



SPECIAL MEETING AGENDA

Date: 7/20/2021
Time: 5:00 p.m.
Location: [Zoom.us/join](https://zoom.us/join) – ID# 998 8073 4930

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.

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- How to participate in the closed session and regular meeting
 - Submit a written comment online up to 1-hour before the meeting start time:
menlopark.org/publiccommentJuly20 *
 - Access the meeting real-time online at:
[Zoom.us/join](https://zoom.us/join) – Meeting ID 998 8073 4930
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(669) 900-6833
Meeting ID 998 8073 4930
Press *9 to raise hand to speak

*Written public comments are accepted up to 1-hour before the meeting start time. Written messages are provided to the City Council at the appropriate time in their meeting.

- Watch meeting:
 - Cable television subscriber in Menlo Park, East Palo Alto, Atherton, and Palo Alto:
Channel 26
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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).

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Closed Session ([Zoom.us/join](https://zoom.us/join) – ID# 998 8073 4930)

A. Call To Order

B. Roll Call

C. Agenda Review

Agenda Review provides advance notice to members of the public and City staff of any modifications to the agenda order and any requests from City Councilmembers under City Councilmember reports.

D. Closed Session

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

D1. Claimant: Lexington Insurance Company/San Mateo County Schools Insurance Group

Agency Claimed Against: City of Menlo Park

E. Adjournment

Special Session ([Zoom.us/join](https://zoom.us/join) – ID# 998 8073 4930)

F. Call To Order

G. Roll Call

H. Presentations and Proclamations

H1. Proclamation: Menlo Park Historical Association 50th Anniversary ([Attachment](#))

I. Consent Calendar

I1. Accept the City Council meeting minutes for June 10, 15, 22, 28, and 29, 2021 ([Attachment](#))

I2. Adopt Resolution No. 6644 approving grant of easement to the United States of America for construction of a water control structure within Bedwell Bayfront Park for the South Bay Salt Pond Restoration project and authorize the city manager to execute the easement agreement ([Staff Report #21-138-CC](#))

I3. Adopt Resolution No. 6646 authorizing the city manager to execute an agreement with California department of education to reimburse the City for Belle Haven Child Development Center operational costs in fiscal year 2021-22 ([Staff Report #21-141-CC](#))

I4. Adopt Resolution No. 6647 modifying the City Council's regular meeting schedule to include August 17 and 31, 2021 ([Staff Report #21-142-CC](#))

J. Public Hearing

- J1. Hold a public hearing and consider any protests related to the collection of the stormwater regulatory fee on the tax roll; adopt Resolution No. 6645 authorizing the collection of the stormwater regulatory fee on the tax roll at the existing rates to implement the City's stormwater management program ([Staff Report #21-140-CC](#)) ([Presentation](#))

K. Informational Items

- K1. City Council agenda topics: August 2021 ([Staff Report #21-139-CC](#))
- K2. Recruitment status report as of July 14, 2021 ([Staff Report #21-143-CC](#))

[Web form public comment on item K2.](#)

L. Adjournment

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

At every special meeting of the City Council, members of the public have the right to directly address the City Council on any item listed on the agenda at a time designated by the chair, either before or during consideration of the item. For appeal hearings, appellant and applicant shall each have 10 minutes for presentations.

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

Any writing that is distributed to a majority of the City Council by any person in connection with an agenda item is a public record (subject to any exemption under the Public Records Act) and is available 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: 7/15/2021)

PROCLAMATION

Menlo Park Historical Association 50th Anniversary

WHEREAS, the Menlo Park Historical Association was established on March 25, 1971, and is thus celebrating its 50th Anniversary; and

WHEREAS, the Menlo Park Historical Association proposed and then collaborated with City officials in the design, development, and installation of a replica (and accompanying storyboard) of the Menlo Gates, dedicated on March 17, 2019; and

WHEREAS, the Menlo Park Historical Association proposed and then collaborated with City officials in the design, development, and installation at Fremont Park of two storyboards detailing the history of Camp Fremont and one storyboard at the Karl E. Clark Park in the Belle Haven neighborhood describing the life and contributions of WWII naval hero and community leader Karl E. Clark; and

WHEREAS, the Menlo Park Historical Association annually holds numerous member and community events about the history of Menlo Park, including physical and virtual walking tours showcasing locations of historical significance, an Annual Dinner, and Annual Meeting featuring city and community guest speakers; and

WHEREAS, the Menlo Park Historical Association has partnered with downtown businesses in showcasing Menlo Park history via “Menlo Memories” pop-up displays of historical images and artifacts; and

WHEREAS, the Menlo Park Historical Association continues to leverage web and social media technologies to provide the community with up-to-date and easy to navigate access to the rich history of Menlo Park and the Association’s archives; and

WHEREAS the Menlo Park Historical Association continues to meticulously archive records, documents, images, and artifacts historical significance and makes them available to residents, researchers, students, community organizations, students, and other interested parties; and

WHEREAS the Menlo Park Historical Association, since its inception, has worked tirelessly to preserve the history, culture, and traditions of our city for our residents, visitors, and future generations to enjoy and learn from.

NOW THEREFORE, BE IT RESOLVED that I, Drew Combs, Mayor of the City of Menlo Park, on behalf of the City Council and City, recognize and support the mission and contributions of the Menlo Park Hist

DocuSigned by: [Signature]

Drew Combs

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Drew Combs, Mayor

July 20, 2021



SPECIAL MEETING MINUTES – DRAFT

Date: 6/10/2021
Time: 1:00 p.m.
Location: Zoom

Closed Session (Zoom.us/join – ID# 922 8106 2905)

A. Call To Order

Mayor Combs called the meeting to order at 1:08 p.m.

B. Roll Call

Present: Combs, Mueller, Nash, Taylor, Wolosin
Absent: None
Staff: City Manager Starla Jerome-Robinson, City Attorney Nira F. Doherty

C. Closed Session

C1. Government Code Section 54957(b)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: City Manager

No reportable actions.

D. Adjournment

Mayor Combs adjourned the meeting at 2:10 p.m.

Judi A. Herren, City Clerk



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SPECIAL MEETING MINUTES – DRAFT

Date: 6/15/2021
Time: 5:00 p.m.
Location: Zoom

Closed Session (Zoom.us/join – ID# 943 8480 2751)

A. Call To Order

Mayor Combs called the meeting to order at 5:04 p.m.

B. Roll Call

Present: Combs, Mueller (arrived at 5:11 p.m.), Nash, Taylor, Wolosin
Absent: None
Staff: City Manager Starla Jerome-Robinson, City Attorney Nira F. Doherty, Assistant Administrative Services Director Dan Jacobson, Acting Human Resources Manager Kristen Strubbe, Legal Counsel Charles Sakai

C. Closed Session

- C1. Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding labor negotiations with the American Federation of State, County, and Municipal Employees Local 829 (AFSCME) and Confidential employees; Service Employees International Union Local 521 (SEIU); Menlo Park Police Sergeants Association (PSA); Menlo Park Police Officers' Association (POA); and unrepresented management

Attendees: City Manager Starla Jerome-Robinson, Assistant City Manager Nick Pegueros, City Attorney Nira F. Doherty, Legal Counsel Charles Sakai, Acting Human Resources Manager Kristen Strubbe

No reportable actions.

D. Adjournment

Mayor Combs adjourned the meeting at 5:37 p.m.

Judi A. Herren, City Clerk

NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

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REGULAR MEETING MINUTES – DRAFT

Date: 6/22/2021
Time: 5:00 p.m.
Location: Zoom

Closed Session (Zoom.us/join – ID# 998 8073 4930)

A. Call To Order

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

B. Roll Call

Present: Combs, Mueller, Nash, Wolosin
Absent: Taylor
Staff: City Manager Starla Jerome-Robinson, City Attorney Nira F. Doherty, Public Works Director Nikki Nagaya, Assistant Public Works Director Chris Lamm

C. Agenda Review

The City Council pulled items K1., K3., K5., K6., and K7. for discussion.

City Councilmember Wolosin requested the addition of two agenda items:

- Extending the City’s eviction moratorium
- Policy for advisory body meeting recordings

D. Closed Session

D1. CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION (Paragraph (1) of subdivision (d) of Section 54956.9) Case number: 21-CIV-01717

E. Adjournment

Mayor Combs adjourned to the regular meeting at 5:42 p.m.

Regular Session (Zoom.us/join – ID# 998 8073 4930)

F. Call To Order

Mayor Combs called the meeting to order at 5:44 p.m.

G. Roll Call

Present: Combs, Mueller, Nash, Wolosin
Absent: Taylor
Staff: City Manager Starla Jerome-Robinson, City Attorney Nira F. Doherty, City Clerk Judi A. Herren

H. Report from Closed Session

No reportable actions.

I. Presentations and Proclamations

I1. Proclamation: Recognizing June 2021 as Pride Month (Attachment)

Mayor Combs read the proclamation (Attachment).

Tanya Beat Director of the LGBTQ Commission, Commission on the Status of Women, County of San Mateo accepted the proclamation.

I2. Proclamation: Recognizing Juneteenth Day (Attachment)

Mayor Combs read the proclamation (Attachment).

- Pamela Jones spoke in support of the proclamation.
- Julie Shanson spoke in support of displaying the flag for 150 days.

I3. Proclamation: Recognizing Menlo Park Fire Protection District Chief Harold Schapelhouman

Mayor Combs read the proclamation (Attachment).

- Pamela Jones spoke in support of the proclamation.

I4. Presentation: Overview of SRI International's campus master plan (Parkline) (Presentation)

Assistant Community Development Director Deanna Chow introduced the item.

SRI International (SRI) representatives John McIntire, Lane Partners representative Mark Murray, and Studios Enterprises representative Thomas Yee made the presentation (Attachment).

- Karen Grove spoke in support of fair housing.
- Julie Shanson spoke in support of affordable housing near services.
- Pamela Jones spoke in support of equity and housing near services.
- Adina Levin spoke in support of housing near services and for varying income levels.
- Phillip Barre spoke in support of increased community engagement.
- Rachel Horst spoke in support of the project and increased community engagement.
- Peter C. spoke in support of the project and requested clarification on global impacts.

The City Council received clarification on access points, application process and timeline, public engagement, changes to existing structures, and the Stanford relationship with SRI related to property tax impacts.

The City Council discussed impacts to the housing element.

J. Public Comment

- Philip Barre spoke in support of the cutout in front of the Pine Street apartments and the need for increased traffic mitigations.
- Adina Levin spoke in support of an extended City eviction moratorium.
- Karen Grove spoke in support of an extended City eviction moratorium.

K. Consent Calendar

The City Council pulled items K1., K3., K5., K6., and K7. for discussion.

- K1. Accept the City Council meeting minutes for May 11, 18, 25, June 2 and 8, 2021 (Attachment)

The City Council directed staff to update the May 25, 2021 minutes, item N2., to include “requested” in the following sentence “The City Council requested information on MPPD presence in East Palo Alto and received clarification on the two proposed resolutions”.

- K2. Adopt Resolution No. 6640 of intention to abandon public utility easements within the properties at 115 Independence Drive, 104 Constitution Drive, and 110 Constitution Drive (Menlo Portal) associated with the proposed redevelopment of the project site (Staff Report #21-129-CC)
- K3. Waive the second reading and adopt zoning Ordinance No. 1077 amendment associated with community amenities and bonus level development in the Office, Life Sciences and Residential Mixed Use zoning districts to establish an in-lieu fee payment for the provision of community amenities and authorize applicants to propose community amenities not on the community amenities list through negotiation of a development agreement (Staff Report #21-130-CC)

Mayor Combs was recused due to Facebook being his employer and exited the meeting.

ACTION: Motion and second (Wolosin/ Nash) to waive the second reading and adopt zoning Ordinance No. 1077 amendment associated with community amenities and bonus level development in the Office, Life Sciences and Residential Mixed Use zoning districts to establish an in-lieu fee payment for the provision of community amenities and authorize applicants to propose community amenities not on the community amenities list through negotiation of a development agreement, passed 3-1-1 (Combs recused and Taylor absent)

Mayor Combs rejoined the meeting.

- K4. Adopt Resolution No. 6641 authorizing the city manager to rescind the portions of Emergency Order No. 2 related to the Main Library, Belle Haven Branch Library, Arrillaga Family Recreation Center, and Police Department Lobby (Staff Report #21-131-CC)

- K5. Waive second reading and adopt fireworks Ordinance No. 1076 (Staff Report #21-132-CC)

The City Council received clarification on recent police department calls and reports related to fireworks.

- K6. Award a construction contract to Interstate Grading and Paving, Inc. and appropriate additional project funding for the 2021 Willow Road resurfacing project (Staff Report #21-133-CC)

K7. Adopt Resolution No. 6642 approving the application for fiscal year 2021-22 Cannabis Tax Fund Grant Program grant funds in the amount of \$376,662.02 (Staff Report #21-134-CC)

- N. Maraayah Roberts spoke in opposition of police department funding and in support of funding communities in need.
- Jason Ollarvia spoke in support on using the grant funds for serving and protecting the community through law enforcement reform.
- Philip Barre spoke in support of the grant funding outside of just traffic.
- Karen Grove spoke on concerns of racial profiling, utilizing funds for reimagining public safety, and in support of accepting the grant funds.

The City Council discussed community engagement related to police department funding, traffic unit(s), and 2020-21 budget cuts to the police department.

The City Council received clarification on what this grant funds, relationship to cannabis funding and traffic enforcement, racial profiling and targeting, using funds on education to public, impacts to the budget when receiving or denying the grant, and how funding is allocated to increase education funding.

The City Council provided direction to staff to increase funding for education and prevention and less on enforcement.

ACTION: Motion and second (Wolosin/ Mueller) to adopt Resolution No. 6642 approving the application for fiscal year 2021-22 Cannabis Tax Fund Grant Program grant funds in the amount of \$376,662.02 prioritizing education and prevention, 4-1 (Taylor absent).

ACTION: Motion and second (Nash/ Combs) to approve the consent calendar except item K3. and K7. and with edits to K1., passed 4-1 (Taylor absent).

L. Public Hearing

L1. Adopt Resolution No. 6639 overruling protests, ordering the improvements, confirming the diagram and ordering the levy and collection of assessments for Landscaping Assessment District for fiscal year 2021-22 (Staff Report #21-127-CC) (Presentation)

Assistant Civil Engineer Esther Jung made the presentation (Attachment).

- Pamela Jones requested clarification on the determination of tree costs in areas with less landscape and requested clarification on how tax is levied.
- N. Maraayah Roberts spoke on concerns for budgeting for this project and in support of increased budget for equity and battling racism.

The City Council received clarification on how the tax is levied, the original property tax measure, costs to residents to maintain trees, fees, and how residents can review and argue their street tree assessment.

The City Council discussed increasing the number of trees in the Belle Haven neighborhood and the benefits of increased tree canopy.

ACTION: Motion and second (Mueller/ Nash) to adopt Resolution No. 6639 overruling protests, ordering the improvements, confirming the diagram and ordering the levy and collection of assessments for Landscaping Assessment District for fiscal year 2021-22, passed 4-1 (Taylor absent).

The City Council took a brief recess at 8:27 p.m.

The City Council reconvened at 8:55 p.m.

M. Regular Business

M1. Approve resolutions: adopting the fiscal year 2021–22 budget and capital improvement plan and appropriating funds; establishing the appropriations limit for fiscal year 2021–22; establishing a consecutive temporary tax percentage reduction in the utility users' tax rates through September 30, 2022; establishing the salary schedule effective June 20, 2021; and establishing citywide salary schedule effective July 4, 2021 (Staff Report #21-125-CC) (Presentation)

Web form public comment on item M1.

Assistant Administrative Services Director Dan Jacobson made the presentation (Attachment).

- Michal Botrnik spoke in support of budgeting for rental assistance and extension of the City eviction moratorium.
- N. Maraayah Roberts spoke on concerns related to City Council responses to public comment.
- Adina Levin spoke in support of the capital improvement project (CIP) budget.
- Rachel Horst spoke in support for an extension of the City eviction moratorium.
- Jason Ollarvia spoke in support of focusing on the needs of the community and increased action on the housing element.
- Karen Grove spoke in support on funding housing and an extension of the City eviction moratorium.
- Josie Gaillard spoke in support of increased funding for climate action.
- Pamela Jones spoke in support of bringing the bottom tier of wages to living wages.
- Diane Honda spoke in support of accelerating the reopening of gymnastics.

The City Council received clarification on additional full-time equivalents (FTEs) for sustainability (totaling two), dollar amount associated with City Council direction on June 8, 2021, and revisiting the utility user tax (UUT).

The City Council discussed including 100 percent of educational revenue augmentation fund (ERAF) in the 2021-22 budget, decreasing public work FTEs from five to four, transportation capacity dedicated to CIP, the impact of additional payments to CalPERS, gymnastic facility reactivation, holiday lights, retaining the safe routes to school program, impacts to staff and hiring, and the Downtown street closure.

The City Council continued this item to a special meeting on June 28, 2021.

M2. Adopt Resolution No. 6638 authorizing extension of the solid waste and water rate assistance program to June 30, 2022, to provide financial relief on residents' solid waste and water bills (Staff Report #21-135-CC)

Management Analyst I Joanna Chen introduced the item.

- N. Maraayah Roberts spoke on concerns related to City Council responses and the need for Menlo Park to help oppressed residents.
- Jason Ollarvia spoke in support of refocusing on City business that is under discussion and the needs of constituents.

The City Council directed staff to return item if it runs over 20 percent of budget.

ACTION: Motion and second (Wolosin/ Combs) to adopt Resolution No. 6638 authorizing extension of the solid waste and water rate assistance program to June 30, 2022, to provide financial relief on residents' solid waste and water bills, passed 4-1 (Taylor absent).

- M3. Adopt Resolution No. 6643 accepting fiscal year 2021-22 State Supplemental Local Law Enforcement Grant (COPS Frontline) in the amount of \$100,000; and approve a spending plan (Staff Report #21-136-CC)

The City Council continued this item to a special meeting on June 28, 2021.

N. Informational Items

- N1. City Council agenda topics: July – August 2021 (Staff Report #21-126-CC)

- N. Maraayah Roberts spoke on concerns of representatives of the residents of the City and the demeanor of the City Council.

O. City Manager's Report

City Manager Starla Jerome-Robinson reported out on the special June 28 and 29, 2021 meetings, and July 13, 2021 meeting rescheduled to July 20, 2021. City Manager Starla Jerome-Robinson also reported out on the upcoming housing element webinar on July 1, 2021 at 6 p.m.

P. City Councilmember Reports

- P1. Appoint a representative to the Bay Area Water Supply & Conservation Agency and the Bay Area Regional Water System Financing Authority (Staff Report #21-128-CC)

City Clerk Judi Herren introduced the item.

City Councilmember Mueller described the duties.

The City Council continued this item to a special meeting on June 28, 2021.

City Councilmember Wolosin requested the addition of a video policy for advisory body meetings. The City Council discussed impacts when in-person meetings restart. The City Council requested this be brought back as an information item for further discussion.

City Councilmember Wolosin requested the addition of an item for an extension on the eviction moratorium. The City Council received clarification on the eviction process and ordinance adoption

timeline.

Q. Adjournment

Mayor Combs adjourned the meeting at 11:14 p.m.

Judi A. Herren, City Clerk

NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

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Date: 6/28/2021
Time: 5:00 p.m.
Location: Zoom

Special Session (Zoom.us/join – ID# 957 0559 2015)

A. Call To Order

Mayor Combs called the meeting to order at 5:04 p.m.

B. Roll Call

Present: Combs, Mueller, Nash, Taylor, Wolosin
Absent: None
Staff: City Manager Starla Jerome-Robinson, Assistant City Attorney Tamar Burke, City Clerk Judi A. Herren

C. Regular Business

- C1. Approve resolutions: adopting the fiscal year 2021–22 budget and capital improvement plan and appropriating funds; establishing the appropriations limit for fiscal year 2021–22; establishing a consecutive temporary tax percentage reduction in the utility users’ tax rates through September 30, 2022; establishing the salary schedule effective June 20, 2021; and establishing citywide salary schedule effective July 4, 2021 (Staff Report #21-125-CC) (Presentation) – **continued from June 22, 2021**

Assistant Administrative Services Director Dan Jacobson introduced the item.

- Victoria Robledo requested a break down on the holiday light costs and commented on a lack of transparency on the Community Engagement and Outreach Committee.
- N. Ollarvia requested information on equitable budget line items and applying that to the holiday lighting budget.
- Jason Ollarvia spoke in opposition of the holiday lightening budget and requested detail on the cost.

The City Council received clarification on Downtown maintenance staff and salaries, budgeting for lower than anticipated investment returns by CalPERS and use of strategic pension reserve fund, rehiring verse new hire onboarding process and priority on rehiring, and capital improvement projects (CIP).

The City Council discussed excess educational revenue augmentation fund (ERAF) as fully funded assumption, permanent street closures on Santa Cruz Avenue, earmarking excess ERAF funds for education and safety, holiday lights allocation and referring celebration lighting to the Parks and Recreation Commission, emergency preparedness, transportation staff and transportation master plan (TMP), review the financial management organizational resiliency headcount, sustainability staff request, user utility tax (UUT), safe routes to school, the classification of recreation coordinator, budgets for environmental impact report (EIR) to make some part of Downtown street closure permanent, gymnastics, and pay and equity.

The City Council took a recess at 8:20 p.m.

The City Council reconvened at 8:45 p.m.

ACTION: Motion and second (Wolosin/ Combs) to approve resolutions as amended: adopting the fiscal year 2021–22 budget including amendments and addendums updates made by the City Council (attachment) and capital improvement plan and appropriating funds; establishing the appropriations limit for fiscal year 2021–22; establishing a consecutive temporary tax percentage reduction in the utility users' tax rates through September 30, 2022; establishing the salary schedule effective June 20, 2021; and establishing citywide salary schedule effective July 4, 2021, passed 4-1 (Taylor dissenting).

C2. Adopt Resolution No. 6643 accepting fiscal year 2021-22 State Supplemental Local Law Enforcement Grant (COPS Frontline) in the amount of \$100,000; and approve a spending plan (Staff Report #21-136-CC) – **continued from June 22, 2021**

Police Chief Dave Norris made the presentation (Attachment).

- Jason Ollarvia requested statistics on Taser deployment and in support of reallocating these funds to police reform.
- N. Ollarvia spoke in support of the budget addressing equity and requested clarification on the need for funding Tasers.

The City Council received clarification on Taser deployment statistics and defibrillators equipped in police vehicles.

The City Council discussed public outreach and how to reimagine policing and a subcommittee to work with police chief on police reform.

ACTION: Motion and second (Combs/ Taylor) to adopt Resolution No. 6643 accepting fiscal year 2021-22 State Supplemental Local Law Enforcement Grant (COPS Frontline) in the amount of \$100,000; approve a spending plan, staff to provide monthly Taser and license plate reader reports to the City Council, and to equip defibrillators in all marked police vehicles, passed 4-1 (Nash dissenting).

D. City Councilmember Reports

D1. Appoint a representative to the Bay Area Water Supply & Conservation Agency and the Bay Area Regional Water System Financing Authority (Staff Report #21-128-CC) – **continued from June 22, 2021**

ACTION: Motion and second (Taylor/ Wolosin) to appoint Mayor Combs to the Bay Area Water Supply & Conservation Agency and the Bay Area Regional Water System Financing Authority with a term that ending June 30, 2025, passed unanimously.

City Councilmember Taylor reported out on One Shoreline Climate resiliency district, Menlo Park Community Center subcommittee and Community Amenities subcommittee meetings. City Councilmember Taylor also requested the addition of an agenda item to relocate senior center interim services to the Boys and Girls Club on Pierce Road. The Mayor provided direction for staff to work with the Council subcommittee to further explore.

City Councilmember Mueller announced an event with the Governor.

City Councilmember Wolosin reported on the Assembly and State Senate extending the statewide eviction moratorium.

Vice Mayor Nash reported on the redistricting meeting tomorrow, June 29, 2021.

City Manager Starla Jerome-Robinson reported on the housing workshop on Thursday, July 1, 2021.

E. Adjournment

Mayor Combs adjourned the meeting at 11:01 p.m.

Judi A. Herren, City Clerk

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 closed session and regular meeting
 - Submit a written comment online up to 1-hour before the meeting start time:
menlopark.org/publiccommentJune28 *
 - Access the meeting real-time online at:
[Zoom.us/join](https://zoom.us/join) – Meeting ID 957 0559 2015
 - Access the meeting real-time via telephone at:
(669) 900-6833
Meeting ID 957 0559 2015
Press *9 to raise hand to speak
Written public comments are accepted up to 1-hour before the meeting start time. Written messages are provided to the City Council at the appropriate time in their meeting.
- Watch 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 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 MINUTES – DRAFT

Date: 6/29/2021
Time: 5:00 p.m.
Location: Zoom

Special Session (Zoom.us/join – ID# 932 2768 7788)

A. Call To Order

Mayor Combs called the meeting to order at 5:09 p.m.

B. Roll Call

Present: Combs, Mueller (arrived at 6:34 p.m.), Nash, Taylor, Wolosin
Absent: None
Staff: City Manager Starla Jerome-Robinson, City Attorney Nira F. Doherty, City Clerk Judi A. Herren

C. Study Session

- C1. Consider establishing a hybrid independent redistricting commission for the upcoming redistricting process following the release of the 2020 Census results (Staff Report #21-137-CC) (Presentation)

City Clerk Judi Herren introduced the item.

GEOinovo Solutions Inc. Program Manager Luciane Musa, Project Manager Alex Sainz, and Demographer Jesus Garcia made the presentation (Attachment).

- Helen Greico, Common Cause representative, spoke in support of an independent redistricting commission.
- Pamela Jones spoke in support of an independent redistricting commission.

The City Council discussed hybrid and independent commissions.

The City Council received clarification on differences of independent and hybrid commission and the processes and outreach, 2017 districting advisory commission process and public engagement, city attorney engagement with the various commissions, appointment process, and City Council powers and responsibilities in independent and hybrid.

The City Council directed staff to return with a recommendation for an independent redistricting commission.

D. Adjournment

Mayor Combs adjourned the meeting at 7:06 p.m.

Judi A. Herren, City Clerk

NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

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- How to participate in the closed session and regular meeting
 - Submit a written comment online up to 1-hour before the meeting start time:
menlopark.org/publiccommentJune29 *
 - Access the meeting real-time online at:
[Zoom.us/join](https://zoom.us/join) – Meeting ID 932 2768 7788
 - Access the meeting real-time via telephone at:
(669) 900-6833
Meeting ID 932 2768 7788
Press *9 to raise hand to speak
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STAFF REPORT

City Council

Meeting Date:

7/20/2021

Staff Report Number:

21-138-CC

Consent Calendar:

Adopt Resolution No. 6644 approving grant of easement to the United States of America for construction of a water control structure within Bedwell Bayfront Park for the South Bay Salt Pond Restoration project and authorize the city manager to execute the easement agreement

Recommendation

Staff recommends that the City Council adopt Resolution No. 6644 (Attachment A) approving grant of easement to the United States of America for construction of a water control structure within Bedwell Bayfront Park for the South Bay Salt Pond Restoration project and authorize the city manager to execute the easement agreement.

Policy Issues

Improvements within city property, which are constructed, operated, maintained, repaired and owned by entities other than the City, require the conveyance of property rights. As such, the City Council must authorize a grant of easement to allow the proposed improvements to proceed.

