



## REGULAR MEETING AGENDA

**Date:** 11/15/2022  
**Time:** 6:00 p.m.  
**Locations:** [Zoom.us/join](https://zoom.us/join) – ID# 831 3316 9409 and  
 City Council Chambers  
 751 Laurel St., Menlo Park, CA 94025

### NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

Consistent with Cal. Gov. Code §54953(e), and in light of the declared state of emergency, and maximize public safety while still maintaining transparency and public access, members of the public can listen to the meeting and participate using the following methods.

#### How to participate in the meeting

- Access the live meeting, in-person, at the City Council Chambers
- Submit a written comment online up to 1-hour before the meeting start time:  
[city.council@menlopark.org](mailto:city.council@menlopark.org)  
 Please include the agenda item number you are commenting on.
- Access the meeting real-time online at:  
[Zoom.us/join](https://zoom.us/join) – Meeting ID 831 3316 9409
- Access the meeting real-time via telephone at:  
 (669) 900-6833  
 Meeting ID 831 3316 9409  
 Press \*9 to raise hand to speak
- Watch meeting:
  - Cable television subscriber in Menlo Park, East Palo Alto, Atherton, and Palo Alto:  
 Channel 26
  - City Council Chambers

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 website [menlopark.gov](https://menlopark.gov). 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.gov/agendas](https://menlopark.gov/agendas)).

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.

## Regular Session

### A. Call To Order

### B. Roll Call

### C. Agenda Review

### D. Public Comment

Under "Public Comment," the public may address the City Council on any subject not listed on the agenda. Each speaker may address the City Council once under public comment for a limit of three minutes. You are not required to provide your name or City of residence, but it is helpful. The City Council cannot act on items not listed on the agenda and, therefore, the City Council cannot respond to non-agenda issues brought up under public comment other than to provide general information.

### E. Presentations and Proclamations

E1. Presentation: Sen. Becker

### F. Consent Calendar

F1. Adopt a resolution to continue conducting the City's Council and advisory body meetings remotely due to health and safety concerns for the public and to authorize the use of hybrid meetings ([Staff Report #22-220-CC](#))

F2. Adopt a resolution modifying the City Council's regular meeting schedule to add December 6, 2022 as a regular meeting ([Staff Report #22-216-CC](#))

F3. Adopt a resolution approving the 2023 City Council regular meeting schedule ([Staff Report #22-221-CC](#))

F4. Adopt a resolution accepting fiscal year 2021-22 State Supplemental Local Law Enforcement Grant in the amount of \$100,000; and approve a spending plan ([Staff Report #22-217-CC](#))

F5. Authorize the city manager to execute an agreement with Fehr & Peers to develop a local road safety plan ([Staff Report #22-219-CC](#))

F6. Review and receive the investment portfolio as of September 30, 2022 ([Staff Report #22-222-CC](#))

F7. Adopt a resolution to accept and appropriate a California State Library grant in the amount of \$509,179 to replace the main library's deteriorating roof and update its fire alarm system; and authorize the city manager to submit the required final application and execute the grant agreement ([Staff Report #22-223-CC](#))

F8. Adopt a resolution approving Alcoholic Beverage Control Grant and authorize the police chief to execute the agreement ([Staff Report #22-226-CC](#))

### G. Public Hearing

G1. Waive the second reading of an ordinance adopting the 2022 Building Standards Code to include

amending Title 12 [Buildings and Construction] of the Menlo Park Municipal Code to adopt local amendments to the California Building Standards Code ([Staff Report #22-218-CC](#))

- G2. Consider the Planning Commission's recommendation to approve the proposed project with modifications and adopt a resolution to 1) certify the final environmental impact report (Final EIR), make the California Environmental Quality Act (CEQA) findings including the Statement of Overriding Considerations for significant and unavoidable impacts, and approve the mitigation monitoring and reporting program (MMRP), 2) adopt a resolution to amend the General Plan Circulation Element, 3) adopt resolutions to approve the vesting tentative maps for the proposed project, read the title, and waive further reading of ordinances to 4) amend the City zoning map, rezone the project site from R-MU-B and O-B to R-MU-B-X and O-B-X to include the "X" Conditional Development overlay, and approve the conditional development permit and 5) adopt the development agreement, and 6) adopt a resolution to approve the below market rate (BMR) housing agreements for the proposed Willow Village masterplan project located at 1350-1390 Willow Road, 925-1098 Hamilton Avenue and 1005-1275 Hamilton Court, 1399 and 1401 Willow road, and 871-883 Hamilton Avenue ([Staff Report #22-227-CC](#))

## H. Informational Items

- H1. City Council agenda topics: December 2022 ([Staff Report #22-225-CC](#))
- H2. Police department quarterly update – Q3 July 2022 – September 2022 ([Staff Report #22-224-CC](#))

## I. City Manager's Report

## J. City Councilmember Reports

## K. 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](mailto: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 Cal. Gov. Code §54954.2(a) or §54956. Members of the public can view electronic agendas and staff reports by accessing the city website at [menlopark.gov/agendas](http://menlopark.gov/agendas) and can receive notification of agenda postings by subscribing at [menlopark.gov/subscribe](http://menlopark.gov/subscribe). Agendas and staff reports may also be obtained by contacting City Clerk at 650-330-6620. (Posted: 11/11/2022)



## STAFF REPORT

### City Council

Meeting Date:

11/15/2022

Staff Report Number:

22-220-CC

Consent Calendar:

**Adopt a resolution to continue conducting the City's Council and advisory body meetings remotely due to health and safety concerns for the public and to authorize the use of hybrid meetings**

### Recommendation

Staff recommends that the City Council adopt a resolution (Attachment A) to continue conducting the City's Council and advisory body meetings remotely due to health and safety concerns for the public and to authorize the use of hybrid meetings.

### Policy Issues

Assembly Bill 361 (AB 361) was signed into law September 16, 2021 allowing cities to continue holding virtual meetings during any emergency proclaimed by the governor. AB 361 will expire when the state of emergency ceases or January 1, 2024, whichever is first. Governor Newsom recently announced an end to the state of emergency February 28, 2023, in which case AB 361 would expire on that date. The City Council would need to declare every 30 days that the City's legislative bodies must continue to meet remotely or in a hybrid format whereby City Councilmembers, appointed officials, staff and the public may participate in person or remotely, in order to ensure the health and safety of the public.

### Background

The California Legislature approved AB 361, which was signed by the governor September 16, 2021 for signature. The bill allows local legislative bodies to continue to meet remotely through January 1, 2024. A local agency will be allowed to continue to meet remotely when:

- The local agency holds a meeting during a declared state of emergency
- State or local health officials have imposed or recommended measures to promote social distancing
- Legislative bodies declare the need to meet remotely due to present imminent risks to the health or safety of attendees

The City meets the requirements to continue holding meetings remotely in order to ensure the health and safety of the public:

- The City is still under a local state of emergency
- County Health urges that all individuals in public spaces maintain social distancing and wear masks

On September 13, 2022 Governor Newsom signed AB 2449 amending the Brown Act to provide additional teleconference procedures to allow members of a legislative body (included bodies appointed by the City Council) to participate remotely in public meetings. The new amendments to the Brown Act go into effect January 1, 2023 and provide complex procedures for holding hybrid public meetings. A hybrid meeting

allows members of City Council and advisory bodies, staff, and members of the public to participate in meetings either virtually and in-person.

## Analysis

The City is still under a local state of emergency and the emergency findings required under AB 361 are still in effect. San Mateo County is still in the Low COVID-19 Community Level category and the Centers for Disease Control and Prevention (CDC) recommends that people may choose to mask at any time and people with symptoms, a positive test, or exposure to someone with COVID-19 should wear a mask. The resolution authorizes the use of hybrid meetings, whereby City Councilmembers, participants, and staff may choose to attend either remotely or in person due to health and safety concerns and needs. The City Council finds that reducing the number of persons present in City Council chambers may continue to reduce imminent health risks associated with large groups and/or members of varying households gathering indoors.

AB 2449 would allow local officials to hold remote public meetings and would authorize relaxed teleconferencing procedures beyond what is currently required by the Brown Act (meaning there would be no need to identify each teleconference location, post agendas at all teleconference locations, or allow the public to access the teleconference locations) if at least a quorum of the legislative body participates in-person at a single location identified on the agenda that is open to the public, and the legislative body follows certain requirements, including:

- The legislative body must provide either a two-way audiovisual platform or two-way telephonic service and a live webcasting of the meeting to allow the public to remotely hear and visually observe the meeting, and remotely address the legislative body.
- The agenda must identify and include an opportunity for all persons to attend via a call-in option, internet-based service option and at the in-person location of the meeting.
- A member of the legislative body can only participate remotely if one of the following are met:
  - the member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for “just cause”; or
  - the member requests the legislative body to allow them to participate in the meeting remotely due to “emergency circumstances” and the legislative body takes action to approve the request. The legislative body must request a general description (generally not exceeding 20 words) of the circumstances relating to their need to appear remotely at the given meeting.
- “Just cause” is defined as (i) a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely; (ii) a contagious illness that prevents a member from attending in person; (iii) a need related to a physical or mental disability as defined by statute; or (iv) travel while on official business of the legislative body or another state or local agency.
- Members of the legislative body are prohibited from using AB 2449 to participate in remote meetings for more than three consecutive months or for 20% of the regular meetings in a calendar year.
- Members of the legislative body participating remotely must participate using both audio and visual technology. While the new law doesn’t specify whether audio and visual technology must be enabled at all times while participating remotely, we think the best reading of the law is that a member participating remotely should keep their camera on, and be able to participate via audio at all times during the meeting.
- Members of the legislative body participating remotely must publicly disclose whether any individual over the age of 18 is present in the same room as the member participating remotely.

- A meeting must be paused when there is any teleconference disruption for the public and no action can be taken if a disruption event prevents the legislative body from broadcasting the meeting.
- Real-time public comments must be allowed during the meeting.
- Legislative bodies must implement procedures for resolving requests for reasonable accommodations for individuals with disabilities.

### **Impact on City Resources**

Additional technologies will need to be purchased and implemented in the City Council Chambers, Main Library (Senior Annex), Oak Room (Arrillaga Recreation Center), and the Downtown Conference Room (City Hall) in order to hold hybrid meetings. There will also be the need to train staff and advisory body members on the new technology.

### **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 an organizational structure change that will not result in any direct or indirect physical change in the environment.

### **Public Notice**

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

### **Attachments**

A. Resolution

Report prepared by:

Judi A. Herren, Assistant to the City Manager/City Clerk

**RESOLUTION NO. XXXX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK AND ON BEHALF OF COMMISSIONS AND COMMITTEES CREATED BY THE CITY COUNCIL PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 54952(b) AUTHORIZING TELECONFERENCE MEETINGS IN COMPLIANCE WITH AB 361 (GOVERNMENT CODE SECTION 54953(e)) TO CONTINUE TO ALLOW MEMBERS OF THE PUBLIC TO SAFELY PARTICIPATE IN LOCAL GOVERNMENT MEETINGS**

WHEREAS, the City Council is committed to ensuring public access to observe and participate in local government meetings; and

WHEREAS, all meetings of the City Council and other legislative bodies created pursuant to Government Code Section 54952(b) are open and public, as required by the Ralph M. Brown Act, so that any member of the public may participate in local government meetings; and

WHEREAS, the AB 361, codified at Government Code section 54953(e), makes provisions for remote teleconferencing participation in local government meetings, without compliance with the requirements of 54953(b)(3), during a Governor-proclaimed state of emergency and if the local legislative body determines, by majority vote, that as a result of the emergency, meeting solely in person would present imminent risks to the health or safety of attendees; and

WHEREAS, on March 4, 2020, Governor Newsom proclaimed a State of Emergency due to the outbreak of respiratory illness due to a novel coronavirus (now known as COVID-19) and that State of Emergency is still in effect in the State of California; and

WHEREAS, on March 11, 2020 the City Council proclaimed the existence of a local state of emergency within the City, pursuant to Section 8625 of the California Emergency Services Act in response to the COVID-19 pandemic; and

WHEREAS, COVID-19 continues to threaten the health and lives of City residents; and

WHEREAS, the SARS-CoV-2 Delta and Omicron Variants are highly transmissible in indoor settings; and

WHEREAS, the Omicron subvariants of the SARS-CoV-2 virus is overtaking other variants in San Mateo County; and

WHEREAS, according to data from the County's Health Administrator and County website, the County is averaging approximately nine new cases per 100,000 of COVID-19 per day; and

WHEREAS, although the City has returned to in-person meetings, due to the prevalence of BA strains of the SARS-CoV-2 virus overtaking other variants in San Mateo County, the City Council finds that reducing the number of persons present in City Council chambers is necessary to reduce imminent health risks associated with large groups and/or members of varying households gathering indoors; and

WHEREAS, the State of California and the City of Menlo Park continue to follow safety measures in response to COVID-19 as ordered or recommended by the Centers for Disease Control and Prevention (CDC), California Department of Public Health (DPH), and/or County of

San Mateo, as applicable, including facial coverings when required; and based upon that guidance, in-person attendance indoors at public meetings continues to present a health risk for certain segments of the population, necessitating the need to reduce the number of in-person meeting attendees; and

WHEREAS, the City Council, acting as a legislative body pursuant to Government Code section 54952(a) and for the benefit of the commissions, committees and other bodies that were created by the City Council pursuant to Government Code section 54952(b) (collectively referred to as “Legislative Bodies”), finds that the current conditions meet the circumstances set forth in Government Code section 54953(e)(3) to allow Legislative Bodies to continue to use teleconferencing to hold open and public meetings if the Legislative Bodies comply with the requirements set forth in Government Code section 54953(e)(2) to ensure the public can safely participate in and observe local government meetings.

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

1. Find that current conditions authorize teleconference public meetings of Legislative Bodies. Based on the California Governor’s continued declaration of a State of Emergency and current conditions, the City Council finds that meeting in person, without the option for certain populations and persons to participate remotely, would present imminent risks to the health or safety of attendees. The City Council does therefore find that Legislative Bodies and members of Legislative Bodies of the City may elect to use teleconferencing to hold public meetings in accordance with Government Code section 54953(e)(2) to ensure members of the public have continued access to safely observe and participate in local government meetings.
2. Authorize Legislative Bodies to conduct teleconference meetings. The Legislative Bodies are hereby authorized to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting open and public meetings in accordance with Government Code section 54953(e)(2) and other applicable provisions of the Brown Act.
3. Authorize Legislative Bodies to conduct hybrid meetings. The Legislative Bodies are hereby further authorized to conduct meetings in a “hybrid” format, where both members of the Body may elect to be present in person, utilizing appropriate distancing and masking practices, or participate by teleconferencing technology. Such meetings of the Legislative Bodies that occur using teleconferencing technology will provide an opportunity for any and all members of the public who wish to address Legislative Bodies and will otherwise occur in a manner that protects the statutory and constitutional rights of parties and the members of the public attending the meeting via teleconferencing.

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I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifteenth day of November, 2022, 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 \_\_ day of November, 2022.

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Judi A. Herren, City Clerk



## STAFF REPORT

**City Council**

**Meeting Date:** 11/15/2022

**Staff Report Number:** 22-216-CC

**Consent Calendar:** **Adopt a resolution modifying the City Council's regular meeting schedule to add December 6, 2022 as a regular meeting**

### Recommendation

Staff recommends that the City Council adopt a resolution (Attachment A) modifying the City Council's regular meeting schedule to add December 6, 2022 as a regular meeting.

### Policy Issues

Ordinance No. 1080 (Attachment B) allows the City Council to adopt a different meeting schedule by resolution.

### Background

On December 14, 2021, the City Council unanimously voted to adopt Ordinance No. 1080 codifying the City Council's regular meeting schedule as the second and fourth Tuesday of every month, commencing at 6 p.m. At the same meeting, the City Council unanimously approved the 2022 City Council regular meeting schedule (Attachment C.)

### Analysis

The adoption of the 2022 regular City Council meeting schedule included regular meetings on the second and fourth Tuesdays of the month and took into account year-end travel schedules and holiday observances.

Although the December 6 meeting was approved December 14, 2021, a resolution modifying the City Council regular meeting schedule (e.g., second and fourth Tuesday of the month) is required to hold it as a "regular" meeting, per Ordinance No. 1080. For "special" meetings (e.g., outside of the approved second and fourth Tuesday of the month), the Brown Act limits public comment to items on the agenda (e.g., no general public comment for items not on the agenda) and ordinances cannot be adopted at "special meetings."

The proposed resolution will update the City Council meeting schedule adding December 6 as a regular meeting.

### **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
- B. Ordinance No. 1080
- C. Hyperlink – 2022 City Council regular meeting schedule:  
[menlopark.gov/files/sharedassets/public/agendas-and-minutes/city-council/2022-meetings/city-council-meeting-schedule-2022.pdf](https://menlopark.gov/files/sharedassets/public/agendas-and-minutes/city-council/2022-meetings/city-council-meeting-schedule-2022.pdf)

Report prepared by:

Judi A. Herren, Assistant to the City Manager/City Clerk

**RESOLUTION NO. XXXX**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
MODIFYING THE CITY COUNCIL'S REGULAR MEETING SCHEDULE TO  
ADD DECEMBER 6, 2022 AS A REGULAR MEETING**

WHEREAS, the City of Menlo Park ("City") wishes to modifying the City Council's regular meeting schedule to add December 6, 2022 as a regular meeting;

WHEREAS, Ordinance No. 1080 allows the modification of the approved City Council meeting scheduled through the adoption of a resolution; and

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 six p.m., unless the City Council adopts a different schedule by resolution. 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 city council meetings, see Government Code Sections 36805 to 36808, 54950 to 65960.

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

The December 6, 2022 meeting shall be added as a regular meeting date to the 2022 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 fifteenth day of November, 2022, 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 \_\_\_ day of November, 2022.

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Judi A. Herren, City Clerk

**ORDINANCE NO. 1080**

**ORDINANCE OF THE CITY 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 (addition in underline, deletions in ~~strikethrough~~):

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 (5)~~ six (6) 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.

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.

SECTION 3. CEQA. The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3.

SECTION 4. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, then such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares it would have adopted this Ordinance and each section, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that one or more section, subsection, subdivision, sentence, clause, phrase, or portion thereof be declared invalid or unconstitutional.

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INTRODUCED on the sixteenth day of November, 2021.

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


AYES: Combs, Mueller, Nash, Taylor, Wolosin

NOES: None


ABSENT: None

ABSTAIN: None

APPROVED:

DocuSigned by:  
  
52C1D491348F4A3...  
Drew Combs, Mayor

ATTEST:

DocuSigned by:  
  
39280A20D0BE491...  
Judi A. Herren, City Clerk



**STAFF REPORT**

**City Council**  
**Meeting Date:** 11/15/2022  
**Staff Report Number:** 22-221-CC

**Consent Calendar:** Adopt a resolution approving the 2023 City Council regular meeting schedule

**Recommendation**

Staff recommends the City Council adopt a resolution (Attachment A) approving the City Council's 2023 meeting schedule (Attachment B.)

**Policy Issues**

The proposed action conforms to the current practice of having the City Council set its meeting schedule annually. According to the City's Municipal Code, Section 2.04.010, a regular meeting of the City Council shall be held on the second and fourth Tuesday of every month commencing at 6 p.m., unless the City Council adopts a different schedule by resolution.

**Background**

The purpose of the annual City Council meeting schedule is to provide the City Council, staff and the public with advance notice of proposed meeting dates. The meeting schedule has typically been approved by the City Council before the last calendar regular meeting in December each year.

**Analysis**

Staff is proposing a meeting schedule for the 2023 calendar year. The proposed dates have been scheduled taking into consideration City holidays and school holidays.

Once a meeting schedule is approved by the City Council, it will be used by staff to create a tentative calendar to identify when items will likely be considered by the City Council. It is important to note that the tentative calendar is a fluid document that serves as an ongoing reference guide, and that items are frequently rescheduled. The City Council is requested to keep Tuesday evenings free so that meetings, including closed sessions, study sessions or other special meetings, can be scheduled as the need arises.

Staff has proposed the following rescheduling of the following regular second and fourth Tuesday of the month meetings:

Table 1: Proposed changes to second and fourth Tuesday schedule			
Current second/fourth Tuesday	Proposed reschedule date	Action	Reason
April 11, 2023	April 4, 2023	Reschedule	Spring break for school districts
November 28, 2023	November 7, 2023	Reschedule	Thanksgiving holiday
December 26, 2023	December 5, 2023	Reschedule	Christmas holiday

In previous years (e.g., pre-2020), the City Council had the option to schedule a summer break. A proposed summer break would host one regular meeting July 11 and one August 22 and result in canceling the July 25 and August 8; the City Council would have no meetings July 12 – August 21. The City Council can approve this summer break or a modified summer break at this meeting.

Table 2 outlines neighboring jurisdiction governing board meeting schedules.

Table 2: Regular governing board meeting schedule	
Board	Meeting schedule
City of Palo Alto	First three Mondays of each month, at 6 p.m.
City of East Palo Alto	First and third Tuesdays of each month at 6:30 p.m.
City of Redwood City	Second and fourth Mondays of each month at 6 p.m.
Las Lomas School District	First Wednesday of each month at 7 p.m.
Menlo Park City School District	Second Thursday of each month at 5 p.m.
Menlo Park Fire Protection District	Third Tuesday of every month at 5:30 p.m.
Ravenswood City School District	Second and fourth Thursdays of each month at 6:30 p.m.
Sequoia Union High School District	Wednesdays at 6 p.m. - adopted by Board
Town of Atherton	Third Wednesday of each month at 6 p.m.
Town of Portola Valley	Second and fourth Wednesdays of the month at 7 p.m.
Town of Woodside	Second and fourth Tuesday of each month at 7:30 p.m.
West Bay Sanitary District	Second and fourth Wednesdays of each month at 7 p.m.

**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
- B. Proposed 2023 City Council meeting schedule

Report prepared by:

Judi A. Herren, Assistant to the City Manager/City Clerk

**RESOLUTION NO. XXXX**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
ADOPTING THE 2023 CITY COUNCIL REGULAR MEETING SCHEDULE**

WHEREAS, the City of Menlo Park ("City") wishes to adopt the 2023 City Council regular meeting schedule as described in Exhibit A;

WHEREAS, Ordinance No. 1080 allows the modification of the approved City Council meeting scheduled through the adoption of a resolution; and

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 six p.m., unless the City Council adopts a different schedule by resolution. 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 Government Code sections 36805 to 36808, 54950 to 65960.

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

The 2023 City Council regular meeting schedule us adopted as described in Exhibit A.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifteenth day of November, 2022, 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 \_\_\_ day of November, 2022.

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Judi A. Herren, City Clerk

Exhibits:

A. 2023 City Council regular meeting schedule



# PROPOSED CITY COUNCIL MEETING SCHEDULE 2023

## JANUARY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

## FEBRUARY

S	M	T	W	T	F	S
			1	2	3	4
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12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

## MARCH

S	M	T	W	T	F	S
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12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

## APRIL

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30						

## MAY

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21	22	23	24	25	26	27
28	29	30	31			

## JUNE

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25	26	27	28	29	30	

## JULY

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23	24	25	26	27	28	29
30	31					

## AUGUST

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20	21	22	23	24	25	26
27	28	29	30	31		

## SEPTEMBER

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17	18	19	20	21	22	23
24	25	26	27	28	29	30

## OCTOBER

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22	23	24	25	26	27	28
29	30	31				

## NOVEMBER

S	M	T	W	T	F	S
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12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

## DECEMBER

S	M	T	W	T	F	S
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17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						



## STAFF REPORT

### City Council

Meeting Date:

11/15/2022

Staff Report Number:

22-217-CC

Consent Calendar:

**Adopt a resolution accepting fiscal year 2021-22 State Supplemental Local Law Enforcement Grant in the amount of \$100,000; and approve a spending plan**

### Recommendation

Adopt a resolution accepting fiscal year 2021-22 State Supplemental Local Law Enforcement Grant (SLESF COPS Frontline) in the amount of \$100,000 and approve a spending plan to provide protective equipment for frontline officers in armored plates and carriers for active shooter-type events, upgrade law enforcement technology by replacing electronic citation writing devices, and supplement Menlo Park Police Department's (MPPD) bike patrol unit with two additional electric bikes (e-bikes.)

### Policy Issues

The proposed action is within city policy and the continued use of law enforcement technology is within city and MPPD policy.

### Background

In 1997, the California State Legislature created the Citizen's Option for Public Safety (COPS) Program. This is a noncompetitive grant whereby cities and counties receive state funds to augment public safety expenditures. Effective in the year 2000, cities were guaranteed a minimum grant award of \$100,000.

The COPS funds must be used for frontline municipal police services and must supplement and not supplant existing funding. The funds cannot be used for administrative overhead costs in excess of half a percent of the total allocation. The allocation may not be used to fund the costs of any capital project or construction project that does not directly support frontline law enforcement.

### Analysis

The 2021-22 COPS Frontline Grant award is in the amount of \$100,000. This grant is included in the City's Fiscal Year \$22,951,641 budget for the MPPD and a spending plan must now be approved by City Council. Staff recommends that the funds be expended in the following areas as shown below:

Protective equipment for frontline officers:

- Armored protective plates and carriers for violent intruder events – \$71,733

Law enforcement technology deployment

- Upgrade and replace citation writing devices (technology upgrade) – \$99,177

Community crime prevention (and engagement):

- Add two electric assist (e-bike) bicycles for the MPPD bike team – \$8,122

Total spending from COPS/SLESF fund – \$179,032

The MPPD has strategically used grant funds to support the department’s technology initiatives, previously unbudgeted items and new field equipment. This year’s spending request continues to strengthen the department’s ability to provide department staff with essential technology to effectively perform their job functions, protect frontline officers in the event of serious community danger, and add to a proven and community-supported crime prevention and community engagement initiative.

The philosophy of securing alternative funding sources to finance new technologies has allowed the MPPD to maintain a progressive approach to policing, while simultaneously supporting the need for a cost-conscious approach to the use of General Fund monies.

The amount listed in this purchase plan does exceed the one-year grant allocation of \$100,000. However, there is sufficient funding in reserve to cover this expense, and this moves MPPD back toward the ideal annual strategy of using as much of this annual allocation as possible.

Protective equipment for front line officers – armored plates and carriers

NOTE: These items are NOT listed equipment under Assembly Bill (AB) 481 requirements

MPPD officers currently carry armored plate-carrying vests for deployment in the event of an “active shooter” or similar violent incident where the officer’s daily-wear bullet-proof vest may not be sufficient due to suspect use of a rifle or other weapon with the capability of penetrating the daily-wear vest. These plates have an expiration date, after which the effectiveness of the plate cannot be guaranteed. The plates currently distributed to our personnel are at their expiration, and replacements are needed to maintain the level of safety-preparedness for front line officers. There is no budgeted contingency for replacement of this needed equipment.

These plates and their carriers are deployed to every officer on the front line at MPPD, and are a proven protective device in the event of a threat to our community above and beyond our day-to-day patrol.

The total cost of replacing plates and carriers for all sworn personnel is \$71,734.

Technology deployment – replacement of electronic citation equipment

The MPPD uses electronic, automated devices to write traffic and other enforcement citations. These devices collect and sort information quickly and efficiently to reduce errors, and collect citation data for automated upload to the courts. This equipment saves significant labor hours of collecting and sorting paper tickets, fixing errors, and sending paper citations over to the courts for a similar repetitive process of sorting and processing. Over 75 percent of our current ticket writing devices are already out of warranty, and technology upgrades to data processing will make the current devices obsolete in the coming months. These items are due to be replaced, and there is not a current budgeted amount to replace these devices, which are crucial to frontline policing services. The vast majority of community demand on policing is within the realm of traffic and other violations which require enforcement as well as education.

Replacement of our 18 citation-writing devices will cost \$114,176 total – this price includes the first year of maintenance, which we budget currently at \$15,000. The total requested amount for this funding source is therefore \$99,176

### Community crime prevention, outreach and engagement – e-bikes for the MPPD bike team

MPPD's bike team has become one of the most lauded dimensions of our community policing strategy over the past two years. Last year, we added two electric-assisted "e-bikes" to our bicycle fleet. Not only have these bikes been a hit with our community – adults and youth alike – they have been a pivotal enhancement to the bike patrol program in allowing our officers to conduct traffic enforcement, arrest crime suspects, and patrol a broader area with bicycles. The community has vocally supported the enhanced engagement that stems from bike patrol, and our officers have gravitated to bike patrol as a highly desired opportunity to police differently.

We have an opportunity to add to our e-bike fleet an additional two bikes of the same model, from the same local merchant. This is not a budgeted expense, but based on enthusiastic support within the department and in the community, we are seeking to add this equipment.

Two e-bikes can be procured and fully outfitted for Patrol at a cost of \$4,061 each, for a total of \$8,122.

### Spending funds in excess of the \$100,000 award

Due to transitions in leadership over the past three years, spending from this fund has been less than the awarded amount, and spending to the allocation is ideal. There is additional existing funding for the added expense. Also, last year's SLESF-COPS funding for outfitting all patrol cars with defibrillators (AED's) was not fully spent due to a separate community grant which covered \$35,000 of the \$48,000 initially allocated.

### **Impact on City Resources**

The fiscal year 2021-22 grant funds have been awarded to the city and there are no matching requirements for this grant. Purchases will be made in accordance with the City's adopted purchasing policies.

### **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

Report prepared by:  
Dave Norris, Chief of Police

**RESOLUTION NO. XXXX**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
ACCEPTING THE STATE SUPPLEMENTAL LOCAL LAW ENFORCEMENT  
GRANT OF \$100,000, APPROVING THE USE OF THE FUNDS IN  
ACCORDANCE WITH STATE REQUIREMENTS**

WHEREAS, the California State Legislature created the Citizen's Option for Public Safety (COPS) Program in fiscal year 1996-97; and

WHEREAS, effective September 8, 2000, cities were guaranteed a minimum grant award of \$100,000; and

WHEREAS, the City must create a Supplemental Law Enforcement Special Fund (SLESF) for the grant funds; and

WHEREAS, the funds cannot be used for administrative overhead exceeding 0.5 percent or allocated to fund the costs of any capital project or construction project that does not directly support frontline law enforcement; and

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Menlo Park does hereby accept the state Supplemental Local Law Enforcement Grant of \$100,000; and

BE IT FURTHER RESOLVED, that the City Council approved the use of State Supplemental Local Law Enforcement Grant funds in accordance with state requirements, as outlined below:

- Ballistic Protective Vests
- Upgraded Electronic Citation-Writing Equipment
- Electric-Assisted Bicycles (E-Bikes)

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifteenth day of November, 2022, 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 \_\_\_ day of November 2022.

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Judi A. Herren, City Clerk



**STAFF REPORT**

**City Council**

**Meeting Date:**

**11/15/2022**

**Staff Report Number:**

**22-219-CC**

**Consent Calendar:**

**Authorize the city manager to execute an agreement with Fehr & Peers to develop a local road safety plan**

**Recommendation**

Staff recommends that the City Council authorize the city manager to execute an agreement with Fehr & Peers to develop a local road safety plan (Attachment A.) The proposed agreement is for \$182,995 with the remaining \$17,005 in the budget authorized as contingency (held by the City.)

**Policy Issues**

The local road safety plan (LRSP) is consistent with General Plan policies CIRC 1.1, 1.7, 1.8, and 1.9 that establish Vision Zero as the City's guiding safety policy and establish specific safety policies for multimodal travel and safe routes to school.

**Background**

A LRSP is a means for local jurisdictions to address the unique highway safety needs in their jurisdictions. A LRSP is required for local jurisdictions to compete for several grant programs, including the Highway Safety Improvement Program, the regional One Bay Area Grant (OBAG) program, the federal Safe Streets for All program, and others. The City is currently pursuing grants from the OBAG program for the Middle Avenue pedestrian and bicycle undercrossing and anticipates pursuing other grant sources for transportation improvements in the future.

The LRSP is a component of a renewed focus on transportation safety at federal, state and local levels. It is a local agency complement to the statewide Strategic Highway Safety Plan (SHSP) that every state is required to complete and update on a regular basis. At the federal level, the U.S. Department of Transportation recently adopted the Safe Systems Approach as the guiding paradigm to address roadway safety. This approach is focused on eliminating fatalities and serious injuries by using a proactive approach to safety with shared responsibility for the people who design the roads and vehicles, the people who use those roads, and the people who enforce the rules and provide emergency response.

For the City of Menlo Park, the LRSP will serve as an extension of the City's Transportation Master Plan (TMP.) The TMP included safety as one of several factors to prioritize transportation investments in the City. The LRSP provides an opportunity to develop an action plan to implement the Vision Zero policy and a more robust analysis of transportation safety issues in the City. Specifically, the plan will include a systemic safety analysis that will identify where elements of the transportation system contribute to elevated collision risk. The LRSP will produce a set of strategies to enhance roadway safety that include both potential policy initiatives and roadway infrastructure changes.

The plan will be developed with robust public involvement, with a focus on reaching the most vulnerable



roadway system users. Vulnerable users typically include people walking and bicycling, individuals who experience higher risk of injury from collisions (such as seniors, individuals with disabilities and children), and any groups that experience traffic collisions at above average rates. The outreach proposed for the LRSP will build on the data analysis to target groups that have experienced above average rates of traffic collisions.

## Analysis

Staff issued a request for proposals (RFP) for a LSRP in September 2022 and received five proposals from the following consultants:

- Fehr & Peers;
- Kimley-Horn and Associates, Inc.;
- Minagar and Associates, Inc.;
- TJKM Transportation Consultants; and
- Toole Design Group, LLC

All five firms had some previous experience developing LRSPs for cities in California. Staff evaluated each proposal based on the criteria in the RFP, including:

- Direct experience leading LRSPs and vision zero action plans;
- Experience conducting detailed safety analysis;
- Capability leading equitable outreach with diverse community members;
- Ability to perform the specific tasks;
- Qualifications of the specific individuals who will work on the project;
- Appropriateness of the proposed methods or techniques to be used in the study;
- Reasonableness of the schedule to complete each task element; and
- Overall cost of the proposal.

Based on this evaluation, the top three firms were invited to interview for the project with a panel from the City's public works and police departments. Each firm provided a short presentation about their approach and responded to a fixed set of questions from the panel. At the conclusion of the process, the panel unanimously recommended Fehr & Peers as the preferred firm to complete the LRSP due to their combination of local and national safety experience, use of innovative data and analysis, capability with public engagement, and cohesive and thoughtful presentation during the interview process.

The LRSP will be developed over the course of the next year, with a target date of completion of December 2023, consistent with requirements for various grant funding programs. The project will begin with a review of safety data, followed by identification of safety strategies to address the most significant challenges. These will be packaged into an action plan that identifies infrastructure improvements, policies, and programs that can help advance safety.

The project will be led by the City's transportation division in coordination with the police department and will include partnership with the public and stakeholders, including Menlo Park Fire Protection District, schools, local business and community groups. Public engagement materials will be available in English and Spanish and public meetings will include native Spanish speakers to help ensure diverse participation. Major public engagement milestones will include opportunities to review the safety data findings, safety strategies, and draft and final plan using multiple methods:

- Stakeholder workshops with a cross section of residents, businesses, community organizations, and other partners to help guide the development of the plan

- Formal presentations to the City's Complete Streets Commission and City Council
- Pop up events in the community for residents to provide feedback and identify their roadway safety priorities
- Presentations to key partner groups such as the Safe Routes to Schools Task Force and Chamber of Commerce

In addition to the outreach effort supported by the consultant team, staff will also be available to conduct presentations and meetings with groups as needed to ensure opportunities for all residents to participate in this planning process.

### **Impact on City Resources**

The fiscal year 2022-23 budget includes \$200,000 in the City's five-year capital improvement program for the LRSP. The proposed Fehr & Peers agreement is for \$182,995 with the remaining \$17,005 authorized as contingency.

### **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. Agreement

Report prepared by:  
Hugh Louch, Assistant Public Works Director – Transportation

Report reviewed by:  
Nicole Nagaya, Public Works Director

**PROFESSIONAL SERVICES AGREEMENT**

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



<b>Agreement #:</b>
<b>AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND FEHR &amp; PEERS</b>
THIS AGREEMENT made and entered into at Menlo Park, California, this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and FEHR & PEERS, hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: Local road safety plan</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
<b>1. SCOPE OF WORK</b>
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.
<b>2. SCHEDULE FOR WORK</b>
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p>
<b>3. PROSECUTION OF WORK</b>
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).

#### 4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$182,995 as described in Exhibit "A," Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

#### 5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

#### 6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

## 7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

## 8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

## 9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Nicole H. Nagaya  
Public Works  
City of Menlo Park  
701 Laurel St.  
Menlo Park, CA 94025  
650-330-6740  
PWSupportStaff@menlopark.org

Notices required to be given to FIRST PARTY shall be addressed as follows:

Meghan Mitman  
Fehr & Peers  
60 S Market St, Suite 700  
San Jose, CA 95113  
408-278-1700  
m.mitman@fehrandpeers.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

## 10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

## 11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage under the Commercial General Liability and Automobile Liability Insurance (but not for the Professional Liability and workers' compensation) to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:  
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
  2. Liability insurance:  
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
  3. Professional liability insurance:  
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

## 12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

## 13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

## 14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

## 15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

## 16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
  2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

**17. INSPECTION OF WORK**

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

**18. COMPLIANCE WITH LAWS**

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

**19. BREACH OF AGREEMENT**

- A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.
- B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.

**20. SEVERABILITY**

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

**21. CAPTIONS**

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

**22. LITIGATION OR ARBITRATION**

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

**23. RETENTION OF RECORDS**

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.

**24. TERM OF AGREEMENT**

This agreement shall remain in effect for the period of November 16, 2022 through December 31, 2026 unless extended, amended, or terminated in writing by CITY.



**25. ENTIRE AGREEMENT**

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

**26. STATEMENT OF ECONOMIC INTEREST**

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

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

**FOR FIRST PARTY:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Tax ID#

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Nira F. Doherty, City Attorney

\_\_\_\_\_  
Date

**FOR CITY OF MENLO PARK:**

\_\_\_\_\_  
Justin I. C. Murphy, City Manager

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Judi A. Herren, City Clerk

\_\_\_\_\_  
Date

**EXHIBIT "A" – SCOPE OF SERVICES****A1. SCOPE OF WORK**

FIRST PARTY agrees to provide consultant services for CITY's Public Works. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services: Provide consultant services set forth in Exhibit A -1, attached hereto.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

**A2. COMPENSATION**

CITY shall pay FIRST PARTY an all-inclusive fee of \$182,995 as described in Exhibit "A," Scope of Services. All payments, shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.

FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.

Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.

Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

**A3. SCHEDULE OF WORK**

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

**A4. CHANGES IN WORK -- EXTRA WORK**

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Department Head.

**A5. BILLINGS**

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

**EXHIBIT "B" - DISPUTE RESOLUTION**

- B1.0** All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:
- B2.0 Mediation**
- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

# Project Work Plan and Approach

Our work plan and approach are organized into five tasks to develop a Local Road Safety Plan (LRSP)/Vision Zero Action Plan (VZAP) that advances Menlo Park’s safety goals.

## Task 1. Kick-off Meeting and Final Scope/Schedule

**Purpose:** Solidify common understanding and expectations for work plan, deliverables, and schedule. Conduct regular check-in meetings with project team to remain in alignment throughout LRSP/VZAP development.

Fehr & Peers will facilitate a virtual project kick-off meeting to discuss the goals, tasks, data needs, and timeline for the LRSP/VZAP. We will prepare a draft work plan in advance of the kick-off meeting and finalize the work plan after the kick-off meeting based on City staff input.

Fehr & Peers is committed to regular, ongoing communication with the City to facilitate smooth project delivery. For the duration of the project, we will provide monthly invoices and progress reports. We also will facilitate virtual bi-weekly, 30-minute conference calls with the City to provide regular opportunities to discuss the project, monitor project progress, prepare for upcoming tasks, debrief on completed tasks, and address issues to ensure the Plan development remains on schedule and within budget. Fehr & Peers will provide meeting agendas and notes for the progress meetings.

### TASK 1 DELIVERABLES

- Participation in kick-off meeting, including meeting agenda and notes
- Final work plan and project schedule
- Participation in biweekly progress check-in meetings, including meeting agenda and notes

## Task 2. Safety Data Analysis

**Purpose:** Establish a Safe System baseline by benchmarking current policies, analyzing current safety data, and applying a proactive, risk-based, data-driven analysis consistent with Caltrans Local Road Safety Manual and FHWA Safe System Approach to inform emphasis areas, priority locations, countermeasures, and other safety strategies.

Our activities within this task include the following.

### Task 2.1. BENCHMARKING ASSESSMENT

Fehr & Peers will review the recently completed studies listed in the RFP, as well as the City’s current policies, guidelines, and standards, to benchmark Menlo Park against Safe System best practices. Instances where the City’s current practices are not aligned with Safe System best practices will become important elements of the Vision Zero Action Plan.

## Task 2.2. COLLISION DATABASE DEVELOPMENT

Fehr & Peers will obtain the 5 most recent years of collision data on Menlo Park streets from the Statewide Integrated Traffic Records System (SWITRS), the UC Berkeley SafeTREC Transportation Injury Mapping System (TIMS), and City-provided local collision data (i.e., publicly available online GIS collision database and incident calls database). We will cross-reference these data sources to prepare a comprehensive collision dataset with collisions correctly mapped to locations.

## Task 2.3. CONTEXTUAL DATABASE DEVELOPMENT

Fehr & Peers will utilize roadway information from MTC's Streetsaver and land use data provided by the City to enhance the collision database with contextual information, including intersection control, crossing type, functional classification, lane configuration, bicycle facility, sidewalk gap, and presence of schools, parks, or other key trip generators. Discussions with City staff will help identify other relevant and available contextual data to include in the database.

We also will use Wejo's connected vehicles data to capture the locations of risky driving events such as hard braking and speeding to identify underlying safety challenges at a specific location and inform proactive safety interventions.

## Task 2.4. COLLISION ANALYSIS

Utilizing the collision and contextual database developed above, Fehr & Peers will prepare a summary of the collision landscape in Menlo Park, including charts and tables displaying key patterns in the collision data by mode, severity, and crash type over time, focused on the most recent five years of collision data. Through this analysis, we will identify collision hotspots, define collision profiles, and identify systemic risk factors potentially associated with higher severity collisions. The analysis will incorporate input received from the community and stakeholders through the engagement efforts.

### TASK 2 DELIVERABLES

- Benchmarking assessment of current policies, guidelines, and standards
- GIS database with collision and contextual safety factors
- Collision landscape summary, hotspot identification, collision profile definition, and risk factor definition

## Task 3. Selection of Emphasis Areas

**Purpose:** Establish emphasis areas with supporting objectives, performance measures, and targeted countermeasures.

Building on the geographic hotspots, collision profiles, and risk factors defined under Task 2, and informed by input from stakeholder and public engagement, Fehr & Peers will develop and map up to five priority geographic emphasis areas that reflect the critical crash types or risks for Menlo Park. These geographic emphasis areas will be a combination of specific targeted locations and systemic citywide location types. For each geographic emphasis area, we will identify specific and measurable objectives and performance measures that allow the City to track its progress, as well as targeted countermeasures informed by industry best practices with information on estimated effectiveness, cost, considerations in implementation, and safety partners or collaboration that may be needed to support implementation.

### TASK 3 DELIVERABLES

- Up to five priority geographic emphasis areas defined and mapped

## Task 4. Comprehensive Safety Plan

**Purpose:** Prepare Local Road Safety Plan (LRSP) that meets Caltrans and USDOT funding requirements, incorporates industry best practices, and reflects the input from the Menlo Park community and stakeholders involved in its development. Develop an accompanying Vision Zero Action Plan to help achieve and sustain the City’s Vision Zero goal.

### Task 4.1. LOCAL ROAD SAFETY PLAN & VISION ZERO ACTION PLAN

Fehr & Peers will prepare a comprehensive safety plan that integrates the Local Road Safety Plan (LRSP) and Vision Zero Action Plan (VZAP) into one document with the City’s safety goals, technical analysis findings, targeted safety strategies, and stakeholder and public input. The plan will be oriented around the Safe System approach – which has been embraced internationally by traffic engineering and planning professionals and recently adopted by Caltrans and the Federal Highway Administration (FHWA) – with strategies oriented around the five elements: Safe road users; Safe roads; Safe speeds; Safe vehicles; and Post-crash care.

The Vision Zero Action Plan will include prioritized infrastructure and non-infrastructure investments with output goals (i.e., things within the City’s control), outcome goals (i.e., things influenced by the City’s outputs), and performance measures to track progress. Proposed actions will include lead agencies/departments, key partners, level of magnitude cost, and implementation timeline.

Fehr & Peers will respond to one round of consolidated comments on the draft LRSP/VZAP comprehensive safety plan by City staff. We have budgeted for one minor round of revision if the City Complete Streets Commission and City Council request editorial changes.

### Task 4.2. EXECUTIVE SUMMARY

To accompany the comprehensive plan, Fehr & Peers will develop an Executive Summary focused on analysis highlights and key strategies. The Executive Summary will be designed to be accessible and engaging for a public audience, and we will prepare it in both English and Spanish.

### TASK 4 DELIVERABLES

- Draft and final comprehensive safety plan with LRSP and VZAP
- Executive summary in English and Spanish

## Task 5. Community Engagement

**Purpose:** Facilitate engagement with stakeholders and the public to educate and inform LRSP and VZAP development, blending in-person engagement with digital approaches to broaden our reach.

Fehr & Peers understands that engagement is critical in developing a LRSP and VZAP that reflects the needs of Menlo Park’s residents and stakeholders. We propose an engagement strategy that includes direct public engagement with residents, employees, and community organizations; structured engagement with City stakeholders; and formal presentations to City Council and other entities. All engagement activities will be aligned with critical project milestones. We routinely approach community engagement in a manner consistent with the Institute for Local Government TIERS Public Engagement

Framework. Aligned with this philosophy, we have identified an engagement approach that modifies the activities in the RFP to emphasize meeting the community where they are, connecting with local community leaders, and enabling digital interactions.

#### **Task 5.1. ENGAGEMENT PLAN**

Fehr & Peers will develop an engagement plan to map out our engagement activities over the course of the project, defining the topics, formats, participants, and timing for engagement. We will discuss a draft engagement plan at the project kick-off and finalize the plan based on feedback from City staff. The Fehr & Peers Community Engagement practice lead will guide our team's engagement approach.

#### **Task 5.2. STAKEHOLDER WORKSHOPS**

Fehr & Peers will organize three workshops with key stakeholders including City staff, elected officials, advisory committees, school district, transit agencies, public safety, San Mateo County, neighboring communities, and community organizations representing specific interests.

The first stakeholder workshop will be an opportunity to educate participants about the City's safety program and the goals of the LRSP and VZAP. The project team will present initial collision analysis findings and solicit input on major safety topics, barriers, and opportunities to be daylighted and tackled through the planning process.

The second stakeholder workshop will focus on the collision profiles, risk factors, and geographic emphasis areas. The project team will share draft maps, objectives, performance measures, and targeted countermeasures and solicit input on the extent to which the identified priorities resonate with the stakeholders' experiences.

The third stakeholder workshop will include a presentation of the draft LRSP and VZAP, with a particular focus on the strategies and actions identified in the documents. This workshop is particularly important in securing commitment from stakeholders and working with them to overcome potential barriers necessary for implementation of the City's proposed safety strategies.

Fehr & Peers will support City staff in its outreach to stakeholders. We will develop agendas, assist in facilitation, and summarize minutes for the three workshops.

#### **Task 5.3. FOCUSED CONVERSATIONS LED BY CITY STAFF**

City staff will bring the content prepared for each stakeholder workshop to selected committees (e.g., Safe Routes or businesses) and local community-based organizations. These focused conversations will be scheduled to align with the stakeholder workshops to cover similar content and solicit similar input. Representatives of the committees and community-based organizations also will be invited to participate in the stakeholder workshops as desired.

[Note: This task is City-led and does not include involvement from Fehr & Peers.]

#### **Task 5.4. COMMUNITY POP-UP EVENTS**

Fehr & Peers will collaborate with the City to bring the City's safety program to the community through pop-up events at popular gathering spots throughout the City. Each event is an opportunity to introduce more community members to the



safety program, help them engage with the program’s goals through interactive activities, and allow them to provide input on the program’s direction.

Fehr & Peers will coordinate three community pop-up events. Pop-up events will include visuals and educational materials to help community members understand the elements of the program, its importance, and strategies the City plans to take to address safety on its streets. Events also will include one or more interactive activities that allow community members to connect with the program on a personal level and share their experiences with traffic safety, for example expressing why safety is important to them, their biggest concerns about traffic safety, or what type of safety project would be most meaningful to them. Pop-up events should be fun, so we recommend promotions like a raffle, giveaways, bicycle tune-ups, or car washes to entice people to participate.

Pop-up events will take place at heavily trafficked locations suggested by the City, including the Farmer’s Market, shopping centers, and transit stations, as well as at schools and/or popular grocery stores, especially those that primarily serve non-English speaking populations. Fehr & Peers will work with the City to ensure that pop-up events include translation services tailored to the needs of the local neighborhood.

Pop-up events will be scheduled to align with the second stakeholder workshop to include discussion of LRSP/VZAP goals, initial collision analysis, and draft geographic emphasis areas.

#### **Task 5.5. FORMAL PRESENTATIONS**

Fehr & Peers will participate in two City Complete Streets Commission meetings and two City Council meetings. Two of these presentations will align approximately with the second or third stakeholder workshops described above, and the final presentations will be for adoption.

#### **Task 5.6. ENGAGEMENT MATERIALS**

Fehr & Peers will prepare written and graphic materials to support the engagement activities. We will utilize our visual communication expertise to produce attractive and easy-to-understand materials that communicate complex concepts and issues to a wide range of audiences. These could include flyers, fact sheets, display posters, or infographics. All engagement materials will be consistent with City branding standards and provided in both English and Spanish.

#### **TASK 5 DELIVERABLES**

- Engagement plan
- Three stakeholder workshops
- Three community pop-up events
- Four presentations to City Complete Streets Commission and City Council
- Written and graphic materials to support engagement activities

# Fee Proposal for Menlo Park LRSP

October 2022 - rev2

	Fehr & Peers									Labor Hours	Direct Costs	Total
	Dana Weissman Project Manager	Erin Ferguson Principal-in-Charge	Meghan Mitman Technical Advisor	Taylor McAdam Community Engagement Lead	Teresa Whinery Equity Advisor	Jess Sandoval Visual Communications & GIS	Jonathan Kupfer Project Engineer/Planner	GIS Analyst/ VisCom	Project Coordinator			
Tasks	\$265	\$310	\$320	\$200	\$210	\$195	\$155	\$155	\$150			
Task 1 - Kick-off and Final Scope/Schedule	30	4	2	2	2	2	40	0	10	92	\$1,310	\$20,050
Task 2 - Safety Data Analysis	28	12	2	0	2	24	166	80	39	353	\$9,400	\$70,260
Task 3 - Selection of Emphasis Areas	8	4	0	0	0	4	24	16	7	63	\$800	\$12,190
Task 4 - Comprehensive Safety Plan	24	10	4	0	2	8	104	16	21	189	\$2,410	\$36,880
Task 5 - Community Engagement	26	11	0	17	2	10	81	54	25	226	\$2,870	\$43,615
Total for all Tasks	<b>116</b>	<b>41</b>	<b>8</b>	<b>19</b>	<b>8</b>	<b>48</b>	<b>415</b>	<b>166</b>	<b>102</b>	<b>923</b>	<b>\$16,790</b>	<b>\$182,995</b>

**Notes:**

*This fee proposal is valid for a period of 90 days from the proposal submittal date.*

*Actual billing rate at the time of service may vary depending on the final staffing plan at the time the project starts; the overall fee will not be exceeded.*



**STAFF REPORT**

**City Council**

**Meeting Date:**

**11/15/2022**

**Staff Report Number:**

**22-222-CC**

**Consent Calendar:**

**Review and receive the investment portfolio as of  
September 30, 2022**

**Recommendation**

Staff and the Finance Audit Committee (FAC) recommend review and receipt of the City's investment portfolio as of September 30, 2022.

**Policy Issues**

The City and the Successor Agency funds are invested in full compliance with the City's investment policy and State law, which emphasize safety, liquidity and yield.

**Background**

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

**Analysis**

Investment portfolio as of September 30, 2022

The City's investment portfolio's fair value basis as of September 30, 2022, totaled \$167,736,372. As shown below in Table 1, the City's investments by type are measured by the amortized cost as well as the fair value as of September 30, 2022. The Local Agency Investment Fund (LAIF) is considered a safe investment as it provides the liquidity of a money market fund. The remaining securities are prudent and range from short to longer-term investments (1-5 years), bearing higher interest rates for longer maturities.

Table 1: Recap of investments held as of September 30, 2022			
Security	Amortized cost basis	Fair value basis	% of portfolio
LAIF	\$6,367,612	\$6,367,612	4%
Securities portfolio			
Cash	193,002	193,002	0.1%
Corporate bonds	48,334,506	46,225,445	28%
Government agencies	45,247,287	43,750,889	26%
Government bonds	68,945,820	66,199,760	39%
Short term bills, notes	4,998,740	4,999,664	3%
<b>Total</b>	<b>174,086,967</b>	<b>167,736,372</b>	<b>100%</b>

As shown in Table 1, the fair value of the City’s securities was \$6.3 million less than the amortized cost as of September 30, 2022. The difference between amortized cost and fair value is referred to as an unrealized loss or gain, and is due to market values fluctuating from one period to another. When securities fair values are less than amortized cost it generally signals interest rates are rising. It is important to note that any unrealized loss or gain does not represent an actual cash transaction to the City, as the City generally holds securities to maturity to avoid market risk. The consolidated portfolio report for the quarter ending September 30, 2022, is included as Attachment A and each component is described in greater detail below.

**LAIF**

As previously shown in Table 1, 4 percent of the portfolio resides in the City’s account at the LAIF, a liquid fund managed by the California State Treasurer, yielding 1.51 percent for the quarter ended September 30, 2022. LAIF yields have fluctuated greatly over recent years, gradually increasing from historic lows following the Great Recession, then falling rapidly during the course of the COVID-19 public health emergency. Due to rising interest rates, staff has invested a significant amount of the balance in LAIF and Union Bank in longer-term securities. Staff developed a cash flow model with the City’s consultant and established an overall liquid balance between LAIF and Union Bank of approximately \$25 million.

**Securities portfolio**

As of September 30, 2022, the City held a number of securities in corporate bonds, government agency notes and government bonds and reflect a diversified mix in terms of type but all at low risk. Insight Investment serves as the City’s financial adviser on security investments and makes recommended trades of securities, purchase and sale that align market conditions to the City Council adopted investment policy to the greatest extent possible. The Insight Investments quarterly statement for the period ended September 30, 2022, is provided in Attachment A. As shown on the quarterly statement, the return for managed assets for the period ended September 30, 2022, on an amortized cost basis, was 2.11 percent. The positions the City held as of September 30, 2022, along with maturities, purchases and transactions are included in Attachment B. The FAC recommended rating of the City’s corporate investments according to an Environmental, Social, Governance (ESG) scale. Attachment C outlines these investments relative to a scale of 1 – 5, 1 being the best investment. The overall score changed from 2.86 to 2.76, which indicates continual improvement. With a score of 3.0 being average, the City’s investments are better than average.

### Performance comparison

As specified in the City's investment policy, the performance of the portfolio is measured against the benchmark of a treasury bond. In the quarter ending September 30, 2022, the City's portfolio returned a weighted average of 2.09 percent having a weighted average maturity of 2.17 years. The twelve month trailing 2 Year treasury note saw a yield of 2.01 percent, or .08 percent lower than the City's portfolio performance. Primary factors influencing the City's portfolio as well as the two-year treasury note are the supply chain problems associated with the pandemic, Russia's military conflict, and Federal Reserve fiscal management policy.

### **Impact on City Resources**

Considering LAIF as well as Union Bank, the City has more than sufficient funds available to meet its expenditure requirements for the next six months.

### **Environmental Review**

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

### **Public Notice**

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

### **Attachments**

- A. Insight Investments consolidated portfolio report for the quarter ended September 30, 2022
- B. Insight Investments quarterly report for the quarter ended September 30, 2022
- C. Insight ESC Rating as of September 30, 2022

Report prepared by:  
Marvin Davis, Interim Finance Director

# City of Menlo Park

## Quarterly Consolidated Portfolio Report

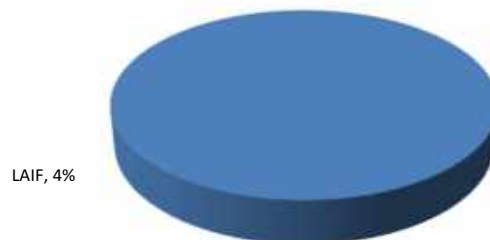
### September 30, 2022

#### City Managed Assets

			%	Return
LAIF	\$	6,367,612	4%	1.51%
<b>Total Internally Managed</b>	<b>\$</b>	<b>6,367,612</b>	<b>4%</b>	

**Weighted Average Yield** **1.51%**

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

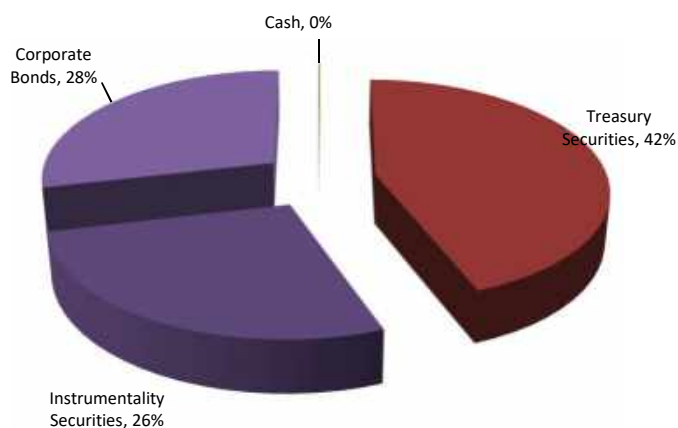


#### Advisor Managed Assets

			%	Return
Cash	\$	193,003	0%	0.02%
Treasury Securities	\$	71,199,425	42%	2.28%
Instrumentality Securities	\$	43,750,889	26%	2.23%
Corporate Bonds	\$	46,255,446	28%	1.75%
<b>Total Externally Managed</b>	<b>\$</b>	<b>161,398,762</b>	<b>96%</b>	

**Weighted Average Yield** **2.11%**

	Years
Effective Average Duration - External	2.12
Weighted Average Maturity - External	2.26

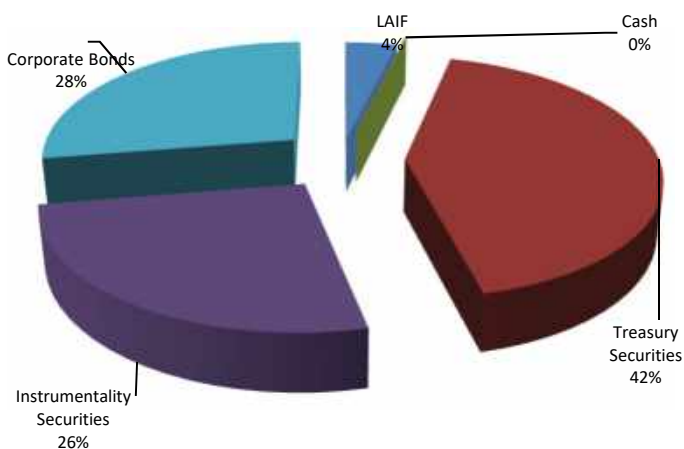


#### Total Portfolio Assets

			%	Return
LAIF	\$	6,367,612	4%	1.51%
Cash	\$	193,003	0%	0.02%
Treasury Securities	\$	71,199,425	42%	2.28%
Instrumentality Securities	\$	43,750,889	26%	2.23%
Corporate Bonds	\$	46,255,446	28%	1.75%
<b>Total Portfolio Assets</b>	<b>\$</b>	<b>167,766,375</b>		

**Weighted Average Yield** **2.09%**

	Years
Effective Average Duration - Total	2.04
Weighted Average Maturity - Total	2.17



#### Portfolio Change

Beginning Balance	\$	145,735,458
Ending Balance	\$	167,766,375

\* Note: All data for external assets was provided by the client and is believed to be accurate.

Insight Investment does not manage the external assets and this report is provided for the client's use.

Market values are presented.

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# CITY OF MENLO PARK

September 2022



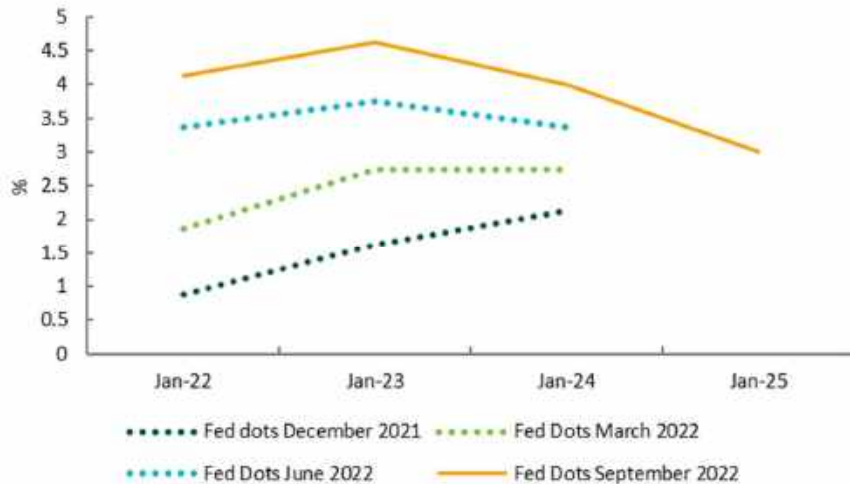
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## As of September 30, 2022

Chart 1: The Fed's rate projections were revised up again



Source: Federal Reserve, September 30, 2022

Chart 2: Labor market remains robust



Source: Bloomberg, September 30, 2022

### Economic Indicators and Monetary Policy

The Fed announced a third consecutive 75bp rate hike, bringing the fed funds rate to a range of 3% to 3.25% and it continued to set a hawkish tone. It raised its dot plot to reflect policy rates at 4.375% by year-end (up 88bp from the projection in June and 188bp higher than in March – see Chart 1). This implies another 125bp of hikes yet for the final two meetings of the year. The Fed materially cut its growth forecasts for 2022 and 2023 to 0.2% and 1.2% from 1.7% and 1.7%, respectively. It also projects the unemployment rate will rise to 4.4% by the end of next year from 3.7% today.

Inflation made less progress than markets had hoped, falling from 8.5% to only 8.3% (where ~8.1% was expected). Core CPI was particularly disappointing, rising from 5.9% to 6.3%, narrowly below the recent peak of 6.5% in March. 'Flexible' categories like gasoline continued to reverse, but 'sticky' services sectors like rents and medical prices continued to be high.

Labor market data remained robust. The economy added 315,000 jobs, close to consensus estimates with broad-based gains, albeit the previous two months were revised down. Wage growth was largely in line with expectations at 5.2%. The unemployment rate ticked up to 3.7% from 3.5%, more than expected, but this was partly a result of the labor participation rate rising from 62.1% from 62.4%. Initial jobless claims reached the lowest levels since April on a seasonally adjusted basis, at 193,000 at the end of the month. Continuing jobless claims saw four straight weeks of declines (Chart 2).

Real GDP for Q2 2022 was unrevised at -0.6%, albeit the mix changed with real consumer spending revised up from 1.5% pa to 2% pa. Revisions back to 2017 showed the economy growing 3.5% since 2019, above the 2.9% previously estimated, indicating a significantly hotter economy than previously indicated.

### Interest Rate Summary

Yields generally rose sharply during the month, given the Federal Reserve's hawkish projections. At the end of September, the 3-month US Treasury bill yielded 3.29%, the 6-month US Treasury bill yielded 3.97%, the 2-year US Treasury note yielded 4.28%, the 5-year US Treasury note yielded 4.09% and the 10-year US Treasury note yielded 3.84%.

# ACTIVITY AND PERFORMANCE SUMMARY

For the period September 1, 2022 - September 30, 2022

<u>Amortized Cost Basis Activity Summary</u>	
<b>Opening balance</b>	167,454,758.92
Income received	194,929.25
<b>Total receipts</b>	194,929.25
<b>Total disbursements</b>	0.00
Interportfolio transfers	0.00
<b>Total Interportfolio transfers</b>	0.00
Realized gain (loss)	0.00
Change in accruals from security movement	0.00
<b>Total amortization expense</b>	(61,519.33)
<b>Total OID/MKT accretion income</b>	131,188.89
Return of capital	0.00
<b>Closing balance</b>	167,719,357.73
<b>Ending fair value</b>	161,398,762.33
Unrealized gain (loss)	(6,320,595.40)

<u>Detail of Amortized Cost Basis Return</u>				
	Interest earned	Accretion (amortization)	Realized gain (loss)	Total income
Cash and Cash Equivalents	4,332.92	0.00	0.00	4,332.92
Corporate Bonds	100,040.71	(33,093.49)	0.00	66,947.22
Government Agencies	65,815.76	15,272.36	0.00	81,088.12
Government Bonds	55,281.14	76,674.89	0.00	131,956.03
Short Term Bills and Notes	0.00	10,815.80	0.00	10,815.80
<b>Total</b>	<b>225,470.53</b>	<b>69,669.56</b>	<b>0.00</b>	<b>295,140.09</b>

<u>Comparative Rates of Return (%)</u>			
	* Twelve month trailing	* Six month trailing	* One month
Fed Funds	0.79	0.74	0.21
Overnight Repo	0.74	0.71	0.20
Merrill Lynch 3m US Treas Bill	0.97	0.89	0.24
Merrill Lynch 6m US Treas Bill	1.25	1.10	0.28
ML 1 Year US Treasury Note	1.68	1.39	0.31
ML 2 Year US Treasury Note	2.01	1.52	0.31
ML 5 Year US Treasury Note	2.24	1.49	0.25

\* rates reflected are cumulative

<u>Summary of Amortized Cost Basis Return for the Period</u>	
	Total portfolio
Interest earned	225,470.53
Accretion (amortization)	69,669.56
Realized gain (loss) on sales	0.00
Total income on portfolio	295,140.09
Average daily amortized cost	167,580,016.28
Period return (%)	0.18
YTD return (%)	1.06
Weighted average final maturity in days	825

# ACTIVITY AND PERFORMANCE SUMMARY

For the period September 1, 2022 - September 30, 2022

<u>Fair Value Basis Activity Summary</u>		
<b>Opening balance</b>		163,702,089.68
Income received	194,929.25	
<b>Total receipts</b>		194,929.25
<b>Total disbursements</b>		0.00
Interportfolio transfers	0.00	
<b>Total Interportfolio transfers</b>		0.00
Unrealized gain (loss) on security movements		0.00
Change in accruals from security movement		0.00
Return of capital		0.00
Change in fair value for the period		(2,498,256.60)
<b>Ending fair value</b>		161,398,762.33

<u>Detail of Fair Value Basis Return</u>			
	Interest earned	Change in fair value	Total income
Cash and Cash Equivalents	4,332.92	0.00	4,332.92
Corporate Bonds	100,040.71	(704,491.90)	(604,451.19)
Government Agencies	65,815.76	(596,390.20)	(530,574.44)
Government Bonds	55,281.14	(1,208,886.20)	(1,153,605.06)
Short Term Bills and Notes	0.00	11,511.70	11,511.70
<b>Total</b>	<b>225,470.53</b>	<b>(2,498,256.60)</b>	<b>(2,272,786.07)</b>

<u>Comparative Rates of Return (%)</u>			
	* Twelve month trailing	* Six month trailing	* One month
Fed Funds	0.79	0.74	0.21
Overnight Repo	0.74	0.71	0.20
ICE Bofa 3 Months US T-BILL	0.62	0.57	0.25
ICE Bofa 6m US Treas Bill	0.39	0.47	0.15
ICE Bofa 1 Yr US Treasury Note	(1.95)	(0.97)	(0.44)
ICE BofA US Treasury 1-3	(4.86)	(2.06)	(1.18)
ICE BofA US Treasury 1-5	(6.78)	(3.07)	(1.70)

\* rates reflected are cumulative

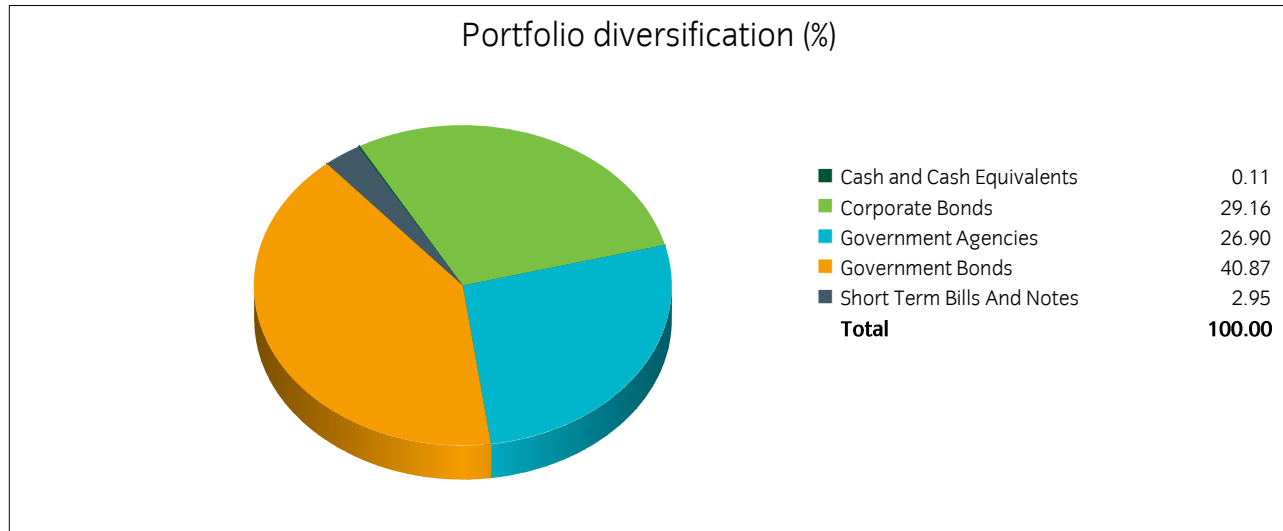
<u>Summary of Fair Value Basis Return for the Period</u>	
	Total portfolio
Interest earned	225,470.53
Change in fair value	(2,498,256.60)
Total income on portfolio	(2,272,786.07)
Average daily total value *	163,315,305.66
Period return (%)	(1.38)
YTD return (%)	(4.42)
Weighted average final maturity in days	825

\* Total value equals market value and accrued interest

# RECAP OF SECURITIES HELD

As of September 30, 2022

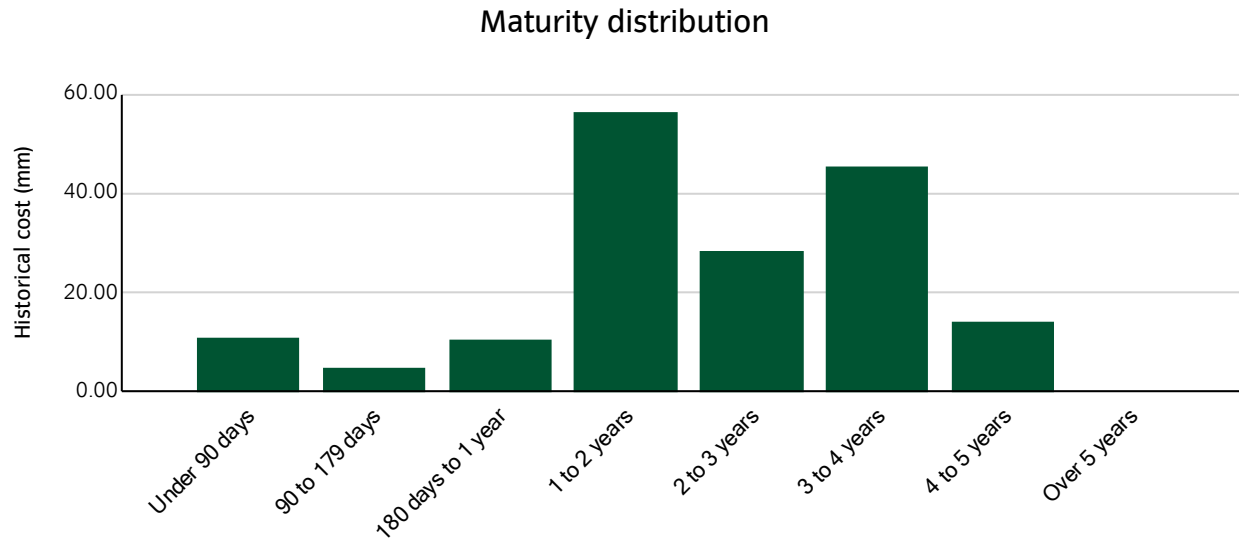
	Historical cost	Amortized cost	Fair value	Unrealized gain (loss)	Weighted average final maturity (days)	Percent of portfolio	Weighted average effective duration (years)
Cash and Cash Equivalents	193,002.60	193,002.60	193,002.60	0.00	1	0.11	0.00
Corporate Bonds	49,175,702.13	48,334,506.77	46,255,445.99	(2,079,060.78)	749	29.16	1.79
Government Agencies	45,376,897.14	45,247,287.42	43,750,889.09	(1,496,398.33)	736	26.90	1.92
Government Bonds	68,934,872.25	68,945,820.94	66,199,760.25	(2,746,060.69)	1,000	40.87	2.64
Short Term Bills And Notes	4,982,675.00	4,998,740.00	4,999,664.40	924.40	4	2.95	0.01
<b>Total</b>	<b>168,663,149.12</b>	<b>167,719,357.73</b>	<b>161,398,762.33</b>	<b>(6,320,595.40)</b>	<b>825</b>	<b>100.00</b>	<b>2.12</b>



# MATURITY DISTRIBUTION OF SECURITIES HELD

As of September 30, 2022

Maturity	Historic cost	Percent
Under 90 days	10,744,577.51	6.37
90 to 179 days	4,553,970.00	2.70
180 days to 1 year	10,183,049.36	6.04
1 to 2 years	56,291,115.93	33.38
2 to 3 years	28,088,814.64	16.65
3 to 4 years	45,038,107.17	26.70
4 to 5 years	13,763,514.51	8.16
Over 5 years	0.00	0.00
	<b>168,663,149.12</b>	<b>100.00</b>



# SECURITIES HELD

As of September 30, 2022

Cusip	Description	Coupon	Maturity/ Call date	Par value or shares	Historical cost	Amortized cost	Fair value	Unrealized gain (loss)	Total accrued interest	% Port cost
<b>Cash and Cash Equivalents</b>										
	Cash and Cash Equivalents	0.000		193,002.60	193,002.60	193,002.60	193,002.60	0.00	0.00	0.11
<b>Total Cash and Cash Equivalents</b>				<b>193,002.60</b>	<b>193,002.60</b>	<b>193,002.60</b>	<b>193,002.60</b>	<b>0.00</b>	<b>0.00</b>	<b>0.11</b>
<b>Corporate Bonds</b>										
02665WCA7	AMERICAN HONDA FINANCE 2.6% 16NOV2022	2.600	11/16/2022	1,000,000.00	1,011,150.00	1,000,421.79	997,310.00	(3,111.79)	9,677.78	0.60
46625HJH4	JPMORGAN CHASE & CO 3.2% 25JAN2023	3.200	01/25/2023	1,000,000.00	1,031,190.00	1,002,858.05	996,802.04	(6,056.01)	5,777.78	0.61
369550BD9	GENERAL DYNAMICS CORP 3.375% 15MAY2023 (CALLABLE 15APR23)	3.375	05/15/2023 04/15/2023	943,000.00	984,840.91	948,977.27	936,726.95	(12,250.32)	11,934.84	0.58
459200HP9	IBM CORP 3.375% 01AUG2023	3.375	08/01/2023	1,000,000.00	1,061,840.00	1,024,951.53	991,988.63	(32,962.90)	5,531.25	0.63
742718EB1	PROCTER & GAMBLE CO/THE 3.1% 15AUG2023	3.100	08/15/2023	1,000,000.00	1,041,328.13	1,008,766.57	990,652.36	(18,114.21)	3,875.00	0.62
89236THA6	TOYOTA MOTOR CREDIT CORP 1.35% 25AUG2023	1.350	08/25/2023	1,000,000.00	1,021,010.00	1,007,949.07	970,940.00	(37,009.07)	1,312.50	0.61
24422EUM9	JOHN DEERE CAPITAL CORP 3.65% 12OCT2023	3.650	10/12/2023	950,000.00	1,005,926.50	964,191.44	943,416.50	(20,774.94)	16,181.67	0.60
06051GHC6	BANK OF AMERICA CORP 3.004% 20DEC2023 (CALLABLE 20DEC22)	3.004	12/20/2023 12/20/2022	1,000,000.00	1,028,310.00	1,005,366.82	994,690.54	(10,676.28)	8,344.44	0.61
14913R2S5	CATERPILLAR FINL SERVICE 0.95% 10JAN2024	0.950	01/10/2024	1,000,000.00	993,070.00	995,465.43	957,725.18	(37,740.25)	2,111.11	0.59
89236THU2	TOYOTA MOTOR CREDIT CORP 0.45% 11JAN2024	0.450	01/11/2024	1,800,000.00	1,797,858.00	1,798,808.85	1,707,774.43	(91,034.42)	1,777.50	1.07

# SECURITIES HELD

As of September 30, 2022

Cusip	Description	Coupon	Maturity/ Call date	Par value or shares	Historical cost	Amortized cost	Fair value	Unrealized gain (loss)	Total accrued interest	% Port cost
<b>Corporate Bonds</b>										
02665WCT6	AMERICAN HONDA FINANCE 3.55% 12JAN2024	3.550	01/12/2024	1,000,000.00	1,090,440.00	1,038,509.94	985,032.61	(53,477.33)	7,691.67	0.65
24422EVN6	JOHN DEERE CAPITAL CORP 0.45% 17JAN2024	0.450	01/17/2024	800,000.00	787,240.00	791,607.15	758,520.21	(33,086.94)	730.00	0.47
17325FAS7	CITIBANK NA 3.65% 23JAN2024 (CALLABLE 23DEC23)	3.650	01/23/2024 12/23/2023	1,500,000.00	1,618,310.00	1,557,023.40	1,479,434.27	(77,589.13)	10,189.58	0.96
693475AV7	PNC FINANCIAL SERVICES 3.5% 23JAN2024 (CALLABLE 23DEC23)	3.500	01/23/2024 12/24/2023	1,000,000.00	1,047,210.00	1,013,161.76	984,103.80	(29,057.96)	6,513.89	0.62
91159HHV5	US BANCORP 3.375% 05FEB2024 (CALLABLE 05JAN24)	3.375	02/05/2024 01/05/2024	1,000,000.00	1,067,060.00	1,036,066.55	982,792.66	(53,273.89)	5,156.25	0.63
594918BX1	MICROSOFT CORP 2.875% 06FEB2024 (CALLABLE 06DEC23)	2.875	02/06/2024 12/06/2023	960,000.00	993,734.40	969,101.24	940,521.81	(28,579.43)	4,140.00	0.59
06051GHF9	BANK OF AMERICA CORP 3.55% 05MAR2024 (CALLABLE 05MAR23)	3.550	03/05/2024 03/05/2023	1,500,000.00	1,606,050.00	1,517,302.89	1,488,197.06	(29,105.83)	3,697.92	0.95
24422EUX5	JOHN DEERE CAPITAL CORP 2.6% 07MAR2024	2.600	03/07/2024	1,450,000.00	1,476,419.00	1,458,282.97	1,410,195.86	(48,087.11)	2,408.61	0.88
459200JY8	IBM CORP 3% 15MAY2024	3.000	05/15/2024	2,000,000.00	2,141,300.00	2,072,700.53	1,945,360.26	(127,340.27)	22,500.00	1.27
14913R2L0	CATERPILLAR FINL SERVICE 0.45% 17MAY2024	0.450	05/17/2024	1,600,000.00	1,597,536.00	1,598,668.17	1,496,514.22	(102,153.95)	2,660.00	0.95
46647PBQ8	JPMORGAN CHASE & CO 1.514% 01JUN2024 (CALLABLE 01JUN23)	1.514	06/01/2024 06/01/2023	2,000,000.00	2,042,800.00	2,010,700.00	1,952,549.42	(58,150.58)	10,009.22	1.21
06051GHL6	BANK OF AMERICA CORP 3.864% 23JUL2024 (CALLABLE 23JUL23)	3.864	07/23/2024 07/23/2023	1,500,000.00	1,605,540.00	1,539,044.47	1,479,597.48	(59,446.99)	10,787.00	0.95

# SECURITIES HELD

As of September 30, 2022

Cusip	Description	Coupon	Maturity/ Call date	Par value or shares	Historical cost	Amortized cost	Fair value	Unrealized gain (loss)	Total accrued interest	% Port cost
<b>Corporate Bonds</b>										
693506BQ9	PPG INDUSTRIES INC 2.4% 15AUG2024 (CALLABLE 15JUL24)	2.400	08/15/2024 07/15/2024	2,000,000.00	2,012,600.00	2,004,910.57	1,921,015.88	(83,894.69)	6,000.00	1.19
89236TGL3	TOYOTA MOTOR CREDIT CORP 2% 07OCT2024	2.000	10/07/2024	1,000,000.00	999,410.00	999,749.02	950,415.46	(49,333.56)	9,611.11	0.59
69353REF1	PNC BANK NA 3.3% 30OCT2024 (CALLABLE 30SEP24)	3.300	10/30/2024 09/30/2024	2,500,000.00	2,737,590.00	2,633,180.72	2,415,432.98	(217,747.74)	34,375.00	1.62
14913Q3B3	CATERPILLAR FINL SERVICE 2.15% 08NOV2024	2.150	11/08/2024	1,000,000.00	1,048,770.00	1,028,027.04	951,038.80	(76,988.24)	8,480.56	0.62
931142DV2	WALMART INC 2.65% 15DEC2024 (CALLABLE 15OCT24)	2.650	12/15/2024 10/15/2024	1,500,000.00	1,595,520.00	1,562,909.68	1,452,054.53	(110,855.15)	11,593.75	0.95
90331HMS9	US BANK NA CINCINNATI 2.8% 27JAN2025 (CALLABLE 27DEC24)	2.800	01/27/2025 12/27/2024	1,000,000.00	995,210.00	996,006.74	956,855.06	(39,151.68)	4,900.00	0.59
437076BM3	HOME DEPOT INC 3% 01APR2026 (CALLABLE 01JAN26)	3.000	04/01/2026 01/01/2026	3,000,000.00	2,948,280.00	2,951,036.85	2,833,929.42	(117,107.43)	44,750.00	1.75
91159HHN3	US BANCORP 2.375% 22JUL2026 (CALLABLE 22JUN26)	2.375	07/22/2026 06/22/2026	2,000,000.00	1,912,040.00	1,915,252.02	1,827,507.52	(87,744.50)	8,972.22	1.13
594918BR4	MICROSOFT CORP 2.4% 08AUG2026 (CALLABLE 08MAY26)	2.400	08/08/2026 05/08/2026	2,000,000.00	1,939,660.00	1,941,838.94	1,851,368.28	(90,470.66)	6,933.33	1.15
88579YAV3	3M COMPANY 2.25% 19SEP2026 (CALLABLE 19JUN26)	2.250	09/19/2026 06/19/2026	2,000,000.00	1,906,760.00	1,910,033.79	1,791,548.50	(118,485.29)	1,375.00	1.13
713448DN5	PEPSICO INC 2.375% 06OCT2026 (CALLABLE 06JUL26)	2.375	10/06/2026 07/06/2026	1,000,000.00	967,260.00	968,396.50	918,406.86	(49,989.64)	11,479.17	0.57



# SECURITIES HELD

As of September 30, 2022

Cusip	Description	Coupon	Maturity/ Call date	Par value or shares	Historical cost	Amortized cost	Fair value	Unrealized gain (loss)	Total accrued interest	% Port cost
<b>Corporate Bonds</b>										
037833CR9	APPLE INC 3.2% 11MAY2027 (CALLABLE 11FEB27)	3.200	05/11/2027 02/11/2027	2,121,000.00	2,062,439.19	2,063,239.01	1,995,026.41	(68,212.60)	26,206.13	1.22
<b>Total Corporate Bonds</b>				<b>48,124,000.00</b>	<b>49,175,702.13</b>	<b>48,334,506.77</b>	<b>46,255,445.99</b>	<b>(2,079,060.78)</b>	<b>327,684.28</b>	<b>29.16</b>
<b>Government Agencies</b>										
3133EA7E2	FEDERAL FARM CREDIT BANK 1.96% 07NOV2022	1.960	11/07/2022	2,000,000.00	2,030,580.00	2,001,145.20	1,996,700.38	(4,444.82)	15,571.11	1.20
3130A3KM5	FEDERAL HOME LOAN BANK 2.5% 09DEC2022	2.500	12/09/2022	1,500,000.00	1,531,815.00	1,501,757.59	1,497,256.82	(4,500.77)	11,562.50	0.91
3133EKKT2	FEDERAL FARM CREDIT BANK 2.25% 08FEB2023	2.250	02/08/2023	1,500,000.00	1,520,580.00	1,502,013.94	1,493,282.81	(8,731.13)	4,875.00	0.90
3130AJ7E3	FEDERAL HOME LOAN BANK 1.375% 17FEB2023	1.375	02/17/2023	2,000,000.00	2,002,200.00	2,000,891.72	1,982,477.38	(18,414.34)	3,284.72	1.19
3135G0U43	FANNIE MAE 2.875% 12SEP2023	2.875	09/12/2023	2,000,000.00	2,081,960.00	2,018,477.47	1,971,343.36	(47,134.11)	2,875.00	1.23
3133EKVB9	FEDERAL FARM CREDIT BANK 1.86% 17OCT2023	1.860	10/17/2023	2,000,000.00	1,993,956.00	1,998,503.88	1,951,357.76	(47,146.12)	16,843.33	1.18
3133EKKU9	FEDERAL FARM CREDIT BANK 2.3% 08NOV2023	2.300	11/08/2023	1,500,000.00	1,524,645.00	1,506,215.91	1,468,640.85	(37,575.06)	13,608.33	0.90
3130AB3H7	FEDERAL HOME LOAN BANK 2.375% 08MAR2024	2.375	03/08/2024	2,000,000.00	2,045,380.00	2,013,884.73	1,944,018.22	(69,866.51)	2,902.78	1.21
3133EMTD4	FEDERAL FARM CREDIT BANK 0.37% 15MAR2024 (CALLABLE 13OCT22)	0.370	03/15/2024	2,000,000.00	1,998,000.00	1,999,033.15	1,884,434.56	(114,598.59)	308.33	1.18
3133EMBE1	FEDERAL FARM CREDIT BANK 0.3% 28MAR2024 (CALLABLE 13OCT22)	0.300	03/28/2024	2,000,000.00	1,998,500.00	1,999,360.03	1,878,392.22	(120,967.81)	33.33	1.18

# SECURITIES HELD

As of September 30, 2022

Cusip	Description	Coupon	Maturity/ Call date	Par value or shares	Historical cost	Amortized cost	Fair value	Unrealized gain (loss)	Total accrued interest	% Port cost
<b>Government Agencies</b>										
3133EKNX0	FEDERAL FARM CREDIT BANK 2.16% 03JUN2024	2.160	06/03/2024	1,000,000.00	1,012,070.00	1,004,093.48	967,465.39	(36,628.09)	7,020.00	0.60
3135G0V75	FANNIE MAE 1.75% 02JUL2024	1.750	07/02/2024	2,000,000.00	1,982,440.00	1,993,813.87	1,914,841.50	(78,972.37)	8,555.56	1.18
3130AKX84	FEDERAL HOME LOAN BANK 0.27% 23AUG2024 (CALLABLE 23NOV22)	0.270	08/23/2024 11/23/2022	1,000,000.00	999,500.00	999,730.47	922,190.53	(77,539.94)	277.50	0.59
3137EAEP0	FREDDIE MAC 1.5% 12FEB2025	1.500	02/12/2025	3,000,000.00	2,881,764.00	2,892,374.92	2,811,492.87	(80,882.05)	6,000.00	1.71
3130AJHU6	FEDERAL HOME LOAN BANK 0.5% 14APR2025	0.500	04/14/2025	1,405,000.00	1,297,447.25	1,300,310.74	1,275,326.80	(24,983.94)	3,239.31	0.77
3135G03U5	FANNIE MAE 0.625% 22APR2025	0.625	04/22/2025	3,000,000.00	2,800,407.00	2,817,072.82	2,733,826.80	(83,246.02)	8,229.17	1.66
3130ASG86	FEDERAL HOME LOAN BANK 3.375% 13JUN2025	3.375	06/13/2025	2,000,000.00	2,008,540.00	2,007,944.00	1,945,337.26	(62,606.74)	19,687.50	1.19
3133ENB74	FEDERAL FARM CREDIT BANK 3.15% 21JUL2025	3.150	07/21/2025	3,000,000.00	2,993,700.00	2,994,124.26	2,912,765.79	(81,358.47)	18,112.50	1.77
3135G05X7	FANNIE MAE 0.375% 25AUG2025	0.375	08/25/2025	2,000,000.00	1,838,268.89	1,853,924.80	1,788,300.78	(65,624.02)	729.17	1.09
3130AL7C2	FEDERAL HOME LOAN BANK 0.5% 25AUG2025 (CALLABLE 25NOV22)	0.500	08/25/2025 11/25/2022	2,000,000.00	2,000,000.00	2,000,000.00	1,780,258.18	(219,741.82)	972.22	1.19
3135G0K36	FANNIE MAE 2.125% 24APR2026	2.125	04/24/2026	3,000,000.00	2,891,100.00	2,897,487.10	2,790,873.63	(106,613.47)	27,625.00	1.71

# SECURITIES HELD

As of September 30, 2022

Cusip	Description	Coupon	Maturity/ Call date	Par value or shares	Historical cost	Amortized cost	Fair value	Unrealized gain (loss)	Total accrued interest	% Port cost
<b>Government Agencies</b>										
3133ENH45	FEDERAL FARM CREDIT BANK 3.125% 24AUG2026	3.125	08/24/2026	4,000,000.00	3,944,044.00	3,945,127.34	3,840,305.20	(104,822.14)	12,500.00	2.34
<b>Total Government Agencies</b>				<b>45,905,000.00</b>	<b>45,376,897.14</b>	<b>45,247,287.42</b>	<b>43,750,889.09</b>	<b>(1,496,398.33)</b>	<b>184,812.36</b>	<b>26.90</b>
<b>Government Bonds</b>										
91282CAR2	USA TREASURY 0.125% 31OCT2022	0.125	10/31/2022	1,000,000.00	995,354.91	999,421.70	997,986.83	(1,434.87)	519.70	0.59
912828S35	USA TREASURY 1.375% 30JUN2023	1.375	06/30/2023	1,000,000.00	984,492.19	997,110.15	979,882.81	(17,227.34)	3,437.50	0.58
912828Y61	USA TREASURY 2.75% 31JUL2023	2.750	07/31/2023	1,000,000.00	1,040,468.75	1,009,079.34	988,437.50	(20,641.84)	4,558.42	0.62
912828D1	USA TREASURY 1.375% 31AUG2023	1.375	08/31/2023	2,000,000.00	1,967,109.38	1,992,784.31	1,947,812.50	(44,971.81)	2,279.01	1.17
912828D8	USA TREASURY 2.875% 30SEP2023	2.875	09/30/2023	1,000,000.00	1,041,679.69	1,022,808.23	987,109.38	(35,698.85)	0.00	0.62
91282CAP6	USA TREASURY 0.125% 15OCT2023	0.125	10/15/2023	1,500,000.00	1,493,203.13	1,496,936.17	1,436,835.93	(60,100.24)	860.66	0.89
91282CDD0	USA TREASURY 0.375% 31OCT2023	0.375	10/31/2023	2,000,000.00	1,981,803.58	1,988,828.24	1,917,031.24	(71,797.00)	3,118.21	1.18
912828P1	USA TREASURY 2.875% 30NOV2023	2.875	11/30/2023	1,800,000.00	1,881,216.97	1,846,944.95	1,770,398.44	(76,546.51)	17,250.00	1.12
912828V23	USA TREASURY 2.25% 31DEC2023	2.250	12/31/2023	1,000,000.00	1,019,261.16	1,005,354.23	975,390.62	(29,963.61)	5,625.00	0.60
91282CBM2	USA TREASURY 0.125% 15FEB2024	0.125	02/15/2024	1,500,000.00	1,489,746.09	1,494,660.75	1,416,855.47	(77,805.28)	234.38	0.88

# SECURITIES HELD

As of September 30, 2022

Cusip	Description	Coupon	Maturity/ Call date	Par value or shares	Historical cost	Amortized cost	Fair value	Unrealized gain (loss)	Total accrued interest	% Port cost
<b>Government Bonds</b>										
9128286R6	USA TREASURY 2.25% 30APR2024	2.250	04/30/2024	1,000,000.00	1,023,050.23	1,008,416.32	968,203.12	(40,213.20)	9,354.62	0.61
91282CCC3	USA TREASURY 0.25% 15MAY2024	0.250	05/15/2024	2,000,000.00	1,997,116.08	1,998,413.58	1,873,593.76	(124,819.82)	1,875.00	1.18
912828XT2	USA TREASURY 2% 31MAY2024	2.000	05/31/2024	2,000,000.00	2,101,803.58	2,053,035.40	1,926,171.88	(126,863.52)	13,333.33	1.25
912828Y87	USA TREASURY 1.75% 31JUL2024	1.750	07/31/2024	2,000,000.00	2,087,272.33	2,047,538.59	1,911,484.38	(136,054.21)	5,801.63	1.24
9128282U3	USA TREASURY 1.875% 31AUG2024	1.875	08/31/2024	1,000,000.00	1,012,382.81	1,004,988.71	956,250.00	(48,738.71)	1,553.87	0.60
91282CCX7	USA TREASURY 0.375% 15SEP2024	0.375	09/15/2024	1,700,000.00	1,696,685.38	1,697,838.55	1,577,082.03	(120,756.52)	264.16	1.01
912828YY0	USA TREASURY 1.75% 31DEC2024	1.750	12/31/2024	2,000,000.00	2,093,281.25	2,059,008.82	1,895,000.00	(164,008.82)	8,797.81	1.24
912828ZF0	USA TREASURY 0.5% 31MAR2025	0.500	03/31/2025	3,000,000.00	2,798,906.25	2,816,033.47	2,736,914.07	(79,119.40)	0.00	1.66
91282CAM3	USA TREASURY 0.25% 30SEP2025	0.250	09/30/2025	3,000,000.00	2,740,205.36	2,758,903.53	2,666,250.00	(92,653.53)	0.00	1.62
91282CAT8	USA TREASURY 0.25% 31OCT2025	0.250	10/31/2025	3,000,000.00	2,733,408.49	2,752,105.09	2,656,757.82	(95,347.27)	3,118.21	1.62
91282CAZ4	USA TREASURY 0.375% 30NOV2025	0.375	11/30/2025	3,000,000.00	2,739,853.80	2,757,657.69	2,659,804.68	(97,853.01)	3,750.00	1.62
91282CBC4	USA TREASURY 0.375% 31DEC2025	0.375	12/31/2025	2,300,000.00	2,071,445.21	2,075,971.05	2,033,792.96	(42,178.09)	2,156.25	1.23

# SECURITIES HELD

As of September 30, 2022

Cusip	Description	Coupon	Maturity/ Call date	Par value or shares	Historical cost	Amortized cost	Fair value	Unrealized gain (loss)	Total accrued interest	% Port cost
<b>Government Bonds</b>										
91282CBH3	USA TREASURY 0.375% 31JAN2026	0.375	01/31/2026	3,000,000.00	2,725,205.36	2,742,327.18	2,642,578.14	(99,749.04)	1,864.81	1.62
91282CBQ3	USA TREASURY 0.5% 28FEB2026	0.500	02/28/2026	3,000,000.00	2,732,939.74	2,749,228.81	2,647,148.43	(102,080.38)	1,243.09	1.62
91282CBT7	USA TREASURY 0.75% 31MAR2026	0.750	03/31/2026	3,000,000.00	2,748,642.86	2,762,400.57	2,663,789.07	(98,611.50)	0.00	1.63
91282CCF6	USA TREASURY 0.75% 31MAY2026	0.750	05/31/2026	3,000,000.00	2,721,328.12	2,727,832.50	2,649,375.00	(78,457.50)	7,500.00	1.61
91282CCJ8	USA TREASURY 0.875% 30JUN2026	0.875	06/30/2026	3,000,000.00	2,747,470.99	2,760,421.20	2,655,937.50	(104,483.70)	6,562.50	1.63
91282CCP4	USA TREASURY 0.625% 31JUL2026	0.625	07/31/2026	2,000,000.00	1,816,334.83	1,822,912.37	1,749,140.62	(73,771.75)	2,072.01	1.08
9128282A7	USA TREASURY 1.5% 15AUG2026	1.500	08/15/2026	2,000,000.00	1,896,334.83	1,900,484.25	1,808,906.24	(91,578.01)	3,750.00	1.12
91282CCW9	USA TREASURY 0.75% 31AUG2026	0.750	08/31/2026	2,000,000.00	1,823,053.58	1,829,258.04	1,753,984.38	(75,273.66)	1,243.09	1.08
91282CCZ2	USA TREASURY 0.875% 30SEP2026	0.875	09/30/2026	5,000,000.00	4,557,790.19	4,576,586.90	4,398,632.80	(177,954.10)	0.00	2.70
91282CDG3	USA TREASURY 1.125% 31OCT2026	1.125	10/31/2026	2,000,000.00	1,846,647.33	1,851,812.06	1,773,203.12	(78,608.94)	9,354.62	1.09
91282CDK4	USA TREASURY 1.25% 30NOV2026	1.250	11/30/2026	2,000,000.00	1,855,397.33	1,860,174.55	1,779,765.62	(80,408.93)	8,333.33	1.10

# SECURITIES HELD

As of September 30, 2022

Cusip	Description	Coupon	Maturity/ Call date	Par value or shares	Historical cost	Amortized cost	Fair value	Unrealized gain (loss)	Total accrued interest	% Port cost
<b>Government Bonds</b>										
91282CDQ1	USA TREASURY 1.25% 31DEC2026	1.250	12/31/2026	2,700,000.00	2,473,980.47	2,478,543.64	2,398,253.91	(80,289.73)	8,437.50	1.47
<b>Total Government Bonds</b>				<b>72,500,000.00</b>	<b>68,934,872.25</b>	<b>68,945,820.94</b>	<b>66,199,760.25</b>	<b>(2,746,060.69)</b>	<b>138,248.71</b>	<b>40.87</b>
<b>Short Term Bills and Notes</b>										
912796YC7	USA TREASURY BILL 0% 04OCT2022	0.000	10/04/2022	5,000,000.00	4,982,675.00	4,998,740.00	4,999,664.40	924.40	0.00	2.95
<b>Total Short Term Bills and Notes</b>				<b>5,000,000.00</b>	<b>4,982,675.00</b>	<b>4,998,740.00</b>	<b>4,999,664.40</b>	<b>924.40</b>	<b>0.00</b>	<b>2.95</b>
<b>Grand total</b>				<b>171,722,002.60</b>	<b>168,663,149.12</b>	<b>167,719,357.73</b>	<b>161,398,762.33</b>	<b>(6,320,595.40)</b>	<b>650,745.35</b>	<b>100.00</b>

# GASB 40 - DEPOSIT AND INVESTMENT RISK DISCLOSURE

As of September 30, 2022

Cusip	Description	Coupon	Maturity date	Call date	S&P rating	Moody rating	Par value or shares	Historical cost	% Portfolio hist cost	Market value	% Portfolio mkt value	Effective dur (yrs)
<b>United States Treasury Note/Bond</b>												
91282CAR2	USA TREASURY 0.125%	0.125	10/31/2022		AA+	Aaa	1,000,000.00	995,354.91	0.59	997,986.83	0.62	0.08
912828S35	USA TREASURY 1.375%	1.375	06/30/2023		AA+	Aaa	1,000,000.00	984,492.19	0.58	979,882.81	0.61	0.73
912828Y61	USA TREASURY 2.75%	2.750	07/31/2023		AA+	Aaa	1,000,000.00	1,040,468.75	0.62	988,437.50	0.61	0.81
9128282D1	USA TREASURY 1.375%	1.375	08/31/2023		AA+	Aaa	2,000,000.00	1,967,109.38	1.17	1,947,812.50	1.21	0.90
9128285D8	USA TREASURY 2.875%	2.875	09/30/2023		AA+	Aaa	1,000,000.00	1,041,679.69	0.62	987,109.38	0.61	0.98
91282CAP6	USA TREASURY 0.125%	0.125	10/15/2023		AA+	Aaa	1,500,000.00	1,493,203.13	0.89	1,436,835.93	0.89	1.02
91282CDD0	USA TREASURY 0.375%	0.375	10/31/2023		AA+	Aaa	2,000,000.00	1,981,803.58	1.18	1,917,031.24	1.19	1.06
9128285P1	USA TREASURY 2.875%	2.875	11/30/2023		AA+	Aaa	1,800,000.00	1,881,216.97	1.12	1,770,398.44	1.10	1.12
912828V23	USA TREASURY 2.25%	2.250	12/31/2023		AA+	Aaa	1,000,000.00	1,019,261.16	0.60	975,390.62	0.60	1.21
91282CBM2	USA TREASURY 0.125%	0.125	02/15/2024		AA+	Aaa	1,500,000.00	1,489,746.09	0.88	1,416,855.47	0.88	1.35
9128286R6	USA TREASURY 2.25%	2.250	04/30/2024		AA+	Aaa	1,000,000.00	1,023,050.23	0.61	968,203.12	0.60	1.52
91282CCC3	USA TREASURY 0.25%	0.250	05/15/2024		AA+	Aaa	2,000,000.00	1,997,116.08	1.18	1,873,593.76	1.16	1.58
912828XT2	USA TREASURY 2%	2.000	05/31/2024		AA+	Aaa	2,000,000.00	2,101,803.58	1.25	1,926,171.88	1.19	1.60
912828Y87	USA TREASURY 1.75%	1.750	07/31/2024		AA+	Aaa	2,000,000.00	2,087,272.33	1.24	1,911,484.38	1.18	1.77
9128282U3	USA TREASURY 1.875%	1.875	08/31/2024		AA+	Aaa	1,000,000.00	1,012,382.81	0.60	956,250.00	0.59	1.85
91282CCX7	USA TREASURY 0.375%	0.375	09/15/2024		AA+	Aaa	1,700,000.00	1,696,685.38	1.01	1,577,082.03	0.98	1.91
912828YY0	USA TREASURY 1.75%	1.750	12/31/2024		AA+	Aaa	2,000,000.00	2,093,281.25	1.24	1,895,000.00	1.17	2.16
912828ZF0	USA TREASURY 0.5%	0.500	03/31/2025		AA+	Aaa	3,000,000.00	2,798,906.25	1.66	2,736,914.07	1.70	2.43
91282CAM3	USA TREASURY 0.25%	0.250	09/30/2025		AA+	Aaa	3,000,000.00	2,740,205.36	1.62	2,666,250.00	1.65	2.92
91282CAT8	USA TREASURY 0.25%	0.250	10/31/2025		AA+	Aaa	3,000,000.00	2,733,408.49	1.62	2,656,757.82	1.65	3.00
91282CAZ4	USA TREASURY 0.375%	0.375	11/30/2025		AA+	Aaa	3,000,000.00	2,739,853.80	1.62	2,659,804.68	1.65	3.08
91282CBC4	USA TREASURY 0.375%	0.375	12/31/2025		AA+	Aaa	2,300,000.00	2,071,445.21	1.23	2,033,792.96	1.26	3.16
91282CBH3	USA TREASURY 0.375%	0.375	01/31/2026		AA+	Aaa	3,000,000.00	2,725,205.36	1.62	2,642,578.14	1.64	3.24
91282CBQ3	USA TREASURY 0.5%	0.500	02/28/2026		AA+	Aaa	3,000,000.00	2,732,939.74	1.62	2,647,148.43	1.64	3.31
91282CBT7	USA TREASURY 0.75%	0.750	03/31/2026		AA+	Aaa	3,000,000.00	2,748,642.86	1.63	2,663,789.07	1.65	3.38

# GASB 40 - DEPOSIT AND INVESTMENT RISK DISCLOSURE

As of September 30, 2022

Cusip	Description	Coupon	Maturity date	Call date	S&P rating	Moody rating	Par value or shares	Historical cost	% Portfolio hist cost	Market value	% Portfolio mkt value	Effective dur (yrs)
<b>United States Treasury Note/Bond</b>												
91282CCF6	USA TREASURY 0.75%	0.750	05/31/2026		AA+	Aaa	3,000,000.00	2,721,328.12	1.61	2,649,375.00	1.64	3.53
91282CCJ8	USA TREASURY 0.875%	0.875	06/30/2026		AA+	Aaa	3,000,000.00	2,747,470.99	1.63	2,655,937.50	1.65	3.60
91282CCP4	USA TREASURY 0.625%	0.625	07/31/2026		AA+	Aaa	2,000,000.00	1,816,334.83	1.08	1,749,140.62	1.08	3.70
9128282A7	USA TREASURY 1.5%	1.500	08/15/2026		AA+	Aaa	2,000,000.00	1,896,334.83	1.12	1,808,906.24	1.12	3.68
91282CCW9	USA TREASURY 0.75%	0.750	08/31/2026		AA+	Aaa	2,000,000.00	1,823,053.58	1.08	1,753,984.38	1.09	3.77
91282CCZ2	USA TREASURY 0.875%	0.875	09/30/2026		AA+	Aaa	5,000,000.00	4,557,790.19	2.70	4,398,632.80	2.73	3.85
91282CDG3	USA TREASURY 1.125%	1.125	10/31/2026		AA+	Aaa	2,000,000.00	1,846,647.33	1.09	1,773,203.12	1.10	3.89
91282CDK4	USA TREASURY 1.25%	1.250	11/30/2026		AA+	Aaa	2,000,000.00	1,855,397.33	1.10	1,779,765.62	1.10	3.96
91282CDQ1	USA TREASURY 1.25%	1.250	12/31/2026		AA+	Aaa	2,700,000.00	2,473,980.47	1.47	2,398,253.91	1.49	4.04
<b>Issuer total</b>							<b>72,500,000.00</b>	<b>68,934,872.25</b>	<b>40.87</b>	<b>66,199,760.25</b>	<b>41.02</b>	<b>2.64</b>
<b>Federal Farm Credit Banks Funding Corp</b>												
3133EA7E2	FEDERAL FARM CREDIT	1.960	11/07/2022		AA+	Aaa	2,000,000.00	2,030,580.00	1.20	1,996,700.38	1.24	0.10
3133EKT2	FEDERAL FARM CREDIT	2.250	02/08/2023		AA+	Aaa	1,500,000.00	1,520,580.00	0.90	1,493,282.81	0.93	0.35
3133EKB9	FEDERAL FARM CREDIT	1.860	10/17/2023		AA+	Aaa	2,000,000.00	1,993,956.00	1.18	1,951,357.76	1.21	1.01
3133EKKU9	FEDERAL FARM CREDIT	2.300	11/08/2023		AA+	Aaa	1,500,000.00	1,524,645.00	0.90	1,468,640.85	0.91	1.07
3133EMTD4	FEDERAL FARM CREDIT	0.370	03/15/2024		AA+	Aaa	2,000,000.00	1,998,000.00	1.18	1,884,434.56	1.17	1.40
3133EMBE1	FEDERAL FARM CREDIT	0.300	03/28/2024		AA+	Aaa	2,000,000.00	1,998,500.00	1.18	1,878,392.22	1.16	1.44
3133EKNX0	FEDERAL FARM CREDIT	2.160	06/03/2024		AA+	Aaa	1,000,000.00	1,012,070.00	0.60	967,465.39	0.60	1.61
3133ENB74	FEDERAL FARM CREDIT	3.150	07/21/2025		AA+	Aaa	3,000,000.00	2,993,700.00	1.77	2,912,765.79	1.80	2.64
3133ENH45	FEDERAL FARM CREDIT	3.125	08/24/2026		AA+	Aaa	4,000,000.00	3,944,044.00	2.34	3,840,305.20	2.38	3.61
<b>Issuer total</b>							<b>19,000,000.00</b>	<b>19,016,075.00</b>	<b>11.27</b>	<b>18,393,344.96</b>	<b>11.40</b>	<b>1.78</b>
<b>Federal Home Loan Banks</b>												
3130A3KM5	FEDERAL HOME LOAN	2.500	12/09/2022		AA+	Aaa	1,500,000.00	1,531,815.00	0.91	1,497,256.82	0.93	0.19
3130AJ7E3	FEDERAL HOME LOAN	1.375	02/17/2023		AA+	Aaa	2,000,000.00	2,002,200.00	1.19	1,982,477.38	1.23	0.38



# GASB 40 - DEPOSIT AND INVESTMENT RISK DISCLOSURE

As of September 30, 2022

Cusip	Description	Coupon	Maturity date	Call date	S&P rating	Moody rating	Par value or shares	Historical cost	% Portfolio hist cost	Market value	% Portfolio mkt value	Effective dur (yrs)
<b>Federal Home Loan Banks</b>												
3130AB3H7	FEDERAL HOME LOAN	2.375	03/08/2024		AA+	Aaa	2,000,000.00	2,045,380.00	1.21	1,944,018.22	1.20	1.39
3130AKX84	FEDERAL HOME LOAN	0.270	08/23/2024	11/23/2022	AA+	Aaa	1,000,000.00	999,500.00	0.59	922,190.53	0.57	1.85
3130AJHU6	FEDERAL HOME LOAN	0.500	04/14/2025		AA+	Aaa	1,405,000.00	1,297,447.25	0.77	1,275,326.80	0.79	2.46
3130ASG86	FEDERAL HOME LOAN	3.375	06/13/2025		AA+	Aaa	2,000,000.00	2,008,540.00	1.19	1,945,337.26	1.21	2.53
3130AL7C2	FEDERAL HOME LOAN	0.500	08/25/2025	11/25/2022	AA+	Aaa	2,000,000.00	2,000,000.00	1.19	1,780,258.18	1.10	2.77
<b>Issuer total</b>							<b>11,905,000.00</b>	<b>11,884,882.25</b>	<b>7.05</b>	<b>11,346,865.19</b>	<b>7.03</b>	<b>1.65</b>
<b>Federal National Mortgage Association</b>												
3135G0U43	FANNIE MAE 2.875%	2.875	09/12/2023		AA+	Aaa	2,000,000.00	2,081,960.00	1.23	1,971,343.36	1.22	0.92
3135G0V75	FANNIE MAE 1.75%	1.750	07/02/2024		AA+	Aaa	2,000,000.00	1,982,440.00	1.18	1,914,841.50	1.19	1.69
3135G03U5	FANNIE MAE 0.625%	0.625	04/22/2025		AA+	Aaa	3,000,000.00	2,800,407.00	1.66	2,733,826.80	1.69	2.48
3135G05X7	FANNIE MAE 0.375%	0.375	08/25/2025		AA+	Aaa	2,000,000.00	1,838,268.89	1.09	1,788,300.78	1.11	2.82
3135G0K36	FANNIE MAE 2.125%	2.125	04/24/2026		AA+	Aaa	3,000,000.00	2,891,100.00	1.71	2,790,873.63	1.73	3.34
<b>Issuer total</b>							<b>12,000,000.00</b>	<b>11,594,175.89</b>	<b>6.87</b>	<b>11,199,186.07</b>	<b>6.94</b>	<b>2.33</b>
<b>United States Treasury Bill</b>												
912796YC7	USA TREASURY BILL 0%	0.000	10/04/2022		A-1+	P-1	5,000,000.00	4,982,675.00	2.95	4,999,664.40	3.10	0.01
<b>Issuer total</b>							<b>5,000,000.00</b>	<b>4,982,675.00</b>	<b>2.95</b>	<b>4,999,664.40</b>	<b>3.10</b>	<b>0.01</b>
<b>Bank of America Corp</b>												
06051GHC6	BANK OF AMERICA CORP	3.004	12/20/2023	12/20/2022	A-	A2	1,000,000.00	1,028,310.00	0.61	994,690.54	0.62	0.22
06051GHF9	BANK OF AMERICA CORP	3.550	03/05/2024	03/05/2023	A-	A2	1,500,000.00	1,606,050.00	0.95	1,488,197.06	0.92	0.42
06051GHL6	BANK OF AMERICA CORP	3.864	07/23/2024	07/23/2023	A-	A2	1,500,000.00	1,605,540.00	0.95	1,479,597.48	0.92	0.79
<b>Issuer total</b>							<b>4,000,000.00</b>	<b>4,239,900.00</b>	<b>2.51</b>	<b>3,962,485.08</b>	<b>2.46</b>	<b>0.51</b>
<b>Toyota Motor Credit Corp</b>												
89236THA6	TOYOTA MOTOR CREDIT	1.350	08/25/2023		A+	A1	1,000,000.00	1,021,010.00	0.61	970,940.00	0.60	0.88

# GASB 40 - DEPOSIT AND INVESTMENT RISK DISCLOSURE

As of September 30, 2022

Cusip	Description	Coupon	Maturity date	Call date	S&P rating	Moody rating	Par value or shares	Historical cost	% Portfolio hist cost	Market value	% Portfolio mkt value	Effective dur (yrs)
<b>Toyota Motor Credit Corp</b>												
89236THU2	TOYOTA MOTOR CREDIT	0.450	01/11/2024		A+	A1	1,800,000.00	1,797,858.00	1.07	1,707,774.43	1.06	1.25
89236TGL3	TOYOTA MOTOR CREDIT	2.000	10/07/2024		A+	A1	1,000,000.00	999,410.00	0.59	950,415.46	0.59	1.92
<b>Issuer total</b>							<b>3,800,000.00</b>	<b>3,818,278.00</b>	<b>2.26</b>	<b>3,629,129.89</b>	<b>2.25</b>	<b>1.33</b>
<b>Caterpillar Financial Services Corp</b>												
14913R255	CATERPILLAR FINL	0.950	01/10/2024		A	A2	1,000,000.00	993,070.00	0.59	957,725.18	0.59	1.25
14913R2L0	CATERPILLAR FINL	0.450	05/17/2024		A	A2	1,600,000.00	1,597,536.00	0.95	1,496,514.22	0.93	1.59
14913Q3B3	CATERPILLAR FINL	2.150	11/08/2024		A	A2	1,000,000.00	1,048,770.00	0.62	951,038.80	0.59	2.00
<b>Issuer total</b>							<b>3,600,000.00</b>	<b>3,639,376.00</b>	<b>2.16</b>	<b>3,405,278.20</b>	<b>2.11</b>	<b>1.62</b>
<b>John Deere Capital Corp</b>												
24422EUM9	JOHN DEERE CAPITAL	3.650	10/12/2023		A	A2	950,000.00	1,005,926.50	0.60	943,416.50	0.58	0.98
24422EVN6	JOHN DEERE CAPITAL	0.450	01/17/2024		A	A2	800,000.00	787,240.00	0.47	758,520.21	0.47	1.27
24422EUX5	JOHN DEERE CAPITAL	2.600	03/07/2024		A	A2	1,450,000.00	1,476,419.00	0.88	1,410,195.86	0.87	1.38
<b>Issuer total</b>							<b>3,200,000.00</b>	<b>3,269,585.50</b>	<b>1.94</b>	<b>3,112,132.57</b>	<b>1.93</b>	<b>1.23</b>
<b>JPMorgan Chase &amp; Co</b>												
46625HJH4	JPMORGAN CHASE & CO	3.200	01/25/2023		A-	A1	1,000,000.00	1,031,190.00	0.61	996,802.04	0.62	0.32
46647PBQ8	JPMORGAN CHASE & CO	1.514	06/01/2024	06/01/2023	A-	A1	2,000,000.00	2,042,800.00	1.21	1,952,549.42	1.21	0.65
<b>Issuer total</b>							<b>3,000,000.00</b>	<b>3,073,990.00</b>	<b>1.82</b>	<b>2,949,351.46</b>	<b>1.83</b>	<b>0.54</b>
<b>International Business Machines Corp</b>												
459200HP9	IBM CORP 3.375%	3.375	08/01/2023		A-	A3	1,000,000.00	1,061,840.00	0.63	991,988.63	0.61	0.81
459200JY8	IBM CORP 3%	3.000	05/15/2024		A-	A3	2,000,000.00	2,141,300.00	1.27	1,945,360.26	1.21	1.54
<b>Issuer total</b>							<b>3,000,000.00</b>	<b>3,203,140.00</b>	<b>1.90</b>	<b>2,937,348.89</b>	<b>1.82</b>	<b>1.30</b>

# GASB 40 - DEPOSIT AND INVESTMENT RISK DISCLOSURE

As of September 30, 2022

Cusip	Description	Coupon	Maturity date	Call date	S&P rating	Moody rating	Par value or shares	Historical cost	% Portfolio hist cost	Market value	% Portfolio mkt value	Effective dur (yrs)
<b>Home Depot Inc/The</b>												
437076BM3	HOME DEPOT INC 3%	3.000	04/01/2026	01/01/2026	A	A2	3,000,000.00	2,948,280.00	1.75	2,833,929.42	1.76	3.19
<b>Issuer total</b>							<b>3,000,000.00</b>	<b>2,948,280.00</b>	<b>1.75</b>	<b>2,833,929.42</b>	<b>1.76</b>	<b>3.19</b>
<b>Federal Home Loan Mortgage Corp</b>												
3137EAEP0	FREDDIE MAC 1.5%	1.500	02/12/2025		AA+	Aaa	3,000,000.00	2,881,764.00	1.71	2,811,492.87	1.74	2.28
<b>Issuer total</b>							<b>3,000,000.00</b>	<b>2,881,764.00</b>	<b>1.71</b>	<b>2,811,492.87</b>	<b>1.74</b>	<b>2.28</b>
<b>US Bancorp</b>												
91159HHV5	US BANCORP 3.375%	3.375	02/05/2024	01/05/2024	A+	A2	1,000,000.00	1,067,060.00	0.63	982,792.66	0.61	1.28
91159HHN3	US BANCORP 2.375%	2.375	07/22/2026	06/22/2026	A+	A2	2,000,000.00	1,912,040.00	1.13	1,827,507.52	1.13	3.53
<b>Issuer total</b>							<b>3,000,000.00</b>	<b>2,979,100.00</b>	<b>1.77</b>	<b>2,810,300.18</b>	<b>1.74</b>	<b>2.72</b>
<b>Microsoft Corp</b>												
594918BX1	MICROSOFT CORP 2.875%	2.875	02/06/2024	12/06/2023	AAA	Aaa	960,000.00	993,734.40	0.59	940,521.81	0.58	1.27
594918BR4	MICROSOFT CORP 2.4%	2.400	08/08/2026	05/08/2026	AAA	Aaa	2,000,000.00	1,939,660.00	1.15	1,851,368.28	1.15	3.53
<b>Issuer total</b>							<b>2,960,000.00</b>	<b>2,933,394.40</b>	<b>1.74</b>	<b>2,791,890.09</b>	<b>1.73</b>	<b>2.76</b>
<b>PNC Bank NA</b>												
69353REF1	PNC BANK NA 3.3%	3.300	10/30/2024	09/30/2024	A	A2	2,500,000.00	2,737,590.00	1.62	2,415,432.98	1.50	1.93
<b>Issuer total</b>							<b>2,500,000.00</b>	<b>2,737,590.00</b>	<b>1.62</b>	<b>2,415,432.98</b>	<b>1.50</b>	<b>1.93</b>
<b>Apple Inc</b>												
037833CR9	APPLE INC 3.2%	3.200	05/11/2027	02/11/2027	AA+	Aaa	2,121,000.00	2,062,439.19	1.22	1,995,026.41	1.24	4.08
<b>Issuer total</b>							<b>2,121,000.00</b>	<b>2,062,439.19</b>	<b>1.22</b>	<b>1,995,026.41</b>	<b>1.24</b>	<b>4.08</b>
<b>American Honda Finance Corp</b>												
02665WCA7	AMERICAN HONDA	2.600	11/16/2022		A-	A3	1,000,000.00	1,011,150.00	0.60	997,310.00	0.62	0.13

# GASB 40 - DEPOSIT AND INVESTMENT RISK DISCLOSURE

As of September 30, 2022

Cusip	Description	Coupon	Maturity date	Call date	S&P rating	Moody rating	Par value or shares	Historical cost	% Portfolio hist cost	Market value	% Portfolio mkt value	Effective dur (yrs)
<b>American Honda Finance Corp</b>												
02665WCT6	AMERICAN HONDA	3.550	01/12/2024		A-	A3	1,000,000.00	1,090,440.00	0.65	985,032.61	0.61	1.23
<b>Issuer total</b>							<b>2,000,000.00</b>	<b>2,101,590.00</b>	<b>1.25</b>	<b>1,982,342.61</b>	<b>1.23</b>	<b>0.70</b>
<b>PPG Industries Inc</b>												
693506BQ9	PPG INDUSTRIES INC 2.4%	2.400	08/15/2024	07/15/2024	BBB+	A3	2,000,000.00	2,012,600.00	1.19	1,921,015.88	1.19	1.78
<b>Issuer total</b>							<b>2,000,000.00</b>	<b>2,012,600.00</b>	<b>1.19</b>	<b>1,921,015.88</b>	<b>1.19</b>	<b>1.78</b>
<b>3M Co</b>												
88579YAV3	3M COMPANY 2.25%	2.250	09/19/2026	06/19/2026	A+	A1	2,000,000.00	1,906,760.00	1.13	1,791,548.50	1.11	3.66
<b>Issuer total</b>							<b>2,000,000.00</b>	<b>1,906,760.00</b>	<b>1.13</b>	<b>1,791,548.50</b>	<b>1.11</b>	<b>3.66</b>
<b>Citibank NA</b>												
17325FAS7	CITIBANK NA 3.65%	3.650	01/23/2024	12/23/2023	A+	Aa3	1,500,000.00	1,618,310.00	0.96	1,479,434.27	0.92	1.24
<b>Issuer total</b>							<b>1,500,000.00</b>	<b>1,618,310.00</b>	<b>0.96</b>	<b>1,479,434.27</b>	<b>0.92</b>	<b>1.24</b>
<b>Walmart Inc</b>												
931142DV2	WALMART INC 2.65%	2.650	12/15/2024	10/15/2024	AA	Aa2	1,500,000.00	1,595,520.00	0.95	1,452,054.53	0.90	2.06
<b>Issuer total</b>							<b>1,500,000.00</b>	<b>1,595,520.00</b>	<b>0.95</b>	<b>1,452,054.53</b>	<b>0.90</b>	<b>2.06</b>
<b>Procter &amp; Gamble Co/The</b>												
742718EB1	PROCTER & GAMBLE	3.100	08/15/2023		AA-	Aa3	1,000,000.00	1,041,328.13	0.62	990,652.36	0.61	0.85
<b>Issuer total</b>							<b>1,000,000.00</b>	<b>1,041,328.13</b>	<b>0.62</b>	<b>990,652.36</b>	<b>0.61</b>	<b>0.85</b>
<b>PNC Financial Services Group Inc/The</b>												
693475AV7	PNC FINANCIAL	3.500	01/23/2024	12/24/2023	A-	A3	1,000,000.00	1,047,210.00	0.62	984,103.80	0.61	1.24
<b>Issuer total</b>							<b>1,000,000.00</b>	<b>1,047,210.00</b>	<b>0.62</b>	<b>984,103.80</b>	<b>0.61</b>	<b>1.24</b>

# GASB 40 - DEPOSIT AND INVESTMENT RISK DISCLOSURE

As of September 30, 2022

Cusip	Description	Coupon	Maturity date	Call date	S&P rating	Moody rating	Par value or shares	Historical cost	% Portfolio hist cost	Market value	% Portfolio mkt value	Effective dur (yrs)
<b>US Bank NA/Cincinnati OH</b>												
90331HMS9	US BANK NA CINCINNATI	2.800	01/27/2025	12/27/2024	AA-	A1	1,000,000.00	995,210.00	0.59	956,855.06	0.59	2.18
<b>Issuer total</b>							<b>1,000,000.00</b>	<b>995,210.00</b>	<b>0.59</b>	<b>956,855.06</b>	<b>0.59</b>	<b>2.18</b>
<b>General Dynamics Corp</b>												
369550BD9	GENERAL DYNAMICS	3.375	05/15/2023	04/15/2023	A-	A3	943,000.00	984,840.91	0.58	936,726.95	0.58	0.59
<b>Issuer total</b>							<b>943,000.00</b>	<b>984,840.91</b>	<b>0.58</b>	<b>936,726.95</b>	<b>0.58</b>	<b>0.59</b>
<b>PepsiCo Inc</b>												
713448DN5	PEPSICO INC 2.375%	2.375	10/06/2026	07/06/2026	A+	A1	1,000,000.00	967,260.00	0.57	918,406.86	0.57	3.64
<b>Issuer total</b>							<b>1,000,000.00</b>	<b>967,260.00</b>	<b>0.57</b>	<b>918,406.86</b>	<b>0.57</b>	<b>3.64</b>
<b>Cash and Cash Equivalents</b>												
	INVESTED CASH	0.000					193,002.60	193,002.60	0.00	193,002.60	0.12	0.00
<b>Issuer total</b>							<b>193,002.60</b>	<b>193,002.60</b>	<b>0.00</b>	<b>193,002.60</b>	<b>0.12</b>	<b>0.00</b>
<b>Grand total</b>							<b>171,722,002.60</b>	<b>168,663,149.12</b>	<b>100.00</b>	<b>161,398,762.33</b>	<b>100.00</b>	<b>2.12</b>

# SECURITIES PURCHASED

For the period September 1, 2022 - September 30, 2022

Cusip	Description / Broker	Trade date Settle date	Coupon	Maturity/ Call date	Par value or shares	Unit cost	Principal cost	Accrued interest
<b>Corporate Bonds</b>								
037833CR9	APPLE INC 3.2% 11MAY2027 GOLDMAN, SACHS AND CO.	09/08/2022 09/12/2022	3.200	05/11/2027 02/11/2027	2,121,000.00	97.24	(2,062,439.19)	(22,812.53)
<b>Total Corporate Bonds</b>					<b>2,121,000.00</b>		<b>(2,062,439.19)</b>	<b>(22,812.53)</b>
<b>Government Agencies</b>								
3130AJHU6	FEDERAL HOME LOAN BANK 0.5% MORGAN STANLEY AND CO., LLC	09/06/2022 09/09/2022	0.500	04/14/2025	1,405,000.00	92.35	(1,297,447.25)	(2,829.51)
3133ENH45	FEDERAL FARM CREDIT BANK 3.125% WELLS FARGO SECURITIES, LLC	09/06/2022 09/07/2022	3.125	08/24/2026	2,000,000.00	98.29	(1,965,844.00)	(2,256.94)
<b>Total Government Agencies</b>					<b>3,405,000.00</b>		<b>(3,263,291.25)</b>	<b>(5,086.45)</b>
<b>Government Bonds</b>								
91282CBC4	USA TREASURY 0.375% 31DEC2025 CREDIT AGRICOLE CIB	09/06/2022 09/07/2022	0.375	12/31/2025	2,300,000.00	90.06	(2,071,445.21)	(1,617.19)
<b>Total Government Bonds</b>					<b>2,300,000.00</b>		<b>(2,071,445.21)</b>	<b>(1,617.19)</b>
<b>Grand total</b>					<b>7,826,000.00</b>		<b>(7,397,175.65)</b>	<b>(29,516.17)</b>

# SECURITIES SOLD AND MATURED

For the period September 1, 2022 - September 30, 2022

Cusip	Description / Broker	Trade date Settle date	Coupon	Maturity/ Call date	Par value or shares	Historical cost	Amortized cost at sale or maturity	Price	Fair value at sale or maturity	Realized gain (loss)	Accrued interest sold
<b>Corporate Bonds</b>											
037833DC1	APPLE INC 2.1% DUE 09-12-2022	09/12/2022 09/12/2022	2.100		(2,000,000.00)	2,026,680.00	2,000,000.00	0.00	2,000,000.00	0.00	0.00
<b>Total (Corporate Bonds)</b>					<b>(2,000,000.00)</b>	<b>2,026,680.00</b>	<b>2,000,000.00</b>		<b>2,000,000.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Government Agencies</b>											
313380GJ0	FEDERAL HOME LN BKS CONS BD 2 09-09-2022	09/09/2022 09/09/2022	2.000		(1,000,000.00)	995,020.00	1,000,000.00	0.00	1,000,000.00	0.00	0.00
<b>Total (Government Agencies)</b>					<b>(1,000,000.00)</b>	<b>995,020.00</b>	<b>1,000,000.00</b>		<b>1,000,000.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Short Term Bills and Notes</b>											
912796XU8	UNITED STATES TREAS BILLS DTD 0% 09-06-2022	09/06/2022 09/06/2022	0.000		(4,000,000.00)	3,993,853.89	4,000,000.00	0.00	4,000,000.00	0.00	0.00
<b>Total (Short Term Bills and Notes)</b>					<b>(4,000,000.00)</b>	<b>3,993,853.89</b>	<b>4,000,000.00</b>		<b>4,000,000.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Grand total</b>					<b>(7,000,000.00)</b>	<b>7,015,553.89</b>	<b>7,000,000.00</b>		<b>7,000,000.00</b>	<b>0.00</b>	<b>0.00</b>

# DETAIL OF RETURN AND INTEREST RECEIVED

For the period September 1, 2022 - September 30, 2022

Cusip	Description	Accretion (amortization)	Realized gain (loss)	Change in fair value	Interest earned	Interest received
<b>Cash</b>						
	Cash and Cash Equivalents	0.00	0.00	0.00	4,332.92	4,332.92
<b>Total Cash</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>4,332.92</b>	<b>4,332.92</b>
<b>Corporate Bonds</b>						
88579YAV3	3M COMPANY 2.25% 19SEP2026 (CALLABLE 19JUN26)	1,888.73	0.00	(73,871.30)	3,625.00	22,500.00
02665WCA7	AMERICAN HONDA FINANCE 2.6% 16NOV2022	(275.08)	0.00	(1,492.14)	2,094.45	0.00
02665WCT6	AMERICAN HONDA FINANCE 3.55% 12JAN2024	(2,500.64)	0.00	(11,571.11)	2,859.73	0.00
037833DC1	APPLE INC 2.1% DUE 09-12-2022	0.00	0.00	417.80	1,283.33	21,000.00
037833CR9	APPLE INC 3.2% 11MAY2027 (CALLABLE 11FEB27)	799.82	0.00	(67,412.78)	3,393.60	0.00
06051GHC6	BANK OF AMERICA CORP 3.004% 20DEC2023 (CALLABLE 20DEC22)	(2,012.56)	0.00	(1,615.21)	2,419.88	0.00
06051GHF9	BANK OF AMERICA CORP 3.55% 05MAR2024 (CALLABLE 05MAR23)	(3,348.95)	0.00	(5,735.52)	4,289.59	26,625.00
06051GHL6	BANK OF AMERICA CORP 3.864% 23JUL2024 (CALLABLE 23JUL23)	(3,997.73)	0.00	(12,348.02)	4,669.00	0.00
14913R2L0	CATERPILLAR FINL SERVICE 0.45% 17MAY2024	68.07	0.00	(16,344.44)	580.00	0.00
14913R2S5	CATERPILLAR FINL SERVICE 0.95% 10JAN2024	295.73	0.00	(6,146.83)	765.28	0.00
14913Q3B3	CATERPILLAR FINL SERVICE 2.15% 08NOV2024	(1,109.25)	0.00	(15,200.74)	1,731.95	0.00
17325FAS7	CITIBANK NA 3.65% 23JAN2024 (CALLABLE 23DEC23)	(3,861.64)	0.00	(18,090.07)	4,410.41	0.00
369550BD9	GENERAL DYNAMICS CORP 3.375% 15MAY2023 (CALLABLE 15APR23)	(919.58)	0.00	(4,117.61)	2,563.78	0.00
437076BM3	HOME DEPOT INC 3% 01APR2026 (CALLABLE 01JAN26)	1,164.87	0.00	(78,288.75)	7,250.00	0.00
459200JY8	IBM CORP 3% 15MAY2024	(3,728.23)	0.00	(30,009.40)	4,833.33	0.00
459200HP9	IBM CORP 3.375% 01AUG2023	(2,486.86)	0.00	(4,381.53)	2,718.75	0.00
24422EVN6	JOHN DEERE CAPITAL CORP 0.45% 17JAN2024	539.15	0.00	(7,405.18)	290.00	0.00



# DETAIL OF RETURN AND INTEREST RECEIVED

For the period September 1, 2022 - September 30, 2022

Cusip	Description	Accretion (amortization)	Realized gain (loss)	Change in fair value	Interest earned	Interest received
<b>Corporate Bonds</b>						
24422EUX5	JOHN DEERE CAPITAL CORP 2.6% 07MAR2024	(480.64)	0.00	(16,744.73)	3,036.94	18,850.00
24422EUM9	JOHN DEERE CAPITAL CORP 3.65% 12OCT2023	(1,144.48)	0.00	(6,895.34)	2,793.27	0.00
46647PBQ8	JPMORGAN CHASE & CO 1.514% 01JUN2024 (CALLABLE 01JUN23)	(1,331.95)	0.00	(4,305.58)	2,439.22	0.00
46625HJH4	JPMORGAN CHASE & CO 3.2% 25JAN2023	(745.58)	0.00	(2,200.59)	2,577.78	0.00
594918BR4	MICROSOFT CORP 2.4% 08AUG2026 (CALLABLE 08MAY26)	1,257.08	0.00	(57,609.38)	3,866.66	0.00
594918BX1	MICROSOFT CORP 2.875% 06FEB2024 (CALLABLE 06DEC23)	(640.93)	0.00	(9,536.11)	2,223.33	0.00
713448DN5	PEPSICO INC 2.375% 06OCT2026 (CALLABLE 06JUL26)	655.67	0.00	(29,918.43)	1,913.20	0.00
69353REF1	PNC BANK NA 3.3% 30OCT2024 (CALLABLE 30SEP24)	(5,549.19)	0.00	(42,262.17)	6,875.00	0.00
693475AV7	PNC FINANCIAL SERVICES 3.5% 23JAN2024 (CALLABLE 23DEC23)	(891.31)	0.00	(12,761.69)	2,819.45	0.00
693506BQ9	PPG INDUSTRIES INC 2.4% 15AUG2024 (CALLABLE 15JUL24)	(228.40)	0.00	(23,111.70)	3,866.67	0.00
742718EB1	PROCTER & GAMBLE CO/THE 3.1% 15AUG2023	(834.91)	0.00	(5,017.37)	2,497.22	0.00
89236THU2	TOYOTA MOTOR CREDIT CORP 0.45% 11JAN2024	77.51	0.00	(15,816.42)	652.50	0.00
89236THA6	TOYOTA MOTOR CREDIT CORP 1.35% 25AUG2023	(733.76)	0.00	(5,240.24)	1,087.50	0.00
89236TGL3	TOYOTA MOTOR CREDIT CORP 2% 07OCT2024	10.36	0.00	(11,286.78)	1,611.11	0.00
91159HHN3	US BANCORP 2.375% 22JUL2026 (CALLABLE 22JUN26)	1,853.09	0.00	(58,811.46)	3,826.39	0.00
91159HHV5	US BANCORP 3.375% 05FEB2024 (CALLABLE 05JAN24)	(2,457.28)	0.00	(12,335.35)	2,718.75	0.00
90331HMS9	US BANK NA CINCINNATI 2.8% 27JAN2025 (CALLABLE 27DEC24)	143.12	0.00	(17,859.15)	2,255.56	0.00
931142DV2	WALMART INC 2.65% 15DEC2024 (CALLABLE 15OCT24)	(2,567.74)	0.00	(19,166.58)	3,202.08	0.00
<b>Total Corporate Bonds</b>		<b>(33,093.49)</b>	<b>0.00</b>	<b>(704,491.90)</b>	<b>100,040.71</b>	<b>88,975.00</b>

# DETAIL OF RETURN AND INTEREST RECEIVED

For the period September 1, 2022 - September 30, 2022

Cusip	Description	Accretion (amortization)	Realized gain (loss)	Change in fair value	Interest earned	Interest received
<b>Government Agencies</b>						
3135G05X7	FANNIE MAE 0.375% 25AUG2025	4,193.55	0.00	(35,990.42)	604.17	0.00
3135G03U5	FANNIE MAE 0.625% 22APR2025	5,952.08	0.00	(43,973.13)	1,510.42	0.00
3135G0V75	FANNIE MAE 1.75% 02JUL2024	293.65	0.00	(25,546.08)	2,819.45	0.00
3135G0K36	FANNIE MAE 2.125% 24APR2026	2,395.16	0.00	(70,746.84)	5,135.42	0.00
3135G0U43	FANNIE MAE 2.875% 12SEP2023	(1,620.83)	0.00	(13,912.96)	4,631.94	28,750.00
3133EMBE1	FEDERAL FARM CREDIT BANK 0.3% 28MAR2024 (CALLABLE 13OCT22)	35.68	0.00	(16,561.44)	483.33	3,000.00
3133EMTD4	FEDERAL FARM CREDIT BANK 0.37% 15MAR2024 (CALLABLE 13OCT22)	55.25	0.00	(15,844.22)	596.11	3,700.00
3133EKVB9	FEDERAL FARM CREDIT BANK 1.86% 17OCT2023	119.05	0.00	(12,150.08)	2,996.66	0.00
3133EA7E2	FEDERAL FARM CREDIT BANK 1.96% 07NOV2022	(928.54)	0.00	1,167.50	3,157.78	0.00
3133EKNX0	FEDERAL FARM CREDIT BANK 2.16% 03JUN2024	(203.66)	0.00	(11,757.71)	1,740.00	0.00
3133EKKT2	FEDERAL FARM CREDIT BANK 2.25% 08FEB2023	(472.02)	0.00	(1,207.60)	2,718.75	0.00
3133EKKU9	FEDERAL FARM CREDIT BANK 2.3% 08NOV2023	(468.54)	0.00	(10,465.53)	2,779.16	0.00
3133ENH45	FEDERAL FARM CREDIT BANK 3.125% 24AUG2026	1,052.98	0.00	(98,452.64)	9,027.78	0.00
3133ENB74	FEDERAL FARM CREDIT BANK 3.15% 21JUL2025	174.35	0.00	(59,809.20)	7,612.50	0.00
313380GJ0	FEDERAL HOME LN BKS CONS BD 2 09-09-2022	37.76	0.00	129.94	444.44	10,000.00
3130AKX84	FEDERAL HOME LOAN BANK 0.27% 23AUG2024 (CALLABLE 23NOV22)	11.84	0.00	(11,646.53)	217.50	0.00
3130AJHU6	FEDERAL HOME LOAN BANK 0.5% 14APR2025	2,863.49	0.00	(22,120.45)	409.80	0.00
3130AL7C2	FEDERAL HOME LOAN BANK 0.5% 25AUG2025 (CALLABLE 25NOV22)	0.00	0.00	(34,225.26)	805.55	0.00
3130AJ7E3	FEDERAL HOME LOAN BANK 1.375% 17FEB2023	(195.26)	0.00	(2,516.96)	2,215.28	0.00
3130AB3H7	FEDERAL HOME LOAN BANK 2.375% 08MAR2024	(804.13)	0.00	(20,855.08)	3,826.39	23,750.00

# DETAIL OF RETURN AND INTEREST RECEIVED

For the period September 1, 2022 - September 30, 2022

Cusip	Description	Accretion (amortization)	Realized gain (loss)	Change in fair value	Interest earned	Interest received
<b>Government Agencies</b>						
3130A3KM5	FEDERAL HOME LOAN BANK 2.5% 09DEC2022	(764.18)	0.00	(992.13)	3,020.83	0.00
3130ASG86	FEDERAL HOME LOAN BANK 3.375% 13JUN2025	(244.93)	0.00	(38,729.68)	5,437.50	0.00
3137EAEP0	FREDDIE MAC 1.5% 12FEB2025	3,789.61	0.00	(50,183.70)	3,625.00	0.00
<b>Total Government Agencies</b>		<b>15,272.36</b>	<b>0.00</b>	<b>(596,390.20)</b>	<b>65,815.76</b>	<b>69,200.00</b>
<b>Government Bonds</b>						
91282CBM2	USA TREASURY 0.125% 15FEB2024	318.45	0.00	(12,246.10)	152.86	0.00
91282CAP6	USA TREASURY 0.125% 15OCT2023	241.88	0.00	(8,144.54)	153.69	0.00
91282CAR2	USA TREASURY 0.125% 31OCT2022	559.65	0.00	2,160.56	101.90	0.00
91282CCC3	USA TREASURY 0.25% 15MAY2024	80.26	0.00	(20,312.48)	407.61	0.00
91282CAM3	USA TREASURY 0.25% 30SEP2025	6,599.35	0.00	(52,265.64)	614.75	3,750.00
91282CAT8	USA TREASURY 0.25% 31OCT2025	6,598.80	0.00	(53,789.04)	611.42	0.00
91282CCX7	USA TREASURY 0.375% 15SEP2024	90.56	0.00	(19,855.47)	524.01	3,187.50
91282CAZ4	USA TREASURY 0.375% 30NOV2025	6,283.73	0.00	(54,257.82)	922.13	0.00
91282CBC4	USA TREASURY 0.375% 31DEC2025	4,525.84	0.00	(37,652.25)	539.06	0.00
91282CBH3	USA TREASURY 0.375% 31JAN2026	6,341.41	0.00	(58,007.79)	917.12	0.00
91282CDD0	USA TREASURY 0.375% 31OCT2023	846.34	0.00	(13,125.00)	611.42	0.00
91282CBQ3	USA TREASURY 0.5% 28FEB2026	6,032.99	0.00	(59,648.43)	1,243.09	0.00
91282ZF0	USA TREASURY 0.5% 31MAR2025	6,044.90	0.00	(43,593.75)	1,229.51	7,500.00
91282CCP4	USA TREASURY 0.625% 31JUL2026	3,794.73	0.00	(45,390.62)	1,019.02	0.00
91282CCW9	USA TREASURY 0.75% 31AUG2026	3,579.50	0.00	(46,171.86)	1,243.09	0.00

# DETAIL OF RETURN AND INTEREST RECEIVED

For the period September 1, 2022 - September 30, 2022

Cusip	Description	Accretion (amortization)	Realized gain (loss)	Change in fair value	Interest earned	Interest received
<b>Government Bonds</b>						
91282CBT7	USA TREASURY 0.75% 31MAR2026	5,577.45	0.00	(62,109.36)	1,844.26	11,250.00
91282CCF6	USA TREASURY 0.75% 31MAY2026	6,097.86	0.00	(66,210.93)	1,844.26	0.00
91282CCJ8	USA TREASURY 0.875% 30JUN2026	5,250.09	0.00	(67,968.75)	2,139.95	0.00
91282CCZ2	USA TREASURY 0.875% 30SEP2026	8,694.32	0.00	(118,359.40)	3,586.07	21,875.00
91282CDG3	USA TREASURY 1.125% 31OCT2026	2,979.65	0.00	(49,140.64)	1,834.24	0.00
91282CDK4	USA TREASURY 1.25% 30NOV2026	2,756.09	0.00	(50,234.38)	2,049.18	0.00
91282CDQ1	USA TREASURY 1.25% 31DEC2026	4,277.97	0.00	(68,976.55)	2,751.36	0.00
912828S35	USA TREASURY 1.375% 30JUN2023	317.57	0.00	(3,398.44)	1,120.92	0.00
9128282D1	USA TREASURY 1.375% 31AUG2023	646.18	0.00	(10,781.26)	2,279.01	0.00
9128282A7	USA TREASURY 1.5% 15AUG2026	2,109.87	0.00	(47,656.26)	2,445.65	0.00
912828YY0	USA TREASURY 1.75% 31DEC2024	(2,150.98)	0.00	(28,515.62)	2,901.07	0.00
912828Y87	USA TREASURY 1.75% 31JUL2024	(2,128.59)	0.00	(25,625.00)	2,853.26	0.00
9128282U3	USA TREASURY 1.875% 31AUG2024	(213.49)	0.00	(13,359.38)	1,553.87	0.00
912828XT2	USA TREASURY 2% 31MAY2024	(2,612.58)	0.00	(24,375.00)	3,278.68	0.00
9128286R6	USA TREASURY 2.25% 30APR2024	(436.83)	0.00	(12,148.44)	1,834.24	0.00
912828V23	USA TREASURY 2.25% 31DEC2023	(351.48)	0.00	(8,593.76)	1,834.24	0.00
912828Y61	USA TREASURY 2.75% 31JUL2023	(895.98)	0.00	(5,820.31)	2,241.84	0.00
9128285P1	USA TREASURY 2.875% 30NOV2023	(3,305.98)	0.00	(16,593.75)	4,241.80	0.00
9128285D8	USA TREASURY 2.875% 30SEP2023	(1,874.64)	0.00	(6,718.74)	2,356.56	14,375.00
<b>Total Government Bonds</b>		<b>76,674.89</b>	<b>0.00</b>	<b>(1,208,886.20)</b>	<b>55,281.14</b>	<b>61,937.50</b>

# DETAIL OF RETURN AND INTEREST RECEIVED

For the period September 1, 2022 - September 30, 2022

Cusip	Description	Accretion (amortization)	Realized gain (loss)	Change in fair value	Interest earned	Interest received
<b>Short Term Bills and Notes</b>						
912796XU8	UNITED STATES TREAS BILLS DTD 0% 09-06-2022	1,365.80	0.00	1,115.40	0.00	0.00
912796YC7	USA TREASURY BILL 0% 04OCT2022	9,450.00	0.00	10,396.30	0.00	0.00
<b>Total Short Term Bills and Notes</b>		<b>10,815.80</b>	<b>0.00</b>	<b>11,511.70</b>	<b>0.00</b>	<b>0.00</b>
<b>Grand total</b>		<b>69,669.56</b>	<b>0.00</b>	<b>(2,498,256.60)</b>	<b>225,470.53</b>	<b>224,445.42</b>

# TRANSACTION REPORT

For the period September 1, 2022 - September 30, 2022

Trade date Settle date	Cusip	Transaction	Sec type	Description	Maturity	Par value or shares	Realized gain(loss)	Principal	Interest	Transaction total
09/05/2022 09/05/2022	06051GHF9	Income	Corporate Bonds	BANK OF AMERICA CORP 3.55%	03/05/2024	1,500,000.00	0.00	0.00	26,625.00	26,625.00
09/06/2022 09/09/2022	3130AJHU6	Bought	Government Agencies	FEDERAL HOME LOAN BANK	04/14/2025	1,405,000.00	0.00	(1,297,447.25)	(2,829.51)	(1,300,276.76)
09/06/2022 09/07/2022	3133ENH45	Bought	Government Agencies	FEDERAL FARM CREDIT BANK	08/24/2026	2,000,000.00	0.00	(1,965,844.00)	(2,256.94)	(1,968,100.94)
09/06/2022 09/06/2022	912796XU8	Capital Change	Short Term Bills And Notes	UNITED STATES TREAS BILLS	09/06/2022	(4,000,000.00)	0.00	4,000,000.00	0.00	4,000,000.00
09/06/2022 09/07/2022	91282CBC4	Bought	Government Bonds	USA TREASURY 0.375%	12/31/2025	2,300,000.00	0.00	(2,071,445.21)	(1,617.19)	(2,073,062.40)
09/07/2022 09/07/2022	24422EUX5	Income	Corporate Bonds	JOHN DEERE CAPITAL CORP	03/07/2024	1,450,000.00	0.00	0.00	18,850.00	18,850.00
09/08/2022 09/12/2022	037833CR9	Bought	Corporate Bonds	APPLE INC 3.2% 11MAY2027	05/11/2027	2,121,000.00	0.00	(2,062,439.19)	(22,812.53)	(2,085,251.72)
09/08/2022 09/08/2022	3130AB3H7	Income	Government Agencies	FEDERAL HOME LOAN BANK	03/08/2024	2,000,000.00	0.00	0.00	23,750.00	23,750.00
09/09/2022 09/09/2022	313380GJ0	Income	Government Agencies	FEDERAL HOME LN BKS CONS	09/09/2022	1,000,000.00	0.00	0.00	10,000.00	10,000.00
09/09/2022 09/09/2022	313380GJ0	Capital Change	Government Agencies	FEDERAL HOME LN BKS CONS	09/09/2022	(1,000,000.00)	0.00	1,000,000.00	0.00	1,000,000.00
09/12/2022 09/12/2022	037833DC1	Income	Corporate Bonds	APPLE INC 2.1% DUE	09/12/2022	2,000,000.00	0.00	0.00	21,000.00	21,000.00
09/12/2022 09/12/2022	037833DC1	Capital Change	Corporate Bonds	APPLE INC 2.1% DUE	09/12/2022	(2,000,000.00)	0.00	2,000,000.00	0.00	2,000,000.00
09/12/2022 09/12/2022	3135G0U43	Income	Government Agencies	FANNIE MAE 2.875%	09/12/2023	2,000,000.00	0.00	0.00	28,750.00	28,750.00
09/15/2022 09/15/2022	3133EMTD4	Income	Government Agencies	FEDERAL FARM CREDIT BANK	03/15/2024	2,000,000.00	0.00	0.00	3,700.00	3,700.00
09/15/2022 09/15/2022	91282CCX7	Income	Government Bonds	USA TREASURY 0.375%	09/15/2024	1,700,000.00	0.00	0.00	3,187.50	3,187.50
09/19/2022 09/19/2022	88579YAV3	Income	Corporate Bonds	3M COMPANY 2.25%	09/19/2026	2,000,000.00	0.00	0.00	22,500.00	22,500.00
09/28/2022 09/28/2022	3133EMBE1	Income	Government Agencies	FEDERAL FARM CREDIT BANK	03/28/2024	2,000,000.00	0.00	0.00	3,000.00	3,000.00

# TRANSACTION REPORT

For the period September 1, 2022 - September 30, 2022

Trade date Settle date	Cusip	Transaction	Sec type	Description	Maturity	Par value or shares	Realized gain(loss)	Principal	Interest	Transaction total
09/30/2022 09/30/2022	9128285D8	Income	Government Bonds	USA TREASURY 2.875%	09/30/2023	1,000,000.00	0.00	0.00	14,375.00	14,375.00
09/30/2022 09/30/2022	912828ZF0	Income	Government Bonds	USA TREASURY 0.5%	03/31/2025	3,000,000.00	0.00	0.00	7,500.00	7,500.00
09/30/2022 09/30/2022	91282CAM3	Income	Government Bonds	USA TREASURY 0.25%	09/30/2025	3,000,000.00	0.00	0.00	3,750.00	3,750.00
09/30/2022 09/30/2022	91282CBT7	Income	Government Bonds	USA TREASURY 0.75%	03/31/2026	3,000,000.00	0.00	0.00	11,250.00	11,250.00
09/30/2022 09/30/2022	91282CCZ2	Income	Government Bonds	USA TREASURY 0.875%	09/30/2026	5,000,000.00	0.00	0.00	21,875.00	21,875.00
09/30/2022		Income	Cash and Cash Equivalents	Cash		0.00	0.00	0.00	4,332.92	4,332.92

# ADDITIONAL INFORMATION

## As of September 30, 2022

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

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

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Please compare the information provided in this statement to the information provided in the statement received from your Custodian.

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

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

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

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

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

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

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

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

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

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



# ADDITIONAL INFORMATION

## As of September 30, 2022

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City of Menlo Park  
Insight ESG Ratings as of September 30, 2022

Cusip/Id	Description	Moody Rating	S&P Rating	Par	Insight ESG Score	Environmental	Social	Governance	
02665WCA7	AMERICAN HONDA FINANCE 2.6% 16NOV2022	A3	A-	\$ 1,000,000	3	1	3	3	
46625HJH4	JPMORGAN CHASE & CO 3.2% 25JAN2023	A2	A-	\$ 1,000,000	3	1	2	4	
369550BD9	GENERAL DYNAMICS 3.375% 15MAY2023	A3	A-	\$ 943,000	4	3	4	3	
459200HP9	IBM CORP 3.2% 01AUG2023	A3	A-	\$ 1,000,000	2	1	2	4	
742718EB1	PROCTER & GAMBLE CORP 3.1% 15AUG2023	Aa3	AA-	\$ 1,000,000	3	3	4	2	
89236THA6	TOYOTA MOTOR CREDIT 1.35% 25 AUG 2023	A1	A+	\$ 1,000,000	3	2	3	5	
24422EUM9	JOHN DEERE CAPITAL CORP 3.65% 12OCT2023	A2	A	\$ 950,000	3	2	3	3	
06051GHC6	BANK OF AMERICA NA 3.004% 20DEC2023 (CALLABLE 20DEC2022)	A2	A-	\$ 1,000,000	3	1	3	4	
14913R2S5	CATERPILLAR FIN. SER. .95% 10JAN2024	A2	A	\$ 1,000,000	3	3	2	4	
89236THU2	TOYOTA MOTOR CREDIT .45% 11JAN2024	A1	A+	\$ 1,800,000	3	2	3	5	
02665WCT6	AMERICAN HONDA FINANCE 3.55% 12JAN2024	A3	A-	\$ 1,000,000	2	2	3	3	
24422EVN6	JOHN DEERE CAPITAL CORP .45% 17JAN2024	A2	A	\$ 800,000	3	3	3	3	
17325FAS7	CITIBANK NA 3.65% 23JAN2024 (CALLABLE 23DEC23)	Aa3	A+	\$ 1,500,000	3	1	3	4	
693475AV7	PNC FINSERVGRUP 3.5% 23JAN2024 (CALLABLE 24DEC2023)	A3	A-	\$ 1,000,000	3	2	3	3	
91159HHV5	US BANK NA CINCINNATI 3.375% 05FEB2024 (CALLABLE 06JAN2024)	A1	AA-	\$ 1,000,000	3	3	4	3	
594918BX1	MICROSOFT CORP 2.875% 06FEB2024 (CALLABLE 06DEC23)	Aaa	AAA	\$ 960,000	2	1	2	3	
06051GHF9	BANK OF AMERICA NA 3.55% 5MAR2024 (CALLABLE 5MAR2023)	A2	A-	\$ 1,500,000	3	1	3	4	
24422EUX5	JOHN DEERE CAPITAL CORP 2.6% 07MAR2024	A2	A	\$ 1,450,000	3	3	3	3	
459200JY8	IBM CORP 3.0% 15MAY2024	A3	A-	\$ 2,000,000	2	1	2	5	
14913R2L0	CATERPILLAR .45% 17MAY2024	A2	A	\$ 1,600,000	3	3	2	4	
46647PBQ8	JPMORGAN CHASE & CO 1.514% 01JUN2024 (CALLABLE 01JUN23)	A1	A-	\$ 2,000,000	3	1	2	4	
06051GHL6	BANK OF AMERICA NA 3.864% 23JUL2024 (CALLABLE 23JUL2023)	A2	A-	\$ 1,500,000	3	1	3	4	
693506BQ9	PPG INDUSTRIES INC 2.4% 15AUG2024	A3	BBB+	\$ 2,000,000	2	1	3	3	
89236TGL3	TOYOTA MOTOR CREDIT 2.00% 07OCT2024	A1	A+	\$ 1,000,000	3	3	3	5	
69353REF1	PNC BANK NA 3.3% 30OCT2024 (CALLABLE 30SEP2024)	A2	A	\$ 2,500,000	3	2	3	2	
14913Q3B3	CATERPILLAR 2.15% 8NOV2024	A2	A	\$ 1,000,000	3	3	2	4	
931142DV2	WALMART INC. 2.65% 15DEC2024 (CALLABLE 15OCT2024)	Aa2	AA	\$ 1,500,000	3	1	4	5	
437076BM3	HOME DEPOT INC. 3% 01APR2026 (CALLABLE 01JAN2026)	A2	A	\$ 3,000,000	1	2	2	2	
911159HHN3	US BANCORP 2.375% 22JUL2026 (CALLABLE 22Jun2026)	A2	A+	\$ 2,000,000	3	3	4	3	
594918BR4	MICROSOFT CORP 2.40% 08AUG2026 (CALLABLE 08MAY26)	Aaa	AAA	\$ 2,000,000	2	1	2	3	
88579YAV3	3M COMPANY 2.25% 19SEO2026 (CALLABLE 19JUN2026)	A1	A+	\$ 2,000,000	3	3	3	2	
713448DN5	PEPSICO INC. 2.375% 06OCT2026 (CALLABLE 06JUL2026)	A1	A+	\$ 1,000,000	2	3	2	2	
037833CR9	APPLE INC. 3.2% 11MAY2027 (CALLABLE 11FEB2027)	Aaa	AA+	\$ 2,121,000	3	3	3	5	
				<b>Corporate</b>	<b>\$ 47,124,000</b>	<b>2.76</b>	<b>2.00</b>	<b>2.82</b>	<b>3.52</b>

\*ESG ratings are from 1 to 5, with 1 as the highest rating and 5 as the lowest. All ratings are weighted by industry rankings, based on the importance of the category within the individual industry.



**STAFF REPORT**

**City Council**

**Meeting Date:**

**11/15/2022**

**Staff Report Number:**

**22-223-CC**

**Consent Calendar:**

**Adopt a resolution to accept and appropriate a California State Library grant in the amount of \$509,179 to replace the main library's deteriorating roof and update its fire alarm system; and authorize the city manager to submit the required final application and execute the grant agreement**

**Recommendation**

Staff recommends that City Council adopt a resolution accepting and appropriating a California State Library Building Forward infrastructure grant in the amount of \$509,179 to replace the Menlo Park Main Library's deteriorating roof and update its fire alarm system; and authorizing the city manager to submit the required final application and related documentation and execute the grant agreement (Attachment A.)

**Policy Issues**

City Council authorizes the acceptance of grant awards to support City of Menlo Park operations, services and projects. If the City Council accepts the grant and authorizes the city manager to submit the required final application and related documentation and execute the grant agreement, then the City will receive \$509,179 toward the cost of replacing the main library's deteriorating roof and updating its fire alarm system. If the City Council does not accept the grant, then the City will not receive \$509,179 in Building Forward infrastructure grant funding and would need to identify other sources of funding to complete the needed replacements.

**Background**

The State of California Budget Act of 2021 (SB 129) allocated \$439 million in one-time funds to the California State Library to address life-safety and critical maintenance needs of public library facilities throughout California through the Building Forward infrastructure grant program.

On March 22, 2022, City staff submitted an initial application to the California State Library for \$514,190 in Building Forward infrastructure grant funds to replace the City of Menlo Park Main Library's deteriorating roof and update its fire alarm system (Attachment B.)

On November 4, 2022, the City received a letter dated October 19, 2022 confirming the California State Library's award of \$509,179 in Building Forward grant funds to the City of Menlo Park for the Menlo Park Main Library Critical Infrastructure Needs project at the main library (Attachment C.)

**Analysis**

Menlo Park Main Library has been in its current location for 65 years. The original, 6,400 square foot

building was built in 1957. It was expanded in 1967 and 1991 to its total current floor space of 33,000 square feet on two levels.

The roof area is approximately 30,000 square feet with a moderate pitch approximately 4:12 (i.e., a roof slope that rises by 4 inches for every 12 inches across.) The current roof material is ceramic shingles installed in 1991. The ceramic shingles have become damaged over time by normal maintenance-related foot traffic which has cracked many shingles and caused hairline leaks which are virtually impossible to repair with the current material. The recommended replacement material is asphalt shingle which is more durable to foot traffic and easier to maintain.

The fire alarm panel, annunciator, smoke detectors, pull stations, and sprinkler activation system were installed in 1991. The system is outdated and frequently malfunctions resulting in regularly occurring false alarms.

The main library children's room was remodeled in 2009. The front lobby was remodeled in 2012 to install an automated materials handling system. The building was re-carpeted in 2012. Both the 2009 and 2012 construction work involved additional costs for modifications to the library interiors to comply with Americans with Disabilities Act requirements.

The project to replace the deteriorating roof and update the fire alarm system will ensure the continuation of safe occupancy and delivery of services at the main library for the next 30 years. The project will substantially reduce maintenance costs related to roof leaks and false fire alarms, which divert limited resources away from service delivery.

There currently are no plans to build a new main library facility in the foreseeable future due to lack of resources and because the current facility has sufficient square footage to accommodate current and projected population growth through 2050. Although these main library critical infrastructure needs were first identified by the City in 2016, multiple other City facilities and infrastructure projects also are in critical need of replacement and in past years these other projects were placed at higher priority than the main library for limited resources.

The project has two main components:

1. Replace the deteriorated and leaking 30,000 square foot main library roof with a new roof and replace wooden roof support beams damaged by dry rot.
2. Replace outdated and malfunctioning main library fire alarm panel, annunciator, smoke detectors, pull stations and sprinkler activation system.

If the City Council adopts the resolution in Attachment A accepting the grant funding and authorizing the project, staff will update the City's Capital Improvement Program and the project will proceed according to the project implementation plan with a target completion date in September 2024 (Attachment B.)

### **Impact on City Resources**

There is no direct impact to the General Fund associated with the recommended City Council action. The estimated total cost to replace the main library's deteriorated roof and wooden support beams and install a new fire alarm, detection and sprinkler activation system is approximately \$1.028 million. If City Council accepts the Building Forward infrastructure grant, then the City will receive \$509,179 in grant funding toward these critical infrastructure replacement costs. The Building Forward infrastructure grant requires a 1:1 local cash match. The City has sufficient match funding available in unexpended capital project fund balances, primarily from past main library facility improvement projects. Approximately \$362,000 is available

fund balance in capital project Fund 400 - Library GO Bond 1990, which consists of leftover funds from a general obligation bond approved by Menlo Park voters in 1990 to construct a major addition to the main library at that time, and which funding may only be used toward capital improvements to the main library facility. Also, approximately \$122,000 is available in capital project Fund 510 - Library Addition which consists of leftover funds from previously completed library renovation projects. The remaining approximately \$25,000 needed to complete the required \$509,179 cash match is available in the general capital Fund 501 buildings (minor) project balance. If City Council accepts the Building Forward infrastructure grant and authorizes the city manager to submit the required final application and related documentation and execute the grant agreement, then staff will bring a budget authorization to City Council during the midyear budget review in early 2023 to formally allocate the above noted match funding to the Building Forward infrastructure grant project.

### **Environmental Review**

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

### **Public Notice**

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

### **Attachments**

- A. Resolution
- B. Initial application
- C. Grant award letter

Report prepared by:  
Sean S. Reinhart, Library and Community Services Director  
Nikki Nagaya, Public Works Director

**RESOLUTION NO. XXXX**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
AUTHORIZING THE GRANT APPLICATION, ACCEPTANCE, AND  
EXECUTION OF THE GRANT FUNDS FROM THE STATE OF CALIFORNIA  
BUDGET ACT OF 2021 (SB 129)**

WHEREAS, the Legislature and Governor of the State of California have provided funds for the program shown above; and

WHEREAS, the California State Library has been delegated the responsibility for the administration of this grant program, establishing necessary procedures; and

WHEREAS, said procedures established by the California State Library require a resolution certifying the approval by the potential grantee's governing board either before submission of said application(s) to the State or prior to execution of the grant agreement; and

WHEREAS, the Applicant/Grantee, if selected, will enter into an agreement with the State of California to carry out the project

WHEREAS, the City of Menlo Park proposes to implement the Menlo Park Main Library Critical Infrastructure Needs project;

WHEREAS, the City of Menlo Park has the legal authority and is authorized to enter into a funding agreement with the State of California; and

WHEREAS, the City of Menlo Park intends to apply for grant funding from the California State Library for the Menlo Park Main Library Critical Infrastructure Needs project;

NOW, THEREFORE, BE IT RESOLVED, by the Menlo Park City Council, with acknowledgement of Menlo Park Public Library, as follows:

1. That pursuant and subject to all of the terms and provisions of the California Budget Act of 2021, the City of Menlo Park City Manager, or designee is hereby authorized and directed to prepare and file an application for funding with the California State Library, and take such other actions necessary or appropriate to obtain grant funding.
2. The City of Menlo Park City Manager, or designee is hereby authorized and directed to execute the funding agreement with the California State Library and any amendments thereto.
3. The City of Menlo Park City Manager, or designee is hereby authorized and directed to submit any required documents, funding requests, and reports required to obtain grant funding.
4. Certifies that the project will comply with any laws and regulations including, but not limited to, the California Environmental Quality Act (CEQA), legal requirements for building codes, health and safety codes, the California Labor Code, disabled access laws, and, that prior to commencement of the project, all applicable permits will have been obtained.

//

//

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifteenth day of November, 2022, 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 \_\_ day of November, 2022.

---

Judi A. Herren, City Clerk



(/sp/buildingforward)

## Part 1: Basic Information ▾

Save Changes

Close

To save your work and finish later, click **Save Draft**.

When finished with this section, click **Mark Complete** on the right side of the page. You will still be able to edit this section until the entire application has been submitted.

**This form is now marked complete.**

*Last saved on 3/21/2022 at 7:02:59 AM*

### Project Information

#### Project Title \*

Menlo Park Main Library Critical Infrastructure Needs

#### Project Summary \*

Replace the deteriorated and leaking Main Library roof with a new 30,000 square foot asphalt shingle roof. Replace wooden roof support beams damaged by dry rot. Replace outdated and malfunctioning Main Library fire alarm panel, annunciator, smoke detectors, pull stations, and sprinkler activation system.

Word Count: **46 / 50**

#### Requested Grant Amount \*

\$ 514,190

The maximum grant amount is \$10 million per facility. Enter whole numbers only.





(/sp/buildingforward)

## Part 2: Project Detail & Implementation ▾

Save Draft

Mark Complete

Close

To save your work and finish later, click **Save Draft**.

When finished with this section, click **Mark Complete** on the right side of the page. You will still be able to edit this section until the entire application has been submitted.

### Detailed Project Information

Please tell us more about your project, how you plan to implement it, and the impact it will have.

**Project Description \***

Save Draft

Mark Complete

Close

The project has two main components:

1. Replace the deteriorated and leaking 30,000 square foot Main Library roof with a new asphalt shingle roof and replace wooden roof support beams damaged by dry rot.
2. Replace outdated and malfunctioning Main Library fire alarm panel, annunciator, smoke detectors, pull stations, and sprinkler activation system.

These Main Library building systems were first identified in 2016 as critical infrastructure systems in need of replacement. However, the City has multiple critical infrastructure needs related to other City facilities, streets, and utilities, all of which have consistently been placed at higher priority than the Main Library for several years.

If California State Library Building Forward grant funding is awarded in the amount of \$514,190, then the City Council of Menlo Park will appropriate matching funds from available Capital Improvement Program fund balance to complete the Main Library critical infrastructure project by replacing the deteriorated roof and wooden support beams, and installing a new fire alarm, detection and sprinkler activation system for a total project cost estimated at \$1.028 million. If funded by California State Library, the project will proceed according to the Project Implementation Plan with a target completion date in September 2024.

The impact of the project will be to ensure the continuation of safe occupancy and operations at the Main Library for the estimated lifespan of the new roof and fire alarm systems, approximately 30 years through the year 2054. There being several other priority infrastructure projects across the City, the California State Library Building Forward grant funding will provide an important catalyst that will advance the Main Library project to first tier priority in the Capital Improvement Plan schedule.

Word Count: 277 / 350

## Project Status

Planning is in process



The status of the project at the time the application is submitted.

**List and describe the roles of all consultants involved in this project such as planning, construction, contractors, and project management. If not yet contracted, briefly detail your plan and timeline to solicit and select consultants. \***

Construction management will be handled in-house by the City's Public Works department. Planning approvals and inspections will be handled by the City's Community Development department. Project design, construction and installation will be bid out to qualified contractors through the standard City procurement process, with final contract awards subject to approval by Menlo Park City Council. The project work will be completed according to the California Building Standards Code, and applicable federal, state, and local laws, regulations, ordinances, policies, and guides.

Word Count: 55 / 200

**Briefly describe past relevant capital improvements to the facility, including year completed. \***

Menlo Park Main Library has been in its current location for 65 years. The original, 6400 square foot building was built in 1957. It was expanded in 1967 and 1991 to its total current floor space of 33,000 square feet on two levels.

The roof area is approximately 30,000 square feet with a moderate pitch approximately 4:12. The current roof material is ceramic shingles installed in 1991. The ceramic shingles have become damaged over time by normal maintenance-related foot traffic which has cracked many shingles and caused hairline leaks which are virtually impossible to repair with the current material. The recommended replacement material is asphalt shingle which is more durable to foot traffic and easier to maintain.

The fire alarm panel, annunciator, smoke detectors, pull stations, and sprinkler activation system were installed in 1991. The system is outdated and frequently malfunctions resulting in regularly occurring false alarms.

The library children's room was remodeled in 2009. The front lobby was remodeled in 2012 to install an automated materials handling system. The building was re-carpeted in 2012. Both the 2009 and 2012 construction work involved additional costs for modifications to the library interiors to comply with Americans with Disabilities Act requirements.

Word Count: 199 / 200

**How will your project address conditions that negatively impact your library's ability to deliver needed services? \***

The project will ensure the continuation of safe occupancy and delivery of services at the Main Library through the year 2054. The project will substantially reduce maintenance costs related to roof leaks and false fire alarms, which divert limited resources away from service delivery. There are no plans to build a new Main Library facility in the foreseeable future due to lack of resources and because the current facility has sufficient square footage to accommodate current and projected population growth through 2050. Although these Main Library Critical Infrastructure Needs were first identified in 2016, multiple other City facilities and infrastructure projects also are in critical need of replacement and year after year these other projects are consistently placed at higher priority than the Main Library for limited resources. The California State Library Building Forward grant funding will provide the needed catalyst to advance the Main Library project to first tier priority in the City's Capital Improvement Plan schedule for completion by the end of 2024.

Word Count: 161 / 200

**Describe how your project contributes to: sustainability, inclusive access, and/or the ability of the facility to adapt to evolving needs. \***

The project contributes indirectly to sustainability by reducing the energy consumption of the facility. A new roof will reduce energy consumption by eliminating the need to run electric fans to dry out carpets and other interior materials when the roof leaks. A new roof also will marginally improve the building insulation properties and reduce energy consumption used for heating and cooling. A new fire alarm system will consume less energy than the current outdated and malfunctioning system by eliminating false alarms and through the application of newer and more energy efficient electrical components. The project contributes directly to the ability of the facility to adapt to evolving needs by significantly extending the lifespan of the current building and reducing maintenance and repair costs which would otherwise divert limited resources away from meeting the community's library service delivery needs.

Word Count: 138 / 200

## Project Implementation

Please use the Project Implementation Form to outline the steps you will take to implement your project, including approximate start and end dates. The Project Implementation template can be found online: <https://www.library.ca.gov/grants/buildingforward> (<https://www.library.ca.gov/grants/buildingforward>)

### Upload Project Implementation Form \*

## Supporting Documentation

This is your opportunity to show us what the project is and why it is needed. This may include photos, video, reports, planning documents, etc. No more than 3 supporting documents will be accepted.

### File Upload

### File Upload

### File Upload



(<http://www.wizehive.com/>)

## Building Forward Library Infrastructure Grant Program Project Implementation Plan

### Project

<b>Organization:</b>	MENLO PARK PUBLIC LIBRARY
<b>Project Title:</b>	Menlo Park Main Library Critical Infrastructure Needs
<b>Facility:</b>	Main Library

### Project Timeline

Using the table below, detail the major project activities or key milestones and when they will occur.

**Note: All grant funds must be expended by March 31, 2026.**

Activity	Month/Year Started	Month/Year Completed
Main Library facility needs assessment	July 2016	March 2017
Capital Improvement Plan (CIP) approval	April 2021	June 2021
Roof replacement estimate	February 2022	March 2022
Fire alarm system replacement estimate	February 2022	March 2022
California State Library infrastructure grant application / award	March 2022	Spring 2022
Local match funding appropriated	June 2022	September 2022
Project manager assigned	January 2023	February 2023
Contract out to bid / bid award	June 2023	September 2023
Design, permitting and approvals	October 2023	March 2024
Services move to temporary library location	March 2024	April 2024
Start of construction – roof + fire alarm system (concurrent)	May 2024	June 2024
Inspections and certifications	June 2024	July 2024
Project completion	July 2024	August 2024
Services resume in Main Library	August 2024	September 2024

MENLO PARK PUBLIC LIBRARY  
Damaged/failing roof support beam.  
Photo taken at Menlo Park Main Library on March 21, 2022



MENLO PARK PUBLIC LIBRARY  
Damaged/failing roof support beam.  
Photo taken at Menlo Park Main Library on March 21, 2022





MENLO PARK PUBLIC LIBRARY  
Interior water damage due to roof leaks.  
Photo taken at Menlo Park Main Library on March 21, 2022





(/sp/buildingforward)

## Part 3: Budget & Funding ▾

Save Changes

Close

To save your work and finish later, click **Save Draft**.

When finished with this section, click **Mark Complete** on the right side of the page. You will still be able to edit this section until the entire application has been submitted.

**This form is now marked complete.**

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### Total Project Budget (including grant, match, and additional funding) \*

\$ 1,028,380

Enter whole numbers only.

## Project Budget

Please outline your project's budget by category and line item. The Project Budget template can be found online: <https://www.library.ca.gov/grants/buildingforward> (<https://www.library.ca.gov/grants/buildingforward>)

### Upload Budget Form \*

+ Select a file

MENLO-PARK\_building-forward-budget-pla



[Save Changes](#)[Close](#)

**Describe the basic elements of the budget, how the budget was created, and the methodology for any project contingency. \***

The project budget is comprised of four basic elements - Pre-construction, Construction, Administration, and Contingency. The budget was created using estimates provided by qualified roof construction and fire alarm system consultants, based on the physical attributes and condition of the Main Library. The recommended project contingency for a roof replacement of this condition, in which dry rot is present and visible in wooden support beams, and in which water intrusion has been recurrent for several years, is higher than the grant's allowable maximum contingency of 10%. For this reason, the maximum allowable contingency of 10% is included in the grant request, with an additional 10% contingency to be matched from City funding sources.

Word Count: **105 / 200**

## Project Funding

**Funding from Other Sources \***

\$	514,190
----	---------

Including required matching funds. Enter whole numbers only.

**Has funding from all other sources been secured? \***

- Yes
- No

**Explain \***

If California State Library Building Forward grant funding is awarded in the amount of \$514,190, the City of Menlo Park will appropriate matching funds from available Capital Improvement Program fund balance to complete the Main Library critical infrastructure project at a total estimated project cost at \$1.028 million. If funded by California State Library, the project will proceed according to the Project Implementation Plan with a target completion date in September 2024.

Word Count: 72 / 150

**List other project funding sources, including any sources and amounts for matching funds and any related requirements to obtaining funds. \***

Matching funds are subject to City Council approval from available Capital Improvement Program fund balance. The City's capital needs greatly exceed the available fund balance. The City typically transfers \$3 million per year to the capital improvement fund. By comparison, the City's total outstanding capital needs are estimated at \$202 million for the years 2021-26.

Word Count: 55 / 200

**Funding Background****If applicable, describe past attempts to fund this project, including other funding sources sought and key obstacles to secure funds. \***

The Main Library Critical Infrastructure Needs were first identified in 2016, but multiple City facilities and infrastructure projects also are in critical need of replacement and are consistently placed at higher priority for limited resources. The California State Library Building Forward grant funding will provide the needed catalyst to advance the Main Library project to first tier priority in the City's Capital Improvement Plan schedule for completion by the end of 2024.

Word Count: 72 / 200

**If grant funding is not approved, or if only a portion of the requested funding for the project is awarded, explain how the project will be completed. \***

If grant funding is not approved, then the project will be delayed beyond 2024 due to lack of resources. If only a portion of the requested funding is awarded, depending on the reduced amount of the award, then it may be possible to limit the project to one of the two major elements, either the roof replacement or the fire alarm system replacement.

Word Count: 63 / 200

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## Building Forward Library Infrastructure Grant Program Budget Plan

### Project

<b>Organization:</b>	MENLO PARK PUBLIC LIBRARY
<b>Project Title:</b>	Menlo Park Main Library Critical Infrastructure Needs
<b>Facility:</b>	Main Library

### Project Budget

Detail the planned project expenditures within the categories below. For costs not falling within the categories below, describe costs in the blank cells below. If requesting a match reduction, create your budget based upon your request.

Match requests are not guaranteed. You may be asked to revise your budget accordingly.

Budget Category	Building Forward Funds	Applicant Funds (Including Match)	Other Funding Source	Total
<b>Project Administration</b> <i>Cannot exceed 10% of total grant request</i>				
Roof - Salaries/Wages/Benefits	\$41,500	\$41,500		\$83,000
Fire alarm - Salaries/Wages/Ben.	\$7,400	\$7,400		\$14,800
Project - Printing & Postage	\$2,500	\$2,500		\$5,000
<b>Subtotal:</b>	<b>\$51,400</b>	<b>\$51,400</b>	<b>\$0</b>	<b>\$102,800</b>
<b>Planning, Design, Other Pre-Construction/Implementation</b> <i>(Engineering, Environmental Review, etc.)</i>				
Roof - Consultant Fees - Design	\$16,500	\$16,500		\$33,000
Roof - Planning fees	\$3,250	\$3,250		\$6,500
Fire alarm - Consultant Fees - Design	\$3,500	\$3,500		\$7,000
Fire alarm - Planning fees	\$1,600	\$1,600		\$3,200
<b>Subtotal:</b>	<b>\$24,850</b>	<b>\$24,850</b>	<b>\$0</b>	<b>\$49,700</b>
<b>Construction/Implementation</b>				
Roof - Construction	\$345,000	\$345,000		\$690,000
Roof - 5% Inspection	\$14,100	\$14,100		\$28,200
Fire alarm - Installation	\$26,500	\$26,500		\$53,000
Fire alarm - 5% inspection	\$1,040	\$1,040		\$2,080
<b>Subtotal:</b>	<b>\$386,640</b>	<b>\$386,640</b>	<b>\$0</b>	<b>\$773,280</b>
<b>Project Contingency (10%)</b>	<b>\$51,300</b>	<b>\$51,300</b>		<b>\$102,600</b>
<b>Total</b>	<b>\$514,190</b>	<b>\$514,190</b>	<b>\$0</b>	<b>\$1,028,380</b>



(/sp/buildingforward)

## Part 4: Match Requirement ▾

Save Changes

Close

To save your work and finish later, click **Save Draft**.

When finished with this section, click **Mark Complete** on the right side of the page. You will still be able to edit this section until the entire application has been submitted.

**This form is now marked complete.**

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### Match

**Are you able to match grant funds on a dollar-for-dollar basis? \***

Yes

No

*Other State funds are not an allowable match contribution.*

### Availability of Match Funds

A letter from Finance Director or equivalent verifying availability match funds is optional at the time this application is submitted. A letter will be required if grant funds are awarded.

**Letter confirming the availability match funds (optional)**

+ Select a file



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## Part 5: Certification ▾

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To save your work and finish later, click **Save Draft**.

When finished with this section, click **Mark Complete** on the right side of the page. You will still be able to edit this section until the entire application has been submitted.

**This form is now marked complete.**

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### Certification and Signature

This application is being submitted by the eligible applicant organization that will administer grant funds if awarded. The authorized representative is the person designated by the applicant organization's governing body to enter into agreements on behalf of the applicant organization. The authorized representative must certify this application before it is submitted. By typing your name below, you are signing this application electronically. You agree that the information submitted on this application is correct and true. Your electronic signature is the legal equivalent of your manual signature on this application.

**Name of Authorized Representative \***

Sean S. Reinhart

Name of person authorized to sign this grant application.

**Title of Authorized Representative \***

Director of Library and Community Services

Title of person authorized to sign this grant application.

**Signature \***

Authorized representative must complete the electronic signature before the application can be submitted.

## Authorizing Resolution

A signed resolution by your organization's governing body designating an authorized representative and approving acceptance of grant funds is optional at the time this application is submitted. A resolution will be required if grant funds are awarded. Suggested resolution language can be found in the Building Forward grant guidelines available online at: <https://www.library.ca.gov/grants/buildingforward> (<https://www.library.ca.gov/grants/buildingforward>). If the signed resolution is available now, you may upload it here.

**Authorizing Resolution (if available)**

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## Library Information

### Library Jurisdiction \*

MENLO PARK PUBLIC LIBRARY



### Name of Library Facility \*

Main Library

### Facility Street Address 1 \*

800 Alma St

### Facility Street Address 2

800 Alma St.

### City \*

Menlo Park

### State \*

California



### Zip Code \*

94025

### Is the facility leased? \*

Yes

No

## Project Contact

Person able to answer questions about this application or project.

### Name \*

Sean Reinhart

### Title \*

Director of Library and Community Services

**Email Address \*****Phone Number \***

Please use the format 123-456-7890.

*Last saved on 3/21/2022 at 7:02:59 AM*

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October 19, 2022

Justin Murphy  
City Manager  
City of Menlo Park  
701 LAUREL ST  
Menlo Park, CA 94025

Subject: Building Forward, Library Infrastructure Grant  
MENLO PARK PUBLIC LIBRARY  
Main Library  
Grant No. BF-1-21-025

Dear Justin Murphy:

This letter confirms the California State Library's award of \$509,179 in Building Forward grant funds to the City of Menlo Park for the Menlo Park Main Library Critical Infrastructure Needs project at the Main Library. These grant funds are intended to be used toward the project components detailed in the Intent to Fund letter dated September 12, 2022, and on the last page of this letter.

Per your application and the requirements set forth in SB 129 (2021), the City of Menlo Park will contribute \$509,179 toward the project. Match funds are subject to the same restrictions as grant funds; may not be spent on any unallowable costs; and must be spent during the grant period at the same rate as grant funds.

This grant is governed by the Grant Agreement and Certification of Compliance. These documents, along with the first allocation claim form, will be sent separately to your organization's authorized representative by email through DocuSign and they must be signed using the DocuSign system.

The following supporting documents are also required and must be submitted through the State Library's online grant portal at: <https://webportalapp.com/sp/buildingforward>:

- Final Project Budget
- Final Project Implementation Plan

Library – Courts Building  
P.O. Box 942837  
Sacramento, CA 94237-0001

916-323-9759  
[csi-adm@library.ca.gov](mailto:csi-adm@library.ca.gov)  
[www.library.ca.gov](http://www.library.ca.gov)

- A resolution from the grantee organization's governing body approving acceptance of grant funds and designating an Authorized Representative allowed to enter into agreements on behalf of the organization
- If applicable: A letter from the grantee organization's Chief Financial Officer, Finance Director, or equivalent confirming availability of matching funds (Required for all grantees contributing local match funds.)
- If applicable: A current facility lease with a term extending at least ten years after the end of the grant period. (Required for all projects involving leased buildings.)

The City of Menlo Park will receive \$254,590 of the award following the submission and approval of all required documents. The remaining funds will be made available following the grantee's completion of the requirements outlined in the Grant Agreement and Certification of Compliance document included in the Award Packet, and in accordance with the payment schedule.

**Please complete and submit all supporting documents within 30 days of receipt of this letter. Contact your grant monitor if you are not able to provide all documentation by that time.**

The State Library grant monitor for this project is Libby Carlson. Your grant monitor can be reached by email at [libby.carlson@library.ca.gov](mailto:libby.carlson@library.ca.gov) or phone at (916) 603-6705. Your grant monitor will be available to assist you throughout your grant period.

Hard copies of this correspondence will not follow. Please keep the entirety of this correspondence for your files and consider these award materials as your original documents.

Best wishes for a successful project.

Respectfully yours,

Greg Lucas  
California State Librarian

Building Forward Library Infrastructure Grant Program

BF-1-21-025

Page 3

Enclosures: Grant Agreement (for reference only)  
Final Project Budget Form and List of Unallowable Costs  
Final Project Implementation Plan Form  
Sample Authorizing Resolution

CC: Libby Carlson  
Annly Roman  
Reed Strege  
State Library Fiscal Office

## THE BASICS – YOUR GRANT AWARD

The following provides all the basic information about your grant and managing your grant.

Grant #:	BF-1-21-025
Organization:	City of Menlo Park
Library:	MENLO PARK PUBLIC LIBRARY - Main Library
Project Title:	Menlo Park Main Library Critical Infrastructure Needs
Grant Award Amount:	\$509,179
Local Match Amount:	\$509,179
Total Project Budget:	\$1,018,358
Grant Period Start Date:	Upon execution of Grant Agreement
Grant Period End Date:	No later than March 2026
Approved Uses (Outputs):	Replace Deteriorated Main Library Roof Replace Outdated Fire Alarm System

Please understand that it can take from six to eight weeks after a completed claim form with no errors has been received before grant funds are delivered. If you have not received your payment after eight weeks, please contact your grant monitor.

## REPORTING

The City of Menlo Park is required to provide financial and narrative reports throughout the grant period as outlined in the Grant Agreement and Certificate of Compliance. A final financial and narrative report will be due within 30 days after the project is complete. Grantees will also be required to provide updates throughout the grant period upon request. Progress documentation (e.g. photos or video of grant-funded work) will be required with each report. Reports should be submitted to your grant monitor.

## PAYMENTS

Grant payments will be made based on the payment schedule specified in the Grant Agreement. Ten percent (10%) of the full grant award will be withheld until the end of the project period. It is payable only if the grant recipient fulfills all project reporting requirements and expends all funds, or returns all unspent grant funds, by the time specified in the grant terms and conditions. Note: This 10% is separate from the project contingency (if one was included in the budget).

## GRANT MONITOR CONTACT

We want your project to be successful. Please work with your grant monitor throughout implementation of your project.

Grant Monitor:	Libby Carlson
Email Address:	libby.carlson@library.ca.gov
Phone Number:	(916) 603-6705





STATE FUNDED GRANTS  
**AWARD AGREEMENT AND  
CERTIFICATE OF COMPLIANCE**

DRY



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## **PROJECT SUMMARY**

### **Award Agreement between the California State Library and City of Menlo Park for the MENLO PARK PUBLIC LIBRARY - Main Library project.**

#### **AWARD AGREEMENT NUMBER BF-1-21-025**

This Award Agreement ("Agreement") is entered into on the date of execution of the agreement by and between the California State Library ("State Library") and City of Menlo Park ("Grantee").

This Award Agreement pertains to Grantee's State-funded project at the MENLO PARK PUBLIC LIBRARY - Main Library.

The Library Development Services Bureau ("LDS") of the State Library administers state and federal funds in the form of awards.

The Grantee was selected by the State Library to receive state grant funds in the amount of \$509,179 through the process adopted by the State Library in administering such grants.

The State Library and the Grantee, for the consideration and under the conditions hereinafter set forth in the Grant Agreement, agree as follows:



## **PROCEDURES and REQUIREMENTS**

### **A. Term of the Agreement**

The Grant term begins on the date of execution of the Agreement by both parties, until March 31, 2026. If completion of the project occurs prior to the end of the grant period this will be the end date of the term of this agreement. Grant eligible program expenditures may begin no earlier than the start date. The project period ends on March 31, 2026, and all grant project costs must be incurred by this date.

### **B. Scope of Work**

1. Grantee agrees to perform all activities specifically identified in the Grantee's submitted application and award packet.
2. The following activities and deliverables to be performed by the Grantee include, but are not limited to the following:
  - Maintain and keep records of expenditures related to the grant that are consistent with Generally Acceptable Accounting Practices (GAAP).
  - Make financial records available to the State Library upon request.
  - Work with the State Library staff to assure that funds are disbursed in compliance with the purpose of the grant.
  - Prepare and submit required narrative and financial reports.
  - Procure equipment, and other supplies as needed for the project.
  - Issue contracts for services, personnel, and consultants as needed for the project.
  - If applicable, make payments for services, including for hours worked and travel reimbursements, to consultants and contractors.
  - Oversee the implementation of project activities.

### **C. Budget Detail**

The State Library shall provide the Grantee funding for the expenses incurred in performing the activities specified in the Grantee's award packet documentation. The Grantee shall request the distribution of grant funding consistent with the approved project budget incorporated herein, and according to the payment schedule

specified in this Agreement. Under no circumstances shall payments exceed the total grant amount identified in this Agreement.

## D. Reports

1. The Grantee shall be responsible for submission of interim and final **narrative and financial** reports on the progress and activities of the project, to the State Library, using the sample report documents provided by the State Library. Visual documentation (e.g. still or video photography) will be required as part of each Narrative Report.
2. All the reports must be current, include all required sections and documents, and must be approved by the Grant Monitor before any payment request can be processed. Failure to comply with the specified reporting requirements may be considered a breach of this Agreement and result in the termination of the Agreement or rejection of the payment request and/or forfeiture by the Grantee of claims for costs incurred that might otherwise have been eligible for grant funding. Any problems or delays must be reported immediately to the Grant Monitor. The financial reports shall reflect the expenditures made by the Grantee under the Agreement and may be incorporated into the same reporting structure as the narrative reports.
3. The reports shall be submitted by the following dates:

Reporting Period	Report	Due Date
Project start date – March 2023	Financial Reports Due	May 1, 2023
April 2023 -June 2023	Financial Reports, Expenditure Detail, and Narrative Reports Due	July 31, 2023
July 2023 – September 2023	Financial Reports Due	October 31, 2023
October 2023- December 2023	Financial Reports, Expenditure Detail, and Narrative Reports Due	January 31, 2024
January 2024- March 2024	Financial Reports Due	April 30, 2024
April 2024 -June 2024	Financial Reports, Expenditure Detail, and Narrative Reports Due	July 31, 2024
July 2024– September 2024	Financial Reports Due	October 31, 2024

October 2024- December 2024	Financial Reports, Expenditure Detail, and Narrative Reports Due	January 31, 2025
January 2025- March 2025	Financial Reports Due	April 30, 2025
April 2025 -June 2025	Financial Reports, Expenditure Detail, and Narrative Reports Due	July 31, 2025
July 2025- September 2025	Financial Reports Due	October 31, 2025
October 2025- December 2025	Financial Reports, Expenditure Detail, and Narrative Reports Due	January 30, 2026
January 2026- March 2026	Final Financial, Narrative, and Expenditure Reports Due	April 30, 2026

4. Failure to submit timely reports with the appropriate documentation by the due date may result in rejection of the payment request and/or forfeiture by the Grantee of claims for costs incurred that might otherwise have been eligible for grant funding.
5. The Grantee agrees to maintain records and supporting documentation pertaining to the performance of this grant, subject to possible audit for a minimum of five (5) years after final payment date or grant term end date, whichever is later. Please refer to Exhibit A, Terms and Conditions for more information.

## **E. Claim Form and Payment**

1. The State Library shall provide the Grantee payment as outlined in the payment schedule only if all requirements for claiming the funds as outlined in this document have been met, and only for those activities and costs specified in the approved award packet documentation.
2. The Grantee shall complete, sign, and submit the Certification of Compliance form (Exhibit C) and the Financial Claim form (included in your award packet), to the State Library within 30 days of receiving this award packet. These forms will be issued, signed, and submitted using the online signature and agreement platform, DocuSign, unless DocuSign is unallowable or inconsistent with practices and policies of the local jurisdiction. If the use of DocuSign is not acceptable to the Grantee organization, please contact the grant monitor regarding alternate options.

3. Any of the sums appearing under the categories in the approved budget may be adjusted with prior authorization from the State Library Grant Monitor. This would be to increase the allotment with the understanding that there will be corresponding decreases in the other allotments so that the total amount paid by the State Library to the Grantee under this Agreement shall not exceed the awarded amount, which shall be expended/encumbered during the grant period.
4. If the payment amount made by the State Library exceeds the actual expenses incurred during the term of this Agreement, as reflected in the financial reports to be filed by the Grantee, the Grantee shall immediately refund the excess payment amount to the State Library.
5. The Award payments will only be made to the Grantee. It is the Grantee's responsibility to pay all contractors and subcontractors for purchased goods and services.
6. The Final Payment of 10% will be withheld and retained by the State Library (if applicable) until all conditions agreed upon in this Agreement have been satisfied.
7. **Prompt Payment Clause**  
The State Library will make payments to the Grantee in accordance with the Prompt Payment Clause under Government Code, section 927, *et. seq.* The Grantee may typically expect payment within 45 days from the date a grant payment request is properly submitted and approved by the Grant Monitor.
8. **Budget Contingency Clause**
  - a. It is mutually agreed that if the Budget Act of the current fiscal year or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall no longer be in full force and effect. In this event, the State Library shall have no liability to pay any funds whatsoever to the Grantee or to furnish any other considerations under this Agreement and the Grantee shall not be obligated to perform any provisions of this Agreement.
  - b. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this Program, the State Library shall have the option to either cancel this Agreement with no liability occurring to itself or offer an Agreement amendment to the Grantee to reflect the reduced amount.



## EXHIBIT A: TERMS and CONDITIONS

1. Accessibility: The State is responsible for ensuring that public websites are accessible to both the general public and state employees, including persons with disabilities. Grantee shall assist the State in meeting its responsibility. Therefore, all project materials generated by state funded programs must meet the [California Accessibility Standards](#). Additionally, all project materials designed, developed, and maintained shall be in compliance with the California Government Code, sections 7405 and 11135, and the Web Content Accessibility Guidelines 2.0, or a subsequent version, as published by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success criteria.

However, if for some reason project materials are not generated to be in compliance to meet these standards, please still submit it to the State Library. When submitting the material make sure to note that the material is not accessible by including "NOT ACCESSIBLE" in the file name.

The State Library reserves the right to post project materials to its website that are in compliance with these standards.

2. Acknowledgment: The State of California and the State Library shall be acknowledged in all promotional materials and publications related to the MENLO PARK PUBLIC LIBRARY - Main Library Project.
  - a. Grant award recipients must ensure that the State of California receives full credit as the source of funds and that the California State Library, likewise, is acknowledged as the administrator.
  - b. Publications and information releases about the project must credit the State of California. An appropriate statement for a publication or project press release is:

*"This [publication/project] was supported in whole or in part by funding provided by the State of California, administered by the California State Library."*

Grantees must include the above statement in any publications, vehicle wraps, and promotional materials, including websites. If space is limited the State Library logo and the following shortened acknowledgement statement is acceptable:



*"Funding provided by the State of California."*

This credit line on products of a project, such as materials, is important to foster support from the public, and state funding sources.

- c. California State Library Logo: Use of the State Library logo, which can be downloaded on the [California State Library website](#), is required on any publication, vehicle wrap, or promotional material along with the above statement(s).
  - d. Project Photography: Photographs and videos are a great way to document your project. If obtaining still or video photography featuring members of the public, Grantees should obtain a photo release form. Grantees may use their organization's image release form, or contact the State Library grant monitor for a sample image release form.
3. Agency: In the performance of this Agreement the Grantee and its agents and employees shall act in an independent capacity and not as officers, employees or agents of the State Library. The Grantee is solely responsible for all activities supported by the grant. Nothing in this Agreement creates a partnership, agency, joint venture, employment, or any other type of relationship between the parties. The Grantee shall not represent itself as an agent of the State Library for any purpose and has no authority to bind the State Library in any manner whatsoever.
  4. Amendment: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or agreement not incorporated into this Agreement is binding on any of the parties. This Agreement may be amended, modified, or augmented by mutual consent of the parties, subject to the requirements and restrictions of this paragraph.
  5. Applicable Law: The laws of the State of California shall govern all proceedings concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder. The parties hereby waive any right to any other venue. The place where the Agreement is entered into and place where the obligation is incurred is Sacramento County, California.
  6. Assignment, Successors, and Assigns: The Grantee may not assign this Agreement or delegate its performance to any third-party person or entity, either in whole or in part, without the State Library's prior written consent. The provisions of this Agreement shall be binding upon and inure to the benefit of the State Library, the Grantee, and their respective successors and assigns.
  7. Audit and Records Access: The Grantee agrees that the State Library, the Department of General Services, the State Auditor, or their designated representatives shall have the right to review, audit, inspect and copy any

records and supporting documentation pertaining to the performance of this Agreement. The Grantee agrees to maintain such records for possible audit for a minimum of five (5) years after the final payment, or grant term end date, whichever is later, unless a longer period of records retention is stipulated, or until completion of any action and resolution of all issues which may arise as a result of any litigation, dispute, or audit, whichever is later. The Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Grantee agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement.

Examples of audit documentation may include, but not limited to, competitive bids, grant amendments, if any, relating to the budget or work plan, copies of any agreements with contractors or subcontractors if utilized, expenditure ledger, payroll register entries, time sheets, personnel expenditure summary form, travel expense log, paid warrants, contracts and change orders, samples of items and materials developed with grant funds, invoices and/or cancelled checks.

8. Authorized Representative: Grantee and the State Library mutually represent that their authorized representatives have the requisite legal authority to sign on their organization's behalf.
9. Communication: All communications from either party, including an interim check-in at any time during the grant term, shall be directed to the respective grant monitor or representative of the California State Library or Grantee. For this purpose, the following contact information is provided below:

**City of Menlo Park**  
**Justin Murphy**  
**701 LAUREL ST**  
**Menlo Park, CA 94025**  
**jicmurphy@menlopark.org**  
**(650) 330-6725**

**California State Library**  
**Libby Carlson**  
**900 N Street**  
**Sacramento, CA 95814]**  
**libby.carlson@library.ca.gov**  
**(916) 603-6705**

1. Confidentiality: Grantee will maintain as confidential any material it receives or produces that is marked **Confidential** or is inherently confidential or is protected by privilege. Grantee agrees to alert the State Library to this status in advance, and State Library agrees to maintain this status in conformity with the Public Records Act.
2. Contractor and Subcontractors: Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any contractor or subcontractors, and no contract or subcontract shall relieve the

Grantee of his or her responsibilities and obligations hereunder. The Grantee agrees to be as fully responsible to the State for the acts and omissions of its contractors, subcontractors, volunteers, student interns, and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Grantee. The Grantee's obligation to pay its contractors and subcontractors is an independent obligation from the State's obligation to make payments to the Grantee. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any contractor or subcontractor.

