



SPECIAL AND REGULAR MEETING AGENDA – AMENDED

Date: 10/29/2019
Time: 6:30 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

This amended agenda includes call-in participation information.

**Mayor Mueller will be participating by phone from the Association of Corporate Counsel:
The Clarendon Hotel and Spa by GreenTree
401 W Clarendon Avenue
Phoenix, AZ 85013**

According to City Council policy, all regular meetings of the City Council are to end by midnight unless there is a super majority vote taken by 11:00 p.m. to extend the meeting and identify the items to be considered after 11:00 p.m.

6:30 p.m. Study Session

SS1. Direction on next steps for addressing unregulated and unmaintained newsracks
([Staff Report #19-221-CC](#))

7:00 p.m. Regular Meeting

- A. Call To Order**
- B. Roll Call**
- C. Pledge of Allegiance**
- D. 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.

E. Presentations and Proclamations

- E1. Proclamation: Media Day
- E2. Presentation: 2018-19 community development department and public works department organizational reviews prepared by Matrix Consulting
- E3. Bay Area Water Supply and Conservation Agency (BAWSCA) report to City Council from Kirsten Keith

F. Commissioner Reports

F1. Housing Commission report

G. Consent Calendar

- G1. Accept the City Council meeting minutes for September 24 and October 1, 2019 ([Attachment](#))
- G2. Approve the purchase of property located at 1283 Willow Road from MP1283 Willow LLC for \$3,633,000 and approve use agreement to permit MidPen Housing to use property for construction staging ([Staff Report #19-225-CC](#))
- G3. Receive and file the investment portfolio review as of September 30, 2019 ([Staff Report #19-220-CC](#))
- G4. Receive and file the quarterly financial review of general fund operations as of September 30, 2019 ([Staff Report #19-219-CC](#))
- G5. Approve the permanent neighborhood traffic management plan for North Lemon Avenue between Valparaiso Avenue and Santa Cruz Avenue ([Staff Report #19-222-CC](#))
- G6. Receive and file West Bay Sanitary District's Bayfront recycled water facilities plan and delegate authority to the city manager to negotiate an agreement for recycled water purveyorship options ([Staff Report #19-217-CC](#))

H. Regular Business

H1. Introduction of Ordinance No. 1060 amending Chapter 13.24 [Heritage Trees] of Title 13 [Streets, sidewalks and utilities] and repealing Chapter 16.65 [Solar Access] of Title 16 [Zoning] ([Staff Report #19-223-CC](#))

I. Informational Items

- I1. City Council agenda topics: November 2019 to January 2020 ([Staff Report #19-216-CC](#))
- I2. Downtown street café program update ([Staff Report #19-224-CC](#))

J. City Manager's Report

K. City Councilmember Reports

L. Adjournment

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

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

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

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

Any writing that is distributed to a majority of the City Council by any person in connection with an agenda item is a public record (subject to any exemption under the Public Records Act) and is available for inspection at the city clerk's office, 701 Laurel St., Menlo Park, CA 94025 during regular business hours. Persons with disabilities, who require auxiliary aids or services in attending or participating in City Council meetings, may call the City Clerk's Office at 650-330-6620.

Agendas are posted in accordance with Government Code Section 54954.2(a) or Section 54956. Members of the public can view electronic agendas and staff reports by accessing the City website at menlopark.org/agenda and can receive email notification of agenda and staff report postings by subscribing to the "Notify Me" service at menlopark.org/notifyme. Agendas and staff reports may also be obtained by contacting City Clerk at 650-330-6620. (Posted: 10/17/2019)

THIS PAGE INTENTIONALLY LEFT BLANK



STAFF REPORT

City Council

Meeting Date: 10/29/2019

Staff Report Number: 19-221-CC

Study Session: Direction on next steps for addressing unregulated and unmaintained newsracks

Recommendation

Staff recommends that the City Council discuss and give direction to staff for addressing the unregulated and unmaintained newsracks throughout Menlo Park.

Policy Issues

The City of Menlo Park currently has no ordinance regulating newsracks and therefore, very little ability to address concerns raised about unmaintained, abandoned or poorly located racks. Addressing the concern would further the goal of downtown beautification in the El Camino Real/Downtown specific plan and the 2015 Menlo Park economic development plan. As a study session item, only general direction or action can be taken on this item.

Background

Over the past five years, the City has received complaints regarding the proliferation and deterioration of newspaper racks throughout the City, especially in the downtown area. There are two types of newsracks used within the City: double stacked, green pedestal racks and private, branded modular racks. To address a similar issue in the 1980s, publishers along with the Chamber of Commerce collaborated, purchased and installed the green racks, but had no agreement on who would maintain the racks.

On October 25, 2017, staff held a community meeting to solicit general feedback and recommendations on a newsrack ordinance. General feedback strongly favored allowing newsracks in the public right of way where they are accessible to all residents, but emphasized the need for cleaning them up. Specific suggestions included ensuring that permit fees are reasonable, not restricting the locations of racks, not mandating the size of the racks, not adopting an ordinance, giving publishers six months to clean up the racks, and creating a stakeholder committee to advise staff on ordinance recommendations.

At the December 5, 2017 City Council meeting, staff presented the community meeting feedback and requested direction on next steps for addressing the newsracks within the City. City Council gave direction for staff to draft an ordinance and bring it for City Council consideration after it has been vetted through a stakeholders' advisory group.

On February 8, 2018, staff held a community meeting in the Arrillaga Recreation Center. In advance of the meeting, the draft ordinance and draft permit application was available for the public to preview. Extensive outreach was conducted to ensure the community, publishers and distributors were notified. A personal email invitation was sent to all editors, publications and publishers identified as distributing within the City. Personal phone calls were made to key stakeholders, the Menlo Park Chamber of Commerce announced the meeting in its newsletter, a City Council Digest article was published, and information was posted on the

community calendar, economic development website, Facebook and Twitter. Additionally, InMenlo and the Almanac published articles about the meeting. At the meeting, staff received positive feedback from the proposed draft ordinance. Distributors and publishers appreciated that the ordinance was not too restrictive, allowed them to brand the news racks while allowing them to distribute at locations they know best serve their customers.

At the March 3, 2018 City Council meeting, staff presented an ordinance regulating newsracks for its first reading. The ordinance was introduced on a 3-1 vote with direction to amend section 13.28.030 by adding a section specifying that newsracks on private property do not require a newsrack permit but do require design review and approval by the City. Staff confirmed that such a provision was already included in the drafted ordinance. City Council also directed staff to take a mid to low cost recovery approach for permitting fees but a full cost recovery approach with enforcement. Staff was also asked to bring back a map that would denote which current newsracks would be noncompliant with the proposed ordinance. Staff created a map showing the location of downtown newsracks (Attachment C,) but has not yet expended the time necessary to determine which newsracks would become noncompliant under the ordinance. The ordinance was never brought back to City Council for a second reading due to a number of sudden key vacancies.

Due to continued complaints and filled staff vacancies in key areas, staff is once again seeking a direction on how to proceed with this issue.

Analysis

Staff is continuing to hear concerns about the newsracks. Staff is seeking City Council direction on how to move this item forward and has identified several options for consideration.

No ordinance/status quo

The City Council can choose to not adopt an ordinance and allow the publishers to self-police. Even without an ordinance, the number of abandoned modular branded racks could be reduced if staff is aware of abandoned or unmaintained racks, seeks out the owner of the racks, and requests their removal. This approach could involve either passive/complaint-driven or active monitoring by staff to maintain an awareness of the state of newsracks. Both approaches would require staff time, and likely a reallocation of time to address the issue. However, there would be little improvement in the state of the green pedestal racks due to a lack of parties directly responsible for them. Without improvement in the state of the green pedestal racks, it is likely that complaints about newsracks would continue.

Originally proposed ordinance

The City Council can direct staff to bring back the ordinance with requested amendments (Attachment A) that was introduced by City Council on March 13, 2018. The City currently has no ordinance regulating newsracks and therefore, very little ability to address the concerns raised about unmaintained, abandoned or modular racks blocking sidewalks, crosswalks or bike racks. Adopting this ordinance, which requires publishers to obtain permits, will give the City current contact information for all racks placed in the public right of way and allow the City to legally remove any racks that do not meet the standards enumerated in the ordinance. The ordinance establishes a newsrack permit process, standards for maintenance and display of newsracks, size and design standards, standards for placement and location of newsracks, and an enforcement mechanism for abandoned or unmaintained newsracks throughout Menlo Park.

Fees for a newsracks permit are expected to be lower than an encroachment permit and would be set to cover the cost of reviewing and renewing permits, verifying modular rack placement and anchoring, and enforcement. The majority of review time is expected to come with the initial permit. Subsequent renewals should be relatively nominal. Staff will recommend lower fees to encourage compliance with the new

ordinance and higher fees for non-compliance (abandonment, other violations.)

This course of action would require minimal staff resources in the short term in terms of ordinance adoption since the groundwork for the ordinance has largely been laid. Staff would be able to bring the ordinance back to City Council for adoption before the end of the year and begin to implement the permitting and removal process following adoption.

Modified version of originally proposed ordinance

The City Council could choose to take the previously proposed ordinance and modify it in order to create a uniform look in the downtown area. This option would carve out a special area around the downtown where newsracks would be required to be within designated areas surrounded by a physical screen or corral (see Attachment B for example.) This corral method has been used in Burlingame and Palo Alto to improve the look and feel of their respective downtowns. Publishers would still be permitted to choose the style, size, and color of their newsracks as long as they met the standards laid out in the ordinance. Outside of the designated downtown area, newsracks would be subject to the provisions of the originally proposed ordinance.

This approach would require the City Council to give staff direction on the number, size and location of the corrals. One method that would minimize disruption to both publishers and their customers would be to select the locations where there are already a large grouping of newsracks (Attachment C) as the designated corral areas. The removal of the green pedestal racks and abandoned modular racks would greatly reduce the current footprint of downtown newsracks and make corrals a viable option.

New ordinance

The City Council may also direct staff to take a fresh look at the newsrack issue. This would include a holistic look and complete reconsideration of the City's options for an ordinance. Many neighboring cities have adopted a newsrack ordinance with varying degrees of regulation. Most ordinances include the following sections:

- *Requirement of newsrack permit* – allows the City to collect current contact information, insurance, business license and indemnification requirements for the publisher and track the locations of the newsracks.
- *Maintenance and standards* – sets quality guidelines that must be upheld by the permit holder, restricts advertising on the newsracks and gives the City authorization to remove abandoned newsracks.
- *Placement* – gives general guidelines on where newsracks can be placed including for ADA accessibility and traffic safety and states how newsracks should be mounted to the sidewalks.
- *Abatement of violation* – allows the City to cancel a permit and remove newsracks for health and safety reasons or violation of permit conditions.

In addition, such an approach would mean reconsidering the following questions:

1. Does the City Council want to standardize the newsracks?
 - a. Style (pedestal or modular)
 - b. Size
 - c. Color
 - d. Manufacturer and/or model
2. Does the City Council want to regulate newsracks locations within the downtown?
 - a. If so, does the City Council want to screen newsracks with physical corrals?
3. Does the City Council want to restrict the number of newsracks allowed?

This process would also benefit from re-engaging with stakeholder groups such as publishers, business owners and residents. The timeline for this approach would stretch into next year and require considerably more staff resources than the other options.

Impact on City Resources

The impact on city resources will depend on the approach selected by the City Council. Choosing to not pursue any ordinance would allow staff to focus on other items unless it was coupled with direction for staff to take a more active role in contacting the owners of abandoned racks. Bringing back the previously proposed ordinance would require little staff resources in the ordinance adoption phase as that ordinance has already gone through a significant public process. Implementation of the ordinance will require staff time and City financial resources to both remove and dispose of noncompliant racks and to review the permits for all the remaining and new newsracks in the City. There would be significant staff resources expended in setting up this permitting process during the first year. Similarly, the modified version of the previously proposed ordinance would not require a large investment of staff resources if minimal changes are made during adoption, although it would be a more work-intensive choice than no modifications. Ordinance implementation would also be a similarly staff resource-intensive process. Finally, pursuing a new ordinance that differs substantially from the previously proposed one would require staff to invest significantly into restarting the ordinance development process and re-engaging with stakeholders.

Environmental Review

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

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. Staff will also notify by email the previously identified publishers operating in the City about the study session.

Attachments

- A. Draft Menlo Park newsracks ordinance introduced on March 13, 2018
- B. Burlingame Corral Design
- C. Map of downtown newsracks

Report prepared by:
John Passmann, Management Analyst II

Report Reviewed by:
Deanna Chow, Interim Community Development Director

ORDINANCE NUMBER _____

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
ADDING CHAPTER 13.28 [NEWSRACKS] OF TITLE 13 [STREETS,
SIDEWALKS, AND UTILITIES] OF THE MENLO PARK MUNICIPAL
CODE**

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

SECTION 1. FINDINGS AND DETERMINATIONS.

A. It is in the public interest to establish regulations that balance the right to distribute information through newsracks with the right of persons to reasonably access and use public property.

B. The City of Menlo Park currently has limited control on the design, placement, and installation of newsracks within the public rights of way, which newsracks can cause interference and obstruction with the use of public rights of way; can cause interference with the safe and reasonable use of private property adjoining or in the vicinity of such public rights of way, and further can adversely impact the aesthetics of the City of Menlo Park creating structural and visual clutter. The goal of this ordinance will reduce such negative impacts.

C. The City Council of the City of Menlo Park finds and declares the addition of Chapter 13.28 [Newsracks] is necessary for the above reasons.

SECTION 2. ADDITION TO CODE. Section 13.28 [Newsracks] is hereby added in its entirety as follows:

Sections:

- 13.28.010 Purpose.
- 13.28.020 Definitions.
- 13.28.030 Permit Required.
- 13.28.040 Obtaining a Permit.
- 13.28.050 Standards for Maintenance and Display of Newsrack.
- 13.28.060 Size and Design Standards.
- 13.28.070 Standards for Placement and Location of Newsrack.
- 13.28.080 Blinder Racks Required.
- 13.28.090 Violation - Enforcement.
- 13.28.100 Nuisance.
- 13.28.110 Removal and Hearing.
- 13.28.120 Abandoned Newsracks.

13.28.010 Purpose.

The purpose and scope of the regulations in this chapter are as follows:

(a) The provisions of this chapter shall apply to all newsracks located within the City of Menlo Park; provided, that certain provisions, as specified, shall apply only to newsracks located on public property.

(b) It is in the public interest to establish regulations that balance the right to distribute information through newsracks with the right of persons to reasonably access and use public property.

(c) The public health, safety, welfare and convenience require that interference with vehicular, bicycle, wheelchair or pedestrian traffic be avoided; obstruction of sight distance and views of traffic signs and street-crossing pedestrians be eliminated; damage done to sidewalks or streets be minimized and repaired; the good appearance of public property be maintained; trees and other landscaping be allowed to grow without disturbance; access to emergency and other public facilities be maintained; and ingress and egress from, and the enjoyment of store window displays on, properties adjoining public property be protected.

(d) Newsracks placed and maintained on public and private property, absent some reasonable regulation, may unreasonably interfere with the use of such property, and may present hazards to persons or property.

(e) The regulations on the time, place and manner of the placement, location and maintenance of newsracks set forth in this chapter are carefully tailored to ensure that the purposes stated in this section are implemented while still providing ample opportunities for the distribution of news and other information to the public.

13.28.020 Definitions.

For the purposes of this chapter, the following words and phrases are defined and shall be given the meaning set out in this section unless it is apparent from the context that a different meaning is intended.

(a) "Abandoned newsrack" means any newsrack which remains empty or contains only outdated issues for fourteen(14) consecutive calendar days; provided, that a newsrack remaining empty due to labor strike or any temporary and extraordinary interruption of distribution or publication by the newspaper or other publication sold or distributed from that newsrack shall not be deemed abandoned.

(b) "Harmful matter" means and is defined as in California Penal Code Section 313, as such section may from time to time be amended.

(c) "Newsrack" means any self-service or coin-operated box, container, storage unit, or other dispenser installed, used or maintained for the display and sale or distribution of newspapers, periodicals or other publications.

(d) "Person" means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.

(e) "Public place(s)" means and includes any public property owned or controlled by the City of Menlo Park or any other public agency, or any outdoor private property which is open to the public.

(f) "Public property" means any public right-of-way or any property owned or controlled by the City of Menlo Park, including, without limitation, streets, sidewalks, alleys, plazas, and rights-of-way.

13.28.030 Permit Required.

It is unlawful to install, place, maintain or cause to be placed, installed or maintained a newsrack on, or projecting on or over, any public property without first receiving a permit therefor from the City of Menlo Park Public Works Director or its designee, and unless such newsrack is in compliance with the provisions of this chapter; provided that a newsrack located on public property as of the effective date of this chapter, may continue to remain in such location for one hundred twenty (120) days following such effective date, under the following conditions:

(a) The newsrack is in compliance with the requirements for the installation and maintenance of newsracks contained in this chapter; and

(b) A permit application for such newsrack has been filed as of that date with the City of Menlo Park Public Works Director or its designee by the duly authorized representative of both the publisher and, if applicable, any independent distributor authorized to service the publisher's newsrack; and

(c) A permit pursuant to such application has not been denied with respect to any such newsrack.

If no permit application has been filed by that date by the duly authorized representative of both the publisher and, if applicable, any independent distributor authorized to service the publisher's newsrack, or such permit is denied, such newsrack shall be deemed to be in violation of the provisions of this chapter. Initial permits shall be valid until December 31, 2019. Thereafter, permits shall be valid for up to two years, expiring on December 31 of each even numbered year.

Newsracks on private property do not require a newsrack permit, but do require design review approval by the City of Menlo Park Public Works Director or its designee if they do not conform to the design standards in this chapter. Existing newsracks on private property shall constitute a non-conforming use to the extent they do not conform to the design standards set forth in this chapter.

13.28.040 Obtaining a Permit.

(a) Exclusive Requirements. The provisions of this chapter shall be the exclusive requirements for newsracks located on or encroaching onto public property in the city.

(b) Application. Application for a newsrack permit for each location sought shall be submitted to the City of Menlo Park Public Works Director or its designee on a form prescribed by the City of Menlo Park, which shall include, without limitation:

(1) The name, street and mailing address, and telephone number of the applicant, which shall be the duly authorized representative of both the publisher and, if applicable, any independent distributor authorized to service the publisher's newsrack for which the permit is sought;

(2) The name, street and mailing address and telephone number of the distributor or other responsible person whom the city may notify or contact at any time concerning the applicant's newsrack(s);

(3) A description of the exact proposed location (including a map or site plan, drawn to scale, with adequate locational information to verify conformance with this chapter) and the proposed means of affixing the proposed newsrack;

(4) A description of the proposed newsrack, including its dimensions, the number of publication spaces it will contain, and whether it contains a coin-operated mechanism;

(5) The name and frequency of publication of each publication proposed to be contained in the newsrack;

(6) A statement signed by the applicant that the applicant agrees to indemnify, defend and hold harmless, the City of Menlo Park and its representatives from all claims, demands, loss, fines or liability to the extent arising out of or in connection with the installation, use or maintenance of any newsrack on public property by or on behalf of any such person, except such injury or harm as may be caused solely and exclusively by the negligence of the City of Menlo Park or its authorized representatives;

(7) A statement signed by the applicant that the applicant agrees, upon removal of a newsrack, to repair any damage to the public property caused by the newsrack or its removal; and

(8) Each applicant shall submit along with the permit application a fee as set forth in the City's Master Fee Schedule. Additionally each applicant shall submit an insurance certificate naming the City of Menlo Park as an additional insured under the same terms as required for a public works encroachment permit.

(c) Issuance of Permit. A permit shall be issued within fifteen (15) working days from the date of filing the application with the City of Menlo Park Public Works Director or its designee if the application is properly completed and the type of newsrack and location proposed for each newsrack meet the standards set forth in this chapter. A single permit shall be issued for each newsrack location applied for by an applicant which meets the standards of this chapter. Each permit holder shall maintain an active City of Menlo Park business license throughout the term of the permit. An applicant may submit more than one application, in order to apply for additional locations. A permit shall not be transferable without written authorization of the City of Menlo Park Public Works Director or its designee.

(d) Period of Permit Validity. Permits shall remain valid if re-registered with the City of Menlo Park prior to expiration, on a form provided by the City of Menlo Park. Failing to re-register or explicit cancellation by a permit holder will void the permit and it will be ineffective thereafter. Unregistered newsracks may be treated as abandoned under Section 13.28.120 or other applicable enforcement mechanism.

(e) Issuance of Permit Sticker. Each permittee shall be issued a pre-printed sticker for each permitted newsrack, which shall be affixed to the lower right corner of the front of each permitted newsrack. Failure to have a permit sticker affixed to a newsrack will be treated as abandoned under Section 13.28.120.

(f) Denial of Permit. If a newsrack permit is disapproved, in whole or in part, the City of Menlo Park Public Works Director or its designee shall notify the applicant within thirty (30) working days from the date of filing a complete application with the City of Menlo Park, explaining the reasons for the denial of the permit. The applicant shall have ten (10)

calendar days within which to appeal the decision to the City Manager in accordance with the appeal provisions set forth in subsection (g) of this section.

(g) Appeal of Permit Denial. After receiving a notice of appeal, the City Manager or the designee of the City Manager shall conduct a hearing within thirty (30) days of the receipt of the applicant's appeal, unless otherwise agreed to by the applicant. Written notice of the time and place of the hearing shall be given to the applicant, and shall be posted in the official posting locations of the City of Menlo Park. The hearing shall be informal, but oral and written evidence may be given by both sides. The City Manager or designee shall render a written decision within twenty (20) days after the date of the hearing. The decision of the City Manager shall be final.

(h) Amendment to Permit. In the event of a change in any of the information contained in the application, the permittee shall submit such change in writing to the City of Menlo Park Public Works Director or its designee. A permittee may install and maintain additional newsracks by an amendment to the permit. The rules and procedures of this section shall also apply to the review and approval of any such amendment.

13.28.050 Standards for Maintenance and Display of Newsracks.

(a) Every person placing or maintaining a newsrack on public property shall comply with the following requirements:

(1) Every newsrack shall be maintained in a neat and clean condition, and in good repair at all times. For example, without limitation, every newsrack shall be reasonably free of dirt and grease, be reasonably free of chipped, faded, peeling or cracked paint, be reasonably free of rust and corrosion, have no broken or cracked plastic or glass parts, and have no broken structural parts. No signs, advertising, stickers or adhesive labels, other than City of Menlo Park issued identification/approval labels, unrelated to publications in the newsracks shall be displayed on newsracks.

(2) Every newsrack shall be constructed, installed and maintained in a safe and secure condition.

(3) Every newsrack shall be made of solid material on all sides, so as to contain the material inside the newsrack in a manner as to prevent it from blowing away or otherwise becoming litter. No wire or other open form of newsrack shall be permitted.

(4) Every newsrack shall be kept free of graffiti.

(5) Every newsrack that sits on legs shall be kept free of dirt and litter under the newsrack.

(6) Every newsrack shall be painted or covered with a protective coating, so as to keep it free from rust, and shall be cleaned and repainted on a regular basis.

(7) Every coin-operated newsrack shall be equipped with a coin-return device that is maintained in good repair and working order.

(8) Every coin-operated newsrack shall display information on how to secure a refund in the event of coin return malfunction. Such information shall be placed in a visible location on the front or top of the newsrack, and shall be legible.

(9) Other than the display of the publication contained therein, no newsrack shall display or be affixed with any words or pictures except for the identifying information, and the coin return information, if applicable.

(10) Old or out-of-date material removed from any newsrack by any person who owns, maintains, or stocks the newsrack shall be recycled or disposed of in a lawful manner and

not in any City owned trash receptacle. Such material shall not be disposed of in any trash receptacle owned or rented by others, without the express written consent of the owner or renter of such receptacle. Such material shall be disposed of in a manner that does not cause the material to become litter.

(11) Upon the removal of a newsrack, the public right-of-way shall be returned to its original condition.

(b) Every newsrack located in a public place shall be affixed with identifying information, which shall contain the name, address and telephone number of the newsrack owner and of the distributor of the publication(s) contained therein. Such information shall be placed in a visible location on the front or top of the newsrack, and shall be legible. The size of the identifying information shall be no larger than three (3) inches by five (5) inches.

13.28.060 Size and Design Standards.

No newsrack shall be placed, installed or maintained on any public property except in compliance with the following standards:

(a) No newsrack shall be more than fifty (50) inches high (including the pedestal in the case of modular newsracks) measured from the ground to the top surface of the newsrack, nor more than twenty-four (24) inches deep, nor more than twenty-four (24) inches wide.

(b) The highest operable part of the coin slot, if provided, and all controls, dispensers and other operable components of a newsrack shall be no higher than forty-eight (48) inches above the ground, and no lower than fifteen (15) inches above the ground.

(c) The design of a newsrack shall not create a danger to the persons using the newsrack in a reasonably foreseeable manner. All newsracks shall comply with all applicable federal, state and local laws and regulations including, without limitation, the Americans with Disabilities Act and other laws and regulations relating to barrier-free design.

13.28.070 Standards for Placement and Location of Newsracks.

(a) No newsrack shall be placed, installed or maintained on any public property when such installation, use or maintenance endangers the safety of persons or property. No newsrack shall be placed, installed or maintained on any public property except in compliance with the following standards:

(1) Newsracks shall be placed only on a sidewalk, in one of the following locations:

(A) Near a curb, in which case, the back of the newsrack shall be placed no less than eighteen (18) inches nor more than twenty-four (24) inches from the face of the curb; or

(B) Adjacent to the wall of a building, in which case, the back of the newsrack shall be placed parallel to such wall and not more than six (6) inches from the wall.

(2) Every newsrack shall be placed so as to open toward the sidewalk.

(3) Every newsrack shall be affixed to the sidewalk or to another newsrack, in a manner approved by the permit therefor; provided, no newsrack shall be chained to another newsrack. Newsracks shall not be chained or otherwise attached to any bus shelter, bench, street light, utility pole or device or sign pole, or to any tree, shrub or other plant, nor situated upon any landscaped area.

(4) No newsrack shall be placed, installed or maintained:

(A) Within five (5) feet of any marked or unmarked crosswalk as measured from the curb return;

(B) Within five (5) feet of any fire hydrant, call box, or other emergency facility; or bus bench;

(C) At any location where the clear space for the passage of pedestrians is reduced to less than six (6) feet except that in areas where physical obstructions provide for less than a six (6) foot clearance, a clear space for passage of not less than four (4) feet may be permitted for a distance of not more than ten (10) feet with the written approval of the City of Menlo Park Public Works Director or its designee;

(D) Within five (5) feet of any driveway;

(E) Within five (5) feet of any red curb of a bus stop zone;

(F) Within five (5) feet of the curb return of any wheelchair curb ramp not in a marked crosswalk;

(G) In such a manner as to impede or interfere with the reasonable use of any commercial window display or access to or from any building;

(H) In such a manner as to impede or interfere with the reasonable use of any bicycle rack;

(I) In such a manner as to block or cover any portion of an underground utility vault, manhole, or other sidewalk underground access location.

(5) Any newsrack placed within Caltrans jurisdiction (such as along El Camino Real or portions of Willow Road) must Comply with the applicable Caltrans Maintenance Agreement held by the City of Menlo Park.

(b) The City of Menlo Park Public Works Director or its designee may allow a permittee to place a newsrack in a location in variance of the standards otherwise required by this section if it is found that such variance will not be detrimental to the public safety and that, due to the existing physical constraints at that location, imposition of the standards would make placement impossible and would cause a hardship to the permittee and its patrons. The written findings and the variance shall be made part of the permit. Prior to considering whether or not to grant a variance, the City of Menlo Park Director of Public Works or its designee shall provide written notice of the requested variance to the owner(s) of the real property adjacent to or abutting the proposed newsrack location.

(c) If sufficient space does not exist to accommodate all newsracks sought to be placed at one location without violating the standards set forth in this chapter, the City of Menlo Park Public Works Director or its designee shall give priority as to that location to publications on a historical "first come first served" basis to permit applicants as follows:

(1) First priority shall be publications that are published two (2) or more times a week;

(2) Second priority shall be given to publications that are published once per week;

(3) Third priority shall be given to publications that are published less than once per week but more than once per month;

(4) Fourth priority shall be given to publications that are published monthly or less frequently than monthly.

In the event the City of Menlo Park is required to utilize the priority system described in subsections (d)(1) through (4), the City of Menlo Park shall permit only one rack per publication or distributor in a single location.

13.28.080 Blinder Racks Required.

Section 313.1 of the California Penal Code shall govern the display, offer for sale or selling of harmful matter as defined in CPC Section 313(a), to minors in vending machines, selling such matter, unattended by an adult at the time of such sale, located in and upon public places. No material which is harmful to minors, as defined in Section 313 of the California Penal Code, shall be displayed in a public place, other than a public place from which minors are excluded, unless blinder racks are placed in front of the material so that the lower two-thirds of the material is not exposed to view.

13.28.090 Violation- Enforcement.

(a) It shall be illegal to place, install, or maintain any newsrack or any material in a newsrack in a manner contrary to any provision of this chapter.

(b) Any person who violates any provision of this chapter shall be guilty of an infraction and upon conviction thereof shall be punished as provided in Section 1.12.010 [Penalty for violations] of this code.

(c) The provisions contained in this chapter shall be subject to the code enforcement authority of the city as provided in Title 1 of this code.

13.28.100 Nuisance.

Any newsrack or any material in a newsrack placed, installed or maintained in violation of this chapter shall constitute a public nuisance and may be abated in accordance with applicable provisions of law.

13.28.110 Removal and Hearing.

In addition to the enforcement remedies available to the City of Menlo Park, which are set forth in Title 1 and in Sections 13.28.090 and 13.28.100 of this chapter, any newsrack placed, installed or maintained in violation of this chapter may be removed by the City of Menlo Park, subject to the notice and hearing procedures set forth in this section.

(a) Notice of Violation. Before removal of any newsrack, the City of Menlo Park shall notify the owner and/or distributor of the violation. Written notification by first class mail to the address or addresses shown on the offending newsrack shall constitute adequate notice; and in addition the City will provide notice by sending an email to the email address listed on the owner and/or distributor's permit application. The City may, but need not, affix an additional notice tag onto the offending newsrack. If no identification is shown on the newsrack, posting of the notice on the newsrack alone shall be sufficient. The notice shall state the nature of the violation, shall specify actions necessary to correct the violation, and shall give the owner and/or distributor ten (10) business days from the date appearing on the notice to either remedy the violation or to request a meeting before the City of Menlo Park Public Works Director or its designee. The date on the notice shall be no earlier than the date on which the notice is mailed or affixed to the newsrack, as the case may be.

(b) Meeting and Decision. Any owner or distributor notified under subsection (a) may request a meeting with the City of Menlo Park Public Works Director or its designee by delivering a written request therefor within ten (10) business days from the date appearing

on the notice. The meeting shall be informal, but oral and written evidence may be given by both sides. The City of Menlo Park Public Works Director or its designee shall give its decision within ten (10) business days after the date of the meeting. Any action by the city to remove the newsrack shall be stayed pending the written decision of the City of Menlo Park Public Works Director or its designee following the meeting.

