



SPECIAL MEETING AGENDA – NOTICE OF CONTINUANCE OF PUBLIC HEARING

Date: 11/30/2022
Time: 6:00 p.m.
Locations: [Zoom.us/join](#) – ID# 811 0951 2196 and
City Council Chambers
751 Laurel St., Menlo Park, CA 94025

THE PUBLIC HEARING IDENTIFIED BELOW, HELD AT THE REGULAR CITY COUNCIL MEETING ON TUESDAY, NOVEMBER 15, 2022 WAS CONTINUED AND SHALL RESUME AT 6 P.M., WEDNESDAY, NOVEMBER 30, 2022.

- ONLINE IN A REMOTE FORMAT, PURSUANT TO ASSEMBLY BILL (AB) 361, AND ACCESSIBLE AT:
[ZOOM.US/JOIN](#) – ID# 811 0951 2196
- IN-PERSON, AT THE CITY COUNCIL CHAMBERS, 751 LAUREL ST., MENLO PARK, CA 94025

NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

Consistent with Government Code section 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
Please include the agenda item number you are commenting on.
- Access the meeting real-time online at:
[Zoom.us/join](#) – Meeting ID 811 0951 2196
- Access the meeting real-time via telephone at:
(669) 900-6833
Meeting ID 811 0951 2196
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’s website [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).

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

Special Session

A. Call To Order

B. Roll Call

C. Agenda Review

D. Public Hearing

- D1. 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 #22-228-CC](#))

E. Regular Business

- E1. Direction on City Council seat vacancy ([Staff Report #22-229-CC](#))

F. Adjournment

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

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

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

Any writing that is distributed to a majority of the City Council by any person in connection with an agenda item is a public record (subject to any exemption under the Public Records Act) and is available by request by emailing the city clerk at

jaherren@menlopark.org. Persons with disabilities, who require auxiliary aids or services in attending or participating in City Council meetings, may call the City Clerk's Office at 650-330-6620.

Agendas are posted in accordance with Government Code Section 54954.2(a) or Section 54956. Members of the public can view electronic agendas and staff reports by accessing the City website at menlopark.gov/agendas and can receive email notification of agenda and staff report postings by subscribing to the "Notify Me" service at menlopark.gov/subscribe. Agendas and staff reports may also be obtained by contacting City Clerk at 650-330-6620. (Posted: 11/28/2022)



STAFF REPORT

City Council

Meeting Date: 11/30/2022

Staff Report Number: 22-228-CC

Public Hearing:

Consider the Planning Commission's recommendation to approve 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 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, 4) read the title, and waive further reading of an ordinance to 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) read the title, and waive further reading of an ordinance to adopt the development agreement, and 6) adopt a resolution to approve the below market rate (BMR) housing agreements

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, public benefits, 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)

The City Council began its review of the proposed project, including the Planning Commission’s recommendation, at its regular meeting on November 15, 2022. At that meeting, the City Council received the staff’s and the applicant’s presentations, heard public comment, and deliberated on the proposed project. The City Council continued the item with direction to the applicant and staff on development agreement terms and modifications to the conditional development permit, draft resolutions, and the draft conditions of approval for the vesting tentative maps. Where a resolution, ordinance, or governing entitlement document has been revised, the tracked changed document is included in the recommended actions listed above. If the City Council adopts the resolutions or introduces the ordinances, the documents would be revised to incorporate the changes.

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, and the proposed deviations from the Below Market Rate Housing Guidelines. 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 City Council November 15, 2022 staff report, available in Attachment I.

Background

Planning Commission recommendation

Previously, on November 3, 2022 the Planning Commission completed its review and recommendation on the proposed project. The Planning Commission voted 6-0-1, with Commissioner Schindler not participating,

to adopt a resolution recommending that the City Council approve 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.

City Council initial review and continuance

At its meeting on November 15, 2022, the City Council began its review of the proposed project, including the Planning Commission's recommendation to approve the proposed project with modifications. After receiving presentations from staff and the applicant and taking public comment, the City Council began its deliberation on the proposed project. The City Council and the applicant engaged in a discussion of potential project modifications to be incorporated into the DA, CDP, or other appropriate entitlement document. The list below provides a summary of the general topics that are discussed in detail later in the report and incorporated into the entitlement documents accordingly.

- Additional annual subsidy for grocery store through year five;
- Bayfront shuttle would be electric, if feasible, coordinated with other owners/users, and at 17 years City and applicant would meet and confer to discuss future operation and funding;
- Phasing plan modifications to frontload housing and amenities by moving up the start of residential buildings RS2 and RS6;
- Provide a longer term for the gap payment to offset fiscal impacts to the City if hotel is not built through a one-time payment at end of gap payment term or the end of the DA;
- Address on-site and off-site bicycle and pedestrian infrastructure in the CDP and/or map conditions;
- Increase funding for affordable housing with an offer of an additional \$1M from the applicant and two payments instead of four payments;
- Include low carbon or electric alternatives to the proposed diesel generators if commercial available at time of purchase;
- Include a City project manager to facilitate project implementation and review;
- Allow for City and community use of the event space at the Meeting and Collaboration Space (MCS);
- Include a financial penalty of 120 percent of the full cost of the Elevated Park segment over Willow Road if that portion is not constructed;
- Modify job training to include five job fairs in case of a hiring freeze;
- Include provisions for Elevated Park to address concerns about balloons and trash in the wetlands; and
- Directed staff to work with the City Council subcommittee for the project to schedule a meeting with East Palo Alto to discuss its comments on the project.

This City Council staff report primarily focuses on the analysis of the changes to the proposed project since

the City Council meeting, including modifications to address the City Council’s recommendations and staff initiated edits and cleanups to the entitlement documents. For a detailed analysis of the proposed project, please review the November 15 City Council staff report (Attachment I) or the November 3 Planning Commission staff report (Attachment J.)

Analysis

Project overview

The applicant, Peninsula Innovation Partners, Inc., is proposing to redevelop the main project site with a mixed-use masterplan that includes office and accessory space, retail, hotel, and multifamily residential units through the master plan process that allows a project to aggregate development potential and Zoning Ordinance requirements across the site. A location map is included in Attachment K. A hyperlink to the master plan project plans is included in Attachment L. 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.

More details on the proposed project are included in the November 15, 2022 City Council Staff Report (Attachment I.)

Project entitlement modifications

The modifications discussed below are included in track changes in the City Council resolutions and ordinances for City Council consideration. If the resolutions are approved and ordinances introduced, staff will incorporate the track changes and any additional requested modifications into the final entitlement documents, resolutions, and ordinances.

Development agreement

Based on the City Council and the applicant’s discussion and generally agreed upon terms at the November

15 City Council meeting, the applicant and City staff collaborated to incorporate the detailed language for the revisions to the development agreement (DA.) The redlined DA is included in Attachment G that documents the substantial changes discussed below as well as the minor clean up items.

Elevated Park penalty (Section 5.1.A)

The City Council identified connectivity concerns between the project site and the Belle Haven neighborhood. In response the applicant offered to increase the financial penalty if the Elevated Park is not constructed due to the inability for the applicant to obtain approvals of outside agencies and approval of lessees at the Hamilton Avenue Parcel North. The revised DA includes a 120 percent financial penalty on the full cost of the Elevated Park segment over Willow Road.

Grocery store rent subsidy (Section 5.1.C)

The City Council raised concerns about the viability of the grocery store beyond the two years of subsidized rent. The City Council and the applicant generally agreed to revise the grocery store rent subsidy to incorporate an additional \$1M that could be applied over years three to five if the grocery store is not meeting a specific sales target. Subsequently, staff and the applicant have worked together to determine specific metrics to be used in evaluating the grocery store and potential subsidy. The sales target proposed by the applicant and confirmed by BAE, the City's consultant, is \$14 per square foot in weekly sales on an annual basis, excluding pharmacy sales (referred to in the DA as the "Grocery Store Performance Standard".) The additional subsidy would be provided based on the amount of the delta between the store sales and Grocery Store Performance Standard for years three to five. The applicant would provide a subsidy if the Grocery Store Performance Standard is not met, with a not to exceed amount of \$1M over the three additional years. The applicant would report if any additional subsidy was provided through the annual review of the DA but is not required to disclose the amount of the subsidy. This subsidy would be in addition to the two years of rent subsidy in the amount of \$1,972,630 to the grocery store tenant.

Affordable housing contribution (Section 5.1.D)

In response to City Council and applicant discussion, the amount of the affordable housing contribution has been increased from \$5M to \$6M and the payments would be accelerated. Instead of an initial \$2M upon issuance of the first building permit for vertical construction and payments of \$1M annually thereafter, the DA has been revised to include an initial \$3M payment upon issuance of the first building permit for vertical construction and a second \$3M payment one year after. Exhibit F of the DA and the DA have been revised accordingly.

Bayfront shuttle (Section 5.1.I)

The DA includes a shuttle that would circulate between the project site and the Bayfront Area of Menlo Park to improve accessibility for residents in the vicinity and to enhance success of the grocery store and other retail uses. The DA previously identified that the shuttle would be electric, if feasible. The City Council requested and the applicant has agreed to make the shuttle electric, provided an electric shuttle can meet the required performance standards. The DA has been revised to identify that the shuttle would be electric, provided that the technology at the time of implementation is able to run for 12 hours without recharging and is commercially reasonably available. If this technology is not feasible, then the City and applicant would meet and confer to determine the lowest emission technology that is commercially reasonable and acceptable to the applicant and the City, which the applicant will then employ.

Additionally, the vicinity of the project site is currently served by multiple private and public shuttles and future development projects in the area may incorporate shuttles as part of their adopted transportation demand management (TDM) plans. The applicant, at the request of the City Council, has agreed to use commercially reasonable efforts to coordinate with other developers and owners in the area on the provision of shuttle services, subject to cost constraints and maintaining anticipated headways, which could allow for

the project shuttle to serve other sites and be integrated into a broader network of shuttles to allow for increased accessibility within the Bayfront Area.

The DA also has been revised to require the City and applicant to meet and confer to determine if there is continued demand for the shuttle after 17 years; If there is demand, the applicant and City would work together to determine an approach for continuing the service.

Job fair for residents (Section 5.3.A)

Similar to previous DAs, the proposed DA includes a requirement for Meta to hold an annual job fair for residents of Belle Haven and East Palo Alto. The DA initially identified that this job fair would be conducted annually for five years except in times of hiring freezes by Meta. Upon request from the City Council, the applicant has clarified that if a hiring freeze occurs the job fairs shall be extended annually until five job fairs have occurred.

Additional gap payment in lieu of hotel (Section 5.3.G)

The fiscal impact analysis for the proposed project identified that, if the hotel is not constructed, the proposed project would result in a negative fiscal impact to the City and, as part of the DA, City staff and the applicant negotiated a gap payment to cover the difference between the projected revenue and costs to the City generated by the proposed project. That gap payment would end in 17 years or upon the construction of the hotel. The City Council and the applicant discussed extending this payment at the November 15 City Council meeting. In response, the DA has been revised to include a lump sum payment or “Supplemental Gap Payment” if the Gap Payment Termination Date is reached without a hotel receiving a certificate of occupancy. The payment would be calculated using the annual gap payment in effect at the time with a three percent annual escalation rate over 10 years and a net present value discount rate of seven and one-half percent. The City’s consultant, BAE Urban Economics, has reviewed this methodology and determined the discount rate is consistent with other City fiscal impact analyses and that the 3 percent escalation rate is reasonable and generally consistent with the long term Bay Area Consumer Price Index increase of 4.1 percent. The proposed one time Supplemental Gap Payment would ensure that the project would be net neutral fiscally to the City over an additional 10 year period, without requiring the applicant to make payments beyond the term of the DA.

Community use of Meeting and Collaboration Space (MCS) (Section 5.3.I)

At the request of the City Council, the revised DA includes an allowance for the City, a non-profit, or similar community organization to use the MCS for up to six events per year. The use of the space would be subject to the applicant’s scheduling needs, applicant’s security protocols and requirements, and deed restrictions resulting from EIR mitigation measures. The applicant would report on the community use of the space annually as part of the DA annual reviews. To accommodate these community events, the applicant has requested that the trip cap for the Campus District be modified to allow for six additional exceedances for these events. A redlined CDP (Attachment F) clarifies the difference between local events (e.g. farmers’ markets) and community events, and a redlined Trip Cap Monitoring and Enforcement Policy is included in Attachment M.

Environmentally cleaner generators (Section 5.3.J)

The proposed project includes 12 diesel generators. The Planning Commission and City Council raised concerns about the timing of project construction and the need for diesel generators with regard to air quality. To address the concerns, the Council asked for the applicant to use non-diesel generators if feasible and the applicant agreed. The DA has been revised to require that if at the time future generators are purchased there is commercially available technology that is environmentally cleaner and can achieve the electrical load requirements of the project, and if the purchase price and operation costs are not more than five percent of the bid price for each generator, then the proposed project will implement the non-diesel

technology. The applicant would be required to provide verification of these cost increases to the City for review and confirmation.

City project manager for implementation of proposed project (Section 9.3.C)

The DA previously included an allowance for the applicant to request that the City hire additional staff and consultants to carry out the project expeditiously; however, the DA did not include an allowance for the City to decide to hire a project manager to facilitate project implementation. At the request of the City Council and the agreement of the applicant, the DA now includes a provision to allow the City to request the applicant to fund a third party consultant or member of staff to focus primarily on managing the proposed project implementation, including subsequent approvals. The retention of a project manager would allow the City to provide resources to facilitate implementation of the project and be reimbursed directly for those resources by the applicant team.

Timing of residential buildings (Exhibit D)

The City Council raised concerns that the project would not balance the delivery of the office buildings and residential buildings. In response, the applicant agreed to modify the timing for the start of residential building 2 (or RS2) (which includes the grocery store) and residential building 6 (or RS6.) The applicant would be required to start construction of residential RS2 concurrent with or prior to construction of the first office building and commence construction of RS6 within 90 days of the start of the first office building. The phasing plan in Exhibit D to the DA, at the request of the City Council, has also been revised to clarify that in no case shall any changes in the project phasing result in an increase in office uses above the maximum permitted in the CDP.

CDP revisions and clarifications

City staff included a number of additional clarifications and edits to the CDP in response to City Council direction and staff initiated clean up items as well as for consistency with the updated DA. The redlined CDP is included in Attachment F.

In response to City Council comments on the viability of the retail and restaurant uses on site, the applicant suggested modifying the CDP to prohibit ATMs, dry cleaners, massage facilities, and permanent third-party branded eating and retail establishments from the Campus District, unless those uses are open to the public (e.g. located in the Main Street retail spaces.) Staff believes these modifications would help ensure the retail and dining uses within the project are successful. These redlined changes are located in Section 3.1.4.1 of the CDP.

In response to concerns raised by the City Council and the Citizens Committee to Complete the Refuge, the City and applicant have revised the CDP to include a requirement that all garbage and recycling bins be designed to reduce windborne refuse (full or partial covers) and be emptied regularly (added section 13.8.3.) To address concerns regarding balloon trash from the Elevated Park, Section 19 (Operating Rules for Publicly Accessible Open Space) has been revised to include a provision that the operating rules prohibit balloons in the Elevated Park.