3. Copyright: Grantee owns and retains titles to any copyrights or copyrightable material from any original works that it creates within the scope of this Agreement in accordance with the federal Copyright Act. (17 U.S.C. 101, *et seq.*) Grantee is responsible for obtaining any necessary licenses, permissions, releases, or authorizations to use text, images, or other materials owned, copyrighted, or trademarked by third parties and for extending such licenses, permissions, releases, or authorizations to the State Library pursuant to this section. Also, the State Library may upload, post or transmit copyrighted material produced or purchased with grant funds on a State Library website for public access and viewing.
4. Discharge of Grant Obligations: The Grantee's obligations under this Agreement shall be deemed discharged only upon acceptance and approval of the final report by State Library. If the Grantee is a non-profit entity, the Grantee's Board of Directors shall accept and certify as accurate the final report prior to its submission to California State Library.
5. Dispute Resolution: In the event of a dispute, Grantee will discuss the problem informally with the Grant Monitor. If unresolved, the Grantee shall file a written "Notice of Dispute" with the State Library Grant Monitor within ten (10) days of discovery of the problem. Within ten (10) days of receipt of the Notice of Dispute, the Grant Monitor shall meet with the Grantee for purposes of resolving the dispute. Any dispute arising under the terms of this Agreement which is not disposed of within a reasonable period of time, the Grantee may bring it to the attention of the State Librarian or the designated representative. The decision of the State Librarian or designated representative shall be final. Unless otherwise instructed by the Grant Monitor, the Grantee shall continue with its responsibilities under this Agreement during any dispute.
6. Drug-free Workplace: The Grantee certifies under penalty of perjury under the laws of California, that the Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code, § 8350 *et seq.*) 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 all of the following:
  - 1) The dangers of drug abuse in the workplace.
  - 2) The Grantee's policy of maintaining a drug-free workplace;
  - 3) Any available counseling, rehabilitation and employee assistance programs.
  - 4) Penalties that may be imposed upon employees for drug abuse violations.
- c. Require that every employee who works on the project funded through this Agreement will:
  - 1) Receive a copy of the Grantee's drug-free workplace policy statement.
  - 2) Agrees to abide by the terms of the Grantee'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 grantee may be ineligible for award of any future state agreements if the State Library determines that the grantee has made a false certification or violated the certification by failing to carry out the requirements as noted above.

7. Effectiveness of Agreement: This Agreement is of no force or effect until signed by both parties.
8. Entire Agreement: This Agreement supersedes all prior agreements, oral or written, made with respect to the subject hereof and, together with all attachments hereto, contains the entire agreement of the parties.
9. Exclusive Agreement: This is the entire Agreement between the State Library and Grantee.
10. Executive Order N-6-22-Russia Sanctions: The Grantee shall comply with Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate grant agreements with, and to refrain from entering any new grant agreements with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Grantee is a target of Economic Sanctions or is conducting prohibited transactions with

sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Grantee advance written notice of such termination, allowing Grantee at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

11. Extension: The State Librarian or designee may extend the final deadline for good cause. The Grantee's request for an extension of the grant period must be made in writing and received by the California State Library at least 30 days prior to the final deadline.
12. Failure to Perform: The grant being utilized by the Grantee is to benefit the MENLO PARK PUBLIC LIBRARY - Main Library Project. If the Grant Monitor determines the Grantee has not complied with this Agreement, the Grantee may forfeit the right to reimbursement of any grant funds not already paid by the California State Library, including, but not limited to, the ten percent (10%) withheld.
13. Federal and State Taxes: The State Library shall not:
  - a. Withhold Federal Insurance Contributions Act (FICA) payments from Grantee's payments or make FICA payments on the Grantee's behalf; or
  - b. Make Federal or State unemployment insurance contributions on Grantee's behalf; or
  - c. Withhold Federal or State income taxes from Grantee's paymentsGrantee shall pay all taxes required on payments made under this Agreement including applicable income taxes and FICA.
14. Force Majeure: Neither the State Library nor the Grantee, its contractors, vendors, or subcontractors, if any, shall be responsible hereunder for any delay, default, or nonperformance of this Agreement, to the extent that such delay, default, or nonperformance is caused by an act of God, weather, accident, labor strike, fire, explosion, riot, war, rebellion, sabotage, flood, or other contingencies unforeseen by the State Library or the Grantee, its contractors, vendors, or subcontractors, and beyond the reasonable control of such party.
15. Forfeit of Grant Funds and Repayment of Funds Improperly Expended: If grant funds are not expended, or have not been expended, in accordance with this Agreement, the State Librarian or designee, at his or her sole discretion, may take appropriate action under this Agreement, at law or in equity, including requiring the Grantee to forfeit the unexpended portion of the grant funds, including, but not limited to, the ten percent (10%) withheld, and/or to repay to the State Library any funds improperly expended.
16. Fringe Benefit Ineligibility: Grantee agrees that neither the Grantee nor its employees and contract personnel are eligible to participate in any employee

pension, health benefit, vacation pay, sick pay or other fringe benefit plan of the State of California or the State Library.

17. Generally Accepted Accounting Principles: The Grantee is required to use Generally Accepted Accounting Principles in documenting all grant expenditures.
18. Grant Monitor: The Grant Monitor's responsibilities include monitoring grant progress, and reviewing and approving Grant Payment Requests and other documents delivered to the California State Library pursuant to this Agreement. The Grant Monitor may monitor Grantee performance to ensure Grantee expends grant funds appropriately and in a manner consistent with the terms and conditions contained herein. The Grant Monitor does not have the authority to approve any deviation from or revision to the Terms and Conditions (Exhibit A and B) or the Procedures and Requirements unless such authority is expressly stated in the Procedures and Requirements.
19. Grantee: The government or legal entity to which a grant is awarded and which is accountable to the State Library for the use of the funds provided.
  - a. The grantee will make reports to the State Librarian in such form and containing such information as may be required to ensure the proper used of funds consistent with the grantee's application, and award agreement and accompanying documentation submitted. The grantee will keep such records and afford such access as the State Library may find necessary to assure the correctness and verification of such reports.
20. Grantee Accountability: The Grantee is ultimately responsible and accountable for the manner in which the grant funds are utilized and accounted for and the way the grant is administered, even if the Grantee has contracted with another organization, public or private, to administer or operate its grant project. In the event an audit should determine that grant funds are owed to the State Library, the Grantee is responsible for repayment of the funds to the State Library.
21. Grantee Funds: It is mutually agreed that the Grantee is responsible for furnishing funds beyond the grant award that may be necessary to complete the project.
22. Independent Action: Grantee reserves the right to fulfill its obligations under this Agreement in an independent manner, at any location and at any time within the agreed-upon timeline. Grantee's employees or contract personnel shall perform all services required by this Agreement, but their time need not be devoted solely to fulfilling obligations under this Agreement. Grantee shall furnish all equipment and materials used to meet its obligations, and complete the Project. The State Library shall not provide any personnel or other resources beyond the grant award and is not required to provide training in connection with this Agreement.

23. Indemnification: Grantee agrees to indemnify, defend and save harmless the State of California, the State Library and its officers, employees, and agents, from any and all claims, losses, and liabilities accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Grantee in the performance of this Agreement.
24. License to Use: The State Library reserves a fully paid-up, royalty-free, nonexclusive, sub-licensable and irrevocable license to reproduce, publish, prepare derivative works, distribute or otherwise use, and to authorize third parties to use, any material received or maintained by Grantee in connection with this Agreement. This includes intellectual property, with or without third-party rights. All such usages will be for public library and State governmental purposes:
- a. The copyright in any work developed under this grant, sub-grant, or contract under this grant or sub-grant; and
  - b. Any rights of copyright to which a Grantee, sub-grantee, or a contractor purchases ownership with grant support.
25. Limitation of Expenditure: Expenditure for all projects must conform to the Grantee's approved budget and with applicable State laws and regulations. The total amount paid by the State Library to the Grantee under this Agreement shall not exceed \$509,179 and shall be expended/encumbered in the designated award period.
- During the award period, the Grantee may find that the approved budget may need to be modified. Budget changes, requests for additional funds, or requests for reductions in award funding must be discussed with the assigned State Library Grant Monitor and a Grant Award Modification may be required to be submitted according to the instructions. Approval is by the State Librarian or their designee. Adjustments should be reported on the next financial report. Any adjustments in approved budgets must be documented and documentation retained in project accounts.
26. Lobbying: Grantee confirms that the grant funds will not be used for the purposes of lobbying or otherwise attempting to influence legislation, as those purposes are defined by the U.S. Internal Revenue Code of 1986.
27. Non-Discrimination Clause: During this grant period, the Grantee and the Grantee's contractors, and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical

disability, mental disability, medical condition, genetic information, marital status, sex, age, sexual orientation, or military and veteran status. Grantee shall insure that the evaluation and treatment of contractors, employees and applicants for employment are free from such discrimination and harassment.

Additionally, Grantee, contractors, and subcontractors, if applicable, shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 *et seq.*), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 *et seq.*), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§ 11135-11139.5), and the regulations or standards adopted by the State Library to implement such article.

Grantee shall permit access by representatives of the Department of Civil Rights and the State Library upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or the State Library shall require ascertaining compliance with this clause. Grantee, and its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.) Grantee shall include the non-discrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under the Agreement.

28. Notices: All notices and other communications in connection with this Agreement shall be in writing, and shall be considered delivered as follows:
- a. **Electronic Mail (Email)**: When sent by e-mail to the last e-mail address of the recipient known to the party giving notice. Notice is effective upon transmission.
  - b. **DocuSign (e-signature platform)**: When sent via DocuSign a notification will be sent to the last e-mail address of the recipient known to the party giving notice. Notice is effective upon transmission.
  - c. **Grants Management System**: When sent via / uploaded to the State Library Grants Management System, a notification will be sent to the last email address of the recipient known to the party giving notice. Notice is effective upon transmission.
  - d. **Personally**: When delivered personally to the Grantee's physical address as stated in this Agreement.
  - e. **U.S. Mail**: Five days after being deposited in the U.S. Mail, postage prepaid, and addressed to Grantee's address as stated in this Agreement.
29. Order of Precedence: The performance of this Agreement shall be conducted in accordance with the Terms and Conditions, Procedures and Requirements, Certificate of Compliance, Project Summary, Implementation Plan, and Budget,



of this Agreement, or other combination of exhibits specified on the Grant Agreement Coversheet attached hereto (collectively referred to as "Terms"). Grantee's State Library-approved Application (Grantee's Application) is hereby incorporated herein by this reference. In the event of conflict or inconsistency between the articles, exhibits, attachments, specifications or provisions that constitute this Agreement, the following order of precedence shall apply:

- a. Grant Agreement Coversheet and any Amendments thereto
- b. Terms and Conditions
- c. Procedures and Requirements
- d. Certificate of Compliance
- e. Project Summary
- f. Grantee's approved outputs from the submitted application (including Budget and Implementation plan submitted as part of the required award documents)
- g. All other attachments hereto, including any that are incorporated by reference.

30. Payment:

- a. The approved Budget, if applicable, is attached hereto and incorporated herein by this reference and states the maximum amount of allowable costs for each of the tasks identified in the Implementation Plan submitted as part of the required award documents. The State Library shall provide funding to the Grantee for only the work and tasks specified in the list of approved outputs at only those costs specified in the Budget submitted as part of the required award documents and incurred in the term of the Agreement.
- b. The Grantee shall carry out the work described in the Implementation Plan in accordance with the approved Budget and shall obtain the Grant Monitor's written approval of any changes or modifications to the Implementation Plan, approved project outputs, or the approved Budget prior to performing the changed work or incurring the changed cost. If the Grantee fails to obtain such prior written approval, the State Librarian or designee, at his or her sole discretion, may refuse to provide funds to pay for such work or costs.
- c. The Grantee shall request funds in accordance with the funding schedule included in this Agreement.
- d. Ten percent (10%) will be withheld from the Payment Request (if applicable) and paid at the end of the grant term, when all reports and conditions stipulated in this Agreement have been satisfactorily completed. Failure by the grantee to satisfactorily complete all reports and conditions stipulated in this Agreement may result in forfeiture of any such funds withheld.

- e. Lodgings, Meals and Incidentals: Grantee's eligible costs are limited to the amounts authorized in the [California State Administrative Manual](#) (see Exhibit C or contact the Grant Monitor for more information).
  - f. Payment will be made only to the Grantee.
  - g. Reimbursable expenses shall not be incurred unless and until the Grantee receives a Notice to Proceed as described in the Procedures and Requirements.
31. Personal Jurisdiction: The Grantee consents to personal jurisdiction in the State of California for all proceedings concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties. Native American Tribal grantees expressly waive tribal sovereign immunity as a defense to any and all proceedings concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties.
32. Personnel Costs: Any personnel expenditures to be paid for with grant funds must be computed based on actual time spent on grant-related activities and on the actual salary or equivalent hourly wage the employee is paid for their regular job duties, including a proportionate share of any benefits to which the employee is entitled.
33. Pledge: This Agreement shall not be interpreted to create any pledge or any commitment by the State Library to make any other or further grants or contributions to Grantee, or any other person or entity in connection with the Project. It is mutually agreed that Grantee is responsible for furnishing funds beyond the grant award that may be necessary to complete outcomes or deliverables.
34. Privacy Protection: Both parties agree to protect the confidentiality of any non-public, personal information that may be contained in materials received or produced in connection with this Agreement, as required by Civil Code, section 1798, *et. seq.*
35. Prohibited Use: The expenditure under this program shall not be used to supplant Grantee efforts in other grant programs provided by the State Library.
36. Public Records Act: Material maintained or used by the State Library is considered "public record" under the Public Records Act (PRA) at Government Code, sections 6250, *et. seq.* This includes the Interim and Final reports, and any other written communications between the parties. Grantee agrees to ensure that all content contained in its written reports are appropriate for publication. Said material, along with all other reports, documentation and data collected during the term of the Agreement, will be subject to disclosure unless it qualifies for exemption under the PRA in whole or in part. Grantee agrees to alert the State Library as to a basis for exemption, if any exists.

37. Publicity Obligations: Grantee will notify the State Library of any promotional materials or publications resulting from the grant no later than five (5) days in advance of distribution, whether they are print, film, electronic, or in any other format or medium. Copies of all promotional materials will be provided to the State Library. Grantee will acknowledge the State Library's support as noted above. Grantee agrees that the State Library may include information about this grant and its outcomes in its own annual reports, with specific reference to Grantee, and may distribute such information to third parties.
38. Records: Communications, grant related documents, data, original receipts, and invoices must be maintained by Grantee and shall be made available to the State Library upon request. Grantee agrees to maintain adequate grant program records and adequate financial records consistent with generally accepted accounting practices, and to retain all records for at least five (5) years after the end-of-term. The State Library may monitor or conduct an onsite evaluation of Grantee's operation to ensure compliance with this Agreement, with reasonable advance notice.
39. Reduction of Waste: In the performance of this Agreement, Grantee shall take all reasonable steps to ensure that materials purchased or utilized in the course of the project are not wasted. Steps should include, but not be limited to: the use of used, reusable, or recyclable products; discretion in the amount of materials used; alternatives to disposal of materials consumed; and the practice of other waste reduction measures where feasible and appropriate.
40. Reimbursement Limitations: Under no circumstances shall the Grantee seek reimbursement pursuant to this Agreement for a cost or activity that has been or will be paid for through another funding source. The Grantee shall not seek reimbursement for any costs used to meet cost sharing or matching requirements of any other State Library funded program.
41. Reports and Claims: It is the responsibility of the grantee make the required reports and claims to the California State Library.
- a. The Grantee shall be responsible for submitting to the State Library Narrative Reports detailing progress and activities. The reports are due on the dates specified in the reporting schedule detailed in the Procedures and Requirements section.
  - b. The Grantee shall be responsible for submitting to the State Library Financial Reports reflecting Grantee expenditure activity. The reports are due on the dates specified in the reporting schedule detailed in the Procedures and Requirements section.
  - c. To obtain payment hereunder, the Grantee shall submit authorized claims provided by the State Library for that purpose, on each of the following

mentioned dates for payment, and the State Library agrees to reimburse the Library as soon thereafter as State fiscal procedures will permit.

- d. The final 10% of the grant award (if applicable) is payable only upon approval of all reports and receipt of claim form. Failure to provide timely reports is a serious breach of an award recipient's administrative duty under the award.
  - e. Payment will be provided to cover the expenditures incurred by the Grantee for the project in the following manner:
    - 1) \$254,590 upon the receipt and approval, by the State Library, of the submission of all required documents as stated in the award letter; execution of the agreement, certification, and claim form by the Grantee organization.
    - 2) The second payment in the amount of \$203,672 after the submission and approval of the January 31, 2024 report and receipt, by the State Library, of a completed claim form unless:
      - i. The grantee needs the funding prior to the January date in order for the project to progress. To obtain funding prior to January 31, 2024, the grantee must provide documentation to the grant monitor demonstrating effectively either (a) that the first award payment has been spent, or (b) why the second installment is needed in advance of the scheduled payment.
      - ii. The grantee's January 31, 2024, financial report demonstrates that they have not spent any of their initial payment. The second payment will be held until the Grantee demonstrates effectively that their project is moving forward and additional funding is needed.
    - 3) A final payment in the amount of \$50,917 will be made upon submission and approval of the final interim grant report and financial claim form.
42. Self-Dealing and Arm's Length Transactions: All expenditures for which reimbursement pursuant to this Agreement is sought shall be the result of arm's-length transactions and not the result of, or motivated by, self-dealing on the part of the Grantee or any employee or agent of the Grantee. For purposes of this provision, "arm's-length transactions" are those in which both parties are on equal footing and fair market forces are at play, such as when multiple vendors are invited to compete for an entity's business and the entity chooses the lowest of the resulting bids. "Self-dealing" is involved where an individual or entity is obligated to act as a trustee or fiduciary, as when handling public funds, and chooses to act in a manner that will benefit the individual or entity, directly or indirectly, to the detriment of, and in conflict with, the public purpose for which all grant monies are to be expended.

43. Severability: If any part of this Agreement is found to be unlawful or unenforceable, such provisions will be voided and severed from this Agreement, but the remainder of the provisions in the Agreement will remain in full force and effect.
44. Site Visits: The Grantee shall allow the State Library to access and conduct site visits, with reasonable notice, at which grant funds are expended and related work being performed at any time during the performance of the work and for up to ninety (90) days after completion of the work, or until all issues related to the grant project have been resolved. A site visit may include, but not be limited to, monitoring the use of grant funds, providing technical assistance when needed, and visiting the State funded project.
45. Termination: The Agreement shall be subject to termination by the State Librarian or designee upon notice to the Grantee at least thirty (30) days prior to the effective date of termination. In the event this Agreement is terminated, the Grantee shall deliver to the State Librarian copies of all reports, accounting, data, and materials prepared up to the date of termination. The State Librarian shall determine and pay the Grantee for necessary and appropriate expenditures and obligations up to the date of termination which have not been covered by prior installments previously paid to the Grantee. Upon such termination, the unused portion of the grant award must be returned to the State Library within 45 days. If funding has been advanced to the Grantee, any unobligated balances, as determined by the State Librarian, shall be returned to the State Library within 45 days of the notice of termination.
46. Timeline: Time is of the essence to this Agreement. It is mutually agreed between the parties that the Budget and the implementation plan included therein are part of the Agreement.
47. Unused Funds: At the end-of-term Grantee agrees to return any unexpended or unaccounted for funds to the State Library, or to submit a written request for an extension of the grant period. Funds will be considered unexpended or unaccounted if they were: (1) not used for their intended purpose, or (2) used inconsistent with the terms of this Agreement.

Funds will also be considered unaccounted for, and must be returned, if the proposal outcomes or deliverables are materially incomplete by the end-of-term or earlier termination, as determined by the State Library in its sole discretion.

48. Waiver of Rights: The State Library shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by State Library. No delay or omission on the part of State Library in exercising any rights shall operate as a waiver of such right or any other right. A waiver by State

Library of a provision of this Agreement shall not prejudice or constitute a waiver of State Library's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by California State Library, nor any course of dealing between the State Library and Grantee, shall constitute a waiver of any of State Library's rights or of any of Grantee's obligations as to any future transactions. Whenever the consent of State Library is required under this Agreement, the granting of such consent by State Library in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of the State Library.

49. Work Products: Grantee shall provide the State Library with copies of all final products identified in the Work Plan and Application. Grantee shall also provide the State Library with copies of all public education and advertising material produced pursuant to this Agreement.
50. Worker's Compensation: The State of California will not provide Workers' Compensation insurance for Grantee or Grantee's employees or contract personnel. If Grantee hires employees to perform services required by this Agreement, Grantee shall provide Workers' Compensation insurance for them. The Grantee is aware of Labor Code Section 3700, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the Labor Code, and the Grantee agrees to comply with such provisions before commencing the performance of the work of this Agreement.



## EXHIBIT B: ADDITIONAL TERMS AND CONDITIONS

1. California Building Codes: Activities funded under this Agreement, regardless of funding source, must be in compliance with all applicable California Building Codes (Cal Code Regs., Title 24).
2. California Environmental Quality Act: Activities funded under this Agreement, regardless of funding source, must be in compliance with the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.). Information on CEQA may be found in the [California State Clearinghouse Handbook](#).
3. Changes in a project: Any proposed change in the project requested by the Grantee, which would change the information provided during the application process, requires approval from the State Librarian prior to execution. The State Librarian shall have the sole authority to determine if a proposed change by the Grantee is approved or not approved. The State Librarian's decision is final and binding.
4. Compliance with Laws; Consents and Approvals: Grantee will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies having jurisdiction over either the Grantee, the Property, or the project, and with all applicable directions, rules and regulations of the Fire Marshal, health officer, building inspector and other officers of any such government or agency. All permits, consents, permissions and licenses required by any federal, state or local government or agency to which Recipient, the Property, or the Infrastructure Project is subject, which may be necessary in relation to this Agreement, development, construction or ownership of the Infrastructure Project, at or prior to the commencement of construction, have been, or will be, obtained, and none of such consents, permissions and licenses are subject to appeal or to conditions which have not been met.
5. Contractors and Subcontractor: For the performance of all construction work on the Project, Grantee agrees to use a licensed general contractor or contractors ("Contractor"), in good standing, in order to complete the work described in the grant application. The Grantee hereby certifies that the Contractor is in good standing with the California State Contractors' License Board. The Grantee shall only

contract with contractors who are licensed and shall ensure that the Contractor and any successor thereto shall only contract with subcontractors, that are also so licensed.

6. Contractor Insurance/Bond: Grantees shall be responsible for ensuring that any contractors/subcontractors hired for grant-funded work have all relevant bonds and insurance in place in compliance with prevailing wage and other applicable state and federal laws, the Department of Industrial Relations, and the Department of Consumer Affairs Contractors State License Board requirements.

Insurance:

a. Casualty Insurance

- i. The Contractor shall procure and maintain insurance on all of its operations with companies acceptable to the State as follows:
  - 1) The Contractor shall keep all insurance in full force and effect from the beginning of the work through contract acceptance.
  - 2) The Contractor shall maintain completed operations coverage with a carrier acceptable to the State through the expiration of the patent deficiency in construction statute of repose set forth in Code of Civil Procedure Section 337.1.

b. Workers' Compensation and Employer's Liability Insurance

- i. In accordance with Labor Code Section 1860, the Contractor shall secure the payment of worker's compensation in accordance with Labor Code Section 3700.
- ii. In accordance with Labor Code Section 1861, the Contractor shall submit to the Grantee the following certification before performing the work:
  - 1) I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.
- iii. Contract execution constitutes certification submittal.
- iv. The Contractor shall provide Employer's Liability Insurance in amounts not less than:
  - 1) \$1,000,000 for each accident for bodily injury by accident
  - 2) \$1,000,000 policy limit for bodily injury by disease
  - 3) \$1,000,000 for each employee for bodily injury by disease
- v. If there is an exposure of injury to the Contractor's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.



c. General Liability Insurance

- i. The Contractor shall carry General Liability and Umbrella or Excess Liability Insurance covering all operations by or on behalf of the Contractor providing insurance for bodily injury liability and property damage liability for the following limits and including coverage for:
  - A. Premises, operations, and mobile equipment
  - B. Products and completed operations
  - C. Broad form property damage (including completed operations)
  - D. Explosion, collapse, and underground hazards
  - E. Personal injury
  - F. Contractual liability
- ii. The Contractor shall not require certified Small Business subcontractors to carry Liability Insurance that exceeds the limits in Section (d)(i), "Liability Limits/Additional Insureds," of these specifications. The maximum required Liability Insurance limits in Section (d)(i), "Liability Limits/Additional Insureds," of these specifications shall apply to certified Small Business subcontractors for work performed on the project, regardless of tier. The provisions of Section (d)(i), "Liability Limits/Additional Insureds," shall be included in all subcontracts for all tiers.

Public works construction projects, as defined in [Labor Code Section 1720 et seq.](#), must meet prevailing wage requirements. California law requires that workers are not paid less than the general prevailing rate of per diem wages on public works projects.

d. LIABILITY LIMITS/ADDITIONAL INSUREDS

- i. The limits of liability shall be at least the amounts shown in the following table:

Construction Contract Amount <sup>4</sup>	For Each Occurrence <sup>1</sup>	Aggregate for Products/ Completed Operation	General Aggregate <sup>2</sup>	Umbrella or Excess Liability <sup>3</sup>
≤\$1,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$5,000,000
>\$1,000,000 ≤\$15,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$10,000,000
>\$15,000,000 ≤\$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$15,000,000
>\$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$25,000,000

1. Combined single limit for bodily injury and property damage.
2. This limit shall apply separately to the Contractor's work under this contract.
3. The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

"Construction Contract Amount" is the total amount of the construction contract all or a portion of which is funded with Building Forward Grant funds.

7. Delay: Grantee shall promptly notify the State Library in writing of any event causing delay or interruption of the project beyond the scheduled implementation plan timeline. The notice shall specify the work delayed and the cause and period of each delay.
8. Documentation: Grantees shall provide to the State Library photographic documentation of the project site prior to the start of the project, during the project, and upon completion of the project.
9. Grantee's Responsibility: Grantee and its representatives shall:
  - a. Faithfully and expeditiously perform or cause to be performed all project work as described in the application, timeline/activities, and budget submitted by the Grantee.
  - b. Accept and agree to comply with all terms, provisions, conditions, and written commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Grantee in the application, documents, amendments, and communications filed in relation to the grant funds.
  - c. Comply with all applicable California laws and regulations.
  - d. Implement the project in accordance with applicable provisions of the law.
  - e. Fulfill their obligations under the Agreement and be responsible for the performance and completion of the project.
  - f. Follow all applicable local, state and/or federal laws pertaining to the expenditure of funds.

- g. Retain any bid, contracts, and any other pertinent documentation. Likewise, all local, state, and federal permits required for construction projects must be acquired by the grantee and retained for a period of five (5) years after the end of the grant period.
10. Inspection of the Project: The State Library shall have the right to inspect the project during the grant term. Grantee shall deliver to the State Library any inspection reports prepared, to the extent available to the Grantee. Inspection of the project shall be for the sole purpose of protecting the State of California's interest and is not to be construed as a representation by the State Library that there has been compliance with plans or that the project will be free of faulty materials or workmanship. The Grantee can make or cause to be made such other independent inspections as the Grantee may desire for its own protection.
11. Interest: Any interest earned on grant funds held by the Grantee shall be contributed to the MENLO PARK PUBLIC LIBRARY - Main Library Project. Interest funds cannot be used as local matching funds.
12. Maintenance and Operation: The Grantee is responsible for ensuring that grant projects funded by the State of California are maintained and operated in the same condition as when the project was completed; normal wear and tear is accepted. Maintenance and operations standards should be adopted upon completion of the project.
13. Matching Funds: Per the Budget Act of 2021 (Chapter 69, Statutes of 2021, Item 6120-161-0001 1d) Grantees shall be required to match state funds on a dollar-for-dollar basis. The State Library may reduce the amount of required matching funds if the requesting local library jurisdiction can demonstrate that it is eligible and financially unable to provide the required matching funds. Upon receipt and assessment of a reduction request, the State Library may lower the match requirement, as follows:
- a. For each library with local operating include per capita (LIPC) of more than \$40, no reduction in local match is allowed
  - b. For reach library with an LIPC between \$40 and \$15.01, the local match may be reduced by half.
  - c. For each library with an LIPC of \$15 of less, the local match may be eliminated.
14. Permits, Licenses, Approvals, and Legal Obligations: Grantee shall be responsible for obtaining any and all permits, licenses, and approvals required for performing any work under this Grant Agreement, including those necessary to perform design, construction, or operation and maintenance of the Project(s). Grantee shall be responsible for observing and complying with any applicable federal, state, and local laws, rules or regulations affecting any such work, specifically those including, but not limited to, environmental, procurement, and safety laws, rules, regulations,

and ordinances. Grantee shall be prepared to provide copies of permits and approvals to the State Library should the State Library request copies.

15. Relationship of Parties: If applicable, Grantee is solely responsible for design, construction, and operation and maintenance of projects within the project application and implementation plan. Review or approval of plans, specifications, bid documents, or other construction documents by State is solely for the purpose of proper administration of funds by State and shall not be deemed to relieve or restrict responsibilities of Grantee under this Grant Agreement.
16. Use of Funds: Grantee agrees that the grant funds shall be expended only in accordance with the applicable statutes and Grant Guidelines governing the Program, and only for the purposes and activities set forth in this Agreement and the Grantee's approved outputs, budget, and implementation plan completed as part of the award packet documentation. The grant funds shall be used exclusively for the payment of, or reimbursement for, approved costs as shown in the project budget completed as part of the award packet documentation or the amended budget as approved in writing by the State Library. Such payment of costs to be made only after the costs have been incurred by the Grantee. "Approved Costs" shall mean all hard and soft eligible costs under the project (and modifications thereto), which were approved, or will be approved by the State Library, which are needed for the completion of the project, in accordance with application.
17. Use of site: The facility, or the part thereof, acquired, constructed, or remodeled, upgraded, or rehabilitated with funds received as part of the Building Forward grant program will be dedicated to public library service and used as a public library according to the Education Code, sections 18010 through 20092 and California Code of Regulations, Title 5, Division 2 and provide at least the following: an organized collection of printed or other library materials, or a combination thereof; paid staff; and regularly scheduled hours for being open to the public for a period of not less than 10 years following completion of the grant period.
18. Withdrawal of a Project: If it is determined by the grant recipient that a project cannot be completed within the scope of the approved application, the project may be withdrawn by the Grantee prior to the completion of fifty percent of the project. Upon withdrawal of a project, all unspent funding must be returned to the State Library along with a completed detailed expenditure form showing how any unreturned funds were spent.



## EXHIBIT C: CERTIFICATION OF COMPLIANCE FORM

1. **AUTHORIZED REPRESENTATIVE:** I certify that the authorized representative named below is the legally designated representative of the Grantee for this Grant Agreement and project and is authorized to receive and expend funds in order to implement this grant-funded project.

I certify that all information provided to the California State Library for review in association with this award is correct and complete to the best of my knowledge, and as the authorized representative of the Grantee, I commit to the conditions of this award, and I have the legal authority to do so.

I certify that any or all other participants or contractors in the grant-funded project have agreed to the terms of the Award Agreement and have entered into an agreement(s) concerning the final disposition of equipment, facilities, and materials purchased for this project from the funds awarded for the activities and services described in the attached award packet, as approved and/or as amended by the California State Librarian.

I certify that I have reviewed and understand the list of unallowable costs and that my project does not contain any of the unallowable costs listed.

The authorized representative, on behalf of the Grantee, certifies that the Grantee will comply with all applicable requirements of State and Federal laws, regulations, and policies governing this project, to include the requirements listed below in this Certification of Compliance Form.

2. The authorized representative, on behalf of the Grantee, hereby certifies to the California State Library, for an award of funds in the amount \$509,179. This award will fund library facility improvements as set forth in the list of approved outcomes, Implementation Plan and Budget as approved and/or as amended by the California State Librarian.
3. The authorized representative, on behalf of the Grantee, hereby certifies that City of Menlo Park will provide a cash match in the amount of \$509,179. The matching funds (if applicable) will be expended during the grant period at the same rate as the state-provided grant funds.

4. The authorized representative, on behalf of the Grantee, hereby certifies that the project property, or a part thereof, will be dedicated to public library services and used as a public library according to the Education Code, sections 18010 through 20092 and California Code of Regulations, Title 5, Division 2 and provide at least the following: an organized collection of printed or other library materials, or a combination thereof; paid staff; and regularly scheduled hours for being open to the public for a period of not less than 10 years following completion of the grant period.
5. **STATEMENT OF COMPLIANCE:** Grantee has, unless exempted, complied with the non-discrimination program requirements. (Gov. Code § 12990 (a-f) and CCR, Title 2, Section 11102).
6. **DRUG-FREE WORKPLACE REQUIREMENTS:** Grantee 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 Grantee may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Grantee has made false certification or violated the certification by failing to carry out the requirements as noted above. (Gov. Code § 8350 *et. seq.*)

7. **CONFLICT OF INTEREST:** Grantee needs to be aware of the following provisions regarding current or former state employees. If Grantee has any questions on the status of any person rendering services or involved with the Agreement, the California State Library must be contacted immediately for clarification.

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

- a. 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.
- b. 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):**

- a. 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.
- b. 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 Grantee violates any provisions of above paragraphs, such action by Grantee 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)).

8. **LABOR CODE/WORKERS' COMPENSATION:** Grantee needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Grantee affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code § 3700).
9. **AMERICANS WITH DISABILITIES ACT:** Grantee 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.*)
10. **RESOLUTION:** A county, city, district, or other local public body must provide the State Library 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.
11. **PAYEE DATA RECORD FORM STD. 204:** This form must be completed by all Grantees that are not another state agency or other governmental entity.

**12. DRUG FREE WORKPLACE:**

- a. Continue to provide a drug-free workplace by complying with the requirements in 2 C.F.R. part 3186 (Requirements for Drug-Free Workplace (Financial Assistance)). In particular, the recipient must comply with drug-free workplace requirements in subpart B of 2 C.F.R. part 3186, which adopts the Government-wide implementation (2 C.F.R. part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (P. L. 100-690, Title V, Subtitle D; 41 U.S.C. §§ 701-707).
- b. This includes but is not limited to: making a good faith effort, on a continuing basis, to maintain a drug-free workplace; publishing a drug-free workplace statement; establishing a drug-free awareness program for the employees; taking actions concerning employees who are convicted of violating drug statutes in the workplace.

**13. ACCESSIBILITY:** The organization receiving this award, as listed in the certification section below, and all project staff, will ensure all project materials will meet California accessibility standards.

**14. NON-DISCRIMINATION:** The organization receiving this award, as listed in the certification section below, and all project staff, agree to comply with all California non-discrimination laws.

**15. ACKNOWLEDGEMENT:** The organization receiving this award, as listed in the certification section below, and all project staff, agree to comply with California State Library acknowledgement requirements.



### Certification

ORGANIZATION	
<b>Name:</b>	<b>Address</b> <i>(official and complete):</i>
PROJECT COORDINATOR	
<b>Name:</b>	
<b>Email:</b>	<b>Phone:</b>
GRANTEE AUTHORIZED REPRESENTATIVE	
<b>Name:</b>	<b>Title:</b>
<b>Email:</b>	<b>Phone:</b>
<b>Signature:</b>	<b>Date:</b>

DRAFT

## Authorized Representative Signature

ORGANIZATION	
<b>Name:</b>	<b>Address</b> <i>(official and complete):</i>
AUTHORIZED REPRESENTATIVE	
<b>Signature:</b>	<b>Date:</b> Click or tap here to enter text.
<b>Printed Name of Person Signing:</b>	<b>Title:</b>
STATE OF CALIFORNIA	
<b>Agency Name:</b> California State Library	<b>Address:</b> 900 N Street, Sacramento, CA 95814
<b>Signature:</b>	<b>Date:</b>
<b>Printed Name of Person Signing:</b>	<b>Title:</b> California State Librarian

DRAFT



## EXHIBIT D: STATE REIMBURSABLE TRAVEL EXPENSES

Rates are subject to change per State of California, Department of Human Resources Please Check State of California, Department of Human Resources Website for updated expenses:

<http://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx>

<b>Mileage:</b> Rate subject to change	\$0.585 per mile – approved business/travel expense
<b>Meals:</b> Receipts are required	\$7.00 – Breakfast \$11.00 – Lunch \$23.00 – Dinner \$5.00 - Incidentals

**Meals Note:** Lunch can only be claimed if travel is more than 24 hours. Incidental charge may be claimed once for every 24-hour period and should cover incidental expenses, such as but not limited to, tip, baggage handling, etc.

<b>Hotel:</b> Receipts are required and MUST have a zero balance.	\$ 90.00 plus tax for all counties/cities not listed below \$ 95.00 plus tax for Napa, Riverside, and Sacramento Counties \$ 110.00 plus tax for Marin County \$ 120.00 plus tax for Los Angeles, Orange, and Ventura Counties, and Edwards AFB. Excluding the city of Santa Monica \$ 125.00 plus tax for Monterey and San Diego Counties \$ 140.00 plus tax for Alameda, San Mateo and Santa Clara Counties \$ 150.00 plus tax for the City of Santa Monica \$ 250.00 plus tax for San Francisco County <b>Out of State:</b> Prior authorization must be obtained, as well as three print-out hotel quotes. Actual receipt must be included with authorization and additional quotes.
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**Hotel Note:** If the above approved reimbursable hotel rates cannot be secured, please contact your grant monitor to obtain an excess lodging form. This form must be approved prior to actual travel.

<b>AIRLINE TICKETS:</b> Itinerary and receipts are required	Actual reasonable fees pertaining to airline travel will be reimbursed. Business, First Class, or Early Bird Check-in fee is not an approved reimbursable expense.
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DRAFT



November 1, 2022

RE: Contractor and Grantee Compliance with Economic Sanctions Imposed in Response to Russia's Actions in Ukraine

Dear Grantee,

You are receiving this notification because you currently have an active grant through the California State Library.

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (EO) regarding sanctions in response to Russian aggression in Ukraine. The EO is located at <https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>.

The EO directs all agencies and departments that are subject to the Governor's authority to take certain immediate steps, including notifying all contractors and grantees of their obligations to comply with existing economic sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law.

This correspondence serves as a notice under the EO that as a contractor or grantee, compliance with the economic sanctions imposed in response to Russia's actions in Ukraine is required, including with respect to, but not limited to, the federal executive orders identified in the EO and the sanctions identified on the U.S. Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>). Failure to comply may result in the termination of contracts or grants, as applicable.

Please note that for any agreements or grants valued at \$5 million or more, a separate notification will be sent outlining additional requirements specified under the EO.

Annly Roman  
Grants and Bureau Operations Manager  
California State Library  
900 N Street  
Sacramento, CA 95814

**Building Forward  
Round 1  
Grant Monitor Checklist**

- Final Project Budget
- Final Project Implementation Plan
- Resolution from the grantee organization's governing body approving acceptance of grant funds and designating an Authorized Representative allowed to enter into agreements on behalf of the organization
- Grant Agreement and Certification of Compliance

If required based on specific project

- A letter from the grantee organization's Chief Financial Officer, Finance Director, or equivalent confirming availability of matching funds (Required for all grantees contributing local match funds.)
- A current facility lease with a term extending at least ten years after the end of the grant period. (Required for all projects involving leased buildings.)

All relevant documents received and approved by Libby Carlson.

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Grant Monitor Signature

## APPENDIX C: Authorizing Resolution Template

If awarded, a resolution adopted by the city, county, or library district applying for funds is required. The resolution should authorize the submission of an application; approval to implement the awarded project; and designation of an Authorized Representative to enter into the grant agreement. If the resolution has not been adopted before the application deadline, applicants may apply but we suggest the applicant seek guidance from their legal counsel to ensure they are authorized to apply.

### RESOLUTION NO. [#]

A RESOLUTION OF THE [APPLICANT] AUTHORIZING THE GRANT APPLICATION, ACCEPTANCE, AND EXECUTION OF THE GRANT FUNDS FROM THE STATE OF CALIFORNIA BUDGET ACT OF 2021 (SB 129)

WHEREAS, the Legislature and Governor of the State of California have provided funds for the program shown above; and

WHEREAS, the California State Library has been delegated the responsibility for the administration of this grant program, establishing necessary procedures; and

WHEREAS, said procedures established by the California State Library require a resolution certifying the approval by the potential grantee's governing board either before submission of said application(s) to the State or prior to execution of the grant agreement; and

WHEREAS, the Applicant/Grantee, if selected, will enter into an agreement with the State of California to carry out the project

WHEREAS, [APPLICANT] proposes to implement [PROJECT TITLE];

WHEREAS, [APPLICANT] has the legal authority and is authorized to enter into a funding agreement with the State of California; and

WHEREAS, [APPLICANT] intends to apply for grant funding from the California State Library for the [PROJECT TITLE];

THEREFORE, BE IT RESOLVED by the [APPLICANT], with acknowledgement of [LIBRARY/LIBRARY JURISDICTION], as follows:

1. That pursuant and subject to all of the terms and provisions of the California Budget Act of 2021, the [APPLICANT] [TITLE OF AUTHORIZED REPRESENTATIVE], or designee is hereby authorized and directed to prepare and file an application for funding with the California State Library, and take such other actions necessary or appropriate to obtain grant funding.
2. The [APPLICANT] [TITLE OF AUTHORIZED REPRESENTATIVE], or designee is hereby authorized and directed to execute the funding agreement with the California State Library and any amendments thereto.
3. The [APPLICANT] [TITLE OF AUTHORIZED REPRESENTATIVE], or designee is hereby authorized and directed to submit any required documents, funding requests, and reports required to obtain grant funding.
4. Certifies that the project will comply with any laws and regulations including, but not limited to, the California Environmental Quality Act (CEQA), legal requirements for building codes, health and safety codes, the California Labor Code, disabled access laws, and, that prior to commencement of the project, all applicable permits will have been obtained; and,

CERTIFICATION I hereby certify that the foregoing Resolution was duly and regularly adopted by the [Governing Body Name] of the [agency name] at the meeting held on [DATE], motion by [NAME] and seconded by [NAME], motion passed by the following vote:

AYES: [#]

NOES: [#]

ABSTAIN: [#]

ABSENT: [#]

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[PRINTED NAME]  
[TITLE], [GOVERNING BODY]

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[PRINTED NAME]  
[SECRETARY/CLERK]





## **Building Forward Grant Program**

### **Unallowable Costs: Round 1**

*Updated 10/03/2022*

This document outlines costs that are **not allowable** under the Building Forward Grant Program.

**No grant funds or required local matching funds may be spent on unallowable costs.**

#### **Unallowable Costs include, but are not limited to:**

- Bidding/advertising
- Book drops if not directly attached or built into the library building
- Book lockers
- Community engagement, planning meetings, or workshops
- Costs incurred outside of the grant period
- Entertainment or meals
- Escalation in addition to the project contingency
- Establishment of a reserve fund
- Exterior elements not attached to building, including but not limited to:
  - Consultants or contractors engaged specifically for exterior elements/grounds (e.g. landscape designers, landscapers, planners), unless the work is directly associated with a funded project output and approved by the State Library
  - Electric vehicle charging stations
  - Fences or Gates, installation and/or repair, unless directly attached to building, addressing an immediate life safety issue, and approved by the State Library
  - Fountains or other water features
  - Landscaping
  - Outdoor areas and access to these areas, including program space, courtyards, patios, benches/furniture, sitting areas, shade structures, and pergolas
  - Hardscape, outdoor walkways/paths of travel - including curbs, sidewalks, and walkways
  - Parking lots – creation, maintenance, reconfiguration, repair, sealing, resurfacing, and/or restriping
  - Security cameras and/or lighting not directly attached to building
  - Shade structures
  - Sprinklers or sprinkler repair
- Federal or state taxes
- Furniture (including accessible furniture) and furnishings

- General costs directly related to unallowable project components (or portion thereof), including, but not limited to: planning, construction/project management, consultant fees, design, architecture and engineering services, permits and fees, other pre-construction costs
- Grant writing, fundraising, or lobbying
- Improvements to facilities that do not qualify as public library outlets
- Indirect costs
- Moving or storage costs
- Open+
- Operation and ongoing maintenance – including extended warranties
- Playgrounds and play structures (internal or external)
- Programming
- Public art
- Real estate – purchase of land, structures, and any related fees
- Removal/disposal of functional items
- Spaces not specifically for library use, such as general municipal services
- Tangible property to support program operations and service delivery, such as tables, chairs, shelves, computers, servers, books, AV equipment/systems, televisions, vehicles, automatic book sorting systems, and self-check machines

**Any expenditure not part of the approved grant budget is also considered unallowable. Any project activity not associated with an approved output is not allowable. Any modifications to the project budget must be reviewed and approved by the State Library.**

If a grantee is unsure whether a cost is allowable or unallowable, they should contact the State Library before committing any funds and/or starting work.

Questions should be emailed to [BuildingForward@library.ca.gov](mailto:BuildingForward@library.ca.gov).



## STAFF REPORT

### City Council

**Meeting Date:**

**11/15/2022**

**Staff Report Number:**

**22-226-CC**

**Consent Calendar:**

**Adopt a resolution approving Alcoholic Beverage Control Grant and authorize the police chief to execute the agreement**

### Recommendation

The staff recommends that the City Council adopt a resolution to accept a grant awarded in the amount of \$70,300 from the California Department of Alcoholic Beverage Control (ABC) Grant Program and authorize the police chief to execute the agreement, including any extensions or amendments thereof and any subsequent agreement with the State in relation thereto.

### Policy Issues

The proposed action and spending plan require City Council authorization.

### Background

The ABC Multi-Program Grant provides funding to local law enforcement agencies to broaden their efforts in addressing alcohol related problems. The ABC program employs strategies including: The Minor Decoy Program, the Shoulder Tap Program, and IMPACT (Informed Merchants Preventing Alcohol-Related Crime Tendencies) inspections. The funding for the ABC program comes from the Office of Traffic Safety through the National Highway Safety Administration.

The City has been a recipient of ABC Grant funding in previous years, the most recent funding amount of \$70,300 was awarded in 2021 and resulted in the education of businesses as well as citizens. Education opportunities are accomplished through inspections conducted at licensed businesses, during which, no enforcement action is taken. During the last grant cycle, the department was able to perform inspections at 22 licensed businesses. In addition, there were approximately 8 businesses visited for general enforcement for alcohol related crimes, the Minor Decoy Program and the Shoulder Tap program identifying more than a third of these businesses knowingly or unknowingly selling alcohol to minors. In coordination with ABC, the department provided broad education across Menlo Park businesses in addition to enforcement. The department not only met, but exceeded the performance metrics outlined in the grant proposal. The 2022 grant program would provide funding for overtime costs associated with enforcement operations and community/licensee education and outreach. The funds must be spent by June 30, 2023.

### Analysis

One of the police department's priorities is to address quality of life issues which include the illegal purchasing and distribution of alcoholic beverages by and to minors. Statistics from the Office of Traffic Safety for the year 2019 show the City of Menlo Park was ranked 16 out of 94 cities of similar population for "total fatal and injury" collisions.

In addition, there are many public and private high schools, colleges, parks and other various public venues located near the 106 Alcohol Beverage Control licensee establishments in the City of Menlo Park. The Menlo Park Police Department has responded to problems commonly associated with irresponsible and illegal alcoholic beverage service including consumption of alcohol by minors, driving under the influence, intoxicated subjects in public and disturbances. Investigations revealed that minors obtained alcohol from either establishments or adults furnishing the alcohol to them.

This grant focuses on education of licensees and community members and enforcement of applicable laws. The funds would allow the Menlo Park Police Department to expand its present efforts in identifying and targeting potential problematic ABC licensed establishments. The grant would fund eight overtime minor decoy operations, eight shoulder tap operations, and eight IMPACT inspections, two task force operations and four general enforcement operations.

The goal of the Minor Decoy Program is to reduce the number of licensees who sell alcoholic beverages to minors. The Minor Decoy Program has proven to be a significant and effective tool for law enforcement officials in combating sales of alcoholic beverages to underage persons.

The Shoulder Tap Program is used to detect and deter adults who furnish alcoholic beverages to minors. "Shoulder Tapping" refers to the practices used by minors to obtain alcohol from adult strangers near off-sale retail outlets.

IMPACT inspections focus on licensee education. Officers randomly select licensed outlets to conduct business friendly compliance inspections. The officers look for loitering, litter, graffiti, posted signs, lack of food service in restaurants, illegal weapons or other violations. The licensee must then correct any problem areas. Follow up visits are then conducted to ensure the licensee has corrected the problems.

In addition to educating the public regarding the sales and distribution of alcohol to minors, conducting Minor Decoy Programs, Shoulder Tap Programs, and IMPACT Inspections would emphasize the legal restrictions and prohibitions regarding the sales of alcohol to minors.

### **Impact on City Resources**

The fiscal year 2022-2023 grant funds must be spent or encumbered by June 30, 2023.

### **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

Report prepared by:  
David Norris, Police Chief  
Dani O'Connor, Management Analyst I

**RESOLUTION NO. XXXX**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK TO  
ACCEPT A GRANT AWARDED IN THE AMOUNT OF \$70,300 FROM THE  
CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL (ABC)  
GRANT PROGRAM**

WHEREAS, the Menlo Park City Council desires to undertake a certain project designated as the Alcoholic Beverage Control Grant to be funded in part from funds made available through the Alcohol Policing Partnership Program (APP) administered by the Department of Alcoholic Beverage Control (hereafter referred to as ABC);

WHEREAS this award would allow the Menlo Park Police Department to expand its present efforts in identifying and targeting potential problematic ABC licensed establishments. The grant would fund eight overtime minor decoy operations, eight shoulder tap operations, and eight IMPACT inspections, two task force operations and four general enforcement operations;

WHEREAS this award is not subject to local hiring freezes;

NOW, THEREFORE, IT IS RESOLVED, that the Police Chief of the Menlo Park Police Department is authorized to execute, on behalf of the Menlo Park City Council the attached contract, including any extensions or amendments thereof and any subsequent contract with the State in relation thereto.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifteenth of November, 2022, 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 \_\_ day of November, 2022.

---

Judi A. Herren, City Clerk

Exhibits:

A. Alcoholic Beverage Control agreement

Resolution No. XXX

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

22-APP14

PURCHASING AUTHORITY NUMBER (If Applicable)

ABC-2100

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Department of Alcoholic Beverage Control

CONTRACTOR NAME

City of Menlo Park through the Menlo Park Police Department

2. The term of this Agreement is:

START DATE

July 1, 2022

THROUGH END DATE

June 30, 2023

3. The maximum amount of this Agreement is:

\$ 70,300.00 Seventy thousand three hundred dollars and no cents

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages
Exhibit A	Scope of Work	2
Exhibit B	Budget Detail and Payment Provisions	3
Exhibit C *	General Terms and Conditions	4
+ - Exhibit D	Special Terms and Conditions	1
+ - Attachment RFP	RFP Scope of Work	8

Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OL5/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

**CONTRACTOR**

CONTRACTOR NAME (If other than an individual, state whether a corporation, partnership, etc.)

City of Menlo Park through the Menlo Park Police Department

CONTRACTOR BUSINESS ADDRESS

701 Laurel Street

CITY

Menlo Park

STATE

CA

ZIP

94025

PRINTED NAME OF PERSON SIGNING

David Norris

TITLE

Chief of Police

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER 22-APP14	PURCHASING AUTHORITY NUMBER (If Applicable) ABC-2100
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**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Department of Alcoholic Beverage Control

CONTRACTING AGENCY ADDRESS

3927 Lennane Drive, Suite 100

CITY

Sacramento

STATE

CA

ZIP

95834

PRINTED NAME OF PERSON SIGNING

Patty Baker

TITLE

Chief, Business Management Branch

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)



## **EXHIBIT A SCOPE OF WORK**

### **I. SCOPE OF WORK**

- Contractor agrees to implement the Department of Alcoholic Beverage Control (ABC), Alcohol Policing Partnership program. This program is intended to work with law enforcement agencies to develop an effective, comprehensive and strategic approach to eliminate the crime and public nuisance problems associated with problem alcoholic beverage outlets.
- Contractor agrees to implement ABC's Minor Decoy, Shoulder Tap Programs and conduct Informed Merchants Preventing Alcohol-Related Crime Tendencies (IMPACT) Inspections. These Programs target both ABC licensed premises and individuals who furnish alcoholic beverages to the underage operators. The project is targeted to reduce underage drinking and the resultant DUI driving injuries and fatalities, and/or property damages, reduce youth access to alcoholic beverages through the education of licensee(s), enforcement intervention and the impressions of omnipresence of law enforcement. In addition, Contractor agrees to the following goals:
  1. The operation period of the grant is July 1, 2022 through June 30, 2023.
  2. Contractor agrees to raise public awareness that selling, serving and/or furnishing alcoholic beverages to individuals under twenty-one years old is a criminal violation that will be prosecuted by local city and district attorneys.
  3. Minor Decoy operations are designed to educate and deter licensed locations from selling/furnishing alcohol to minors. Contractor agrees to conduct Minor Decoy Operations at both "On-Sale" and "Off-Sale" licensed establishments within the operation period of the grant.
  4. Shoulder Tap operations are used to detect and deter adult furnishers outside of a licensed business. Contractor agrees to conduct Shoulder Tap Operations at "Off-Sale" licensed locations to apprehend adults that are unaffiliated with the licensed businesses and who are purchasing alcohol for minors outside of the stores within the operation period of the grant.
  5. Informed Merchants Preventing Alcohol-Related Crime Tendencies (IMPACT) primary goal is to educate licensee's on alcohol related laws to help reduce alcohol-related crime in and around licensed premises. Contractor agrees to conduct visits and inspections of licensed premises identifying areas of non-compliance at "On-Sale" and "Off-Sale" licensed locations within the operation period of the grant.

### **II. GOALS AND OBJECTIVES**

1. Conduct at least eight (8) Minor Decoy operations.
2. Conduct at least eight (8) Shoulder Tap operations.
3. Conduct at least eight (8) IMPACT operations.
4. Conduct at least four (4) General Enforcement operations.

5. Conduct at least two (2) Task Force operations.
6. Provide at least two (2) press releases on grant enforcement activities.
  - A. To announce the start of the program;
  - B. At the conclusion of each Minor Decoy Operation has been held (to announce the number of licensed premises who sold to the minor decoy)
  - C. At the conclusion of each Shoulder Tap Operation has been held (to announce the number of adults arrested for purchasing alcoholic beverages for the decoy).
7. Contractor will fax (916) 419-2599 or email each press release to the Department's Public Information Officer ([pio@abc.ca.gov](mailto:pio@abc.ca.gov)) as soon as it is released.
8. Contractor agrees in all press releases, in addition to any credits the agency wishes to give, will include the following statement: "This project is part of the Department of Alcoholic Beverage Control's Alcohol Policing Partnership."

Contractor agrees to complete and submit monthly reports, on a format designed and provided by the Department of Alcoholic Beverage Control due no later than 15<sup>th</sup> of the following month.

### III. PROJECT REPRESENTATIVES

The project representatives during the term of this agreement will be:

Menlo Park Police Department  
Galen Fliege, Officer  
701 Laurel Street  
Menlo Park, CA 94025  
(650) 847-0574  
[gfliege@menlopark.org](mailto:gfliege@menlopark.org)

Department of Alcoholic Beverage Control  
Brandon Shotwell, Supervising Agent in Charge  
3927 Lennane Drive, Suite 100  
Sacramento, CA 95834  
(916) 419-2329  
[Brandon.shotwell@abc.ca.gov](mailto:Brandon.shotwell@abc.ca.gov)

Direct all fiscal inquiries to:

Menlo Park Police Department  
Dani O'Connor, Executive Assistant  
701 Laurel Street  
Menlo Park, CA 94025  
(650) 330-6632  
[Pobarboza@menlopark.org](mailto:Pobarboza@menlopark.org)

Department of Alcoholic Beverage Control  
Kristine Okino, Grant Coordinator  
3927 Lennane Drive, Suite 100  
Sacramento, CA 95834  
(916) 419-2572  
[Kristine.okino@abc.ca.gov](mailto:Kristine.okino@abc.ca.gov)

## **EXHIBIT B BUDGET DETAIL AND PAYMENT PROVISIONS**

### **I. INVOICING AND PAYMENT**

- For services satisfactorily rendered and upon receipt and approval of the invoice, the Department of Alcoholic Beverage Control agrees to pay a monthly payment of approved reimbursable costs per the Budget Detail of personnel overtime and benefits (actual cost) and/or allowable costs.
- Invoices shall clearly reference this contract number (22-APP14) and must not exceed the contract total authorized amount of \$70,300.00. Invoices are to be submitted by the 15<sup>th</sup> of every month, on the prescribed form designed by the Department of Alcoholic Beverage Control.

Submit to:                    Department of Alcoholic Beverage Control  
   Attn: Kristine Okino, Grant Coordinator  
   3927 Lennane Drive, Suite 100  
   Sacramento, California 95834

- Payment shall be made in arrears within 30 days from the receipt of an undisputed invoice. Nothing contained herein shall prohibit advance payments as authorized by Item 2100-101-3036, Budget Act, Statutes of 2022.
- Contractor understands in order to be eligible for reimbursement; cost must be incurred on or after the effective date of the project, July 1, 2022 and on or before the project termination date, June 30, 2023.
- Revisions to the "Scope of Work" and the "Budget Detail" may be requested by a change request letter submitted by the Contractor. If approved, the revised Grant Scope of Work and/or Budget Detail supersedes and replaces the previous grant and will initiate an amendment. No revisions can exceed allotted amount as shown on the Budget Detail. The total amount of the grant must remain unchanged.
- Contractor agrees to refund to the State any amounts claimed for reimbursement and paid to Contractor which are later disallowed by the State after audit or inspection of records maintained by the Contractor.
- Only the costs displayed in the Budget Detail are authorized for reimbursement by the State to Contractor under this agreement. Any other costs incurred by Contractor in the performance of this agreement are the sole responsibility of Contractor.
- Title shall be reserved to the State for any State-furnished or State-financed property authorized by the State which is not fully consumed in the performance of this agreement. Contractor is responsible for the care, maintenance, repair, and protection of any such property. Inventory records shall be maintained by Contractor and submitted to the State upon request. All such property shall be returned to the State upon the expiration of this grant unless the State otherwise directs.
- Prior approval by the State in writing is required for the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop or conference, and over any reimbursable publicity or educational materials to be made available for distribution. Contractor is required to acknowledge the support of the State whenever publicizing the work under this grant in any media.

**II. BUDGET DETAIL**

<b>COST CATEGORY</b>	<b>TOTAL COST</b>
<p><b>A. Personnel Services</b></p> <p><u>Overtime</u></p> <p>Officers (180 hours @ \$91.49/hour) \$49,400.00</p> <p>Reserve Officer (155 hours @ \$88.40/hour) \$13,400.00</p> <p>Benefits (n/a) \$0.00</p> <p><b>TOTAL Personnel \$62,800.00</b></p>	
<p><b>B. Operating Expenses (receipts required)</b></p> <p>Buy Money \$2,500.00</p> <p><b>TOTAL Operating \$2,500.00</b></p>	
<p><b>C. Equipment (receipts required, must be purchased by 12/31)</b></p> <p>Uniforms related to operations (pre-approval required) \$1,650.00</p> <p>Ipad for mobile reporting/ID/evidence preservation \$850.00</p> <p><b>TOTAL Equipment \$2,500.00</b></p>	
<p><b>D. Travel Costs</b></p> <p>Registration, lodging, travel \$2,500.00</p> <p><b>TOTAL Travel \$2,500.00</b></p>	
<p><b>GRANT TOTAL</b></p>	<p><b>\$70,300.00</b></p>

### **III. BUDGET CONTINGENCY CLAUSE**

- It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

### **IV. PROMPT PAYMENT CLAUSE**

- Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

### **EXHIBIT C GENERAL TERMS AND CONDITIONS**

1. **APPROVAL**: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT**: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT**: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT**: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION**: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. **DISPUTES**: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE**: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. **INDEPENDENT CONTRACTOR**: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. **RECYCLING CERTIFICATION:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)
- Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. **CERTIFICATION CLAUSES:** The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
12. **TIMELINESS:** Time is of the essence in this Agreement.
13. **COMPENSATION:** The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
14. **GOVERNING LAW:** This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
15. **ANTITRUST CLAIMS:** The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

- a. The Government Code Chapter on Antitrust claims contains the following definitions:
    - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
    - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
  - b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
  - c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
  - d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.
16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
  - b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.



17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.
19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:
  - a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
  - b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)
20. LOSS LEADER: If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

## EXHIBIT D SPECIAL TERMS AND CONDITIONS

1. **Disputes:** Any disputes concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Director, Department of Alcoholic Beverage Control, or designee, who shall reduce his decision in writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Department shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the State a written appeal addressed to the Director of the Department of Alcoholic Beverage Control. The decision of the Director of Alcoholic Beverage Control or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Contractor shall proceed diligently with the performance of the contract and in accordance with the decision of the State.
2. **Cancellation/Termination:** This agreement may be cancelled or terminated without cause by either party by giving thirty (30) calendar days advance written notice to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements. No penalty shall accrue to either party because of contract termination.
3. **Contract Validity:** This contract is valid and enforceable only if adequate funds are appropriated in Item 2100-101-3036, Budget Act of 2022, for the purposes of this program.
4. **Contractor Certifications:** By signing this agreement, Contractor certifies compliance with the provisions of CCC 04/2017, Standard Contractor Certification Clauses. This document may be viewed at: <https://www.dqs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language>
5. If the State determines that the grant project is not achieving its goals and objectives on schedule, funding may be reduced by the State to reflect this lower level of project activity and/or cancel the agreement.



# STATE OF CALIFORNIA

## Department of Alcoholic Beverage Control

### Alcohol Policing Partnership Program

### PROPOSAL COVER SHEET

(TO BE COMPLETED BY APPLICANT AGENCY)

<b>1. Name of Applicant Agency:</b> Menlo Park Police Department	
<b>2. Description of Applicant Agency:</b> <i>Provide your city or county jurisdiction, and include population data, relevant demographic, and socio-economic characteristics of the community.</i> The Menlo Park Police Department is a municipal police department in the State of California, incorporated in 1874. The department's public safety goals are accomplished through crime suppression, problem solving, crime analysis, community outreach, education and crime prevention strategies. The Menlo Park Police Department's current sworn personnel consists of: one Chief of Police, two Commanders, nine Sergeants, six Corporals and 26 Officers. Sworn personnel are divided between the Operations Division (Patrol, Code Enforcement, & Community Service and Engagement) and the Special Operations Division (Investigations).	
<b>3. Number of licenses in Project Area:</b> 104	<b>4. Tax ID:</b> 94-6000370
<b>5. Funds Requested:</b> \$70,300	<b>6. Project Period:</b> July 1, 2022 – June 30, 2023
<b>7. Acceptance of Conditions:</b> <i>By submitting this proposal, the applicant signifies acceptance of the responsibility to comply with all requirements stated in the Request for Proposals. The applicant understands that ABC is not obligated to fund the project until the applicant submits correctly completed documents required for the contract.</i>	
<b>A. Project Director</b> <i>Person Having Day-To-Day Responsibility for the Project</i>	<b>B. Chief of Police or Sheriff</b> <i>Authorizing Official</i>
Name: Officer Galen Fliege Address: 701 Laurel Street Menlo Park, Ca 94025 Phone: 650-847-0574 Email Address: gpfliege@menlopark.org Title: Officer	Name: Chief David Norris Address: 701 Laurel Street Menlo Park, Ca 94025 Phone: 650-330-6322 Email Address: DSNorris@menlopark.org Title: Chief of Police
Signature:	Signature: Dave Norris <span style="float: right; font-size: small;">Digitally signed by Dave Norris Date: 2022.03.28 13:41:39 -07'00'</span>
<b>C. Fiscal or Accounting Official</b>	<b>D. ABC USE ONLY</b>
Name: Patricia Barboza Address: 701 Laurel Street Menlo Park, Ca 94025 Phone: 650-330-6632 Email Address: POBarboza@menlopark.org Title: Senior Accountant	
Signature: Patricia Barboza <span style="float: right; font-size: small;">Digitally signed by Patricia Barboza Date: 2022.03.28 08:56:24 -07'00'</span>	

## SCOPE OF WORK

### Summary

The Menlo Park Police Department is requesting funding from the California Alcoholic Beverage Control (ABC) for the fiscal year 2022/2023. The Menlo Park Police Department previously received three grants from Alcoholic Beverage Control (ABC) in the last 10 years. Due to the Menlo Park Police Departments small size and limited officers, (we currently have 44 sworn which includes our command staff), it is necessary to conduct Alcoholic Beverage Control operations on an overtime basis. The City of Menlo Park has approximately 35,000 residents with a daytime population of 150,000 workforce and visitors. The City of Menlo Park is home to several large private businesses as well as small family run business, the city is experiencing large growth in these areas. There are a total of 104 (81 On-Sales, 23 Off-Sale) licensed ABC establishments in the City of Menlo Park. The department is requesting \$70,300 to accomplish the goals set forth in this proposal.

### Project Personnel

Officer Fliege would be assigned as the Project Director if this grant were awarded to the Menlo Park Police Department. Officer Fliege will be conducting the grant and will be assisted by Officer Baxter. Officer Fliege was the Project Director for the last two grants the department received. Officer Baxter has previously participated in numerous operations which included Minor Decoy, Shoulder Tap and IMPACT Inspection operations, and Task Force Operations for the Menlo Park Police Department.

Officer Fliege and Baxter are familiar with the logistics and documentation that is necessary prior to and at the completion of an operation. This includes the selection of the minor decoys, the laws regarding the deployment of minor decoys, and the safety of the minor decoys. Officer Fliege and Baxter would also assist in the training of officers in the above-mentioned Alcoholic Beverage Control operations and laws. Officer Fliege participated in an Alcoholic Beverage Control Minor Decoy operation and Shoulder Tap Operation as a Police Explorer as well as being the Project Director for the ABC grant for the last two grant years. The FY 20/21 grant included Minor Decoy Operations, Shoulder Tap Operations, IMPACT Inspections, and General Enforcement Operations. FY 21/22 included the above mentioned operations as well as task force operations and community outreach.

Officer Fliege is assigned to the Patrol Division. Officer Baxter is currently assigned to patrol vacation relief as a Reserve Officer with the department. This grant would be managed by Officer Fliege and Officer Baxter and would fall under the patrol division.

## SCOPE OF WORK

### Problem Statement

The Menlo Park Police Department would like to continue efforts to change the patterns of behavior currently taking place in our community with respect to alcohol sales, minors in possession of false identification, and the consumption of alcoholic beverages involving minors. The Menlo Park Police Department has been proactive as well as responded to many incidents concerning intoxicated minors. We found minors accessed alcohol from establishments, adults furnishing the alcohol to them, or from minors who have false identification. The grant the Menlo Park Police Department received for FY21/22 made it apparent these problem exist, there was a 20% increase in on sale locations furnishing to alcohol to minors as compared to FY20/21. The City is expecting a large growth in restaurants, bars, and entertainment venues that will serve alcohol this year.

Statistics from the Office of Traffic Safety for the year 2019 show the City of Menlo Park was ranked 16 out of 94 cities of similar population for "total fatal and injury" collisions. The total number of individuals injured or killed was 176. The City of Menlo Park was ranked 45 out of 94 in Driving Under the Influence with 62 arrests being made in 2019. Data for 2020 was not available as of this writing.

In addition, there are many public and private high schools, colleges, parks and other various public venues located near the 104 Alcoholic Beverage Control licensee establishments in the City of Menlo Park. An ABC Grant award will provide the Menlo Park Police Department with an opportunity to conduct increased enforcement activity as well as educate the community. The Menlo Park Police Department was awarded a grant in FY 21/22. Due to the budget, we were not able to achieve the complete goals and objectives. We still maintained proactivity and were able schedule and host a class on false ID's, passing along knowledge we learned from the grant to patrol to help them expand their knowledge. The department would like to maintain enforcement and education efforts by continuing to utilize grant

### Project Description *section 1 of 3*

Funding is essential to staff Minor Decoy Operations, Shoulder Tap Operations, IMPACT Inspections, General Enforcement Operations, and Task Force Operations. Menlo Park Police Officers are prepared to handle such operations and are committed to working with ABC in this joint partnership. The City of Menlo Park is expecting a large growth in restaurants and entertainment venues that will serve alcohol this upcoming year. We want to take a proactive approach with these new businesses to educate them and prevent minors from obtaining alcohol.

The Menlo Park Police Department would commit to conducting a minimum of the following within a 12-month period:

#### 8 Minor Decoy Operations

- o Drastically reduce the number of on-sale locations that are serving alcohol to minors
- o FY 21/22 showed approximately a 66% failure rate of on sales, two business have sold to a minor two times within a year

#### 8 Shoulder Tap Operations

- o Continue to lower the number of people who provide minors alcohol
- o We have seen an increase in business owners/employees asking our decoys to leave their store front when we conduct operations

## SCOPE OF WORK

### **Project Description** *section 2 of 3*

#### **8 IMPACT Inspections**

- o There are several new businesses that are planned to open up this year, we want to educate them by conducting these inspections
- o There are still several businesses that have yet to have an IMPACT inspection
- o Officers have been able to educate proactive businesses about how to identify false ID's, so far local businesses have collected approximately 60

#### **4 General Enforcement Operations**

- o We have learned minors are using false ID's to purchase alcohol, this would allow us to observe the sale and attempt to curb the availability of alcohol to minors

#### **2 Task Force Operations**

- o These operations help us to keep up with current trends
- o They help us with volume so we can be more experienced in the field

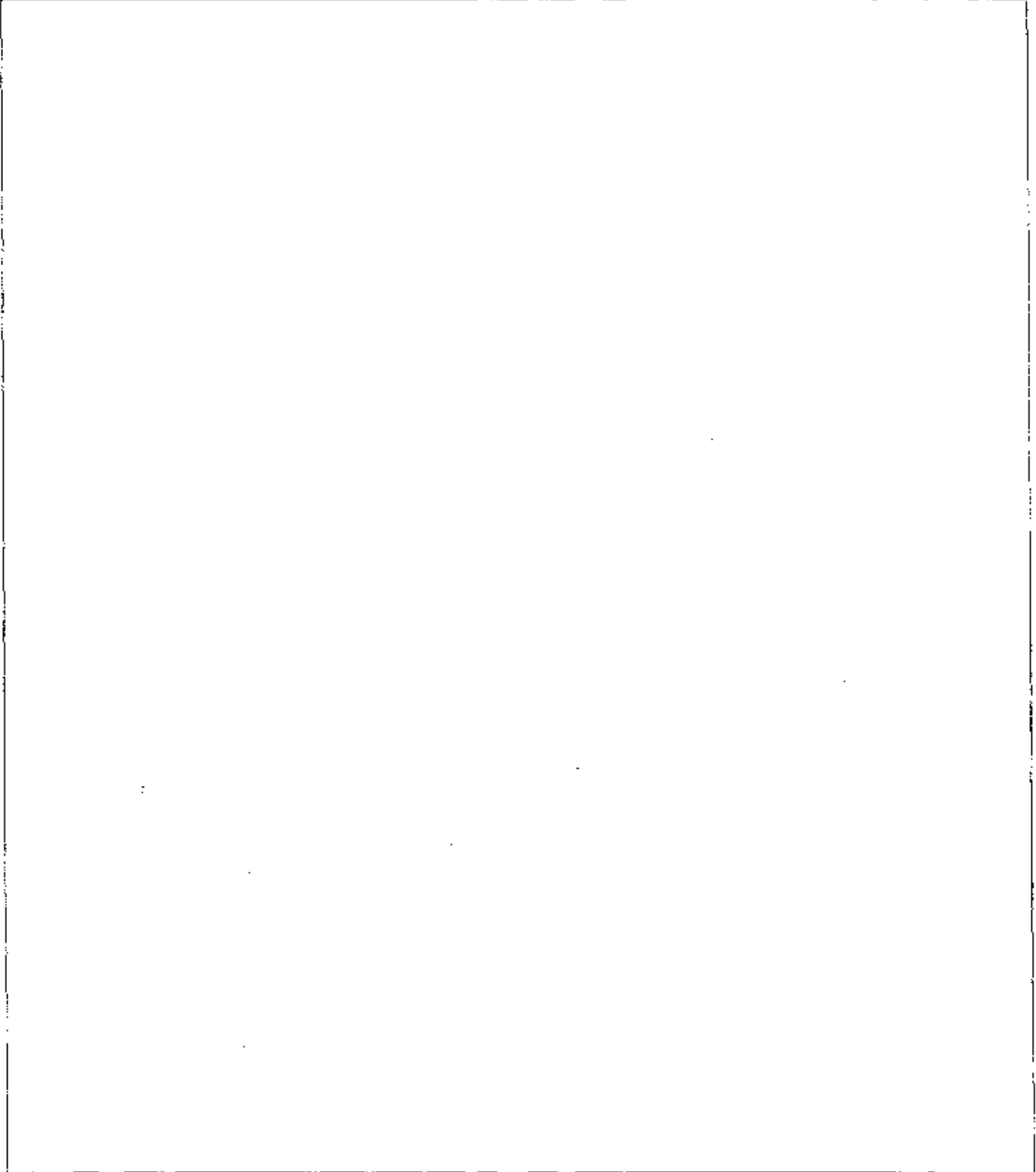
Officer Fliege would also work with ABC and help put together roll call training for other Menlo Park Police Officers and identify any problem locations/establishments.

The Menlo Park Police Department will issue a press release at the following times:

- o July 1st, 2022 to announce the kick off of the grant
- o Immediate press release/s as well as announcements on Menlo Park Police social media platforms after each Minor Decoy/Shoulder Tap Operation indicating the results of each operation
- o June 30th, 2023 to announce the end of the grant.

## SCOPE OF WORK

**Project Description** *section 3 of 3*



### ALCOHOL POLICING PARTNERSHIP GRANT PROPOSAL BUDGET DETAIL

**A. Personnel Services**

**Salaries**

Classification/Positions	Computation	Total Cost
1 None		
2		
3		
<b>SUBTOTAL</b>		<b>\$ 0.00</b>

**Overtime**

Classification/Positions	Computation	Total Cost
1 Police Officer	180 hours @ 91.49 per ofa (3 officers)	\$ 49,400.00
2 Reserve Officer	155 hours @ 88.40 (1 officer)	\$ 13,400.00
3		
4		
5		
6		
<b>SUBTOTAL</b>		<b>\$ 62,800.00</b>

**Benefits**

Classification/Positions	Computation	Total Cost
1 None		
2		
3		
4		
5		
<b>SUBTOTAL</b>		<b>\$ 0.00</b>

**B. Operating Expenses and Equipment**

**Operating Expenses \***

Description	Computation	Total Cost
1 Minor Decoy/Shoulder Tap Operations/ Buy Money		\$ 2,500.00
2		
<b>SUBTOTAL</b>		<b>\$ 2,500.00</b>

\* maximum of \$2,500.00

**Equipment \***

Description	Computation	Total Cost
1 Uniforms related to operations		\$ 1,650.00
2 Ipad for mobile reporting/ID/evidence preservation		\$ 850.00
3		
<b>SUBTOTAL</b>		<b>\$ 2,500.00</b>

\* maximum of \$2,500.00

**C. Travel Expenses \***

Description	Computation	Total Cost
1 Travel/Registration fee for 2 officers		\$ 2,500.00
2		
3		
4		
<b>SUBTOTAL</b>		<b>\$ 2,500.00</b>

\* APP Conference only. All travel cannot exceed current state rates

**GRANT TOTAL** **\$ 70,300.00**



### OTHER FUNDING SOURCES

Complete the following to report the total funds available to support the activities related to accomplishing the goals and objectives of the contract. In the "Grant Funds" column, report the A&C funds requested by category. In the "Other Funds" column, report all other funds available to support the project by category (if none, leave blank). Then calculate the totals by category in the "Program Total" column. Total each column down to arrive at the total program funds available.

*Note: Round all budget amounts to the nearest dollar—no cents.*

Budget Category	Grant Funds	Other Funds	Program Total
A. Personnel Services	62,800.00	0.00	62,800.00
B. Operating Expense	2,500.00	0.00	2,500.00
C. Travel/Registration Fees	2,500.00	0.00	2,500.00
D. Equipment	2,500.00	0.00	2,500.00
<b>TOTALS</b>	<b>\$ 70,300.00</b>	<b>\$ 0.00</b>	<b>\$ 70,300.00</b>

*This form does not become part of the contract but is **required** in the Request for Proposal package.*



CITY OF  
**MENLO PARK**  
February 23rd 2021

Police

Officer Fliege  
Menlo Park Police  
701 Laurel Street  
Menlo Park, Ca 9025

**RE: Alcoholic Beverage Control Grant Operation Agreement**

**OPERATIONAL AGREEMENT**

This Operational Agreement stands as evidence that the

**SAN MATEO DISTRICT ATTORNEY'S OFFICE**

And

**MENLO PARK POLICE DEPARTMENT**

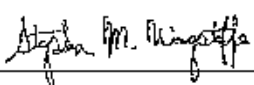
Intended to work together toward the mutual goal of reducing the availability of alcohol to minors in San Mateo County/Menlo Park. Both agencies believe that our collaboration will more effectively further the goal of reducing availability of alcohol to minors.

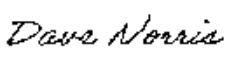
To this end, each agency agrees to participate by making and accepting referrals, providing information and mutual assistance.

We, the undersigned, as authorized representatives of each agency, do hereby approve this document and its validity.

**DISTRICT ATTORNEY'S OFFICE**

**MENLO PARK POLICE DEPARTMENT**

  
\_\_\_\_\_

  
\_\_\_\_\_

03/15/2022  
Date

3/14/22  
Date

## RESOLUTION OF THE GOVERNING BOARD

WHEREAS, The Menlo Park City Council desires to undertake a certain project designated as the Alcoholic Beverage Control Grant to be funded in part from funds made available through the Alcohol Policing Partnership Program (APP) administered by the Department of Alcoholic Beverage Control (hereafter referred to as ABC);

NOW, THEREFORE, BE IT RESOLVED that Chief Norris of the Menlo Park Police Department is authorized to execute on behalf of Mayor Nash, Vice Mayor Wolosin, Council Members Mueller, Combs, and Taylor the attached contract, including any extensions or amendments thereof and any subsequent contract with the State in relation thereto.

IT IS AGREED that any liability arising out of the performance of this contract, including civil court actions for damages, shall be the responsibility of the grant recipient and the authorizing agency. The State of California and ABC disclaim responsibility for any such liability.

BE IT FURTHER RESOLVED that grant funds received hereunder shall not be used to supplant expenditures controlled by this body.

IT IS ALSO AGREED that this award is not subject to local hiring freezes.

I hereby certify that the foregoing is a true copy of the resolution adopted by the Menlo Park City Council by Mayor Nash, Vice Mayor Wolosin, Council Members Mueller, Combs, and Taylor in a meeting thereof held on \_\_\_\_\_, 2022 by the following:

Vote:

Ayes:

Nays:

Absent:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Typed Name and Title: \_\_\_\_\_

ATTEST: Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Typed Name and Title: \_\_\_\_\_



## STAFF REPORT

### City Council

Meeting Date:

11/15/2022

Staff Report Number:

22-218-CC

### Public Hearing:

**Waive the second reading of an ordinance adopting the 2022 Building Standards Code to include amending Title 12 [Buildings and Construction] of the Menlo Park Municipal Code to adopt local amendments to the California Building Standards Code**

## Recommendation

Staff recommends that the City Council waive the second reading and adopt an ordinance amending Title 12 [Buildings and Construction] of the Menlo Park Municipal Code to adopt local amendments to the California Building Standards Code (Attachment A.)

## Policy Issues

Every three years, the State of California Building Standards Commission adopts a revised Building Standards Code, Title 24 of the California Code of Regulations. State law requires two City Council actions, a first reading and second reading, to amend or add to a City's Municipal Code. The adoption of the proposed local amendments to the State Building Standards Code and City's Municipal Code generally support local City goals and policies. This ordinance implements local amendments to the building codes.

## Background

On November 1, 2022 staff provided the City Council a review of the proposed building code amendments for this triennial period and proposed local building code amendments, and to receive any feedback on the proposed revisions to the fire code by the Menlo Park Fire Protection District. The City Council did not have any comments and unanimously approved the first reading of the ordinance with two modification noted by staff during the presentation.

## Analysis

If the City Council chooses to take action to adopt the ordinance, the updated building code and local amendments will be effective January 1, 2023. All building permit applications submitted on or after January 1, 2023 will be subject to the new State building code requirements as well as the local amendments. In order to minimize any impacts by these new code changes, applicants are encouraged to submit their complete Building pre-application package no later than 5:30 p.m. December 15, 2022. Submitting by December 15 will allow sufficient time to complete the process that results in successful conversion to a building permit application by December 31, 2022.

## Fire Code ratification

The Menlo Park Fire Protection District intends to adopt their updated fire code ordinance November 15,

2022. Once the Menlo Park Fire Protection District adopts its ordinance, staff will then present a resolution to the City Council December 6 ratifying the Menlo Park Fire Protection District's ordinance so that it may go into effect in Menlo Park, January 1, 2023. The resolution will designate the Menlo Park Fire Protection District as the primary entity for enforcement of the fire code as amended.

### **Impact on City Resources**

The adoption of the current State codes and proposed local amendments will not result in any direct costs to the City. Public informational materials, such as City webpages and/or handouts, will need to be updated to reflect minor modifications.

### **Environmental Review**

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §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 and posting a notice at the City Hall front entry. Notice of the hearing was also published in The Examiner in accordance with Government Code 50022.3 and 6066.

### **Attachments**

- A. Ordinance of the City Council of the City of Menlo Park amending Title 12 [Buildings and Construction] of the Menlo Park Municipal Code to adopt Title 24, California Code of Regulations, 2022 Building Standards Code and local amendments to the 2022 California Building Standards Code, adding requirements for pools under construction, and amending flood damage prevention requirements

Report prepared by:

Sergio Rudin, Assistant City Attorney

Chuck Andrews, Assistant Community Development Director

Reviewed by:

Deanna Chow, Assistant Community Development Director

**ORDINANCE NO. XXXX****ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
AMENDING TITLE 12 [BUILDINGS AND CONSTRUCTION] OF THE MENLO  
PARK MUNICIPAL CODE TO ADOPT TITLE 24, CALIFORNIA CODE OF  
REGULATIONS, 2022 BUILDING STANDARDS CODE AND LOCAL  
AMENDMENTS TO THE 2022 CALIFORNIA BUILDING STANDARDS CODE,  
ADDING REQUIREMENTS FOR POOLS UNDER CONSTRUCTION, AND  
AMENDING FLOOD DAMAGE PREVENTION REQUIREMENTS**

WHEREAS, the City of Menlo Park ("City") is required pursuant to state law to adopt and enforce the 2022 Building Standards Code, Title 24 California Code of Regulations, as adopted by the California Standards Building Commission, subject to such local amendments as may be adopted by the City of in accordance with applicable law;

WHEREAS, California Health and Safety Code Sections 17958.5, 17958.7 and 18941.5 provide that the City may make changes or modifications to the building standards contained in the California Building Standards based upon express findings that such changes or modifications are reasonably necessary because of local climatic, geological or topographical conditions;

WHEREAS, the City Council of the City of Menlo Park finds that each of the amendments, additions and deletions to the California Energy Code contained in this ordinance are reasonably necessary because of local climatic, geological or topographical conditions described in Section 1;

WHEREAS, Public Resources Code Section 25402.1(h)2 establishes a process which allows local adoption of energy standards that are more stringent than the statewide Standards, provided that such local standards are cost effective and the California Energy Commission finds that the standards will require buildings to be designed to consume no more energy than permitted by the California Energy Code;

WHEREAS, the California Codes and Standards Reach Code Program, has determined specific modifications to the Energy Code for each climate zone that are cost effective, and the City of Menlo Park is proposing adoption of measures previously studied;

WHEREAS, that such modifications will result in designs that consume less energy than they would under the 2022 California Energy Code;

WHEREAS, based upon these analyses, the City Council of the City of Menlo Park finds that the local amendments to the California Energy Code contained in this ordinance are cost effective and will require buildings to be designed to consume no more energy than permitted by the California Energy Code;

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

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

SECTION 1: Findings and Determinations.

The City Council of the City of Menlo Park hereby finds that the following local climatic, geological, and topographic conditions justify the adoption of local modifications to the California Building Standards Code, as further set forth in this Ordinance:

- A. Climatic: The City is located in Climate Zone 3 as established in the 2022 California Energy Code. Climate Zone 3 incorporates mostly coastal communities from Marin County to southern Monterey County including San Francisco. The City experiences precipitation ranging from 13 to 20 inches per year with an average of approximately 15 inches per year. Ninety-five percent of precipitation falls during the months of November through April, leaving a dry period of approximately six months each year. Relative humidity remains moderate most of the time. Temperatures in the summer average around 80 degrees Fahrenheit and in the winter in the mid 50 degrees Fahrenheit. Prevailing winds in the area come from the west with velocities generally in the 12 miles per hour range, gusting from 25 to 35 miles per hour. These climatic conditions along with the greenhouse emissions generated from structures in both the residential and non-residential sectors requires exceeding the energy standards for building construction established in the 2022 California Buildings Standards Code. The City Council also adopted a 2030 Climate Action Plan that has a goal to be carbon neutral by 2030. In order to achieve and maintain this goal, the City needs to adopt policies and regulations that reduce the use of fossil fuels that contribute to climate change, such as natural gas in buildings, in new development. Human activities, such as burning natural gas to heat buildings, releases greenhouse gases into the atmosphere and causes an overall increase in global average temperature. This causes sea levels to rise, affecting the City's shoreline and infrastructure.

Many new buildings in Menlo Park will be built near the coastline in an area known as the Bayfront Area that is situated on marshlands and former salt ponds. San Francisquito Creek also runs through the City, which creates an increasing potential flooding risk with climate change as a result of human generated greenhouse gas emissions. Menlo Park is vulnerable to sea level rise where new development is proposed in this code cycle. New buildings that are directly vulnerable to sea level rise should avoid generating additional greenhouse gas emissions. The proposed Reach Code would ensure that new buildings use cleaner sources of energy that are greenhouse gas free.

- B. Geologic: The City of Menlo Park is subject to earthquake hazard caused by its proximity to San Andreas Fault. This fault runs from Hollister, through the Santa Cruz Mountains, epicenter of the 1989 Loma Prieta earthquake, then on up the San Francisco Peninsula, then offshore at Daly City near Mussel Rock. This is the approximate location of the epicenter of the 1906 San Francisco earthquake. The other fault is Hayward Fault. This fault is about 74 mi long, situated mainly along the western base of the hills on the east side of San Francisco Bay. Both of these faults are considered major Northern California earthquake faults, which may experience rupture at any time. Thus, because the City is within a seismic area, which includes these earthquake faults, the modifications and changes cited herein are designed to better limit property damage as a result of seismic activity and to establish criteria for repair of damaged properties following a local emergency.
- C. Topographic: The City of Menlo Park is contiguous with the San Francisco Bay, resulting in a natural receptor for storm and waste water run-off. Also the City is located in an area that is relatively high liquefaction potential given its proximity to the Bay. The surface condition consists mostly of stiff to dense sandy clay, which is highly plastic and expansive in nature. The aforementioned conditions within the City create hazardous conditions for which departure from California Building Standards Code is warranted.

**SECTION 2: Adoption of 2022 Building Standards Code.**

Section 12.040.10 of Chapter 12.04 [Adoption of Codes] Title 12 [Buildings and Construction] of the Menlo Park Municipal Code is hereby repealed and replaced to read in entirety as follows:

**12.04.010 – Adoption of California Building Standards Code.**

The following codes, as approved by the California Building Standards Commission, are hereby adopted by reference:

- 1) The 2022 California Administrative Code, Part 1 of the California Building Standards Code, Title 24 California Code of Regulations;
- 2) The 2022 California Building Code, Part 2 of the California Building Standards Code, Title 24 California Code of Regulations, including Appendices I and J;
- 3) The 2022 California Residential Code, Part 2.5 of the California Building Standards Code, Title 24 California Code of Regulations, including Appendices AH, AQ, AS, and AX;
- 4) The 2022 California Electrical Code, Part 3 of the California Building Standards Code, Title 24 California Code of Regulations;
- 5) The 2022 California Mechanical Code, Part 4 of the California Building Standards Code, Title 24 California Code of Regulations;
- 6) The 2022 California Plumbing Code, Part 5 of the California Building Standards Code, Title 24 California Code of Regulations;
- 7) The 2022 California Energy Code, Part 6 of the California Building Standards Code, Title 24 California Code of Regulations;
- 8) The 2022 California Historical Building Code, Part 8 of the California Building Standards Code, Title 24 California Code of Regulations;
- 9) The 2022 California Fire Code, Part 9 of the California Building Standards Code, Title 24 California Code of Regulations;
- 10) The 2022 California Existing Building Code, Part 10 of the California Building Standards Code, Title 24 California Code of Regulations;
- 11) The 2022 California Green Building Standards Code, Part 11 of the California Building Standards Code, Title 24 California Code of Regulations; and
- 12) The 2022 California Referenced Standards Code, Part 12 of the California Building Standards Code, Title 24 California Code of Regulations.

A copy of each code, subject to such amendments as may be adopted by the City in this Title 12, is on file in the office of the city clerk. The provisions of this title, including said codes and amendments thereto, shall be known as the building code of the city.

**SECTION 3: Adoption of Penalties.**

Section 12.04.020 of Chapter 12.04 [Adoption of Codes] Title 12 [Buildings and Construction] of the Menlo Park Municipal Code is hereby repealed and replaced to read in entirety as follows:

**12.04.020 – Penalties for Violations of California Building Standards Code.**

Persons who shall violate a provision of the code adopted under section 12.04.010, as may be amended by this title, or who fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the Building Official or Fire Official, or of a permit or certificate used under provisions of the above codes, shall be subject to penalty in accordance with chapter 1.12. Persons committing such violation shall be guilty of a misdemeanor, punishable by a fine of not more than \$1000 or by imprisonment not exceeding six months, or both fine and imprisonment, unless the violation is made an infraction by the prosecuting authority.



SECTION 4: Amendment of 2022 California Building Code.

Chapter 12.06 of Title 12 [Buildings and Construction] of the Menlo Park Municipal Code is hereby repealed and replaced to read as follows:

Chapter 12.06  
California Building Code Amendments

**Sections:**

**12.06.010 – Amendment of Section 105.2 – Work exempt from permit.**

**12.06.020 – Appendix J, Section J107.4.1 – Imported Fill added.**

**12.06.010 – Amendment of Section 105.2 – Work exempt from permit.**

Section 105.2 of the California Building Code, Part 2 of the California Building Standards Code, Title 24 California Code of Regulations is amended for the first paragraph and “Building” exemptions to read as follows:

105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other law or ordinance of the City of Menlo Park. Permits shall not be required for the following:

**Building:**

1. One-story detached accessory buildings used as tool and storage sheds, playhouses, garden sheds or similar uses, provided the height does not exceed eight feet, the projected roof area does not exceed 64 square feet, and the structure complies with Section 16.68.030 of the City of Menlo Park Municipal Code. These structures shall still be regulated by section 710A, despite exemption from permit.
2. Wood fences not over seven feet high.
3. Oil Derricks.
4. Retaining walls which are not over two feet high measured from the top of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II, or III liquids.
5. Detached free-standing water tanks supported directly on a concrete foundation at grade if the capacity does not exceed 500 gallons and the height above grade does not exceed six feet and the height to width ratio does not exceed two to one.
6. Platforms, walks, and driveways not more than 12 inches above grade and not over any basement or story below and are not part of an accessible route.
7. Painting, papering, carpeting, tiling except in showers, cabinets, countertops and similar finish work.
8. Temporary motion picture, television and theater stage sets and scenery.
9. Prefabricated swimming pools accessory to a Group R Division 3 occupancy that are less than 24 inches deep, do not exceed 5,000 Gallons and are installed entirely above ground.
10. Shade cloth structures constructed for nursery or agricultural purposes, not including service systems
11. Swings and other playground equipment accessory to detached one- and two-family dwellings not exceeding 120 square feet as measured at the supports or nine feet in height as measured from existing natural grade to the top of the highest structural member, guard rail, or appendage.
12. Windows awnings supported by an exterior wall of Group R Division 3 occupancy when projecting not more than 36 inches from the exterior wall and do not require additional support.
13. Non-fixed and moveable fixtures, cases, racks, counters, and partitions not over five feet nine inches in height.

**12.06.020 – Appendix J, Section J107.4.1 – Imported Fill added.**

Section J107.4.1 is added to Appendix J 2 of the California Building Standards Code, Title 24 California Code of Regulations to read in entirety as follows:

J107.4.1 Imported Fill. Prior to the import of fill, the origin of the fill shall be identified by a licensed geotechnical engineer and samples of the soil shall be tested and shown to meet the standards established in the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) guidelines for clean imported fill material. The test results from the samples shall be submitted to and approved by the Building Official prior to the fill being brought on site.

SECTION 5: Amendment of 2022 California Residential Code.

Chapter 12.08 [California Residential Code Amendments] of Title 12 [Buildings and Construction] of the Menlo Park Municipal Code is hereby repealed and replaced to read in entirety as follows:

Chapter 12.08  
California Residential Code Amendments

**Sections:**

**12.08.010 – Amendment of Section R105.2 – Work exempt from permit.**

**12.08.020 – Amendment of Table R301.2 – Climatic and Geographic Design Criteria.**

**12.08.030 – Amendment of Section R322.1 – General.**

**12.08.040 – Limits on Repair and Remodel.**

**12.08.010 Amendment of Section R105.2 – Work exempt from permit.**

Section R105.2 of the California Residential Code, Part 2.5 of the California Building Standards Code, Title 24 California Code of Regulations is amended for the first paragraph and “Building” exemptions to read as follows:

R105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other law or ordinance of the City of Menlo Park. Permits will not be required for the following:

**Building:**

1. Other than storm shelters, one story detached accessory structures, provided the height does not exceed eight feet, the projected roof area does not exceed 64 square feet, and the structure complies with Section 16.68.030 of the City of Menlo Park Municipal Code. These structures shall still be regulated by section 710A despite exemption from permit.
2. Wood fences not over seven feet high.
3. Retaining walls which are not over two feet high measured from the top of the footing to the top of the wall, unless supporting a surcharge.
4. Detached free-standing water tanks supported directly on a concrete foundation at grade if the capacity does not exceed 500 gallons and the height above grade does not exceed six feet and the height to width ratio does not exceed two to one.
5. Sidewalks and driveways.
6. Painting, papering, carpeting, tiling except in showers, cabinets, countertops and similar finish work.
7. Prefabricated swimming pools that are less than 24 inches deep.
8. Swings and other playground equipment accessory to detached one- and two-family dwellings not exceeding 120 square feet as measured at the supports or nine feet in height as

measured from existing natural grade to the top of the highest structural member, guard rail, or appendage.

9. Windows awnings supported by an exterior wall of Group R Division 3 occupancy when projecting not more than 36 inches from the exterior wall and do not require additional support.
10. Decks not exceeding 200 square feet in area, that are not more than 30 inches above grade at any point, are not attached to a dwelling unit and do not serve the exit door required by Section 311.4.

**12.08.020 – Amendment of Table R301.2 – Climatic and Geographic Design Criteria.**

Table R301.2 of the California Residential Code, Part 2.5 of the California Building Standards Code, Title 24 California Code of Regulations is amended to read as follows:

Table R301.2 Climatic and Geographic Design Criteria

GROUND SNOW LOAD	WIND DESIGN				SEISMIC DESIGN CATEGORY <sup>f</sup>
	Speed <sup>d</sup> (mph)	Topographic effects <sup>k</sup>	Special wind region <sup>l</sup>	Wind-borne debris zone <sup>m</sup>	
NA	110	NA	NA	NA	D-E

SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP <sup>e</sup>	ICE BARRIER UNDER- LAYMENT REQUIRED <sup>h</sup>	FLOOD HAZARDS <sup>g</sup>	AIR FREEZING INDEX <sup>i</sup>	MEAN ANNUAL TEMP <sup>j</sup>
Weathering <sup>a</sup>	Frost line depth <sup>b</sup>	Termite <sup>c</sup>					
NA	NA	NA	NA	NA	National Flood Insurance program Date – Feb 4, 1981 revised April 21, 1999.  Adoption of first code management of flood hazard areas – June 14, 1974  Flood insurance Study - Oct 16, 2012 revised July 16, 2015  Panel number – 06081C0195F, 06081C0215F, 06081C0302F, 06081C0306F, 06081C0307F, 06081C0308E, 06081C0309F,	NA	58.55

SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP <sup>e</sup>	ICE BARRIER UNDER-LAYMENT REQUIRED <sup>h</sup>	FLOOD HAZARDS <sup>g</sup>	AIR FREEZING INDEX <sup>i</sup>	MEAN ANNUAL TEMP <sup>j</sup>
Weathering <sup>a</sup>	Frost line depth <sup>b</sup>	Termite <sup>c</sup>					
					06081C0311E, 06081C0326F, 06081C0328F,		

For SI: 1 pound per square foot = 0.0479 kPa, 1 mile per hour = 0.447 m/s.

- a. Weathering may require a higher strength concrete or grade of masonry than necessary to satisfy the structural requirements of this code. The weathering column shall be filled in with the weathering index, "negligible," "moderate" or "severe" for concrete as determined from Figure R301.2(1). The grade of masonry units shall be determined from ASTM C34, C55, C62, C73, C90, C129, C145, 0216 or C652.
- b. The frost line depth may require deeper footings than indicated in Figure R403.1(1). The jurisdiction shall fill in the frost line depth column with the minimum depth of footing below finish grade.
- c. The jurisdiction shall fill in this part of the table to indicate the need for protection depending on whether there has been a history of local subterranean termite damage.
- d. The jurisdiction shall fill in this part of the table with the wind speed from the basic wind speed map [Figure R301.2(2)]. Wind exposure category shall be determined on a site-specific basis in accordance with Section R301.2.1.4.
- e. Temperatures shall be permitted to reflect local climates or local weather experience as determined by the building official.
- f. The jurisdiction shall fill in this part of the table with the seismic design category determined from Section R301.2.2.1.
- g. The jurisdiction shall fill in this part of the table with (a) the date of the jurisdiction's entry into the National Flood Insurance Program (date of adoption of the first code or ordinance for management of flood hazard areas), (b) the date(s) of the Flood Insurance Study and (c) the panel numbers and dates of the currently effective Flood Insurance Study or other flood hazard map adopted by the authority having jurisdiction, as amended.
- h. In accordance with Sections R905.1.2, R905.4.3.1, 8905.5.3.1, R905.6.3.1, R905.7.3.1 and R905.8.3.1, where there has been a history of local damage from the effects of ice damming, the jurisdiction shall fill in this part of the table with "YES." Otherwise, the jurisdiction shall fill in this part of the table with "NO."
- i. The jurisdiction shall fill in this part of the table with the 100-year return period air freezing index (BF-days) from Figure R403.3(2) or from the 100-year (99 percent) value on the National Climatic Data Center data table "Air Freezing Index-USA Method (Base 32°F)."
- j. The jurisdiction shall fill in this part of the table with the mean annual temperature from the National Climatic Data Center data table "Air Freezing Index-USA Method (Base 32°F)."
- k. In accordance with Section R301.2.1.5, where there is local historical data documenting structural damage to buildings due to topographic wind speed-up effects, the jurisdiction shall fill in this part of the table with "YES." Otherwise, the jurisdiction shall indicate "NO" in this part of the table.
- l. In accordance with Figure R301.2(4)A, where there is local historical data documenting unusual wind conditions, the jurisdiction shall fill in this part of the table with "YES" and identify

any specific requirements, Otherwise, the jurisdiction shall indicate "NO" in this part of the table.

- m. In accordance with Section R301.2.1.2.1. the jurisdiction shall indicate the wind-borne debris wind zone(s). Otherwise, the jurisdiction shall indicate "NO" in this part of the table.
- n. The jurisdiction shall fill in these sections of the table to establish the design criteria using Table 1a or 1b from ACCA manual J or established criteria determined by the jurisdiction.
- o. The jurisdiction shall fill in this section of the table using the ground snow loads in figures R301.2(3) and R301.2(4).

**12.308.30 – Amendment of Section R322.1 – General.**

Section R322.1 of the California Residential Code, Part 2.5 of the California Building Standards Code, Title 24 California Code of Regulations is amended to read in entirety as follows:

R322.1 General. Buildings and structures constructed in whole or part in flood hazard areas including A or V Zones and Coastal A Zones, as established in Table R301.2, and substantial improvement and restoration of substantial damaged of buildings and structures in flood hazard areas, shall be designed and constructed in accordance with the provisions contained in this section and Chapter 12.42, Flood Damage Prevention, of the City of Menlo Park’s Municipal Code. Buildings and structures that are located in more than one flood hazard area shall comply with the provisions of associated with the most restrictive flood hazard area. Buildings and structures located in whole or in part in identified floodways shall be designed and constructed in accordance with ASCE 24.

**12.08.040 – Limits on Repair and Remodel**

When the scope of work for R3 and U occupancies involves the alteration or removal of any existing structural framing that meets or exceeds seventy-five percent (75%) or greater of the linear footage of interior and exterior walls, including the removal of roof structure in those wall areas, cumulative within a two (2) year period, the project shall be considered as new construction.

SECTION 6: Amendment of 2022 California Plumbing Code.

Chapter 12.14 [California Plumbing Code Amendments] of Title 12 [Buildings and Construction] of the Menlo Park Municipal Code is hereby repealed and replaced to read in entirety as follows:

Chapter 12.14  
California Plumbing Code Amendments

**Sections:**

**12.14.010 – Addition of Section 808.2 - Single pass water systems prohibited.**

**12.14.010 – Addition of Section 808.2 of Chapter 8.**

Section 808.2 is added to the 2022 California Plumbing Code, Part 5 of the California Building Standards Code, Title 24 California Code of Regulations to read in entirety as follows:

808.2 Single Pass Cooling Water Systems Prohibited. Clean running water used only once for exclusively as a cooling medium in an appliance, device, or apparatus is prohibited.

SECTION 7: Amendment of 2022 California Energy Code.

Chapter 12.16 [California Energy Code Amendments] of Title 12 [Buildings and Construction] is hereby repealed and replaced to read as follows:

Chapter 12.16

## California Energy Code Amendments

### Sections:

#### **12.16.010 – California Energy Code amendments.**

#### **12.16.020 – Prohibition on Conversion to Mixed-Fuel Buildings.**

#### **12.16.010 – California Energy Code amendments.**

The 2022 California Energy Code, Part 6 of the California Building Standards Code, Title 24 California Code of Regulations is amended with the modifications set forth below:

Section 100.0(e), paragraphs (1) and (2) are modified to read as follows:

#### SECTION 100.0 – Scope.

e) Sections applicable to particular buildings. TABLE 100.0-A and this subsection list the provisions of Part 6 that are applicable to different types of buildings covered by Section 100.0(a).

1. All buildings. Sections 100.0 through 110.12 apply to all buildings.

EXCEPTION to Section 100.0(e) 1: Spaces or requirements not listed in TABLE 100.0-A

2. Newly constructed buildings.

a) All newly constructed buildings. Sections 110.0 through 110.12 apply to all newly constructed buildings within the scope of Section 100.0(a). In addition, newly constructed buildings shall meet the requirements of Subsections B, C, D or E, as applicable and shall be an All-Electric Building as defined in Section 100.1(b).

Exception 1: Non-Residential Buildings containing a Scientific Laboratory Building, such area may apply for approval to contain a non-electric Space Conditioning System or appliances or laboratory equipment, subject to demonstrating infeasibility or lack of cost-effectiveness in accordance with administrative guidelines as may be established by the Building Official.

To take advantage of this exception applicant shall provide third party verification that All-Electric space heating requirement is not cost effective and feasible.

Exception 2: All Residential buildings may contain non-electric Cooking Appliances and Fireplaces except buildings defined in the Energy Code as “Multifamily buildings” that are four stories or more.

Exception 3: Exemption for public agency owned and operated emergency centers. To take advantage of this exception applicant shall provide third party verification that All-Electric space heating requirement is not cost effective and feasible.

Exception 4: Non-residential buildings containing a for-profit restaurant open to the public or an employee kitchen may apply to the Environmental Quality Commission (EQC) for an exception to install gas-fueled cooking appliances. This request must be based on a business-related reason to cook with a flame that cannot be reasonably achieved with an electric fuel source. Examples include barbeque-themed restaurants and pizza ovens. The Environmental Quality Commission (EQC) shall grant this exception if they find the following:

1. There is a business-related reason to cook with a flame;

2. This need cannot be reasonably achieved with an electric fuel source;
3. The applicant has employed reasonable methods to mitigate the greenhouse gas impacts of the gas-fueled appliance;
4. The applicant shall comply with the pre-wiring provision of Note 1 below.

The Environmental Quality Commission's decision shall be final unless the applicant appeals to the City Council within 15 days of the appointed body's decision. The City Council's decision on the appeal shall be final.

Note 1: If natural gas appliances are used in any of the above exceptions 1-4, natural gas appliance locations must also be electrically pre-wired for future electric appliance installation. They shall include the following:

1. A dedicated circuit, phased appropriately, for each appliance, with a minimum amperage requirement for a comparable electric appliance (see manufacturer's recommendations) with an electrical receptacle or junction box that is connected to the electric panel with conductors of adequate capacity, extending to within 3 feet of the appliance and accessible with no obstructions. Appropriately sized conduit may be installed in lieu of conductors;
2. Both ends of the unused conductor or conduit shall be labeled with the words "For Future Electric appliance" and be electrically isolated;
3. A reserved circuit breaker space shall be installed in the electrical panel adjacent to the circuit breaker for the branch circuit and labeled for each circuit, an example is as follows (i.e "For Future Electric Range;") and
4. All electrical components, including conductors, receptacles, junction boxes, or blank covers, related to this section shall be installed in accordance with the California Electrical Code.

Note 2: If any of the exceptions 1-4 are granted, the Building Official shall have the authority to approve alternative materials, design and methods of construction or equipment per CBC 104.

Subdivision (b), Definitions, of Section 100.1 — Definitions and Rules of Construction, is modified by adding the following definitions of "All Electric Building" "Scientific Laboratory Building" and replacing the definition of "Shading" as follows:

**ALL ELECTRIC BUILDING** is a building that has no natural gas or propane plumbing installed within the building, and that uses electricity as the source of energy for its space heating, water heating, cooking appliances, and clothes drying appliances. All Electric Buildings may include solar thermal pool heating.

**SCIENTIFIC LABORATORY BUILDING** is a building or area where research, experiments, and measurement in medical, and life sciences are performed and/or stored requiring examination of fine details. The building may include workbenches, countertops, scientific instruments, and supporting offices.

**SHADING** is the protection from heat gains because of direct solar radiation by permanently attached exterior devices of building elements, interior shading devices, glazing material, adherent materials, including items located outside the building footprint such as heritage trees or Multifamily buildings that may affect shading.

Section 110.2, Mandatory Requirements for Space Conditioning Equipment is amended for the first paragraph to read as follows:

Certification by Manufacturers. Any space-conditioning equipment listed in this section, may be installed only if the manufacturer has certified to the Commission that the equipment complies with all the applicable requirements of this section and the building will still meet applicable All-Electric Building requirements as set forth in section 100.0 (e)2A.

Subdivision (a), Certification by manufacturers, of Section 110.3, Mandatory Requirements for Service Water-Heating Systems and Equipment, is modified for the first sentence to read as follows:

- a) Certification by manufacturers. Any service water-heating system or equipment may be installed only if the manufacturer has certified that the system or equipment complies with all of the requirements of this subsection for that system or equipment, and the building will still meet applicable All-Electric Building requirements as set forth in section 100.0 (e)2A.

Subdivision (a), Certification by manufacturers, of Section 110.4, Mandatory Requirements for Pool and Spa Systems and Equipment, is modified to read as follows:

- a) Certification by Manufacturers. Any pool or spa heating system or equipment, may be installed only if the manufacturer has certified that the system or equipment has all of the following, and the building will still meet applicable All-Electric Building requirements as set forth in section 100.0 (e)2A.:
  1. Efficiency. For equipment subject to state or federal appliance efficiency standards, listings in the commissions directory of certified equipment showing compliance with applicable standards; and
  2. On-off Switch. A readily accessible on-off switch, mounted on the outside of the heater that allows shutting off the heater without adjusting the thermostat setting; and
  3. Instructions. A permanent, easily readable and weatherproof plate or card that gives instruction for the energy efficient operation of the pool or spa heater and for the proper care of pool or spa water when a cover is used; and
  4. Electric resistance heating. No electric resistance heating.  
Exception 1 to section 110.4(a) 4: Listed package units with fully insulated enclosures, and with tight-fitting covers that are insulated to at least R-6.  
Exception 2 to section 110.4 (a) 4: Pools or spas deriving at least 60 percent of the annual heating energy from site solar energy or recovered energy.
- b) Installation. Any pool or spa system or equipment shall be installed between with all of the following:
  1. Piping. At least 36 inches of pipe shall be installed between the filter and the heater or dedicated suction and return lines, or built-in or built-up connection shall be installed to allow for the future addition of solar heating equipment;
  2. Covers. A cover for outdoor pools or outdoor spas that have a heat pump or gas heater; and
  3. Directional inlets and time switches for pools. If the system or equipment is for a pool:
    - i. The pool shall have directional inlets the adequately mix the pool water; and
    - ii. A time switch or similar control mechanism shall be installed as part of a pool water circulation control system the will allow all pumps to be set or programmed



to run only during off-peak electric demand periods, and for the minimum time necessary to maintain the water the condition required by applicable public health standards.

Subdivision (a), Certification by manufacturers, of Section 110.5, Natural Gas Central Furnaces, Cooking Equipment, Pool and Spa Heaters, is modified for the first sentence to read as follows:

Any natural gas system or equipment listed below may be installed only if it does not have a continuously burning pilot light, and the building will still meet applicable All-Electric Building requirements as set forth in section 100.0 (e)2A:

- a. Fan-type central furnaces.
- b. Household cooking appliances

Exception to Section 110.5(b): Household cooking appliances without an electrical supply voltage connection and in which each pilot consumes less than 150 Btu/hr.

- c. Pool Heaters
- d. Spa Heaters
- e. Indoor and outdoor fireplaces.

Section 110.10, Mandatory Requirements for Solar Readiness, is amended to read as follows:

**SECTION 110.10 – Mandatory Requirements for Solar Readiness.**

a) Covered Occupancies.

1. Single Family Residences. Single family residences located in subdivisions with ten or more single family residences and where the application for a tentative subdivision map for the residences has been deemed complete approved by the enforcement agency, which do not have a photovoltaic system installed, shall comply with the requirements of Section 110.10(b) through 110.10(e).
2. Low-rise multifamily buildings. Residential buildings, other than single family, with less than 4 stories that do not have a photovoltaic system installed shall comply with the requirements of Section 110.10(b) through 110.10(d).
3. Hotel/motel occupancies and high rise multifamily buildings that do not have a photovoltaic system installed shall comply with the requirements of Section 110.10(b) through 110.10(d) and Table 2.
4. Nonresidential buildings with three habitable stories or fewer, other than I-2 and I-2.1 buildings, that do not have a photovoltaic system installed, shall comply with the requirements of Sections 110.10(b) through 110.10(d) and Table 2.

<b>Table 2: Solar panel requirements for all new nonresidential and high rise residential buildings</b>	
<b>Square footage of building</b>	<b>Size of panel</b>
Less than 10,000 sq. ft.	Minimum of 3-kilowatt PV systems

<b>Table 2: Solar panel requirements for all new nonresidential and high rise residential buildings</b>	
<b>Square footage of building</b>	<b>Size of panel</b>
Greater than or equal to 10,000 sq. ft.	Minimum of 5-kilowatt PV systems
EXCEPTION: As an alternative to a solar PV system, the building type may provide a solar hot water system (solar thermal) with a minimum collector area of 40 square feet, additional to any other solar thermal equipment otherwise required for compliance with Part 6.	

b) Solar Zone.

1. Minimum Solar Zone Area. The solar zone shall have a minimum total area as described below. The solar zone shall comply with access, pathway, smoke ventilation, and spacing requirements as specified in Title 24, Part 9 or other Parts of Title 24 or in any requirements adopted by a local jurisdiction. The solar zone total area shall be comprised of areas that have no dimension less than five feet and are no less than 80 square feet each for buildings with roof areas less than or equal to 10,000 square feet or no less than 160 square feet each for buildings with roof areas greater than 10,000 square feet.

A. Single Family Residences. The solar zone shall be located on the roof or overhang of the building and have a total area no less than 250 square feet.

EXCEPTION 1 to Section 110.10(b)1A: Single family residences with a permanently installed domestic solar water-heating system meeting the installation criteria specified in the Reference Residential Appendix RA4 and with a minimum solar savings fraction of 0.50.

EXCEPTION 2 to Section 110.10(b)1A: Single family residences with three habitable stories or more and with a total floor area less than or equal to 2000 square feet and having a solar zone total area no less than 150 square feet.

EXCEPTION 3 to Section 110.10(b)1A: Single family residences located in the Wildland-Urban Interface Fire Area as defined in Title 24, Part 2 and having a whole house fan and having a solar zone total area no less than 150 square feet.

EXCEPTION 4 to Section 110.10(b)1A: Buildings with a designated solar zone area that is no less than 50 percent of the potential solar zone area. The potential solar zone area is the total area of any low-sloped roofs where the annual solar access is 70 percent or greater and any steep-sloped roofs oriented between 90 degrees and 300 degrees of true north where the annual solar access is 70 percent or greater. Solar access is the ratio of solar insolation including shade to the solar insolation without shade. Shading from obstructions located on the roof or any other part of the building shall not be included in the determination of annual solar access.

EXCEPTION 5 to Section 110.10(b)1A: Single family residences having a solar zone total area no less than 150 square feet and where all thermostats are demand responsive controls and comply with Section 110.12(a), and are capable of receiving and responding to Demand Response Signals prior to granting of an occupancy permit by the enforcing agency.

EXCEPTION 6 to Section 110.10(b)1A: Single family residences meeting the following conditions:

- A. All thermostats are demand responsive controls that comply with Section 110.12(a), and are capable of receiving and responding to Demand Response Signals prior to granting of an occupancy permit by the enforcing agency.
- B. Comply with one of the following measures:
  - i. Install a dishwasher that meets or exceeds the ENERGY STAR Program requirements with a refrigerator that meets or exceeds the ENERGY STAR Program requirements, a whole house fan driven by an electronically commutated motor, or an SAE J1772 Level 2 Electric Vehicle Supply Equipment (EVSE or EV Charger) with a minimum of 40 amperes; or
  - ii. Install a home automation system capable of, at a minimum, controlling the appliances and lighting of the dwelling and responding to demand response signals; or
  - iii. Install alternative plumbing piping to permit the discharge from the clothes washer and all showers and bathtubs to be used for an irrigation system in compliance with the California Plumbing Code and any applicable local ordinances; or
  - iv. Install a rainwater catchment system designed to comply with the California Plumbing Code and any applicable local ordinances, and that uses rainwater flowing from at least 65 percent of the available roof area.

B. Low-rise and High-rise Multifamily Buildings, Hotel/Motel Occupancies, and Nonresidential Buildings. The solar zone shall be located on the roof or overhang of the building or on the roof or overhang of another structure located within 250 feet of the building or on covered parking installed with the building project, and shall have a total area no less than 15 percent of the total roof area of the building excluding any skylight area. The solar zone requirement is applicable to the entire building, including mixed occupancy.

EXCEPTION 1 to Section 110.10(b)1B: High-rise Multifamily Buildings, Hotel/Motel Occupancies, and Nonresidential Buildings with a permanently installed solar electric system having a nameplate DC power rating, measured under Standard Test Conditions, of no less than one watt per square foot of roof area.

EXCEPTION 2 to Section 110.10(b)1B: High-rise multifamily buildings, hotel/motel occupancies with a permanently installed domestic solar water-heating system complying with Section 150.1(c)8Biii and an additional collector area of 40 square feet.

EXCEPTION 3 to Section 110.10(b)1B: Buildings with a designated solar zone area that is no less than 50 percent of the potential solar zone area. The potential solar zone area is the total area of any low-sloped roofs where the annual solar access is 70 percent or greater and any steep-sloped roofs oriented between 90 degrees and 300 degrees of true north where the annual solar access is 70 percent or greater. Solar access is the ratio of solar insolation including shade to the solar insolation without shade. Shading from obstructions located on the

roof or any other part of the building shall not be included in the determination of annual solar access.

EXCEPTION 4 to Section 110.10(b)1B: Low-rise and high-rise multifamily buildings with all thermostats in each dwelling unit are demand response controls that comply with Section 110.12(a), and are capable of receiving and responding to Demand Response Signals prior to granting of an occupancy permit by the enforcing agency. In addition, either A or B below:

- A. In each dwelling unit, comply with one of the following measures:
  - i. Install a dishwasher that meets or exceeds the ENERGY STAR Program requirements with either a refrigerator that meets or exceeds the ENERGY STAR Program requirements or a whole house fan driven by an electronically commutated motor; or
  - ii. Install a home automation system that complies with Section 110.12(a) and is capable of, at a minimum, controlling the appliances and lighting of the dwelling and responding to demand response signals; or
  - iii. Install alternative plumbing piping to permit the discharge from the clothes washer and all showers and bathtubs to be used for an irrigation system in compliance with the California Plumbing Code and any applicable local ordinances; or
  - iv. Install a rainwater catchment system designed to comply with the California Plumbing Code and any applicable local ordinances, and that uses rainwater flowing from at least 65 percent of the available roof area.
  
- B. Meet the Title 24, Part 11, Section A4.106.8.2 requirements for electric vehicle charging spaces.

EXCEPTION 5 to Section 110.10(b)1B: Buildings where the roof is designed and approved to be used for vehicular traffic or parking or for a heliport.

EXCEPTION 6 to section 110.10(b)1B: Performance equivalency approved by the building official.

- 2. Azimuth. All sections of the solar zone located on steep-sloped roofs shall have an azimuth range and be oriented between 90 degrees and 300 degrees of true north.
- 3. Shading.
  - A. No obstructions, including but not limited to, vents, chimneys, architectural features, and roof mounted equipment, shall be located in the solar zone.
  - B. Any obstruction, located on the roof or any other part of the building that projects above a solar zone shall be located at least twice the distance, measured in the horizontal plane, of the height difference between the highest point of the obstruction and the horizontal projection of the nearest point of the solar zone, measured in the vertical plane.

EXCEPTION to Section 110.10(b)3: Any roof obstruction, located on the roof or any other part of the building, that is oriented north of all points on the solar zone.

- C. The solar zone needs to account for shading from obstructions that may impact the area required in 110.10(b)1B. When determined by the Building Official that conditions exist where excessive shading occurs and solar zones cannot be met, a performance equivalency approved by the Building Official may be used as an alternative.

4. Structural Design Loads on Construction Documents. For areas of the roof designated as solar zone, the structural design loads for roof dead load and roof live load shall be clearly indicated on the construction documents.

NOTE: Section 110.10(b)4 does not require the inclusion of any collateral loads for future solar energy systems.

c) Interconnection Pathways.

1. The construction documents shall indicate a location reserved for inverters and metering equipment and a pathway reserved for routing of conduit from the solar zone to the point of interconnection with the electrical service.
2. For single family residences and central water-heating systems, the construction documents shall indicate a pathway for routing of plumbing from the solar zone to the water-heating system.

d) Documentation. A copy of the construction documents or a comparable document indicating the information from Sections 110.10(b) through 110.10(c) shall be provided to the occupant.

e) Main Electrical Service Panel.

1. The main electrical service panel shall have a minimum busbar rating of 200 amps.
2. The main electrical service panel shall have a reserved space to allow for the installation of a double pole circuit breaker for a future solar electric installation. The reserved space shall be permanently marked as "For Future Solar Electric".

**12.16.020 – Prohibition on Conversion to Mixed-Fuel Buildings.**

No building that is required to be constructed as an All-Electric building, or that currently uses electricity as its sole fuel source for appliances, space conditioning systems, water heating systems, pool and spa systems, or any other building systems, shall be altered or modified to use any fuel source other than electricity for appliances, space conditioning systems, water heating systems, pool and spa systems, or any other building systems.

SECTION 8: Amendment of Green Building Standards Code.

Chapter 12.18 of Title 12 [Buildings and Construction] of the Menlo Park Municipal Code is hereby repealed and replaced to read in entirety as follows:

California Green Building Standards Code Amendments

**Sections:**

**12.18.010 – Amendments to Section 202 – Definitions.**

**12.18.020 – Amendment of Section 4.106.4 – Electric vehicle (EV) charging for new construction.**

**12.18.030 – Amendment of Section 4.106.4.1 – New one and two-family dwellings and town houses with attached private garages.**

**12.18.040 – Amendment of Section 4.106.4.2 – Multifamily dwellings with residential parking facilities.**

**12.18.050 – Amendment of Section 4.408.1 – Construction Waste Management.**

**12.18.060 – Amendment of Section 5.106.5.3 – Electric Vehicle Charging.**

**12.18.070 – Addition of Section 5.106.5.5.1 – Additions and Alterations.**

**12.18.080 – Amendment of Section 5.408.1 – Construction Waste Management.**

**12.18.010 – Amendment to Section 202 – Definitions.**

Section 202 of the California Green Building Standards Code, Part 11 of the California Building Standards Code, Title 24 California Code of Regulations is amended to (1) add definitions of Affordable Housing and Direct Current Fast Charging, Level 1 EV Ready, Level 2 EV Capable, Level 2 EV Ready, Low Power Level 2 EV Ready, and (2) revise definitions of Automatic Load Management System (ALMS), Electric Vehicle Charging Station, with enacted definitions to read as follows:

**AFFORDABLE HOUSING.** Residential buildings that entirely consist of units below market rate and whose rents or sales prices are governed by local agencies to be affordable based on area median income.

**AUTOMATIC LOAD MANAGEMENT SYSTEM (ALMS).** A control system designed to manage load across one or more electric vehicle supply equipment (EVSE), circuits, panels and to share electrical capacity and/or automatically manage power at each connection point. ALMS systems shall be designed to deliver no less than 3.3 kVa (208/240 volt, 16-ampere) to each EV Capable, EV Ready or EVCS space served by the ALMS, and meet the requirements of California Electrical Code Article 625. The connected amperage to the building site for the EV charging infrastructure shall not be lower than the required connected amperage per California Green Building Standards Code, Title 24 Part 11.

**DIRECT CURRENT FAST CHARGING (DCFC).** A parking space provided with electrical infrastructure that meets the following conditions:

- i. A minimum of 48 kVa (480 volt, 100-ampere) capacity wiring.
- ii. Electric vehicle supply equipment (EVSE) located within three (3) feet of the parking space providing a minimum capacity of 80-ampere.

**ELECTRIC VEHICLE CHARGING STATION (EVCS).** A parking space that includes installation of electric vehicle supply equipment (EVSE) at an EV Ready space. An EVCS space may be used to satisfy EV Ready space requirements. EVSE shall be installed in accordance with the California Electrical Code, Article 625.

**LEVEL 1 EV READY.** A parking space that is served by a complete electric circuit with the following requirements:

- i. A minimum of 2.2 kVa (110/120 volt, 20-ampere) capacity wiring.
- ii. A receptacle labeled “Electric Vehicle Outlet” or electric vehicle supply equipment located within three (3) feet of the parking space. If EVSE is provided the minimum capacity of the EVSE shall be 16-ampere.
- iii. Conduit oversized to accommodate future Level 2 EV Ready (208/240 volt, 40-ampere) at each parking space.

**LEVEL 2 EV CAPABLE.** A parking space provided with electrical infrastructure that meets the following requirements:

- i. Conduit that links a listed electrical panel with sufficient capacity to a junction box or receptacle located within three (3) feet of the parking space.

- ii. The conduit shall be designed to accommodate at least 8.3 kVa (208/240 volt, 40-ampere) per parking space. Conduit shall have a minimum nominal trade size of 1 inch inside diameter and may be sized for multiple circuits as allowed by the California Electrical Code. Conduit shall be installed at a minimum in spaces that will be inaccessible after construction, either trenched underground or where penetrations to walls, floors, or other partitions would otherwise be required for future installation of branch circuits, and such additional elements deemed necessary by the Building Official. Construction documents shall indicate future completion of conduit from the panel to the parking space, via the installed inaccessible conduit.
- iii. The electrical panel shall reserve a space for a 40-ampere overcurrent protective device space(s) for EV charging, labeled in the panel directory as "EV CAPABLE."
- iv. Electrical load calculations shall demonstrate that the electrical panel service capacity and electrical system, including any on-site distribution transformer(s), have sufficient capacity to simultaneously charge all EVs at all required EV spaces at a minimum of 40 amperes.
- v. The parking space shall contain signage with at least a 12" font adjacent to the parking space indicating the space is EV Capable.

LEVEL 2 EV READY. A parking space that is served by a complete electric circuit with the following requirements:

- i. A minimum of 8.3 kVa (208/240 volt, 40-ampere) capacity wiring.
- ii. A receptacle labeled "Electric Vehicle Outlet" or electric vehicle supply equipment located within three (3) feet of the parking space. If EVSE is provided the minimum capacity of the EVSE shall be 30-ampere.

LOW POWER LEVEL 2 EV READY. A parking space that is served by a complete electric circuit with the following requirements:

- i. A minimum of 4.1 kVA (208/240 Volt, 20-ampere) capacity wiring.
- ii. A receptacle labeled "Electric Vehicle Outlet" or electric vehicle supply equipment located within three (3) feet of the parking space. If EVSE is provided the minimum capacity of the EVSE shall be 16-ampere.

Conduit oversized to accommodate future Level 2 EV Ready (208/240 volt, 40-ampere) at each parking space.

#### **12.18.020 – Amendment of Section 4.106.4 – Electric Vehicle (EV) charging for new construction.**

Section 4.106.4 of the California Green Building Standards Code, Part 11 of the California Building Standards Code, Title 24 California Code of Regulations is amended to read in entirety as follows:

4.106.4 Electric vehicle (EV) charging. Residential construction shall comply with Section 4.106.4.1 or 4.106.4.2, and 4.106.4.3, to facilitate future installation and use of EV chargers. Electric vehicle supply equipment (EVSE) shall be installed in accordance with the California Electrical Code, Article 625. For EVCS signs, refer to Caltrans Traffic Operations Policy Directive 13-01 (Zero Emission Vehicle Signs and Pavement Markings) or its successor(s). Calculation for spaces shall be rounded up to the nearest whole number.

Exceptions:

1. On a case-by-case basis, where the local enforcing agency has determined EV charging and infrastructure are not feasible based on one or more of the following conditions:
  - 1.1 Where there is no local utility power supply or the local utility is unable to supply adequate power.
  - 1.2. Where there is evidence suitable to the local enforcing agency substantiating that meeting the requirements will alter the local utility infrastructure design requirements may increase construction cost by an average of \$4,500 per parking space for market rate housing or \$400 per parking space for affordable housing. EV infrastructure shall be provided up to the level that would not exceed this cost for utility service. For 100 percent Below Market Rate affordable housing developments, EVSE with a minimum of Level 2 ready shall be provided for a minimum of 10 percent of the total number of dwelling units.
2. Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units without additional parking facilities

**12.18.030 – Amendment of Section 4.106.4.1 – New one and two-family dwellings and town houses with attached private garages.**

Section 4.106.4.1 of the California Green Building Standards Code, Part 11 of the California Building Standards Code, Title 24 California Code of Regulations is amended to read in entirety as follows:

4.106.4.1 New one and two-family dwellings and town houses with attached private garages.

For each dwelling unit, one parking space provided shall be a Level 2 EV Ready space. If a second parking space is provided, it shall be provided with a Level 1 EV Ready space.

**12.18.040 – Amendment of Section 4.106.4.2 – Multifamily dwellings with residential parking facilities.**

Section 4.106.4.2 of the California Green Building Standards Code, Part 11 of the California Building Standards Code, Title 24 California Code of Regulations is amended revise sections 4.106.4.2 and 4.106.4.2.1, and 4.106.4.2.2 to read as follows:

4.106.4.2 Multifamily dwellings with residential parking facilities. Requirements apply to parking spaces that are assigned or leased to individual dwelling units, as well as unassigned residential parking. Visitor or common area parking is not included. Calculations for the required number of EV spaces shall be rounded up to the nearest whole number.

4.106.4.2.1 New Construction. At least fifteen percent (15%) of dedicated parking spaces for any project shall be EVCS with minimum of Level 2 EV Ready. Automatic Load Management System (ALMS) shall be permitted to reduce load when multiple vehicles are charging. All remaining dedicated parking spaces required for a project shall, at a minimum, meet requirements to be considered a Low Power Level 2 EV Ready space. EVCS shall comply with the accessibility provisions for EV chargers in the California Building Code,



Chapter 11B. EV ready spaces and EVCS in multifamily developments shall comply with California Building Code, Chapter 11A, Section 1109A.

Note: The total number of EV spaces should be one-hundred percent (100%) of dwelling units or one-hundred percent (100%) of parking spaces, whichever is less. Construction plans and specifications shall include the following:

- The type and location of the vehicle supply equipment (EV Ready and / or EVSE).
- The raceway shall not be less than trade size 1"
- The raceway and wiring shall originate at a service panel or a subpanel serving the area and shall terminate into a receptacle or EVSE.
- The service panel or subpanel shall have sufficient capacity to accommodate a 208/240 minimum 40-ampere dedicated branch circuit for the future installation of the EVSE. The service panel or subpanel circuit directory shall identify the overcurrent protective device as "EV Ready or EV Capable" in accordance with the California Electrical Code
- Electrical calculations shall substantiate the design of the electrical system to include the rating of equipment and any on-site distribution transformers and have sufficient capacity to charge required EV at its full rated amperage
- Plan design shall be capable of accommodating a 208/240-volt dedicated circuit based upon 40 ampere branch circuit requirements. Required raceways and related components that are planned to be installed underground, enclosed, inaccessible or in concealed areas and spaces shall be installed at the time of original construction.

#### **4.106.4.2.2 EVCS Provisions.**

##### **4.106.4.2.2.1 Electric Vehicle Charging Stations (EVCS).**

Electric vehicle charging stations shall comply with the following requirements, except for EVCS serving public accommodations, public housing, motels and hotels shall not be required to comply with this section (see California Building Code, Chapter 11B, for applicable requirements):

##### **4.106.4.2.2.1.1 Location.**

EVCS shall comply with at least one of the following options:

1. The charging space shall be located adjacent to an accessible parking space meeting the requirements of the California Building Code, Chapter 11A, to allow use of the EV charger from the accessible parking space
2. The charging space shall be located on an accessible route, as defined in California Building Code, Chapter 2, to the building.

Exception: EVCS designed and constructed in compliance with California Building Code, Chapter 11B, are not required to comply with Section 4.106.4.2.2.1.1 and Section 4.106.4.2.2.1.2, Item 3.

##### **4.106.4.2.2.1.2 EVCS Dimensions**

The charging spaces shall be designed to comply with the following:

1. The minimum length of each EV space shall be 18 feet.
  2. The minimum width of each EV space shall be 9 feet.
  3. One in every 25 charging spaces, but not less than one, shall also have an 8-foot wide minimum aisle. A 5 foot wide minimum aisle shall be permitted provided the minimum width of the EV space is 12 feet.
- a. Surface slope for this EV space and the aisle shall not exceed 1 unit vertical in 48 units horizontal (2.083 percent slope) in any direction.

#### **4.106.4.2.2.1.3 Accessible EV spaces.**

In addition to the requirements in Sections 4.106.4.2.2.1.1 and 4.106.4.2.2.1.2, all EVSE, when installed, shall comply with the accessibility provisions for EV chargers in the California Building Code, Chapter 11B. EV ready spaces and EVCS in multifamily developments shall comply with California Building Code, Chapter 11A, Section 1109A.

### **12.18.050 – Amendment of Section 4.408.1 – Construction Waste Management.**

Section 4.408.1 of the California Green Building Standards Code, Part 11 of the California Building Standards Code, Title 24 California Code of Regulations is amended to read in entirety as follows:

4.408.1 Construction waste management. Recycle and/or salvage for reuse a minimum of 65 percent of both inert and non-inert nonhazardous demolition waste and 65 percent of both inert and non-inert nonhazardous construction waste in accordance with Section 4.408.2, 4.408.3 or 4.408.4 and meet the requirements of Chapter 12.48 Recycling and Salvaging of Construction and Demolition Debris City of Menlo Park Municipal Code.

Exceptions:

1. Excavated soil and land clearing debris.
2. Alternate waste reduction methods developed by working with local agencies if diversion or recycle facilities capable of compliance with this item do not exist or are not located reasonably close to the job site.
3. The enforcing agency may make exceptions to the requirements of this section when isolated jobsites are located in areas beyond the haul boundaries of the diversion facility.

### **12.18.060 – Amendment of Section 5.106.5.3 – Electric Vehicle Charging.**

Section 5.106.5.3 of the California Green Building Standards Code, Part 11 of the California Building Standards Code, Title 24 California Code of Regulations is amended to read in entirety as follows:

5.106.5.3 Electric vehicle (EV) charging. [N] Construction to provide electric vehicle infrastructure and facilitate electric vehicle charging shall comply with Section 5.106.5.3.1 and shall be provided in accordance with regulations in the California Building Code and the California Electrical Code. Accessible EVCS shall be provided in accordance with the California Building Code Chapter 11B Section 11B-228.3. For EVCS signs, refer to Caltrans Traffic Operations Policy Directive 13-01 (Zero Emission Vehicle Signs and Pavement Markings) or its successor(s). Calculation for spaces shall be rounded up to the nearest whole number.

Exceptions:

1. On a case-by-case basis where the local enforcing agency has determined compliance with this section is not feasible based upon one of the following conditions:
  - a. Where there is no local utility power supply.
  - b. Where the local utility is unable to supply adequate power.
  - c. Where there is evidence suitable to the local enforcement agency substantiating that additional local utility infrastructure design requirements, directly related to the implementation of Section 5.106.5.3, may increase construction cost by an average of \$4,500 per parking space. EV infrastructure shall be provided up to the level that would not exceed this cost for utility service.

Table 5.106.5.3.1 of Chapter 5 is amended and replaced with:

Table A5.106.5.3.1 Electric Vehicle (EV) charging Tier 1 [N] shall be used to determine the number of EV capable spaces required. Refer to Section 5.106.5.3.2 for design space requirements. When EV capable spaces are provided with EVSE to create EVCS per Table A5.106.5.3.1 refer to Section 5.106.5.3.2 for allowed use of Level 2 or Direct Current Fast Charger (DCFC) and Section 5.106.5.3.3 for the allowed use of Automatic Load Management System (ALMS).

Total Number of actual parking spaces	Tier 1 Number of Required EV capable spaces	Tier 1 Number of EVCS (EV capable spaces provided with EVSE) <sup>2</sup>
0-9	2	0
10-25	5	2
26-50	11	4
76-100	26	9
101-105	38	13
151-150	38	13
151-200	53	18
201 and over	30 percent of total parking spaces <sup>1</sup>	33 percent of EV capable spaces <sup>1</sup>

1. Calculation for spaces shall be rounded up to the nearest whole number.

2. The number of required EVCS (EV capable spaces provided with EVSE) in column 3 count toward the total number of required EV capable spaces shown in column 2.

**12.18.070 – Addition of Section 5.106.5.5.1 – Additions and Alterations.**

Section 5.106.5.5.1 is added to the California Green Building Standards Code, Part 11 of the California Building Standards Code, Title 24 California Code of Regulations is amended to read in entirety as follows:

Section 5.106.5.5.1 Additions and Alterations. Level 2 EV capable spaces and EVSE spaces that meet Level 2 Ready requirements shall be constructed and installed for additions and alterations as specified below in Table 5.105.5.1.

Table 5.106.5.5.1 Additions and Alterations <sup>1</sup>		
	NUMBER OF REQUIRED LEVEL 2 EV CAPABLE SPACES	NUMBER OF REQUIRED EVSE THAT ARE LEVEL 2 EV READY <sup>3</sup>
1 - 9,999 sq.ft.	Voluntary	Voluntary
10,000 - 25,000 sq.ft.	5%	1 Can be located in an EV capable space
Greater than 25,000 sq.ft.	10%	One + 1% of total required parking spaces for the affected area. Can be located in an EV capable space

<sup>1</sup>The EV space requirement is based on the required parking associated with the building where the work is being performed, inclusive of landscape reserve parking. For additions and alterations, percentages are based on the required parking for the affected area of the scope of work.

<sup>2</sup>Calculations for spaces shall be rounded up to the nearest whole number.

<sup>3</sup>The maximum number of required EV spaces and electric vehicle supply equipment (EVSE) shall not exceed the requirement for EV spaces for new construction of an equivalent development on a parcel or project site unless it is voluntary.

Construction plans and specifications shall include, all of the below:

1. The type and location of the EVSE.
2. A listed raceway capable of accommodating a 208/240-volt dedicated branch circuit.
3. The raceway shall not be less than trade size 1"
4. The raceway shall originate at a service panel or a subpanel serving the area and shall terminate in close proximity to the proposed location of the charging equipment and into a listed suitable cabinet, box, enclosure or equivalent.
5. The service panel or subpanel shall have sufficient capacity to accommodate a minimum 40-ampere dedicated branch circuit for the future installation of the EVSE.

6. Electrical calculations shall substantiate the design of the electrical system to include the rating of equipment and any on-site distribution transformers and have sufficient capacity to charge required EV at its full rated amperage. Calculations for the required number of EV spaces shall be rounded up to the nearest whole number.

#### **12.18.080 – Amendment of Section 5.408.1 – Construction Waste Management.**

Section 5.408.1 of the California Green Building Standards Code, Part 11 of the California Building Standards Code, Title 24 California Code of Regulations is amended to read in entirety as follows:

5.408.1 Construction waste management. Recycle and/or salvage for reuse a minimum of 65 percent of both inert and non-inert nonhazardous demolition waste and 65 percent of both inert and non-inert nonhazardous construction waste in accordance with Section 5.408.2, 5.408.3 or 5.408.4 and meet the requirements of Chapter 12.48 Recycling and Salvaging of Construction and Demolition Debris City of Menlo Park Municipal Code.

Exceptions:

1. Excavated soil and land clearing debris.
2. Alternate waste reduction methods developed by working with local agencies if diversion or recycle facilities capable of compliance with this item do not exist or are not located reasonably close to the job site.
3. The enforcing agency may make exceptions to the requirements of this section when isolated jobsites are located in areas beyond the haul boundaries of the diversion facility.

#### **SECTION 9: Amendment of Section 12.32.050.**

Section 12.32.050 [Filing Fee] of Chapter 12.32 [Moving Buildings] of Title 12 [Buildings and Construction] of the Menlo Park Municipal Code is hereby amended to read in entirety as follows:

#### **Section 12.32.040 – Filing Fee.**

Prior to, or at the time of, filing any application for a permit to move or remove a building or structure a fee in an amount established by resolution of the City Council shall be paid to the building department by the applicant to defray the reasonable cost of investigations and other services required of the building department pursuant to this chapter. The filing fee provided in this section shall be in addition to other permit fees which are required to erect, construct, enlarge, alter, repair, improve and convert any structural, electrical, plumbing, and heating work required for any building, or to demolish any building or structure pursuant to other applicable laws or ordinances.

#### **SECTION 10: Enactment of Section 12.36.060.**

Section 12.36.060 [Pools under construction] is hereby added to Chapter 12.36 [Swimming Pools] of Title 12 [Buildings and Construction] of the Menlo Park Municipal Code, to read as follows:

#### **Section 12.36.060 – Pools under construction.**

During construction, pools shall be enclosed by a fence or solid structure with a height of 60-84 inches. The fence shall not have any openings larger than 50 square inches other than a gate. Fences with rectangular openings having a horizontal dimension 4 inches or less may exceed 50 square inches. All gates leading into the area shall be self-closing self-latching. The latch shall be at least 60 inches above the ground.

SECTION 11: Amendment of Code on Flood Damage Prevention.

Chapter 12.42 [Flood Damage Prevention] of Title 12 [Buildings and Construction] of the Menlo Park Municipal Code is hereby amended to modify Sections 12.42.12, 12.42.20, 12.42.41, 12.42.43, 12.42.51 to read as set forth below:

**Section 12.42.12 – Findings of fact.**

- a. The flood hazard areas of the city of Menlo Park are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- b. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

**Section 12.42. – Definitions.**

Unless specifically defined below, words and phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

1. "Accessory structure" means a structure that is either: solely for the parking of no more than two (2) cars or a small, low cost shed for limited storage, less than one hundred fifty (150) square feet and one thousand five hundred dollars (\$1,500) in value.
2. "Appeal" means a request for a review of the floodplain administrator's interpretation of any provision of this chapter or a request for a variance.
3. "Area of shallow flooding" means a designated AO or AH zone on the flood insurance rate map (FIRM). The base flood depths range from one (1) to three (3) feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
4. "Area of special flood hazard." See "Special flood hazard area."
5. "Base flood elevation (BFE)" means the elevation shown on the flood insurance rate map for zones AE, AH, A1-30, VE and V1-V30 that indicates the water surface elevation resulting from a flood that has a one percent (1%) or greater chance of being equaled or exceeded in any given year.
6. "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.
7. "Breakaway walls" are any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic or any other suitable building materials, which are not part of the structural support of the building and which are designed to break away under abnormally high tides or wave action without causing any damage to the structural integrity of the building on which they are used or any buildings to which they might be carried by floodwaters. A breakaway wall shall have a safe design loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. Use of breakaway walls must be certified by a registered engineer or architect and shall meet the following conditions:
  - A. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and

- B. The elevated portion of the building shall not incur any structural damage due to the effects of wind and water loads acting simultaneously in the event of the base flood.
8. "Building." See "structure."
  9. "Coastal A Zones" means a special flood hazard area landward of a V Zone or landward of an open coast without a mapped V Zone, where the principle source of flooding are associated with astronomical tides, storm surges, seiches or tsunamis, not riverine flooding. During base flood conditions, the potential for breaking wave heights between 1.5 feet and 3.0 feet will exist.
  10. "Coastal high hazard area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. It is an area subject to high velocity waters, including coastal and tidal inundation or tsunamis. The area is designated on a flood insurance rate map (FIRM) as zone V1-V30, VE, or V.
  11. "Design Flood Elevation (DFE)" means the elevation of the design flood, including wave height, relative to the datum specified on a community's flood hazard map.
  12. "Development" means any manmade change to improved or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
  13. "Dry floodproofing" means a combination of measures that results in a structure, including the attendant utilities and equipment, being watertight with all elements substantially impermeable to the entrance of floodwater and with structural components having the capacity to resist flood loads.
  14. "Encroachment" means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain which may impede or alter the flow capacity of a floodplain.
  15. "Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.
  16. "Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
  17. "Flood, flooding, or floodwater" means a general and temporary condition of partial or complete inundation of normally dry land areas from (A) the overflow of floodwaters; (B) the unusual and rapid accumulation or runoff of surface waters from any source; and/or (C) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.
  18. "Flood boundary and floodway map" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of flood hazard and the floodway.
  19. "Flood hazard boundary map" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated the areas of flood hazards.

20. "Flood insurance rate map" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.
21. "Flood insurance study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the FIRM, the flood boundary and floodway map, and the water surface elevation of the base flood and supporting technical data.
22. "Floodplain or flood-prone area" means any land area susceptible to being inundated by water from any source (see definition of "flooding").
23. "Floodplain administrator" means the community official designated by title to administer and enforce the floodplain management regulations.
24. "Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain including, but not limited to, emergency preparedness plans, flood control works and floodplain management regulations and open space plans.
25. "Floodplain management regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. This term describes such federal, state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.
26. "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
27. "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Also referred to as "regulatory floodway."
28. "Floodway fringe" means that area of the floodplain on either side of the regulatory floodway where encroachment may be permitted.
29. "Fraud and victimization," as related to Section 12.42.61, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the city will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty (50) to one hundred (100) years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.
30. "Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.
31. "Governing body" means the City Council.
32. "Hardship," as related to Section 12.42.61, means the exceptional hardship that would result from a failure to grant the requested variance. The city requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot,



as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere, or put the parcel to a different use than originally intended.

33. "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
34. "Historic structure" means any structure that is:
  - A. Listed individually in the National Register of Historic places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  - C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
  - D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states without approved programs.
35. "Levee" means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.
36. "Levee system" means a flood protection system which consists of a levee or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accord with sound engineering practices.
37. "Lowest floor" means the lowest floor of the lowest enclosed area, including basement (see "basement" definition).
  - A. An unfinished or flood resistant enclosure below the lowest floor that is usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor provided it conforms to applicable nonelevation design requirements, including, but not limited to:
    - i. The wet floodproofing standard in Section 12.42.51(3)(D);
    - ii. The anchoring standards in Section 12.42.51(1);
    - iii. The construction materials and methods standards in Section 12.42.51(2);
    - iv. The standards for utilities in Section 12.42.52.
  - B. For residential structures, all subgrade enclosed areas are prohibited as they are considered to be basements. This prohibition includes below-grade garages and storage areas.

(Note: This definition allows attached garages to be built at grade. Below grade garages are not allowed as they are considered to be basements.)

38. "Manufactured home" means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days.
39. "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for sale or rent.
40. "Market value" is defined in the city of Menlo Park's substantial damage/improvement procedures.

41. "Mean sea level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.
42. "New construction" means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by this community and includes any subsequent improvements to such structure.
43. "New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by this community.
44. "Obstruction" includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.
45. "One-hundred-year flood" or "100-year flood" means a flood which has a one percent (1%) annual probability of being equaled or exceeded in any given year. It is identical to the "base flood," which will be the term used throughout this chapter.
46. "Person" means an individual or his agent, firm, partnership, association or corporation, or agent of the aforementioned groups, or this state or its agencies or political subdivisions.
47. "Primary frontal dune" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively mild slope.
48. "Public safety and nuisance," as related to Section 12.42.62, means that the granting of a variance must not result in anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage of use, in the customary manner, of any navigable lake, river, bay, stream, canal or basin.
49. "Recreational vehicle" means a vehicle which is:
  - A. Built on a single chassis;
  - B. Four hundred (400) square feet or less when measured at the largest horizontal projection;
  - C. Designed to be self-propelled or permanently towable by a light-duty truck; and
  - D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
50. "Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.
51. "Remedy a violation" means to bring the structure or other development into compliance with state or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this chapter or otherwise deterring future similar violations, or

reducing state or federal financial exposure with regard to the structure or other development.

52. "Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
53. "Sand dunes" mean naturally occurring accumulations of sand in ridges or mounds landward of the beach.
54. "Sheet flow area." See "area of shallow flooding."
55. "Special flood hazard area (SFHA)" means an area having special flood or flood related erosion hazards, and shown on an FHBM or FIRM as zone A, AO, A1-A30, AE, A99, AR, AO, AH, E, M, V1-V30, VO, VE or V.
56. "Start of construction" includes substantial improvement and other proposed new development, and means the date the building permit was issued; provided, the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation of the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
57. "Structure" means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.
58. "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.
59. "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either:
  - A. Before the improvement or repair is started; or
  - B. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed.

For the purpose of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- A. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code violations identified by the building official and are the minimum necessary to assure safe living conditions; or
  - B. Any alterations of a structure meeting the "historic structure" definition as defined in this section; provided, that the alteration will not preclude the structure's continued designation as a historic structure.
60. "V zone." See "coastal high hazard area."
  61. "Variance" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.
  62. "Violation" means the failure of a structure or other development to be fully compliant with this chapter. A structure or other development without the elevation certificate, other

certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

63. "Water surface elevation" means the height, in relation to the North American Vertical Datum of 1988 (NAVD 88), (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverline areas.
64. "Watercourse" means a lake, river, creek, stream, wash, arroyo, channel or other topographical feature on or over which waters flow at least periodically. "Watercourse" includes specifically designated areas in which substantial flood damage may occur. (Ord. 1022 § 8 (part), 2016).
65. "Wet floodproofing" means the use of flood damage resistant materials and construction techniques to minimize flood damage to areas below the flood protection level of a structure, which is intentionally allowed to flood.

#### **Section 12.42.41 – Development Permit.**

- a) A development permit shall be obtained before construction or development begins within any area of special flood hazards established in Section 12.42.32. Application for a development permit shall be made on forms furnished by the floodplain administrator and may include, but not be limited to: Plans in duplicate, drawn to scale, showing:
  - 1) Location, dimensions, and elevation of the area in question, existing or proposed structures, storage of materials and equipment and their location;
  - 2) Proposed locations of water supply, sanitary sewer, and other utilities;
  - 3) Grading information showing existing and proposed contours, any proposed fill, and drainage facilities;
  - 4) Location of the regulatory floodway when applicable;
  - 5) Base flood elevation information as specified in Section 12.42.32 or 12.42.43(3);
  - 6) Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures; and
  - 7) Proposed elevation in relation to mean sea level to which any nonresidential structure will be floodproofed, as required in Section 12.42.51(3)(C) and detailed in FEMA Technical Bulletin TB 3-93.
- b) Certification from a registered civil engineer or architect that the nonresidential floodproofed building meets the floodproofing criteria in Section 12.42.51(3)(C).
- c) For a crawl-space foundation, location and total net area of foundation openings as required in Section 12.42.51(3)(D) of this ordinance and detailed in FEMA Technical Bulletins 1 and 7.
- d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- e) All appropriate certifications listed in Section 12.42.43(7).

#### **Section 12.42.43 – Duties and responsibilities of floodplain administrator.**

The duties and responsibilities of the floodplain administrator shall include, but not be limited to:

- 1) Permit Review.
  - A. Review all development permits to determine that the permit requirements of this ordinance have been satisfied;
  - B. All other required state and federal permits have been obtained;
  - C. The site is reasonably safe from flooding;
  - D. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been

- designated. For purposes of this chapter, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one (1) foot at any point.
- E. All letters of map revision (LOMRs) for flood control projects are approved prior to the issuance of building permits. Building permits must not be issued based on conditional letters of map revision (CLOMRs). Approved CLOMRs allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition.
- 2) Development of Substantial Improvement and Substantial Damage Procedures.
- A. Using FEMA publication FEMA 213, "Answers to Questions About Substantially Damaged Buildings," develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage, to include defining "market value."
- B. Assure procedures are coordinated with other departments/divisions and implemented by community staff.
- 3) Review, Use, and Development of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 12.42.32, the floodplain administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer Sections 12.42.51 through 12.42.56. Any such information shall be submitted to the city council for adoption.
- NOTE: A base flood elevation may be obtained using one (1) of two (2) methods from the FEMA publication FEMA 265, "Managing Floodplain Development in Approximate Zone A Areas – A Guide for Obtaining and Developing Base (100-year) Flood Elevations" dated July 1995.
- 4) Whenever a watercourse is to be altered or relocated:
- A. Notify adjacent communities and the California Department of Water Resources prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency; and
- B. Require that the flood-carrying capacity of the altered or relocated portion of said watercourse is maintained.
- 5) Base Flood Elevation Changes Due to Physical Alterations.
- A. Within six (6) months of information becoming available or project completion, whichever comes first, the floodplain administrator shall submit or assure that the permit applicant submits technical or scientific data to FEMA for a letter of map revision (LOMR).
- B. All LOMR's for flood control projects are approved prior to the issuance of building permits. Building permits must not be issued based on conditional letters of map revision (CLOMRs). Approved CLOMRs allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition. Such submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements are based on current data.
- 6) Changes in Corporate Boundaries. Notify FEMA in writing whenever the corporate boundaries have been modified by annexation or other means and include a copy of a map of the community clearly delineating the new corporate limits.
- 7) Obtain and maintain for public inspection and make available as needed:
- A. The certification required in Section 12.42.51(3)(A)  
(lowest floor elevations);

- B. The certification required in Section 12.42.51(3)(C)(iii) (elevation or floodproofing of nonresidential structures);
  - C. The certification required in Section 12.42.51(3)(D)(i) or (3)(D)(ii) or (3)(D)(iv) (wet floodproofing standard);
  - D. The certification required in Section 12.42.53(b) (subdivision standards);
  - E. The certification required in Section 12.42.55(1) (floodway encroachments);
  - F. Information required by Section 12.42.56 (coastal construction standards).
- 8) Make interpretations where needed, as to the location of the boundaries of the areas of special flood hazards. Where there appears to be a conflict between a mapped boundary and actual field conditions, grade and base flood elevations shall be used to determine the boundaries of the special flood hazard area. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Sections 12.42.61 and 12.42.62.
- 9) Take action to remedy violations of this chapter as specified in Section 12.42.33.

### **Section 12.42.51 – Standards of construction.**

In all areas of special flood hazards the following standards are required:

- 1) Anchoring.
  - A. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
  - B. All manufactured homes shall meet the anchoring standards of Section 12.42.54.
- 2) Construction Materials and Methods.
  - A. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
  - B. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
  - C. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
  - D. All new construction and substantial improvements shall be constructed within zone AH or AO, so that there are adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.
- 3) Elevation and Floodproofing.
  - A. Residential construction (as defined by the California Residential Code as amended from time to time, i.e., single-family homes, duplex and townhomes) shall comply with the elevation requirement provisions of the California Residential Code in effect at the time of permit submittal. Other residential construction, and new or substantial improvement, shall have the lowest floor, including basement, comply with the following:
    - i. In areas of shallow flooding (AO zone), elevated to a height above the highest adjacent grade of not less than the depth number specified in feet on the FIRM plus one (1) foot, or not less than three (3) feet if no depth number is specified;
    - ii. In all other Zone A, including Coastal A zones, elevated to or above the base flood elevation plus 1 foot, or the design flood elevation, whichever is higher.
    - iii. In all other zones, elevated to or above the base flood elevation.

Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor, and verified by the community building inspector to be properly elevated. Such certification and verification shall be provided to the floodplain administrator.

- B. Nonresidential new construction shall be elevated to conform with subsection (3)(A) of this section and have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- C. Nonresidential substantial improvement shall either be elevated to conform with subsection (3)(A) of this section or together with attendant utility and sanitary facilities:
  - i. Be dry floodproofed below the elevation required under subsection (3)(A) of this section so that the structure is watertight with walls substantially impermeable to the passage of water;
  - ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
  - iii. Be certified by registered professional engineer or architect that the standards of subsection (3)(C) of this section are satisfied in accordance with ASCE 24 and shall include the flood emergency plan specified in Chapter 6 of ASCE 24. Such certification shall be provided to the floodplain administrator.
- D. All new construction and substantial improvement with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement shall follow the guidelines in FEMA Technical Bulletins 1, 7 and 11 as revised, amended and constructed to meet the following requirements:
  - i. Be certified by a registered professional engineer or architect;
  - ii. Have a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one (1) foot above exterior adjacent grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater;
  - iii. The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Crawl space construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer;
  - iv. The crawl space is an enclosed area below the DFE and, as such, must have openings that equalize hydrostatic pressures by allowing for the automatic entry and exit of floodwaters. For guidance on flood openings, see Technical Bulletin 1, Openings in Foundation Walls. For fully enclosed areas below the design flood elevation where provisions to allow for the automatic entry and exit of floodwaters do not meet the minimum requirements in Section 2.7.2.1 of ASCE 24, construction documents shall include a statement that the design will provide for equalization of hydrostatic flood forces in accordance with Section 2.7.2.2 of ASCE 24;
  - v. Crawl space construction is not permitted in V zones. Open pile or column foundations that withstand storm surge and wave forces are required in V zones;
  - vi. Portions of the building below the DFE must be constructed with materials resistant to flood damage that conform to the provisions of FEMA Technical Bulletin 2. This includes not only the foundation walls of the crawl space used to elevate the building, but also any joists, insulation, or other materials that extend below the DFE; and
  - vii. Any building utility systems within the crawl space must be elevated above DFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions.
  - viii. Requirements for all below-grade crawl space construction, in addition to the above requirements, include the following provisions, per Technical Bulletin 11:

- a. The interior grade of a crawl space below the DFE must not be more than two (2) feet below the lowest adjacent exterior grade (LAG), shown as D in figure 3 of Technical Bulletin 11;
  - b. The height of the below-grade crawl space, measured from the interior grade of the crawl space to the top of the crawl space foundation wall must not exceed four (4) feet (shown as L in figure 3 of Technical Bulletin 11) at any point;
  - c. There must be an adequate drainage system that removes floodwaters from the interior area of the crawl space within a reasonable period of time after a flood event;
  - d. The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawl space. For velocities in excess of five (5) feet per second, other foundation types should be used; and
  - e. Below-grade crawl space construction in accordance with the requirements listed above will not be considered basements.
- E. Manufactured homes shall also meet the standards in Section 12.42.54.
- F. Accessory structures defined in Section 16.68.030 used solely for parking (two (2) car detached garages or smaller) or limited storage (low cost, not exceeding one hundred fifty (150) square feet) may be constructed such that its floor is below the design flood elevation (DFE) and not be required to apply for a variance, provided the structure is designed and constructed in accordance with the following requirements:
- i. Use of the accessory structure must be limited to parking or limited storage;
  - ii. The portion of the accessory structure located below the DFE must be built using flood damage resistant materials;
  - iii. The accessory structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and meet the FEMA regulations as specified in this section;
  - iv. Any mechanical and utility equipment in the accessory structure must be elevated to or above the DFE or wet-floodproofed as defined in FEMA regulations;
  - v. The accessory structure must comply with floodplain encroachment provisions in FEMA Regulation 60.3(C)(10) or (d)(3); and
  - vi. The accessory structure must be designed to allow for the automatic entry of floodwaters. (Ord. 1022 § 8 (part), 2016).

#### **Section 12.42.56 – Coastal high hazard areas and Coastal A zones.**

Within coastal high hazard areas and coastal A zones, as established under Section 12.42.32, the following standards shall apply:

- 1) Dry floodproofing of structures is not permitted in coastal high hazard areas and coastal A zones.
- 2) All new construction and substantial improvement shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the lowest horizontal portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state or local building standards. Construction documents shall include a statement that the building is designed in accordance with ASCE 24.



- 3) All new construction and other development shall be located on the landward side of the reach of mean high tide.
- 4) All new construction and substantial improvement shall have the space below the lowest floor free of obstructions or constructed with breakaway walls in accordance with FEMA Technical Bulletins 5 and 9 as amended or revised and as defined in Section 12.42.20. Such enclosed space shall not be used for human habitation and will be usable solely for parking of vehicles, building access or storage.
- 5) Fill shall not be used for structural support of buildings.
- 6) Manmade alteration of sand dunes which would increase potential flood damage is prohibited.
- 7) For breakaway walls designed to have a resistance of more than 20 psf determined using allowable stress design, construction documents shall include a statement that the breakaway wall is designed in accordance with ASCE 24.
- 8) For breakaway walls where provisions to allow for the automatic entry and exit of floodwaters do not meet the minimum requirements in Section 2.7.2.1 of ASCE 24, construction documents shall include a statement that the design will provide for equalization of hydrostatic flood forces in accordance with Section 2.7.2.2 of ASCE 24.
- 9) The floodplain administrator shall obtain and maintain the following records:
  - A. Certification by a registered engineer or architect that a proposed structure complies with subsection (1) of this section.
  - B. (B) The elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings or columns) of all new and substantially improved structures, and whether such structures contain a basement. (Ord. 1022 § 8 (part), 2016).

#### SECTION 12: Exemption from CEQA.

The City Council finds, pursuant to Title 14 of the California Administrative Code, Section 15061(b)(3) that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") on the grounds that these standards are more stringent than the State standards, there are no reasonably foreseeable adverse impacts and there is no possibility that the activity in question may have a significant effect on the environment.

#### SECTION 13: Severability.

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

#### SECTION 14: Effective Date.

This Ordinance shall become effective thirty days following adoption or on January 1, 2023, whichever is later. However, where applications and plans for building have been filed and are pending for building permits prior to the effective date of this Ordinance, such permits may be issued, and the applicant may proceed with construction in strict compliance with the California Building Standards Codes, 2019 Editions, California Code of Regulations, Title 24, as previously adopted and amended by any ordinances of the City of Menlo Park, but only to the extent that the issuance of such permit is required by Health and Safety Code section 18938.5 and any other applicable law.

#### SECTION 15: Posting and Filing.

Within fifteen (15) days of its adoption, the Ordinance shall be posted in three (3) public places within the City of Menlo Park, and the Ordinance, or a summary thereof shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective

date. The City Clerk shall file this ordinance with the California Energy Commission and/or California Building Standards Commission in the manner as may be required by law.

INTRODUCED on the first day of November, 2022.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the \_\_\_ day of November, 2022, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

\_\_\_\_\_  
Betsy Nash, Mayor

ATTEST:

\_\_\_\_\_  
Judi A. Herren, City Clerk



**STAFF REPORT**

**City Council**  
**Meeting Date:** 11/15/2022  
**Staff Report Number:** 22-227-CC

**Public Hearing:** Consider the Planning Commission's recommendation to approve the proposed project with modifications and adopt a resolution to 1) certify the final environmental impact report (Final EIR), make the California Environmental Quality Act (CEQA) findings including the Statement of Overriding Considerations for significant and unavoidable impacts, and approve the mitigation monitoring and reporting program (MMRP), 2) adopt a resolution to amend the General Plan Circulation Element, 3) adopt resolutions to approve the vesting tentative maps for the proposed project, read the title, and waive further reading of ordinances to 4) amend the City zoning map, rezone the project site from R-MU-B and O-B to R-MU-B-X and O-B-X to include the "X" Conditional Development overlay, and approve the conditional development permit and 5) adopt the development agreement, and 6) adopt a resolution to approve the below market rate (BMR) housing agreements for the proposed Willow Village masterplan project located at 1350-1390 Willow Road, 925-1098 Hamilton Avenue and 1005-1275 Hamilton Court, 1399 and 1401 Willow road, and 871-883 Hamilton Avenue

**Recommendation**

Staff recommends that the City Council consider the Planning Commission's resolution (Attachment A) recommending approval with modifications of the proposed project to the City Council, including the following actions:

- Adopt a resolution to certify the Final EIR that analyzes the potential environmental impacts of the proposed project and makes the CEQA findings to address impacts, including a statement of overriding considerations for significant and unavoidable environmental effects that would result from the proposed project, and approves the mitigation monitoring and reporting program for the proposed project to mitigate impacts to less than significant with mitigation or reduce significant and unavoidable impacts (Attachment B);
- Adopt a resolution to amend the General Plan Circulation Map to modify the locations of the public rights-of-way, new street connections, paseos and incorporate multi-use pathways within the main project site and new site access (Attachment C);
- Adopt resolutions to approve the vesting tentative map for the main project site and the vesting tentative

map for the Hamilton Avenue Parcels to create new buildable parcels, dedicate public rights-of-way, identify public access easements, site infrastructure and realign Hamilton Avenue (Attachment D “main project site” and Attachment E “Hamilton Avenue parcels”);

- Introduce, read the title, and waive further reading of an ordinance to rezone the project site from R-MU-B and O-B to R-MU-B-X and O-B-X to include the “X” Conditional Development combining district overlay, amend the Zoning Map to include the X overlay and modify the locations of the public right-of-ways, new street connections and paseos, and approve a conditional development permit (CDP) to develop the proposed project through the master plan provisions outlined in the Zoning Ordinance, utilize the bonus level development allowances (increased height, density and intensity) in exchange for community amenities, establish allowed uses, development regulations (including design standard modification requests), and otherwise govern the development of the proposed project (Attachment F);
- Introduce, read the title, and waive further reading of an ordinance to adopt a development agreement (DA) between the City and the project applicant for vested rights in exchange for community amenities and assurances on the timing and phasing of the proposed project (Attachment G); and
- Adopt a resolution to approve the BMR housing agreements for the provision of 312 BMR units with a mix of affordable income limits, including 119 age-restricted senior units (Attachment H)

### **Policy Issues**

The City Council should consider the Planning Commission’s review and recommendation when evaluating the merits of the proposed project, including project consistency with the City’s current general plan, municipal code, and other adopted policies and programs. The City Council will also need to consider the proposed development regulations, which include modifications to the development standards established in the Zoning Ordinance (e.g., design standards, bird friendly waivers, transportation demand management, signage, construction hours and BMR housing) in the CDP. As part of the project review, the City Council will need to make findings that the merits of the project and the public benefits and specific community amenities associated with the development agreement balance the significant and unavoidable environmental impacts as described in the environmental impact report by adopting a statement of overriding considerations. The policy issues summarized here are discussed in detail in the staff report.

The City prepared the following documents to analyze the proposed project and inform reviews by community members, the Planning Commission and the City Council:

- Housing Needs Assessment (HNA), including an analysis of the multiplier effect for indirect and induced employment from the proposed project, in compliance with the terms of the 2017 settlement agreement between the City of Menlo Park and the City of East Palo Alto (Attachment I);
- Fiscal impact analysis (FIA) to inform decision makers and the public of the potential fiscal impacts of the proposed project (Attachment J);
- Appraisal to identify the required value of the community amenity in exchange for bonus level development (Attachment K); and
- Community amenities proposal evaluation to determine if the community amenities proposal meets the minimum required value (Attachment L.)

These reports are not subject to City Council action, but provide background information for the CDP, development agreement and other land use entitlements.

## **Background**

### Planning Commission recommendation

On November 3, 2022 the Planning Commission completed its review of the proposed project, which it began at its regular meeting October 24, 2022 and continued to November 3. The Planning Commission voted 6-0-1, with Commissioner Schindler not participating, to adopt a resolution recommending approval to the City Council of the proposed project with the following modifications:

1. Incorporate a guarantee of operation for the community amenities (e.g., grocery store, pharmacy, bank, air quality monitoring installation, etc.);
2. Evaluate and incorporate a longer duration for the grocery store rent subsidy beyond the currently proposed 24 months, potentially up to as many as 60 months;
3. Clarify the minimum required development potential (e.g., number of dwelling units, size of grocery store, etc.);
4. Modify the timing for the delivery of the community amenities to be more concurrent with the completion of the office square footage;
5. Provide additional financial analysis on the cost and/or value of the senior standalone BMR housing building;
6. Reduce daily trips from the main project site by 1,000 or reduce office parking spaces commensurately;
7. Increase funding of \$10 million for programs to increase connectivity of the main project site and the surrounding area, including potential additional funding for the proposed Bayfront Area shuttle; and
8. Require the Bayfront Area shuttle to be electric.

This City Council staff report primarily focuses on the analysis of the changes to the proposed project since the Planning Commission meeting, including staff initiated edits and cleanups to the entitlement documents and EIR as well as responses to the Planning Commission's recommended modifications. For a detailed analysis of the proposed project, please review the October 24 Planning Commission staff report. The staff report is included in Attachment M and a link to the Planning Commission agenda with the staff report, attachments, and presentations is included in Attachment N.

### *Site location*

A project location map that includes site addresses, neighboring Meta sites, and other landmarks is included in Attachment O. The project site includes the following three project areas.

### Main project site

The approximately 59-acre site is generally located along Willow Road between Hamilton Avenue and Ivy Drive, previously referred to as the ProLogis Menlo Science and Technology Park. The main project site contains 20 existing buildings with approximately 1 million square feet of office, warehouse, and research and development uses.

### Hamilton Avenue parcels

The proposed project includes the realignment of Hamilton Avenue west of Willow Road and affected parcels to the north (Belle Haven Shopping Center, referred to as Hamilton Avenue Parcel North) and south (Chevron gas station, which is referred to as Hamilton Avenue Parcel South) sides of Hamilton Avenue.

### Willow Road undercrossing and overcrossing

The main project site could be connected to the Meta West Campus by an undercrossing and an elevated parkway would connect the main project site with Hamilton Avenue Parcel North. Both the undercrossing and elevated park would include public access for bicyclists and pedestrians.

**Project milestones**

A table summarizing the previous project milestones and meetings is included in Attachment P.

**Analysis**

Project overview

The applicant, Peninsula Innovation Partners, Inc., is proposing to redevelop the main project site through the master plan process that allows a project to aggregate development potential and meet the Zoning Ordinance requirements (e.g., parking) across the site.

Main project site

The proposed project would redevelop the main project site in three districts: a Town Square district, a Residential/Shopping district, and a Campus district. The Campus district is intended to be occupied by Meta. The proposed site plan is included in Attachment Q and a hyperlink to the master plan project plans is included in Attachment R. The proposed project would increase nonresidential uses (office, retail, personal services, etc.) by approximately 800,000 square feet for a total of approximately 1.8 million square feet. The proposal also includes multifamily housing units, a hotel, and publicly accessible open space (e.g., elevated linear park, town square, dog park and 3.5 acre publicly accessible park.) Table 1 summarizes the proposed development at the project site.

Table 1: Main project site project data		
	Proposed project (CDP Standards)	Zoning Ordinance bonus level standards (maximums)
Residential dwelling units	1,730 units**	1,735 units
Residential square footage	1,696,406 s.f.	1,701,404 s.f.
Residential floor area ratio	224.3%	225%
Commercial retail square footage	200,000 s.f.	397,848 s.f.
Commercial retail floor area ratio	12.6%	25%
Office square footage	1,600,000 s.f.*	1,780,436 s.f.
Office floor area ratio	113%	125%
Hotel rooms	193	n/a

\*Proposed office square footage includes a maximum of 1.25M s.f. of office use with the balance of 350,000 s.f. for meeting and collaboration space use (if office square footage is maximized at 1.25M sf) within the Campus District; the total s.f. includes a portion of the 25% non-residential FAR permitted in the R-MU portion of the project site.

\*\*The total units would include a minimum of 15 percent of the residential units as BMR units to satisfy the City's inclusionary requirements. Additional BMR units would be incorporated to comply with the commercial linkage requirement.

The following list identifies some key components of the proposed site layout.

- The grocery store would be proximate to Willow Road at the intersection with Hamilton Avenue/Main Street and entertainment and retail/dining uses would generally be located along Main Street;
- Hotel and associated retail/dining would be proximate to the 1.5-acre publicly accessible town square;
- 3.5-acre publicly accessible park (proximate to Willow Road at Park Street), a dog park (in the

- southeastern portion of the main project site) and additional public open space;
- 2-acre publicly accessible elevated park extending over Willow Road providing access at the Hamilton Avenue Parcel North; and
- A potential publicly-accessible, below grade tunnel for Meta intercampus trams, bicyclists and pedestrians connecting the project with the West and East campuses

The proposed project would include a circulation network for vehicles, bicycles and pedestrians, inclusive of paseos, multi-use paths, and both public rights-of-way and private streets that would be generally aligned to an east-to-west and a north-to-south grid.

### Project variants

The proposed project includes four variants that could be incorporated into the project. Variants are variations of the proposed project at the same project site, with the same objectives, background, and development controls but with a specific variation. With the exception of the Increased Residential Density Variant (studied for policy purposes in the event the City decision makers desire to consider it), the variants are slightly different versions of the project that could occur based upon the action or inaction of agencies other than the City, decisions of the applicant, or of property owners outside the Project site. The CDP allows for the three non-housing variants to be incorporated into the proposed project. The project includes the following variants:

- No Willow Road Tunnel Variant
- Increased Residential Density Variant (200 additional dwelling units)
- No Hamilton Avenue Realignment Variant
- Onsite Recycled Water Variant

With the exception of the Increased Residential Density Variant, the other three variants could be incorporated by the applicant or be necessary due to action or inaction by an outside agency. The Willow Road Tunnel is a project feature that the applicant has discretion to construct provided the applicant obtains approvals/permits from Caltrans and SamTrans. The Hamilton Avenue realignment and on-site recycled water variant are also dependent upon decisions by outside agencies. The CDP incorporates a review process for these variants, discussed in more detail in the following section for the tunnel and Hamilton Avenue realignment.

### Hamilton Avenue parcels and Willow Road grade separated crossings

The proposed project includes off-site improvements, such as the realignment of Hamilton Avenue and the Willow Road undercrossing and elevated park (over Willow Road) that would create grade separated connections across Willow Road. The tunnel if constructed, would allow Meta trams to circulate off-street between the campuses and allow for bicyclists and pedestrians to travel from the main project site to the campuses and the Bay Trail.

The realignment of Hamilton Avenue would result in the demolition and potential reconstruction of the existing Chevron station (Hamilton Avenue Parcel South) and the potential future expansion of retail uses at the existing Belle Haven neighborhood shopping center (Hamilton Avenue Parcel North.) These are components of the proposed project that could occur and would be reviewed through separate permitting processes. Table 2 below summarizes the potential development on the two Hamilton Avenue parcels and the maximum square footage allowed by the existing zoning district (C-2-S district.)

Table 2: Hamilton Avenue Parcels North and South project data		
Project site	Potential future projects (Total square footage)	Zoning Ordinance maximums*
Hamilton Avenue Parcel North	22,400 s.f.	48,134 s.f./(FAR 0.5)
Hamilton Avenue Parcel South	5,700 s.f.	21,126 s.f./(FAR 0.5)

\*Zoning Ordinance maximums represent maximum development potential after realignment of Hamilton Avenue, which includes re-subdividing the parcels to reduce the size of Hamilton Avenue Parcel South and increase the size of Hamilton Avenue Parcel North.

While the proposed project includes the Willow Road Tunnel, it is an optional feature and the applicant may choose not to construct the tunnel. If the tunnel is not constructed or the Hamilton Avenue right-of-way realignment is not approved by Caltrans, then the revisions to proposed site plan from the implementation of these project variants would be reviewed through the processes identified in the CDP based on the effect of these changes to the on-site buildings and features. The incorporation of these variants would not be subject to discretionary City review and action. The possible removal of the Elevated Park segment over Willow Road, if Caltrans does not approve the feature, would be governed by the terms of the DA.

City staff incorporated the following clarifying text on the change processes into the CDP (Section 8):

- Section 8.1.4.1: If the Willow Road Tunnel is removed, the on-site changes would be reviewed as a Substantially Consistent Change or Minor Change depending on the scope of the changes. No further discretionary review of the Willow Road Tunnel is required. To ensure the community is aware of the removal of the Willow Road Tunnel, the community development director shall notify the Planning Commission and City Council of this change for informational purposes only.
- Section 8.1.4.2: If the applicant does not receive outside agency approval to realign Hamilton Avenue, the associated on-site revisions to the proposed project would be reviewed through an architectural control package (ACP.) The review would be limited to the on-site changes based on the revised circulation and locations of building/site features.

Where appropriate, this report includes additional analysis on the project components that supplements or supersedes the Planning Commission staff report.

Development standards

The conditional development district (or “X” district), also referred to as combining district, is a zoning district specifically established for the purpose of combining special regulations or conditions with one of the zoning districts through a CDP. CDPs allow for customization and modifications to Zoning Ordinance and Municipal Code requirements, provided the proposed project complies with the maximum density and floor area ratio (FAR) for the site. The CDP would identify project-specific development regulations and design standards for the masterplan. More details on the proposed project development standards including design standards modifications, master sign program requirements, expanded construction hours, outdoor seating, sale of beer, wine and alcohol, emergency generators, bird friendly design waivers and requirements, and green and sustainable building compliance are provided in the Planning Commission staff report in Attachment M.

Site circulation, parking, transportation demand management

The main project site is currently accessible from a traffic signal-controlled intersection at Willow Road via Hamilton Avenue/Hamilton Court and two driveways off northbound Willow Road. Hamilton Avenue Parcels North and South are both accessible via one driveway from southbound Willow Road and one driveway along Hamilton Avenue.



The proposed project would comprehensively redevelop the site, creating new vehicular entrances/access points from Willow Road, Hamilton Avenue, Adams Court and O'Brien Drive. In addition to accommodating vehicular and transit access, the proposed streets would include bicycle and pedestrian infrastructure, and include a comprehensive streetscape plan, including street trees, plantings, green infrastructure and sidewalks. The Planning Commission staff report provides a more detailed evaluation of the proposed project.

#### Site access

To accommodate access to the main project site, the proposed project would include offsite improvements on Willow Road, Hamilton Avenue, O'Brien Drive and Adams Court.

#### *Willow Road*

In order to provide adequate access to the main project site, improvements to Willow Road are proposed, as follows:

- Right-of-way widening to accommodate additional left-turn pockets.
- Creation of one new signalized intersection (Park Avenue.)
- Relocation of one signalized intersection (Hamilton Avenue.)
- Bicycle and pedestrian improvements along the project frontage and crossing improvements at the new intersections at Park Street/Willow Road and Hamilton Avenue/Willow Road.

The proposed left-turn adjustments are currently receiving further analysis. Staff will be coordinating with the applicant and Caltrans to refine the proposed change with a focus on enhancing the safety of the crossings of Willow Road, including turning movements for bicycles and pedestrian crossings. City staff added a step in the process for staff to provide an update to the City Council on the design before submitting to Caltrans given the scale of this project. This is a staff initiated revision to conditions for the main project site vesting tentative map (Condition 6(C)(ii)); however, this change could address some of the Planning Commission's comments regarding connectivity improvements in the vicinity of the proposed project.

#### Transportation demand management (TDM)

The City requires all new developments in the R-MU and O zoning districts to reduce their trip generation by 20 percent from standard trip generation rates via TDM strategies. The City has applied the 20 percent reduction after crediting for any trip reductions based on a project's proximity to complementary land uses, alternative transportation facilities, as well as reductions based on a project's mixed-use characteristics. The TDM and trip reduction requirement applies to the daily trips, AM peak hour trips, and PM peak hour trips. The applicant submitted a request to modify the trip reduction to be taken from gross versus net trips (Attachment S.) Table 7 outlines the required City standard trip reduction, the proposed trip reduction with the applicant's request to calculate from the gross trips, and the difference between the two calculations.

Table 7: City standard and proposed trip reductions			
	City standard trip reduction	Applicant proposed trip reduction	Delta
<b>Office</b>			
Daily trips	15,837	18,237	+2400
A.M. peak period	1,670	1,670	n/a
P.M. peak period	1,670	1,670	n/a
<b>Residential/Mixed use</b>			
Daily trips	13,048	15,026	+1,978
A.M. peak period	644	726	+82
P.M. peak period	1,100	1,237	+137

The applicant is requesting to modify the City’s standard practice through the CDP, which would calculate the 20 percent trip reduction from the gross ITE rates. The City’s Transportation and Planning Divisions have evaluated this request to determine the appropriateness of this adjustment compared to the City’s General Plan goals, policies and programs. While the proposed modification would increase the total number of trips since the reduction would be taken from the gross instead of the net trips after accounting for the project land uses, the proposed project includes unique characteristics that justify capturing trip reduction from the comprehensive mixed-use design of the proposed project. Other projects in the R-MU, LS, and O zoned districts have been single land use projects or predominantly a single land use with a small amount of supporting retail uses. The transportation impact analysis prepared for the proposed project applied the applicant’s requested modification, studying the potential effects (CEQA and non-CEQA) with a higher number of trips. The proposed project would result in a less than significant impact on vehicle miles traveled after application of further trip reductions specific to the residential land use. Congestion created by the project would be addressed through recommended intersection improvements.

The applicant is proposing a trip cap for the Campus District that would operate similar to the existing trip caps on the East and West Campus that would be monitored daily (Attachment T.) For the non-Campus district uses (retail, residential and hotel), the proposed project would implement a monitoring plan. The annual monitoring would be different from the trip cap monitoring for the Campus District, which would be monitored daily. The TDM plan that includes the monitoring plans for both the Campus District and the Town Square and Residential/Shopping Districts is included in Attachment U.

***Planning Commission recommended TDM modifications***

As part of its recommendation to the City Council, the Planning Commission included a request to reduce the project trips by 1,000 or remove the same number of parking spaces from the South Garage within the Campus District. Staff believes the reduction in 1,000 parking spaces for the Campus District could constrain parking within the Campus District and burden the shared retail/residential/visitor parking or result in spillover parking into the adjacent neighborhoods that do not contain daytime parking restrictions. Further, the spillover parking would likely not be captured in the daily trip cap compliance monitoring. Master Response 2 in the Final EIR further explains why parking and trips are not directly correlated. A parking reduction is not recommended by staff.

The applicant’s request to use the gross trips instead of the net trips results in an increase in 2,400 daily trips for the Campus District and 1,978 for the residential/mixed use land uses. Staff evaluated applying the additional 1,000 trip reduction to the daily trips and determined that applying the trip reduction to the

residential and mixed-use could constrain the viability of the retail/restaurant/entertainment uses (specifically the grocery store) and would require compliance by potentially multiple ownership groups. Further, the EIR includes an increased trip reduction for the residential land use already to mitigate a significant impact to vehicle miles traveled.

If the 1,000 daily trip reduction is applied to the Campus District, the Planning Commission's request would generally split the difference between the City's standard application of the TDM ordinance and the applicant's request and would equate to an approximately 24 percent reduction from the gross trips, where the applicant has proposed a 20 percent reduction from gross trips. This reduction would require potentially additional TDM measures; however, a single entity would operate the Campus District which would help ensure compliance and Hexagon and City staff have reviewed the applicant's TDM plan and believe that meeting this trip reduction is potentially feasible. The City Council should consider the Planning Commission's recommendation and determine whether the possible daily trip reduction from the Campus District should be incorporated into the project entitlements.

Level of service or roadway congestion analysis (non-CEQA transportation analysis)

The City's TIA Guidelines require that the TIA also analyze LOS for planning purposes. The LOS analysis determines whether the project traffic would cause an intersection LOS to be potentially noncompliant with local policy if it degrades the LOS operational level or increases delay under near term and cumulative conditions. Where deficiencies are identified, the TIA Guidelines require consideration of improvement measures. The CDP identifies the recommended improvement measures that the City determined to be feasible for near term improvements and fair share payments for cumulative intersection improvements. The draft conditions include input from East Palo Alto for improvements at Kavanaugh Drive and O'Brien Drive and fair share payment for intersections in East Palo Alto. These measures are included as conditions in the CDP (Section 14.)

Given past feedback from the public and City Councilmembers, staff has identified since the Planning Commission meeting that some of the near-term intersection investments may warrant additional discussion. Staff has incorporated its recommended changes into the CDP. The following staff initiated changes are now included in the CDP (Section 14):

- Willow Road and Bay Road. The TIA recommended the project add a right turn lane from Willow Road westbound at Bay Road and an additional left turn lane from Bay Road onto Willow Road. The latter portion of this proposed change was also conditioned for the Menlo Uptown project and would not be conditioned for Willow Village. Separately, as part of a grant proposal to the California Active Transportation Program, staff has developed separated bikeway and pedestrian improvements along Willow Road, including at this location. Staff has revised the condition to explicitly require the right turn lane and the separated bikeway and pedestrian improvements, provided Caltrans approves these improvements, to ensure bicyclist and pedestrian safety are prioritized with the intersection improvements. This intersection also includes investments conditioned to the Menlo Uptown development project to add a second left turn lane from Bay Road onto Willow Road that City Councilmembers have asked staff to bring back to City Council, which is anticipated in early 2023.

The project also previously included conditions to provide fair share contributions to intersection improvements at the following location that staff has removed due to potential impacts to bicyclists and pedestrians:

- Marsh Road and Bohannon Drive/Florence Street. The TIA recommends the project be conditioned to contribute to an investment that would add a right turn lane on southbound Marsh Road. This improvement would likely require either narrowing or eliminating the existing median, limit the addition of

bicycle lanes on Marsh, or require more substantial reconstruction of the street. Because of these challenges, staff has removed this fair share contribution condition from the CDP.

#### CDP clarifications

City staff included a number of additional clarifications and edits to the CDP, in addition to the modifications to the intersection improvements and variant related changes. The changes include references to the use of shared parking, consistency with the DA (e.g., Elevated Park requirements), roles and responsibilities for changes in Section 8, and timing and responsibility for project conditions.

#### *Vesting tentative maps*

The phased vesting tentative maps for the main project site propose to merge the existing parcels then re-subdivide them to create parcels for residential, retail, hotel and office developments; new public rights-of-way for street purposes; parcels for private street purposes; and park open space parcels. Multiple final maps are anticipated to match the proposed phasing of the tentative maps. A vesting tentative map for the Hamilton Avenue Parcels would reconfigure the existing parcels and provide for the realignment of Hamilton Avenue.

Since the Planning Commission meeting, City staff have incorporated additional vesting tentative map conditions (Conditions 15, 16, and 17 of the main project site) to clarify that the current street names are placeholders and future street names will be approved through the final map process and subject to review and approval by the City Council. The vesting tentative map for the main project site is included in Attachment V and the vesting tentative map for the Hamilton Avenue Parcels is included in Attachment W.

#### *Project phasing, minimum dwelling units and commercial square footage*

The proposed project is planned to be developed in phases with specific milestones identified in the DA and summarized in Table 4. The first phase would include the following:

- Demolition of existing buildings and installation of backbone infrastructure;
- Vertical construction focused on the campus district and residential/mixed-use buildings RS2 (inclusive of the grocery store), RS3 (anticipated to include the entertainment uses), RS6 (residential building adjacent to the park space);
- RS7 (senior BMR building) would begin construction during this phase;
- Construction of publicly accessible open spaces, including the elevated park, community park, the town square, which is dependent upon Caltrans right-of-way relinquishment at the existing Hamilton Avenue intersection that would conflict with the below grade garage and
- Construction of the hotel, which is also dependent upon Caltrans relinquishment of the existing right-of-way and the completion of the below grade parking structure.

The second phase would include the remainder of the residential buildings (RS4 and RS5) and associated infrastructure (Center and East streets.) The applicant's conceptual construction phasing timeline (provided during the development agreement negotiation process) is included in Attachment X and represents one possible scenario for the timeline for project buildout. A site plan with the building labels and parcels is included in Attachment Y.

The project development agreement includes negotiated timing for the delivery of the housing units and community amenities in relation to the development timeline. Exhibit D of the DA (Attachment Z) includes a detailed phasing plan and Exhibit F of the DA (Attachment AA) includes a phasing plan for the completion of the community amenities. In response to the Planning Commission's recommendation, the table below summarizes the phasing and timing of the office buildings, housing units and on-site community amenities. The project phasing includes the issuance of permits for residential and mixed use buildings in relation to

the office buildings. The phasing includes requirements for substantial progress on the buildings, including completion of the podium (which includes the lower levels and most of the amenity spaces: grocery store, bank, retail, entertainment uses) and completion of the roof framing before the granting of occupancy or permit issuance for specific office buildings. The timing for the amenities in Table 3 includes the timing from occupancy; however, the DA includes additional timing obligations from temporary occupancy to facilitate potential earlier delivery of the amenity. For simplicity, Table 3 references the amenity timing from final certificate of occupancy.

Table 3: Development agreement phasing timeline				
Campus District component	Non Campus District component	Residential units	Community amenity	Timing for community amenity
Meeting and Collaboration Space (MCS)	Start elevated park concurrent with MCS	n/a	Elevated Park and excess public open space	Finish excess publicly accessible open space concurrent with Elevated Park
First, Second and Third office buildings	Complete structural podium of RS2 (residential and grocery uses) and RS6 (residential) before occupancy of the first office building; and Complete roof framing of RS2 and RS6 before certificate of occupancy for second office building	Issue permits for 505 units before occupancy of first office building	Grocery store within RS2	Finish grocery tenant improvement 12 months from RS2 building occupancy
Fourth office building	Commence construction of residential RS2 and RS6 before issuance of building permit for fourth office building;	Certificate of occupancy for RS6 before occupancy of fourth office building		
Sixth office building	Complete construction of podiums for RS3 and RS7 before issuance of building permit for sixth office building;	539 units including 119 senior units within RS3 and RS7	Bank/credit union; First phase dining Second phase dining First phase community entertainment Second phase community entertainment	Certificates of occupancy of tenant improvements for amenities tied to RS3 occupancy but may be located in any building: 12 months from RS3 occupancy Nine months from RS3 occupancy 18 months from RS3 occupancy 18 months from RS3 occupancy 24 months from RS3 occupancy
Sixth office building	Commence construction of RS4 and RS5 before occupancy of the sixth office building	Issue permits for 686 units		
	Town Square garage		Town square	Complete main portion of Town Square within 12 months of garage podium; finish town square within 18 months of completion of hotel

In addition to the summary above, Attachment FF includes the negotiated timing for the delivery of the pharmacy services, which includes the following requirements depending on the location of the pharmacy within the project. Since the Planning Commission meeting the City and applicant have worked together to revise the pharmacy language to add that the pharmacy could be located within the grocery store and include timing for providing the pharmacy in that scenario. Per the DA, the applicant shall complete the construction and secure final certificate of occupancy of the pharmacy based on the following requirements:

- A. If within the Willow Hamilton retail center (Hamilton Avenue Parcel North), then 12 months after completion of the Elevated Park elevator tower at the Hamilton center;
- B. If within Willow Village in RS3, then within 12 months after final certification of occupancy (COO) for RS3, but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3; or
- C. If within Willow Village in Office Building O2 Retail (east side of Main), then within 12 months after later of (i) final COO for RS3 to correspond with retail on the west side of Main (but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3) or (ii) final COO for O2 (but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for O2)
- D. if within Willow Village Parcel 2 in conjunction with the grocery store, then within 12 months after final COO for RS2, but, if a temporary COO has been issued, no later than 16 months from the issuance of a temporary COO for RS2

The DA includes timing for the payment of funding for other amenities based on the timing of issuance of demolition permits, first building permit for vertical construction, and immediately with credits for previous funding. The Bayfront Area shuttle is required to be operational concurrent with the completion of the grocery store and/or the completion of the on-site component of the Elevated Park, whichever is earlier. The DA has been revised to make this timing clear.

The minimum required square footage for the dining and entertainment uses is identified in the DA. The CDP has been revised to identify a minimum grocery store square footage of 35,000 square feet. The bank and pharmacy services do not include a minimum required square footage since banking operations have changed over the last few years and smaller space may be able to provide the same retail banking services as more traditional sized branches. The same space needs are true for pharmacy services.

The Planning Commission recommended that the timing for the provision of community amenities and the office building be more aligned. Following the Planning Commission meeting, the City and the applicant met to discuss potential modifications to align the amenities with the office building construction. No changes were agreed to and the project phasing, with the exception of clarifications remains unchanged.

#### *Community amenities and development agreement*

The Office (O), Life Sciences (LS) and Residential Mixed-use (R-MU) zoning districts allow for bonus level development (i.e., increases in height, density and intensity) in exchange for community amenities in the area between Highway 101 and the San Francisco Bay. The community amenities were identified and prioritized through public outreach and input, but the ordinance allows the adopted community amenities list to be updated to reflect evolving community needs and priorities. Amenities not contained in the adopted list may be provided by a specific proposed project through a DA for that project. The required community amenity value is 50 percent of the increase in value of the bonus level development above the base level of the Zoning Ordinance determined through a bonus level development appraisal. Through the appraisal review process, the City determined that the project's community amenities obligation is \$133.3 million (Attachment K.)

A development agreement (DA) is a negotiated contract between a developer and a city that both allows the city to impose conditions on development projects beyond the city's municipal code requirements and provides certainty to the developer by limiting the city's ability to apply changes to regulatory standards and impact fees to the project for a certain period of time. A development agreement must be approved by ordinance. The DA with Peninsula Innovation Partners is for a term of 10 years, which can be extended for an additional seven years if specific provisions are met. The DA includes community amenities and public benefits for the City beyond what is required in the municipal code, as well as deadlines for the developer to construct or provide those community amenities or public benefits. The DA is included in Attachment G.

In addition to the community amenities discussed earlier, the public benefits include requirements for the developer to make payments to the city to offset lost revenue from the hotel in the event of construction delays (i.e., gap payment); ongoing job training and career experience programs; and stakeholder support for Dumbarton Rail Corridor Project and Dumbarton Forward. Terms of the DA that are favorable for the applicant include the term of the DA for vested rights and terms that prohibit the city from requiring developer to pay (i) new impact fees adopted after the development agreement becomes effective, or (ii) increased impact fees unless the increase is based on escalation provisions in effect when the development agreement becomes effective. These impact fee limitations last for the full term of the DA and the first three years of the extended term if an extension is granted.

#### Planning Commission recommendation on the community amenities and development agreement

In addition to a request for clarity on the project phasing and minimum requirements for the dwelling units and square footage of amenities (discussed in the previous section), the Planning Commission requested the following items related to the community amenities and/or development agreement.

- Incorporate a guarantee of operation for the community amenities (e.g., grocery store, pharmacy, bank, and air quality and noise monitoring funding, etc.);
- Evaluate and incorporate a longer duration for the grocery store rent subsidy beyond the currently proposed 24 months, potentially up to as many as 60 months;
- Modify the timing for the delivery of the community amenities to be more concurrent with the completion of the office square footage;
- Increase funding of \$10 million for programs to increase connectivity of the main project site and the surrounding area, including potential additional funding for the proposed Bayfront Area shuttle; and
- Require the Bayfront Area shuttle to be electric.

City staff and the applicant team have met to discuss these recommendations by the Planning Commission. The applicant informed the City that an operational covenant is a nonnegotiable item since the applicant team would be providing the space, the tenant improvements, and for the grocery store a two year rent subsidy which would ensure the amenity uses would be able to open but that the applicant cannot force or guarantee operation of businesses it does not control and that no operator would agree to these provisions. Regarding additional funding, the applicant indicated that the funding for community amenities is capped at \$187,674,419 and if additional funding for longer rent subsidies and connectivity improvements is desired by the City, then the amenities would need to be modified or removed from the proposal to deliver the additional connectivity and rent subsidy requests. Further, the applicant has maintained that the Bayfront shuttle would be electric, if feasible, as determined by the applicant.

#### Staff initiated changes to the development agreement

The following changes were made to the DA between the Planning Commission hearing and the City Council hearing and were initiated by the City and/or the applicant to provide greater clarity on the terms of the DA:

- Clarified that the grocery store must have a final certificate of occupancy for Developer to receive a DA



extension term.

- At the recommendation of BAE, the City's economic consultant, the following revisions regarding a potential community facilities district (CFD) under the Mello-Roos Act were made:
  - Added a requirement that Developer prepare a financing plan for the City's approval.
  - Clarified that if CFDs were not formed, the Developer would still be responsible for the cost of constructing infrastructure and providing services for which the CFD was sought.
- Added that financing with CFD Bonds will be subject to City approval.
- Added that the amount, timing, and terms of the issuance and sale of CFD Bonds will be determined by City in coordination with financial consultants and bond counsel.
- Stated in the text of the DA that the grocery store will be located on parcel 2 rather than referencing a map exhibit.
- Clarified in the text of the DA that there are four possible locations for the pharmacy and/or pharmacy services, and the timing of the pharmacy in all four scenarios are specified in the Willow Village Community Amenities Timing Provisions exhibit.
  - Added that the pharmacy could be located within the grocery store and timing for providing the pharmacy in that scenario.
- Clarified that the City would not be responsible for maintaining the segment of the Elevated Park that crosses Willow Road nor the Willow Road Tunnel.
- Clarified that Developer must use good faith efforts to obtain all approvals from governmental agencies necessary to realign Hamilton Avenue (including Caltrans.)
- Added a requirement that Developer enter into a Payment in Lieu of Taxes (PILOT) Agreement before selling any property subject to the DA or receiving any building permits for the Project, whichever is sooner, instead of only before receiving any building permit for the Project.
- Clarified that the PILOT Agreement obligation does not apply if there is any transfer of the property with the senior affordable housing building.
- Added a requirement that if Developer received a temporary certificate of occupancy for the first office building, Developer must complete the structural podium of RS2 and RS6 within 120 days of the issuance of the temporary certificate of occupancy.
- Added a requirement that the Bayfront Shuttle would be operational at the opening of the Grocery Store in the unlikely event that it opens before the completion of the Elevated Park.
- Added definitions of RS2, RS3, RS4, RS5, RS6, and RS7 in the Willow Village Phasing Plan.

### *BMR ordinance and BMR Guidelines*

The City's BMR Housing Program Guidelines requires a minimum of 15 percent of the proposed dwelling units for residential development projects with 20 or more units be set aside for low-income households or an equivalent alternative. The proposed project includes commercial retail and office spaces that would be required to provide BMR housing units on site or off site, or and/or pay the commercial linkage fee. The applicant is proposing 312 BMR units, inclusive of the 260 inclusionary units and 52 units associated with the non-residential square footage (inclusive of credits for existing commercial square footage.)

The applicant is proposing to allocate 119 BMR units to a standalone affordable residential building dedicated to seniors (either 55 or 62 and up depending on financing requirements.) The applicant's BMR proposal is included in Attachment BB. The proposed age-restricted BMR units would be dedicated to extremely low and very low income seniors and would be mostly studios and one bedroom units. Table 4 summarizes the BMR units by size and income.

Table 4: BMR income and unit size breakdown at full buildout						
Category	Area median income limit	Number of units	Studios	One bedrooms	Two bedrooms	Three bedrooms
Extremely low (senior)	30%	82	74	8	0	0
Very low (senior)	50%	37	33	4	0	0
Low (non-age restricted)	80%	76	17	35	23	3
Moderate (non-age restricted)	120%	117	30	50	32	3
Total units		312	154	97	55	6

On August 3, 2022 the Housing Commission reviewed the BMR proposal and voted 6-0 to recommend approval of the applicant’s BMR proposal with the income limits, distribution, and unit sizes outlined in Table 4 and contained in the draft BMR Agreements (Attachments H.) The BMR agreements would result in a project that meets the inclusionary and commercial linkage requirements at full build out with modifications to the City’s proportionality and location requirements. During the phased development there may be times when the on-site BMR units are below the minimum requirements; however, upon completion of the standalone senior building the proposed project would comply with minimum BMR requirements. Section 13 of the BMR Guidelines allow for the City to approve reasonably equivalent alternatives to the characteristics of the proposed BMR units and the affordability mix.

Planning Commission recommendation

The Planning Commission requested the City prepare additional analysis of the senior standalone building to ensure that the cost and value of the standalone building are equivalent to inclusionary units. City staff believes that the intent of this request is to ensure that the applicant spends the same amount of money per unit (cost) for the senior buildings as it would with an inclusionary project or potentially provide the balance of the cost to the City by another means. City staff also believes that the intent of the request is for the value of the senior buildings to be comparable to inclusionary units. The City’s BMR guidelines do not speak to the funding component of the BMR units and focus on delivery of the units. The proposed project would provide the minimum number of required BMR units for both the inclusionary and commercial linkage fee unit requirements and would comply with the BMR guidelines and ordinance subject to the modifications in the CDP to the proportionality and location of the BMR units.

The decision to approve the modification requests for the BMR units (proportionality and location) is a policy decision of the City Council that should not take into account the financing structure for the senior BMR units. Through the agreements, the City will not provide any of its BMR funds to help the applicant meet its BMR obligation.

BMR agreements

The project approvals include a project wide BMR agreement which will be recorded against the entire Project site. The project wide BMR agreement requires that once a parcel or final map is recorded which identifies the non-residential (i.e., office) parcels within the Project site, those non-residential parcels are released from the project wide BMR agreement. Each residential parcel will remain subject to the project wide BMR agreement until a regulatory agreement is recorded against it. Regulatory agreements must be recorded before issuance of building permits for reach of the residential buildings. The regulatory agreements recorded against each of the residential parcels ensure the development and lease of required BMR units for a period of 55 years. The regulatory agreements prescribe maximum rents, tenant eligibility and reporting requirements. If any parcel or portion of the Project site is sold or transferred, the buyer or

transferee assumes all obligations under either the project wide BMR agreement or regulatory agreement, depending upon which is recorded against the sold or transferred parcel.

### Correspondence

Since the November 3, 2022 Planning Commission meeting, staff and the City Council email log have received 21 letters, including 19 letters in support, 1 in opposition, and a letter from the City of East Palo relaying its concerns. The correspondence is included in Attachment CC.

