



SPECIAL MEETING AGENDA – AMENDED

Date: 9/15/2020

Time: 5:00 p.m.

Special Meeting Location: Joinwebinar.com – ID# 250-784-227

This amended agenda removes item E2. Purchase, install, and maintain picnic tables on closed sections of Santa Cruz Avenue.

NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

On March 19, 2020, the Governor ordered a statewide stay-at-home order calling on all individuals living in the State of California to stay at home or at their place of residence to slow the spread of the COVID-19 virus. Additionally, the Governor has temporarily suspended certain requirements of the Brown Act. For the duration of the shelter in place order, the following public meeting protocols will apply.

Teleconference meeting: All members of the City Council, city staff, applicants, and members of the public will be participating by teleconference. To promote social distancing while allowing essential governmental functions to continue, the Governor has temporarily waived portions of the open meetings act and rules pertaining to teleconference meetings. This meeting is conducted in compliance with the Governor Executive Order N-25-20 issued March 12, 2020, and supplemental Executive Order N-29-20 issued March 17, 2020.

- How to participate in the meeting
 - Submit a written comment online: menlopark.org/publiccommentSeptember15*
 - Record a comment or request a call-back when an agenda topic is under consideration: Dial 650-474-5071*
 - Access the special meeting real-time online at: joinwebinar.com – Special Meeting ID 250-784-227
 - Access the special meeting real-time via telephone (listen only mode) at: (415) 930-5321
Special Meeting ID 862-669-295 (# – no audio pin)
*Written and recorded public comments and call-back requests are accepted up to 1-hour before the meeting start time. Written and recorded messages are provided to the City Council at the appropriate time in their meeting. Recorded messages may be transcribed using a voice-to-text tool.
- Watch special meeting:
 - Cable television subscriber in Menlo Park, East Palo Alto, Atherton, and Palo Alto: Channel 26
 - Online: menlopark.org/streaming

Note: City Council closed sessions are not broadcast online or on television and public participation is limited to the beginning of closed session.

Subject to Change: Given the current public health emergency and the rapidly evolving federal, state, county and local orders, the format of this meeting may be altered or the meeting may be canceled. You may check on the status of the meeting by visiting the City’s website www.menlopark.org. The instructions for logging on to the webinar and/or the access code is subject to change. If you have difficulty accessing the webinar, please check the latest online edition of the posted agenda for updated information (menlopark.org/agenda).

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.

Special Meeting (Joinwebinar.com – ID# 250-784-227)

A. Call To Order

B. Roll Call

C. Presentations and Proclamations

C1. Community land trusts

D. Regular Business

D1. Adopt Resolution No. 6585 authorizing the city manager to execute an amendment to the professional services agreement with Team Sheeper, Inc., to extend the term of the Belle Haven pool operations ([Staff Report #20-202-CC](#)) – **updated from the September 8, 2020 City Council meeting**

D2. Consider the term sheet, conceptual design and project review process of Facebook’s offer to rebuild community facilities located at 100-110 Terminal Avenue ([Staff Report #20-201-CC](#) [Informe de Personal #20-201-CC](#))

[Web form public comment received for item D2.](#)

D3. Review financial feasibility analysis of the City of Menlo Park’s below market rate inclusionary rental housing requirements and adopt Resolution No. 6586 implementing below market rate in-lieu fee for rental housing ([Staff Report #20-203-CC](#))

D4. Consider an update on the housing innovation fund and confirm use of the housing inventory and local supply study ([Staff Report #20-204-CC](#))

D5. Adopt Resolution No. 6587 to supersede resolution No. 6490 to increase a loan to MidPen Housing from \$6.7 million up to \$9.331 million for an affordable housing development at 1317-1385 Willow Road ([Staff Report #20-205-CC](#))

D6. Approval of a retired annuitant employment agreement for the position of interim chief of police to carry out the duties and responsibilities of chief of police to work in a vacant position during the recruitment to permanently fill the vacancy and during an emergency to prevent stoppage of public business ([Staff Report #20-206-CC](#))

E. City Council Initiated Items

- E1. Refocus City Council 2020-21 priorities and direct specific land use planning work
([Staff Report #20-199-CC](#)) – continued from the September 8, 2020 City Council meeting
- ~~E2. Purchase, install, and maintain picnic tables on closed sections of Santa Cruz Avenue
([Staff Report #20-200-CC](#))~~

F. 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 by request by emailing the city clerk at jaherren@menlopark.org. 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: 9/14/2020)



STAFF REPORT

City Council

Meeting Date:

9/15/2020

Staff Report Number:

20-202-CC

Regular Business:

Adopt Resolution No. 6585 authorizing the city manager to execute an amendment to the professional services agreement with Team Sheeper, Inc., to extend the term of the Belle Haven pool operations

Recommendation

Staff recommends that City Council adopt Resolution No. 6585 authorizing the city manager to execute an amendment (Second Amendment; Attachment B) to the professional services agreement between the City of Menlo Park (City) and Team Sheeper, Inc. (Provider) to extend Provider's services at Belle Haven pool until the agreement expires August 31, 2021, or until construction commences at the Onetta Harris Community Center, whichever occurs first.

Should City Council desire to modify the terms of the base agreement beyond simply extending the end date, staff recommends that City Council adopt the resolution as presented to avoid a service interruption at Belle Haven pool October 1, and direct the city manager to negotiate with Provider to modify the terms of the base agreement per City Council's desired terms and bring back the new terms for City Council approval at a future meeting.

Policy Issues

City Council provides policy direction to the city manager regarding service provision to the community; provides authorization to the city manager to negotiate and execute professional services agreements with service providers; and sets prioritization for the use of City resources to serve the community.

Background

On March 27, 2018, City Council authorized the city manager to execute a professional services agreement with Provider to provide recreational aquatics programming at Burgess pool and Belle Haven pool.

On February 24, City Council authorized the city manager to execute a new professional services agreement with Provider (Attachment D) to terminate services at Belle Haven pool effective October 1 in preparation for the planned demolition of the Onetta Harris Community Center and adjacent city facilities for the new Belle Haven Community Center and Library (BHCCL) project, and continue services at Burgess pool for an extended term that expires August 31, 2021.

On March 13, City Council declared a local emergency closing all City facilities to the public, including Belle Haven pool and Burgess pool, to protect public health and safety from the COVID-19 pandemic.

On June 9, City Council authorized the city manager to amend the agreement with Provider (First Amendment; Attachment C) to update its terms and conditions in a manner that would allow operations to safely resume at Belle Haven pool and Burgess pool, with operational modifications and health precautions

to protect public health and comply with health orders made necessary by the COVID-19 pandemic. On July 28, City Council reviewed the revised timeline for the BHCCL project in light of delays caused by the COVID-19 pandemic, which indicated that BHCCL construction activity would commence in summer 2021 instead of October 2020 as previously planned.

Analysis

On September 8, the City Council elected to defer action on this item for one week pending review of additional considerations including the functionality of Provider's mobile app. On September 9, staff learned from the Provider that after several hours of back-and-forth technical support with the app developer, the mobile app has been repaired and is now fully functional with swim lanes now conveniently reservable at both pools through the mobile app.

The First Amendment to Provider's professional services agreement calls for the termination of services at Belle Haven pool October 1. The BHCCL project timeline has been delayed and extended for several months due to the COVID-19 pandemic, with construction activities now projected to begin in summer 2021. Should City Council desire that services at Belle Haven pool continue until BHCCL construction begins, a Second Amendment to Provider's professional services agreement would be necessary to extend the term of the Belle Haven pool portion of the agreement. Because the exact date of the start of BHCCL construction activities is not yet known, staff recommends extending Provider's services at Belle Haven pool until the agreement expires August 31, 2021, or until construction commences at the Onetta Harris Community Center, whichever occurs first.

Impact on City Resources

Per the existing agreement, the \$5,000 per month Belle Haven pool management fee payment to Provider which corresponds to the annual funding amount that the City receives from Facebook, Inc. per section 9.1.1 of the development agreement dated December 14, 2016 and recorded in the official records of the county of San Mateo as Doc # 2016-133794, resumed beginning June 1 and was to continue until the pool was scheduled to close October 1 as was previously agreed upon in order to prepare for the construction of the new BHCCL project. The Second Amendment would extend the term of these payments from that same source and at the same rate through the end of the new agreement term, e.g., until the agreement expires August 31, 2021, or until construction commences at the Onetta Harris Community Center, whichever occurs first.

Also, as part of the current agreement the City is responsible for baseline maintenance and custodial services for the pools. However, under the amendment Provider is responsible for additional maintenance and sanitary services to ensure adequate sanitation as required by County Health orders to prevent COVID-19 transmission.

Environmental Review

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

Public Notice

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

Attachments

- A. Resolution No. 6585
- B. Second amendment to professional services agreement
- C. First amendment to professional services agreement
- D. Professional services agreement

Report prepared by:

Leigh F. Prince, Assistant City Attorney

Sean Reinhart, Library and Community Services Director

RESOLUTION NO. 6585

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
APPROVING THE SECOND AMENDMENT TO PROFESSIONAL SERVICES
AGREEMENT (MENLO PARK AQUATIC FACILITIES)**

WHEREAS, on March 27, 2018, the City of Menlo Park (“City”) Team Sheep, Inc. (“Provider”) entered into the professional services agreement (“Agreement”) whereby Provider agreed to provide recreational aquatics programming at the Burgess pool and the Belle Haven pool;

WHEREAS, on February 24, 2020, by mutual written agreement, the City and Provider agreed to terminate Provider’s services at the Belle Haven pool effective October 1, 2020 due to a pending construction project at the Onetta Harris Community Center;

WHEREAS, the Agreement was renewed with respect to the Burgess pool for an extended term that expires on August 31, 2021;

WHEREAS, the City and Provider entered into an Amendment to professional services agreement dated June 9, 2020 (“First Amendment”) to respond to the COVID-19 pandemic;

WHEREAS, the City desires to extend the Provider’s services at the Belle Haven pool until the extended term of the Agreement expires on August 31, 2021 or until construction commences at the Onetta Harris Community Center, whichever occurs first.

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 does hereby resolve:

The City Council has reviewed the second amendment to professional services agreement (Menlo Park Aquatic Facilities) attached to this resolution and hereby authorizes the Mayor to execute the second amendment extending Provider’s services at the Belle Haven pool.

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 fifteenth day of September, 2020, 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 fifteenth day of September, 2020.

Judi A. Herren, City Clerk

SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(Menlo Park Aquatic Facilities)

This Second Amendment to Professional Services Agreement ("Second Amendment") is made and executed as of September 15, 2020, by and between the City of Menlo Park, a municipal corporation ("City") and Team Sheeper, Inc., a California S Corporation ("Provider"), referred to herein collectively as "Parties." This Second Amendment modifies the Professional Services Agreement dated March 27, 2018 by and between the Parties regarding the provision of recreational aquatics programming ("Agreement"), as amended by the Amendment to Professional Services Agreement dated June 9, 2020 ("First Amendment").

RECITALS

The City and Provider are entering into Second this Amendment based on the following facts, understandings and intentions:

- A. On March 27, 2018, the Parties entered into the Agreement whereby Provider agreed to provide recreational aquatics programming at Burgess and Belle Haven Pools in the City of Menlo Park.
- B. On February 24, 2020, by mutual written agreement, the Parties agreed to terminate Provider's services at the Belle Haven Pool effective October 1, 2020 due to a pending construction project at the Onetta Harris Community Center.
- C. The Agreement was renewed for an Extended Term that expires on August 31, 2021 with respect to the Burgess Pool.
- D. The Parties desire to extend the Provider's services at the Belle Haven Pool until the Extended Term of the Agreement expires on August 31, 2021 or until construction commences at the Onetta Harris Community Center, whichever occurs first.

NOW THEREFORE, the Parties agree as follows:

- 1. Provider shall continue to provide services at the Belle Haven Pool in accordance with the terms and conditions of the Agreement, as amended by the First Amendment, until the Extended Term of the Agreement expires on August 31, 2021 or until construction commences at the Onetta Harris Community Center, whichever occurs first. If terminated prior to the expiration of the Extended Term, the City will provide at least 30 days written notice to Provider of the date that construction will commence at the Onetta Harris Community Center and Provider's services at the Belle Haven Pool will be terminated.
- 2. The City shall continue to pay Provider the Belle Haven Management Fee until the Extended Term of the Agreement expires on August 31, 2021 or until construction commences at the Onetta Harris Community Center, whichever occurs first.
- 3. Except to the extent expressly modified by this Second Amendment, the terms of the Agreement, as amended by the First Amendment, shall remain effective without impairment or modification.

4. This Second Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one amendment.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment by their duly authorized officers as of the date first set forth above.

CITY OF MENLO PARK

By: _____

Approved as to Form:

Interim City Attorney

ATTEST:

City Clerk

TEAM SHEEPER, INC
501 Laurel Street
Menlo Park, CA 94025

By: _____

Tim Sheeper, Chief Executive Officer

Approved as to Form:

Attorney for Team Sheeper

SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(Menlo Park Aquatic Facilities)

This Second Amendment to Professional Services Agreement ("Second Amendment") is made and executed as of September 15, 2020, by and between the City of Menlo Park, a municipal corporation ("City") and Team Sheeper, Inc., a California S Corporation ("Provider"), referred to herein collectively as "Parties." This Second Amendment modifies the Professional Services Agreement dated March 27, 2018 by and between the Parties regarding the provision of recreational aquatics programming ("Agreement"), as amended by the Amendment to Professional Services Agreement dated June 9, 2020 ("First Amendment").

RECITALS

The City and Provider are entering into Second this Amendment based on the following facts, understandings and intentions:

- A. On March 27, 2018, the Parties entered into the Agreement whereby Provider agreed to provide recreational aquatics programming at Burgess and Belle Haven Pools in the City of Menlo Park.
- B. On February 24, 2020, by mutual written agreement, the Parties agreed to terminate Provider's services at the Belle Haven Pool effective October 1, 2020 due to a pending construction project at the Onetta Harris Community Center.
- C. The Agreement was renewed for an Extended Term that expires on August 31, 2021 with respect to the Burgess Pool.
- D. The Parties desire to extend the Provider's services at the Belle Haven Pool until the Extended Term of the Agreement expires on August 31, 2021 or until construction commences at the Onetta Harris Community Center, whichever occurs first.

NOW THEREFORE, the Parties agree as follows:

- 1. Provider shall continue to provide services at the Belle Haven Pool in accordance with the terms and conditions of the Agreement, as amended by the First Amendment, until the Extended Term of the Agreement expires on August 31, 2021 or until construction commences at the Onetta Harris Community Center, whichever occurs first. If terminated prior to the expiration of the Extended Term, the City will provide at least 30 days written notice to Provider of the date that construction will commence at the Onetta Harris Community Center and Provider's services at the Belle Haven Pool will be terminated.
- 2. The City shall continue to pay Provider the Belle Haven Management Fee until the Extended Term of the Agreement expires on August 31, 2021 or until construction commences at the Onetta Harris Community Center, whichever occurs first.
- 3. Except to the extent expressly modified by this Second Amendment, the terms of the Agreement, as amended by the First Amendment, shall remain effective without impairment or modification.

4. This Second Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one amendment.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment by their duly authorized officers as of the date first set forth above.

CITY OF MENLO PARK

By: _____

Approved as to Form:

Interim City Attorney

ATTEST:

City Clerk

TEAM SHEEPER, INC
501 Laurel Street
Menlo Park, CA 94025

By: _____

Tim Sheeper, Chief Executive Officer

Approved as to Form:

Attorney for Team Sheeper

AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(Menlo Park Aquatic Facilities)

This Amendment to Professional Services Agreement (“Amendment”) is made and executed as of June 9, 2020, by and between the City of Menlo Park, a municipal corporation (“City”) and Team Sheeper, Inc., a California S Corporation (“Provider”), referred to herein individually as “Party” and collectively as “Parties.” This Amendment modifies the Professional Services Agreement dated March 27, 2018 by and between the Parties regarding the provision of recreational aquatics programming (“Agreement”) and will become effective upon the approval by the City of the reopening the Burgess and Belle Haven Pools in accordance with the standards set by the San Mateo County Health Officer, as provided below.

RECITALS

The City and Provider are entering into this Amendment based on the following facts, understandings and intentions:

- A. On March 27, 2018, the Parties entered into the Agreement whereby Provider agreed to provide recreational aquatics programming at Burgess and Belle Haven Pools in the City of Menlo Park.
- B. On February 24, 2020, by mutual written agreement, the Parties agreed to terminate the Belle Haven Pool service effective October 1, 2020 in light of a pending construction project at the Onetta Harris Community Center.
- C. On March 4, 2020, the Governor of the State of California declared a state of emergency to help the state prepare for the spread of the novel coronavirus named COVID-19.
- D. On March 10, 2020, the San Mateo County Health Officer issued a statement that evidence existed of widespread community transmissions of COVID-19 in San Mateo County.
- E. On March 11, 2020, the City Council of the City of Menlo Park declared a local emergency based on the COVID-19 world pandemic. Effective immediately, all City facilities were closed to the public.
- F. Effective March 12, 2020, Provider closed the Burgess Pool for all services with the goal of keeping people safe and preventing the spread of COVID-19.
- G. On March 16, 2020, the San Mateo Health Officer issued an order that, among other things, directed all individuals currently living within San Mateo County to shelter in their place of residence and authorized individuals to leave their residences only for certain essential activities (“Shelter-in-Place Order”).
- H. On March 27, 2020, the City pursuant to City of Menlo Park Director of Emergency Services/City Manager Emergency Order No. 2 (“Order No. 2”) closed all public facilities including the Burgess Pool and the Belle Haven Pool to help slow the spread of COVID-19.

- I. The State of California has developed a resilience roadmap that identifies four stages to reopening: stage 1 (safety and preparedness), stage 2 (lower risk workplaces), stage 3 (higher risk workplaces), and stage 4 (end of stay at home order).
- J. On May 15, 2020 the San Mateo County Health Officer issued a revised Shelter-in-Place Order, inclusive of appendixes, that in this second stage allows the reopening of public pools subject to certain safety precautions ("Revised Order"). A copy of the Revised Order is attached hereto as Exhibit A. The Revised Order was subsequently amended on May 29 to allow, with restrictions and safety measures, places of worship to hold services and retail stores to allow customers inside. The Parties anticipate that the County of San Mateo will continue to issue revised orders during this time of local emergency.
- K. On May 19, 2020, Provider submitted a plan to the City to operate the Burgess Pool in accordance with the Revised Order, but it was not legal to reopen based on the City's March 11, 2020 declaration of emergency and Order No. 2 closing public facilities, including the Burgess and Belle Haven pools. On June 2, Provider submitted a revised plan to reopen both the Burgess Pool and the Belle Haven Pool attached hereto as Exhibit B.
- L. The Parties desire to provide for a reopening process for the Burgess Pool and the Belle Haven Pool in the event the Director of Emergency Services modifies Order No. 2 and allows the opening of public facilities.
- M. The City and Provider desire to enter into this Amendment to memorialize the process of reopening the Burgess Pool and Belle Haven Pool throughout the stages, until the local emergency is terminated.

NOW THEREFORE, the Parties agree as follows:

- 1. The Parties agree that given the above described conditions, Provider has been unable to perform the Services described in the Agreement since March 12, 2020. The Parties further agree that until the City modifies Order No. 2, Provider is not legally allowed by the City to operate because public facilities are closed. The Parties further agree that the Agreement is in full force and effect and neither Party is in default.
- 2. The parties agree that Provider will resume services under the Agreement within five days, or earlier, of the Emergency Director's modification of Order No. 2 to allow the re-opening the pools.
- 3. While the local emergency is in effect, Provider shall adhere to the social distancing protocols and best practices established by the County of San Mateo Health Officer on May 15, 2020, a copy of which is attached hereto and incorporated herein as Exhibit C, and as may be modified from time to time. In addition, Provider shall comply with all legally required safety precautions identified in the Revised Order and any future orders issued by the Governor, the San Mateo County Health Officer or the City of Menlo Park affecting public swimming pools. Safety precautions include but are not limited to the use of personal protective equipment, social distancing requirements, symptom checks and tracking attendance. Furthermore, Provider shall continue to comply with any and all city,

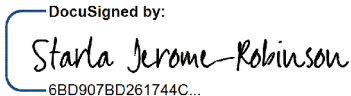
county, state and federal laws and regulations related to pool and aquatic program operations as required by the Agreement.

4. It is of critical importance to the City that the Belle Haven Pool be reopened at the same time as the Burgess Pool to ensure that recreational aquatics opportunities are available to the whole community. Provider agrees to reopen both the Burgess Pool and the Belle Haven Pool concurrently within five days or earlier from the modification of Order No. 2 allowing the reopening of the pools, consistent with the phases identified in the Provider's reopening plan, attached hereto as Exhibit B and provide any and all services included in the Scope of Services which are legally allowable pursuant to the Revised Order, including but not limited to lap swim. The use of the locker rooms is not allowed in the second phase of reopening. Limited use of bathrooms will be provided for as documented in Exhibit B.
5. Provider agrees to increase the services and provide any and all services included in the Scope of Services at both the Burgess Pool and the Belle Haven Pool as soon as provision of such services is both legally allowable pursuant to any state, county or local law and Provider is reasonably able to comply with any and all legally required safety precautions. SOLO swim team will be allowed to return to pool usage as soon as the Provider and SOLO agree upon and can accommodate the safety precautions required by San Mateo County Health Order. Prior to use of the pool, SOLO shall acknowledge in writing its acceptance of such precautions and agreement to abide by the terms of this Amendment. The City understands that the application of required safety precautions at the Burgess and Belle Haven pools is nuanced and that it is possible that activities that are allowed under existing health orders and directives may still be deemed unsafe by the Provider. In such situation, Provider shall provide written notice to and obtain consent, which may not be unreasonably withheld, from the City Manager or her designee for such adjustments.
6. In accordance with Paragraph 6 of the Agreement, the Parties will work together during the second and third stage to modify operations, access and schedule as appropriate. Provider agrees to provide weekly reports regarding capacity, residents/non-residents use, and fee subsidies provided for each pool and the Parties agree to meet and confer as necessary to address any issues. Any schedule modifications shall be subject to approval by the City Manager or her designee and shall be acted on within a commercially reasonable time (typically within 48 hours of request) and shall not be unreasonably withheld. The Parties acknowledge that the situation relative to COVID-19 may change rapidly and the stage may be increased or decreased. The Parties agree to allow a commercially reasonable time to respond to requests for modification. If the City returns to stage one and public facilities are again closed, Provider will cease operations immediately without need for a modification request.
7. The term of this Amendment shall continue until the fourth stage of the County's Orders and the City's termination of the local emergency after which time this Amendment will terminate and the Agreement will continue unamended.
8. The City shall pay the Provider the Belle Haven Management Fee for the period beginning June 1, 2020 through the pool's scheduled closing on October 1, 2020, as previously agreed.

9. Provider shall be granted access to the Burgess Pool and Belle Haven Pools only for preparation for opening no later than Friday June 5 through Tuesday June 9 and then after the Emergency Director's modification of Order No. 2 reopening the pools. Any time and expense to prepare the use of the pool prior to the modification of Order No. 2 shall be Provider's sole cost and expense understanding Order No. 2 may or may not be modified on June 9.
10. The Parties acknowledge that the COVID-19 crisis has placed Provider in a precarious financial position. Nevertheless, Provider is prepared to move forward and open the pools. In consideration of this Amendment, Provider shall have the right to terminate this Amendment and the original Agreement upon demonstrating to the City Manager that continuing operation would not be financially feasible with 30 days written notice provided to City.
11. In addition to the indemnification identified in Paragraph 24 of the Agreement, Provider specifically agrees to indemnify and hold the City, its Council, Commissions, agents, officers, volunteers or employees harmless from any and all claims, legal action or causes of action related to contraction of the COVID-19 virus at either pool alleged by any source, including but not limited to Provider's employees and pool patrons, during Provider's use of the Premises. Provider's indemnification obligation as set forth herein will include any and all costs, expenses, attorneys' fees and liability incurred by the Provider or any person in defending against such claims, whether the same proceed to judgment or not. The Provider will, at its own expense and upon written request by the City, defend any such suit or action brought against the City, its Council, Commissions, members, agents, officers, volunteers or employees. This section will survive the expiration or termination of this Amendment. This indemnity obligation will not cover any COVID-19 related claims that are based on the actions or negligence of the City, its employees, representatives or contractors (other than the Provider and its employees, subcontractors and agents).
12. Except to the extent expressly modified by this Amendment, the terms of the Agreement shall remain effective without impairment or modification.
13. This Agreement shall be effective only if the City allows Provider to open the pools in accordance with the San Mateo County Health officer's guidelines on or before June 12, 2020.
14. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one Amendment.

IN WITNESS WHEREOF, the Parties have executed this Amendment by their duly authorized officers as of the date first set forth above.

CITY OF MENLO PARK

By:  _____
DocuSigned by:
Starla Jerome Robinson
6BD907BD261744C...

Approved as to Form:

DocuSigned by:
Cara E. Silver
CD6C53C794F6491... _____
Interim City Attorney

ATTEST:

DocuSigned by:
[Signature]
39280A20D0BE491... _____
City Clerk

TEAM SHEEPER, L.L.C.

501 Laurel Street
Menlo Park, CA 94025

DocuSigned by:
Tim Sheeper
By: 8D6D1B94CF7B4BC... _____
Tim Sheeper, Chief Executive Officer

Approved as to Form:

DocuSigned by:
[Signature]
088537C219454F5... _____
Attorney for Team Sheeper



Public Health, Policy & Planning
225 37th Avenue
San Mateo, CA 94403
smchealth.org

Order No. c19-5d – Appendix C-2: Allowed Additional Activities

May 15, 2020

General Requirements

The “Additional Activities” listed below may resume, subject to the requirements set forth in the Order and to any additional requirements set forth below or in separate guidance by the Health Officer. These activities were selected to implement an initial measured expansion of activity based on health-related considerations including the risks of COVID-19 transmission associated with types and modes of activity, the ability to substantially mitigate transmission risks associated with the operations, and related factors, such as the following:

- **Increase in mobility and volume of activity**—the overall impact resumption of the activity will have on the number of people leaving their homes and interacting with others in the community;
- **Contact intensity**—the type (close or distant) and duration (brief or prolonged) of the contact involved in the activity;
- **Number of contacts**—the approximate number of people that will be in the setting at the same time;
- **Modification potential**—the degree to which mitigation measures can decrease the risk of transmission.

List of Additional Activities

Notwithstanding Section 15.a regarding outdoor recreation areas and shared recreation facilities, for the purposes of this Order Additional Activities include the following:

- (1) Indoor and outdoor pools, outdoor recreation areas, and outdoor shared recreation facilities may be opened, but only if they are actively monitored and managed to ensure that the facility is either (1) only used by members of the same household or (2) used in a manner that ensures that all social distancing, face covering and all other requirements (including the prohibitions against gathering and shared equipment), including Health Officer orders, are enforced. Any measures put in place must be reflected in the required posted written protocols.
 - a. Basis for Addition. Indoor and outdoor pools, outdoor recreation areas, and outdoor shared recreation facilities that are actively managed and monitored in a manner that ensures that the social distancing, face covering and all other requirements (including the prohibitions against gathering and shared equipment), including Health Officer orders, are enforced, the likelihood of transmission is significantly reduced.



**Team Sheepher
Burgess and Belle Haven Pool
Covid-19 Operations
2020 Reopening
Standard Operating Procedures**

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General Operations

Introduction

This document has been created to operate under the safety guidelines for covid -19 to ensure the safety of staff and participants. These policies and procedures will outline staff, consumer and facility operations. This document will be updated regularly as County, City, CDC guidelines change for the covid-19 response. Our company will align daily on updates and new guidelines, and this document will change as those guidelines are updated.

Phases in Reopening

These Phases are subject to change depending on county and city guidelines. The plan outlines what could be possible for us to offer to the community under current guidelines but could change as far as timeline.

Phase 1.

This phase will open the facility with minimal programming. The programming will be limited to Lap Swimming and Summer Camps. This will ensure that the facility is operating in a manner that is safe for all and will be able to adhere to county guidelines. We hope to move to phase 2 fairly quickly, once operations are smoothly operating.

Phase 2.

This phase will begin to add small amounts of programming within the facility. These programs will be Masters Swimming, Swim Lessons and Open Swim for families in the same household in designated areas for their family. Again, this phase will last as long as it takes for smooth operations, then the next phase will be undertaken.

Phase 3.

Phase 3 will consist of adding in Aqua-fit, potential locker rooms, more restroom usage for patrons, showers, front office and youth sports.

Phase 4.

This phase will only happen when guidelines allow normal operations with full programming. This will include continued enhanced cleaning and disinfecting. This phase will continue to modify all programming as guided by the county and city recommendations.

Facility Operations

San Mateo County Operating Guidelines

A letter from the San Mateo County Health Department

Dear Pool Owners,

On Friday, May 15, 2020, the San Mateo County Pool Program received the Health Officer's Order regarding the reopening of public pools. We are excited that San Mateo County residents now have a new option for exercise during this unprecedented time. Spas must continue to remain closed per this Order.

We received many inquiries about how to safely open public pools. The attached documents are guidelines for you to use as a reference. The Order must be adhered to in its entirety while allowing your pool to operate. You must post PROTOCOLS (unique to pools per Appendix C-2) and include all required information for PROTOCOLS FOR BUSINESSES (per May 15 Order, bullet 15.h), and SIGNAGE (per May 15 Order, bullet 15.h.vii). We have attached samples to assist you, but you can create your own. Protocols and signage must be posted conspicuously at the gate entry or other easily viewable location for patrons and law enforcement to review. We recommend that these documents be laminated or placed in plastic sleeves to prevent deterioration or water damage.

Refer to the attachments for details. Feel free to add additional protocols in the attached samples for further safe practices.

Highlights to remember:

- Pool operators (i.e., HOA, apartment and hotel management) are legally responsible for ensuring the pool's operation is compliant with the Order and must actively manage the pool's operation and compliance with the Order.
- Gatherings are still prohibited (i.e., the pool deck cannot be open for lingering/loitering of non-family members)
- Minimum of 6-foot Social Distancing (100% requirement, in and out of the pool)
- Face coverings are mandatory when not in the pool
- Locker rooms cannot be occupied
- Restrooms, if open, must have a rigorous cleaning and disinfection protocol

- Equipment in the pool area, including deck furniture, must be wiped down after EACH use

We will be resuming our inspections but will leave if site conditions are unsafe for our staff. If this occurs, you may be charged a reinspection fee.

Don't hesitate to contact our office (email: ngwong@smcgov.org) if you have any additional questions.

Sincerely,

San Mateo County Swimming Pool Program

Environmental Health Services San Mateo County Health (650) 372-6200

Order No. c19-5d – Appendix C-2: Allowed Additional Activities May 15, 2020

General Requirements

The “Additional Activities” listed below may resume, subject to the requirements set forth in the Order and to any additional requirements set forth below or in separate guidance by the Health Officer. These activities were selected to implement an initial measured expansion of activity based on health-related considerations including the risks of COVID-19 transmission associated with types and modes of activity, the ability to substantially mitigate transmission risks associated with the operations, and related factors, such as the following:

- **Increase in mobility and volume of activity**—the overall impact resumption of the activity will have on the number of people leaving their homes and interacting with others in the community;
- **Contact intensity**—the type (close or distant) and duration (brief or prolonged) of the contact involved in the activity;
- **Number of contacts**—the approximate number of people that will be in the setting at the same time;
- **Modification potential**—the degree to which mitigation measures can decrease the risk of transmission.

List of Additional Activities

Notwithstanding Section 15.a regarding outdoor recreation areas and shared recreation facilities, for the purposes of this Order Additional Activities include the following:

(1) Indoor and outdoor pools, outdoor recreation areas, and outdoor shared recreation facilities may be opened, but only if they are actively monitored and managed to ensure that the facility is either (1) only used by members of the same household or (2) used in a manner that ensures that all social distancing, face covering and all other requirements (including the prohibitions against gathering and shared equipment), including Health Officer orders, are enforced. Any measures put in place must be reflected in the required posted written protocols.

a. Basis for Addition. Indoor and outdoor pools, outdoor recreation areas, and outdoor shared recreation facilities that are actively managed and monitored in a manner that ensures that the social distancing, face covering and all other requirements (including the prohibitions against gathering and shared equipment), including Health Officer orders, are enforced, the likelihood of transmission is significantly reduced.

Burgess Pool

Entrance and Exiting Facility

Entrance

To enter the pool facility patrons must comply with county guidelines or will be refused service and not allowed to enter pool.

- 1.Social Distancing
- 2.Wearing a facemask
- 3.Temperature taken before entry

As patrons enter the facility there will be social distancing dots on the ground for them to line up at a minimum of 6ft apart. Patrons not wearing a mask will be asked to please put one on and if they do not have one, they will have to come back when they do have one. There will be a door monitor to ensure patrons are following facility guidelines.

Once patrons have confirmed lane reservation, they will be given a number of a lane and then taken to their appropriate lane. Swimmers will be spaced out on even and odd lanes. (See Exhibit)

Front Desk Entrance

The location of the front desk will be inside of the building where there will be two open doors to reduce high touch points in building. Patrons will wait outside the front desk area until called in by the entrance monitor. Staff will be trained and prepare to interact with the public in a safe manner. Staff will be required to wear a facemask at all times while on duty. There will be a plexiglass shield installed for the protection of the staff member and patron being served. All payments will be taken prior to patrons' arrival via

registration system online or through our App on Apple or google store or the patron may call in to the pool to reserve a space in the pool.

Extra cleaning of this area will be done on an hourly bases to the entire front desk area. Doors to the facility will be left open to ensure there is no high touch points for staff or patrons.

Exiting Pool

When Patrons lane time is up a whistle will sound and patrons will exit their lane, dress and exit through the back of the facility while continuing to follow social distancing guidelines. Patrons will have 5 minutes to exit pool and leave so that the next set of swimmers can be brought into the facility. There will be an exit door monitor to ensure no patrons enter in the through the exit and to ensure the safety of all exiting the facility. Patrons will exit to the rear of the facility. See Exhibit

Locker rooms

Locker rooms will be closed to the public for the unforeseen future (or phase 3). Patrons will have to come to the pool in their swimsuit prior to arrival to the pool.

Bathrooms

There will be one restroom available for patrons to use. This restroom with be disinfected after each use to ensure safety for anyone using the facility.

There will also be a staff restroom that will be closed to the public and will also be disinfected by a staff member after each use.

Belle Haven Pool

Entrance and Exiting Facility

Entrance

To enter the pool facility patrons must comply with county guidelines or will be refused service and not allowed to enter pool.

- 1.Social Distancing
- 2.Wearing a facemask
- 3.Temperature taken before entry

As patrons enter the facility there will be social distancing dots on the ground for them to line up at a minimum of 6ft apart. Patrons not wearing a mask will be asked to

please put one on and if they do not have one, they will have to come back when they do have one. There will be a door monitor to ensure patrons are following facility guidelines.

Once patrons have confirmed lane reservation, they will be given a number of a lane and then taken to their appropriate lane. Swimmer will be spaced out on even and odd lanes.

Front Desk Entrance

The location of the front desk will be inside building. Staff will be trained and prepare to interact with the public in a safe manner. Staff will be required to wear a facemask at all times while on duty. There will be a plexiglass shield installed for the protection of the staff member and patron being served. All payments will be taken prior to patrons' arrival via registration system online or through our App on Apple or google store.

Extra cleaning of this area will be done on an hourly bases to the entire front desk area. Doors to the facility will be left open to ensure there is no high touch points for staff or patrons.

Exiting Pool

When Patrons lane time is up a whistle will sound and patrons will exit their lane dress and exit through the back of the facility while continuing to follow social distancing guidelines. Patrons will have 5 minutes to exit pool and leave so that the next set of swimmers can be brought into the facility. There will be a exit door monitor to ensure no patrons enter in the through the exit and to ensure the safety of all exiting the facility. Patrons will exit to the rear of the facility. See Exhibit

Locker rooms

Locker rooms will be closed to the public for the unforeseen future (or phase 3). Patrons will have to come to the pool in their swimsuit prior to arrival to the pool.

Bathrooms

There will be one restroom available for patrons to use. This restroom with be disinfected after each use to ensure safety for anyone using the facility.

There will also be a staff restroom that will be closed to the public and will also be disinfected by a staff member after each use.

Cleaning/Disinfecting Program

To ensure safe operations of the facility there will be an increase of frequency, documentation and training on proper cleaning, protection and frequency of the facility.

General cleaning guidelines from the CDC

How to clean and disinfect

Clean

- **Wear disposable gloves** to clean and disinfect.
- **Clean surfaces using soap and water, then use disinfectant.**
- Cleaning with soap and water **reduces number of germs, dirt and impurities** on the surface. **Disinfecting kills germs** on surfaces.
- **Practice routine cleaning** of frequently touched surfaces.
 - - More frequent cleaning and disinfection may be required based on level of use.
 - Surfaces and objects in public places, such as shopping carts and point of sale keypads should be cleaned and disinfected before each use.
- **High touch surfaces include:**
 - Tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets, sinks, etc.

Disinfect

- **Recommend use of disinfectant**
Follow the instructions on the label to ensure safe and effective use of the product.
Many products recommend:
 - Keeping surface wet for a period of time (see product label).
 - Precautions such as wearing gloves and making sure you have good ventilation during use of the product.

Always read and follow the directions on the label to ensure safe and effective use.

- Wear skin protection and consider eye protection for potential splash hazards
- Ensure adequate ventilation
- Use no more than the amount recommended on the label
- Use water at room temperature for dilution (unless stated otherwise on the label)
- Avoid mixing chemical products
- Label diluted cleaning solutions
- Store and use chemicals out of the reach of children and pets

You should never eat, drink, breathe or inject these products into your body or apply directly to your skin as they can cause serious harm. Do not wipe or bathe pets with these products or any other products that are not approved for animal use.

- **Diluted household bleach solutions may also be used** if appropriate for the surface.
 - Check the label to see if your bleach is intended for disinfection and has a sodium hypochlorite concentration of 5%–6%. Ensure the product is not past its expiration date. Some bleaches, such as those designed for safe use on colored clothing or for whitening may not be suitable for disinfection.
 - Unexpired household bleach will be effective against coronaviruses when properly diluted.
Follow manufacturer’s instructions for application and proper ventilation. Never mix household bleach with ammonia or any other cleanser.
Leave solution on the surface for **at least 1 minute**.
 - **To make a bleach solution**, mix:
 - 5 tablespoons (1/3rd cup) bleach per gallon of room temperature water
OR
 - 4 teaspoons bleach per quart of room temperature water
- Bleach solutions will be effective for disinfection up to 24 hours.
- **Alcohol solutions with at least 70% alcohol may also be used.**

Soft surfaces

For soft surfaces such as carpeted floor, rugs, and drapes

- **Clean the surface using soap and water** or with cleaners appropriate for use on these surfaces.
- **Launder items** (if possible) according to the manufacturer’s instructions. Use the warmest appropriate water setting and dry items completely.

OR

- **Disinfect with an EPA-registered household disinfectant.** These disinfectants meet EPA's criteria for use against COVID-19.
- **Vacuum as usual.**

Electronics

For electronics, such as tablets, touch screens, keyboards, remote controls, and ATM machines

- Consider putting a **wipeable cover** on electronics.
- **Follow manufacturer's instruction** for cleaning and disinfecting.
 - If no guidance, **use alcohol-based wipes or sprays containing at least 70% alcohol.** Dry surface thoroughly.

Cleaning and disinfecting your building or facility if someone is sick

- **Close off areas** used by the person who is sick.
 - Companies do not necessarily need to close operations, if they can close off affected areas.
- **Open outside doors and windows** to increase air circulation in the area.
- **Wait 24 hours** before you clean or disinfect. If 24 hours is not feasible, wait as long as possible.
- Clean and disinfect **all areas used by the person who is sick**, such as offices, bathrooms, common areas, shared electronic equipment like tablets, touch screens, keyboards, remote controls, and ATM machines.
- **Vacuum the space if needed.** Use vacuum equipped with high-efficiency particular air (HEPA) filter, if available.
 - Do not vacuum a room or space that has people in it. Wait until the room or space is empty to vacuum, such as at night, for common spaces, or during the day for private rooms.
 - Consider temporarily turning off room fans and the central HVAC system that services the room or space, so that particles that escape from vacuuming will not circulate throughout the facility.
- Once area has been **appropriately disinfected**, it can be opened for use.
 - **Workers without close contact** with the person who is sick can return to work immediately after disinfection.
- If **more than 7 days** since the person who is sick visited or used the facility, additional cleaning and disinfection is not necessary.
 - Continue routine cleaning and disinfection. This includes everyday practices that businesses and communities normally use to maintain a healthy environment.

Cleaning and disinfecting outdoor areas

- Outdoor areas, like **playgrounds in schools and parks** generally require **normal routine cleaning**, but **do not require disinfection.**

- Do not spray disinfectant on outdoor playgrounds- it is not an efficient use of supplies and is not proven to reduce risk of COVID-19 to the public.
- High touch surfaces made of plastic or metal, such as grab bars and railings should be cleaned routinely.
- Cleaning and disinfection of wooden surfaces (play structures, benches, tables) or groundcovers (mulch, sand) is not recommended.
- **Sidewalks and roads should not be disinfected.**
 - Spread of COVID-19 from these surfaces is very low and disinfection is not effective.

When cleaning

- **Regular cleaning staff** can clean and disinfect community spaces.
 - Ensure they are trained on appropriate use of cleaning and disinfection chemicals.
- **Wear disposable gloves and gowns for all tasks in the cleaning process, including handling trash.**
 - Additional personal protective equipment (PPE) might be required based on the cleaning/disinfectant products being used and whether there is a risk of splash.
 - Gloves and gowns should be removed carefully to avoid contamination of the wearer and the surrounding area.
- **Wash your hands often** with soap and water for 20 seconds.
 - Always wash immediately after removing gloves and after contact with a person who is sick.
 - Hand sanitizer: If soap and water are not available and hands are not visibly dirty, an alcohol-based hand sanitizer that contains at least 60% alcohol may be used. However, if hands are visibly dirty, always wash hands with soap and water.

Always read and follow the directions on the label to ensure safe and effective use.

- Keep hand sanitizers away from fire or flame
- For children under six years of age, hand sanitizer should be used with adult supervision
- Always store hand sanitizer out of reach of children and pets
- **Additional key times to wash hands** include:
 - After blowing one's nose, coughing, or sneezing.
 - After using the restroom.
 - Before eating or preparing food.
 - After contact with animals or pets.
 - Before and after providing routine care for another person who needs assistance (e.g., a child).

Training: All staff will be retrained on cleaning practices and what safety precautions are needed to clean facilities. There will be an added segment to this on infections disease and how to prevent spread of bacteria and viruses in a safe manor.

Documentation: All employees must document the time and work done for the cleaning duty. Each location in the facility will have different requirements of frequency and specifics depending on use of location.

Staff Operations

GENERAL GUIDELINES

Staff will be required to check in at the beginning of each shift with a manager at a designated location on site.

1. Temperature will be taken
2. Asked if they have had any symptoms
3. Then assigned duties for the day
4. Safety meeting and education
5. At the end of the day another temperate will be taken on their way out

During Shift:

1. Staff will have to wear a facemask at all times
2. Comply with social distancing guidelines
3. Staff will not share any items to be used for work or any other purposes

Daily Health checks

Employees will be required to fill out a digital daily health check form to ensure of their health and wellness and all others. This form will ask their name, temp, and symptoms in the last 48 hours. Once the form is filled out, they will be cleared for work

Patrons will have their temperature checked before entering the facility and signs will be posted about self-health and wellness checks. Patrons will be asked if they have felt any symptoms of illness at all that they not enter the facility or participate in any program. They will also be asked if they do test positive for covid-19 in the next 14 days of use of facility that they contact by email immediately.

Covid-19 Positive Operations

If an employee is found positive for Covid-19 and has been on site the facility will be closed for a minimum of 24 hours, until all other employees on that shift have been tested and are clear to work. Employees contacts at the facilities will be traced to ensure no others are found ill.

If a patron is found to have been at the facility and tested positive for covid-19 the facility will be shut down for a minimum of 24 hours to ensure we can trace possible infection and notify employees of possible exposure.

Daily PPE Requirements

Staff will be required to wear a facemask and sanitize their hands regularly. During an emergency there will be an increased level of PPE. This will be found in the emergency section of this document.

Patrons will be required to wear a facemask while walking through and around the facility. Patrons are allowed to remove their mask while swimming. They will be asked to wear the mask as they exit the facility.

Emergency Operations

Emergency Action Plan

Whistle Cadences

ONE BLAST: grab the attention of individual patron
TWO BLAST: grab the attention of another guard
THREE BLAST: activate the EAP
ONE LONG BLAST: clear the pool

Primary Guard

- Identify situation & activate EAP
- Approach Victim
 - Water emergency: Perform appropriate rescue
 - Land emergency: Size up the Scene & acquire Expressed Consent
- Primary assessment
- Perform appropriate care
- Secondary Assessment
- Report, Advise, Release

Secondary Guard (*most available guard*)

- Bring necessary equipment
 - Backboard
 - AED
 - First Aid
- **Bring first what is most important to the situation*
- Assign someone to call 911 & come back

- Assist Primary guard

Assisting Responders

- Clear pool & deck as needed
- Inform Front Desk of emergency
- Ensure EMS services are on their way
- Assist rescuers

When EMS Arrives

- Meet EMS on street & direct to emergency

When EMS Leaves

- *Primary guard & Leadership staff* - Report, Advise, Release

Lifeguard Emergency Response

In the event someone needs CPR staff will put on full PPE to include, Face Mask, Eye Protection and gloves.

General Prevention for COVID-19 Transmission During CPR and First Aid

While there is currently no specific data on COVID-19 transmission while performing CPR or giving first aid, it is reasonable to conclude that chest compressions have the potential to generate respiratory droplets or aerosols and close contact needed for some aspects of first aid may have risk of transmission.

PPE

For responders and those who may need to provide care to someone suspected to have COVID-19. We will require wearing PPE as recommended by CDC, this would be wearing respiratory protection using a respirator (e.g. N-95 mask), eye protection, disposable gloves and a disposable isolation gown if possible. Per CDC guidance facemasks are an acceptable alternative when there is shortage of N-95. During the COVID-19 pandemic, for all persons requiring CPR, personal protective equipment (PPE) such as gloves and face mask should be worn, if available.. We recognize that for lay responders, CPR and first aid is often performed for household members where there would have already been close contact and exposure.

We recommend placing a face mask or cloth covering over the mouth and nose of the victim may reduce the risk of transmission. If only 1 mask is available and it is a simple face mask, we recommend placing it on the victim.

Guidance for Performing a Breathing Assessment and Rescue Breaths in Children or Adults

While CPR with breaths has been shown to be beneficial when compared to compression-only CPR, during the COVID-19 outbreak, it is currently recommended that no rescue breaths be performed for adult cardiac arrest patients with confirmed or suspected COVID-19, due to the risk of disease transmission. The following measures are recommended and may be associated with a decreased risk of transmitting the virus:

- When assessing for normal breathing, we recommended that the CPR/first aid care provider looks for breathing but does not listen or feel for the victim's breathing, as this will minimize potential exposure.
- We recommend that adult victims of sudden cardiac arrest receive continuous compression-only CPR from their CPR/first aid care provider until emergency personnel arrive. *Note: Compression-only CPR saves lives compared to no CPR.*
- Cardiac arrests that occur after a breathing problem (which is often the case in infants and young children), drowning and drug overdoses may benefit from standard CPR that includes compressions and rescue breaths. *Note: It is recognized that in some of the cases, the victim may also have COVID-19. However, if a lay responder is unable or unwilling to provide rescue breathing with CPR, compression-only CPR should be initiated.*

Guidance for Compressions

Chest compressions and use of an AED is recommended for every cardiac arrest victim. Whether or not a cardiac arrest victim is suspected of having COVID-19, 9-1-1 should be called and, if available, an AED should be used.

Guidance for AED Application & Use

No studies to date have shown that defibrillation generates respiratory droplets or aerosols, and it is known that prompt use of AEDs save the lives of cardiac arrest victims. In addition, the current methods of automatic external defibrillation use hands-free methods via adhesive pads that allow performance without direct contact with the victim.

- If an AED is available, it should be applied and used consistently with the manufacturer's guidelines while waiting for emergency personnel to arrive.
- If gloves are available, they should be worn.
- The AED device should be cleaned with disinfectant after use.

Cleaning & Disinfection After First Aid Care

While still wearing personal protective equipment, clean and disinfect items that touched the victim. After cleaning, dispose of your personal protective equipment and perform hand hygiene. Surfaces should be cleaned using a detergent or soap and water prior to disinfection.

- For Hard Surfaces:
 - Diluted household bleach solutions, alcohol solutions with at least 70% alcohol and most common EPA-registered household disinfectants should be effective.
 - Products with EPA-approved emerging viral pathogens claims are expected to be effective against COVID-19 based on data for harder to kill viruses. Follow the manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, etc.). In their absence, products with label claims against human coronaviruses or other viruses should be used according to label instructions.

- For Soft or Porous Surfaces
 - For surfaces such as carpeted floor, rugs, and drapes; remove visible contamination if present, and clean with appropriate cleaners indicated for use on these surfaces.
 - After cleaning, wash items as appropriate in accordance with the manufacturer's instructions. If possible, wash items using the warmest appropriate water setting and dry completely or use products with the EPA-approved emerging viral pathogens claims that are suitable for porous surfaces.

- For Clothing:
 - Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
 - Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.
 - If clothing cannot be immediately laundered, store in a sealed disposable bag.

- Alternatives to EPA-registered disinfectants include:
 - Diluted household bleach: Mix 5 tablespoons (1/3 cup) bleach per gallon of water, or 4 teaspoons bleach per quart of water. Make sure you have proper ventilation and that the bleach is not expired.
 - Alcohol solutions: Ensure your solution has at least 70% alcohol.

Program Operations Burgess

Lap Swimming

Patrons will register for a lane online or by phone prior to arriving at the aquatic facility, to include payment online only. We will not be accepting cash at this time. Patrons will line up on the side gate of the pool where there will be lines for them to stand to stage for their turn to come into the facility. All social distancing guidelines will be adhered to or the patron may be ask to leave to include.

1. **Wearing a facemask** until about to get into pool
2. **Stay 6 feet apart** from each other including staff

Once checked-in patrons will be allowed to walk to their lane once the group before them has left the facility. They will have 5 minutes to get into the pool and out of the pool after their swim. Patrons will stagger at either end of the pool to ensure social distancing. **There will be only 1 person lane** (unless family in the same household is swimming with each other). Once 35 minutes are up a guard will blow a whistle signaling each swimmer has 5 minutes to get out of the pool and exit through the back gate adjacent to the pool.

Open Swim

Open swim will have designated times for families and individuals to come a reserve a space in our play pool. Each family from the same household will have a lane in one of our bigger pools or in our baby pool to ensure social distancing. Each family can reserve a space in pool online for 1-hour increments as space permits.

Swim Lessons

The swim lesson programming guidelines will fully utilize the existing facility plan for covid-19 controls. The goal is to provide the highest level of swim lesson programming while maintaining social distance, minimizing contact to high touch areas and objects, and to maintain a consistent routine of disinfecting swim equipment and facility features.