Under the permitted uses for each district, community events have been redefined as local events to avoid confusion with the six community events permitted in the Meeting and Collaboration Space. A new community events use (Section 3.1.4.10) has been added in the Campus District, referenced back to the DA for the definition and parameters for community events.

Section 15.1 has been revised to clarify that if the No Hamilton Avenue Realignment variant is incorporated into the proposed project, then the applicant would recalculate the maximum permitted floor area ratio, gross floor area, and density in accordance with the Zoning Ordinance and the masterplan plan set based

on the revised area of dedicated public right-of-way, provided the maximum development potential identified in the masterplan plan set shall not be exceeded.

Additional clean up items in the CDP are focused generally on typos, numbering, grammar, and minor edits for consistency with the project plans and other entitlement documents.

Vesting tentative maps (VTMs)

In response to City Council discussion and comments on the on-site and off-site circulation improvements, City staff updated the vesting tentative map for the main project site conditions to clarify the timing and expectations for the Willow Road Improvements and bicycle and pedestrian circulation on/off-site. A redlined version of the vesting tentative map conditions for the main project site is included in Attachment D.

For the Willow Road improvements, Condition 6.C for the main project site VTM has been revised to require the applicant to coordinate with staff on the improvements prior to the submittal of the first Final/Parcel Map and the applicant and the City shall coordinate on the design to ensure safe bicycle and pedestrian connections across Willow Road (including turning movements for bicyclists.) The previous conditions included a check in review by the City Council of the Willow Road improvements in advance of the submittal to Caltrans and that requirement has been revised to clarify that the update would be an opportunity for the City Council to provide input on the design for Caltrans' consideration. Caltrans has final design and permitting authority over Willow Road.

Staff added condition of approval 19 to the main project site VTM that requires bicycle infrastructure on the project site to comply with the masterplan plan set. The condition would further ensure that connections from off-site improvements and transitions within the project site are designed per best practice complete streets design guidance that emphasizes designing for all ages and abilities and City standards and City standards, subject to review and approved by the Public Works Director or their designee.

Condition of approval 20 has been added to the main project site VTM to clarify that if the Hamilton Avenue Realignment is not approved by Caltrans or the applicant is unable to obtain sufficient real property rights that the No Hamilton Avenue Realignment would take effect, as outlined in the CDP. This change is limited to clarifying that the vesting tentative map would comply with the CDP.

General plan amendment

Staff has revised the general plan circulation element amendment resolution to authorize the proposed project circulation and the circulation for the No Hamilton Avenue Realignment variant in the event that the applicant does not receive approval from outside agencies and real property rights to implement the realignment of Hamilton Avenue. The redlined resolution is included in Attachment C and includes updated exhibits for both the proposed project and the No Hamilton Avenue Realignment variant. These changes are limited to clarifying the amendment for consistency with the CDP.

Correspondence

Since the November 15, 2022 City Council public hearing, staff has received four additional items of correspondence included in Attachment N.

Conclusion

The City Council should consider the revised DA, CDP, general plan amendment resolution, and vesting tentative map conditions that Staff and the applicant have collaborated on in response to the City Council's direction at its November 15, 2022 public hearing. The resolutions, ordinances, and entitlement documents for the project are contained in Attachments B through G. The City Council should also consider the Planning Commission's recommendation (Attachment A) 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 O.

The City released the Draft EIR for public review and comment on April 8, 2022. The comment period closed May 23, 2022. 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 numerous public benefits of the project, inclusive of the benefits derived from the community amenities and development agreement, economic benefits, and social benefits. Per City Council direction, the SOC has been updated to remove under "Social Benefits" the statement that the proposed project would include a meeting and collaboration space so "visitors can understand the company's background and products." The other benefits of the meeting and collaboration space have been retained in the draft SOC. The SOC has also been revised to change the reference to grocery store space as a benefit to a grocery store. A redlined version of the resolution is included in Attachment B. 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.

Public Notice

Public notification of this special City Council meeting was achieved by posting the agenda, with the agenda items being listed, at least 24 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 – November 15 City Council agenda and staff report:
menlopark.gov/files/sharedassets/public/agendas-and-minutes/city-council/2022-meetings/agendas/20221115-city-council-agenda-packet.pdf#page=219
- J. 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#page=5
- K. Location map
- L. Hyperlink – master plan project plans: menlopark.gov/files/sharedassets/public/community-development/documents/projects/under-review/willow-village/october-2022/masterplan-plan-set.pdf
- M. Redline Trip Cap Monitoring and Enforcement Policy
- N. Correspondence since November 15 City Council meeting
- O. 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

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 3rd 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.

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

- 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 tiers 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. 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. 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_x, the excess lifetime cancer risk, and the PM_{2.5} 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_x) 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^{1,2}: 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

¹ This noise and vibration study for the Proposed Project has been prepared in accordance with ConnectMenlo Mitigation Measure NOISE-2a.

² 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_{2.5} 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_{2.5} 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.³ 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;

³ 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.⁴ 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

⁴ 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 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.

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 a grocery store ~~space~~, two-year grocery storespace 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 ~~thirtieth~~ ~~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

Exhibits:

A. MMRP

Mitigation Monitoring and Reporting Program

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.

WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<i>Transportation</i>				
<i>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)</i>				
<i>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.</i>	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
<i>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)</i>				
<i>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.</i>	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
<i>IMPACT BEING ADDRESSED: Vehicle Miles Traveled. (Impact C-TRA-2)</i>				
<i>Implement Mitigation Measure TRA-2 above.</i>	<i>See above.</i>	<i>See above.</i>	<i>See above.</i>	<i>See above.</i>
<i>IMPACT BEING ADDRESSED: Hazards or Incompatible Uses. (Impact C-TRA-3)</i>				

WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
Implement <i>Mitigation Measure TRA-3</i> , above.	See above.	See above.	See above.	See above.
<i>Air Quality</i>				
<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>				
<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"> • 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_x, the excess lifetime cancer risk, and the PM_{2.5} concentration would not exceed the thresholds from the 2017 BAAQMD CEQA Air Quality Guidelines using the mix of equipment proposed by the applicant. 	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

WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
	Management District Rule 1113.	Ongoing during operation of Project		
<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>				
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 ₁₀ (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

WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
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.)				
<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>				
<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.
<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>				
<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
<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>				
<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.
<i>Greenhouse Gas Emissions</i>				
<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>				
<i>Implement Mitigation Measure TRA-2, above.</i>	See above.	See above.	See above.	See above.

WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<i>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)</i>				
Implement <i>Mitigation Measure TRA-2</i> , above.	See above.	See above.	See above.	See above.

WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
Noise				
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)				
<p>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:</p> <ul style="list-style-type: none"> • 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. 	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

WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<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 L_{eq} 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 L_{eq} 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>

WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<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"> • 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. 				

WILLOW VILLAGE MASTER PLAN PROJECT MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<ul style="list-style-type: none"> • 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. 				
<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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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<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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<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>				
<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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<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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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<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"> • 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. <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><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></p>				
<p><i>ConnectMenlo Mitigation Measure NOISE-2a.</i>^{1,2} To prevent architectural damage citywide as a result of construction-generated vibration:</p> <ul style="list-style-type: none"> • Prior to the issuance of a building permit for any development project requiring pile driving or blasting, the 	<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>

¹ This noise and vibration study for the Proposed Project has been prepared in accordance with ConnectMenlo Mitigation Measure NOISE-2a.
² 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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<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"> 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. <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"> 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 <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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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

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<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.				
<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>				
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.
<i>Cultural Resources</i>				
<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>				
<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.				
<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>				
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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<i>IMPACT BEING ADDRESSED: Human Remains. The Proposed Project could disturb human remains, including those interred outside of dedicated cemeteries. (Impact CR-3)</i>				
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.
<i>Biological Resources</i>				
<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>				
<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><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></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.³ 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>

³ 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"> • 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; • Mitigation design; <ul style="list-style-type: none"> ○ 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: <ul style="list-style-type: none"> ○ At Year 5 post-mitigation, at least 75 percent of the mitigation site shall be dominated by native hydrophytic vegetation. <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.				
<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>				
Implement Mitigation Measures BIO-3.1, BIO-3.2, and BIO-3.3, above.	See above.	See above.	See above.	See above.
<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>				
<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"> 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. 	<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"> 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. 				
<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"> 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.⁴ Because a Threat Factor is a nonlinear index, its value is not 	<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>

⁴ 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"> 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. 	<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"> • 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. • 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 				

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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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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<ul style="list-style-type: none"> ○ 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 though glazed façades 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. 				

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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<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"> • 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, 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 	<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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<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"> • 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 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. 				

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<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>				
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.
<i>Geology and Soils</i>				
<i>IMPACT BEING ADDRESSED: Paleontological Resources. The Proposed Project could destroy a unique paleontological resource or site. (Impact GS-5)</i>				
<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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<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><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></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><i>Hydrology</i></p>				
<p><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></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><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></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><i>Hazards and Hazardous Materials</i></p>				

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<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>				
<p><i>ConnectMenlo Mitigation Measure HAZ-4a: Environmental Site Management Plan.</i> 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.</p> <p>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.</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
<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>				
Implement Project Mitigation Measure HAZ-2.1 and ConnectMenlo Mitigation Measure HAZ-4a, above.	See above.	See above.	See above.	See above.
<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>				
Implement ConnectMenlo Mitigation Measure HAZ-4a, above.	See above.	See above.	See above.	See above.
<i>Tribal Cultural Resources</i>				
<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>				
<i>Project Mitigation Measure TCR-1.1: Avoidance and Mitigation of Impacts</i> 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: <ul style="list-style-type: none"> 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 	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"> • That all ground disturbing activities require compliance with the ATMTTP. <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><u>Measures for the Core</u></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"> • Ground disturbance into the existing culturally affected soil of the Core is prohibited. The following performance standards for capping, minimizing 				

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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<p>construction loading, and preservation in place of the Core shall apply.</p> <p><u>Capping of Core</u></p> <ul style="list-style-type: none"> • 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. • 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. <ul style="list-style-type: none"> ○ An elevation contour plan shall be created to guide the surface preparation necessary to place the fill cap 				

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Mitigation Measures	Action	Timing	Implementing Party	Monitoring Party
<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"> ○ 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 				

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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"> ○ 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. <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"> • Scaffolds placed on the Core shall be installed no earlier than three months after the engineered fill placement related to sea-level rise. 				

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<ul style="list-style-type: none"> • 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. <p><u>Post-Construction Preservation in Place at the Core</u></p> <ul style="list-style-type: none"> • 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. • The Project Sponsor shall comply with Mitigation Measure TCR-1.3, <i>Post-Construction Preservation in Place</i>. <p><u>Measures for the Perimeter</u></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"> • 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 <i>Mitigation Measure TCR-1.2</i>. • 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. 				

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<p><u>Measures for the High Sensitivity Area</u></p> <p>The Project Sponsor shall avoid or mitigate ground-disturbing excavation in the High Sensitivity Area as follows:</p> <ul style="list-style-type: none"> 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. <p><u>Measures for Existing Known Reburials</u></p> <ul style="list-style-type: none"> 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. 				
<p><i>Project Mitigation Measure TCR-1.2: Archaeological and Tribal Cultural Resource Monitoring and Treatment Protocol and Plan.</i></p> <p>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"> • 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 				

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<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"> • 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. 				

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<ul style="list-style-type: none"> • 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 ATMTTP 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, 				

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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"> • Soil treatment protocols that preserve cultural soil onsite where feasible, including: <ul style="list-style-type: none"> ○ 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 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 				

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<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"> • 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"> ○ 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 				

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<p>and/or phase of a permit that requires ground-disturbing activities onsite.</p> <ul style="list-style-type: none"> ○ 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: <ul style="list-style-type: none"> ○ 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. 				

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<ul style="list-style-type: none"> ○ 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: <ul style="list-style-type: none"> ○ 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 				

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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"> • 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. 	Post-construction preservation and recording of deed restrictions over the Core, known reburials, and Project Reburial Area.	Prior to the issuance of the first certificate of occupancy for any occupied building within the Campus District	Project Sponsor/ licensed surveyor	CDD

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<ul style="list-style-type: none"> 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. 				
<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"> Access to the Project Reburial Area will be available following completion of construction of the Proposed Project, including the Project Reburial Area, subject to 	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

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<p>notification and access requirements to be specified in an access agreement.</p> <ul style="list-style-type: none"> • 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. 				
<p><i>IMPACT BEING ADDRESSED: Human Remains. The Proposed Project could disturb human remains, including those interred outside of dedicated cemeteries. (Impact TCR-2)</i></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>

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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, paseos, and a proposed multi-use pathway within the Main Project Site; and

WHEREAS, the proposed project includes a variant in the event that approval by outside agencies with jurisdiction (Caltrans) and acquisition of necessary real property rights are ~~is not~~ obtained for the Hamilton Avenue realignment and therefore, an alternate General Plan Circulation Map amendment is necessary; and

WHEREAS, the proposed amendments to the General Plan Circulation Map ~~are~~ 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 amendments ~~s~~ ~~are~~ 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 the Project Variants, 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 amendments 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 amendments 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 amendments 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 amendments to the General Plan Circulation Map, as depicted by and attached hereto as Exhibit A and in the event that the Applicant does not receive approval of outside agencies for the Hamilton Avenue realignment, then the General Plan Circulation Map depicted in Exhibit B shall become effective. Exhibits A and B are, 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~~ thirtieth day of November, 2022, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

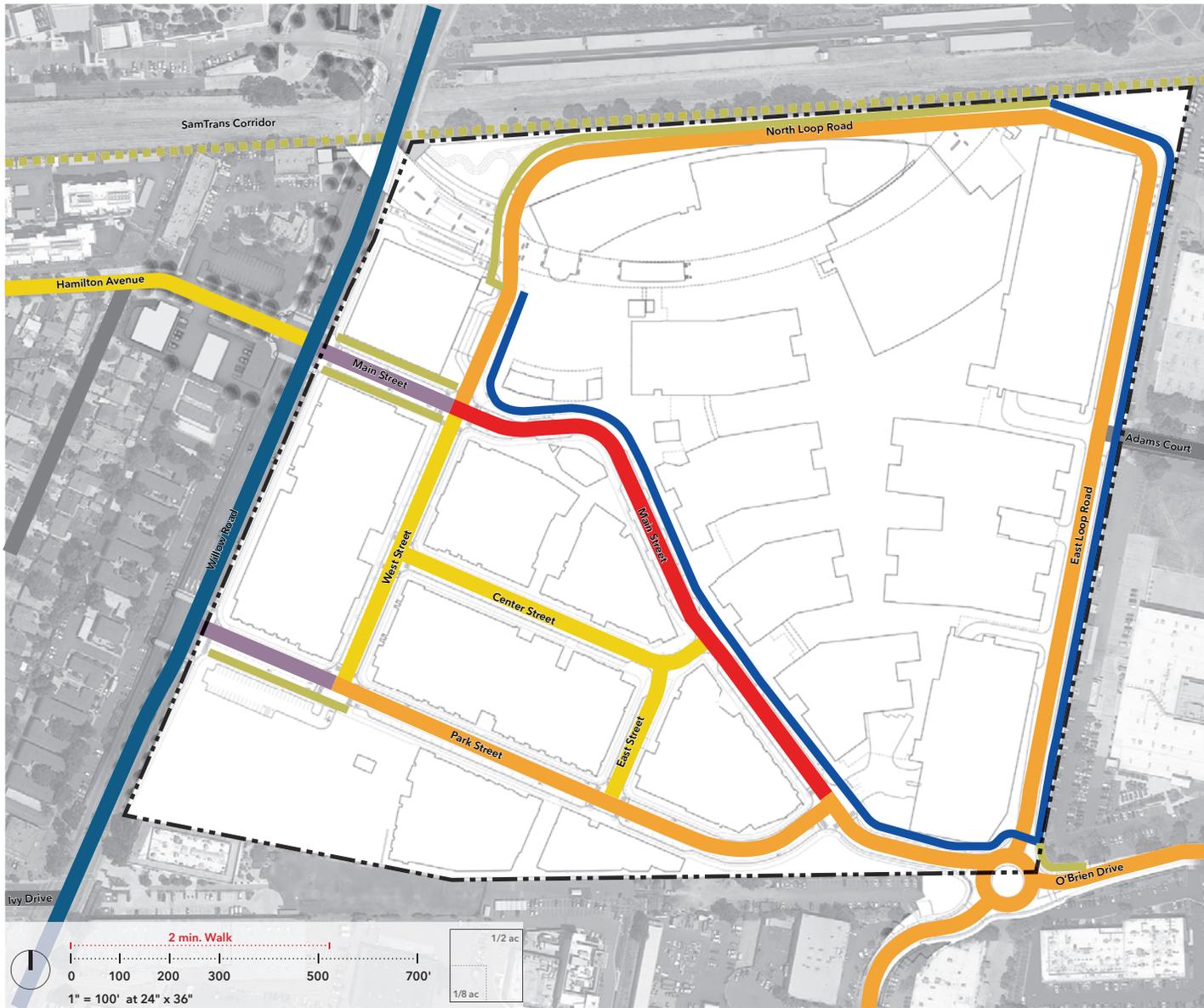
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this ___ day of November, 2022.

