



## REGULAR MEETING AGENDA

**Date:** 1/10/2023  
**Time:** 6:00 p.m.  
**Locations:** [Zoom.us/join](https://zoom.us/join) – ID# 837 7994 1162 and  
City Council Chambers  
751 Laurel St., Menlo Park, CA 94025

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

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

#### How to participate in the meeting

- Submit a written comment online up to 1-hour before the meeting start time:  
[city.council@menlopark.gov](mailto:city.council@menlopark.gov)  
Please include the agenda item number you are commenting on.
- Access the meeting real-time online at:  
[Zoom.us/join](https://zoom.us/join) – Meeting ID 837 7994 1162
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(669) 900-6833  
Meeting ID 837 7994 1162  
Press \*9 to raise hand to speak
- Watch meeting:
  - Cable television subscriber in Menlo Park, East Palo Alto, Atherton, and Palo Alto:  
Channel 26
  - City Council Chambers

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

Subject to Change: Given the current public health emergency and the rapidly evolving federal, state, county and local orders, the format of this meeting may be altered or the meeting may be canceled. You may check on the status of the meeting by visiting the city website [menlopark.gov](http://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](http://menlopark.gov/agendas)).

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

## Regular Session

### A. Call To Order

### B. Roll Call

### C. Agenda Review

### D. Public Comment

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

### E. Consent Calendar

- E1. Accept the City Council meeting minutes for November 15 and 30 and December 6, 13, and 21, 2022 ([Attachment](#))  
Not a California Environmental Quality Act (CEQA) project.
- E2. Adopt a resolution to continue conducting the City’s Council and advisory body meetings remotely due to health and safety concerns for the public and to authorize the use of hybrid meetings ([Staff Report #23-003-CC](#))  
Not a CEQA project.
- E3. Adopt a resolution amending City Council Policy CC-22-004 Commissions/Committees Policies and Procedures, Roles and Responsibilities ([Staff Report #23-004-CC](#))  
Not a CEQA project.
- E4. Authorize the city manager to execute an agreement with LookingPoint for the replacement of network switches in an amount not to exceed \$113,000 ([Staff Report #23-005-CC](#))  
Not a CEQA project.
- E5. Transmittal of the annual report on the status of the transportation impact, storm drainage, recreation in-lieu and construction impact fees collected as of June 30, 2021 ([Staff Report #23-001-CC](#))  
Not a CEQA project.
- E6. Adopt a resolution authorizing the city manager to execute a continued funding application with the California Department of Education for continued funding of the Belle Haven Child Development Center operational costs in fiscal year 2023-24 ([Staff Report #23-006-CC](#))  
Not a CEQA project

### F. Public Hearing

- F1. Adopt a resolution to approve the use permit and architectural control approvals for the Menlo Uptown development project to allow for the potential removal of infrastructure investments at Willow Road and Bay Road from the project conditions of approval; to authorize the city manager to sign a

modified public improvement agreement for the Menlo Uptown development; and to authorize the removal of condition of approval 2.wv.ii ([Staff Report #23-007-CC](#))  
Not a CEQA project.

## **G. Regular Business**

G1. Appoint City Council representatives and alternates to various local and regional agencies and as liaisons and members to City Council advisory bodies ([Staff Report #23-010-CC](#))  
Not a CEQA project.

## **H. Informational Items**

H1. City Council agenda topics: January 24 – February 14, 2023 ([Staff Report #23-008-CC](#))  
Not a CEQA project.

H2. Transmittal of city attorney billing ([Staff Report #23-009-CC](#))  
Not a CEQA project.

H3. Update on draft outdoor dining design standards ([Staff Report #23-011-CC](#))  
Not a CEQA project.

## **I. City Manager's Report**

## **J. City Councilmember Reports**

## **K. Adjournment**

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

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

If you challenge any of the items listed on this agenda in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Menlo Park at, or before, 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.gov](mailto:jaherren@menlopark.gov). 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.

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**REGULAR MEETING MINUTES – DRAFT**

**Date:** 11/15/2022  
**Time:** 6:00 p.m.  
**Locations:** Teleconference and  
City Council Chambers  
751 Laurel St., Menlo Park, CA 94025

**Regular Session**

**A. Call To Order**

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

**B. Roll Call**

**Present:** Combs (exited at 7:02 p.m.), Mueller, Nash, Taylor, Wolosin  
**Absent:** None  
**Staff:** City Manager Justin I. C. Murphy, City Attorney Nira F. Doherty, Assistant to the City Manager/City Clerk Judi A. Herren

**C. Agenda Review**

Staff will provide an update on item F3.

**D. Public Comment**

- Shani Podell spoke in opposition to the permanent conversion of tennis to pickleball courts (Attachment).
- Dana Weintraub spoke in opposition to the conversion of additional pickleball replacing tennis courts.
- Eric Dunn spoke in opposition of expanding pickleball courts.
- Bronwyn Alexander spoke on concerns related to traffic signals in the Belle Haven neighborhood.
- Marc Bryman spoke in support of dedicated or “new build” pickleball courts.
- Ray Mueller provided information on the San Mateo County’s anonymous gun buy back event.

**E. Presentations and Proclamations**

**E1. Presentation: Senator Josh Becker**

- Menlo Spark representative Diane Baily spoke in support of the City’s electrification initiative.

Senator Josh Becker made a presentation of the \$4.5 million State grant to the Menlo Park electrification initiative.

**F. Consent Calendar**

- F1.** Adopt a resolution to continue conducting the City’s Council and advisory body meetings remotely due to health and safety concerns for the public and to authorize the use of hybrid meetings

(Staff Report #22-220-CC)

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

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

Staff provided an update related to a proposed Summer break for the 2023 meeting schedule.

The City Council discussed Summer break options for 2023.

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

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

The City Council requested adding both farmer’s markets to the list of outreach locations.

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

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

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

**ACTION:** Motion and second (Wolosin/ Taylor), to approve the consent calendar, updating item F3. by cancelling the July 25, 2023 meeting and scheduling meetings on August 15 and 29, 2023, passed unanimously.

## **G. Public Hearing**

G1. Waive the second reading of an ordinance adopting the 2022 Building Standards Code to include amending Title 12 [Buildings and Construction] of the Menlo Park Municipal Code to adopt local amendments to the California Building Standards Code (Staff Report #22-218-CC)

Assistant Community Development Director Chuck Andrews introduced the item.

Mayor Nash opened the public hearing.

Mayor Nash closed the public hearing

**ACTION:** Motion and second (Taylor/ Nash), to waive the second reading and adopt an ordinance amending Title 12 [Buildings and Construction] of the Menlo Park Municipal Code to adopt local amendments to the California Building Standards Code, passed unanimously.

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

City Councilmember Combs was recused and exited the meeting.

Planning Manager Kyle Perata made a presentation (Attachment).

Applicants Signature Development representatives Mike Ghielmetti, Eron Ashley, Eric Harrison, Faye Brandin, Paul Nieto, and Eric Morley made presentations (Attachments).

Mayor Nash opened the public hearing.

- Isabel Pardo spoke in support of the Willow Village project.
- Nestor Flores spoke in support of the Willow Village project.
- Sergio Ramirez-Herrera spoke in support of the Willow Village project.
- Carlos Valdez spoke in support of the Willow Village project.
- Bryan Shields spoke in support of the Willow Village project.
- Krista Kobeski spoke in support of the Willow Village project.
- Marlene Santoyo read public comment into the record for those unable to attend providing suggestions and concerns for the project.
- Building Trades Council in San Mateo County representative Bart Pantoja spoke in support of the Willow Village project.
- Lauren Fitzgerald spoke in support of the Willow Village project.
- Jenny Michel spoke on addressing concerns related to environmental and traffic impacts and displacement of current residents.
- Mid Pen High School Head of School Karen Eshoo spoke in support of the Willow Village project.
- Romain Teniere spoke in support of the Willow Village project and requested a study session to review plans and execution for the Stanford project.
- Housing Action Coalition representative Ali Sapirman spoke in support of the Willow Village project.
- Kathleen Daly spoke on the commitment to the Belle Haven community through the Willow Village project.
- Glemin Zelaya spoke on concerns related to impacts to traffic and the environment.
- Everardo Luna spoke in support of the Willow Village project.
- Bay Area Council representative Alex Torres spoke in support of the Willow Village project.
- Karen Grove spoke in support of the Planning Commission recommendations and provided recommendations for anti-displacement.

- Citizens Committee to Complete the Refuge representative Eileen McLaughlin spoke on concerns to the project related to the elevated park.
- Gail Wilkerson requested clarification on mitigating impacts to the City of East Palo Alto.
- Housing Leadership Council of San Mateo County representative Ken Chan spoke in support of the Willow Village project.
- Carol Cunningham spoke in support of the Willow Village project.
- Pastor Josh Arias spoke in support of the Willow Village project.
- Chamber of Commerce representative Fran Dehn spoke in support of the Willow Village project.
- Rick Johnson spoke in opposition of the Willow Village project, unless further environmental view is completed.
- Mike Hoff spoke in support of the Willow Village project.
- Greenbelt Alliance representative Jordan Grimes spoke in support of the Willow Village project.
- Silicon Valley Leadership Group representative Vince Rocha spoke in support of the Willow Village project.
- United Way Bay Area representative Jess Hudson spoke in support of the Willow Village project.
- Meda spoke in support of the Willow Village project and concerns on traffic impacts.
- Alex Dersh spoke in support of the Willow Village project.
- Marisela Ramos spoke on concerns to the impacts to the residents of East Palo Alto.
- Michael Murillo spoke in support of the Willow Village project.
- Pamela Jones spoke on concerns for job/housing imbalance impacts from the project and requested clarification on amenity timelines.

Mayor Nash closed the public hearing

The City Council took a recess at 9:02 p.m.

The City Council reconvened the meeting at 9:17 p.m.

The City Council discussed:

- Amenities completion dates; and
- Below market rate (BMR) housing increase to 20% inclusionary and the \$5 million BMR subsidy to increase and be lump sum opposed incremental; and
- Transient occupancy tax; and
- Grocery store, housing, and operating retail in parallel; and
- Housing imbalance; and
- Water supply; and
- Traffic circulation and connectivity; and
- Air quality and mitigation efforts; and
- Sea-level rise and flooding impacts to Belle Haven community; and
- Level of service (LOS) review; and
- Site access on CalTrans owned Willow Road; and
- Onsite circulation.

The City Council received clarification on:

- Amenities completion phasing; and
- Tree planting; and

- Gas station remodel; and
- Construction hours and schedule; and
- Inclusionary housing increase or reduction in office; and
- Condensing residential and grocery timelines; and
- Zoning commitments; and
- Development agreement hotel gap payment for 17-years but applicant willingness to bridge for future; and
- Grocery store subsidy deadline; and
- Changing 20% standard reduction from 'net' to 'gross' on lower daily trips; and
- Sea-level rise and flooding.

The City Council took a recess at 11:03 p.m.

The City Council reconvened at 11:13 p.m.

**ACTION:** By acclamation, the City Council extended the meeting past 11 p.m.

The City Council further discussed:

- Grocery store opening Winter 2026; and
- Three additional years of subsidy for grocery store; and
- Housing timeline moved up; and
- No additional office occupied beyond existing until the grocery store is open; and
- Planning Commission recommendations; and
- Additional funding for affordable housing; and
- Shuttle to continue beyond the 17-year agreement and electric if possible; and
- Renewable energy generators.

The City Council received further clarification on housing occupancy.

The City Council directed the subcommittee, city manager, and city attorney to reach out to the City of East Palo Alto.

City Council directed a special meeting on November 30 to continue this item.

The City Council went to recess at 12:11 a.m.

The City Council reconvened at 12:22 a.m.

Staff provided a summary:

- Shuttle electric – after 17 years to return to applicants and discuss extension
- Affordable housing – additional \$1 million (\$3 million in first year and \$3 million in second year)
- Gap hotel – extended additional 10 years
- Grocery store additional subsidy of \$1 million if below sales target
- Residential construction timeline to be accelerated

The City Council directed staff and applicant to return with additional information and clarification on:

- LOS improvements at Bay Road and Willow Road



- Site access on CalTrans owned Willow Road
- Onsite and offsite circulation for bicyclists and pedestrians
- City and community use of event space consideration
- Applicant to cover costs of project manager
- Job fairs with ongoing job training for a total of five fairs
- State in phasing plan Exhibit D footnote that office can increase more than 25% but cumulative total remains the same
- Zero/low emission equipment for construction, whenever possible
- Citizens Committee for the Refuge requests for oversight of mitigation monitoring reports given to the City including bird safe design, night images captured by specialist, water flow identified and mitigated if fresh water source is needed, protect areas from night lighting, balloons and trash impacts to the marshland
- Consider the 2023 Bay Area Air Quality Management District air quality measure guidelines/measures for air quality measurements
- Auditor to perform trip counting and report back to the City

**ACTION:** By acclamation, this item was continued to November 30 at 6 p.m.

#### **H. Informational Items**

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

#### **I. City Manager's Report**

None.

#### **J. City Councilmember Reports**

None

#### **K. Adjournment**

Mayor Nash adjourned the meeting at 1:06 a.m.

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



**SPECIAL MEETING MINUTES – DRAFT**

**Date:** 11/30/2022  
**Time:** 6:00 p.m.  
**Locations:** Teleconference and  
City Council Chambers  
751 Laurel St., Menlo Park, CA 94025

**Special Session**

**A. Call To Order**

Mayor Nash called the meeting to order at 6:10 p.m.

**B. Roll Call**

**Present:** Combs (exited the meeting at 6:13 p.m. and returned at 6:19 p.m.), Mueller, Nash, Wolosin  
**Absent:** Taylor  
**Staff:** City Manager Justin I. C. Murphy, City Attorney Nira F. Doherty, Assistant to the City Manager/City Clerk Judi A. Herren

**C. Agenda Review**

None.

**D. Public Hearing**

City Councilmember Combs was recused and exited the meeting.

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)

**ACTION:** By acclamation, this item was continued to December 6, 2022 at 6 p.m. (Taylor absent).



**E. Regular Business**

City Councilmember Combs rejoined the meeting.

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

City Clerk Judi Herren made the presentation (Attachment).

The City Council received clarification on the earliest date a special election could occur and appointment date impacts to the District 5 term of office.

**ACTION:** Motion and second (Mueller/ Wolosin), to direct staff to fill the vacancy by appointment per the schedule as presented (Attachment), passed 4-0 (Taylor absent).

**F. Adjournment**

Mayor Nash adjourned the meeting at 6:37 p.m.

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



**REGULAR MEETING MINUTES – DRAFT**

**Date:** 12/6/2022  
**Time:** 6:00 p.m.  
**Locations:** Teleconference and  
City Council Chambers  
751 Laurel St., Menlo Park, CA 94025

**Regular Session**

**A. Call To Order**

Mayor Nash called the meeting to order at 6:11 p.m.

**B. Roll Call**

**Present:** Mueller (joined at 6:44 p.m. and exited at 11:16 p.m.), Nash, Taylor, Wolosin  
**Absent:** Combs  
**Staff:** City Manager Justin I. C. Murphy, City Attorney Nira F. Doherty, Assistant to the City Manager/City Clerk Judi A. Herren

**C. Agenda Review**

The City Council reordered the agenda pulling item E6. to discuss after regular business.

**D. Public Comment**

- Joan Miessi requested that the East Palo Alto Sanitary District absorption is agendized for a future meeting.

**E. Consent Calendar**

- E1. Adopt a resolution to continue conducting the City’s Council and advisory body meetings remotely due to health and safety concerns for the public and to authorize the use of hybrid meetings (Staff Report #22-230-CC)
- E2. Adopt a resolution ratifying the Menlo Park Fire Protection District Ordinance No. 50-2022 adopting amendments to the 2022 California Fire Code (Staff Report #22-231-CC)
- E3. Receive and file the Single Audit Report for the fiscal year ended June 30, 2021 (Staff Report #22-232-CC)
- E4. Reject all bids for the minimum point of entry room heating, ventilation, and air conditioning upgrade project and direct staff to rebid the project at a future date (Staff Report #22-233-CC)
- E5. Adopt a resolution of intention to abandon a public utility easement along the rear of properties at 1701 Bay Laurel Drive and 1715 Bay Laurel Drive; determine this action is categorically exempt under California Environmental Quality Act Guidelines Section 15305’s Class 5 exemption for minor

alterations in land use limitations (Staff Report #22-234-CC)

- E6. Authorize the city manager to execute an agreement with the West Bay Sanitary District regarding the provision of recycled water service within Menlo Park Municipal Water Service Area; determine this action is exempt from California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15268 (Ministerial Projects) (Staff Report #22-237-CC)

**ACTION:** Motion and second (Wolosin/ Taylor), to approve the consent calendar excluding item E6., passed 3-0 (Combs and Mueller absent).

## **E. Consent Calendar**

- E6. Authorize the city manager to execute an agreement with the West Bay Sanitary District regarding the provision of recycled water service within Menlo Park Municipal Water Service Area; determine this action is exempt from California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15268 (Ministerial Projects) (Staff Report #22-237-CC)

Public Works Director Nikki Nagaya, West Bay Sanitary District General Manager Sergio Ramirez, and Woodard & Curran representative Dave Richardson made a presentation (Attachment).

- Fran Dehn spoke in support of the agreement.
- Eileen McLaughlin spoke in opposition of the agreement and requested additional mitigations to be considered to protect sensitive wildlife and habitat as part of the flood protection project.
- Pam Jones requested clarification on how this flood protection project would align with other levee construction and flood protection work, and whether this would affect water or sewer rates in the future.
- Sierra Club representative Gita Dev spoke in opposition of the flood protection project in particular the installation of sheetpiles and requested infrastructure not be located in this area due to risk.

The City Council received clarification on the project site location selection, environmental impact report (EIR) and public engagement of the project and mitigations, cost impacts to the customers of Menlo Park Municipal Water and West Bay Sanitary District, impacts from constructions at Bedwell Bayfront Park, and coordination with other projects and OneShoreline.

The City Council discussed providing information and outreach in both English and Spanish.

**ACTION:** Motion and second (Wolosin/ Nash), to authorize the city manager to execute an agreement with West Bay Sanitary District (WBSD) regarding the provision of recycled water service within Menlo Park Municipal Water (MPMW) Service area and determine this action is exempt from CEQA pursuant to CEQA Guidelines section 15268 (Ministerial Projects) in that approval of the agreement is required by the Water Code section 13850.7, and also, pursuant to CEQA Guidelines section 15307 (Action for Protection of Natural Resources), in that the approval of the agreement would authorize the provision of recycled water within the service area in lieu of potable water, 3-0 (Combs absent and Mueller abstaining).

## **F. Continued Public Hearing**

- F1. 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) – **Continued from 11/30/2022**

Planning Manager Kyle Perata made a presentation (Attachment).

The City Council received clarification on incentive based programs to lower traffic daily trip number.

The City Council discussed updated phasing plan, zero/lowest-emissions equipment requirement, conditional development permit to include photographs taken at Samtrans rail corridor, residential to office ratio, and traffic impacts and daily trips especially in reference to the office building.

The City Council went to recess at 7:39 p.m.

The City Council reconvened at 8:28 p.m.

The City Council discussed transportation demand management and removing requirement to construct intersection improvements at Willow Road and Bay Road.

The City Council directed that the annual reporting of the development agreement be transmitted to the City Council and to agendaize how impact fees are used in the City.

The City Council went to recess at 8:42 p.m.

The City Council reconvened at 8:58 p.m.

**ACTION:** Motion and second (Taylor/ Nash), to adopt

- 1) a resolution certifying the final EIR, making the CEQA finding including a statement of overriding considerations, and approve the mitigation monitoring and reporting program; and
- 2) a resolution amending the general plan circulation map; and
- 3) a resolution approving the vesting tentative map;
- 4) a resolution approving the BMR housing agreement; and
- 5) introduce and waive the first reading of an ordinance to rezone the project site to include the “X” conditional development combining district overlay, amending the zoning map, and approve the conditional development permit; and
- 6) introduce and waive the first reading of an ordinance to adopt the development agreement; and include modifications as read into the record to the development agreement and conditional development permit, 4-0 (Combs absent).

## **G. Regular Business**

- G1. Authorize the city manager to execute a community funding agreement and approve budget

amendment (Staff Report #22-235-CC)

Interim Finance Director Marvin introduced the item.

The City Council discussed the negotiations with the Stanford project.

**ACTION:** Motion and second (Mueller/ Wolosin), to authorize the city manager to execute the community funding agreement among City of Menlo Park, Menlo Park City School District and Menlo Park Atherton Education Foundation and approve a budget amendment, passed 4-0 (Combs absent).

## H. Study Session

H1. Provide direction regarding revisions to the City's draft Housing Element in response to comments from the State Department of Housing and Community Development (HCD), and potential Zoning Ordinance and El Camino Real/Downtown Specific Plan amendments associated with the Housing Element Update project (Staff Report #22-236-CC)

Principal Planner Tom Smith introduced the item.

- Bryan Shields spoke in support of the consideration of builders of additional housing generated by the housing element.
- Jenny Michele provided comprehensive feedback to the housing element.
- Pam Jones spoke on concerns related to impacts on the environmental other OneShoreline projects and requested information on impacts to City water customer bills.
- Patti Fry spoke in support of open space and on the importance of office and non-residential.
- Adina Levin spoke in support of email sent to the City Council (Attachment).
- Skylar Spear spoke in support of equitable housing and on concerns related to site analysis.
- Katherine Dumont spoke on concerns related to anti-displacement and the current time lime.
- Lorena Cuffy spoke on concerns related to the cost of living and in support of rent control.

The City Council received clarification on incorporating all City Councilmembers input in the housing element, below market rate (BMR) policy related to rent increases, California Department of Housing and Community Development (HCD) response letter, amnesty program for the accessory dwelling units (ADU) policy and delayed enforcement, and impacts to vacancy rates through short-term rental units.

The City Council discussed the proposed anti-displacement policy and programs, staff meeting with HCD before resubmitting the housing element, increasing opportunities for childcare facilities relationships, reviewing fees without dis-incentivizing home building, expanding on anti-displacement programs, revitalizing downtown and downtown parking lots, affordable housing, retaining aesthetic development standards as part of adoption, jobs/housing imbalance and relationship, incorporating/requiring mixed-use residential with commercial and office, long term housing with ADUs, and increasing BMR units requirements and reviewing lieu fees.

**ACTION:** By acclamation, the City Council extended the meeting past 11 p.m. (Combs absent).

The City Council further discussed anti-displacement strategy details.

The City Council directed review of the proposed anti-displacement actions and modified timeline,

creating an ad hoc Anti-Displacement Strategy Subcommittee comprised of Vice Mayor Wolosin and City Councilmember Taylor charged with considering the prioritization of anti-displacement strategies, and a jobs-housing linkage policy.

**I. Informational Items**

- I1. City Council agenda topics: December 2022 (Staff Report #22-240-CC)
- I2. Transmittal of city attorney billing (Staff Report #22-238-CC)
- I3. Update on the Willow Oaks Park improvement project (Staff Report #22-239-CC)

**J. City Manager's Report**

City Manager Justin Murphy reported out on Willow Oaks Park pickleball update, Light Up the Season even at Fremont Park, and introduced the new Deputy City Clerk, Sarah Sandoval.

**K. City Councilmember Reports**

Mayor Nash reported on attending a tri-city meeting with Menlo Park, Palo Alto, and East Palo Alto.

**L. Adjournment**

Mayor Nash adjourned the meeting at 11:25 p.m.

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





**REGULAR MEETING MINUTES – DRAFT**

**Date:** 12/13/2022  
**Time:** 6:00 p.m.  
**Locations:** Teleconference and  
**City Council Chambers**  
**751 Laurel St., Menlo Park, CA 94025**

**Regular Session**

**A. Call To Order**

Mayor Nash called the meeting to order at 6:21 p.m.

**B. Roll Call**

**Present:** Combs (exited at 6:29 p.m. and rejoined at 7:29 p.m.), Mueller, Nash, Taylor, Wolosin  
**Absent:** None  
**Staff:** City Manager Justin I. C. Murphy, City Attorney Nira F. Doherty, Assistant to the City Manager/City Clerk Judi A. Herren

**C. Agenda Review**

The City Council pulled item E4.

**D. Public Comment**

- Congresswoman Jackie Speier office representative Raghda Karajah recognized City Councilmember Mueller.

**E. Consent Calendar**

- E1. Accept the City Council meeting minutes for October 20 and November 1, 2022 (Attachment)
- E2. Adopt a resolution to continue conducting the City’s Council and advisory body meetings remotely due to health and safety concerns for the public and to authorize the use of hybrid meetings (Staff Report #22-243-CC)
- E3. Adopt a resolution declaring the canvass of votes cast and results of the General Municipal Election held in the City of Menlo Park November 8, 2022 (Staff Report #22-245-CC)

**ACTION:** Motion and second (Mueller/ Wolosin), to approve consent calendar except item E4., passed unanimously.

- E4. Waive the second reading and adopt ordinances to 1) 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, amend the City zoning map, and approve the conditional development permit and 2) adopt the development agreement 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 #22-246-CC)



City Councilmember Combs was recused and exited the meeting.

The City Council went to recess at 6:31 p.m.

The City Council reconvened at 6:37 p.m.

The City Council received clarification on changes to the development agreement.

**ACTION:** Motion and second (Taylor/ Nash), to waive the full reading of and adopt the following:

- 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 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; and
  - an ordinance to adopt a development agreement 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; and
- subject to the changes as read into the record, passed 4-0 (Combs recused).