(c) Removal and Impoundment. The City of Menlo Park may remove and impound a newsrack or newsracks in accordance with this section following the written decision of the City of Menlo Park Public Works Director or its designee upholding the determination of a violation, or if the owner or distributor has neither requested a meeting nor remedied the violation within ten (10) business days from the date on the notice. An impounded newsrack shall be retained by the City of Menlo Park for a period of at least ninety (90) calendar days following the removal, and may be recovered by the permittee upon payment of a fee as set forth in the municipal fee schedule. An impounded newsrack and its contents may be disposed of by the City of Menlo Park after ninety (90) calendar days.

(d) Summary Abatement. Notwithstanding the provisions of subsections (a) and (b), prior notice and an opportunity to be heard shall not be required prior to removal of any newsrack that is installed or maintained in such a place or manner as to pose an immediate or clear and present danger to persons, vehicles or property or any newsrack that is placed in any location without a permit. In such case, the City of Menlo Park shall proceed in the following manner:

(1) Within the next working day following removal, the City of Menlo Park shall notify by telephone the permittee or, in the case of an unpermitted newsrack, the owner of the newsrack or a person whose name is shown on the required identification, if available. Within three (3) business days, the City of Menlo Park shall send written confirmation of the telephoned notice. The written confirmation shall contain the reasons for the removal and information supporting the removal, and shall inform the recipient of the right to request, in writing or in person, a post-removal meeting within four (4) business days of the date of such written notice and the person to whom such request shall be made.

(2) Upon timely request, the City of Menlo Park shall provide a meeting within two (2) business days of the request, unless the requesting party agrees to a later date. The proceeding shall be informal, but oral and written evidence may be given by both sides. The City of Menlo Park designee hearing the matter shall give his or her decision in writing to the requesting party within two (2) business days after such meeting. If the City of Menlo Park hearing officer finds that the removal was proper, he or she shall notify the requesting party to pay any applicable penalties and costs and recover the newsrack. If the City of Menlo Park hearing officer finds that the removal was improper and that placement of the newsrack was lawful, he or she shall order that the newsrack be released and reinstalled without charge.

(3) If the owner and distributor of an unpermitted rack cannot be determined and the rack does not contain the required identification, no notice of the removal shall be required.

13.28.120 Abandoned Newsracks.

An abandoned newsrack may be removed by the city and impounded, pursuant to the notice and hearing procedures set forth in Section 13.28.110. The City of Menlo Park may

dispose of the newsrack if the permittee does not claim the newsrack and pay any required fees within ninety (90) days of its removal.

SECTION 3. SEVERABILITY. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION. The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act ("CEQA") because the activity is not a project as defined by Section 15378 of the CEQA Guidelines. The ordinance has no potential for resulting in physical change to the environment either directly or indirectly.

SECTION 5. EFFECTIVE DATE AND PUBLISHING. This ordinance shall take effect 30 days after adoption. The City Clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, the posting in at least three public places in the city. Within 15 days after the adoption of the ordinance amendment, a summary of the amendment shall be published with the names of the council members voting for and against the amendment.

INTRODUCED on the thirteenth day of March, 2018.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the ___ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

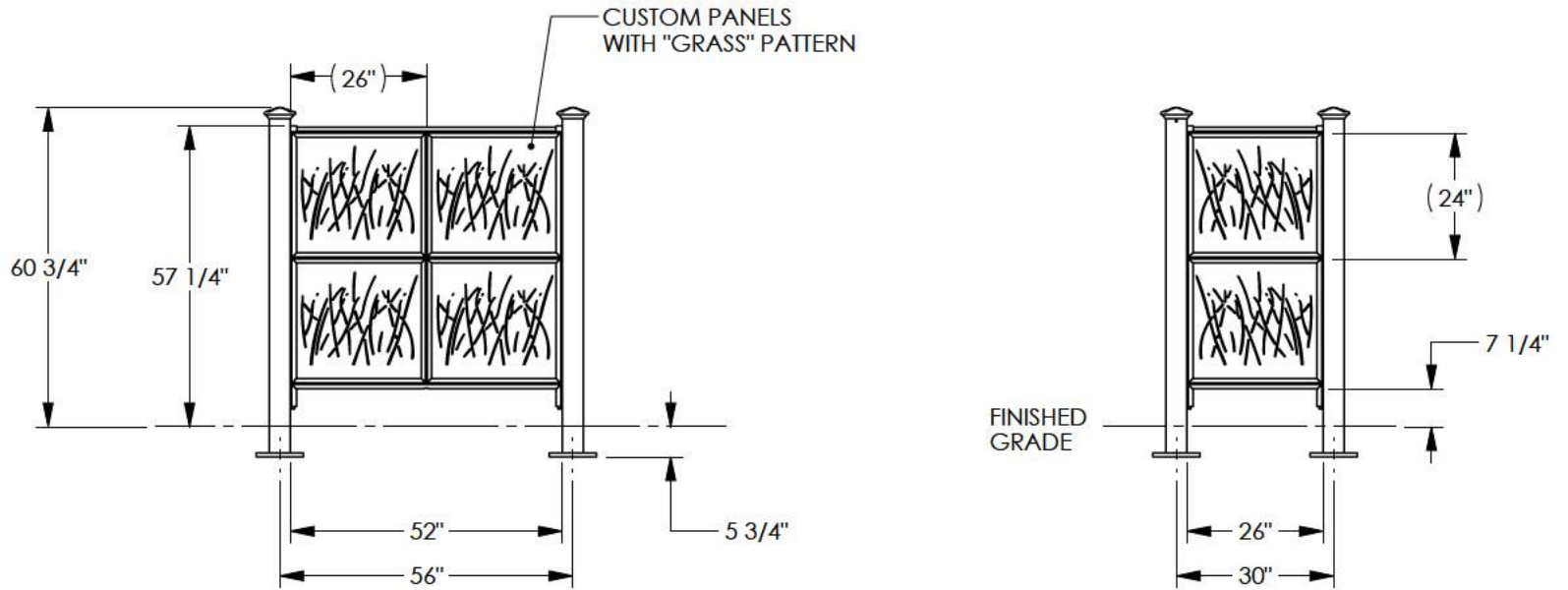
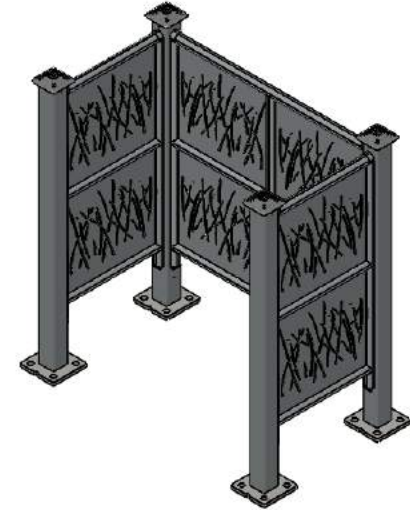
City Clerk

___ APPROVED
 ___ REVISE AND RESUBMIT
 ___ REJECTED

COMMENTS MADE ON THESE SUBMITTALS ARE FOR INFORMATION ONLY. ANY CHANGES REQUIRE RE-SUBMITTAL AND APPROVAL. CUSTOMER IS RESPONSIBLE FOR CONFIRMING ALL QUANTITIES, DIMENSIONS, AND INSTALLATION TECHNIQUES.

landscapeforms®

BY: ___ DATE: ___



landscapeforms®

431 LAWNDAL AVE. KALAMAZOO, MI 49048 PHONE: 800-521-2546 FAX: 269-381-3455

CONFIDENTIAL DRAWING INFORMATION CONTAINED HEREIN IS THE PROPERTY OF LANDSCAPE FORMS, INC. INTENDED USE IS LIMITED TO DESIGN PROFESSIONALS SPECIFYING LANDSCAPE FORMS, INC. PRODUCTS AND THEIR DIRECT CLIENTS. DRAWING IS NOT TO BE COPIED OR DISCLOSED TO OTHERS WITHOUT THE CONSENT OF LANDSCAPE FORMS, INC.

©2012 LANDSCAPE FORMS, INC. ALL RIGHTS RESERVED. WWW.LANDSCAPEFORMS.COM

KALEIDOSCOPE OS "U" SHAPED WALL UNIT W/CUSTOM SIZED FRAME & GRASS PANELS

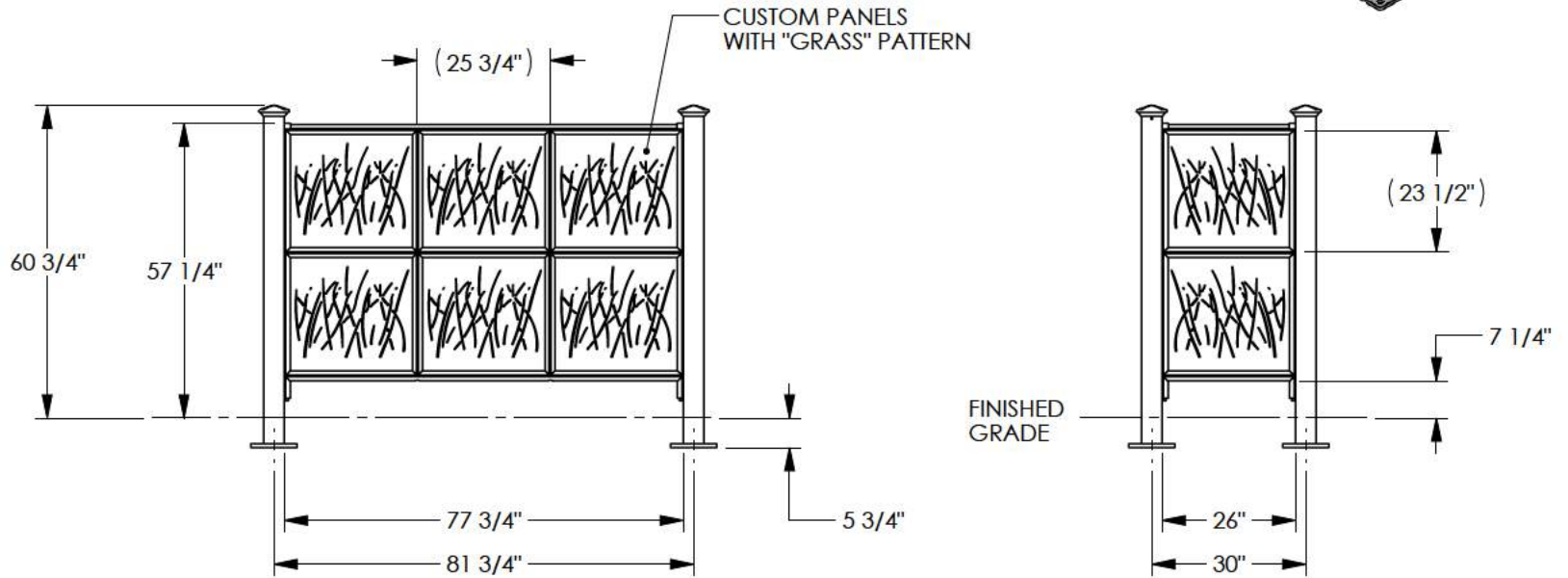
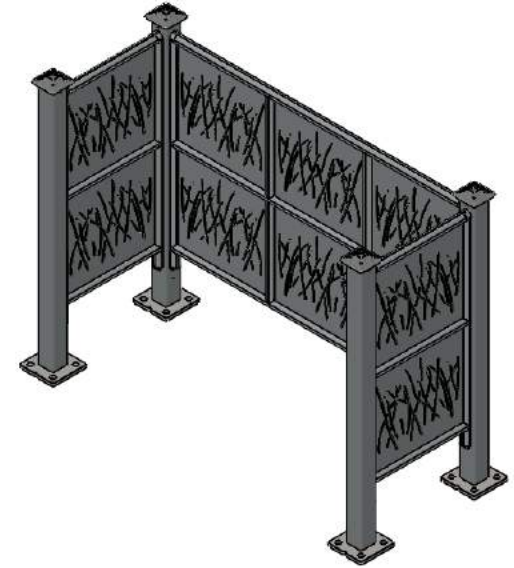
FILE NAME: KA9990408-01	SCALE	1:36
SPECIAL CUSTOMER DRAWING	AUTHOR	mjp
SPDREQ#	DATE	5/3/2013
ALL DIMENSIONS IN INCHES	A SIZE SHEET	REVISED

APPROVED
 REVISE AND RESUBMIT
 REJECTED

COMMENTS MADE ON THESE SUBMITTALS ARE FOR INFORMATION ONLY. ANY CHANGES REQUIRE RE-SUBMITTAL AND APPROVAL. CUSTOMER IS RESPONSIBLE FOR CONFIRMING ALL QUANTITIES, DIMENSIONS, AND INSTALLATION TECHNIQUES.

landscapeforms®

BY: _____ DATE: _____



landscapeforms®

431 LAWDALE AVE. KALAMAZOO, MI 49048 PHONE: 800-521-2546 FAX: 269-381-3455

CONFIDENTIAL DRAWING INFORMATION CONTAINED HEREIN IS THE PROPERTY OF LANDSCAPE FORMS, INC. INTENDED USE IS LIMITED TO DESIGN PROFESSIONALS SPECIFYING LANDSCAPE FORMS, INC. PRODUCTS AND THEIR DIRECT CLIENTS. DRAWING IS NOT TO BE COPIED OR DISCLOSED TO OTHERS WITHOUT THE CONSENT OF LANDSCAPE FORMS, INC.

©2012 LANDSCAPE FORMS, INC. ALL RIGHTS RESERVED. WWW.LANDSCAPEFORMS.COM

KALEIDOSCOPE OS "U" SHAPED WALL UNIT W/CUSTOM SIZE FRAME & GRASS PANELS

FILE NAME: KA9990408-02	SCALE	1:36
SPECIAL CUSTOMER DRAWING	AUTHOR	mjp
SPDREQ#	DATE	5/3/2013
ALL DIMENSIONS IN INCHES	A SIZE SHEET	REVISED



Downtown Newsrack Locations

Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community



- Newspaper Racks**
- Private
 - ▲ Public
- Other Features**
- Parking
 - Selected Santa Cruz Ave Businesses
 - Parks

- Street Improvements**
- Landscape
 - Ramp
 - Sidewalk
 - Vertical Curb



Locations are approximate

THIS PAGE INTENTIONALLY LEFT BLANK



SPECIAL AND REGULAR MEETING MINUTES – DRAFT

Date: 9/24/2019
Time: 5:00 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

5:00 p.m. Special Joint Study Session with Atherton City Council (City Council Chambers)

A. Call To Order

Mayor Mueller called the meeting to order at 5:03 p.m.

B. Roll Call

Present: Carlton, Combs, Nash, Mueller
Absent: Taylor
Staff: City Manager Starla Jerome-Robinson, Assistant City Attorney Cara Silver, City Clerk Judi A. Herren, Police Chief Dave Bertini

Atherton
Present: DeGolia, Lempres, Lewis, Widmer, Wiest
Absent: None
Staff: City Manager George Rodericks, City Clerk Anthony Suber, Finance Director Robert Barron, Public Works Director Robert Ovadia, Police Chief Steve McCulley

SS1. Review and discuss collaborative policing efforts and activities

Chief Dave Bertini and Chief Steve McCulley introduced the item.

The City Councils discussed collaboration on traffic enforcement and emergency operation centers.

SS2. Review and discuss regional projects, traffic impacts and shared input, and El Camino traffic safety and pedestrian safety

Deputy City Manager Justin Murphy and Interim Public Works Director Nikki Nagaya introduced the item.

- Lydia Lee spoke in support of increased bicycle and pedestrian safety.

The City Councils spoke to Menlo Park's traffic calming measures and Atherton's upcoming discussions on traffic calming and management plans.

Atherton City Council suggested a liaison between their Bicycle and Pedestrian Committee and Menlo Park's Complete Street Commission. They also commented on their license plate reader policy and requested more information on Menlo Park's drone policy.

Menlo Park City Council suggested adding neighboring jurisdictions input at study sessions pertaining to environmental impact reports.

Mayor Mueller adjourned to the special business at 5:59 p.m.

6:00 p.m. Special Meeting (City Hall - “Downtown” Conference Room, 1st Floor)

Mayor Mueller called the meeting to order at 6:07 p.m.

C. Special Business

C1. Interviews of Planning Commission applicants

The City Council conducted interviews with the two applicant; Jeff Kleck and Larry Khale.

6:30 p.m. Study Session (City Council Chambers)

City Council reconvened at 6:41 p.m.

SS1. Provide direction on Downtown parking utility underground project and future citywide undergrounding priorities ([Staff Report #19-200-CC](#))

Senior Project Manager Morad Fakhrai and Cindy Middleson made the presentation (Attachment).

The City Council received clarification that the underground of utilities are performed with other street and sidewalk projects to limit the need to excavate multiple occasions. There was discussion on utilizing utility user tax for the project. City Council directed staff to return this item with projects ranked with the approved criteria.

- Steve Van Pelt suggested other undergrounding needs in Menlo Park and undergrounding the large transmission lines.
- Henry Riggs spoke in support of undergrounding in proposed roadways but in opposition in parking lots.

City Council took a recess at 7:17 p.m.

City Council reconvened at 7:24 p.m.

Regular Meeting

D. Call To Order

Mayor Mueller called the meeting to order at 7:24 p.m.

E. Roll Call

Present: Carlton, Combs (excused at 8:28 p.m.), Nash, Mueller
Absent: Taylor
Staff: City Manager Starla Jerome-Robinson, Assistant City Attorney Cara Silver, City Clerk Judi A. Herren

F. Pledge of Allegiance

Mayor Mueller led the Pledge of Allegiance.

G. Public Comment

No public comment.

Mayor Mueller reordered the agenda.

J. Consent Calendar

- J1. Accept the City Council meeting minutes for August 20 and 27, 2019 ([Attachment](#))
- J2. Introduction of Ordinance No. 1059 repealing Chapter 2.58 (Safe City) of Title 2 (Administration and Personnel) ([Staff Report #19-191-CC](#))
- J3. Waive the second reading and adopt Ordinance No. 1057 to establish local amendments to the 2019 California Energy Code that require higher levels of building electrification and solar production for newly constructed buildings to reduce greenhouse gas emissions effective January 1, 2020 ([Staff Report #19-195-CC](#))
- Janelle London spoke in support of Ordinance No. 1057 to establish local amendments to the 2019 California Energy Code.
 - Josh Becker spoke in support of Ordinance No. 1057 to establish local amendments to the 2019 California Energy Code.
 - Mitch Slokiak spoke in support of Ordinance No. 1057 to establish local amendments to the 2019 California Energy Code.
 - Kristin Duriseti spoke in support of Ordinance No. 1057 to establish local amendments to the 2019 California Energy Code.
 - Matt James, board member of Menlo Spark, spoke in support of Ordinance No. 1057 to establish local amendments to the 2019 California Energy Code.
 - Chris DeCardy spoke in support of Ordinance No. 1057 to establish local amendments to the 2019 California Energy Code.
 - Dashiell Leeds spoke in support of Ordinance No. 1057 to establish local amendments to the 2019 California Energy Code.
 - Steve Westly spoke in support of Ordinance No. 1057 to establish local amendments to the 2019 California Energy Code.
 - Mark Jacobson spoke in support of Ordinance No. 1057 to establish local amendments to the 2019 California Energy Code.
 - Zoe Wong-VanHaren spoke in support of Ordinance No. 1057 to establish local amendments to the 2019 California Energy Code

ACTION: Motion and second (Carlton/ Nash) to waive the second reading and adopt Ordinance No. 1057 to establish local amendments to the 2019 California Energy Code that require higher levels of building electrification and solar production for newly constructed buildings to reduce greenhouse gas emissions effective January 1, 2020, passed 4-0-1 (Taylor absent).

- J4. Receive and file the preliminary year-end close financial review of general fund operations as of June 30, 2019 ([Staff Report #19-197-CC](#))

- J5. Receive and file the investment portfolio review as of June 30, 2019 ([Staff Report #19-193-CC](#))
- J6. Authorize the city manager to enter into an agreement with Black & Veatch Management Consulting to develop the 2020 water rate study ([Staff Report #19-198-CC](#))

N. City Councilmember Reports

- N1. Authorize a request to San Mateo County Labs, a division of the County of San Mateo, for air quality monitors in the Belle Haven neighborhood ([Staff Report #19-199-CC](#))

Assistant City Manager Nick Pegueros introduced the item.

- Pamela Jones spoke in support of authorizing a request to San Mateo County Labs, a division of the County of San Mateo, for air quality monitors in the Belle Haven neighborhood.
- Diane Bailey spoke in support of air monitors in the Belle Haven neighborhood.

The City Council discussed placing monitors in other areas of Menlo Park and received information of the collection and availability of the data.

ACTION: By acclamation, the City Council directed staff to draft and send a letter requesting San Mateo County Labs, a division of the County of San Mateo, for air quality monitors in the Belle Haven neighborhood.

- J7. Waive the second reading and adopt Ordinance No. 1058 adopting a local minimum wage ordinance effective January 1, 2020 ([Staff Report #19-196-CC](#))
 - Fran Dehn spoke on the challenges facing small businesses with the proposed minimum wage ordinance.
 - Rayna Lehman spoke in support of the minimum wage ordinance.
 - Anna Chow, owner of Cheeky Monkey, spoke about the challenges to small businesses.
 - Grace Streltsov spoke in support of Ordinance No. 1058.
 - Anthony R. Morales spoke in support of a phased approach to the minimum wage ordinance.

The City Council discussed the challenges to small businesses.

ACTION: Motion and second (Nash/ Combs) to waive the second reading and adopt Ordinance No. 1058 adopting a local minimum wage ordinance effective January 1, 2020, passed 3-1-1 (Carlton dissenting and Taylor absent).

City Councilmember Combs was excused at 8:28 p.m.

ACTION: Motion and second (Carlton/ Nash) to approve the consent calendar, except items J3 and J7, passed 3-0-2 (Combs and Taylor absent).

I. Commissioner Reports

I1. Environmental Quality Commission update

Environmental Quality Commission (EQC) Chair Ryann Price made the presentation ([Attachment](#)).

The City Council discussed the PACE program and directed the EQC to examine pesticide notifications.

I2. Parks and Recreation Commission update ([Attachment](#))

Park and Recreation Chair Christopher Harris made the presentation.

K. Regular Business

K1. Authorize the city manager to enter into a three-year agreement with OpenGov up to \$239,000 to upgrade to the City's budgeting and financial reporting software ([Staff Report #19-201-CC](#))

Finance and Budget Manager Dan Jacobson and Management Analyst II Brandon Cortez introduced the item.

ACTION: Motion and second (Carlton/ Nash) to authorize the city manager to enter into a three-year agreement with OpenGov up to \$239,000 to upgrade to the City's budgeting and financial reporting software, passed 3-0-2 (Combs and Taylor absent).

K2. Authorize the city manager to apply for the affordable housing and sustainable communities grant – transportation improvements fund ([Staff Report #19-202-CC](#))

Deputy Community Development Director - Housing Rhonda Coffman made the presentation.

The City Council discussed the impacts to the El Camino Real crossing improvement project and the need to connect the Dumbarton crossing to Kelly Park.

ACTION: Motion and second (Carlton/ Nash) to authorize the city manager to apply for the affordable housing and sustainable communities grant – transportation improvements fund, passed 3-0-2 (Combs and Taylor absent).

L. Informational Items

L1. City Council agenda topics: October to December 2019 ([Staff Report #19-192-CC](#))

City Councilmember Nash commented appointments need to be made to the Facebook/ Willow Village subcommittee and requested that regional preparedness efforts return to the City Council.

L2. Update on the Parks and Recreation facilities master plan process ([Staff Report #19-194-CC](#))

City Councilmember Nash spoke in support of the Burgess Park snack shack, but suggested that Onetta Harris is a better opportunity for a food vendor.

M. City Manager's Report

No report.

H. Presentations and Proclamations

H1. Communication plan presentation

Public Engagement Manager Clay Curtain made the presentation (Attachment).

- Pamela Jones spoke in support of the report and provided suggestions on the website.

N. City Councilmember Reports

City Councilmember Nash announced the housing study session on November 5 and the Stanford general use permit meeting at Palo Alto City Hall on October 26.

City Councilmember Carlton announced the Sister Cities international annual meeting on November 2 at Onetta Harris.

O. Adjournment

Mayor Mueller adjourned the meeting at 9:23 p.m.

Judi A. Herren, City Clerk



SPECIAL MEETING AGENDA – DRAFT

Date: 10/1/2019
Time: 6:00 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

6:00 p.m. Special Meeting

A. Call To Order

Mayor Mueller called the meeting to order at 6:02 p.m.

B. Roll Call

Present: Carlton, Combs, Nash, Mueller, Taylor
Absent: None
Staff: City Manager Starla Jerome-Robinson, Assistant City Attorney Cara Silver, City Clerk Judi A. Herren

C. Pledge of Allegiance

Mayor Mueller led the Pledge of Allegiance.

D. Commissioner Reports

Item D1. was continued to a future meeting.

D1. Complete Streets Commission update

E. Consent Calendar

City Councilmember Nash pulled item E4.

E1. Approve the response to the San Mateo County Civil grand jury report: “Soaring Pension Costs – Follow-up on grand jury report of 2017-2018” ([Staff Report #19-205-CC](#))

E2. Authorize the city manager to enter into an agreement with Wood Rodgers, Inc. to develop the stormwater master plan ([Staff Report #19-209-CC](#))

E3. Authorize the city manager to enter into an agreement with California Land Management for ranger services at Bedwell Bayfront Park and Kelly Park up to the budgeted amount and appropriate \$21,000 from the undesignated general fund balance for Kelly Park services ([Staff Report #19-203-CC](#))

E4. City Council adopted 2019-20 priorities and work plan quarterly update ([Staff Report #19-208-CC](#))

The City Council received clarification on the completion of priorities.

ACTION: Motion and second (Carlton/ Combs) to accept the City Council adopted 2019-20 priorities and work plan quarterly update, passed unanimously.

ACTION: Motion and second (Carlton/ Combs) to approve the consent calendar, except item E4, passed unanimously.

F. Regular Business

F1. Direction on biennial community survey methodology and vendor ([Staff Report #19-210-CC](#))

Public Engagement Manager Clay Curtin introduced the item.

The City Council discussed the need for statistically significant results. There was also discussion on previous experiences with the two vendors. The City Council created a subcommittee to work on the survey questions for Godbe Research and appointed City Councilmembers Carlton and Nash. City Council requested that work from the subcommittee and staff return to the City Council before being released to the public.

ACTION: Motion and second (Carlton/ Nash) to select Godbe Research as the vendor for biennial community survey, passed unanimously.

F2. Discussion of options for formation of re-districting committee following release of 2020 census information ([Staff Report #19-207-CC](#))

Assistant City Attorney Cara Silver made the presentation ([Attachment](#)).

- Pamela Jones spoke in support of an independent redistricting commission and keeping the charter separate ([Attachment](#)).

The City Council received clarification on the details of an independent and advisory committee and discussed the previous advisory districting committee. The City Council supported public outreach during the districting process.

No action.

F3. Review proposed City Council procedure #CC-19-010 “City Council powers and responsibilities” and provide direction to staff ([Staff Report #19-206-CC](#))

Assistant City Manager Nick Pegueros introduced the item.

Assistant City Manager Pegueros detailed the major changes to the procedure. The City Council provided the following direction: requested that Mayor Pro Tem be included in the agenda setting, updating “Grand Boulevard Initiative Taskforce” name, add to the notes of the Caltrain Modernization Local Policy Maker Group to include Rail Subcommittee members, add to the notes of the County of Santa Clara Community Resources Group for Stanford University to include ad hoc subcommittee on Stanford General Use Permit members, encourage City Council to report out on outside board meetings during City Councilmember Reports at City Council meetings, update the Mayor Pro Tem title to Vice Mayor, and include the Willow Village/ Facebook subcommittee. The City Council requested this item be updated and returned on consent.

No action.

F4. Adopt the City Council's regular meeting schedule for calendar year 2020 ([Staff Report #19-185-CC](#))

The City Council discussed the advantages and disadvantages of a set second and fourth Tuesday meeting schedule. The City Council directed staff to remove the April 14 and 28, 2020 meetings and add April 21, 2020.

ACTION: Motion and second (Combs/ Carlton) to adopt the City Council's regular meeting schedule for calendar year 2020, passed unanimously.

G. City Manager's Report

No report.

H. City Councilmember Reports

City Councilmember Nash announced the Stanford General Use Permit meeting at Palo Alto City Hall on October 22 at 6 p.m.

Mayor Pro Tem Taylor reported out on the Government Alliance on Race and Equity (GARE) training.

Mayor Mueller reported out on the Rail Subcommittee meeting

I. Adjournment

Mayor Mueller adjourned the meeting at 8:08 p.m.

Judi A. Herren, City Clerk

THIS PAGE INTENTIONALLY LEFT BLANK



STAFF REPORT

City Council

Meeting Date: 10/29/2019

Staff Report Number: 19-225-CC

Consent Calendar: Approve the purchase of property located at 1283 Willow Road from MP 1283 Willow LLC for \$3,633,000 and approve use agreement to permit MidPen Housing to use property for construction staging

Recommendation

Staff recommends City Council adopt a resolution (Attachment A:)

1. Authorizing the city manager to execute a purchase agreement in substantially the same form as Attachment B with MP 1283 Willow LLC to purchase the property located at 1283 Willow Road in the amount of \$3,633,000;
2. Authorizing the city manager to accept a grant deed for the property located at 1283 Willow Road;
3. Authorizing the city manager to execute a use agreement in substantially the same form as Attachment C to permit MidPen Housing Corporation to use the property located at 1283 Willow Road for construction staging;
4. Authorizing the city manager and city attorney to execute minor amendments to the use agreement and to execute all documents necessary to effectuate the purchase of the property located at 1283 Willow Road and to permit MidPen Housing Corporation to use such property for construction phasing; and
5. Appropriating \$3,650,000 from general fund unassigned fund balance to purchase the property located at 1283 Willow Road and related expenses.

Policy Issues

Opportunities for the City to purchase vacant land in Menlo Park are rare. While there is currently no programmed use for this property, the City Council may elect to purchase this vacant land in order to preserve it for some form of public use.

Background

The City Council held a closed session regarding the purchase of the property on August 20. At that time the City Council authorized the city attorney and the city manager to negotiate for the purchase of the property, subject to appropriate terms and conditions and contingent upon review and approval by the City Council at a public meeting. The purchase agreement that is before the City Council for approval is the result of those negotiations and falls within the parameters directed by the City Council in closed session.

Analysis

The property is located at 1283 Willow Road ("property".) The property is irregular in shape and is 29,054 square feet. It is located on the corner of Ivy Drive and Willow Road and is zoned neighborhood commercial. Attached is a map showing the location of the project site (Attachment D.)

From 1939-1950 the property was used for agricultural use. Following that, the property was used as a gas station and automotive repair. In 1978, the gasoline station was demolished. In approximately 2006, two concrete foundations were poured but development of the site was never completed. Currently the property is vacant with two concrete foundations remaining.