Judi A. Herren, City Clerk

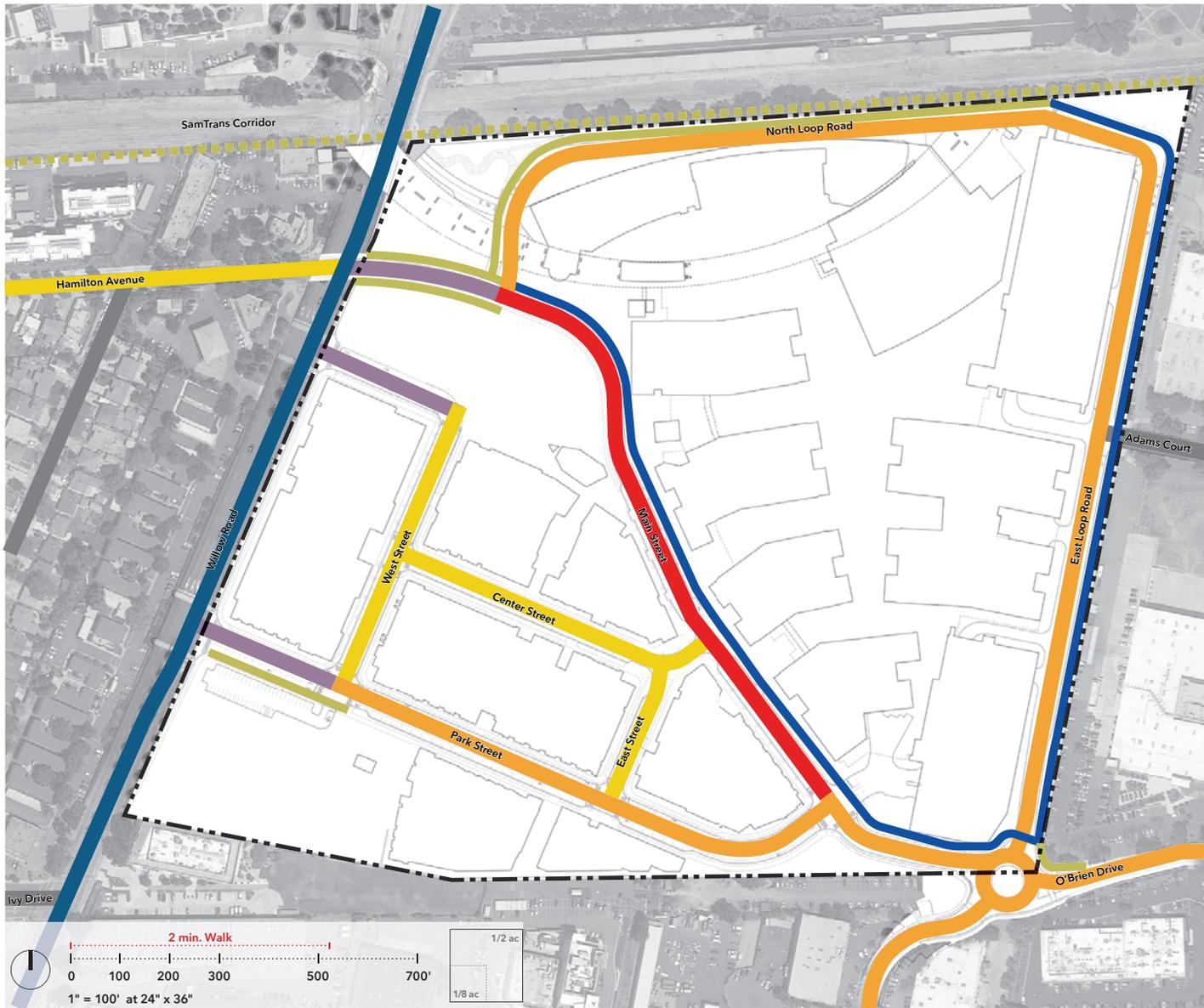
Exhibits:

A. General Plan circulation map

A-B. General Plan circulation map, no Hamilton Avenue realignment



LEGEND	
	Boulevard
	Main Street
	Avenue - Mixed Use
	Mixed Use Collector
	Neighborhood Collector
	Local Access
	Multi-use Pathway
	Multi-use Pathway - Future
	Paseo



LEGEND	
	Boulevard
	Main Street
	Avenue - Mixed Use
	Mixed Use Collector
	Neighborhood Collector
	Local Access
	Multi-use Pathway
	Multi-use Pathway - Future
	Paseo

Note:
The circulation configuration depicted on this General Plan Circulation Map: No Hamilton Realignment Variant shall apply instead of the configuration depicted on the General Plan Circulation Map in the event that 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 the property owner is unable to obtain sufficient real property rights for the realignment.

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~~thirtieth 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

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. The Applicant shall coordinate with City staff on the design of the Willow Road Improvements prior to submittal of the first Parcel Map, and Applicant shall submit Willow Road Improvement Plans to the City for approval no later than concurrent with the submittal of the first Parcel Map. ~~The Applicant shall coordinate with City staff on the design of the Willow Road Improvements prior to 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
 4. Bicycle and pedestrian connections across Willow Road (e.g. turning movements for bicyclists, crosswalks, pedestrian refuges)
 - ~~3-5.~~ Wayfinding for bicyclists and pedestrians (e.g. signage, bicycle signals) to the Main Project Site
- 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 to allow for City Council input on the design of the Willow Road Improvements for consideration by Caltrans.- 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.

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.

19. Bicycle infrastructure and connections shall be substantially consistent with the Conceptual Plans from the Willow Village Masterplan plan set (dated October 19, 2022) and shall include signage, bicycle facilities, and striping per best practice complete streets design guidance that emphasizes designing for all ages and abilities and City standards.

a. Multi-use paths that connect the Main Project Site to the Willow Road Improvements shall include striping and signage to minimize conflicts between bicyclists and pedestrians, per best practice complete streets design guidance that emphasizes designing for all ages and abilities and City standards, subject to review and approval of the Public Works Director or their designee.

b. The transition from multi-use paths to other bicycle infrastructure (e.g. Class II or Class III facilities) within the Main Project Site shall include appropriate signage, striping, and/or bicycle signals, per best practice complete streets design guidance that emphasizes designing for all ages and abilities and City standards, subject to review and approval by the Public Works Director or their designee.

~~18-20.~~ If the No-Hamilton Avenue Realignment Variant takes effect in accordance with the Project's Conditional Development Permit and Development Agreement, the Willow Village "A" Map shall be revised generally consistent with Sheet G4.08 of the Willow Village Masterplan plan set.

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~~thirtieth 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

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~~thirtieth 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,

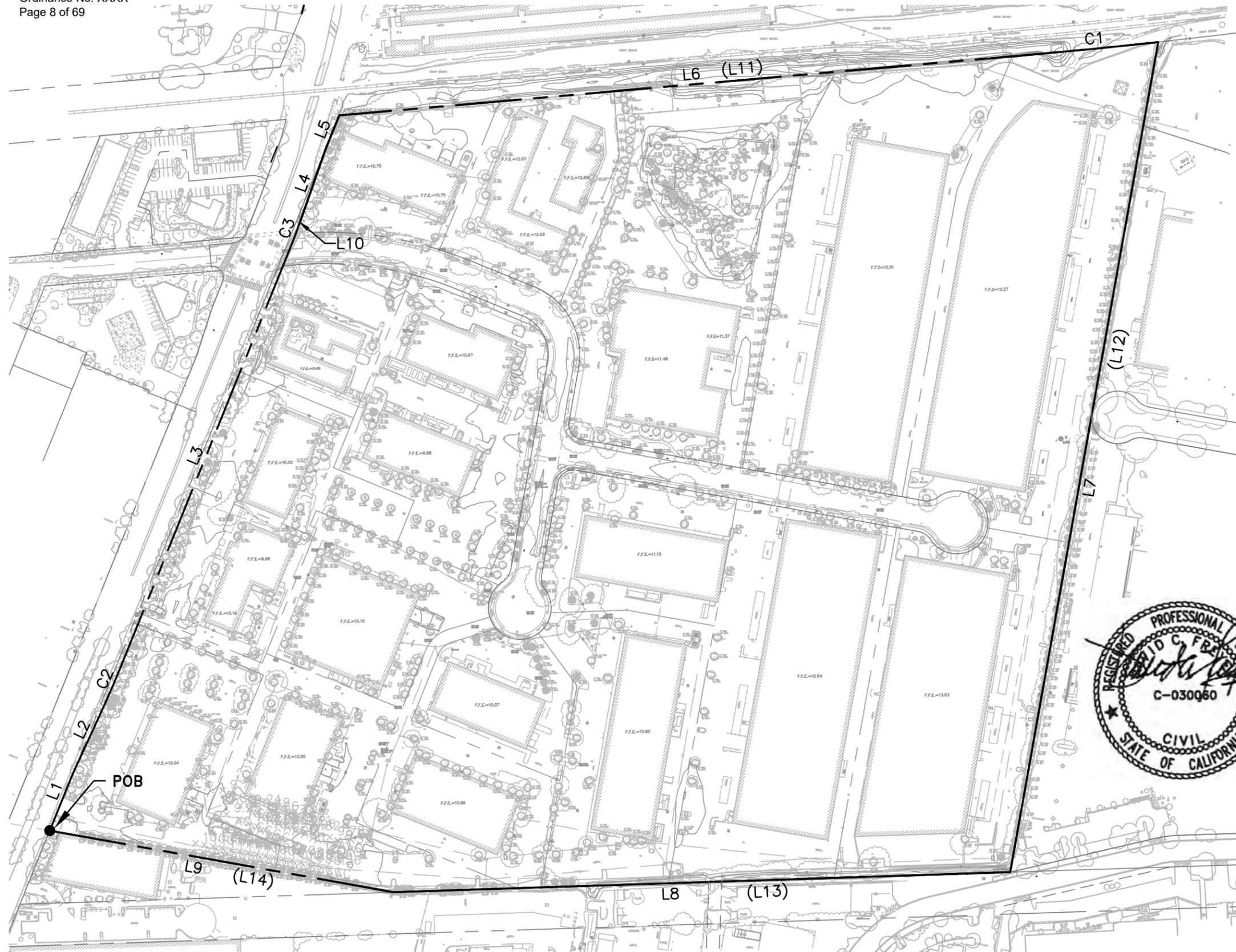
South 88°08'54" West, 1,612.25 feet; thence,

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

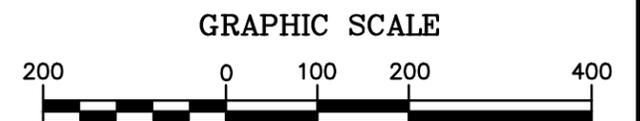


Line Table		
Line #	Length	Direction
L1	120.17	N22° 05' 00"E
L2	143.14	N24° 45' 44"E
L3	864.41	N22° 05' 00"E
L4	144.98	N19° 19' 09"E
L5	71.06	N22° 05' 00"E
L6	1324.41	N84° 59' 41"E
L7	1612.25	S10° 08' 21"W
L8	1182.95	S88° 08' 54"W
L9	668.96	N79° 51' 49"W
L10	2.12	N25° 35' 47"E
L11	1324.41	N84° 59' 45"E
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,

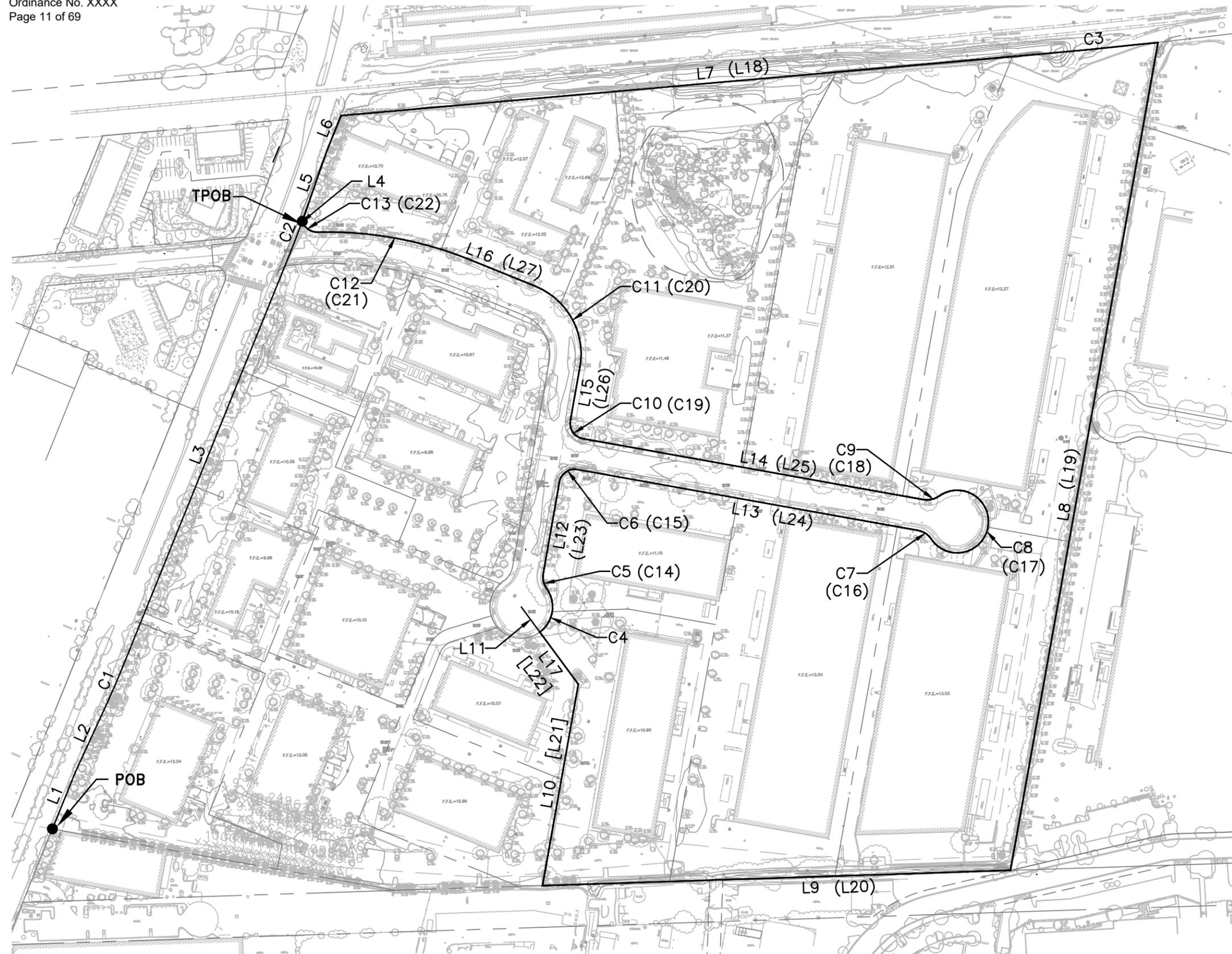
Along a tangent curve to the left, having a radius of 735.00 feet, length of 301.93 feet, and a delta angle of 23°32'13"; thence,

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**.