## **F. Regular Business**

City Councilmember Combs rejoined the meeting

### **F1. Recognition of outgoing Mayor**

- Kathleen Daly expressed appreciation for the City Council.

Vice Mayor Wolosin read the proclamation (Attachment).

Mayor Nash accepted the proclamation.

### **F2. Swearing in of new City Councilmembers**

City Clerk Judi Herren administered the oath of office to City Councilmembers Combs, Nash, and Taylor.

### **F3. Selection of Mayor and Vice Mayor (Staff Report #22-242-CC)**

City Clerk Herren took nominations for Mayor for 2023.

**ACTION:** Motion and second (Mueller/ Taylor), to appoint Jen Wolosin as Mayor, passed unanimously.

City Clerk Herren took nominations for Vice Mayor for 2023.

**ACTION:** Motion and second (Nash/ Mueller), to appoint Cecilia Taylor as Vice Mayor, passed unanimously.

- F4. Provide direction to the City’s voting delegate regarding regional vacancies for the next City Selection Committee meeting December 16, 2022 (Staff Report #22-241-CC)

City Clerk Judi Herren introduced the item.

**ACTION:** Motion and second (Combs/ Nash), to select Mayor Wolosin as the City’s voting delegate regarding regional vacancies for the next City Selection Committee meeting December 16, 2022, passed unanimously.

**G. Informational Items**

- G1. City Council agenda topics: December 21, 2022 – January 2023 (Staff Report #22-244-CC)

**H. City Manager's Report**

City Manager Justin Murphy reported out on release of the draft environmental justice and safety elements of the general plan.

**I. City Councilmember Reports**

City Councilmember Nash reported out on the Searsville Advisory Group meeting.

**J. Adjournment**

Mayor Wolosin adjourned the meeting at 8:04 p.m.

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



## STAFF REPORT

**City Council**  
**Meeting Date:** 1/10/2023  
**Staff Report Number:** 23-003-CC

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

### Recommendation

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

### Policy Issues

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

### Background

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

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

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

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

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

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

On August 23, 2022 the City Council requested that staff begin the process of bringing advisory body meetings to a hybrid platform. Staff has connected with advisory body members to ensure that current meeting start times and days will work for in-person and hybrid meetings and gauge in-person participation. Staff has also identified technological and logistical needs to conduct advisory body meetings on a hybrid platform. Table 1 shows the hybrid implementation schedule:

Table 1: Advisory body implementation schedule		
Body	Location	Status
Complete Streets Commission	Downtown Conference Room (City Hall)	Fully hybrid
Environmental Quality Commission	Downtown Conference Room (City Hall)	Hybrid in January 2023
Finance and Audit Committee	Downtown Conference Room (City Hall)	Fully hybrid
Housing Commission	Cypress Room (Arrillaga Family Recreation Center)	Fully hybrid
Library Commission	Senior Annex (Menlo Park Library)	Hybrid in January 2023
Parks and Recreation Commission	Cypress Room (Arrillaga Family Recreation Center)	Hybrid in January 2023
Planning Commission	City Council Chambers	Fully hybrid

**Analysis**

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

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

- The legislative body must provide either a two-way audiovisual platform or two-way telephonic service and a live webcasting of the meeting to allow the public to remotely hear and visually observe the meeting, and remotely address the legislative body.

- The agenda must identify and include an opportunity for all persons to attend via a call-in option, internet-based service option and at the in-person location of the meeting.
- A member of the legislative body can only participate remotely if one of the following are met:
  - the member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for “just cause”; or
  - the member requests the legislative body to allow them to participate in the meeting remotely due to “emergency circumstances” and the legislative body takes action to approve the request. The legislative body must request a general description (generally not exceeding 20 words) of the circumstances relating to their need to appear remotely at the given meeting.
- “Just cause” is defined as (i) a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely; (ii) a contagious illness that prevents a member from attending in person; (iii) a need related to a physical or mental disability as defined by statute; or (iv) travel while on official business of the legislative body or another state or local agency.
- Members of the legislative body are prohibited from using AB 2449 to participate in remote meetings for more than three consecutive months or for 20% of the regular meetings in a calendar year.
- Members of the legislative body participating remotely must participate using both audio and visual technology. While the new law doesn’t specify whether audio and visual technology must be enabled at all times while participating remotely, we think the best reading of the law is that a member participating remotely should keep their camera on, and be able to participate via audio at all times during the meeting.
- Members of the legislative body participating remotely must publicly disclose whether any individual over the age of 18 is present in the same room as the member participating remotely.
- A meeting must be paused when there is any teleconference disruption for the public and no action can be taken if a disruption event prevents the legislative body from broadcasting the meeting.
- Real-time public comments must be allowed during the meeting.
- Legislative bodies must implement procedures for resolving requests for reasonable accommodations for individuals with disabilities.

### **Impact on City Resources**

There is no impact on City resources.

### **Environmental Review**

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

### **Public Notice**

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

**Attachments**

A. Resolution

Report prepared by:

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

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

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

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

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

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

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

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

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

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

WHEREAS, according to data from the County's Health Administrator and County website, the County is averaging approximately 14 new cases per 100,000 of COVID-19 per day; and

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

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



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

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

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

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

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I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the tenth day of January, 2023, 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 January, 2023.

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Judi A. Herren, City Clerk



## STAFF REPORT

### City Council

Meeting Date: 1/10/2023  
Staff Report Number: 23-004-CC

Consent Calendar: **Adopt a resolution amending City Council Policy CC-22-004 Commissions/Committees Policies and Procedures, Roles and Responsibilities**

### Recommendation

Staff recommends that the City Council adopt a resolution (Attachment A) amending City Council Policy CC-22-004 Commissions/Committees Policies and Procedures, Roles and Responsibilities.

### Policy Issues

According to CC-22-004, advisory body regular meetings shall have a fixed date and time established by the advisory body. Changes to the established regular dates and times are subject to the approval of the City Council.

### Background

On December 15, 2022, the Finance and Audit Committee (FAC) voted unanimously (Commissioner Wong absent) to adjust the regular meeting start day to the third Thursday of the quarter at 5:30 p.m. from the third Wednesday of the quarter at 5:30 p.m. This proposed update removes the reoccurring conflict with the Environmental Quality Committee regular meeting day of the third Wednesday of the month at 6 p.m.

### Analysis

Staff is proposing the following edits to CC-22-004 (Exhibit A to the resolution.)

#### Policy number

- CC-23-004

#### The schedule of commission/committee meetings

- Update FAC regular meeting date to the third Thursday of the quarter at 5:30 p.m.
  - To take effect January 2023

### Impact on City Resources

There is no impact on City resources associated with the earlier start time for the Complete Street Commission.

### Environmental Review

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

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

**Public Notice**

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

**Attachments**

A. Resolution

Report prepared by:

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

**RESOLUTION NO. XXXX**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
APPROVING AMENDMENTS TO CITY COUNCIL POLICY CC-22-004  
COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND  
RESPONSIBILITIES**

WHEREAS, the current regular meeting day and start time of the Finance and Audit Committee is the third Wednesday of the quarter at 5:30 p.m.; and

WHEREAS, the City Council desires to update the Finance and Audit Committee regular meeting day from the third Wednesday of the quarter at 5:30 p.m. to the third Thursday of the quarter at 5:30 p.m.

WHEREAS, the City Council approves the following amendments to City Council Policy CC-23-004 Commissions/Committees Policies and Procedures, Roles and Responsibilities:

- Update the policy number from CC-22-004 to CC-23-004; and
- Update Finance and Audit Committee regular meeting day and start time to the third Thursday of the quarter at 5:30 p.m.

NOW, THEREFORE, IT IS RESOLVED, that City Council Policy CC-22-004 Commissions/Committees Policies and Procedures, Roles and Responsibilities is hereby amended, as set forth in Exhibit A.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the tenth of January, 2023, 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 January, 2023.

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Judi A. Herren, City Clerk

Exhibits:

- A. City Council Policy CC-23-004 Commissions/Committees Policies and Procedures, Roles and Responsibilities



# COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-~~2223~~-004

Adopted ~~September 20, 2022~~

Resolution No. ~~6776~~

<b>Purpose</b>
To define policies and procedures and roles and responsibilities for Menlo Park appointed commissions and committees.
<b>Authority</b>
Upon its original adoption, this policy replaced the document known as “Organization of Advisory Commissions of the City of Menlo Park.”
<b>Background</b>
<p>The City of Menlo Park currently has seven active Commissions and Committees. The active advisory bodies are: Complete Streets Commission, Environmental Quality Commission, Finance and Audit Committee, Housing Commission, Library Commission, Parks and Recreation Commission, and Planning Commission. Those not specified in the City Code are established by City Council ordinance or resolution. Most of these advisory bodies are established in accordance with Resolution No. 2801 and its amendments. Within specific areas of responsibility, each advisory body has a primary role of advising the City Council on policy matters or reviewing specific issues and carrying out assignments as directed by the City Council or prescribed by law.</p> <p>Six of the seven commissions and committees listed above are advisory in nature. The Planning Commission is both advisory and regulatory and organized according to the City Code (Ch. 2.12) and State statute (Government Code 65100 et seq., 65300-65401).</p> <p>The City has an adopted Anti-Harassment and Non-Discrimination Policy (CC-21-0022), and a Travel, Meal, and Lodging Policy (CC-19-002), which are also applicable to all advisory bodies.</p>
<b>Policies and Procedures</b>
<p><u>Relationship to City Council, staff and media</u></p> <ul style="list-style-type: none"> <li>• Upon referral by the City Council, the commission/committee shall study referred matters and return their recommendations and advise to the City Council. With each such referral, the City Council may authorize the City staff to provide certain designated services to aid in the study.</li> <li>• Upon its own initiative, the commission/committee shall identify and raise issues to the City Council’s attention and from time to time explore pertinent matters and make recommendations to the City Council.</li> <li>• At a request of a member of the public, the commission/committee may consider appeals from City actions or inactions in pertinent areas and, if deemed appropriate, report and make recommendations to the City Council.</li> <li>• Each commission/committee is required to develop an annual work plan which will be the foundation for the work performed by the advisory body in support of City Council annual work plan. The plan, once finalized by a majority of the commission/committee, will be formally presented to the City Council for direction and approval no later than September 30 of each year and then reported out on by a representative of the advisory body at a regularly scheduled City Council meeting at least annually, but recommended twice a year. The proposed work plan must align with the City Council’s adopted work plan. When modified, the work plan must be taken to the City Council for approval. The Planning Commission is exempt from this requirement as its functions are governed by the Menlo Park municipal code (Chapter 2.12) and State law (Government Code 65100 et seq, 65300-65401).</li> <li>• Commissions and committees shall not become involved in the administrative or operational matters of City departments. Members may not direct staff to initiate major programs, conduct large studies or establish department policy. City staff assigned to furnish staff services shall be available to provide general staff assistance, such as preparation of agenda/notice materials and minutes, general review of department programs and activities, and to perform limited studies, program reviews, and other services of a general staff nature. Commissions/Committees may not establish department work programs or determine department program priorities. The responsibility for setting policy and allocating scarce City resources rests with the City’s duly elected representatives, the City Council.</li> <li>• Additional or other staff support may be provided upon a formal request to the City Council.</li> <li>• The staff liaison shall act as the commission/committee’s lead representative to the media concerning matters before the commission/committee. Commission/Committee members should refer all media inquiries to their respective liaisons for response. Personal opinions and comments may be expressed so long as the commission/committee member clarifies that their statements do not represent the position of the City Council.</li> <li>• Commission/Committee members will have mandatory training every two years regarding the Brown Act and</li> </ul>

## COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-~~2223~~-004

~~Adopted September 20, 2022~~

Resolution No. ~~6776~~

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parliamentary procedures, anti-harassment training, ethics training, and other training required by the City Council or State Law. The commission/committee members may have the opportunity for additional training, such as training for chair and vice chair. Failure to comply with the mandatory training will be reported to the City Council and may result in replacement of the member by the City Council.

- Requests from commission/committee member(s) determined by the staff liaison to take one hour or more of staff time to complete, must be directed by the City Council.

### Role of City Council commission/committee liaison

City Councilmembers are assigned to serve in a liaison capacity with one or more city commission/committee. The purpose of the liaison assignment is to facilitate communication between the City Council and the advisory body. The liaison also helps to increase the City Council's familiarity with the membership, programs and issues of the advisory body. In fulfilling their liaison assignment, City Councilmembers may elect to attend commission/committee meetings periodically to observe the activities of the advisory body or simply maintain communication with the commission/committee chair on a regular basis.

City Councilmembers should be sensitive to the fact that they are not participating members of the commission/committee, but are there rather to create a linkage between the City Council and commission/committee. In interacting with commissions/committee, City Councilmembers are to reflect the views of the City Council as a body. Being a commission/committee liaison bestows no special right with respect to commission/committee business.

Typically, assignments to commission/committee liaison positions are made at the beginning of a City Council term in December. The Mayor will ask City Councilmembers which liaison assignments they desire and will submit recommendations to the full City Council regarding the various committees, boards, and commissions which City Councilmembers will represent as a liaison. In the rare instance where more than one City Councilmember wishes to be the appointed liaison to a particular commission, a vote of the City Council will be taken to confirm appointments.

### City Staff Liaison

The City has designated staff to act as a liaison between the commission/committee and the City Council. The City shall provide staff services to the commission/committee which will include:

- Developing a rapport with the Chair and commission/committee members
- Providing a schedule of meetings to the city clerk's office and commission/committee members, arranging meeting locations, maintaining the minutes and other public records of the meeting, and preparing and distributing appropriate information related to the meeting agenda.
- Advising the commission/committee on directions and priorities of the City Council.
- Informing the commission/committee of events, activities, policies, programs, etc. occurring within the scope of the commission/committee's function.
- Ensuring the city clerk is informed of all vacancies, expired terms, changes in offices, or any other changes to the commission/committee.
- Providing information to the appropriate appointed official including reports, actions, and recommendations of the committee/commission and notifying them of noncompliance by the commission/committee or chair with City policies.
- Ensuring that agenda items approved by the commission/committee are brought forth in a timely manner taking into consideration staff capacity, City Council priorities, the commission/committee work plan, and other practical matters such as the expense to conduct research or prepare studies, provided appropriate public notification, and otherwise properly prepare the item for commission/committee consideration.
- Take action minutes; upon agreement of the commission, this task may be performed by one of the members (staff is still responsible for the accuracy and formatting of the minutes)
- Maintain a minute book with signed minutes

### Recommendations, requests and reports

As needed, near the beginning of City Council meetings, there will be an item called "Advisory Body Reports." At this time, commissions/committees may present recommendations or status reports and may request direction and support from the City Council. Such requests shall be communicated to the staff liaison in advance, including any written materials, so that they may be listed on the agenda and distributed with the agenda packet. The materials being

## COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-~~2223~~-004

~~Adopted September 20, 2022~~

Resolution No. ~~6776~~

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provided to the City Council must be approved by a majority of the commission/committee at a commission/committee meeting before submittal to the City Council. The City Council will receive such reports and recommendations and, after suitable study and discussion, respond or give direction.

### City Council referrals

The city clerk shall transmit to the designated staff liaison all referrals and requests from the City Council for advice and recommendations. The commissions/committees shall expeditiously consider and act on all referrals and requests made by the City Council and shall submit reports and recommendations to the City Council on these assignments.

### Public appearance of commission/committee members

When a commission/committee member appears in a non-official, non-representative capacity before the public, for example, at a City Council meeting, the member shall indicate that they are speaking only as an individual. This also applies when interacting with the media and on social media. If the commission/committee member appears as the representative of an applicant or a member of the public, the Political Reform Act may govern this appearance. In addition, in certain circumstances, due process considerations might apply to make a commission/committee member's appearance inappropriate. Conversely, when a member who is present at a City Council meeting is asked to address the City Council on a matter, the member should represent the viewpoint of the particular commission/committee as a whole (not a personal opinion).

### Disbanding of advisory body

Upon recommendation by the Chair or appropriate staff, any standing or special advisory body, established by the City Council and whose members were appointed by the City Council, may be declared disbanded due to lack of business, by majority vote of the City Council.

### Meetings and officers

#### 1. *Agendas/notices/minutes*

- All meetings shall be open and public and shall conduct business through published agendas, public notices and minutes and follow all of the Brown Act provisions governing public meetings. Special, canceled and adjourned meetings may be called when needed, subject to the Brown Act provisions.
- Support staff for each commission/committee shall be responsible for properly noticing and posting all regular, special, canceled and adjourned meetings. Copies of all meeting agendas, notices and minutes shall be provided to the City Council, city manager, city attorney, city clerk and other appropriate staff, as requested.
- Original agendas and minutes shall be filed and maintained by support staff in accordance with the City's adopted records retention schedule.
- The official record of the commissions/committees will be preserved by preparation of action minutes.

#### 2. *Conduct and parliamentary procedures*

- Unless otherwise specified by State law or City regulations, conduct of all meetings shall generally follow Robert's Rules of Order.
- A majority of commission/committee members shall constitute a quorum and a quorum must be seated before official action is taken.
- The chair of each commission/committee shall preside at all meetings and the vice chair shall assume the duties of the chair when the chair is absent.
- The role of the commission/committee chair (according to Roberts Rules of Order): To open the session at the time at which the assembly is to meet, by taking the chair and calling the members to order; to announce the business before the assembly in the order in which it is to be acted upon; to recognize members entitled to the floor; to state and put to vote all questions which are regularly moved, or necessarily arise in the course of the proceedings, and to announce the result of the vote; to protect the assembly from annoyance from evidently frivolous or dilatory motions by refusing to recognize them; to assist in the expediting of business in every compatible with the rights of the members, as by allowing brief remarks when undebatable motions are pending, if they think it advisable; to restrain the members when engaged in debate, within the rules of order, to enforce on all occasions the observance of order and decorum among the members, deciding all questions of order (subject to an appeal to the assembly by any two members) unless when in doubt he prefers to submit the question for the decision of the assembly; to inform the assembly when necessary, or when referred to for the purpose, on a point of order to practice pertinent to pending business; to authenticate by their signature, when necessary, all the acts, orders, and proceedings of the assembly declaring it will and in all things obeying its commands.



**COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES**

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~~Adopted September 20, 2022~~

Resolution No. 6776

3. *Lack of a quorum*

- When a lack of a quorum exists at the start time of a meeting, those present will wait 15 minutes for additional members to arrive. If after 15 minutes a quorum is still not present, the meeting will be adjourned by the staff liaison due to lack of a quorum. Once the meeting is adjourned it cannot be reconvened.
- The public is not allowed to address those commissioners present during the 15 minutes the commission/committee is waiting for additional members to arrive.
- Staff can make announcements to the members during this time but must follow up with an email to all members of the body conveying the same information.
- All other items shall not be discussed with the members present as it is best to make the report when there is a quorum present.

4. *Meeting locations and dates*

- Meetings shall be held in designated City facilities, as noticed.
- All commissions/committees with the exception of the Planning Commission, and Finance and Audit Committee shall conduct regular meetings once a month. Special meetings may also be scheduled as required by the commission/committee. The Planning Commission shall hold regular meetings twice a month and the Finance and Audit Committee shall hold quarterly meetings.
- Monthly regular meetings shall have a fixed date and time established by the commission/committee. Changes to the established regular dates and times are subject to the approval of the City Council. An exception to this rule would include any changes necessitated to fill a temporary need in order for the commission/committee to conduct its meeting in a most efficient and effective way as long as proper and adequate notification is provided to the City Council and made available to the public.

The schedule of Commission/Committee meetings is as follows:

- Complete Streets Commission – Every second Wednesday at 6:30 p.m.
- Environmental Quality Commission – Every third Wednesday at 6:00 p.m.
- Finance and Audit Committee – Third ~~Wednesday~~ Thursday of every quarter at 5:30 p.m.,
- Housing Commission – Every first Wednesday at 6:30 p.m.
- Library Commission – Every third Monday at 6:30 p.m.
- Parks and Recreation Commission – Every fourth Wednesday at 6:30 p.m.
- Planning Commission – Twice a month on a Monday at 7 p.m.

Each commission/committee may establish other operational policies subject to the approval of the City Council. Any changes to the established policies and procedures shall be subject to the approval of the City Council.

5. *Off-premises meeting participation*

While technology allows commission/committee members to participate in meetings from a location other than the meeting location (referred to as “off-premises”), off-premises participation is discouraged given the logistics required to ensure compliance with the Brown Act and experience with technological failures disrupting the meeting. In the event that a commission/committee member believes that their participation is essential to a meeting, the following shall apply:

- Any commission/committee member intending to participate from an off-premise location shall inform the staff liaison at least two weeks in advance of the meeting.
- The off-premise location must be identified in the notice and agenda of the meeting.
- Agendas must be posted at the off-premise location.
- The off-premise location must be accessible to the public and be ADA compliant.
- The commission/committee member participating at a duly noticed off-premises location does not count toward the quorum necessary to convene a meeting of the commission/committee.
- For any one meeting, no more than one commission/committee member may participate from an off-premise location.
- All votes must be by roll call.

6. *Selection of chair and vice chair*

- The chair and vice chair shall be selected in May of each year by a majority of the members and shall serve for one year or until their successors are selected.
- Each commission/committee shall annually rotate its chair and vice chair.

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**G. Memberships**

*Appointments/Oaths*

- The City Council is the appointing body for all commissions/committees. All members serve at the pleasure of the City Council for designated terms.
- All appointments and reappointments shall be made at a regularly scheduled City Council meeting, and require an affirmative vote of not less than a majority of the City Council present.
- Before taking office, all members must complete an Oath of Allegiance required by Article XX, §3, of the Constitution of the State of California. All oaths are administered by the city clerk or their designee.
- Appointments made during the middle of the term are for the unexpired portion of that term.

*Application and selection process*

- The application process begins when a vacancy occurs due to term expiration, resignation, removal or death of a member.
- The application period will normally run for a period of four weeks from the date the vacancy occurs. If there is more than one concurrent vacancy in a Commission, the application period may be extended. Applications are available from the city clerk's office and on the City's website.
- The city clerk shall notify members whose terms are about to expire whether or not they would be eligible for reappointment. If reappointment is sought, an updated application will be required.
- Applicants are required to complete and return the application form for each commission/committee they desire to serve on, along with any additional information they would like to transmit, by the established deadline. Applications sent by email are accepted.
- After the deadline of receipt of applications, the city clerk shall schedule the matter at the next available regular City Council meeting. All applications received will be submitted and made a part of the City Council agenda packet for their review and consideration. If there are no applications received by the deadline, the city clerk will extend the application period for an indefinite period of time until sufficient applications are received.
- Upon review of the applications received, the City Council reserves the right to schedule or waive interviews, or to extend the application process in the event insufficient applications are received. In either case, the city clerk will provide notification to the applicants of the decision of the City Council.
- If an interview is requested, the date and time will be designated by the City Council. Interviews are open to the public.
- The selection/appointment process by the City Council shall be conducted at a City Council meeting. The city clerk will ask each City Councilmember for their nominations; the number of nominations is limited to the number of vacancies. The candidate that receives a majority of nominations will be appointed. If there is a tie, multiple rounds of voting will occur.
- Following a City Council appointment, the city clerk shall notify successful and unsuccessful applicants accordingly, in writing. Appointees will receive copies of the City's Non-Discrimination and Sexual Harassment policies, and disclosure statements for those members who are required to file under State law as designated in the City's Conflict of Interest Code. Copies of the notification will also be distributed to support staff and the commission/committee chair.
- An orientation will be scheduled by the city clerk following an appointment (but before taking office) and a copy of this policy document will be provided at that time.

*Attendance*

- A compilation of attendance will be submitted to the City Council at least annually listing absences for all commissions/committee members.
- Absences, which result in attendance at less than two-thirds of their meetings during the calendar year, will be reported to the City Council and may result in replacement of the member by the City Council.
- Any member who feels that unique circumstances have led to numerous absences can appeal directly to the City Council for a waiver of this policy or to obtain a leave of absence.
- While it is expected that members be present at all meetings, the chair and staff liaison should be notified if a member knows in advance that they will be absent.
- When reviewing commissioners for reappointment, overall attendance at full commission meetings will be given significant consideration.

*Compensation*

- Members shall serve without compensation (unless specifically provided) for their services, provided, however,

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members shall receive reimbursement for necessary travel expenses and other expenses incurred on official duty when such expenditures have been authorized by the City Council (See Policy CC-19-002).

*Conflict of interest and disclosure requirements*

- A Conflict of Interest Code has been updated and adopted by the City pursuant to Government Code §87300 et seq. Copies of the conflict of interest code are filed with the city clerk. Pursuant to the adopted Conflict of Interest Code, members serving on the Complete Streets Commission, Housing Commission, and Planning Commission are required to file a Statement of Economic Interest with the city clerk to disclose personal interest in investments, real property and income. This is done within 30 days of appointment and annually thereafter. A statement is also required within 30 days after leaving office.
- If a public official has a conflict of interest, the Political Reform Act may require the official to disqualify himself or herself from making or participating in a governmental decision, or using their official position to influence a governmental decision. Questions in this regard may be directed to the city attorney.

*Qualifications, compositions, number*

- In most cases, members shall be residents of the City of Menlo Park and at least 18 years of age.
- Current members of any other City commission/committee are disqualified for membership, unless the regulations for that advisory body permit concurrent membership. Commission/Committee members are strongly advised to serve out the entirety of the term of their current appointment before seeking appointment on another commission/committee.
- Commission/Committee members shall be permitted to retain membership while seeking any elective office. However, members shall not use the meetings, functions or activities of such bodies for purposes of campaigning for elective office.
- There shall be seven (7) members on each commission/committee.