Social distancing will be adhered to when arriving to the facility, checking in and staging within a designated staging area prior to the swim lesson. Participants will store their belongs at their assigned spot within the staging area.

Lessons will be held in either a private, instructor guided parent/children's lesson, and or a single family from the same household with parent in the water with kids and instructor on the deck with a facemask on. These lessons will also be staggered to avoid gatherings of people.

Camps

The goal of our summer camps will provide care for the children of the community in a fun and safe environment while following all county, city, and cdc guidelines for covid-19. We want to create this environment give families peace of mind while being care for at our facility.

Goal to run 4 morning camps and 4 pm camps in controlled groups of 12.

We will follow guidelines as followed:

Childcare establishments, summer camps, and other educational or recreational institutions or programs providing care or supervision for children of all ages. To the extent possible and compliant with any licensing requirements, these operations must also comply with the following conditions:

- 1.They must be carried out in stable groups of 12 or fewer children ("stable" means that the same 12 or fewer children are in the same group each day and for at least four consecutive weeks). No child will be added to the group if a child does not come to camp. These groups will remain the same for 3 weeks including staff.

- 2.Children shall not change from one group to another or attend more than one childcare establishment, summer camp, other educational or recreational instruction or program simultaneously.

3.If more than one group of children is at one facility, each group shall be in a separate rooms or spaces that cannot be accessed by children or adults outside the stable group. Groups shall not mix with each other.

4.Providers, educators and other staff cannot serve more than one group of children and shall remain solely with that group of children during the duration of the childcare establishment, summer camp, other educational or recreational institution or program.

Program Operations Belle Haven

Lap Swimming

Patrons will register for a lane online or by phone prior to arriving at the aquatic facility, to include payment online only. We will not be accepting cash at this time. Patrons will line up on the side gate of the pool where there will be lines for them to stand to stage for their turn to come into the facility. All social distancing guidelines will be adhered to or the patron may be ask to leave to include.

1. **Wearing a facemask** until about to get into pool
2. **Stay 6 feet apart** from each other including staff

Once checked-in patrons will be allowed to walk to their lane once the group before them has left the facility. They will have 5 minutes to get into the pool and out of the pool after their swim. Patrons will stagger at either end of the pool to ensure social distancing. **There will be only 1-person lane** (unless family in the same household is swimming with each other). Once 35 minutes are up a guard will blow a whistle signaling each swimmer has 5 minutes to get out of the pool and exit through the back gate adjacent to the pool.

Open Swim

Open swim will have designated times for families and individuals to come a reserve a space in our play pool. Each family from the same household will have a lane in one of our bigger pools or in our baby pool to ensure social distancing. Each family can reserve a space in pool online for 1-hour increments as space permits.

Swim Lessons

The swim lesson programming guidelines will fully utilize the existing facility plan for covid-19 controls. The goal is to provide the highest level of swim lesson programming while maintaining social distance, minimizing contact to high touch areas and objects, and to maintain a consistent routine of disinfecting swim equipment and facility features.

Social distancing will be adhered to when arriving to the facility, checking in and staging within a designated staging area prior to the swim lesson. Participants will store their belongs at their assigned spot within the staging area.

Lessons will be held in either a private, instructor guided parent/children's lesson, and or a single family from the same household with parent in the water with kids and instructor on the deck with a facemask on. These lessons will also be staggered to avoid gatherings of people.

Camps

The goal of our summer camps will provide care for the children of the community in a fun and safe environment while following all county, city, and cdc guidelines for covid-19. We want to create this environment give families peace of mind while being care for at our facility.

Goal: To run 1 camp in the morning and 1 in the afternoon, following

We will follow guidelines as followed:

Childcare establishments, summer camps, and other educational or recreational institutions or programs providing care or supervision for children of all ages. To the extent possible and compliant with any licensing requirements, these operations must also comply with the following conditions:

- 1.They must be carried out in stable groups of 12 or fewer children ("stable" means that the same 12 or fewer children are in the same group each day and for at least four consecutive weeks). No child will be added to the group if a child does not come to camp. These groups will remain the same for 3 weeks including staff.
- 2.Children shall not change from one group to another or attend more than one childcare establishment, summer camp, other educational or recreational instruction or program simultaneously.
- 3.If more than one group of children is at one facility, each group shall be in a separate rooms or spaces that cannot be accessed by children or adults outside the stable group. Groups shall not mix with each other.

4. Providers, educators and other staff cannot serve more than one group of children and shall remain solely with that group of children during the duration of the childcare establishment, summer camp, other educational or recreational institution or program.

Exhibit A

A. Facility Map Entrance and Exit

Burgess Pool



Exhibit A Continued



Exhibit A Continued



Exhibit A Continued

Belle Haven Pool



B.


Exhibit B: Health Check Form


Questions Responses 1

Employee Covid Check-In Sheet

Form description

Full Name *
Short answer text

Today's Date *
Month, day, year 

Time *
Time 

Temperature *
Short answer text

Symptoms (if any) *
Long answer text

C.
D.

Exhibit C: Thermometers



Exhibit D: General PPE information



Infection Prevention and Control

Taking off (Doffing) Personal Protective Equipment (PPE)

1 **Gloves**

A Grasp the outside edge of the glove near the wrist and peel away from the hand, turning the glove inside-out.

- ◆ Hold the glove in the opposite gloved hand.

B Slide an ungloved finger or thumb under the wrist of the remaining glove.

C Peel the glove off and over the first glove, making a bag for both gloves.

- ◆ Put the gloves in the garbage.

2 **HAND HYGIENE**

A Using an alcohol-based hand rub is the preferred way to **clean your hands**.

B If your hands look or feel dirty, soap and water must be used to wash your hands.

3 **Gown**

A Carefully unfasten ties.

B Grasp the outside of the gown at the back of the shoulders and pull the gown down over the arms.

C Turn the gown inside out during removal.

- ◆ Put in hamper or, if disposable, put in garbage.

4 **HAND HYGIENE**

- ◆ **Clean your hands.** (See No. 2)
- ◆ Exit the patient room, close the door and **clean your hands** again.

5 **Eye protection or face shield**

- ◆ Handle only by headband or ear pieces.
- ◆ Carefully pull away from face.
- ◆ Put reusable items in appropriate area for cleaning.
- ◆ Put disposable items into garbage.

6 **Mask or N95 respirator**

- ◆ Bend forward slightly and carefully remove the mask from your face by touching only the ties or elastic bands.
- ◆ Start with the bottom tie, then remove the top tie.
- ◆ Throw the mask in the garbage.

There are different styles of N95 respirators but all styles have the same basic steps for doffing.

7 **HAND HYGIENE**

- ◆ **Clean your hands.** (See No. 2)

Exhibit E: Facility Signs

**EVERYONE
MUST WEAR A
FACE COVERING***



Covering your face is now mandatory and helps prevent the spread of COVID-19.

Masks, bandanas, scarves, and cloth can be used. *This order does not apply to those 12 years old and less.

**...AND STAY 6 FEET
APART**

FOR MORE INFORMATION

- menlopark.org/coronavirus
- smchealth.org/coronavirus
- cdc.gov/coronavirus

EVERYONE MUST WEAR A FACE COVERING*

Covering your face is now mandatory and helps prevent the spread of COVID-19.



Masks, bandanas, scarves, and cloth can be used.

* This order does not apply to those 12 years old and less.

...AND STAY 6 FEET APART

This business is required to refuse service to anyone who does not comply.

Todos deben de usar una cobertura facial*

Cubrirse la cara ahora es obligatorio y ayuda a prevenir la propagación de COVID-19. Se pueden usar máscaras, pañuelos, bufandas y telas.

* Esta orden no aplica a aquellos que tengan 12 años de edad o menos.

...y mantenerse a 6 pies de distancia.

Este negocio está requerido a negarle el servicio a cualquier persona que no cumpla con este requisito.

每个人都必须佩带面罩*

现在要求强制性佩带面罩，帮助防止新型冠状病毒地传播。口罩，头巾，围巾和布料都可以。

* 该规定不适用于12岁及以下人群。

...并且保持6尺社交安全距离

商家不得为没有遵守规定的人提供服务。



COUNTY OF SAN MATEO

www.smcgov.org



SAN MATEO COUNTY HEALTH

SOCIAL DISTANCING DURING CORONAVIRUS

Social distancing is an action encouraged by public health officials to stop or slow down the spread of a highly contagious disease. This information is being provided to help you understand what you are being asked to do by the Health Officer.

STOP THE SPREAD OF CORONAVIRUS (COVID-19)

If you must be in a public space, maintain 6 feet of distance from others



What are social distancing measures?

Social distancing measures are taken to restrict when and where people can gather to stop or slow the spread of infectious diseases. Social distancing measures include limiting large groups of people coming together, closing buildings and canceling events. When in public spaces it is important to stay 6 feet away from other people.

Why would social distancing measures be used?

Since the start of the spread of coronavirus, social distancing measures will be used early on to slow the spread of the disease and provide our community with the valuable time needed to be better prepared.

What can I do?

Practicing good hygiene habits such as washing your hands and covering your cough will help to stop or slow the spread of many diseases. The San Mateo County Health website (www.smchealth.org) has 'Wash Your Hands' and 'Cover Your Cough' posters you can download and use.

It is important to follow any social distancing instructions from San Mateo County Health. Please stay informed and plan ahead.

IMPORTANT RESOURCES DURING THE COVID-19 PANDEMIC

For questions or concerns, please dial 2-1-1

For more information about health issues and emergency preparedness, please visit the following websites:

County Health: www.smchealth.org/coronavirus

San Mateo County: www.smcgov.org



U.S. CDC: www.cdc.gov/coronavirus/2019-ncov



SAN MATEO COUNTY HEALTH

Dial 2-1-1 for non-emergency, non-medical calls
smchealth.org/coronavirus

Exhibit F: Pool Documents



SAN MATEO COUNTY HEALTH
**ENVIRONMENTAL
HEALTH SERVICES**

PROTECT YOURSELF & OTHERS FROM COVID-19

DO:

- Shower before entering the pool**
- Stay at least 6 feet away from others to maintain social distancing**
- Keep your hands clean by washing hands with soap and water, especially after going to the bathroom, before eating, and after blowing your nose, coughing, or sneezing**
- Wear face coverings except in the pool or exempted by the Health Officer.**

DON'T:

- Visit the pool or other public areas if you are sick with COVID-19, were recently exposed (within 14 days) to someone with COVID-19, or experience the following symptoms: *fever, cough, shortness of breath or difficulty breathing, chills, repeated shaking with chills, muscle pain, headache, sore throat, new loss of taste or smell***
- Gather in large group**

STAY INFORMED WITH THE SOCIAL DISTANCING PROTOCOL
San Mateo County COVID-19: smchealth.org/coronavirus
COVID-19 Hotline: Dial 211



SAN MATEO COUNTY HEALTH
ENVIRONMENTAL HEALTH SERVICES

Environmental Health Services
Pool Program
 2000 Alameda de las Pulgas, Suite #100
 San Mateo, CA 94403
 (650) 372-6200 FAX (650) 627-8224
 smhealth.org/food

PUBLIC SWIMMING POOLS DAILY CHECKLIST AND ATTENDANCE RECORD DURING COVID-19

A separate copy of this checklist should be maintained for each day a public pool is open during the COVID-19 Shelter in Place Order. One checklist may be kept for multiple pools within the same enclosure. The checklist shall be maintained for at least 90 days for possible review by personnel from the San Mateo County Environmental Health Services.

FACILITY NAME: DATE:

NAME OF SUPERVISING PARTY:

- | | YES | NO |
|---|--------------------------|--------------------------|
| 1. Sign(s) posted at each entrance regarding Guidelines for Pool Users? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Reduced pool capacity sign posted? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Designated personnel can maintain six-foot separation? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Designated personnel has face covering? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Restrooms cleaned & disinfected frequently? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. High touch areas cleaned & disinfected frequently? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Hand washing station or hand sanitizer station stocked & available? | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Tape/markings to guide six-foot distancing? | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Pool water is tested prior to opening the pool? | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Pool water is tested at 4 hour intervals until pool is closed? | <input type="checkbox"/> | <input type="checkbox"/> |

Time	Free Chlorine (ppm)	pH	Notes
Pool Open (i.e. 8:00 am)			
Midday (i.e. 12:00 pm)			
Pool Close (i.e. 4 pm)			



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APPENDIX C-2 ALLOWED ADDITIONAL ACTIVITIES

SAMPLE GUIDELINES FOR PUBLIC SWIMMING POOLS
SPAS MUST CONTINUE TO REMAIN CLOSED PER THIS ORDER (MAY 22, 2020)

FACILITY NAME

SITE ADDRESS/CITY/ZIP

THE HEALTH OFFICER'S ORDER PROHIBITS GATHERING AT THE POOL. THE POOL MUST BE ACTIVELY MONITORED AND MANAGED TO ENSURE THAT THE HEALTH OFFICER'S ORDERS ARE ENFORCED

Pool owner/operator (i.e., HOA, apartment and hotel management) are legally responsible for ensuring the pool's operation is compliant with the Order.

SIGNAGE

- Post a copy of the Social Distancing Sign at each gate entry or other easily viewable location.
- Post a copy of the Social Distancing Guidelines (Appendix C-2) at each gate entry or other easily viewable location.
- Other: _____

MEASURES TO PREVENT GATHERING AND ENSURE SOCIAL DISTANCING

- Ensure social distancing by (1) having members of the same household use the pool at the same time period or (2) in a manner that ensures the Health Officer orders are enforced (recommend dividing pool occupancy by half). Any measures put in place must be reflected in the required posted written protocols.
- Minimum six feet of social distancing is required in and out of the pool.
- No personal contact in and out of pool unless pool users are from the same household (No contact swim lessons).
- Lap swimming shall be separated by alternate lanes or maintain 6 feet social distancing. Only one person per lane.
- Face covering is required for all those on the pool deck. Do not wear a face covering while in the pool.
- Eliminate shared equipment and pool furniture in the facility or disinfect after each use.
- Place tape or other markings at least six feet apart in pool user line areas or any other area in the pool where pool users congregate (e.g. line for outdoor showers).
- Other: _____



SAN MATEO COUNTY HEALTH
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EXHIBIT C

APPENDIX C-2 ALLOWED ADDITIONAL ACTIVITIES

SAMPLE GUIDELINES FOR PUBLIC SWIMMING POOLS
SPAS MUST CONTINUE TO REMAIN CLOSED PER THIS ORDER (MAY 22, 2020)

FACILITY NAME

SITE ADDRESS/CITY/ZIP

THE HEALTH OFFICER'S ORDER PROHIBITS GATHERING AT THE POOL. THE POOL MUST BE ACTIVELY MONITORED AND MANAGED TO ENSURE THAT THE HEALTH OFFICER'S ORDERS ARE ENFORCED

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- No personal contact in and out of pool unless pool users are from the same household (No contact swim lessons).
- Lap swimming shall be separated by alternate lanes or maintain 6 feet social distancing. Only one person per lane.
- Face covering is required for all those on the pool deck. Do not wear a face covering while in the pool.
- Eliminate shared equipment and pool furniture in the facility or disinfect after each use.
- Place tape or other markings at least six feet apart in pool user line areas or any other area in the pool where pool users congregate (e.g. line for outdoor showers).
- Other: _____

MEASURES TO INCREASE SANITATION

Cleaning and Disinfecting Pools:

- Maintain proper disinfectant levels:

Type	Free Chlorine	pH
Pools With Cyanuric Acid	2-10 ppm	7.2-7.8
Pools Without Cyanuric Acid	1-10 ppm	7.2-7.8

- Ensure daily monitoring and recording of pool chemicals (chlorine, pH, and cyanuric acid). If the
- operator notices the chemicals are not within their appropriate range, the pool shall be closed until the chemicals are balanced to the correct levels.
- Recommend maintaining a checklist with attendance records to aid in contact tracing as needed.

Cleaning and Disinfecting Ancillary Areas:

- Keep locker rooms closed.
- Stock handwashing stations with liquid soap and paper towels. Provide hand sanitizer with at least 60% alcohol for pool users/visitors to use.
- Clean and disinfect frequently touched surfaces: handrails and ladders ADA liftdoor/gate handles surfaces of restrooms: handwashing stations diaper changing stations, and showers any multi-touch contact surface that have been identified
- *Examples of disinfectants: Alcohol solutions with at least 70% alcohol may be used for surfaces. Diluted household bleach solutions may also be used: To make a bleach solution, mix: 5 tablespoons (1/3rd cup) bleach per gallon of water as per CDC Guidelines**

MEASURES TO PROTECT EMPLOYEE HEALTH (IF APPLICABLE)

- Distribute a copy of the safety guidelines to each employee.
- Instruct employees not to come to work for at least 14 days if they are exhibiting COVID-19 symptoms and/or seek a health care provider.
- Check employees for symptoms (fever, cough, or shortness of breath) of illness prior to entering work space by following CDC guidelines.
- Employees shall wear face coverings in the workplace.
- Liquid soap, warm water, and paper towels are available to all employees for handwashing.
- Hand sanitizer (at least 60% alcohol) and other EPA approved disinfectants are available to all employees.
- Individual work stations are separated by at least six feet or with a physical barrier.

- All employees/attendants have been instructed to maintain at least six feet distance from pool users and from each other as much as practicable.
 - Sanitize all individual work stations and common touch points frequently.
 - Common areas such as break rooms and bathrooms are to be sanitized after each use.
- For indoor pools, make sure ventilation systems work properly. Increase air circulation by introducing
- outdoor air as much as possible by opening windows and doors or using fans.; however, do not open windows and doors if doing so poses a safety risk to staff, patrons, or swimmers.
 - Other: _____

Optional Measures:

For additional information refer to the latest Health Officer's order:

<https://www.smchealth.org/post/health-officer-statements-and-orders>

IT IS THE LEGAL RESPONSIBILITY OF THE POOL OWNER/OPERATOR TO ENSURE ALL APPLICABLE REQUIREMENTS ARE FOLLOWED TO PROTECT THE SAFETY OF THE POOL USERS. IF OPERATORS ARE UNABLE TO DO SO, THE POOL SHALL REMAIN CLOSED.

Contact the owner or person in charge listed below with any questions about the following safety measure protocols.

NAME _____

EMAIL _____ **PHONE NUMBER** _____

PROFESSIONAL SERVICES AGREEMENT
(Menlo Park Aquatic Facilities)

This Professional Services Agreement (“Agreement”) is made and executed as of March 27, 2018, by and between the City of Menlo Park, a municipal corporation (“City”), and Team Sheeper, Inc., a California S Corporation (“Provider”), referred to herein individually as “Party” and collectively as “Parties”.

WHEREAS, City is the owner of certain premises (“Premises”) described below, and desires to provide recreational aquatics programming for the benefit of the community at the Premises;

WHEREAS, City desires to engage Provider to provide the recreational aquatics programming, including swim instructors and certified lifeguards to provide lap swim, open swim, youth swim team, youth and adult swim lessons, youth camps, masters swim, aqua-fit classes and lane rentals for community swim teams and other community organizations at the Premises (“Services”) consistent with the current level of programming;

WHEREAS, Provider has been providing the Services pursuant to a Lease Agreement, which is expiring on March 31, 2018, and has the necessary professional expertise, qualifications and capability, and all required licenses and/or certificates to provide the services; and

WHEREAS, City and Provider desire to enter into this Agreement on the terms and conditions set forth below.

NOW, THEREFORE, the Parties agree as follows:

1. PREMISES. The Premises includes both the “Burgess Pool”, 501 Laurel Street, Menlo Park, CA and the “Belle Haven Pool”, 100 Terminal Avenue, Menlo Park, CA as defined herein. Burgess Aquatic Facility (“Burgess Pool”) consists of the fenced pool area at the City’s Civic Center campus at Burgess Park. Burgess Pool includes the lap pool, instructional pool, toddler activity pool, locker rooms and restrooms, offices, lawn area, pool mechanical room, lobby area, and all associated areas in the City of Menlo Park, County of San Mateo, State of California, as more particularly shown in Exhibit A, attached hereto and incorporated herein by reference. The Belle Haven Pool (“Belle Haven Pool”) is a six-lane x 25-meter outdoor swimming pool located adjacent to the Onetta Harris Community Center. Belle Haven Pool includes a locker room, shower facilities, mechanical room, office and small children’s wading pool in a fenced area as shown in Exhibit B, attached hereto and incorporated herein by reference.

2. SCOPE OF SERVICES. Provider shall perform the Services, as more particularly described in Exhibit C attached hereto and incorporated herein by this reference in accordance with the terms and conditions contained in this

Agreement. Performance of all Services shall be to the reasonable satisfaction of the City.

3. TERM. The term of this Agreement shall commence on April 1, 2018 and shall terminate on August 31, 2020 ("Term"). If not terminated as set forth hereinafter, this Agreement shall automatically renew for successive 12-month periods (each year an "Extended Term"), subject to all of the same terms and conditions contained in this Agreement. Not less than 180 days prior to the expiration of the Term or Extended Term, either of the Parties may provide written notice requesting either an evaluation of the terms and conditions of this Agreement or termination of this Agreement. In the event no such notice of termination is given, this Agreement shall automatically continue for an Extended Term.

4. BELLE HAVEN POOL MANAGEMENT FEE. The City shall pay Provider a management fee for the operation of the Belle Haven Pool in an amount not to exceed Five Thousand Dollars (\$5,000) per month or Sixty Thousand Dollars (\$60,000) per year, unless otherwise approved by the City Council. The City currently receives annual funding for the Belle Haven Pool from Hibiscus Properties, LLC ("Facebook") pursuant to Section 9.1.1 of the Development Agreement dated December 14, 2016 and recorded in the Official Records of the County of San Mateo as Document Number 2016-133794. In addition to the management fee, pursuant to the terms of the prior Lease Agreement, the City shall pay to Provider Five Thousand Dollars (\$5,000) per month for the period January 1, 2018 through March 31, 2018 for a total of Fifteen Thousand Dollars (\$15,000) for operating the Belle Haven Pool, subject to and upon receipt by the City of funds from Facebook covering that time period. To the extent Provider has been paid all or any portion of the management fee directly by Facebook, the City shall be relieved from the requirement to pay such amount to Provider. If and when such annual funding is reduced or terminated, the City may terminate the Services at the Belle Haven Pool after providing 30 days' advance written notice to Provider. Provider shall be paid pro rata for Services performed at the Belle Haven Pool up to the termination date. If the Services at the Belle Haven Pool are terminated, the management fee shall also terminate.

5. EXCLUSIVE USE OF PREMISES. Subject to the terms of this Agreement, Provider shall have exclusive use of the Premises for the purposes of conducting aquatics programs, including, but not limited to, a masters swim program, swim team, swim lessons, fitness training, recreational swimming, community rentals and other aquatics programs and providing for reasonable public access to and use of the Premises pursuant to Section 6 of this Agreement. Provider shall have the exclusive right to staff, supervise and contract for such use of the Premises, subject to the terms of this Agreement. The Parties specifically agree that Provider shall accommodate the SOLO swim team's use of Burgess Pool in accordance with schedule and terms set forth in Exhibit D, which shall not

be modified without mutual agreement of Provider and SOLO, unless SOLO is in breach of its contract with Provider.

Provider shall have non-exclusive use of the locker rooms, as depicted on Exhibit A and Exhibit B, to accommodate Provider's use of the Premises. The Parties agree that use of the locker rooms shall be limited to persons participating in programs and activities offered by Provider or City or other members of the public upon payment to Provider of fees for such use. Specifically, City reserves the right to use the locker rooms for any City program, including facility rentals and programs and for public use on a "pay for use" basis. Provider may only refuse locker room access when patrons fail to follow the rules of conduct approved by the City. Patrons shall have the right to appeal Provider's decision to the Director of Community Services, if the patron feels denial of locker room access was unreasonable. The Director of Community Services' decision shall be final.

6. OPERATION, COMMUNITY ACCESS AND SCHEDULING. Provider may operate the Premises between the hours of 5 a.m. to 10 p.m. seven days a week, 365 days a year. Provider currently operates the Burgess Pool from 5:45 a.m. to 8:00 p.m., and until 10:00 p.m. on Tuesdays and Thursdays Monday through Sunday and the Belle Haven Pool from 3:00 p.m. to 7:00 p.m. Monday through Friday. Provider may reasonably modify, subject to prior written approval from the City, which shall not be unreasonably withheld, the current schedule at either the Burgess Pool or the Belle Haven Pool if staffing is not possible or if it is not financially feasible to operate during certain hours. The City will provide its consent or objection to the requested change within 10 business days or the request will be deemed approved.

Provider will be responsible for the scheduling of the Premises. Provider shall provide reasonable public access and community use of the Premises. Provider will not reduce the public access and community use without prior City approval from the Director of Community Services who is authorized to finalize the City's schedule of use of the Premises. When evaluating the pool space and time allocation, Provider shall consider and give scheduling priority for programs based on the number and percentage of City residents.

Burgess Pool: Minimum public access and community use will include:

- a. Year-round lap swim, seven days per week (except holidays);
- b. Seasonal open/recreational swim daily from Memorial Day through Labor Day for a reasonable amount of time and with adequate pool space;
- c. Reasonable availability for other community organizations/users;
- d. Programs and reasonable accommodation for all ages and abilities;
- e. Inclusive programs for people with disabilities when possible; and
- f. Winter programming subject to the City's provision a dome over the instructional pool, if possible.

Belle Haven Pool: Minimum public access and community use will include:

- a. Open to the public for a minimum of 10 weeks during the summer season in June, July, and August. During that time period, the pool shall be open for a minimum of six days a week, Monday through Saturday; and
- b. Open/recreational swim hours will be at least three hours per day, six days per week but will be allowed on a “pool sharing” basis with other programming.

7. PROGRAM REGISTRATION AND FEES. Provider shall be responsible for having a method for the public to register and pay for programs. Provider shall collect all program fees for the Services provided pursuant to this Agreement. The program fees charged by Provider shall be as follows:

- a. The fees charged by the Provider for public lap swimming, open/recreational swim, and swim lessons shall be comparable to rates and fees charged by other aquatic facilities in surrounding communities and in alignment with the approved business model.
- b. Provider shall provide rental space for other community organizations and users for competitive youth swimming programs, instructional programs, fitness training, etc., on a reasonable and comparable fee basis.
- c. Review of the program fees shall be included in the annual report to the City. Although Provider is responsible for setting program fees, Provider shall consider both City input and market rates in establishing the program fees.
- d. The City will provide limited conference room space at the Arrillaga Family Gymnasium free of charge for Provider’s team meetings and trainings, subject to availability.
- e. The City will make sports field space at Burgess Park available free of charge for Provider camps and programs in exchange for pool use for City camps and programs, both subject to availability.

8. REVENUE SHARING. Provider shall maintain an annual profit and loss statement (“Statement”) during the Term and any Extended Term of this Agreement. The Parties acknowledge that the Provider’s Statement includes revenue from the Services at the Premises and also Menlo Fit/Boot Camp revenue and triathlon team revenue. If Provider’s revenue from the Services provided pursuant to this Agreement, exclusive of Menlo Fit/Boot Camp revenue and 2/3 of the triathlon team revenue, exceeds Three Million One Hundred Forty Thousand (\$3,140,000) in a single calendar year, Provider shall pay to the City 30 percent such revenue within 60 days of the end of the year.

9. PROGRAM ADMINISTRATION. Provider shall have adequate administrative staff and assistance to support all hours of operation. Policies and procedures for handling registration, refunds, and complaints are required. Provider shall maintain a customer database and appropriate records retention.

Provider shall develop sufficient communication and marketing in order to inform the public of the programs and services. The City will provide reasonable marketing space in the tri-annual activity guide for the Provider to promote their aquatics programs at the Premises, subject to availability. Provider shall be responsible for meeting the deadlines and providing accurate and sufficient information to City staff.

Provider shall take appropriate steps to maintain a high level of customer service and overall satisfaction at all times. Provider shall be engaged with City staff and regional aquatics groups throughout the year and shall attend an annual meeting convened by the City. Additionally, Provider shall prepare and provide an annual report no later than January 30 of each year to City staff, which will be presented to the City's Parks & Recreation Commission for review and comment by the Commission at its February meeting. The annual report should include the following items:

- a. Total program hours by program area;
- b. Participation statistics by program area including resident and non-resident percentages;
- c. Customer satisfaction survey results;
- d. User group feedback by program area or rental;
- e. Pool schedule and allocation by program for previous year and projections to the upcoming year;
- f. Fees by program area and a fee comparison to other public pools in the region;
- g. Annual audits and reviews demonstrating standards of care, outlined in Section 12, below, are met;
- h. Risk management documentation, outlined in Section 13, below; and
- i. Training certifications listed by staff member.

Provider shall maintain reasonable evidence and documentation of this information and have these records accessible to the City at any time following 10 days written notice.

In the event of a third-party dispute or conflict arising out of or related to this Agreement, the City will use best efforts to notify and discuss the issue with Provider before engaging in any dialogue with the third-party involved.

10. COMPLIANCE WITH LAWS AND REGULATIONS. Provider shall comply with all city, county, state, and federal laws and regulations related to pool and aquatic program operations. These regulators and laws include but are not limited to:

- a. City of Menlo Park
- b. Menlo Park Fire Department
- c. San Mateo County Health Department
- d. California Department of Health Services

- e. California Department of Labor
- f. Occupational Safety and Health Administration (OHSA)
- g. Emergency Medical Services Authority (EMSA)
- h. Consumer Product Safety Commission & Virginia Graeme Baker Act
- i. Americans with Disabilities Act
- j. California Department of Fair Employment and Housing

11. HEALTH AND SAFETY. Provider shall maintain health and safety standards in a reasonable and acceptable manner for the Premises, participants, and its employees in compliance with City standards and the other regulatory agencies listed in Section 10 above. These standards include but are not limited to:

- a. Employee Injury and Illness Prevention Plan
- b. Hazardous Materials Communications and Business Plan
- c. Blood borne Pathogens and Bio Hazardous Exposure Control Plan
- d. Lifting and Fall Prevention
- e. Electrical Safety
- f. Emergency Action Planning
- g. First Aid
- h. Heat Illness and Sun Protection
- i. Confined Spaces
- j. Chemical Storage
- k. Personal Protective Equipment
- l. Recreational Waterborne Illnesses (RWI's)
- m. Signage

Provider is responsible for keeping up to date with all changes, additions, or amendments to the laws, regulations and codes related to pool operations and aquatics programs.

12. STANDARD OF CARE. Provider shall provide aquatic programs and manage the Premises in a manner that is comparable to or above the standard of care that is reasonable and acceptable for a public pool in the surrounding communities. This standard of care should be demonstrated in all areas of operations including: supervision and lifeguard coverage, surveillance techniques, staff training, record keeping, basic maintenance and janitorial services during business hours, cleanliness of facilities, safety, and risk management. Provider is expected to ensure this standard of care by conducting annual audits by qualified external experts and including this information in the annual report to City staff and the City's Parks and Recreation Commission identified in Section 9, above.

13. RISK MANAGEMENT. The Provider shall take all appropriate and necessary steps to provide adequate risk management planning to minimize liability or negligence by the Provider. The Provider shall manage their risk by demonstrating proficiency in the following areas:

- a. Emergency Action Plan - staff training plan, drills conducted, emergency equipment and communication process.
- b. Facilities & Equipment - inspection, maintenance, and checklists.
- c. Supervision - quality, quantity, lesson plans and progression.
- d. Training - requirements and appropriate staff.
- e. Documentation - manuals, waivers, medical screening, skills screening, risk information provided to public, policies and evaluations.

14. EMERGENCY ACTION PLAN AND PROCEDURES. Provider shall create and maintain all emergency procedures and emergency action plans for the Premises. An emergency action plan is required under Title 29 of Federal Regulations Sections 1910.38/.120/.156, and Title 8 California Code of Regulations, Sections 3220 and 3221. The emergency action plan covers all employees and non-employees who may be exposed to hazards arising from emergency situations. It must contain information for all of the Provider's employees, including administration and line level employees using the plan in order to reduce the severity of emergency situations and minimize the risk to life and property.

15. MAINTENANCE, REPAIR, CUSTODIAL AND LANDSCAPING. The City will be responsible for the maintenance and repair of the equipment and facilities at the Premises, including:

- a. Burgess Pool: three pools, appropriate signage, offices, lobby, locker rooms and shower area, restrooms, pool decks, fences and gates, lawn area, supply storage areas, equipment/mechanical rooms, chemical storage areas, and lights.
- b. Belle Haven Pool: two pools, appropriate signage, office, locker rooms and shower area, restrooms, pool decks, fences and gates, supply storage areas, equipment/mechanical rooms, chemical storage areas, and lights.

If in the course of operating the Premises, Provider identifies any equipment, facilities or portion thereof in need of maintenance or repair, Provider shall notify the City's Public Works Director or his/her designee as soon as possible and the City shall be responsible for performing the necessary maintenance or repair work. If any maintenance or repair work requires immediate emergency attention, Provider may engage a preferred City contractor directly after obtaining consent from the City's Public Works Director or his/her designee. Provider shall be reimbursed by the City for any costs incurred by Provider in addressing the immediate/emergency maintain/repair work. If the Facilities or equipment are damaged due to the willful misconduct or negligence of Provider, its employees, subcontractors, or program participants, Provider is responsible for any necessary repair or replacement of such damage at Provider's sole cost and expense.

Provider shall employ or contract one full-time custodial support staff from 3:00 a.m. to noon, consistent with Provider's current practice. The City will provide

janitorial service during midday and Saturday and Sunday evenings. The City and Provider shall coordinate custodial services to ensure the Premises is maintained in an orderly, clean and professional condition. The City shall provide all incidental facility supplies, such as paper towels, toilet paper, etc. The City agrees to reimburse Provider, upon approval by the Public Works Director, or his/her designee, up to Two Hundred Dollars (\$200) per month for the purchase of incidental supplies. The City shall provide landscaping services for the Premises.

The City shall provide and be billed directly for all necessary pool chemicals. Provider shall employ or contract for a Certified Pool Operator. Provider shall maintain standard operation procedure manuals and maintenance records and logs. These records will include: daily pool and chemical log and checklists for routine maintenance and janitorial duties (daily, weekly, monthly, quarterly, bi-annually, and annually).

16. UTILITIES. The City shall provide, without cost to Provider, all utilities necessary to operate the Premises for the purposes identified in this Agreement, including water, sewer, stormwater, electricity, gas, telephone and internet. Provider shall modify operations to comply with any conservation requirements imposed by any utility operator. Provider shall consult with and obtain City approval prior to making any operational changes that would impact utility costs and regulatory compliance.

17. INSURANCE. Provider shall acquire and maintain Workers' Compensation, Employer Liability, and Commercial General Liability relating to the Provider's use of the Premises. The insurance company or companies must be approved by the City. Provider will furnish City with certificates and copies of information or declaration pages of the insurance required. Provider would need to provide the City with 30 days' notice if any changes, cancellation, or non-renewals. Provider is required to disclose any self-insured retentions or deductibles, which shall be subject to City's approval, not to be unreasonably withheld. Provider's insurance shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of the insurer's liability (cross liability endorsement). Provider's insurance coverage shall be primary insurance with respect to City, its Council, Boards, Commissions, agents, officers, volunteers or employees, and any insurance or self-insurance maintained by City, for themselves, and their Council, Boards, Commissions, agents, officers, volunteers or employees shall be in excess of Provider's insurance and not contributory with it.

The minimum amounts of coverage corresponding to these categories of insurance per insurable event shall be as follows:

Insurance Category	Minimum Limits
Workers' Compensation	Statutory Minimum - include endorsement waiving the insurer's right of subrogation against the City, its

Employer's Liability	<p>officers, officials, employees and volunteers.</p> <p>One Million Dollars (\$1,000,000) per accident for bodily injury or disease – include endorsement adding the City, its officers, officials, employees and volunteers as additional insured for both ongoing operations as well as products and completed operations; include endorsement to provide primary insurance and waive any rights of contribution from the City's coverage.</p>
Commercial General Liability	<p>Three Million Dollars (\$3,000,000) per occurrence for bodily injury, personal injury and premises damages. Must include all areas in Insurance Service Office (ISO) Form No. CG 00 01 (including Products and Completed Operations if food is served or for repairs done by the tenant, Contractual Liability, Broad form property damage, Participants and spectators coverage, and Personal and Advertising injury liability)</p>

If Provider fails to maintain any of the insurance coverage required herein, then City will have the option to terminate this Agreement or may purchase replacement insurance or pay the premiums that are due on existing policies in order that the required coverage may be maintained. Provider is responsible for any payments made by City to obtain or maintain such insurance.

Provider shall require any subcontractor who uses the Premises more than once in any 12-month period to maintain and carry the same coverage as described above, which policies shall name the City as an additional insured. Provider shall require such subcontractor to obtain and provide a certificate of insurance evidencing said coverage to the City.

Each Party hereby waives and agrees to obtain from each insurance carrier of the insured a "subrogation waiver endorsement" waiving its right of recovery to the extent of insurance proceeds, against the other Party, the other Party's officers, directors, agents, representatives, employees, successors and assigns with respect to any loss or damages, including consequential loss or damage to the insured's property caused or occasioned by any peril or perils (including negligent acts) covered by any policy or policies carried by the Party.

18. INSPECTIONS AND AUDITS. The City reserves the right to conduct periodic and regular site inspections and operational audits.

- a. Safety: Provider will be required to comply with the City's safety program guidelines and protocol. Quarterly inspections by an outside vendor will be conducted and recommendations for compliance will be enforced. City staff will be responsible for following up with the Provider on specific safety issues identified in the quarterly inspection. The Provider will be required to comply with the City's requests in a timely manner. In addition, documentation demonstrating compliance with all city, county, state and federal regulations will be required to be kept up to date and reviewed on an annual basis or more frequently as deemed necessary by the City.
- b. Maintenance: City staff reserves the right to conduct weekly, monthly, quarterly, and annual inspections relative to Provider's responsibilities pursuant to this Agreement, including inspections relating to pool chemistry, pool equipment, and safety practices.
- c. Operations: An annual operational audit will be conducted by an external expert and industry professional approved by the City. An observational audit, lifeguard skills assessment, and site inspection shall be conducted annually. An overall operational audit shall be conducted every two years. This audit should include but may not be limited to: staff skills assessment, staff selection and training procedures, policies and procedures review, site inspection, code compliance and record keeping practices, and adherence to aquatic safety standards.
- d. Financial Review/Audit: Provider shall provide complete financials for all aquatics programs and/or programs operated out of the Premises (with administrative costs/salaries that may be related to both aquatics and non-aquatics programs fairly allocated between such programs) prepared in accordance with generally accepted accounting principles for each calendar year during the Term of this Agreement for City staff and outside consultant review. The purpose for such review shall be for determining appropriate revenue sharing, if any, pursuant to Section 8. Provider agrees, upon the City's request, to make all books and records available to the City for review such that the City is provided the opportunity to confirm the accuracy of the financial reports provided.

19. CITY ACCESS. The City shall have access to the Premises or any part thereof for municipal purposes, which may include the performance of maintenance and repairs in or upon the Premises, the inspection of the Premises, or the use, maintenance, repair of adjoining areas. When City access will be during the Provider's operational hours and may impact the provision of Services, the City shall provide prior notice and coordinate access with the Provider.

20. IMPROVEMENTS. Provider shall not make, nor cause to be made, nor allow to be made, alterations or improvements to the Premises, without the prior

written consent of City, not to be unreasonably delayed or withheld. All improvements or alterations constructed or installed shall be removed and the Premises restored to substantially the same condition existing prior to such construction or installation, upon the termination of this Agreement, unless the prior written approval of City is secured, allowing such improvements or alterations to remain in place, in which case, title thereto shall vest in City. All improvements undertaken pursuant to this Agreement will be at City's sole expense and the City will be responsible for the use and maintenance of the improvements.

21. NOISE. Except in the event of an emergency, Provider shall not use any amplified sound, whistles, bullhorns, music, etc., between the hours of 5:30 a.m. to 8:00 a.m., and/or from 8:00 p.m. to closing during any day of operation. In order to minimize impacts of major events on residents of the surrounding neighborhood, Provider will notify the City on a quarterly basis of all swimming meets or other large group events beyond normal operations to allow the City to notify the neighborhood in advance of such events.

22. PARKING. Provider shall instruct its patrons to park away from the nearest residences before 8:00 a.m. and after 8:00 p.m.

23. WAIVER OF CLAIMS. Except as it relates to claims asserted by anyone related to or arising from The City's failure to fulfill its obligations to maintain, repair, clean and/or landscape in accordance with this Agreement, including, without limitation Section 15 hereof, Provider waives all claims against City, its Council, Commissions, agents, officers, volunteers, contractors or employees for any damages to the improvements in, upon or about the Premises and for injuries to any employees of Provider or their agents, invitees or sub-contractors in or about the Premises from any cause arising at any time, where City had no involvement or where such damages or injuries did not arise out of the instruction or guidance of the City. In no event shall the City be responsible for loss of profits or any consequential damages to Provider.

24. INDEMNIFICATION. Except as it relates to claims asserted by anyone related to or arising from The City's failure to fulfill its obligations to maintain, repair, clean and/or landscape in accordance with this Agreement, including, without limitation Section 15 hereof, Provider will defend, indemnify and hold City, its Council, Commissions, agents, officers, volunteers or employees harmless from any damage or injury to any person, or any property, from any cause of action arising at any time from the use of the Premises by Provider, and Provider's invitees, program participants, and visitors, or from the failure of Provider to keep the Premises in good condition, including all claims arising out of the negligence of Provider, but excluding any damage or injury caused by the willful misconduct or negligence of City or its employees, agents or contractors. City will defend, indemnify and hold Provider, its members, agents, officers, volunteers or employees harmless from any damage or injury to any person, or any property,

from any cause of action arising at any time from the willful misconduct or negligence of City or its employees, agents or contractors.

Each Party's indemnification obligation set forth above will include any and all costs, expenses, attorneys' fees and liability incurred by any indemnified Party or person in defending against such claims, whether the same proceed to judgment or not. Each Party will, at its own expense and upon written request by a Party to be indemnified as provided hereinabove, defend any such suit or action brought against the Party to be indemnified, its Council, Commissions, members, agents, officers, volunteers or employees (as applicable). This Section will survive the expiration or termination of this Agreement.

25. HAZARDOUS MATERIALS. Provider shall not use or store any Hazardous Materials in, on, or about the Premises except in compliance with all applicable federal, state, and local laws, statutes, ordinances, and governmental regulations, and the highest standards prevailing in the industry for storage and use of any such Hazardous Materials, nor allow any Hazardous Materials to be brought in the Premises, except to use in the ordinary course of Provider's business, and then only after written notice to City of the Hazardous Materials to be used by Provider. Provider shall not cause or permit the escape, release, or disposal of any Hazardous Materials in the Premises.

In addition, Provider shall, at City's request, execute affidavits, representations, or other documents concerning Provider's best knowledge and belief regarding the presence of any Hazardous Materials in the Premises. Provider shall indemnify, defend, and hold harmless City from any liability, cost, or expense, including reasonable attorneys' fees, arising from the use, storage, release or disposal of any Hazardous Materials in, on, or about the Premises by Provider, its agents, employees, contractors, or invitees. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

For the purposes of this Agreement, the term "Hazardous Material" shall mean any substance or material which has been designated hazardous or toxic by any federal, state, county, municipal, or other governmental agency or determined by such agency to be capable of endangering or posing a risk of injury to, or adverse effect on, the health or safety of persons, the environment, or property, including without limitation those substances or materials described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.

26. ATTORNEY'S FEES. In any legal action brought by either Party to enforce the terms of this Agreement, the prevailing party is entitled to all costs incurred in connection with such an action, including reasonable attorneys' fees.

27. ARBITRATION. Any dispute regarding the breach of this Agreement shall be decided by binding arbitration pursuant to the rules of the American

Arbitration Association, and not by court action, except as otherwise provided in this Section or as allowed by California law for judicial review of arbitration proceedings. Judgment on the arbitration award may be entered in any court having jurisdiction. The Parties may conduct discovery in accordance with California Code of Civil Procedure. This provision shall not prohibit the Parties from filing a judicial action to enable the recording of a notice of pending action for order of attachment, receivership, injunction, or other provisional remedy. Venue for the resolution of any such dispute or disputes shall be in San Mateo County, California.

BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTER 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 BY 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.

Provider

City

28. VENUE. Provider agrees and hereby stipulates that the proper venue and jurisdiction for resolution of any disputes between the parties arising out of this Agreement is San Mateo County, California.

29. ASSIGNMENT AND NONTRANSFERABILITY. Provider understands and acknowledges that assignment of this Agreement is absolutely prohibited without the written consent of City, and any attempt to do so without City's written consent may result in termination of the Agreement at the will of City. Notwithstanding the foregoing, City shall grant permission to Provider to contract with other entities or organizations to provide some of the programs at the Premises for certain hours, subject to prior approval by the City, which shall not be unreasonably withheld. Such use is contingent, in part, upon said entity or organization indemnifying and insuring City in the same manner and amount that Provider has indemnified and insured City under this Agreement. City, its Council, Boards, Commissions, agents, officers, volunteers and employees shall be named

as additional insureds. Any insurance policy maintained by a such an entity organization will be in addition to, and shall not replace, any insurance required of Provider.

30. LIENS AND ENCUMBRANCES. Provider shall have no authority to do anything that may result in a lien or encumbrance against the Premises. Without limiting the foregoing, however, Provider agrees to pay promptly all costs associated with the activities associated with this Agreement and not to cause, Agreement, or suffer any lien or encumbrance to be asserted against the Premises. In the event that Provider causes, leases, or suffers any lien or encumbrance to be asserted against the Premises related to activities associated with this Agreement, Provider, at its sole cost and expense, shall promptly cause such lien or encumbrance to be removed.

31. TERMINATION OF AGREEMENT.

a. Default. City or Provider shall have the right to terminate this Agreement by written notice to the other party for any default or breach of any term or condition of this Agreement by the other Party; provided, however, the non-defaulting and non-breaching Party must first deliver written notice to the other Party of any such default or breach, and if such breach or default exists for more than 30 days after the delivery of such notice without being cured, the non-defaulting and non-breaching Party may elect to terminate this Agreement by giving written notice of such termination to the defaulting Party. Termination shall be effective on the date specified in the notice, which date shall not be less than 30 days nor more than 180 days following such notice. In addition to termination, the non-defaulting and non-breaching Party shall be entitled to pursue any and all other remedies provided by law.

b. City Dissatisfaction. If City and/or Menlo Park community believes Provider has not satisfied community needs with respect to public access, service and program quality, public safety, noise restrictions and/or parking, City may deliver written notice to Provider of such dissatisfaction and the Parties shall meet and confer within 15 days of Provider's receipt of such notice. If the matter is not resolved to the City Manager's satisfaction, City may terminate this Agreement by giving written notice of such termination to Provider. Termination shall be effective not less than 90 days after the date of such notice. Provider shall have the right to appeal such termination to the City Council within 10 days of Provider's receipt of such notice. Upon receipt of Provider's timely appeal, the Council shall place the matter on the City Council agenda and make the final determination with regard to the termination of the Agreement and shall give written notice to Provider of such final determination. If the City Council determines the Agreement

should be terminated, termination of the Agreement shall be effective not less than 90 days after the date of such notice.

c. City Expense. The City may terminate this Agreement, effective 90 days from the date of the notice, if the City's costs for maintenance and repair (Section 15), and utilities (Section 16) are exceeding the amounts budgeted by the City for such costs.

d. Provider's Option. Provider may terminate the Agreement at Provider's option upon the occurrence of any of the following: (1) upon the death of Tim Sheeper; (2) upon the disability of Tim Sheeper, if such disability prevents him from running Provider's business operations for a continuous period of 60 consecutive days; or (3) upon financial hardship, which shall require not less than six month written notice to terminate Agreement based on financial hardship.

Termination shall be effective on the later of 90 days after the date of any such notice, the date of termination specified in the notice or such later effective date as is required pursuant to any specific provision of this Agreement. In the event Provider does not elect to terminate the Agreement as permitted herein, the Agreement shall remain in full force and effect for the remainder of the Term, unless subsequently terminated for another cause or event as specified herein.

32. CONDITION OF PREMISES UPON TERMINATION. Upon the effective termination of the Agreement, Provider shall restore the Premises to its condition prior to the execution of this Agreement, excluding (a) wear and tear and natural deterioration based on the passage of time, (b) items subject to the City's obligations to maintain, repair, clean and/or landscape in accordance with this Agreement, including, without limitation Section 15 hereof, and (c) other changes or improvements to the Premises previously approved by the City, remove all personal property, including furniture, furnishings, vehicles, and equipment, belonging to Provider or Provider's employees, invitees, and agents. Should Provider fail to perform those obligations by the effective termination date, the Parties agree to the following:

- a. Such remaining property shall be deemed abandoned and Provider waives all provisions for disposition of abandoned personal property required by California law including but not limited to California Code of Civil Procedure Section 1980 et. seq. (requiring notice for reclaiming abandoned property and public sale for disposition).
- b. City has the right to take action to remove Provider's personal property. Should City exercise this right, Provider shall be liable to City for:
 - i. the actual cost of this removal, demonstrated by valid receipts and invoices;
 - ii. a 15 percent overhead to City for reasonable costs in contracting and supervising the removal work; and

- iii. any attorneys' fees incurred by City to remove Provider from the Property after termination, if necessary. Invoices must be paid within 10 days of submission of invoice to Provider. If not paid within this time, then interest will be charged at 10 percent or the maximum extent allowed by law, whichever is less.

33. NOTICE. All notices under this Agreement shall be in writing and, unless otherwise provided herein, shall be deemed validly given if sent by certified mail, return receipt requested, or via recognized overnight courier service, addressed as follows (or to any other mailing address which the party to be notified may designate to the other party by such notice). All notices properly given as provided for in this section shall be deemed to be given on the date when sent. Should City or Provider have a change of address, the other party shall immediately be notified as provided in this section of such change.

Provider

Team Sheeper, Inc.
Attn: Tim Sheeper
501 Laurel Street
Menlo Park, CA 94025
(650) 369-7946

City

City of Menlo Park
Attn: City Manager
701 Laurel Street
Menlo Park, CA 94025
(650) 330-6610

34. COMPLETE AGREEMENT. This Agreement contains the entire agreement between the Parties with respect to the matters set forth herein and supersedes all prior or contemporaneous agreements (whether oral or written) between the Parties with respect to the matters set forth herein.

35. AMENDMENT. This Agreement may be amended only by a written instrument executed by the Parties.

36. AUTHORITY. The individuals executing this Agreement on behalf of Provider represent and warrant that they have the legal power, right and actual authority to bind Provider to the terms and conditions of this Agreement.

37. NO WAIVER. Waiver by either Party of a breach of any covenant of this Agreement will not be construed to be a continuing waiver of any subsequent breach. City's receipt of rent with knowledge of Provider's violation of a covenant does not waive City's right to enforce any covenant of this Agreement. No waiver by either Party of a provision of this Agreement will be considered to have been made unless expressed in writing and signed by all parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their officers therein duly authorized as of the date and year first written above.