In 2016, MidPen Housing purchased the site and transferred it into an LLC called 1283 Willow Road with the intent to develop an affordable housing mixed use project. In connection with the purchase, MidPen commissioned Phase I and II environmental studies. In addition, MidPen commissioned a site management plan to address contaminants encountered during site redevelopment. MidPen has provided the City with copies of those environmental reports.

During the purchase negotiations, MidPen became aware that other public entities may also be interested in purchasing or using the property. For tax reasons MidPen desires to dispose of the property before the end of 2019.

MidPen provided the City with a property appraisal conducted in May 2019 by an MAI-certified appraiser. The property's appraised value is \$3,633,000. The City had the appraisal peer reviewed by its own appraiser and the City's appraiser concurred with the value.

The property is being sold "as is" and the purchase price is \$3,633,000, the appraised value. It is anticipated that the property will close in the first couple of weeks of November 2019. Following sale of the property, MidPen has also requested use of a portion of the property for construction staging. This would assist in the development of MidPen's Gateway Apartments project located at 1345 Willow Road, adjacent to the property. The initial term of the use agreement would be three years, with the option to extend for one additional year. In consideration for use of the property, MidPen would remove all weeds on the property and adjacent sidewalks, maintain the fence and restore the property to its current condition at the end of the use term. During the course of the agreement, the City would have the right to access the property to perform testing, surveys and other property investigations.

At this point, the future use of the property is unknown. A public process will be conducted before deciding any future use, the fire district has expressed interest in acquiring the property if the City does not identify an immediate need for it.

Impact on City Resources

Funding for the property purchase would come from the general fund unassigned fund balance. Pending final audited balances for fiscal year ended June 30, the general fund unassigned fund balance is estimated to decrease to \$2.76 million if the recommended action of appropriating \$3.65 million is approved.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment. Any subsequent use of the property would be subject to environmental review.

Public Notice

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

Attachments

- A. Resolution
- B. Purchase agreement
- C. Use agreement
- D. Property map

Report prepared by:

Cara Silver, Assistant City Attorney

Reviewed by:

Justin Murphy, Deputy City Manager
William L. McClure, City Attorney

RESOLUTION NO. 6523**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
APPROVING THE PURCHASE OF PROPERTY LOCATED AT 1283 WILLOW
ROAD FROM MP 1283 WILLOW LLC FOR \$3,633,000 AND APPROVE USE
AGREEMENT TO PERMIT MIDPEN HOUSING CORP. TO USE PROPERTY FOR
CONSTRUCTION STAGING**

WHEREAS, the City Council of the City of Menlo Park has read and considered that certain property purchase agreement and joint escrow instructions, between the City of Menlo Park and MP 1283 Willow LLC for the property located at 1283 Willow Road ("Property"); and

WHEREAS, the City Council of the City of Menlo Park having been fully advised on the matter is satisfied that the purchase is fair and reasonable and is in the best interests of the City.

NOW, THEREFORE BE IT RESOLVED, that the City of Menlo Park, acting by and through its City Council, having considered and been fully advised in the matter and good cause appearing therefore do hereby:

1. Authorizes the city manager to execute a purchase agreement in substantially the same form as Attachment B with MP 1283 Willow LLC to purchase the property located at 1283 Willow Road in the amount of \$3,633,000;
2. Authorizes the city manager to accept a grant deed for the property located at 1283 Willow Road;
3. Authorizes the city manager to execute a use agreement in substantially the same form as Attachment C to permit MidPen Housing Corporation to use the property located at 1283 Willow Road for construction staging;
4. Authorizes the city manager and city attorney to execute minor amendments to the Use Agreement and to execute all documents necessary to effectuate the purchase of the property located at 1283 Willow Road and to permit MidPen Housing Corporation to use such property for construction phasing; and
5. Appropriates \$3,650,000 from general fund reserves for the purchase of the property located at 1283 Willow Road and related expenses.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the twenty-ninth day of October, 2019, 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 twenty-ninth day of October, 2019.

Judi A. Herren, City Clerk



VACANT LAND PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (C.A.R. Form VLPA, Revised 11/14)

Date Prepared: 9/10/2019

- 1. OFFER: A. THIS IS AN OFFER FROM MP 1283 Willow, LLC ("Seller") ("Buyer"), B. THE REAL PROPERTY to be acquired is sold is a vacant lot situated in Menlo Park (City), San Mateo (County), California, 94025 (Zip Code), Assessor's Parcel No. 062-103-640-9 ("Property"), Further Described As 1283 Willow Road C. THE PURCHASE PRICE offered is Three Million Six Hundred Thirty-Three Thousand Dollars \$ 3,633,000 D. CLOSE OF ESCROW shall occur on [x] or before November 1, 2019 (date) (or [] Days After Acceptance). E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.

- 2. AGENCY: A. DISCLOSURE: The Parties each acknowledge receipt of a [] "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD). B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction: Listing Agent (Print Firm Name) is the agent of (check one): [] the Seller exclusively; or [] both the Buyer and Seller. Selling Agent (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one): [] the Buyer exclusively; or [] the Seller exclusively; or [] both the Buyer and Seller. C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a [] "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

- 3. FINANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder. A. INITIAL DEPOSIT: Deposit shall be in the amount of \$ (1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, [] cashier's check, [] personal check, [] other within 3 business days after Acceptance (or); OR (2) [] Buyer Deposit with Agent: Buyer has given the deposit by personal check (or) to the agent submitting the offer (or to), made payable to . The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or). Deposit checks given to agent shall be an original signed check and not a copy.

- (Note: Initial and increased deposits checks received by agent shall be recorded in Broker's trust fund log.) B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of \$ within Days After Acceptance (or). If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder. C. [] ALL CASH OFFER: No loan is needed to purchase the Property. This offer is NOT contingent on Buyer obtaining a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or [] Buyer shall, within 3 (or) Days After Acceptance, Deliver to Seller such verification.

- D. LOAN(S): (1) FIRST LOAN: in the amount of \$ This loan will be conventional financing or [] FHA, [] VA, [] Seller financing (C.A.R. Form SFA), [] assumed financing (C.A.R. Form AFA), [] subject to financing, [] Other . This loan shall be at a fixed rate not to exceed % or, [] an adjustable rate loan with initial rate not to exceed % . Regardless of the type of loan, Buyer shall pay points not to exceed % of the loan amount. (2) [] SECOND LOAN in the amount of \$ This loan will be conventional financing or [] Seller financing (C.A.R. Form SFA), [] assumed financing (C.A.R. Form AFA), [] subject to financing [] Other . This loan shall be at a fixed rate not to exceed % or, [] an adjustable rate loan with initial rate not to exceed % . Regardless of the type of loan, Buyer shall pay points not to exceed % of the loan amount. (3) FHAVA: For any FHA or VA loan specified in 3D(1), Buyer has 17 (or) Days After Acceptance to Deliver to Seller written notice (C.A.R. Form FVA) of any lender-required repairs or costs that Buyer requests Seller to pay for or otherwise correct. Seller has no obligation to pay or satisfy lender requirements unless agreed in writing. A FHAVA amendatory clause (C.A.R. Form FVAC) shall be a part of this transaction.

E. ADDITIONAL FINANCING TERMS:

Buyer's Initials () () Seller's Initials () ()

© 1996-2014, California Association of REALTORS®, Inc. VLPA REVISED 11/14 (PAGE 1 OF 11)

VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 1 OF 11)



Property Address: 1283 Willow Road, Menlo Park, CA 94025

Date: 9/10/2019

F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of \$ _____ to be deposited with Escrow Holder pursuant to Escrow Holder instructions.

G. PURCHASE PRICE (TOTAL): \$ _____

H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to paragraph 3J(1)) shall, within 3 (or _____) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. (Verification attached.)

I. APPRAISAL CONTINGENCY AND REMOVAL: This Agreement is (or is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 19B(3), in writing, remove the appraisal contingency or cancel this Agreement within 17 (or _____) Days After Acceptance.

J. LOAN TERMS:

(1) LOAN APPLICATIONS: Within 3 (or _____) Days After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. (Letter attached.)

(2) LOAN CONTINGENCY: Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above is a contingency of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs are not contingencies of this Agreement.

(3) LOAN CONTINGENCY REMOVAL:

Within 21 (or _____) Days After Acceptance, Buyer shall, as specified in paragraph 19, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.

(4) NO LOAN CONTINGENCY: Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

(5) LENDER LIMITS ON BUYER CREDITS: Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

K. BUYER STATED FINANCING: Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

L. SELLER FINANCING: The following terms (or the terms specified in the attached Seller Financing Addendum) (C.A.R. Form SFA) apply ONLY to financing extended by Seller under this Agreement.

(1) BUYER'S CREDIT-WORTHINESS: Buyer authorizes Seller and/or Brokers to obtain, at Buyer's expense, a copy of Buyer's credit report. Within 7 (or _____) Days After Acceptance, Buyer shall provide any supporting documentation reasonably requested by Seller.

(2) TERMS: Buyer's promissory note, deed of trust and other documents as appropriate shall incorporate and implement the following additional terms: (i) the maximum interest rate specified in paragraph 3D shall be the actual fixed interest rate for Seller financing; (ii) deed of trust shall contain a REQUEST FOR NOTICE OF DEFAULT on senior loans; (iii) Buyer shall sign and pay for a REQUEST FOR NOTICE OF DELINQUENCY prior to Close Of Escrow and at any future time if requested by Seller; (iv) note and deed of trust shall contain an acceleration clause making the loan due, when permitted by law and at Seller's option, upon the sale or transfer of the Property or any interest in it; (v) note shall contain a late charge of 6% of the installment due (or _____) if the installment is not received within 10 days of the date due; (vi) title insurance coverage in the form of a joint protection policy shall be provided insuring Seller's deed of trust interest in the Property (any increased cost over owner's policy shall be paid by Buyer); and (vii) tax service shall be obtained and paid for by Buyer to notify Seller if property taxes have not been paid.

(3) ADDED, DELETED OR SUBSTITUTED BUYERS: The addition, deletion or substitution of any person or entity under this Agreement or to title prior to Close Of Escrow shall require Seller's written consent. Seller may grant or withhold consent in Seller's sole discretion. Any additional or substituted person or entity shall, if requested by Seller, submit to Seller the same documentation as required for the original named Buyer. Seller and/or Brokers may obtain a credit report, at Buyer's expense, on any such person or entity.

M. ASSUMED OR "SUBJECT TO" FINANCING: Seller represents that Seller is not delinquent on any payments due on any loans. Seller shall, within the time specified in paragraph 19, provide Copies of all applicable notes and deeds of trust, loan balances and current interest rates to Buyer. Buyer shall then, as specified in paragraph 19B(3), remove this contingency or cancel this Agreement. Differences between estimated and actual loan balances shall be adjusted at Close Of Escrow by cash down payment. Impound accounts, if any, shall be assigned and charged to Buyer and credited to Seller. Seller is advised that Buyer's assumption of an existing loan may not release Seller from liability on that loan. If this is an assumption of a VA Loan, the sale is contingent upon Seller being provided a release of liability and substitution of eligibility, unless otherwise agreed in writing. If the Property is acquired subject to an existing loan, Buyer and Seller are advised to consult with legal counsel regarding the ability of an existing lender to call the loan due, and the consequences thereof.

Buyer's Initials (_____) (_____)
VLPA REVISED 11/14 (PAGE 2 OF 11)

Seller's Initials (_____) (_____)

VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 2 OF 11)

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com



Property Address: 1283 Willow Road, Menlo Park, CA 94025

Date: 9/10/2019

4. SALE OF BUYER'S PROPERTY:

- A. This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer.
OR B. This Agreement and Buyer's ability to obtain financing are contingent upon the sale of property owned by Buyer as specified in the attached addendum (C.A.R. Form COP).
5. MANUFACTURED HOME PURCHASE: The purchase of the Property is contingent upon Buyer acquiring a personal property manufactured home to be placed on the Property after Close Of Escrow.
6. CONSTRUCTION LOAN FINANCING: The purchase of the Property is contingent upon Buyer obtaining a construction loan.

7. ADDENDA AND ADVISORIES:

- A. ADDENDA: Addendum # (C.A.R. Form ADM)
Back Up Offer Addendum (C.A.R. Form BUO) Court Confirmation Addendum (C.A.R. Form CCA)
Septic, Well and Property Monument Addendum (C.A.R. Form SWPI)
Short Sale Addendum (C.A.R. Form SSA) Other Addendum

B. BUYER AND SELLER ADVISORIES:

- Buyer's Inspection Advisory (C.A.R. Form BIA)
Probate Advisory (C.A.R. Form PAK) Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
Trust Advisory (C.A.R. Form TA) REO Advisory (C.A.R. Form REO)
Short Sale Information and Advisory (C.A.R. Form SSIA) Other

8. OTHER TERMS:

9. ALLOCATION OF COSTS

A. INSPECTIONS, REPORTS AND CERTIFICATES: Unless otherwise agreed, in writing, this paragraph only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report.

- (1) Buyer Seller shall pay for a natural hazard zone disclosure report, including tax environmental Other:
(2) Buyer Seller shall pay for the following Report
(3) Buyer Seller shall pay for the following Report

B. ESCROW AND TITLE:

- (1) (a) Buyer Seller shall pay escrow fee
(b) Escrow Holder shall be Old Republic Title Company, Oakland Office
(c) The Parties shall, within 6 (or) Days After receipt, sign and return Escrow Holder's general provisions.
(2) (a) Buyer Seller shall pay for owner's title insurance policy specified in paragraph 18E
(b) Owner's title policy to be issued by Old Republic Title Company
(Buyer shall pay for any title insurance policy insuring Buyer's fender, unless otherwise agreed in writing.)

C. OTHER COSTS:

- (1) Buyer Seller shall pay County transfer tax or fee
(2) Buyer Seller shall pay City transfer tax or fee
(3) Buyer Seller shall pay Homeowners' Association ("HOA") transfer fee
(4) Seller shall pay HOA fees for preparing all documents required to be delivered by Civil Code §4525.
(5) Buyer to pay for any HOA certification fee.
(6) Buyer Seller shall pay HOA fees for preparing all documents other than those required by Civil Code §4525.
(7) Buyer Seller shall pay for any private transfer fee
(8) Buyer Seller shall pay for
(9) Buyer Seller shall pay for

10. CLOSING AND POSSESSION: Possession shall be delivered to Buyer: (i) at 6 PM or () AM/ () PM on the date of Close Of Escrow; (ii) no later than calendar days after Close Of Escrow; or (iii) at () AM/ () PM on . The Property shall be unoccupied, unless otherwise agreed in writing. Seller shall provide keys and/or means to operate all Property locks. If Property is located in a common interest subdivision, Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.

11. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:

A. NOTE TO BUYER AND SELLER: Items listed as included or excluded in the MLS, flyers or marketing materials are not included in the purchase price or excluded from the sale unless specified in 11B or C.

Buyer's Initials () ()

Seller's Initials () ()



B. ITEMS INCLUDED IN SALE:

- (1) All EXISTING fixtures and fittings that are attached to the Property;
- (2) The following items: _____

- (3) Seller represents that all items included in the purchase price, unless otherwise specified, are owned by Seller.
- (4) All items included shall be transferred free of liens and without Seller warranty.

C. ITEMS EXCLUDED FROM SALE: _____

12. STATUTORY AND OTHER DISCLOSURES AND CANCELLATION RIGHTS:

- A. NATURAL AND ENVIRONMENTAL HAZARD DISCLOSURES AND OTHER BOOKLETS:** Within the time specified in paragraph 19A, Seller shall, if required by Law: (i) Deliver to Buyer earthquake guide(s) (and questionnaire), environmental hazards booklet; (ii) disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; and Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
- B. WITHHOLDING TAXES:** Within the time specified in paragraph 19A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law (C.A.R. Form AS or QS).
- C. MEGAN'S LAW DATABASE DISCLOSURE:** Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)
- D. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.
- E. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**
 - (1) SELLER HAS: 7 (or) Days After Acceptance to disclose to Buyer whether the Property is a condominium, or is located in a planned development or other common interest subdivision (C.A.R. Form SPQ or SSD).
 - (2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has 3 (or) Days After Acceptance to request from the HOA (C.A.R. Form HOA1): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; and (v) the names and contact information of all HOAs governing the Property (collectively, "CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 19B(3). The Party specified in paragraph 9, as directed by escrow, shall deposit funds into escrow or direct to HOA or management company to pay for any of the above.

13. SELLER DOCUMENTATION AND ADDITIONAL DISCLOSURE:

- A. Within the time specified in paragraph 19, if Seller has actual knowledge, Seller shall provide to Buyer, in writing, the following information:**
 - (1) LEGAL PROCEEDINGS: Any lawsuits by or against Seller, threatening or affecting the Property, including any lawsuits alleging a defect or deficiency in the Property or common areas, or any known notices of abatement or citations filed or issued against the Property.
 - (2) AGRICULTURAL USE: Whether the Property is subject to restrictions for agricultural use pursuant to the Williamson Act (Government Code §§51200-51295).
 - (3) DEED RESTRICTIONS: Any deed restrictions or obligations.
 - (4) FARM USE: Whether the Property is in, or adjacent to, an area with Right to Farm rights (Civil Code §3482.5 and §3482.6).
 - (5) ENDANGERED SPECIES: Presence of endangered, threatened, 'candidate' species, or wetlands on the Property.
 - (6) ENVIRONMENTAL HAZARDS: Any substances, materials, or products that may be an environmental hazard including, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the Property.
 - (7) COMMON WALLS: Any features of the Property shared in common with adjoining landowners, such as walls, fences, roads, and driveways, and agriculture and domestic wells whose use or responsibility for maintenance may have an effect on the Property.
 - (8) LANDLOCKED: The absence of legal or physical access to the Property.
 - (9) EASEMENTS/ENCROACHMENTS: Any encroachments, easements or similar matters that may affect the Property.
 - (10) SOIL FILL: Any fill (compacted or otherwise), or abandoned mining operations on the Property.
 - (11) SOIL PROBLEMS: Any slippage, sliding, flooding, drainage, grading, or other soil problems.
 - (12) EARTHQUAKE DAMAGE: Major damage to the Property or any of the structures from fire, earthquake, floods, or landslides.
 - (13) ZONING ISSUES: Any zoning violations, non-conforming uses, or violations of "setback" requirements.
 - (14) NEIGHBORHOOD PROBLEMS: Any neighborhood noise problems, or other nuisances.
- B. RENTAL AND SERVICE AGREEMENTS:** Within the time specified in paragraph 19, Seller shall make available to Buyer for inspection and review, all current leases, rental agreements, service contracts and other related agreements, licenses, and permits pertaining to the operation or use of the Property.
- C. TENANT ESTOPPEL CERTIFICATES:** Within the time specified in paragraph 19, Seller shall deliver to Buyer tenant estoppel certificates (C.A.R. Form TEC) completed by Seller or Seller's agent, and signed by tenants, acknowledging: (i) that tenants' rental or lease agreements are unmodified and in full force and effect (or if modified, stating all such modifications); (ii) that no lessor defaults exist; and (iii) stating the amount of any prepaid rent or security deposit.

Buyer's Initials () ()

Seller's Initials () ()



Property Address: 1283 Willow Road, Menlo Park, CA 94025

Date: _____

- D. MELLO-ROOS TAX; 1916 BOND ACT:** Within the time specified in paragraph 19, Seller shall: (i) make a good faith effort to obtain a notice from any local agencies that levy a special tax or assessment on the Property (or, if allowed, substantially equivalent notice), pursuant to the Mello-Roos Community Facilities Act, and Improvement Bond Act of 1915, and (ii) promptly deliver to Buyer any such notice obtained.
- E. SELLER VACANT LAND QUESTIONNAIRE:** Seller shall, within the time specified in paragraph, complete and provide Buyer with a Seller Vacant Land Questionnaire (C.A.R. Form VLQ).
- 14. SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer of which Buyer is otherwise unaware, Seller shall promptly provide a subsequent or amended disclosure or notice, in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies disclosed in reports ordered and paid for by Buyer.
- 15. CHANGES DURING ESCROW:**
- A. Prior to Close Of Escrow, Seller may engage in the following acts, ("Proposed Changes"), subject to Buyer's rights in paragraph 19: (i) rent or lease any part of the premises; (ii) alter, modify or extend any existing rental or lease agreement; (iii) enter into, alter, modify or extend any service contract(s); or (iv) change the status of the condition of the Property.
 - B. At least 7 (or _____) Days prior to any Proposed Changes, Seller shall give written notice to Buyer of such Proposed Changes.
- 16. CONDITION OF PROPERTY:** Unless otherwise agreed in writing: (i) the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's Investigation rights; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow.
- A. Seller shall, within the time specified in paragraph 19A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.
 - B. Buyer has the right to conduct Buyer Investigations of the property and, as specified in paragraph 19B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.
 - C. **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.**
- 17. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**
- A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 19B. Within the time specified in paragraph 19B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying pests and organisms; (iii) review the registered sex offender database; (iv) confirm the insurability of Buyer and the Property; and (v) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations except for minimally invasive testing; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
 - B. Seller shall make the Property available for all Buyer Investigations. Buyer shall (i) as specified in paragraph 19B, complete Buyer Investigations and, either remove the contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete Copies of all Investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
 - C. **Buyer indemnity and Seller protection for entry upon property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs of Buyer's Investigations. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination or cancellation of this Agreement and Close Of Escrow.
 - D. **BUYER IS STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY AND ALL MATTERS AFFECTING THE VALUE OR DESIRABILITY OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE ITEMS SPECIFIED BELOW. IF BUYER DOES NOT EXERCISE THESE RIGHTS, BUYER IS ACTING AGAINST THE ADVICE OF BROKERS. BUYER UNDERSTANDS THAT ALTHOUGH CONDITIONS ARE OFTEN DIFFICULT TO LOCATE AND DISCOVER, ALL REAL PROPERTY CONTAINS CONDITIONS THAT ARE NOT READILY APPARENT AND THAT MAY AFFECT THE VALUE OR DESIRABILITY OF THE PROPERTY. BUYER AND SELLER ARE AWARE THAT BROKERS DO NOT GUARANTEE, AND IN NO WAY ASSUME RESPONSIBILITY FOR, THE CONDITION OF THE PROPERTY. BROKERS HAVE NOT AND WILL NOT VERIFY ANY OF THE ITEMS IN THIS PARAGRAPH 17, UNLESS OTHERWISE AGREED IN WRITING.**
 - E. **SIZE, LINES, ACCESS AND BOUNDARIES:** Lot size, property lines, legal or physical access and boundaries including features of the Property shared in common with adjoining landowners, such as walls, fences, roads and driveways, whose use or responsibility for maintenance may have an effect on the Property and any encroachments, easements or similar matters that may affect the Property. (Fences, hedges, walls and other natural or constructed barriers or markers do not necessarily identify true Property boundaries. Property lines may be verified by survey.) (Unless otherwise specified in writing, any numerical statements by Brokers regarding lot size are APPROXIMATIONS ONLY, which have not been and will not be verified, and should not be relied upon by Buyer.)
 - F. **ZONING AND LAND USE:** Past, present, or proposed laws, ordinances, referendums, initiatives, votes, applications and permits affecting the current use of the Property, future development, zoning, building, size, governmental permits and inspections. Any zoning violations, non-conforming uses, or violations of "setback" requirements. (Buyer should also investigate whether these matters affect Buyer's intended use of the Property.)

Buyer's Initials (_____) (_____)

Seller's initials (_____) (_____)

VLPA REVISED 11/14 (PAGE 5 OF 11)

VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 5 OF 11)



Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48028 www.ziplogix.com

Property Address: 1283 Willow Road, Menlo Park, CA 94025

Date: 9/10/2019

- G. UTILITIES AND SERVICES:** Availability, costs, restrictions and location of utilities and services, including but not limited to, sewerage, sanitation, septic and leach lines, water, electricity, gas, telephone, cable TV and drainage.
- H. ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel, oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, including mold (airborne, toxic or otherwise), fungus or similar contaminant, materials, products or conditions.
- I. GEOLOGIC CONDITIONS:** Geologic/seismic conditions, soil and terrain stability, suitability and drainage including any slippage, sliding, flooding, drainage, grading, fill (compacted or otherwise), or other soil problems.
- J. NATURAL HAZARD ZONE:** Special Flood Hazard Areas, Potential Flooding (Inundation) Areas, Very High Fire Hazard Zones, State Fire Responsibility Areas, Earthquake Fault Zones, Seismic Hazard Zones, or any other zone for which disclosure is required by Law.
- K. PROPERTY DAMAGE:** Major damage to the Property or any of the structures or non-structural systems and components and any personal property included in the sale from fire, earthquake, floods, landslides or other causes.
- L. NEIGHBORHOOD, AREA AND PROPERTY CONDITIONS:** Neighborhood or area conditions, including Agricultural Use Restrictions pursuant to the Williamson Act (Government Code §§51200-51295), Right To Farm Laws (Civil Code §3482.5 and §3482.6), schools, proximity and adequacy of law enforcement, crime statistics, the proximity of registered felons or offenders, fire protection, other government services, availability, adequacy and cost of any speed-wired, wireless internet connections or other telecommunications or other technology services and installations, proximity to commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, abandoned mining operations on the Property, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.
- M. COMMON INTEREST SUBDIVISIONS; OWNER ASSOCIATIONS:** Facilities and condition of common areas (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others), Owners' Association that has any authority over the subject property, CC&Rs, or other deed restrictions or obligations, and possible lack of compliance with any Owners' Association requirements.
- N. SPECIAL TAX:** Any local agencies that levy a special tax on the Property pursuant to the Mello-Roos Community Facilities Act or Improvement Bond Act of 1915.
- O. RENTAL PROPERTY RESTRICTIONS:** Some cities and counties impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants and the right of a landlord to terminate a tenancy.
- P. MANUFACTURED HOME PLACEMENT:** Conditions that may affect the ability to place and use a manufactured home on the Property.

18. TITLE AND VESTING:

- A.** Within the time specified in paragraph 19, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 19B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.
- B.** Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.
- C.** Within the time specified in paragraph 19A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- D.** At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.
- E.** Buyer shall receive a "CLTA/ALTA Homeowner's Policy of Title Insurance", if applicable to the type of property and buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.

19. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).

- A. SELLER HAS: 7 (or ___) Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 3M, 7A, 8, 9, 12A, B, and E, 13, 16A and 18A. Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement if Seller has not Delivered the items within the time specified.**
- B. (1) BUYER HAS: 17 (or ___, ___) Days After Acceptance, unless otherwise agreed in writing, to:**
(i) complete all Buyer Investigations; review all disclosures, reports, and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory Disclosures and other disclosures Delivered by Seller in accordance with paragraph 12A.
- (2) Within the time specified in paragraph 19B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to (C.A.R. Form RRRR) Buyer's requests.**

Buyer's Initials (_____) (_____) **VLPA REVISED 11/14 (PAGE 6 OF 11)**

Seller's Initials (_____) (_____)

VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 6 OF 11)

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48025 www.ziplogix.com



Property Address: 1283 Willow Road, Menlo Park, CA 94025

Date: 9/10/2019

- (3) By the end of the time specified in paragraph 19B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 19A, then Buyer has 5 (or ___) Days After Delivery of any such items, or the time specified in paragraph 19B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.
- (4) Continuation of Contingency: Even after the end of the time specified in paragraph 19B(1) and before Seller cancels, if at all, pursuant to paragraph 19C, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 19C(1).

C. SELLER RIGHT TO CANCEL:

- (1) Seller right to Cancel; Buyer Contingencies: If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- (2) Seller right to Cancel; Buyer Contract Obligations: Seller, after first delivering to Buyer a NBP, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3A or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; (ii) Deliver a notice of FHA or VA costs or terms as required by paragraph 3D(3) (C.A.R. Form FVA); (iii) Deliver a letter as required by paragraph 3J(1); (iv) Deliver verification as required by paragraph 3C or 3H or if Seller reasonably disapproves of the verification provided by paragraph 3C or 3H; (v) Return Statutory Disclosures as required by paragraph 12A; or (vi) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 27B; or (vii) Provide evidence of authority to sign in a representative capacity as specified in paragraph 19. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

D. NOTICE TO BUYER OR SELLER TO PERFORM: The NBP or NSP shall: (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least 2(or ___) Days After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than 2 Days Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 19.

E. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES: If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in writing, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.

F. CLOSE OF ESCROW: Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: (i) be signed by the applicable Buyer or Seller; and (ii) give the other Party at least 3 (or ___) Days After Delivery to close escrow. A DCE may not be Delivered any earlier than 3 Days Prior to the scheduled close of escrow.

G. EFFECT OF CANCELLATION ON DEPOSITS: If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. If either Party fails to execute mutual instructions to cancel escrow, one Party may make a written demand to Escrow Holder for the deposit (C.A.R. Form BDRD or SDRD). Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within 10 Days After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursement of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. A Party may be subject to a civil penalty of up to \$1,000 for refusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).

20. REPAIRS: Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.

21. FINAL VERIFICATION OF CONDITION: Buyer shall have the right to make a final verification of the Property within 5 (or ___) Days Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 16; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).

22. ENVIRONMENTAL HAZARD CONSULTATION: Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Broker(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Broker(s) has/have made no representation concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

VLPA REVISED 11/14 (PAGE 7 OF 11)

VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 7 OF 11)

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.ziplogix.com



23. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS: Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.

24. BROKERS:

A. COMPENSATION: Seller or Buyer, or both, as applicable, agrees to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.

B. SCOPE OF DUTY: Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

25. REPRESENTATIVE CAPACITY: If one or more Parties is signing the Agreement in a representative capacity and not for him/herself as an individual then that Party shall so indicate in paragraph 37 or 38 and attach a Representative Capacity Signature Addendum (C.A.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD appear on the Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists and (ii) shall Deliver to the other Party and Escrow Holder, within 3 Days After Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code §18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).

26. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:

A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3, 4B, 5, 6, 7A, 8, 9, 12B, 18, 19G, 23, 24A, 25, 26, 32, 35, 36, 37, 38 and paragraph D of the section titled Real Estate Brokers on page 11. If a Copy of the separate compensation agreement(s) provided for in paragraph 24A, or paragraph D of the section titled Real Estate Brokers on page 10 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 9B(1)(c). To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within 3 (or ___) Days, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 9, 12 or elsewhere in this Agreement.

B. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within 3 Days After Acceptance (or _____). Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title company when received from Seller. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 12B, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.

C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 24A and paragraph D of the section titled Real Estate Brokers on page 11. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 24A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.

D. Upon receipt, Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (i) if Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.

Buyer's Initials (_____) (_____)
VLPA REVISED 11/14 (PAGE 8 OF 11)

Seller's Initials (_____) (_____)



VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 8 OF 11)

Property Address: 1283 Willow Road, Menlo Park, CA 94025

Date: 09/10/2019

E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.

27. REMEDIES FOR BUYER'S BREACH OF CONTRACT:

- A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.
- B. **LIQUIDATED DAMAGES:** If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. **AT TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R.FORM RID).**

Buyer's Initials _____ / _____

Seller's Initials _____ / _____

28. DISPUTE RESOLUTION:

- A. **MEDIATION:** The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Consumer Mediation Center (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. **THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. Exclusions from this mediation agreement are specified in paragraph 28C.**
- B. **ARBITRATION OF DISPUTES:** The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 28C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials _____ / _____

Seller's Initials _____ / _____

C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:

- (1) **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.
- (2) **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- (3) **BROKERS:** Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement.