*Reappointments, resignations, removals*

- Incumbents seeking a reappointment are required to complete and file an application with the city clerk by the application deadline. No person shall be reappointed to a commission/committee who has served on that same body for two consecutive terms; unless a period of one year has lapsed since the returning member last served on that commission/committee (the one-year period is flexible subject to City Council's discretion).
- Resignations must be submitted in writing to the city clerk, who will distribute copies to City Council and appropriate staff.
- The City Council may remove a member by a majority vote of the City Council without cause, notice or hearing.

*Term of office*

- Unless specified otherwise, the term of office for all commission/committee shall be four (4) years unless a resignation or a removal has taken place. The Finance and Audit Committee term of office shall be two (2) years.
- If a person is appointed to fill an unexpired term and serves less than two years, that time will not be considered a full term. However, if a person is appointed to fill an unexpired term and serves two years or more, that time will be considered a full term.
- Terms are staggered to be overlapping four-year terms, so that all terms do not expire in any one year.
- If a member resigns before the end of their term, a replacement serves out the remainder of that term.

*Vacancies*

- Vacancies are created due to term expirations, resignations, removals or death.
- Vacancies are posted by the city clerk in the City Council Chambers bulletin board and on the city website.
- Whenever an unscheduled vacancy occurs in any commission/committee, a special vacancy notice shall be posted within 20 days after the vacancy occurs. Appointment shall not be made for at least 10 working days after posting of the notice (Government Code 54974).
- On or before December 31 of each year, an appointment list of all regular advisory commissions/committees of the City Council shall be prepared by the city clerk and posted in the City Council Chambers bulletin board and on the City's website. This list is also available to the public. (Government Code 54972, Maddy Act).

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### Roles and Responsibilities

#### Complete Streets Commission

The Complete Streets Commission is charged primarily with advising the City Council on realizing the City's adopted goals for complete streets, vision zero, climate action plan, and provide input on major land use and development projects as it relates to transportation. The Complete Streets Commission's responsibilities include:

- To advance the goals of the city's newly adopted climate action plan by making alternatives to driving safer and more attractive
- Advise City Council on the implementation of the transportation master plan.
- Continue to advocate for and advise the City Council on planning and installing pedestrian and bicycle rail crossing and safe cycling/pedestrian infrastructure.
- Continue to support City Council in ongoing initiatives to improve access to Downtown and support downtown businesses.
- Continue to support the implementation of the Safe Routes to School strategy and advocate for community engagement, program continuity and engineering implementation.
- Continue to support City Council's role as a stakeholder with regard to regional multi-modal and transportation demand management programs projects to increase

#### Environmental Quality Commission

The Environmental Quality Commission is charged primarily with advising the City Council on matters involving environmental protection, improvement and sustainability. Specific focus areas include:

- Preserving heritage trees
- Using best practices to maintain city trees
- Preserving and expanding the urban canopy
- Making determinations on appeals of heritage tree removal permits
- Administering annual Environmental Quality Awards program
- Organizing annual Arbor Day Event; typically, a tree planting event
- Advising on programs and policies related to protection of natural areas, recycling and waste reduction, environmentally sustainable practices, air and water pollution prevention, climate protection, and water and energy conservation.

#### Finance and Audit Committee

The Finance and Audit Committee is charged primarily to support delivery of timely, clear and comprehensive reporting of the City's fiscal status to the community at large. Specific focus areas include:

- Review the process for periodic financial reporting to the City Council and the public, as needed
- Review financial audit and annual financial report with the City's external auditors
- Review of the resolution of prior year audit findings
- Review of the auditor selection process and scope, as needed

#### Housing Commission

The Housing Commission is charged primarily with advising the City Council on housing matters including housing supply and housing related problems. Specific focus areas include:

- Community attitudes about housing (range, distribution, racial, social-economic problems)
- Programs for evaluating, maintaining, and upgrading the distribution and quality of housing stock in the City
- Planning, implementing and evaluating City programs under the Housing and Community Development Act of 1974
- Review and recommend to the City Council regarding the Below Market Rate (BMR) program
- Initiate, review and recommend on housing policies and programs for the City
- Review and recommend on housing related impacts for environmental impact reports
- Review and recommend on State and regional housing issues
- Review and recommend on the Housing Element of the General Plan

#### Library Commission

The Library Commission is charged primarily with advising the City Council on matters related to the maintenance and operation of the City's libraries and library systems. Specific focus areas include:

- The scope and degree of library activities

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- Maintenance and protection of City libraries
- Evaluation and improvement of library service
- Acquisition of library materials
- Coordination with other library systems and long range planning
- Literacy and ESL programs

Parks and Recreation Commission

The Parks and Recreation Commission is charged primarily with advising the City Council on matters related to City programs and facilities dedicated to recreation. Specific focus areas include:

- Those programs and facilities established primarily for the participation of and/or use by residents of the City, including adequacy and maintenance of such facilities as parks and playgrounds, recreation buildings, facilities and equipment
- Adequacy, operation and staffing of recreation programs
- Modification of existing programs and facilities to meet developing community needs
- Long range planning and regional coordination concerning park and recreational facilities

Planning Commission

The Planning Commission is organized according to State Statute.

- The Planning Commission reviews development proposals on public and private lands for compliance with the General Plan and Zoning Ordinance.
- The Commission reviews all development proposals requiring a use permit, architectural control, variance, minor subdivision and environmental review associated with these projects. The Commission is the final decision-making body for these applications, unless appealed to the City Council.
- The Commission serves as a recommending body to the City Council for major subdivisions, rezoning's, conditional development permits, Zoning Ordinance amendments, General Plan amendments and the environmental reviews and Below Market Rate (BMR) Housing Agreements associated with those projects.
- The Commission works on special projects as assigned by the City Council.

**Special Advisory Bodies**

The City Council has the authority to create standing committees, task forces or subcommittees for the City, and from time to time, the City Council may appoint members to these groups. The number of persons and the individual appointee serving on each group may be changed at any time by the City Council. There are no designated terms for members of these groups; members are appointed by and serve at the pleasure of the City Council.

Any requests of city commissions or committees to create such ad hoc advisory bodies shall be submitted in writing to the city clerk for City Council consideration and approval.

**Procedure history**

Action	Date	Notes
Procedure adoption	1991	Resolution No. 3261
Procedure adoption	2001	
Procedure adoption	2011	
Procedure adoption	2013	Resolution No. 6169
Procedure adoption	2017	Resolution No. 6377
Procedure adoption	6/8/2021	Resolution No. 6631
Procedure adoption	3/1/2022	Resolution No. 6706
Procedure adoption	3/8/2022	Resolution No. 6718

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Procedure adoption	9/20/2022	Resolution No. 6776
<u>Procedure adoption</u>		<u>Resolution No.</u>



**STAFF REPORT**

**City Council Meeting Date:** 1/10/2023  
**Staff Report Number:** 23-005-CC

**Consent Calendar:** **Authorize the city manager to execute an agreement with LookingPoint for the replacement of network switches in an amount not to exceed \$113,000**

**Recommendation**

Staff recommends that the City Council authorize the city manager to execute an agreement with LookingPoint for the replacement of network infrastructure switches in an amount not to exceed \$113,000. This includes a three-year cost for support and maintenance.

**Policy Issues**

This commitment exceeds the city manager’s signing authority of \$86,000 in the fiscal year 2022-23 and requires City Council approval.

**Background**

In 2020, the City identified and replaced 18 end-of-life network switches as part of the Information Technology Master Plan (ITMP) to upgrade aging infrastructure. Currently, nine (9) additional core network switches are now end-of-life and need replacement. These switches provide networking and telephony services to the users. Cisco will no longer support these switches, and they will need to be replaced with current hardware, software and security releases. The City’s network resources, including the entire phone system, depend on reliable access to these switches.

**Analysis**

The City’s network, computer and telephony topology is built on Cisco Systems network switches. This equipment provides access to the network resources in the data center for the users and the entire telephone system. Over the years, the equipment has proven to be reliable and trouble free, and staff is trained and qualified to manage this equipment. The IT division is making every effort to ensure that all equipment in the data center is current, covered by support and maintenance agreements, and complies with the latest security and networking standards.

Cisco Systems, Inc. uses an outside vendor, LookingPoint, to sell their network switches and support agreements. The City contacted LookingPoint after locating a CMAS (California Multiple Award Schedule), which is managed by the State of California Department of General Services. Public Contract Code (PCC) §10290 et seq. and 12101.5 include approval for local government agencies to use CMAS for acquisition of information technology and non-information technology products and services. PCC §10298 and 10299 authorizes local government agencies and school districts to use CMAS and other Department of General Services (DGS) agreements without competitive bidding. All pricing, products and/or services offered must have been previously bid and awarded on a Federal General Services Administration (GSA) multiple award

schedule; therefore, this meets bid requirements and allows local governments to obtain the lowest competitive price (Attachment A.) IT division staff negotiated an additional discount with LookingPoint, reflected in the quote provided (Attachment B.) The total cost, including all hardware and three years of support and maintenance is \$112,611.26.

### **Impact on City Resources**

The current fiscal year cost is included in the fiscal year 2022-23 budget as part of the ITMP funding. Future years' costs will also be covered with ITMP funds.

### **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 does not propose a change that will result in any direct or indirect physical change in the environment.

### **Public Notice**

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

### **Attachments**

- A. CMAS No.: 3-20-70-3092D
- B. LookingPoint quote 12753

Report prepared by:  
Sandy Pimentel, Information Technology Manager

Report reviewed by:  
Mary Morris-Mayorga, Extra Help Retired Annuitant – Administrative Services Director



## State of California MULTIPLE AWARD SCHEDULE LookingPoint, Inc.

CMAS NUMBER:	<b>3-20-70-3092D</b>
CMAS TERM DATES:	4/22/2020 through 9/04/2023
CMAS CATEGORY:	Information Technology Goods & Services
APPLICABLE TERMS & CONDITIONS:	<u>June 7, 2019</u> (www.dgs.ca.gov/-/media/Divisions/PD/Acquisitions/CMAS/IT-CMAS-Terms-and-Conditions.ashx?la=en&hash=B41342080DE511121ECC253A04D62AC90CED6123)
FOR USE BY:	State & Local Government Agencies
BASE GSA SCHEDULE #:	GS-35F-0563U
BASE SCHEDULE HOLDER:	SYNNEX Corporation

This CMAS provides for the purchase and warranty of hardware and software, hardware maintenance and repair, software maintenance as a product, and Software as a Service (SaaS). (See page 3 for the restrictions applicable to this CMAS.)

NOTICE: Products and/or services on this CMAS may be available on a Mandatory Statewide Contracts. If this is the case, the use of this CMAS is restricted unless the State agency has an approved exemption as explained in the Statewide Contract User Instructions. Information regarding Statewide Contracts can be obtained at the Statewide Contract Index Listing (www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/Statewide-Contracts) under the Resources heading. This requirement is not applicable to local government entities.

ANY REFERENCE TO A SPECIFIC MANUFACTURER'S OR PUBLISHER'S WARRANTY OR TERMS AND CONDITIONS AS SHOWN IN THE BASE SYNNEX CORPORATION GSA SCHEDULE ARE NOT APPLICABLE TO THIS CMAS.

*Original Signature On File*

Effective Date: **4/22/2020**

**BRYAN DUGGER, Program Analyst, California Multiple Award Schedules Unit**

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
LOOKINGPOINT, INC.  
CMAS NO. 3-20-70-3092D**

Buyers must verify that the CMAS vendor has a letter of authorization from the manufacturer or an authorized distributor for the sale of the products being procured. Service specific letters of authorization are required if the CMAS vendor is providing maintenance and repair services.

The services provided under this CMAS are only in support of the products covered by this CMAS.

The most current Ordering Instructions and Special Provisions, CMAS Terms and Conditions, and products and/or services are included herein. All purchase orders issued by State agencies under this CMAS shall incorporate these Ordering Instructions and Special Provisions and CMAS Terms and Conditions dated June 7, 2019.

Agency non-compliance with the requirements of this CMAS may result in the loss of delegated authority to use the CMAS program.

CMAS contractor non-compliance with the requirements of this CMAS may result in termination of the CMAS.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
LOOKINGPOINT, INC.  
CMAS NO. 3-20-70-3092D**

**CMAS PRODUCT & SERVICE CODES**

The CMAS Product & Service Codes listed below are for marketing purposes only. Review this CMAS and the base contract identified below for the products and/or services available on this CMAS.

Brand-Cisco  
Cable-Telecommunication  
Data Commun-Equipment  
Data Commun-Network Mgmt  
Firewall-Network Security  
LAN/WAN-System  
Network Equipment-Chassis  
Security-IT Hardware  
Security-IT Network  
Server-Network  
Software-Maintenance  
Data Commun-Data Switch

**AVAILABLE PRODUCTS AND/OR SERVICES**

All of the products from the manufacturers listed in the base GSA schedule are available within the scope of this CMAS.

The ordering agency must verify all products and/or services are currently available on the base General Services Administration (GSA) schedule. Access the [GSA eLibrary](http://www.gsaelibrary.gsa.gov) at [www.gsaelibrary.gsa.gov](http://www.gsaelibrary.gsa.gov).

**CMAS BASE CONTRACT**

**This CMAS is based on some or all of the products and/or services and prices from GSA Schedule Number GS-35F-0563U (SYNNEX CORPORATION) with a GSA term of 9/05/2008 through 9/04/2023.**

**Replace “SYNNEX Corporation” with “LookingPoint, Inc.” where “SYNNEX Corporation” is referenced in the federal GSA multiple award Contract Terms and Conditions.**

**EXCLUDED PRODUCTS AND/OR SERVICES**

Maintenance of software as a service, electronic commerce services, training courses, Information Technology (IT) consulting services, and order-level materials are not available under this CMAS.

**ISSUE PURCHASE ORDER TO**

Agency purchase orders must be either mailed or emailed to the following:

**LookingPoint, Inc.  
391 Taylor Blvd., Suite 120  
Pleasant Hill, CA 94523  
Attn: Katy Mundy**

**E-mail: [katy@lookingpoint.com](mailto:katy@lookingpoint.com)**

Agencies with questions regarding products and/or services may contact the CMAS contractor as follows:

**Contact: Katy Mundy  
Phone: (925) 566-3456  
E-mail: [katy@lookingpoint.com](mailto:katy@lookingpoint.com)**

**TOP 500 DELINQUENT TAXPAYERS**

In accordance with Public Contract Code (PCC) § 10295.4, and prior to placing an order for IT goods and/or services, **agencies must verify** with the Franchise Tax Board and the California Department of Tax and Fee Administration that this CMAS contractor’s name does not appear on either list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code. **See next paragraph for information.**

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
LOOKINGPOINT, INC.  
CMAS NO. 3-20-70-3092D**

The Franchise Tax Board's list of Top 500 Delinquent Taxpayers is available at [www.ftb.ca.gov/about-ftb/newsroom/top-500-past-due-balances/index.html](http://www.ftb.ca.gov/about-ftb/newsroom/top-500-past-due-balances/index.html).

The California Department of Tax and Fee Administration's list of Top 500 Sales & Use Tax Delinquencies in California is available at [www.cdtfa.ca.gov/taxes-and-fees/top500.htm](http://www.cdtfa.ca.gov/taxes-and-fees/top500.htm).

**CALIFORNIA SELLER'S PERMIT**

LookingPoint, Inc.'s California Seller's Permit Number is 101318837. Prior to placing an order with this company, agencies must verify that this permit is still valid at the California Department of Tax and Fee Administration website ([cdtfa.ca.gov](http://cdtfa.ca.gov)).

**CMAS PRICES**

The maximum prices allowed for the products and/or services available in this CMAS are those set forth in the base contract identified on page 3 of this CMAS.

The ordering agency is encouraged to seek prices lower than those on this CMAS. When responding to an agency's Request for Offer (RFO), the CMAS contractor can offer lower prices to be competitive.

**CALIFORNIA CIVIL RIGHTS LAW CERTIFICATION**

Pursuant to Public Contract Code section 2010, effective January 1, 2017, applicants must certify their compliance with the California Civil Rights laws and Employer Discriminatory Policies (section 51 of the Civil Code, section 12960 of the Government Code). It is the agency's responsibility to verify that the contractor has a California Civil Rights Law Certification on file.

**WARRANTY**

For warranties, see the federal GSA schedule and the CMAS Terms and Conditions, General Provisions, CMAS Warranty.

**DELIVERY**

30 days after receipt of order, or as negotiated between agency and CMAS contractor and included in the purchase order, or as otherwise stipulated in the contract.

**SHIPPING INSTRUCTIONS**

F.O.B. (Free On Board) Destination. Seller pays the freight charges.

**PURCHASING AUTHORITY DOLLAR THRESHOLD**

Order limits for the purchase of goods and/or services is determined by the individual agency purchasing authority threshold.

No CMAS order may be executed by a State agency that exceeds that agency's purchasing authority threshold. State agencies with approved purchasing authority, along with their dollar thresholds can be obtained at the List of State Departments with Approved Purchasing Authority website ([www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/List-of-State-Departments-with-Approved-Purchasing-Authority](http://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/List-of-State-Departments-with-Approved-Purchasing-Authority)).

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
LOOKINGPOINT, INC.  
CMAS NO. 3-20-70-3092D**

**HOW TO USE CMAS**

Agencies must adhere to the detailed requirements in the State Contracting Manual (SCM) when using CMAS. The requirements for the following bullets are in the SCM, Volume 2, Chapter 6 (for non-IT), the SCM, Volume 3, Chapter 6 (for IT), and the SCM, Volume FISCAL, Chapter 5 (FISCAL):

- Develop a Request for Offer, which includes a Scope of Work (SOW), and Bidder Declaration form. For information on the Bidder Declaration requirements, see the SCM, Volume 2, Section 3.5.7 and Volume 3, Section 3.4.7.
- Search for potential CMAS contractors on the CMAS website ([www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules](http://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules)) and select “Find a CMAS Contractor.”
- Solicit offers from a minimum of 3 CMAS contractors including one small business and/or DVBE, if available, who are authorized to sell the products and/or services needed.
- If soliciting offers from a certified DVBE, include the Disabled Veteran Business Enterprise Declarations form (Standard 843) in the Request for Offer. This declaration must be completed and returned by the DVBE prime contractor and/or any DVBE subcontractors. (See the SCM Volumes 2, 3, and FISCAL, Chapter 3).
- This is not a bid transaction, so the small business preference, DVBE incentives, protest language, intents to award, evaluation criteria, advertising, etc., are not applicable.

- If less than 3 offers are received, State agencies must document their file with the reasons why the other suppliers solicited did not respond with an offer.
- Assess the offers received using best value methodology, with cost as one of the criteria.
- Issue a Purchase Order to the selected CMAS contractor.
- For CMAS transactions under \$10,000, only one offer is required if the State agency can establish and document that the price is fair and reasonable. The fair and reasonable method can only be used for non-customizable purchases.

Local governments set their own order limits, and are not bound by the order limits on the cover page of this CMAS.

**SPLITTING ORDERS**

Splitting orders to avoid any monetary limitations is prohibited.

Do not circumvent normal procurement methods by splitting purchases into a series of delegated purchase orders, per Public Contract Code (PCC) § 10329.

Splitting a project into small projects to avoid either fiscal or procedural controls is prohibited, per State Administrative Manual (SAM) § 4819.34.

**MINIMUM ORDER LIMITATION**

There is no minimum dollar value limitation on orders placed under this CMAS.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
LOOKINGPOINT, INC.  
CMAS NO. 3-20-70-3092D**

**ORDERING PROCEDURES**

**1. Purchase Orders**

All Ordering Agency purchase order documents executed under this CMAS must contain the applicable CMAS number as show on page 1.

1. State Departments:

Standard 65 Purchase Documents – State departments not transacting in FISCAL must use the Purchasing Authority Purchase Order (Standard 65) for purchase execution. An electronic version of the Standard 65 is available at the DGS-PD website ([www.dgsapps.dgs.ca.gov/osp/StatewideFormsWeb/Forms.aspx](http://www.dgsapps.dgs.ca.gov/osp/StatewideFormsWeb/Forms.aspx)), select Standard STD Forms.

FISCAL Purchase Documents – State departments transacting in FISCAL will follow the FISCAL procurement and contracting procedures.

2. Local Governmental Departments:

Local governmental agencies may use their own purchase document for purchase execution.

The agency is required to complete and distribute the purchase order. For services, the agency shall modify the information contained on the order to include the service period (start and end date), and the monthly cost (or other intermittent cost), and any other information pertinent to the services being provided. The cost for each line item should be included in the order, not just system totals.

The contractor must immediately reject purchase orders that are not accurate. Discrepancies are to be negotiated and incorporated into the purchase order prior to the products and services being delivered.

**2. Service and Delivery after CMAS Expiration**

The purchase order must be issued before the CMAS expires. However, delivery of the products or completion of the services may be after the CMAS expires (unless otherwise specifically stated in the purchase order).

**3. Multiple CMAS Agreements on a Single Purchase Order**

Agencies wishing to include multiple CMAS(s) on a single FISCAL purchase order must adhere to the following guidelines:

- All CMAS must be for the same CMAS contractor.
- The purchase order must go to one contractor location.
- Write the word “CMAS” in the space usually reserved for the contract number. On Standard 65’s, this is at the top of the form. The word “CMAS” signifies that the purchase order contains items from multiple CMAS agreements. The purchasing agency may only use one bill code.

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- For each individual CMAS (as differentiated by alpha suffix), the agency must identify and group together the CMAS number with the line items and subtotal per CMAS number (do not include tax in the subtotal), and sequentially identify each individual CMAS as Sub #1, Sub #2, Sub #3, etc. This facilitates accurate billing of administrative fees by the Procurement Division.
- The total of all items on the purchase order must not exceed the purchase order limit identified in the CMAS.
- Do not combine items from both non-IT and Information Technology CMAS(s). A non-IT CMAS begin with the number "4" and an Information Technology CMAS begins with the number "3." The purchase order limits are different for these two types of CMAS agreements.

Amendments unique to non-IT services are covered in the SCM, Volume 2, Chapter 6.B2.9 and SCM, Volume FISCAL, Chapter 5.A4.1 as follows:

If the original contract permitted amendments, but did not specify the changes (e.g., quantity or time), it may be amended, per Public Contract Code (PCC) § 10335 (d)(1). This only applies to the first amendment. The time shall not exceed one year, or add not more than 30% of the original order value and may not exceed \$250,000. If the original contract did not have language permitting amendments, the NCB process must be followed.

Also, see the SCM, Volumes 2 & 3, Chapter 8, Topic 6, for more information on amending purchase orders.

**4. Amendments to Agency's Purchase Orders**

Agency purchase orders cannot be amended if the CMAS has expired.

The SCM, Volumes 2 & 3, Chapter 6.A5.0 and SCM, Volume FISCAL, Chapter 5.A4.0 provides the following direction regarding amendments to all types of CMAS purchase orders:

Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the RFO process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then amendments are not allowed unless an NCB is approved for those amendments.

**CMAS CONTRACTOR OWNERSHIP INFORMATION**

LookingPoint, Inc. is a large business enterprise.

**SMALL BUSINESS MUST BE CONSIDERED**

Prior to placing orders under the CMAS program, State agencies shall whenever practicable first consider offers from small businesses that have established CMAS [Government Code (GC) § 14846(b)]. NOTE: The Department of General Services auditors will request substantiation of compliance with this requirement when agency files are reviewed.

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CMAS Small Business and Disabled Veteran Partners lists

([www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules](http://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules)) can be found on the CMAS website by selecting "Find a CMAS Contractor".

In response to our commitment to increase participation by small businesses, the Department of General Services waives the administrative fee (a fee currently charged to customer agencies to support the CMAS program) for orders to certified small business enterprises.

See the current fees in the DGS Price Book at: [www.dgs.ca.gov/OFS/Price-Book](http://www.dgs.ca.gov/OFS/Price-Book).

**SMALL BUSINESS/DVBE - TRACKING**

State agencies are able to claim subcontracting dollars towards their small business or DVBE goals whenever the CMAS contractor subcontracts a commercially useful function to a certified small business or DVBE. The CMAS contractor will provide the ordering agency with the name of the small business or DVBE used and the dollar amount the ordering agency can apply towards its small business or DVBE goal.

**SMALL BUSINESS/DVBE - SUBCONTRACTING**

1. The amount an ordering agency can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the CMAS contractor to each small business or DVBE.

2. The CMAS contractor will provide an ordering agency with the following information at the time the order is quoted:
  - a. The CMAS contractor will state that, as the prime contractor, it shall be responsible for the overall execution of the fulfillment of the order.
  - b. The CMAS contractor will indicate to the ordering agency how the order meets the small business or DVBE goal, as follows:
    - i. List the name of each company that is certified by the Office of Small Business and DVBE Services that it intends to subcontract a commercially useful function to; and
    - ii. Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and
    - iii. Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering agency towards the small business or DVBE goal; and
    - iv. Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.
3. The ordering agency's purchase order must be addressed to the prime Contractor, and the purchase order must reference the information provided by the prime Contractor as outlined above.



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**NEW EQUIPMENT REQUIRED**

The State will procure new equipment. All equipment must be new (or warranted as newly manufactured) and the latest model in current production. Used, shopworn, demonstrator, prototype, or discontinued models are not acceptable.

Where Federal Energy Management Program (FEMP) standards are available, all State agencies shall purchase only those products that meet the recommended standards. All products displaying the Energy Star label meet the FEMP standards.

**SPECIAL MANUFACTURED GOODS**

Any CMAS for goods to be manufactured by the CMAS contractor specifically for the State and not suitable for sale to others may require progress payments.