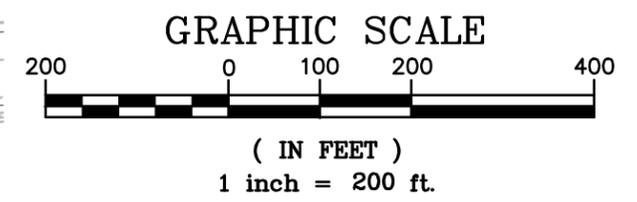
Containing 1,624,516.57 square feet (37.29 acres), more or less.

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:	

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DESCRIPTION	DATE

EXHIBIT B
OFFICE (O)
WILLOW VILLAGE
MENLO PARK, CALIFORNIA

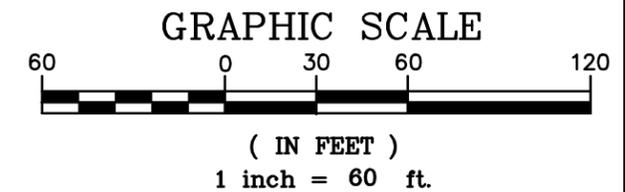
SHEET 1 OF 2 SHEETS
 JOB NO. 300001

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
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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

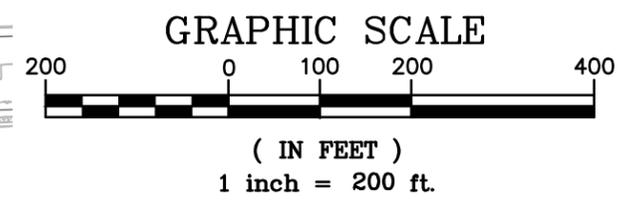
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Page 1 of 1

Page D-1.184



NOTES
 (L11) RECORD DATA FROM
99 M 82-83
 [L15] RECORD DATA FROM
52 M 82



DATE:	10/17/2022
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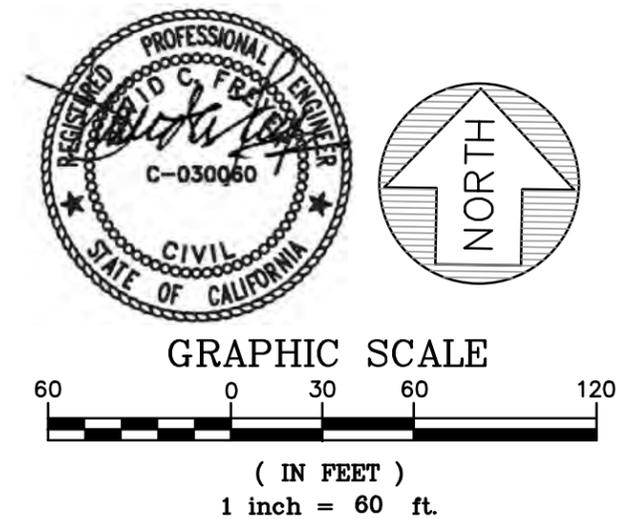
DESCRIPTION	DATE

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
DESIGNED:
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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. CommunityLocal 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 communitysuch 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. CommunityLocal 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 communitysuch 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) and wellness facilities (including medical and dental), provided that ATMs, dry cleaners, and massage facilities are not permitted in the office amenity space, and permanent third-party branded eating establishments as well as permanent third-party branded retail are not permitted in the office amenity space, except for private special events permitted by this CDP. Nothing in this Section 3.1.4.1 limits retail uses that are open to the public.~~
 - 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 [XXG6.07](#) of the Project Plans and the Hazardous materials information forms, ~~e~~-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.](#) CommunityLocal 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~~such 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.
- ~~3.1.4.9.~~[3.1.4.10.](#) MCS Community Events as defined in Section 5.3.I of the Development Agreement
- ~~3.1.4.10.~~[3.1.4.11.](#) 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.~~[3.1.4.12.](#) Parking structures, above and below-grade
- ~~3.1.4.12.~~[3.1.4.13.](#) Cellular telecommunications facilities

~~3.1.4.13~~3.1.4.14. 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
- CommunityLocal 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~~Local 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*

- CommunityLocal 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 stepback of 10 feet; allow Shade trellis and parapet within stepback zone(s).

4.2.2.1. Roof trellises within the stepback 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 stepback required along North Loop Road.

4.4. Parcel 1 (Office)

- 4.4.1. No stepbacks required for office garages; stepback 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~~to 70 feet above average natural- grade.
- 4.7.2. Allow for (i) setbacks of 8 feet minimum depth, (ii) projections into setback 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~~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~~stepbacks of 6 feet; ~~Minimum~~minimum setback 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~~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~~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~~approximately 38 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~~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~~ Twenty Million ~~Three~~ Seven Hundred ~~Sixty-Nine~~ Thirty Eight Thousand ~~Thirty-One~~ Sixty-Two Dollars (~~\$-10,369,031~~ 20,738,062) 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~~approximately 38 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.

13.8.3. All garbage and recycling bins located outside buildings shall include a cover to reduce windborne refuse. The covers may be full or partial, provided that refuse cannot become windborne from the receptacle, subject to review and approval by the Planning and Sustainability Divisions. All exterior garbage and recycling bins shall be frequently emptied on a routine schedule to reduce the possibility of overflowing refuse.

- 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; and (iii) maximum building square footage shall be recalculated in accordance with Municipal Code Section 16.04.325 (Gross floor area) and maximum allowed gross floor area and floor area ratios shall be recalculated based on the area of public right-of-way dedication shown on the revised Parcel Map utilizing the calculations and ratios identified on Sheets G1.5 and G3.02 of the Project Plans, provided that in no case shall the maximum allowable gross floor area, floor area ratios, and density exceed the maximums permitted in this CDP. The City shall cooperate with Applicant in ~~its efforts in~~ connection with any modifications to ~~modify~~ this CDP or other Project entitlements necessary 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, including the Elevated Park, 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. The Operating Rules shall include a provision that prohibits balloons in the Elevated Park.

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 Willow Village Community Amenities as defined and outlined in the Development Agreement and in accordance with the timing/phasing provided in Exhibits —D and —E of the Development Agreement, as they may be amended from time to time. Provision and timing of said Willow Village 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.

21.8-21.9. Indemnification. The Applicant or permittee shall defend, indemnify, and hold harmless the City of Menlo Park or its agents, officers, and employees from any claim, action, or proceeding against the City of Menlo Park or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit, or land use approval; provided, however, that the Applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the Applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the Applicant's or permittee's defense of said claims, actions or proceedings. In the event of a conflict between this indemnification language and the indemnification language included in the Development Agreement, the Development Agreement shall control. This indemnification language shall only control in the event the Development Agreement is no longer in effect.

21.9-21.10. 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~~, Staff Report Attachment M)
- Exhibit 4: TDM Compliance Plan (November 15, 2022 Staff Report Attachment U)
- Exhibit 5: Glossary of Supporting Documents
- Exhibit 6: Mitigation Monitoring and Reporting Program (Staff Report Attachment B)

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~~thirtieth 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

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-2-1</u>	Main Project Site Legal Description
<u>Exhibit A-2-2</u>	Hamilton Parcels Legal Description
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<u>Exhibit E-4</u>	Conceptual Alternative Design For Elevated Park Vertical Transportation System
<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-~~ sixty-two (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. ~~_____~~ [2019090428](#)), 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 [Project 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 ~~2.2C~~~~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 ~~2.2C~~~~2.2B~~.

“**Grocery Store**” is defined in Section 5.1B~~5.1A~~.

“**Grocery Store Performance Standard**” is defined in Section 5.1C.

“**Grocery Store Rent Subsidy**” is defined in Section 5.1C~~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 Deposit**” is defined in Section 9.3C(1).

“**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.

[“MCS Community Events” is defined in Section 5.3I.](#)

“**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 Manager**” is defined in [Section 9.3C.](#)

“**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 2.2C~~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.

“**Supplemental Gap Payment**” is defined in [Section 5.3G.](#)

“**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 (10th) 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 2.2C~~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 depicted 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~~ Hamilton Lessee Approvals 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)~~ Twenty Million Seven Hundred Thirty Eight Thousand Sixty-Two Dollars (\$20,738,062), which represents one hundred and twenty percent (120%) of ~~fifty one hundred~~ percent (~~50~~100%) 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~~ 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.

~~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 (“**C. Grocery Store Rent Subsidy**”).~~

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**”). In addition, to assist the Grocery Store to remain in operation in the event that the Grocery Store tenant is not achieving sales of at least Fourteen Dollars (\$14) per square foot, excluding prescription drug sales, in weekly average sales on an annual look back (the “**Grocery Store Performance Standard**”) during the third (3rd) through fifth (5th) years of operation, with the first annual lookback occurring on the third (3rd) anniversary of the Grocery Store opening, Developer shall offer the Grocery Store tenant an additional rent subsidy in the amount of the delta between the Grocery Store tenant’s sales and the Grocery Store Performance Standard, not to exceed a total of One Million Dollars (\$1,000,000) over such three (3) year period. If Developer does not offer the maximum subsidy after the first annual look back, Developer shall conduct a second annual look back on the fourth (4th) anniversary of the Grocery Store opening. Developer shall also conduct a third annual look back on the fifth (5th) anniversary of the Grocery Store opening if One Million Dollars in total has not yet been provided. Developer shall report as part of the annual review pursuant to Section 6.1 whether any additional rent subsidy has been provided under this Section 5.1.C after each annual look back. Developer shall state whether the full amount of the subsidy was provided after each annual look back, but shall not otherwise be required to disclose the specific subsidy amounts paid after each annual look back. Nothing under this Section 5.1.C shall require Developer or the Grocery Store tenant to disclose any Grocery Stores sales information to the City.

D. Affordable Housing Contribution. Developer shall provide ~~Five~~ Six Million Dollars (~~\$5,000,000~~ \$6,000,000) 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 non-profit~~ 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~~ The shuttle shall use one hundred percent (100%) electric vehicles if feasible, which shall mean that a technology that can run a single shuttle for twelve (12) hours without recharging is commercially reasonably available. If Developer believes using one hundred percent (100%) electric vehicles is infeasible, Developer shall notify City and Developer and City shall meet and confer to determine the lowest emission technology that is commercially reasonable and mutually acceptable to

Developer and City and Developer shall employ such technology. 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.
- (4) Use commercially reasonable efforts to coordinate with other developers and property owners in the area regarding the provision of shuttle services, subject to cost constraints and maintaining anticipated headways.

At the end of the seventeen (17) year period of operation of the Bayfront Shuttle, Developer and the City shall meet and confer to determine if there is continued demand for shuttle services and, if so, an appropriate approach for continuing such services, on what schedule, and how such services would be funded.

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 depicted 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 depicted 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 five (5)~~ annual job ~~fair~~ fairs for residents of City and City of East Palo Alto. ~~Program-~~The program shall run annually for a period of five (5) years after the Effective Date, except for times of Meta hiring freezes, in which case the period shall be extended annually until five (5) job fairs have occurred;
- (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 Midday, 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 depicted 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.

(3) If at the Gap Payment Termination Date the Hotel has not received a certificate of occupancy, then Developer shall make a one-time net present value supplemental payment to the City (the "**Supplemental Gap Payment**"), which shall be calculated by applying the then in effect Gap Payment amount for a ten (10) year period at a three (3) percent escalation rate over such ten (10) year period and applying a net present value discount rate of seven and one-half percent (7.5%). Developer's obligation to make a Supplemental Gap Payment shall survive the termination of this Agreement until the obligation is satisfied, and the general survival time frame for public benefits set forth in Section 11.7 shall not apply to this obligation.

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 depicted 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.

I. Community Use of MCS. Subject to Developer's security protocols and requirements and Developer's scheduling needs, exercised in good faith, and applicable deed restrictions imposed pursuant to Mitigation Measures in the Project EIR, Developer will provide access to the MCS to the City and/or non-profit or similar community organizations for up to six (6) community events per year ("**MCS Community Events**"). As part of the periodic review pursuant to Article 6.1, Developer will advise the City of the number of MCS Community Events that occurred in the prior year. Other than providing police services ordinarily provided

by the City, City shall have no obligation to provide security or contribute to the cost of security for MCS Community Events pursuant to this Section 5.3I.

J. Generators. If, at the time that generators are purchased, there is commercially available generator technology that is environmentally cleaner than diesel, and commercial generators with that technology can achieve the Project electrical load requirements and work with the electrical and mechanical infrastructure/service of the Project without redesign, then the Project will use that technology if (1) the capital cost is not more than five percent (5%) more expensive (for the generator including any system modifications to accommodate that technology) of the bid price of the diesel generator meeting the project specifications and (2) the annual operational cost will not be more than five percent (5%) more expensive. At least 30 days prior to purchasing, Developer shall provide City with (i) a bid for the generator and any system modifications to accommodate the environmentally cleaner technology and, for purposes of comparison, a bid for a diesel generator and (ii) documentation showing the annual operational costs of the environmentally cleaner technology and, for purposes of comparison, documentation showing the annual operational costs of diesel.

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. In the event Developer does not receive such Other Agency Approvals, Developer shall provide written notice to City and Developer shall be permitted to construct the Project, as reconfigured in accordance with Sheet G4.08 of the Willow Village Master Plans.

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.