29. SELECTION OF SERVICE PROVIDERS: Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

VLPA REVISED 11/14 (PAGE 9 OF 11)

VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 9 OF 11)

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.ziplogix.com



Property Address: 1283 Willow Road, Menlo Park, CA 94025

Date: 9/10/2019

- 30. **MULTIPLE LISTING SERVICE ("MLS"):** Brokers are authorized to report to the MLS a pending sale and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS.
- 31. **ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorneys fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 28A.
- 32. **ASSIGNMENT:** Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the written consent of Seller. Such consent shall not be unreasonably withheld unless otherwise agreed in writing. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller (C.A.R. Form AQAA).
- 33. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
- 34. **TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initiated by all Parties or if incorporated by mutual agreement in a counteroffer or addendum. If at least one but not all Parties Initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.
- 35. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California. Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.
- 36. **DEFINITIONS:** As used in this Agreement:
 - A. "Acceptance" means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.
 - B. "Agreement" means this document and any counter offers and any incorporated addenda, collectively forming the binding agreement between the Parties. Addenda are incorporated only when Signed by all Parties.
 - C. "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to by the parties.
 - D. "Close Of Escrow" means the date the grant deed, or other evidence of transfer of title, is recorded.
 - E. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
 - F. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
 - G. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
 - H. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
 - I. "Deliver", "Delivered" or "Delivery", unless otherwise specified in writing, means and shall be effective upon: personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 1, regardless of the method used (i.e., messenger, mail, email, fax, other).
 - J. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
 - K. "Law" means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
 - L. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
 - M. "Signed" means either a handwritten or electronic signature on an original document, Copy or any counterpart.
- 37. **EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by _____ who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by _____ AM/ PM, on _____ (date)).

One or more Buyers is signing the Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD) for additional terms.

Date _____ BUYER _____
 (Print name) _____
 Date _____ BUYER _____
 (Print name) _____

Additional Signature Addendum attached (C.A.R. Form ASA).

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

VLPA REVISED 11/14 (PAGE 10 OF 11)

VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 10 OF 11)

Produced with zipForm® by zipLogic 18070 Fifteen Mile Road, Fraser, Michigan 48228 www.zipLogic.com



Property Address: 1283 Willow Road, Menlo Park, CA 94025

Date: 9/10/2019

38. ACCEPTANCE OF OFFER: Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to Deliver a Signed Copy to Buyer.

(If checked) SELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:

[X] One or more Sellers is signing the Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD) for additional terms.

Date SELLER MP 1283 Willow, LLC [See attached signature]
(Print name)

Date SELLER
(Print name)

[] Additional Signature Addendum attached (C.A.R. Form ASA).

(/) (Do not initial if making a counter offer.) CONFIRMATION OF ACCEPTANCE: A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) at
[] AM/ [] PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

REAL ESTATE BROKERS:

- A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.
B. Agency relationships are confirmed as stated in paragraph 2.
C. If specified in paragraph 3A(2), Agent who submitted the offer for Buyer acknowledges receipt of deposit.
D. COOPERATING BROKER COMPENSATION: Listing Broker agrees to pay Cooperating Broker (Selling Firm) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow, the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Listing Broker and Cooperating Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.

Real Estate Broker (Selling Firm) CalBRE Lic. #
By CalBRE Lic. # Date
By CalBRE Lic. # Date
Address City State Zip
Telephone Fax E-mail
Real Estate Broker (Listing Firm) CalBRE Lic. #
By CalBRE Lic. # Date
By CalBRE Lic. # Date
Address City State Zip
Telephone Fax E-mail

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, [] a deposit in the amount of \$), counter offer numbers [] Seller's Statement of Information and , and agrees to act as Escrow Holder subject to paragraph 26 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is
Escrow Holder Escrow #
By Date
Address
Phone/Fax/E-mail
Escrow Holder has the following license number #
[] Department of Business Oversight, [] Department of Insurance, [] Bureau of Real Estate.

PRESENTATION OF OFFER: () Listing Broker presented this offer to Seller on (date).
Broker or Designee Initials

REJECTION OF OFFER: () () No counter offer is being made. This offer was rejected by Seller on (date).
Seller's Initials

©1996-2014, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

Published and Distributed by:
REAL ESTATE BUSINESS SERVICES, INC.
a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®
525 South Virgil Avenue, Los Angeles, California 90020
VLPA REVISED 11/14 (PAGE 11 OF 11)

Buyer's Acknowledges that page 10 is part of
this Agreement () ()

Reviewed by
Broker or Designee



VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 11 OF 11)

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48025 www.ziplogix.com

IN WITNESS WHEREOF, the parties hereto have executed this Vacant Land Purchase Agreement and Joint Escrow Instructions as of _____, 2019.

BUYER

City of Menlo Park, a municipal corporation of the State of California

By: _____

Its: _____

SELLER

MP 1283 WILLOW, LLC, a California limited liability company

By: Mid-Peninsula Half Moon Bay, Inc.
a California nonprofit public benefit corporation

Its Sole Member

By: _____

Name: Jan M. Lindenthal

Its: Assistant Secretary

**Addendum to Vacant Land Purchase Agreement and
Joint Escrow Instructions dated September ____, 2019,
by and between the City of Menlo Park, as “Seller,”
and MP 1283 Willow, LLC, as “Buyer”**

39. Condition of Property. Paragraph 16 of this Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

Buyer hereby acknowledges that the Property will be sold to Buyer “AS IS”, “WHERE IS” and “WITH ALL FAULTS”, including, but not limited to, both latent and patent defects and the existence of any hazardous materials, and there are no representations and/or warranties, express or implied, made by Seller in connection with the transaction contemplated by this Agreement. Buyer acknowledges and agrees that (1) Buyer shall rely upon Buyer’s own due diligence in determining whether the Property is suitable for purchase by Buyer; (2) Buyer has been given a reasonable opportunity to inspect and investigate the Property and all aspects relating thereto, either independently or through agents and experts of Buyer’s choosing; (3) Buyer is acquiring the Property based exclusively upon Buyer’s own investigations and inspections thereof and is not relying on any representations and warranties of Seller. Buyer hereby waives its right to recover from, and forever releases and discharges Seller, Seller’s affiliates, members, directors, officers and their respective heirs, successors, personal representatives and assigns from any and all demands, claims (including, without limitation, causes of action in tort), legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys’ fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen (collectively, “**Claims**”), that may arise on account of or in any way be connected with the Property, the physical condition thereof, or any law or regulation applicable thereto and Buyer shall indemnify, defend and hold Seller harmless from and against any and all Claims that may arise on account of or in any way be connected with the Property, the physical condition thereof, or any law or regulation applicable thereto.

40. Buyer’s Investigation of Property and Matters Affecting Property. Paragraph 17 of this Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

Buyer acknowledges that Buyer is familiar with the condition of the Property and has had the opportunity to inspect the Property and investigate the suitability of the Property for Buyer’s intended use. Buyer hereby unconditionally waives any further right to inspect the Property or to perform any tests or inspections and, upon acceptance of this Agreement by Buyer, Buyer acknowledges that approval of the condition of the Property shall not be a condition to Buyer’s performance under this Agreement.

41. Time Periods; Removal of Contingencies; Cancellation Rights. Paragraph 19 of this Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

A. Seller has provided Buyer with a copy of a Preliminary Title Report for the

Property prepared by Old Republic Title Company, dated as of August 9, 2019, Order No. 1117017836-JM (“**Title Report**”), together with copies of the property documents listed on Exhibit A attached to this Addendum (collectively, “Property Documents”). The Property Documents delivered by Seller to Buyer shall be delivered without any representation, warranty, or liability whatsoever by or on the part of Seller or the preparers of such studies and investigations, as to the accuracy, completeness, or utility of any such studies and investigations, and Buyer or any successor or assign of Buyer shall utilize and/or rely on the information contained in the Property Documents at Buyer’s or such successor’s or assign’s sole and absolute risk. Buyer acknowledges that Buyer has had the opportunity to review the Property Documents and, notwithstanding anything to the contrary contained in this Agreement, Buyer shall not have the right to cancel this Agreement as a result of any information contained in the Property Documents.

B. As set forth in Section 17 above, Buyer is familiar with the Property and, upon acceptance of this Agreement by Buyer, Buyer shall proceed to close escrow within the time period set forth in Section 1 D above.

42. Repairs. Paragraph 20 and 21 of this Agreement are hereby deleted in their entirety and the following is inserted in lieu thereof:

The parties acknowledge that the Property is being sold to Buyer “AS IS”, “WHERE IS” and “WITH ALL FAULTS” as set forth in Section 16 above and Seller shall have no obligation to make any repairs or improvements to the Property in connection with Buyer’s acquisition of the Property under this Agreement.

43. Brokers. Paragraph 24 of this Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

The parties acknowledge that neither Buyer nor Seller is represented by a real estate broker in connection with this transaction. Seller and Buyer shall each indemnify, defend and hold the other harmless in connection with any broker’s commission or finder’s fee due or alleged to be due based upon the acts of the indemnifying party.

44. Terms and Conditions of Offer. . The first sentence of Section 34 of this Agreement is deleted and replaced with the following:

This is an offer to sell the Property on the above terms and conditions.

45. Acceptance. Notwithstanding the provisions of Paragraph 36.A. of this Agreement, Seller and Buyer agree that for purposes of this Agreement, “**Acceptance**” of this Agreement shall mean the time of (i) the approval of this Agreement by the City Council of the City of Menlo Park, (ii) the full execution of this Agreement by Seller and Buyer, and (iii) the delivery of such fully executed Agreement to each of the parties.

46. Representative Capacity. Buyer acknowledges that Jan Lindenthal has executed this Agreement on behalf of Buyer in her representative capacity as Buyer’s Chief Real Estate Development Officer.

47. Use of Property Post Closing. Buyer hereby grants to Seller a temporary right to use the Property after the Close of Escrow (“Temporary Use”) as a staging area for the storage of construction materials and modular components and containers in connection with the construction of Seller’s Gateway Apartments project located at 1345 Willow Street in Menlo Park (“Adjacent Project”). The Temporary Use shall commence upon not less than thirty (30) days written notice to Buyer that Seller intends to commence construction of the Adjacent Project. Within such thirty (30) day period, the parties shall enter into a Property Use Agreement in substantially the form attached hereto as Exhibit B to evidence the terms and conditions of the Temporary Use.

In Witness Whereof, the parties hereto have executed this Addendum One to Vacant Land Purchase Agreement and Joint Escrow Instructions as of the date set forth hereinabove.

<p>Buyer</p> <p>City of Menlo Park, a municipal corporation of the State of California</p> <p>By: _____</p> <p>Its: _____</p>	<p>Seller</p> <p>MP 1283 Willow LLC, a California limited liability company</p> <p>By: Mid-Peninsula Half Moon Bay, Inc. a California nonprofit public benefit corporation Its Sole Member</p> <p>By: _____ Name: Jan M. Lindenthal Its: Assistant Secretary</p>
--	---

EXHIBIT A

List of Property Documents

[To Be Attached]

EXHIBIT B

Form of Property Use Agreement

[To Be Attached]

Exhibit A: Property Documents to
Addendum to Vacant Land Purchase Agreement

Restricted Appraisal of Real Property dated May 25, 2019

Phase I Environmental Site Assessment dated April 21, 2016

Limited Phase II Subsurface Investigation dated April 12, 2016

ALTA Survey dated March 8, 2016

Soil Disposal Evaluation Letter from AEI Consultants dated April 22, 2016

Site Management Plan revised January 24, 2017

Preliminary Title Report dated August 9, 2019

MidPen's Conceptual Design Studies

PROPERTY USE AGREEMENT

THIS PROPERTY USE AGREEMENT (“Agreement”) is made this _____ day of _____, 2020 (“Effective Date”), by and between the CITY OF MENLO PARK, a municipal corporation of the State of California (“City”), and MIDPEN HOUSING CORPORATION, a California non-profit public benefit corporation (“Developer”).

Recitals

A. The City is the owner of that certain real property located at 1283 Willow Road in Menlo Park, California, which is more particularly described on **Exhibit A** attached hereto (“Property”).

B. Developer desires to use a portion of the Property as a staging area for the storage of construction materials and modular components and containers in connection with the construction of Developer’s Gateway Apartments project located at 1345 Willow Road in Menlo Park (“**Adjacent Project**”).

C. The Property is vacant and available for the proposed use hereunder for the period of Developer’s proposed use.

NOW, THEREFORE, City and Developer agree as follows:

1. **Grant of Use.** City hereby grants to Developer a temporary right to use a portion of the Property, generally described as the existing fenced area on the Property and as more particularly shown on **Exhibit A-1** attached hereto (“**Staging Area**”), for a staging area for the Adjacent Project for the period set forth below (collectively, “**Temporary Use**”).

2. **Duration of Temporary Use.** Developer shall have the right to exclusive use of the Staging Area for a staging area for a period of three (3) years after the Effective Date (“**Initial Term**”). To the extent necessary to complete the Adjacent Project, Developer shall have the right to extend the Initial Term for a period of up to one (1) year upon written notice to City delivered not less than ninety (90) days prior to expiration of the Initial Term.

3. **Condition of Staging Area.**

a. Developer shall at all times maintain the Staging Area in a neat and orderly fashion, minimize any dust (by watering, if necessary) and noise, prevent any hazardous and/or toxic substances from being placed, stored, or used on the Staging Area, and shall remove any and all garbage and/or debris placed onto the Staging Area.

b. In consideration for use of the Staging Area, Developer will remove all weeds on the Property and adjacent sidewalks.

c. During the term of this Agreement, Developer shall, at its sole cost and expense, maintain the fencing located on the Staging Area.

d. Developer shall restore and return the Staging Area to City, at no expense to City, in the same condition it was received by Developer except as provided in subsection b above.

e. Developer expressly acknowledges and agrees that the Staging Area is being made available for Developer's use "as is", that is, in its present condition, and that City makes no warranties or representations whatsoever regarding the condition of the Staging Area or its suitability for such use.

f. The City shall bear no responsibility or risk of loss of any kind for any personal property, equipment or construction materials stored or used by Developer on the Staging Area.

4. City Right of Entry. City, and its agents, officers, employees, and contractors (collectively, "City Parties") shall have the right to enter the Staging Area upon not less than two (2) business days' notice to Developer for the purpose of conducting and performing inspections, surveys, testing and other reasonable investigations (collectively, "Tests"); provided that such Tests shall not unreasonably disrupt Developer's use of the Staging Area. The City shall defend, indemnify and hold harmless Developer and its officers, employees and agents against any costs, loss, damages, liability, claims and/or expenses arising out of or resulting in any way from the entry onto the Staging Area by the City Parties pursuant to this Section.

5. Assignment. Developer may, upon written notice to City, assign its rights and delegate its duties hereunder to any subsidiary or other entity either wholly or jointly controlled by or under common control (through its board of directors) with Developer, provided such assignment shall not relieve Developer of its duties and obligations hereunder. This Agreement is made and entered into solely for the benefit of the City and Developer, and no other third person shall have any rights under this Agreement.

6. No Agent. Developer does not become an agent or employee of the City by virtue of this Agreement and/or the Temporary Use, and the parties expressly agree that no agency or employment relationship is created by this Agreement.

7. Insurance. Developer agrees to have and maintain the policies set forth in the attached Exhibit B, entitled "Insurance Requirements". All policies, endorsements, certificates and/or binders shall be subject to approval by the City as to form and content. Developer agrees to provide City with a copy of all the policies, certificates and/or endorsements before Developer's use of the Staging Area commences under this Agreement.

8. Indemnification. Developer shall indemnify, defend and hold City, and its agents, officers, and employees, harmless from and against any and all costs, loss, damages, claims, liability and/or expenses, including defense costs, legal fees and attorneys' fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage, including equipment and vehicles, arising in any manner from or in connection with Developer's use and occupancy of the Staging Area, and access to and from the Staging Area, except for costs, loss, damages, liability, claims and/or expenses solely resulting from the negligence or misconduct of the indemnified party, its agents, officers and/or employees.

9. Termination. If Developer violates any of the terms and conditions set forth in this Agreement, City shall have the right to terminate this Agreement upon not less than seven (7) days written notice from City to Developer. If the City terminates this Agreement, Developer agrees to cause all of its agents, officers and employees to immediately vacate the Staging Area and to remove all equipment and/or other property belonging to Developer, its agents, officers and/or employees from the Staging Area and to restore the Staging Area to the condition required hereunder.

10. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, by electronic mail or facsimile transmission with verification of receipt, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

If to City: City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Attn: City Manager

If to Developer MidPen Housing Corporation
303 Vintage Park Drive, Suite 250
Foster City, CA 94404
Attn: Nevada Merriman

or to such other address as any party may designate by notice in accordance with this Section.

Notice shall be deemed effective on the date delivered or, if appropriate, on the date delivery is refused.

11. Nondiscrimination. Developer shall not discriminate, in any way, against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, creed, marital status, sexual orientation, disability, ethnicity, ancestry, or national origin in the use, occupancy, tenure or enjoyment of the Staging Area.

12. Governing Law. City and Developer agree that the law governing this Agreement shall be that of the State of California.

13. Venue. If a lawsuit shall be brought by either party hereunder, the parties agree that trial of such action shall be exclusively vested in a state court in the County of San Mateo or, where appropriate, in the United States District Court for the Northern District of California, San Jose, California.

14. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

15. Exhibits. All attached exhibits are incorporated into this Agreement.

16. Additional Reasonable Conditions. Nothing herein shall prevent City from imposing additional reasonable conditions on Developer's use of the Staging Area.

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

Buyer	Seller
City of Menlo Park, a municipal corporation of the State of California	MidPen Housing Corporation, a California nonprofit public benefit corporation
By: _____	By: _____
Its: _____	Name: Jan M. Lindenthal
Approved as to form:	Its: _____
By: _____ William L. McClure, City Attorney	

EXHIBIT A and A-1

PROPERTY

Survey and Legal Description of the Property attached.

STAGING AREA

The existing fenced area on the Property, shown by the delineated Chain Link Fence on Survey page 2 attached hereto.

EXHIBIT B

INSURANCE REQUIREMENTS

[City's Insurance Requirements - To Be Attached]

MAP NOTES
 PROPERTY ADDRESS: 1283 Willow Road
 Menlo Park, CA 94025

ASSESSOR'S PARCEL NO.'s: 062-103-640

FLOOD ZONE DESIGNATION: ZONE X
 Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood; per Preliminary Flood Insurance Rate Map (FIRM) No. 06081C0307F, Community no. 060321 (City of Menlo Park), Panel 0307, Suffix F, effective date of August 13, 2025 from Federal Emergency Management Agency (fema)

PARCEL AREA:
 Title Report Parcel One = 17,445 S.F.±
 Title Report Parcel Two = 10,773 S.F.±
 Title Report Parcel Three = 663 S.F.±
 TOTAL = 28,881 S.F.±

ZONING: C2B (Neighborhood Commercial, Restrictive)

SETBACKS:
 Front = 10 feet
 Side = None
 Rear = None, except when abutting a residential district where twenty-foot yard shall be provided.

MAXIMUM BUILDING HEIGHT: 30 feet (no buildings on site)

PARKING SPACE COUNT: None (No parking spaces on site. Site is vacant.)

There are no building structures on the site. Building foundations only.

There was no observable evidence of street or sidewalk construction or repairs on the day of the field survey.

There was no observable evidence of earth moving work, building construction or building additions on the day of the field survey.

There are no cemeteries within 100 feet of boundary of property.

There are no springs, ponds, lakes, streams and rivers bordering on or running through the Property.

REFERENCED TITLE INSURANCE POLICY
 TITLE COMPANY: Old Republic Title Company
 555 12th Street, Suite 2000
 Oakland, CA 94607

TITLE POLICY NO.: 1117015674-JM (Order No.)

TITLE POLICY DATE: January 15, 2016

TITLE VESTED IN: Willow Corner, LLC., a California limited liability company

NATURE OF TITLE: Fee

PROPERTY DESCRIPTION
 The land referred to is situated in the County of San Mateo, City of Menlo Park, State of California, and is described as follows:

PARCEL ONE:
 Parcel 1, as shown on that certain Map entitled "Parcel Map, consisting of one (1) sheet being portions of Lots 23, 24 and 25, Block 5, as shown on Map entitled, "Newbridge Park, San Mateo County, California", filed in Book 14 of Maps, at Page 7, San Mateo County Records, State of California and lying within the City of Menlo Park, San Mateo County, State of California", filed in the Office of the County Recorder of San Mateo County, State of California, on August 6, 1987, under Instrument No. 87122861, in Book 59 of Parcel Maps, at Page 53.

PARCEL TWO:
 Being a portion of Segment 1: that portion of existing roadway (Willow Road) as described in that certain "Relinquishment of Highway Right of Way in the City of Menlo Park, Road 4-SM114-5.0 / 5.8, Request No. 40470" to the City of Menlo Park, recorded June 13, 1994 under Recorder's Serial No. 94101801, Official Records of San Mateo County, being more particularly described as follows:

Beginning at a point on the Southerly line of Hatch-Hetchy Way (now known as Ivy Drive, 80' wide), said point being the Northeastery corner of Lot 23, in Block 5, as said Lot, Block and Road are shown on that certain Map entitled "Newbridge Park" filed for record June 10, 1926, in Volume 14 of Maps, at Pages 6 and 7, San Mateo County Records;

Thence along the Easterly line of said Block 5, South 22' 05' 00" West 186.82 feet;

Thence South 67° 55' 00" East 59.26 feet to the Easterly line of said Relinquishment;

Thence along the Easterly boundary line of said Relinquishment the following four (4) courses;

- 1) North 22' 05' 00" East 24.81 feet;
- 2) North 18' 04' 45" East 100.26 feet;
- 3) North 22' 05' 00" East 60.19 feet;

4) Northerly along a tangent curve to the left, having a radius of 19.25 feet, through a central angle of 75° 06' 28" for an arc length of 25.23 feet to the Easterly prolongation of said Southerly line of Hatch-Hetchy Way (now known as Ivy Drive, 80' wide);

Thence along said prolonged line South 88' 12' 30" West 41.51 to said point of beginning.

PARCEL THREE:
 Being a portion of Lot 26 in Block 5, as said Lot and Block are shown on that certain Map entitled "Newbridge Park" filed for record June 10, 1926, in Volume 14 of Maps, at Pages 6 and 7, San Mateo County Records. Also being a portion of Frontage Road, as shown on that certain Parcel Map filed for record August 6, 1987, in Book 59 of Parcel Maps, at Page 53, San Mateo County Records, being more particularly described as follows:

Beginning at the most Easterly corner of said Lot 26, also being the most Southerly corner of Parcel 1, as shown on said Parcel Map;

Thence along the Northerly line of Lot 26 North, 67° 55' 00" West 108.00 feet to the beginning of a non-tangent curve to the right from which a radial line bears South 68° 28' 16" West, having a radius of 14.50 feet, through a central angle of 43° 36' 44" for an arc distance of 11.04 feet to the Westerly line of said Parcel 1;

Thence along the Southerly prolongation of said Westerly line South 22' 05' 00" West 6.00 feet;

Thence along a tangent curve to the left, having a radius of 10.00 feet, through a central angle of 90° 00' 00" for an arc distance of 15.71 feet.

Thence along a line parallel with and 6.00 feet Southerly of, measured at right angles, the said Southerly line of Parcel 1 South 67° 55' 00" East 102.00 feet to the Easterly line of said Block 5 of Newbridge Park, also being the Westerly line of that portion of existing roadway (Willow Road) as described in that certain "Relinquishment of Highway Right of Way in the City of Menlo Park, Road 4-SM-114-5.0 / 5.8, Request No. 40470" to the City of Menlo Park, recorded June 13, 1994, under Recorder's Serial No. 94101801, Official Records of San Mateo County;

Thence along said Westerly line of said Relinquishment and along the Easterly line of said Block 5 North, 22' 05' 00" East 6.00 feet to the point of beginning.

EXCEPTIONS FROM COVERAGE

1. Taxes and assessments, general and special, for the fiscal year 2016 2017, a lien, but not yet due or payable.
NOT A SURVEY ITEM.
2. Taxes and assessments, general and special, for the fiscal year 2015 2016, as follows:
 Assessor's Parcel No.: 062-103-640
 Code No.: 008-092
 1st Installment: \$6,255.08 Marked Paid
 2nd Installment: \$6,255.08 NOT Marked Paid
 Land Value: \$1,097,051.00
NOT A SURVEY ITEM.

3. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.
NOT A SURVEY ITEM.

4. Covenants, Conditions and Restrictions which do not contain express provision for forfeiture or reversion of title in the event of violation, but omitting any covenants or restriction if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

Entitled: Deed
 Executed by: Newbridge Park Realty Company, a corporation
 Recorded: May 21, 1930 in Book 482 of Official Records, Page 39

NOTE: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."
NOT A SURVEY ITEM.

5. Covenants, Conditions and Restrictions which do not contain express provision for forfeiture or reversion of title in the event of violation, but omitting any covenants or restriction if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

Entitled: Deed
 Executed by: Newbridge Park Realty Company, a corporation
 Recorded: March 20, 1936 in Book 683 of Official Records, Page 263

NOTE: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."
NOT A SURVEY ITEM.

6. The herein described property lies within the boundaries of the Las Pulgas Community Development Project Area of the Menlo Park Community Development Agency, as disclosed by instrument recorded December 21, 1981, of Official Records, under Recorder's Serial Number 19388AT.

The above was amended by Ordinance No. 826, adopting the First Amended and Restated Las Pulgas Community Development Plan, recorded September 11, 1991, of Official Records, under Recorder's Serial Numbers 91120049 and 91120050. And as amended by Ordinance No. 851 recorded August 10, 1995, of Official Records, under Recorder's Serial Number 95081846.
NOT A SURVEY ITEM.

7. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument: Grant Deed
 Granted To: City of Menlo Park
 For: Public utility
 Recorded: January 24, 1983 in Official Records under Recorder's Serial Number 83006998
 Affects: The Northeastery portion

Said easement is also shown on the Map filed on August 6, 1987, in Book 59 of Parcel Maps, at Page 53.
PLOTTED.

8. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument: Resolution No. 5504
 Reserved By: The City Council of the City of Menlo Park
 For: Pedestrian access
 Affects: Parcel Two as described therein
 For: Public utilities
 Affects: Parcel Two
 Recorded: September 23, 2008, in Official Records, under Recorder's Serial Number 2008-106805
PLOTTED.

9. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument: Easement Deed
 Granted To: Pacific Gas and Electric Company
 For: Distribution of electric energy and communication purposes
 Dated: January 6, 2011
 Recorded: January 12, 2011 in Official Records under Recorder's Serial Number 2011-004471
 Affects: The Northerly portion as shown and described therein

Upon the terms and conditions contained therein.
PLOTTED.

10. Prior to the issuance of any policy of title insurance, the Company requires the following with respect to Willow Corner, LLC., a California Limited Liability Company:

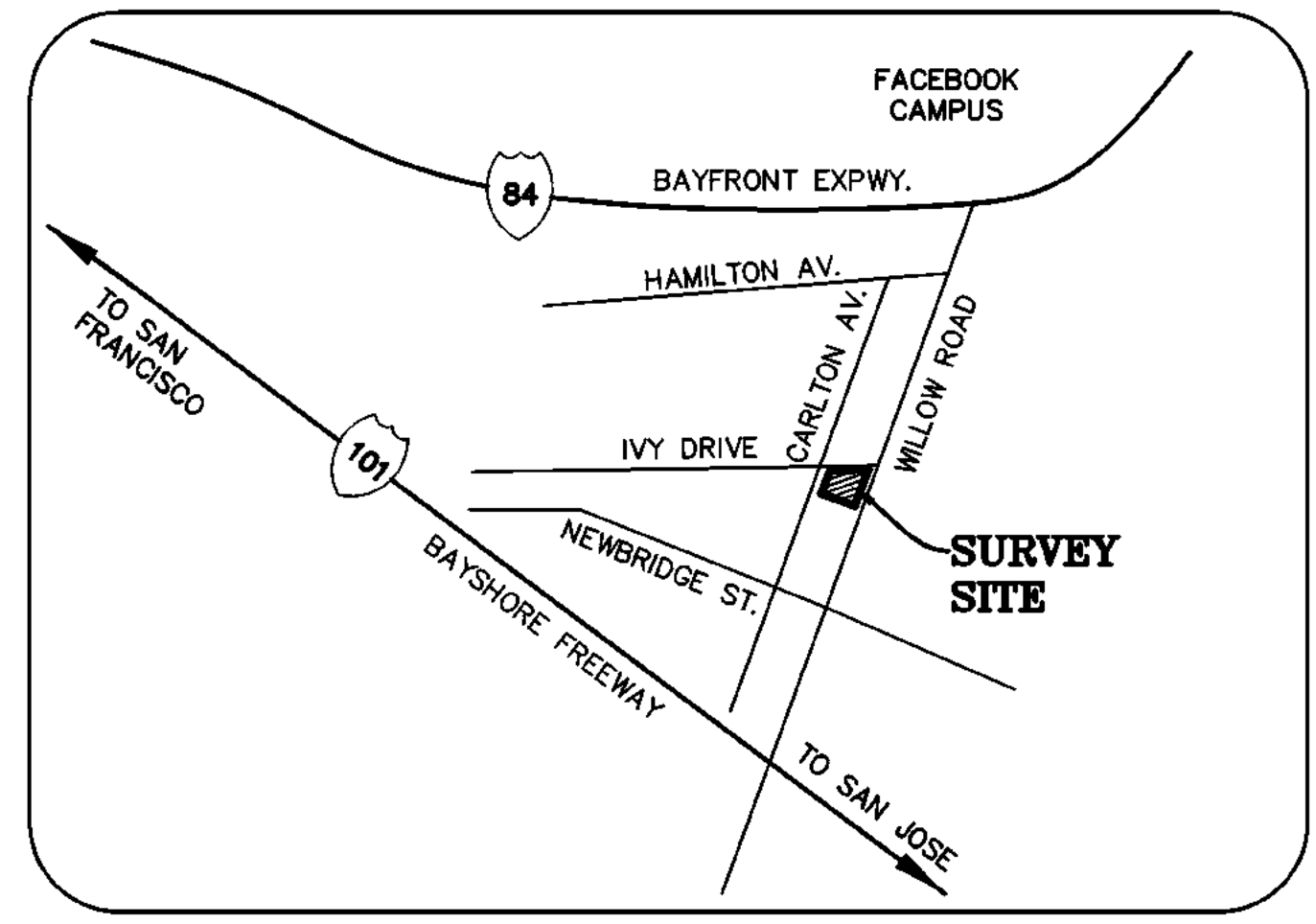
- 1) A copy of any management or operating agreements and any amendments thereto, together with a current list of all members of said LLC.
- 2) A certified copy of its Articles of Organization (LLC-1), any Certificate of Correction (LLC-1), Certificate of Amendment (LLC-2), or Restatement of Articles of Organization (LLC-10).
- 3) Recording a Certified copy of said LLC-1 and any amendments thereto.
NOT A SURVEY ITEM.