**TRADE-IN EQUIPMENT**

Trade-ins at open market price may be considered. The product description and trade-in allowance must be identified on the purchase order.

Agencies are required to adhere to State Administrative Manual (SAM) § 3520 through 3520.6, Disposal of Personal Property and Surplus Personal Property, as applicable, when trade-ins are considered. A Property Survey Report, Standard 152, must be submitted for approval prior to disposition of any State-owned personal property, including general office furniture regardless of the acquisition value, or if the property was recorded or capitalized for accounting purposes.

**STATE AGENCY BUY RECYCLED  
CAMPAIGN (SABRC)**

State ordering agencies are required to report purchases made within the eleven product categories in the California Department of Resources Recycling and Recovery's State Agency Buy Recycled Campaign (SABRC) per Public Contract Code sections 12200-12217.

Contractor will be required to complete and return a Recycled-Content Certification form ([www.calrecycle.ca.gov/contracts/forms](http://www.calrecycle.ca.gov/contracts/forms)) upon request by the state ordering agency.

**ELECTRONIC WASTE RECYCLING**

State agencies are required to recycle state owned surplus electronic equipment that has no useful life remaining (E-Waste), to the maximum extent possible. State agencies shall dispose of E-Waste using the services of the California Prison Industry Authority (CALPIA), unless the agency meets the pickup quantity and location exemption criteria detailed in State Administrative Manual (SAM) § 3520.10. Electronic equipment that is usable and still retains value is not considered E-Waste and must be reutilized through the DGS, Office of Fleet and Asset Management (OFAM) Surplus Personal Property Warehouse.

State agencies shall determine which equipment meets the definition of E-Waste or reusable Electronic Equipment, per the definitions provided in the State Administrative Manual Management Memo MM 17-06. OFAM will validate that equipment meets the appropriate definition when reviewing the submitted Property Survey Report (STANDARD 152).

Please see State Administrative Manual (SAM) § 3520.10 for more information on this policy.

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Information for submitting a STANDARD 152 can be found on the [DGS OFAM surplus property website](http://www.dgs.ca.gov/RES/RESOURCES/PAGE-CONTENT/REAL-ESTATE-SERVICES-DIVISION-RESOURCES-LIST-FOLDER/DGS-SURPLUS-PROPERTY-HOMEPAGE) ([www.dgs.ca.gov/RES/RESOURCES/PAGE-CONTENT/Real-Estate-Services-Division-Resources-List-Folder/DGS-Surplus-Property-Homepage](http://www.dgs.ca.gov/RES/RESOURCES/PAGE-CONTENT/REAL-ESTATE-SERVICES-DIVISION-RESOURCES-LIST-FOLDER/DGS-SURPLUS-PROPERTY-HOMEPAGE)).

Information on the [CALPIA E-Waste Program](http://www.calpia.ca.gov/services/e-waste/) can be found at: [catalog.calpia.ca.gov/services/e-waste/](http://www.calpia.ca.gov/services/e-waste/).

The [E-Waste Exemption Request Form EWR-F400](http://www.calpia.ca.gov/calpia/assets/File/ewaste/F400.pdf) can be found at: [www.calpia.ca.gov/calpia/assets/File/ewaste/F400.pdf](http://www.calpia.ca.gov/calpia/assets/File/ewaste/F400.pdf).

The electronic waste recycling fee must be shown as a line item on the agency purchase order before the CMAS contractor can include it on their invoice.

**PRODUCTIVE USE REQUIREMENTS**

The customer in-use requirement applies to all procurements of information technology equipment and software, per the SCM, Volume 3, Chapter 2, Section 2.B6.2 and SCM, Volume FISCAL, Chapter 2, Section 2.E3.2.

Each equipment or software component must be in current operation for a paying customer and the paying customer must be external to the contractor’s organization (not owned by the contractor and not owning the contractor).

To substantiate compliance with the Productive Use Requirements, the CMAS contractor must provide upon request the name and address of a customer installation and the name and telephone number of a contact person.

The elapsed time such equipment or software must have been in operation is based upon the importance of the equipment or software for system operation and its cost. The following designates product categories and the required period of time for equipment or software operation prior to approval of the replacement item on CMAS.

**Category 1 - Critical Software:** Critical software is software that is required to control the overall operation of a computer system or peripheral equipment. Included in this category are operating systems, data base management systems, language interpreters, assemblers and compilers, communications software, and other essential system software.

<b>Cost</b>	<b>Installation</b>	<b>Final Bid Submission</b>
More than \$100,000	8 months	6 months
\$10,000 up to \$100,000	4 months	3 months
Less than \$10,000	1 month	1 month

**Category 2 - All Information Technology Equipment and Non-Critical Software:** Information technology equipment is defined in State Administrative Manual (SAM) § 4819.2.

<b>Cost</b>	<b>Installation</b>	<b>Final Bid Submission</b>
More than \$100,000	6 months	4 months
\$10,000 up to \$100,000	4 months	3 months
Less than \$10,000	1 month	1 month

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**NOT SPECIFICALLY PRICED (NSP) ITEMS**

The only time that open market/incidental, non-schedule items may be included in a CMAS order is when they fall under the parameters of the Not Specifically Priced (NSP) Items provision.

CMAS contractors must be authorized providers of the hardware, software and/or services they offer under the Not Specifically Priced (NSP) Items provision.

Agency and CMAS contractor use of the NSP provision is subject to the following requirements:

1. Purchase orders containing only NSP items are prohibited.
2. A purchase order containing NSP items may be issued only if it results in the lowest overall alternative to the State.
3. NSP items shall be clearly identified in the order. Any product or service already specifically priced and included in the base contract may not be identified as an NSP item.
4. NSP Installation Services: The CMAS contractor is fully responsible for all installation services performed under the CMAS. Product installations must be performed by manufacturer authorized personnel and meet manufacturer documented specifications. The prime contractor, as well as any subcontractors, must hold any certifications and/or licenses required for the project. The total dollar value of all installation services included in the purchase order cannot exceed the dollar value of the products included in the purchase order, nor can they exceed the NSP Maximum Order Limitation.

5. Maximum Order Limitation: For orders \$250,000, or less, the total dollar value of all NSP items included in a purchase order shall not exceed \$5,000. For orders exceeding \$250,000, and at the option of the contractor, the total dollar value of all NSP items in a purchase order shall not exceed 5% of the total cost of the order, or \$25,000 whichever is lower.
6. An NSP item included in an order issued against a CMAS is subject to all of the terms and conditions set forth in the contract.
7. Trade-ins, upgrades, involving the swapping of boards, are permissible, where the contract makes specific provisions for this action. In those instances where it is permitted, the purchase order must include the replacement item and a notation that the purchase involves the swapping of a board.

The following NSP items ARE SPECIFICALLY EXCLUDED from any order issued under this CMAS:

1. Items not intended for use in directly supporting the priced items included in the same order. An NSP item must be subordinate to the specifically priced item that it is supporting. For example, a cable, which is not otherwise specifically priced in the base contract, is subordinate to a specifically priced printer or facsimile machine, and is eligible to be an NSP item subject to that cable meeting the remaining NSP requirements. However, a printer or facsimile machine, which is not otherwise specifically priced in the base contract, is not subordinate to a specifically priced cable, and is not eligible to be an NSP item.

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2. Supply type items, except for the minimum amount necessary to provide initial support to the priced items included in the same order.
3. Items that do not meet the Productive Use Requirements for information technology products, per the SCM, Volume 3, Chapter 2, Section 2.B6.2 and SCM, Volume FISCAL, Chapter 2, Section 2.E3.2.
4. Any other item or class of items specifically excluded from the scope of this CMAS.
5. Public Works components NOT incidental to the total purchase order amount.
6. Products or services the CMAS contractor is NOT factory authorized or otherwise certified or trained to provide.
7. Follow-on consultant services that were previously recommended or suggested by the same CMAS contractor.

The CMAS contractor is required to reject purchase orders containing NSP items that do not conform to the above requirements. The CMAS contractor will promptly notify the agency issuing the non-conforming order of its non-acceptance and the reasons for its non-acceptance.

**STATE AND LOCAL GOVERNMENTS CAN USE CMAS**

State and local government agency use of CMAS is optional. A local government is any city, county, city and county, district, or other local governmental body or corporation, including UC, CSU, K-12 schools and community colleges empowered to expend public funds. While the State makes this CMAS available, each local government agency should make its own determination whether the CMAS program is consistent with their procurement policies and regulations.

**UPDATES AND/OR CHANGES**

A CMAS amendment is not required for updates and/or changes once the update and/or change becomes effective for the federal GSA schedule, except as follows:

- A CMAS amendment is required when the CMAS is based on specific products and/or services from another contractor's multiple award contract and the contractor wants to add a new manufacturer's products and/or services.
- A CMAS amendment is required for new federal contract terms and conditions that constitute a material difference from existing contract terms and conditions. A material change has a potentially significant effect on the delivery, quantity or quality of items provided, the amount paid to the contractor or on the cost to the State.

A CMAS amendment is required to update and/or change terms and conditions and/or products and services based on a non-federal GSA multiple award contract.

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**SELF-DELETING FEDERAL GSA TERMS  
AND CONDITIONS**

Instructions, or terms and conditions that appear in the Special Items or other provisions of the federal GSA and apply to the purchase, license, or rental (as applicable) of products or services by the US Government in the United States, and/or to any overseas location shall be self-deleting. (Example: "Examinations of Records" provision).

Federal regulations and standards, such as Federal Acquisition Regulation (FAR), Federal Information Resources Management Regulation (FIRMR), Federal Information Processing Standards (FIPS), General Services Administration Regulation (GSAR), or Federal Installment Payment Agreement (FIPA) shall be self-deleting. Federal blanket orders and small order procedures are not applicable.

**ORDER OF PRECEDENCE**

The CMAS Terms and Conditions takes precedence if there is a conflict between the terms and conditions of the contractor's federal GSA, (or other multiple award contract), packaging, invoices, catalogs, brochures, technical data sheets or other documents (see CMAS Terms and Conditions, CONFLICT OF TERMS).

**APPLICABLE CODES, POLICIES AND  
GUIDELINES**

All California codes, policies, and guidelines are applicable. THE USE OF CMAS DOES NOT REDUCE OR RELIEVE STATE AGENCIES OF THEIR RESPONSIBILITY TO MEET STATEWIDE REQUIREMENTS REGARDING CONTRACTING OR THE PROCUREMENT OF GOODS OR SERVICES. Most procurement and contract codes, policies, and guidelines are incorporated into CMAS agreements. Nonetheless, there is no guarantee that every possible requirement that pertains to all the different and unique State processes has been included.

**PAYMENTS AND INVOICES**

**1. Payment Terms**

Payment terms for this CMAS are net 45 days.

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code (GC) § 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (1) the date of acceptance of goods or performance of services; or (2) receipt of an undisputed invoice, whichever is later.

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**2. Payee Data Record (Standard 204)**

State Agencies not transacting in FISCAL, must obtain a copy of the Payee Data Record (Standard 204) in order to process payments. State Ordering Agencies forward a copy of the Standard 204 to their accounting office(s). Without the Standard 204, payment may be unnecessarily delayed. State Agencies should contact the CMAS contractor for copies of the Payee Data Record.

**3. DGS Administrative and Incentive Fees**

**Orders from State Agencies:**

The Department of General Services (DGS) will bill each State agency directly an administrative fee for use of CMAS. The administrative fee should NOT be included in the order total, nor remitted before an invoice is received from DGS. This administrative fee is waived for CMAS purchase orders issued to California certified small businesses.

See the current administrative fees in the [DGS Price Book](http://www.dgs.ca.gov/OFS/Price-Book) ([www.dgs.ca.gov/OFS/Price-Book](http://www.dgs.ca.gov/OFS/Price-Book)).

**Orders from Local Government Agencies:**

CMAS contractors, who are not California certified small businesses, are required to remit to the DGS an incentive fee equal to **1.25%** of the total of all local government agency orders (excluding sales tax and freight) placed against their CMAS. The incentive fee is in lieu of local government agencies being billed the above referenced DGS administrative fee.

This incentive fee is waived for CMAS purchase orders issued to California certified small businesses.

The check covering this fee shall be made payable to the Department of General Services, CMAS Unit, and mailed to the CMAS Unit along with the applicable Quarterly Report. See the provision in this CMAS entitled "Contractor Quarterly Report Process" for information on when and where to send these checks and reports.

**4. Contractor Invoices**

Unless otherwise stipulated, the CMAS contractor must send their invoices to the agency address set forth in the purchase order. Invoices shall be submitted in triplicate and shall include the following:

- CMAS number
- Agency purchase order number
- Agency Bill Code (State Only)
- Line item number
- Unit price
- Extended line item price
- Invoice total

State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

The company name on the CMAS, purchase order and invoice must match or the State Controller's Office will not approve payment.

**5. Advance Payments**

Advance payment is allowed for services only under limited, narrowly defined circumstances, e.g., between specific departments and certain types of non-profit organizations, or when paying another government agency (Government Code (GC) § 11256 – 11263 and 11019).

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It is NOT acceptable to pay in advance, except software maintenance and license fees, which are considered a subscription and may be paid in advance if a provision addressing payment in advance is included in the purchase order.

Software warranty upgrades and extensions may also be paid for in advance, one time.

**6. Credit Card**

LookingPoint, Inc. does not accept the State of California credit card (CAL-Card).

**7. Lease/Purchase Analysis**

State agencies must complete a Lease/Purchase Analysis (LPA) to determine best value when contemplating a lease/rental, and retain a copy for future audit purposes (State Administrative Manual (SAM) § 3710).

For short-term rental equipment, the lease/purchase analysis must be approved by the Department of General Services, Office of legal Services.

The lease/purchase analysis for all other purchases must be approved by the Department of General Services, GS Smart State Financial Marketplace. Buyers may contact the GS Smart Administrator, Kris Bianchini via email at [kristopher.bianchini@dgs.ca.gov](mailto:kristopher.bianchini@dgs.ca.gov) for further information.

**8. Leasing**

The State reserves the right to select the form of payment for all procurements, be it either an outright purchase with payment rendered directly by the State, or a financing/lease-purchase or operating lease via the State Financial Marketplace (GS Smart and/or Lease Smart). If payment is via the financial marketplace, the Supplier will invoice the State and the State will approve the invoice and the selected Lender/Lessor for all product listed on the State's procurement document will pay the supplier on behalf of the State.

Buyers may contact the GS Smart Administrator, Kris Bianchini via email at [kristopher.bianchini@dgs.ca.gov](mailto:kristopher.bianchini@dgs.ca.gov) for further information.

**9. Maintenance Tax**

The California Department of Tax and Fee Administration has ruled that in accordance with Section 1546 of the Sales and Use Tax Regulations of the Business Taxes Law Guide, whenever optional maintenance contracts include consumable supplies, such supplies are subject to sales tax.

Generally, the State has two options:

1. For agreements that provide for only maintenance services (i.e., the furnishing of labor and parts necessary to maintain equipment), the charges for the provision of maintenance services are not taxable.

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2. For agreements that provide for both maintenance services and consumable supply items (i.e., toner, developer, and staples, for example), the provision of the consumable supplies is considered a taxable sale of tangible personal property. Therefore, State agencies awarding optional maintenance contracts are responsible for paying the applicable sales tax on the consumable supplies used during the performance period of the maintenance contract.

The Contractor will be required to itemize the consumables being taxed for State accounting purposes.

**CONTRACTOR QUARTERLY REPORT PROCESS**

CMAS contractors are required to submit a detailed CMAS Business Activity Report on a quarterly basis to the CMAS Unit. See Attachment B for a copy of this form and instructions.

This report shall be mailed to:

Department of General Services  
Procurement Division – CMAS Unit  
Attention: Quarterly Report Processing  
PO Box 989052, MS #2-202  
West Sacramento, CA 95798-9052

Reports that include checks for incentive fees must be mailed and shall not be e-mailed. All other reports may be e-mailed to the attention of Quarterly Report Processing as follows:

CMAS Unit E-Mail: [cmas@dgs.ca.gov](mailto:cmas@dgs.ca.gov)

For the full instructions on completing and submitting CMAS Quarterly Business Activity Reports, and a soft copy of a blank quarterly report form, go to the [CMAS website](http://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules) ([www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules](http://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules)) and then select “File a CMAS Quarterly Report”.

Important things to remember regarding CMAS Quarterly Business Activity Reports (referred to as “reports” below):

- A report is required for each CMAS, each quarter, even when no new purchase orders are received in the quarter.
- A separate report is required for each CMAS.
- **Each purchase order must be reported only once in the quarter identified by the purchase order date, regardless of when the services were performed, the products were delivered, the invoice was sent, or the payment was received.**
- Purchase orders from State and local government agencies must be separated on the report, as shown in the instructions.
- CMAS contractors must report the sales activity for all resellers listed on their CMAS.
- Any report that does not follow the required format or excludes required information will be deemed incomplete and returned to the CMAS contractor for corrections.
- Taxes and freight must not be included in the report.
- CMAS contractors must attach to their quarterly report a check covering the required incentive fee for all CMAS sales to local government agencies (see more information below).



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- New CMAS agreements, renewals, extensions, and amendments will be approved only if the CMAS contractor has submitted all required quarterly reports and incentive fees.

CMAS Quarterly Business Activity Reports are due in the CMAS Unit within two weeks after the end of each quarter as shown below:

Quarter 1	Jan 1 to Mar 31	Due Apr 15
Quarter 2	Apr 1 to Jun 30	Due Jul 15
Quarter 3	Jul 1 to Sep 30	Due Oct 15
Quarter 4	Oct 1 to Dec 31	Due Jan 15

**CONTRACTOR QUARTERLY INCENTIVE FEES**

CMAS contractors who are not California certified small businesses must remit to DGS an incentive fee equal to **1.25%** of the total of all local government agency orders (excluding sales tax and freight) placed against their CMAS agreement(s). This incentive fee is in lieu of local government agencies being billed the above referenced DGS administrative fee.

CMAS contractors cannot charge local government agencies an additional **1.25%** charge on a separate line item to cover the incentive fee. The CMAS contractor must include the **1.25%** incentive fee in the price of the products or services offered, and the line item prices must not exceed the applicable base contract prices.

A local government agency is any city, county, district, or other local governmental body, including the California State University (CSU) and University of California (UC) systems, K-12 public schools and community colleges empowered to expend public funds.

This incentive fee is waived for CMAS purchase orders issued to California certified small businesses.

Ordering Instructions and Special Provisions

The check covering this fee shall be made payable to the Department of General Services, CMAS Unit, and mailed to the CMAS Unit along with the applicable Quarterly Report. See the provision in this CMAS entitled "Contractor Quarterly Report Process" for information on when and where to send these checks and reports.

**OBTAINING COPY OF ORIGINAL CMAS AND AMENDMENTS**

A copy of a CMAS and amendments, if any, can be obtained at Cal eProcure ([caleprocure.ca.gov](http://caleprocure.ca.gov)). A complete CMAS consists of the following:

- CMAS cover pages (which includes the signature page, ordering instructions and special provisions, and any attachments or exhibits as prepared by the CMAS Unit)
- CMAS Terms and Conditions.
- Federal GSA (or Non-GSA) terms and conditions
- Product/service listing and prices
- Amendments, if applicable.

It is important for the agency to confirm that the required products, services, and prices are included in the CMAS and are at or below base contract rates. To streamline substantiation that the needed items are in the base contract, the agencies should ask the CMAS contractor to identify the specific pages from the base contract that include the required products, services, and prices. Agencies should save these pages for their file documentation.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
LOOKINGPOINT, INC.  
CMAS NO. 3-20-70-3092D**

**CONTRACTORS ACTING AS FISCAL AGENTS ARE PROHIBITED**

When a subcontractor ultimately provides all of the products or performs all of the services that a CMAS contractor has agreed to provide, and the prime contractor only handles the invoicing of expenditures, then the prime contractor's role becomes that of a fiscal agent because it is merely administrative in nature, and does not provide a Commercially Useful Function (CUF). It is unacceptable to use fiscal agents in this manner because the agency is paying unnecessary administrative costs.

**AGENCY RESPONSIBILITY**

Each agency is responsible for its own contracting program and purchasing decisions, including use of the CMAS program and associated outcomes.

This responsibility includes, but is not necessarily limited to, ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, preparing the purchase order in a manner that safeguards the State's interests, obtaining required approvals, and documenting compliance with Government Code (GC) § 19130.b (3) for outsourcing services.

It is the responsibility of each agency to consult as applicable with their legal staff and contracting offices for advice depending upon the scope or complexity of the purchase order.

If you do not have legal services available to you within your agency, the DGS Office of Legal Services is available to provide services on a contractual basis.

**CONFLICT OF INTEREST**

Agencies must evaluate the proposed purchase order to determine if there are any potential conflict of interest issues. See the CMAS Terms and Conditions, Conflict of Interest, for more information.

**FEDERAL DEBARMENT**

When federal funds are being expended, the agency is required to obtain (retain in file) a signed "Federal Debarment" certification from the CMAS contractor before the purchase order is issued.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants; responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

**CONTRACTOR TRAVEL**

The Travel provision is not applicable to this CMAS.

**LIQUIDATED DAMAGES FOR LATE DELIVERY**

The value of the liquidated damages cannot be a penalty, must be mutually agreed upon by agency and contractor and included in the purchase order to be applicable.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
LOOKINGPOINT, INC.  
CMAS NO. 3-20-70-3092D**

**ACCEPTANCE TESTING CRITERIA**

If the agency wants to include acceptance testing for all newly installed technology systems, and individual equipment, and machines which are added or field modified (modification of a machine from one model to another) after a successful performance period, the test criteria must be included in the purchase order to be applicable.

**AMERICANS WITH DISABILITY ACT (ADA)**

Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22; California Government Code, Sections 11135, et seq.; and other federal and State laws, and Executive Orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities. See Attachment A for Procurement Division's ADA Compliance Policy of Nondiscrimination on the Basis of Disability.

Individual government agencies are responsible for self-compliance with ADA regulations.

Contractor sponsored events must provide reasonable accommodations for persons with disabilities.

**DGS PROCUREMENT DIVISION CONTACT  
AND PHONE NUMBER**

Department of General Services  
Procurement Division, CMAS Unit  
707 Third Street, 2<sup>nd</sup> Floor, MS 2-202  
West Sacramento, CA 95605-2811

Phone # (916) 375-4365

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
LOOKINGPOINT, INC.  
CMAS NO. 3-20-70-3092D**

**ATTACHMENT A**

**ADA NOTICE**

**Procurement Division (State Department of General Services)  
AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE  
POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY**

To meet and carry out compliance with the nondiscrimination requirements of the Americans with Disabilities Act (ADA), it is the policy of the Procurement Division (within the State Department of General Services) to make every effort to ensure that its programs, activities, and services are available to all persons, including persons with disabilities.

For persons with a disability needing a reasonable accommodation to participate in the Procurement process, or for persons having questions regarding reasonable accommodations for the Procurement process, please contact the Procurement Division at (916) 375-4400 (main office); the Procurement Division TTY/TDD (telephone device for the deaf) or California Relay Service numbers which are listed below. You may also contact directly the Procurement Division contact person who is handling this procurement.

**IMPORTANT: TO ENSURE THAT WE CAN MEET YOUR NEED, IT IS BEST THAT WE RECEIVE YOUR REQUEST AT LEAST 10 WORKING DAYS BEFORE THE SCHEDULED EVENT (i.e., MEETING, CONFERENCE, WORKSHOP, etc.) OR DEADLINE DUE-DATE FOR PROCUREMENT DOCUMENTS.**

The Procurement Division TTY telephone numbers are:

Sacramento Office: 916-376-5127 (CALNET 480-5127)

The California Relay Service Telephone Numbers are:

Voice: 1-800-735-2922, or 7-1-1

Speech to Speech Service: 1-800-854-7784

## CMAS QUARTERLY BUSINESS ACTIVITY REPORT

Company Name: \_\_\_\_\_ Reporting Calendar Year: \_\_\_\_\_ Revision

CMAS Number: \_\_\_\_\_ Reporting Quarter:  Q1 (January to March)

For Questions Regarding this Report Contact:  Q2 (April to June)

Name: \_\_\_\_\_  Q3 (July to September)

Phone Number: \_\_\_\_\_  Q4 (October to December)

E-mail: \_\_\_\_\_ Check Here if No New Orders for This Quarter

### STATE GOVERNMENT AGENCY PURCHASES

State Agency Name	Purchase Order Number	Purchase Order Date	Total Dollars Per Purchase Order	Agency Contact	Agency Address	Phone Number

Total State Agency Dollars Reported for Quarter: \$ \_\_\_\_\_

### LOCAL GOVERNMENT AGENCY PURCHASES

Local Government Agency Name	Purchase Order Number	Purchase Order Date	Total Dollars Per Purchase Order	Agency Contact	Agency Address	Phone Number

Total Local Government Agency Dollars for Quarter: \$ \_\_\_\_\_

Total 25% Remitted to DGS (does not apply to CA certified Small Businesses): \$ \_\_\_\_\_

Total of State and Local Government Agency Dollars Reported for this Quarter: \$ \_\_\_\_\_

# ATTACHMENT B

## CMAS Quarterly Business Activity Report

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### Instructions for **completing** the CMAS Quarterly Business Activity Report

1. Complete the top of the form with the appropriate information for your company.
2. **Agency Name** - Identify the State agency or Local Government agency that issued the order.
3. **Purchase Order Number** - Identify the purchase order number (and amendment number if applicable) on the order form. This is not your invoice number. This is the number the State agency or Local Government agency assigns to the order.
4. **Purchase Order Date** - Identify the date the purchase order was issued, as shown on the order. This is not the date you received, accepted, or invoiced the order.
5. **Total Dollars Per Purchase Order** - Identify the total dollars of the order excluding tax and freight. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order. The total dollars per order should indicate the entire purchase order amount (less tax and freight) regardless of when you invoice order, perform services, deliver product, or receive payment.
6. **Agency Contact** - Identify the ordering agency's contact person on the purchase order.
7. **Agency Address** - Identify the ordering agency's address on the purchase order.
8. **Phone Number** - Identify the phone number for the ordering agency's contact person.
9. **Total State Sales & Total Local Sales** - Separately identify the total State dollars and/or Local Government agency dollars (pre-tax) for all orders placed in quarter.
10. **1.25% Remitted to DGS** - Identify **1.25%** of the total Local Government agency dollars reported for the quarter. This is the amount to be remitted to DGS by contractors who are not California certified small businesses.
11. **Grand Total** - Identify the total of all State and Local Government agency dollars reported for the quarter.