Background

The South Bay Salt Pond Restoration project consists of the restoration and enhancement of 15,100 acres of former salt evaporation ponds to wetland habitat, making it the largest tidal restoration project on the West Coast. The project focuses on the restoration of three (3) salt pond complexes, which include Eden Landing in the East Bay, the Alviso pond complex extending from the city of Mountain View to the city of Fremont, and the Ravenswood pond complex located in the city of Menlo Park. Acquired in 2003, approximately 5,500 acres of salt ponds in the Eden Landing complex are owned and operated by the California Department of Fish and Game, while approximately 9,600 acres of the salt ponds in the Alviso and Ravenswood complexes are owned and operated by the U.S. Fish and Wildlife Service. The Alviso and Ravenswood pond complexes are part of the Don Edwards San Francisco Bay National Wildlife Refuge.

In 2007, California Department of Fish and Game, U.S. Fish and Wildlife Service, and California State Coastal Conservancy adopted a 50-year, multiphased approach to the restoration plan. The overall goal of the restoration effort includes the conversion of up to 90 percent of the salt ponds to tidal marsh, while retaining 10 percent as managed ponds. Construction on Phase 1 of the restoration project began in 2008 and was completed in 2016. In the Ravenswood pond complex, the Phase 1 effort included the enhancement of 240 acres of salt ponds in Pond SF2 and the installation of interpretive displays and 0.7 miles of trails near the Dumbarton Bridge.

Planning for Phase 2 of the restoration project began in 2010. For the Ravenswood pond complex, the Phase 2 scope of work involved a number of ponds (R3, R4, R5 and S5) that are located south and east of

Bedwell Bayfront Park. The ponds are surrounded by levees and are bordered by State Route 84 to the south, Ravenswood Slough to the east, and Greco Island and the San Francisco Bay to the north. The preferred alternative (shown in Attachment B) consist of the following elements:

- Breaching the outer levee to open Pond R4 to tidal flows
- Lowering a section of the outer levee along Pond R4 to allow spillover during high tides
- Partially removing the levee between Ponds R5 and S5
- Raising of the levees between Ponds R3 and R4 and along the eastern side of Ponds R5 and S5
- Enhancing Ponds R5 and S5 to form shallow managed pond areas
- Installing water control structures between Ponds R3 and S5, R4 and R5, R3 and Ravenswood Slough, and S5 and Flood Slough
- Creating habitat transition zones in Pond R4
- Establishing a new public access trail from the existing Bay Trail (from State Route 84 near Chilco Street) to Bedwell Bayfront Park
- Constructing a viewing area with benches and interpretive panels along new public access trail

The U.S. Fish and Wildlife Service began work on the levee improvements in 2018 and has continued to pursue completion of that element of work as material availability and weather allows. In 2021, a total of four water control structures are planned for construction within the ponds along with levee work for Ponds R5 and S5. Construction in 2022 will complete earthwork for levee improvements and habitat transition zones in and around Pond R4, excavate drainage channels, breach Pond R4, and complete the public access trail and viewing area. Construction on the project is anticipated to be complete by the end of calendar year 2022.

Analysis

As shown in Attachment B, the proposed Phase 2 action for the Ravenswood complex identifies the construction of a water control structure to hydraulically connect Pond S5 with Flood Slough for the purpose of aquatic habitat management. This hydraulic connection will allow the U.S. Fish and Wildlife Service to manage water levels within Ponds R5 and S5 for the benefit of multiple aquatic species. The water control structure is proposed to be built across a portion of the Bedwell Bayfront Park entrance road and therefore requires an easement from the City.

The United States of America is requesting that the City provide the necessary easement, in order to allow the U.S. Fish and Wildlife Service to proceed with construction of the water control structure. The negotiated easement agreement is provided as Attachment C. It should be noted that while the water control structure will be operated and maintained by the U.S. Fish and Wildlife Service, the land rights conveyed by the easement will be vested with the United States of America.

The water control structure design consists of two 48-inch diameter pipes with combination slide/flap gates, rock rip rap outfalls, and maintenance access bridges on each end. Attachment D provides relevant plan sheets for the water control structure that show the proposed design, which has been developed by Ducks Unlimited under agreement with U.S. Fish and Wildlife Service. The attachment also includes City staff markups indicating the relative location of the water control structure within Bedwell Bayfront Park and the proposed easement area.

Coordination

The South Bay Salt Pond Restoration project improvements, including the proposed water control structure, have been coordinated with the Bayfront Canal and Atherton Channel Flood Protection and Ecosystem

Restoration project and the City's upcoming Bedwell Bayfront Park Entrance Improvements project. Additionally, the project has been coordinated with the potential Menlo Park SAFER Bay project, should funding be awarded via the City's pending Federal Emergency Management Agency Building Resilient Infrastructure and Communities (BRIC) grant application.

Nothing in the proposed easement agreement precludes any of these projects from proceeding or makes them more difficult to implement in the future. It would provide more flood protection to the area in the short term, as described further below.

Construction

Construction of the water control structure under the Bedwell Bayfront Park entrance road is anticipated to begin in the late summer or early fall of 2021 and be completed within four months. Under agreement with U.S. Fish and Wildlife Service, Ducks Unlimited will be responsible for procuring the project construction contractor and will provide construction management services. To minimize impacts to park users, representatives for the restoration project are coordinating with the City on the sequencing for construction of the water control structure in consideration of the ongoing Bayfront Canal and Atherton Channel Flood Protection project, which is currently under construction at the entrance to Bedwell Bayfront Park by the San Mateo County Flood and Sea Level Rise Resiliency District. The restoration project is also coordinating directly with the San Mateo County Flood and Sea Level Rise Resiliency District to minimize conflicts between the concurrent construction projects.

Bayfront Canal and Atherton Channel Flood Protection and Ecosystem Restoration project

The proposed water control structure is an integral component to the success of the Bayfront Canal and Atherton Channel Flood Protection and Ecosystem Restoration project, which is designed to temporarily divert stormwater from Bayfront Canal to Ponds R5 and S5 during storm events that are concurrent with high tides in Flood Slough. The proposed water control structure will allow operators to drain Ponds R5 and S5 in advance of forecasted storm events, thus increasing the capacity of the Ponds to retain diverted stormwater that would otherwise start to flood low-lying areas of Menlo Park along Haven Avenue and Redwood City along East Bayshore Road.

Encroachment agreement

Concurrent with the execution of the easement agreement for the water control structure, the City will be executing an encroachment agreement with the U.S. Fish and Wildlife Service for the placement of earthen fill material and landscaping for habitat improvements around the southern and eastern edges of Bedwell Bayfront Park, where it adjoins the restoration area. The encroachment agreement also allows for the placement of fill material, surfacing and signage associated with the new public access trail that will connect to the southeastern corner of Bedwell Bayfront Park. The encroachment agreement does not require City Council action and is provided as Attachment E for reference.

Impact on City Resources

Funding for staff time to develop and review the easement and encroachment agreements, as well as coordinate between adjacent construction projects, is available within the approved capital improvement program budgets for the Bayfront Canal and Atherton Channel Flood Protection and Ecosystem Restoration and SAFER Bay projects.

Environmental Review

The Phase 2 Draft Environmental Impact Statement / Environmental Impact Report (EIS/EIR) was issued in July 2015 and included evaluation of the proposed water control structure. The City provided comments on

the Phase 2 Draft EIS/EIR in October 2015. The Phase 2 Final EIS / EIR was issued in April 2016. The California State Coastal Conservancy, lead agency for CEQA, certified the Final EIS/EIR May 26, 2016. A federal Record of Decision approving the Final EIS/EIR was issued September 27, 2018. The restoration project has received permitting authorizations from the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Regional Water Quality Control Board, San Francisco Bay Conservation and Development Commission, and U.S. Army Corp of Engineers.

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. 6644
- B. Exhibit – South Bay Salt Pond Restoration, Ravenswood Phase 2
- C. Easement agreement with USA
- D. Exhibit – Plan sheets for proposed water control structure
- E. Encroachment agreement with U.S. Fish and Wildlife Service

Report prepared by:

Eric Hinkley, Associate Engineer

Report reviewed by:

Chris Lamm, Assistant Public Works Director

RESOLUTION NO. 6644

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
APPROVING GRANT OF EASEMENT TO THE UNITED STATES OF AMERICA
FOR CONSTRUCTION OF A WATER CONTROL STRUCTURE FOR THE
SOUTH BAY SALT POND RESTORATION PROJECT**

WHEREAS, in 2003, the U.S. Fish and Wildlife Service and California Department of Fish and Game acquired approximately 15,100 acres of former salt evaporation ponds in the southern portion of the San Francisco Bay, including an area known as the Ravenswood pond complex in Menlo Park, and

WHEREAS, in 2008, work began on the South Bay Salt Pond Restoration Project, a multi-phased effort to restore the salt ponds to tidal marsh and managed pond habitat, and

WHEREAS, Phase 1 restoration in the Ravenswood pond complex included enhancement of 240 acres in Pond SF2 and the installation of interpretive displays and 0.7 miles of public access trails, and

WHEREAS, Phase 2 restoration in the Ravenswood pond complex includes improvements to Ponds R3, R4, R5 and S5, to create tidal marsh habitat, managed pond habitat, preserve western snowy plover nesting areas, and provide public access trail with viewing area and interpretive display, and

WHEREAS, being necessary for the successful implementation of Phase 2 within the Ravenswood complex, United States of America requests an easement from the City to allow the U.S. Fish and Wildlife Service to construct and operate a water control structure between Pond S5 and Flood Slough, and

WHEREAS, the proposed water control structure is also an integral component to the success of the Bayfront Canal and Atherton Channel Flood Protection and Ecosystem Restoration project, which will divert excess stormwater flows during high tide in Flood Slough and reduce frequent flooding within areas of Menlo Park and Redwood City, and

NOW, THEREFORE, BE IT RESOLVED, by the Menlo Park City Council that:

In consideration of the public access, habitat restoration, and surface water management benefits of the South Bay Salt Pond Restoration project, Menlo Park does hereby grant an easement to the United States of America for the construction, operation, maintenance and repair of a water control structure within Bedwell Bayfront Park, and

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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 twentieth day of July, 2021, by the following votes:

AYES:

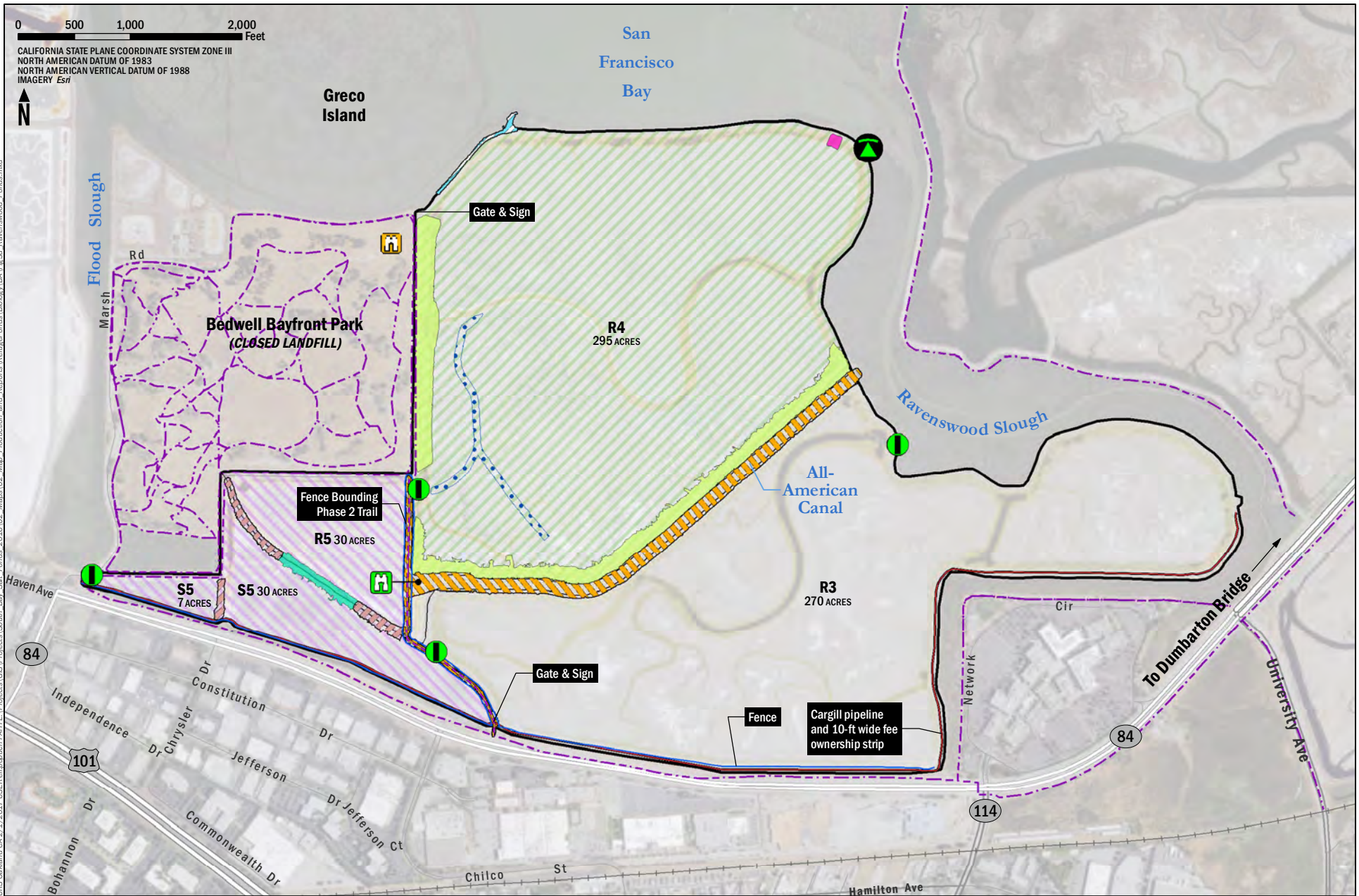
NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this twentieth day of July, 2021.

Judi A. Herren, City Clerk



LEGEND

*Pending property rights/easements

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Menlo Park
Attn: City Clerk
701 Laurel St.
Menlo Park, CA 94025

The undersigned declares this instrument to be exempt from Recording Fees (Govt. Code § 27383) and Documentary Transfer Tax (Rev. & Tax. Code §11922).

(Space above this line reserved for Recorder's use only)

EASEMENT AGREEMENT

This Easement Agreement ("Easement") is made as of the ____ day of _____ 2021 ("Effective Date") by and between the City of Menlo Park, a municipal corporation (hereinafter "City" or "Grantor") and the United States of America and its assigns ("USA" or "Grantee").

GRANT OF EASEMENT

In consideration of the public access, habitat restoration, and surface water management benefits of the South Bay Salt Pond Restoration project, and without monetary consideration, receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants to the Grantee a nonexclusive easement ("Easement"), including ingress and egress, over and across a portion of the property described in Exhibit A (the "Property") which easement is more particularly described and shown in Exhibit B ("Easement Area"), attached hereto and incorporated herein by this reference. Such easement shall be for the construction, operation and maintenance and repair of a water control structure for aquatic habitat management within the former salt-production ponds commonly referred to as Ponds R5, S5 and forebay to S5 ("Improvements"). The Easement shall be held subject to the terms and conditions set forth herein.

TERM

The Easement is granted in perpetuity.

REPAIR AND MAINTENANCE

Grantee will provide services through itself or its Partners (defined below) for maintaining and repairing the Easement Area and all improvements constructed in the Easement Area, in good condition and repair in accordance with its legal obligations as a federal agency, including, without limitation, the water control structure (WCS-1), which consists of two 48-inch diameter HDPE pipe culverts, combination slide/flap gates at each end, and rock aprons (small areas of rip-rap) for erosion control at the outflow of each end. Grantee will provide services through itself or its Partners (defined below) for building and maintaining, in accordance with its legal obligations as a federal agency, the short gravel paths and small pedestrian access bridges of precast concrete that lead from the paved entry road into Bedwell Bayfront Park to the ends above each pipe culvert.

Damages to the Property:

If any portion of the Property is damaged by the Grantee, its officers', agents', employees' and/ or contractors' actions in gaining access to the Easement, constructing Improvements, or for purposes of repair, maintenance, connection, or for any other purpose, then the Grantee shall provide services for the reasonable repair of such damage including replacement or repair any portion of the Property, damaged by the Grantee, as reasonably as possible, to the conditions that existed prior to the damage occurring, reasonable wear and tear excepted. If the Grantee undertakes any repair on any portion of the Property, the Grantee's work shall conform to applicable standards of the construction industry.

NONEXCLUSIVE EASEMENT

The Easement is nonexclusive. Grantor retains the right to make any use of the Easement Area, including the right to grant concurrent easements on, over, or under the Easement Area to third parties, provided such use or uses do not unreasonably interfere with Grantee's use and enjoyment of the Easement. The Easement granted herein shall have priority over any subsequently granted easement to a third party.

Grantor reserves to itself the continued use of the Easement Area consistent with the terms of the preceding paragraph. Grantor agrees for itself, its successors and assigns, not to erect, place or maintain, nor to permit the erection, placement, or maintenance of, any buildings, structures, or similar improvements on the Easement Area that would interfere with Grantee's and the public's ability to use the Easement as set forth herein.

ENCROACHMENTS

The Easement is subject to all existing encroachments of utilities and improvements on, over, and under the Easement Area, and to all future encroachments of utilities and improvements constructed or installed on or around the Easement Area, provided such future encroachments do not unreasonably interfere with Grantee's use and enjoyment of the easement.

NOTICE

Any notices served hereunder or by law shall be deemed to be served by personally delivering or mailing the notice, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows:

City: City of Menlo Park
Attn: Public Works Director
701 Laurel Street
Menlo Park, CA 94025

USA: San Francisco Bay National Wildlife Refuge Complex
Attn: Refuge Complex Manager
1 Marshlands Road
Fremont, CA, 94555

Notice mailed as provided herein shall be deemed given upon receipt of the notice, unless such notice was rejected by the intended recipient and returned to the sender, in which event it shall be deemed served 72 hours after deposit in the mail. Notice given in any other manner shall be deemed given and received upon actual receipt. Each Party shall have the right to revise its address for notice by delivering a notice (in accordance with the terms of this Section) to the other Party.

GENERAL PROVISIONS

Federal Tort Claims Act. The Grantee agrees to cooperate, to the extent allowed by law, in the submission of claims pursuant to the Federal Tort Claims Act against the United States for personal injuries or property damage resulting from the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her employment, arising out of this Agreement.

Copy of Easement. Any Partners (defined as construction contractors, construction monitors, and private companies or private non-profit organizations working onsite and under separate contractual agreements with the USA) working for the USA under a partnership agreement in assisting the USA with work on the USA lands for which access is provided to the USA under this Easement will be given a copy of the Easement.

Notification of Partners. Under the terms of this Easement, USA shall notify its Partners by providing a copy of the Easement Agreement and being made aware that the USA's or the Partner's use of the Easement is conditional on the following indemnification.

Indemnification by Partners. Without limiting the generality of the foregoing, USA shall require its Partners to the maximum extent permitted by law, to indemnify, protect, defend and hold City harmless from and against claims arising out of or in connection with any labor performed on the Property by, or at the request or for the benefit of, USA, construction of the Improvements, and/or any other rights and obligations conferred by this Agreement.

USA shall, to the maximum extent permitted by law, require any Partners to indemnify, protect, defend and hold City harmless against claims, losses, costs (including attorneys' fees and costs), liabilities and damages resulting from the failure of any of USA's Partners, consultants, contractors or subcontractors, to comply with the insurance requirements set forth in Exhibit C, USFWS Partner Agreement.

Insurance. To the extent any Partners working for the USA under a partnership agreement in assisting the USA with work on the USA's property and uses the Easement Area, USA shall require that Partners add City as an additional insured and provide City with the insurance requirements set forth in Exhibit C.

Choice of Law. This Agreement shall be governed by and enforced in accordance with the laws of the State of California and the United States of America, as applicable.

Authorization. Each signatory to this Agreement warrants that he or she has full authority to execute this Agreement on behalf of and thus bind the individual, or entity represented.

Binding on Successors. This Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, executors, administrators and estates of each of the parties.

Title. Grantor covenants and agrees with the USA that Grantor has full power and authority to convey the Easement.

Attachments:	Exhibit A	Legal Description of the Property
	Exhibit B	Legal Description of the Easement / Plat depicting Easement
	Exhibit C	Insurance Requirements, in USFWS Partner Agreement

[SIGNATURES APPEAR ON NEXT PAGE]

SIGNATURES

IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

GRANTOR:

CITY OF MENLO PARK:

Starla Jerome-Robinson, City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date

APPROVED AS TO FORM:

Nira Doherty, City Attorney

Date

CERTIFICATE OF ACCEPTANCE

State of California Code Section 27281

This is to certify that the Secretary of the Interior, acting by and through his authorized representative, the Acting Realty Officer, California-Great Basin Region, U.S. Fish and Wildlife Service, hereby accepts on behalf of the United States of America, the real property described in the within Grant of Easement and consents to recordation thereof.

Date

Michael Borkoski, Acting Realty Officer

California-Great Basin Region

U.S. Fish and Wildlife Service

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (seal)

EXHIBIT A

LANDS OF THE CITY OF MENLO PARK (Marsh Road Sanitary Landfill Site)

All that real property situated in the City of Menlo Park, County of San Mateo, State of California more particularly described as follows:

BEGINNING at the northeast corner of that certain parcel conveyed by LESLIE SALT COMPANY to MENLO PARK SANITARY DISTRICT by deed recorded in Volume 1051 of Official Records of San Mateo County at Page 40: thence along the northerly line thereof, North 53° 19' 06" West, 1,310.61 feet to the northwest corner thereof; thence along the northerly extension of the westerly line of said parcel, North 1° 01' 38" East, 56.96 feet to the southerly line of Parcel G described in the deed from LESLIE SALT COMPANY to STATE OF CALIFORNIA, recorded in Volume 5426 of said Official Records at Page 109; thence along said southerly line South 47° 00' 52" East, 121.91 feet; thence continuing along said southerly line South 56° 02' 07" East, 173.6 feet; South 50° 29' 59" East, 745.2 feet; South 77° 39' 39" East, 163.8 feet; North 36° 03' 24" East, 70.8 feet; North 75° 57' 50" East, 40.2 feet; South 12° 15' 53" East, 117.7 feet; South 80° 56' 00" East, 285.6 feet; South 77° 05' 33" East, 394.0 feet; South 84° 50' 57" East, 356.4 feet; North 77° 52' 54" East, 643.05 feet; thence South 0° 16' 11" East, 708.79 feet; thence South 1° 04' 49" West, 1,750.53 feet to a point on the easterly extension of the southerly line of Parcel B of that certain Parcel Map recorded April 18, 1969 in Volume 7 of Parcel Maps at Page 44 of Records San Mateo county; thence South 75° 47' 22" West, 45.66 feet to a point on the southerly extension of the easterly line of said Parcel B distant thereon South 1° 16' 36" West, 12.00 feet from said southeast corner; thence North 88° 58' 22" West, 1646.33 feet; thence South 1° 09' 44" West, 940.65 feet to a point on the easterly extension of the southerly line of Parcel A of the last mentioned Parcel Map; thence along said extension North 88° 58' 22" West, 73.00 feet; thence along the southerly line of Parcel A of last mentioned Parcel Map, North 88° 58' 22" West, 1175.97 feet to the southwest corner of Parcel A of the last mentioned Parcel Map; thence North 27° 20' 12" West, 60.0 feet to the general westerly line of that 60 foot wide road easement first described in the Grant of Easement from LESLIE SALT COMPANY to MENLO PARK SANITARY DISTRICT, Recorded in Volume 1878 of Official Records of San Mateo county at Page 673; thence along said westerly line, North 62° 39' 48" East, 247.91 feet; North 28° 34' 01" East, 205.87 feet; North 14° 05' 12" West, 200.41 feet to the southwest corner of Parcel 1 of that certain Parcel Map recorded in Volume 21 of Parcel Maps at Page 21, Records of San Mateo County; thence along the southwesterly line of said Parcel 1, North 14° 05' 12" West, 217.01 feet; thence North 1° 24' 10" East, 2117.30 feet to a point on the southeasterly corner of that certain parcel conveyed by LESLIE SALT COMPANY to MENLO PARK SANITARY DISTRICT by deed recorded in Volume 1051 of Official records of San Mateo County at page 40; thence along the southerly line of said parcel South 88° 58' 22" East, 1064.94 feet to the southeasterly corner of said parcel; thence along the easterly line of said parcel North 1° 01' 38" East, 435.97 feet to the point of beginning.

Containing 164.25 acres, more or less.

The California Coordinate System, Zone III as shown on that Parcel Map recorded April 18, 1969, in Volume 7, of Parcel Maps page 44, San Mateo County Records, was used as the basis or bearings for the above descriptions. All distances are grid distances. To obtain ground distances, multiply the grid distance by 1.0000600.



**EXHIBIT A
LEGAL DESCRIPTION
STORM DRAIN EASEMENT**

All that certain real property situate in the City of Menlo Park, County of San Mateo, State of California, described as follows:

Being a portion of the Lands of the City of Menlo Park as described in that certain Corporation Grant Deed filed for record on March 20, 1975 in Volume 6803 at Page 144, Official records of said County, and being a portion of Parcel 5 of the Lands of the City of Menlo Park, as described in that certain Corporation Grant Deed filed for record on December 30, 1977 in in Volume 7702 at Page 275, Official records of said County, and being more particularly described as follows:

BEGINNING at the southwesterly terminus of that line labeled as "N28°34'01"E 205.88'" as shown on that certain Record of Survey entitled "R/S NO. 1917" filed for record on August 22, 2008 in Book 32 of LLS Maps at pages 13 through 21, Official records of said County, said point being a common corner of said Lands of City of Menlo Park and the Lands of Cargill, being a Portion of Parcel 4 as shown on said map,

Thence leaving said common corner and along the common line of said Lands of City of Menlo Park and said Lands of Cargill Inc. as shown on said map, South 62°39'48" West, 15.00 feet to the **TRUE POINT OF BEGINNING** of this description;

Thence leaving said common line South 27°04'05" East, 185.27 feet to a point on the common line of said Lands of City of Menlo Park and the Lands of United States of America as described in that certain Grant Deed filed for record on March 6, 2003 as Document No. 2003-058900, Official records of said County;

Thence along said common line North 88°58'22" West, 57.74 feet to a common corner of said Lands of United States of America and said Lands of Cargill Inc. as shown on said map;

Thence leaving said common corner and along the common line of said Lands of City of Menlo Park and said Lands of Cargill Inc., North 88°58'22" West, 10.28 feet;

March 1, 2021
BKF No. 2020-0958



Thence leaving said common line, North 27°04'05" West, 152.96 feet to said common line of said Lands of City of Menlo Park and said Lands of Cargill Inc. as shown on said map;

Thence along said common line, North 62°39'48" East, 60.00 feet to the **TRUE POINT OF BEGINNING.**

Containing 10,147 square feet more or less.

A plat showing the above described parcel is attached hereto and made a part hereof.

This legal description was prepared by me or under my direction in conformance with the requirements of the Professional Land Surveyors' Act.