### Conclusion

The City Council should consider the Planning Commission's recommendation including its recommended modifications and determine whether to certify the EIR and approve the requested land use entitlements and adopt the resolutions and introduce ordinances to enable the proposed project. The City Council will need to consider the environmental analysis, the merits of the proposed project, the comprehensive redevelopment through the CDP, the provision of BMR units, and the community amenities and public benefits in the DA.

### **Impact on City Resources**

The applicant is required to pay planning, building and public works permit fees, based on the City's Master Fee Schedule, to fully cover the cost of staff time spent on the review of the proposed project. The applicant is also required to fully cover the cost of work by consultants performing environmental review and additional analyses to evaluate potential impacts of the proposed project.

### **Environmental Review**

As stated in the CEQA Guidelines, an EIR is an informational document that is intended to provide the City, responsible and trustee agencies, other public agencies, and community members with detailed information about the potential environmental effects that could result from implementing the proposed project, examine and implement mitigation measures to reduce or avoid potentially significant physical environmental impacts if the proposed project is approved, and consider feasible alternatives to the proposed project, including a required No Project Alternative. The Final EIR, which includes the Draft EIR by reference, is included through the hyperlink in Attachment DD.

The City released the Draft EIR for public review and comment April 8, 2022. The comment period closed May 23, 2022. A detailed summary of the environmental analysis, including the significant impacts, the response to comments, the project variants, and project alternatives is contained within the Planning Commission staff report (Attachment M)

As part of its consideration of the merits of the project, the City Council will need to review and consider the Statement of Overriding Considerations (SOC) along with the Mitigation Monitoring and Reporting Program (MMRP.) The draft resolution certifying the EIR, making the CEQA findings inclusive of the SOC and the MMRP is included in Attachment B. The draft SOC outlines the following public benefits of the project, inclusive of the benefits derived from the community amenities and development agreement: economic benefits, and social benefits. The MMRP includes the feasible mitigation measures identified in the EIR. This Mitigation Monitoring and Reporting Program (MMRP) is designed to aid the City of Menlo Park in its implementation and monitoring of measures adopted from the certified EIR.

### Errata to the Final EIR

Following release of the Final EIR the City initiated three errata to the Final EIR that are included in Attachment EE.

The Final EIR include revisions to the Draft EIR to update mitigation measure numbering. In one location, the mitigation measure reference was not updated consistent with the revisions to other references to mitigation. The revised Section 3.8, Cultural Resources that was included in the Final EIR contained text that stated that Mitigation Measure CR 2.2 would apply to the Hamilton parcels. However, Mitigation Measure CR 2.2 was replaced with Tribal Cultural Resources (TCR) 1.2, as indicated elsewhere in the same paragraph and the text has been updated in an errata.

In response to a comment letter from the Amah Mutsun Tribal Band of San Juan Bautista on the Final EIR that raised concerns with the focus and scope of the ethnographic context and not the EIR mitigation measures, the City reached out to the Amah Mutsun Tribal Band of San Juan Bautista and the Muwekma Ohlone Tribe of the San Francisco Bay Area to request additional written ethnographic context for those two tribes and to offer interviews with ECORP consulting to inform the ethnographic context of the Tribal Cultural Resources chapter of the EIR. The errata to the Tribal Cultural Resources chapter is included in Attachment FF. This second errata does not affect the mitigation measures or findings of the EIR and includes additional ethnographic context for these two additional Native America Tribes only. The City reached out to these two Native America Tribes since these Tribal Nations had been consulting with the City on the proposed project.

The third errata to the Final EIR addresses an inconsistency in the Draft EIR between Mitigation Measure TRA-2 as provided in the Executive Summary and as provided in Section 3.3, Transportation. The mitigation measure in the executive summary references active ITE trip generation, while the measure in the transportation section references gross ITE trip generation. The version of the mitigation measure in the Executive Summary was corrected in Chapter 4 of the Final EIR through referencing revisions as shown for Section 3.3. However, the version of the Mitigation Measure in Section 3.3 of the Draft EIR is correct and did not require revisions.

### **Public Notice**

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. Public notification also consisted of publishing a notice in the local newspaper and notification by mail of owners and occupants within a ¼ miles radius of the subject property.

### **Attachments**

- A. Planning Commission Resolution recommending the City Council adopt a resolution to 1) certify the final environmental impact report (Final EIR), make the CEQA Findings, including the Statement of Overriding Considerations for significant and unavoidable impacts, and approve the mitigation monitoring and reporting program (MMRP), 2) adopt a resolution to amend the General Plan Circulation Element, 3) adopt resolutions to approve the vesting tentative maps for the proposed project, read the title, and waive further reading of ordinances to 4) amend the City zoning map, rezone the project site from R-MU-B and O-B to R-MU-B-X and O-B-X to include the "X" Conditional Development overlay, and approve the CDP and 4) adopt the development agreement, and 5) adopt a resolution to approve the BMR housing agreements for the proposed Willow Village masterplan project
- B. Resolution certifying EIR and adopting CEQA Findings and Statement of Overriding Considerations
- C. Resolution amending General Plan Circulation Map
- D. Resolution approving vesting tentative map for the Main project site (includes conditions)
- E. Resolution approving vesting tentative map for the Hamilton Avenue parcels (includes conditions)
- F. Ordinance rezoning main project site, amending the zoning map and approving a CDP
- G. Draft Ordinance adopting the development agreement
- H. Resolution approving the BMR housing agreements

- I. Hyperlink – HNA: [menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/draft-eir/appendix\\_3.13\\_housing-needs-assessment.pdf](https://menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/draft-eir/appendix_3.13_housing-needs-assessment.pdf)
- J. Hyperlink – FIA: [menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/october-2022/20221011-willow-village-master-plan-fia-report.pdf](https://menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/october-2022/20221011-willow-village-master-plan-fia-report.pdf)
- K. Hyperlink – Community amenities appraisal for bonus level development: [menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/september-2022/20210917-community-amenities-appraisal-report-for-bonus-level-development.pdf](https://menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/september-2022/20210917-community-amenities-appraisal-report-for-bonus-level-development.pdf)
- L. Hyperlink – Community amenities proposal evaluation: [menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/september-2022/20220427-community-amenities-proposal-city-evaluation.pdf](https://menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/september-2022/20220427-community-amenities-proposal-city-evaluation.pdf)
- M. Planning Commission staff report
- N. Hyperlink – November 3 Planning Commission agenda and staff report: [menlopark.gov/files/sharedassets/public/agendas-and-minutes/planning-commission/2022-meetings/agendas/20221103-continuance-of-20221024-public-hearing.pdf](https://menlopark.gov/files/sharedassets/public/agendas-and-minutes/planning-commission/2022-meetings/agendas/20221103-continuance-of-20221024-public-hearing.pdf)
- O. Location map
- P. Project milestones and meeting summary
- Q. Master plan site plan
- R. Hyperlink – master plan project plans: [menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/october-2022/masterplan-plan-set.pdf](https://menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/october-2022/masterplan-plan-set.pdf)
- S. TDM modification request
- T. Campus District Trip Cap Policy
- U. TDM Plan and Monitoring Plan
- V. Hyperlink – main project site vesting tentative map: [menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/october-2022/vesting-tentative-map-and-major-subdivision-main-site.pdf](https://menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/october-2022/vesting-tentative-map-and-major-subdivision-main-site.pdf)
- W. Hyperlink – Hamilton Avenue parcels vesting tentative map: [menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/october-2022/vesting-tentative-map-and-subdivision-hamilton-avenue-realignment.pdf](https://menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/october-2022/vesting-tentative-map-and-subdivision-hamilton-avenue-realignment.pdf)
- X. Conceptual Willow Village construction phasing timeline
- Y. Willow Village buildings and parcels reference from plans and DA
- Z. Exhibit D to the DA (project phasing)
- AA. Exhibit F to the DA (amenities phasing)
- BB. Willow Village BMR Housing Proposal
- CC. Correspondence
- DD. Hyperlink Final EIR: [menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/final-eir/willow-village-master-plan-final-eir.pdf](https://menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/final-eir/willow-village-master-plan-final-eir.pdf)
- EE. Errata to Final EIR
- FF. Tribal Cultural Resources Chapter Errata

Report prepared by:  
Kyle Perata, Planning Manager

Report reviewed by:  
Deanna Chow, Assistant Community Development Director  
Anna Shimko, Assistant City Attorney

**PLANNING COMMISSION RESOLUTION NO. 2022-31**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MENLO PARK RECOMMENDING CITY COUNCIL CERTIFY THE ENVIRONMENTAL IMPACT REPORT, MAKE CEQA FINDINGS OF FACT AND ADOPT A STATEMENT OF OVERRIDING CONSIDERATIONS, ADOPT THE MITIGATION MONITORING AND REPORTING PROGRAM, AND APPROVE A GENERAL PLAN AMENDMENT, ZONING MAP AMENDMENT, REZONE OF CERTAIN PROPERTIES TO ADD A CONDITIONAL DEVELOPMENT (“X”) COMBINING DISTRICT, AND APPROVE WITH RECOMMENDED MODIFICATIONS A CONDITIONAL DEVELOPMENT PERMIT, BELOW MARKET RATE HOUSING AGREEMENTS, VESTING TENTATIVE MAPS, AND DEVELOPMENT AGREEMENT FOR UP TO 1.6 MILLION SQUARE FEET OF OFFICE AND ACCESSORY USES, UP TO 1,730 MULTIFAMILY DWELLING UNITS, UP TO 200,000 SQUARE FEET OF RETAIL USES, AN UP TO 193 ROOM HOTEL, AND ASSOCIATED OPEN SPACE AND INFRASTRUCTURE**

**WHEREAS**, the City of Menlo Park (“City”) received an application requesting an amendment to the General Plan Circulation Element (“General Plan”), zoning map amendment, rezoning certain properties to add a Conditional Development (“X”) Combining District, a conditional development permit (“CDP”), below market rate (“BMR”) housing agreements, vesting tentative maps, and Development Agreement from Peninsula Innovation Partners, LLC (“Applicant”), to redevelop an approximately 59-acre industrial site (the “Main Project Site”) plus three parcels (within two sites) west of Willow Road (the “Hamilton Parcels” and collectively, with the Main Project Site, the “Project Site”) with a bonus level development project consisting of up to 1.6 million square feet of office and accessory uses (a maximum of 1,250,000 square feet for office uses and the balance accessory uses), up to 1,730 multifamily dwelling units, up to 200,000 square feet of retail uses, an up to 193-room hotel, and associated open space and infrastructure (“Project”); and

**WHEREAS**, the Project requires discretionary actions by the City, and therefore the California Environmental Quality Act (CEQA, Public Resources Code Section 21000 et seq.) and CEQA Guidelines (Cal. Code of Regulations, Title 14, Section 15000 et seq.) require analysis and a determination regarding the Project’s environmental impacts; and

**WHEREAS**, on November 29, 2016, in connection with an update to the Land Use and Circulation Elements of the City’s General Plan and related zoning changes, commonly referred to as the ConnectMenlo project, the City certified the ConnectMenlo Final EIR (ConnectMenlo EIR); and

**WHEREAS**, in connection with the certification of the ConnectMenlo EIR, the City entered into a settlement agreement with the City of East Palo Alto (“Settlement Agreement”), which requires project-specific environmental impact reports (EIR) for certain future projects. Pursuant to the Settlement Agreement: (i) a project-specific EIR may tier from the ConnectMenlo EIR, and the project-level EIR shall include a project-specific transportation impact analysis; and (ii) the City shall prepare a housing needs assessment (HNA) to inform the population and housing topic area of the project-level EIR; and

**WHEREAS**, the City is the lead agency for the Project, as defined in CEQA and the CEQA Guidelines, and therefore is responsible for the preparation, consideration, certification, and approval of environmental documents for the Project; and

**WHEREAS**, pursuant to the requirements of the Settlement Agreement and CEQA, the City prepared, or caused to be prepared, a project-level EIR (SCH: 2019090428), including a transportation impact analysis, and an HNA for the Project that informed the population and housing section of the Project EIR, and meets the requirements of the Settlement Agreement; and

**WHEREAS**, the City released a Notice of Preparation (“NOP”) of an Environmental Impact Report for the Project (“Project EIR” or “EIR”) to the Office of Planning and Research (“OPR”) State Clearinghouse and interested agencies and persons on September 18, 2019, for a 30-day review period, during which interested agencies and the public could submit comments about the Project; and

**WHEREAS**, the City held a public scoping meeting on the Project EIR on October 7, 2019; and

**WHEREAS**, comments on the NOP were received by the City and considered during preparation of the Draft Project EIR; and

**WHEREAS**, a Notice of Availability (“NOA”) was issued and the Draft Project EIR made available for public review on April 8, 2022, for a 45-day public review period through May 23, 2022; and

**WHEREAS**, the Draft Project EIR was filed with the California Office of Planning and Research and copies of the Draft Project EIR were made available on the City’s website and at the City Main Library and the Belle Haven Branch Library; and

**WHEREAS**, a public hearing was held before the Planning Commission of the City of Menlo Park (Planning Commission) on April 25, 2022, to receive public comments on the Draft Project EIR; and

**WHEREAS**, the analysis in the Draft Project EIR tiered from the ConnectMenlo EIR pursuant to Public Resource Code Sections 21166 and CEQA Guidelines Sections 15152, 15162, 15168, and 15183, as appropriate, and as further described in each environmental topic section in the Draft Project EIR; and

**WHEREAS**, on October 14, 2022, the City published a Response to Comments Document that contains all the comments received on the Draft Project EIR during the public comment period, including a transcript of the public hearing, and written responses to those comments, as well as text changes to the EIR, prepared in accordance with CEQA and the CEQA Guidelines. The Draft Project EIR and Response to Comments Document constitute the Final Project EIR; and

**WHEREAS**, all required public notices and public hearings were duly given and held according to law; and

**WHEREAS**, after notice having been lawfully given a duly noticed public hearing was held before the Planning Commission on October 24, 2022, at which all persons interested had the opportunity to appear and comment; and

**WHEREAS**, the Planning Commission reviewed the comments received and the responses thereto; and

**WHEREAS**, the Final Project EIR identified certain potentially significant adverse effects on the environment caused by the Project; and

**WHEREAS**, an amendment to the General Plan Circulation Map, as shown in Attachment A, attached hereto and incorporated herein by this reference, is necessary to modify the circulation plan with regard to the locations for new street connections to the surrounding roadway network as well as the locations of public rights-of-way and a proposed multi-use pathway within the Main Project Site; and

**WHEREAS**, the requested amendment would further the goals of the General Plan; and

**WHEREAS**, an amendment of the City zoning map is necessary to modify the circulation plan with regard to the locations for new street connections to the surrounding roadway network as well as the locations of public rights-of-way within the Main Project Site as shown in Exhibit A to Attachment B, attached hereto and incorporated herein by this reference;

**WHEREAS**, rezoning of the Main Project Site as shown in Exhibit A to Attachment B requires adding a conditional development (“X”) combining district, thereby allowing special regulations and conditions to be added at the Main Project Site (combined with the base O-B and R-MU-B regulations) as part of the proposed Project;

**WHEREAS**, the Applicant has specifically requested that the parcels identified in Exhibit B to Attachment B are rezoned to O-B-X to add an X combining district and the parcels identified in Exhibit C to Attachment B are rezoned to R-MU-B-X to add an X combining district.

**WHEREAS**, the Project is eligible for a CDP under Menlo Park Municipal Code section 16.82.055(1) in that the Main Project Site is more than one acre and is not located in the SP-ECR/D district;

**WHEREAS**, approving the CDP, a draft of which is attached hereto as Attachment C, is necessary to authorize development of the Project on the Main Project Site, including variants of the Project, including to authorize certain modifications to the requirements of the O and R-MU zoning districts for the Project in accordance with Municipal Code Section 16.82.050, authorize a master planned project in accordance with Municipal Code Sections 16.43.055 and 16.45.55, authorize bonus level development and require the provision of community amenities in accordance with Municipal Code Sections 16.43.060 through .070 and 16.45.60 through 70, approve uses identified in the Conditional Development Permit in accordance with Menlo Park Municipal Code sections 16.43.020 through .040, 16.45.020 through .040, and 16.78.030, approve waivers to Bird Friendly Design requirements pursuant to Municipal Code Sections 16.43.140(6) and 16.45.130(6), approve modifications to the City’s transportation demand management plans and trip reductions in accordance with Municipal Code Sections 16.43.100 and 16.45.90, establish a procedure for approval of a future master sign program that would establish signage standards and guidelines and also set maximum sign areas by parcel or building, establish protocols for events, outdoor seating, and sale of beer, wine, and alcohol, approve emergency diesel generators, establish construction hours and construction noise exceptions, and approve an exception to the unbundled parking requirement pursuant to Municipal Code Section 16.45.080(1);



**WHEREAS**, the proposed amendment of the City zoning map and rezoning of the Main Project Site, as shown in Exhibit A to Attachment B, and approval of the CDP, would promote a mixed-use live/work/play environment through the inclusion of multifamily housing, including affordable residential units, along with office, retail, hotel and recreational uses at the density and intensity envisioned in the General Plan;

**WHEREAS**, the proposed amendment of the City zoning map and rezoning of the Main Project Site, as shown in Exhibit A to Attachment B and the CDP are consistent with the General Plan, including the land use designations for the Main Project Site;

**WHEREAS**, General Plan Policy LU-4.7 requires proposed mixed-use and nonresidential development of a certain minimum scale to be evaluated for its fiscal impacts on the City and the community; and

**WHEREAS**, the City had its consultant, BAE Urban Economics, prepared a fiscal impact analysis pursuant to General Plan Policy LU-4.7 that the Community Development Director reviewed and determined was prepared pursuant to professional standards and based on correct data and assumptions and which showed that the Project would have a positive fiscal impact on the City and community; and

**WHEREAS**, General Plan Policy LU-4.4 and Program LU-4.C and Sections 16.43.060 and 16.45.060 of the City of Menlo Park Municipal Code requires that bonus level projects that are developed at a greater level of intensity with an increase in density, floor area ratio (FAR), and/or height shall provide one or more community amenities to address the needs that result from the effect of the increased development. The value of the community amenities to be provided shall be equal to 50 percent of the fair market value of the additional gross floor area of the bonus level development; and

**WHEREAS**, pursuant to the requirements of Sections 16.43.070 and 16.45.070 of the City of Menlo Park Municipal Code, the City commissioned Fabbro Moore & Associates, Inc. to perform an independent review of an appraisal produced by Valbridge Property Advisors and determine the value of the Project's community amenities contribution. In a report titled "Community Amenities Appraisal Report Review," Fabbro Moore & Associates determined the Project's community amenities obligation would amount to \$133,300,000. The Community Development Director determined that the appraisal was created pursuant to the City's guidelines and approved the appraisal; and

**WHEREAS**, in May and August 2022, the City Council held study sessions, received public comments, and provided feedback on the Applicant's community amenities proposal, and helped to shape the community amenities offered by the Applicant; and

**WHEREAS**, in August 2022, the Applicant submitted a community amenities proposal with the following features: grocery store space, two-year grocer space rent subsidy, pharmacy services, dining options, community entertainment offerings, bank or credit union, elevated park improvements, town square improvements, teacher housing and rent subsidies, excess public open space, open space operations and maintenance, funding for job training programs, Bayfront area shuttle, funding for Willow Road feasibility study, funding for additional affordable housing, and funding for the installation of air quality and noise monitors in Belle Haven. Some of these amenities are on a list of City Council-adopted community amenities and some are unique to the Project, as documented in the Development Agreement. These community amenities are valued at \$187,674,410

according to the City’s consultant, BAE Urban Economics, which would exceed the required amenities value of \$133,300,000; and

**WHEREAS**, pursuant to the requirements of Sections 16.45.060, 16.96.020, and 16.96.030 of the City of Menlo Park Municipal Code and the City’s Below Market Rate (“BMR”) Housing Program, the applicant submitted a BMR proposal that would provide 312 BMR units (15 percent of the allowed 1,730 units totaling 260 inclusionary units plus 52 units that satisfy the City’s commercial linkage/unit equivalency requirement for 1.6 million square feet of office space), where 82 units would be affordable to extremely low income households (age-restricted for seniors); 37 units would be affordable to very low income households (age-restricted for seniors), 76 units would be affordable to low income households (not age-restricted), and 117 units would be available to moderate income households (not age-restricted); and

**WHEREAS**, at a duly noticed public meeting on August 3, 2022, the Housing Commission considered the applicant’s BMR proposal, including a requested adjustment to BMR Housing Program Guidelines Section 5.1 regarding the size and dispersion of BMR units, and draft BMR Housing Agreement Term Sheet, and forwarded a recommendation of approval to the Planning Commission of the proposed BMR Term Sheet; and

**WHEREAS**, there is a deficit of affordable housing for seniors in the City, and concentrating senior housing in one designated building provides the most feasible option for affordability. In addition, the typical lifestyle needs of senior residents supports a higher percentage of senior affordable studio apartments as compared to the percentage of studio apartments in the Project as a whole. Constructing affordable senior housing serves the purpose of the BMR Housing Program, which is to increase the housing supply for households that have extremely low, very low, low- and moderate-incomes compared to the median income for San Mateo County; and

**WHEREAS**, the Planning Commission has read and considered those certain Below Market Rate Housing Agreements (“BMR Agreements”) between the City and Peninsula Innovation Partners and finds that those satisfy the requirements in Chapter 16.96 of the City’s Municipal Code and in the BMR Housing Program Guidelines, except as modified by the CDP, and would result in affordable housing that meets the City’s affordable housing goals and result in a BMR program for the Project with characteristics that are a reasonably equivalent alternative to a program that strictly complied with the BMR Housing Program Guidelines; and

**WHEREAS**, an “A” Vesting Tentative Parcel Map creating legal non-buildable parcels for financing and conveyancing purposes and the construction of project-serving infrastructure improvements is proposed for the Main Project Site; and

**WHEREAS**, a Vesting Tentative Subdivision Map for a subdivision is proposed for the Hamilton Avenue realignment proposed as part of the Project (“Hamilton VTM”); and

**WHEREAS**, the Project would be developed subject to a Development Agreement that provides the City certain benefits including certain community amenities and provides the Applicant certainty for developing the Project. Pursuant to Government Code section 65864 et seq. and City Resolution No. 4159, the Planning Commission has reviewed the Development Agreement; and

**WHEREAS**, all required public notices and public hearings were duly given and held according to law; and

**WHEREAS**, after notice having been lawfully given, a duly noticed public hearing was held before the City Planning Commission on October 24, 2022 and continued to November 3, 2022, at which all persons interested had the opportunity to appear and comment; and

**WHEREAS**, after closing the public hearing, the Planning Commission considered all public and written comments, pertinent information, documents and plans and all other evidence in the public record on the Project; and

**WHEREAS**, the Planning Commission fully reviewed, considered, evaluated, and recommended certification of the Final EIR, along with all public and written comments, pertinent information, documents and plans prior to recommending that the City Council approve an amendment to the General Plan, zoning map amendment, the rezoning of certain properties to add a Conditional Development (“X”) Combining District, a CDP, BMR housing agreements, vesting tentative maps, and Development Agreement, with the following recommended modifications:

1. Incorporate a guarantee of operation for the community amenities (e.g. grocery store, pharmacy, bank, air quality monitoring installation, etc.);
2. Evaluate and incorporate a longer duration for the grocery store rent subsidy beyond the currently proposed 24 months, potentially up to 60 months;
3. Clarify the minimum required development potential (e.g. number of dwelling units, size of grocery store, etc.);
4. Modify the timing for the delivery of the community amenities to be more concurrent with the completion of the office square footage;
5. Provide additional financial analysis of the cost and/or value of the senior standalone below market rate housing building;
6. Reduce daily trips from the main project site by 1,000 or reduce office parking spaces commensurately;
7. Increase funding of \$10 million for programs to increase transportation connectivity of the main project site and the surrounding area, including potential additional funding for the proposed Bayfront Area shuttle; and
8. Require the Bayfront Area shuttle to be fully electric.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

**BE IT FURTHER RESOLVED** that the Planning Commission finds that the above recitals together with the staff report and the application materials, including without limitation, the EIR, and all other documents, reports, studies, memoranda, maps, oral and written testimony, and materials in the City’s file for the applications and the Project, and all adopted and applicable City planning documents related to the Project and the Project Site and all associated approved or certified environmental documents, have together served as an adequate and appropriate evidentiary basis for the recommendations set forth in this resolution.

**BE IT FURTHER RESOLVED** that the Planning Commission makes the following findings and recommendations:

1. *CEQA*. The Planning Commission, having fully reviewed, considered, and evaluated all the testimony and evidence submitted in this matter, finds:
  - a. The Final Project EIR was prepared in compliance with CEQA and provides adequate, good faith, and reasoned responses to the comments.
  - b. Pursuant to Public Resources Code section 21082.1(c)(3), the Final Project EIR reflects the City’s independent judgment as the lead agency for the Project and is supported by substantial evidence.
  - c. Where more than one reason for approving the Project and rejecting alternatives is given in its findings or in the record, and where more than one reason is given for adopting the Statement of Overriding Considerations, the Planning Commission would have made its recommendation on the basis of any one of those reasons.
  - d. Based on the findings in Attachment D, for the reasons stated therein and incorporated fully here, despite the potential for significant environmental effects that cannot be substantially lessened or avoided through the adoption of feasible mitigation measures or feasible alternatives, there exist certain overriding economic, social, and other considerations for approving the Project that justify the occurrence of those impacts.

Having fully reviewed, considered, and evaluated all the testimony and evidence submitted in this matter, the Planning Commission recommends that the City Council vote to certify the Final Project EIR, make the findings required by CEQA, adopt the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program (“MMRP”) in a form substantially consistent with Attachment D to this resolution, and approve the Project.

2. *General Plan Amendment*. An amendment to the General Plan Circulation Map is necessary to modify the circulation plan with regard to the locations for new street connections to the surrounding roadway network, as well as the locations of public rights-of-way and a proposed multi-use pathway within the Main Project Site; and.

The proposed general plan amendment is consistent with the ConnectMenlo General Plan goals, policies, and programs, including Policy LU-1.2 which states, “Integrate regional land use planning efforts with development of an expanded transportation network focusing on mass transit rather than freeways, and encourage development that supports multimodal transportation. The proposed amendment is also consistent with the policies under Goal CIRC-2, which states, “Increase accessibility for and use of streets by pedestrian, bicyclists, and transit riders,” and Goal CIRC-4, which states, “Improve Menlo Park’s overall health, wellness, and quality of life through transportation enhancements.” The new roadway connections to the surrounding roadway network and the proposed paseos and multi-use pathways will provide new routes for bicyclists and pedestrians through the Main Project Site, encouraging the use of multimodal transportation. The paseos and multi-use pathways will increase accessibility and use of

the streets by pedestrians and bicycles, and the proposed roundabout connection will provide an additional to the Main Project Site for bicyclists, pedestrians, and vehicles.

The Planning Commission thus recommends that the City Council adopt a resolution approving the amendment to the General Plan Circulation Map.

3. *Zoning Map Amendment and Rezoning.* The zoning map amendment and proposed X Combining District is consistent with the General Plan, which allows the uses permitted in the combining district at the density and intensity proposed and encourages the type of live/work/play environment promoted by the X combining district in the Bayfront area. The Planning Commission thus recommends that the City Council adopt an ordinance approving the Zoning Map Amendment and X Combining District.
4. *CDP.* In accordance with Municipal Code Sections 16.82.030, 16.78.020, and 16.82.440, the CDP, including all uses permitted therein, would be consistent with the General Plan and would not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of the Project, would not be unreasonably incompatible with uses permitted in surrounding areas, and would not be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the City. In addition, public convenience or necessity would be served by the issuance of licenses to sell alcohol contemplated by the CDP, and the outdoor seating contemplated by the CDP would maintain unimpeded pedestrian access on the public right-of-way. The Planning Commission thus recommends that the City Council adopt an ordinance approving the CDP with the recommended modifications to the TDM requirement and trip reduction.
5. *BMR Agreements.* The BMR Agreements satisfy the requirements in Chapter 16.96 of the City's Municipal Code and the applicable BMR Housing Program Guidelines, as amended by the CDP. The request to modify BMR Housing Program Guidelines Section 5.1 to allow affordable senior housing to be located in a single building rather than distributed through all residential buildings and to have a higher percentage of studio apartments than the Project as a whole supports the City's need for affordable senior housing. The Planning Commission finds that the deviations from BMR Housing Program Guidelines Section 5.1 meet the requirement of BMR Housing Program Guidelines Section 13, which allows the City Council to approve a BMR proposal and ensuing Agreement(s) that is not consistent with every section of the BMR Housing Program Guidelines where the deviation results in the proposal providing a reasonably equivalent alternative that is commensurate with the goals of the BMR Housing Program Guidelines. The Planning Commission recommends that the City Council waive the BMR Housing Program Guidelines' distribution and size requirements of Section 5.1, as well as adjust the preference criteria of Section 8.1, to allow for the senior affordable housing, consistent with the CDP, to promote the construction of needed affordable senior housing. The Planning Commission recommends that the City Council approve applicant's BMR proposal and the BMR regulatory Agreements, including an agreement for the non-age restricted BMR units, and an agreement for the age restricted (senior affordable housing) BMR units in a form substantially

consistent with the Agreements attached hereto as Attachment E to this resolution, and direct the City Manager to execute the BMR Agreements on behalf of the City.

6. *“A” Vesting Tentative Parcel Map*. Subject to final approval by the City Council of the above rezoning, approval of the “A” Vesting Tentative Parcel Map consistent with the requirements of the Subdivision Map Act and City of Menlo Park Municipal Code Section 15.20.050:
  - a. The proposed “A” Vesting Tentative Parcel Map for the Main Project Site is technically correct and in compliance with all applicable State regulations, City General Plan, Zoning and Subdivision Ordinances, and the State Subdivision Map Act.
  - b. The proposed “A” Vesting Tentative Parcel Map for the Main Project Site, including the contemplated design and improvements, is consistent with applicable General Plan goals and policies, in particular the goals for the Bayfront Area set forth in the General Plan. The Project is consistent with the land use designations described in the General Plan and would be consistent with City General Plan policies as well as City Zoning Ordinance requirements for master-planned projects at the proposed density and for the types of use.
  - c. The Project Site is physically suitable for the proposed master-planned development, including the proposed density of development, and the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially injure fish or wildlife or their habitat. The Project is consistent with the density and uses for the site set forth in the General Plan. The Project Site is in a heavily urbanized area of the City currently occupied by developed/landscaped areas that include various urban uses and does not include any aquatic habitat. The Project would not cause substantial environmental damage to the already disturbed Project Site and would not substantially injure the limited wildlife that access the site or their habitat.
  - d. The design of the subdivision or types of improvements is not likely to cause serious public health or safety problems. The Project would comply with the General Plan’s goals and policies, City Zoning and Subdivision Ordinances, and other applicable regulations designed to prevent serious health or safety problems.
  - e. The design of the subdivision or the type of improvements does not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision because alternate easements for access or use will be provided that are substantially equivalent to ones previously acquired by the public.
  - f. The Project is subject to flood and inundation hazards and is not located within a slide area. The Project Site is located within the 100-year flood hazard zone. However, the contemplated Project design and improvements will be elevated so as to mitigate flood hazards, and the Project would comply with applicable requirements designed to mitigate flood hazards as well as address future sea level rise.

Based on the above findings, the Planning Commission recommends that the City Council approve the “A” Vesting Tentative Parcel Map in a form substantially consistent with Attachment F.

7. *Hamilton VTM*. The Hamilton VTM meets the requirements of the Subdivision Map Act and City of Menlo Park Municipal Code Section 15.20.050:
  - a. The Hamilton VTM is technically correct and in compliance with all applicable State regulations, City General Plan, Zoning and Subdivision Ordinances, and the State Subdivision Map Act.
  - b. The proposed Hamilton VTM, including the contemplated design and improvements, is consistent with applicable General Plan goals and policies, in particular the goals for the Bayfront Area set forth in the General Plan. The Project is consistent with the land use designations described in the General Plan and would be consistent with City General Plan policies as well as City Zoning Ordinance requirements for master-planned projects at the proposed density and for the types of use.
  - c. The Project Site is physically suitable for the proposed master-planned development, including the proposed density of development, and the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially injure fish or wildlife or their habitat. The Project is consistent with the density and uses for the site set forth in the General Plan. The Project Site is in a heavily urbanized area of the City currently occupied by developed/landscaped areas that include various urban uses and does not include any aquatic habitat. The Project would not cause substantial environmental damage to the already disturbed Project Site and would not substantially injure the limited wildlife that access the site or their habitat.
  - d. The design of the subdivision or types of improvements is not likely to cause serious public health or safety problems. The Project would comply with the General Plan’s goals and policies, City Zoning and Subdivision Ordinances, and other applicable regulations designed to prevent serious health or safety problems.
  - e. The design of the subdivision or the type of improvements does not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision because alternate easements for access or use will be provided that are substantially equivalent to ones previously acquired by the public.
  - f. The Project is subject to flood and inundation hazards but is not located within a slide area. The Project Site is located within the 100-year flood hazard zone. However, the contemplated Project improvements will be designed to comply with applicable requirements that mitigate flood hazards as well as address future sea level rise.

Based on the above findings, the Planning Commission recommends that the City Council approve the Hamilton VTM in a form substantially consistent with Attachment G.

8. *Development Agreement.* The Planning Commission has reviewed and considered the draft Development Agreement, attached as Attachment G, as well as the analysis and facts set forth above, the staff report, EIR, other supporting documents, and public testimony and based on this information makes the following findings:
- a. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan.
  - b. The Development Agreement is compatible with the uses authorized in and the regulations prescribed for the O-B-X, R-MU-B-X, and C-2-S districts in which the Project Site will be located.
  - c. The Development Agreement is in conformity with public convenience, general welfare and good land use practices.
  - d. The Development Agreement will not be detrimental to the health, safety and general welfare of the City or the region surrounding the City.
  - e. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values within the City.
  - f. The Development Agreement will promote and encourage the development of the Project by providing a greater degree of certainty with respect thereto.
  - g. The Development Agreement will result in the provision of public benefits by the Applicant, including, but not limited to, financial commitments.

The Planning Commission thus recommends that the City Council approve the Development Agreement in a form substantially consistent with Attachment H to this resolution with recommended modifications to the operation of community amenities, timing for delivery of amenities, and overall uses and funding, and direct the City Manager to execute the Development Agreement on behalf of the City.

**SEVERABILITY**

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

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I, Deanna Chow, Assistant Community Development Director of Menlo Park, do hereby certify that the above and foregoing Planning Commission Resolution was duly and regularly passed and adopted at a meeting by said Planning Commission on the 3<sup>rd</sup> day of November, 2022, by the following votes:

AYES: Barnes, DeCardy, Do, Harris, Riggs, Tate

NOES: None

ABSENT: Shindler

ABSTAIN: None

IN WITNESS THEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this \_\_ day of November, 2022.

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Deanna Chow  
Assistant Community Development Director  
City of Menlo Park

Attachments included as Hyperlink – [menlopark.gov/files/sharedassets/public/agendas-and-minutes/planning-commission/2022-meetings/agendas/20221103-continuance-of-20221024-public-hearing.pdf#page=47](https://menlopark.gov/files/sharedassets/public/agendas-and-minutes/planning-commission/2022-meetings/agendas/20221103-continuance-of-20221024-public-hearing.pdf#page=47)

- A. General Plan Amendment (Staff Report Attachment A4)
- B. Zoning Map Amendment and Rezoning (Staff Report Attachment A7)
- C. Conditional Development Permit (Staff Report Attachment A8)
- D. CEQA Findings and Statement of Overriding Considerations and MMRP (Staff Report Attachments A2 and A3)
- E. , Below Market Rate Housing Agreements (Staff Report Attachment A12 and A13)
- F. Vesting Tentative Map Main Project Site (Staff Report Attachment A5)
- G. Vesting Tentative Map Hamilton Avenue Parcels (Staff Report Attachment A6)
- H. Development Agreement Ordinance (Staff Report Attachments A9 and A10)

**RESOLUTION NO. XXXX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE WILLOW VILLAGE MASTER PLAN PROJECT AND ADOPTING FINDINGS, A STATEMENT OF OVERRIDING CONSIDERATIONS, AND A MITIGATION MONITORING AND REPORTING PROGRAM, ALL PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, FOR A MIXED USE PROJECT CONSISTING OF UP TO 1.6 MILLION SQUARE FEET OF OFFICE AND ACCESSORY USES, UP TO 1,730 MULTIFAMILY DWELLING UNITS, UP TO 200,000 SQUARE FEET OF RETAIL USES, AN UP TO 193 ROOM HOTEL, AND ASSOCIATED OPEN SPACE AND INFRASTRUCTURE**

WHEREAS, the City of Menlo Park (City) received an application requesting to redevelop an approximately 59-acre industrial site (main Project Site) plus three parcels (within two sites) west of Willow Road (Hamilton Parcels and, together with the main Project Site, Project Site) as a mixed-use development consisting of up to 1.6 million square feet of office and accessory uses, up to 1,730 multifamily dwelling units, up to 200,000 square feet of retail uses, an up to 193-room hotel, and associated open space and infrastructure (Proposed Project); and

WHEREAS, the Proposed Project requires discretionary actions by the City, and therefore the California Environmental Quality Act (CEQA, Public Resources Code Section 21000 et seq.) and CEQA Guidelines (Cal. Code of Regulations, Title 14, Section 15000 et seq.) require analysis and a determination regarding the Proposed Project's environmental impacts; and

WHEREAS, on November 29, 2016, in connection with an update to the Land Use and Circulation Elements of the City's General Plan and related zoning changes, commonly referred to as the ConnectMenlo project, the City certified the ConnectMenlo Final EIR (ConnectMenlo EIR); and

WHEREAS, in connection with the certification of the ConnectMenlo EIR, the City entered into a settlement agreement with the City of East Palo Alto (Settlement Agreement), which requires project-specific environmental impact reports (EIRs) for certain future projects. Pursuant to the Settlement Agreement: (i) a project-specific EIR may tier from the ConnectMenlo EIR, and the project-level EIR shall include a project-specific transportation impact analysis; and (ii) the City shall prepare a housing needs assessment (HNA) to inform the population and housing topic area of the project-level EIR; and

WHEREAS, the City is the lead agency for the Proposed Project, as defined in CEQA and the CEQA Guidelines, and therefore is responsible for the preparation, consideration, certification, and approval of environmental documents for the Proposed Project; and

WHEREAS, pursuant to the requirements of the Settlement Agreement and CEQA, the City prepared, or caused to be prepared, a project-level EIR, including a transportation impact analysis, and an HNA for the Proposed Project; and

WHEREAS, the City released a Notice of Preparation (NOP) of an Environmental Impact Report for the Proposed Project (Project EIR) to the Office of Planning and Research (OPR) State Clearinghouse and interested agencies and persons on September 18, 2019, for a 30-day review period, during which interested agencies and the public could submit comments about the Proposed Project; and

WHEREAS, the City held a public scoping meeting on the Proposed Project EIR on October 7, 2019; and

WHEREAS, comments on the NOP were received by the City and considered during preparation of the Draft Project EIR; and

WHEREAS, a Notice of Availability (NOA) was issued and the Draft Project EIR made available for public review on April 8, 2022, for a 45-day public review period through May 23, 2022; and

WHEREAS, the Draft Project EIR was filed with the California Office of Planning and Research and copies of the Draft Project EIR were made available at the Community Development Department, on the City's website, and at the City Main Library and the Belle Haven Branch Library; and

WHEREAS, a public hearing was held before the Planning Commission of the City of Menlo Park (Planning Commission) on April 25, 2022, to receive public comments on the Draft Project EIR; and

WHEREAS, the analysis in the Draft Project EIR tiered from the ConnectMenlo EIR pursuant to Public Resource Code Sections 21166 and CEQA Guidelines Sections 15152, 15162, 15168, and 15183, as appropriate, and as further described in each environmental topic section in the Draft Project EIR; and

WHEREAS, on October 14, 2022, the City published a Final Project EIR that includes the Draft Project EIR as well as all the comments received on the Draft Project EIR during the public comment period, including a transcript of the public hearing, written responses to those comments, and text revisions to the Draft Project EIR, all prepared in accordance with CEQA and the CEQA Guidelines; and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, after notice having been lawfully given, a duly noticed public hearing was held before the Planning Commission on October 24, 2022, continued to November 3, 2022, at which all persons interested had the opportunity to appear and comment and at which the Planning Commission considered and made recommendations to the City Council of the City of Menlo Park (City Council) regarding the Final Project EIR and the merits of the Proposed Project; and

WHEREAS, the Planning Commission, having fully reviewed, considered, and evaluated all the testimony and evidence submitted in this matter, voted affirmatively to recommend to the City Council to certify the Final Project EIR pursuant to CEQA; and

WHEREAS, after notice having been lawfully given, a duly noticed public hearing was held before the City Council on \_\_\_\_\_, 2022, at which all persons interested had the opportunity to appear and comment and at which the City Council considered the Final Project EIR and the merits of the Proposed Project; and

WHEREAS, the City Council has reviewed and considered the Final Project EIR, all staff reports pertaining to the Final Project EIR, the Planning Commission hearing minutes and reports, and

all evidence received by the City, including at the Planning Commission and at the City Council hearings, and found that the Final Project EIR was prepared in compliance with CEQA; and

WHEREAS, after closing the public hearing, the City Council, acting on its independent judgment and analysis, voted affirmatively to certify the Final Project EIR pursuant to CEQA; and

WHEREAS, the City Council certifies that it has reviewed the comments received and the responses thereto and finds that the Final Project EIR provides adequate, good faith, and reasoned responses to the comments. Pursuant to Public Resources Code Section 21082.1(c)(3), the City also finds that the Final Project EIR reflects the City's independent judgment as the lead agency for the Proposed Project and is supported by substantial evidence; and

WHEREAS, the Final Project EIR identified certain potentially significant adverse effects on the environment caused by the Proposed Project; and

WHEREAS, the City Council specifically finds that where more than one reason for approving the Proposed Project and rejecting alternatives is given in its findings or in the record, and where more than one reason is given for adopting the Statement of Overriding Considerations, the City Council would have made its decision on the basis of any one of those reasons; and

WHEREAS, the City Council desires, in accordance with CEQA, to declare that, despite the potential for significant environmental effects that cannot be substantially lessened or avoided through the adoption of feasible mitigation measures or feasible alternatives, there exist certain overriding economic, social, and other considerations for approving the Proposed Project that the City Council believes justify the occurrence of those impacts; and

WHEREAS, the City Council, having fully reviewed, considered, and evaluated all the testimony and evidence submitted in this matter, voted affirmatively to certify the Final Project EIR, make the findings required by CEQA, adopt the Statement of Overriding Considerations, adopt the Mitigation Monitoring and Reporting Program (MMRP), and approve the Proposed Project.

NOW, THEREFORE, BE IT RESOLVED that the City Council finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

BE IT FURTHER RESOLVED THAT that the City Council of the City of Menlo Park hereby certifies the Final Project EIR, makes the following findings with respect to the Proposed Project's significant effects on the environment as identified in the Final Project EIR, as required under Sections 15091, 15092, and 15093 of the CEQA Guidelines, and adopts the Statement of Overriding Considerations and the MMRP as follows:

I. Project description

As fully described in Chapter 2 of the Draft Project EIR, Peninsula Innovation Partners, LLC (Project Sponsor), a subsidiary of Meta Platforms, Inc. (Meta), is proposing redevelopment of an approximately 59-acre industrial site (main Project Site) plus three parcels (within two sites) west of Willow Road (Hamilton Parcels and, collectively with the main Project Site, the Project Site) as a multi-phase, mixed-use development. The Willow Village Master Plan Project (Proposed Project) includes demolition of all buildings and landscaping on the 59-acre portion of the main Project Site and construction of new buildings, establishment of various open space areas (defined below), and installation of infrastructure within a new Residential/Shopping

District, Town Square District, and Campus District. In addition, the Proposed Project would alter three parcels (Hamilton Avenue Parcels North and South), totaling 3.1 acres, to accommodate realignment of Hamilton Avenue at Willow Road for Project Site access. The City of Menlo Park (City) is the Lead Agency for the Proposed Project.

At the main Project Site, the Proposed Project would demolish approximately 1 million square feet (sf) of existing nonresidential uses and construct approximately 1.8 million sf of nonresidential uses (excluding the proposed hotel), for a net increase of 800,000 sf in nonresidential square footage. The new nonresidential uses (excluding the hotel) would be composed of up to 1.6 million sf of office and accessory uses in the Campus District (with the office space not to exceed 1.25 million sf), up to approximately 200,000 sf of commercial/retail space, primarily in the Residential/Shopping District and Town Square District. Some of the commercial/retail sf would be located on the east side of Main Street, within the Campus District, and accessible by the public from Main Street. The Proposed Project would also include up to approximately 1,730 multi-family residential units, an up to 193-room hotel, and, assuming full buildout, approximately 20 acres of open spaces, which include approximately 8 acres of publicly accessible parks, bike paths, and trails. The Proposed Project would be developed using the bonus level allowances from the Zoning Ordinance. The Proposed Project would utilize these allowances for increased density, intensity, and height in exchange for the provision of community amenities.

The three proposed districts within the main Project Site would be situated as follows: the approximately 17.7-acre Residential/Shopping District in the southwestern portion of the main Project Site, the approximately 4.3-acre Town Square District in the northwestern portion of the main Project Site, and the approximately 32-acre Campus District in the eastern portion of the main Project Site. The Campus District would include office uses (including amenity space), accessory uses, publicly accessible retail space, and a publicly accessible elevated park (i.e., the Elevated Park) that would serve to connect the main Project Site to the adjacent Belle Haven neighborhood via an overpass at Willow Road. The Proposed Project could include an undercrossing (Willow Road Tunnel), which may be developed at the discretion of the Project Sponsor, to provide tram and pedestrian/bicyclist access to the neighboring Meta campuses from the Campus District. If constructed, the Willow Road Tunnel would be an approximately 18-foot-tall by 42-foot-wide tunnel, running under the existing Dumbarton Cutoff at Willow Road. To be conservative in the approach to environmental review, the Project EIR evaluated the potential environmental impacts associated with construction of the Willow Road Tunnel.

The main Project Site would be bisected by a new north–south street (Main Street) as well as an east–west street that would provide access to all three districts. The Proposed Project would include a circulation network for vehicles, bicycles, and pedestrians, inclusive of both public rights-of-way and private streets that would be generally aligned to an east-to-west and a north-to-south grid. The Proposed Project would also alter parcels west of the main Project Site, across Willow Road, on both the north and south sides of Hamilton Avenue (Hamilton Avenue Parcels North and South) to support realignment of the Hamilton Avenue right-of-way and provide access to the new Elevated Park. The realignment of Hamilton Avenue would require demolition and reconstruction of an existing Chevron gas station (with a potential increase in approximately 1,000 sf) at Hamilton Avenue Parcel South and enable the potential addition of up to 6,700 sf of retail uses at the existing neighborhood shopping center (Belle Haven Retail Center) on Hamilton Avenue Parcel North.

Offsite transportation and utility improvements would be constructed to serve the Proposed Project. These include various potential intersection improvements, which may be required to

bring intersection congestion back to pre-Project conditions per the City's transportation impact analysis guidelines, expansion of the Pacific Gas and Electric (PG&E) Ravenswood substation, and installation of a new conduit to connect the Ravenswood substation to the main Project Site. The Proposed Project also would result in the construction of a sanitary sewer force main and recycled water line in the same trench in Hamilton Avenue and an extension of the sanitary sewer line in Willow Road from O'Brien Drive to the proposed sanitary sewer pump station, should it be sited near the intersection of Willow Road and Park Street within the Community Park. In the event the pump station is sited within the Dog Park, the extension of the sanitary sewer line would divert flows from the existing sanitary sewer line within O'Brien Drive into either a new line located within Main Street, originating at the intersection of Main Street and O'Brien Drive, to Park Street, feeding into the sanitary sewer pump station or a new line that bisects the San Francisco Public Utilities Commission (SFPUC) Hetch Hetchy right-of-way and directly feeds into the proposed pump station.

## II. ConnectMenlo EIR

The Project Site is within the General Plan and M-2 Area Zoning Update (ConnectMenlo) study area. ConnectMenlo, which updated the City General Plan Land Use and Circulation Elements and rezoned land in the M-2 area, now referred to as the Bayfront Area, was approved on November 29, 2016. It serves as the City's comprehensive and long-range guide to land use and infrastructure development. Because the City General Plan is a long-range planning document, the ConnectMenlo EIR was prepared as a Program EIR, pursuant to CEQA Guidelines Section 15168. ConnectMenlo's Land Use Element identifies an allowable increase in net new development potential of up to 2.3 million square feet for nonresidential uses, up to 4,500 residential units, and up to 400 hotel rooms in the Bayfront Area.

Acting as the lead agency under CEQA, the City determined that the Proposed Project's location and development parameters are consistent with ConnectMenlo and that the Proposed Project is within the scope of the ConnectMenlo Program EIR. Thus, the Project EIR tiered from the ConnectMenlo EIR, pursuant to CEQA Guidelines Sections 15152, 15162, 15168, and 15183. The ConnectMenlo EIR is available on the City's website for public review at the following link: [menlopark.org/connectmenlo](http://menlopark.org/connectmenlo). The Proposed Project also would be required to comply with all applicable mitigation measures identified in the ConnectMenlo MMRP, as required for any proposed development in the City.

In many environmental topic areas, the impacts of the Proposed Project were found to be within the scope of the ConnectMenlo EIR, as determined in accordance with CEQA Guidelines Sections 15168 and 15162. In those cases, the Proposed Project would not have new or substantially more severe impacts than those identified in the ConnectMenlo EIR, and there are no new or considerably different mitigation measures or alternatives that would substantially reduce significant impacts that the applicant has declined to adopt. Likewise, in many topic areas, there are no impacts peculiar to the Proposed Project that were not addressed in the ConnectMenlo EIR or that would be substantially more severe than those identified in the ConnectMenlo EIR or that cannot be substantially mitigated by the imposition of uniformly applied development policies or standards, as determined in accordance with CEQA Guidelines Section 15183. Nonetheless, given the magnitude of the Proposed Project and the public interest, the City chose to prepare an EIR that discusses all CEQA impacts of the Proposed Project, including those that were adequately addressed in the ConnectMenlo EIR. Accordingly, although the EIR tiers from the ConnectMenlo EIR in accordance with CEQA, the EIR discusses all impacts for purposes of providing comprehensive information, even when not required by CEQA.

On December 29, 2016, the City of East Palo Alto filed suit to challenge certification of the ConnectMenlo Final EIR. The City of East Palo Alto alleged that the City did not comply with CEQA because the EIR underestimated the amount of new employment and failed to adequately analyze the traffic impacts that would result from development under ConnectMenlo. To resolve the litigation, the City of Menlo Park and the City of East Palo Alto entered into a settlement agreement. While the settlement agreement does not alter what is required for an EIR under CEQA, the Draft Project EIR was prepared in accordance with the settlement agreement, the key terms of which are as follows:

- *Reciprocal Environmental Review for Future Development Projects.* The City will prepare an EIR for any project located in the Office (O), Life Science (LS), or Residential Mixed-Use (R-MU) district that exceeds 250,000 net new square feet and requires a use permit, that proposes bonus-level development, that proposes a master plan project, or that may have a significant environmental impact. The City may, with the exception of housing and traffic (which were the focus of East Palo Alto's challenge), simplify the environmental review for future development projects by incorporating analysis and discussions from the ConnectMenlo Final EIR, pursuant to CEQA Guidelines Section 15168(d). East Palo Alto will prepare an Initial Study for future development projects to determine the appropriate level of environmental review and conduct that review, which can be simplified by incorporating by reference analysis and discussions from its general plan, referred to as Vista 2035.
- *Reciprocal Traffic Studies.* The City and East Palo Alto will work together to ensure that future development projects' potentially significant traffic impacts on the other jurisdiction are analyzed and mitigated.
- *Reciprocal Study of Multiplier Effect.* When the preparation of an EIR is required, as described above, the City or East Palo Alto, as applicable, will conduct a Housing Needs Assessment, which, to the extent possible, will include an analysis of the multiplier effect for indirect and induced employment.

### III. Environmental review process

Under CEQA, lead agencies are required to consult with public agencies having jurisdiction over a proposed project, and to provide the general public with an opportunity to comment on an EIR. A Notice of Preparation (NOP) for the Project EIR was issued by the City to the OPR State Clearinghouse and interested agencies and persons on September 18, 2019, for a 30-day review period, during which interested agencies and the public could submit comments about the Proposed Project. The City also held a public scoping meeting on October 7, 2019. Comments on the NOP were received by the City and considered during preparation of the Draft Project EIR.

A Notice of Availability (NOA) for the Draft Project EIR was issued on April 8, 2022, and the Draft Project EIR was made available for public review for a 45-day public review period through May 23, 2022. The Draft Project EIR was distributed to local, regional, and State agencies, and the general public was advised of the availability of the Draft Project EIR. The Draft Project EIR was made available online at [www.menlopark.org/willowvillage](http://www.menlopark.org/willowvillage). Printed copies of the Draft Project EIR were available for review at the City Main Library (800 Alma Street) and the Belle Haven Branch Library (413 Ivy Drive). A public hearing was held before the Planning Commission on April 25, 2022, to receive comments on the Draft Project EIR.

The Final Project EIR provides responses to the comments on significant environmental issues received during the comment period of the Draft Project EIR. The Draft Project EIR and the responses to comments, along with the revisions to the Draft Project EIR comprise the Final Project EIR. The Planning Commission considered the Final Project EIR at a duly noticed public

hearing held on October 24, 2022, and continued to November 3, 2022, at the conclusion of which the Planning Commission voted affirmatively to recommend the City Council certify the Final Project EIR pursuant to CEQA. On \_\_\_\_\_, 2022, the City Council held a duly noticed public hearing, at which the City Council independently considered the Final Project EIR and the Planning Commission's recommendation.

#### IV. Certification of the final project EIR

In accordance with CEQA Guidelines Section 15090, the City, acting by and through its City Council, hereby certifies that the Final Project EIR has been completed in compliance with CEQA and the CEQA Guidelines. The City further certifies that it has reviewed and considered the information contained in the Final Project EIR prior to approving the Proposed Project. The City further certifies that the Final Project EIR reflects its independent judgment and analysis.

#### V. Record Of Proceedings

For purposes of CEQA and these findings, the record of proceedings consists of the following documents and testimony:

- (a) The ConnectMenlo EIR;
- (b) The NOP and all other public notices issued by the City in conjunction with the Project;
- (c) The Draft Project EIR for the Proposed Project, dated April 2022;
- (d) All comments submitted by agencies or members of the public during the public comment period on the Draft Project EIR;
- (e) The Final Project EIR for the Proposed Project, including comments received on the Draft Project EIR, responses to those comments, and the technical appendices, as well as text changes to the Draft Project EIR, dated October 14, 2022;
- (f) The MMRP for the Project;
- (g) All reports, studies, memoranda, maps, staff reports, or other planning documents related to the Proposed Project prepared by the City or consultants to the City with respect to the City's compliance with the requirements of CEQA and with respect to the City's action on the Proposed Project, including as well all reports and other related documents prepared by the applicant and peer reviewed by the City and included in the Project EIR;
- (h) All documents submitted to the City (including the Planning Commission and City Council) by other public agencies or members of the public, including the applicant, in connection with the Project;
- (i) Any minutes and/or verbatim transcripts of all information sessions, public meetings, and public hearings held by the City in connection with the Proposed Project;
- (j) All matters of common knowledge to the Planning Commission and City Council, including, but not limited to:
  - (i) City's General Plan and other applicable policies;
  - (ii) City's Zoning Ordinance and other applicable ordinances;
  - (iii) Information regarding the City's fiscal status;
  - (iv) Applicable City policies and regulations; and
  - (v) Federal, state and local laws and regulations; and
- (k) Any other materials required for the record of proceedings by CEQA Section 21167.6(e).

The documents described above comprising the record of proceedings are located in the Community Development Department, City of Menlo Park, 701 Laurel Street, Menlo Park, California 94025. The custodian of these documents is the City's Community Development Director or his/her designee.

#### VI. Findings

The findings, recommendations, and statement of overriding considerations set forth below are made and adopted by the City Council of the City of Menlo Park as the City's findings under



CEQA and the CEQA Guidelines relating to the Proposed Project. These findings provide the written analysis and conclusions of the City Council regarding the Proposed Project's environmental impacts, mitigation measures, variants to the Proposed Project, alternatives to the Proposed Project, and the overriding considerations that support approval of the Proposed Project and Project variants despite any remaining environmental effects they may have.

In many environmental topic areas, the impacts of the Proposed Project were found to be within the scope of the ConnectMenlo EIR, as determined in accordance with CEQA Guidelines Sections 15168 and 15162. In those cases, the Proposed Project would not have new or substantially more severe impacts than those identified in the ConnectMenlo EIR, and there are no new or considerably different mitigation measures or alternatives that would substantially reduce significant impacts that the applicant has declined to adopt. Likewise, in many topic areas, there are no impacts peculiar to the Proposed Project that were not addressed in the ConnectMenlo EIR or that would be substantially more severe than those identified in the ConnectMenlo EIR or that cannot be substantially mitigated by the imposition of uniformly applied development policies or standards, as determined in accordance with CEQA Guidelines Section 15183. Nonetheless, given the magnitude of the Proposed Project and the public interest, the City chose to prepare an EIR that discusses all CEQA impacts of the Proposed Project, including those that were adequately addressed in the ConnectMenlo EIR. Accordingly, although the EIR tiers from the ConnectMenlo EIR, in accordance with CEQA, for purposes of providing comprehensive information, the EIR discusses all impacts, even when not required by CEQA.

The below findings summarize the environmental determinations of the Project EIR with regard to Project impacts before and after mitigation but do not attempt to repeat the full analysis of each impact contained in the Project EIR. Instead, these findings provide a summary description of and basis for each impact conclusion identified in the Project EIR, describe the applicable mitigation measures identified in the Project EIR, and state the City's findings and rationale about the significance of each impact following the adoption of mitigation measures. A full explanation of environmental findings and conclusions can be found in the Project EIR, and these below findings incorporate by reference the discussion and analysis in the Project EIR supporting the determinations regarding mitigation measures and the Proposed Project's impacts.

In adopting the mitigation measures, below, the City intends to adopt each of the mitigation measures identified in the Project EIR. Accordingly, in the event a mitigation measure identified in the Project EIR has been inadvertently omitted from these findings, such mitigation measure is hereby adopted and incorporated into the Project in the findings below by reference. In addition, in the event the language of a mitigation measure set forth below fails to accurately reflect the mitigation measure in the Project EIR due to a clerical error, the language of the mitigation measure as set forth in the Project EIR shall control unless the language of the mitigation measure specifically and expressly has been modified by these findings.

Sections VII and VIII, below, provide brief descriptions of the impacts that the Project EIR identifies as either significant and unavoidable or less than significant with adopted mitigation. These descriptions also reproduce the full text of the mitigation measures identified in the Project EIR for each significant impact.

#### VII. Findings for significant and unavoidable impacts

The Final Project EIR identified the following significant and unavoidable adverse environmental impacts associated with approval of the Proposed Project, some of which can be reduced,

although not to a less-than-significant level, through implementation of mitigation measures identified in the Project EIR. The City Council finds there are no additional feasible mitigation measures or alternatives that could be adopted at this time that would reduce these significant and unavoidable impacts to a less than significant level. For reasons set forth in Section XI, below, however, the City Council has determined that overriding economic, social, and other considerations outweigh the Project's significant and unavoidable effects. The findings in this section are based on the Project EIR, the discussion and analysis of which is hereby incorporated in full by this reference.

A. Impact AQ-1: The Proposed Project would conflict with or obstruct implementation of the applicable air quality plan.

Project Mitigation Measure AQ-1.1: The Project Sponsor shall either:

- Ensure all off-road construction equipment with greater than 25 horsepower and operating for more than 20 hours total over the entire duration of construction activities have engines that meet or exceed either EPA or ARB Tier 4 Final off-road emission standards. The exception to this requirement allows a cumulative total of 618,028 horsepower-hours over the duration of construction activities before residents move onsite and 34,716 horsepower-hours over the duration of construction activities after residents move onsite from the operation of off-road construction equipment that meets standards less than Tier 4 Final; or
- Prior to issuance of building permits, provide supplemental analysis prepared by a qualified air quality specialist to the City for approval that shows that emissions of ROG and NO<sub>x</sub>, the excess lifetime cancer risk, and the PM<sub>2.5</sub> concentration would not exceed the thresholds from the 2017 BAAQMD CEQA Air Quality Guidelines using the mix of equipment Proposed by the applicant.

Project Mitigation Measure AQ-1.2: The Project Sponsor shall use super-compliant architectural coatings during construction and operation for all buildings, which shall have VOC content that meet SCAQMD Rule 1113 Architectural Coatings as revised on February 5, 2016.

Finding: Implementation of Project Mitigation Measures AQ-1.1 and AQ-1.2, which are hereby adopted and incorporated into the Proposed Project, would reduce the impacts but not to a less-than-significant level. Specific considerations make further mitigation measures or alternatives infeasible; therefore, the impact would be significant and unavoidable.

Facts in Support of Finding: Impacts related to Clean Air Plan consistency were analyzed in the ConnectMenlo EIR as Impact AQ-1. It was determined that ConnectMenlo would be consistent with the goals and applicable control measures of the 2010 Bay Area Clean Air Plan. In addition, the ConnectMenlo Final EIR determined that implementation of the ConnectMenlo project would result in lower VMT per service population than under then-existing conditions. In addition, the ConnectMenlo Final EIR states that, pursuant to the City's Zoning Ordinance update, projects that require preparation of a transportation demand management (TDM) plan are required to reduce trip generation by 20 percent below standard use rates. For these reasons, the ConnectMenlo Final EIR found that implementation of ConnectMenlo would be consistent with air quality planning efforts of the San Francisco Bay Area Air Basin and would not hinder the Bay Area Air Quality Management District's (BAAQMD's) ability to attain the California Ambient Air Quality Standards (CAAQS) or National Ambient Air Quality Standards (NAAQS), and this impact would be less than significant. With implementation of Project Mitigation Measures AQ-1.1 and AQ-1.2 and ConnectMenlo Mitigation Measures AQ-2b1 and AQ-2b2, the Proposed Project would result in less-than-significant impacts related to Nitrogen Oxides (NO<sub>x</sub>) emissions and Toxic Air Contaminant (TAC) exposures. The Proposed Project

would also be consistent with the transportation control measures with implementation of Project Mitigation Measure TRA-2. However, as discussed under Clean Air Plan goals and further in Impact AQ-2, the Proposed Project's Reactive Organic Gas (ROG) emissions would remain above the BAAQMD ROG threshold after implementation of all mitigation measures. ROG emissions from consumer products constitute the majority of the operational ROG emissions associated with the Proposed Project, and the City and Project Sponsor have minimal control over what consumer products Project users would purchase. There are no additional mitigation measures to reduce ROG emissions from consumer products. Therefore, the Proposed Project would possibly disrupt or hinder implementation of the current Clean Air Plan, and this impact would be significant and unavoidable.

B. Impact AQ-2: The Proposed Project would result in a cumulative net increase in a criteria pollutant for which the Project region is classified as a nonattainment area under an applicable federal or ambient air quality standard.

Project Mitigation Measure AQ-1.1: Implement Project Mitigation Measure AQ-1.1, above.

Project Mitigation Measure AQ-1.2: Implement Project Mitigation Measure AQ-1.2, above.

ConnectMenlo Mitigation Measure AQ-2b1: Prior to building permit issuance, the City shall require applicants for all development projects in the city to comply with the current Bay Area Air Quality Management District's (BAAQMD) basic control measures for reducing construction emissions of PM10 (Table 8-1, Basic Construction Mitigation Measures Recommended for All Proposed Projects, of the BAAQMD CEQA Guidelines).

ConnectMenlo Mitigation Measure AQ-2b2: Prior to issuance of a building permit, development projects in the City that are subject to CEQA and exceed the screening sizes in the BAAQMD's CEQA Guidelines shall prepare and submit to the City of Menlo Park a technical assessment evaluating potential project construction-related air quality impacts. The evaluation shall be prepared in conformance with the BAAQMD methodology for assessing air quality impacts. If construction-related criteria air pollutants are determined to have the potential to exceed the BAAQMD thresholds of significance, as identified in the BAAQMD CEQA Guidelines, the project applicant is required to incorporate mitigation measures to reduce air pollutant emissions during construction activities to below these thresholds (e.g., Table 8-2, Additional Construction Mitigation Measures Recommended for projects with Construction Emissions Above the Threshold of the BAAQMD CEQA Guidelines, or applicable construction mitigation measures subsequently approved by BAAQMD). These identified measures shall be incorporated into all appropriate construction documents (e.g., construction management plans), subject to the review and approval of the Planning Division prior to building permit issuance. (The AQTR prepared and submitted for the Proposed Project fulfills the air quality technical assessment requirement.)

Finding: Implementation of Project Mitigation Measures AQ-1.1 and AQ-1.2 as well as ConnectMenlo Mitigation Measures AQ-2b1 and AQ-2b2, which are hereby adopted and incorporated into the Proposed Project, would reduce the impacts but not to a less-than-significant level. Specific considerations make further mitigation measures or alternatives infeasible; therefore, the impact would be significant and unavoidable.

Facts in Support of Finding: Impacts related to criteria air pollutant emissions were analyzed in the ConnectMenlo EIR as Impact AQ-2, which found that construction emissions associated

with individual development projects could generate emissions of criteria air pollutants and TACs. This would require subsequent environmental review of future development projects to assess potential impacts relate to BAAQMD-recommended project-level thresholds. The ConnectMenlo EIR found that construction-related impacts would be significant and identified ConnectMenlo Mitigation Measures AQ-2b1 and AQ-2b2 to reduce impacts to the extent feasible. Even with implementation of these measures, the ConnectMenlo Final EIR found that construction-related impacts associated with buildout would be significant and unavoidable. The Proposed Project would implement Project Mitigation Measures AQ-1.1 and AQ-1.2 and ConnectMenlo Mitigation Measures AQ-2b1 and AQ-2b2. However, ROG emissions from consumer products constitute most of the operational ROG emissions associated with the Proposed Project. The City and Project Sponsor would have minimal control over what consumer products Project users would purchase. There are no additional mitigation measures to reduce ROG from consumer products. Thus, although the Proposed Project would not result in a substantial change in the ConnectMenlo project and would not cause new or substantially more severe significant impacts than those analyzed in the ConnectMenlo EIR, net mitigated operational ROG emissions would still exceed BAAQMD's ROG threshold after implementation of all feasible mitigation measures. Impacts would be significant and unavoidable.

C. Impact C-AQ-1: Cumulative development would result in a significant and unavoidable cumulative impact on air quality; thus, the Proposed Project would be a cumulatively considerable contributor to a significant cumulative impact on air quality.

Project Mitigation Measure AQ-1.1: Implement Project Mitigation Measure AQ-1.1, above.

ConnectMenlo Mitigation Measure AQ-2b1: Implement ConnectMenlo Mitigation Measure AQ-2b1, above.

ConnectMenlo Mitigation Measure AQ-2b2: Implement ConnectMenlo Mitigation Measure AQ-2b2, above.

Finding: Implementation of Project Mitigation Measure AQ-1.1 as well as ConnectMenlo Mitigation Measures AQ-2b1 and AQ-2b2, which are hereby adopted and incorporated into the Proposed Project, would reduce the impacts but not to a less-than-significant level. Specific considerations make further mitigation measures or alternatives infeasible; therefore, the impact would be significant and unavoidable.

Facts in Support of Finding: Cumulative development in the San Francisco Bay Area Air Basin (SFBAAB) would result in a significant unavoidable cumulative impact with respect to air quality as a result of an exceedance of BAAQMD criteria pollutant thresholds, even with implementation of all feasible mitigation. The ConnectMenlo EIR determined criteria air pollutant emissions generated by cumulative development would exceed BAAQMD's project-level significance thresholds and that cumulative impacts related to criteria air pollutants under ConnectMenlo would be significant and unavoidable. The Proposed Project would not result in a substantial change in the ConnectMenlo project and would not cause new or substantially more severe significant impacts than those analyzed in the ConnectMenlo EIR. As a result of its operational ROG emissions, in excess of the BAAQMD ROG threshold, even after implementation of all feasible mitigation (see Impact AQ-2 above), the Proposed Project would be a cumulatively considerable contributor to a significant and unavoidable cumulative impact on air quality with respect to criteria pollutants.

D. Impact NOI-1a: Construction of the Proposed Project would generate a substantial temporary or permanent increase in ambient noise levels in the vicinity of the Project in excess of standards established in a local general plan or noise ordinance or applicable standards of other agencies.

Modified ConnectMenlo Mitigation Measure NOISE-1c: Project applicants for all development projects in the city shall minimize the exposure of nearby properties to excessive noise levels from construction-related activity through CEQA review, conditions of approval and/or enforcement of the City's Noise Ordinance. Prior to issuance of demolition, grading, and/or building permits for development projects, a note shall be provided on development plans indicating that during on-going grading, demolition, and construction, the property owner/developer shall be responsible for requiring contractors to implement the following measures to limit construction-related noise:

- All internal combustion engines on construction equipment and trucks are fitted with properly maintained mufflers, air intake silencers, and/or engine shrouds that are no less effective than as originally equipped by the manufacturer.
- Stationary equipment such as generators and air compressors shall be located as far as feasible from nearby noise-sensitive uses.
- Stockpiling is located as far as feasible from nearby noise-sensitive receptors.
- Limit unnecessary engine idling to the extent feasible.
- Limit the use of public address systems.
- Construction traffic shall be limited to the haul routes established by the City of Menlo Park.

Project Mitigation Measure NOI-1.1: The Project applicant and/or the contractor(s) shall obtain a permit to complete work outside the exempt/standard construction hours outlined in the City of Menlo Park Municipal Code, which may be incorporated into the conditional development permit for the Proposed Project. In addition, the applicant and/or contractor(s) shall develop a construction noise control plan to reduce noise levels and comply with Municipal Code daytime (during non-exempt hours) and nighttime noise standards to the extent feasible and practical, subject to review and determination by the Community Development Department. The plan shall also include measures to reduce noise levels such that a 10-dB increase over the ambient noise level does not occur at nearby noise-sensitive land uses, such as schools and residences to the extent feasible and practical (as determined by the City). Finally, the plan shall include measures to reduce pile driving noise such that noise from this equipment does not exceed 85 dBA Leq at a distance of 50 feet, as feasible.

The plan shall demonstrate that, to the extent feasible and practical, noise from construction activities that occur daily between 7:00 and 8:00 a.m. or between 6:00 p.m. and 10:00 p.m. will comply with the applicable City of Menlo Park noise limit of 60 dBA at the nearest existing residential or noise-sensitive land use, and construction activities that occur between 10:00 p.m. and 7:00 a.m. will comply with the applicable City noise limit of 50 dBA at the residential or noise-sensitive land use. The plan shall also demonstrate that, to the extent feasible and practical (as determined by the City), noise from construction activities during all hours will not result in a 10 dB increase over the ambient noise level at the nearest noise-sensitive land uses, and that pile driving noise would not exceed 85 dBA Leq at a distance of 50 feet. This Noise Control Plan shall be approved by the City prior to the issuance of building permits to confirm the precise noise minimization strategies that will be implemented and to document that strategies will be employed to the extent feasible and practical.

Measures to help reduce noise from construction activity to these levels shall be incorporated into this plan and may include, but are not limited to, the following:

- To the extent feasible and practical, plan for the noisiest construction activities to occur during daytime hours when the quantitative standards are less stringent, existing ambient noise levels are generally louder, and when people are less sensitive to noise.
- Require all construction equipment be equipped with mufflers and sound control devices (e.g., intake silencers and noise shrouds) that are in good condition (at least as effective as those originally provided by the manufacturer) and appropriate for the equipment.
- Maintain all construction equipment to minimize noise emissions.
- Locate construction equipment as far as feasible from adjacent or nearby noise-sensitive receptors.
- Require all stationary equipment be located to maintain the greatest possible distance to the nearby existing buildings, where feasible and practical.
- Require stationary noise sources associated with construction (e.g., generators and compressors) in proximity to noise-sensitive land uses to be muffled and/or enclosed within temporary enclosures and shielded by barriers, which can reduce construction noise by as much as 5 dB.
- Install noise-reducing sound walls or fencing (e.g. temporary fencing with sound blankets) around noise-generating equipment, to the extent feasible and practical, where no perimeter wall is provided pursuant to Mitigation Measure NOI-1.2.
- Prohibit idling of inactive construction equipment for prolonged periods during nighttime/non-standard hours (i.e., more than 2 minutes).
- Provide advance notification in the form of mailings/deliveries of notices to surrounding land uses regarding the construction schedule, including the various types of activities that would be occurring throughout the duration of the construction period.
- Provide the name and telephone number of an on-site construction liaison through on-site signage and on the notices mailed/delivered to surrounding land uses. If construction noise is found to be intrusive to the community (i.e., if complaints are received), the construction liaison shall take reasonable efforts to investigate the source of the noise and require that reasonable measures be implemented to correct the problem.
- Use electric motors rather than gasoline- or diesel-powered engines to avoid noise associated with compressed air exhaust from pneumatically powered tools during nighttime hours, to the extent feasible and practical (as determined by the City). Where the use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust could be used; this muffler can lower noise levels from the exhaust by about 10 dB. External jackets on the tools themselves could be used, which could achieve a reduction of 5 dB.

Project Mitigation Measure NOI-1.2: The Project contractor(s) shall install an 8-foot-high temporary noise barrier along the complete length of the western and southern perimeter (e.g., areas near residential and school land uses), and along the southernmost 500 feet of the eastern perimeter of the main Project Site. As project buildout occurs, removal and/or adjustment in the location of the perimeter noise barrier may occur because either the construction of project buildings (completion of core and shell) or streets requires barrier realignment, or the perimeter barrier is not needed, as shown by preparation of an acoustical analysis that indicates the balance of the construction activities will not result in construction noise that exceeds the allowable limits.

Regarding the Hamilton Avenue Parcel South, a similar noise barrier shall be installed around the complete length of the southern, western and northern perimeters as well as the southernmost 100 feet of the eastern perimeter of the Hamilton Avenue Parcel South, unless the Project Sponsor can demonstrate, through an acoustical analysis, that construction noise at

this site would not exceed the allowable limits. The decision regarding the necessity of this barrier and location(s) shall be subject to review and approval of the City based on evidence and analyses providing by the applicant team.

Regarding the Hamilton Avenue Parcel North, a similar noise barrier shall also be constructed along the complete length of the southern and western perimeters, along with the eastern most 100 feet of the northern perimeter of the Hamilton Avenue Parcel North, unless the Project Sponsor can demonstrate, through an acoustical analysis, that construction noise at this site would not exceed the allowable limits. The decision regarding the necessity of this barrier and location(s) shall be subject to review and approval of the City based on evidence and analyses providing by the applicant team.

The barriers shall be constructed of material that has an acoustical rating of at least 26 STC (Sound Transmission Class). This can include a temporary barrier constructed with plywood supported on a wood frame, sound curtains supported on a frame, or other comparable material.

Finding: Implementation of Modified ConnectMenlo Mitigation Measure NOISE-1c and Project Mitigation Measures NOI-1.1 and NOI-1.2, which are hereby adopted and incorporated into the Project, would reduce the impacts but not to a less-than-significant level. Specific considerations make further mitigation measures or alternatives infeasible; therefore, the impact would be significant and unavoidable.

Facts in Support of Finding: Noise impacts related to construction during the day, construction during non-exempt daytime hours, construction during the night, potential intersection improvements, and construction of offsite improvements would be significant. The ConnectMenlo EIR determined that future projects in Menlo Park could result in construction-related noise levels that would exceed noise limits; however, with implementation of mitigation measures and compliance with the City Noise Ordinance, impacts would be less than significant. Since adopting ConnectMenlo, the City has implemented a construction noise threshold under CEQA that is more stringent than the threshold used to evaluate construction noise in the ConnectMenlo EIR. With respect to the Proposed Project, noise impacts on offsite uses (e.g., schools, residences) from construction, including the construction of certain offsite improvements, would remain significant, even after implementation of feasible mitigation measures. For example, while installation of a temporary construction noise barrier could reduce impacts, effective mitigation may not be feasible in all locations and may not reduce noise from all activities to a level of insignificance, even if noise is somewhat reduced. In addition, although not a CEQA impact, construction noise impacts on onsite Project land uses during morning and evening hours would be significant, even after implementation of feasible mitigation measures. Thus, the Proposed Project would cause a new or substantially more severe significant construction noise impact than that analyzed in the ConnectMenlo EIR.

E. Impact NOI-2: The Proposed Project would generate excessive groundborne vibration or groundborne noise levels.

ConnectMenlo Mitigation Measure NOISE-2a<sup>1,2</sup>: To prevent architectural damage citywide as a result of construction-generated vibration:

- Prior to the issuance of a building permit for any development project requiring pile driving or blasting, the project applicant/developer shall prepare a noise and vibration analysis to assess and mitigate potential noise and vibration impacts related to these activities. The maximum levels shall not exceed 0.2 in/sec, which is the level that can cause architectural damage for typical residential construction. If maximum levels would exceed the thresholds, alternative methods, such static rollers, non-explosive blasting, and pile drilling, as opposed to pile driving, shall be used to the extent feasible and practical, subject to review and determination by the Community Development Department.

To prevent vibration-induced annoyance as a result of construction-generated vibration:

- Individual projects that involve vibration-intensive construction activities, such as blasting or the use of pile drivers, jack hammers, or vibratory rollers, within 200 feet of sensitive receptors shall be evaluated for potential vibration impacts. A vibration study shall be conducted for individual projects where vibration-intensive impacts may occur. The study shall be prepared by an acoustical or vibration engineer holding a degree in engineering, physics, or an allied discipline who is able to demonstrate a minimum of 2 years of experience in preparing technical assessments regarding acoustics and/or ground-borne vibration. The study is subject to review and approval of the Community Development Department.

Vibration impacts on nearby receptors shall not exceed the vibration annoyance levels (in RMS inches per second), as follows:

- Workshop = 0.126
- Office = 0.063
- Residence, daytime (7:00 a.m.-10:00 p.m.) = 0.032
- Residence, nighttime (10:00 p.m. to 7:00 a.m.) = 0.016

If construction-related vibration is determined to be perceptible at vibration-sensitive uses, additional requirements, such as less vibration-intensive equipment or construction techniques, shall be implemented during construction (e.g., non-explosive blasting, pile drilling, as opposed to pile driving, preclusion for vibratory roller use, use of small or medium-sized bulldozers) to the extent feasible and practical. Vibration reduction measures shall be incorporated into the site development plan as a component of the Project and applicable building plans, subject to the review and approval of the Community Development Department.

Project Mitigation Measure NOI-2.1: During daytime hours, pile driving activity shall take place no closer than 335 feet from residential land uses, 210 feet from office or school land uses, and 130 feet from workshops or retail land uses, to the extent feasible and practical. When pile driving work must take place closer than these distances from the aforementioned land uses, reduction measures shall be incorporated to the extent feasible and practical, such as the use of alternative pile installation methods that do not require impact or vibratory pile driving. Examples of alternative pile installation methods include auger cast pressure grouted displacement

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<sup>1</sup> This noise and vibration study for the Proposed Project has been prepared in accordance with ConnectMenlo Mitigation Measure NOISE-2a.

<sup>2</sup> ConnectMenlo Mitigation Measure NOISE-2a has been modified to allow for compliance “to the extent feasible and practical,” which would be subject to review and determination by the Community Development Department.



(APGD) piles, stone columns, cast-in-drilled-hole (CIDH) piles, or press-in piles. These measures will be subject to review and approval of the Community Development Department.

In addition, the construction contractor shall appoint a Project vibration coordinator who will serve as the point of contact for vibration-related complaints during project construction. Contact information for the Project vibration coordinator will be posted at the Project Site and on a publicly available Project website. Should complaints be received, the Project vibration coordinator shall work with the construction team to adjust activities (e.g., drilling instead of driving piles in closer proximity to certain land uses) to the extent feasible and practical to reduce vibration or to reschedule activities for a less sensitive time. The Project vibration coordinator shall notify the Community Development Department of all vibration-related complaints and actions taken to address the complaints.

Project Mitigation Measure NOI-2.2: During daytime hours, construction activity involving a vibratory roller shall take place no closer than 90 feet from residential land uses, 60 feet from office or school land uses, and 35 feet from workshops or retail land uses, to the extent feasible and practical, subject to review and approval by the Community Development Department. In addition, equipment that generates vibration levels similar to a large bulldozer shall take place no closer than 50 feet from residential land uses, 35 feet from office or school land uses, and 20 feet from workshops or retail land uses, to the extent feasible and practical, subject to review and approval by the Community Development Department. Maintaining these distances between equipment and the nearest residential, school/office, or workshop land uses would ensure vibration levels would be below 0.032 PPV in/sec at the nearest residences, 0.063 PPV in/sec at the nearest school or office, and 0.126 PPV in/sec at the nearest workshop, per the requirements in ConnectMenlo Mitigation Measure NOISE-2a.

When construction would require the use of these equipment types at distances closer than these to nearby sensitive uses, reduction measures shall be incorporated to the extent feasible and practical, such as the use of smaller or less vibration-intensive equipment. For example, the vibration level from a large bulldozer at 10 feet would be approximately 0.352 PPV in/sec, whereas the vibration level from a large bulldozer at the same distance would be approximately 0.012 PPV in/sec. The vibration level from a small bulldozer at 10 feet would be below all daytime vibration thresholds from ConnectMenlo Mitigation Measure Noise-2a. The feasibility of reduction measures shall be subject to review and determination by the Community Development Department.

In addition, the construction contractor shall appoint a Project vibration coordinator who will serve as the point of contact for vibration-related complaints during Project construction. Contact information for the Project vibration coordinator will be posted at the Project Site and on a publicly available Project website. Should complaints be received, the Project vibration coordinator shall work with the construction team to adjust activities (e.g., drilling instead of driving piles in closer proximity to certain land uses) to the extent feasible and practical to reduce vibration or to reschedule activities for a less sensitive time. The Project vibration coordinator shall notify the Community Development Department of all vibration-related complaints and actions taken to address the complaints.

Project Mitigation Measure NOI-2.3: During the nighttime hours of 10:00 p.m. to 7:00 a.m., pile driving activity shall take place no closer than 540 feet from residential land uses to the extent feasible and practical. When pile installation work must take place closer than this distance to residences, alternative pile installation methods that do not require impact or vibratory pile driving shall be employed to the extent feasible and practical. Examples of alternative pile

installation methods include auger cast pressure grouted displacement (APGD) piles, stone columns, cast-in-drilled hole (CIDH) piles, or press-in piles. The feasibility of these alternative measures shall be subject to review and determination of the Community Development Department.

In addition, the construction contractor shall appoint a Project vibration coordinator who will serve as the point of contact for vibration-related complaints during Project construction. Contact information for the Project vibration coordinator will be posted at the Project Site and on a publicly available Project website. Should complaints be received, the Project vibration coordinator shall work with the construction team to adjust activities (e.g., drilling instead of driving piles in closer proximity to certain land uses) to the extent feasible and practical to reduce vibration or to reschedule activities for a less sensitive time. The Project vibration coordinator shall notify the Community Development Department of all vibration-related complaints and actions taken to address the complaints.

Finding: Implementation of ConnectMenlo Mitigation Measure NOISE-2a and Project Mitigation Measures NOI-2.1, NOI-2.2, and NOI-2.3, which are hereby adopted and incorporated into the Proposed Project, would reduce vibration-related damage impacts from Project construction to nearby residential, school, and commercial/industrial buildings and vibration-related annoyance during nighttime to less than significant, but would not reduce daytime vibration-related annoyance impacts to a less than significant level. Specific considerations make further mitigation measures or alternatives for daytime vibration-related annoyance impacts infeasible; therefore, the impact would be significant and unavoidable.

Facts in Support of Finding: Construction vibration impacts were analyzed in the ConnectMenlo EIR and determined to be potentially significant. With implementation of ConnectMenlo Mitigation Measure NOISE-2a, this impact was determined to be reduced to a less-than-significant level. Both daytime and nighttime onsite and offsite construction activities would result in less than significant vibration-related damage impacts because vibration would be less than the damage threshold. Offsite vibration levels from the Proposed Project may exceed applicable vibration-related annoyance thresholds at nearby sensitive uses during daytime and nighttime construction. The impacts would be significant, even after implementation of feasible mitigation. Implementation of Project Mitigation Measure NOI-2.1, for instance, would reduce daytime vibration-related annoyance effects from pile driving to nearby sensitive uses. However, because pile installation can be vibration-intensive, it is not known if at all times and in all locations vibration levels would be reduced to below the applicable annoyance criteria. In addition, Project Mitigation Measure NOI-2.2 would reduce vibration levels from non-pile driving activity. However, it might not be possible to ensure that vibration levels at all times and in all locations would be reduced to below the applicable annoyance thresholds. Likewise, vibration from construction of offsite improvements would exceed annoyance thresholds. Project Mitigation Measure NOI-2.3 would implement vibration control measures for annoyance from nighttime pile driving, would limit nighttime pile driving, and would ensure that nighttime pile driving would take place at least 540 feet from the nearest residential land uses, as feasible. If pile installation must take place closer than this distance from occupied residences, alternative pile installation methods would be used to the extent feasible and practical to reduce vibration levels to below the applicable significance thresholds. However, it may not be possible to ensure that vibration levels at all times and in all locations would be reduced to below the applicable annoyance thresholds if pile driving work must occur closer than 540 feet from residences, making the impact significant and unavoidable. The ConnectMenlo EIR determined that future projects in Menlo Park could expose people to or generate excessive ground-borne vibration or ground-borne noise levels, but that with implementation of mitigation measures,

impacts would be less than significant. Thus, the Proposed Project would cause a new or substantially more severe significant construction vibration impact than that analyzed in the ConnectMenlo EIR.

F. Impact C-NOI-1: Cumulative development would result in a significant and unavoidable cumulative noise impact; thus, the Proposed Project would be a cumulatively considerable contributor to a significant cumulative noise impact.

ConnectMenlo Mitigation Measure NOISE-1c: Implement ConnectMenlo Mitigation Measure NOISE-1c, above.

Project Mitigation Measure NOI-1.1: Implement Project Mitigation Measure NOI-1.1, above.

Project Mitigation Measure NOI-1.2: Implement Project Mitigation Measure NOI-1.2, above.

Project Mitigation Measure NOI-1.3: Implement Project Mitigation Measure NOI-1.3, below.

Finding: Implementation of ConnectMenlo Mitigation Measure NOISE-1c and Project Mitigation Measures NOI-1.1, NOI-1.2, and NOI-1.3, which are hereby adopted and incorporated into the Proposed Project, would reduce the impacts but not to a less than significant level. Specific considerations make further mitigation measures or alternatives infeasible; therefore, the impact would be significant and unavoidable.

Facts in Support of Finding: Because there might be future or approved projects located in close proximity to the Project Site that could undergo construction at the same time, cumulative construction noise impacts would be significant. Although mitigation is applied to the Project to reduce construction noise impacts (see ConnectMenlo Mitigation Measure Noise-1c, and Project Mitigation Measures NOI-1.1 and NOI-1.2), including implementation of best practices and construction of temporary construction noise barriers, construction noise impacts for the Proposed Project were determined to be significant and unavoidable. Therefore, consistent with the conclusion in the ConnectMenlo EIR, the Proposed Project in combination with other past, present, and reasonably foreseeable future projects would result in a significant cumulative impact with respect to construction noise. Unlike the conclusion in the ConnectMenlo EIR, however, the Proposed Project's contribution to the cumulative impact would be cumulatively considerable, and cumulative noise impacts would be significant and unavoidable with mitigation. The Proposed Project's contribution to significant cumulative operational traffic noise impacts would be less than cumulatively considerable on all roadway segments. With the implementation of mitigation, the Proposed Project's contribution to significant cumulative operational equipment noise impacts would be less than cumulatively considerable. Specifically, with implementation of Project Mitigation Measure NOI-1.3: Mechanical Equipment Noise Reduction Plan, Project-related impacts would be reduced to less-than-significant levels; similar mitigation would be required for other projects in the project vicinity in order to ensure equipment noise complies with the applicable local noise standards. Cumulative noise impacts related to emergency generator testing would be less than significant. It is unlikely that emergency generators associated with the Proposed Project and nearby future projects would be tested at the same time or would be close enough to one another for noise to combine at a given individual receptor to create a new significant cumulative noise impact. Cumulative vibration impacts would be less than significant. Operational sources of vibration that may operate simultaneously would not be expected to combine to raise the overall peak vibration

level experienced at a nearby sensitive use. Construction vibration from multiple construction projects near one another would generally not combine to increase vibration levels.

VIII. Findings for significant impacts reduced to a less-than-significant level by mitigation measures

The Project EIR identifies the following significant impacts associated with the Proposed Project and mitigation measures for those impacts. It is hereby determined that the impacts addressed by the following described mitigation measures will be mitigated to a less than significant level or avoided by adopting and incorporating these mitigation measures as conditions into the Project. The findings in this section are based on the Project EIR, the discussion and analysis of which is hereby incorporated in full by this reference.

- A. Impact C-LU-1: Cumulative development would not result in a significant cumulative impact to land use, and the Proposed Project would not be a cumulatively considerable contributor to such cumulative impact.

ConnectMenlo Mitigation Measure LU-2: Prior to project approval, as part of the project application process, future development in Menlo Park is required to demonstrate consistency with the applicable goals, policies, and programs in the General Plan and the supporting Zoning standards to the satisfaction of the City of Menlo Park's Community Development Department. A future project is consistent with the General Plan and Zoning standards if, considering all its aspects, it will further the goals, policies and programs of the General Plan and supporting Zoning standards and not obstruct their attainment.

Finding: ConnectMenlo Mitigation Measure LU-2 has been implemented through the Project EIR, which analyzes the Proposed Project's consistency with General Plan goals and policies. Because the Proposed Project is consistent with General Plan goals and policies, the Proposed Project would not result in a substantial change in the ConnectMenlo project and would not cause a new or substantially more severe significant land use impact than that analyzed in the ConnectMenlo EIR. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: The ConnectMenlo EIR determined that implementation of ConnectMenlo would not divide an established community or conflict with established plans, policies, and regulations and that implementation of ConnectMenlo Mitigation Measure LU-2 (requiring projects to demonstrate consistency with the City General Plan and zoning standards prior to approval) would ensure that future projects in Menlo Park would be consistent with City General Plan policies. The ConnectMenlo EIR also determined that ConnectMenlo would be consistent with existing and proposed changes in other local and regional plans and that development in surrounding cities and the San Mateo County region is taking place in already-urbanized areas and therefore would not require significant land use changes that would create land use conflicts, nor would development contemplated by ConnectMenlo divide communities. Therefore, cumulative impacts related to land use changes would be less than significant with mitigation. As required by ConnectMenlo Mitigation Measure LU-2, the Project EIR analyzed the Proposed Project's consistency with ConnectMenlo's goals and policies. The analysis in the Project EIR, including in Table 3.1-4, shows that the Proposed Project will be consistent with ConnectMenlo's goals and policies. Accordingly, the Proposed Project would not result in a substantial change in the ConnectMenlo project and would not cause a new or substantially more severe significant land use impact than that analyzed in the ConnectMenlo EIR. Consistent with the conclusions in the ConnectMenlo EIR, the Proposed Project in combination with other cumulative development in Menlo Park, which also must implement ConnectMenlo

Mitigation Measure LU-2, as well as other foreseeable cumulative development in the area, would result in a less-than-significant cumulative impact with respect to land use. No additional mitigation measures are required.

B. Impact TRA-2: The Proposed Project would exceed the applicable VMT threshold of significance for the residential land use and could result in a significant impact.

Project Mitigation Measure TRA-2: The residential land use of the Project Site will be required to implement a TDM Plan achieving a 36% reduction from gross ITE trip generation rates (for the Proposed Project, this reduction equals 6,023 daily trips). Should a different number of residential units be built, the total daily trips will be adjusted accordingly. The required residential TDM Plan will include annual monitoring and reporting requirements on the effectiveness of the TDM program. The Project applicant will be required to work with City staff to identify the details of the TDM Plan. If the annual monitoring finds that the TDM reduction is not met (i.e., the Proposed Project exceeds 6,023 daily trips from the residential land use), the TDM coordinator will be required to work with City staff to detail next steps to achieve the TDM reduction.

Finding: Implementation of Project Mitigation Measure TRA-2, which is hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: While the ConnectMenlo EIR included an evaluation of VMT impacts for information purposes, the VMT standards applied in the ConnectMenlo EIR differ from those adopted by the City under the updated TIA Guidelines. The ConnectMenlo EIR found that implementation of ConnectMenlo would not exceed the VMT threshold of significance used in that EIR and would result in less-than-significant impacts with respect to VMT. The Proposed Project would exceed the applicable VMT threshold of significance for the residential land use. Residential land use VMT is estimated to be 13.3 daily miles per capita, which would exceed the VMT threshold and result in a VMT impact. The Proposed Project's residential land use would require a 36% reduction in VMT from gross Institute of Transportation Engineers (ITE) rates to mitigate the significant VMT impact. Therefore, mitigation of the VMT impact would require implementing a TDM Plan for the residential component that achieves at least a 36% reduction from gross ITE rates (for the Proposed Project, this reduction equals 6,023 daily trips). According to the Proposed Project's proposed TDM Plan, the proposed TDM measures for the residential component could achieve the required reduction. The City incorporates monitoring requirements for TDM plans into project conditions and would monitor annually the effectiveness of the TDM plan to ensure that total daily trips achieve the required reduction. Therefore, Project Mitigation Measure TRA-2 is feasible and would fully mitigate this impact.

C. Impact TRA-3: The Proposed Project includes a design feature that could increase hazards and could result in a significant impact.

Project Mitigation Measure TRA-3: Revise the North Garage access design to provide adequate sight distance for the eastern driveway or incorporate other design solutions to reduce hazards to the satisfaction of the Public Works Director. Potential solutions that would reduce hazards to a less than significant level include restricting the eastern driveway to inbound vehicles only or prohibiting exiting left turns, modifying landscaping or relocating the driveway to the west to allow for adequate sight distance for exiting vehicles, or installing an all-way stop or signal.

Finding: Implementation of Project Mitigation Measure TRA-3, which is hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: The ConnectMenlo EIR found that future developments and roadway improvements would be designed according to City standards and subject to existing regulations that are aimed at reducing hazardous conditions with respect to circulation. Additionally, future development would be concentrated on sites that are already developed where impacts related to incompatible traffic related land uses would not likely occur. Therefore, the adoption of ConnectMenlo would result in less-than-significant impacts for hazards due to design features or incompatible uses. The Proposed Project includes a design feature that could increase hazards. While the driveway designs generally comply with applicable standards and would not present hazards, the Proposed Project's proposed eastern driveway at the "North Garage" would be directly adjacent to a sharp roadway curve. The roadway curve would restrict sight distance to approximately 50 feet, which would provide inadequate sight distance for vehicles exiting the garage. Project Mitigation Measure TRA-3, which requires revisions to the North Garage access design to provide adequate sight distance for the eastern driveway or other design solutions to reduce hazards, would mitigate this impact to a less-than-significant level.

D. Impact C-TRA-2: The Proposed Project would exceed the applicable VMT threshold of significance for the residential land use and could result in a significant impact.

Project Mitigation Measure TRA-2: Implement Project Mitigation Measure TRA-2, above.

Finding: Implementation of Project Mitigation Measure TRA-2, which is hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: The ConnectMenlo EIR found that cumulative impacts to the transportation network would be the same as identified for each respective environmental topic area. The Proposed Project would be consistent with the development assumptions included in ConnectMenlo. Implementation of the land use and transportation changes described in ConnectMenlo would create a built environment that supports a live/work/play environment with increased density and diversity of uses and a street network that supports safe and sustainable travel and is expected to reduce VMT per capita and VMT per employee within the study area where the Project Site is located. Consistent with the findings of the ConnectMenlo Final EIR, the Proposed Project, in combination with cumulative projects, would have a less-than-significant cumulative impact with implementation of Project Mitigation Measure TRA-2 with respect to VMT.

E. Impact C-TRA-3: The Proposed Project includes a design feature that could increase hazards and could result in a significant impact.

Project Mitigation Measure TRA-3: Implement Project Mitigation Measure TRA-3, above.

Finding: Implementation of Project Mitigation Measure TRA-3, which is hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: The ConnectMenlo EIR found that cumulative impacts to the transportation network would be the same as identified for each respective environmental topic area. Cumulative land use development and transportation projects would promote accessibility for people walking to and through the site by conforming to General Plan policies and zoning regulations, and by adhering to planning principles that emphasize providing convenient connections and safe routes for people walking, bicycling, driving, and taking transit. Additionally, as with current practice, projects would be designed and reviewed in accordance with the City's Public Works Department Transportation Program and the department would provide oversight engineering review to ensure that the project is constructed according to City specifications. With implementation of Project Mitigation Measure TRA-3, this Proposed Project, in combination with cumulative projects, consistent with the findings of the ConnectMenlo Final EIR, would have a less than significant cumulative impact with respect to hazards or incompatible uses.

F. Impact AQ-3: The Proposed Project would expose sensitive receptors to substantial pollutant concentrations.

Project Mitigation Measure AQ-1.1: Implement Project Mitigation Measure AQ-1.1, above.

ConnectMenlo Mitigation Measure AQ-2b1: Implement ConnectMenlo Mitigation Measure AQ-2b1, above.

ConnectMenlo Mitigation Measure AQ-2b2: Implement ConnectMenlo Mitigation Measure AQ-2b2, above.

Finding: Implementation of Project Mitigation Measure AQ-1.1 as well as ConnectMenlo Mitigation Measures AQ-2b1 and AQ-2b2, which are hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Impacts related to the exposure of sensitive receptors to pollutant concentrations were analyzed in the ConnectMenlo EIR as Impact AQ-3. It was determined that the increase in traffic associated with buildout would not result in, or contribute to, localized concentrations of CO that would exceed applicable federal and state ambient air quality standards. The ConnectMenlo EIR found that new land uses in the City that involve trucks and truck idling and the use of off-road equipment at warehousing operations could generate substantial DPM emissions. The ConnectMenlo Final EIR identified ConnectMenlo Mitigation Measure AQ-3b to ensure that air pollution levels at sensitive receptors meet the incremental risk thresholds established by BAAQMD. With implementation of ConnectMenlo Mitigation Measure AQ-3b, the ConnectMenlo Final EIR concluded that impacts would be less than significant. The Proposed Project's unmitigated health risk results would not exceed BAAQMD's recommended health risk thresholds for the non-cancer hazard index; however, the Proposed Project would exceed BAAQMD's cancer risk and annual PM<sub>2.5</sub> concentration thresholds. Project Mitigation Measure AQ-1.1 and ConnectMenlo Mitigation Measures AQ-2b1 and AQ-2b2 would be implemented to mitigate cancer risk and PM<sub>2.5</sub> concentration exceedances. The Proposed Project triggered the requirement for ConnectMenlo Mitigation Measure AQ-3b and complied with the measure by submitting a health risk assessment (HRA) to the City's Planning Division prepared in accordance with the policies and procedures of the State Office of Environmental health hazard Assessment and the Bay Area Air Quality Management District. ConnectMenlo Mitigation Measure AQ-3b also requires a project to identify and demonstrate that mitigation measures are capable of reducing health risks to below the BAAQMD thresholds

and incorporate those measures into the project. Based on the HRA and EIR analysis, ConnectMenlo Mitigation Measures AQ-2b1 and AQ-2b2, together with Mitigation Measure AQ-1.1 would reduce health risks to below BAAQMD's thresholds and the Mitigation Monitoring and Reporting Program requires the applicant to implement these mitigation measures. ConnectMenlo Mitigation Measure AQ-3a would not apply to the Proposed Project. With implementation of Project Mitigation Measure AQ-1.1 and ConnectMenlo Mitigation Measures AQ-2b1 and AQ-2b2 from the ConnectMenlo EIR, the incremental increase in health risks from all sensitive receptor types would be less than all BAAQMD-recommended health risk thresholds. Therefore, mitigated construction and operational emissions would not expose sensitive receptors to substantial pollutant concentrations and associated health risks. Impacts would be less than significant with mitigation.

G. Impact AQ-4: The Proposed Project would result in other emissions (such as those leading to odors) that would adversely affect a substantial number of people.

Project Mitigation Measure AQ-4.1: The Project Sponsor and West Bay Sanitary District shall install a molecular neutralizer at the proposed sanitary sewer pump station to convert hydrogen sulfide gas into a biodegradable effluent during sewer pump operations. The molecular neutralizer shall be installed prior to the commencement of sewer pump operations.

Finding: Implementation of Project Mitigation Measure AQ-4.1, which is hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Odors from the Proposed Project's sewer pump station could adversely affect a substantial number of people, which could be considered a significant impact. BAAQMD Regulation 7 contains requirements on the discharge of odorous substances after the Air Pollution Control Officer receives odor complaints from ten or more complainants within a 90-day period, alleging that a person has caused odors perceived at or beyond the property line of such person and deemed to be objectionable by the complainants in the normal course of their work, travel or residence [BAAQMD 7-102]. The operations within the Proposed Project would be subject to this regulation and would comply with the requirements if the regulation becomes applicable via BAAQMD 7-102, which is not expected. Therefore, the Proposed Project would be in compliance with BAAQMD Regulation 7. The Proposed Project also would implement Project Mitigation Measure AQ-4.1, which requires the sewer pump station to be equipped with a molecular neutralizer, which would convert hydrogen sulfide gas into a biodegradable effluent during sewer pump operations. With implementation of this Project Mitigation Measure and compliance with BAAQMD Regulation 7, this impact would be less than significant with mitigation.

H. Impact GHG-1b: Operation of the Proposed Project could generate GHG emissions that may have a significant impact on the environment.

Project Mitigation Measure TRA-2: Implement Project Mitigation Measure TRA-2, above.  
Finding: Implementation of Project Mitigation Measure TRA-2, which is hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: The ConnectMenlo EIR included an emissions inventory for ConnectMenlo scenarios in 2020 and 2040. The EIR found that policies identified in the City General Plan, as well as the TDM program, other green building sustainability measures in the City Zoning Ordinance, and ConnectMenlo Mitigation Measure GHG-1 (which required the City



to update the Climate Action Plan) would reduce GHG emissions to the extent feasible. However, additional state and federal actions would be necessary to ensure that regulated state and federal sources (i.e., sources outside the City's jurisdiction) would achieve the deep reductions needed to meet a 2050 target. Therefore, the ConnectMenlo Final EIR considered GHG emissions to be significant and unavoidable. The Proposed Project would develop and implement TDM programs with trip reduction measures to reduce vehicle traffic in and around the Project Site. Because the Proposed Project would implement TDM measures and Project Mitigation Measure TRA-2 (which would ensure that operation of the Proposed Project would achieve the City's VMT thresholds) to meet the City's trip and VMT reduction targets, implementation of the Proposed Project would not contribute a significant amount of operational mobile-source GHG emissions to existing significant cumulative emissions. Accordingly, the Project's contribution to this significant cumulative impact would be less than cumulatively considerable with mitigation. In addition, because the Proposed Project would not result in an increase in operational non-mobile-source GHG emissions, the Proposed Project's operational GHG emissions would not constitute a cumulatively considerable contribution to significant cumulative climate change impacts. Therefore, the Project's contribution to this significant cumulative impact would be less than cumulatively considerable with mitigation.

- I. Impact GHG-2: The Proposed Project would conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing emissions or GHGs.

Project Mitigation Measure TRA-2: Implement Project Mitigation Measure TRA-2, above.

Finding: Implementation of Project Mitigation Measure TRA-2, which is hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Impacts related to consistency with GHG plans, policies, or regulations were analyzed in the ConnectMenlo EIR as Impact GHG-2, which found that it could not be demonstrated that the City would achieve sufficient GHG emissions reductions. Therefore, the ConnectMenlo Final EIR determined that the level of GHG emissions associated with implementation of ConnectMenlo would be significant and unavoidable. The Proposed Project would achieve net-zero non-mobile-source operational emissions without mitigation. Implementation of Project Mitigation Measure TRA-2 would ensure that operation of the Proposed Project would achieve the City's VMT thresholds, thereby reducing associated operational mobile-source GHG emissions. Construction and operation of the buildings associated with the Proposed Project would be consistent with all applicable plans, policies, and regulations adopted for the purpose of reducing GHG emissions. The buildings would meet a net-zero operational GHG threshold. Implementation of Project Mitigation Measure TRA-2 would ensure that operation of the Proposed Project would result in a level of VMT that would meet the City's VMT thresholds. For these reasons, implementation of Project Mitigation Measure TRA-2 would result in the Proposed Project being consistent with all applicable plans, policies, and regulations adopted for the purpose of reducing GHG emissions, thereby reducing the Project's contribution to this significant cumulative impact to less than cumulatively considerable with mitigation.

- J. Impact NOI-1b: Operation of the Proposed Project would generate a substantial temporary or permanent increase in ambient noise levels in the vicinity of the Project in excess of standards established in a local general plan or noise ordinance or applicable standards of other agencies.

ConnectMenlo Mitigation Measure NOISE-1b: Stationary noise sources and landscaping and maintenance activities citywide shall comply with Chapter 8.06, Noise, of the Menlo Park Municipal Code.

Project Mitigation Measure NOI-1.3: To reduce potential noise impacts resulting from Project mechanical equipment, including heating, cooling, and ventilation equipment, the Project applicant shall conduct a noise analysis to estimate noise levels of Project-specific mechanical equipment based on the final selected equipment models and design features. In addition to the analysis, a Mechanical Equipment Noise Reduction Plan shall be created to ensure noise levels of equipment, once installed, are below the applicable criteria described below. The Noise Reduction Plan shall include any necessary noise reduction measures required to reduce Project-specific mechanical equipment noise to a less-than-significant levels. The plan shall also demonstrate that with the inclusion of selected measures, noise from equipment would be below the significance thresholds. Feasible noise reduction measures to reduce noise below the significance thresholds include, but are not limited to, selecting quieter equipment, utilizing silencers and acoustical equipment at vent openings, siting equipment farther from the roofline, and/or enclosing all equipment in a mechanical equipment room designed to reduce noise. This analysis shall be conducted and the results and final Noise Reduction Plan shall be provided to the City prior to the issuance of building permits for each building.

The noise analysis and Noise Reduction Plan shall be prepared by persons qualified in acoustical analysis and/or engineering. The Noise Reduction Plan shall demonstrate with reasonable certainty that noise from mechanical equipment selected for the Project, including the attenuation features incorporated into the Project design, will not exceed the City of Menlo Park's property plane threshold of 60 dBA during daytime hours or 50 dBA during nighttime hours at nearby noise-sensitive land uses, as well as the 50 dBA at 50 feet threshold that applies to rooftop equipment in the City.

The Project applicant shall incorporate all feasible methods to reduce noise identified above and other feasible recommendations from the acoustical analysis and Noise Reduction Plan into the building design and operations as necessary to ensure that noise sources meet applicable requirements of the respective noise ordinances at receiving properties.

Project Mitigation Measure NOI-1.4: Prior to approval of a building permit for each building, the Project applicant shall conduct a noise analysis to estimate noise levels from the testing of Project specific emergency generators, based on the actual generator makes and models Proposed and the actual selected attenuation features. Based on the results of the analysis, a Noise Reduction Plan shall be created to ensure noise levels of generator testing are below the applicable Code requirements. The results, methods, and final Noise Reduction Plan shall be provided to the City prior to the issuance of building permits. The analysis shall account for proposed noise attenuation features, such as specific acoustical enclosures and mufflers or silences, and the final Noise Reduction Plan shall demonstrate with reasonable certainty that proposed generator(s) will not exceed the City of Menlo Park noise thresholds of 60 dBA at the nearest noise-sensitive use during daytime hours, and/or 85 dBA at 50 feet for powered equipment, whichever is lower. Acoustical treatments may include, but are not limited to:

- Enclosing generator(s);
- Installing relatively quiet model generator(s);
- Orienting or shielding generator(s) to protect noise-sensitive receptors to the greatest extent feasible;
- Installing exhaust mufflers or silencers;

- Increasing the distance between generator(s) and noise-sensitive receptors; and/or
- Placing barriers around generator(s) to facilitate the attenuation of noise.

In addition, all Project generator(s) shall be tested only between the hours of 7:00 a.m. and 10:00 p.m. Because no nighttime testing of generators will be allowed, compliance with the 50-dB nighttime noise threshold in the City need not be demonstrated.

The Project applicant shall incorporate sufficient recommendations from the acoustical analysis into the building design and operations to ensure that noise sources meet applicable requirements of the noise ordinance.

Finding: Implementation of ConnectMenlo Mitigation Measure NOISE-1b and Project Mitigation Measures NOI-1.3 and NOI-1.4, which are hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less than significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Construction and operational noise effects were analyzed in the ConnectMenlo EIR as Impact NOISE-1. Impacts were determined to be less than significant with application of mitigation measures as well as compliance with City General Plan goals and policies. Mechanical equipment noise from the Proposed Project's South Garage central energy plant, the North Garage central energy plant, and the Proposed Project's mixed-use parcels may exceed the daytime and nighttime thresholds outlined in the City Municipal Code, as well as the rooftop equipment noise threshold. Impacts from mechanical equipment noise at these locations would be considered significant. Mitigation Measure NOISE-1b from the ConnectMenlo EIR in combination with Project Mitigation Measure NOI-1.3, which requires acoustical analysis and preparation of a Mechanical Equipment Noise Reduction Plan, would reduce noise from Project mechanical equipment to comply with the noise limits outlined in Chapter 8.06 of the Menlo Park Municipal Code. Therefore, impacts from mechanical equipment noise would be less than significant with mitigation. In addition, generator noise from multiple Project generators would have the potential to exceed the allowable limits in the City. Because all final generator makes and models, as well as generator noise attenuation features and actual locations, have not been finalized, actual noise levels also could be louder, or quieter, than the estimated levels at the nearest sensitive land uses. Because generator noise during testing likely would be in excess of the applicable City noise limits, noise impacts from emergency generator testing would be considered significant. ConnectMenlo Mitigation Measure NOISE-1b in combination with Project Mitigation Measure NOI-1.4, which requires preparation of an Emergency Generator Noise Reduction Plan that includes effective attenuation features, would ensure noise from emergency generators during testing would comply with the noise limits outlined in Chapter 8.06 of the Menlo Park Municipal Code. Therefore, noise impacts from Project emergency generator testing would be less-than-significant with mitigation.

K. Impact CR-1: The Proposed Project would cause a substantial adverse change in the significance of a historical resource, pursuant to Section 15064.5.

Project Mitigation Measure CR-1.1: The Project Sponsor shall remove the Dumbarton Cutoff Line tracks, store them during construction of the Proposed Project, and reinstall them in their historic location without irreparable damage to their character-defining historic fabric. The Project Sponsor will prepare a preservation plan that specifies the practices to be employed to preserve the historical integrity of the tracks during their removal, storage, and reinstallation. These methods may include the following: using straps to lift rails rather than chains or other "metal on metal" methods, marking or numbering the track components so they can be replaced

in their original sequence, and ensuring secure storage onsite or in a lay-down area. Following tunnel construction, the rail segments will be returned to their preconstruction location in Willow Road on new ballast and ties or other appropriate material for the rail crossing. The preservation plan shall be reviewed and approved by the City and the San Mateo County Transit District (Samtrans) prior to the issuance of demolition permits related to construction activities within Willow Road, and the Project Sponsor will incorporate the recommended protective measures into construction specifications.

Finding: Implementation of Project Mitigation Measure CR-1.1, which is hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Impacts related to historical resources were analyzed in the ConnectMenlo EIR as Impact CULT-1. The ConnectMenlo EIR did not identify any historical resources within the vicinity of the Project Site. However, as a result of the Proposed Project's temporary removal of a segment of track from the Dumbarton Cutoff Line (which currently crosses Willow Road) in connection with the construction of the Willow Road Tunnel, the now identified historical resource could lose a portion of the historic material that expresses the significant historic character of the Dumbarton Cutoff Linear Historic District if the material is damaged or not properly returned to its original location. This activity could discernibly alter the resource's historical integrity and the public's ability to understand its historic character, as observed from Willow Road. Therefore, the Proposed Project could constitute material impairment of the significance of the Dumbarton Cutoff Line. Implementation of Project Mitigation Measure CR-1.1 would require the Project Sponsor to remove the tracks belonging to the Dumbarton Cutoff Line in a sensitive manner, store them during construction, and reinstall them in their historic location following completion of Project construction. This measure would ensure that the resource's overall physical characteristics and extant alignment would remain intact; following the Proposed Project, the Dumbarton Cutoff Line and the historic district to which it contributes would retain all aspects of historical integrity as well as the physical characteristics that support inclusion in the National Register and California Register. With implementation of Project Mitigation Measure CR-1.1, the Dumbarton Cutoff Line and the Dumbarton Cutoff Linear Historic District would still convey their historical significance and continue to qualify as historical resources for purposes of CEQA. Impacts therefore would be less than significant with mitigation

L. Impact CR-2: The Proposed Project would cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5.

Modified ConnectMenlo Mitigation Measure CULT-2a:

- If a potentially significant subsurface cultural resource is encountered during ground-disturbing activities on any parcel in the city, all construction activities within a 100-foot radius of the find shall cease until a qualified archeologist determines whether the resource requires further study. In addition, if a potentially significant subsurface cultural resource is encountered during ground-disturbing activities within the California Department of Transportation (Caltrans) right-of-way, the Caltrans District 4 Office of Cultural shall be immediately contacted at (510) 847-1977. All developers in the Study Area shall include a standard inadvertent discovery clause in every construction contract to inform contractors of these requirements. Any previously undiscovered resources found during construction activities shall be recorded on appropriate DPR forms and evaluated for significance in terms of CEQA criteria by a qualified archeologist in accordance with Project Mitigation Measure TCR-1.2.

Project Mitigation Measure TCR-1.1: Implement Project Mitigation Measure TCR-1.1, below.

Project Mitigation Measure TCR-1.2: Implement Project Mitigation Measure TCR-1.2, below.

Finding: Implementation of Project Mitigation Measures TCR-1.1 and TCR-1.2 as well as Modified ConnectMenlo Mitigation Measure CULT-2a, which are hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less than significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Impacts related to archeological resources were analyzed in the ConnectMenlo EIR as Impact CULT-2. It was determined that impacts would be less than significant with implementation of ConnectMenlo Mitigation Measures CULT-2a and CULT-2b. Project-related ground disturbance would have the potential to disturb both known and as-yet undocumented archaeological deposits associated with CA-SMA-160/H and other archeological resources. Compliance with federal, state, and local laws and regulations, including applicable ConnectMenlo EIR mitigation measures, City General Plan goals and policies, and Project-specific mitigation measures, would protect significant archaeological resources within the Project Site by providing archaeological resources sensitivity training to workers; ensuring preservation in place or, if infeasible, archaeological data recovery when significant archaeological resources are encountered and cannot be avoided; and allowing early detection of potential conflicts between development and resources. The Proposed Project has implemented ConnectMenlo Mitigation Measure CULT-1 by completing the site-specific historical and archeological resource studies referenced in the Draft Project EIR. The Proposed Project would implement ConnectMenlo Mitigation Measure CULT-2a, as modified to avoid redundancy with Project-specific mitigation, if a potentially significant subsurface cultural resource is encountered during ground-disturbing activities. In addition, the Project Sponsor would implement Project Mitigation Measures TCR-1.1 and TCR-1.2, which would reduce impacts on CA-SMA-160/H and unknown archeological resources to a less than significant level. These measures would be implemented on the main Project Site. ConnectMenlo Mitigation Measure CULT-2a (as modified) and Project Mitigation Measure TCR-1.2 apply to Hamilton Avenue Parcels North and South and the Willow Road Tunnel site, areas where Project-related ground disturbance would have the potential to affect elements of CA-SMA-160/H and unknown archaeological resources. Impacts on archaeological resources would be less than significant with mitigation.

M. Impact CR-3: The Proposed Project could disturb human remains, including those interred outside of dedicated cemeteries.

Project Mitigation Measure TCR-1.1: Implement Project Mitigation Measure TCR-1.1, below.

Project Mitigation Measure TCR-1.2: Implement Project Mitigation Measure TCR-1.2, below.

Project Mitigation Measure TCR-2.1: Implement Project Mitigation Measure TCR-2.1, below.

ConnectMenlo Mitigation Measure CULT-4: Implement ConnectMenlo Mitigation Measure CULT-4, below. Finding: Implementation of Project Mitigation Measures TCR-1.1, TCR-1.2, and TCR-2.1 as well as Modified ConnectMenlo Mitigation Measure CULT-4, which are hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less than significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Impacts related to human remains were analyzed in the ConnectMenlo EIR as Impact CULT-4, which found that impacts would be less than significant with implementation of ConnectMenlo Mitigation Measure CULT-4. Here, Native American human remains could be exposed and disturbed during ground-disturbing activities at the Project Site. An archaeological and tribal cultural resource was identified within the main Project Site. This resource has the potential to contain human remains interred outside of dedicated cemeteries. Excavation activities associated with the Proposed Project would not affect any known reburial locations; however, previously undocumented Native American burials could be affected by ground-disturbing construction due to their location within areas proposed for subsurface improvements. This impact could be potentially significant. The Proposed Project would implement ConnectMenlo Mitigation Measure CULT-4, as modified, based on the Project's cultural resources assessment report, if human remains are encountered at the Project Site during ground-disturbing activities. The Project Sponsor also would implement Project Mitigation Measures TCR 1.1 and TCR 1.2 within the main Project Site, given the presence of CA-SMA-160/H. Project Mitigation Measures TCR 1.1 and TCR 1.2 include measures to avoid or minimize ground-disturbing excavation near CA-SMA-160/H, to the extent feasible, and preparation of a monitoring and treatment plan that details the appropriate procedure if remains are encountered. Project Mitigation Measure TCR-2.1 requires avoidance and preservation in place of existing known reburials. With implementation of mitigation, the Proposed Project's impact on human remains would be less than significant.

N. Impact BIO-2: The Proposed Project would result in substantial predation among special-status bird and mammal species that breed in the nearby brackish marshes and may forage, in the case of special-status birds, in the Project area.

Project Mitigation Measure BIO-2.1: The Project Sponsor shall implement a feral cat management program, similar to the program developed in conjunction with the Peninsula Humane Society and the Society for the Prevention of Cruelty to Animals for the East Campus in 2013. Prior to the program being implemented, the program developer shall coordinate with local humane societies and animal service centers to identify facilities able to take cats. The program coordinator shall coordinate with facilities receiving cats to ensure that efforts are made to attempt to reunite any inadvertently trapped pet with its owners.

For one week every 3 months (i.e., each quarter), three live trap cages, designed to trap domestic cats, shall be placed around the perimeter of the main Project Site in locations where feral cats are likely to prey upon native wildlife species. The traps shall be deployed and maintained by a qualified trapping professional (such as an animal management company or other trained and experienced animal or wildlife professional). The duration of traps shall be coordinated with the specified intake facility so that the facility is prepared and open to receive trapped cats.

Each trap cage shall be closely monitored and maintained on a daily basis during the week when traps have been set to determine whether a feral cat has been caught and whether the trap has inadvertently captured a non-target species (e.g., pet cat or wildlife). Traps shall not be deployed during extreme weather (e.g., heat, cold, rain). Traps shall contain water and be at least partially covered where feasible to attempt to reduce stress of trapped animals.

If a cat is caught, the qualified professional shall transport the trapped cat as soon as practicable to the local humane society or animal service center that accepts trapped cats. If an animal other than a feral cat is caught in one of the traps, such as a suspected pet cat (e.g., cat with a collar) or wildlife, it shall be released immediately at the trap location.

Because there are residences within and adjacent to the Project Site and the area where the Feral Cat Management Program will take place, efforts will be taken to ensure that residences are aware of the program to avoid inadvertent trapping and removal of pet cats. Visible signage shall be installed a week in advance of trapping and shall remain installed for the duration of trapping. The signs will have contact information should residents have questions or concerns.

Finding: Implementation of Project Mitigation Measure BIO-2.1, which is hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Impacts related to special-status species or the inadvertent loss of bird nests in active use were analyzed in the ConnectMenlo EIR as Impact BIO-1 and found to be less-than-significant with mitigation. The impact could be potentially significant because special-status species have the potential for occurrence in the remaining undeveloped lands in the Bayfront Area and, much more infrequently, in the semi-natural portions of the City where construction with future development allowed under the General Plan could occur.

Feral cat populations have been observed at the main Project Site, which increases predation of local animal populations, including special-status species. Implementation of the Proposed Project has the potential to result in an increase in the feral cat population. The influx of residents and their pets, or the establishment of new feral cat feeding stations by residents and workers, would also increase the feral cat population on the main Project Site. In addition, Willow Road Tunnel would provide direct access to the West Campus and a connection to the undercrossing below Bayfront Expressway that links the Bay Trail and the Meta Campuses, both East and West. Willow Road Tunnel could increase feral cat movement in the Project area; it could also increase access to the Baylands north of the Project Site where special-status species are known to be present. Offsite improvements at the PG&E Ravenswood substation, other utility improvements, and intersection roadway improvements would not facilitate increased predation of special-status species. Feral cats could access the main Project Site via the new Elevated Park or Willow Road Tunnel, allowing them to cross Willow Road and the Dumbarton Rail Corridor. Migration is most conceivable at night when traffic is reduced and mammalian predators are less likely to be injured or killed by cars; however, predators can already cross this area at street level. Therefore, indirect impacts on special-status species would be potentially significant. Implementation of Project Mitigation Measure BIO-2.1, which would require implementation of a feral cat management program, would reduce impacts to less than significant with mitigation.

O. Impact BIO-3: Project demolition and construction would affect riparian and other sensitive natural communities.

Project Mitigation Measure BIO-3.1: To the extent feasible, construction activities should avoid or minimize the removal of wetland vegetation or the placement of fill in the wetlands immediately north and northeast of the Project Site. If all direct impacts on wetlands (i.e., vegetation removal, loss, and fill) are avoided, Mitigation Measures BIO-3.2 and BIO-3.3 would not need to be implemented. However, if any wetland vegetation needs to be removed from the wetlands, or any fill needs to be placed in the wetlands, or post-construction conditions result in vegetation loss, Mitigation Measure BIO-3.2 (and Mitigation Measure BIO-3.3 if permanent impacts would occur) shall be implemented.

Project Mitigation Measure BIO-3.2: If impacts on the wetlands immediately north of the Project Site are temporary, resulting in vegetation removal or temporary fill within the wetland but no

permanent fill, then the wetland area shall be restored by the Project Sponsor following construction. The herbaceous seasonal wetlands are likely to become recolonized easily without the need for seeding and planting as long as their existing hydrology and topography are restored following temporary impacts. There is some potential for the arroyo willow clumps in the isolated forested wetland to regrow from cut stumps. In such a case, the in-situ restoration shall involve simply protecting the area with exclusion fencing following construction to allow for regrowth of vegetation.

For temporary impacts involving removed willow root masses where in situ restoration is still an option, a more detailed restoration plan shall be developed. The mitigation shall, at a minimum, achieve no net loss of wetland acreage (i.e., jurisdictional wetlands lost to fill shall be replaced through the creation or restoration of wetland habitat of the same type as the affected habitat [either forested or herbaceous seasonal] at a minimum ratio of 1:1 on an acreage basis or as otherwise required by any state or federal permitting agencies) or ecological functions and values through the restoration and enhancement of the affected wetlands to a level equal to or greater than the baseline condition of the existing wetlands. An in-situ restoration approach could involve salvaging wetland plant material prior to construction (e.g., willow cuttings or willow clumps, in the case of the isolated forested wetland) and then replanting the material if the seasonal timing of construction is appropriate. USACE and/or RWQCB approvals may be required to authorize temporary impacts on these features.

Project Mitigation Measure BIO-3.3: If any permanent fill or permanent loss of the isolated forested wetland or the herbaceous seasonal wetlands occurs, the Project Sponsor shall provide new wetland habitat of the same type (either forested or herbaceous seasonal) to offset this impact, either through the creation, enhancement, or restoration of wetlands in an appropriate location or through the purchase of mitigation credits from a USACE- or RWQCB-approved wetland mitigation bank. The purchase of such credits shall serve as full mitigation for impacts on these wetland features.<sup>3</sup> If Project-specific creation, enhancement, or restoration of wetland habitat is implemented, habitat shall be restored or created at a minimum ratio of 2:1 (compensation: impact) on an acreage basis or as otherwise required by any state or federal permitting agencies. This ratio is not higher because of the relatively low quality of the wetlands on the Project Site relative to the more extensive, less fragmented wetlands elsewhere in the region, and it is not lower because of the temporal loss of wetland functions and values that would result from the lag between impacts on the wetlands and maturation of the mitigation habitat. USACE and/or RWQCB approvals may be required to authorize permanent impacts on this feature.

To the extent that compensatory mitigation is not provided by purchasing mitigation credits from a USACE- or RWQCB approved wetland mitigation bank, then, if feasible, compensation shall be provided by creating, enhancing, or restoring wetland habitat so as to achieve the 2:1 ratio somewhere in San Mateo County or as otherwise required by any state or federal permitting agencies. A qualified biologist shall develop a wetland mitigation and monitoring plan that describes the mitigation, including the following components (or as otherwise modified by regulatory agency permitting conditions):

- Summary of habitat impacts and Proposed mitigation ratios;
- Goal of the restoration to achieve no net loss of habitat functions and values;
- Location of mitigation site(s) and description of existing site conditions;

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<sup>3</sup> Refer to U.S. Army Corps of Engineers 33 CFR Part 325 and State Water Resources Control Board's *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* (April 2, 2019), pages 28 and 29.



- Mitigation design:
  - Existing and Proposed site hydrology;
  - Grading plan, if appropriate, including bank stabilization or other site stabilization features;
  - Soil amendments and other site preparation elements, as appropriate;
  - Planting plan;
  - Irrigation and maintenance plan;
  - Remedial measures and adaptive management; and
  - Monitoring plan, including final and performance criteria, monitoring methods, data analysis, reporting requirements, and monitoring schedule. Success criteria shall include quantifiable measurements of wetland vegetation type (e.g., dominance by natives), the appropriate extent for the restoration location, and the provision of ecological functions and values equal to or exceeding those in the affected wetland habitat. At a minimum, success criteria shall include following:
    - At Year 5 post-mitigation, at least 75 percent of the mitigation site shall be dominated by native hydrophytic vegetation.

The wetland mitigation and monitoring plan must be approved by the City and other applicable agencies prior to the wetland impacts and must be implemented within 1 year after the discharge of fill into wetland features. Alternately, offsite mitigation could be provided through the purchase of mitigation credits at an agency-approved mitigation bank, as noted above.

Finding: Implementation of Project Mitigation Measures BIO-3.1, BIO-3.2, and BIO-3.3, which are hereby adopted and incorporated into the Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Impacts related to the loss of coastal salt marsh vegetation in the Baylands and possibly areas of riparian scrub and woodland along San Francisquito Creek and other drainages in the area were analyzed in the ConnectMenlo EIR as Impact BIO-2 and found to be less than significant with mitigation incorporated. There are wetlands outside the boundary of the main Project Site and Hamilton Avenue Parcels North and South, and it is possible that these features may be affected, either temporarily or permanently, during Project grading. Construction of a bicycle/pedestrian path along the northern edge of the main Project Site would require soil excavated from basement construction to be brought in to elevate the site. Although a retaining wall, ranging from 2 to 7 feet in height, is proposed to support the path, some vegetation clearing, as well as fill, within the wetlands (or portions of the wetlands) may occur. As a result, it is possible that the entire 0.07-acre isolated forested wetland (as well as an additional 0.13-acre area where the canopy of willows extends outside the 0.07-acre forested wetland footprint within which the willows are rooted) and the 0.07-acre herbaceous seasonal wetlands may be lost because of fill. Even if the wetlands are not permanently affected, temporary impacts on wetlands may occur because of construction access, potentially resulting in degradation of wetland vegetation or hydrology. Owing to the scarcity of forested wetlands along the edge of the Bay and the decline in seasonal wetlands in the region, this impact would be potentially significant. Implementation of Project Mitigation Measures BIO-3.1, BIO-3.2, and BIO-3.3, which provide for avoidance and minimization of impacts, as possible, as well as restoration and compensatory mitigation, as needed, would reduce this impact to less than significant with mitigation.

P. Impact BIO-4: Project demolition and construction could affect state and/or federally protected wetlands.

Project Mitigation Measure BIO-3.1: Implement Project Mitigation Measure BIO-3.1, above.

Project Mitigation Measure BIO-3.2: Implement Project Mitigation Measure BIO-3.2, above.

Project Mitigation Measure BIO-3.3: Implement Project Mitigation Measure BIO-3.3, above.

Finding: Implementation of Project Mitigation Measures BIO-3.1, BIO-3.2, and BIO-3.3, which are hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Impacts related to the loss of wetland habitat in the area were analyzed in the ConnectMenlo EIR as Impact BIO-3 and found to be less than significant with mitigation. As discussed in Impact BIO-3, above, the Proposed Project could affect a portion of the isolated forested wetland and herbaceous seasonal wetland along the northern edge of the main Project Site and Hamilton Avenue Parcel North during grading. As discussed in Impact BIO-3, above, implementation of Project Mitigation Measures BIO-3.1, BIO-3.2, and BIO-3.3, outlined in Impact BIO-3, above, would reduce this impact to less than significant with mitigation.

Q. Impact BIO-5: The removal of buildings, trees, shrubs, or woody vegetation and the construction of new buildings and installation of lighting that could affect native migratory birds.

Project Mitigation Measure BIO-5.1: The Project Sponsor shall implement the following measures to reduce impacts on nesting migratory birds:

- To the extent feasible, construction activities shall be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season, all impacts on nesting birds protected under the MBTA and California Fish and Game Code will be avoided. The nesting season for most birds in San Mateo County extends from February 1 through August 31.
- If it is not possible to schedule construction activities between September 1 and January 31, then preconstruction surveys for nesting birds shall be conducted by a qualified ornithologist to ensure that no nests of migratory birds will be disturbed during Project implementation. Surveys shall be conducted no more than 7 days prior to the initiation of construction activities for each construction phase. During this survey, the ornithologist shall inspect all trees and other potential nesting habitats (e.g., trees, shrubs, California annual grasslands, buildings) in and immediately adjacent to the impact areas for migratory bird nests.
- If an active nest is found within trees or other potential nesting habitats that would be disturbed by construction activities, a construction-free buffer zone (typically 300 feet for raptors and 100 feet for other species) will be established around the nest to ensure that species that are protected under the MBTA and California Fish and Game Code will not be disturbed during Project implementation. The ornithologist shall determine the extent of the buffer.
- If construction activities will not be initiated until after the start of the nesting season, all potential nesting substrates (e.g., bushes, trees, grasses, and other vegetation) that are scheduled to be removed by the Proposed Project may be removed prior to the start of the nesting season (i.e., prior to February 1). This would preclude the initiation of nests in this vegetation and prevent any potential delay for the Proposed Project because of the presence of active nests in these substrates.

Project Mitigation Measure BIO-5.2: The Project Sponsor shall implement the following measures to reduce impacts on migratory birds due to construction of the atrium:

- The Project Sponsor shall treat 100 percent of the glazing on the dome-shaped portions of the atrium's façades (i.e., all areas of the north façade and all areas of the south façade above the Elevated Park) with a bird-safe glazing treatment to reduce the frequency of collisions. This glazing shall have a Threat Factor of 15 or less.<sup>4</sup> Because a Threat Factor is a nonlinear index, its value is not equivalent to the percent reduction in collisions that a glazing product provides. However, products with lower Threat Factors result in fewer bird collisions.
- The Project Sponsor shall treat 100 percent of the glazing on the atrium's east and west façades with a bird-safe glazing treatment to reduce the frequency of collisions. This glazing shall have a Threat Factor of 15 or less.
- Interior trees and woody shrubs shall be set back from the atrium's east, west, and non-sloped (i.e., vertical/perpendicular to the ground) portions of the south façades by at least 50 feet to reduce the potential for collisions with these facades due to the visibility of interior trees. This 50-foot distance is greater than the distance used in the project design for the north and sloped portions of the south facades (e.g., 20-25 feet for the north façade) due to the vertical nature of the east, west, and non-sloped portion of the south façades, as opposed to the articulated nature of the north and sloped portions of the south façades (which is expected to reduce the visibility of internal vegetation to some extent), as well as the direct line-of-sight views between interior and exterior vegetation through the east, west, and non-sloped portions of the south façades compared to the north façade (where internal vegetation is elevated above exterior vegetation). Interior trees and shrubs that are not visible through the east, west, and south façades may be planted closer than 50 feet to glass façades.
- Because the glass production process can result in substantial variations in the effectiveness of bird-safe glazing, a qualified biologist will review physical samples of all glazing to be used on the atrium to confirm that the bird-safe frit will be visible to birds under various lighting conditions and expected to be effective.
- The Project Sponsor shall monitor bird collisions around the atrium for a minimum of 2 years following construction to identify any collision "hot spots" (i.e., areas where collisions occur repeatedly). A monitoring plan for the atrium shall be developed by a qualified biologist and shall include focused surveys for bird collisions from late April through May (spring migration), September through October (fall migration), and mid-November through mid-January (winter) to maximize the possibility of detecting bird collisions that might occur. Surveys of the atrium shall be conducted daily for 3 weeks during each of these periods (i.e., 21 consecutive days during each season, for a total of 63 surveys per year). In addition, for the 2-year monitoring period, surveys of the atrium shall be conducted the day following nighttime events during which temporary lighting exceed would typical levels (i.e., levels specified in the International Dark-Sky Association's defined lighting zone, LZ-2 [Moderate Ambient], from dusk until 10:00 p.m., or 30 percent below these levels from 10:00 p.m. to midnight). The applicant can assign responsibility for tracking events and notifying the biologist when a survey is needed to a designated individual who is involved in the

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<sup>4</sup> A material's Threat Factor, as assigned by the American Bird Conservancy, refers to the level of danger posed to birds, based on the birds' ability to perceive the material as an obstruction, as tested using a "tunnel" protocol (a standardized test that uses wild birds to determine the relative effectiveness of various products at deterring bird collisions). The higher the Threat Factor, the greater the risk that collisions will occur. An opaque material will have a Threat Factor of 0, and a completely transparent material will have a Threat Factor of 100. Threat Factors for many commercially available façade materials can be found at <https://abcbirds.org/wp-content/uploads/2021/01/Masterspreadsheet-1-25-2021.xlsx>.

planning and scheduling of atrium events. The timing of the 63 seasonal surveys (e.g., morning or afternoon) shall vary on the different days to the extent feasible; surveys conducted specifically to follow nighttime events shall be conducted in the early morning.

- At a frequency of no less than every 6 months, a qualified biologist shall review the bird collision data for the atrium in consultation with the City to determine whether any potential hot spots are present (i.e., if collisions have occurred repeatedly at the same location). A “*potential hot spot*” is defined as a cluster of three or more collisions that occur within one of the 3-week monitoring periods described above at a given location on the atrium. The “*location*” shall be identified by the qualified biologist as makes sense for the observed collision pattern, and may consist of a single pane of glass, an area of glass adjacent to a landscape tree or light fixture, the 8,990-square-foot vertical façade beneath the Elevated Park, the façade adjacent to the vegetation at the Elevated Park, the atrium’s east façade, the atrium’s west façade, or another defined area where the collision pattern is observed. The definition of location shall be based on observations of collision patterns and the architectural, lighting, and/or landscape features that contributed to the collisions and not arbitrarily determined (e.g., by assigning random grids). If any such potential hot spots are found, the qualified biologist shall provide an opinion as to whether the potential hot spots will affect bird populations over the long term to the point that additional measures (e.g., light adjustments, planting of vegetation) will be needed to reduce the frequency of bird strikes at the hot spot location in order to reduce impacts to a less-than-significant level under CEQA (i.e., whether it constitutes an actual “hotspot”). This determination shall be based on the number of birds and the species of birds that collide with the atrium over the monitoring period. In addition, a “hotspot” is automatically defined if a cluster of five or more collisions are identified at a given “location” on the atrium within one of the three-week monitoring periods described above. If a hotspot is identified, additional measures will be implemented at the potential hotspot location at the atrium; these may include one or more of the following options in the area of the hotspot depending on the cause of the collisions:
  - Adding a visible bird-safe frit pattern, netting, exterior screens, art, printed sheets, interior shades, grilles, shutters, exterior shades, or other features to untreated glazing (i.e., on the façade below the Elevated Park) to help birds recognize the façade as a solid structure.
  - Installing interior or exterior blinds on buildings within the atrium to prevent light from spilling outward through glazed facades at night.
  - Reducing lighting by dimming fixtures, redirecting fixtures, turning lights off, and/or adjusting the programmed timing for dimming/shutoff.
  - Replacing certain light fixtures with new fixtures to increase shielding or redirect lighting.
  - Adjusting or reducing lighting during events.
  - Adjusting the timing of events to reduce the frequency during certain times of year (e.g., spring and/or fall migration) when relatively high numbers of collisions occur.
  - Adjusting landscape vegetation by removing, trimming, or relocating trees or other plants (e.g., moving them farther from glass) or blocking birds’ views of vegetation through glazing (e.g., using a screen or other opaque feature).
  - If modifications to the atrium are implemented to reduce collisions at a hot spot, 1 year of subsequent focused monitoring of the hot-spot location shall be performed to confirm that the modifications effectively reduced bird collisions to a less-than-significant level under CEQA. In the event that a hot-spot is detected at a time when there is less than one year remaining of the initial 2-year monitoring period, then this one year of subsequent monitoring of that hot-spot would extend beyond the 2-year monitoring period described above.

Project Mitigation Measure BIO-5.3: The Project Sponsor shall prepare a lighting design plan that incorporates and implements the following measures to reduce lighting impacts on migratory birds. Prior to implementation of the lighting design plan, a qualified biologist shall review the final lighting design plan to confirm that the required measures are incorporated:

- To the maximum extent feasible, up-lighting (i.e., lighting that projects upward above the fixture) shall be avoided in the Project design. All lighting shall be fully shielded to prevent illumination from shining upward above the fixture. If up-lighting cannot be avoided in the Project design, up-lights shall be shielded and/or directed such that no luminance projects above/beyond the objects at which they are directed (e.g., trees and buildings) and no light shines directly into the eyes of a bird flying above the object. If the objects themselves can be used to shield the lights from the sky beyond, no substantial adverse effects on migrating birds are anticipated.
- All lighting shall be fully shielded to prevent it from shining outward and toward Bay habitats to the north. No light trespass shall be permitted more than 80 feet beyond the Project Site's northern property line (i.e., beyond the Dumbarton Rail Corridor).
- With respect to exterior lighting in the northern portion of the Project Site (i.e., areas north of Main Street and Office Buildings 03 and 05 surrounding the hotel, Town Square retail pavilion, Office Building 04, event building, and North Garage), and with respect to interior portions of the atrium, exterior lighting shall be minimized (i.e., outdoor lumens shall be reduced by at least 30 percent, or extinguished, consistent with recommendations from the International Dark-Sky Association [2011]) from 10:00 p.m. until sunrise, except as needed for safety and compliance with Menlo Park Municipal Code. With respect to Office Buildings 01, 02, 03, 05, and 06, South Garage, and the residential/mixed-use buildings, exterior lighting shall be minimized (i.e., total outdoor lighting lumens shall be reduced by at least 30 percent or extinguished, consistent with recommendations from the International Dark-Sky Association [2011]) from midnight until sunrise, except as needed for safety and City code compliance.
- Temporary lighting that exceeds minimal site lighting requirements may be used for nighttime social events. This lighting shall be switched off no later than midnight. No exterior up-lighting (i.e., lighting that projects upward above the fixture, including spotlights) shall be used during events.
- Lights shall be shielded and directed so as not to spill outward from the elevator/stair towers and into adjacent areas.
- Interior or exterior blinds shall be programmed to close on north-facing windows of buildings within the atrium from 10:00 p.m. to sunrise to prevent light from spilling outward.
- Accent lighting with the atrium shall not be used to illuminate trees or vegetation. Alternatively, the applicant shall provide documentation to the satisfaction of a qualified biologist that the illumination of vegetation and/or structures within the atrium by accent lighting and/or up-lighting will not make these features more conspicuous to the human eye from any elevation outside the atrium compared to ambient conditions within the atrium. The biologist shall submit a report to the City following completion of the lighting design, documenting compliance with this requirement.

Finding: Implementation of Project Mitigation Measures BIO-5.1, BIO-5.2, and BIO-5.3, which are hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Impacts related to the movement of fish and wildlife, wildlife corridors, or wildlife nursery sites in the area were analyzed in the ConnectMenlo EIR as Impact BIO-4 and found to be less than significant with mitigation incorporated. The Proposed Project

would incorporate trees, shrubs, and forbs into the landscape design, which would provide some food and structural resources for the common, urban-adapted birds of the area as well as migrants that may use the area during spring and fall migration. If the Proposed Project is implemented during the nesting season (February 1 to September 14), tree and shrub removal could result in the direct mortality of adult or young birds, the destruction of active nests, or disturbance of nesting adults, causing nest abandonment and/or loss of reproductive effort. Any disturbance of nesting birds that results in the abandonment of active nests or the loss of active nests through vegetation or structure removal would be a potentially significant impact. In addition, the proposed buildings at the main Project Site could result in avian collision risks, as discussed in the Willow Village Master Plan Bird-Safe Design Assessment prepared by H.T. Harvey & Associates. Birds at the main Project Site could also be affected by new buildings and other structures with significant glass façades. The Proposed Project would also be required to comply with the City's bird-safe design requirements, which would further reduce the risk of avian collisions on the main Project Site. Through incorporation of bird-friendly Project features, compliance with City requirements, and preparation of final architectural control plans, as required by the Conditional Development Permit (CDP) for the Proposed Project, impacts related to bird collisions with buildings and other structures would be less than significant. The only exception to this would be at the atrium. Because of the unique design of the atrium, bird-friendly Project features and compliance with City bird-safe design requirements required by the CDP would not reduce collision risks enough to avoid significant impacts under CEQA. Therefore, impacts would be potentially significant. Construction of the Proposed Project also would create new sources of light, which would emanate from fixtures for illuminating buildings, building architectural lighting, pedestrian lighting, and artistic lighting. Light from the Project Site has some potential to attract and/or disorient birds, especially during inclement weather when nocturnally migrating birds descend to lower altitudes. As a result, some birds flying along the Bay at night may be attracted to the site and/or disoriented by the light, potentially causing them to collide with buildings. Certain migrant birds that use structures for roosting and foraging (e.g., swifts and swallows) could be vulnerable to collisions if they perceive illuminated building interiors as potential roosting habitat and attempt to enter the buildings through glass walls. Similarly, migrant and resident birds would be vulnerable to collisions if they perceive illuminated vegetation within buildings as potential habitat and attempt to enter through glass walls. Impacts on birds within the Project Vicinity due to artificial lights would be potentially significant. Implementation of Project Mitigation Measures BIO-5.1, BIO-5.2, and BIO-5.3, which address impacts to nesting migratory birds and lighting impacts on migratory birds, would ensure that Project impacts on migratory birds would be less than significant with mitigation.

R. Impact BIO-6: The Project would result in conflicts with the Menlo Park Municipal Code.

Project Mitigation Measure BIO-2.1: Implement Project Mitigation Measure BIO-2.1, above.

Project Mitigation Measure BIO-3.1: Implement Project Mitigation Measure BIO-3.1, above.

Project Mitigation Measure BIO-3.2: Implement Project Mitigation Measure BIO-3.2, above.

Project Mitigation Measure BIO-3.3: Implement Project Mitigation Measure BIO-3.3, above.

Project Mitigation Measure BIO-5.2: Implement Project Mitigation Measure BIO-5.2, above.

Finding: Implementation of Project Mitigation Measures BIO-2.1, BIO-3.1, BIO-3.2, BIO-3.3, and BIO-5.2, which are hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less than significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Impacts related to conflicts with local policies and ordinances for the area were analyzed in the ConnectMenlo EIR as Impact BIO-5 and found to be less than significant because the General Plan is the overriding planning document for the City and the proposed amendments analyzed under the ConnectMenlo EIR would ensure internal consistency between the General Plan and the Zoning Ordinance. Furthermore, with adherence to General Plan goals, policies, and programs in the Land Use and Open Space/Conservation, Noise, and Safety Elements and the City's Tree Preservation Ordinance, in combination with Municipal Code Chapters 12.44, Water-Efficient Landscaping, and 13.24, Heritage Trees, as well as federal and state laws, no conflicts with local plans and policies were anticipated, and impacts were determined to be less than significant.

Compliance with the bird-friendly design requirements of the Menlo Park Municipal Code, with appropriate waivers, would reduce the number of bird collisions with proposed buildings. However, because of the unique design of the atrium, bird-friendly Project features and compliance with City bird-safe design requirements required by the CDP would not reduce collision risks enough to avoid significant impacts under CEQA. However, with implementation of Project Mitigation Measure BIO-5.2, which sets forth atrium bird-safe design requirements, Project impacts due to bird collisions at the atrium would be less than significant with mitigation. Provided that the Proposed Project incorporates the mitigation measures described in the EIR, the Proposed Project would not conflict with City General Plan Policy OSC1.3, which sets forth certain requirements relating to sensitive habitats, including preparation of baseline biological resources reports, consultation with appropriate regulatory and resource agencies, incorporation of avoidance and minimization measures, and receipt of needed permits/authorizations. The Master Plan Biological Resources Assessment (Master Plan BRA) and the Tunnel Biological Resources Assessment (Tunnel BRA) represent compliance with ConnectMenlo Mitigation Measure BIO-1 by providing all information required by that mitigation measure for a biological resources assessment. Therefore, impacts would be less than significant with mitigation.

S. Impact C-BIO-1: Cumulative development would not result in a significant cumulative impact on biological resources, and the Proposed Project would not be a cumulatively considerable contributor to such a cumulative impact.

ConnectMenlo Mitigation Measure BIO-1: As part of the discretionary review process for development projects, new construction and building additions, regardless of size, in addition to appropriate CEQA review, the City shall require all project applicants to prepare and submit project-specific baseline biological resources assessments (BRA) if the project would occur on or adjacent to a parcel containing natural habitat with features such as mature and native trees, unused structures that could support special-status species, other sensitive biological resources, and/or active nests of common birds protected under Migratory Bird Treaty Act (MBTA). Sensitive biological resources triggering the need for the baseline BRA shall include: wetlands, occurrences or suitable habitat for special-status species, sensitive natural communities, and important movement corridors for wildlife such as creek corridors and shorelines.

The baseline BRA shall be prepared by a qualified biologist.

The baseline BRA shall provide a determination on whether any sensitive biological resources are present on the site, including jurisdictional wetlands and waters, essential habitat for special-status species, and sensitive natural communities. If jurisdictional wetlands and/or waters are suspected to be present on the site, a jurisdictional delineation confirmed by the U.S. Army Corps of Engineers (USACE) will be provided as part of the baseline BRA.

The baseline BRA shall also include consideration of possible sensitive biological resources on any adjacent undeveloped lands that could be affected by the project and lands of the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge).

The baseline BRA shall incorporate guidance from relevant regional conservation plans, including, but not limited to, the then current Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan, South Bay Salt Pond Restoration Project, Tidal Marsh Recovery Plan and the USFWS Recovery Plan for the Pacific Coast Population of the Western Snowy Plover, for determining the potential presence or absence of sensitive biological resources, however, the presence or absence of sensitive biological resources will be determined by on-site surveys. If the adjacent property is the Refuge, Refuge staff shall be contacted regarding the presence or absence of sensitive biological resources.

If sensitive biological resources are determined to be present on the site or may be present on any adjacent parcel containing natural habitat, coordination with the appropriate regulatory and resource agencies must occur. Appropriate measures, such as preconstruction surveys, establishing no-disturbance zones and restrictive time periods during construction, protective development setbacks and restrictions, and applying bird-safe building design practices and materials, shall be developed by the qualified biologist in consultations with the regulatory and resource agencies to provide adequate avoidance, or provide compensatory mitigation if avoidance is infeasible. With respect to fully protected species, if the BRA for any development project determines that any of the following Fully Protected Species are present, then neither take of such species will be permitted nor will mitigation measures including species collection or relocation. The Fully Protected Species include American Peregrine Falcon (*Falco peregrinus anatum*), California Black Rail (*Laterallus jamaicensis coturniculus*), California Clapper Rail – Ridgway's Rail (*Rallus longirostris obsoletus*), California Least Tern (*Sterna albifrons browni*), White-tail Kite (*Elanus leucurus*), Saltmarsh harvest mouse (*Reithrodontomys raviventris*), and San Francisco garter snake (*Thamnophis sirtalis tetrataenia*).

The qualified biologist shall consult with the Refuge management and, where appropriate, the Endangered Species Office of the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), and California Department of Fish and Wildlife (CDFW) for determining the potential presence or absence of sensitive biological resources and appropriate avoidance or compensatory mitigation measures, if required.

Where jurisdictional waters or federally and/or State-listed special-status species would be affected, appropriate authorizations, i.e. the USACE, San Francisco Bay Regional Water Quality Control Board (RWQCB), San Francisco Bay Conservation and Development Commission (BCDC), USFWS, NMFS, Refuge and CDFW, shall be obtained by the project applicant, and evidence of such authorization provided to the City prior to issuance of grading or other construction permits.

For sites that are adjacent to undeveloped lands with federally and/or State-listed special status species, or sensitive habitats, or lands of the Refuge, the BRA shall include evaluation of the potential effects of:

- additional light,
- glare,
- shading (i.e. shadow analysis),
- noise,
- urban runoff,



- water flow disruption,
- water quality degradation/sedimentation,
- attraction of nuisance species/predators (e.g. attraction of refuse) and their abatement (e.g. adverse impacts of rodenticides), and
- pesticides

generated by the project, as well as the possibility for increased activity from humans and/or domesticated pets and their effects on the nearby natural habitats. The BRA shall include proposed avoidance, minimization and mitigation of these adverse impacts.

The City of Menlo Park Planning Division may require an independent peer review of the adequacy of the baseline BRA as part of the review of the project to confirm its adequacy. Mitigation measures identified in the project-specific BRA shall be incorporated as a component of a proposed project and subsequent building permit, subject to the review and approval of the Community Development Department and the appropriate regulatory and resource agencies.

The following zoning regulations enacted by ordinances (including, but not limited to, 16.43 O-Office District, 16.43.080 Corporate housing, 16.43.140 Green and sustainable building; 16.44 LS-Life Science District, 16.44.130 Green and sustainable building) to minimize impacts to biological resources are incorporated by reference into this mitigation measure and shall be a component of the project building permits:

1. Setbacks (A) Minimum of two hundred (200) feet from the waterfront; waterfront is defined as the top of the levee.
2. Waterfront and Environmental Considerations. The following provisions are applicable when the property is adjacent to the waterfront or other sensitive habitat.
  - a. Non-emergency lighting shall be limited to the minimum necessary to meet safety requirements and shall provide shielding and reflectors to minimize light spill and glare and shall not directly illuminate sensitive habitat areas. Incorporate timing devices and sensors to ensure night lighting is used only when necessary.
  - b. Landscaping and its maintenance shall not negatively impact the water quality, native habitats, or natural resources.
  - c. Pets shall not be allowed within the corporate housing due to their impacts on water quality, native habitats, and natural resources.
3. Bird-friendly design.
  - a. No more than ten percent (10%) of façade surface area shall have non-bird- friendly glazing.
  - b. Bird- friendly glazing includes, but is not limited to opaque glass, covering the outside surface of clear glass with patterns, paned glass with fenestration, frit or etching patterns, and external screens over non-reflective glass. Highly reflective glass is not permitted.
  - c. Occupancy sensors or other switch control devices shall be installed on non-emergency lights and shall be programmed to shut off during non-work hours and between 10 PM and sunrise.
  - d. Placement of buildings shall avoid the potential funneling of flight paths towards a building façade.
  - e. Glass skyways or walkways, freestanding (see-through) glass walls and handrails, and transparent building corners shall not be allowed.

- f. Transparent glass shall not be allowed at the rooflines of buildings, including in conjunction with roof decks, patios and green roofs.
- g. Use of rodenticides shall not be allowed.

If it is determined through the BRA or CEQA review that further assessment/monitoring/reporting is required by appropriate regulatory or resource agencies, it shall be the responsibility of the City to ensure all project requirements are implemented.

Finding: ConnectMenlo Mitigation Measure BIO-1 has been implemented by the Proposed Project's design features, Project-specific BRA, analysis in the Project EIR, and Project-specific biological mitigation measures, which would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: The ConnectMenlo EIR determined cumulative impacts to biological resources to be less than significant with implementation of ConnectMenlo Mitigation Measure BIO-1. This mitigation measure requires that as part of the discretionary review process for development projects, the City require project applicants to prepare and submit project-specific baseline biological resources assessments (BRA) prepared by a qualified biologist. This mitigation measure was implemented for the Proposed Project through preparation of the Master Plan BRA and Tunnel BRA by H.T. Harvey & Associates. The Master Plan BRA and Tunnel BRA, as well as the Bird-Safe Design Assessment, all prepared by H.T. Harvey & Associates, outline mitigation measures to reduce Project impacts on biological resources. As described above, Project Mitigation Measures BIO-2.1, BIO-3.1 through BIO-3.3, and BIO-5.1 through BIO-5.3 would mitigate Project impacts on sensitive regulated habitats, minimize impacts on nesting birds, and reduce bird collisions. In addition, the City General Plan contains conservation measures that would benefit biological resources as well as measures to avoid, minimize, or mitigate impacts on such resources. All other projects within the Bayfront Area of Menlo Park also would be required to implement General Plan measures, including ConnectMenlo Mitigation Measure BIO-1. The Proposed Project would not result in a substantial change in the ConnectMenlo project and would not cause new or substantially more severe significant biological resources impacts than those analyzed in the ConnectMenlo EIR. Therefore, consistent with the conclusions in the ConnectMenlo EIR, with respect to biological resources, the Proposed Project in combination with past, present, and reasonably foreseeable future projects would result in cumulative impacts that would be less than significant with mitigation. No further mitigation measures are required.

- T. Impact GS-5: The Proposed Project could destroy a unique paleontological resource or site.

ConnectMenlo Mitigation Measure CULT-3: In the event that fossils or fossil-bearing deposits are discovered during ground-disturbing activities anywhere in the City, excavations within a 50-foot radius of the find shall be temporarily halted or diverted. Ground disturbance work shall cease until a City-approved, qualified paleontologist determines whether the resource requires further study. The paleontologist shall document the discovery as needed (in accordance with Society of Vertebrate Paleontology standards [Society of Vertebrate Paleontology 1995]), evaluate the potential resource, and assess the significance of the find under the criteria set forth in CEQA Guidelines Section 15064.5. The paleontologist shall notify the appropriate agencies to determine the procedures that would be followed before construction activities would be allowed to resume at the location of the find. If avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of construction activities on the discovery. The excavation plan shall be submitted to the City of Menlo Park for review

and approval prior to implementation, and all construction activity shall adhere to the recommendations in the excavation plan.

Project Mitigation Measure PALEO-1: Before the start of any excavation or grading activities, the construction contractor will retain a qualified paleontologist, as defined by the SVP, who is experienced in teaching non-specialists. The qualified paleontologist will train all construction personnel who are involved with earthmoving activities, including the site superintendent, regarding the possibility of encountering fossils, the appearance and types of fossils that are likely to be seen during construction, and proper notification procedures should fossils be encountered. Procedures to be conveyed to workers include halting construction within 50 feet of any potential fossil find and notifying a qualified paleontologist, who will evaluate the significance.

The qualified paleontologist will also make periodic visits during earthmoving in high sensitivity sites to verify that workers are following the established procedures.

Finding: Implementation of ConnectMenlo Mitigation Measure CULT-3 and Project Mitigation Measure PALEO-1, which are hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: The ConnectMenlo EIR found that impacts on paleontological resources would be less than significant with mitigation incorporated, in particular implementation of ConnectMenlo Mitigation Measure CULT-3. In the event that fossils or fossil-bearing deposits are discovered during ground-disturbing activities, ConnectMenlo Mitigation Measure CULT-3 would require excavations within a 50-foot radius of the find to be temporarily halted or diverted until a City-approved paleontologist can assess the significance of the find under the criteria set forth in CEQA Guidelines Section 15064.5. If the find meets the criteria set forth in CEQA Guidelines Section 15064.5 and avoidance is not feasible, the paleontologist would prepare an excavation plan to mitigate the effect of construction activities on the discovery. Project site preparation would involve earthwork, such as excavation, grading, trenching, cut-and-cover work, and potentially the installation of foundation piles, all of which would encounter artificial fill and could encounter native deposits. Activities at ground surface that disturb Quaternary fine-grained alluvium (Qaf), Quaternary alluvial fan deposits, fine facies (Qhff), and Quaternary floodplain deposits (Qhfp), as well as activities below the ground surface that disturb these geologic units and Quaternary older alluvium, could expose undisturbed deposits that contain fossils. These activities could damage or destroy fossils. This is considered a potentially significant impact. ConnectMenlo Mitigation Measure CULT-3 would ensure that construction personnel would follow proper notification procedures in the event that paleontological resources are uncovered during construction. In addition, Project Mitigation Measure PALEO-1 would ensure that construction personnel would recognize fossil materials. Implementation of ConnectMenlo Mitigation Measure CULT-3 and Project Mitigation Measure PALEO-1 would reduce potentially significant impacts on paleontological resources to less than significant with mitigation, consistent with the ConnectMenlo EIR.

U. Impact C-GS-1: Cumulative development would result in a less than significant cumulative impact to geology, soils, and seismicity, and thus the Proposed Project would not be a cumulatively considerable contributor to any significant cumulative impact to geology, soils, and seismicity. Cumulative development would result in a less-than-significant cumulative impact with mitigation to paleontological resources and the Proposed Project would not be a cumulatively considerable contributor to any significant cumulative impact.

ConnectMenlo Mitigation Measure CULT-3: Implement ConnectMenlo Mitigation Measure CULT-3, above.

Finding: Implementation of ConnectMenlo Mitigation Measure CULT-3, which is hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: The ConnectMenlo EIR determined that cumulative impacts on geology, soils, and seismicity would be less than significant and that implementation of ConnectMenlo would not significantly contribute to cumulative impacts related to geology, soils, and seismicity. Therefore, ConnectMenlo determined that impacts related to geology, soils, and seismicity under ConnectMenlo would be less than significant. With respect to paleontological resources, new development would be required to comply with existing federal, state, and local laws and regulations enacted to protect paleontological resources. In addition, development within the ConnectMenlo study area would be subject to general plan policies adopted to protect unrecorded paleontological resources. ConnectMenlo Mitigation Measure CULT-3 would require avoidance of paleontological resources or, if avoidance is not possible, preparation of an excavation plan to protect the resources. Impacts on paleontological resources would be less than significant with mitigation. The Proposed Project would not result in a substantial change in the ConnectMenlo project and therefore would not be a cumulatively considerable contributor to any significant cumulative impact on geology, soils, and seismicity and would not cause new or substantially more severe significant impacts related to geology, soils, seismicity, or paleontological resources than those analyzed in the ConnectMenlo EIR. Consistent with the conclusions in the ConnectMenlo EIR, the Proposed Project would result in a less-than-significant cumulative impact with respect to geology, soils, and seismicity. Impacts to paleontological resources would be less than significant with implementation of ConnectMenlo Mitigation Measure CULT-3.

V. Impact HY-1: The Proposed Project could violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface water or groundwater quality.

Project Mitigation Measure HY-1.1: If dewatering is needed to complete the Proposed Project, and if water from dewatering is discharged to a storm drain or surface water body, dewatering treatment may be necessary if groundwater exceeding water quality standards is encountered during excavation. Because there is potential for groundwater to be contaminated with VOCs or fuel products at the Project Site, the Project Sponsor would be required to comply with the San Francisco Bay Regional Water Board's VOC and Fuel General Permit (Order No. R2-2018-0050) if groundwater exceeding water quality standards is encountered.

If dewatering requires discharges to the storm drain system or other water bodies, the water shall be pumped to a tank and tested using grab samples and sent to a certified laboratory for analysis. If it is found that the water does not meet water quality standards, it shall be treated as necessary prior to discharge so that all applicable water quality objectives (as noted in Table 3.11-2) are met or it shall be hauled offsite instead for treatment and disposed of at an appropriate waste treatment facility that is permitted to receive such water. The water treatment methods selected shall remove contaminants in the groundwater to meet discharge permit requirements while achieving local and state requirements, subject to approval by the San Francisco Bay Regional Water Board. Methods may include retaining dewatering effluent until particulate matter has settled before discharging it or using infiltration areas, filtration techniques, or other means. The contractor shall perform routine inspections of the construction

area to verify that water quality control measures are properly implemented and maintained, observe the water (i.e., check for discoloration or an oily sheen), and perform other sampling and reporting activities prior to discharge. The final selection of water quality control measures shall be submitted in a report to the San Francisco Bay Regional Water Board for approval prior to construction. If the results from the groundwater laboratory do not meet water quality standards and the identified water treatment measures cannot ensure that treatment meets all standards for receiving water quality, then the water shall be hauled offsite instead for treatment and disposal at an appropriate waste treatment facility that is permitted to receive such water.

Finding: Implementation of Project Mitigation Measure HY-1.1, which is hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Impacts related to water quality were analyzed in the ConnectMenlo EIR as Impact HYDRO-1 and determined to be less than significant through compliance with existing federal, state, and local regulations, including General Plan goals, policies, and design standards. No mitigation measures were recommended. This topic also was analyzed in the ConnectMenlo EIR as Impact HYDRO-6, which likewise found that impacts on water quality would be less than significant through compliance with existing federal, state, and local regulations as well as General Plan policies to minimize impacts related to water supply. No mitigation measures were recommended in the ConnectMenlo EIR. However, construction dewatering for the Proposed Project could be required in areas with shallow groundwater during excavation and trenching for foundation work and utility improvements. The main Project Site has historical soil and groundwater contamination (EnviroStor ID 60002595). In addition, construction of the Willow Road Tunnel would require cut-and-cover work during construction and possibly dewatering. Compliance with waste discharge requirements and dewatering regulations would ensure that dewatering activities would be monitored as required and that no violations of water quality standards or waste discharge requirements would occur. Dewatering of potentially contaminated groundwater may result in a potentially significant impact on groundwater quality. Implementation of Project Mitigation Measure HY-1.1 would reduce the potentially significant impact on groundwater quality during construction to a less-than-significant level by requiring groundwater monitoring and treatment during dewatering activities. Therefore, Project impacts on groundwater quality during construction would be less than significant with mitigation.

W. Impact HY-5: The Proposed Project could conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan.

Project Mitigation Measure HY-1.1: Implement Project Mitigation Measure HY-1.1, above.

Finding: Implementation of Project Mitigation Measure HY-1.1, which is hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: The ConnectMenlo EIR did not analyze whether a project would conflict with or obstruct implementation of a water quality control plan because this topic was added to CEQA Guidelines Appendix G after completion of the ConnectMenlo EIR. However, the ConnectMenlo EIR concluded that, through compliance with existing federal, state, and local regulations and implementation of the site design, source control, and treatment control measures, impacts on water quality would be less than significant. The Connect Menlo EIR also did not analyze whether a project would conflict with or obstruct implementation of a sustainable

groundwater management plan because this topic was added to CEQA Guidelines Appendix G after completion of the ConnectMenlo EIR. However, the ConnectMenlo EIR concluded that development under the General Plan would result in less-than-significant impacts with respect to depleting groundwater supplies or interfering with groundwater recharge.

Dewatering for the Proposed Project would be conducted temporarily during the construction phase. Implementation of Project Mitigation Measure HY-1.1 would reduce the potentially significant impact on groundwater quality during construction to a less-than-significant level by requiring groundwater monitoring and treatment during dewatering activities. Further, groundwater supplies would not be used during operation. The amount of impervious area within the Project Site would decrease upon Project completion. New landscaping, pervious paving, stormwater gardens, bioretention areas, flow-through planters, and other features would be integrated into the design of streets and parks; they would also treat runoff and allow groundwater infiltration. In addition, implementation of the appropriate City General Plan policies would require the protection of groundwater recharge areas and groundwater resources, in accordance with the applicable sustainable groundwater management plan. The Project Site overlies the San Mateo subbasin, which is designated as a very low-priority basin and not subject to the Sustainable Groundwater Management Act of 2014 (SGMA); thus, no sustainable groundwater management plan is applicable. Construction and operation of the Proposed Project would not conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan. Therefore, Project impacts on groundwater quality during construction would not conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan. The impact would be less than significant with mitigation.

- X. Impact HAZ-2: The Proposed Project could create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.

ConnectMenlo Mitigation Measure HAZ-4a: Construction of any site in the City with known contamination shall be conducted under a Project-specific Environmental Site Management Plan (ESMP) prepared in consultation with the Regional Water Quality Control Board (RWQCB) or the Department of Toxic Substances Control (DTSC), as appropriate. The purpose of the ESMP is to protect construction workers, the general public, the environment, and future site occupants from subsurface hazardous materials previously identified at the site and address the possibility of encountering unknown contamination or hazards in the subsurface. The ESMP shall summarize soil and groundwater analytical data collected on the site during past investigations; identify management options for excavated soil and groundwater, if contaminated media are encountered during deep excavations; and identify monitoring, irrigation, or wells that require proper abandonment in compliance with local, state, and federal laws, policies, and regulations.

The ESMP shall include measures for identifying, testing, and managing soil and groundwater suspected of or known to contain hazardous materials. The ESMP shall 1) provide procedures for evaluating, handling, storing, testing, and disposing of soil and groundwater during excavation and dewatering activities, respectively; 2) describe required worker health and safety provisions for all workers who could be exposed to hazardous materials, in accordance with state and federal worker safety regulations; and 3) designate the personnel responsible for implementation of the ESMP.

Project Mitigation Measure HAZ-2.1: For the offsite improvement in the area where the Willow Road Tunnel passes under the Dumbarton Rail Corridor and Willow Road, a Phase I ESA shall be performed by a licensed environmental professional. The Phase I ESA shall identify RECs at the site and indicate whether a Phase II ESA is required in order to evaluate contamination at the site.

Finding: Implementation of ConnectMenlo Mitigation Measure HAZ-4a and Project Mitigation Measure HAZ-2.1, which are hereby adopted and incorporated into the Project, would reduce the impacts to a less than significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Impacts as a result of reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment were analyzed in the ConnectMenlo EIR as impact HAZ-2. Future development under ConnectMenlo, as part of the City's approval process, would be required to comply with existing federal, state, regional, and local laws. In addition, General Plan goals, policies, and programs would minimize potential hazardous materials impacts that could result from reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. Impacts from ConnectMenlo were determined to be less than significant, and no mitigation was required. However, implementation of ConnectMenlo Mitigation Measures HAZ-4a and 4b would further reduce impacts from sites with known hazardous material contamination. Mitigation Measure HAZ-4b applies to projects on sites with potential residual contamination in soil, gas, or groundwater, rather than sites with known contamination, such as the Project site, which are addressed by ConnectMenlo Mitigation Measure HAZ-4a.

Ground-disturbing activities associated with construction could expose construction workers to contaminated groundwater at the main Project Site and Willow Road Tunnel site. A Phase I ESA has been prepared for the main Project Site and the Willow Road Tunnel site where the tunnel would emerge on the West Campus. The impact on construction workers and the environment at these locations would be less than significant. However, groundwater contamination in the Dumbarton Rail Corridor and within the Willow Road right-of-way has not been characterized by a Phase I ESA. Therefore, the impact on construction workers and the environment at these locations would be potentially significant. Implementation of ConnectMenlo Mitigation Measure HAZ-4a and Project Mitigation Measure HAZ-2.1 would characterize soil contamination where the Willow Road Tunnel would go under the Dumbarton Rail Corridor and Willow Road. In addition, ConnectMenlo Mitigation Measure HAZ-4a would require development and implementation of a Project-specific ESMP, which would provide procedures for evaluating, handling, storing, testing, and disposing of soil and groundwater during excavation and dewatering activities; describe required worker health and safety provisions for all workers who could be exposed to hazardous materials; and designate the personnel responsible for implementation of the ESMP. With implementation of ConnectMenlo Mitigation Measure HAZ-4a and Project Mitigation Measure HAZ-2.1, the impact at the Willow Village Tunnel site within the Dumbarton Rail Corridor would be less than significant with mitigation.

Y. Impact HAZ-3: The Proposed Project would not emit hazardous emissions or involve handling hazardous or acutely hazardous materials, substances, or waste within 0.25 mile of an existing or proposed school.

Project Mitigation Measure HAZ-2.1: Implement Project Mitigation Measure HAZ-2.1, above.

ConnectMenlo Mitigation Measure HAZ-4a: Implement ConnectMenlo Mitigation Measure HAZ-4a, above.

Finding: Implementation of Project Mitigation Measure HAZ-2.1 and ConnectMenlo Mitigation Measure HAZ-4a, which are hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less than significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Impacts related to hazardous emissions or the handling of hazardous or acutely hazardous materials near schools were analyzed in the ConnectMenlo EIR as Impact HAZ-3. Impacts were found to be less than significant because hazardous materials would be stored, used, and handled according to existing federal, state, and local regulations. Similarly, hazardous materials emissions would be subject to existing federal, state, and local regulations. For any future public schools that would receive state funding for acquisition or construction, DTSC's School Property Evaluation and Cleanup Division would assess, investigate, and clean up the proposed school sites. General Plan policies and Zoning Ordinance requirements would minimize potential hazardous materials impacts that could result from storing, using, or handling hazardous materials or from generating emissions from hazardous materials. No mitigation was required, although implementation of ConnectMenlo Mitigation Measures HAZ-4a and 4-b would further reduce impacts from sites with known hazardous material contamination. Mitigation Measure HAZ-4b applies to projects on sites with potential residual contamination in soil, gas, or groundwater, rather than sites with known contamination, such as the Project site, which are addressed by ConnectMenlo Mitigation Measure HAZ-4a.

Offsite construction work could occur within 0.25 mile of Costaño Elementary School in East Palo Alto as well as the Belle Haven School and Beechwood School in Menlo Park. The upsizing and placement of utility lines within existing rights-of-way and improvements within intersections would result in temporary construction impacts. No federally or state-listed cleanup sites or known subsurface hazardous materials are identified within 0.25 mile of proposed offsite improvements in hazardous materials databases. However, contamination has been documented at the Willow Road Tunnel site. Accordingly, offsite utility work could encounter hazardous materials or contaminated groundwater. Therefore, impacts on schools would be potentially significant. Implementation of ConnectMenlo Mitigation Measure HAZ-4a and Project Mitigation Measure HAZ-2.1 would characterize soil contamination where the Willow Road Tunnel would go under the Dumbarton Rail Corridor and Willow Road. In addition, ConnectMenlo Mitigation Measure HAZ-4a would require development and implementation of a Project-specific ESMP, which would provide procedures for evaluating, handling, storing, testing, and disposing of soil and groundwater during excavation and dewatering activities; describe required worker health and safety provisions for all workers who could be exposed to hazardous materials; and designate the personnel responsible for implementation of the ESMP. With implementation of ConnectMenlo Mitigation Measure HAZ-4a and Project Mitigation Measure HAZ-2.1, the impact at the Willow Village Tunnel site within the Dumbarton Rail Corridor would be less than significant with mitigation.

- Z. Impact C-HAZ-1: Cumulative development would not result in a significant cumulative impact from hazards and hazardous materials, and the Proposed Project would not be a cumulatively considerable contributor to such a cumulative impact.

ConnectMenlo Mitigation Measure HAZ-4a: Implement ConnectMenlo Mitigation Measure HAZ-4a, above.



Finding: Implementation of ConnectMenlo Mitigation Measure HAZ-4a, which is hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less than significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: As with the Proposed Project, cumulative projects in the Project vicinity would be required to comply with existing local, regional, state, and federal regulations as well as safety plans. Hazardous materials would be managed in accordance with existing regulatory requirements, which would reduce the risk of hazardous materials emissions and/or accidental releases that could affect receptors outside work areas. In addition, all projects in the Bayfront area in Menlo Park with known hazardous materials would be required to comply with ConnectMenlo Mitigation Measure HAZ-4a, thereby reducing impacts to less than significant. The Proposed Project would not result in a substantial change in the ConnectMenlo project and would not cause new or substantially more severe significant impacts related to hazards and hazardous materials. Therefore, the Proposed Project would not be a cumulatively considerable contributor to a significant cumulative impact regarding hazards and hazardous materials. Consistent with the conclusions in the ConnectMenlo EIR, the cumulative impact of the Proposed Project and other past, present, and reasonably foreseeable future projects with respect to hazards and hazardous materials would be less than significant with mitigation. No additional mitigation measures are required.

AA.Impact TCR-1: The Proposed Project could cause a substantial adverse change in the significance of a tribal cultural resource, as defined in PRC Section 21074.

Modified ConnectMenlo Mitigation Measure CULT-2a: Implement Modified ConnectMenlo Mitigation Measure CULT-2a, above.

Project Mitigation Measure TCR-1.1:

Plan Check

Prior to issuance of grading permits, the Project Sponsor shall ensure and the City shall verify that the applicable grading plans that require ground-disturbing excavation clearly indicate:

- that there is potential for exposing buried cultural resources, including tribal cultural resources (“TCRs”) and Native American burials; and
- that excavations associated with soil remediation, removal of below grade utilities, and initial mass grading at the main Project site and all ground disturbing activities within the Core and Perimeter (including the High Sensitivity Area) require the presence of an archaeological monitor and tribal monitor in accordance with the Archaeological and Tribal Cultural Resources Monitoring and Treatment Protocol and Plan (“ATMTPP”), as defined in Mitigation Measure TCR-1.2; and
- that all ground disturbing activities require compliance with the ATMTPP.

All archaeological site information supplied to the contractor shall be considered and marked confidential. Any no-disturbance zones shall be labelled as environmentally sensitive areas. Prior to issuance of grading permits for the Project, the Project Sponsor and City shall, with input from the tribes that engaged in consultation with the City on the Proposed Project pursuant to Assembly Bill 52 (“Consulting Tribes”), develop a non-confidential field manual summarizing the approved TCR mitigation measures and the approved ATMTPP requirements. This list shall be provided to all relevant personnel implementing TCR mitigation measures.

Archeological and tribal monitors shall be invited to attend all Tailgate Safety meetings at which safety concerns and other pertinent information regarding current construction activities are presented.

### Measures for the Core

The Project Sponsor shall avoid or mitigate ground-disturbing excavation in the Core as detailed below.

- Ground disturbance into the existing culturally affected soil of the Core is prohibited. The following performance standards for capping, minimizing construction loading, and preservation in place of the Core shall apply.

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### Capping of Core

- The Project Sponsor shall install a culturally sterile engineered cap of four to seven feet to cover the cultural deposits within the Core and preserve the Core in place. Tribal monitoring shall be required during the installation of the fill cap on the Core.
- Onsite soil material is suitable as fill material provided that it is processed to remove concentrations of organic material, debris, and particles greater than six inches in maximum dimension; oversized particles shall either be removed from the fill or broken down to meet the requirement. Imported fill material shall meet the above requirements and have a plasticity index of less than 20. Material used for engineered fill shall not contain or introduce contaminants in excess of applicable Department of Toxic Substances Control ("DTSC") Environmental Screening Levels ("ESLs"). Any TCR materials within the soil matrix that are identified as TCRs by a tribal monitor shall be treated in accordance with the ATMTTPP and shall not be broken down or used in fill.
- Construction activities shall be conducted in a manner that protects against penetration of the culturally affected soil within the Core and reduces the potential for disturbance from concentrated surface loads. The following measures shall be implemented within the Core during fill placement and any subsequent construction to reduce potential impacts on subsurface archaeological and cultural materials.
  - An elevation contour plan shall be created to guide the surface preparation necessary to place the fill cap within the Core boundaries. The plan shall show the top of the culturally affected soil elevation to establish a six-inch-thick protection layer above the culturally affected soil layer, below which soil excavation or penetration shall not be permitted.
  - Tree root balls from trees removed within the Core boundary that have roots extending within an area 24 inches from the culturally affected soil layer shall be left in place. Stumps may be ground flat with the existing grade.
  - Clearing of surface vegetation within the Core boundary shall be performed through hand grubbing.
  - Ground surface preparation prior to fill placement within the Core boundary shall use relatively light equipment (3,000 to 5,000 pounds), such as a walk-behind roller, to densify the six-inch-thick protection material. The use of relatively light equipment reduces potential for densification below the buffer zone.
  - A layer of geogrid reinforcement shall be placed over the prepared ground surface within the Core boundary. Geogrid shall consist of a triaxial grid (e.g., TX140 or approved equivalent). A second layer of geogrid shall be placed to reinforce the engineered fill approximately 24 inches above the base geogrid layer. Geogrid shall be installed in accordance with the manufacturer's specifications. After placement of the geogrid, there shall be no soil disturbance in the Core below the top layer of geogrid.
  - Once the six-inch-thick protection layer has been prepared and the base reinforcement grid placed within the Core boundary, engineered fill may be placed in eight-inch lifts and

compacted using a single-drum ride-on sheepsfoot roller. The roller shall not be parked or left stationary on the Core overnight. If yielding subgrade is encountered in the base protection layer, the geotechnical consultant may recommend placement of additional layers of reinforcement within the engineered fill. This determination will be based on field observations during preparation of the ground surface.

- To protect the culturally affected soil in the Core, construction and other transitory vehicle traffic (with the exception of the equipment necessary to place and compact the engineered fill) shall not be permitted over the Core until after engineered fill placement is complete to provide a buffer between mound material and concentrated vehicle loads. Once fill placement is complete, the culturally affected soil will be protected, but construction vehicles and construction equipment directly on the Core nonetheless shall continue to be limited to the minimum number necessary to complete construction of the Proposed Project. Vehicles shall not be left stationary or parked on the Core overnight. The contractor shall ensure that vehicles and equipment will not leak fuel or other liquids when operating on the Core. Leaking vehicles and equipment shall be promptly removed from the Core area and repaired before use is resumed on the Core.

#### Temporary Construction Loading at Core

The following measures shall be implemented within the Core during scaffold erection to reduce potential impacts on subsurface cultural materials:

- Scaffolds placed on the Core shall be installed no earlier than three months after the engineered fill placement related to sea-level rise.
- Scaffolds shall use 16-foot square bases on top of the engineered fill cap. Minor leveling of the fill cap shall be allowed at each scaffold installation, but excavation or other penetrations into the fill surface shall not be permitted except for equipment or the temporary auxiliary structures needed to install the atrium frame and associated glass. There shall be no soil disturbance in the Core below the top layer of geogrid.
- Scaffolds shall be removed promptly after installation and inspection of the framework and glass within the atrium to remove pressure from the engineered fill over the Core.

#### Post-Construction Preservation in Place at the Core

- Post-construction, there shall be no soil disturbance in the Core below the top layer of geogrid. Any surface structural elements, irrigation, utilities, and infrastructure shall be located only upon/within the engineered fill and shall not penetrate the top layer of geogrid.
- Comply with Mitigation Measure TCR-1.3, *Post-Construction Preservation in Place*.

#### Measures for the Perimeter

The Project Sponsor shall avoid or mitigate ground-disturbing excavation in the Perimeter Area as follows:

- The Project Sponsor shall install a culturally sterile engineered cap of four to seven feet to cover the cultural deposits within the Perimeter.
- Excavation through the cap shall follow the procedures in Mitigation Measure TCR-1.2.
- Tribal monitoring shall be required during all ground disturbing site work in the Perimeter; provided that, once culturally affected soil has been removed, stockpiled, and treated in accordance with the ATMTTPP, no additional tribal monitoring of ground disturbance is required in the area where such soil was removed.

#### Measures for the High Sensitivity Area

The Project Sponsor shall avoid or mitigate ground-disturbing excavation in the High Sensitivity Area as follows:

- For portions of the High Sensitivity Area located within the Core, the Project Sponsor shall comply with the mitigation measures for the Core identified above, including but not limited to the tribal monitoring provisions.
- For portions of the High Sensitivity Area located within the Perimeter, the Project Sponsor shall comply with the mitigation measures for the Perimeter identified above, including but not limited to the tribal monitoring provisions.

#### Measures for Existing Known Reburials

- Existing known reburials shall be preserved in place.
- Existing known reburials will be protected by a layer of geogrid prior to the placement of engineered fill.
- Tribal monitoring in the vicinity of existing known reburials shall be required in accordance with the ATMTTP.

#### Project Mitigation Measure TCR-1.2:

The Project Sponsor and archaeological consultant, in consultation with the Consulting Tribes, shall develop an Archaeological and Tribal Cultural Resource Monitoring and Treatment Protocol and Plan ("ATMTTP") to guide archaeological and tribal cultural resource monitoring of ground-disturbing site work and provide for appropriate treatment of any archeological materials and tribal cultural resources exposed during construction, as described below. The ATMTTP will apply to the entire Project Site and all off-site Project improvements. In addition, specific protocols that pertain to the Core, Perimeter, and High Sensitivity Area will be distinguished from general unanticipated discovery response procedures that apply in other areas. Tribal monitoring refers to the controlled observation and regulation of construction operations on or in the vicinity of a known or potentially significant tribal cultural resource to avoid, preserve in place, or mitigate impacts on the resource. The ATMTTP shall be developed in consultation with the Consulting Tribes and submitted to the City for review and approval prior to issuance of the first grading permit and any physical ground disturbing site work being allowed on the Project Site or for off-site Project improvements. The ATMTTP shall include, at a minimum:

- Background information and context data on the Project Site, archeological resources, and tribal cultural resources.
- Tribal monitoring requirements, including worker awareness training as specified below; a discussion of specific locations and the intensity of the monitoring effort for areas with potential for the discovery of archeological and tribal cultural materials; and anticipated personnel, including retention of California Native American tribal representative(s) from Consulting Tribes.
- A requirement that tribal monitors from each Consulting Tribe be afforded the opportunity to be present at each location of ground disturbing site work that requires tribal monitoring pursuant to the Project mitigation measures and the ATMTTP, for the duration of such work, unless a Consulting Tribe agrees in writing that tribal monitoring is not needed by that tribe in that instance, or unless a Consulting Tribe fails to provide a monitor at the scheduled time, provided that adequate notice of the schedule was provided and documented.
- Specific parameters for tribal monitoring, including the number of monitors from each Consulting Tribe based on number of simultaneous excavation locations, activities subject to monitoring (consisting of all excavations associated with soil remediation, removal of below grade utilities, and initial mass grading at the main Project Site and all ground disturbing activities within the Core), and activities not subject to monitoring (including all grading outside the Core subsequent to initial mass grading in areas that have been monitored by the Consulting Tribes and found to no longer contain tribal cultural resources, all foundation and building demolition, and all above ground or vertical build construction).

- Identification of a tribal monitoring coordinator, whose responsibility is to ensure that communication between the construction team and monitors is clear, that schedules for monitoring are conveyed, and that monitoring tribes have a single point of contact, prior to the commencement of ground disturbing activities.
- Protocols for discoveries during construction, consistent with modified ConnectMenlo Mitigation Measure CULT-2a (see Section 3.8, Cultural Resources), including a requirement that any DPR forms required pursuant to ConnectMenlo Mitigation Measure CULT-2a to be submitted to the Northwest Information Center to document a find of TCR, cultural resources, historical resources, or archaeological resources shall be completed and submitted no later than 120 days after completion of the Project.
- Prehistoric era research design, including sampling level, study method documentation, and provisions, such as staffing and scheduling, for bringing the proposed research to fruition.
- Detailed procedures regarding how to address significant discoveries made during construction, including a discussion of field and artifact analysis methods to be used.
- Treatment of Native American human remains consistent with state law and recommendations of the NAHC-appointed Most Likely Descendant (“MLD”) and Modified ConnectMenlo Mitigation Measure CULT-4.
- Laboratory methods, including artifact cataloging and special analyses.
- Thresholds for decision making if there is a conflict among tribal or archeological monitors regarding the identification or treatment of TCRs. Specifically, if there is a conflict between the archeological monitor and the tribal monitors, deference shall be given to the preferences of the tribal monitors, subject to applicable law in the event of the discovery of Native American human remains, provided that those preferences do not require Project redesign or result in unreasonable construction delay. If there is a conflict among the tribal monitors, the soil containing the potential TCR will be evaluated in accordance with applicable law and, if appropriate, shall be stockpiled in accordance with the soil protocol in the ATMTTPP while the disagreement is being resolved.
- Provisions for reporting (e.g., Tribal Monitoring Closure Report) and artifact treatment in consultation with the Consulting Tribes in the event of significant finds.
- Pre-designated confidential reburial area(s) that will serve to reinter any Native American human remains encountered during construction (excluding existing, known reburial sites, which shall be preserved in place pursuant to Mitigation Measure TCR-1.1) with appropriate level of privacy for visitation by the Consulting Tribes, in an area not open to the public.
- Treatment protocols that detail the appropriate procedures, methods, and reports to be completed if significant archaeological or tribal cultural materials, including Native American burials, are encountered. The archeological significance of a resource shall not be determinative of whether the resource is a TCR, the level of impact to a TCR, or the significance of a TCR.
- Soil treatment protocols that preserve cultural soil onsite where feasible, including:
  - Subject to the requirements of DTSC or other agencies with jurisdiction and the reasonable preferences of the MLD in accordance with applicable law, prohibiting the removal of cultural soil from the main Project site. The determination of which soils are cultural soils shall be made by the tribal monitors.
  - Requiring only clean, engineered fill to be used on the main Project site. Under no circumstances should soil from another culturally significant area be used on this Project site.
  - The tribal monitors shall have the right to request that any cultural soils excavated from native soil on the main Project site be relocated to an area on the main Project site located away from the construction zone, where the tribal monitors shall be given the opportunity during active construction work hours to sift the cultural soil to identify and

remove any tribal cultural items and Native American human remains, which tribal cultural items and Native American human remains shall be treated in accordance with the ATMTPP. Any tribal cultural resources obtained from sifting shall be reburied in the reburial area, subject to the reasonable preferences of the MLD in accordance with Public Resources Code Section 5097.98 and other applicable law. Any tribal monitors performing this work (1) must have the requisite training or experience to do so, including training or experience with regard to work in environmentally impacted soil (which shall include at a minimum HAZWOPR certification), and (2) shall be paid at the rate specified for this work in the applicable Tribal Monitoring Agreement. Following sifting and removal of TCRs, the soil can be reused at the same or a different location within the main Project Site.

- Specifications for archeological and tribal cultural resources sensitivity training for construction workers and superintendents that meet the following standards:
  - Occurs prior to the start of any ground-disturbing activity or site work on the Project Site or for off-site improvements.
  - Training shall be required for all construction personnel participating in ground-disturbing construction to alert them to the archaeological and tribal cultural sensitivity of the area and provide protocols to follow in the event of a discovery of archaeological materials or tribal cultural resources. Training shall be provided en masse to such personnel at the start of construction of the Project, and training shall be repeated when new personnel participating in ground-disturbing site work start work.
  - Includes, for job site posting, a document (“ALERT SHEET”) that summarizes the potential finds that could be exposed, the protocols to be followed, and the points of contact to alert in the event of a discovery that is presented as part of the training.
  - Requires the contractor to ensure that all workers requiring training are in attendance.
  - Requires training for all contractors and sub-contractors that is documented for each permit and/or phase of a permit that requires ground-disturbing activities onsite.
  - For work in the Core and the existing known reburial area, additional worker training shall also be required for workers who will work on the surface or who will drive directly over the Core or work in the existing known reburial area.
- Work plan for the use of ground penetrating radar (GPR) and forensic canine detection (FCD) that meets the following standards:
  - Upon conclusion of building demolition and the removal of surface improvements within the Perimeter, the Project Sponsor shall retain a qualified team of FCD survey providers and a GPR operator to perform a survey of the Perimeter before grading, trenching, or other earthwork commences.
  - A minimum of seven calendar days prior to the FCD or GPR survey, the Project Sponsor or their designee shall notify the Consulting Tribes of the schedule to afford sufficient time to be present during the survey. Should the Consulting Tribe(s) choose not to attend, the FCD or GPR survey may continue as scheduled. Where the FCD or GPR survey will occur within 100 feet of known burials or reburials (which know reburials shall remain in place in accordance with Mitigation Measure TCR-1.1), use of the FCD or GPR and presence of tribal monitors shall be dictated by the MLD for those prior discoveries.
  - The results of the FCD and GPR surveys shall be provided to the Consulting Tribes within fourteen calendar days after completion of the survey reports. Measures to protect TCRs identified as a result of the surveys shall be implemented in accordance with the Project mitigation measures and ATMTPP.

- In the event of the discovery of Native American human remains other than known reburials, the procedures in Modified ConnectMenlo Mitigation Measure CULT-4 will apply.
- Procedures for the event of an inadvertent discovery during construction, which require the archaeological and tribal monitors to review, identify, and evaluate TCRs to determine if a discovery is a historical resource and/or unique archaeological resource, or a TCR, under CEQA. These procedures shall include, at a minimum:
  - Criteria for identifying cultural soils.
  - Impose a stop work radius of 100 feet around the discovery; work can continue outside of the stop-work radius while the discovery is being addressed. If the archaeological and tribal monitors agree that the find does not constitute a TCR, work can resume immediately, and no notifications are required.
  - Notify the City, Consulting Tribes, and Project Sponsor within 24 hours of the discovery.
  - Complete a discovery form to document the location, nature, and condition of the discovery.
  - Consult on the discovery to determine appropriate treatment, which may include any combination of avoidance, preservation in place, rapid recovery and reburial, and/or documentation. In no circumstance other than the express written recommendation of the MLD shall Native American human remains be removed from the Project site. Curation and data recovery shall not be allowed, unless curation or data recovery is (i) in compliance with the recommendation of the MLD for Native American human remains in accordance with Public Resources Code Section 5097.98 and other applicable law or, (ii) agreed upon by the tribal monitors per the protocols in the ATMTTPP for TCRs that are not Native American human remains.

Project Mitigation Measure TCR-1.3:

Prior to the issuance of the first certificate of occupancy for any occupied building within the Campus District, the Project Sponsor shall record deed restrictions over the Core, confidential locations of existing known reburials, and the pre-designated reburial area (“Project Reburial Area”) to restrict development or other activities identified in the deed restrictions that would disturb TCRs or Native American human remains in the future. The area included in the deed restrictions shall be described by a licensed surveyor prior to recording. Because archaeological and tribal cultural resource site locations are restricted from public distribution, the deed restrictions shall cite an “environmentally sensitive area.” A copy of the recorded deed restrictions that include the Core and any pre-designated reburial site shall be provided to the City for retention in a confidential project file. A copy of the deed restrictions shall be provided to the Northwest Information Center of the California Historical Resources Information System.

The restriction on the deed for the Core and Project Reburial Area shall prohibit the following activities directly on the Core or Project Reburial Area (excluding activities in cantilevered or spanned structural elements) after completion of construction of the Proposed Project, subject to applicable building code and life safety access requirements and necessary facilities maintenance, service, and repairs:

- Active recreational activities and structures, including, but not limited to, sports, field games, running, biking, and play equipment.
- Domesticated animals other than security/service animals.
- Vehicles.
- Surface penetrations below the upper geogrid.

- Altering the surface or general topography of the Core or Project Reburial Area except for maintenance of the engineered soil cap, landscaping, facilities, circulation, and utilities included within the cap.
- In the unlikely event that any activity needs to occur below the area of the upper geogrid in the event of an emergency, the Consulting Tribes will be immediately notified and given a reasonable opportunity (consistent with the nature of the emergency) to have a tribal monitor present.

Project Mitigation Measure TCR-1.4:

Within 30 days after the recording of the deed restrictions over the dedicated reburial area(s), the Project Proponent shall extend a written offer to the Consulting Tribes to execute a tribal access agreement to allow for permitted access to the Project Reburial Area for the purposes of tribal visitation, subject to the parameters below. The Project Proponent shall provide a copy of the offer letter and if accepted by the Consulting Tribe(s), the executed agreement(s), to the City for retention in a confidential Project file. This mitigation measures shall be considered satisfied upon delivery of the offer letter to the Consulting Tribes, even if the Consulting Tribe(s) declined to enter into the agreement. The owners' association shall manage the Project Reburial Area in accordance with the terms and conditions of the deed restrictions, access agreements, Project mitigation measures, and Project conditions of approval, subject to applicable building code and life safety access requirements and necessary facilities maintenance, service, and repairs.

Access to the reburial area established for the Project will be controlled. The following conditions apply:

- Access to the Project Reburial Area will be available following completion of construction of the Proposed Project, including the Project Reburial Area, subject to notification and access requirements to be specified in an access agreement.
- Visitation shall comply with all rules applicable to publicly accessible open space within the Proposed Project except as otherwise specified in an access agreement.
- Visitation shall not obstruct or otherwise interfere with the passage of vehicles or the operation of the facility.
- Parking shall be limited to public parking spaces.
- Visitation shall not include activities or uses that conflict with the deed restriction or reasonable preferences of the Most Likely Descendent; provided that the Project Proponent shall work in good faith to ensure that all Consulting Tribes are provided access to the Project Reburial Area in accordance with the terms of the access agreement.
- Visitation shall not present a risk to human life or safety.
- Visitation shall not include abandonment of materials or objects other than ceremonial, religious, or funerary offerings specified in an access agreement.
- Visitation shall be subject to restriction as necessary to respond to any security threat, pandemic or similar health risk, or emergency condition. Visitation shall not be unreasonably restricted.

Modified ConnectMenlo Mitigation Measure CULT-4: Procedures of conduct following the discovery of human remains citywide have been mandated by Health and Safety Code Section 7050.5, Public Resources Code Section 5097.98, and the California Code of Regulations Section 15064.5(e) (CEQA). According to the provisions in CEQA, if human remains are encountered at the site, all work in the immediate vicinity of the discovery shall cease and necessary steps to ensure the integrity of the immediate area shall be taken. The San Mateo County Coroner shall be notified immediately. The coroner shall then determine whether the remains are Native American. If the coroner determines the remains are Native American, the



coroner shall notify the NAHC within 24 hours, which will, in turn, notify the person the NAHC identifies as the Most Likely Descendant (MLD) in connection with any human remains. Further actions shall be determined, in part, by the desires of the MLD. The Project Sponsor, the Project archaeologist, and the MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of human remains and associated or unassociated funerary objects, including those associated with known and unknown Native American burial locations (CEQA Guidelines Section 15064.5[d]). The agreement should address appropriate actions for when remains are discovered, including excavation, removal, recordation, analysis, custodianship, and final disposition of the remains and associated or unassociated funerary objects. The MLD will have 48 hours to make recommendations regarding the disposition of the remains following notification from the NAHC of the discovery. If the MLD does not make recommendations within 48 hours, or the owner does not accept the recommendation of the MLD in accordance with Public Resources Code 5097.98(e), the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance. Alternatively, if the owner does not accept the MLD's recommendations, the owner or the descendent may request mediation by the NAHC.

Finding: Implementation of Project Mitigation Measures TCR-1.1, TCR-1.2, TCR-1.3, and TCR-1.4 as well as Modified ConnectMenlo Mitigation Measures CULT-2a and CULT-4, which are hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Impacts related to tribal cultural resources were analyzed in the ConnectMenlo EIR as Impact CULT-5. The ConnectMenlo EIR found that compliance with existing federal, state, and local laws and regulations, as well as General Plan goals and policies listed under Impact CULT-2, would protect tribal cultural resources by providing for the early detection of potential conflicts between development and resource protection and by preventing or minimizing the material impairment of the ability of archeological deposits to convey their significance through excavation or preservation. The ConnectMenlo EIR further found that implementation of ConnectMenlo Mitigation Measures CULT-2a, CULT-2b, and CULT-4 would reduce any impacts to tribal cultural resources in the City as a result of future development under buildout of the General Plan to a less-than-significant level.

The Proposed Project would avoid and minimize known archaeological expressions of the Hiller Mound, a tribal cultural resource, through a combination of avoidance through design strategies, preservation in place, capping to protect the resource, planning greenspace to incorporate the resource with culturally appropriate protection and management criteria, and specifications of the contractor's means and methods. Collectively, these Proposed Project features and measures would be consistent with the appropriate treatment measures established by CEQA Sections 20183.2 and 21084.3. Nonetheless, given the relatively shallow depth of the archaeological deposits associated with the Hiller Mound, as well as the dispersal of deposits from past disturbance associated with natural drainage, agriculture, and construction, the Proposed Project could encounter culturally affected soil in the Hiller Mound during construction activities, such as grading, demolition, construction of underground improvements, and placement of construction equipment. Project-related ground disturbance would have the potential to disturb both known and as-yet undocumented cultural deposits associated with the tribal cultural resource.

Pursuant to ConnectMenlo Mitigation Measure CULT-2b, which requires the City to request tribal consultation for projects that involve General Plan amendments and land use policy changes, AB 52, and SB 18, the City contacted the Native American Heritage Commission for a

list of tribes to be contacted about the Proposed Project and sent the required requests for consultation. In its consultation with the City, the Tamien Nation has asserted that the entire site of Hiller Mound is a tribal cultural resource and sacred site that the Tamien Nation uses to this day, even though legal access does not currently extend to tribal members. The Tamien Nation has stated that building around a sacred site is not avoidance because the use of the site would be impacted, and that construction within a tribal cultural landscape is an impact on a larger county-wide tribal cultural landscape. However, the avoidance and preservation in place of the Core and existing, known reburials, coupled with the modification of construction means and methods in the Hiller Mound, would ensure that tribal cultural resources, if encountered, are treated with care and in a culturally appropriate manner. In addition, permanent use restrictions with respect to the Core, existing known reburial area, and future reburial area, and access agreement with respect to the future reburial area, would preserve and protect the tribal cultural resource. After numerous meetings and discussions, the Tamien Nation sent a letter to the City dated October 24, 2022, stating that the City and proponent responded to the Tamien Nation's concerns, thanking the City and proponent, and withdrawing any previous objections to the Project. The Muwekma Ohlone Indian Tribe also identified the Hiller Mound as a tribal cultural resource and indicated its support of the proposed mitigation measures.

The Proposed Project would implement ConnectMenlo Modified Mitigation Measures CULT-2a and CULT-4 if potentially significant subsurface cultural resources or human remains are encountered during ground-disturbing activities. In addition to these mitigation measures, the Project Sponsor would implement Project Mitigation Measures TCR-1.1 through -1.4. These measures require preservation in place of known tribal cultural resources (the Core and existing reburials), worker training prior to construction to allow early identification of discoveries, and tribal monitoring, thereby reducing impacts on tribal cultural resources. These mitigation measures also require consultation on the appropriate response when a tribal cultural resource is encountered. Implementation of these enforceable mitigation measures is sufficient to reduce impacts to tribal cultural resources to less than significant with mitigation.