CITY OF MENLO PARK

By: _____

ATTEST:

City Clerk

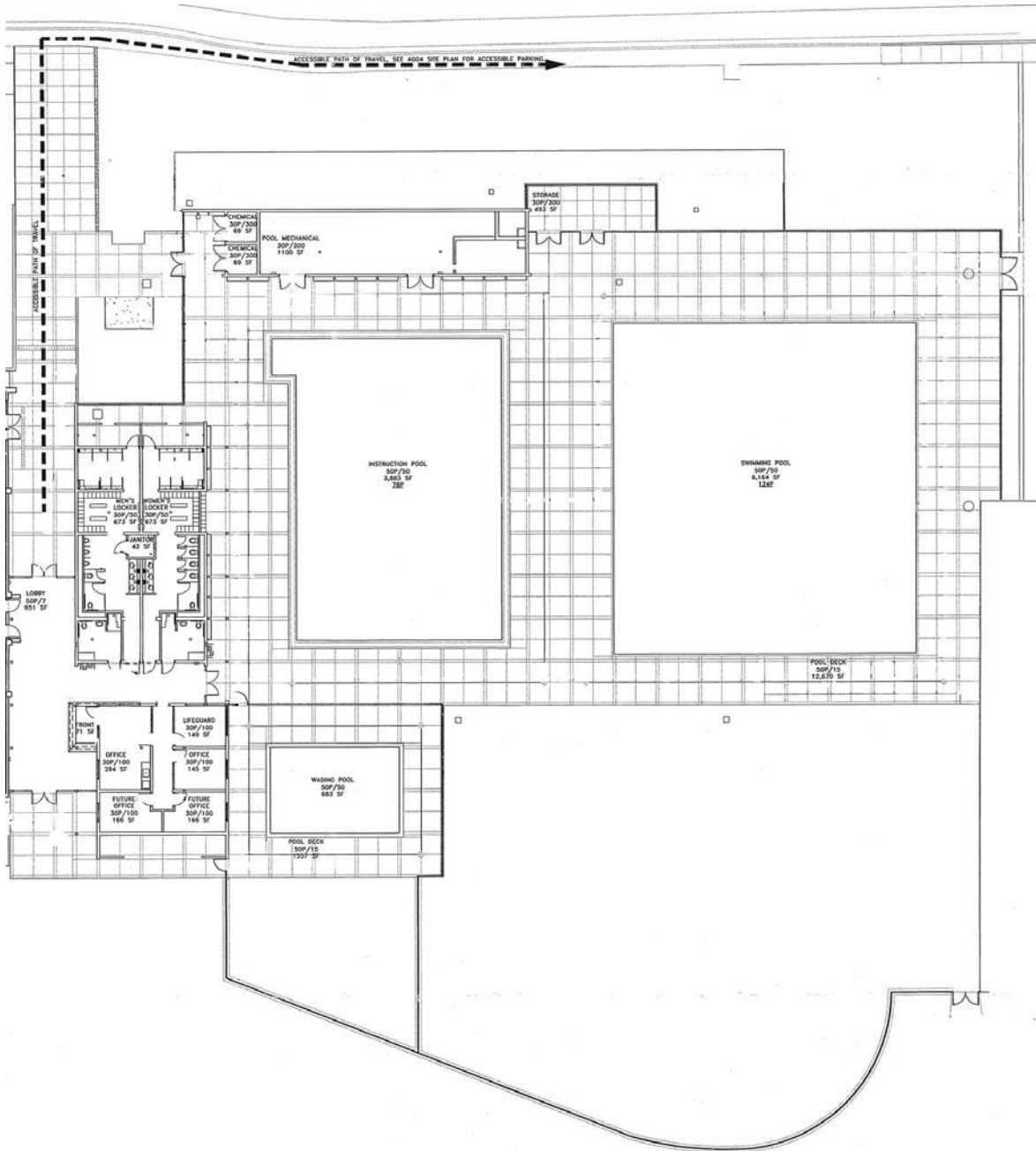
TEAM SHEEPER, L.L.C.
501 Laurel Street
Menlo Park, CA 94025

By: _____
Tim Sheeper, Chief Executive Officer

Exhibits

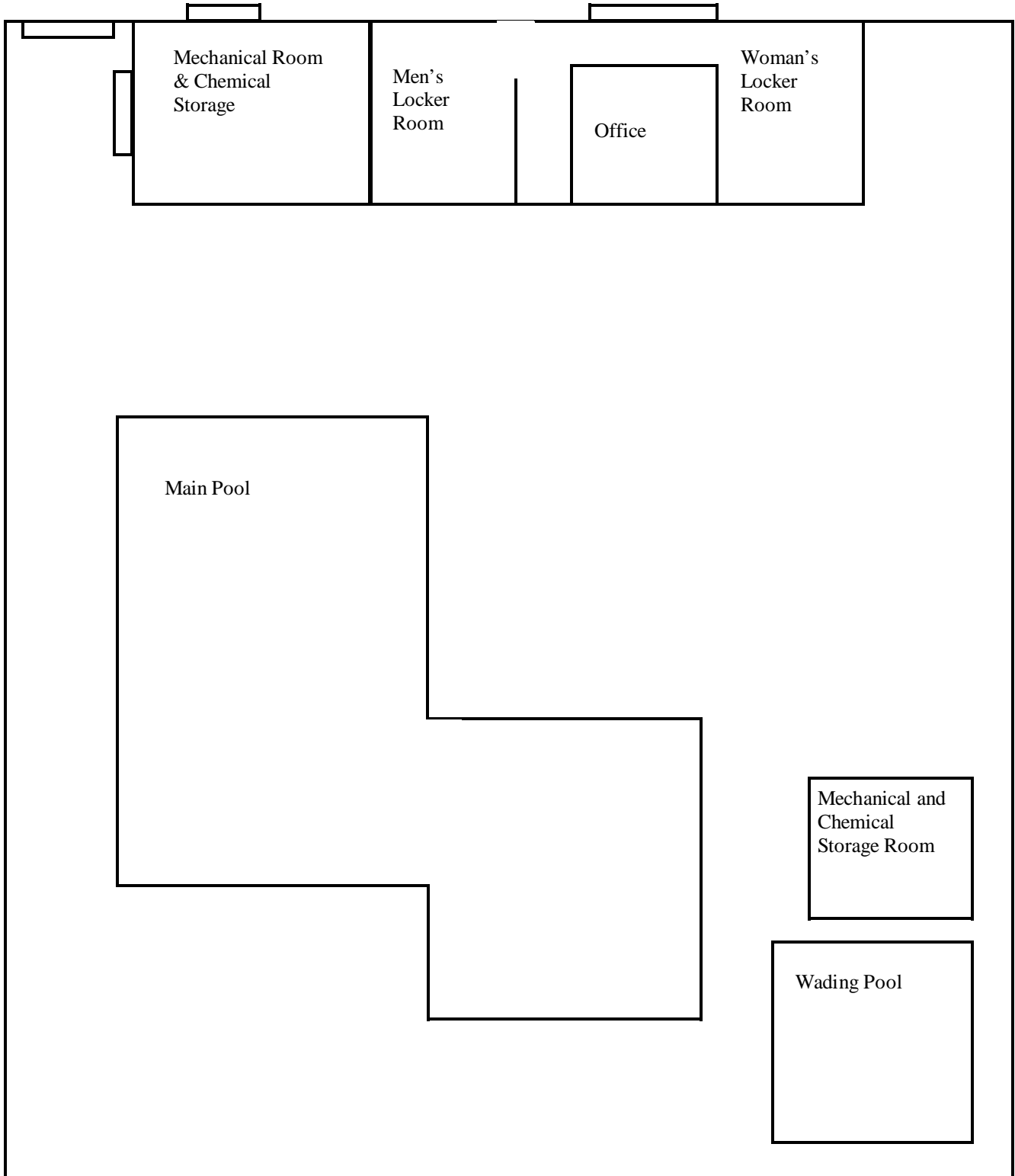
- A. Burgess Pool Site Map
- B. Belle Haven Pool Site Map
- C. Scope of Services
- D. SOLO Schedule and Terms

EXHIBIT A
BURGESS POOL MAP



BELLE HAVEN POOL MAP :

Parking Lot



Menlo Swim and Sport
2018 Scope of Services

1. Lap Swim

Description: Community based, non-structured, fitness swimming in both performance and instructional pools with the goal of having lane availability whenever the business is open. Drop-in and membership options

Frequency: 7 days/wk, year-round

Times: Opening to closing

Belle Haven: Weekdays during all open hours, year-round

2. Open Swim

Description: Community-based, non-structured, play and family time in both the performance and instructional pool. Increasing pool availability during warmer high demand seasons. Drop-in and seasonal memberships options.

Frequency: 7 days/wk, year-round

Times: Late morning to evening hours, all-day on weekends

Belle Haven: Summer focus-4 hours/daily

3. Menlo Aquatics-Youth Year-Round Swim Team

Description: Community-based, structured and programmed with performance incentives including weekend off-site coached events and competitions. Segmented and serving various age-groups from 6-18 year olds. Monthly memberships.

Frequency: 6 days/wk, year-round

Times: After school to late evening weekdays and late morning on Saturdays

Belle Haven: Full program not available, but Belle Haven is used during summer.

4. Menlo Mavericks-Youth Summer Swim Team

Description: Community-based, introductory-level, structured and coached 10-week program that is part of a regional competitive league with weekday and weekend events. Monthly memberships.

Frequency: Monday-Saturday, summer only

Times: Morning and afternoon hours throughout the summer

Belle Haven: Not available

5. Menlo Mavericks-Youth Water Polo Team

Description: Community-based, year-round team that serves introductory and intermediate level players that compete locally and regionally. Monthly memberships.

Frequency: 3 days/wk

Times: Afternoons year round

Belle Haven: Only available at Belle Haven

6. Menlo Swim School

Description: Community-based, year-round service that targets individuals 6 months to adults. Small group, semi-private and private instruction that teaches to class ability level. Various segmented levels that supports time efficient and optimum improvement. Monthly membership.

Frequency: 7 days/wk, year-round.

Times: Mornings to late evening with a long lunch break.

Belle Haven: Available spring, summer and fall

7. Camp Menlo-Summer and School Holiday Camps

Description: Community based, seasonal program that serves youth from 4.5-15 year olds with 5 different offerings of week-long camps. Pre and post camp care is available. Most campers take part in a small group swim lesson each day. Weekly fee.

Frequency: Monday-Friday for 10 weeks spanning the summer months.

Times-Early morning to late afternoon options.

Belle Haven: Not available at Belle Haven

8. Menlo Masters-Adult Swim Team

Description: Community-based, year-round team that serves introductory to advanced participants. Stroke and fitness improvement along with growth of interpersonal relationships and connection to the community are the goals. Local, regional and international competitions are a part of the curriculum. Monthly memberships and daily drop-ins available.

Frequency: Several daily workouts available

Times: Before work, lunch-time and weekend morning offerings

Belle Haven: Not available

9. Team Sheeper Triathlon-Adult Triathlon Program

Description: Community-based, year-round team that serves introductory to advanced participants. Improving personal skills and fitness along with community connection are the main goals. Monthly membership.

Frequency: A few workouts on daily basis year round

Times: Before work, lunch-times and evenings during the week and morning on weekends

Belle Haven: Not available

10. Aqua Fit-Adult Water Exercise

Description: Community based, year-round program that targets the non-swimming fitness seekers including the senior population seeking respite from gravity based land exercises. Cardio-vascular and muscular strength improvement is focused upon. Monthly memberships and daily drop-ins available.

Frequency: Offered daily, excluding Saturday

Times: Early mornings weekdays and Sunday, evenings on Tuesday and Thursday

Belle Haven: Not available

11. Aqua Wellness- Adult Water Therapy

Description: Community based, year-round program that targets individuals who need assistance with range-of-motion in joints, muscular strength and coordination or are in recovery from an illness or surgical procedure. Monthly memberships or daily drop-ins available.

Frequency: 3 mornings per week

Times: Mid to late morning hours

Belle Haven: Not available

12. Menlo Mavens-Women's Water Polo Team

Description: Community based, year-round program that attracts beginners to high level players. The uniqueness of the program serves as a connection point for many women who thrive on interacting with other inspiring and courageous women in the community. The team competes locally, regionally and internationally. Monthly membership and drop-in options available.

Frequency: 2 time per week

Times: Weekday evening and weekend morning

Belle Haven: Annual weekend tournament is hosted at Belle Haven

13. Pro Services-Private Premium Coaching

Description: Personal and tailored premium coaching available for clients who do not fit into our established group structure or for those who want the extra attention from a professional level instructor. Monthly memberships or per session fee available.

Frequency: Daily, year-round

Time: Flexible and available all open hours

Belle Haven: Available during open hours with a highly experienced professional

14. Safety Academy-Lifeguard Certification Courses

Description: Red Cross certified lifeguard classes are instructed by our Red Cross certified instructors for anyone in the community or region who are seeking their Red Cross lifeguarding certification. A 3-day, 30+ hour course that blends on-site learning and on-line learning. Certification class fee.

Frequency: Monthly year-round, and weekly during peak summer months

Times: Friday evenings, and full day Saturdays and Sundays.

Belle Haven: A portion of the classes are conducted at Belle Haven

15. Community Rentals and Clinics

Description: For profit and not for profit community based rentals agreements are entered into throughout the year. An underwater hockey team, a youth swim team (SOLO), a triathlon team (Team in Training) are the year-long agreements. Along with Boy scouts, Cub scouts, Girl Scouts and public and private schools, personal swim clinics. Full pool and individual lane rentals are available

Frequency: Daily, year-round

Time: Various times throughout the year

Belle Haven: Synchronized swimming is the predominant agreement

16. Menlo Boot Camp-Adult Land Based Exercise Classes

Description: Community based, year-round program focused on improving general functional strength and well-being for adults. Strength and endurance exercises are used in a group setting that forms community and purpose for life-long vitality and mobility. Monthly memberships and daily drop-in options available.

Frequency: Weekdays, year-round

Times: Early and mid-morning hours

Belle Haven: Not available

17. Pro Shop-Food and Merchandise

Description: Support of fuel and gear for the community members using the aquatic or surrounding campus at Burgess Park. Low prices on food and merchandise and the high accessibility of the store make it a convenience for staff and participants.

Frequency: Daily, year-round

Times: During all open hours

Belle Haven: Available on a reduced scale.

EXHIBIT D
SOLO SCHEDULE AND TERMS

The SOLO Aquatics swim team (“SOLO”) will be able to use Burgess Pool and Belle Haven Pool on the following terms:

- a. Lane space will be provided from 4:00 to 5:30 p.m., Monday through Friday, eight (8) lanes in Burgess performance pool September 1st through May 31st.
- b. Lane space will be provided from 4:00 to 5:30 p.m., Monday through Friday, four (4) lanes in Burgess performance pool June 1st through August 31st. Additional lanes may be provided at current rental rates during summer if Provider agrees and open swim attendance allows.
- c. Rental rate will be \$14 per lane hour for the term of the Agreement.
- d. SOLO may elect to opt out of any of the hours provided for herein with 30 days notice.
- e. SOLO will be billed thirty (30) days in advance and on a monthly basis. Any payment not received by Provider within fifteen (15) days of the due date shall be subject to a late payment penalty of five percent (5%) of the amount due.
- f. When the Belle Haven Pool is operational, youth swim team rental shall have the option to use the Belle Haven Pool at agreed upon rates and times.
- g. Youth swim team will have access lobby area of the Burgess Pool for marketing purposes to be approved by Provider in advance.
- h. SOLO shall provide proof of insurance listing the Provider and City as additional insureds.
- i. SOLO shall comply with all of the facilities policies and rules of conduct.
- j. SOLO may not allow any other organization or individual to use any of the privileges or services provided by the Provider
- k. SOLO is responsible for the control and supervision of all participants in their program.
- l. If storage is provided for equipment at the request by SOLO, the Provider is not responsible for any damages or losses to the SOLO’s equipment.
- m. They City and Provider reserve the right to close the pool(s) at any time for maintenance or any safety reason. Provider will make every attempt to give notice when possible and assist with informing the SOLO and its participants.
- n. Provider shall have the right to terminate its agreement with SOLO by written notice to the SOLO for any default or breach of any term or condition herein. SOLO will be provided not less than thirty (30) days notice and opportunity to cure any notice of default. Provider shall provide City with a copy of any notice of default provided to SOLO.

- o. City requires a written agreement on a form approved by the City Attorney between the two parties with a copy provided to the City no later than the commencement of the Term of the Agreement between the City and Provider; provided however, Provider shall not be considered in default of the terms and provisions of the Agreement if SOLO has refused to execute a written agreement with Provider on such form approved by the City Attorney.

**STAFF REPORT****City Council**

Meeting Date: 9/15/2020
Staff Report Number: 20-201-CC

Regular Business: Consider the term sheet, conceptual design and project review process of Facebook's offer to rebuild community facilities located at 100-110 Terminal Avenue

Recommendation

Staff recommends that the City Council confirm the following:

- The term sheet for the Menlo Park Community Campus (MPCC) located at 100 Terminal Avenue should guide the preparation of a binding agreement (Attachment A.)
- The conceptual design as shown in the illustrative site plan (Attachment B), which requires the demolition of the existing Belle Haven pool facilities, should proceed for review.
- The project review process should adhere to the remaining steps and timeline as outlined below.

Policy Issues

This generous offer to build a new public facility in the Belle Haven neighborhood provides an exciting opportunity for the community for generations to come. On multiple occasions over the past nine months, the City Council has established this project as one of the City's top priorities, most recently August 18.

Background

In October 2019, Facebook announced its intent to collaborate with the community and the City to build a new multigenerational community center and library on the site of the current Onetta Harris Community Center (OHCC), Menlo Park Senior Center and Belle Haven Youth Center located at 100-110 Terminal Avenue. On December 10, 2019, staff provided an informational item to provide an update to City Council while awaiting a written offer. In addition, the City Council appointed City Councilmembers Carlton and Taylor to an ad hoc subcommittee on this project. On December 16, 2019, Facebook submitted its offer for the City Council's consideration.

On January 28, the City Council approved a resolution of intent to collaborate with Facebook and accept the offer (Attachments C and D.) Since January, the project has been referred to by the name Belle Haven community center and library (or BHCCL for short.) Moving forward, the project will be referred to as the Menlo Park Community Campus (or MPCC for short) to be more inclusive reflecting the benefits to the overall City and the other components of the project besides the community center and library, namely the senior center, youth center and pool. The actual naming of the new facility will be a separate process after approval of the project.

On February 11, City Council conducted a study session to discuss current service levels and directed staff regarding changes to the preliminary recommendations. On February 25, City Council approved the

interim service levels, appropriated \$1 million for interim services, waived purchasing requirements and expressed a willingness to convene special City Council meetings with 24-hour noticing related to any potential contracts in excess of the city manager's spending authority (currently \$78,000.)

On March 10, the City Council initiated the process to abandon public utilities easements and a portion of Terminal Avenue currently occupied by Kelly Park, the Menlo Park Senior Center and the Belle Haven Pool. The City Council completed the abandonment process June 23.

On April 7, the City Council voted unanimously to reaffirm the project as a top priority in light of the impacts of the COVID-19 pandemic. On April 14, the City received an informational item on the project. On April 21, the City Council took two actions: confirming the next steps and timeline for the project review and expressing support for the draft plan for interim services subject to continued due diligence and final subsequent City Council approval.

As part of the June 9 City Council staff report on the operating budget, staff provided an update that the overall project schedule was delayed. Facebook needed additional time to ensure that the proposed design for the new facility was consistent with the project budget. At that point in time, the estimated timeline for City Council approval of the project was September 2020, resulting in the need to decommission facilities in late March/early April 2021, with demolition occurring approximately one or two months thereafter.

On July 28, the City Council received an informational update on the project timeline. Actions related to lot mergers, right of way and easement abandonments, and heritage tree permits were completed. Additional time was needed to work through the design and budget issues. The earliest that the project would be ready for City Council approval is January 2021. With this delay, there would be a corresponding delay in the decommissioning and demolition process until summer 2021, at the earliest.

Information related to the project is available on the City-maintained webpage (Attachment E.) In preparation for the September 15, City Council meeting, the Subcommittee, comprised of Mayor Taylor and City Councilmember Carlton, will be hosting a telephone town hall meeting Thursday, September 10, from 6 – 7:30 p.m.

Analysis

Term sheet

The draft term sheet (Attachment A) reflects a collaborative effort by Facebook and the City, including legal review. The term sheet is not enforceable, but it provides a summary of what to expect in a future binding agreement that the City Council will be asked to review and approve in January 2021 based on the current project schedule (discussed below). The term sheet includes seven sections or paragraphs with the following headings:

1. Facebook's obligations
2. City's obligations
3. City requested work
4. Project schedule
5. Naming rights
6. Termination; suspension
7. Indemnification; warranties

One topic worth particular interest is the item 3 (City requested work.) The City is responsible for funding additional work and is responsible for separately contracting for the additional work unless it is integral to

the design of the main building. Consistent with the City Council Resolution of Intent, the types of enhancements that the City is considering as itemized in item 3a of the term sheet are as follows:

- i. A new swimming pool and all associated support systems including a pool mechanical equipment building,
- ii. Upgrading the building to a Red Cross Evacuation Center (instead of a standard community building),
- iii. Deploying emergency backup power (e.g., diesel generator),
- iv. Installing solar carports to achieve Net Zero Energy,
- v. Pursuing Leadership in Energy and Environmental Design (LEED) Platinum or equivalent (instead of LEED Gold),
- vi. Designing and installing a microgrid,
- vii. Deconstructing the existing buildings deconstruction (instead of demolishing them),
- viii. Replacing the on-site water main replacement,
- ix. Extending a recycled water main extension to serve the site in the future,
- x. Undergrounding utilities (communication and potentially electric distribution lines)

Of these items, only item vii (water main replacement) has been funded to date. Item i. (new swimming pool) has an estimated cost of \$7.4 million and is discussed further below. Staff is currently reviewing item vi. (microgrid) as part of a feasibility analysis, which will also factor in the complexities of delivering such a system as part of the project timeline. Staff is continuing to refine estimates for the other seven items listed above, but the expected costs are likely to total \$3-4 million. Additionally, staff is pursuing options for securing rights to continue to use lands currently owned by the PG&E, including the option to acquire the land to provide more certainty for the project and long-term benefits for the City (item 2h.)

Conceptual design and pool demolition

The concept design is shown on an illustrative site plan (Attachment B.) The plan shows a new two-story building in the same location as earlier concepts. In order to meet the programming needs and site constraints, the footprint of the proposed building encroaching into the area of the existing pool. As part of the September 15, City Council discussion, the Facebook team will give a presentation explaining the thought process behind the current design. The proposed design is dependent on the demolition of the existing pool facilities concurrently with the demolition of the other facilities. Facebook's offer and the project schedule is contingent on the City Council providing direction about the pool demolition in mid-September. The City Council Subcommittee supports the demolition of the pool as part of this project, understanding that the future design and funding would need to be determined later.

The illustrative site plan shows one potential layout of a new pool facility to assist in visualizing the possibilities. The construction and funding of the pool is not part of Facebook's offer and is the responsibility of the City to deliver. The current cost estimate for the reconstruction of the pool is \$7.4 million. Based on the project schedule, the most likely source of funding that would be available in a timely fashion would be Measure T recreation bonds approved by Menlo Park voters in 2001. To date, approximately \$24 million has been spent on projects and \$14 million remains. The bonds are paid for by all property owners based on assessed (not market) value of properties. For each \$1 million of assessed value, property owners are currently paying approximately \$65 per year through 2040. In order to tap the remaining \$14 million, property owners would need to pay an additional \$45 per year (totaling \$110 for \$1 million assessed value) through 2040. If the City Council were to consider the use of Measure T funding, the City Council would need to make such a decision by January 2021 at the latest because it takes approximately six months to access the proceeds of the bond sales. Additional information related to Measure T bonds is available through an August 27, 2019 staff report regarding the refinancing of the bonds (Attachment F.)

In terms of other funding options, the general fund's unassigned fund balance is estimated at \$2.09 million, which is insufficient to cover the full cost of the pool, let alone the potential enhancements. One idea that has been mentioned as a potential funding option would be a community amenity delivered through a development project in the Bayfront Area. Such an option could not be pursued until such time that a proposed development project was approved by the City. It would be extremely challenging to align the sequence of events to secure the necessary funding by January 2021. Staff intends to return to City Council October 13 for decisions on all of the City requested work.

Project schedule and review process

Based on the updated submittal from Facebook, staff has developed a timeline corresponding with the meeting schedule outlined in the April 21 and July 28 staff reports as follows:

- September 15 – City Council review of the term sheet
- October 5 – Planning Commission study session
- October 13 – City Council direction on additional City requested work
- October 27 – City Council approval of the final interim services plan (as summarized April 21 and July 28)
- December 7 – Planning Commission public hearing to make a recommendation on the project
- January 12, 2021 – City Council public hearing on agreement, project and California Environmental Quality Act (CEQA) determination plus identification of funding to rebuild the pool concurrently with the new building

If the project is approved in January 2021, this would result in the following schedule for project completion assuming this remains a high priority project for the City:

- June 2021 – Facility closures
- July to August 2021 – Remediation and demolition
- Spring 2023 – Facilities re-opening

Impact on City Resources

Staff estimates the value of the offer at approximately \$40 million. On the July 28, the City Council approved the capital improvement plan (CIP) budget for fiscal year 2020-21, which allocated an additional \$3.850 million, plus carry-over funds of \$2.138 million for a total project budget of approximately \$5.988 for the City's base-level commitments, including interim services. Staff estimates that the inclusion of the reconstruction of the pool in the project could require approximately \$7.4 million in additional funding. Other potential project enhancements could cost an additional \$3-4 million.

Environmental Review

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. The proposed building is a project under CEQA and staff believes that the project is eligible for a Class 2 exemption for the replacement of existing facilities (§15302). The final CEQA determination will occur later in the process at the time of project approval.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. In addition, the City sent electronic notices via Nextdoor, Facebook and directly to project email and text update subscribers from the project page (Attachment A.)

Attachments

- A. Draft term sheet
- B. Illustrative site plan
- C. Offer letter from Facebook, dated December 16, 2019
- D. Resolution No. 6537 approved January 28
- E. Hyperlink – project page: menlopark.org/communitycampus
- F. Hyperlink – menlopark.org/DocumentCenter/View/22628/H5---20190827-Approve-GO-Bond-refunding-CC

Report prepared by:
Justin Murphy, Deputy City Manager

Menlo Park Community Campus
Draft Term Sheet

Facebook has offered to provide funding and development of a new multi-generational community center, including senior center, youth center and library, for a new community campus in the Belle Haven neighborhood (the "Project"), in accordance with preliminary space plans and building design concept that are subject to final review and approval by the Menlo Park City Council, as generally set forth in Facebook's letter to the City Council dated December 16, 2019. The Project includes the remediation and demolition of all of the existing facilities, including the pool. The following is a summary of the terms to be incorporated into a definitive agreement between Facebook and the City of Menlo Park.

1. Facebook's Obligations

- a. Design, obtain entitlements for, and construct the Project in accordance with mutually agreeable plans (to be attached as an exhibit to the agreement). Facebook will have sole discretion over the means and methods of design and construction including the selection of the architect, engineers, design consultants, general contractor and all subcontractors. The agreement will identify scopes of work and materials outside of the Project (e.g., furnishings, IT equipment, etc.). Facebook will be responsible for unforeseen/unanticipated conditions (subject to its termination right described in Paragraph 6).
- b. Prepare a budget for the Project. If the cost of the Project is projected to exceed the budget, then the City and Facebook will work together to identify modifications to the Project that allow it to fit within the budget.
- c. Pay prevailing wage for all work done on the Project.
- d. Work with the City and the surrounding neighborhood to minimize impacts on the neighborhood during construction.
- e. Assist the City in pursuing CPUC 851 permits/approval for acquisition of, or work within, PG&E parcel(s).
- f. Obtain fixed bids/pricing for City requested work (described in Paragraph 3) to assist City in determining whether to include some or all of such additional work.

2. City's Obligations

- a. Timely process all building permit applications. The City will make a good faith effort to expedite the plan check process with the goal of issuing building permits within two months of submittal of the complete application post-entitlement.
- b. Make good faith efforts to assist Facebook with resolving permitting issues with other public agencies, utilities, and neighboring property owners, if any.
- c. Waive all costs in connection with processing Project approvals, staff time, permits, plan check, and building division inspections, etc.
- d. Waive all applicable development impact fees.
- e. Work with the community to develop and implement a plan to accommodate existing community programs that will be displaced during the construction period. Facebook has no responsibility for interim facilities or programming.
- f. Work with Facebook on closures during the construction phase. During construction, the site will be closed except that access must be maintained to Beechwood School and the sports fields.
- g. Bear all costs in connection with programming, operation, and maintenance of the new facilities. Facebook is not responsible for any ongoing costs.

- h. Bear all costs in connection with acquiring PG&E parcel(s) [fee, easement or license] and obtaining CPUC 851 permits/approval for acquisition of, or work within, PG&E parcel(s).

3. City Requested Work

- a. The City will have the right to propose work in addition to the Project but related to the Project such as the following:
 - i. a new swimming pool and all associated support systems including a pool mechanical equipment building,
 - ii. upgrading the building to a Red Cross Evacuation Center (instead of a standard building),
 - iii. deploying emergency backup power (e.g., diesel generator),
 - iv. installing solar carports to achieve Net Zero Energy,
 - v. pursuing LEED Platinum or equivalent (instead of LEED Gold),
 - vi. designing and installing a microgrid,
 - vii. deconstructing the existing buildings (instead of demolishing them),
 - viii. replacing the on-site water main,
 - ix. extending a recycled water main to serve the site in the future,
 - x. undergrounding utilities (communication and potentially electric distribution lines).
- b. The City will be responsible for all costs of any City requested work.
- c. The City would contract directly with the contractors for any City requested work (except that Facebook will consider contracting for minor ancillary work and/or works that cannot be separated from the main building construction contract). The agreement will include a process for proposing and finalizing City requested work. If the City desires to include any City requested work, Facebook will cooperate and coordinate with the City and at the City's request, Facebook will obtain fixed bids/pricing for City requested work from Facebook's contractors.
- d. As a condition to performing any City requested work, Facebook may require the City to demonstrate that sufficient funds are available to cover the full cost of the City requested work that Facebook is performing.

4. Proposed Schedule

- a. The agreement will include a Project schedule.
- b. Facebook will not be liable for delays. Facebook will, however, make a good faith effort to complete the Project within 24 months of demolition of the existing facility (subject to force majeure including shut downs by government order).

5. Naming Rights

- a. The City will have the right to name the facility. The City will, however, meet and confer with Facebook with respect to the facility's name. The City will not license or otherwise sell naming rights to the facility.

6. Termination; Suspension

- a. Termination Prior to Commencement of Construction: Facebook may terminate the agreement with or without cause before demolition of any existing facilities. If Facebook terminates the agreement without cause, then it will reimburse the City for its out of pocket costs and staff time but no other damages. If Facebook terminates the agreement with cause [to be defined], it will not be liable for any costs incurred or damages sustained by the City.
- b. Termination After Commencement of Construction: Facebook may not terminate the agreement after demolition of the building(s) without cause [to be defined]. If Facebook terminates the agreement without cause or if the City terminates the agreement for cause, the City may complete the Project and Facebook will be responsible for the cost to complete the Project, together with all damages sustained by the City as result of the delays in completing the Project due to such termination. If Facebook terminates the agreement for cause, Facebook will not be liable for completing the Project or for any damages and the City shall determine whether and how to complete the Project.
- c. Upon termination, with or without cause, Facebook will use commercially reasonable efforts to assign all design, construction and other Project related contracts to the City.

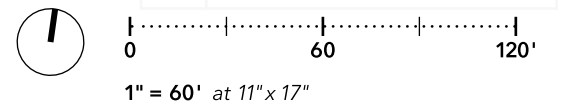
7. Indemnification; Warranties

- a. Facebook will indemnify the City from third party claims arising out of construction of the Project (excluding claims attributable to the City's negligence or willful misconduct). Facebook will not, however, be liable for construction defects (see below). The City will indemnify Facebook and its designers from third party claims arising from events occurring after turnover of the site to the City (excluding claims attributable to the indemnitees' negligence or willful misconduct).
- b. The improvements will be delivered "as-is" and Facebook will not be liable for construction defects. The agreement will, however, include a process for identifying punch list items and agreeing on final completion. Facebook will assign all construction warranties to the City and cooperate with the enforcement of those warranties.

This Term Sheet is a non-binding document for discussion purposes only. Neither party is obligated to proceed with the proposed Project unless until the parties enter into a binding agreement setting forth all materials terms, provisions and obligations of the parties.



A	Menlo Park Community Campus Building	E	Children's Outdoor Courtyard	I	Service Area
B	Boardwalk	F	Bicycle Parking	J	Pedestrian Pathway
C	Playground	G	Outdoor Dining Terrace	K	Parking Lot
D	Existing Redwood Trees to Remain	H	Community Terrace & Garden	L	Pool Area by the City of Menlo Park
		M	SamTrans Bus Layover	N	SamTrans Bus Stop



Proposed Site Plan /

December 16, 2019

City Council
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025

Re: Multi-Generational Community Center and Library in Belle Haven

Dear Mayor Mueller and Honorable Members of the City Council:

On behalf of Facebook, I am honored to submit our proposal to explore funding and the development of a new multi-generational community center and library for Menlo Park's Belle Haven neighborhood. This is an incredibly exciting project that will bring vitality and vibrancy to Belle Haven, and ties back to the long-term vision that we share for our surrounding community.

As you know, we have a long history of partnering with the City – dating back to the 2011 Belle Haven & Willow Business Area Design Charrette that we initiated when we moved to Menlo Park. That was the catalyst for our collaboration with the community to realize our shared goals and create a sense of place. Eight years after making Menlo Park our home, our commitment has not wavered, and we are in a strong position to make this donation.

Today, we are presenting the City an opportunity to continue our work together and move these important efforts forward. The purpose of this letter is to suggest a framework for completing the Belle Haven Senior Center and Onetta Harris Community Center as quickly as possible – a project that we know from listening to residents has been a long-desired wish of the community.

Before getting into the framework, I want to address why we're making this significant philanthropic commitment and clarify that the Community Center should be treated as a standalone endeavor that is not connected to any other Facebook project. By providing updated facilities, our goal is to give residents a welcoming place to gather, celebrate and reinforce the social fabric that makes this neighborhood special.

This is an ambitious undertaking but fortunately, we have a head start. Through the City's development of the Parks and Recreation Facilities Master Plan and Belle Haven Branch Library studies – as well as our own engagement – we have direct input from the community, City staff and City Council. We want to thank Mayor ProTem Cecilia Taylor, whose leadership enabled us to begin working with architect Hart Howerton to develop preliminary space/site plans and a conceptual design for the project. We hope our proposal will go a long way in meeting the City and community's desired goals of redeveloping the existing facilities.

With Facebook's bias for action, we can quickly turn this vision into a reality – and we think it's feasible to do so within 2.5 years. This expedited schedule is contingent upon leveraging existing information and achieving consensus among key stakeholders, including community members, City staff and City leadership.

With the above in mind, we propose that the project proceed in two phases as outlined below:

Phase One – Outreach, Design, Space Programming and Approvals

As mentioned above, we have developed a preliminary space plan and building design concept. As a first step in conjunction with the city, we plan to present the concept and preliminary space plan at a community meeting in Belle Haven in mid-January and at a City Council meeting in late January. These meetings will give the city council, community and stakeholders the opportunity to share initial feedback and discuss the types of activities and programs the community would like to have in the new facility.

In February and March, we will hold additional meetings with the community and operations staff to further define the space needs. In January, we'll provide additional information on the community engagement plan and give specific details on the meetings to be held. We envision the meetings will provide additional data on the types of programs the community would like to see run in the new facilities. Facebook will not decide what programs will be operated in the facility, as that will be for the City to determine.

After those meetings, we will consider all the feedback and work with the architect to further refine the floor plans and building design. The updated design will then be presented to the Planning Commission and City Council for approval in the summer of 2020. While the design will need to be refined through the process outlined above, we plan to study the following:

- New youth facilities and a new senior center;
- Health & fitness facilities (gymnasium);
- Incorporation of the proposed Belle Haven Library program into the facility;
- Renovated amenities near the existing swimming pools, such as new locker rooms and additional areas for picnics and gatherings. At this time, Facebook is not offering to pay for a complete reconstruction of the swimming pools; however, we are willing to work with the City to understand what improvements can be accommodated within the budget for the project. Facebook is open to building new pools if additional funding sources are identified by the City or third parties.
- Improved access to Kelly Park by extending pedestrian access through a breezeway in the new building and by better orienting new communal spaces to the park; and
- Additional amenities, such as a new arrival area and improvements to the parking lot, circulation and drop-off zones.

During this phase, we would also complete the following steps:

1. Gather information to ensure that our proposal will meet Menlo Park's existing zoning and building requirements. To keep the project on track, we intend to design a building to meet the parameters of a categorical exemption to satisfy the environmental review – Class 2 replacement of existing facilities.
2. Conduct due diligence on the site to ensure we understand its condition and whether there is anything that may affect the feasibility of the different redevelopment options or inform the design. This involves understanding the parameters for geotechnical conditions, site easements and location of existing site conditions and utilities.
3. Our team will work with the City Manager and the City Attorney to develop an agreement that documents project development details related to design, construction, financing, operations and maintenance.
4. We anticipate that Facebook would act in the capacity of a master developer and be responsible for design and construction, with the scope of our funding commitment contingent on the outcome of the design process. If there are additional items the City would like to see included that are not a part of the fixed budget, such as replacement of the swimming pool, then those items would need to be funded with contributions from the City.

Our interest in this project is driven in large part by our desire to deliver benefits to the community in a relatively short duration. If this initial phase takes more than 6 months, we will reassess whether the project is feasible under the goals we have outlined in this letter.

Phase Two – Developing Construction Plans & Building

During the second phase, we will finalize the technical requirements of the project, develop plans for construction, submit plans to the City for permit and ultimately demolish the existing facilities and construct the facility.

Details related to construction phasing, timing, community notifications and progress reporting would also be developed during this phase. We optimistically believe that we can complete construction within 18 months after receiving the building permit.

Further Clarifications

1. Facebook is proposing that Hart Howerton be the lead project planner and designer and that the City retain a consultant to help guide requirements.
2. While the site plan that we have developed does allow for some of the existing facilities to remain open during construction, it does add risk to the project schedule, and we would need to ensure the public can safely access facilities given the proximity to the new construction. Facebook's preference would be to relocate all existing programs with the expectations of the requirements to maintain access for Beechwood and the soccer fields.

3. The project is expected to be phased, and Facebook will not be responsible for providing temporary facilities during the construction period.
4. We ask that the City Council designate this project as a priority project and direct staff to prioritize timely project approvals and plan check / permitting reviews. Currently, permits can take up to 8 months after projects are approved, and our request for this project is that permits be issued within 2 months of submittal. This will lead to an expedited completion date and ultimately benefit the residents of Menlo Park.
5. We are also requesting that the City cover all costs related to processing of the project approvals, permitting, plan checking and building department inspections.
6. Facebook is not responsible for developing or funding the activities and programs that will be run from the new facility.
7. The City will be responsible for all ongoing operations and maintenance costs associated with operating the facility. Facebook will, however, assign the City any construction warranties it receives.
8. Formal roles and responsibilities between Facebook and the City will need to be established so expectations and lines of communication are clear for all parties. In order to move quickly, communication will need to be streamlined.

Next Steps

As for immediate next steps, we anticipate working with the community and the City to schedule the community outreach and engagement meetings and, with City Council support, proceeding with the tasks outlined in phase one above.

This project is an exciting opportunity to provide a tremendous neighborhood resource that will serve as a community gathering place in Menlo Park, the place we consider home. Thank you for this opportunity, and we look forward to working closely with you, Menlo Park's Belle Haven residents and City staff on this important initiative.

Sincerely,



John Tenanes

cc: Starla Jerome-Robinson, City Manager
William McClure, City Attorney
Deanna Chow, Interim Community Development Director

RESOLUTION NO. 6537**RESOLUTION OF INTENTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK TO COLLABORATE WITH FACEBOOK, INC. FOR THE CONSTRUCTION OF A NEW COMMUNITY CENTER AND LIBRARY IN THE BELLE HAVEN NEIGHBORHOOD**

WHEREAS, on December 16, 2019, the City Council of the City of Menlo Park received a proposal from Facebook Inc. proposing to explore funding and development of a new multi-generational community center and library located in Menlo Park's Belle Haven neighborhood, replacing existing community center, senior center, youth center, pool house, and library facilities; and

WHEREAS, the proposal outlines a two-phase project schedule, with Phase One occurring over six months, from January to June 2020, and Phase Two occurring over two years, from July 2020 to July 2022, with a goal of starting construction through demolition of existing facilities in January 2021; and

WHEREAS, the proposal requests that the City Council designate this project as a priority project and direct staff to prioritize timely project approvals and plan check / permitting reviews; and

WHEREAS, Phase One would include obtaining the necessary City approvals for the design of the project and the City and Facebook, Inc. entering into an agreement that documents project development details related to design, construction, financing, operations, and maintenance for the project; and

WHEREAS, Phase Two of the proposal would result in the completion of construction documents, permitting, and construction of the building; and

WHEREAS, the intent of the proposal is to design a building to meet the parameters of a California Environmental Quality Act (CEQA) Class 2 categorical exemption as a replacement of existing facilities; and

WHEREAS, the project is anticipated to receive input from the Library Commission and Parks and Recreation Commission and approvals from the Planning Commission and City Council; and

WHEREAS, a community public engagement plan for the project, a joint effort between Facebook, Inc., City staff, and the City Council ad hoc subcommittee, was presented to the City Council on January 28, 2020, outlining the level of public engagement by project component and the role of City Council advisory bodies and community in the project approval process; and

WHEREAS, the proposal outlines that the City will be responsible for relocating existing programs into temporary facilities for the duration of construction and will be responsible for the future programming of the facility; and

WHEREAS, the proposal outlines that the City will be responsible for all costs related to project approvals, permitting, plan checking and inspections, and for all ongoing operations and maintenance costs of the facility; and

WHEREAS, the City entered into an agreement with Noll and Tam Architects for the design of the Belle Haven branch library; and

WHEREAS, the City intends to revise the scope of work with Noll and Tam Architects for design assistance on the project to provide expertise on programmatic requirements, performance criteria, and act as an Owner's representative, as needed; and

WHEREAS, the City intends to seek funding for the replacement of the Belle Haven pool for inclusion as part of the project; and

WHEREAS, the City will retain the right to name the facility and will develop a process to determine the name of the facility.

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 declare its intent to collaborate with Facebook Inc. for the construction of a new community center and library in the Belle Haven neighborhood with the following clarifications and actions:

1. Accept the proposal from Facebook, Inc. for the construction of a new community center and library in the Belle Haven neighborhood.
2. Designate the project as a priority project and direct staff to prioritize timely project approvals, plan check and permitting reviews.
3. Direct staff to develop a draft agreement with Facebook, Inc. that documents project development details related to design, construction, financing, operations, and maintenance for the City Council's consideration.
4. Accept the public engagement outline for the project presented to the City Council on January 28, 2020 identifying the level of public engagement the role City Council advisory bodies and the community, as a joint effort with Facebook and led by the City.
5. Revise the scope of work with Noll and Tam for design assistance on the project to provide expertise on programmatic requirements, performance criteria, and act as a subject matter expert, as needed up to the current contract amount of \$160,000.
6. Direct staff to identify a project budget and recommend contracting authority modifications specific to this project for items not included in the offer.
7. Amend the fiscal year 2019-20 budget to merge the Belle Haven Branch Library project and the Belle Haven Youth Center Improvement project into a single Belle Haven community center and library project.
8. Direct staff to seek or identify funding for the replacement of the Belle Haven pool for inclusion as part of the project for the City Council's consideration.
9. Direct City staff and the City Council ad hoc subcommittee to develop a community process, including a timeline, to determine the name of the new multipurpose, multigenerational facility while reflecting history.
10. Direct staff to evaluate and propose specific environmental, sustainability, and resiliency goals for the project in order to understand project cost implications and tradeoffs.

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-eighth day of January, 2020, by the following votes:

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AYES: Carlton, Mueller, Nash, Taylor

NOES: None

ABSENT: None

ABSTAIN: None

RECUSED: Combs

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this twenty-eighth day of January, 2020.



Judi A. Herren, City Clerk

Oficina del Administrador de la Ciudad



INFORME DE PERSONAL

Ayuntamiento

Fecha de la reunión: 15/9/2020

Número de informe del personal: 20-201-CC

Negocios regulares: Considere la hoja de términos, el diseño conceptual y el proceso de revisión del proyecto de la oferta de Facebook para reconstruir las instalaciones comunitarias ubicadas en 100-110 Terminal Avenue

Recomendación

El personal recomienda que el Ayuntamiento confirme lo siguiente:

- La hoja de términos del Campus Comunitario de Menlo Park (MPCC) ubicado en 100 Terminal Avenue debe guiar la preparación de un acuerdo vinculante (Anexo A.)
- El diseño conceptual, tal como se muestra en el plan ilustrativo del sitio (Anexo B), que requiere la demolición de las instalaciones existentes de la piscina de Belle Haven, debe proceder a su revisión.
- El proceso de examen de los proyectos debería ajustarse a los pasos y plazos restantes, como se indica a continuación.

Temas de política

Esta generosa oferta de construir una nueva instalación pública en el vecindario de Belle Haven proporciona una emocionante oportunidad para la comunidad para las generaciones venideras. En múltiples ocasiones durante los últimos nueve meses, el Ayuntamiento ha establecido este proyecto como una de las principales prioridades de la ciudad, la más reciente el 18 de agosto.

Antecedentes

En octubre de 2019, Facebook anunció su intención de colaborar con la comunidad y la Ciudad para construir un nuevo centro comunitario multigeneracional y una biblioteca en el sitio del actual Centro Comunitario Onetta Harris (OHCC), el Centro para Ancianos de Menlo Park y el Centro Juvenil de Belle Haven ubicado en la 100-110 Terminal Avenue. El 10 de diciembre de 2019, el personal proporcionó un artículo informativo para proporcionar una actualización al Ayuntamiento mientras se esperaba una oferta por escrito. Además, el Ayuntamiento nombró a los concejales Carlton y Taylor para un subcomité especial en este proyecto. El 16 de diciembre de 2019, Facebook presentó su oferta para la consideración del Ayuntamiento.

El 28 de enero, el Ayuntamiento aprobó una resolución de intención de colaborar con Facebook y aceptar la oferta (Anexos A y D) Desde enero, el proyecto ha sido llamado por el nombre de centro comunitario y biblioteca de Belle Haven (o BHCC para abreviar.) En el futuro, el proyecto se denominará Campus Comunitario de Menlo Park (o MPCC para abreviar) para que sea más inclusivo y refleje los beneficios para la ciudad en general y los otros componentes del proyecto además del centro comunitario y la

biblioteca, es decir, el centro de ancianos, el centro juvenil y la piscina. La denominación real de la nueva instalación será un proceso separado después de la aprobación del proyecto.

El 11 de febrero, el Ayuntamiento llevó a cabo una sesión de estudio para discutir los niveles de servicio actuales y dirigió al personal con respecto a los cambios en las recomendaciones preliminares. El 25 de febrero, el Ayuntamiento aprobó los niveles de servicio provisionales, asignó 1 millón de dólares para los servicios provisionales, renunció a los requisitos de compra y expresó su voluntad de convocar reuniones especiales del Ayuntamiento con atención las 24 horas del día relacionadas con cualquier contrato potencial que supere la autoridad de gasto del administrador de la ciudad (actualmente de \$78,000.)

El 10 de marzo, el Ayuntamiento inició el proceso para abandonar las servidumbres de servicios públicos y una porción de Terminal Avenue actualmente ocupada por Kelly Park, el Centro de Ancianos de Menlo Park y la Piscina de Belle Haven. El Ayuntamiento completó el proceso de abandono el 23 de junio.

El 7 de abril, el Ayuntamiento votó unánimemente para reafirmar que el proyecto es de máxima prioridad en vista de los impactos de la pandemia de COVID-19. El 14 de abril, la ciudad recibió un artículo informativo sobre el proyecto. El 21 de abril, el Ayuntamiento tomó dos medidas: confirmar los próximos pasos y el calendario para la revisión del proyecto y expresar su apoyo al proyecto de plan para los servicios provisionales, sujeto a la debida diligencia continua y la posterior aprobación final del Ayuntamiento.

Como parte del informe del personal del Ayuntamiento del 9 de junio sobre el presupuesto operativo, el personal proporcionó una actualización de que el calendario general del proyecto se retrasó. Facebook necesitaba más tiempo para asegurarse de que el diseño propuesto para la nueva instalación era coherente con el presupuesto del proyecto. En ese momento, el plazo estimado para la aprobación del proyecto por parte del Ayuntamiento era en septiembre de 2020, lo que dio lugar a la necesidad de dismantelar las instalaciones para finales de marzo/principios de abril de 2021, con una demolición aproximadamente uno o dos meses después.

El 28 de julio, el Ayuntamiento recibió una actualización informativa sobre el calendario del proyecto. Se completaron acciones relacionadas con fusiones de lotes, abandonos de derechos de paso y servidumbres, y permisos de árboles patrimoniales. Se necesitaba tiempo adicional para trabajar en los temas de diseño y presupuesto. Lo más pronto que el proyecto estará listo para la aprobación del Ayuntamiento es enero de 2021. Con este retraso, habría un retraso correspondiente en el proceso de desmantelamiento y demolición hasta el verano de 2021, como mínimo.

La información relacionada con el proyecto puede consultarse en la página web administrada por la Ciudad (Anexo E.) En preparación para la reunión del Ayuntamiento del 15 de septiembre, el Subcomité, compuesto por el Alcalde Taylor y el Concejal Carlton, tendrá una reunión telefónica en la alcaldía el jueves 10 de septiembre, de 6 a 7:30 p.m.

Análisis

Hoja de términos

El borrador de la hoja de términos (Anexo A) refleja un esfuerzo de colaboración entre Facebook y la Ciudad, incluyendo la revisión legal. La hoja de términos no es ejecutable, pero proporciona un resumen de lo que se puede esperar en un futuro acuerdo vinculante que se le pedirá al Ayuntamiento que revise y apruebe en enero de 2021 basado en el calendario actual del proyecto (que se discute a continuación). La hoja de términos incluye siete secciones o párrafos con los siguientes encabezados:

1. Obligaciones de Facebook
2. Obligaciones de la Ciudad
3. Trabajo solicitado por la Ciudad
4. Programa del Proyecto
5. Derechos de nombres
6. Cancelación; suspensión
7. Indemnización; garantías

Un tema que merece especial interés es el tema 3 (Trabajo solicitado por la Ciudad). La Ciudad es responsable de financiar el trabajo adicional y es responsable de contratar por separado el trabajo adicional a menos que sea parte integral del diseño del edificio principal. De acuerdo con la Resolución de Intención del Ayuntamiento, los tipos de mejoras que la Ciudad está considerando, como se detalla en el punto 3a de la hoja de términos, son los siguientes:

- i. Una nueva piscina y todos los sistemas de apoyo asociados, incluyendo un edificio de equipo mecánico de la piscina,
- ii. La mejora del edificio para convertirlo en un Centro de Evacuación de la Cruz Roja (en lugar de un edificio comunitario estándar),
- iii. Despliegue de energía de reserva de emergencia (por ejemplo, un generador diesel),
- iv. Instalación de techos solares en estacionamientos para lograr la Energía Cero Neta,
- v. Perseguir el Liderazgo en Energía y Diseño Ambiental (LEED, por sus siglas en inglés) Platino o equivalente (en lugar de LEED Oro),
- vi. Diseño e instalación de una microrred,
- vii. Desmantelamiento de los edificios existentes indicados (en lugar de demolerlos),
- viii. Reemplazo las tuberías principales de agua en el sitio,
- ix. Extensión de una tubería de agua reciclada para servir al sitio en el futuro,
- x. Suministro de servicios subterráneos (líneas de comunicación y potencialmente de distribución eléctrica)

De estos puntos, hasta la fecha solo se ha financiado el punto vii (sustitución de la tubería principal de agua). El punto i. (nueva piscina) tiene un costo estimado de \$7.4 millones y se discute más adelante. El personal está examinando actualmente el punto vi. (microrred) como parte de un análisis de viabilidad, en el que también se tendrán en cuenta las complejidades de la puesta en marcha de ese sistema como parte del cronograma del proyecto. El personal sigue perfeccionando las estimaciones de los otros siete puntos mencionados, pero es probable que los costos previstos asciendan a un total de \$3 a 4 millones. Además, el personal está buscando opciones para asegurar los derechos para continuar usando las tierras que actualmente son propiedad de la PG&E, incluyendo la opción de adquirir la tierra para dar más certeza al proyecto y beneficios a largo plazo para la Ciudad (punto 2h.)