11. Any claim of lien for services, labor or material arising from an improvement or work under construction or completed at the date hereof.
NOT A SURVEY ITEM.

12. The requirement that this Company be provided with an opportunity to inspect the land (the Company reserves the right to make additional exceptions and/or requirements upon completion of its inspection).
NOT A SURVEY ITEM.

13. The requirement that this Company be provided with a suitable Owner's Declaration (form ORT 174). The Company reserves the right to make additional exceptions and/or requirements upon review of the Owner's Declaration.
NOT A SURVEY ITEM.

BOLD lettering response in the exceptions are the Surveyor's comment.



1650 TECHNOLOGY DRIVE
 SUITE 650
 SAN JOSE, CA 95110
 408-467-9100
 408-467-9199 (FAX)



CALIFORNIA

ALTA/NSPS LAND TITLE SURVEY
 1283 WILLOW ROAD, MENLO PARK, CA 94025

SAN MATEO COUNTY
 MENLO PARK

SURVEYOR'S CERTIFICATE
 To: Willow Corner, LLC. and
 Old Republic Title Company

This is to certify that this map or plat and the survey on which it was based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes items 2, 3, 4, 6(a), 7(c), 7(b)(1), 7(c), 8, 9, 10(a), 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 (\$1,000,000 minimum threshold) of Table A thereof. The fieldwork was completed on February 22, 2016.

John Koroyan
 John Koroyan
 P.L.S. No. 8883



MARCH 8, 2016
 Dated

Date	Scale	Drawn	Approved	Job No.
03-08-2016	NO SCALE	JG	JK	2016036

No.	Revisions

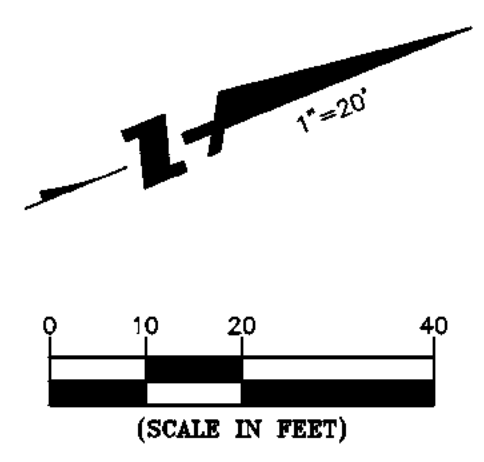
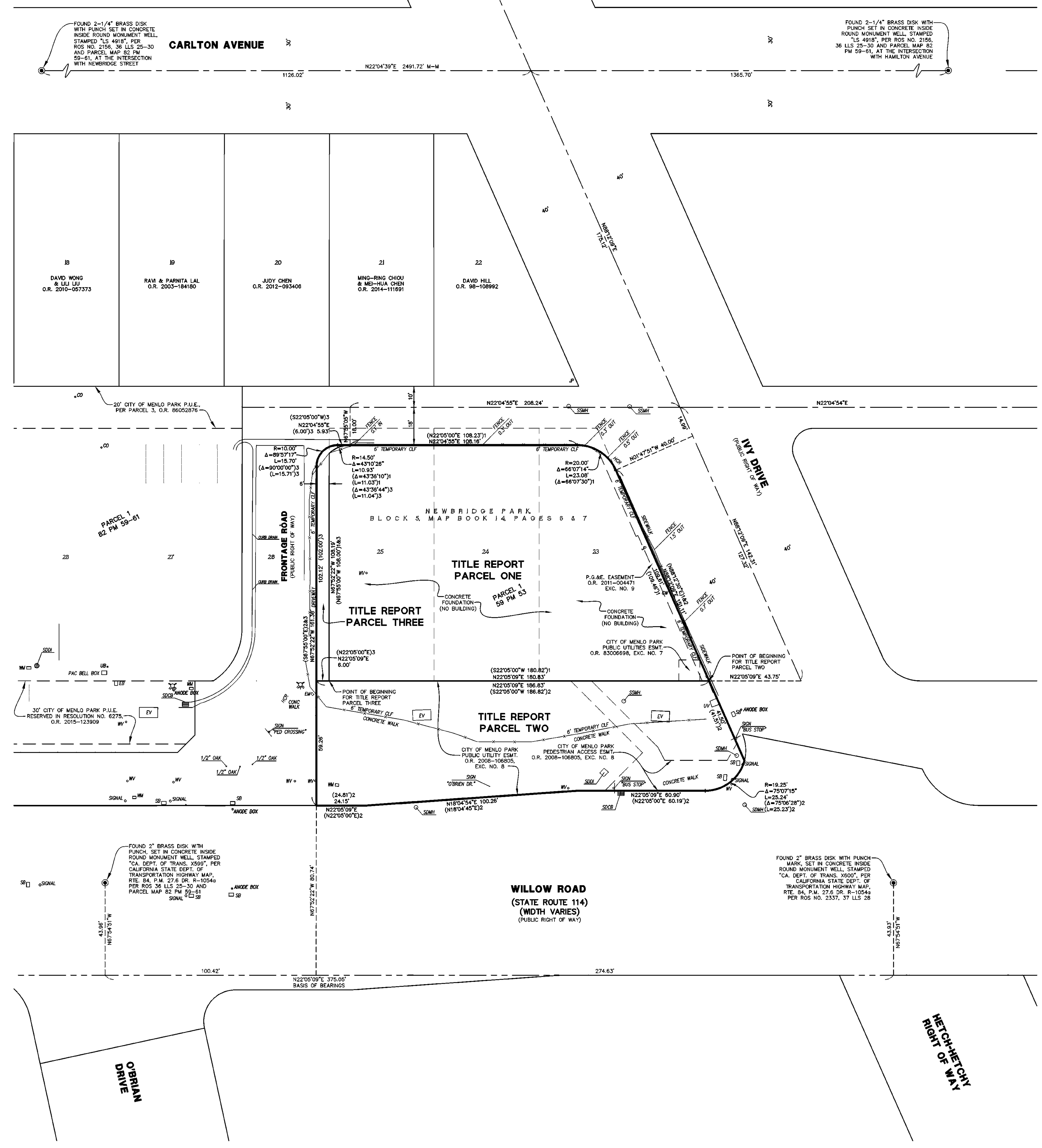
Date: 03-08-2016
 Scale: 1" = 20'
 Design: JG
 Drawn: JG
 Approved: JG
 Job No.: 2016036
 Drawing Number: 2 OF 2

BASIS OF BEARINGS
 THE BEARING N22°05'09"E OF THE SOUTHEASTERLY LINE OF WILLOW ROAD, AS SHOWN ON THAT CERTAIN PARCEL MAP, FILED FOR RECORD ON DECEMBER 29, 2015 IN BOOK 82 OF PARCEL MAPS AT PAGES 59 THROUGH 61, INCLUSIVE, RECORDS OF SAN MATEO COUNTY, CALIFORNIA.

- MAP NOTES**
- ALL DISTANCES AND DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
 - TOPOGRAPHIC AND PLANIMETRIC FEATURES SHOWN ON THIS MAP WERE COMPILED BY PHOTOGRAMMETRIC PROCESS BASED ON AERIAL PHOTOGRAPHY DATED AUGUST 13, 2014 AND SUPPLEMENTED WITH GROUND SURVEYS ON FEBRUARY 22, 2016.
 - THE UTILITY AND SERVICE LINES SHOWN ON THIS SURVEY ARE DERIVED FROM SURFACE OBSERVATION AND AS-BUILT PLANS. NO WARRANTY IS IMPLIED AS TO THE ACTUAL LOCATION, SIZE OR PRESENCE OF ANY UTILITY AND SERVICE LINES SHOWN HEREON OR THE PRESENCE OF ANY ADDITIONAL UTILITY AND SERVICE LINES NOT SHOWN ON THE SURVEY.
 - FEMA ZONE BOUNDARY LINES SHOWN ON THIS SURVEY ARE APPROXIMATELY PLOTTED.

LEGEND

CL	CHAIN LINK FENCE
CO	CLEANOUT
CONC	CONCRETE
EB	ELECTRIC BOX
ESMT.	EASEMENT
EXC. NO.	TITLE REPORT EXCEPTION NUMBER
EV	ELECTRIC VAULT
GW	GUY WIRE
HCR	HANDICAP RAMP
HYD	FIRE HYDRANT
JP	JOINT POLE
MH	MANHOLE
M-M	MONUMENT TO MONUMENT DISTANCE
O.R.	OFFICIAL RECORDS
PAC BELL	PACIFIC BELL COMPANY
P.C.&E.	PUBLIC GAS & ELECTRIC
PED	PEDESTRIAN
PM	PARCEL MAP
SDCB	STORM DRAIN CATCH BASIN
SDDI	STORM DRAIN INLET
SDMH	STORM DRAIN MANHOLE
SB	SIGNAL BOX
SSMH	SANITARY SEWER MANHOLE
UB	UTILITY BOX
UV	UTILITY VAULT
WM	WATER METER
WV	WATER VALVE
IN	DENOTES INSIDE SUBJECT BOUNDARY
OUT	DENOTES OUTSIDE SUBJECT BOUNDARY
() 1	RECORD DATA PER TITLE REPORT PARCEL ONE
() 2	RECORD DATA PER TITLE REPORT PARCEL TWO
() 3	RECORD DATA PER TITLE REPORT PARCEL THREE
E	ELECTRIC LINE
G	GAS LINE
SD	STORM DRAIN LINE
SS	SANITARY SEWER LINE
T	TELEPHONE LINE
TV	CABLE TELEVISION LINE
W	WATER LINE
⊙	FOUND MONUMENT AS NOTED ON MAP



ALL RIGHTS RESERVED. THIS DRAWING IS THE PROPERTY OF BKF ENGINEERS. NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF BKF ENGINEERS.

EXHIBIT B

INSURANCE REQUIREMENTS

Developer shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the use of the Property hereunder by the Developer, its agents, representatives, employees or subcontractors.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- a. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001, Fire Legal Liability; and
- b. The coverage provided for all non-owned and hired automobiles through endorsement to Commercial General Liability coverage; and
- c. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance; and
- d. Property Insurance against all risks of loss to any improvements or betterments, Developer's furniture, fixtures, stock and equipment, including fixtures, improvements and betterments installed by Developer on the Property.

There shall be no endorsement reducing the scope of coverage required above unless approved by the Administrative Services Director City's Risk Manager.

2. Minimum Limits of Insurance

Developer shall maintain limits no less than:

- a. Commercial General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage; \$1,000,000 Fire Legal Liability; and
- b. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage for non-owned and hired automobiles through endorsement to Commercial General Liability Coverage.
- c. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident; and

- d. Property Insurance: 90% replacement cost with no coinsurance penalty provision.

3. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

a. General Liability Coverages:

- (i) The City of Menlo Park, its officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, Developer; products and completed operations of Developer; premises owned, leased or used by Developer; or automobiles owned, leased, hired or borrowed by Developer. The coverage shall contain no special limitations on the scope of protection afforded to City, their officials, employees, agents and contractors.
- (ii) Developer's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officials, employees, agents or contractors shall be excess of Developer's insurance and shall not contribute with it.
- (iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided City, its officials, employees, agents, or contractors.
- (iv) Coverage shall state that Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (v) Coverage shall contain waiver of subrogation in favor of the City of Menlo Park, its officers, employees, agents and contractors
- (vi) Workers' Compensation and Employers' Liability
Coverage shall contain waiver of subrogation in favor of the City of Menlo Park, its officers, employees, agents and contractors

b. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to City of Menlo Park,

except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

5. Acceptability of Insurance

Insurance is to be placed with insurers acceptable to the Administrative Services Director ~~City's Risk Manager~~. It is acknowledged that Developer's current insurer Lexington Insurance Company shall be acceptable subject to the coverage terms of the applicable policies being compliant with the terms of this Agreement.

6. Verification of Coverage

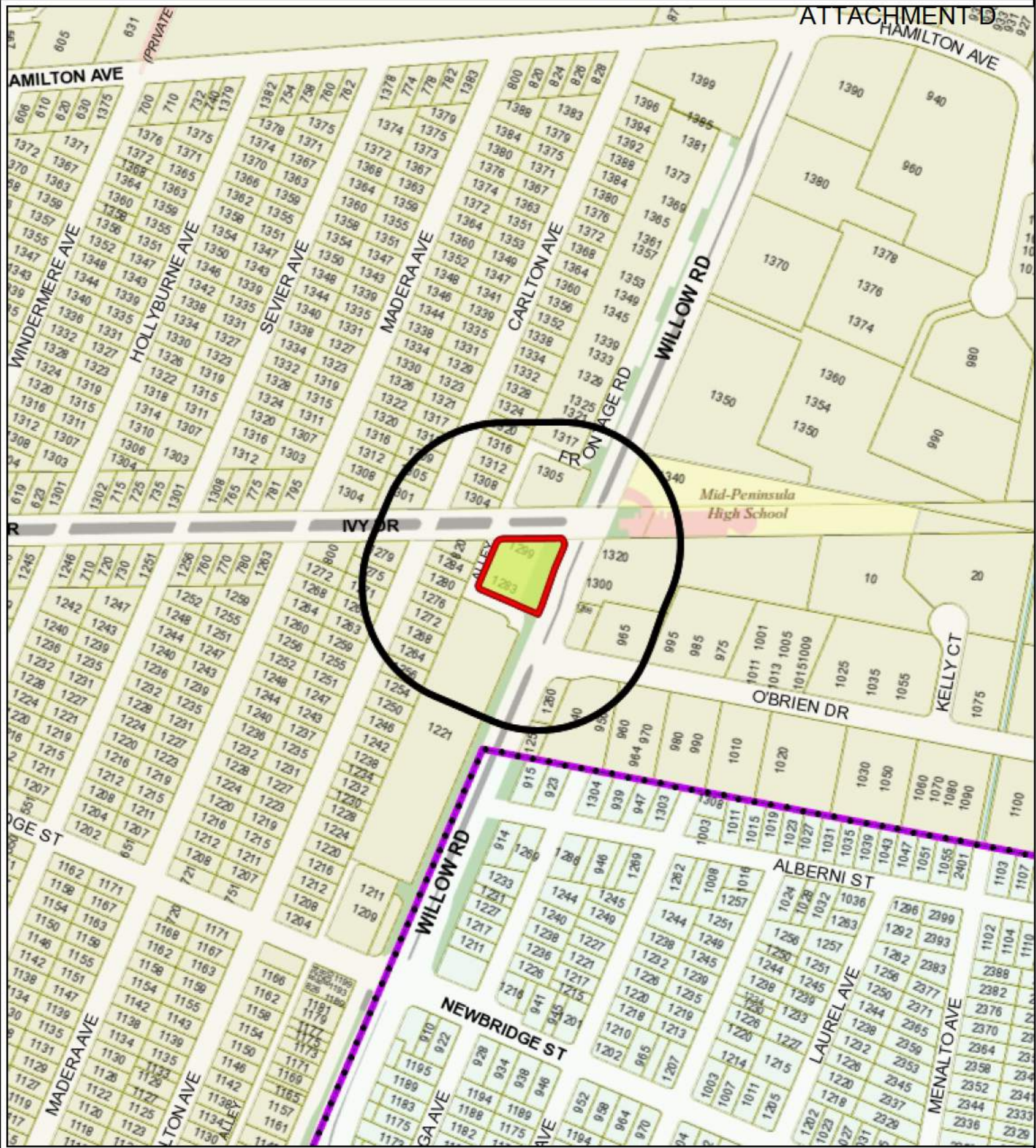
Developer shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: LDDiaz@menlopark.org _____.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Administrative Services Director ~~Risk Manager~~):

City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Attn: _____ Administrative Services Director

7. Subcontractors

Developer shall ensure that its contractors and subcontractors maintain insurance in compliance with the requirements set forth herein.



City of Menlo Park
 Location Map
 1283 Willow Road



Scale: 1:4,000

Drawn By: CRT

Checked By: DMC

Date: 10/29/2019

Sheet: 1

THIS PAGE INTENTIONALLY LEFT BLANK



STAFF REPORT

City Council
Meeting Date: 10/29/2019
Staff Report Number: 19-220-CC

Consent Calendar: Receive and file the investment portfolio review as of September 30, 2019

Recommendation

Staff recommends receipt and filing of the City’s investment portfolio review as of September 30.

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 September 30

The City’s investment portfolio as of September 30, totaled \$156,863,861. As shown below in Table 1, the City’s investments by type are measured by the amortized cost as well as the fair value as of September 30. 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- and medium-term investments (one to five years) bearing a higher interest rate than LAIF, and/or provide investment diversification.

Security	Amortized cost basis	Fair value basis	% of portfolio
LAIF	\$ 65,000,000	\$ 65,000,000	41.4%
Securities portfolio			
Corporate bonds	30,129,117	30,302,658	19.3%
Government agencies	47,158,892	47,556,264	30.3%
Government bonds	13,932,620	14,004,938	8.9%
Total	\$ 156,220,629	\$ 156,863,861	100.0%

As shown in Table 1, the fair value of the City's securities was \$643,232 greater than the amortized cost as of September 30. The difference between amortized cost and fair value is referred to as an unrealized loss or gain, 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.

The consolidated portfolio report for the quarter ending September 30, is included as Attachment A and each component is described in greater detail below.

LAIF

As previously shown in Table 1, 41 percent of the portfolio resides in the City's account at the LAIF, a liquid fund managed by the California State Treasurer, yielding 2.28 percent for the quarter ended September 30. LAIF yields had been at historic lows for several recent years but the last three years have shown a small but steady trend upward before recently levelling off. Due to the liquidity of LAIF and based on uncertainty surrounding rates for longer-term securities, the City has kept a large number of funds in LAIF in recent years. However, the City does invest excess funds in other types of securities in an effort to provide diversification and guarantee rates from longer-duration investments.

Securities portfolio

As of September 30, the City held a number of securities in corporate bonds, government agency notes and government bonds and reflect a diversified mix in terms of type but all at low risk. Insight Investment serves as the City's financial adviser on security investments and makes recommended trades of securities, purchase and sale that align market conditions to the City Council adopted investment policy to the greatest extent possible. The Insight Investments quarterly statement for the period ended September 30, is provided in Attachment B. As shown on the quarterly statement, the return for the period ended September 30, on an amortized cost basis, was 0.53 percent. The positions the City held as of September 30, are included in Attachment C.

Performance comparison

As specified in the City's investment policy, the performance of the portfolio is measured against the benchmark of a similar-length treasury bond. In the quarter ending September 30, 2019, the City's portfolio returned a weighted average of 2.21 percent with non-LAIF funds having a weighted average maturity of 1.92 years. The trailing 18-month period for a two-year Treasury note saw a yield of 2.37 percent, or 0.16 higher than the City's portfolio performance. It is important to note, however that the falling rate climate allowed the City to purchase longer duration positions, which are intended to result in higher yields in future periods.

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

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

Public Notice

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

Attachments

- A. Insight Investments consolidated portfolio report for the quarter ended September 30
- B. Hyperlink – Insight Investments advised funds quarterly report for the quarter ended September 30: menlopark.org/DocumentCenter/View/23236/Att-B---Insight-Investments-quarterly-report-as-of-9-30-19
- C. Hyperlink – Securities positions held by the City of Menlo Park as of September 30: menlopark.org/DocumentCenter/View/23237/Att-C-9-30-19-positions

Report prepared by:

Dan Jacobson, Finance and Budget Manager

City of Menlo Park

Quarterly Consolidated Portfolio Report

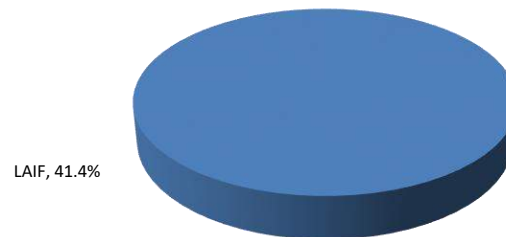
September 30, 2019

City Managed Assets

			%	Return
LAIF	\$	65,000,000	41.4%	2.28%
Total Internally Managed	\$	65,000,000	41.4%	

Weighted Average Yield **2.28%**

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

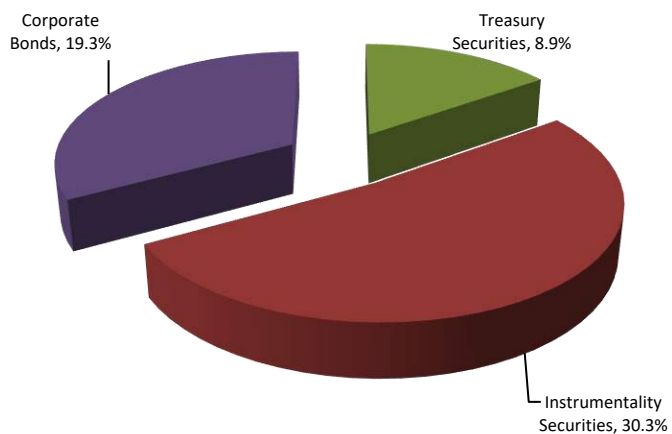


Advisor Managed Assets

			%	Return
Treasury Securities	\$	14,004,938	8.9%	1.95%
Instrumentality Securities	\$	47,556,264	30.3%	2.13%
Corporate Bonds	\$	30,302,658	19.3%	2.28%
Total Externally Managed	\$	91,863,861	58.6%	

Weighted Average Yield **2.15%**

	Years
Effective Average Duration - External	1.82
Weighted Average Maturity - External	1.92

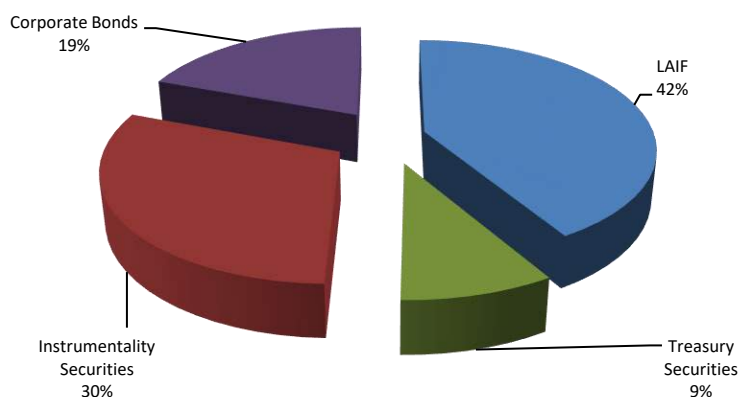


Total Portfolio Assets

			%	Return
LAIF	\$	65,000,000	41.4%	2.28%
Treasury Securities	\$	14,004,938	8.9%	1.95%
Instrumentality Securities	\$	47,556,264	30.3%	2.13%
Corporate Bonds	\$	30,302,658	19.3%	2.28%
Total Portfolio Assets	\$	156,863,861		

Weighted Average Yield **2.21%**

	Years
Effective Average Duration - Total	1.07
Weighted Average Maturity - Total	1.13



Portfolio Change

Beginning Balance	\$	154,477,139
Ending Balance	\$	156,863,861

Yield Comparison	2-Year Treasury	2-Year Treasury (18 Month Trailing)
	1.65%	2.37%

* 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.



STAFF REPORT

City Council
Meeting Date: 10/29/2019
Staff Report Number: 19-219-CC

Consent Calendar: **Receive and file the quarterly financial review of general fund operations as of September 30, 2019**

Recommendation

Staff recommends City Council receive and file the quarterly financial review of general fund operations as of September 30, 2019.

Policy Issues

The quarterly budget-to-actual report is presented to facilitate better understanding of general fund operations and the overall state of the City's current fiscal affairs by the public and the City Council.

Background

In order to provide timely information to City Council and the public, the administrative services department prepares a quarterly report on general fund operations. The report provides a review of general fund revenues and expenditures for the most recently completed quarter of the current fiscal year. These results are presented alongside results from the same time period for the previous year, with material differences being explained in the appropriate section of the staff report.

Analysis

The report, which is included as Table 1 on the following page, was developed to apprise City Council of the year-to-date status of the general fund. It provides year-to-date first quarter comparable data for fiscal years 2018-19 and 2019-20. Information included in this report is intended to highlight some of the critical elements of Table 1 and supplement that information with explanations of significant differences between fiscal years 2018-19 and 2019-20.

Overall, revenues in the general fund for 2019-20 are 10 percent higher when compared to the same period in 2018-19. Year-to-date expenditures are also on track at 76 percent of the budget expended. It is important to note that the City's budget cycle is yearly and in order to prepare quarterly reports, a straight-line estimation method is used. As a result, the quarterly adopted budget shown is the annual budget divided evenly by four rather than representing a budget developed specifically for the first three months of the fiscal year.

Table 1: Q1 general fund budget to actuals						
	2018-19 Adopted budget*	Actuals as of 9/30/18	% of Budget	Adopted budget*	2019-20 Actuals as of 9/30/19	% of Budget
Revenues						
Property tax	5,847,250	117,417	2.01%	6,897,828	1,499,220	21.73%
Charges for services	2,989,850	2,056,800	68.79%	3,107,487	4,263,091	137.19%
Sales tax	1,511,500	484,599	32.06%	1,590,360	491,309	30.89%
Licenses and permits	1,990,750	4,312,371	216.62%	1,146,500	1,060,576	92.51%
Transient occupancy tax	2,795,000	-	0.00%	2,562,891	364	0.01%
Franchise fees	511,750	222,405	43.46%	516,867	217,265	42.03%
Fines	315,600	228,445	72.38%	212,500	180,457	84.92%
Utility users' tax	302,750	202,515	66.89%	302,750	202,408	66.86%
Inter-Governmental revenue	265,584	322,039	121.26%	313,750	9,060	2.89%
Interest and rental income	292,500	367,313	125.58%	386,175	746,078	193.20%
Transfers and other	17,762	23,976	134.99%	16,512	57,880	350.54%
Use of assigned fund balance	-	-	0.00%	461,353	-	0.00%
Total revenues:	16,840,295	8,337,879	49.51%	17,514,973	8,727,709	49.83%
Expenditures						
Police	4,704,490	3,787,509	80.51%	5,024,343	4,195,148	83.50%
Public Works	2,865,082	2,427,085	84.71%	3,243,724	2,502,787	77.16%
Community Services	2,344,752	2,028,273	86.50%	2,459,103	2,166,529	88.10%
Community Development	1,973,601	1,169,151	59.24%	2,054,456	1,096,725	53.38%
Administrative Services	741,962	618,463	83.36%	865,172	694,003	80.22%
Library	855,749	748,085	87.42%	944,482	864,495	91.53%
City Manager's Office	661,277	369,002	55.80%	616,507	452,486	73.40%
City Council	173,377	65,244	37.63%	166,354	48,556	29.19%
City Attorney	185,152	65,942	35.61%	174,095	87,985	50.54%
Non-Departmental	(6,328)	40,822	-645.09%	645,000	191,579	29.70%
Total expenditures:	14,499,114	11,319,575	78.07%	16,193,237	12,300,293	75.96%
Transfers						
Transfers in	131,775	131,775	100.00%	136,800	136,800	100.00%
Transfers out	1,710,375	1,710,375	100.00%	794,975	794,975	100.00%

*The quarterly budget is calculated as the total adopted budget divided by four.

Revenue

Table 2 below shows a summary of first quarter budget-to-actual revenues for fiscal years 2018-19 and 2019-20.

Table 2: Q1 revenues						
Revenues	2018-19			2019-20		
	Adopted budget*	Actuals as of 9/30/18	% of Budget	Adopted budget*	Actuals as of 9/30/19	% of Budget
Property tax	5,847,250	117,417	2.01%	6,897,828	1,499,220	21.73%
Charges for services	2,989,850	2,056,800	68.79%	3,107,487	4,263,091	137.19%
Sales tax	1,511,500	484,599	32.06%	1,590,360	491,309	30.89%
Licenses and permits	1,990,750	4,312,371	216.62%	1,146,500	1,060,576	92.51%
Transient occupancy tax	2,795,000	-	0.00%	2,562,891	364	0.01%
Franchise fees	511,750	222,405	43.46%	516,867	217,265	42.03%
Fines	315,600	228,445	72.38%	212,500	180,457	84.92%
Utility users' tax	302,750	202,515	66.89%	302,750	202,408	66.86%
Inter-Governmental revenue	265,584	322,039	121.26%	313,750	9,060	2.89%
Interest and rental income	292,500	367,313	125.58%	386,175	746,078	193.20%
Transfers and other	17,762	23,976	134.99%	16,512	57,880	350.54%
Use of assigned fund balance	-	-	0.00%	461,353	-	0.00%
Total revenues:	16,840,295	8,337,879	49.51%	17,514,973	8,727,709	49.83%

*The quarterly budget is calculated as the total adopted budget divided by four.

Through the first quarter of fiscal year 2019-20, general fund revenues are up \$0.39 million, which is a five percent increase over the same time period in 2018-19. The increase in charges for services is primarily driven by the receipt of full year development agreement payments received at the beginning of the fiscal year. It should be noted that these payments were also received last year at this time but were recorded under the licenses and permits category; going forward, all development agreement payments will be recorded in charges for services. As the fiscal year progresses this amount should trend closer towards the budgeted number.

Given the seasonality of many revenue sources, the overall revenue picture is on track and there does not appear to be any particular area which would be cause for alarm. For example, property taxes, the City's largest revenue category, is received primarily in December and April and receipts in the first five months of each fiscal year are minimal. Additionally, there is also a timing delay in transient occupancy tax receipts.

Expenditures

The first quarter of the fiscal year's general fund expenditures budget demonstrated some savings when comparing budget to actual. Expenditures in the first quarter of 2019-20 are nearly identical to the same period in 2018-19 as a percentage of the City Council adopted budget. Total expenditures of \$13.10 million are slightly ahead of the \$13.03 amount from the previous year, but sit at 77 percent of the adopted budget which is under the 80 percent experienced the prior year.

Personnel expenditures

The lower than budgeted expenditures are driven in part by the City's vacancy rate for staff, which results in salary savings when comparing budgeted expenditures to actual expenditures. The City's budget includes an assumption of some staff vacancy, but the actual vacancy is somewhat higher and results in some savings above the planned savings. In addition to salary savings, operationalizing the accelerated pension payments adopted in the fiscal year 2019-20 results in an uneven expense throughout the year but will result in full payment by the end of the fiscal year. Through the first quarter of fiscal year 2019-20, the City has contributed 10 percent of the planned supplemental payment, an uneven payment schedule which helps reduce market risk by spreading out payments made to CalPERS. Salary savings and CalPERS supplemental payments are both recorded in non-departmental, and combine for all actual personnel expenditures in this category.

It is important to note that due to the asynchronous nature of payroll expenditures and the City's fiscal cycle, the personnel expenditures of the first quarter of 2019-20 understate the actual costs and are not a perfect reflection to the day. The net result of this timing effect and the vacancy rate is a modest savings when viewed Citywide.