C. If City so requests in writing after submittal of an application for a demolition permit, or earlier if otherwise agreed by Developer in its reasonable discretion, Developer shall fund (i) a third party consultant or (ii) a member of City staff that is primarily dedicated to the Project Manager functions under this Section 9.3C (and any time spent on other functions shall not be billed to the Project under this Section), to be selected and retained by City and subject to Developer’s reasonable approval, to assist City in managing the implementation of the Project Approvals and this Agreement as well as facilitating the processing of Subsequent Project Approvals; receive inquiries related to the Project and coordinate with Developer and City departments regarding appropriate responses thereto during development of the Project; and promote accessibility, predictability, and consistency across City departments (the “**Project Manager**”). Developer shall use commercially reasonable efforts to provide at least ninety (90) days advance written notice of its intent to submit a demolition permit.

(1) City shall determine, in City’s reasonable discretion after consulting with Developer, the need for the Project Manager, the initial budget (including a reasonable initial deposit amount to cover initial hiring and reasonable compensation costs, which shall be consistent with market costs for similar services, associated with the Project Manager (the “**Initial Deposit**”), the scope of work, and the schedule of work for the Project Manager. Developer shall deposit the Initial Deposit within sixty (60) days of City’s written request. City shall utilize the Initial Deposit to pay for the initial cost of the Project Manager and Developer shall pay future invoices as set forth in Section 9.3C(3) below. At such intervals as the Parties shall agree in writing, subsequent budgets, schedules, and scopes of work for the Project Manager shall be determined by the City in its reasonable discretion after consulting with Developer. City shall provide written notice to Developer prior to entering into any contract with a third party to provide the Project Manager services under this Section 9.3C.

(2) In the event that Developer reasonably disputes any budget, scope, schedule, or selection of the Project Manager proposed by City, Developer shall provide written notice to City of its objections and the Parties shall cooperate in good faith to resolve the dispute pursuant to Section 11.6. If the Parties are unable to resolve the dispute, then the Parties shall participate in a mediation to be conducted at the Judicial Arbitration and Mediation Services (JAMS) in San Francisco, CA. The mediation shall be before a single mediator and, unless otherwise agreed by the Parties, shall not exceed two (2) days in length. The costs of any such mediation shall be borne equally by the Parties. If the dispute is not resolved at mediation, the disputed budget, scope, schedule, or selection of the Project Manager proposed by City shall stand and Developer shall have the right to seek mandamus or other equitable relief as may be available under applicable law.

(3) City shall provide Developer on a monthly or quarterly basis (as mutually agreed to by the Parties in writing) an invoice which shall include: the Project Manager’s hourly rate, the number of hours the Project Manager worked on Project activities during the previous month or quarter (as mutually agreed to by the Parties in writing), and a brief, non-confidential description of the work the Project Manager performed on Project activities. Developer shall submit payment of any invoice within sixty (60) days of receipt of

City's invoice.

(4) Further details regarding the process and timing for billing and payment of the City's costs associated with the Project Manager shall be documented in an Operating Memorandum to be entered into within sixty (60) days of City's receipt of Developer's notice provided pursuant to the opening paragraph of Section 9.3C.

(5) Developer may, from time to time, but in no event more than once in any twelve (12)-month period, at Developer's sole cost and expense, request an audit of the City invoices described in this Section and non-confidential supporting documentation therefor, provided any such audit is initiated within one (1) year after Developer's receipt of the invoice. If an audit reveals that the actual costs were less than the amount of any City invoice provided in accordance with this Section, then within sixty (60) days following receipt of the invoice or audit results, Developer shall provide notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile or resolve the dispute as soon as practicable.

(6) Developer's obligation to fund the costs of the Project Manager shall terminate upon Completion of Construction of the last Improvement for the Project. In addition, on thirty (30) days' prior written notice from Developer of an anticipated temporary suspension of at least ninety (90) days of the implementation of the Project Approvals and processing of Subsequent Project Approvals, Developer's obligation to fund the costs of the Project Manager shall be suspended until Developer resumes the implementation of the Project Approvals or processing of Subsequent Project Approvals, at which time Developer's obligation to fund the costs of the Project Manager shall resume. Developer shall provide City with at least sixty (60) days' written notice of its intent to resume implementation of the Project Approvals or processing of Subsequent Project Approvals. City will use good faith efforts in consultation with Developer to locate an alternate Project Manager within a reasonable period of time in the event that the Project Manager in place prior to the suspension (i) will not be used, as determined in City's reasonable discretion, or (ii) declines to act as Project Manager.

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 or later 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; and (vii) references to Sections shall be deemed to refer to Sections in this Agreement 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]

EXHIBIT A-1-1
MAIN PROJECT SITE MAP
(ATTACHED)

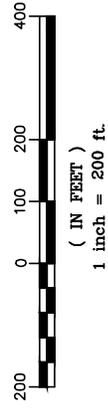
Line Table		
Line #	Length	Direction
L1	120.17	N22° 05' 00"E
L2	143.14	N24° 45' 44"E
L3	864.41	N22° 05' 00"E
L4	144.98	N19° 19' 09"E
L5	71.06	N22° 05' 00"E
L6	1324.41	N84° 59' 41"E
L7	1612.25	S10° 08' 21"W
L8	1182.95	S88° 08' 54"W
L9	668.96	N79° 51' 49"W
L10	2.12	N25° 35' 47"E
L11	1324.41	N84° 59' 45"E
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 ST., SUITE 1000 • CARLSBAD, CA 92008
 (415) 524-7070 • www.feyeraurel.com

DATE:	9/26/2022
DRAWN BY:	AS SHOWN
DESIGNED BY:	RUL
CHECKED BY:	DCF
SCALE:	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**

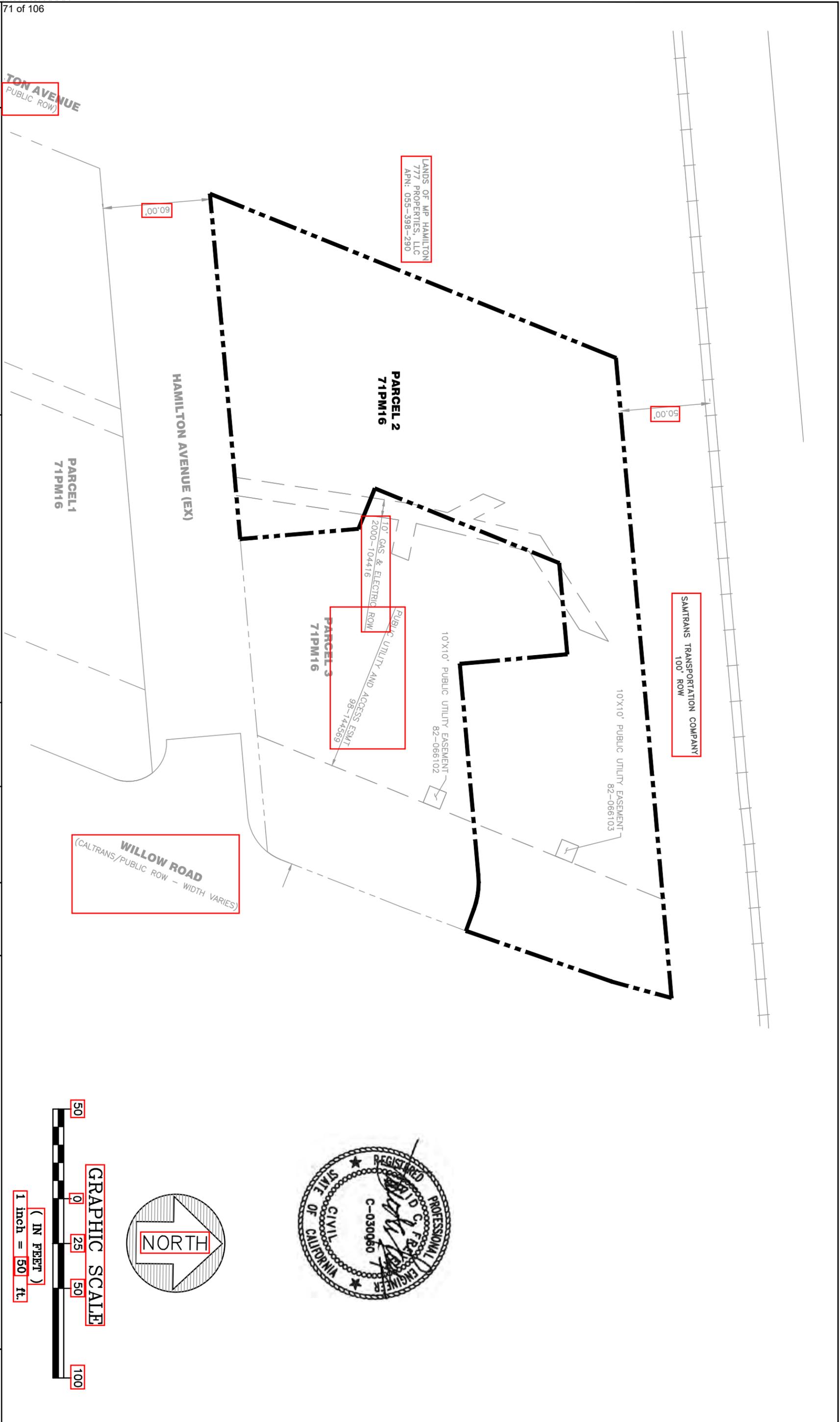


EXHIBIT A-2-1
MAIN PROJECT SITE LEGAL DESCRIPTION
(ATTACHED)

**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 31st 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 31st 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 ¹	Required Minimum Number of Residential and BMR Units associated with such Phase of Construction ²
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.	

¹ 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. Nothing in this Footnote authorizes an increase in the total office building square footage for the Project above the amount approved in the Project Approvals.

² 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 ¹	Required Minimum Number of Residential and BMR Units associated with such Phase of Construction ²
3. First, Second and Third Office buildings ³	<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 (“RS2”) and the residential building on Parcel 6 (“RS6”) prior to final Certificate of Occupancy (“COO”) 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	<p>4. Commence construction <u>of RS2 on or before commencement of construction of first office building.</u></p> <p><u>Commence construction of RS6</u> within 4 months <u>90 days</u> after commencement of construction of first office building.</p>	RS2 and RS6 have a combined total of 505 units, including 54 BMR units.

³ Office buildings as used in this Exhibit D excludes the MCS.

Project Component	Timing/Milestones ¹	Required Minimum Number of Residential and BMR Units associated with such Phase of Construction ²
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>	
6. Sixth Office building	<p>6. Complete construction of podium of the mixed-use building on Parcel 3 (“RS3”) and the residential building on Parcel 7 (“RS7”) prior to issuance of building permits for the sixth office building.</p> <p>Commence construction of the residential building on Parcel 4 (“RS4”) and the residential building on Parcel 5 (“RS5”) 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

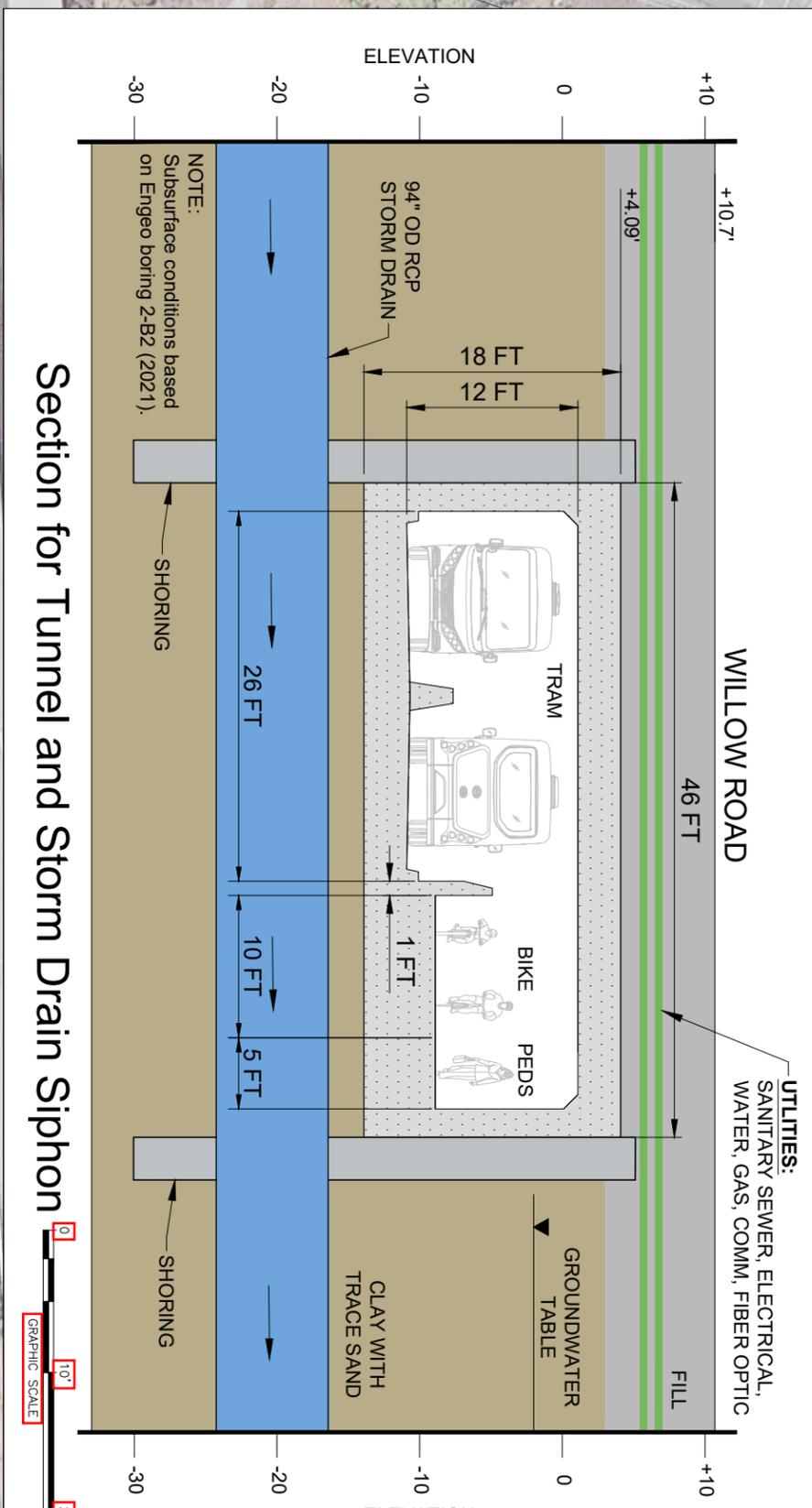
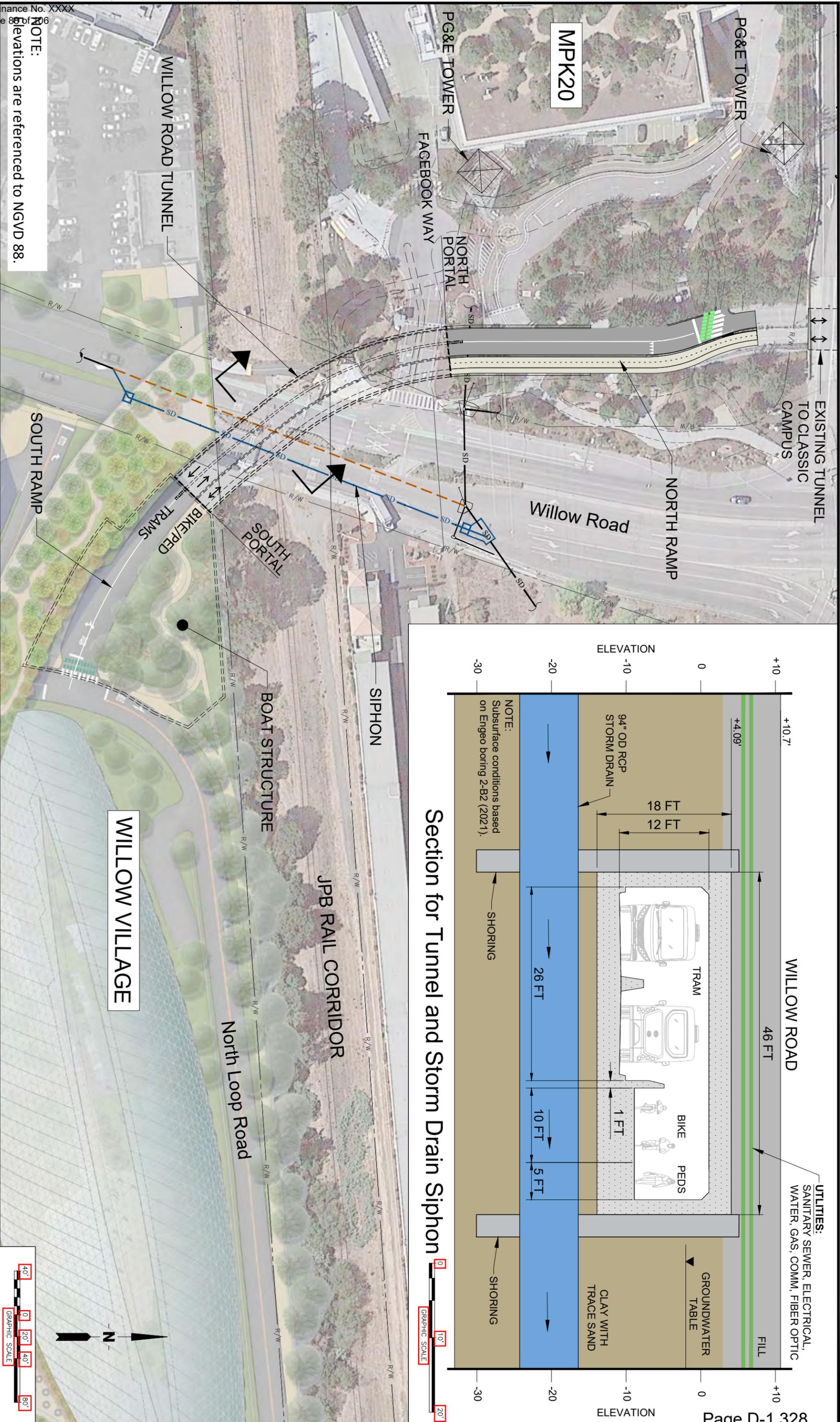
October 12, 2022