Diseño conceptual y demolición de la piscina

El diseño conceptual se muestra en un mapa ilustrativo del sitio (Anexo B.) El mapa muestra un nuevo edificio de dos pisos en el mismo lugar que los conceptos anteriores. A fin de satisfacer las necesidades de programación y las limitaciones del sitio, la huella del edificio propuesto invade la zona de la piscina existente. Como parte de la discusión del Ayuntamiento del 15 de septiembre, el equipo de Facebook dará una presentación explicando el proceso de pensamiento detrás del diseño actual. El diseño propuesto depende de la demolición de las instalaciones de la piscina existente simultáneamente con la demolición de las otras instalaciones. La oferta de Facebook y el calendario del proyecto depende de que el Ayuntamiento proporcione orientación sobre la demolición de la piscina a mediados de septiembre. El Subcomité del Ayuntamiento apoya la demolición de la piscina como parte de este proyecto, entendiendo que el diseño y la financiación futuros necesitarán ser determinados más adelante.

El mapa ilustrativo del sitio muestra una posible disposición de una nueva instalación de piscinas para ayudar a visualizar las posibilidades. La construcción y la financiación de la piscina no es parte de la oferta de Facebook y es la responsabilidad de la Ciudad de brindar. La estimación actual del costo de la reconstrucción de la piscina es de \$7.4 millones. Según el calendario del proyecto, la fuente de financiación más probable de la que se dispondría oportunamente serían los bonos de recreación de la Medida T aprobados por los votantes de Menlo Park en 2001. Hasta la fecha, se han gastado aproximadamente \$24 millones en proyectos y quedan \$14 millones. Los bonos son pagados por todos los propietarios sobre la base del valor de tasación (no de mercado) de las propiedades. Por cada \$1 millón de valor estimado, los propietarios están pagando actualmente aproximadamente \$65 por año hasta el 2040. Para poder aprovechar los \$14 millones restantes, los propietarios tendrían que pagar \$45 adicionales al año (por un total de \$110 por un valor tasado de \$1 millón) hasta el año 2040. Si el Ayuntamiento considerara la posibilidad de utilizar la financiación de la Medida T, tendría que tomar esa decisión a más tardar en enero de 2021, ya que se tarda aproximadamente seis meses en acceder al producto de la venta de bonos. Se puede obtener información adicional relacionada con los bonos de la Medida T mediante un informe del personal del 27 de agosto de 2019 relativo a la refinanciación de los bonos (Anexo F.)

En cuanto a otras opciones de financiación, el saldo no asignado del fondo general se estima en \$2.09 millones, lo cual es insuficiente para cubrir el costo total del fondo común, sin mencionar las posibles mejoras. Una idea que se ha mencionado como posible opción de financiación sería un servicio comunitario prestado a través de un proyecto de desarrollo en la zona de la bahía. Tal opción no podría llevarse a cabo hasta que un proyecto de desarrollo propuesto fuera aprobado por la Ciudad. Sería extremadamente difícil alinear la secuencia de eventos para asegurar la financiación necesaria para enero de 2021. El personal tiene la intención de volver al Ayuntamiento el 13 de octubre para tomar decisiones sobre todo el trabajo solicitado por la ciudad.

Calendario del proyecto y proceso de revisión

Sobre la base de la presentación actualizada de Facebook, el personal ha elaborado un calendario que se corresponde con el calendario de reuniones descrito en los informes del personal del 21 de abril y el 28 de julio, como se indica a continuación:

- 15 de septiembre – Revisión de la hoja de términos por el Ayuntamiento
- 5 de octubre – Sesión de estudio de la Comisión de Planificación
- 13 de octubre – Orientación del Ayuntamiento sobre el trabajo adicional solicitado por la Ciudad
- 27 de octubre – Aprobación del plan final de servicios provisionales por el Ayuntamiento (como se resume el 21 de abril y el 28 de julio)
- 7 de diciembre – Audiencia pública de la Comisión de Planificación para hacer una recomendación sobre el proyecto
- 12 de enero de 2021 – Audiencia pública del Ayuntamiento sobre el acuerdo, el proyecto y la determinación de la Ley de Calidad Ambiental de California (CEQA, por sus siglas en inglés), además de la identificación de la financiación para reconstruir la piscina al mismo tiempo que el nuevo edificio

Si el proyecto se aprueba en enero de 2021, el resultado sería el siguiente calendario para la finalización del proyecto, suponiendo que éste siga siendo un proyecto de alta prioridad para la Ciudad:

- Junio de 2021 – Cierre de instalaciones
- Julio a agosto de 2021 – Remediación y demolición
- Primavera de 2023 – Reapertura de las instalaciones

Impacto en los recursos de la Ciudad

El personal estima que el valor de la oferta es de aproximadamente \$40 millones. El 28 de julio, el

Ayuntamiento aprobó el presupuesto del plan de mejoras de capital (CIP, por sus siglas inglés) para el año fiscal 2020-21, que asignó \$3.850 millones adicionales, más fondos de remanentes de \$2.138 millones para un presupuesto total del proyecto de aproximadamente \$5.988 para los compromisos de nivel básico de la Ciudad, incluyendo servicios provisionales. El personal estima que la inclusión de la reconstrucción de la reserva en el proyecto podría requerir aproximadamente \$7.4 millones de financiación adicional. Otras posibles mejoras del proyecto podrían costar entre \$3 y \$4 millones adicionales.

Revisión Ambiental

Esta acción no es un proyecto en el sentido de las Directrices de la CEQA Secciones 15378 y 15061(b)(3) ya que no resultará en ningún cambio físico directo o indirecto en el medio ambiente. El edificio propuesto es un proyecto en cumplimiento con la CEQA y el personal cree que el proyecto es elegible para una exención de clase 2 para la sustitución de las instalaciones existentes (§15302). La determinación final de la CEQA se producirá posteriormente en el proceso al momento de la aprobación del proyecto.

Aviso público

El aviso público se logró mediante la publicación del orden del día, con la enumeración de los temas del orden del día, al menos 72 horas antes de la reunión. Además, la Ciudad envió avisos electrónicos a través de Nextdoor, Facebook y directamente a los suscriptores del proyecto por correo electrónico y actualización de texto desde la página del proyecto (Anexo A.)

Anexos

- A. Borrador de la hoja de términos
- B. Mapa ilustrativo del sitio
- C. Carta de oferta de Facebook, con fecha 16 de diciembre de 2019
- D. Resolución No. 6537 aprobada el 28 de enero
- E. Hipervínculo – página del proyecto: menlopark.org/communitycampus
- F. Hipervínculo – menlopark.org/DocumentCenter/View/22628/H5---20190827-Approve-GO-Bond-refunding-CC

Informe preparado por:
Justin Murphy, Administrador adjunto de la Ciudad

Campus Comunitario de Menlo Park
Borrador de Hoja de Términos

Facebook se ha ofrecido a proporcionar financiación y desarrollo de un nuevo centro comunitario multigeneracional, que incluye un centro para la tercera edad, un centro juvenil y una biblioteca, para un nuevo campus comunitario en el vecindario de Belle Haven (el "Proyecto"), de acuerdo con los planes de espacio preliminares y el concepto de diseño del edificio que están sujetos a la revisión y aprobación final del Ayuntamiento de Menlo Park, como se establece generalmente en la carta de Facebook al Ayuntamiento de fecha 16 de diciembre de 2019. El proyecto incluye la remediación y la demolición de todas las instalaciones existentes, incluida la piscina. A continuación, se resumen los términos que se incorporarán a un acuerdo definitivo entre Facebook y la ciudad de Menlo Park.

1. Obligaciones de Facebook

- a. Diseñar, obtener derechos y construir el Proyecto de acuerdo con planes mutuamente convenidos (que se adjuntarán como anexo al acuerdo). Facebook tendrá discreción exclusiva sobre los medios y métodos de diseño y construcción, incluyendo la selección del arquitecto, los ingenieros, los asesores de diseño, el contratista general y todos los subcontratistas. En el acuerdo se identificarán los ámbitos de trabajo y los materiales ajenos al Proyecto (por ejemplo, mobiliario, equipo informático, etc.). Facebook será responsable de las condiciones inesperadas/imprevistas (sujeto a su derecho de cancelación descrito en el párrafo 6).
- b. Preparar un presupuesto para el Proyecto. Si el costo del Proyecto se proyecta que exceda el presupuesto, entonces la Ciudad y Facebook trabajarán juntos para identificar modificaciones al Proyecto que le permitan ajustarse al presupuesto.
- c. Pagar el salario predominante por todo el trabajo realizado en el Proyecto.
- d. Trabajar con la Ciudad y el vecindario cercano para minimizar los impactos en el vecindario durante la construcción.
- e. Ayudar a la ciudad a conseguir los permisos/aprobaciones de la CPUC 851 para la adquisición o el trabajo en las parcelas de PG&E.
- f. Obtener ofertas/precios fijos para el trabajo solicitado por la Ciudad (descrito en el Párrafo 3) para ayudar a la Ciudad a determinar si se incluye parte o todo ese trabajo adicional.

2. Obligaciones de la Ciudad

- a. Procesar oportunamente todas las solicitudes de permisos de construcción. La Ciudad hará un esfuerzo de buena fe para agilizar el proceso de verificación del plan con el objetivo de expedir los permisos de construcción en un plazo de dos meses a partir de la presentación de la solicitud completa después de la concesión.
- b. Hacer esfuerzos de buena fe para ayudar a Facebook a resolver problemas de permisos con otras agencias públicas, servicios públicos y propietarios de propiedades vecinas, si las hay.
- c. Renunciar a todos los costos relacionados con el procesamiento de las aprobaciones de proyectos, el tiempo del personal, los permisos, la verificación de los planes y las inspecciones de la división de edificios, etc.
- d. Renunciar a todas las tasas de impacto sobre el desarrollo aplicables.
- e. Trabajar con la comunidad para desarrollar e implementar un plan para acomodar los programas comunitarios existentes que serán desplazados durante el período de

construcción. Facebook no tiene responsabilidad por las instalaciones o programas provisionales.

- f. Trabajar con Facebook en los cierres durante la fase de construcción. Durante la construcción, el sitio será cerrado, excepto que el acceso a la Escuela Beechwood y a los campos deportivos debe mantenerse.
- g. Asumir todos los costos relacionados con la programación, operación y mantenimiento de las nuevas instalaciones. Facebook no se hace responsable de ningún costo en curso.
- h. Asumir todos los costos relacionados con la adquisición de la(s) parcela(s) de PG&E [cuota, derecho de acceso a la propiedad o licencia] y la obtención de los permisos/aprobaciones de la CPUC 851 para la adquisición de la(s) parcela(s) de PG&E o el trabajo dentro de ella(s).

3. Trabajo solicitado por la Ciudad

- a. La Ciudad tendrá derecho a proponer trabajos adicionales al Proyecto, pero relacionados con el mismo como los siguientes:
 - i. Una nueva piscina y todos los sistemas de apoyo asociados, incluyendo un edificio de equipamiento mecánico de la piscina,
 - ii. La mejora del edificio para convertirlo en un Centro de Evacuación de la Cruz Roja (en lugar de un edificio estándar),
 - iii. Despliegue de energía de emergencia de reserva (por ejemplo, un generador diésel),
 - iv. Instalación de techos solares en estacionamientos para lograr la Energía Neta Cero,
 - v. Perseguir el LEED Platino o equivalente (en lugar del LEED Oro),
 - vi. Diseño e instalación de una microrred,
 - vii. Desmantelamiento de los edificios existentes indicados (en lugar de demolerlos),
 - viii. Reemplazo de la tubería principal de agua en el lugar,
 - ix. Extensión de una tubería de agua reciclada para servir al sitio en el futuro,
 - x. Suministro de servicios subterráneos (líneas de comunicación y potencialmente de distribución eléctrica).
- b. La Ciudad será responsable de todos los costos de cualquier trabajo solicitado por la Ciudad.
- c. La Ciudad contrataría directamente a los contratistas para cualquier trabajo solicitado por la Ciudad (excepto que Facebook considerará la contratación de trabajos auxiliares menores y/o trabajos que no puedan separarse del contrato de construcción del edificio principal). El acuerdo incluirá un proceso para proponer y finalizar el trabajo solicitado por la ciudad. Si la Ciudad desea incluir cualquier trabajo solicitado por la Ciudad, Facebook cooperará y coordinará con la Ciudad y, a petición de la Ciudad, Facebook obtendrá ofertas/precios fijos para el trabajo solicitado por la Ciudad de los contratistas de Facebook.
- d. Como condición para realizar cualquier trabajo solicitado por la Ciudad, Facebook puede requerir que la Ciudad demuestre que hay suficientes fondos disponibles para cubrir el costo total del trabajo solicitado por la Ciudad que Facebook está realizando.

4. Calendario propuesto

- a. El acuerdo incluirá un calendario del Proyecto.
- b. Facebook no será responsable de los retrasos. Sin embargo, Facebook hará un esfuerzo de buena fe para completar el Proyecto dentro de los 24 meses de la

demolición de la instalación existente (sujeto a fuerza mayor incluyendo el cierre por orden del gobierno).

5. Derechos de nombres

- a. La Ciudad tendrá el derecho de nombrar la instalación. Sin embargo, la Ciudad se reunirá y consultará con Facebook con respecto al nombre de la instalación. La Ciudad no otorgará licencias ni venderá derechos de nombre a la instalación.

6. Cancelación; suspensión

- a. Cancelación antes del comienzo de la construcción: Facebook puede cancelar el acuerdo con o sin causa antes de la demolición de cualquier instalación existente. Si Facebook cancela el acuerdo sin causa, entonces reembolsará a la Ciudad por sus gastos de desembolso y tiempo de personal pero no por otros daños. Si Facebook cancela el acuerdo con causa [por definir], no será responsable de los costos incurridos o los daños sufridos por la Ciudad.
- b. Cancelación después del comienzo de la construcción: Facebook no puede cancelar el acuerdo después de la demolición del (de los) edificio(s) sin causa [por definir]. Si Facebook cancela el acuerdo sin causa o si la Ciudad cancela el acuerdo por causa, la Ciudad puede completar el Proyecto y Facebook será responsable por el costo de completar el Proyecto, junto con todos los daños sufridos por la Ciudad como resultado de los retrasos en la finalización del Proyecto debido a dicha cancelación. Si Facebook rescinde el acuerdo por causa justificada, Facebook no será responsable de completar el Proyecto o de cualquier daño y la Ciudad determinará si y cómo completar el Proyecto.
- c. Tras la cancelación, con o sin causa, Facebook hará esfuerzos comercialmente razonables para asignar todos los contratos de diseño, construcción y otros contratos relacionados con el Proyecto a la Ciudad.

7. Indemnización; garantías

- a. Facebook indemnizará a la Ciudad por las reclamaciones de terceros que surjan de la construcción del Proyecto (excluyendo las reclamaciones atribuibles a la negligencia o mala conducta intencional de la Ciudad). Sin embargo, Facebook no será responsable de los defectos de construcción (véase más abajo). La Ciudad indemnizará a Facebook y a sus diseñadores por las demandas de terceros que surjan de los eventos que ocurran después de la entrega del sitio a la Ciudad (excluyendo las demandas atribuibles a la negligencia o mala conducta intencional de los indemnizados).
- b. Las mejoras se entregarán "tal cual" y Facebook no será responsable de los defectos de construcción. Sin embargo, el acuerdo incluirá un proceso para identificar los elementos de la lista de perforación y acordar la conclusión final. Facebook asignará todas las garantías de construcción a la Ciudad y cooperará con la aplicación de esas garantías.

La presente Hoja de Términos es un documento no vinculante para fines de discusión solamente. Ninguna de las partes está obligada a seguir adelante con el Proyecto propuesto, a menos que hasta que las partes celebren un acuerdo vinculante en el que se establezcan todos los términos, disposiciones y obligaciones materiales de las partes.



A	Menlo Park Community Campus Building
B	Boardwalk
C	Playground
D	Existing Redwood Trees to Remain

E	Children's Outdoor Courtyard
F	Bicycle Parking
G	Outdoor Dining Terrace
H	Community Terrace & Garden

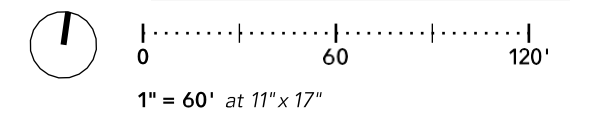
I	Service Area
J	Pedestrian Pathway
K	Parking Lot
L	Pool Area by the City of Menlo Park
M	SamTrans Bus Layover
N	SamTrans Bus Stop

A	Edificio del campus comunitario de Menlo Park
B	Paseo entablado
C	Área de juegos
D	Árboles de secoya existentes que permanecerán

E	Patio al aire libre para niños
F	Estacionamiento de bicicletas
G	Terraza para comer al aire libre
H	Terraza y jardín comunitario

I	Área de servicios
J	Sendero peatonal
K	Estacionamiento
L	Área de piscinas por la Ciudad de Menlo Park
M	Escala de autobús de SamTrans
N	Parada de autobús de SamTrans

Plan de sitio propuesto /



16 de diciembre de 2019

Ayuntamiento
Ciudad de Menlo Park
701 Laurel St.
Menlo Park, CA 94025

Re: Centro comunitario multigeneracional y biblioteca en Belle Haven

Estimado alcalde Mueller y honorables miembros del Ayuntamiento:

En nombre de Facebook, es un honor para mí presentar nuestra propuesta para explorar la financiación y el desarrollo de un nuevo centro comunitario multigeneracional y una biblioteca para el vecindario de Belle Haven en Menlo Park. Este es un proyecto increíblemente emocionante que traerá vitalidad y energía a Belle Haven, y se vincula a la visión a largo plazo que compartimos para nuestra comunidad circundante.

Como saben, tenemos una larga historia de asociación con la ciudad - que se remonta al Taller Comunitario de Diseño del Área Comercial de Belle Haven y Willow en 2011, que iniciamos cuando nos mudamos a Menlo Park. Ese fue el catalizador de nuestra colaboración con la comunidad, para realizar nuestras metas compartidas y crear un sentido del lugar. Ocho años después de hacer de Menlo Park nuestro hogar, nuestro compromiso no ha disminuido y estamos en una firme posición para hacer esta donación.

Hoy, le presentamos a la ciudad una oportunidad para continuar nuestro trabajo juntos y avanzar en estos importantes esfuerzos. El propósito de esta carta es sugerir un marco para completar el Centro para Ancianos de Belle Haven y el Centro Comunitario Onetta Harris lo más pronto posible - un proyecto que sabemos, escuchando a los residentes, ha sido un deseo largamente anhelado por la comunidad.

Antes de entrar en el marco, quiero abordar el por qué estamos haciendo este importante compromiso filantrópico y aclarar que el Centro Comunitario debe ser tratado como un esfuerzo autónomo que no está conectado a ningún otro proyecto de Facebook. Al ofrecer instalaciones actualizadas, nuestro objetivo es dar a los residentes un lugar acogedor para reunirse, celebrar y reforzar el tejido social que hace que este vecindario sea especial.

Esta es una iniciativa ambiciosa, pero, afortunadamente, tenemos una ventaja. A través del desarrollo de la ciudad del Plan Maestro de Parques e Instalaciones Recreativas y los estudios de la Biblioteca de Belle Haven - así como nuestro propio compromiso - tenemos la aportación directa de la comunidad, el personal de la ciudad y el Ayuntamiento. Queremos agradecer a la alcaldesa ProTem Cecilia Taylor, cuyo liderazgo nos permitió comenzar a trabajar con el arquitecto Hart Howerton para desarrollar los planes preliminares de espacio/sitio y un diseño conceptual para el proyecto. Esperamos que nuestra propuesta sea de gran ayuda para cumplir con los objetivos de la ciudad y la comunidad de reformar las instalaciones existentes.

Con la predisposición de Facebook por tomar acción, podemos convertir rápidamente esta visión en una realidad, y creemos que es factible hacerlo en 2.5 años. Este programa acelerado depende de aprovechar la información existente y lograr el consenso entre los principales interesados, incluyendo los miembros de la comunidad, el personal de la ciudad y los líderes de la ciudad.

Teniendo en cuenta lo anterior, proponemos que el proyecto se lleve a cabo en dos fases como se indica a continuación:

Fase uno – Difusión, diseño, programación espacial y aprobaciones

Como ya se ha mencionado, hemos desarrollado un plan espacial preliminar y un concepto de diseño del edificio. Como primer paso en conjunto con la ciudad, planeamos presentar el concepto y el plan espacial preliminar en una reunión comunitaria en Belle Haven a mediados de enero y en una reunión del Ayuntamiento a finales de enero. Estas reuniones darán al ayuntamiento, a la comunidad y a los interesados la oportunidad de compartir su retroalimentación inicial y discutir los tipos de actividades y programas que a la comunidad le gustaría tener en las nuevas instalaciones.

En febrero y marzo, celebraremos reuniones adicionales con la comunidad y el personal operativo para definir con más detalle las necesidades de espacio. En enero, brindaremos información adicional sobre el plan de compromiso con la comunidad y daremos detalles específicos sobre las reuniones que se celebrarán. Prevemos que las reuniones proporcionarán datos adicionales sobre los tipos de programas que a la comunidad le gustaría ver ejecutados en las nuevas instalaciones. Facebook no decidirá qué programas serán operados en las instalaciones, ya que eso lo determinará la Ciudad.

Después de esas reuniones, consideraremos toda la retroalimentación y trabajaremos con el arquitecto para refinar más los planos y el diseño del edificio. El diseño actualizado será presentado a la Comisión de Planificación y al Ayuntamiento para su aprobación en verano de 2020. Aunque el diseño tendrá que ser refinado a través del proceso descrito anteriormente, planeamos estudiar lo siguiente:

- Nuevas instalaciones para jóvenes y un nuevo centro para ancianos;
- Instalaciones de salud y condición física (gimnasio);
- Incorporación del programa propuesto de la Biblioteca de Belle Haven en las instalaciones;
- Instalaciones renovadas cerca de las piscinas existentes, como nuevos vestuarios y áreas adicionales para picnics y reuniones. En este momento, Facebook no ofrece pagar una reconstrucción completa de las piscinas; sin embargo, estamos dispuestos a trabajar con la Ciudad para entender qué mejoras se pueden ajustar dentro del presupuesto del proyecto. Facebook está abierto a construir nuevas piscinas si la ciudad o terceros identifican fuentes de financiación adicionales.
- Un mejor acceso a Kelly Park, extendiendo el acceso peatonal a través de un corredor en el nuevo edificio y orientando mejor los nuevos espacios comunitarios hacia el parque; y

- Instalaciones adicionales, tales como una nueva área de llegadas y mejoras a las zonas de estacionamiento, circulación y descenso de pasajeros.

Durante esta fase, también completaríamos las siguientes actividades:

1. Recopilar información para asegurar que nuestra propuesta cumpla con los requisitos existentes de zonificación y construcción de Menlo Park. Para mantener el proyecto en marcha, tenemos la intención de diseñar un edificio que cumpla los parámetros de una exención categórica para satisfacer la revisión ambiental – Reemplazo Clase 2 de instalaciones existentes.
2. Llevar a cabo la debida diligencia en el sitio para asegurarnos de que entendemos su condición y si hay algo que pueda afectar la viabilidad de las diferentes opciones de reurbanización o informar el diseño. Esto implica comprender los parámetros de las condiciones geotécnicas, las servidumbres del sitio y la ubicación de las condiciones del sitio y los servicios públicos existentes.
3. Nuestro equipo trabajará con el Administrador de la Ciudad y el Fiscal de la Ciudad para desarrollar un acuerdo que documente los detalles de desarrollo del proyecto relacionados con el diseño, construcción, financiación, operaciones y mantenimiento.
4. Anticipamos que Facebook actuaría en calidad de desarrollador maestro y sería responsable del diseño y la construcción, y el alcance de nuestro compromiso de financiación dependería del resultado del proceso de diseño. Si hay elementos adicionales que la Ciudad quisiera ver incluidos que no son parte del presupuesto establecido, como el reemplazo de la piscina, entonces esos elementos tendrían que ser financiados con contribuciones de la Ciudad.

Nuestro interés en este proyecto está impulsado en gran parte por nuestro deseo de ofrecer beneficios a la comunidad en un plazo relativamente corto. Si esta fase inicial dura más de 6 meses, reevaluaremos si el proyecto es factible según los objetivos que hemos esbozado en esta carta.

Fase dos - Desarrollo de planes de construcción y construcción

Durante la segunda fase, finalizaremos los requisitos técnicos del proyecto, desarrollaremos planes para la construcción, presentaremos los planes a la Ciudad para obtener permisos y, finalmente, demoleremos las instalaciones existentes y construiremos las nuevas.

Durante esta fase también se desarrollarían los detalles relacionados con las fases de construcción, los plazos, las notificaciones a la comunidad y los informes del progreso realizado. Creemos con optimismo que podemos completar la construcción dentro de 18 meses después de recibir el permiso de construcción.

Aclaraciones adicionales

1. Facebook propone que Hart Howerton sea el líder planificador y diseñador del

- proyecto y que la Ciudad contrate a un consultor para ayudar a guiar los requisitos.
2. Si bien el plan de emplazamiento que hemos desarrollado permite que algunas de las instalaciones existentes permanezcan abiertas durante la construcción, esto añade riesgo al calendario del proyecto y tendríamos que asegurarnos de que el público pueda acceder con seguridad a las instalaciones, dada la proximidad de la nueva construcción. La preferencia de Facebook sería reubicar todos los programas existentes que tengan la expectativa de mantener el acceso a Beechwood y los campos de fútbol.
 3. Se espera que el proyecto sea por fases y Facebook no será responsable de proporcionar instalaciones temporales durante el período de construcción.
 4. Pedimos que el Ayuntamiento designe este proyecto como proyecto prioritario y que solicite al personal priorizar las aprobaciones oportunas del proyecto y la revisión de los planes de control/permisos. Actualmente, los permisos pueden tardar hasta 8 meses después de que los proyectos son aprobados y nuestra petición para este proyecto es que los permisos sean emitidos dentro de los 2 meses siguientes a su presentación. Esto conducirá a una fecha de finalización acelerada y, en última instancia, beneficiará a los residentes de Menlo Park.
 5. También solicitamos que la Ciudad cubra todos los costos relacionados con la tramitación de aprobaciones, permisos, verificación de planes e inspecciones del departamento de construcción para el proyecto.
 6. Facebook no es responsable de desarrollar o financiar las actividades y programas que serán operadas desde las nuevas instalaciones.
 7. La Ciudad será responsable de todas las operaciones en curso y los costos de mantenimiento asociados con el funcionamiento de la instalación. Facebook, sin embargo, asignará a la Ciudad cualquier garantía de construcción que reciba.
 8. Será necesario establecer roles y responsabilidades formales entre Facebook y la Ciudad para que las expectativas y las líneas de comunicación estén claras para todas las partes. Con el fin de avanzar rápidamente, la comunicación tendrá que ser optimizada.

Próximos pasos

En cuanto a los próximos pasos inmediatos, anticipamos trabajar con la comunidad y la Ciudad para programar las reuniones de alcance y participación de la comunidad y, con el apoyo del Ayuntamiento, proceder con las tareas esbozadas en la fase uno.

Este proyecto es una emocionante oportunidad para proporcionar un tremendo recurso vecinal que servirá como lugar de reunión de la comunidad en Menlo Park, el lugar que consideramos nuestro hogar. Gracias por esta oportunidad, y esperamos trabajar estrechamente con ustedes, los residentes de Belle Haven en Menlo Park y el personal de la ciudad en esta importante iniciativa.

Atentamente,

[Firma]



Johnnes

CC.: Starla Jerome-Robinson, Administradora de la Ciudad
William McClure, Fiscal de la Ciudad
Deanna Chow, Directora Interina de Desarrollo Comunitario

Dirección: 1 Hacker Way
Menlo Park, CA 94025

**RESOLUCIÓN NO.
6537**

**RESOLUCIÓN DE INTENCIÓN DEL AYUNTAMIENTO DE LA CIUDAD DE
MENLO PARK DE COLABORAR CON FACEBOOK, INC. PARA LA
CONSTRUCCIÓN DE UN NUEVO CENTRO COMUNITARIO Y
BIBLIOTECA EN EL VECINDARIO DE BELLE HAVEN**

CONSIDERANDO que el 16 de diciembre de 2019, el Ayuntamiento de la Ciudad de Menlo Park recibió una propuesta de Facebook Inc. en la que se proponía explorar la financiación y el desarrollo de un nuevo centro comunitario multigeneracional y biblioteca ubicado en el vecindario de Belle Haven en Menlo Park, reemplazando las instalaciones existentes del centro comunitario, el centro de ancianos, el centro juvenil, la casa de piscina y la biblioteca; y

CONSIDERANDO que en la propuesta se indica un calendario de proyecto de dos fases, en el que la fase uno se desarrollaría durante seis meses, de enero a junio de 2020, y la fase dos en dos años, de julio de 2020 a julio de 2022, con el objetivo de iniciar la construcción mediante la demolición de las instalaciones existentes en enero de 2021; y

CONSIDERANDO que la propuesta solicita que el Ayuntamiento designe este proyecto como proyecto prioritario y que solicite al personal priorizar las aprobaciones y revisiones de planes de control/permisos eventuales del proyecto; y

CONSIDERANDO que la fase uno incluiría la obtención de las aprobaciones de la Ciudad necesarias para el diseño del proyecto y la firma de un acuerdo entre la Ciudad y Facebook, Inc. que documente los detalles del desarrollo del proyecto relacionados con el diseño, la construcción, la financiación, las operaciones y el mantenimiento del proyecto; y

CONSIDERANDO que la fase dos de la propuesta resultaría en la finalización de los documentos de construcción, la obtención de permisos y la construcción del edificio; y

CONSIDERANDO que la intención de la propuesta es diseñar un edificio que cumpla con los parámetros de una exención categórica de Clase 2 bajo la Ley de Calidad Ambiental de California (CEQA, por sus siglas en inglés) como reemplazo de las instalaciones existentes; y

CONSIDERANDO que se prevé que el proyecto reciba aportaciones de la Comisión de Bibliotecas y de la Comisión de Parques y Recreación, así como aprobaciones de la Comisión de Planificación y del Ayuntamiento; y

CONSIDERANDO un plan de participación comunitaria para el proyecto, un esfuerzo colectivo entre Facebook, Inc., personal de la Ciudad y el subcomité ad hoc del Ayuntamiento fue presentado al Ayuntamiento el 28 de enero de 2020, indicando el nivel de participación pública por componente de proyecto y el rol de los órganos asesores del Ayuntamiento de la comunidad en el proceso de aprobación del proyecto; y

CONSIDERANDO que la propuesta indica que la Ciudad será responsable de reubicar los programas existentes en instalaciones temporales durante el plazo de la construcción y que será responsable de la futura programación de las instalaciones; y

CONSIDERANDO que la propuesta indica que la Ciudad será responsable de todos los costos relacionados con la aprobación del proyecto, la obtención de permisos, la verificación de los planes e inspecciones, así como de todos los costos de operación y mantenimiento de las instalaciones; y

CONSIDERANDO que la ciudad llegó a un acuerdo con Noll and Tam Architects para el diseño de la biblioteca de Belle Haven; y

CONSIDERANDO que la Ciudad tiene la intención de revisar el alcance del trabajo con Noll and Tam Architects para tener asistencia de diseño en el proyecto, para proporcionar experiencia en los requisitos programáticos, criterios de rendimiento y actuar como representante del Propietario, según sea necesario; y

CONSIDERANDO que la ciudad tiene la intención de buscar financiación para la sustitución de la piscina de Belle Haven para incluirla como parte del proyecto; y

CONSIDERANDO que la Ciudad retendrá el derecho de nombrar la instalación y desarrollará un proceso para determinar el nombre de la misma.

POR TANTO, SE RESUELVE que la Ciudad de Menlo Park, actuando por y a través de su Ayuntamiento, habiendo considerado y sido completamente informado del asunto y de la buena causa aparente, por lo tanto, por medio de la presente, declara su intención de colaborar con Facebook Inc. para la construcción de un nuevo centro comunitario y biblioteca en el vecindario de Belle Haven con las siguientes aclaraciones y acciones:

1. Aceptar la propuesta de Facebook, Inc. para la construcción de un nuevo centro comunitario y biblioteca en el vecindario de Belle Haven.
2. Designar el proyecto como proyecto prioritario y solicitar al personal que dé prioridad oportunamente a la aprobación del proyecto, la verificación del plan y el examen de los permisos.
3. Dirigir al personal a desarrollar un borrador de acuerdo con Facebook, Inc. que documente los detalles de desarrollo del proyecto relacionados con el diseño, construcción, financiación, operaciones y mantenimiento, para la consideración del Ayuntamiento.
4. Aceptar el esquema de participación pública para el proyecto presentado al Ayuntamiento el 28 de enero de 2020, que identifica el nivel de participación pública, el rol de los órganos asesores del Ayuntamiento y la comunidad, como un *esfuerzo* conjunto con Facebook y dirigido por la Ciudad.
5. Revisar el alcance de trabajo con Noll and Tam para tener asistencia de diseño sobre el proyecto, para brindar experiencia sobre los requerimientos programáticos, criterios de rendimiento y actuar como expertos en la materia, según sea necesario, hasta el límite contractual actual de \$160,000.
6. Indicar al personal que identifique un presupuesto de proyecto y recomiende a la autoridad contratante modificaciones específicas de este proyecto para partidas no incluidas en la *oferta*.
7. Enmendar el presupuesto del año fiscal 2019-20 para integrar el proyecto de la Biblioteca de Belle Haven y el proyecto de mejora del Centro Juvenil de Belle Haven en un único proyecto de centro comunitario y biblioteca de Belle Haven.
8. Dirigir al personal a buscar o identificar financiación para la sustitución de la piscina de Belle Haven para su inclusión como parte del proyecto, para la consideración del Ayuntamiento.

9. Dirigir al personal de la Ciudad y al subcomité ad hoc del Ayuntamiento para desarrollar un proceso comunitario, incluyendo un cronograma, para determinar el nombre de la nueva instalación multipropósito y multigeneracional, reflejando al mismo tiempo la historia.
10. Dirigir al personal a evaluar y proponer objetivos específicos de medio ambiente, sostenibilidad y resistencia para el proyecto, a fin de comprender las implicaciones de costos e intercambios del proyecto.

Yo, Judi A. Herren, Secretaria de la Ciudad de Menlo Park, por medio de la presente certifico que la anterior y precedente Resolución del Ayuntamiento fue debida y ordinariamente aprobada y adoptada en una reunión de dicho Ayuntamiento el día veintiocho de enero de 2020, por medio de los siguientes votos:

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SÍ:	Carlton, Mueller, Nash, Taylor
NO:	Ninguno
AUSENTE:	Ninguno
SE ABSTIENE:	Ninguno
RECUSADO:	Combs

EN FE DE LO CUAL, estampo mi firma y el Sello Oficial de dicha Ciudad, este día veintiocho de enero de 2020.

[Firma]


J _____ Ten, _____



SPECIAL MEETING AGENDA

Date: 9/15/2020

Time: 5:00 p.m.

Special Meeting Location: Joinwebinar.com – ID# 250-784-227

EARLY STAFF REPORT RELEASE NOTICE

The following staff report is being released in advance of the special City Council meeting:

Consider the term sheet, conceptual design and project review process of Facebook’s offer to rebuild community facilities located at 100-110 Terminal Avenue ([Staff Report #20-201-CC Informe de Personal #20-201-CC](#))

This Notice is posted in accordance with Government Code §54954.2(a) or §54956. Members of the public can view electronic agendas and staff reports by accessing the City website at www.menlopark.org and can receive e-mail 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 the City Clerk’s Office at 650-330-6620. (Posted 9/10/2020)

Agenda item D2
Julie Shanson, resident

Honorable Council Members,

I am writing to encourage you to rebuild the Belle Haven Pool as part of the new community center. The existing pool is old, with unheated locker rooms and was not designed to be used year round. The water is too cold for seniors and small children. We have made improvements over the decades to the main pool, replacing heaters, re-tiling, re building locker rooms, etc. The same improvements are overdue at the Belle Haven Pool.

Menlo Park is uniquely divided by 101. The north side has older, smaller and shabbier facilities. It is time to to build a state of the art aquatic facility on the north side.

Prior to the pandemic, the pool was used for youth lessons and water polo. A new pool could also be used for rehabilitation classes for seniors and those in need of aquatic fitness.

Facebook's design does not include a pool because they don't want to fund it. They don't need to fund the pool. We can pay for it ourselves. We have the money when we want it (see the exercise in coming up with matching funds for a new Main Library only months ago). Let's make this new facility one that can last for another fifty years. Let's include a pool.

Shanson



STAFF REPORT

City Council

Meeting Date:

9/15/2020

Staff Report Number:

20-203-CC

Regular Business:

Review financial feasibility analysis of the City of Menlo Park's below market rate inclusionary rental housing requirements and adopt Resolution No. 6586 implementing below market rate in-lieu fee for rental housing

Recommendation

Staff recommends that the City Council:

1. Review the financial feasibility analysis of Menlo Park's below market rate (BMR) inclusionary rental housing requirements;
2. Adopt a resolution implementing a BMR in-lieu fee alternative for rental housing projects (Attachment B); and
3. Provide direction to staff to explore additional Housing Commission recommendations in conjunction with the upcoming Housing Element work plan.

Policy Issues

The Housing Commission acts as an advisory body to the City Council primarily on housing matters, including but not limited to making recommendations regarding the implementation of the BMR housing program. Any changes to the City's BMR housing program, including the required percentage of affordable inclusionary housing and the level of affordability are a City Council policy decision. Zoning changes or the adoption of an in-lieu fee for BMR units by resolution are also City Council policy decisions.

Background

The City adopted Municipal Code Chapter 16.96 establishing the BMR housing program 33 years ago in 1987 to increase the supply of housing for people who live and/or work in Menlo Park and have very low, low or moderate incomes. The BMR housing program, as summarized in Table 1 below, identifies different inclusionary requirements depending upon the size of the project. The smallest projects from zero to four units are exempt. Projects with 10 to 19 units must provide 10 percent of the units as affordable. Large projects with 20 or more units must provide 15 percent of the units as affordable. The BMR housing program is implemented through the BMR housing program guidelines (Guidelines) as adopted and amended from time to time by the City Council. For all rental housing projects, regardless of the size, the BMR Guidelines require that rental units be provided at the low-income level (e.g., affordable to households with incomes equal to or less than 80 percent of the area median income or AMI.)

Table 1: BMR program requirements	
Number of units	Inclusionary requirement
0-4	Exempt
5-19	10%
20 or more	15%

Suspension and reactivation of rental housing inclusionary requirement

There was a period beginning in 2009, as a result of the California Court of Appeal ruling in the Palmer/Sixth Street Properties LP v. City of Los Angeles case that the City was prevented from imposing inclusionary requirements on rental housing projects that did not receive government assistance.¹ In 2011, the Menlo Park City Council by resolution formally suspended its inclusionary rental housing requirement to comply with the Palmer decision.

In 2018, the State of California passed Assembly Bill 1505 (sometimes called “the Palmer fix”) legislatively overruling the Palmer decision. The Palmer fix allowed cities to once again legally impose inclusionary requirements on rental housing. In order to reactivate its inclusionary rental housing program, the new state law contained two conditions: (1) applicants must also be given the option of paying an in-lieu affordable housing fee instead of providing the units on-site and (2) if the City imposed an inclusionary requirement of 20 percent or more, the department of housing and community development (HCD) may seek to review the financial feasibility of this option.

When implementing the Palmer fix in 2018, the City Council amended the Guidelines, specifically Section 4.4, to require an in-lieu fee that approximated on a project-by-project basis the total cost to develop, design, construct and maintain an on-site below market rate BMR housing unit had it been developed as part of the project. The Guidelines also require the fee to include the proportionate costs of parking, common area and land acquisition associated with providing the BMR housing unit. This methodology for calculating the in-lieu fee is called the “total cost” approach. BMR guidelines indicate that the City Council will establish the in lieu fee by resolution.

Economic analysis of City’s rental BMR program

In 2018 when the City Council adopted modifications to the R-MU zoning district for consistency with the then existing BMR housing program, as summarized in Table 1, the City Council requested further economic analysis to determine whether any adjustments should be made based upon concerns that were raised. On October 9, 2018, the City Council reviewed, provided input and approved the scope of work for the financial analysis by BAE Urban Economics (BAE), an expert financial consultant. The main tasks included:

1. Analyze projects of various sizes with 15 percent low-income requirement. BAE would analyze prototypical projects with 20 units, 50 units, 100 units **and** 200 units. For each size category, BAE would examine two different parking treatments that reflect varying densities.
2. Analyze projects of various sizes with 20 percent low-income requirement. BAE would evaluate the financial feasibility of a 20 percent inclusionary requirement for each of the prototypes.
3. Analyze an above-moderate income requirement. BAE would evaluate the financial feasibility of adding a requirement that two percent of units in new market-rate residential developments be affordable to

¹ This legal ruling did not affect for-sale housing projects and the City continued imposing inclusionary requirements on for-sale housing projects.

teachers and emergency workers with household incomes 120 percent of AMI. This requirement would be in addition to the existing 15 percent low income inclusionary requirement.

4. Determine the “point of indifference.” BAE would determine the in-lieu fee rate for each unit size (e.g., one-, two-, and three-bedroom units) based on the amount that would be equivalent in cost to providing affordable units on-site, from the perspective of a developer or the “point of indifference.” The intent was to verify that the proposed “total cost” approach did not incentivize payment of the fee over provision of units.

In January 2020, BAE completed its analysis. Unfortunately, public review of this analysis was delayed as a result of the pandemic. In August 2020, the City publicly released the BAE report (Attachment A) containing the following findings:

Higher-density (100 dus/acre or more) multifamily rental projects in Menlo Park can generally provide 15 percent of units affordable to low-income households in compliance with the City’s existing BMR Housing Program, and could likely exceed the existing requirements, while maintaining feasibility. Multifamily rental projects built at the bonus level development (e.g., at 100 dwelling units (dus) per acre, plus any density bonuses) can provide 15 percent of units to low-income households while remaining financially feasible. With a 15 percent low-income requirement, the analysis found that these higher-density prototypes resulted in residual land values that are higher than the typical land sale costs within the area of Menlo Park that could accommodate these developments. These results are consistent across all higher-density prototypes tested in the study. Thus, these projects can likely meet the existing inclusionary requirements along with the community amenities requirement that would apply to projects built at this bonus level.

Higher-density multifamily rental projects in Menlo Park can generally provide up to 20 percent of units affordable to low-income households while maintaining feasibility. Higher-density prototypes that provide 20 percent of units affordable to low-income households generate residual land values that exceed the feasibility thresholds used for this study. These projects are able to maintain feasibility due in part to the availability of density bonuses that partially offset the cost of providing additional affordable units. This finding is based on an assumption that the additional five percent low-income requirement would count toward the community amenities requirement that would apply to projects built at this bonus level, though it is possible that these projects could provide community amenities in addition to a 20-percent low income requirement.

Similarly, higher-density multifamily rental projects in Menlo Park can generally provide 15 percent of units affordable to low-income households plus an additional two percent of units affordable to moderate-income households while maintaining feasibility. The financial analysis found that providing two percent of units affordable to moderate-income households in addition to the existing requirement to provide 15 percent of units affordable to low-income households decreases residual land values only slightly. With the additional two percent moderate-income requirement, all higher-density prototypes tested in this study support residual land values that are higher than typical land sale costs within the area of Menlo Park that could accommodate these developments. This finding is based on an assumption that the additional two percent moderate income requirement would count toward the community amenities requirement that would apply to projects built at this bonus level, though it is possible that these projects could provide community amenities in addition to a 15-percent low-income requirement and a two-percent moderate income requirement.

Small (30 units or less) infill multifamily rental projects are generally not financially feasible in the current development environment, regardless of inclusionary requirements. This study tested two small (13- to 30-unit) multifamily rental projects that would be consistent with the El Camino Real/Downtown specific plan

(Specific Plan) Area and found that neither project is feasible under current market and development cost conditions. Both projects remained significantly below the infeasibility threshold even with no affordability requirement or BMR in-lieu fee, indicating that affordable housing requirements do not constitute the primary barrier to feasibility for these projects. This is consistent with trends throughout the Bay Area, as rapid increases in development costs have outpaced increases in multifamily rents, resulting in feasibility challenges for new construction projects in many communities. Small infill projects often have higher costs on a per-unit or per-building-square-foot basis than large developments on larger sites, and therefore may be disproportionately impacted by these trends in some cases.²

Larger (100 units or more) low-density (30 dws/acre plus any density bonus) multifamily rental projects are generally not feasible with the City's current inclusionary requirements, but also are not likely to constitute a significant share of future development projects in Menlo Park regardless of affordability requirements.

Multifamily rental projects built at 38 to 41 dwelling units per acre are not feasible with the City's current inclusionary requirements. With a 15 percent low income requirement, the analysis found that these lower-density prototypes resulted in residual land values that are lower than the typical land sale costs within the area of Menlo Park that could accommodate these developments, indicating that these prototypes do not generate sufficient value to pay market-rate land costs.

Regardless of affordability requirements, lower-density prototypes are not likely to represent an attractive development opportunity relative to the higher-density prototypes that can be built on the same sites. The analysis showed that the higher-density Bayfront Area prototypes – which could be built on the same sites as the lower-density Bayfront Area prototypes – generate a larger residual land value per site square foot than the lower-density prototypes, even with a significantly higher affordability requirement for the higher density prototypes. This means that a developer pursuing a project on one of these sites would be able to offer more for the land if they are planning to construct a higher-density project, thereby outcompeting any developers pursuing a lower-density project on the same site. If a developer is able to acquire one of these sites for less than the residual land value that their project supports, the difference between the residual land value from the project and the actual sale price would essentially represent additional profit from the project. In this case, the developer would be incentivized to build the higher-density project with the higher residual land value, in order to increase profits from the project.

The in-lieu fee rates that represent the "point of indifference" compared to providing affordable units on-site are approximately \$335,000 per studio unit not provided on-site, \$351,000 per one-bedroom unit not provided on-site, \$449,000 per two-bedroom unit not provided on-site, and \$723,000 per three-bedroom unit not provided on-site. A requirement that developers pay these fees for each affordable unit that is not provided in a project results in the same residual land values as providing the affordable units. Assessing fees that are higher than these rates would generally incentivize construction of affordable units on-site within market-rate projects. Assessing fees that are lower than these rates would generally incentivize payment of in-lieu fees. The in-lieu fee rates that represent the "point of indifference" are sensitive to the difference between market-rate rents and affordable rents, and therefore will change over time and between projects.

The in-lieu fee rates that represent the "point of indifference" are sensitive to the difference between market-rate rents and affordable rents, and therefore will change over time and between projects. The in-lieu fee rates that are equivalent to providing affordable units on-site from a developer cost perspective will

² Projects in the Specific Plan area have generally not been residential only projects as was analyzed in the financial feasibility analysis, but have been mixed use projects including both residential and commercial components. The commercial component generally makes the whole project, including residential with an affordable component, more financially feasible.

generally be higher for projects with a large gap between the market-rate rent and affordable rent, and lower for projects in which this gap is relatively small. Therefore, if the City adopts a single in-lieu fee that would apply to all projects based on the in-lieu fee equivalent for a typical project, developers of higher-end luxury projects will be incentivized to pay the fee due to the large pricing gap between the market-rate and affordable units. Conversely, developers of projects with a lower price point than is typical for Menlo Park will find it advantageous to provide affordable units on-site. This finding also suggests that adjustments to fees over time should be based on changes in the difference between market-rate rents and affordable rents.

Housing Commission discussion and recommendation

The Housing Commission reviewed and discussed the BAE report August 5. After much deliberation, including discussion on how the current COVID-19 environment and expected economic downturn would impact the analysis, the Housing Commission voted to recommend:

1. Increasing the inclusionary requirement and the density bonus to 20 percent for projects of a certain size. This would involve an additional sensitivity analysis by BAE.
2. Maintaining the inclusionary requirement and adding a two percent moderate income requirement. The Housing Commission had some discussion around the need for moderate income housing.
3. Modifying density, development standards and other economic considerations such as the commercial linkage fee to make rental housing projects more financially feasible.
4. Adopt an in-lieu fee to encourage the production of housing units based on the point of indifference, but make the fee per square foot not by number of bedrooms consider the difference between market and affordable rent to account for the price point of projects in determining the fee and determine the best method for an annual increase.

Analysis

The economic findings in the BAE report may be used for informing a variety of housing related policy issues. As discussed below, the staff recommends that the BAE report be used to provide important foundational information for zoning actions that may be contemplated in the Specific Plan area, as well as a broader discussion of the housing element. In addition, staff is recommending the City Council adopt a resolution that charges a “total cost” BMR in-lieu fee alternative for rental housing projects consistent with Section 4.4 of the City’s BMR Guidelines as an incentive to provide on-site units.

Implementation of BAE Findings

The BAE report confirms that the City’s existing 15 percent inclusionary housing requirement is financially feasible as applied to high density projects (100 du/acre or more), but is not always feasible when applied to low density projects (30 du/acre.)

The BAE report also suggests that high density projects may also be financially feasible with inclusionary housing requirements in excess of the current 15 percent requirement. In light of this finding the Housing Commission recommended that the City Council move forward with exploring both an additional two percent moderate income requirement or an additional five percent low income requirement and recommended a sensitivity analysis be done to determine what size projects to which any additional affordability requirement would apply.

Staff has some concerns with moving forward with this recommendation immediately. First, as some of the Housing Commissioners noted, the impact of COVID-19 on the housing market is unknown. It is likely the housing demand in Menlo Park and the Bay Area in general will continue to be strong, but it is less certain how the demand will impact rental rates in the region. Further, since high density housing (100 du/ac) is

more likely in the Bayfront Area than the Specific Plan at this time, staff is concerned that equity issues may be exacerbated and/or low income housing may be clustered in the Bayfront area and moderate income housing units concentrated outside the Bayfront Area. For these reasons, staff proposes studying this issue in connection with the housing element. This will give time for the economic issues to stabilize and also give the city the opportunity to more fully analyze the equity issues.³

The BAE study also highlights that the City's low-density zoning areas do not feasibly support an inclusionary housing requirement absent other project factors. If the City desires the Specific Plan area to support additional inclusionary housing units, it should consider rezoning areas of the Specific Plan to support higher-density housing. As part of the City Council's priorities and work plan discussion, the City Council will be considering a project to increase densities and incentivize housing production in the Specific Plan Area. Work on this item, if directed by the City Council, would commence in 2021.