BB. Impact TCR-2: The Proposed Project could disturb human remains, including those interred outside of dedicated cemeteries.

Modified ConnectMenlo Mitigation Measure CULT-4: Implement Modified ConnectMenlo Mitigation Measure CULT-4, above.

Project Mitigation Measure TCR-1.1: Implement Project Mitigation Measure TCR-1.1, above.

Project Mitigation Measure TCR-1.2: Implement Project Mitigation Measure TCR-1.2, above.

Project Mitigation Measure TCR-2.1:

The locations of known previous reburials of Native American human remains shall be restricted from future ground disturbance, as required by Project Mitigation Measure TCR-1.3.

Finding: Implementation of Project Mitigation Measures TCR-1.1, TCR-1.2, and TCR-2.1 as well as Modified ConnectMenlo Mitigation Measure CULT-4, which are hereby adopted and incorporated into the Proposed Project, would reduce the impacts to a less-than-significant level. (CEQA Guidelines Section 15091(a)(1).)

Facts in Support of Finding: Impacts related to tribal cultural resources were analyzed in the ConnectMenlo EIR as Impact CULT-5. The ConnectMenlo EIR found that compliance with existing federal, state, and local laws and regulations, as well as General Plan goals and

policies listed under Impact CULT-2, would protect tribal cultural resources by providing for the early detection of potential conflicts between development and resource protection and by preventing or minimizing the material impairment of the ability of archeological deposits to convey their significance through excavation or preservation. The ConnectMenlo EIR further found that implementation of ConnectMenlo Mitigation Measures CULT-2a, CULT-2b, and CULT-4 would reduce any impacts to tribal cultural resources in the City as a result of future development under buildout of the General Plan to a less-than-significant level.

Here, Native American human remains could be exposed and disturbed during ground-disturbing activities at the Project Site. A tribal cultural resource was identified within the main Project Site. This resource has the potential to contain human remains interred outside of dedicated cemeteries. Excavation activities associated with the Proposed Project would not affect any known reburial locations; however, previously undocumented Native American burials could be affected by ground-disturbing construction due to their location within areas proposed for subsurface improvements. This impact would be potentially significant. The City implemented ConnectMenlo Mitigation Measure CULT-2b when it sent consultation requests to tribes asking to be notified about projects in the area of the Proposed Project. The Proposed Project would implement ConnectMenlo Mitigation Measure CULT-4, as modified, based on the Project's cultural resources assessment report, if human remains are encountered at the Project Site during ground-disturbing activities. The Project Sponsor would also implement Project Mitigation Measures TCR-1.1 and -1.2 within the main Project Site, given the presence of CA-SMA-160/H. Project Mitigation Measures TCR-1.1 and -1.2 include measures to avoid or mitigate ground-disturbing excavation near CA-SMA-160/H, to the extent feasible, and preparation of a monitoring and treatment plan that details the appropriate procedure if remains are encountered. Project Mitigation Measure TCR-2.1 requires avoidance and preservation in place of existing known reburials. Therefore, the Project's impact on human remains would be less than significant with mitigation.

#### IX. Findings regarding variants to the proposed project

The Draft EIR included an environmental analysis of certain "variants" to the Proposed Project in Chapter 5 of the Project EIR, the analysis is hereby incorporated. Variants are variations of the Proposed Project at the Project Site, with the same objectives, background, and development controls but with a specific variation. With the exception of the Increased Residential Density Variant (which was studied for policy purposes in the event the City desires to consider it), the variants are slightly different versions of the Proposed Project that could occur, based on the action or inaction of agencies other than the City, property owners outside the Project Site, or an applicant's decision not to build certain components (e.g., the Willow Road Tunnel). Because the variants could increase or reduce environmental impacts, the Draft EIR described and analyzed associated environmental impacts for the following four variants to the Proposed Project:

- Variant 1: No Willow Road Tunnel Variant. This variant considers a scenario where the Willow Road Tunnel would not be constructed as part of the Proposed Project and Meta trams would continue to use the public street network, Bayfront Expressway, and Willow Road to access the proposed Campus District. Without the Willow Road Tunnel, cyclists and pedestrians traveling between the main Project Site and the West/East Campus would need to use at-grade crossings. All other development components of the Proposed Project would continue to be proposed under this variant. This variant was analyzed to disclose environmental impacts that would occur if agencies other than the City with jurisdiction over the Willow Road Tunnel do not approve the Willow Road Tunnel or if the applicant elects not to build it. In addition, because this option would avoid significant noise impacts associated with constructing the Willow Road Tunnel, this option was included as an alternative to the

Project that could be selected by the City Council; thus, it is fully analyzed in Chapter 6, Alternatives, of the Draft EIR.

- Variant 2: Increased Residential Density Variant. This variant would increase the number of residential dwelling units by approximately 200, for a total of 1,930 residential units at the main Project Site. All other components of the Proposed Project would remain. This variant was analyzed to disclose environmental impacts that would occur in the event that the City Council desires to increase the number of residential units under the Proposed Project.
- Variant 3: No Hamilton Avenue Realignment Variant. This variant would alter the proposed circulation network east of Willow Road to accommodate retaining the Willow Road/Hamilton Avenue intersection in its current alignment. The overall development program for the Proposed Project would remain unchanged. This variant was analyzed to disclose environmental impacts that would occur if affected property owners and/or agencies other than the City with jurisdiction over the Hamilton Avenue Realignment do not approve the Hamilton Avenue Realignment.
- Variant 4: Onsite Recycled Water Variant. This variant would provide recycled water to the main Project Site through onsite treatment of wastewater. The onsite treatment and production of recycled water would involve capturing wastewater, including blackwater (e.g., water from toilet flushing, food preparation drains), from all proposed buildings. All other proposed features of the Project would remain the same. This variant was analyzed to disclose environmental impacts that would occur if the West Bay Sanitary District does not construct its project to provide recycled water to the main Project Site in time to serve the Proposed Project and the applicant instead constructs onsite treatment facilities.

Overall, these variants would modify limited “features” or aspects of the Proposed Project. By contrast, the various “alternatives” to the Proposed Project (as described and analyzed in Chapter 6 of the Draft EIR) were designed to meet the requirements of CEQA Guidelines Section 15162.6. As required by CEQA, alternatives must meet most of the basic Project objectives and avoid or lessen one or more of the significant environmental impacts of the Proposed Project. The proposed variants would not change the basic characteristics of the Proposed Project. Rather, each variant would change the design of the Project in a discrete way. Each variant was analyzed at the same level of detail as the Proposed Project, as warranted, and is available for selection by the Project Sponsor and decision-makers as part of an approval action.

The Project EIR’s analysis considered the environmental impacts associated with each variant in Chapter 5, Variants. For some environmental topics, the impacts under a specific variant would be the same as those of the Proposed Project. For those topics, further analysis was not needed. In some cases, the impacts under a particular variant would differ from the impacts identified for the Proposed Project in Chapter 3, Environmental Impact Analysis, of the Project EIR. The differences between the Proposed Project and the variants were analyzed quantitatively in the Project EIR. Unless otherwise stated, all mitigation measures required to reduce impacts associated with the Proposed Project also would be applicable to each of the variants.

As described in Chapter 5 of the Draft Project EIR, the No Willow Road Tunnel Variant, the Increased Residential Density Variant, the No Hamilton Avenue Realignment Variant, and the Onsite Recycled Water Variant all would remain within the overall scope of impacts as evaluated for the Proposed Project and would not result in any new significant impacts. All impacts identified above as being significant and unavoidable would remain significant and unavoidable under each of the No Willow Road Tunnel Variant, the Increased Residential Density Variant, the No Hamilton Avenue Realignment Variant, and the Onsite Recycled Water

Variant, even with implementation of all feasible mitigation, and the same findings set forth apply. Likewise, significant impacts identified above as being reduced to less-than-significant levels with implementation of mitigation also would remain the same for each of the No Willow Road Tunnel Variant, the Increased Residential Density Variant, the No Hamilton Avenue Realignment Variant, and the Onsite Recycled Water Variant, and the same findings set forth above apply. No additional mitigation measures were identified or otherwise are required for the No Willow Road Tunnel Variant, the Increased Residential Density Variant, the No Hamilton Avenue Realignment Variant, or the Onsite Recycled Water Variant. The City's CEQA findings as set forth above, therefore, likewise apply to the No Willow Road Tunnel Variant, the Increased Residential Density Variant, the No Hamilton Avenue Realignment Variant, and the Onsite Recycled Water Variant, and the City thus can authorize these variants based on the same above findings for the Proposed Project.

X. Findings regarding alternatives to the proposed project

As required under CEQA, the Project EIR analyzed a reasonable range of alternatives to the Proposed Project and evaluated the environmental impacts and feasibility of each alternative, as well as the ability of the alternatives to meet Project objectives. The Proposed Project objectives are listed in Chapter 2 (Project Description) of the Draft Project EIR; the potentially significant environmental effects of the Proposed Project, including feasible mitigation measures identified to avoid significant environmental impacts, are analyzed in Chapter 3 (Environmental Impact Analysis) of the Draft Project EIR, as further reflected in Chapter 5 (Variants); the alternatives are described in detail in Chapter 6 (Alternatives Analysis) of the Draft Project EIR.

Brief summaries of the alternatives are provided below. The findings in this section are based on the Project EIR, the discussion and analysis of which is hereby incorporated in full by this reference. The reasons stated in the EIR for rejecting certain alternatives likewise are hereby adopted and incorporated herein by reference. Each individual reason constitutes a separate and independent basis to reject the alternative and, when the reasons are viewed collectively, provide an overall basis for rejecting the alternative.

A. The No Project Alternative

CEQA requires evaluation of the "no project" alternative. Under the No Project Alternative, no additional construction would occur at the Project Site. The existing buildings and landscaping on the Project Site would not be demolished and would instead remain in place and be used and maintained the same as current site conditions. The Project Sponsor would not construct the new buildings, establish open space area, provide community amenities, or install infrastructure. There would be no realignment of Hamilton Avenue at Willow Road and no additional streets within the Project Site. None of the Project variants would be implemented.

Compared to the Proposed Project, the No Project Alternative would result in fewer environmental impacts. As discussed in the EIR, however, the No Project Alternative would not satisfy the basic project objectives, including the underlying purpose of the Proposed Project and the objectives identified by the Project Sponsor. The current uses on the Project Site include offices, offices/labs, warehouses, warehouses/offices, retail, and a service station. The No Project Alternative would preserve these uses and not meet any objectives related to creating a mixed-use community or residential uses. The No Project Alternative also would not be required to have a TDM program or provide the bicycle and pedestrian friendly environment that enhances the Project Site's connectivity to surrounding areas. No changes to land use would occur and existing space would remain the same, not meeting several objectives related to design and use of buildings and the land. Development would not respond to market

demands. Accordingly, for the foregoing reasons, the No Project Alternative is hereby rejected as infeasible.

#### B. No Willow Road Tunnel Alternative

The No Willow Road Tunnel Alternative would consist of the Proposed Project but without the Willow Road Tunnel. The trams would use the public street network, Bayfront Expressway, and Willow Road to access the proposed Campus District. Historically, three tram routes have served the Willow Village campus. Without the Willow Road Tunnel, the trams would continue to operate as they do under baseline conditions. Most pedestrians and bicyclists accessing the Willow Village Campus District would use the on-street bike lanes and sidewalk improvements to move along the Willow Road corridor and would cross at the Willow Road and Main Street/Hamilton Avenue intersection. Pedestrians and bicyclists desiring to access the Bay Trail or the other Meta campuses would use (i) the bike/pedestrian trail within the City public utility easement located adjacent to and immediately west of Willow Road or (ii) the Elevated Park. Pedestrians and bicyclists would access the Elevated Park using publicly accessible stairs and elevators located within or adjacent to Hamilton Avenue Parcel North and within Town Square.

Compared to the Proposed Project, the No Willow Road Tunnel Alternative would result in reduced impacts related to aesthetics (Impacts AES-3 and C-AES-1), air quality (Impact AQ-1, AQ-2, and C-AQ-1), energy (Impact C-EN-1), greenhouse gas emissions (Impact GHG-1a), noise (Impact NOI-1, NOI-2, and C-NOI-1), cultural resources (Impact CR-1, CR-2, CR-3, and C-CR-1), biological resources (Impact BIO-1), geology and soils (Impact GS-2, GS-5, and C-GS-1), hydrology and water quality (Impact HY-1, HY-5, and C-HY-1), hazards and hazardous materials (Impact HAZ-1, HAZ-2, HAZ-3, and C-HAZ-1), and tribal cultural resources (Impact TCR-2 and C-TCR-1). However, while impacts related to air quality (Impact AQ-1, AQ-2, and C-AQ-1) and noise (Impact NOI-1, NOI-2, and C-NOI-1) would be slightly reduced because there would be less overall construction under the No Willow Road Tunnel Alternative, these impacts would still remain significant and unavoidable under this alternative. Thus, this alternative would not appreciably reduce any significant and unavoidable impact of the Proposed Project.

Overall, the No Willow Road Tunnel Alternative would meet many of the Project objectives. It would still, for example, contain the land uses proposed under the Proposed Project. Thus, it would meet objectives related to creating a mixed-use community and residential uses and other specified building and land uses. For the objective that contains new bicycle and pedestrian connections, the No Willow Road Tunnel Alternative also would meet this objective, albeit to a lesser degree than the Proposed Project because the Willow Road Tunnel would provide a pedestrian and bicycle connection. Similar to the Project, the alternative also would generate revenue for the City and other public entities. Because the No Willow Road Tunnel Alternative would not reduce avoid or substantially lessen any of the Proposed Project's significant and unavoidable environmental impacts, however, it is hereby rejected as an alternative, although it may still be authorized by the City as a permissible variant to the Proposed Project. As stated in the EIR, the No Willow Road Tunnel Alternative also is considered a variant to the Proposed Project. The City Council could choose to select the No Willow Road Tunnel Alternative to reduce construction noise impacts, and the Willow Road Tunnel would thus not proceed. If the City Council does not select the No Willow Road Tunnel Alternative, then the No Willow Road Tunnel Variant could be approved as part of the Project to address the potential that Caltrans does not provide the requisite right of way for the Willow Road Tunnel or the Applicant elects not to construct the Willow Road Tunnel.

### C. Base Level Development Alternative

The Base Level Development Alternative would consist of the Proposed Project but developed to be consistent with the “base-level” development standards in the R-MU and O zoning districts. The base-level development standards for the R-MU district allow for a maximum density of up to 30 dwelling units per acre (du/acre) and a maximum height of up to 40 feet. For the O zoning district, the base-level development standards allow for a floor area ratio (FAR) of 0.45 (plus 10 percent for non-office commercial uses and 175 percent for hotels) and a maximum height of 35 feet (110 feet for hotels). The Proposed Project proposes “bonus-level” development in exchange for providing community amenities acceptable to the City Council; the Base Level Development Alternative would not involve this exchange and no community amenities would be provided. Construction also would not be phased.

Compared to the Proposed Project, the Base Level Development Alternative would result in reduced impacts related to aesthetics (Impact AES-1, AES-3, and C-AES-1), air quality (Impact AQ-1, AQ-2, C-AQ-1), energy (Impact EN-1, C-EN-1), greenhouse gas emissions (Impact GHG-1a, GHG-1b), noise (Impact NOI-1, C-NOI-1), cultural resources (Impact CR-1, CR-2, CR-3, and C-CR-1), biological resources (Impact BIO-1, BIO-5, BIO-6), geology and soils (Impact GS-5, C-GS-1), hydrology and water quality (Impact C-HY-1), hazards and hazardous materials (Impact HAZ-1, HAZ-2, HAZ-3, C-HAZ-1), population and housing (Impact POP-1, C-POP-1), public services (Impact PS-1, PS-2, PS-3, PS-4, PS-5, and C-PS-1), utilities and service systems (Impact UT-1, UT-2, UT-3, UT-4, UT-5, C-UT-1, C-UT-2, C-UT-3, C-UT-4, C-UT-5, C-UT-6), and tribal cultural resources (Impact TCR-2 and C-TCR-1). Impacts related to noise (Impact NOI-1, NOI-2, and C-NOI-1) would remain significant and unavoidable. Project-level and cumulative operational air quality impacts related to ROG emissions (Impact AQ-1, AQ-2, and C-AQ-1), however, would be reduced to a less-than-significant level with mitigation.

The Base Level Development Alternative would not meet many of the Project Objectives to the same degree as the Proposed Project. It would still contain the proposed land uses. Therefore, it would meet objectives related to creating a mixed-use community, residential uses, and other specified building and land uses but to a considerably lesser degree than the Proposed Project because there would be a reduction in office, non-office commercial/retail, and residential square footage and residential density as compared to the Proposed Project. The Base Level Development Alternative could still include a pharmacy (although it would not be a required community amenity); an interconnected office campus; a meeting and collaboration space; and a secure, safe, and private work environment. But because the Base Level Development would result in less office space than currently exists on the Project Site, it is reasonable to conclude that the Project Sponsor likely would not proceed with the Base Level Development Alternative and that this alternative would not provide a mix of uses at densities to achieve a financially feasible project. The Base Level Development Alternative likely would respect the surrounding community through appropriate building siting, massing, density, and height, but it would not meet the objective to be consistent with the standards prescribed for bonus-level development. Open space would be reduced in the Base Level Development Alternative compared to the Proposed Project, which means the Base Level Development Alternative would meet open space related objectives to a lesser degree than the Proposed Project. The Base Level Alternative also would not generate as much revenue for the City and other public entities in part because it would reduce the level of development and the Zoning Ordinance would not require the Base Level Alternative to provide community amenities. These amenities would provide much needed benefits to the Bayfront area, including grocery store space, two-year grocery store space rent subsidy, pharmacy services, dining options, community entertainment offerings, bank or credit union, elevated park improvements, town square improvements, teacher housing and rent subsidies, excess public open space, open space operations and

maintenance, and funding for job training programs. It is important to the City to be able to provide such amenities to its constituents and absent bonus-level development, the City would be unable to require such amenities. The Base Level Development Alternative would not be phased, so it would not meet the objective regarding phasing to meet market demands. Accordingly, for the foregoing reasons, the Base Level Development Alternative is hereby rejected as infeasible.

#### D. Reduced Intensity Alternative

The Reduced Intensity Alternative would consist of the Proposed Project but developed at a lesser intensity (albeit still at a bonus level of development, unlike the Base Level Development Alternative). Both the total residential and non-residential square footage would be reduced compared to the Proposed Project. Construction of this alternative would be conducted in one phase rather than in the two phases planned for the Proposed Project. The Reduced Intensity Alternative would meet many of the basic Project Objectives, although it may not meet some objectives to the same degree as the Project.

Compared to the Proposed Project, the Reduced Intensity Alternative would result in reduced impacts related to aesthetics (Impact AES-1, AES-3, and C-AES-1), air quality (Impact AQ-1, AQ-2, C-AQ-1), energy (Impact EN-1, C-EN-1), greenhouse gas emissions (Impact GHG-1a, GHG-1b), noise (Impact NOI-1, C-NOI-1), cultural resources (Impact CR-1, CR-2, CR-3, and C-CR-1), biological resources (Impact BIO-1, BIO-5, BIO-6), geology and soils (Impact GS-5, C-GS-1), hydrology and water quality (Impact C-HY-1), hazards and hazardous materials (Impact HAZ-1, HAZ-2, HAZ-3, C-HAZ-1), population and housing (Impact POP-1, C-POP-1), public services (Impact PS-1, PS-2, PS-3, PS-4, PS-5, and C-PS-1), utilities and service systems (Impact UT-1, UT-2, UT-3, UT-4, UT-5, C-UT-1, C-UT-2, C-UT-3, C-UT-4, C-UT-5, C-UT-6), and tribal cultural resources (Impact TCR-2 and C-TCR-1). Impacts related to noise (Impact NOI-1, NOI-2, and C-NOI-1) would remain significant and unavoidable. Project-level and cumulative operational air quality impacts related to ROG emissions (Impact AQ-1, AQ-2, and C-AQ-1), however, would be reduced to a less-than-significant level with mitigation.

The Reduced Intensity Alternative would not meet many of the Project Objectives to the same degree as the Proposed Project. It would still contain the land uses proposed under the Proposed Project. Therefore, it would meet objectives related to creating a mixed-use community, residential uses, and other specified building and land uses. However, there would be a reduction in office, non-office commercial/retail, and residential square footage and residential density. Due to the lower residential density, the Reduced Intensity Alternative also would provide less affordable housing than the Proposed Project. In addition, the Reduced Intensity Alternative would provide only approximately 225,000 square feet more office than currently existing on the Project Site and may not result in densities that achieve a financially feasible project. The Reduced Intensity Alternative thus would meet objectives related to land use to a considerably lesser degree than the Proposed Project. Community amenities also would be reduced commensurate with the reduction in bonus level development under the Reduced Intensity Alternative. The Reduced Intensity Alternative could still include a pharmacy; an interconnected office campus; a meeting and collaboration space; and a secure, safe, and private work environment. The community amenities provided by the Proposed Project meet important City needs, including the desire for more parks and neighborhood-serving retail and entertainment, and lesser amenities would not aid the City to the same extent. The Reduced Intensity Alternative would meet the objective related to building siting, massing, density, and height because it would be within the standards prescribed for bonus-level development. Open space would be reduced in the Reduced Intensity Alternative compared to the Proposed Project, which means the Reduced Intensity Alternative would meet open space related



objectives to a lesser degree than the Proposed Project. The Reduced Intensity Alternative also would not be phased, so it would not meet the objective regarding phasing to meet market demands. Accordingly, for the foregoing reasons, the Reduced Intensity Alternative is hereby rejected as infeasible.

#### E. Environmentally Superior Alternative

In addition to the discussion and comparison of impacts of the Proposed Project and the alternatives, Section 15126.6 of the CEQA Guidelines requires that an “environmentally superior” alternative be selected and the reasons for such a selection be disclosed. In general, the environmentally superior alternative is the alternative that would be expected to generate the least amount of significant impacts. Identification of the environmentally superior alternative is an informational procedure, and the alternative selected as environmentally superior may not be an alternative that is feasible and substantially lessens the significant environmental effects of the project.

As set forth in the EIR, the No Project Alternative would be the environmentally superior alternative. CEQA Guidelines section 15126.6(e)(2) states that when the no project alternative is identified as the environmentally superior alternative, the EIR must also identify an environmentally superior alternative from among the other alternatives. Selection of an environmentally superior alternative necessitates weighing of numerous environmental considerations. No other alternative is environmentally superior for all resource areas, as shown in Table 6-12 of the Project EIR, and so the City must balance environmental aspects in determining which alternative is the environmentally superior alternative.

Whereas the No Willow Road Tunnel Alternative largely reduces impacts that are temporary as a result of construction and excavation, the Base Level Development Alternative and Reduced Intensity Alternative result in reductions in impacts during both construction and operation.

The No Willow Road Tunnel Alternative reduces noise and vibration impacts during construction, as well as the criteria air pollutant emissions, energy consumption, and greenhouse gas emissions from construction activities such as heavy equipment operation and excavation. It reduces the potential for damage of cultural resources and reduces hydrology and hazardous materials impacts during construction of the Willow Road Tunnel.

The Base Level Alternative and Reduced Intensity Alternative also reduce construction impacts because the development would have smaller buildings under those alternatives. The No Willow Road Tunnel Alternative also would reduce construction impacts because tunnel construction would not occur. However, over the long term, the Base Level Alternative and Reduced Intensity Alternative also would reduce impacts associated with operation of the buildings, such as criteria air pollutant emissions, energy consumption, noise, and greenhouse gas emissions, which the No Willow Road Tunnel Alternative would not.

Menlo Park’s 2030 Climate Action Plan (Menlo Park 2021) sets a goal for the City of Menlo Park to reduce its VMT by 25 percent or an amount recommended by the Complete Streets Commission as one of six actions to eventually reach carbon neutrality. This emphasizes the importance of reducing VMT in Menlo Park. A reduction in VMT is also expressed in the objectives of the Proposed Project, through objectives such as to reduce VMT by locating residential, commercial, and office uses adjacent to each other; provide multiple transportation options and a robust TDM to reduce traffic congestion, air quality impacts, and greenhouse impacts; and develop an integrated, highly connected office campus that accommodates

anticipated worker space demands and provides flexible workspace at densities that support various transportation options.

Based on the latest citywide travel demand model, the regional average office VMT is 15.9 and the regional average residential VMT is 13.1. Office VMT for the Proposed Project would be 13.6, while residential VMT would be subject to mitigation to meet the significance threshold of 11.2. Mitigation Measure TRA-1 would require that residential land uses on the Project site reduce trips through a TDM Plan achieving a 36 percent trip reduction from gross ITE trip generation rates.

The Proposed Project and all three alternatives would generate similar VMT per capita. However, there would be differences in total VMT. The No Willow Road Tunnel Alternative would generate similar total VMT at the Project Site to the Proposed Project because it would have the same square footage of nonresidential and residential development. The Reduced Intensity Alternative would generate less VMT than the Proposed Project at the Project Site because there would be fewer total residents and employees. The Base Level Development Alternative would generate even less VMT at the Project Site because there would be even fewer total residents and employees. However, the Proposed Project is designed to reduce VMT to below the regional average, such that if office uses and residential uses were developed elsewhere, the VMT reduction benefits at the Project Site would not be realized. The Base Level and Reduced Intensity Alternatives would also reduce VMT to below the regional average. The No Willow Road Tunnel Alternative, with the maximum residential and non-residential buildout at the Project Site among the alternatives, would maximize development and total VMT reduction at the Project Site over the long term while also reducing several construction impacts. However, the No Willow Road Tunnel Alternative would not reduce any of the Proposed Project's significant and unavoidable impacts to a less-than-significant level. Therefore, the No Willow Road Tunnel Alternative is not the environmentally superior alternative.

None of the other alternatives would reduce the Proposed Project's significant and unavoidable construction noise and vibration impacts to a less-than-significant level. The Base Level Development Alternative and the Reduced Intensity Alternative would reduce the Proposed Project's project-level and cumulative operational air quality impacts related to ROG emissions to a less-than-significant level with mitigation. The Base Level Development Alternative would result in the greatest reduction (19 net lbs/day of ROG compared to 53.6 net lbs/day under the Reduced Intensity Alternative). Therefore, the Base Level Development Alternative is the environmentally superior alternative.

#### XI. Statement of overriding considerations

As set forth above, the City has found that the Proposed Project will result in project and cumulative significant adverse environmental impacts related to air quality and noise that cannot be avoided following adoption, incorporation into the Project, and implementation of mitigation measures described in the EIR. In addition, there are no feasible project alternatives that would mitigate or avoid all of the Project's significant environmental impacts. Section 15093(b) of the State CEQA Guidelines provides that when the decision of the public agency results in the occurrence of significant impacts that are not avoided or substantially lessened, the agency must state in writing the reasons to support its actions. See also Public Resources Code Section 21081(b). Having balanced the economic, legal, social, technological or other benefits of the Project, including region-wide or statewide environmental benefits, against its significant and unavoidable environmental impacts, the City finds that the Proposed Project's benefits outweigh its unavoidable adverse environmental effects, and that the adverse environmental effects are therefore acceptable.

The following statement identifies the reasons why, in the City's judgment, specific benefits of the Proposed Project outweigh the significant and unavoidable effects. The City finds that each of the Proposed Project's benefits discussed below is a separate and independent basis for these findings. The reasons set forth below are based on the Final Project EIR and other information contained in the administrative record for the Proposed Project.

#### Economic Benefits

1. The Proposed Project would redevelop an underutilized property with a master-planned, mixed-use neighborhood in further of the goals for the Bayfront Area set forth in ConnectMenlo.
2. The Proposed Project would develop an integrated, connected office campus that accommodates anticipated worker space demands and provides flexible workspace at densities that support various transportation options.
3. The Proposed Project would have positive net fiscal impact on the City's annual General Fund operating budget. The Proposed Project also would both generate a net positive fiscal impact for the Menlo Park Fire Protection District, Sequoia Union High School District, and the Ravenswood City Elementary School District. The Proposed Project also would be required to pay various impact fees to the City and the two school districts.

#### Environmental Benefits

1. The Proposed Project would reduce vehicle miles traveled by locating residential, commercial, and office uses adjacent to each other.
2. The Proposed Project would provide multiple transportation options and a transportation demand management program to reduce traffic congestion, air quality impacts, and greenhouse gas emissions.
3. The Proposed Project would create a bicycle- and pedestrian-friendly environment that enhances connectivity between the Project Site and surrounding areas with minimal traffic conflicts.
4. The Proposed Project would use sustainable design techniques to promote energy and water efficiency.
5. The Proposed Project would respect the surrounding community through appropriate building siting, massing, density, and height, consistent with the standards prescribed for bonus-level development in the City's General Plan and zoning policies.

#### Social Benefits

1. The Proposed Project would create a master-planned, mixed-use neighborhood with up to 1,730 residential units, a grocery store/supermarket, neighborhood-serving retail uses, office space, a hotel, new bicycle and pedestrian connections, and open space.
2. The Proposed Project would promote General Plan goals of providing office, R&D, residential, and commercial uses and a hotel in proximity to or integrated with one another.
3. The Proposed Project would provide market rate and below market rate housing, including affordable senior housing, in Menlo Park.
4. The Proposed Project would provide a pharmacy to serve the community within the main Project Site or on Hamilton Avenue Parcel North, as well as other community amenities.
5. The Proposed Project would provide publicly accessible open space in the area.
6. The Proposed Project would foster knowledge, partnerships, and innovation by creating a "meeting and collaboration space" where workers can convene to share ideas and goals, visitors can understand the company's background and products, business partners can learn about technology, and new product demonstrations can occur.
7. The Proposed Project would provide a variety of community benefits, including but not limited to grocery store space, two-year grocer space rent subsidy, pharmacy services,

dining options, community entertainment offerings, bank or credit union, elevated park improvements, town square improvements, teacher housing and rent subsidies, excess public open space, open space operations and maintenance, and funding for job training programs.

XII. Adoption of the MMRP

The City Council hereby adopts the MMRP attached hereto as Exhibit A and incorporated herein by this reference.

XIII. Severability

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifteenth day of November, 2022, 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 \_\_\_ day of November, 2022.

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Judi A. Herren, City Clerk

Exhibits:

A. MMRP

# Mitigation Monitoring and Reporting Program

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## Introduction

The California Environmental Quality Act (CEQA) requires the adoption of feasible mitigation measures to reduce the severity and magnitude of significant environmental impacts associated with project development. The Environmental Impact Report (EIR) prepared and certified for the proposed Willow Village Master Plan Project (Proposed Project) includes all feasible mitigation measures to reduce the potential environmental effects of the Proposed Project.

CEQA also requires reporting on and monitoring of mitigation measures adopted as part of the environmental review process (Public Resources Code Section 21081.6). This Mitigation Monitoring and Reporting Program (MMRP) is designed to aid the City of Menlo Park in its implementation and monitoring of measures adopted from the certified EIR.

The mitigation measures in this MMRP are assigned the same number they had in the EIR. The MMRP, presented in table format, describes the actions that must take place to implement each mitigation measure, the timing of those actions, the entities responsible for implementing and monitoring the actions, and verification of compliance. Additional information is provided in the certified EIR for the Project.

<b>WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM</b>				
<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<b>Transportation</b>				
<b>IMPACT BEING ADDRESSED: The Proposed Project would exceed an applicable VMT threshold of significance. The Proposed Project would exceed the applicable VMT threshold of significance for the residential land use and would result in a significant impact. (Impact TRA-2)</b>				
<i>Project Mitigation Measure TRA-2:</i> The residential land use of the Project Site will be required to implement a TDM Plan achieving a 36% reduction from gross ITE trip generation rates (for the Proposed Project, this reduction equals 6,023 daily trips). Should a different number of residential units be built, the total daily trips will be adjusted accordingly. The required residential TDM Plan will include annual monitoring and reporting requirements on the effectiveness of the TDM program. The Project applicant will be required to work with City staff to identify the details of the TDM plan. If the annual monitoring finds that the TDM reduction is not met (i.e. the Proposed Project exceeds 6,023 daily trips from the residential land use), the TDM coordinator will be required to work with City staff to detail next steps to achieve the TDM reduction.	Finalize Transportation Demand Management (TDM) Plan details with the City.  Implement TDM Plan during occupancy of the Proposed Project.	Finalization of TDM Plan with City prior to occupancy of the first building  Annual monitoring and reporting every year the Project is operational with timing to be determined by the City	Project Sponsor	City of Menlo Park Community Development Department (CDD), Planning Division  City of Menlo Park Public Works Department (PW), Transportation Division
<b>IMPACT BEING ADDRESSED: The Proposed Project would substantially increase hazards due to a design feature or incompatible uses. The Proposed Project includes a design feature that could increase hazards and would result in a significant impact. (Impact: TRA-3)</b>				
<i>Project Mitigation Measure TRA-3:</i> Revise the North Garage access design to provide adequate sight distance for the eastern driveway or incorporate other design solutions to reduce hazards to the satisfaction of the Public Works Director. Potential solutions that would reduce hazards to a less than significant level include restricting the eastern driveway to inbound vehicles only or prohibiting exiting left turns, modifying landscaping or relocating the driveway to the west to allow for adequate sight distance for exiting vehicles, or installing an all-way stop or signal.	Revise the North Garage access design for adequate visibility and hazard reduction.	During the building permit and site development review process and prior to issuance of building permits.	Project Sponsor/ Project architect	PW, Transportation Division
<b>IMPACT BEING ADDRESSED: Vehicle Miles Traveled. (Impact C-TRA-2)</b>				
Implement <i>Mitigation Measure TRA-2</i> above.	See above.	See above.	See above.	See above.
<b>IMPACT BEING ADDRESSED: Hazards or Incompatible Uses. (Impact C-TRA-3)</b>				

<b>WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM</b>				
<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
Implement <i>Mitigation Measure TRA-3</i> , above.	See above.	See above.	See above.	See above.
<b><i>Air Quality</i></b>				
<b><i>IMPACT BEING ADDRESSED: Conflict with or Obstruct Implementation of the Applicable Air Quality Plan. The Proposed Project would conflict with or obstruct implementation of the applicable air quality plan. (Impact AQ-1)</i></b>				
<p><i>Project Mitigation Measure AQ-1.1: Use Clean Diesel-powered Equipment during Construction to Control Construction-related Emissions.</i> The Project Sponsor shall either:</p> <ul style="list-style-type: none"> <li>• Ensure all off-road construction equipment with greater than 25 horsepower and operating for more than 20 hours total over the entire duration of construction activities have engines that meet or exceed either EPA or ARB Tier 4 Final off-road emission standards. The exception to this requirement allows a cumulative total of 618,028 horsepower-hours over the duration of construction activities before residents move onsite and 34,716 horsepower-hours over the duration of construction activities after residents move onsite from the operation of off-road construction equipment that meets standards less than Tier 4 Final; or</li> <li>• Prior to issuance of building permits, provide supplemental analysis prepared by a qualified air quality specialist to the City for approval that shows that emissions of ROG and NO<sub>x</sub>, the excess lifetime cancer risk, and the PM<sub>2.5</sub> concentration would not exceed the thresholds from the 2017 BAAQMD CEQA Air Quality Guidelines using the mix of equipment proposed by the applicant.</li> </ul>	Use clean diesel-powered equipment during construction or provide supplemental air quality analysis.	<p>Prior to the issuance of building permits</p> <p>During construction (if clean diesel-powered equipment is used)</p>	Project Sponsor	CDD
<p><i>Project Mitigation Measure AQ-1.2: Architectural Coatings.</i> The Project Sponsor shall use super-compliant architectural coatings during construction and operation for all buildings, which shall have VOC content that meet SCAQMD Rule 1113 Architectural Coatings as revised on February 5, 2016.</p>	Apply architectural coatings to meet South Coast Air Quality	<p>Prior to the issuance of building permits</p> <p>During construction</p>	Project Sponsor	CDD

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<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
	Management District Rule 1113.	Ongoing during operation of Project		
<b><i>IMPACT BEING ADDRESSED: Cumulatively Considerable Net Increase in Criteria Pollutants. The Proposed Project would result in a cumulative net increase in a criteria pollutant for which the Project region is classified as a nonattainment area under an applicable federal or ambient air quality standard. (Impact AQ-2)</i></b>				
Implement Project Mitigation Measures AQ-1.1 and AQ-1.2	See above	See above	See above	See above
<i>ConnectMenlo Mitigation Measure AQ-2b1:</i> Prior to building permit issuance, the City shall require applicants for all development projects in the city to comply with the current Bay Area Air Quality Management District’s (BAAQMD) basic control measures for reducing construction emissions of PM <sub>10</sub> (Table 8-1, Basic Construction Mitigation Measures Recommended for All Proposed Projects, of the BAAQMD CEQA Guidelines).	Comply with BAAQMD basic control measures.	During the building permit and site development review process, prior to building permit issuance, and during construction	Project Sponsor	CDD
<i>ConnectMenlo Mitigation Measure AQ-2b2:</i> Prior to issuance of a building permit, development projects in the City that are subject to CEQA and exceed the screening sizes in the BAAQMD’s CEQA Guidelines shall prepare and submit to the City of Menlo Park a technical assessment evaluating potential project construction-related air quality impacts. The evaluation shall be prepared in conformance with the BAAQMD methodology for assessing air quality impacts. If construction-related criteria air pollutants are determined to have the potential to exceed the BAAQMD thresholds of significance, as identified in the BAAQMD CEQA Guidelines, the project applicant is required to incorporate mitigation measures to reduce air pollutant emissions during construction activities to below these thresholds (e.g., Table 8-2, Additional Construction Mitigation Measures Recommended for projects with Construction Emissions Above the Threshold of the BAAQMD CEQA Guidelines, or applicable construction mitigation measures subsequently	Prepare the construction-related air quality technical assessment.	During the building permit and site development review process and prior to permit issuance	Project Sponsor	CDD



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<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
approved by BAAQMD). These identified measures shall be incorporated into all appropriate construction documents (e.g., construction management plans), subject to the review and approval of the Planning Division prior to building permit issuance. (The AQTR prepared and submitted for the Proposed Project fulfills the air quality technical assessment requirement.)				
<b><i>IMPACT BEING ADDRESSED: Expose Sensitive Receptors to Substantial Pollutant Concentrations. The Proposed Project would expose sensitive receptors to substantial pollutant concentrations. (Impact AQ-3)</i></b>				
<i>Implement Project Mitigation Measure AQ-1.1 and ConnectMenlo Mitigation Measures AQ-2b1 and AQ-2b2, above.</i>	See above.	See above.	See above.	See above.
<b><i>IMPACT BEING ADDRESSED: Other Air Emissions. The Proposed Project would result in other emissions (such as those leading to odors) that would adversely affect a substantial number of people. (Impact AQ-4)</i></b>				
<i>Project Mitigation Measure AQ-4.1: Molecular Neutralizer for Odors. The Project Sponsor and West Bay Sanitary District shall install a molecular neutralizer at the proposed sanitary sewer pump station to convert hydrogen sulfide gas into a biodegradable effluent during sewer pump operations. The molecular neutralizer shall be installed prior to the commencement of sewer pump operations.</i>	Install molecular neutralizer at the proposed sanitary sewer pump station.	During the building permit and site development review process. Install prior to the commencement of sewer pump operations.	Project Sponsor/ West Bay Sanitary District	CDD/PW
<b><i>IMPACT BEING ADDRESSED: Cumulative Air Quality Impacts. Cumulative development would result in a significant and unavoidable cumulative impact on air quality; thus, the Proposed Project would be a cumulatively considerable contributor to a significant cumulative impact on air quality. (Impact C-AQ-1)</i></b>				
<i>Implement Project Mitigation Measure AQ-1.1 and ConnectMenlo Mitigation Measures AQ-2b1 and AQ-2b2.</i>	See above.	See above.	See above.	See above.
<b><i>Greenhouse Gas Emissions</i></b>				
<b><i>IMPACT BEING ADDRESSED: Generation of GHG Emissions during Construction. Construction of the Proposed Project would not generate GHG emissions that may have a significant impact on the environment. (Impact GHG-1b)</i></b>				
<i>Implement Mitigation Measure TRA-2, above.</i>	See above.	See above.	See above.	See above.

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<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<i><b>IMPACT BEING ADDRESSED: Conflicts with Applicable Plans and Policies. The Proposed Project would conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing emissions of GHGs. (Impact GHG-2)</b></i>				
Implement <i>Mitigation Measure TRA-2</i> , above.	See above.	See above.	See above.	See above.

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<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<i>Noise</i>				
<b><i>IMPACT BEING ADDRESSED: Construction Noise. Construction of the Proposed Project would generate a substantial temporary or permanent increase in ambient noise levels in the vicinity of the Project in excess of standards established in a local general plan or noise ordinance or applicable standards of other agencies. (Impact NOI-1a)</i></b>				
<p><b><i>Modified ConnectMenlo Mitigation Measure NOISE-1c.</i></b>                      Project applicants for all development projects in the city shall minimize the exposure of nearby properties to excessive noise levels from construction-related activity through CEQA review, conditions of approval and/or enforcement of the City’s Noise Ordinance. Prior to issuance of demolition, grading, and/or building permits for development projects, a note shall be provided on development plans indicating that during on-going grading, demolition, and construction, the property owner/developer shall be responsible for requiring contractors to implement the following measures to limit construction-related noise:</p> <ul style="list-style-type: none"> <li>• All internal combustion engines on construction equipment and trucks are fitted with properly maintained mufflers, air intake silencers, and/or engine shrouds that are no less effective than as originally equipped by the manufacturer.</li> <li>• Stationary equipment such as generators and air compressors shall be located as far as feasible from nearby noise-sensitive uses.</li> <li>• Stockpiling is located as far as feasible from nearby noise-sensitive receptors.</li> <li>• Limit unnecessary engine idling to the extent feasible.</li> <li>• Limit the use of public address systems.</li> <li>• Construction traffic shall be limited to the haul routes established by the City of Menlo Park.</li> </ul>	Implement measures to limit construction-related noise.	Prior to the issuance of demolition, grading, and building permits and throughout the duration of construction activities	Project Sponsor/contractor(s)	CDD

<b>WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM</b>				
<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<p><i>Project Mitigation Measure NOI-1.1: Construction Noise Control Plan to Reduce Construction Noise.</i> The Project applicant and/or the contractor(s) shall obtain a permit to complete work outside the exempt/standard construction hours outlined in the City of Menlo Park Municipal Code, which may be incorporated into the conditional development permit for the Proposed Project. In addition, the applicant and/or contractor(s) shall develop a construction noise control plan to reduce noise levels and comply with Municipal Code daytime (during non-exempt hours) and nighttime noise standards to the extent feasible and practical, subject to review and determination by the Community Development Department. The plan shall also include measures to reduce noise levels such that a 10-dB increase over the ambient noise level does not occur at nearby noise-sensitive land uses, such as schools and residences to the extent feasible and practical (as determined by the City). Finally, the plan shall include measures to reduce pile driving noise such that noise from this equipment does not exceed 85 dBA <math>L_{eq}</math> at a distance of 50 feet, as feasible.</p> <p>The plan shall demonstrate that, to the extent feasible and practical, noise from construction activities that occur daily between 7:00 and 8:00 a.m. or between 6:00 p.m. and 10:00 p.m. will comply with the applicable City of Menlo Park noise limit of 60 dBA at the nearest existing residential or noise-sensitive land use, and construction activities that occur between 10:00 p.m. and 7:00 a.m. will comply with the applicable City noise limit of 50 dBA at the residential or noise-sensitive land use. The plan shall also demonstrate that, to the extent feasible and practical (as determined by the City), noise from construction activities during all hours will not result in a 10 dB increase over the ambient noise level at the nearest noise-sensitive land uses, and that pile driving noise would not exceed 85 dBA <math>L_{eq}</math> at a distance of 50 feet. This</p>	<p>Develop a Noise Control Plan and obtain a permit to complete work outside standard construction hours.</p>	<p>Submit noise control plan concurrently with the application for the first building permit for each building and implement plan during construction. Obtain permit prior to building permit application.</p>	<p>Project Sponsor/ contractor(s)</p>	<p>CDD</p>

<b>WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM</b>				
<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<p>Noise Control Plan shall be approved by the City prior to the issuance of building permits to confirm the precise noise minimization strategies that will be implemented and to document that strategies will be employed to the extent feasible and practical. Measures to help reduce noise from construction activity to these levels shall be incorporated into this plan and may include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>• To the extent feasible and practical, plan for the noisiest construction activities to occur during daytime hours when the quantitative standards are less stringent, existing ambient noise levels are generally louder, and when people are less sensitive to noise.</li> <li>• Require all construction equipment be equipped with mufflers and sound control devices (e.g., intake silencers and noise shrouds) that are in good condition (at least as effective as those originally provided by the manufacturer) and appropriate for the equipment.</li> <li>• Maintain all construction equipment to minimize noise emissions.</li> <li>• Locate construction equipment as far as feasible from adjacent or nearby noise-sensitive receptors.</li> <li>• Require all stationary equipment be located to maintain the greatest possible distance to the nearby existing buildings, where feasible and practical.</li> <li>• Require stationary noise sources associated with construction (e.g., generators and compressors) in proximity to noise-sensitive land uses to be muffled and/or enclosed within temporary enclosures and shielded by barriers, which can reduce construction noise by as much as 5 dB.</li> <li>• Install noise-reducing sound walls or fencing (e.g. temporary fencing with sound blankets) around noise-generating equipment, to the extent feasible and practical, where no perimeter wall is provided pursuant to Mitigation Measure NOI-1.2.</li> </ul>				

<b>WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM</b>				
<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<ul style="list-style-type: none"> <li>• Prohibit idling of inactive construction equipment for prolonged periods during nighttime/non-standard hours (i.e., more than 2 minutes).</li> <li>• Provide advance notification in the form of mailings/deliveries of notices to surrounding land uses regarding the construction schedule, including the various types of activities that would be occurring throughout the duration of the construction period.</li> <li>• Provide the name and telephone number of an on-site construction liaison through on-site signage and on the notices mailed/delivered to surrounding land uses. If construction noise is found to be intrusive to the community (i.e., if complaints are received), the construction liaison shall take reasonable efforts to investigate the source of the noise and require that reasonable measures be implemented to correct the problem.</li> <li>• Use electric motors rather than gasoline- or diesel-powered engines to avoid noise associated with compressed air exhaust from pneumatically powered tools during nighttime hours, to the extent feasible and practical (as determined by the City). Where the use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust could be used; this muffler can lower noise levels from the exhaust by about 10 dB. External jackets on the tools themselves could be used, which could achieve a reduction of 5 dB.</li> </ul>				
<p><i>Project Mitigation Measure NOI-1.2: Construction of Temporary Noise Barrier along Project Perimeter.</i> The Project contractor(s) shall install an 8-foot-high temporary noise barrier along the complete length of the western and southern perimeter (e.g., areas near residential and school land uses), and along the southernmost 500 feet of the eastern perimeter of the main Project Site. As project buildout occurs, removal and/or adjustment in the location of the perimeter noise</p>	Install noise barriers.	Prior to issuance of building permit for each building and/or relevant area of site improvement plans/building construction and ongoing	Project Sponsor/contractor(s)	CDD

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<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<p>barrier may occur because either the construction of project buildings (completion of core and shell) or streets requires barrier realignment, or the perimeter barrier is not needed, as shown by preparation of an acoustical analysis that indicates the balance of the construction activities will not result in construction noise that exceeds the allowable limits.</p> <p>Regarding the Hamilton Avenue Parcel South, a similar noise barrier shall be installed around the complete length of the southern, western and northern perimeters as well as the southernmost 100 feet of the eastern perimeter of the Hamilton Avenue Parcel South, unless the Project Sponsor can demonstrate, through an acoustical analysis, that construction noise at this site would not exceed the allowable limits. The decision regarding the necessity of this barrier and location(s) shall be subject to review and approval of the City based on evidence and analyses providing by the applicant team.</p> <p>Regarding the Hamilton Avenue Parcel North, a similar noise barrier shall also be constructed along the complete length of the southern and western perimeters, along with the eastern most 100 feet of the northern perimeter of the Hamilton Avenue Parcel North, unless the Project Sponsor can demonstrate, through an acoustical analysis, that construction noise at this site would not exceed the allowable limits. The decision regarding the necessity of this barrier and location(s) shall be subject to review and approval of the City based on evidence and analyses providing by the applicant team.</p> <p>The barriers shall be constructed of material that has an acoustical rating of at least 26 STC (Sound Transmission Class). This can include a temporary barrier constructed with plywood supported on a wood frame, sound curtains supported on a frame, or other comparable material.</p>		removal/adjustment of noise barriers during construction		

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<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<b><i>IMPACT BEING ADDRESSED: Operational Noise. Operation of the Proposed Project would generate a substantial temporary or permanent increase in ambient noise levels in the vicinity of the Project in excess of standards established in a local general plan or noise ordinance or applicable standards of other agencies. (Impact NOI-1b)</i></b>				
<i>ConnectMenlo Mitigation Measure NOISE-1b. Stationary noise sources and landscaping and maintenance activities citywide shall comply with Chapter 8.06, Noise, of the Menlo Park Municipal Code.</i>	Comply with Chapter 8.06 of the Menlo Park Municipal Code.	Prior to the issuance of construction permits and throughout the duration of construction activities	Project Sponsor	CDD
<i>Project Mitigation Measure NOI-1.3: Mechanical Equipment Noise Reduction Plan. To reduce potential noise impacts resulting from Project mechanical equipment, including heating, cooling, and ventilation equipment, the Project applicant shall conduct a noise analysis to estimate noise levels of Project-specific mechanical equipment based on the final selected equipment models and design features. In addition to the analysis, a Mechanical Equipment Noise Reduction Plan shall be created to ensure noise levels of equipment, once installed, are below the applicable criteria described below. The Noise Reduction Plan shall include any necessary noise reduction measures required to reduce Project-specific mechanical equipment noise to a less-than-significant levels. The plan shall also demonstrate that with the inclusion of selected measures, noise from equipment would be below the significance thresholds. Feasible noise reduction measures to reduce noise below the significance thresholds include, but are not limited to, selecting quieter equipment, utilizing silencers and acoustical equipment at vent openings, siting equipment farther from the roofline, and/or enclosing all equipment in a mechanical equipment room designed to reduce noise. This analysis shall be conducted and the results and final Noise Reduction Plan shall be provided to the City prior to the issuance of building permits for each building.</i>	Submit a Mechanical Equipment Noise Reduction Plan for each building and implement noise control measures to reduce noise during operation.	Submit noise reduction plan concurrently with the application for the first building permit for each building, and implement plan during operation.	Project Sponsor/ engineers(s)	CDD



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<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<p>The noise analysis and Noise Reduction Plan shall be prepared by persons qualified in acoustical analysis and/or engineering. The Noise Reduction Plan shall demonstrate with reasonable certainty that noise from mechanical equipment selected for the Project, including the attenuation features incorporated into the Project design, will not exceed the City of Menlo Park’s property plane threshold of 60 dBA during daytime hours or 50 dBA during nighttime hours at nearby noise-sensitive land uses, as well as the 50 dBA at 50 feet threshold that applies to rooftop equipment in the City.</p> <p>The Project applicant shall incorporate all feasible methods to reduce noise identified above and other feasible recommendations from the acoustical analysis and Noise Reduction Plan into the building design and operations as necessary to ensure that noise sources meet applicable requirements of the respective noise ordinances at receiving properties.</p>				
<p><i>Project Mitigation Measure NOI-1.4: Emergency Generator Noise Reduction Plan (All Parcels).</i> Prior to approval of a building permit for each building, the Project applicant shall conduct a noise analysis to estimate noise levels from the testing of Project-specific emergency generators, based on the actual generator makes and models proposed and the actual selected attenuation features. Based on the results of the analysis, a Noise Reduction Plan shall be created to ensure noise levels of generator testing are below the applicable Code requirements. The results, methods, and final Noise Reduction Plan shall be provided to the City prior to the issuance of building permits. The analysis shall account for proposed noise attenuation features, such as specific acoustical enclosures and mufflers or silences, and the final Noise Reduction Plan shall demonstrate with reasonable certainty that proposed generator(s) will not exceed the City of Menlo Park noise thresholds of 60 dBA at the nearest noise-sensitive</p>	<p>Submit an Emergency Generator Noise Reduction Plan and implement noise control measures to reduce noise during operation.</p>	<p>Submit plan concurrently with the application for the first building permit for each generator and implement plan during operation.</p>	<p>Project Sponsor/ engineers(s)</p>	<p>CDD</p>

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<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<p>use during daytime hours, and/or 85 dBA at 50 feet for powered equipment, whichever is lower. Acoustical treatments may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Enclosing generator(s);</li> <li>• Installing relatively quiet model generator(s);</li> <li>• Orienting or shielding generator(s) to protect noise-sensitive receptors to the greatest extent feasible;</li> <li>• Installing exhaust mufflers or silencers;</li> <li>• Increasing the distance between generator(s) and noise-sensitive receptors; and/or</li> <li>• Placing barriers around generator(s) to facilitate the attenuation of noise.</li> </ul> <p>In addition, all Project generator(s) shall be tested only between the hours of 7:00 a.m. and 10:00 p.m. Because no nighttime testing of generators will be allowed, compliance with the 50-dB nighttime noise threshold in the City need not be demonstrated.</p> <p>The Project applicant shall incorporate sufficient recommendations from the acoustical analysis into the building design and operations to ensure that noise sources meet applicable requirements of the noise ordinance.</p>				
<p><b><i>IMPACT BEING ADDRESSED: Generation of excessive ground-borne vibration or ground-borne noise levels. The Proposed Project would generate excessive ground-borne vibration or noise levels. (Impact NOI-2)</i></b></p>				
<p><i>ConnectMenlo Mitigation Measure NOISE-2a.</i><sup>1,2</sup> To prevent architectural damage citywide as a result of construction-generated vibration:</p> <ul style="list-style-type: none"> <li>• Prior to the issuance of a building permit for any development project requiring pile driving or blasting, the</li> </ul>	<p>Prepare a noise and vibration analysis.</p>	<p>Prior to the issuance of building permits</p>	<p>Project Sponsor/ engineer(s)</p>	<p>CDD</p>

<sup>1</sup> This noise and vibration study for the Proposed Project has been prepared in accordance with ConnectMenlo Mitigation Measure NOISE-2a.  
<sup>2</sup> ConnectMenlo Mitigation Measure NOISE-2a has been modified to allow for compliance “to the extent feasible and practical,” which would be subject to review and determination by the Community Development Department.

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<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<p>project applicant/developer shall prepare a noise and vibration analysis to assess and mitigate potential noise and vibration impacts related to these activities. The maximum levels shall not exceed 0.2 in/sec, which is the level that can cause architectural damage for typical residential construction. If maximum levels would exceed the thresholds, alternative methods, such static rollers, non-explosive blasting, and pile drilling, as opposed to pile driving, shall be used to the extent feasible and practical, subject to review and determination by the Community Development Department.</p> <p>To prevent vibration-induced annoyance as a result of construction-generated vibration:</p> <ul style="list-style-type: none"> <li>Individual projects that involve vibration-intensive construction activities, such as blasting or the use of pile drivers, jack hammers, or vibratory rollers, within 200 feet of sensitive receptors shall be evaluated for potential vibration impacts. A vibration study shall be conducted for individual projects where vibration-intensive impacts may occur. The study shall be prepared by an acoustical or vibration engineer holding a degree in engineering, physics, or an allied discipline who is able to demonstrate a minimum of 2 years of experience in preparing technical assessments regarding acoustics and/or ground-borne vibration. The study is subject to review and approval of the Community Development Department.</li> </ul> <p>Vibration impacts on nearby receptors shall not exceed the vibration annoyance levels (in inches per second), as follows:</p> <ul style="list-style-type: none"> <li>Workshop = 0.126</li> <li>Office = 0.063</li> <li>Residence, daytime (7:00 a.m.-10:00 p.m.) = 0.032</li> <li>Residence, nighttime (10:00 p.m. to 7:00 a.m.) = 0.016</li> </ul> <p>If construction-related vibration is determined to be perceptible at vibration-sensitive uses, additional</p>				

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requirements, such as less vibration-intensive equipment or construction techniques, shall be implemented during construction (e.g., non-explosive blasting, pile drilling, as opposed to pile driving, preclusion for vibratory roller use, use of small or medium-sized bulldozers) to the extent feasible and practical. Vibration reduction measures shall be incorporated into the site development plan as a component of the Project and applicable building plans, subject to the review and approval of the Community Development Department.				
<p><i>Project Mitigation Measure NOI-2.1: Vibration Control Measures for Annoyance from Daytime Pile Driving Activity.</i> During daytime hours, pile driving activity shall take place no closer than 335 feet from residential land uses, 210 feet from office or school land uses, and 130 feet from workshops or retail land uses, to the extent feasible and practical. When pile driving work must take place closer than these distances from the aforementioned land uses, reduction measures shall be incorporated to the extent feasible and practical, such as the use of alternative pile installation methods that do not require impact or vibratory pile driving. Examples of alternative pile installation methods include auger cast pressure grouted displacement (APGD) piles, stone columns, cast-in-drilled-hole (CIDH) piles, or press-in piles. These measures will be subject to review and approval of the Community Development Department.</p> <p>In addition, the construction contractor shall appoint a Project vibration coordinator who will serve as the point of contact for vibration-related complaints during project construction. Contact information for the Project vibration coordinator will be posted at the Project Site and on a publicly available Project website. Should complaints be received, the Project vibration coordinator shall work with the construction team to adjust activities (e.g., drilling instead of driving piles in closer</p>	Implement vibration control measures for daytime pile driving activity and limit daytime pile driving.	Ongoing during daytime construction hours; documentation provided to City prior to pile driving construction activities	Project Sponsor/ contractor(s)/ Project vibration coordinator	CDD

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<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
proximity to certain land uses) to the extent feasible and practical to reduce vibration or to reschedule activities for a less sensitive time. The Project vibration coordinator shall notify the Community Development Department of all vibration-related complaints and actions taken to address the complaints.				
<i>Project Mitigation Measure NOI-2.2: Vibration Control Measures for Annoyance from Daytime Construction Activities Excluding Pile Driving.</i> During daytime hours, construction activity involving a vibratory roller shall take place no closer than 90 feet from residential land uses, 60 feet from office or school land uses, and 35 feet from workshops or retail land uses, to the extent feasible and practical, subject to review and approval by the Community Development Department. In addition, equipment that generates vibration levels similar to a large bulldozer shall take place no closer than 50 feet from residential land uses, 35 feet from office or school land uses, and 20 feet from workshops or retail land uses, to the extent feasible and practical, subject to review and approval by the Community Development Department. Maintaining these distances between equipment and the nearest residential, school/office, or workshop land uses would ensure vibration levels would be below 0.032 PPV in/sec at the nearest residences, 0.063 PPV in/sec at the nearest school or office, and 0.126 PPV in/sec at the nearest workshop, per the requirements in ConnectMenlo Mitigation Measure NOISE-2a. When construction would require the use of these equipment types at distances closer than these to nearby sensitive uses, reduction measures shall be incorporated to the extent feasible and practical, such as the use of smaller or less vibration-intensive equipment. For example, the vibration level from a large bulldozer at 10 feet would be approximately 0.352 PPV in/sec, whereas the vibration level from a large bulldozer at the same distance would be approximately 0.012	Implement vibration control measures for annoyance from daytime construction activity, excluding pile driving, and limit vibratory roller use during daytime hours.	Ongoing during daytime construction hours; documentation provided to City prior to vibration related construction activities	Project Sponsor/ contractor(s)/ Project vibration coordinator	CDD

<b>WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM</b>				
<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<p>PPV in/sec. The vibration level from a small bulldozer at 10 feet would be below all daytime vibration thresholds from ConnectMenlo Mitigation Measure Noise-2a. The feasibility of reduction measures shall be subject to review and determination by the Community Development Department. In addition, the construction contractor shall appoint a Project vibration coordinator who will serve as the point of contact for vibration-related complaints during Project construction. Contact information for the Project vibration coordinator will be posted at the Project Site and on a publicly available Project website. Should complaints be received, the Project vibration coordinator shall work with the construction team to adjust activities (e.g., drilling instead of driving piles in closer proximity to certain land uses) to the extent feasible and practical to reduce vibration or to reschedule activities for a less sensitive time. The Project vibration coordinator shall notify the Community Development Department of all vibration-related complaints and actions taken to address the complaints.</p>				
<p><i>Project Mitigation Measure NOI-2.3: Vibration Control Measures for Annoyance from Nighttime Pile Installation Activity.</i> During the nighttime hours of 10:00 p.m. to 7:00 a.m., pile driving activity shall take place no closer than 540 feet from residential land uses to the extent feasible and practical. When pile installation work must take place closer than this distance to residences, alternative pile installation methods that do not require impact or vibratory pile driving shall be employed to the extent feasible and practical. Examples of alternative pile installation methods include auger cast pressure grouted displacement (APGD) piles, stone columns, cast-in-drilled-hole (CIDH) piles, or press-in piles. The feasibility of these alternative measures shall be subject to review and determination of the Community Development Department. In addition, the construction contractor shall appoint a Project vibration coordinator who will serve as the point of contact for</p>	<p>Implement vibration control measures for annoyance from nighttime pile driving and limit nighttime pile driving.</p>	<p>Ongoing during nighttime construction hours; documentation provided to City in advance of nighttime pile installation activities.</p>	<p>Project Sponsor/ contractor(s)/ Project vibration coordinator</p>	<p>CDD</p>

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vibration-related complaints during Project construction. Contact information for the Project vibration coordinator will be posted at the Project Site and on a publicly available Project website. Should complaints be received, the Project vibration coordinator shall work with the construction team to adjust activities (e.g., drilling instead of driving piles in closer proximity to certain land uses) to the extent feasible and practical to reduce vibration or to reschedule activities for a less sensitive time. The Project vibration coordinator shall notify the Community Development Department of all vibration-related complaints and actions taken to address the complaints.				
<b><i>IMPACT BEING ADDRESSED: Cumulative Noise Impacts. Cumulative development would result in a significant and unavoidable cumulative noise impact; thus, the Proposed Project would be a cumulatively considerable contributor to a significant cumulative noise impact. (Impact C-NOI-1)</i></b>				
Implement <i>Project Mitigation Measure NOI-1.1, NOI-1.2, and NOI-1.3, and ConnectMenlo Mitigation Measure NOI-1c, above.</i>	See above.	See above.	See above.	See above.
<b><i>Cultural Resources</i></b>				
<b><i>IMPACT BEING ADDRESSED: Historical Resources. The Proposed Project would cause a substantial adverse change in the significance of a historical resource, pursuant to Section 15064.5. (Impact CR-1)</i></b>				
<i>Project Mitigation Measure CR-1.1. Remove, Store, and Reinstall Dumbarton Cutoff Line Tracks.</i> The Project Sponsor shall remove the Dumbarton Cutoff Line tracks, store them during construction of the Proposed Project, and reinstall them in their historic location without irreparable damage to their character-defining historic fabric. The Project Sponsor will prepare a preservation plan specifying the practices to be employed to preserve the historical integrity of the tracks during their removal, storage, and reinstallation. These methods may include the following: using straps to lift rails rather than chains or other “metal on metal” methods, marking or numbering the track components so they can be replaced in their original sequence, and ensuring secure storage onsite or in a lay-down area. Following tunnel	Remove, store, and reinstall Dumbarton Cutoff Line tracks and implement a preservation plan to preserve the historical integrity of the tracks.	Preparation of plan prior to the issuance of demolition permits related to Willow Road Tunnel construction activities as well as storage and reinstallation of tracks during construction	Project Sponsor/ contractor(s)	CDD and San Mateo County Transit District (SamTrans)

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construction, the rail segments will be returned to their preconstruction location in Willow Road on new ballast and ties or other appropriate material for the rail crossing. The preservation plan shall be reviewed and approved by the City and SamTrans prior to the issuance of demolition permits related to construction activities within Willow Road, and the Project Sponsor will incorporate the recommended protective measures into construction specifications.				
<b><i>IMPACT BEING ADDRESSED: Archaeological Resources. The Proposed Project would cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5. (Impact CR-2)</i></b>				
Implement <i>Project Mitigation Measures TCR-1.1 and TCR-1.2, below (see Tribal Cultural Resources)</i>	See below.	See below.	See below.	See below.
<i>ConnectMenlo Mitigation Measure CULT-2a (Modified) Stop Work if Archaeological Material or Features Are Encountered during Ground-Disturbing Activities.</i> If a potentially significant subsurface cultural resource is encountered during ground-disturbing activities on any parcel in the city, all construction activities within a 100-foot radius of the find shall cease until a qualified archeologist determines whether the resource requires further study. In addition, if a potentially significant subsurface cultural resource is encountered during ground-disturbing activities within the California Department of Transportation (Caltrans) right-of-way, the Caltrans District 4 Office of Cultural Studies shall be immediately contacted at [510] 847-1977). All developers in the Study Area shall include a standard inadvertent discovery clause in every construction contract to inform contractors of these requirements. Any previously undiscovered resources found during construction activities shall be recorded on appropriate DPR forms and evaluated for significance in terms of CEQA criteria by a qualified archeologist in accordance with Project Mitigation Measure TCR-1.2.	Stop work if archaeological materials and/or cultural resources are discovered and determine whether resource requires further study.	Initiated after a find is made during construction, with regularly scheduled site inspections thereafter	Project Sponsor/ qualified archaeologist approved by CDD	CDD



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<b><i>IMPACT BEING ADDRESSED: Human Remains. The Proposed Project could disturb human remains, including those interred outside of dedicated cemeteries. (Impact CR-3)</i></b>				
Implement <i>Project Mitigation Measures TCR-1.1, TCR-1.2, TCR-2.1, and ConnectMenlo Mitigation Measure CULT-4 (Modified)</i> , below (see <i>Tribal Cultural Resources</i> )	See below.	See below.	See below.	See below.
<b><i>Biological Resources</i></b>				
<b><i>IMPACT BEING ADDRESSED: Indirect Impacts on Special-Status Species. The Proposed Project would result in substantial predation among special-status bird and mammal species that breed in the nearby brackish marshes and may forage, in the case of special-status birds, in the Project area. (Impact BIO-2)</i></b>				
<p><i>Project Mitigation Measure BIO-2.1: Feral Cat Management Program.</i> The Project Sponsor shall implement a feral cat management program, similar to the program developed in conjunction with the Peninsula Humane Society and the Society for the Prevention of Cruelty to Animals for the East Campus in 2013. Prior to the program being implemented, the program developer shall coordinate with local humane societies and animal service centers to identify facilities able to take cats. The program coordinator shall coordinate with facilities receiving cats to ensure that efforts are made to attempt to reunite any inadvertently trapped pet cat with its owners.</p> <p>For one week every 3 months (i.e., each quarter), three live trap cages, designed to trap domestic cats, shall be placed around the perimeter of the main Project Site in locations where feral cats are likely to prey upon native wildlife species. The traps shall be deployed and maintained by a qualified trapping professional (such as an animal management company or other trained and experienced animal or wildlife professional). The duration of traps shall be coordinated with the specified intake facility so that the facility is prepared and open to receive trapped cats.</p> <p>Each trap cage shall be monitored and maintained on a daily basis during the week when traps have been set to determine whether a cat has been caught and whether the trap has inadvertently captured a non-target species (e.g. pet cat or</p>	Implement a feral cat management program.	<p>Ongoing beginning with occupancy of the first building at a level of extensiveness commensurate with the level of development and based on reasonable data (e.g., nearby feral cat management efforts).</p> <p>Trap cages must be placed for 1 week every 3 months (i.e., each quarter) for the duration of Project operation.</p>	Project Sponsor/qualified trapping professional	CDD

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<p>wildlife). Traps shall not be deployed during extreme weather (e.g., heat, cold, rain). Traps shall contain water and be at least partially covered where feasible to attempt to reduce stress of trapped animals.</p> <p>If a cat is caught, the qualified professional shall transport the trapped cat as soon as practicable to the local humane society or animal service center that accepts trapped cats. If an animal other than a feral cat is caught in one of the traps, such as a suspected pet cat (e.g. cat with a collar) or wildlife, it shall be released immediately at the trap location.</p> <p>Because there are residences within and adjacent to the Project Site and the area where the Feral Cat Management Program will take place, efforts will be taken to ensure that residences are aware of the program to avoid inadvertent trapping and removal of pet cats. Visible signage shall be installed a week in advance of trapping and shall remain installed for the duration of trapping. The signs will have contact information should residents have questions or concerns.</p>				
<p><b><i>IMPACT BEING ADDRESSED: Impacts on Riparian Habitat and Other Sensitive Natural Communities. Project demolition and construction would affect riparian habitat and other sensitive natural communities. (Impact BIO-3)</i></b></p>				
<p><i>Project Mitigation Measure BIO-3.1: Avoid and Minimize Impacts on Riparian Habitat and Other Sensitive Natural Communities.</i> To the extent feasible, construction activities should avoid or minimize the removal of wetland vegetation or the placement of fill in the wetlands immediately north and northeast of the Project Site. If all direct impacts on wetlands (i.e., vegetation removal, loss, and fill) are avoided, Mitigation Measures BIO-3.2 and BIO-3.3 would not need to be implemented. However, if any wetland vegetation needs to be removed from the wetlands, or any fill needs to be placed in the wetlands, or post-construction conditions result in vegetation loss, Mitigation Measure BIO-3.2 (and Mitigation Measure BIO-3.3 if permanent impacts would occur) shall be implemented.</p>	<p>Avoid and minimize the removal of wetland vegetation or placement of fill in wetlands.</p>	<p>During construction</p>	<p>Project Sponsor/ contractor(s)</p>	<p>CDD</p>

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<p><i>Project Mitigation Measure BIO-3.2: In-Situ Restoration of Temporary Impacts.</i> If impacts on the wetlands immediately north of the Project Site are temporary, resulting in vegetation removal or temporary fill within the wetland but no permanent fill, then the wetland area shall be restored by the Project Sponsor following construction. The herbaceous seasonal wetlands are likely to become recolonized easily without the need for seeding and planting as long as their existing hydrology and topography are restored following temporary impacts. There is some potential for the arroyo willow clumps in the isolated forested wetland to regrow from cut stumps. In such a case, the in-situ restoration shall involve simply protecting the area with exclusion fencing following construction to allow for regrowth of vegetation.</p> <p>For temporary impacts involving removed willow root masses where in-situ restoration is still an option, a more detailed restoration plan shall be developed. The mitigation shall, at a minimum, achieve no net loss of wetland acreage (i.e., jurisdictional wetlands lost to fill shall be replaced through the creation or restoration of wetland habitat of the same type as the affected habitat [either forested or herbaceous seasonal] at a minimum ratio of 1:1 on an acreage basis or as otherwise required by any state or federal permitting agencies) or ecological functions and values through the restoration and enhancement of the affected wetlands to a level equal to or greater than the baseline condition of the existing wetlands. An in-situ restoration approach could involve salvaging wetland plant material prior to construction (e.g., willow cuttings or willow clumps, in the case of the isolated forested wetland) and then replanting the material if the seasonal timing of construction is appropriate. United States Army Corps of Engineers (USACE) and/or Regional Water Quality Control Boards (RWQCB) approvals may be required to authorize temporary impacts on these features.</p>	<p>If impacts on wetlands are temporary, restore wetlands to pre-construction conditions and prepare a restoration plan, if needed.</p>	<p>Immediately following construction (if applicable)</p>	<p>Project Sponsor</p>	<p>CDD/USACE/ RWQCB</p>

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<p><i>Project Mitigation Measure BIO-3.3: Provide Compensatory Mitigation.</i> If any permanent fill or permanent loss of the isolated forested wetland or the herbaceous seasonal wetlands occurs, the Project Sponsor shall provide new wetland habitat of the same type (either forested or herbaceous seasonal) to offset this impact, either through the creation, enhancement, or restoration of wetlands in an appropriate location or through the purchase of mitigation credits from a USACE- or RWQCB-approved wetland mitigation bank. The purchase of such credits shall serve as full mitigation for impacts on these wetland features.<sup>3</sup> If Project-specific creation, enhancement, or restoration of wetland habitat is implemented, habitat shall be restored or created at a minimum ratio of 2:1 (compensation: impact) on an acreage basis or as otherwise required by any state or federal permitting agencies. This ratio is not higher because of the relatively low quality of the wetlands on the Project Site relative to the more extensive, less fragmented wetlands elsewhere in the region, and it is not lower because of the temporal loss of wetland functions and values that would result from the lag between impacts on the wetlands and maturation of the mitigation habitat. USACE and/or RWQCB approvals may be required to authorize permanent impacts on this feature.</p> <p>To the extent that compensatory mitigation is not provided by purchasing mitigation credits from a USACE- or RWQCB-approved wetland mitigation bank, then, if feasible, compensation shall be provided by creating, enhancing, or restoring wetland habitat so as to achieve the 2:1 ratio somewhere in San Mateo County or as otherwise required by any state or federal permitting agencies. A qualified biologist</p>	<p>If impacts on wetlands are permanent, provide new wetland habitat of the same type or purchase mitigation credits to offset any impacts on wetlands and prepare a wetland mitigation and monitoring plan, if needed.</p>	<p>Immediately following construction (if applicable)</p>	<p>Project Sponsor/ qualified biologist</p>	<p>CDD/USACE/ RWQCB</p>

<sup>3</sup> Refer to U.S. Army Corps of Engineers 33 CFR Part 325 and State Water Resources Control Board’s *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* (April 2, 2019), pages 28 and 29.

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<p>shall develop a wetland mitigation and monitoring plan that describes the mitigation, including the following components (or as otherwise modified by regulatory agency permitting conditions):</p> <ul style="list-style-type: none"> <li>• Summary of habitat impacts and proposed mitigation ratios;</li> <li>• Goal of the restoration to achieve no net loss of habitat functions and values;</li> <li>• Location of mitigation site(s) and description of existing site conditions;</li> <li>• Mitigation design;                             <ul style="list-style-type: none"> <li>○ Existing and proposed site hydrology;</li> <li>○ Grading plan, if appropriate, including bank stabilization or other site stabilization features;</li> <li>○ Soil amendments and other site preparation elements, as appropriate; Planting plan;</li> <li>○ Irrigation and maintenance plan;</li> <li>○ Remedial measures and adaptive management; and</li> </ul> </li> <li>• Monitoring plan, including final and performance criteria, monitoring methods, data analysis, reporting requirements, and monitoring schedule. Success criteria shall include quantifiable measurements of wetland vegetation type (e.g., dominance by natives), the appropriate extent for the restoration location, and the provision of ecological functions and values equal to or exceeding those in the affected wetland habitat. At a minimum, success criteria shall include following:                             <ul style="list-style-type: none"> <li>○ At Year 5 post-mitigation, at least 75 percent of the mitigation site shall be dominated by native hydrophytic vegetation.</li> </ul> </li> </ul> <p>The wetland mitigation and monitoring plan must be approved by the City and other applicable agencies prior to the wetland impacts and must be implemented within 1 year</p>				

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after the discharge of fill into wetland features. Alternately, offsite mitigation could be provided through the purchase of mitigation credits at an agency-approved mitigation bank, as noted above.				
<b><i>IMPACT BEING ADDRESSED: Impacts on State and/or Federally Protected Wetlands. Project demolition and construction could affect state and/or federally protected wetlands. (Impact BIO-4)</i></b>				
Implement Mitigation Measures BIO-3.1, BIO-3.2, and BIO-3.3, above.	See above.	See above.	See above.	See above.
<b><i>IMPACT BEING ADDRESSED: Impacts on Wildlife Movement and Native Wildlife Nursery Sites. The removal of buildings, trees, shrubs, or woody vegetation and the construction of new buildings and installation of lighting could affect native migratory birds. (Impact BIO-5)</i></b>				
<p><i>Project Mitigation Measure BIO-5.1: Avoidance and Pre-construction Surveys for Nesting Migratory Birds.</i> The Project Sponsor shall implement the following measures to reduce impacts on nesting migratory birds:</p> <ul style="list-style-type: none"> <li>To the extent feasible, construction activities shall be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season, all impacts on nesting birds protected under the MBTA and California Fish and Game Code will be avoided. The nesting season for most birds in San Mateo County extends from February 1 through August 31.</li> <li>If it is not possible to schedule construction activities between September 1 and January 31, then preconstruction surveys for nesting birds shall be conducted by a qualified ornithologist to ensure that no nests of migratory birds will be disturbed during Project implementation. Surveys shall be conducted no more than 7 days prior to the initiation of construction activities for each construction phase. During this survey, the ornithologist shall inspect all trees and other potential nesting habitats (e.g., trees, shrubs, California annual grasslands, buildings) in and immediately adjacent to the impact areas for migratory bird nests.</li> </ul>	<p>Avoid construction during the nesting season from February 1 through August 31; if not feasible, conduct pre-construction surveys for birds and potential nesting habitat.</p> <p>Establish a construction-free buffer zone if an active nest is found.</p>	<p>Ongoing during construction.</p> <p>In the event construction activities are initiated between February 1 through August 31, preconstruction nesting surveys of potential nesting habitat onsite shall be conducted no earlier than 7 days prior to start of construction activities for each applicable construction phase.</p>	Project Sponsor/ qualified ornithologist	CDD

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<ul style="list-style-type: none"> <li>If an active nest is found within trees or other potential nesting habitats that would be disturbed by construction activities, a construction-free buffer zone (typically 300 feet for raptors and 100 feet for other species) will be established around the nest to ensure that species that are protected under the MBTA and California Fish and Game Code will not be disturbed during Project implementation. The ornithologist shall determine the extent of the buffer.</li> <li>If construction activities will not be initiated until after the start of the nesting season, all potential nesting substrates (e.g., bushes, trees, grasses, and other vegetation) that are scheduled to be removed by the Proposed Project may be removed prior to the start of the nesting season (i.e., prior to February 1). This would preclude the initiation of nests in this vegetation and prevent any potential delay for the Proposed Project because of the presence of active nests in these substrates.</li> </ul>				
<p><i>Project Mitigation Measure BIO-5.2: Atrium Bird-safe Design Requirements.</i> The Project Sponsor shall implement the following measures to reduce impacts on migratory birds due to construction of the atrium:</p> <ul style="list-style-type: none"> <li>The Project Sponsor shall treat 100 percent of the glazing on the dome-shaped portions of the atrium’s façades (i.e., all areas of the north façade and all areas of the south façade above the Elevated Park) with a bird-safe glazing treatment to reduce the frequency of collisions. This glazing shall have a Threat Factor of 15 or less.<sup>4</sup> Because a Threat Factor is a nonlinear index, its value is not</li> </ul>	<p>Implement bird-safe design standards for the proposed atrium.</p> <p>Monitor and survey bird collisions.</p> <p>Implement modifications to</p>	<p>Design standards for atrium prior to issuance of the building permit for the building shell and for the duration of use at the building</p>	<p>Project Sponsor/ architect/ qualified biologist</p>	<p>CDD</p>

<sup>4</sup> A material’s Threat Factor, as assigned by the American Bird Conservancy, refers to the level of danger posed to birds, based on the birds’ ability to perceive the material as an obstruction, as tested using a “tunnel” protocol (a standardized test that uses wild birds to determine the relative effectiveness of various products at deterring bird collisions). The higher the Threat Factor, the greater the risk that collisions will occur. An opaque material will have a Threat Factor of 0, and a completely transparent material will have a Threat Factor of 100. Threat Factors for many commercially available façade materials can be found at <https://abcbirds.org/wp-content/uploads/2021/01/Masterspreadsheet-1-25-2021.xlsx>.

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<p>equivalent to the percent reduction in collisions that a glazing product provides. However, products with lower Threat Factors result in fewer bird collisions.</p> <ul style="list-style-type: none"> <li>• The Project Sponsor shall treat 100 percent of the glazing on the atrium’s east and west façades with a bird-safe glazing treatment to reduce the frequency of collisions. This glazing shall have a Threat Factor of 15 or less.</li> <li>• Interior trees and woody shrubs shall be set back from the atrium’s east, west, and non-sloped (i.e., vertical/perpendicular to the ground) portions of the south façades by at least 50 feet to reduce the potential for collisions with these facades due to the visibility of interior trees. This 50-foot distance is greater than the distance used in the project design for the north and sloped portions of the south facades (e.g., 20-25 feet for the north façade) due to the vertical nature of the east, west, and non-sloped portion of the south façades, as opposed to the articulated nature of the north and sloped portions of the south façades (which is expected to reduce the visibility of internal vegetation to some extent), as well as the direct line-of-sight views between interior and exterior vegetation through the east, west, and non-sloped portions of the south façades compared to the north façade (where internal vegetation is elevated above exterior vegetation). Interior trees and shrubs that are not visible through the east, west, and south façades may be planted closer than 50 feet to glass façades.</li> <li>• Because the glass production process can result in substantial variations in the effectiveness of bird-safe glazing, a qualified biologist will review physical samples of all glazing to be used on the atrium to confirm that the bird-safe frit will be visible to birds under various lighting conditions and expected to be effective.</li> </ul>	<p>the atrium to reduce collisions if a hot spot is identified.</p>	<p>Survey bird collisions for a minimum of 2 years following construction.</p>		



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<ul style="list-style-type: none"> <li>• The Project Sponsor shall monitor bird collisions around the atrium for a minimum of 2 years following construction to identify any collision “hot spots” (i.e., areas where collisions occur repeatedly). A monitoring plan for the atrium shall be developed by a qualified biologist and shall include focused surveys for bird collisions from late April through May (spring migration), September through October (fall migration), and mid-November through mid-January (winter) to maximize the possibility of detecting bird collisions that might occur. Surveys of the atrium shall be conducted daily for 3 weeks during each of these periods (i.e., 21 consecutive days during each season, for a total of 63 surveys per year). In addition, for the 2-year monitoring period, surveys of the atrium shall be conducted the day following nighttime events during which temporary lighting exceed would typical levels (i.e., levels specified in the International Dark-Sky Association’s defined lighting zone, LZ-2 [Moderate Ambient], from dusk until 10:00 p.m., or 30 percent below these levels from 10:00 p.m. to midnight). The applicant can assign responsibility for tracking events and notifying the biologist when a survey is needed to a designated individual who is involved in the planning and scheduling of atrium events. The timing of the 63 seasonal surveys (e.g., morning or afternoon) shall vary on the different days to the extent feasible; surveys conducted specifically to follow nighttime events shall be conducted in the early morning.</li> <li>• At a frequency of no less than every 6 months, a qualified biologist shall review the bird collision data for the atrium in consultation with the City to determine whether any potential hot spots are present (i.e., if collisions have occurred repeatedly at the same location). A “<i>potential hot spot</i>” is defined as a cluster of three or more collisions that</li> </ul>				

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<p>occur within one of the 3-week monitoring periods described above at a given location on the atrium. The “location” shall be identified by the qualified biologist as makes sense for the observed collision pattern, and may consist of a single pane of glass, an area of glass adjacent to a landscape tree or light fixture, the 8,990-square-foot vertical façade beneath the Elevated Park, the façade adjacent to the vegetation at the Elevated Park, the atrium’s east façade, the atrium’s west façade, or another defined area where the collision pattern is observed. “Location” shall be defined based on observations of (1) collision patterns and (2) the architectural, lighting, and/or landscape features that contributed to the collisions and not arbitrarily determined (e.g., by assigning random grids). If any such potential hot spots are found, the qualified biologist shall provide an opinion as to whether the potential hot spots will affect bird populations over the long term to the point that additional measures (e.g., light adjustments, planting of vegetation) will be needed to reduce the frequency of bird strikes at the hot spot location in order to reduce impacts to a less-than-significant level under CEQA (i.e., whether it constitutes an actual “hotspot”). This determination shall be based on the number of birds and the species of birds that collide with the atrium over the monitoring period. In addition, a “hotspot” is automatically defined if a cluster of five or more collisions are identified at a given “location” on the atrium within one of the three-week monitoring periods described above. If a hotspot is identified, additional measures will be implemented at the potential hotspot location at the atrium; these may include one or more of the following options in the area of the hotspot depending on the cause of the collisions:</p>				

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<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<ul style="list-style-type: none"> <li>○ Adding a visible bird-safe frit pattern, netting, exterior screens, art, printed sheets, interior shades, grilles, shutters, exterior shades, or other features to untreated glazing (i.e., on the façade below the Elevated Park) to help birds recognize the façade as a solid structure.</li> <li>○ Installing interior or exterior blinds on buildings within the atrium to prevent light from spilling outward though glazed façades at night.</li> <li>○ Reducing lighting by dimming fixtures, redirecting fixtures, turning lights off, and/or adjusting the programmed timing for dimming/shutoff.</li> <li>○ Replacing certain light fixtures with new fixtures to increase shielding or redirect lighting.</li> <li>○ Adjusting or reducing lighting during events.</li> <li>○ Adjusting the timing of events to reduce the frequency during certain times of year (e.g., spring and/or fall migration) when relatively high numbers of collisions occur.</li> <li>○ Adjusting landscape vegetation by removing, trimming, or relocating trees or other plants (e.g., moving them farther from glass) or blocking birds' views of vegetation through glazing (e.g., using a screen or other opaque feature).</li> <li>● If modifications to the atrium are implemented to reduce collisions at a hot spot, 1 year of subsequent focused monitoring of the hot-spot location shall be performed to confirm that the modifications effectively reduced bird collisions to a less-than-significant level under CEQA. In the event that a hot-spot is detected at a time when there is less than one year remaining of the initial 2-year monitoring period, then this one year of subsequent monitoring of that hot-spot would extend beyond the 2-year monitoring period described above.</li> </ul>				

<b>WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM</b>				
<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<p><i>Project Mitigation Measure BIO-5.3: Lighting Design Requirements.</i> The Project Sponsor shall prepare a lighting design plan that incorporates and implements the following measures to reduce lighting impacts on migratory birds. Prior to implementation of the lighting design plan, a qualified biologist shall review the final lighting design plan to confirm that the required measures are incorporated:</p> <ul style="list-style-type: none"> <li>• To the maximum extent feasible, up-lighting (i.e., lighting that projects upward above the fixture) shall be avoided in the Project design. All lighting shall be fully shielded to prevent illumination from shining upward above the fixture. If up-lighting cannot be avoided in the Project design, up-lights shall be shielded and/or directed such that no luminance projects above/beyond the objects at which they are directed (e.g., trees and buildings) and no light shines directly into the eyes of a bird flying above the object. If the objects themselves can be used to shield the lights from the sky beyond, no substantial adverse effects on migrating birds are anticipated.</li> <li>• All lighting shall be fully shielded to prevent it from shining outward and toward Bay habitats to the north. No light trespass shall be permitted more than 80 feet beyond the Project Site’s northern property line (i.e., beyond the Dumbarton Rail Corridor).</li> <li>• With respect to exterior lighting in the northern portion of the Project Site (i.e., areas north of Main Street and Office Buildings 03 and 05 surrounding the hotel, Town Square retail pavilion, Office Building 04, event building, and North Garage), and with respect to interior portions of the atrium, exterior lighting shall be minimized (i.e., outdoor lumens shall be reduced by at least 30 percent, consistent with recommendations from the International Dark-Sky Association [2011]) from 10:00 p.m. until sunrise, except as needed for safety and compliance with Menlo Park</li> </ul>	<p>Implement lighting design measures to reduce lighting impacts on migratory birds.</p>	<p>Prior to issuance of building permit</p> <p>Ongoing during operation of Project</p>	<p>Project Sponsor/ architect</p>	<p>CDD/qualified biologist</p>

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<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<p>Municipal Code. With respect to Office Buildings 01, 02, 03, 05, and 06, South Garage, and the residential/mixed-use buildings, exterior lighting shall be minimized (i.e., total outdoor lighting lumens shall be reduced by at least 30 percent or extinguished, consistent with recommendations from the International Dark-Sky Association [2011]) from midnight until sunrise, except as needed for safety and City code compliance.</p> <ul style="list-style-type: none"> <li>• Temporary lighting that exceeds minimal site lighting requirements may be used for nighttime social events. This lighting shall be switched off no later than midnight. No exterior up-lighting (i.e., lighting that projects upward above the fixture, including spotlights) shall be used during events.</li> <li>• Lights shall be shielded and directed so as not to spill outward from the elevator/stair towers and into adjacent areas.</li> <li>• Interior or exterior blinds shall be programmed to close on north-facing windows of buildings within the atrium from 10:00 p.m. to sunrise to prevent light from spilling outward.</li> <li>• Accent lighting within the atrium shall not be used to illuminate trees or vegetation. Alternatively, the applicant shall provide documentation to the satisfaction of a qualified biologist that the illumination of vegetation and/or structures within the atrium by accent lighting and/or up-lighting will not make these features more conspicuous to the human eye from any elevation outside the atrium compared to ambient conditions within the atrium. The biologist shall submit a report to the City following completion of the lighting design, documenting compliance with this requirement.</li> </ul>				

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<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<b><i>IMPACT BEING ADDRESSED: Impact BIO-6: Conflicts with Any Local Policies or Ordinances that Protect Biological Resources. The Project would result in conflicts with the Menlo Park Municipal Code. (Impact BIO-6)</i></b>				
Implement Mitigation Measures BIO-2.1, BIO-3.1 through BIO-3.3, and BIO-5.2, above.	See above.	See above.	See above.	See above.
<b><i>Geology and Soils</i></b>				
<b><i>IMPACT BEING ADDRESSED: Paleontological Resources. The Proposed Project could destroy a unique paleontological resource or site. (Impact GS-5)</i></b>				
<i>ConnectMenlo Mitigation Measure CULT-3: Conduct Protocol and Procedures for Encountering Paleontological Resources.</i> In the event that fossils or fossil-bearing deposits are discovered during ground-disturbing activities anywhere in the City, excavations within a 50-foot radius of the find shall be temporarily halted or diverted. Ground disturbance work shall cease until a City-approved, qualified paleontologist determines whether the resource requires further study. The paleontologist shall document the discovery as needed (in accordance with Society of Vertebrate Paleontology standards [Society of Vertebrate Paleontology 1995]), evaluate the potential resource, and assess the significance of the find under the criteria set forth in CEQA Guidelines Section 15064.5. The paleontologist shall notify the appropriate agencies to determine the procedures that would be followed before construction activities would be allowed to resume at the location of the find. If avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of construction activities on the discovery. The excavation plan shall be submitted to the City of Menlo Park for review and approval prior to implementation, and all construction activity shall adhere to the recommendations in the excavation plan.	Conduct protocol and procedures for encountering paleontological resources.	During construction, in the event that fossils or fossil-bearing deposits are discovered	Project Sponsor/qualified paleontologist approved by CDD	CDD
<i>Project Mitigation Measure PALEO-1: Conduct Worker Awareness Training.</i> Before the start of any excavation or grading activities, the construction contractor will retain a qualified paleontologist, as defined by the SVP, who is experienced in teaching non-specialists. The qualified	Conduct worker awareness training.	Prior to any excavation or grading activities	Project Sponsor/contractor(s)/qualified paleontologist	CDD

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<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<p>paleontologist will train all construction personnel who are involved with earthmoving activities, including the site superintendent, regarding the possibility of encountering fossils, the appearance and types of fossils that are likely to be seen during construction, and proper notification procedures should fossils be encountered. Procedures to be conveyed to workers include halting construction within 50 feet of any potential fossil find and notifying a qualified paleontologist, who will evaluate the significance.</p> <p>The qualified paleontologist will also make periodic visits during earthmoving in high sensitivity sites to verify that workers are following the established procedures.</p>				
<p><b><i>IMPACT BEING ADDRESSED: Cumulative Geology and Soil Impacts. Cumulative development would result in a less than significant cumulative impact to geology, soils, and seismicity, and thus the Proposed Project would not be a cumulatively considerable contributor to any significant cumulative impact to geology, soils, and seismicity. Cumulative development would result in a less-than-significant cumulative impact with mitigation to paleontological resources and the Proposed Project would not be a cumulatively considerable contributor to any significant cumulative impact. (Impact C-GS-1)</i></b></p>				
<p>Implement ConnectMenlo Mitigation Measure CULT-3, above.</p>	<p>See above.</p>	<p>See above.</p>	<p>See above.</p>	<p>See above.</p>
<p><b><i>Hydrology</i></b></p>				
<p><b><i>IMPACT BEING ADDRESSED: Water Quality. The Proposed Project could violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface water or groundwater quality. (Impact HY-1)</i></b></p>				
<p><i>Project Mitigation Measure HY-1.1: Implement Construction Dewatering Treatment (if necessary). If dewatering is needed to complete the Proposed Project, and if water from dewatering is discharged to a storm drain or surface water body, dewatering treatment may be necessary if groundwater exceeding water quality standards is encountered during excavation. Because there is potential for groundwater to be contaminated with VOCs or fuel products at the Project Site, the Project Sponsor would be required to comply with the San Francisco Bay Regional Water Board’s VOC and Fuel General Permit (Order No. R2-2018-0050) if groundwater exceeding water quality standards is encountered.</i></p>	<p>Implement construction dewatering treatment if groundwater is encountered.</p>	<p>During construction (if necessary)</p>	<p>Project Sponsor/ contractor(s)</p>	<p>CDD</p>

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<p>If dewatering requires discharges to the storm drain system or other water bodies, the water shall be pumped to a tank and tested using grab samples and sent to a certified laboratory for analysis. If it is found that the water does not meet water quality standards, it shall be treated as necessary prior to discharge so that all applicable water quality objectives (as noted in Table 3.11-2) are met or it shall be hauled offsite instead for treatment and disposed of at an appropriate waste treatment facility that is permitted to receive such water. The water treatment methods selected shall remove contaminants in the groundwater to meet discharge permit requirements while achieving local and state requirements, subject to approval by the San Francisco Bay Regional Water Board. Methods may include retaining dewatering effluent until particulate matter has settled before discharging it or using infiltration areas, filtration techniques, or other means. The contractor shall perform routine inspections of the construction area to verify that water quality control measures are properly implemented and maintained, observe the water (i.e., check for discoloration or an oily sheen), and perform other sampling and reporting activities prior to discharge. The final selection of water quality control measures shall be submitted in a report to the San Francisco Bay Regional Water Board for approval prior to construction. If the results from the groundwater laboratory do not meet water quality standards and the identified water treatment measures cannot ensure that treatment meets all standards for receiving water quality, then the water shall be hauled offsite instead for treatment and disposal at an appropriate waste treatment facility that is permitted to receive such water.</p>				
<p><b><i>IMPACT BEING ADDRESSED: Conflict or Obstruct a Water Resource Management Plan. The Proposed Project could conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan. (Impact HY-5)</i></b></p>				
<p>Implement <i>Project Mitigation Measure HY-1.1</i>, above.</p>	<p>See above.</p>	<p>See above.</p>	<p>See above.</p>	<p>See above.</p>
<p><b><i>Hazards and Hazardous Materials</i></b></p>				



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<b><i>IMPACT BEING ADDRESSED: Upset and Accident Conditions Involving Hazardous Materials. The Proposed Project could create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. (Impact HAZ-2)</i></b>				
<p><i>ConnectMenlo Mitigation Measure HAZ-4a: Environmental Site Management Plan. Construction of any site in the City with known contamination shall be conducted under a Project-specific Environmental Site Management Plan (ESMP) prepared in consultation with the Regional Water Quality Control Board (RWQCB) or the Department of Toxic Substances Control (DTSC), as appropriate. The purpose of the ESMP is to protect construction workers, the general public, the environment, and future site occupants from subsurface hazardous materials previously identified at the site and address the possibility of encountering unknown contamination or hazards in the subsurface. The ESMP shall summarize soil and groundwater analytical data collected on the site during past investigations; identify management options for excavated soil and groundwater, if contaminated media are encountered during deep excavations; and identify monitoring, irrigation, or wells that require proper abandonment in compliance with local, state, and federal laws, policies, and regulations.</i></p> <p><i>The ESMP shall include measures for identifying, testing, and managing soil and groundwater suspected of or known to contain hazardous materials. The ESMP shall 1) provide procedures for evaluating, handling, storing, testing, and disposing of soil and groundwater during excavation and dewatering activities, respectively; 2) describe required worker health and safety provisions for all workers who could be exposed to hazardous materials, in accordance with state and federal worker safety regulations; and 3) designate the personnel responsible for implementation of the ESMP.</i></p>	<p>Prepare an Environmental Site Management Plan.</p>	<p>During the building permit and site development review process and prior to permit issuance</p>	<p>Project Sponsor/ personnel designated in the ESMP</p>	<p>DTSC/ CDD</p>

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<i>Project Mitigation Measure HAZ-2.1: Phase I Environmental Site Assessment for the Willow Road Tunnel under Dumbarton Rail Corridor and Willow Road. For the offsite improvement in the area where the Willow Road Tunnel passes under the Dumbarton Rail Corridor and Willow Road, a Phase I ESA shall be performed by a licensed environmental professional. The Phase I ESA shall identify RECs at the site and indicate whether a Phase II ESA is required in order to evaluate contamination at the site.</i>	Perform/obtain a Phase I Site Assessment for the Willow Road Tunnel.	Prior to construction of the Willow Road Tunnel	Project Sponsor/ licensed environmental professional	CDD
<b><i>IMPACT BEING ADDRESSED: Exposure to Schools. The Proposed Project would not emit hazardous emissions or involve handling hazardous or acutely hazardous materials, substances, or waste within 0.25 mile of an existing or proposed school. (Impact HAZ-3)</i></b>				
Implement <i>Project Mitigation Measure HAZ-2.1 and ConnectMenlo Mitigation Measure HAZ-4a</i> , above.	See above.	See above.	See above.	See above.
<b><i>IMPACT BEING ADDRESSED: Cumulative Hazards and Hazardous Materials Impacts. Cumulative development would not result in a significant cumulative impact from hazards and hazardous materials, and the Proposed Project would not be a cumulatively considerable contributor to such a cumulative impact. (Impact C-HAZ-1)</i></b>				
Implement <i>ConnectMenlo Mitigation Measure HAZ-4a</i> , above.	See above.	See above.	See above.	See above.
<b><i>Tribal Cultural Resources</i></b>				
<b><i>IMPACT BEING ADDRESSED: Tribal Cultural Resources. The Proposed Project could cause a substantial adverse change in the significance of a tribal cultural resource, as defined in PRC Section 21074. (Impact TCR-1)</i></b>				
<i>Project Mitigation Measure TCR-1.1: Avoidance and Mitigation of Impacts</i> <b>Plan Check</b> Prior to issuance of grading permits, the Project Sponsor shall ensure and the City shall verify that the applicable grading plans that require ground-disturbing excavation clearly indicate: <ul style="list-style-type: none"> <li>That there is potential for exposing buried cultural resources, including tribal cultural resources (“TCRs”) and Native American burials; and</li> <li>That excavations associated with soil remediation, removal of below grade utilities, and initial mass</li> </ul>	Preservation in place of known tribal cultural resources through plan check and measures for the Core, Perimeter, High Sensitivity Area, and existing known reburials.	Prior to the issuance of grading permits (plan check and field manual)  During construction (implement design measures and preservation)	Project Sponsor/ contractor(s)	CDD

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<p>grading at the main Project Site and all ground disturbing activities within the Core and Perimeter (including the High Sensitivity Area) require the presence of an archaeological monitor and tribal monitor in accordance with the Archaeological and Tribal Cultural Resources Monitoring and Treatment Protocol and Plan (“ATMTTP”), as defined in Mitigation Measure TCR-1.2; and</p> <ul style="list-style-type: none"> <li>• That all ground disturbing activities require compliance with the ATMTTP.</li> </ul> <p>All archaeological site information supplied to the contractor shall be considered and marked confidential. Any no-disturbance zones shall be labelled as environmentally sensitive areas.</p> <p>Prior to issuance of grading permits for the Project, the Project Sponsor and City shall, with input from the tribes that engaged in consultation with the City on the Proposed Project pursuant to Assembly Bill 52 (“Consulting Tribes”), develop a non-confidential field manual summarizing the approved TCR mitigation measures and the approved ATMTTP requirements. This list shall be provided to all relevant personnel implementing TCR mitigation measures. Archeological and tribal monitors shall be invited to attend all tailgate safety meetings at which safety concerns and other pertinent information regarding current construction activities are presented.</p> <p><b><u>Measures for the Core</u></b></p> <p>The Project Sponsor shall avoid or mitigate ground-disturbing excavation in the Core as detailed below.</p> <ul style="list-style-type: none"> <li>• Ground disturbance into the existing culturally affected soil of the Core is prohibited. The following performance standards for capping, minimizing</li> </ul>				

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<p>construction loading, and preservation in place of the Core shall apply.</p> <p><b><u>Capping of Core</u></b></p> <ul style="list-style-type: none"> <li>• The Project Sponsor shall install a culturally sterile engineered cap of four to seven feet to cover the cultural deposits within the Core and preserve the Core in place. Tribal and archaeological monitoring shall be required during the installation of the fill cap on the Core.</li> <li>• Onsite soil material is suitable as fill material provided that it is processed to remove concentrations of organic material, debris, and particles greater than six inches in maximum dimension; oversized particles shall either be removed from the fill or broken down to meet the requirement. Imported fill material shall meet the above requirements and have a plasticity index of less than 20. Material used for engineered fill shall not contain or introduce contaminants in excess of applicable Department of Toxic Substances Control (“DTSC”) Environmental Screening Levels (“ESLs”). Any TCR materials within the soil matrix that are identified as TCRs by a tribal monitor shall be treated in accordance with the ATMTTP and shall not be broken down or used in fill.</li> <li>• Construction activities shall be conducted in a manner that protects against penetration of the culturally affected soil within the Core and reduces the potential for disturbance from concentrated surface loads. The following measures shall be implemented within the Core during fill placement and any subsequent construction to reduce potential impacts on subsurface archaeological and cultural materials.                         <ul style="list-style-type: none"> <li>○ An elevation contour plan shall be created to guide the surface preparation necessary to place the fill cap</li> </ul> </li> </ul>				

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<p>within the Core boundaries. The plan shall show the top of the culturally affected soil elevation to establish a six-inch-thick protection layer above the culturally affected soil layer, below which soil excavation or penetration shall not be permitted.</p> <ul style="list-style-type: none"> <li>○ Tree root balls from trees removed within the Core boundary that have roots extending within an area 24 inches from the culturally affected soil layer shall be left in place. Stumps may be ground flat with the existing grade.</li> <li>○ Clearing of surface vegetation within the Core boundary shall be performed through hand grubbing.</li> <li>○ Ground surface preparation prior to fill placement within the Core boundary shall use relatively light equipment (3,000 to 5,000 pounds), such as a walk-behind roller, to densify the six-inch-thick protection material. The use of relatively light equipment reduces potential for densification below the buffer zone.</li> <li>○ A layer of geogrid reinforcement shall be placed over the prepared ground surface within the Core boundary. Geogrid shall consist of a triaxial grid (e.g., TX140 or approved equivalent). A second layer of geogrid shall be placed to reinforce the engineered fill approximately 24 inches above the base geogrid layer. Geogrid shall be installed in accordance with the manufacturer’s specifications. After placement of the geogrid, there shall be no soil disturbance in the Core below the top layer of geogrid.</li> <li>○ Once the six-inch-thick protection layer has been prepared and the base reinforcement grid placed within the Core boundary, engineered fill may be placed in eight-inch lifts and compacted using a single-drum ride-on sheepsfoot roller. The roller shall not be parked or left stationary on the Core</li> </ul>				

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<p>overnight. If yielding subgrade is encountered in the base protection layer, the geotechnical consultant may recommend placement of additional layers of reinforcement within the engineered fill. This determination will be based on field observations during preparation of the ground surface.</p> <ul style="list-style-type: none"> <li>○ To protect the culturally affected soil in the Core, construction and other transitory vehicle traffic (with the exception of the equipment necessary to place and compact the engineered fill) shall not be permitted over the Core until after engineered fill placement is complete to provide a buffer between mound material and concentrated vehicle loads. Once fill placement is complete, the culturally affected soil will be protected, but construction vehicles and construction equipment directly on the Core nonetheless shall continue to be limited to the minimum number necessary to complete construction of the Proposed Project. Vehicles shall not be left stationary or parked on the Core overnight. The contractor shall ensure that vehicles and equipment will not leak fuel or other liquids when operating on the Core. Leaking vehicles and equipment shall be promptly removed from the Core area and repaired before use is resumed on the Core.</li> </ul> <p><u>Temporary Construction Loading at Core</u>                      The following measures shall be implemented within the Core during scaffold erection to reduce potential impacts on subsurface cultural materials:</p> <ul style="list-style-type: none"> <li>• Scaffolds placed on the Core shall be installed no earlier than three months after the engineered fill placement related to sea-level rise.</li> </ul>				

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<ul style="list-style-type: none"> <li>• Scaffolds shall use 16-foot square bases on top of the engineered fill cap. Minor leveling of the fill cap shall be allowed at each scaffold installation, but excavation or other penetrations into the fill surface shall not be permitted except for equipment or the temporary auxiliary structures needed to install the atrium frame and associated glass. There shall be no soil disturbance in the Core below the top layer of geogrid.</li> <li>• Scaffolds shall be removed promptly after installation and inspection of the framework and glass within the atrium to remove pressure from the engineered fill over the Core.</li> </ul> <p><u>Post-Construction Preservation in Place at the Core</u></p> <ul style="list-style-type: none"> <li>• Post-construction, there shall be no soil disturbance in the Core below the top layer of geogrid. Any surface structural elements, irrigation, utilities, and infrastructure shall be located only upon/within the engineered fill and shall not penetrate the top layer of geogrid.</li> <li>• The Project Sponsor shall comply with Mitigation Measure TCR-1.3, <i>Post-Construction Preservation in Place</i>.</li> </ul> <p><b><u>Measures for the Perimeter</u></b></p> <p>The Project Sponsor shall avoid or mitigate ground-disturbing excavation in the Perimeter Area as follows:</p> <ul style="list-style-type: none"> <li>• The Project Sponsor shall install a culturally sterile engineered cap of four to seven feet to cover the cultural deposits within the Perimeter.</li> <li>• Excavation through the cap shall follow the procedures in <i>Mitigation Measure TCR-1.2</i>.</li> <li>• Tribal monitoring shall be required during all ground disturbing site work in the Perimeter; provided that, once culturally affected soil has been removed, stockpiled, and treated in accordance with the ATMTTPP, no additional tribal monitoring of ground disturbance is required in the area where such soil was removed.</li> </ul>				

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<p><b><u>Measures for the High Sensitivity Area</u></b>                      The Project Sponsor shall avoid or mitigate ground-disturbing excavation in the High Sensitivity Area as follows:</p> <ul style="list-style-type: none"> <li>• For portions of the High Sensitivity Area located within the Core, the Project Sponsor shall comply with the mitigation measures for the Core identified above, including but not limited to the tribal monitoring provisions.</li> <li>• For portions of the High Sensitivity Area located within the Perimeter, the Project Sponsor shall comply with the mitigation measures for the Perimeter identified above, including but not limited to the tribal monitoring provisions.</li> </ul> <p><b><u>Measures for Existing Known Reburials</u></b></p> <ul style="list-style-type: none"> <li>• Existing known reburials shall be preserved in place.</li> <li>• Existing known reburials will be protected by a layer of geogrid prior to the placement of engineered fill.</li> <li>• Tribal monitoring in the vicinity of existing known reburials shall be required in accordance with the ATMTTP.</li> </ul>				
<p><i>Project Mitigation Measure TCR-1.2: Archaeological and Tribal Cultural Resource Monitoring and Treatment Protocol and Plan.</i>                      The Project Sponsor and archaeological consultant, in consultation with the Consulting Tribes, shall develop an Archaeological and Tribal Cultural Resource Monitoring and Treatment Protocol and Plan (“ATMTTP”) to guide archaeological and tribal cultural resource monitoring of ground-disturbing site work and provide for appropriate treatment of any archeological materials and tribal cultural resources exposed during construction, as described below. The ATMTTP will apply to the entire Project Site and all off-site Project improvements. In addition, specific protocols that pertain to the Core, Perimeter, and High Sensitivity Area will</p>	Develop an ATMTTP to guide archaeological and tribal monitoring.	Prior to issuance of the first grading permit and any physical ground-disturbing activity	Project Sponsor/ approved archaeological consultant/ consulting tribe(s)	CDD



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<p>be distinguished from general unanticipated discovery response procedures that apply in other areas. Tribal monitoring refers to the controlled observation and regulation of construction operations on or in the vicinity of a known or potentially significant tribal cultural resource to avoid, preserve in place, or mitigate impacts on the resource. The ATMTTP shall be developed in consultation with the Consulting Tribes and submitted to the City for review and approval prior to issuance of the first grading permit and any physical ground disturbing site work being allowed on the Project Site or for off-site Project improvements. The ATMTTP shall include, at a minimum:</p> <ul style="list-style-type: none"> <li>• Background information and context data on the Project Site, archeological resources, and tribal cultural resources.</li> <li>• Tribal monitoring requirements, including worker awareness training as specified below; a discussion of specific locations and the intensity of the monitoring effort for areas with potential for the discovery of archeological and tribal cultural materials; and anticipated personnel, including retention of California Native American tribal representative(s) from Consulting Tribes.</li> <li>• A requirement that tribal monitors from each Consulting Tribe be afforded the opportunity to be present at each location of ground disturbing site work that requires tribal monitoring pursuant to the Project mitigation measures and the ATMTTP, for the duration of such work, unless a Consulting Tribe agrees in writing that tribal monitoring is not needed by that tribe in that instance, or unless a Consulting Tribe fails to provide a monitor at the scheduled time, provided that adequate notice of the schedule was provided and documented.</li> <li>• Specific parameters for tribal monitoring, including the number of monitors from each Consulting Tribe based on number of simultaneous excavation locations, activities</li> </ul>				

<b>WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM</b>				
<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<p>subject to monitoring (consisting of all excavations associated with soil remediation, removal of below grade utilities, and initial mass grading at the main Project Site and all ground disturbing activities within the Core), and activities not subject to monitoring (including all grading outside the Core subsequent to initial mass grading in areas that have been monitored by the Consulting Tribes and found to no longer contain tribal cultural resources, all foundation and building demolition, and all above ground or vertical build construction).</p> <ul style="list-style-type: none"> <li>• Identification of a tribal monitoring coordinator, whose responsibility is to ensure that communication between the construction team and monitors is clear, that schedules for monitoring are conveyed, and that monitoring tribes have a single point of contact, prior to the commencement of ground disturbing activities.</li> <li>• Protocols for discoveries during construction, consistent with modified ConnectMenlo EIR Mitigation Measure CULT-2a (see Section 3.8, Cultural Resources), including a requirement that any DPR forms required pursuant to ConnectMenlo EIR Mitigation Measure CULT-2a to be submitted to the Northwest Information Center to document a find of TCR, cultural resources, historical resources, or archaeological resources shall be completed and submitted no later than 120 days after completion of the Project.</li> <li>• Prehistoric era research design, including sampling level, study method documentation, and provisions, such as staffing and scheduling, for bringing the proposed research to fruition.</li> <li>• Detailed procedures regarding how to address significant discoveries made during construction, including a discussion of field and artifact analysis methods to be used.</li> </ul>				

<b>WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM</b>				
<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<ul style="list-style-type: none"> <li>• Treatment of Native American human remains consistent with state law and recommendations of the NAHC-appointed Most Likely Descendant (“MLD”) and Modified ConnectMenlo EIR Mitigation Measure CULT-4.</li> <li>• Laboratory methods, including artifact cataloging and special analyses.</li> <li>• Thresholds for decision making if there is a conflict among tribal or archeological monitors regarding the identification or treatment of TCRs. Specifically, if there is a conflict between the archeological monitor and the tribal monitors, deference shall be given to the preferences of the tribal monitors, subject to applicable law in the event of the discovery of Native American human remains, provided that those preferences do not require Project redesign or result in unreasonable construction delay. If there is a conflict among the tribal monitors, the soil containing the potential TCR will be evaluated in accordance with applicable law and, if appropriate, shall be stockpiled in accordance with the soil protocol in the ATMTTP while the disagreement is being resolved.</li> <li>• Provisions for reporting (e.g., Tribal Monitoring Closure Report) and artifact treatment in consultation with the Consulting Tribes in the event of significant finds.</li> <li>• Pre-designated confidential reburial area(s) that will serve to reinter any Native American human remains encountered during construction (excluding existing, known reburial sites, which shall be preserved in place pursuant to Mitigation Measure TCR-1.1) with appropriate level of privacy for visitation by the Consulting Tribes, in an area not open to the public.</li> <li>• Treatment protocols that detail the appropriate procedures, methods, and reports to be completed if significant archaeological or tribal cultural materials,</li> </ul>				

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<p>including Native American burials, are encountered. The archeological significance of a resource shall not be determinative of whether the resource is a TCR, the level of impact to a TCR, or the significance of a TCR.</p> <ul style="list-style-type: none"> <li>• Soil treatment protocols that preserve cultural soil onsite where feasible, including:                             <ul style="list-style-type: none"> <li>○ Subject to the requirements of DTSC or other agencies with jurisdiction and the reasonable preferences of the MLD in accordance with applicable law, prohibiting the removal of cultural soil from the main Project Site. The determination of which soils are cultural soils shall be made by the tribal monitors.</li> <li>○ Requiring only clean, engineered fill to be used on the main Project Site. Under no circumstances should soil from another culturally significant area be used on this Project Site.</li> <li>○ The tribal monitors shall have the right to request that any cultural soils excavated from native soil on the main Project Site be relocated to an area on the main Project Site located away from the construction zone, where the tribal monitors shall be given the opportunity during active construction work hours to sift the cultural soil to identify and remove any tribal cultural items and Native American human remains, which tribal cultural items and Native American human remains shall be treated in accordance with the ATMTTP. Any tribal cultural resources obtained from sifting shall be reburied in the reburial area, subject to the reasonable preferences of the MLD in accordance with Public Resources Code Section 5097.98 and other applicable law. Any tribal monitors performing this work (1) must have the requisite training or experience to do so, including training</li> </ul> </li> </ul>				

<b>WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM</b>				
<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<p>or experience with regard to work in environmentally impacted soil (which shall include at a minimum HAZWOPR certification), and (2) shall be paid at the rate specified for this work in the applicable Tribal Monitoring Agreement. Following sifting and removal of TCRs, the soil can be reused at the same or a different location within the main Project Site.</p> <ul style="list-style-type: none"> <li>• Specifications for archeological and tribal cultural resources sensitivity training for construction workers and superintendents that meet the following standards:                             <ul style="list-style-type: none"> <li>○ Occurs prior to the start of any ground-disturbing activity or site work on the Project Site or for off-site improvements.</li> <li>○ Training shall be required for all construction personnel participating in ground-disturbing construction to alert them to the archaeological and tribal cultural sensitivity of the area and provide protocols to follow in the event of a discovery of archaeological materials or tribal cultural resources. Training shall be provided en masse to such personnel at the start of construction of the Project, and training shall be repeated when new personnel participating in ground-disturbing site work start work.</li> <li>○ Includes, for job site posting, a document (“ALERT SHEET”) that summarizes the potential finds that could be exposed, the protocols to be followed, and the points of contact to alert in the event of a discovery that is presented as part of the training.</li> <li>○ Requires the contractor to ensure that all workers requiring training are in attendance.</li> <li>○ Requires training for all contractors and sub-contractors that is documented for each permit</li> </ul> </li> </ul>				

<b>WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM</b>				
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<p>and/or phase of a permit that requires ground-disturbing activities onsite.</p> <ul style="list-style-type: none"> <li>○ For work in the Core and the existing known reburial area, additional worker training shall also be required for workers who will work on the surface or who will drive directly over the Core or work in the existing known reburial area.</li> <li>● Work plan for the use of ground penetrating radar (GPR) and forensic canine detection (FCD) that meets the following standards:                             <ul style="list-style-type: none"> <li>○ Upon conclusion of building demolition and the removal of surface improvements within the Perimeter, the Project Sponsor shall retain a qualified team of FCD survey providers and a GPR operator to perform a survey of the Perimeter before grading, trenching, or other earthwork commences.</li> <li>○ A minimum of seven calendar days prior to the FCD or GPR survey, the Project Sponsor or their designee shall notify the Consulting Tribes of the schedule to afford sufficient time to be present during the survey. Should the Consulting Tribe(s) choose not to attend, the FCD or GPR survey may continue as scheduled. Where the FCD or GPR survey will occur within 100 feet of known burials or reburials (which know reburials shall remain in place in accordance with Mitigation Measure TCR-1.1), use of the FCD or GPR and presence of tribal monitors shall be dictated by the MLD for those prior discoveries.</li> <li>○ The results of the FCD and GPR surveys shall be provided to the Consulting Tribes within fourteen calendar days after completion of the survey reports. Measures to protect TCRs identified as a result of the surveys shall be implemented in accordance with the Project mitigation measures and ATMTTPP.</li> </ul> </li> </ul>				

<b>WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM</b>				
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<ul style="list-style-type: none"> <li>○ In the event of the discovery of Native American human remains other than known reburials, the procedures in Modified ConnectMenlo Mitigation Measure CULT-4 will apply.</li> <li>● Procedures for the event of an inadvertent discovery during construction, which require the archaeological and tribal monitors to review, identify, and evaluate TCRs to determine if a discovery is a historical resource and/or unique archaeological resource, or a TCR, under CEQA. These procedures shall include, at a minimum:                         <ul style="list-style-type: none"> <li>○ Criteria for identifying cultural soils.</li> <li>○ Impose a stop work radius of 100 feet around the discovery; work can continue outside of the stop-work radius while the discovery is being addressed. If the archaeological and tribal monitors agree that the find does not constitute a TCR, work can resume immediately, and no notifications are required.</li> <li>○ Notify the City, Consulting Tribes, and Project Sponsor within 24 hours of the discovery.</li> <li>○ Complete a discovery form to document the location, nature, and condition of the discovery.</li> <li>○ Consult on the discovery to determine appropriate treatment, which may include any combination of avoidance, preservation in place, rapid recovery and reburial, and/or documentation. In no circumstance other than the express written recommendation of the MLD shall Native American human remains be removed from the Project Site. Curation and data recovery shall not be allowed, unless curation or data recovery is (i) in compliance with the recommendation of the MLD for Native American human remains in accordance with Public Resources Code Section 5097.98 and other applicable law or, (ii) agreed upon by the tribal monitors per the protocols</li> </ul> </li> </ul>				

<b>WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM</b>				
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in the ATMTTP for TCRs that are not Native American human remains.				
<p><i>Project Mitigation Measure TCR-1.3: Post-Construction Preservation in Place of Tribal Cultural Resources.</i> Prior to the issuance of the first certificate of occupancy for any occupied building within the Campus District, the Project Sponsor shall record deed restrictions over the Core, confidential locations of existing known reburials, and the pre-designated reburial area (“Project Reburial Area”) to restrict development or other activities identified in the deed restrictions that would disturb TCRs or Native American human remains in the future. The area included in the deed restrictions shall be described by a licensed surveyor prior to recording. Because archaeological and tribal cultural resource site locations are restricted from public distribution, the deed restrictions shall cite an “environmentally sensitive area.” A copy of the recorded deed restrictions that include the Core and any pre-designated reburial site shall be provided to the City for retention in a confidential project file. A copy of the deed restrictions shall be provided to the Northwest Information Center of the California Historical Resources Information System.</p> <p>The restriction on the deed for the Core and Project Reburial Area shall prohibit the following activities directly on the Core or Project Reburial Area (excluding activities in cantilevered or spanned structural elements) after completion of construction of the Proposed Project, subject to applicable building code and life safety access requirements and necessary facilities maintenance, service, and repairs:</p> <ul style="list-style-type: none"> <li>• Active recreational activities and structures, including, but not limited to, sports, field games, running, biking, and play equipment.</li> <li>• Domesticated animals other than security/service animals.</li> <li>• Vehicles.</li> </ul>	<p>Post-construction preservation and recording of deed restrictions over the Core, known reburials, and Project Reburial Area.</p>	<p>Prior to the issuance of the first certificate of occupancy for any occupied building within the Campus District</p>	<p>Project Sponsor/ licensed surveyor</p>	<p>CDD</p>



<b>WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM</b>				
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<ul style="list-style-type: none"> <li>• Surface penetrations below the upper geogrid.</li> <li>• Altering the surface or general topography of the Core or Project Reburial Area except for maintenance of the engineered soil cap, landscaping, facilities, circulation, and utilities included within the cap.</li> <li>• In the unlikely event that any activity needs to occur below the area of the upper geogrid in the event of an emergency, the Consulting Tribes will be immediately notified and given a reasonable opportunity (consistent with the nature of the emergency) to have a tribal monitor present.</li> </ul>				
<p><i>Project Mitigation Measure TCR-1.4: Project Reburial Area Access.</i> Within 30 days after the recording of the deed restrictions over the dedicated reburial area(s), the Project Proponent shall extend a written offer to the Consulting Tribes to execute a tribal access agreement to allow for permitted access to the Project Reburial Area for the purposes of tribal visitation, subject to the parameters below. The Project Proponent shall provide a copy of the offer letter and if accepted by the Consulting Tribe(s), the executed agreement(s), to the City for retention in a confidential Project file. This mitigation measures shall be considered satisfied upon delivery of the offer letter to the Consulting Tribes, even if the Consulting Tribe(s) declined to enter into the agreement. The owners' association shall manage the Project Reburial Area in accordance with the terms and conditions of the deed restrictions, access agreements, Project mitigation measures, and Project conditions of approval, subject to applicable building code and life safety access requirements and necessary facilities maintenance, service, and repairs. Access to the reburial area established for the Project will be controlled. The following conditions apply:</p> <ul style="list-style-type: none"> <li>• Access to the Project Reburial Area will be available following completion of construction of the Proposed Project, including the Project Reburial Area, subject to</li> </ul>	Provide a written offer to execute a tribal access agreement for permitted access to the Project Reburial Area.	<p>Within 30 days after the recording of the deed restrictions</p> <p>Following completion of construction and ongoing during operation of the Project</p>	Project Sponsor/ owner's association /consulting tribe(s)	CDD

<b>WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM</b>				
<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
<p>notification and access requirements to be specified in an access agreement.</p> <ul style="list-style-type: none"> <li>• Visitation shall comply with all rules applicable to publicly accessible open space within the Proposed Project except as otherwise specified in an access agreement.</li> <li>• Visitation shall not obstruct or otherwise interfere with the passage of vehicles or the operation of the facility.</li> <li>• Parking shall be limited to public parking spaces.</li> <li>• Visitation shall not include activities or uses that conflict with the deed restriction or reasonable preferences of the Most Likely Descendent; provided that the Project Proponent shall work in good faith to ensure that all Consulting Tribes are provided access to the Project Reburial Area in accordance with the terms of the access agreement.</li> <li>• Visitation shall not present a risk to human life or safety.</li> <li>• Visitation shall not include abandonment of materials or objects other than ceremonial, religious, or funerary offerings specified in an access agreement.</li> <li>• Visitation shall be subject to restriction as necessary to respond to any security threat, pandemic or similar health risk, or emergency condition. Visitation shall not be unreasonably restricted.</li> </ul>				
<p><b><i>IMPACT BEING ADDRESSED: Human Remains. The Proposed Project could disturb human remains, including those interred outside of dedicated cemeteries. (Impact TCR-2)</i></b></p>				
<p><i>Project Mitigation Measure TCR-2.1. Avoid and Preserve in Place Known Reburials.</i> The locations of known previous reburials of Native American human remains shall be restricted from future ground disturbance, as required by Mitigation Measure TCR-1.3.</p>	<p>Avoid and preserve in place known reburials.</p>	<p>See above (Mitigation Measure TCR-1.3).</p>	<p>See above (Mitigation Measure TCR-1.3).</p>	<p>See above (Mitigation Measure TCR-1.3).</p>

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<p><i>Mitigation Measure CULT-4: (Modified ConnectMenlo EIR). Comply with State Regulations Regarding the Discovery of Human Remains at the Project Site.</i> Procedures of conduct following the discovery of human remains citywide have been mandated by Health and Safety Code Section 7050.5, Public Resources Code Section 5097.98, and the California Code of Regulations Section 15064.5(e) (CEQA). According to the provisions in CEQA, if human remains are encountered at the site, all work in the immediate vicinity of the discovery shall cease and necessary steps to ensure the integrity of the immediate area shall be taken. The San Mateo County Coroner shall be notified immediately. The coroner shall then determine whether the remains are Native American. If the coroner determines the remains are Native American, the coroner shall notify the NAHC within 24 hours, which will, in turn, notify the person the NAHC identifies as the Most Likely Descendant (MLD) in connection with any human remains. Further actions shall be determined, in part, by the desires of the MLD. The Project Sponsor, the Project archaeologist, and the MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of human remains and associated or unassociated funerary objects, including those associated with known and unknown Native American burial locations (CEQA Guidelines Section 15064.5[d]). The agreement should address appropriate actions for when remains are discovered, including excavation, removal, recordation, analysis, custodianship, and final disposition of the remains and associated or unassociated funerary objects. The MLD will have 48 hours to make recommendations regarding the disposition of the remains following notification from the NAHC of the discovery. If the MLD does not make recommendations within 48 hours, or the owner does not accept the recommendation of the MLD in accordance with Public Resources Code 5097.98(e), the owner</p>	<p>Comply with state regulations regarding the discovery of human remains at the Project Site.</p>	<p>Initiated after a find is made during construction, with regularly scheduled site inspections thereafter</p>	<p>Project Sponsor/ San Mateo County Coroner</p>	<p>CDD</p>

<b>WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM</b>				
<b>Mitigation Measures</b>	<b>Action</b>	<b>Timing</b>	<b>Implementing Party</b>	<b>Monitoring Party</b>
shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance. Alternatively, if the owner does not accept the MLD's recommendations, the owner or the descendent may request mediation by the NAHC.				

**RESOLUTION NO. XXXX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
APPROVING AN AMENDMENT TO THE CIRCULATION MAP OF THE MENLO  
PARK GENERAL PLAN**

WHEREAS, in 2016, the City of Menlo Park (“City”) updated its General Plan when it adopted ConnectMenlo, which contains the City’s new Land Use Element and Circulation Element; and

WHEREAS, when the City adopted the ConnectMenlo General Plan, the City also certified an Environmental Impact Report providing a program-level analysis of the development potential envisioned for the entire City, including the increased development potential in the Bayfront Area; and

WHEREAS, the City received an application requesting to redevelop an approximately 59-acre industrial site (the “Main Project Site”) plus three parcels (within two sites) west of Willow Road (the “Hamilton Parcels,” and, collectively with the Main Project Site, the “Project Site”) as a multi-phase, mixed-use development consisting of up to 1.6 million square feet of office and accessory uses (a maximum of 1,250,000 square feet for office use and the balance for accessory uses), up to 1,730 multifamily dwelling units, up to 200,000 square feet of retail uses, an up to 193-room hotel, and associated open space and infrastructure (the “Project”); and

WHEREAS, an amendment to the General Plan Circulation Map is necessary to modify the circulation plan with regard to the locations for new street connections to the surrounding roadway network, as well as the locations of public rights-of-way and a proposed multi-use pathway within the Main Project Site; and

WHEREAS, the proposed amendment to the General Plan Circulation Map is consistent with the General Plan goals, policies, and programs, including Policy LU-1.2 which states, “Integrate regional land use planning efforts with development of an expanded transportation network focusing on mass transit rather than freeways, and encourage development that supports multimodal transportation. The proposed amendment is also consistent with the policies under Goal CIRC-2, which states, “Increase accessibility for and use of streets by pedestrian, bicyclists, and transit riders,” and Goal CIRC-4, which states, “Improve Menlo Park’s overall health, wellness, and quality of life through transportation enhancements.” The new roadway connections to the surrounding roadway network and the proposed paseos and multi-use pathways will provide new routes for bicyclists and pedestrians through the Main Project Site, encouraging the use of multimodal transportation. The multi-use pathways and paseos will also increase accessibility and use of the streets by pedestrians and bicycles, and the proposed roundabout connection will provide an additional route to the Main Project Site for bicyclists, pedestrians, and vehicles; and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, an Environmental Impact Report (EIR) was prepared for the Project (SCH: 2019090428), including an amendment to the General Plan Circulation Map, and certified by the City Council on \_\_\_\_\_, 2022 in accordance with the provisions of the California Environmental Quality Act (CEQA) and the CEQA Guidelines. Findings and a statement of overriding considerations were adopted by the City Council on \_\_\_\_\_, 2022, by Resolution No. \_\_\_\_\_, and are incorporated herein by this reference; and

WHEREAS, the analysis in the Project EIR tiered from the ConnectMenlo Final EIR as appropriate and as further described in each environmental topic section in the EIR; and

WHEREAS, after notice having been lawfully given, a public hearing was scheduled and held before the Planning Commission of the City of Menlo Park on October 24, 2022 and continued to November 3, 2022, to review and consider the Project, including the proposed amendment to the General Plan Circulation Map, whereat all persons interested therein might appear and be heard; and

WHEREAS, the Planning Commission of the City of Menlo Park, having fully reviewed, considered, and evaluated all the testimony and evidence submitted in this matter, voted affirmatively to recommend to the City Council of the City of Menlo Park to approve the amendment to the General Plan Circulation Map; and

WHEREAS, after notice having been lawfully given, a public hearing was scheduled and held before the City Council of the City of Menlo Park on \_\_\_\_\_, 2022, to review and consider the Project, including the proposed amendment to the General Plan Circulation Map, whereat all persons interested therein might appear and be heard; and

WHEREAS, the City Council of the City of Menlo Park having fully reviewed, considered, and evaluated all the testimony and evidence submitted in this matter, including the recommendation of the Planning Commission, voted affirmatively to approve the amendment to the General Plan Circulation Map.

NOW, THEREFORE, BE IT RESOLVED that the City Council finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park hereby approves the amendment to the General Plan Circulation Map, as depicted by and attached hereto as Exhibit A, and incorporated herein by this reference.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifteenth day of November, 2022, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

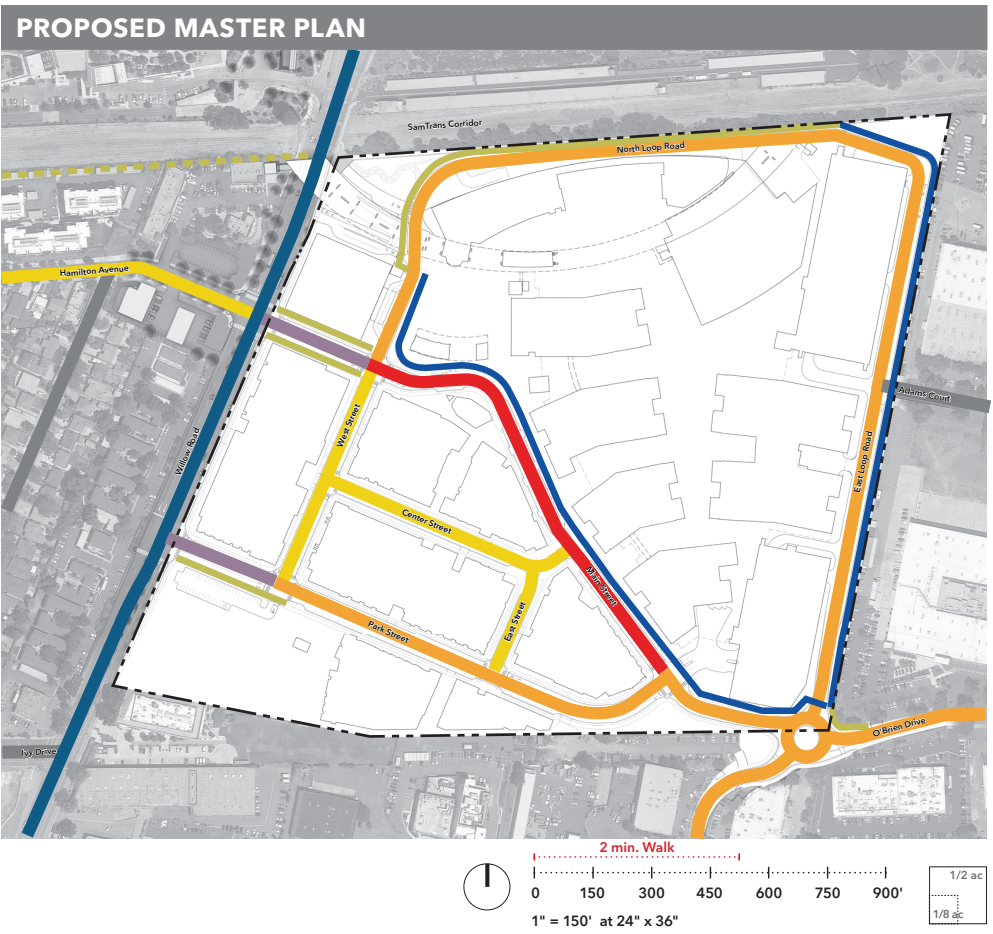
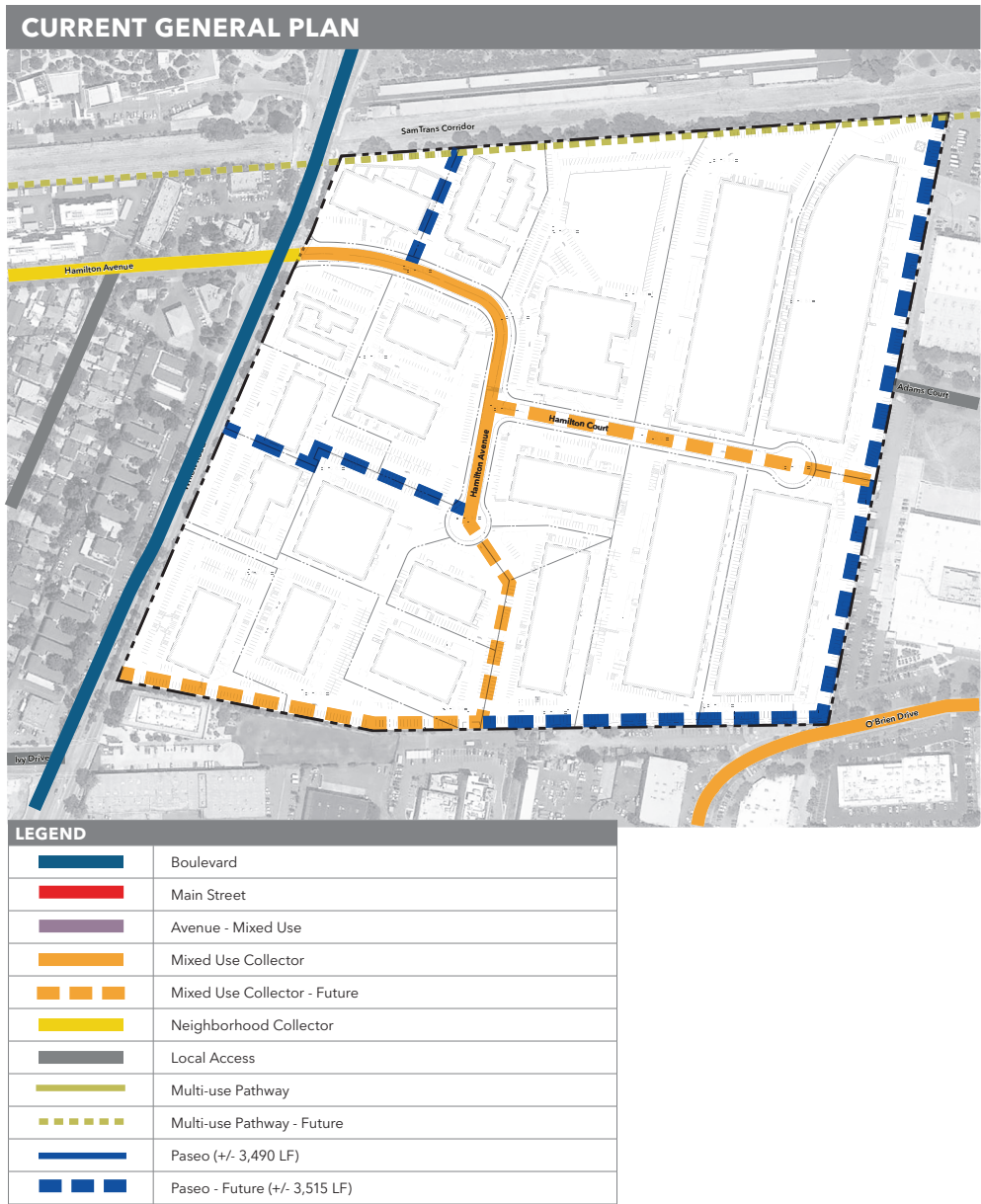
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this \_\_\_ day of November, 2022.

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Judi A. Herren, City Clerk

Exhibits:

- A. General Plan circulation map





## RESOLUTION NO. XXXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK APPROVING FINDINGS AND CONDITIONS FOR AN “A” VESTING TENTATIVE PARCEL MAP FOR THE MAIN PROJECT SITE FOR THE WILLOW VILLAGE MASTER PLAN PROJECT CONSISTING OF UP TO 1.6 MILLION SQUARE FEET OF OFFICE AND ACCESSORY USES, UP TO 1,730 MULTIFAMILY DWELLING UNITS, UP TO 200,000 SQUARE FEET OF RETAIL USES, AN UP TO 193 ROOM HOTEL, AND ASSOCIATED OPEN SPACE AND INFRASTRUCTURE**

WHEREAS, the City received an application requesting to redevelop an approximately 59-acre industrial site (the “main Project Site”) plus three parcels (within two sites) west of Willow Road (the Hamilton Parcels, and collectively with the main Project Site, the “Project Site”) as a multi-phase, mixed-use development consisting of up to 1.6 million square feet of office and accessory uses (a maximum of 1,250,000 square feet for office uses and the balance for accessory uses), up to 1,730 multifamily dwelling units, up to 200,000 square feet of retail, an up to 193-room hotel, and associated open space and infrastructure (the “Project”); and

WHEREAS, an “A” Vesting Tentative Parcel Map creating legal non-buildable parcels for financing and conveyancing purposes and the construction of project-serving infrastructure improvements is proposed for the main Project Site; and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, an Environmental Impact Report (EIR) was prepared for the Project and certified by the City Council on \_\_\_\_\_, 2022 (SCH: 2019090428), in accordance with the provisions of the California Environmental Quality Act (CEQA) and the CEQA Guidelines. Findings and a statement of overriding considerations were adopted by the City Council on \_\_\_\_\_, 2022, by Resolution No. \_\_\_\_\_, and are incorporated herein by this reference; and

WHEREAS, after notice having been lawfully given, a public hearing was scheduled and held before the Planning Commission of the City of Menlo Park (the “Planning Commission”) on October 24, 2022 and continued to November 3, 2022, to review and consider the Project, including the “A” Vesting Tentative Parcel Map for the main Project Site, whereat all persons interested therein might appear and be heard; and

WHEREAS, the Planning Commission, having fully reviewed, considered, and evaluated all the testimony and evidence submitted in this matter, voted affirmatively to recommend to the City Council of the City of Menlo Park (the “City Council”) to approve the “A” Vesting Tentative Parcel Map for the main Project Site; and

WHEREAS, after notice having been lawfully given, a public hearing was scheduled and held before the City Council on \_\_\_\_\_, 2022, to review and consider the Project, including the “A” Vesting Tentative Parcel Map for the main Project Site, whereat all persons interested therein might appear and be heard; and

WHEREAS, the City Council, having fully reviewed, considered, and evaluated all the testimony and evidence submitted in this matter, voted affirmatively to approve the “A” Vesting Tentative Parcel Map for the main Project Site.

NOW, THEREFORE, BE IT RESOLVED that the City Council finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park hereby approves the “A” Vesting Tentative Parcel Map for the main Project Site subject to conditions (Exhibit A), and subject to final approval of the rezoning for the Project. This approval is pursuant to the Subdivision Map Act and City of Menlo Park Municipal Code Section 15.20.050:

1. The proposed “A” Vesting Tentative Parcel Map for the main Project Site is technically correct and in compliance with all applicable State regulations, City General Plan, Zoning and Subdivision Ordinances, and the State Subdivision Map Act.
2. The proposed “A” Vesting Tentative Parcel Map for the main Project Site, including the contemplated design and improvements, is consistent with applicable General Plan goals and policies, in particular the goals for the Bayfront Area set forth in the General Plan Update (“ConnectMenlo”). The Project is consistent with the land use designations described in the General Plan and would be consistent with City General Plan policies as well as City Zoning Ordinance requirements for master-planned projects at the proposed density and for the types of use.
3. The Project Site is physically suitable for the proposed master-planned development, including the proposed density of development, and the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially injure fish or wildlife or their habitat. The Project is consistent with the density and uses for the site set forth in the General Plan. The Project Site is in a heavily urbanized area of the City currently occupied by developed/landscaped areas that include various urban uses and does not include any aquatic habitat. The Project would not cause substantial environmental damage to the already disturbed Project Site and would not substantially injure the limited wildlife that access the site or their habitat.
4. The design of the subdivision or types of improvements is not likely to cause serious public health or safety problems. The Project would comply with General Plan goals and policies, City Zoning and Subdivision Ordinances, and other applicable regulations designed to prevent serious health or safety problems.
5. The design of the subdivision or the type of improvements does not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision because alternate easements for access or use will be provided that are substantially equivalent to ones previously acquired by the public.
6. The Project is not subject to flood and inundation hazards and is not located within a slide area. The Project Site is located within the 100-year flood hazard zone. However, the contemplated Project design and improvements will be elevated so as to mitigate flood hazards, and the Project would comply with applicable requirements designed to mitigate flood hazards and address future sea level rise.

#### SEVERABILITY

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void, or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifteenth day of November, 2022, 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 \_\_\_ day of November, 2022.

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Judi A. Herren, City Clerk

Exhibits:

A. Draft main project site vesting tentative map conditions

## Willow Village “A” Map

### Conditions of Approval

1. As used in these Conditions of Approval:
  - a. “Applicant” shall mean Peninsula Innovation Partners, LLC.
  - b. “Property Owner(s)” shall mean Peninsula Innovation Partners and its successors in interest to all or any part of the Project site.
  - c. “Project” shall mean the development of approximately 1.8 million sf of nonresidential uses, composed of up to 1.6 million sf of office and accessory uses in the Campus District (consisting of up to 1.25 million sf of office space, with the balance of space for accessory use [up to 350,000 sf if the office sf is maximized], in multiple buildings) and up to approximately 200,000 sf of commercial/retail space; up to approximately 1,730 multi-family residential units; an up to 193-room hotel; and up to approximately 20 acres of open space at full buildout, including approximately 8 acres of publicly accessible parks, paths, and trails.
2. The Applicant shall comply with the applicable mitigation measures identified in Mitigation Monitoring and Reporting Program for the Project.
3. Prior to Parcel Map approval, Applicant shall pay all Public Works fees. Refer to City of Menlo Park Master Fee Schedule.
4. Applicant shall complete all of the following **Temporary Improvements** prior to removal of existing distribution improvements:
  - a. Domestic Water lines – The existing water system within the Willow Village main Project Site (“**Main Project Site**”) is comprised of 10” diameter mains with two points of connection off Willow Road and one point of connection each off Adams Court and O’Brien Drive. Prior to the removal of any of the above-described water distribution lines that provide service to off-site parcels, the Applicant shall design and construct a temporary 2,100 LF 16” diameter water main in a general alignment from Adams Court traversing north along the east side of Main Project Site, then along the northern boundary, then south generally aligned between existing Buildings MPK 47 and 48 to connect to the existing 10” main within existing Hamilton Avenue. Depending to the final alignment, sections of this distribution pipe, when designed and constructed to minimum City specifications, located within City public rights-of-way and City easements, and consistent with the Willow Village Hydraulic Evaluation shall be accepted as public improvements and as operatable components of the permanent domestic water distribution system.

Prior to the demolition of the existing domestic distribution water lines through the main Project site that serve development east of the Main Project site, Applicant shall design and construct a second temporary 12-inch domestic water

distribution pipeline generally parallel to the southern boundary of the Main Project Site, providing connectivity from Willow Road to O'Brien Drive near the southeasterly corner of the Main Project Site. This pipeline will connect to an existing pipeline in O'Brien and a 10" pipe entering the site along the southern boundary of the Main Project Site.

In the event any of the above temporary improvements are designed and constructed to the minimum specifications of the City, the City shall accept the temporary improvements within public rights-of-way and City easements as permanent public improvements.

All Domestic water distribution improvements shall conform to the recommendations contained within the West Yost Willow Village Hydraulic Evaluation dated February 3, 2022.

- b. Natural Gas Line – The Main Project Site contains an existing primary gas line that crosses through the Main Project Site from Willow Road to the east along Hamilton Avenue and Hamilton Court and continues to the east providing service to the properties east of the Main Project Site. Prior to the demolition and removal of said existing gas line, the Applicant shall construct and make operational a replacement gas main, subject to the approval of PG&E. Documentation of PG&E approval shall be provided to the Engineering Division prior to demolition of said existing gas line.

##### **5. Demolition of Improvements**

Applicant shall prepare and submit Demolition Plans to the City prior to the approval of the Parcel Map; however, in the event that Applicant files multiple Parcel Maps, the Demolition Plans, at a minimum, shall depict the demolition of all existing improvements within the boundaries of each Parcel Map. Prior to recordation of each Parcel Map, all existing buildings within the boundaries of that Parcel Map shall be removed unless a building is completely within the confines of a created parcel boundary and is retained for temporary use during the construction of the project improvements. In the event any building is retained for temporary purposes, the Applicant shall provide utility services and vehicular access subject to the approval of the Public Works Director. Additionally, surety for the demolition of said building(s), in amount agreed upon by the Public Works Director shall be provided prior to recordation of the Parcel Map which boundaries include said building.

##### **6. Site Improvement Work**

- a. Department of Toxic Substance Control (DTSC) Approval: Prior to the commencement of ground disturbance activities within the Residential/Shopping District, the Property Owner shall have received approval of the Willow Village Removal Action Work Plan (RAW), Site Management Plan (SMP) and Health and Safety Plan (HSP) for the Residential/Shopping District from DTSC. Prior to

commencement of ground disturbance activities within each the Campus District and the Town Square District, the Property Owner shall have received DTSC approval of the SMP and HSP for each the Campus District and the Town Square District, as applicable. Documentation of compliance shall be provided to the Building, Planning, and Engineering Divisions prior to commencement of ground disturbance activities.

b. Site Improvement Work

- i. Prior to the recordation of each Parcel Map, Applicant shall prepare and submit for City approval: Improvement Plans for all Main Project Site-serving improvements within that Parcel Map, which shall include Mass Grading, Utilities, On-site Circulation Improvements consisting of Roadways and Intersection Improvements and Public Realm Landscaping and Street Furnishings. Submittal of a Parcel Map is not a prerequisite for obtaining City approval of any of the above-mentioned plans.
- ii. Construction Agreement: In the event construction of site improvements commences in advance of approval of a Parcel Map that would require a Subdivision Improvement Agreement, prior to commencing construction of the site improvements, the Applicant shall enter into a Construction Agreement with the City. Approval shall not be unreasonably withheld or conditioned so long as the following is provided: adequate security in favor of the City for completion of construction of the site improvements, provisions for dedicating improvements to the City upon completion, and permits for the replacement with a Subdivision Improvement Agreement.
- iii. Imported Fill: The imported fill must meet the City of Menlo Park's requirements. Documentation demonstrating that the fill meets the City's requirements must be submitted to and approved by the Building Official or their designee prior to fill being brought on site. Fill requirements are outlined in CBC appendix J section J107 as adopted in MPMC Section 12.06.020.

c. Willow Road Improvements

- i. Applicant shall submit Willow Road Improvement Plans to the City for approval concurrent with the submittal of the first Parcel Map. The Willow Road Improvement Plans shall be comprised of the below listed "**Willow Road Improvements**" within Caltrans' right-of-way. Improvement Plans shall include surface improvements, traffic signals, bicycle lanes, utility improvements, striping and signage improvements and other frontage improvements addressing both sides of Willow Road. The City shall cooperate with Applicant in its efforts to obtain encroachment permits and other applicable approvals from Caltrans.
  1. Realigned Willow Road/Hamilton Avenue intersection

2. New Willow Road/Park Street intersection
  3. Class IV bicycle lanes on Willow Road
- ii. Prior to City authorization of Applicant submittal of the Willow Road Improvement Plans to Caltrans, City staff will provide an update on the design of the improvements to the City Council. The Applicant shall provide the City 30-day notice of the submittal of Willow Improvement Plans and the City staff shall endeavor to provide such update no later than 60 days following Applicant's submittal to the City of the proposed Willow Road Improvement Plans.
  - iii. Prior to the issuance of the first permit for the Site Improvement Work, the Applicant shall submit Willow Road Improvement Plans to Caltrans and apply for encroachment permit approvals no later than 30 days after City reviews and authorizes in writing the submittal to Caltrans;
  - iv. Applicant shall submit documentation of Caltrans' approval of the encroachment permit prior to the City approval of said Willow Road Improvement Plans
  - v. Applicant shall complete Willow Road Improvements prior to the certificate of occupancy for the first building on the Main Project Site.
  - vi. In the event construction of the Willow Road Improvements is delayed due to circumstances outside of the Applicant's reasonable control, the Public Works Director may grant an extension based on substantial evidence from the Applicant that the delay is based on external circumstances, and the Applicant demonstrates a good faith effort to complete the improvements. Any extension would be based on an agreed upon timeline by the Public Works Director and the Applicant.
- d. SF PUC Approvals: Prior to issuance of the building permit for the first building on the Main Project Site, the Applicant shall obtain San Francisco Public Utilities Commission ("**SF PUC**") approval for a lease, license, easement agreement, or other authorization to permit the construction and operation of the following proposed public improvements concurrently with separate or combined applications. In pursuit of the necessary approvals the City shall be the applicant for public improvements that require approval and granting a lease, license, easement agreement, or other authorization from SF PUC.
    - i. Main Street/O'Brien Drive roundabout intersection improvements within the SF PUC right of way.
    - ii. Installation of a 48-inch storm drain within the Menlo Park Storm Drain Channel and filling of said channel partially located within SF PUC right-of-way.
  - e. Prior to the construction of the O'Brien Drive/Main Street roundabout intersection improvements, Applicant shall acquire an easement for public right-of-way

purposes from properties affected by the alignment of the proposed improvement.

- f. Prior to certificate of occupancy for the first building on the Main Project Site, the applicant shall complete the Willow Road and SF PUC Improvements to satisfaction of the City Engineer and SF PUC.
  - g. In the event construction of the SF PUC Improvements is delayed due to circumstance outside of the Applicant's reasonable control, the Public Works Director may grant an extension based on substantial evidence from the Applicant that the delay is based on external circumstances, and the Applicant demonstrates a good faith effort to complete the improvements. Any extension would be based on an agreed upon timeline by the Public Works Director and the Applicant.
7. Prior to Parcel Map approval or the commencement of soil disturbing activities, whichever occurs first, Applicant shall prepare and submit plans for soil disturbance area for: 1) construction safety fences around the periphery of the construction area, 2) dust control, 3) air pollution control, 4) erosion and sedimentation control, 5) tree protection fencing, 6) traffic control plans shall provide accommodation for safe pedestrian and bicycle travel through the construction zone and 7) construction vehicle parking. The plans shall be subject to review and approval by the Building, Engineering, and Planning Divisions. The fences and erosion and sedimentation control measures shall be installed according to the approved plan prior to commencing soil disturbing activities.
8. Prior to each Parcel Map approval, the Applicant shall prepare and submit Improvement Plans for the applicable Parcel Map to the Engineering, Utilities, and Planning Divisions for approval. Improvement Plans are required for all project serving off-site infrastructure improvements, including Willow Road Improvements, and shall incorporate the following:
- a. Improvement Plans shall include, at minimum, specifications, engineer's cost estimates, and all engineering calculations necessary to substantiate the design of the following improvements: proposed roadways, drainage improvements, utilities, traffic control devices, required retaining walls, sanitary sewers, storm water conveyance improvements, pump/lift stations, street lightings, landscaping and other project improvements. All public improvements shall be designed and constructed to the satisfaction of the Engineering Division. Submittal of a Parcel Map is not a prerequisite of obtaining City approval of the any of the above-mentioned plans. Improvement Plans shall also provide the following:
    - Existing Topography (NAVD 88')
    - Demolition Plan
    - Site Plan (including easement dedications, if applicable)
    - Construction Parking Plan
    - Grading and Drainage Plan



- Utility Plan
  - Off-site Improvement Plan
  - Erosion Control Plan / Tree Protection Plan
  - Planting and Irrigation Plan
  - Construction Details (including references to City Standards)
- i. Grading and drainage plans shall demonstrate how post-construction runoff conveyed into storm drains shall not exceed existing site runoff levels. A Hydrology Report will be required to the satisfaction of the Engineering Division.
  - ii. Landscape Screening: Landscaping shall screen all public utility equipment that is installed within the public rights-of-way and cannot be placed underground, subject, however, to the requirements of the Menlo Park Fire Protection District, the West Bay Sanitary District, PG&E, and any other applicable agencies regarding utility clearances and screening. The Improvement Plans shall depict new public utility installation's exact locations of any meters, back flow prevention devices, transformers, junction boxes, relay boxes and other equipment boxes installed within the public right of way or public easement area. The Improvement Plans shall also depict landscape screening. The screening shall be compatible and unobtrusive and subject to the review and approval of the Planning Division which approval will be required prior to the City's approval of the Improvement Plans.
  - iii. Public Realm Landscape Plans: Improvement Plans shall include detailed landscape plans for the public realm areas of the Main Project Site, as shown on Exhibit G5.18 Conceptual Public Realm Tree Planting Plan of the Willow Village Master Plan including the size, species, and location including an irrigation plans for review and approval by the Planning, Engineering, Transportation Divisions and City Arborist. The Landscape Plan sheets shall include public realm onsite landscaping (including heritage tree replacements if applicable) for the respective area that the plans address. All Landscape Plans shall include measures addressing adequate sight distance visibility, screening for above grade utilities within the rights-of-way with labels for the utility boxes sizes and heights, and documentation confirming compliance with the Water Efficient Landscaping Ordinance (Municipal Code Chapter 12.44) subject to review and approval by the Engineering Division. The Landscape Plans shall substantially comply with Sheets G5.18, G5.19, and G5.20 in the masterplan plan set. Heritage tree replacements (in accordance with section 10.7 of the CDP) shall be identified on the Landscape Plans and subject to review and approval by the City Arborist.
  - iv. Truck Route Plan: The Applicant shall submit a truck route plan concurrent with the Improvement Plan set approval for the scope of

construction as evidenced by said improvement plans and based on the City's Municipal Code requirements, for review and approval by the Transportation Division. The Applicant shall also submit a permit application and pay applicable fees relating to the truck route plan, to the satisfaction of the Public Works Director or designee.

- v. Construction and Demolition Debris: As applicable, the Applicant shall comply with the requirements of Chapter 12.48 (Salvaging and Recycling of Construction and Demolition Debris) of the City of Menlo Park Municipal Code, subject to review and approval by the Building Official or designee.
- vi. Erosion and Sedimentation Control: Concurrent with Improvement Plan submittal the Applicant shall submit a plan for construction of safety fences around the periphery of the construction area and a demolition Erosion and Sedimentation Control Plan. The fences and erosion and sedimentation control measures shall be installed according to the plan prior to commencing construction. The plans shall be reviewed and approved by the Engineering, Building, and Planning Divisions prior to issuance of a demolition permit.
- vii. Tree Protection: Trees in the vicinity of the construction project that are to remain shall be protected pursuant to the Heritage Tree Ordinance section 13.24.030.
  - i. The Project Arborist shall provide a tree protection verification letter to the City Arborist prior to the start of demolition/construction activities. The tree protection verification letter shall include photos of the installed tree protection measures as specified by the Project Arborist and identify that the Arborist will conduct monthly inspections of the protective measures. During the monthly inspection the Arborist shall assess and monitor the effectiveness of the Tree Protection Plan and provide recommendations for additional care or treatment. The Project Arborist shall provide a monthly inspection report to the City Arborist and Planning Division to document compliance and for the City Arborist review and input on any recommendations for additional care.
- b. Green Infrastructure: The Improvement Plans shall include Green Infrastructure in the form of a stormwater treatment area to treat runoff from the public and private street rights-of-way. The treatment area shall be located within the landscape area between the curb and sidewalk. Sizing and design shall conform to San Mateo Countywide Water Pollution Prevention Program design templates and technical guidance and be approved by the Engineering Division.

- c. Water Efficient Landscape Ordinance: The Applicant shall provide documentation indicating the amount of irrigated landscaping within the Improvement Plans for the area of Parcel Map within the Main Project Site. If the project proposes more than 500 square feet of irrigated landscaping, it is subject to the City's Water Efficient Landscaping Ordinance (Municipal Code Chapter 12.44). Submittal of a detailed landscape plan would be required concurrently with the submittal of Improvement Plan Set subject to review and approval by the Engineering Division.
9. Prior to approval of the Improvements Plans, all potential utility conflicts shall be potholed by Applicant with actual depths documented on the Improvement Plans submitted for City review and approval.
10. For areas that have undergone site clearing and have remaining exposed soil by the start of the wet season (October 1 through April 30), the Applicant shall implement a winterization program to minimize the potential for erosion and sedimentation. As appropriate to the site and status of construction, winterization requirements shall include inspecting/maintaining/cleaning all soil erosion and sedimentation controls prior to, during, and immediately after each storm event; stabilizing disturbed soils through temporary or permanent seeding, mulching, matting, tarping or other physical means; rocking unpaved vehicle access to limit dispersion of mulch onto public right-of-way; and covering/tarping stored construction materials, fuels, and other chemicals. Plans to include proposed measures to prevent erosion and polluted runoff from all site conditions shall be submitted for review and approval of the Engineering Division prior to beginning site clearing activities.
11. The Applicant shall retain a civil engineer to prepare "as-built" or "record" drawings of public improvements, and the drawings shall be submitted in AutoCAD and Adobe PDF formats to the Engineering Division prior to dedication and acceptance of improvements.
12. All public right-of-way improvements, including frontage improvements and the dedication of easements and public right-of-way, shall be completed to the satisfaction of the Engineering Division prior acceptance of such public improvements. Frontage improvements, limited to sidewalks, landscape and urban furnishing, on a fronting parcel can be deferred until completion of construction on the adjacent parcel, provided that such improvements are secured under a separate Improvement Agreement and commensurate surety for completion of said improvements has been provided, subject to review and approval of the Public Works Director. Project serving private improvements depicted within the Improvement Plan set, consisting of frontage improvements, streets, utilities, landscape improvements and dedication of easements shall be completed to the satisfaction of the Engineering Division prior to the issuance of the first building occupancy. Upon Applicant's/Property Owner's completion of these improvements, Applicant/Property Owner shall offer for dedication to City such improvements as completed and City shall promptly accept the completed improvements and release to the Applicant/Property Owner any surety bonds or other security posted in connection with performance thereof in accordance with the terms of such bonds.

13. Prior to Parcel Map approval, the Applicant shall enter into a Subdivision Improvement Agreement and provide performance bonds for the completion of the improvements as shown on the approved project Improvement Plans. The Applicant shall obtain an encroachment permit from the appropriate reviewing and permitting jurisdiction prior to commencing any work within the public right-of-way or public easements.
14. Heritage Tree Replacements: The Applicant is permitted to remove up to 276 heritage trees on the Project Site and 16 heritage trees for construction of the new O'Brien intersection, as determined by the Project Arborist in the *Tree Survey Report* dated August 16, 2022 and shown on Sheets G1.06-1.09 and Appendix 9 of the Project Plans. A minimum of value of \$3,413,400 in heritage tree replacements are required for the Project Site. Heritage tree replacements shall be a minimum of 24-inch box size and are required to be planted at grade. The number of heritage tree replacements shall be tracked by the City and Applicant in accordance with the compliance matrix, dated June 23, 2022 and on file with the City.
15. Any Final Map/Parcel Map that includes an irrevocable offer of dedication for rights-of-way or other public facilities, shall be approved by and dedication accepted by the City Council.
16. Each Final Map/Parcel Map shall contain the final street names for the proposed streets that are offered for dedication or otherwise established on said map. The street names shown in the Vesting Tentative Map shall be considered "placeholders."
17. Prior to the Final Map/Parcel Map action by the City Council, the applicant shall provide the Public Works Department with preferred and alternate street names for review by the City Council.
18. The City has approved this Map in conjunction with a Development Agreement. During the term of the Development Agreement, this Map shall be subject to the terms and conditions of the Development Agreement and, in the event of a conflict, the terms and conditions of the Development Agreement shall prevail.

## RESOLUTION NO. XXXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK APPROVING FINDINGS AND CONDITIONS FOR A VESTING TENTATIVE SUBDIVISION MAP FOR THE HAMILTON AVENUE REALIGNMENT PORTION OF THE WILLOW VILLAGE MASTER PLAN PROJECT CONSISTING OF UP TO 1.6 MILLION SQUARE FEET OF OFFICE AND ACCESSORY USES, UP TO 1,730 MULTIFAMILY DWELLING UNITS, UP TO 200,000 SQUARE FEET OF RETAIL USES, AN UP TO 193 ROOM HOTEL, AND ASSOCIATED OPEN SPACE AND INFRASTRUCTURE**

WHEREAS, the City received an application requesting to redevelop an approximately 59-acre industrial site (the “main Project Site”) plus three parcels (within two sites) west of Willow Road (the “Hamilton Parcels,” and collectively with the main Project Site, the “Project Site”) as a multi-phase, mixed-use development consisting of up to 1.6 million square feet of office and accessory uses (a maximum of 1,250,000 square feet of office uses and the balance for accessory uses), up to 1,730 multifamily dwelling units, up to 200,000 square feet of retail, an up to 193-room hotel, and associated open space and infrastructure (the “Project”); and

WHEREAS, a Vesting Tentative Subdivision Map for a subdivision is proposed for the Hamilton Avenue realignment proposed as part of the Project (“Hamilton VTM”); and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, an Environmental Impact Report (EIR) was prepared for the Project and certified by the City Council on \_\_\_\_\_, 2022 (SCH: 2019090428), in accordance with the provisions of the California Environmental Quality Act (CEQA) and the CEQA Guidelines. Findings and a statement of overriding considerations were adopted by the City Council on \_\_\_\_\_, 2022, by Resolution No. \_\_\_\_\_, and are incorporated herein by this reference; and

WHEREAS, after notice having been lawfully given, a public hearing was scheduled and held before the Planning Commission of the City of Menlo Park (the “Planning Commission”) on October 24, 2022 and continued to November 3, 2022, to review and consider the Project, including the Hamilton VTM, whereat all persons interested therein might appear and be heard; and

WHEREAS, the Planning Commission, having fully reviewed, considered, and evaluated all the testimony and evidence submitted in this matter, voted affirmatively to recommend to the City Council of the City of Menlo Park (the “City Council”) to approve the Hamilton VTM; and

WHEREAS, after notice having been lawfully given, a public hearing was scheduled and held before the City Council on \_\_\_\_\_, 2022, to review and consider the Project, including the Hamilton VTM, whereat all persons interested therein might appear and be heard; and

WHEREAS, the City Council, having fully reviewed, considered, and evaluated all the testimony and evidence submitted in this matter, voted affirmatively to approve the Hamilton VTM.

NOW, THEREFORE, BE IT RESOLVED that the City Council finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park hereby approves the Hamilton VTM subject to conditions (Exhibit A) for the Project. This approval is pursuant to the Subdivision Map Act and City of Menlo Park Municipal Code Section 15.20.050:

1. The Hamilton VTM is technically correct and in compliance with all applicable State regulations, City General Plan, Zoning and Subdivision Ordinances, and the State Subdivision Map Act.
2. The proposed Hamilton VTM, including the contemplated design and improvements, is consistent with applicable General Plan goals and policies, in particular the goals for the Bayfront Area set forth in the General Plan Update (“ConnectMenlo”). The Project is consistent with the land use designations described in the General Plan and would be consistent with City General Plan policies as well as City Zoning Ordinance requirements for master-planned projects at the proposed density and for the types of use.
3. The Project Site is physically suitable for the proposed master-planned development, including the proposed density of development, and the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially injure fish or wildlife or their habitat. The Project is consistent with the density and uses for the site set forth in the General Plan. The Project Site is in a heavily urbanized area of the City currently occupied by developed/landscaped areas that include various urban uses and does not include any aquatic habitat. The Project would not cause substantial environmental damage to the already disturbed Project Site and would not substantially injure the limited wildlife that access the site or their habitat.
4. The design of the subdivision or types of improvements is not likely to cause serious public health or safety problems. The Project would comply with General Plan goals and policies, City Zoning and Subdivision Ordinances, and other applicable regulations designed to prevent serious health or safety problems.
5. The design of the subdivision or the type of improvements does not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision because alternate easements for access or use will be provided that are substantially equivalent to ones previously acquired by the public.
6. The Project is subject to flood and inundation hazards but is not located within a slide area. The Project Site is located within the 100-year flood hazard zone. However, the contemplated Project improvements will be designed so as to mitigate flood hazards, and the Project would comply with applicable requirements designed to mitigate flood hazards and address future sea level rise.

SEVERABILITY

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void, or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

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I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifteenth day of November, 2022, 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 \_\_\_ day of November, 2022.

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Judi A. Herren, City Clerk

Exhibits:

A. Draft Hamilton Avenue parcels vesting tentative map conditions

## Conditions of Approval – Parcels west of Willow Road

### Standard Conditions

#### Prior to Parcel Map Approval

1. Prior to approval of the Parcel Map the Applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
2. Applicant shall prepare and submit Demolition Plans to the City prior to the approval of the Parcel Map. The Demolition Plans, at a minimum, shall depict the demolition of all existing improvements within Parcel 1 that would conflict with the proposed reconfigured Parcel 1.
3. Prior to recordation of the Parcel Map, any existing buildings/structures that conflict with future proposed parcel boundaries of the Parcel Map shall be demolished subject to City approved Demolition Plans and Permit.
4. Prior to Parcel Map approval, Applicant shall submit plans for: 1) construction safety fences around the periphery of the construction area on private property, 2) dust control, 3) air pollution control, 4) erosion and sedimentation control, 5) tree protection fencing, and 6) construction vehicle parking. The plans shall be subject to review and approval by the Building, Engineering, and Planning Divisions. The fences and erosion and sedimentation control measures shall be installed according to the approved plan prior to commencing construction.
5. Prior to Parcel Map approval, Applicant shall submit a Grading and Drainage Plan which may be included in the Improvement Plan set for review and approval. Post-construction runoff into the storm drain shall not exceed preconstruction runoff levels. A Hydrology Report calculating post construction performance will be required to the satisfaction of the Engineering Division.
6. Prior to Parcel Map approval, the Applicant shall submit engineered Off-Site Improvement Plans (including plans, specifications & engineer's cost estimates), for approval by the Engineering Division, showing the infrastructure necessary to serve the Project. The Off-Site Improvement Plans shall include, but are not limited to, all engineering calculations necessary to substantiate the design of proposed realigned Hamilton Avenue improvements and associated relocation of utilities, traffic control devices, street lighting, and streetscape landscaping improvements, and shall incorporate the following:
  - a. The Off-Site Improvement Plans shall depict a realigned Menlo Park Utilities 12 inch domestic water mainline in an alignment within Willow Road.
  - b. The Applicant shall extend the existing 10 foot shared bicycle/pedestrian path within Parcel 2 along Willow Road to the realigned Willow Road/Hamilton Avenue intersection improvements.



- c. The relocated Bus Stop on Willow Road shall accommodate the proposed Class IV bicycle lanes on Willow Road and necessary ADA accommodations, including a bus shelter.
  - d. Off-Site Improvement Plans shall include, but are not limited to:
    - Existing Topography (NAVD 88')
    - Demolition Plan
    - Site Plan (including easement dedications, if applicable)
    - Construction Parking Plan
    - Grading and Drainage Plan
    - Utility Plan
    - Off-site Improvement Plan
    - Erosion Control Plan / Tree Protection Plan
    - Planting and Irrigation Plan
    - Construction Details (including references to City Standards)
  - e. All public improvements shall be designed and constructed to the satisfaction of the Engineering Division.
7. Green Infrastructure: The Off-Site Improvement Plans shall include Green Infrastructure in the form of a stormwater treatment area along the project's frontage to treat runoff from the public right-of-way. The treatment area shall be located within the landscape area between the curb and sidewalk. Sizing and design shall conform to San Mateo Countywide Water Pollution Prevention Program design templates and technical guidance and be approved by the Engineering Division.
  8. Landscape Screening: Landscaping shall screen all public utility equipment that is installed within the public rights-of-way and cannot be placed underground, subject, however, to the requirements of the Menlo Park Fire Protection District, the West Bay Sanitary District, PG&E, and any other applicable agencies regarding utility clearances and screening. The Off-Site Improvement Plans shall depict new utility installations, exact locations of any meters, back flow prevention devices, transformers, junction boxes, relay boxes and other equipment boxes installed within the public right of way or public easement area. The Off-Site Improvement Plans shall also depict the landscape screening. The screening shall be compatible and unobtrusive and subject to the review and approval of the Engineering and Planning Divisions; which approval will be required prior to the City's approval of the Off-Site Improvement Plans.
  9. Stormwater Management Report: Prior to Parcel Map approval, the applicant shall submit a Storm Water Management Report for the public right-of-way that meets the requirements of the San Mateo County's C.3 Stormwater Technical Guidance Manual.
  10. Prior to Parcel Map approval, Applicant shall provide documentation indicating the amount of irrigated landscaping within the public right-of-way. If the project proposes more than 500 square feet of irrigated landscaping, it is subject to the City's Water Efficient Landscaping Ordinance (Municipal Code Chapter 12.44). A detailed landscape plan shall be included in the Off-Site Improvement Plans and shall be subject to review and approval by the Engineering Division.

11. Prior to Parcel Map approval, Applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions. The plan shall show locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
12. Prior to Parcel Map approval, Applicant shall pay all Public Works fees. Refer to City of Menlo Park Master Fee Schedule.
13. Prior to Parcel Map approval, the Applicant shall enter into a Subdivision Improvement Agreement and provide a performance bond for the completion of the off-site improvements as shown on the approved Off-Site Improvement plans. The Applicant shall obtain an encroachment permit, from the appropriate reviewing jurisdiction, prior to commencing any work within the right-of-way or public easements.
14. Prior to Parcel Map approval, Applicant shall submit draft updates to the recorded February 25, 1999, Covenants, Conditions and Restrictions (CC&Rs) to the City for review and approval by the Engineering Division, Planning Division and City Attorney. The CC&Rs shall include amendments for the maintenance of storm water treatment improvements either within and/or adjacent to the Project site or constructed to serve the Project.

Prior to Construction

15. Prior to the commencement of the construction of public improvements, the Applicant shall obtain approval of the Willow Road Improvements encroachment permit from Caltrans as follows:
  - a. Submit a substantially complete set of Willow Road Improvement Plans to the City concurrent with the approval of the Willow Village Phase I Improvement Plans. The "Willow Road Improvement Plans" shall be comprised of the following improvements within Caltrans' right-of-way:
    1. Realigned Willow Road/Hamilton Avenue intersection;
    2. New Willow Road/Park Street intersection; and
    3. Class IV bicycle lanes on Willow Road.

Willow Road Improvement Plans shall include surface improvements, traffic signals, bicycle lanes, utility improvements, striping and signage improvements and other frontage improvements addressing both sides of Willow Road. The City shall cooperate with Applicant in its efforts to obtain an encroachment permit and other applicable approvals from Caltrans.
  - b. Caltrans Approval: Applicant shall submit applications to Caltrans no later than 30 days after City approval of the Willow Road Improvement Plans, and diligently pursue approvals.

16. Truck Route Plan: The Applicant shall submit a truck route plan concurrent with the approval of the Off-Site Improvement Plan set based on the City's municipal code requirements, for review and approval by the Transportation Division. The Applicant shall also submit a permit application and pay fees, if applicable, relating to the truck route plan, to the satisfaction of the Public Works Director.

During Construction

17. Salvaging and Recycling of Construction and Demolition Debris: For demolition of the existing improvements and the segment of Hamilton Avenue that is to be demolished, the Applicant shall comply with the requirements of Chapter 12.48 (Salvaging and Recycling of Construction and Demolition Debris) of the City of Menlo Park Municipal Code, which compliance shall be subject to review and approval by the Building Official or designee.
18. For areas that have undergone site clearing and have exposed soil by the start of the wet season (October 1 through April 30), the Applicant shall implement a winterization program to minimize the potential for erosion and sedimentation. As appropriate to the site and status of construction, winterization requirements shall include inspecting/maintaining/cleaning all soil erosion and sedimentation controls prior to, during, and immediately after each storm event; stabilizing disturbed soils through temporary or permanent seeding, mulching, matting, tarping or other physical means; rocking unpaved vehicle access to limit dispersion of much onto public right-of-way; and covering/tarping stored construction materials, fuels, and other chemicals. Erosion Plans shall include proposed measures to prevent erosion and polluted runoff occurring from site conditions shall be submitted for review and approval of the Engineering Division prior to beginning site clearing activities.
19. Stormwater Pollution Prevention Program Best Management Practices (BMPs) for construction shall be implemented to protect water quality, in accordance with the approved Stormwater Pollution Prevention Plan (SWPPP). BMP plan sheets are available electronically for inserting into Project plans.

Additional General Conditions

20. Within two years from the date of approval of the tentative parcel map, the Applicant shall submit a Parcel Map for City approval and recordation or apply for an extension of time consistent with section 66463.5(a) of the Subdivision Map Act.
21. The Applicant shall adhere to the Subdivision Map Act and Chapter 15 of the City's Municipal Code.
22. West Bay Sanitary District Requirements: The Property Owner shall comply with all regulations of the West Bay Sanitary District that are directly applicable to the Project.

23. Menlo Park Fire Protection District Requirements: The Property Owner shall comply with all Menlo Park Fire Protection District regulations governing site improvements, Fire Code compliance, and access verification that are directly applicable to the Project.
24. During the design phase of the construction drawings, all potential utility conflicts shall be potholed with actual depths recorded on the improvement plans submitted for City review and approval.
25. The Applicant shall retain a civil engineer to prepare "as-built" or "record" drawings of public improvements, and the drawings shall be submitted in AutoCAD and Adobe PDF formats to the Engineering Division prior to Final Occupancy.

#### Project-Specific Conditions

1. The Parcel Map shall indicate and provide irrevocable offers of right-of-way dedication and public easements, as shown on tentative map dated October 7, 2022.
2. "No Objection" letters shall be provided to the City from all utilities companies prior to abandonment of public right of ways and public utility easements.
3. The existing Hamilton Avenue roadway shall remain operational until the cutover to the new alignment.

## ORDINANCE NO. XXXX

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
AMENDING THE CITY ZONING MAP, REZONING CERTAIN PROPERTIES TO  
ADD A CONDITIONAL DEVELOPMENT (“X”) COMBINING DISTRICT, AND  
APPROVING A CONDITIONAL DEVELOPMENT PERMIT FOR THE WILLOW  
VILLAGE MASTER PLAN PROJECT**

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

**SECTION 1.**

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

- A. The City received an application requesting to redevelop an approximately 59-acre industrial site (the “main Project Site”) plus three parcels (within two sites) west of Willow Road (the “Hamilton Parcels” and collectively, with the main Project Site, the “Project Site”) as a mixed-use development consisting of up to 1.6 million square feet of office and accessory uses (a maximum of 1,250,000 square feet for office uses and the balance for accessory uses), up to 1,730 multifamily dwelling units, up to 200,000 square feet of retail uses, an up to 193-room hotel, and associated open space and infrastructure (the “Project”).
- B. Amendment of the City zoning map is necessary to modify the circulation plan with regard to the locations for new street connections to the surrounding roadway network as well as the locations of public rights-of-way and paseos and the inclusion of multi-use pathways within the main Project Site as shown in Exhibit A, attached hereto and incorporated herein by this reference.
- C. Rezoning of the main Project Site as shown in Exhibit A is necessary to add a conditional development (“X”) combining district, thereby allowing special regulations and conditions to be added at the main Project Site (combined with the base O-B and R-MU-B regulations) as part of the proposed Project.
- D. The Project is eligible for a Conditional Development Permit under Menlo Park Municipal Code section 16.82.055(1) in that the main Project Site is more than one acre and is not located in the SP-ECR/D district.
- E. Approving the Conditional Development Permit is necessary to authorize development of the Project on the main Project Site, including variants of the Project, including to authorize certain modifications to the requirements of the O and R-MU zoning districts for the Project in accordance with Municipal Code Section 16.82.050, authorize a master planned project in accordance with Municipal Code Sections 16.43.055 and 16.45.55, authorize bonus level development and require the provision of community amenities in accordance with Municipal Code Sections 16.43.060 through .070 and 16.45.60 through 70, approve uses identified in the Conditional Development Permit in accordance with Menlo Park Municipal Code sections 16.43.020 through .040, 16.45.020 through .040, and 16.78.030, approve waivers to Bird Friendly Design requirements pursuant to Municipal Code Sections 16.43.140(6) and 16.45.130(6), approve transportation demand management plans in accordance with Municipal Code Sections 16.43.100 and 16.45.90, establish a procedure for future consideration and approval of a Master Sign Program to establish signage standards and guidelines, and approve an exception to the unbundled parking requirement pursuant to Municipal Code Section 16.45.080(1).
- F. The proposed amendment to the City zoning map and rezoning of the main Project Site, as shown in Exhibit A, as well as the approval of the Conditional Development Permit, would promote a mixed-use live/work/play environment through the inclusion of multifamily housing, including affordable residential units, along with office, retail, hotel and recreational uses at the density and intensity envisioned in the ConnectMenlo General Plan (“General Plan”).

G. The proposed amendment of the City zoning map and rezoning of the main Project Site, as shown in Exhibit A, as well as the Conditional Development Permit are consistent with the General Plan, including the land use designations for the main Project Site.

#### SECTION 2.

An Environmental Impact Report (EIR) was prepared for the Project and certified by the City Council on \_\_\_\_\_, 2022 (SCH# 2019090428), in accordance with the provisions of the California Environmental Quality Act (CEQA) and the CEQA Guidelines. Findings and a statement of overriding considerations were adopted by the City Council on \_\_\_\_\_, 2022, by Resolution No. \_\_\_\_\_, and are incorporated herein by this reference. The analysis in the Project EIR tiered from the ConnectMenlo Final EIR, as appropriate and as further described in each environmental topic section in the EIR.

#### SECTION 3.

The Planning Commission of the City of Menlo Park (the "Planning Commission") held a duly noticed public hearing on October 24, 2022 and continued to November 3, 2022, to review and consider the Project, including the proposed amendment to the zoning map and the rezoning of the main Project Site, as shown on Exhibit A, and the Conditional Development Permit, whereat all interested persons had the opportunity to appear and comment.

#### SECTION 4.

The Planning Commission, having fully reviewed, considered, and evaluated all the testimony and evidence submitted in this matter, voted affirmatively to recommend to the City Council of the City of Menlo Park (the "City Council") to approve the Project with recommended modifications, including the proposed amendment to the zoning map and the rezoning of the main Project Site, as shown on Exhibit A, as well as the Conditional Development Permit. In considering the Project, the Planning Commission considered and gave due regard to the nature and condition of all adjacent uses and structures and the impact of the Project thereon, and in relation to the effect upon the immediate neighborhood and the City. In accordance with Municipal Code Sections 16.82.030, 16.78.020, and 16.82.440, the Planning Commission found that approval of the Conditional Development Permit, including all uses permitted therein, would be consistent with the ConnectMenlo General Plan and would not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of the Project, would not be unreasonably incompatible with uses permitted in surrounding areas, and would not be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the City. The diesel emergency generators would meet the requirements of all reviewing and permitting agencies. The expanded construction hours include requirements to limit noise generating activities outside of the typical construction hours unless determined by the Building and Planning Divisions that an exception for specific activities is necessary (e.g. offsite evening/night work or other on-site activities that cannot occur during the typical construction hours). The Planning Commission further found that the public convenience or necessity would be served by the issuance of licenses to sell alcohol contemplated by the Conditional Development Permit and that the outdoor seating contemplated by the Conditional Development Permit would maintain unimpeded pedestrian access on the public right-of-way.

#### SECTION 5.

The City Council held a duly noticed public hearing on \_\_\_\_\_, 2022, to review and consider the Project, including the proposed amendment to the zoning map and the rezoning of the main Project Site, as shown in Exhibit A, as well as the Conditional Development Permit, whereat all interested persons had the opportunity to appear and comment.

#### SECTION 6.

After due consideration of the proposed amendment to the zoning map and the rezoning of the main Project Site, as shown in Exhibit A, the Conditional Development Permit, public comments, the Planning Commission's recommendation, the staff report, and other substantial evidence in the record, the City Council finds that the proposed amendment of the zoning map and rezoning of properties and the Conditional Development Permit as identified herein are consistent with the ConnectMenlo General Plan and are appropriate. In considering the Project, the City Council considered and gave due regard to the nature and condition of all adjacent uses and structures and the impact of the Project thereon, and in relation to the effect upon the immediate neighborhood and the City. In accordance with Municipal Code Sections 16.82.030, 16.78.020, and 16.82.440, the City Council further finds that approval of the Conditional Development Permit, including all uses permitted therein, would not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of the Project, would not be unreasonably incompatible with uses permitted in surrounding areas, and would not be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the City. The City Council further finds that the public convenience or necessity would be served by the issuance of licenses to sell alcohol contemplated by the Conditional Development Permit, and that the outdoor seating contemplated by the Conditional Development Permit would maintain unimpeded pedestrian access on the public right-of-way.

#### SECTION 7.

The zoning map of the City of Menlo Park is hereby amended to modify the circulation plan with regard to the locations for new street connections to the surrounding roadway network as well as the location of public rights-of-way and paseos, and the inclusion of multi-use pathways, within the main Project Site, as shown in Exhibit A.

#### SECTION 8.

The zoning map of the City of Menlo Park is hereby amended such that certain real properties shown in Exhibit A are rezoned to add a conditional development ("X") combining district. Specifically, the parcels identified in Exhibit B are rezoned to O-B-X to add an X combining district; the parcels identified in Exhibit C are rezoned to R-MU-B-X to add an X combining district. This X combining district is consistent with the General Plan, which allows the uses permitted in the combining district at the density and intensity proposed and encourages the type of live/work/play environment promoted by the X combining district in the Bayfront Area.

#### SECTION 9.

The Conditional Development Permit (Exhibit D) is hereby approved, authorizing development of the Project on the main Project Site. The Conditional Development Permit is consistent with the General Plan, which allows the uses permitted in the O-B-X and R-MU-B-X districts at the density and intensity proposed and encourages the type of live/work/play environment promoted by the X combining districts in the Bayfront area. Pursuant to Menlo Park Municipal Code section 16.56.030, the Conditional Development Permit establishes development regulations for the main Project Site, and the number of dwelling units, floor area ratio, and floor area limit authorized thereunder do not exceed the development regulations set forth in the O-B and R-MU-B districts. The Conditional Development Permit, including all uses permitted therein, would not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of the Project, would not be unreasonably incompatible with uses permitted in surrounding areas, and would not be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the City

SECTION 10. The Conditional Development Permit (Exhibit D) approves:

- 1) a master planned development that allows residential density, floor area ratio, and open space requirements at the bonus level to be calculated in the aggregate across the site but at levels which do not exceed what would be permitted if the site were developed in accordance with the O-B-X and R-MU-B-X districts, pursuant to Menlo Park Municipal Code sections 16.43.055 and 16.45.055;
- 2) bonus level development on the main Project Site and community amenities in accordance with the Development Agreement between City and Applicant, as well as Menlo Park Municipal Code sections 16.43.060, 16.45.060, 16.43.070, and 16.45.070;
- 3) all uses identified in the Conditional Development Permit in accordance with the terms thereunder and Menlo Park Municipal Code sections 16.43.020 through .040, 16.45.020 through .040, and 16.78.030;
- 4) waivers to Bird Safe Design requirements pursuant to Menlo Park Municipal Code sections 16.43.140(6)(H) and 16.45.130(6)(H) as provided in the Conditional Development Permit;
- 5) modifications to the requirements of the O-B and R-MU districts identified in the Conditional Development Permit to secure special benefits possible through comprehensive planning of large development, to allow relief from the monotony of standard development, and to permit the application of new and desirable development techniques, pursuant to Menlo Park Municipal Code section 16.82.050;
- 6) the transportation demand management plans identified in the Conditional Development Permit pursuant to Menlo Park Municipal Code sections 16.43.100 and 16.45.090;
- 7) all variants of the Project as identified in the Conditional Development Permit, including the No Willow Road Tunnel Variant, No Hamilton Avenue Realignment Variant, and Onsite Recycled Water Variant, which modify certain features or aspects of the Project based upon the election of the applicant or upon the potential action or inaction of agencies other than the City or of property owners outside the main Project Site;
- 8) establishment of a procedure for future consideration and approval of a Master Sign Program by the Planning Commission to establish signage standards and guidelines; and
- 9) an exception to the unbundled parking requirement pursuant to Municipal Code Section 16.45.080(1) for the Project's affordable units.
- 10) allowance for expanded construction work hours, provided the construction activities comply with the noise limitations set forth in Chapter 8.06 (Noise) of the Municipal Code and mitigation measures Modified ConnectMenlo NOISE-1c, NOI-1.1 and NOI-1.2, unless determined by the Building and Planning Divisions that an exception for specific activities is necessary (e.g. offsite evening/night work or other on-site activities that cannot occur during the typical construction hours). Noise is allowed to exceed the City's 85 decibel at 50 foot for any one piece of equipment requirement for construction equipment such as pile drivers, subject to compliance with Modified ConnectMenlo NOISE-1c, NOI-1.1 and NOI-1.2 in the EIR.

#### SECTION 11.

This ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption, the ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

#### SEVERABILITY

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void, or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.



INTRODUCED on the fifteenth day of November, 2022.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the \_\_\_ day of November, 2022, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

---

Betsy Nash, Mayor

ATTEST:

---

Judi A. Herren, City Clerk

Exhibits:

- A. Plat and legal – site
- B. Plat and legal – office
- C. Plat and legal – R-MU
- D. Conditional development permit

**LEGAL DESCRIPTION  
WILLOW VILLAGE SITE  
MENLO PARK, CALIFORNIA**

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

**BEGINNING** at the southwesterly corner of Parcel S; as shown on that certain map entitled "Menlo Industrial Center, City of Menlo Park, San Mateo County, California" filed in the office of the County Recorder of San Mateo County, State of California, on October 1, 1979, in Volume 99 of Maps at Pages 81-83, thence,

North 22°05'00" East, 120.17 feet; thence,

North 24°45'44" East, 143.14 feet; thence,

Along a tangent curve to the left, having a radius of 1,536.52 feet, length of 74.34 feet, and a delta angle of 02°46'19"; thence,

North 22°05'00" East, 864.41 feet; thence,

Along a tangent curve to the left, having a radius of 1,032.50 feet, length of 55.72 feet, and a delta angle of 03°05'31"; thence,

North 25°35'47" East, 2.12 feet; thence,

North 19°19'09" East, 144.98 feet; thence,

North 22°05'00" East, 71.06 feet; thence,

North 84°59'41" East, 1,324.41 feet; thence,

Along a tangent curve to the left, having a radius of 1,1509.17 feet, length of 251.79 feet, and a delta angle of 01°15'13"; thence,

South 10°08'21" West, 1,612.25 feet; thence,

South 88°08'54" West, 1,612.25 feet; thence,

North 79°51'49" West, 668.96 feet to the **POINT OF BEGINNING.**

Containing 2,577,434.20 square feet (59.17 acres), more or less.



September 30, 2022

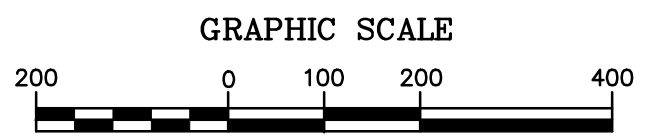


Line Table		
Line #	Length	Direction
L1	120.17	N22° 05' 00"E
L2	143.14	N24° 45' 44"E
L3	864.41	N22° 05' 00"E
L4	144.98	N19° 19' 09"E
L5	71.06	N22° 05' 00"E
L6	1324.41	N84° 59' 41"E
L7	1612.25	S10° 08' 21"W
L8	1182.95	S88° 08' 54"W
L9	668.96	N79° 51' 49"W
L10	2.12	N25° 35' 47"E
L11	1324.41	N84° 59' 45"E
L12	1612.25	S10° 07' 20"W
L13	1182.46	S88° 07' 50"W
L14	669.55	N79° 55' 00"W

Curve Table			
Curve #	Length	Radius	Delta
C1	251.79	11509.17	1°15'13"
C2	74.34	1536.52	2°46'19"
C3	55.72	1032.50	3°05'31"



NOTES  
(L11) RECORD DATA FROM  
99 M 82-83



( IN FEET )  
1 inch = 200 ft.

DATE:	9/30/2022
SCALE:	AS SHOWN
DESIGNED:	
DRAWN:	RJL
CHECKED:	DCF
PROJ. ENGR:	

**FREYER & LAURETA, INC.**  
CIVIL ENGINEERS • SURVEYORS • CONSTRUCTION MANAGERS  
150 Executive Blvd • Suite 4200 • San Francisco, CA 94134  
(415)534-7070 • www.freyerlaureta.com

DESCRIPTION	DATE

**EXHIBIT B**  
**PROJECT SITE PLAT**  
**WILLOW VILLAGE**  
**MENLO PARK, CALIFORNIA**

SHEET	1
OF 1 SHEETS	
JOB NO.	300001

**LEGAL DESCRIPTION  
OFFICE (O)  
MENLO PARK, CALIFORNIA**

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

**BEGINNING** at the southwesterly corner of Parcel S; as shown on that certain map entitled "Menlo Industrial Center, City of Menlo Park, San Mateo County, California" filed in the office of the County Recorder of San Mateo County, State of California, on October 1, 1979, in Volume 99 of Maps at Pages 81-83, thence,

North 22°05'00" East, 120.17 feet; thence,

North 24°45'44" East, 143.14 feet; thence,

Along a tangent curve to the left, having a radius of 1,536.52 feet, length of 74.34 feet, and a delta angle of 02°46'19"; thence,

North 22°05'00" East, 864.41 feet; thence,

Along a tangent curve to the left, having a radius of 1,032.50 feet, length of 55.72 feet, and a delta angle of 03°05'31" to the **TRUE POINT OF BEGINNING**, thence clockwise the following courses and distances:

North 25°35'47" East, 2.12 feet; thence,

North 19°19'09" East, 144.98 feet; thence,

North 22°05'00" East, 71.06 feet; thence,

North 84°59'41" East, 1,324.41 feet; thence,

Along a tangent curve to the left, having a radius of 11,509.17 feet, length of 251.79 feet, and a delta angle of 01°15'13"; thence,

South 10°08'21" West, 1,612.25 feet; thence,

South 88°08'54" West, 899.78 feet; thence,

North 10°08'21" East, 391.79 feet; thence,

North 36°24'32" West, 124.47 feet; thence,

Along a curve to the left, having a radius of 60.00 feet, length of 93.25 feet, a delta angle of 89°02'37", and a radial bearing of North 36°24'32" West; thence,

Along a tangent curve to the right, having a radius of 40.00 feet, length of 31.82 feet, and a delta angle of 45°34'23"; thence,

North 10°07'14" East, 176.74 feet; thence,

Along a tangent curve to the right, having a radius of 30.00 feet, length of 47.12 feet, and a delta angle of 90°00'00"; thence,

South 79°52'46" East, 664.42 feet; thence,

Along a tangent curve to the right, having a radius of 40.00 feet, length of 31.82 feet, and a delta angle of 45°34'23"; thence,

Along a tangent curve to the left, having a radius of 60.00 feet, length of 283.94 feet, and a delta angle of 271°08'46"; thence,

Along a tangent curve to the right, having a radius of 40.00 feet, length of 31.82 feet, and a delta angle of 45°34'23"; thence,

North 79°52'46" West, 664.42 feet; thence,

Along a tangent curve to the right, having a radius of 30.00 feet, length of 47.12 feet, and a delta angle of 90°00'00"; thence,

North 10°07'14" East, 104.42 feet; thence,

Along a tangent curve to the left, having a radius of 140.00 feet, length of 190.68 feet, and a delta angle of 78°02'17"; thence,

North 67°55'03" West, 133.87 feet; thence,

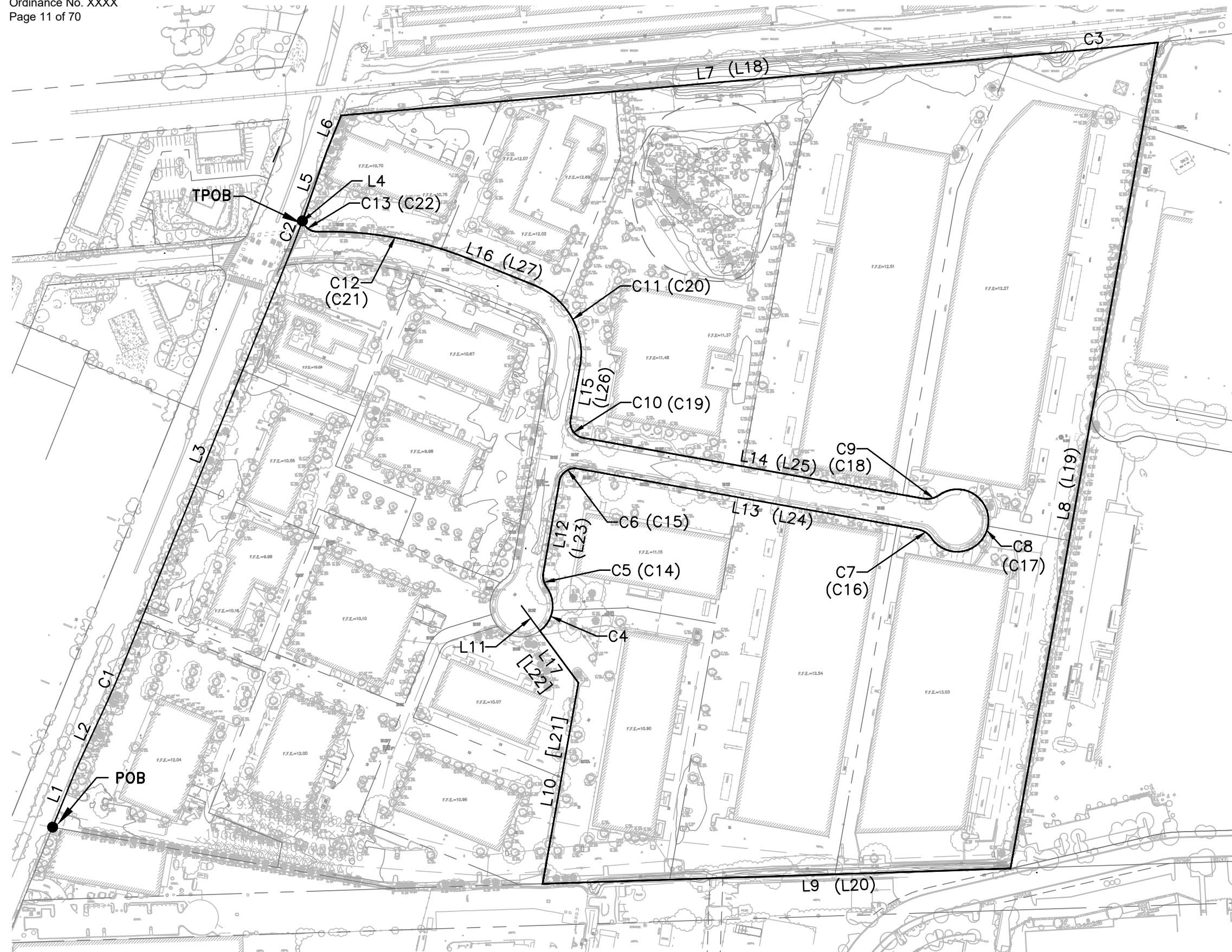
Along a tangent curve to the left, having a radius of 735.00 feet, length of 301.93 feet, and a delta angle of 23°32'13"; thence,

Along a tangent curve to the right, having a radius of 30.00 feet, length of 38.55 feet, and a delta angle of 73°37'09" to the **TRUE POINT OF BEGINNING**.

Containing 1,624,516.57 square feet (37.29 acres), more or less.