David Jungmann, PLS 9267



03/01/2021
Dated

END OF DESCRIPTION

EXHIBIT B

PORTION OF EASEMENT
TO BE DEDICATED BY
SEPARATE INSTRUMENT

N28°34'01"E 205.88'

POINT OF BEGINNING

S62°39'48"W 15.00'

TRUE POINT OF BEGINNING

LANDS OF
CARGILL INC.
(5426 O.R. 126)
PORTION OF PARCEL 4
(32 LLS 13)

N62°39'48"E 60.00'

LANDS OF
CITY OF MENLO PARK
(6803 O.R. 144 & 7702 O.R. 275)



STORM DRAIN
EASEMENT
AREA = 10,147 SQ.FT.±

S27°04'05"E 185.27'

N27°04'05"W 152.96'

LEGEND

O.R. OFFICIAL RECORDS
SQ.FT. SQUARE FEET

— LOT LINE
— EASEMENT LINE

▨ EASEMENT AREA

N88°58'22"W
57.74'

10.28'

PORTION OF EASEMENT
TO BE DEDICATED BY
SEPARATE INSTRUMENT

LANDS OF
CARGILL INC.
(5426 O.R. 126)
PORTION OF PARCEL 4
(32 LLS 13)

LANDS OF
U.S.A.
(DN. 2003-058900)

GRAPHIC SCALE



DRAWING NAME: K:\2020\20200958_Duces (unlimited) Backwell_Broyron\GIS\Maping\Plots & Legends\1 - SD Easements 2020-09\1 - SD Over Menlo Park Parcel\20200958_V-Plot Menlo Park.dwg
PLOT DATE: 03-31-21 PLOTTED BY: dell



255 SHORELINE DR.,
SUITE 200
REDWOOD CITY, CA 94065
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Subject **EXHIBIT [B] – STORM DRAIN EASEMENT**
PLAT TO ACCOMPANY LEGAL DESCRIPTION

Job No. **20200958**
By **BDF** Chkd. **AJD** Date **3/1/2021**

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PARTNER DESIGN & CONSTRUCTION AGREEMENT

Between the

THE UNITED STATES DEPARTMENT OF INTERIOR
U.S. FISH & WILDLIFE SERVICE
SAN FRANCISCO BAY NATIONAL WILDLIFE REFUGE COMPLEX

AND

DUCKS UNLIMITED, INC.

FOR

PROJECT IMPLEMENTATION AT THE
DON EDWARDS SAN FRANCISCO BAY NATIONAL WILDLIFE REFUGE
SOUTH BAY SALT POND RESTORATION PROJECT

Phase 2

This PARTNER DESIGN & CONSTRUCTION AGREEMENT (“AGREEMENT”) is hereby entered into between THE UNITED STATES FISH AND WILDLIFE SERVICE, SAN FRANCISCO BAY NATIONAL WILDLIFE REFUGE (“USFWS”), an agency of the United States Department of Interior, and Ducks Unlimited, Inc. (“DU” or “Partner”), a District of Columbia non-profit organization.

The purpose of the AGREEMENT is to set out the terms and conditions under which the Partner will design, construct, and donate to the United States, for the USFWS use, restoration projects described in Phase 2 South Bay Salt Pond Restoration Project (“SBSP Project” or “Project”), including earthmoving, revegetation, installation of water control features, public access features, earthen berms, swales, pedestrian bridges, levee breaches, levee lowering, planting of appropriate propagated native habitat along portions of the below described habitat transition zones to be constructed as part of the South Bay Salt Pond Restoration Project, Phase 2 actions at Ravenswood Ponds (R3, R4, R5, S5, Mt. View Ponds A1 and A2W, and Island Ponds A19 and A20 as described below. Throughout this AGREEMENT, the USFWS and the Partner may be referred to jointly as “the parties.”

In consideration of, and reliance on, the Partner’s offer to complete and donate the Project to the United States, the USFWS will not seek Federal appropriations for the Project but will use existing appropriated funds to work with the Partner to implement the Project. It is the intent of both parties to be legally bound by the AGREEMENT.

ARTICLE I. BACKGROUND

The South Bay Salt Pond (“SBSP”) Restoration Project is a multi-agency effort to restore 15,100 acres of former salt evaporation ponds in South San Francisco Bay in phases over a 50-year period that was established after the March 2003 acquisition by the US Fish and Wildlife Service (“USFWS”) and the California Department of Fish and Wildlife (“CDFW”) of these ponds in southern San Francisco Bay. The USFWS assumed ownership of the ponds in the Ravenswood, Alviso ponds areas managed as part of the Don Edwards San Francisco Bay National Wildlife Refuge (“Refuge”). From 2009 through 2017, the USFWS has worked with the State Coastal Conservancy (“SCC”) and other agencies to plan the second series of habitat, public access, and flood protection improvements, known as Phase 2 of the South Bay Salt Pond Restoration Project (Phase 2). Phase 2 builds on the goals established by the programmatic 2007 EIS/R by identifying the next set of actions in each of the three pond complexes of the SBSP Restoration Project. The Phase 2 projects on the USFWS property were analyzed in *Final Environmental Impact Statement/Report, Phase 2 -- South Bay Salt Pond Restoration Project, April 2016* (Final Phase 2 EIS/R). A summary project description and map of each of the restoration sites is included in Attachment A & B (see attached).

This AGREEMENT focuses on the Phase 2 project on USFWS properties at the Ravenswood, Mountain View, and Island Ponds (described in more detail below), specifically on a portion of the work that will be implemented by DU, a District of Columbia non-profit established in 1937 to protect and restore wetland and aquatic habitats and is recognized by the Internal Revenue Service as a 501(c)(3) tax exempt entity and doing business in the State of California. USFWS has worked cooperatively to plan, design, and oversee implementation of similar restoration projects with the non-profit.

The USFWS has secured necessary permits for the restoration of the Project to accomplish the actions described below:

Ravenswood Ponds (Ponds R3, R4, R5, and S5). In the Ravenswood pond complex, Phase 2 of the SBSP Project will create a 355-acre mosaic of tidal wetlands, upland transition zone, and managed pond habitats. In the 295-acre Pond R4, the SBSP Project will breach levees, install ditch blocks, dredge pilot channels, and construct approximately 15 acres of gently sloping upland transition zone along the edge of an existing landfill. The levee between R3 and R4 will be raised and widened to reduce flooding risks and to create an upland transition zone. In addition, the project will install water control structures to improve circulation in a remnant channel in R3 in order to enhance Snowy Plover habitat. Water control structures also will be installed to create managed pond habitat in Ponds R5 and S5 for migratory shorebirds and waterfowl. The eastern levee of Ponds R5 and S5 will be improved. A half mile of trail will be constructed with interpretive platforms and signage. DU’s role is to advance the 30% design to final, provide environmental compliance review and other services for permitting and NEPA/CEQA efforts done by others, and oversee construction.

Mountain View Ponds (Ponds A1, A2W). In the Alviso pond complex at Ponds A1 and A2W, Phase 2 of the SBSP Project will create 670 acres of restored tidal wetland habitat and 20 acres of upland transition zone as well as create over 1.1 miles of new Bay Trail spur out to the open bay along the eastern levee of Pond A2W, including two bridges over new, armored levee breaches, and a short 0.2-mile spur to an overlook. The project will include interpretive platforms and signage. Wetlands will be restored by breaching levees, installing ditch blocks in low areas, dredging pilot channels through fringing marsh, and constructing 20 acres of gently sloping upland transition zone (done by others). DU's role is to advance the 30% design to final, provide environmental compliance review and others for permitting and NEPA/CEQA efforts done by others, and oversee construction.

Island Ponds (Ponds A19 and A20). DU will breach and lower the A19 berm in additional locations in order to improve tidal circulation in the 265-acre A19. Initially A19 was breached in 2006 along with the adjacent Ponds A20 and A21. However, since A19 is further upstream from the other ponds and is connected to tidal waters through a single breach, tidal marsh habitat has developed more slowly. By improving the connection to Bay's waters and sediment, tidal vegetation in A19 is expected to substantially expand, providing additional habitat to the endangered and threatened species that have re-occupied A20 and A21. DU's role is to prepare the bid set and oversee construction.

The following grants and funding agreements have been obtained to complete the work described above:

On September 28, 2017, SCC authorized Grant Agreement No. 16-009 for up to \$2,205,296, and further amended to \$13,699,620, a copy of which is provided as Attachment C1.

In addition to these funds, DU has submitted applications to and has been granted funds from National Oceanic and Atmospheric Administration under Federal Award No. NA17NMF4630014 (\$1,500,000), see Attachment C2, and from Facebook under Purchase Order No. 1103798 (\$350,000), Attachment C3, for the Ravenswood Ponds.

In addition, for the Mountain View Ponds, DU has submitted applications to and has been granted funds from North American Wetlands Conservation Act under Grant Award F17AP00277 (\$1,000,000), see Attachment C4, U.S. Environmental Protection Agency under Grant No. 99T52301 (\$1,677,683), Attachment C5, and National Oceanic and Atmospheric Administration under Federal Award No FNA17NMF4630282 1,500,000), see Attachment C6.

An additional \$6,221,730 has been awarded via SCC from the San Francisco Bay Restoration Authority under Agreement No. SFB0004-RA005, a copy of which is provided as Attachment C7.

DU shall not be obliged to commence construction until sufficient funds have been secured from SCC or from other funds directly awarded to DU, or a plan for phasing project elements based on availability of funds and until all funding, permits, and authorizations are obtained and submitted to USFWS, or unless otherwise approved to commence by USFWS.

This AGREEMENT establishes the parties' understandings and obligations regarding planning, design, construction management, and construction of the Ravenswood and Mountain View Ponds and construction management and construction of enhancement actions at Island Ponds and will complete this scope of work as described in funding agreements in compliance with applicable laws, regulations, government policies, and management plans.

USFWS will review and approve Project designs at the 60%, 90% and 100% design levels within 14 days of receipt.

ARTICLE II. AUTHORITY

The USFWS enters into the AGREEMENT pursuant to the Fish and Wildlife Coordination Act of 1934 under 16 U.S.C. Section 661 et seq. and the Fish and Wildlife Act of 1956 under 16 U.S.C. Section 742a et seq.

ARTICLE III. DEFINITIONS

As used in this AGREEMENT, the following terms have the following meanings, and are applicable to both the singular and plural forms of the term:

“Contractor” means any entity (including without limitation, general contractors and subcontractors, vendors, suppliers, architectural and engineering firms, landscape architecture firms, design firms, exhibit fabricators, or other professional service firms) retained by the Partner to provide any design, construction, fabrication, utility, architectural, engineering, project management, construction management, regulatory compliance, labor, materials, products, or services.

“Construction” means any fabrication, installation, improvements to, or modifications of USFWS real property or personal property, including any ground or site disturbance.

“Construction documents” means the drawings and specifications that fully describe the work to be completed under this AGREEMENT.

“Cost estimate” means a cost estimate appropriate for the level and complexity of design and construction of a project, as determined by the USFWS.

“Design” defines the construction requirement (including the functional relationships and technical systems to be used, such as architectural, landscape architectural, environmental, structural, electrical, mechanical, and fire protection) producing the technical specifications and drawings, and preparing the construction cost estimate. Design includes the development of a range of conceptual alternatives through a variety of means including design, design build or design competition; at the sole discretion of the USFWS, the development of regulatory compliance documentation for USFWS review and approval, including National Environmental Policy Act and National Historic Preservation Act documentation; value analysis and alternative refinement during schematic design and design development; required USFWS design-related reviews and approvals; and the preparation of construction documents.

“Project Development Plan” describes (1) project-specific design elements and construction standards required by USFWS that must be addressed in Project designs, (2) the USFWS’s project reviews, and (3) Project deliverables and delivery dates. And any other planning and implementation by DU to plan, design, and oversee construction of habitat enhancements in the Ravenswood, Mountain View, and Island pond complexes on the Refuge, as depicted in Attachment A.

“Third-Party Contract” means any contract between the Partner and any contractor furnishing design, construction, labor, supplies or services.

“Applicable Laws” means all federal, state and local laws regulations, ordinances, order or other legal requirements applicable to the activities undertaken under the AGREEMENT, whether now in force or enacted or promulgated after the AGREEMENT is executed.

“Project” for this AGREEMENT consists of planning, design, bidding, construction management, and construction of Ravenswood and Mountain View Ponds, and construction management and construction at Island Ponds.

ARTICLE IV. RESPONSIBILITIES OF THE PARTIES

A. The USFWS agrees to:

1. In its sole discretion, either review and provide written comments promptly as to not delay the project progress or within 7 days of receipt on any substantive change to any Third-Party Contract, or if not substantively changed then acknowledge receipt of any revised third-party contracts executed by DU in performance of the described work.
2. Within 7 days of receipt or within time period mutually agreed to between parties, review, provide written comments on, and approve or disapprove all design plans, construction drawings, engineering documents, environmental compliance documents, and other documents that affect the scope or fundamental nature of the work associated with the Project. Any of the above-mentioned documents already prepared by the Partner will be provided as an attachment to the AGREEMENT and approved upon signature of the AGREEMENT.
3. Within 7 days of receipt, review and approve (with or without conditions) or disapprove applications for special use permits for access to the Refuge to accomplish the Project.
4. Monitor the general implementation of the Project, including periodic inspection and tests for compliance with the requirements of this AGREEMENT, the Project Development Plan, Project implementation plan or applicable special use permit, and relevant laws, regulations, and policies.
5. Inspect the Project and, if the USFWS determines that it meets USFWS standards and requirements and is complete, provide a written acceptance to the Partner. If the USFWS cannot accept the Project as complete, then the USFWS will identify in writing what additional work the Partner must accomplish in order to allow the USFWS to accept the Project as complete.

6. Notify the Partner of any change in federal law or USFWS policy that may affect implementation of this AGREEMENT.
7. As a subrecipient of funds provided by various federal and state partners to DU, USFWS will accept and comply with all required terms and conditions of those funding agreements, attached as Exhibit C1-C7 to this AGREEMENT.
8. USFWS will designate a representative to serve as the Project Manager over the Project who will visit the project site no less than weekly to check-in with the representative from DU who will serve as the on-the-ground designated Project officer.
9. USFWS will also authorize the Executive Project Manager for the South Bay Salt Pond Restoration Project to serve as its alternate Project Manager for the Refuge and has authorizes him/her to represent the Refuge in furtherance of the Project, including any coordination with the DU representative.

B. Ducks Unlimited, Inc. agrees to:

1. Designate a representative from DU to serve as on-the ground Project representative who is authorized to make decisions on the Project. DU representative will keep the USFWS Project Manager and South Bay Salt Pond Executive Project Manager informed on all aspects of the Project and meet no less than once per week to review project schedule, status, and identify any issues requiring decision or resolution.
2. Ensure that the Project meets USFWS project purpose and the Partner of its own volition provides said improvements, and without compensation or reimbursement by the USFWS.
3. Contact the USFWS in a timely manner with special use requests for access to the Refuge to accomplish the Project and ensure that its third-party contractors and subcontractors do the same.
4. Unless, otherwise approved at time of signature of AGREEMENT and provided as an attachment, before entering into any contract or agreement with any third party related to the Project, DU will provide to the USFWS:
 - a. A copy any Third-Party Contract;
 - b. Written confirmation that the third party:
 - i. Has obtained all required licenses to do the work required;
 - ii. Is not suspended or debarred from federal contracting; and
 - iii. Demonstrates relevant experience and competence to perform the work contemplated in the Third-Party Contract.
 - c. Written confirmation that the Partner:
 - i. Where appropriate used competition in selecting the third party to perform the work. In the event that a contract meets the threshold for sole-source justification, DU will provide a memo detailing sole source justification rationale. A memo would also be provided in the event of contracting with project partners, where a partner donates funds or services to the project;
 - ii. Has taken measures to avoid or mitigate conflicts of interest;

- iii. Has incorporated provisions reflecting best practices in contract management and project administration into the Third-Party Contract; and
- iv. Has made the USFWS a third-party beneficiary of all Third-Party Contracts.
- d. The signed agreement with the contractor or consultant included as an Attachment to this AGREEMENT, or amended as an Attachment to this AGREEMENT if obtained after the execution of this AGREEMENT.
- 5. Timely provide the USFWS with a final, signed copy of any Third-Party Contract upon execution.
- 6. Ensure that Third-Party Contracts do not contain a binding arbitration clause or other clause that may affect the USFWS’s ability to seek judicial review in its capacity as a third-party beneficiary to the Third-Party Contract.
- 7. Execute any Third-Party Contract only after receiving (a) the USFWS written comments on the proposed contract, (b) written notification from the USFWS that it has no comments on the proposed contract, or (c) written notification from the USFWS that it is declining to review the proposed contract.
- 8. Submit all plans, designs, and specifications for USFWS review and approval or disapproval at key stages (90% and 100%) of the Project.
- 9. Ensure that the Project design complies with all applicable laws, regulations, legal requirements, building codes, design requirements, and to coordinate with USFWS in advance on approach in meeting all required permit provisions.
- 10. Coordinate with the USFWS designated Project Manager, under this AGREEMENT and serve as on-site project manager, for all activities to vegetation transition zone habitat along the areas designated as the Bedwell Bayfront Park Transition Zone and the All-American Canal Transition Zone.
- 11. Include the following requirements verbatim in any Third-Party Contract for the performance of any work or for fulfilling any obligation related to the Project:

1. “The contractor agrees:

- a. That the U.S. Fish & Wildlife Service is a third-party beneficiary of this contract, with all legal rights associated with that status, including the right to enforce the contract.
- b. To comply with all applicable laws, regulations, rules, orders, and other legal requirements, and USFWS policies;
- c. To comply with the design plans, technical specifications, and permits relating to the Project;
- d. To comply with all applicable OSHA standards and requirements and to follow any USFWS order to suspend work if unsafe conditions or unsafe practices arise; and that at any time the USFWS may monitor, inspect, or access the construction site and construction-related materials and documents;
- e. To obtain and transfer to the USFWS all warranties from subcontractors, manufacturers or suppliers that would be

given in normal commercial practice for work performed and materials furnished:

- i. For a period of not less than one year; and
 - ii. Executed, in writing, for the benefit of the United States;
- f. To be responsible for all damages to persons or property that occur as a result of the contractor's fault or negligence because of, or in any way related to the Project;
- g. To waive any defense to any claim based on the contractor's alleged reliance on the USFWS's Project monitoring, inspections or tests. All monitoring, inspections or tests are for the benefit of the USFWS and do not relieve the contractor of responsibility for (i) providing adequate quality control measures, or (ii) ensuring against damage or loss before Project acceptance. In addition, such monitoring, inspections or tests do not imply acceptance of the contractor's work by either Ducks Unlimited or the USFWS, nor does it affect the continuing rights of Ducks Unlimited or the USFWS after acceptance of the contractor's work.
- h. That the USFWS's review, approval, or acceptance of the contractor's services nor Ducks Unlimited's payment for those services will be construed to operate as a waiver of any rights of the USFWS, or of any cause of action that the USFWS may have, and the contractor will be and remain liable to Ducks Unlimited and the USFWS in accordance with the terms of this Contract and applicable law for all damages for which the contractor is legally responsible.
- i. To obtain and maintain, in addition to other stated requirements, the following insurance requirements:

2. Insurance

- a. The contractor must comply with all insurance-related provisions of this Article. The contractor is responsible for ensuring that these insurance requirements are included, as appropriate, in their respective contracts with subcontractors.
- b. Insurance must be acquired before the initiation of any National Wildlife Refuge activities on the property and must be maintained until the Project is accepted as complete by the USFWS.
- c. Insurance coverage must be commensurate with foreseeable risk, and coverage limits may ultimately be greater than the minimum limitations required below. The USFWS will not be responsible for any omissions or inadequacies of any insurance coverage or amounts in the event that insurance purchased by the contractor or a subcontractor proves to be inadequate or insufficient for any reason.

- d. The contractor and all subcontractors must procure and maintain the following insurance and comply with the following associated requirements:
- i. The contractor and all subcontractors must have appropriate insurance including coverage for commercial general liability, contractual liability, automobile, valuable papers, umbrella coverage, and worker's compensation from a responsible company or companies. Unless higher limits are required by the USFWS in writing, within 30 days following the execution of this AGREEMENT, commercial general liability insurance must each have a minimum limitation of One million dollars (\$1,000,000) per person for any one claim, and an aggregate limitation of Three Million Dollars (\$3,000,000) for any number of claims arising from any one incident.
 - ii. The contractor and subcontractors, as applicable, must have appropriate insurance coverage when warranty work is conducted. This provision will survive termination or expiration of this AGREEMENT. Warranty work requires the USFWS Project Leader's prior approval.
 - iii. Contractors providing architectural or engineering service must have Professional Error and Omissions Insurance coverage that, at a minimum, conforms to the requirements of applicable state, territorial, or district law.
 - iv. Where a contractor is authorized to utilize USFWS structures or facilities in conjunction with this AGREEMENT, the contractor must procure and maintain, at its sole cost and expense, fire and hazard protection insurance in an amount equal to the replacement cost of structures or facilities utilized. This insurance must be maintained for the term of use.
- e. All insurance policies required by this AGREEMENT must be payable to the Ducks Unlimited, and Ducks Unlimited will use insurance proceeds to correct the damage, harm, or deficiency that is the basis of the insurance claim. Ducks Unlimited expenditure of insurance proceeds will be in conformance with law, and USFWS approvals. Insurance proceeds that are paid to the Ducks Unlimited, but that are not needed or cannot be used to correct the harm or deficiency at issue, must, if allowed under the insurance policy, be used to further USFWS projects and programs as agreed to by the parties.

- f. All insurance policies required by this AGREEMENT must name the United States as an additional insured and must specify that the insurer must specify that the insurer has no right of subrogation vis-à-vis the United States with respect to claims against other parties.
- g. Before beginning the work authorized herein, the contractor must provide copies of Certificates of Insurance demonstrating that the contractor and subcontractors have acquired all insurance required by this Article. Insurance coverage must be reviewed every year beginning on the date of execution of this AGREEMENT and must be modified if necessary to ensure consistency with generally accepted insurance practices and USFWS policies. The contractor and subcontractors must immediately notify Ducks Unlimited and the USFWS if an insurance policy is canceled or terminates for any reason.
- h. Insurance Carrier Requirements:
 - i. Each issuer of the insurance required by this Article must be rated no lower than A- by the most recent edition of the A.M. Best's Key Rating Guide (Property-Casualty Edition).
 - ii. All insurers for all coverage must have a Best's Financial Size Category of at least VII according to the most recent edition of A.M. Best's Key Rating Guide (Property-Casualty Edition).
 - iii. All insurers must be admitted, licensed, and approved to operate in the state, territory, or district in which the Project will occur.

3. Liability

- a. The contractor assumes liability for and does hereby agree to hold harmless and indemnify the United States of America, its agents and employees from and against any and all claims, losses, damages, costs, judgments, or other liability of any kind whatsoever arising out of or relating to the activities of the contractor and its officers, employees, agents, contractors, and subcontractors under this AGREEMENT. This indemnification will survive the termination or expiration of this AGREEMENT.
- b. To the extent authorized by applicable federal law, including the Federal Tort Claims Act, codified as amended primarily at 28 U.S.C. §§ 2671-80 (2014), the USFWS will be liable for the negligent or other wrongful acts of omissions of its officers or employees while acting with the scope of their office or employment. The USFWS's commitment to pay any lawful liability incurred by the USFWS under this AGREEMENT is backed by the full faith and credit of the

United States.

- c. The contractor must cooperate with the USFWS in the investigation and defense of any claims that may be filed with or against the USFWS arising out of the activities of the contractor, or the contractor’s employees, agents, representatives, or subcontractors (including a subcontractor’s subcontractor).
- d. That the contractor has no recourse against the United States with respect to any aspect of construction activities and will not lien any land, structures, fixtures, or improvements associated with this Contract; and
- e. To be jointly and severally liable under this Contract if the contractor consists of more than one legal entity.”

In addition to provisions “1” through “3” above, any Third-Party Contract for the provision of architectural or engineering services must contain verbatim the following provisions “4” through “6”:

“The contractor agrees:

- 4. That it is solely responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the contractor and warrants that the Project can be built as designed;
- 5. To correct or revise any errors or omissions in its designs, drawings, specifications, and other services without any additional compensation; and
- 6. That the final signed and sealed Final Construction Documents provided by the contractor, as reviewed and approved in writing by the USFWS, are the only true contract documents of record for this Project. By submission of the Final Construction Documents to the Partner, the contractor warrants that all review comments have been resolved to the satisfaction of the USFWS and have been incorporated into the Final Construction Documents.”

- 12. Be responsible for performing one or more of the following: Design, permit support, planning, environmental compliance support, construction management, and construction of the South Bay Salt Ponds Restoration Projects, Phase 2at both Ravenswood (R3, R4, R5, S5) and Mountain View Ponds (A1, A2W), and construction management of the Project at Island Ponds (A19, A20), as described in the Grant Agreements attached to this AGREEMENT.
- 13. Coordinate with USFWS prior to conducting any field activities and will inform the Refuge manager prior to start of work.
- 14. At no cost to the USFWS, promptly take steps necessary, including the suspension of work, to address any reasonable concerns raised by the USFWS such unsafe work practices or if required due to a government shutdown.

Typically, during a government shutdown projects that have funding that do not require a federal employee to be present maybe authorized to continue during a shutdown. Each shutdown is unique and USFWS will promptly notify the partner if work can continue during a lapse in government appropriations.

15. Comply with and cause its contractors to comply with any the wage requirements of the funding agreements, including the Davis Bacon Act, 40 U.S.C. §§ 3142 *et seq.*, and the relevant Department of Labor regulations, 29 C.F.R. Part 5, as applicable.
16. Certify in writing that the Project is free and clear of all debts, liabilities, liens, or obligations before the USFWS accepts the Project as complete.

C. The parties further agree as follows:

1. Other Contracts: The USFWS has entered into a Memorandum of Understanding with the California State Coastal Conservancy; the Conservancy has entered into a standard agreement contract with Ducks Unlimited; and Ducks Unlimited has entered into a project agreement with the USFWS. All parties have been provided a fully signed copy of each agreement for their project files and the supporting documents are included as an attachment to this AGREEMENT.
2. The USFWS’s review or approval of documents under Article IV.A of this AGREEMENT will not be construed to operate either as a waiver of any rights of the USFWS or as a waiver of any cause of action that the USFWS may have under this AGREEMENT or any Third-Party Contract.

NOTICES

Any and all formal notices required for either party shall be in writing and shall be sent to the parties at the addresses set forth below in Article VI. Each such notice shall be either (a) personally delivered, in which case notice shall be deemed delivered upon receipt or refusal of delivery, (b) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered upon receipt or refusal of delivery, or (c) sent by United States mail, registered or certified, with postage prepaid and return receipt requested (provided that such return receipt must indicate receipt at the address specified), in which case notice shall be deemed delivered upon receipt or refusal of delivery. USFWS approvals outlined in Article IV, A herein may be sent as above or by any other mutually agreed upon method, such as by electronic mail.

ARTICLE V. ATTACHMENTS

Attachment A – Project Description from the Conservancy funding agreement with DU

Attachment B – South Bay Salt Pond Restoration Project Overview Map

Attachment B.1 - Map of Ravenswood Ponds

Attachment B.2 – Map of Mountain View Ponds

Attachment B.3 – Map of Island Ponds

Attachment C: - Other Contracts and Agreements

- C.1. SCC grant agreement for up to \$6,221,730, and amended to \$13,699,620, attachment,
- C2. Ravenswood Ponds National Oceanic and Atmospheric Administration grant agreement for \$1,500,000,
- C3. Ravenswood Ponds Facebook Agreement (\$350,000),
- C4. Mountain View Ponds North American Wetlands Conservation Act (\$1,000,000),
- C5. Mountain View Ponds US Environmental Protection Agency (\$1,668,200.20),
- C6. Mountain View Ponds National Oceanic and Atmospheric Administration (\$1,460,638.60).
- C7. Ravenswood and Island Ponds San Francisco Bay Restoration Authority (\$6,821,730) .

Attachment D.1: Ravenswood Ponds design – 60%

Attachment D.2: Mountain View Ponds design – 60%

Attachment D.3: Island Ponds design - preliminary

Attachment E: Contractor Certification Form (IF ANY)

Attachments A-E are hereby incorporated into the AGREEMENT

ARTICLE VI. KEY OFFICIALS

For: U.S. Fish and Wildlife Service
Name/Title: Anne Morkill, Project Leader
Address: San Francisco Bay National Wildlife Complex
U.S. Fish & Wildlife Service
#1 Marshlands Road
Fremont, CA 94555
Phone: 510-792-0222 x123
E-mail: Anne.Morkill@fws.gov

For: Ducks Unlimited, Inc.
Name/Title Mark E. Biddlecomb
Address: 3074 Gold Canal Drive
Phone: (916) 996-1816
Fax: (916) 852-2200
E-mail: mbiddlecomb@ducks.org

ARTICLE VII. TERM OF AGREEMENT

This AGREEMENT will be effective on the date of final signature and, unless modified or terminated by the parties in accordance with Article VIII below, will continue in force and effect for a period of five years thereafter.