Implementation of BMR in-lieu fee

As part of the original scope of work, BAE was asked to determine the point of indifference where a developer would be more likely to build the units than pay the fee. BAE studied the point of indifference and in response to comments by the Housing Commission considered whether the City's total cost fee as identified in BMR Guidelines Section 4.4 would incentivize the developer to pay an in-lieu fee instead of providing units on-site. BAE concluded that the City's total cost methodology was well above the point of indifference. Thus, adopting a resolution to set the in-lieu fee at the total cost to construct consistent with the current BMR Guidelines would incentivize on-site production.

The Housing Commission recommended a per square foot fee, which is more commonplace and easier to administer from both a staff and developer perspective. Staff would like to move toward implementing a per square foot fee, but at this point there are resource constraints to implementing this fee as there would have to be additional analysis and outreach. Thus, staff is recommending adopting a resolution consistent with BMR Guidelines Section 4.4 or a project by project total cost approach. Adopting this fee makes the City's position after the Palmer fix more defensible as it completes the necessary final step to give developers the option of paying an in-lieu affordable housing fee. Attachment B is a resolution implementing the BMR Guidelines' requirement to establish a total cost fee. The Guidelines require the City Council to adopt a resolution describing the process for calculating the in-lieu fee. As described in the resolution, the in-lieu fee will be calculated on a project by project basis by a consultant selected by the City and paid for by the developer.

If the City Council would like to later adopt a per square foot fee, as recommended by the Housing Commission, staff suggests BAE's contract be amended to add additional analysis and public engagement with the Housing Commission, Planning Commission and development community to implement this approach.

Next steps

The City Council identified the housing element (2023-2031) update as a top priority. The preparation of the Housing Element is critical to addressing local housing needs and for compliance with State law. The housing element process would include a various components and discussion topics such as the preparation of

³ It should be noted that housing development projects that have already submitted complete applications pursuant to Senate Bill 330, the Housing Crisis Act of 2019, would not be subject to any changes in the BMR housing program.

environmental justice element, potential re-zonings and zoning amendments, an analysis of housing constraints, and a discussion on affirmatively furthering fair housing. Extensive public outreach is an important part of the process. Recommendations noted earlier by the Housing Commission can be considered during the Housing Element process for a more comprehensive discussion. Release of the City's regional housing need allocation (RHNA) is expected in the Spring 2021, which will identify the number of housing units, by income category, the City will need to plan for during the next 8-year cycle.

Impact on City Resources

The scope and budget for BAE to prepare the analysis was previously approved and the consultant has been paid. If the City Council desires to make policy or fee changes to the inclusionary housing requirements for rental housing based upon the Housing Commissions recommendation, depending upon the scope, staff would at that time provide information relative to the costs of making the desired changes. Currently, changes to the inclusionary housing program are not part of the work program or the budget.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines Section 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment. No further environmental review is necessary.

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. BAE inclusionary housing feasibility analysis
- B. Resolution No. 6586 adopting a process for determining the affordable in-lieu fee for rental housing projects

Report prepared by:
Rhonda Coffman, Deputy Community Development Director

Report reviewed by:
Cara E. Silver, Interim City Attorney

bae urban economics

Inclusionary Housing Feasibility Analysis

Prepared for the City of Menlo Park

January 21, 2020

January 21, 2020

Ms. Deanna Chow, Assistant Community Development Director
City of Menlo Park
City Hall – 1st Floor
701 Laurel Street
Menlo Park, CA 94025

Dear Ms. Chow:

We are pleased to submit this Inclusionary Housing Feasibility Analysis report. This study evaluates the feasibility of the City's existing Below Market Rate housing program requirements for rental projects, tests the feasibility of adding additional affordable housing requirements for new rental projects, and provides analysis to inform the City's decision-making processes related to setting BMR in-lieu fees.

We hope that this report is helpful in assisting the City with evaluating its BMR Housing Program.

Sincerely,



David Shiver
Principal



Stephanie Hagar
Vice President

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EXECUTIVE SUMMARY

The City of Menlo Park established its Below Market Rate (BMR) Housing Program in 1987, which requires developers of new market-rate residential projects to provide affordable housing, also referred to as BMR housing. The City's current program requires that developers of projects with five to nine units either provide a BMR unit or pay an in-lieu fee. The program requires developers of projects with ten to 19 units to restrict ten percent of the units for the BMR Housing Program and requires developers of projects with 20 or more residential units to restrict 15 percent of the units for the BMR Housing Program.

Residential developers, community members, and elected and appointed City officials requested that the City evaluate various topics related to the City's BMR Housing Program for rental units. The City commissioned BAE to conduct a study to evaluate the following four scenarios (each a BMR Housing Scenario):

- 1) Providing low income rental units (i.e., units affordable to households with incomes equal to or less than 80 percent of the Area Median Income or AMI) in compliance with the City's existing BMR Housing Program;
- 2) Providing 20 percent of units as low-income units;
- 3) Adding a small number of units reserved for households with moderate incomes (defined in this analysis as households with incomes equal to 120 percent of AMI) in addition to meeting a 15 percent low-income requirement; and
- 4) Payment of an in-lieu fee that represents the "point of indifference," or the fee that would be equivalent in cost to providing affordable units on site, from the perspective of a developer.

The purpose of BMR Housing Scenarios 1 through 3 is to inform City policy discussions related to current and potential on-site inclusionary housing requirements in Menlo Park. The purpose of BMR Housing Scenario 4 is to inform City policy discussions related to providing developers with the option to pay an in-lieu fee rather than provide inclusionary units on site.

Methodology

The methodology used for this study involved preparation of static pro-forma financial feasibility models to test the effect of the BMR Housing Scenarios described above on eight multifamily rental prototypes. The prototypes encompass a range of project sizes and densities, which are designed to reflect the potential range of multifamily rental development projects in Menlo Park in the near to medium term given existing development regulations in the City's remaining multifamily rental opportunity areas. Two of the prototypes reflect typical development standards in the El Camino Real/Downtown (ECR/DT) Specific Plan Area and are consistent with other small infill projects that have been pursued in the area. The remaining six prototypes were developed based on the maximum densities permitted under existing

development and bonus level development zoning regulations in the Bayfront Area.¹ The detailed pro-formas shown in Appendix A provide information on each development program.

The static pro-forma models represent a simplified form of financial feasibility analysis that developers often use at a conceptual level of planning for a development project, as an initial test of financial feasibility for a development concept, to screen for viability. The pro-forma models are structured to calculate the residual land value associated with each prototype under each BMR Housing Scenario tested, equal to the market value of the completed project at stabilization net of total development costs and developer profit:

$$\begin{aligned} &\text{Capitalized Value at Stabilization (i.e., NOI} \div \text{cap rate)} - \text{Total Development Cost (not incl. land)} \\ &= \\ &\text{Residual Land Value} \end{aligned}$$

The residual land value approximates the maximum amount that a developer should be willing to pay for a given site, based on the value of the project that the developer would build on that site. In general, a development pro-forma that shows a residual land value that is approximately equivalent to or higher than the typical sale price for land among recent comparable sales indicates a financially feasible project. If a developer is able to acquire land for a price that is lower than the residual the land value associated with his or her project, the difference between the residual land value and the actual sale price essentially represents additional project profit.

Residual Land Value Analysis for Scenarios 1 through 3: This study evaluated BMR Housing Scenarios 1 through 3 based on whether each of the eight prototypes can absorb the inclusionary requirements associated with each scenario while maintaining financial feasibility. This analysis determined that a BMR Housing Scenario is financially feasible if the residual land value resulting from the scenario is comparable to or higher than actual typical land acquisition costs for residential development sites in Menlo Park. A residual land value that is higher than the typical sale price for residential development sites indicates that a project might be able to absorb higher inclusionary requirements than modeled in the BMR Housing Scenario, while a lower residual land value might indicate financial feasibility challenges.

Residual Land Value Analysis for Scenario 4: The purpose of BMR Housing Scenario 4 is to identify the “point of indifference” for a potential in-lieu fee, or the BMR in-lieu fee rates that are equivalent to meeting the City’s existing BMR Housing Program requirements from a developer cost perspective. This differs from the other three BMR Housing Scenarios because the purpose of the financial analysis for BMR Housing Scenario 4 is to identify these equivalent fee rates for each prototype, rather than to evaluate the financial feasibility of the

¹ To be eligible for bonus level development, an applicant must provide community amenities in accordance with Bayfront Area zoning regulations.

scenario itself. This analysis evaluated BMR Housing Scenario 4 by identifying the fee rates that result in the same residual land value as providing affordable units on site.

Key Findings

The analysis presented in this study supports the following findings:

Higher-density (100 dus/acre or more) multifamily rental projects in Menlo Park can generally provide 15 percent of units affordable to low-income households in compliance with the City's existing BMR Housing Program, and could likely exceed the existing requirements, while maintaining feasibility. The financial analysis found that multifamily rental projects built at bonus level development (i.e., at 100 dwelling units per acre, plus any density bonuses) can provide 15 percent of units to low-income households while remaining financially feasible. With a 15-percent low-income requirement, the analysis found that these higher-density prototypes resulted in residual land values that are higher than the typical land sale costs within the area of Menlo Park that could accommodate these developments, indicating that these prototypes can feasibly provide more low-income units than the 15 percent currently required by the City's existing BMR Housing Program. These results are consistent across all higher-density prototypes tested in this study. These projects can likely meet the existing inclusionary requirements along with the community amenities requirement that would apply to projects built at this bonus level.

Higher-density multifamily rental projects in Menlo Park can generally provide up to 20 percent of units affordable to low-income households while maintaining feasibility. The financial analysis found that higher-density prototypes that provide 20 percent of units affordable to low-income households generate residual land values that exceed the feasibility thresholds used for this study. These projects are able to maintain feasibility due in part to the availability of density bonuses that partially offset the cost of providing additional affordable units. This finding is based on an assumption that the additional five percent low-income requirement would count toward the community amenities requirement that would apply to projects built at this bonus level, though it is possible that these projects could provide community amenities in addition to a 20-percent low income requirement.

Similarly, higher-density multifamily rental projects in Menlo Park can generally provide 15 percent of units affordable to low-income households plus an additional two percent of units affordable to moderate-income households while maintaining feasibility. The financial analysis found that providing two percent of units affordable to moderate-income households in addition to the existing requirement to provide 15 percent of units affordable to low-income households decreases residual land values only slightly. With the additional two percent moderate-income requirement, all higher-density prototypes tested in this study support residual land values that are higher than typical land sale costs within the area of Menlo Park that could accommodate these developments. This finding is based on an assumption that the additional two percent moderate income requirement would count toward the community

amenities requirement that would apply to projects built at this bonus level, though it is possible that these projects could provide community amenities in addition to a 15-percent low-income requirement and a two-percent moderate income requirement.

Small (30 units or less) infill multifamily rental projects are generally not financially feasible in the current development environment, regardless of inclusionary requirements. This study tested two small (13- to 30-unit) multifamily rental projects that would be consistent with the ECR/DT Specific Plan Area and found that neither project is feasible under current market and development cost conditions. Both projects remained significantly below the infeasibility threshold even with no affordability requirement or BMR in-lieu fee, indicating that affordable housing requirements do not constitute the primary barrier to feasibility for these projects. This is consistent with trends throughout the Bay Area, as rapid increases in development costs have outpaced increases in multifamily rents, resulting in feasibility challenges for new construction projects in many communities. Small infill projects often to have higher costs on a per-unit or per-building-square-foot basis than large developments on larger sites, and therefore may be disproportionately impacted by these trends in some cases.

Larger (100 units or more) low-density (30 dus/acre plus any density bonus) multifamily rental projects are generally not feasible with the City's current inclusionary requirements, but also are not likely to constitute a significant share of future development projects in Menlo Park regardless of affordability requirements. The financial analysis found that multifamily rental projects built at 38 to 41 dwelling units per acre are not feasible with the City's current inclusionary requirements. With a 15-percent low-income requirement, the analysis found that these lower-density prototypes resulted in residual land values that are lower than the typical land sale costs within the area of Menlo Park that could accommodate these developments, indicating that these prototypes do not generate sufficient value to pay market-rate land costs.

However, regardless of affordability requirements, these prototypes are not likely to represent an attractive development opportunity relative to the higher-density prototypes that can be built on the same sites. The analysis showed that the higher-density Bayfront Area prototypes – which could be built on the same sites as the lower-density Bayfront Area prototypes – generate a larger residual land value per site square foot than the lower-density prototypes, even with a significantly higher affordability requirement for the higher-density prototypes. This means that a developer pursuing a project on one of these sites would be able to offer more for the land if he or she is planning to construct a higher-density project, thereby outcompeting any developers pursuing a lower-density project on the same site. If a developer is able to acquire one of these sites for less than the residual land value that his or her project supports, the difference between the residual land value from the project and the actual sale price would essentially represent additional profit from the project. In this case, the developer would be incentivized to build the higher-density project with the higher residual land value, in order to increase profits from the project.

The in-lieu fee rates that represent the “point of indifference” compared to providing affordable units on site are approximately \$335,000 per studio unit not provided on site, \$351,000 per one-bedroom unit not provided on site, \$449,000 per two-bedroom unit not provided on site, and \$723,000 per three-bedroom unit not provided on site. A requirement that developers pay these fees for each affordable unit that is not provided in a project results in the same residual land values as providing the affordable units. Assessing fees that are higher than these rates would generally incentivize construction of affordable units on site within market-rate projects. Assessing fees that are lower than these rates would generally incentivize payment of in-lieu fees.

The in-lieu fee rates that represent the “point of indifference” are sensitive to the difference between market-rate rents and affordable rents, and therefore will change over time and between projects. The in-lieu fee rates that are equivalent to providing affordable units on site from a developer cost perspective will generally be higher for projects with a large gap between the market-rate rent and affordable rent, and lower for projects in which this gap is relatively small. Therefore, if the City adopts a single in-lieu fee that would apply to all projects based on the in-lieu fee equivalent for a typical project, developers of higher-end luxury projects will be incentivized to pay the fee due to the large pricing gap between the market-rate and affordable units. Conversely, developers of projects with a lower price point than is typical for Menlo Park will find it advantageous to provide affordable units on site. This finding also suggests that adjustments to fees over time should be based on changes in the difference between market-rate rents and affordable rents.

INTRODUCTION

The City of Menlo Park has a 32-year history of supporting the production of affordable housing through inclusionary requirements and affordable housing fees, demonstrating the City's long-standing commitment to addressing local affordable housing needs. The City established a Below Market Rate (BMR) Housing Program in 1987 and has updated the program on a periodic basis to accommodate shifts in State housing laws as well as local needs and policy objectives. The City's current BMR Housing Program requires that developers of projects with five to nine units either provide a BMR unit or pay an in-lieu fee. The program requires developers of projects with ten to 19 units to restrict ten percent of the units for the BMR Program and requires developers of a projects with 20 or more residential units to restrict 15 percent of the units for the BMR Program. The BMR Program requires that BMR rental units be affordable to households that qualify as low income, defined by the City's ordinance as households with incomes equal to or less than 80 percent of the Area Median Income (AMI), although an equivalent alternative may be approved by the City Council.

Residential developers, community members, and elected and appointed City officials requested that the City evaluate various topics related to the City's BMR Housing Program for rental units. While some members of the development community report challenges in meeting the current requirement, Menlo Park has experienced substantial residential development activity despite these requirements. Meanwhile, some community members and elected and appointed officials have expressed an interest in understanding whether the City might be able increase the BMR requirements for market-rate developments. In addition, local and elected officials have expressed interest in achieving a better understanding of potential BMR in-lieu fee rates, with a focus on identifying the fee rates that result in developer return metrics that are similar to the return metrics for a project that would provide BMR units on site rather than pay an in-lieu fee. The City commissioned BAE to conduct an economic analysis to evaluate these topics.

Purpose

The purpose of this analysis is to assess the economic feasibility of the City's existing BMR Housing Program requirements for rental projects, evaluate whether it would be possible to increase the requirements for rental projects to better address the City's affordable housing needs, and inform future discussions about the City's rental in-lieu fees. The following analysis evaluates four scenarios (each a BMR Housing Scenario) as each scenario relates to future multifamily rental development in Menlo Park:

- 1) Providing low income rental units in compliance with the City's existing BMR Housing Program (ten percent of units in projects with ten to 19 units and 15 percent of units in projects with 15 units or more);
- 2) Providing 20 percent of units as low-income units;

- 3) Adding a small number of units reserved for teacher and emergency worker households with moderate incomes (defined in this analysis as households with incomes equal to 120 percent of AMI) in addition to meeting a 15 percent low-income requirement; and
- 4) Payment of an in-lieu fee that represents the “point of indifference,” or the fee that would be equivalent in cost to providing affordable units on site, from the perspective of a developer.

The purpose of BMR Housing Scenarios 1 through 3 is to inform City policy discussions related current and potential on-site inclusionary housing requirements in Menlo Park. The purpose of BMR Housing Scenario 4 is to inform City policy discussions related to providing developers with the option to pay an in-lieu fee rather than provide inclusionary units on site. If in-lieu fees are lower than the fee rates identified in BMR Housing Scenario 4, market-rate developers will generally choose to pay the fee rather than provide units on site. If in-lieu fees are higher than the fee rates identified in BMR Housing Scenario 4, market-rate developers will generally choose to provide units on site rather than pay the in-lieu fee.

Report Organization

The remainder of this report is organized as follows:

- **Development of Prototype Projects.** This chapter identifies eight multifamily rental project prototypes, which are designed to reflect a range of potential future residential development typologies in Menlo Park. This section also describes the methodology that this study used to derive the eight prototypes.
- **Financial Analysis.** This chapter presents the results of a static development pro-forma analysis that provides a financial analysis of each of the four BMR Housing Scenarios in each of the eight multifamily rental prototype projects. The methodology used for the financial analysis is described in detail in this section of the report.
- **Key Findings.** This chapter summarizes the key findings from the financial analysis as they relate to each of the four BMR Housing Scenarios.

DEVELOPMENT OF PROTOTYPE PROJECTS

This chapter summarizes the methodology that BAE used to develop the eight multifamily rental development prototypes used for the financial feasibility analysis. The prototypes encompass a range of project sizes and densities, which are designed to reflect the likely range of multifamily rental development projects in Menlo Park in the near to medium term given existing development regulations in the City's remaining multifamily rental opportunity areas. The subsequent chapter of this report evaluates each of these prototypes in relation to the four BMR Housing Scenarios analyzed in this report.

Multifamily Rental Prototypes

BAE consulted with City staff to identify potential size ranges for future multifamily rental projects in Menlo Park, as well as the development standards that would apply to new projects in the two areas most likely to accommodate future multifamily development in the City: the ECR/DT Specific Plan Area and the Bayfront Area. BAE also reviewed recently-constructed multifamily rental projects and projects in the City's development pipeline to define residential development typologies for projects actively being pursued in the City. The two smallest prototypes (Prototypes 1 and 2) shown in Table 1 below reflect typical development standards in the ECR/DT Specific Plan Area and are consistent with other small infill projects that have been pursued in the area. The larger prototypes (Prototypes 3 through 8) were developed based on the maximum densities permitted under base and bonus level development zoning regulations in the Bayfront Area. Each of the prototypes evaluated in this study are described below and summarized in Table 1 below. The detailed pro-formas shown in Appendix A provide additional information on each development program.

Density Bonuses for Prototype Projects

This analysis assumes that each of the prototypes would receive density bonuses pursuant to either the State Density Bonus Law or the density bonuses that are available as part of the City of Menlo Park's BMR Housing Program. The City's BMR Housing Program allows developers to build one bonus unit for every one BMR unit provided within a project, up to a 15 percent density bonus, and relaxes some development standards for projects that provide BMR units on site. For example, if the zoning for a site allows for 100 units, a project that restricts 15 units (15 percent) for low-income households would be eligible for an additional 15 market-rate units under the City's BMR Housing Program, resulting in 115-unit project with 15 BMR units and 100 market-rate units. In Scenarios 2 and 3, this analysis assumes that the City would modify its existing density bonus program to allow an additional market-rate unit for each low-income or moderate-income unit provided on site.

State Density Bonus Law provides various levels of density bonuses, along with other concessions and incentives, depending on the number of affordable units provided in a project and the income level of the affordable units. Under State Density Bonus Law, a project is

eligible for a 27.5-percent density bonus if 15 percent of the units that would be allowable by zoning are affordable to low-income households. For example, if the zoning for a site allows for 100 units, a project that restricts 15 units (15 percent) for low-income households would be eligible for an additional 28 market-rate units under State Density Bonus Law, resulting in a 128-unit project with 15 affordable units and 113 market-rate units. The percentage density bonus provided by State Density Bonus Law increases as the percent affordable increases. A project is eligible for a 35-percent density bonus if 20 percent of the units that would be allowable by zoning are affordable to low-income households. Projects that provide units affordable to very low-income households are eligible for the same density bonuses in exchange for a smaller percentage of affordable units.

Although the State Density Bonus Law provides a larger density bonus than the City's BMR Housing Program, State Density Bonus Law requires deeper affordability. The State Density Bonus Law requires that low-income units target households with incomes equal to 60 percent of the area median income (AMI), while the City's BMR Housing Program requires that low income units target households with incomes equal to 80 percent of AMI. Therefore, some developers may choose to provide deeper affordability in exchange for a larger density bonus under the State Density Bonus Law, whereas others may choose a smaller density bonus in exchange for higher rents for the affordable units allowed by the City's BMR Housing Program.

El Camino Real/Downtown Specific Plan Area Prototypes

The ECR/DT Specific Plan Area consists of smaller infill opportunity sites for relatively small-scale projects, and therefore the prototypes for the ECR/DT Specific Plan Area consist of one prototype on a half-acre site and one prototype on a one-acre site. New multifamily rental projects in this area are typically required to include at least a small amount of ground-floor commercial space. Consistent with the City's requirements in the ECR/DT Specific Plan Area, both prototypes provide parking at a ratio of 1.85 spaces per residential unit and 4.0 spaces per 1,000 square feet of commercial space. Parking for these prototypes is provided through a combination of podium and surface spaces. This analysis assumes that the ECR/DT Specific Plan Area prototypes receive a density bonus under the City's BMR Housing Program, which is consistent with the option that developers have typically pursued for projects in this area. The City BMR Housing Program may be preferred in this area because the small site sizes in this area make it difficult to accommodate the additional density that the State Density Bonus Law would offer along with the parking that would be required to serve the additional units.

Prototype 1: ECR/DT Prototype on 0.48 Acres: Prototype 1 consists of a small residential project on a 0.48-acre site in the ECR/DT Specific Plan Area. Based on the zoning, the site has a residential density of 25 dwelling units per acre, or 12 units total. The analysis assumes that the project would use the City's BMR Housing Program, which would result in differing numbers of total residential units depending on the BMR Housing Scenario (see below). This prototype includes 2,000 square feet of commercial space in all scenarios. While this prototype is slightly larger than the minimum project size that would be required to provide a

BMR unit (ten units), the findings for this prototype would generally be applicable to a slightly smaller, ten-unit project. The project that would be built on the site in BMR Housing Scenarios 1 through 3 are as follows:

- **Scenario 1:** Under the City's BMR Housing Program, the 12-unit project that could be built as allowable by zoning would be required to provide 1.2 BMR units (ten percent of 12 units). This analysis assumes that the prototype would provide one BMR unit in Scenario 1 and pay an in-lieu fee to satisfy the requirement for an additional 0.2 BMR units. The City's BMR Housing Program would allow a density bonus of one additional market-rate unit in exchange for the affordable unit, resulting in a 13-unit project.
- **Scenario 2:** Under Scenario 2, the 12-unit project that could be built as allowable by zoning would be required to provide 2.4 BMR units (20 percent of 12 units). This analysis assumes that the prototype would provide two BMR units in Scenario 2 and pay an in-lieu fee to satisfy the requirement for an additional 0.4 BMR units. This analysis assumes that the City's BMR Housing Program would allow a density bonus of two additional market-rate units in exchange for the affordable units, resulting in a 14-unit project.
- **Scenario 3:** Under Scenario 3, the 12-unit project that could be built as allowable by zoning would be required to provide 1.8 low-income units (15 percent of 12 units) plus 0.24 moderate-income units (two percent of 12 units), or 2.04 BMR units in total (1.8 low-income plus 0.24 moderate-income). This analysis assumes that the prototype would provide two low-income units in Scenario 3 and pay an in-lieu fee to satisfy the requirement for an additional 0.04 BMR units. This represents one possible outcome for this project based on the requirements in Scenario 3. If the City were to adopt a requirement in accordance with Scenario 3, the total number of BMR units, BMR affordability levels, and fractional in-lieu fee payment for this project would depend on developer decisions as well as the City's policies related to rounding of requirements for fractional units in each affordability category and payment of in-lieu fees to meet requirements for fractional units in each affordability category. This analysis assumes that the City's BMR Housing Program would allow a density bonus of two additional market-rate units in exchange for the affordable units, resulting in a 14-unit project.

Prototype 2: ECR/DT Prototype on 1.0 Acres: Prototype 2 consists of a slightly larger residential project on a 1.0-acre site in the ECR/DT Specific Plan Area. Based on the zoning, the site has a residential density of 25 dwelling units per acre, or 25 units total. The analysis assumes that the project would use the City's BMR Housing Program, which would result in differing numbers of residential units depending on the BMR Housing Scenario (see below). This prototype includes 4,500 square feet of commercial space in all scenarios. The project that would be built on the site in BMR Housing Scenarios 1 through 3 are as follows:

- **Scenario 1:** Under the City's BMR Housing Program, the 25-unit project that could be built as allowable by zoning would be required to provide 3.75 BMR units (15 percent

of 25 units). This analysis assumes that the prototype would provide three BMR units in Scenario 1 and pay an in-lieu fee to satisfy the requirement for an additional 0.75 BMR units. The City's BMR Housing Program would allow a density bonus of three additional market-rate units in exchange for the affordable units, resulting in a 28-unit project.

- **Scenario 2:** Under Scenario 2, the 25-unit project that could be built as allowable by zoning would be required to provide five BMR units (20 percent of 25 units). This analysis assumes that the City's BMR Housing Program would allow a density bonus of five additional market-rate units in exchange for the affordable units, resulting in a 30-unit project.
- **Scenario 3:** Under Scenario 3, the 25-unit project that could be built as allowable by zoning would be required to provide 3.75 low-income units (15 percent of 25 units) plus 0.5 moderate-income units (two percent of 25 units), or 4.25 BMR units in total (3.75 low-income plus 0.5 moderate-income). This analysis assumes that in Scenario 3 the prototype would provide four BMR units, comprised of three low-income units and one moderate-income unit, and pay an in-lieu fee to satisfy the requirement for an additional 0.25 BMR units. As with Prototype 1, this represents one possible outcome for this project based on the requirements in Scenario 3, though the total number of BMR units, BMR affordability levels, and fractional in-lieu fee payment for this project would depend on developer decisions as well as the City policies related to fractional units in each affordability category. This analysis also assumes that the City's BMR Housing Program would allow a density bonus of four additional market-rate units in exchange for the affordable units, resulting in a 29-unit project.

Bayfront Area Prototypes

The Bayfront Area includes larger development sites that could accommodate the prototypes with 100 units or more. Within the primary zoning district in the Bayfront Area where residential development is allowed (the Residential Mixed-Use or "RM-U" zoning district), the base density is 30 dwelling units per acre. However, projects in the RM-U zoning district that provide community amenities pursuant to the City's community amenities program can be built at bonus level densities of up to 100 dwelling units per acre. The City prefers that residential projects built at bonus level development in the RM-U zoning district meet the community amenity requirement by providing additional affordable units, in excess of the units that a project must provide to meet the requirements of the City's BMR Housing Program.

The Bayfront Area prototypes in this study include prototypes at the base density and at bonus level development. For each prototype, this analysis includes a scenario in which 15 percent of the units in the project are affordable to low-income households. Under the City's R-MU zoning ordinance, the City's preference is that projects built at the bonus level development provide more than 15 percent of units to low-income households to meet the community amenity requirement. However, this analysis includes a 15-percent affordability scenario for

the bonus level development projects as a baseline in order to first evaluate the feasibility of Scenario 1, independent of the requirement to provide community amenities. The Financial Analysis chapter of this report includes analysis related to the financial feasibility of community amenities requirements in these prototypes.

This analysis assumes that projects in the Bayfront Area that do not pursue bonus level development in exchange for community amenities will choose the State Density Bonus Law rather than the City's BMR Housing Program in order to maximize the number of market-rate units on each site. Therefore, the affordable units in these prototypes would target households with incomes equal to 60 percent of AMI, per State Density Bonus Law requirements.

The analysis assumes that Bayfront Area projects that are built at bonus level development in exchange for community amenities will choose the City's BMR Housing Program rather than the State Density Bonus Law, which is consistent with at least one proposed residential project in the Bayfront Area. The City's BMR Housing Program may be more attractive at bonus level development because providing additional units pursuant to State Density Bonus Law could necessitate a change in the building typology that would require a more expensive construction type.

As an alternative or in addition to additional affordable housing as the community amenity, City staff reports that the City Council has expressed an interest in encouraging projects in these areas to provide commercial space for neighborhood-serving retail. Therefore, each of the Bayfront Area prototypes included in this analysis includes a small amount of ground-floor commercial space.

This analysis assumes that parking is provided at a rate 1.5 spaces per unit for projects built at 40 dwelling units per acre and 1.15 spaces per unit for projects built at 100 dwelling units per acre, plus 3.0 spaces per 1,000 square feet of commercial space. These parking ratios exceed the minimum parking requirements for the RM-U zoning district, which are lower than the maximum allowable parking requirements for projects that utilize State Density Bonus Law. The lower-density Bayfront Area prototypes would provide parking through a combination of podium garage spaces and surface spaces, while the higher-density Bayfront Area prototypes would provide parking in two levels of podium parking.

Prototype 3: Lower-Density Bayfront Area Prototype on 3.3 Acres: Prototype 3 consists of a residential project on a 3.3-acre site in the Bayfront Area, which would be built at the lower or base density which has a residential density of 30 dwelling units per acre, or 100 units total. The analysis assumes that the project would use the State Density Bonus Law, which would result in differing numbers of residential units depending on the BMR Housing Scenario (see below). This prototype includes 1,000 square feet of commercial space in all scenarios. The project that would be built on the site in BMR Housing Scenarios 1 through 3 are as follows:

- **Scenario 1:** Under the City’s BMR Housing Program, the 100-unit project that could be built as allowable by zoning (no bonus level development) would be required to provide 15 BMR units (15 percent of 100 units). This analysis assumes that the developer would choose to make these units affordable to households with incomes equal to 60 percent of AMI, thereby making the project eligible for a 27.5-percent increase in density under the State Density Bonus Law. The additional 27.5 units would be rounded up to allow for 28 additional market-rate units, resulting in a 128-unit project.
- **Scenario 2:** Under Scenario 2, the 100-unit project that could be built as allowable by zoning would be required to provide 20 BMR units (20 percent of 100 units). This analysis assumes that the developer would choose to make these units affordable to households with incomes equal to 60 percent of AMI, thereby making the project eligible for a 35-percent increase in density under the State Density Bonus Law, resulting in a 135-unit project.
- **Scenario 3:** Under Scenario 3, the 100-unit project that could be built as allowable by zoning would be required to provide 17 BMR units (17 percent of 100 units), consisting of 15 low-income units and two moderate-income units. This analysis assumes that the developer would choose to make the low-income units affordable to households with incomes equal to 60 percent of AMI, thereby making the project eligible for a 27.5-percent increase in density under the State Density Bonus law, as in Scenario 1. Under State Density Bonus law, the moderate-income units would not entitle the project to any additional density. Therefore, the project would consist of a total of 128 units, including 111 market-rate units, 15 low-income units, and two moderate-income units.

Prototype 4: Lower-Density Bayfront Area Prototype on 6.7 Acres: Prototype 4 consists of a residential project on a 6.7-acre site in the Bayfront Area, which would be built at the lower or base density, which would allow a residential density of 30 dwelling units per acre, or 200 units total. The analysis assumes that the project would use the State Density Bonus Law, which would result in differing numbers of residential units depending on the BMR Housing Scenario (see below). This prototype includes 2,000 square feet of commercial space in all scenarios. The project that would be built on the site in BMR Housing Scenarios 1 through 3 are as follows:

- **Scenario 1:** Under the City’s BMR Housing Program, the 200-unit project that could be built as allowable by zoning would be required to provide 30 BMR units (15 percent of 200 units). This analysis assumes that the developer would choose to make these units affordable to households with incomes equal to 60 percent of AMI, thereby making the project eligible for a 27.5-percent increase in density pursuant to State Density Bonus Law, or 55 additional market-rate units, resulting in a 255-unit project.
- **Scenario 2:** Under Scenario 2, the 200-unit project that could be built as allowable by zoning would be required to provide 40 BMR units (20 percent of 200 units). This

analysis assumes that the developer would choose to make these units affordable to households with incomes equal to 60 percent of AMI, thereby making the project eligible for a 35-percent increase in density under the State Density Bonus Law, resulting in a 270-unit project.

- **Scenario 3:** Under Scenario 3, the 200-unit project that could be built as allowable by zoning would be required to provide 34 BMR units (17 percent of 200 units), consisting of 30 low-income units and four moderate-income units. This analysis assumes that the developer would choose to make the low-income units affordable to households with incomes equal to 60 percent of AMI, thereby making the project eligible for a 27.5-percent increase in density under the State Density Bonus Law, as in Scenario 1. Under State Density Bonus Law, the moderate-income units would not entitle the project to any additional density. Therefore, the project would consist of a total of 255 units, including 221 market-rate units, 30 low-income units, and four moderate-income units.

Prototype 5: Lower-Density Bayfront Area Prototype on 13.3 Acres: Prototype 5 consists of a residential project on a 13.3-acre site in the Bayfront Area, which would be built at the lower or base density, which would allow 30 dwelling units per acre, or 400 units total. The analysis assumes that the project would use the State Density Bonus Law, which would result in differing numbers of residential units depending on the BMR Housing Scenario (see below). This prototype includes 4,000 square feet of commercial space in all scenarios. The project that would be built on the site in BMR Housing Scenarios 1 through 3 are as follows:

- **Scenario 1:** Under the City's BMR Housing Program, the 400-unit project that could be built as allowable by zoning would be required to provide 60 BMR units (15 percent of 400 units). This analysis assumes that the developer would choose to make these units affordable to households with incomes equal to 60 percent of AMI, thereby making the project eligible for a 27.5-percent increase in density pursuant to State Density Bonus Law, or 110 additional market-rate units, resulting in a 510-unit project.
- **Scenario 2:** Under Scenario 2, the 400-unit project that could be built as allowable by zoning would be required to provide 80 BMR units (20 percent of 400 units). This analysis assumes that the developer would choose to make these units affordable to households with incomes equal to 60 percent of AMI, thereby making the project eligible for a 35-percent increase in density under the State Density Bonus Law, resulting in a 540-unit project.
- **Scenario 3:** Under Scenario 3, the 400-unit project that could be built as allowable by zoning would be required to provide 68 BMR units (17 percent of 400 units), consisting of 60 low-income units and eight moderate-income units. This analysis assumes that the developer would choose to make the low-income units affordable to households with incomes equal to 60 percent of AMI, thereby making the project eligible for a 27.5-percent increase in density under the State Density Bonus Law, as in

Scenario 1. Under State Density Bonus law, the moderate-income units would not entitle the project to any additional density. Therefore, the project would consist of a total of 510 units, including 442 market-rate units, 60 low-income units, and eight moderate-income units.

Prototype 6: Higher-Density Bayfront Area Prototype on 1.0 Acres: Prototype 6 consists of a residential project on a 1.0-acre site in the Bayfront Area, built at bonus level development in exchange for community amenities. At bonus level development, the site has a residential density of 100 dwelling units per acre, or 100 units total. The analysis assumes that the project would use the City's BMR Housing Program, which would result in differing numbers of residential units depending on the BMR Housing Scenario (see below). This prototype includes 750 square feet of commercial space in all scenarios. The project that would be built on the site in BMR Housing Scenarios 1 through 3 are as follows:

- **Scenario 1:** Under the City's BMR Housing Program, the 100-unit project that could be built as allowable by zoning would be required to provide 15 BMR units (15 percent of 100 units). The City's BMR Housing Program would allow a density bonus of 15 additional market-rate units in exchange for the affordable units, resulting in a 115-unit project.
- **Scenario 2:** Under Scenario 2, the 100-unit project that could be built as allowable by zoning would be required to provide 20 BMR units (20 percent of 100 units). This analysis assumes that the City's BMR Housing Program would allow a density bonus of 20 additional market-rate units in exchange for the affordable units, resulting in a 120-unit project.
- **Scenario 3:** Under Scenario 3, the 100-unit project that could be built as allowable by zoning would be required to provide 17 BMR units (17 percent of 100 units), consisting of 15 low-income units and two moderate-income units. This analysis assumes that the City's BMR Housing Program would allow as a density bonus 17 additional market-rate units in exchange for the affordable units, resulting in a 117-unit project.

Prototype 7: Higher-Density Bayfront Area Prototype on 2.0 Acres: Prototype 7 consists of a residential project on a 2.0-acre site in the Bayfront Area, built at bonus level development in exchange for community amenities. At bonus level development, the site has a residential density of 100 dwelling units per acre, or 200 units total. The analysis assumes that the project would use the City's BMR Housing Program, which would result in differing numbers of residential units depending on the BMR Housing Scenario (see below). This prototype includes 1,000 square feet of commercial space in all scenarios. The project that would be built on the site in BMR Housing Scenarios 1 through 3 are as follows:

- **Scenario 1:** Under the City's BMR Housing Program, the 200-unit project that could be built as allowable by zoning would be required to provide 30 BMR units (15 percent of

200 units). The City's BMR Housing Program would allow as a density bonus 30 additional market-rate units in exchange for the affordable units, resulting in a 230-unit project.

- **Scenario 2:** Under Scenario 2, the 200-unit project that could be built as allowable by zoning would be required to provide 40 BMR units (20 percent of 200 units). This analysis assumes that the City's BMR Housing Program would allow as a density bonus 40 additional market-rate units in exchange for the affordable units, resulting in a 240-unit project.
- **Scenario 3:** Under Scenario 3, the 200-unit project that could be built as allowable by zoning would be required to provide 34 BMR units (17 percent of 200 units), consisting of 30 low-income units and four moderate-income units. This analysis assumes that the City's BMR Housing Program would allow as a density bonus 34 additional market-rate units in exchange for the affordable units, resulting in a 234-unit project.

Prototype 8: Higher-Density Bayfront Area Prototype on 4.0 Acres: Prototype 8 consists of a residential project on a 4.0-acre site in the Bayfront Area, built at the bonus level development in exchange for the provision of community amenities. At the bonus level development, the site has a residential density of 100 dwelling units per acre, or 400 units total. The analysis assumes that the project would use the City's BMR Housing Program, which would result in differing numbers of residential units depending on the BMR Housing Scenario (see below). This prototype includes 2,000 square feet of commercial space in all scenarios. The project that would be built on the site in BMR Housing Scenarios 1 through 3 are as follows:

- **Scenario 1:** Under the City's BMR Housing Program, the 400-unit project that could be built as allowable by zoning would be required to provide 60 BMR units (15 percent of 400 units). The City's BMR Housing Program would allow as a density bonus 60 additional market-rate units in exchange for the affordable units, resulting in a 460-unit project.
- **Scenario 2:** Under Scenario 2, the 400-unit project that could be built as allowable by zoning would be required to provide 80 BMR units (20 percent of 400 units). This analysis assumes that the City's BMR Housing Program would allow as a density bonus 80 additional market-rate units in exchange for the affordable units, resulting in a 480-unit project.
- **Scenario 3:** Under Scenario 3, the 400-unit project that could be built as allowable by zoning would be required to provide 68 BMR units (17 percent of 400 units), consisting of 60 low-income units and eight moderate-income units. This analysis assumes that the City's BMR Housing Program would allow as a density bonus 68 additional market-rate units in exchange for the affordable units, resulting in a 468-unit project.

Table 1: Summary of Prototype Project Development Programs

	ECR/DT Prototypes		Lower-Density Bayside Area Prototypes			Higher-Density Bayside Area Prototypes		
	Prototype 1	Prototype 2	Prototype 3	Prototype 4	Prototype 5	Prototype 6	Prototype 7	Prototype 8
	Site Size (acres)	0.48	1.00	3.33	6.67	13.33	1.00	2.00
Density (du/acre) Before Density Bonus	25	25	30	30	30	100	100	100
Total Units Before Density Bonus	12	25	100	200	400	100	200	400
Type of Density Bonus (City/State)	City	City	State	State	State	City	City	City
Scenario 1 (Current Requirements)								
BMR Req. as a % of Units at Base Level Density	10.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%
Total BMR Units	1	3	15	30	60	15	30	60
Density Bonus (% of Base)	8.3%	12.0%	27.5%	27.5%	27.5%	15.0%	15.0%	15.0%
Bonus Units	1	3	28	55	110	15	30	60
Total Project Size with Bonus	13	28	128	255	510	115	230	460
Project Density with Density Bonus (du/acre)	27.1	28.0	38.4	38.3	38.3	115.0	115.0	115.0
Fractional In-Lieu Fee Units	0.20	0.75	0.00	0.00	0.00	0.00	0.00	0.00
Scenario 2 (20% BMR Requirement)								
BMR Req. as a % of Units at Base Level Density	20.0%	20.0%	20.0%	20.0%	20.0%	20.0%	20.0%	20.0%
Total BMR Units	2	5	20	40	80	20	40	0
Density Bonus (% of Base)	16.7%	20.0%	35.0%	35.0%	35.0%	20.0%	20.0%	0.0%
Bonus Units	2	5	35	70	140	20	40	0
Total Project Size with Bonus	14	30	135	270	540	120	240	4
Project Density with Density Bonus (du/acre)	29.2	30.0	40.5	40.5	40.5	120.0	120.0	1.0
Fractional In-Lieu Fee Units	0.40	0.00	0.00	0.00	0.00	0.00	0.00	0.80
Scenario 3 (15% Low + 2% Moderate)								
BMR Req. as a % of Units at Base Level Density	17.0%	17.0%	17.0%	17.0%	17.0%	17.0%	17.0%	17.0%
Total BMR Units	2	4	17	34	68	17	34	0
Density Bonus (% of Base)	16.7%	16.0%	27.5%	27.5%	27.5%	17.0%	17.0%	0.0%
Bonus Units	2	4	28	55	110	17	34	0
Total Project Size with Bonus	14	29	128	255	510	117	234	4
Project Density with Density Bonus (du/acre)	29.2	29.0	38.4	38.3	38.3	117.0	117.0	1.0
Fractional In-Lieu Fee Units	0.04	0.25	0.00	0.00	0.00	0.00	0.00	0.68

Source: BAE, 2019.

FINANCIAL ANALYSIS

This chapter describes the methodology and key assumptions that BAE used to conduct a financial analysis of each of the four BMR Housing Scenarios in each of the eight residential prototypes and presents the results of the financial analysis. The financial feasibility analysis was conducted during the first half of 2019, and reflects assumptions that BAE collected during that period.

Methodology

The methodology used for this study involved preparation of static pro-forma financial feasibility models for each of the eight prototypes described in the previous chapter. The static pro-forma models represent a simplified form of financial feasibility analysis that developers often use at a conceptual level of planning for a development project, as an initial test of financial feasibility for a development concept, to screen for viability. The analysis conducted for this study included preparation of three static pro-formas for each of the eight prototypes to evaluate the effect that BMR Housing Scenarios 1 through 3 would have on each prototype. The detailed pro-formas that BAE prepared for this analysis are shown in Appendix A. The analysis of BMR Housing Scenario 4 relied on a different methodology, based on the assumptions used in the pro-formas for each prototype, as described in further detail below.

Residual Land Value Analysis

The pro-forma models are structured to calculate the residual land value associated with each prototype under each of the scenarios tested. The residual land value is equal to the market value of the completed project at stabilization net of total development costs and developer profit:

$$\begin{aligned} \text{Capitalized Value at Stabilization (i.e., NOI} \div \text{cap rate)} - \text{Total Development Cost (not incl. land)} \\ = \\ \text{Residual Land Value} \end{aligned}$$

The residual land value approximates the maximum amount that a developer should be willing to pay for a given site, based on the value of the project that the developer would build on that site. In general, a development pro-forma that shows a residual land value that is approximately equivalent to or higher than the typical sale price for land among recent comparable sales indicates a financially feasible project. If a developer is able to acquire land for a price that is lower than the residual the land value associated with his or her project, the difference between the residual land value and the actual sale price essentially represents additional project profit.

Residual Land Value Analysis for Scenarios 1 through 3: This study evaluated BMR Housing Scenarios 1 through 3 based on whether each of the eight prototypes can

absorb the inclusionary requirements associated with each scenario while maintaining financial feasibility. This analysis determined that a scenario is financially feasible if the residual land value resulting from the scenario is comparable to or higher than actual typical land acquisition costs for residential development sites in Menlo Park. A residual land value that is higher than the typical sale price for residential development sites indicates that a project might be able to absorb higher inclusionary requirements than modeled in the Scenario, while a lower residual land value might indicate financial feasibility challenges.

The financial analysis calculates the residual land value for each scenario on both a per-site-square-foot basis and a per-unit basis and uses both metrics to evaluate financial feasibility. On a per-unit basis, this analysis uses a residual land value threshold of approximately \$80,000 per unit to establish feasibility, based on information provided by developers that BAE interviewed for this study during the first half of 2018 and BAE's experience with recent projects.

To evaluate the cost of land on a per-site-square-foot basis, BAE assembled data on recent commercial property sales in the ECR/DT Specific Plan Area and the Bayfront Area using ListSource, a private data vendor that provides property records from the County Assessor. Menlo Park has few vacant development opportunity sites, and therefore many recent development projects in Menlo Park have required acquisition and redevelopment of sites with existing improvements. Accordingly, the sales analyzed for this study included sales of properties with existing improvements along with any records of sales of vacant land in Menlo Park. To distinguish properties that were purchased as redevelopment opportunity sites from those purchased for the existing improvements, BAE first cross-checked the land sale records from ListSource with recently-constructed, planned, and proposed development projects. BAE assumed that recent commercial property sales that have since resulted in a completed or proposed redevelopment project are effectively land sales rather than sales for the purpose of acquiring the existing commercial improvements on site. BAE then calculated the ratio of improvement value to land value for sites not associated with recent, planned, or proposed projects. The sale of a property with a low ratio of improvement value to land value often indicates that the purchaser bought the land for its redevelopment potential rather than for the existing improvements on site. Conversely, properties with high ratios of improvement value to land value often do not represent attractive redevelopment opportunity sites due to the high cost to acquire a site with high-value improvements. While this analysis did not exclude records of commercial property sales with a high ratio of improvement to land value, properties with a high ratio were generally assumed to be less representative of typical land costs than properties with lower ratios.

This analysis provided information on the sales of several sites in the ECR/DT Specific Plan Area over the past few years which have since been redeveloped or proposed for redevelopment with a mix of residential and non-residential uses. Among these sales, the sale prices range from approximately \$225 per site square foot to over \$300 per site square foot,

with a weighted average of approximately \$270 per site square foot. Therefore, the financial analysis assumed that the ECR/DT Specific Plan Area prototypes would need to support a residual land value of at least \$225 per site square foot to be financially feasible.

The data from ListSource include sales of several properties in the RM-U zoning district of the Bayfront Area, all of which occurred in 2016 or earlier. Among sales of properties in this area that occurred in 2015 and 2016, the price per site square foot ranged from approximately \$115 to \$180, with a weighted average of approximately \$140 per site square foot. These sales all occurred prior to the City's adoption of the General Plan and Zoning Ordinance Update, and therefore before the properties received the RM-U zoning designation, but during the time when the City was developing and evaluating the General Plan and Zoning Ordinance Update. Therefore, the sale price among these properties may reflect buyers' and sellers' anticipation of future increases in development potential, potentially tempered somewhat by uncertainty regarding the timing and outcome of the update process.

Sale prices among more recent land sales in the Bayfront Area, all of which have been outside of the RM-U zone, have ranged from approximately \$80 per site square foot to approximately \$230 per site square foot, with a weighted average of approximately \$140 per site square foot, including some properties with relatively high improvement values. Based on these data and BAE's experience with recent multifamily rental projects near Menlo Park, the financial analysis assumed that the Bayfront Area prototypes would need to support a residual land value of at least \$160 to \$170 per site square foot to be financially feasible.

Residual Land Value Analysis for Scenario 4: The purpose of BMR Housing Scenario 4 is to identify the "point of indifference," or the BMR in-lieu fee rates that are equivalent to meeting the City's BMR Housing Program requirements from a developer cost perspective. This differs from the other three BMR Housing Scenarios because the purpose of the financial analysis for Scenario 4 is to identify these equivalent fee rates, rather than to evaluate the financial feasibility of the scenario itself.

In practice, the cost of an in-lieu fee and the cost to provide inclusionary units on site are not directly comparable, because an in-lieu fee affects total development costs, whereas providing inclusionary units on site affects total project income and the resulting capitalized project value. In other words, payment of an in-lieu fee affects the cost side of the residual land value calculation, while providing inclusionary units on site affects the project value side of the residual land value calculation.

This analysis evaluated BMR Housing Scenario 4 by calculating the cost of making a unit affordable to a low-income household, with this "cost" defined as the reduction in capitalized project value that would result from charging affordable rents on the unit rather than market-rents. The calculations shown in Table 4 show the annual operating revenue that a project would forego by making a unit affordable, compared to renting the unit at market rate, and the

resulting difference in the capitalized value of the project. The analysis evaluated the cost of providing affordable units of various sizes at rents that are affordable to low-income households and at rents that are affordable to moderate-income households. The resulting cost of providing affordable units represents the “point of indifference,” or the BMR in-lieu fee payment that would have the same cost impacts as providing affordable units within the project. In other words, if all else were equal, a residential rental project that pays the “point of indifference” fee rates shown in Table 4 in place of each affordable unit would generally support the same residual land value as a project that provides the affordable units on site. The market-rate rents, affordable rents, and capitalization rate used for this analysis were the same as those used for the pro-formas shown in Appendix A.

The analysis of Scenario 4 does not account for the effect that density bonuses available through either the City BMR Housing Program or State Density Bonus Law would have on overall project feasibility for projects that provide affordable units on site rather than paying an in-lieu fee. To the extent that projects that provide affordable units receive a density bonus, these additional units and other incentives or concessions wholly or partially offset the feasibility impacts associated with providing affordable units on site. Therefore, accounting for the effects that a density bonus would have on feasibility would result in a lower point of indifference fee rate. This analysis does not account for the effect of a possible density bonus to avoid underestimating the point of indifference fee rate for projects for which the developer chooses not to receive a density bonus.

Key Assumptions

BAE formulated assumptions for the pro-forma analyses based on a combination of published data sources, experience with recent development projects in the local area, and a series of interviews with developers familiar with the local development environment. These assumptions are based on BAE’s research of market conditions and construction costs, conducted in the first half of 2019. Specific information about key assumptions is provided below.