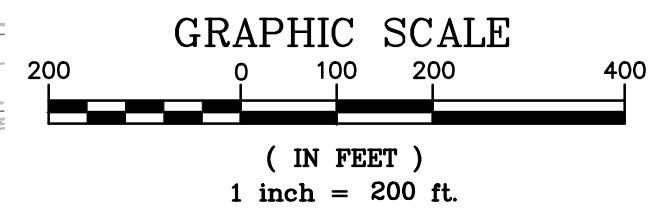
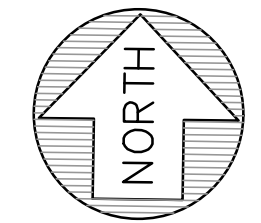
October 17, 2022





**NOTES**

- (L11) RECORD DATA FROM 99 M 82-83
- [L15] RECORD DATA FROM 52 M 82



DATE:	10/17/2022
SCALE:	AS SHOWN
DESIGNED:	
DRAWN:	RJL
CHECKED:	DCF
PROJ. ENGR:	

**FREYER & LAURETA, INC.**  
 CIVIL ENGINEERS • SURVEYORS • CONSTRUCTION MANAGERS  
 150 Executive Blvd • Suite 4200 • San Francisco, CA 94134  
 (415)534-7070 • www.freyerlaureta.com

DESCRIPTION	DATE

**EXHIBIT B**  
**OFFICE (O)**  
**WILLOW VILLAGE**  
**MENLO PARK, CALIFORNIA**

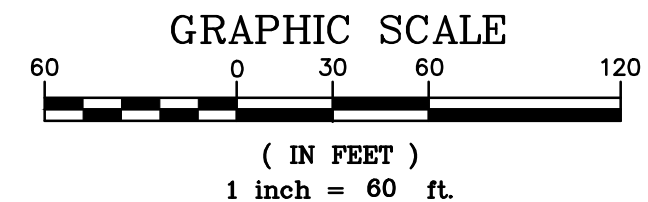
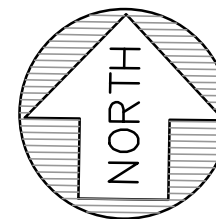
SHEET 1 OF 2 SHEETS  
 JOB NO. 300001

Line Table

Line #	Length	Direction
L1	120.17	N22° 05' 00"E
L2	143.14	N24° 45' 44"E
L3	864.41	N22° 05' 00"E
L4	2.12	N25° 35' 47"E
L5	144.98	N19° 19' 09"E
L6	71.06	N22° 05' 00"E
L7	1324.41	N84° 59' 41"E
L8	1612.25	S10° 08' 21"W
L9	899.78	S88° 08' 54"W
L10	391.79	N10° 08' 21"E
L11	60.00	N36° 24' 32"W
L12	176.74	N10° 07' 14"E
L13	664.42	S79° 52' 46"E
L14	664.42	N79° 52' 46"W
L15	104.42	N10° 07' 14"E
L16	133.87	N67° 55' 03"W
L17	124.47	N36° 24' 32"W
(L18)	1324.41	N84° 59' 45"E
(L19)	1612.25	S10° 07' 20"W
(L20)	899.63(c)	S88° 07' 50"W
[L21]	391.79	N10° 07' 20"E
[L22]	124.71	N36° 23' 11"W
(L23)	176.74	N10° 07' 20"E
(L24)	664.59	S79° 52' 40"E
(L25)	664.59	N79° 52' 40"W
(L26)	104.42	N10° 07' 20"E
(L27)	134.10	N67° 55' 00"W

Curve Table

Curve #	Length	Radius	Delta
C1	74.34	1536.52	2°46'19"
C2	55.72	1032.50	3°05'31"
C3	251.79	11509.17	1°15'13"
C4	93.25	60.00	89°02'37"
C5	31.82	40.00	45°34'23"
C6	47.12	30.00	90°00'00"
C7	31.82	40.00	45°34'23"
C8	283.94	60.00	271°08'46"
C9	31.82	40.00	45°34'23"
C10	47.12	30.00	90°00'00"
C11	190.68	140.00	78°02'17"
C12	301.93	735.00	23°32'13"
C13	38.55	30.00	73°37'09"
(C14)	31.82	40.00	45° 34'22"
(C15)	47.12	30.00	90° 00'00"
(C16)	31.82	40.00	45° 34'22"
(C17)	283.94	60.00	271° 08'44"
(C18)	31.82	40.00	45° 34'22"
(C19)	47.12	30.00	90° 00'00"
(C20)	190.68	140.00	53° 39'10"
(C21)	301.52	735.00	-
(C22)	-	30.00	-



DATE: 10/17/2022  
SCALE: AS SHOWN  
DESIGNED:  
DRAWN: RJL  
CHECKED: DCF  
PROJ. ENGR:

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(415)534-7070 • www.freyerlaureta.com

DESCRIPTION	DATE

**EXHIBIT B**  
**OFFICE (O)**  
**WILLOW VILLAGE**  
**MENLO PARK, CALIFORNIA**

SHEET  
2  
OF 2 SHEETS  
JOB NO.  
**300001**



**LEGAL DESCRIPTION  
RESIDENTIAL MIXED USE (R-MU)  
MENLO PARK, CALIFORNIA**

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

**BEGINNING** at the southwesterly corner of Parcel S; as shown on that certain map entitled "Menlo Industrial Center, City of Menlo Park, San Mateo County, California" filed in the office of the County Recorder of San Mateo County, State of California, on October 1, 1979, in Volume 99 of Maps at Pages 81-83, thence,

North 22°05'00" East, 120.17 feet; thence,

North 24°45'44" East, 143.14 feet; thence,

Along a tangent curve to the left, having a radius of 1,536.52 feet, length of 74.34 feet, and a delta angle of 02°46'19"; thence,

North 22°05'00" East, 829.11 feet; thence,

Along a curve to the left, having a radius of 30.00 feet, length of 9.98 feet, a delta angle of 19°03'50", and a radial bearing of South 24°04'08" East; thence,

North 84°59'42" East, 13.25 feet; thence,

Along a tangent curve to the right, having a radius of 675.00 feet, length of 319.12 feet, and a delta angle of 27°05'15"; thence,

South 67°55'03" East, 133.87 feet; thence,

Along a tangent curve to the right, having a radius of 80.00 feet, length of 108.96 feet, and a delta angle of 78°02'17"; thence,

South 10°07'14" West, 401.15 feet; thence,

Along a tangent curve to the right, having a radius of 40.00 feet, length of 31.82 feet, and a delta angle of 45°34'23"; thence,

Along a tangent curve to the left, having a radius of 60.00 feet, length of 190.70 feet, and a delta angle of 182°06'08"; thence,

South 36°24'32" East, 124.47 feet; thence,

South 10°08'21" West, 391.79 feet; thence,

South 88°08'54" West, 283.17 feet; thence,

North 79°51'49" West, 668.96 feet to the **POINT OF BEGINNING**.

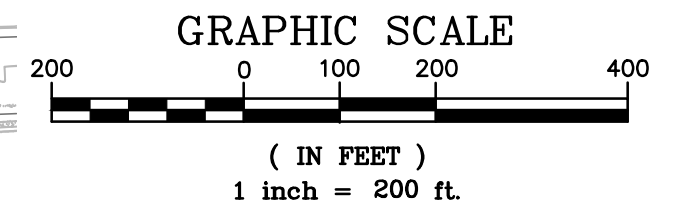
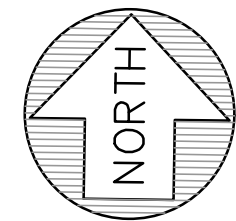
Containing 824,596.48 square feet (18.93 acres), more or less.



October 17, 2022



**NOTES**  
 (L11) RECORD DATA FROM  
99 M 82-83  
 [L15] RECORD DATA FROM  
52 M 82



DATE: 10/17/2022  
 SCALE: AS SHOWN  
 DESIGNED:  
 DRAWN: RJL  
 CHECKED: DCF  
 PROJ. ENGR:

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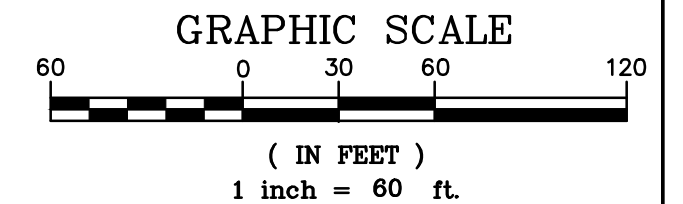
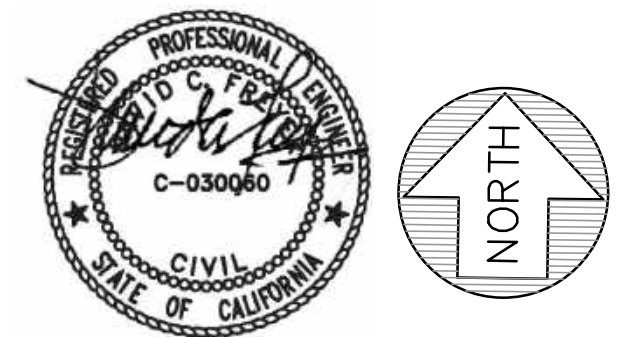
DESCRIPTION	DATE

**EXHIBIT B**  
**RESIDENTIAL MIXED USE (R-MU)**  
**WILLOW VILLAGE**  
**MENLO PARK, CALIFORNIA**

SHEET  
1  
OF 2 SHEETS  
JOB NO.  
**300001**

Line Table		
Line #	Length	Direction
L1	120.17	N22° 05' 00"E
L2	143.14	N24° 45' 44"E
L3	829.11	N22° 05' 00"E
L4	30.00	S24° 04' 08"E
L5	13.25	N84° 59' 42"E
L6	133.87	S67° 55' 03"E
L7	401.15	S10° 07' 14"W
L8	124.47	S36° 24' 32"E
L9	391.79	S10° 08' 21"W
L10	283.17	S88° 08' 54"W
L11	668.96	N79° 51' 49"W
(L12)	12.80	N84° 59' 45"E
(L13)	134.10	N67° 55' 00"W
(L14)	401.16	N10° 07' 20"E
[L15]	124.71	N36° 23' 11"W
[L16]	391.79	N10° 07' 20"E
(L17)	669.55	N79° 55' 00"W

Curve Table			
Curve #	Length	Radius	Delta
C1	74.34	1536.52	2°46'19"
C2	9.98	30.00	19°03'50"
C3	319.12	675.00	27°05'15"
C4	108.96	80.00	78°02'17"
C5	31.82	40.00	45°34'23"
C6	190.70	60.00	182°06'08"
(C7)	108.96	80.00	78° 02'20"
(C8)	31.82	40.00	45° 34'22"



DATE: 10/17/2022  
SCALE: AS SHOWN  
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DESCRIPTION	DATE

**EXHIBIT B**  
**RESIDENTIAL MIXED USE (R-MU)**  
**WILLOW VILLAGE**  
**MENLO PARK, CALIFORNIA**

SHEET  
2  
OF 2 SHEETS  
JOB NO.  
**300001**

**DRAFT CONDITIONAL DEVELOPMENT PERMIT (“CDP”)  
WILLOW VILLAGE MASTER PLAN PROJECT**

**1. GENERAL INFORMATION**

- 1.1. Applicant: Peninsula Innovation Partners, LLC (“**Applicant**”) or its successors or assigns
- 1.2. Project Description: General Plan Circulation Map Amendment, Zoning Ordinance Map Amendment, Rezoning, Development Agreement, Conditional Development Permit, Architectural Control, Vesting Tentative Subdivision Maps, Heritage Tree Removal Permits, Zoning Ordinance Modifications, Bird-Friendly Design Waivers, Willow Village Transportation Demand Management (TDM) Plan, and Below Market Rate Housing Agreements, to demolish approximately 1 million square feet (sf) of existing nonresidential uses and construct:
1. Approximately 1.8 million sf of nonresidential uses, composed of up to 1.6 million sf of office and accessory uses in the Campus District (consisting of up to 1.25 million sf of office space, with the balance of space for accessory uses [up to 350,000 sf if the office sf is maximized], in multiple buildings) and up to 200,000 sf of commercial/retail space;
  2. Up to approximately 1,730 multi-family residential units, inclusive of 312 below market rate units;
  3. An up to 193-room hotel; and
  4. Minimum of 857,000 sf of open space at full buildout, including a minimum of 360,000 sf of publicly accessible parks, paths, and trails.

The above elements are collectively referred to as “**Project**”.

- 1.3. Project Site: The project site consists of approximately 59 acres identified by the Assessor’s Parcel Numbers listed in Section 1.4 herein, and generally is bounded by the currently inactive Dumbarton Rail Corridor to the north, an existing life science complex to the east (Menlo Park Labs Campus), the San Francisco Public Utilities Commission (SFPUC) Hetch Hetchy right-of-way to the south, and Willow Road to the west (“**Project Site**”). The existing project site parcels are shown on Exhibit A attached hereto and are more particularly described in Exhibit B attached hereto.

The Project also includes three parcels on two sites west of Willow Road. Hamilton Avenue Parcel North includes the existing Belle Haven Shopping Center (1401 Willow Road and 871-883 Hamilton Avenue) and Hamilton Avenue Parcel South includes the existing Chevron service station (1399 Willow Road). These parcels are not subject to this CDP; however, these parcels would be subject to and affected by specific off-site improvements and project actions (e.g. realignment of Hamilton Avenue).

- 1.4. Assessor’s Parcel Numbers: 055-440-010; 055-440-020; 055-440-030; 055-440-040; 055-440-090; 055-440-110; 055-440-130; 055-440-190; 055-440-210; 055-440-230;

055-440-260; 055-440-300; 055-440-310; 055-440-320; 055-440-330; 055-440-050;  
055-440-340; 055-440-350

- 1.5. Property Owner(s): Peninsula Innovation Partners and its successors in interest to all or any part of the Project Site (“**Property Owner**”)
- 1.6. Zoning: O-B-X (Office-Bonus, Conditional Development), R-MU-B-X (Residential Mixed-Use-Bonus, Conditional Development)
- 1.7. Conditions Precedent:

1.7.1. Property Owner’s obligations set forth herein are expressly conditioned on the resolution of all legal challenges, if any, to the Project’s entitlements. Notwithstanding any legal challenges, Property Owner’s obligations as set forth herein are expressly conditioned on Property’s Owner’s election, in its sole discretion, to commence construction of the Project.

1.7.2. Development of the Project, and all references in this CDP to the City’s Municipal Code, Zoning Ordinance, and future conditions of approval and fees, shall be subject to vested rights pursuant to common law, the Subdivision Map Act, and the Development Agreement.

## 2. PROJECT PLANS AND DEVELOPMENT STANDARDS

### 2.1. Project Plans:

2.1.1. Development of the Project shall substantially conform with the Willow Village Master Plan plans submitted by Applicant dated October 19, 2022, consisting of 66 plan sheets and Appendices 1 through 10, recommended for approval by the Planning Commission on [date], and approved by the City Council on [date] (“**Project Plans**”), except as modified by the conditions contained herein and/or in accordance with Section 8 (Changes) of this CDP.

2.1.2. Attached as Exhibit D is a glossary of technical reports and documents supporting implementation of this CDP.

2.1.3. Prior to the issuance of building permits for each building in the Project, and in accordance with Section 12.2, below, Property Owner shall submit architectural control plans (ACPs) for the building/site for review and approval by the Planning Commission in accordance with Municipal Code Section 16.68.020. As part of the architectural control review, the Community Development Department shall track compliance with the Development Standards set forth in Section 2.3 below through a compliance matrix, dated 6/23/22 and on file with the

City that may be updated from time to time to ensure compliance with this CDP and Municipal Code requirements.

2.2. Definitions: As used in this CDP and the Project Plans:

2.2.1. **“Standards”**. Standards are objective measures with which all architectural control plans (ACPs) must substantially conform, subject to Changes to the CDP granted in accordance with and defined in Section 8 herein. Standards may be minimum or maximum development parameters that development must fall within, or may be prescriptive requirements for objective Project design features.

2.2.2. **“Conceptual Plans”**. Items labeled as Conceptual Plans are intended to convey the general vision and design intent of the Project, while allowing flexibility in interpretation and implementation. Conceptual Plans serve as guidelines for general orientation and organization of land uses and transportation and open space networks, general scale and massing of development, and overall architectural themes. All ACPs should be materially consistent with the vision and design intent conveyed by Conceptual Plans but need not comply with the specific details.

2.2.3. **“Illustrative Plans and Renderings”**. Items labeled as Illustrative Plans and Renderings depict one possible example of development that would substantially conform with the Standards and be materially consistent with the vision and design intent conveyed by the Conceptual Plans. Illustrative Plans and Renderings are not determinative of the ultimate configuration, building orientation, massing, architectural and landscaping details, parking design, etc. ACPs may vary from these depictions.

2.2.4. **“Architectural Control Plan” (“ACP”)**. ACPs provide architectural drawings of the proposed building or structure, proposed landscaping or other treatment of grounds around such building or structure, and proposed design of, and access to, required parking facilities, in accordance with Municipal Code Section 16.68.020. ACPs should generally include site plans, floor plans, elevations, square footage diagrams, height calculations, color and materials, etc. The ACPs shall comply with the City’s Application Submittal Guidelines. All ACPs shall substantially conform to the Standards and be materially consistent with the vision and design intent conveyed by the Conceptual Plans, subject to Modifications granted in accordance with Section 4 and/or Changes granted in accordance with Section 8 herein.

2.2.5. **“Phase 1”**. Project Site improvements under Phase 1 encompass structure demolition, surface improvements, and utility

improvements within the Phase 1 and Phase 2 areas on the main Project Site. Specifically, Phase 1 would include:

- a. Demolition of structures on the parcels south of Hamilton Avenue to support the realignment of Hamilton Avenue west of Willow Road and the new intersection at Willow Road.
- b. Street improvements including realignment of the Hamilton Avenue and Willow Road intersection, Park Street, West Street, Main Street from O'Brien Drive to Hamilton Avenue, North Loop Road, and East Loop Road, each with a full complement of utilities to serve the Project and Willow Road Tunnel.
- c. Grading and construction of primary circulation improvements (i.e., the streets and infrastructure necessary to serve Phase 1) to raise the Project Site above the flood hazard designation and ensure sea-level rise resiliency.
- d. Construction of components associated with the Town Square District and the Campus District in the northern portion of the Project Site, including approximately 172,000 sf of hotel space (up to approximately 193 rooms); construction of the entirety of the office and accessory uses, the Elevated Park, and up to 200,000 sf of retail uses, including the grocery store; construction of the Town Square and the Town Square parking garage; construction of the North Garage and South Garage as part of the Campus District; and construction within the Residential/Shopping District of 1,044 residential units, the Publicly Accessible Park, and the Dog Park.

2.2.6. **“Phase 2”**. Phase 2 construction would encompass the construction of the balance of the Residential/Shopping District, provide 686 residential units, and construct Willow Road Tunnel, if Applicant so elects. Phase 2 site improvements would also include construction of Center Street and East Street, along with the installation of the infrastructure necessary to serve Phase 2.

2.2.7. **“Square footage” or “sf”** shall have the same meaning as the definition of Gross Floor Area (16.04.325) of the Zoning Ordinance.

### 2.3. Development Standards

2.3.1. Dwelling Units shall not exceed 100 dwelling units per acre for a not to exceed total of 1,730 units.

2.3.2. Maximum building square footage shall be calculated in accordance with Municipal Code Section 16.04.325 (Gross floor area), and shall not exceed:

- 2.3.2.1. Office and accessory uses: 1,600,000 square feet in accordance with Sheet G3.03 of the Project Plans (consisting of a maximum of up to 1,250,000 square feet of office space, with the balance of space for accessory uses, in multiple buildings)
- 2.3.2.2. Retail uses: 200,000 square feet in accordance with Sheet G3.03 of the Project Plans
- 2.3.2.3. Residential uses: 1,696,406 square feet for 1,730 dwelling units in accordance with Sheet G3.03 of the Project Plans.
- 2.3.3. Hotel: 193 rooms in accordance with Sheet G3.03 of the Project Plans
- 2.3.4. Areas of private rights-of-way shall be included in the calculation of the maximum density and intensity (gross floor area) as shown on Sheet G3.02 of the Project Plans.
- 2.3.5. Building heights shall not exceed the maximum heights provided on Sheet G3.04 of the Project Plans.
- 2.3.6. Development standards identified in the Project Plans as CDP standards are incorporated by reference herein.
- 2.3.6.1. The calculation of height (average) and maximum height shall comply with Zoning Ordinance Sections 16.43.050 and 16.45.050.
- 2.3.7. Parking shall be provided in accordance with the standards set forth on Sheet G4.01 of the Project Plans and in compliance with Zoning Ordinance Sections 16.43.090 and 16.45.080, subject to the Modification for senior parking (below). This CDP grants an exception for unbundled parking for senior below market rate residential units. This CDP also authorizes shared parking on the main Project Site in accordance with Sheet G4.01 of the Project Plans.
- 2.3.8. Open Space shall be provided in accordance with the standards set forth on Sheet G3.05 of the Project Plans. The Project shall provide a minimum of 360,000 sf of publicly accessible open space, consisting of 285,970 sf of open space required by the R-MU/O zoning and 74,030 sf of publicly accessible open space in excess of the R-MU and O zoning district requirements (“Excess Publicly Accessible Open Space”)
- 2.3.8.1. The Excess Publicly Accessible Open Space will be provided in the Community Park and/or the Dog Park and/or Parcel 3. ACPs containing the Community Park, the Dog Park, and Parcel 3 will be required to document the amount of Excess Publicly Accessible Open Space provided in each ACP.



- 2.3.9. Roof Mounted Equipment except photovoltaic or solar panels, shall be fully screened and integrated into the design of the building consistent with Zoning Ordinance Section 16.08.095, and shall also comply with the noise requirements of that same section.
- 2.3.10. Ground Mounted Equipment shall be screened and integrated into the site design to the satisfaction of the Planning Division. The ground mounted equipment shall comply with the noise requirements in Chapter 8.06 (Noise) of the Municipal Code.
- 2.3.11. Building Setbacks shall be measured from the public right-of-way or public access easements. Private right-of-ways shall be treated as public right-of-ways for setback purposes.

### 3. USES

- 3.1. Permitted uses on the Project Site: The following uses are permitted on the Project Site pursuant to this CDP without the need for further administrative, special, or conditional use or special event permits:

- 3.1.1. Existing Uses

- 3.1.1.1. Notwithstanding the rezoning of the main Project Site and adoption of this CDP, existing uses and structures on the main Project Site that remain shall not be considered nonconforming and may continue (including after any period of discontinuance and without amortization) and be maintained, repaired, altered, restored if destroyed by catastrophe, subject to any applicable procedural review provisions of the Zoning Ordinance not contained in Chapter 16.80 and provided there is no increase in square footage. Existing use permits and architectural control permits shall remain valid until demolition (whole or partial) occurs.

- 3.1.2. Town Square District

- 3.1.2.1. Hotel
- 3.1.2.2. Banks and other financial institutions providing retail banking services (including credit unions and ATMs)
- 3.1.2.3. Eating and drinking establishments, including the sale of beer, wine, and alcohol (e.g., spirits and liquor other than beer and wine) in accordance with Section 3.6 herein, and/or that have live entertainment, and/or establishments that are portable (i.e. not permanent)
- 3.1.2.4. Retail sales establishments, excluding the sale of beer, wine, and alcohol except those uses identified in accordance with Section 3.6 herein Personal services, excluding tattooing, piercing, palm-reading, or similar services
- 3.1.2.5. Recreational facilities privately operated, less than 20,000 square feet

- 3.1.2.6. Outdoor seating and tables (including those intended to be used for consumption of food and beverages), in accordance with Section 5.2
- 3.1.2.7. Emergency generators and associated use and storage of diesel fuel for up to 12 generators on the main project site in accordance with Sheet G6.07 of the Project Plans and the Hazardous materials information forms, generator supplemental forms (dated August 8, 2022) and agency referral forms. Generator size, type, and locations shall be substantially in conformance with the Project Plans and supporting documents and shall comply with the requirements and conditions of the San Mateo County Environmental Health Services Division, Menlo Park Fire Protection District, West Bay Sanitary District, and the City of Menlo Park Building and Planning Divisions.
- 3.1.2.8. Bonus level development (e.g. height, density, and intensity) in accordance with Sections 16.43.040(1) and 16.43.060 and/or 16.45.040(10) and 16.45.060 of the Zoning Ordinance.
- 3.1.2.9. Public utilities, in accordance with Chapter 16.76 of the Zoning Ordinance. Any above ground utilities or appurtenances shall be screened with appropriate fencing, mesh enclosures, and/or like materials compatible with surrounding improved environment, or painted with appropriate colors compatible with surrounding improved environment.
- 3.1.2.10. Open space, private and publicly accessible, in accordance with Zoning Ordinance Sections 16.43.130(4) and 16.45.120(4).
- 3.1.2.11. Community events including but not limited to farmers' markets, movie nights, concerts, community block parties, and food trucks, provided the activities comply with Chapter 8.06 (Noise) of the Municipal Code, and provided that community events that require the use of City public services (e.g. police monitoring or control, street closure, traffic control, parking needs that will exceed capacity of the venue, or interfere with normal use and operation of right-of-ways for travel) require a special event permit per Chapter 8.60 of the Municipal Code.
- 3.1.2.12. Private special events not to exceed 26 in a calendar year, subject to Section 5.3, provided that private special events that require the use of City public services (e.g. police monitoring or control, street closure, traffic control parking needs that will exceed capacity of the venue, or interfere with normal use and operation of right-of-ways for travel) require a special event permit per Chapter 8.60 of the Municipal Code.
- 3.1.2.13. Parking structures, above and below-grade
- 3.1.2.14. Cellular telecommunications facilities provided the facilities are fully screened and/or integrated into a building or site feature and the facilities comply with all applicable Federal and State regulations
- 3.1.2.15. Other uses determined by the Community Development Director to be similar and compatible uses based on the following criteria:
  - The activities involved in or equipment or materials employed in the use are the same or substantially similar to the uses expressly authorized by this CDP;
  - The use is compatible with surrounding uses; and
  - The use is consistent with the stated purpose of this CDP.

### 3.1.3. Residential/Shopping District

- 3.1.3.1. Multiple dwellings
- 3.1.3.2. Eating establishments, including the sale of beer, wine, and alcohol in accordance with Section 3.6 herein, and/or that have live entertainment, and/or establishments that are portable (i.e. not permanent)
- 3.1.3.3. Retail sales establishments, excluding the sale of beer, wine, and alcohol except those uses identified in accordance with Section 3.6 herein, including those greater than 20,000 square feet of gross floor area
- 3.1.3.4. Personal services, excluding tattooing, piercing, palm-reading, or similar services
- 3.1.3.5. Outdoor seating and tables (including those intended to be used for consumption of food and beverages) subject to Section 5.2
- 3.1.3.6. Movie theater and/or live theater
- 3.1.3.7. Recreational facilities, privately operated, including those greater than 20,000 square feet in gross floor area
- 3.1.3.8. Emergency generators and associated use and storage of diesel fuel for up to 12 generators on the main project site in accordance with Sheet G6.07 of the Project Plans and the Hazardous materials information forms, generator supplemental forms (dated August 8, 2022), and agency referral forms. Generator size, type, and locations shall be substantially in conformance with the Project Plans and supporting documents and shall comply with the requirements of the San Mateo County Environmental Health Services Division, Menlo Park Fire Protection District, West Bay Sanitary District, and the City of Menlo Park Building and Planning Divisions.
- 3.1.3.9. Bonus level development (e.g. height, density, and intensity) in accordance with Sections 16.43.040(10) and 16.43.080 or 16.45.040(10) and 16.45.060 of the Zoning Ordinance.
- 3.1.3.10. Public utilities, in accordance with Chapter 16.76 of the Zoning Ordinance. Any above ground utilities or appurtenances shall be screened with appropriate fencing, mesh enclosures, and/or like materials compatible with surrounding improved environment, or painted with appropriate colors compatible with surrounding improved environment.
- 3.1.3.11. Open space, private and publicly accessible, in accordance with Zoning Ordinance Sections 16.43.130(4) and 16.45.120(4)
- 3.1.3.12. Community events including but not limited to farmers' markets, movie nights, concerts, community block parties, and food trucks, provided the activities comply with Chapter 8.06 (Noise) of the Municipal Code and provided that community events that require the use of City public services (e.g. police monitoring or control, street closure, traffic control, parking needs that will exceed capacity of the venue, or interfere with normal use and operation of right-of-ways for travel) require a special event permit, per Chapter 8.60 of the Municipal Code.
- 3.1.3.13. Private special events not to exceed 26 in a calendar year, subject to Section 5.3, provided that private events that require the use of City public services (e.g. police monitoring or control, street closure, traffic control, parking needs that will exceed capacity of the venue, or interfere with normal

use and operation of right-of-ways for travel) require a special event permit, per Chapter 8.60 of the Municipal Code.

- 3.1.3.14. Parking structures, above and below-grade
- 3.1.3.15. Temporary dialysis center consistent with the improvements depicted on Conceptual Dialysis Center Temporary Location Sheet in Exhibit 5.
- 3.1.3.16. Cellular telecommunications facilities provided the facilities are fully screened and/or integrated into a building or site feature and the facilities comply with all applicable Federal and State regulations
- 3.1.3.17. Other uses determined by the Community Development Director to be similar and compatible uses based on the following criteria:
  - The activities involved in or equipment or materials employed in the use are the same or substantially similar to the uses expressly authorized by this CDP;
  - The use is compatible with surrounding uses; and
  - The use is consistent with the stated purpose of this CDP.

#### 3.1.4. Campus District

- 3.1.4.1. Administrative and professional offices (including amenity uses) and accessory uses, including those greater than 250,000 square feet in gross floor area
  - Office amenity uses intended to serve employees, contractors, and visitors, including, without limitation, the following facilities to serve on-site workers and visitors: food service facilities, ATMs, dry cleaners, fitness facilities, personal services (excluding tattooing, piercing, palm-reading, or similar services), wellness facilities (including medical and dental)
  - Accessory uses include, without limitation, the following types of spaces: meeting/collaboration space, orientation space, training space, event space, breakout space, incubator space, a business center, event building (including pre-function space, collaboration areas, and meeting/event rooms), a visitor center, experience center, production/demonstration areas, a film studio, catering and culinary spaces affiliated with accessory uses, gathering spaces, terraces and private gardens, and space for other accessory uses
- 3.1.4.2. Eating establishments, including the sale of beer, wine, and alcohol in accordance with Section 3.6 herein, live entertainment, and/or establishments that are portable
- 3.1.4.3. Personal services, excluding tattooing, piercing, palm-reading, or similar services
- 3.1.4.4. Outdoor seating and tables (including those intended to be used for consumption of food and beverages) subject to Section 5.2.
- 3.1.4.5. Emergency generators and associated use and storage of diesel fuel for up to 12 generators on the main project site in accordance with Sheet XX of the Project Plans and the Hazardous materials information forms, d generator supplemental forms (dated August 8, 2022), and agency referral forms. Generator size, type, and locations shall be substantially in conformance with

the Project Plans and supporting documents and shall comply with the requirements of the San Mateo County Environmental Health Services Division, Menlo Park Fire Protection District, West Bay Sanitary District, and the City of Menlo Park Building and Planning Divisions.

- 3.1.4.6. Bonus level development (e.g. height, density, and intensity) in accordance with Sections 16.43.040(10) and 16.43.060 and/or 16.45.040(10) and 16.45.060 of the Zoning Ordinance.
- 3.1.4.7. Public utilities, in accordance with Chapter 16.76 of the Zoning Ordinance. Any above ground utilities or appurtenances shall be screened with appropriate fencing, mesh enclosures, and/or like materials compatible with surrounding improved environment, or painted with appropriate colors compatible with surrounding improved environment.
- 3.1.4.8. Open space, private and publicly accessible, in accordance with Zoning Ordinance Sections 16.43.130(40) and 16.45.120(4).
- 3.1.4.9. Community events including but not limited to farmers' markets, movie nights, concerts, community block parties, and food trucks, provided the activities comply with Chapter 8.06 (Noise) of the Municipal Code, and provided that community events that require the use of City public services (e.g. police monitoring or control, street closure, traffic control, parking needs that will exceed capacity of the venue, or interfere with normal use and operation of right-of-ways for travel) require a special event permit per Chapter 8.60 of the Municipal Code.
- 3.1.4.10. Private special events subject to the Event Management Plan (provided the activities comply with Chapter 8.06 (Noise) of the Municipal Code and do not require the use of City public services (e.g. police monitoring or control, street closure, traffic control), and do not require parking needs that will exceed capacity of the venue, or interfere with normal use and operation of right-of-ways for travel) including:
  - Multiple day private special events located primarily indoors, without a special event permit
  - Private special events with attendance expected to exceed 150 people that will use the Elevated Park (limited to 26 per year), without a special event permit provided the noise limits of Chapter 8.06 are complied with.
  - Private special events as provided in a special event permit approved by the City, as outlined in Chapter 8.60 of the Municipal Code
- 3.1.4.11. Parking structures, above and below-grade
- 3.1.4.12. Cellular telecommunications facilities
- 3.1.4.13. Other uses determined by the Community Development Director to be similar and compatible uses based on the following criteria:
  - The activities involved in or equipment or materials employed in the use are the same or substantially similar to the uses expressly authorized by this CDP;
  - The use is compatible with the surrounding uses; and
  - The use is consistent with the stated purpose of this CDP.

3.2. Additional Permitted uses on the Project Site: All permitted uses listed in the O and R-MU zoning districts unless superseded by this CDP.

- 3.3. Additional administratively permitted uses on the Project Site: All administratively permitted uses listed in the O and R-MU zoning districts, and not specifically authorized by Section 3.1, are permitted with an administrative permit.
- 3.4. Additional special uses on the Project Site: Special uses in accordance with Chapter 16.78 and not specifically authorized by Section 3.1 herein are permitted with a use permit.
- 3.5. Additional conditionally permitted uses on the Project Site: All Conditionally permitted uses listed in the O and RMU zoning districts, and not specifically authorized by Section 3.1 herein, are permitted with a use permit.
- 3.6. Beer, Wine, and Alcohol Uses: Beer, wine, and alcohol uses shall be permitted as provided in sections 3.6.5, 3.6.6, and 3.6.7, subject to receipt of all required permits from the Bureau of Alcoholic Beverage Control (ABC). All other beer, wine, and alcohol uses shall require an administrative or use permit per the requirements of Zoning Ordinance Chapters 16.43 and 16.45.
  - 3.6.1. Any citation or notification of violation by the ABC of the applicable ABC permit shall be grounds for suspension or revocation of the administrative/conditional use permits granted to the applicable user.
  - 3.6.2. Prior to building permit issuance, the applicant shall comply with the applicable requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the sale of beer, wine, and alcohol.
  - 3.6.3. A minimum of 90 days prior to the commencement of any sale of beer, wine, and alcohol for uses permitted through this CDP, the applicant shall submit documentation of an application for the permit with the ABC, a site plan and floor plan/seating plan, and project description letter for review and approval of the Community Development Director and the Chief of Police or their designee for conformance with this CDP, and compliance with the City of Menlo Park Municipal Code.
    - 3.6.3.1. The submittal materials shall identify the location of alcohol use/sale/storage, barriers to define the extent of the alcohol use/service, and hours of operation, and any other information deemed necessary to evaluate the design appropriateness, conformance with this CDP, and compliance with the City of Menlo Park Municipal Code of the request as determined by the Community Development Director or Chief of Police or their designees.
  - 3.6.4. The City shall track the number of active licenses within the Project site using the tracking matrix dated June 23, 2022 and on file with the City.

### 3.6.5. Town Square District

#### 3.6.5.1. *Hotel*

Maximum of four ABC licenses, provided all requirements of the California ABC and City are met. If the ABC determines that a public convenience and necessity finding is required, the Planning Commission shall review the request through an administrative permit or use permit based on license type and request, in accordance with the requirements of the Zoning Ordinance.

- Hotel operations including in-room mini-bar, pool, lounges
- Off-site sale of beer, wine, and alcohol for a hotel gift shop within the hotel
- Eating Establishments (e.g. bona fide eating place) including beer, wine and alcohol
- Drinking Establishments (e.g. bar or tavern) including beer, wine and alcohol
- Special events including beer, wine, and alcohol (e.g., events in conferences rooms, ballroom space, outdoor locations)

#### 3.6.5.2. *Town Square*

Maximum of three ABC licenses for uses identified below for the Town Square District, excluding off-sale and on-sale public premises (e.g. bar or tavern) and not including ABC licenses associated with the hotel, provided all requirements of the California ABC and City are met. If the ABC determines that a public convenience and necessity finding is required, the Planning Commission shall review the request through an administrative permit or use permit based on license type and request, in accordance with the requirements of the Zoning Ordinance.

- Eating Establishments (e.g. bona fide eating places) including beer, wine and alcohol
- Community events including beer and wine only (farmer's market, art festival, etc.)

### 3.6.6. Residential/Shopping District

Maximum of eight ABC licenses for Residential/Shopping District, excluding off-sale and on-sale public premises (e.g. bar or tavern), provided all requirements of the California ABC and City are met. If the ABC determines that a public convenience and necessity finding is required, the Planning Commission shall review the request through an administrative permit or use permit based on license type and request, in accordance with the requirements of the Zoning Ordinance.

#### 3.6.6.1. *Grocery Store*

- Off-site sale of beer, wine, and alcohol for full service grocery stores greater than 20,000 square feet
- Tasting Room: On-site consumption of sample amounts of beer and wine in a restricted area inside the grocery store, proximate to the alcoholic beverage section. The tasting room must be enclosed by a wall and shall not include seating.
- Micro-Brewery or Café, including beer and wine only.

3.6.6.2. *Ground Floor Retail*

- Eating Establishments (e.g. bona fide eating places) including beer, wine and alcohol

3.6.6.3. *Community Park*

- Community events including beer and wine only (farmer's market, art festival, etc.)

3.6.7. Campus District

Maximum of four ABC licenses for Campus District, excluding off-sale and on-sale public premises (e.g. bar or tavern), provided all requirements of the California ABC and City are met. If the ABC determines that a public convenience and necessity finding is required, the Planning Commission shall review the request through an administrative permit or use permit based on license type and request, in accordance with the requirements of the Zoning Ordinance

3.6.7.1. *Campus District Retail*

- Eating Establishments (e.g. bona fide eating places) including beer, wine and alcohol

3.6.7.2. *Meeting and Collaboration Space and Other Accessory Space*

- Special events including beer, wine, and alcohol

3.6.7.3. *Elevated Park*

- Special events including beer and wine only

3.6.7.4. Main Street

- Community events including beer and wine only (farmer's market, art festival, etc.)

#### 4. MODIFICATIONS TO O AND RMU DISTRICT REQUIREMENTS AND SIGNAGE REGULATIONS

4.1. Unless enumerated in this section, each building within the Project Site shall comply with the requirements of the O (Office) and R-MU (Residential Mixed-Use) zoning districts. Where a standard or requirement listed below is inconsistent with the Zoning Ordinance, the standard in this CDP takes precedence. In accordance with Zoning Ordinance Section 16.82.050, this CDP authorizes the following modifications



(“**Modifications**”) to the City Zoning Ordinance requirements of the RMU and O districts, which are included in the Zoning Ordinance Modification Request dated September 2, 2022:

4.2. Parcel 1 (Hotel)

4.2.1. No building modulations required along Willow Road or Main Street facades.

4.2.2. Required setback of 10 feet; allow Shade trellis and parapet within setback zone(s).

4.2.2.1. Roof trellises within the setback area shall be included in the calculation of height (maximum and average) for the building.

4.2.3. No public entrances required along Willow Road or Main Street facades. Allow public entrances along West Street.

4.2.4. Minimum setback from back of public easement to be 1 foot, 6 inches for Willow Road

4.2.5. Along Willow Road, allow maximum building projection to extend 4 feet, 6 inches from the required setback.

4.2.6. Along West Street, allow maximum building projection to extend 8 feet from the required setback.

4.2.7. Allow 40% Ground Floor transparency along West St.

4.2.8. Allow 15% frontage landscaping.

4.2.9. Maximum setback of 30 feet along Hotel Service Road.

4.2.10. Maximum setback of 50 feet along West Street.

4.3. Parcel 1 (MCS)

4.3.1. No building modulations required along North Loop Road.

4.3.2. No building setback or setback required along North Loop Road.

4.4. Parcel 1 (Office)

4.4.1. No setbacks required for office garages; setback required at a height not to exceed 70 feet for 30% of office building facades.

- 4.4.2. Office buildings 02, 03, 05 and 06 stepback required at a height not to exceed 70 feet and garages not required to have stepbacks or a base height.
- 4.4.3. Office buildings may have a consistent roofline without modulation.
- 4.4.4. No requirement for above ground garages to be screened or located behind buildings;
- 4.4.5. No building entrances required for office buildings along East Loop Road and South Garage.
- 4.4.6. Allow garage facades along East Loop Road and Main Street to have a minimum modulation of one per 200 feet.

#### 4.5. Parcel 1 (Town Square)

- 4.5.1. Allow 75 feet maximum length Ground Floor pedestrian pass-through at grade level along Main Street façade, with a minimum of one per facade.
- 4.5.2. Buildings less than three stories may have a consistent roofline without modulation.
- 4.5.3. Maximum setback from public easement or property line to be 32 feet along West Street and Main Street.

#### 4.6. Parcel 2

- 4.6.1. Allow for (i) Maximum base height (including 10-foot increase within the flood zone) to be 71 feet above average natural grade and (ii) roof trellises within stepback areas.
  - 4.6.1.1. Roof trellises within the stepback area shall be included in the calculation of height (maximum and average) for the building.
- 4.6.2. Major modulation on Park St. to be a minimum of 8 feet deep.
- 4.6.3. Two-way garage entrances may be up to 30 feet wide.
- 4.6.4. Spacing can be up to 138 feet between two building entrances and up to 200 feet from corner to building entrance.
- 4.6.5. Roof modulation not required for the West St. and Main St. elevations.

4.6.6. No façade minor modulations are required on the Willow Road elevation.

4.7. Parcel 3

4.7.1. Maximum Base Height (including 10-foot increase within the flood zone) to be up to 70 feet above average natural grade.

4.7.2. Allow for (i) stepbacks of 8 feet minimum depth, (ii) projections into stepback area, and (iii) projections (awnings) of up to 8 feet.

4.7.3. Maximum allowable building height of 85 feet.

4.7.4. Allow grouped vehicle access locations along Center Street and West Street, without the minimum separation distance.

4.7.5. Allow for (i) major modulations along Main Street to be between 5 feet and 6 feet deep, (ii) major modulations along Center Street to begin at Level 3.

4.7.6. Building may have consistent roofline without modulation.

4.7.7. Maximum Setbacks on Main Street to be 75 feet.

4.8. Parcel 4

4.8.1. Maximum Base Height (including 10-foot increase within the flood zone) to be up to 70 feet above natural grade.

4.8.2. Minimum Stepbacks of 6 feet; Minimum stepback percentage to be 70% of the façade.

4.8.3. Minimum of one major modulation allowed per 250 feet of façade length.

4.8.4. Maximum of 115 feet spacing between minor modulations.

4.8.5. Minimum height between ground-level finished floor to second-level finished floor along street to be 18 feet.

4.9. Parcel 5

4.9.1. Maximum base height (including 10-foot increase within the flood zone) to be up to 70 feet.

4.10. Parcel 6

- 4.10.1. Minimum Stepback of 5 feet.
- 4.10.2. No minor modulation requirement along Park Street façade for levels 3-6.
- 4.10.3. Maximum base height (including 10-foot increase within the flood zone) to be 60 feet above average natural grade.
- 4.10.4. Roof modulations may be between 2 feet and 3 feet.

4.11. Parcel 7

- 4.11.1. Minimum Stepback of 8 feet.
- 4.11.2. No minor modulation requirement on Park Street.
- 4.11.3. Building may have consistent roofline without modulation.
- 4.11.4. Provide 36 of the total required 60 parking spots in a shared arrangement with Parcel 6.
- 4.11.5. Allow (i) 0.5:1 covered bicycle parking and (ii) 10% additional short-term bicycle parking of the provided long-term spaces.
- 4.11.6. Allow biotreatment planting adjacent to building frontage.

4.12. Transportation Demand Management

- 4.12.1. The trip reduction requirement through TDM for the Project shall require a minimum a 20 percent reduction from gross Institute of Traffic Engineers (ITE) Trip Generation Rates for the mixed-use component of the Project (i.e., the Town Square and Residential/Shopping Districts combined), and compliance with the Trip Cap for the Office Campus (defined below).

4.13. Recycled Water Use

- 4.13.1. Temporarily defer enforcement of the Zoning Ordinance Sections 16.43.140(3)(E) and 16.45.140(3)(E) potable water demand reduction requirements until the earlier of the date recycled water is available to meet the project's nonpotable water demand, or the date specified in the project's development agreement by which the project is required to begin utilizing recycled water for nonpotable uses.
- 4.13.2. During the period of deferred enforcement, the project will implement a water conservation plan approved by the city that shall be submitted to the Planning Division 120 days prior to the granting of

occupancy for the first building and shall be approved by the City's Public Works and Community Development Directors prior to the granting of occupancy for the first building.

4.14. Parking

4.14.1. Permit parking for senior units at a rate of 0.5 space per unit.

4.15. Signage

4.15.1. Authorize signage on the main Project Site pursuant to a Master Sign Program to identify the maximum permitted signage by parcel/building and develop sign design guidelines in lieu of compliance with the requirements of Municipal Code Chapter 16.92 and Sections 16.43.120(3) and 16.45.120(3), subject to review and approval of the Master Sign Program by the Planning Commission.

**5. PERFORMANCE STANDARDS**

5.1. Live Entertainment

5.1.1. The following standards apply to the Town Square and Residential/Shopping Districts. These standards exclude special events that are addressed under subsection 5.3 Special Events.

5.1.2. Live entertainment shall be confined to the tenant space and outdoor seating areas and shall not exceed the permitted occupancy. Sounds shall not exceed the Menlo Park Municipal Code, Chapter 8.06 (Noise). Live entertainment shall be limited to tenant's hours of operation.

5.2. Outdoor Seating

5.2.1. Outdoor Seating is permitted throughout the main Project Site. The following performance standards apply to Outdoor Seating within the Town Square District and Residential/Shopping District and adjacent to the publicly accessible retail in the Campus District. If desired by the tenant, or if required by other regulatory agencies with jurisdiction, Outdoor Seating shall be enclosed by a fence or containment. A building permit may be required for certain features associated with the Outdoor Seating.

5.2.2. Outdoor Seating areas shall be limited to use at eating and/or drinking establishments.

- 5.2.3. Outdoor Seating areas shall be adjacent to the building they serve. Sidewalk seating areas shall not exceed the frontage of the business that they serve.
- 5.2.4. Outdoor Seating areas shall not encroach into publicly accessible open spaces unless the outdoor seating is open to the public and not controlled by a private business.
- 5.2.5. Outdoor Seating areas shall comply with all applicable provisions of the Americans with Disabilities Act (ADA) and state and local implementing regulations and the universal access requirements of the California Building Code.
- 5.2.6. No outdoor preparation of food or beverages is permitted in Outdoor Seating areas, except as permitted for outdoor propane barbeques pursuant to California Health and Safety Code.
- 5.2.7. Portable toilets are not permitted in Outdoor Seating areas, except as authorized through a temporary event or use permit pursuant to Municipal Code Section 8.06.060.
- 5.2.8. Outdoor Seating areas shall not obstruct or restrict access to public utilities.
- 5.2.9. Tables, chairs, and any other furniture/fixtures placed within Outdoor Seating areas shall not obstruct or block access to fire protection equipment.
- 5.2.10. All fixtures, furniture, and structures in Outdoor Seating areas shall comply with the following criteria:
  - 5.2.10.1. Umbrellas/shade structures shall be compatible in design with the adjacent retail tenant's storefront. They shall not exceed 15 feet in height, shall be temporary/removable, and shall not block any path of travel.
  - 5.2.10.2. Table and chairs in Outdoor Seating areas shall be compatible in design with the adjacent retail tenant's storefront. They shall not extend beyond the tenant fencing/containment and shall not impede any path of travel.
  - 5.2.10.3. Outdoor heaters, speakers, and lighting in Outdoor Seating areas shall be compatible in design with the adjacent retail tenant's storefront and shall not impede any path of travel.
  - 5.2.10.4. All fixtures, furniture, and structures used in Outdoor Seating areas shall be of substantial construction to withstand outdoor use, and maintained in good condition, quality, and repair at all times.

- 5.2.10.5. Electric radiant heaters are allowed within Outdoor Seating areas. Natural or propane gas heaters are not permitted.
- 5.2.10.6. All exterior surfaces within Outdoor Seating areas shall be kept clean at all times.
  - 5.2.11. Outdoor Seating areas shall be on the same elevation as the adjacent sidewalk. Raised platforms are not permitted.
  - 5.2.12. Outdoor speakers for background music in Outdoor Seating areas will comply with Noise Ordinance Section 08.06.30.
  - 5.2.13. Fences or containment shall be decorative in nature and constructed from wrought iron, tubular steel, wood, or other mix of durable materials; shall not exceed 3 feet, 4 inches in height unless otherwise required by a regulatory agency (e.g. CA ABC); and shall not restrict pedestrian access into building entries, public path of travel, or other publicly accessible seating areas.
  - 5.2.14. Planters are encouraged in combination with fences. Planters shall be self-watering and designed to prevent irrigation runoff.
  - 5.2.15. Outdoor Seating shall not restrict bicycle and pedestrian access along street frontages.
  - 5.2.16. Outdoor Seating plans shall be submitted to the City for review and approval by the Planning and Engineering Divisions prior to installation of Outdoor Seating. These plans may be submitted concurrent with a building permit application, if required for the installation.

### 5.3. Special Events

- 5.3.1. Special events and temporary permits shall comply with Chapter 8.60 and Section 8.06.060 of the Menlo Park Municipal Code, except as provided below. Special events are permitted within the Town Square and Residential/Shopping Districts, including set up and break down, between the hours of 8am-10pm, every day of the week.
  - 5.3.2. Town Square and Residential/Shopping Districts
    - 5.3.2.1. Farmers market shall be limited to a total of 52 per calendar year.
    - 5.3.2.2. All other community and private events shall be limited to a total of 52 per calendar year.

5.3.2.3. Emergency vehicle access routes through the Town Square shall be kept clear and unobstructed for the duration of any special event.

5.3.3. Campus District

5.3.3.1. Special Events within the Campus District shall be subject to the Event Management Plan, and shall not be subject to the provisions of section 5.3.2 above and not open to the general public.

5.3.4. Commercial Storefronts

5.3.4.1. Commercial storefronts are allowed customization based on the following criteria, subject to obtaining an administrative architectural control permit to be reviewed and granted by the Community Development Director or their designee concurrent with the building permit application, if applicable:

- The tenant is allowed to change or modify the façade materials and color from finished grade to the level 2 floor plate. All modifications shall be compatible with the architectural character.
- The tenant is allowed to change or modify the storefront glazing and entries to suit their program or brand. Rollup, sliding and swinging doors are allowed.
- The tenant is allowed to change or modify the awnings at their lease space.
- The tenant is allowed to change or modify the exterior lighting with their lease space. All lights shall be LED with a maximum color temperature of 3000k. Downlights may be added to awning. Lighting shall be concealed within structure of awning and match in color.

5.3.4.2. Decorative commercial string lights are allowed in conjunction with outdoor seating areas only. Lights shall be commercial grade and suitable for exterior applications. Lights need to be hardwired to a power source. Extension cords are allowed. Lights shall be LED with a maximum color temperature of 3000k.

5.3.4.3. All commercial signage is governed by the Willow Village Master Sign Program.

5.4. Pump Station Screening

5.4.1. The pump station and supporting equipment will require screening and sound attenuation per the following criteria:



- 5.4.1.1. The pump station and supporting equipment shall be located within an enclosure that is architecturally compatible to the adjacent buildings and landscape context.
- 5.4.1.2. The pump station enclosure shall be made of a material and color that recedes into the landscape.
- 5.4.1.3. The pump station enclosure shall be designed with a minimum setback of 8' from all adjacent walks or other pedestrian areas.
- 5.4.1.4. The pump station enclosure shall be at a minimum to the height of the equipment, and be fully covered provided the enclosure meets the requirements of the West Bay Sanitary District.
- 5.4.1.5. The enclosure shall be designed with sound attenuation to comply with Chapter 8.06 of Menlo Park's Municipal Code.
- 5.4.1.6. The pump station enclosure shall be screened from pedestrian walks, plazas, and view with adequate vegetation.

## **6. SIGNS**

6.1. Master Sign Program. The Project shall comply with Chapter 16.92 of the Zoning Ordinance or submit a project-specific Master Sign program which shall be subject to review and approval by the Planning Commission prior to installation of any onsite mixed use or commercial signage.

6.1.1. The Master Sign Program shall identify the maximum square footage of signage for each parcel/building within the project site and set design guidelines for signage.

## **7. RECORDATION AND EFFECTIVE DATE**

7.1. The Willow Village CDP shall be recorded in the Official Records of the County of San Mateo, State of California.

7.2. The Willow Village CDP shall be in full force and effect on the effective date of the ordinance approving the CDP.

## **8. CHANGES TO CONDITIONAL DEVELOPMENT PERMIT**

8.1. Changes to this CDP (including the Project Plans) shall be processed at the written request of the Property Owner with all applicable plans and fees, to the Planning Department for review as follows:

8.1.1. Substantially Consistent Changes are made at the staff level and include any modifications that Property Owner makes or proposes to

make to this CDP (including the Project Plans) that are in substantial compliance with and/or substantially consistent with the Project approvals based on the determination that the proposed change(s) is consistent with other building and design elements of the CDP, and will not have an adverse impact on the character and aesthetics of the Property. The determination as to whether a requested change is a Substantially Consistent Change will be made by the Community Development Director (in his/her reasonable discretion). Substantially consistent changes do not affect permitted uses, the density or intensity of uses, restrictions and requirements relating to subsequent discretionary actions, monetary obligations, or conditions or covenants limiting or restricting the use of the Property or similar material elements. The Community Development Director or his/her designee shall act on Substantially Consistent Changes administratively, without public notice or hearing.

8.1.2. Minor Changes are any modifications that Property Owner makes or proposes to make to this CDP (including the Project Plans) that are made at the staff level, but the Planning Commission is provided information regarding these changes. The determination as to whether a requested change is a Minor Change is determined by the Community Development Director (in his/her reasonable discretion). A Minor Change is similar in nature to a Substantially Consistent Change, except that Minor Changes are more visible to the general public and result in minor exterior changes to the Project aesthetics (e.g. site layout, location of uses, etc.). Any member of the Planning Commission may request within seven days of receipt of the informational notice that the item(s) be reviewed by the Planning Commission to determine whether the proposed changes are considered a Minor Change. If the Planning Commission does not request review, the Community Development Director or his/her designee shall act on Minor Changes administratively.

8.1.3. Major Changes are any modifications that Property Owner makes or proposes to make to this CDP (including the Project Plans) that do not constitute Substantially Consistent Changes or Minor Changes. Major Changes are reviewed by the Planning Commission as a Regular Business item, and publicly noticed. Major Changes include, but are not limited to, significant changes to the exterior appearance of the buildings or appearance of the Property, changes to the project plans (e.g. site access, roadway and pedestrian/bicycle infrastructure design, etc.), which are determined by the Community Development Director (in his/her reasonable discretion) to not constitute Substantially Consistent Changes or Minor Changes to the Conceptual Plans and this CDP. The Planning Commission's decision shall be based on the determination that the proposed modification is compatible with other building and design elements or onsite/offsite

improvements of the CDP and would not have an adverse impact on safety and/or the character and aesthetics of the site. Planning Commission decisions on Major Changes may be appealed to the City Council. City Council shall have final authority to approve Major Changes.

8.1.4. Changes for Project Variants are permitted subject to staff review of the resulting on site changes to the Project Plans and this CDP. The Project Variants are permitted without any additional discretionary actions by the City. The following process for the on-site changes are required:

8.1.4.1. If the Willow Road Tunnel is removed, the on-site changes would be reviewed as a Substantially Consistent Change or Minor Change depending on the scope of the changes. No further discretionary review of the Willow Road Tunnel is required. To ensure the community is aware of the removal of the Willow Road Tunnel, the Community Development Director shall notify the Planning Commission and City Council of this change for informational purposes only.

8.1.4.2. If the applicant does not receive outside agency approval to realign Hamilton Avenue, the associated on-site revisions to the proposed project would be reviewed through an ACP. The review would be limited to the on-site changes based on the revised circulation and locations of building/site features.

8.1.5. Architectural Control Plans (ACPs) for future buildings and site features (e.g. publicly accessible park and dog park) are required for each individual building/site. The Planning Commission shall review the ACPs through an architectural control application. The Applicant is required to submit an architectural control application and pay all applicable fees for the Planning Division's review of the proposed ACPs, subject to review and approval by the Planning Commission. The Planning Commission's action will be based on substantial conformance with this CDP and the required findings for architectural control, as enumerated in Chapter 16.68.020 (Architectural Control) of the Zoning Ordinance.

8.1.6. Amendments to this CDP (including the Project Plans) that involve material relaxation of the development standards identified in Section 2, material changes to the uses identified in Section 3, exceedance of the signage maximum square footages identified in the Master Sign Program pursuant to Section 6, or material modifications to the conditions of approval identified in Sections 10 through 21 (in each case, other than changes deemed to be Substantially Consistent Changes pursuant to Section 8.1.1 , Minor Changes pursuant to Section 8.1.2, or Major Changes pursuant to Section 8.1.3), constitute

CDP amendments that require public hearings by the Planning Commission and City Council. Such revisions might also require modifications to the Project Plans and/or Willow Village Development Agreement. Any application for amendment to the CDP shall be made by the Property Owner, in writing with all applicable plans and fees, to the Planning Department for review and recommendation by the Planning Commission at a public hearing. The Planning Commission shall forward its recommendation to the City Council for action on proposed amendment(s) to the CDP.

## 9. TRANSPORTATION MEASURES

9.1. Consistent with the Project proposal and to minimize environmental and community impacts resulting from utilization of the Project Site, Property Owner shall enforce a trip cap ("**Trip Cap**") for the Campus District.

9.1.1. Trip Cap: The Property Owner shall comply with the Trip Cap, which sets the maximum number of morning and evening peak vehicle trips and daily vehicle trips for the Campus District, as set forth in Exhibit 3.

9.1.2. Monitoring: The Property Owner shall comply with the parameters and requirements of the Trip Cap as specified in the Willow Village Campus District Trip Cap Monitoring and Enforcement Policy. The Trip Cap applies to the Campus District only.

9.1.3. Implementation: The Trip Cap counting equipment shall be installed in good working order prior to issuance of a certificate of occupancy for the first office building, unless otherwise approved, to the satisfaction of the Public Works Director.

9.2. The Property Owner shall implement the Willow Village Transportation Demand Management (TDM) Plan, which includes TDM components for the Campus District and the Town Square and Residential/Shopping Districts.

9.2.1. Monitoring: The Property Owner shall comply with the Willow Village TDM Compliance Plan which provides recommendations regarding annual monitoring provisions for the Campus District and the Town Square and Residential/Shopping Districts, including the additional residential trip reduction required by the Mitigation Monitoring and Reporting Program for the Project. The Campus District shall be monitored daily through the Trip Cap and the Town Square and Residential/Shopping Districts shall be monitored annually. The Property Owner shall document compliance with the trip reduction requirements of this CDP through the TDM Compliance Plan in Exhibit 4.

9.3. The Property Owner shall comply with EIR Mitigation Measure TRA-2, which requires the residential land use of the Project to achieve a 36% reduction from gross ITE trip generation rates (resulting in a total of 6,023 average daily trips for the residential uses).

9.3.1. Monitoring: The Property Owner shall comply with the Village TDM Compliance Plan.

## 10. CONSTRUCTION PERMITS SEQUENCING:

10.1. The following outlines the basic sequencing of site development construction permits related to the Project. Completion of each site development phase (e.g., the Voluntary Remediation Work, the Site Improvement Work, etc.) is determined by the scope of the approved improvement plans. Completion of the site improvements to City standards is necessary prior to the dedication and acceptance of the public improvements. Upon Applicant's/Property Owner's completion of public infrastructure, Applicant/Property Owner shall offer for dedication to City such public infrastructure as completed, and City shall promptly accept the completed public infrastructure and release to Applicant/Property Owner any bonds or other security posted in connection with performance thereof in accordance with the terms of such bonds, and thereafter City shall maintain the public infrastructure. Applicant/Property Owner may offer dedication of public infrastructure, as identified in the Site Improvement Plans, in phases and the City shall not refuse to accept such phased dedications or refuse phased releases of bonds or other security so long as all other conditions for acceptance have been satisfied. Circulation improvements providing access to the Project Site as well as on-site access improvements as documented within the approved improvement plans shall be completed prior to the issuance of any temporary or initial Certificate of Occupancy for buildings within the applicable phase.

10.2. Implementation of Willow Village anticipates two overarching construction work phases. The initial efforts pertain to construction of Site Improvements, per Sections 10.2.1-10.2.4 below, primarily comprised of project serving infrastructure improvements, documented in Improvement Plan Sets (Plans, Specifications and Estimates). The second phase of project implementation pertains to the construction of vertical/building improvements. The construction of vertical improvements may overlap with completion of Site Improvements; however, building final permit sign-off/Certificate of Occupancy is dependent on the completion of the Site Improvements associated with the Map Phase in which the subject Vertical improvements are located. At Applicant's election, Improvement Plan sets may be prepared and submitted for plan check and approval as independent plan sets in the following formats:

- 10.2.1. Demolition Plans of existing improvements
- 10.2.2. Grading Plans
- 10.2.3. Streets, Utilities and Streetscape Improvements
- 10.2.4. Park and Open Space Improvements

10.3. At Applicant's election, plan check and issuance of building permits, may be processed in incremental submittals such as the following, subject to review and acceptance of the Building Division:

- 10.3.1. Civil Engineering, grading, utilities
- 10.3.2. Foundation design including piles and pile caps, if proposed
- 10.3.3. Structural design
- 10.3.4. Core and Shell
- 10.3.5. Interior improvements
- 10.3.6. Site improvements and landscaping

10.4. Voluntary Remediation Work

- 10.4.1. Implementation of Removal Action Workplan (“RAW”) The primary objective of the RAW is to evaluate potential management practices with the proposed plans to redevelop the Project Site with residential use while protecting the health of future occupants/users. The California Department of Toxic Substances Control (DTSC) approved RAW identifies a preferred removal action most appropriate for the Residential/Shopping District of the Site, as prior remedial actions did not anticipate residential land uses. It is anticipated that DTSC will approve the RAW upon certification of the Willow Village EIR. The applicant is required to implement the remedial actions identified in the final approved RAW prior to issuance of any building or encroachment permits from the City for the Project. Documentation of an approved RAW shall be provided to the Building Division prior to issuance of any building permits for the Project
- 10.4.2. Site Management Plan (“SMP”) The purpose of the SMP is to establish appropriate management practices/protocols for handling impacted soil, soil vapor, and ground water that may be encountered during development activities. It is anticipated that DTSC will approve the SMP upon the certification of the Willow Village Project EIR. The applicant shall implement the management practices and protocols of the SMP during Project construction. Documentation of an approved SMP shall be provided to the Building Division prior to issuance of any building permits for the Project.
- 10.4.3. In the event remedial efforts are not completed during the grading phase, and DTSC allows for phased remediation, then as part of each complete building permit application submittal, the grading plans shall document any necessary soil remediation efforts in compliance with the approved site management plan and work plans by DTSC. These plans shall be submitted to the City for reference purposes. Any excavation related to soils remediation shall require issuance of a building permit from the City. DTSC approval of remediation shall be provided to the Building Division prior to issuance of any building permits.
- 10.4.4. Vapor Intrusion Mitigation Plan (VIMP”) The purpose of the VIMP is to identify the measures that will be implemented for the planned

development to effectively eliminate potential vapor intrusion concerns into future buildings. The VIMP is building specific to identify measures that will be implemented by building and is reviewed and approved by DSTC prior to the issuance of building permits. Documentation of DTSC review and approval shall be provided to the Building Division prior to building permit issuance. The VIMP plans shall be incorporated for “reference only” into applicable building permit plan sets.

10.5. Subdivision Mapping and Project Serving Improvements

10.5.1. Willow Village proposes a two-step subdivision approach to facilitate the development of the Project. The initial subdivision consists of a Large Lot Parcel Map “A” Map. The primary purpose of the “A” Map is to create legal parcels for potential financing and conveyance purposes, but that are not buildable, reserve and offer for dedication future public rights of way and public easements and provide project serving backbone infrastructure improvements consisting of grading plans, street improvements, utility improvements and streetscape improvements. The “A” map may be filed in multiple maps. The subsequent subdivision process that creates buildable parcels is referred to as a “B” Map. Both Parcel and Final Maps are anticipated to create buildable parcels within the Office District/Town Square District and Residential/Shopping District. All obligations specific to each Parcel or Tract Map are documented as conditions of approval to each map. In the event the required project serving improvements are not completed prior to approval and recordation of the Parcel Map or Final Map, the subdivider shall enter into a Public/Subdivision Improvement Agreement with the City of Menlo Park and provide the appropriate amount of surety guaranteeing the completion of said improvements to the satisfaction of the City Engineer.

10.5.2. The Applicant shall submit for a Final Map/Parcel Map for the “A Map” to the Public Works Department for review and approval, documenting compliance with the Vesting Tentative Map.

10.5.3. The Applicant shall submit public improvement plans prior to or concurrent with the Final Map/Parcel Map for the “A Map” subject to review and approval of the Engineering, Building, and Planning Divisions.

10.5.4. The Applicant shall construct the public improvements/backbone infrastructure in compliance with the conditions of approval for the Vesting Tentative Map

10.5.5. The Applicant shall coordinate the public improvement plans/backbone infrastructure and the Final Map plans with the Hamilton Avenue Parcels Vesting Tentative Map and associated public improvement plans.

10.6. Willow Road Tunnel

10.6.1. This CDP approves the Willow Road Tunnel Variant in addition to the Project, subject to the review process for on-site changes outlined in Section 8 of this CDP. In the event the Applicant proposes to construct Willow Road Tunnel Improvements, the following process shall apply:

10.6.2. Applicant shall submit to the City Improvement Plans detailing the proposed Willow Road Tunnel consisting of vehicle travel lanes to accommodate bi-directional vehicular travel of Project Transit vehicles, separated pedestrian and bicycle lanes, portal improvements on eastern portion of the MPK 20 site connecting to Bayfront Expressway Tunnel and a tunnel approach consisting of dedicated bicycle and improvements within Willow Village Site.

10.6.3. Applicant shall submit Willow Road Tunnel Improvement Plans to the Community Development and Public Works Departments for review and preliminary design acceptance, prior to submittal to Caltrans and SamTrans.

10.6.4. Following City review and preliminary design acceptance, the Applicant shall submit Willow Road Tunnel Improvement Plans to Caltrans and SamTrans and apply for encroachment permit and/or other required approvals which may coincide with the City's more detailed building permit review of the Willow Road Tunnel Improvement Plans for the portions of the tunnel on private property (i.e. Project Site and West Campus).

10.6.5. Applicant shall process a Modification, as applicable, to the West Campus Conditional Development Permit for the portions of the tunnel portal and associated improvements on West Campus, which City shall approve if it substantially conforms to the Willow Road Tunnel Improvement Plans.

10.6.6. Applicant shall apply jointly with SamTrans to California Public Utilities Commission (CPUC) for a GO-88(b) authorization to permit an undercrossing below the Dumbarton Rail corridor.

10.6.7. Applicant shall submit documentation of Caltrans' approval of encroachment permit, the SamTrans approval of the encroachment permit, and CPUC's approval of a GO-88(B) authorization to the



Public Works and Community Development Departments for review prior to approval and issuance of said Willow Road Tunnel Improvement Plans.

- 10.6.8. Applicant shall obtain necessary permits, at the Applicant's sole cost, from Caltrans and SamTrans and provide documentation to the Community Development and Public Works Departments prior to issuance of building permits for the tunnel approach and other improvements on private property, including the Project Site and the West Campus Site.
- 10.6.9. Public Access Easements: Concurrent with complete plan set submittal for construction of the Willow Road Tunnel, the Applicant shall submit a plat and legal description for a public access easement(s) on property it owns or controls for utilization of the Willow Road Tunnel to the satisfaction of the Public Works Director. The form of public access easement shall permit Applicant to establish reasonable rules and regulations governing its use and to temporarily suspend access to the Willow Road Tunnel in case of emergencies. The acceptance of the deed or dedication requires Menlo Park City Council approval prior to final inspection.
- 10.6.10. The Willow Road Tunnel shall be open 24 hours a day for bicyclists and pedestrian access, except when temporarily suspended in case of emergencies or maintenance. If the Willow Road Tunnel will be closed for planned maintenance the Applicant shall provide the Public Works Director with written notice 72 hours in advance.
- 10.6.11. Maintenance Agreement: Prior to approval of building permit final inspection for the Willow Road Tunnel, the Applicant shall enter into a Maintenance Agreement with the City to maintain the Willow Road Tunnel, including but not limited to typical cleaning and repairs, at the Applicant's sole cost.
- 10.6.12. Applicant is responsible for payment of Caltrans and Samtrans permitting, licensing, and other fees associated with the review and approval of the Willow Road Tunnel Improvement Plans.

#### 10.7. Elevated Park Segment Over Willow Road

- 10.7.1. The Applicant shall submit to the City Improvement Plans depicting the segment of the Elevated Park that crosses Willow Road consisting of a raised landscaped park open to the public with stair and elevator access points on both sides of Willow Road connecting pedestrian and bicycle users.

- 10.7.2. Applicant shall submit Elevated Park Improvement Plans to the Community Development and Public Works Departments for review and preliminary design acceptance, prior to submittal for Caltrans.
- 10.7.3. Following City review and preliminary design acceptance, Applicant shall submit the Elevated Park Improvement Plans to Caltrans and apply for encroachment permit approvals which may coincide with the City's more detailed review of the Elevated Park over Willow Road Improvement Plans for compliance with the ACP for the Elevated Park.
- 10.7.4. Applicant shall submit documentation of Caltrans' approval of encroachment permit prior to the City approval of said Segment of the Elevated Park over Willow Road.
- 10.7.5. Applicant shall complete Segment of the Elevated Park over Willow Road Improvements prior to the issuance of the last Phase 2 building Certificate of Occupancy and permit sign off.
- 10.7.6. Maintenance Agreement: Prior to approval of building permit final inspection for the Elevated Park Segment over Willow Road, the Applicant shall enter into a Maintenance Agreement with the City to maintain the Willow Elevated Park Segment, including but not limited to typical cleaning and repairs, at the Applicant's sole cost.
- 10.7.7. Applicant shall obtain necessary permits, at the Applicant's sole cost, from Caltrans and other agencies that have jurisdiction and provide documentation to the Community Development and Public Works Departments prior to issuance of building permits for the segment of the Elevated Park spanning over Willow Road including other improvements on private property, including the Project Site and the Willow/Hamilton Parcel.
- 10.7.8. Public Access Easements: Concurrent with complete plan set submittal for construction of the Elevated Park, the Applicant shall submit a plat and legal description for a public access easement(s) on property it owns or controls to the satisfaction of the Public Works Director. The form of public access easement shall permit Applicant to establish reasonable rules and regulations governing its use and to temporarily suspend access to the Elevated Park in case of emergencies. The acceptance of the deed or dedication requires Menlo Park City Council approval prior to final inspection.
- 10.7.9. Extensions: In the event construction of the Elevated Park is delayed due to circumstance outside of the Applicant's reasonable control, the Public Works Director may grant an extension based on substantial evidence from the Applicant that the delay is based on

external circumstances, and the Applicant demonstrates a good faith effort to complete the improvements. Any extension would be based on an agreed upon timeline by the Public Works Director and the Applicant.

10.7.10. If the segment of the Elevated Park that crosses Willow Road is not approved by outside agencies prior to the development of Phase 2, Applicant shall have no further obligation to construct the segment of the Elevated Park over Willow Road and shall instead (1) pay a community amenity fee in the amount of Ten Million Three Hundred Sixty Nine Thousand Thirty-One Dollars (\$ 10,369,031) and (2) ensure that the vertical transportation system (i.e, elevators, stairs, etc.) at the westerly side of the Elevated Park is located reasonably proximate to the eastern side of Willow Road, taking into account Project design and utility considerations, consistent with the requirements of the Willow Village Development Agreement.

10.8. Vertical Building Phase – The vertical building construction phasing shall conform to Exhibit D of the Development Agreement.

## 11. BIRD SAFE DESIGN

11.1. Bird-Safe Design: For purposes of addressing the potential for avian collision risk associated with the Project, the Project shall comply with the following:

11.1.1. The “beneficial project features” identified in the Willow Village Master Plan Bird-Safe Design Assessment prepared by H.T. Harvey & Associates for Peninsula Innovation Partners (October 19, 2021) (“**Bird-Safe Design Assessment**”) as identified in Appendix A to the Bird-Safe Design Assessment.

11.1.2. City Bird-Safe Design Requirements

11.1.2.1. Except as provided in Section 11.1.2.2, the City Bird-Safe Design Requirements identified in Mitigation Measure BIO-1 of the ConnectMenlo: General Plan Land Use & Circulation Elements and M-2 Area Zoning Update Environmental Impact Report (ConnectMenlo EIR), certified by the City of Menlo Park in 2016 and codified in Sections 16.43.140(6) and 16.45.130(6) of the City’s Municipal Code (collectively referred to as the “City Bird-Safe Design Requirements”), as described in Sections 5.2.2.1, 5.3.2.1, 5.4.2.1, 5.5.2.1, and 6.2.2 of the Bird-Safe Design Assessment.

11.1.2.2. The Alternative Measures Proposed, as described in Sections 5.2.2.2, 5.3.2.2, 5.4.2.2, 5.5.2.2, and 6.2.2 of the Bird-Safe Design Assessment, in accordance with the Planning Commission approval of waivers to the referenced City Bird-Safe Design Requirements.

11.1.2.3. The “lighting design principles,” as described in Section 6.2.1 of the Bird-Safe Design Assessment.

11.1.2.4. The mitigation measures applicable to avian collision impacts identified in the Mitigation Monitoring and Reporting Program for the Project.

11.1.3. Bird-Friendly Design Waivers: In accordance with Zoning Ordinance Sections 16.43.140(6)(H) and 16.45.130(6)(H), this CDP authorizes waivers to the City Zoning Ordinance requirements for Bird-Friendly Design in the RMU and O districts as provided with the Bird-Safe Design Assessment. Future waivers may be considered and approved by the Planning Commission provided that the proposed waivers do not conflict with the provisions of this CDP.

11.1.4. Prior to City approval of each ACP for the Project, a qualified biologist shall review the final ACP to confirm that the above features, requirements, alternative measures, and mitigation measures, or other alternative features, requirements, alternative measures, and mitigation measures proposed by the applicant and reasonably acceptable to the qualified biologist, are incorporated into the ACP, such that Project impacts due to bird collisions would be less than significant under CEQA and comply with the intent of the City’s Zoning Ordinance requirements, as indicated in the Bird-Safe Design Assessment. The qualified biologist shall submit its report and findings to the Planning Division for review and acceptance prior to action on each individual ACP.

## 12. PROJECT SPECIFIC CONDITIONS – GENERAL

12.1. The following project specific conditions generally apply to every building permit and construction phase unless a specific building or phase is identified. Each subsequent permit shall be reviewed by the Community Development and Public Works Departments for compliance with these conditions prior to building permit issuance. Compliance shall be documented by the applicant in the appropriate form as determined by the applicable City department or division.

12.2. Architectural Control Plan Approval: Per Section 2.2.4, an Applicant shall submit for individual parcels within the O and R-MU District complete Architectural Control Plans in accordance with Menlo Park Municipal Code Section 16.68.020 and materially consistent with the vision and design intent conveyed by the Conceptual Plans, subject to applicable Modifications granted in accordance with Section 4 and Changes granted in accordance with Section 8 herein. Per Section 8.1.4, at time of each ACP submittal, the Property Owner will have the ability to submit additional bird-safe waivers, to be reviewed by a qualified biologist, so long as those waivers are demonstrated to be less than significant under the Willow Village Project EIR. Through the ACP review process the Applicant may request additional project modifications subject to Changes granted

in accordance with Section 8 herein. Approval of the Architectural Control Plans is a prerequisite to building permit issuance.

- 12.3.** Future Conditions: The City's Planning, Building, Engineering, and Transportation Divisions shall review each ACP for substantial conformance with this CDP. The City may impose additional conditions of approval related to building design or conditions necessary to ensure compliance with applicable Building Code or health and safety regulations. Conditions within this CDP would continue to apply to all future ACPs and any future conditions shall be consistent with this CDP, the DA, the MMRP, and Vesting Tentative Maps for the Masterplan.
- 12.4. Below Market Rate Housing Agreement: Concurrently with the recordation of the Willow Village Development Agreement and this CDP, the Applicant shall record the Project-Wide Willow Village Below Market Rate Housing Agreement and subsequent parcel specific BMR agreements shall be recorded prior to issuance of the first building permit for the associated vertical construction.
- 12.5. Public Realm Lighting: Building and parcel specific lighting plans shall comply with Sheets G5.22 through G5.33 of the Project Plans and be included in all applicable permits.
- 12.6. Outside Agency Compliance: Prior to issuance of each building permit, the Applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the Project. Documentation of compliance shall be submitted to the Building Division prior to building permit issuance.
- 12.7. Condition Compliance: Prior to the issuance of each building permit, the Applicant shall submit documentation of compliance with all conditions of approval on the plans or in supporting documents for review and approval of the Public Works and Community Development Departments. Any request for a modification in the timing of a specific condition shall be made in writing with a detailed explanation and requested alternative timing to the Community Development Director for review based on conformance with Section 8 (Changes) of this CDP.
- 12.8. Fees: All outstanding and applicable fees associated with the processing of this Project shall be paid prior to the issuance of any building permit for the Project.
- 12.9. Construction Fencing: The Applicant shall submit a plan for construction safety fences around the periphery of the construction area or the periphery of the Project Site including the installation of Temporary Noise Abatement sound barriers consistent with Mitigation Measure NOI-1.2 concurrent with the building permit for each phase of construction or site development activities. The fences shall be installed according to the plan prior to commencing construction for each individual construction phase or each building. The plan shall be reviewed and approved by the Building and Planning Divisions prior to issuance of a demolition permit for each building.

- 12.10. Site Upkeep: Property Owners shall keep their respective properties on the Project Site in a clean and sanitary condition at all times, maintain its site in a fashion that does not constitute a public nuisance and that does not violate any provision of the City of Menlo Park Municipal Code.
- 12.11. Truck Route Plan: The Applicant shall submit a truck route plan concurrent with the building permit application for each stage of construction based on the City's municipal code requirements, for review and approval by the Transportation Division. The Applicant shall also submit a permit application and pay applicable fees relating to the truck route plan, to the satisfaction of the Public Works Director
- 12.12. Salvaging and Recycling of Construction and Demolition Debris: For each building, the Property Owner shall comply with the requirements of Chapter 12.48 (Salvaging and Recycling of Construction and Demolition Debris) of the City of Menlo Park Municipal Code, which compliance shall be subject to review and approval by the Building Division.
- 12.13. Water Efficient Landscape Ordinance: Simultaneous with the submittal of each complete building permit application, the Applicant shall provide documentation indicating the amount of irrigated landscaping. If the project proposes more than 500 square feet of irrigated landscaping, it is subject to the City's Water Efficient Landscaping Ordinance (Municipal Code Chapter 12.44). Submittal of a detailed landscape plan is required concurrently with the submittal of each complete building permit application and subject to review and approval of the Engineering Division.
- 12.14. Landscape Screening: Landscaping shall screen all public utility equipment that is installed within the public and private rights-of-way and cannot be placed underground, subject, however, to the requirements of the Menlo Park Fire Protection District, the West Bay Sanitary District, PG&E, and any other applicable agencies regarding utility clearances and screening. The Improvement Plans shall depict new utility installations exact locations of any meters, back flow prevention devices, transformers, junction boxes, relay boxes and other equipment boxes installed within the public right of way or public easement area in the event said above ground utility installations are depicted within the Improvement Plans. The screening shall be compatible and unobtrusive and subject to the review and approval of the Planning Division which approval will be required prior to the City's approval of the Improvement Plans.
- 12.15. Hydrology Report: Simultaneous with the submittal of each complete building permit application, the Applicant's design professional shall evaluate the Project's impact to the City's storm drainage system and prepare a Hydrology Report to the satisfaction of the City Engineer or Director of Public Works, or designee. Post-construction runoff into the storm drain shall not exceed pre-construction runoff levels.
- 12.16. Stormwater Management Report: Simultaneous with the submittal of each complete building permit application, the applicant shall submit a Storm Water

Management Report that meets the requirements of the San Mateo County's C.3 Stormwater Technical Guidance Manual for review and approval of the City's Engineering Division.

12.17. FEMA Compliance: The Project Site is in Flood Zone AE and must be designed and constructed in compliance with current FEMA regulations, the City's Flood Damage Prevention Ordinance, and Zoning Ordinance Sections 16.43.140(4) and 16.45.130(4) (Hazard Mitigation and Sea Level Rise Resiliency).

12.17.1. Concurrent with the building permit submittal, the Applicant shall submit a FEMA Conditional Letter of Map Revision-Fill (CLOMR-F) application to the Public Works Department for review and approval. In accordance with the National Flood Insurance Program (NFIP), Section 65.5, the Applicant shall prepare supporting data, including relevant hydraulic and hydrologic analyses, delineation of floodplain boundaries and all other information required by FEMA to review and evaluate the request for a CLOMR-F. Upon receiving City approval, the Applicant shall submit the CLOMR-F application to FEMA.

12.17.2. Prior to issuance of any building permit the Applicant shall obtain a CLOMR-F from FEMA.

12.17.3. The Applicant shall submit an elevation certificate to the Engineering Division prior to final signoff of the foundation inspection for each building.

12.17.4. When construction is complete, appropriate as-built data must be supplied to FEMA for a permanent LOMR-F to be issued. The applicant shall submit the LOMR-F application to FEMA, with a copy to the Engineering Division, within 30 days of Certificate of Occupancy for each building.

12.18. Heritage Tree Protection: Improvement Plans shall include tree protection plans for any construction phase that retains existing heritage trees subject to review and approval of the City Arborist and Planning Division.

12.19. Heritage Tree Removals: The applicant is permitted to remove 276 heritage trees at the main Project Site, 6 heritage trees along O'Brien Drive, 7 heritage trees on 1305 O'Brien Drive, and 3 heritage trees on 1330 O'Brien Drive, subject to the following conditions.

12.19.1. Heritage tree removal permits were conditionally approved by the City Arborist on 6/28/22 (HTR Permit Nos 2022-00057 and 2022-00058).

12.19.2. Heritage tree removal permits associated with additional property owners shall not be issued until the City receives written authorization from affected property owners.

12.19.3. Removals of conditionally approved heritage trees may not occur prior to issuance of demolition permits, authorization of all affected property owners, and/or the effective date of this CDP.

12.20. Heritage Tree Replacements: The Applicant is permitted to remove up to 276 heritage trees on the Project Site and 16 heritage trees for construction of the new O'Brien intersection, as determined by the Project Arborist in the *Tree Survey Reports* dated August 16, 2022 (and shown on Sheets G1.06-G1.09 and Appendix 9) of the Project Plans. A minimum of value of \$3,413,400 in heritage tree replacements are required for the Project Site. Heritage tree replacements shall be a minimum of 24-inch box size and are required to be planted at grade. The number of heritage tree replacements shall be tracked by the City and Applicant in accordance with the compliance matrix, dated 6/23/22 and on file with the City and subject to the approval of the City Arborist and Planning Division.

12.21. Title 12 Compliance: Simultaneous with the submittal of each complete building permit application, the applicant shall submit plans to the Building Division verifying that the project complies with all applicable Municipal Code Title 12 (Buildings and Construction) requirements for review and approval.

12.22. Building Codes Compliance: The project is subject to the California Building Code, the California Building Standards Code and any adopted Reach Codes and/or local building code ordinances in effect at the time of each complete building permit application submittal, unless otherwise regulated by the development agreement and this CDP.

12.23. CalGreen Compliance: The project is subject to the California Green Building Standards Code (CalGreen) and any local amendments to the Code in effect at the time of submittal of each complete building permit application, unless otherwise regulated by the development agreement and this CDP.

12.24. Natural Gas Usage: Prior to submittal of a complete building permit application for the superstructure, the Applicant shall apply for an exception to use natural gas, if applicable, for nonresidential kitchens (such as for-profit restaurants and cafeterias), subject to the criteria in Chapter 12.16 of the Municipal Code and the City's Reach code administrative guidelines. Exceptions for natural gas usage in commercial kitchens require review and approval of the Environmental Quality Commission and are appealable to the City Council. If exceptions are not granted by the Environmental Quality Commission or City Council, the plans shall be revised to remove all natural gas improvements.

12.25. Unit plans: Each complete building permit application that includes residential units shall include all unit plans to be fully drawn and detailed including mirrored plans.



Further, all residential building plans are required to include drawings for mirrored units including structural, mechanical, electrical, and plumbing plan sheets.

- 12.26. Deferred submittals: All deferred submittals other than trusses are to be approved by the Building Official or their designee prior to submittal of each complete building permit application.
- 12.27. Menlo Park Fire Protection District: Each occupancy and unit set forth in the Plans shall have the required fire protection systems, allowable building height and separations per Table 508.4 of the 2019 California Building Code (CBC) or whichever CBC is in effect at the time of building permit submittal. Simultaneous with the submittal of a complete building permit application, the applicant shall include documentation that the Plans have been reviewed and approved by the Menlo Park Fire Protection District.
- 12.28. Electric Vehicle Space: Each complete building permit application shall include construction documents needed to identify the location of electric vehicle (EV) spaces per the CalGreen code and any local amendments in effect at the time of submittal of a complete building permit application unless otherwise regulated by the development agreement and this CDP.
- 12.29. Pedestrian Protection: Each complete building permit application shall include pedestrian protection along the public right-of-way with sidewalks, as required per Section 3306 of the 2019 CBC or the CBC in effect at the time of submittal of a complete building permit application.
- 12.30. Adjoining Properties: Each complete building permit application shall include details regarding protection of adjoining property, as required per Section 3307 of the 2019 CBC or the CBC in effect at the time of submittal of each complete building permit application.
- 12.31. Sanitary Sewer: Each complete building permit application shall include details demonstrating that all sanitary sewer lines will gravity feed to the sewer mains in the public right-of-way unless otherwise approved by the Building Official or their designee.
- 12.32. Simultaneous with the submittal of each complete building permit application, the applicant shall submit plans for: 1) construction safety fences around the periphery of the construction area, 2) dust control, 3) air pollution control, 4) erosion and sedimentation control, 5) tree protection fencing, and 6) construction vehicle parking. The plans shall be subject to review by the Engineering, Planning, and Building Divisions and the City's Building Official or their designee shall approve the Plans subject to input by City staff. The safety fences, dust and air pollution control measures, erosion and sedimentation control measures, and tree protection measures shall be installed according to the approved plan prior to commencing construction and implemented throughout the duration of construction at the project site
- 12.33. Erosion Control: No later than upon the submittal of a complete building permit application, the Applicant shall submit plans that include proposed measures to prevent

erosion and polluted runoff from all site conditions, subject to review and approval of the Building Division. During construction, if construction is not complete by the start of the wet season (October 1 through April 30), the Applicant shall implement a winterization program to minimize the potential for erosion and sedimentation. As appropriate to the site and status of construction, winterization requirements shall include inspecting/maintaining/cleaning all soil erosion and sedimentation controls prior to, during, and immediately after each storm event; stabilizing disturbed soils through temporary or permanent seeding, mulching, matting, tarping or other physical means; rocking unpaved vehicle access to limit dispersion of soil onto public right-of-way; and covering/tarping stored construction materials, fuels, and other chemicals. A site specific winterization plan implemented during construction would be subject to review by the Engineering, Building, and Planning Divisions and subject to approval by the Building Official or their designee with input from City staff. The winterization plan would be in addition to any required erosion control plan.

12.34. Stationary Noise Source Compliance Data (Non-roof mounted equipment):

Concurrent with the Core and Shell building permit phase submittal for each building, the Property Owner shall provide a plan that details that all on-site stationary noise sources comply with the standards listed in Section 8.06.030 of the City's Noise Ordinance. This plan shall be subject to review and approval by the Planning and Building Divisions prior to each building permit issuance.

12.35. Stationary Noise Source Compliance Data (Roof mounted equipment):

Concurrent with the Core and Shell building permit phase submittal for each building, the Property Owner shall provide a plan that details that all roof-mounted stationary noise sources comply with the standards listed in Section 16.08.095 of the City's Zoning Ordinance. This plan shall be subject to review and approval by the Planning and Building Divisions prior to each building permit issuance.

12.36. Building Construction Street Impact Fee: Prior to issuance of each building permit, the Property Owner shall pay the applicable Building Construction Street Impact Fee, to the satisfaction of the Public Works Director.

12.37. Accessibility: All pedestrian pathways shall comply with applicable Federal and State accessibility requirements, to the satisfaction of the Public Works Director and Building Official.

12.38. Prior to issuance of the building permit for the senior below market rate building, the applicant shall submit documentation of an agreement for up to 36 off-site spaces within the adjacent building on residential parcel 6 to the Planning and Building Divisions for review and approval. The agreement shall be recorded with the San Mateo County Assessor Recorder's office prior to the granting of Certificate of Occupancy for the senior below market rate building.

12.39. The grocery store shall be a minimum of 35,000 square feet in size.

**13. Ongoing Compliance Monitoring**

**13.1. Water Supply Assessment (WSA) Compliance:** Twelve months following the date of the issuance of the certificate of occupancy, the Property Owner/Manager for each parcel shall submit documentation to the City to confirm that potable water usage for the parcel does not exceed the estimated potable water consumption for the parcel documented in the WSA dated February 2022, prepared by West Yost Associates. The estimated total potable water consumption for the Project at full buildout is 94 million gallons per year, a net increase of 75 million gallons and each building shall be reviewed for compliance with its prorated/fair share water usage based on square footage, units, or hotel rooms. The Public Works Director shall review the documentation along with City records for potable water usage at the Project Site to confirm that potable water usage does not exceed the estimated potable water usage in the WSA. In the event that actual water consumption exceeds the WSA, a water conservation program, as approved by the City's public works director, shall be implemented. Twelve (12) months after City approval of the water conservation program, the building owner shall submit data and information sufficient to allow the city to determine compliance with the conservation program. If water consumption exceeds the budgeted amount, the City's public works director may prohibit the use of water for irrigation or enforce compliance as an infraction pursuant to Chapter 1.12 of the Municipal Code until compliance is achieved. This section shall not be effective during the period of deferred enforcement established by section 4.13 of this CDP.

**13.2. Long-term Maintenance Provisions**

**13.2.1. Stormwater Operations and Maintenance Agreement for Private Property:** Prior to temporary/initial certificate of occupancy for each building, the Property Owner shall enter into, or amend the existing Operations and Maintenance Agreement with the City, as applicable. The Operations and Maintenance Agreement shall establish a stormwater treatment system maintenance program (to be managed by the Property Owner) that includes annual inspections of any infiltration features and stormwater detention devices (if any), and drainage inlets, flow through planters, and other Best Management Practices (BMP). There may be separate Operations and Maintenance Agreements for each individual parcel within the Project Site, or one combined agreement as may be determined by the City and Applicant. The Operation and Maintenance Agreements shall be subject to review and approval of the City Attorney and the Public Works Director and shall be recorded prior to final inspection of the Tenant Improvement phase for each building. An annual report documenting the inspection and any remedial action conducted shall be submitted to the Public Works Department for review. This condition shall be in effect for the life of the Project.

**13.2.2. Stormwater Operations and Maintenance Agreement for Rights of Way and the Public Realm:** Prior to the certificate of occupancy for each building, the Owners' Association shall enter into, or amend the

existing Operations and Maintenance Agreement with the City, as applicable. The Operations and Maintenance Agreement shall establish a stormwater treatment maintenance program (to be managed by the Owners' Association) that includes annual inspections of any infiltration features and stormwater detention devices (if any), and drainage inlets, flow through planters, and other Best Management Practices (BMP). There may be separate Operations and Maintenance Agreements for each individual parcel within the Project Site, or one combined agreement as may be determined by the City and Applicant. The Operation and Maintenance Agreements shall be subject to review and approval of the City Attorney and the Public Works Director and shall be recorded prior to final inspection of the Tenant Improvement phase for each building. An annual report documenting the inspection and any remedial action conducted shall be submitted to the Public Works Department for review. This condition shall be in effect for the life of the Project.

13.2.3. Landscape Maintenance: Site landscaping shall be maintained by the entities described in Section 13.2.4, below, and to the satisfaction of the Community Development Director. Significant revisions to site landscaping shall require review by the Building Official, Public Works Director, City Arborist, and Community Development Director to confirm the proposed changes comply with accessibility and exiting requirements, stormwater requirements and substantially conform with the Project Plans consistent with the procedure outlined in Section 8, Changes.

13.2.4. Maintenance Obligations

13.2.4.1. City: Once constructed, the Applicant/Property Owner shall dedicate the following improvements to the City, after which time the City shall be responsible for maintaining the public improvements.

- All public streets and utility improvements per Sheet G6.04 of the Project Plans (Conceptual Operations and Maintenance Responsibility Diagram) as follows:
  - Park street
  - The portion of West Street south of Main Street
  - The southern half of East Loop
  - The portion of Main Street between Willow Road and West Street and Park Street to the intersection of O'Brien Drive.

13.2.4.2. Applicant: The Applicant shall be responsible for maintaining the following improvements for the life of the Project in accordance with the standards that would be submitted in conjunction with the review and approval of the Improvement Plans.

- The Elevated Park
- Town Square

- The Willow Road Tunnel

13.2.4.3. Owners' Association: Prior to the first Certificate of Occupancy for the first building, an Owners' Association shall be formed for purposes of maintaining the following improvements. Following its formation, the Owners' Association shall be responsible for maintaining the following improvements for the life of the Project in accordance with the standards that would be submitted in conjunction with the review and approval of the Improvement Plans.

1. All privately-owned, publicly accessible open space other than the areas identified in Section 13.2.4.2, per Sheet G6.04 (Conceptual Operations and Maintenance Responsibility Diagram) of the Project Plans.
2. Private Streets and Utilities as follows:
  - a. North Loop Road
  - b. Segment of East Loop north of the Adams Court Intersection
  - c. Main Street between the intersection of West Street and Park Street
  - d. Center Street
  - e. East Street
  - f. Willow Road Tunnel, if constructed

13.3. City shall cooperate with Applicant in implementing all of the conditions of this CDP, including to alter responsibility for ongoing maintenance and compliance obligations as necessary (e.g., alter responsibilities between Applicant, Property Owner, Owners' Association).

13.4. Power and Communications Requirements: The Property Owner shall comply with all regulations of PG&E and other applicable communication providers (e.g., AT&T and Comcast) that are directly applicable to the Project.

13.5. Public Open Space Access: Simultaneous with the submittal of a complete building permit application, the Applicant shall submit a plat and legal description and proposed form of irrevocable easement agreement for public utilization of the Publicly Accessible Open Space, including the publicly accessible multi-use pathway(s), to the satisfaction of the Public Works Director and City Attorney. The form of irrevocable easement shall ensure, to the satisfaction of the City, that the Applicant has reasonable control over the Publicly Accessible Open Space and that the Publicly Accessible Open Space is accessible to the general public, in perpetuity during reasonable hours of each day of the week and at a minimum from sunrise to 30 minutes after sunset in compliance with Section 8.28.133 of the Municipal Code, except as otherwise provided in the Open Space Operating Rules to be prepared in accordance with Section 19. Publicly accessible open space and frontage landscaping that is part of each parcel, and identified in the ACP, shall be open prior to certificate of occupancy.

13.5.1. The irrevocable easement agreement requires City Manager approval and shall be recorded with the County of San Mateo prior to granting of the first unit and/or building occupancy.

13.6. On-site Pedestrian Deterrents and Safety Features: In the Campus District, the on-site pedestrian deterrent materials and color shall be consistent with the materials and colors used for the adjacent Campus District building and landscape palette as approved through the ACP process. In publicly accessible open space and adjacent to publicly accessible private streets, perimeter safety fencing and roadway barricades shall be consistent with the overall character of the publicly accessible open space to the satisfaction of the Community Development Director.

13.7. Generator Screening: To the extent generators are placed on the exterior of the buildings, the Property Owner shall screen all generators prior to certificate of occupancy for each building, to the satisfaction of the Planning Division. Screening shall be to the height of the generator and enclose all four sides of the generator. Buildings may be used for all or part of the enclosure.

13.8. Refuse and Recyclables: The Project shall comply with Zoning Ordinance Sections 16.43.140(5) and 16.45.130(5) and the City's implementing regulations. Documentation of preliminary compliance shall be submitted with each ACP and confirmed prior to issuance of each applicable building permit, subject to review and approval of the Sustainability and Planning Divisions. Ongoing compliance shall be demonstrated by Applicant through zero waste assessments and established benchmarks for waste reduction as part of the City's implementing guidelines, subject to review and approval of the Sustainability Division.

13.8.1. All garbage bins and carts shall be located within a trash enclosure that meets the requirements of the solid waste disposal provider, and the City Public Works Department and Planning Division for the lifetime of the Project. If additional trash enclosures are required to address the on-site trash bin and cart storage requirements of the Property Owner, a complete building permit submittal shall be submitted inclusive of detailed plans, already approved by the solid waste disposal provider, for review and approval of the Planning Division and the Public Works Department prior to each building permit issuance.

13.8.2. Concurrent with the submittal of each complete building permit application that requires waste and recycling collection services, the applicant shall provide documentation of approval of the refuse and recycling locations by the City's waste and recycling provider (e.g. Recology), subject to review and approval of the Sustainability and Planning Divisions.

- 13.9. Event Parking Management Plan: The Project shall comply with the Event Parking Management Plan, dated October 15, 2022 and on file with the City.
- 13.10. Construction Hours: 13.10. Construction Hours: Construction activities may take place outside of the typical construction hours of 8:00 a.m. to 6:00 p.m. Monday through Friday, provided the construction activities comply with the noise limitations set forth in Chapter 8.06 (Noise) of the municipal code and mitigation measures Modified ConnectMenlo NOISE-1c, NOI-1.1 and NOI-1.2, unless determined by the Building and Planning Divisions that an exception for specific activities is necessary (e.g. offsite evening/night work or other on-site activities that cannot occur during the typical construction hours). Prior to the issuance of a building permit for each individual phase, the Property Owner shall submit a construction work plan and acoustical analysis to the City documenting the expected work hours and compliance with the Noise Ordinance (Chapter 8.06), the project MMRP, and any noise ordinance exceptions subject to review and approval of the Building and Planning Divisions. Noise is allowed to exceed the City's 85 decibel at 50 foot for any one piece of equipment requirement for construction equipment such as pile drivers, subject to compliance with Modified ConnectMenlo NOISE-1c, NOI-1.1 and NOI-1.2 in the EIR.
- 13.11. Diesel Generators: Except as provided for in Section 3 of this CDP, any additional diesel generators require review and approval of an administrative permit per the requirements of the Zoning Ordinance.
- 13.12. Food deliveries to retailers (including grocery) and restaurant and loading hours: Deliveries of food to retailers (including the grocery) and restaurants are permitted at all hours and are exempt from noise standards in accordance with Municipal Code Section 8.06.040(d).
- 13.13. EPA Energy Star Portfolio Manager: Simultaneous with the submittal of each complete building permit application, the applicant shall enroll in EPA Energy Star Building Portfolio Manager. Prior to building permit final approval, the applicant shall submit documentation showing compliance to the satisfaction of the Planning and Building Divisions.
- 13.14. Energy Requirements: Prior to issuance of the first building permit for building or site feature (e.g. publicly accessible park), the applicant shall submit plans and supporting documentation to the Building and Planning Divisions documenting that the project meets one hundred percent of its energy demand (electricity and natural gas), as required by Chapter 16.45.130(2) of the Zoning Ordinance, through the combination of the following measures and to the satisfaction of the Building and Planning Divisions:
- 13.14.1. On-site energy generation;
  - 13.14.2. Purchase of 100% renewable electricity through Peninsula Clean Energy or Pacific Gas and Electric Company in an amount equal to the annual energy demand of the project;
  - 13.14.3. Purchase and installation of local renewable energy generation within the City of Menlo Park in an amount equal to the annual energy demand of the project;

13.14.4. Purchase of certified renewable energy credits and/or certified renewable energy offsets annually in an amount equal to the annual energy demand of the project.

13.15. The Project Site shall meet one hundred percent (100%) of its energy demand (electricity and natural gas) in accordance with Zoning Ordinance sections 16.45.130(2)(A) (RMU District) and 16.43.140(2)(A) (O District) for the life of the Project.

13.15.1. Concurrent with the submittal of each building permit, the applicant shall document energy demand through the compliance tracker dated 6/23/22 and on file with the City, which verifies the amount of carbon-free energy generated on site compared to the projected amount of non-carbon-free energy used by the Project, to achieve the Zoning Ordinance requirements of 100% renewable energy across the project site.

13.15.2. The Applicant/Project Owner shall document compliance with Zoning Ordinance sections 16.45.130(2)(A) (RMU District) and 16.43.140(2)(A) (O District) on a schedule determined by the Applicant/Project Owner and the City, based on the construction schedule for the Project.

#### **14. OFF SITE IMPROVEMENTS**

14.1. Transportation Impact Fee ("TIF"): The current estimated total transportation impact fee based on the maximum development potential is \$39,728,599.82 (subject to adjustments for the actual proposed development) ("**TIF Obligation**"). The Applicant shall complete off-site circulation improvements identified as the responsibility of the Project through the TIA and included in the TIF ("**TIF In Lieu Improvements**") in lieu of paying the TIF. The City and Applicant shall establish the estimated cost of the TIF In Lieu Improvements prior to issuance of the first building permit. The TIF In Lieu Improvements shall reduce the TIF Obligation dollar for dollar. In the event the estimated cost of the TIF In Lieu Improvements is less than the TIF Obligation, the difference will be prorated across all buildings on the Project Site and paid at the time of building permit issuance for each building. Credit for existing buildings will be allocated by location of the new building. The TIF rates are subject to adjustment on July 1st of each year based on the ENR Construction Cost Index % for San Francisco. In the event that another development project is also obligated to construct the improvement and undertakes construction of the improvement, the Applicant would not be credited for said improvement.

14.2. Applicant shall perform, construct and complete, at the Applicant's own expense, the transportation improvements in Sections 14.5 and 14.6, prior to issuance of the first certificate of occupancy for the Project.

14.3. To determine the estimated TIF In Lieu Improvements cost, the Applicant shall submit detailed estimates of costs, including design, engineering, and permitting costs, to the Director of Public Works or designee of said transportation improvements.



Pursuant to MPMC 13.26.80 the Applicant shall be entitled to credit and/or reimbursement for said transportation improvements.

14.4. Should the final expenses for the TIF In Lieu Improvements exceed the Project estimated TIF payment (determined in 14.1) the TIF Obligation would be adjusted accordingly. If the final expenses (e.g. actual cost) for the TIF In lieu Improvements included in the City's TIF program exceed the Project's TIF Obligation, the City and the Applicant shall enter into a reimbursement agreement, which will provide for the Applicant to be reimbursed by the City from available TIF revenues. The reimbursement of the TIF would be made, within 180 days of submittal of the actual cost documentation from the applicant, subject to review and acceptance of the cost documentation by the Public Works Director.

14.5. TIF In Lieu Improvements:

14.5.1. Willow Road and Bay Road – The TIF proposes to modify the southbound approach at this intersection to two left-turn lanes and one right-turn lane and to modify the westbound approach to add a right-turn lane. With these improvements under project conditions, the critical movement delay at the local approach would be reduced to lower than no project conditions. To ensure safe bicycle and pedestrian movements, the project would be required to construct the right turn lane, separated bikeway or other City approved bikeway and pedestrian improvements, and associated signal modifications. This improvement would address the adverse effect on the intersection due to project traffic. This improvement requires Caltrans approval. The Applicant shall construct the improvement prior to certificate of occupancy of the first building on the main Project Site. If Caltrans approval has not been obtained or the intersection improvements have not been completed prior to certificate of occupancy of the first building on the main Project Site, but the Applicant demonstrates that it has worked diligently to pursue agency approvals and completion of construction to the satisfaction of the Director of Public Works or designee, the Applicant shall continue to pursue approval and construction for a period of five years from the date of issuance of the first vertical construction building permit. If the Applicant continues to work diligently to the satisfaction of the Director of Public Works or designee, but has not yet obtained approval or been able to construct the improvement, then the Applicant shall be relieved of responsibility to construct the improvement and the Applicant shall submit the TIF in Lieu costs subject to any increases based on the ENR Construction Cost Index % for San Francisco.

14.6. Non-TIF intersection improvements

- 14.6.1. O'Brien Drive and Kavanaugh Drive – The applicant shall work with the City of East Palo Alto to install traffic calming measures to discourage the use of Kavanaugh Drive, which is a residential street, and encourage vehicles to use O'Brien Drive and Adams Drive instead. The cost of the development of the traffic calming plan and implementation of the measures shall not exceed \$500,000.
- 14.6.2. Adams Drive and O'Brien Drive - Design and construct a new traffic signal, appropriate pedestrian and bicycle accommodation should be provided at this intersection. This includes the proposed Class II bicycle lanes along O'Brien Drive between Willow Road and University Avenue, pedestrian countdown timers, Americans with Disabilities Act (ADA) compliant curbs, and bicycle detection loops.
- 14.6.3. Any project(s) approved within 10 years of the approval date of the Willow Village Master Plan project and required to implement the same Non-TIF Intersection improvement in Section 14.6.2 shall reimburse the Project Applicant for its proportional fair share of the improvement costs. The City shall require and condition such projects to reimburse the Project Applicant for its proportional fair share of the improvement costs.

14.7. Cumulative Intersection Improvements

- 14.7.1. For the following cumulative intersection improvements, the Applicant shall provide a conceptual plan and a cost estimate (including design engineering) for approval by the Transportation Division to determine the fair share contribution. Applicant shall not be required to construct these improvements.

- 14.7.1.1. Willow Road & Hospital Plaza/Durham Street – Restripe northbound Durham Street as a shared left-through lane and right-turn lane, and add a northbound right turn overlap phase. The fair share contribution for the intersection improvement, calculated as 25% of the cost estimate, shall be paid prior to the issuance of a building permit

14.8. Fair Share Payment for Intersections within EPA

- 14.8.1. University Avenue and Bay Road - The project would reduce its adverse effect on the traffic operations at this intersection by making a fair share (34%) monetary contribution towards modifications to bring the intersection to pre-project conditions including the addition of an exclusive eastbound right-turn lane and a second eastbound left-turn lane on University Avenue, adding a second northbound left-turn lane on Bay Road, adding a second westbound left-turn lane on University Avenue, and modify signal phasing. Partial improvement of this intersection is included in the Menlo Park TIF. The Applicant will receive \$5,073.49 credit towards their fair share payment. The

Applicant shall provide a conceptual plan of the improvement and a cost estimate (including design engineering) for approval by the Transportation Division to determine the fair share contribution. The fair share contribution for the intersection improvement shall be paid to the City of Menlo Park prior to the issuance of a building permit. If these funds are not used within a 5-year period, the Applicant may request the funds be returned from East Palo Alto.

- 14.8.2. US 101/University Avenue Interchange - Plans to widen the northbound approach on Donohoe Street at the US 101 northbound off-ramp to accommodate four through lanes to improve the vehicular throughput at this intersection. This improvement will require median modifications and narrowing the southbound Donohoe Street approach to Cooley Avenue to include two through lanes and a full length left-turn lane. In addition, the traffic signals will be coordinated with adjacent traffic signals on Donohoe Street. Additionally, plans to install a new traffic signal at the US 101 northbound on-ramp and Donohoe Street and Bayshore Road and Euclid Avenue to coordinate with other closely spaced traffic signals along Donohoe Street. Along with new traffic signals, appropriate pedestrian and bicycle accommodation will be provided. This includes pedestrian countdown timers, Americans with Disabilities Act (ADA) compliant curbs, and bicycle detection loops. In order to align with the proposed driveway for the University Plaza Phase II site on the north side of Donohoe Street, the US 101 on-ramp will be shifted approximately 30 feet to the south. In addition, the northbound approach on Donohoe Street will be restriped to accommodate a short exclusive left-turn pocket (approximately 60 feet in length), a shared left-through lane, and a shared through-right lane. These improvements would require widening of the US 101 northbound on-ramp to accommodate two lanes that taper down to a single lane before this ramp connects with the loop on-ramp from eastbound University Avenue. A northbound right turn only will also be added to Bayshore Road and Euclid Avenue. Because the improvements in this corridor are all interconnected and dependent on each other to work, the recommended improvement measure would be for the Project sponsor to contribute its fair share to improvements at all six intersections in this corridor. Fair share is calculated as the percentage of net project traffic generated of the overall cumulative traffic growth at this intersection. The fair share will be applied to the cost estimates approved by the City of East Palo Alto to determine the fair share contribution. Partial improvement of the University and Donohoe intersection is included in the Menlo Park TIF. The Applicant will receive \$10,147 credit towards their fair share payment. The fair share contribution for these intersection improvements shall be paid to the City of Menlo Park prior to the issuance of a building permit. If these

funds are not used within a 5-year period, the Applicant may request the funds be returned from East Palo Alto.

- a. Donohoe Street & Cooley Avenue: 10% fair share
- b. Donohoe Street & US 101 Northbound Off-Ramp: 24% fair share
- c. Donohoe Street & University Avenue: 31% fair share
- d. Donohoe Street & US 101 Northbound On-Ramp: 8% fair share
- e. Donohoe Street/Bayshore Road & Euclid Avenue: 2% fair share

## **15. PROJECT SPECIFIC CONDITIONS – NO HAMILTON AVENUE REALIGNMENT VARIANT**

- 15.1. No Hamilton Avenue Realignment Variant. This CDP approves the No Hamilton Avenue Realignment Variant in addition to the Project, subject to the requirements for Changes in Section 8. If all applicable agencies with jurisdiction over the proposed realignment of the intersection of Hamilton Avenue and Willow Road have not issued all necessary approvals, or if Applicant is unable to obtain sufficient real property rights, for the proposed realignment as depicted in Conceptual Vehicular Circulation Concept – Variant exhibit G4.08 prior to the completion of the backbone infrastructure, (i) the intersection of Hamilton Avenue and Willow Road and the proposed circulation network east of Willow Road within the Project Site would be revised generally consistent with Exhibit G4.08 to accommodate retaining the Willow Road/Hamilton Avenue intersection in its current alignment; (ii) Property Owner shall nonetheless be permitted to construct the Project, as reconfigured in accordance with Exhibit G4.08, in accordance with this CDP. The City shall cooperate with Applicant in its efforts to modify this CDP or other Project entitlements to construct the Project as reconfigured pursuant to this section.

## **16. PROJECT SPECIFIC CONDITIONS – PG&E IMPROVEMENTS**

- 16.1. Applicant shall coordinate with PG&E to implement improvements to upgrade the distribution power capacity at its Ravenswood substation to meet the Project Site's diversified projected power demand through an interconnection and new distribution conduit feeders to provide power to the Project Site. Applicant shall be responsible for fees due to PG&E as outlined in the applicable tariff regulations. Prior to the issuance of the first new building certificate of occupancy for the Project Site, Applicant shall provide documentation to the City that PG&E has completed the initial phase of power upgrades and reinforcements, as evidenced by PG&E's notice that the first new building on the Project Site is ready to be energized.

## **17. PROJECT SPECIFIC CONDITIONS – WEST BAY SANITARY DISTRICT IMPROVEMENTS**

- 17.1. Waste Water Conveyance Improvements: Applicant shall comply with regulations of the West Bay Sanitary District that are directly applicable to the Project in the design and construction of wastewater conveyance improvements, and submit documentation to the Planning and Building Divisions prior to issuance of each building permit. The West Bay Sanitary District Improvements serving the Project Site will be

depicted on the Willow Village Improvement Plan set, subject to approval by West Bay Sanitary District.

17.2. Recycled Water: Applicant shall coordinate with West Bay Sanitary District in its efforts to design and construct the Bayfront Recycled Water Plant, described in the EIR as the Resource Recovery Center (“**Recycled Water Plant**”). Applicant shall enter into an agreement with West Bay Sanitary District which acknowledges Applicant’s fair share financial commitment along with the District’s performance metrics to construct and operate the Recycled Water Plant. Applicant shall provide evidence that agreement has been entered into with the District prior to issuance of the building permit for the first new building on the Project Site. Provided that Applicant has entered into the agreement with West Bay Sanitary, if West Bay Sanitary has not completed the Recycled Water Plant such that it can deliver recycled water to the Project Site when demand for non-potable water is created, the City shall energize the recycled water distribution lines within the Project Site with potable water and Property Owner shall be permitted to use potable water for non-potable purposes at the Project Site until such time as West Bay Sanitary District is able to provide non-potable water, or as provided in Section 17.3. Additionally, pursuant to section 4.13 of this CDP, Applicant shall prepare and submit a water conservation plan that addresses potable water use during the interim period from the initial building occupancy until West Bay energizes the Recycled Water Supply. The water conservation plan shall address the frequency of potable water use reporting, acknowledge that the project shall comply with any demand reduction measures established and enforced by the City applicable to other similarly situated water users. This plan shall be submitted prior to the issuance of the initial temporary certificate of occupancy only in the event recycled water is not available concurrent with the final inspection and shall be subject to review and approval of the Public Works Director.

17.3. Onsite Recycled Water Variant: This CDP approves the Onsite Recycled Water Variant in addition to the Project, subject to the requirements for Changes in Section 8. In the event that West Bay Sanitary District has not completed the Recycled Water Plant such that it can deliver recycled water to the Project Site by 24 months after the issuance of a Certificate of Occupancy for the initial building within Phase 1 of the Project, or in the event that the West Bay Sanitary District abandons the proposed Recycled Water Plant before that date, the Applicant shall provide written notice to the Public Works Director that the Applicant intends to construct an Alternative Recycled Water Treatment facility capable of meeting the projected non-potable water peak demand for the Project. Within 60 months after notice is provided to the City Public Works Director, the Applicant shall complete an Alternative Recycled Water treatment facility for the production of recycled water through the capture of wastewater, including blackwater, from all proposed buildings on the Project Site.

17.3.1. Following steps are the anticipated:

17.3.1.1. Submittal of Concept Plans to Community Development and Public Works Departments for review within 90\_days from submittal of Alternative Recycled Water Treatment Facility notice.

17.3.1.2. Submittal of construction documents 12 months after City Approval of Concept Plans.

17.3.1.3. Submittal Title 22 Engineering Report and obtain approvals/permits from the State Division of Drinking Water (DDW), from the Regional Board, and a discharge permit from West Bay Sanitary District.

17.3.1.4. Commence construction of Alternative Recycled Water Facility within 90 days of approval of necessary permits required to commence construction.

## **18. PROJECT SPECIFIC CONDITIONS – SFPUC ROUNDABOUT**

18.1. Applicant shall obtain San Francisco Public Utilities Commission (“**SFPUC**”) approval for a lease, license, easement agreement, or other authorization to permit the construction and operation of the proposed Main Street/O’Brien Drive roundabout intersection improvement and drainage improvements (“SFPUC Improvements”) within the SF PUC right of way prior to issuance of the first building permit for the Project Site. The City shall be the applicant for public improvements that require approval and granting a lease, license, easement agreement, or other authorization from SFPUC.

18.2. Applicant shall submit to the City Improvement Plans detailing the proposed SFPUC improvements consisting of O’Brien Drive right-of-way realignment, new connection to the Project Site, creation of a roundabout within the right-of-way, and drainage improvements within the SFPUC right-of-way.

18.3. Applicant shall submit SFPUC Improvement Plans to the Community Development and Public Works Departments for review and preliminary design acceptance, prior to submittal to SFPUC.

18.4. Following City review and preliminary design acceptance, the Applicant shall submit SFPUC Improvement Plans to the SFPUC and apply for all applicable review and approvals.

18.5. Applicant shall obtain necessary permits and approval from SFPUC and provide documentation to the Community Development and Public Works Departments prior to issuance of the building permit for the first building.

18.6. Applicant shall construct all SFPUC roadway improvements prior to certificate of occupancy for the first building on the Project Site.

18.7. Applicant shall construct drainage improvements within the SFPUC right-of-way concurrent with the roadway improvements to ensure that stormwater drainage is not disrupted.

18.8. In the event construction of the SF PUC Improvements is delayed due to circumstance outside of the Applicant’s reasonable control, the Public Works Director

may grant an extension based on substantial evidence from the Applicant that the delay is based on external circumstances, and the Applicant demonstrates a good faith effort to complete the improvements. Any extension would be based on an agreed upon timeline by the Public Works Director and the Applicant.

## **19. PROJECT SPECIFIC CONDITIONS – OPERATING RULES FOR PUBLICLY ACCESSIBLE OPEN SPACE**

19.1. Prior to opening the Publicly Accessible Open Space to the public, the Property Owner or Owners' Association, as applicable, shall prepare Operating Rules for the Publicly Accessible Open Space which shall set forth reasonable rules and restrictions regarding the public's access to and use of the Publicly Accessible Open Space per the requirements of this CDP, subject to review and approval of the Directors of Community Development and Public Works, City Manager or their designee, and City Attorney. The Operating Rules may include without limitation provisions such as: (a) permitting the Property Owner or Owners' Association, as applicable, to reasonably restrict or prohibit public access and use as reasonably necessary to (i) ensure security of the Project Site and persons or property within or around the Project Site and (ii) preclude activities that unreasonably disrupt non-public uses in the Project; (b) providing exclusive use by Property Owner for a specified number of private events; and (c) providing terms of use for community use of the Publicly Accessible Open Space.

## **20. PROJECT SPECIFIC CONDITIONS – MITIGATION MEASURES**

20.1. The Property Owner shall comply with all mitigation measures identified in the EIR and the associated Mitigation Monitoring and Reporting Program for the Project attached hereto as Exhibit 6.

## **21. GENERAL CONDITIONS**

21.1. School Impact Fee: Prior to issuance of each building permit, the Property Owner shall pay the applicable School Impact Fee for the building in effect at the time of payment and submit documentation of payment to the Building Division prior to issuance of each building permit.

21.2. Menlo Park Municipal Water: The Property Owner shall comply with all requirements of Menlo Park Municipal Water that are directly applicable to the Project and document compliance prior to issuance of each building permit.

21.3. Leadership in Energy and Environmental Design: The Property Owner shall design and certify buildings greater than 25,000 square feet in size for LEED Gold (Residential/Shopping District and Campus District) and buildings between 10,000 and 25,000 square feet in size for LEED Silver (Town Square District) certification, in accordance with Zoning Table 16.45.130(1)(B) and (C) (RMU District) and 16.43.140(1)(B) (O District). Buildings on the Project Site of less than 10,000 sf would not be certified under LEED. Each building shall be certified within one year of Certificate of Occupancy and documentation shall be provided to the Planning Division.

At its discretion, the Property Owner may certify buildings less than 25,000 square feet in size for LEED Gold.

- 21.4. Lighting: Concurrent with building permit submittal for each individual building as appropriate, the Property Owner shall submit a lighting plan, including photometric contours, manufacturer's specifications on the fixtures, and mounting heights to ensure safe access and to illustrate the light and glare do not spillover to neighboring properties, to the satisfaction of the Planning, Engineering, Transportation, and Building Divisions.
- 21.5. The City has approved this CDP in conjunction with a Development Agreement. During the term of the Development Agreement, the CDP shall be subject to the terms and conditions of the Development Agreement and, in the event of a conflict, the terms and conditions of the Development Agreement shall prevail.
- 21.6. This CDP is being provided in exchange for the provision and effectuation of the Community Amenities outlined in the Development Agreement and in accordance with the timing/phasing provided in Exhibits \_\_\_ and \_\_\_ of the Development Agreement, as they may be amended from time to time. Provision and timing of said Community Amenities are a condition of this CDP and this requirement shall survive any termination of the Development Agreement.
- 21.7. Covenants Run with the Land: All of the conditions contained in this CDP shall run with the land comprising the Project Site and shall be binding upon, and shall inure to the benefit of the Applicant and its heirs, successors, assigns, devisees, administrators, representatives and lessees, except as otherwise expressly provided in this CDP. Upon transfer, sale, or assignment of all or any portion of the Project Site to another owner, the Applicant shall be released from its obligations pursuant to this CDP with regard to the transferred, sold, or assigned property that arise or accrue subsequent to the effective date of the transfer, sale and/or assignment.
- 21.8. Severability: If any condition of this CDP, or any part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such condition, or part hereof, shall be deemed severable from the remaining conditions of this CDP and shall in no way affect the validity of the remaining conditions hereof. Notwithstanding the foregoing, in the event that any provision of this CDP is found to be unenforceable, void or voidable which materially impairs Applicant's ability to construct the Project, Applicant may terminate this CDP upon providing written notice to the City.
- 21.9. Exhibits: The exhibits referred to herein are deemed incorporated into this CDP in their entirety.

## EXHIBITS

- Exhibit 1: Legal Description (To be incorporated prior to recordation)
- Exhibit 2: Plat Map (To be incorporated prior to recordation)
- Exhibit 3: Trip Cap Monitoring and Enforcement Policy (Staff Report Attachment T)



- Exhibit 4: TDM Compliance Plan (Staff Report Attachment U)
- Exhibit 5: Glossary of Supporting Documents
- Exhibit 6: Mitigation Monitoring and Reporting Program (Staff Report Attachment B)

## **DRAFT Glossary of Supporting Documents**

Project Plans (dated October 19, 2022)

Development Agreement

Exhibit D to the Development Agreement (Willow Village Phasing Plan)

Modification Requests (dated September 2, 2022)

Heritage Tree Removal Permits Nos 2022-00057 and 2022-00058 (conditionally approved June 28, 2022)

Tree Survey Reports

- Heritage Tree Removal Report Willow Village dated August 16, 2022
- Heritage Tree Removal Report for Hamilton Avenue Parcels dated August 16, 2022
- Heritage Tree Removal Report for 1305 O'Brien dated August 16, 2022
- Heritage Tree Removal Report for 1330 O'Brien dated August 16, 2022
- Heritage Tree Removal Report for O'Brien ROW dated August 16, 2022

Willow Village Master Plan Bird-Safe Design Assessment (dated February 24, 2022)

Vesting Tentative Map for Major Subdivision No. XXXXX Willow Village A Map (dated October 7, 2022)

Vesting Tentative Maps for Major Subdivision No. XXXXX Chevron and Retail Parcels (dated October 7, 2022)

Willow Village Campus District Trip Cap Monitoring and Enforcement Policy (dated October 7, 2022)

Willow Village Transportation Demand Management (TDM) Plan (dated October 2022)

Willow Village TDM Compliance Plan (dated October 14, 2022)

Mitigation Monitoring and Reporting Program

Event Management Plan (dated October 14, 2022)

Willow Village Project-Wide Below Market Rate Housing Agreement (dated \_\_\_\_, 2022)

Water Supply Assessment prepared by West Yost (dated February, 2022)

Willow Village Hydraulic Evaluation prepared by West Yost (dated February 3, 2022)

Willow Village Compliance Matrix (dated June 23, 2022)

Hazardous materials information forms and generator supplemental forms (dated August 8, 2022)

Conceptual Dialysis Center Temporary Location (dated March 16, 2022)

Conceptual Parcels and Building Numbers (dated October 12, 2022)

**ORDINANCE NO. XXXX****ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK FOR APPROVAL OF THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MENLO PARK AND PENINSULA INNOVATION PARTNERS, LLC FOR THE WILLOW VILLAGE PROJECT**

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

**SECTION 1.**

This Ordinance is adopted under the authority of Government Code Section 65864 et seq. and pursuant to the provisions of City Resolution No. 4159, which establishes procedures and requirements for the consideration of developments within the City of Menlo Park ("City"). This Ordinance incorporates by reference that certain Development Agreement for the Willow Village Project (the "Development Agreement") by and between the City and Peninsula Innovation Partners, LLC ("Applicant") attached hereto as Exhibit A (Staff Report Attachment A10) and incorporated herein by this reference.

**SECTION 2.**

The City, as lead agency, prepared an Environmental Impact Report ("EIR") pursuant to the California Environmental Quality Act ("CEQA") that examined the environmental impacts of the redevelopment of the approximately 59-acre industrial site (the "Main Project Site") plus three parcels (within two sites) west of Willow Road (the "Hamilton Parcels" and collectively, with the Main Project Site, the "Project Site"). On \_\_\_\_\_, 202\_, by Resolution No. \_\_\_\_\_, the City Council certified the EIR, made certain findings, and adopted a Mitigation Monitoring and Reporting Plan, which Resolution together with the EIR are incorporated herein by reference. The City Council finds that the Development Agreement is within the scope of the EIR.

**SECTION 3.**

As required by Resolution No. 4159, the Planning Commission reviewed the Development Agreement at a duly and properly noticed public hearing held on October 24, 2022 and continued to November 3, 2022 and recommended that the City Council adopt this ordinance. As part of its recommendation to the City Council, the Planning Commission determined that the Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan; is compatible with the uses authorized in and the regulations prescribed for the land use district in which the Project Site is located; is in conformity with public convenience, general welfare and good land use practice; will not be detrimental to the health, safety and general welfare of the City or the region surrounding the City; and will not adversely affect the orderly development of property or the preservation of property values within the City.

**SECTION 4.**

The City Council held a duly and properly noticed public hearing on the Development Agreement on \_\_\_\_\_, 2022. The City Council finds that the following are the relevant facts concerning the Development Agreement:

1. The General Plan designates the Main Project Site for Office and Mixed-Use Residential land uses and Hamilton Parcels for Retail/Commercial land uses. The Main Project Site is zoned O-B-X and R-MU-B-X, and the Hamilton Parcels are zoned C-2-S.
2. The Applicant proposes a unified development on the Main Project Site consisting of approximately 59 acres.

3. The Applicant proposes to demolish the existing buildings on the Main Project Site and redevelop the Project Site with the subsequent construction of a mixed-use development consisting of up to 1.6 million square feet of office and accessory uses (a maximum of 1,250,000 square feet for offices and the balance for accessory uses), up to 1,730 multifamily dwelling units, up to 200,000 square feet of retail uses, an up to 193-room hotel, and associated open space and infrastructure (the "Project").
4. The Applicant proposes to provide numerous community amenities, some of which are on the list of community amenities adopted by the City Council and some of which have been agreed upon by City and the Applicant in the Development Agreement, as specified in further detail in the Development Agreement. The Development Agreement's requirement for the Applicant to implement community amenities allow the Applicant to develop the Main Project Site with an increased floor area ratio, density, and height in the R-MU-B-X district and increased floor area ratio and height in the O-B-X district. The Applicant submitted an application identifying the amount of bonus development sought, an appraisal of the fair market value of the gross floor area of the bonus level of development compared to the fair market value of the base level development, and the projected value of the proposed community amenities. The City's economic consultant conducted a peer review analyzing and revising the values. Based upon such City-determined values, the value of the community amenities set forth in the Development Agreement will equal or exceed half the difference between the value of the base and bonus level development scenarios.

#### SECTION 5.

As required by Section 302 of Resolution No. 4159 and based on an analysis of the facts set forth above, the staff report to the City Council, the presentation to the Council, supporting documents, and public testimony, the City Council hereby adopts the following as its findings:

1. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan because the Project will create a live/work/play environment that will place office, residential and commercial uses in close proximity to one another. As described in the EIR, the Project will be consistent with the land use designations and the goals and polices of the General Plan.
2. The Development Agreement is compatible with the uses authorized in and the regulations prescribed for the O-B-X, R-MU-B-X, and C-2-S districts in which the Project Site is located because the Project includes office buildings, mixed use residential and retail buildings providing high density residential housing to serve both the office buildings and existing community housing needs and neighborhood-serving retail, and open space. As described in the EIR, the Project will be consistent with the development regulations of the applicable zoning districts, including the use of bonus level development and a master-planned project to provide creative designs, orderly development, and optimal use of open space while maintaining and achieving the City General Plan vision for the Bayfront Area.
3. The Development Agreement is in conformity with public convenience, general welfare and good land use practices because the Project is consistent with the General Plan and zoning designations for the Project Site and appropriate utilities and services can be provided for the Project.
4. The Development Agreement will not be detrimental to the health, safety and general welfare of the City or the region surrounding the City.
5. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values within the City.
6. The Development Agreement will promote and encourage the development of the Project by providing a greater degree of certainty with respect thereto by establishing the regulations concerning land use development, timing and sequencing of Project development and the payment of fees.

7. The Development Agreement will result in the provision of public benefits by the Applicant, including, but not limited to, payments to the City to offset lost revenue from the hotel in the event of construction delays (i.e. gap payment); financial commitments to ongoing job training and career experience programs; and stakeholder support for Dumbarton Rail Corridor Project and Dumbarton Forward.
8. The community amenities proposed in the Development Agreement have a value of at least fifty percent (50%) of the fair market value of the additional gross floor area of the bonus level development in accordance with Menlo Park Municipal Code Sections 16.43.070 and 16.45.070, and include, but are not limited to, additional funding for affordable housing, workforce housing, grocery, pharmacy services and banking uses, dining and entertainment uses, a shuttle to transport Bayfront residents to the Project Site, funding for air quality and noise monitors in the Belle Haven neighborhood, and community use of open space within the Project, including the elevated park and town square.

SECTION 6.

Based upon the above findings of fact, the Development Agreement for the Project is hereby approved, subject to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager in consultation with the City Attorney. The City Council hereby authorizes the Mayor to execute the Development Agreement and all documents required to implement the Development Agreement on behalf of the City.

SECTION 7.

No later than ten days after this ordinance is effective and has been executed by all parties, the City Clerk shall record with the San Mateo County Recorder a copy of the Development Agreement, as required by Government Code Section 65868.5.

SECTION 8.

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

SECTION 9.

This ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption, the ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

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INTRODUCED on the fifteenth day of November, 2022.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the \_\_\_ day of November, 2022, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

---

Betsy Nash, Mayor

ATTEST:

---

Judi A. Herren, City Clerk

Exhibits:

- A. Form of development agreement for the Willow Village project by and between the City and Peninsula Innovation Partners, LLC

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

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

Exempt from recording fee per  
Govt. Code §6103 and 27383

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Space Above This Line Reserved for Recorder's Use

**DEVELOPMENT AGREEMENT**

by and between the

**CITY OF MENLO PARK,**  
a California municipal corporation

and

**PENINSULA INNOVATION PARTNERS, LLC**  
a Delaware limited liability company

regarding the  
**Willow Village Master Plan Project**

Dated: \_\_\_\_\_, 2022

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<u>Exhibit A-1-2</u>	Hamilton Parcels Map
<u>Exhibit A-2-1</u>	Main Project Site Legal Description
<u>Exhibit A-2-2</u>	Hamilton Parcels Legal Description
<u>Exhibit B</u>	LLBG Consent
<u>Exhibit C</u>	Impact Fees
<u>Exhibit D</u>	Willow Village Phasing Plan
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<u>Exhibit E-3</u>	Conceptual Willow Road Tunnel
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<u>Exhibit F</u>	Willow Village Community Amenities Timing Provisions
<u>Exhibit G</u>	Form of Partial Assignment and Assumption Agreement

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) dated for reference purposes as of \_\_\_\_\_, 2022, is entered into by and between PENINSULA INNOVATION PARTNERS, LLC, a Delaware limited liability company (“**Developer**”), a subsidiary of Meta Platforms, Inc., a Delaware corporation (“**Meta**”), and the CITY OF MENLO PARK, a California municipal corporation (“**City**”). Developer and City are sometimes referred to individually herein as a “**Party**” and collectively as “**Parties**.”

### R E C I T A L S

The following recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Section 1.1 of this Agreement.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 *et seq.* of the Government Code (“**Development Agreement Statute**”) which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement, establishing certain development rights in the subject property.

B. As authorized by the Development Agreement Statute, the City has adopted Resolution No. 4159 adopting regulations establishing procedures and requirements for consideration of development agreements within the City of Menlo Park (“**Development Agreement Regulations**”). The provisions of the Development Agreement Statute and City’s Development Agreement Regulations are collectively referred to herein as the “**Development Agreement Law**.” This Agreement has been drafted and processed pursuant to the Development Agreement Law.

C. This Agreement concerns that certain real property measuring approximately 62 acres located in the Bayfront Area of the City, as depicted in Exhibit A-1, and more fully described in Exhibit A-2, both attached hereto and incorporated herein by this reference (“**Property**”). The Property comprises approximately 59 acres intended as the primary development location (“**Main Project Site**”) (depicted on Exhibit A-1-1 and described in Exhibit A-2-1), of which Developer is the owner and two parcels totaling approximately 3 acres west of Willow Road to accommodate realignment of Hamilton Avenue, of which LLBG Properties LLC, a Delaware limited liability company, is the owner (“**Hamilton Parcels**”) (depicted on Exhibit A-1-2 and described in Exhibit A-2-2). Meta controls both Developer and LLBG Properties LLC, a Delaware limited liability company, and therefore Developer has an equitable interest in the Hamilton Parcels. Further, LLBG Properties LLC, a Delaware limited liability company, has consented to the terms of this Agreement as shown in Exhibit B.

D. Developer has submitted applications to the City to redevelop, or cause redevelopment of, the Property by demolishing approximately one million square feet of existing nonresidential buildings on the Main Project Site and developing a mixed-use project on the Property that at full buildout would consist of up to approximately 1.6 million square feet of

office and accessory space (of which up to 1.25 million square feet may be for office uses), 200,000 square feet of commercial/retail space, 1,730 multi-family residential units, a 193-room hotel (“**Hotel**”) and 20 acres of open space including approximately 8 acres of publicly accessible parks and pathways, constructing a new north-south street and realigning other public rights-of-way, and creating a new Residential/Shopping District, Town Square District, and Campus District, all in two Phases as described in more detail in the Willow Village CDP (collectively, the “**Project**”).

E. This Agreement between City and Developer sets forth, among other things, the applicable fees, policies and zoning requirements that apply to Developer’s development of the Project and provides Developer with a vested right to develop the Project should Developer elect to develop the Project.

F. Pursuant to the California Environmental Quality Act and its associated regulations (Public Resources Code section 21000 *et seq.* and the CEQA Guidelines at California Code of Regulations, Title 14, section 15000 *et seq.*) (together and as they may be amended, “**CEQA**”), City previously prepared the Final Program Environmental Impact Report for the ConnectMenlo General Plan and Zoning Update (State Clearinghouse No. 2015062054), certified by the City Council of City on November 29, 2016 by Resolution No. 6356 (“**ConnectMenlo EIR**”).

G. Pursuant to CEQA, City conducted environmental review of the Willow Village Master Plan Project, prepared and duly processed an Environmental Impact Report (State Clearinghouse No. \_\_\_\_\_), tiering from the ConnectMenlo EIR as authorized by CEQA (“**Project EIR**”), and adopted a Mitigation Monitoring and Reporting Program for implementation of mitigation measures specified in the Project EIR and (as applicable to the Project) in the ConnectMenlo EIR as approved by the City (“**Project MMRP**”).

H. Prior to or concurrently with approval of this Agreement, City has taken the following actions in connection with development of the Project on the Property (the “**Existing Approvals**”).

1. Certification of the Project EIR as adequate under CEQA and adoption of the Project MMRP, by Resolution No. \_\_\_\_\_, adopted by the City Council on \_\_\_\_\_, 2022.

2. Approval of amendments to the Menlo Park General Plan Circulation Map to allow changes to streets and other public rights-of-way proposed for the Project, by Ordinance No. \_\_\_\_\_, adopted by the City Council on \_\_\_\_\_, 2022.

3. Approval of amendments to the Menlo Park Zoning Map by Ordinance No. \_\_\_\_\_, adopted by the City Council on \_\_\_\_\_, 2022 to:

- a. allow changes to streets proposed for the Project; and
- b. revise zoning designations for the Property to add a conditional development (“**X**”) combining district.

4. Approval of Conditional Development Permit No. \_\_\_\_\_ to authorize a master-planned project with bonus-level development and allow other aspects of the Project, by Ordinance No. \_\_\_\_\_, adopted by the City Council on \_\_\_\_\_, 2022 (“**Willow Village CDP**”).

5. Approval of Vesting Tentative Map No. \_\_\_\_ for the Main Project Site to merge and re-subdivide existing parcels on the Property, approve abandonment and dedication of public rights-of-way and easements, and allow filing of multiple final maps for the Project, by Resolution No. \_\_\_\_\_, adopted by the City Council on \_\_\_\_\_, 2022 (“**Main Project VTM**”), together with associated conditions of approval (“**Main VTM Conditions**”).

6. Approval of Vesting Tentative Map No. \_\_\_\_ for the Hamilton Parcels to merge and re-subdivide existing parcels on the Property, approve abandonment and dedication of public rights-of-way and easements, and allow filing of multiple final maps for the Project, by Resolution No. \_\_\_\_\_, adopted by the City Council on \_\_\_\_\_, 2022 (“**Hamilton VTM**”), together with associated conditions of approval (“**Hamilton VTM Conditions**”).

7. Approval of Below-Market Rate Housing Agreements specifying terms for Developer to provide onsite reduced-cost housing units, by Resolution No. \_\_\_\_\_, adopted by the City Council on \_\_\_\_\_, 2022 (collectively, the “**BMR Agreements**”).

8. Approval of tree removal permits to remove 276 heritage trees on the Property, approved by the City Arborist on June 28, 2022 (“**Tree Permits**”), and not appealed to the Environmental Quality Commission, which approvals were conditioned on Developer receiving the other Existing Approvals listed in this Recital H.

9. Approval of this Agreement by Ordinance No. \_\_\_\_\_, adopted by the City Council on \_\_\_\_\_, 2022 (“**Enacting Ordinance**”).

I. City has determined that by entering into this Agreement, City will further the purposes set forth in the Development Agreement Law and City will benefit from the increased range of housing options, employment opportunities, retail establishments, circulation improvements, and open space created by the Project for residents of City.

J. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Existing Approvals and Subsequent Approvals, thereby encouraging planning for, investment in, and commitment to use and development of the Property. Continued use and development of the Property will in turn provide substantial employment, tax, and other public benefits to City, and will contribute to redevelopment of the Bayfront Area and provide for Menlo Park residents expanded housing opportunities affordable to varying household income levels, which is a critical City need, thereby achieving the goals and purposes for which the Development Agreement Law was enacted.

K. The terms and conditions of this Agreement have undergone review by City staff, the Planning Commission and the City Council at publicly noticed meetings and have been found to be fair, just and reasonable and in conformance with the Development Agreement Law and the

goals, policies, standards and land use designations specified in the City’s General Plan and, further, the City Council finds that the economic interests of City’s citizens and the public health, safety and welfare will be best served by entering into this Agreement.

L. On November 3, 2022, the Planning Commission, the initial hearing body for purposes of development agreement review, recommended approval of this Agreement to the City Council. Following a duly noticed public hearing, on \_\_\_\_\_, 2022, the City Council introduced the Enacting Ordinance and on \_\_\_\_\_, 2022 the City Council adopted that Enacting Ordinance.

A G R E E M E N T

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE 1 DEFINITIONS**

Section 1.1 Definitions.

“**Administrative Amendment**” is defined in Section 8.5.

“**Affordable Housing Contribution**” is defined in Section 5.1D.

“**Agreement**” means this Agreement.

“**Agreement Date**” means the date of the second reading of the Enacting Ordinance.

“**Air Quality and Noise Monitoring Equipment**” is defined in Section 5.1E.

“**Applicable City Regulations**” means the permitted uses of the Property, the maximum density and/or total number of residential units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for public improvements, and other terms and conditions of development applicable to the Property as set forth in the General Plan of the City on the Effective Date, the Existing Approvals, the Municipal Code of the City on the Effective Date, and the other ordinances, policies, rules, regulations, standards and specifications of the City in effect on the Effective Date.

“**Applicable Law**” means (a) all State and Federal laws and regulations applicable to the Property and the Project as enacted, adopted and amended from time to time and (b) the Applicable City Regulations.

“**Bank**” is defined in Section 5.1J.

“**Bayfront Shuttle**” is defined Section 5.1I.



“**BMR Agreement**” is defined in Recital H.

“**BMR Fee Holding Period**” is defined Section 5.7.

“**BMR Housing True Up Payment**” is defined Section 5.7.

“**BMR Units**” is defined Section 5.7.

“**CEQA**” is defined in Recital F.

“**CFDs**” is defined in Section 4.4A.

“**CFD Bonds**” is defined in Section 4.4C.

“**CFD Facilities**” is defined in Section 4.4B.

“**Changes in the Law**” is defined in Section 3.8.

“**Chevron Parcel**” is defined in Section 8.7.

“**City**” means the City of Menlo Park, a California municipal corporation.

“**City Parties**” means City and its elected and appointed officials, officers, agents, employees, contractors and representatives.

“**City Council**” means the City Council of the City of Menlo Park.

“**Claims**” means liabilities, obligations, orders, claims, damages, fines, penalties and expenses, including reasonable attorneys’ fees and costs.

“**Commence Construction**” or “**Commencement of Construction**” means the issuance of a building permit for vertical construction (including the Elevated Park), mobilization of construction equipment and workers on-site, and the beginning of physical construction activities under such permit.

“**Community Entertainment**” is defined in Section 5.1L.

“**Complete Construction**” or “**Completion of Construction**” means the completion of a final inspection by the City of the specified portion of the specified work or Improvement.

“**Conceptual**” or “**Conceptually**” means plans intended to convey the general vision and design intent of the Willow Village CDP, while allowing flexibility in interpretation and implementation. Conceptual plans serve as guidelines for general orientation and organization of land uses and transportation and open space networks, general scale and massing of development, and overall architectural themes.

“**Connection Fees**” means those fees duly adopted in accordance with applicable law and charged by City or by a utility provider to utility users as a cost for connecting to water, sanitary sewer and other applicable utilities.

“**ConnectMenlo EIR**” is defined in Recital F.

“**CPI**” means Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor or its successors, San Francisco-Oakland-Hayward, All Items (1982-84 = 100), or any successor index thereto designated by the Bureau of Labor Statistics or its successor.

“**CPI Adjustment**” means an adjustment of each dollar amount that is subject to CPI Adjustment under this Agreement and is made by multiplying the dollar amount being adjusted by the sum of (a) one hundred percent, plus (b) the CPI Increase.

“**CPI Increase**” means the percentage increase, if any (but not decrease, if any) between the CPI for the calendar month that is three months prior to the effective date of adjustment and the CPI for the calendar month that is fifteen months prior to the effective date of adjustment.

“**Default**” is defined in Section 11.1.

“**Developer**” means Peninsula Innovation Partners, LLC, a Delaware limited liability company, and its permitted assignees and successors-in-interest under this Agreement.

“**Development Agreement Law**” is defined in Recital B.

“**Development Agreement Regulations**” is defined in Recital B.

“**Development Agreement Statute**” is defined in Recital A.

“**Dining Venues**” is defined in Section 5.1K.

“**Dumbarton Forward**” is defined in Section 5.3D.

“**Dumbarton Rail Corridor Project**” is defined in Section 5.3C.

“**Effective Date**” is defined in Section 2.1.

“**Elevated Park**” is defined in Section 5.1A.

“**Elevated Park Segment Over Willow Road**” is defined in Section 5.1A.

“**Enacting Ordinance**” is defined in Recital H.

“**Exactions**” means exactions imposed by City as a condition of developing the Project, including requirements for acquisition, dedication or reservation of land; and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions

constitute subdivision improvements, mitigation measures in connection with CEQA review of the Project, or impositions made under Applicable City Regulations. For purposes of this Agreement, Exactions do not include Impact Fees.

“**Excess Publicly Accessible Open Space**” is defined in Section 5.1O.

“**Existing Approvals**” is defined in Recital H.

“**Extension**” is defined in Section 2.2A(2).

“**Extension Conditions**” is defined in Section 2.2A(4).

“**Extension Request**” is defined in Section 2.2A(4).

“**Fee Credits**” is defined in Section 4.2.

“**Fee Paid BMR Units**” is defined in Section 5.7.

“**First Phase Community Entertainment**” is defined in Section 5.1L.

“**First Phase Dining Venues**” is defined in Section 5.1K.

“**Fiscal Year**” means the period from July 1- June 30.

“**Force Majeure Delay**” is defined in Section 2.2B.

“**Gap Payment**” is defined in Section 5.3G.

“**Gap Payment Commencement Date**” is defined in Section 5.3G.

“**Gap Payment Period**” is defined in Section 5.3G.

“**Gap Payment Termination Date**” is defined in Section 5.3G.

“**General Plan**” means the General Plan of the City of Menlo Park in effect as of the Agreement Date, as modified by the Existing Approvals.

“**Government Offices**” is defined in Section 2.2B.

“**Grocery Store**” is defined in Section 5.1A.

“**Grocery Store Rent Subsidy**” is defined in Section 5.1A.

“**Hamilton Lessee Approvals**” is defined in Section 5.1A.

“**Hamilton Parcels**” is defined in Recital C.

“**Hamilton ROW Parcel**” is defined in Section 8.7.

“**Hamilton VTM**” is defined in Recital H.

“**Hamilton VTM Conditions**” is defined in Recital H.

“**Home Price Index**” is defined in Section 2.2C.

“**Hotel**” is defined in Recital D.

“**Impact Fee Limitation Period**” is defined in Section 4.1A.

“**Impact Fees**” means those fees set forth in Exhibit C, all of which are monetary fees and impositions, other than taxes and assessments, charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of a development project or development of the public facilities and services related to a development project and any “fee” as that term is defined by Government Code section 66000(b). For purposes of this Agreement, a monetary fee or imposition that meets both the definition of an Impact Fee and the definition of an Exaction will be considered an Impact Fee.

“**Improvement**” means all physical improvements required or permitted to be made under the Existing Approvals or Subsequent Project Approvals.

“**Improvement Plans**” is defined in Section 3.3B.

“**Inclusionary Units**” is defined in Section 5.7.

“**Initial Term**” is defined in Section 2.2A(1).

“**Job Training Funding and Community Hub**” is defined in Section 5.1G.

“**Linkage Equivalent Units**” is defined in Section 5.7.

“**Litigation Challenge**” is defined in Section 9.6B.

“**Local CFD Policies**” is defined in Section 4.4A.

“**Main Project Site**” is defined in Recital C.

“**Main Project VTM**” is defined in Recital H.

“**Main VTM Conditions**” is defined in Recital H.

“**MCS**” means Meeting and Collaboration Space, which shall consist of buildings and private gardens, as well as a Meta visitor’s center and an event building south of the Elevated Park.

“**Memorandum of Extension**” is defined in Section 2.2A.

“**Meta**” is defined in the introductory paragraph preceding the Recitals of this Agreement.

“**Mortgage**” is defined in Section 7.1.

“**Mortgagee**” is defined in Section 7.1.

“**Municipal Code**” means the Municipal Code of the City of Menlo Park in effect as of the Agreement Date as amended by the Existing Approvals.

“**New City Laws**” means and includes any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through the power of initiative or otherwise) after the Agreement Date.

“**Non Intended Prevailing Wage Requirement**” is defined in Section 4.6D.

“**Notice**” is defined in Section 12.5.

“**Other Agency Fees**” is defined in Section 4.1D.

“**Other Agency Subsequent Project Approvals**” means Subsequent Project Approvals to be obtained from entities other than City.

“**Operating Memoranda**” is defined in Section 8.6.

“**Operating Memorandum**” is defined in Section 8.6

“**Party/Parties**” is defined in the introductory paragraph preceding the Recitals of this Agreement.

“**Pause of Construction**” is defined in Section 5.7.

“**Pharmacy**” is defined in Section 5.1M.

“**PILOT Agreement**” is defined in Section 10.3.

“**Planning Commission**” means the Planning Commission of the City of Menlo Park.

“**Prevailing Wage Components**” is defined in Section 4.6A.

“**Prevailing Wage Laws**” is defined in Section 4.6A.

“**Processing Fees**” means all fees charged on a City-wide basis to cover the cost of City processing of development project applications, including any required supplemental or other further CEQA review, plan checking (time and materials) and inspection and monitoring for land use approvals, design review, grading and building permits, and other permits and entitlements required to implement the Project, which are in effect at the time those permits, approvals or entitlements are applied for, and which fees are intended to cover the City’s actual and reasonable costs of processing the foregoing.

“**Project**” is defined in Recital D.

“**Project Approvals**” means the Existing Approvals and, when and as approved in accordance with the terms of this Agreement, the Subsequent Project Approvals.

“**Project EIR**” is defined in Recital G.

“**Project MMRP**” is defined in Recital G.

“**Property**” is defined in Recital C.

“**Proportionate Required BMR Units**” is defined in Section 5.7.

“**Publicly Accessible Open Space**” is defined in Section 5.3F.

“**Resumption of Construction**” is defined in Section 5.7.

“**Second Phase Community Entertainment**” is defined in Section 5.1L.

“**Second Phase Dining Venues**” is defined in Section 5.1K.

“**Severe Economic Recession**” is defined in Section 2.2B.

“**Special Tax**” is defined in Section 4.4D.

“**Specified Materials**” is defined in Section 5.6.

“**Subsequent Project Approvals**” is defined in Section 9.1.

“**Teacher Housing Rent Subsidies**” is defined in Section 5.1H.

“**Term**” is defined in Section 2.2.

“**Third Office COO Issuance**” is defined in Section 5.3G.

“**Town Square**” is defined in Section 5.1N.

“**Transfer**” is defined in Section 10.1.

“**Tree Permits**” is defined in Recital H.

“**Willow Road Feasibility Study Funding**” is defined in Section 5.1F.

“**Willow Road Tunnel**” is defined in Section 5.3H.

“**Willow Village CDP**” is defined in Recital H.

“**Willow Village Open Space Rules**” is defined in Section 5.3F.

“**Willow Village Phasing Plan**” is defined in Section 3.7.

“Willow Village Community Amenities” is defined in Section 5.1.

## ARTICLE 2 EFFECTIVE DATE AND TERM

Section 2.1 Effective Date. This Agreement shall become effective upon the date that the Enacting Ordinance becomes effective (“**Effective Date**”).

Section 2.2 Term.

A. Term of Agreement. Except as to those obligations that expressly extend beyond the stated Term of this Agreement, the “**Term**” of this Agreement shall commence as of the Effective Date and shall continue for the Initial Term as defined in subsection Section 2.2A(1) below, plus the duration of any City-approved extension as provided in subsection (1) below, or until earlier terminated by mutual consent of the Parties or as otherwise provided by this Agreement.

(1) Initial Term of Agreement. The “**Initial Term**” of this Agreement shall be ten (10) years, commencing on the Effective Date and expiring on the tenth (10<sup>th</sup>) anniversary thereof, unless this Agreement is otherwise terminated or extended in accordance with the provisions of this Agreement.

(2) 7-Year Extension. Subject to the terms and conditions in this Section 2.2, Developer shall have the right to extend the Initial Term for one additional seven (7)-year period (“**Extension**”). In order to obtain the Extension, Developer requesting the Extension must be in substantial compliance with all of its obligations set forth in this Agreement and Project Approvals with respect to the portion or portions of the Property for which Developer is seeking an Extension. If the Property is owned by more than one entity, a separate Extension may be sought for each portion of the Property that is in separate ownership; however, for the Extension to be granted, the conditions described in subsection (3) below must be satisfied.

(3) Extension Requirements. In addition to the conditions in subsection (1) above, in order to obtain the Extension, (a) certificates of occupancy must be issued for at least eight hundred and sixty-five (865) residential units, (b) the final certificate of occupancy must be issued for the building in which the Grocery Store is located; and (c) the Grocery Store has received a final certificate of occupancy.

(4) Extension Request. If Developer desires to seek the Extension, Developer must submit a letter addressed to the City Manager requesting such Extension at least one hundred eighty (180) days prior to the date that the Initial Term otherwise would expire (the “**Extension Request**”). The Extension Request shall include documentation in a form reasonably acceptable to City demonstrating that the applicable conditions for an Extension described in subsections (1) and (3) above (“**Extension Conditions**”) have been satisfied, or will be satisfied prior to the date that the Initial Term otherwise would expire. If a letter of compliance has been issued in accordance with Section 6.1F within no more than ninety (90) days prior to the submission of Extension Request to the City and City has not issued a Notice of Default following such letter of compliance, then such letter of compliance shall be a conclusive determination that Developer is in substantial compliance with this Agreement.

(5) Extension Review. Within 45 days of receipt of an Extension Request and accompanying documentation, the City Manager shall determine whether the Extension Conditions have been satisfied, including whether Developer is in substantial compliance with this Agreement. Except as otherwise provided in this Section 2.2, the determination whether Developer is in substantial compliance with this Agreement shall be undertaken in a manner consistent with the annual review process described in Section 6.1 below. If the City Manager determines Developer is not in substantial compliance with the Agreement through such review process, Developer shall have the opportunity to cure such non-compliance prior to the last date that the Extension Request is to be decided. If City Manager concludes that the Extension Conditions have been satisfied, then he or she shall grant the Extension Request and provide a Memorandum of Extension, in a recordable form, as described in Section 2.2A(6) below, that the Agreement has been extended for the extension period, and the Initial Term shall be extended accordingly. If the City Manager determines the Extension Conditions have not been satisfied, including that Developer is not in substantial compliance with this Agreement, or if there is any dispute regarding the steps required to satisfy the Extension Conditions, then Developer shall have ten (10) business days to present to the City Manager a letter providing written notice of the Developer's appeal of the City Manager's determination to the City Council. The City Council shall hear such an appeal within 60 days of the City Manager's receipt of the letter providing written notice of the appeal, and the City Council shall decide such appeal no later than 30 days before the date upon which the Initial Term otherwise would expire. If the City Council determines Developer is in substantial compliance with this Agreement and all of the applicable Extension Conditions have been satisfied, then the City Council shall grant the Extension Request and direct the City Manager within five (5) business days to provide Developer the Memorandum of Extension and the Initial Term shall be extended accordingly. If the City Council determines Developer is not in substantial compliance with this Agreement or one or more of the other applicable Extension Conditions have not been satisfied, then the City Council shall document such findings in its action denying the Extension Request. The City Council's decision shall be final, subject to Developer's ability to pursue available remedies as provided in Section 11.3 below.

(6) Memorandum of Extension. Within ten days after the written request of either Party hereto, City and Developer agree to execute, acknowledge and record in the Official Records of the County of San Mateo a memorandum evidencing any approved Extension of the Term pursuant to this Section 2.2 ("**Memorandum of Extension**").

B. Effect of Termination. Upon the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions set forth in Section 11.7 below.

C. Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, the Term of this Agreement and the Project Approvals and the time within which either Party shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock outs and other labor difficulties; Acts of God; unusually severe weather, but only to the extent that such weather or its effects (including, without limitation, dry out time) result in delays that cumulatively exceed twenty (20) days for any winter season occurring after



commencement of construction of the Project; failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body; any development moratorium or any action of other public agencies that regulate land use, development or the provision of services that prevents, prohibits or delays construction of the Project, including without limitation any extension authorized by Government Code Section 66463.5(d); acts of the public enemy; civil disturbances; wars; acts of terrorism; insurrection; riots; floods; earthquakes; fires; unavoidable casualties; epidemics; pandemics; quarantine restrictions; freight embargoes; government restrictions, or litigation; government mandated shutdowns or government closure (meaning any of the following events: (a) the governmental offices where any action required under this Agreement (collectively, "**Government Offices**") are not open for business and any Government Offices' systems are not operational such that such action cannot occur; (b) any other third party is not open for business such that its services required as necessary for a Party to perform obligations under this Agreement cannot be performed; (c) overnight couriers are not operating such that any documents cannot be delivered to the extent such documents are required to be originals; or (d) financial institutions or wire transfer systems are not operating, such that consummation of financial transactions contemplated hereby cannot occur); a Severe Economic Recession, defined below; any other cause beyond the reasonable control of Developer which substantially interferes with carrying out the development of the Project; or litigation involving the Project Approvals (including this Agreement) or that enjoins construction or other work on the Project or any portion thereof or would cause a reasonably prudent developer either to forbear from commencing construction or other work on the Project or portion thereof or to suspend construction or other work (each a "**Force Majeure Delay**"). An extension of time for any such cause other than a Severe Economic Recession shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if Notice by the Party claiming such extension is sent to the other Party within sixty (60) days after the commencement of the cause. If Notice is sent after such sixty (60) day period, then the extension shall commence to run no sooner than sixty (60) days prior to the giving of such Notice. Notwithstanding the foregoing, in the case of Force Majeure Delay due to litigation, the Force Majeure Delay shall terminate three (3) months after a final settlement or non-appealable judgment is issued or affirmed. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City Manager and Developer. Developer's inability or failure to obtain financing shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for an excused delay. "**Severe Economic Recession**" means a significant decline in the residential real estate market, as measured by a decline of more than four percent (4%) in the Home Price Index during the preceding twelve (12) month period. Severe Economic Recession shall commence upon Developer's notification the City of the Severe Economic Recession (together with appropriate backup evidence). Severe Economic Recession shall continue prospectively on a quarterly basis and remain in effect until the Home Price Index increases for three (3) successive quarters; provided that the cumulative total Severe Economic Recession shall not exceed forty-eight (48) months. "**Home Price Index**" means the quarterly index published by the Federal Housing Finance Agency representing home price trends for the Metropolitan Statistical Area comprising San Francisco, San Mateo, Redwood City. If the Home Price Index is discontinued, Developer and the City shall approve a substitute index that tracks the residential market with as close a geography to the San Francisco, San Mateo, Redwood City Metropolitan Statistical Area as possible.

Section 2.3 City Representations and Warranties. City represents and warrants to Developer that:

A. City is a municipal corporation and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

B. The execution and delivery of this Agreement and the performance of the obligations of City hereunder have been duly authorized by all necessary City Council action and all necessary approvals have been obtained.

C. This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, City shall, upon learning of any fact or condition that would cause any of the warranties and representations in this Section 2.3 not to be true, immediately give written Notice of such fact or condition to Developer.

Section 2.4 Developer Representations and Warranties. Developer represents and warrants to City that:

A. Developer is duly organized, validly existing and in good standing under the laws of the State of Delaware, is authorized to do business in the State of California and has all necessary powers under the laws of the State of California to own property interests and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

B. The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary corporate, partnership or company action and all necessary shareholder, member or partner approvals have been obtained.

C. This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

D. Developer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, Developer shall, upon learning of any fact or condition that would cause any of the warranties and representations in this Section 2.4 not to be true, immediately give written Notice of such fact or condition to City.

### **ARTICLE 3 DEVELOPMENT OF PROPERTY**

Section 3.1 Vested Rights. City hereby grants to Developer a vested right to develop and construct the Project on the Property, including all on-site and off-site improvements authorized by, and in accordance with, the Project Approvals. Except as otherwise provided in this Agreement, no New City Laws that conflict with this Agreement, the Applicable City Regulations, or the Project Approvals shall apply to the Project or the Property. For purposes of this Section 3.1 and Section 3.3 and Section 3.6, the word “conflict” means any modification that purports to: (i) limit the permitted uses of the Property, the maximum density and intensity of use (including but not limited to floor area ratios of buildings and the overall maximum size of allowed uses ), or the maximum height and size of proposed buildings; (ii) impose requirements for reservation or dedication of land for public purposes or requirements for infrastructure, public improvements, or public utilities, other than as provided in the Project Approvals; (iii) impose conditions upon development of the Property other than as permitted by Applicable Law, Changes in the Law, and the Project Approvals; (iv) limit the timing, phasing, sequencing, or rate of development of the Property; (v) limit the location of building sites, grading or other improvements on the Property in a manner that is inconsistent with the Existing Approvals; (vi) limit or control the ability to obtain public utilities, services, infrastructure, or facilities (provided, however, with the exception of provisions under the Willow Village CDP relating to the implementation and timing for the installation of recycled water facilities and procedures for exceedances as provided therein, nothing herein shall be deemed to exempt the Project or the Property from any water use conservation or rationing requirements that may be imposed on a City-wide basis to all substantially similar types of development projects and project sites (i.e., to all multifamily residential projects, to all office projects, to all retail projects, to all hotel projects) from time to time in the future or be construed as a reservation of any existing sanitary sewer or potable water capacity); (vii) require the issuance of additional permits or approvals by the City other than those required by Applicable Law and the Existing Approvals; (viii) increase the permitted Impact Fees or add new Impact Fees, except as permitted by Section 4.1 of this Agreement; (ix) establish, enact, increase, or impose against the Project or the Property any special taxes or assessments other than those specifically permitted by this Agreement, including Section 4.7, (x) apply to the Project any New City Laws that are not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites (i.e., to all multifamily residential projects, to all office projects, to all retail projects, to all hotel projects ); (xi) impose against the Project any condition, dedication or other Exaction not specifically authorized by Applicable Law or the Existing Approvals; or (xii) impose against the Project any obligations regarding the construction of or provision of below market rate units not specifically required by the Existing Approvals. To the extent that New City Laws conflict with the vested rights granted pursuant to this Agreement, they shall not apply to the Property or the Project, except as provided in Section 3.3, below. Nothing in this Agreement is intended to supersede or limit vested rights provided through any vesting subdivision map or otherwise applicable state law, except for the payment of fees, which shall be governed by Section 4.1 of this Agreement notwithstanding any vesting of fees otherwise provided by any vesting subdivision map pursuant to the provisions of the Subdivision Map Act.

Section 3.2 Development and Design Standards. The Project shall be developed in conformance with the Existing Approvals and Applicable City Regulations and the Subsequent Project Approvals. The permitted uses, density and intensity of development, maximum height

and size of proposed buildings and development standards shall all be in accordance with the Existing Approvals and Applicable City Regulations. Project design and materials will need to the urban design standards outlined in the Willow Village CDP. City's review of applications for Subsequent Project Approvals shall be in accordance with the Existing Approvals and the Applicable City Regulations.

Section 3.3 Reservations of Authority. Notwithstanding any other provision of this Agreement to the contrary, the following regulations and provisions shall apply to the development of the Project:

A. Regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure then applicable in City at the time of permit application.

B. Regulations governing construction standards and specifications, including City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in City at the time of building permit application. Local modifications to the Building Code that take effect after the submission for approval of plans, specifications and estimates for Project-serving improvements (both on- and off-site) for the Project ("**Improvement Plans**") to the City shall not apply to such Improvement Plans unless required (i) by the then-current version of the California Building Code, (ii) to comply with State or Federal Law, or (iii) to avoid a specific, adverse impact upon the public health or safety. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the Improvement Plans were submitted to the City for approval.

C. New City Laws applicable to the Property or Project that do not conflict with this Agreement, including Developer's vested rights under Section 3.1 above.

D. New City Laws that may be in conflict with this Agreement but that are necessary to protect persons or property from dangerous or hazardous conditions that create a specific, adverse impact upon public health or safety or create a physical risk to persons or property, based on findings by the City Council identifying the dangerous or hazardous conditions requiring such changes in the law, where there are no feasible alternatives to the imposition of such changes, and how such changes would alleviate the dangerous or hazardous condition. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the Improvement Plans were submitted to the City for approval.

E. Exactions permitted by Section 9.2 of this Agreement.

Section 3.4 Regulation by Other Public Agencies. Developer acknowledges and agrees that the State of California Department of Transportation, SamTrans, the California Public Utilities Commission, the San Francisco Public Utilities Commission, West Bay Sanitary District, and other public agencies not within the control of City possess authority to regulate

aspects of the development of the Project separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Developer shall use reasonable diligence in applying for all such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. Developer shall also pay all required fees when due to such public agencies. Developer acknowledges that City does not control the amount of any such fees. City shall reasonably cooperate with Developer in Developer's effort to obtain such permits and approvals; provided, however, City shall have no obligation to incur any costs, without compensation or reimbursement by Developer, or to amend any policy, regulation or ordinance of City in connection therewith.

Section 3.5 Life of Project Approvals. The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approvals. In the event that this Agreement is terminated prior to the expiration of the Term of the Agreement, the term of any subdivision or parcel map or any other Project Approval and the vesting period for any final subdivision map approved as a Project Approval shall be the term otherwise applicable to the approval, which shall commence to run on the date that the termination of this Agreement takes effect (including any extensions); provided, however, that the statutory vesting period for fees shall be calculated based upon the original date of approval of any Vesting Subdivision Map.

Section 3.6 Initiatives. Except as to those New City Laws described in Section 3.3D (which may be enacted or imposed by initiative or referendum), if any New City Law is enacted or imposed by an initiative or referendum, which New City Law would conflict with the Project Approvals or reduce the development rights or assurances provided by this Agreement, such New City Law shall not apply to the Property or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. Without limiting the generality of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise) affecting subdivision maps, use permits, building permits, occupancy permits, or other entitlements to use that are approved or to be approved, issued or granted by City shall apply to the Property or Project. Developer agrees and understands that City does not have authority or jurisdiction over any other public agency's ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may affect the Project. City shall reasonably cooperate with Developer and, at Developer's expense, shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. City, except to submit to vote of the electorate initiatives and referendums required by law to be placed on a ballot and fulfill any legal responsibility to defend a ballot measure passed by its voters, shall not support, adopt or enact any New City Law, or take any other action which would violate the express provisions or spirit and intent of this Agreement.

Section 3.7 Timing of Development. Nothing in this Agreement obligates Developer to undertake the Project. The timing of development of the Project Improvements shall be undertaken, if undertaken by Developer, in accordance with the Willow Village Phasing Plan, attached hereto as Exhibit D ("**Willow Village Phasing Plan**") and in accordance with Section 5.1 and the Willow Village Community Amenities Provisions, attached hereto as Exhibit F. The

Willow Village Phasing Plan sets forth the order and timing of when certain Improvements will be constructed and/or occupied within the Project. Each Improvement identified in the Willow Village Phasing Plan shall be defined with reference to the Improvement with the same name as shown on the Site Plan attached as Exhibit E to this Agreement, in locations substantially consistent with the Site Plan. Modifications may be made to the timing set forth in the Willow Village Phasing Plan through an Operating Memorandum approved pursuant to Section 8.6 to this Agreement.

However, and not in limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984) that the failure of the parties therein to consider, and expressly provide for, the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the desire of the Parties hereto to avoid that result. Therefore, notwithstanding the adoption of an initiative after the Effective Date by City's electorate to the contrary, the Parties acknowledge that, except as otherwise provided for in the Existing Approvals and in this Agreement, Developer shall have the vested right (but not the obligation) to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its sole discretion and consistent with the terms of this Agreement.

Section 3.8 Changes in the Law. As provided in Section 65869.5 of the Development Agreement Law, this Agreement shall not preclude the applicability to the Project of changes in laws or regulations, to the extent that such changes are specifically mandated and required by changes in State or Federal laws ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law. Following the meeting between the Parties, the provisions of this Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such Changes in the Law. In such event, this Agreement together with any required modifications shall continue in full force and effect. In the event that the Changes in the Law operate to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Agreement, Developer may terminate this Agreement by Notice to City. Nothing in this Agreement shall preclude Developer from contesting by any available means (including administrative or judicial proceedings) such Changes in the Law or their applicability to the Project and, in the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect and times of performance extended in accordance with Section 2.2B, unless the Parties mutually agree otherwise.

Section 3.9 Expansion of Development Rights. If any New City Laws or Changes in Law expand, extend, enlarge or broaden Developer's rights to develop the Project, then, (a) if such law is mandatory, the provisions of this Agreement shall be modified as may be necessary to comply or conform with such new law, and (b) if such law is permissive, the provisions of this Agreement may be modified, upon the mutual agreement of Developer and City. Immediately after enactment of any such new law, upon Developer's request, the Parties shall meet and confer in good faith for a period not exceeding sixty (60) days (unless such period is extended by mutual written consent of the Parties) to prepare such modification in the case of a mandatory

law or to discuss whether to prepare a proposed modification in the case of a permissive law. Developer shall have the right to challenge City's refusal to apply any new law mandating expansion of Developer's rights under this Agreement, and in the event such challenge is successful, this Agreement shall be modified to comply with, or conform to, the new law.

Section 3.10 No Reservation of Sanitary Sewer or Potable Water Capacity. City has found that there will be sufficient potable water and sanitary sewer capacity to serve future development contemplated by the General Plan, including the Project. However, as noted in Section 3.1 above, with the exception of provisions under the Willow Village CDP relating to the implementation and timing for the installation of recycled water facilities and procedures for exceedances as provided therein, nothing in this Agreement is intended to exempt the Project or the Property from any water use conservation or rationing requirements that may be imposed on a City-wide basis to all substantially similar types of development projects and project sites (i.e., to all multifamily residential projects, to all office projects, to all retail projects, to all hotel projects) from time to time in the future or be construed as a reservation of any existing sanitary sewer or potable water capacity. In the event Developer's lenders or financing partners request issuance of water and/or sanitary sewer "will serve" letters as a condition of providing debt or equity financing for the Project, City agrees to consider in good faith issuing such letters on terms reasonably acceptable to City.

Section 3.11 Project Approvals and Applicable City Regulations. Prior to the Effective Date, the Parties shall have prepared two (2) sets of the Existing Approvals and Applicable City Regulations, one (1) set for City and one (1) set for Developer, to which shall be added from time to time, Subsequent Project Approvals, so that if it becomes necessary in the future to refer to any of the Project Approvals or Applicable City Regulations, there will be a common set available to the Parties. Failure to include in the sets of Project Approvals and Applicable City Regulations any rule, regulation, policy, standard or specification that is within the Applicable City Regulations and Project Approvals as described in this Agreement shall not affect the applicability of such rule, regulation, policy, standard or specification.

Section 3.12 Written Verification of Sufficient Water Supply. Any and all tentative subdivision maps approved for the Project shall comply with Government Code Section 66473.7, if, and to the extent, required by Government Code Section 65867.5(c).

## **ARTICLE 4 OTHER RIGHTS AND OBLIGATIONS OF THE PARTIES**

### **Section 4.1 Developer Fees.**

A. Impact Fees. City understands that the limited assurances by City concerning Impact Fees set forth below were a material consideration for Developer agreeing to enter into this Agreement, to pay the Impact Fees set forth in this Agreement and the Existing Approvals, and to provide the public benefits as described in this Agreement. For the period commencing on the Effective Date and continuing until expiration of the Impact Fee Limitation Period (defined below), Developer shall pay when due all existing Impact Fees applicable to the Project in accordance with this Agreement in effect as of the Agreement Date at the lower of (i) the rates in effect as of the Agreement Date, including all existing fee escalation provisions in effect as of the Agreement Date, or (ii) the rates in effect when such existing Impact Fees are due

and payable, and shall not be required to pay any escalations in such Impact Fees in excess of the fee escalation provisions in any Impact Fee in effect as of the Agreement Date or new Impact Fees enacted or established after the Agreement Date. As used herein, the term “**Impact Fee Limitation Period**” means the period commencing on the Effective Date and expiring on expiration of the Initial Term; provided, however, the Impact Fee Limitation Period will be automatically extended for the first three (3) years of any Extension Term Developer obtains pursuant to Section 2.2A. Following expiration of the Impact Fee Limitation Period, individual components and phases of the Project not yet undertaken, with no retroactive application to portions of the Project that have been completed or are then under construction, shall be subject to all Impact Fees in effect at the time such fees are due and payable. Except as otherwise provided in this Section 4.1A above, Developer agrees to pay, as and when due, any and all existing, new, increased or modified Impact Fees, at the rates then in effect at the time building permits are issued on any or all portions of the Project so long as any new fees or increases in existing fees from the amount existing as of the Agreement Date are uniformly applied by City to all substantially similar types of development projects and properties (i.e., all office projects, all multifamily residential projects, all retail projects, or all hotel projects) and are consistent with the provisions of applicable California law, including the provisions of Government Code Section 66000 *et seq.*, and all applicable nexus and rough proportionality tests and other legal requirements. Developer retains all rights to protest an imposition, fee, dedication, reservation, or other exaction, as set forth in California Government Code Section 66020.

B. Processing Fees. City may charge and Developer agrees to pay all Processing Fees that are in effect on a City-wide basis at the time applications are submitted for permits, approvals or entitlements for the Project.

C. Connection Fees. Developer shall pay connection fees assessed by utility providers and other agencies assessing such fees at the rates in effect from time to time.

D. Other Agency Fees. Nothing in this Agreement shall preclude City from collecting fees from Developer that are lawfully imposed on the Project by another agency having jurisdiction over the Project, which the City is required to collect pursuant to Applicable Law (“**Other Agency Fees**”).

Section 4.2 Fee Credits. Developer shall receive credit for the payment of transportation Impact Fees in accordance with the provisions of Municipal Code Section 13.26.080 and this Section 4.2. “**Fee Credits**” shall be as set forth in the Willow Village CDP. In addition, in the event that the amount of transportation impact fee credits for eligible transportation improvements to be constructed by Developer pursuant to the Willow Village CDP exceeds the amount of the transportation Impact Fees due for the Project, then City shall reimburse Developer from transportation Impact Fee funds collected by the City from other sources subject to the transportation Impact Fee.

Section 4.3 Reimbursements from Other Developers. To the extent that Developer constructs public infrastructure that is not eligible for Fee Credits or reimbursement by the City, as provided above, in excess of Developer’s “fair share” cost of such public infrastructure improvements, then the City shall use its best efforts to condition projects to be constructed by other parties benefiting from such infrastructure to enter into infrastructure-item-specific



reimbursement agreements for the portion of the cost of any dedications, public facilities and/or infrastructure the City may require the Developer to construct as conditions of the Project Approvals to the extent that they exceed the Project's "fair share." Where projects to be constructed by other parties have been conditioned to construct a portion of or pay a fair share fee for public improvements being constructed by Developer, then City shall use its best efforts to cause such third party developers to reimburse Developer for the applicable third party developer's fair share of the improvement costs incurred by Developer, in an amount consistent with such third party developer's prior approvals.

Section 4.4 CFDs.

A. Local CFD Policies and CFD Formation. City agrees to consider adopting a local policy pursuant to Government Code Section 53312.7 ("**Local CFD Policies**") to authorize the formation of Community Facilities Districts pursuant to the Mello-Roos Act (Government Code Section 53311 *et seq.*) ("**CFDs**") to serve residential and mixed use projects and the issuance of bonds to finance eligible public facilities and/or provide financing for eligible services. If Local CFD Policies are adopted and Developer files a petition requesting that City form a CFD to serve the Project, the Parties shall cooperate in good faith to establish a CFD to serve the Project. The boundaries of the CFD shall be coextensive with those of the Main Project Site, unless the Parties otherwise agree. Upon the filing of a petition by Developer pursuant to Government Code Section 53318(c), the City Council shall consider adoption of a resolution of intention to establish the CFD and, following adoption, City shall use good faith, diligent efforts, in compliance with Government Code Sections 53318 *et seq.*, to establish and implement the CFD pursuant to the terms of this Agreement, including scheduling of necessary public hearings and adoption of a resolution of formation. Developer shall cooperate with City in the formation of any CFD requested by Developer, including the timely submission of all petitions, waivers and consents. Developer shall prepare, and submit to the City no later than the date Developer files a petition for a CFD, a financial plan specifying the proposed total amount of debt or other financing for the CFD Facilities, including the projected costs of the CFD Facilities that support the proposed total amount of financing, to be financed by CFD Bonds, the Special Tax, or a combination of CFD Bonds and Special Tax, which financial plan shall be subject to the approval of the City, which approval will not be unreasonably withheld, delayed, or conditioned.

B. CFD Facilities and Services. Subject to caps on the total amount of net CFD Bond proceeds and the total tax and assessment rate set forth in subsection D below, the CFD shall finance the design and acquisition or construction of those facilities necessary for development of the Project ("**CFD Facilities**") and services that may lawfully be financed or paid for under the Mello-Roos Act and other applicable law. Financing of the CFD Facilities, or portion thereof, with CFD Bonds shall be subject to approval of City.

C. Issuance of CFD Bonds. Upon successful formation of the CFD and approval of the Special Tax (as defined in subsection D below), and subject to the restrictions in subsection C below, bonds shall be issued ("**CFD Bonds**"), the proceeds of which shall be used to finance the CFD Facilities, to the extent the CFD Facilities, or portion thereof, legally and feasibly may be financed utilizing this method of financing. The amounts, timing and terms of

the issuance and sale of the CFD Bonds shall be determined by City, in consultation with Developer and City's bond counsel, financial advisors and/or underwriters.

D. Special Tax. The CFD shall be authorized to levy, and Developer shall approve (by affirmative vote or other legally acceptable method), a tax ("**Special Tax**") in accordance with the rate and method of apportionment of such Special Tax approved in the completed proceedings for the CFD. The Special Tax so set shall be in an amount such that, at the time the rate and method of apportionment of the Special Tax is approved, the estimated maximum special tax within the CFD district shall not exceed \$750 per each dwelling (in 2022 dollars) for residential property and \$0.75 per square foot for non-residential property (in 2022 dollars).

E. City's Reservation of Discretion. It is expressly acknowledged, understood and agreed by the Parties that notwithstanding any of the foregoing obligations set forth in this section, (i) City reserves full and complete discretion in accordance with applicable law with respect to any adoption of Local CFD Policies and all legally required findings that must be made in connection with formation of a CFD, (ii) nothing in this Agreement is intended to or shall limit City's discretion in accordance with applicable law to adopt or refuse to adopt the Local CFD Policies or adopt legally required findings with respect to formation of the CFD, and (iii) nothing in this Agreement is intended to or shall prejudice or commit to City regarding the findings and determinations to be made with respect thereto.

F. Costs If No CFD Formed. In the event that City does not adopt the Local CFD Policies or is unable to make the legally required findings in connection with the formation of the CFD and the issuance of CFD Bonds for any reason, City shall not be liable for any resulting costs to Developer and Developer shall nonetheless be responsible for constructing all of the CFD Facilities and providing any services for which a CFD was sought at Developer's expense.

G. Developer's Consent. Subject to City adopting Local CFD Policies, and subject to and Developer requesting and City adopting a CFD for the Project and in accordance with the caps on the total amount of net CFD Bond proceeds and the total tax and assessment rate set forth in subsection D above and Developer's approval of the rate and method of apportionment of the Special Tax, which approval shall not be unreasonably withheld, delayed or conditioned, Developer irrevocably consents to the formation of the CFD, the issuance of the CFD Bonds, the imposition of the Special Tax against the Property at rates and pursuant to a method of apportionment appropriate to fund the debt service on the CFD Bonds sold to finance the CFD Facilities, and agrees not to protest or object to formation of the CFD or levy of an appropriate Special Tax consistent herewith. Developer acknowledges and agrees that CFD Bonds shall not be issued to fund any on-site public improvements or any other infrastructure or fees other than the CFD Facilities, or portion thereof, which may lawfully be financed under the Mello-Roos Act and other applicable law.

H. Limited Liability of City. Notwithstanding any other provision of this Agreement, City shall not be liable for or obligated to pay any costs or expenses in connection with the CFD or the CFD Facilities except to the extent monies are available (from Advanced

Costs, proceeds of CFD Bonds, or Special Taxes) and specifically authorized by law for payment of such costs or expenses.

Section 4.5 Public Infrastructure. City shall use good faith, diligent efforts to work with Developer to ensure that all public infrastructure required in connection with the Project is expeditiously reviewed and considered for acceptance by City on a phased basis as discrete components of the public infrastructure is completed. Developer may offer dedication of public infrastructure in phases and City shall not unreasonably withhold, condition or delay acceptance of such phased dedications or refuse phased releases of bonds or other security so long as all other conditions for acceptance have been satisfied. Developer's obligation to construct the public improvements shall be set forth in one or more public improvement agreements to be entered into by the Parties on or before approval of final subdivision maps for the Project. Upon acceptance of the public improvements, or components thereof, City shall release to Developer any bonds or other security posted in connection with performance thereof, other than warranty period security, as more fully provided in the applicable improvement agreements between City and Developer in accordance with the Subdivision Map Act. Except as to the Willow Road Tunnel and the Elevated Park Segment Over Willow Road as provided in Section 5.4 below, and in such improvement agreements with respect to Developer's warranty period obligations, Developer shall have no obligation to maintain any public infrastructure following City's acceptance thereof.

Section 4.6 Prevailing Wage Requirements.

A. To the extent applicable, Developer shall comply with, and require its contractors and subcontractors to comply with, all State Labor Code requirements and implementing regulations of the Department of Industrial Relations pertaining to "public works," including the payment of prevailing wages (collectively, "**Prevailing Wage Laws**"). Developer shall require the contractor(s) for all work that is subject to Prevailing Wage Laws ("**Prevailing Wage Components**") to submit, upon request by City, certified copies of payroll records to City at the Property or at another location within City, and to maintain and make records available to City and its designees for inspection and copying to ensure compliance with Prevailing Wage Laws. Developer shall also include in each of its contractor agreements, a provision in form reasonably acceptable to City, obligating the contractor to require its contractors and/or subcontractors to comply with Prevailing Wage Laws in connection with the Prevailing Wage Components, and to submit, upon request by City, certified copies of payroll records to City and to maintain and make such payroll records available to City and its designees for inspection and copying during regular business hours at the contractor's or subcontractor's regular place of business. City and Developer each acknowledge and agree that it is a condition of approval of the Project that Developer construct public improvements to be dedicated to the City as part of the Project.

B. Developer shall defend (with counsel reasonably acceptable to the City), indemnify, assume all responsibility for, and hold harmless City Parties from and against any and all present and future Claims arising out of or in any way connected with Developer's or its contractors' or subcontractors' obligations to comply with all Prevailing Wage Laws, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781.

C. Developer hereby waives and releases City Parties from any and all manner of Claims or other compensation whatsoever, in law or equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, now existing or which may in the future arise, including lost business opportunities or economic advantage, and special and consequential damages, arising out of, directly or indirectly, or in any way connected with Developer's obligation to comply with all Prevailing Wage Laws in conjunction with the Prevailing Wage Components. Developer is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

INITIALS: DEVELOPER \_\_\_\_\_

As such relates to this Section 4.6, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

D. Non Intended Prevailing Wage Requirements. Nothing in this Agreement shall in any way require, or be construed to require, Developer to pay prevailing wages with respect to any work of construction or improvement within the Project (a “**Non Intended Prevailing Wage Requirement**”). But for the understanding of the Parties as reflected in the immediately preceding sentence, the Parties would not have entered into this Agreement based upon the terms and conditions set forth herein. Developer and City have made every effort in reaching this Development Agreement to ensure that its terms and conditions will not result in a Non Intended Prevailing Wage Requirement. These efforts have been conducted in the absence of any applicable existing judicial interpretation of the recent amendments to the California prevailing wage law. If, despite such efforts, any provision of this Agreement shall be determined by any court of competent jurisdiction to result in a Non Intended Prevailing Wage Requirement, such determination shall not invalidate or render unenforceable any provision hereof; provided, however, that the Parties hereby agree that, in such event, this Agreement shall be reformed such that each provision of this Agreement that results in the Non Intended Prevailing Wage Requirement will be removed from this Agreement as though such provisions were never a part of the Agreement, and, in lieu of such provision(s), replacement provisions shall be added as a part of this Agreement as similar in terms to such removed provision(s) as may be possible and legal, valid and enforceable but without resulting in the Non Intended Prevailing Wage Requirement.

Section 4.7 Taxes and Assessments. As of the Agreement Date, City is unaware of any pending efforts to initiate, or consider applications for new or increased special taxes or assessments covering the Property, or any portion thereof. City shall retain the ability to initiate or process applications for the formation of new assessment districts or imposition of new taxes covering all or any portion of the Property. City may impose new taxes and assessments, other

than Impact Fees, on the Property in accordance with the then applicable laws and this Agreement, but only if such taxes or assessments are adopted by or after Citywide voter approval or approval by landowners subject to such taxes or assessments and are imposed on other land and projects of the same category (i.e., office, multifamily residential, retail, or hotel, as applicable) within the jurisdiction of City and, as to assessments, only if the impact thereof does not fall disproportionately on the Property as compared to the benefits accruing to the Property as indicated in the engineers report for such assessment district. Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property. In the event an assessment district is lawfully formed to provide funding for services, improvements, maintenance or facilities that are substantially the same as or duplicative of those services, improvements, maintenance or facilities being funded by the Impact Fees to be paid by Developer under the Project Approvals, such Impact Fees paid or to be paid by Developer shall be subject to reduction/credit in an amount equal to developer's new or increased assessment under the assessment district. Alternatively, the new assessment district shall reduce/credit Developer's new assessment in an amount equal to such Impact Fees paid or to be paid by Developer under the Project Approvals.

#### **ARTICLE 5 COMMUNITY AMENITIES; PUBLIC BENEFITS; TERMS REGARDING MAINTENANCE AND COMPLETION OF PROJECT IMPROVEMENTS**

In consideration of the rights and benefits conferred by City to Developer under this Agreement, if and to the extent that Developer commences construction of the Project, Developer shall perform and provide the obligations described in this ARTICLE 5 at the times and on the conditions specified herein and in Exhibit F. The Parties acknowledge and agree that some of the obligations described in this ARTICLE 5 exceed those dedications, conditions, and exactions that may be imposed under Applicable Law and would not otherwise be achievable without the express agreement of Developer. Notwithstanding anything to the contrary contained herein, Developer has no obligation to perform the obligations under this ARTICLE 5 unless and until Developer commences construction of the portion of the Project that requires such performance.

Section 5.1 Bonus Development Community Amenities. In order to obtain the right to bonus level development within the Residential Mixed Use District and the Office District, as defined in the Municipal Code, the Municipal Code requires that Developer implement community amenities with a valuation of fifty percent (50%) of the fair market value of the additional gross floor area of the bonus level development. The Municipal Code requires each community amenity to be either selected from a list of community amenities set forth in Resolution No. 6360 or agreed upon by Developer and City pursuant to a development agreement. This Agreement documents the requirements for and governs the delivery of all community amenities for the Project. If and to the extent that Developer commences construction of the Project, Developer shall implement the community amenities set forth in this Section 5.1 at the times and on the conditions specified herein and in Exhibit F, some of which are on the list of community amenities set forth in Resolution No. 6360 and some of which are additional and have been agreed upon by the Parties pursuant to this Agreement (collectively, "**Willow Village Community Amenities**"). The Willow Village Community Amenities shall be implemented at the times set forth in the Willow Village Community Amenities Timing

Provisions attached hereto as Exhibit F, except to the extent that the obligations set forth in Exhibit F are modified in accordance with this Agreement. Undefined, capitalized terms in Exhibit F shall have the meanings ascribed to them in this Agreement. If and to the extent that Developer commences construction of the Project, then Developer's failure to provide any of the Willow Village Community Amenities as set forth in this Section 5.1 by the times set forth in Exhibit F shall be a Default.

A. Elevated Park. Developer shall construct an elevated park to provide direct and convenient access from Belle Haven to the Main Project Site, which will include bike and pedestrian paths, gathering spaces, plazas, and landscaped areas as Conceptually shown on Exhibit E-1 and Exhibit E-2 ("**Elevated Park**"). If Developer obtains all necessary Other Agency Approvals and the consent of the commercial lessees in the shopping center located on one of the Hamilton Parcels ("**Hamilton Lessee Approvals**"), a portion of the Elevated Park shall include a bike and pedestrian overcrossing over Willow Road. This portion of the Elevated Park is within State of California Department of Transportation right of way and shall be referred to as the "**Elevated Park Segment Over Willow Road.**" Developer's inability to secure such Other Agency Approvals and consents for the Elevated Park Segment Over Willow Road shall not be a Force Majeure Delay. Developer shall make good faith efforts to obtain such Other Agency Approvals and Hamilton Lessee Approvals, but if Developer fails to secure such Other Agency Approvals and Hamilton Lessee Approvals prior to the development of Phase 2, as defined in the Willow Village CDP, Developer shall have no further obligation to construct the Elevated Park Segment Over Willow Road or the portion of the Elevated Park on the Hamilton Parcels and shall instead (1) pay a community amenity fee in the amount of Ten Million Three Hundred Sixty Nine Thousand Thirty-One Dollars (\$ 10,369,031), which represents one hundred and twenty percent (120%) of fifty percent (50%) of the cost to construct the Elevated Park Segment Over Willow Road and the portion of the Elevated Park on the Hamilton Parcels based on the square footage of such portions relative to the whole of the Elevated Park and (2) ensure that the vertical transportation system (i.e, elevators, stairs, etc.) at the westerly side of the Elevated Park is located reasonably proximate to the eastern side of Willow Road, taking into account Project design and utility considerations, as conceptually depicted in Exhibit E-4, attached hereto.

B. Grocery Store. Developer shall construct a grocery store, which will be located on Parcel 2, which store shall be a full-service store providing a range of goods, including: fresh fruits, vegetables, meat and fish; dairy products; beer and wine; fresh baked goods; and a delicatessen or prepared foods ("**Grocery Store**"). The Grocery Store shall be leased to an operator or affiliate of an operator with at least five (5) years of experience or five (5) stores unless an operator with less experience or fewer stores is approved in writing by City's Community Development Director.

C. Grocery Store Rent Subsidy. Developer shall provide a subsidy for two (2) years of rent in the amount of One Million Nine Hundred Seventy Two Thousand Six Hundred and Thirty Dollars (\$1,972,630) to the Grocery Store tenant ("**Grocery Store Rent Subsidy**").

D. Affordable Housing Contribution. Developer shall provide Five Million Dollars (\$5,000,000) in funding for affordable housing in the City, with priority for Belle Haven residents to the extent permitted by applicable law (the “**Affordable Housing Contribution**”).

E. Air Quality and Noise Monitoring Equipment Funding. Developer shall provide one time funding in the amount of Two Hundred Thousand Dollars (\$200,000) to the City for the City to procure and install at locations determined by the City in the Belle Haven neighborhood one (1) new high-quality air monitoring system that shall meet Bay Area Air Quality Management District sensor requirements and one (1) new high-quality noise monitoring system that is capable of at least an 80 dB dynamic range, such that if they are set to measure as low as 20 dB, then it is able to measure sound levels as high as 100 dB (“**Air Quality and Noise Monitoring Equipment**”). Developer shall reasonably cooperate with City and any City consultants regarding make and model or other similar technical questions that may arise regarding the Air Quality and Noise Monitoring Equipment.

F. Willow Road Feasibility Study Funding. Developer shall make a one-time payment of One Hundred Thousand Dollars (\$100,000) to City to support feasibility studies to be undertaken by City related to Willow Road ownership (the “**Willow Road Feasibility Study Funding**.”)

G. Job Training Funding and Community Hub. Developer shall provide funding to the below specified entities in the aggregate total amount of Eight Million Three Hundred Four Thousand Nine Hundred and Seven Dollars (\$8,304,907) for the following from February 2022 through December 2024:

(1) Career pathway programs in partnership with local non-profit  
YearUp;

(2) Career pathway programs in partnership with local nonprofit  
JobTrain;

(3) A facility to be managed by Developer that will prepare local residents with job skills and fund internships for Menlo Park residents, with priority for Belle Haven residents, to the extent permitted by law.

The obligations set forth in this Section 5.1G shall be referred to collectively as the “**Job Training Funding and Community Hub**.” The funding costs are intended to include all costs incurred by Developer in providing the Job Training Funding and Community Hub, including rent and staffing costs associated with the Job Training Funding and Community Hub.

H. Teacher Housing Rent Subsidies. Developer shall provide subsidized rent in the amount of One Million Seven Hundred Forty-Five Thousand Three Hundred Nineteen Dollars (\$1,745,319) for twenty-two (22) teachers currently living at 777 Hamilton Apartments in Belle Haven from February 2022 through March 2024 (“**Teacher Housing Rent Subsidies**”). The Teacher Housing Rent Subsidies shall be provided pursuant to Meta’s existing Workforce Housing Fund Pilot Program established pursuant to the Development Agreement between Hibiscus Properties, LLC, a Delaware limited liability company and City dated December 14, 2016, as amended by the Amendment to Development Agreement dated December 18, 2017.

I. Bayfront Shuttle. Provide a shuttle service for a period of seventeen (17) years to transport Bayfront residents to and from the Main Project Site (“**Bayfront Shuttle**”). Developer shall fund the Bayfront Shuttle through the formation of a Transportation Management Association (TMA) unless coordination with the City as described below results in an agreement between the Parties to provide the required shuttle service in an alternate manner. If feasible as determined in Developer’s reasonable discretion, the shuttle shall use one hundred percent (100%) electric vehicles. In connection with the Bayfront Shuttle, Developer shall:

- (1) Coordinate outreach on shuttle routing, frequency, and design with the City’s outreach on shuttles to avoid duplicating service or inefficiency with transfers.
- (2) Participate in the City’s shuttle study as a stakeholder.
- (3) Prepare an annual report on shuttle ridership and other metrics such as timeliness of shuttle arrivals so that City can evaluate the shuttle service.

J. Bank. Developer shall construct a bank or credit union branch that includes retail service as well as one or more Automatic Teller Machines (“**Bank**”).

K. Dining Venues. Developer shall construct 18,000 square feet of building space for by Eating Establishments and Drinking Establishments, as defined in the Applicable City Regulations (“**Dining Venues**”), which shall be constructed in two phases of 9,000 square feet each (“**First Phase Dining Venues**” and “**Second Phase Dining Venues**,” respectively). The Dining Venues shall consist of a range of dining options, from fast casual to sit-down restaurants, to serve residents and local employees.

L. Community Entertainment. Developer shall construct 25,000 square feet of building space for community entertainment offerings such as a cinema, live music, bowling, miniature golf, gaming, or similar use provided that gambling shall not be a permissible use (“**Community Entertainment**”), which shall be constructed in two phases of 12,500 square feet each (“**First Phase Community Entertainment**” and “**Second Phase Community Entertainment**,” respectively).

M. Pharmacy. Developer shall construct a space for pharmacy services to fill prescriptions and offer convenience goods (“**Pharmacy**”) in one of the four locations identified in Exhibit F.

N. Town Square. Developer shall construct as part of the Project a “**Town Square**” as Conceptually shown on Exhibit E-1 and Exhibit E-2 that will include areas for community gatherings, festivals, and farmers markets.

O. Excess Publicly Accessible Open Space. Developer shall construct as part of the Project publicly accessible open space improvements in excess of what is required by City Code and provide ongoing maintenance for these areas, consisting of a minimum of 74,030 square feet (“**Excess Publicly Accessible Open Space**”). The Excess Publicly Accessible Open Space may be constructed within the areas of the Community Park and/or the Dog Park and/or Parcel 3, each of which is Conceptually depicted on Exhibit E-2, attached hereto.



Section 5.2 Leasing of Space for Bonus Development Community Amenities.

Developer shall make good faith, reasonable efforts to lease the space identified for the Grocery Store as a Grocery Store, the space identified for the Bank as a Bank, the space identified for the Pharmacy as a Pharmacy, the spaces identified for Dining Venues as Dining Venues, and the spaces identified for Community Entertainment as Community Entertainment. Developer shall provide a report to the City describing its good faith efforts to lease the Project components listed under this Section 5.2 in conjunction with the issuance of the first permits for vertical construction and an updated report in conjunction with each Annual Review thereafter. With regard to the Grocery Store, the Bank, and the Pharmacy, Developer shall notify the City as soon as reasonably possible following the execution of a lease with an operator of any such space that such lease has been executed and identifying the name of the operator; provided, however, that nothing contained within this Section 5.2 shall require Developer to breach any confidentiality provisions contained in any such lease. If despite Developer's good faith, reasonable efforts, Developer is unable to lease the space identified for the Grocery Store as a Grocery Store, the space identified for the Bank as a Bank, the space identified for the Pharmacy as a Pharmacy, any of the spaces identified for Dining Venues as Dining Venues, or any of the spaces identified for Community Entertainment as Community Entertainment, then within twelve (12) months of the deadline for a final certificate of occupancy for that space as set forth in Exhibit F the Parties shall meet and confer to discuss potential alternative uses for such spaces that would provide community amenities on the list of community amenities set forth in Resolution No. 6360 or as agreed upon by Developer and City and to be memorialized in an Operating Memorandum.

Section 5.3 Public Benefits. If and to the extent that Developer commences construction of the Project, Developer must provide the public benefit contributions set forth in this Section 5.3.

A. Ongoing Job Training. Developer shall cause Meta to, for a period of five (5) years from and after the Effective Date:

- (1) Work with a local training program to expand training services for residents of City and City of East Palo Alto;
- (2) Create an ongoing quarterly series of career development workshops focusing on resume writing, interviewing skills, and how to find a job;
- (3) Hold an annual job fair for residents of City and City of East Palo Alto. Program shall run for a period of five (5) years after the Effective Date, except for times of Meta hiring freezes;
- (4) Promote local volunteer opportunities to its employees; and
- (5) Host a local community organization fair.

B. Career Experience Program. Developer shall cause Meta to, for a period of five (5) years from and after the Effective Date, create a career experience program for high school students living in the City, East Palo Alto, or Redwood City. The program shall run for at least four (4) weeks each year and shall allow students to receive STEM career training and engage with Meta employees.

C. Dumbarton Rail. Developer shall provide stakeholder support (for example, sending support letters) for a rail transit project along the Dumbarton rail bridge, which would connect the Caltrain corridor at Redwood City to the East Bay (“**Dumbarton Rail Corridor Project**.”) Developer shall have no obligation to provide financial support for the Dumbarton Rail Corridor Project.

D. Dumbarton Forward. Developer shall provide stakeholder support (for example, sending support letters) for Metropolitan Transportation Commission’s strategies to improve efficiency and reduce delay on the State Route 84-Dumbarton Bridge-Bayfront Expressway corridor between Interstate 880 in Fremont and Marsh Road in Menlo Park (“**Dumbarton Forward**.”) Developer shall have no obligation to provide financial support for Dumbarton Forward.

E. Bus Access. Developer shall coordinate with City to ensure that publicly operated buses have access to the Main Project Site (e.g., Menlo Park Middy, commute.org, SamTrans buses) and provide bus stops at reasonable locations within the Main Project Site, to be reasonably approved by City in conjunction with approval of Improvement Plans, for public transit systems.

F. Community Use of Publicly Accessible Open Space. Community use of the “**Publicly Accessible Open Space**”, as Conceptually depicted in Exhibit E-2, shall be subject to compliance with the “**Willow Village Open Space Rules**,” which shall be approved by City prior to the first certificate of occupancy for the Project and shall include without limitation provisions: (a) permitting Developer or the owner’s association to be formed pursuant to Section 5.3 to reasonably restrict or prohibit public access and use as reasonably necessary to (i) ensure security of the Project Site and persons or property within or around the Project Site and (ii) preclude activities that unreasonably disrupt non-public uses in the Project; (b) providing exclusive use by Developer for a specified number of private events; and (c) providing terms of use for community use of the Publicly Accessible Open Space.

G. Gap Payment. Developer shall make an annual payment of Three Hundred Eighty-Nine Thousand Dollars (\$389,000), plus a CPI Adjustment each year (“**Gap Payment**”) as provided in this Section 5.3G.

(1) The obligation to make a Gap Payment, if any, shall commence on the first of the month following the date that the certificate of occupancy for the third office building is issued (“**Third Office COO Issuance**”) if a building permit for the Hotel has not been issued as of the Third Office COO Issuance (“**Gap Payment Commencement Date**”); provided, however, that the Gap Payment Commencement Date shall be the first of the month following the first anniversary of the Third Office COO Issuance if a building permit for the Hotel has been issued as of the Third Office COO Issuance. The first Gap Payment shall be prorated to reflect the months remaining in the Fiscal Year then in effect. Subsequent Gap Payments shall be due on July 1. Developer’s obligation to make the Gap Payment shall apply to the period commencing on the Gap Payment Commencement Date and continuing until the earlier of (i) the Hotel has received a certificate of occupancy or (ii) the time period provided in Section 11.7 following the expiration or earlier termination of this Agreement (the “**Gap Payment Termination Date**”) and there shall be no further obligation to make a Gap Payment

after the Gap Payment Termination Date, provided however that if the Hotel is not built but another use, as agreed below, is approved for and occupies the site, the Gap Payment shall be adjusted to be reduced by the amount of annual revenue projected by the City's economic consultant to result from the alternate use, and if the Gap Payment would thereby be reduced to zero then there shall be no further obligation to make a Gap Payment ("**Gap Payment Period**").

(2) If the Hotel has not received a certificate of occupancy within twenty-four (24) months after the date that the certificate of occupancy for the sixth office building is issued, Developer and City shall meet and confer to discuss a potential alternative productive and beneficial use for the parcel upon which the Hotel would have been constructed. The Parties understand and agree that such alternative productive and beneficial use may require further review under CEQA and may require Subsequent Project Approvals including Other Agency Subsequent Project Approvals.