EXHIBIT E-3
CONCEPTUAL WILLOW ROAD TUNNEL
(ATTACHED)

NOTE:
Elevations are referenced to NGVD 88.



WSP USA, INC
425 Market Street, 17th Floor
San Francisco, CA 94105
wsp.com



GENERAL LAYOUT
WILLOW ROAD TUNNEL AND NORTH & SOUTH RAMP



META WILLOW ROAD CROSSING

TUNNEL SCHEMATIC DESIGN
CUT AND COVER

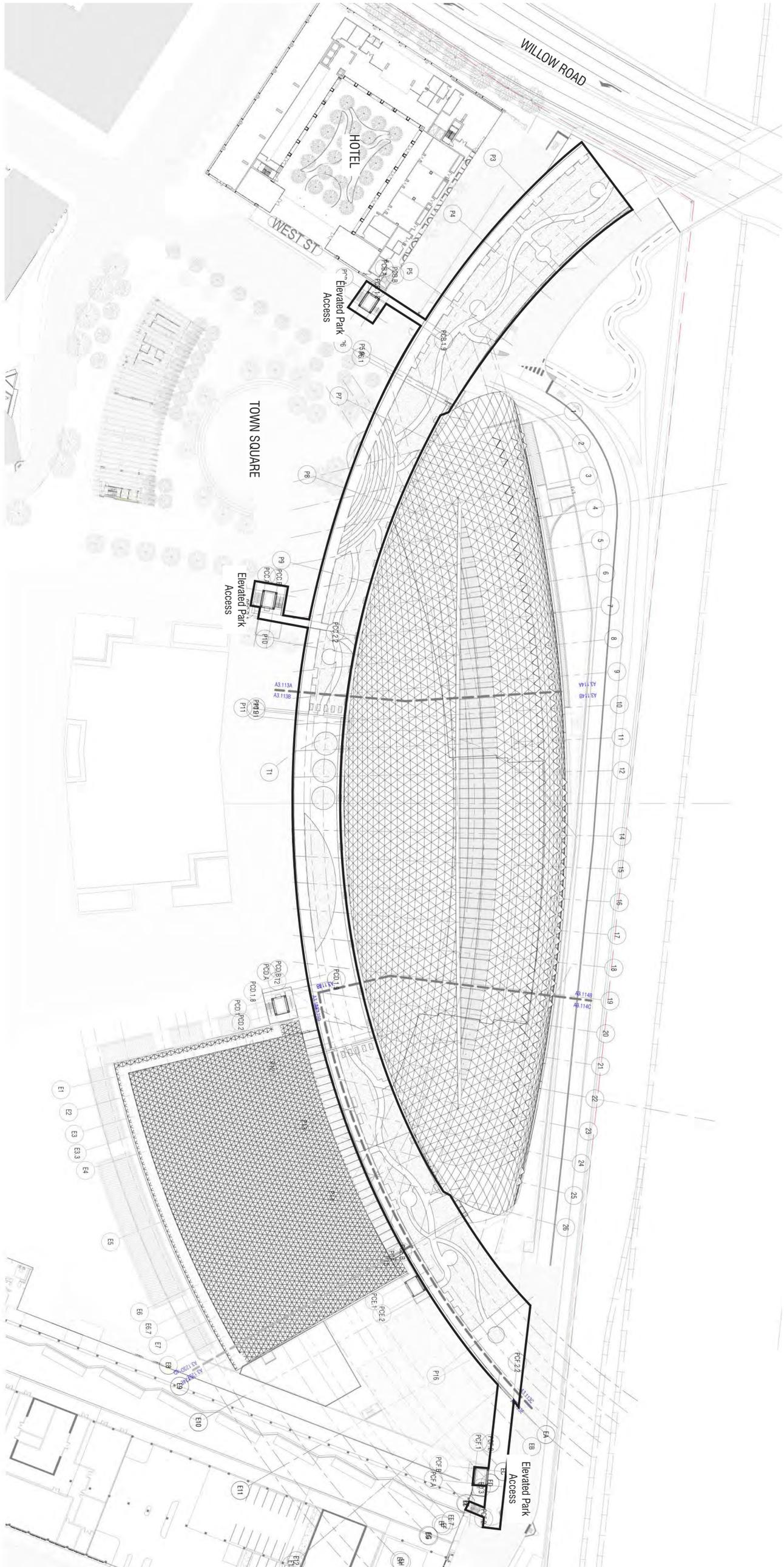
TSD-1

1 OF 12
DATE 12/2022

EXHIBIT E-4

**CONCEPTUAL ALTERNATIVE DESIGN FOR ELEVATED
PARK VERTICAL TRANSPORTATION SYSTEM**

(ATTACHED)



DRAWING NO: A2.05	DRAWING TITLE: ROOF PLAN	WILLOW VILLAGE Architectural Control Package - Parcel 1 Menlo Park, CA	PENINSULA INNOVATION PARTNERS
	SCALE: 1"=50'-0" <small>NOTE: THIS DRAWING IS FOR INFORMATION ONLY AND DOES NOT CONSTITUTE A CONTRACT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING ALL DIMENSIONS AND CONDITIONS OF THE SITE AND FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.</small>		
MILESTONES DATE: 10/26/2022 ISSUE: ACP SUBMITTAL: Submittal		REVISIONS NO. DATE ISSUE	

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- <u> </u>
2. Grocery Store and Rent Subsidies	2. Grocery store located in RS2 (first residential building); ³⁴ 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> </u>
<u>Offsite Amenity</u>	
1. Affordable Housing Contribution	1. Total contribution of \$ 5-6 Million to City, with an initial payment of \$ 2-3 Million upon issuance of first building permit for vertical construction and three subsequent payments of \$1- a second payment of \$3 Million on the <u>first</u> anniversary of such issuance- <u> </u>
2. Air Quality and Noise Monitoring Equipment Funding	2. Prior to issuance of the first demolition permit- <u> </u>
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 <u> </u>
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 <u> </u> - b) Job Train from January 2022- December 2023 <u> </u> = <u> </u>
5. Teacher Housing Rent Subsidies	5. Ongoing funding of \$1,745,319 total for February 2022- March 2024- <u> </u>

³⁴ 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- <u>1</u>
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- <u>1</u>
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- <u>1</u>
4. Second Phase Dining (2 nd 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- <u>1</u>
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- <u>1</u>
6. Second Phase Community Entertainment (2 nd 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>1</u>

<u>Building Related Amenities</u>	<u>Timing/Milestones/Valuations</u>
7. Pharmacy Services	7. Timing is dependent on location; Complete Construction and secure final COO: a) if within Willow Hamilton retail center, 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 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; 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 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
<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)

EXHIBIT A
Description of the Property
(Attached)

EXHIBIT C

List of Assignor Retained Obligations

(Attached)

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~~thirtieth 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

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

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

	Market Rate Units	Affordable Units
Parcel 2	293	34
Parcel 3	376	43
Parcel 6	158	20
Parcel 7	1 (manager’s unit)	119

Phase 2

	Market Rate Units	Affordable Units
Parcel 4	378	62
Parcel 5	212	34

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

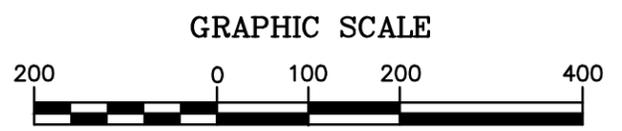


Line Table		
Line #	Length	Direction
L1	120.17	N22° 05' 00"E
L2	143.14	N24° 45' 44"E
L3	864.41	N22° 05' 00"E
L4	144.98	N19° 19' 09"E
L5	71.06	N22° 05' 00"E
L6	1324.41	N84° 59' 41"E
L7	1612.25	S10° 08' 21"W
L8	1182.95	S88° 08' 54"W
L9	668.96	N79° 51' 49"W
L10	2.12	N25° 35' 47"E
L11	1324.41	N84° 59' 45"E
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

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

BMR Units	Low	Moderate
Studio apartment		
1 bedroom apartment		
2 bedroom apartment		
3 bedroom apartment		
Total - BMR Units		

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

**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

BMR Units	Extremely Low	Very Low	Manager's Unit
Studio apartment			
1 bedroom apartment			
2 bedroom apartment			1
Total - BMR Units	82	37	

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

	Market Rate Units	Affordable Units
Parcel 2	293	34
Parcel 3	376	43
Parcel 6	158	20
Parcel 7	1 (manager’s unit)	119

Phase 2

	Market Rate Units	Affordable Units
Parcel 4	378	62
Parcel 5	212	34

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)

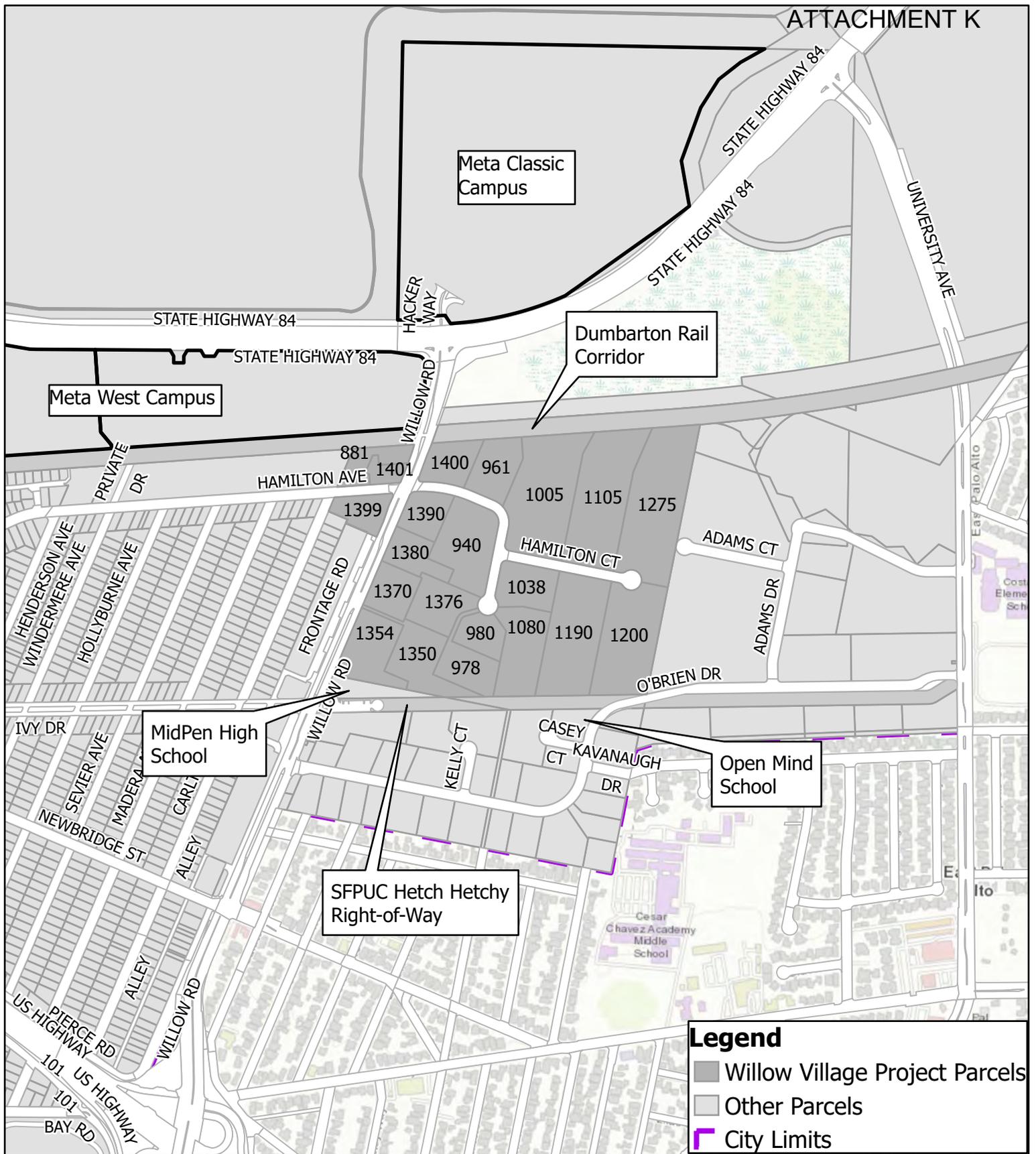
EXHIBIT C

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: _____



Legend

- Willow Village Project Parcels
- Other Parcels
- City Limits

CITY OF MENLO PARK

LOCATION MAP

WILLOW VILLAGE



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 City¹. 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

¹ 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~~Three 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.
 - **MCS Community Events:** The Campus District Property Owner shall be entitled to an exclusion from the Trip Cap for MCS Community Events as defined in Section 5.3.I of the Development Agreement between the Property Owner and the City.
- **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.