Hard Costs: This analysis assumed that the two ECR/DT Specific Plan Area Prototypes (Prototypes 1 and 2) would have the highest hard cost per square foot of all eight prototypes, averaging \$375, reflecting that these projects would be less efficient than larger projects and would have some fixed costs that are spread over a smaller amount of overall square footage than in a larger project. This analysis assumed a hard construction cost of \$350 per square foot for the lower-density Bayfront Area prototypes (Prototypes 3 through 5). While these three prototypes would vary in terms of overall project size, this analysis assumes that each of these lower-density Bayfront Area prototypes would have the same hard cost per square foot because these prototypes would be similar in building height and massing, with the primary difference between the projects being the site size and the number of buildings on the site. Similarly, this analysis assumed an average hard cost of \$360 per square foot for all of the higher-density Bayfront Area prototypes (Prototypes 6 through 8).

This analysis uses a parking hard cost assumption of \$10,000 per surface space, \$50,000 per podium space, and \$80,000 per underground space.

All hard cost assumptions used in this analysis are consistent with current hard cost estimates provided by developers that BAE interviewed for this project as well as with BAE's experience with recent construction bids for proposed projects in the local area. However, it should be noted that hard costs are subject to variation, even among projects that are relatively similar, and the sources that BAE used to estimate hard costs for this study reflected this variation. This study generally uses assumptions that fall between the high and low end of the range of estimates.

Soft Costs: This analysis assumes that soft costs are equal to 20 percent of hard costs. This soft cost estimate includes engineering, architecture, and environmental review costs, as well as City cost-recovery fees for planning, permitting, and entitlements, but does not include financing costs or impact fees. Financing costs and impact fees were calculated separately and included in total development costs as separate line items. While some developers interviewed for this study stated that larger projects could have lower per-unit architecture and engineering fees and environmental review costs than the smaller projects, creating soft cost efficiencies as the projects move up in size, this analysis conservatively used the same 20 percent base soft cost assumption for all prototypes. Any differences in individual soft cost items would typically have a relatively small effect on overall project costs, as most of these costs constitute a small share of total development costs.

Financing Costs: This analysis assumes a 5.0 percent interest rate on construction loans and loan fees equal to 0.75 percent of the loan amount. Developers interviewed for this study reported slightly lower financing costs, but also stated that their financing costs might be lower than is typical. This analysis used slightly higher costs to ensure a conservative analysis.

Impact Fees: BAE calculated impact fees for each prototype based on the City's impact fee schedule and the applicable school district impact fee schedules, applied to the characteristics of each prototype.

BMR In-Lieu Fees: BAE calculated the in-lieu fees that a developer could pay to satisfy a requirement to provide a partial BMR unit in Prototypes 1 and 2 based on the cost of providing an affordable unit, as defined by City ordinance. These calculations are explained in further detail in Appendix B.

Market-Rate Residential Rents: This analysis assumes that rental rates for market-rate units in each prototype will be comparable to current rental rates for recently-constructed multifamily rental developments in Menlo Park. This analysis assumes that market-rate rents

will average \$3,400 per month for studio units, \$3,609 per month for one-bedroom units, \$4,445 per month for two-bedroom units, and \$5,954 per month for three-bedroom units.

BMR Rents: For Prototypes 1 and 2 (the two ECR/DT Specific Plan Area prototypes) and Prototypes 6 through 8 (the higher-density prototypes in the Bayfront Area), the BMR rental rates reflect the rental rates affordable to households with incomes equal to 80 percent of Area Median Income (AMI), in accordance with the requirements of the City of Menlo Park BMR program. For Prototypes 3 through 5 (the lower-density prototypes in the Bayfront Area), the BMR rental rates reflect the rental rates affordable to households with incomes equal to 60 percent of AMI, based on the assumption that these projects will pursue a density bonus under the State Density Bonus Law, which requires deeper affordability than the City's BMR Housing Program but allows for a larger overall density bonus. In all cases, the BMR rental rate is equal to 30 percent of household income for a household at the designated AMI level, adjusted for household size.

Operating Expenses: This analysis assumed that residential operating expenses would be equal to \$13,000 per unit per year, which is consistent with BAE's experience with recent projects as well as information obtained through developer interviews.

Commercial Rents: The commercial rental rates used in this analysis are based on rents for existing retail space in Menlo Park, according to data provided by Costar. This analysis assumes that all commercial spaces will rent for \$4.00 per square foot per month, triple net.

Capitalization Rate: This analysis uses a 4.0 percent capitalization rate for residential uses and a 5.0 percent capitalization rate for commercial uses. These are the mid-point of the range of typical capitalization rates for stabilized properties of each type in both San Francisco and San Jose, as reported in the CBRE North America Cap Rate Survey for the second half of 2018. These figures are also consistent with information obtained during developer interviews.

Table 2: Summary of Key Assumptions

General Assumptions (All Prototypes)					
Hard Construction Costs					
Surface Parking, per space					\$10,000
Podium Parking, per space					\$50,000
Underground Parking, per space					\$80,000
Construction Financing					
Loan to Cost Ratio					65%
Interest Rate					5.0%
Loan Fees					0.75%
Avg. Outstanding Balance					50%
Developer Fee (as % of hard and soft costs)					4%
Contingency (as % of hard and soft costs)					5%
Developer Profit (as % of total hard and soft costs)					10%
Operating Assumptions					
Vacancy (Residential, Commercial, and Residential Parking)					5%
Operating Expenses (per unit/year)					\$13,000
				Moderate	
				Income	
		Low Income			
		60% AMI	80% AMI	(120% AMI)	
Average Monthly Rent per Unit	Market				
Studio	\$3,400	\$1,541	\$2,054	\$2,486	
1-bedroom	\$3,609	\$1,760	\$2,200	\$2,664	
2-bedroom	\$4,445	\$1,980	\$2,640	\$3,197	
3-bedroom	\$5,954	\$2,199	\$3,050	\$3,694	
Residential Parking Rent (per space/per month)					\$125.00
Commercial Rent, NNN (per sf/per mo)					\$4.00
Prototype-Specific Assumptions					
Unit Mix		ECR/DT	Bayfront Low Den.	Bayfront High Den.	
Studio		0%	10%	25%	
1-bedroom		25%	50%	60%	
2-bedroom		50%	35%	15%	
3-bedroom		25%	5%	0%	
Hard Costs					
Site Work, per site sf		\$30	\$25	\$30	
Residential, per gross building sf (a)		\$375	\$350	\$360	
Commercial, per gross building sf (a)		\$380	\$380	\$380	
Capitalization Rates					
Residential		4.00%	4.00%	4.00%	
Commercial		5.00%	5.00%	5.00%	
		Project Size			
		<100 Units	100 Units	200 Units	400 Units
Soft Costs (as % of hard costs)	20%	20%	20%	20%	20%
Construction Period (months)	18	20	24	28	

Note:

(a) Does not include cost of parking, site work, etc.

Sources: BAE, 2019.

Financial Analysis Results

This section provides an overview of the findings from the financial analysis of each of the four BMR Housing Scenarios. The findings are summarized in Table 3 and Table 4 below. Appendix A also shows the findings along with detailed pro-formas.

Financial Feasibility of Current Affordability Requirements (BMR Housing Scenario 1)

Higher-Density Bayfront Area Prototypes: The financial feasibility analysis indicates that the higher-density Bayfront Area prototypes can absorb a 15-percent inclusionary requirement while remaining financially feasible. The analysis found that the three Bayfront Area prototypes built at bonus level development (Prototypes 6, 7, and 8) can support a residual land value of \$301 to \$315 per site square foot and \$114,000 to \$119,000 per unit with a 15-percent inclusionary requirement. This is higher than the minimum residual land value of \$160 to \$170 per site square foot and \$80,000 per unit that this analysis uses to establish financial feasibility for prototypes in the Bayfront Area. However, as mentioned above, the analysis of this scenario does not account for the additional affordable units or other community amenities contribution that the City would require these prototypes to provide to be eligible for bonus level development with a density of 100 dwelling units per acre. The “Financial Feasibility of RM-U Community Amenities Requirements” subsection provided below discusses the effect that the community amenities requirement would have on the financial feasibility of these prototypes.

Lower-Density Bayfront Area Prototypes: The financial feasibility analysis indicates that the lower-density Bayfront Area prototypes cannot absorb a 15-percent inclusionary requirement while remaining financially feasible. While the analysis found that the three Bayfront Area prototypes that are built at lower or base density (not bonus level development) (Prototypes 3, 4, and 5) support high residual land values on a per-unit basis, on a per-site-square-foot basis these prototypes support a residual land value of \$133 to \$136. This per-site-square-foot residual land value is lower than the minimum residual land value of \$160 to \$170 per site square foot that this analysis uses to establish financial feasibility for prototypes in the Bayfront Area. These findings are consistent with comments made by developers interviewed for this study, who reported that developers are not typically pursuing this type of lower-density multifamily rental project in Menlo Park and nearby communities in the current development environment.

The potential development opportunity sites that could accommodate the lower-density Bayfront Area prototypes could also accommodate the higher-density prototypes, and therefore a developer pursuing a project on one of these sites will have a choice between a lower-density and higher density project. Because the higher-density projects result in a higher residual land value on a per-site-square-foot basis, a developer pursuing a project on one of these sites would be able to offer more for the land, thereby outcompeting any developers pursuing a lower-density project on the same site. Alternatively, if a developer is able to

acquire one of these sites for a price that is lower than the residual land value associated with his or her project, the difference between the residual land value from the project and the actual sale price would essentially represent additional profit from the project. The developer in this scenario would also be incentivized to build the higher-density project with the higher residual land value, in order to increase profits from the project.

If there were no inclusionary requirements or BMR in-lieu fees, the lower density Bayfront Area prototypes support residual land values that are well below the per-site-square-foot residual land values that the higher-density prototypes can support with a 15-percent low-income requirement. This means that the higher-density Bayfront Area prototypes represent more profitable and attractive development opportunities than the lower-density prototypes, even with a significantly higher affordability requirement.

ECR/DT Specific Plan Area Prototypes: The financial feasibility analysis also indicates that the ECR/DT Specific Plan Area prototypes cannot absorb the City's current inclusionary requirement (10 percent for the smallest ECR/DT prototype and 15 percent for the slightly larger ECR/DT prototype) while remaining financially feasible. While the analysis found that the two ECR/DT Specific Plan Area prototypes (Prototypes 1 and 2) support high residual land values on a per-unit basis, these per-unit land values are somewhat misleading because each of these projects also includes commercial space that is not accounted for in the per-unit land value calculation. Moreover, on a per-site-square-foot basis these prototypes support a residual land value of \$72 to \$86, well below the land value per site square foot that this analysis uses to establish financial feasibility for the ECR/DT Specific Plan Area prototypes. Both ECR/DT Specific Plan Area prototypes remain infeasible even with no affordability requirement, meaning that the affordability requirements for these units are not the sole cause of the feasibility shortfalls for these prototypes. These findings are consistent with BAE experience with recent projects, which has found that many smaller infill projects are not financially feasible in the current development environment.

Financial Feasibility of a 20-Percent Low Income Requirement (BMR Housing Scenario 2)

Higher-Density Bayfront Area Prototypes: The financial feasibility analysis indicates that the higher-density Bayfront Area prototypes are financially feasible with a 20-percent low-income requirement. The analysis found that the three Bayfront Area prototypes that are built at bonus level development (Prototypes 6, 7, and 8) can support a residual land value of \$280 to \$291 per site square foot, exceeding the minimum residual land value of \$160 to \$170 per site square foot that this analysis uses to establish financial feasibility for prototypes in the Bayfront Area. These same prototypes support a residual land value of \$101,000 to \$106,000 per unit, higher than the estimate of \$80,000 per unit that this analysis uses to establish financial feasibility. These findings suggest that projects that are similar to Prototypes 6, 7, and 8 can generally absorb a 20-percent inclusionary requirement.

These higher-density Bayfront Area prototypes support a higher residual land value per site square foot in Scenario 2 than the lower-density prototypes support in Scenario 1. As a result, a developer that is pursuing a project on a site with RM-U zoning would be able to build a higher-value project and earn more profit by building a bonus level development project with a 20-percent low-income requirement than by building a lower or base level project with a 15-percent low-income requirement.

These findings do not account for the impact that providing community benefits in addition to a 20-percent inclusionary requirement would have on financial feasibility. However, these findings do indicate that it is generally feasible for developers of higher-density Bayfront Area prototypes to provide additional affordable units in excess of the City's current 15-percent BMR requirements as a community amenity. The "Financial Feasibility of RM-U Community Amenities Requirements" section below provides additional analysis of the financial feasibility of meeting the community amenities requirement in addition to the baseline BMR requirements.

Lower-Density Bayfront Area Prototypes and ECR/DT Prototypes: As stated above, the lower-density Bayfront Area prototypes and ECR/DT Specific Plan Area prototypes cannot absorb the City's existing affordability requirements while maintaining financial feasibility. Accordingly, these prototypes cannot absorb the higher 20-percent low income requirement modeled in Scenario 2.

Financial Feasibility of a 15 Percent Low-Income Requirement Plus a Two Percent Moderate-Income Requirement (BMR Housing Scenario 3)

High-Density Bayfront Area Prototypes: The financial feasibility analysis indicates that the higher-density Bayfront Area prototypes can absorb a 15-percent low-income requirement plus a two percent moderate-income requirement while remaining financially feasible. The analysis found that the three Bayfront Area prototypes that are built at bonus level development (Prototypes 6, 7, and 8) can support a residual land value of \$298 to \$309 per site square foot and \$111,000 to \$115,000 per unit in BMR Housing Scenario 3. This is higher than the minimum residual land value of \$160 to \$170 per site square foot and \$80,000 per unit that this analysis uses to establish financial feasibility for prototypes in the Bayfront Area.

As with the findings related to Scenario 2, these findings do not account for the impact that providing community benefits in addition to a 15-percent low-income requirement and a two-percent moderate-income requirement would have on financial feasibility. However, these findings do indicate that it is generally feasible for developers of higher-density Bayfront Area prototypes to provide additional affordable units in excess of the City's current 15-percent BMR requirements as a community amenity. The "Financial Feasibility of RM-U Community Amenities Requirements" section below provides additional analysis of the financial feasibility

of meeting the community amenities requirement in addition to the baseline BMR requirements.

Lower-Density Bayfront Area Prototypes and ECR/DT Prototypes: The lower-density Bayfront Area prototypes and ECR/DT prototypes cannot absorb the City's existing affordability requirements while maintaining financial feasibility, and therefore cannot absorb the higher 15-percent low income plus two percent moderate income requirement modeled in BMR Housing Scenario 3.

Table 3: Summary of Financial Analysis Results, Inclusionary Scenarios (Scenarios 1 through 3)

	ECR/DT Prototypes		Bayfront Area Prototypes					
	Prototype 1 0.48 Acres	Prototype 2 1 Acre	Lower-Density Option			Community Amenities Density Option		
			Prototype 3 3.3 Acres	Prototype 4 6.7 Acres	Prototype 5 13.3 Acres	Prototype 6 1 Acre	Prototype 7 2 Acres	Prototype 8 4 Acres
BMR Housing Scenario 1: Current Inclusionary Requirement (10% Low Income for 10-19 Units; 15% Low Income for 20+ Units)								
Capitalized Value	\$14,841,001	\$31,569,928	\$102,432,801	\$204,556,406	\$409,080,038	\$82,477,760	\$164,630,905	\$329,059,175
Less Development Costs, excl. Land Cost	(\$13,051,548)	(\$28,446,926)	(\$82,712,029)	(\$165,206,654)	(\$332,002,932)	(\$68,761,528)	(\$137,657,120)	(\$251,524,042)
Residual Land Value	\$1,789,454	\$3,123,002	\$19,720,772	\$39,349,753	\$77,077,105	\$13,716,232	\$26,973,785	\$52,382,729
Residual Land Value per Site Sq. Ft	\$86	\$72	\$136	\$136	\$133	\$315	\$310	\$301
Residual Land Value per Unit	\$137,650	\$111,536	\$154,069	\$154,313	\$151,132	\$119,272	\$117,277	\$113,875
Financially Feasible?	No	No	No	No	No	Yes	Yes	Yes
BMR Housing Scenario 2: 20% Inclusionary Requirement (Low Income)								
Capitalized Value	\$15,178,626	\$32,531,603	\$105,180,214	\$211,290,881	\$423,011,756	\$84,249,675	\$167,651,475	\$335,267,325
Less Development Costs, excl. Land Cost	(\$14,129,301)	(\$29,041,795)	(\$87,229,880)	(\$174,820,783)	(\$351,406,943)	(\$71,579,659)	(\$142,573,370)	(\$260,509,351)
Residual Land Value	\$1,049,325	\$3,489,808	\$17,950,334	\$36,470,098	\$71,604,813	\$12,670,016	\$25,078,105	\$48,707,039
Residual Land Value per Site Sq. Ft	\$50	\$80	\$124	\$126	\$123	\$291	\$288	\$280
Residual Land Value per Unit	\$74,952	\$116,327	\$132,965	\$135,074	\$132,602	\$105,583	\$104,492	\$101,473
Financially Feasible?	No	No	No	No	No	Yes	Yes	Yes
BMR Housing Scenario 3: 15% Inclusionary (Low Income) + 2% Moderate-Income								
Capitalized Value	\$15,304,026	\$32,227,323	\$101,807,796	\$203,306,396	\$406,675,208	\$83,366,760	\$166,469,040	\$332,583,540
Less Development Costs, excl. Land Cost	(\$13,594,419)	(\$28,568,432)	(\$82,712,029)	(\$165,206,654)	(\$332,002,932)	(\$69,888,781)	(\$139,623,620)	(\$255,118,166)
Residual Land Value	\$1,709,607	\$3,658,891	\$19,095,767	\$38,099,743	\$74,672,275	\$13,477,979	\$26,845,420	\$51,953,558
Residual Land Value per Site Sq. Ft	\$82	\$84	\$132	\$131	\$129	\$309	\$308	\$298
Residual Land Value per Unit	\$122,115	\$126,169	\$149,186	\$149,411	\$146,416	\$115,196	\$114,724	\$111,012
Financially Feasible?	No	No	No	No	No	Yes	Yes	Yes

Note: (a) Total development costs include the cost of commercial space.
Source: BAE, 2019.

“Point of Indifference” In-Lieu Fee Rates (BMR Housing Scenario 4)

As shown in Table 4 below, the in-lieu fees that would be equivalent in cost to providing affordable units on site (i.e., the “point of indifference” in-lieu fee rates) vary between unit sizes and depending on the affordability level of the affordable units. The in-lieu fee that would be equivalent to providing a unit affordable to a low-income household would be approximately \$335,000 per studio unit not provided on site, \$351,000 per one-bedroom unit not provided on site, \$449,000 per two-bedroom unit not provided on site, and \$723,000 per three-bedroom unit not provided on site. If the City sets fee rates that are higher than these figures, developers will generally choose to provide affordable units on site rather than pay the BMR in-lieu fee. If the fee rates are lower than these figures, developers will generally choose to pay the in-lieu fee if allowed by City policy.

If the City chooses to adopt a moderate-income BMR requirement, the City could consider providing the option to pay the lower point of indifference fees that represent the cost of providing moderate-income units, rather than providing the moderate-income units on site. The in-lieu fee that would be equivalent to providing a unit affordable to a moderate-income household would be approximately \$228,000 per studio unit not provided on site, \$235,000 per one-bedroom unit not provided on site, \$311,000 per two-bedroom unit not provided on site, and \$563,000 per three-bedroom unit not provided on site.

This analysis does not include a calculation of the point of indifference fee rates that would be equivalent to providing low-income units affordable at the deeper 60 percent of AMI affordability level because none of the BMR Housing Scenarios evaluated in this study would require developers to target the deeper 60 percent of AMI affordability level. If the City’s in-lieu fee rates are structured to incentivize providing BMR units on site, some developers will consider voluntarily making the BMR units affordable to low-income households at the deeper 60 percent of AMI level to become eligible for the greater bonus available under State Density Bonus Law, as discussed above. In these cases, the developer will have chosen to target these income levels only after deciding to provide affordable units on site rather than pay the in-lieu fee, making any fees that would be structured based on the deeper 60 percent of AMI affordability level irrelevant to the developer’s decision-making process.

The “point of indifference” fee rates identified in this analysis are sensitive to the relationship between the market-rate rent and the affordable rent. Consequently, the fee rate that represents the point of indifference will vary between projects and over time based on variations in the difference between market-rate and affordable rents.

Table 4: Summary of Financial Analysis Results, Point of Indifference In-Lieu Fee Scenario (Scenario 4)

	Studio Unit	One- Bedroom Unit	Two- Bedroom Unit	Three- Bedroom Unit
80% AMI Affordability				
Foregone Revenues				
Market-Rate Monthly Rent, per unit	\$3,400	\$3,609	\$4,445	\$5,954
50% AMI Monthly Rent, per unit	<u>\$2,054</u>	<u>\$2,200</u>	<u>\$2,640</u>	<u>\$3,050</u>
Difference btw. Market-Rate Rent and 80% AMI Rent, per unit	\$1,346	\$1,409	\$1,805	\$2,904
Valuation Assumptions				
Capitalization Rate	4.0%	4.0%	4.0%	4.0%
Vacancy Allowance	5.0%	5.0%	5.0%	5.0%
Cost of Providing one Affordable Unit at 80% of AMI (a)	\$383,610	\$401,565	\$514,425	\$827,569
Less: Cost of Financing on In-Lieu Fee	(\$11,221)	(\$11,746)	(\$15,047)	(\$24,206)
Less: Cost of Developer Profit on In-Lieu Fee	(\$37,239)	(\$38,982)	(\$49,938)	(\$80,336)
"Point of Indifference" Fee Rate	\$335,150	\$350,837	\$449,440	\$723,026
120% AMI Affordability				
Foregone Revenues				
Market-Rate Monthly Rent, per unit	\$3,400	\$3,609	\$4,445	\$5,954
60% AMI Monthly Rent, per unit	<u>\$2,486</u>	<u>\$2,664</u>	<u>\$3,197</u>	<u>\$3,694</u>
Difference btw. Market-Rate Rent and 120% AMI Rent, per unit	\$914	\$945	\$1,248	\$2,260
Valuation Assumptions				
Capitalization Rate	4.0%	4.0%	4.0%	4.0%
Vacancy Allowance	5.0%	5.0%	5.0%	5.0%
Cost of Providing one Affordable Unit at 120% of AMI (a)	\$260,490	\$269,325	\$355,680	\$644,029
Less: Cost of Financing on In-Lieu Fee	(\$7,619)	(\$7,878)	(\$10,404)	(\$18,838)
Less: Cost of Developer Profit on In-Lieu Fee	(\$25,287)	(\$26,145)	(\$34,528)	(\$62,519)
"Point of Indifference" Fee Rate	\$227,584	\$235,303	\$310,749	\$562,672

Notes:

All market-rate rent, affordable rent, capitalization rate, and vacancy assumptions shown in this table are the same as those used in the pro-forma analysis provided in this report and described above.

(a) This analysis defines the cost to the developer of providing an onsite affordable unit as the capitalized value of the rent revenues forgone from not charging market-rate rent on that unit. The cost does not include development cost factors, such as construction costs, because the analysis assumes the developer would otherwise construct an identical unit at identical cost and rent it at market rate. This analysis also excludes any additional rental income from units that could be added to a project due to a City or State density bonus, which partially offsets the cost of providing affordable units, because some developers will choose not to pursue a density bonus.

Source: BAE, 2019.

Financial Feasibility of RM-U Community Amenities Requirements

As discussed above, the three higher-density Bayfront Area prototypes (Prototypes 6, 7, and 8) represent projects that could be built at the bonus level development allowed in the RM-U zoning district, and therefore would be required to provide community amenities subject to the City's community amenities requirements. According to City ordinance, the value of the community amenity that each project provides must effectively equal half of the difference between the value of the land under the bonus level development and the value of the land under the base level allowed by zoning.

This study uses the analysis described in the above sections of this report to estimate the value of the community amenity that each of the higher-density prototypes would be required to provide. Because the three lower-density Bayfront Area prototypes (Prototypes 3, 4, and 5) represent projects that could be built at the base density in the RM-U zone, this analysis uses the residual land value that these three prototypes support to estimate the land value per acre in the RM-U zoning district at the base level zoning.² As shown in Table 5 below, the three lower-density Bayfront Area prototypes support a residual land value of approximately \$5.8 million per acre on a weighted average basis.

Table 5: Average Residual Land Value per Acre, Prototypes 3, 4, and 5

	Prototype 3 3.3 Acres	Prototype 4 6.7 Acres	Prototype 5 13.3 Acres
Residual Land Value	\$19,720,772	\$39,349,753	\$77,077,105
Site Size (acres)	3.33	6.67	13.33
Weighted Average Residual Land Value/Acre			\$5,834,898

Source: BAE, 2019.

Table 6 below applies the weighted average residual land value per acre from Table 5 to the site sizes for each of the higher-density Bayfront Area prototypes (Prototypes 6, 7, and 8) to determine the value of each site at base level zoning. The calculations in Table 6 then subtract these base level site values from the residual land value that each of the bonus level development prototypes support, as determined through the financial feasibility analysis described above. The value of the community amenity value from each project would be equal to half of the difference in site value between the base and bonus level development, as shown in the table.

Finally, the calculations shown in Table 6 subtract the required community amenity value from the residual land value that each of the higher-density Bayfront Area prototypes support in Scenario 1 to determine the residual land associated with each prototype, net of the required community benefit contribution. As shown, after accounting for the community amenities contribution, each prototype continues to support a residual land value that exceeds the threshold used to establish feasibility in this study. This indicates that these prototypes can meet the City’s current inclusionary requirements and the community amenities requirement while remaining financially feasible.

² City policy requires an appraisal to determine the value of the bonus; this analysis uses the residual land value as a proxy for appraised value.

Table 6: Required Community Amenities Value, Prototypes 6, 7, and 8

	Prototype 6 1 Acre	Prototype 7 2 Acres	Prototype 8 4 Acres
Site Size (acres)	1.0	2.0	4.0
Value of Site at Base Level Density (a)	\$5,834,898	\$11,669,797	\$23,339,594
Residual Land Value at Comm. Amenity Bonus Level, Scenario 1 (b)	\$13,716,232	\$26,973,785	\$52,382,729
Difference between Base and Bonus Level Site Value	\$7,881,333	\$15,303,988	\$29,043,135
Required Community Amenity Value (c)	\$3,940,667	\$7,651,994	\$14,521,567
Residual Land Value Net of Required Community Amenity Value	\$9,775,565	\$19,321,791	\$37,861,161
Res. Land Value Net of Required Comm. Amenity Value, per site SF	\$224	\$222	\$217

Notes:

(a) Based on weighted average residual land value per acre for Base Level prototypes, as shown in Table 5.

(b) Residual land value modeled in each scenario does not account for the effect of the community amenities requirement.

(c) Equal to 50% of the difference between the value of the site at the Base Level density and the residual land value of the Bonus Level prototype.

Source: BAE, 2019.

The figures provided in Table 6 above provide a high-level approximation of the feasibility of meeting the City's current inclusionary requirements in addition to the community amenities requirement that would apply to the higher-density Bayfront Area prototypes evaluated in this study. It should be noted that the City requires an appraisal to determine the value of the specific property that would provide community amenities, which determines the value of the property at the base and at the bonus level development, and that the appraised value of a specific site may differ from the residual land values identified in this analysis. This analysis provides a general indication that new multifamily rental developments in the Bayfront Area can typically meet the City's BMR Housing Program requirements and the community amenities requirement while remaining financially feasible, though specific findings for individual projects may vary.

KEY FINDINGS

The analysis presented in the previous chapters of this report supports the following findings.

Higher-density (100 dus/acre or more) multifamily rental projects in Menlo Park can generally provide 15 percent of units affordable to low-income households in compliance with the City's existing BMR Housing Program, and could likely exceed the existing requirements, while maintaining feasibility. The financial analysis found that multifamily rental projects built at the bonus level development (i.e., at 100 dwelling units per acre, plus any density bonuses) can provide 15 percent of units to low-income households while remaining financially feasible. With a 15-percent low-income requirement, the analysis found that these higher-density prototypes resulted in residual land values that are higher than the typical land sale costs within the area of Menlo Park that could accommodate these developments, indicating that these prototypes can feasibly provide more low-income units than the 15 percent currently required by the City's BMR Housing Program. These results are consistent across all higher-density prototypes tested in this study. These projects can likely meet the existing inclusionary requirements along with the community amenities requirement that would apply to projects built at this density.

Higher-density multifamily rental projects in Menlo Park can generally provide up to 20 percent of units affordable to low-income households while maintaining feasibility. The financial analysis found that higher-density prototypes that provide 20 percent of units affordable to low-income households generate residual land values that exceed the feasibility thresholds used for this study. These projects are able to maintain feasibility due in part to the availability of density bonuses that partially offset the cost of providing additional affordable units. This finding is based on an assumption that the additional five percent low-income requirement would count toward the community amenities requirement that would apply to projects built at this bonus level, though it is possible that these projects could provide community amenities in addition to a 20-percent low income requirement.

Similarly, higher-density multifamily rental projects in Menlo Park can generally provide 15 percent of units affordable to low-income households plus an additional two percent of units affordable to moderate-income households while maintaining feasibility. The financial analysis found that providing two percent of units affordable to moderate-income households in addition to the existing requirement to provide 15 percent of units affordable to low-income households decreases residual land values only slightly. With the additional two percent moderate-income requirement, all higher-density prototypes tested in this study support residual land values that are higher than typical land sale costs within the area of Menlo Park that could accommodate these developments. This finding is based on an assumption that the additional two percent moderate income requirement would count toward the community amenities requirement that would apply to projects built at this bonus level, though it is

possible that these projects could provide community amenities in addition to a 15-percent low-income requirement and a two-percent moderate income requirement.

Small (30 units or less) infill multifamily rental projects are generally not financially feasible in the current development environment, regardless of inclusionary requirements. This study tested two small (13- to 30-unit) multifamily rental projects that would be consistent with the ECR/DT Specific Plan Area and found that neither project is feasible under current market and development cost conditions. Both projects remained significantly below the infeasibility threshold even with no affordability requirement or BMR in-lieu fee, indicating that affordable housing requirements do not constitute the primary barrier to feasibility for these projects. This is consistent with trends throughout the Bay Area, as rapid increases in development costs have outpaced increases in multifamily rents, resulting in feasibility challenges for new construction projects in many communities. Small infill projects often to have higher costs on a per-unit or per-building-square-foot basis than large developments on larger sites, and therefore may be disproportionately impacted by these trends in some cases.

Larger (100 units or more) low-density (30 dus/acre plus any density bonus) multifamily rental projects are generally not feasible with the City's current inclusionary requirements, but also are not likely to constitute a significant share of future development projects in Menlo Park regardless of affordability requirements. The financial analysis found that multifamily rental projects built at 38 to 41 dwelling units per acre are not feasible with the City's current inclusionary requirements. With a 15-percent low-income requirement, the analysis found that these lower-density prototypes resulted in residual land values that are lower than the typical land sale costs within the area of Menlo Park that could accommodate these developments, indicating that these prototypes do not generate sufficient value to pay market-rate land costs.

However, regardless of affordability requirements, these prototypes are not likely to represent an attractive development opportunity relative to the higher-density prototypes that can be built on the same sites. The analysis showed that the higher-density Bayfront Area prototypes – which could be built on the same sites as the lower-density Bayfront Area prototypes – generate a larger residual land value per site square foot than the lower-density prototypes, even with a significantly higher affordability requirement for the higher-density prototypes. This means that a developer pursuing a project on one of these sites would be able to offer more for the land if he or she is planning to construct a higher-density project, thereby outcompeting any developers pursuing a lower-density project on the same site. If a developer is able to acquire one of these sites for less than the residual land value that his or her project supports, the difference between the residual land value from the project and the actual sale price would essentially represent additional profit from the project. In this case, the developer would be incentivized to build the higher-density project with the higher residual land value, in order to increase profits from the project.

The in-lieu fee rates that represent the “point of indifference” compared to providing affordable units on site are approximately \$335,000 per studio unit not provided on site, \$351,000 per one-bedroom unit not provided on site, \$449,000 per two-bedroom unit not provided on site, and \$723,000 per three-bedroom unit not provided on site. A requirement that developers pay these fees for each affordable unit that is not provided in a project results in the same residual land values as providing the affordable units. Assessing fees that are higher than these rates would generally incentivize construction of affordable units on site within market-rate projects. Assessing fees that are lower than these rates would generally incentivize payment of in-lieu fees.

The in-lieu fee rates that represent the “point of indifference” are sensitive to the difference between market-rate rents and affordable rents, and therefore will change over time and between projects. The in-lieu fee rates that are equivalent to providing affordable units on site from a developer cost perspective will generally be higher for projects with a large gap between the market-rate rent and affordable rent, and lower for projects in which this gap is relatively small. Therefore, if the City adopts a single in-lieu fee that would apply to all projects based on the in-lieu fee equivalent for a typical project, developers of higher-end luxury projects will be incentivized to pay the fee due to the large pricing gap between the market-rate and affordable units. Conversely, developers of projects with a lower price point than is typical for Menlo Park will find it advantageous to provide affordable units on site. This finding also suggests that adjustments to fees over time should be based on changes in the difference between market-rate rents and affordable rents.

APPENDIX A: DETAILED PRO-FORMAS

Pro-formas for Multifamily Rental Project on 0.5 Acres in ECR/DT Area (Prototype 1), City of Menlo Park, 2019 (page 1 of 2)

	Current Inclusionary Requirement			20% Inclusionary Requirement			15% Low Plus 2% Moderate Req.		
Site Size (acres / sf)	0.48	20,909		0.48	20,909		0.48	20,909	
Built Project FAR (excl. parking)	0.87	FAR		0.93	FAR		0.93	FAR	
Dwelling Units per Acre	27	du / acre		29	du / acre		29	du / acre	
Total Dwelling Units	13 units			14 units			14 units		
Unit Mix		<u>Market</u>	<u>Low</u>		<u>Market</u>	<u>Low</u>	<u>Market</u>	<u>Low</u>	<u>Moderate</u>
Studio	0%	0	0	0%	0	0	0	0	0
One-Bedroom	25%	3	0	25%	3	1	3	0	0
Two-Bedroom	50%	6	1	50%	6	1	6	2	0
Three-Bedroom	25%	3	0	25%	3	0	3	0	0
Total		12	1		12	2	12	1	1
Weighted Average Rent (per unit/mo.)		\$4,613	\$2,640		\$4,613	\$2,420	\$4,613	\$5,280	\$0
Gross Building Area	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
	16,250	2,000	18,250	17,500	2,000	19,500	17,500	2,000	19,500
Parking Spaces									
Surface	2	8	10	2	8	10	2	8	10
Podium	18	0	18	19	0	19	19	0	19
Underground	0	0	0	0	0	0	0	0	0
Total	20	8	28	21	8	29	21	8	29

(Continued on following page)

Pro-formas for Multifamily Rental Project on 0.5 Acres in ECR/DT Area (Prototype 1), City of Menlo Park, 2019 (page 2 of 2)

Hard Construction Costs	Development Costs			Development Costs			Development Costs		
	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
Site Work	\$558,523	\$68,741	\$627,264	\$562,929	\$64,335	\$627,264	\$562,929	\$64,335	\$627,264
Building Costs	\$6,093,750	\$760,000	\$6,853,750	\$6,562,500	\$760,000	\$7,322,500	\$6,562,500	\$760,000	\$7,322,500
Surface Parking	\$20,000	\$80,000	\$100,000	\$20,000	\$80,000	\$100,000	\$20,000	\$80,000	\$100,000
Podium Parking	\$900,000	\$0	\$900,000	\$950,000	\$0	\$950,000	\$950,000	\$0	\$950,000
Underground Parking	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Hard Costs	\$7,572,273	\$908,741	\$8,481,014	\$8,095,429	\$904,335	\$8,999,764	\$8,095,429	\$904,335	\$8,999,764
Total Hard Costs per sf (gross)	\$465.99	\$454.37	\$464.71	\$462.60	\$452.17	\$461.53	\$462.60	\$452.17	\$461.53
Soft Costs									
Soft Costs	\$1,514,455	\$181,748	\$1,696,203	\$1,619,086	\$180,867	\$1,799,953	\$1,619,086	\$180,867	\$1,799,953
Impact Fees	\$147,041	\$25,181	\$172,222	\$158,008	\$25,155	\$183,163	\$158,008	\$25,155	\$183,163
Developer Fee	\$363,469	\$43,620	\$407,089	\$388,581	\$43,408	\$431,989	\$388,581	\$43,408	\$431,989
Contingency	\$454,336	\$54,524	\$508,861	\$485,726	\$54,260	\$539,986	\$485,726	\$54,260	\$539,986
BMR in-lieu fee	\$262,465	\$0	\$262,465	\$524,931	\$0	\$524,931	\$52,493	\$0	\$52,493
Total Soft Costs	\$2,741,767	\$305,073	\$3,046,840	\$3,176,331	\$303,690	\$3,480,021	\$2,703,893	\$303,690	\$3,007,584
Total Costs before Financing	\$10,314,039	\$1,213,814	\$11,527,854	\$11,271,760	\$1,208,025	\$12,479,785	\$10,799,322	\$1,208,025	\$12,007,348
Total Costs per sf	\$634.71	\$606.91	\$631.66	\$644.10	\$604.01	\$639.99	\$617.10	\$604.01	\$615.76
Financing Costs									
Interest	\$251,405	\$29,587	\$280,991	\$274,749	\$29,446	\$304,195	\$263,233	\$29,446	\$292,679
Points	\$50,281	\$5,917	\$56,198	\$54,950	\$5,889	\$60,839	\$52,647	\$5,889	\$58,536
Total Financing Costs	\$301,686	\$35,504	\$337,190	\$329,699	\$35,335	\$365,034	\$315,880	\$35,335	\$351,215
Developer Profit	\$1,061,572	\$124,932	\$1,186,504	\$1,160,146	\$124,336	\$1,284,482	\$1,111,520	\$124,336	\$1,235,856
Total Development Costs (excl. land)	\$11,677,297	\$1,374,250	\$13,051,548	\$12,761,605	\$1,367,696	\$14,129,301	\$12,226,723	\$1,367,696	\$13,594,419
Total Development Cost per sf	\$718.60	\$687.13	\$715.15	\$729.23	\$683.85	\$724.58	\$698.67	\$683.85	\$697.15
Total Development Cost per Unit	\$898,254	\$105,712	\$1,003,965	\$911,543	\$97,693	\$1,009,236	\$873,337	\$97,693	\$971,030
	Income Capitalization			Income Capitalization			Income Capitalization		
	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
Gross Annual Rent	\$661,180	\$91,200	\$752,380	\$686,260	\$91,200	\$777,460	\$691,276	\$91,200	\$782,476
Gross Annual Residential Parking Rent	\$28,500	\$0	\$28,500	\$29,925	\$0	\$29,925	\$29,925	\$0	\$29,925
Less: Operating Expenses	(\$169,000)	\$0	(\$169,000)	(\$182,000)	\$0	(\$182,000)	(\$182,000)	\$0	(\$182,000)
Net Operating Income	\$520,680	\$91,200	\$611,880	\$534,185	\$91,200	\$625,385	\$539,201	\$91,200	\$630,401
Capitalization Rate	4.00%	5.00%	4.12%	4.00%	5.00%	4.12%	4.00%	5.00%	4.12%
Capitalized Project Value	\$13,017,001	\$1,824,000	\$14,841,001	\$13,354,626	\$1,824,000	\$15,178,626	\$13,480,026	\$1,824,000	\$15,304,026
	Residual Land Value			Residual Land Value			Residual Land Value		
Capitalized Project Value			\$14,841,001			\$15,178,626			\$15,304,026
Less Total Development Costs			(\$13,051,548)			(\$14,129,301)			(\$13,594,419)
Residual Land Value			\$1,789,454			\$1,049,325			\$1,709,607
Residual Land Value per Site sf			\$85.58			\$50.19			\$81.76
Residual Land Value per Unit			\$137,650			\$74,952			\$122,115

Source: BAE, 2019.

Pro-formas for Multifamily Rental Project on One Acre in ECR/DT Area (Prototype 2), City of Menlo Park, 2019 (page 1 of 2)

	Current Inclusionary Requirement			20% Inclusionary Requirement			Current Req. Plus 2% Moderate Req.		
Site Size (acres / sf)	1.00	43,560		1.00	43,560		1.00	43,560	
Built Project FAR (excl. parking)	0.91	FAR		0.96	FAR		0.94	FAR	
Dwelling Units per Acre	28	du / acre		30	du / acre		29	du / acre	
Total Dwelling Units	28	units		30	units		29	units	
Unit Mix		<u>Market</u>	<u>Low</u>		<u>Market</u>	<u>Low</u>	<u>Market</u>	<u>Low</u>	<u>Moderate</u>
Studio	0%	0	0	0%	0	0	0	0	0
One-Bedroom	25%	6	1	25%	6	1	6	1	0
Two-Bedroom	50%	13	1	50%	13	3	13	1	1
Three-Bedroom	25%	6	1	25%	6	1	6	1	0
Total		25	3		25	5	25	3	1
Weighted Average Rent (per unit/mo.)		\$4,606	\$2,630		\$4,606	\$2,634	\$4,606	\$2,630	\$3,197
Gross Building Area	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
	35,000	4,500	39,500	37,500	4,500	42,000	36,250	4,500	40,750
Parking Spaces									
Surface	6	18	24	5	18	23	6	18	24
Podium	36	0	36	40	0	40	38	0	38
Underground	0	0	0	0	0	0	0	0	0
Total	42	18	60	45	18	63	44	18	62

(Continued on following page)

Pro-formas for Multifamily Rental Project on One Acre in ECR/DT Area (Prototype 2), City of Menlo Park, 2019 (page 2 of 2)

Hard Construction Costs	Development Costs			Development Costs			Development Costs		
	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
Site Work	\$1,157,924	\$148,876	\$1,306,800	\$1,166,786	\$140,014	\$1,306,800	\$1,162,491	\$144,309	\$1,306,800
Building Costs	\$13,125,000	\$1,710,000	\$14,835,000	\$14,062,500	\$1,710,000	\$15,772,500	\$13,593,750	\$1,710,000	\$15,303,750
Surface Parking	\$60,000	\$180,000	\$240,000	\$50,000	\$180,000	\$230,000	\$60,000	\$180,000	\$240,000
Podium Parking	\$1,800,000	\$0	\$1,800,000	\$2,000,000	\$0	\$2,000,000	\$1,900,000	\$0	\$1,900,000
Underground Parking	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Hard Costs	\$16,142,924	\$2,038,876	\$18,181,800	\$17,279,286	\$2,030,014	\$19,309,300	\$16,716,241	\$2,034,309	\$18,750,550
Total Hard Costs per sf (gross)	\$461.23	\$453.08	\$460.30	\$460.78	\$451.11	\$459.75	\$461.14	\$452.07	\$460.14
Soft Costs									
Soft Costs	\$3,228,585	\$407,775	\$3,636,360	\$3,455,857	\$406,003	\$3,861,860	\$3,343,248	\$406,862	\$3,750,110
Impact Fees	\$315,738	\$56,623	\$372,361	\$338,194	\$56,572	\$394,766	\$326,996	\$56,597	\$383,592
Developer Fee	\$774,860	\$97,866	\$872,726	\$829,406	\$97,441	\$926,846	\$802,380	\$97,647	\$900,026
Contingency	\$968,575	\$122,333	\$1,090,908	\$1,036,757	\$121,801	\$1,158,558	\$1,002,974	\$122,059	\$1,125,033
BMR in-lieu fee	\$971,753	\$0	\$971,753	\$0	\$0	\$0	\$323,918	\$0	\$323,918
Total Soft Costs	\$6,259,512	\$684,597	\$6,944,109	\$5,660,214	\$681,816	\$6,342,030	\$5,799,515	\$683,164	\$6,482,679
Total Costs before Financing	\$22,402,436	\$2,723,473	\$25,125,909	\$22,939,499	\$2,711,831	\$25,651,330	\$22,515,756	\$2,717,473	\$25,233,229
Total Costs per sf	\$640.07	\$605.22	\$636.10	\$611.72	\$602.63	\$610.75	\$621.12	\$603.88	\$619.22
Financing Costs									
Interest	\$546,059	\$66,385	\$612,444	\$559,150	\$66,101	\$625,251	\$548,822	\$66,238	\$615,060
Points	\$109,212	\$13,277	\$122,489	\$111,830	\$13,220	\$125,050	\$109,764	\$13,248	\$123,012
Total Financing Costs	\$655,271	\$79,662	\$734,933	\$670,980	\$79,321	\$750,301	\$658,586	\$79,486	\$738,072
Developer Profit	\$2,305,771	\$280,313	\$2,586,084	\$2,361,048	\$279,115	\$2,640,163	\$2,317,434	\$279,696	\$2,597,130
Total Development Costs (excl. land)	\$25,363,478	\$3,083,448	\$28,446,926	\$25,971,528	\$3,070,267	\$29,041,795	\$25,491,776	\$3,076,655	\$28,568,432
Total Development Cost per sf	\$724.67	\$685.21	\$720.18	\$692.57	\$682.28	\$691.47	\$703.22	\$683.70	\$701.07
Total Development Cost per Unit	\$905,838	\$110,123	\$1,015,962	\$865,718	\$102,342	\$968,060	\$879,027	\$106,092	\$985,118
	Income Capitalization			Income Capitalization			Income Capitalization		
	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
Gross Annual Rent	\$1,402,787	\$205,200	\$1,607,987	\$1,462,979	\$205,200	\$1,668,179	\$1,439,233	\$205,200	\$1,644,433
Gross Annual Parking Rent	\$59,850	\$0	\$59,850	\$64,125	\$0	\$64,125	\$62,700	\$0	\$62,700
Less: Operating Expenses	(\$364,000)	\$0	(\$364,000)	(\$390,000)	\$0	(\$390,000)	(\$377,000)	\$0	(\$377,000)
Net Operating Income	\$1,098,637	\$205,200	\$1,303,837	\$1,137,104	\$205,200	\$1,342,304	\$1,124,933	\$205,200	\$1,330,133
Capitalization Rate	4.00%	5.00%	4.13%	4.00%	5.00%	4.13%	4.00%	5.00%	4.13%
Capitalized Project Value	\$27,465,928	\$4,104,000	\$31,569,928	\$28,427,603	\$4,104,000	\$32,531,603	\$28,123,323	\$4,104,000	\$32,227,323
	Residual Land Value			Residual Land Value			Residual Land Value		
Capitalized Project Value			\$31,569,928			\$32,531,603			\$32,227,323
Less Total Development Costs			(\$28,446,926)			(\$29,041,795)			(\$28,568,432)
Residual Land Value			\$3,123,002			\$3,489,808			\$3,658,891
Residual Land Value per Site sf			\$71.69			\$80.11			\$84.00
Residual Land Value per Unit			\$111,536			\$116,327			\$126,169

Source: BAE, 2019.

Pro-formas for Lower-Density Multifamily Rental Project in Bayfront Area on 3.3 Acres (Prototype 3), City of Menlo Park, 2019 (page 1 of 2)

	Current Inclusionary Requirement			20% Inclusionary Requirement			Current Req. Plus 2% Moderate Req.		
Site Size (acres / sf)	3.33	145,200		3.3	145,200		3.3	145,200	
Built Project FAR (excl. parking)	0.89	FAR		0.94	FAR		0.89	FAR	
Dwelling Units per Acre	38	du / acre		41	du / acre		38	du / acre	
Total Dwelling Units	128 units			135 units			128 units		
Unit Mix		<u>Market</u>	<u>Low</u>		<u>Market</u>	<u>Low</u>	<u>Market</u>	<u>Low</u>	<u>Moderate</u>
Studio	10%	11	2	10%	12	2	11	2	0
One-Bedroom	50%	57	7	50%	58	10	56	7	1
Two-Bedroom	35%	40	5	35%	40	7	39	5	1
Three-Bedroom	5%	5	1	5%	5	1	5	1	0
Total		113	15		115	20	111	15	2
Weighted Average Rent (per unit/mo.)		\$3,988	\$1,833		\$3,980	\$1,837	\$3,988	\$1,833	\$2,931
Gross Building Area	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
	128,000	1,000	129,000	135,000	1,000	136,000	128,000	1,000	129,000
Parking Spaces									
Surface	88	3	91	88	3	91	88	3	91
Podium	104	0	104	115	0	115	104	0	104
Total	192	3	195	203	3	206	192	3	195

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Pro-formas for Lower-Density Multifamily Rental Project in Bayfront Area on 3.3 Acres (Prototype 3), City of Menlo Park, 2019 (page 2 of 2)

	Development Costs			Development Costs			Development Costs		
	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
Hard Construction Costs									
Site Work	\$3,601,860	\$28,140	\$3,630,000	\$3,603,309	\$26,691	\$3,630,000	\$3,601,860	\$28,140	\$3,630,000
Building Costs	\$44,800,000	\$380,000	\$45,180,000	\$47,250,000	\$380,000	\$47,630,000	\$44,800,000	\$380,000	\$45,180,000
Surface Parking	\$880,000	\$30,000	\$910,000	\$880,000	\$30,000	\$910,000	\$880,000	\$30,000	\$910,000
Podium Parking	\$5,200,000	\$0	\$5,200,000	\$5,750,000	\$0	\$5,750,000	\$5,200,000	\$0	\$5,200,000
Total Hard Costs	\$54,481,860	\$438,140	\$54,920,000	\$57,483,309	\$436,691	\$57,920,000	\$54,481,860	\$438,140	\$54,920,000
Total Hard Costs per sf (gross)	\$425.64	\$438.14	\$425.74	\$425.80	\$436.69	\$425.88	\$425.64	\$438.14	\$425.74
Soft Costs									
Soft Costs	\$10,896,372	\$87,628	\$10,984,000	\$11,496,662	\$87,338	\$11,584,000	\$10,896,372	\$87,628	\$10,984,000
Impact Fees	\$1,020,806	\$7,971	\$1,028,778	\$1,076,759	\$7,963	\$1,084,722	\$1,020,806	\$7,971	\$1,028,778
Developer Fee	\$2,615,129	\$21,031	\$2,636,160	\$2,759,199	\$20,961	\$2,780,160	\$2,615,129	\$21,031	\$2,636,160
Contingency	\$3,268,912	\$26,288	\$3,295,200	\$3,448,999	\$26,201	\$3,475,200	\$3,268,912	\$26,288	\$3,295,200
BMR in-lieu fee	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Soft Costs	\$17,801,219	\$142,918	\$17,944,138	\$18,781,618	\$142,464	\$18,924,082	\$17,801,219	\$142,918	\$17,944,138
Total Costs before Financing	\$72,283,080	\$581,058	\$72,864,138	\$76,264,927	\$579,155	\$76,844,082	\$72,283,080	\$581,058	\$72,864,138
Total Construction Costs per sf	\$564.71	\$581.06	\$564.84	\$564.93	\$579.15	\$565.03	\$564.71	\$581.06	\$564.84
Financing Costs									
Interest	\$1,957,667	\$15,737	\$1,973,404	\$2,065,508	\$15,685	\$2,081,194	\$1,957,667	\$15,737	\$1,973,404
Points	\$352,380	\$2,833	\$355,213	\$371,792	\$2,823	\$374,615	\$352,380	\$2,833	\$355,213
Total Financing Costs	\$2,310,047	\$18,570	\$2,328,616	\$2,437,300	\$18,509	\$2,455,809	\$2,310,047	\$18,570	\$2,328,616
Developer Profit	\$7,459,313	\$59,963	\$7,519,275	\$7,870,223	\$59,766	\$7,929,989	\$7,459,313	\$59,963	\$7,519,275
Total Development Costs (excl. land)	\$82,052,439	\$659,590	\$82,712,029	\$86,572,450	\$657,430	\$87,229,880	\$82,052,439	\$659,590	\$82,712,029
Total Development Cost per sf	\$641.03	\$659.59	\$641.18	\$641.28	\$657.43	\$641.40	\$641.03	\$659.59	\$641.18
Total Development Cost per Unit	\$641,035	\$5,153	\$646,188	\$641,277	\$4,870	\$646,147	\$641,035	\$5,153	\$646,188
	Income Capitalization			Income Capitalization			Income Capitalization		
	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
Gross Annual Rent	\$5,451,232	\$45,600	\$5,496,832	\$5,636,454	\$45,600	\$5,682,054	\$5,426,232	\$45,600	\$5,471,832
Gross Annual Parking Rent	\$273,600	\$0	\$273,600	\$289,275	\$0	\$289,275	\$273,600	\$0	\$273,600
Less: Operating Expenses	(\$1,664,000)	\$0	(\$1,664,000)	(\$1,755,000)	\$0	(\$1,755,000)	(\$1,664,000)	\$0	(\$1,664,000)
Net Operating Income	\$4,060,832	\$45,600	\$4,106,432	\$4,170,729	\$45,600	\$4,216,329	\$4,035,832	\$45,600	\$4,081,432
Capitalization Rate	4.00%	5.00%	4.01%	4.00%	5.00%	4.01%	4.00%	5.00%	4.01%
Capitalized Project Value	\$101,520,801	\$912,000	\$102,432,801	\$104,268,214	\$912,000	\$105,180,214	\$100,895,796	\$912,000	\$101,807,796
	Residual Land Value			Residual Land Value			Residual Land Value		
	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
Capitalized Project Value			\$102,432,801			\$105,180,214			\$101,807,796
Less Total Development Costs			(\$82,712,029)			(\$87,229,880)			(\$82,712,029)
Residual Land Value			\$19,720,772			\$17,950,334			\$19,095,767
Residual Land Value per Site sf			\$135.82			\$123.62			\$131.51
Residual Land Value per Unit			\$154,069			\$132,965			\$149,186

Source: BAE, 2019.