H. Willow Road Tunnel. Subject to receipt of all necessary Other Agency Approvals, Developer at its sole election may construct the new bike lanes and pedestrian paths, which would connect to existing facilities and the Bay Trail, as Conceptually depicted in Exhibit E-3 including the tunnel under Willow Road that would provide pedestrian and bicycle access to the Bayfront Area Meta Campuses ("**Willow Road Tunnel**"). Upon Developer's request, to the extent necessary to accommodate the Willow Road Tunnel portal and associated improvements, City shall cooperate with Developer in processing and approving a modification to the approved Conditional Development Permit for the Bayfront Expansion Campus in accordance with Section 6.1.1 – 6.1.3 thereof.

Section 5.4 Maintenance of Publicly Accessible Open Space. Except as provided in Section 5.5 below, Developer or another entity controlled by Meta, or an owners' association to be formed by Developer, shall own, operate, maintain and repair the Publicly Accessible Open Space in good and workmanlike condition, and otherwise in accordance with all Applicable Laws and any Project Approvals, all at no cost to City.

Section 5.5 Maintenance of Elevated Park Segment Over Willow Road and Willow Road Tunnel. If constructed, City shall own and Developer shall maintain and insure the Elevated Park Segment Over Willow Road and the Willow Road Tunnel at its sole cost and expense pursuant to agreements to be executed prior to construction of the Elevated Park Segment Over Willow Road and the Willow Road Tunnel, respectively. City shall have no obligation to fund maintenance of the Elevated Park Segment Over Willow Road and the Willow Road Tunnel. City shall have no liability for any Claims relating to the construction, condition, or maintenance of the Elevated Park Segment Over Willow Road or the Willow Road Tunnel except to the extent resulting from the gross negligence or willful misconduct of City. At Developer's sole cost and expense, Developer shall remove or replace the Elevated Park Segment Over Willow Road and the Willow Road Tunnel at the end of their respective useful lives.

Section 5.6 Sales Tax Point of Sale Designation. Developer shall use commercially reasonable efforts to the extent allowed by law to require all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, ("**Specified Materials**") to be used in connection with the initial construction and development

of, or incorporated into, the Project (excluding (i) any subsequent remodeling or construction on the Property following final building permit sign off for each building to be constructed as part of the Project and (ii) furnishings, equipment, and personal property), to (a) obtain a use tax direct payment permit; and either (b) elect to obtain a subcontractor permit for the job site of a contract valued at Five Million Dollars (\$5,000,000) or more or (c) otherwise designate the Property as the place of use of the Specified Materials used in the construction of the Project in order to have the local portion of the sales and use tax distributed directly to City instead of through the county-wide pool. Developer shall instruct each of its subcontractors subject to this Section 5.6 to cooperate with City in its efforts to ensure the full local sales/use tax for the Specified Materials is allocated to City. To assist City in its efforts to ensure that the full amount of such local sales/use tax is allocated to the City, Developer shall provide City with an annual spreadsheet, which includes a list of all subcontractors subject to this Section 5.6, a description of all applicable work, and the dollar value of such subcontracts. City may use said spreadsheet sheet to contact each subcontractor who may qualify for local allocation of use taxes to the City.

Section 5.7 BMR Housing True Up Payment. If following Commencement of Construction, Developer has no active building permits or has not passed any of the inspections required in connection with the building permits issued to Developer for a period of three (3) years for reasons other than a Force Majeure Delay (“**Pause of Construction**”) and the number of “**BMR Units**” actually constructed at such point is less than the Proportionate Required BMR Units, as calculated below, then Developer shall pay a “**BMR Housing True Up Payment**” as provided in this Section 5.7. The BMR Housing True Up Payment shall be calculated as follows: (1) determine the then required number of BMR Units (the “**Proportionate Required BMR Units**”) by (a) multiplying the total number of residential units constructed to date by fifteen percent (15%) (the “**Inclusionary Units**”) and (b) adding the number of any required additional BMR Units correlated to commercial space constructed to date based on the value of the commercial in-lieu fee at the rate in effect as of the Effective Date using the same methodology that was used to determine the total number of BMR Units correlated to all commercial space in the Project at full buildout (the “**Linkage Equivalent Units**”) (the sum of the Inclusionary Units and Linkage Equivalent Units equals the Proportionate Required BMR Units); (2) subtract the number of BMR Units constructed to date from the Proportionate Required BMR Units (the resulting difference shall be referred to herein as the “**Fee Paid BMR Units**”); and (3) multiply the number of Fee Paid BMR Units by Five Hundred Thousand Dollars (\$500,000), subject to any annual escalator that is applied to the below market rate commercial linkage in-lieu fee in effect as of the Effective Date, with the resulting product being the amount of the BMR Housing True Up Payment. The BMR Housing True Up Payment shall be paid to the City and the City shall hold the BMR Housing True Up Payment in a segregated account and no portion of the BMR Housing True Up Payment shall be deposited into the City’s Below Market Rate Housing Fund. City shall not spend any portion of the BMR Housing True Up Payment for any purpose for a period of three (3) years following the City’s receipt of the BMR Housing True Up Payment (the “**BMR Fee Holding Period**”). If Developer secures an additional building permit and Commences Construction or passes an inspection required in connection with Developer’s building permits (“**Resumption of Construction**”) prior to the expiration of the BMR Fee Holding Period, then the City shall return the BMR Housing True Up Payment to Developer and Developer shall construct all future BMR Units to be constructed on site as described in the Project Approvals. In the event that a Resumption of Construction does not occur within the BMR Fee Holding Period, then the City may use the BMR Housing True Up

Payment for affordable housing purposes as permitted under the City's Below Market Rate Housing Program, and Developer shall have no further obligation to construct any of the Fee Paid BMR Units and Developer shall only be obligated to construct future required BMR Units on site (i.e., the proposed number of BMR Units in the project less the number of BMR Units constructed previously and the Fee Paid BMR Units). If there is a Resumption of Construction after the BMR Fee Holding Period, and the City Council and/or City Manager have not approved expenditure of the BMR Housing True Up Payment for a specific affordable housing project or program, then Developer may request that the BMR Housing True Up Payment be returned to Developer. Upon receipt of said request, Developer and City shall meet and confer regarding any planned or proposed use by the City of the BMR Housing True Up Payment. Following said meet and confer, Developer may, in its sole discretion, confirm its request that the BMR Housing True Up Payment be returned to Developer, in which case the City shall return the BMR Housing True Up Payment to Developer and Developer shall construct all future BMR Units to be constructed on site as described in the Project Approvals. If there is another Pause of Construction after any Resumption of Construction, Developer shall be obligated to make another BMR Housing True Up Payment calculated pursuant to this Section 5.7.

Section 5.8 Hamilton Avenue Realignment. Subject to receipt of all necessary Other Agency Approvals, Developer shall realign Hamilton Avenue in accordance with the Project Approvals. Developer shall make good faith efforts to obtain such Other Agency Approvals for the realignment of Hamilton Avenue.

## ARTICLE 6 ANNUAL REVIEW

### Section 6.1 Periodic Review.

A. As required by California Government Code Section 65865.1 and the Development Agreement Regulations, City and Developer shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every twelve (12) months to determine good faith compliance with this Agreement. Specifically, City's annual review shall be conducted for the purposes of determining good faith compliance by Developer with its obligations under this Agreement.

B. The annual review shall be conducted as provided in the Development Agreement Law and City's Development Agreement Regulations as follows:

(1) The Director of Community Development shall provide each Developer notice of an annual review hearing before the Planning Commission, which shall be scheduled at least thirty (30) days after the date of the notice. The notice shall, to the extent required by law, include a statement that any review may result in amendment or termination of this Agreement. At said hearing, each Developer must demonstrate, and shall bear the burden of proof of, good faith compliance with the terms of this Agreement. The Planning Commission shall determine upon the basis of substantial evidence whether or not a Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the Planning Commission may be appealed to the City Council. Each Developer shall be responsible for its own Annual Review process; provided, however, that multiple Annual Reviews may occur at the

same Planning Commission hearing. In accordance with Section 10.2, no default of one Developer shall have any effect on the compliance of a different Developer.

(2) If the Planning Commission (if its finding is not appealed) or City Council finds that Developer has not complied in good faith with the terms and conditions of this Agreement, the City shall commence proceedings under ARTICLE 11 by providing a written Notice of Default under Section 11.1 to such Developer describing: (a) such failure and that such failure constitutes a Default; (b) the actions, if any, required by Developer to cure such Default; and (c) the time period within which such Default must be cured. In accordance with Section 11.1, if the Default can be cured, Developer shall have a minimum of thirty (30) days after the date of such notice to cure such Default, or in the event that such Default cannot be cured within such thirty (30) day period, if Developer shall commence within such thirty (30) day time period the actions necessary to cure such Default and shall be diligently proceeding to complete such actions necessary to cure such Default, Developer shall have such additional time period as may be required by Developer within which to cure such Default.

(3) If Developer fails to cure a Default within the time periods set forth above, the City Council may amend or terminate this Agreement as provided below.

C. If, upon a finding under Section 6.1, subsection B of this Agreement and the expiration of the cure period specified in Section 6.1, subsection B without Developer having cured a Default, the City determines to proceed with amendment or termination of this Agreement, the City shall give written notice to Developer of its intention so to do. The notice shall be given at least fifteen (15) days before the scheduled hearing and shall contain:

- (1) The time and place of the hearing before the City Council;
- (2) A statement that City proposes to amend or terminate the Agreement;
- (3) Such other information as is reasonably necessary to inform Developer of the nature of the proceeding.

D. At the time and place set for the hearing on amendment or termination, Developer shall be given an opportunity to be heard, and Developer shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. If the City Council finds, based upon substantial evidence, that Developer has not complied in good faith with the terms or conditions of this Agreement, the City Council may terminate this Agreement pursuant to Section 11.2. The decision of the City Council shall be final, subject to judicial review pursuant to Section 1094.5 of the California Code of Civil Procedure.

E. Failure of City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

F. If, after an annual review, City finds Developer has complied in good faith with this Agreement, City, promptly following Developer's request, shall issue to Developer a

letter of compliance in recordable form certifying that Developer has so complied through the period of the applicable annual review.

## ARTICLE 7 MORTGAGEE PROTECTION

Section 7.1 Mortgagee Protection. This Agreement shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property ("**Mortgage**"). This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the Agreement, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgage**"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

Section 7.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 7.1 above, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of the Project, or any portion thereof, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Project Approvals and this Agreement nor to construct any improvements thereon or institute any uses other than those uses and improvements provided for or authorized by this Agreement and the Project Approvals.

Section 7.3 Notice of Default to Mortgagee; Right to Cure. With respect to any Mortgage granted by Developer as provided herein, so long as any such Mortgage shall remain unsatisfied of record and Mortgagee has provided City with written notice requesting that City send Mortgagee notices of Default and specifying the address for service thereof, the following provisions shall apply:

A. City, upon serving Developer any notice of Default, shall also serve a copy of such notice upon any Mortgagee at the address provided to City, and no notice by City to Developer hereunder shall affect any rights of a Mortgagee unless and until a copy thereof has been so served on such Mortgagee; provided, however, that failure so to deliver any such notice shall in no way affect the validity of the notice sent to Developer as between Developer and City.

B. In the event of a Default by Developer, any Mortgagee shall have the right to remedy, or cause to be remedied, such Default within sixty (60) days following the later to occur of (i) the date of Mortgagee's receipt of the notice referred to in Section 7.3A above, or (ii) the expiration of the period provided herein for Developer to remedy or cure such Default, and City shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by Developer; provided, however, that (a) if such Default is not capable of being cured within the timeframes set forth in this Section 7.3B and Mortgagee commences to cure the Default within such timeframes, then Mortgagee shall have such additional time as is required to cure the Default so long as Mortgagee diligently prosecutes the cure to completion

and (b) if possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

C. Any notice or other communication which City shall desire or is required to give to or serve upon the Mortgagee shall be in writing and shall be served in the manner set forth in Section 12.5, addressed to the Mortgagee at the address provided by Mortgagee to City. Any notice or other communication which Mortgagee shall give to or serve upon City shall be deemed to have been duly given or served if sent in the manner and at City's address as set forth in Section 12.5, or at such other address as shall be designated by City by notice in writing given to the Mortgagee in like manner.

Section 7.4 No Supersedure. Nothing in this Article 7 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Article 7 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 7.3.

Section 7.5 Technical Amendments to this Article 7. City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the Project on the Property or any refinancing thereof and to otherwise cooperate in good faith, at Developer's expense, to facilitate Developer's negotiations with lenders.

## **ARTICLE 8 AMENDMENT OF AGREEMENT AND EXISTING APPROVALS**

Section 8.1 Amendment of Agreement By Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the Parties hereto or their successors-in-interest or assigns, and then only in the manner provided for in the Development Agreement Statute and Development Agreement Regulations.

Section 8.2 Requirement for Writing. No modification, amendment or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing that refers expressly to this Agreement and is signed by duly authorized representatives of both Parties or their successors. A copy of any change shall be provided to the City Council within thirty (30) days of its execution.

Section 8.3 Amendments to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those provisions existed as of the Agreement Date. No amendment or addition to those provisions that would materially affect the interpretation or enforceability of this Agreement shall be applicable to this Agreement, unless such amendment or addition is specifically required by the California State Legislature or is mandated by a court of competent jurisdiction. In the event of the application of such a change in law, the Parties shall meet in good faith to determine the feasibility of any modification or suspension that may be necessary to comply with such new law



or regulation and to determine the effect such modification or suspension would have on the purposes and intent of this Agreement. Following the meeting between the Parties, the provisions of this Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended but only to the minimum extent necessary to comply with such new law or regulation. If such amendment or change is permissive (as opposed to mandatory), this Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Agreement to permit such applicability. Developer and/or City shall have the right to challenge any new law or regulation preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

Section 8.4 Amendments to Project Approvals. Project Approvals (except for this Agreement, the amendment process for which is set forth in Section 8.1 through 8.2) may be amended or modified from time to time, but only at the written request of Developer or with the written consent of Developer at its sole discretion. All amendments to the Project Approvals shall automatically become part of the Project Approvals. The permitted uses of the Property or portion thereof, the maximum density and/or number of residential units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development as set forth in all such amendments shall be automatically vested pursuant to this Agreement, without requiring an amendment to this Agreement. Amendments to the Project Approvals shall be governed by the Project Approvals and the Applicable Law. City shall not request, process or consent to any amendment to the Project Approvals, or applicable portion thereof, without Developer's prior written consent in Developer's sole discretion.

Section 8.5 Administrative Amendments of Project Approvals. Upon the request of Developer for an amendment or modification of any of the Project Approvals (except for this Agreement, the amendment process for which is set forth in Section 8.1 through 8.2 herein, and the Willow Village CDP, the change or amendment process for which is set forth in Section 8 thereof), the City Manager or his/her designee shall determine: (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (b) whether the requested amendment or modification substantially conforms with the material terms of this Agreement and the Applicable Law and may be processed administratively. If the City Manager or his/her designee finds that the requested amendment or modification is both minor and substantially conforms with the material terms of this Agreement and the Applicable Law, the amendment or modification shall be determined to be an "**Administrative Amendment**," and the City Manager or his/her designee may approve the Administrative Amendment, without public notice or a public hearing. Without limiting the generality of the foregoing, lot line adjustments, minor reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, variations in the location of structures that do not substantially alter the design concepts of the Project, substitution of comparable landscaping for any landscaping shown on any development plan or landscape plan, variations in the location or installation of utilities and other infrastructure connections and facilities that do not substantially alter design concepts of the Project, and minor adjustments to a subdivision map or the Property legal description shall be deemed to be minor amendments or

modifications. Any request of Developer for an amendment or modification to a Project Approval that is determined not to be an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.

Section 8.6 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details or timing of performance of City and Developer. If and when, from time to time, during the Term of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer may effectuate such clarifications through operating memoranda approved by City and Developer (each, individually an “**Operating Memorandum**” and collectively “**Operating Memoranda**”), which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such Operating Memorandum shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 8.6 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 8.1 above. The City Manager shall be authorized to execute any Operating Memorandum hereunder on behalf of City.

Section 8.7 Amendment to Incorporate Additional Property. Developer has an equitable reversionary interest in portions of Hamilton Avenue to be abandoned by the City (the “**Hamilton ROW Parcel**”) and an equitable interest in a portion of a parcel that is owned by Chevron USA (the “**Chevron Parcel**”) pursuant to an executed purchase and sale agreement between Developer and the owner of the Chevron Parcel. Upon Developer acquiring a fee interest in the Chevron Parcel or the Hamilton ROW Parcel, or both, City and Developer shall enter into an Operating Memorandum to subject the Chevron Parcel or the Hamilton ROW Parcel, or both, to this Agreement and amend the map of the Property attached hereto as Exhibits A-1-1 and A-1-2 and the legal description of the Property attached hereto as Exhibits A-2-1 and A-2-2 to add the Chevron Parcel or the Hamilton ROW Parcel, or both, to the legal description for this Agreement, which Operating Memorandum shall be recorded in the Official Records of San Mateo County.

Section 8.8 CEQA. In connection with its consideration and approval of the Existing Approvals, the City has prepared and certified the Project EIR, which evaluates the environmental effects of the Project, and has imposed all feasible mitigation measures to reduce the significant environmental effects of the Project. The Parties acknowledge that certain Subsequent Project Approvals may legally require additional analysis under CEQA. Nothing contained in this Agreement is intended to prevent or limit the City from complying with CEQA. In acting on Subsequent Project Approvals, City will rely on the Project EIR to the fullest extent permissible by CEQA. In the event supplemental or additional review is required for a Subsequent Project Approval, City shall limit such supplemental or additional review to the scope of analysis mandated by CEQA and shall not impose new mitigation measures except as legally required.

## ARTICLE 9 COOPERATION AND IMPLEMENTATION

Section 9.1 Subsequent Project Approvals. Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals will be necessary or desirable for implementation of the Project (“**Subsequent Project Approvals**”). The Subsequent Project Approvals may include, without limitation, the following: grading permits, building permits, sewer and water connection permits, certificates of occupancy, lot line adjustments, site plans, development plans, land use plans, building plans and specifications, final maps, parcel maps and/or subdivision maps, conditional use permits, variances, architectural control plans, demolition permits, improvement agreements, encroachment permits, and any modifications or amendments to any of the foregoing or any Existing Approvals. At such time as any Subsequent Project Approval applicable to the Property is approved by the City, then such Subsequent Project Approval shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals and shall be treated as a “Project Approval” under this Agreement.

Section 9.2 Scope of Review of Subsequent Project Approvals. In exercising its discretion in connection with consideration of Subsequent Project Approvals, City agrees that City shall not revisit the fundamental policy decisions reflected by the Existing Approvals or impose any Exactions that would conflict with the Applicable City Regulations or the Existing Approvals as set forth in Section 3.1 herein or any Project Approvals unless expressly permitted by Sections 4.3A-D or 9.8.

### Section 9.3 Processing Applications for Subsequent Project Approvals.

A. Developer acknowledges that City cannot begin processing applications for Subsequent Project Approvals until Developer submits applications and responses to City comments thereto on a timely basis. Developer acknowledges that for the City to process applications, Developer needs to (i) provide to City in a timely manner and in the manner required under Applicable Law any and all Processing Fees, documents, materials, applications, plans, and other information reasonably necessary for City to carry out its review and processing obligations; and (ii) cause Developer’s planners, engineers, and all other consultants to provide to City in a timely manner and in the manner required under Applicable Law all such documents, applications, plans, information, and other materials required under Applicable Law.

B. Upon submission by Developer of all appropriate applications and Processing Fees for any Subsequent Project Approval, City shall accept, review, and use reasonable efforts to expeditiously process Developer’s applications and requests for Subsequent Project Approvals in connection with the Project in good faith and in a manner that complies with and is consistent with Applicable Law and the Project Approvals and this Agreement. The City shall approve any application or request for any Subsequent Project Approval that substantially complies with and is substantially consistent with the Project Approvals. The Parties shall cooperate with each other and shall use diligent, good faith efforts to cause the expeditious review, processing, and action on the Subsequent Project Approvals. City shall, to the full extent allowed by Applicable Law, promptly and diligently, subject to City ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Developer’s currently pending Subsequent Project Approval applications

including: (i) providing at Developer's expense and subject to Developer's request and prior approval, reasonable overtime staff assistance, additional staff and/or staff consultants for processing of Subsequent Project Approval applications as may be necessary to meet Developer's reasonable schedule considerations; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such pending Subsequent Project Approval application.

Section 9.4 Other Agency Subsequent Project Approvals; Authority of City. Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Agreement in all respects when dealing with any such agency regarding the Property. City shall cooperate with Developer, at Developer's expense, to the extent appropriate and as permitted by law, in Developer's efforts to obtain, as may be required, Other Agency Subsequent Project Approvals. Nothing in this Section 9.4 shall relieve Developer of its obligation to comply with the Project Approvals, notwithstanding any conflict between the Other Agency Subsequent Project Approvals and the Project Approvals.

Section 9.5 Implementation of Necessary Mitigation Measures. Developer shall, at its sole cost and expense, comply with the Project MMRP requirements as applicable to the Property and Project.

Section 9.6 Cooperation in the Event of Legal Challenge.

A. The filing of any third party lawsuit(s) against City or Developer relating to this Agreement, the Project Approvals or construction of the Project shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Project Approvals, unless a court order prevents the activity. City shall not stipulate to or cooperate in the issuance of any such order.

B. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any of the Project Approvals ("**Litigation Challenge**"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information. To the extent Developer desires to contest or defend such Litigation Challenge, (i) Developer shall take the lead role defending such Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice; (ii) City may, in its sole discretion, elect to be separately represented by the legal counsel of its choice, selected after consultation with Developer, in any action or proceeding, with the reasonable costs of such representation to be paid by Developer; (iii) Developer shall reimburse City, within forty-five (45) days following City's written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge, including City's reasonable administrative, legal, and court costs and City Attorney oversight expenses; and (iv) Developer shall indemnify, defend, and hold harmless City Parties from and against any damages, attorneys' fees or cost awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against City by way of judgment, settlement, or

stipulation. Upon request by Developer, City shall enter into a joint defense agreement in a form reasonably acceptable to the City Attorney and Developer to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege. Any proposed settlement of a Litigation Challenge by a Party shall be subject to the approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed; provided, however, that Developer may settle Litigation without consent of the City if the settlement does not require any changes to any Project Approvals or action by the City. If the terms of the proposed settlement would constitute an amendment or modification of any Project Approvals, the settlement shall require such amendment or modification to be approved by City in accordance with Applicable Law, and City reserves its full discretion in accordance with Applicable Law with respect thereto. If Developer opts not to contest or defend such Litigation Challenge, City shall have no obligation to do so, but shall have the right to do so at its own expense.

Section 9.7 Revision to Project. In the event of a court order issued as a result of a successful Litigation Challenge, City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Project Approvals and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Project Approvals, or (ii) any conflict with the Project Approvals or frustration of the intent or purpose of the Project Approvals.

Section 9.8 State, Federal or Case Law. Where any state, federal or case law allows City to exercise any discretion or take any act with respect to that law, City shall, in an expeditious and timely manner, at the earliest possible time, (i) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement, and (ii) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

Section 9.9 Defense of Agreement. City, at Developer's expense, shall take all actions that are necessary or advisable to uphold the validity and enforceability of this Agreement. If this Agreement is adjudicated or determined to be invalid or unenforceable, City agrees, subject to all legal requirements, to consider modifications to this Agreement acceptable to Developer to render this Agreement valid and enforceable to the extent permitted by Applicable Law. In the event of a Litigation Challenge, Developer may terminate this Agreement and abandon the Project and, following such termination, Developer shall have no further obligation to pay for the costs of defense of this Agreement other than incurred by the City in seeking to have any such Litigation Challenge dismissed as moot.

## ARTICLE 10 ASSIGNMENT AND PILOT AGREEMENT

Section 10.1 Transfers and Assignments. Developer shall have the right to sell, assign or transfer any portion of the Property without the consent of City; provided, however, in no event shall the rights, duties and obligations conferred or imposed upon Developer pursuant to this Agreement be at any time transferred in whole or part ("**Transfer**") except through a transfer of the Property or portion thereof and no such Transfer of this Agreement shall be made prior to substantial completion of the Project without the prior written consent of City Manager, not to be unreasonably withheld, conditioned, or delayed, in accordance with the provisions of

this Article 10. Upon Developer's request, City, at Developer's expense, shall cooperate with Developer and any proposed transferee of any portion of the Property to allocate and Transfer rights, duties and obligations under this Agreement and the Project Approvals between the transferred Property and the retained Property.

Developer shall notify City of any proposed Transfer of this Agreement at least sixty (60) days prior to completing any Transfer. City shall approve or disapprove the requested Transfer of this Agreement with respect to any portion of the Property within thirty (30) days after receipt of a written request for approval from Developer, together with such financial information and other documentation that City determines is reasonably necessary to evaluate the proposed transaction and the proposed assignee's experience, reputation and qualifications. City shall not unreasonably withhold, condition or delay its approval of a proposed Transfer of this Agreement to a reputable assignee who has (i) at least ten (10) years' experience in the development, ownership, operation and management of similar-size or larger developments of the type to be undertaken on the transferred portion of the Property without any record of material violations of Applicable Laws, and (ii) the financial resources and wherewithal to develop and effectively manage the Project or pertinent component of the Project. The approved assignee shall be required to assume Developer's rights and obligations under this Agreement with respect to the transferred portion of the Property pursuant to an assignment and assumption agreement in substantially the same form attached hereto as Exhibit G. No later than ten (10) business days after the date the assignment becomes effective, Developer shall deliver to City a conformed copy of the fully executed and recorded assignment and assumption agreement.

Notwithstanding anything to the contrary provided herein, Mercy Housing is preapproved as a transferee of this Agreement with respect to the senior affordable housing component of the Project.

Section 10.2 Release upon Transfer. Upon the Transfer of all or any of Developer's rights and interests under this Agreement pursuant to this Article 10, Developer shall automatically be released from its obligations and liabilities under this Agreement with respect to that portion of the Property transferred and the rights and/or obligations Transferred, and any subsequent default or breach with respect to the transferred rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Agreement, provided that (i) Developer has provided to City written Notice of such Transfer, and (ii) the transferee executes and delivers to City a written agreement in accordance with Section 10.1 above. Upon any Transfer of any portion of the Property and the express assumption of Developer's obligations under this Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee. Except as otherwise provided in this Agreement, a default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferor and the transferee shall each be solely responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferor/transferee and the rights and/or obligations under this Agreement assumed by such transferee, and any amendment to this Agreement between City and a transferor or a transferee shall only affect the portion of the Property owned by and the rights and/or obligations retained and/or assumed by such transferor or transferee. Failure to deliver a written assumption agreement hereunder shall not

affect the running of any covenants herein with the land, as provided in Section 12.4 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

Section 10.3 PILOT. Prior to the issuance of the first building permit for the Project or any transfer of any portion of the Property, whichever is earlier, Developer and City shall enter into a Payment In Lieu of Taxes Agreement (“**PILOT Agreement**”) to be recorded in the Official Records of the County of San Mateo against the Main Project Site and Developer shall cause LLBG Properties, LLC to enter into a PILOT Agreement to be recorded in the Official Records of the County of San Mateo against the Hamilton Parcels. Each PILOT Agreement shall require that if any portion of the Property is sold or transferred to an entity that applies for and is granted a "welfare exemption" pursuant to Section 214 of the California Revenue and Taxation Code, or any successor provision, or any other exemption from the payment of real or personal property taxes of any nature, Developer or LLBG Properties, LLC or the proposed transferee, as applicable, must pay annually to the City, a payment in lieu of taxes in an amount equal to the portion of the real and personal property tax levy the City would have received but for the exemption as reasonably determined by the City and as increased annually by the amount permitted under the provisions of Article XIII A, Section 2, of the California Constitution. Notwithstanding the foregoing, nothing in this Section 10.3 shall apply to any transfer to a non-profit developer for the purpose of constructing the stand-alone senior affordable component of the project.

## **ARTICLE 11 DEFAULT; REMEDIES; TERMINATION**

Section 11.1 Breach and Default. Subject to extensions of time under Section 2.2B or by mutual consent in writing, and subject to a Mortgagee’s right to cure under Section 7.3, failure by a Party to perform any material action or covenant required by this Agreement (not including any failure by Developer to perform any term or provision of any other Project Approval) within thirty (30) days following receipt of written Notice from the other Party specifying the failure shall constitute a “**Default**” under this Agreement; provided, however, that if the failure to perform cannot be reasonably cured within such thirty (30) day period, a Party shall be allowed additional time as is reasonably necessary to cure the failure so long as such Party commences to cure the failure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion. Any Notice of Default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Default, all facts constituting evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in Default for purposes of (a) termination of this Agreement, (b) institution of legal proceedings with respect thereto, or (c) issuance of any approval with respect to the Project. The waiver by either Party of any Default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

Section 11.2 Termination. In the event of a Default by a Party, the non-defaulting Party shall have the right to institute legal proceedings pursuant to Section 11.3 and/or terminate this Agreement effective immediately upon giving notice of intent to terminate. Termination of

this Agreement shall be subject to the provisions of Section 11.7 hereof. In the event that this Agreement is terminated pursuant to Section 6.1 herein or this Section 11.2 and the validity of such termination is challenged in a legal proceeding that results in a final decision that such termination was improper, then this Agreement shall immediately be reinstated as though it had never been terminated.

Section 11.3 Legal Actions.

A. Institution of Legal Actions. In addition to any other rights or remedies, a Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the terms of this Agreement.

B. Acceptance of Service of Process. In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon Developer's registered agent for service of process, or in such other manner as may be provided by law.

Section 11.4 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party, except as otherwise expressly provided herein.

Section 11.5 No Damages. In no event shall a Party, or its boards, commissions, officers, agents or employees, be liable in damages for any Default under this Agreement, it being expressly understood and agreed that the sole legal remedy available to a Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement, including, but not limited to, obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Agreement by the other Party.

Section 11.6 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable Law, a Party shall, at the request of the other Party, meet with designated representatives of the requesting Party



promptly following its request. The Parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section 11.6 shall in any way be interpreted as requiring that Developer and City reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the Parties to such meetings. Nothing in this Section 11.6 shall prohibit either Party from pursuing any available remedies, including injunction relief, during the period of such discussions.

Section 11.7 Surviving Provisions. In the event this Agreement expires or is terminated, neither Party shall have any further rights or obligations hereunder, except for those obligations of Developer set forth in Section 3.5 (Life of Project Approvals), Section 4.6 (Prevailing Wage Requirements), Section 5.3 (Public Benefits) (provided, however, Public Benefits under Section 5.3 shall survive for seventeen (17) years following the Effective Date or such earlier date as such obligations terminate pursuant to Section 5.3), Section 5.7 (BMR Housing True Up Payment), Section 9.6 (Cooperation in the Event of Legal Challenge; provided, however, Developer shall have no obligation to defend any litigation if this Agreement has been terminated), or expressly set forth herein as surviving the expiration or termination of this Agreement. The termination or expiration of this Agreement shall not affect the validity of the Project Approvals (other than this Agreement).

Section 11.8 Effects of Litigation. In the event litigation is timely instituted, and a final judgment is obtained, which invalidates in its entirety this Agreement, neither Party shall have any obligations whatsoever under this Agreement, except for those obligations which by their terms survive termination hereof.

Section 11.9 California Claims Act. Compliance with the procedures set forth this ARTICLE 11 shall be deemed full compliance with the requirements of the California Claims Act (Government Code Section 900 *et seq.*) including, but not limited to, the notice of an event of default hereunder constituting full compliance with the requirements of Government Code Section 910.

## **ARTICLE 12 MISCELLANEOUS PROVISIONS**

Section 12.1 Incorporation of Recitals, Exhibits and Introductory Paragraph. The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals and the Exhibits attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

Section 12.2 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual written agreement of the Parties.

Section 12.3 Construction. Each reference herein to this Agreement or any of the Existing Approvals or Subsequent Project Approvals shall be deemed to refer to the Agreement, Existing Approval or Subsequent Project Approval as it may be amended from time to time in

accordance with the terms of this Agreement, whether or not the particular reference refers to such possible amendment. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement. This Agreement has been reviewed and revised by legal counsel for City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive; (iv) “or” is not exclusive; (v) “include,” “includes” and “including” are not limiting and shall be construed as if followed by the words “without limitation,” and (vi) “days” means calendar days unless specifically provided otherwise.

Section 12.4 Covenants Running with the Land. Except as otherwise more specifically provided in this Agreement, this Agreement and all of its provisions, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein or portion thereof, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code section 65868.5.

Section 12.5 Notices. Any notice or communication required hereunder between City and Developer (“**Notice**”) must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a Notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by registered or certified mail, such Notice shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom Notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such Notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written Notice to the other Party hereto, designate any other address in substitution of the address to which such Notice shall be given. Such Notices shall be given to the Parties at their respective addresses set forth below.

To City: City of Menlo Park  
Community Development  
701 Laurel Street  
Menlo Park, CA 94025  
Attn: Community Development Director

and

City of Menlo Park  
Community Development  
701 Laurel Street  
Menlo Park, CA 94025  
Attn: City Manager

With a copy to: Burke, Williams & Sorensen, LLP  
181 Third Street  
Suite 200  
San Rafael, CA 94901-6587  
Attn: Nira Doherty

To Developer: c/o Meta Platforms, Inc.  
1 Hacker Way  
Menlo Park, CA 94025  
Attention: Facilities, Real Estate Development

With a copy to: c/o Meta Platforms, Inc.  
1 Hacker Way  
Menlo Park, CA 94025  
Attention: Real Estate Counsel

Section 12.6 Counterparts and Exhibits; Entire Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original. This Agreement, together with the Project Approvals and attached Exhibits, constitutes the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter hereof.

Section 12.7 Recordation of Agreement. Pursuant to California Government Code Section 65868.5, no later than ten (10) days after the Effective Date, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of San Mateo. Thereafter, if this Agreement is terminated, modified or amended, the City Clerk shall record notice of such action in the Official Records of the County of San Mateo.

Section 12.8 No Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties hereto that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any public improvements constructed by Developer as part of the Project until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in

connection with the various Existing Approvals or Subsequent Project Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, Existing Approvals, Subsequent Project Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

Section 12.9 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act by the other Party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future.

Section 12.10 California Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of San Mateo, except for actions that include claims in which the Federal District Court for the Northern District of the State of California has original jurisdiction, in which case the Northern District of the State of California shall be the proper venue.

Section 12.11 City Approvals and Actions. Whenever reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise. Wherever this Agreement permits the City Manager to exercise his/her discretion with respect to any of the terms and provisions herein, including but not limited to approval of an Extension Request, modifications to the timing set forth in Exhibit D and Exhibit F, Administrative Amendments, operating memoranda, and approval of a Transfer, as otherwise permitted in this Agreement, the City Manager shall advise the City Council of such exercise of discretion and where practical shall consult with the Mayor and/or the City Council prior to exercising such discretion. Notwithstanding such requirement to inform and consult with the City Council, Developer may rely on any writing evidencing the exercise of discretion by the City Manager.

Section 12.12 City Funding for Affordable Housing. Notwithstanding anything to the contrary in this Agreement, City shall have no obligation to contribute any monies from its Below Market Rate Housing Fund to finance affordable housing for the Project. Notwithstanding the foregoing, in the event that Developer provides any funding to the City for the senior affordable parcel to qualify for the County of San Mateo Affordable Housing Fund, or similar program that requires local matching funds, then such funds shall not be deposited into the City's

Below Market Rate Housing Fund and shall be used in accordance with the local matching fund requirement to advance affordable housing development associated with the Project.

Section 12.13 Estoppel Certificates. A Party may, at any time during the Term of this Agreement, and from time to time, deliver written Notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, or if amended, identifying the amendments; (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults; and (iv) any other information reasonably requested. The requesting Party shall be responsible for all reasonable costs incurred by the Party from whom such certification is requested and shall reimburse such costs within thirty (30) days of receiving the certifying Party's request for reimbursement. The Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so, within twenty (20) days following the receipt of Notice requesting such certificate. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. The City Manager shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

Section 12.14 No Third Party Beneficiaries. City and Developer hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

Section 12.15 Signatures. Each Party represents that the individuals executing this Agreement on behalf of such Party have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City and that all necessary board of directors', shareholders', partners', city councils' or other approvals have been obtained.

Section 12.16 Further Actions and Instruments. Each Party to this Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Agreement, subject to satisfaction of the conditions of this Agreement. Upon the request of any Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement.

Section 12.17 Limitation on Liability. In no event shall: (a) any partner, officer, director, member, shareholder, employee, affiliate, manager, representative, or agent of Developer or any general partner of Developer or its general partners be personally liable for any breach of this Agreement by Developer, or for any amount which may become due to City under the terms of this Agreement; or (b) any member, officer, agent or employee of City be personally liable for any breach of this Agreement by City or for any amount which may become due to Developer under the terms of this Agreement.

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the day and year first above written.

**CITY:**

CITY OF MENLO PARK, a California municipal corporation

By: \_\_\_\_\_  
Justin Murphy, City Manager  
*[signature must be notarized]*

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Nira Doherty, City Attorney

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

**DEVELOPER:**

PENINSULA INNOVATION PARTNERS, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
*[signature must be notarized]*

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
*[signature must be notarized]*



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                 )  
  ) ss  
County of \_\_\_\_\_             )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(Name of Notary)

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.

\_\_\_\_\_  
(Notary Signature)



**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                    )  
  ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(Name of Notary)

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.

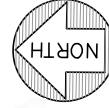
WITNESS my hand and official seal.

\_\_\_\_\_  
(Notary Signature)

**EXHIBIT A-1-1**  
**MAIN PROJECT SITE MAP**  
**(ATTACHED)**

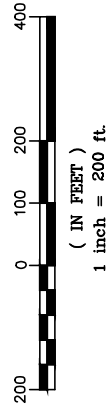
Line Table		
Line #	Length	Direction
L1	120.17	N22° 05' 00"E
L2	143.14	N24° 45' 44"E
L3	864.41	N22° 05' 00"E
L4	144.98	N19° 19' 09"E
L5	71.06	N22° 05' 00"E
L6	1324.41	N84° 59' 41"E
L7	1612.25	S10° 08' 21"W
L8	1182.95	S88° 08' 54"W
L9	668.96	N79° 51' 49"W
L10	2.12	N25° 35' 47"E
L11	1324.41	N84° 59' 45"E
L12	1612.25	S10° 07' 20"W
L13	1182.46	S88° 07' 50"W
L14	669.55	N79° 55' 00"W

Curve Table			
Curve #	Length	Radius	Delta
C1	251.79	11509.17	1°15'13"
C2	74.34	1536.52	2°46'19"
C3	55.72	1032.50	3°05'31"



NOTES  
(L11) RECORD DATA FROM  
99 M 82-83

GRAPHIC SCALE



DATE	DESCRIPTION

**FEYER LAUREL INC.**  
 CIVIL ENGINEERS • SURVEYORS • CONSTRUCTION MANAGERS  
 1501 S. GARDEN AVENUE, SUITE 1000 • CARLSBAD, CA 92008  
 (415) 524-7070 • www.feyeraurel.com

DATE:	9/26/2022
SCALE:	AS SHOWN
DESIGNED:	RUL
CHECKED:	DCF
DATE:	9/26/2022
BY:	ENR

SHEET 1  
OF 1 SHEETS  
JOB NO.  
300001

**PROJECT SITE PLAT**  
**WILLOW VILLAGE**  
**MENLO PARK, CALIFORNIA**

**EXHIBIT A-1-2**

**HAMILTON PARCELS MAP**

**(ATTACHED)**

DATE: 10/19/2022  
 SCALE: AS SHOWN  
 DESIGNED: RIL  
 DRAWN: RIL  
 CHECKED: DJF  
 PROJ. ENGR:

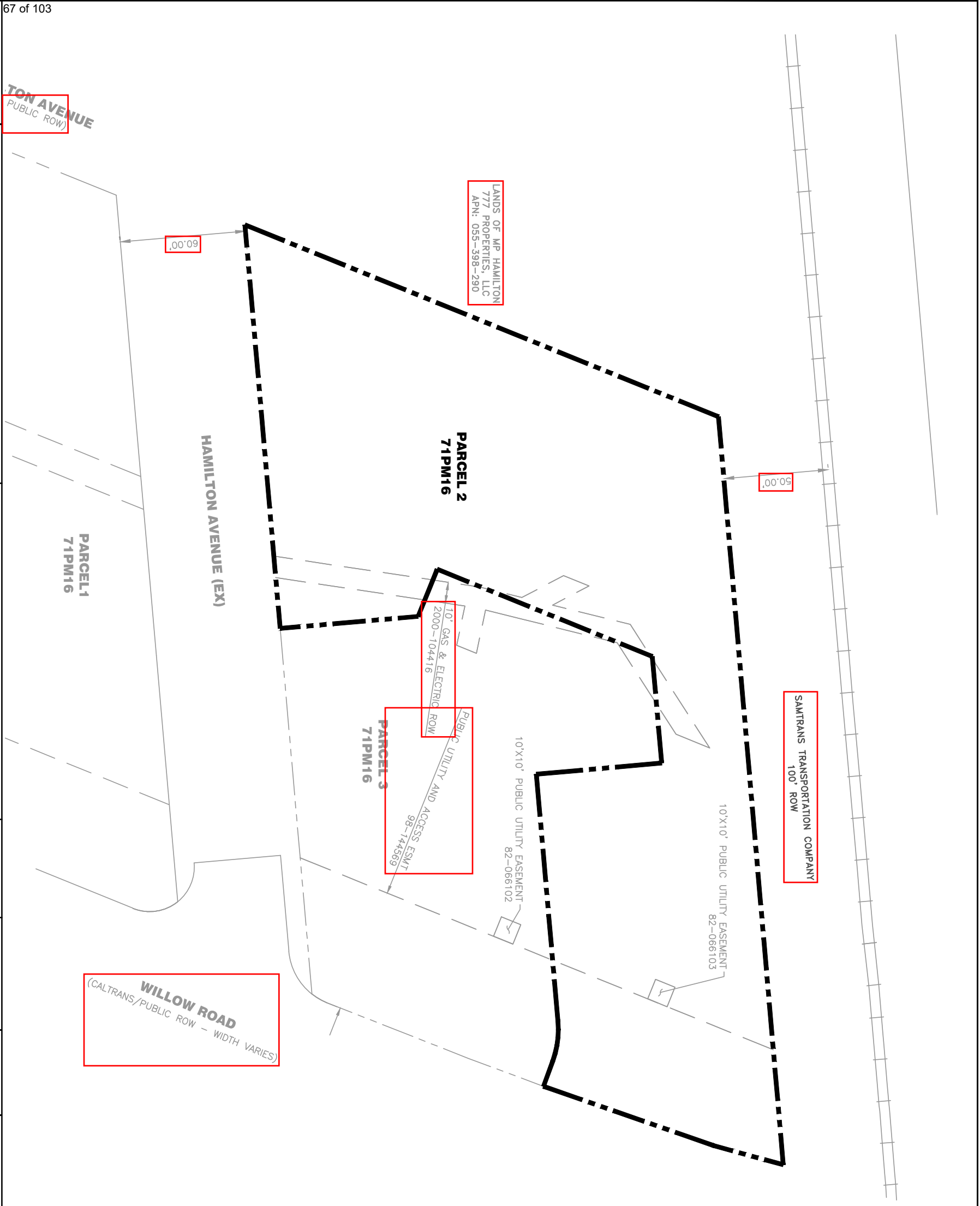
**FT FREYER & LAURETA, INC.**  
 CIVIL ENGINEERS • SURVEYORS • CONSTRUCTION MANAGERS  
 150 Executive Blvd • Suite 4200 • San Francisco, CA 94134  
 (415)534-7070 • www.ftfreyerlaureta.com

DESCRIPTION	DATE

--

**PARCEL 2**  
**WILLOW VILLAGE**  
**MENLO PARK, CALIFORNIA**

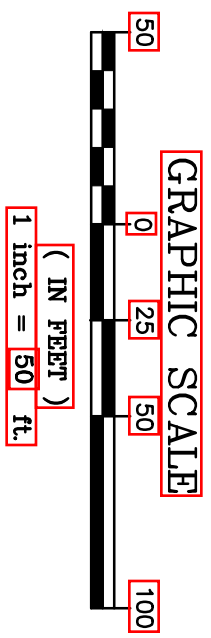
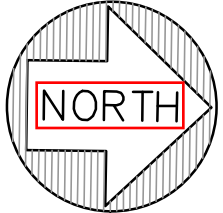
SHEET 1 OF 1 SHEETS  
 JOB NO. **300001**



**WILLOW ROAD**  
 (CALTRANS/PUBLIC ROW - WIDTH VARIES)

LANDS OF MP HAMILTON  
 777 PROPERTIES, LLC  
 APN: 055-398-290

SAMTRANS TRANSPORTATION COMPANY  
 100' ROW



DATE: 10/19/2022  
 SCALE: AS SHOWN  
 DESIGNED: RIL  
 DRAWN: RIL  
 CHECKED: DJF  
 PROJ. ENGR:

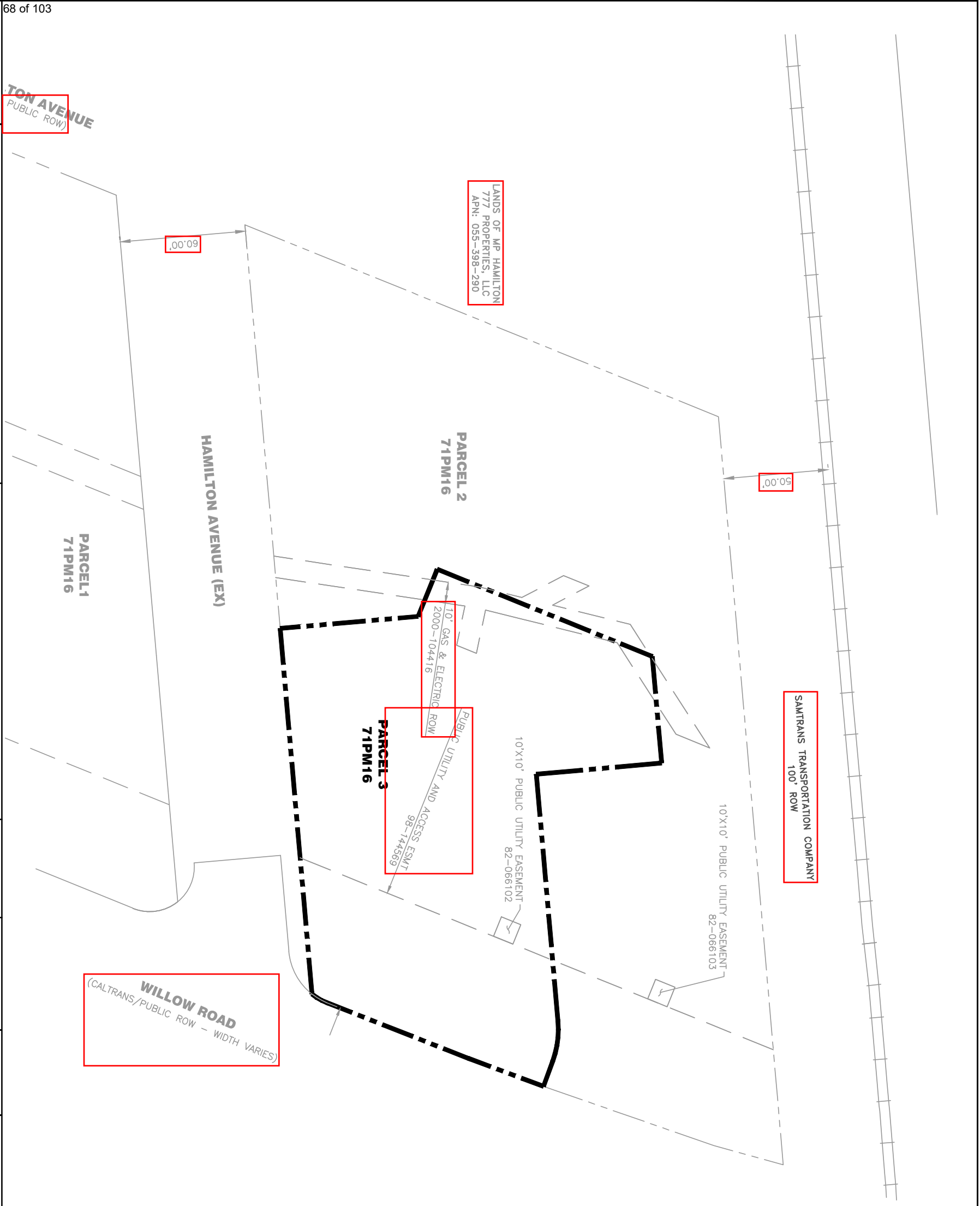
**FT FREYER & LAURETA, INC.**  
 CIVIL ENGINEERS • SURVEYORS • CONSTRUCTION MANAGERS  
 150 Executive Blvd • Suite 4200 • San Francisco, CA 94134  
 (415)534-7070 • www.ftfreyerlaureta.com

DESCRIPTION	DATE



**PARCEL 3**  
**WILLOW VILLAGE**  
**MENLO PARK, CALIFORNIA**

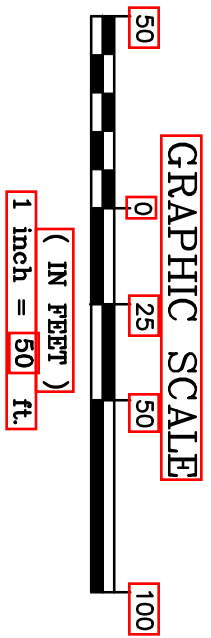
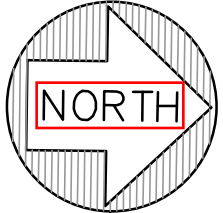
SHEET 1 OF 1 SHEETS  
 JOB NO. **300001**



**WILLOW ROAD**  
 (CALTRANS/PUBLIC ROW - WIDTH VARIES)

LANDS OF MP HAMILTON  
 777 PROPERTIES, LLC  
 APN: 055-398-290

SAMTRANS TRANSPORTATION COMPANY  
 100' ROW



**EXHIBIT A-2-1**

**MAIN PROJECT SITE LEGAL DESCRIPTION**

**(ATTACHED)**

**LEGAL DESCRIPTION  
WILLOW VILLAGE SITE  
MENLO PARK, CALIFORNIA**

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

**BEGINNING** at the southwesterly corner of Parcel S; as shown on that certain map entitled "Menlo Industrial Center, City of Menlo Park, San Mateo County, California" filed in the office of the County Recorder of San Mateo County, State of California, on October 1, 1979, in Volume 99 of Maps at Pages 81-83, thence,

North 22°05'00" East, 120.17 feet; thence,

North 24°45'44" East, 143.14 feet; thence,

Along a tangent curve to the left, having a radius of 1,536.52 feet, length of 74.34 feet, and a delta angle of 02°46'19"; thence,

North 22°05'00" East, 864.41 feet; thence,

Along a tangent curve to the left, having a radius of 1,032.50 feet, length of 55.72 feet, and a delta angle of 03°05'31"; thence,

North 25°35'47" East, 2.12 feet; thence,

North 19°19'09" East, 144.98 feet; thence,

North 22°05'00" East, 71.06 feet; thence,

North 84°59'41" East, 1,324.41 feet; thence,

Along a tangent curve to the left, having a radius of 11,509.17 feet, length of 251.79 feet, and a delta angle of 01°15'13"; thence,



South 10°08'21" West, 1,612.25 feet; thence,

South 88°08'54" West, 1,182.95 feet; thence,

North 79°51'49" West, 668.96 feet to the **POINT OF BEGINNING**.

Containing 2,577,434.20 square feet (59.17 acres), more or less.



September 30, 2022

**EXHIBIT A-2-2**

**HAMILTON PARCELS LEGAL DESCRIPTION**

**(ATTACHED)**

**LEGAL DESCRIPTION  
PARCEL 2  
PARCEL MAP FOR BELLE HAVEN RETAIL CENTER  
MENLO PARK, CALIFORNIA**

Parcel 2 as shown on that Map titled “Parcel Map for Belle Haven Retail Center”, which map was filed in the Office of the Recorder of San Mateo County, on December 31<sup>st</sup> in Book 71 of Maps, pages 15-16.

Containing 51,011 square feet, more or less.

October 19, 2022



**LEGAL DESCRIPTION  
PARCEL 3  
PARCEL MAP FOR BELLE HAVEN RETAIL CENTER  
MENLO PARK, CALIFORNIA**

Parcel 3 as shown on that Map titled “Parcel Map for Belle Haven Retail Center”, which map was filed in the Office of the Recorder of San Mateo County, on December 31<sup>st</sup> in Book 71 of Maps, pages 15-16.

Containing 28,191 square feet, more or less.

October 19, 2022



**EXHIBIT B**

**LLBG PROPERTIES, LLC CONSENT**

LLBG Properties, LLC, a Delaware limited liability company, (“**LLBG Properties**”) has reviewed the terms and conditions of that certain Development Agreement dated as of on or about \_\_\_\_\_, 2022, by and between Peninsula Innovation Partners, LLC, a Delaware limited liability company, and the City of Menlo Park, a California municipal corporation, (the “**Development Agreement**”) and hereby consents to the terms and conditions of the Development Agreement and the recordation of the Agreement against the property owned by LLBG Properties described in Exhibit A-2-2 to the Development Agreement.

LLBG PROPERTIES, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT C**

**IMPACT FEES**

1. Transportation Impact Fee (Municipal Code Chapter 13.26)
2. Building Construction Street Impact Fee
3. Below Market Rate Housing Program (Municipal Code Chapter 16.96) [Note – being satisfied through provision of on-site affordable housing in accordance with Project affordable housing agreements and this Agreement rather than through payment of fee]
4. Residential Subdivision Recreation in Lieu Fees (Municipal Code Section 15.16.020) [Note – fee not applicable to current Project due to lack of for-sale residential units]

**EXHIBIT D**

**WILLOW VILLAGE PHASING PLAN**

Project Component	Timing/Milestones <sup>1</sup>	Required Minimum Number of Residential and BMR Units associated with such Phase of Construction <sup>2</sup>
1. Demolition, Grading, and Infrastructure Installation	1. Commence construction following approval of all applicable Improvement Plans for the area of construction	
2. Elevated Park and Meeting and Collaboration Space (“MCS”)	2. Commence construction concurrently with or after completion of demolition, grading and infrastructure for the area of construction	

---

<sup>1</sup> The milestones set forth in this exhibit are based upon Developer’s plan to construct six (6) office buildings as reflected in the Willow Village CDP. In the event that office building square footages shift considerably in the reasonable judgment of the City Manager (e.g., increase by more than twenty-five percent (25%) as to any office building or buildings that trigger(s) a milestone) or combine, the obligations set forth in this exhibit shall shift in a correlative manner through a meet and confer process between the Parties, with resulting changes to this exhibit being documented in writing by the Parties through an Operating Memorandum pursuant to Section 8.7 of this Agreement.

<sup>2</sup> Final distribution of residential units, including BMR units, to be determined at building permit for each building containing residential units. Reduction from required minimum number of units by up to five percent (5%) is permitted. Reduction from required number of units by more than five percent (5%) but less than up to ten percent (10%) requires approval through an Operating Memorandum pursuant to Section 8.7 of this Agreement. Reduction from the required number of units by more than 10 percent (10%) requires approval through amendment of this Agreement pursuant to Section 8.1 of this Agreement.

Project Component	Timing/Milestones <sup>1</sup>	Required Minimum Number of Residential and BMR Units associated with such Phase of Construction <sup>2</sup>
3. First, Second and Third Office buildings	<p>3. Commence construction concurrently with or after commencement of Elevated Park and MCS</p> <p>Complete Structural Podium of the mixed-use building on Parcel 2 (“<u>RS2</u>”) and the residential building on Parcel 6 (“<u>RS6</u>”) prior to final Certificate of Occupancy (“<u>COO</u>”) for first office building, but if a temporary COO has been issued, no later than 120 days from the issuance of a temporary COO for the first office building.</p> <p>Complete roof framing of RS2 and RS6 prior to final COO for the second office building, but if a temporary COO has been issued, no later than 120 days from the issuance of a temporary COO for the second office building.</p>	
4. Residential buildings RS2 and RS6	4. Commence construction within 4 months after commencement of construction of first office building	RS2 and RS6 have a combined total of 505 units, including 54 BMR units
5. Fourth Office building	<p>5. Commence construction of RS2 and RS6 prior to issuance of building permits for the fourth office building</p> <p>Issue final COO for RS6 prior to final COO for the fourth office building, but, if a temporary COO has been issued, no later than 120 days from the issuance of a temporary COO for the fourth office building</p>	



Project Component	Timing/Milestones <sup>1</sup>	Required Minimum Number of Residential and BMR Units associated with such Phase of Construction <sup>2</sup>
6. Sixth Office building	<p>6. Complete construction of podium of the mixed-use building on Parcel 3 (“<u>RS3</u>”) and the residential building on Parcel 7 (“<u>RS7</u>”) prior to issuance of building permits for the sixth office building</p> <p>Commence construction of the residential building on Parcel 4 (“<u>RS4</u>”) and the residential building on Parcel 5 (“<u>RS5</u>”) prior to final COO for the sixth office building, but, if a temporary COO has been issued, no later than 120 days after the issuance of a temporary COO for the sixth office building</p>	<p>RS3 and RS7 (senior building) have a combined total of 539 units, including 162 BMR units</p> <p>RS4 and RS5 have a combined total of 686 units, including 96 BMR units</p>

**EXHIBIT E-1**  
**CONCEPTUAL SITE PLAN**  
**(ATTACHED)**



# WILLOW VILLAGE

Menlo Park, CA

**EXHIBIT E-2**

**CONCEPTUAL PUBLICLY ACCESSIBLE OPEN SPACE SITE PLAN**

**(ATTACHED)**



# WILLOW VILLAGE

Menlo Park, CA

Publicly Accessible Open Space

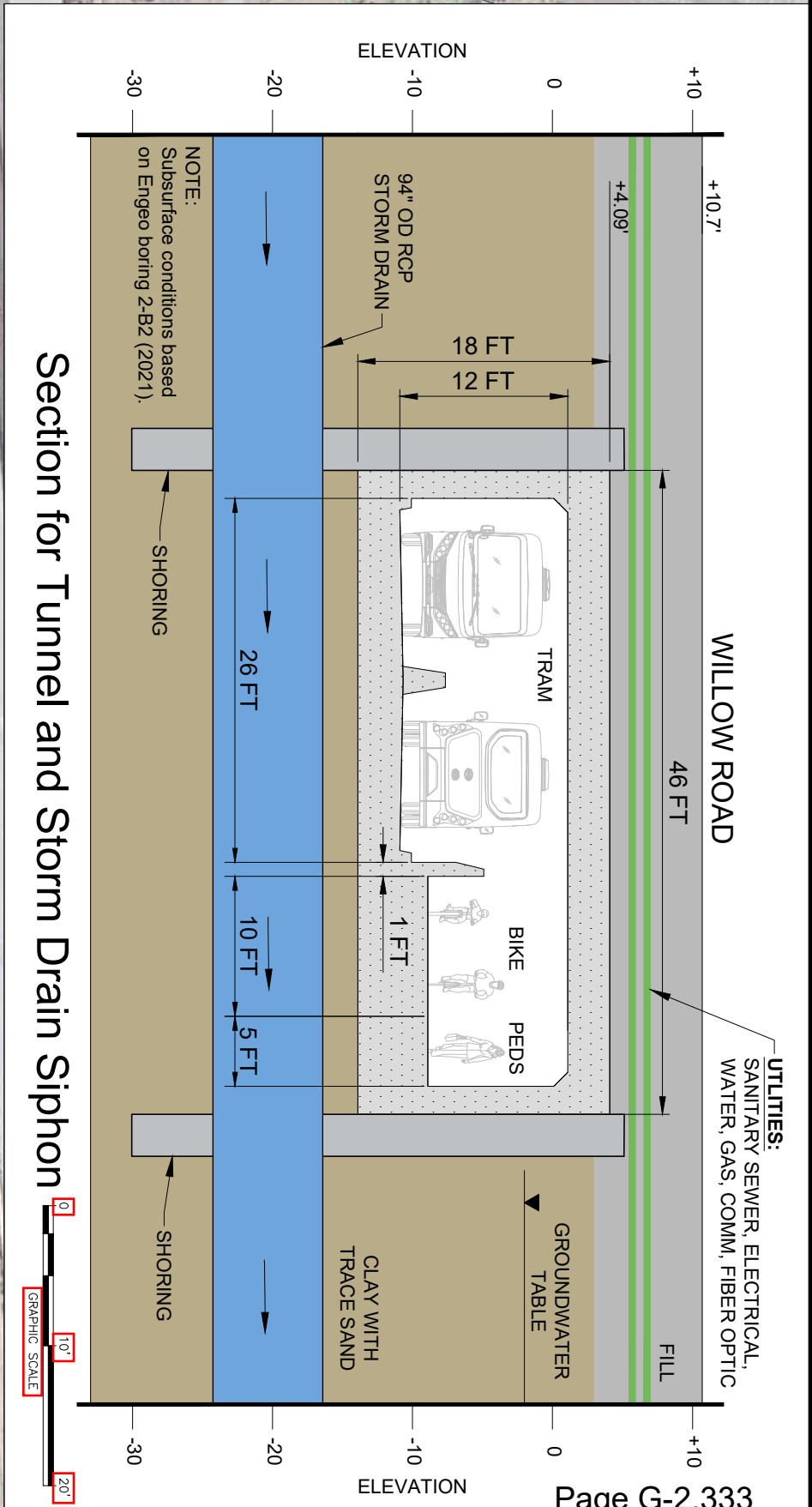
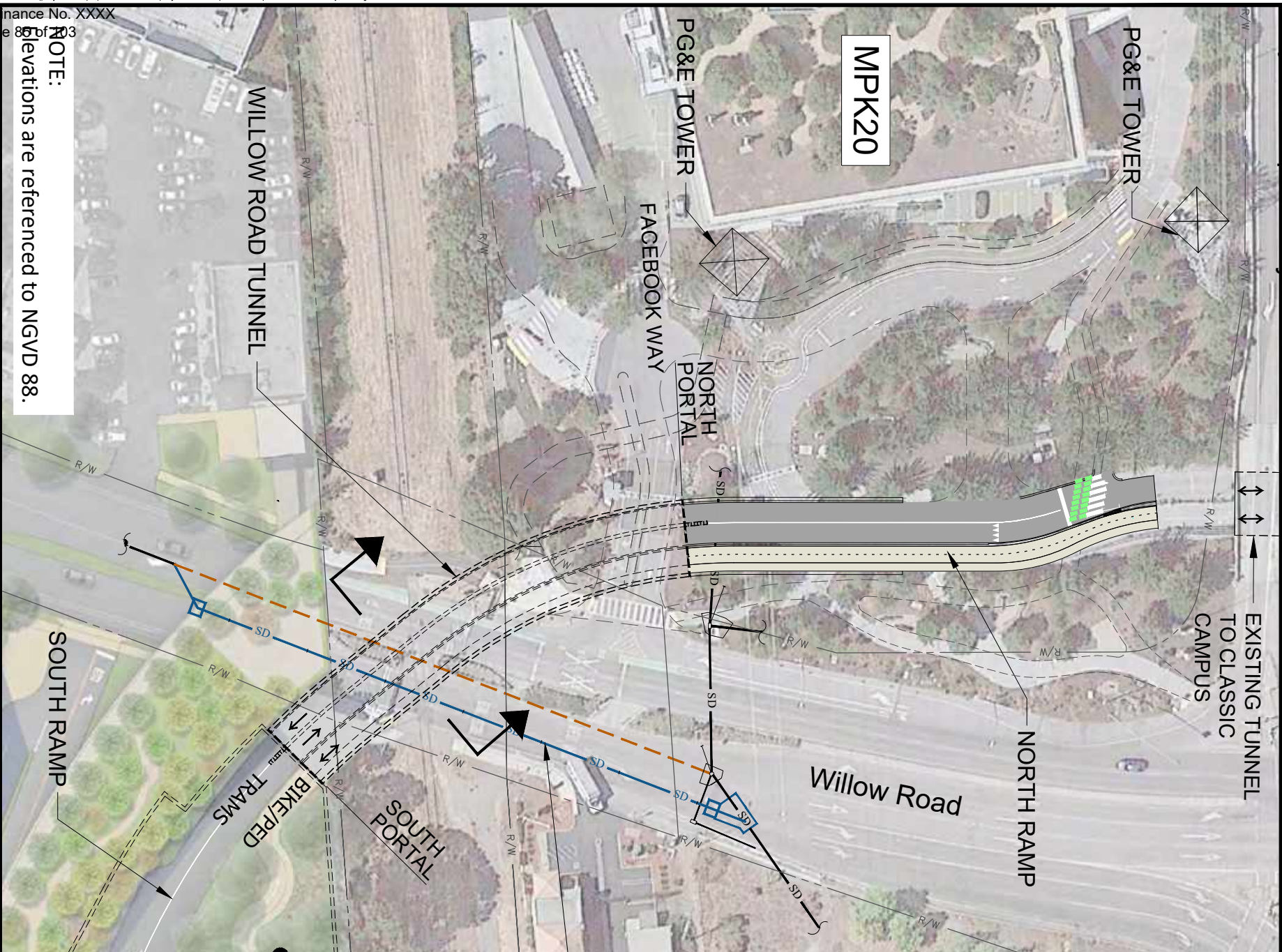
October 12, 2022

**EXHIBIT E-3**  
**CONCEPTUAL WILLOW ROAD TUNNEL**  
**(ATTACHED)**

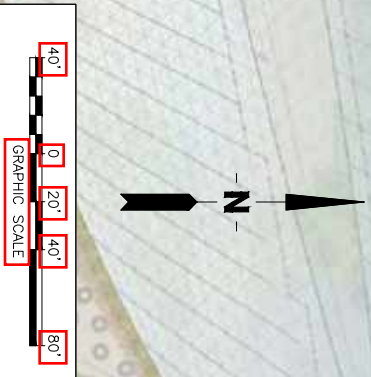


WSP USA, INC  
425 Market Street, 17th Floor  
San Francisco, CA 94105  
wsp.com

**NOTE:**  
Elevations are referenced to NGVD 88.



**GENERAL LAYOUT**  
**WILLOW ROAD TUNNEL AND NORTH & SOUTH RAMP**



META WILLOW ROAD CROSSING

TUNNEL SCHEMATIC DESIGN  
CUT AND COVER

TSD-1

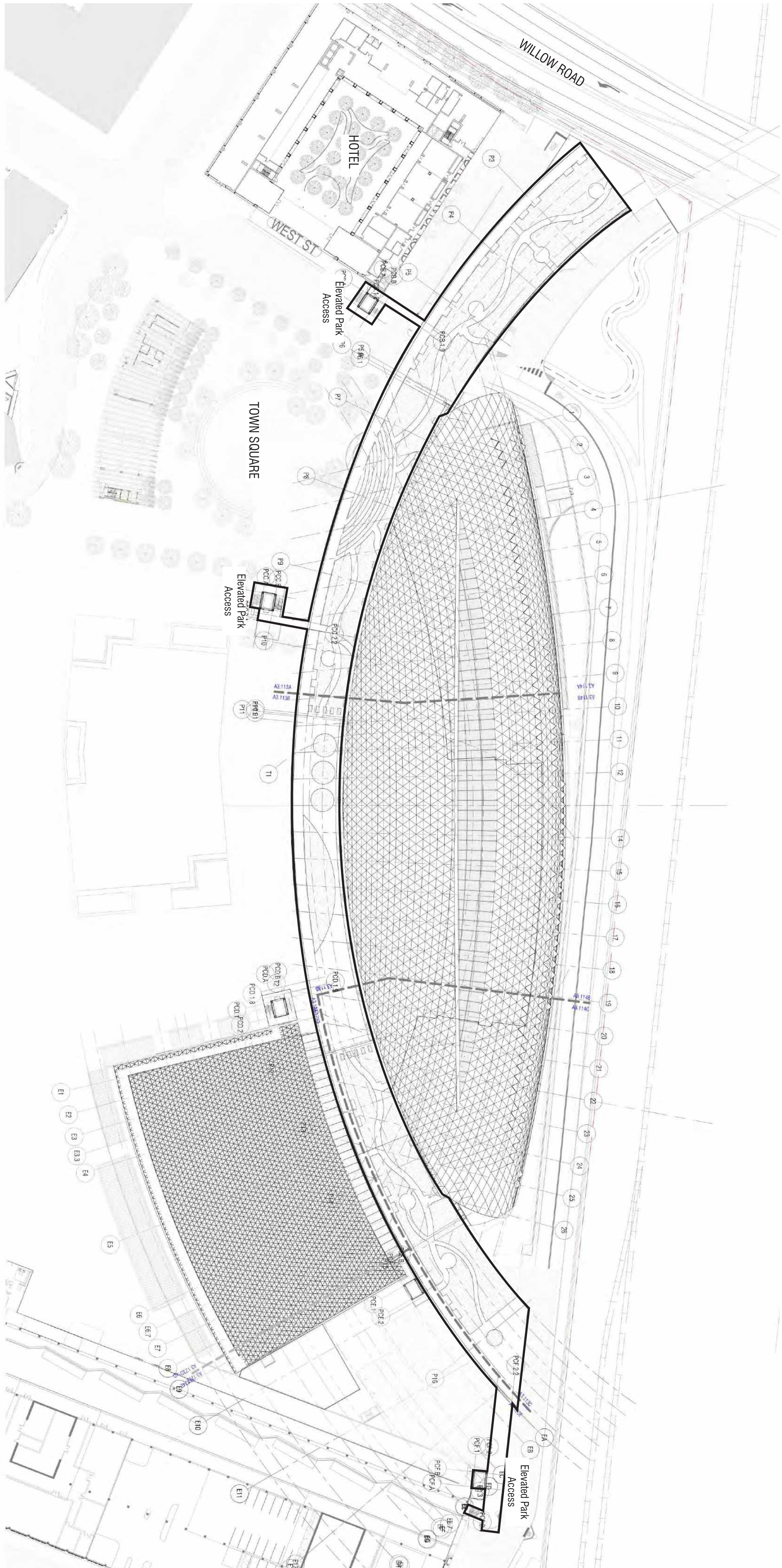
1 OF 12  
June 12/2022

**EXHIBIT E-4**

**CONCEPTUAL ALTERNATIVE DESIGN FOR ELEVATED  
PARK VERTICAL TRANSPORTATION SYSTEM**

**(ATTACHED)**





<p>DRAWING NO: <b>A2.05</b></p>	<p>DRAWING TITLE: <b>ROOF PLAN</b></p>		<p><b>WILLOW VILLAGE</b> Architectural Control Package - Parcel 1 Menlo Park, CA</p>	<p>PENINSULA INNOVATION PARTNERS</p>
	<p>NO. DATE</p> <p>REVISIONS</p>	<p>DATE</p> <p>ISSUE</p> <p>10/26/2022 ACP Submittal</p> <p>MAILESTONES</p>		

**EXHIBIT F**

**WILLOW VILLAGE COMMUNITY AMENITIES  
TIMING PROVISIONS**

<u>Building Related Amenities</u>	<u>Timing/Milestones/Valuations</u>
1. Elevated Park/MCS	1. First Vertical Improvements to be constructed
2. Grocery Store and Rent Subsidies	2. Grocery store located in RS2 (first residential building); <sup>3</sup> final COO for Grocery Store tenant improvements to be issued within 12 months after final COO for RS2, but, if a temporary COO has been issued, no later than 16 months from the issuance of a temporary COO for RS2
<u>Offsite Amenity</u>	
1. Affordable Housing Contribution	1. Total contribution of \$5 Million to City, with an initial payment of \$2 Million upon issuance of first building permit for vertical construction and three subsequent payments of \$1 Million on the anniversary of such issuance
2. Air Quality and Noise Monitoring Equipment Funding	2. Prior to issuance of the first demolition permit
3. Willow Road Feasibility Study funding or for other use as determined by City	3. \$100,000 prior to issuance of first building permit for vertical construction
4. Funding for Job Training Programs	4. Ongoing funding of \$8,304,907 total for: a) Year-up and Hub from February 2022- December 2024 b) Job Train from January 2022- December 2023
5. Teacher Housing Rent Subsidies	5. Ongoing funding of \$1,745,319 total for February 2022- March 2024

<sup>3</sup> RS2 is the residential building located on Parcel 2.

<u>Building Related Amenities</u>	Timing/Milestones/Valuations
<u>Vertical Buildout Amenities</u>	
1. Bayfront Shuttle	1. Bayfront Shuttle to be operational at the earlier of the opening of the Grocery Store or the completion of the Elevated Park
2. Bank/Credit Union	2. Complete Construction and secure final COO within 12 months after final COO for RS3, but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3
3. First Phase Dining (9,000 SF of restaurants/cafes)	3. Complete Construction and secure final COO within 9 months after final COO for RS3, but, if a temporary COO has been issued, no later than 13 months after the issuance of a temporary COO for RS3
4. Second Phase Dining (2 <sup>nd</sup> 9,000 SF of restaurants/cafes)	4. Complete Construction and secure final COO within 18 months after final COO for RS3, but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3
5. First Phase Community Entertainment (12,500 SF of Community Entertainment)	5. Complete Construction and secure final COO within 18 months after final COO for RS3, but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3
6. Second Phase Community Entertainment (2 <sup>nd</sup> 12,500 SF of Community Entertainment)	6. Complete Construction and secure final COO within 24 months after final COO for RS3, but, if a temporary COO has been issued, no later than 28 months after the issuance of a temporary COO for RS3

<u>Building Related Amenities</u>	Timing/Milestones/Valuations
7. Pharmacy Services	<p>7. Timing is dependent on location; Complete Construction and secure final COO:</p> <p>a) if within Willow Hamilton retail center, then 12 months after completion of the Elevated Park elevator tower at the Hamilton center;</p> <p>b) if within Willow Village in RS3, then within 12 months after final COO for RS3, but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3;</p> <p>c) if within Willow Village in Office Building O2 Retail (east side of Main), then within 12 months after later of (i) final COO for RS3 to correspond with retail on the west side of Main (but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3) or (ii) final COO for O2 (but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for O2); or</p> <p>d) if within Willow Village Parcel 2 in conjunction with the grocery store, then within 12 months after final COO for RS2, but, if a temporary COO has been issued, no later than 16 months from the issuance of a temporary COO for RS2</p>
<u>Publicly Accessible Open Space Amenities</u>	
1. Town Square Open Space	2. Complete Construction of Town Square improvements east of West Street, up to O4, within 12 months after completion of Town Square garage structural podium regardless of hotel status; commence construction of remainder within 6 months after final COO for hotel and complete within 18 months after final COO for hotel; maintain improvements following completion.
2. Elevated Park	5. Commence construction after issuance of first building permit for Elevated Park, and diligently prosecute to Completion of Construction
3. Excess Publicly Accessible Open Space	6. Construct concurrent with Completion of Construction of Elevated Park

**EXHIBIT G**

**FORM OF PARTIAL ASSIGNMENT AND  
ASSUMPTION AGREEMENT**

**(ATTACHED)**

Recording Requested by and  
When Recorded Return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER’S USE

**ASSIGNMENT AND ASSUMPTION AGREEMENT -  
DEVELOPMENT AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“**Agreement**”) is made and entered into as of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ company (“**Assignor**”), and \_\_\_\_\_, a \_\_\_\_\_ company (“**Assignee**”).

**RECITALS**

A. Assignor owns that real property located in the City of Menlo Park (“**City**”), County of San Mateo, State of California, and more particularly described in Exhibit A attached hereto (the “**Property**”).

B. On the date hereof, Assignee is acquiring approximately \_\_ acres of the Property as more particularly described in Exhibit B attached hereto (the “**Assigned Property**”).

C. The City and Peninsula Innovation Partners, LLC, a Delaware limited liability company, entered into that certain Development Agreement dated as of \_\_\_\_\_, 202\_ and recorded against the Property on \_\_\_\_\_, 202\_ as Instrument No. \_\_\_\_\_ in the San Mateo County Recorder’s Office (the “**Development Agreement**”).

D. Assignor desires to assign to Assignee all of Assignor’s rights, duties and obligations under the Development Agreement with respect to the Assigned Property only (excluding, however, Assignor’s obligations with respect to the construction of and/or payment for certain infrastructure and other project-wide items specified in Exhibit C, attached hereto (the “**Assignor Retained Obligations**”), for which Assignor remains responsible) (the “**Assigned Rights and Obligations**”), and Assignee desires to accept and assume Assignor’s rights and obligations under the Development Agreement with respect to the Assigned Property only (the “**Assumed Rights and Obligations**”), such assignment and assumption to be effective on the Effective Date (as defined in Section 1.3 below). The Assigned Rights and Obligations and the Assumed Rights and Obligations are referred to collectively herein as the “**Assigned Property Rights and Obligations**”.

NOW THEREFORE, in consideration of these promises, and of the agreements, covenants and conditions contained in this Agreement and other good and valuable consideration, the parties agree as follows:

## ARTICLE 1.

### **ASSIGNMENT AND ASSUMPTION OF THE ASSIGNED PROPERTY RIGHTS AND OBLIGATIONS**

1.1. Assignment. Assignor assigns to Assignee, as of the Effective Date (as defined in Section 1.3 below), all of Assignor's rights, title and interest in and to the Assigned Property Rights and Obligations.

1.2. Assumption. As of the Effective Date, Assignee accepts Assignor's assignment of the Assigned Rights and Obligations and assumes the Assumed Rights and Obligations. From and after the Effective Date, Assignee shall keep and perform all covenants, conditions and provisions of the Development Agreement relating to the Assigned Property. Effective Date. For purposes of this Agreement, the "**Effective Date**" shall be the later to occur of (1) the date on which the deed from Assignor to Assignee for the Assigned Property is recorded in the Office of the Recorder of the County of San Mateo; or (2) the date of the execution of this Agreement by all parties; provided, however, that this Agreement shall have no force and effect without the written approval of the City, as evidenced by the full execution by the City's representatives of the form entitled City of Menlo Park's Consent, attached hereto as Exhibit D. Phasing. Nothing in this Agreement shall be deemed to relieve any party of the timing obligations established in Exhibits D and F to the Development Agreement.

### **RIGHTS AND REMEDIES**

2.1. Assignor's Release; No Assignor Liability or Default for Assignee Breach. Pursuant to Section 10.2 of the Development Agreement, Assignor shall be released from the Development Agreement with respect to the Assigned Property and the Assumed Rights and Obligations as of the Effective Date. Any default or breach by Assignee under the Development Agreement following the Effective Date with respect to the Assigned Property or the Assumed Rights and Obligations ("**Assignee Breach**") shall not constitute a breach or default by Assignor under the Development Agreement and shall not result in (a) any remedies imposed against Assignor, or (b) modification or termination of the Development Agreement with respect to that portion of the Property retained by Assignor after the conveyance of the Assigned Property, if any (the "**Assignor Property**"). No Assignee Liability or Default for Assignor Breach. As of the Effective Date, any default or breach by Assignor under the Development Agreement prior to or after the Effective Date ("**Assignor Breach**"), shall not constitute a breach or default by Assignee under the Development Agreement, and shall not result in (a) any remedies imposed against Assignee, including without limitation any remedies authorized in the Development Agreement, or (b) modification or termination of the Development Agreement with respect to the Assigned Property.

### **PERIODIC REVIEW OF COMPLIANCE**

3.1. Assignor Responsibilities. Assignor shall participate in the annual review of the Development Agreement conducted pursuant to Section 65865.1 of the California Government Code with respect to the Assignor Property, and Assignee shall have no responsibility therefor. Assignee Responsibilities. Assignee shall participate in the annual review of the

Development Agreement conducted pursuant to Section 65865.1 of the California Government Code with respect to the Assigned Property, and Assignor shall have no responsibility therefor.

### **AMENDMENT OF THE DEVELOPMENT AGREEMENT**

4.1. Assignor. Assignor shall not request, process or consent to any amendment to the Development Agreement that would affect the Assigned Property or the Assigned Property Rights and Obligations without Assignee's prior written consent, which consent shall not be withheld unreasonably. The foregoing notwithstanding, Assignor may process any amendment that does not affect the Assigned Property, and, if necessary, Assignee shall consent thereto and execute all documents necessary to accomplish said amendment, provided that said amendment does not adversely affect the Assigned Property or any of Assignee's Assigned Property Rights and Obligations pursuant to the Development Agreement. Assignee. Assignee shall not request, process or consent to any amendment to the Development Agreement that would affect the Assignor Property or the Assignor's remaining rights and obligations pursuant to the Development Agreement without Assignor's prior written consent, which consent shall not be withheld unreasonably. The foregoing notwithstanding, Assignee may process any amendment that does not affect the Assignor Property or any of Assignor's remaining rights and obligations pursuant to the Development Agreement, and, if necessary, Assignor shall consent thereto and execute all documents necessary to accomplish said amendment.

### **GENERAL PROVISIONS**

5.1. Notices. All notices, invoices and other communications required or permitted under this Agreement shall be made in writing, and shall be delivered either personally (including by private courier) or by nationally recognized overnight courier service to the following addresses, or to such other addresses as the parties may designate in writing from time to time: If to Assignee:

with copies to:

If to Assignor:

with a copies to:



Notices personally delivered shall be deemed received upon delivery. Notices delivered by courier service as provided above shall be deemed received twenty-four (24) hours after the date of deposit. From and after the Effective Date and until further written notice from Assignee to the City pursuant to the terms of the Development Agreement, Assignee hereby designates as its notice address for notices sent by the City pursuant to Section 12.5 of the Development Agreement, the notice address set forth above.

5.2. Estoppel Certificates. Within ten (10) days after receipt of a written request from time to time, either party shall execute and deliver to the other, or to an auditor or prospective lender or purchaser, a written statement certifying to that party's actual knowledge: (a) that the Development Agreement is unmodified and in full force and effect (or, if there have been modifications, that the Development Agreement is in full force and effect, and stating the date and nature of such modifications); (b) that there are no current defaults under the Development Agreement by the City and either Assignor or Assignee, as the case may be (or, if defaults are asserted, so describing with reasonable specificity) and that there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default; (c) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, and stating the date and nature of such modifications); and (d) such other matters as may be reasonably requested.Attorneys' Fees. In the event of any legal or equitable proceeding in connection with this Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees, costs and disbursements paid or incurred in good faith at the arbitration, pre-trial, trial and appellate levels, and in enforcing any award or judgment granted pursuant thereto. No Waiver. No delay or omission by either party in exercising any right, remedy, election or option accruing upon the noncompliance or failure of performance by the other party under the provisions of this Agreement shall constitute an impairment or waiver of any such right, remedy, election or option. No alleged waiver shall be valid or effective unless it is set forth in a writing executed by the party against whom the waiver is claimed. A waiver by either party of any of the covenants, conditions or obligations to be performed by the other party shall not be construed as a waiver of any subsequent breach of the same or any other covenants, conditions or obligations.Amendment. This Agreement may be amended only by a written agreement signed by both Assignor and Assignee, and subject to obtaining the City's consent. Successors and Assigns. This Agreement runs with the land and shall be binding on and inure to the benefit of the parties and their respective successors and assigns. No Joint Venture. Nothing contained herein shall be construed as creating a joint venture, agency, or any other relationship between the parties hereto other than that of assignor and assignee.Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the full extent permitted by law; provided that, if the invalidation or unenforceability would deprive either Assignor or Assignee of material benefits derived from this Agreement or make performance under this Agreement unreasonably difficult, then Assignor and Assignee shall meet and confer and shall make good faith efforts to modify this Agreement in a manner that is acceptable to Assignor, Assignee and the City. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of

California. Third Party Beneficiaries. Assignor and Assignee acknowledge that the City is a third party beneficiary of the terms and conditions of this Agreement to the extent necessary for City to enforce the terms and conditions of the Development Agreement. This Agreement shall not be deemed or construed to confer any rights, title or interest, including without limitation any third party beneficiary status or right to enforce any provision of this Agreement, upon any person or entity other than Assignor, Assignee and the City. Time of the Essence. Time is of the essence in the performance by each party of its obligations under this Agreement. Authority. Each party represents that the individuals executing this Agreement on behalf of such Party have the authority to bind his or her respective party to the performance of its obligations hereunder and that all necessary board of directors', shareholders', partners' and other approvals have been obtained. Term. The term of this Agreement shall commence on the Effective Date and shall expire upon the expiration or earlier termination of the Development Agreement, subject to any obligations under the Development Agreement that expressly survive the expiration or termination of the Development Agreement. Upon the expiration or earlier termination of this Agreement, the parties shall have no further rights or obligations hereunder, except with respect to any obligation to have been performed prior to such expiration or termination or with respect to any default in the performance of the provisions of this Agreement which occurred prior to such expiration or termination or with respect to any obligations which are specifically set forth as surviving this Agreement or the Development Agreement. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document. Default. Any failure by either party to perform any material term or provision of this Agreement shall constitute a default (a) if such defaulting party does not cure such failure within thirty (30) days following written notice of default from the other party, where such failure is of a nature that can be cured within such thirty (30) day period, or (b) if such default is not of a nature that can be cured within such thirty (30) day period, if the defaulting party does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence the curing of such failure. Any notice of default given hereunder shall be given in the same manner as provided in Section 5.1 hereof and shall specify in detail the nature of the failures in performance that the noticing party claims and the manner in which such failure can be satisfactorily cured.

*[remainder of page left intentionally blank – signature pages follow]*

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement by proper persons thereunto duly authorized, to be effective as of the Effective Date.

**“Assignor”**

\_\_\_\_\_,  
a \_\_\_\_\_ company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**“Assignee”**

\_\_\_\_\_,  
a \_\_\_\_\_ company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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 \_\_\_\_\_ ) ss:

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_  
Notary Public (insert name and title of the officer),

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]

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 )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_  
Notary Public (insert name and title of the officer),

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**  
**Description of the Property**  
**(Attached)**

**EXHIBIT B**  
**Description of the Assigned Property**  
**(Attached)**

**EXHIBIT C**  
**List of Assignor Retained Obligations**  
**(Attached)**



**EXHIBIT D**

**CONSENT OF CITY OF MENLO PARK**

The City of Menlo Park hereby consents to the assignment and assumption of the Assigned Property Rights and Obligations as set forth in this Agreement and agrees to the terms and conditions set forth herein.

**CITY OF MENLO PARK,**  
a California Municipal corporation

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RESOLUTION NO. XXXX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK FOR APPROVAL OF THE BELOW MARKET RATE HOUSING AGREEMENTS BETWEEN THE CITY OF MENLO PARK AND PENINSULA INNOVATION PARTNERS, LLC FOR THE WILLOW VILLAGE MASTER PLAN PROJECT**

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

**SECTION 1.**

This resolution incorporates by reference those certain Below Market Rate (“BMR”) Housing Agreements (“BMR Agreements”) inclusive of Exhibits B1 and B2 thereto for the Willow Village Project by and between the City and Peninsula Innovation Partners, LLC (“Applicant”) attached hereto as Attachment A and incorporated herein by this reference. Specifically, Attachment A hereto contains the Project Wide Affordable Housing Agreement. Exhibit B1 contains the form non-age restricted Below Market Rate Housing Agreement and Declaration of Restrictive Covenants (“Non-Age Restricted BMR Agreement”) for all non-age restricted BMR units and Exhibit B2 contains the age restricted Below Market Rate Housing Agreement and Declaration of Restrictive Covenants (“Age Restricted BMR Agreement”). Exhibit C contains the Pro Forma Partial Release, Exhibit D documents the estimated BMR units by building, and Exhibit E contains the Pro Forma Assignment and Assumption Agreement. Collectively, the “BMR Agreements.”

**SECTION 2.**

The City, as lead agency, prepared an Environmental Impact Report (“EIR”) (SCH: 2019090428) pursuant to the California Environmental Quality Act (“CEQA”) that examined the environmental impacts of the redevelopment of the approximately 59-acre industrial site (the “main Project Site”) plus three parcels (within two sites) west of Willow Road (the “Hamilton Parcels” and collectively, with the main Project Site, the “Project Site”) with the construction of a mixed-use development consisting of up to 1.6 million square feet of office and accessory uses (a maximum of 1,250,000 square feet of offices and the balance for accessory uses), up to 1,730 multifamily dwelling units, up to 200,000 square feet of retail uses, an up to 193-room hotel, and associated open space and infrastructure (the “Project”). On \_\_, 2022, by Resolution No. \_\_\_\_\_, the City Council certified the EIR, made certain findings, and adopted a Mitigation Monitoring and Reporting Plan, which Resolution together with the EIR are incorporated herein by reference. The City Council finds that the BMR Agreements are within the scope of the EIR.

**SECTION 3.**

The Planning Commission reviewed the BMR Agreements at a duly and properly noticed public hearing held on October 24, 2022 and continued to November 3, 2022, and recommended that the City Council adopt this resolution. As part of its recommendation to the City Council, the Planning Commission determined that the BMR Agreements are consistent with the purpose of the City’s BMR Housing Program as stated in Municipal Code Section 16.96.010, which is to increase the housing supply for households that have extremely low, very low, low and moderate incomes compared to the median household income for San Mateo County. The Planning Commission also determined that the BMR Agreements are consistent with the primary objective of the BMR Housing Program as stated in Municipal Code Section 19.16.010, which is to create actual housing units. The Planning Commission further determined that Applicant’s request to deviate from requirements in BMR Guidelines Sections 5.1 and 8.1 for the Age Restricted BMR Agreement would result in BMR units of reasonably equivalent characteristics as what would be required under the BMR Guidelines and is necessary to provide affordable units for seniors.

SECTION 4.

The City Council held a duly and properly noticed public hearing on the BMR Agreements on \_\_\_, 2022. The City Council finds that the following are the relevant facts concerning the BMR Agreements:

1. The BMR Agreements will result in the construction of BMR units that meet the requirements of Municipal Code Chapter 16.96 and are commensurate with the goals of the BMR Housing Program Guidelines, resulting in the Project producing 312 affordable units, as more specifically described in the BMR Agreements.
2. To provide affordable senior housing, which is needed in San Mateo County, the Age Restricted BMR Agreement allows the senior affordable units to be in a senior housing building, as required by law, rather than distributed throughout the Project, and to have a different mix than the overall mix of units in the Project as a whole. The production of affordable senior units is a benefit to the City.
3. To provide affordable senior housing, which is needed in San Mateo County, the Age Restricted BMR Agreement will require the affordable units to be rented to persons over a certain age, which preference is not expressly contemplated in the City's BMR rental preference criteria (set forth in the City of Menlo Park Below Market Rate Guidelines). The production of affordable senior units is a benefit to the City.
4. The waiver of the location requirements of Section 5.1 the City of Menlo Park Below Market Rate Guidelines with respect to the senior housing building would carry out the purposes of the BMR Housing Program and the Housing Element.
5. The rental of units in the senior building to persons over a certain age is a reasonably equivalent alternative to the preference criteria of the City of Menlo Park Below Market Rate Guidelines, is commensurate with the applicable requirements in the Guidelines and is consistent with the goals of the Guidelines.

SECTION 6.

Based upon the above findings of fact, the BMR Agreements for the Project are hereby approved. The City Council hereby authorizes the City Manager to execute the BMR Agreements in substantial conformance the BMR Agreements attached hereto and all documents required to implement the BMR Agreements on behalf of the City.

SECTION 7.

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

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I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifteenth day of November, 2022, 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 \_\_\_ day of November, 2022.

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Judi A. Herren, City Clerk

Attachments:

- A. Project wide affordable housing agreement

Exhibits:

- A. Legal description Willow Village site Menlo Park, California
- B1. Below market rate housing agreement and declaration of restrictive covenants (Willow Village Masterplan 1350 Willow Road)
- B2. Below market rate housing agreement and declaration of restrictive covenants (Willow Village Masterplan 1350 Willow Road)
- C. Partial release of project wide affordable housing agreement
- D. Estimated below market rate units by building
- E. assignment and assumption agreement – project wide affordable housing agreement

This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

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

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**PROJECT WIDE AFFORDABLE HOUSING AGREEMENT**

**THIS PROJECT WIDE AFFORDABLE HOUSING AGREEMENT** (“Agreement”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between Peninsula Innovation Partners, LLC, a Delaware limited liability company (“Project Wide Developer”) and the City of Menlo Park, a California municipal corporation (“City”) (each individually a “party” and together the “parties”), with reference to the following facts.

**RECITALS**

A. Project Wide Developer owns and is developing the real property commonly known as “Willow Village Master Plan Project” in the City of Menlo Park, County of San Mateo, (APNs 055-440-350, 055-440-210, 055-440-300, 055-440-130, 055-440-230, 055-440-110, 055-440-340, 055-440-330, 055-440-260, 055-440-320, 055-440-310, 055-440-040, 055-440-020, 055-440-010, 055-440-030, 055-440-050, 055-440-090, 055-440-190), more particularly described on Exhibit “A” attached hereto (“Property”). Development of the Property is governed by, among other items, Menlo Park Municipal Code Chapter 16.96 (“BMR Ordinance”) and the Below Market Rate Housing Program Guidelines (“Guidelines”).

B. Project Wide Developer applied to demolish an existing office, research and development and industrial site and to comprehensively redevelop the main project site with up to 1.6 million square feet of office space (inclusive of meeting and collaboration space and accessory uses), up to 200,000 square feet of retail uses, a 193 room hotel (approximately 172,000 square feet in size), and up to 1,730 residential dwelling units, as well as publicly accessible open space and landscaping (the “Project”).

C. The BMR Ordinance and Guidelines require Project Wide Developer to provide fifteen percent (15%) of the total number of units in the Project as affordable to below market rate households. To satisfy the requirements of the BMR Ordinance and Guidelines, Project Wide Developer has proposed to provide 312 on-site Affordable Housing Units (as hereinafter defined) to below market rate households, inclusive of 119 age-restricted senior Affordable Housing Units and 193 non-age restricted Affordable Housing Units.

D. On August 3, 2022, after a duly noticed public hearing, the Housing Commission recommended approval of the Affordable Housing Units (as hereinafter defined) with eighty-two (82) extremely-low-income age-restricted senior units, thirty-seven (37) very-low-income age-restricted senior units, seventy-six (76) low-income non-age restricted units and one hundred and seventeen (117) moderate-income non-age restricted units.

E. On \_\_\_\_\_, 2022, after a duly noticed public hearing, and on the recommendation of the Housing Commission and the Planning Commission, the City Council certified the environmental impact report and granted General Plan Circulation Element and Zoning Map amendments, rezoning, conditional development permit, development agreement (the “Development Agreement”), vesting tentative map, and below market rate (BMR) housing agreement for the Project (collectively, “Project Approvals”). The Project Approvals require the Project Wide Developer to provide Affordable Housing Units as described herein. In accordance with the BMR Ordinance and Guidelines, Project Wide Developer is required to execute and record an approved BMR housing agreement as a condition precedent to the issuance of a building permit for the Project. This Agreement is intended to satisfy that requirement.

F. The Project is anticipated to be completed in two phases over time, with a cumulative total of six parcels containing all of the Affordable Housing Units, with parcels known as 2, 3, 6, and 7 in the first phase and parcels known as 4 and 5 in the second phase.

G. This Agreement will serve to memorialize the following: Project Wide Developer’s agreement to provide the Affordable Housing Units within the Project needed to satisfy BMR Ordinance requirements; the security for the performance of this Agreement; the time frame for the construction of the Affordable Housing Units; the restriction of the Affordable Housing Units by the recordation of the Declarations (as defined below), in favor of the City and in a form agreed upon by Project Wide Developer and the City, as set forth in Exhibit “B-1” and “B-2” attached hereto, assuring affordability for the required term; and other related issues to the provision of Affordable Housing Units on the Property.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, Project Wide Developer hereby declares and the City hereby agrees as follows:

1. Definitions. The following terms shall have the meanings ascribed to them in this Section 1:

(a) Affordable Housing Units. “Affordable Housing Units” means the rental residential units that Project Wide Developer is required to provide on the Property, which are restricted as provided in this Agreement to assure affordability for households earning either 30% Area Median Income (as defined below), 50% Area Median Income (as defined below), 80% Area Median Income (as defined below), or 120% Area Median Income (as defined below).

(b) Agreement. “Agreement” means this Project Wide Affordable Housing Agreement.

(c) Area Median Income. “Area Median Income” or “AMI” means the area median income for San Mateo County, as published and periodically updated by the U.S. Department of Housing and Urban Development (“HUD”), adjusted for assumed household size.

(d) BMR Ordinance. “BMR Ordinance” has that meaning ascribed to it in Recital A, above.

(e) Building Permit(s). “Building Permit(s)” means a permit for the actual structure(s) of a Development Parcel, as that term is defined herein, in which residential rental units shall be developed and/or permits for any site preparation construction work, which may include but not be limited to make-ready utility installation; excavation, shoring and grading; and/or foundation installation.

(f) City. “City” means the City of Menlo Park, a municipal corporation.

(g) Declaration. “Declaration” means the Below Market Rate Housing Agreement and Declaration of Restrictive Covenants recorded in Senior Position against a parcel(s) and/or condominium(s) sufficient to accommodate construction of the Affordable Housing Units applicable to a Development Parcel or multiple Development Parcels. The Declaration shall be in substantially the same form as the Pro Forma Declaration attached hereto as Exhibit “B-1” and “B-2”, with the form attached as Exhibit “B-1” used for the non-age restricted buildings, and the form attached as Exhibit “B-2” used for the age restricted building. The term Declaration includes the First Development Parcel Declaration as defined in Section 5(a) below. Each Declaration shall be made by the owner of the affordable housing portion of such corresponding Development Parcel.

(h) Development Parcel. “Development Parcel” means those parcels within the Property upon which any group of Market Rate Units and Affordable Housing Units, and/or improvements for which Building Permits are being concurrently requested by the Project Wide Developer (or any successor owner of any portion of the Project ) are located, and shall include the First Development Parcel and any Subsequent Development Parcel, as such terms are defined herein.

(i) First Development Parcel. “First Development Parcel” shall mean and refer to: the first Development Parcel to be developed.

(j) Guidelines. “Guidelines” has that meaning ascribed to it in Recital A, above.

(k) Market Rate Units. “Market Rate Units” means the rental residential units that Project Wide Developer will develop on the Property that are not constricted by affordability rules under a Declaration and are permitted under the Project Approvals.

(l) Project Wide Developer. “Project Wide Developer” means Peninsula Innovation Partners, LLC, a Delaware limited liability company.

(m) Property. “Property” has that meaning ascribed to it in Recital A, above.

(n) Project. “Project” has that meaning ascribed to it in Recital B, above.

(o) Project Approvals. “Project Approvals” has that meaning ascribed to it in Recital E, above.

(p) Required Affordable Units. “Required Affordable Units” means the number of Affordable Housing Units which, as of the date of issuance of the first Building Permit for any particular Development Parcel, Project Wide Developer is required to construct pursuant to Section 2(c) of this Agreement (less any such Affordable Housing Units which have already been commenced by Project Wide Developer).

(q) Senior Position. “Senior Position” means that the document is recorded against the Property such that it is senior in recording priority to all mortgages and deeds of trust.

(r) Subsequent Development Parcel. “Subsequent Development Parcel” (it being acknowledged that there will be approximately five Subsequent Development Parcels shall mean and refer to: each of the five remaining Development Parcels to be developed as part of the Project.

(s) Targeted Household. “Targeted Household” means those households whose aggregate gross annual income does not exceed one hundred twenty percent (120%) of Area Median Income, as adjusted for family size.

(t) Other Terms. Other terms referenced in this Agreement in “quotations” (including those set forth in the Recitals) have the meanings ascribed to them in this Agreement.

2. Design, Construction and Occupancy Schedule for Affordable Housing Units. Project Wide Developer shall have no obligation to commence construction of the Affordable Housing Units except in accordance with the following schedule.

(a) First Development Parcel. Upon the start of the First Development Parcel, Project Wide Developer and/or a successor owner of any portion of the Project shall obtain Building Permits for all of the Required Affordable Units for the First Development Parcel and shall diligently commence and pursue construction of such Affordable Housing Units.

(b) Subsequent Development Parcel(s). Upon the commencement of any Subsequent Development Parcel, Project Wide Developer and/or a successor owner of such Subsequent Development Parcel shall obtain Building Permits for all of the Required Affordable Units for such Subsequent Development Parcel and shall diligently commence and pursue construction of such Affordable Housing Units. It is acknowledged that there may be more than one Subsequent Development Parcel.

(c) Construction of Affordable Housing Units. With respect to each Development Parcel, Project Wide Developer shall obtain Building Permits (and thereafter construct and complete pursuant to Sections 2(a) and 2(b), above) for the Required Affordable Units in relation to such Development Parcel, all as provided in Exhibit “D” attached hereto, as the same may be



amended or updated with the mutual approval of the City and the Project Wide Developer, provided, however, that a reallocation of Affordable Housing Units of Affordable Housing Units from one Development Parcel to another Development Parcel is permitted without the approval of the City so long as the reallocation does not decrease the Affordable Housing Units in any given Development Parcel as set forth in Exhibit “D” by more than 5%; and provided further that a reallocation that decreases the number of Affordable Housing Units of any given Development Parcel by more than 5% but less than 10% shall require approval of the City pursuant to an Operating Memorandum as described in Section 8.7 of the Development Agreement. In the event of any reallocation of Affordable Housing Units as described in this Section and pursuant to Section 5.1 of the Guidelines (as that section may be amended), in the Development Parcel accommodating the reallocated Affordable Housing Units, the Affordable Housing Units shall generally be of the same proportional size (number of bedrooms and square footage) as the market-rate units in such Development Parcel, should be distributed through such development, and should be indistinguishable from the exterior. City shall reasonably cooperate in the amendment of Exhibit “D” if a reallocation of more than 10% of Affordable Units among the Parcels is requested by Project Wide Developer provided there is no material impact on the deliver of Affordable Units to the Project.

3. Building Permits. Issuance of Building Permits for any Development Parcel, and a corresponding release of this Agreement from the property comprising such Development Parcel, shall not be allowed until Project Wide Developer causes a parcel(s) and/or condominium(s) sufficient to accommodate construction of the Affordable Housing Units applicable to such Development Parcel to be encumbered by a Declaration in Senior Position.

4. Effect of Sale of Parcel by Project Wide Developer. If a parcel(s) or condominium(s) within the Project are sold or otherwise transferred by Project Wide Developer, every such parcel or condominium sold or transferred shall (at the time the owner thereof obtains Building Permits for residential rental units on such parcel(s) or condominium(s)) be included, for purposes of this Agreement, in the phased delivery of Affordable Housing Units and Market Rate Units as provided in Exhibit “D” attached hereto, as the same may be amended or updated with the mutual approval of the City and the Project Wide Developer pursuant to Section 2 of this Agreement, and the other requirements of this Agreement. Any such sale or transfer by the Project Wide Developer shall also be subject to the provisions of Section 11 of this Agreement.

5. Declarations of Covenants, Conditions and Restrictions. The Project Wide Developer, and/or a successor owner of any applicable portion of the Project, shall timely execute and record Declarations as and when required by this Agreement.

(a) First Development Parcel Declaration. Prior to the first date upon which Building Permits for Market Rate Units in the First Development Parcel are first issued, Project Wide Developer shall execute, acknowledge and deliver a “First Development Parcel Declaration” to the title company, who will cause the First Development Parcel Declaration to be recorded in Senior Priority against the parcel(s) and/or condominium(s) described in such First Development Parcel Declaration. The First Development Parcel Declaration shall ensure that the required number of Affordable Housing Units applicable to the First Development Parcel (as provided on Exhibit “D” attached hereto, as the same may be amended or updated with the mutual approval of

the City and the Project Wide Developer) will be owned, operated, leased, rented, maintained, and occupied as Affordable Housing Units for the term of the First Development Parcel Declaration. At the time the First Development Parcel Declaration is executed, the City shall execute a release of this Agreement for all of the parcel(s) and/or condominium(s) comprising the First Development Parcel. Such release shall be in the form attached as Exhibit “C” hereto.

(b) Subsequent Development Parcel Declaration. Prior to the issuance of Building Permits for any Market Rate Units in any Subsequent Development Parcel, Project Wide Developer shall, to the extent a previously recorded Declaration does not already address the Affordable Housing Units applicable to such Subsequent Development Parcel, cause a parcel(s) or condominium(s) of real property sufficient to accommodate construction of the Affordable Housing Units applicable to such Subsequent Development Parcel to be encumbered by a Declaration in Senior Position. At the time a Declaration for such Subsequent Development Parcel is executed, the City shall execute a release of this Agreement for all of the parcel(s) and/or condominium(s) comprising such Subsequent Development Parcel. Such release shall be in the form attached as Exhibit “C” hereto.

(c) Restrictions. Each Declaration shall be in substantially the same form as the declarations set forth in Exhibit “B-1” for the non-age restricted buildings and Exhibit “B-2” for the age restricted building and shall provide for the bedroom mix of the Affordable Housing Units on each Development Parcel. Each Declaration shall also restrict the occupancy, and rents paid by the Targeted Households in accordance with the provisions of the Guidelines or as otherwise allowed by law.

6. Recordation. This Agreement shall be recorded against the Property in the Office of the County Recorder for the County of San Mateo in Senior Position; but subject to the release provisions of Sections 5(a) and 5(b) above and Section 16 below.

7. Indemnity. Project Wide Developer agrees to indemnify and hold harmless the City, and any and all of its members, officers, agents, servants, or employees (the “Indemnitees”) from and against all claims, liens, claims of lien, losses, damages, costs, and expenses, whether direct or indirect, arising in any way from the default by Project Wide Developer in the performance of its obligations under this Agreement; provided, however, that Project Wide Developer shall not be required to indemnify, defend or hold harmless any of the Indemnitees from claims, losses, damages, costs and expenses related to the negligence or willful misconduct of any of the Indemnitees.

8. Marketing Requirements. Project Wide Developer shall follow any applicable marketing requirements and procedures of the Guidelines.

9. Breach/Default. If Project Wide Developer is in material breach of the terms set forth in this Agreement and Project Wide Developer does not take action to correct such violation within 60 days of written notice of such failure from the City (or 180 days in the event such violation cannot be cured within 60 days and Project Wide Developer is diligently pursuing such cure), the City shall be entitled to all of its rights and remedies set forth herein and at law and in equity.

10. Covenants to Run With the Land. Project Wide Developer agrees that all of its obligations hereunder shall constitute covenants, which shall run with the land and shall be binding upon the Property and upon every person having any interest therein at any time and from time to time during the term of this Agreement. Further, Project Wide Developer agrees that, if a court of competent jurisdiction determines that the obligations set forth herein do not qualify as covenants running with the land, they shall be enforced as equitable servitudes.

11. Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, and their respective heirs, successors and assigns. Project Wide Developer shall not sell, transfer or otherwise dispose of the Property or any legal parcel or condominium comprising a portion thereof, unless: (i) the proposed transferee enters into a Declaration as described in Section 5 hereof or (ii) the proposed transferee shall have executed and delivered to the City an express written assumption of all of Project Wide Developer's obligations under this Agreement as they relate to such acquired real property, on a form substantially similar to the attached Exhibit "E". Upon any sale of any portion of the Property permitted by the preceding sentence, with respect solely to the transferred property, Project Wide Developer and any Property not so conveyed will be released from further obligations relating to such transferred property (and under any Declaration or other documentation related hereto). The foregoing restrictions on sale and transfer shall not apply to the granting of easements, rights-of-way, and similar conveyances in connection with the development of the Project which are not in the nature of a sale of one or more legal parcels or condominiums. Upon assignment and assumption by a successor entity, as approved by the City, Project Wide Developer shall be released from all further responsibility under the terms of this Agreement as to the subject parcel(s) and/or condominium(s) so conveyed. The successors, heirs and assigns of the Project Wide Developer shall enter into and execute such other and further documents as the City shall reasonably require, as from time to time, may be needed to effectuate the affordable housing requirements of the Guidelines or as otherwise required or allowed by law.

12. Standing, Equitable Remedies; Cumulative Remedies. Project Wide Developer expressly agrees and declares that the City and/or its successors shall be the proper parties and shall have standing to initiate and pursue any and all actions or proceedings, at law or in equity, to enforce the provisions hereof and/or to recover damages for any default hereunder, notwithstanding the fact that such damages or the detriment arising from such a default may have actually been suffered by some other person or by the public at large. Nothing in this subparagraph, and no recovery to the City, shall restrict or limit the rights or remedies of persons or entities other than the City, against Project Wide Developer in connection with the same or related acts by Project Wide Developer. Neither Project Wide Developer, nor any tenant or occupant of the Property, shall have any claim or right of action against the City based on any alleged failure of the City to perform or enforce the terms of this Agreement, except that Project Wide Developer may reasonably rely upon City's tenant eligibility determination, and provided further that Project Wide Developer may pursue a claim of specific performance against the City in the event the City improperly withholds a release of a Development Parcel from this Agreement after a Declaration has been recorded against such Development Parcel according to the terms of this Agreement.

13. Certificate of Compliance. The City shall provide Project Wide Developer upon request with recordable evidence that a particular parcel(s) of real property or condominium(s) within the

Project has satisfied all applicable requirements under this Agreement, or has been developed in a manner which makes this Agreement inapplicable thereto, and which instrument shall have the effect of making this Agreement no longer a lien or encumbrance upon title to such parcel(s) or condominium(s).

14. Term. This Agreement and the covenants and restrictions contained herein shall, subject to the provisions above relating to release hereof, remain in effect as a lien and charge against each legal parcel or condominium within the Property until the date of recordation of the final Declaration for the final Subsequent Development Parcel for the Property, at which time this Agreement shall be terminated.

15. Severability. In the event that any provision or covenant of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then it shall be severed from the remaining portions of this Agreement which shall remain in full force and effect.

16. Release of Non-Residential Parcels. This Agreement is entered into to provide for the development of Affordable Housing Units on the six (6) Development Parcels containing Affordable Housing Units. Those portions of the Project not containing the Development Parcels shall be released from this Agreement upon the earlier of (i) the recording of a parcel or final map for said portions of the Project not containing the six (6) Development Parcels, which map substantially conforms to the Willow Village Master Plan or (ii) the issuance of a demolition or building permit for the development of any portion of the Project not containing the six (6) Development Parcels. Such release shall be in the form attached as Exhibit "C" hereto.

17. General Provisions.

(a) Integration. The undersigned, and each of them, acknowledge and represent that no promise or inducement not expressed in this Agreement has been made in connection with this Agreement. This Agreement contains the entire agreement and understanding between the parties as to its subject matter.

(b) Waiver and Amendment. No provision of this Agreement, or breach of any provision, can be waived except in writing. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach of the same or other provision. Except as otherwise provided herein, this Agreement may be amended, modified or rescinded only in writing signed by Project Wide Developer and the City.

(c) Time of Essence. Time is expressly declared to be of the essence in this Agreement, and of every provision in which time is an element.

(d) Captions. Paragraph titles and captions contained in this Agreement are inserted as a matter of convenience and for reference, and are not a substantive part of this Agreement.

(e) Further Assurances. The parties each agree to sign any additional documents, which are reasonably necessary to carry out this Agreement or to accomplish its intent.



50 California Street, Suite 3200  
San Francisco, CA 94111  
Attn: Ofer Elitzur, Esq.  
E-mail: oelitzur@coxcastle.com

(l) Mortgagees Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any permitted deed of trust recorded on the Property provided, however, that any subsequent owner of the Property shall be bound by the covenants, conditions, restrictions, limitations and provisions of this Agreement, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

(m) Actions of Parties to be Reasonable. Each party to this Agreement agrees that it shall act reasonably in granting or withholding any consent or approval required by this Agreement and/or any other legal document executed in connection with this Agreement or in connection with the development of the Project.

(n) Estoppel Certificate. Upon the request of the Project Wide Developer, the City shall, through the City Manager, provide Project Wide Developer and any potential lender or purchaser, with an estoppel certificate by which the City confirms that neither Project Wide Developer nor the City is in default hereof (or setting forth such defaults) and confirming such other factual matters as Project Wide Developer or such potential lender or purchaser may reasonably request and the addressees of such estoppel certificates shall be entitled to rely upon the information contained therein.

[This Space Intentionally Left Blank]

IN WITNESS WHEREOF, the Project Wide Developer has caused this Agreement to be executed as of the date first written above.

**PROJECT WIDE DEVELOPER:**

PENINSULA INNOVATION PARTNERS, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**CITY:**

CITY OF MENLO PARK, a California municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Manager

**ATTEST:**

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

ACKNOWLEDGMENT

State of California            )  
  )  
County of Mateo                )

On \_\_\_\_\_, 20\_\_\_\_ before me, \_\_\_\_\_,  
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

State of California            )  
  )  
County of San Mateo         )

On \_\_\_\_\_, 20\_\_\_\_ before me, \_\_\_\_\_,  
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"**  
**Property Description**

**Exhibit “B-1”**

**Pro Forma Affordable Regulatory Agreement and  
Declaration of Restrictive Covenants**

**Exhibit “B-2”**

**Pro Forma Affordable Regulatory Agreement and  
Declaration of Restrictive Covenants (Age-Restricted)**

**Exhibit “C”**  
**Pro Forma Partial Release**

**Exhibit “D”**

**Phase 1**

	<b>Market Rate Units</b>	<b>Affordable Units</b>
<b>Parcel 2</b>	<b>293</b>	<b>34</b>
<b>Parcel 3</b>	<b>376</b>	<b>43</b>
<b>Parcel 6</b>	<b>158</b>	<b>20</b>
<b>Parcel 7</b>	<b>1 (manager’s unit)</b>	<b>119</b>

**Phase 2**

	<b>Market Rate Units</b>	<b>Affordable Units</b>
<b>Parcel 4</b>	<b>378</b>	<b>62</b>
<b>Parcel 5</b>	<b>212</b>	<b>34</b>

**Exhibit “E”**  
**Pro Forma Assignment and Assumption**

**EXHIBIT A**

**LEGAL DESCRIPTION  
WILLOW VILLAGE SITE  
MENLO PARK, CALIFORNIA**

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

**BEGINNING** at the southwesterly corner of Parcel S; as shown on that certain map entitled "Menlo Industrial Center, City of Menlo Park, San Mateo County, California" filed in the office of the County Recorder of San Mateo County, State of California, on October 1, 1979, in Volume 99 of Maps at Pages 81-83, thence,

North 22°05'00" East, 120.17 feet; thence,

North 24°45'44" East, 143.14 feet; thence,

Along a tangent curve to the left, having a radius of 1,536.52 feet, length of 74.34 feet, and a delta angle of 02°46'19"; thence,

North 22°05'00" East, 864.41 feet; thence,

Along a tangent curve to the left, having a radius of 1,032.50 feet, length of 55.72 feet, and a delta angle of 03°05'31"; thence,

North 25°35'47" East, 2.12 feet; thence,

North 19°19'09" East, 144.98 feet; thence,

North 22°05'00" East, 71.06 feet; thence,

North 84°59'41" East, 1,324.41 feet; thence,

Along a tangent curve to the left, having a radius of 1,1509.17 feet, length of 251.79 feet, and a delta angle of 01°15'13"; thence,



South 10°08'21" West, 1,612.25 feet; thence,

South 88°08'54" West, 1,612.25 feet; thence,

North 79°51'49" West, 668.96 feet to the **POINT OF BEGINNING**.

Containing 2,577,434.20 square feet (59.17 acres), more or less.

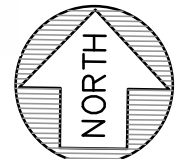


September 30, 2022

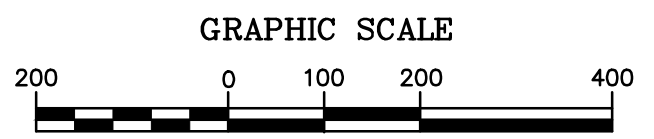


Line Table		
Line #	Length	Direction
L1	120.17	N22° 05' 00"E
L2	143.14	N24° 45' 44"E
L3	864.41	N22° 05' 00"E
L4	144.98	N19° 19' 09"E
L5	71.06	N22° 05' 00"E
L6	1324.41	N84° 59' 41"E
L7	1612.25	S10° 08' 21"W
L8	1182.95	S88° 08' 54"W
L9	668.96	N79° 51' 49"W
L10	2.12	N25° 35' 47"E
L11	1324.41	N84° 59' 45"E
L12	1612.25	S10° 07' 20"W
L13	1182.46	S88° 07' 50"W
L14	669.55	N79° 55' 00"W

Curve Table			
Curve #	Length	Radius	Delta
C1	251.79	11509.17	1°15'13"
C2	74.34	1536.52	2°46'19"
C3	55.72	1032.50	3°05'31"



NOTES  
(L11) RECORD DATA FROM  
99 M 82-83



( IN FEET )  
1 inch = 200 ft.

DATE:	9/30/2022
SCALE:	AS SHOWN
DESIGNED:	
DRAWN:	RJL
CHECKED:	DCF
PROJ. ENGR:	

**FREYER & LAURETA, INC.**  
CIVIL ENGINEERS • SURVEYORS • CONSTRUCTION MANAGERS  
150 Executive Blvd • Suite 4200 • San Francisco, CA 94134  
(415)534-7070 • www.freyerlaureta.com

DESCRIPTION	DATE

**EXHIBIT B**  
**PROJECT SITE PLAT**  
**WILLOW VILLAGE**  
**MENLO PARK, CALIFORNIA**

SHEET	1
OF 1 SHEETS	
JOB NO.	300001

This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

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

---

**BELOW MARKET RATE HOUSING AGREEMENT  
AND DECLARATION OF RESTRICTIVE COVENANTS  
(Willow Village Masterplan 1350 Willow Road)**

**THIS BELOW MARKET RATE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (“Agreement”)** is entered into as of \_\_\_\_\_, 2022, by and between the City of Menlo Park, a California municipal corporation (“**City**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Owner**”). City and Owner may be referred to individually as a “**Party**” or collectively as the “**Parties**” in this Agreement.

**RECITALS**

A. Owner is the owner of that certain real property located at \_\_\_\_\_ (APN \_\_\_\_\_), in the City of Menlo Park, California (“**Property**”), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

B. [Peninsula Innovation Partners, LLC] (“**Project Wide Developer**”) applied to demolish an existing office, research and development and industrial site (the “**Main Willow Village Project Site**”) and to comprehensively redevelop the project wide site with up to 1.6 million square feet of office space (inclusive of meeting and collaboration space and accessory uses), up to 200,000 square feet of retail uses, a 193 room hotel (approximately 172,000 square feet in size), and up to 1,730 residential dwelling units, as well as publicly accessible open space and landscaping as part of a master planned mixed-use project (the “**Willow Village Project**”), [which is subject to that certain Project Wide Affordable Housing Agreement (“**Project Wide Affordable Housing Agreement**”) between Project Wide Developer and City, dated as of \_\_\_\_\_], 2022. The Property is part of Phase [\_\_\_\_] as described in the Project Wide Affordable Housing Agreement.]

C. [The Project Wide Developer has transferred the Property to the Owner, and the City has released the Property from the Project Wide Affordable Housing Agreement pursuant to the terms of the Project Wide Affordable Housing Agreement, in conjunction with the recording of this Agreement.]

D. The Willow Village Project re-subdivided the Main Willow Village Project Site into \_\_\_\_ new legal parcels shown on the proposed Vesting Tentative Map in Exhibit \_\_\_\_ of the DA. Amongst those new parcels is parcel \_\_\_\_\_, which is approved for residential building [\_\_\_\_] with a new multifamily residential project with [\_\_\_\_] rental units, as well as associated open space, circulation, parking and infrastructure improvements. (“**Project**”), of which [\_\_\_\_] (\_\_\_\_) rental units (“**BMR Units**”) shall be affordable to below market rate households as follows: [\_\_\_\_] (\_\_\_\_) low income units (“**Low Income Units**”) and [\_\_\_\_] (\_\_\_\_) moderate income units (“**Moderate Income Units**”). The allocation of BMR Units across the unit-sizes in the Project is more particularly described on Exhibit B, attached hereto and incorporated herein by this reference.

E. On \_\_\_\_\_, 2022, after a duly noticed public hearing, and on the recommendation of the Housing Commission, the Plannin Commission, and the City Council certified the environmental impact report and granted General Plan Circulation Element and Zoning Map amendments, rezoning, conditional development permit, development agreement, vesting tentative map, and below market rate (BMR) housing agreement for the Project (“**Project Approvals**”). The Project Approvals require the Project Wide Developer to provide BMR Units in accordance the Project Wide Affordable Housing Agreement. In accordance with the Menlo Park Municipal Code Chapter 16.96, the Below Market Rate Housing Program (“**BMR Ordinance**”), and the Below Market Rate Housing Program Guidelines (“**Guidelines**”), Owner is required to execute and record an approved BMR Housing Agreement as a condition precedent to the issuance of a building permit for the Project. This Agreement is intended to satisfy that requirement.

F. As required by the Project Wide Affordable Housing Agreement, and pursuant to this Agreement, Owner has agreed to observe all the terms and conditions set forth below for purposes of development and operation of the BMR Units. This Agreement will ensure the Project’s continuing affordability.

**NOW, THEREFORE**, the Parties hereto agree as follows. The recitals are incorporated into this Agreement by this reference.

**1. CONSTRUCTION OF THE IMPROVEMENTS.**

**1.1 Construction of the Project.** Owner agrees to construct the Project in accordance with the Menlo Park Municipal Code and all other applicable state and local building codes, development standards, ordinances and zoning ordinances.

**1.2 City and Other Governmental Permits.** Before commencement of the Project, Owner shall secure or cause its contractor to secure any and all permits which may be required by the City or any other governmental agency affected by such construction, including without limitation building permits. Owner shall pay all necessary fees and timely submit to the City final drawings with final corrections to obtain such permits; City staff will, without incurring liability or expense therefore, process applications in the ordinary course of business for the issuance of building permits and certificates of occupancy for construction that meets the requirements of the Menlo Park Municipal Code, and all other applicable laws and regulations.

**1.3 Compliance with Laws.** Owner shall carry out the design, construction and operation of the Project in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Menlo Park Municipal Code, and **all** applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

## **2. OPERATION OF THE BMR UNITS**

**2.1 Affordability Period.** This Agreement shall remain in effect and the Property shall be subject to the requirements of this Agreement from the date that the City issues a final certificate occupancy for the Project (the “**Effective Date**”) until the 55th anniversary of such Effective Date. The duration of this requirement shall be known as the “**Affordability Period.**”

**2.2 Maintenance.** Owner shall comply with every condition of the Project Approvals applicable to the Project and shall, at all times, maintain the Project and the Property in good repair and working order, reasonable wear and tear excepted, and in a safe and sanitary condition, and from time to time shall make all necessary and proper repairs, renewals, and replacements to keep the Project and the Property in a good, clean, safe, and sanitary condition.

**2.3 Monitoring and Recordkeeping.** Throughout the Affordability Period, Owner shall comply with all applicable recordkeeping and monitoring requirements set forth in the Guidelines. City shall have the right to inspect the books and records of Owner and its rental agent or bookkeeper upon reasonable notice during normal business hours. Representatives of the City shall be entitled to enter the Property, upon at least 48-hour prior written notice, which can be provided via email, to monitor compliance with this Agreement, to inspect the records of the Project with respect to the BMR Units, and to conduct, or cause to be conducted, an independent audit or inspection of such records. Owner agrees to cooperate with the City in making the Property available for such inspection or audit. Owner agrees to maintain records in businesslike manner, and to maintain such records for Affordability Period.

**2.4 Non-Discrimination Covenants.** Owner covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

a. In deeds, the following language shall appear:

(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no

discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

b. In leases, the following language shall appear:

(1) The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

c. In contracts pertaining to management of the Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

(1) There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

**2.5 Subordination.** This Agreement shall be recorded in the Official Records of the County of San Mateo and shall run with the land. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement for the benefit of lenders providing financing for the Project, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

### **3. OPERATION OF THE BMR UNITS**

**3.1 BMR Units.** Owner agrees to make available, restrict occupancy to, and lease not less than [\_\_\_\_\_] ( ) BMR Units, inclusive of [\_\_\_\_\_] ( ) Low Income Units and [\_\_\_\_\_] ( ) Moderate Income Units, to Qualifying Households, as hereinafter defined, at an affordable rent, pursuant to the terms set forth below. The BMR Units shall be of a quality comparable to all of the other rental units in the Project. The BMR Units shall be initially distributed as set forth in Exhibit C, attached hereto and incorporated herein by this reference. Thereafter, the location of the individual BMR Units may float to account for the next available unit requirement set forth below and as otherwise necessary for the professional maintenance and operation of the Project provided that the distribution of BMR Units are equitably disbursed throughout the Project and the City's City Manager or Deputy Director of Community Development ("**Deputy Director**") shall be notified of any change or relocation of BMR Units by Owner.

**3.2 Qualifying Households.** For purposes of this Agreement, “**Qualifying Households**” shall mean those households with incomes as follows:

- a. **“Low Income Unit”**: means units restricted to households with incomes of not more than eighty percent (80%) of AMI. “AMI” means the median income for San Mateo County, California, adjusted for Actual Household Size, as published from time to time by the State of California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision. Qualifying Households shall continue to qualify unless at the time of recertification, the household’s income exceeds the Low Income eligibility requirements, then the tenant shall no longer be qualified. Upon Owner’s determination that any such household is no longer qualified, the unit shall no longer be deemed a Low Income Unit, and the Owner shall either (1) make the next available unit, which is comparable in terms of size, features and number of bedrooms, a Low Income Unit, or take other actions as may be necessary to ensure that the total required number of Low Income Units are rented to Qualifying Households, or (2) if the tenant’s income does not exceed one hundred twenty (120%) of the maximum income that would qualify the Tenant as a Moderate Income Household, the tenant shall be allowed to remain in the unit at a Moderate Income rent. If the tenant originally qualified as a Low Income Household, then the tenant’s rent will be increased to a Moderate Income rent upon the later of sixty (60) days’ notice or the renewal of the tenant’s lease, and the Owner shall rent the next available unit to a Low Income Household. Owner shall notify the City annually if Owner substitutes a different unit for one of the designated Low Income Units pursuant to this paragraph.
  
- b. **“Moderate Income Unit”**: means units restricted to households with incomes of not more than one hundred and twenty percent (120%) of AMI. “AMI” means the median income for San Mateo County, California, adjusted for Actual Household Size, as published from time to time by the State of California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision. Qualifying Households shall continue to qualify unless at the time of recertification, the household’s income exceeds the Moderate Income eligibility requirements, then the tenant shall no longer be qualified. Upon Owner’s determination that any such household is no longer qualified, the unit shall no longer be deemed a Moderate Income Unit and the Owner shall either (1) make the next available Moderate Income Unit, which is comparable in terms of size, features and number of bedrooms, a Moderate Income Unit, or take other actions as may be necessary to ensure that the total required number of Moderate Income Units are rented to Qualifying Households, or (2) If the tenant’s income does not exceed one hundred twenty (120%) of the maximum income that would qualify the Tenant as a Moderate Income Household, the tenant shall be allowed to



remain in the unit at a Moderate Income rent. If the tenant originally qualified as a Moderate Income Household, then the Tenant shall be notified they are no longer eligible for the BMR unit and tenant's rent will be increased to a market rate rent upon the later of sixty (60) days' notice or the renewal of the tenant's lease, and the Owner shall rent the next available unit to a Moderate Income Household. Owner shall notify the City annually if Owner substitutes a different unit for one of the designated Moderate Income Units pursuant to this paragraph.

**3.3 Income Verification and Annual Report.** On or before July 1 of each year, commencing with the calendar year that the first residential unit in the Project is rented to a tenant, and annually thereafter, Owner shall obtain from each household occupying a BMR Unit and submit to the City an income computation and certification form, completed by a tenant of such unit, which shall certify that the income of each Qualifying Household is truthfully set forth in the income certification form, in the form proposed by the Owner and approved by the Deputy Director ("**Annual Report**"). Owner shall make a good faith effort to verify that each household leasing a BMR Unit meets the income and eligibility restrictions for the BMR Unit by taking the following steps as a part of the verification process: (a) obtain a minimum of the three (3) most current pay stubs for all adults age eighteen (18) or older; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain the three (3) most current savings and checking account bank statements; (e) obtain an income verification form from the applicant's current employer; (f) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (g) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of tenant income certifications shall be available to the City upon request. The Annual Report shall, at a minimum, include the following information for each BMR Unit: unit number, number of bedrooms, current rent and other charges, dates of any vacancies during the reporting period, number of people residing in the unit, total household Gross Income, and lease commencement and termination dates. The Report shall also provide a statement of the owner's management policies, communications with the tenants and maintenance of the BMR Unit, including a statement of planned repairs to be made and the dates for the repairs.

**3.4 Affordable Rent.** The maximum Monthly Rent, defined below, chargeable for the BMR Units and paid shall be as follows:

- a. "**Low Income Household**": shall be 1/12th of 30 percent of 80 percent of the AMI. The Monthly Rent for a Low Income Unit rented to a Low Income Household and paid by the household shall be based on an assumed average occupancy per unit of one person per studio unit, 1.5 persons for a one-bedroom unit, 3 persons for a two-bedroom unit and 4.5 persons for a three-bedroom unit, unless otherwise approved by the Deputy Director for an unusually large unit with a maximum of two persons per bedroom, plus one.
- b. "**Moderate Income Household**": shall be 1/12th of 30 percent of 120 percent of the AMI. The Monthly Rent for a Moderate Income Unit rented to a Moderate Income Household and paid by the household shall be based

on an assumed average occupancy per unit of one person per studio unit, 1.5 persons for a one- bedroom unit, 3 persons for a two-bedroom unit and 4.5 persons for a three- bedroom unit, unless otherwise approved by the Deputy Director for an unusually large unit with a maximum of two persons per bedroom, plus one.

For purposes of this Agreement, “**Monthly Rent**” means the total of monthly payments actually made by the household for (a) use and occupancy of each BMR Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Owner which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, and which are not paid directly by Owner, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone or internet service, which reasonable allowance for utilities is set forth in the County of San Mateo’s Utility Allowance Schedule for detached homes, apartments, condominiums and duplexes, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Owner. Pursuant to the Guidelines, in no case shall the Monthly Rent for a BMR Unit exceed 75 percent of comparable market rate rents.

**3.5 Agreement to Limitation on Rents.** As described in Recital C above, Owner is developing at the bonus level of development, which is a form of assistance authorized by Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code. Sections 1954.52(b) and 1954.53(a)(2) of the Costa-Hawkins Act provide that, where a developer has received such assistance, certain provisions of the Costa-Hawkins Act do not apply if a developer has so agreed by contract. Owner hereby agrees to limit Monthly Rent as provided in this Agreement in consideration of Owner’s receipt of the assistance and further agrees that any limitations on Monthly Rents imposed on the BMR Units are in conformance with the Costa-Hawkins Act. Owner further warrants and covenants that the terms of this Agreement are fully enforceable.

**3.6 Lease Requirements.** No later than 180 days prior to the initial lease up of the BMR Units, Owner shall submit a standard lease form to the City for approval by the Deputy Director or his/her designee. The City shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement and contains all of the provisions required pursuant to the Guidelines. The City's failure to respond to Owner's request for approval of the standard lease form within thirty (30) business days of City's receipt of such lease, shall be deemed City's approval of such lease form. Owner shall enter into a written lease, in the form approved by the City, with each new tenant of a BMR Unit prior to a tenant or tenant household’s occupancy of a BMR Unit. Each lease shall be for an initial term of not less than one year which may be renewed pursuant to applicable local and State laws, and shall not contain any of the provisions which are prohibited pursuant to the Guidelines, local, state and Federal laws.

**3.7 Selection of Tenants.** Each BMR Unit shall be leased to tenant(s) selected by Owner who meet all of the requirements provided herein, and, to the extent permitted by law, with priority given to those eligible households who either live or work in the City of Menlo Park, or meet at least one of the other preferences identified in the Guidelines. The City’s BMR

Administrator, on behalf of the City will provide to Owner the names of persons who have expressed interest in renting BMR Units for the purposes of adding such interested persons to Owner's waiting list, to be processed in accordance with Owner's customary policies. Owner shall not refuse to lease to a holder of a certificate or a rental voucher under the Section 8 program or other tenant-based assistance program, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria.

#### **4. DEFAULT AND REMEDIES**

**4.1 Events of Default.** The following shall constitute an "Event of Default" by Owner under this Agreement: there shall be a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement and such breach shall continue for a period of thirty (30) days after written notice thereof to the Owner without the Owner curing such breach, or if such breach cannot reasonably be cured within such 30 day period, commencing the cure of such breach within such 30 day period and thereafter diligently proceeding to cure such breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other paragraph of Section 4 of this Agreement, the specific provision shall control.

**4.2 Remedies.** The occurrence of any Event of Default under Section 4.1 shall give the City the right to proceed with an action in equity to require the Owner to specifically perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.

**4.3 Obligations Personal to Owner.** The liability of Owner under this Agreement to any person or entity is limited to Owner's interest in the Project, and the City and any other such persons and entities shall look exclusively thereto for the satisfaction of obligations arising out of this Agreement or any other agreement securing the obligations of Owner under this Agreement. From and after the date of this Agreement, no deficiency or other personal judgment, nor any order or decree of specific performance (other than pertaining to this Agreement, any agreement pertaining to any Project or any other agreement securing Owner's obligations under this Agreement), shall be rendered against Owner, the assets of Owner (other than Owner's interest in the Project), its partners, members, successors, transferees or assigns and each of their respective officers, directors, employees, partners, agents, heirs and personal representatives, as the case may be, in any action or proceeding arising out of this Agreement or any agreement securing the obligations of Owner under this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding. No subsequent Owner of the Project shall be liable or obligated for the breach or default of any obligations of Owner under this Agreement on the part of any prior Owner. Such obligations are personal to the person who was the Owner at the time the default or breach was alleged to have occurred and such person shall remain liable for any and all damages occasioned thereby even after such person ceases to be the Owner. Each Owner shall comply with and be fully liable for all obligations the Owner hereunder during its period of ownership of the Project.

**4.4 Force Majeure.** Subject to the party's compliance with the notice requirements as set forth below, performance by either party hereunder shall not be deemed to be in default, and

all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to causes beyond the control and without the fault of the party claiming an extension of time to perform, which may include, without limitation, the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the other party, or acts or failures to act of any public or governmental entity (except that the City's acts or failure to act shall not excuse performance of the City hereunder). An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within 30 days of the commencement of the cause.

**4.5 Attorneys' Fees.** In addition to any other remedies provided hereunder or available pursuant to law, if either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing party shall be entitled to recover from the other party its costs of suit and reasonable attorneys' fees. This Section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

**4.6 Remedies Cumulative.** No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise.

**4.7 Waiver of Terms and Conditions.** The City may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

**4.8 Non-Liability of City Officials and Employees.** No member, official, employee or agent of the City shall be personally liable to Owner or any occupant of any BMR Unit, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Owner or its successors, or on any obligations under the terms of this Agreement.

**4.9 Cure Rights.** Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by (i) Owner's limited partner, or (ii) Owner's senior mortgage lender, shall be deemed to be a cure by Owner and shall be accepted or rejected on the same basis as if made or tendered by Owner.

## **5. GENERAL PROVISIONS**

**5.1 Below Market Rate Guidelines ("Guidelines").** This Agreement incorporates by reference the Guidelines as of the date of this Agreement and any successor sections as the Guidelines may be amended from time to time. In the event of any conflict or ambiguity between this Agreement, the requirements of state and federal fair housing laws and the Guidelines, the

terms and conditions of this Agreement and the requirements of state and federal fair housing laws shall control.

**5.2 Time.** Time is of the essence in this Agreement.

**5.3 Notices.** Unless otherwise indicated in this Agreement, any notice requirement set forth herein shall be deemed to be satisfied three days after mailing of the notice first-class United States certified mail, postage prepaid, or at the time of personal delivery, addressed to the appropriate party as follows:

Owner: [ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
Attention: [ \_\_\_\_\_ ]  
Email: [ \_\_\_\_\_ ]

City : City of Menlo Park  
701 Laurel Street  
Menlo Park, California 94025-3483  
Attention: City Manager

Such addresses may be changed by notice to the other party given in the same manner as provided above.

**5.4 Successors and Assigns.** This Agreement constitutes a covenant and legal restriction on the Property and shall run with the land, provided the Project remains on the Property, and all of the terms, covenants and conditions of this Agreement shall be binding upon Owner and the permitted successors and assigns of Owner.

**5.5 Intended Beneficiaries.** The City is the intended beneficiary of this Agreement and shall have the sole and exclusive power to enforce this Agreement. It is intended that the City may enforce this Agreement in order to, satisfy its obligations to improve, increase and preserve affordable housing within the City, as required by the Guidelines, and to provide that a certain percentage of new housing is made available at affordable housing cost to persons and families of very low, low and moderate incomes as required by the Guidelines. No other person or persons, other than the City and Owner and their assigns and successors, shall have any right of action hereon.

**5.6 Partial Invalidity.** If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

**5.7 Governing Law.** This Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto. The venue for any action shall be the County of San Mateo.

**5.8 Amendment.** This Agreement may not be changed orally, but only by agreement in writing signed by Owner and the City.

**5.9 Approvals.** Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the City, such approval shall not be unreasonably withheld may be given on behalf of the City by the City Manager or his or her designee. The City Manager or his or her designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement, and amendments which do not substantially change the uses or restrictions hereunder, or substantially add to the costs of the City hereunder.

**5.10 Indemnification.** To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel reasonably approved by City) and hold the City, its heirs, successors and assigns (the “**Indemnitees**”) harmless from and against any and all demands, losses, claims, costs and expenses, and any other liability whatsoever, including without limitation, reasonable accountants’ and attorneys’ fees, charges and expense (collectively, “**Claims**”) arising directly or indirectly, in whole or in part, as a result of or in connection with Owner’s construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner’s indemnification obligations under this Section 6.10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 6.10 shall survive the expiration or earlier termination of this Agreement, but only as to claims arising from events occurring during the Affordability Period.

**5.11 Insurance Coverage.** Throughout the Affordability Period, Owner shall comply with the insurance requirements set forth in Exhibit D, attached hereto and incorporated herein by this reference, and shall, at Owner’s expense, maintain in full force and effect insurance coverage as specified in Exhibit D.

**5.12 Transfer and Encumbrance.**

**5.12.1 Restrictions on Transfer and Encumbrance.** During the term of this Agreement, except as permitted pursuant to this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (other than a lease of a BMR Unit on an approved form under Section 3.6 hereof to a qualified tenant as described in Section 3.7 hereof) (collectively, “**Transfer**”) of the whole or any part of any BMR Unit, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by

the investor limited partner to subsequent limited partners shall be restricted by this provision.

**5.12.2 Permitted Transfers.** The prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; or (ii) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest.

**5.12.3 Requirements for Proposed Transfers.** The City may, in the exercise of its reasonable discretion, consent to a proposed Transfer of this Agreement and/or a BMR Unit if all of the following requirements are met (provided however, the requirements of this Section 5.12.3 shall not apply to Transfers described in clauses (i) or (ii) of Section 5.12.2.

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Owner under this Agreement.

(ii) The Owner and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the BMR Unit or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Owner under this Agreement arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner's obligations pursuant to conditions, and restrictions set forth in this Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

**5.13 Effect of Transfer without City Consent.** In the absence of specific written agreement by the City, no Transfer of any BMR Unit shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. This Section 5.12 shall not apply to Transfers described in clauses (i) and (ii) of Section 5.12.2.

**5.14 Recovery of City Costs.** Owner shall reimburse City for all reasonable City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments

and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery to Owner of an invoice detailing such costs.

**5.15 [Satisfaction of Project Wide Affordable Housing Agreement Requirements.**

The City hereby acknowledges and agrees that Owner's execution and delivery of this Agreement and the performance of Owner's obligations herein, satisfies Project Wide Developer's obligation to execute and record a Below Market Rate Housing Agreement and Declaration of Restrictive Covenants against the Property as set forth in Section 5 of the Project Wide Affordable Housing Agreement.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

SIGNATURES ON FOLLOWING PAGE(S).



**OWNER:**

[\_\_\_\_\_], a [\_\_\_\_\_]

By:\_\_\_\_\_

Its:

**CITY:**

**CITY OF MENLO PARK**, a California municipal corporation

By:\_\_\_\_\_ City Manager

**ATTEST:**

By:\_\_\_\_\_ City Clerk

**List of Exhibits:**

- Exhibit A: Property Description
- Exhibit B: Allocation of the BMR Units
- Exhibit C: BMR Unit Locations
- Exhibit D: Insurance Requirements

**Exhibit A**  
**Property Description**

**Exhibit B**  
**Allocation of BMR Units in the Project**

<b>BMR Units</b>	Low	Moderate
Studio apartment		
1 bedroom apartment		
2 bedroom apartment		
3 bedroom apartment		
<b>Total - BMR Units</b>		

**Exhibit C**  
**BMR Unit Locations**

## **Exhibit D Insurance Requirements**

Prior to initiating work on the Project and continuing throughout the Affordability Period, Owner shall obtain and maintain the following policies of insurance and shall comply with all provisions set forth in this Exhibit.

1. General Requirements. Owner shall procure and maintain the following insurance providing coverage against claims for injuries to persons or damages to property that may arise from or in connection with the Project, construction, management, or operation of the Property by the Owner or the Owner's agents, representatives, employees and contractors, or subcontractors, including the following:

(a) Commercial General Liability: The Owner and all contractors working on behalf of Owner on the Property shall maintain a commercial general liability policy in an occurrence policy for protection against all claims arising from injury to person or persons not in the employ of the Owner and against all claims resulting from damage to any property due to any act or omission of the Owner, its agents, or employees in the conduct or operation of the work or the execution of this Agreement. Such insurance shall include products and completed operations liability, blanket contractual liability, personal injury liability, and broad form property damage coverage. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage.

(b) Commercial Automobile Liability: The Owner and all contractors working on behalf of Owner on the Property shall maintain insurance for protection against all claims arising from the use of vehicles, owned, hired, non-owned, or any other vehicle in connection with the Project, construction, operation or management of the Property. Such insurance shall cover the use of automobiles and trucks on and off the site of the Property. Coverage shall be at least as broad as Insurance Services Office covering Commercial Automobile Liability, any auto, owned, non-owned and hired auto.

(c) Workers' Compensation Insurance: The Owner (and the general partners thereof) shall furnish or cause to be furnished to City evidence satisfactory to City that Owner (and the general partners thereof), and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement, shall maintain Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance.

(d) Builder's Risk: Upon commencement of any construction work on the Property, Owner and all contractors working on behalf of Owner shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee as its interests may appear.

(e) Professional Liability/Errors and Omissions: Owner shall require any architects, engineers, and general contractors working on the Property to maintain Professional Liability/Errors and Omissions insurance with limits not less than Two Million Dollars (\$2,000,000) each claim. Certificates evidencing this coverage must reference both the Owner and the Indemnitees. If the professional liability/errors and omissions insurance is written on a

claims made form: (i) the retroactive date must be shown and must be before the Effective Date, (ii) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of Project construction, and (iii) if coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Effective Date, Owner must purchase, or require the provision of, extended period coverage for a minimum of three (3) years after completion of construction.

(f) Property: Owner shall maintain property insurance covering all risks of loss, including earthquake and flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee as its interests may appear.

2. Minimum Limits; Adjustments. Insurance shall be maintained with limits no less than the following:

(a) Commercial General Liability and Property Damage: \$2,000,000 per occurrence and \$5,000,000 annual aggregate for bodily injury, personal injury and property damage; provided however, with City's advance written approval, subcontractors may maintain liability coverage with limits not less than \$1,000,000 per occurrence, \$2,000,000 annual aggregate.

(b) Products and Completed Operations: \$3,000,000 per occurrence/aggregate.

(c) Commercial Automobile Liability: \$2,000,000 combined single limit.

(d) Employer's Liability:

Bodily Injury by Accident - \$1,000,000 each accident.

Bodily Injury by Disease - \$1,000,000 policy limit.

Bodily Injury by Disease - \$1,000,000 each employee.

(e) Professional Liability/Errors and Omissions: \$2,000,000 per occurrence or claim. If the policy provides coverage on a claims-made basis, the retroactive date must be shown and must be before the date of the Agreement or the beginning of the contract work.

Coverage limits, and if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in circumstance, including, but not limited to, changes in inflation and the litigation climate in California. City shall give written notice to Owner of any such adjustments, and Owner shall provide City with amended or new insurance certificates or endorsements evidencing compliance with such adjustments within thirty (30) days following receipt of such notice.

3. Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be

declared to, and approved by, the City. Payment of all deductibles and self-insured retentions will be the responsibility of Owner. If the City determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Owner shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense.

4. Additional Requirements. The required general liability and automobile policies shall contain, or be endorsed to contain, the following provisions:

(a) The Indemnitees are to be covered as Additional Insureds as respects: liability arising out of activities performed by or on behalf of the Owner; products and completed operations of the Owner; premises owned, occupied or used by the Owner; or automobiles owned, leased, hired or borrowed by the Owner. The coverage shall contain no special limitations on the scope of protection afforded to the Indemnitees. Additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(b) All insurance shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the Indemnitees shall be excess of the Owner's/contractor's insurance and shall not contribute with it.

(c) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Indemnitees.

(d) The Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.

(e) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

(f) If any insurance policy or coverage required hereunder is canceled or reduced, Owner shall, within five (5) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Owner's expense, and Owner shall promptly reimburse City for such expense upon receipt of billing from City.

(g) Owner agrees to waive subrogation rights for commercial general liability, automobile liability and worker's compensation against Indemnitees regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with any construction on the Property to do likewise. Each insurance policy shall contain a

waiver of subrogation for the benefit of City. If any required insurance is provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs are included in such annual aggregate limit, such annual aggregate limit shall be three times the applicable occurrence limits specified above.

(h) It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirement and/or limits shall be available to the additional insured. Furthermore, the requirement for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. For all liability insurance required by this Agreement, Owner (and Owner's contractors, as applicable) shall obtain endorsements that name the Indemnitees as additional insured in the full amount of all applicable policies, notwithstanding any lesser minimum limits specified in this Agreement. This Agreement requires Owner (and Owner's contractors, as applicable) to obtain and provide for the benefit of the Indemnitees, additional insured coverage in the same amount of insurance carried by Owner (or Owner's contractors, as applicable), but in no event less than the minimum amounts specified in this Agreement. In the event that Owner (or Owner's contractors as applicable) obtains insurance policies that provide liability coverage in excess of the amounts specified in this Agreement, the actual limits provided by such policies shall be deemed to be the amounts required under this Agreement. Without limiting the foregoing, the limits of liability coverage specified in this Agreement are not intended, nor shall they operate, to limit City's ability to recover amounts in excess of the minimum amounts specified in this Agreement.

(i) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

5. Acceptability of Insurers. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

6. Verification of Coverage. Prior to the Effective Date of this Agreement, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (a), (b), (c), and (e) of Section 1 above, duly executed endorsements evidencing the Indemnitees' status as additional insured, and all other endorsements and coverage required hereunder pertaining to such coverage. Prior to commencement of any construction work on the Property, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (d) and (g) of Section 1 above. Prior to City's issuance of a final certificate of occupancy or equivalent for the Project, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraph (f) of Section 1 above. Owner shall



furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

7. Insurance Certificates and Endorsements. Owner shall submit to the City all of the necessary insurance documents, including the applicable amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of required Owner policies listing all required policy endorsements to the City. Insurance Certificates and Endorsements are to be received and approved by the City within the time periods specified in Section 6 above. Should Owner cease to have insurance as required at any time, all work by Owner pursuant to this Agreement shall cease until insurance acceptable to the City is provided. Upon City's request, Owner shall, within thirty (30) days of the request, provide or arrange for the insurer to provide to City, complete certified copies of all insurance policies required under this Agreement. City's failure to make such request shall not constitute a waiver of the right to require delivery of the policies in the future.

This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

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

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**BELOW MARKET RATE HOUSING AGREEMENT  
AND DECLARATION OF RESTRICTIVE COVENANTS  
(Willow Village Masterplan 1350 Willow Road)**

**THIS BELOW MARKET RATE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (“Agreement”)** is entered into as of \_\_\_\_\_, 2022, by and between the City of Menlo Park, a California municipal corporation (“**City**”), and [\_\_\_\_\_], a [\_\_\_\_\_] (“**Owner**”). City and Owner may be referred to individually as a “**Party**” or collectively as the “**Parties**” in this Agreement.

**RECITALS**

A. Owner is the owner of that certain real property located at \_\_\_\_\_ (APN \_\_\_\_\_), in the City of Menlo Park, California (“**Property**”), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

B. [Peninsula Innovation Partners, LLC] (“**Project Wide Developer**”) applied to demolish an existing office, research and development and industrial site (the “**Main Willow Village Project Site**”) and to comprehensively redevelop the project wide site with up to 1.6 million square feet of office space (inclusive of meeting and collaboration space and accessory uses), up to 200,000 square feet of retail uses, a 193 room hotel (approximately 172,000 square feet in size), and up to 1,730 residential dwelling units, as well as publicly accessible open space and landscaping as a part of a master planned mixed-use project (the “**Willow Village Project**”), [which is subject to that certain Project Wide Affordable Housing Agreement (“**Project Wide Affordable Housing Agreement**”) between Project Wide Developer and City, dated as of \_\_\_\_\_], 2022. The Property is part of Phase [\_\_\_\_] as described in the Project Wide Affordable Housing Agreement.]

C. [The Project Wide Developer has transferred the Property to the Owner, and the City has released the Property from the Project Wide Affordable Housing Agreement pursuant to the terms of the Project Wide Affordable Housing Agreement, in conjunction with the recording of this Agreement.]

D. The Willow Village project re-subdivided the Main Willow Village Project Site into [\_\_\_] new legal parcels shown on the proposed Vesting Tentative Map in Exhibit [\_\_\_] of the Development Agreement. Amongst those new parcels is parcel [\_\_\_\_], which is approved for residential building RS7 with a new multifamily senior residential project with [one hundred twenty (120)] rental units, as well as associated open space, circulation, parking and infrastructure improvements. (“**Project**”), of which one hundred nineteen (119) rental units (“**BMR Units**”) shall be affordable to below market rate households as follows: eighty two (82) extremely low income units (“**Extremely Low Income Units**”) and thirty seven (37) very low income units (“**Very Low Income Units**”), and one (1) unit shall be a manager’s unit. The allocation of BMR Units across the unit-sizes in the Project is more particularly described on Exhibit B, attached hereto and incorporated herein by this reference.

E. On \_\_\_\_\_, 2022, after a duly noticed public hearing, and on the recommendation of the Housing Commission, the Planning Commission, and the City Council certified the environmental impact report and granted General Plan Circulation Element and Zoning Map amendments, rezoning, conditional development permit, development agreement, vesting tentative map, and below market rate (BMR) housing agreement for the Project (“**Project Approvals**”). The Project Approvals require the Project Wide Developer to provide BMR Units in accordance the Project Wide Affordable Housing Agreement. In accordance with the Menlo Park Municipal Code Chapter 16.96, the Below Market Rate Housing Program (“**BMR Ordinance**”), and the Below Market Rate Housing Program Guidelines (“**Guidelines**”), Owner is required to execute and record an approved BMR Housing Agreement as a condition precedent to approval of the issuance of a building permit for the Project. This Agreement is intended to satisfy that requirement.

F. [As required by the Project Wide Affordable Housing Agreement, and pursuant to this Agreement,] Owner has agreed to observe all the terms and conditions set forth below for purposes of development and operation of the BMR Units. This Agreement will ensure the Project’s continuing affordability.

**NOW, THEREFORE**, the Parties hereto agree as follows. The recitals are incorporated into this Agreement by this reference.

## **1. CONSTRUCTION OF THE IMPROVEMENTS.**

**1.1 Construction of the Project.** Owner agrees to construct the Project in accordance with the Menlo Park Municipal Code and all other applicable state and local building codes, development standards, ordinances and zoning ordinances.

**1.2 City and Other Governmental Permits.** Before commencement of the Project, Owner shall secure or cause its contractor to secure any and all permits which may be required by the City or any other governmental agency affected by such construction, including without limitation building permits. Owner shall pay all necessary fees and timely submit to the City final drawings with final corrections to obtain such permits; City staff will, without incurring liability or expense therefore, process applications in the ordinary course of business for the issuance of

building permits and certificates of occupancy for construction that meets the requirements of the Menlo Park Municipal Code, and all other applicable laws and regulations.

**1.3 Compliance with Laws.** Owner shall carry out the design, construction and operation of the Project in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Menlo Park Municipal Code, and **all** applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

## **2. OPERATION OF THE BMR UNITS**

**2.1 Affordability Period.** This Agreement shall remain in effect and the Property, shall be subject to the requirements of this Agreement from the date that the City issues a final certificate of occupancy for the Project (the “**Effective Date**”) until the 55th anniversary of such Effective Date. The duration of this requirement shall be known as the “**Affordability Period.**”

**2.2 Maintenance.** Owner shall comply with every condition of the Project Approvals applicable to the Project and shall, at all times, maintain the Project and the Property in good repair and working order, reasonable wear and tear excepted, and in a safe and sanitary condition, and from time to time shall make all necessary and proper repairs, renewals, and replacements to keep the Project and the Property in a good, clean, safe, and sanitary condition.

**2.3 Monitoring and Recordkeeping.** Throughout the Affordability Period, Owner shall comply with all applicable recordkeeping and monitoring requirements set forth in the Guidelines. City shall have the right to inspect the books and records of Owner and its rental agent or bookkeeper upon reasonable notice during normal business hours. Representatives of the City shall be entitled to enter the Property, upon at least 48-hour prior written notice, which can be provided via email, to monitor compliance with this Agreement, to inspect the records of the Project with respect to the BMR Units, and to conduct, or cause to be conducted, an independent audit or inspection of such records. Owner agrees to cooperate with the City in making the Property available for such inspection or audit. Owner agrees to maintain records in businesslike manner, and to maintain such records for Affordability Period.

**2.4 Non-Discrimination Covenants.** Owner covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

- a. In deeds, the following language shall appear:

(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

b. In leases, the following language shall appear:

(1) The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360

of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

c. In contracts pertaining to management of the Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

(1) There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

**2.5 Subordination.** This Agreement shall be recorded in the Official Records of the County of San Mateo and shall run with the land. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement for the benefit of lenders providing financing for the Project, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

### **3. OPERATION OF THE BMR UNITS**

**3.1 BMR Units.** Owner agrees to make available, restrict occupancy to, and lease not less than one hundred nineteen (119) BMR Units, inclusive of eighty two (82) Extremely Low Income Units and thirty seven (37) Very Low Income Units, to Qualifying Households, as hereinafter defined, at an affordable rent, pursuant to the terms set forth below. The BMR Units shall be of a quality comparable to all of the other rental units in the Project. The Project Approvals included a modification to the proportionality requirement to permit exclusively studio and one bedroom BMR Units and a modification to the location requirement to accommodate 119 BMR units at the Project. The BMR Units shall be initially distributed as set forth in Exhibit C, attached hereto and incorporated herein by this reference. Thereafter, the location of the individual BMR Units may float to account for the next available unit requirement set forth below and as otherwise

necessary for the professional maintenance and operation of the Project provided that the distribution of BMR Units are equitably disbursed throughout the Project and the City's City Manager or Deputy Director of Community Development ("**Deputy Director**") shall be notified of any change or relocation of BMR Units by Owner.

**3.2 Qualifying Households.** For purposes of this Agreement, "**Qualifying Households**" shall mean those households with incomes as follows:

- a. **"Extremely Low Income Unit"**: means units restricted to households with incomes of not more than thirty percent (30%) of AMI. "AMI" means the median income for San Mateo County, California, adjusted for Actual Household Size, as published from time to time by the State of California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision. Qualifying Households shall continue to qualify unless at the time of recertification, the household's income exceeds the Extremely Low Income eligibility requirements, then the tenant shall no longer be qualified. Upon Owner's determination that any such household is no longer qualified, the unit shall no longer be deemed an Extremely Low Income Unit, and the Owner shall either (1) make the next available unit, which is comparable in terms of size, features and number of bedrooms, an Extremely Low Income Unit, or take other actions as may be necessary to ensure that the total required number of Extremely Low Income Units are rented to Qualifying Households, or (2) if the tenant's income does not exceed eighty (80%) of the maximum income that would qualify the Tenant as a Very Low Income Household, the tenant shall be allowed to remain in the unit at a Very Low Income rent. If the tenant originally qualified as an Extremely Low Income Household, then the tenant's rent will be increased to a Very Low Income rent upon the later of sixty (60) days' notice or the renewal of the tenant's lease, and the Owner shall rent the next available unit to an Extremely Low Income Household. Owner shall notify the City annually if Owner substitutes a different unit for one of the designated Extremely Low Income Units pursuant to this paragraph.
- b. **"Very Low Income Unit"**: means units restricted to households with incomes of not more than fifty percent (50%) of AMI. "AMI" means the median income for San Mateo County, California, adjusted for Actual Household Size, as published from time to time by the State of California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision. Qualifying Households shall continue to qualify unless at the time of recertification, the household's income exceeds the Very Low Income eligibility requirements, then the tenant shall no longer be qualified. Upon Owner's determination that any such household is no longer qualified, the unit shall no longer be deemed a Very Low Income Unit and the Owner shall either (1) make the next available Very Low Income Unit, which is

comparable in terms of size, features and number of bedrooms, a Very Low Income Unit, or take other actions as may be necessary to ensure that the total required number of Very Low Income Units are rented to Qualifying Households, or (2) If the tenant's income does not exceed one hundred twenty (120%) of the maximum income that would qualify the Tenant as a Very Low Income Household, the tenant shall be allowed to remain in the unit at a Very Low Income rent. If the tenant originally qualified as a Very Low Income Household, then the Tenant shall be notified they are no longer eligible for the BMR unit and tenant's rent will be increased to a market rate rent upon the later of sixty (60) days' notice or the renewal of the tenant's lease, and the Owner shall rent the next available unit to a Very Low Income Household. Owner shall notify the City annually if Owner substitutes a different unit for one of the designated Very Low Income Units pursuant to this paragraph.

**3.3 Income Verification and Annual Report.** On or before July 1 of each year, commencing with the calendar year that the first residential unit in the Project is rented to a tenant, and annually thereafter, Owner shall obtain from each household occupying a BMR Unit and submit to the City an income computation and certification form, completed by a tenant of such unit, which shall certify that the income of each Qualifying Household is truthfully set forth in the income certification form, in the form proposed by the Owner and approved by the Deputy Director ("**Annual Report**"). Owner shall make a good faith effort to verify that each household leasing a BMR Unit meets the income and eligibility restrictions for the BMR Unit by taking the following steps as a part of the verification process: (a) obtain a minimum of the three (3) most current pay stubs for all adults age eighteen (18) or older; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain the three (3) most current savings and checking account bank statements; (e) obtain an income verification form from the applicant's current employer; (f) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (g) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of tenant income certifications shall be available to the City upon request. The Annual Report shall, at a minimum, include the following information for each BMR Unit: unit number, number of bedrooms, current rent and other charges, dates of any vacancies during the reporting period, number of people residing in the unit, total household Gross Income, and lease commencement and termination dates. The Report shall also provide a statement of the owner's management policies, communications with the tenants and maintenance of the BMR Unit, including a statement of planned repairs to be made and the dates for the repairs. Notwithstanding anything to the contrary contained herein, for so long as the Project is encumbered a Regulatory Agreement from the California Tax Credit Allocation Committee ("**Tax Credit Regulatory Agreement**") due to the Project's receipt of federal/and or state low-income housing tax credits, copies of any annual reporting required by the Tax Credit Regulatory Agreement delivered to the City shall satisfy the requirements of this Section.

**3.4 Affordable Rent.** The maximum Monthly Rent, defined below, chargeable for the BMR Units and paid shall be as follows:



- a. **“Extremely Low Income Household”**: maximum Monthly Rent shall be 1/12th of 30 percent of 30 percent of the AMI. The Monthly Rent for an Extremely Low Income Unit rented to an Extremely Low Income Household and paid by the household shall be based on an assumed average occupancy per unit of one person per studio unit, 1.5 persons for a one-bedroom unit, 3 persons for a two-bedroom unit and 4.5 persons for a three-bedroom unit, unless otherwise approved by the Deputy Director for an unusually large unit with a maximum of two persons per bedroom, plus one.
- b. **“Very Low Income Household”**: maximum Monthly Rent shall be 1/12th of 30 percent of 50 percent of the AMI. The Monthly Rent for a Very Low Income Unit rented to a Very Low Income Household and paid by the household shall be based on an assumed average occupancy per unit of one person per studio unit, 1.5 persons for a one- bedroom unit, 3 persons for a two-bedroom unit and 4.5 persons for a three- bedroom unit, unless otherwise approved by the Deputy Director for an unusually large unit with a maximum of two persons per bedroom, plus one.
- c. Notwithstanding anything to the contrary contained herein, if the the Project is encumbered by a Tax Credit Regulatory Agreement and there is a conflict between the provisions of this Agreement and the provisions of such Tax Credit Regulatory Agreement regarding rent, utility allowance, and/or household size appropriate for each unit, the Tax Credit Regulatory Agreement shall govern.

For purposes of this Agreement, **“Monthly Rent”** means the total of monthly payments actually made by the household for (a) use and occupancy of each BMR Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Owner which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, and which are not paid directly by Owner, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone or internet service, which reasonable allowance for utilities is set forth in the County of San Mateo’s Utility Allowance Schedule for detached homes, apartments, condominiums and duplexes, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Owner. Pursuant to the Guidelines, in no case shall the Monthly Rent for a BMR Unit exceed 75 percent of comparable market rate rents.

**3.5 Agreement to Limitation on Rents.** As described in Recital C above, Owner is developing at the bonus level of development, which is a form of assistance authorized by Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code. Sections 1954.52(b) and 1954.53(a)(2) of the Costa-Hawkins Act provide that, where a developer has received such assistance, certain provisions of the Costa-Hawkins Act do not apply if a developer has so agreed by contract. Owner hereby agrees to limit Monthly Rent as provided in this Agreement in consideration of Owner’s receipt of the assistance and further agrees that any limitations on Monthly Rents imposed on the BMR Units are in conformance with the Costa-

Hawkins Act. Owner further warrants and covenants that the terms of this Agreement are fully enforceable.

**3.6 Lease Requirements.** No later than 180 days prior to the initial lease up of the BMR Units, Owner shall submit a standard lease form to the City for approval by the Deputy Director or his/her designee. The City shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement and contains all of the provisions required pursuant to the Guidelines. The City's failure to respond to Owner's request for approval of the standard lease form within thirty (30) business days of City's receipt of such lease, shall be deemed City's approval of such lease form. Owner shall enter into a written lease, in the form approved by the City, with each new tenant of a BMR Unit prior to a tenant or tenant household's occupancy of a BMR Unit. Each lease shall be for an initial term of not less than one year which may be renewed pursuant to applicable local and State laws, and shall not contain any of the provisions which are prohibited pursuant to the Guidelines, local, state and Federal laws.

**3.7 Selection of Tenants.** Each BMR Unit shall be leased to tenant(s) selected by Owner who meet all of the requirements provided herein, and, to the extent permitted by law, with priority given to those eligible households (i) with a minimum of one household member who is a senior of age [\_\_\_] and above, and (ii) who either live or work in the City of Menlo Park, or meet at least one of the other preferences identified in the Guidelines. The City's BMR Administrator, on behalf of the City will provide to Owner the names of persons who have expressed interest in renting BMR Units for the purposes of adding such interested persons to Owner's waiting list, to be processed in accordance with Owner's customary policies. Owner shall not refuse to lease to a holder of a certificate or a rental voucher under the Section 8 program or other tenant-based assistance program, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria.

#### **4. DEFAULT AND REMEDIES**

**4.1 Events of Default.** The following shall constitute an "Event of Default" by Owner under this Agreement: there shall be a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement and such breach shall continue for a period of thirty (30) days after written notice thereof to the Owner without the Owner curing such breach, or if such breach cannot reasonably be cured within such 30 day period, commencing the cure of such breach within such 30 day period and thereafter diligently proceeding to cure such breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other paragraph of Section 4 of this Agreement, the specific provision shall control.

**4.2 Remedies.** The occurrence of any Event of Default under Section 4.1 shall give the City the right to proceed with an action in equity to require the Owner to specifically perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.

**4.3 Obligations Personal to Owner.** The liability of Owner under this Agreement to any person or entity is limited to Owner's interest in the Project, and the City and any other such

persons and entities shall look exclusively thereto for the satisfaction of obligations arising out of this Agreement or any other agreement securing the obligations of Owner under this Agreement. From and after the date of this Agreement, no deficiency or other personal judgment, nor any order or decree of specific performance (other than pertaining to this Agreement, any agreement pertaining to any Project or any other agreement securing Owner's obligations under this Agreement), shall be rendered against Owner, the assets of Owner (other than Owner's interest in the Project), its partners, members, successors, transferees or assigns and each of their respective officers, directors, employees, partners, agents, heirs and personal representatives, as the case may be, in any action or proceeding arising out of this Agreement or any agreement securing the obligations of Owner under this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding. No subsequent Owner of the Project shall be liable or obligated for the breach or default of any obligations of Owner under this Agreement on the part of any prior Owner. Such obligations are personal to the person who was the Owner at the time the default or breach was alleged to have occurred and such person shall remain liable for any and all damages occasioned thereby even after such person ceases to be the Owner. Each Owner shall comply with and be fully liable for all obligations the Owner hereunder during its period of ownership of the Project.

**4.4 Force Majeure.** Subject to the party's compliance with the notice requirements as set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to causes beyond the control and without the fault of the party claiming an extension of time to perform, which may include, without limitation, the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the other party, or acts or failures to act of any public or governmental entity (except that the City's acts or failure to act shall not excuse performance of the City hereunder). An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within 30 days of the commencement of the cause.

**4.5 Attorneys' Fees.** In addition to any other remedies provided hereunder or available pursuant to law, if either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing party shall be entitled to recover from the other party its costs of suit and reasonable attorneys' fees. This Section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

**4.6 Remedies Cumulative.** No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise.

**4.7 Waiver of Terms and Conditions.** The City may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or

condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

**4.8 Non-Liability of City Officials and Employees.** No member, official, employee or agent of the City shall be personally liable to Owner or any occupant of any BMR Unit, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Owner or its successors, or on any obligations under the terms of this Agreement.

**4.9 Cure Rights.** Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by (i) Owner's limited partner, or (ii) Owner's senior mortgage lender, shall be deemed to be a cure by Owner and shall be accepted or rejected on the same basis as if made or tendered by Owner.

## 5. GENERAL PROVISIONS

**5.1 Below Market Rate Guidelines ("Guidelines").** This Agreement incorporates by reference the Guidelines as of the date of this Agreement and any successor sections as the Guidelines may be amended from time to time. In the event of any conflict or ambiguity between this Agreement, the requirements of state and federal fair housing laws and the Guidelines, the terms and conditions of this Agreement and the requirements of state and federal fair housing laws shall control.

**5.2 Time.** Time is of the essence in this Agreement.

**5.3 Notices.** Unless otherwise indicated in this Agreement, any notice requirement set forth herein shall be deemed to be satisfied three days after mailing of the notice first-class United States certified mail, postage prepaid, or at the time of personal delivery, addressed to the appropriate party as follows:

Owner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: [\_\_\_\_\_]

City :

City of Menlo Park  
701 Laurel Street  
Menlo Park, California 94025-3483  
Attention: City Manager

Such addresses may be changed by notice to the other party given in the same manner as provided above.

**5.4 Successors and Assigns.** This Agreement constitutes a covenant and legal restriction on the Property and shall run with the land, provided the Project remains on the

Property, and all of the terms, covenants and conditions of this Agreement shall be binding upon Owner and the permitted successors and assigns of Owner.

**5.5 Intended Beneficiaries.** The City is the intended beneficiary of this Agreement and shall have the sole and exclusive power to enforce this Agreement. It is intended that the City may enforce this Agreement in order to, satisfy its obligations to improve, increase and preserve affordable housing within the City, as required by the Guidelines, and to provide that a certain percentage of new housing is made available at affordable housing cost to persons and families of very low, low and moderate incomes as required by the Guidelines. No other person or persons, other than the City and Owner and their assigns and successors, shall have any right of action hereon.

**5.6 Partial Invalidity.** If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

**5.7 Governing Law.** This Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto. The venue for any action shall be the County of San Mateo.

**5.8 Amendment.** This Agreement may not be changed orally, but only by agreement in writing signed by Owner and the City.

**5.9 Approvals.** Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the City, such approval shall not be unreasonably withheld may be given on behalf of the City by the City Manager or his or her designee. The City Manager or his or her designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement, and amendments which do not substantially change the uses or restrictions hereunder, or substantially add to the costs of the City hereunder.

**5.10 Indemnification.** To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel reasonably approved by City) and hold the City, its heirs, successors and assigns (the “**Indemnitees**”) harmless from and against any and all demands, losses, claims, costs and expenses, and any other liability whatsoever, including without limitation, reasonable accountants’ and attorneys’ fees, charges and expense (collectively, “**Claims**”) arising directly or indirectly, in whole or in part, as a result of or in connection with Owner’s construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner’s indemnification obligations under this Section 6.10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 6.10 shall survive the expiration or earlier termination of this Agreement, but only as to claims arising from events occurring during the Affordability Period.

**5.11 Insurance Coverage.** Throughout the Affordability Period, Owner shall comply with the insurance requirements set forth in Exhibit D, attached hereto and incorporated herein by this reference, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit D.

**5.12 Transfer and Encumbrance.**

5.12.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (other than a lease of a BMR Unit on an approved form under Section 3.6 hereof to a qualified tenant as described in Section 3.7 hereof) (collectively, "Transfer") of the whole or any part of any BMR Unit, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

5.12.2 Permitted Transfers. The prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; or (ii) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest.

5.12.3 Requirements for Proposed Transfers. The City may, in the exercise of its reasonable discretion, consent to a proposed Transfer of this Agreement and/or a BMR Unit if all of the following requirements are met (provided however, the requirements of this Section 5.12.3 shall not apply to Transfers described in clauses (i) or (ii) of Section 5.12.2.

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Owner under this Agreement.

(ii) The Owner and the proposed transferee shall submit for

City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the BMR Unit or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Owner under this Agreement arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner's obligations pursuant to conditions, and restrictions set forth in this Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

5.13 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of any BMR Unit shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. This Section 5.12 shall not apply to Transfers described in Section 5.12.2.

5.14 Recovery of City Costs. Owner shall reimburse City for all reasonable City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery to Owner of an invoice detailing such costs.

5.15 [Satisfaction of Project Wide Affordable Housing Agreement Requirements. The City hereby acknowledges and agrees that Owner's execution and delivery of this Agreement and the performance of Owner's obligations herein, satisfies Project Wide Developer's obligation to execute and record a Below Market Rate Housing Agreement and Declaration of Restrictive Covenants against the Property as set forth in Section 5 of the Project Wide Affordable Housing Agreement.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

SIGNATURES ON FOLLOWING PAGE(S).

**OWNER:**

[\_\_\_\_\_], a  
[\_\_\_\_\_]

By:\_\_\_\_\_

Its:

**CITY:**

**CITY OF MENLO PARK**, a California municipal corporation

By:\_\_\_\_\_ City Manager

**ATTEST:**

By:\_\_\_\_\_ City Clerk

**List of Exhibits:**

- Exhibit A: Property Description
- Exhibit B: Allocation of the BMR Units
- Exhibit C: BMR Unit Locations
- Exhibit D: Insurance Requirements



**Exhibit A**  
**Property Description**

**Exhibit B**  
**Allocation of BMR Units in the Project**

<b>BMR Units</b>	Extremely Low	Very Low	Manager's Unit
Studio apartment			
1 bedroom apartment			
2 bedroom apartment			1
<b>Total - BMR Units</b>	<b>82</b>	<b>37</b>	

**Exhibit C**  
**BMR Unit Locations**

## Exhibit D Insurance Requirements

Prior to initiating work on the Project and continuing throughout the Affordability Period, Owner shall obtain and maintain the following policies of insurance and shall comply with all provisions set forth in this Exhibit.

1. General Requirements. Owner shall procure and maintain the following insurance providing coverage against claims for injuries to persons or damages to property that may arise from or in connection with the Project, construction, management, or operation of the Property by the Owner or the Owner's agents, representatives, employees and contractors, or subcontractors, including the following:

(a) Commercial General Liability: The Owner and all contractors working on behalf of Owner on the Property shall maintain a commercial general liability policy in an occurrence policy for protection against all claims arising from injury to person or persons not in the employ of the Owner and against all claims resulting from damage to any property due to any act or omission of the Owner, its agents, or employees in the conduct or operation of the work or the execution of this Agreement. Such insurance shall include products and completed operations liability, blanket contractual liability, personal injury liability, and broad form property damage coverage. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage.

(b) Commercial Automobile Liability: The Owner and all contractors working on behalf of Owner on the Property shall maintain insurance for protection against all claims arising from the use of vehicles, owned, hired, non-owned, or any other vehicle in connection with the Project, construction, operation or management of the Property. Such insurance shall cover the use of automobiles and trucks on and off the site of the Property. Coverage shall be at least as broad as Insurance Services Office covering Commercial Automobile Liability, any auto, owned, non-owned and hired auto.

(c) Workers' Compensation Insurance: The Owner (and the general partners thereof) shall furnish or cause to be furnished to City evidence satisfactory to City that Owner (and the general partners thereof), and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement, shall maintain Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance.

(d) Builder's Risk: Upon commencement of any construction work on the Property, Owner and all contractors working on behalf of Owner shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee as its interests may appear.

(e) Professional Liability/Errors and Omissions: Owner shall require any architects, engineers, and general contractors working on the Property to maintain Professional Liability/Errors and Omissions insurance with limits not less than Two Million Dollars (\$2,000,000) each claim. Certificates evidencing this coverage must reference both the Owner and the Indemnitees. If the professional liability/errors and omissions insurance is written on a

claims made form: (i) the retroactive date must be shown and must be before the Effective Date, (ii) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of Project construction, and (iii) if coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Effective Date, Owner must purchase, or require the provision of, extended period coverage for a minimum of three (3) years after completion of construction.

(f) Property: Owner shall maintain property insurance covering all risks of loss, including earthquake and flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee as its interests may appear.

2. Minimum Limits; Adjustments. Insurance shall be maintained with limits no less than the following:

(a) Commercial General Liability and Property Damage: \$2,000,000 per occurrence and \$5,000,000 annual aggregate for bodily injury, personal injury and property damage; provided however, with City's advance written approval, subcontractors may maintain liability coverage with limits not less than \$1,000,000 per occurrence, \$2,000,000 annual aggregate.

(b) Products and Completed Operations: \$3,000,000 per occurrence/aggregate.

(c) Commercial Automobile Liability: \$2,000,000 combined single limit.

(d) Employer's Liability:

Bodily Injury by Accident - \$1,000,000 each accident.

Bodily Injury by Disease - \$1,000,000 policy limit.

Bodily Injury by Disease - \$1,000,000 each employee.

(e) Professional Liability/Errors and Omissions: \$2,000,000 per occurrence or claim. If the policy provides coverage on a claims-made basis, the retroactive date must be shown and must be before the date of the Agreement or the beginning of the contract work.

Coverage limits, and if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in circumstance, including, but not limited to, changes in inflation and the litigation climate in California. City shall give written notice to Owner of any such adjustments, and Owner shall provide City with amended or new insurance certificates or endorsements evidencing compliance with such adjustments within thirty (30) days following receipt of such notice.

3. Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be

declared to, and approved by, the City. Payment of all deductibles and self-insured retentions will be the responsibility of Owner. If the City determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Owner shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense.

4. Additional Requirements. The required general liability and automobile policies shall contain, or be endorsed to contain, the following provisions:

(a) The Indemnitees are to be covered as Additional Insureds as respects: liability arising out of activities performed by or on behalf of the Owner; products and completed operations of the Owner; premises owned, occupied or used by the Owner; or automobiles owned, leased, hired or borrowed by the Owner. The coverage shall contain no special limitations on the scope of protection afforded to the Indemnitees. Additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(b) All insurance shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the Indemnitees shall be excess of the Owner's/contractor's insurance and shall not contribute with it.

(c) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Indemnitees.

(d) The Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.

(e) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

(f) If any insurance policy or coverage required hereunder is canceled or reduced, Owner shall, within five (5) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Owner's expense, and Owner shall promptly reimburse City for such expense upon receipt of billing from City.

(g) Owner agrees to waive subrogation rights for commercial general liability, automobile liability and worker's compensation against Indemnitees regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with any construction on the Property to do likewise. Each insurance policy shall contain a

waiver of subrogation for the benefit of City. If any required insurance is provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs are included in such annual aggregate limit, such annual aggregate limit shall be three times the applicable occurrence limits specified above.

(h) It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirement and/or limits shall be available to the additional insured. Furthermore, the requirement for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. For all liability insurance required by this Agreement, Owner (and Owner's contractors, as applicable) shall obtain endorsements that name the Indemnitees as additional insured in the full amount of all applicable policies, notwithstanding any lesser minimum limits specified in this Agreement. This Agreement requires Owner (and Owner's contractors, as applicable) to obtain and provide for the benefit of the Indemnitees, additional insured coverage in the same amount of insurance carried by Owner (or Owner's contractors, as applicable), but in no event less than the minimum amounts specified in this Agreement. In the event that Owner (or Owner's contractors as applicable) obtains insurance policies that provide liability coverage in excess of the amounts specified in this Agreement, the actual limits provided by such policies shall be deemed to be the amounts required under this Agreement. Without limiting the foregoing, the limits of liability coverage specified in this Agreement are not intended, nor shall they operate, to limit City's ability to recover amounts in excess of the minimum amounts specified in this Agreement.

(i) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

5. Acceptability of Insurers. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

6. Verification of Coverage. Prior to the Effective Date of this Agreement, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (a), (b), (c), and (e) of Section 1 above, duly executed endorsements evidencing the Indemnitees' status as additional insured, and all other endorsements and coverage required hereunder pertaining to such coverage. Prior to commencement of any construction work on the Property, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (d) and (g) of Section 1 above. Prior to City's issuance of a final certificate of occupancy or equivalent for the Project, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraph (f) of Section 1 above. Owner shall

furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

7. Insurance Certificates and Endorsements. Owner shall submit to the City all of the necessary insurance documents, including the applicable amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of required Owner policies listing all required policy endorsements to the City. Insurance Certificates and Endorsements are to be received and approved by the City within the time periods specified in Section 6 above. Should Owner cease to have insurance as required at any time, all work by Owner pursuant to this Agreement shall cease until insurance acceptable to the City is provided. Upon City's request, Owner shall, within thirty (30) days of the request, provide or arrange for the insurer to provide to City, complete certified copies of all insurance policies required under this Agreement. City's failure to make such request shall not constitute a waiver of the right to require delivery of the policies in the future.



**RECORDING REQUESTED BY**

Peninsula Innovation Partners, LLC  
1 Hacker Way  
Menlo Park, California 94025  
Attention: \_\_\_\_\_

*(Space Above for Recorder's Use)*

APN/Parcel ID: \_\_\_\_\_

**PARTIAL RELEASE**  
**OF**  
**PROJECT WIDE AFFORDABLE HOUSING AGREEMENT**

THIS PARTIAL RELEASE OF PROJECT WIDE AFFORDABLE HOUSING AGREEMENT (“**Release**”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_ by THE CITY OF MENLO PARK, a California municipal corporation (“**City**”) in favor of PENINSULA INNOVATION PARTNERS, LLC, a Delaware limited liability company (“**Project Wide Developer**”) and its successors and assigns with reference to the following:

**RECITALS**

A. Pursuant to that certain Project Wide Affordable Housing Agreement executed by Project Wide Developer and City, recorded on \_\_\_\_\_ as Instrument No. \_\_\_\_\_ of the County Recorder of San Mateo County, California (the “**Instrument**”), the City imposed certain covenants, conditions and/or restrictions upon the real property described therein, a portion of which is more particularly described in Exhibit A attached hereto (the “**Released Property**”).

B. As provided for in [Section 5]/[Section 16] of the Instrument, the City has agreed to release a portion of the real property from the Instrument.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Project Wide Developer hereby agree that the restrictions contained in the Instrument as they relate only to the Released Property are hereby unconditionally and irrevocably released and terminated as to the Released Property.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, this Release is made and executed as of this \_\_\_\_ day of \_\_\_\_\_, 202\_.

[ALL SIGNATURES TO BE ACKNOWLEDGED]

**PROJECT WIDE DEVELOPER:**

PENINSULA INNOVATION PARTNERS, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**CITY:**

CITY OF MENLO PARK, a California municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Manager

**ATTEST:**

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

**CALIFORNIA ACKNOWLEDGMENTS**

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 \_\_\_\_\_  
County of \_\_\_\_\_

On \_\_\_\_\_, 2022, before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**CALIFORNIA ACKNOWLEDGMENTS**

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 \_\_\_\_\_  
County of \_\_\_\_\_

On \_\_\_\_\_, 2022, before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**EXHIBIT A**

**Exhibit “D”**

**Phase 1**

	<b>Market Rate Units</b>	<b>Affordable Units</b>
<b>Parcel 2</b>	<b>293</b>	<b>34</b>
<b>Parcel 3</b>	<b>376</b>	<b>43</b>
<b>Parcel 6</b>	<b>158</b>	<b>20</b>
<b>Parcel 7</b>	<b>1 (manager’s unit)</b>	<b>119</b>

**Phase 2**

	<b>Market Rate Units</b>	<b>Affordable Units</b>
<b>Parcel 4</b>	<b>378</b>	<b>62</b>
<b>Parcel 5</b>	<b>212</b>	<b>34</b>

Recording Requested by and  
When Recorded Return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**ASSIGNMENT AND ASSUMPTION AGREEMENT -  
PROJECT WIDE AFFORDABLE HOUSING AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“**Agreement**”) is made and entered into as of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ company (“**Assignor**”), and \_\_\_\_\_, a \_\_\_\_\_ company (“**Assignee**”).

**RECITALS**

A. Assignor owns that real property located in the City of Menlo Park (“**City**”), County of San Mateo, State of California, and more particularly described in Exhibit A attached hereto (the “**Property**”).

B. On the date hereof, Assignee is acquiring approximately \_\_ acres of the Property as more particularly described in Exhibit B attached hereto (the “**Assigned Property**”).

C. The City and Peninsula Innovation Partners, LLC, a Delaware limited liability company, entered into that certain Project Wide Affordable Housing Agreement dated as of \_\_\_\_\_, 202\_ and recorded against the Property on \_\_\_\_\_, 202\_ as Instrument No. \_\_\_\_\_ in the San Mateo County Recorder’s Office (the “**Project Wide Affordable Housing Agreement**”).

D. Assignor desires to assign to Assignee all of Assignor’s rights, duties and obligations under the Project Wide Affordable Housing Agreement with respect to the Assigned Property only (the “**Assigned Rights and Obligations**”), and Assignee desires to accept and assume Assignor’s rights and obligations under the Project Wide Affordable Housing Agreement with respect to the Assigned Property only (the “**Assumed Rights and Obligations**”), such assignment and assumption to be effective on the Effective Date (as defined in Section 1.3 below). The Assigned Rights and Obligations and the Assumed Rights and Obligations are referred to collectively herein as the “**Assigned Property Rights and Obligations**”.

NOW THEREFORE, in consideration of these promises, and of the agreements, covenants and conditions contained in this Agreement and other good and valuable consideration, the parties agree as follows:

## ARTICLE 1

### **ASSIGNMENT AND ASSUMPTION OF THE ASSIGNED PROPERTY RIGHTS AND OBLIGATIONS**

**1.1 Assignment.** Assignor assigns to Assignee, as of the Effective Date (as defined in Section 1.3 below), all of Assignor's rights, title and interest in and to the Assigned Property Rights and Obligations.

**1.2 Assumption.** As of the Effective Date, Assignee accepts Assignor's assignment of the Assigned Rights and Obligations and assumes the Assumed Rights and Obligations. From and after the Effective Date, Assignee shall keep and perform all covenants, conditions and provisions of the Project Wide Affordable Housing Agreement relating to the Assigned Property.**Effective Date.** For purposes of this Agreement, the "**Effective Date**" shall be the later to occur of (1) the date on which the deed from Assignor to Assignee for the Assigned Property is recorded in the Office of the Recorder of the County of San Mateo; or (2) the date of the execution of this Agreement by all parties; provided, however, that this Agreement shall have no force and effect without the written approval of the City, as evidenced by the full execution by the City's representatives of the form entitled City of Menlo Park's Consent, attached hereto as Exhibit C.

### **RIGHTS AND REMEDIES**

**2.1 Assignor's Release; No Assignor Liability or Default for Assignee Breach.** Pursuant to Section 11 of the Project Wide Affordable Housing Agreement, Assignor shall be released from the Project Wide Affordable Housing Agreement with respect to the Assigned Property and the Assumed Rights and Obligations as of the Effective Date. Any default or breach by Assignee under the Project Wide Affordable Housing Agreement following the Effective Date with respect to the Assigned Property or the Assumed Rights and Obligations ("**Assignee Breach**") shall not constitute a breach or default by Assignor under the Project Wide Affordable Housing Agreement and shall not result in (a) any remedies imposed against Assignor, or (b) modification or termination of the Project Wide Affordable Housing Agreement with respect to that portion of the Property retained by Assignor after the conveyance of the Assigned Property, if any (the "**Assignor Property**"). **No Assignee Liability or Default for Assignor Breach.** As of the Effective Date, any default or breach by Assignor under the Project Wide Affordable Housing Agreement prior to or after the Effective Date ("**Assignor Breach**"), shall not constitute a breach or default by Assignee under the Project Wide Affordable Housing Agreement, and shall not result in (a) any remedies imposed against Assignee, including without limitation any remedies authorized in the Project Wide Affordable Housing Agreement, or (b) modification or termination of the Project Wide Affordable Housing Agreement with respect to the Assigned Property.

### **INTENTIONALLY OMITTED**



**ARTICLE 4**  
**AMENDMENT OF THE PROJECT WIDE AFFORDABLE HOUSING AGREEMENT**

**4.1 Assignor.** Assignor shall not request, process or consent to any amendment to the Project Wide Affordable Housing Agreement that would affect the Assigned Property or the Assigned Property Rights and Obligations without Assignee's prior written consent, which consent shall not be withheld unreasonably. The foregoing notwithstanding, Assignor may process any amendment that does not affect the Assigned Property, and, if necessary, Assignee shall consent thereto and execute all documents necessary to accomplish said amendment, provided that said amendment does not adversely affect the Assigned Property or any of Assignee's Assigned Property Rights and Obligations pursuant to the Project Wide Affordable Housing Agreement.**Assignee.** Assignee shall not request, process or consent to any amendment to the Project Wide Affordable Housing Agreement that would affect the Assignor Property or the Assignor's remaining rights and obligations pursuant to the Project Wide Affordable Housing Agreement without Assignor's prior written consent, which consent shall not be withheld unreasonably. The foregoing notwithstanding, Assignee may process any amendment that does not affect the Assignor Property or any of Assignor's remaining rights and obligations pursuant to the Project Wide Affordable Housing Agreement, and, if necessary, Assignor shall consent thereto and execute all documents necessary to accomplish said amendment.

**GENERAL PROVISIONS**

**5.1 Notices.** All notices, invoices and other communications required or permitted under this Agreement shall be made in writing, and shall be delivered either personally (including by private courier) or by nationally recognized overnight courier service to the following addresses, or to such other addresses as the parties may designate in writing from time to time: If to Assignee:

with copies to:

If to Assignor:

with a copies to:

Notices personally delivered shall be deemed received upon delivery. Notices delivered by courier service as provided above shall be deemed received twenty-four (24) hours after the date of deposit. From and after the Effective Date and until further written notice from Assignee to the City pursuant to the terms of the Project Wide Affordable Housing Agreement, Assignee hereby designates as its notice address for notices sent by the City pursuant to Section 17(k) of the Project Wide Affordable Housing Agreement, the notice address set forth above.

**5.2 Estoppel Certificates.** Within ten (10) days after receipt of a written request from time to time, either party shall execute and deliver to the other, or to an auditor or prospective lender or purchaser, a written statement certifying to that party's actual knowledge: (a) that the Project Wide Affordable Housing Agreement is unmodified and in full force and effect (or, if there have been modifications, that the Project Wide Affordable Housing Agreement is in full force and effect, and stating the date and nature of such modifications); (b) that there are no current defaults under the Project Wide Affordable Housing Agreement by the City and either Assignor or Assignee, as the case may be (or, if defaults are asserted, so describing with reasonable specificity) and that there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default; (c) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, and stating the date and nature of such modifications); and (d) such other matters as may be reasonably requested.**Attorneys' Fees.** In the event of any legal or equitable proceeding in connection with this Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees, costs and disbursements paid or incurred in good faith at the arbitration, pre-trial, trial and appellate levels, and in enforcing any award or judgment granted pursuant thereto. **No Waiver.** No delay or omission by either party in exercising any right, remedy, election or option accruing upon the noncompliance or failure of performance by the other party under the provisions of this Agreement shall constitute an impairment or waiver of any such right, remedy, election or option. No alleged waiver shall be valid or effective unless it is set forth in a writing executed by the party against whom the waiver is claimed. A waiver by either party of any of the covenants, conditions or obligations to be performed by the other party shall not be construed as a waiver of any subsequent breach of the same or any other covenants, conditions or obligations.**Amendment.** This Agreement may be amended only by a written agreement signed by both Assignor and Assignee, and subject to obtaining the City's consent.

**5.6 Successors and Assigns.** This Agreement runs with the land and shall be binding on and inure to the benefit of the parties and their respective successors and assigns. **No Joint Venture.** Nothing contained herein shall be construed as creating a joint venture, agency, or any other relationship between the parties hereto other than that of assignor and assignee.**Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the full extent permitted by law; provided that, if the invalidation or unenforceability would deprive either Assignor or Assignee of material benefits derived from

this Agreement or make performance under this Agreement unreasonably difficult, then Assignor and Assignee shall meet and confer and shall make good faith efforts to modify this Agreement in a manner that is acceptable to Assignor, Assignee and the City. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. **Third Party Beneficiaries.** Assignor and Assignee acknowledge that the City is a third party beneficiary of the terms and conditions of this Agreement to the extent necessary for City to enforce the terms and conditions of the Project Wide Affordable Housing Agreement. This Agreement shall not be deemed or construed to confer any rights, title or interest, including without limitation any third party beneficiary status or right to enforce any provision of this Agreement, upon any person or entity other than Assignor, Assignee and the City. **Time of the Essence.** Time is of the essence in the performance by each party of its obligations under this Agreement. **Authority.** Each party represents that the individuals executing this Agreement on behalf of such Party have the authority to bind his or her respective party to the performance of its obligations hereunder and that all necessary board of directors', shareholders', partners' and other approvals have been obtained. **Term.** The term of this Agreement shall commence on the Effective Date and shall expire upon the expiration or earlier termination of the Project Wide Affordable Housing Agreement, subject to any obligations under the Project Wide Affordable Housing Agreement that expressly survive the expiration or termination of the Project Wide Affordable Housing Agreement. Upon the expiration or earlier termination of this Agreement, the parties shall have no further rights or obligations hereunder, except with respect to any obligation to have been performed prior to such expiration or termination or with respect to any default in the performance of the provisions of this Agreement which occurred prior to such expiration or termination or with respect to any obligations which are specifically set forth as surviving this Agreement or the Project Wide Affordable Housing Agreement. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document. **Default.** Any failure by either party to perform any material term or provision of this Agreement shall constitute a default (a) if such defaulting party does not cure such failure within thirty (30) days following written notice of default from the other party, where such failure is of a nature that can be cured within such thirty (30) day period, or (b) if such default is not of a nature that can be cured within such thirty (30) day period, if the defaulting party does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence the curing of such failure. Any notice of default given hereunder shall be given in the same manner as provided in Section 5.1 hereof and shall specify in detail the nature of the failures in performance that the noticing party claims and the manner in which such failure can be satisfactorily cured.

*[remainder of page left intentionally blank – signature pages follow]*

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement by proper persons thereunto duly authorized, to be effective as of the Effective Date.

**“Assignor”**

\_\_\_\_\_,  
**a** \_\_\_\_\_ **company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**“Assignee”**

\_\_\_\_\_,  
**a** \_\_\_\_\_ **company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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 )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer),

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]

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 )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer),

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**  
**Description of the Property**  
**(Attached)**

**EXHIBIT B**  
**Description of the Assigned Property**  
**(Attached)**



**EXHIBIT C**

**CONSENT OF CITY OF MENLO PARK**

The City of Menlo Park hereby consents to the assignment and assumption of the Assigned Property Rights and Obligations as set forth in this Agreement and agrees to the terms and conditions set forth herein.

**CITY OF MENLO PARK,**  
a California Municipal corporation

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**STAFF REPORT**

**Planning Commission**

**Meeting Date:**

**10/24/2022**

**Staff Report Number:**

**22-056-PC**

**Public Hearing:**

**Adopt a resolution recommending the City Council certify the final environmental impact report (Final EIR), adopt California Environmental Quality Act (CEQA) Findings, adopt a Statement of Overriding Considerations for significant and unavoidable impacts, amend the General Plan Circulation Element, rezone the project site and amend the zoning map to incorporate “X” overlay district and approve the conditional development permit (CDP), approve the vesting tentative maps for the main project site and the Hamilton Avenue Parcels, approve the development agreement (DA), and approve the below market rate (BMR) housing agreements for the proposed Willow Village masterplan project located at 1350-1390 Willow Road, 925-1098 Hamilton Avenue and 1005-1275 Hamilton Court, 1399 and 1401 Willow road, and 871-883 Hamilton Avenue**

**Recommendation**

Staff recommends that the Planning Commission adopt a resolution recommending approval to the City Council of the following (included in Attachment A):

- Certification of the Final Environmental Impact Report (Attachment A.1) that analyzes the potential environmental impacts of the proposed project and adopt the CEQA findings to address impacts, including a statement of overriding considerations for significant and unavoidable environmental effects that would result from the proposed project (Attachment A.2), and approval of the mitigation monitoring and reporting program for the proposed project to mitigate impacts to less than significant with mitigation or reduce significant impacts (Attachment A.3);
- Amendments to the General Plan Circulation Element and Zoning Map to modify the locations of the public rights-of-way, new street connections, paseos and incorporate multi-use pathways within the main project site and new site access (draft resolution in Attachment A.4);
- Approval of vesting tentative maps for the main project site and Hamilton Avenue Parcels to create new buildable parcels, dedicate public rights-of-way, identify public access easements, site infrastructure, and realign Hamilton Avenue (draft resolutions in Attachments A.5 “main project site” and A.6 “Hamilton Avenue parcels”);

- A rezoning of the project site from R-MU-B and O-B to R-MU-B-X and O-B-X to include the “X” Conditional Development combining district overlay to enable the use of a conditional development permit (CDP) (draft ordinance in Attachment A.7);
- A CDP to develop the proposed project through the master plan provisions outlined in the Zoning Ordinance, utilize the bonus level development allowances (increased height, density, and intensity) in exchange for community amenities, establish allowed uses, development regulations (including design standard modification requests), and otherwise govern the development of the proposed project (draft CDP in Attachment A.8);
- A development agreement (DA) between the City and the project applicant for vested rights in exchange for community amenities and assurances on the timing and phasing of the proposed project (draft ordinance in Attachment A.9 and draft DA in Attachment A.10);
- Below market rate housing agreements for the provision of 312 BMR units with a mix of affordable income limits, including 119 age restricted senior units (draft resolution in Attachment A.11 and draft agreements in Attachments A.12 “age restricted” and A.13 “non-age restricted”).

The proposed project received conditional approval from the City Arborist for heritage tree removal permits to remove 276 heritage trees on the main project site, three (3) heritage trees on the Hamilton Avenue Parcels, and 16 heritage trees within parcels at 1305 and 1330 O’Brien Drive and within the O’Brien Drive right-of-way that conflict with the development of the proposed project and off-site improvements. The heritage tree permits would become effective upon approval and implementation of the proposed project.

### **Policy Issues**

The proposed project requires the Planning Commission and City Council to consider the merits of the project, including project consistency with the City’s current general plan and proposed amendments, municipal code, and other adopted policies and programs. The Commission and Council will also need to consider the proposed development regulations and modifications to the Zoning Ordinance standards (e.g. design standards, bird friendly waivers, transportation demand management, signage, construction hours, and below market rate housing) in the conditional development permit. As part of the project review, the Commission and Council will need to make findings that the merits of the project and the public benefits and specific community amenities associated with the development agreement balance the significant and unavoidable environmental impacts as described in the environmental impact report by adopting a statement of overriding considerations. The Planning Commission is a recommending body on these policy issues. The policy issues summarized here are discussed in detail in the staff report.

In addition, the City prepared the following documents to analyze the proposed project and inform reviews by community members, the Planning Commission, and the City Council:

- Housing Needs Assessment (HNA), including an analysis of the multiplier effect for indirect and induced employment from the proposed project, in compliance with the terms of the 2017 settlement agreement between the City of Menlo Park and the City of East Palo Alto (Attachment B);
- Fiscal Impact Analysis (FIA) to inform decision makers and the public of the potential fiscal impacts of the proposed project (Attachment C);
- Appraisal to identify the required value of the community amenity in exchange for bonus level development (Attachment D); and
- Community amenities proposal evaluation to determine if the community amenities proposal meets the minimum required value (Attachment E).

These reports are not subject to specific City action, but provide background information for the conditional development permit, development agreement, and other land use entitlements.

## **Background**

### ***Site location***

A project location map that includes site addresses, neighboring Meta sites, and other landmarks is included in Attachment F. The project site includes the following three project areas.

#### Main project site

The approximately 59-acre main project site is generally located along Willow Road between Hamilton Avenue and Ivy Drive, previously referred to as the ProLogis Menlo Science and Technology Park. The main project site contains 20 existing buildings with approximately 1 million square feet of gross floor area.

#### Hamilton Avenue Parcels

The proposed project includes the realignment of Hamilton Avenue west of Willow Road, and the associated parcels to the north (Belle Haven Shopping Center, referred to as Hamilton Avenue Parcel North) and south (Chevron gas station, which is referred to as Hamilton Avenue Parcel South) sides of Hamilton Avenue.

#### Willow Road undercrossing and overcrossing

The main project site could be connected to the Meta West Campus by an undercrossing and an elevated parkway that would connect the main project site with the Hamilton Avenue Parcel North site. Both the undercrossing and elevated park would include public access for bicyclists and pedestrians.