Penalty Tier ¹	Applicability	Penalty Amount per Trip per Day
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:

Penalty Cost Per Day			
Vehicles Over Trip Cap	Tier 1	Tier 2	Tier 3
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.

Perata, Kyle T

From: Alan Brown <adbrown1967@yahoo.com>
Sent: Friday, November 18, 2022 1:43 PM
To: _CCIN
Cc: Willow Village; Perata, Kyle T; Murphy, Justin I C
Subject: Willow Village shuttle suggestion

Follow Up Flag: Follow up
Flag Status: Flagged

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.

Hello,

I understand that Willow Village approval is still under negotiation. I have a suggestion for this.

I know Meta runs a number of electric shuttles through its properties. I have also noticed that there are lot of large residences being built in the are, not necessarily Facebook.

There have been a few concerns about traffic, grocery store utilization, and air pollution on this project.

I was wondering if there could be electric shuttles that use roads on Meta properties, that could be used by residents of these other large buildings to use the grocery store and other amenities. The advantage of using these paths are that they, for the most part, avoid local streets which may become clogged. Shuttles which service these apartment buildings would encourage the residents of these buildings to make use of this retail and other services, while not adding to traffic to the other roads. Opening it up to residents of these buildings would result in higher utilization of the shuttles and amenities of Willow Village, while not adding to overall traffic.

I suppose they could restrict usage to these residents (they might need an electronic card), and even charge a modest fee - so they could feel confident in security, and make it work well financially. Higher usage would justify improved frequency.

Sincerely,
Alan Brown
1155 Carlton Ave, Menlo Park, Ca 94025

Perata, Kyle T

From: Chow, Deanna M
Sent: Monday, November 28, 2022 5:50 PM
To: Perata, Kyle T
Subject: FW: Please Support Willow Village - Housing Leadership Council of San Mateo County
Attachments: Housing Leadership Council - Support Willow Village.pdf



Deanna M. Chow
Assistant Community Development Director
City Hall - 1st Floor
701 Laurel St.
tel 650-330-6733
menlopark.gov

From: Ken Chan [mailto:kchan@hlscmc.org]
Sent: Monday, November 21, 2022 8:37 PM
To: _CCIN <city.council@menlopark.org>
Subject: Please Support Willow Village - Housing Leadership Council of San Mateo County

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 Members of the Menlo Park City Council,

Please see the attached support letter regarding the Willow Village proposal set for discussion at the upcoming November 30, 2022 City Council Special meeting.

You may also find the text of the letter below:

Dear Mayor Nash and Members of the Menlo Park City Council,

The Housing Leadership Council of San Mateo County (HLC) works with our communities and their leaders to produce and preserve quality affordable homes.

On behalf of HLC, and as expressed in our previous communications, I'm writing to express our support for the Willow Village proposal by Peninsula Innovation Partners and Signature Development Group. Of the potential 1,730 homes, a total of **312 will be affordable, including 119 set aside for your senior community members at both the Very Low (VLI) and Extremely-Low Income (ELI) levels.** These homes, combined with the newly increased **\$6 million in additional funding for**

affordable housing for your community members in Menlo Park and rent subsidies for local teachers, can provide the City of Menlo Park with the much-needed relief against the job-housing imbalance that all your residents are collectively experiencing at this moment.

In addition, by approving the Willow Village, you have the opportunity to help **ensure that your city will achieve a legally compliant Housing Element in January 2023**. HLC has been closely following the City of Menlo Park’s 6th Cycle (2023-2031) RHNA obligations and Housing Element Update process over the past year. The City Council is scheduled to adopt the updated Housing Element on December 6, 2022 and the statutory deadline for HDC to certify updated Housing Element is no later than January 31, 2023.

As you may know, this proposal alone represents 1) 59% of Menlo Park’s total 6th Cycle 2023-2031 RNHA obligation, 2) 16% of the City’s VLI RNHA obligation, and 3) 19% of Menlo Park’s VLI to Moderate (MOD) ("BMR") RNHA obligation. Please see Table 7-1 RNHA Allocation below.

Table 7-1: RNHA Allocation

	Very Low Income Category	Low Income Category	Moderate Income Category	Above Moderate Income Category	Total Units (All Income Categories)	Total Affordable Units (Very Low, Low, and Moderate Income Categories)
	0-50% AMI	51-80% AMI	81-120% AMI	>120% AMI		
6th Cycle RNHA	740	426	496	1,284	2,946	1,662
Willow Village Units	119	76	117	1,418	1,730	312
% of RNHA	16%	18%	24%	110%	59%	19%

It has taken more than five years of input from your community members and fellow city leaders, and revisions by the developer, for Willow Village to get to this juncture; leading to its overlap with the aforementioned and upcoming Housing Element. With your support of this proposal, you can avoid the onerous task of revising your City’s Housing Element and the need to identify new housing sites throughout your city to fulfill it’s RNHA obligations,

We also caution you to fully comply with California State housing law and adopt a realistic Housing Element with viable versus theoretical housing sites, as the consequences, such as what has occurred in Santa Monica over the past year, are pronounced. Any city that does not have an adopted Housing Element by January 31, 2023 is subject to the “builder’s remedy.” Under California State law and the builder’s remedy application process, your authority to approve or reject certain housing proposals can temporarily be taken out of your control.

A builder’s remedy proposal also **DOES NOT** need to comply with your city’s Zoning or General Plan standards — it can be much larger than Menlo Park would otherwise permit **AND** you will not be able to deny a builder’s remedy proposal solely on the basis that it does not comply with those standards. The only grounds for the rejection of a proposal is if it can be proven to “have a specific, adverse impact upon the public health or safety,” which is a much higher standard than California Environmental Quality Act (CEQA) and a very difficult finding to make with a housing proposal.

According to the Department of Housing and Community Development (HCD), any housing proposals submitted after a city fails to meet its compliance deadline, will **earn automatic permit approval** if they meet the standards for serving low- and moderate-income households by committing least 20%

of their homes as affordable to lower income households or 100% as affordable to moderate income households. In addition, these proposals are **not necessarily subject to community amenities requirements and may not be required to provide any**; like the ones included in Willow Village. If a jurisdiction were to receive a housing proposal while it's Housing Element is out of compliance, any potential benefits afforded to the applicant as a result of the jurisdiction's noncompliant status would remain throughout the entitlement process even if the jurisdiction subsequently achieves compliance during the entitlement process according to HCD. If Menlo Park falls into this category, it would make it that much harder for you to make impactful and meaningful land use decisions for your community.

To illustrate the "builder's remedy" in action: while the City of Santa Monica was out of compliance with Housing Element law, leaders had no choice but to approve 12 development proposals in just this year alone - totaling nearly 4,000 homes. Please see: [Developers capitalize on Housing Element fiasco to force 3,968 undeniable units into the city's pipeline](#).

With your support of the Willow Village proposal, Menlo Park can avoid the consequences experienced by your counterparts in Santa Monica and also provide much-needed quality affordable homes for your community members. We urge you to take all the necessary steps to approve this proposal at the November 30, 2022 City Council meeting.

Sincerely,
Ken Chan

--
Ken Chan
he/him/his
Senior Organizer
Housing Leadership Council of San Mateo County
2905 S El Camino Real
San Mateo, CA 94403
(408) 421 - 0586
www.hlcsmc.org



November 21, 2022

The Honorable Betsy Nash and Members of the Menlo Park City Council
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
Via Email: city.council@menlopark.org

Re: Support Willow Village – Menlo Park RNHA Obligations / Housing Element Compliance - Housing Leadership Council of San Mateo County

Dear Mayor Nash and Members of the Menlo Park City Council,

The Housing Leadership Council of San Mateo County (HLC) works with our communities and their leaders to produce and preserve quality affordable homes.

On behalf of HLC, and as expressed in our previous communications, I'm writing to express our support for the Willow Village proposal by Peninsula Innovation Partners and Signature Development Group. Of the potential 1,730 homes, a total of **312 will be affordable, including 119 set aside for your senior community members at both the Very Low (VLI) and Extremely-Low Income (ELI) levels.** These homes, combined with the newly increased **\$6 million in additional funding for affordable housing** for your community members in Menlo Park and rent subsidies for local teachers, can provide the City of Menlo Park with the much-needed relief against the job-housing imbalance that all your residents are collectively experiencing at this moment.

In addition, by approving the Willow Village, you have the opportunity to help **ensure that your city will achieve a legally compliant Housing Element in January 2023.** HLC has been closely following the City of Menlo Park's 6th Cycle (2023-2031) RHNA obligations and Housing Element Update process over the past year. The City Council is scheduled to adopt the updated Housing Element on December 6, 2022 and the statutory deadline for HDC to certify updated Housing Element is no later than January 31, 2023.

As you may know, this proposal alone represents 1) 59% of Menlo Park's total 6th Cycle 2023-2031 RNHA obligation, 2) 16% of the City's VLI RNHA obligation, and 3) 19% of Menlo Park's VLI to Moderate (MOD) ("BMR") RNHA obligation. Please see Table 7-1 RNHA Allocation below.

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It has taken more than five years of input from your community members and fellow city leaders, and revisions by the developer, for Willow Village to get to this juncture; leading to its overlap with the aforementioned and upcoming Housing Element. With your support of this proposal, you can avoid the onerous task of revising your City’s Housing Element and the need to identify new housing sites throughout your city to fulfill its RNHA obligations,

We also caution you to fully comply with California State housing law and adopt a realistic Housing Element with viable versus theoretical housing sites, as the consequences, such as what has occurred in Santa Monica over the past year, are pronounced. Any city that does not have an adopted Housing Element by January 31, 2023 is subject to the “builder’s remedy.” Under California State law and the builder’s remedy application process, your authority to approve or reject certain housing proposals can temporarily be taken out of your control.

A builder’s remedy proposal also **DOES NOT** need to comply with your city’s Zoning or General Plan standards — it can be much larger than Menlo Park would otherwise permit **AND** you will not be able to deny a builder’s remedy proposal solely on the basis that it does not comply with those standards. The only grounds for the rejection of a proposal is if it can be proven to “have a specific, adverse impact upon the public health or safety,” which is a much higher standard than California Environmental Quality Act (CEQA) and a very difficult finding to make with a housing proposal.

According to the Department of Housing and Community Development (HCD), any housing proposals submitted after a city fails to meet its compliance deadline, will **earn automatic permit approval** if they meet the standards for serving low- and moderate-income households by committing least 20% of their homes as affordable to lower income households or 100% as affordable to moderate income households. In addition, these proposals are **not necessarily subject to community amenities requirements and may not be required to provide any**; like the ones included in Willow Village. If a jurisdiction were to receive a housing proposal while its Housing Element is out of compliance, any potential benefits afforded to the applicant as a result of the jurisdiction’s noncompliant status would remain throughout the entitlement process even if the jurisdiction subsequently achieves compliance during the entitlement process according to HCD. If Menlo Park falls into this category, it would make it that much harder for you to make impactful and meaningful land use decisions for your community.

To illustrate the “builder’s remedy” in action: while the City of Santa Monica was out of compliance with Housing Element law, leaders had no choice but to approve 12 development proposals in just this year alone - totaling nearly 4,000 homes. Please see [Developers capitalize on Housing Element fiasco to force 3,968 undeniable units into the city’s pipeline.](#)

With your support of the Willow Village proposal, Menlo Park can avoid the consequences experienced by your counterparts in Santa Monica and also provide much-needed quality affordable homes for your community members. We urge you to take all the necessary steps to approve this proposal at the November 30, 2022 City Council meeting.

Sincerely,
Ken Chan

A handwritten signature in black ink, appearing to read 'Ken Chan', is placed over a light green rectangular background.

Senior Organizer

Perata, Kyle T

From: Perata, Kyle T
Sent: Monday, November 28, 2022 6:11 PM
To: Perata, Kyle T
Subject: Willow Village Undermines the Housing Element

On Nov 27, 2022, at 5:14 PM, Patti Fry <Patti.L.Fry@gmail.com> wrote:

City Council,

Your decisions related to Willow Village and the ConnectMenlo General Plan will communicate to our community - and to the State – your dedication to remedy the housing shortage.

Our city’s final Housing Element to be submitted to the State in January needs to be a lot more realistic - and convincing. It must describe strategies such as the five listed below that would repair ConnectMenlo’s rules that have already led to a 20% worsened jobs/housing imbalance in the six years since ConnectMenlo was adopted in 2015. Your Council can demonstrate that large projects are approved only when they improve the City’s ratio of housing to jobs.

The draft Housing Element Menlo Park submitted last summer did not include strategies that other cities have adopted to address jobs/housing imbalances:

1. Capping office growth when the jobs/housing ratio exceeds 2.0; Menlo Park's ratio was 2.9 in 2021 without a cap
2. Adjusting the ConnectMenlo Maximum Buildout so that the potential cumulative non-residential square feet is reduced when housing replaces non-residential square feet
3. Revising industrial and office zoning to reflect contemporary worker density practices by reducing the total allowable square feet
4. Enlarging mixed use zoning districts, while shrinking office-only zoning districts
5. Revising mixed-use zoning so that housing densities would exceed new demand from non-residential elements

If the pending large projects such as Willow Village and Parkline are approved as currently proposed, the State would have evidence that Menlo Park is not serious about correcting its part in the regional jobs/housing imbalance. Each project worsens the housing shortage – and you have the power to require a different result.

You will not want to have your names attached to hefty RHNA allocations that will affect every District and neighborhood of Menlo Park. You will not want to be held accountable for large projects that worsen the jobs/housing imbalance. You will not want to be blamed for inherent problems in ConnectMenlo’s zoning that have not been addressed during your tenure.

Use this opportunity to get the City on the right path by beginning to unravel the mistakes of former Councils. This is the time and this is your moment.

Sincerely,
Patti Fry, former Menlo Park Planning Commissioner



Kyle T. Perata
Planning Manager
City Hall - 1st Floor
701 Laurel St.
tel 650-330-6721
menlopark.gov

Perata, Kyle T

From: Perata, Kyle T
Sent: Monday, November 28, 2022 6:04 PM
To: Perata, Kyle T
Subject: RE: Willow Village

From: Paul Collacchi [<mailto:pjcoll@comcast.net>]
Sent: Monday, November 28, 2022 1:06 PM
To: _CCIN <city.council@menlopark.org>
Subject: Willow Village

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Council Members,

Here are my recommendations for Willow Village

- ❖ Deny unmitigated project configurations
- ❖ Move to cap ConnectMenlo (Bayfront) development as part of the Housing Element SEIR process.

1.) DENY UNMITIGATED PROJECT CONFIGURATIONS

As configured, the Willow Village project will worsen the housing deficit, displace low-income families, gentrify District 1, and unleash Bayfront development beyond the ConnectMenlo Program EIR envelope into the enormous uncapped, unplanned ConnectMenlo zoning envelope.