#### Notes:

- A report is required for each CMAS, each quarter, even if there are no new orders for the quarter.
- Quarterly reports are due two weeks after the end of the quarter.

Date Issued: **11.30.2022**

 Expires: **12.15.2022**
**Prepared For:**
**City of Menlo Park**

 Jepry Sotto  
 701 Laurel Street  
 Menlo Park, CA 94025

**P:** (650) 330-6645

**E:** jsotto@menlopark.org

**Prepared By:**
**LookingPoint**

 Chuck Davis  
 391 Taylor Blvd. Suite 120  
 Pleasant Hill, CA 94523

**P:** 925-566-3480

**E:** chuck@lookingpoint.com

**Purchase Order Payable to:**

 LookingPoint  
 391 Taylor Blvd. Suite 120  
 Pleasant Hill, CA 94523  
 Federal Tax ID: 27-1173205

**Email or FAX Purchase Order and this form to:**
**Orders@lookingpoint.com or  
 FAX:925-405-3847**

Line #	Product	Cisco	Qty	Price Per	Extended Price
1		Catalyst 9300 48-port(12 mGig&36 2.5Gbps) Network Essentials	5	\$6,268.31	\$31,341.55
2		SNTC-8X5XNBD Catalyst 9300 48-port(12 mGig36 2.5Gbps	5	\$2,754.48	\$13,772.40
3		1100W AC 80+ platinum Config 1 Secondary Power Supply	5	\$893.89	\$4,469.45
4		C9300 DNA Essentials, 48-port, 3 Year Term license	5	\$526.92	\$2,634.60
5		Catalyst 9300 8 x 10GE Network Module	5	\$1,199.69	\$5,998.45
6		Catalyst 9300 24-port mGig and UPOE, Network Essentials	4	\$6,294.82	\$25,179.28
7		SNTC-8X5XNBD Catalyst 9300 24-port mGig and UPOE, Net	4	\$2,766.17	\$11,064.68
8		1100W AC 80+ platinum Config 1 Secondary Power Supply	4	\$893.89	\$3,575.56
9		C9300 DNA Essentials, 24-Port, 3 Year Term License	4	\$286.99	\$1,147.96
10		Catalyst 9300 8 x 10GE Network Module	4	\$1,199.69	\$4,798.76
<b>Subtotal</b>					<b>\$103,982.69</b>

Line #	Product	Shipping	Qty	Price Per	Extended Price
1	Shipping	Shipping is FOB: Origin	1	\$50.00	\$50.00
<b>Subtotal</b>					<b>\$50.00</b>

Quote Summary		Amount
Cisco		\$103,982.69
<b>Subtotal:</b>		<b>\$103,982.69</b>
<b>Shipping:</b>		<b>\$50.00</b>
<b>Tax:</b>		<b>\$8,578.57</b>
<b>Total:</b>		<b>\$112,611.26</b>

Date Issued: **11.30.2022**Expires: **12.15.2022**

By signing this quote you agree to the terms and conditions attached.

## Acceptance

**LookingPoint****City of Menlo Park**

Chuck Davis

Signature / Name

11/30/2022

Date

Signature / Name

Initials

Date



## Terms

**General.** This quote constitutes the confidential information of LookingPoint. It is provided for the benefit of the client only and shall not be provided to any third parties.

**Limitation of Liability.** Under no circumstances shall company, or its respective officers or agents, be liable for any direct, indirect, incidental, consequential, special, punitive, or exemplary damages, including negligence, loss of business, revenue, profits, use, data or other economic advantage (even if they have been advised of the possibility of such damages) and even if such damages were foreseeable, arising from the use of or inability to use the client's or customer's system and/or components; or that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, transmission, or any failure of performance. In no event shall any liability exceed the amount invoiced under the applicable order.

**Licensing, SaaS and Calling Agreements.** Initial billing for recurring agreements will start once service is activated, regardless of installation status. The initial term of the agreement is stated in the quote and there will be no early termination, the remaining contract value will be assessed for cancellations. All subscriptions will auto-renew, are subject to pricing changes and a true up based on actual usage. Manufacturer Terms of Service shall govern your use of the features and functions provided in the Service: [OEM T&Cs](#). All overages and toll free calling will be billed based on usage the following month. For Global Call Me (1) and Global Toll Free (1) Committed Rates Cisco Committed Rates apply.

**Payment Terms.** Payment terms are subject to credit approval. All hardware, software and licensing will be invoiced when shipped.

**Credit Card Payments.** A service charge equal to 4% will be applied to all credit card transactions.

**Late Payments.** A service charge equal to 18% APR will be assessed each month on all amounts past due 30 days or more until paid.

**Shipping.** All shipping is FOB: ORIGIN. All shipping charges are estimated based on requested class of shipping (Next Day, Second day, etc.). Taxes, handling and other fees may apply.

**Taxes.** All prices are based on U.S. dollars. Customer shall be solely responsible for the payment of all taxes, including any interest and penalties, in connection with the purchase, including but not limited to any sales, use, excise, value-added taxes ("VAT"), consumption, and other taxes and duties assessed on the, except if Customer provides the Company with a tax exemption certification acceptable to all relevant taxing authorities.

**Returns.** Factory sealed returns are subject to OEM T&Cs and approval. Customer is responsible for returning equipment within the return window as described in the RMA instructions, provided upon approval. All invoices related to this quote must be paid within terms. A Credit Memo will be issued once the credit is received by LookingPoint, and 25% restocking fee will be applied. The process can take anywhere from 30-90 days. VMware, APC and Microsoft are non-returnable

**Order Cancellation Policy** Cisco, Meraki, VMware, APC and Microsoft orders will be non-cancellable and cannot be modified starting 45 days prior to the current estimated ship date. Non-cancellable orders are not eligible for RMA credit and are not eligible for an RMA exception



## STAFF REPORT

### City Council

Meeting Date:

1/10/2023

Staff Report Number:

23-001-CC

Consent Calendar:

**Transmittal of the annual report on the status of the transportation impact, storm drainage, recreation in-lieu and construction impact fees collected as of June 30, 2022**

### Recommendation

Staff recommends the City Council review the City's Assembly Bill 1600 (AB1600) report providing data on the revenues collected from the transportation impact, storm drainage, recreation in-lieu and construction impact fees. The below market rate (BMR) housing fees are included in this report to inform the City Council in accordance with BMR Guidelines 14.5 under Resolution No. 6708.

### Policy Issues

This report does not represent any change to existing City policy and affirms the City's intention to continue to charge these impact fees to fund projects and programs that mitigate the impact of development in the City of Menlo Park.

### Background

Cities and counties often charge fees on new development to fund public improvements to mitigate the impact of development activity. These fees are commonly known as development impact fees. In 1989, the state Legislature passed AB1600, which added Sections 66000 et seq. to the California Government Code, commonly known as the Mitigation Fee Act.

As required by law, these fees are segregated from the general fund and accounted for in special revenue funds. Government Code Section 66001 requires that the City make available to the public information regarding development impact fees for the fiscal year within 180 days after the end of each fiscal year:

- A brief description of the fee and the fund into which the fee was deposited
- The amount of the fee
- The associated fund's beginning and ending balances for the fiscal year
- The total amount of fees collected and interest earned
- Identification of each public improvement on which impact fees were expended and the amount of expenditure on each improvement, including the total percentage of the cost of the public improvement that was funded with impact fees
- Identification of the approximate date by which construction of a public improvement will commence if the local agency determined that sufficient funds have been collected to complete financing on an incomplete public improvement and the public improvement remains incomplete
- A description of each interfund transfer or loan made from an account or fund

Further, Government Code Section 66000 et. seq. also requires that findings describing the continuing need for impact fees be made every five years specifying the intended use of any unexpended impact fees, regardless of whether the fees are committed or uncommitted. Failure to make such findings subjects the City to going through a refunding procedure. This report meets the requirements to comply with the Mitigation Fee Act.

**Analysis**

Transportation impact fees

Due to growth and development in the City of Menlo Park and surrounding cities and the region, increased pressure has been put on the transportation system. The purpose of the transportation impact fee is to provide adequate transportation improvements to serve cumulative development within the city. However, the fee does not replace the need for all site-specific transportation improvements that may be needed to mitigate the impact of specific projects upon the city’s transportation system.

The transportation impact fee methodology was put in place effective December 6, 2009, with the addition of Section 13.26 to the municipal code,. In 2019, the City prepared an updated transportation impact fee study which demonstrates the reasonable relationship between the amount of the fees and the purpose for which they are charged. In addition, the 2019 update set the fees for child care facilities and secondary dwelling units to \$0. The current fee program became effective in February 2020, and are adjusted annually according to the Engineering News Record construction cost index. Current 2022 fees are listed below:

Transportation impact fee		
Land use	Unit	2022 fee amount*
Office	Sq.Ft.	\$ 21.88
Research and development	Sq.Ft.	9.32
Manufacturing	Sq.Ft.	12.76
Warehousing	Sq.Ft.	3.62
Restaurant	Sq.Ft.	12.76
Retail	Sq.Ft.	12.76
Single-family	Dwelling units	18,845.59
Multifamily	Dwelling units	6,351.83
Hotel	Per room	11,421.56
Medical office	Sq.Ft.	65.87
Child care	Sq.Ft.	0
Secondary dwelling unit	Dwelling units	0

\*As of June 2022, ENR Construction Cost Index % Change for San Francisco =14.1  
 If land use is not one of the above, use this formula: \$19,035.94 \* Total PM Peak Hour Trips

For fiscal year 2021-22, the City received total revenue of \$2,484,739 (\$2,675,719 in fees, \$180,992 in interest earnings and other revenue, and a negative \$371,972 due to unrealized loss adjustment on investments.) The unrealized gain/(loss) on investments is an accounting requirement to reflect the year-end value of the investment and not a cash loss, provided investments are held until maturity. For the same period, the City expended a total of \$511,353 on projects eligible for funding under this revenue source. Accordingly, net revenue for the year totaled \$1,973,386 and the ending balance as of June 30, 2022, is \$8,828,075. Of this amount, all funds are available for use to meet current or planned projects eligible for this funding source. In the next five fiscal years, it is planned that the City will require \$27,534,567 from transportation impact fees to finance needed infrastructure projects. The City Council adopted the transportation master plan in November 2020 and staff has included new projects to the future five-year capital improvement program. As such, there exists a continued need for this fee. Detail of current year and historical financials as well as current year project expenditures are available in Attachment A.

### Storm drainage fees

The storm drainage fee commenced before 1989. The fee is levied to mitigate impacts on the storm drainage system either directly or indirectly resulting from development projects. The fee does not cover all federally or regionally mandated stormwater permitting requirements imposed since 1990 under the National Pollutant Discharge Elimination System permits. Storm drainage connection fees are charged for property development as shown in the City's 2022 master fee schedule:

- Single-family – per lot \$450.00
- Multifamily – per unit \$150.00
- Industrial and commercial – per square foot of impervious area \$0.24

For fiscal year 2021-22, the City received developer fees of \$1,440, interest income of \$1,087 and had negative \$3,967 due to unrealized loss adjustment on investments. For the same period, the City did not expend any funds on projects eligible for funding under this revenue source. Accordingly, net revenue for the year for the year totaled (\$1,440) and the ending balance as of June 30, 2022, is \$93,449. Of this amount, all funds are available for use to meet planned projects eligible for this funding source. The City plans to use the remaining funds to support storm drain improvements identified in the citywide stormwater master plan currently in development. At this time, there still exists a continued need for this fee. Detail of current year and historical financials as well as current year project expenditures are available in Attachment B.

### Recreation in-lieu fees

The recreation in-lieu fee commenced before 1989. The purpose of the fee is to provide improved and expanded recreation facilities to serve new residential uses. The fee is assessed as an option for residential developments in-lieu of providing dedication of land for new facilities. Although the fee is not required reporting under AB 1600, staff is providing a brief update here consistent with past practice. The fee is charged on new residential subdivisions as authorized under Municipal Code section 15.16.020 in accordance with the Quimby Act and summarized in the City's 2022 master fee schedule:

- Single-family (RE and R-1): 0.013 (Multiplied by number of units and by market value of acreage to be subdivided)
- Multifamily development (R-2, R-3, RLU and PD): 0.008 (Multiplied by number of units and by market value of acreage to be subdivided)

For fiscal year 2021-22, the City received total revenue of \$445,809 (\$519,400 in fees, \$39,653 in interest income and negative \$113,244 due to unrealized loss adjustment on investments. For the same period, the City expended a total of \$1,263,010 on projects eligible for funding under this revenue source. Accordingly, net revenue for the year for the year totaled (\$817,201) and the ending balance as of June 30, 2022, is

\$2,823,576. Of this amount, all funds are available for use to meet current or planned projects eligible for this funding source. In the next five fiscal years, it is planned that the City will require \$2,682,709 from recreation in-lieu fees to finance needed infrastructure projects. As such, there exists a continued need for this fee. Detail of current year and historical financials as well as current year project expenditures are available in Attachment C.

#### Construction impact fees

The construction impact fee took effect in November 2005 and was adopted to recover the cost of repairing damage to streets caused by construction-related vehicle traffic. On August 5, 2008, the City Council adopted a resolution extending this fee beyond the three-year sunset provision initially established. The fee is charged on the value of the construction project as shown in the 2022 master fee schedule:

- 0.58 percent of a construction project's value
- Residential alteration and repairs, as well as all projects under \$10,000, are exempt from the fee

For fiscal year 2021-22, the City received total revenue of \$1,555,385 (\$1,435,257 in fees, \$253,522 in a One Bay Area grant for paving Santa Cruz and Middle Avenues, \$71,537 in interest income and negative \$204,932 in unrealized loss adjustment on investments.) For the same period, the City expended a total of \$664,082 on projects eligible for funding under this revenue source. Accordingly, net revenue for the year totaled \$891,302 and the ending balance as of June 30, 2022, is \$6,011,991. Of this amount, all funds are available for use to meet current or planned projects eligible for this funding source. In the next five fiscal years, it is planned that the City will require \$9,237,020 from construction impact fees to finance needed infrastructure projects. As such, there exists a continued need for this fee. Detail of current year and historical financials as well as current year project expenditures are available in Attachment D.

#### Below market rate housing fees

The BMR fee is not an impact fee; therefore, staff is not required to include the following summary per AB1600. Staff is including this section to comply with annual reporting requirements in section 14.5 of the BMR Guidelines. The BMR housing program was established in 1987 to increase the housing supply for people who live and/or work in Menlo Park and have very low, low, or moderate incomes as defined by income limits set by the California Department of Housing and Community Development for San Mateo County. The primary objective of the fee is to create actual housing units rather than generate a capital fund. Residential developers are subject to the following requirements, but may be permitted to pay an in-lieu fee for a fractional unit in certain situations:

- Residential developments of five or more units are strongly encouraged to provide a BMR unit.
- Residential developments of 10 to 19 units are required to provide 10 percent of the housing at BMRs.
- Residential developments of 20 units or more are required to provide 15 percent of the housing at BMRs.

For new commercial developments equal to or greater than 10,000 square feet that generate employment opportunities, the commercial linkage fee for fiscal year 2021-22 was established as follows:

- Group A: \$20.46 per square foot of net new gross floor area for most commercial uses
- Group B: \$11.10 per square foot of net new gross floor area for defined uses that generate fewer employees

For fiscal year 2021-22, the City received total revenue of \$1,662,735, primarily from BMR housing commercial linkage fees, interest income and proceeds from the sale of assets. For the same period, the City expended a total of \$520,104 on projects eligible for funding under this revenue source. Accordingly, net revenue for the year totaled \$1,142,637 and the ending balance as of June 30, 2022, is \$32,693,791. Of this amount, \$7,701,456 is available after existing loans, to meet current or planned projects eligible for this funding source.

In May 2021, the City Council authorized \$1.2 million (staff report 21-099-CC) from the BMR housing fund to support Habitat for Humanity Greater San Francisco's proposal to create a Homeownership Preservation Program. The program will assist low income homeowners in Menlo Park with major repairs and rehabs that address acute safety issues and enable homeowners to age in place and remain in the community they have been a part of for many years. Staff continues to work on the \$1.2 million funding agreement details and the program should begin in early 2023. In October 2021, the City Council held a study session (staff report 21-219-CC) to provide direction on the use of BMR funds for the creation of a Community Land Trust (CLT) as part of MidPen Housing's proposal to build 12 attached single family homes for low income homebuyers. City Council expressed support for the creation of CLT, and staff will return with potential recommendations in early 2023. The total funding request for this project is \$3.6 million. It is estimated at this time that the abovementioned activities will utilize the majority of available fund balance and additional projects will be identified in coming years. As such, there exists a continued need for the City to collect this fee to support the preservation and production of affordable housing. Detail of current year and historical financials as well as current year project expenditures are available in Attachment E.

### **Impact on City Resources**

There is no impact on City resources resulting from this annual report, and this report meets the compliance requirements of the Mitigation Fee Act. Impact fees collected in 2021-22 represented \$4,631,816. As described above, the BMR housing fee is not an impact fee, and therefore, is not included in this total.

### **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 to comply with the Mitigation Fee Act is achieved by posting the annual report December 23, 2022, at least 15 days before the meeting at which the City Council is anticipated to make required findings as outlined in the recommendation.

### **Attachments**

- A. Transportation impact fee financial report
- B. Storm drainage fee financial report
- C. Recreation in-lieu fee financial report
- D. Construction impact fee financial report
- E. BMR housing fee financial report

Report prepared by:

Rani M. Singh, Interim Finance and Budget Manager

Adrian B Patino, Management Analyst II

Eren Romero, Interim Housing Manager

Report reviewed by:

Marvin Davis, Interim Finance Director

City of Menlo Park  
Transportation Impact Fee Financial Report (Fund 351)

Transportation Impact Fees	2017-18	2018-19	2019-20	2020-21	2021-22
<b>Beginning balance</b>	<b>\$ 3,671,623</b>	<b>\$ 4,827,758</b>	<b>\$ 7,339,432</b>	<b>\$ 7,202,952</b>	<b>\$ 6,854,689</b>
Developer Fees	1,525,690	2,410,325	255,091	106,028	2,675,719
Returned to Developer	0	0	0	(177,480)	0
Interest income and other	36,360	404,242	197,163	115,156	180,992
Unrealized gain/(loss on investment)					(371,972)
Expenditures	(405,915)	(302,893)	(588,734)	(391,967)	(511,353)
Non-traffic impact fee transfer	0	0	0	0	0
<b>Ending Balance</b>	<b>\$4,827,758</b>	<b>\$7,339,432</b>	<b>\$7,202,952</b>	<b>\$6,854,689</b>	<b>\$8,828,074</b>

2021-22 Transportation Impact Fee Project Expenditures	Total TIF Expended	Fee % Share	Construction start date <sup>1</sup>
Haven Avenue Streetscape	\$ 48,526	100%	2023
Middle Avenue Caltrain Crossing Study	\$ 173,751	100%	2025
Traffic Signal Modifications*	\$ 200,590	100%	April 2021
Pierce Road Sidewalk & San Mateo Bike Route Installation	\$ 9,190	100%	August 2020
Other	\$ 79,296	100%	n/a
<b>Total</b>	<b>\$511,353</b>		

\*Expense related to Ravenswood and Laurel Street Signal and Video detection system instal at Willow Road and Gilbert Avenue

<sup>1</sup> Construction start dates are shown as month and year of construction contract authorization for projects that have commenced construction. For future projects, the year construction is expected to commence is noted.

<sup>2</sup> There were no interfund loans nor interfund transfers from impact fee to other funds this year.

Transportation Impact Fee Future Projects	TIF funding 2022-23	Other Funding	TIF Funding 2023-27	Total TIF future needs
Middle Avenue Caltrain Crossing Study Design and Construction	\$ 5,933,997	\$ -	\$ 8,900,000	\$ 14,833,997
Traffic Signal Modifications	\$ 1,211,544	\$ -	\$ 1,400,000	\$ 2,611,544
Transportation project (minor)	\$ 543,784	\$ 496,839	\$ 700,000	\$ 1,243,784
Haven Avenue Streetscape Improvement	\$ 1,021,495	\$ 1,400,000	\$ -	\$ 1,021,495
Willow Oaks Bike Connector	\$ 500,000	\$ -	\$ -	\$ 500,000
ECR Crossings Improvements	\$ 307,087	\$ -	\$ -	\$ 307,087
Willow Rd & Newbridge St Bicycle and Pedestrian Improvement	\$ 400,000	\$ -	\$ 5,600,000	\$ 6,000,000
Pierce Road Sidewalk and San Mateo Bike Route Installation	\$ 629,737	\$ -	\$ -	\$ 629,737
Transit Improvements	\$ 186,923	\$ -	\$ -	\$ 186,923
Middle Avenue Complete Streets Study	\$ 200,000	\$ -	\$ -	\$ 200,000
<b>Total</b>				<b>\$27,534,567</b>

Collected Developer Fees	2021-22
300 Constitution Drive	\$2,402,431
1300 El Camino Real	\$219,082
661 Partridge Avenue	\$33,033
1010 Mallet Court	\$16,517
1105 Hollyburne Avenue	\$3,394
1540 El Camino Real	\$1,261
<b>Total</b>	<b>\$2,675,719</b>

**City of Menlo Park  
Storm Drainage Impact Fee Financial Report (Fund 354)**

Storm Drainage Impact Fees	2017-18	2018-19	2019-20	2020-21	2021-22
<b>Beginning balance</b>	<b>\$176,446</b>	<b>\$168,480</b>	<b>\$174,688</b>	<b>\$160,066</b>	<b>\$94,889</b>
Developer fees	7,270	2,250	6,150	900	1,440
Interest income	2,166	3,958	4,206	2,286	1,087
Unrealized gain/(loss on investment)					(3,967)
Expenditures	(17,402)	0	(24,978)	(68,363)	0
<b>Ending Balance</b>	<b>\$168,480</b>	<b>\$174,688</b>	<b>\$160,066</b>	<b>\$94,889</b>	<b>\$93,449</b>

Storm Drainage Impact Fee Fund Expenditures	Total SDIF Expended	Fee % Share	Construction start date <sup>1</sup>
All projects	\$ -	0%	n/a
<b>Total</b>	<b>\$ -</b>		

<sup>1</sup> Construction start dates are shown as month and year of construction contract authorization for projects that have commenced construction.

<sup>2</sup> There were no interfund loans nor interfund transfers from impact fee to other funds this year.

Storm Drainage Impact Fee Future Projects	Total Budget 2022-23	SDIF Funding	Other funding Sources 2022-23	2023-2027	Total
Storm System Funding Study	\$ 110,000	\$ -	\$ 110,000	\$ -	\$ -
<b>Total</b>	<b>\$ 110,000</b>				<b>\$ -</b>

Collected Developer Fees	2021-22
1021 Evelyn St	\$450
661 Partridge Ave	\$300
1105 Hollyburne Ave	\$240
2300 Tioga Dr	\$450
<b>Total</b>	<b>\$1,440</b>



**City of Menlo Park  
Recreation In-Lieu Impact Fee Financial Report (Fund 256)**

Recreation In-Lieu Impact Fees	2017-18	2018-19	2019-20	2020-21	2021-22
<b>Beginning balance</b>	<b>\$1,167,732</b>	<b>\$3,745,549</b>	<b>\$3,553,462</b>	<b>\$2,964,040</b>	<b>\$3,640,777</b>
Developer Fees	2,619,200	205,800	313,600	705,600	519,400
Interest income	36,958	81,234	97,406	47,547	39,653
Unrealized gain/(loss on investment)					(113,244)
Expenditures	(78,341)	(479,121)	(1,000,428)	(76,410)	(1,263,010)
<b>Ending balance</b>	<b>\$3,745,549</b>	<b>\$3,553,462</b>	<b>\$2,964,040</b>	<b>\$3,640,777</b>	<b>\$2,823,576</b>

Recreation In-Lieu Fee Expenditures	Total RIL Expended	Fee % Share	Construction start date <sup>1</sup>
Menlo Park Community Campus	\$ 1,165,341	100%	2021
Park Playground Equipment	\$ 68,945	100%	2023
Willow Oaks Park Improvement	\$ 18,653	100%	2023
Other	\$ 10,070	100%	
<b>Total</b>	<b>\$ 1,263,010</b>	<b>100%</b>	

<sup>1</sup> Construction start dates are shown as month and year of construction contract authorization for projects that have commenced construction. For future projects, the year construction is expected to commence is noted.

<sup>2</sup> There were no interfund loans nor interfund transfers from impact fee to other funds this year.