Pro-formas for Lower-Density Multifamily Rental Project in Bayfront Area on 6.7 Acres (Prototype 4), City of Menlo Park, 2019 (page 1 of 2)

	Current Inclusionary Requirement			20% Inclusionary Requirement			Current Req. Plus 2% Moderate Req.		
Site Size (acres / sf)	6.7	290,400		6.7	290,400		6.7	290,400	
Built Project FAR (excl. parking)	0.88	FAR		0.94	FAR		0.88	FAR	
Dwelling Units per Acre	38	du / acre		41	du / acre		38	du / acre	
Total Dwelling Units	255 units			270 units			255 units		
Unit Mix		<u>Market</u>	<u>Low</u>		<u>Market</u>	<u>Low</u>	<u>Market</u>	<u>Low</u>	<u>Moderate</u>
Studio	10%	22	3	10%	23	4	22	3	0
One-Bedroom	50%	113	15	50%	115	20	111	15	2
Two-Bedroom	35%	79	11	35%	81	14	77	11	2
Three-Bedroom	5%	<u>11</u>	<u>1</u>	5%	<u>11</u>	<u>2</u>	<u>11</u>	<u>1</u>	<u>0</u>
Total		225	30		230	40	221	30	4
Weighted Average Rent (per unit/mo.)		\$3,997	\$1,833		\$3,995	\$1,837	\$3,996	\$1,833	\$2,931
Gross Building Area	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
	255,000	2,000	257,000	270,000	2,000	272,000	255,000	2,000	257,000
Parking Spaces									
Surface	184	6	190	184	6	190	184	6	190
Podium	<u>199</u>	<u>0</u>	<u>199</u>	<u>221</u>	<u>0</u>	<u>221</u>	<u>199</u>	<u>0</u>	<u>199</u>
Total	383	6	389	405	6	411	383	6	389

(Continued on following page)

Pro-formas for Lower-Density Multifamily Rental Project in Bayfront Area on 6.7 Acres (Prototype 4), City of Menlo Park, 2019 (page 2 of 2)

	Development Costs			Development Costs			Development Costs		
	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
Hard Construction Costs									
Site Work	\$7,203,502	\$56,498	\$7,260,000	\$7,206,618	\$53,382	\$7,260,000	\$7,203,502	\$56,498	\$7,260,000
Building Costs	\$89,250,000	\$760,000	\$90,010,000	\$94,500,000	\$760,000	\$95,260,000	\$89,250,000	\$760,000	\$90,010,000
Surface Parking	\$1,840,000	\$60,000	\$1,900,000	\$1,840,000	\$60,000	\$1,900,000	\$1,840,000	\$60,000	\$1,900,000
Podium Parking	\$9,950,000	\$0	\$9,950,000	\$11,050,000	\$0	\$11,050,000	\$9,950,000	\$0	\$9,950,000
Total Hard Costs	\$108,243,502	\$876,498	\$109,120,000	\$114,596,618	\$873,382	\$115,470,000	\$108,243,502	\$876,498	\$109,120,000
Total Hard Costs per sf (gross)	\$424.48	\$438.25	\$424.59	\$424.43	\$436.69	\$424.52	\$424.48	\$438.25	\$424.59
Soft Costs									
Soft Costs	\$21,648,700	\$175,300	\$21,824,000	\$22,919,324	\$174,676	\$23,094,000	\$21,648,700	\$175,300	\$21,824,000
Impact Fees	\$2,031,929	\$15,944	\$2,047,873	\$2,151,372	\$15,926	\$2,167,298	\$2,031,929	\$15,944	\$2,047,873
Developer Fee	\$5,195,688	\$42,072	\$5,237,760	\$5,500,638	\$41,922	\$5,542,560	\$5,195,688	\$42,072	\$5,237,760
Contingency	\$6,494,610	\$52,590	\$6,547,200	\$6,875,797	\$52,403	\$6,928,200	\$6,494,610	\$52,590	\$6,547,200
BMR in-lieu fee	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Soft Costs	\$35,370,928	\$285,905	\$35,656,833	\$37,447,130	\$284,927	\$37,732,058	\$35,370,928	\$285,905	\$35,656,833
Total Costs before Financing	\$143,614,430	\$1,162,403	\$144,776,833	\$152,043,748	\$1,158,310	\$153,202,058	\$143,614,430	\$1,162,403	\$144,776,833
Total Costs per sf	\$563.19	\$581.20	\$563.33	\$563.12	\$579.15	\$563.24	\$563.19	\$581.20	\$563.33
Financing Costs									
Interest	\$4,667,469	\$37,778	\$4,705,247	\$4,941,422	\$37,645	\$4,979,067	\$4,667,469	\$37,778	\$4,705,247
Points	\$700,120	\$5,667	\$705,787	\$741,213	\$5,647	\$746,860	\$700,120	\$5,667	\$705,787
Total Financing Costs	\$5,367,589	\$43,445	\$5,411,034	\$5,682,635	\$43,292	\$5,725,927	\$5,367,589	\$43,445	\$5,411,034
Developer Profit	\$14,898,202	\$120,585	\$15,018,787	\$15,772,638	\$120,160	\$15,892,798	\$14,898,202	\$120,585	\$15,018,787
Total Development Costs (excl. land)	\$163,880,221	\$1,326,433	\$165,206,654	\$173,499,021	\$1,321,762	\$174,820,783	\$163,880,221	\$1,326,433	\$165,206,654
Total Development Cost per sf	\$642.67	\$663.22	\$642.83	\$642.59	\$660.88	\$642.72	\$642.67	\$663.22	\$642.83
Total Development Cost per Unit	\$642,668	\$5,202	\$647,869	\$642,589	\$4,895	\$647,484	\$642,668	\$5,202	\$647,869
	Income Capitalization			Income Capitalization			Income Capitalization		
	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
Gross Annual Rent	\$10,878,521	\$91,200	\$10,969,721	\$11,311,550	\$91,200	\$11,402,750	\$10,828,521	\$91,200	\$10,919,721
Gross Annual Parking Rent	\$545,775	\$0	\$545,775	\$577,125	\$0	\$577,125	\$545,775	\$0	\$545,775
Less: Operating Expenses	(\$3,315,000)	\$0	(\$3,315,000)	(\$3,510,000)	\$0	(\$3,510,000)	(\$3,315,000)	\$0	(\$3,315,000)
Net Operating Income	\$8,109,296	\$91,200	\$8,200,496	\$8,378,675	\$91,200	\$8,469,875	\$8,059,296	\$91,200	\$8,150,496
Capitalization Rate	4.00%	5.00%	4.01%	4.00%	5.00%	4.01%	4.00%	5.00%	4.01%
Capitalized Project Value	\$202,732,406	\$1,824,000	\$204,556,406	\$209,466,881	\$1,824,000	\$211,290,881	\$201,482,396	\$1,824,000	\$203,306,396
	Residual Land Value			Residual Land Value			Residual Land Value		
Capitalized Project Value			\$204,556,406			\$211,290,881			\$203,306,396
Less Total Development Costs			(\$165,206,654)			(\$174,820,783)			(\$165,206,654)
Residual Land Value			\$39,349,753			\$36,470,098			\$38,099,743
Residual Land Value per Site sf			\$135.50			\$125.59			\$131.20
Residual Land Value per Unit			\$154,313			\$135,074			\$149,411

Source: BAE, 2019.

Pro-formas for Lower-Density Multifamily Rental Project in Bayfront Area on 13.3 Acres (Prototype 5), City of Menlo Park, 2019 (page 1 of 2)

	Current Inclusionary Requirement			20% Inclusionary Requirement			Current Req. Plus 2% Moderate Req.		
Site Size (acres / sf)	13.3	580,800		13.3	580,800		13.3	580,800	
Built Project FAR (excl. parking)	0.88	FAR		0.94	FAR		0.88	FAR	
Dwelling Units per Acre	38	du / acre		41	du / acre		38	du / acre	
Total Dwelling Units	510 units			540 units			510 units		
Unit Mix		<u>Market</u>	<u>Low</u>		<u>Market</u>	<u>Low</u>	<u>Market</u>	<u>Low</u>	<u>Moderate</u>
Studio	10%	45	6	10%	46	8	44	6	1
One-Bedroom	50%	225	30	50%	230	40	221	30	4
Two-Bedroom	35%	158	21	35%	161	28	155	21	3
Three-Bedroom	5%	<u>22</u>	<u>3</u>	5%	<u>23</u>	<u>4</u>	<u>22</u>	<u>3</u>	<u>0</u>
Total		450	60		460	80	442	60	8
Weighted Average Rent (per unit/mo.)		\$3,996	\$1,837		\$3,998	\$1,837	\$3,998	\$1,837	\$2,842
Gross Building Area	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
	510,000	4,000	514,000	540,000	4,000	544,000	510,000	4,000	514,000
Parking Spaces									
Surface	369	12	381	369	12	381	369	12	381
Podium	<u>396</u>	<u>0</u>	<u>396</u>	<u>441</u>	<u>0</u>	<u>441</u>	<u>396</u>	<u>0</u>	<u>396</u>
Total	765	12	777	810	12	822	765	12	777

(Continued on following page)

Pro-formas for Lower-Density Multifamily Rental Project in Bayfront Area on 13.3 Acres (Prototype 5), City of Menlo Park, 2019 (page 2 of 2)

	Development Costs			Development Costs			Development Costs		
	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
Hard Construction Costs									
Site Work	\$14,407,004	\$112,996	\$14,520,000	\$14,413,235	\$106,765	\$14,520,000	\$14,407,004	\$112,996	\$14,520,000
Building Costs	\$178,500,000	\$1,520,000	\$180,020,000	\$189,000,000	\$1,520,000	\$190,520,000	\$178,500,000	\$1,520,000	\$180,020,000
Surface Parking	\$3,690,000	\$120,000	\$3,810,000	\$3,690,000	\$120,000	\$3,810,000	\$3,690,000	\$120,000	\$3,810,000
Podium Parking	\$19,800,000	\$0	\$19,800,000	\$22,050,000	\$0	\$22,050,000	\$19,800,000	\$0	\$19,800,000
Total Hard Costs	\$216,397,004	\$1,752,996	\$218,150,000	\$229,153,235	\$1,746,765	\$230,900,000	\$216,397,004	\$1,752,996	\$218,150,000
Total Hard Costs per sf (gross)	\$424.31	\$438.25	\$424.42	\$424.36	\$436.69	\$424.45	\$424.31	\$438.25	\$424.42
Soft Costs									
Soft Costs	\$43,279,401	\$350,599	\$43,630,000	\$45,830,647	\$349,353	\$46,180,000	\$43,279,401	\$350,599	\$43,630,000
Impact Fees	\$4,063,336	\$31,887	\$4,095,223	\$4,302,512	\$31,851	\$4,334,364	\$4,063,336	\$31,887	\$4,095,223
Developer Fee	\$10,387,056	\$84,144	\$10,471,200	\$10,999,355	\$83,845	\$11,083,200	\$10,387,056	\$84,144	\$10,471,200
Contingency	\$12,983,820	\$105,180	\$13,089,000	\$13,749,194	\$104,806	\$13,854,000	\$12,983,820	\$105,180	\$13,089,000
BMR in-lieu fee	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Soft Costs	\$70,713,613	\$571,810	\$71,285,423	\$74,881,709	\$569,855	\$75,451,564	\$70,713,613	\$571,810	\$71,285,423
Total Costs before Financing	\$287,110,617	\$2,324,806	\$289,435,423	\$304,034,944	\$2,316,619	\$306,351,564	\$287,110,617	\$2,324,806	\$289,435,423
Total Costs per sf	\$562.96	\$581.20	\$563.10	\$563.03	\$579.15	\$563.15	\$562.96	\$581.20	\$563.10
Financing Costs									
Interest	\$10,886,278	\$88,149	\$10,974,426	\$11,527,992	\$87,838	\$11,615,830	\$10,886,278	\$88,149	\$10,974,426
Points	\$1,399,664	\$11,333	\$1,410,998	\$1,482,170	\$11,294	\$1,493,464	\$1,399,664	\$11,333	\$1,410,998
Total Financing Costs	\$12,285,942	\$99,482	\$12,385,424	\$13,010,162	\$99,132	\$13,109,294	\$12,285,942	\$99,482	\$12,385,424
Developer Profit	\$29,939,656	\$242,429	\$30,182,085	\$31,704,511	\$241,575	\$31,946,086	\$29,939,656	\$242,429	\$30,182,085
Total Development Costs (excl. land)	\$329,336,215	\$2,666,717	\$332,002,932	\$348,749,617	\$2,657,327	\$351,406,943	\$329,336,215	\$2,666,717	\$332,002,932
Total Development Cost per sf	\$645.76	\$666.68	\$645.92	\$645.83	\$664.33	\$645.97	\$645.76	\$666.68	\$645.92
Total Development Cost per Unit	\$645,757	\$5,229	\$650,986	\$645,833	\$4,921	\$650,754	\$645,757	\$5,229	\$650,986
	Income Capitalization			Income Capitalization			Income Capitalization		
	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
Gross Annual Rent	\$21,757,157	\$182,400	\$21,939,557	\$22,640,300	\$182,400	\$22,822,700	\$21,660,963	\$182,400	\$21,843,363
Gross Annual Parking Rent	\$1,090,125	\$0	\$1,090,125	\$1,154,250	\$0	\$1,154,250	\$1,090,125	\$0	\$1,090,125
Less: Operating Expenses	(\$6,630,000)	\$0	(\$6,630,000)	(\$7,020,000)	\$0	(\$7,020,000)	(\$6,630,000)	\$0	(\$6,630,000)
Net Operating Income	\$16,217,282	\$182,400	\$16,399,682	\$16,774,550	\$182,400	\$16,956,950	\$16,121,088	\$182,400	\$16,303,488
Capitalization Rate	4.00%	5.00%	4.01%	4.00%	5.00%	4.01%	4.00%	5.00%	4.01%
Capitalized Project Value	\$405,432,038	\$3,648,000	\$409,080,038	\$419,363,756	\$3,648,000	\$423,011,756	\$403,027,208	\$3,648,000	\$406,675,208
	Residual Land Value			Residual Land Value			Residual Land Value		
Capitalized Project Value			\$409,080,038			\$423,011,756			\$406,675,208
Less Total Development Costs			(\$332,002,932)			(\$351,406,943)			(\$332,002,932)
Residual Land Value			\$77,077,105			\$71,604,813			\$74,672,275
Residual Land Value per Site sf			\$132.71			\$123.29			\$128.57
Residual Land Value per Unit			\$151,132			\$132,602			\$146,416

Source: BAE, 2019.

Pro-formas for Higher-Density Multifamily Rental Project in Bayfront Area on One Acre (Prototype 6), City of Menlo Park, 2019 (page 1 of 2)

	Current Inclusionary Requirement			20% Inclusionary Requirement			Current Req. Plus 2% Moderate Req.		
Site Size (acres / sf)	1.0	43,560		1.0	43,560		1.0	43,560	
Built Project FAR (excl. parking)	2.39	FAR		2.50	FAR		2.43	FAR	
Dwelling Units per Acre	115	du / acre		120	du / acre		117	du / acre	
Total Dwelling Units	115 units			120 units			117 units		
Unit Mix		<u>Market</u>	<u>Low</u>		<u>Market</u>	<u>Low</u>	<u>Market</u>	<u>Low</u>	<u>Moderate</u>
Studio	25%	25	4	25%	25	5	25	4	1
One-Bedroom	60%	60	9	60%	60	12	60	9	1
Two-Bedroom	15%	15	2	15%	15	3	15	2	0
Three-Bedroom	0%	0	0	0%	0	0	0	0	0
Total		100	15		100	20	100	15	2
Weighted Average Rent (per unit/mo.)		\$3,682	\$2,220		\$3,682	\$2,230	\$3,682	\$2,220	\$2,575
Gross Building Area	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
	103,500	750	104,250	108,000	750	108,750	105,300	750	106,050
Parking Spaces									
Surface	0	0	0	0	0	0	0	0	0
Podium	<u>133</u>	<u>3</u>	<u>136</u>	<u>138</u>	<u>3</u>	<u>141</u>	<u>135</u>	<u>3</u>	<u>138</u>
Total	133	3	136	138	3	141	135	3	138

(Continued on following page)

Pro-formas for Higher-Density Multifamily Rental Project in Bayfront Area on One Acre (Prototype 6), City of Menlo Park, 2019 (page 2 of 2)

	Development Costs			Development Costs			Development Costs		
	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
Hard Construction Costs									
Site Work	\$1,297,399	\$9,401	\$1,306,800	\$1,297,788	\$9,012	\$1,306,800	\$1,297,558	\$9,242	\$1,306,800
Building Costs	\$37,260,000	\$285,000	\$37,545,000	\$38,880,000	\$285,000	\$39,165,000	\$37,908,000	\$285,000	\$38,193,000
Surface Parking	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Podium Parking	\$6,650,000	\$150,000	\$6,800,000	\$6,900,000	\$150,000	\$7,050,000	\$6,750,000	\$150,000	\$6,900,000
Total Hard Costs	\$45,207,399	\$444,401	\$45,651,800	\$47,077,788	\$444,012	\$47,521,800	\$45,955,558	\$444,242	\$46,399,800
Total Hard Costs per sf (gross)	\$436.79	\$592.54	\$437.91	\$435.91	\$592.02	\$436.98	\$436.43	\$592.32	\$437.53
Soft Costs									
Soft Costs	\$9,041,480	\$88,880	\$9,130,360	\$9,415,558	\$88,802	\$9,504,360	\$9,191,112	\$88,848	\$9,279,960
Impact Fees	\$855,412	\$6,650	\$862,062	\$892,052	\$6,648	\$898,700	\$870,068	\$6,649	\$876,717
Developer Fee	\$2,169,955	\$21,331	\$2,191,286	\$2,259,734	\$21,313	\$2,281,046	\$2,205,867	\$21,324	\$2,227,190
Contingency	\$2,712,444	\$26,664	\$2,739,108	\$2,824,667	\$26,641	\$2,851,308	\$2,757,333	\$26,655	\$2,783,988
BMR in-lieu fee	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Soft Costs	\$14,779,291	\$143,526	\$14,922,816	\$15,392,011	\$143,404	\$15,535,414	\$15,024,380	\$143,476	\$15,167,856
Total Costs before Financing	\$59,986,689	\$587,927	\$60,574,616	\$62,469,798	\$587,416	\$63,057,214	\$60,979,938	\$587,717	\$61,567,656
Total Costs per sf	\$579.58	\$783.90	\$581.05	\$578.42	\$783.22	\$579.84	\$579.11	\$783.62	\$580.55
Financing Costs									
Interest	\$1,624,640	\$15,923	\$1,640,563	\$1,691,890	\$15,909	\$1,707,800	\$1,651,540	\$15,917	\$1,667,457
Points	\$292,435	\$2,866	\$295,301	\$304,540	\$2,864	\$307,404	\$297,277	\$2,865	\$300,142
Total Financing Costs	\$1,917,075	\$18,789	\$1,935,864	\$1,996,431	\$18,773	\$2,015,203	\$1,948,817	\$18,782	\$1,967,600
Developer Profit	\$6,190,376	\$60,672	\$6,251,048	\$6,446,623	\$60,619	\$6,507,242	\$6,292,876	\$60,650	\$6,353,526
Total Development Costs (excl. land)	\$68,094,140	\$667,388	\$68,761,528	\$70,912,852	\$666,808	\$71,579,659	\$69,221,631	\$667,150	\$69,888,781
Total Development Cost per sf	\$657.91	\$889.85	\$659.58	\$656.60	\$889.08	\$658.20	\$657.38	\$889.53	\$659.02
Total Development Cost per Unit	\$592,123	\$5,803	\$597,926	\$616,633	\$5,798	\$622,432	\$601,927	\$5,801	\$607,729
	Income Capitalization			Income Capitalization			Income Capitalization		
	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
Gross Annual Rent	\$4,577,225	\$34,200	\$4,611,425	\$4,705,977	\$34,200	\$4,740,177	\$4,635,935	\$34,200	\$4,670,135
Gross Annual Parking Rent	\$189,525	\$0	\$189,525	\$196,650	\$0	\$196,650	\$192,375	\$0	\$192,375
Less: Operating Expenses	(\$1,495,000)	\$0	(\$1,495,000)	(\$1,560,000)	\$0	(\$1,560,000)	(\$1,521,000)	\$0	(\$1,521,000)
Net Operating Income	\$3,271,750	\$34,200	\$3,305,950	\$3,342,627	\$34,200	\$3,376,827	\$3,307,310	\$34,200	\$3,341,510
Capitalization Rate	4.00%	5.00%	4.01%	4.00%	5.00%	4.01%	4.00%	5.00%	4.01%
Capitalized Project Value	\$81,793,760	\$684,000	\$82,477,760	\$83,565,675	\$684,000	\$84,249,675	\$82,682,760	\$684,000	\$83,366,760
	Residual Land Value			Residual Land Value			Residual Land Value		
Capitalized Project Value			\$82,477,760			\$84,249,675			\$83,366,760
Less Total Development Costs			(\$68,761,528)			(\$71,579,659)			(\$69,888,781)
Residual Land Value			\$13,716,232			\$12,670,016			\$13,477,979
Residual Land Value per Site sf			\$314.88			\$290.86			\$309.41
Residual Land Value per Unit			\$119,272			\$105,583			\$115,196

Source: BAE, 2019.

Pro-formas for Higher-Density Multifamily Rental Project in Bayfront Area on Two Acres (Prototype 7), City of Menlo Park, 2019 (page 1 of 2)

	Current Inclusionary Requirement			20% Inclusionary Requirement			Current Req. Plus 2% Moderate Req.		
Site Size (acres / sf)	2.0	87,120		2.0	87,120		2.0	87,120	
Built Project FAR (excl. parking)	2.39	FAR		2.49	FAR		2.43	FAR	
Dwelling Units per Acre	115	du / acre		120	du / acre		117	du / acre	
Total Dwelling Units	230 units			240 units			234 units		
Unit Mix		<u>Market</u>	<u>Low</u>		<u>Market</u>	<u>Low</u>	<u>Market</u>	<u>Low</u>	<u>Moderate</u>
Studio	25%	50	7	25%	50	10	50	7	1
One-Bedroom	60%	120	18	60%	120	24	120	18	2
Two-Bedroom	15%	30	5	15%	30	6	30	5	1
Three-Bedroom	0%	0	0	0%	0	0	0	0	0
Total		200	30		200	40	200	30	4
Weighted Average Rent (per unit/mo.)		\$3,682	\$2,239		\$3,682	\$2,230	\$3,682	\$2,239	\$2,753
Gross Building Area	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
	207,000	1,000	208,000	216,000	1,000	217,000	210,600	1,000	211,600
Parking Spaces									
Surface	0	0	0	0	0	0	0	0	0
Podium	<u>265</u>	<u>3</u>	<u>268</u>	<u>265</u>	<u>3</u>	<u>279</u>	<u>265</u>	<u>3</u>	<u>273</u>
Total	265	3	268	265	3	279	265	3	273

(Continued on following page)

Pro-formas for Higher-Density Multifamily Rental Project in Bayfront Area on Four Acres (Prototype 8), City of Menlo Park, 2019 (page 1 of 2)

	Current Inclusionary Requirement			20% Inclusionary Requirement			Current Req. Plus 2% Moderate Req.		
Site Size (acres / sf)	4.0	174,240		4.0	174,240		4.0	174,240	
Built Project FAR (excl. parking)	2.39	FAR		2.49	FAR		2.43	FAR	
Dwelling Units per Acre	115	du / acre		120	du / acre		117	du / acre	
Total Dwelling Units	460 units			480 units			468 units		
Unit Mix		<u>Market</u>	<u>Affordable</u>		<u>Market</u>	<u>Affordable</u>	<u>Market</u>	<u>Low</u>	<u>Moderate</u>
Studio	25%	100	15	25%	100	20	100	15	2
One-Bedroom	60%	240	36	60%	240	48	240	36	5
Two-Bedroom	15%	60	9	15%	60	12	60	9	1
Three-Bedroom	0%	0	0	0%	0	0	0	0	0
Total		400	60		400	80	400	60	8
Weighted Average Rent (per unit/mo.)		\$3,682	\$2,230		\$3,682	\$2,230	\$3,682	\$2,230	\$2,686
	Residential	Commercial	Total	Residential	Commercial	Total	Residential	Commercial	Total
Gross Building Area	414,000	2,000	416,000	432,000	2,000	434,000	421,200	2,000	423,200
Parking Spaces									
Surface	0	0	0	0	0	0	0	0	0
Podium	<u>529</u>	<u>6</u>	<u>535</u>	<u>529</u>	<u>6</u>	<u>558</u>	<u>529</u>	<u>6</u>	<u>545</u>
Total	529	6	535	529	6	558	529	6	545

(Continued on following page)

APPENDIX B: BMR IN-LIEU FEE CALCULATIONS

This appendix describes the methodology used to calculate the in-lieu fee that a developer could pay to satisfy fractional BMR unit requirements in the two ECR/DT Specific Plan Area prototypes. The City's BMR Housing Program Guidelines for the in-lieu fee state:

The fee shall be based on the cost to develop, design, construct, and maintain a standard one-bedroom unit in Menlo Park. The fee shall also include the proportionate costs of associated common area as well as land acquisition costs. The fee shall be adjusted on a project-by-project basis depending on size, location and other factors relevant to cost.

Based on the above guidelines, BAE estimated the in-lieu fee as the sum of: 1) total per-square-foot development costs for the multifamily portion of each project, excluding land and any BMR in-lieu fees, multiplied by the gross square footage for a one-bedroom unit in each project; 2) the estimated cost of land for each project site, assuming a land cost of \$270 per site square foot, allocated to a one-bedroom unit based on the average one-bedroom unit's share of overall gross project square footage; and 3) the net present value of the estimated average per-unit operating costs over a 55-year period. This methodology is consistent with calculations that BAE recently prepared to estimate a partial in-lieu fee payment for a proposed project in the ECR/DT Specific Plan Area. Table B.1 shows this in-lieu fee calculation for the two ECR/DT prototypes and applies the resulting fee rates to the partial unit requirements that would apply in BMR Housing Scenarios 1, 2, and 3.

Table B.1: In-Lieu Fees for Partial BMR Unit Requirements, ECR/DT Prototypes

	Prototype 1	Prototype 2
	0.48 Acres	1 Acre
Total Development Cost per Gross Residential Sq. Ft. (a)	\$637	\$630
Average One-Bedroom Unit Size with Common Area (b)	883	882
Estimated Land Cost for Project Site (c)	\$5,645,376	\$11,761,200
Average One-Bedroom Unit Share of Gross Building Area (d)	4.8%	2.2%
Average One-Bedroom Unit Development Cost, excl. land & BMR in-lieu fee	\$562,260	\$556,072
One-Bedroom Unit Land Costs (e)	\$273,190	\$262,722
One-Bedroom Unit 55-year Operating Cost (e)	\$476,876	\$476,876
Total BMR In-Lieu Fee (per whole unit)	\$1,312,327	\$1,295,671
Scenario 1 Fractional Unit	0.20	0.75
Scenario 1 Fractional Fee	\$262,465	\$971,753
Scenario 2 Fractional Unit	0.40	0.00
Scenario 2 Fractional Fee	\$524,931	\$0
Scenario 3 Fractional Unit	0.04	0.25
Scenario 3 Fractional Fee	\$52,493	\$323,918

Notes:

(a) Equal to all hard and soft costs for the multifamily residential portion of each prototype, excluding land and BMR in-lieu fees, divided by the gross multifamily residential square footage.

(b) Represents the average gross residential area for a one-bedroom unit in each prototype.

(c) Based on the site sizes used in the pro-forma for each prototype and an assumed land cost equal to \$270 per square foot.

(d) Equal to the average one-bedroom unit size with common area divided by the gross building area for each prototype.

(e) Equal to the estimated land cost for the project site multiplied by a one-bedroom unit's share of gross building area.

(e) NPV of operating costs for a one-bedroom unit over a 55-year period.

Annual operating costs in year 1 (per unit): \$13,000

Annual rate of operating cost inflation: 2.5%

Discount rate for NPV analysis: 4.0%

Source: BAE, 2019.

RESOLUTION NO. 6586**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
ADOPTING A PROCESS FOR DETERMINING THE AFFORDABLE IN LIEU FEE FOR
RENTAL HOUSING PROJECTS NOT PROVIDING SOME OR ALL OF THEIR
INCLUSIONARY HOUSING REQUIREMENT**

WHEREAS, the City's housing element includes a program (H.4.B) to implement inclusionary housing requirements to assist in providing housing affordable to extremely low, very low, low and moderate-income households in Menlo Park.

WHEREAS, the City Council of the City of Menlo Park adopted the Below Market Rate Housing Program Guidelines ("BMR Guidelines") on January 12, 1988.

WHEREAS, under the BMR Guidelines, the number of on-site affordable housing units (referred to as "inclusionary housing units") is based on the size of the overall housing projects. Small housing projects from zero to four units are exempt. Projects with 5 to 19 units must provide 10 percent of the units as affordable. Large projects with 20 or more units must provide 15 percent of the units as affordable.

WHEREAS, in 2011, the City stopped applying inclusionary zoning requirements to rental housing projects pursuant to the California Court of Appeal ruling in the Palmer/Sixth Street Properties LP v. City of Los Angeles case.

WHEREAS, Effective January 1, 2018, AB 1505 superseded the court's ruling in Palmer v. City of Los Angeles and once again cities are authorized to apply inclusionary housing ordinances to rental projects.

WHEREAS, cities and counties that elect to adopt inclusionary rental ordinances pursuant to AB 1505 must provide developers with an alternative means of compliance, such as the payment of in-lieu fees, dedication of land, the construction of affordable units off-site, or the acquisition and rehabilitation of existing units.

WHEREAS, on March 13, 2018, the City Council held a study session to consider both the proposed updates to the BMR Guidelines citywide as well as the impact of AB 1505 on the bonus level of development in the residential mixed-use (R-MU) zoning district. At the study session, the City Council directed staff to proceed with the citywide updates to the BMR Guidelines. The City Council also directed staff to clarify that projects in the R-MU zoning district would be required to provide inclusionary rental housing in accordance with the BMR Guidelines and that the community amenity value would no longer be required to be spent first on an additional 15 percent affordable housing, but could be used for additional affordable housing or other community amenities.

WHEREAS, in accordance with the City Council's direction at the March 13, 2018 study session, the BMR Guidelines specify that the fee will be determined by a total cost approach that will approximate the City's cost to develop an equivalent unit. If a developer elects to pay the in-lieu fee, rather than provide the units on site, the cost will be adjusted on a project specific basis to reflect the size, location and other relevant attributes of the proposed project.

WHEREAS, on March 27, 2018, the City Council conducted a public hearing on the proposed ordinance to modify the R-MU zoning and update the BMR Guidelines to implement AB 1505

and restore the city's inclusionary housing policy for rental projects. In compliance with AB 1505, the ordinance allows rental projects to comply with the City's inclusionary requirements through alternative means.

NOW, THEREFORE, the City Council of the City of Menlo Park hereby resolves as follows:

Pursuant to Section 4.4 of the BMR Guidelines, the City Council hereby establishes the following process to determine the applicable housing in lieu fee for any rental housing project electing to satisfy all or a portion of its inclusionary housing requirement by payment of an affordable housing in lieu fee as authorized by Menlo Park Municipal Code Section 16.96.070:

- a) Methodology. The in lieu fee shall be based on the total cost to develop, design, construct, and maintain an on-site below market rate (BMR) housing unit had it been developed as part of the project. The fee shall also include the proportionate costs of parking, common area and land acquisition associated with providing the BMR housing unit.

- b) In Lieu Fee Calculation. The in lieu fee for each BMR unit shall be calculated by a consultant selected by the City and funded by the applicant. The per unit in lieu fee shall be established on a project-by-project basis and calculated as the sum of:
 - 1) Total per-square-foot development costs for the multifamily portion of the proposed project, excluding land, developer profit, and any BMR in-lieu fees, multiplied by the gross square footage (net rentable square footage plus a proportionate share of common areas) for a comparable market rate unit in each project;
 - 2) The estimated cost of land for each project site, allocated to a comparable market rate unit based on its share of overall gross project square footage; and
 - 3) The net present value of the estimated average per-comparable market rate unit operating costs over a 55-year period.

- c) Proration of In Lieu Fee. For each required BMR unit applicant is unable to provide on site, applicant shall pay a per unit fee as calculated above. In lieu of providing fractional units, applicant may pay the pro-rated portion of the calculated fee.

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I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifteenth day of September, 2020, 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 fifteenth day of September, 2020.

Judi A. Herren, City Clerk



STAFF REPORT

City Council

Meeting Date:

9/15/2020

Staff Report Number:

20-204-CC

Regular Business:

Consider an update on the housing innovation fund and confirm use of the housing inventory and local supply study

Recommendation

Staff recommends that the City Council confirm that the housing inventory and local supply study (Attachment A) should be utilized as part of future work on the housing element update.

Policy Issues

As required by the Facebook Campus expansion project development agreement (DA), Facebook conducted a housing inventory and local supply study to assess conditions, occupancy, and resident profiles to establish a baseline understanding of housing conditions and to identify long-term housing solutions in the Belle Haven neighborhood and East Palo Alto. Further, in accordance with the DA, Facebook is establishing the housing innovation fund to implement near term strategies as a direct outcome of the study. The implementation of the DA and Facebook's compliance with the terms of the DA are evaluated annually by the Planning Commission. Considering how the City could utilize the information provided in the study is a policy decision.

Background

On August 11, the City Council received an informational item updating the City Council on the DA requirement for Facebook to prepare a Housing Inventory and Local Supply Study. The staff report (Attachment B) provided an overview of the DA housing terms, specifically focused on the required housing inventory and local supply study (Item 8.1.1) and the housing innovation fund (Item 8.1.2.) The housing inventory and local supply study was prepared by UC Berkeley's Center for Community Innovation and its Y-PLAN group from the Center for Cities and Schools. At the August 11 meeting, the City Council also received a presentation from the study's preparers on the findings reported in the housing inventory and local supply study, titled Investment and Disinvestment as Neighbors. At the meeting, the City Council expressed appreciation for the study and its findings, and an interest in placing the topic on a future City Council agenda for further conversation about how the study could be used. At the September 15 meeting, staff is seeking confirmation on staff's recommendation on how the study could be used for future work efforts.

For more information about the East Campus and West Campus projects and the Campus Expansion project, please visit the City-maintained project pages in Attachments B and C, respectively.

Analysis

Housing inventory and local supply study

The housing inventory and local supply study outlines recommended actions for housing unit production and preservation, as well as tenant protections. The study also identifies the need to monitor conditions over time and for large employers, such as Facebook, to consider how a company's internal policies can affect housing conditions in the vicinity and educate employees. The study highlights a number of recommendations, some of which have since been addressed through either local regulations and/or State law. Despite efforts, the region continues to face housing challenges. The recommended actions in the study are intended to be used to inform potential projects the housing innovation fund could support.

Housing innovation fund

Since the August 11 City Council meeting, Facebook and City staff have continued to discuss and outline the implementation of the housing innovation fund. Facebook has interviewed three potential nonprofits to manage the housing innovation fund. The nonprofit selected would provide administrative functions and manage the housing innovation fund, but would not be involved in determining how the money from the fund is distributed. The eight-member oversight board would be independent of the nonprofit and would ultimately be responsible for determining how to allocate the \$1,500,000 for programming. Pursuant to the DA, money from the housing innovation fund shall not be spent on the nonprofit's operating expenses.

Facebook anticipates that the nonprofit would manage a request for proposals (RFP) process to solicit potential projects, evaluate the proposals, and provide recommendations to the oversight board. Facebook anticipates selecting a nonprofit within the next month with the goal of finalizing the oversight board soon after. Upon notification to the City that a nonprofit has been selected by Facebook, Menlo Park's City Manager will need to appoint her representative. The City of East Palo Alto and Menlo Park city managers each will appoint their own member of the oversight board and Facebook will appoint the six remaining members in its sole discretion.

Upon selection of all oversight board members, the nonprofit managing the housing innovation fund would issue the RFP for projects that could be funded by the housing innovation fund. The City may wish to consider to submit a proposal and staff would return to the City Council for direction. That timeline will be defined upon final selection of a nonprofit, but it is expected that the RFP process could commence before the end of 2020. This timing will coincide with the 2020 DA annual review and staff anticipates reporting on the housing innovation fund status as part of the DA compliance report to the Planning Commission in early 2021. Upon distribution of the funds, Facebook anticipates that the nonprofit managing the Housing Innovation Fund would send out periodic updates on project statuses to the oversight board, stakeholders and interested parties.

Upon receiving the information from the housing inventory and local supply study, the City Council expressed an interest using this information to explore policy direction for the city. The City, like many jurisdictions in the Bay Area, will be initiating its housing element update process in the near future. The housing element will consider a number of policies and implementation programs for the eight year planning period. Staff anticipates that the study could be used for background research and context as well to provide a launching point for housing policies (e.g., accessory dwelling units, land trusts, etc.) that would potentially be considered as part of the City's upcoming housing element update, environmental justice element and Housing Commission work plan. The City Council will be receiving a presentation on community land trusts at its September 15 meeting and will be considering the Housing Commission's work plan in the coming months. In addition to using the study to inform the housing element and environmental

justice element, the City Council may wish to provide staff with additional guidance and recommendations on appropriate uses of the study.

Impact on City Resources

Facebook is required to pay all costs associated with this review to fully cover the cost of staff time spent on the review of these projects, including implementation of the development agreement requirements. The housing innovation fund is also fully funded by Facebook.

Environmental Review

Click here to enter text. 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. Hyperlink – housing inventory and local supply study:
menlopark.org/DocumentCenter/View/25939/Housing-Inventory-and-Supply-Study
- B. Hyperlink – Facebook Campus expansion project DA update City Council staff report:
menlopark.org/DocumentCenter/View/25907/L3-20200811-CC-Update-on-Facebook-campus-expansion-project
- C. Hyperlink – Facebook Campus project page (East and West Campuses): menlopark.org/643/Facebook-Campus-Project
- D. Hyperlink – Facebook Campus expansion project page:
menlopark.org/995/Facebook-Campus-Expansion

Report prepared by:
Kyle Perata, Principal Planner

Report reviewed by:
Deanna Chow, Assistant Community Development Director



STAFF REPORT

City Council Meeting Date: 9/15/2020
Staff Report Number: 20-205-CC

Regular Business: Adopt Resolution No. 6587 to supersede resolution No. 6490 to increase a loan to MidPen Housing from \$6.7 million up to \$9.331 million for an affordable housing development at 1317-1385 Willow Road

Recommendation

Staff recommends that the City Council adopt Resolution No. 6587 to supersede Resolution No. 6490 to increase a loan from the below market rate (BMR) housing fund from \$6,700,000 up to \$9,331,000 to MidPen Housing for an affordable housing development at 1317-1385 Willow Road.

Policy Issues

The City Council retains sole discretion to award available BMR housing funds collected in accordance with Menlo Park Municipal Code Chapter 16.96. As an impact fee, the City's use of the BMR housing in-lieu fee funds is subject by state laws governing impact fees which require that impact fees be expended or encumbered within five years of collection.

Background

On March 26, 2019, the City Council adopted resolution No. 6490 authorizing a loan from the BMR housing fund of \$6.7 million to MidPen Housing for an affordable housing development at 1317-1385 Willow Road (Project.) The resolution also authorized the city manager to execute all subordination agreements and loan documents necessary to consummate the loan and fee payments on behalf of the City of Menlo Park. The loan terms previously approved were three percent simple interest for a term of 55-57 years. A repayment provision includes a pro rata share of 50 percent of residual receipts each year, applied to accrued interest first and then to principal. Collateral will be comprised of a subordinate deed of trust against the property (1317-1385 Willow Road), with non-recourse to the borrower.

The proposed Project is comprised of a 140-unit, 100-percent BMR multifamily housing consisting of 66 one-bedroom, 50 two-bedroom and 24 three-bedroom units. It includes a variety of common open and indoor spaces, a community room with a landscaped courtyard, an exercise room, a teen room, an after-school program space, two large laundry rooms and a variety of smaller outdoor spaces. All units feature a full kitchen, with an open layout between kitchen, dining and living areas and a private deck. All of the units will be targeted to households at 30 to 60 percent of area median income (AMI.) Additional detailed information on the proposed Project are included in the staff report from March 26, 2019, in Attachment B.

The proposed development would replace the existing 82 residential units known as Gateway Family, adding 58 additional units. MidPen Housing will temporarily relocate the 82 current tenants during

construction based on individual household needs (e.g., transportation, employment, schools, public/social services, etc.) Replacement housing will be comparable to the unit a household currently resides in and MidPen Housing will cover the increased housing costs during the displacement period and all reasonable moving expenses. Upon completion of construction, all displaced households will have the first right to move back into a new apartment with the same number of bedrooms previously occupied.

The site was identified as a housing opportunity site and was rezoned to R-4-S (high-density residential, special – affordable housing overlay) in 2013 as part of the housing element update. The Project would benefit the City in meeting its regional housing needs allocation (RHNA) at the lowest income levels, which are often the hardest to meet due to the high level of rent subsidy needed for each unit.

Analysis

Funding

MidPen is requesting an additional \$2,630,100 of BMR housing funds to provide the final gap financing for the redevelopment of Gateway Family, prior to bond and tax credit financing. If approved, the total City commitment would total \$12,754,441, or equal to approximately \$91,103 per unit. The funds are a combination of restructuring an existing City loan, a prior award from BMR funds, and the current additional request. To assist with the initial acquisition of the property in 1987, the City provided MidPen a loan, which has a current balance of approximately \$3,424,341 million. This additional request of \$2,630,100 coupled with the 2019 award of \$6.7 million would result in a new loan amount of up to \$9,330,100. Combined, the total amount of the City contribution to the project would be approximately \$12,754,441.

The City's new and existing loans will be subordinate to senior financing the developer will be using to complete this project. The loan terms would be the same as approved previously. MidPen Housing prepared an updated sources and project costs work sheet included in Attachment C, which includes the total development costs of \$134,225,841. The increased loan request represents approximately seven percent of the total project costs. MidPen will continue to review the Gateway Family project costs with cost containment strategies, including value engineering as the design plans advance, refining the relocation budget, and incorporating projected loan rates and construction escalation.

Gateway Family previously secured local City financing as well as San Mateo County (County) financing through previous rounds of affordable housing funds (AHF.) In July 2020, the County released a notice of funding availability (NOFA) for the current AHF round, and MidPen staff applied for \$7,745,335, the full gap amount remaining on the project prior to bonds and tax credits. In August 2020, County staff contacted MidPen to share that the AHF funds were significantly oversubscribed. However, Gateway Family is a priority project for the County in this round and County staff moved forward with a recommendation to fund \$5,115,235 of the \$7,745,335 request. Prior to this current request to the County AHF, the County contributed \$7,639,206 to the Project. This additional amount of \$5,115,235 combined with the prior funding of \$7,639,206 to the project would be approximately \$12,754,441.

On September 1, the County Housing and Community Development Committee (HCDC) unanimously approved the staff AHF recommendations. The HCDC funding recommendation will be moved to the County board of supervisors for a final action September 15. The remaining \$2,630,100 gap is being requested from the City. Currently, there is a BMR housing fund balance of approximately \$15 million. If approved, both the City and County will be contributing equal amounts of local financing to the project.

Other financing sources

Prior to requesting additional BMR housing funds, MidPen staff has evaluated or applied to the following financing sources in an effort to secure alternative sources for the project:

- Affordable Housing and Sustainable Communities (AHSC): In February 2020, MidPen staff submitted an application for AHSC 5.0 funds. The application for housing funds and local transportation, pedestrian, and bicyclist improvements was developed in partnership with the City and SamTrans. AHSC 5.0 was oversubscribed and ultimately the project was not competitive based on greenhouse gas emission scores, which was heavily skewed by projects with fixed rail transit.
- Housing Endowment and Regional Trust (HEART): HEART, San Mateo County's local trust fund, partnered with City jurisdictions and submitted an application for the State of California's Local Housing Trust Fund (LHTF) program in July 2020. In order for a City to receive funds from this application, the City's contribution would need to be granted to HEART. The City of Menlo Park's BMR housing funds ordinance stipulates that all funds need to be assumed as loans. Additionally, the LHTF capped at \$5,000,000 and Gateway Family would have likely only been able to secure \$2-3 million, less than half of the gap financing needed.
- Local Initiatives Support Corporation (LISC) Catalyst: In July 2020, MidPen and City staff discussed currently evolving loan products from LISC/Catalyst. However, LISC does not currently have the amount of funds needed for Gateway Family's redevelopment, nor a loan product that would fit the project/allow the project to pencil.
- Multifamily housing program (MHP): MidPen staff evaluated the State's MHP program in July 2019. The program's tiebreaker is the lowest average affordability and Gateway Family's affordability targeting would need to be changed significantly in order to be competitive. Based on past winning tiebreakers, the affordability targeting at Gateway Family would need to be changed to include 20 percent of units at 25 percent AMI. Based on community outreach, there is a desire not to have lower affordability levels concentrated in the Belle Haven neighborhood.
- Transit-Oriented Development (TOD): MidPen staff evaluated and self-scored the State's TOD program in May 2020 and determined that the project was not competitive based on the previous three rounds of funds. The project does not score the full points for transportation amenities near the site.

Summary

This affordable housing project is consistent with the housing production objectives set by the Menlo Park housing element as well as the intent of the R-4-S (High Density Residential – Special) zoning district and the AHO (affordable housing overlay.) With the addition of this development project and the net new 58 units, more households will have the opportunity to live in Menlo Park. If the final gap financing from the City and County are secured, Gateway Family will be in position to apply for bond and tax credit financing in the last allocation round of 2020. The application is due September 24 and if successful, Gateway Family will begin construction in May 2021 and complete construction in March 2023. While the application is due in September, MidPen needs to submit a funding commitment letter from the City in December 2020. During this period, MidPen will continue to seek other gap financing that may replace some or all of the additional \$2,630,100 funding requested from the City.

Impact on City Resources

In addition to the \$9,331,000 loan, the majority of fees, including staff time and the value of the land acquisition, have been waived or decreased in accordance with the AHO and will be considered as part of

the City's overall contribution to the project. Additional staff time will be needed to prepare the necessary agreements and documents related to project financing.

Environmental Review

On May 21, 2013, the City Council adopted the environmental assessment (EA) prepared for the City's Housing Element. The EA analyzed the project site as a potential location for higher density, low income housing, and the subject property was rezoned to R-4-S with an AHO. Therefore, the environmental impacts of this project were reviewed in the EA, which is the equivalent of a draft environmental impact report (EIR.)

In light of the foregoing, the "common sense exemption" which indicates that the California Environmental Quality Act (CEQA) applies only to projects that have the potential for causing a significant effect on the environment applies. It can be seen with certainty that there is no possibility that the approval of the loan for the development of the project will have a significant effect on the environment beyond what was analyzed in the EA. Therefore, the project is exempt from CEQA.

Public Notice

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

Attachments

- A. Resolution No. 6587 amending Resolution No. 6490 authorizing BMR loan increase to \$9,331,000
- B. Hyperlink – March 26, 2019, City Council staff report: menlopark.org/DocumentCenter/View/21089/I1-20190326-Mid-Pen-1300-Willow-fund-CC?bidId=
- C. MidPen Gateway Family sources and uses work sheet

Report prepared by:

Rhonda Coffman, Deputy Community Development Director – Housing

Reviewed by:

Justin Murphy, Deputy City Manager

RESOLUTION NO. 6587

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AUTHORIZING A LOAN IN THE AMOUNT OF UP TO \$9,331,000 FROM THE
BELOW MARKET RATE (BMR) FUND TO MIDPEN HOUSING FOR THE
CONSTRUCTION AND PERMANENT FINANCING OF A 140-UNIT
APARTMENT COMPLEX LOCATED AT 1317-1385 WILLOW ROAD**

The City Council Finds:

WHEREAS, the opportunity to increase BMR housing remains a need in Menlo Park; and

WHEREAS, the BMR Housing Fund allows the construction of units for inclusion in the BMR Program as an eligible use; and

WHEREAS, MidPen Housing proposes to develop, and manage these units located at 1317-1385 Willow Road in Menlo Park; and

WHEREAS, the City of Menlo Park affirms the City's commitment to assist those eligible for BMR housing by making units available.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of Menlo Park hereby resolves:

(a) To approve a funding commitment for the construction of 140 rental units and a total loan up to \$9,331,000 million;

(b) All loan proceeds shall be funded from the City's BMR Fund with the loan documents and affordability restrictions to be subject to review and approval of the City Attorney and City Manager consistent with the terms of other loans from the BMR Fund;

(c) The City Manager is authorized to execute any and all documents necessary to consummate such loan payments and applicable fee waivers on behalf of the City of Menlo Park; and

(d) This resolution supersedes Resolution 6490.