I would urge you to deny Willow Village unless it contains the following mitigations:

- A reduced office footprint to eliminate the net housing deficits and displacement caused by the project,
- A requirement that the applicant build all proposed housing units, and link office build-out to housing unit build-out, and
- A valid mechanism to monitor and enforce off-site employment caps.

Denying the project might seem to require courage, but council might take a lesson from the most recent Stanford GUP approval process in which Supervisor Simitian led the call for full mitigation of that project, a call which then Mayor Taylor and Vice Mayor Nash joined. As with the Stanford GUP, denied or withdrawn projects don't go away, they return with more favorable configurations. Sometime denial is required as part of the process of setting community boundaries.

2.) MOVE TO CAP CONNECTMENLO (BAYFRONT) DEVELOPMENT AS PART OF THE HOUSING ELEMENT SEIR PROCESS

The future growth potential under the uncapped ConnectMenlo zoning envelope is staggering. In my view, and apparently in the view of at least three of you, ConnectMenlo is objectionable local land use policy. It enables unneeded levels of office development with little local benefit and large, permanent negative impacts. ConnectMenlo

housing development will forever change the character of District 1, and ConnectMenlo office development will create perpetual housing pressure with RHNA-driven political strife throughout the city.

Development in Bayfront should be capped and metered similarly to the way downtown development is capped and metered, and the caps should insure full housing mitigation during build out.

Rather than creating a separate process to revisit ConnectMenlo, council could move to create a subcommittee of council members to work with staff to create area development caps in Bayfront similar to those in the Downtown Specific Plan. These could be approved in conjunction with the Housing Element SEIR process.

At one time or another, three of you, members Mueller, Taylor, and Nash have expressed disapproval over ConnectMenlo Bayfront development. Your legacy will be defined by your actions or inactions to make it right when you had that chance.

Thank you for your consideration.

Sincerely,

Paul Collacchi



Virus-free www.avast.com



Kyle T. Perata
Planning Manager
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tel 650-330-6721
menlopark.gov



STAFF REPORT

City Council

Meeting Date: 11/30/2022

Staff Report Number: 22-229-CC

Regular Business: Direction on City Council vacancy

Recommendation

Staff recommends that the City Council provide direction on the City Council vacancy resulting from the resignation of City Councilmember Mueller, District 5.

Policy Issues

According to Ordinance No. 1092 (Attachment A) and Government Code Section 36512 the City Council can appoint or call a special election to fill a City Council vacancy within 60 days of the creation of a vacancy.

Background

On November 17 City Councilmember Mueller submitted a notice of resignation to Mayor Nash and the City Council. The notice of resignation specifies that City Councilmember Mueller's resignation shall be effective upon appointment of his successor, but no later than January 1, 2023. Thus the vacancy would be created when the resignation becomes effective, either upon appointment of his successor or January 1, 2023, if there is no appointment.

As a result of the impending vacancy, the City Council may decide whether it wants to appoint or call a special election in order to fill this City Council vacancy, in conformance with the provisions of Government Code Section 36512 and Ordinance No. 1092. Resolution No. 6775 (Attachment B) provides the process that shall be utilized in the event that a City Council seat will be filled by appointment.

Analysis

The City Council has two options of filling a vacancy within 60-days from the commencement of the vacancy: either fill the vacancy by appointment or call a special election to fill the vacancy.

If the City Council fills the vacancy by appointment, the person appointed to fill the vacancy shall hold office pursuant to one of the following:

- A. If the vacancy occurs in the first half of a term of office and at least 130 days before the next general municipal election, the person appointed to fill the vacancy shall hold office until the next general municipal election that is scheduled 130 or more days after the date the City Council is notified of the vacancy, and thereafter until the person who is elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy shall hold office for the unexpired balance of the term of office.
- B. If the vacancy occurs in the first half of a term of office, but less than 130 days before the next general municipal election, or if the vacancy occurs in the second half of a term of office, the person

appointed to fill the vacancy shall hold office for the unexpired term of the former incumbent.

If the appointment occurs before December 16, 2022, then the vacancy will occur in the first half of City Councilmember Mueller's term of office and at least 130 days before the next general municipal election, as described in option A. This means that a person appointed to office would only serve until the next general municipal election (i.e., November 2023.) Thereafter, the person elected shall fill the vacancy for the unexpired balance of the term of office (i.e., until December 2024.)

If the appointment occurs after December 16, 2022, then the vacancy will occur in the second half of City Councilmember Mueller's term of office and the person appointed to fill the vacancy shall hold office for the unexpired term of City Councilmember Mueller (i.e., until December 2024.)

In this case, if the City Council desires to appoint someone to the City Council seat, the appointment will likely occur after December 16, 2022 due to the publication requirements in Resolution No. 6775, which requires, among other things that upon a determination that the City Council desires to appoint to the City Council seat a notice in the newspaper and other locations be published at least two weeks before the meeting at which the City Council will consider candidates.

Below is the timeline if the City Council directs the appointment to fill the vacancy:

- November 30, 2022: Direct staff to begin the process for appointment.
- December 6, 2022: Publish a notice of the vacancy in a newspaper of general circulation, advertise in local online media and social media, and post on the City's website.
- December 6 – December 20, 2022: Application acceptance.
- December 21 – December 31, 2022: City Council to interview qualified applicants and elect by motion at a special meeting.
 - The City Council will be polled for this special meeting if direction is received at this meeting.

If the City Council decides not to appoint anyone to the seat and instead decides to call a special election, the special election must be called at the next regularly established election date not less than 114 days from the call of the special election. A person elected to fill a vacancy holds office for the unexpired term of the former incumbent.

Since the special election must be held on a date not less than 114 days from the call of the special election, the City would not be able to hold the special election March 10, 2023, which is a statewide election date. The only other date for a polling place election in 2023 would be the November 7, 2023 election. The City may also be able to conduct the special election by mail-in ballot.

If the City Council directs the calling of a special election, staff will return to the City Council after the resignation becomes effective with a resolution calling the special election. The City has requested information from the County related to an all mail-in ballot special election and is pending response.

Impact on City Resources

As of November 2022, the estimated cost of consolidated election services for one City Councilmember seat is approximately between \$97,000 and \$116,400. Along with the request for information to the County related to an all mail-in ballot special election, the estimated cost is still pending.

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 24 hours prior to the meeting.

Attachments

- A. Ordinance No. 1092
- B. Resolution No. 6775

Report prepared by:

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

Report reviewed by:

Denise Bazzano, Assistant City Attorney

ORDINANCE NO. 1092

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
REPEALING AND REPLACING SECTION 2.04.190, "FILLING OF VACANCIES
ON THE CITY COUNCIL," OF CHAPTER 2.04 WITHIN TITLE 2 OF THE MENLO
PARK MUNICIPAL CODE**

WHEREAS, in 1974, the City Council adopted Ordinance No. 559 establishing a process for filling vacancies on the City Council; and

WHEREAS, Ordinance No. 559 is codified in Section 2.04.190 of the Menlo Park Municipal Code; and

WHEREAS, on August 23, 2022, the City Council discussed the various options available to public agencies to fill vacancies of elected officers; and

WHEREAS, the City Council desires to repeal Section 2.04.190 and replace the provision with language that conforms to the requirements in Government Code Section 36512, which provides, among other things, that a city may appoint or call a special election within sixty days of a vacancy.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MENLO PARK:

SECTION 1. Findings.

The above recitals are hereby declared to be true and correct findings of the City Council of the City of Menlo Park.

SECTION 2. Repeal and Replace. Section 2.04.190 - Filling of vacancies on the City Council of Chapter 2.04 - City Council of Title 2 - Administration and Personnel of the Menlo Park Municipal Code is hereby repealed in its entirety and replaced to read as follows:

"Section 2.04.190-Filling of vacancies on the City Council
If a vacancy occurs in the office of a member of the City Council, the City Council may appoint or call a special election in order to fill the City Council vacancy, in conformance with the provisions of Government Code section 36512, as that section may be amended. If the City Council decides to fill the vacancy by appointment, the appointment shall be made pursuant to an appointment process set forth in a separate Resolution of the City Council, which Resolution may be amended from time to time."

SECTION 3. Severability.

If any provision or clause of this ordinance or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by a final judgment of any court or competent jurisdiction, such invalidity shall not affect other provisions or clauses or application, and to this end, the provisions and clauses of this ordinance are declared to be severable.

SECTION 4. California Environmental Quality Act.

This Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21000, et seq. and the CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et. seq.), including without limitation, Public Resources Code Section

21065 and California Code of Regulations 15378 as this is not a "project" that may cause a direct, or reasonably foreseeable indirect, physical change in the environment and if a "project," is exempt under the "common sense" exception (14 Cal. Code Regs. § 15061(b)(3)) because it can be seen with certainty that there is no possibility that this action may have a significant effect on the environment.

SECTION 5. Publication; Effective Date.

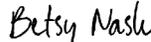
This Ordinance shall be published once, in full or in summary form, after its final passage, in a newspaper of general circulation, published, and circulated in the City of Menlo Park, and shall be in full force and effect thirty (30) days after its final passage. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those City Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of Menlo Park, County of San Mateo, State of California.

INTRODUCED on the thirteenth day of September, 2022.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the twentieth day of September, 2022, by the following votes:

- AYES: Combs, Mueller, Nash, Taylor, Wolosin
- NOES: None
- ABSENT: None
- ABSTAIN: None

APPROVED:

DocuSigned by:

 415F4B216DBF480...
 Betsy Nash, Mayor

ATTEST:

DocuSigned by:

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

RESOLUTION NO. 6775

RESOLUTION OF THE CITY COUNCIL OF MENLO PARK ESTABLISHING A PROCESS FOR APPOINTMENT OF CANDIDATES TO CITY COUNCIL SEATS IN ORDER TO FILL A VACANCY ON THE CITY COUNCIL

WHEREAS, on the twentieth day of September, 2022 the City Council of the City of Menlo Park adopted Ordinance No. 1092, amending Menlo Park Municipal Code Section 2.04.190 pertaining to the filling of City Council vacancies to conform to the process identified in Government Code Section 36512; and

WHEREAS, the City Council desires to establish via Resolution a process that shall be utilized in the event of a vacancy on the City Council and the City Council decides to appoint someone to a City Council seat in accordance with Section 2.04.190 and Government Code Section 36512.

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

Section 1. Recitals. The City Council hereby finds that the foregoing recitals are a true and accurate and are incorporated herein by reference.

Section 2. California Environmental Quality Act (CEQA) Determination. This action is exempt from environmental review as the adoption of this resolution does not qualify as a “project” pursuant to Public Resource Code Section 21065 and CEQA Guidelines Sections 15320, 15378 and 15061(b)(3), since it can be seen with certainty that there is no possibility that adoption of this Resolution would cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Section 3. Process for Appointment.

- A. Upon determination that the City Council desires to appoint someone to a vacant City Council seat, the City Clerk shall publish a notice of the vacancy in a newspaper of general circulation, advertise in local online media and social media, and post on the City’s website at least two weeks prior to the meeting at which the City Council will consider candidates to fill a vacated position. The City Clerk may also develop an application to be submitted by the candidates.
- B. The notice shall provide:
 - 1. The District in which the City Council vacancy has occurred;
 - 2. The date, time, and place of the meeting where the City Council will conduct interviews and appoint a candidate to fill the vacancy;
 - 3. The deadline for submitting an interested person’s name and other identified information or application prepared by the City Clerk; and
 - 4. Information about the Questionnaire identified in Section C below and where a copy of the Questionnaire may be obtained.
- C. An individual who is interested in filling the vacancy shall be requested to provide written answers to questions, which are attached hereto as Exhibit A (“Questionnaire”) on the date specified by the City Clerk so that the Questionnaire can be included in the agenda package and made public for the meeting at which the City Council conducts interviews of City Council candidates. If the Questionnaire is not provided on or before the date specified by the City Clerk, the candidate shall not be interviewed by the City Council and shall not be eligible for appointment to the City Council.

- D. Qualified Candidates. The City Clerk shall review the submittals from the candidates to ensure that each candidate resides in the District where the vacancy has occurred and has submitted all required documents to confirm that the candidate is a qualified candidate ("Qualified Candidates").
- E. Interviews of Qualified Candidates shall take place during a regular or special City Council meeting, as determined appropriate by the Mayor and the City Manager. The following procedures shall govern the interview process:
 - 1. Order of Interview. Prior to commencement of the interviews, candidates shall be placed in a random drawing to determine the order in which candidates are interviewed.
 - 2. Introductions. Candidates shall each be allotted five minutes to introduce themselves to the City Council. Time limits shall be strictly enforced during this phase of the interview. Candidates may all be present at the same time that another candidate is being interviewed.
 - 3. Questions. To ensure equal opportunity and standardization, each City Councilmember will have an opportunity to ask questions of the candidates from the list of questions in the Questionnaire and follow-up questions to responses that the candidate provided to the Questionnaire.
 - 4. Public Comment. The City Council shall hear from members of the public after the City Council has asked all questions of the candidates.
 - 5. Discussion. The City Council shall have the opportunity to discuss and deliberate the candidates.
- F. Election by Motion. At the conclusion of discussion, the city clerk will ask each City Councilmember for their nominations. The candidate that receives the most nominations will be brought up for a motion and vote on appointment to the vacant office. If no candidate receives more nominations than any other candidate, any City Councilmember may move to appoint one of the candidates to the vacant office. If the motion to appoint fails, the nominations shall continue until a motion is supported by a majority of the City Council. A motion to appoint must be supported by a majority of the City Council in order for an appointment to be made.
- G. Appointment and Swearing In. Upon the affirmative vote of the City Council, the selected individual may be sworn in during that meeting or the City Council may direct the swearing in of the candidate to take place at a future City Council meeting. The newly appointed City Councilmember shall be eligible to take part in City Council meetings after being sworn into office.

Section 4. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Resolution shall nonetheless remain in full force and effect. The City Council hereby declares that it would have adopted each section, subsection, sentence, clause, phrase, or portion of this Resolution, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Resolution be declared invalid or unenforceable.

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Resolution No. 6775
Page 3 of 4

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the twentieth day of September, 2022, by the following votes:

AYES: Combs, Mueller, Nash, Taylor, Wolosin

NOES: None

ABSENT: None

ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this twenty-first day of September, 2022.

DocuSigned by:

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Judi A. Herren, City Clerk

Exhibits:

A. Questionnaire

QUESTIONNAIRE

Please answer the following questions.

1. Have you ever held an elected or appointed public office? If yes, name the office title, dates of service and describe the duties.
2. Please describe your qualifications, education and work experience/training that you believe would be relevant in your role as a City Councilmember.
3. Tell us about your previous involvement with the City of Menlo Park? Please include any service organizations or community engagement in which you have participated.
4. What is your understanding of the time commitment and the responsibilities associated with serving as a City Councilmember and are you prepared to serve without reservation?
5. Do you have any duties or responsibilities that would conflict with the duties of a City Councilmember?
6. Please describe the top three immediate issues that you think the City Council needs to address in Menlo Park.
7. Please describe the top three long-term issues that you think the City Council needs to address in Menlo Park.
8. What improvements do you think can be made in the City of Menlo Park?
9. Why do you think you are qualified to be appointed to the vacant City Council seat?
10. Is there anything else you would like to share with the City Council?