Recreation In-Lieu Fee Future Projects	Total budget 2022-23	RIL funding 2022-23	Other funding Sources 2022-23	RIL funding 2023-27	Total RIL future needs
Menlo Park Community Campus	\$ 13,516,943	\$ 404,659	\$ 13,112,284	\$ -	\$ 404,659
Park Playground Equipment	\$ 1,379,130	\$ 1,379,130	\$ -	\$ -	\$ 1,379,130
Parks and Recreation Master Plan Implementation	\$ 1,500,000	\$ -	\$ 1,500,000	\$ -	\$ -
Willow Oaks Park Improvements	\$ 3,998,920	\$ 898,920	\$ 3,100,000	\$ -	\$ 898,920
	<b>\$ 20,394,993</b>	<b>\$ 2,682,709</b>	<b>\$17,712,284</b>	<b>\$ -</b>	<b>\$ 2,682,709</b>

Collected Developer Fees	2021-22
617 Partridge Ave	\$ 78,400
1021 Evelyn St	\$ 235,200
1340 Hoover St	\$ 78,400
2300 Tioga Dr	\$ 127,400
<b>Total</b>	<b>\$ 519,400</b>

**City of Menlo Park**  
**Construction Impact Fee Financial Report (Fund 362)**

Construction Impact Fee Fund	2017-18	2018-19	2019-20	2020-21	2021-22
<b>Beginning balance</b>	<b>\$6,915,392</b>	<b>\$5,344,627</b>	<b>\$7,814,172</b>	<b>\$9,483,695</b>	<b>\$5,120,689</b>
Developer Fees	2,976,022	3,655,133	2,809,763	830,634	1,435,257
Grants - Federal					253,522
Interest income and other	51,713	179,535	236,374	80,150	71,537
Unrealized gain/(loss on investment)					(204,932)
Expenditures	(4,598,500)	(1,365,123)	(1,376,614)	(5,273,790)	(664,082)
<b>Ending balance</b>	<b>\$5,344,627</b>	<b>\$7,814,172</b>	<b>\$9,483,695</b>	<b>\$5,120,689</b>	<b>\$6,011,991</b>

Construction Impact Fee Fund Expenditures	Total CIF Expended	Fee % Share	Construction start date <sup>1</sup>
Street Resurfacing Project	\$ 40,705	100%	July 2020
Chilco Streetscape & Sidewalk Installation <sup>2</sup>	\$ 50	100%	May 2019
Santa Cruz & Middle Resurfacing	\$ 38,195	100%	April 2020
Willow Road Resurfacing	\$ 531,385	100%	September 2021
<b>Operating Expenditures:</b>		100%	
Street Maintenance	\$ 53,747	100%	July 2021
<b>Total Expenditures:</b>	<b>\$ 664,082</b>	<b>100%</b>	

<sup>1</sup> Construction start dates are shown as month and year of construction contract authorization for projects that have commenced construction. For future projects, the year construction is expected to commence is noted.

<sup>2</sup> The scope of this project includes Phases 5 and 6 according to the Facebook Campus Expansion project development agreement. The expenditures shown include funds expended by the City, but do not include costs for work completed by the applicant beyond the City's contributions.

<sup>3</sup> There were no interfund loans nor interfund transfers from impact fee to other funds this year.

Construction Impact Fee Future Projects	Total budget 2022-23	CIF Funding 2022-23	Other Funding sources 2022-23	CIF Funding 2023-27	Total CIF future needs
Street Resurfacing	\$ 7,135,926	\$ 2,740,430	\$ 4,395,496	\$ 1,400,000	\$ 4,140,430
Chilco Streetscape and Sidewalk Installation	\$ 926,355	\$ 896,590	\$ 29,765	\$ -	\$ 896,590
Middlefield Road (Woodland to Ravenswood) Street Reconstruction	\$ 150,000	\$ 150,000	\$ -	\$ 4,050,000	\$ 4,200,000
			<b>Total</b>		<b>\$ 9,237,020</b>

Collected Developer Fees	2021-22
1345 Willow Rd	\$ 179,395
141 Jefferson Dr	\$ 150,427
110 Constitution Dr	\$ 129,496
1 Hacker Way	\$ 104,400
173 Jefferson Dr	\$ 69,780
1300 El Camino Real	\$ 59,589
300 Constitution Dr	\$ 45,994
661 Partridge Ave	\$ 32,706
1302 El Camino Real	\$ 22,951
275 Middlefield Rd	\$ 21,025
3000 Sand Hill Rd	\$ 20,358

**City of Menlo Park**  
**Below Market Rate Housing Financial Report (Fund 222)**

Below Market Rate Housing Special Fund	2017-18	2018-19	2019-20	2020-21	2021-22
<b>Beginning balance</b>	<b>\$15,903,862</b>	<b>\$21,920,888</b>	<b>\$22,476,969</b>	<b>\$31,313,226</b>	<b>\$31,551,159</b>
Fiscal Year Activity					
Charges for Services*	6,109,892	354,517	5,437,462	808,964	1,435,346
Use of Money and Property	125,117	517,831	646,128	272,111	(162,541)
Expenditures	(217,983)	(316,267)	(515,156)	(924,674)	(520,104)
Proceeds from the Sale of Assets	-	-	-	-	446,561
Prior period adjustment	-	-	3,267,823.00	-	
Adjustment for accounts payable				81,532	(56,630)
<b>Ending balance</b>	<b>\$21,920,888</b>	<b>\$22,476,969</b>	<b>\$31,313,226</b>	<b>\$31,551,159</b>	<b>\$32,693,791</b>
Adjustment for notes and interest receivable	(\$8,861,591)	(\$8,980,996)	(\$9,052,369)	(\$24,608,269)	(\$24,992,335)
<b>Adjusted available balance</b>	<b>\$13,059,297</b>	<b>\$13,495,973</b>	<b>\$22,260,857</b>	<b>\$6,942,890</b>	<b>\$7,701,456</b>

\* Includes fees collected from developers

Below Market Rate Housing Special Fund Expenditures	2021-22
1155 Merrill purchase	\$ 312,377
BMR Housing program administration	\$ 207,727
<b>Total</b>	<b>\$ 520,104</b>

Below Market Rate Housing Special Fund Future Projects	2022-27	Total
Homeownership Preservation Program (Approved)	\$ 1,200,000	\$ 1,200,000
335 Pierce Road (Pending)	\$ 3,600,000	\$ 3,600,000
Non-earmarked funds (expenditures, NOFAs, etc.)	\$ 2,901,456	\$ 2,901,456
		<b>\$ 7,701,456</b>

Collected Developer Fees <sup>1</sup>	2021-22
300 Constitution Dr	\$ 881,484
1300 El Camino Real	\$ 63,120
1540 El Camino Real	\$ 1,333
<b>Total</b>	<b>\$ 945,938</b>

<sup>1</sup> Included within "Charges for Services" line item



**STAFF REPORT**

**City Council Meeting Date:** 1/10/2023  
**Staff Report Number:** 23-006-CC

**Consent Calendar:** Adopt a resolution authorizing the city manager to execute a continued funding application with the California Department of Education for continued funding of the Belle Haven Child Development Center operational costs in fiscal year 2023-24

**Recommendation**

Staff recommends that the City Council adopt a resolution (Attachment A) authorizing the city manager to execute a continued funding application (CFA) with the California Department of Education (CDE) for continued funding of the Belle Haven Child Development Center (BHCDC) to offset operational costs during fiscal year 2023-24.

**Policy Issues**

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

**Background**

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

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

**Analysis**

Per the CDE grant requirements, the City Council must annually adopt a resolution to certify acceptance of the reimbursement funding and authorize the city manager to execute the grant agreement. The adoption of a resolution also indicates the City Council accepts all regulations that may be involved in operating the grant. The center also completes a CFA annually to apply for the grant. As of fall 2021 the CDE will also

require the City Council to adopt a resolution approving the submission of the CFA annually. A copy of the application is included as Attachment B.

Under the terms of the current agreement, CDE will reimburse eligible program operating costs at a rate of \$82.08 per child per day, up to a maximum of \$2,315,756 in fiscal year 2022-23. The total maximum reimbursement amount is based on the typical maximum enrollment of 96 children. In a normal year, BHDC's typical enrollment capacity per state licensing requirements is 96 children. The current application would request CDE to continue funding for the BHDC in fiscal year 2023-24. The submission of this application would make BHDC eligible to potentially receive up to the maximum reimbursement of \$2,315,756 for the upcoming fiscal year.

The current CDE agreement further specifies a minimum days of operation (MDO) requirement of 244 days during the fiscal year and 28,213 minimum child days of enrollment (CDE.) The BHDC program has sufficient staffing capacity and resources to meet all the criteria set forth in the agreement at this time. In addition to the external funding received from CDE, the BHDC also receives external funding from the USDA child and adult care food program and some enrollment fees. Remaining operational expenditures are subsidized by the City of Menlo Park general fund, as authorized by City Council in the fiscal year 2022-23 operating budget. The submission of the application would require the same MDO of 244 days for the upcoming fiscal year 2023-24.

### **Impact on City Resources**

Should the City Council adopt the resolution in Attachment A authorizing the city manager to execute the application in Attachment B, the City of Menlo Park will become eligible to receive up to \$2,315,756 in direct reimbursements from CDE to offset the costs of BHDC operations in fiscal year 2023-24.

### **Environmental Review**

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

### **Public Notice**

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

### **Attachments**

- A. Resolution
- B. Hyperlink – CDE CFA: [cde.ca.gov/sp/cd/ci/cfaforms2324.asp](https://cde.ca.gov/sp/cd/ci/cfaforms2324.asp)

Report prepared by:  
Kira Storms, Library and Community Services Supervisor  
Nick Szegda, Assistant Library Services Director

Report reviewed by:  
Sean Reinhart, Library and Community Services Director

**RESOLUTION NO. XXXX**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK AUTHORIZING THE SUBMISSION OF THE CONTINUED FUNDING APPLICATION WITH THE STATE OF CALIFORNIA DEPARTMENT OF EDUCATION TO APPLY FOR GRANT FUNDING IN FISCAL YEAR 2023-2024**

WHEREAS, the City of Menlo Park has operated the Belle Haven Child Development Center for over 30 years; and

WHEREAS, the program offers developmentally appropriate materials and activities that support social, economic, physical and cognitive abilities; and

WHEREAS, the program receives funding from the State of California Department of Education; and

WHEREAS, a resolution must be adopted before the extended application deadline of January 31, 2023, certifying the approval of the continued funding application and authorizing the designated personnel to submit the application to receive continued funding from the State of California Department of Education.

NOW THEREFORE BE IT RESOLVED, that the City of Menlo Park, acting by and through its City Council, having considered and been fully advised in the matter and good cause appearing therefore do hereby authorize the submission of the continued funding application with the State of California Department of Education to request funding reimbursement of the Belle Haven Child Development Center for fiscal year 2023-24.

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 tenth day of January, 2023, 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 January, 2023.

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Judi A. Herren, City Clerk



**STAFF REPORT**

**City Council**

**Meeting Date:**

**1/10/2023**

**Staff Report Number:**

**23-007-CC**

**Public Hearing:**

**Adopt a resolution to approve the use permit and architectural control approvals for the Menlo Uptown development project to allow for the potential removal of infrastructure investments at Willow Road and Bay Road from the project conditions of approval; to authorize the city manager to sign a modified public improvement agreement for the Menlo Uptown development; and to authorize the removal of condition of approval 2.ww.ii**

**Recommendation**

Staff recommends that the City Council adopt a resolution (Attachment A) to 1) approve the use permit and architectural control revisions to modify the conditions of approval for the Menlo Uptown development project to allow the City Council to consider removal of infrastructure investments at Willow Road and Bay Road from conditions of approval; 2) update the public improvement agreement for the Menlo Uptown development to remove the infrastructure investments at Willow Road and Bay Road; and 3) authorize the removal of condition of approval 2.ww.iii.

**Policy Issues**

The proposed action is consistent with General Plan Circulation Element policies to provide and maintain a safe, efficient, attractive, user-friendly circulation system that promotes a healthy, safe, and active community and quality of life throughout Menlo Park, including CIRC 1.1 (Vision Zero), CIRC 2-1 (accommodating all modes), and CIRC 2-6 (reduce cut through traffic.)

**Background**

The Menlo Uptown development project, which consists of 441 rental units and 42 for-sale condominium units and approximately 2,940 square feet of commercial space (for the project's community amenity) and is located at 141 Jefferson Drive and 180-186 Constitution Drive, was approved by the Planning Commission June 21, 2021. That approval was appealed to the City Council, which rejected the appeals and approved the development September 14, 2021. During the hearing on the appeal, City Councilmembers raised questions about certain proposed infrastructure investments at intersections along Willow Road that were identified as conditions of the project.

Similar to other development projects reviewed by the City, the Menlo Uptown project included analysis of traffic conditions at intersections consistent with the City's Transportation Impact Analysis (TIA) Guidelines. These guidelines require new development projects to evaluate the potential impact of each development project on intersection level of service (LOS) for all intersections where the proposed project would add 10 or more vehicles per lane in the peak hour. Potential infrastructure investments are identified for

intersections for which the project would cause the intersection to exceed the City's LOS standard or, if the intersection already exceeds the City's LOS standard, if the delay at the intersection would increase by 0.8 seconds.

The TIA for the Menlo Uptown project identified infrastructure investments at seven intersections, including intersections with near term impacts (for which the developer had responsibility to construct the investments) and cumulative impacts (for which the developer contributes a payment for their fair share of the investment.)

The final conditions of approval for Menlo Uptown included language that the City Council could consider removal of select infrastructure investments identified as a function of LOS deficiencies generated by the project. Specifically, condition 2.xx identifies that required infrastructure investments at the following intersections would remain in the conditions of approval but could be removed by a future action of the City Council if desired:

- Willow Road and Coleman Avenue
- Willow Road and Gilbert Avenue
- Jefferson Drive and Chrysler Drive
- Chilco Street and Bayfront Expressway
- Chilco Street and Constitution Drive

Two other locations with infrastructure investments were not covered by this condition (at Willow Road and Bay Road and at Chrysler Drive and Independence Drive.) At these two locations, the proposed investments are consistent with projects identified in the City's Transportation Impact Fee (TIF) nexus study.

On May 24, 2022, the City Council approved the public improvement agreement for the Menlo Uptown development, which included infrastructure investments at the above noted intersections, as well as several others that were not identified for potential reconsideration. Subsequently, on August 9, 2022, the City Council adopted a resolution to remove the infrastructure investments at Willow Road and Coleman Avenue and Willow Road and Gilbert Avenue from the public improvement agreement as contemplated in condition 2.xx of the final conditions of approval.

## **Analysis**

At the October 11, 2022 City Council meeting, City Councilmember Combs requested that the City consider modifying the Menlo Uptown condition of approval at Willow Road and Bay Road (condition 2.ww.iii) that would add a second, short left turn lane from Bay Road onto Willow Road, due to inconsistency with complete streets principles. Other City Councilmembers expressed support to bring this back for consideration. Because this proposed investment was not identified for potential removal in the final conditions of approval for the Menlo Uptown project, the reconsideration required returning to the Planning Commission for review, followed by the City Council.

The Menlo Uptown project is expected to add just under 100 vehicles to Willow Road in both the eastbound and westbound directions in the AM peak period and about 40 to 60 vehicles in the PM peak period, depending on direction (Table 1.) Notably, the Menlo Uptown project is not anticipated to add any trips to the travel movements to or from Bay Road.



**Table 1: Traffic volumes at Willow Road and Bay Road with and without Menlo Uptown project**

Period	Scenario	Willow Road Eastbound		Willow Road Westbound		Bay Road	
		Thru	Left	Thru	Right	Left	Right
A.M.	Existing	1,080	65	1,186	423	352	60
	With project	1,172	65	1,282	423	352	60
	Difference	92	0	96	0	0	0
P.M.	Existing	1,201	20	678	100	241	40
	With project	1,245	20	739	100	241	40
	Difference	44	0	61	0	0	0

In principle, installing the left turn lane allows the left turns from Bay Road on to Willow Road to clear slightly more quickly, allowing for more of each signal cycle to be allocated to the Willow Road through traffic, which has the highest vehicle volumes. The addition of the left turn lane is expected to increase the amount of green time for Willow Road by between five and seven percent, depending on the direction and time of day. Today, the green time for the Willow Road through traffic is between 60 and 70 percent of the total signal cycle time.

In practice, actual conditions and performance do not match analysis and may be somewhat worse or better than identified in the evaluation depending on a variety of considerations. Importantly, this type of analysis considers only conditions at a specific location, and does not consider how these changes may impact the behavior of people traveling across the entire roadway network, which could result in shifting of travel patterns. For example, adding additional turning capacity at Bay Road could encourage more people to use Bay Road as a cut through route.

The proposed investment at Willow Road and Bay Road is identified within the City’s TIF nexus study. Developers that construct TIF projects receive a credit against their TIF payment. If the condition is removed, the City will simply collect the TIF payment from Menlo Uptown. The recommended updated conditions of approval are included in Attachment A, which would modify condition 2.xx to include the Willow Road and Bay Road intersection investment (condition of approval 2.ww.iii) in the list of intersections that the City Council could consider removing at a later time. The public improvement agreement would be updated and modified accordingly and a redlined version is included as Exhibit A to Attachment A.

On December 5, 2022, the Planning Commission adopted resolution PC-2022-16 recommending that the City Council revise the approved architectural control and use permit to allow the City Council to consider whether to remove the intersection investment at Willow Road and Bay Road.

If the City Council approves the resolution, the conditions of approval and public improvement agreement would be modified to provide the same flexibility as other intersection investments on Willow Road within the Menlo Uptown conditions of approval, the city manager would be authorized to sign the modified public improvement agreement, and the designated intersection changes at Willow Road and Bay Road would not be formally removed from the conditions of approval.

### **Impact on City Resources**

There is no impact on City resources.

### **Environmental Review**

The Menlo Uptown final environmental impact report was certified September 14, 2021. The proposed modification to the conditions of approval would result in no change to the street network at Willow Road and Bay Road and thus does not have an environmental impact.

### **Public Notice**

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. Public notification also consisted of publishing a notice in the local newspaper and notification by mail of owners and occupants within a quarter ( $\frac{1}{4}$ ) miles radius of the subject property.

### **Attachments**

A. Resolution and redline Exhibit A

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

Report reviewed by:  
Nikki Nagaya, Deputy City Manager

## RESOLUTION NO. XXXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK TO APPROVE REVISIONS TO THE APPROVED USE PERMIT AND ARCHITECTURAL CONTROL PERMIT FOR THE MENLO UPTOWN MULTIFAMILY AND TOWNHOME PROJECT TO MODIFY THE CONDITIONS OF APPROVAL TO ALLOW THE CITY COUNCIL TO REMOVE THE CONSTRUCTION OF CERTAIN TRANSPORTATION IMPROVEMENTS FROM THE CONDITIONS OF APPROVAL AND THE PUBLIC IMPROVEMENT AGREEMENT; AUTHORIZING THE CITY MANAGER TO SIGN THE MODIFIED PUBLIC IMPROVEMENT AGREEMENT; AND DETERMINING, PURSUANT TO THE MODIFIED CONDITIONS OF APPROVAL AND PUBLIC IMPROVEMENT AGREEMENT BETWEEN THE CITY OF MENLO PARK AND CLPF GRP UPTOWN MENLO PARK AND CLPF CRP TH MENLO PARK, LLC (“OWNER”) FOR THE MENLO UPTOWN MULTIFAMILY AND TOWNHOME PROJECT NOT TO REQUIRE THE CONSTRUCTION OF CERTAIN TRANSPORTATION IMPROVEMENTS IDENTIFIED IN THE PUBLIC IMPROVEMENT AGREEMENT**

WHEREAS, the City of Menlo Park (“City”) received an application requesting environmental review, use permit, architectural control, below market rate (BMR) Housing Agreement, heritage tree removal permits, major subdivision, and community amenities operating covenant from CLPF GRP Uptown Menlo Park, LLC and CLPF CRP TH Menlo Park, LLC (“Applicant”), to redevelop the property located at 141 Jefferson Drive, and 180-186 Constitution Drive (APNs 055-242-030, 055-242-040, 055-242-140) (“Property”), with a bonus level development project consisting of up to 483 dwelling units comprised of 441 rental units and 42 for-sale condominium units and approximately 2,940 square feet of commercial space proposed to be used as part of the Applicant’s community amenity (hereinafter the “Project”); and

WHEREAS, the Planning Commission fully reviewed, considered, evaluated, and certified the Final EIR for the project, along with all public and written comments, pertinent information, documents and plans prior to taking action to approve the use permit, architectural control, BMR housing agreement, and community amenities operating covenant and recommended approval of the major subdivision to the City Council for the Menlo Uptown project; and

WHEREAS, following the Planning Commission’s review, consideration, evaluation and certification of the final environmental impact report (“EIR”) and approval of the use permit, architectural control, BMR Housing agreement, and community amenities operating covenant, the City Council received two timely appeals to the Planning Commission’s actions on the project; and

WHEREAS, on September 14, 2021, the City Council held a public hearing and separately reviewed and considered the aforementioned appeals, and fully reviewed, considered, evaluated, and certified the final EIR, along with all public and written comments, pertinent information, documents and plans prior to taking action to deny the appeals and approve the use permit, architectural control, BMR housing agreement, and community amenities agreement for the Project; and

WHEREAS, condition of approval 2.ww.iii of Resolution No. 6661, incorporated herein, approving the use permit, architectural control, BMR housing agreement, and community amenities agreement for the Project requires the Applicant to construct certain transportation improvements at Willow Road and Bay Road; and,

WHEREAS, members of the City Council of Menlo Park have requested consideration of the proposed improvement at Willow Road and Bay Road; and,

WHEREAS, condition of approval 2.xx of the Project allows the City Council to determine whether to implement certain intersection improvements identified in the conditions of approval; and

WHEREAS, in order to address the City Councilmembers requests to consider the applicant's obligation to construct the proposed improvements at Willow Road and Bay Road, condition of approval 2.xx of Resolution No. 6661 must be amended; and,

WHEREAS, modification of condition of approval 2.xx to allow the City Council to consider and potentially not require applicant to construct the intersection improvements at Willow Road and Bay Road requires Planning Commission review and recommendation to the City Council because the City Council would need to revise the approved conditions of approval for the use permit and architectural control permit for the project; and

WHEREAS, on May 24, 2022 the City Council approved a public improvement agreement, incorporated herein, for the Project which governs the permitting, construction and phasing of the various public improvements required pursuant to the project entitlements ("Public Improvement Agreement"), including the construction of those certain transportation improvements at Willow Road and Bay Road; and,

WHEREAS, in conformance with conditions of approval 2.ww.iii, subsection (i) of subsection (f) of section (2) of the public improvement agreement requires Applicant to prepare and submit plans, specifications and cost estimates in connection with the near term transportation improvements (improvements required pursuant to condition of approval 2.w.iii "Willow Road and Bay Road") prior to the issuance of a superstructure permit from City to Applicant for the construction of the multifamily component of the project; and,

WHEREAS, the Applicant has completed the appropriate Plans, Specifications, and Cost Estimates as required; and

WHEREAS, pursuant to subsection (i) of subsection (f) of section (2) of the public improvement agreement, the City Council desires to have flexibility to consider whether to remove the Near Term Transportation Improvement requirements of condition of approval 2.ww.iii (governing improvements at Willow Road and Bay Road); and

WHEREAS, allowing for the City Council to consider removing condition of approval 2.ww.iii would be consistent with the City's General Plan, including policies CIRC-1.1 (Vision Zero), CIRC 2-1 (accommodating all modes), CIRC 2-6 (reduce cut through traffic); 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 December 5, 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, on December 5, 2022 the Planning Commission fully reviewed, considered, evaluated, and unanimously recommended to the City Council that condition of approval 2.ww.iii be modified as follows: the intersection improvement at Willow Road and Bay Road required by condition of approval 2.ww.iii be added to the list of intersection improvements identified in condition of approval 2.xx that the City Council has authority to review and determine whether to require at a future time; and

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

Section 1. Recitals. The City Council hereby finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

Section 2. Modification to Project condition of approval 2.xx in City Council Resolution 6661. The City Council hereby modifies condition of approval 2.xx of Resolution No. 6661 to add the Willow Road and Bay Road intersection to those intersections that the City Council may determine need not be improved. Condition of approval 2.xx is hereby amended to read as follows:

xx. All conditions of approval (2.ww.iii, 2.ww.iv, 2.ww.v, 2.ww.vi, 2.ww.vii, 2.ww.viii) mandating improvements to the following intersections will remain as drafted in the conditions of approval but may, at a time determined by the City Council, be analyzed and potentially removed from the approved conditions of approval. If the City Council does not analyze and/or remove said conditions of approval, the applicant shall continue to be bound by the existing conditions of approval regarding the following intersections: Willow Road and Bay Road, Willow Road and Coleman Avenue, Willow Road and Gilbert Avenue, conversion of the shared left/right lane to one left-turn lane and one right-turn lane on northbound Jefferson Drive at Chrysler Drive and Jefferson Drive, Chilco Street and Bayfront Expressway, and Chilco Street and Constitution Drive.

Section 3. Removal of certain near-term transportation improvements.

Pursuant to subsection (i) of subsection (f) of section (2) of the modified public improvement agreement and condition of approval 2.xx of Resolution No. 6661, as amended, the City Council hereby determines not to require the construction of the Near Term Transportation Improvements required by condition of approval 2.ww.iii ("Willow Road and Bay Road"). All other terms, provisions and requirements of Resolution No. 6661 and the public improvement agreement remain unchanged and unaltered.