ARTICLE VIII. MODIFICATIONS, DISPUTE RESOLUTION, AND TERMINATION

- A. This AGREEMENT may be modified only by a written instrument executed by the parties' authorized representatives.
- B. The parties agree that in the event of a dispute between them, they will promptly use their best efforts to resolve the dispute in an informal fashion through communication and consultation, or other forms of non-binding alternative dispute resolution that are mutually acceptable to the parties.
- C. If either party reasonably believes that the other party has breached its obligations under this AGREEMENT, the alleging party must provide the other party a written Default Notice (Notice) of such alleged breach. The party receiving the Notice will have 30 days

(the Cure Period) after receipt of the Notice to cure such alleged breach. The Cure Period may be extended by mutual agreement of the parties.

- D. If the alleged breach is not cured within the Cure Period, the alleging party may, without first obtaining a judgment or declaration of breach by any court, board, arbitrator or any other adjudicator, or seek any alternative or additional remedies available to it, including termination of this AGREEMENT.

ARTICLE IX. INSURANCE AND LIABILITY

A. Insurance

1. The Partner and its contractors must comply with all insurance-related provisions of this Article. The Partner and its contractors are responsible for ensuring that these insurance requirements are included, as appropriate, in their respective contracts with subcontractors.
2. Insurance must be acquired before the initiation of any National Wildlife Refuge activities on the property and must be maintained until the Project is accepted as complete by the USFWS.
3. Insurance coverage must be commensurate with foreseeable risk, and coverage limits may ultimately be greater than the minimum limitations required below. The USFWS will not be responsible for any omissions or inadequacies of any insurance coverage or amounts in the event that insurance purchased by the Partner or a contractor proves to be inadequate or insufficient for any reason.
4. The Partner and all contractors must procure and maintain the following insurance and comply with the following associated requirements:
 - i. The Partner and all contractors must have appropriate insurance including coverage for commercial general liability, contractual liability, automobile, valuable papers, umbrella coverage, and worker's compensation from a responsible company or companies. Unless higher limits are required by the USFWS in writing, within 30 days following the execution of this AGREEMENT, commercial general liability insurance must each have a minimum limitation of One million dollars (\$1,000,000) per person for any one claim, and an aggregate limitation of Three Million Dollars (\$3,000,000) for any number of claims arising from any one incident.
 - ii. The Partner and contractors, as applicable, must have appropriate insurance coverage when warranty work is conducted. This provision will survive termination or expiration of this AGREEMENT. Warranty work requires the USFWS Project Leader's prior approval.
 - iii. Contractors providing architectural or engineering service must have Professional Error and Omissions Insurance coverage that, at a minimum, conforms to the requirements of applicable state, territorial, or district law.
 - iv. Where a Partner or contractor is authorized to utilize USFWS structures or facilities in conjunction with this AGREEMENT, the Partner or contractor

must procure and maintain, at its sole cost and expense, fire and hazard protection insurance in an amount equal to the replacement cost of structures or facilities utilized. This insurance must be maintained for the term of use.

5. All insurance policies required by this AGREEMENT must be payable to the Partner, and the Partner will use insurance proceeds to correct the damage, harm, or deficiency that is the basis of the insurance claim. Partner expenditure of insurance proceeds will be in conformance with law, and USFWS approvals. Insurance proceeds that are paid to the Partner, but that are not needed or cannot be used to correct the harm or deficiency at issue, must, if allowed under the insurance policy, be used to further USFWS projects and programs as agreed to by the parties.
6. All insurance policies required by this AGREEMENT must name the United States as an additional insured and must specify that the insurer must specify that the insurer has no right of subrogation vis-à-vis the United States with respect to claims against other parties.
7. Before beginning the work authorized herein, the Partner must provide the USFWS with copies of Certificates of Insurance demonstrating that the Partner and contractors have acquired all insurance required by this Article. Insurance coverage must be reviewed every year beginning on the date of execution of this AGREEMENT and must be modified if necessary to ensure consistency with generally accepted insurance practices and USFWS policies. The Partner and contractors must immediately notify the USFWS if an insurance policy is canceled or terminates for any reason.
8. Insurance Carrier Requirements:
 - i. Each issuer of the insurance required by this Article must be rated no lower than A- by the most recent edition of the A.M. Best's Key Rating Guide (Property-Casualty Edition).
 - ii. All insurers for all coverage must have a Best's Financial Size Category of at least VII according to the most recent edition of A.M. Best's Key Rating Guide (Property-Casualty Edition).
 - iii. All insurers must be admitted, licensed, and approved to operate in the state, territory, or district in which the Project will occur.

B. Liability

1. The Partner assumes liability for and does hereby agree to hold harmless and indemnify the United States of America, its agents and employees from and against any and all claims, losses, damages, costs, judgments, or other liability of any kind whatsoever arising out of or relating to the activities of the Partner and its officers, employees, agents, contractors, and subcontractors under this AGREEMENT. This indemnification will survive the termination or expiration of this AGREEMENT.

2. To the extent authorized by applicable federal law, including the Federal Tort Claims Act, codified as amended primarily at 28 U.S.C. §§ 2671-80 (2014), the USFWS will be liable for the negligent or other wrongful acts of omissions of its officers or employees while acting with the scope of their office or employment. The USFWS's commitment to pay any lawful liability incurred by the USFWS under this AGREEMENT is backed by the full faith and credit of the United States.
3. The Partner must cooperate with the USFWS in the investigation and defense of any claims that may be filed with or against the USFWS arising out of the activities of the Partner, or the Partner's employees, agents, representatives, or contractors (including a contractor's subcontractor).

ARTICLE X. REPORTING

The Partner and its contractors and subcontractors must maintain accounting books and records under a system of accounts and financial controls meeting Generally Accepted Accounting Principles and must permit the Department of the Interior or its designee, including the USFWS and the Department's Office of the Inspector General, to verify and audit financial documents from the books, correspondence, memoranda and other records of the Partner relating to this AGREEMENT, during the period of this AGREEMENT, and for such time thereafter up to 3 years as may be necessary to accomplish such verification.

DU will notify the USFWS staff of any problems or issues as soon as possible. DU will annually provide a brief report (written) to the USFWS staff describing restoration activities at the site for the year these could be a part of or in addition to any regular grant reports to funders which DU will share with the USFWS. Copies both hard and electronic copies of all plan sets such as as-built drawing, and technical reports will be provided to the USFWS by completion of the project.

ARTICLE XI. STANDARD CLAUSES

- A. **Non-Discrimination:** All activities pursuant to or in association with this AGREEMENT will be conducted without discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex, as well as in compliance with the requirements of any applicable federal laws, regulations, or policies prohibiting such discrimination.
- B. **USFWS Appropriations:** Pursuant to 31 U.S.C. § 1341, nothing contained in this AGREEMENT will be construed to obligate the government to any current or future expenditure of funds in excess or advance of the availability of appropriations from Congress, nor does this AGREEMENT obligate the government to spend funds on any particular project or purpose, even if funds are available.
- C. **Limitations on Lobbying:** To the extent that the Partner commits in this AGREEMENT or any related agreement to raise funds from non-federal sources for the Project, the Partner further agrees that it will not lobby for or otherwise seek the appropriation of funds from Congress to meet that commitment. The Partner may not use any appropriated

funds (including property, utilities, or services acquired with or supported by appropriated funds) to lobby or attempt to influence Congress or any official of any government.

- D. Compliance with Applicable Law: This AGREEMENT and performance hereunder is subject to all applicable laws, regulations, and government policies whether now in force or hereafter enacted or promulgated. Nothing in this AGREEMENT will be construed as in any way limiting the general powers of the USFWS for supervision, regulation, and control of its property under such applicable laws, regulations, and management policies.
- E. Release of Information: The Partner will obtain prior written approval through the USFWS Key Official for any public information releases which refer to this <https://www.facebook.com/events/Agreement> or Project. The specific text, layout, photographs, etc., of the proposed release will be submitted with the request for approval.
- F. Assignment: No part of this AGREEMENT may be assigned to any other party without prior written approval of the USFWS.
- G. Agency: The Partner is not an agent or representative of the United States, the Department of the Interior, or the USFWS, or the Refuge, nor will the Partner represent its self as such to third parties. USFWS employees are not agents of the Partner and will not act on behalf of the Partner.
- H. Non-Exclusive Agreement: This AGREEMENT does not restrict the Partner or the USFWS from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.

AUTHORIZING SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their duly authorized representatives as of the date the last signature is affixed:

U.S. FISH & WILDLIFE SERVICE

Name, Title

Date

DUCKS UNLIMITED, INC.

Mark E. Biddlecomb, Director

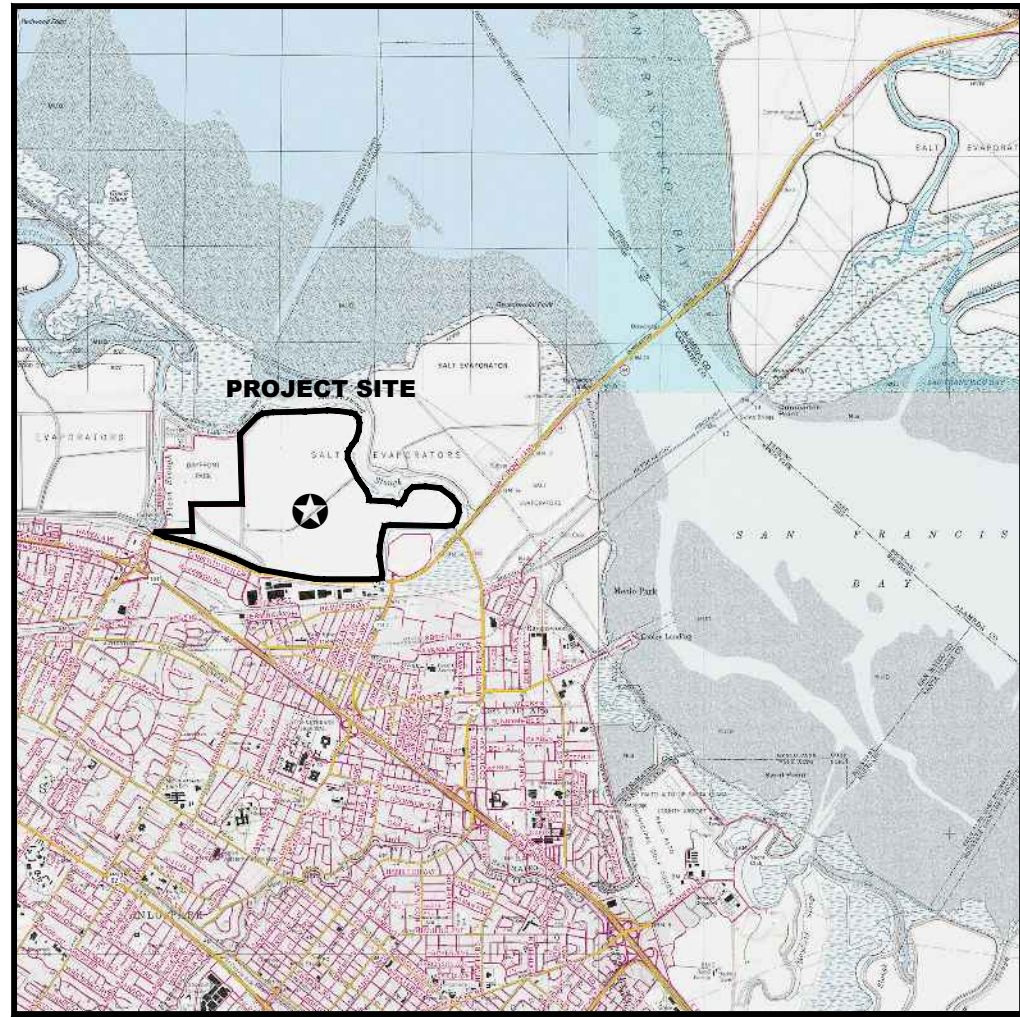
Date



US-CA-515-2

SOUTH BAY SALT POND RESTORATION PROJECT RAVENSWOOD PONDS WATER CONTROL STRUCTURES

LOCATION MAP



NOT TO SCALE

VICINITY MAP



See Location Map

SURVEY DATUM

Horizontal and Vertical Control:
Coordinates are State Plane 0403 California Zone 3 in US feet [NAD83], with vertical in NAVD88.

MAP DATA

Contour Interval: 1 Foot
(Existing ground surface: D.U. survey & 2010 U.S.G.S. Lidar)
Aerial Photos: 2016 NAIP, Google

Parcel lines shown hereon represent approximate Assessor's parcel lines and ownership data (Does not indicate surveyed property boundaries)

SHEET INDEX

- 1 Cover Sheet
- 2 Definitions & Legend
- 3 Site Overview
- 4 Plan & Profile - WCS-1
- 5 Plan & Profile - WCS-2 & WCS 3
- 6 Plan & Profile - WCS-4
- 7 Details - WCS General
- 8 Details - WCS General
- S1 WCS-1 General Plan
- S2 WCS-1 Foundation Plan
- S3 WCS-2 & WCS-3 General Plans
- S4 WCS-2 & WCS-3 Foundation Plans
- S5 WCS-4 General Plan
- S6 WCS-4 Foundation Plan
- S7 Details - One-Pipe Maintenance Bridge
- S8 Details - Two-Pipe Maintenance Bridge
- S9 Details - WCS Girder
- S10 Details - WCS General
- S11 Bearing Pad Details
- S12 Details - Cable Railing

PROJECT DIRECTORY

Ducks Unlimited, Inc.
Western Regional Office
3074 Gold Canal Drive
Rancho Cordova, Ca. 95670-6116
Ph. (916) 852-2000

Unauthorized Changes & Uses
The engineer preparing these plans will not be responsible for, or liable for, unauthorized changes to or uses of these plans. All changes must be in writing and must be approved by the preparer of these plans.



REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED



PROJECT NO. **US-CA-515-2** DATE: **5/14/2021**
SOUTH BAY SALT POND RESTORATION PROJECT
RAVENSWOOD PONDS
 DESIGNED BY: SC
 DRAWN BY: JS
 SURVEYED BY: DU
 CHECKED BY:
 APPROVED BY:
 SHEET NO.

BID SET

GRECO ISLAND

BEDWELL BAYFRONT PARK

POND R4

POND R3

POND S5

POND R5

FLOOD SLOUGH

RAVENSWOOD SLOUGH

Location of Work

POND R4 LEVEE LOWERING (BY OTHERS)

POND R4 BREACH & DITCH BLOCK (BY OTHERS)

BEDWELL BAYFRONT PARK HABITAT TRANSITION ZONE (BY OTHERS)

POND R4 PILOT CHANNELS (BY OTHERS)

ALL AMERICAN CANAL LEVEE IMPROVEMENT & HABITAT TRANSITION ZONE (BY OTHERS)

TEMPORARY ACCESS ROAD REGRADE (BY OTHERS)

POND R5 / S5 LEVEE LOWERING (BY OTHERS)

WCS-02 (SEE SHEET 5)
DEMO EX WCS

WCS-04 (SEE SHEET 6)

EX LEVEE STRAIGHTENING & DITCH FILL (BY OTHERS)

POND S5 FOREBAY

REGRADE (BY OTHERS)

POND R3 LEVEE LOWERING (BY OTHERS)

WCS-03 (SEE SHEET 5)

POND S5 LEVEE LOWERING (BY OTHERS)

POND R5 / S5 LEVEE LOWERING (BY OTHERS)

POND S5 / S5 FOREBAY LEVEE IMPROVEMENT (BY OTHERS)

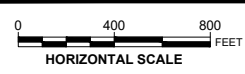
CONSTRUCTION ACCESS ROUTE

MARSH ROAD

INDEPENDANCE DRIVE

STATE ROUTE 84

WILLOW ROAD



REVISIONS				
REV. NO.	DESCRIPTION	DATE	APPROVED	
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BID SET

PROJECT NO. US-CA-515-2 DATE: 5/14/2021

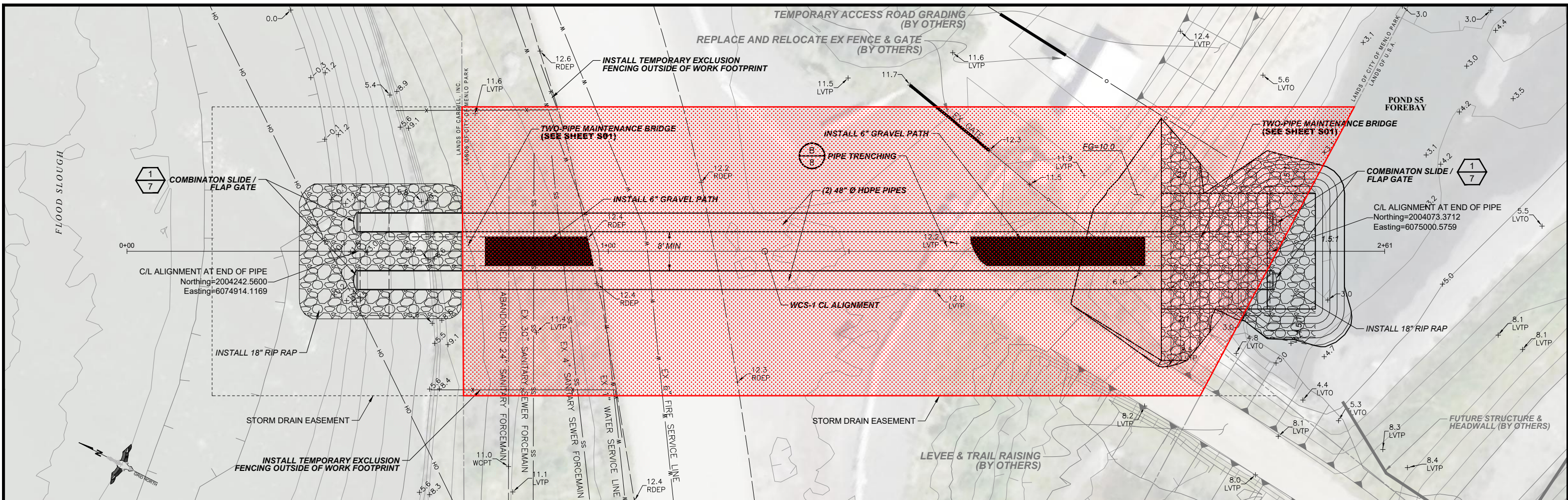
SOUTH BAY SALT POND RESTORATION PROJECT

RAVENSWOOD PONDS

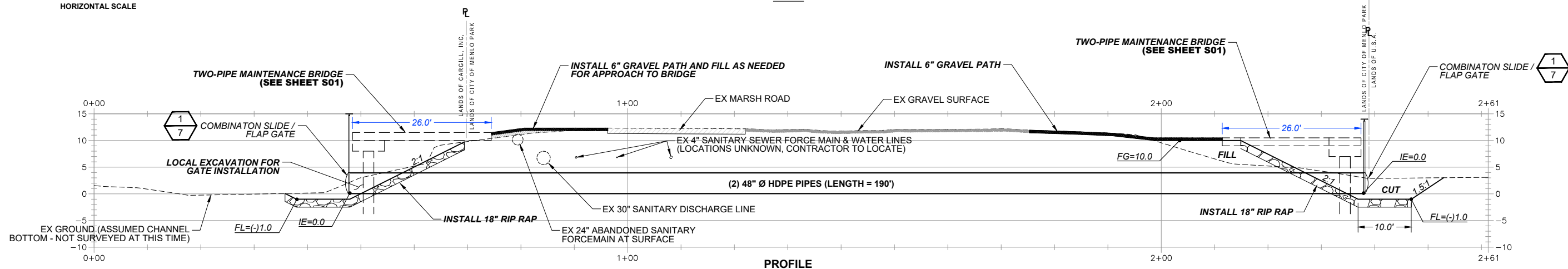
SITE OVERVIEW Page 1-23 of 20

DESIGNED BY: SC
DRAWN BY: JS
SURVEYED BY: DU
CHECKED BY:
SHEET NO.

Unauthorized Changes & Uses
The engineer preparing these plans will not be responsible for, or liable for, unauthorized changes to or uses of these plans. All changes must be in writing and must be approved by the preparer of these plans.



PLAN

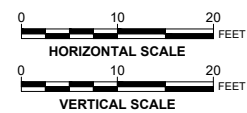


PROFILE

WCS-1 CL ALIGNMENT PLAN & PROFILE

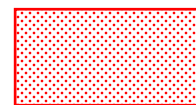
NOTES:

- CONTRACTOR SHALL PROTECT AND SUPPORT ALL UTILITIES CROSSING TRENCH. CONTRACTOR SHALL SUBMIT PROPOSED UTILITY SUPPORT PRIOR TO BEGINNING EXCAVATION.
- CONTRACTOR SHALL ISOLATE EXCAVATION FROM FLOOD SLOUGH USING A COFFERDAM. COFFERDAM SHALL BE REMOVED AFTER CONSTRUCTION.
- CONTRACTOR SHALL OBTAIN ALL PERMITS AND APPROVALS FOR WORK IN ROADWAYS. CONTRACTOR SHALL PROVIDE TRAFFIC CONTROL APPROVED BY LOCAL JURISDICTION.



Unauthorized Changes & Uses

The engineer preparing these plans will not be responsible for, or liable for, unauthorized changes to or uses of these plans. All changes must be in writing and must be approved by the preparer of these plans.



Proposed easement area

REV. NO.	DESCRIPTION	DATE	APPROVED



PROJECT NO. US-CA-515-2	DATE: 5/14/2021	DESIGNED BY: SC
SOUTH BAY SALT POND RESTORATION PROJECT		DRAWN BY: JS
RAVENSWOOD PONDS		SURVEYED BY: DU
PLAN & PROFILE - WCS-1		CHECKED BY:
Page 1-24		SHEET NO. 20

BID SET

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Menlo Park
Attn: City Clerk
701 Laurel St.
Menlo Park, CA 94025

The undersigned declares this instrument to be exempt
from Recording Fees (Govt. Code § 27383) and
Documentary Transfer Tax (Rev. & Tax. Code §11922).

(Space above this line reserved for Recorder's use only)

**ENCROACHMENT AGREEMENT FOR INSTALLATION OF IMPROVEMENTS AT BEDWELL
BAYFRONT PARK, MARSH ROAD, MENLO PARK, CA**

THIS AGREEMENT, dated this ____ day of _____, **2021**, is by and between the City of Menlo Park, a municipal corporation, hereinafter referred to as "City", fee title owner (the "Owner") of the real property commonly known as **Bedwell Bayfront Park**, and more particularly outlined in the legal description attached hereto as **Exhibit A** (the "Property"), and UNITED STATES FISH AND WILDLIFE SERVICE, hereinafter referred to as "Service", for the installation, use of, maintenance, and repair of (1) placement of earthen fill and landscape for habitat improvements and management on the adjacent properties, and (2) placement of fill and surfacing to connect to a public access trail on the adjacent property and installation of informational signage on the Property.

RECITALS

WHEREAS, **Service** owns property adjacent to the Property.

WHEREAS, **Service** is proposing to install, and place fill, surfacing and signage ("Facility") as shown on Exhibit B (the "Encroachment Area) and incorporated into this Encroachment Agreement.

WHEREAS, the Facility has been reviewed, and meets the satisfaction of, all necessary City Departments including approval from the Director of Public Works.

WHEREAS, as a result of the foregoing, the City is requiring an Agreement for the ownership, liability, and maintenance of said Facility prior to the commencement of its construction.

NOW, THEREFORE, it is agreed by and between the City and Service hereto as follows:

CONDITIONS OF AGREEMENT

1. Access. City agrees to the following regarding access to the Property within the footprint of the Facility:
 - a. City agrees to provide access to the Service within the footprint of the Facility.

- b. Service agrees to provide services through itself or its Partners (defined below) to remove the Facility upon receipt of a 60-day advance notification from the City, at the City's sole and absolute discretion.
2. Repair and Maintenance. Service shall provide services through itself or its Partners (defined below) for any and all maintenance and repair of the Facility and the Property in the vicinity of the Facility and shall keep the Facility and the Property in good condition and repair, in accordance with the Service's legal obligations as a federal agency, at all times.
3. Damages to the Property. If any portion of the Property is damaged by the Service, its officers', agents', employees' and/ or contractors' actions in gaining access to the Encroachment Area, constructing improvements, or for purposes of repair, maintenance, connection, or for any other purpose, then the Service shall provide services for the reasonable repair of such damage including replacement or repair any portion of the Property, damaged by the Grantee, as reasonably as possible, to the conditions that existed prior to the damage occurring, reasonable wear and tear excepted. If the Service undertakes any repair on any portion of the Property, the Service's work shall conform to applicable standards of the construction industry.
4. Permits. Service agrees through itself or its Partners (defined below) to obtain all necessary permits from the City for maintenance, removal, repair or replacement of the Facility. Permits may include, but are not limited to: Planning Permits, Building Permits, or Engineering / Encroachment Permits. Additionally, Service shall obtain all appropriate permits and consents required by applicable law before performing future construction work within the Encroachment Area.
5. Remedies. In the event that Service fails to abide by the terms of this Agreement after fifteen (15) days prior notice, the City may enter and repair the Facility and/or Property, or, remove the Facility without right of reimbursement from the Service. Alternatively, the City may also invoke provision 1(b) above by providing the Service with 60-days advance notice.
6. Grantee Liability. The Service agrees to cooperate, to the extent allowed by law, in the submission of claims pursuant to the Federal Tort Claims Act against the United States for personal injuries or property damage resulting from the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her employment, arising out of this Agreement.
7. Copy of Agreement. Any Partners (defined as construction contractors, construction monitors, and private companies or private non-profit organizations working onsite and under separate contractual agreements with the Service) working for the Service under a partnership agreement in assisting the Service with work on the Service lands for which access is provided to the Service under this Agreement will be given a copy of the Agreement.
8. Notification of Partners. Under the terms of this Agreement, Service shall notify its Partners by providing a copy of the Agreement and being made aware that the Service's or the Partner's use of the Property is conditional on the following indemnification.
9. Indemnification by Partners. Without limiting the generality of the foregoing, Service shall require its Partners to the maximum extent permitted by law, to indemnify, protect, defend and hold City harmless from and against Claims arising out of or in connection with any labor performed on the Property by, or at the request or for the benefit of, Service.
Service shall, to the maximum extent permitted by law, require any Partners to indemnify, protect, defend and hold City harmless against claims, losses, costs (including attorneys' fees and costs), liabilities and damages resulting from the failure of any of Service's Partners, consultants, contractors or subcontractors, to comply with the insurance requirements set forth in Exhibit C.
10. Insurance. To the extent any Partners working for the Service under a partnership agreement in assisting the Service with work on the Service's property and uses the Encroachment Area, Service shall require that Partners add City as an additional insured and provide City with the insurance requirements set forth in Exhibit C, USFWS Partner Agreement.

11. Choice of Law. This Agreement shall be governed by and enforced in accordance with the laws of the State of California and the United States, as applicable.
12. Non-exclusive Use. Service shall not construct any new structures or other permanent improvements within the Encroachment Areas without City's prior written approval. City reserves the right to continued use of the Encroachment Areas for any, and all, Public purposes, and or, utilities.
13. Assignment. Service shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Service's duties or obligations under this Agreement without the prior written consent of the City. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including termination of this Agreement. City acknowledges, however, that Service, in the performance of its duties pursuant to this Agreement, may utilize sub-contractors.
14. Authorization. Each signatory to this Agreement warrants that he or she has full authority to execute this Agreement on behalf of and thus bind the individual, or entity represented.
15. Covenants and Conditions. The covenants and conditions in this Agreement, including, but not limited to, indemnification of the City, shall run with the land commonly known as **Bedwell Bayfront Park / APNs 055-400-490**, burden the Property and bind and inure to the benefit of the City and Service and their respective successors and assigns.
16. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one instrument.