Table 3: Q1 personnel expenditures						
Departments	2018-19 Adopted budget*	Actuals as of 9/30/18	% of Budget	2019-20 Adopted budget*	Actuals as of 9/30/19	% of Budget
Police	3,836,333	3,159,201	82.35%	4,011,452	3,448,836	85.97%
Public Works	1,557,301	1,429,743	91.81%	1,659,826	1,338,651	80.65%
Community Services	1,578,383	1,394,097	88.32%	1,712,829	1,512,684	88.31%
Community Development	1,199,114	857,737	71.53%	1,156,584	840,969	72.71%
Administrative Services	496,173	441,537	88.99%	541,882	470,208	86.77%
Library	624,886	463,346	74.15%	693,553	586,964	84.63%
City Manager's Office	402,070	301,175	74.91%	469,047	353,257	75.31%
City Council	45,077	36,965	82.00%	40,920	38,096	93.10%
City Attorney	39,427	38,662	98.06%	41,044	39,704	96.74%
Non-Departmental	(232,672)	5,825	-2.50%	206,207	181,504	88.02%
Total expenditures:	9,546,091	8,128,286	85.15%	10,533,345	8,810,874	83.65%

*The quarterly budget is calculated as the total adopted budget divided by four.

Non-personnel expenditures

In non-personnel expenditures, the majority of departments have comparable expenditures to the previous year, with one exception. Expenditures for the Library, which are comparable to the prior period but exceed the budgeted amount, reflect the timing of pre-payments relating to their computer catalog for the entire fiscal year and expenditures as a percentage will converge with the budget for the remainder of the year.

Table 4: Q1 non-personnel Expenditures						
Departments	2018-19			2019-20		
	Adopted budget*	Actuals as of 9/30/18	% of Budget	Adopted budget*	Actuals as of 9/30/19	% of Budget
Police	868,158	628,308	72.37%	1,012,891	746,311	73.68%
Public Works	1,307,781	997,342	76.26%	1,583,898	1,164,136	73.50%
Community Services	766,369	634,176	82.75%	746,273	653,845	87.61%
Community Development	774,487	311,415	40.21%	897,873	255,756	28.48%
Administrative Services	245,790	176,926	71.98%	323,290	223,795	69.22%
Library	230,863	284,739	123.34%	250,929	277,531	110.60%
City Manager's Office	259,207	67,827	26.17%	147,460	99,230	67.29%
City Council	128,300	28,280	22.04%	125,434	10,459	8.34%
City Attorney	145,725	27,280	18.72%	133,052	48,282	36.29%
Non-Departmental	226,344	34,997	15.46%	438,793	10,075	2.30%
Transfers out	1,710,375	1,710,375	100.00%	794,975	794,975	100.00%
Total expenditures:	6,663,398	4,901,664	73.56%	6,454,867	4,284,395	66.37%

*The quarterly budget is calculated as the total adopted budget divided by four.

Overall, there are no areas of great concern regarding actual revenues and expenditures relative to the City Council Adopted Budget as of the end of the first quarter of 2019-20. Areas of note and where staff will pay close attention include revenue receipts as they occur and personnel costs as they relate to both vacancy rate and expenditures in overtime or temporary help to compensate, recommending any necessary adjustments to the budget during the annual mid-year budget review early in the 2020 calendar year.

Impact on City Resources

There is no impact on City resources.

Environmental Review

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

Public Notice

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

Attachments

None.

Report prepared by:
Brandon Cortez, Management Analyst I

Report reviewed by:
Dan Jacobson, Finance and Budget Manager

Report approved by:
Lenka Diaz, Administrative Services Director



STAFF REPORT

City Council

Meeting Date: 10/29/2019

Staff Report Number: 19-222-CC

Consent Calendar: **Approve the permanent neighborhood traffic management plan for North Lemon Avenue between Valparaiso Avenue and Santa Cruz Avenue**

Recommendation

Staff recommends the City Council approve the traffic management plan for North Lemon Avenue between Valparaiso Avenue and Santa Cruz Avenue.

Policy Issues

This project is consistent with the City's circulation element, adopted in 2016, which includes goals of promoting safe, multimodal streets, and minimizing cut-through and high-speed traffic that diminishes the quality of life in Menlo Park's residential neighborhoods.

This project follows the City's neighborhood traffic management program (NTMP) guidelines adopted in November 2004. The City Council can either approve the traffic plan measures to be made permanent or authorize plan revisions.

Background

On January 16, 2018, the City Council approved the trial installation of the traffic plan measures for North Lemon Avenue, between Valparaiso Avenue and Santa Cruz Avenue, for a six-month trial period (Attachment A.) This project was the result of the NTMP process to address the neighborhood's concerns about speeding on North Lemon Avenue.

Installation of the following North Lemon Avenue NTMP measures was completed on September 19, 2018:

- Speed humps with emergency vehicle cut-outs, as approved by Menlo Park Fire Protection District. Constructed using asphalt concrete, the speed humps would remain as a permanent measure if the City Council approves the permanent installation.
- Temporary gateway structure on each end of North Lemon (four in total.) Spare concrete planters that were used by the City from a previous project. A more permanent device is needed for this measure, as explained further below.

The six-month trial installation ended on March 19.

Analysis

Following completion of the trial period, the NTMP requires the following steps to be taken to consider a permanent installation:

1. Traffic data collection to determine effectiveness
2. Resident survey to determine support

3. Complete Streets Commission review and recommendation
4. City Council approval

Traffic data and resident survey

On May 22, in accordance with the NTMP, staff circulated a survey (Attachment B) to the 43 Menlo Park households in the study area to determine whether they consider the North Lemon Avenue (NTMP) to be successful and if they wish the (NTMP) measures to be made permanent. On June 12, a second survey was sent to households that did not respond to the first survey.

The survey presented the following results of the “after” studies that were conducted on April 9, for the traffic speeds and volumes and comparisons with the “before” studies. In the “after” study, the eight-fifth percentile traffic speeds were reduced by six mph and five mph for the northbound (NB) and southbound (SB) directions, respectively, bringing the speeds at or near the prima facie (presumed) residential speed limit of 25 mph. This speed reduction demonstrates that the speed humps were effective in reducing the speeds. The “after” study also showed a significant reduction of the “cut-through” traffic on North Lemon Avenue, presumably with this traffic being diverted to either Orange Avenue or Elder Avenue or other nearby streets.

Table 1: Traffic speeds and volumes (by direction)						
	Before installation		After installation		Difference	
	NB	SB	NB	SB	NB	SB
85 percentile speeds ¹ (mph)	30	30	24	25	-6	-5
Mean speeds (mph)	25	25	19	20	-6	-5
Volumes (vehicles/day)	775	505	425	310	-350	-195

¹ The 85th percentile speed is the speed at or below which 85 percent of traffic is moving.

The NTMP requires 51 percent support of households in the study area. As shown in the table below, households in the study area supported that the North Lemon Avenue traffic plan measures to be made permanent.

The following is the final result of the resident survey for permanent installation:

Table 2: Survey results	
Yes, I support plan	25 votes or 58.1%
No, I do not support the plan	4 votes or 9.3%
Did not respond	14 or 32.6%

Subsequently, on September 11, the Complete Streets Commission considered the North Lemon Avenue NTMP and results of the resident survey for permanent installation and unanimously passed a motion, recommending to City Council to approve the North Lemon Avenue NTMP measures to be made permanent. There was one public speaker at this meeting, acknowledging the work of staff on this traffic-calming project and commenting that this project eliminated his main concern of “outliers” driving at very high speeds.

The speed humps, having been installed with asphalt concrete with their associated pavement markings and traffic signs, would have no change if they are approved to remain permanent.

The temporary gateway structures installed for the six-month trial period were concrete planter boxes with reflective tapes. Only two of the four planter boxes remain. One planter box near Santa Cruz Avenue was hit by a vehicle while making the right turn from Santa Cruz Avenue to North Lemon Avenue. One planter box near Valparaiso Avenue was also destroyed during construction on North Lemon Avenue earlier this year. The permanent gateway structures that were originally proposed to be installed on North Lemon Avenue were similar to the gateway structures installed on University Drive at Middle Avenue and on Cambridge Avenue near El Camino Real (Attachment C.) The gateway has a built-in light fixture to improve visibility and would be solar-powered. The North Lemon Avenue residents expressed their agreement with this proposed permanent gateway structure.

However, staff is concerned with the cost of the four gateway structures as originally identified outweighing the traffic calming benefit of the devices. As such, staff has suggested alternatives to the brick pillars to the residents on North Lemon Avenue, such as curb-protected tree wells also shown in Attachment D, which could provide a similar benefit with a lesser cost. Feedback received from the residents expressed continuing support for the brick pillars as the preferred device, and a secondary option of the tree well if brick pillars are not feasible.

As such, staff recommends the following next steps if City Council approves the NTMP to be made permanent:

- Remove two remaining concrete planters on North Lemon Avenue
- Collect speed and volume data again three-months after planters removed
- Pursue installation of gateway structures with a maximum \$35,000 construction budget only if eight-fifth percentile speeds increase to more than 27 mph

Staff would continue to work with residents to refine placement and design of the gateway structures if found to be necessary to maintain the speed reduction achieved in the trial NTMP program.

Impact on City Resources

The estimated cost for installing the four gateway structures as originally identified is \$48,000. As described above, staff is concerned with the cost of the four gateway structures as originally identified outweighing the traffic calming benefit of the devices. Funds for construction of the improvements are budgeted in the transportation (minor) project included in the 2019-20 capital improvement program, with \$35,000 available. Staff will continue to refine the design of the brick pillars within the allotted budget; if found not feasible within the available funds, the curb-protected tree wells will be explored.

Environmental Review

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

Public Notice

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

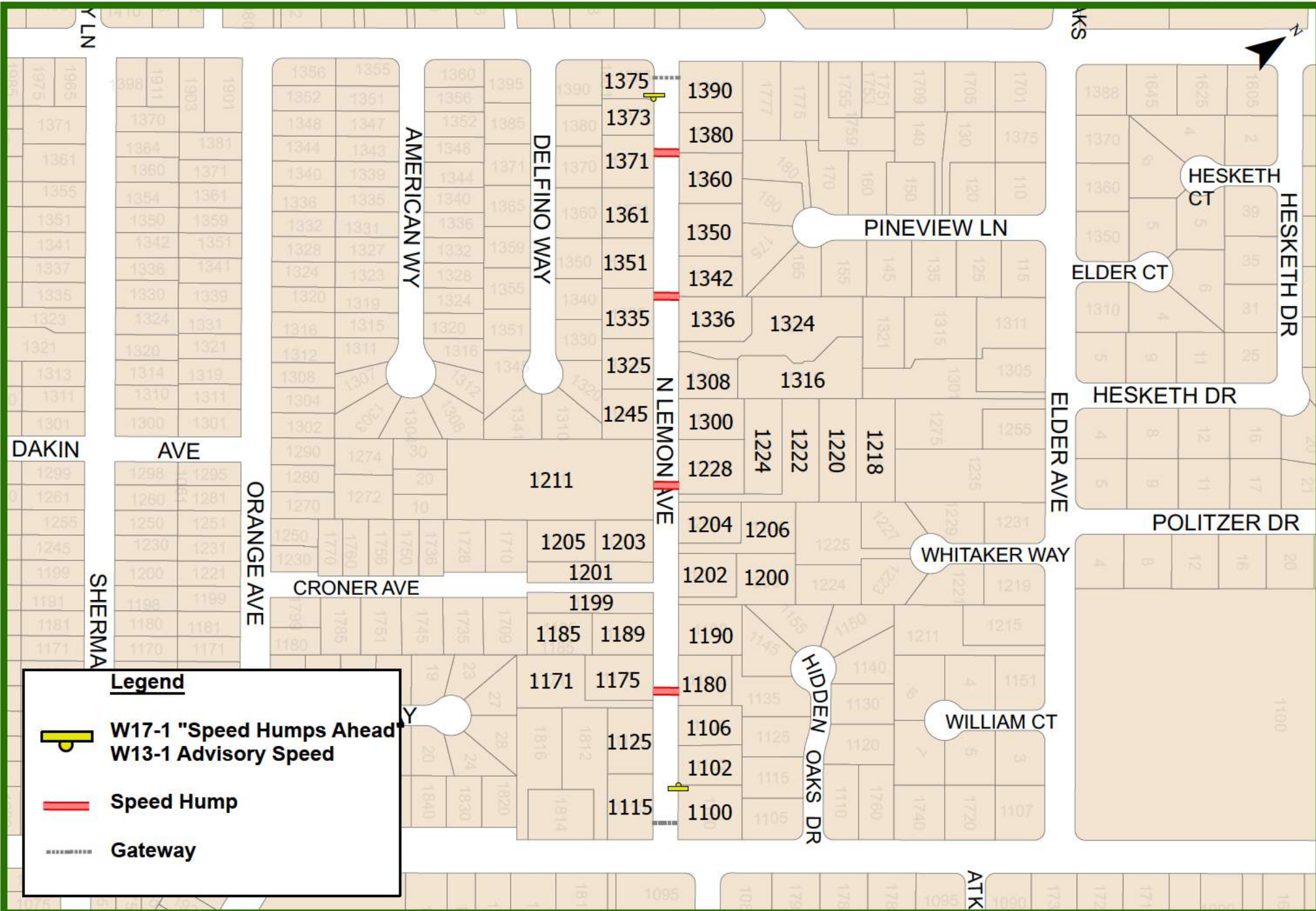
hours prior to the meeting. Postcard notices of this meeting were also mailed to the residents on North Lemon Avenue. The postcard invited the residents so that they can learn about the results of the resident survey for permanent installation as well as provide input on the permanent installation.

Attachments




- A. North Lemon Avenue traffic plan
- B. North Lemon Avenue survey for permanent installation
- C. Permanent neighborhood gateway structure
- D. Alternative permanent neighborhood gateway structure

Report prepared by:
Rene Baile, Associate Transportation Engineer

Report reviewed by:
Nicole Nagaya, Interim Public Works Director



Legend

-  W17-1 "Speed Humps Ahead" W13-1 Advisory Speed
-  Speed Hump
-  Gateway

Work Order: PW 2017-19
 Location: Lemon Ave
 Project: NTMP

 City of Menlo Park
 Transportation Division
 (650) 330-6770

Date: 8/7/17
 For: PW
 Req. By: Marlon



May 22, 2019

«OccName»
«addr1»
«city», «state» «zip»

RE: North Lemon Avenue NTMP

Dear Menlo Park Resident/Property Owner:

Attached is the Resident Survey for Permanent Installation of the North Lemon Avenue Traffic Management Plan. Please complete and return to our office by Wednesday, June 12, 2019. In accordance with the City's Neighborhood Traffic Management Plan (NTMP), a vote not turned in is a No vote.

On January 16, 2018, the City Council approved the implementation of the traffic management plan for North Lemon Avenue between Valparaiso Avenue and Santa Cruz Avenue for a six-month trial period. This project was the result of the NTMP process to address the neighborhood's concerns about drivers' speeding on North Lemon Avenue between Valparaiso Avenue and Santa Cruz Avenue.

The North Lemon Avenue traffic management plan comprised of the following measures:

- Installation of four speed humps at various locations; and
- Installation of neighborhood gateways near Valparaiso Avenue and near Santa Cruz Avenue

On September 29, 2018, the temporary installation of the above measures was completed and subsequently, the trial period of the installation commenced.

In accordance with the NTMP, at the conclusion of this trial period on March 31, 2019, an after traffic study was conducted to collect traffic speeds and volume. Subsequently, this survey is being sent to study area households and businesses to determine whether they consider the Level II traffic management plan measures to be successful and if they wish them to be implemented on a permanent basis.

Next Steps:

If at least 51% of households and businesses in the study area support the permanent installation, the Complete Streets Commission will vote to approve or deny the recommendation to City Council for permanent installation. The City Council will

then review the Commission's recommendation and decide to either deny or approve the permanent establishment of measures. Based on the Council's decision, the traffic management measures on North Lemon Avenue between Valparaiso Avenue and Santa Cruz Avenue will be either removed or remain permanently.

If you have any questions regarding the above, please contact me at 650-330-6770 or visit the webpage below (Attachment A).

Sincerely,



Rene C. Baile
Associate Transportation Engineer

Attachments:

- A. City's Neighborhood Traffic Management Program web page:
www.menlopark.org/documentcenter/view/300
- B. Resident Survey

RESIDENT SURVEY FOR PERMANENT INSTALLATION NORTH LEMON AVENUE TRAFFIC MANAGEMENT PLAN MEASURES

As stated in the enclosed cover letter, the City of Menlo Park is taking a survey to determine whether the residents consider the North Lemon Avenue traffic management plan measures to be successful and wish them to remain or be installed on a permanent basis.

Results of the "After" studies for the traffic speeds and volumes and comparisons with the "Before" studies are shown on the table below. The 85th Percentile speed is the speed at or below which 85 percent of traffic is moving.

	Before Studies		After Studies		Difference	
	Direction of Traffic		Direction of Traffic		Direction of Traffic	
	NB	SB	NB	SB	NB	SB
85 Percentile Speeds (mph)	30	30	24	25	-6	-5
Mean Speeds (mph)	25	25	19	20	-6	-5
Volumes (veh/day)	775	505	425	310	-350	-195

You may return your completed survey by using the self-addressed envelope or by dropping it off at the front desk at City Hall. We would appreciate receiving your response by Friday, July 26, 2019. (Please check one response)

Do you support the North Lemon Avenue Traffic Management Plan Measures to remain or be installed on a permanent basis?

- Yes, I support the plan measures to remain or be installed on a permanent basis.**
- No, I do not support the plan measures to remain or be installed on a permanent basis.**

Thank you for taking the time to respond to this survey for trial installation. Please provide your name and address in the spaces below – only one signature per household or business. (Identities of individuals responding to this survey will remain confidential in the City's processing of the returns).

Name:

Date:

I am resident or property owner at (address):

E-mail Address (optional):

Tel. No. (optional):

If you have any questions regarding this, please contact Rene Baile, Associate Transportation Engineer.

Sincerely,

Rene C. Baile, P.E.

Associate Transportation Engineer



ATTACHMENT C: PERMANENT NEIGHBORHOOD GATEWAY STRUCTURE



@ University Drive



@ Cambridge Avenue



ATTACHMENT D: ALTERNATIVE PERMANENT GATEWAY STRUCTURE





STAFF REPORT

City Council

Meeting Date: 10/29/2019

Staff Report Number: 19-217-CC

Consent Calendar: **Receive and file West Bay Sanitary District's Bayfront recycled water facilities plan and delegate authority to the city manager to negotiate an agreement for recycled water purveyorship options**

Recommendation

Staff recommends the City Council receive and file West Bay Sanitary District Bayfront recycled water facilities plan and authorize the city manager to negotiate an agreement that would ultimately return to the City Council for approval to delegate recycled water purveyorship in the Bayfront Area to West Bay Sanitary District.

Policy Issues

New development must comply with water conservation measures stipulated in the City's general plan, as adopted in 2016. New development within the Bayfront Area is required to be dual plumbed for internal use of recycled water. For buildings equal to or exceeding 250,000 square feet and larger, the City requires identification and use of an alternate water source for all City-approved non-potable applications. If recycled water requests from customers within the Menlo Park Menlo Water (MPMW) service area boundary cannot be met in a reasonable time frame, the MPMW can delegate these rights to a recycled water producer.

Background

West Bay Sanitary District (WBSD) provides wastewater collection services to the City, as well as to the Towns of Portola Valley, Atherton, Woodside, sections of the City of East Palo Alto, and sections of unincorporated areas of Santa Clara and San Mateo counties. The wastewater collected from these areas flows to the Menlo Park pump station, located on Marsh Road near the entrance of the Bedwell Bayfront Park, and is pumped to the wastewater treatment facility in Redwood City. Both the Menlo Park pump station and the wastewater treatment facility in Redwood City are operated by Silicon Valley Clean Water (SVCW.) A portion of the wastewater treated at the SVCW facility is discharged to the San Francisco Bay, while the rest is treated to recycled water standards and sold to Redwood City customers for non-potable uses.

In 2014, WBSD conducted a market survey to assess the feasibility of including recycled water services into their portfolio. The Sharon Heights Golf and Country Club (SHGCC) was identified as a potential user of recycled water. WBSD followed this effort with a recycled water facilities plan, completed in August 2015, evaluating the feasibility of developing a wastewater facility at the SHGCC that would produce recycled water for the golf course and other potential users in the MPMW service area. An agreement between the City and WBSD was executed in 2016 delegating the rights to serve recycled water in the SHGCC Area A link to the staff report including the agreement is included as Attachment A. The proposed recycled water project consists of an influent pump station, wastewater treatment plant, recycled water pump station, and a 2.7 mile recycled water distribution system. This project is under construction, and is anticipated to be

complete by the end of 2019.

In addition to the development of a recycled water facility at the SHGCC, which is located in the upper zone of the MPMW's service area, there is an identified need for recycled water services in the lower zone. Growth, particularly in the lower zone's Bayfront zoning area, is expected to increase the future demand for water.

In February, WBSD completed the Bayfront Recycled water facilities plan (Bayfront RWFP) (Attachment B.) The report performed additional market assessment, studied recycled water treatment requirements, evaluated potential project alternatives, and identified a recommended project. The proposed project would divert wastewater from the 36-inch sewer pipeline near the intersection of Bayfront Expressway and Marsh Road and pump the wastewater to the Bayfront satellite treatment facility located at former wastewater treatment plant at the end of Marsh Road (Attachment D.) The new treatment facility would include grit removal and fine screening, biological reactor tanks, membrane bioreactor treatment system, and ultraviolet disinfection. The product water would be stored in a recycled water tank and a distribution pump station would be used to deliver recycled water to customers in the Bayfront area for irrigation, cooling towers and other non-potable, indoor uses.

The report also identified the City of Menlo Park as a potential water purveyor, however, acknowledges that if the City declined that WBSD could perform this role. This would result in an agreement similar to that which was executed between the City and WBSD in the upper zone for the facility located at the SHGCC.

Analysis

California Water Code §13575, et seq., the Water Recycling Act of 1991 (Recycling Act) requires that water purveyors, such as MPMW, identify potential uses for recycled water and potential recycled water customers within their service areas. As part of this requirement, and to help offset potential future shortfalls in water supply, the MPMW evaluated the feasibility of developing a recycled water program as part of the water system master plan (WSMP.) The WSMP identified potential areas that can be served with recycled water and the feasibility of acquiring recycled water from the cities of Redwood City and Palo Alto. The WSMP also identifies the potential construction of a new facility to deliver recycled water. The water code also states that if recycled water requests from customers within the MPMW service area boundary cannot be met in a reasonable time frame, MPMW can delegate these rights to a recycled water producer.

Water Code Section §1210 states that the waste water treatment plant (WWTP) owner shall hold the exclusive right to the treated wastewater. Under the proposed project, WBSD would curtail the sewer flow diverted to SVCW by up to 0.4 million gallons per day

In May, at the request of City staff, WBSD provided options for purveying recycled water in the Bayfront area as listed below:

Option 1: MPMW purveyorship

- MPMW could be the recycled water purveyor for transmission and distribution in the Bayfront area and charge connection fees, meter fees, and usage fees to each individual customer. MPMW would be responsible for billing and collection from customers.
- MPMW would pay WBSD as a wholesaler for recycled water metered as it leaves the WWTP. The City would be responsible to maintain the transmission lines, service lines, and meters to customers throughout the MPMW service area.

Option 2: WBSD purveyorship

- WBSD could be the recycled water purveyor for the Bayfront area and charge connection fees, meter fees, and usage fees to each individual customer. WBSD would be responsible for billing and collection from customers.
- WBSD would be responsible to maintain the transmission lines, service lines, and meters to customers throughout the MPMW service area.

Option 3: Shared MPMW and WBSD purveyorship

- MPMW could be the recycled water purveyor for retailing while WBSD retain ownership of transmission lines and service lines. MPMW would be responsible for billing and collection from customers only passing through costs from WBSD.
- WBSD would own and maintain the transmission and services lines through the Bayfront area.
- MPMW would own the metered connection between WBSD and the customer and would act as the retailer of the recycled water.

Regionally, it is uncommon for agencies who act as a water utility, but not as either the sanitary sewer collection or wastewater treatment agency to act as purveyors of recycled water. A listing of how other communities are wholesaling and retailing recycled water in the Bay Area is included in Attachment C. The MPMW would realize additional risk in retailing when no control is present in the quality or reliability of the recycled water being delivered.

An additional 2.7-mile distribution system in the Bayfront area, if operated and maintained by the City, would require additional personnel in the maintenance division of the City which would increase as the system expands. While there would be realized revenue decreases from selling a reduced volume of potable water, the quantity of potable water customers and physical infrastructure requiring maintenance would remain constant.

Similarly, a new distribution system would require engineering support in preparing reports that are required by the State, development of standards, and capital planning separate from work done on the potable system which would remain constant. Should the City elect to act as the water purveyor for recycled water, these personnel demands on both the maintenance and engineering divisions would require further study.

Based on the information provided by WBSD and City staff assessing the operation, maintenance and infrastructure requirements for the development of a recycled water distribution system to serve the Bayfront Area, it is not recommend at this time that the City become a recycled water purveyor. It is recommended to proceed with Option 2, similar to the SHGCC, to delegate rights to WBSD to serve the MPMW service area in the Bayfront Area.

Next steps

- Staff will engage WBSD in the development of an agreement
- City Manager will negotiate an agreement for recycled water purveyorship option to delegate rights to serve recycled water in the Bayfront Area
- The agreement will return to City Council for approval

Impact on City Resources

The proposed project anticipates the usage of 220 acre feet per year (AFY) which would directly result in the decrease of potable water sales in an equivalent amount. In 2015, the MPMW adopted new water rates for the five years beginning in 2015 thru 2020. In 2020, the MPMW will complete a water rate study and propose new rates for the next five years. Estimated revenue losses and wholesale water purchases associated with the SHGCC and the proposed Bayfront recycled water facility will be accounted for as new rates are developed for City Council approval. Overall, The MPMW is expected to experience an increase in potable water sales associated with the projected growth and increased water demand within its service area, particularly from the Bayfront zoning area.

Environmental Review

WBSD will be the lead agency under California Environmental Quality Act (CEQA) for this project, and will be preparing the required environmental review documents. This action to receive and file the plan, does not require environmental review as it is not a project under CEQA. This action is not a project within the meaning of the CEQA Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

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

Attachments

- A. Hyperlink – staff report, May 3, 2016, authorize the city manager to execute an agreement with the WBSD regarding the provision of recycled water related to the SHGCC and other customers: menlopark.org/DocumentCenter/View/10125/H2---West-Bay-Agreement?bidId=
- B. Hyperlink – Bayfront RWFP final report: menlopark.org/DocumentCenter/View/23235/Attachment-B-to-SR_WBSD-Bayfront-RWFP_Final_Rev1-002
- C. Recycled water retailing compilation table
- D. Map of recommended project, potential customers and facilities in the Bayfront Area

Report prepared by:
Fariborz Heydari, Senior Civil Engineer

Report reviewed by:
Chris Lamm, Assistant Public Works Director

This list of Wastewater and Water agencies (including Cities and Special Districts) is provided to West Bay Sanitary District and the City of Menlo Park to share how other communities are wholesaling and retailing recycled water

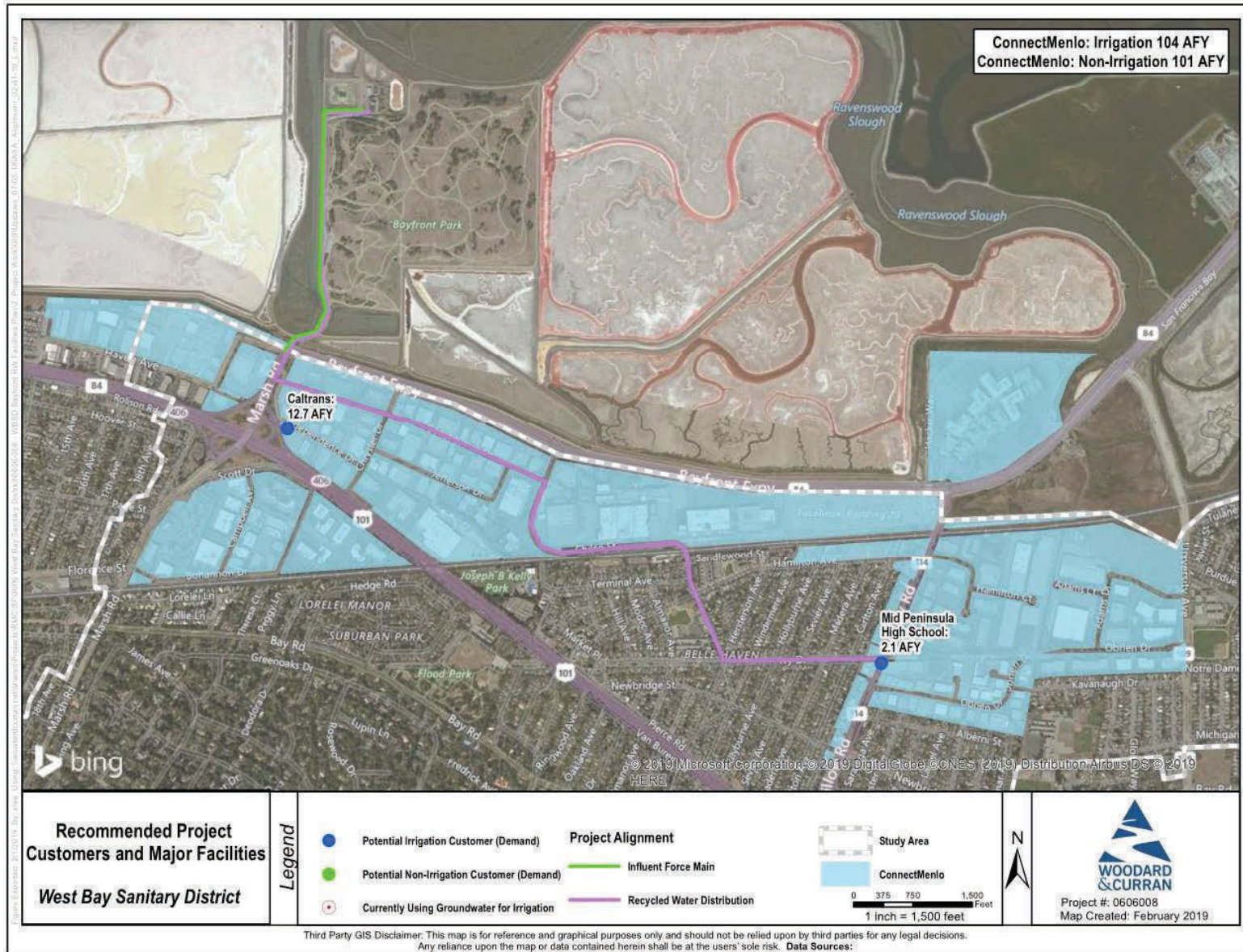
City	Population / Recycled Water (AF)	Wastewater Treatment Agency	Wastewater Collection Agency	Recycled Water Wholesaler	Recycled Water Retailer	Notes*
Northern California						
Santa Rosa, Rohnert Park, Cotati, Sebastopol, Sonoma County, Geysers	230,000 pop. 20,000 AF 41 mi. RW pipe	City of Santa Rosa Subregional System (owned by City)	City of Santa Rosa, Rohnert Park, etc.	City of Santa Rosa	City of Santa Rosa, City of Rohnert Park	Each city provides water and sewer and retails RW where it operates collection system
San Jose, Santa Clara, Milpitas	1.4 M pop. 19,000 AF 150 mi. RW pipe	San Jose-Santa Clara Regional Wastewater Facility	City of San Jose and tributary agencies of Santa Clara and Milpitas	South Bay Water Recycling (City of San Jose)	San Jose Municipal Water, San Jose Water Co, Santa Clara, Milpitas	Cities provide sewer and water, and private water companies retail RW
Napa	82,000 pop. 2,000 AF	Napa Sanitation District	Napa Sanitation District	Napa Sanitation District	Napa Sanitation District	RW wholesaled by San District; City provides water
Sunnyvale	152,000 pop. 800 AF 17 mi. RW pipe	Sunnyvale	Sunnyvale	Sunnyvale	Sunnyvale	City provides water, sewer, and RW
Martinez, Pacheco, Concord, Pleasant Hill	0.5 million pop. 600 AFY 14 mi. RW pipe	Central Contra Costa Sanitary District (CCCSD)	CCCSD	CCCSD	CCCSD	Contra Costa Water District operates recycled water system under contract
Redwood City	170,000 pop. 600 AF (3,000 AF future)	Silicon Valley Clean Water (SVCW) JPA	West Bay, Redwood City, Belmont, San Carlos	Redwood City	Redwood City	Redwood City, which provides sewer and water, retails RW and wholesales RW produced by SCVW
Sharon Heights (Located in the City of Menlo Park)	250 AF (0.5 mgd satellite plant)	Silicon Valley Clean Water (SVCW) JPA	West Bay Sanitary District	West Bay Sanitary District	West Bay Sanitary District	West Bay will wholesale and retail from its satellite plant

Menlo Park Bayfront Area	34,000 pop. 300 AFY (0.5 mgd satellite plant)	Silicon Valley Clean Water (SVCW) JPA	West Bay Sanitary District	TBD	TBD	TBD
Southern California						
City of Encinitas, City of Solana Beach, Rancho Santa Fe CSD, City of Del Mar	40,000 pop. 1,605 AF	San Elijo JPA	Encinitas, Solana Beach, Rancho Santa Fe CSD, Del Mar	San Elijo JPA	San Dieguito Water District, Santa Fe Irrigation District	RW is retailed by water districts, not cities
City of Irvine	256,000	Irvine Ranch Water District	Irvine Ranch Water District	Irvine Ranch Water District	Irvine Ranch Water District	City does not supply water or sewer. RW is wholesaled by IRWD.
City of Santa Ana	334,000	Orange County Sanitation District	City of Santa Ana	Orange County Water District	City of Santa Ana	RW is wholesaled by OCWD and retailed by City. City provides sewer service and supplies water, along with retailing RW.