#### Project variants

The proposed project includes four variants that could be incorporated into the project. Variants are variations of the proposed project at the same project site, with the same objectives, background, and development controls but with a specific variation. With the exception of the Increased Residential Density Variant (studied for policy purposes in the event the City decision makers desire to consider it), the variants are slightly different versions of the project that could occur based upon the action or inaction of agencies other than the City or of property owners outside the Project site. The project includes the following variants:

- No Willow Road Tunnel Variant
- Increased Residential Density Variant (200 additional dwelling units)
- No Hamilton Avenue Realignment Variant
- Onsite Recycled Water Variant

With the exception of the Increased Residential Density Variant, the other three variants could be incorporated by the applicant without further analysis; the changes to the site plan that could result from the variants would be evaluated under the change provisions of the CDP.

### ***Project milestones***

A table summarizing the previous project milestones and meetings is included in Attachment G.

## **Analysis**

### ***Project overview***

The applicant, Peninsula Innovation Partners, Inc., is proposing to redevelop the project site through the master plan process, by utilizing a CDP and entering into a DA, to secure vested rights, with the City. The master plan process allows a project to aggregate development potential across the entire site, including square footage, open space requirements, parking, etc. The project site is zoned O-B (Office, bonus) and R-MU-B (Residential mixed-use, bonus). As stated in the site location section, above, the proposed project includes a main project site and off-site components along Hamilton Avenue.

**Main project site**

The proposed project would redevelop the main project site into three districts: a Town Square district, a Residential/Shopping district, and a Campus district. The Campus district is intended to be occupied by Meta. The proposed site plan is included in Attachment H and a hyperlink to the master plan project plans is included in Attachment I. The proposed project would result in a net increase of approximately 800,000 square feet of nonresidential uses (office, retail, personal services, etc.) for a total of approximately 1.8 million square feet. The proposal also includes multifamily housing units, a hotel, and publicly accessible open space (e.g. elevated linear park, town square, dog park, and 3.5 acre publicly accessible park). Table 1 summarizes the proposed development at the project site.

Table 1: Main project site Project Data		
	Proposed project (CDP Standards)	Zoning Ordinance bonus level standards (maximums)
Residential dwelling units	1,730 units**	1,730 units
Residential square footage	1,696,406 s.f.	1,701,404 s.f.
Residential floor area ratio	224.3%	225%
Commercial Retail square footage	200,000 s.f.	397,848 s.f.
Commercial Retail floor area ratio	12.6%	25%
Office square footage	1,600,000 s.f.*	1,780,436 s.f.
Office floor area ratio	113%	125%
Hotel rooms	193	n/a

\*Proposed office square footage includes a maximum of 1.25M s.f. of office use with the balance of 350,000 s.f. for meeting and collaboration space use (if office square footage is maximized at 1.25M sf) within the Campus District; the total s.f. includes a portion of the 25% non-residential FAR permitted in the R-MU portion of the project site.

\*\*The total units would include a minimum of 15 percent of the residential units as below market rate (BMR) units to satisfy the City’s inclusionary requirements. Additional BMR units would be incorporated to comply with the commercial linkage requirement.

**Main project site layout**

The site layout for the main project site is shown on Masterplan Sheet G3.01 and in Attachment H. The conceptual district plan for the site is included in Attachment J. The three districts are linked through the proposed street network, parks and open space, and the layout of the buildings. The following list identifies some key components of the proposed site layout.

- The grocery store would be proximate to Willow Road at the intersection with Hamilton Avenue/Main Street and entertainment and retail/dining uses would generally be located along Main Street;

- Hotel and associated retail/dining would be proximate to the 1.5-acre publicly accessible town square;
- 3.5-acre publicly accessible park (proximate to Willow Road at Park Street), a dog park (in the southeastern portion of the main project site) and additional public open space;
- 2-acre publicly accessible elevated park extending over Willow Road providing access at the Hamilton Avenue Parcel North; and
- A potential publicly-accessible, below grade tunnel for Meta intercampus trams, bicyclists and pedestrians connecting the project with the West and East campuses

The main project site would be bisected by a new north–south street (Main Street) as well as an east–west street that would provide access to all three districts (Park Street). The proposed project would include a circulation network for vehicles, bicycles, and pedestrians, inclusive of paseos, multi-use paths, and both public rights-of-way and private streets that would be generally aligned to an east-to-west and a north-to-south grid. While the CDP would incorporate the Willow Road Tunnel, it is an optional feature and the applicant may choose not to construct the tunnel. The potential scenario without the Willow Road Tunnel was studied in the EIR as both an alternative and project variant.

Hamilton Avenue Parcels and Willow Road grade separated crossings

The proposed project includes off-site improvements, such as the realignment of Hamilton Avenue and the Willow Road undercrossing and elevated park (over Willow Road). The proposed project includes an elevated park that would extend from Hamilton Avenue Parcel North over Willow Road to the main project site, creating a grade separated connection across Willow Road. In addition, the main project site could be connected to the West and East Campuses through a tunnel below Willow Road and the Dumbarton Corridor that would allow Meta trams to circulate off-street between the campuses and allow for bicyclists and pedestrians to travel from the main project site to the campuses and the Bay Trail.

The realignment of Hamilton Avenue would result in the demolition and potential reconstruction of the existing Chevron station (Hamilton Avenue Parcel South) and the potential future expansion of retail uses at the existing Belle Haven neighborhood shopping center (Hamilton Avenue Parcel North). These are components of the proposed project that could occur as a result of the realignment of Hamilton Avenue and would be reviewed through separate permitting processes. However, these were studied for environmental clearance through the EIR for the proposed project. The conceptual site plans for the Hamilton Avenue Parcels are included in Appendix 7 of the masterplan plan set (link in Attachment I) for reference. Table 2 below summarizes for reference only the potential development on the two Hamilton Avenue Parcels and the maximum square footage allowed by the existing zoning district (C-2-S district).

Table 2: Hamilton Avenue Parcels North and South Project Data		
Project site	Potential Future Projects (Total square footage)	Zoning Ordinance maximums*
Hamilton Avenue Parcel North	22,400 s.f.	48,134 s.f./(FAR 0.5)
Hamilton Avenue Parcel South	5,700 s.f.	21,126 s.f./(FAR 0.5)

\*Zoning Ordinance maximums represent maximum development potential after realignment of Hamilton Avenue, which includes re-subdividing the parcels to reduce the size of Hamilton Avenue Parcel South and increase the size of Hamilton Avenue Parcel North.

Project phasing

Project build out would be phased. The first phase would include the demolition and backbone infrastructure, followed by the first vertical construction phase (focused on the campus district and select

residential/mixed-use buildings). The first vertical construction phase would include the elevated park. The publicly accessible community park would be completed in the first vertical construction phase and construction on the town square and hotel are dependent upon Caltrans approvals and the completion of the below grade parking structure. The second phase would include the remainder of the residential and mixed-use buildings. The applicant’s conceptual construction phasing timeline (from the Development Agreement) is included in Attachment K and represents one possible scenario for the timeline for project buildout.

**Development standards**

This section summarizes the proposed project and the development regulations and standards. The conditional development district (or “X” district), also referred to as combining district, is a zoning district specifically established for the purpose of combining special regulations or conditions with one of the zoning districts through a CDP. CDPs allow for customization and modifications to Zoning Ordinance and Municipal Code requirements, provided the proposed project complies with the maximum density and floor area ratio (FAR) for the site. The proposed project includes a CDP for a comprehensive masterplan redevelopment of the project site and the CDP would identify project specific development regulations and design standards.

Density, floor area ratio (FAR), and gross floor area (GFA)

The proposed project would be developed at a bonus-level FAR, height, and density and would aggregate development potential across the project site through the CDP. The proposed project does not exceed the maximum allowed density, FAR, or GFA allowed in the O-B and R-MU-B zoning districts. Refer to Table 1 and Table 2 for detailed density, FAR, and GFA details for the proposed project.

The proposed project includes up to 1,730 dwelling units. The EIR studied a project variant that would increase the number of housing units to 1,930 units. These additional 200 units could be enabled through the City’s BMR density bonus or State Density Bonus law. The proposed project does not currently include these additional units; however, studying these additional units in the Draft EIR enables City decision makers to incorporate these units into the project if desired.

Height

The applicant has submitted an analysis in the master plan that documents preliminary compliance with the Zoning Ordinance height requirements for height (average) and maximum height for the project. The CDP includes a request to increase the maximum height of Parcel 3 (Building RS3) to 85 feet. The proposed project heights are outlined in Table 3 below. Maximum and average height compliance would be tracked by staff through the review of each individual building permit.

Table 3: Building Height		
	Proposed	Zoning Ordinance standards*
<b>Building Height (Maximum)**</b>		
O-B Zoning	120 feet	120 feet
R-MU-B Zoning	80 feet; 85 feet for (Building RS 3)***	80 feet
<b>Height (Average)**</b>		
O-B Zoning	70 feet	77.5 feet
R-MU-B Zoning	62.5 feet	62.5 feet

\* The height limits include the 10-foot height increase allowed for properties within the FEMA flood zone.

\*\* Maximum height and average height do not include roof-mounted equipment, utilities and parapets used to screen mechanical equipment.

\*\*\* The additional height above the Zoning Ordinance maximums can be permitted through the CDP.

#### Design standards and modification requests

The R-MU-B and O-B zoning districts include design standards for new construction that regulate the siting and placement of buildings, landscaping, parking, and other features in relation to the street; building mass, bulk, size, and vertical building planes; ground floor exterior facades of buildings; open space, including publicly accessible open space; development of paseos to enhance pedestrian and bicycle connections between parcels and public streets in the vicinity; building design, materials, screening, and rooflines; and site access and parking.

Buildings and site features will be reviewed subsequently by the Planning Commission through the architectural control permit review process. The proposal includes modifications from the Zoning Ordinance design standards that would be enumerated in the CDP and each future architectural control review would need to be in compliance. Where a standard is not modified by the CDP, the Zoning Ordinance requirement would apply.

The applicant is requesting the following modifications to the development and design standards to create architectural variation throughout the overall master plan (these may be recurring amongst buildings or building specific requests):

- Building Modulation (Minor and Major);
- Building Step-backs;
- Building setbacks;
- Minimum Base Height;
- Roof Modulations;
- Building Projections;
- Building and Garage Entrances.
- Senior Parking Standards (Vehicles/bicycles);
- Above Ground Parking Structures (Campus District); and
- Retail Building Height (Mixed use buildings with retail uses).

For the above listed requests, the applicant has prepared detailed modification requests and justifications (Attachment L). The modification requests include a discussion of the building/site specific reason for the requested modification. In general, City staff believes that the modification requests are supportable and meet the intent of the General Plan and Zoning Ordinance as the modifications have been considered holistically and each future building would continue to provide façade variations, visual interest, and general building articulation. The proposed modifications are located in Section 4 of the draft CDP (Attachment A.8). Future architectural control reviews by the Planning Commission would help ensure high quality architectural design, and appropriate building massing, materials and architectural elements.

#### Site signage and outdoor advertising

The CDP would allow the applicant to prepare a master sign program to set the square footage maximums for each parcel/building and to outline the design standards and guidelines for site signage. The Planning Commission would review and act on the master sign program prior to the installation of any signage for the buildings at the project site. Wayfinding signage (e.g. street signs, bike route signage, etc.) would be incorporated into the master sign program. The use of a master sign program would allow for signage to be comprehensively reviewed and incorporated into the masterplan instead of reviewed individually tenant by tenant.



### Construction hours and noise compliance

Construction activities for the proposed project may take place outside of typical construction hours and could take place between 7:00 a.m. to 10:00 p.m. Monday through Saturday and from 8:00 a.m. to 6:00 p.m. on Sundays. Construction activities taking place outside of the noise ordinance exemption work hours of 8:00 a.m. to 6:00 p.m. Monday through Friday would generally comply with the noise limitations set forth in Chapter 8.06 (Noise) of the municipal code and mitigation measures Modified ConnectMenlo NOISE-1c, NOI-1.1 and NOI-1.2. The mitigation measures would help ensure that the noisiest construction activities would generally take place between 8:00 a.m. to 6:00 p.m. Monday through Friday. Some activities will not be able to take place during those hours (e.g. tunnel and elevated park construction, off-site utility improvements, building concrete pours, etc.) and could exceed the noise ordinance limits, even with mitigation. In addition, components of construction such as pile driving would exceed the construction noise exception during daytime construction hours.

Prior to the issuance of a building permit for each individual phase, the applicant will submit a noise control plan to City for review. The CDP would generally permit pile drivers and similar construction equipment to exceed the 85 decibels at 50 feet requirement, subject to review and approval of the noise control plan. Additionally, construction activities outside of 8:00 a.m. to 6:00 p.m. may be allowed to exceed the noise ordinance if determined by the Building and Planning Divisions that an exception for specific activities (e.g. pile driving or similar activities) is necessary. Through the CDP and the noise control plan, City staff would ensure that impacts from these activities are limited to the extent feasible and practical and that any extended working hours predominantly comply with the noise ordinance with some exceptions.

### Outdoor seating

The applicant is proposing outdoor seating associated with retail and restaurant uses as a permitted use, subject to compliance with standards outlined in the CDP. The CDP includes standards for location and design. The Planning Division would review the outdoor seating for compliance with the CDP.

### Sale of beer, wine, and alcohol

To ensure viable retail, restaurant, hotel, and grocery uses, the applicant requests an allowance for on-sale and off-sale California alcoholic beverage control (ABC) licenses. The CDP would permit a certain number of alcohol licenses by use within each district on the project site. The CDP would permit the following types:

- on-site sale of alcohol associated with restaurant uses,
- on-site sale of beer and wine only for events (e.g. farmers' markets),
- off-site sale of alcohol for a full service grocery store greater than 20,000 square feet,
- off-site sale of alcohol for the gift shop within the hotel; and
- on-site sale general (bar and/or restaurant) for the hotel.

The CDP would allow up to seven permits for the Town Square district (inclusive of four permits for the hotel), up to eight permits for the Residential/Shopping district, and up to four for the Office Campus district. Within those permits, only two off-sale licenses would be permitted through the CDP for the full service grocery store and for the hotel gift shop. The alcohol permits would be subject to the ABC, Planning Division, and Police Department review and approval to ensure safeguards are in place prior to operation. Additional licenses and license types may be permitted through an administrative or use permit process per the requirements of the Zoning Ordinance.

### Parks, paseos, and open space

The proposed master plan includes a minimum required square footage of open space (both publicly accessible and general/common open space) through a combination of parks, a town square, paseos and

landscaping. Please refer to the open space exhibit on Sheet G3.05 in master plan (Attachment M) for more details on the proposed open space design and locations. Table 4 below identifies the minimum open space requirement and the proposed open space for the project.

Table 4: Open Space and Landscaping Requirements				
Land use	Zoning requirement (total open space) (sf)	Zoning requirement (publicly accessible*) (sf)	CDP minimum open space (sf)	CDP minimum publicly accessible open space (sf)
R-MU-B	189,045 (25%)	47,262 (25%)	370,000	160,000
0-B	477,418 (30%)	238,709 (50%)	487,000	200,000
Total	-	-	857,000	360,000

\*publicly accessible open space percentages are calculated from the total required open space.

The proposed open space would meet the design and access requirements of the Zoning Ordinance and would be documented through future architectural control reviews. The paseos and pathways through the site include the multi-use pathway along the eastern edge of the site, connecting with an east-to-west pathway along the northern edge of the main project site that would link to the potential Willow Road Tunnel. The elevated park would function as an east-to-west paseo and the enhanced streetscape along Main Street would also function similar to a paseo. Along the eastern edge of the main project site, the applicant is proposing to construct a minimum 20-foot wide paseo (identified on the Zoning Map as shared between the main project site and the 1350 Adams Court/1305 O'Brien Drive parcel). The project plans identify details for the eastern paseo, enhanced main street bike/pedestrian facilities, and the elevated park.

The publicly accessible park located at the southwest corner of the site is anticipated to be passively landscaped with trees, landscaping, pathways, and open lawn areas. Additionally, the proposed project includes a town square gathering space adjacent to the hotel, meeting and collaboration space, and office campus. The town square would include access to the elevated park and be located in a central site location bringing together the Campus District, hotel, and residential/retail uses.

**Trees and landscaping**

The majority of the trees on the main project site would be removed to accommodate the construction, specifically the grading for sea level rise resiliency per FEMA and Zoning Ordinance requirements. Table 5 outlines the tree removals associated with the construction of the proposed project.

Table 5: Proposed tree removals				
Project component	Total trees	Heritage size trees	Heritage tree removals	Non-heritage tree removals
Main project site	805	284	276	505
Hamilton Avenue parcels	141	18	3	58
O'Brien Drive off-site improvements	37	25	16	7
Total	983	327	295	570

Eight heritage trees and 16 non-heritage trees would remain in place on the main project site, mostly along

the southern property line. Heritage tree replacements would meet the City's replacement value requirements. The proposed tree replacement and plantings would include both native and adapted trees and the replacement trees would be reviewed for compliance with City requirements by the City Arborist during future architectural control and building permit applications.

The City Arborist reviewed and conditionally approved the heritage tree removal permits associated with the proposed project, pending action by the City Council on the CDP and subject to authorization from all affected property owners for the off-site heritage tree removals. In addition, tree removals would be restricted until issuance of associated building permits for construction. The draft CDP includes these conditions and requirements.

#### Green and sustainable building regulations

The proposed project would, at a minimum, comply with the green and sustainable building requirements of the Zoning Ordinance, the City's current Reach Code, and EV charging requirements. The summary below includes the City's requirements for the proposed project and compliance would be ensured through the CDP and future architectural control permits:

- Meet 100 percent of its energy demand through any combination of on-site energy generation, purchase of 100 percent renewable electricity, and/or purchase of certified renewable energy credits;
- Be designed to meet LEED (Leadership in Energy and Environmental Design) Gold BD+C (Building Design + Construction) for buildings greater than 20,000 square feet and LEED Silver BD+C for buildings between 10,000 and 20,000 square feet;
- Comply with the current electric vehicle (EV) charger requirements adopted by the City Council;
- Meet water use efficiency requirements including the use of recycled water for all City-approved non-potable applications;
- Locate the proposed buildings 24 inches above the Federal Emergency Management Agency (FEMA) base flood elevation (BFE) to account for sea level rise;
- Plan for waste management during the demolition, construction, and occupancy phases of the project (including the preparation of the required documentation of zero waste plans); and
- Incorporate bird friendly design in the placement of the building and use bird friendly exterior glazing and lighting controls.

West Bay Sanitary District is evaluating a recycled water facility for the Bayfront Area and the applicant is participating in that effort. The proposed project would utilize recycled water from this facility; however, if the facility is not available for the proposed project, the applicant would provide an on-site facility. To help ensure that the regional facility is more viable and enable the applicant's participation in the development of that facility, the DA includes an allowance for the applicant to use potable water for an interim period while the regional facility is being constructed or while the applicant constructs its own facility if West Bay does not move forward with the regional facility. Any interim use of potable water would require the applicant to implement conservation measures to offset some of its potable water use. Staff believes this allowance will help ensure the West Bay facility is more viable and available to supply other users in the Bayfront Area.

In addition, the proposed project would be required to use electricity as the only source of energy for all appliances used for space heating, water heating, cooking, and other activities, consistent with the City's reach code, with the exception of commercial kitchens that may appeal to use natural gas, which is subject to review and approval by the Environmental Quality Commission. The proposed project would be net zero for non-transportation operational greenhouse gas emissions. The Project proposes to use natural gas for commercial kitchens but the on-site renewable energy generation would off-set any natural gas used in building operations (cooking), any tenants that do not purchase 100 percent renewable energy through

PCE, and the routine testing of diesel generators.

#### Bird friendly design waivers

The proposed project includes a request to modify the City's bird friendly design standard requirements, allowing for alternative applications to reduce the potential impacts to birds. The applicant submitted a Bird Safe Design Assessment that was peer reviewed by the City's environmental consultant and determined to meet the City's bird safe requirements. The EIR incorporated the bird safe waivers in the environmental evaluation and found the impacts less than significant with mitigation. The alternate measures recommended by the assessment report are incorporated into the draft CDP and the report is included in Attachment N.

#### Hazardous materials (diesel fuel)

As part of the project, the applicant is proposing 13 diesel-powered backup generators throughout the proposed project, including one generator on Hamilton Avenue Parcel North, which would be permitted through a separate review and permitting process. That generator was analyzed in the EIR, however. The general locations and sizing are shown on Sheet G6.07 of the master plan (Attachment O). For the main project site, the use and storage of diesel fuel is administratively permitted. The applicant submitted documentation on the specifications of the generators, which was reviewed by the San Mateo County Health Department, West Bay Sanitary District, Menlo Park Fire Protection District, and the Building Division, and found to be in compliance with applicable standards and each reviewer has approved or conditionally approved these generators. The draft CDP would permit the 12 generators currently proposed on the main project site through a building permit, subject to conformance review with the master plan, hazardous materials information forms, supplemental generator information, and agency reviews. The agency referral forms are in Attachment P. Any additional diesel generators or other applications that involve the storage and use of hazardous materials on the main project site would require an administrative or use permit per the Zoning Ordinance.

#### ***Site circulation, parking, transportation demand management***

The main project site is currently accessible from a traffic signal-controlled intersection at Willow Road via Hamilton Avenue/Hamilton Court and two driveways off northbound Willow Road. Multiple curb-cut entrances off Hamilton Avenue/Hamilton Court lead into the primary parking area for each building. Hamilton Avenue Parcels North and South are both accessible via one driveway from southbound Willow Road and one driveway along Hamilton Avenue.

The proposed project would comprehensively redevelop the site, creating new vehicular entrances/access points from Willow Road, Hamilton Avenue, Adams Court, and O'Brien Drive. In addition to accommodating vehicular and transit access, the proposed streets would include bicycle and pedestrian infrastructure, and include a comprehensive streetscape plan, including street trees, plantings, green infrastructure, and sidewalks. The proposed site circulation requires an amendment to Figure 2 of the General Plan Circulation Element to modify the location of rights-of-way throughout the main project site. The amendment would also modify the location of paseos and add multi-use pathways within the main project site for bicyclists and pedestrians to traverse the main project site. The proposed connection between Main Street and O'Brien Drive also requires an amendment to the City's Circulation Element and Zoning Map to create a new connection to O'Brien Drive. A comparison of the site circulation from the adopted General Plan and the Circulation Element amendment is included in Attachment Q.

#### Site circulation

Excerpted circulation plans (Sheets G4.03- G4.11) showing tram, shuttle, vehicle, service, bicycle, and pedestrian circulation are included in Attachment R.

Key circulation and access components include:

- New east to west street that would connect Willow Road to Main Street within the Project site (identified as Park Street).
- A connection from Willow Road/Hamilton Avenue (northwest portion of the main project site) diagonally to the southeast corner of the Project site (and a new site access to O'Brien Drive).
- A connection to Adams Court at East Loop Road that would link to Main Street/Park Street to provide cross-site access.
- Internal streets overlaid in a grid-like pattern within the main project site.
- Inclusion of a multi-use bicycle/pedestrian pathway on the eastern edge of the site and an extension of this pathway along the northern edge of the main Project site.
- An enhanced bicycle and pedestrian zone along Main Street, including a promenade for bicyclists and pedestrians outside of the vehicular circulation lanes and a Class IV separated bikeway.
- An optional publicly accessible tunnel between the main project site, the West and East Meta Campuses, and the Bay Trail.
- An elevated park that would provide an east to west bicycle and pedestrian connection from the Belle Haven shopping center on Hamilton Avenue to the northeast corner of the main project site.

#### Site access

To accommodate access to the main project site, the proposed project would include offsite improvements on Willow Road, Hamilton Avenue, O'Brien Drive, and Adams Court.

#### *Willow Road*

In order to provide adequate access to the main project site, improvements to Willow Road are proposed, as follows:

- Right-of-way widening to accommodate additional left-turn pockets.
- Creation of one new signalized intersection (Park Avenue).
- Relocation of one signalized intersection (Hamilton Avenue).
- Bicycle and pedestrian improvements along the project frontage and crossing improvements at the new intersections.

The proposed left-turn adjustments are currently receiving further analysis. Staff will be coordinating with the applicant and Caltrans to refine the proposed change with a focus on enhancing the safety of the crossings of Willow Road.

#### *Hamilton Avenue*

In conjunction with Project site access and to improve traffic operations on Willow Road, the Hamilton Avenue/Willow Road intersection would be relocated approximately 150 feet south of the existing intersection and connect to Main Street on the main project site.

#### *O'Brien Drive*

At the southeast corner of the main project site, the proposed project would create a new four-legged roundabout at O'Brien Drive to accommodate site access and area circulation. This intersection would require realignment of O'Brien Drive where it passes through the roundabout. The new roundabout would provide direct access to Main Street and East Loop Road.

#### Complete Streets Commission review

The Complete Streets Commission reviewed the site circulation and access at its meeting on June 8, 2022

and recommended approval of the General Plan Circulation Element and Zoning Map amendments but provided feedback to improve on-site circulation to prioritize pedestrian and bicycle safety. Since that meeting the applicant team revised the site circulation to address the Commission’s comments and City staff has been working with the applicant to further refine site circulation. Roadway design and cross sections from the masterplan are included in Attachment S. Staff generally supports the proposed changes, which provide reduced travel lanes widths on most streets, additional space for bicyclists, and accommodation of additional capacity primarily on the perimeter of the site per the recommendations of the Complete Streets Commission.

Site parking

Parking throughout the main project site would be provided on streets and within a surface lot on Park Street, in aboveground parking structures (for the Campus District), and in podiums or underground parking garages. Table 6 includes the proposed parking standards and the Zoning Ordinance requirements.

Project component	Development maximum	Minimum parking ratio	Minimum parking spaces	Maximum parking ratio	Maximum parking spaces
Office/accessory space	1,600,000 sf	2.0/1,000 sf	3,200	2.3/1,000 sf	3,700
Residential (non-age restricted)	1611 du	1.0/du	1,611	1.02/du	1,644
Residential (age-restricted senior units)	119 du	0.5/du	60	0.5/du	60
Shared parking*	n/a		1,052		1,080
Publicly accessible park			38		41
Total			5,961		6,525

\*Shared parking includes residential and office visitor, hotel, retail, and on-street passenger and commercial loading spaces, which can be permitted through a shared parking study that the applicant has prepared and is on file with the City.

Parking locations are identified on Sheet G4.01 of the master plan and excerpted in Attachment T. The proposed parking would include electric-vehicle spaces and bicycle parking spaces in compliance with Menlo Park Municipal Code requirements. Parking on the Hamilton Avenue Parcels North and South would be reviewed during subsequent entitlements for compliance with the C-2-S zoning district requirements for off-street parking.

Transportation demand management (TDM)

The City requires all new developments in the R-MU and O zoning districts to reduce their trip generation by 20 percent from standard trip generation rates via TDM strategies. The City has applied the 20 percent reduction after crediting for any trip reductions based on a project’s proximity to complementary land uses, alternative transportation facilities, as well as reductions based on a project’s mixed-use characteristics. The TDM and trip reduction requirement applies to the daily trips, AM peak hour trips, and PM peak hour trips. The applicant submitted a request to modify the trip reduction to be taken from gross vs net trips (Attachment U). Table 7 outlines the required City standard trip reduction, the trip reduction with the applicant’s request to calculate from the gross trips, and the difference.

Table 7: City standard and proposed trip reductions				
	City standard trip reduction	Applicant proposed trip reduction	Delta	
<b>Office</b>				
Daily trips	15,837	18,237	+ 2,400	
AM peak period	1,670	1,670	n/a	
PM peak period	1,670	1,670	n/a	
<b>Residential/Mixed Use</b>				
Daily trips	13,048	15,026	+1,978	
AM peak period	644	726	+82	
PM peak period	1,100	1,237	+137	

The applicant is requesting to modify the City’s standard practice through the CDP, to calculate the 20 percent trip reduction from the gross ITE rates. The City’s Transportation and Planning Divisions have evaluated this request to determine the appropriateness of this adjustment compared to the City’s General Plan goals, policies, and programs. While the proposed modification would increase the total number of trips since the reduction would be taken from the gross instead of the net trips after accounting for the project land uses, staff believes that the proposed project includes unique characteristics that justify calculating the trip reduction from the gross trips. Specifically, the proposed project would result in a true mixed-use project that would inherently reduce the number of vehicle trips due to site design and land uses. Other projects in the R-MU, LS, and O zoned districts have been single land use projects or predominately a single land use with a small amount of supporting retail uses. The transportation impact analysis prepared for the proposed project applied the applicant’s requested modification, studying the potential effects (CEQA and non-CEQA) with a higher number of trips. The proposed project would result in a less than significant impact on impact on vehicle miles traveled after application of further trip reductions specific to the residential land use. Congestion created by the project would be addressed through recommended intersection improvements.

The applicant is proposing a trip cap for the Campus District that would operate similar to the existing trip caps on the East and West Campus that would be monitored daily (Attachment V). For the non-Campus district uses (retail, residential, and hotel), the proposed project would implement a monitoring plan. The CDP requires the applicant to implement its TDM monitoring plan that includes trip count monitoring and origin/destination and parking surveys to determine compliance with the trip reductions outlined in Table 7. The annual monitoring would be different than the trip cap monitoring for the Campus District, which would be monitored daily. The TDM plan that includes the monitoring plans for both the Campus District and the Town Square and Residential/Shopping Districts is included in Attachment W.

Trip cap allowable exceedances

The Campus District trip cap proposal includes event day and non-event exceedances. The applicant states that Meta hosted approximately 150 events in the Bay Area annually prior to Covid-19 and that the new Meeting and Collaboration Space would allow Meta to consolidate its regional events. Estimated number of events by size are in Table 8.

Table 8: Estimated meeting and collaboration space events		
Event size	Number of attendees	Number of events
Small events	100 – 1,000 persons	30
Medium events	1,001 – 2,500 persons	15
Large events	2,501 – 5,000 persons	10
Total		55

To accommodate the events, the applicant is requesting an allowance for up to 25 trip cap exceedances during a calendar year for events. For comparison, the East and West Campuses include an allowance for up to 12 event exemptions. The applicant is also requesting 3 non-event exceedances every 180 days provided the applicant is in compliance with the limit, which is consistent with the allowances for the East and West Campuses.

According to the event management plan provided by the applicant (Attachment X), there could be up to 15 medium size events for 1,001 to 2,500 persons and 10 large size events for 2,501 to 5,000 persons. To ensure that the events and potential trip cap exceedances limit impacts to the surrounding areas, the applicant would provide the individual medium and large event management plans to the City for review in advance and also provide event assessments after to the City with best practices and recommended improvements for inclusion in future event management plans. The trip cap exceedances will be reported annually to the City’s Public Works Department to confirm that exceedances are attributed to valid event exclusions. Per the Trip Cap Policy, the applicant would also monitor transportation network companies (TNCs) trips for one event each quarter for two years to provide additional data on event operations and travel patterns.

Level of service or roadway congestion analysis (non-CEQA transportation analysis)

The City’s TIA Guidelines require that the TIA also analyze LOS for planning purposes. The LOS analysis determines whether the project traffic would cause an intersection LOS to be potentially noncompliant with local policy if it degrades the LOS operational level or increases delay under near term and cumulative conditions. Attachment Y includes an excerpt from the Transportation Chapter of the Draft EIR that further explains the LOS thresholds and the identified deficiencies and recommended improvements measures to comply with the TIA Guidelines. Where deficiencies are identified, the TIA Guidelines require consideration of improvement measures. The CDP identifies the recommended improvement measures that the City determined to be feasible for near term improvements and fair share payments for cumulative intersection improvements. The draft conditions include input from East Palo Alto for improvements at Kavanaugh Drive and O’Brien Drive and fair share payment for intersections in East Palo Alto. These measures are included as conditions in the CDP (Section 14).

Given past feedback from the public and Council Members, staff have identified that some of the near term intersection investments may warrant additional discussion:

- Willow Road and Bay Road. The project would be conditioned to add a right turn lane from Willow Road westbound at Bay Road and an additional left turn lane from Bay Road onto Willow Road. The latter portion of this proposed change was also conditioned for the Menlo Uptown project and would not be conditioned for Willow Village. Separately, as part of a grant proposal to the California Active Transportation Program, staff has developed separated bikeway and pedestrian improvements at this



location. Staff proposes to work with the applicant and Caltrans to incorporate the current City recommendations at this location to improve the safety of this intersection.

- O'Brien Drive and Adams Drive. The project would be conditioned to install a signal at this intersection, conditioned on it meeting warrants. Staff believes this is an appropriate investment that would help direct traffic into Willow Village and other developments and out of nearby residential areas within the City of East Palo Alto.
- East Palo Alto. The project would be conditioned to contribute to several improvements within East Palo Alto. These were developed consistent with East Palo Alto's traffic impact analysis guidelines and staff has worked with East Palo Alto staff and the applicant to develop an approach to making these contributions.

The project also has conditions to provide fair share contributions to intersection investments at two locations due to cumulative impacts:

- Marsh Road and Bohannon Drive/Florence Street. The project would be conditioned to contribute to an investment that would add a right turn lane on southbound Marsh Road. This improvement would likely require either narrowing or eliminating the existing median, limit the addition of bicycle lanes on Marsh, or require more substantial reconstruction of the street. Because of these challenges, staff recommends that the Planning Commission recommend removal of this fair share contribution from the CDP.
- Willow Road and Durham Street. The project would reconfigure the lanes on Durham Street to separate the right-turn movement and combination of the left and thru movement. This will provide a modest improvement to the operations of this intersection. Staff recommends retaining the fair share contribution to this investment.

#### General Plan Circulation and Zoning Map amendments

As discussed in the previous section, the proposal includes amendments to the General Plan and Zoning Map to accommodate the proposed site access and circulation. City staff have reviewed the proposed amendment and determined that the proposed circulation would comply with the City's General Plan roadway classifications and the revised layout and access would generally meet the intent of the Circulation Element and Zoning Map.

#### ***Vesting tentative maps***

The phased vesting tentative maps for the main project site propose to merge the existing parcels then re-subdivide them to create parcels for residential, retail, hotel, and office developments; new public rights-of-way for street purposes; parcels for private street purposes; and park open space parcels. Multiple final maps are anticipated to match the proposed phasing. A vesting tentative map for the Hamilton Avenue Parcels would reconfigure the existing parcels and provide for the realignment of Hamilton Avenue.

It is anticipated that the proposed right-of-way abandonment on both Hamilton Avenue and Hamilton Court would occur through the subdivision mapping process; alternate public rights-of-way also would be dedicated through the subdivision mapping process. The main project site would include approximately 5 acres of public right-of-way (inclusive of the existing abandoned rights-of-way). These public rights-of-way are anticipated to include Main Street (between Willow Road and West Street and between Park Street and O'Brien Drive), West Street, Park Street, and East Loop Road (from O'Brien Drive to Adams Court).

The vesting tentative map for the main project site and the vesting tentative map for the Hamilton Avenue

parcels are included in Attachments Z and AA.

**Below market rate (BMR) ordinance and BMR Guidelines**

The City’s BMR Housing Program Guidelines requires a minimum of 15 percent of the proposed dwelling units for residential development projects with 20 or more units be set aside for low-income households or an equivalent alternative. The proposed project includes commercial retail and office spaces that would be required to provide below market rate housing units on site or off site, or and/or pay the commercial linkage fee. The applicant is proposing 312 BMR units, inclusive of the 260 inclusionary units and 52 units associated with the non-residential square footage (inclusive of credits for existing commercial square footage). The applicant’s BMR proposal letter is included in Attachment BB.

The applicant is proposing to allocate 119 BMR units to a standalone affordable residential building dedicated to seniors (either 55 or 62 and up depending on financing requirements). The proposed age-restricted BMR units would be dedicated to extremely low and very low income seniors and would be mostly studios and one bedroom units. The applicant’s BMR proposal states that the standalone building, in partnership with Mercy Housing (or similar affordable housing developer), would allow the project to incorporate essential services.

The applicant proposes 193 non-age restricted BMR units. The applicant has proposed a low income equivalency mix that includes extremely-low, very-low, low-, and moderate-income BMR units. The breakdown of the number of units by income level (age-restricted and non-age restricted) are in Table 9. The table shows that a large portion of extremely low and very low income units are located within the 100 percent affordable, age-restricted senior building while the BMR units in the non-age-restricted, mixed-income residential buildings target low- and moderate-income households.

**Table 4: BMR income and unit size breakdown at full buildout**

Category	Area median income limit	Number of units	Studios	One bedrooms	Two bedrooms	Three bedrooms
Extremely low (senior)	30%	82	74	8	0	0
Very low (senior)	50%	37	33	4	0	0
Low (non-age restricted)	80%	76	17	35	23	3
Moderate (non-age restricted)	120%	117	30	50	32	3
<b>Total units</b>		<b>312</b>	<b>154</b>	<b>97</b>	<b>55</b>	<b>6</b>

The draft BMR Agreements are included in Attachment A.12 (age restricted units) and Attachment A.13 (non-age restricted units). On August 3, 2022 the Housing Commission reviewed the BMR proposal and voted 6-0 to recommend approval of the applicant’s BMR proposal with the income limits, distribution, and unit sizes outlined in Table 9 above. The BMR proposal includes modifications to the BMR Guidelines to deviate from the proportionality and location requirements. Specifically, the standalone senior building would result in a higher percentage of BMR studio units than the ratio of studio units within the overall project which would not comply with the proportionality requirement that the BMR unit sizes match the ratio of unit sizes in the market rate units. Additionally, the senior BMR building would be dedicated to extremely low and very low income seniors. The applicant proposes a low income equivalency mix and with the

deeper affordability in the age-restricted building, the BMR units in the non-age-restricted, mixed-income residential buildings would be for low- and moderate-income households, with the majority for moderate income households. Additionally, the BMR Guidelines require BMR units to be generally evenly distributed throughout the proposed project and the provision of a standalone building would not necessarily comply with the location/distribution requirement. The BMR agreements would result in a project that meets the inclusionary and commercial linkage requirements at full build out. During the phased development there may be times when the on-site BMR units are below the minimum requirements; however, upon completion of the standalone senior building the proposed project would comply with minimum BMR requirements. Section 13 of the BMR Guidelines allow for the City to approve reasonably equivalent alternatives to the characteristics of the proposed BMR units and the affordability mix. The Planning Commission should consider the Housing Commissions recommendation on the BMR proposal, inclusive of the modifications to the location/distribution and proportionality requirements.

**Community amenities**

The Office (O), Life Sciences (LS) and Residential Mixed-use (R-MU) zoning districts allow for bonus level development (i.e., increases in height, density and intensity) in exchange for community amenities in the area between Highway 101 and the San Francisco Bay. The community amenities were identified and prioritized through public outreach and input, but the ordinance allows the adopted community amenities list to be updated to reflect evolving community needs and priorities. Amenities not contained in the adopted list may be provided by a specific proposed project through a DA for that project. The required community amenity value is 50 percent of the increase in value of the bonus level development above the base level of the Zoning Ordinance determined through a bonus level development appraisal. More details on the appraisal process can be found in the City’s appraisal instructions (Attachment CC.)

Proposed community amenities

Through the appraisal review process, the City determined that the project’s community amenities obligation is \$133.3 million (Attachment D.)

The applicant submitted a community amenities proposal, which is included in Attachment DD. A summary letter of the community amenities proposal updates is included in Attachment EE. The proposed community amenities include items that are identified on the current community amenities list and community amenities through the DA. Table 10 below identifies the summary of the amenity, the City’s preliminary and final value, and whether the item is on the adopted community amenities list or a possible amenity through the DA.

**Table 10: Summary of project community amenities**

Amenity	Original BAE (City’s valuation)	Final City Valuation	Delta (City’s original to final value)	Amenity on City Council adopted list	Possible amenity provided through DA
Grocery store space	\$30,450,935	\$30,450,935	n/a	X	
Grocer space rent subsidy	\$1,972,630	\$1,972,630	n/a	X	
Pharmacy	\$992,340	\$992,340	n/a	X	
Dining options	\$10,316,257	\$10,316,257	n/a	X	

Community entertainment offerings	\$12,247,793	\$12,247,793	n/a		X
Bank or credit union	\$1,557,964	\$1,557,964	n/a	X	
Elevated park improvement costs	\$133,668,672	\$66,834,336	(\$66,834,336)		X
Town square Improvement Costs	\$15,517,431	\$15,517,431	n/a		X
Teacher housing rent subsidies	\$1,745,319	\$1,745,319	n/a		X
Excess public open space	\$18,078,137	\$18,078,137	n/a		X
Open space operations & maintenance costs	\$4,656,361	\$4,656,361	n/a		X
Funding for job training programs	\$8,304,907	\$8,304,907	n/a	X	
Bayfront Area shuttle	\$9,700,000	\$9,700,000	n/a	X	
Willow Road feasibility study	\$100,000	\$100,000	n/a		X
Funding for additional affordable housing	\$5,000,000	\$5,000,000	n/a		X
Funding for installation of air quality and noise monitoring in Belle Haven	\$2000,000*	\$200,000*	n/a		X
<b>Total</b>	<b>\$267,167,746</b>	<b>\$187,724,410</b>	<b>(\$94,443,336)</b>		
<b>Required amenities value</b>		<b>\$133,300,000</b>			

\*The funding for the installation of air quality and noise monitoring stations in Belle Haven has increased from \$150,000 to \$200,000 since the submittal of the last community amenities proposal and this is reflected in the DA.

The City's valuation is based on an independent analysis prepared by BAE Urban Economics and included in Attachment E. For the elevated park, the City Council subcommittee recommended that the applicant receive 50 percent of the value since the elevated park predominately serves the proposed project, but does provide a grade separated connection from the Hamilton Avenue Parcel North (and the Belle Haven neighborhood) to the main project site. The draft CDP and DA include detailed timing and operational requirements for the community amenities.

City Council review and input

The City Council initially reviewed and provided feedback on the applicant's community amenities proposal at its meeting on May 24, 2022. The table above reflects revisions made by the applicant in response to the

study session and additional meetings with the City Council subcommittee for the proposed project. Through these reviews and discussions, the applicant has removed the Willow Road Tunnel, community mobile market, and dog park, and added funding for additional affordable housing, funding for the Willow Road feasibility study, funding for installation of air quality and noise monitoring sensors (one each) in the Belle Haven neighborhood, and the creation and operation of a shuttle from the project site through the Bayfront Area (including Belle Haven, Independence/Constitution, and Haven Avenue areas) to be in operation for 17 years starting when the grocery store opens or upon completion of the Elevated Park within the main project site. The values for those additional community amenities were not reviewed by the City's Consultant since the amenities include funding or the operation of a shuttle and not the value of physical community amenities. In a follow up City Council study session on the proposed community amenities on August 23, the City Council provided general support for the proposal with individual members providing additional clarifications.

### ***Development Agreement***

A development agreement (DA) is a negotiated contract between a developer and a city that both allows the city to impose conditions on development projects beyond the city's municipal code requirements and provides certainty to the developer by limiting the city's ability to apply changes to regulatory standards and impact fees to the project for a certain period of time. A development agreement must be approved by ordinance. The DA with Peninsula Innovation Partners is for a term of 10 years, which can be extended for an additional 7 years if specific provisions are met. The DA includes community amenities and public benefits for the City beyond what is required in the municipal code, as well as deadlines for the developer to construct or provide those community amenities or public benefits. The DA is included in Attachment A.10.

In addition to the community amenities discussed earlier, the public benefits include requirements for the developer to make payments to the city to offset lost revenue from the hotel in the event of construction delays (i.e. gap payment); ongoing job training and career experience programs; and stakeholder support for Dumbarton Rail Corridor Project and Dumbarton Forward. Terms of the DA that are favorable for the applicant include the term of the DA for vested rights and terms that prohibit the city from requiring developer to pay (i) new impact fees adopted after the development agreement becomes effective, or (ii) increased impact fees unless the increase is based on escalation provisions in effect when the development agreement becomes effective. These impact fee limitations last for the full term of the DA and the first 3 years of the extended term if an extension is granted.

Exhibit D to the development agreement (Attachment FF) memorializes the detailed project phasing and timing for community amenities and other key components of the proposed project.

### ***Fiscal impact analysis***

The City's consultant, BAE, prepared a fiscal impact analysis (FIA) of the proposed project (Attachment C). In addition to the proposed project, the FIA examines the fiscal impacts of an Increased Residential Density Variant that would include an additional 200 residential units for a total of up to 1,930 units. The FIA addresses the net increase in revenues and expenditures and resulting net fiscal impact of the Proposed project and the Increased Residential Density Variant on the following:

- City of Menlo Park General Fund,
- Menlo Park Fire Protection District,
- School districts that serve the project area, and
- Other special districts that serve the project area.

Selected FIA findings are summarized in the table in Attachment GG. As shown below, the FIA estimates that the proposed project and the increased residential density variant would both have a positive net fiscal impact on the City of Menlo Park's annual General Fund operating budget. The proposed project and the increased residential density variant would also both generate a net positive fiscal impact for the Menlo Park Fire Protection District, Sequoia Union High School District, and the Ravenswood City Elementary School District. In addition to the ongoing fiscal impacts shown in the table below, the project would be required to pay various impact fees to the City of Menlo Park and the two school districts. It should be noted that without the hotel, there would be a net negative fiscal impact to the City of Menlo Park. The DA includes a gap payment provision until the hotel is constructed to off-set the annual negative fiscal effect of the proposed project.

### **CEQA review**

As stated in the CEQA Guidelines, an EIR is an informational document that is intended to provide the City, responsible and trustee agencies, other public agencies, and community members with detailed information about the potential environmental effects that could result from implementing the proposed project, examine and implement mitigation measures to reduce or avoid potentially significant physical environmental impacts if the proposed project is approved, and consider feasible alternatives to the proposed project, including a required No Project Alternative. The Final EIR, which includes the Draft EIR by reference, is included through the hyperlink in Attachment A.1.

The Project site is within the General Plan and M-2 Area Zoning Update (ConnectMenlo) study area. ConnectMenlo, which updated the City's General Plan Land Use and Circulation Elements and rezoned land in the M-2 Area (now referred to as the Bayfront Area), was approved on November 29, 2016. Because the City's General Plan is a long range planning document, the ConnectMenlo Final EIR was prepared as a program EIR, pursuant to CEQA Guidelines Section 15168. Section 15168(d) of the CEQA Guidelines provides information for simplifying the preparation of subsequent environmental documents by incorporating by reference analyses and discussions. CEQA Guidelines Section 15162(d) states that where an EIR has been prepared and certified for a program or plan, the environmental review for a later activity consistent with the program or plan should be limited to effects that were not analyzed as significant in the prior EIR or susceptible to substantial reduction or avoidance. The project-level EIR was prepared in accordance with the terms of the settlement agreement between the cities of Menlo Park and East Palo Alto, which allows for simplification in accordance with CEQA Guidelines Section 15168 for all topic areas, except housing and transportation.

The City released the Draft EIR for public review and comment on April 8, 2022. The comment period closed on May 23, 2022. While the project-level Draft EIR tiers from the ConnectMenlo program-level EIR where appropriate, most CEQA topic areas were included in the Draft EIR, including the following:

- Aesthetics
- Air quality
- Biological resources
- Cultural resources
- Tribal cultural resources
- Energy
- Geology and soils
- Greenhouse Gas emissions
- Hazards and hazardous materials
- Land use and planning
- Noise
- Population and housing
- Public services
- Transportation
- Utilities and service systems
- Hydrology and water quality

Section 15128 of the CEQA Guidelines states that "an EIR shall contain a statement briefly indicating the

reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR.” Implementation of the Proposed project would not result in significant environmental impacts on agricultural and forestry resources or mineral resources. These issues are not analyzed in the EIR.

### Impact analysis

Impacts are considered both for the project individually, as well as cumulatively, for the project in combination with other reasonably foreseeable probable future projects and cumulative growth. The EIR identifies and classifies the potential environmental impacts as:

- No Impact (NI)
- Less than Significant (LTS)
- Significant (S)
- Potentially Significant (PS)

Where a significant or potentially significant impact is identified, mitigation measures are considered to reduce, eliminate, or avoid the adverse effects (less than significant with mitigation). If a mitigation measure cannot eliminate/avoid an impact, or reduce the impact below the threshold of significance, it is considered a significant and unavoidable impact. The following determinations are then applied to the impact.

- Less than Significant with Mitigation (LTS/M)
- Significant and Unavoidable (SU)

The EIR prepared for the Project identifies less than significant effects and effects that can be mitigated to a less-than-significant level in all topic areas except air quality and noise. The EIR finds that impacts related to air quality and noise would be significant and unavoidable. The Proposed Project would result in potentially significant impacts related to transportation, air quality, energy, greenhouse gas emissions, noise, cultural and tribal cultural resources, biological resources, geology and soils, hydrology and water quality, and hazards and hazardous materials, but these impacts would be reduced to a less-than-significant level with implementation of identified mitigation measures. Impacts related to land use, aesthetics, population and housing, public services and recreation, and utilities and service systems would be less than significant without any mitigation measures. The mitigation monitoring and reporting program (Attachment A.3) includes the impacts and mitigation measures for the proposed project, including mitigation measures for the significant and unavoidable impacts to reduce the impact but not to a less than significant level. A more detailed analysis of the proposed project's impacts and associated mitigation measures by topic area is provided in the EIR.

### Response to comments and Final EIR

The Final EIR is now available (Attachment A.1), and comprises a response to comments chapter that responds to each unique comment on the environmental analysis received during the 45-day draft EIR comment period, text edits to the draft EIR, and the Draft EIR that is incorporated by reference. The comments on the Draft EIR and the responses thereto did not result in any previously identified impacts. No new significant environmental impacts and no substantial increases in the severity of previously identified impacts have resulted after responding to comments. In addition, there are no feasible alternatives or mitigation measures that are considerably different from others previously analyzed that would clearly lessen the environmental impacts of the Proposed project that the Project proponent has declined to adopt. Therefore, any changes to the text of the Final EIR were limited to corrections and clarifications that do not alter the environmental analysis.

The City, prepared the cultural and tribal cultural resources analyses in the draft EIR in consultation with the three tribal nations that requested consultation under Assembly Bill 52 and Senate Bill 18. In response to the Tamien Nation's comments on the draft EIR the City further consulted and developed the additional studies and revised mitigation measures, including the decision to create a standalone Tribal Cultural Resources chapter. This topic area was previously included within the Cultural and Historic Resources topic area. While the mitigation measures for tribal cultural resources have been revised, the findings of significance did not change and no new impacts were identified. The revised mitigation measures were developed in consultation with the Tamien Nation. The City also consulted with the Amah Mutsun Tribal Band of San Juan Bautista and Muwekma Ohlone Tribe of the San Francisco Bay Area. Neither tribe provided comments on the mitigation measures; however, the Amah Mutsun Tribal Band provided a comment letter (Attachment HH) on the draft Tribal Cultural Resources Chapter. The City continues to work with both tribes to determine if any errata to the Final EIR should be incorporated prior to certification.

In addition to responding to written comments and oral comments presented at the April 25, 2022 Draft EIR public hearing, the Final EIR includes master responses that address the potential for a further reduction in parking and a possible vehicular connection to Bayfront Expressway (excerpts in Attachment II). The analysis determined that these would not be viable alternatives or mitigation measures.

The Final EIR includes revisions to the Draft EIR to update mitigation measure numbering. In one location, the mitigation measure reference was not updated consistent with the revisions to other references to mitigation. The revised Section 3.8, Cultural Resources, that was included in the Final EIR contained text that stated that Mitigation Measure CR 2.2 would apply to the Hamilton parcels. However, Mitigation Measure CR 2.2 was replaced with Tribal Cultural Resources (TCR) 1.2, as indicated elsewhere in the same paragraph and the text has been updated in an errata that will be included in the Final EIR for the City Council review. The summary of changes is included in Attachment JJ.

#### Significant and unavoidable impacts

While identified impacts for most topic areas can be mitigated to a less than significant level with project-specific mitigation measures or the application of mitigation measures from the certified ConnectMenlo program level Final EIR, impacts related to air quality and noise remain significant and unavoidable even with the application of mitigation measures. CEQA Guidelines Section 15126.2(c) requires EIRs to include a discussion of the significant environmental effects that cannot be avoided if the proposed project is implemented. More detailed analysis for each impact and associated mitigation measures (applied even if unable to fully reduce the impact to less than significant) are included in the air quality (Chapter 3.4) and noise (Chapter 3.7) sections of the EIR.

#### *Air Quality Impacts*

Impact AQ-1: Project operations would disrupt or hinder implementation of the Bay Area Air Quality Management District's (BAAQMD's) 2017 Clean Air Plan. Prior to adoption of the 2017 Clean Air Plan, the General Plan and M-2 Area Zoning Update (ConnectMenlo) EIR determined that emissions of criteria air pollutants and precursors associated with the operation of new development under ConnectMenlo would generate a substantial net increase in emissions that would exceed the BAAQMD regional significance thresholds and that operational impacts would be significant and unavoidable. Similarly, Project operations would exceed BAAQMD's operational reactive organic gasses (ROG) threshold (see Impact AQ-2 below). The proposed project would not result in a substantial change in the ConnectMenlo project and would not cause new or substantially more severe significant impacts than those analyzed in the ConnectMenlo EIR. However, as discussed under Impact AQ-2, below, implementation of Mitigation Measure AQ-1.2 would decrease the proposed project's full build-out operational ROG emissions, but there is no feasible mitigation



available to reduce the proposed project's operational ROG emissions to a level below the BAAQMD threshold. The proposed project's ROG emissions would remain above the BAAQMD ROG threshold after implementation of all feasible mitigation measures.

Impact AQ-2: Operation of the proposed project would generate levels of net ROG that would exceed BAAQMD's ROG threshold. As discussed above, the ConnectMenlo EIR determined that emissions of criteria air pollutants and precursors associated with operation of new development under ConnectMenlo would result in significant and unavoidable impacts. The proposed project would implement Mitigation Measure AQ-1.2, which would require use of super-compliant architectural coatings during operations at all buildings. However, ROG emissions from consumer products constitute most of the operational ROG emissions associated with the proposed project. The City of Menlo Park (City) and applicant would have minimal control over what consumer products project users would purchase. There are no additional mitigation measures to reduce ROG from consumer products. Thus, although the proposed project would not result in a substantial change in the ConnectMenlo project and would not cause new or substantially more severe significant impacts than those analyzed in the ConnectMenlo EIR, net mitigated operational ROG emissions would still exceed BAAQMD's ROG threshold after implementation of all feasible mitigation measures.

Impact C-AQ-1: Cumulative development in the San Francisco Bay Area Air Basin (SFBAAB) would result in a significant and unavoidable cumulative impact with respect to air quality as a result of an exceedance of BAAQMD criteria pollutant thresholds, even with implementation of all feasible mitigation. The ConnectMenlo EIR determined that criteria air pollutant emissions generated by cumulative development would exceed BAAQMD's project-level significance thresholds and that cumulative impacts related to criteria air pollutants under ConnectMenlo would be significant and unavoidable. The proposed project would not result in a substantial change in the ConnectMenlo project and would not cause new or substantially more severe significant impacts than those analyzed in the ConnectMenlo EIR. As a result of its operational ROG emissions, in excess of the BAAQMD ROG threshold, even after implementation of all feasible mitigation (see Impact AQ-2 above), the proposed Project would be a cumulatively considerable contributor to a significant and unavoidable cumulative impact on air quality with respect to criteria pollutants.

### *Noise Impacts*

Impact NOI-1: Impacts related to construction during the day, construction during non-exempt daytime hours, construction during the night, potential intersection improvements, and construction of offsite improvements would be significant. The ConnectMenlo EIR determined that future projects in Menlo Park could result in construction-related noise levels that would exceed noise limits; however, with implementation of mitigation measures and compliance with the City Noise Ordinance, impacts would be less than significant. With respect to the proposed project, noise impacts on offsite uses from construction, including the construction of certain offsite improvements, would remain significant, even after implementation of feasible mitigation measures. In addition, construction noise impacts on onsite land uses during early morning and evening hours would be significant, even after implementation of feasible mitigation measures. Thus, the proposed project would cause a new or substantially more severe significant impact than that analyzed in the ConnectMenlo EIR.

Impact NOI-2: Offsite vibration levels may exceed applicable vibration-related annoyance thresholds at nearby sensitive uses during daytime and nighttime construction on the site. The impacts would be significant, even after implementation of feasible mitigation. Likewise, construction vibration from offsite improvements would exceed annoyance thresholds. The impacts would be significant, even after mitigation. The ConnectMenlo EIR determined that future projects in Menlo Park could expose people to or generate

excessive ground-borne vibration or ground-borne noise levels, but that with implementation of mitigation measures, impacts would be less than significant. Thus, the proposed project could cause a new or substantially more severe significant impact than that analyzed in the ConnectMenlo EIR.

### Project variants

The EIR includes an environmental analysis the following four variants to the Proposed Project:

- No Willow Road Tunnel Variant
- Increased Residential Density Variant (200 additional dwelling units)
- No Hamilton Avenue Realignment Variant
- Onsite Recycled Water Variant

With the exception of the Increased Residential Density Variant, the impacts in each variant are the same or reduced compared to the proposed Project. For the Residential Density Variant, air quality impacts related to reactive organic gases (ROG) would increase due to the increase in residential population. This variant, like the proposed Project, would result in a significant and unavoidable impact regarding obstruction of implementation of clean air plans and criteria pollutants.

### Project alternatives

The CEQA Guidelines require study of a reasonable range of alternatives to the proposed project; a “reasonable range” includes alternatives that could feasibly attain most of the project’s basic objectives, while avoiding or substantially lessening any of the significantly adverse environmental effects of the project. An EIR does not need to consider every conceivable alternative to a project, but it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation. Section 15126.6(e) of the State CEQA Guidelines requires the evaluation of a No Project Alternative. Other alternatives may be considered during preparation of the EIR and will comply with the State CEQA Guidelines. The Draft EIR alternatives analysis focused on potential alternatives to reduce the significant and unavoidable impacts associated with air quality (conflict with air quality plan, operation, and cumulative criteria air pollutants) and noise (construction noise levels, vibration annoyance, and cumulative noise and vibration impacts). The Draft EIR includes the following alternatives. For a summary and list of the alternatives considered but rejected, please review Chapter 6: Alternatives of the Draft EIR.

1. **No Project Alternative:** Under this alternative, no additional construction would occur at the project site with implementation of the No Project Alternative. The existing buildings and landscaping on the project site would not be demolished and would instead remain in place and be used and maintained the same as current conditions. The applicant would not construct the new buildings, establish open space area, or install infrastructure. There would be no realignment of Hamilton Avenue at Willow Road and no additional streets within the main project site.
2. **No Willow Road Tunnel Alternative:** Under this alternative, the proposed project would be implemented, but without the Willow Road Tunnel. The trams would use the public street network, Bayfront Expressway and Willow Road to access the proposed Campus District. Historically, three tram routes have served the Willow Village campus. Without the Willow Road Tunnel, the trams would continue to operate as they do under baseline conditions. Without the tunnel connection, the line that operates between the Classic and Willow campus would continue to use Willow Road, as it does under current conditions.

Most pedestrians and bicyclists accessing the Willow Village Campus District would use the on-street bike lanes and sidewalk improvements to move along the Willow Road corridor and would

cross at the Willow Road and Main Street/Hamilton Avenue intersection. Pedestrians and bicyclists desiring to access the Bay Trail or the other Meta campuses would use (i) the bike/pedestrian trail within the City public utility easement located adjacent to and immediately west of Willow Road or (ii) the Elevated Park. Pedestrians and bicyclists would access the Elevated Park using publicly accessible stairs and elevators located within or adjacent to Hamilton Avenue Parcel North and within Town Square. (This alternative was also studied as a project variant.)

The Willow Road Tunnel is an optional project feature and the applicant may elect to not proceed with the tunnel. If the City Council ultimately approves the proposed project it would be approving the proposed project and this alternative, which would be implemented at the discretion of the applicant.

- 3. Base Level Development Alternative:** This alternative would consist of the proposed project but developed to be consistent with the “base-level” development standards in R-MU zoning district, which allow for a maximum density of up to 30 dwelling units per acre (du/acre) and a maximum height of up to 40 feet. For the O zoning district, the base-level development standards allow for a floor area ratio (FAR) of 0.45 (plus 10 percent for non-office commercial uses and 175 percent for hotels) and a maximum height of 35 feet (110 feet for hotels). The proposed project proposes “bonus-level” development in exchange for providing community amenities, and the Base Level Development Alternative would not involve this exchange. Table 4 below summarizes the density and intensity of the proposed project and the Base Level Development Alternative. It is anticipated that publicly accessible and general open space would be constructed at the Zoning Ordinance required minimum in this alternative, where the proposed project would exceed the minimum requirement.

**Table 11: Base Level Development Alternative Density and Intensity**

	Base Level Alternative	Zoning Ordinance bonus level standards (maximums)*
Residential dwelling units	519 units	1,730 units
Residential square footage	678,390 s.f.	1,701,404 s.f.
Residential floor area ratio	90%	225%
Commercial Retail square footage	166,321	397,848 s.f.
Commercial Retail floor area ratio	10% of office zoned area	25%
Office square footage	826,906 s.f.*	1,780,436 s.f.
Office floor area ratio	58.4%	125%
Hotel rooms	193	n/a

\* Office includes the non-residential commercial square footage from the R-MU zoning district.

- 4. Reduced Intensity Alternative:** Under this alternative scenario, the proposed project would be developed utilizing the bonus level development provisions but at a lower density and intensity. Both the total residential and non-residential square footage would be reduced compared to the proposed project. Construction of this alternative would also be conducted in one phase rather than in the two

phases planned for the proposed project. Table 5 below summarizes the density and intensity of the proposed project and the Reduced Intensity Alternative. It is anticipated that publicly accessible and general open space would be constructed at the Zoning Ordinance required minimum in this alternative, where the proposed project would exceed the minimum requirement.

Table 12: Reduced Intensity Alternative Density and Intensity		
	Reduced Intensity Alternative	Proposed project (CDP Standards)
Residential dwelling units	1,530 units	1,730 units
Residential square footage	1,499,909 s.f.	1,696,406 s.f.
Residential floor area ratio	220%	224.3%%
Commercial Retail square footage	88,000	200,000 s.f.
Commercial Retail floor area ratio	5.5% of office zoned area	12.6%
Office square footage	1,225,000 s.f.*	1,600,000 s.f.*
Office floor area ratio	86.5%	113%
Hotel rooms	193	n/a

\* Office includes the non-residential commercial square footage from the R-MU zoning district.

Table 6-12 from the EIR contains a comparison of the impacts of the proposed project to the project alternatives. Table 6-12 is included in Attachment KK. The No Project Alternative would be the environmentally superior alternative. State CEQA Guidelines Section 15126.6(e)(2) states that when the no-project alternative is identified as the environmentally superior alternative, the EIR must also identify an environmentally superior alternative from among the other alternatives. Selection of an environmentally superior alternative necessitates weighing of numerous environmental considerations. No other alternative is environmentally superior for all resource areas, as shown in Table 6-12, and so the City must balance environmental impacts in determining which alternative is the environmentally superior alternative. The detailed analysis for the environmental superior alternative is included in Chapter 6 of the EIR.

None of the alternatives (other than the No Project Alternative) would reduce the proposed project’s significant and unavoidable construction noise and vibration impacts to a less-than-significant level. The Base Level Development Alternative and the Reduced Intensity Alternative would reduce the proposed project’s project-level and cumulative operational air quality impacts related to ROG emissions to a less than-significant level with mitigation. The Base Level Development Alternative would result in the greatest reduction (19 net lbs/day of ROG compared to 53.6 net lbs/day under the Reduced Intensity Alternative). Therefore, the Base Level Development Alternative is the environmentally superior alternative. In considering the Base Level Development Alternative, the City will need to balance the tradeoff of a base level development that does not result in significant and unavoidable air quality impacts related to ROG with the lack of community amenities that would be provided with a bonus level project in exchange for the increased density, intensity, and height.

Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program (MMRP)

As part of its consideration of the merits of the project, the Planning Commission and City Council will need to review and consider the Statement of Overriding Considerations (SOC) along with the Mitigation Monitoring and Reporting Program (MMRP). The draft resolution for the CEQA findings, SOC and the MMRP is included in Attachments A.1. The Planning Commission is a recommending body on the adoption of the EIR, the CEQA findings and SOC, and the MMRP. The draft SOC outlines the following public benefits of the project, inclusive of the benefits derived from the community amenities and development agreement: economic benefits, and social benefits. The MMRP includes the feasible mitigation measures identified in the EIR. This Mitigation Monitoring and Reporting Program (MMRP) is designed to aid the City of Menlo Park in its implementation and monitoring of measures adopted from the certified EIR. The draft MMRP is included in Attachment A.3. The MMRP would be incorporated into the CDP as part of the project specific conditions of approval for the project.

### **Correspondence**

Staff has received 39 letters on the proposed project since the release of the notice of availability of the Final EIR and the public hearing notice. Most of the comments express general support for the project such as the addition of new housing, community amenities (e.g. grocery store), mix of uses, accessibility, and sustainability features. Three of the letters express opposition to the project citing concerns about reduced access to schools and parks, the jobs housing imbalance, and sea level rise/flooding. The City also received a letter (Attachment GG) from the Amah Mutsun Tribal Band of San Juan Bautista on the Final EIR that raised concerns with the focus and scope of the ethnographic context and not the EIR mitigation measures. The City continues to work with the Amah Mutsun Tribal Band to address its concerns through additional ethnographic text and potential interviews that may result in errata to the Final EIR that do not affect the potential impacts and mitigation measures. All other comment letters are included in Attachment LL.

### **Conclusion**

The Planning Commission is a recommending body to the City Council on whether to certify the EIR and approve the requested land use entitlements. The draft Planning Commission resolution recommending these actions is included in Attachment A. The Planning Commission will need to consider the environmental analysis, the merits of the proposed project, the comprehensive redevelopment through the CDP, the provision of BMR units, and the community amenities and public benefits in the DA. The Planning Commission's recommendation would be forwarded to the City Council for review, which is tentatively scheduled to take place on the November 15 meeting.

### **Impact on City Resources**

The applicant is required to pay Planning, Building and Public Works permit fees, based on the City's Master Fee Schedule, to fully cover the cost of staff time spent on the review of the proposed project. The applicant is also required to fully cover the cost of work by consultants performing environmental review and additional analyses to evaluate potential impacts of the proposed project.

### **Environmental Review**

### **Public Notice**

Public Notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. Public notification also consisted of publishing a notice in the local newspaper

and notification by mail of owners and occupants within a ¼ miles radius of the subject property.

## Attachments

- A. Planning Commission Resolution recommending the City Council certify the final environmental impact report (Final EIR), adopt California Environmental Quality Act (CEQA) Findings, adopt a Statement of Overriding Considerations for significant and unavoidable impacts, adopt a resolution amending the General Plan Circulation Element and Zoning Map, adopt an ordinance rezoning the project site to incorporate “X” overlay district and approve the conditional development permit (CDP), approve the vesting tentative maps for the main project site and the Hamilton Avenue Parcels, adopt an ordinance to approve the development agreement (DA), and approve the below market rate (BMR) housing agreements for the proposed Willow Village masterplan project

### Exhibits to Attachment A

1. Hyperlink Final EIR: <https://beta.menlopark.org/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/final-eir/willow-village-master-plan-final-eir.pdf>
  2. Draft Resolution certifying EIR and adopting CEQA Findings and Statement of Overriding Considerations
  3. Mitigation Monitoring and Reporting Program
  4. Draft Resolution amending General Plan Circulation Map
  5. Draft Resolution approving vesting tentative map for the Main project site (includes conditions)
  6. Draft Resolution approving vesting tentative map for the Hamilton Avenue parcels
  7. Draft Ordinance rezoning main project site, amending the zoning map and approving a conditional development permit
  8. Draft conditional development permit
  9. Draft Ordinance adopting the development agreement
  10. Draft development agreement
  11. Resolution approving the below market rate housing agreements
  12. Non-Age Restricted BMR Agreement
  13. Age Restricted BMR Agreement
- B. Hyperlink Housing Needs Assessment: [https://beta.menlopark.org/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/draft-eir/appendix\\_3.13\\_housing-needs-assessment.pdf](https://beta.menlopark.org/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/draft-eir/appendix_3.13_housing-needs-assessment.pdf)
- C. Hyperlink Fiscal Impact Analysis: <https://beta.menlopark.org/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/october-2022/20221011-willow-village-master-plan-fia-report.pdf>
- D. Hyperlink Community amenities appraisal for bonus level development: <https://beta.menlopark.org/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/september-2022/20210917-community-amenities-appraisal-report-for-bonus-level-development.pdf>
- E. Hyperlink Community amenities proposal evaluation: <https://beta.menlopark.org/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/september-2022/20220427-community-amenities-proposal-city-evaluation.pdf>
- F. Location map
- G. Project milestones and meeting summary
- H. Master plan site plan
- I. Hyperlink master plan project plans: <https://beta.menlopark.org/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/october-2022/masterplan-plan-set.pdf>

- J. Conceptual district plan sheet from master plan
- K. Conceptual Willow Village construction phasing timeline
- L. Willow Village design standards modification requests
- M. Conceptual open space plan sheet from master plan
- N. Bird Safe Design Assessment
- O. Conceptual emergency generator location plan from master plan
- P. Hazardous materials agency referral forms
- Q. Comparison of existing and proposed Circulation Map
- R. Conceptual circulation exhibits from master plan
- S. Conceptual street cross sections from master plan
- T. Conceptual parking plan from the master plan
- U. TDM modification request
- V. Campus District Trip Cap Policy
- W. TDM Plan and Monitoring Plan
- X. Event Transportation Management Plan
- Y. Non-CEQA LOS section of the Draft EIR excerpt
- Z. Hyperlink vesting tentative map for the main project site:  
<https://beta.menlopark.org/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/october-2022/vesting-tentative-map-and-major-subdivision-main-site.pdf>
- AA. Hyperlink vesting tentative map for the Hamilton Avenue parcels:  
<https://beta.menlopark.org/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/october-2022/vesting-tentative-map-and-subdivision-hamilton-avenue-realignment.pdf>
- BB. Willow Village BMR Housing Proposal
- CC. Hyperlink: Menlo Park bonus level development appraisal instructions  
<https://www.menlopark.org/DocumentCenter/View/20467/Community-Amenity-Appraisal-Instructions>
- DD. Hyperlink: Willow Village Community Amenities Proposal  
<https://beta.menlopark.org/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/october-2022/20221011-willow-village-community-amenities-and-benefits-august-2022.pdf>
- EE. Hyperlink: Community Amenities Proposal Updates Summary Letter  
<https://beta.menlopark.org/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/october-2022/20221011-willow-village-updated-community-amentity-letter.pdf>
- FF. Exhibit D to the DA (project phasing)
- GG. Fiscal impact analysis summary table
- HH. Final EIR comment letter from Amah Mutsun Tribal Band of Mission San Juan Bautista
- II. Excerpted master responses for reduced parking and connection to Bayfront Expressway from Final EIR
- JJ. Errata to Final EIR
- KK. Project and alternatives impact comparison – Table 6-12 of EIR
- LL. Correspondence

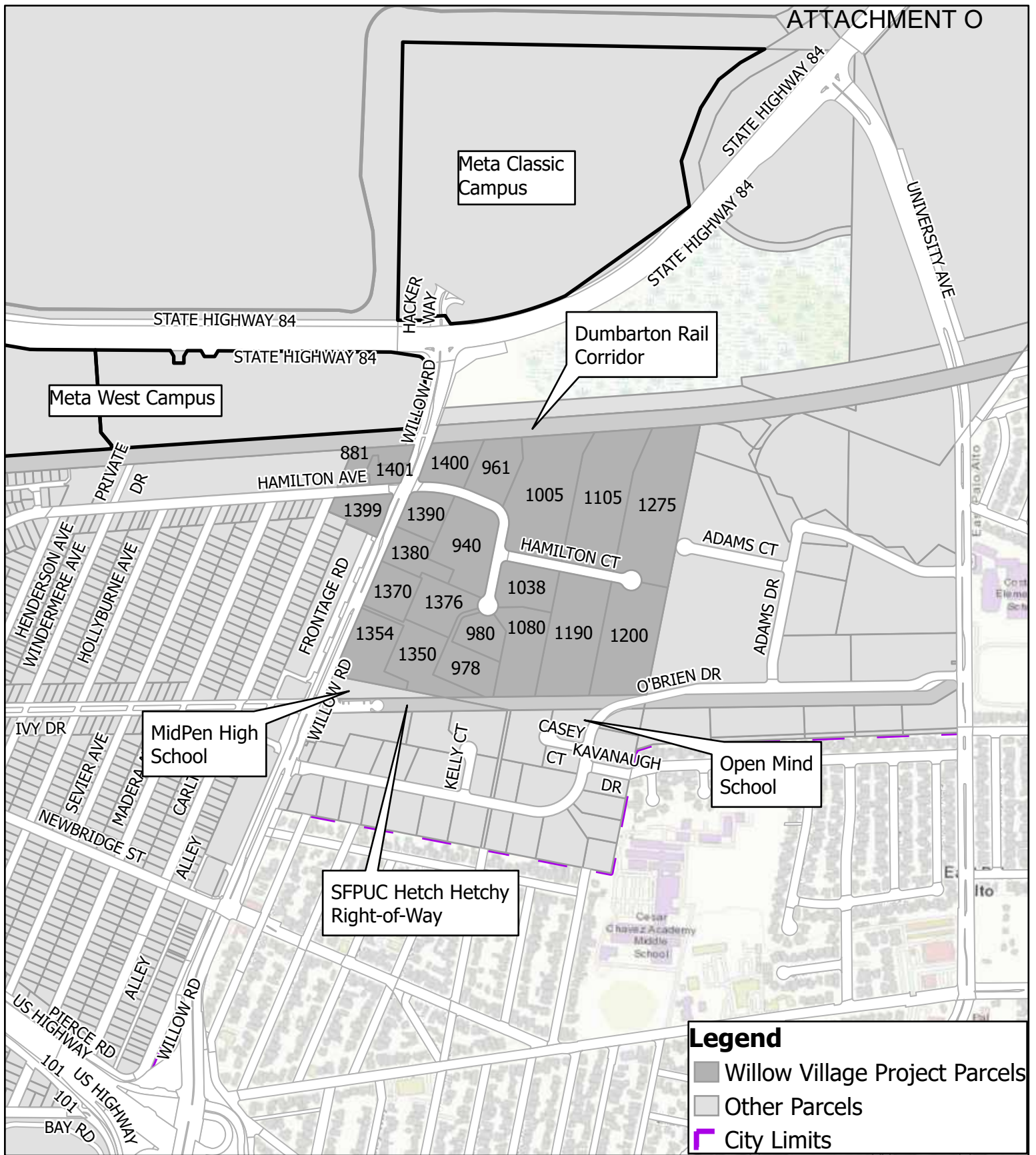
### Disclaimer

Attached are reduced versions of maps and diagrams submitted by the applicants. The accuracy of the information in these drawings is the responsibility of the applicants, and verification of the accuracy by City Staff is not always possible. The original full-scale maps, drawings and exhibits are available for public viewing at the Community Development Department.

Report prepared by:  
Kyle Perata, Planning Manager

Report reviewed by:  
Corinna Sandmeier, Acting Principal Planner  
Deanna Chow, Assistant Community Development Director  
Anna Shimko, Assistant City Attorney





# CITY OF MENLO PARK

## LOCATION MAP

### WILLOW VILLAGE



CITY OF  
MENLO PARK

Scale: 1:9,000

Drawn By: KTP

Checked By: CDS

Date: 10/24/2022



Project meetings and milestones	
Milestone	Date
Project submittal	July 2017
Planning Commission study session	February 2018
City Council study session	March 2018
Revised project submitted with current land uses and site plan	February 2019
Notice of Preparation for EIR released	September 18, 2019
Planning Commission EIR scoping session and study session	October 7, 2019
City Council review and confirmation on EIR scope and content	December 16, 2019
Draft EIR released for public review and comment	April 8, 2022
Planning Commission Draft EIR public hearing and study session	April 25, 2022
City Council study session on community amenities proposal	May 24, 2022
Complete Streets Commission review and recommendation on General Plan Circulation and Zoning Map amendments	June 8, 2022
Housing Commission review and recommendation on BMR proposal	August 3, 2022
City Council study session on community amenities proposal updates	August 23, 2022
Complete Streets Commission informational item on site circulation updates	September 14, 2022
Planning Commission review and recommendation on EIR and land use entitlements	October 24, 2022
Planning Commission continuation of review and recommendation on EIR and land use entitlements with modifications	November 3, 2022
City Council review and consideration of Planning Commission recommendation and City Council initial actions	November 15, 2022



LEGEND	
1	Town Square
2	Grocery Store on Ground Level
3	Publicly Accessible Park
4	Publicly Accessible Dog Park
5	Elevated Park Access (Elevator and Stairs)
6	Elevated Park
7	Hotel
8	Mixed-Use Block
9	Residential Block
10a	Office Campus
10b	Meeting & Collaboration Space
11	Parking Garage with Transit Hub on Ground Level
12	Proposed Multi-use Pathway
13	Willow Road Tunnel
14	Realigned Hamilton Avenue
15	Hamilton Avenue Parcel North
16	Hamilton Avenue Parcel South

Note: Willow Road improvements are subject to Caltrans approval.

## WILLOW VILLAGE ADJUSTMENT REQUEST: TRANSPORTATION DEMAND MANAGEMENT

### Summary of Adjustment Request

Request for adjustment to staff's interpretation of the Transportation Demand Management ("TDM") provisions of the City of Menlo Park ("City") Zoning Code (Zoning Code §§16.43.100 and 16.45.090) to allow the Willow Village Master Plan Project ("Willow Village") to achieve the greater reduction of (i) a 20 percent trip reduction from gross trip generation rates, and (ii) the proposed Trip Cap for the Office component of Willow Village.

Using gross trip generation rates and the proposed Trip Cap, Willow Village overall would achieve a 20 percent reduction in average daily trips and a 31/35 percent reduction in AM/PM peak hour trips. The Office component of Willow Village would achieve a 35/40 percent reduction in AM/PM peak hour trips. These reductions would meet or exceed the Zoning Code requirement for a 20 percent reduction.

### Code Requirements

#### *Zoning Code Provisions - Zoning Code §§16.43.100 (Office District) and 16.45.090 (R-MU District)*

"New construction and additions to an existing building involving ten thousand (10,000) or more square feet of gross floor area, or a change of use of ten thousand (10,000) or more square feet of gross floor area shall develop a transportation demand management (TDM) plan necessary to reduce associated vehicle trips to at least twenty percent (20%) below standard generation rates for uses on the project site."

#### *Menlo Park Transportation Demand Management (TDM) Program Guidelines ("TDM Guidelines")*

The City's TDM Guidelines provide list of recommended potential TDM measures and their associated trip credit is maintained by the San Mateo County City/County Association of Governments ("C/CAG") as part of the San Mateo County Congestion Management Program ("CMP"). The TDM Guidelines do not provide specific guidance on the measurement of the Zoning Code-required 20 percent reduction in standard trip generation rates.

#### *Staff Interpretation*

Staff has made three significant interpretations of the TDM provisions of the Zoning Code:

1. *Standard Generation Rates*: Staff interprets the term "standard generation rates" as used in the TDM provisions of the Zoning Code to mean:

The trip generation rates set forth in the current edition of the Institute of Traffic Engineers ("ITE") *Trip Generation Manual* (referred to herein as "Gross Trip Generation Rates")

MINUS

Reductions for “Land Use Efficiency” (*i.e.*, the portion of trips generated by a mixed-use development that both begin and end within the development, also referred to as “internal capture”);

AND

Reductions for “Location Efficiency” (*i.e.*, the portion of trips generated within a development that will be pedestrian/bicycle/transit trips as a result of proximity to other uses or transit).

The reduced trip generation rates as interpreted by staff are referred to herein as “Net Trip Generation Rates.”

2. *Reduction Period*: Staff interprets the TDM provisions of the Zoning Code to require a 20 percent reduction in both peak hour trips and average daily total (“ADT”) trips.

### **Requested Adjustment**

Peninsula Innovation Partners requests for adjustment to staff’s interpretation of the TDM provisions of the Zoning Code (Zoning Code §§16.43.100 and 16.45.090) to allow Willow Village to achieve the greater reduction of (i) a 20 percent reduction from Gross Trip Generation Rates, and (ii) the proposed Trip Cap for Willow Village, as detailed in Row D of Table 1, below.

Using Gross Trip Generation Rates, these reductions would meet or exceed the Zoning Code requirement for a 20 percent reduction.

Table 1 details the Adjustment Request.

**Row A** depicts the ITE Gross Trip Generation Rates for Willow Village developed by the City’s transportation consultant, Hexagon Transportation Consultants.

**Row B** depicts a 20 percent reduction from Gross Trip Generation Rates.

**Row C** depicts the proposed Office Trip Cap for the Office component of Willow Village

**Row D** depicts the proposed TDM reduction requirement for Willow Village, based on the greater reduction of **Row B** and **Row C**. As proposed, Willow Village would achieve a 20 percent reduction in ADT trips and a 31/35 percent reduction in AM/PM peak hour Trips. The Office component of Willow Village would achieve a 35/40 percent reduction in AM/PM peak hour trips.

**Table 1: Trip Generation Summary – Office, Mixed Use, & Total**

	Daily Totals			AM Peak Hour			PM Peak Hour		
	Office	Mixed-Use	Total	Office	Mixed-Use	Total	Office	Mixed-Use	Total
<b>A. Standard (Gross) ITE Trip Generation<sup>1</sup></b> (based on ITE rate for each land use)	22,796	18,783	41,579	2,572	905	3,476	2,780	1,688	4,468
<b>B. 20% TDM Reduction per Ordinance</b> <i>Reduction from Standard ITE Rates</i>	18,237 -20%	15,026 -20%	33,263 -20%	2,058 -20%	724 -20%	2,781 -20%	2,224 -20%	1,350 -20%	3,574 -20%
<b>C. Office Proposed Trip Cap</b> (Existing Trip Cap KSF rate for 1,250 KSF) <i>Reduction from Standard ITE Rates</i>	19,280 -15%	NA	NA	<b>1,670</b> -35%	NA	NA	<b>1,670</b> -40%	NA	NA
<b>D. Project Trip Generation<sup>2</sup></b>									
1. With TDM reduction / no pass by reduction) <i>Reduction from Standard ITE Rates</i>	18,237 -20%	15,026 -20%	33,263 -20%	1,670 -35%	726 -20%	2,396 -31%	1,670 -40%	1,237 -27%	2,907 -35%
2. With Residential VMT Mitigation <sup>3</sup> <i>Reduction from Standard ITE Rates</i>	18,237 -20%	13,522 -28%	31,759 -24%	1,670 -35%	726 -20%	2,396 -31%	1,670 -40%	1,237 -27%	2,907 -35%

1 – Calculated using the trip generation data summarized in **Table 2A** Trip Generation for Development Phases of the Proposed Facebook Willow Village Campus in Menlo Park, California, Hexagon Transportation Consultants, June 14, 2021. Daily, AM, and PM peak hour average rates published in ITE Trip Generation Manual, 10th Edition, 2017 were used for each land use.

2 - Trip generation data summarized from **Table 13** Project Trip Generation Estimates (Main Project Site) Facebook Willow Village Campus Transportation Impact Analysis, Hexagon Transportation Consultants

3 - Residential VMT Mitigation Measure TRA-2 reduces the residential daily trips to a maximum of 6,023 trips, a reduction of an additional 1,504 daily trips from the original trip generation estimates.

## **Justification for Adjustment**

The proposed Adjustment would be consistent with *ConnectMenlo* and would avoid penalizing Willow Village for embracing the City's vision for a truly mixed-use project.

### ***Consistency with ConnectMenlo***

The proposed Adjustment would be consistent with *ConnectMenlo* vision for mixed-use development in the Bayfront Area.

*General Plan.* The *ConnectMenlo* General Plan encourages office, residential, commercial, and hotel uses "in close proximity or integrated with one another" in order to "promote the creation of an employment district with travel patterns that are oriented toward pedestrian, transit, and bicycle use." (General Plan Land Use Element, p. LU-15). *ConnectMenlo* therefore promotes mixed-use development to increase alternative modes of travel and to decrease vehicle trips that are otherwise necessary with single-use development. Willow Village's proposed mix of office, residential, commercial, and hotel uses would directly accomplish *ConnectMenlo's* mixed-use vision by increasing the amount of walking, biking, and transit use and, in turn, decreasing vehicle trips. Willow Village's travel benefits are a key element of its TDM program and should be credited, rather than discounted, in accordance with *ConnectMenlo's* vision.

*Zoning Code.* As noted above, the TDM provisions of the Zoning Code require a 20 percent reduction from "standard trip generation rates." ITE's standard trip generation rates are gross trip rates, before any reductions for Land Use Efficiency and Location Efficiency. While ITE and other national organizations (such as the American Planning Association) have developed recommended methodologies for calculating Land Use Efficiency and Location Efficiency, these reductions are not "standard," but instead are calculated based on project land uses, local conditions, and engineering judgment. *TDM Guidelines.* The City's TDM Guidelines support the approach of including Land Use Efficiency and Location Efficiency with the TDM measures that count toward the required 20 percent trip reduction. For example, the TMD Guidelines recommend TDM credits for:

- Providing on-site amenities/accommodations (e.g., banking, grocery) that encourage people to stay on site during the workday, making it easier for workers to leave their automobiles at home (a form of Land Use Efficiency);
- Encouraging infill development (a form of Location Efficiency); and
- Making roads and streets more pedestrian and bicycle friendly (a form of both Land Use and Location Efficiency).

Indeed, the TDM Guidelines recognize that the trip reduction benefits of mixed-use/infill development are considered "generally acceptable TDM practices" consistent with industry standards. (TDM Program Guidelines, at p. 7). In other words, the TDM Guidelines support treating Land Use Efficiency and Location Efficiency as part of the TDM reductions from Gross Trip Generation Rates.

### ***Avoiding Penalizing Mixed-Use Projects***

Staff's interpretation of applying the 20 percent reduction to Net Trip Generation Rates would penalize Willow Village and other mixed-use projects<sup>1</sup> for implementing *ConnectMenlo's* vision by proposing a true mix of uses. As shown in Table 1:

- ***Mixed-Use Reduction:*** Under staff's interpretation (Row E), the Mixed-Use component of Willow Village would be required to achieve 31% ADT/29% AM/35% PM trip reduction, as opposed to 20% ADT/20% AM/20% PM trip reduction when using Gross Trip Generation Rates (Row D).
  - Achieving reductions of the magnitude proposed by staff is infeasible for retail and residential projects in locations similar to Menlo Park. Requiring this magnitude of reduction would render important Willow Village components infeasible, especially the grocery store and other community amenities.
- ***Office Reduction:*** Under staff's interpretation (Row E), the Office component of Willow Village would be required to achieve 31% ADT trip reduction, as opposed to 20% ADT trip reduction when using Gross Trip Generation Rates (Row D). (The required reduction for peak hour trips would be the same as with the proposed Adjustment, because the Office Trip Cap is more stringent than the 20 percent reduction regardless of whether it is taken from Gross Trip Generation Rates or Net Trip Generation Rates.)
  - Standard industry practice is that most TDM programs are geared toward reducing peak hour trips, not ADT trips. The *Connect Menlo* General Plan explains that TDM programs "are intended to reduce vehicle trips and parking demand by promoting the use of a variety of transportation options and *shifting travel mode and time of day* to take advantage of available capacity to reduce crowding and congestion." (GP Circulation Element, p. CIRC-13). (Nonetheless, the full impacts of daily trip generation are addressed in other aspects of EIRs, such as air quality and GHG.)
  - Likewise, the TDM provisions of the Zoning Code include "alternative work schedules" and the TDM Guidelines include "flextime" as acceptable TDM measures.
  - Achieving ADT reductions of the magnitude proposed by staff is infeasible for office projects in locations similar to Menlo Park.
- ***Total Reduction:*** Under staff's interpretation (Row E), Willow Village overall would be required to achieve 31% ADT/33% AM/38% PM trip reduction, as opposed to 20% ADT/31% AM/35% PM trip reduction when using Gross Trip Generation Rates and the proposed Trip Cap (Row D).
  - By requiring substantially higher trip reductions based on the mixed-use nature of the project (because of higher Land Use Efficiencies), staff's interpretation would punish Willow Village for implementing *ConnectMenlo's* mixed use vision.

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<sup>1</sup> Unlike mixed-use projects, single-use projects would not be subject to Land Use Efficiency reductions. Likewise, predominantly single use projects with a small area devoted to a secondary use (such as an office building with a café or a residential building with an incubator office space) would be subject to a far less acute penalty, because the Land Use Efficiency of such projects is much lower than for a large, truly mixed-use project such as Willow Village.



The Applicant respectfully requests that the City grant the proposed Adjustment to staff's interpretation of the TDM provisions of the Zoning code.

October 20, 2022

## WILLOW VILLAGE CAMPUS DISTRICT TRIP CAP MONITORING AND ENFORCEMENT POLICY

This policy applies to the Campus District of the Willow Village Project ("Project"). For purposes of this policy, the term "Willow Village Campus District" is intended to include the six office buildings (O1 – O6) and the meeting and collaboration space (MCS) that are proposed as part of the Project. This trip cap does not apply to the Town Square District or Residential/Shopping District of the Willow Village Project. There are separate trip cap monitoring and enforcement policies for the Classic and Bayfront Campuses that are independently enforced.

### DEFINITIONS

**Trip** - A single vehicle (car, truck, van, shuttle, etc.) arriving at a location in Menlo Park, whose occupant(s)' final destination is the Willow Village Campus District, or a single vehicle departing from a location in Menlo Park, whose occupant(s)' origin is the Willow Village Campus District. Therefore, for example, a roundtrip by a single vehicle arriving at a location in Menlo Park and departing from a location in Menlo Park whose occupant(s)' destination and origin is the Willow Village Campus District equals two trips. A vehicle transiting from either the Classic or Bayfront campuses to Willow Village Campus District or from the Willow Village Campus District to either the Classic or Bayfront campuses is a trip. A single shuttle coming from outside Menlo Park or from the Menlo Park Caltrain station that makes stops at multiple Meta campuses shall only count as one trip against the Daily Trip Cap. Intra-campus shuttle trips that enter or exit the Willow Village Campus District via Willow Road or University Avenue during the peak periods shall count fully against the Peak Hour Trip Caps. Trams, shuttles, or other vehicles utilizing the planned Willow Road undercrossing between the Bayfront Campus and Willow Village Campus District shall not count against either the Daily Trip Cap or the Peak Hour Trip Caps. Trips also do not include bicycles, e-bikes, scooters, or other self-powered modes of travel.

**Peak Hour Trip Cap** -The maximum number of trips allowed in each hour of the AM Peak Period or the PM Peak Period.

**Peak Period** - Roadway morning and evening commuter peak travel times:

- AM Peak Period - 7:00 AM to 9:00 AM
- PM Peak Period - 4:00 PM to 6:00 PM

**Daily Trip Cap**-The maximum number of trips per day.

**Trip Cap** - Generally refers to the AM Peak Hour Trip Caps, the PM Peak Hour Trip Caps and the Daily Trip Cap.

### TRIP CAP

The Campus District must comply with the Trip Cap and may not exceed the Trip Cap without an application for and approval of a change to the Conditional Development Permit (CDP) for Willow Village.

If the Trip Cap is exceeded without the appropriate approval, the Campus District Property Owner is in violation of the CDP.

The Trip Cap proposed as part of the Willow Village Campus District is as follows:

- AM Peak Period Trip Caps:
  - 1,670 trips are permitted between 7:00 a.m. and 8:00 a.m.
  - 1,670 trips are permitted between 8:00 a.m. and 9:00 a.m.
  
- PM Peak Period Trip Caps:
  - 1,670 trips are permitted between 4:00 p.m. and 5:00 p.m.
  - 1,670 trips are permitted between 5:00 p.m. and 6:00 p.m.
  
- Daily Trip Cap: 18,237 trips

## **MONITORING**

To monitor compliance with the Trip Cap, traffic counts shall be taken at the Willow Village Campus District. The monitoring shall be done through automated means (e.g., imbedded loop detectors in the pavement in each travel lane or video detection) approved by the City<sup>1</sup>. All vehicular entrances to the Willow Village Campus District parking facilities, transit hubs, and loading docks shall be included in the monitoring. The Campus District Property Owner shall be solely responsible for paying all costs related to monitoring, including, but not limited to, development, installation, maintenance, and repair of all monitoring equipment.

In addition to monitoring the Campus District parking structures, adjustments will need to be made for Campus District visitors that use the shared parking structures or arrive via ride hailing services (Uber, Lyft, or taxis). Since these activities will occur in areas shared by multiple land uses, they will be accounted for in the reliability (sensitivity) factors described later in this document.

The City reserves the option to require the Campus District Property Owner to monitor neighborhood parking intrusion in the Belle Haven neighborhood, parking on other public streets in the City, or parking at any off- site parking lot(s) in Menlo Park (other than any property or properties leased or owned by and occupied by any affiliate of the Campus District Property Owner) if it is observed or suspected that vehicles whose occupant(s)' final destination is the Willow Village Campus District are parking at any of these locations. If the City requires monitoring of these off-site locations and, after investigation, it is confirmed that vehicle occupant(s) whose final destination is the Willow Village Campus District are parking vehicles at these off-site locations (other than a property or properties leased or owned and

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<sup>1</sup> City approvals related to monitoring equipment will be through the Director of Public Works or his/her designee.

occupied by any affiliate of the Campus District Property Owner), the trips to these locations will be counted toward the Trip Cap.

Monitoring program details are as follows:

- **Monitoring Days/Times**- Each hour within the AM Peak Period, each hour within the PM Peak Period and total daily trips will be monitored on all non-holiday weekdays. Holidays are those days identified as State holidays in California Government Code Section 6700.
- **Exclusions** - Two types of exclusions from the Trip Cap shall be permissible as discussed below:
  - **Special Events:** To account for special events and their effect on trips, the Campus District Property Owner may have up to 25 special event exclusions per year or 25 days on which one or more of the AM Peak Hour Trip Caps, PM Peak Hour Trip Caps or Daily Trip Cap are exceeded, but are not considered violations of the Trip Cap. These special events do not represent typical operating conditions at the Willow Village Campus District. A special event will be defined as an activity that is not typical of the normal operations of the Willow Village Campus District and may involve more than Meta workers. If the Trip Cap has been violated as a result of a special event, the Campus District Property Owner shall provide documentation to the City that a special event took place. Upon City review and approval, in the City's reasonable discretion, an exclusion for a special event shall apply.
  - **Non-event exclusions:** For non-special events, the Campus District Property Owner will be allowed three days on which one or more of the AM Peak Hour Trip Caps, PM Peak Hour Trip Caps or Daily Trip Cap are exceeded within a 180-day period without incurring penalties. These non-event exclusion days are intended to allow the Campus District Property Owner time to correct the Trip Cap violation. If the Campus District Property Owner exceeds the Trip Cap on more than three days within a 180-day period, then the non-event exclusion is exhausted, and penalties will be imposed for violations of the Trip Cap until compliance is reached for a consecutive 180-day period. Additional violations, if any, within the 180-day compliance period, will re-set the 180-day compliance period. If after a consecutive 180-day period, the Campus District Property Owner remains in full compliance with the Trip Cap, then the three days of non-event exclusions will become available again.
- **Count Equipment** - Automated count equipment will be designed and constructed at the Campus District Property Owner's sole expense to collect data on the number of trips at each of the Willow Village Campus District driveways including parking structures, underground parking, and loading areas, and send the data back to the City offices. The type of count equipment (initial and any future changes) shall be approved by the City, in consultation with the Campus District Property Owner and considering the latest technologies for detection, counting and reporting. The City shall not unreasonably withhold approval of initial count equipment or any future equipment which achieves the result envisioned in this document. The City shall also approve the

count equipment that will be used to monitor off-site locations, if the City exercises the option to require such monitoring. The City shall not unreasonably withhold approval of such additional count equipment.

- **Initial Calibration Process** - Once any new count equipment has been established, a calibration process will be undertaken to determine the reliability and accuracy of the count equipment. Depending on the type of equipment, the count accuracy can be affected by a number of environmental factors which will need to be confirmed. This calibration process would be conducted prior to issuance of the occupancy permit for the final Willow Village Campus District office building.
- **Determination of Reliability (Sensitivity) Factor** - Based on the calibration analysis, the City and the Campus District Property Owner will agree to a reliability factor for the count stations which will be used to evaluate the count results consistent with what the City and Meta have historically agreed upon for the Classic and Bayfront campus trip cap monitoring. The reliability factor would represent the margin of error inherent in the vehicle counting equipment, address the exclusion of shuttle trips that serve multiple Meta campuses, and address the inclusion of trips to and from the Campus District that do not use the office worker parking (Campus District visitors and ride hailing passengers). Periodically, the reliability factor will be updated using data provided by the Campus District Property Owner or collected by a third-party for the following trip types:
  - **Worker shuttles serving multiple Meta campuses.** The reliability factor would account for single shuttles coming from outside Menlo Park or from the Menlo Park Caltrain station and making stops at multiple campuses. Periodically, the reliability factor, based on reporting from Meta, may be modified to address the anticipated or actual number of shuttles coming from outside Menlo Park or from the Menlo Park Caltrain station making stops as part of one trip at multiple campuses outside of the peak period. At a minimum, Meta shall provide an annual report to the City Transportation Manager for each upcoming year that provides data on the proposed number of shuttle trips so that the City may analyze whether the reliability factor is accurately accounting for single shuttles coming from outside Menlo Park or from the Menlo Park Caltrain station and making stops at multiple campuses.
  - **Willow Road Tunnel Adjustments.** The reliability factor will need to be adjusted for vehicles that access the Campus District via the Willow Road tunnel. The trips that use the Willow Road tunnel to access the Willow Village Campus District will not be adding traffic to Willow Road or Bayfront Expressway. These trips may include intra-campus trams, on-demand vehicles, and maintenance and security vehicles. These vehicles may be captured by one of the count locations, but would not count against the trip cap.

Some, or all, of the intra-campus trams will be routed through one or both of the Willow Village Campus District transit hubs. In addition, other Meta transportation vehicles (e.g. Campus Cars or Candidate Cars) may use the Willow Road tunnel and drop off or pick up passenger within the transit hubs. By using the Willow Road tunnel, these trips do not impact the public roadways. Similar to the workers shuttles, any intra-campus trams that use public roads (Willow Road or Bayfront Expressway) will need an adjustment factor to account for these trams passing through both of the Willow Village Campus District transit hubs. Meta will report the tram schedules, track on-demand trips, and provide adjustment factors during the annual reporting to account for these tram and on-demand trips.

- **Maintenance and security vehicle trip adjustments.** On the Classic and Bayfront campuses, many of the maintenance and security trips travel between origins and destinations within a single campus. These are internal trips to the Meta campuses so they never pass over a monitoring station. In addition, these trips do not travel on public roadways (e.g. Bayfront Expressway and Willow Road). The maintenance and security trips passing through the Willow Road tunnel will avoid travelling on Bayfront Expressway and Willow Road, but they would be counted entering and existing the parking structures or loading areas. Therefore, these trips should not be included in the trip cap. A process will be developed to account for these trips and subtract them from the driveway counts. The adjustment process will be included in the development of the annual reliability factor.
- **Campus District Visitor Parking** – Visitors to the Campus District will use the Town Square shared parking. The Campus District Property Owner will establish a system to track the Campus District visitor parking activity that is approved by the Public Works Director. The system will need to track the number of daily visitor trips and record the activity and provide the data to the City when the reliability factor is calculated. The shared parking areas will include control systems that will collect data on vehicles using the Town Square parking structure. Campus District visitors will be required to validate their parking when they check-in at the Campus District entrances. This data will be used to account for Campus District visitor parking.
- **Campus District Visitor Ride Hailing** – Meta currently monitors ride hailing trips at their campuses as part of the trip cap monitoring for the Classic and Bayfront campuses. The existing ride hailing monitoring includes vehicle counts and origin-destination surveys conducted at ride hailing lounges located at Meta buildings within in Menlo Park. A similar survey approach will be used to monitor ride hailing activity at the Willow Village Campus District. Unlike the other two campuses, ride hailing at the Willow Village Campus District will occur on public streets that are

shared with the other Willow Village districts. Therefore, a survey will be used to capture the number of vehicles and information on the origin/destination of passengers to determine if the trip is related to the Campus District or the other Willow Village Districts. The annual survey will be conducted of the ride hailing activity at the same time the reliability factor is developed. The Campus District Property Owner will establish a survey procedure that is approved by the Public Works Director. This is consistent with the procedure used for the Classic and Bayfront Campuses.

To capture the ride hailing activity for events, the Campus District Property Owner in consultation with City staff shall once a quarter select either a medium (1,001 -2,500 persons) or large (2,501 -5,000 persons) event to survey ride hailing trips for a minimum of two years after buildout of the Office Campus. During each twelve-month period, at least one survey shall occur during a large event. In addition, surveys for two smaller events of less than 1,000 persons shall be conducted during each twelve-month period. The surveys should include rideshare location, arrival/departure date and time, drop-off or pick-up, and number of passengers.

- **Periodic Count Equipment Testing/Recalibration** - The vehicle detection system will be periodically tested to ensure the accuracy of the monitoring counts. During the first two years of operation, testing will be conducted at six-month intervals. If these tests show that the system is operating reliably, then testing can be reduced to once a year. If the equipment is thought to be out of calibration, the Campus District Property Owner will work with the City to test and calibrate the equipment if necessary. The City will have final approval, which approval shall be granted or withheld in a reasonable manner, on all testing and calibration.
- **Installation and Repairs** - New count equipment shall be installed and in good working order prior to final building permit sign-off for occupancy of first Willow Village Campus District office building. The City shall have final approval, which approval shall be granted or withheld in a reasonable manner, of the contractor completing the installation and the maintenance contractor completing any repairs. Non-emergency repairs and maintenance of the monitoring equipment shall occur only on evenings and weekends, unless otherwise approved by the City. The Transportation Division shall be notified at least 48 hours in advance of any non-emergency repairs or maintenance work. The City Transportation Division shall be notified within 24 hours of any emergency repairs. City inspection and approval of any repairs or maintenance is required. Failure to keep monitoring equipment operational in good working order will be considered a violation of the Trip Cap after two working days, unless the repairs/maintenance require additional time as approved by the City and the Campus District Property Owner is diligently pursuing such repairs/maintenance. The Trip Cap penalty will not be enforced during the repair/maintenance of the monitoring equipment. If the City, in its sole and reasonable discretion, determines that the Campus District Property Owner is not diligently pursuing the

repairs/maintenance, the City may elect to perform the repairs/maintenance and charge the cost of the repair/maintenance, staff time, and 15 percent penalty fee to the Campus District Property Owner.

- **Access to Count Equipment/Reporting**- The City shall have the ability to access the count equipment at any time after reasonable prior notice to the Campus District Property Owner. The Campus District Property Owner will not have access to the count equipment, unless approved by the City or in case of the need for emergency repairs. The City shall not unreasonably withhold approval of access for repair/maintenance contractors. The Campus District Property Owner shall have "read-only" access to the reporting data but shall have the ability to record such data and run history reports in order to track trends. Reporting data shall be provided to the Campus District Property Owner and the City in real time. Real time data will provide the Campus District Property Owner the opportunity to take immediate action, if necessary, to avoid violating the Trip Cap.

## ENFORCEMENT

The Campus District Property Owner shall be responsible not only for monitoring, but also for achieving compliance with the Trip Cap, which includes, by definition, all trip cap measurements on a daily basis (the AM Peak Hour Trip Caps, the PM Peak Hour Trip Caps and the Daily Trip Cap). The City shall enforce compliance with the Trip Cap.

If, on a given day, the results of the monitoring indicate that the number of trips is at or below the Trip Cap, considering the reliability factor, then the Campus District Property Owner is considered in compliance. If, however, the monitoring, considering the reliability factor, reveals that any of the AM Peak Hour Trip Caps or the PM Peak Hour Trip Caps or the Daily Trip Cap has been exceeded (after accounting for any permitted exclusions), the Campus District Property Owner is in violation of its CDP and the City may take steps to enforce the Trip Cap.

The specifics for enforcement are as follows:

- **Threshold** - If there are any AM Peak Hour Trip Cap, PM Peak Hour Trip Cap or Daily Trip Cap violations that do not qualify for an exclusion as discussed above, then penalties will be imposed.
- **Penalties** - Monetary penalties will be imposed for violations of the Trip Cap in excess of the threshold. Penalties are calculated on a per trip basis and progressively increasing penalties will be imposed for subsequent violation(s) of the Trip Cap based on a tiered system described in the table below. Penalties will be applied for each violation including the AM Peak Hour, PM Peak Hour, and the Daily Period. If any of the AM Peak Hour Trip Caps, and/or PM Peak Hour Trip Caps and Daily Trip Cap are exceeded on the same day, the penalty paid shall be the greater of the sum of the penalties for the AM Peak Hour and PM Peak Hour or the Daily penalty. The penalty payment schedule is shown in the table below.



<b>Penalty Tier<sup>1</sup></b>	<b>Applicability</b>	<b>Penalty Amount per Trip per Day</b>
Tier 1	Tier 1 is the default tier and applies for the month unless one of the other tiers is applicable.	\$66.26 per trip per day
Tier 2	Tier 2 applies for the month if either (a) penalties were imposed in both of the 2 months immediately preceding that month or (b) penalties were imposed in any 4 of the 6 months immediately preceding that month. Tier 2 will not apply if Tier 3 applies.	\$132.56 per trip per day
Tier 3	Tier 3 applies for the month if penalties were imposed in each of the 6 months immediately preceding that month.	\$265.11 per trip per day

1 - Only one tier is applicable for any given violation. In addition, the penalty amounts are shown in 2022 dollars based on the original 2012 penalty amounts that applied to the original project approvals for Building 20 adjusted by CPI.

An example table showing the penalty amounts:

<b>Penalty Cost Per Day</b>			
<b>Vehicles Over Trip Cap</b>	<b>Tier 1</b>	<b>Tier 2</b>	<b>Tier 3</b>
100	\$6,626	\$13,256	\$26,511
500	\$33,130	\$66,280	\$132,555
1000	\$66,260	\$132,560	\$265,110
2000	\$132,520	\$265,120	\$530,220

Example calculation:

AM Peak Period exceeds AM Peak Period Trip Cap by 100 trips

PM Peak Period exceeds PM Peak Period Trip Cap by 50 trips

Daily trips exceed the Daily Trip Cap by 400 trips

$$\text{AM penalty} = 100 \text{ trips} \times \$66.26 = \$6,626$$

$$\text{PM penalty} = 50 \text{ trips} \times \$66.26 = \$3,313$$

$$\text{Daily penalty} = 400 \text{ trips} \times \$66.26 = \$26,504$$

The Payment would be:

$$\text{AM + PM penalties} = \$9,939$$

$$\text{Daily penalty} = \$26,504 - \$9,939 = \$16,565$$

$$\text{Total Penalty} = \$9,939 \text{ (Peak Period Penalty)} + \$16,565 \text{ (Daily Penalty)} = \$26,504$$

The base penalties are stated in 2022 dollars (based on the original 2012 penalty amounts that applied to the approval of Meta's Building 20, as adjusted by CPI) and shall be adjusted annually per the Consumer Price Index for All Urban Consumers All Items in the San Francisco-Oakland-San Jose Metropolitan Area [1982-84=100] (the intent is for the same penalty rate to apply to Classic, Bayfront and Willow Village Campuses). Penalties are due and payable to the City within 30 days of the issuance of an invoice, which the City shall issue on a monthly basis. The City shall use the penalties collected for programs or projects designed to reduce trips or traffic congestion within Menlo Park and the City shall share 25 percent of the penalties collected with the City of East Palo Alto for use on transportation systems and solutions that help reduce traffic in the City of East Palo Alto around the Classic, Bayfront and Willow Village Campuses. In addition to monetary penalties, failure to comply with the Trip Cap is considered a violation of the CDP and could result in revocation of the CDP.

Violations of the Trip Cap for Willow Village are independent of violations of the Classic and Bayfront Trip Caps. This means, for instance, that if there are violations of the Trip Cap at the Classic and Bayfront campuses for the six months immediately preceding a particular month, but there are no violations of the Trip Cap at the Willow Village Campus District during that same period, Tier 3 would be applicable to the Classic and/or Bayfront Campuses and Tier 1 would be applicable to the Willow Village Campus District.

- **Interim Measure** - If the Campus District Property Owner determines that it needs to secure parking in another location as an interim measure to maintain compliance with the Trip Cap, the Campus District Property Owner may, through the City's entitlement process, obtain approval for the use of another private property in Menlo Park (not the Classic, Bayfront or Willow Village campuses) that includes both a building and associated parking. Trips to such an off-site location will not count toward the Trip Cap only if there will be no more trips to that off-site location than is allowed under the then current use of that property.
- **Compliance** - If after non-compliance, the Campus District Property Owner comes back into compliance with the Trip Cap and maintains compliance for 180 consecutive days, the scale of penalties will revert to the base level and the relevant threshold would once again apply before there is non-conformance and the onset of penalties.



ATTACHMENT U

# Willow Village TDM Plan

Prepared for:  
Peninsula Innovation Partners

October 2022

SJ18-1860

FEHR & PEERS

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## 1. INTRODUCTION

Willow Village will replace approximately one million square feet of industrial, office, and warehouse buildings in the Menlo Science and Technology Park with a mixed-use development. Willow Village creates a new mixed-use community comprised of new housing, retail, hotel, office, and entertainment space. The 59-acre Willow Village site is in Menlo Park's Bayfront Area. The site is bounded by Willow Road to the west, the Joint Powers Board (JPB) rail corridor to the north, the Hetch-Hetchy corridor and Mid-Peninsula High School to the south and an existing life science office park to the east. **Figure 1** shows the project location and adjacent street network.

The Project will include the following components:

- Community-serving retail
- Below market rate and market rate housing
- A hotel
- Office buildings with associated meeting and conference space
- Open space improvements including a public park and community center
- New bike and pedestrian facilities

The primary purpose of any Transportation Demand Management (TDM) plan is to reduce the amount of vehicle traffic generated by a development by creating measures, strategies, incentives, and policies to shift workers and residents from driving alone to using other travel modes including transit, carpooling/ridesharing, cycling, and walking. TDM strategies can include informational resources, physical site enhancements, monetary incentives, and more. This report presents the comprehensive TDM Plan for the Willow Village development. In addition to reducing vehicles trips, the TDM Plan can reduce the parking demand of the residents and office workers.



The existing and proposed transit, bicycle, and pedestrian facilities near the site are illustrated in this document to provide the transportation context of the Project. The TDM Plan includes attributes of the site's location and physical improvements at the site as well as the TDM measures that will be provided by the Project.





-  Project Site
-  City Boundary



Figure 1  
Project Location and Adjacent Street Network

## 1.1 PROJECT DESCRIPTION AND TDM APPROACH

Willow Village proposes to replace approximately one million square feet of existing industrial, office, and warehouse space in the Menlo Science and Technology Park with a new mixed-use village including up to 1,730 residential units, 200,000 square feet of retail uses, a 193-room hotel, 1,600,000 square feet of office and accessory uses, consisting of a maximum of 1,250,000 square feet of space for office and amenity uses and the balance ( 350,000 square feet, if the office space is maximized) of accessory uses. The proposed site improvements include construction of:

- new circulation improvements to accommodate vehicles, bicycles, and pedestrians,
- utility improvements,
- a community park, an elevated park, and other open space improvements,
- residential mixed-use buildings,
- a hotel, and
- office campus improvements.

**Figure 2** is a site plan showing the roadway network, landscaping, and building locations. **Figure 3** shows the location of the three districts consisting of the Office Campus District, the Town Square District, and Residential/ Shopping District. The Office Campus District includes the office and accessory space that will be used by Meta. The Town Square District will include the hotel, retail, and restaurants. The Residential / Shopping District will include apartments, a grocery store, and other retail.

Due to the mixture of office, residential, and retail uses, the Project's TDM plan is anticipated to reduce vehicles trips throughout the day as well as during the typical morning and afternoon peak periods of travel. The mix of residential, office, and retail uses within the Project reduces the need to travel long distances to jobs and services. The Project proposes walking and biking improvements including sidewalks and gathering areas for pedestrians as well as on and off-street bike facilities. These facilities reduce the need to use a vehicle to travel within the project.

### 1.1.1 PROPOSED CIRCULATION AND ACCESS

**Figure 2** shows the proposed street network. The Project proposes a new circulation network consisting of approximately 4.6 acres of public rights of way and approximately 7.2 acres of private streets with public access easements. The proposed network will accommodate multiple transportation modes including vehicles, pedestrians, and bicycles. Site access from Willow Road will be primarily provided via two signalized intersections: the realigned Hamilton Avenue intersection and a proposed new intersection at Park Street. Main Street will provide primary north/south access via a new roundabout at O'Brien Drive and East Loop.







Source: Peninsula Innovation Partners

Figure 2  
Site Plan





 District Boundary

Figure 3  
Office Campus District vs. Residential/Shopping District Location



There will also be two right-in/right-out driveways on Willow Road that provided ingress and egress to the Town Square parcel and Parcel 2. Both Hamilton Avenue and Park Street connect with Main Street to facilitate circulation throughout the Community. There will also be a connection via the North Loop Road between Hamilton Avenue and Adams Court. In addition to these roadways, the Project includes an off-street pedestrian and bicycle pathways that parallel Main Street and East Loop Road.

### 1.1.2 PROPOSED CAMPUS PARKING AND TRANSIT

Along the eastern edge of the Office Campus District, seated worker parking will be provided in two parking structures with a total of approximately 3,325 parking spaces with an additional 600 valet spaces. Both parking structures include a ground-level transit hub for regional Meta worker commuter shuttles and intra-campus trams. Intra-campus trams will also operate on Main Street, West Street, and East Loop Road providing service between the Willow Village, Bayfront, and Classic Campuses. Visitor parking for the Office Campus District will be in a shared parking structure in the northwestern corner of the project site. Shared parking is located under the Town Center, Hotel, and Parcel 3 and will be used by the hotel guests and employees, retail patrons and employees, and office visitors.

Reserved residential parking will be located on the residential parcels. On mixed-use parcels with residential and retail uses, provisions will be made to reserve the residential parking spaces. Residential parking spaces will be unbundled to provide flexibility for residents, and it generally keeps car ownership lower which supports the lower end of City's municipal code requirements. The publicly accessible park will have its own surface parking lot and on-street parking will be time limited during the day for general use.



## 2. SITE CONTEXT - TRANSPORTATION SERVICES

The transportation system serving the project site includes roadways, pedestrian and bicycle facilities, and transit services. The existing transit, bicycle and pedestrian facilities, and planned project improvements that will support travel to the site by modes of transportation other than driving alone are described below. The data presented represents transit operating conditions prior to the shelter in place order issued March 16, 2020.

### 2.1 NEARBY TRANSIT SERVICE

The City of Menlo Park encourages the use of transit as an alternative mode of transportation and is served by two major transit providers: SamTrans and Caltrain. San Mateo County Transit District (SamTrans) provides bus service throughout San Mateo County and into parts of San Francisco and Palo Alto. Caltrain provides commuter rail service between San Francisco and San Jose. In addition, Caltrain shuttles provide access from the Menlo Park Caltrain Station to the Willow Road area office buildings during commute hours.

Paratransit services are also available for seniors and people with disabilities. The transit district offers Redi-Wheels paratransit service for persons with disabilities who are unable to take SamTrans regular buses.

**Figure 4** shows the existing transit bus routes and bus stops that serve the Project site. **Table 1** summarizes hours of operation and service frequencies for the bus routes nearest the site.

#### 2.1.1 EXPRESS BUS SERVICE BETWEEN THE EAST BAY AND PENINSULA



The Dumbarton Express is an all-day, limited-stop bus service that takes riders from the East Bay to the Peninsula via Dumbarton Bridge on two bus routes. The DB route serves stops on Willow Road in Menlo Park and connects to the Downtown Palo Alto Transit Center. The DB1 route serves stops on Willow Road in Menlo Park north of US 101 and connects to Stanford Research Park via Oregon Expressway. Dumbarton Express bus stops that serve the Willow Village site are located on

Willow Road and are accessible within a five-minute walk to and from the site. The closest existing stops are located at the intersection of Willow Road and Ivy Drive and Willow Road and Hamilton Avenue.

#### 2.1.2 CALTRAIN

Caltrain provides weekday commuter rail service between San Jose and San Francisco. There are currently 46 trains traveling northbound to San Francisco and 46 trains traveling southbound from San Francisco each weekday. A total of 65 trains that serve the Menlo Park Station each day. The Menlo Park and Palo Alto Downtown stations are located approximately 3.0 miles



southwest of the Project site and can be accessed by a twenty-minute bicycle ride, or a thirty-minute bus ride on either M4-Willow Road Shuttle or Dumbarton Express bus routes near the Willow Village site that drop riders off directly in front of the Menlo Park and Palo Alto Caltrain stations. Meta currently provides additional private shuttle service for their Menlo Park workers to the Palo Alto, Menlo Park, and Redwood City Caltrain stations.

### 2.1.3 M4-WILLOW ROAD SHUTTLE

The M4-Willow Road Shuttle is a free commuter shuttle open to everyone. It runs between the Menlo Park Caltrain station and the Willow Road area business parks. The M4-Willow Road Shuttle schedule operates Monday through Friday during the peak period Caltrain schedule. The Menlo Park shuttle service has been in operation since 1989 and is funded through grants from San Mateo City/County Association of Governments, Bay Area Air Quality Management District, and the City of Menlo Park. The closest stops are located south of the Project site along O'Brien Drive, northeast of the intersection of Willow Road and Ivy Drive, and along Hamilton Court and Adams Court.

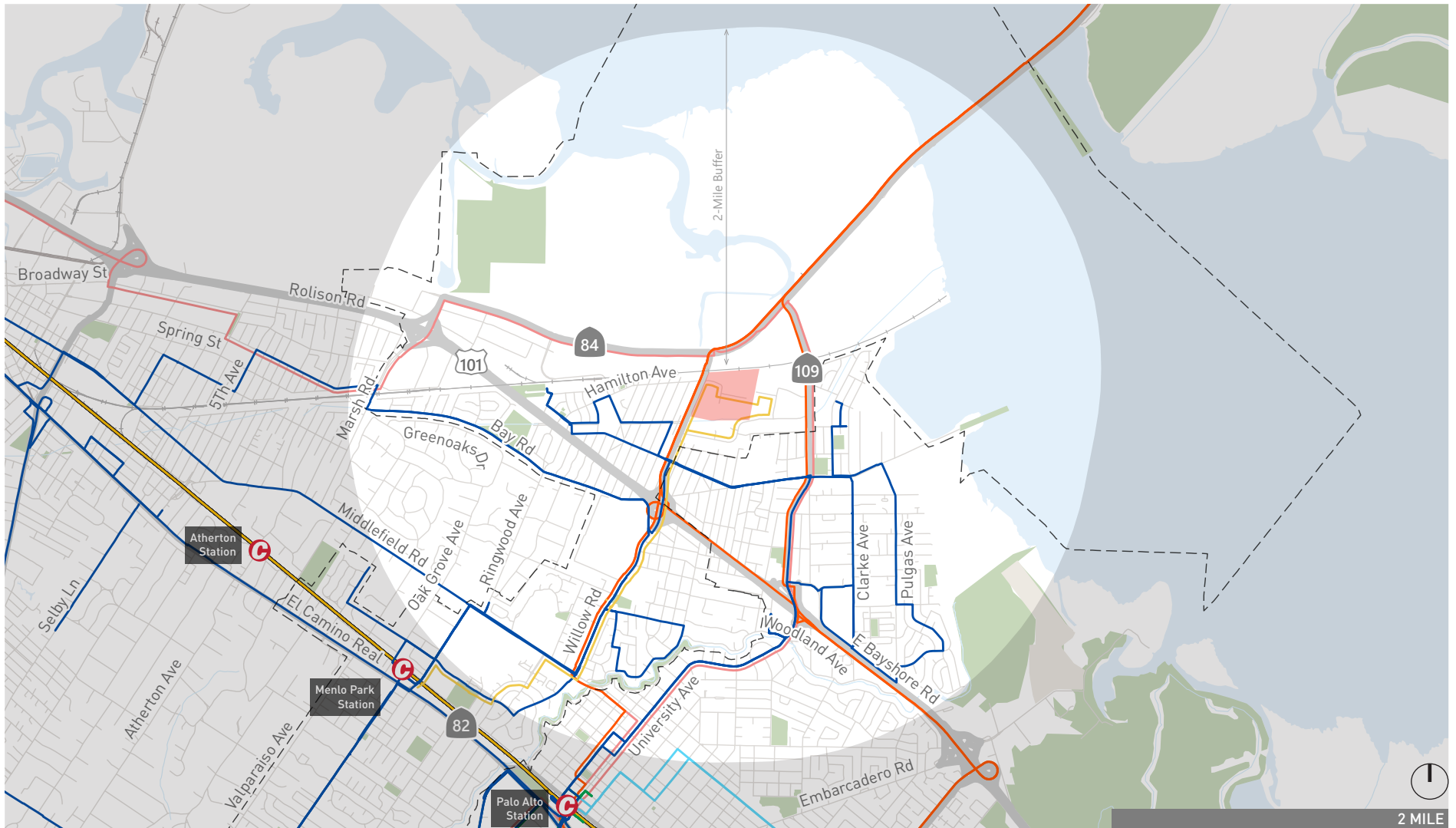
**TABLE 1: NEARBY TRANSIT SERVICES**

Route	From	To	Weekdays		Saturdays		Sundays	
			Operating Hours	Peak Headway (minutes)	Operating Hours	Headway (minutes)	Operating Hours	Headway (minutes)
<b>Dumbarton Express</b>								
DB	Union City BART	Stanford Oval	5:20 am to 8:45 pm	20	No Service			
DB1	Union City BART	3475 Deer Creek Road	5:20 am to 8:30 pm	20	No Service			
<b>Caltrain Shuttle</b>								
M4-Willow Road	Menlo Park Caltrain	Hamilton Court	7:00 am to 10:00 am & 3:15 pm to 6:15 pm	60	No Service			

### 2.1.4 PARATRANSIT

SamTrans paratransit is provided to eligible individuals with disabilities who are prevented from using regular transit services. The San Mateo County Transit District provides paratransit using Redi-Wheels on the bayside of the county and RediCoast on the coast side. Eligible Willow Village residents and employees could use this service to reach nearby destinations.





Transit\_Routes

-  Caltrain Line and Station
-  AC Transbay
-  Stanford Marguerite Shuttle
-  Project Site (Willow Village)
-  Caltrain Shuttle
-  Dumbarton Express
-  samTrans
-  City Boundary
-  Santa Clara Valley Transportation Authority

Figure 4  
Existing Transit Service

## 2.2 EXISTING PEDESTRIAN AND BICYCLE FACILITIES

### 2.2.1 EXISTING AND PROPOSED PEDESTRIAN FACILITIES

Pedestrian facilities near the site include sidewalks, crosswalks, curb ramps, and pedestrian signals. There is a continuous sidewalk along Willow road on the east side of the street. To access the west side of Willow Road from the Project site, there are two existing signalized crosswalks within walking distance from the proposed development. The existing crosswalks are located at the intersection of Willow Road and Ivy Drive and the intersection of Willow Road and Hamilton Avenue. Most of the existing pedestrian activity occurs at the Willow Road and Hamilton intersection, which is the closest pedestrian connection to the Bayfront and Classic campuses.

As part of the Willow Village development and to enhance the pedestrian experience, publicly accessible open spaces within the Project site are proposed including a publicly accessible park located northeast of the intersection of Willow Road and Ivy Drive, an off-street bike and pedestrian path connecting O'Brien Drive to the proposed Willow tunnel, town square, retail district, and a dog park near O'Brien Avenue. **Figure 2** shows the location of the proposed open spaces within the Project site.

The Project proposes to implement pedestrian crossing improvements along Willow Road. These improvements include installation of new traffic signal at the proposed intersection of Willow Road and Park Street, and sidewalk and landscape improvements. The project will implement a grade separated pedestrian crossing near the Hamilton Avenue and Willow Road intersection via the elevated park. Pedestrian improvements will also be evaluated the intersection of Ivy Drive and Willow Road. Per the proposed site plan, the Project proposes a new intersection at O'Brien Drive requiring new traffic signals with pedestrian crossing considerations.

### 2.2.2 EXISTING AND PROPOSED BICYCLE FACILITIES

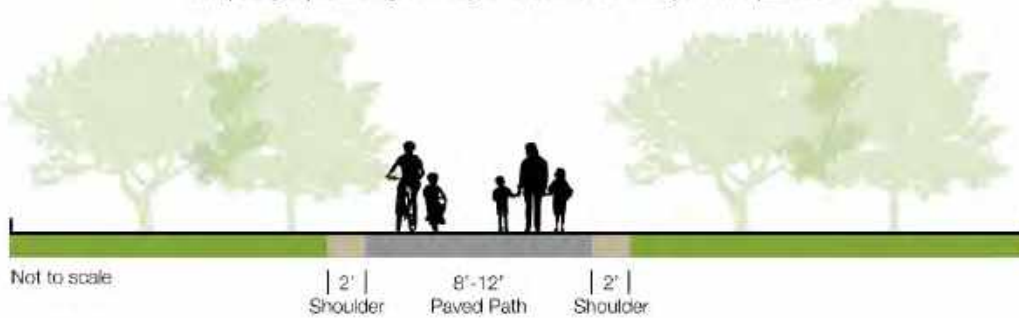
The California Department of Transportation (Caltrans) recognizes four classifications of bicycle facilities:

- **Class I Shared-Use Path**, or commonly referred to as a Bikeway or Bike Path, is a facility separated from automobile traffic for the exclusive use of bicyclists. Class I facilities can be designed to accommodate other modes of transportation, including pedestrians and equestrians, in which case they are referred to as shared use paths.



### SHARED-USE PATH (CLASS I)

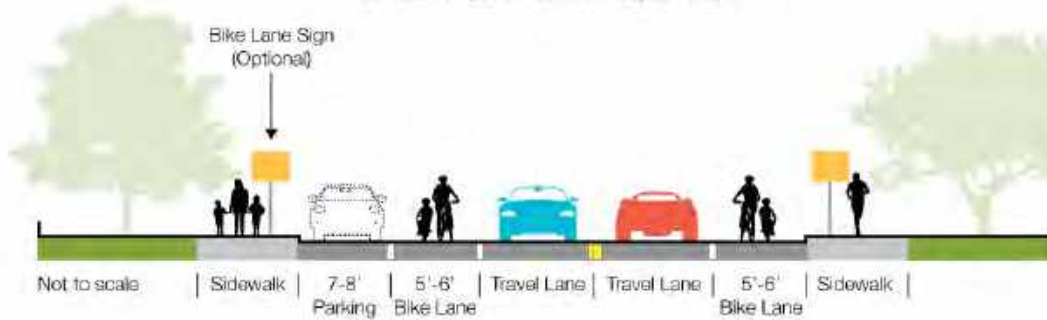
Completely separated right-of-way for exclusive use of bicycles and pedestrians



- **Class II Bicycle Lane** is a dedicated facility for bicyclists immediately adjacent to automobile traffic. Class II facilities are identified with striping, pavement markings and signage, and can be modified with a painted buffer to become a buffered bicycle lane (Class II)

### BICYCLE LANE (CLASS II)

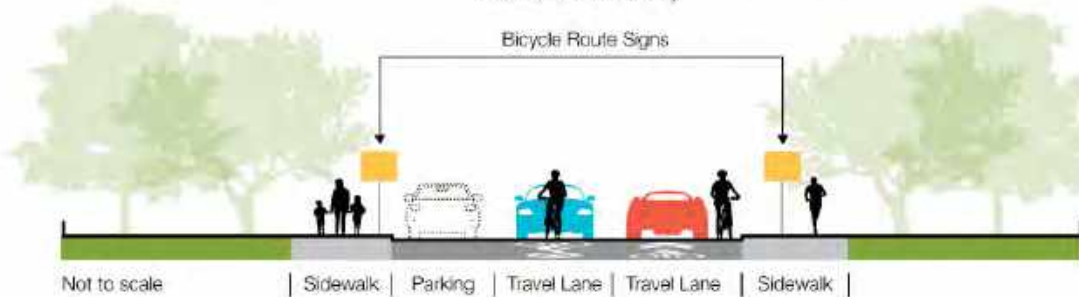
On-street striped lane for one-way bike travel



- **Class III Bicycle Route** is an on-street route where bicyclists and automobiles share the road. They are identified with pavement markings and signage and are typically assigned to low-volume and/or low-speed streets.

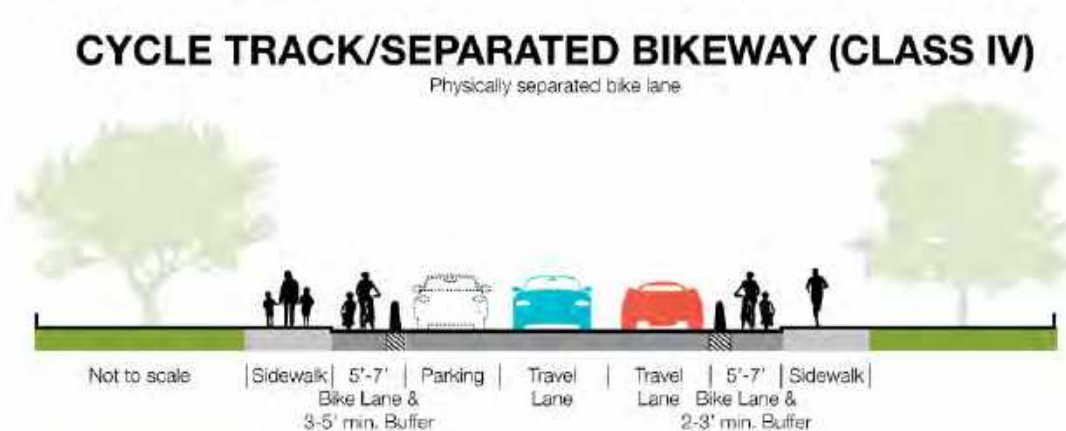
### BICYCLE ROUTE (CLASS III)

Shared on-street facility

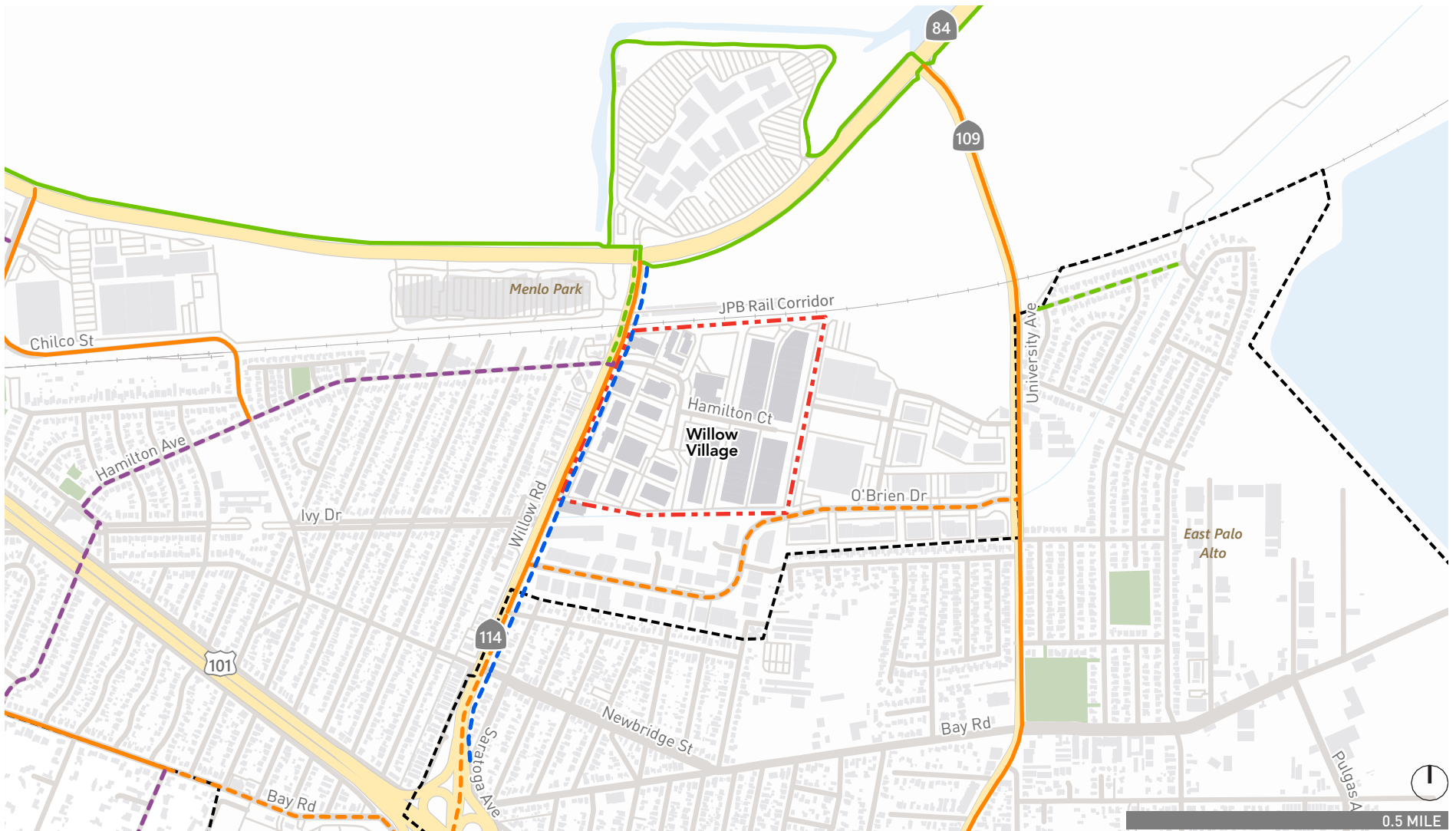




- **Class IV Cycle Track or Separated Bikeway**, commonly referred to as a protected bicycle lane, is a facility that combines elements of Class I and Class II facilities. They offer an exclusive bicycle route immediately adjacent to a roadway similar to a Class II facility but provide a physical separation from traffic with plastic delineators, raised curb, or parked automobiles.



Class I shared use path and class II bicycle lanes exist near the site, as shown in **Figure 5**. Willow Road west of the Project site, has class II bike lanes on both sides of the street which are connected to the Bayfront recreational trail shared use path along Bayfront Expressway to the north of the Project site. As part of the Menlo Park Comprehensive Bicycle Development Plan, class II bike lanes are proposed along O'Brien Drive connecting Willow Road to the University Avenue. In addition, Class II bike lanes exist along University Avenue serving local trips with north-south connectivity between East Palo Alto and Bayfront recreational trail. The comprehensive plan recommends class III shared on-street facility along Hamilton Avenue. As part of the proposed Willow Village development, there will be an off-street multi-use pathway adjacent to the East Loop Road that provides north-south connectivity between the proposed North Loop Road and O'Brien Drive within the Project site.



- |                        |                               |               |
|------------------------|-------------------------------|---------------|
| Existing Bike Facility | Proposed Bike Facility        | Project Site  |
| Class I Bike Path      | Class I Bike Path             | City Boundary |
| Class II Bike Lane     | Class II Bike Lane            |               |
| Class III Bike Route   | Class III Bike Route          |               |
|                        | Class IV Bike Lane (Buffered) |               |



Figure 5  
Existing and Proposed Bicycle Facilities

## 2.3 EXISTING CARSHARE

Carsharing allows members to reserve vehicles by the hour or the day, and is typically used for short-term, local trips. Carsharing supports commute modes of travel such as transit, carpooling, walking, and biking, by providing users with access to a vehicle when needed during the workday. There are several Carsharing providers located near or in Menlo Park include Zipcar, Enterprise, Hertz, Avis, and Budget. Meta sponsors three existing carshare vehicles operated by Enterprise. There is one existing Zipcar located within the project study area near Meta Building 58.

Additionally, other carshare services allow residents and neighbors to offer their own vehicles as part of carsharing services (peer-to-peer) such as Getaround, and Turo (formerly Relay Rides).

## 2.4 EXISTING RIDESHARE

Ridesharing is the term to describe grouping travelers into common trips, which allows travelers to better utilize empty seats in passenger cars or vans. Rideshare matching programs, such as 511 Regional Rideshare Program, Scoop, Waze Carpool, Uber Pool, Lyft Carpool, Duet, Carma Carpooling, and other ridesharing apps help carpools and vanpools to form by matching drivers and passengers. Ridesharing services make it easy to coordinate carpools and allows residents or employees to consider downsizing or eliminating the number of vehicles they own.

## 2.5 EXISTING RIDE HAILING

Ride hailing is for-hire, point-to-point transportation services, which include transportation network companies (TNCs) and taxis. Within the last few years, TNCs, such as Uber and Lyft, have become the primary method of ride hailing since the many users can easily utilize smartphone apps to send requests for rides. Like carshare and rideshare, ride hailing makes it easy to coordinate and reserve a ride, which allows residents and employees to consider downsizing or eliminating the number of vehicles they own.

Meta has instituted ride hailing lounges on three of their Menlo Park Campuses including the Willow Village campus. The ride hailing lounges provide a centralized location where TNC vehicles are directed to pick up or drop-off their users.



### 3. TDM MEASURES AND STRATEGIES

There are numerous strategies that can be used to encourage residents and workers to use modes of transportation other than driving alone and, therefore, reduce the vehicle miles traveled (VMT) and parking demand generated by a development. TDM is made up of two key components. The first component are the physical design features of a project that allows users not to drive-alone such as combining residential, retail and office uses; building design features such as showers and changing areas and providing pedestrian and bicycle facilities. The second component are the operational programs offered by employers and residential building managers that will reduce drive-alone travel.

The following sections describe a proposed set of programs that could be used to reduce drive-alone trips to the office, residential, retail and hotel components of the project.

#### 3.1 OFFICE COMPONENT TDM

It is assumed that Meta will occupy the office component of the Willow Village project. Meta currently operates an aggressive TDM program that substantially reduces the number of solo drivers to their Menlo Park campuses. A reduction in solo drivers directly reduces the number of vehicles trips at the campus by two trips - one inbound trip in the morning and one outbound trip in the afternoon. Recent Meta surveys<sup>1</sup> demonstrated that the drive-alone rate for the Menlo Park campuses is 51%. The drive-alone rate for commuters in San Mateo County is 69% as reported in the 2017 American Community Survey, U.S. Census Bureau. Approximately 34% of Meta workers use the Meta shuttles for their commutes.

While the commuter shuttle service is a major component of the TDM program, Meta offers a broad range of services, subsidies, and amenities to their workers that make it possible to use travel alternatives to driving alone. **Table 2** summarizes the existing Meta TDM measures that will be available to workers working at office component of Willow Village. These programs include drive-alone alternatives such as transit subsidies, shuttles, carpools, and vanpools. In addition, Meta provides key support services and amenities such as “last-mile” connections to Caltrain, showers and changing rooms, secure bike storage, preferential vanpool parking, intra-campus trams within the Menlo Park campuses, and carshare that frees workers from needing a personal vehicle at the workplace. The campuses also include other amenities such as banking services, a wellness clinic, fitness centers, and food service. Meta’s TDM program also has an extensive education and marketing program that provides workers information beginning at their initial job orientation.

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<sup>1</sup> Fehr & Peers conducted ground counts of all driveways serving Meta’s Menlo Park campuses for three days in October 2018. This driveway data was combined with transit ridership, carpool, and vanpool data provided by Meta to develop mode splits for the 4-hour peak period from 7:00 AM to 11:00 AM. The analysis is documented in Fehr & Peers memorandum *Facebook Menlo Park Campus 2018 Mode Share Monitoring*, December 3, 2019.



**TABLE 2: META OFFICE TDM PROGRAM**

TDM Measure	Description	Meta Program
Transit Pass Subsidy	Monthly reimbursement for public transit commute costs (fare).	Full time employees and interns are eligible for a subsidy of up to \$260/month toward eligible public transit.
New Hire Clipper Card Program	Clipper cards with cash value for use on specific transit agencies.	Clipper cards with \$130 e-cash loaded are available to new workers to allow for immediate use of public transportation.
Parking at BART, and Caltrain	Monthly reimbursement for parking at specific transit stations.	Up to \$100 month reimbursement available for parking at Caltrain and BART.
Last-Mile Transit Connections	Shuttles to/from nearby transit facilities.	Meta will provide dedicated shuttles to nearby transit facilities to provide reliable connections between transit stops and the Menlo Park campuses.
Commuter Shuttle Bus Services	Private shuttle service from various regions of the Bay Area to the Menlo Park campuses.	Currently, Meta provides free direct services between Menlo Park and Sunnyvale, Palo Alto, San Francisco, Mountain View, Cupertino, Campbell, Berkeley, Oakland, Dublin, Castro Valley, Redwood City, San Jose, Fremont, Danville, San Ramon, Los Gatos, Millbrae, San Mateo, Santa Cruz, Scotts Valley, Marin, Saratoga, and other cities for workers.
Bicycle Amenities and Perks	Lockers, showers, towel service, bicycle pumps, FixIt self-repair station, etc.	<ul style="list-style-type: none"> <li>• A 24/7 DIY FixIt station will be located within the office complex along with a free vending machine with emergency parts for repair.</li> <li>• Routine Bike to Work Days with giveaways are held with bike shop staff leading group rides.</li> <li>• Each worker-occupied building has interior bike parking, and a bike cage that offers additional bike parking space.</li> </ul>



TDM Measure	Description	Meta Program
Bike Sales and Rentals	Bikes available for purchase and rental onsite.	Discounted bikes are available for sale onsite and sold below MSRP and include a commuter-ready package with a helmet, lights, and a U-lock.  Bike rentals are available for periods of 1-2 weeks for visiting employees.
Vanpool Program	A program that allows groups of people to share rides to and from work.	Meta contracts with Enterprise to assist in the formation of vanpools. Groups of five workers can form a vanpool. Meta pays for the vehicle costs, insurance, and maintenance. The vanpool members pay for fuel.
Carpool Matching with the Internal Ride App	Scoop & Meta Ride App for carpool match.	Meta is in the processing of transitioning to Scoop for carpool matching between workers. Previously, they used their Ride App to connect workers to coordinate a carpool.
Dedicated Vanpool Parking	Dedicated parking for Vanpools.	Meta provides preferred parking for Vanpools.
Education and Promotion	Educational and promotional events to encourage employees to use alternative modes to travel to and from the workplace.	Drop-in commute advice is available through the Transportation Desk at the transportation hubs. There will be four transportation hubs when Willow Village is open.  Events and competitions for prizes include bike commuting classes and Bike to Work days. New workers receive information on various commute options during orientation.
Emergency Ride Home	Rides provided for employees in case of emergency.	In the event of an emergency, Meta provides rides home to all rideshare and alternative mode commuters who may not have a vehicle readily accessible.
Campus Bike Share Program	Bicycles provided for employee use on campus.	This program provides Meta Bike Share Bicycles for workers to use for trips around campus.
Inter-campus Tram and On-Demand Car Service	Tram service to transport workers between buildings.	A fleet of electric and non-electric vehicles to transport employees between buildings, and a separate on-demand car service for moving between campuses at Menlo Park.
Carshare	Car sharing available on campus.	A fleet of shared cars that are available to reserve for free if employees use alternative transportation to commute and have a mid-day errand or business appointment offsite. Meta provides Enterprise vehicles for employees and there are also publicly available Zipcars.



TDM Measure	Description	Meta Program
Amenities	Provision of services at the campus so workers do not need a vehicle at work or do not need to make mid-day trips.	<p>Meta provides a wide range of on-site amenities for workers that minimize the need to make trips in personal vehicles. These amenities include:</p> <ul style="list-style-type: none"> <li>• cafes</li> <li>• banking services/ATMs</li> <li>• dry cleaning services</li> <li>• fitness center(s)</li> <li>• wellness center</li> <li>• bicycle shop &amp; DIY FixIt stations</li> <li>• car wash services</li> <li>• auto services (oil changes)</li> <li>• vehicle fueling</li> </ul>

Source: Fehr & Peers / Meta Transportation Group, August 2020

As noted above, the Meta TDM program reduces the commute drive-alone rate to 51% as compared to the county average drive-alone rate of 69%. This is a reduction of 26% in the drive-alone rate over the county average. This level of drive-alone reduction is sufficient to reduce the peak hour trips by more than 20% relative to the Institute of Transportation Engineers general office trip generation for the office component of the Project. There will be additional peak period commute trip reductions due to the presence of nearby housing in the residential/retail portion of the project.

### 3.1.1 TDM ENHANCEMENTS TO REDUCE OFFICE PARKING DEMAND

The *Willow Village Parking Assessment Report* (July 2021) identified that there would be a shortfall in the office seated worker parking supply of 106 spaces (vehicles). Therefore, the Meta TDM program will need to make modest improvements to shift more seated workers from driving-alone to other commute modes to reduce the office worker parking demand. As stated above the current drive alone for the entire MPK campus (Classic, Bayfront, Willow, and Chilco) is 51 percent. If the parking reduction is assumed to occur only at the Willow Village campus, the drive-alone rate for the Willow Village campus would need to be 49.7 percent. However, Meta TDM programs are available to all seated workers in Menlo Park. Any enhancements to the TDM programs will be applied to all Meta seated workers; therefore, to achieve a reduction of 106 spaces, the overall Menlo Park drive-alone rate would need to be 50.6 percent. To achieve this 0.5% reduction, Meta will need to invest additional resources into their existing programs and, possibly, add to or expand the commute programs offered to workers.

As described above, Meta’s has an extensive set of TDM programs that they can utilize to reduce the drive-alone rate by expanding existing programs and/or offering higher incentives not to drive alone. Some of the key TDM programs Meta could enhance or increase their investment to achieve the reduction in drive-alone rate and reduce the parking demand are:

- Employee shuttle service – expanded service areas or frequency of service
- Bicycle commute incentives – amenities such as showers, lockers, fix-it stations, bike rentals and bike sales to employees
- Carpool matching – service to match Meta employees to form carpools or van pools
- Vanpools – provision of a van for groups of five or more employees
- Public transit incentives – subsidized transit passes and station parking costs
- Implement and/or maintain flexible work schedules and work from home policies that will reduce the number of workers on-campus during the work week

In addition to these existing TDM programs, Meta is considering new TDM programs and activities that will promote other modes of travel for commuters including bicycle facility improvements and parking management options.

The Meta Transportation team monitors TDM program effectiveness and refines the TDM programs to meet the needs of their workers. The TDM program monitoring and evaluation is designed to determine the effectiveness of each individual program and the program's ability to reduce peak period vehicle trips, eliminate drive alone vehicle trips, and reduce parking demand. Programs that are under performing may be replaced with new programs that are designed to better meet workers' commute travel needs. Therefore, this TDM Plan is designed to evolve over time. A description of the TDM monitoring is provided in Section 3.3 Monitoring Program.

## **3.2 RESIDENTIAL/RETAIL COMPONENT TDM**

While the Office TDM program will be delivered by Meta to their workers, the TDM program for the residential, retail, and hotel (Residential/Retail TDM) components will be delivered by multiple entities including property management companies for residential uses and individual businesses for the retail, restaurant, and entertainment uses. Either the property owner's association or a Transportation Management Association will be created to coordinate the delivery of the Residential/Retail TDM Plan. The Association will improve the effectiveness of the programs and potentially reduce the overall costs to deliver the TDM programs. The Association will establish by laws for the operation of the organization and establish a funding mechanism for common services provided by the Association. The Association will be formed prior to the completion of the first phase of construction.

The City of Menlo Park will require the Willow Village Project to implement a TDM program that will reduce the trip generation of the proposed land uses by 20% as compared to the trip generation using standard Institute of Transportation Engineers (ITE) trip generation rates. The 20% reduction will be accomplished through both design features of the Project that make it easier to travel without a vehicle, and specific programs or incentives to reduce the number of drive-alone vehicle trips. The Willow Village Residential/Retail TDM program will consist of strategies that are aimed at discouraging single-occupancy





vehicle trips and encouraging alternative modes of transportation, such as carpooling, taking transit, walking, and biking. Strategies included in most TDM programs address a wide range of transportation factors, including parking, transit access, shared mobility, bicycle infrastructure, site design, education and encouragement, and management.

TDM reductions for the Project were estimated based on the California Air Pollution Control Officers Association (CAPCOA) research and methodologies as described in Quantifying Greenhouse Gas Mitigation Measures (2010) and more recent research for the California Air Resources Board Zero Carbon Buildings and Communities studies.

Residential and commercial land use TDM credits were calculated separately, as certain TDM measures are more appropriately applied in the commercial arena or vice versa. For example, for commercial tenants, vanpools and rideshare may be effective tools to reduce employee solo vehicle trips. However, vanpools would be difficult to implement for residents who are traveling from the Project to many disparate destinations. For residents, unbundling parking is a more effective strategy as residents are incentivized to reduce car ownership to save on monthly rental costs for a vehicular parking space. Additionally, the net effectiveness of commute trip reductions is reduced for the commercial land uses as those measures are only applicable to the work trips made by commercial land use employees, rather than the trips made by commercial patrons.

**Table 3** provides a list of physical and programmatic TDM actions that could be provided to the retail/hotel employees and Willow Village residents along with an indication of which use or uses they are appropriate. The TDM measures listed in **Table 3** include both physical design measures such as pedestrian and bike facilities and programs that help shift travelers out of their personal vehicles. In addition, **Table 3** also includes reserved measures that could be used to improve the performance of the Residential/Retail TDM plan, as needed in the future.

**TABLE 3: WILLOW VILLAGE RESIDENTIAL/RETAIL TDM PROGRAM**

TDM	Description	Implementation	Retail/ Hotel Employees	Residents	Reserved Measure
Transportation Management Association	Create an Association for the mixed-uses.	<ul style="list-style-type: none"> <li>• Information sharing</li> <li>• Education &amp; marketing function – TDM coordinator</li> <li>• Pooled resources to reduce costs</li> <li>• Provide emergency rides home for workers</li> <li>• Assist in monitoring TDM programs</li> </ul>	✓	✓	





TDM	Description	Implementation	Retail/ Hotel Employees	Residents	Reserved Measure
Increasing diversity of land uses	Increasing developed area dedicated to a complementary but uncommon or nonexistent use in the surrounding neighborhood	Proposed development includes a combination of multi-family residential units with retail spaces including grocery, restaurants, entertainment, and hotel.	✓	✓	
Housing	Housing built near job center	Willow Village development includes multifamily residential units which could accommodate some of the workers working in the office, retail, and hotel components of the development.		✓	
Public Transit Improved Service	Coordination with SamTrans to provide potential service options to the site.	The property managers and employers will work with SamTrans staff to improve service area around the Project site through providing new frequent routes or re-routing the existing SamTrans routes.	✓	✓	
Bicycle Amenities	Lockers & showers	Clothing lockers and showers are provided in the overall design of the hotel. Facilities may be provided by other commercial spaces as tenant improvements are prepared.	✓		
Bicycle network	Integration of the Project site bike network into the City's bike network	The Proposed site plan includes a network of publicly accessible open spaces and a bike and pedestrian path which will be integrated into the City of Menlo Park's bike network.	✓	✓	





TDM	Description	Implementation	Retail/ Hotel Employees	Residents	Reserved Measure
Vanpool Program	A program to allow groups of people to share rides to and from work.	Sponsored by mixed-use owners and/or employers through the Association, the vanpool program would take advantage of serving all the retail employment. A combined service could be explored to take advantage of the large number of Meta workers for ride matching.	✓		
Carpool Matching	Use of public or private service	Use of 511 RideMatch, SCOOP or WAZE Carpool for employees. This is a reserved action for residents. Most ride matches are made at the place of employment. The Association's ride matching could potentially take advantage of the substantial number of Facebook Meta workers for ride matching	✓		✓
Dedicated Carpool/ Vanpool Parking	Dedicated parking for multiple-occupancy vehicles	Spaces will be provided for carpools and vanpool in parking structures for groups that form carpools or vanpools.	✓		✓
Shared Parking	Provision of shared pool of parking for the mixed-use development	The retail, hotel, office visitors, and residential guests will share a pool of parking.	✓	✓	
Emergency Ride Home	Rides provided for employees in case of emergency	In the event of an emergency, the Association provides rides home to hotel / retail employees that use alternative modes to commute to work.	✓		
Wayfinding and Lighting	Provision of wayfinding signage and lighting	The project developer will provide bicycle, pedestrian, transit and vehicle wayfinding signage and lighting throughout the development.	✓	✓	



TDM	Description	Implementation	Retail/ Hotel Employees	Residents	Reserved Measure
Carshare	Car sharing located in public parking areas	Shared cars that are available for a fee to retail/hotel employees and Willow Village residents to run errand or business appointment offsite. Fees could be subsidized for employees using alternative modes for their commute.	✓	✓	
Bicycle Parking	Enclosed secure bicycle parking	Incorporated into the design of the mixed-use and hotel buildings.	✓	✓	
Bicycle Repair Stations	Do it yourself repair stations located in the development	These facilities allow residents and employees to repair and maintain bicycles that can be used for their commutes.	✓	✓	
Bike Sharing	Provision of bike share stations at the development	The property managers and employers will work with the City of Menlo Park to advocate for bike share stations at the development.	✓	✓	
Commute Assistance Center/Website	Information sharing to new residents & employees	A function provided by the Association for the mixed-use component.	✓	✓	
Unbundled Residential Parking / Limit Parking Supply	Separate sale or lease of a vehicular parking	Unbundled parking, which separates the sale or lease of a vehicular parking space from the sale or lease of living units, will be provided for all market-rate residential units.		✓	
Metered On-Street Parking	Priced on-street parking	On-street parking would be priced. This measure requires coordination and approval from the City of Menlo Park.	✓	✓	
Parking Management & Off-Street Parking Fees	Priced off-street parking	The retail & residential district will implement a parking management system for the shared and residential parking as described in the text.	✓	✓	

Source: Fehr & Peers, May 2022



The TDM programs promote use of transit, carpooling, vanpooling, biking, and walking to reduce vehicle trips. These programs are complimented by physical design features such as bicycle parking, pedestrian and bicycle features, and showers/changing areas in large workspaces. Each TDM strategy has an associated range of effectiveness in reducing vehicle trips and the combination of strategies have an overall effectiveness. The overall effectiveness is not simply additive when programs are combined since some of the programs overlap in terms of their markets and effectiveness. For this analysis, we evaluated the range of effectiveness as shown in **Table 4** and have chosen to use the average of the range of the combined strategies effectiveness.

Based on the CAPCOA and CARB research, it is estimated that the Project’s Residential/Retail TDM program would reduce the residential, retail, and hotel trips as follows:

- Residential trip reduction                      24%
- Retail trip reduction                                18%
- Hotel trip reduction                                 20%

The overall trip reduction from the Residential/Retail TDM program as proposed would be approximately 20%. The estimates represent the average of the potential range effectiveness for each land use supported by evidence from the application of these same measures at other projects reported in the CAPCOA and found in more recent CARB research.

The City of Menlo Park requires that the project monitor the effectiveness of the TDM programs in achieving a 20% reduction in trips. The TDM monitoring program is outlined below for the Mixed-Use and Office Components.

**TABLE 4: WILLOW VILLAGE RESIDENTIAL/RETAIL TDM PROGRAM EFFECTIVENESS**

TDM Strategy	Residential	Retail	Hotel
<b>Parking</b>			
Unbundle Parking & Reduced Parking Supply	Up to 20%	--	--
On-Street Parking Fees	3% to 11%	3% to 11%	3% to 11%
Off-Street Parking Fee (reserved program)	6% to 11%	6% to 11%	6% to 11%
<b>Bike &amp; Walk</b>			
Secure Parking	Up to 1%	Up to 1%	Up to 1%
Showers & Lockers	Up to 1%	--	--
End of Trip Repair Stations	Up to 1%	Up to 1%	Up to 1%





<b>TDM Strategy</b>	<b>Residential</b>	<b>Retail</b>	<b>Hotel</b>
Bike Share & Subsidies	Up to 1%	Up to 1%	Up to 1%
<b>Commute Programs / Association</b>			
Marketing Program	3% to 10%	Up to 1%	Up to 1%
Commute Incentives	--	Up to 1%	Up to 1%
<b>Total of All Measures</b>	<b>11% to 36%</b>	<b>9% to 27%</b>	<b>9% to 31%</b>

Source: Fehr & Peers, December 2021



## 4. WILLOW VILLAGE TDM MONITORING PLAN

The City's Zoning Ordinance requires annual reporting to evidence achievement of the intended TDM reduction. While the Zoning Ordinance does not specifically describe the monitoring process, City staff has requested a monitoring plan as a means of demonstrating compliance. This section outlines a TDM monitoring plan designed to document the effectiveness of the office and mixed-use TDM plans.

As outlined above in Sections 4.1 and 4.2, there are two distinct components in the Willow Village TDM plan. The office component of the plan will be implemented by Meta as the sole owner and occupant of the office space. The mixed-use component (residential, retail, and hotel) will have multiple owners, property managers, and tenants; therefore, a Transportation Management Association (Association) will be established to assist in the implementation, coordination, and reporting of the programs included in the residential / retail TDM plan. While the Association can assist in the implementation and reporting, the ultimate effectiveness of the residential / retail TDM programs will depend on the execution by each Association member.

### 4.1 OFFICE TDM (TRIP CAP) MONITORING

Meta is proposing an office trip cap for Willow Village office uses that is consistent with the trip caps currently used on both the Classic and Bayfront campuses. The proposed office trip cap and monitoring for the Willow Village campus is presented in the memorandum entitled Willow Village Trip Cap Proposal, August 15, 2020. The proposed daily and peak hour trip caps meet or exceed (in the peak hours) the City's TDM Ordinance reduction of 20% over ITE rates. The proposed annual trip cap monitoring report provides information on the driveway vehicle counts, special events, and any exceedances of the caps, as well as a list of TDM programs that are provided by Meta to their workers. The monitoring report of the Willow Village Office trip cap, and TDM program, will be packaged with the other trip cap monitoring reports for the Classic and Bayfront campuses and provided together to the City.

While the final details of the worker monitoring program will be established in collaboration with City staff, the key components of the office TDM monitoring are summarized below:

#### Meta Workers

Worker auto and transit vehicle trips will be monitored at the two worker parking structures where workers will park their cars and the Meta shuttle hubs are located. The proposed design of the workers parking structures will allow for monitoring at the entries and exits used by autos and transit coaches. Therefore, it will be possible to monitoring these locations with automated devices 24-hours a day, 365 days a year.



### **Office Visitors (Shared Parking Structures)**

Since the office visitor parking will be shared with the retail and hotel uses, an alternative monitoring approach will be established to determine the trips associated with office visitors. There will be multiple shared parking facilities within the Town Square and mixed-use portion of the project (parcels 2 and 3). The mostly likely location for office visitors to park would be in the central Town Square parking structure. The basic monitoring approach would be to use a commercial parking application to track visitor activity. Validation of the parking would be provided when checking in at security. The validation data will be included as a part of the annual monitoring reporting to account for visitor trip. This process is similar to the adjustments currently being made at the Classic and Bayfront campuses for ride hailing activity, monument sign visitors, and shuttles that stop at multiple campuses.

### **Ride Hailing Trips**

Ride hailing trips destined to Willow Village office campus will be co-mingled with the retail and residential ride hailing trips. The ride hailing passenger loading will be located along Main Street and will be used by retail visitors as well as office visitors and workers. Like the ongoing monitoring at Classic and Bayfront, ride hailing activity would be surveyed each year to show the amount of activity generated by each component of the project. The resulting adjustment factor would be integrated into the annual reporting by Meta on their office worker analysis.

### **Event Days**

As described in the Parking Assessment Report, Meta will develop an event transportation plan to minimize the number of trips on event days. To allow for these medium and large events there would be an allowance for up to 25 days per year when there could be exceptions to the trip cap. The structure of these exceptions will be worked out with the City of Menlo Park and are similar to exceptions allowed under the Classic and Bayfront trip caps. In addition, to these 25 event days, the monitoring would also include non-event exclusions as allowed under the existing trip caps at Classic and Bayfront.

### **Implementation**

The implementation of the Willow Village office trip caps would use a similar approach that is currently used at the Classic and Bayfront campuses. The worker parking structures would be monitored on a daily basis at the entries and exits. The Willow Campus monitoring systems will be subject to the same calibration procedures used for the other campuses in terms of the physical monitoring equipment. At the Willow Campus, Meta will also need to include data on the number of daily office visitors, number of the shuttles serving multiple MPK campuses, and ride hailing activity related to the office campus. These survey data would be used to determine daily





adjustment factors that would be combined with the office parking counts. The adjusted total trips would be used to determine Meta's compliance with the office trip caps.

## 4.2 RESIDENTIAL / RETAIL TDM MONITORING PLAN

As stated above, monitoring of the residential / retail TDM Plan introduces several challenges since there is no single entity responsible for the implementation of the TDM programs. The creation of, and requiring membership in, the Association will provide a means to coordinate the TDM efforts executed by the property owners, property managers, and major tenants. The Association can implement some TDM programs that will benefit from sharing resources between the Association members. However, many of the programs will be implemented by the property owners, property managers, and individual tenants in the retail spaces. The Association can also serve as a clearing house for gathering data, summarizing it, and documenting the TDM performance of the residential properties and retail tenants (including the hotel).

The residential / retail TDM annual monitoring will include the following components:

- **Driveway Vehicle Counts** – A minimum of three days of parking structure driveway counts will be provided for the driveways in the mixed-use and town square districts. This data will be collected using the control gates at each driveway. To the extent feasible, control gate data for the reserved residential parking areas will be reported.
- **Parking Occupancy Counts** – The parking structure and surface parking occupancy counts will be used to determine the intensity of parking demand. If the parking occupancies are over 95-percent, it may indicate that additional TDM programs are needed.
- **On-Street Parking Turnover Counts** – Once a year, parking turnover counts will be collected for the on-street parking spaces within the mixed-use and town square districts. The turnover counts will include all types of on-street parking including standard spaces, commercial loading zones, and passenger loading zones.
- **Inventory of TDM Facilities** – information related to the physical features that help to reduce drive-alone vehicles and increase the use of active modes of travel.
- **TDM Program Data** – A summary of the programs and activities being used by Association members to reduce vehicle trips and supporting data on participation rates.
- **Resident and Retail/Hotel Employee Travel Behavior Surveys** – the Association may conduct Annual surveys to establish the travel behavior of Willow Village residents and retail employees. TDM programs can be targeted at residents and retail employees since there is direct contact with these cohorts. Retail customers, hotel guests, and residential guests will not be included in the survey. Depending on the parking management plan, data from the parking control gates could be used to estimate these activities.



The Association will be responsible for coordinating the monitoring of and reporting on the residential, retail and hotel components of the Willow Village project. The Association will prepare an annual report documenting the following aspects of the residential and retail TDM plan.

### **Finalize the Monitoring Plan**

The plan outlined below represent the proposed approach for monitoring the TDM performance to confirm that the Residential / Retail TDM programs are effective in reducing trips. Due to the complexity in monitoring individual land uses within a mixed-use development where there is shared parking, there may be a need to adjust the monitoring plan that is implemented. There may be a need to modify the annual surveys in order to capture more information. Therefore, it is anticipated that following an initial round of monitoring refinements may be necessary. This will be like the process that was used when developing the Classic and Bayfront campus trip cap monitoring. The following components would make up the annual monitoring:

### **Inventory of TDM Facilities**

The Association will establish and maintain an inventory of the TDM related facilities. The inventory would include a tabular summary and map showing the location of the facilities serving the residential, retail, hotel, and town square parcels. This inventory would include features such as:

- Bicycle and Pedestrian Networks
- Bicycle Parking – Long-term and Short-term
- Bike Share Locations
- Bicycle Repair Stations
- Other Bicycle Amenities (i.e., location of public restrooms)
- Dedicated Carpool/Vanpool Parking Locations
- Carshare Locations

### **TDM Program Data**

The Association would compile a summary of the TDM programs operated by each member of the organization. This data would include descriptions of the services provided by each of the members and programs sponsored by the Association.

- Transportation Demand Coordinators – list of names and contact information
- Commute Assistance Centers/Websites – list of locations and URLs
- Carpool Matching – number of carpools
- Vanpool Programs – number of vanpools
- Transit Subsidies – any subsidies provided to residents or employees
- Emergency Ride Home – existence of program and description of the service



- Unbundled Residential Parking – description of programs and data on use of program
- Off-Street Parking Fees (non-residential / shared parking area) – status and rates
- Metered On-Street Parking – status and rates
- Public Transit Improved Service – actions taken by Association

### **Annual Surveys - Residents and Retail Employee**

An annual survey of the residents and retail employees will be conducted to determine the effectiveness of the TDM programs being used by the Association members. Due to the shared parking, it is not feasible to use vehicle trip counts by the retail, hotel, and office visitor trips. Therefore, the Association would conduct an annual survey of residents and retail employees. These cohorts represent the people that TDM programs can be directly marketed to through property managers and employers. The residential survey would be the same survey used for the Residential VMT mitigation monitoring. Other users, such as retail customers, hotel guests, and residential guests, have no direct link to the Association members.

As discussed above, the annual survey methodology would be developed and refined in collaboration with City staff. The surveys would need to collect sufficient information to determine key travel behavior of the residents and employees. Since the information from residents will need to be more detailed than for employees, there will be two survey formats. For employees, questions related to their commute travel, work schedule (days per week), and place of residence (city) will be requested. For residents, data will be requested on their place of work (zip code) and travel behavior including mode of travel and time of travel.

Given the uncertainty around the post-pandemic return to work, the surveys will need to gather information on frequency of travel. The final format of the surveys will need to protect personal privacy while collecting sufficient data to understand travel behavior and calculate the trip reduction compared to the standard Institute of Transportation Engineers trip rates.

Prior to the first survey, an analysis will be prepared to determine sample sizes needed to have a statistically significant results within an agreed to level of confidence. The analysis will also determine what is a representative sample within the overall residential, retail employee, and hotel employee populations. The Association will pay of the statistical analysis, and it will be conducted by a qualified firm acceptable to the City of Menlo Park and the Association. For the first annual survey, the Association and consultant that developed the survey procedures will implement the survey for both residents and retail/hotel employees. Once the survey methodology is validated, the Association or a third party would implement subsequent annual surveys.



### Driveway Count Data

At the time that the resident and retail employee survey is conducted, driveway counts will be collected from the parking control gates for all mixed-use and town square district parking and at the surface parking areas.

- Driveway Counts All Vehicles – Three midweek, weekdays of control gate data that captures all vehicles entering and exiting the parking structures.

The purpose of the driveway vehicle counts is to document the effectiveness of the TDM plan to reduce vehicles trips to/from the mixed-use and town square districts.

### Residential Vehicle Counts – VMT Mitigation Monitoring

Mitigation Measure TRA-2 requires that the residential land use of the Project Site implement a TDM Plan that will achieve trips reductions so that the residential uses will generate less than or equal to 6,023 daily trips. Should a different number of residential units be built, the total daily trips will be adjusted accordingly.

One element of the VMT monitoring will be to count the number of vehicle trips accessing the residential parking areas. Residential parking is controlled by gates either at parking structure driveways or at internal gates within the shared parking structures. Therefore, residential vehicle trip counts will be collected at the driveway control gates. On parcels 4, 5, 6, and 7 the parking structures are solely for the use of residents. On parcels 2 and 3 where there are shared parking structures the access to the residential parking is controlled by gates located within the parking structure. These interior gates are used to keep other non-resident users (retail, hotel, and office visitors) from accessing the residential parking. The residential counts will be conducted for three consecutive weekdays during a typical work week, when school is in session.

During the process of finalizing the monitoring plan, a methodology will be developed to estimate an average number of residential guests and apply it as a reduction in the total daily trips allowed for residents (below 6,023 trips). Based on a review of available industry publications, there was no data that separates out resident and guest trip making; therefore, this ratio would be established in the initial set up of the monitoring and applied to subsequent monitoring cycles.

### Parking Occupancy Data

At the time that the resident and retail employee survey is conducted, a parking occupancy analysis will be conducted in the residential and share parking structures and for the on-street parking. The survey and parking occupancy study will be conducted in the fall or spring (agreed to by the City) when school is in session and there are no holidays or special events, the following data will be collected:



- Parking Occupancy Counts – On two weekdays and one weekend day, parking occupancy counts will be conducted in the parking structures, surface parking lots, and the on-street parking spaces between the hours of 7:00 AM and 7:00 PM. Counts will be collected in one-hour intervals. Any stacked valet parking will also be counted.

The purpose of the parking occupancy study is to document the peak parking demand. If the parking demand is greater than 95 percent of the physical stalls. The Association will need to document how they will address the additional demand through valet parking or added TDM programs to reduce parking demand.

### On-Street Parking Turnover Data

An on-street parking turnover study will be performed for three weekdays which is contemporary to the driveway counts. The parking turnover counts will be collected for the on-street parking spaces within the mixed-use and town square districts. The turnover counts will include all types of on-street parking including standard spaces, commercial loading zones, and passenger loading zones. At a minimum, the data should capture the hours of 7:00 AM to 7:00 PM when office, retail, restaurants, and entertainment venues are active.

The parking turnover data will be used in conjunction with the driveway counts to estimate the vehicle trips associated with the mixed-use and town square districts.

### Annual Monitoring Report

The Association will prepare an annual TDM monitoring report that contains the information from the tasks listed above. The report will document the performance of the Residential / Retail TDM Plan as compared to the trip generation values from **Table 4**, which show the following trip generation estimates:

- **Section A** – The project trip generation using standard Institute of Transportation Engineers (ITE) trip rates from the ITE Trip Generation Manual, 10<sup>th</sup> Edition.
- **Section B** – The project trip generation applying a 20% reduction from the ITE standard rates as required by the City's TDM Ordinance.
- **Section C** – The project trip generation used in the transportation impact analysis (C1) and the adjusted mixed-use daily trips with the implementation of the VMT Mitigation TRA-2.

The report will be submitted the report to the City for review. If the TDM programs are falling short of the TDM standards, the Association will work with members to improve or expand their individual TDM programs. The Association will report back to the City what additional actions are being taken.



**Table 4: Trip Generation Summary – Office, Mixed Use, & Total**

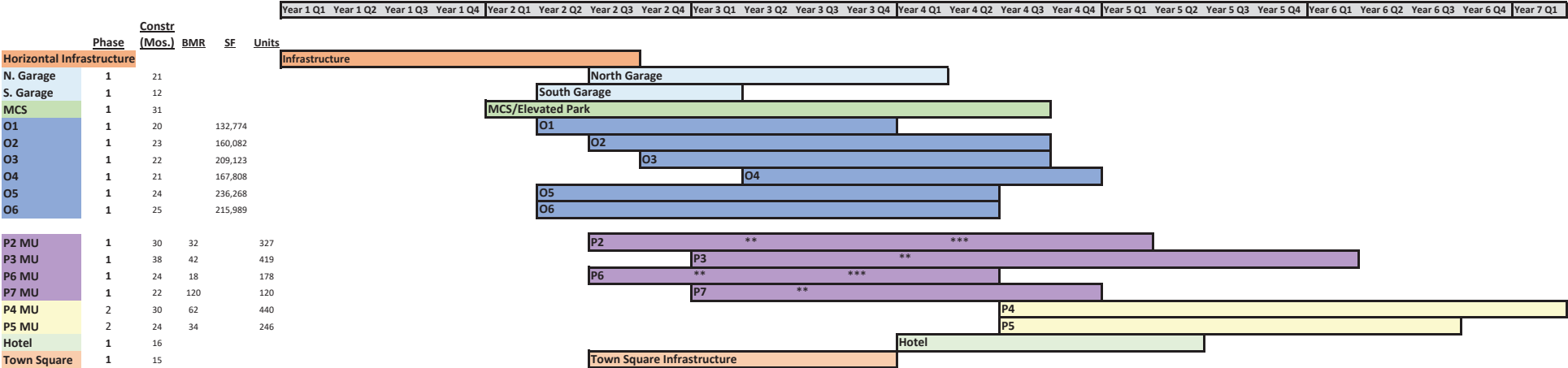
	Daily Totals			AM Peak Hour			PM Peak Hour		
	Office	Mixed-Use	Total	Office	Mixed-Use	Total	Office	Mixed-Use	Total
<b>A. Standard (Gross) ITE Trip Generation<sup>1</sup></b> (based on ITE rate for each land use)	22,796	18,783	41,579	2,572	905	3,476	2,780	1,688	4,468
<b>B. 20% TDM Reduction per Ordinance</b>	18,237	15,026	33,403	2,058	724	2,781	2,224	1,350	3,574
<i>Reduction from Standard ITE Rates</i>	<i>-20%</i>	<i>-20%</i>	<i>-20%</i>	<i>-20%</i>	<i>-20%</i>	<i>-20%</i>	<i>-20%</i>	<i>-20%</i>	<i>-20%</i>
<b>C. Project Trip Generation<sup>2</sup></b>									
1. With TDM reduction / no pass by reduction)	18,237	15,026	33,403	1,670	726	2,396	1,670	1,237	2,907
<i>Reduction from Standard ITE Rates</i>	<i>-20%</i>	<i>-20%</i>	<i>-20%</i>	<i>-35%</i>	<i>-20%</i>	<i>-31%</i>	<i>-40%</i>	<i>-27%</i>	<i>-35%</i>
2. With Residential VMT Mitigation <sup>3</sup>	18,237	13,522	31,759	1,670	726	2,396	1,670	1,237	2,907
<i>Reduction from Standard ITE Rates</i>	<i>-20%</i>	<i>-22%</i>	<i>-20%</i>	<i>-35%</i>	<i>-20%</i>	<i>-31%</i>	<i>-40%</i>	<i>-27%</i>	<i>-35%</i>

- 1 - Calculated using the trip generation data summarized in **Table 2A** Trip Generation for Development Phases of the Proposed Facebook Willow Village Campus in Menlo Park, California, Hexagon Transportation Consultants, June 14, 2021. Daily, AM, and PM peak hour average rates published in ITE Trip Generation Manual, 10th Edition, 2017 were used for each land use.
- 2 - Trip generation data summarized from **Table 13** Project Trip Generation Estimates (Main Project Site) Facebook Willow Village Campus Transportation Impact Analysis, Hexagon Transportation Consultants.
- 3 - Residential VMT Mitigation TRA-2 reduces the residential daily trips to a maximum of 6,023 trips, a reduction of an additional 1,504 daily trips from the original trip generation estimates.





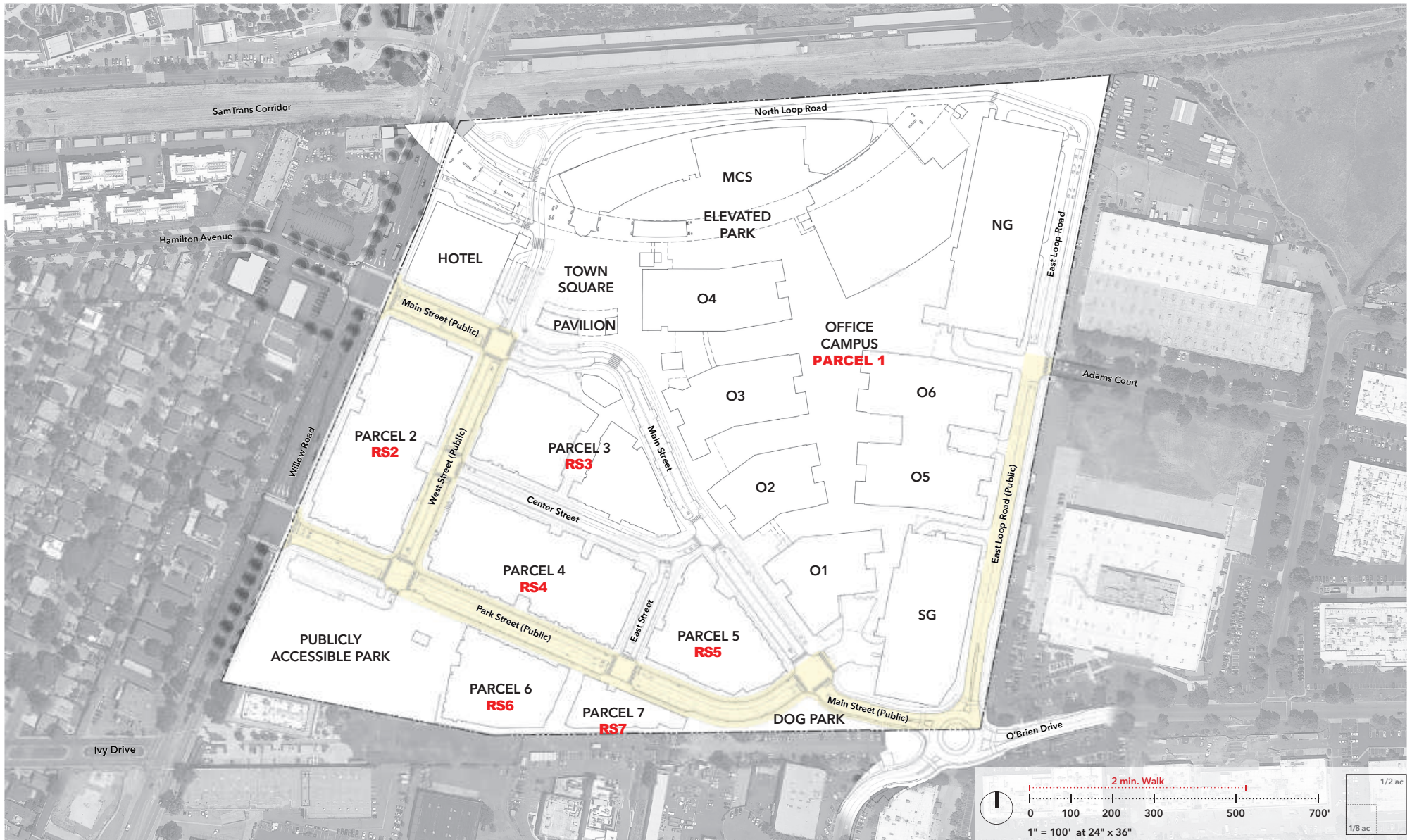
Illustrative WV Construction Phasing Schedule  
10/18/2022



Dates are preliminary and subject to change

\*\* Podium completion  
\*\*\* Roof Framing





**EXHIBIT D****WILLOW VILLAGE PHASING PLAN**

Project Component	Timing/Milestones <sup>1</sup>	Required Minimum Number of Residential and BMR Units associated with such Phase of Construction <sup>2</sup>
1. Demolition, Grading, and Infrastructure Installation	1. Commence construction following approval of all applicable Improvement Plans for the area of construction	
2. Elevated Park and Meeting and Collaboration Space (“MCS”)	2. Commence construction concurrently with or after completion of demolition, grading and infrastructure for the area of construction	

<sup>1</sup> The milestones set forth in this exhibit are based upon Developer’s plan to construct six (6) office buildings as reflected in the Willow Village CDP. In the event that office building square footages shift considerably in the reasonable judgment of the City Manager (e.g., increase by more than twenty-five percent (25%) as to any office building or buildings that trigger(s) a milestone) or combine, the obligations set forth in this exhibit shall shift in a correlative manner through a meet and confer process between the Parties, with resulting changes to this exhibit being documented in writing by the Parties through an Operating Memorandum pursuant to Section 8.7 of this Agreement.

<sup>2</sup> Final distribution of residential units, including BMR units, to be determined at building permit for each building containing residential units. Reduction from required minimum number of units by up to five percent (5%) is permitted. Reduction from required number of units by more than five percent (5%) but less than up to ten percent (10%) requires approval through an Operating Memorandum pursuant to Section 8.7 of this Agreement. Reduction from the required number of units by more than 10 percent (10%) requires approval through amendment of this Agreement pursuant to Section 8.1 of this Agreement.

Project Component	Timing/Milestones <sup>1</sup>	Required Minimum Number of Residential and BMR Units associated with such Phase of Construction <sup>2</sup>
3. First, Second and Third Office buildings	<p>3. Commence construction concurrently with or after commencement of Elevated Park and MCS</p> <p>Complete Structural Podium of the mixed-use building on Parcel 2 (“<u>RS2</u>”) and the residential building on Parcel 6 (“<u>RS6</u>”) prior to final Certificate of Occupancy (“<u>COO</u>”) for first office building, but if a temporary COO has been issued, no later than 120 days from the issuance of a temporary COO for the first office building.</p> <p>Complete roof framing of RS2 and RS6 prior to final COO for the second office building, but if a temporary COO has been issued, no later than 120 days from the issuance of a temporary COO for the second office building.</p>	
4. Residential buildings RS2 and RS6	4. Commence construction within 4 months after commencement of construction of first office building	RS2 and RS6 have a combined total of 505 units, including 54 BMR units
5. Fourth Office building	<p>5. Commence construction of RS2 and RS6 prior to issuance of building permits for the fourth office building</p> <p>Issue final COO for RS6 prior to final COO for the fourth office building, but, if a temporary COO has been issued, no later than 120 days from the issuance of a temporary COO for the fourth office building</p>	

Project Component	Timing/Milestones <sup>1</sup>	Required Minimum Number of Residential and BMR Units associated with such Phase of Construction <sup>2</sup>
6. Sixth Office building	<p>6. Complete construction of podium of the mixed-use building on Parcel 3 (“<u>RS3</u>”) and the residential building on Parcel 7 (“<u>RS7</u>”) prior to issuance of building permits for the sixth office building</p> <p>Commence construction of the residential building on Parcel 4 (“<u>RS4</u>”) and the residential building on Parcel 5 (“<u>RS5</u>”) prior to final COO for the sixth office building, but, if a temporary COO has been issued, no later than 120 days after the issuance of a temporary COO for the sixth office building</p>	<p>RS3 and RS7 (senior building) have a combined total of 539 units, including 162 BMR units</p> <p>RS4 and RS5 have a combined total of 686 units, including 96 BMR units</p>

**EXHIBIT F****WILLOW VILLAGE COMMUNITY AMENITIES  
TIMING PROVISIONS**

<u>Building Related Amenities</u>	<u>Timing/Milestones/Valuations</u>
1. Elevated Park/MCS	1. First Vertical Improvements to be constructed
2. Grocery Store and Rent Subsidies	2. Grocery store located in RS2 (first residential building); <sup>3</sup> final COO for Grocery Store tenant improvements to be issued within 12 months after final COO for RS2, but, if a temporary COO has been issued, no later than 16 months from the issuance of a temporary COO for RS2
<u>Offsite Amenity</u>	
1. Affordable Housing Contribution	1. Total contribution of \$5 Million to City, with an initial payment of \$2 Million upon issuance of first building permit for vertical construction and three subsequent payments of \$1 Million on the anniversary of such issuance
2. Air Quality and Noise Monitoring Equipment Funding	2. Prior to issuance of the first demolition permit
3. Willow Road Feasibility Study funding or for other use as determined by City	3. \$100,000 prior to issuance of first building permit for vertical construction
4. Funding for Job Training Programs	4. Ongoing funding of \$8,304,907 total for: a) Year-up and Hub from February 2022- December 2024 b) Job Train from January 2022- December 2023
5. Teacher Housing Rent Subsidies	5. Ongoing funding of \$1,745,319 total for February 2022- March 2024

<sup>3</sup> RS2 is the residential building located on Parcel 2.

<u>Building Related Amenities</u>	<u>Timing/Milestones/Valuations</u>
<u>Vertical Buildout Amenities</u>	
1. Bayfront Shuttle	1. Bayfront Shuttle to be operational at the earlier of the opening of the Grocery Store or the completion of the Elevated Park
2. Bank/Credit Union	2. Complete Construction and secure final COO within 12 months after final COO for RS3, but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3
3. First Phase Dining (9,000 SF of restaurants/cafes)	3. Complete Construction and secure final COO within 9 months after final COO for RS3, but, if a temporary COO has been issued, no later than 13 months after the issuance of a temporary COO for RS3
4. Second Phase Dining (2 <sup>nd</sup> 9,000 SF of restaurants/cafes)	4. Complete Construction and secure final COO within 18 months after final COO for RS3, but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3
5. First Phase Community Entertainment (12,500 SF of Community Entertainment)	5. Complete Construction and secure final COO within 18 months after final COO for RS3, but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3
6. Second Phase Community Entertainment (2 <sup>nd</sup> 12,500 SF of Community Entertainment)	6. Complete Construction and secure final COO within 24 months after final COO for RS3, but, if a temporary COO has been issued, no later than 28 months after the issuance of a temporary COO for RS3

<u>Building Related Amenities</u>	<u>Timing/Milestones/Valuations</u>
7. Pharmacy Services	<p>7. Timing is dependent on location; Complete Construction and secure final COO:</p> <p>a) if within Willow Hamilton retail center, then 12 months after completion of the Elevated Park elevator tower at the Hamilton center;</p> <p>b) if within Willow Village in RS3, then within 12 months after final COO for RS3, but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3;</p> <p>c) if within Willow Village in Office Building O2 Retail (east side of Main), then within 12 months after later of (i) final COO for RS3 to correspond with retail on the west side of Main (but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3) or (ii) final COO for O2 (but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for O2); or</p> <p>d) if within Willow Village Parcel 2 in conjunction with the grocery store, then within 12 months after final COO for RS2, but, if a temporary COO has been issued, no later than 16 months from the issuance of a temporary COO for RS2</p>
<u>Publicly Accessible Open Space Amenities</u>	
1. Town Square Open Space	2. Complete Construction of Town Square improvements east of West Street, up to O4, within 12 months after completion of Town Square garage structural podium regardless of hotel status; commence construction of remainder within 6 months after final COO for hotel and complete within 18 months after final COO for hotel; maintain improvements following completion.
2. Elevated Park	5. Commence construction after issuance of first building permit for Elevated Park, and diligently prosecute to Completion of Construction
3. Excess Publicly Accessible Open Space	6. Construct concurrent with Completion of Construction of Elevated Park

## Below Market Rate Housing Proposal – Willow Village Master Plan Project

### 1350 Willow Road

July 20, 2022

Peninsula Innovation Partners, LLC (“Peninsula”) is pleased to provide this Below Market Rate (“BMR”) Proposal for the Willow Village Master Plan Project, located at 1350 Willow Road. We believe the Willow Village BMR proposal will play a role in addressing the ongoing housing crisis by reaching deeper affordability levels than what is required, while also providing all the units on-site. Peninsula intends to provide on-site BMR units as outlined below.

#### General Description

The *ConnectMenlo* General Plan requires developers to participate in the City’s BMR Program. The latest City of Menlo Park Housing Element (2015-2023) encourages applicants to build affordable housing for groups with special needs, including seniors, with an emphasis on facilitating development of housing for seniors with very low, low, and moderate incomes. Further, the Housing Element identifies the benefits of market rate developers partnering with affordable housing developers to provide BMR units, noting that units developed in this manner are more likely to serve lower income households. The Housing Element also emphasizes the need for units at a range of affordability levels, highlighting that an estimated 50 percent of the City’s very low-income housing need for the 2015-2023 planning period was for extremely low-income households. Additionally, the Housing Element promotes the development of a balanced mix of housing types and densities for all economic segments throughout the community.

The purpose of the City’s BMR Program is to increase the housing supply for households that have very low, low, and moderate incomes, with a primary objective of creating actual housing units rather than collecting fees. According to the City’s BMR Program, residential development projects that include 20 or more units must provide not less than 15 percent of these units at below market rates to very low, low, and moderate-income households. In addition, the BMR Program requires commercial developers to mitigate the demand for affordable housing created by their projects by providing BMR housing on or off-site, or if that is not feasible, paying a fee. Mixed use projects must comply with the commercial and residential requirements as applicable to each portion of the development. The BMR Program permits BMR units to be provided across the full range of affordability levels, provided that the provision of units at extremely low, very low, low and/or moderate income is “roughly equivalent” to the provision of all of the units at the low-income level.

For both residential and commercial projects, the applicant must enter into a BMR agreement with the City. The City’s BMR Guidelines require the applicant to submit a proposal for meeting the requirements of the BMR Program.



Willow Village proposes 1,730 residential rental units, necessitating 260 BMR units at full buildout. Additionally, a BMR unit equivalency for the commercial component of Willow Village would apply, calculated at 52 units (staff calculation is attached as **Attachment A**). The total BMR units proposed at Willow Village at maximum buildout is 312 rental units (260 units + 52 units). Notably, the 52 units reflect an application of the commercial linkage calculation to the full 1.6M SF maximum of office and accessory space. This approach results in a higher affordable unit calculation than traditionally required, because it calculates a linkage requirement on the uniquely proposed accessory space. This space is not anticipated to generate any employment or housing demand in excess of the maximum 1.25M SF of office space. If the entire amount of accessory space were excluded, the commercial linkage calculation would result in a requirement for a maximum of 281 units; if only the unusable covered garden space were excluded, the commercial linkage calculation would result in a requirement for a maximum of 291 units. In addition, the 52 units reflects application of the commercial linkage fee to the full 200K SF of retail and the hotel at 172K SF, whereas the currently proposed architectural control packages contemplate less retail and hotel square footage.

Willow Village is not seeking a State Density Bonus or a City density affordable housing bonus in conjunction with this proposal.

**Program Breakdown**

The proposed Willow Village BMR Program is comprised of a senior affordable building in partnership with a non-profit housing developer, and the remaining inclusionary units will be placed throughout the market-rate buildings. The non-senior inclusionary units will be floating through the market-rate buildings and the senior affordable units will be provided in a dedicated building. A diagram identifying the number of BMR units by building will be forthcoming.

<b>Program Breakdown at Full Buildout</b>	
Senior Affordable Building	119
Inclusionary Units	193
<b>Total Units</b>	<b>312</b>

Senior Affordable Housing

As noted above, the General Plan supports provision of affordable senior housing, including maximizing the use of available funding mechanisms, partnering with non-profits, and allowing smaller unit sizes and common dining areas. The Housing Element includes two specific goals that acknowledge the need for affordable senior housing:

- Goal H3 — SPECIALIZED HOUSING NEEDS: Provide Housing for Special Needs Populations that is Coordinated with Support Services. Goal H3 is intended to proactively address the special housing needs of the community, including seniors, disabled individuals and the homeless.
- Goal H4 — NEW HOUSING: Use Land Efficiently to Meet Community Housing Needs at a Variety of Income Levels, Implement Sustainable Development Practices and Blend Well-Designed New Housing into the Community. Goal H4 is intended to: (1) promote the development of a balanced mix of housing types and densities for all economic segments throughout the community, (2) remove governmental and non-governmental constraints on the production, rehabilitation and/or cost of housing where appropriate, and (3) to encourage energy efficiency in both new and existing housing.

According to the Housing Element, the City has a higher percentage of seniors than the county or the state and seniors' income tends to decline as they age, and thus, creating affordable housing options for seniors is a goal for the City. Of the 1,740 extremely low income households living in the City in 2012, the majority were seniors. The local need for affordable senior housing is evidenced by long waitlists at three affordable senior projects in Menlo Park, Sequoia Belle Haven, Crane Place, and Partridge Kennedy. Additionally, Sequoia Belle Haven received 1,474 applications of 53 senior units, with 1,700 persons added to the interest list. Jordan Court, another affordable senior project in Berkeley that opened in May of 2022 (income levels of 20%-60% AMI), received 1,000 applications for 34 units.

The need for affordable senior housing is further documented in the following additional sources:

- According to the Menlo Park Senior Housing Needs Assessment, City of Menlo Park, 2009, there are only 297 senior income restricted rental units in Menlo Park, while the future demand for senior housing in Menlo Park and San Mateo County continues to grow.
- A 2009 report by the *Livable Communities for Successful Aging* states that the population over 65 is projected to increase 73% between 2005 and 2030, from about 91,000 to more than 157,000. The problem of housing affordability for San Mateo County seniors is two-fold. Some seniors are living on such modest incomes that they require subsidized affordable housing. Others own their homes but may find it too demanding and costly to maintain a single-family home later in life. These seniors might relocate if they could find suitable alternative housing in their communities that they consider affordable.
- According to a 2017 Study done by *Get Healthy San Mateo County*, while 47% of San Mateo County residents overall pay more than 30% of their income to rent, 64% of the population 65 years and over-pays this percentage. Of those who are receiving retirement income (49%), their mean income is \$30,833, and of the 87% receiving Social Security income, their mean income is \$20,847. With median monthly rent for those aged 65 and over in San Mateo County around \$1,434, housing affordability for this group will continue to be an issue, especially as this population group increases and more people are seeking out affordable housing options.

In response to these identified needs and strong community input, Peninsula intends to partner with Mercy Housing to deliver 119 units of affordable senior housing in a dedicated senior living building. This model is successfully seen throughout the Bay Area.

The BMR Program generally requires that units be distributed throughout the development, but explicitly authorizes the City to waive this requirement to carry out the purposes of the BMR Housing Program and the Housing Element. As noted above, the Housing Element policies support the provision of affordable, senior housing, which can be accomplished only in a standalone project to comply with fair housing laws. Providing senior units together in a dedicated building allows the provision of much needed services in a much more efficient manner than possible with dispersed inclusionary units, allowing residents to age in place. Services may include programs such as health education and risk reduction, on-site planned physical activities such as yoga and tai-chi, and financial literacy education (a more detailed explanation of the some of the services that could be provided is included as **Attachment B.**) These services are not typical of market rate buildings and provide a higher quality of life for the seniors, helping them live independently and averting/delaying relocation to more institutional care environments. There is great need for deeply affordable senior housing in the Bay Area, which our proposal will help fill. Mercy intends to market the senior units in accordance with the BMR Guidelines regarding City of Menlo Park worker and resident preference, subject to compliance with fair housing laws. Depending on the different state and federal financing programs available to build affordable senior housing, the age restriction is 55 and over or 62 and over. Currently, Peninsula and Mercy Housing are exploring a variety of federal and state funding programs including the Federal Tax Credit Program, State Multifamily Housing Program, State Infill and Infrastructure Grant, Affordable Housing Program (through the Federal Home Loan Bank), Project Based Section 8, and other local subsidies. Peninsula also intends to contribute the land for the senior building, which is appraised at \$11,400,000.

The major source of affordable housing financing is the Federal Tax Credit Program, which is a competitive allocation. This funding source is the final to be secured to complete the financing and proceed into construction. The senior project would likely apply for tax credit financing once it can satisfy all the readiness criteria, typically in March or July of a given year (standard funding rounds) and would expect to receive an award three months thereafter. The readiness criteria include obtaining all other gap sources of funding, which are typically secured in the following order: (1) Local funds (County, City, private sector grants, land contribution, and direct Peninsula investment) and (2) State funding. County and State funding rounds are only held once a year; the current schedule based on a mid-2022 potential project approval for both master plan and architectural control permits contemplates applying for County funding in July of 2023 and State Funding in March of 2024 (based historical funding cycles). County and State funding cannot be sought without project entitlements (a readiness point category), and State Funding cannot be applied for without first securing County and other local funding (similar readiness point category). The earliest the applicant could apply for tax credit financing is July 2024 and then would expect to receive an award in October 2024. If the project receives a tax credit allocation in October of 2024, construction would likely commence around Q4 2024, no later than 180 days after the tax credit allocation, and take about 20-24 months to complete. It should be noted that the timing of

funding rounds is subject to change. The senior housing project will be delivered close to when grocery and other neighborhood serving retail are established, as having such amenities already in place in the community for seniors is important.

### **Local Match Proposal**

One of the sources contemplated for the senior housing is the County of San Mateo Department of Housing Affordable Housing Fund. Currently, the project contemplates the County source to be about 11% of the total development cost. The County's Affordable Housing Fund was created in 2013 with funds derived from a one-time distribution of Housing Trust Funds held by former redevelopment agencies in San Mateo County. Since that time, the AHF has been annually funded by the County's Board of Supervisors using a variety of sources including, but not limited to, County Measure K, Housing Authority Moving to Work Reserves, and former redevelopment agency funds reallocated to the County.

Projects are required to meet minimum qualifications and then awarded points if they meet certain scoring criteria. One of the point categories is a local match category, where the local City has demonstrated a commitment to providing City funds to the project. In this case, Peninsula Innovation Partners proposes contributing money to the City, and the City would then donate money to the senior affordable housing development without using any of its existing financial resources to fund the project. This commitment could be evidenced in the form of a letter to the County, promising to commit funding. A separate point category is that either City-owned or privately-owned land be donated to the project, which will be satisfied with the applicant's land donation to the affordable housing development. Because funding is extremely competitive, it is important for the project to score as many points as possible.

### *Inclusionary (Non-Senior) Housing*

The non-senior inclusionary BMR units will be of the same proportionate size (number of bedrooms and square footage) and location as the market-rate units in each of the buildings. They will be distributed throughout the residential buildings and will be indistinguishable from the market rate units from the exterior view (floor plan layouts will follow at a later date). Design and materials to be used in construction of the BMR units in each building will be of comparable quality to the other new units constructed in each of the respective buildings within the overall development. Inclusionary Units will be proportionately distributed evenly across all frontages and floors, and have proportionately similar amenities as the market-rate units respectively. The BMR units will float within each building, per section 11.1.7 of the BMR Guidelines.

Based on the current Willow Village phasing plan, Willow Village would deliver 216 BMR units at full buildout of Phase 1, representing over 20 percent of all units in Phase 1, and 96 BMR units at full buildout of Phase 2, which together with the Phase 1 BMR units, represents 15 percent of the Project units. This proposal front loads the affordable units to be brought on early in the project. An illustrative program breakdown, BMR income breakdown, and proposed unit mix and phasing plan are included as **Attachment C.1**.

Phasing of BMR units	Phase 1 BMR Units	Phase 1 BMR %	Phase 2 BMR Units	Phase 2 BMR %	TOTAL %
City BMR Ordinance Units <sup>1</sup>	164	15.7%	96	14.0%	15.0%
Commercial Linkage Fee Units <sup>2</sup>	52	5.0%	0	0.0%	3.0%
<b>TOTAL</b>	<b>216</b>	<b>20.7%</b>	<b>96</b>	<b>14.0%</b>	<b>18.0%</b>

The applicant proposes that all 216 BMR units in Phase 1 will pull building permits prior to certificate of occupancy for Office Buildings 2, 3, and 4. Office Buildings 1, 5, 6, and MCS should be exempt from any mixed-use timing connection due to the fact that the current number of seated employees on the site today (3,500) is roughly equivalent to the number of proposed new office employees in those buildings.

### Proposed Income Levels (Baseline Scenario)

The BMR ordinance requires the provision of BMR units for very-low, low, and moderate-income households, the BMR Guidelines allow the City to approve variations in the affordability mix to assist in meeting RHNA requirements, subject to a finding that the mix is “roughly equivalent to the provision of all of the affordable units at the low-income level.” The following table demonstrates how the BMR units proposed at Willow Village addresses the City of Menlo Park’s obligations under the most current RHNA:

Income Levels	RNHA Menlo Park	Willow Village Proposal	Remaining
Acutely Low	N/A	0	0
Extremely Low	N/A	82	-82
Very Low	740	37	703
Low	426	76	350
Moderate	496	117	379
<b>TOTAL</b>	<b>1,662</b>	<b>312</b>	<b>1,350</b>

Source: ABAG Draft RHNA 2023-2031 for Menlo Park

Peninsula proposes a BMR program with a mix of income levels to help meet RHNA requirements, at an average affordability of 78.6 percent of Area Media Income (AMI), which is below the City’s required low-income level of 80 percent of AMI. The senior units would consist of a mix of extremely-low and very-low income units, while the inclusionary units would be available to households earning up to 80% AMI (low income) and 120% AMI (moderate income).