Attachments:	Exhibit A	Legal Description
	Exhibit B	Site Plan / Encroachment Area for Fill, Surfacing and Signage
	Exhibit C	Insurance Requirements, in USFWS Partner Agreement

[SIGNATURES APPEAR ON NEXT PAGE]

SIGNATURES

IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

U.S. Fish and Wildlife Service:

Signature

Date

Name

APPROVED AS TO FORM:

Nira Doherty, City Attorney

Date

CITY OF MENLO PARK:

Nicole H. Nagaya, Public Works Director

Date

ATTEST:

Judi A. Herren, City Clerk

Date

EXHIBIT A

LANDS OF THE CITY OF MENLO PARK (Marsh Road Sanitary Landfill Site)

All that real property situated in the City of Menlo Park, County of San Mateo, State of California more particularly described as follows:

BEGINNING at the northeast corner of that certain parcel conveyed by LESLIE SALT COMPANY to MENLO PARK SANITARY DISTRICT by deed recorded in Volume 1051 of Official Records of San Mateo County at Page 40: thence along the northerly line thereof, North 53° 19' 06" West, 1,310.61 feet to the northwest corner thereof; thence along the northerly extension of the westerly line of said parcel, North 1° 01' 38" East, 56.96 feet to the southerly line of Parcel G described in the deed from LESLIE SALT COMPANY to STATE OF CALIFORNIA, recorded in Volume 5426 of said Official Records at Page 109; thence along said southerly line South 47° 00' 52" East, 121.91 feet; thence continuing along said southerly line South 56° 02' 07" East, 173.6 feet; South 50° 29' 59" East, 745.2 feet; South 77° 39' 39" East, 163.8 feet; North 36° 03' 24" East, 70.8 feet; North 75° 57' 50" East, 40.2 feet; South 12° 15' 53" East, 117.7 feet; South 80° 56' 00" East, 285.6 feet; South 77° 05' 33" East, 394.0 feet; South 84° 50' 57" East, 356.4 feet; North 77° 52' 54" East, 643.05 feet; thence South 0° 16' 11" East, 708.79 feet; thence South 1° 04' 49" West, 1,750.53 feet to a point on the easterly extension of the southerly line of Parcel B of that certain Parcel Map recorded April 18, 1969 in Volume 7 of Parcel Maps at Page 44 of Records San Mateo county; thence South 75° 47' 22" West, 45.66 feet to a point on the southerly extension of the easterly line of said Parcel B distant thereon South 1° 16' 36" West, 12.00 feet from said southeast corner; thence North 88° 58' 22" West, 1646.33 feet; thence South 1° 09' 44" West, 940.65 feet to a point on the easterly extension of the southerly line of Parcel A of the last mentioned Parcel Map; thence along said extension North 88° 58' 22" West, 73.00 feet; thence along the southerly line of Parcel A of last mentioned Parcel Map, North 88° 58' 22" West, 1175.97 feet to the southwest corner of Parcel A of the last mentioned Parcel Map; thence North 27° 20' 12" West, 60.0 feet to the general westerly line of that 60 foot wide road easement first described in the Grant of Easement from LESLIE SALT COMPANY to MENLO PARK SANITARY DISTRICT, Recorded in Volume 1878 of Official Records of San Mateo county at Page 673; thence along said westerly line, North 62° 39' 48" East, 247.91 feet; North 28° 34' 01" East, 205.87 feet; North 14° 05' 12" West, 200.41 feet to the southwest corner of Parcel 1 of that certain Parcel Map recorded in Volume 21 of Parcel Maps at Page 21, Records of San Mateo County; thence along the southwesterly line of said Parcel 1, North 14° 05' 12" West, 217.01 feet; thence North 1° 24' 10" East, 2117.30 feet to a point on the southeasterly corner of that certain parcel conveyed by LESLIE SALT COMPANY to MENLO PARK SANITARY DISTRICT by deed recorded in Volume 1051 of Official records of San Mateo County at page 40; thence along the southerly line of said parcel South 88° 58' 22" East, 1064.94 feet to the southeasterly corner of said parcel; thence along the easterly line of said parcel North 1° 01' 38" East, 435.97 feet to the point of beginning.

Containing 164.25 acres, more or less.

The California Coordinate System, Zone III as shown on that Parcel Map recorded April 18, 1969, in Volume 7, of Parcel Maps page 44, San Mateo County Records, was used as the basis or bearings for the above descriptions. All distances are grid distances. To obtain ground distances, multiply the grid distance by 1.0000600.

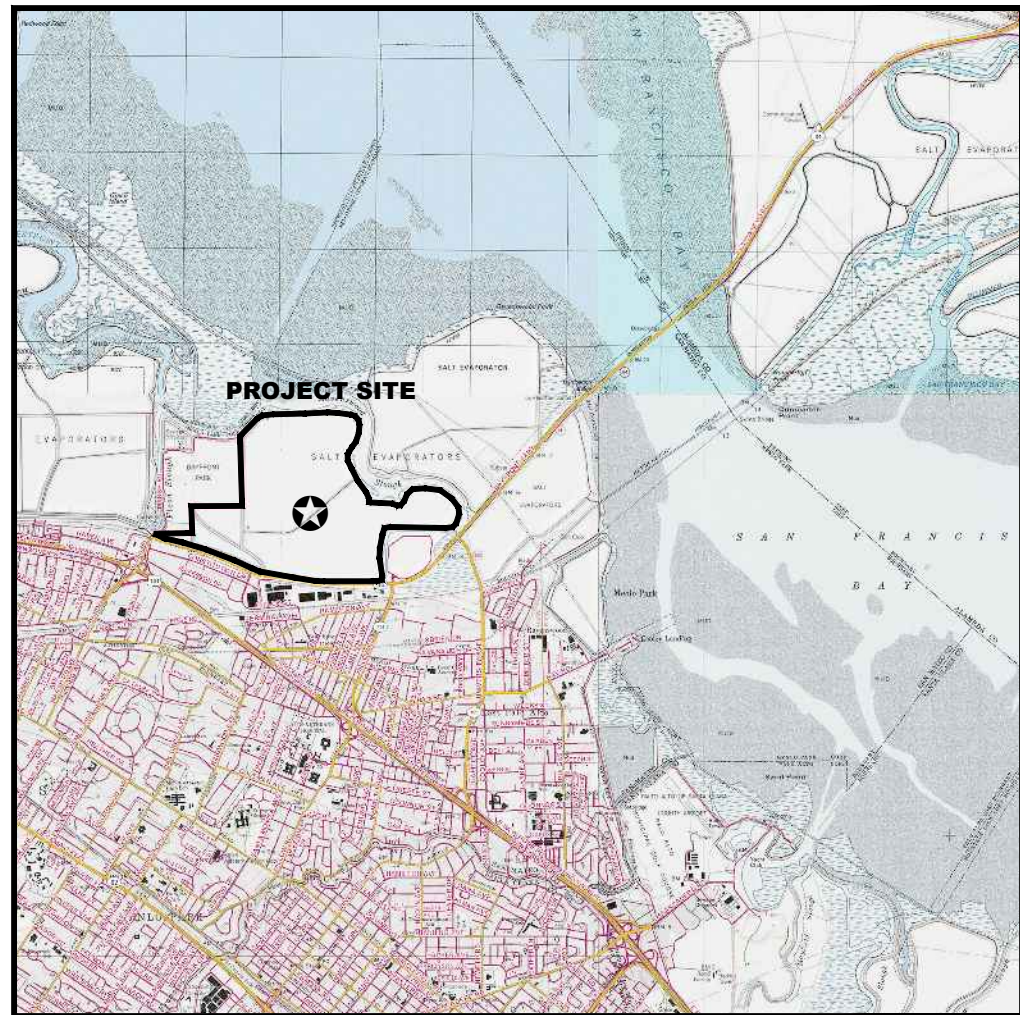


US-CA-515-2

SOUTH BAY SALT PONDS RESTORATION PROJECT

RAVENSWOOD PONDS

LOCATION MAP



NOT TO SCALE

VICINITY MAP



See Location Map

SURVEY DATUM

Horizontal and Vertical Control:
Coordinates are State Plane 0403 California Zone 3 in US feet [NAD83], with vertical in NAVD88.

MAP DATA

Contour Interval: 1 Foot
(Existing ground surface: D.U. survey & 2010 U.S.G.S. Lidar)
Aerial Photos: 2016 NAIP, Google

SHEET INDEX

- 1 Cover Sheet
- 2 Site Overview
- 3 Grading - Pond R5/S5
- 4 Bedwell Bayfront Park HTZ
- 5 Bedwell Bayfront Park HTZ

PROJECT DIRECTORY

Ducks Unlimited, Inc.
Western Regional Office
3074 Gold Canal Drive
Rancho Cordova, Ca. 95670-6116
Ph. (916) 852-2000

Unauthorized Changes & Uses
The engineer preparing these plans will not be responsible for, or liable for, unauthorized changes to or uses of these plans. All changes must be in writing and must be approved by the preparer of these plans.



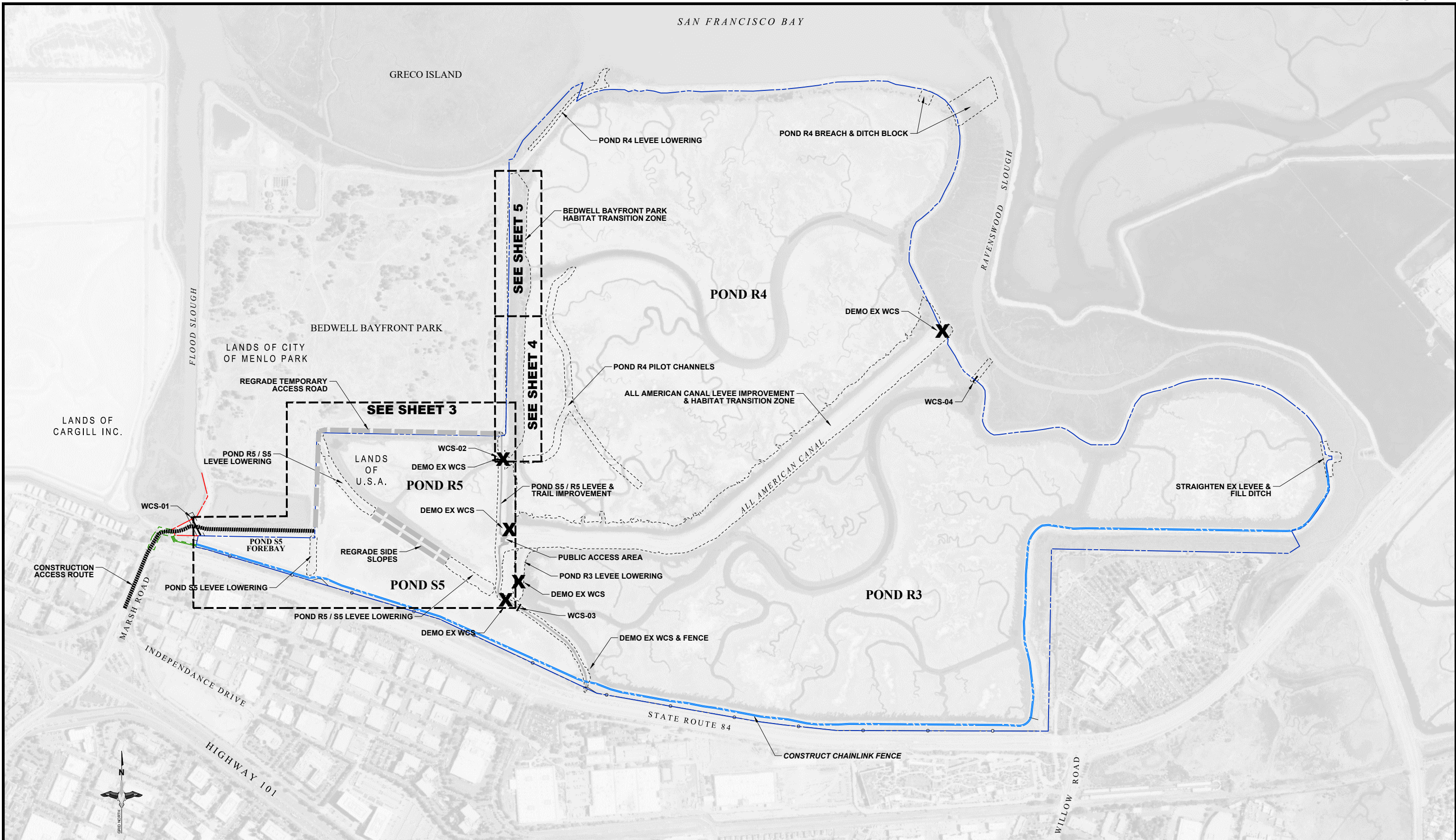
PRELIMINARY
NOT FOR CONSTRUCTION

REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED
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△			
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PROJECT NO. US-CA-515-2	DATE: 5/20/2021	DESIGNED BY: SC
SOUTH BAY SALT PONDS RESTORATION PROJECT RAVENSWOOD PONDS		DRAWN BY: JS
		SURVEYED BY: DU
		CHECKED BY:
		SHEET NO.
APPROVED BY:		Page 1-2 of 4

SAN FRANCISCO BAY



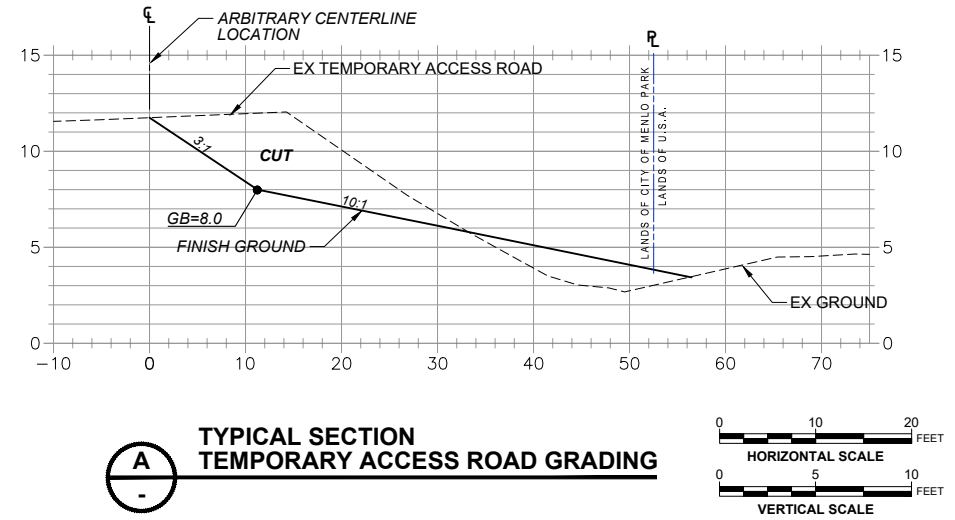
- USFWS Boundary
- - - Adjacent Boundary Lines
- Cargill pipeline parcel
- - - PROPOSED Easement
- Centerline of Easement (Other)
- - - Easement (Other)

REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED
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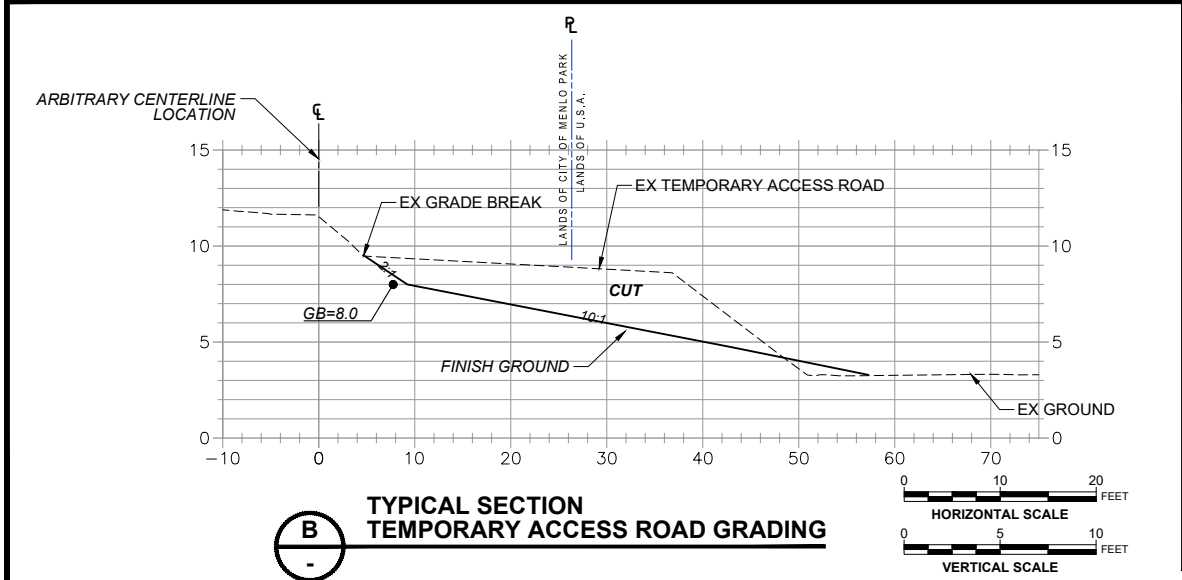
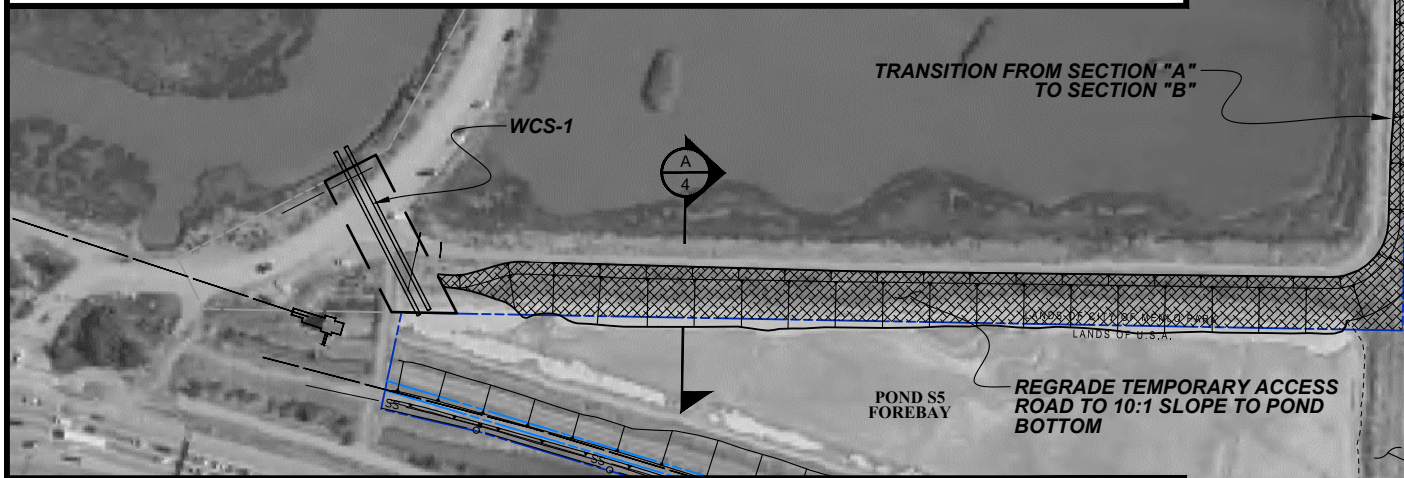


PROJECT NO. US-CA-515-2	DATE: 5/20/2021	DESIGNED BY: SC
SOUTH BAY SALT PONDS RESTORATION PROJECT		DRAWN BY: JS
RAVENSWOOD PONDS		SURVEYED BY: DU
SITE OVERVIEW Page 1-2.4 of 5		CHECKED BY:
		SHEET NO.

Unauthorized Changes & Uses
 The engineer preparing these plans will not be responsible for, or liable for, unauthorized changes to or uses of these plans. All changes must be in writing and must be approved by the preparer of these plans.



A
TYPICAL SECTION
TEMPORARY ACCESS ROAD GRADING



B
TYPICAL SECTION
TEMPORARY ACCESS ROAD GRADING



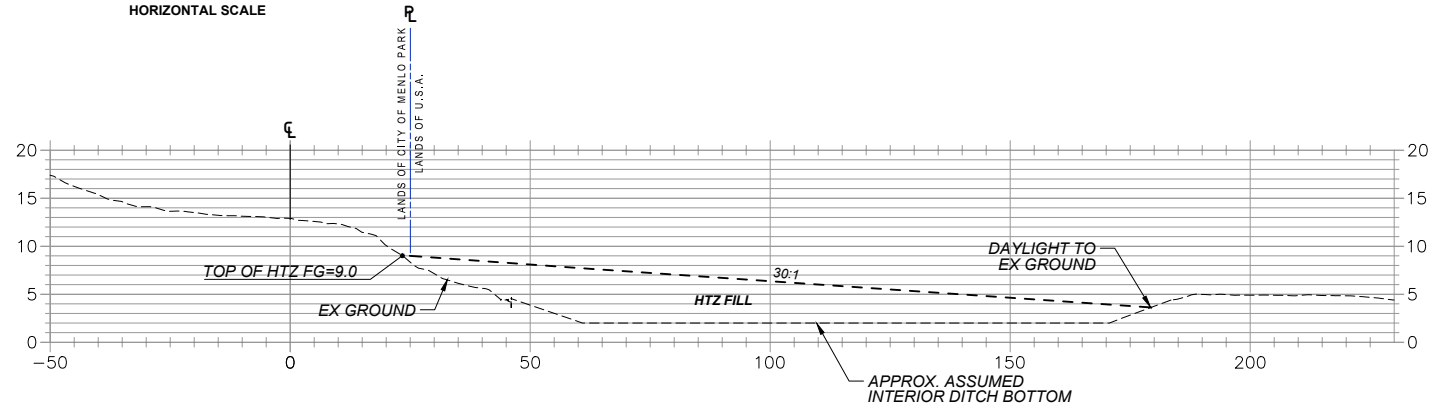
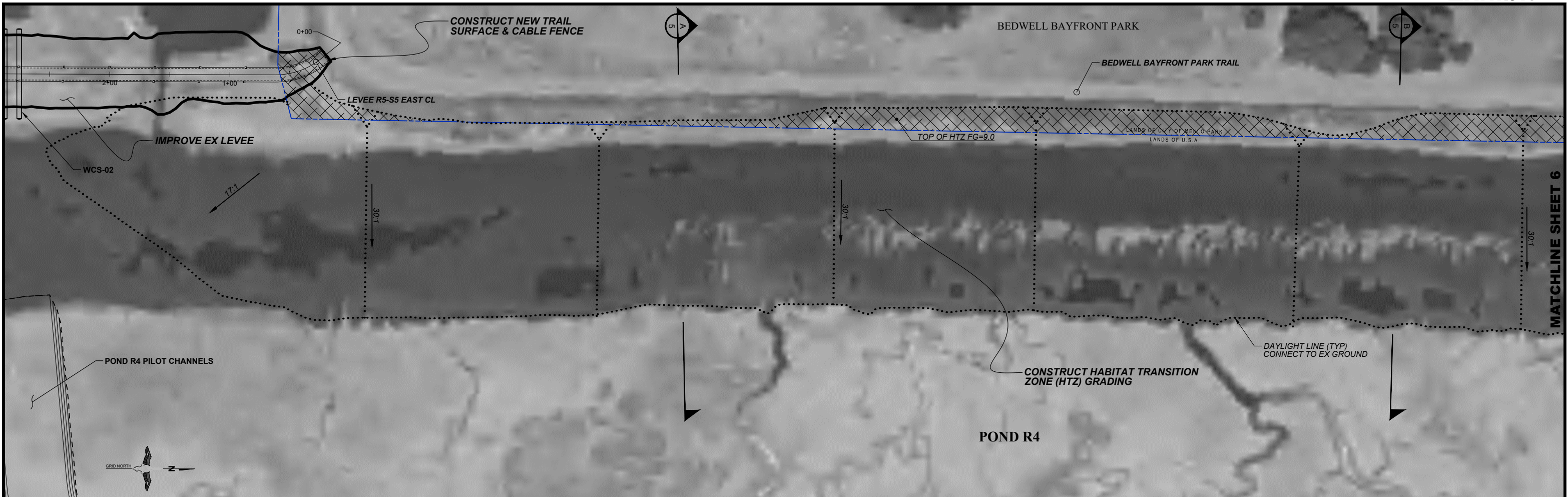
- Work within City of Menlo Park
- USFWS Boundary
- Cargill pipeline parcel

Unauthorized Changes & Uses
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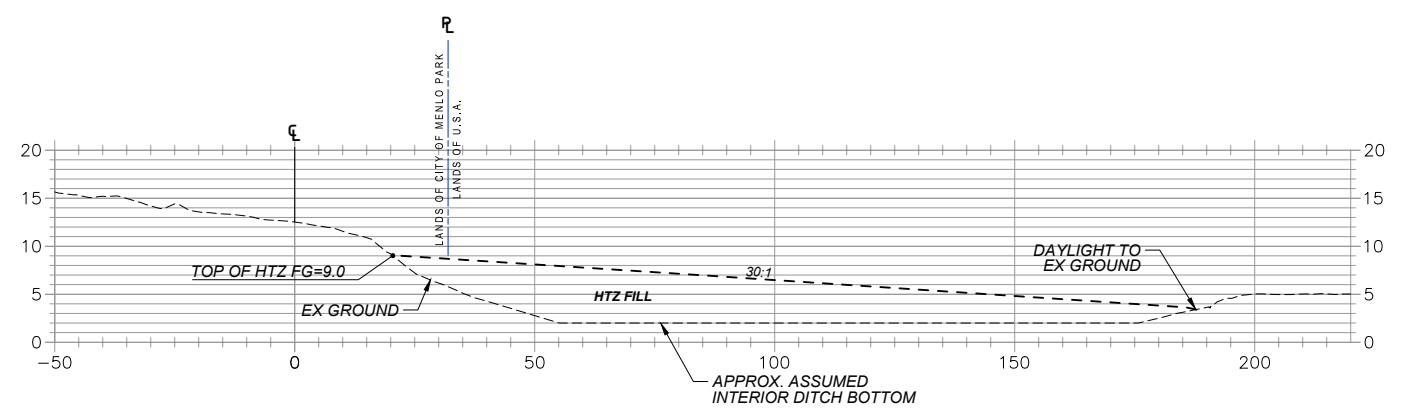
REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED



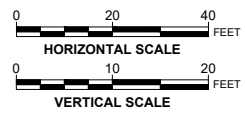
PROJECT NO. US-CA-515-2	DATE: 5/20/2021	DESIGNED BY: SC
SOUTH BAY SALT PONDS RESTORATION PROJECT		DRAWN BY: JS
RAVENSWOOD PONDS		SURVEYED BY: DU
GRADING - POND R5/S5		CHECKED BY:
Page 1-2 of 5		SHEET NO.