Section 4. The city manager shall be authorized to sign the amended public improvement agreement which amendments reflect the City Council's determination not to require applicant

to construct the previously required intersection improvements at Willow Road and Bay Road. The amended public improvement agreement is attached hereto as Exhibit A and incorporated herein by this reference (additions in underline, deletions in ~~strikethrough~~)

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.

Section 6. California Environmental Quality Act (“CEQA”). On September 14, 2021, the City Council adopted Resolution No. 6660 certifying the Menlo Uptown final EIR, State Clearinghouse No. 2019110498, in compliance with the CEQA (Pub. Resources Code, § 21000 et seq.), the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). The City Council certified an EIR and adopted an MMRP for the Menlo Uptown Project. This action, determining not to require the construction of the transportation improvement identified in condition of approval 2.wv.iii, is consistent with the modified Menlo Uptown project approvals which specify that the City Council may elect to remove these transportation improvements (see condition of approval 2.xx.) This action does not result in any new significant environmental effects or a substantial increase in the severity of any previously identified significant effects analyzed in the EIR and as such, this action is not subject to further CEQA review or action.

Section 7. Effective Date. This Resolution shall take effect upon its adoption.

BE IT FURTHER RESOLVED that the City Council finds that the above recitals together with the staff report and the application materials, including without limitation, the certified 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.

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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 tenth day of January, 2023, 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 January, 2023.

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Judi A. Herren, City Clerk

Exhibits:

A. Public improvement agreement

Recording requested by and when  
Recorded return to:

City of Menlo Park  
Attn: City Clerk  
701 Laurel Street  
Menlo Park, CA 94025-3483

Exempt From Recording Fees Per  
Government Code §27383 And  
Building Homes & Jobs Trust Fund  
Fee Per Government Code §27388.1(a) (2) (D)

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(SPACE ABOVE THIS LINE FOR RECORDER'S USE)  
APN: 055-242-140, 055-242-030, and 055-242-040

## PUBLIC IMPROVEMENT AGREEMENT

### Uptown - Multifamily and Townhome Improvements

This PUBLIC IMPROVEMENT AGREEMENT (this "**Agreement**"), is entered into as of \_\_\_\_\_, 2022 (the "**Effective Date**"), by and between the CITY OF MENLO PARK, a municipal corporation of the State of California ("**City**") and CLPF GRP Uptown Menlo Park, LLC, a Delaware limited liability company ("**MF Owner**"); and CLPF CRP TH Menlo Park, LLC, a Delaware limited liability company ("**TH Owner**"). MF Owner and TH Owner are collectively referred to as "**Developers**." City, MF Owner and TH Owner are referred to herein individually as a "**Party**" and collectively as the "**Parties**."

### RECITALS

A. MF Owner owns certain real property located at 141 Jefferson Drive, in the City of Menlo Park, State of California, more particularly described in legal description attached hereto as **Exhibit A-1** ("**Multifamily Property**"), and TH Owner owns certain real property located at 180 Constitution Drive and 186 Constitution Drive in the City of Menlo Park, County of San Mateo, State of California, more particularly described in the legal description attached hereto as **Exhibit A-2** ("**Townhome Property**"). The Multifamily Property and Townhome Property are collectively referred to as the "**Property**".

B. On June 21, 2021, after a duly noticed public hearing, and on the recommendation of the City's Housing Commission, the City's Planning Commission approved Planning Commission Resolution No. 2021-07, permitting Developers to develop 441 multi-family residential units ("**Multifamily Component**") and 42 for-sale townhome units ("**Townhome Component**"), approximately 2,940 square feet of community amenity space, as well as associated open space, circulation and parking, and infrastructure improvements at the Property (the "**Project**"), subject to certain requirements and conditions contained in the Conditions of Approval



(“**Conditions of Approval**”) and on September 14, 2021, after a duly noticed public hearing, the City Council adopted Resolution Nos. 6660, 6661, and 6662 denying all appeals to, and upholding the Planning Commission’s approval of, the Project.

C. Pursuant to Condition of Approval 1.ss, Developers shall enter into an agreement for completion of development improvements and provide a performance bond for the completion of the off-site improvements for the Project as referenced in Condition of Approval 2.z (green infrastructure), 2.cc, 2.kk, 2.uu (existing utilities to be relocated), 1.hh (new utilities), 1.ll (water mains and service laterals), 1.aa, 1.mm, 1.cc (sanitary sewer mains and service laterals), 1.ww, 2.nn (remove/replace any damaged/worn frontage improvements), 2.bb, 2.dd (asphalt overlay), and 2.ss (loading zones-Complete Streets Commission) and more particularly listed and depicted in **Exhibit B** (the “**Off-Site Improvements**”), which Off-Site Improvements shall be installed, constructed and completed as detailed in plans and specifications approved by the Public Works Director (“**Director**”) or the City Engineer or their designees where authorized by law. Developers shall obtain an encroachment permit from the City prior to commencing any work on the Off-Site Improvements within the public right-of-way or public easements.

D. Condition of Approval 2.w.w. provides that Developers shall enter into an improvement agreement with the City memorializing the terms for performance, construction, and completion of the transportation improvements, which are more particularly described in **Exhibit C** (the “**Transportation Improvements**”).

E. The City’s approval of the Project also included the approval of a lot line adjustment to create the Multifamily Property and Townhome Property, as well as a tentative map in accordance with the Subdivision Map Act and the City of Menlo Park Municipal Code (the “**Code**”), for the creation of 42 townhomes on the Townhome Property. On May \_\_\_, 2022, the City Council adopted Resolution No. \_\_\_\_, approving the final map for the creation of the 42 townhomes on the Townhome Property (“**Final Map**”), subject to the TH Owner entering into this Agreement regarding the Off-Site Improvements for the Townhome Property.

F. The City and the Developers desire to enter into this Agreement in order to permit the issuance of a building permit for the development of the Project, filing of the Final Map in the Official Records of the County of San Mateo, implement the Conditions of Approval, and to simultaneously satisfy the security provisions of the Code and the Conditions of Approval.

NOW, THEREFORE, in order to ensure satisfactory performance of the Developers under the Code and Conditions of Approval, Developers and the City agree as follows:

1. Recitals. The above recitals are true and correct, and are incorporated into this Agreement.

2. Developers’ Obligations.

(a) Off-Site Improvements and Transportation Improvements: Plans and Specifications and Construction. As more particularly described below, Developers shall, at its sole cost and expense, furnish all necessary materials, equipment and labor as is required to prepare the designs, plans and specifications for the Off-Site Improvements and Transportation Improvements for the Project for the review and approval of the Director of Public Works

(“**Director**”) and/or the City Engineer, as applicable (the “**Plans and Specifications**”). Developers shall, at its sole cost and expense, furnish all necessary materials, equipment and labor, and perform all work in a good and workmanlike manner, and cause the Off-Site Improvements and Near Term Improvements, as defined below, to be designed, installed, constructed and completed in substantial conformity with the Plans and Specifications, or with any changes required or ordered by the Director or City Engineer to the approved Plans and Specifications (the “**Work**”), which in his or her reasonable opinion are necessary or required to complete the Work in compliance with all applicable federal, state and local laws, ordinances, rules, regulations and policies.

(b) Multifamily Improvement Plans. As of the Effective Date, the Plans and Specifications for the Off-Site Improvements for the Multifamily Component listed in **Exhibit B** consist of conceptual improvement plans entitled "Menlo Uptown (Multifamily) Off-Site Street Improvements" prepared by BKF Engineers dated April 25, 2022, PGA Design dated April 22, 2022 and Giacalone Design, Inc. dated March 24, 2022, March 17, 2022, February 3, 2022 and March 11, 2022 (“**Multifamily Improvement Plans**”). MF Owner shall continue to work towards completion of and City approval of one hundred percent (100%) Multifamily Improvement Plans. The City shall diligently review and process the Multifamily Improvement Plans submitted by MF Owner. As each stage of improvement plans are approved by the City, the more complete and recently approved improvement plans shall be the “**Multifamily Improvement Plans**”. MF Owner shall obtain the approval of the Multifamily Improvement Plans to be constructed by MF Owner in accordance with the Conditions of Approval within three (3) months from the Effective Date. Further, in no event shall the City be obligated to issue a superstructure building permit to MF Owner for the construction of the Multifamily Component of the Project until the Multifamily Improvement Plans have been approved by City.

(c) Commencement and Completion of Construction of Multifamily Improvement Plans. Within ninety (90) days following the issuance of a superstructure building permit for the construction of the Multifamily Component of the Project, MF Owner shall commence the installation and construction of the improvements set forth in the Multifamily Improvement Plans to be constructed by MF Owner in accordance with the Conditions of Approval and this Agreement. In the event MF Owner fails to timely commence the construction of the improvements set forth in the Multifamily Improvement Plans as required herein, City may, in its discretion, issue and enforce a stop work notice on all or any portion of work being undertaken by MF Owner pursuant to any building permits issued by City for the construction of any portion of the Multifamily Component of the Project until construction of the improvements set forth in the Multifamily Improvement Plans has commenced to the reasonable satisfaction of the Director or City Engineer.

MF Owner shall complete the installation and construction of the improvements set forth in the Multifamily Improvement Plans in accordance with Section 6 (a) [Director's Inspection] below and City shall complete the Acceptance of the improvements set forth in the Multifamily Improvement Plans in accordance with Section 6 (b) [Acceptance] upon the earlier of (i) twenty four (24) months following the commencement of the installation and construction of the improvements set forth in the Multifamily Improvement Plans or (ii) issuance of a certificate of occupancy, inclusive of a temporary certificate of occupancy, from City for any portion of the Multifamily Component of the Project. The period of time provided for MF Owner to complete

the installation and construction of the improvements set forth in the Multifamily Improvement Plans pursuant to this Agreement may be extended upon application by MF Owner and approval by the Director pursuant to Section 4(b) [Extensions] below.

(d) Townhome Improvement Plans. As of the Effective Date, the Plans and Specifications for the Off-Site Improvements for the Townhome Component listed in **Exhibit B** consist of conceptual improvement plans entitled "Menlo Uptown (Townhomes) Off-Site Street Improvements" prepared by BKF Engineers dated April 25, 2022, PGA Design dated April 22, 2022 and Giacalone Design, Inc. dated March 8, 2022, March 17, 2022 and February 3, 2022 ("**Townhome Improvement Plans**"). TH Owner shall work towards completion of and shall obtain City approval of one hundred percent (100%) Townhome Improvement Plans. The City shall diligently review and process the Townhome Improvement Plans submitted by the TH Owner. As each stage of improvement plans are approved by the City, the more complete and recently approved improvement plans shall be the "**Townhome Improvement Plans**". TH Owner shall obtain the approval of the Townhome Improvement Plans to be constructed by TH Owner within eighteen (18) months of the Effective Date. Further, in no event shall City be obligated to issue a superstructure building permit to TH Owner for the construction of the Townhome Component of the Project until the Townhome Improvement Plans have been approved by City.

(e) Commencement and Completion of Construction of Townhome Improvement Plans. TH Owner shall commence the installation and construction of the improvements set forth in the Townhome Improvement Plans to be constructed by TH Owner in accordance with the Conditions of Approval and this Agreement, within ninety (90) days following the earlier of (i) issuance of a final certificate of occupancy from City for any portion of the Multifamily Component of the Project, or (ii) issuance of a superstructure building permit from the City to TH Owner for the construction of the Townhome Component of the Project. In the event TH Owner fails to timely commence the construction of the improvements set forth in the Townhome Improvement Plans as required herein, City may, in its discretion, issue and enforce a stop work notice on all or any portion of work being undertaken by TH Owner pursuant to any building permits issued by City for the construction of any portion of the Townhome Component of the Project until construction of the improvements set forth in the Townhome Improvement Plans has commenced to the reasonable satisfaction of the Director or City Engineer. The period of time provided for TH Owner to commence the installation and construction of the improvements set forth in the Townhome Improvement Plans pursuant to Section 2 (e)(i) above may only be extended upon application by TH Owner and approval by the Director pursuant to Section 4(b) [Extensions] below, which approval, if granted, shall be extended to a date or time certain and conditioned on the delivery of improvement security by TH Owner to City in accordance with Section 3 (c).

TH Owner shall complete the installation and construction of the improvements set forth in the Townhome Improvement Plans in accordance with Section 6 (a) [Director's Inspection] below and City shall complete the Acceptance of the improvements set forth in the Townhome Improvement Plans in accordance with Section 6 (b) [Acceptance] upon the earlier of (i) twenty four (24) months following the commencement of the installation and construction of the improvements set forth in the Townhome Improvement Plans or (ii) issuance of a certificate of occupancy, inclusive of a temporary certificate of occupancy, from City for any portion of the Townhome Component of the Project. The period of time provided for TH Owner to complete

the installation and construction of the improvements set forth in the Townhome Improvement Plans pursuant to this Agreement may be extended upon application by TH Owner and approval by the Director pursuant to Section 4(b) [Extensions] below.

(f) Transportation Improvements.

(i) Transportation Improvements Requiring Plans and Specifications for Construction. MF Owner shall prepare and submit Plans, Specifications, and Cost Estimates in connection with ~~Condition of Approval 2.w.iii (Willow Road and Bay Road),~~ Condition of Approval 2.ww.iv (Willow Road and Coleman Avenue) and Condition of Approval 2.ww.v (Willow Road and Gilbert Avenue)(collectively referred to as "**Near Term Transportation Improvements**"), prior to the issuance of a superstructure permit from City to MF Owner for the construction of the Multifamily Component of the Project ("**Transportation Improvement Plans**"), unless the City Council determines not to require the construction of the transportation improvement identified in ~~Condition of Approval 2.ww.iii (Willow Road and Bay Road),~~ Condition of Approval 2.ww.iv (Willow Road and Coleman Avenue) and Condition of Approval 2.ww.v (Willow Road and Gilbert Avenue) pursuant to Condition of Approval 2.xx. The City shall diligently review and process Transportation Improvement Plans submitted by MF Owner. Within one hundred twenty (120) days following the issuance of a superstructure building permit for the construction of the Multifamily Component of the Project, MF Owner shall commence the installation and construction of the improvements set forth in the Transportation Improvement Plans to be constructed by MF Owner in accordance with the Conditions of Approval and this Agreement. In the event MF Owner fails to timely commence the construction of the improvements set forth in the Transportation Improvement Plans as required herein, City may, in its discretion, issue and enforce a stop work notice on all or any portion of work being undertaken by MF Owner pursuant to any building permits issued by City for the construction of any the Multifamily Component of the Project until construction of the improvements set forth in the Transportation Improvement Plans has commenced to the reasonable satisfaction of the Director or City Engineer. Notwithstanding the foregoing, to the extent that the review and approval of improvement plans by Caltrans of improvements under Caltrans' jurisdiction for Condition of Approval 2.w.iii (Willow Road and Bay Road) delays commencement and progress on transportation improvements, MF Owner may provide documentation of such delays to City and City shall not issue a stop work notice in such circumstance.

MF Owner shall complete the installation and construction of the improvements set forth in the Transportation Improvement Plans in accordance with Section 6 (a) [Director's Inspection] below and City shall complete the Acceptance of the improvements set forth in the Transportation Improvement Plans in accordance with Section 6 (b) [Acceptance] upon the earlier of (i) twenty four (24) months following the commencement of the installation and construction of the improvements set forth in the Transportation Improvement Plans or (ii) issuance of a certificate of occupancy, inclusive of a temporary certificate of occupancy, from City for any portion of the Multifamily Component of the Project. The period of time provided for MF Owner to complete the installation and construction of the improvements set forth in the Transportation Improvement Plans pursuant to this Agreement may be extended upon application by MF Owner and approval by the Director pursuant to Section 4(b) [Extensions] below.

(ii) Transportation Improvements Requiring Conceptual Plans, Cost Estimates and Fees Only. Notwithstanding anything else herein, the Parties acknowledge and agree that Condition of Approval 2.wv.vi (Chrysler Drive and Jefferson Drive), Condition of Approval 2.wv.vii (Chilco Street and Bayfront Expressway) and Condition of Approval 2.wv.viii (Chilco Street and Constitution Drive) (collectively referred to as "**Cumulative Transportation Improvements**") as further identified in Exhibit C obligate MF Owner to provide conceptual plans and cost estimates and pay fair share fees without any obligation to construct any of the Cumulative Transportation Improvements. Unless such obligation is modified by the City Council consistent with Condition of Approval 2.xx, MF Owner shall be required to provide conceptual plans, engineer's cost estimates and pay fair share fees for the Cumulative Transportation Improvements prior to issuance of a superstructure building permit from the City to MF Owner for the construction of the Multifamily Component of the Project. MF Owner shall not be required to provide 100% plans and shall not be required to construct such improvements or otherwise comply with the terms of this Agreement relating to construction of improvements.

(iii) Transportation Improvements Not Required. Developers shall not be required to construct improvements in connection with Condition of Approval 2.w-w.i (Marsh Road and Bayfront Expressway/Haven Avenue) and Condition of Approval 2.w-w.ii (Willow Road and Newbridge Street) and shall instead pay applicable Transportation Impact Fee Program fees.

(g) Other Required Documentation.

(i) Prior to the issuance of a superstructure building permit from City to MF Owner for the construction of the Multifamily Component of the Project, MF Owner shall provide executed copies of all the documents, agreements and notices required pursuant to and set forth in Exhibit D and labeled as required pursuant to Section 2 (g)(i), including the improvement security set forth in Section 3 and insurance coverage set forth in Section 9, with respect to the Near Term Transportation Improvements and improvements set forth in the Multifamily Improvement Plans to be installed, constructed and completed by MF Owner in accordance with the Conditions of Approval and this Agreement, unless waived or deferred by the Director, in writing, until a time certain or the time of a request for a Notice of Completion pursuant to Section 6 (a) [Director's Inspection] below. The required documents shall include an (A) estimate of costs to construct and complete the improvements set forth in the Multifamily Improvement Plans plus a twenty five percent (25%) contingency ("**Multifamily Engineer's Estimate**") and (B) an estimate of costs to construct and complete the improvements set forth in the Transportation Improvement Plans plus a twenty five percent (25%) contingency ("**Transportation Engineer's Estimate**").

(ii) Prior to the earlier of (i) issuance of a final certificate of occupancy from City for any portion of the Multifamily Component of the Project, or (ii) issuance of a superstructure building permit from the City to TH Owner for the construction of the Townhome Component of the Project, TH Owner shall provide executed copies of all the documents, agreements and notices required pursuant to and set forth in Exhibit D and labeled as required pursuant to Section 2 (g)(ii), including the improvement security set forth in Section 3 and insurance coverage set forth in Section 9, with respect to the improvements set forth in the Townhome Improvement Plans to be installed, constructed and completed by TH Owner in

accordance with the Conditions of Approval and this Agreement, unless waived or deferred by the Director, in writing, until a time certain or the time of a request for a Notice of Completion pursuant to Section 6 (a) [Director's Inspection] below. The required documents shall include an estimate of costs to construct and complete the improvements set forth in the Townhome Improvement Plans plus a twenty five percent (25%) contingency ("**Townhome Engineer's Estimate**").

(iii) At the time of a request for a Notice of Completion for the improvements set forth in the Transportation Improvement Plans, Multifamily Improvement Plans or the Townhome Improvement Plans pursuant to Section 6 (a) [Director's Inspection] below, Developers, as appropriate, shall provide all documents required pursuant to and set forth in **Exhibit E**, plus any other materials previously deferred by the Director pursuant to subsections 2 (g)(i) or 2(g)(ii) above, unless waived or deferred by the Director, in writing, until a time certain or the time of a request for Acceptance pursuant to Section 6 (b) below. The required documents shall include as-built plans of the completed improvements, or portion thereof, set forth in the Transportation Improvement Plans, Multifamily Improvement Plans and Townhome Improvement Plans in both electronic (in a reasonably current version of AutoCAD and/or another digital format acceptable to Public Works) and Mylar formats and any reports required by any related Plans and Specifications.

(iv) At the time of a request for Acceptance of the improvements set forth in the Transportation Improvement Plans, Multifamily Improvement Plans or the Townhome Improvement Plans pursuant to Section 6(b) below, Developers, as appropriate, shall provide all the documents required pursuant to and set forth in **Exhibit F**, plus any other materials previously deferred by the Director pursuant to subsections 2(g)(i), 2 (g)(ii) and 2(g)(iii) above, unless waived or deferred by the Director in writing. In addition, as part of compliance with this subsection 2 (h)(iv), Developers shall coordinate with the City and assist in the City's process for the subsequent dedication and Acceptance of the improvements set forth in the Transportation Improvement Plans, Multifamily Improvement Plans and the Townhome Improvement Plan by (A) providing necessary maps, legal descriptions and plats for street openings, proposed easements and/or dedications for right of way or utility purposes and for relinquishment of existing rights of access and utilities associated with on-site and off-site development, to the extent applicable, and (B) executing easement agreements or grant deeds or modifying existing easements or grant deeds consistent with the Conditions of Approval, to the extent applicable.

(h) **Labor Code Compliance.** Developers shall carry out, and shall use its best efforts to ensure that its contractors and subcontractors carry out, the design, installation, construction and completion of the Near Term Transportation Improvements in conformity with all applicable State of California Labor Code requirements; the City zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the City of Menlo Park Municipal Code; and all applicable disabled and handicapped access requirements, including 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.*

Developers acknowledge and agree that the Off-Site Improvements and Near Term Transportation Improvements constitute "public works" as defined in Labor Code §1720. Developers shall be required to comply with prevailing wage requirements in connection with the

design and construction of the Off-Site Improvements and Near Term Transportation Improvements to the extent required by applicable State of California Labor Code requirements. Developers shall require the general contractor(s) for the Off-Site Improvements and Near Term Transportation Improvements to post on the job site prevailing wage rates for all applicable trades and to submit certified copies of payroll records to Developers to ensure compliance with State of California Labor Code requirements pertaining to public works. Developers shall provide such payroll records to City within ten (10) days following City's request therefor. Developers shall also include in its construction contract a provision obligating Developers' contractor to require its contractors and/or subcontractors to comply with public works prevailing wage requirements.

Developers shall defend, with counsel reasonably acceptable to City, indemnify and hold harmless City and Bay Cities Joint Powers Insurance Authority and their respective officials, officers, employees, agents and representatives ("**Indemnitees**") from and against any and all liabilities, obligations, orders, claims, damages, governmental fines or penalties, and actual expenses of defense with respect thereto, including reasonable attorneys' fees and costs ("**Claims**") arising out of Developers' failure to comply with State of California Labor Code requirements pertaining to the design and construction of the Near Term Transportation Improvements. Further, Developers shall indemnify and hold harmless the Indemnitees with respect to all final judgments or settlements in actions brought by any "contractor" in which City is (i) determined to be an "awarding body" and (ii) damages are awarded, pursuant to Labor Code sections 1726 or 1781. Developers' defense, indemnity and hold harmless obligations under this section shall survive expiration or termination of this Agreement.

Developers hereby waive, release and discharge forever the Indemnitees from any and all present and future Claims arising out of or in any way connected with Developers' obligation to comply with all State of California Labor Code requirements pertaining to the design, installation, construction and completion of the Near Term Transportation Improvements.

This release applies to all potential future claims and Developers on behalf of itself and its agents, representatives, assigns, heirs, spouses, successors-in-interest, executors, administrators, employees, contractors, subcontractors, material suppliers and vendors ("**Releasors**"), agrees to waive any and all rights pursuant to Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims that the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Developers shall include within each of its contracts, subcontracts, and within any other agreements with Releasors involved in the Work, a release in favor of the Indemnitees substantially identical to this Section 2 (h).

3. Improvement Security.

(a) Security: Multifamily Improvement Plans. Concurrent with the delivery of the documentation set forth in **Exhibit D** in accordance with the provisions of Section 2(g)(i), MF

Owner shall furnish and deliver to the Director bonds, in favor of the City, substantially in the form attached as **Exhibits G-1** and **G-2** and approved by the City Attorney, from an issuer approved by the Director, securing the completion of the installation and construction of the improvements set forth in the Multifamily Improvement Plans, and payment for all labor, materials, equipment, and services required for the installation and construction of the improvements set forth in the Multifamily Improvement Plans, including any monuments as determined to be necessary by the Director or City Engineer, as follows:

(i) Performance bonds, substantially in the form attached as **Exhibit G-1** and approved by the City Attorney, in the amount of the Multifamily Engineer's Estimate to secure the satisfactory performance of MF Owner's obligation to complete the installation and construction of the improvements set forth in the Multifamily Improvement Plans; further, as provided therein, upon Acceptance of the improvements set forth in the Multifamily Improvement Plans by City pursuant to Section 6(b), the performance bond shall convert to a warranty bond in the amount of ten percent (10%) of the Multifamily Engineer's Estimate for a period of one (1) year to secure the Warranty Period provided in Section 8(a) below; and

(ii) Payment bonds, substantially in the form attached as **Exhibit G-2** and approved by the City Attorney, in the amount of the Multifamily Engineer's Estimate to guarantee payment for the labor, materials, equipment, and services required for the installation, construction and completion of the improvements set forth in the Multifamily Improvement Plans.