Note:

***The Cities and Special Districts in the table provided above are also domestic water providers in the areas where they collect wastewater and provide recycled water.**

Figure 17: Recommended Project, Potential Customers and Facilities



THIS PAGE INTENTIONALLY LEFT BLANK



STAFF REPORT

City Council
Meeting Date: 10/29/2019
Staff Report Number: 19-223-CC

Regular Business: Introduction of Ordinance No. 1060 amending Chapter 13.24 [Heritage Trees] of Title 13 [Streets, sidewalks and utilities] and repealing Chapter 16.65 [Solar Access] of Title 16 [Zoning]

Recommendation

The Heritage Tree Task Force recommends that the City Council waive reading and introduce Ordinance No. 1060 amending Chapter 13.24 [Heritage Trees] of Title 13 [Streets, sidewalks and utilities] and repealing Chapter 16.65 [Solar Access] of Title 16 [Zoning] (Attachment A.)

Policy Issues

The heritage tree ordinance regulates removal and pruning of trees of a certain size on private property. The heritage tree ordinance update was included in the 2017, 2018, and 2019 City Council workplan. It is currently priority No. 4 in the 2019 City Council workplan.

Background

The City adopted its heritage tree ordinance in 1979 (Attachment B.) Since then, five amendments have been made with the latest occurring in 2006. Over the last several years, concerns from the community arose with development-related appeals, unpermitted removals, and inadequate enforcement of tree replacements. The City Council, Planning Commission, and Environmental Quality Commission also expressed there is room for improvement in the ordinance as well. As a result, the City Council included updating the heritage tree ordinance as part of their 2017, 2018, and 2019 workplans. This project is identified in the City Council's top five priorities for 2019.

In May 2018, the City Council approved the appointment of a community task force and scope of work for the heritage tree ordinance update. The City Council also established the desired outcome for the update, which is to ensure a significant and thriving population of large healthy trees in Menlo Park for public enjoyment and environmental sustainability while balancing property rights/values and implementation efficiency.

Heritage Tree Task Force (Task Force)

Between August 2018 and June 2019, this project involved the ongoing time and resources of 17 individuals (including staff,) 10 Task Force meetings, and reception of about 20 public comments. Some Task Force members also engaged, informed, and received feedback from other community members to ensure that balance between community values around trees and property enjoyment were being reflected in the ordinance update.

It is important to note that the diversity of the Task Force and staff resulted in navigating personal opinions about sensitive topics such as property rights and community ethos to find middle ground solutions and finalize recommendations to the City Council. Task Force members included City Councilmember Combs, tree enthusiasts, a former Environmental Quality Commissioner (Scott Marshall,) developers, the executive director of a Canopy (a local nonprofit,) and past permit applicants and appellants. Many of the meetings were facilitated by Peninsula Conflict Resolution Center to allow for effective group participation while meeting project milestones and deadlines. The Task Force did work together to deliver recommendations to the City Council by summer 2019.

City Council direction and consideration

In July 2019, staff and Task Force recommendations were presented to the City Council (Attachment C.) The City Council agreed to proceed with the recommendations, and directed further community engagement be limited to review and feedback from the Task Force, Planning Commission, and Environmental Quality Commission between August and October before returning to City Council for final adoption of the amendments. In addition, the City Council expressed concern about the additional resources necessary to implement the recommended changes, which were estimated to cost between \$185,000 to \$200,000 per year. Staff was directed to explore reducing this annual cost, and has provided an analysis below that has reduced the estimated cost to \$75,000-\$120,000 per year.

After a thorough policy analysis process and advice from the City Council, Task Force, Planning Commission and Environmental Quality Commission, the City Attorney's Office has finalized amendments to the heritage tree ordinance in Attachment A for City Council adoption. If adopted, the ordinance would take effect July 1, 2020 to allow a six-month lead time for developing and executing an implementation plan.

Analysis

Summary of policy analysis

The heritage tree ordinance update was separated into two policy analysis phases performed by HortScience | Bartlett Consulting:

- Phase I (August 2018-February 2019) evaluated the effectiveness of the current ordinance and explored best practices or ideas from other communities. The Task Force considered the challenges with the current ordinance and ideas and best practices from other communities, and decided which would be explored deeper in the Phase II options analysis.
- Phase II (December 2018-April 2019) evaluated the options from Phase I based on benefits, risks and impacts to city operations, permit applicant and the community. The Task Force selected three weighted criteria to identify the preferred option, which were increased clarity of the ordinance to permit applicants and the community (20 percent,) maintain or increase canopy (60 percent,) and improved effectiveness (20 percent.)

Initially, the appeals process was identified as a problem area largely due to development projects receiving Planning Commission approval before the heritage tree appeal period. This resulted in costly appeals for the permit applicant for designing alternatives on a project that was already approved.

However, through the course of the policy analysis, it was found that the decision-making criteria was the main contributor to conflicts and subjective interpretations of the ordinance. Unclear decision-making criteria was identified as the cause for most appeals from surveyed permit applicants, appellants and staff. Based on the City's permit and appeal data over the last nine years, 80 percent of community member appeals where the tree was approved for removal and 75 percent of permit applicant appeals where tree

was not approved for removal resulted in upholding of the staff's original decision. Only 20-25 percent of appeals resulted in a change of the city arborist's decision. Considering the time and resources required by the City, permit applicants and appellants, it was identified that clearer and better decision making criteria for tree removal would likely reduce overall appeals and result in savings to the City, permit applicants and community members.

Annually, an average of 700 heritage trees are approved for removal. The permit data that captures the reasons for granting removal was difficult to align with the current decision making criteria, which can contribute to confusion/frustration. The permit data showed that approved removals were largely broken down into four categories:

- 56 percent were due to the condition of the tree, such as declining health or safety risk of the tree
- 17 percent of removals had a combination of reasons or other circumstances beyond the criteria
- 14 percent were related to development and construction
- 13 percent were due to tree death

One of the issues with the existing decision making criteria is basing removal decisions on the benefits of trees. The existence of the heritage tree ordinance already protects the benefits of trees by requiring a permit for removal. Including the benefits of trees in the removal decision making criteria complicates the process. The proposed intent for the new decision making criteria is make it clear when it is acceptable for a heritage tree to be removed and establish standards and thresholds for how death, condition, or feasibility of alternatives is determined.

Another problem identified was enforcement of replacement plantings to maintain the urban canopy. A survey targeting community members who applied for a heritage tree removal permit within the last two years revealed that only 54 percent of respondents reported planting required replacement trees.

Benefits and impacts of the ordinance amendments

The amendments to the ordinance address many of the issues above and support monitoring the ordinance's effectiveness over time. The expected benefits of the amendments in Attachment A include:

- More replacement trees being planted and protected
- Increased preservation of healthy heritage trees in development projects
- Reduced number of appeals (and cost to city operations and permit applicants)
- Reduced conflicts between community, staff and permit applicants
- Increased public access to heritage tree removal permits and information

However, the changes will also increase costs for development projects that include heritage tree removal(s) and non-development related tree removal applications. For development related projects, increases result from having to replace the value of the tree(s) if granted a removal, using a city approved certified arborist, and requiring additional alternatives and information to be submitted for some projects. However, this upfront work could assist in avoiding costly appeals.

For non-development related removal requests, applicants will also be limited to using a city approved list of arborists and would be required to plant more trees than current standards. In addition, the permit fee for heritage tree removals are likely to increase to recover costs for replacement tree verification. It is difficult to assess the range of increases for the permit applicant as each tree, property and development project is unique, but this can be tracked and monitored for future reporting.

Draft administrative guidelines (to be finalized by July 2020)

Draft administrative guidelines have been developed to help supplement the implementation of the ordinance (Attachment D.) The ordinance language in Attachment A is intended to be a longstanding policy document while the administrative guidelines (Attachment E) will support day-to-day implementation practices, and can provide further clarification to new staff and community.

Administrative guidelines are established at a staff level and can be readily updated by staff as necessary to reflect changes or institutionalize industry standards, operating practice or best practices. This approach provides flexibility in adapting implementation procedures as needed without necessitating a full ordinance update.

Any amendments to the administrative guidelines would require a public review period of 30 days before implementing any changes. Public feedback may be considered by the public works director.

The Task Force and the Environmental Quality Commission have reviewed the administrative guidelines and their feedback has been incorporated to the maximum extent possible to achieve the desired outcomes established for the project. The administrative guidelines will be finalized by the effective date of the ordinance July 1, 2020, and will be published for a 30-day public review.

Repealing Chapter 16.65 Solar Access

While performing the policy analysis of the current heritage tree ordinance, it was determined that a separate municipal code regarding solar access (Chapter 16.65) did not align with the California State Solar Shade Control Act, and needs to be repealed or removed to be in compliance. Thus, staff is recommending repeal of the solar access code.

Cost to implement changes

In July, staff estimated the recommended changes would require an additional \$185,000 to \$200,000 per year. This is largely due to the inspection and enforcement of replacement trees. Based on City Council, commissions and Task Force feedback, the cost to implement the ordinance has been reduced to \$75,000 to \$120,000 per year. The reduced cost is largely due to the City Council's direction to continue using the Environmental Quality Commission as the appeal hearing body rather than establishing a new heritage tree board. Other cost savings measures include reduced appeals due to clearer decision criteria for tree removals and using existing tree tracking software to verify tree replacements.

Recovering increased implementation cost would likely involve increasing the tree removal permit fee and using a portion of the proposed tree replacement funds derived from projects unable to plant the required amount of replacement trees. The general fund would also be evaluated for funding.

Per the direction of City Council, staff explored hosting an app challenge to reduce staff resources for inspection and enforcement. See Attachment E for the analysis on the App Challenge and other options to reduce inspection costs. To meet the July 1, 2020 ordinance effective date, staff recommends exploring the following options over the next six months:

1. Leveraging and exploring the use of the City's new Accela permitting system that may have features that could support photographic verification of tree replacements. The new permitting system is expected to be deployed in the next month, and permit information may be made accessible to the public.
2. If the Accela permitting system cannot support tree replacement verification, staff recommends exploring existing tree tracking software, such as Tree Plotter, where the permit applicant would be required to log evidence of tree replacements. Both Accela and other tree tracking systems may have

the ability to be accessed by the public.

3. Working with a nonprofit to use community member volunteers to preform tree replacement verifications and help educate residents about keeping trees healthy.

Community engagement

Per the City Council's direction, the proposed ordinance amendments were presented to the Planning Commission, the Task Force and the Environmental Quality Commission. Below is a summary of their advice to the City Council and how their advice was incorporated to the maximum extent possible in Attachment A and D. In general, the Task Force and commissions were supportive and recommended approval of the amendments.

Planning Commission (August 2019): The Planning Commission advises the City Council to adopt the proposed ordinance amendments. However, they expressed concern over the removal of the building moratorium as an enforcement measure. This concern was addressed by including a stop work order provision that is more effective and regularly used to address development related violations.

The Planning Commission was also concerned with the estimated increase to annual implementation cost, but supported the importance and value of a fully funded program. They provided ideas on obtaining additional revenue for the City Council to consider.

Task Force (September 2019): The Task Force reviewed the draft ordinance language, and by a super majority vote advises the City Council to adopt the proposed amendments with the following modifications that have been incorporated into Attachment A:

- Remove replacement tree example
- Insert noticing requirements
- Include the city's obligation to collect data to monitor the effectiveness of the ordinance

For the draft administrative guidelines, the Task Force proposed the following modifications that have been incorporated into Attachment D:

- Increasing the threshold for evaluating feasible and reasonable alternatives
- Limiting the list of invasive species

Other members expressed concerns about allowing trees to be removed for solar power generation. Solar panel installation is considered a development project that would be subject to the same standards as all other developments or building projects with a heritage tree removal request under removal decision making criteria No. 5 (Attachment A.) It would require a permit applicant to explore feasible and reasonable alternatives to preserve a heritage tree if there is a desire to install solar panels on a building or site. If there is a feasible or reasonable alternative, the removal permit would not be granted. Attachment D includes specific criteria for evaluating solar power alternatives.

Some Task Force members still have concerns or have offered further ideas for improving the ordinance that are beyond the scope of work identified by the City Council. Additional budget appropriations and reprioritizing of city projects may be needed if the scope is further expanded.

Environmental Quality Commission (September 2019): The Environmental Quality Commission (EQC) reviewed the draft ordinance language and administrative guidelines, and advises the City Council to adopt the proposed amendments, and include a provision in the ordinance that does not allow final occupancy to be granted for development projects until evidence or inspection of replacement trees(s) has been completed. This has been incorporated into the administrative guidelines (Attachment D) because it

is considered an administrative function and may require changes over time.

For the administrative guidelines, the EQC advised the following modifications to be incorporated:

- For a permit or an appeal, the permit applicant may be required to pay for additional costs to process the permit/appeal that can include, but is not limited to:
 - Third party peer review of alternatives
 - Third party analysis of further alternatives
- If an appeal is filed, the schematic design alternatives originally submitted may require additional and complete analysis that will be paid for by the permit applicant
- The city reserves the right to hire a third-party review of alternatives that will be paid for by the permit applicant.
- Include a public review/approval of changes to the administrative guidelines, such as an appointed body or City Council.

These have been incorporated into Attachment E except for the public review being approved by an appointed body or City Council. Amendments to the administrative guidelines are intended to reflect current industry standard and/or best practices. A public review of 30 days with the authority for the public works director to address/evaluate public feedback provides efficient implementation of the administrative guidelines and supports City Council and other appointed bodies' ability to complete annual work plan priorities.

The EQC recognizes that the heritage tree ordinance is only one tool for protecting and growing the urban forest, and that there are many other tools and policies that could further enhance the urban canopy. The EQC advises that the City Council consider developing an urban forest master plan after adopting updates to the heritage tree ordinance. In particular, the urban forest master plan can start by focusing on collecting current canopy coverage information for the entire city, address community values around redwood trees and their changing future in this geographic area, address canopy inequities across the community, and understand the impacts of other city policies on the urban forest.

Phase III ordinance implementation plan

The scope of the Task Force was to update the ordinance. However, throughout the policy analysis process and community engagement, ideas related to process, education, monitoring, and implementation were captured in the policy analysis report, administrative guidelines outline and meeting minutes.

The ordinance effective date will be July 1, 2020 due to the time and resources needed to ensure implementation processes, tools and education is in place.

Upon adoption of the updated heritage tree ordinance, staff will begin implementation planning and development from January to June 2020, which includes but is not limited to:

- Preparing inclusion of additional budget and resources for the 2020-2021 fiscal year budget
- Developing a request for qualifications to provide permit applicants with a list of city approved arborists
- Amending the master fee schedule to increase the heritage removal permit fee
- Developing helpful guides and education material for permit applicants
- Approving an agreement for conflict resolution/mediators
- Establishing specific fines depending on type of violation
- Developing permit application and appeal forms

Impact on City Resources

To implement the approved changes, city operational costs will increase. It is estimated that the costs will increase the heritage tree program budget up to \$120,000 annually and will require additional staff or a mix of staff, nonprofit and consulting services.

Environmental Review

An analysis of impacts under the California Environmental Quality Act (CEQA) will be performed before adoption of the final ordinance. As the purpose of the Task Force was to continue the level of tree canopy protection existing in the current ordinance while providing more clarity and better enforcement, staff anticipates the ordinance will be exempt from further CEQA review.

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. Draft Municipal Code Chapter 13.24 (Heritage Trees)
- B. Hyperlink – Current heritage tree ordinance:
codepublishing.com/CA/MenloPark/#!/html/MenloPark13/MenloPark1324.html
- C. Hyperlink – July 16 City Council staff report:
menlopark.org/DocumentCenter/View/22137/I2-20190716-Heritage-Tree-Ord-Update-CC
- D. Draft administrative guidelines applicable to heritage trees
- E. App challenge and tree replacement inspection options analysis

Report prepared by:
Candise Almendral, Sustainability Project Contractor
Rebecca Lucky, Sustainability Manager

ORDINANCE NO. 1060**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AMENDING CHAPTER 13.24 [HERITAGE TREES] OF TITLE 13 [STREETS,
SIDEWALKS AND UTILITIES] AND REPEALING CHAPTER 16.65 [SOLAR
ACCESS] OF TITLE 16 [ZONING]**

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

SECTION 1. FINDINGS AND DETERMINATIONS.

A. In August 2018, the City Council appointed a Heritage Tree Task Force (Task Force) to collaborate with staff to review and provide recommendations to update the Heritage Tree ordinance (ordinance);

B. The Task Force finalized their recommendations to the City Council at the end of June 2019;

C. On August 12, 2019, the Planning Commission reviewed the proposed updates to the Heritage Tree Ordinance and recommended approval;

D. On September 12, 2019, the Task Force reviewed the draft ordinance language and administrative guidelines, and recommended approval;

E. On September 18, 2019, the Environmental Quality Commission reviewed the draft ordinance language and administrative guidelines, and recommended approval;

F. On October 29, 2019, the City Council reviewed the updated Heritage Tree ordinance;

G. The City Council finds that the desired outcome of the ordinance update to ensure a significant and thriving population of large healthy trees in Menlo Park for public enjoyment and environmental sustainability while balancing property rights and implementation efficiency was achieved;

H. City Council finds the ordinance update process evaluated current issues and successes with the existing ordinance and explored options based on evidence and best practices in other communities and industry experts; and

I. The City Council finds that the preferred options were identified based on increasing clarity, increasing and maintaining canopy, and increasing effectiveness of ordinance implementation, and adopts the following amendments to the Heritage Tree Ordinance (13.24).

SECTION 2. AMENDMENT OF CODE. Chapter 13.24 [Heritage Trees] of Title 13 [Streets, Sidewalks and Utilities] is hereby repealed and replaced with the following:

CHAPTER 13.24 HERITAGE TREES

Sections:

13.24.010 Intent and purpose

13.24.020 Definitions

13.24.030 Maintenance and preservation of heritage trees

13.24.040 Removal and major pruning of heritage trees prohibited

13.24.050 Permits and decision making criteria for removal

13.24.060 Appeals

13.24.070 Establishment of heritage tree fund

13.24.080 Administrative guidelines

13.24.090 Heritage tree replacements

13.24.100 Enforcement and violations

13.24.110 Urban Forest Data Collection

13.24.010 Intent and purpose.

This chapter is adopted with the intent and purpose of promoting the preservation and development of a healthy, diverse tree canopy in Menlo Park, which is highly valued by the community and is vital to the character and health of the city.

Heritage trees are valued for their many contributions to the environment, public health and quality of life of the Menlo Park community. Examples of those benefits include:

- provide shade
- enhance resilience to climate change
- improve air quality
- provide shelter from wind
- prevent erosion and landslides
- protect against flood hazards
- add to the city's scenic beauty and character
- recognize historical significance to our city
- create natural gathering places
- reduce noise pollution
- enhance privacy
- enhance neighborhood property values

- provide habitat for wildlife

This chapter establishes regulations for the removal and replacement of heritage trees, promotion of additional heritage tree planting, and public education about the planting, maintenance and preservation of healthy heritage trees following industry best management practices, and consistent with the purposes of this chapter, the reasonable enjoyment of public and private property, property rights and in alignment with the General Plan.

13.24.020 Definitions.

For purposes of this Chapter, the terms below shall have the following meanings:

1. "Administrative guidelines" means staff-promulgated regulations implementing and interpreting this ordinance.
2. "Applicant" is the person seeking a Permit to remove or perform major pruning on a heritage tree under this Chapter.
2. "Major pruning" is the significant removal of roots or foliage that has the potential to negatively impact the health or structural stability of a heritage tree. Major pruning includes the removal of more than one-fourth of the live branches or roots within a twelve (12) month period.
3. "Public Works Director" shall mean the Public Works Director or their designee, including but not limited to the City Arborist.
4. "Heritage tree" shall mean:
 - (A) All trees other than oaks which have a trunk with a circumference of 47.1 inches (diameter of fifteen (15) inches) or more, measured fifty-four (54) inches above natural grade).
 - (B) An oak tree (*Quercus*) which is native to California and has a trunk with a circumference of 31.4 inches (diameter of ten (10) inches) or more, measured at fifty-four (54) inches above natural grade.
 - (C) A tree or group of trees of historical significance, special character or community benefit, specifically designated by resolution of the city council.

For purposes of Sections 13.24.020 (4) (A) and (B), trees with more than one trunk shall be measured at the diameter below the main union of all multi-trunk trees unless the union occurs below grade, in which case each stem shall be measured as a standalone tree. Multi-trunk trees under twelve (12) feet in height shall not be considered a heritage tree.

13. 24.030 Maintenance and preservation of heritage trees.

1. Any person who owns, controls, or has custody or possession of any real property within the city shall use reasonable efforts to maintain and preserve all heritage trees located thereon in a state of good health pursuant to the provisions of this chapter. Failure to do so shall constitute a violation of this chapter.
2. Any person who conducts any grading, excavation, demolition or construction activity on property shall do so in such a manner as to not threaten the health or viability or cause the removal of any heritage tree.

3. Any work performed within an area ten (10) times the diameter of a heritage tree (i.e., the tree protection zone) shall require submittal and implementation of a tree protection plan for review and approval by the public works director or his or her designee prior to issuance of any permit for grading or construction. The tree protection plan shall be prepared by a City-approved certified arborist and shall address issues related to protective fencing and protective techniques to minimize impacts associated with grading, excavation, demolition and construction. The director of public works or his or her designee may impose conditions on any city permit to assure compliance with this section.

13.24.040 Removal and major pruning of heritage trees prohibited.

It is unlawful for any person to remove, or cause to be removed, any heritage tree from any parcel of property in the city, or perform major pruning on a heritage tree, without obtaining a permit; provided, that in case of emergency, when a heritage tree is imminently hazardous or dangerous to life or property, it may be removed by order of the police chief, fire chief, the public works director or their respective designees. Any person who vandalizes, grievously mutilates, destroys or unbalances a heritage tree without a permit or beyond the scope of an approved permit shall be in violation of this chapter.

13.24.050 Permits and decision making criteria for tree removal.

a. Permit Requirement and Removal Criteria. Any person desiring to remove one or more heritage trees or perform major pruning as described in Section [13.24.020](#) shall apply for a permit pursuant to procedures established by the public works director and shall pay a fee established by the city council. It is the joint responsibility of the property owner and party removing the heritage tree or trees, or portions thereof, to obtain the permit. The director of public works or his or her designee may only issue a permit for the removal or major pruning of a heritage tree if he or she determines there is good cause for such action. In determining whether there is good cause, the public works director shall give consideration to the following:

1. Death. The heritage tree is dead.
2. Risk Rating. The condition of the heritage tree poses a high or extreme risk rating under the International Society of Arboriculture Best Management Practices: Tree Risk Assessment and/or administrative guidelines; and the risk cannot be reasonably abated to a low risk rating with sound arboricultural treatments.
3. Tree Health. The heritage tree is (a) dying or has a severe disease, pest infestation, intolerance to adverse site conditions, or other condition and pruning or other reasonable treatments based on current arboricultural standards will not restore the heritage tree to a fair, good or excellent health rating as defined in the Guide for Plant Appraisal, 10th Edition, or its successor manual or the administrative guidelines or (b) the heritage tree is likely to die within a year.
4. Species. The heritage tree is a member of a species that has been designated as invasive or low species desirability by the public works director in the administrative guidelines.
5. Development. The heritage tree interferes with proposed development, repair, alteration or improvement of a site or habitable building that is causing/contributing to structural damage (excluding amenities, such as walkways, patios, pools and fire pits); and there is no financially feasible and reasonable design alternative that would permit preservation of the heritage tree

while achieving the applicant's reasonable development objectives or reasonable economic enjoyment of the property using the methodology established in the administrative guidelines.

6. Utility Interference. The removal is requested by a utility, public transportation agency, or other governmental agency due to a health or safety risk resulting from the heritage tree's interference with existing or planned public infrastructure and there is no financially feasible and reasonable design alternative that would permit preservation of the heritage tree.

b. Notice Requirements.

1. The City will use its best efforts to maintain a publicly accessible data base of permit applications.

2. When a permit is sought under Criteria No. 5 (Development) or 6 (Utility), property owners within 300 feet of the exterior boundary of the property containing the Heritage Tree shall be noticed by email or mail of the pending application. Failure to receive copies of such notice shall not invalidate any action taken by the City.

13.24.060 Appeals.

1. Authority to appeal. Removals based on criteria 1 through 4 in section 13.24.050 may only be appealed by the permit applicant as set forth in section 13.24.060 (2) below. Removals based on criteria 5 and 6 may be appealed by the permit applicant or Menlo Park resident. Appeals must be filed on a city approved form and are subject to appeal fees. A permit shall not be issued until all appeals are completed and/or the time for filing an appeal has expired.

2. Criteria 1-4 Appeals. Permit decisions based on criteria numbers 1, 2, 3 or 4 in section 13.24.050 may only be appealed by the permit applicant. Such appeal must be filed within fifteen (15) days of the public works director's written decision and must be in writing. The appeal shall be heard by the City Manager or designee whose decision shall be final.

3. Criteria 5-6 Appeals. Notice of the public works director's decision shall be mailed to all property owners within 300 feet of the exterior boundary of the property where the heritage tree is located. In addition, the applicant shall post a notice on a form supplied by the city on the property in a location visible to the public.

A. Filing Appeal. Within (15) days of posting, the applicant or any person may appeal the public works director's decision to the Environmental Quality Commission

B. Review Period for decision making criteria number 5 and 6 of section 13.24.050. If the Permit is timely appealed, the appellant shall have an additional (15) days to review the project file and to submit written evidence to the city clerk relating to the appeal. The appellant may submit one to five reasonable and feasible alternatives for the permit applicant to explore. If either party would like the appeal body to review third-party expert evidence, such party shall submit the evidence to the city within the review period. No additional removal alternatives/concepts or third party expert testimony will be accepted for review by the Environmental Quality Commission or City Council after the end of the review period.

C. Decision by Environmental Quality Commission. The Environmental Quality Commission shall consider the appeal. The Environmental Quality Commission may only consider removal alternatives/concepts and third party expert evidence submitted to the city during the review period. Within fifteen (15) days following the Environmental Quality Commission's decision, the applicant or any other party to the appeal may appeal the Environmental Quality Commission's decision to the City Council.

D. Planning Commission development related tree removals. When a removal permit is sought in conjunction with a project requiring Planning Commission review, the appeal to the Environmental Quality Commission, if any, should be completed before the Planning Commission takes final action on the development project.

i. If the Environmental Quality Commission approves the heritage tree removal, such approval shall be conditioned upon final approval of the project by the Planning Commission or City Council, as applicable. Following the Environmental Quality Commission's approval of the development related heritage tree removal, any appeal to the City Council is suspended until the Planning Commission acts. Once the Planning Commission makes a final decision on the overall development project that includes the heritage tree removal, any party to the Environmental Quality Commission appeal may appeal the heritage tree removal decision to the City Council. Such appeal shall be filed with the city clerk within fifteen (15) days of the Planning Commission's decision.

ii. If the Environmental Quality Commission denies the removal permit, the permit applicant may appeal the decision to the City Council before the Planning Commission reviews the related development project. If the applicant does not appeal the permit decision within fifteen (15) days of the Environmental Quality Commission's decision, no appeal may be taken on the removal permit, and the development project shall be redesigned to include plans for retaining the heritage tree.

E. Decision by City Council. The City Council shall consider the appeal. The City Council may only consider removal alternatives/concepts and third party expert evidence submitted to the city during the review period.

5. Alternate appeal body. From time to time, the City Council may by resolution appoint a separate appellate body to hear Permit appeals in lieu of the Environmental Quality Commission.

6. Re-submittal. If an applicant fails to exhaust the appeals set forth in this Chapter or the City Council denies the Permit, the Applicant may not apply for another Permit applicable to that heritage tree for a period of six months from the denial decision.

13.24.070 Establishment of heritage tree fund.

There is hereby established a heritage tree fund. This fund may be used to plant additional trees, to assist with implementation of the Heritage Tree Ordinance and any other purpose established by the administrative guidelines.

13.24.080 Administrative guidelines.

The public works director or their designee shall have the authority to adopt and modify administrative guidelines to implement this chapter.

13.24.090 Tree replacements.

1. If a permit for removal of a heritage tree is granted under Section 13.24.050, the applicant shall replace the heritage tree with a tree from a list of species approved by the City Arborist or pay a heritage tree in lieu fee in accordance with this section.

2. For development related removals, the applicant shall provide replacement heritage trees on site in an amount equivalent to the appraised value of the removed heritage tree. The City Arborist shall approve the location, size, species and number of replacement heritage trees. If the appraised value of the removed heritage tree, exceeds the value of the replacement

heritage trees that can be accommodated on the property, the applicant shall pay the difference in value to the heritage tree fund.