A
5



B
5



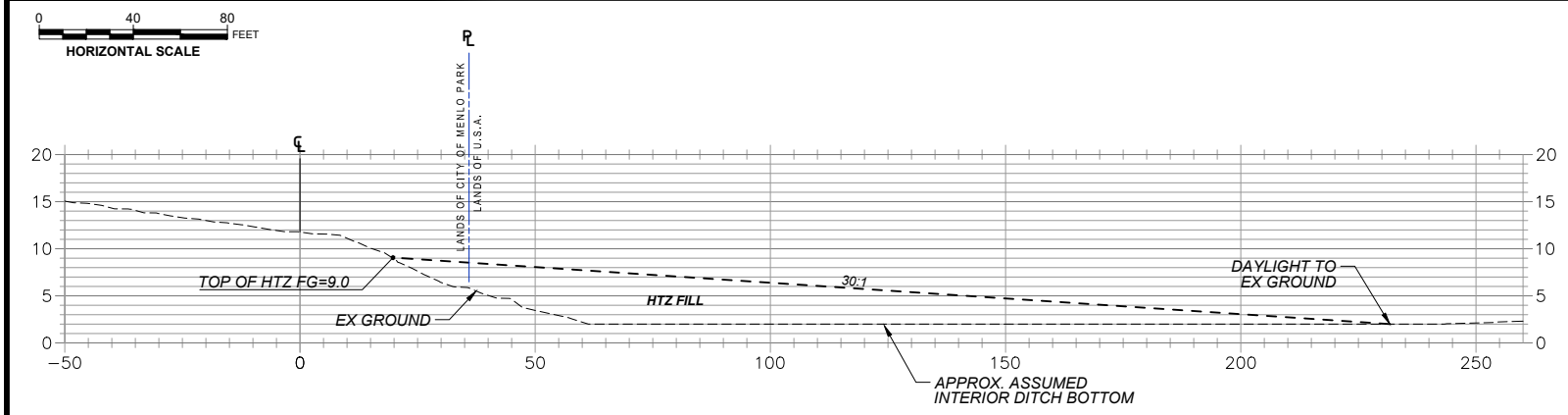
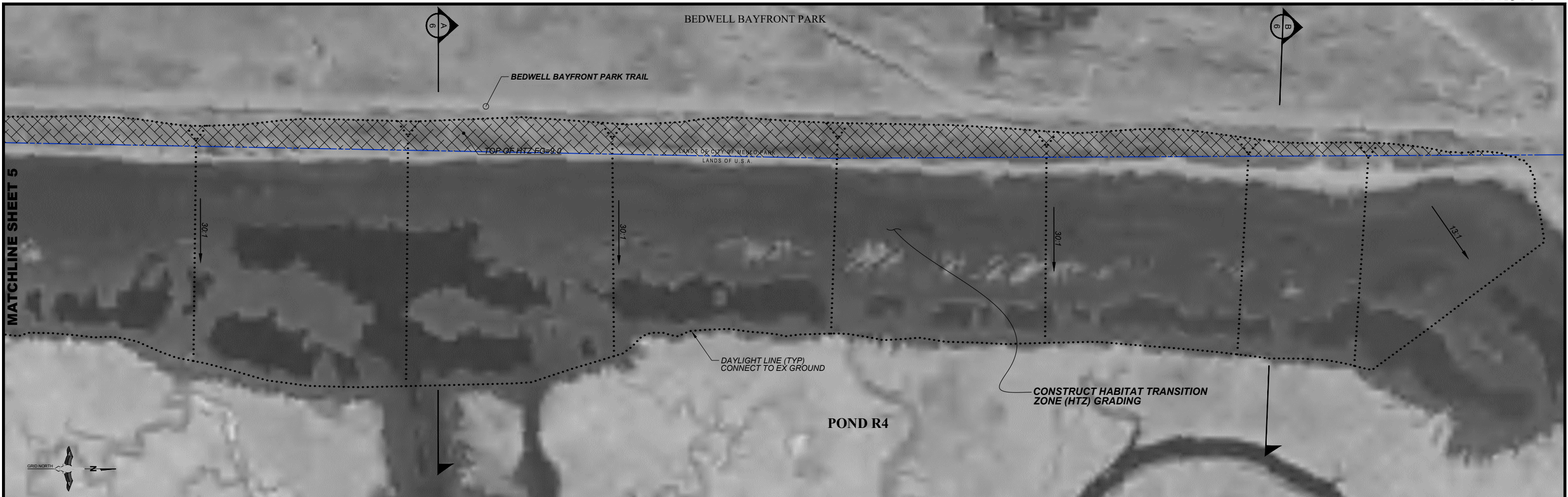
Work within City of Menlo Park
 USFWS Boundary

Unauthorized Changes & Uses
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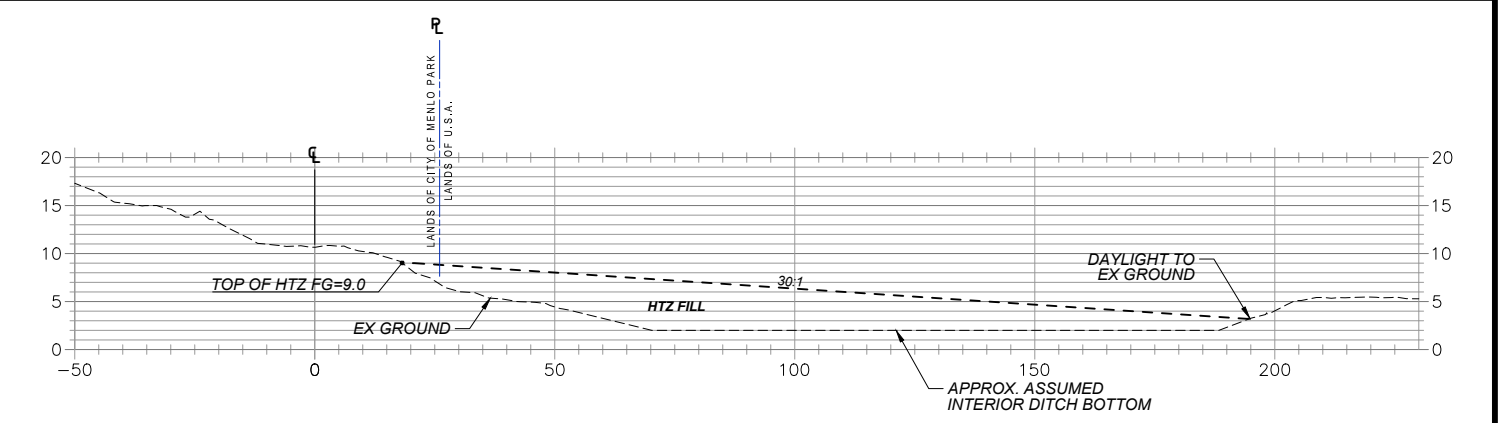
REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED



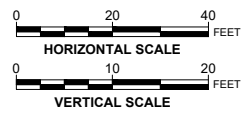
PROJECT NO. US-CA-515-2	DATE: 5/20/2021	DESIGNED BY: SC
SOUTH BAY SALT PONDS RESTORATION PROJECT		DRAWN BY: JS
RAVENSWOOD PONDS		SURVEYED BY: DU
BEDWELL BAYFRONT PARK		CHECKED BY:
Page 1-2.4 of 5		SHEET NO.



A
SECTION (STA. 14+00)
BEDWELL BAYFRONT PARK HTZ
6



B
SECTION (STA. 21+00)
BEDWELL BAYFRONT PARK HTZ
6



Work within City of Menlo Park
 USFWS Boundary

Unauthorized Changes & Uses
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REVISIONS			
REV. NO.	DESCRIPTION	DATE	APPROVED



PROJECT NO. US-CA-515-2	DATE: 5/20/2021	DESIGNED BY: SC
SOUTH BAY SALT PONDS RESTORATION PROJECT		DRAWN BY: JS
RAVENSWOOD PONDS		SURVEYED BY: DU
BEDWELL BAYFRONT PARK		CHECKED BY: DU
Page 1-2 of 5		SHEET NO. 48f 5

PARTNER DESIGN & CONSTRUCTION AGREEMENT

Between the

THE UNITED STATES DEPARTMENT OF INTERIOR
U.S. FISH & WILDLIFE SERVICE
SAN FRANCISCO BAY NATIONAL WILDLIFE REFUGE COMPLEX

AND

DUCKS UNLIMITED, INC.

FOR

PROJECT IMPLEMENTATION AT THE
DON EDWARDS SAN FRANCISCO BAY NATIONAL WILDLIFE REFUGE
SOUTH BAY SALT POND RESTORATION PROJECT

Phase 2

This PARTNER DESIGN & CONSTRUCTION AGREEMENT (“AGREEMENT”) is hereby entered into between THE UNITED STATES FISH AND WILDLIFE SERVICE, SAN FRANCISCO BAY NATIONAL WILDLIFE REFUGE (“USFWS”), an agency of the United States Department of Interior, and Ducks Unlimited, Inc. (“DU” or “Partner”), a District of Columbia non-profit organization.

The purpose of the AGREEMENT is to set out the terms and conditions under which the Partner will design, construct, and donate to the United States, for the USFWS use, restoration projects described in Phase 2 South Bay Salt Pond Restoration Project (“SBSP Project” or “Project”), including earthmoving, revegetation, installation of water control features, public access features, earthen berms, swales, pedestrian bridges, levee breaches, levee lowering, planting of appropriate propagated native habitat along portions of the below described habitat transition zones to be constructed as part of the South Bay Salt Pond Restoration Project, Phase 2 actions at Ravenswood Ponds (R3, R4, R5, S5, Mt. View Ponds A1 and A2W, and Island Ponds A19 and A20 as described below. Throughout this AGREEMENT, the USFWS and the Partner may be referred to jointly as “the parties.”

In consideration of, and reliance on, the Partner’s offer to complete and donate the Project to the United States, the USFWS will not seek Federal appropriations for the Project but will use existing appropriated funds to work with the Partner to implement the Project. It is the intent of both parties to be legally bound by the AGREEMENT.

ARTICLE I. BACKGROUND

The South Bay Salt Pond (“SBSP”) Restoration Project is a multi-agency effort to restore 15,100 acres of former salt evaporation ponds in South San Francisco Bay in phases over a 50-year period that was established after the March 2003 acquisition by the US Fish and Wildlife Service (“USFWS”) and the California Department of Fish and Wildlife (“CDFW”) of these ponds in southern San Francisco Bay. The USFWS assumed ownership of the ponds in the Ravenswood, Alviso ponds areas managed as part of the Don Edwards San Francisco Bay National Wildlife Refuge (“Refuge”). From 2009 through 2017, the USFWS has worked with the State Coastal Conservancy (“SCC”) and other agencies to plan the second series of habitat, public access, and flood protection improvements, known as Phase 2 of the South Bay Salt Pond Restoration Project (Phase 2). Phase 2 builds on the goals established by the programmatic 2007 EIS/R by identifying the next set of actions in each of the three pond complexes of the SBSP Restoration Project. The Phase 2 projects on the USFWS property were analyzed in *Final Environmental Impact Statement/Report, Phase 2 -- South Bay Salt Pond Restoration Project, April 2016* (Final Phase 2 EIS/R). A summary project description and map of each of the restoration sites is included in Attachment A & B (see attached).

This AGREEMENT focuses on the Phase 2 project on USFWS properties at the Ravenswood, Mountain View, and Island Ponds (described in more detail below), specifically on a portion of the work that will be implemented by DU, a District of Columbia non-profit established in 1937 to protect and restore wetland and aquatic habitats and is recognized by the Internal Revenue Service as a 501(c)(3) tax exempt entity and doing business in the State of California. USFWS has worked cooperatively to plan, design, and oversee implementation of similar restoration projects with the non-profit.

The USFWS has secured necessary permits for the restoration of the Project to accomplish the actions described below:

Ravenswood Ponds (Ponds R3, R4, R5, and S5). In the Ravenswood pond complex, Phase 2 of the SBSP Project will create a 355-acre mosaic of tidal wetlands, upland transition zone, and managed pond habitats. In the 295-acre Pond R4, the SBSP Project will breach levees, install ditch blocks, dredge pilot channels, and construct approximately 15 acres of gently sloping upland transition zone along the edge of an existing landfill. The levee between R3 and R4 will be raised and widened to reduce flooding risks and to create an upland transition zone. In addition, the project will install water control structures to improve circulation in a remnant channel in R3 in order to enhance Snowy Plover habitat. Water control structures also will be installed to create managed pond habitat in Ponds R5 and S5 for migratory shorebirds and waterfowl. The eastern levee of Ponds R5 and S5 will be improved. A half mile of trail will be constructed with interpretive platforms and signage. DU’s role is to advance the 30% design to final, provide environmental compliance review and other services for permitting and NEPA/CEQA efforts done by others, and oversee construction.

Mountain View Ponds (Ponds A1, A2W). In the Alviso pond complex at Ponds A1 and A2W, Phase 2 of the SBSP Project will create 670 acres of restored tidal wetland habitat and 20 acres of upland transition zone as well as create over 1.1 miles of new Bay Trail spur out to the open bay along the eastern levee of Pond A2W, including two bridges over new, armored levee breaches, and a short 0.2-mile spur to an overlook. The project will include interpretive platforms and signage. Wetlands will be restored by breaching levees, installing ditch blocks in low areas, dredging pilot channels through fringing marsh, and constructing 20 acres of gently sloping upland transition zone (done by others). DU's role is to advance the 30% design to final, provide environmental compliance review and others for permitting and NEPA/CEQA efforts done by others, and oversee construction.

Island Ponds (Ponds A19 and A20). DU will breach and lower the A19 berm in additional locations in order to improve tidal circulation in the 265-acre A19. Initially A19 was breached in 2006 along with the adjacent Ponds A20 and A21. However, since A19 is further upstream from the other ponds and is connected to tidal waters through a single breach, tidal marsh habitat has developed more slowly. By improving the connection to Bay's waters and sediment, tidal vegetation in A19 is expected to substantially expand, providing additional habitat to the endangered and threatened species that have re-occupied A20 and A21. DU's role is to prepare the bid set and oversee construction.

The following grants and funding agreements have been obtained to complete the work described above:

On September 28, 2017, SCC authorized Grant Agreement No. 16-009 for up to \$2,205,296, and further amended to \$13,699,620, a copy of which is provided as Attachment C1.

In addition to these funds, DU has submitted applications to and has been granted funds from National Oceanic and Atmospheric Administration under Federal Award No. NA17NMF4630014 (\$1,500,000), see Attachment C2, and from Facebook under Purchase Order No. 1103798 (\$350,000), Attachment C3, for the Ravenswood Ponds.

In addition, for the Mountain View Ponds, DU has submitted applications to and has been granted funds from North American Wetlands Conservation Act under Grant Award F17AP00277 (\$1,000,000), see Attachment C4, U.S. Environmental Protection Agency under Grant No. 99T52301 (\$1,677,683), Attachment C5, and National Oceanic and Atmospheric Administration under Federal Award No FNA17NMF4630282 1,500,000), see Attachment C6.

An additional \$6,221,730 has been awarded via SCC from the San Francisco Bay Restoration Authority under Agreement No. SFB0004-RA005, a copy of which is provided as Attachment C7.

DU shall not be obliged to commence construction until sufficient funds have been secured from SCC or from other funds directly awarded to DU, or a plan for phasing project elements based on availability of funds and until all funding, permits, and authorizations are obtained and submitted to USFWS, or unless otherwise approved to commence by USFWS.

This AGREEMENT establishes the parties' understandings and obligations regarding planning, design, construction management, and construction of the Ravenswood and Mountain View Ponds and construction management and construction of enhancement actions at Island Ponds and will complete this scope of work as described in funding agreements in compliance with applicable laws, regulations, government policies, and management plans.

USFWS will review and approve Project designs at the 60%, 90% and 100% design levels within 14 days of receipt.

ARTICLE II. AUTHORITY

The USFWS enters into the AGREEMENT pursuant to the Fish and Wildlife Coordination Act of 1934 under 16 U.S.C. Section 661 et seq. and the Fish and Wildlife Act of 1956 under 16 U.S.C. Section 742a et seq.

ARTICLE III. DEFINITIONS

As used in this AGREEMENT, the following terms have the following meanings, and are applicable to both the singular and plural forms of the term:

“Contractor” means any entity (including without limitation, general contractors and subcontractors, vendors, suppliers, architectural and engineering firms, landscape architecture firms, design firms, exhibit fabricators, or other professional service firms) retained by the Partner to provide any design, construction, fabrication, utility, architectural, engineering, project management, construction management, regulatory compliance, labor, materials, products, or services.

“Construction” means any fabrication, installation, improvements to, or modifications of USFWS real property or personal property, including any ground or site disturbance.

“Construction documents” means the drawings and specifications that fully describe the work to be completed under this AGREEMENT.

“Cost estimate” means a cost estimate appropriate for the level and complexity of design and construction of a project, as determined by the USFWS.

“Design” defines the construction requirement (including the functional relationships and technical systems to be used, such as architectural, landscape architectural, environmental, structural, electrical, mechanical, and fire protection) producing the technical specifications and drawings, and preparing the construction cost estimate. Design includes the development of a range of conceptual alternatives through a variety of means including design, design build or design competition; at the sole discretion of the USFWS, the development of regulatory compliance documentation for USFWS review and approval, including National Environmental Policy Act and National Historic Preservation Act documentation; value analysis and alternative refinement during schematic design and design development; required USFWS design-related reviews and approvals; and the preparation of construction documents.

“Project Development Plan” describes (1) project-specific design elements and construction standards required by USFWS that must be addressed in Project designs, (2) the USFWS’s project reviews, and (3) Project deliverables and delivery dates. And any other planning and implementation by DU to plan, design, and oversee construction of habitat enhancements in the Ravenswood, Mountain View, and Island pond complexes on the Refuge, as depicted in Attachment A.

“Third-Party Contract” means any contract between the Partner and any contractor furnishing design, construction, labor, supplies or services.

“Applicable Laws” means all federal, state and local laws regulations, ordinances, order or other legal requirements applicable to the activities undertaken under the AGREEMENT, whether now in force or enacted or promulgated after the AGREEMENT is executed.

“Project” for this AGREEMENT consists of planning, design, bidding, construction management, and construction of Ravenswood and Mountain View Ponds, and construction management and construction at Island Ponds.

ARTICLE IV. RESPONSIBILITIES OF THE PARTIES

A. The USFWS agrees to:

1. In its sole discretion, either review and provide written comments promptly as to not delay the project progress or within 7 days of receipt on any substantive change to any Third-Party Contract, or if not substantively changed then acknowledge receipt of any revised third-party contracts executed by DU in performance of the described work.
2. Within 7 days of receipt or within time period mutually agreed to between parties, review, provide written comments on, and approve or disapprove all design plans, construction drawings, engineering documents, environmental compliance documents, and other documents that affect the scope or fundamental nature of the work associated with the Project. Any of the above-mentioned documents already prepared by the Partner will be provided as an attachment to the AGREEMENT and approved upon signature of the AGREEMENT.
3. Within 7 days of receipt, review and approve (with or without conditions) or disapprove applications for special use permits for access to the Refuge to accomplish the Project.
4. Monitor the general implementation of the Project, including periodic inspection and tests for compliance with the requirements of this AGREEMENT, the Project Development Plan, Project implementation plan or applicable special use permit, and relevant laws, regulations, and policies.
5. Inspect the Project and, if the USFWS determines that it meets USFWS standards and requirements and is complete, provide a written acceptance to the Partner. If the USFWS cannot accept the Project as complete, then the USFWS will identify in writing what additional work the Partner must accomplish in order to allow the USFWS to accept the Project as complete.

6. Notify the Partner of any change in federal law or USFWS policy that may affect implementation of this AGREEMENT.
7. As a subrecipient of funds provided by various federal and state partners to DU, USFWS will accept and comply with all required terms and conditions of those funding agreements, attached as Exhibit C1-C7 to this AGREEMENT.
8. USFWS will designate a representative to serve as the Project Manager over the Project who will visit the project site no less than weekly to check-in with the representative from DU who will serve as the on-the-ground designated Project officer.
9. USFWS will also authorize the Executive Project Manager for the South Bay Salt Pond Restoration Project to serve as its alternate Project Manager for the Refuge and has authorizes him/her to represent the Refuge in furtherance of the Project, including any coordination with the DU representative.

B. Ducks Unlimited, Inc. agrees to:

1. Designate a representative from DU to serve as on-the ground Project representative who is authorized to make decisions on the Project. DU representative will keep the USFWS Project Manager and South Bay Salt Pond Executive Project Manager informed on all aspects of the Project and meet no less than once per week to review project schedule, status, and identify any issues requiring decision or resolution.
2. Ensure that the Project meets USFWS project purpose and the Partner of its own volition provides said improvements, and without compensation or reimbursement by the USFWS.
3. Contact the USFWS in a timely manner with special use requests for access to the Refuge to accomplish the Project and ensure that its third-party contractors and subcontractors do the same.
4. Unless, otherwise approved at time of signature of AGREEMENT and provided as an attachment, before entering into any contract or agreement with any third party related to the Project, DU will provide to the USFWS:
 - a. A copy any Third-Party Contract;
 - b. Written confirmation that the third party:
 - i. Has obtained all required licenses to do the work required;
 - ii. Is not suspended or debarred from federal contracting; and
 - iii. Demonstrates relevant experience and competence to perform the work contemplated in the Third-Party Contract.
 - c. Written confirmation that the Partner:
 - i. Where appropriate used competition in selecting the third party to perform the work. In the event that a contract meets the threshold for sole-source justification, DU will provide a memo detailing sole source justification rationale. A memo would also be provided in the event of contracting with project partners, where a partner donates funds or services to the project;
 - ii. Has taken measures to avoid or mitigate conflicts of interest;

- iii. Has incorporated provisions reflecting best practices in contract management and project administration into the Third-Party Contract; and
- iv. Has made the USFWS a third-party beneficiary of all Third-Party Contracts.
- d. The signed agreement with the contractor or consultant included as an Attachment to this AGREEMENT, or amended as an Attachment to this AGREEMENT if obtained after the execution of this AGREEMENT.
- 5. Timely provide the USFWS with a final, signed copy of any Third-Party Contract upon execution.
- 6. Ensure that Third-Party Contracts do not contain a binding arbitration clause or other clause that may affect the USFWS’s ability to seek judicial review in its capacity as a third-party beneficiary to the Third-Party Contract.
- 7. Execute any Third-Party Contract only after receiving (a) the USFWS written comments on the proposed contract, (b) written notification from the USFWS that it has no comments on the proposed contract, or (c) written notification from the USFWS that it is declining to review the proposed contract.
- 8. Submit all plans, designs, and specifications for USFWS review and approval or disapproval at key stages (90% and 100%) of the Project.
- 9. Ensure that the Project design complies with all applicable laws, regulations, legal requirements, building codes, design requirements, and to coordinate with USFWS in advance on approach in meeting all required permit provisions.
- 10. Coordinate with the USFWS designated Project Manager, under this AGREEMENT and serve as on-site project manager, for all activities to vegetation transition zone habitat along the areas designated as the Bedwell Bayfront Park Transition Zone and the All-American Canal Transition Zone.
- 11. Include the following requirements verbatim in any Third-Party Contract for the performance of any work or for fulfilling any obligation related to the Project:

- 1. “The contractor agrees:
 - a. That the U.S. Fish & Wildlife Service is a third-party beneficiary of this contract, with all legal rights associated with that status, including the right to enforce the contract.
 - b. To comply with all applicable laws, regulations, rules, orders, and other legal requirements, and USFWS policies;
 - c. To comply with the design plans, technical specifications, and permits relating to the Project;
 - d. To comply with all applicable OSHA standards and requirements and to follow any USFWS order to suspend work if unsafe conditions or unsafe practices arise; and that at any time the USFWS may monitor, inspect, or access the construction site and construction-related materials and documents;
 - e. To obtain and transfer to the USFWS all warranties from subcontractors, manufacturers or suppliers that would be

given in normal commercial practice for work performed and materials furnished:

- i. For a period of not less than one year; and
 - ii. Executed, in writing, for the benefit of the United States;
- f. To be responsible for all damages to persons or property that occur as a result of the contractor's fault or negligence because of, or in any way related to the Project;
 - g. To waive any defense to any claim based on the contractor's alleged reliance on the USFWS's Project monitoring, inspections or tests. All monitoring, inspections or tests are for the benefit of the USFWS and do not relieve the contractor of responsibility for (i) providing adequate quality control measures, or (ii) ensuring against damage or loss before Project acceptance. In addition, such monitoring, inspections or tests do not imply acceptance of the contractor's work by either Ducks Unlimited or the USFWS, nor does it affect the continuing rights of Ducks Unlimited or the USFWS after acceptance of the contractor's work.
 - h. That the USFWS's review, approval, or acceptance of the contractor's services nor Ducks Unlimited's payment for those services will be construed to operate as a waiver of any rights of the USFWS, or of any cause of action that the USFWS may have, and the contractor will be and remain liable to Ducks Unlimited and the USFWS in accordance with the terms of this Contract and applicable law for all damages for which the contractor is legally responsible.
 - i. To obtain and maintain, in addition to other stated requirements, the following insurance requirements:

2. Insurance

- a. The contractor must comply with all insurance-related provisions of this Article. The contractor is responsible for ensuring that these insurance requirements are included, as appropriate, in their respective contracts with subcontractors.
- b. Insurance must be acquired before the initiation of any National Wildlife Refuge activities on the property and must be maintained until the Project is accepted as complete by the USFWS.
- c. Insurance coverage must be commensurate with foreseeable risk, and coverage limits may ultimately be greater than the minimum limitations required below. The USFWS will not be responsible for any omissions or inadequacies of any insurance coverage or amounts in the event that insurance purchased by the contractor or a subcontractor proves to be inadequate or insufficient for any reason.

- d. The contractor and all subcontractors must procure and maintain the following insurance and comply with the following associated requirements:
- i. The contractor and all subcontractors must have appropriate insurance including coverage for commercial general liability, contractual liability, automobile, valuable papers, umbrella coverage, and worker's compensation from a responsible company or companies. Unless higher limits are required by the USFWS in writing, within 30 days following the execution of this AGREEMENT, commercial general liability insurance must each have a minimum limitation of One million dollars (\$1,000,000) per person for any one claim, and an aggregate limitation of Three Million Dollars (\$3,000,000) for any number of claims arising from any one incident.
 - ii. The contractor and subcontractors, as applicable, must have appropriate insurance coverage when warranty work is conducted. This provision will survive termination or expiration of this AGREEMENT. Warranty work requires the USFWS Project Leader's prior approval.
 - iii. Contractors providing architectural or engineering service must have Professional Error and Omissions Insurance coverage that, at a minimum, conforms to the requirements of applicable state, territorial, or district law.
 - iv. Where a contractor is authorized to utilize USFWS structures or facilities in conjunction with this AGREEMENT, the contractor must procure and maintain, at its sole cost and expense, fire and hazard protection insurance in an amount equal to the replacement cost of structures or facilities utilized. This insurance must be maintained for the term of use.
- e. All insurance policies required by this AGREEMENT must be payable to the Ducks Unlimited, and Ducks Unlimited will use insurance proceeds to correct the damage, harm, or deficiency that is the basis of the insurance claim. Ducks Unlimited expenditure of insurance proceeds will be in conformance with law, and USFWS approvals. Insurance proceeds that are paid to the Ducks Unlimited, but that are not needed or cannot be used to correct the harm or deficiency at issue, must, if allowed under the insurance policy, be used to further USFWS projects and programs as agreed to by the parties.

- f. All insurance policies required by this AGREEMENT must name the United States as an additional insured and must specify that the insurer must specify that the insurer has no right of subrogation vis-à-vis the United States with respect to claims against other parties.
- g. Before beginning the work authorized herein, the contractor must provide copies of Certificates of Insurance demonstrating that the contractor and subcontractors have acquired all insurance required by this Article. Insurance coverage must be reviewed every year beginning on the date of execution of this AGREEMENT and must be modified if necessary to ensure consistency with generally accepted insurance practices and USFWS policies. The contractor and subcontractors must immediately notify Ducks Unlimited and the USFWS if an insurance policy is canceled or terminates for any reason.
- h. Insurance Carrier Requirements:
 - i. Each issuer of the insurance required by this Article must be rated no lower than A- by the most recent edition of the A.M. Best's Key Rating Guide (Property-Casualty Edition).
 - ii. All insurers for all coverage must have a Best's Financial Size Category of at least VII according to the most recent edition of A.M. Best's Key Rating Guide (Property-Casualty Edition).
 - iii. All insurers must be admitted, licensed, and approved to operate in the state, territory, or district in which the Project will occur.