<sup>1</sup> Delivered via permit issuance

<sup>2</sup> Delivered via permit issuance and 100% of commercial linkage fee units in Phase 1

<b>Illustrative BMR Income Breakdown at Full Buildout - BASE SCENARIO</b>		
<b>Category</b>	<b>AMI Limit</b>	<b># Units</b>
Extremely Low (Senior)	30%	82
Very Low (Senior)	50%	37
Low (Inclusionary)	80%	76
Moderate (Inclusionary)	120%	117
<b>TOTAL BMR Units</b>		<b>312</b>
<b>TOTAL PROJECT UNITS</b>	<b>1730</b>	
<b>Affordable %</b>	<b>18.0%</b>	
<b>PROJECT WIDE Avg. Affordability</b>	<b>78.3%</b>	
<b>City of Menlo Park Required Affordability</b>	<b>80.0%</b>	
Senior Building Avg. Affordability	36.2%	
Inclusionary Avg. Affordability	104.2%	

A low-income equivalency calculation, as requested by staff, is provided in **Attachment D.1**. This calculation is modeled after the closest comparable projects low-income equivalency analysis included in Greystar Menlo Portal BMR Proposal, attached for reference as **Attachment E**. The projected market rate rent in this analysis is equivalent to the proposed market rent for the Greystar Menlo Portal project for modelling purposes. The final unit/BMR mix will be determined along with the conditional development permit approvals.

#### **Alternate Scenario**

The applicant is proposing an alternative scenario with inclusionary units available to households earning up to 50% AMI, 80% AMI, and 120% AMI (**Attachment C.2**). The corresponding equivalency memo is included as **Attachment D.2**. This scenario has a slightly lower affordability, at 78.6%, but does include some very low-income inclusionary units.

<b>Illustrative BMR Income Breakdown at Full Buildout - ALT SCENARIO</b>		
<b>Category</b>	<b>AMI</b>	<b># Units</b>
Extremely Low (Senior)	30%	82
Very Low (Senior)	50%	37
Very Low (Inclusionary)	50%	12
Low (Inclusionary)	80%	53
Moderate (Inclusionary)	120%	128
<b>TOTAL BMR Units</b>		<b>312</b>

<b>TOTAL PROJECT UNITS</b>	<b>1730</b>
<b>Affordable %</b>	<b>18.0%</b>
<b>PROJECT WIDE Avg. Affordability</b>	<b>78.6%</b>
<b>City of Menlo Park Required Affordability</b>	<b>80.0%</b>
Senior Building Avg. Affordability	36.2%
Inclusionary Avg. Affordability	108.2%

In both the baseline and alternate scenarios, the applicant has revised the unit mix to match the income limits per the City and HCD. We have reflected maximum rents for each income category in the low-income equivalency calculation.

### Secondary Alternative

Last, the applicant could consider a secondary alternative with the following elements (**Attachment C.3**):

- i) there would be no senior housing,
- ii) the residential BMRs obligation would be satisfied with 100% inclusionary units at an 80% average affordability level, and
- iii) the commercial linkage units would be satisfied by paying the in-lieu fee.

This will result in 260 BMR inclusionary units (15% of 1,730, instead of currently 18%) plus the fee of approximately \$22 million (**per Attachment A**).

Please note that the applicant prefers a project that includes the mix of the senior residents coupled with the inclusionary to meet the objectives of the City BMR program, along with providing the commercial linkage units on-site instead of paying the in-lieu fee if granted the necessary amount of time to construct them in relation to other buildings.

### Conclusion

In summary, this Willow Village BMR proposal achieves deep affordability at extremely low income levels, provides critical housing opportunities for seniors, provides all of the units on-site versus paying an in-lieu fee, targets the “missing-middle” with housing opportunities that are desperately needed and rarely provided, front-loads affordable units to Phase 1, and surpasses the requirements of Menlo Park when it comes to average affordability of the BMR units across the project site.

**Below Market Rate Commercial Linkage Fee/Unit Calculations**

<b>Existing Credits (Existing Gross Floor Area and Land Uses)</b>				
	Current Rate	Existing gross floor area	dollar amount (credits)	BMR units (unit/sf calculation)
Group A	\$ 20.46	423,030	\$ 8,655,193.80	20.54
Group B	\$ 11.10	580,880	\$ 6,447,768.00	15.37
<b>Total</b>		<b>1,003,910</b>	<b>\$ 15,102,961.80</b>	<b>35.90</b>
<b>Proposed Project Commercial Components</b>				
	Current Rate	Proposed gross floor area	dollar amount	BMR units (unit/sf calculation)
Group A	\$ 20.46	1,600,000.00	\$ 32,736,000.00	77.67
Group B	\$ 11.10	372,000.00	\$ 4,129,200.00	9.84
<b>Total</b>		<b>1,972,000.00</b>	<b>\$ 36,865,200.00</b>	<b>87.51</b>

<b>Proposed Commercial Linkage Fee</b>		
	<b>payment</b>	<b>units</b>
Commercial Linkage Fee (Proposed project net credits)	<b>\$ 21,762,238.20</b>	
<b>BMR Unit Equivalency Calculation</b>		<b>52</b>

Factors for unit conversion

- Group A 20,600 sf per unit
- Group B 37,800 sf per unit



## **Mercy Housing Resident Services ATTACHMENT B**

Mercy Housing California (MHC) is a leader in an integrated, mission-based approach that couples the delivery of customized resident and community service enrichments with quality development, management, and maintenance to create healthy communities. MHC has a robust Resident Services Program that serves over 4,715 seniors and is implemented at 49 senior properties throughout California. Resident Services Coordinators (RSCs) are onsite and oversee the delivery of quality programming and services to a culturally diverse group of seniors and individuals with disabilities.

The essential services include a wellness model that has been selected to be responsive to the needs of older adults wishing to "age in place". Service-enriched housing further addresses the critical factors associated with averting and delaying institutionalization such as continuously monitoring cognitive, functional, and other risk factors; providing wellness services; teaching chronic disease management strategies; and actively coordinating transitions to and from the hospital. The Resident Services Program is designed to include four priority program models: 1) Health and Wellness 2) Economic Development/Housing Stability 3) Education 4) Community Participation.

### ***Health & Wellness***

MHC delivers health services coordination to all its residents, offering the following services: basic health & needs assessments, ADL support & screening, health benefit acquisition, health education & risk reduction, physical activities, access to food, wellbeing checks, transition planning, and linkages to preventative and behavioral health care. Service enriched housing requires strong partnerships with health care providers.

Recognizing that there may be a lack of resources available to residents in the 40-50% AMI category, MHC will continue to create partnerships that leverage both private and public health agencies to ensure service delivery is enhanced. Current creative partnerships have included working with California State University to implement a Preventative Health Screenings Program on site at all MHC's senior properties in San Francisco. MHC has also partnered with the Institute on Aging to provide a wellness nurse at three of our senior properties in San Francisco. The wellness nurse provides the following onsite services: comprehensive psychosocial and health assessments and monitoring, blood pressure screening, glucose monitoring, hospital transition planning, and home visits.

All RSCs are trained to be workshop facilitators in Stanford's Chronic Disease Self-Management (CDSMP) Class and Matter of Balance. The CDSMP workshop focuses on a self-management approach in dealing with chronic conditions such as heart disease, arthritis, diabetes, depression, asthma, and other physical and mental health conditions. Residents who have participated in the program have reported improvements in their condition and general well-being and continue engage in physical activity and exercises. Also, 80% of residents that have participated in fall prevention workshop report viewing falls and fear of falling as controllable.

### ***Economic Development/Housing Stability***

MHC's long-term impact is to create households that have safe and stable housing, and where renters are in good standing. In order to achieve housing stability, MHC's services staff work closely with residents, and provide the following services: eviction prevention coaching, lease education, housing options, housing inspection, linkages with financial resources, and referrals. Housing stability activities are provided proactively before any risk of instability of housing occurs or following an incident that increases the resident's risk of eviction. MHC understands the complex needs of our residents, and therefore we position our residents with the best of resources, so that they can maintain their housing stability.

### ***Education***

MHC believes that education plays an important part in empowering residents with the knowledge to make good decisions. The focus of MHC's education programming is focused around creating Financial Stability. In addition to referrals, Resident Services Coordinators provide the following services: financial stability seminars, financial benefit acquisition, employment and job readiness support, and technology literacy. MHC requires that all properties implement at least one education seminar every month.

### ***Community***

Community participation is a vehicle for preventing isolation, reducing conflict, enhancing safety, promoting property and neighborhood pride, and building leadership skills in individual residents. MHC supports strong resident participation and feedback in all areas of programming and services. In order to achieve this, MHC encourages residents to participate in community events, and join tenant councils and volunteer groups. Resident Services encourages community participation in order to enhance social connections and build community among residents and between and property and the surrounding community.

**WILLOW VILLAGE SUMMARY BMR PROGRAM  
Attachment C.1 - BASELINE SCENARIO**

Program Breakdown	
Senior Affordable Building	119
Inclusionary Units	193
<b>Total Units</b>	<b>312</b>

Illustrative BMR Income Breakdown at Full Buildout - BASE SCENARIO		
Category	AMI Limit	# Units
Extremely Low (Senior)	30%	82
Very Low (Senior)	50%	37
Low (Inclusionary)	80%	76
Moderate (Inclusionary)	120%	117
<b>TOTAL BMR Units</b>		<b>312</b>
<b>TOTAL PROJECT UNITS</b>	<b>1730</b>	
Affordable %	<b>18.0%</b>	
<b>PROJECT WIDE Avg. Affordability</b>	<b>78.3%</b>	
<b>City of Menlo Park Required Affordability</b>	<b>80.0%</b>	
Senior Building Avg. Affordability	36.2%	
Inclusionary Avg. Affordability	104.2%	

Illustrative Phase 1 at Full Buildout							
Phase 1 % Affordable Units		20.7%					
Parcel 7 (Senior Building)	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix%	Avg. BMR Unit Size	Avg. Total Unit Size	
studio	108	108	91%	91%	466	466	
one-bedroom	11	11	9%	9%	633	633	
two-bedroom	0	1	0%	0%	929	929	
three-bedroom							
<b>TOTAL BMR Units</b>	<b>119</b>	<b>120</b>	<b>100%</b>	<b>100%</b>	<b>481</b>	<b>485</b>	
<b>PARCEL TOTAL UNITS</b>	<b>120</b>						
<b>% BMR</b>	<b>99%</b>						
Parcel 2	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix%	Avg. BMR Unit Size	Avg. Total Unit Size	
studio	10	100	29%	31%	489	489	
one-bedroom	12	113	35%	35%	650	650	
two-bedroom	11	105	32%	32%	999	999	
three-bedroom	1	9	3%	3%	1252	1252	
<b>TOTAL BMR Units</b>	<b>34</b>	<b>327</b>	<b>100%</b>	<b>100%</b>	<b>733</b>	<b>729</b>	
<b>PARCEL TOTAL UNITS</b>	<b>327</b>						
<b>% BMR</b>	<b>10%</b>						
Parcel 3	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix%	Avg. BMR Unit Size	Avg. Total Unit Size	
studio	12	118	28%	28%	503	503	
one-bedroom	18	170	42%	41%	723	723	
two-bedroom	13	131	30%	31%	1078	1078	
three-bedroom							
<b>TOTAL BMR Units</b>	<b>43</b>	<b>419</b>	<b>100%</b>	<b>100%</b>	<b>769</b>	<b>772</b>	
<b>PARCEL TOTAL UNITS</b>	<b>419</b>						
<b>% BMR</b>	<b>10%</b>						
Parcel 6	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix%	Avg. BMR Unit Size	Avg. Total Unit Size	
studio	3	25	15%	14%	500	500	
one-bedroom	7	61	35%	34%	691	691	
two-bedroom	9	77	45%	43%	867	867	
three-bedroom	1	15	5%	8%	1281	1281	
<b>TOTAL BMR Units</b>	<b>20</b>	<b>178</b>	<b>100%</b>	<b>100%</b>	<b>771</b>	<b>790</b>	
<b>PARCEL TOTAL UNITS</b>	<b>178</b>						
<b>% BMR</b>	<b>11%</b>						
<b>TOTAL UNITS PHASE 1</b>	<b>1044</b>						
<b>TOTAL BMR UNITS PHASE 1</b>	<b>216</b>						

Illustrative Phase 2 at Full Buildout							
Phase 2 % Affordable Units		14.0%					
Parcel 4	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix%	Avg. BMR Unit Size	Avg. Total Unit Size	
studio	15	106	24%	24%	450	450	
one-bedroom	32	231	52%	53%	703	703	
two-bedroom	13	88	21%	20%	1149	1149	
three-bedroom	2	15	3%	3%	1199	1199	
<b>TOTAL BMR Units</b>	<b>62</b>	<b>440</b>	<b>100%</b>	<b>100%</b>	<b>751</b>	<b>748</b>	
<b>PARCEL TOTAL UNITS</b>	<b>440</b>						
<b>% BMR</b>	<b>14%</b>						
Parcel 5	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix%	Avg. BMR Unit Size	Avg. Total Unit Size	
studio	7	50	21%	20%	450	450	
one-bedroom	16	127	47%	52%	764	764	
two-bedroom	9	57	26%	23%	1030	1030	
three-bedroom	2	12	6%	5%	1260	1260	
<b>TOTAL BMR Units</b>	<b>34</b>	<b>246</b>	<b>100%</b>	<b>100%</b>	<b>799</b>	<b>786</b>	
<b>PARCEL TOTAL UNITS</b>	<b>246</b>						
<b>% BMR</b>	<b>14%</b>						

TOTAL UNITS PHASE 2 686  
TOTAL BMR UNITS PHASE 2 96

Phasing of BMR units	Phase 1 BMR Units	Phase 1 BMR %	Phase 2 BMR Units	Phase 2 BMR %	TOTAL
City BMR Ordinance Units*	164	15.7%	96	14.0%	15.0%
Commercial Linkage Fee Units* **	52	5.0%	0	0.0%	3.0%
<b>TOTAL</b>	<b>216</b>	<b>20.7%</b>	<b>96</b>	<b>14.0%</b>	<b>18.0%</b>

**Comparison of low income inclusionary requirement to alternate mix proposed  
(for illustrative purposes)  
ATTACHMENT D.1 - BASELINE SCENARIO**

Original (Per BMR ordinance requirement of 15% low income)

Unit Type	AMI (<80%)			Comparable Market Rents*	Affordable Rents**	Number Proposed units	Subsidy per unit	Total Subsidy
studio	LI			2,968	2,226	154	742	114,268
one-bedroom	LI			3,628	2,721	97	907	87,979
two-bedroom	LI			4,370	3,278	55	1,093	60,088
three-bedroom	LI			5,518	3,877	6	1,641	9,847
<b>TOTAL</b>						<b>312</b>		<b>272,182</b>
							avg/unit	872

Alternative Proposed

Unit Type	AMI Limit	AMI Category	Senior/Inclusionary	Comparable Market Rents*	Affordable Rents**	Number Proposed units	Subsidy per unit	Total Subsidy
studio	30% ELI		Senior	2,968	979	74	1,989	147,216
studio	50% VLI		Senior	2,968	1,631	33	1,337	44,121
studio	80% LI		Inclusionary	2,968	2,226	17	742	12,614
studio	120% MI		Inclusionary	2,968	2,226	30	742	22,260
one-bedroom	30% ELI		Senior	3,628	1,049	8	2,579	20,634
one-bedroom	50% VLI		Senior	3,628	1,748	4	1,880	7,520
one-bedroom	80% LI		Inclusionary	3,628	2,721	35	907	31,745
one-bedroom	120% MI		Inclusionary	3,628	2,721	50	907	45,350
two-bedroom	80% LI		Inclusionary	4,370	3,278	21	1,093	22,943
two-bedroom	120% MI		Inclusionary	4,370	3,278	34	1,093	37,145
three-bedroom	80% LI		Inclusionary	5,518	3,877	3	1,641	4,924
three-bedroom	120% MI		Inclusionary	5,518	4,139	3	1,380	4,139
<b>TOTAL</b>						<b>312</b>		<b>400,609</b>
							avg/unit	1,284

ELI	82
VLI	37
LI	76
MI	117
<b>TOTAL</b>	<b>312</b>

\* Estimated market rents inc. utilities from KMA Housing Needs Assessment Dated April 2022, page 33

\*\*San Mateo Rent Limits (HCD Published Limits 2022); inclusive of utilities

AMI level		studio	one	two	three
25%		816	874	1049	1212
30%		979	1049	1258	1454
50%		1631	1748	2097	2423
60%		1794	1923	2307	2665
80%		2610	2797	3355	3877
90%		2936	3146	3775	4361
100%		3262	3496	4194	4846
110%		3588	3846	4613	5331
120%		3914	4195	5033	5815

**WILLOW VILLAGE SUMMARY BMR PROGRAM  
Attachment C.2 - ALTERNATIVE SCENARIO**

Program Breakdown	
Senior Affordable Building	119
Inclusionary Units	193
<b>Total Units</b>	<b>312</b>

Illustrative BMR Income Breakdown at Full Buildout -ALT SCENARIO		
Category	AMI	# Units
Extremely Low (Senior)	30%	82
Very Low (Senior)	50%	37
Very Low (Inclusionary)	50%	12
Low (Inclusionary)	80%	53
Moderate (Inclusionary)	120%	128
<b>TOTAL BMR Units</b>		<b>312</b>
<b>TOTAL PROJECT UNITS</b>	<b>1730</b>	
<b>Affordable %</b>	<b>18.0%</b>	
<b>PROJECT WIDE Avg. Affordability</b>	<b>78.6%</b>	
<b>City of Menlo Park Required Affordability</b>	<b>80.0%</b>	
Senior Building Avg. Affordability	36.2%	
Inclusionary Avg. Affordability	108.3%	

Illustrative Phase 1 at Full Buildout						
Phase 1 % Affordable Units		20.7%				
Parcel 7 (Senior Building)	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix %	Avg. BMR Unit Size	Avg. Total Unit Size
studio	108	108	91%	91%	466	466
one-bedroom	11	11	9%	9%	633	633
two-bedroom	0	1	0%	0%	929	929
three-bedroom						
<b>TOTAL BMR Units</b>	<b>119</b>	<b>120</b>	<b>100%</b>	<b>100%</b>	<b>481</b>	<b>485</b>
<b>PARCEL TOTAL UNITS</b>	<b>120</b>					
<b>% BMR</b>	<b>99%</b>					
Parcel 2	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix %	Avg. BMR Unit Size	Avg. Total Unit Size
studio	10	100	29%	31%	489	489
one-bedroom	12	113	35%	35%	650	650
two-bedroom	11	105	32%	32%	999	999
three-bedroom	1	9	3%	3%	1252	1252
<b>TOTAL BMR Units</b>	<b>34</b>	<b>327</b>	<b>100%</b>	<b>100%</b>	<b>733</b>	<b>729</b>
<b>PARCEL TOTAL UNITS</b>	<b>327</b>					
<b>% BMR</b>	<b>10%</b>					
Parcel 3	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix %	Avg. BMR Unit Size	Avg. Total Unit Size
studio	12	118	28%	28%	503	503
one-bedroom	18	170	42%	41%	723	723
two-bedroom	13	131	30%	31%	1078	1078
three-bedroom						
<b>TOTAL BMR Units</b>	<b>43</b>	<b>419</b>	<b>100%</b>	<b>100%</b>	<b>769</b>	<b>772</b>
<b>PARCEL TOTAL UNITS</b>	<b>419</b>					
<b>% BMR</b>	<b>10%</b>					
Parcel 6	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix %	Avg. BMR Unit Size	Avg. Total Unit Size
studio	3	25	15%	14%	500	500
one-bedroom	7	61	35%	34%	691	691
two-bedroom	9	77	45%	43%	867	867
three-bedroom	1	15	5%	8%	1281	1281
<b>TOTAL BMR Units</b>	<b>20</b>	<b>178</b>	<b>100%</b>	<b>100%</b>	<b>771</b>	<b>790</b>
<b>PARCEL TOTAL UNITS</b>	<b>178</b>					
<b>% BMR</b>	<b>11%</b>					
<b>TOTAL UNITS PHASE 1</b>	<b>1044</b>					
<b>TOTAL BMR UNITS PHASE 1</b>	<b>216</b>					

Illustrative Phase 2 at Full Buildout						
Phase 2 % Affordable Units		14.0%				
Parcel 4	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix %	Avg. BMR Unit Size	Avg. Total Unit Size
studio	15	106	24%	24%	450	450
one-bedroom	32	231	52%	53%	703	703
two-bedroom	13	88	21%	20%	1149	1149
three-bedroom	2	15	3%	3%	1199	1199
<b>TOTAL BMR Units</b>	<b>62</b>	<b>440</b>	<b>100%</b>	<b>100%</b>	<b>751</b>	<b>748</b>
<b>PARCEL TOTAL UNITS</b>	<b>440</b>					
<b>% BMR</b>	<b>14%</b>					
Parcel 5	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix %	Avg. BMR Unit Size	Avg. Total Unit Size
studio	7	50	21%	20%	450	450
one-bedroom	16	127	47%	52%	764	764
two-bedroom	9	57	26%	23%	1030	1030
three-bedroom	2	12	6%	5%	1260	1260
<b>TOTAL BMR Units</b>	<b>34</b>	<b>246</b>	<b>100%</b>	<b>100%</b>	<b>799</b>	<b>786</b>
<b>PARCEL TOTAL UNITS</b>	<b>246</b>					
<b>% BMR</b>	<b>14%</b>					

TOTAL UNITS PHASE 2 686  
TOTAL BMR UNITS PHASE 2 96

Phasing of BMR units	Phase 1 BMR Units	Phase 1 BMR %	Phase 2 BMR Units	Phase 2 BMR %	TOTAL
City BMR Ordinance Units*	168	16.1%	96	14.0%	15.3%
Commercial Linkage Fee Units* **	48	4.6%	0	0.0%	2.8%
<b>TOTAL</b>	<b>216</b>	<b>20.7%</b>	<b>96</b>	<b>14.0%</b>	<b>18.0%</b>

**Comparison of low income inclusionary requirement to alternate mix proposed  
(for illustrative purposes)  
ATTACHMENT D.2 - ALTERNATIVE SCENARIO**

Original (Per BMR ordinance requirement of 15% low income)

Unit Type	AMI (<80%)		Comparable Market Rents*	Affordable Rents**	Number Proposed units	Subsidy per unit	Total Subsidy
studio	LI		2,968	2,226	154	742	114,268
one-bedroom	LI		3,628	2,721	97	907	87,979
two-bedroom	LI		4,370	3,278	55	1,093	60,088
three-bedroom	LI		5,518	3,877	6	1,641	9,847
<b>TOTAL</b>					<b>312</b>		<b>272,182</b>
						avg/unit	872

Alternative Proposed

Unit Type	AMI Limit	AMI Category	Senior/Inclusionary	Comparable Market Rents*	Affordable Rents**	Number Proposed units	Subsidy per unit	Total Subsidy
studio	30% ELI		Senior	2,968	979	74	1,989	147,216
studio	50% VLI		Senior	2,968	1,631	33	1,337	44,121
studio	50% VLI		Inclusionary	2,968	1,631	2	1,337	2,674
studio	80% LI		Inclusionary	2,968	2,226	14	742	10,388
studio	120% MI		Inclusionary	2,968	2,226	31	742	23,002
one-bedroom	30% ELI		Senior	3,628	1,049	8	2,579	20,634
one-bedroom	50% VLI		Senior	3,628	1,748	4	1,880	7,520
one-bedroom	50% VLI		Inclusionary	3,628	1,748	7	1,880	13,160
one-bedroom	80% LI		Inclusionary	3,628	2,721	28	907	25,396
one-bedroom	120% MI		Inclusionary	3,628	2,721	50	907	45,350
two-bedroom	50% LI		Inclusionary	4,370	2,097	3	2,273	6,819
two-bedroom	80% LI		Inclusionary	4,370	3,278	9	1,093	9,833
two-bedroom	120% MI		Inclusionary	4,370	3,278	43	1,093	46,978
three-bedroom	50% LI		Inclusionary	5,518	2,423	0	3,095	-
three-bedroom	80% LI		Inclusionary	5,518	3,877	2	1,641	3,282
three-bedroom	120% MI		Inclusionary	5,518	4,139	4	1,380	5,518
<b>TOTAL</b>						<b>312</b>		<b>411,890</b>
							avg/unit	1,320

ELI	82
VLI	49
LI	53
MI	128
<b>TOTAL</b>	<b>312</b>

\* Estimated market rents inc. utilities from KMA Housing Needs Assessment Dated April 2022, page 33

\*\*San Mateo Rent Limits (HCD Published Limits 2022); inclusive of utilities

AMI level	studio	one	two	three
25%	816	874	1049	1212
30%	979	1049	1258	1454
50%	1631	1748	2097	2423
60%	1794	1923	2307	2665
80%	2610	2797	3355	3877
90%	2936	3146	3775	4361
100%	3262	3496	4194	4846
110%	3588	3846	4613	5331
120%	3914	4195	5033	5815

**WILLOW VILLAGE SUMMARY BMR PROGRAM  
Attachment C.3 - SECONDARY ALTERNATE SCENARIO**

Program Breakdown	
Inclusionary Units	260
<b>Total Units</b>	<b>260</b>

Illustrative BMR Income Breakdown at Full Buildout - SECONDARY ALT		
Category	AMI	# Units
Low (Inclusionary)	80%	260
<b>TOTAL BMR Units</b>		<b>260</b>
<b>TOTAL PROJECT UNITS</b>	<b>1730</b>	
<b>Affordable %</b>	<b>15.0%</b>	
<b>PROJECT WIDE Avg. Affordability</b>	<b>80.0%</b>	
<b>City of Menlo Park Required Affordability</b>	<b>80.0%</b>	

Illustrative Phase 1 at Full Buildout							
Phase 1 % Affordable Units		15.1%					
Parcel 7 (Market Rate)	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix %	Avg. BMR Unit Size	Avg. Total Unit Size	
studio	15	108	71%	71%	466	466	
one-bedroom	6	11	29%	29%	633	633	
two-bedroom	0	1	0%	0%	929	929	
three-bedroom							
<b>TOTAL BMR Units</b>	<b>21</b>	<b>120</b>	<b>100%</b>	<b>100%</b>	<b>514</b>	<b>485</b>	
<b>PARCEL TOTAL UNITS</b>	<b>120</b>						
<b>% BMR</b>	<b>18%</b>						
Parcel 2	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix %	Avg. BMR Unit Size	Avg. Total Unit Size	
studio	15	100	31%	31%	489	489	
one-bedroom	16	113	33%	35%	650	650	
two-bedroom	15	105	31%	32%	999	999	
three-bedroom	2	9	4%	3%	1252	1252	
<b>TOTAL BMR Units</b>	<b>48</b>	<b>327</b>	<b>100%</b>	<b>100%</b>	<b>734</b>	<b>729</b>	
<b>PARCEL TOTAL UNITS</b>	<b>327</b>						
<b>% BMR</b>	<b>15%</b>						
Parcel 3	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix %	Avg. BMR Unit Size	Avg. Total Unit Size	
studio	17	118	27%	28%	503	503	
one-bedroom	25	170	40%	41%	723	723	
two-bedroom	21	131	33%	31%	1078	1078	
three-bedroom							
<b>TOTAL BMR Units</b>	<b>63</b>	<b>419</b>	<b>100%</b>	<b>100%</b>	<b>782</b>	<b>772</b>	
<b>PARCEL TOTAL UNITS</b>	<b>419</b>						
<b>% BMR</b>	<b>15%</b>						
Parcel 6	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix %	Avg. BMR Unit Size	Avg. Total Unit Size	
studio	4	25	15%	14%	500	500	
one-bedroom	9	61	35%	34%	691	691	
two-bedroom	11	77	42%	43%	867	867	
three-bedroom	2	15	8%	8%	1281	1281	
<b>TOTAL BMR Units</b>	<b>26</b>	<b>178</b>	<b>100%</b>	<b>100%</b>	<b>782</b>	<b>790</b>	
<b>PARCEL TOTAL UNITS</b>	<b>178</b>						
<b>% BMR</b>	<b>15%</b>						
<b>TOTAL UNITS PHASE 1</b>	<b>1044</b>						
<b>TOTAL BMR UNITS PHASE 1</b>	<b>158</b>						

Illustrative Phase 2 at Full Buildout							
Phase 2 % Affordable Units		14.9%					
Parcel 4	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix %	Avg. BMR Unit Size	Avg. Total Unit Size	
studio	16	106	24%	24%	450	450	
one-bedroom	35	231	53%	53%	703	703	
two-bedroom	13	88	20%	20%	1149	1149	
three-bedroom	2	15	3%	3%	1199	1199	
<b>TOTAL BMR Units</b>	<b>66</b>	<b>440</b>	<b>100%</b>	<b>100%</b>	<b>745</b>	<b>748</b>	
<b>PARCEL TOTAL UNITS</b>	<b>440</b>						
<b>% BMR</b>	<b>15%</b>						
Parcel 5	BMR Units	Total Units	BMR Unit Mix%	Parcel Total Unit Mix %	Avg. BMR Unit Size	Avg. Total Unit Size	
studio	7	50	19%	20%	450	450	
one-bedroom	19	127	53%	52%	764	764	
two-bedroom	8	57	22%	23%	1030	1030	
three-bedroom	2	12	6%	5%	1260	1260	
<b>TOTAL BMR Units</b>	<b>36</b>	<b>246</b>	<b>100%</b>	<b>100%</b>	<b>790</b>	<b>786</b>	
<b>PARCEL TOTAL UNITS</b>	<b>246</b>						
<b>% BMR</b>	<b>15%</b>						

TOTAL UNITS PHASE 2                    686  
TOTAL BMR UNITS PHASE 2            102

## ATTACHMENT E - GREYSTAR MENLO PORTAL LOW INCOME EQUIVALENCY CALCULATION

### Comparison of low income inclusionary requirement to alternative mix proposed by developer Project: Menlo Portal - Scenario 1 and Alternative

#### Original (Per BMR ordinance requirement of 15% Low Income)

Unit size (e.g 1 bedroom)	AMI	Market Rents	Affordable rents	Number proposed units	Subsidy per unit	Total subsidy
Studio	LI	2975	2231	18	744	13392
1 BDRM	LI	3475	2606	21	869	18249
2 BDRM	LI	4250	3137	8	1113	8904
3 BDRM	LI	5000	3625	1	1375	1375
<b>Total</b>				<b>48</b>		<b>41920</b>

873.33 (AVG/UNIT)

#### NOTES:

*Affordable rents based on 2020 San Mateo County Area Median Income*

*Affordable rent calculation assumes family size for each unit: Studio: 1 person; one-bedroom: 1.5 persons; two-bedroom: 3 persons; three-bedroom: 4.5 persons*

*Junior one bedrooms are included in the studio unit count*

*Maximum affordable rents were adjusted not to exceed 75% of market rent for unit size*

#### Alternative Proposed

Unit size (e.g 1 bedroom)	AMI	Market Rents	Affordable rents	Number proposed units	Subsidy per unit	Total subsidy
Studio	VLI	2975	1522	3	1453	4359
Studio	LI	2975	2231	10	744	7440
Studio	MI	2975	2231	5	744	3720
1 BDRM	VLI	3475	1631	0	1844	0
1 BDRM	LI	3475	2606	4	869	3476
1 BDRM	MI	3475	2606	17	869	14773
2 BDRM	VLI	4250	1957	0	2293	0
2 BDRM	LI	4250	3137	0	1113	0
2 BDRM	MI	4250	3187	8	1063	8504
3 BDRM	MI	5000	3750	1	1250	1250
<b>Total</b>				<b>48</b>		<b>43522</b>

906.71 (AVG/UNIT)



**Perata, Kyle T**

---

**From:** Ali Sapirman <ali@housingactioncoalition.org>  
**Sent:** Thursday, November 10, 2022 2:51 PM  
**To:** \_CCIN; Perata, Kyle T; Murphy, Justin I C  
**Subject:** Please support Willow Village without delay!  
**Attachments:** Willow Village Letter of Support.pdf

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Dear Mayor Nash, Vice Mayor Wolosin, Councilmembers, and Staff,

My name is Ali Sapirman and I am writing on behalf of the Housing Action Coalition, a member-supported nonprofit that advocates for creating more housing for residents of all income levels to help alleviate the Bay Area and California's housing shortage, displacement, and affordability crisis.

**I am writing in strong support of the Willow Village proposal which the Housing Action Coalition has endorsed.** I have attached our formal letter of support to this email. Feel free to reach out to me with any questions.

Please support the Willow Village proposal without any delay!

In solidarity,  
--

**Ali Sapirman** | Pronouns: They/Them

South Bay Organizer | Housing Action Coalition  
50 Otis St, San Francisco, CA 94103  
Cell: (407) 739-8818 | Email: [ali@housingactioncoalition.org](mailto:ali@housingactioncoalition.org)



To opt out of all HAC emails, respond to this email with "unsubscribe all".



8/3/22

To Whom It May Concern,

The Housing Action Coalition is pleased to endorse Signature Development's exemplary mixed-use project at Willow Village in Menlo Park. After a detailed presentation, the committee determined the project exceeds our high standards in addressing the regional affordability and displacement crisis.

The committee commends the excellent land use of the project, which replaces a 59 acre site of warehouses and office space with 1,729 new homes, over 1.2 million square feet of office space, 200,000 square feet of retail space, and significant public space in the forms of parklands, a town square, and public plazas. At 99 units per acre, Willow Village will offer much-needed dense housing to the Peninsula and justifies increased spending on local public transportation. The committee recommended the project team work with local elected leaders to bring more transit options to Willow Village.

The project site sits between the Belle Haven neighborhood and East Palo Alto, two historically underserved communities with relatively minimal public transit. Willow Village will include over 2,000 bike spaces and 6,000 car spaces, and while the committee would prefer less car parking to encourage alternate transit use, we understand feasibility concerns for this area. Additionally, the Committee recognizes that a large portion of the parking is dedicated for the new office spaces. Beyond the environmental benefits that increased housing density will bring, all of Willow Village's buildings will be built with LEED Gold certification. Buildings will be equipped with 100% electric power, and use recycled water, sustainable materials, and increased photovoltaics. Using mass timber as the primary structure material will also substantially reduce carbon emissions. Included in the project is a community space covered by a glass canopy, which the committee thought innovative and beneficial to the public. The committee also admired the project team's dedication to sustainability, and believes that Willow Village will be a model of sustainable development in the future.

Approximately 20% of Willow Village's homes will be subsidized affordable, equalling 320 homes. Of these, 120 will be reserved for very-low and extremely low-income seniors. The affordable count has increased in response to community input, and goes above and beyond local standards. In totality, Willow Village will be the largest market rate and affordable home project in Menlo Park.

The project team has been communicating with neighbors for almost four years, and has been responsive to community feedback. This has included prioritizing a grocery store affordable for all residents, reserving retail space for local businesses, adding more affordable homes, and decreasing office space to create a more balanced ratio of homes and offices. In response to concerns about physical and economic separation between Belle Haven and Willow Village, the project introduced an elevated parkway that will cross Willow Road, a major thoroughfare, to connect with Belle Haven. The project will also construct a tunnel under Highway 84 to provide safe access to miles of bayside trails. The committee applauds Signature's commitment to



engaging with the community. At the same time, we would like to see increased accessibility to the sky bridge, and also encourage additional connections on the south side of the site.

Overall, we appreciate the project team's commitment to alleviating the impact on the nearby community. The team has demonstrated continued community involvement by amending plans that achieve the best possible housing outcomes and community open space. We are excited that Signature has committed to union labor for a large portion of the project, and encourage them to continue conversations with labor groups.

The Housing Action Coalition applauds the project team for striving to achieve the best possible project for the community. Ultimately, we are proud to endorse Willow Village, which will provide well-designed and well-located homes that help address our region's ongoing affordability and displacement crisis.

A handwritten signature in black ink, appearing to read "Corey Smith".

**Corey Smith**, *Executive Director*  
Housing Action Coalition (HAC)

**Perata, Kyle T**

---

**From:** Robert Ott [REDACTED] >  
**Sent:** Tuesday, November 8, 2022 4:00 PM  
**To:** \_CCIN  
**Cc:** connect@willowvillage.com; Perata, Kyle T; Murphy, Justin I C  
**Subject:** I support Willow Village

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Dear Council Members, I am writing to express my support for the Willow Village project.

This has been a 5 year project, and it's been collaborative with the community from day one.

**I also want to highlight the worsening economic situation, including** dramatic [layoffs](#), reduced [office spend](#), and more reductions in [real estate](#) over the past 2 months from the company sponsoring Willow Village. It would be beyond horrendous if we allowed politics or slow processes to lead to the withdrawal of transformative, critical resources for this community. Please don't let that happen.

Sincerely,

Robert Ott  
Windermere Ave., Belle Haven

**Perata, Kyle T**

---

**From:** Brian Henry [REDACTED] >  
**Sent:** Tuesday, November 8, 2022 7:05 AM  
**To:** \_CCIN  
**Cc:** connect@willowvillage.com; Perata, Kyle T; Murphy, Justin I C  
**Subject:** I support Willow Village

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Dear Council Members,

I am writing to express my support for the Willow Village project. This plan has been developed with the community over the past five years, and it brings critical amenities for Menlo Park's future. I urge you to approve Willow Village without delay.

Thanks,  
Brian Henry  
1243 Carlton Ave,  
Menlo Park

**Perata, Kyle T**

---

**From:** Arvind Chari [REDACTED]  
**Sent:** Saturday, November 5, 2022 6:59 PM  
**To:** \_CCIN  
**Cc:** Perata, Kyle T; Murphy, Justin I C  
**Subject:** I support Willow Village

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Dear Council Members, I am writing to express my support for the Willow Village project. This plan has been developed with the community over the past five years, and it brings critical amenities for Menlo Park's future. I urge you to approve Willow Village without delay.

Belle Haven deserves this sort of development, bringing a pride in the community along with the physical investment added to the area.

Sincerely,

Arvind Chari  
[REDACTED]

**Perata, Kyle T**

---

**From:** Carol Cunningham <carol.cunningham@compass.com>  
**Sent:** Saturday, November 5, 2022 3:12 AM  
**To:** \_CCIN  
**Cc:** connect@willowvillage.com; Perata, Kyle T; Murphy, Justin I C  
**Subject:** I support Willow Village

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Dear Menlo Park City Council Members:

I've been following the progress of the Willow Village project since it was initially announced to the public years ago and I am writing to express my strong support. This plan has been developed and refined with the community over the past five years and it brings critical amenities for Menlo Park's future. I urge you to approve Willow Village without delay and thank you for your service to our community!

Sincerely,

Carol Cunningham



**Perata, Kyle T**

---

**From:** John Binay [REDACTED]  
**Sent:** Friday, November 4, 2022 10:41 PM  
**To:** \_CCIN  
**Cc:** Willow Village; Murphy, Justin I C; Perata, Kyle T  
**Subject:** I support Willow Village

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Dear Council Members,

I am writing to express my support for the Willow Village project. This plan has been developed with the community over the past five years, and it brings critical amenities for Menlo Park's future. I urge you to approve Willow Village without delay.

Sincerely,

Jean Binay  
Former-East Palo Alto resident



**Perata, Kyle T**

---

**From:** lloyd [REDACTED] >  
**Sent:** Friday, November 4, 2022 9:35 PM  
**To:** \_CCIN  
**Cc:** connect@willowvillage.com; Perata, Kyle T; Murphy, Justin I C  
**Subject:** I oppose Willow Village

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Dear Council Members,

I am writing to express my opposition to the Willow Village project.

Willow Village will further the damage Meta/Facebook has done to Menlo Park residents' way of life. It will also worsen the jobs-housing imbalance. The City of Menlo Park should strongly encourage Meta/Facebook to look outside of the Bay Area should it need to expand. It should tell the company that it is no longer welcome to expand in Menlo Park.

For years, Menlo Park has been enormously exposed to a downturn in the company's business. Now, such a downturn appears to be well underway. Picture the company's millions of Bayfront Expressway square feet (and potentially Willow Village) abandoned with no company paying for maintenance and security. Think it can't happen and that Meta/Facebook will be there forever? That is a dangerously naive view.

Please unanimously oppose the Willow Village proposal. Please require Meta/Facebook to spend resources eliminating the risk to the City of Menlo Park associated with the company's already excessive footprint in the city.

Sincerely,

Lloyd L  
Flood Triangle

**Perata, Kyle T**

---

**From:** iamxt1na [REDACTED]  
**Sent:** Friday, November 4, 2022 6:34 PM  
**To:** \_CCIN  
**Cc:** connect@willowvillage.com; Perata, Kyle T; Murphy, Justin I C  
**Subject:** I support Willow Village

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Dear Council Members,

I am writing to express my support for the Willow Village project. This plan has been developed with the community over the past five years, and it brings critical amenities for Menlo Park's future. I urge you to approve Willow Village without delay.

Sincerely,

Christina Alo

1207 Madera Ave, Menlo Park, CA 94025

**Perata, Kyle T**

---

**From:** Luis Perez [REDACTED]  
**Sent:** Friday, November 4, 2022 5:07 PM  
**To:** \_CCIN  
**Cc:** Willow Village; Perata, Kyle T; Murphy, Justin I C  
**Subject:** I support Willow Village

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Dear Council Members, I am writing to express my support for the Willow Village project. This plan has been developed with the community over the past five years, and it brings critical amenities for Menlo Park's future. I urge you to approve Willow Village without delay.

Sincerely,

Luis Perez

2234 Ralmar Ave, East Palo Alto

**Perata, Kyle T**

---

**From:** Weichuan Tian [REDACTED]  
**Sent:** Friday, November 4, 2022 4:44 PM  
**To:** \_CCIN  
**Cc:** connect@willowvillage.com; Perata, Kyle T; Murphy, Justin I C  
**Subject:** I support Willow Village

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Dear Council Members, I am writing to express my support for the Willow Village project. This plan has been developed with the community over the past five years, and it brings critical amenities for Menlo Park's future. I urge you to approve Willow Village without delay.

Sincerely,

Weichuan Tian

1495 Kavanaugh Dr, East Palo Alto, CA 94303

**Perata, Kyle T**

---

**From:** Yichen Tsai [REDACTED]  
**Sent:** Friday, November 4, 2022 4:42 PM  
**To:** \_CCIN  
**Cc:** connect@willowvillage.com; Perata, Kyle T; Murphy, Justin I C  
**Subject:** I support Willow Village

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Dear Council Members, I am writing to express my support for the Willow Village project. This plan has been developed with the community over the past five years, and it brings critical amenities for Menlo Park's future. I urge you to approve Willow Village without delay.

Sincerely,

Yichen Tsai

Kavanaugh Dr, East Palo Alto, CA 94303

**Perata, Kyle T**

---

**From:** Avi Urban [REDACTED]  
**Sent:** Friday, November 4, 2022 3:37 PM  
**To:** \_CCIN  
**Cc:** connect@willowvillage.com; Perata, Kyle T; Murphy, Justin I C  
**Subject:** I support Willow Village

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Dear Council Members,

I am writing to express my support for the Willow Village project. I believe that this development benefit far exceeds the benefits for the immediate neighborhood and Menlo Park, it brings value to the greater Silicon Valley, particularly these days when there are so many other cities and countries which want to attempt to take the place of this area as a hub of innovation and quality of life.

I urge you to approve Willow Village without delay.

Sincerely,

Avi & Yael Urban

1239 Madera Ave. Menlo Park

**Perata, Kyle T**

---

**From:** Kimberly Baller [REDACTED]  
**Sent:** Friday, November 4, 2022 3:32 PM  
**To:** \_CCIN  
**Cc:** connect@willowvillage.com; Perata, Kyle T; Murphy, Justin I C  
**Subject:** I support Willow Village

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Dear Council Members, I am writing to express my support for the Willow Village project. This plan has been developed with the community over the past five years, and it brings critical amenities for Menlo Park's future. I urge you to approve Willow Village without delay.

Sincerely,

Kimberly Baller

1519 Kavanaugh Dr. East Palo Alto

**Perata, Kyle T**

---

**From:** Western Specialty <westernspecialty@fibercementpanel.com>  
**Sent:** Thursday, November 10, 2022 4:11 PM  
**To:** \_CCIN  
**Cc:** connect@willowvillage.com; Perata, Kyle T; Murphy, Justin I C  
**Subject:** I support Willow Village

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Dear Council Members: I am writing to express my enthusiastic support for the Willow Village project. I am a lifelong resident of the Bay Area, and more specifically was raised in San Mateo County. During this time, I have seen how communities in certain areas of the County, especially on the East Side, have for the most part not benefited from the developments that have taken place over the past several decades. It is very exciting to see that a vibrant, energizing development is finally being planned for the Belle Haven neighborhood of Menlo Park.

The Willow Village planned development is truly a collaborative, inclusive effort, as the Developer has taken great care to solicit and carefully listen to the community at large and also local housing coalitions and construction trades. They have been listened to and the needs and wishes of the community have been incorporated into the plans.

This development will bring much needed below market, sustainably designed housing to the area, as well as good paying jobs to the local residents. It will also bring a much needed full service grocery store to the area. And last, but not least, the planned park and pedestrian and bicycle friendly Town Square will provide an arena where positive community engagement will be allowed to flourish.

Sincerely,

Valerie Concepcion, 3715 Quimby Road, San Jose, CA 95148





# CITY OF EAST PALO ALTO

November 10, 2022

Mayor Nash and Menlo Park City Councilmembers  
City of Menlo Park  
701 Lauren Street  
Menlo Park, CA 94025

**Subject:** Willow Village Project

Dear Mayor Nash:

This correspondence is being sent at the direction of the East Palo Alto City Council.

The City of East Palo Alto has delivered three letters to the City of Menlo Park regarding the Willow Village project (Project). Previous correspondence focused primarily on project elements related to the California Environmental Quality Act (CEQA) as part of the Notice of Availability (NOA) for the Project. We commend your staff and consultants for their work incorporating the City's CEQA-related comments into the Project's Final Environmental Impact Report (FEIR).

The purpose of this letter is to express, in the strongest possible terms, our deep concerns about the potential unintended consequences for residents of East Palo Alto that may result from the approval and eventual construction of this Project. To address these concerns, the East Palo Alto City Council requests that the Menlo Park City Council consider opportunities to offset these potential impacts and require that the developer (Meta/Facebook) provide tangible mitigations as a condition of Project approval.

Since its incorporation in 1983, the City of East Palo Alto has struggled to achieve economic growth and financial sustainability, especially in comparison to other nearby communities. To address this reality, the City's leadership has ensured a strong focus on actions that strengthen the City's economic profile, with the ultimate goal of improving the lives and enhancing the well-being of East Palo Alto residents.

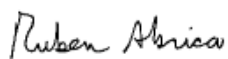
As the new Project progressed through design, East Palo Alto staff and City Council have conveyed these overarching concerns, as well as the following specific areas of interest:

- The Project may result in unintended financial consequences for the City of East Palo Alto. For example, it is expected that the Project will include a large grocery store, which is a beneficial amenity for the Belle Haven neighborhood and Menlo Park as a whole, but it is unclear how this store will benefit East Palo Alto. If a significant number of residents frequent this new store, the few smaller grocery stores in East Palo Alto may experience negative impacts to their businesses, and the City will receive decreased sales tax revenues. In addition, increased traffic created by East Palo Alto residents traveling to the new store will only worsen current traffic concerns.
- The East Palo Alto Police Department could be impacted by an increase in calls for service, which would require the City of East Palo Alto to fund more police officers during a time when the City has a significant budget deficit.
- The Facebook/Meta expansion is located in close proximity to the Cesar Chavez Ravenswood Middle School, which already experiences traffic congestion during common drop-off and pick-up hours. Facebook/Meta and the City of Menlo Park should ensure that the Project does not impact the students, staff, and other community members connected to the middle school campus.
- Traffic and air quality, resulting from increased vehicle traffic through East Palo Alto to access to future Project, are perhaps the greatest concerns. These realities should be acknowledged and City of East Palo Alto should be engaged as a partner to consider necessary infrastructure projects that may be of mutual benefit.
- The City of East Palo Alto has a critical need for emergency-access water storage locations. If water storage may be included in the Project's design, this would offer support to East Palo Alto residents during a potential emergency.

In accordance with the above considerations, the City Council of East Palo Alto asks that the Menlo Park City Council defer action on the Project until the City of East Palo Alto, Menlo Park, and/or Meta/Facebook have the opportunity to meet to discuss the City's concerns.

In conclusion, the City of East Palo Alto values its relationship with the City of Menlo Park and Facebook/Meta, yet we are aware that, unless mitigated, many aspects of the Project may negatively impact the residents of East Palo Alto and the City's ability to achieve our goals. An effective partnership between the City of Menlo Park, Facebook/Meta, and the City of East Palo Alto may successfully address these concerns, thus ensuring that all three entities thrive in the future. The City would be eager to engage in these discussions.

Sincerely,



Ruben Abrica  
Mayor

## Letter of Support for Willow Village

Dear Menlo Park City Council,

My wife, Carolina Lopez and I have raised our family in the Belle Haven neighborhood of Menlo Park since April 1983. We are deeply rooted in this community and we are in full support of the Willow Village project.

We believe the project will bring much needed benefits to us and our neighbors in the form of a full service grocery store and proximity to more restaurants, stores, and community entertainment and gathering spaces. We are especially excited for the additional affordable housing for seniors which will help many of our aging local residents stay in the community and receive the services they need.

We urge you to continue investing in improving the quality of life of Belle Haven residents and approve the Willow Village Project on November 15<sup>th</sup>.

If you have any questions, please feel free to reach out.

Thank you for your time,

*Roberto Lopez and Carolina Lopez*

Roberto Lopez and Carolina Lopez

1332 Modoc Ave Menlo Park, CA 94025  
650-321-4475

## Perata, Kyle T

---

**From:** Perata, Kyle T  
**Sent:** Friday, November 11, 2022 1:09 AM  
**To:** Perata, Kyle T  
**Subject:** FW: Willow Village project



**Kyle T. Perata**  
Planning Manager  
City Hall - 1st Floor  
701 Laurel St.  
tel 650-330-6721  
[menlopark.gov](http://menlopark.gov)

**From:** Halimah Rasheed [REDACTED]  
**Sent:** Sunday, November 6, 2022 12:16 PM  
**To:** \_CCIN <[city.council@menlopark.org](mailto:city.council@menlopark.org)>  
**Subject:** Willow Village project

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Dear Menlo park city council members, I am writing to express my support for the Willow village project this plan has been developed with the community over the past five years and it brings critical and amenities for Menlo Park's future. I urge you to approve Willow Village without delay this is something that our community greatly needs which will also improve the lives of the residents in the city of Menlo Park. I am looking forward to this new addition to our community and this new partnership.

Thank you very much,

Sincerely,

Halimah Rasheed  
312 Ivy Drive  
Menlo Park, Ca 94025

[Sent from Yahoo Mail for iPad](#)

## Perata, Kyle T

---

**From:** Perata, Kyle T  
**Sent:** Friday, November 11, 2022 1:10 AM  
**To:** Perata, Kyle T  
**Subject:** FW: I support Willow Village



**Kyle T. Perata**  
Planning Manager  
City Hall - 1st Floor  
701 Laurel St.  
tel 650-330-6721  
[menlopark.gov](http://menlopark.gov)

**From:** Federico Andrade-Garcia [REDACTED]  
**Sent:** Monday, November 7, 2022 12:36 PM  
**To:** \_CCIN <[city.council@menlopark.org](mailto:city.council@menlopark.org)>  
**Cc:** [connect@willowvillage.com](mailto:connect@willowvillage.com); Perata, Kyle T <[ktperata@menlopark.org](mailto:ktperata@menlopark.org)>; Murphy, Justin I C <[JICMurphy@menlopark.org](mailto:JICMurphy@menlopark.org)>  
**Subject:** I support Willow Village

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Dear Council Members, I am writing to express my support for the Willow Village project.

I live in East Palo Alto, next to "East Menlo Park", and trivial amenities like restaurants and grocery shopping are hard to find in this side of HW 101. We usually need to drive several miles to get access to those things, a consequence of historical redlining.

Even is majority of this is for Meta and its employees, the public options that will be available to everybody else, are enough for EPA residents to feel happy about it. And it will reduce drivers on the streets, so it is a win-win.

I urge you to approve Willow Village without delay.

Sincerely,

Federico Andrade  
East Palo Alto resident

## Perata, Kyle T

---

**From:** Perata, Kyle T  
**Sent:** Friday, November 11, 2022 1:10 AM  
**To:** Perata, Kyle T  
**Subject:** FW: Support homes at Willow Village!



**Kyle T. Perata**  
Planning Manager  
City Hall - 1st Floor  
701 Laurel St.  
tel 650-330-6721  
[menlopark.gov](http://menlopark.gov)

**From:** Maggie Trinh [<mailto:info@email.actionnetwork.org>]  
**Sent:** Tuesday, November 8, 2022 11:50 AM  
**To:** \_CCIN <[city.council@menlopark.org](mailto:city.council@menlopark.org)>  
**Subject:** Support homes at Willow Village!

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

City Council Menlo Park Planning Commission,

Dear Councilmember,

I'm writing to express my support for a creative new project at Willow Village that would bring over 1,730 much-needed homes to Menlo Park and urge you to approve this worthy project.

I support Willow Village because it:

- 1) Transforms old office space into a place for affordable homes. This project replaces 1970s outdated R&D office space over 59 acres with a mixed-use project that includes 1,730 new homes. Approximately 18%

will be subsidized affordable, which is more than 300 Affordable homes, and will increase the city's existing affordable housing stock by approximately 60%. Of these, up to 120 homes will be reserved for seniors providing much needed senior housing at the Very Low-Income and Extremely-Low Income levels. These homes, combined with the newly proposed \$5 million in additional funding for affordable housing for your community members in Menlo Park. Willow Village's affordable housing plan brings unprecedented housing resources where they are truly needed most.

2) Delivers badly needed amenities to the local community.

Willow Village is a community-facing mixed-use site that provides the Belle Haven neighborhood vital community amenities and benefits such as a grocery store, pharmacy services, space for local retailers, significant public open space, and a town square.

3) Ensures that resources are accessible.

The community park above Willow Road near Hamilton Avenue connects directly to the Town Square, providing convenient access for neighbors to walk and bike while improving traffic circulation on Willow.


4) Utilizes sustainable building and design practices.

This project is built to LEED Gold standards meaning that buildings will be equipped with 100% electric power, use recycled water, sustainable materials, and increased photovoltaics.

For these and many other reasons, I urge you to approve these well-designed, well-located, sustainable new homes without delay.

Thank you.

Maggie Trinh

  
400 South El Camino Real 400  
San Mateo, California 94402

## Perata, Kyle T

---

**From:** Perata, Kyle T  
**Sent:** Friday, November 11, 2022 1:10 AM  
**To:** Perata, Kyle T  
**Subject:** FW: Support homes at Willow Village!



**Kyle T. Perata**  
Planning Manager  
City Hall - 1st Floor  
701 Laurel St.  
tel 650-330-6721  
[menlopark.gov](http://menlopark.gov)

**From:** Michael Szeto [<mailto:info@email.actionnetwork.org>]  
**Sent:** Tuesday, November 8, 2022 11:55 AM  
**To:** \_CCIN <[city.council@menlopark.org](mailto:city.council@menlopark.org)>  
**Subject:** Support homes at Willow Village!

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

City Council Menlo Park Planning Commission,

Dear Councilmember,

I'm writing because I support the important project at Willow Village. It would bring over 1,730 much-needed homes to the Menlo Park community. Please approve this worthy and urgent project. We need a more affordable Bay Area and projects like this help us get there. I hope Menlo Park can be a leader on this.

I support Willow Village because it:



1) Transforms old office space into a place for affordable homes.

This project replaces 1970s outdated R&D office space over 59 acres with a mixed-use project that includes 1,730 new homes. Approximately 18% will be subsidized affordable, which is more than 300 Affordable homes, and will increase the city's existing affordable housing stock by approximately 60%. Of these, up to 120 homes will be reserved for seniors providing much needed senior housing at the Very Low-Income and Extremely-Low Income levels. These homes, combined with the newly proposed \$5 million in additional funding for affordable housing for your community members in Menlo Park. Willow Village's affordable housing plan brings unprecedented housing resources where they are truly needed most.

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For these and many other reasons, I urge you to approve these well-designed, well-located, sustainable new homes without delay.

Thank you.

Michael Szeto



Redwood City, California 94063

## Perata, Kyle T

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**From:** Perata, Kyle T  
**Sent:** Friday, November 11, 2022 1:11 AM  
**To:** Perata, Kyle T  
**Subject:** FW: Please approve much-needed homes at Willow Village



**Kyle T. Perata**  
Planning Manager  
City Hall - 1st Floor  
701 Laurel St.  
tel 650-330-6721  
[menlopark.gov](http://menlopark.gov)

**From:** Elias Platte Bermeo [<mailto:info@email.actionnetwork.org>]  
**Sent:** Tuesday, November 8, 2022 2:45 PM  
**To:** \_CCIN <[city.council@menlopark.org](mailto:city.council@menlopark.org)>  
**Subject:** Please approve much-needed homes at Willow Village

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

City Council Menlo Park Planning Commission,

Dear Councilmember,

I'm writing to express my support for a creative new project at Willow Village that would bring over 1,730 much-needed homes to Menlo Park and urge you to approve this worthy project.

I support Willow Village because it:

1) Transforms old office space into a place for affordable homes.

This project replaces 1970s outdated R&D office space over 59 acres with a mixed-use project that includes 1,730 new homes. Approximately 18% will be subsidized affordable, which is more than 300 Affordable homes, and will increase the city's existing affordable housing stock by approximately 60%. Of these, up to 120 homes will be reserved for seniors providing much-needed senior housing at the Very Low-Income and Extremely-Low Income levels. These homes, combined with the newly proposed \$5 million in additional funding for affordable housing for your community members in Menlo Park. Willow Village's affordable housing plan brings unprecedented housing resources where they are truly needed most.

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For these and many other reasons, I urge you to approve these well-designed, well-located, sustainable new homes without delay.

Thank you,  
Elias Platte Bermeo  
San Mateo County Resident

Elias Platte Bermeo



Highlands-Baywood Park, California 94402



**EXECUTIVE COMMITTEE**

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Chair of the Board  
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*DES Architects + Engineers, Inc.*

ROSANNE FOUST  
President & CEO  
SAMCEDA

November 9, 2022

Mayor Betsy Nash and Members of the City Council  
City of Menlo Park  
701 Laurel St.  
Menlo Park, CA 94025

**RE: Letter of Support for Willow Village**

Dear Hon. Mayor Nash and Members of the City Council,

For seven decades, the San Mateo County Economic Development Association (SAMCEDA) has been a leading voice for the economic engine that is San Mateo County. SAMCEDA believes in the power of a strong economy driven by an appreciation of what that engine provides to our ecosystem on the Peninsula.

**DIRECTORS**

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*Kaiser Permanente*

DYANNA VOLEK  
*San Francisco International Airport*

CHRIS WEBER  
*Oracle*

LUCY WICKS  
*Stanford University*

By working with employers of all sizes and industries, engaging with our public sector and our elected leadership, recognizing that we have 21 individual jurisdictions (20 cities and one county) and collaborating and communicating with the Chambers of Commerce, non-profit organizations and our educational institutions, SAMCEDA tackles the most difficult challenges through goal-oriented solutions.

I am writing to express SAMCEDA's support for Signature Development's *Willow Village* project. This plan has been developed with the community over the past five years and it brings much-needed housing and critical amenities for Menlo Park's future.

*Willow Village* will bring in 1,730 apartment homes in a mix of sizes, including approximately 18% affordable housing, more than 300 affordable homes. This project not only delivers amenities and services (including a full-service grocery store, dining options, publicly accessible park space, community gathering spaces, and more) but includes alternative modes of transportation and utilizes sustainable building materials to reduce the buildings' carbon emissions.

We encourage you to support the *Willow Village* project.

Thank you for your consideration.

Sincerely,

Rosanne Foust  
President & CEO, SAMCEDA

**EMERITUS ADVISORS  
TO THE CHAIR**

NORMAN BOOK, JR.  
*Carr McClellan*

T. JACK FOSTER, JR.  
*Foster Enterprises*

# Willow Village Master Plan Project Final EIR Errata

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## Introduction

The City of Menlo Park (City) released the Final Environmental Impact Report (Final EIR) for the Willow Village Master Plan Project (Proposed Project) on October 14, 2022. The City will use the Final EIR as support for its decision about whether to approve the Proposed Project. This Errata document includes minor clarifications and corrections to the Final EIR that were identified since publication of the Final EIR. These revisions are not considered significant new information according to California Environmental Quality Act Guidelines section 15088.5(a). The information merely clarifies, amplifies, or makes insignificant modifications to the EIR.

Revisions are shown in double underlined and ~~double strikethrough~~ text; revisions included in the Final EIR are shown in underlined text or ~~strikethrough~~ text.

## Errata

### Draft EIR Section 3.8, Cultural Resources

The Final EIR discloses revisions to the Draft EIR to update mitigation measure numbering. In one location, the mitigation measure reference was not updated consistent with the revisions to other references to mitigation. The revised Section 3.8, Cultural Resources, that was included in the Final EIR contained text that stated that Mitigation Measure CR 2.2 would apply to the Hamilton parcels. However, Mitigation Measure CR 2.2 was replaced with TCR 1.2, as indicated elsewhere in the same paragraph. Additionally, Mitigation Measure CULT-2a references Mitigation Measure TCR 1.2. The following revision is made on page 3.8-25 of the Draft EIR to make it consistent with the updated mitigation measure references:

MITIGATION MEASURES. Compliance with federal, state, and local laws and regulations, including applicable ConnectMenlo EIR mitigation measures, City General Plan goals and policies, and Project-specific mitigation measures, would protect significant archaeological resources within the Project Site by providing archaeological resources sensitivity training to workers; ensuring preservation in place or, if infeasible, archaeological data recovery when significant archaeological resources are encountered and cannot be avoided; and allowing early detection of potential conflicts between development and resources. The Proposed Project has implemented ConnectMenlo EIR Mitigation Measure CULT-1 by completing the site-specific historical and archeological resource studies referenced in this Draft EIR. The Proposed Project would implement ConnectMenlo EIR Mitigation Measure CULT-2a, as modified to avoid redundancy with Project-specific mitigation, if a potentially significant subsurface cultural resource is encountered during ground-disturbing activities. In addition, the Project Sponsor would implement Project Mitigation Measures TCR 1.1~~CR 2.1~~ and TCR 1.2~~CR 2.2~~, which would reduce impacts on CA-SMA-160/H and unknown archeological resources to a less-than-significant level. These measures would be implemented on the main Project Site. ConnectMenlo EIR Mitigation Measure CULT-2a (as modified) and Mitigation Measure TCR 1.2~~CR 2.2~~ apply to Hamilton Avenue Parcels North and South and the Willow Road Tunnel site, areas where Project-related ground disturbance would have the potential to affect elements of CA-SMA\_160/H and

unknown archaeological resources. Impacts on archaeological resources would be *less than significant with mitigation*.

## Draft EIR Section 3.16, Tribal Cultural Resources

As explained in Response to Comment T1-1, the Tribal Cultural Resource section was separated from Section 3.8, Cultural Resources, and is now Section 3.16. The new TCR section includes additional ethnographic information, the tribal cultural resources impacts analysis, and mitigation measures, which were developed with extensive participation and input from the Tamien Nation. The City also consulted with the Amah Mutsun Tribal Band of San Juan Bautista and Muwekma Ohlone Tribe of the San Francisco Bay Area. Neither tribe provided comments on mitigation measures; however, the Amah Mutsun Tribal Band provided a comment letter (attachment HH to Staff Report 22-056-PC, October 24, 2022) on the Tribal Cultural Resources chapter. Additional information was obtained from the Muwekma Ohlone Tribe and the Amah Mutsun Tribal Band of Mission San Juan Bautista, and the Tribal Cultural Resources chapter was augmented with this information. There are no changes to the mitigation measures or impact analysis as a result of this information. The Tribal Cultural Resources chapter is recreated in its entirety as an attachment to this errata document, with revisions shown in the attachment. Of particular note is that the Hiller Mound is also considered a Tribal Cultural Resource for the Muwekma Ohlone Tribe. The original Tribal Cultural Resources chapter was added as revisions to the Draft EIR; however, for the sake of readability, the original text generated as revisions to the Draft EIR is not shown in single underline. The addition of footnotes also resulted in substantial chronological re-numbering of footnotes, which is not shown with double strikethrough or double underline. Added footnotes are shown in double strikethrough.

## Final EIR, Chapter 4

There is an inconsistency in the Draft EIR between Mitigation Measure TRA-2 as provided in the Executive Summary and as provided in Section 3.3, Transportation. The mitigation measure in the executive summary references active ITE trip generation, while the measure in the transportation section references gross ITE trip generation. The version of the mitigation measure in the Executive Summary was corrected in Chapter 4 of the Final EIR through referencing revisions as shown for Section 3.3. However, the version of the Mitigation Measure in Section 3.3 of the Draft EIR is correct and did not require revisions. As a result, only the measure in the Executive Summary is revised as follows:

**Mitigation Measure TRA-2:** The residential land use of the Project Site will be required to implement a TDM Plan achieving ~~19% active TDM trip reduction from a 36% reduction from gross~~ ITE trip generation rates ~~(for the Proposed Project, this reduction equals equivalent to 6,023 daily trips)~~. Should a different number of residential units be built, the total daily trips will be adjusted accordingly. The required residential TDM Plan will include annual monitoring and reporting requirements on the effectiveness of the TDM program. The Project applicant will be required to work with City staff to identify the details of the TDM plan. If the annual monitoring finds that the TDM reduction is not met (i.e. the Proposed Project exceeds 6,023 daily trips from the residential land use), the TDM coordinator will be required to work with City staff to detail next steps to achieve the TDM reduction.

### 3.16 Tribal Cultural Resources

This section describes the affected environment and regulatory setting for tribal cultural resources. The term *tribal cultural resources* refers to sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either included in or determined eligible for inclusion in the California Register of Historical Resources (CRHR) or included in a qualifying local register of historic and other resources that have been determined by a lead agency to be significant pursuant to the criteria for listing in the CRHR.

Included in this section are brief descriptions of the ethnographic and contemporary Native American setting of the Project Site. Applicable state and local regulations are identified, followed by impact analyses and mitigation measures to reduce the impacts to less-than-significant levels.

This section relies on information from consultation between the City of Menlo Park (City) and culturally affiliated California Native American tribes. Because the tribal cultural resources described in this section meet the definitions for historical resources and unique archaeological resources (see Section 3.8, *Cultural Resources*), the analysis relies on information gathered regarding such resources. This includes record searches and cultural resources studies provided by the Project Sponsor and peer reviewed by ICF. The sources include the following:

- Tribal consultation record between the City and culturally affiliated tribes under Assembly Bill (AB) 52 and Senate Bill (SB) 18;
- The records search from the California Historical Resources Information Center dated August 4, 2020, as described in Section 3.8, *Cultural Resources*;
- Interviews of tribal experts and representatives of the Tamien Nation;<sup>1</sup>
- The tribal cultural resources memo prepared by ECORP Consulting, Inc.;<sup>2</sup>
- Numerous sources of scholarly ethnographic literature (see footnoted references within this section); ~~and~~
- *The Cultural Resources Assessment Report for Meta Willow Campus Project, City of Menlo Park, San Mateo County*, by Basin Research Associates (Basin) (2019 [revised 2022]);
- Interviews with, and the ethnohistory of, the Muwekma Ohlone Tribe, by Arellano et al. (2022)<sup>3</sup>; ~~and~~

<sup>1</sup> ECORP Consulting. September 6, 2022—personal communication between Lisa Westwood and Tamien Nation representatives Quirina Geary, Lillian Luna, Clara Luna, Susana Mesa, Susie Q. Arias, Vidal E. Luna, and Theodore “Mike” Bonillas, Sr.

<sup>2</sup> ECORP Consulting. 2022. *Confidential Tribal Consultation Summary for Assembly Bill 52 and Senate Bill 18 for the Willow Village Project*.

<sup>3</sup> Arellano, Monica V., Alan Leventhal, Sheila Guzman-Schmidt, Gloria E. Arellano Gomez, and Charlene Nijmeh. Draft: An Ethnohistory of the Menlo Park, Mid-San Francisco Peninsula, Santa Clara Valley and Adjacent Regions; Historic Ties of the Muwekma Ohlone Tribe of the San Francisco Bay Area and Tribal Input on the Proposed Willow Village Project and its Potential Impact on Ancestral Heritage Site CA-SMA-160/H (P-41-000160): The Hiller Mound. Manuscript submitted to the City of Menlo Park, October 26, 2022.



- Interviews with, and information submitted by, the Amah Mutsun Tribal Band of Mission San Juan Bautista.<sup>4</sup>

Issues identified in response to the Notice of Preparation (Appendix 1) were considered during preparation of this analysis. The applicable issues pertain to Native American consultation pursuant to AB 52 and SB 18.

The California Environmental Quality Act (CEQA) and CEQA Guidelines prohibit lead agencies from including any information from a California Native American tribe about tribal cultural resources (e.g., the location) in the environmental document or otherwise disclosing it without prior consent from the tribe that provided the information (Public Resources Code Section 21082.3[c] and CEQA Guidelines Section 15120[d]). Similarly, cities are required to protect the confidentiality of information concerning the identity, location, character, and use of places, features, and objects that are the subject of SB 18 consultation (California Government Code Section 65342.3[b]). In addition, the California Public Records Act authorizes agencies to exclude from public disclosure archaeological site information; records of Native American graves, cemeteries, and sacred places; and records of Native American places, features, and objects (California Government Code Sections 7927.000 and 7927.005.) In addition, California's open meeting laws (The Brown Act, California Government Code Section 54950 et seq.) protect the confidentiality of Native American cultural place information.

Because the disclosure of information about the location of archaeological cultural resources (many of which are also tribal cultural resources) is prohibited by the Archaeological Resources Protection Act of 1979 (16 United States Code [U.S.C.] Section 470hh) and Section 307103 of the National Historic Preservation Act (NHPA), it is exempted under Exemption 3 of the federal Freedom of Information Act (5 U.S.C. Section 552).

The Basin report (2019) contains confidential information regarding the location of archaeological resources, which are nonrenewable, and their scientific, cultural, and aesthetic values could be significantly impaired by disturbance. To deter vandalism, artifact hunting, and other activities that can damage such resources, the Basin study and certain details about tribal cultural resources discussed during tribal consultation are not included in Appendix 3.8 and are not open to public inspection.

## Existing Conditions

The setting for the Proposed Project considers existing as well as relevant historical conditions within the Study Area. The Study Area for tribal cultural resources comprises the main Project Site, Hamilton Avenue Parcels North and South, and Willow Road Tunnel site as well as all adjoining parcels. The Study Area was delineated to consider potential impacts on tribal cultural resources caused by Project activities, including ground disturbance, building and/or structure demolition, and building and/or structure construction, all of which could result in a substantial adverse change in the significance of tribal cultural resources.

Today, the Study Area is already developed with approximately one million square feet of office and industrial space in twenty buildings and associated parking and landscaping. The majority of the existing development was constructed in the 1960s through the 1980s and would be demolished as part of the Project. The baseline conditions under CEQA for the Study Area would be characterized as substantial past disturbance. Understanding tribal cultural resources from a cultural perspective,

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<sup>4</sup> Personal communication from Amah Mutsun Tribal Trustee Wayne Pierce to ECORP Consulting, Inc., October 28, 2022.

however, requires considering background conditions beyond CEQA's definition of baseline. This section 1) provides a brief overview of the ethnographic and contemporary Native American setting of the Study Area and surrounding area, 2) describes the methods used to establish baseline conditions for tribal cultural resources at the Study Area, and 3) describes the tribal cultural resources and their significance under CEQA. The analysis of impacts and measures required to mitigate them, follows. Information specific to archaeological and non-Native American cultural resources is provided in Section 3.8, *Cultural Resources*, and was considered in the analysis of impacts to tribal cultural resources, where appropriate.

## Ethnographic Setting

The following summary represents ethnographic information as previously documented by academics and as shared by tribal representatives with knowledge of their own tribes. This summary does not attempt to reassess or reconcile this information.

Long before contact with the Spanish, California Native Americans, including those around the San Francisco Bay, had already developed complex social, ceremonial, political, and economic institutions that were interconnected with neighboring tribal groups and regions. This development is seen in the archaeological record through the artifact assemblages, mortuary mounds, and burial patterns found throughout the region.<sup>5</sup>

Native Californians settled in the Menlo Park area between 14,000 and 6,000 years ago. Subsequent Penutian peoples migrated into central California around 4,500 years ago and were firmly settled around San Francisco Bay by 1,500 years ago. The people who lived between the Carquinez Strait and the Monterey area when Europeans first arrived were referred to as the *Ohlone* by ethnographers, although they are often referred to by the name of their broader linguistic group, *Costanoan*, which was the name incorrectly bestowed by the Spanish.

The word *Costanoan* comes from the Spanish word *Costanos*, meaning *coast people*, which was given to the tribes in 1770 when the first mission was established in their traditional tribal territory. The Costanoan represented a group of people who spoke eight separate languages but whose dialects were similar to those of their geographic neighbors. The languages included Karkin, Chochenyo, Ramaytush,

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<sup>5</sup> Arellano, Monica V., Alan Leventhal, Sheila Guzman-Schmidt, Gloria E. Arellano Gomez, and Charlene Nijmeh. 2021. *An Ethnohistory of Santa Clara Valley and Adjacent Regions*. Historic Ties of the Muwekma Ohlone Tribe of the San Francisco Bay Area and Tribal Stewardship over the Human Remains Recovered on the Prometheus Project located at 575 Benton Street and Affiliated with the 3<sup>rd</sup> Mission Santa Clara de Thámien Indian Neophyte Cemetery and Indian Rancheria: Clareño Muwékma Ya Túnnešte Nómmo [Where the Clareño Indians Are Buried], Site CA-SCL-30/H. Available: [https://www.academia.edu/67563699/An\\_Ethnohistory\\_of\\_Santa\\_Clara\\_Valley\\_and\\_Adjacent\\_Regions\\_Historic\\_Ties\\_of\\_the\\_Muwekma\\_Ohlonet\\_Tribe\\_of\\_the\\_San\\_Francisco\\_Bay\\_Area](https://www.academia.edu/67563699/An_Ethnohistory_of_Santa_Clara_Valley_and_Adjacent_Regions_Historic_Ties_of_the_Muwekma_Ohlonet_Tribe_of_the_San_Francisco_Bay_Area); Bennyhoff, James A. 1977. *Ethnogeography of the Plains Miwok*. Center for Archaeological Research at Davis. Publication No. 5. University of California, Davis; Fredrickson, David A. 1973. *Early Cultures of the North Coast of the North Coast Ranges, California*. Ph.D. dissertation, Department of Anthropology, University of California, Davis; Gifford, Edward W. 1955. Central Miwok Ceremonies. In *University of California Anthropological Records* 14(4):261–318, Berkeley; Kroeber, A.L. 1932. The Patwin and Their Neighbors. In *University of California Publications in American Archaeology and Ethnology* 29(4):253–423. Berkeley, CA; Kroeber, A.L. 1939. Cultural and Natural Areas of Native North America. In *University of California Publications in American Archaeology and Ethnology* 38:1–240, Berkeley, CA; Leventhal, Alan. 1993. *A Reinterpretation of Some Bay Area Shellmound Sites: A View from the Mortuary Complex at CA-ALA-329, the Ryan Mound*. Unpublished master's thesis, Department of Social Sciences, San José State University; Moratto, M.J. 1984. *California Archaeology*. Orlando, FL: Academic Press, Inc. (Harcourt, Brace, Jovanovich, Publishers).

Tamyen, Awaswas, Mutsun, Rumsen, and Chalon. Although ethnographers differentiate the tribes by language and cultural expression, the Native American populations actually consisted of numerous politically autonomous nations. Moreover, forced displacement and recombination of Native American communities has led to a change in the way cultural affiliation is described and mapped today.

Menlo Park is near the ethnolinguistic boundary between the Tamyen and Ramaytush language groups. Tamyen (also written as “Thámien” in earlier documents or, today, as “Tamien”), or the Santa Clara language group, is traditionally spoken in the area at the southern end of San Francisco Bay and within the lower Santa Clara Valley. Contemporary Tamien, however, recognize their traditional cultural affiliation as extending north to Redwood City (inclusive of Menlo Park). They descended from those who resided at Mission Santa Clara, Mission Santa Cruz, and Mission San Juan Bautista. Contemporary Tamien are direct descendants of Chief Tulum and Yaayaye and others who were taken to Mission Santa Clara. Having recently exercised their self-determination, they recognize that they have always been Tamien.<sup>6</sup> In 1770, there were approximately 1,200 speakers of the Tamyen language.<sup>7</sup> Today, the language is being actively revitalized and documented by tribal language expert Quirina Geary.<sup>8</sup>

The neighboring language to the north, Ramaytush, or the San Francisco language group, is spoken traditionally in San Francisco and San Mateo Counties.<sup>9</sup> In 1770, there were 1,400 speakers. There is only one lineage within the Ramaytush tribe today that is known to have produced living descendants, most of whom refer to themselves as Ohlone, along with a few Costanoan.<sup>10</sup>

Other contemporary groups have been organized from descendants of other Ohlone languages. The Amah Mutsun Tribal Band is composed of the direct descendants of the people whose territories fell under the influence of Mission Santa Cruz (Awasswas) and Mission San Juan Bautista (Mutsun). Amah villages were distinct from those outside the San Juan Valley because no other tribe spoke Mutsun. Today members can trace their descentance to other missions as well.<sup>11</sup>

The Amah Mutsun Tribal Band are composed of the descendants of the Mutsun language speakers of San Juan Bautista and the Awasswas speakers of Santa Cruz.<sup>12</sup> With an enrolled membership of nearly 600 Bureau of Indian Affairs-documented tribal members, the Amah Mutsun Tribal Band represents the “the Previously Recognized Tribal group listed by the Indian Service Bureau (now known as the Bureau of Indian Affairs) as the San Juan Band. All lineages comprising the Amah Mutsun Tribal Band are the direct descendants of the aboriginal Tribal groups whose villages and territories fell under the sphere of

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<sup>6</sup> ECORP Consulting. September 6, 2022—personal communication between Lisa Westwood and Tamien Nation representatives Quirina Geary, Lillian Luna, Clara Luna, Susana Mesa, Susie Q. Arias, Vidal E. Luna, and Theodore “Mike” Bonillas, Sr.

<sup>7</sup> Levy, R. 1978. Costanoan. In *Handbook of North American Indians*, Chapter 8, California, pp. 398–413.

<sup>8</sup> ECORP Consulting. September 6, 2022—personal communication between Lisa Westwood and Tamien Nation representatives Quirina Geary, Lillian Luna, Clara Luna, Susana Mesa, Susie Q. Arias, Vidal E. Luna, and Theodore “Mike” Bonillas, Sr.

<sup>9</sup> Levy, R. 1978. Costanoan. In *Handbook of North American Indians*, Chapter 8, California, p. 485.

<sup>10</sup> Association of Ramaytush Ohlone. 2022. *The Original Peoples of the San Francisco Peninsula*. Available: <https://www.ramaytush.org/>. Accessed: July 7, 2022.

<sup>11</sup> Amah Mutsun Tribal Band. 2022. *History of the Tribe*. Available: <https://amahmutsun.org/history>. Accessed: July 7, 2022.

<sup>12</sup> Lopez, Valentin. 2013. The Amah Mutsun Tribal Band: Reflections on Collaborative Archaeology. California Archaeology. Volume 5, Number 2. December. Pp. 221-223.

influence of Missions San Juan Bautista (Mutsun) and Santa Cruz (Awaswas) during the late 18th, 19th and early 20th centuries.

The Amah Mutsun Tribal Band has been present within its traditional territory for as far back as oral history can trace. This area spans Monterey Bay and extends from the south Bay to just south of present-day Soledad.

For thousands of years prior to Spanish contact in the 18th century, the Amah Mutsun occupied a series of villages along the Pajaro River Basin. The occupants of these villages were united by their cultural practices, religious beliefs, and their exclusive use of the Mutsun language. This is one of eight distinct languages in the Costanoan/Ohlone language family, and it is estimated that there were around 7,000 speakers in the San Juan Valley at the time of Spanish contact.<sup>13</sup>

This area is recognized for its wealth of natural resources. The presence of waterways provided an abundance of fish, and the plant and animal life of the region was diverse and bountiful, allowing the ancestral Amah Mutsun to utilize a range of subsistence strategies. They crafted tools for hunting and fishing from a variety of available materials, including bone, wood, and stone. They also wove baskets for trapping, food collection, and food storage. The local fauna they utilized for food included fish, shellfish, reptiles, insects, and a variety of birds. Additionally, land management through controlled burning helped them to cultivate a wealth of wild nuts, grapes, berries, and herbs.<sup>14</sup> This Traditional Ecological Knowledge continues to be practiced today by contemporary practitioners.

In the traditional villages of the Pajaro River Basin, there were a series of domestic dwellings surrounding a central dancing area. The dwellings were dome-shaped structures thatched with fibrous plant material, and the dancing area was surrounded by a woven fence with a single doorway. There were also sweathouses dug directly into the banks of nearby creeks.<sup>15</sup> These structures are important for religious practice among the Amah Mutsun, who have a strong connection with the earth, because they were tasked by their creator to protect it. Within these structures, many songs, prayers, and ceremonies that were endowed by their creator directly are performed. These religious practices are strongly rooted in oral tradition and passing this knowledge to new generations was prioritized in their culture.<sup>16</sup>

The arrival of the Spanish in the San Juan Valley precipitated the founding of the San Juan Bautista mission in 1797, which changed every aspect of life for the Amah Mutsun.<sup>17</sup> Though many fled and some fought against the Spanish, ultimately most were taken from their villages and forced into labor at the Mission. The Spanish usurped native religious traditions, banned the traditional practice of controlled burning, and seized native land on behalf of the Mission. In addition to the hardship of labor and having their lifeways

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<sup>13</sup> Amah Mutsun Tribal Band (AMTB). 2022. History of the Tribe. < <https://amahmutsun.org/history> > Accessed July 7, 2022.

<sup>14</sup> Lopez, Valentin. 2013. The Amah Mutsun Tribal Band: Reflections on Collaborative Archaeology. California Archaeology. Volume 5, Number 2. December. Pp. 221-223.

<sup>15</sup> Amah Mutsun Tribal Band (AMTB). 2022. History of the Tribe. < <https://amahmutsun.org/history> > Accessed July 7, 2022.

<sup>16</sup> Lopez, Valentin. 2013. The Amah Mutsun Tribal Band: Reflections on Collaborative Archaeology. California Archaeology. Volume 5, Number 2. December. Pp. 221-223.

<sup>17</sup> Hart, Richard E. 2013. Federal Recognition of Native American Tribes: The Case of California's Amah Mutsun. Western Legal History. Volume 16, Number 1. Winter/Spring. Pp. 39-84.

disrupted, the Amah Mutsun suffered from diseases they were exposed to by the Spanish and a large portion of their population died as a result.<sup>18,19</sup>

During the Mexican period, the Amah Mutsun were allowed to leave the Mission, but they were again forced into labor as ranch hands, domestic workers, and construction workers. Once California became a part of the United States, laws prevented the tribe from gaining a foothold on their ancestral lands, restricted their civil rights, and prevented them from having tribal representation in the government. The plight of the Amah Mutsun was worsened in 1851 by a failure of the government to ratify a series of treaties that would have awarded them with reservations on their ancestral land. The federal recognition status of the Amah Mutsun was rescinded in 1927. Efforts to reinstate the federal recognition are underway. The tribe is currently listed with the Department of Interior, Bureau of Indian Affairs as Petitioner #120.<sup>20,21,22</sup>

Revitalization efforts are also ongoing, as tribal members are working to restore knowledge of the Mutsun language and traditional religious practices, and to restore the ethnobotany and ecological diversity of their ancestral region.<sup>23</sup>

The Muwekma Ohlone, also known as the Pleasanton or Verona Band of Alameda County, comprises all known surviving lineages that were ancestral to the San Francisco Bay region. These lineages trace their ancestry through Mission Dolores, Mission Santa Clara, and Mission San José. They also include members of the historic federally recognized Verona Band of Alameda County.<sup>24</sup> According to Arellano et al.,<sup>25</sup> (2021), the traditional lands include Alameda, Contra Costa, Napa, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, and Solano Counties and crosscut several major linguistic and tribal boundaries.

The Muwekma Ohlone Tribe of the San Francisco Bay Area is comprised of descendants of speakers of the Chochenyo or Thámien languages of the Verona Band of Alameda County, which distinguishes them from other Ohlone groups.<sup>26</sup> Verona Band elders employed the linguistic term Muwekma, meaning the people, in the Chocheño or Thámien-Ohlone languages that are traditionally tied to the East and South San

<sup>18</sup> Amah Mutsun Tribal Band (AMTB). 2022. History of the Tribe. < <https://amahmutsun.org/history>> Accessed July 7, 2022.

<sup>19</sup> Lopez, Valentin. 2013. The Amah Mutsun Tribal Band: Reflections on Collaborative Archaeology. California Archaeology. Volume 5, Number 2. December. Pp. 221-223.

<sup>20</sup> Hart, Richard E. 2013. Federal Recognition of Native American Tribes: The Case of California's Amah Mutsun. Western Legal History. Volume 16, Number 1. Winter/Spring. Pp. 39-84.

<sup>21</sup> Amah Mutsun Tribal Band (AMTB). 2022. History of the Tribe. < <https://amahmutsun.org/history>> Accessed July 7, 2022.

<sup>22</sup> Rodriguez, Carolyn Terese. 2020. (Re)writing California Native American Representations: Amah Mutsun Sovereignty and Educational Experiences of Tribal Elders. Master's Thesis, University of California, Los Angeles.

<sup>23</sup> Lopez, Valentin. 2013. The Amah Mutsun Tribal Band: Reflections on Collaborative Archaeology. California Archaeology. Volume 5, Number 2. December. Pp. 221-223.

<sup>24</sup> Muwekma Ohlone Tribe. 2022. *Welcome and History*. Available: <http://www.muwekma.org/>. Accessed: July 7, 2022.

<sup>25</sup> Arellano, Monica V., Alan Leventhal, Sheila Guzman-Schmidt, Gloria E. Arellano Gomez, and Charlene Nijmeh. Draft: An Ethnohistory of the Menlo Park, Mid-San Francisco Peninsula, Santa Clara Valley and Adjacent Regions; Historic Ties of the Muwekma Ohlone Tribe of the San Francisco Bay Area and Tribal Input on the Proposed Willow Village Project and its Potential Impact on Ancestral Heritage Site CA-SMA-160/H (P-41-000160): The Hiller Mound. Manuscript submitted to the City of Menlo Park, October 26, 2022.

<sup>26</sup> Ragland, Alisha. 2018. Resisting Erasure: The History, Heritage, and Legacy of the Muwekma Ohlone Tribe of the San Francisco Bay Area. Master's Thesis. San Jose State University.

Francisco Bay Area.<sup>27</sup> The Muwekma Ohlone Chochenyo, Tamien, Ramaytush and Awáwas languages fall under the Ohlone/Utian language family.<sup>28</sup>

The members of the Muwekma Ohlone Tribe are directly descended from the once-federally recognized Verona Band of Alameda County, and their ancestors before them, who trace their ancestry through the Mission Delores, Santa Clara, and San Jose. This also includes the Alisal and Niles Rancherias, which had come under the influence of not only the broken secularization during the 18th century and throughout the Mexican and Mission eras, but also the fast transformation brought about by the Gold Rush and other advancements and growth well into the early 20th century.

The traditional ancestral lands and territory of the Muwekma Ohlone Tribe include the present-day counties of San Francisco and San Mateo, most of Santa Clara, Alameda, and Contra Costa counties, and portions of Napa, Santa Cruz, Solano, and San Joaquin counties.<sup>29,30</sup> For over 12,000 years prior to Spanish contact in the 18th century, the Muwekma Ohlone have been hunting, fishing, and harvesting within the greater San Francisco Bay Area and established villages along creeks and permanent water sources. These residents were connected by their native communities and social networks, such that it is recognized that the Muwekma had an entire network of their own. Either way, these connections remained even through the struggle to survive by Spanish and European occupation.<sup>31</sup>

The seasonality of subsistence-related activities of traditional lifeways cover a wide range of microecosystems, such as fresh water creeks and streams, inland lagoons, bay shore wetlands and other resources such as hardwood forests and grasslands. Families moved in groups during the course of the year, using temporary seasonal shelters for specialized tasks that were never too far from the permanent or semi-permanent villages.<sup>32</sup>

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<sup>27</sup> Leventhal, Alan, Emily McDaniel, Melynda Atwood, Diane DiGiuseppe, David Grant, Colin Jaramillo, Rosemary Cambra, Charlene Nijmeh, Monica V. Arellano, Sheila Guzman-Schmidt, Gloria E. Arellano Gomez, Les Field, Dottie Galvan Lameira, Hank Alvarez, Jessica Veikune and Norma Sanchez. 2015. Final Report on the Burial and Archaeological Data Recovery Program Conducted on a Portion of Thámien Rúmmeytak [Guadalupe River Site], (CA-SCL-128/Hyatt Place Hotel) Located in Downtown San Jose, Santa Clara County, California. Report Prepared for DiNapoli Construction Hyatt Place Hotel by Muwekma Ohlone Tribe of the San Francisco Bay Area Ohlone Families Consulting Services. On file at San Jose State University and Northwest Archaeological Information Center, Sonoma State University.

<sup>28</sup> Ohlone Land (OL). 2022. < <https://cejce.berkeley.edu/ohloneland> > Accessed October 19, 2022.

<sup>29</sup> Ibid.

<sup>30</sup> Muwekma Ohlone Tribe. 2022. Traditional Territory. < <http://www.muwekma.org/maps.html> > Accessed October 19, 2022.

<sup>31</sup> Ragland, Alisha. 2018. Resisting Erasure: The History, Heritage, and Legacy of the Muwekma Ohlone Tribe of the San Francisco Bay Area. Master's Thesis. San Jose State University.

<sup>32</sup> Arellano, Monica V., Alan Leventhal, Sheila Guzman-Schmidt, Gloria E. Arellano Gomez, and Charlene Nijmeh. 2021. An Ethnohistory of Santa Clara Valley and Adjacent Regions; Historic Ties of the Muwekma Ohlone Tribe of the San Francisco Bay Area and Tribal Stewardship Over the Human Remains Recovered on the Prometheus Project located at 575 Benton Street and Affiliated with the 3rd Mission Santa Clara de Thámien Indian Neophyte Cemetery and Indian Rancheria: Clareño Muwékma Ya Túnnešte Nómmo [Where the Clareño Indians are Buried] Site CA-SCL-30/H. [https://www.academia.edu/67563699/An\\_Ethnohistory\\_of\\_Santa\\_Clara\\_Valley\\_and\\_Adjacent\\_Regions\\_Historic\\_Ties\\_of\\_the\\_Muwekma\\_Ohlone\\_Tribe\\_of\\_the\\_San\\_Francisco\\_Bay\\_Area](https://www.academia.edu/67563699/An_Ethnohistory_of_Santa_Clara_Valley_and_Adjacent_Regions_Historic_Ties_of_the_Muwekma_Ohlone_Tribe_of_the_San_Francisco_Bay_Area)

According to anthropologists,<sup>33 34</sup> the Muwekma Ohlone practice the Northern Californian Kuksu religion, which involves ceremonial regalia, rites of passage, and medicine men, as well as anthropomorphic Kuksu pendants.<sup>35,36</sup> The arrival of the Spanish transformed every aspect of Native American religion and life. After the missionization of California between 1767 and 1836, about 80 percent of the indigenous population was lost due to many factors: the impacts to natural resources, living conditions in the missions that resulted in widespread disease, and the mistreatment of people forced to live there. All of this led to the average lifespan of a missionized Native American to be three years, at best.<sup>37</sup>

After California statehood, at least six Muwekma Indian rancherias, including the Alisal Rancheria, that persisted during the 19th and early 20th centuries. The Verona Band of the Alisal Rancheria is considered to be the most significant Ohlone community in the Bay Area. Overall, the rancherias were used as a place of retreat from mission life.<sup>38</sup> A religious revitalization movement referred to as the Ghost Dance spread across California in the 1870s, and at Alisal, the Ghost Dance was combined with the Kuksu religion and other rites practiced throughout the state.<sup>39</sup>

Today, the Muwekma Ohlone Tribe has undertaken efforts of reclamation to regain their tribal identity in the Bay Area as part of a cultural revitalization movement. The Muwekma are reclaiming their history, heritage, and legacy through advocating for historic preservation and educating the public about the ancestral homeland in the Greater San Francisco Bay Area.<sup>40</sup> For example, the Tribe's language

<sup>33</sup> Leventhal, Alan, Emily McDaniel, Melynda Atwood, Diane DiGiuseppe, David Grant, Colin Jaramillo, Rosemary Cambra, Charlene Nijmeh, Monica V. Arellano, Sheila Guzman-Schmidt, Gloria E. Arellano Gomez, Les Field, Dottie Galvan Lameira, Hank Alvarez, Jessica Veikune and Norma Sanchez. 2015. Final Report on the Burial and Archaeological Data Recovery Program Conducted on a Portion of Thámien Rúmmeytak [Guadalupe River Site], (CA-SCL-128/Hyatt Place Hotel) Located in Downtown San Jose, Santa Clara County, California. Report Prepared for DiNapoli Construction Hyatt Place Hotel by Muwekma Ohlone Tribe of the San Francisco Bay Area Ohlone Families Consulting Services. On file at San Jose State University and Northwest Archaeological Information Center, Sonoma State University.

<sup>34</sup> Ragland, Alisha. 2018. Resisting Erasure: The History, Heritage, and Legacy of the Muwekma Ohlone Tribe of the San Francisco Bay Area. Master's Thesis. San Jose State University.

<sup>35</sup> Leventhal, Alan, Emily McDaniel, Melynda Atwood, Diane DiGiuseppe, David Grant, Colin Jaramillo, Rosemary Cambra, Charlene Nijmeh, Monica V. Arellano, Sheila Guzman-Schmidt, Gloria E. Arellano Gomez, Les Field, Dottie Galvan Lameira, Hank Alvarez, Jessica Veikune and Norma Sanchez. 2015. Final Report on the Burial and Archaeological Data Recovery Program Conducted on a Portion of Thámien Rúmmeytak [Guadalupe River Site], (CA-SCL-128/Hyatt Place Hotel) Located in Downtown San Jose, Santa Clara County, California. Report Prepared for DiNapoli Construction Hyatt Place Hotel by Muwekma Ohlone Tribe of the San Francisco Bay Area Ohlone Families Consulting Services. On file at San Jose State University and Northwest Archaeological Information Center, Sonoma State University.

<sup>36</sup> Ragland, Alisha. 2018. Resisting Erasure: The History, Heritage, and Legacy of the Muwekma Ohlone Tribe of the San Francisco Bay Area. Master's Thesis. San Jose State University.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Leventhal, Alan, Emily McDaniel, Melynda Atwood, Diane DiGiuseppe, David Grant, Colin Jaramillo, Rosemary Cambra, Charlene Nijmeh, Monica V. Arellano, Sheila Guzman-Schmidt, Gloria E. Arellano Gomez, Les Field, Dottie Galvan Lameira, Hank Alvarez, Jessica Veikune and Norma Sanchez. 2015. Final Report on the Burial and Archaeological Data Recovery Program Conducted on a Portion of Thámien Rúmmeytak [Guadalupe River Site], (CA-SCL-128/Hyatt Place Hotel) Located in Downtown San Jose, Santa Clara County, California. Report Prepared for DiNapoli Construction Hyatt Place Hotel by Muwekma Ohlone Tribe of the San Francisco Bay Area Ohlone Families Consulting Services. On file at San Jose State University and Northwest Archaeological Information Center, Sonoma State University.

<sup>40</sup> Ragland, Alisha. 2018. Resisting Erasure: The History, Heritage, and Legacy of the Muwekma Ohlone Tribe of the San Francisco Bay Area. Master's Thesis. San Jose State University.

revitalization program began in 2004, and the language committee has been able to rename their ancestral heritage sites in the Chochoyeno, Tamien, Ramaytush, and Awáwas languages. All of this is part of the reclamation and revitalization process that is attempting to reverse the impacts of colonialism on Native American culture, language, religion, and identity.<sup>41</sup>

All of the aforementioned communities have a shared heritage that has been memorialized through oral history, ethnography, and archaeology. The description below represents a blended subset of the rich culture that has occupied the Bay Area for thousands of years. While the modern expression of traditional culture has been inhibited by Spanish occupation and the influx of Europeans, descendent communities are still recognizing, practicing, and revitalizing traditional lifeways. Variations in cultural expression exist among and between the eight language groups composing the ethnographic Ohlone; however, some general patterns have been recognized by anthropologists, and additional details have been provided by the Tamien Nation<sup>42</sup>, as follows.

Traditional households are generally large, consisting of approximately 15 individuals from multiple generations. Groups of households form larger districts that share a common language as well as adjacent resource gathering and processing locations. Ethnographic studies have documented approximately 40 such districts, with each one consisting of 200 to 250 people.<sup>43</sup> Those who occupied the modern-day Menlo Park, Mountain View, and Palo Alto were most likely associated with the Puichon district. Trade routes, including a prominent one for the Tamien along Pacheco Pass, allowed trade with the Chowchilla.<sup>44</sup>

The traditional villages and temporary campsites within the Menlo Park area were located near sources of fresh water adjacent to the marshlands that once bordered the San Francisco Bay. Fish were caught using A-frame nets, while clams, abalone, and kelp were harvested along the shorelines.<sup>45</sup> Acorns were knocked from trees with poles, then leached to remove bitter tannins before being eaten as mush or turned into bread. Other plant resources for subsistence included mushrooms, dandelion, hog weed, watercress, toyon berries, goose berries, Manzanita berries, elderberries, strawberries, buckeye, California laurel, wild carrots, wild grapes, wild onion, cattail, amole, clover, and chuchupate. Game animals included antelope, black-tailed deer, Roosevelt elk, and marine mammals as well as waterfowl, fish, mollusks, skunk, rabbit, raccoon, squirrel, and dog. Hunting was often followed by slitting the animal's eyes and placing meat in its ears and nostrils as a sign of good luck; this was also done so that the animal would not see, hear, or smell the hunters.<sup>46</sup>

Not only have the Bay Area's natural resources provided sustenance for thousands of years, they have also been a source of raw material for clothing, shelter, medicine, cordage, twined basketry, tools, and boats.<sup>47</sup> Contemporary cultures have been restricted from hunting and gathering on their traditional lands by laws

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<sup>41</sup> Ibid.

<sup>42</sup> ECORP Consulting. September 6, 2022—personal communication between Lisa Westwood and Tamien Nation representatives Quirina Geary, Lillian Luna, Clara Luna, Susana Mesa, Susie Q. Arias, Vidal E. Luna, and Theodore "Mike" Bonillas, Sr.

<sup>43</sup> Kroeber, A.L. 1955. Nature of the Land-Holding Group. In *Ethnohistory* 2:303-314.

<sup>44</sup> ECORP Consulting. September 6, 2022—personal communication between Lisa Westwood and Tamien Nation representatives Quirina Geary, Lillian Luna, Clara Luna, Susana Mesa, Susie Q. Arias, Vidal E. Luna, and Theodore "Mike" Bonillas, Sr.; Tamien Nation. 2022. *Tribal Territories*. Available: <https://www.tamien.org/tribal-territories>. Accessed: June 23, 2022.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Levy, R. 1978. Costanoan. In *Handbook of North American Indians*, Chapter 8, California, pp. 491-493.



and regulations related to now-private property and wildlife protection, leading to either trespassing or abandonment of the activity.<sup>48</sup>

Traditional medicines included the use of black-widow spider webs to close wounds and ground abalone shell or acorns to heal them without scars. Spearmint or castor oil was used to remedy an upset stomach, and a mixture of powdered hot mustard and lard was applied to the forehead to break a fever. Sore throats were treated with tea and flax seed.<sup>49</sup> As with all cultures, the adaptation of traditional lifeways, using more modern materials, allows for a continuation of cultural practices by contemporary people.

Among traditional practices was the creation and maintenance of shell mounds. According to contemporary Tamien experts, uneaten food (especially ceremonial food) was never discarded. It was placed onto a mound behind each residence, which, over time, led to the formation of midden soil.<sup>50</sup> Based on archaeological evidence alone, between 2,500 and 1,000 years ago, many of the bay shore midden sites grew into mounds. These were used until the Spanish arrived and legal or physical access to the sites was prevented. These midden mounds are often associated with villages and burials. Flexed burials, with the occasional cremation, were the main interment custom during this time period.<sup>51</sup> Approximately 1,500 years ago, a shift in village and burial practices occurred as burials were placed away from the main village site. There were more frequent seasonal shifts between villages during this time, as well.<sup>52</sup>

Midden mounds have been used for religious ceremonies, some of which are tied to creation stories. According to the Tamien Nation, “our sacred sites are vital spaces for Tamien people. Like our baskets, they are an interweaving of our land, stories, culture, religion, language, and overall identity that ties us to thousands of years of being.”<sup>53</sup> History, religion, and traditional ecological knowledge, among other aspects of culture, are passed from generation to generation through oral histories.

Oral histories throughout west-central California regarding the nature and creation of the universe share a common overarching theme.<sup>54</sup> They relay how modern events and places in nature occurred through the actions of a prehuman race of supernatural beings from a former mythological age. The specific narratives state that each group is linked to its local landscape, which served as a charter, establishing that group’s origins and provided them with rights of ownership to their particular territory. Other stories

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<sup>48</sup> ECORP Consulting. September 6, 2022—personal communication between Lisa Westwood and Tamien Nation representatives Quirina Geary, Lillian Luna, Clara Luna, Susana Mesa, Susie Q. Arias, Vidal E. Luna, and Theodore “Mike” Bonillas, Sr.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Fredrickson, David A. 1973. *Early Cultures of the North Coast of the North Coast Ranges, California*. Ph.D. dissertation, Department of Anthropology, University of California, Davis.

<sup>52</sup> Bennyhoff, James A. 1994. Variation within the Meganos Culture. In *Toward a New Taxonomic Framework for Central California Archaeology*, Richard Hughes (ed.), pp. 81–89. Contributions of University of California Archaeological Research Facility No. 52. Berkeley, CA.

<sup>53</sup> Tamien Nation. 2022. *Sacred and Cultural Landscapes*. Available: <https://www.tamien.org/cultural-resources>. Accessed: July 18, 2022.

<sup>54</sup> Barrett, Samuel. 1933. Pomo Myths. In *Bulletin of the Public Museum of the City of Milwaukee*, Volume 15, pp. 466–482. Milwaukee, WI; Gayton, Anna H. 1935. Areal Affiliations of California Folktales. In *American Anthropologist* 37(4):588–591; Milliken, Randall T., Laurence H. Shoup, and Beverly R. Ortiz. 2009. *Ohlone/Costanoan Indians of the San Francisco Peninsula and their Neighbors, Yesterday and Today*. Prepared for National Park Service Golden Gate National Recreation Area, San Francisco, CA. On file at California State University, Monterey Bay.

discuss how flooding or wildfires were a consequence of rule-breaking or greed.<sup>55</sup> For the Tamien, Mt. Umunhum (Dove Mountain) is the physical foundation of their oral narrative of the Great Flood. It is considered the Tamien Nation's most sacred landscape.<sup>56</sup>

One of the traditions of public ritual activity within native California identified by Kroeber (1925) is the "secret society and Kuksu dances" practiced from north-central California south to the Salinan language territory (Salinas Valley), including the San Francisco Bay Penutian-speaking Ohlone.<sup>57</sup> This set of dances covers several well-described ceremonial dance traditions, including the northern Ohlone/Costanoan group at Mission San José (variations include the Kuksi among the Tamien).<sup>58</sup> However, it is not known if these dances occurred prior to the Mission period.<sup>59</sup> The Kusku worshipers are the only ones in California who developed a fair number of distinctive disguises and paraphernalia to impersonate spirits and mythic characters. This feature likely evolved within the region as there are no examples in the southwestern or northern Pacific coast areas.<sup>60</sup> Archaeologically, the use of Kuksu "Big Head" (or "N series") abalone shell effigy pendants first appeared around 1,000 years ago and suggests inclusion in the greater ceremonial interaction sphere of the Kuksu religion.<sup>61</sup>

Accounts from the Tamien Nation, and specifically from Josefa Velasquez (b. 1833), are that Kuksui had a large headdress of condor wingtip feathers. The dance was performed in Santa Cruz County near Watsonville, where large headed abalone pendants were found. It is unknown, however, if the pendants are directly associated with Kuksui. According to Tamien Nation Chairwoman Geary, to the Tamien, "Kuksui is a deity, dance, and healing ceremony and does not umbrella over other ceremonies. Each ceremony and dance is separate and can be performed independently. The Kuksui, Kilaki, Sunwele, Tura, Lolei koimei etc. are different ceremonies often erroneously grouped under Kuksui... Kuksui is a deity

<sup>55</sup> Barrett, Samuel. 1933. Pomo Myths. In *Bulletin of the Public Museum of the City of Milwaukee*; Gayton, Anna H. 1935. Areal Affiliations of California Folktales. In *American Anthropologist* 37(4), pp. 582–599; Kelly, Isabel. 1978. Coast Miwok. In *Handbook of North American Indians*, Chapter 8, California. Robert F. Heizer (ed.), pp. 414–425. Smithsonian Institution, Washington, D.C.; Merriam, C. Hart. 1910. *The Dawn of the World: Myths and Weird Tales Told by the Mewan Indians of California*. Arthur H. Clark (ed.), Cleveland, OH; Radin, Paul. 1924. Wappo Texts: First Series. In *University of California Publications in American Archaeology and Ethnology* 19(1):1–147, Berkeley, CA.

<sup>56</sup> Tamien Nation. 2022. *Sacred and Cultural Landscapes*.

<sup>57</sup> Arellano, Monica V., Alan Leventhal, Sheila Guzman-Schmidt, Gloria E. Arellano Gomez, and Charlene Nijmeh. 2021. *An Ethnohistory of Santa Clara Valley and Adjacent Regions*; Milliken, Randall T., Laurence H. Shoup, and Beverly R. Ortiz. 2009. *Ohlone/Costanoan Indians of the San Francisco Peninsula and their Neighbors, Yesterday and Today*, pp. 69 and 70; Kroeber, A.L. 1925. *Handbook of the Indians of California*. Bureau of American Ethnology. Bulletin 78, Washington, pp. 855–859.

<sup>58</sup> Harrington, John P. 1942. Culture Element Distributions: XIX, Central California Coast. In *Anthropological Records* Volume 7, No. 1, University of California Press, Berkeley, CA.

<sup>59</sup> Milliken, Randall T. 1995. *A Time of Little Choice: The Disintegration of Tribal Culture in the San Francisco Bay Region, 1769–1810*. Ballena Press, Menlo Park, CA.

<sup>60</sup> Milliken, Randall T., Laurence H. Shoup, and Beverly R. Ortiz. 2009. *Ohlone/Costanoan Indians of the San Francisco Peninsula and their Neighbors, Yesterday and Today*, p. 69; Kroeber A. L. 1922. Elements of Culture in Native California. In *American Archaeology and Ethnology*. Volume 13, No. 8, pp. 259–328. University of California Press, Berkeley, CA, p.305.

<sup>61</sup> Arellano, Monica V., Alan Leventhal, Sheila Guzman-Schmidt, Gloria E. Arellano Gomez, and Charlene Nijmeh. 2021. *An Ethnohistory of Santa Clara Valley and Adjacent Regions*; Leventhal, Alan. 1993. *A Reinterpretation of Some Bay Area Shellmound Sites: A View from the Mortuary Complex at CA-ALA-329, the Ryan Mound*. Unpublished master's thesis, Department of Social Sciences, San José State University; Kroeber, A.L. 1925. *Handbook of the Indians of California*. Bureau of American Ethnology. Bulletin 78, Washington.

with both physical and spiritual forms. He also performs healing rituals. He can even bring a person back to life.”

Based on Late-period mortuary sites, including CA-SCL-128, the Thámien Rúmmeytak site in downtown San José, the Santa Clara Valley Ohlone tribal groups likely performed world renewal dance ceremonies and paid great attention to funerary and morning rituals.<sup>62</sup> CA-SCL-128 contains more than 100 ancestral burials and represents a large ancient burial ground. Dancing enabled the participants to open doors between the conscious world and travel to an ongoing supernatural world where the creators resided and enacted mythic dramas. The regalia worn by dancers imbued them with the power of the rituals. Certain natural locations, such as rock formations and springs, were marked nodal points that acted as shrines, areas where ritual performances were particularly effective.<sup>63</sup> The placement of offerings and sharing of food among families at a time of mourning continues to be a common practice among descendent communities, albeit modified and adapted to today’s circumstances.<sup>64</sup>

The village Siputca from the Contact period is approximately two miles southeast of the Project Site. This village is within Puichon territory, along lower San Francisquito Creek and near San Francisco Bay.<sup>65</sup> This is likely one of the larger villages that early explorers visited, with 250 inhabitants at San Francisquito Creek.<sup>66</sup>

The arrival of Spanish missionaries and, later, Europeans in general was culturally and otherwise disastrous for traditional Ohlone communities. Seven Spanish missions were founded in Ohlone territory alone between 1776 and 1797. While living within the mission system, the Ohlone commingled with other groups, including the Yokuts, Miwok, and Patwin. Members of the Puichon tribelet went to Mission San Francisco between 1781 and 1794 and Mission Santa Clara from 1781 to as late as 1805.

Mission life was devastating to the tribal population.<sup>67</sup> When the first mission was established in the region in 1776, the Ohlone population (inclusive of all eight language groups) was estimated to be 10,000. By 1832, they numbered less than 2,000 as a result of introduced disease, harsh living conditions, and reduced birth

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<sup>62</sup> Leventhal, Alan, Rosemary Cambra, Monica Arellano, and Emily McDaniel. 2015. *Final Report on the Burial and Archaeological Data Recovery Program Conducted on a Portion of Thámien Rúmmeytak [Guadalupe River Site], (CA-SCL-128/Hyatta Place Hotel) Located in Downtown San Jose, Santa Clara County, California*. Unpublished paper. San José State University.

<sup>63</sup> Bean, L.J. 1975. Power and Its Applications in Native California. In *Journal of California Anthropology* 2(1):25–33; Bean, Lowell J., and Sylvia B. Vane. 1978. Cults and Their Transformations. In *Handbook of North American Indians*, pp 37–57, Chapter 8, California, Robert F. Heizer (ed.), Smithsonian Institution, Washington D.C.; Arellano, Monica V., Alan Leventhal, Sheila Guzman-Schmidt, Gloria E. Arellano Gomez, and Charlene Nijmeh. 2021. *An Ethnohistory of Santa Clara Valley and Adjacent Regions*.

<sup>64</sup> ECORP Consulting. September 6, 2022—personal communication between Lisa Westwood and Tamien Nation representatives Quirina Geary, Lillian Luna, Clara Luna, Susana Mesa, Susie Q. Arias, Vidal E. Luna, and Theodore “Mike” Bonillas, Sr.

<sup>65</sup> Bocek, Barbara. 1992. Subsistence, Settlement, and Tribelet Territories on the Eastern San Francisco Peninsula. In *Proceedings of the Society for California Archaeology* 5; Milliken, Randall T. 1983. *The Spatial Organization of Human Populations on Central California’s San Francisco Peninsula at the Spanish Arrival*. Unpublished master’s thesis, Department of Anthropology, Sonoma State University, Rohnert Park, CA.

<sup>66</sup> Font [1776] in Bolton, Herbert E. (ed.). 1930. *Anza’s California Expeditions*. Berkeley, CA: University of California Press; Milliken, Randall T., Laurence H. Shoup, and Beverly R. Ortiz. 2009. *Ohlone/Costanoan Indians of the San Francisco Peninsula and Their Neighbors*, p. 67; Crespí [1769] in Stanger, Frank M., and Alan K. Brown. 1969. *Who Discovered the Golden Gate?* San Mateo County Historical Association, San Mateo, CA.

<sup>67</sup> Milliken, Randall T. 1995. *A Time of Little Choice: The Disintegration of Tribal Culture in the San Francisco Bay Region, 1769–1810*. Ballena Press, Menlo Park, CA.

rates.<sup>68</sup> The Mexican government began to earnestly secularize the mission lands in 1834 and divide the former mission land among loyal Mexican subjects. Those who opted to remain in their ancestral territory were branded as squatters. Others fled in the interest of survival. As one example, the Tamien were forced to relocate to Madera, Hollister, Gilroy, Los Banos, and San José. Because ceremonies and lifeways are dependent on the traditional spatial organization and proximity of households, as well as the reliance on the family as the sole support system, it has been difficult for many dispersed contemporary groups to maintain their cultural identity and language.<sup>69</sup>

Mission life also forced Catholic baptism upon Native Americans, who were prohibited (either directly or indirectly, in the interest of survival) from practicing traditional religion. The Tamien, for example, could no longer practice roundhouse religion, and ceremonies had to be moved to other, less appropriate locations.<sup>70</sup>

Formal recognition, assertion, and self-determination began to move to the forefront during the early 20<sup>th</sup> century. This movement was enforced by legal suits brought by the Indians of California against the United States government (1928–1964) for reparation due to them for the loss of traditional lands. Tribally led political advocacy groups brought attention to the community and resulted in a re-evaluation of Native American rights.<sup>71</sup>

## Tribal Cultural Resources

CEQA defines a tribal cultural resource as a site, feature, place, cultural landscape, sacred place, or object with cultural value to a California Native American tribe that is either included in or determined eligible for inclusion in the CRHR or a qualifying local historical register or determined by the lead agency to be significant pursuant to the criteria for listing in the CRHR, based on substantial evidence (Public Resources Code Section 20174[a]). A cultural landscape that meets this definition is a tribal cultural resource to the extent that the landscape is geographically defined in terms of size and scope (Section 20174[b]). A historical resource or archeological resource that meets this definition may also be a tribal cultural resource (Section 20174[c]).

Information about tribal cultural resources under AB 52 and tribal cultural places under SB 18 was drawn from multiple sources, including the tribal consultation, as summarized below; record searches and literature reviews with the California Historical Resources Information System (CHRIS); a review of existing ethnographic information; interviews with Tamien tribal experts;<sup>72</sup> an ethnographic

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<sup>68</sup> Cook, S.F. 1943. *The Conflict between the California Indians and White Civilization, I: The Indian Versus the Spanish Mission*. In *Ibero-Americana* 21. Berkeley, CA.; Cook, S.F. 1943. *The Conflict between the California Indians and White Civilization, II: The Physical and Demographic Reaction of the Non-Mission Indians in Colonial and Provincial California*. In *Ibero-Americana* 22. Berkeley, CA; Levy, R. 1978. Costanoan. In *Handbook of North American Indians*, Chapter 8, California, p. 486.

<sup>69</sup> ECORP Consulting. September 6, 2022—personal communication between Lisa Westwood and Tamien Nation representatives Quirina Geary, Lillian Luna, Clara Luna, Susana Mesa, Susie Q. Arias, Vidal E. Luna, and Theodore “Mike” Bonillas, Sr.

<sup>70</sup> Ibid.

<sup>71</sup> Bean, L.J. 1994. *The Ohlone Past and Present: Native Americans of the San Francisco Bay Region*. Ballena Press, Menlo Park, CA.

<sup>72</sup> ECORP Consulting. September 6, 2022—personal communication between Lisa Westwood and Tamien Nation representatives Quirina Geary, Lillian Luna, Clara Luna, Susana Mesa, Susie Q. Arias, Vidal E. Luna, and Theodore “Mike” Bonillas, Sr.

overview;<sup>73</sup> and a cultural resources study (Basin 2022) that included an analysis to determine if the potential for buried sites exists (refer to Section 3.8, *Cultural Resources*).

Basin Research Associates (2022)<sup>74</sup> included archival record searches and literature reviews conducted at the Northwest Information Center (NWIC); Bancroft Library at the University of California, Berkeley; and Basin Research Associates, San Leandro. The review identified one previously recorded multi-component (historic and pre-European contact) archaeological resource within the Project area: CA-SMA-160/H (P-41- 000160), also referred to as the Hiller Mound.<sup>75</sup> The Tamien have identified this site as the potential village site of Puichon, although linguistic research is ongoing by language experts to confirm the traditional name, which has long since been lost because of forced dispersals and the resulting loss of culture.<sup>76</sup> The historic (non-Native American) component of CA-SMA-160/H consists of the remains of the Carnduff farm, which was established in 1865.

The pre-contact (Native American) archeological component of the Hiller Mound has several parts. The central portion, consisting of approximately 1.77 acres, is the most archaeologically intact portion of the archeological site. It is referred to herein as the Core. According to Basin, the Core has been studied over the past 40 years by various researchers and determined to be the center of prehistoric occupation. Discoveries encountered during construction-related ground disturbance in 2012 and 2017 were overseen by the Native American Heritage Commission– (NAHC-) appointed Most Likely Descendant (MLD). The NAHC-appointed MLD was a member of the Amah Mutsun Band of Mission San Juan Bautista.

According to Basin (2022), the alluvial midden present around the perimeter of the Core area reflects erosion and slope wash displacement of cultural sediment from the former low-elevation mound or the midden that was displaced from the leveling of the Core that predated the existing development. According to Basin, this perimeter, which consists of approximately 5.26 acres (excluding the Core), is not in its original context; it is referred to herein as the Perimeter. The Core and Perimeter collectively form the recorded site, CA-SMA-160/H, referred to herein as the Hiller Mound.

According to Basin (2022:25), the archival review and analysis, coupled with an enhanced archaeological identification program involving subsurface probing (see Chapter 3.8, *Cultural Resources*), support a determination that the Hiller Mound is eligible for the CRHR under Criterion 1 for its importance to the Ohlone people because of Native American burials and Criterion 4 for its potential to yield information important in prehistory and history because of the presence of intact subsurface cultural deposits.

The importance of the entire Hiller Mound to the descendant communities was expressed to the City during tribal consultation under AB 52. In letters to the City on May 22 and August 5, 2022, the Tamien Nation asserted that the site is sacred to the tribe and that members of the tribe use the natural setting of the Hiller Mound to conduct ongoing tribal cultural practices. In several meetings with the Tamien Nation,

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<sup>73</sup> ECORP Consulting. 2022. *Confidential Tribal Consultation Summary for Assembly Bill 52 and Senate Bill 18 for the Willow Village Project*.

<sup>74</sup> Basin Research Associates, Inc. 2019 (revised 2022). *Cultural Resources Assessment Report*. Meta Willow Campus Project, City of Menlo Park, San Mateo County, CA. Prepared for Pacific Innovation Partners, LLC.

<sup>75</sup> During consultation with the Tamien Nation, the City learned that the Tamien Nation is considering other names for the Hiller Mound. As of publication of the EIR, the Tamien Nation has not communicated with the City and provided a preferred name for the resource. Therefore, in the EIR, the resource is still referred to as the Hiller Mound.

<sup>76</sup> ECORP Consulting. September 6, 2022—personal communication between Lisa Westwood and Tamien Nation representatives Quirina Geary, Lillian Luna, Clara Luna, Susana Mesa, Susie Q. Arias, Vidal E. Luna, and Theodore “Mike” Bonillas, Sr.

and the May 22 and August 5 correspondence, representatives of the tribe stated that the mound site is a tribal cultural landscape. According to the National Park Service's *Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties*, a cultural landscape is recognized as a geographic area that includes both cultural and natural resources and exhibits cultural values. An ethnographic landscape is a type of cultural landscape that can range from contemporary settlements to religious sacred sites or geological landforms that exhibit importance to the culture. The Tamien Nation recognizes the various mounds across the Bay Area region as an ethnographic landscape. In addition, in its manuscript submitted to the City,<sup>77</sup> the Muwekma Ohlone Indian Tribe documented its cultural affiliation with the Hiller Mound and cited it as a tribal cultural resource. Therefore, the entire site, including the Core, Perimeter, and an associated zone referred to as an area of *High Sensitivity*, is a tribal cultural resource for the purposes of CEQA and a tribal cultural place under SB 18.

### **Assembly Bill 52 and Senate Bill 18 Consultation**

CEQA, as amended in 2014 by Assembly Bill 52, requires that the City to consult with any California Native American tribe that is traditionally and culturally affiliated with the geographic area of a proposed project if the California Native American tribe has requested notice of projects in the area traditionally and culturally affiliated with the tribe and responded to the notice within 30 days of receipt with a request for consultation (Public Resources Code Section 20180.3.1). CEQA defines California Native American tribes as "a Native American tribe located in California that is on the contact list maintained by the California Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004" (Section 20173.) This includes both federally and non-federally recognized tribes.

SB 18 requires cities, prior to the adoption of any general plan amendment, to conduct consultations with Native American tribes that are on the lists maintained by the NAHC for the purpose of preserving or mitigating impacts on places, features, and objects described in Public Resources Code Section 5097.9 (Native American sanctified cemeteries, places of worship, religious or ceremonial sites, or sacred shrines located on public property) or Section 5097.993 (Native American historic, cultural, or sacred sites listed or eligible for listing in the CRHR, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site, any inscriptions made by Native Americans at such a site, any archaeological or historic Native American rock art, or any archaeological or historic feature of a Native American historic, cultural, or sacred site) (California Government Code Section 65352.3).

The City's AB 52 and SB 18 consultation for the Proposed Project initially included the following tribes that were included on the NAHC's list of tribes:

- Amah Mutsun Tribal Band;
- Costanoan Rumsen Carmel Tribe;
- Indian Canyon Mutsun Band of Costanoan;
- Muwekma Ohlone Indian Tribe of the San Francisco Bay Area; and
- Ohlone Indian Tribe.

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<sup>77</sup> Arellano, Monica V., Alan Leventhal, Sheila Guzman-Schmidt, Gloria E. Arellano Gomez, and Charlene Nijmeh. Draft: An Ethnohistory of the Menlo Park, Mid-San Francisco Peninsula, Santa Clara Valley and Adjacent Regions; Historic Ties of the Muwekma Ohlone Tribe of the San Francisco Bay Area and Tribal Input on the Proposed Willow Village Project and its Potential Impact on Ancestral Heritage Site CA-SMA-160/H (P-41-000160): The Hiller Mound. Manuscript submitted to the City of Menlo Park, October 26, 2022.

The City contacted seven individuals who represent the five local California Native American tribes above. Letters with Project details, a map, and a request for consultation were sent on December 21, 2020. The letters solicited responses from each contact, including questions, comments, or concerns regarding the Proposed Project. The statutory response window under AB 52 closed on January 22, 2021, and under SB 18 on March 23, 2021. Consulting tribes were required to respond to the City within those timeframes.

The City did not receive a response from the Costanoan Rumsen Carmel Tribe, the Indian Canyon Mutsun Band of Costanoan, or the Ohlone Indian Tribe. Therefore, no tribal consultation was carried out with the tribes, and none was required.

The City received requests for consultation from the Amah Mutsun Tribal Band and Muwekma Ohlone Indian Tribe of the San Francisco Bay Area in response to the initial notices. The Project proponent received correspondence from the Ramaytush Ohlone following publication of the draft EIR.

In July 2021, because the Project description had changed to include the proposed Willow Road Tunnel, the City requested an updated AB 52 and SB 18 consultation list from the NAHC. On July 23, 2021, the City received a tribal consultation list. The list included the five tribes noted above plus two additional tribes:

- Wuksache Indian Tribe/Eshom Valley Band; and
- Tamien Nation.

The City mailed letters on September 9, 2021, to the additional tribal contacts who were identified by the NAHC, notifying them of their opportunity to consult for the Proposed Project and identify potential impacts on tribal cultural resources and proposed mitigation measures. The statutory response window under AB 52 closed on October 9, 2021, and under SB 18 on December 8, 2021. Consulting tribes were required to respond to the City within those timeframes.

The City did not receive a response from the Wuksache Indian Tribe/Eshom Valley Band. Therefore, no tribal consultation was carried out with the tribe, and none was required.

The City received requests for consultation from the Tamien Nation.

A summary of the consultation that occurred with the Amah Mutsun Tribal Band, Muwekma Ohlone Tribe, and Tamien Nation follows.

### **Amah Mutsun Tribal Band**

On December 16, 2021, the City received a response from the Amah Mutsun Tribal Band with an undated formal letter requesting consultation under AB 52. Although this response did not occur within the 30-day statutory timeframe for AB 52, the City considered the request and carried out consultation. A summary of the consultation follows.

- January 13, 2022: The City confirmed receipt of the request and requested an introductory meeting to begin the consultation process.
- January 27, 2022: The City sent a follow-up email to the tribe.
- February 28, 2022: The City sent a follow-up email to the tribe.
- March 3, 2022: City planning personnel reached out by email to confirm that the City would send draft mitigation measures for the Proposed Project to the Amah Mutsun Tribal Band in the near future and set up a consultation meeting with the City and the applicant team.

- March 9, 2022: City planning personnel, the applicant, and the Amah Mutsun Tribal Band met to discuss the Proposed Project and recommended draft mitigation measures.
- March 17, 2022: The City sent draft mitigation measures to the Amah Mutsun Tribal Band for review and comment.
- April 1, 2022: The City sent three exhibits from the cultural resources report identifying the known cultural and tribal resources in the Project area.
- June 23, 2022: The City received a letter from the Amah Mutsun Tribal Band dated June 1, stating that the tribe was first designated Most Likely Descendant of discovered human remains by the Native American Heritage Commission in 2015, and that the tribe has been engaged in consultation for many years on this project. The letter also expressed support of the project and the DEIR, including the mitigation measures proposed therein.
- August 17, 2022: City planning personnel sent a revised draft ethnographic context for the Proposed Project<sup>78</sup> to the tribe for its review and input and requested a response by September 1, 2022.
- October 16, 2022: Chairwoman Irenne Zwierlein sent a letter to the City, commenting that the ethnographic section was unfairly emphasizing information provided by the Tamien Nation.
- October 19 and 20, 2022: At the request of the City, ECORP contacted the Chairwoman and Michelle Zimmer by email, phone, and text to request an opportunity to discuss any additional information the tribe wished to contribute to the ethnographic section.
- October 25, 2022: Tribal Trustee Wayne Pierce contacted ECORP at the request of Chairwoman Zwierlein, and a phone meeting was scheduled for the next day.
- October 26, 2022: ECORP and Wayne Pierce met by phone to discuss the project. Mr. Pierce indicated he would speak with Michelle Zimmer and then relay any information.
- October 28, 2022: Wayne Pierce indicated that “The Amah Mutsun Tribal Band of the Mission San Juan Bautista (the “Tribe”) have no direct ties to the subject property in Menlo Park. The Tribe appreciates your efforts to give it the opportunity to make comments.”<sup>79</sup>

Although the tribe did not provide specific information about tribal cultural resources, the previous discovery of human remains, for which the tribe was named MLD, is being treated as a tribal cultural resource for the purpose of CEQA. Therefore, pursuant to Public Resources Code Sections 21080.3.2(b)(1) and 21082.3(d)(1), the City concluded consultation under AB 52 in agreement with the Amah Mutsun Tribal Band. Similarly, pursuant to the 2005 Supplement to the General Plan Guidelines, the City concluded consultation under SB 18 in agreement with the tribe. In accordance with Government Code Sections 65352(a)(11) and 65092, the tribe will be provided referral notices 45 days and 10 days prior to the public hearing, and any further comments will be taken into consideration. The thresholds for certification of the EIR and amendment of the general plan have been met. The City will continue to engage with the tribe as part of implementing the approved mitigation measures.

<sup>78</sup> ECORP. 2022. *Revised Draft Ethnographic Context Statement for the Willow Village Project*. Unpublished manuscript on file with City of Menlo Park.

<sup>79</sup> Personal communication: Email from Wayne Pierce, Amah Mutsun Tribal Band to Lisa Westwood, ECORP, October 28, 2022.



## Muwekma Ohlone Indian Tribe

On December 8, 2021, the City received an email request for consultation under AB 52 from the Muwekma Ohlone Indian Tribe that included a formal letter (dated November 15, 2021); an ethnographic history of the tribe titled *Ethnohistory, Historic Ties, and Tribal Stewardship of Sunol/Pleasanton, Santa Clara Valley, and Adjacent Areas*; a report prepared for the Ronald McDonald House in Palo Alto; a court order regarding the Muwekma Ohlone Indian Tribe's federal status; various letters of support for federal recognition; and court documents. A summary of consultation follows.

- January 13, 2022: The City confirmed receipt of the request and requested an introductory meeting to begin the consultation process.
- January 24, 2022: The City and the Muwekma Ohlone Indian Tribe held an introductory meeting.
- February 7, 2022: City planning personnel reached out to the Muwekma Ohlone Indian Tribe to schedule a second consultation meeting with the City, applicant team, and City's environmental consultant (ICF).
- February 18–March 11, 2022: City planning personnel reached out to the Muwekma Ohlone Indian Tribe on several more occasions by email, phone, and certified mail to schedule a second consultation meeting.
- March 14, 2022: The Muwekma Ohlone Indian Tribe contacted the City to schedule a consultation meeting.
- March 16, 2022: City personnel and the applicant team met with the Muwekma Ohlone Indian Tribe to discuss the Proposed Project and recommended draft mitigation measures.
- March 17, 2022: The City sent draft mitigation measures to the Muwekma Ohlone Indian Tribe for review and comment.
- April 1, 2022: The City sent three exhibits from the cultural resources report identifying the known cultural and tribal resources in the Project area.
- June 21, 2022: The City received a letter from the tribe, expressing support for the mitigation measures proposed in the DEIR. No information about tribal cultural resources was provided to the City.
- August 17, 2022: City planning personnel sent a revised draft ethnographic context for the Proposed Project <sup>80</sup> to the tribe for its review and input and requested a response by September 1, 2022.
- October 19 and 20, 2022: At the request of the City, ECORP contacted the Vice Chairwoman Arellano by email, phone, and text to request an opportunity to discuss any additional information the tribe wished to contribute to the ethnographic section.
- October 26, 2022: Vice Chairwoman Arellano contacted ECORP and recommended that ECORP contact Tribal Ethnohistorian Alan Leventhal. ECORP and Mr. Leventhal met by phone on the same day, and followed up with the tribe's contribution. <sup>81</sup> The document provides the tribe's

<sup>80</sup> ECORP. 2022. Revised Draft Ethnographic Context Statement.

<sup>81</sup> Arellano, Monica V., Alan Leventhal, Sheila Guzman-Schmidt, Gloria E. Arellano Gomez, and Charlene Nijmeh. Draft: An Ethnohistory of the Menlo Park, Mid-San Francisco Peninsula, Santa Clara Valley and Adjacent Regions; Historic Ties of the Muwekma Ohlone Tribe of the San Francisco Bay Area and Tribal Input on the

history with respect to the Project Area vicinity and the Hiller Mound, and cites the Hiller Mound as a tribal cultural resource.

Therefore, pursuant to Public Resources Code Sections 21080.3.2(b)(1) and 21082.3(d)(1), the City concluded consultation under AB 52 in agreement with the Muwekma Ohlone Indian Tribe. Similarly, pursuant to the 2005 Supplement to the General Plan Guidelines, the City concluded consultation under SB 18 in agreement with the tribe. In accordance with Government Code Sections 65352(a)(11) and 65092, the tribe will be provided referral notices 45 days and 10 days prior to the public hearing, and any further comments will be taken into consideration. The thresholds for certification of the EIR and amendment of the general plan have been met. The City will continue to engage with the tribe as part of implementing the approved mitigation measures.

## **Tamien Nation**

On October 16, 2021, the City received a response from the Tamien Nation, requesting consultation. The City confirmed receipt of the request on October 18, 2021, and committed to scheduling a consultation meeting. City planning staff met with Tamien Nation Chairwoman Geary on December 3, 2021. Subsequently, the City and Tamien Nation met and exchanged information on numerous occasions, as summarized below.

- December 8, 2021: As part of a separate planning matter unrelated to this Project, Chairwoman Geary informed the City of the presence of a tribal cultural resource in the Project area and expressed concerns about reburials.
- February 15, 2022: The City and applicant met with the Tamien Nation to discuss the Draft EIR analysis and potential mitigation measures.
- March 17, 2022: The City sent draft mitigation measures to the Tamien Nation for review and comment.
- March 19, 2022: The Tamien Nation replied with a request for the CHRIS reports and biological resources mitigation measures.
- March 22, 2022: The City provided the biological resources mitigation measures and informed the Tamien Nation that the City would not be able to provide the CHRIS reports because of confidentiality issues.
- March 24, 2022: The Tamien Nation requested a meeting with the City and the Project archaeologist (Basin) to discuss the mitigation measures for the Proposed Project and asked for a map with Project details, including human burials and other known tribal cultural resources.
- March 31, 2022: The City, ICF, the applicant, and Basin met with the Tamien Nation. The meeting included a discussion of mitigation measures and resulted in agreement to revise the tribal cultural resources mitigation measures to include cultural and tribal sensitivity training for construction workers, requiring that the archeological monitoring plan be developed in consultation with the consulting tribes. During the meeting, the Tamien Nation requested a map of the tribal cultural resource.
- April 1, 2022: The City sent three exhibits from the cultural resources report identifying the known cultural and tribal resources in the Project area.

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- April 4, 2022: The City contacted the Tamien Nation to confirm whether or not the Tamien Nation had any additional feedback on the draft mitigation measures.
- April 8, 2022: The Tamien Nation replied to the City, stating that it had no further comments on the mitigation measures at that time. Chairwoman Geary stated that the Tamien Nation would continue to consult with the City on the Proposed Project and that the City could move forward with the Draft EIR release but that further consultation would continue and need to be concluded before the Final EIR. The chairwoman stated that “we do not foresee any major recommendations with the [mitigation measures], we just have an internal review process we are working on.”
- May 23, 2022: The City received a formal Draft EIR comment letter from the Tamien Nation that expressed concern about environmental impacts and the inadequacy of mitigation measures, the adequacy of the analysis of cumulative impacts, and the need for repatriation to the Tamien Nation.
- June 30, 2022: The City, applicant team, ICF, and legal counsel met with the Tamien Nation. The tribe provided an overview of the Tamien Nation and their connection to the Project area and the tribal cultural resource present therein. The meeting included a discussion of the Draft EIR comment letter, concerns with the Project’s impacts on tribal cultural resources, and potential options for addressing those impacts.
- July 2, 2022: The City sent the cultural resources report to the Tamien Nation.
- August 5, 2022: The City received another letter from the Tamien Nation, documenting the oral testimony from tribal cultural practitioners as substantial evidence and stating that there is a tribal cultural resource present in the Project area, the Tamien Nation uses the tribal cultural landscape that includes the Project area to this day, and asserting that the tribal cultural resource is a sacred site and avoidance is the preferred option.
- October 24, 2022. After numerous meetings and discussions, the Tamien Nation sent a letter to the City stating that the City and proponent responded to the tribes concerns, thanked the City and proponent and withdrew any previous objections to the project.<sup>82</sup>

Pursuant to Public Resources Code Sections 21080.3.2(b)(1) and 21082.3(d)(1), the City concluded consultation under AB 52 in agreement with the Tamien Nation. Similarly, pursuant to the 2005 Supplement to the General Plan Guidelines, the City concluded consultation under SB 18 in agreement with the tribe. In accordance with Government Code Sections 65352(a)(11) and 65092, the tribe will be provided referral notices 45 days and 10 days prior to the public hearing, and any further comments will be taken into consideration. The thresholds for certification of the EIR and amendment of the general plan have been met. The City will continue to engage with the tribe as part of implementing the approved mitigation measures.

## Regulatory Setting

### Federal

#### Native American Graves Protection and Repatriation Act

The Native American Graves Protection and Repatriation Act (NAGPRA) requires federal agencies and institutions that receive federal funds, including museums, universities, state agencies, and local

<sup>82</sup> Letter from Tamien Nation Chairwoman Quirina Luna Geary to City of Menlo Park Planning Commission Chair Chris DeCardy, October 21, 2022.

governments, to repatriate or transfer Native American human remains and other cultural items to the appropriate parties upon request of a culturally affiliated lineal descendant, Indian tribe, or Native Hawaiian organization (43 Code of Federal Regulations [CFR] Section 10.10). Federal NAGPRA regulations (43 CFR Part 10) provide the process for determining the rights of culturally affiliated lineal descendants, Native American tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony, which are indigenous to Alaska, Hawaii, and the continental United States but not to territories of the United States, that are (i) in federal possession or control, (ii) in the possession or control of any institution or state or local government receiving federal funds, or (iii) excavated intentionally or discovered inadvertently on federal or tribal lands.

### **National Historic Preservation Act, Section 106**

The NHPA (54 U.S.C. Section 300101 et seq.) created the NRHP and the list of National Historic Landmarks. Section 106 of the NHPA requires federal agencies to consider the impact of their actions on historic and archeological properties and provide the Advisory Council on Historic Preservation with an opportunity to comment on projects before implementation (Section 306108). The NRHP and federal guidelines related to the treatment of traditional cultural properties are relevant for the purposes of determining whether significant tribal cultural resources, as defined under CEQA, are present and guiding the treatment of such resources.

## **State**

### **CalNAGPRA**

The California Native American Graves Protection and Repatriation Act of 2001 (CalNAGPRA), as amended, requires all state agencies and state-funded museums that have possession or control over collections of California Native American human remains or cultural items to provide a process for the identification, inventory, and repatriation of these items to the appropriate tribes. Lineal descendants of human remains or cultural items may file a claim for the return of the materials by demonstrating the relationship between the lineal descendent and the materials.

### **California Native American Historic Resources Protection Act**

The California Native American Historic Resources Protection Act of 2002 imposes civil penalties, including imprisonment and fines of up to \$50,000 per violation, for persons who unlawfully and maliciously excavate, remove, destroy, injure, or deface a Native American historic, cultural, or sacred site that is listed in or may be listed in the CRHR.

### **Assembly Bill 52**

CEQA, as amended in 2014 by AB 52, requires cities to consult with any California Native American tribe that is traditionally and culturally affiliated with the geographic area of a proposed project if the California Native American tribe has requested notice of projects in the area traditionally and culturally affiliated with the tribe and has responded to the notice within 30 days of receipt with a request for consultation. CEQA defines *tribal cultural resources* as either of the following:

- (1) Sites, features, places, cultural landscapes (geographically defined in terms of the size and scope), sacred places, and objects with cultural value to a California Native American tribe that are:
  - a) Included in or determined to be eligible for inclusion in the CRHR, and/or

b) Included in a local register of historical resources, as defined in subdivision (k) of Section 5020.1; and/or

(2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1, for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe (California Public Resources Code Section 21074[a]).

A cultural landscape that meets the above criteria to be a tribal cultural resource is one to the extent that the landscape is geographically defined in terms of the size and scope of the landscape (Section 21074[b]). In addition, a historical resource, as described in Section 21084.1; a unique archaeological resource, as defined in subdivision (g) of Section 21083.2; or a “nonunique archaeological resource,” as defined in subdivision (h) of Section 21083.2, may also be a tribal cultural resource if it conforms with the criteria listed above to be a tribal cultural resource (Section 21074[c]).

CEQA requires that the City initiate consultation with culturally affiliated tribes at the commencement of the CEQA process to identify tribal cultural resources (Section 20180.3.1). As a part of the consultation, the parties may propose mitigation measures, including, but not limited to, those recommended in Public Resources Code Section 21084.3, to avoid or substantially lessen potential significant impacts on a tribal cultural resource or may propose alternatives to avoid significant impacts on a tribal cultural resource (Section 20180.3.2[a]). If the California Native American tribe requests consultation regarding alternatives to a project, recommended mitigation measures, or significant effects, the consultation must include those topics. The consultation may include a discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of a project’s impacts on tribal cultural resources, and, if necessary, project alternatives or appropriate measures for preservation or mitigation that the California Native American tribe may recommend to the lead agency. The consultation is considered concluded when either of the following occurs: (1) the parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource or (2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached (Section 20180.3.2[b]).

A California Native American tribe or the public can submit information to the lead agency regarding the significance of tribal cultural resources, the significance of a project’s impact on tribal cultural resources, or any appropriate measures to mitigate the impact outside the consultation process as well.

## Senate Bill 18

SB 18 was signed into law in September 2004 and became effective in 2005. SB 18 (Burton, Chapter 905, Statutes of 2004) requires city and county governments to consult with California Native American tribes that were on the NAHC contact list prior to the adoption or amendment of general plans, with the intent of protecting traditional tribal cultural places (California Government Code Section 65352.3) Resources subject to this requirement include any of the following (California Government Code Section 65352.3.):

- A Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine (California Public Resources Code Section 5097.9); and/or
- A Native American historic, cultural, or sacred site that is listed or may be eligible for listing in the CRHR pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site, any inscriptions made by Native Americans at such a site, any archaeological or historic Native American rock art, or any archaeological or historic feature of a

Native American historic, cultural, or sacred site (California Public Resources Code Section 5097.993).

The purpose of involving tribes at the early stage of planning efforts is to allow consideration of tribal cultural places in the context of broad local land use policy before project-level land use decisions are made by a local government. The process by which consultation must occur in these cases was published by the Governor's Office of Planning and Research through its *Tribal Consultation Guidelines: Supplement to General Plan Guidelines* (November 14, 2005). Although SB 18 is not a CEQA issue, consultation regarding tribal cultural places can, and, in this case, did, overlap with AB 52 consultation; therefore, a summary of SB 18 consultation is included herein.

### **Health and Safety Code Section 7050.5**

In the event of the discovery or recognition of human remains in any location other than a dedicated cemetery, Health and Safety Code Section 7050.5 requires no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie the remains until the coroner of the county in which the human remains were discovered has determined that they are not subject to the provisions of Section 27491 of the Government Code or any other related provisions of the law concerning an investigation of the circumstances, manner, and cause of death. If the coroner determines that the remains are not subject to his or her authority but recognizes them to be those of a Native American, or has reason to believe that they are those of a Native American, he or she shall contact the NAHC by telephone within 24 hours.

### **Public Resources Code Section 5097.98**

Section 5097.98 of the Public Resources Code stipulates that whenever the NAHC receives notification of a discovery of Native American human remains from a county coroner, pursuant to subdivision (c) of Section 7050.5 of the California Health and Safety Code, it shall immediately notify those persons it believes to be most likely descended from the deceased Native American. The decedents may, with the permission of the owner of the land, or his or her authorized representative, inspect the site of the discovery of the Native American remains and recommend to the owner or the person responsible for the excavation work means for treating or disposing of, with appropriate dignity, the human remains and any associated grave goods. The descendants shall complete their inspection and make their recommendation within 48 hours of being granted access to the site. The recommendation may include scientific removal and nondestructive analysis of the human remains and items associated with Native American burials.

Whenever the NAHC is unable to identify a descendant, or the identified descendant fails to make a recommendation; the landowner or his or her authorized representative rejects the recommendation of the descendant; or the mediation provided for in subdivision (k) of Section 5097.94, if invoked, fails to provide measures that would be acceptable to the landowner, the landowner or his or her authorized representative shall reinter on the property the human remains and associated items with appropriate dignity at a location that will not be subject to further and future subsurface disturbance.

Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may agree that additional consultation with the descendants is necessary to consider culturally appropriate treatment of the remains. Culturally appropriate treatment of the discovery may be ascertained from a review of the site using cultural and archaeological standards. Where the parties are unable to agree on appropriate treatment measures, the human remains and associated items shall be reinterred with appropriate dignity.

## Local

### Menlo Park General Plan

The City General Plan consists of Open Space/Conservation, Noise, and Safety Elements, adopted May 21, 2013; the 2015–2023 Housing Element, adopted April 1, 2014; and the Circulation and Land Use Elements, adopted November 29, 2016. The following goals and policies from the Land Use Element that have been adopted to avoid or mitigate environmental impacts relevant to cultural and tribal resources and the Proposed Project:

- **Goal LU-7:** Sustainable Services. Promote the implementation and maintenance of sustainable development, facilities, and services to meet the needs of Menlo Park’s residents, businesses, workers, and visitors.
- **Policy LU-7.8:** Cultural Resource Preservation. Promote preservation of buildings, objects, and sites with historic and/or cultural significance.

The following goals and policies from the Open Space/Conservation Element that have been adopted to avoid or mitigate environmental impacts, are relevant to cultural resources and the Proposed Project:

- **Goal OSC-3:** Protect and Enhance Historic Resources. Protect and enhance cultural and historical resources for their aesthetic, scientific, educational, and cultural values.
- **Policy OSC-3.1:** Prehistoric or Historic Cultural Resources Investigation and Preservation. Preserve historical and cultural resources to the maximum extent practical.
- **Policy OSC-3.2:** Prehistoric or Historic Cultural Resources Protection. Require significant historic or prehistoric artifacts to be examined by a qualified consulting archaeologist or historian for appropriate protection and preservation and ensure compliance with local, state, and federal regulations.
- **Policy OSC-3.3:** Archaeological or Paleontological Resources Protection. Protect prehistoric or historic cultural resources either onsite or through appropriate documentation as a condition of removal. When a development project has sufficient flexibility, require avoidance or preservation of the resources as the primary form of mitigation, unless the City identifies superior mitigation. If resources are documented, undertake coordination with descendants and/or stakeholder groups, as warranted.
- **Policy OSC-3.4:** Prehistoric or Historic Cultural Resources Found during Construction. If cultural resources, including archaeological or paleontological resources, are uncovered during grading or other onsite excavation activities, require construction to stop until appropriate mitigation is implemented.
- **Policy OSC-3.5:** Consultation with Native American Tribes. Consult with those Native American tribes with ancestral ties to the Menlo Park city limits regarding City General Plan amendments and land use policy changes.

## Environmental Impacts

This section describes environmental impacts related to tribal cultural resources that could result from implementation of the Proposed Project. The section begins with the criteria of significance that establish

the thresholds for determining whether an impact would be significant. It then presents impacts associated with the Proposed Project and identifies mitigation measures to address the impacts as needed.

## Thresholds of Significance

A project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment (California Public Resources Code Section 21084.2). In accordance with Appendix G of the CEQA Guidelines, the Proposed Project would have a significant effect on tribal cultural resources if it would:

- Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as a site, feature, place, or cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe and:
  - Listed in or eligible for listing in the CRHR or a local register of historical resources, as defined in Public Resources Code Section 5020.1(k), or
  - A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource (California Public Resources Code Section 21084.3[a]). If the lead agency determines that a project may cause a substantial adverse change in a tribal cultural resource, and measures are not otherwise identified in the consultation process provided in Section 21080.3.2, state law provides mitigation measures that, if feasible, may be considered to avoid or minimize the significant adverse impacts (Section 21084.3[b]). These measures include avoidance and preservation in place, including incorporation of the resource into open spaces, parks, or green spaces; treating the resource with appropriate dignity, including protecting the cultural character and integrity of the resource, protecting the traditional use of the resource, and protecting the confidentiality of the resource; establishing conservation easements or other interests in real property with culturally appropriate management criteria for purposes of preserving or utilizing the resource in place; or otherwise protecting the resource.

A discussion of each the criteria is included in the impact analysis below. If an impact on a tribal cultural resource would be significant, CEQA requires feasible measures to minimize the impact (CEQA Guidelines Section 15126.4[a][1]).

## Methods for Analysis

The following section analyzes potential impacts on tribal cultural resources that may be caused by the Proposed Project. In accordance with CEQA section 21084.2, the analysis considers the potential for Project activities to cause a substantial adverse change in the significance of a tribal cultural resource. To assess the Proposed Project's potential to create a significant adverse change in tribal cultural resources, the City considered information provided by representatives from consulting tribes as well as the analysis provided in the General Plan and M-2 Area Zoning Update (ConnectMenlo) EIR.

As described above, for purposes of this analysis, the entire Hiller Mound (CA-SMA-160/H) is considered to be a tribal cultural resource. The central Core of the Hiller Mound, consisting of approximately 1.77



acres, is the most archaeologically intact portion of the archeological site. According to Basin, the Perimeter of the Hiller Mound, consisting of approximately 5.26 acres (excluding the Core) within the Project Site, contains alluvial midden, reflecting erosion and slope wash displacement of cultural sediment from the former low-elevation mound that was displaced from the leveling of the Core that predated the existing development. Basin also identifies a High Sensitivity Area (described below), which is partially within the Core and partially within the Perimeter that is deemed likely based on past discoveries to contain cultural resources. The specific locations of these three areas cannot be disclosed in a public document, and the amount of project detail for each area is limited in this EIR, accordingly.

## Summary of Analysis in the ConnectMenlo EIR

The ConnectMenlo EIR analyzed the following impacts that would result from implementing the updates to the Land Use and Circulation Elements and the M-2 Area Zoning Update. The Proposed Project is within the development envelope considered in the ConnectMenlo EIR impact analysis.

Impacts related to tribal cultural resources, as defined by Public Resources Code Section 21074, were analyzed in the ConnectMenlo EIR as Impact CULT-5 (ConnectMenlo EIR, p. 4.4-21) and cumulatively as Impact CULT-6 (ConnectMenlo EIR, p. 4.4-22). The ConnectMenlo EIR concluded that compliance with existing federal, state, and local laws and regulations, as well as the City General Plan goals and policies listed under CULT-2, would protect tribal cultural resources by providing for early detection of potential conflicts between development and resource protection and preventing or minimizing material impairment of the ability of archaeological deposits to convey their significance through excavation or preservation. The ConnectMenlo EIR further found that implementation of Mitigation Measures CULT-2a, CULT-2b, and CULT-4 would reduce any impacts to tribal cultural resources in Menlo Park as a result of future development under buildout of the City General Plan to a less-than-significant level. Mitigation Measure CULT-2a mitigates impacts to subsurface cultural resources. This mitigation measure requires all construction activity within 100 feet of such a find to cease until a qualified archeologist determines whether the resource requires further study and requires project proponents to include an “inadvertent discovery” clause in every construction contract to inform contractors of this requirement. In addition, Mitigation Measure CULT-2a specifies that, when previously undiscovered resources are found, they must be recorded on appropriate California Department of Parks and Recreation (DPR) forms and evaluated for significance in terms of the CEQA criteria by a qualified archeologist. Furthermore, if the resource is determined significant under CEQA, the qualified archeologist must prepare and implement a research design and archaeological data recovery plan that captures those categories of data for which the site is significant. Mitigation Measure CULT-2a also requires the archeologist to perform appropriate technical analyses; prepare a comprehensive report complete with methods, results, and recommendations; and provide for the permanent curation of the recovered resources. If required by law, the report must be submitted to the City of Menlo Park, NWIC, and State Historic Preservation Office.

Mitigation Measure CULT-2b requires tribal consultation. Mitigation Measure CULT-2b states that, as part of the City’s application approval process and prior to project approval, the City must consult with those Native American tribes with ancestral ties to the Menlo Park city limits regarding City General Plan amendments and land use policy changes. In addition, upon receipt of an application for a project that requires a general plan amendment or a land use policy change, the City must submit a request for a list of Native American tribes to be contacted about the proposed project to the NAHC. After the list is received, the City must submit a letter to each tribe on the list, requesting consultation about the proposed project and using a method that allows the City to confirm receipt of the request.

Mitigation Measure CULT-4 mitigates impacts related to the discovery of human remains. This mitigation measure notes that procedures of conduct following the discovery of human remains have been mandated by California Health and Safety Code Section 7050.5, Public Resources Code Section 5097.98, and California Code of Regulations Section 15064.5(e). Mitigation Measure CULT-4 states that, according to the provisions in CEQA, if human remains are encountered at a site, all work in the immediate vicinity of the discovery shall cease and necessary steps to ensure the integrity of the immediate area shall be taken. Under this mitigation measure, if human remains are encountered, the San Mateo County Coroner must be notified immediately. The coroner then determines whether the remains are Native American. If the coroner determines the remains are Native American, he or she notifies the NAHC within twenty-four hours and the NAHC notifies the person it identifies as the MLD of the discovered remains. This mitigation measure notes that, under applicable state laws, the MLD has forty-eight hours to make recommendations regarding the disposition of the remains following notification from the NAHC of the discovery. If the MLD does not make recommendations within forty-eight hours, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance. Alternatively, if the owner does not accept the MLD's recommendations, the owner or the descendent may request mediation by the NAHC.

Finally, the ConnectMenlo EIR concluded that general plan buildout, when combined with past, present, and reasonably foreseeable future development, would not result in a significant cumulative impact on tribal cultural resources with implementation of the project-level mitigation measures. In addition, the ConnectMenlo EIR found that future development set to occur under the general plan would not create or contribute to a cumulative impact on known cultural resources, including tribal cultural resources.

## Impacts and Mitigation Measures

### **Impact TCR-1: The Proposed Project could cause a substantial adverse change in the significance of a tribal cultural resource, as defined in PRC Section 21074. (LTS/M)**

To identify tribal cultural resources within the Project Site, the City contacted California Native American tribes and received requests for consultation from the Amah Mutsun Tribal Band, Tamien Nation, and Muwekma Ohlone Indian Tribe.

An archaeological site that can also be considered a tribal cultural resource was identified within the main Project Site (Hiller Mound). Project-related ground disturbance has the potential to encounter both known and as-yet undocumented Native American deposits associated with the Hiller Mound. This impact would be potentially significant.

The Proposed Project would avoid and minimize known archaeological expressions of the tribal cultural resource through a combination of avoidance through design strategies, preservation in place, capping to protect the resource, planning green space to incorporate the resource with culturally appropriate protection and management criteria, and the specifications of the contractor's means and methods. Collectively, these Proposed Project features and measures would be consistent with the appropriate treatment measures established by CEQA Sections 20183.2 and 21084.3.

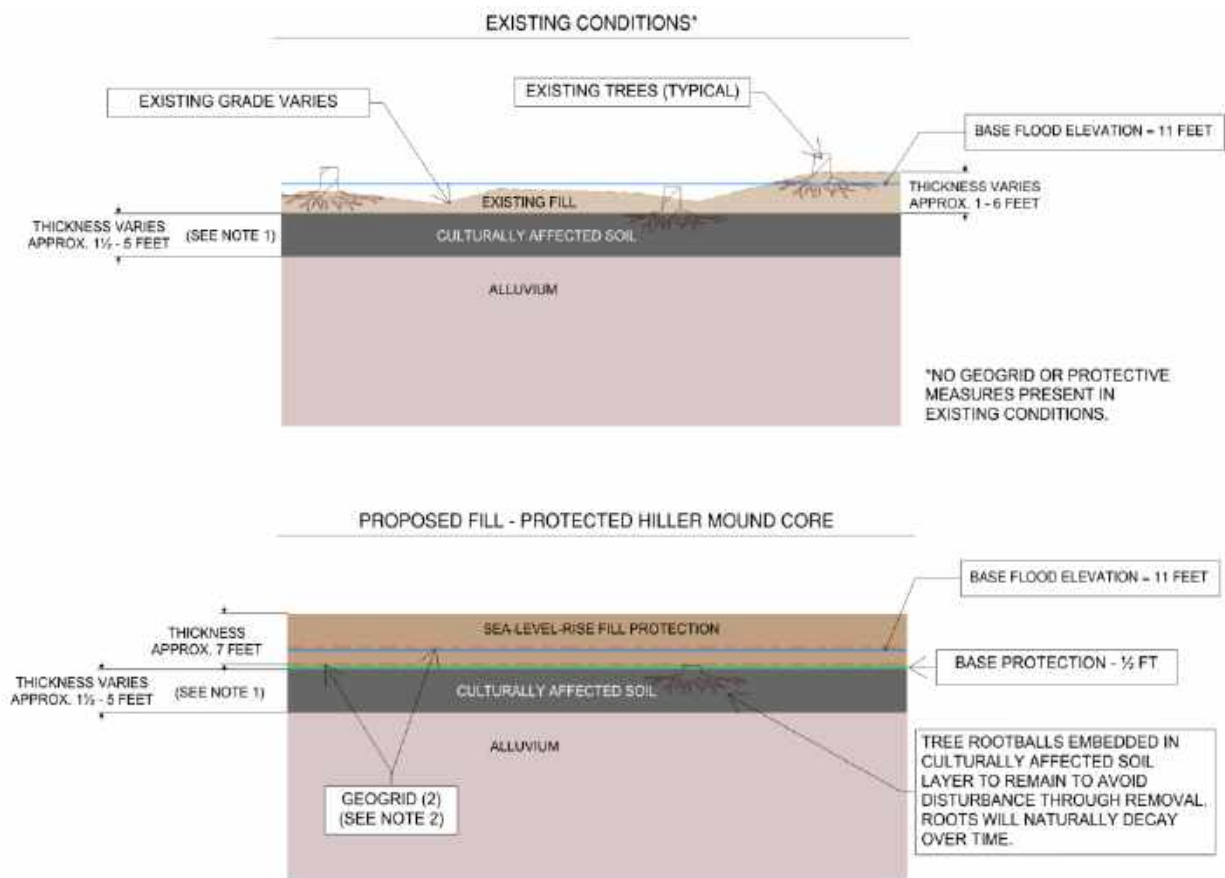
The entire main Project Site, not just the portions with a tribal cultural resource, requires the placement of four to seven feet of engineered fill to raise the site grade and accommodate future sea-level rise. The engineered fill capping would double as in-place protection for the Core. The portion of the Core that requires protection is the subsurface layer of culturally affected soil, which is composed of a cultural midden.

To accommodate the protective fill and minimize damage to near-surface artifacts during fill placement in the Core, hand grubbing and the placement of two layers of geogrid or geotextile reinforcement prior

to the use of mechanical construction equipment would be implemented in the Core. During vegetation clearing, the root balls of trees and would be left in place so that removal would not cause disturbance of the culturally affected soil.

The thickness of the protective soil layer over the Core has been engineered to avoid significant adverse impacts to tribal cultural resources within the Core. The fill would create a vertical separation of between four and seven feet for the entire Project Site. The soil cover would also provide a protective layer over culturally affected soils in the Core. The geogrid-enhanced engineered fill would amount to less than five pounds per square inch (psi) of uniform pressure on the culturally affected soil within the Core. Geotechnical modeling of the effect of this amount of pressure on the culturally affected soil was conducted by ENGeo (2022). The effect was found to be negligible and comparable to the amount of pressure that the atmosphere applies to humans.

Project construction activities, including temporary scaffolding for construction purposes, would occur only in the new engineered fill material and would not penetrate the upper layer of geogrid above the culturally affected soil within the Core.



The Proposed Project is designed such that all building structural loads would be carried off of the Core. All building structural loads would span the Core through a structural truss or bridge design or cantilever. Tree root balls from the trees removed within the Core boundary that have roots extending within an area 24 inches from the culturally affected soil layer would be left in place. Stumps may be ground flat with the existing grade. The only permanent structural elements that would contact the surface of the protective fill on top of the Core would be walkways, landscape courtyards, planter walls, and connection points

between glass walls and the ground. Limited permanent improvements would be located within the engineered fill above the Core but, in all cases, above the top layer of the geogrid. These elements would be designed to avoid additional structural loads on the culturally affected soil of the Core. No excavation into the culturally affected soil of the Core is proposed.

The Perimeter Area, like other areas of the main Project Site, would require the placement of engineered fill to accommodate future sea-level rise. Site preparation within the Perimeter Area would include compaction of the upper eight inches below the existing ground surface, placement of a layer of geogrid reinforcement to distribute loads uniformly, and the addition of four to five feet of engineered fill. Future improvements would include buildings, a portion of a road, emergency vehicle paths, circulation paths, landscape planters, water and irrigation improvements, drainage improvements, and utility improvements. Some buildings would include basement access for mechanical equipment and vehicle parking. In these cases, the basement parking excavation would penetrate the engineered fill and into existing ground surface. Protocols for addressing culturally affected soil encountered during excavation are described below.

A portion of the main Project Site that partially overlaps the Core and Perimeter has been designated as a High Sensitivity Area, which has a higher likelihood for the discovery of culturally affected soils and materials associated with the tribal cultural resource, including human remains. Portions of the High Sensitivity Area are already obscured by existing buildings, structures, and surface improvements from previous development of the main Project Site. As with all areas of the main Project Site, the High Sensitivity Area would require placement of engineered fill to accommodate future sea-level rise. Within the High Sensitivity Area, the Project proposes improvements such as emergency vehicle paths, circulation paths, landscape planters, water and irrigation improvements, drainage improvements, utility improvements, and non-building improvements. In addition, a portion of one proposed building is sited at the location of an existing building within the High Sensitivity Area.

Three construction protocols are proposed within the High Sensitivity Area. First, after demolition of existing site improvements, the existing soil within the High Sensitivity Area would be left in place. The ground surface preparation would include preparation of the upper eight inches of the existing soil by grading loose material and then compacting with a sheepsfoot roller. Second, building protocols within the High Sensitivity Area would include implementation of ground improvement measures to reduce potential long-term settlement of the new building foundation. After the ground surface has been prepared, as described above, the ground improvement supports would be identified. Each location of ground improvement support would be manually excavated to the bottom of the culturally affected soil. It is anticipated that manual excavation could extend to depths of seven feet. Following the excavation, the ground improvement supports would be installed at the pre-excavated locations. Finally, a layer of protective geogrid reinforcement would be placed over the prepared ground surface, then engineered fill ranging from four to five feet in depth would be placed over the layer of geogrid to accommodate future sea-level rise. Nonetheless, given the relatively shallow depth of the archaeological deposits associated with the Hiller Mound, as well as the dispersal of deposits from past disturbance associated with natural drainage, agriculture, and construction, the Proposed Project could encounter culturally affected soil in the Hiller Mound during construction activities, such as grading, demolition, construction of underground improvements, and the placement of construction equipment. Project-related ground disturbance would have the potential to disturb both known and as-yet undocumented cultural deposits associated with the tribal cultural resource. Furthermore, in its consultation with the City, the Tamien Nation has asserted that the entire site of Hiller Mound is a tribal cultural resource and sacred site that the Tamien Nation uses to this day, even though legal access does not currently extend to tribal members. The Tamien Nation has stated that building around a sacred site is not avoidance because the use of the site would be impacted and that construction within a tribal cultural landscape is an impact on a larger county-wide tribal cultural

landscape. However, avoidance and preservation in place for the Core as well as existing known reburials, coupled with modifications to construction means and methods in the Hiller Mound, would ensure that tribal cultural resources, if encountered, would be treated with care and in a culturally appropriate manner. In addition, permanent use restrictions with respect to the Core, the existing known reburial area, and the future reburial area, as well as an access agreement with respect to the future reburial area, would preserve and protect the tribal cultural resource.

The Proposed Project would implement ConnectMenlo EIR Modified Mitigation Measures CULT-2a and CULT-4 (see Section 3.8, *Cultural Resources*) if potentially significant subsurface cultural resources or human remains are encountered during ground-disturbing activities. In addition to these mitigation measures, the Project Sponsor would implement Project Mitigation Measures TCR 1.1 through 1.3. These measures require preservation in place of known tribal cultural resources (the Core and existing reburials), worker training prior to construction to allow early identification of discoveries, and tribal monitoring, thereby reducing impacts on tribal cultural resources. These mitigation measures also require consultation regarding the appropriate response when a tribal cultural resource is encountered. Implementation of enforceable mitigation measures to ensure these measures is sufficient to reduce impacts to tribal cultural resources to ***less than significant with mitigation***.

#### *MM TCR 1.1. Avoidance and Mitigation of Impacts*

##### **Plan Check**

Prior to issuance of grading permits, the City shall ensure that the applicable grading plans that require ground-disturbing excavation clearly indicate:

- that there is potential for exposing buried cultural resources, including tribal cultural resources (“TCRs”) and Native American burials; and
- that excavations associated with soil remediation, removal of below grade utilities, and initial mass grading at the main Project site and all ground disturbing activities within the Core and Perimeter (including the High Sensitivity Area) require the presence of an archaeological monitor and tribal monitor in accordance with the Archaeological and Tribal Cultural Resources Monitoring and Treatment Protocol and Plan (“ATMTTPP”), as defined in Mitigation Measure TCR-1.2; and
- that all ground disturbing activities require compliance with the ATMTTPP.

All archaeological site information supplied to the contractor shall be considered and marked confidential. Any no-disturbance zones shall be labelled as environmentally sensitive areas.

Prior to issuance of grading permits for the Project, Applicant and City shall, with input from the tribes that engaged in consultation with the City on the Proposed Project pursuant to Assembly Bill 52 (“Consulting Tribes”), develop a non-confidential field manual summarizing the approved TCR mitigation measures and the approved ATMTTPP requirements. This list shall be provided to all relevant personnel implementing TCR mitigation measures.

Archeological and tribal monitors shall be invited to attend all Tailgate Safety meetings at which safety concerns and other pertinent information regarding current construction activities are presented.

##### **Measures for the Core**

The Project Sponsor shall avoid or mitigate ground-disturbing excavation in the Core as detailed below.

- Ground disturbance into the existing culturally affected soil of the Core is prohibited. The following performance standards for capping, minimizing construction loading, and preservation in place of the Core shall apply.

### **Capping of Core**

- The Project Sponsor shall install a culturally sterile engineered cap of four to seven feet to cover the cultural deposits within the Core and preserve the Core in place. Tribal monitoring shall be required during the installation of the fill cap on the Core.
- Onsite soil material is suitable as fill material provided that it is processed to remove concentrations of organic material, debris, and particles greater than six inches in maximum dimension; oversized particles shall either be removed from the fill or broken down to meet the requirement. Imported fill material shall meet the above requirements and have a plasticity index of less than 20. Material used for engineered fill shall not contain or introduce contaminants in excess of applicable Department of Toxic Substances Control (“DTSC”) Environmental Screening Levels (“ESLs”). Any TCR materials within the soil matrix that are identified as TCRs by a tribal monitor shall be treated in accordance with the ATMTTP and shall not be broken down or used in fill.
- Construction activities shall be conducted in a manner that protects against penetration of the culturally affected soil within the Core and reduces the potential for disturbance from concentrated surface loads. The following measures shall be implemented within the Core during fill placement and any subsequent construction to reduce potential impacts on subsurface archaeological and cultural materials.
  - An elevation contour plan shall be created to guide the surface preparation necessary to place the fill cap within the Core boundaries. The plan shall show the top of the culturally affected soil elevation to establish a six-inch-thick protection layer above the culturally affected soil layer, below which soil excavation or penetration shall not be permitted.
  - Tree root balls from trees removed within the Core boundary that have roots extending within an area 24 inches from the culturally affected soil layer shall be left in place. Stumps may be ground flat with the existing grade.
  - Clearing of surface vegetation within the Core boundary shall be performed through hand grubbing.
  - Ground surface preparation prior to fill placement within the Core boundary shall use relatively light equipment (3,000 to 5,000 pounds), such as a walk-behind roller, to densify the six-inch-thick protection material. The use of relatively light equipment reduces potential for densification below the buffer zone.
  - A layer of geogrid reinforcement shall be placed over the prepared ground surface within the Core boundary. Geogrid shall consist of a triaxial grid (e.g., TX140 or approved equivalent). A second layer of geogrid shall be placed to reinforce the engineered fill approximately 24 inches above the base geogrid layer. Geogrid shall be installed in accordance with the manufacturer’s specifications. After placement of the geogrid, there shall be no soil disturbance in the Core below the top layer of geogrid.

- Once the six-inch-thick protection layer has been prepared and the base reinforcement grid placed within the Core boundary, engineered fill may be placed in eight-inch lifts and compacted using a single-drum ride-on sheepsfoot roller. The roller shall not be parked or left stationary on the Core overnight. If yielding subgrade is encountered in the base protection layer, the geotechnical consultant may recommend placement of additional layers of reinforcement within the engineered fill. This determination will be based on field observations during preparation of the ground surface.

To protect the culturally affected soil in the Core, construction and other transitory vehicle traffic (with the exception of the equipment necessary to place and compact the engineered fill) shall not be permitted over the Core until after engineered fill placement is complete to provide a buffer between mound material and concentrated vehicle loads. Once fill placement is complete, the culturally affected soil will be protected, but construction vehicles and construction equipment directly on the Core nonetheless shall continue to be limited to the minimum number necessary to complete construction of the Proposed Project. Vehicles shall not be left stationary or parked on the Core overnight. The contractor shall ensure that vehicles and equipment will not leak fuel or other liquids when operating on the Core. Leaking vehicles and equipment shall be promptly removed from the Core area and repaired before use is resumed on the Core.

#### **Temporary Construction Loading at Core**

The following measures shall be implemented within the Core during scaffold erection to reduce potential impacts on subsurface cultural materials:

- Scaffolds placed on the Core shall be installed no earlier than three months after the engineered fill placement related to sea-level rise.
- Scaffolds shall use 16-foot square bases on top of the engineered fill cap. Minor leveling of the fill cap shall be allowed at each scaffold installation, but excavation or other penetrations into the fill surface shall not be permitted except for equipment or the temporary auxiliary structures needed to install the atrium frame and associated glass. There shall be no soil disturbance in the Core below the top layer of geogrid.
- Scaffolds shall be removed promptly after installation and inspection of the framework and glass within the atrium to remove pressure from the engineered fill over the Core.

#### **Post-Construction Preservation in Place at the Core**

- Post-construction, there shall be no soil disturbance in the Core below the top layer of geogrid. Any surface structural elements, irrigation, utilities, and infrastructure shall be located only upon/within the engineered fill and shall not penetrate the top layer of geogrid.
- Comply with Mitigation Measure TCR-1.3, *Post-Construction Preservation in Place*.

#### **Measures for the Perimeter**

The Project Sponsor shall avoid or mitigate ground-disturbing excavation in the Perimeter Area as follows:

- The Project Sponsor shall install a culturally sterile engineered cap of four to seven feet to cover the cultural deposits within the Perimeter.
- Excavation through the cap shall follow the procedures in Mitigation Measure TCR-1.2.

- Tribal monitoring shall be required during all ground disturbing site work in the Perimeter; provided that, once culturally affected soil has been removed, stockpiled, and treated in accordance with the ATMTTPP, no additional tribal monitoring of ground disturbance is required in the area where such soil was removed.

#### **Measures for the High Sensitivity Area**

The Project Sponsor shall avoid or mitigate ground-disturbing excavation in the High Sensitivity Area as follows:

- For portions of the High Sensitivity Area located within the Core, the Project Sponsor shall comply with the mitigation measures for the Core identified above, including but not limited to the tribal monitoring provisions.
- For portions of the High Sensitivity Area located within the Perimeter, the Project Sponsor shall comply with the mitigation measures for the Perimeter identified above, including but not limited to the tribal monitoring provisions.

#### **Measures for Existing Known Reburials**

- Existing known reburials shall be preserved in place.
- Existing known reburials will be protected by a layer of geogrid prior to the placement of engineered fill.
- Tribal monitoring in the vicinity of existing known reburials shall be required in accordance with the ATMTTPP.

#### *MM TCR-1.2: Archaeological and Tribal Cultural Resource Monitoring and Treatment Protocol and Plan*

The Project Sponsor and archaeological consultant, in consultation with Consulting Tribes, shall develop an Archaeological and Tribal Cultural Resource Monitoring and Treatment Protocol and Plan (“ATMTTPP”) to guide archaeological and tribal cultural resource monitoring of ground-disturbing site work and provide for appropriate treatment of any archeological materials and tribal cultural resources exposed during construction, as described below. The ATMTTPP will apply to the entire Project Site and all off-site Project improvements. In addition, specific protocols that pertain to the Core, Perimeter, and High Sensitivity Area will be distinguished from general unanticipated discovery response procedures that apply in other areas. Tribal monitoring refers to the controlled observation and regulation of construction operations on or in the vicinity of a known or potentially significant tribal cultural resource to avoid, preserve in place, or mitigate impacts on the resource. The ATMTTPP shall be developed in consultation with the Consulting Tribes and submitted to the City for review and approval prior to issuance of the first grading permit and any physical ground disturbing site work being allowed on the Project Site or for off-site Project improvements. The ATMTTPP shall include, at a minimum:

- Background information and context data on the Project Site, archeological resources, and tribal cultural resources.
- Tribal monitoring requirements, including worker awareness training as specified below; a discussion of specific locations and the intensity of the monitoring effort for areas with potential for the discovery of archeological and tribal cultural materials; and anticipated



personnel, including retention of California Native American tribal representative(s) from Consulting Tribes.

- A requirement that tribal monitors from each Consulting Tribe be afforded the opportunity to be present at each location of ground disturbing site work that requires tribal monitoring pursuant to the Project mitigation measures and the ATMTTPP, for the duration of such work, unless a Consulting Tribe agrees in writing that tribal monitoring is not needed by that tribe in that instance, or unless a Consulting Tribe fails to provide a monitor at the scheduled time, provided that adequate notice of the schedule was provided and documented.
- Specific parameters for tribal monitoring, including the number of monitors from each Consulting Tribe based on number of simultaneous excavation locations, activities subject to monitoring (consisting of all excavations associated with soil remediation, removal of below grade utilities, and initial mass grading at the main Project Site and all ground disturbing activities within the Core), and activities not subject to monitoring (including all grading outside the Core subsequent to initial mass grading in areas that have been monitored by the Consulting Tribes and found to no longer contain tribal cultural resources, all foundation and building demolition, and all above ground or vertical build construction).
- Identification of a tribal monitoring coordinator, whose responsibility is to ensure that communication between the construction team and monitors is clear, that schedules for monitoring are conveyed, and that monitoring tribes have a single point of contact, prior to the commencement of ground disturbing activities.
- Protocols for discoveries during construction, consistent with modified ConnectMenlo EIR Mitigation Measure CULT-2a (see Section 3.8, Cultural Resources), including a requirement that any DPR forms required pursuant to ConnectMenlo EIR Mitigation Measure CULT-2a to be submitted to the Northwest Information Center to document a find of TCR, cultural resources, historical resources, or archaeological resources shall be completed and submitted no later than 120 days after completion of the Project.
- Prehistoric era research design, including sampling level, study method documentation, and provisions, such as staffing and scheduling, for bringing the proposed research to fruition.
- Detailed procedures regarding how to address significant discoveries made during construction, including a discussion of field and artifact analysis methods to be used.
- Treatment of Native American human remains consistent with state law and recommendations of the NAHC-appointed Most Likely Descendant (“MLD”) and Modified ConnectMenlo EIR Mitigation Measure CULT-4.
- Laboratory methods, including artifact cataloging and special analyses.
- Thresholds for decision making if there is a conflict among tribal or archeological monitors regarding the identification or treatment of TCRs. Specifically, if there is a conflict between the archeological monitor and the tribal monitors, deference shall be given to the preferences of the tribal monitors, subject to applicable law in the event of the discovery of Native American human remains, provided that those preferences do not require Project redesign or result in unreasonable construction delay. If there is a conflict among the tribal

monitors, the soil containing the potential TCR will be evaluated in accordance with applicable law and, if appropriate, shall be stockpiled in accordance with the soil protocol in the ATMTTPP while the disagreement is being resolved.

- Provisions for reporting (e.g., Tribal Monitoring Closure Report) and artifact treatment in consultation with the Consulting Tribes in the event of significant finds.
- Pre-designated confidential reburial area(s) that will serve to reinter any Native American human remains encountered during construction (excluding existing, known reburial sites, which shall be preserved in place pursuant to Mitigation Measure TCR-1.1) with appropriate level of privacy for visitation by the Consulting Tribes, in an area not open to the public.
- Treatment protocols that detail the appropriate procedures, methods, and reports to be completed if significant archaeological or tribal cultural materials, including Native American burials, are encountered. The archeological significance of a resource shall not be determinative of whether the resource is a TCR, the level of impact to a TCR, or the significance of a TCR.
- Soil treatment protocols that preserve cultural soil onsite where feasible, including:
  - Subject to the requirements of DTSC or other agencies with jurisdiction and the reasonable preferences of the MLD in accordance with applicable law, prohibiting the removal of cultural soil from the main Project site. The determination of which soils are cultural soils shall be made by the tribal monitors.
  - Requiring only clean, engineered fill to be used on the main Project site. Under no circumstances should soil from another culturally significant area be used on this Project site.
  - The tribal monitors shall have the right to request that any cultural soils excavated from native soil on the main Project site be relocated to an area on the main Project site located away from the construction zone, where the tribal monitors shall be given the opportunity during active construction work hours to sift the cultural soil to identify and remove any tribal cultural items and Native American human remains, which tribal cultural items and Native American human remains shall be treated in accordance with the ATMTTPP. Any tribal cultural resources obtained from sifting shall be reburied in the reburial area, subject to the reasonable preferences of the MLD in accordance with Public Resources Code Section 5097.98 and other applicable law. Any tribal monitors performing this work (1) must have the requisite training or experience to do so, including training or experience with regard to work in environmentally impacted soil (which shall include at a minimum HAZWOPR certification), and (2) shall be paid at the rate specified for this work in the applicable Tribal Monitoring Agreement. Following sifting and removal of TCRs, the soil can be reused at the same or a different location within the main Project Site.
- Specifications for archeological and tribal cultural resources sensitivity training for construction workers and superintendents that meet the following standards:
  - Occurs prior to the start of any ground-disturbing activity or site work on the Project Site or for off-site improvements.

- Training shall be required for all construction personnel participating in ground-disturbing construction to alert them to the archaeological and tribal cultural sensitivity of the area and provide protocols to follow in the event of a discovery of archaeological materials or tribal cultural resources. Training shall be provided en masse to such personnel at the start of construction of the Project, and training shall be repeated when new personnel participating in ground-disturbing site work start work.
- Includes, for job site posting, a document (“ALERT SHEET”) that summarizes the potential finds that could be exposed, the protocols to be followed, and the points of contact to alert in the event of a discovery that is presented as part of the training.
- Requires the contractor to ensure that all workers requiring training are in attendance.
- Requires training for all contractors and sub-contractors that is documented for each permit and/or phase of a permit that requires ground-disturbing activities onsite.
- For work in the Core and the existing known reburial area, additional worker training shall also be required for workers who will work on the surface or who will drive directly over the Core or work in the existing known reburial area.
- Work plan for the use of ground penetrating radar (GPR) and forensic canine detection (FCD) that meets the following standards:
  - Upon conclusion of building demolition and the removal of surface improvements within the Perimeter, the Project Sponsor shall retain a qualified team of FCD survey providers and a GPR operator to perform a survey of the Perimeter before grading, trenching, or other earthwork commences.

A minimum of seven calendar days prior to the FCD or GPR survey, the Project Sponsor or their designee shall notify the Consulting Tribes of the schedule to afford sufficient time to be present during the survey. Should the Consulting Tribe(s) choose not to attend, the FCD or GPR survey may continue as scheduled. Where the FCD or GPR survey will occur within 100 feet of known burials or reburials (which know reburials shall remain in place in accordance with Mitigation Measure TCR-1.1), use of the FCD or GPR and presence of tribal monitors shall be dictated by the MLD for those prior discoveries.
  - The results of the FCD and GPR surveys shall be provided to the Consulting Tribes within fourteen calendar days after completion of the survey reports. Measures to protect TCRs identified as a result of the surveys shall be implemented in accordance with the Project mitigation measures and ATMTTPP.
  - In the event of the discovery of Native American human remains other than known reburials, the procedures in Modified ConnectMenlo Mitigation Measure CULT-4 will apply.
- Procedures for the event of an inadvertent discovery during construction, which require the archaeological and tribal monitors to review, identify, and evaluate TCRs to determine if a discovery is a historical resource and/or unique archaeological resource, or a TCR, under CEQA. These procedures shall include, at a minimum:
  - Criteria for identifying cultural soils.
  - Impose a stop work radius of 100 feet around the discovery; work can continue outside of the stop-work radius while the discovery is being addressed. If the archaeological and

tribal monitors agree that the find does not constitute a TCR, work can resume immediately, and no notifications are required.

- Notify the City, Consulting Tribes, and Project Sponsor within 24 hours of the discovery.
- Complete a discovery form to document the location, nature, and condition of the discovery.
- Consult on the discovery to determine appropriate treatment, which may include any combination of avoidance, preservation in place, rapid recovery and reburial, and/or documentation. In no circumstance other than the express written recommendation of the MLD shall Native American human remains be removed from the Project site. Curation and data recovery shall not be allowed, unless curation or data recovery is (i) in compliance with the recommendation of the MLD for Native American human remains in accordance with Public Resources Code Section 5097.98 and other applicable law or, (ii) agreed upon by the tribal monitors per the protocols in the ATMTTPP for TCRs that are not Native American human remains.

*MM TCR 1.3: Post-Construction Preservation in Place of Tribal Cultural Resources*

Prior to the issuance of the first certificate of occupancy for any occupied building within the Campus District, the Project Sponsor shall record deed restrictions over the Core, confidential locations of existing known reburials, and the pre-designated reburial area (“Project Reburial Area”) to restrict development or other activities identified in the deed restrictions that would disturb TCRs or Native American human remains in the future. The area included in the deed restrictions shall be described by a licensed surveyor prior to recording. Because archaeological and tribal cultural resource site locations are restricted from public distribution, the deed restrictions shall cite an “environmentally sensitive area.” A copy of the recorded deed restrictions that include the Core and any pre-designated reburial site shall be provided to the City for retention in a confidential project file. A copy of the deed restrictions shall be provided to the Northwest Information Center of the California Historical Resources Information System.

The restriction on the deed for the Core and Project Reburial Area shall prohibit the following activities directly on the Core or Project Reburial Area (excluding activities in cantilevered or spanned structural elements) after completion of construction of the Proposed Project, subject to applicable building code and life safety access requirements and necessary facilities maintenance, service, and repairs:

- Active recreational activities and structures, including, but not limited to, sports, field games, running, biking, and play equipment.
- Domesticated animals other than security/service animals.
- Vehicles.
- Surface penetrations below the upper geogrid.
- Altering the surface or general topography of the Core or Project Reburial Area except for maintenance of the engineered soil cap, landscaping, facilities, circulation, and utilities included within the cap.
- In the unlikely event that any activity needs to occur below the area of the upper geogrid in the event of an emergency, the Consulting Tribes will be immediately notified and given

a reasonable opportunity (consistent with the nature of the emergency) to have a tribal monitor present.

*MM TCR 1.4: Project Reburial Area Access*

Within 30 days after the recording of the deed restrictions over the dedicated reburial area(s), the Project Proponent shall extend a written offer to the Consulting Tribes to execute a tribal access agreement to allow for permitted access to the Project Reburial Area for the purposes of tribal visitation, subject to the parameters below. The Project Proponent shall provide a copy of the offer letter and if accepted by the Consulting Tribe(s), the executed agreement(s), to the City for retention in a confidential Project file. This mitigation measures shall be considered satisfied upon delivery of the offer letter to the Consulting Tribes, even if the Consulting Tribe(s) declined to enter into the agreement. The owners' association shall manage the Project Reburial Area in accordance with the terms and conditions of the deed restrictions, access agreements, Project mitigation measures, and Project conditions of approval, subject to applicable building code and life safety access requirements and necessary facilities maintenance, service, and repairs.

Access to the reburial area established for the Project will be controlled. The following conditions apply:

- Access to the Project Reburial Area will be available following completion of construction of the Proposed Project, including the Project Reburial Area, subject to notification and access requirements to be specified in an access agreement.
- Visitation shall comply with all rules applicable to publicly accessible open space within the Proposed Project except as otherwise specified in an access agreement.
- Visitation shall not obstruct or otherwise interfere with the passage of vehicles or the operation of the facility.
- Parking shall be limited to public parking spaces.
- Visitation shall not include activities or uses that conflict with the deed restriction or reasonable preferences of the Most Likely Descendent; provided that the Project Proponent shall work in good faith to ensure that all Consulting Tribes are provided access to the Project Reburial Area in accordance with the terms of the access agreement.
- Visitation shall not present a risk to human life or safety.
- Visitation shall not include abandonment of materials or objects other than ceremonial, religious, or funerary offerings specified in an access agreement.
- Visitation shall be subject to restriction as necessary to respond to any security threat, pandemic or similar health risk, or emergency condition. Visitation shall not be unreasonably restricted.

**Impact TCR-2. Human Remains. The Proposed Project could disturb human remains, including those interred outside of dedicated cemeteries. (LTS/M)**

Native American human remains could be exposed and disturbed during ground-disturbing activities at the Project Site. A tribal cultural resource was identified within the main Project Site. This resource has the potential to contain human remains interred outside of dedicated cemeteries. Excavation activities associated with the Proposed Project would not affect any known reburial locations; however, previously

undocumented Native American burials could be affected by ground-disturbing construction due to their location within areas proposed for subsurface improvements. This impact would be potentially significant.

The Proposed Project would implement ConnectMenlo EIR Mitigation Measure CULT-4, as modified below, based on the Project's cultural resources assessment report, if human remains are encountered at the Project Site during ground-disturbing activities. The Project Sponsor would also implement Mitigation Measures TCR 1.1 and 1.2 within the main Project Site, given the presence of CA-SMA-160/H. Mitigation Measures TCR 1.1 and 1.2 include measures to avoid or mitigate ground-disturbing excavation near CA-SMA-160/H, to the extent feasible, and preparation of a monitoring and treatment plan that details the appropriate procedure if remains are encountered. Mitigation Measure TCR-2.1 requires avoidance and preservation in place of existing known reburials. Therefore, the Proposed Project's impact on human remains would be ***less than significant with mitigation***.

*Mitigation Measure CULT-4: (Modified ConnectMenlo EIR) Comply with State Regulations Regarding the Discovery of Human Remains at the Project Site.*

Procedures of conduct following the discovery of human remains citywide have been mandated by Health and Safety Code Section 7050.5, Public Resources Code Section 5097.98, and the California Code of Regulations Section 15064.5(e) (CEQA). According to the provisions in CEQA, if human remains are encountered at the site, all work in the immediate vicinity of the discovery shall cease and necessary steps to ensure the integrity of the immediate area shall be taken. The San Mateo County Coroner shall be notified immediately. The coroner shall then determine whether the remains are Native American. If the coroner determines that the remains are Native American, the coroner shall notify the NAHC within 24 hours. The NAHC, in turn, will notify the person the NAHC identifies as the Most Likely Descendant (MLD) in connection with any human remains. Further actions shall be determined, in part, by the desires of the MLD. The Project Sponsor, the Project archaeologist, and the MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of human remains and associated or unassociated funerary objects, including those associated with known and unknown Native American burial locations (CEQA Guidelines Section 15064.5[d]). The agreement should address appropriate actions for when remains are discovered, including excavation, removal, recordation, analysis, custodianship, and final disposition of the remains and associated or unassociated funerary objects. The MLD will have 48 hours to make recommendations regarding the disposition of the remains following notification from the NAHC of the discovery. If the MLD does not make recommendations within 48 hours, or the owner does not accept the recommendation of the MLD in accordance with Public Resources Code 5097.98(e), the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance. Alternatively, if the owner does not accept the MLD's recommendations, the owner or the descendent may request mediation by the NAHC.

*Mitigation Measure TCR-2-1: Avoid and Preserve in Place Known Reburials*

The locations of known previous reburials of Native American human remains shall be restricted from future ground disturbance, as required by Mitigation Measure TCR-1.3.

## Cumulative Impacts

**Impact C-TCR-1: Cumulative Impacts on Tribal Cultural Resources. Cumulative development would result in a less-than-significant cumulative impact on tribal cultural resources. The**

**Proposed Project would not be a cumulatively considerable contributor to any significant cumulative impact on cultural and tribal cultural resources. (LTS)**

### **Summary of Analysis in the ConnectMenlo EIR**

As stated in Section 4.4, *Cultural Resources*, of the ConnectMenlo EIR, the geographic context for cumulative impacts associated with cultural and tribal cultural resources considers growth projected in the ConnectMenlo study area in combination with buildout of the city and the region.

Development of past, current, and future projects within the ConnectMenlo study area, city, and region has the potential to result in development-related impacts on tribal cultural resources. However, new development would be subject to existing federal, state, and local regulations as well as general plan goals, policies, and programs, which would, to the maximum extent practicable, reduce cumulative development-related impacts on tribal cultural resources.

The ConnectMenlo EIR found that, with mitigation, development consistent with ConnectMenlo would not make a cumulatively considerable contribution to significant cumulative impacts on tribal cultural resources. The ConnectMenlo EIR concluded that potentially cumulatively considerable contributions to significant cumulative impacts on identified tribal cultural resources, including human remains, would be mitigated with implementation of Mitigation Measures CULT-2a, CULT-2b, and CULT-4. In addition, the ConnectMenlo EIR noted that existing federal, state, and local regulations, as well as general plan goals, policies, and programs, would serve to protect cultural resources in Menlo Park. Therefore, the ConnectMenlo EIR determined that cumulative impacts associated with tribal cultural resources under ConnectMenlo would be less than significant.

The ConnectMenlo EIR examined the environmental impacts of the City of Menlo Park General Plan Land Use and Circulation Elements and the M-2 Area Zoning Update. The Proposed Project is located in a former M-2 area and consistent with the general plan policies and zoning analyzed in the ConnectMenlo EIR. The Proposed Project does not propose substantial changes that would require major revisions to the ConnectMenlo EIR, and substantial changes have not occurred with respect to the circumstances under which the Proposed Project would be undertaken. In addition, there is no new information of substantial importance related to tribal cultural resources that was not known and could not have been known with the exercise of reasonable diligence at the time the ConnectMenlo EIR was certified.

### **Cumulative Impacts with the Proposed Project**

Consistent with the ConnectMenlo EIR, the geographic context for cumulative impacts associated with tribal cultural resources considers growth projected by ConnectMenlo within the Study Area in combination with buildout in the city and the region.

As noted in Chapter 3, *Environmental Impact Analysis*, of this EIR, in addition to the buildout projections considered in the ConnectMenlo EIR, the cumulative scenario for the EIR also includes the additional unrestricted units from the 123 Independence Drive and East Palo Alto projects. As with the Proposed Project, the additional unrestricted units from the 123 Independence Drive and East Palo Alto projects, as well as other projects in the vicinity, would be required to comply with existing federal, state, and local regulations as well as general plan goals, policies, and programs.

The Proposed Project would not result in a substantial change in the ConnectMenlo project, which considered future development at the location of the tribal cultural resource. Therefore, with project-level mitigation measures (Mitigation Measures TCR-1.1, TCR-1.2, TCR-1.3, TCR-2.1) and applicable

ConnectMenlo mitigation measures, as modified herein, the Proposed Project would not be a cumulatively considerable contributor to a significant cumulative impact on tribal cultural resources and would not cause new or substantially more severe significant impacts related to tribal cultural resources than those analyzed in the ConnectMenlo EIR. Therefore, consistent with the conclusions in the ConnectMenlo EIR, the Proposed Project would not make a cumulatively considerable contribution to significant cumulative impacts with respect to tribal cultural resources.





**STAFF REPORT**

**City Council**

**Meeting Date:** 11/15/2022

**Staff Report Number:** 22-225-CC

**Informational Item:** City Council agenda topics: December 2022

**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 December 13, 2022. 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: December 2022

Report prepared by:

Judi A. Herren, Assistant to the City Manager/City Clerk

**Tentative City Council Agenda**

#	Title	Department	Item type	City Council action
1	AB 1600 impact fees report	ASD	Consent	Receive and file
2	Annual Comprehensive Financial Report (ACFR) update-June 2022	ASD	Consent	Receive and file
3	Personnel Activity Report - July 2022 through October 2022	ASD	Informational	No action
4	Single Audit (Federal Grants)-June 2021	ASD	Consent	Receive and file
5	Housing Element Update	CDD	Study Session	Direction to staff
6	Ratification of the Menlo Park fire protection district ordinance	CDD	Consent	Adopt resolution
7	Willow Village - second reading and adoption	CDD	Consent	Second read/adopt ordinance
8	Adopt a resolution approving the City Council Community Funding Subcommittee's recommendations for 2022-23 community funding allocations	CMO	Regular	Adopt resolution
9	Adopt Resolution to continue conducting the City's Council and advisory body meetings remotely due to health and safety concerns for the public	CMO	Consent	Adopt resolution
10	Appoint City Council representatives and alternates to various local and regional agencies and as liaisons and members to City Council advisory bodies	CMO	Regular	Decide
11	Appoint City Councilmembers to various standing and ad hoc subcommittees, and disband inactive ad hoc subcommittees	CMO	Regular	Decide
12	Authorize the city manager to execute an agreement with MPCSD and MPAEF and approve a budget amendment	CMO	Regular	Approve, Contract award or amend
13	BlocPower: prevailing wage	CMO	Informational	Decide, Direction to staff
14	Certify November 2022 election results	CMO	Consent	Adopt resolution
15	City Council agenda topics Jan 2023	CMO	Informational	No action
16	Provide direction to the City's voting delegate regarding regional vacancies for the next City Selection Committee meeting December 16, 2022	CMO	Regular	Decide
17	Receive and file 2021 priorities, work plan quarterly report as of September 30, 2022 and advisory body work plan update	CMO	Consent	Receive and file
18	Recognition of outgoing City Councilmember (if any)	CMO	Regular	No action
19	Recognition of outgoing Mayor	CMO	Regular	No action
20	Selection of the 2023 Mayor and Vice Mayor	CMO	Regular	Decide
21	Swearing in of new city councilmembers	CMO	Regular	No action
22	Transmittal of city attorney billing	CMO	Informational	No action
23	Direction on City Council seat vacancy	CMO, CAO	Regular	Decide
24	Adopt a resolution establishing City Council Policy CC-22-XXX Commemorative Park Amenities Policy	LCS	Consent	Adopt resolution
25	MPCC project update	LCS	Informational	No action
26	Additional conceptual design options for Willow Oaks Park	PW	Regular	Approve
27	Adopt a resolution for the intention of PUE vacation for 1701 and 1715 Bay Laurel Drive	PW	Consent	Adopt resolution

**Tentative City Council Agenda**

#	Title	Department	Item type	City Council action
28	Authorize the city manager to execute an agreement with the West Bay Sanitary District regarding the provision of recycled water service within Menlo Park Municipal Water Bayfront Area, and other customers within the Recycled Water Purveyor Boundary	PW	Consent	Contract award or amend
29	Award Contract for Chrysler PS - CM and Inspection Services	PW	Consent	Contract award or amend
30	Reject Bids for MPPD equipment room and HVAC upgrade project	PW	Consent	Direction to staff



**STAFF REPORT**

**City Council**

**Meeting Date:** 11/15/2022

**Staff Report Number:** 22-224-CC

**Informational Item:** Police department quarterly update – Q3 July 2022 - September 2022

**Recommendation**

The purpose of this informational item is to provide an update to the public and to the City Council as requested in the City Council discussions in spring and summer 2021. This is an informational item and does not require City Council action.

**Policy Issues**

In accordance with the City Council informational requests and interest in Menlo Park Police Department (MPPD) activities and use of equipment, this staff report transmits information to the public.

**Analysis**

In public discussions with City Council, the following information is provided through regular updates by the MPPD:

1. Results of required periodic auditing of the department’s automated license plate reader (ALPR) technology. The department is required to conduct regular audits of the system to ensure it is being used appropriately.
2. Reports of interactions with Animal Control. Specifically, the Council requested to be notified of any Animal Control Hearings being held for a dangerous animal in Menlo Park.
3. Use of force and Taser Incidents. Committed to transparency, the MPPD will provide the number of documented use of force incidents and Taser deployments regularly. Every documented use of force incident (including Taser deployments) is investigated and reviewed by the supervisor and command staff by policy.
4. Complaints. Also in the spirit of transparency, the MPPD will provide the number of complaints received and reviewed regularly.
5. Assembly Bill 481 (AB 481.) AB 481, signed into law in September 30, 2021 and applicable to agencies no later than May 1, 2022, requires that law enforcement agencies obtain the approval of the City Council, through the adoption of a Military Equipment Use Policy, by ordinance at a regular meeting held pursuant to specified open meeting laws, before taking certain actions relating to the funding, acquisition or use of military equipment, as defined. The City Council adopted this ordinance at the May 10, 2022, meeting.
6. Community engagement. For a more holistic perspective, the MPPD will also be sharing a general overview of outreach activities completed by the department on a regular basis.

Quarterly update Q3 – July – September 2022

*ALPR update*

From July through September 2022 MPPD’s three mobile mounted ALPR’s captured 293,392 license plates. The data captured resulted in 276 “hits” that a captured license plate was currently on an active law

enforcement database or wanted list.

Additionally, MPPD also audits inquiries to the overall ALPR databases made by members of MPPD Staff. Each inquiry to the database requires an articulable investigative reason (case investigation.) The ALPR database was offline for the entire reporting period and no inquiries were made.

#### *Animal Control update*

During this reporting period, no animal control hearings for animals in Menlo Park were conducted and based upon the information currently available there were no citations issued by Animal Control in our jurisdiction.

#### *Use of force update*

From July through September 2022, MPPD was attached to 8,559 incidents, including calls for police service and proactive patrol activity. There were two uses of force meeting the threshold for further documentation reported. Each reported use of force report is presented for review to the Chief and Command Staff, and any training issues are identified and addressed.

#### *Complaints update*

From July through September 2022, MPPD was attached to 8,559 incidents, including calls for police service and proactive patrol activity. Six complaints were documented either from the community or self-initiated by this Department. Each complaint is always evaluated and/or investigated according to policy.

#### *AB 481 equipment use update*

From July through September 2022, MPPD was attached to 8,559 incidents, including calls for police service and proactive patrol activity. During this time period, there were no operations of MPPD or SWAT personnel that resulted in the use of equipment listed in compliance with AB 481.

#### *Community engagement update*

MPPD officers encounter opportunities regularly to interact with the community in a positive way. During the quarters from July to October 2022, MPPD officers documented 60 distinct incidents as "OUTREACH" in the computer dispatch system (CAD.) While this number is the floor, not the ceiling of the total positive interactions MPPD has with the public, these incidents were entirely community engagement and public service oriented.

The 60 incidents included officers engaging in conversations over coffee with community members, passing out stickers to children, interactive visits to the local skate park, engagement during downtown foot patrols and at Lions Club sponsored farmers market, in addition to numerous visits to local elementary and middle schools. The Menlo Park Bike Team attended several events including National Night Out and made a large number of positive community contacts. The most significant outreach event was National Night Out. Members from across the department interacted with members of the community at various events throughout the city in an effort to promote police-community partnerships.

#### **Public Notice**

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

#### **Attachments**

None.

Report prepared by:

Scott Mackdanz, Administrative Sergeant

Tracy Weber, Technical Services Supervisor

William Dixon, Police Commander

Dave Norris, Police Chief