3. For non-development related removals, the applicant shall provide replacement heritage trees on site, with a tree from a list of species approved by the City Arborist, in an amount based on a replacement matrix based on trunk diameter as set forth in the administrative guidelines. If the property cannot accommodate all replacement trees on site, the applicant may pay an in lieu fee equivalent to the value of the replacement trees not planted on site. The in lieu fee shall be deposited into the heritage tree fund.

13.24.100 Enforcement and Violations

In addition to all other remedies set forth in this code or otherwise provided by law, the following remedies shall be available to the city for violation of this chapter:

1. If a violation occurs during development, the city may issue a stop work order suspending and prohibiting further activity on the property pursuant to the grading, demolition, and/or building permit(s) (including construction, inspection, and issuance of certificates of occupancy) until a mitigation plan has been filed with and approved by the public works director and city attorney, agreed to in writing by the property owner(s), and either implemented or guaranteed by the posting of adequate security as determined by the city attorney.
2. Any person violating this chapter shall be subject to a civil fine or penalty in the amount established by the City Council by resolution. Civil fines or penalties collected under this chapter shall be deposited into the heritage tree fund.
3. The Code Enforcement Officer, Public Works Director and Building Official or designee are authorized to issue stop work orders, notices of violation, administrative penalties and citations under this chapter and/or pursuant to the administrative guidelines adopted by the Public Works Director.
4. Any citation or penalty received under this chapter may be appealed to the City Manager or designee whose determination shall be final. Such appeal must be filed within fifteen (15) days of receipt of the citation or penalty.
5. Whenever the amount of any administrative fine or penalty or administrative cost incurred by the city in connection with a violation of this chapter has not been satisfied in full within ninety days and/or has not been successfully challenged by a timely writ of mandate, this obligation may constitute a lien or, in the alternative, a special assessment against the real property on which the violation occurred.
6. The City Attorney may bring a civil action against the violator to abate, enjoin, or otherwise compel the cessation of violation of any provision in this chapter. In a civil action brought pursuant to this chapter in which the City prevails, the court may award to the City all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including overhead and administrative costs incurred in prosecuting the action, and reasonable attorney fees.
7. The remedies provided in this section may be enforced against both the contractor or other person performing work in violation of this chapter as well as the owner of the real property on which the heritage tree is located.
8. All remedies provided in this section shall be cumulative and are not exclusive.

13.24.110 Urban Forest Data Collection

The City shall use its best efforts to collect and make publicly available data to monitor the effectiveness of this ordinance.

SECTION 3. REPEAL OF CODE. Chapter 16.65 [Solar Access] of Title 16 [Zoning] is hereby repealed in its entirety.

SECTION 4. SEVERABILITY. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION. The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act ("CEQA") under Sections 15378 and 15061(b)(3) of the of the CEQA Guidelines. The ordinance update is intended to continue the level of tree canopy protection existing in the current ordinance while providing more clarity and better enforcement, and has no potential for resulting in physical change to the environment either directly or indirectly.

SECTION 6. EFFECTIVE DATE AND PUBLISHING. This ordinance shall take effect July 1, 2020. The city clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, by posting in at least three public places in the city. Within 15 days after the adoption of the ordinance amendment, a summary of the amendment shall be published with the names of the city councilmembers voting for and against the amendment.

INTRODUCED on this twenty-ninth day of October, 2019.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on this __ day of ____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Ray Mueller, Mayor

ATTEST:

Judi A. Herren, City Clerk

Administrative Guidelines Applicable to Heritage Trees

Updated October 2, 2019

[Note: These Guidelines are in draft form. It is anticipated they will be finalized and approved in June 2020.]

These administrative guidelines are promulgated by the public works director or their designee pursuant to the authority set forth in Menlo Park Municipal Code Section 13.24.080.

I. Intent and purpose.

[Blank]

II. Heritage tree defined.

A. The public works director or their designee has determined the following species of oak trees are native to California:

- Coast live oak (*Quercus agrifolia*)
- Scrub oak (*Quercus berberidifolia*)
- Canyon live oak (*Quercus chrysolepis*)
- Blue oak (*Quercus douglasii*)
- Leather oak (*Quercus dumosa*)
- Englemann oak (*Quercus englmannii*)
- Oregon white oak (*Quercus garryana*)
- Black oak (*Quercus kelloggii*)
- Valley oak (*Quercus lobata*)
- Shreve oak (*Quercus parvula* var. *shrevei*)
- Oracle oak (*Quercus x morehus*)
- Island oak (*Quercus tomentella*)
- Interior live oak (*Quercus wislizenii*)

B. [Insert graphics or images to show how multi-stem trunk trees are measured.]

C. As of August 19, 2019, the Council has not designated any trees under Menlo Park Municipal Code Section 13.24.020 (4)(C).

III. Maintenance and preservation of heritage trees.

A. For development projects, the appraised value of all heritage trees on site shall be submitted.

IV. Removal and major pruning of heritage trees prohibited.

[Blank]

V. Permits and decision making criteria for removals.

A. The decision making criteria described below are closely tied to industry standards and require the provision of evidence to demonstrate a heritage tree is: dead, dying or poses a significant risk; significantly restricts reasonable economic enjoyment of the property; or interferes with utilities.

B. Prior to the issuance of a heritage tree removal permit, the public works director or their designee shall review the request and make a decision. The public works director or their designee may request relevant documentation from the applicant to determine whether removal is justified. The determination in granting or denying a permit shall in most instances be based on the articulated criteria in Municipal Code Section 13.24.050.

C. Decision Making Criteria

1. Death (Criterion 1). The public works director or their designee may request information to determine the tree is in fact dead. For example, photos of deciduous tree during fall or winter will not suffice.
2. Risk Rating (Criterion 2) Considerations.
 - Tree risk assessment is a systematic process used to identify, analyze and evaluate tree risk. Risk is assessed by categorizing or quantifying both the likelihood (probability) of occurrence and the severity of consequences.
 - Trees with moderate, high or extreme risk are required to have been evaluated by an International Society of Arboriculture (ISA) Qualified Tree Risk assessor and the assessed risk compared against given risk criteria to determine the significance of the risk.

The following documentation may be used to support Criteria 2:

- Evidence that the tree risk rating cannot be reduced to low (through pruning or other means), as reported by a Qualified Tree Risk Assessor.
3. For Criterion 3 (Tree Health), intolerance to adverse site conditions can include factors such as soil or water salinity, exposure to sun or wind, or increasingly high temperatures.

Tree health shall be determined by standards set by Table 4.1 of the Guide for Plant Appraisal, 10th Edition, or its successor manual, and are as follows:

- Excellent: High vigor and nearly perfect health with little or no twig dieback, discoloration, or defoliation.
- Good: Vigor is normal for the species. No significant damage due to diseases or pests. Any twig dieback, defoliation, or discoloration is minor.
- Fair: Reduced vigor, Damage due to insects or diseases may be significant and associated with defoliation but is not likely to be fatal. Twig dieback, defoliation, discoloration, and/or dead branches may comprise up to 50% of crown.
- Poor: Unhealthy and declining in appearance. Poor vigor. Low foliage density and poor foliage color are present. Potentially fatal pest infestation. Extensive twig and/or branch dieback.
- Very Poor: Poor vigor. Appears to be dying and in the last stages of life. Little live foliage.

4. Species (Criterion 4). The following trees have been designated by the public works director or their designee to be invasive/low desirability species:

- Blackwood acacia
- California fan palm
- Glossy privet
- Mexican fan palm
- Myoporum
- Purple leaf plum
- Tree of heaven
- Other species with overall desirability of five (5) as defined in the Western Chapter International Society of Arboriculture: Species Classification and Group Assignment, 2004, or the most current edition.

5. Development (Criterion 5).

The following documentation may be required to support criterion 5:

- Schematic diagrams that demonstrate the feasibility/livability of alternative design(s) that preserve the tree, including utilizing zoning ordinance variances that would preserve the tree;
- Documentation on the additional incremental construction cost attributable to an alternative that preserves the tree (i.e. construction cost of alternative design minus cost of original design) in relation to the appraised value of tree(s) as outlined in City administrative rules for appraising trees and based on the most recent addition to the Guide for Plant Appraisal.

The following guidance will be used to determine feasibility:

- If the incremental cost of the tree preservation alternative is more than 140% of the appraised value of the tree, the cost will be presumed to be financially infeasible.
- If the incremental cost of the tree preservation alternative is less than 110% of the appraised value of the tree, the cost will be presumed to be financially feasible.
- If the incremental cost of the tree preservation alternative is between 110% and 140% of the appraised value of the tree, public works director or their designee will consider a range of factors, including the value of the improvements, the value of the tree, the location of the tree, the viability of replacement mitigation and other site conditions.
- In calculating the incremental cost of the tree preservation alternative, only construction costs will be evaluated. No design fees or other soft costs will be considered.

Removal applications based on shading interference with proposed solar facilities shall employ the following screening criteria before applying the feasibility guidance above:

- Can the proposed array be ground mounted or positioned elsewhere to avoid shading by tree
- Can pruning resolve the conflict
- Is the proposed array sized appropriately
- Are there other energy efficiency measures that owner could employ to replace or reduce the need for the proposed solar array (energy efficiency analysis should be prepared by a certified energy auditor).

D. The public works director or their designee may expedite dead (Criterion 1) or invasive tree (Criterion 4) permit processes and shall have authority to reasonably waive permit application requirements and fees for these types of removals.

E. Permit applications (except Criteria 1 and 4) are required to be accompanied by a report prepared by an ISA certified arborist or member of the American Society of Consulting Arborists (ASCA) as approved at the discretion of public works director or their designee.

F. The public works director or their designee may charge applicant for the reasonable costs of third party or staff reviews required under the Heritage Tree Ordinance. The public works director or their designee will establish an approved list of arborists to reduce conflicts between the city arborist and applicant's arborist.

VI. Appeals.

A. The purpose of review period is to allow appeals to be processed in an appropriate, meaningful, and efficient manner to respect both permit applicant time and other city priorities. An appeal can only be based upon the criteria used in the application.

B. Conflict Resolution. City can offer conflict resolution for community member appeals before/at the start of the formal appeal process. Adding mediation as part of an appeals process could help maintain, preserve, and build good community relations while resolving concerns and disagreements regarding heritage trees. In many circumstances, conflict resolution mediated by a third party will help to educate or provide a different perspective to potential appellants that might affect the appellant's decision about filing an appeal.

To implement this option, the City shall engage and pay for a mediator for the applicant and appellant. Note that participating in non-binding mediation does not preclude the appellant from subsequently filing an appeal.

C. Upon request by either party, the City may extend the review period to allow for expert submissions not to exceed 60 days from appeal file date.

VII. Establishment of heritage tree fund.

A. Funds are authorized to be used for site modifications and underlying treatments (such as, concrete excavation, installation of structural soils, pervious pavers, Silva Cells, and cantilevered sidewalks) to facilitate tree planting, limit infrastructure conflicts, and to promote healthy tree growth.

VIII. Heritage tree replacements

A. The overall goal of the Heritage Tree Ordinance's replacement requirement is to ensure continued canopy cover is maintained or increased. Ideally, the replacement tree(s) should replace the removed canopy cover in a period of approximately 15 years.

B. Appraised tree value will be required for all heritage tree removals (and street trees) for a development project. The public works director or their designee will establish an approved list of tree appraisers to reduce conflicts between the city arborist and applicant's arborist.

C. The appraisal shall use the most recent edition of the Guide to Plant Appraisal to determine the value of the tree being removed and the replacement trees. An alternate industry tree appraising standard may be used upon approval by the public works director or their designee.

D. For enforcement of replacement trees two inspections are required: one to verify tree has been planted, and a second at two years to ensure tree is thriving.

E. Applicant will add planted replacement trees to a web-based platform, which will be available to the community.

F. Heritage tree replacement matrix for non-development related removals

Trunk diameter (at designated breast height)	Heritage tree replacement	
	Minimum number of replacement	Minimum size of replacement
15 to 20 inches	2	15 gallon container
>20 to 30 inches	3 or 24" box	15 gallon container
>30 to 40 inches	4 or 36" box	15 gallon container
>40 to 50 inches	5 or 48" box	15 gallon container
>50 inches	6 or 60" box	15 gallon container

If the site lacks adequate space for healthy tree development of multiple trees, an applicant may plant a larger size replacement tree(s) in lieu of the multiple replacement trees. All tree replacement must be consistent with the guidelines outlined in the heritage tree replacement procedures and is subject to City approval.

G. For criteria no. 5 (development) removal, to extent possible the public works director or their designee shall not issue the final certificate of occupancy until all replacement trees required by the Heritage Tree ordinance are planted.

H. The public works director or their designee has approved the following list of acceptable replacement tree criteria such as drought and heat tolerance.

[To be inserted.]

IX. Enforcement and violations

A. [Insert civil fine or penalty approved by City Council]

B. [Insert administrative fines or penalty approved by City Council]

X. Urban Forest Data Collection

A. To the extent permitted by law, the City shall make publicly available using Accela all heritage tree removal applications, permits, and appeals.

XI. Amendment of Administrative Guidelines.

Before amending these Guidelines, the public works director shall make all proposed amendments available for public review and comment for 30 days by posting the amendments on the City's website.



MEMORANDUM

Date: 10/29/2019
To: City Council
From: Candise Almendral, Project Contractor Sustainability Division
Re: Analysis of conducting an app challenge and other options to reduce the cost of heritage tree inspections

Menlo Park is currently in the process of updating its heritage tree ordinance which regulates the removal and significant pruning (>25%) of trees on private property. The proposed updates are estimated to increase the annual cost to administer this ordinance up to \$200,000. One of the largest costs identified is inspecting replacement trees. These inspections are estimated to require 30-40 hours of staff time per month, costing \$48,000-\$60,000 annually. The inspection method outlined includes the review of photographs of approximately 300- 400 replacement trees plantings and 50 in-person inspections annually. To lessen operating costs, City Council directed staff to explore hosting an app challenge to develop a creative approach to inspecting replacement trees at their July meeting.

Summary of resource needs for an App Challenge

An app challenge, or application challenge, harnesses the creativity of community members to generate ideas and produce software solutions that work on a mobile device (e.g. smartphone, tablet computer, etc.). Palo Alto successfully launched a municipal apps challenge and compiled the lessons learned in *The Apps Challenge Playbook*. This playbook is a resource with detailed advice and information on the planning, designing, and execution of a city-based apps challenge.

Using this resource, staff estimates a minimum of seven months and 400 staff hours (approximately \$64,000) are required to plan and coordinate an event of this type. This does not include other resource needed such as, prizes to top entrants, promotional material, event space and supplies, etc. Funding for these other resources can be supplemented by third-party sponsorship or recouped through event ticket sales and in-kind/donated services. However, the staff time required to plan, judge, and coordinate this effort cannot be offset by sponsorship.

There are risks associated with hosting an app challenge not captured in this playbook. For example, there is no guarantee an app challenge will result in a viable product. This risk may be further compounded by the fact that the Palo Alto model rules were flexible and did not include requirement to fill a specific city need. Menlo Park's desire for a solution to a specific challenge (tree inspection) may limit the pool of entrants. Additionally, these budget estimates and staff requirements do not include ongoing maintenance or update of any product an app challenge produces. Another consideration is the time and budget requirements may delay implementation rollout which is currently targeted for July 1, 2020. As a long-term strategy, City Council may look to plan an app challenge after initial implementation to reduce annual cost of administration of the heritage tree ordinance.

In addition to hosting an app challenge, staff also assessed using volunteer community member tree inspectors and existing software solutions described below.

Volunteer community member tree inspectors

The Heritage Tree Task Force suggested harnessing the community members interested in tree preservation as a resource. This option would require partnership with a local nonprofit such as Canopy, Grassroots Ecology, Friends of the Urban Forest or similar, to coordinate volunteer inspection of tree replacements.

This will likely require an administrative contract with a third-party in addition to a minimum of 20 hours of staff time to setup the relationship and under 5 hours monthly of the City Arborist's time to sustain the relationship. This option will cost the City approximately \$30,000 annually to sustain, which is approximately two-thirds the cost of city staff conducting the inspections.

There is a risk this option may result in the delay of tree replacement inspection as availability of volunteers may vary. This may delay issuance of final occupancy or completion of development projects. The recruitment and training of volunteers may also delay the implementation rollout which currently targeted for July 1, 2020. Also, the ongoing success of this program is dependent on the continued recruitment and/or retention of volunteer tree inspectors.

Additionally, tree replacements may be planted in restricted areas, such as fenced backyards or gated properties. Community member volunteers will be required to take on personal risk by entering onto private properties. This may put community members or private property owners in a litigious position.

There is also a risk no third-party partner is available to administrate this tree inspection program. The City Council may also want to explore the establishment of a city run volunteer program. However, this option would require further exploration of budget requirement (e.g. staff time, insurance, etc.) and legal risks (e.g. liability of volunteer community members on private property).

Available software solutions

Tree inventory management software is available for City use. Tree specific software applications, like Tree Plotter, are geographic information systems that allow users to input tree information from a mobile device (e.g. smartphone, tablet computer, etc.). Conceivably, permit applicants could input replacement tree data directly into this software. The predicted cost of this software application is up to \$3,000 per year.

The City also currently has a 5-year term contract with Accela permitting system which has asset management features. The City is in the process of implementing the Accela software and is expected to be completed by Winter 2019. After the initial rollout, expanded functionality such as the input of tree replacement evidence by community members will be explored further.

The risk associated with the software option is allowing multiple users to input publicly available information. City staff time would be required to verify information to ensure accurate reporting periodically. While it may reduce staff time in the continued

administration of the updated heritage tree ordinance, initial set up and community member training on this software may increase staff time needs in short term.

Recommendation

Based on the analysis, staff recommends exploring the following options over the next six months to meet the July 1, 2020 ordinance effective date:

1. Leveraging and exploring the use of the City's new Accela permitting system that may have features that could support photographic verification of tree replacements. The new permit system is expected to be deployed in the next few months, and the changes to the ordinance will be implemented on July 1, 2020, providing enough time to implement this option.
2. If the Accela permitting system cannot support tree replacement verification, staff recommends exploring existing tree tracking software, such as Tree Plotter, where the permit applicant would be required to log and provide photographic evidence of tree replacements. Both Accela and other tree tracking systems have the ability to be accessed by the public.
3. Working with a nonprofit to use community member volunteers to preform tree replacement verifications and help educate residents about keeping trees healthy.

THIS PAGE INTENTIONALLY LEFT BLANK



STAFF REPORT

City Council

Meeting Date: 10/29/2019

Staff Report Number: 19-216-CC

Informational Item: City Council agenda topics: November 2019 to January 2020

Recommendation

The purpose of this informational item is to provide the City Council and members of the public access to the anticipated agenda items that will be presented to the City Council. The mayor and city manager set the City Council agenda so there is no action required of the City Council as a result of this informational item.

Policy Issues

In accordance with the City Council procedures manual, the mayor and city manager set the agenda for City Council meetings.

Analysis

In an effort to provide greater access to the City Council's future agenda items, staff has compiled a listing of anticipated agenda items, Attachment A, through January 14, 2020. The topics are arranged by department to help identify the work group most impacted by the agenda item.

Specific dates are not provided in the attachment due to a number of factors that influence the City Council agenda preparation process. In their agenda management, the mayor and city manager strive to compile an agenda that is most responsive to the City Council's adopted priorities and work plan while also balancing the business needs of the organization. Certain agenda items, such as appeals or State mandated reporting, must be scheduled by a certain date to ensure compliance. In addition, the meeting agendas are managed to allow the greatest opportunity for public input while also allowing the meeting to conclude around 11 p.m. Every effort is made to avoid scheduling two matters that may be contentious to allow the City Council sufficient time to fully discuss the matter before the City Council.

Public Notice

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

Attachments

A. City Council agenda topics: November 2019 to January 2020

Report prepared by:
Judi A. Herren, City Clerk

Tentative City Council Agenda

#	Title	Department	Item type
1	Adopt a resolution approving the City Council Subcommittee recommendations regarding the 2019-20 community funding allocation	ASD	Regular
2	Amend the 2019-20 adopted budget	ASD	Regular
3	Finance and Audit Committee update	ASD	Committee Report
4	Receive the comprehensive annual financial report for the fiscal year ended June 30, 2019	ASD	Regular
5	CitizenM Hotel - CDP Amendment	CDD	Public Hearing
6	SB2 Planning Grant Authorization	CDD	Consent
7	Subdivision Ordinance front setback variance for 180 Elliot Drive	CDD	Regular
8	Amend master fee schedule: Public Electric Vehicle Charging Station Fee and Zero Waste Implementation Development Fee	CMO	Public Hearing
9	Approve response to Civil Grand Jury report: "Electric Vehicle Adoption in the Cities and County of San Mateo"	CMO	Consent
10	City Council agenda topics: December 2019 – February 2020	CMO	Informational
11	City Council agenda topics: December 2019 – February 2020	CMO	Informational
12	City Council agenda topics: January 2020 – March 2020	CMO	Informational
13	City Council agenda topics: November 2019 to January 2020	CMO	Informational
14	City Council appointments to regional boards, commissions and committees	CMO	Regular
15	Climate Action Plan Progress	CMO	Regular
16	Mayor's state of the city reception	CMO	Presentation
17	Minutes: 10/15	CMO	Consent
18	Minutes: 10/29	CMO	Consent
19	Minutes: 11/19	CMO	Consent
20	Minutes: 11/5	CMO	Consent
21	Minutes: 12/10 and 12/17	CMO	Consent
22	Provide direction to the City's voting delegate regarding regional vacancies for the City Selection Committee's December meeting	CMO	Regular
23	Receive and file quarterly update on the 2019-20 City Council work plan	CMO	Consent
24	Recognition of the outgoing Mayor	CMO	Regular
25	Second Reading of Updates to the Heritage Tree Ord	CMO	Consent
26	Selection of the 2020 Mayor and Vice Mayor	CMO	Regular
27	Sister City Committee recommendation to upgrade Bizen, Japan to full Sister City status	CMO	Consent

Tentative City Council Agenda

#	Title	Department	Item type
28	Sister City Committee update	CMO	Committee Report
29	Update on zero waste plan progress	CMO	Regular
30	Study session on housing element, state housing laws, and the 2022 housing element update	CMO, CDD	Study Session
31	Provide direction on the formation of a Youth Advisory Committee (YAC)	CSD	Regular
32	Belle Haven branch library project - conceptual design alternatives and cost estimates	LIB	Study Session
33	Belle Haven branch library project	LIB	Informational
34	Library Commission update	LIB	Committee Report
35	Study Session on City Drone Program	PD	Study Session
36	Adopt resolution for parking restrictions on Santa Cruz between Johnson and Arbor	PW	Regular
37	Adopt resolution for parking time restrictions Alma St/Creek Dr	PW	Consent
38	Adopt Resolution No. XXX proposing to abandon public right-of-way along Woodland Avenue	PW	Consent
39	Authorize the City Manager to Enter into an Agreement with Roberts & Brune Company to Provide Water Parts and Supplies up to the Budgeted Amount Each Year and Authorize the Option to Renew the Contract Annually for up to Three Years	PW	Consent
40	Authorize the city manager to enter into funding agreements with C/CAG and Caltrans and authorize a design-build approach for the project (Hav	PW	Consent
41	Award of a construction contract for the Oak Grove Ave Green Infrastructure & Sidewalk Project to XXX, in the amount of \$XXX; approve a construction contingency in the amount of \$XXX	PW	Consent
42	Monte Rosa water main bid award	PW	Consent
43	Second reading and adoption of transportation impact fee ordinance	PW	Consent
44	Second reading and adoption of transportation impact fee ordinance (placeholder if needed to reintroduce 11/19)	PW	Consent
45	TIA Guidelines	PW	Study Session
46	Update on new wireless facility regulations	PW	Informational
47	Willows turn restrictions	PW	Regular
48	Annexation procedure/policies/applications/West Menlo Triangle/Menlo Oaks annexation	PW, CMO	Informational

THIS PAGE INTENTIONALLY LEFT BLANK



STAFF REPORT

City Council

Meeting Date: 10/29/2019

Staff Report Number: 19-224-CC

Informational Item: Downtown street café program update

Recommendation

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

Policy Issues

The Downtown street café program was developed following the adoption of the El Camino Real/Downtown specific plan to support the City Council's goal of enhancing vibrancy in the downtown.

Background

During the 2014 City Council goal setting meeting, the City Council discussed opportunities to enhance outdoor seating as a valuable tool for increasing vibrancy on Santa Cruz Avenue and supporting local merchants. On March 25, 2014, the City hosted a meeting with a number of downtown merchants who were interested in discussing opportunities for improving downtown. The discussion included additional public events, capital improvement projects and enhanced outdoor seating opportunities. The merchants were supportive of the concept of an outdoor seating pilot program and pointed to Mountain View as a model. On May 13, 2014, the City Council unanimously approved the establishment and appropriation of the Santa Cruz Avenue enhanced on-street pilot program. As part of the pilot program, the City installed planters and landscaping to section off a seating area in front of Left Bank restaurant at 635 Santa Cruz Avenue.

On January 27, 2015, the City Council provided direction for the expansion of the enhanced on-street dining pilot program. Based on community input, business feedback and preliminary observation, sites that City Council considered included: Santa Cruz Avenue in front of Starbucks/Una Mas, Miyo Yogurt/Angelo Mio and Amici's, and Crane Street in front of Refuge. The City Council agreed that the existing Left Bank pilot program successfully enlivened the downtown retail experience. As a result, the City Council directed staff to expand the pilot program. The City Council direction was that the expansion be semi-permanent, include cost-sharing, and be open to all businesses.

The City retained the services of Ian Moore Design, Inc. (IMD) to provide a prototype design and initial cost estimates for a typical street café. Two base designs were developed to match the parking configurations downtown: one for parallel parking spaces and one for angled parking spaces. After extensive outreach, the general consensus of interested business owners was that a \$10,000 - \$15,000 investment would be feasible, and a \$20,000 investment would preclude most of those small businesses from participating. To keep the street cafe affordable for small businesses, staff presented a series of cost sharing options based on the initial cost estimates of \$30,000 for a parallel installation and \$40,000 for an angled installation.

On June 2, 2015, the City Council approved the base design concept and a cost-sharing requirement of 75 percent for parallel parking and 70 percent for angled parking with the participating business paying its

share upfront. An alternative payment option was also approved which would allow a business to pay through installments over a two-year timeframe with the City contributing 70 percent for parallel parking and 60 percent for angled parking. Both payment options carried a City maximum contribution of \$30,000 for any one street cafe. The cost for any enhancements beyond the base design were to be borne solely by the business.

Subsequently, final designs were developed, which accounted for site-specific conditions. The estimated construction costs had increased due to a general increase in the size of the café, safety features and disabled accessibility requirements. For the various designs, the costs for the street cafes ranged from \$39,000 to \$88,000. The increased costs also affected the feasibility of businesses to participate. Recognizing the value of the program, the cost-sharing approach was modified to increase the maximum City contribution amount. On May 24, 2016, the City Council approved the following:

1. Increased the Downtown streetscape improvement budget for fiscal year 2016-17 based on the engineer's estimate;
2. Authorized the city manager to award construction contracts up to the budgeted amount;
3. Authorized the city manager to enter into license and funding agreements with the business owners;
4. Approved a 80-20 percentage cost split with the City contributing 80 percent and the business 20 percent for the base design with a City maximum contribution of \$45,000; and
5. Directed staff to advance the project into construction.

On September 13, 2016, the City Council authorized the city manager to eliminate the cap on the City's contribution and increase the term of the agreements from three years to five years. Additionally, two options for repayment were established. Business owners could pay upfront and receive an 80-20 cost-share with the City or over three years with a 75-25 split.

Currently, the City has seven street cafés along Santa Cruz Avenue in the downtown area. The program has successfully enhanced downtown vibrancy and character while also improving the retention of downtown businesses, particularly restaurants.

Analysis

Following the latest round of street cafés completed in 2017, the City has not actively sought out suitable sites to expand the program. However, staff has received and followed up on a few inquiries for expanding the program. Among those inquiries, there are two locations that have expressed interest in moving forward: the Refuge at 1143 Crane Street and Coffeebar at 1149 Chestnut Street. The Refuge was first explored as a potential site for a street café in 2014 while Coffeebar expressed interest in the program in 2018. However, key vacancies with the City did not allow for execution on any additional street cafés until now. Additional street cafes would contribute to vibrancy and economic activity in Downtown Menlo Park. A street café at these locations would meet the original intent in regards to downtown vibrancy while also helping the City retain desirable and popular business establishments.

The following sets out the relevant milestones and timeline that staff has estimated for the completion of the street café at these sites:

- The City will contract with a designer to prepare construction-ready drawings and specifications for the project. The proposed street cafes would be the first on side streets, which may provide an opportunity to explore different designs. (Estimated completion: four to five months)
- Staff will return to City Council to authorize the city manager to enter into a funding/licensing agreement with each business owner for the street cafe. (November-December 2019)

- Staff will present to the Complete Streets Commission for approval to remove the necessary parking spots to complete the cafes. It is anticipated that 2 parallel spaces at each location would require removal. (January – February 2020)
- City issues a request for bids and City Council awards construction contracts. (Estimated completion: three-months)
- Funding agreements are executed and street cafés are built. (Estimated completion: two to three months)
- Total estimated time to completion nine to 11 months

Staff proposes to take a similar approach in cost-sharing as with previous street café locations. While the exact costs will not be known until bids are accepted, early estimates put the business contributions somewhere between \$15,000 and \$18,000 each depending on the funding option the merchants chooses. They will have the option of paying up front with an 80-20 split with the City or paying over the course of three years with a 75-25 split. The business owners have indicated that this is an acceptable cost. At a total estimated cost of \$150,000 for construction of the street cafés, this would leave the City's obligation in the range of \$112,500 to \$120,000.

The City will enter into a five-year agreement with each business. The funding/licensing agreements outline how the City would be reimbursed for its upfront construction costs as well as how the use of the street café would be licensed. Use of city utilities (such as electricity for lighting) would be granted based on a yearly fee paid by the business owner to cover costs. Maintenance of the street cafés would be the responsibility of the business owner. In the event of a change in ownership or un-renewed agreement, use and maintenance of the café would be returned to the City until a new agreement is completed.

Staff will return before the end of the year to seek the authority to award a construction contract and the authority to enter into an agreement with the business owner. In the meantime, construction-ready and site-specific designs will be developed for both sites in preparation for a request for bids. Staff is not aware of any other businesses interested in the program and will not actively pursue further street café sites unless given City Council direction to do so.

Impact on City Resources

Preparation of construction-ready and site-specific designs will cost approximately \$20,000. Preparation and management of the project will require staff time and resources. Adequate funding is available in the Capital Improvement Program as part of the Downtown Streetscape Improvement project.

Environmental Review

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

Public Notice

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

Attachments

None

Report prepared by:

John Passmann, Management Analyst II

Christopher Lamm, Assistant Public Works Director

Report reviewed by:

Deanna Chow, Interim Community Development Director