3. Liability

- a. The contractor assumes liability for and does hereby agree to hold harmless and indemnify the United States of America, its agents and employees from and against any and all claims, losses, damages, costs, judgments, or other liability of any kind whatsoever arising out of or relating to the activities of the contractor and its officers, employees, agents, contractors, and subcontractors under this AGREEMENT. This indemnification will survive the termination or expiration of this AGREEMENT.
- b. To the extent authorized by applicable federal law, including the Federal Tort Claims Act, codified as amended primarily at 28 U.S.C. §§ 2671-80 (2014), the USFWS will be liable for the negligent or other wrongful acts of omissions of its officers or employees while acting with the scope of their office or employment. The USFWS's commitment to pay any lawful liability incurred by the USFWS under this AGREEMENT is backed by the full faith and credit of the

United States.

- c. The contractor must cooperate with the USFWS in the investigation and defense of any claims that may be filed with or against the USFWS arising out of the activities of the contractor, or the contractor’s employees, agents, representatives, or subcontractors (including a subcontractor’s subcontractor).
- d. That the contractor has no recourse against the United States with respect to any aspect of construction activities and will not lien any land, structures, fixtures, or improvements associated with this Contract; and
- e. To be jointly and severally liable under this Contract if the contractor consists of more than one legal entity.”

In addition to provisions “1” through “3” above, any Third-Party Contract for the provision of architectural or engineering services must contain verbatim the following provisions “4” through “6”:

“The contractor agrees:

- 4. That it is solely responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the contractor and warrants that the Project can be built as designed;
- 5. To correct or revise any errors or omissions in its designs, drawings, specifications, and other services without any additional compensation; and
- 6. That the final signed and sealed Final Construction Documents provided by the contractor, as reviewed and approved in writing by the USFWS, are the only true contract documents of record for this Project. By submission of the Final Construction Documents to the Partner, the contractor warrants that all review comments have been resolved to the satisfaction of the USFWS and have been incorporated into the Final Construction Documents.”

- 12. Be responsible for performing one or more of the following: Design, permit support, planning, environmental compliance support, construction management, and construction of the South Bay Salt Ponds Restoration Projects, Phase 2at both Ravenswood (R3, R4, R5, S5) and Mountain View Ponds (A1, A2W), and construction management of the Project at Island Ponds (A19, A20), as described in the Grant Agreements attached to this AGREEMENT.
- 13. Coordinate with USFWS prior to conducting any field activities and will inform the Refuge manager prior to start of work.
- 14. At no cost to the USFWS, promptly take steps necessary, including the suspension of work, to address any reasonable concerns raised by the USFWS such unsafe work practices or if required due to a government shutdown.

Typically, during a government shutdown projects that have funding that do not require a federal employee to be present maybe authorized to continue during a shutdown. Each shutdown is unique and USFWS will promptly notify the partner if work can continue during a lapse in government appropriations.

15. Comply with and cause its contractors to comply with any the wage requirements of the funding agreements, including the Davis Bacon Act, 40 U.S.C. §§ 3142 *et seq.*, and the relevant Department of Labor regulations, 29 C.F.R. Part 5, as applicable.
16. Certify in writing that the Project is free and clear of all debts, liabilities, liens, or obligations before the USFWS accepts the Project as complete.

C. The parties further agree as follows:

1. Other Contracts: The USFWS has entered into a Memorandum of Understanding with the California State Coastal Conservancy; the Conservancy has entered into a standard agreement contract with Ducks Unlimited; and Ducks Unlimited has entered into a project agreement with the USFWS. All parties have been provided a fully signed copy of each agreement for their project files and the supporting documents are included as an attachment to this AGREEMENT.
2. The USFWS’s review or approval of documents under Article IV.A of this AGREEMENT will not be construed to operate either as a waiver of any rights of the USFWS or as a waiver of any cause of action that the USFWS may have under this AGREEMENT or any Third-Party Contract.

NOTICES

Any and all formal notices required for either party shall be in writing and shall be sent to the parties at the addresses set forth below in Article VI. Each such notice shall be either (a) personally delivered, in which case notice shall be deemed delivered upon receipt or refusal of delivery, (b) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered upon receipt or refusal of delivery, or (c) sent by United States mail, registered or certified, with postage prepaid and return receipt requested (provided that such return receipt must indicate receipt at the address specified), in which case notice shall be deemed delivered upon receipt or refusal of delivery. USFWS approvals outlined in Article IV, A herein may be sent as above or by any other mutually agreed upon method, such as by electronic mail.

ARTICLE V. ATTACHMENTS

Attachment A – Project Description from the Conservancy funding agreement with DU

Attachment B – South Bay Salt Pond Restoration Project Overview Map

Attachment B.1 - Map of Ravenswood Ponds

Attachment B.2 – Map of Mountain View Ponds

Attachment B.3 – Map of Island Ponds

Attachment C: - Other Contracts and Agreements

C.1. SCC grant agreement for up to \$6,221,730, and amended to \$13,699,620, attachment,

C2. Ravenswood Ponds National Oceanic and Atmospheric Administration grant agreement for \$1,500,000,

C3. Ravenswood Ponds Facebook Agreement (\$350,000),

C4. Mountain View Ponds North American Wetlands Conservation Act (\$1,000,000),

C5. Mountain View Ponds US Environmental Protection Agency (\$1,668,200.20),

C6. Mountain View Ponds National Oceanic and Atmospheric Administration (\$1,460,638.60).

C7. Ravenswood and Island Ponds San Francisco Bay Restoration Authority (\$6,821,730) .

Attachment D.1: Ravenswood Ponds design – 60%

Attachment D.2: Mountain View Ponds design – 60%

Attachment D.3: Island Ponds design - preliminary

Attachment E: Contractor Certification Form (IF ANY)

Attachments A-E are hereby incorporated into the AGREEMENT

ARTICLE VI. KEY OFFICIALS

For: U.S. Fish and Wildlife Service
Name/Title: Anne Morkill, Project Leader
Address: San Francisco Bay National Wildlife Complex
U.S. Fish & Wildlife Service
#1 Marshlands Road
Fremont, CA 94555
Phone: 510-792-0222 x123
E-mail: Anne.Morkill@fws.gov

For: Ducks Unlimited, Inc.
Name/Title Mark E. Biddlecomb
Address: 3074 Gold Canal Drive
Phone: (916) 996-1816
Fax: (916) 852-2200
E-mail: mbiddlecomb@ducks.org

ARTICLE VII. TERM OF AGREEMENT

This AGREEMENT will be effective on the date of final signature and, unless modified or terminated by the parties in accordance with Article VIII below, will continue in force and effect for a period of five years thereafter.

ARTICLE VIII. MODIFICATIONS, DISPUTE RESOLUTION, AND TERMINATION

- A. This AGREEMENT may be modified only by a written instrument executed by the parties' authorized representatives.
- B. The parties agree that in the event of a dispute between them, they will promptly use their best efforts to resolve the dispute in an informal fashion through communication and consultation, or other forms of non-binding alternative dispute resolution that are mutually acceptable to the parties.
- C. If either party reasonably believes that the other party has breached its obligations under this AGREEMENT, the alleging party must provide the other party a written Default Notice (Notice) of such alleged breach. The party receiving the Notice will have 30 days

(the Cure Period) after receipt of the Notice to cure such alleged breach. The Cure Period may be extended by mutual agreement of the parties.

- D. If the alleged breach is not cured within the Cure Period, the alleging party may, without first obtaining a judgment or declaration of breach by any court, board, arbitrator or any other adjudicator, or seek any alternative or additional remedies available to it, including termination of this AGREEMENT.

ARTICLE IX. INSURANCE AND LIABILITY

A. Insurance

1. The Partner and its contractors must comply with all insurance-related provisions of this Article. The Partner and its contractors are responsible for ensuring that these insurance requirements are included, as appropriate, in their respective contracts with subcontractors.
2. Insurance must be acquired before the initiation of any National Wildlife Refuge activities on the property and must be maintained until the Project is accepted as complete by the USFWS.
3. Insurance coverage must be commensurate with foreseeable risk, and coverage limits may ultimately be greater than the minimum limitations required below. The USFWS will not be responsible for any omissions or inadequacies of any insurance coverage or amounts in the event that insurance purchased by the Partner or a contractor proves to be inadequate or insufficient for any reason.
4. The Partner and all contractors must procure and maintain the following insurance and comply with the following associated requirements:
 - i. The Partner and all contractors must have appropriate insurance including coverage for commercial general liability, contractual liability, automobile, valuable papers, umbrella coverage, and worker's compensation from a responsible company or companies. Unless higher limits are required by the USFWS in writing, within 30 days following the execution of this AGREEMENT, commercial general liability insurance must each have a minimum limitation of One million dollars (\$1,000,000) per person for any one claim, and an aggregate limitation of Three Million Dollars (\$3,000,000) for any number of claims arising from any one incident.
 - ii. The Partner and contractors, as applicable, must have appropriate insurance coverage when warranty work is conducted. This provision will survive termination or expiration of this AGREEMENT. Warranty work requires the USFWS Project Leader's prior approval.
 - iii. Contractors providing architectural or engineering service must have Professional Error and Omissions Insurance coverage that, at a minimum, conforms to the requirements of applicable state, territorial, or district law.
 - iv. Where a Partner or contractor is authorized to utilize USFWS structures or facilities in conjunction with this AGREEMENT, the Partner or contractor

must procure and maintain, at its sole cost and expense, fire and hazard protection insurance in an amount equal to the replacement cost of structures or facilities utilized. This insurance must be maintained for the term of use.

5. All insurance policies required by this AGREEMENT must be payable to the Partner, and the Partner will use insurance proceeds to correct the damage, harm, or deficiency that is the basis of the insurance claim. Partner expenditure of insurance proceeds will be in conformance with law, and USFWS approvals. Insurance proceeds that are paid to the Partner, but that are not needed or cannot be used to correct the harm or deficiency at issue, must, if allowed under the insurance policy, be used to further USFWS projects and programs as agreed to by the parties.
6. All insurance policies required by this AGREEMENT must name the United States as an additional insured and must specify that the insurer must specify that the insurer has no right of subrogation vis-à-vis the United States with respect to claims against other parties.
7. Before beginning the work authorized herein, the Partner must provide the USFWS with copies of Certificates of Insurance demonstrating that the Partner and contractors have acquired all insurance required by this Article. Insurance coverage must be reviewed every year beginning on the date of execution of this AGREEMENT and must be modified if necessary to ensure consistency with generally accepted insurance practices and USFWS policies. The Partner and contractors must immediately notify the USFWS if an insurance policy is canceled or terminates for any reason.
8. Insurance Carrier Requirements:
 - i. Each issuer of the insurance required by this Article must be rated no lower than A- by the most recent edition of the A.M. Best's Key Rating Guide (Property-Casualty Edition).
 - ii. All insurers for all coverage must have a Best's Financial Size Category of at least VII according to the most recent edition of A.M. Best's Key Rating Guide (Property-Casualty Edition).
 - iii. All insurers must be admitted, licensed, and approved to operate in the state, territory, or district in which the Project will occur.

B. Liability

1. The Partner assumes liability for and does hereby agree to hold harmless and indemnify the United States of America, its agents and employees from and against any and all claims, losses, damages, costs, judgments, or other liability of any kind whatsoever arising out of or relating to the activities of the Partner and its officers, employees, agents, contractors, and subcontractors under this AGREEMENT. This indemnification will survive the termination or expiration of this AGREEMENT.

2. To the extent authorized by applicable federal law, including the Federal Tort Claims Act, codified as amended primarily at 28 U.S.C. §§ 2671-80 (2014), the USFWS will be liable for the negligent or other wrongful acts of omissions of its officers or employees while acting with the scope of their office or employment. The USFWS's commitment to pay any lawful liability incurred by the USFWS under this AGREEMENT is backed by the full faith and credit of the United States.
3. The Partner must cooperate with the USFWS in the investigation and defense of any claims that may be filed with or against the USFWS arising out of the activities of the Partner, or the Partner's employees, agents, representatives, or contractors (including a contractor's subcontractor).

ARTICLE X. REPORTING

The Partner and its contractors and subcontractors must maintain accounting books and records under a system of accounts and financial controls meeting Generally Accepted Accounting Principles and must permit the Department of the Interior or its designee, including the USFWS and the Department's Office of the Inspector General, to verify and audit financial documents from the books, correspondence, memoranda and other records of the Partner relating to this AGREEMENT, during the period of this AGREEMENT, and for such time thereafter up to 3 years as may be necessary to accomplish such verification.

DU will notify the USFWS staff of any problems or issues as soon as possible. DU will annually provide a brief report (written) to the USFWS staff describing restoration activities at the site for the year these could be a part of or in addition to any regular grant reports to funders which DU will share with the USFWS. Copies both hard and electronic copies of all plan sets such as as-built drawing, and technical reports will be provided to the USFWS by completion of the project.

ARTICLE XI. STANDARD CLAUSES

- A. **Non-Discrimination:** All activities pursuant to or in association with this AGREEMENT will be conducted without discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex, as well as in compliance with the requirements of any applicable federal laws, regulations, or policies prohibiting such discrimination.
- B. **USFWS Appropriations:** Pursuant to 31 U.S.C. § 1341, nothing contained in this AGREEMENT will be construed to obligate the government to any current or future expenditure of funds in excess or advance of the availability of appropriations from Congress, nor does this AGREEMENT obligate the government to spend funds on any particular project or purpose, even if funds are available.
- C. **Limitations on Lobbying:** To the extent that the Partner commits in this AGREEMENT or any related agreement to raise funds from non-federal sources for the Project, the Partner further agrees that it will not lobby for or otherwise seek the appropriation of funds from Congress to meet that commitment. The Partner may not use any appropriated

funds (including property, utilities, or services acquired with or supported by appropriated funds) to lobby or attempt to influence Congress or any official of any government.

- D. Compliance with Applicable Law: This AGREEMENT and performance hereunder is subject to all applicable laws, regulations, and government policies whether now in force or hereafter enacted or promulgated. Nothing in this AGREEMENT will be construed as in any way limiting the general powers of the USFWS for supervision, regulation, and control of its property under such applicable laws, regulations, and management policies.
- E. Release of Information: The Partner will obtain prior written approval through the USFWS Key Official for any public information releases which refer to this <https://www.facebook.com/events/Agreement> or Project. The specific text, layout, photographs, etc., of the proposed release will be submitted with the request for approval.
- F. Assignment: No part of this AGREEMENT may be assigned to any other party without prior written approval of the USFWS.
- G. Agency: The Partner is not an agent or representative of the United States, the Department of the Interior, or the USFWS, or the Refuge, nor will the Partner represent its self as such to third parties. USFWS employees are not agents of the Partner and will not act on behalf of the Partner.
- H. Non-Exclusive Agreement: This AGREEMENT does not restrict the Partner or the USFWS from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.

AUTHORIZING SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their duly authorized representatives as of the date the last signature is affixed:

U.S. FISH & WILDLIFE SERVICE

Name, Title

Date

DUCKS UNLIMITED, INC.

Mark E. Biddlecomb, Director

Date



STAFF REPORT

City Council

Meeting Date:

July 20, 2021

Staff Report Number:

21-141-CC

Consent Calendar:

Adopt Resolution No. 6646 authorizing the city manager to execute an agreement with California department of education to reimburse the City for Belle Haven Child Development Center operational costs in fiscal year 2021-22

Recommendation

Staff recommends that the City Council adopt Resolution No. 6646 (Attachment A) authorizing the city manager to execute an agreement with the California department of education (CDE) to reimburse the City up to a maximum \$1,052,422 to offset operational costs at the Belle Haven Child Development Center (BHCDC) during fiscal year 2021-22.

Policy Issues

The recommended action is consistent with existing City policy and past practice related to BHCDC operations. The City of Menlo Park annually receives reimbursement from the State of California through CDE to offset the cost of BHCDC operations.

Background

The City of Menlo Park operates BHCDC to provide affordable child care and early childhood development services to families in Menlo Park and nearby communities. BHCDC is a licensed child care provider by the California Department of Social Services. The BHCDC program offers developmentally appropriate materials and activities supporting social, emotional, physical, and cognitive abilities to preschool aged children while providing essential child care services to working families. Children are provided nutritional breakfast, lunch and snacks daily.

Enrollment fees are subsidized under the CDE Child Development Division (CDD) State Preschool Program. CDE funding requirements stipulate that all parents of children enrolled in BHCDC's subsidized enrollment slots must be working, in school, in training, seeking permanent housing, actively seeking employment or incapacitated. All families of children enrolled in the BHCDC must meet income eligibility requirements. CDE funding reimbursements also may be applied toward the costs of resource materials, classroom supplies and small equipment.

Analysis

Per the CDE grant requirements, City Council must annually adopt a resolution to certify acceptance of the reimbursement funding and authorize the city manager to execute the grant agreement. A copy of the agreement is included as Attachment B.

Under the terms of the agreement, CDE will reimburse eligible program operating costs at a rate of \$53.69 per child per day, up to a maximum of \$1,052,422 in fiscal year 2021-22. The total maximum reimbursement amount is based on the typical maximum enrollment of 96 children. In a normal year, BHDC's typical enrollment capacity per state licensing requirements is 96 children. Due to health and safety restrictions made necessary by the COVID-19 pandemic, BHDC maximum enrollment was reduced to a little more than half at a maximum of 52 children. This will affect accordingly the amount that can be reimbursed on a per-child basis, however guidance is beginning to change and may allow for numbers to be increased back to BHDC's original maximum of 96 children. The program is currently enrolling – new children are being phased into the program over time per standard best practice – and is expected to achieve the previous acceptable maximum allowable enrollment of 52 children within the next 4 – 6 weeks. With guidance beginning to change the program could possibly begin to safely increase numbers after the previous maximum of 52 children has been reached. As we continue to slowly raise enrollment numbers over the next few months, we anticipate that by January 2022 we could be back to full capacity of 96 children.

The CDE agreement further specifies a minimum days of operation (MDO) requirement of 244 days during the fiscal year and 19,062 Minimum Child Days of Enrollment (CDE.) The BHDC program has sufficient staffing capacity and resources to meet all the criteria set forth in the agreement at this time. In addition to the external funding received from CDE, the BHDC also receives external funding from the USDA child and adult care food program, and some enrollment fees. Remaining operational expenditures are subsidized by the City of Menlo Park general fund, as authorized by City Council in the fiscal year 2020-21 operating budget.

Impact on City Resources

Should the City Council adopt the resolution in Attachment A authorizing the city manager to execute the agreement in Attachment B, the City of Menlo Park will become eligible to receive up to \$1,052,422 in direct reimbursements from CDE to offset the costs of BHDC operations in fiscal year 2021-22. Due to enrollment limitations currently in effect due to COVID-19 potentially being lessened, it is likely that BHDC will be eligible to receive the maximum reimbursable amount for the year. If the current enrollment limitations remain in place for the duration of the fiscal year, then the reimbursable amount could be as low as 50 percent of the maximum. If authorized by the City Council, the CDE reimbursement would offset a substantial portion of BHDC program's operating costs in the 2020-21 fiscal year.

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. 6646
- B. CDE funding agreement

Staff Report #: 21-141-CC

Report prepared by:

Kira Storms, Acting Recreation Coordinator

Theresa DellaSanta, Interim Assistant Director of Community Services

Report reviewed by:

Sean Reinhart, Library and Community Services Director

RESOLUTION NO. 6646

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH
THE CALIFORNIA DEPARTMENT OF EDUCATION TO REIMBURSE THE CITY
FOR CHILD CARE SERVICES AT BELLE HAVEN CHILD DEVELOPMENT
CENTER IN FISCAL YEAR 2021-22**

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 authorize entering into local agreement number CSPP-1519 reimbursing the City up to \$1,052,422 for child care services at the Belle Haven Child Development Center for fiscal year 2021-22, and that the person who is listed below is authorized to sign the transaction for the City Council.

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 twentieth day of July, 2021, 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 twentieth day of July, 2021.

Judi A. Herren, City Clerk



LOCAL AGREEMENT FOR CHILD DEVELOPMENT SERVICES

DATE: July 01, 2021

CONTRACT NUMBER: CSPP-1519

PROGRAM TYPE: CALIFORNIA STATE PRESCHOOL PROGRAM

PROJECT NUMBER: 41-2184-00-1

STATE AGENCY: CALIFORNIA DEPARTMENT OF EDUCATION

CONTRACTOR'S NAME: CITY OF MENLO PARK

This Agreement is entered into between the State Agency and the Contractor named above. The Contractor agrees to comply with the terms and conditions of the CURRENT APPLICATION; the SAN MATEO COUNTY Local Individualized Subsidized Child Care Plan (hereafter the "SAN MATEO COUNTY PILOT PLAN") as most recently approved by the California Department of Education; the GENERAL TERMS AND CONDITIONS (GTC 04/2017)*; the CALIFORNIA STATE PRESCHOOL PROGRAM REQUIREMENTS*; and the FUNDING TERMS AND CONDITIONS (FT&C)*, which are by this reference made a part of this Agreement. Where the GTC 04/2017 conflicts with either the Program Requirements or the FT&C, the Program Requirements or the FT&C will prevail. The Contract must meet the specifications of the CALIFORNIA STATE PRESCHOOL PROGRAM REQUIREMENTS except where the SAN MATEO COUNTY PILOT PLAN allows for exceptions.

Funding of this contract is contingent upon appropriation and availability of sufficient funds. This contract may be terminated immediately by the State if funds are not appropriated or available in amounts sufficient to fund the State's obligations under this contract.

The period of performance for this contract is July 01, 2021 through June 30, 2022. For satisfactory performance of the required services, the contractor shall be reimbursed in accordance with the Determination of Reimbursable Amount Section of the FT&C, at a rate not to exceed \$53.69 per child per day of full-time enrollment and a Maximum Reimbursable Amount (MRA) of \$1,052,422.00. During the term of this contract, the MRA may be adjusted through an Allocation Letter issued to the Contractor by State Agency.

SERVICE REQUIREMENTS

Minimum Child Days of Enrollment 19,602.0

Minimum Days of Operation (MDO) Requirement 244

Any provision of this contract found to be in violation of Federal or State statute or regulation shall be invalid but such a finding shall not affect the remaining provisions of this contract. Items shown with an Asterisk (*), are hereby incorporated by this reference and made part of this Agreement as if attached hereto. Amendments to any of these asterisked documents during the term of this contract shall be incorporated by reference as of the date issued by State Agency without need for formal amendment. These documents can be viewed at http://www.cde.ca.gov/fg/aa/cd/ftc2021.asp

STATE OF CALIFORNIA	CONTRACTOR
BY (AUTHORIZED SIGNATURE)	BY (AUTHORIZED SIGNATURE)
PRINTED NAME OF PERSON SIGNING Jaymi Brown,	PRINTED NAME AND TITLE OF PERSON SIGNING
TITLE Contract Manager	ADDRESS

AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 1,052,422 PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT \$ 0 TOTAL AMOUNT ENCUMBERED TO DATE \$ 1,052,422	PROGRAM/CATEGORY (CODE AND TITLE) Child Development Programs		FUND TITLE General		Department of General Services use only
	(OPTIONAL USE) 0656 25451-2184				
	ITEM 30.10.020.001 6100-194-0001	CHAPTER B/A	STATUTE 2021	FISCAL YEAR 2021-2022	
	OBJECT OF EXPENDITURE (CODE AND TITLE) 706 SACS: Res-0000 Rev-0000				
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.			T.B.A. NO.	B.R. NO.	Page I-3.5
SIGNATURE OF ACCOUNTING OFFICER			DATE		

Contractor Certification Clauses

CCC 04/2017

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

Contractor/Bidder Firm Name (Printed)	Federal ID Number
---------------------------------------	-------------------

By (Authorized Signature)

Printed Name and Title of Person Signing

Date Executed	Executed in the County of
---------------	---------------------------

CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 11102) (Not applicable to public entities.)

2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,

2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that Contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably

required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.

8. GENDER IDENTITY: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions, and

Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

CALIFORNIA CIVIL RIGHTS LAWS CERTIFICATION

Pursuant to Public Contract Code section 2010, if a bidder or proposer executes or renews a contract in the amount of \$100,000 or more on or after January 1, 2017, the bidder or proposer hereby certifies compliance with the following:

1. **CALIFORNIA CIVIL RIGHTS LAWS:** For contracts \$100,000 or more, executed or renewed after January 1, 2017, the contractor certifies compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code) and the Fair Employment and Housing Act (Section 12960 of the Government Code); and
2. **EMPLOYER DISCRIMINATORY POLICIES:** For contracts \$100,000 or more, executed or renewed after January 1, 2017, if a Contractor has an internal policy against a sovereign nation or peoples recognized by the United States government, the Contractor certifies that such policies are not used in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the Fair Employment and Housing Act (Section 12960 of the Government Code).

CERTIFICATION

I, the official named below, certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

1. Proposer/Bidder Firm Name (Printed):
2. Federal ID Number:
3. By (Authorized Signature):
4. Printed Name and Title of Person Signing:
5. Date Executed:
6. Executed in the County and State of:

RESOLUTION

This resolution is adopted in order to certify the approval of the Governing Board to enter into this transaction with the California Department of Education for the purpose of providing child care and development services and to authorize the designated personnel to sign contract documents for Fiscal Year 2021-2022.

RESOLUTION

BE IT RESOLVED that the Governing Board of _____

_____ authorizes entering into local agreement number _____ and that the person/s who is/are listed below, is/are authorized to sign the transaction for the Governing Board.

NAME

TITLE

SIGNATURE

PASSED AND ADOPTED THIS _____ day of _____ 2020, by the

Governing Board of _____

of _____ County, in the State of California.

I, _____, Clerk of the Governing Board of

_____, of _____, County, in the State of California, certify that the foregoing is a full, true and correct copy of a resolution adopted by the said Board at a _____ meeting thereof held at a regular public place of meeting and the resolution is on file in the office of said Board.

(Clerk's signature)

(Date)



STAFF REPORT

City Council

Meeting Date: 7/20/2021
Staff Report Number: 21-142-CC

Consent Calendar: Adopt Resolution No. 6647 modifying the City Council's regular meeting schedule to include August 17 and 31, 2021

Recommendation

Staff recommends that the City Council adopt Resolution No. 6647 (Attachment A) modifying the City Council's regular meeting schedule to include August 17 and 31, 2021.

Policy Issues

Ordinance No. 1074 (Attachment B) allows the City Council to adopt a different meeting schedule by resolution.

Background

On December 15, 2020, the City Council unanimously voted to introduce Ordinance No. 1074. At the January 12, 2021 City Council, the unanimously voted to waive the second reading and adopt Ordinance No. 1074. This ordinance codified the City Council's current practice of conducting regular meetings on the second and fourth Tuesday of every month with a 5 p.m. start time

Analysis

The need to reschedule the July and August 2021 City Council meetings, sets the next regular City Council meeting for September 14, 2021. The Brown Act states that general public comment (e.g., comments on items *not* on the agenda or non-agendized items) is allowed at regular meetings and special meetings allow for public comment for agendized items *only*. Resolution No. 6647 will update the City Council meeting schedule to include August 17 and 31, 2021 as regular meetings, therefore allowing general public comment at the August 2021 meetings. As a result of the rescheduling, the August 24, 2021 regular City Council meeting will be cancelled.

Impact on City Resources

There is no impact on City resources.

Public Notice

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

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.