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 fifteenth day of September 2020 by the following votes:

YES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this fifteenth day of September 2020.

Judi A. Herren, City Clerk

MIDPEN HOUSING – GATEWAY FAMILY

SOURCES OF FUNDS		
<i>Gateway Family</i>		
	CONSTRUCTION	PERMANENT
County AHF	12,754,441	12,754,441
City Existing Loan	3,424,341	3,424,341
City BMR Funds	6,700,000	6,700,000
Seller Takeback	3,153,335	3,153,335
GP Contribution	1,857,629	1,857,629
City Loan - New Request	2,630,100	2,630,100
Construction Loan-tax exempt + taxable tail	85,215,791	
GP Equity		5,738,328
Tax Credit Proceeds	4,173,690	41,736,897
Permanent Loan - Tranche A		17,948,800
Permanent Loan - Tranche B		29,969,400
CalHFA Residual Receipts Loan		3,500,000
Deferred Developer Fee		4,812,570
Total Sources	119,909,327	134,225,841
Total Development Costs	119,909,327	134,225,841
GAP	0	0

DEVELOPMENT COSTS				
<i>Gateway Family</i>	TOTAL COST	\$ PER UNIT	\$ PER SF	% of TOTAL
LAND COSTS				
Acquisition including Closing Costs	12,747,675	91,054.82	79	9%
TOTAL LAND COSTS	12,747,675	91,055	79	9%
DIRECT CONSTRUCTION COSTS				
Off-site improvements	1,806,676	12,905	11	1%
Site Work & Structures	64,748,095	462,486	403	48%
Contactor's Overhead & Profit	2,168,419	15,489	13	2%
General Conditions	3,056,035	21,829	19	2%
Construction Contingency	13,941,170	99,580	87	10%
Contractor's Bond & Insurance	1,076,179	7,687	7	1%
TOTAL CONSTRUCTION COSTS	86,796,574	607,071	529	65%
INDIRECT COSTS				
Local Permits and Impact Fees	1,660,910	11,864	10	1%
Architectural and Engineering Fees	3,733,040	26,665	23	3%
Consultants and Professional Services	370,000	2,643	2	0%
Developers Fee	13,050,898	93,221	81	10%
Indirect Soft Costs Contingency	312,000	2,229	2	0%
Relocation	7,201,136	51,437	45	5%
Legal	145,000	1,036	1	0%
TOTAL INDIRECT COSTS	26,472,984	189,093	165	20%
FINANCING COSTS				
Construction Loan Interest	4,380,624	31,290	27	3%
Construction Loan Fees/Expenses	751,668	5,369	5	1%
Permanent Loan Fees/Expenses	742,978	5,307	5	1%
Tax Credit Costs	102,924	735	1	0%
Capitalized Reserves	937,449	6,696	6	1%
Taxes and Insurance during construction	907,966	6,485	6	1%
TOTAL FINANCING COSTS	7,823,609	55,883	49	6%
RENT-UP COSTS				
Marketing /Advertising Expense	185,000	1,321	1	0%
Common Area Furnishings	200,000	1,429	1	0%
TOTAL RENT UP/MARKETING COSTS	385,000	2,750	2	0%
TOTAL DEVELOPMENT COSTS	134,225,841	945,851	824	100%
TOTAL DEVELOPMENT COSTS (NET OF RECONTRIBUTED AND DEFERRED DEVELOPER FEE)	123,674,943	883,392	770	100%



STAFF REPORT

City Council

Meeting Date:

9/15/2020

Staff Report Number:

20-206-CC

Regular Business:

Approval of a retired annuitant employment agreement for the position of interim chief of police to carry out the duties and responsibilities of chief of police to work in a vacant position during the recruitment to permanently fill the vacancy and during an emergency to prevent stoppage of public business

Recommendation

Staff recommends that the City Council authorize the city manager to approve a retired annuitant employment agreement with interim Chief of Police David Spiller effective July 30.

Policy Issues

The city manager has the responsibility of appointing the chief of police. GC Section 21221(h), Attachment B, requires that an agency's governing board approve the appointment of retired annuitants to serve on an interim basis during recruitment for a permanent appointment. .

Background

Former Chief of Police Dave Bertini announced his retirement in June 2020 effective for July 31. The City began an expedited recruitment process to hire an interim chief of police by former Chief Bertini's last day. The chief of police is appointed by the city manager. However, California Public Employees' Retirement Systems (CalPERS) has specific requirement for hiring a retired person to serve in vacant managerial, executive or other unique positions, such as city manager, chief information officer, chief financial officer, police chief, director, department heads, etc.

The governing body of a public agency can appoint a retiree to work in a vacant position during the recruitment to permanently fill the vacancy or during an emergency to prevent stoppage of public business. The governing body's appointment should explain the need for the particular retiree's hire and there must be documentation that the governing body made the appointment in the form of a resolution, board minutes, etc.

Analysis

The city manager determined it was necessary to hire a retired annuitant because the chief of police is required to maintain adequate staffing in emergency response and recovery. The city manager signed an agreement to hire David Spiller to serve as the interim chief of police effective July 30. Mr. Spiller, due to his significant experience as a former chief of police has the special skills necessary to perform in this interim

position.

Mr. Spiller is a retired annuitant of CalPERS within the meaning of Government Code § 21221(h) and his compensation is statutorily limited as provided in Government Code § 21221(h). Mr. Spiller has worked a total of zero hours for another CalPERS agency in fiscal year 2020-2021 and normally would be restricted to working no more than 960 hours the city of Menlo Park during the 2020-21 fiscal year. However, given the current state of emergency, and with the Governor's Executive Order N-25-20 and CalPERS circular letter: 200-016-20 which suspends the 960-hour limitation during the state of emergency to ensure adequate staffing during the state of emergency, any hours worked by Spiller to ensure adequate staffing during the state of emergency will not be counted toward the 960-hour limit for the fiscal

The contract (Attachment A) provides that Mr. Spiller shall serve as interim chief of police until January 31, 2021, or upon appointment of a permanent chief of police; whichever occurs first.

Impact on City Resources

There are no additional financial impacts associated with this engagement as the chief of police salary is currently budgeted.

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 is a minor change that 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. Retired annuitant employment agreement
- B. Government Code Section 21221(h)
- C. PERS circular letter re: Governors Executive Order on Retired Annuitants

Report prepared by:
Theresa DellaSanta, Human Resources Manager

**RETIRED ANNUITANT EMPLOYMENT AGREEMENT
For the Position Of
INTERIM POLICE CHIEF**

This Employment Agreement ("Agreement") is made and entered into this 30th day of July, 2020, by and between the CITY OF MENLO PARK ("CITY"), a general law city and municipal corporation, and David Spiller ("Spiller"), an individual, on the following terms and conditions:

RECITALS

A. CITY desires to employ the services of Spiller as its Interim Police Chief, temporarily, to carry out the duties and responsibilities of Police Chief, in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

B. Spiller desires to accept employment as Interim Police Chief in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

C. On March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency related to COVID-19 and on March 11 the City of Menlo Park City Council declared a local emergency due to the COVID-19 pandemic;

D. Effective on or about July 31, 2020, the City's current Police Chief is scheduled to retire and an Interim Police Chief is needed to ensure adequate staffing during the state of emergency until a permanent chief can be hired;

E. Spiller represents that he is a retired annuitant of CalPERS within the meaning of Government Code § 21221(h) and acknowledges that his compensation is statutorily limited as provided in Government Code § 21221(h). Spiller acknowledges that he has worked a total of zero hours for another CalPERS agency in fiscal year 2020-2021 and normally is restricted to working no more than 960 hours for CITY, a state agency or other CalPERS contracting agencies (collectively "CalPERS Agencies") during CITY's 2020-2021 fiscal year. However, given the current state of emergency, and with the Governor's Executive Order N-25-20 and CalPERS Circular Letter: 200-016-20 which suspends the 960-hour limitation during the state of emergency to ensure adequate staffing during the state of emergency, any hours worked by Spiller to ensure adequate staffing during the state of emergency will not be counted toward the 960-hour limit for the fiscal year.

F. Spiller also represents that he has not received unemployment compensation from any CalPERS agencies during the 12-month period preceding the effective date of this Agreement.

G. CITY has determined that it is necessary to hire Spiller, a retired annuitant, because the position of Interim Police Chief is required for adequate staffing

in emergency response and recovery, and Spiller, by virtue of his significant experience as a retired Police Chief, has those special skills.

OPERATIVE PROVISIONS

In consideration of the promises and covenants contained herein, the parties agree as follows:

1 Position and Duties.

1.1 Position. Spiller accepts employment with CITY as its Interim Police Chief and shall oversee the police department and perform all functions, duties and services set forth in Section 1.4 [Duties] of this Agreement. Spiller shall provide service at the direction and under the supervision of the City Manager. It is the intent of the parties that Spiller, as the Interim Police Chief, shall keep the City Manager fully apprised of all significant ongoing operations of the City's police department.

1.2 Term. This Agreement shall become effective when executed both by Spiller and CITY's City Manager, which date shall be the date first referenced above. Spiller shall commence the performance of his duties as the Interim Police Chief on July 30, 2020 or at such later date as the parties hereto shall agree in writing ("Commencement Date"). This Agreement shall expire as of the first of the following to occur: (i) 5:00 p.m. on January 31, 2021;(ii) upon the employment commencement date of a permanent Police Chief employed by CITY; or (iii) upon termination of the Agreement by either Spiller or CITY as provided in Section 4 [Termination] of this Agreement.

1.3 At-Will. Spiller acknowledges that he is an at-will, temporary employee of CITY who shall always serve at the pleasure of the City Manager during the period of his service hereunder. Nothing in this Agreement is intended to, or does, confer upon Spiller any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by the City Manager to terminate his employment, except as is expressly provided in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of CITY to terminate the services of Spiller, as provided in Section 1.2 [Term] or Section 4 [Termination]. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Spiller to resign at any time from this position with CITY, subject only to the provisions set forth in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. This at-will employment Agreement shall be expressly subject to the rights and obligations of CITY and Spiller, as set forth in Section 1.2 [Term] or Section 4 [Termination] below.

1.4 Duties. Spiller shall serve as the Interim Police Chief and shall for the Term of the Agreement perform the duties set forth in Government Code sections 41601-41612. In addition, at the City Manager's direction, Spiller shall cooperate with any organizational audit of the police department as authorized by the City Council and, participate in community discussions, including police reform and make recommendations to the City Manager regarding re-allocation of police resources to address residents' concerns about under and over policing in certain areas of the city. Spiller shall provide service at the direction and under the supervision of the City Manager. Spiller shall also do an

organizational assessment to provide recommendations regarding stabilizing and rebuilding police services to best serve the overall community. It is the intent of the parties that the Interim Police Chief shall keep the City Manager fully apprised of all significant ongoing operations of CITY's Police Department. Spiller shall devote his best efforts and full-time attention to the performance of his duties.

1.5 Hours of Work. Spiller shall devote the time necessary to adequately perform his duties as Interim Police Chief. The parties anticipate that Spiller will work a sufficient number of hours per week allocated between regular business hours and hours outside of regular business hours including, without limitation, attendance at regular and special City Council meetings and such community meetings as the City Manager may direct. Toward that end, Spiller shall be allowed reasonable flexibility in setting his own office hours, provided the schedule of such hours provides a significant presence at the Police Department, reasonable availability to the City Council, City Manager, CITY staff, and members of the community during regular CITY business hours and for the performance of his duties and of CITY business.

2 Compensation.

2.1 Rate of Pay. For all services performed by Spiller as the Interim Police Chief under this Agreement, CITY shall pay Spiller compensation at the rate of \$120.00 per hour according to the payroll schedule in place for CITY employees paid bi-weekly subject to the limitations provided below.

2.1.1 Compliance with CalPERS requirements. It is the intent of the parties to compensate Spiller only to the extent permitted under Government Code § 21221(h) and corresponding CalPERS regulations and policy statements. The Rate of Pay is within the established salary range for Police Chief. Spiller acknowledges that he will be compensated the rate of \$120.00 per hour and will not receive any benefits, incentives, compensation in-lieu of benefits, or any other form of compensation.

2.1.2 Recordation and Reporting of Hours Worked. Spiller and the CITY will comply with all applicable CalPERS regulations governing employment after retirement, including the recordation and reporting of all hours worked for CITY to CalPERS as required. Additionally, Spiller shall keep CITY continually apprised of any hours worked by Spiller for other CalPERS Agencies during the term of this Agreement.

Spiller will be responsible for keeping track of his hours worked, including during the period in which the Governor's Executive Order N-25-20 and CalPERS Circular Letter: 200-016-20 suspending the 960-hour limitation during the state of emergency are in effect. Spiller will submit his timesheets to the CITY in accordance with City payroll procedures. The CITY shall maintain these approved timesheets in a legal file and they shall not be disclosed except and unless as required by law or Spiller and/or the CITY need to defend themselves against any legal claims, including but not limited to by CalPERS.

2.1.3 Indemnity for CalPERS Claimed Overpayments. The CITY agrees to defend and indemnify Spiller for any fees, fines, penalties, contributions or other monetary damages claimed, asserted, or alleged against Spiller by CalPERS as a result of his

employment with the CITY upon a finding that the CITY failed to keep or report Spiller's accurate hours worked.

2.2 Benefits.

2.2.1 No Benefits. Pursuant to Government Code §21221(h) and related CalPERS regulations and policy statements, Spiller shall not receive from CITY any benefits CITY commonly provides to its employees, including without limitation health, dental, or vision insurance coverage, life insurance, employee assistance programs, and similar benefits.

3. **Vacation and Leave.**

3.1 No Leave. Spiller, in accordance with Government Code Section 21221(h) and related CalPERS regulations and policy statements, shall not be provided or accrue any personal time off, vacation, sick leave, administrative leave, paid holidays or similar leave benefits.

4. **Termination.**

4.1 By CITY. This Agreement may be terminated by CITY for any reason thirty (30) days after providing written notice to Spiller of such termination. CITY's only obligation in the event of such termination will be payment to Spiller of all compensation then due and owing as set forth in Section 2.1 [Rate of Pay] up to and including the effective date of termination. However, this Agreement may be terminated immediately if necessitated by changes to CalPERS statutory or regulatory requirements.

4.2 By Spiller. This Agreement may be terminated by Spiller for any reason thirty (30) days after providing written notice to CITY of such termination. CITY shall have the option, in its complete discretion, to make Spiller's termination effective at any time prior to the end of such period, provided CITY pays Spiller all compensation as set forth in Section 2.1 [Rate of Pay] then due and owing him through the last day actually worked.

4.3 No Notice for Expiration. Nothing in this Section 4 [Termination] shall be construed to require either party to give advance written notice for the Agreement to expire as set forth in Section 1.2 [Term].

4.4 Termination Obligations. Spiller agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment belongs to CITY and shall be returned promptly to CITY upon termination of Spiller's employment. Spiller's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

5. **Conflict of Interest**

In accordance with Government Code Section 1126, during the period of his employment, Spiller shall not accept, without the express prior written consent of the City

Manager, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity, whether or not to pecuniary advantage, that is or may be competitive with CITY, that might cause a conflict of interest with CITY, or that otherwise might interfere with the business or operation of CITY or the satisfactory performance of Spiller's duties as Interim Police Chief.

6. Expenses.

CITY agrees to pay job related expenses incurred by Spiller for any out of area business and travel expenses incurred in the course of his duties as approved by the City Manager.

7. General Provisions.

7.1 Recitals. The recitals, inclusive of all facts and representations, are incorporated into this Agreement as if set forth in the Operative Provisions.

7.2 Vehicle Operation. Spiller shall comply with CITY's administrative policies regarding operation of a vehicle on official business. Spiller shall not receive an automobile allowance but shall be eligible for reimbursement for mileage when using his personal vehicle for CITY business in accordance with CITY policy.

7.3 Notices. All notices required under this Agreement shall be in writing and either given in person or delivered by first class mail with postage prepaid and addressed as follows:

City's Notice Address:

City of Menlo Park
Attn: Theresa DellaSanta, Human Resources Manager
701 Laurel Street
Menlo Park, CA 94025

Interim Police Chief Address:

Address on file with Human Resources Department

7.4 Indemnification. Subject to, in accordance with, and to the extent provided by the California Government Claims Act [Government Code Section 810 *et seq.*], CITY will indemnify, defend, and hold Spiller harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during Spiller's tenure as Interim Police Chief.

7.5 Bonding. CITY shall bear the full cost of any fidelity or other bonds required of the Interim Police Chief under any law or ordinance.

7.6 Integration. This Agreement is intended to be the final, complete, and exclusive statement of the terms of Spiller's appointment as Interim Police Chief by CITY. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of Spiller as Interim Police Chief, and it may not be contradicted by evidence of any prior or contemporaneous statements or

agreements. To the extent that the practices, policies, or procedures of CITY, now or in the future, apply to Spiller and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

7.7 Amendments. This Agreement may not be amended except in a written document signed by Spiller, approved by the City Council and signed by CITY's City Manager.

7.8 Waiver. Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

7.9 Assignment. Spiller shall not assign any rights or obligations under this Agreement. CITY may, upon prior written notice to Spiller, assign its rights and obligations hereunder.

7.10 Severability. If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

7.11 Attorneys' Fees. In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

7.12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue proper only in San Mateo County, State of California.

7.13 Interpretation. This Agreement shall be construed, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

7.14 Acknowledgment. Spiller acknowledges that he has had the opportunity to consult legal counsel regarding this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, CITY has caused this Agreement to be signed and executed on its behalf by its Mayor and Spiller has signed and executed this Agreement, as of the date first indicated above.

CITY OF MENLO PARK

DocuSigned by:
Starla Jerome-Robinson
6BD907BD261744C...
Starla, Jerome-Robinson, City Manager

APPROVED AS TO FORM:

DocuSigned by:
Cara Silver
CD6C53C794F6491...
Cara Silver, Interim City Attorney

INTERIM POLICE CHIEF

DocuSigned by:
DS
487F1626665D4D2...
David Spiller

ARTICLE 8. Employment after Retirement [21220 - 21233]

(Article 8 added by Stats. 1995, Ch. 379, Sec. 2.)

21221.

A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system, as follows:

(a) As a member of any board, commission, or advisory committee, upon appointment by the Governor, the Speaker of the Assembly, the President pro Tempore of the Senate, director of a state department, or the governing board of the contracting agency. However, the appointment shall not be deemed employment within the meaning of Division 4 (commencing with Section 3200) and Division 4.5 (commencing with Section 6100) of the Labor Code, and shall not provide a basis for the payment of workers' compensation to a retired state employee or to his or her dependents.

(b) As a school crossing guard.

(c) As a juror or election officer.

(d) As an elective officer on and after September 15, 1961. However, all rights and immunities which may have accrued under Section 21229 as it read prior to that section's repeal during the 1969 Regular Session of the Legislature are hereby preserved.

(e) As an appointive member of the governing body of a contracting agency. However, the compensation for that office shall not exceed one hundred dollars (\$100) per month.

(f) Upon appointment by the Legislature, or either house, or a legislative committee to a position deemed by the appointing power to be temporary in nature.

(g) Upon employment by a contracting agency to a position found by the governing body, by resolution, to be available because of a leave of absence granted to a person on payroll status for a period not to exceed one year and found by the governing body to require specialized skills. The temporary employment shall be terminated at the end of the leave of absence. Appointments under this section shall be reported to the board and shall be accompanied by the resolution adopted by the governing body.

(h) Upon interim appointment by the governing body of a contracting agency to a vacant position during recruitment for a permanent appointment and deemed by the governing body to require specialized skills or during an emergency to prevent stoppage of public business. A retired person shall only be appointed once to this vacant position. These appointments, including any made concurrently pursuant to Section 21224 or 21229, shall not exceed a combined total of 960 hours for all employers each fiscal year. The compensation for the interim appointment shall not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule for the vacant position divided by 173.333 to equal an hourly rate. A retired person appointed to a vacant position pursuant to this subdivision shall not receive any benefits, incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the hourly rate. A retired annuitant appointed pursuant to this subdivision shall not work more than 960 hours each fiscal year regardless of whether he or she works for one or more employers.



California Public Employees' Retirement System
P.O. Box 942715 | Sacramento, CA 94229-2715
(888) CalPERS (or 888-225-7377) | TTY: (877) 249-7442
www.calpers.ca.gov

Announcements

Circular Letter

March 18, 2020

Circular Letter: 200-015-20

Distribution: IV, V, VI, X, XII, XVI

To: All CalPERS Employers
Subject: Governor's Executive Order N-25-20

Purpose

The purpose of this Circular Letter is to inform you of the impact of Executive Order N-25-20 on CalPERS retirees employed as retired annuitants with all CalPERS employers.

Work Hour Limitation Exceptions

On March 4, 2020, Governor Gavin Newsom declared a statewide state of emergency due to the COVID-19 pandemic. Governor Newsom issued Executive Order N-25-20 to further enhance California's ability to respond to COVID-19. Consistent with applicable federal law, and to ensure adequate state staffing to expedite emergency response and recovery, the work hour limitations for retired annuitants are suspended from the date the state of emergency was declared until the state of emergency is lifted.

The intent of the executive order is to suspend reinstatement and the retired annuitant work hour limitation of 960 hours per fiscal year during the state of emergency. Any hours worked by a retired annuitant to ensure adequate staffing during the state of emergency will not be counted toward the 960-hour limit for the fiscal year.

Wait Period Exceptions

Under this executive order, the 180-day break in service requirement under Government Code section 7522.56(f) is also suspended for retired annuitants hired to ensure adequate staffing during the state of emergency.

In addition, under subdivision (c) of section 586.2 of Title 2 of the California Code of Regulations (CCR), the declaration of a state of emergency exempts retired annuitants from the 60-day separation in service requirement under subdivision (a)(2) of CCR section 586.2. However, please be aware, the prohibition under subdivision (a)(1) of CCR section 586.2 on any predetermined agreement between an employer and an impending retiree who has not attained normal retirement age, continues to remain in effect, consistent with federal law.

Timeline

The start date for the state of emergency was March 4, 2020. The suspension of the retired annuitant work hour limitation and wait period exceptions will remain in place until the state of emergency is lifted.

Continued Compliance

Agencies must continue to enroll, and report retired annuitants to CalPERS. The remaining working after retirement provisions in Government Code sections 21221(h), 21224(a), and 7522.56(e) will continue to apply:

- Compensation for the appointment shall not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule divided by 173.333 to equal an hourly rate.
- A retired annuitant shall not receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate.

The emergency proclamation applies to work performed by a retired annuitant hired to ensure adequate staffing during the state of emergency. You must notify the director of the California Department of Human Resources of any individual employed pursuant to these waivers. Notification should be sent to CAStateofEmergency@calhr.ca.gov.

CalPERS will continue to monitor the work hours for retired annuitants covered by this order and send communication to confirm when a violation is found and whether it complies with these exceptions.

Questions

If you have any questions, call our CalPERS Customer Contact Center at **888 CalPERS** (or **888-225-7377**).

Renee Ostrander, Chief
Employer Account Management Division



STAFF REPORT

City Council

Meeting Date:

~~9/8/2020~~ 9/15/2020

Staff Report Number:

20-199-CC

City Council Initiated
Items:

Refocus City Council 2020-21 priorities and direct
specific land use planning work

Recommendation

City staff seek direction on requests from Mayor Taylor and City Councilmember Nash to improve the focus of City Council 2020-21 priorities and direct specific land use planning work. Per City Council Procedure #CC-20-013 – “City Councilmember requests” a majority of the City Council may direct the following:

- Direct the city manager to prioritize staff resources to prepare a formal staff report for further City Council consideration and/or action, or
- Direct the item to an advisory body for preparation of a formal staff report with no additional staff support required, or
- Direct the city manager to prepare a formal staff report for further City Council consideration as resources are available, or
- Defer action to the City Council's annual goal setting process.

If the request does not receive sufficient City Council support, the item is not considered further.

Policy Issues

At their August 25 meeting, the City Council adopted City Council Procedure #CC-20-013 – “City Councilmember requests,” Attachment A, to assist in determining the full City Council's desire to move forward with work on requests by one or two City Councilmembers.

Background

At their August 18 meeting, the City Council adopted their top five priorities for 2020-21 and four suspended (or bike rack) initiatives. Also, at staff's request, the City Council deferred action on 11 work plan items. Attachment B summarizes the updated list of priorities, yet-to-be approved work plan projects and the bike rack.

Analysis

For the City Council's August 18 meeting, Mayor Taylor and City Councilmember Nash presented a memo, Attachment C, detailing specific modifications to the City's goal-setting process. In recent years, the City Council's goal setting process generally resulted in a list of stand-alone projects or initiatives. Attachment C outlines the following goals most with specific work efforts outlined to achieve the goal:

- Support construction of new Belle Haven Community Center and Library project.
- Reform policing in Menlo Park so everyone can live their lives without fear.

- Reform our land use policies to reflect one united city.
- Prioritize climate action and empower the City's environmental leadership, recognizing that our most vulnerable residents are the most affected by this global issue.
- Ensure that City services support all our residents, and everyone feels welcome.
- Revise City policies and practices to promote inclusion and equity.

Staff's summary of City Council priorities and work plan, Attachment B, and the memo from City Councilmember Nash and Mayor Taylor, Attachment C, overlap in certain aspects. For example, both lists include the new Community Campus project (formerly referred to as the BHCCL project.) However, the overlap in planning efforts is less clear to staff and requires additional discussion to understand the intent of Attachment C. On September 3, City Councilmember Nash emailed the following request to City Manager Jerome-Robinson with a copy to Mayor Taylor:

Mayor Taylor and City Councilmember Nash request the following item be added to City Council agenda for discussion as soon as possible:

Engage M-Group to perform a high-level review of development in the Bayfront.

- *Explore the amount and type of existing, proposed and potential development, compared with development anticipated under the 25-year ConnectMenlo plan.*
- *Evaluate current and potential impacts of the development in Bayfront using the City's Guiding Principles as described in ConnectMenlo.*
- *What lessons have been learned that can inform our process as we move into the Housing Element update?"*

For context relative to the long-range planning desired, staff drafted Attachment D to begin the discussion of the relationship between various mandated long-range planning efforts and their demand on resources and timelines. Attachment D serves as the springboard for a September 29 special meeting (tentative) to continue City Council priority and work plan discussions.

Impact on City Resources

Unknown. Staff estimates that initial assessment and discussion of Attachments C and D have far exceeded the customary one to two hours allocated to explore City Councilmember ideas, concerns and requests.

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. City Council Procedure #CC-20-013 – "City Councilmember requests"
- B. City Council approved priorities, August 18

Staff Report #: 20-199-CC

- C. Request from Mayor Taylor and City Councilmember Nash – “City Council priorities – 8.11.2020”
- D. Memo: planning projects

Report prepared by:
Nick Pegueros, Assistant City Manager

CITY COUNCILMEMBER REQUESTS

City Council Procedure #CC-20-013

Adopted August 25, 2020



Purpose

The purpose of this procedure is to provide transparency into requests by individual City Councilmembers that results in the use of staff time. The policy applies to all City Councilmembers equally and allows the full City Council to determine how to use limited City resources.

For this procedure, a "City Councilmember request" is defined as a request to use City resources in a manner that exceeds the City Council approved budget, priorities, or work plan. This includes requests directed to the city manager, city attorney, and all City staff members. This procedure also applies to City Council appointed commissions and committees.

Requests to add items to a future agenda

To make a request

To request consideration of an item at future City Council meetings, Councilmembers may send the request via email to the city manager, with a copy to the Mayor and Vice Mayor, or via email to city.council@menlopark.org. The request must be received no later than two (2) business days prior to publication of the meeting agenda. The request will automatically appear under "City Council initiated items" at the end of the City Council's regular agenda.

Initial City Council consideration of request

As an agenda item under "City Council initiated items" the City Council may discuss the item and ask staff questions regarding preliminary scope, analysis, and resource requirements. After discussion, with a motion and second, the City Council may take one of the following actions:

- Direct the city manager to prioritize staff resources to prepare a formal staff report for further City Council consideration and/or action, or
- Direct the item to an advisory body for preparation of a formal staff report with no additional staff support required, or
- Direct the city manager to prepare a formal staff report for further City Council consideration as resources are available, or
- Defer action to the City Council's annual goal setting process.

If the request does not receive sufficient City Council support, the item is not considered further.

City Council action

When the staff report is available, the report will be placed under "City Council initiated items" for City Council discussion and action at the next City Council meeting, regardless of agenda load management exercised by the Mayor, Vice Mayor, and city manager.

Request to modify operations or for special projects

To make a request

To request consideration of a change in operations or for a special project, a City Councilmember may send the request via email to the city manager, with a copy to the Mayor and Vice Mayor, or via email to city.council@menlopark.org. The request must be received no later than two (2) business days prior to publication of the meeting agenda. The request will automatically appear under "City Council initiated items" at the end of the City Council's regular agenda.

CITY COUNCILMEMBER REQUESTS

City Council Policy #CC-20-013

Adopted August 25, 2020

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Initial City Council consideration of request

As an agenda item under “City Council initiated items” the City Council may discuss the item and ask the city manager the preliminary assessment of the scope, analysis, and resource requirements of the request. After discussion, with a motion and second, the City Council may take one of the following actions:

- Direct the city manager to prioritize staff resources to prepare a formal staff report for further City Council consideration and/or action, or
- Direct the city manager to prepare a formal staff report for further City Council consideration as resources are available, or
- Defer action to the City Council’s annual budget process.

If the request does not receive sufficient City Council support, the item is not considered further.

City Council action

When the staff report is available, the report will be placed under “City Council initiated items” for City Council discussion and action at the next City Council meeting, regardless of agenda load management exercised by the Mayor, Vice Mayor, and city manager.

Emergency and non-agendized items

Emergency and non-agendized items may be added to an agenda only in accordance with State law.

Emergency items are only those matters affecting public health or safety such as work stoppages, disasters and other severe emergencies. Adding an emergency item requires a majority vote. Emergency items are very rare. An item that the City Council would like to act on after agenda posting is considered a non-agendized item.

Non-agendized items may be added to the agenda only if the City Council makes findings that (1) the need to consider the item arose after the posting of the agenda, and; (2) there is a need to take immediate action at this meeting of the City Council. These findings must be approved by a four-fifths vote; if less than five members of the City Council are present, the findings require a unanimous vote of those present.

Emergency and non-agendized items are not be used to bypass the City Councilmember request process above.

Procedure history

Action	Date	Notes
Draft procedure presented	July 28, 2020	City Council continued item to August 25, 2020
Procedure adoption	August 25, 2020	Draft procedure amended at City Council direction. Staff edit to clarify definition of a “non-agendized item”

**2020-21 City Council Priorities and Work Plan
Approved August 18, 2020**

10 20 30 40 50 60 70 80 90 100

Ref #	Priority projects (Approved August 18, 2020)	Lead Department	0	--	% Complete	--	100
1	Transportation master plan (TMP)	Public Works					
2	2022 Housing Element, zoning code update and related work	Community Development					
3	Belle Haven community center and library	City Manager's Office					
4	COVID-19 pandemic local emergency response	City Manager's Office					
5	Information Technology Master Plan implementation	Administrative Services					
Ref #	Work plan projects (No action taken on August 18, 2020)	Lead Department	0	--	% Complete	--	100
6	Transportation management association (TMA) formation	Public Works					
7	Middle Avenue pedestrian & bicycle rail crossing planning	Public Works					
8	Short-term rental ordinance	Community Development					
9	Accessory dwelling unit ordinance update	Community Development					
10	ConnectMenlo community amenities list update	Community Development					
11	ECR/Downtown Specific Plan area housing development incentives	Community Development					
12	Development and environmental review process education series	Community Development					
13	Santa Cruz Ave closure and economic development initiatives	Community Development					
14	Citywide communication program development	City Manager's Office					
15	Climate Action Plan implementation	City Manager's Office					
16	Institutional bias reform	City Manager's Office					
Ref #	Suspended projects (Approved August 18, 2020)	Lead Department	0	--	% Complete	--	100
17	Near-term downtown parking and access strategies	Public Works					
18	Ravenswood Avenue Caltrain grade separation study	Public Works					
19	Single-Family residential design review	Community Development					
20	City Council procedures update	City Manager's Office					
			Complete				
			In progress / Implementation phase				
			Suspended				

COUNCIL PRIORITIES - 8.11.2020

Mayor Cecilia Taylor & Councilmember Betsy Nash

Based on Black Lives Matter Resolution #6563

All actions should have aggressive, achievable, measurable goals.

Support construction of new Belle Haven Community Center and Library project.**Reform policing in Menlo Park so everyone can live their lives without fear.**

- Discuss partnering with NOBLE for holistic approach to conducting police reform
- Develop new public safety policies and practices based on an open dialogue about public safety in our town, with
 - input from the community,
 - data and other input from our police department and police union, Menlo Park Fire District, and
 - learning from reforms elsewhere.
- Restructure city budget to implement new public safety policy goals.

Reform our land use policies to reflect one united city.

- Develop and implement an equitable community amenities list for projects in the Bayside area.
- Revise how land use is counted.
 - Eliminate development 'double-dipping.' Commercial land that is redeveloped for residential use should not be added back as available square footage under the development cap for future commercial use.
 - Count residential by square footage as well as units.
 - Count hotel square footage as well as units. Count hotel common space and parking garage.
 - Count square footage used for parking garages.
- Develop and implement single citywide General Use Plan.
 - Land use, including density and heights, should have citywide standards
 - Specific plans for downtown and Bayside areas
 - Apply environmental justice policies (SB1000 and AB617).
- Develop and implement citywide standards for locating essential services near residential areas.
- Plan RHNA numbers using citywide equity lens.

COUNCIL PRIORITIES - 8.11.2020

Mayor Cecilia Taylor & Councilmember Betsy Nash

Based on Black Lives Matter Resolution #6563

All actions should have aggressive, achievable, measurable goals.

Prioritize climate action and empower the City's environmental leadership, recognizing that our most vulnerable residents are the most affected by this global issue.

- Develop and implement citywide Climate Action Plan.
 - Priorities:
 - Explore policy/program options to convert 95% of existing buildings to all-electric by 2030
 - Expand access to EV charging for multifamily and commercial properties
 - Eliminate the use of fossil fuels from municipal operations
 - Address:
 - Setting regional goals for increasing EVs and decreasing gasoline sales
 - Reduce vehicle miles traveled (VMT) by 25% or other amount recommended by Complete Streets Commission
 - Develop a climate adaptation plan to protect the community from sea level rise and flooding

Ensure that City services support all our residents, and everyone feels welcome.

- Review and document all city services, including contracted services, to ensure they are equitable citywide.
- Develop and implement resident communication strategy
- Address community needs exacerbated by COVID-19 pandemic
 - Food insecurity
 - Housing instability
 - Internet and technology insufficiencies

Revise City policies and practices to promote inclusion and equity.

- Implement hiring practice of interviewing a diverse slate of candidates (no hires approved without diverse interviews).
- Review all levels of city staffing to establish baseline data from which to measure diversity at all levels.
- Identify a vendor for equity training (GARE?) and prioritize training for City staff, starting with executive management and working through all managers/staff.
- Develop and implement standards of equity training for all contractors and consultants.



MEMORANDUM

Date: 9/3/2020
To: Starla Jerome-Robinson, City Manager
From: Deanna Chow, Assistant Community Development Director
Re: City Council Priority and Work Plan – Planning Projects

The City Council is considering a number of land-use related priority projects and work plan items that would require a considerable amount of staffing and consultant resources as well as community, Commission and City Council involvement. As the City Council deliberates over its project priorities and work plan, the attached table has been prepared to provide a little more context for Planning projects to inform the City Council's discussion.

The projects identified in the attached table (Attachment A) are a subset of the full project list containing the 2020-21 City Council priorities and work plan (Attachment A of the August 11 City Council staff report and Attachment B to this memo). These projects are ones that would require the Planning Division to be in the lead or to dedicate staffing to help achieve them. These projects cannot be undertaken concurrently given the complexity of the work and the resources needed to accomplish the projects. However, staff has begun to outline how the projects can be accomplished over the next several years based upon our initial understanding of the work plan items. The table considers several factors for how the projects can be accomplished as noted below:

- **Project and Description:** Name and brief description of the project.
- **Priority Type:** The priority type reflects the City Council's discussion at its meeting on August 18.
- **CM Nash & Taylor 8.11.20 List, Land Use (Bullet Reference):** A reference note indicates alignment between the full City Council's list and the Mayor and City Councilmember Nash's list.
- **Sequence:** The number in the sequence columns reflects the order in which projects occur.
- **Staff Resources:** The dollar figure ranges from one to four dollar signs, depending on the level of Planning staffing needed to complete the project. All of the projects would also involve staff from other Departments, which have not been factored into this chart.
- **Consultant Resources:** Consultant assistance is anticipated for many of the projects and depending on the number of components, complexity, and/or technical skills, resources are needed to augment and support staff in the projects. The dollar signs in the chart range from one to four depending on the anticipated cost for services, but the amount would be determined once a scope of work is finalized.
- **Grant Funding:** Several of the projects will be supported by partial grant funding.
- **Public Engagement Level:** The chart provides a spectrum of public participation to help define the public's role in the process. The chart identifies the anticipated level of participation for each of the projects based upon the initial scope of work. A change in the level of participation could affect the timeline and budget of a project.
- **Timeline:** The chart attempts to identify when a project would be initiated and completed.

Following the City Council's direction to staff on the priority and work plan items, staff can return to the Council with more detailed information regarding needed staffing and consultant resources based upon the information outlined in the chart or as modified by the City Council.

Attachments

- A. Draft planning division action plan
- B. Hyperlink – Fiscal year 2020-21 City Council priorities and work plan August 11 staff report:
menlopark.org/DocumentCenter/View/25905/K2-20200811-CC-City-Council-priorities

Project	Description	Priority Type	CM Nash & Taylor 8.11.2020 List, Land Use (Bullet Reference)	Sequence	Staff Resources	Consultant Resources	Grant Funding
2022 Housing Element, zoning code update and related work (e.g., preparation of an Environmental Justice Element, Land Use Element amendments, rezonings, etc.) (Ref #2.)	The preparation of the Housing Element – Regional Housing Need Allocation (RHNA) Cycle 6 (2023-2031) is critical to addressing local housing needs and for compliance with State law. The housing element process would involve a number of components, including the preparation of an environmental justice element, updates to the land use and safety elements, potential zoning ordinance amendments and rezonings, environmental review (anticipated environmental impact report) and extensive public outreach, as well as require additional staff and consultant resources beyond the adopted budget. As new state laws have established stricter standards for site inventories, which will require additional data and analyses, the City will be taking a collaborative approach with other jurisdictions in San Mateo County (as part of 21 elements) to help leverage resources and streamline and strategically target work efforts. On June 30, 2020, following City Council's authorization, staff submitted an application for a Local Early Action Planning (LEAP) grant for \$150,000. The funding would be earmarked for work on the housing element, but would only be a small portion of the estimated \$1.5 to \$2.0 million needed to complete the project. Staff anticipates returning to City Council for review of the scope of work and consultant selection process by the end of the second quarter of fiscal 20-21. Staff anticipates the preparation of the Environmental Justice Element to occur first to help set the policy framework for the Housing Element.	Priority	3rd & 5th Bullet	Overarching	\$\$\$\$	\$\$\$\$	Partial
Accessory dwelling unit ordinance update (Ref #9.)	On February 25, the City Council adopted urgency Ordinance no. 1066, which amended the Menlo Park Municipal Code to comply with recent State Legislation pertaining to accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs.) This was the first step in furthering ADU housing production. As a second step, staff will pursue "cleanup" amendments for internal consistency in the zoning ordinance for increased clarity for applicants. In addition, staff applied for and has been subsequently awarded an SB 2 grant. A portion of the funds is anticipated to be used to help fund additional work on ADU regulations and/or educational materials to support ADU production. At this point, staff recommends giving the urgency ordinance time to take effect before considering additional modifications given the recent changes are quite significant. Potential work on ADU regulations could also align with work on the upcoming housing element process.	Work Plan	n.a.	4 (if two phases, then 1 and 5)	\$\$	\$\$	Partial
ConnectMenlo community amenities list update (Ref #10.)	As part of the ConnectMenlo General Plan Update in 2016, the City Council adopted Resolution No. 6360, approving the community amenities list developed through the ConnectMenlo process. The list of amenities reflected the community's priority of benefits within the area generally bounded by Highway 101, Marsh Road, Bayfront Expressway and University Avenue, and was developed through an extensive outreach and input process that included a number of different stakeholders. Development projects seeking bonus level development are required to provide a community amenity. Since the adoption of the list, the City Council Subcommittee for District 1 in 2019 considered whether to change the amenities list, which can be done through adoption of a City Council resolution. If the City Council wishes to pursue changes to the community amenities list, they should provide staff with direction to either bring forward a resolution with the updated list previously provided by the Subcommittee (Attachment E) or establish a public engagement process with the community to update the amenities list. Additional funding for staffing and/or consultant resources may be needed to complete the latter effort.	Work Plan	1st Bullet	2	\$	N/A	No
ECR/Downtown specific plan area housing development incentives (Ref #11.)	The City Council redirected staff to focus its efforts on establishing incentives and reducing development barriers to creating housing in the Specific Plan Area. These changes would likely include modifications to the development regulations (e.g., density and height,) but would not increase the residential cap. This plan would be focused in its scope and would not incorporate policy items such as allowing hotels to automatically develop at the bonus level, consideration for a mixed-use parking structure, and creation of a parking inlieu fee previously identified by the City Council in its 2018 biennial review. This new focused work is consistent with recommendations made by the City Council Subcommittee for Districts 2 to 5. In April 2020, the City was awarded \$160,000 in SB 2 grant funds. Staff proposes to use apportion of the SB 2 grant funding to assist with the preparation of potential specific plan amendments. If the City Council wishes to prioritize this as a work plan item, staff would return to the City Council with a timeline and scope of work, including potential funding request for consultant resources. The work would need to be completed/adopted prior to the end of the grant term June 30, 2022, and is anticipated to commence before the housing element process. The initial scope of work contemplates modification to the Specific Plan that would involve limited public outreach, not trigger an amendment to the general plan or the preparation of an environmental impact report. Any modifications that trigger one of those items would be folded into the housing element update process.	Work Plan	3rd bullet (partial)	3	\$\$	\$\$	Partial
Development and environmental review process education series (Ref #12.)	The idea for an education series on the development and environmental review processes was an outcome of work done by the City Council subcommittees to help educate the public and interested parties about the City's development review process given the number of large, complex development projects occurring in the City. Work on this effort would be timely as the preparation of multiple environmental impact reports (EIR) are underway. The first EIR could be released as early as this Fall. If the City Council wishes to prioritize this item, staff would recommend that funding be allocated to this effort, which would allow staff to collaborate with a consultant on how to best present these complex topics. The education series could be three parts, focused on 1) overview of development in the City, 2) the development review process and 3) California Environmental Quality Act (CEQA) and the various levels of environmental review.	Work Plan	n.a.	1	\$	\$	No
Institutional bias reform (Ref #16.)	The City Council received a report on institutional bias reform at their July 11 meeting. For 2020-21, staff recommends defining terms to establish a common language authorizing equity reviews of city departments, and training staff. A more detailed discussion is provided in Attachment B.	Work Plan	<i>Revise City policies and practices to promote inclusion and equity</i>				
Single-family residential design review. Suspended.	Due to competing priorities and staffing resources, work has yet to commence work on this item. The ability to initiate this project will be dependent upon the prioritization of this work in relation to other land use review and/or zoning changes.	Bike Rack	n.a.	TBD	\$\$\$	\$\$	No
Revise how land use is counted	<ul style="list-style-type: none"> o Eliminate development 'double-dipping.' Commercial land that is redeveloped for residential use should not be added back as available square footage under the development cap for future commercial use. o Count residential by square footage as well as units. o Count hotel square footage as well as units. Count hotel common space and parking garage. o Count square footage used for parking garages. 	New	2nd bullet under heading	TBD	\$	\$\$	No

<https://menlopark.org/DocumentCenter/View/25943/G1-20200811-CC-City-Council-priorities>

Consultant
 \$ - less than \$25,000
 \$\$ - up to \$100,000
 \$\$\$ - up to \$250,000
 \$\$\$\$ - over \$250,000

Project	Public Engagement Level					2020		2021				2022				2023	
	Inform	Consult	Involve	Collaborate	Empower	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
2022 Housing Element, zoning code update and related work (e.g., preparation of an Environmental Justice Element, Land Use Element amendments, rezonings, etc.) (Ref #2.)			X														
Accessory dwelling unit ordinance update (Ref #9.)	X (1st phase)	X (5th phase)					Phase 1				Phase 5						
ConnectMenlo community amenities list update (Ref #10.)	X																
ECR/Downtown specific plan area housing development incentives (Ref #11.)		X															
Development and environmental review process education series (Ref #12.)	X																
Institutional bias reform (Ref #16.)			X														
Single-family residential design review. Suspended.			X														
Revise how land use is counted	X																

<https://menlopark.org/DocumentCenter/V>

Consultant
 \$ - less than \$25,000
 \$\$ - up to \$100,000
 \$\$\$ - up to \$250,000
 \$\$\$\$ - over \$250,000



STAFF REPORT

City Council Meeting Date: 9/15/2020
Staff Report Number: 20-200-CC

City Council Initiated Items: Purchase, install, and maintain picnic tables on closed sections of Santa Cruz Avenue

Recommendation

City staff seek direction on a request from City Councilmember Nash to purchase, install, and maintain picnic tables in the downtown area. Per City Council Procedure #CC-20-013 – “City Councilmember requests” a majority of the City Council may direct the following:

- Direct the city manager to prioritize staff resources to prepare a formal staff report for further City Council consideration and/or action, or
- Direct the item to an advisory body for preparation of a formal staff report with no additional staff support required, or
- Direct the city manager to prepare a formal staff report for further City Council consideration as resources are available, or
- Defer action to the City Council’s annual goal setting process.

If the request does not receive sufficient City Council support, the item is not considered further.

Policy Issues

At their August 18 meeting, the City Council adopted City Council Procedure #CC-20-013 – “City Councilmember requests,” Attachment B, to assist in determining the City Council’s desire to move forward with work requested by one or two City Councilmembers.

Background

At their September 9 meeting, the City Council modified closure of Santa Cruz Avenue to assist local restaurants adhere to social distancing protocols limiting indoor dining and requiring greater distance between tables.

Analysis

City Councilmember Nash, in accordance with City Council Procedure #CC-20-013, sent an email to city.council@menlopark.org September 4, as provided in Attachment A. City staff received the request after publication of the agenda for the City Council’s September 9 meeting.

Impact on City Resources

Unknown. If directed by the City Council, staff will prepare an estimate of the initial and ongoing costs of

picnic tables. Additional effort may be in order to solicit feedback from businesses adjacent to the proposed installations.

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. Email from City Councilmember Nash
- B. City Council Procedure #CC-20-013 – “City Councilmember requests

Report prepared by:
Nick Pegueros, Assistant City Manager

Herren, Judi A

From: Nash, Betsy
Sent: Friday, September 4, 2020 10:27 AM
To: _CCIN
Subject: Picnic Tables downtown
Attachments: IMG_0591.PNG

Hi Starla,

After my swim at Burgess this morning, I noticed 9 picnic tables going unused under the oak trees in the pool area. It would be wonderful to move a few of them onto the closed block of Santa Cruz Avenue today for the upcoming Labor Day weekend.

Thanks,
Betsy



CITY COUNCILMEMBER REQUESTS

City Council Procedure #CC-20-013

Adopted August 25, 2020

**Purpose**

The purpose of this procedure is to provide transparency into requests by individual City Councilmembers that results in the use of staff time. The policy applies to all City Councilmembers equally and allows the full City Council to determine how to use limited City resources.

For this procedure, a "City Councilmember request" is defined as a request to use City resources in a manner that exceeds the City Council approved budget, priorities, or work plan. This includes requests directed to the city manager, city attorney, and all City staff members. This procedure also applies to City Council appointed commissions and committees.

Requests to add items to a future agenda**To make a request**

To request consideration of an item at future City Council meetings, City Councilmembers may send the request via email to the city manager, with a copy to the Mayor and Vice Mayor, or via email to city.council@menlopark.org. The request must be received no later than two (2) business days prior to publication of the meeting agenda. The request will automatically appear under "City Council initiated items" at the end of the City Council's regular agenda.

Initial City Council consideration of request

As an agenda item under "City Council initiated items" the City Council may discuss the item and ask staff questions regarding preliminary scope, analysis, and resource requirements. After discussion, with a motion and second, the City Council may take one of the following actions:

- Direct the city manager to prioritize staff resources to prepare a formal staff report for further City Council consideration and/or action, or
- Direct the item to an advisory body for preparation of a formal staff report with no additional staff support required, or
- Direct the city manager to prepare a formal staff report for further City Council consideration as resources are available, or
- Defer action to the City Council's annual goal setting process.

If the request does not receive sufficient City Council support, the item is not considered further.

City Council action

When the staff report is available, the report will be placed under "City Council initiated items" for City Council discussion and action at the next City Council meeting, regardless of agenda load management exercised by the Mayor, Vice Mayor, and city manager.

CITY COUNCILMEMBER REQUESTS

City Council Policy #CC-20-013

Adopted August 25, 2020

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Request to modify operations or for special projects

To make a request

To request consideration of a change in operations or for a special project, a City Councilmember may send the request via email to the city manager, with a copy to the Mayor and Vice Mayor, or via email to city.council@menlopark.org. The request must be received no later than two (2) business days prior to publication of the meeting agenda. The request will automatically appear under “City Council initiated items” at the end of the City Council’s regular agenda.

Initial City Council consideration of request

As an agendized item under “City Council initiated items” the City Council may discuss the item and ask the city manager the preliminary assessment of the scope, analysis, and resource requirements of the request. After discussion, with a motion and second, the City Council may take one of the following actions:

- Direct the city manager to prioritize staff resources to prepare a formal staff report for further City Council consideration and/or action, or
- Direct the city manager to prepare a formal staff report for further City Council consideration as resources are available, or
- Defer action to the City Council’s annual budget process.

If the request does not receive sufficient City Council support, the item is not considered further.

City Council action

When the staff report is available, the report will be placed under “City Council initiated items” for City Council discussion and action at the next City Council meeting, regardless of agenda load management exercised by the Mayor, Vice Mayor, and city manager.

Emergency and non-agendized items

Emergency and non-agendized items may be added to an agenda only in accordance with State law. Emergency items are only those matters affecting public health or safety such as work stoppages, disasters and other severe emergencies. Adding an emergency item requires a majority vote. Emergency items are very rare. An item that the City Council would like to act on after agenda posting is considered a non-agendized item.

Non-agendized items may be added to the agenda only if the City Council makes findings that (1) the need to consider the item arose after the posting of the agenda, and; (2) there is a need to take immediate action at this meeting of the City Council. These findings must be approved by a four-fifths vote; if less than five members of the City Council are present, the findings require a unanimous vote of those present.

Emergency and non-agendized items are not be used to bypass the City Councilmember request process above.

Procedure history

Action	Date	Notes
Draft procedure presented	July 28, 2020	City Council continued item to August 25, 2020
Procedure adoption	August 25, 2020	Draft procedure amended at City Council direction. Staff edit to clarify definition of a “non-agendized item”