Attachments

- A. Resolution No. 6647
- B. Ordinance No. 1074

Report prepared by:
Judi A. Herren, City Clerk

RESOLUTION NO. 6647

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
ADDING AUGUST 17 AND 31, 2021 TO THE CITY COUNCIL SCHEDULE OF
REGULAR MEETINGS**

WHEREAS, the City of Menlo Park ("City") wishes to add August 17 and 31, 2021 to the City Council schedule of regular meetings.

WHEREAS, Ordinance No. 1074 allows the modification of the approved City Council meeting scheduled through the adoption of a resolution;

WHEREAS, Section 2.04.010 of the Menlo Park Municipal Code reads as follows:

2.04.010. Regular Meetings – Days and time. **

A regular meeting of the City Council shall be held on the second and fourth Tuesday of every month commencing at five p.m., unless the City Council adopts a different schedule by resolution at the beginning of the year. A regular meeting of the City Council may be canceled (i) by notice at a prior City Council meeting, or (ii) by notice to all of the City Council members of not less than twenty-four (24) hours prior to the meeting and by posting a notice of cancellation at all locations where public notices are regularly posted by the City.

** For state law as to council meetings, see Gov. Code sections 36805 to 36808, 54950 to 65960.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MENLO PARK HEREBY RESOLVES:

August 17, 2021, and August 31, 2021 shall be added as regular meeting dates to the 2021 Schedule of Regular City Council meetings of the City of Menlo Park.

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 twentieth day of July, 2021, 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 twentieth day of July, 2021.

Judi A. Herren, City Clerk

ORDINANCE NO. 1074

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MENLO PARK AMENDING SECTION 2.04.010 OF CHAPTER 2.04 (CITY COUNCIL) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE MENLO PARK MUNICIPAL CODE

WHEREAS, the City of Menlo Park ("City") wishes to change the time when the City Council holds its regularly scheduled meetings and the methods for canceling a City Council meeting.

THE CITY COUNCIL OF THE CITY OF MENLO PARK DOES ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT OF CODE. Section 2.04.010 of the Menlo Park Municipal Code is amended to read as follows:

2.04.010. Regular Meetings – Days and time. **

A regular meeting of the City Council shall be held on the second and fourth Tuesday of every month commencing at five p.m., unless the City Council adopts a different schedule by resolution at the beginning of the year. A regular meeting of the City Council may be canceled (i) by notice at a prior City Council meeting, or (ii) by notice to all of the City Council members of not less than twenty-four (24) hours prior to the meeting and by posting a notice of cancellation at all locations where public notices are regularly posted by the City.

** For state law as to council meetings, see Gov. Code sections 36805 to 36808, 54950 to 65960.

SECTION 2. EFFECTIVE DATE AND PUBLISHING. This ordinance shall take effect 30 days after adoption. The city clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, the posted in at least three public places in the city. Within 15 days after the adoption of the ordinance amendment, a summary of the amendment shall be published with the names of the City Councilmembers voting for and against the amendment.

INTRODUCED on the fifteenth day of December, 2020.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the twelfth day of January, 2021 by the following vote:

AYES: Mueller, Taylor, Wolosin, Nash, Combs

NOES: None

ABSENT: None


ABSTAIN: None

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Ordinance No. 1074
Page 2 of 2

APPROVED:

DocuSigned by:

52C1D491348F4A3...
Drew Combs, Mayor

ATTEST:

DocuSigned by:

39280A20D0BE491...
Judi A. Herren, City Clerk



STAFF REPORT

City Council

Meeting Date:

7/20/2021

Staff Report Number:

21-140-CC

Public Hearing:

Hold a public hearing and consider any protests related to the collection of the stormwater regulatory fee on the tax roll; adopt Resolution No. 6645 authorizing the collection of the stormwater regulatory fee on the tax roll at the existing rates to implement the City's stormwater management program

Recommendation

Staff recommends that the City Council hold a public hearing and, if protests are not made by the property owners of a majority of the affected parcels, adopt Resolution No. 6645 adopting the stormwater regulatory fee report and authorizing the collection of the stormwater regulatory fee on the tax roll.

Policy Issues

Menlo Park Municipal Code Chapter 7.42 (adopted in July 1994, updated in March 2019) highlights the City's stormwater management program, and Section 7.42.250 establishes a separate funding mechanism for the stormwater management program requiring the City implement the regulatory fee. Funds collected through the regulatory fee are used for administering the stormwater management program to ensure compliance and includes maintenance of storm drains and creeks. If the City Council does not adopt the resolution for the fee collection, the lack of adequate funding would impact the level of services required to maintain the storm drain system, and the City may not meet regulatory requirements.

Health and Safety Code Section 5473 et seq. authorizes public agencies to collect stormwater regulatory charges on the tax roll in the same manner, by the same persons, and at the same time as, together with and not separately from general taxes. It also allows the City Council's authorization to remain in effect for future fiscal years until fees are increased via a Proposition 218 process.

Background

Menlo Park property owners pay two types of stormwater related fees: a local regulatory fee applicable to the City only, and a countywide fee applicable to general program activities benefiting all agencies within San Mateo County (County.) The City authorizes the local fee for collection on the County tax roll, and the Countywide Flood and Sea Level Rise Resiliency District collects the County fee. The following background information is specific to the local regulatory fee program.

In 1991, the San Francisco Bay Regional Water Quality Control Board (RWQCB) notified the County and all incorporated cities within the County of the requirement to submit a municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit application. As part of the permit process, all agencies were also required to implement a stormwater management program with the intent of reducing the sources of pollution from stormwater discharges that enter San Francisco Bay from urban and developing areas. The

City began collecting the local fee in 1994, and the fee has remained the same for more than 20 years.

In 2015, the RWQCB adopted the Municipal Regional NPDES Permit (known as the 2015 MRP) that regulates stormwater activities for various provisions, each with its own goals, tasks, schedules and reporting requirements. In February 2021, the RWQCB distributed a public review draft MRP (known as the MRP 3.0) with an expected effective date of July 1, 2022.

On October 1, 2019, the City Council approved an agreement with Wood Rodgers, Inc. to develop the City’s Stormwater Master Plan which will serve as the strategic planning guide for compliance with regulatory requirements, maintain existing infrastructure, and identify future stormwater system upgrades and improvements over the next 25 years. Staff expects a draft of the plan to be completed in 2022.

Analysis

Fees currently collected do not fully cover the cost to implement the program. In fiscal year 2020-21, the stormwater management program budget was \$539,902 with the regulatory fee providing \$339,221 in funds and stormwater business inspection fees providing an additional \$63,000 in funds. The remaining expenses of \$137,681 were covered by the carry-over in the program fund balance, which leaves \$287,089 remaining in the program fund balance.

The current annual local regulatory fee collected is based on a rate of \$5.25 per 1,000 square feet of impervious area for each property in the City. Fees therefore vary per property, depending on the amount of impervious area associated with the parcel and its size. For single family homes in the Belle Haven and Willows neighborhoods, where parcels are typically smaller than others in the City, the annual fee averages between \$16 and \$18 per property. In central Menlo Park and in the Sharon Heights neighborhood, the annual fee ranges between \$20 and \$26 per property. For a typical 5,000 square-foot downtown commercial property along Santa Cruz Avenue, the annual fee is \$26 per property.

Table 1 shows the proposed fiscal year 2021-22 stormwater management program expenditures, and Table 2 shows the proposed budget for fiscal year 2021-22.

Table 1: Stormwater management program Fiscal year 2021-22 proposed expenditures	
Staff administration and operating costs: City’s personnel and operating costs to implement the requirements of the NPDES permit including reporting, participating in the Countywide Technical Advisory Committee and subcommittees, managing storm drain efforts, and administering the street sweeping program.	\$306,191
Stormwater business inspections: Contract to perform business inspections per the NPDES permit.	\$86,000
Stormwater permit: Annual NPDES permit fee paid to the RWQCB.	\$15,000
Watershed outreach: City’s contribution to Grassroots Ecology for coordination of educational outreach, watershed planning and coastal cleanup day efforts.	\$17,000
General and administrative overhead: City’s obligation to the general fund for finance, information technology and administrative services.	\$68,953
Miscellaneous professional services: Stenciling of storm drains, updating the storm drain base map, geographic information services development, hazardous material permit, etc.	\$24,500
Total	\$517,644

Table 2: Stormwater management program Fiscal year 2021-22 proposed budget	
Projected beginning fund balance	\$287,089
Estimated revenues (based on impervious area per parcel)	\$340,673
Estimated revenues (from business inspection fees to cover costs for inspections performed by EOA, Inc.)	\$86,000
Estimated expenses	\$517,644
Projected ending fund balance	\$196,118

With a projected ending fund balance of \$196,118 for fiscal year 2021-22, there may not be sufficient funds to fully cover program costs for future fiscal years. With the forthcoming adoption of the new MRP which may include new programs that the City must implement, and the stormwater master plan that will identify future upgrades and improvements to the stormwater system for the next 25 years, expenditures are anticipated to increase.

Staff recommends beginning to collect the stormwater regulatory fee on the tax roll pursuant to Health and Safety Code section 5473 et seq. The stormwater regulatory fee report (Report) contains a description of each parcel of real property, which receives stormwater services from the City’s stormwater facilities and the amount of the stormwater regulatory fee for each of those parcels. The Report contains information regarding each individual parcel so it is not attached to this staff report but is on file with the City Clerk’s office and is available for review by the public upon request. Once the resolution is adopted, staff will forward the fee database directly to the County for preparation.

Per Health and Safety Code Section 5473, the City Council’s authorization will remain in effect for future fiscal years as long as fees remain unchanged. After the new MRP is adopted and the Stormwater Master Plan is completed, staff will return to the City Council with more information and proposed next steps to secure sufficient funding for the stormwater management program. Increasing the regulatory fee would require the City to conduct a property-owner voting procedure in accordance with Proposition 218.

Impact on City Resources

Funding for the stormwater management program consists of the carry-over of unspent funds from prior years and revenues collected through the regulatory fee. If the City Council does not adopt a resolution to continue collecting fees on the tax roll, the impact on the City’s general fund would be \$340,673 (the total projected revenues from the regulatory fee) in order to sustain the program in fiscal year 2021-22.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines Section 15378(b)(4.) Moreover, it can be seen with certainty that there is no possibility that the actions being taken by this Resolution may have a significant effect on the environment, and it is therefore exempt from CEQA pursuant to Section 15061(b)(3) of the State CEQA Guidelines.

Public Notice

Public notification was achieved by posting a legal notice in The Examiner, a local newspaper, June 25 and July 2, and posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

A. Resolution No. 6645

Report prepared by:

Scott Jaw, Assistant Engineer

Pam Lowe, Senior Civil Engineer

Reviewed by:

Christopher Lamm, Assistant Public Works Director

RESOLUTION NO. 6645**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK TO AUTHORIZE COLLECTION OF A REGULATORY FEE ON THE TAX ROLL AT EXISTING RATES TO IMPLEMENT THE LOCAL CITY OF MENLO PARK STORMWATER MANAGEMENT PROGRAM**

WHEREAS, Section 402(p) of the Clean Water Act (33 U.S.C. 1251 et seq.) as amended by the Water Quality Control Act of 1987, requires that all large and medium-sized incorporated municipalities must effectively prohibit non-storm water discharges into storm sewers; and further requires controls to reduce the discharge of pollutants from storm water systems to waters of the United States to the maximum extent practicable; and

WHEREAS, the City of Menlo Park, in conjunction with all of the incorporated cities in San Mateo County, has prepared the Storm Water Management Plan, which has a General Program to be administered and funded through the San Mateo County Flood and Sea Level Rise Resiliency District, and a specific program for each city, to be administered and funded by each city; and

WHEREAS, the Menlo Park specific program includes those efforts and programs required to be undertaken by the City of Menlo Park to support and address its responsibility to regulate and enforce local pollution control components under the Storm Water Management Plan; and

WHEREAS, the Menlo Park City Council is authorized and/or mandated by Chapter 7.42 Storm Water Management Program of the municipal code adopted on July 12, 1994 (Ordinance No. 859) and updated on March 12, 2019 (Ordinance No. 1055), and including the following federal and/or state statutes: the Federal Clean Water Act as amended in 1987; the National Pollutant Discharge Elimination System Permit Application Regulations for Stormwater Discharges; the California Constitution, Article XI, Section 7 of the California Water Code Section 13002; and Part 3 of Division 5 of the California Health and Safety Code, to impose a regulatory fee to enforce the local storm water pollution control components of the San Mateo County Stormwater Management Plan upon the businesses, entities, residents, and unimproved properties of the City of Menlo Park; and

WHEREAS, in July 1994, the Menlo Park City Council adopted Ordinance No. 859, which established and levied the stormwater regulatory fee upon each premises or any portion thereof that receives or uses stormwater service from the City's stormwater facilities; and

WHEREAS, the stormwater regulatory fees were adopted in compliance with Health and Safety Code section 5471; and

WHEREAS, the City of Menlo Park has been collecting the stormwater regulatory fees on the tax roll pursuant to Health and Safety Code section 5473 et. seq.; and

WHEREAS, the City prepared a written report entitled the Stormwater Regulatory Fee Report ("Report"), which contains a description of each parcel of real property that receives stormwater services from the City's stormwater facilities and the amount of the stormwater regulatory fee for each of those parcels, computed in conformity with the stormwater fee authorized by Ordinance No. 859; and

WHEREAS, the Report is on file with the City Clerk and available to the public; and

WHEREAS, at its meeting on July 20, 2021, after duly publishing and posting all required notices, the City Council held a public hearing as part of a special meeting to consider the Report and heard all objections or protests to the Report, if any.

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

1. The recitals set forth above are true and correct, and are hereby incorporated herein by this reference as if fully set forth in their entirety.
2. That the Public Works Director for the City of Menlo Park is the authorized collection agent for the regulatory fees authorized and/or mandated by federal and/or state statutes, and is hereinafter empowered to collect, contract for collection, enforce, and/or institute other proceedings necessary for the collection of the regulatory fee.
3. The City Council finds and determines that notice of the filing of the Report and of the time and place of the hearing thereon was published in accordance with Health and Safety Code Sections 5473.1.
4. After hearing and considering all objections or protests to the Report, if any, the City Council finds that protest was not made by a majority of the separate parcels of property described in the Report and hereby adopts the Report.
5. That the Public Works Director is hereby directed to file, or cause to be filed, the amount of regulatory fees as described and shown on the Report, attached as Exhibit "A," including the diagram shown on the County Assessor's maps to be imposed and the parcels upon which such regulatory fees are imposed, with the County Auditor and/or the County Tax Collector of the County of San Mateo no later than early August of each applicable tax year. For each parcel upon which a regulatory fee has been imposed, the regulatory fee shall appear as a separate item on the tax bill and shall be levied and collected at the same time and in the same manner as the general tax levy for City purposes.
6. That the Public Works Director is authorized to enter into those agreements necessary to have the County of San Mateo perform the regulatory fee collection services required; and the City Council hereby authorizes the County of San Mateo to perform such services, and for the City to pay the County of San Mateo for the reasonable costs of those collection services so provided.
7. The City Council finds that this Resolution is not subject to the California Environmental Quality Act ("CEQA"). This action is not a project within the meaning of the CEQA Guidelines Section 15378(b)(4). Moreover, it can be seen with certainty that there is no possibility that the actions being taken by this Resolution may have a significant effect on the environment, and it is therefore exempt from CEQA pursuant to Section 15061(b)(3) of the State CEQA Guidelines.
8. This resolution shall take effect immediately.

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 twentieth of July, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this twentieth day of July, 2021.

Judi A. Herren, City Clerk

Storm Water Management Program Regulatory Fee

All Residential/Commercial/Industrial

All residential/commercial/industrial properties and other non-residential properties shall pay \$0.00525 per square foot of impervious area.

Exempt from fee: Federal, State, County, Flood Plain, and City Government parcels.



LOCAL STORMWATER FEE

Public Hearing – July 20, 2021

ANNIERGA FAMILY
GYMNASIUM

LOCAL STORMWATER FEE

- Funds collected are used for
 - Staff admin and operating costs
 - Meet requirements of our Municipal Regional Permit
 - General and admin overhead
 - Miscellaneous professional services
- Began collecting fee in 1994 – The fee has remained the same for more than 20 years
- Fee: \$5.25 per 1,000 square feet of impervious area
- Average fee ranges between \$16 to \$26 per property

REQUESTED DIRECTION

- Adopt Resolution No. 6645 authorizing the collection of the local stormwater fee, the fee will then be placed on the County tax roll



THANK YOU



STAFF REPORT

City Council

Meeting Date:

7/20/2021

Staff Report Number:

21-139-CC

Informational Item:

City Council agenda topics: August 2021

Recommendation

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

Policy Issues

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

Analysis

In an effort to provide greater access to the City Council's future agenda items, staff has compiled a listing of anticipated agenda items, Attachment A, through August 31, 2021. The topics are arranged by department to help identify the work group most impacted by the agenda item.

Specific dates are not provided in the attachment due to a number of factors that influence the City Council agenda preparation process. In their agenda management, the mayor and city manager strive to compile an agenda that is most responsive to the City Council's adopted priorities and work plan while also balancing the business needs of the organization. Certain agenda items, such as appeals or State mandated reporting, must be scheduled by a certain date to ensure compliance. In addition, the meeting agendas are managed to allow the greatest opportunity for public input while also allowing the meeting to conclude around 11 p.m. Every effort is made to avoid scheduling two matters that may be contentious to allow the City Council sufficient time to fully discuss the matter before the City Council.

Public Notice

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

Attachments

A. City Council agenda topics: August 2021

Report prepared by:

Judi A. Herren, City Clerk

Tentative City Council Agenda

#	Title	Department	Item type	City Council action
1	Ratify successor MOU - AFSCME	ASD	Regular	Adopt resolution
2	Ratify successor MOU - SEIU	ASD	Regular	Adopt resolution
3	City attorney 6-month eval	CA	Closed Session	
4	Closed Session: CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION	CA	Closed Session	
5	Closed Session: Unrepresented management	CA	Closed Session	
6	710 Willow Road appeal of use permit denial for alcohol sales	CDD	Public Hearing	Decide
7	Menlo Uptown major subdivision map (Appeals + map hearing)	CDD	Public Hearing	Adopt resolution
8	2021 priorities and work plan quarterly report as of June 30	CMO	Consent	Receive and file
9	Approve EQC two year work plan	CMO	Consent	Approve
10	CAP #1 - existing building electrification cost effectiveness study session	CMO	Study Session	Direction to staff
11	Climate Action Plan Progress, GHG inventory update, and proposed amendments	CMO	Regular	Approve
12	Confirm voting delegate for the League of California Cities annual conference (before 8/31)	CMO	City Council Reports	Decide
13	Dissolve Housing Element subcommittee	CMO	Consent	Decide
14	Pre hearing decision on appeal	CMO	Regular	Direction to staff
15	Proclamations: Boy Scout Troop 222	CMO	Proclamation	No action
16	Redistricting: independent redistricting commission	CMO	Regular	Direction to staff
17	SB1383 study session	CMO	Study Session	No action
18	Approve contract for city manager recruiter	CMO/CA	Regular	Approve
19	Recreation scholarship pilot program	LCS	Consent	Approve
20	Adopt Resolution No. XXXX to reduce the posted speed limit in school zones consistent with the California Vehicle Code	PW	Consent	Adopt resolution
21	Award Construction Contract - On call asphalt and concrete	PW	Consent	Approve
22	FEMA BRIC grant study session	PW	Study Session	Direction to staff
23	Local Hazard Mitigation Plan	PW	Study Session	Direction to staff
24	Transportation Management Association feasibility study approval	PW	Regular	Approve
25	West Bay Sanitary - MOU for Recycled Water	PW	Regular	Approve
26	Parks capital projects and use of Measure T funds	PW, ASD	Study Session	Direction to staff
27	Resolution authorizing Measure T bond issuance	PW, ASD	Consent	Adopt resolution
28	Award MPCC Solar Microgrid PPA	PW, CMO	Regular	Contract award or amend



STAFF REPORT

City Council

Meeting Date:

7/20/2021

Staff Report Number:

21-143-CC

Informational Item:

Recruitment status report as of July 14, 2021

Recommendation

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

Policy Issues

City Council authorizes the annual budget, including approved full-time equivalent (FTE) personnel budgets, and delegates personnel management to the city manager. The purpose of this report is to transmit the recruitment status of all authorized vacancies as of the report date.

Background

Recruitment status updates provide a snapshot view of vacant positions across the organization and provide insight into which vacant positions impact workgroups. The report reflects all known vacancies or pending vacancies as of the report date.

Analysis

Attachment A lists the recruitment status of all vacant full-time equivalent classifications July 14. As the first report of fiscal year 2021-22, City staff has streamlined the report production to sync with the authorized headcount tracking system used by the management staff. New data includes the vacant classification's recruitment status as of the date of the report, the reason for vacancy, department and division, and employee group.

Of particular note in Attachment A are the positions with a recruitment status of "99-pending prioritization." With limited human resources staff capacity to open new recruitments, the city manager prioritizes recruitments based on operational needs weekly. Administrative services staff are working to increase capacity to expand the number of recruitments; however, recent changes in the department's senior staff have set those efforts back several weeks. City staff intends to release a request for proposals by the end of July for contract services to support non-executive recruitments.

Impact on City Resources

City staff anticipates returning to City Council in August or September, 2021 to request a budget amendment and contract approval to augment recruitment services.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA)

Agenda item K2
Soody Tronson, resident

Dear Council

If there is one thing constant about Council meetings is the never ending addition of new personnel to the City staff.

I note that while the table references "vacant" position, there is not a single clue as to the overall staffing. For example, the City does not provide an organizational chart and no one knows and with who else these vacant positions fit. Neither do we ever know, objectively, what is being done by the existing personnel and what is not.

There has also not been an independent audit of the efficiency of the City that is has not been commissioned by the Staff itself.

The Staff sets the agendas and the residents have no say on what gets to be on the agenda. Regardless of how many times residents express concern about various topics, including the City Staff and Police Dept. numbers/compensation, they are never addressed.

Why is the City not publicly tracking a list of topics the residents have concerns about and allocate a reasonable portion of the Council meetings exchanging with residents about their concerns.

Soody Tronson

Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

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Attachments

A. FTE recruitment status report as of July 14, 2021

Report prepared by:

Kristen Strubbe, Interim Human Resources Manager

FTE recruitment status report

As of July 14, 2021

#	Name	Full-time equivalent (FTE)			Recruitment Status	Vacancy reason	Dept-Division	Unit
		Auth.	Filled	Vacant				
1	Plan Check Engineer	1.00	-	1.00	00-PR required	New authorization	CDD-Building	AFSCME
2	Planning Manager	1.00	-	1.00	00-PR required	New authorization	CDD-Planning	Unrep mgmt
3	Management Analyst I/II	1.00	-	1.00	02-Workplan development	Promotion/transfer	ASD-HR	Unrep conf
4	Water System Operator I	1.00	-	1.00	02-Workplan development	Separation	PW-Water	SEIU
5	Child Care Teacher II	1.00	-	1.00	03-Accepting applications	Separation	LCS-Childcare	SEIU
6	Assistant Engineer	1.00	-	1.00	04-Reviewing applications	Separation	PW-Engineering	SEIU
7	Librarian II	1.00	-	1.00	05-Testing process	New authorization	LCS-Library	SEIU
8	Librarian I/II	1.00	-	1.00	06-Dept interviews	Separation	LCS-Library	SEIU
9	Asst. Public Works Director - Transportation	1.00	-	1.00	07-Background	Separation	PW-Transportation	Unrep mgmt
10	Associate Transportation Engineer	1.00	-	1.00	07-Background	New authorization	PW-Transportation	SEIU
11	Library and Community Services Supervisor	1.00	-	1.00	09-Start date confirmed	New authorization	LCS-Childcare	AFSCME
12	Library and Community Services Supervisor	1.00	-	1.00	09-Start date confirmed	New authorization	LCS-Childcare	AFSCME
13	Recreation Coordinator	1.00	-	1.00	10-Reinstate	Separation	LCS-Facilities&Events	AFSCME
14	Program Assistant	1.00	-	1.00	10-Reinstate	New authorization	LCS-Programs&Classes	SEIU
15	Asst. Administrative Services Director	1.00	-	1.00	99-Pending prioritization	Separation	ASD-Finance	Unrep mgmt
16	Management Analyst I/II	1.00	-	1.00	99-Pending prioritization	New authorization	ASD-Finance	AFSCME
17	Enterprise Apps Support Specialist I/II	1.00	-	1.00	99-Pending prioritization	New authorization	ASD-IT	SEIU
18	Enterprise Apps Support Specialist I/II	1.00	-	1.00	99-Pending prioritization	New authorization	ASD-IT	SEIU
19	IT Specialist I/II	1.00	-	1.00	99-Pending prioritization	New authorization	ASD-IT	SEIU
20	Community Development Director	1.00	-	1.00	99-Pending prioritization	Separation	CDD-Admin	Unrep mgmt
21	Management Analyst II	1.00	-	1.00	99-Pending prioritization	Separation	CDD-Admin	AFSCME
22	Building Inspector II	1.00	-	1.00	99-Pending prioritization	New authorization	CDD-Building	SEIU
23	Permit Technician	1.00	-	1.00	99-Pending prioritization	New authorization	CDD-Building	SEIU
24	Assistant/Associate Planner	1.00	-	1.00	99-Pending prioritization	Separation	CDD-Planning	SEIU
25	Principal Planner	1.00	-	1.00	99-Pending prioritization	New authorization	CDD-Planning	AFSCME
26	Economic Development Manager	1.00	-	1.00	99-Pending prioritization	New authorization	CMO-EconDev	Unrep mgmt
27	Management Analyst I/II	1.00	-	1.00	99-Pending prioritization	New authorization	CMO-Sustainability	AFSCME
28	Senior Program Assistant	1.00	-	1.00	99-Pending prioritization	New authorization	LCS-Facilities&Events	SEIU
29	Program Assistant	1.00	-	1.00	99-Pending prioritization	New authorization	LCS-Programs&Classes	SEIU
30	Program Assistant	0.50	-	0.50	99-Pending prioritization	New authorization	LCS-Programs&Classes	SEIU
31	Program Assistant	0.50	-	0.50	99-Pending prioritization	New authorization	LCS-Programs&Classes	SEIU
32	Program Assistant	0.50	-	0.50	99-Pending prioritization	New authorization	LCS-Programs&Classes	SEIU
33	Program Assistant	0.50	-	0.50	99-Pending prioritization	New authorization	LCS-Programs&Classes	SEIU
34	Police Commander	1.00	-	1.00	99-Pending prioritization	Separation	PD-Admin	Unrep mgmt
35	Police Records Specialist	1.00	-	1.00	99-Pending prioritization	New authorization	PD-Dispatch&Records	SEIU
36	Police Sergeant	1.00	-	1.00	99-Pending prioritization	Separation	PD-Patrol	PSA
37	Management Analyst I	1.00	-	1.00	99-Pending prioritization	New authorization	PW-Admin	SEIU
38	Construction Inspector II	1.00	-	1.00	99-Pending prioritization	Separation	PW-Engineering	SEIU
39	Asst. Public Works Director - Engineering	1.00	-	1.00	99-Pending prioritization	Separation	PW-Engineering	Unrep mgmt
40	Maintenance Worker II	1.00	-	1.00	99-Pending prioritization	Separation	PW-Maintenance	SEIU
41	Maintenance Worker I	1.00	-	1.00	99-Pending prioritization	New authorization	PW-Maintenance	SEIU
42	Maintenance Worker I	1.00	-	1.00	99-Pending prioritization	New authorization	PW-Maintenance	SEIU
43	Public Works Superintendent	1.00	-	1.00	99-Pending prioritization	New authorization	PW-Maintenance	Unrep mgmt
		41.00	-	41.00				