(b) **Security: Transportation Improvement Plans.** Concurrent with the delivery of the documentation set forth in **Exhibit D** in accordance with the provisions of Section 2(g)(i), MF Owner shall furnish and deliver to the Director bonds, in favor of the City, substantially in the form attached as **Exhibits G-1** and **G-2** and approved by the City Attorney, from an issuer approved by the Director, securing the completion of the installation and construction of the improvements set forth in the Transportation Improvement Plans, and payment for all labor, materials, equipment, and services required for the installation and construction of the improvements set forth in the Transportation Improvement Plans, including any monuments as determined to be necessary by the Director or City Engineer, as follows:

(i) Performance bonds, substantially in the form attached as **Exhibit G-1** and approved by the City Attorney, in the amount of the Transportation Engineer's Estimate for the installation, construction and completion of the improvements set forth in the Transportation Improvement Plans, to secure the satisfactory performance of MF Owner's obligation to complete the installation and construction of the improvements set forth in the Transportation Improvement Plans; further, as provided therein, upon Acceptance of the improvements set forth in the Transportation Improvement Plans by City pursuant to Section 6 (b), the performance bond shall convert to a warranty bond in the amount of ten percent (10%) of the Transportation Engineer's Estimate for a period of one (1) year to secure the Warranty Period provided in Section 8(a) below; and

(ii) Payment bonds, substantially in the form attached as **Exhibit G-2** and approved by the City Attorney, in the amount of the Transportation Engineer's Estimate to guarantee payment for the labor, materials, equipment, and services required for the installation,



construction and completion of the improvements set forth in the Transportation Improvement Plans.

(c) Security: Townhome Improvement Plans. Concurrent with the delivery of the documentation set forth in Exhibit D in accordance with the provisions of Section 2(g)(ii), TH Owner shall furnish and deliver to the Director bonds, in favor of the City, substantially in the form attached as Exhibits G-1 and G-2 and approved by the City Attorney, from an issuer approved by the Director, securing the completion of the installation and construction of the improvements set forth in the Townhome Improvement Plans, and payment for all labor, materials, equipment, and services required for the installation and construction of the improvements set forth in the Townhome Improvement Plans, including any monuments as determined to be necessary by the Director or City Engineer, as follows:

(i) Performance bonds, substantially in the form attached as Exhibit G-1 and approved by the City Attorney, in the amount of the Townhome Engineer's Estimate for the installation, construction and completion of the improvements set forth in the Townhome Improvement Plans, to secure the satisfactory performance of TH Owner's obligation to complete the installation and construction of the improvements set forth in the Townhome Improvement Plans; further, as provided therein, upon Acceptance of the improvements set forth in the Townhome Improvement Plans by City pursuant to Section 6 (b), the performance bond shall convert to a warranty bond in the amount of ten percent (10%) of the Townhome Engineer's Estimate for a period of one (1) year to secure the Warranty Period provided in Section 8(a) below; and

(ii) Payment bonds, substantially in the form attached as Exhibit G-2 and approved by the City Attorney, in the amount of Townhome Engineer's Estimate guarantee payment for the labor, materials, equipment, and services required for the installation, construction and completion of the improvements set forth in the Townhome Improvement Plans.

(d) Use of Security. Any security provided under Section 3(a), 3 (b) and 3(c) shall be referred to collectively as the “**Security**”. If the installation and construction of the improvements set forth in the Multifamily Improvement Plans, Townhome Improvement Plans or Transportation Improvement Plans are not commenced or completed within the time periods specified in Sections 2(c), 2(e), or 2 (f)(i), respectively, and such period is not extended by the City or as otherwise provided under this Agreement, or Developers has not satisfactorily corrected all deficiencies during the Warranty Period (as defined below), the Security may, as determined by the Director, be used by the City for commencement and completion of the installation and construction of the improvements set forth in and in accordance with the Multifamily Improvement Plans, Townhome Improvement Plans or Transportation Improvement Plans and for the correction of any such deficiencies.

#### 4. Construction of the Off-Site Improvements and Near Term Transportation Improvements.

(a) Permits and Fees. Developers shall not perform any work on the Off-Site Improvements or Near Term Transportation Improvements until all required permits have been obtained for the portion of work involved, and all applicable fees, including, but not limited to,

encroachment permit, building permit, plan check, inspection and testing fees, have been paid to City. In addition, no work shall commence until the Developers have submitted to the City and City has approved, which approval shall not be unreasonably withheld, all required items described in Section 2(g), as applicable, and any additional requirements of and authorizations specified in the Code, Conditions of Approval, and this Agreement, unless the Director, in his or her discretion, has granted a written waiver or deferral for one or more of these materials.

Developers acknowledge that City may inspect the construction of the Off-Site Improvements and Near Term Transportation Improvements and agrees to pay costs incurred by City for these inspection services. Costs of inspection services include, but are not limited to, checking of maps and plans, field checking, inspection and testing conducted by City staff and/or agents or consultants contracted by City to perform such services. City staff, agents and consultants shall at all times during construction of the Off-Site Improvements and Near Term Transportation Improvements have access to the work.

(b) Extensions. The Developers may request an extension of the time period specified in Sections 2(c), 2(e), or 2(f)(i) for completion of the installation and construction of the Off-Site Improvements and Near Term Transportation Improvements by written request to the Director. A request shall include satisfactory evidence, as determined by the Director, to justify the extension, and shall be made upon the Director's determination that Developers cannot reasonably meet the deadline in the time remaining for completion. The Director may request additional information, and shall in good faith attempt to determine within thirty (30) days of the request whether to grant an extension of time. The Director's failure to respond within the time specified shall, however, not constitute either a grant or denial of the requested extension. The Director shall not unreasonably withhold a request for an extension. The Director may reasonably condition an extension subject to the terms of this Agreement and the conditions provided in the Code, including execution of an extension agreement and the extension of any security. No extension approved hereunder shall limit or relieve a surety's liability, or provide an extension on any future obligation under this Agreement.

(i) Consistent with Condition of Approval 2.w.iii (Willow Road and Bay Road), which requires Caltrans review and approval, MF Owner may request the ability to provide a performance bond for 100 percent of the estimated cost of the improvements plus 30 percent contingency in order to obtain occupancy of the Multifamily Portion of the Project. If MF Owner continues to work diligently to the satisfaction of the Director of Public Works or designee, but has not yet obtained approval to construct the improvements within five years from the date of issuance of the building permit for the Multifamily Component of the Project, then MF Owner shall be relieved of the responsibility to construct the improvements and the bond shall be released by the City.

(c) Revisions to Plans and Specifications. Requests by the Developers for revisions, modifications, or amendments to the approved Multifamily Improvement Plans, Townhome Improvement Plans or Transportation Improvement Plans (each a "**Plan Revision**") shall be submitted in writing to the Director (with a copy to the Director's designee). Developers shall not commence construction of any proposed Plan Revision without approval by Public Works and until revised plans have been received and approved by the Director (or the Director's designee) in writing.

(i) Any documentation required for a Plan Revision shall be processed with reasonable promptness, and approval of the Plan Revision shall not be deemed final until the amendment or other documentation has been completed.

(ii) Any Plan Revision request shall be accompanied by (A) a statement explaining the need for or purpose of the proposed revision, and (B) drawings and specifications and other related documents showing the proposed Plan Revision in reasonable detail, consistent with the original Plans and Specifications.

5. Release of Security. The Security, or any portions thereof, not required to secure completion of Developers' obligation for construction or installation of Off-Site Improvements and Near Term Transportation Improvements, to satisfy claims by contractors, subcontractors, and/or persons furnishing materials or equipment, or for setting monuments, shall be released to the Developers, or its successors in interest, or reduced, pursuant to the procedures below as appropriate:

(a) Warranty Bond. Upon the Acceptance of Off-Site Improvements and Near Term Transportation Improvements in accordance with Section 6(a), the Security shall be reduced as to that portion of Off-Site Improvements and Near Term Transportation Improvements in accordance with Section 3(a)(i), 3(b)(i) and 3(c)(i). As to that portion of Off-Site Improvements and Near Term Transportation Improvements, the Security remaining following such reduction is referred to herein as the "**Remaining Security**," which term shall also refer to all Security remaining after any release under this Subsection following the Director's issuance of a Notice of Completion for the final portion of Off-Site Improvements and Near Term Transportation Improvements.

(b) Partial Release of Security. Notwithstanding the release provisions in Section 5(a) and except as provided in Section 5(c), the Security as required by Section 3 may be reduced in conjunction with completion of any portion of Off-Site Improvements and Near Term Transportation Improvements to the satisfaction of the Director in compliance with Section 6(a) to an amount determined by the Director that equals the actual cost of the completed portion of Off-Site Improvements and Near Term Transportation Improvements. Prior to the date that the conditions set forth in Section 5(c) are satisfied, in no event, however, shall the amount of the Security be reduced below the greater of (i) the amount required to guarantee the completion of the remaining portion of Off-Site Improvements and Near Term Transportation Improvements and any other obligation imposed by the Subdivision Map Act, if applicable, the Code, Conditions of Approval or this Agreement; or (ii) the warranty bond totaling ten percent (10%) of the original bond amount.

(c) Release of Remaining Security. Remaining Security shall be released when all of the following have occurred:

(i) One (1) year following the date of Acceptance (as defined below) of (or, as appropriate, a Certificate of Conformity) regarding the relevant portion of Off-Site Improvements and Near Term Transportation Improvements, or, with respect to any specific claim of defects or deficiency in Off-Site Improvements and Near Term Transportation Improvements (excepting therefrom normal wear and tear) after such has been Accepted, one (1) year following

the date that any such defect or deficiency which the Director identified in the Off-Site Improvements and Near Term Transportation Improvements in accordance with Section 6(a) has been corrected or waived in writing by the Director; and

(ii) The City Clerk (or the Clerk's designee) certifies that no claims by any contractor, subcontractor or person furnishing labor, materials or equipment for the Off-Site Improvements and Near Term Transportation Improvements have been filed with the City, or all such claims have been satisfied, withdrawn, or otherwise secured by bond or other security provided by Developers and approved by the Director (or the Director's designee).

6. Completion and Acceptance.

(a) Director's Inspection. No sooner than ninety (90) days prior to the date that Developers intend for the Director to issue a Notice of Completion, Developers shall make a written request to the Director of the Developers' intent to initiate the Notice of Completion process ("**Letter of Intent to Request Notice of Completion**"). Upon written request from the Developers for a "**Notice of Completion**", accompanied with any and all materials that are required under Section 2(g)(iii) [Other Required Documentation] related to the Notice of Completion and any other materials that the Director deferred in writing pursuant to Section 2(g)(i) or 2(g)(ii), other than those materials that the Director has deferred until Acceptance, the Director shall initiate the inspection. If the Developers fail to submit a Letter of Intent to Request Notice of Completion, the Director need not consider the Developers' request for the Director's issuance of a Notice of Completion until such a Letter of Intent to Request Notice of Completion is submitted to the Director and ninety (90) days have passed from the submission of the Letter; provided, however, that the Director, in his or her discretion, may agree in writing to a period of less than ninety (90) days from receipt of the Letter to consider issuance of a Notice of Completion. If the Director determines that the Off-Site Improvements and Near Term Transportation Improvements have not been completed or does not satisfy the above requirements, Director shall notify Developers of such determination together with a statement setting forth with particularity the basis for that determination. If the Director determines that the Off-Site Improvements and Near Term Transportation Improvements has been completed and meets the above requirements, the Director shall issue the Notice of Completion. For the sake of clarity, the Developers may submit separate requests for Notices of Completion for the improvements set forth in the Multifamily Improvement Plans, improvements set forth in the Transportation Improvement Plans and improvements set forth in the Townhome Improvement Plans. Requests to further separate Notices of Completion for separate scopes of work shall be subject to the Director's approval.

(b) Acceptance. "**Acceptance**" by the City of the Off-Site Improvements and Near Term Transportation Improvements, or portion thereof, for public use and maintenance shall be deemed to have occurred when:

(i) The Director has issued a Notice of Completion for the Off-Site Improvements and Near Term Transportation Improvements, or portion thereof, in accordance with Section 6(a);

(ii) The Developers submit a written request to the Director to accept the Off-Site Improvements and Near Term Transportation Improvements, or portion thereof. Such

submission shall include all materials required by Section 2(g)(iv) and all materials for which the Director authorized deferral under Sections 2(g)(i), 2(g)(ii) and 2(g)(iii); and

(iii) The Director, in writing, accepts the Off-Site Improvements and Near Term Transportation Improvements, or portion thereof, for public use and maintenance in accordance with the Code and Developers' warranty obligations under Section 8(a) of this Agreement.

(c) Offers of Dedication. The Developers' statements on a Final Map, if applicable, include or shall include certain irrevocable offers of dedication of improvements, easements shown only on the map, easements by agreement, and real property in fee simple. In addition to statements on a Final Map, if applicable, offers of dedication of improvements shall be made by separate instrument(s); offers of dedication of real property in fee simple shall be made by separate instrument(s) and separate deed(s); and offers of dedication of easements shall be made by separate instrument(s). The City Council shall accept, conditionally accept, or reject such offers of easements or fee simple in real property, if applicable, at its discretion, and may accept these offers of easements or fee simple in real property at its convenience through formal action of the City Council or as otherwise provided in local law. The Public Works Director shall accept, conditionally accept, or reject for public right-of-way and utility purposes the Off-Site Improvements and Near Term Transportation Improvements (or a portion of the Off-Site Improvements and Near Term Transportation Improvements), in writing, in accordance with Section 6(b). The Final Map, if applicable, may include certain offers of dedication of easements or fee simple in real property as more particularly set forth therein; upon the Director's issuance of a Notice of Completion for the Off-Site Improvements and Near Term Transportation Improvements, or portion thereof, in accordance with Section 6(a) of this Agreement, the City Council shall by resolution accept, conditionally accept, or reject such offers of dedication of easements or fee simple in real property.

(d) Dedication. In addition to accepting improvements, if applicable, the City shall dedicate the Off-Site Improvements and Near Term Transportation Improvements to public use and shall designate them for their appropriate public uses.

7. Developers' Maintenance Responsibility.

(a) General Maintenance and Liability Prior to Acceptance. Prior to Acceptance, Developers shall be responsible for the maintenance and repair of the Off-Site Improvements and Near Term Transportation Improvements, in accordance with the obligations identified for the MF Owner and TH Owner in Section 2, and shall bear liability regarding the same.

(b) Maintenance and Liability Following Acceptance. Following Acceptance of Off-Site Improvements and Near Term Transportation Improvements, and subject to Section 8(a), the City shall assume the responsibility of operating and maintaining and shall be liable for such Off-Site Improvements and Near Term Transportation Improvements in accordance with State law and the Code, as either may be amended from time to time. Without limiting the generality of the foregoing, nothing in this Agreement shall be construed to mean that City shall have right to call upon the Security pursuant to Section 8(a) for the repair, replacement, restoration,

or maintenance of the Off-Site Improvements and Near Term Transportation Improvements damaged during the Warranty Period by the actions of third parties following Acceptance by the City or by ordinary wear and tear or harm or damage from improper operation of the Off-Site Improvements and Near Term Transportation Improvements by the City, or any agent or agency of either. Furthermore, without limiting the generality of the foregoing, nothing in this Agreement shall be construed to mean that Developers do not retain responsibility for maintenance and repair of “sidewalks” and “walkways”, as defined in California Streets and Highways Code §5600 and Menlo Park Municipal Code §13.08.010, respectively, constructed as part of the Off-Site Improvements, pursuant to California Streets and Highways Code §5600 *et seq.* and Chapter 13.08 of Title 13 of the Code, as said provisions may be amended from time to time.

(c) Protection of Off-Site Improvements and Near Term Transportation Improvements. Developers may, but shall not be obligated to, allow access by the public to portions of the Off-Site Improvements and Near Term Transportation Improvements that have been constructed but not Accepted. In order to protect the Off-Site Improvements and Near Term Transportation Improvements from damage and to minimize Developers’ exposure to liability until such time as the applicable Off-Site Improvements and Near Term Transportation Improvements, or portion thereof, is Accepted, Developers may erect a construction fence or other physical barrier around areas under construction, to be constructed in the future, or constructed but not Accepted, provided that Developers have procured all necessary permits and complied with all applicable laws. However, no construction fence or other physical barrier may be built or maintained if the Director determines that a construction fence or other physical barrier adversely affects public health or safety by unreasonably restricting the ingress and egress of the public to and from a public right of way. For purposes of the preceding sentence, if there exists an alternative means of ingress and egress other than the Off-Site Improvements and Near Term Transportation Improvements, then the Director may not determine that the construction fence or other physical barrier constitutes an unreasonable restriction of ingress and egress of the public to and from a public right of way.

8. Warranty and Indemnity.

(a) Warranty. Acceptance of Off-Site Improvements and Near Term Transportation Improvements by the City shall not constitute a waiver of any defects. Separate and apart from any warranty provided at law, Developers covenant that all Off-Site Improvements and Near Term Transportation Improvements constructed or installed by Developers shall be free from defects in material or workmanship and shall perform satisfactorily for a period (a “**Warranty Period**”) of one (1) year for all portions of the Off-Site Improvements and Near Term Transportation Improvements. Such Warranty Period shall begin upon the Acceptance of the Off-Site Improvements and Near Term Transportation Improvements (or portion thereof), except that the Warranty Period for plant materials and trees planted as part of the Off-Site Improvements and Near Term Transportation Improvements shall not commence until the plant establishment period set in accordance with the Multifamily Improvement Plans, Townhome Improvement Plans and Transportation Improvement Plans has satisfactorily passed. During the Warranty Period, Developers shall, as necessary, and upon receipt of a request in writing from the Director that defective work be corrected, inspect, correct, repair or replace any defects in the Off-Site Improvements and Near Term Transportation Improvements (excepting therefrom normal wear and tear) at its own expense. Should Developers fail to act with reasonable promptness to make

such inspection, correction, repair or replacement, or should an emergency require that inspection, correction, repair or replacement be made before Developers can be notified (or prior to Developers' ability to respond after notice), the City may, at its option, upon notice to Developers, make the necessary inspection, correction, repair or replacement or otherwise perform the necessary work and Developers shall reimburse the City for the actual cost thereof. During the Warranty Period, the City shall hold the Developers' Security, reduced as described in Section 5, to secure performance of Developers' foregoing warranty obligations. Developers' responsibility during the Warranty Period shall include repairing defects and defective material or workmanship, but not ordinary wear and tear or harm or damage from improper maintenance or operation of the Off-Site Improvements and Near Term Transportation Improvements by the City, or any agent or agency of either.

(b) Indemnification of City. Developers, its successors and assigns, shall defend and indemnify the Indemnitees from and against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") to the extent arising from Developers' breach of or negligent performance (or nonperformance) of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the gross negligence or willful misconduct of City, and further provided that any demand for indemnification hereunder with respect to negligent or defective construction must be brought, if at all, within one (1) year after expiration of the Warranty Period applicable to the Off-Site Improvements, or portion therefore. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the City's cost of investigating any claims against the City.

(c) Limitation on City Liability. The City shall not be an insurer or surety for the design or construction of the Off-Site Improvements and Near Term Transportation Improvements pursuant to the approved Multifamily Improvement Plans, Townhome Improvement Plans and Transportation Improvement Plans, nor shall any officer or employee thereof be liable or responsible for any accident, loss, or damage happening or occurring during the construction of the Off-Site Improvements and Near Term Transportation Improvements as specified in this Agreement, except as may arise due to the gross negligence or willful acts or omissions of the City.

9. Insurance. Prior to performing any Work pursuant to this Agreement, Developers shall, at its sole cost and expense, procure and maintain in effect, or cause to be procured and maintained in effect by contractor performing said Work, insurance coverage for general liability, automobile liability, workers compensation, pollution liability and Builder's Risk against claims which may arise out of or result from the design, installation, construction and completion of the Off-Site Improvements by Developers, its agents, employees and contractors. Concurrent with the delivery of the documentation set forth in Exhibit D in accordance with the provisions of Section 2(g)(i) and 2 (g)(ii), Developers shall deliver to City one or more certificates of coverage, with the appropriate endorsements outlined below. The insurance policies shall be provided by a financially responsible insurance company authorized to write business in the State of California and have, at

all times, a Best's rating of "A- VII" (A minus VII) or better by AM Best & Company, and with coverage and policy limits as follows:

(i) The general liability insurance coverage shall have a per occurrence limit of two million and 00/100 dollars (\$2,000,000.00) and an aggregate limit of at least five million and 00/100 dollars (\$5,000,000.00), and shall be endorsed to (a) include the Indemnitees as additional covered parties providing all required coverages including coverages for both ongoing and completed operations, (b) stipulate that such coverage is primary and is not excess of, or contributing with, any other insurance carried by, or for the benefit of the Indemnitees, (c) apply separately to each insured and additional insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, (d) waive any and all right of subrogation against the Indemnitees, and (e) contain a cross liability/severability endorsement (unless the base policy contains a separation of insureds clause accomplishing the same result);

(ii) The auto liability insurance coverage shall cover all owned, hired and non-owned vehicles utilized in connection with the construction of the Off-Site Improvements with a per occurrence limit of two million and 00/100 dollars (\$2,000,000.00) and an aggregate limit of not less than five million and 00/100 dollars (\$5,000,000.00), and shall be endorsed to (a) include the Indemnitees as additional covered parties, (b) stipulate that such coverage is primary and is not excess of, or contributing with, any other insurance carried by, or for the benefit of the Indemnitees, (c) apply separately to each insured and additional covered parties against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, (d) waive any and all right of subrogation against the Indemnitees, and (e) contain a cross liability/severability endorsement (unless the base policy contains a separation of insureds clause accomplishing the same result);

(iii) Worker's Compensation insurance as required by the State of California which shall be endorsed to waive any and all rights of subrogation against the Indemnitees; further, any and all subcontractors shall maintain insurance coverage limits in accordance with state statute which shall also be endorsed to waive any and all rights of subrogation against the Indemnitees;

(iv) Pollution liability coverage shall have coverage limits of not less than \$2,000,000 for each claim arising from the discharge, dispersal, release or escape of any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater; coverage shall include on and off-site clean up and emergency response costs and claims arising from above ground and below ground storage tanks; and

(v) Builder's Risk property insurance (either directly or through Developers' general contractor) on all buildings, structures, improvements, materials and real property on site, that are intended to be, or have already been incorporated into and forming part of the Work. Such coverage shall be on a builder's risk "special perils" or equivalent policy form in an amount not less than the Multifamily Engineer's Estimate and the Transportation Engineer's Estimate in the case of the MF Owner and the Townhome Engineer's Estimate in the case of the TH Owner, plus the value of subsequent contract modifications and the cost of the materials supplied or installed by others, comprising the total value of the Work on a replacement cost basis, with a deductible not to exceed \$100,000.00. Such property insurance shall be maintained for the Work, unless otherwise agreed in writing by City. This insurance shall include the interests of City and the other



Indemnitees, Developers, Developers' contractor and subcontractors on the Work. City shall further have the right to review and reasonably approve the form of Builder's Risk policy.

10. Miscellaneous.

(a) Relationship Between the Parties; Authority; Binding Effect. In performing its obligations under this Agreement, the Developers are independent contractors and not an agent or employee of the City. This Agreement does not create any partnership or agency between the Parties, each of which is, and at all times shall remain, solely responsible for all acts of its officials, employees, agents, contractors and any subcontractors, including any negligent acts or omissions. No Party is an agent of the other, and has no authority to act on behalf of or to bind the other Party to any obligation whatsoever. Each Party executing this Agreement on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind. Each of the terms, covenants and conditions of this Agreement shall extend to and be binding on and shall inure to the benefit the Parties and each of their respective successors and assigns and all those taking by, under or through it or them.

(b) Venue; Attorneys' Fees. In the event that any action is brought by either Party hereto as against the other Party for the enforcement or declaration of any right or remedy in or under this Agreement or for the breach of any covenant or condition of this Agreement, venue for any such proceeding shall be in the Superior Court of the County of San Mateo, State of California. Should any party hereto institute any action or proceeding in court or other dispute resolution mechanism ("**DRM**") to enforce any provision hereof by reason of an alleged breach of any provision of this Agreement, the prevailing party shall be entitled to receive from the losing party, court or DRM costs or expenses incurred by the prevailing party including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the court or DRM may adjudge to be reasonable attorneys' fees for the services rendered the prevailing party in such action or proceeding. Attorneys' fees under this Section 10(b) include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

(c) Notices.

(i) A notice or communication under this Agreement by either Party to the other (or by or to the Director) shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, or via electronic mail, addressed as follows:

In the case of a notice or communication to the Public Works Director:

City of Menlo Park  
701 Laurel Street  
Menlo Park, CA 94025-3483  
Attn: Nicole H. Nagaya, Public Works Director  
Reference: Menlo Uptown  
Email: nhnagaya@menlopark.org

With copies to:

Office of the City Attorney  
c/o Burke, Williams & Sorensen, LLP  
181 Third Street, Suite 200  
San Rafael, CA 94901-6587  
Attn: Nira Doherty, City Attorney  
Reference: Menlo Uptown  
Email: [NDoherty@bwslaw.com](mailto:NDoherty@bwslaw.com)

And in the case of a notice or communication to the Developers:

CLPF GRP Uptown Menlo Park, LLC  
450 Sansome Street, Suite 500  
San Francisco, CA 94111  
Attn: Matthew Udouj  
Email: [matthew.udouj@greystar.com](mailto:matthew.udouj@greystar.com)

CLPF CRP TH Menlo Park, LLC,  
450 Sansome Street, Suite 500  
San Francisco, CA 94111  
Attn: Matthew Udouj  
Email: [matthew.udouj@greystar.com](mailto:matthew.udouj@greystar.com)

With copies to:

Chelsea Maclean  
Holland & Knight, LLP  
50 California Street, Suite 2800  
San Francisco, CA 94111  
Email: [chelsea.maclean@hklaw.com](mailto:chelsea.maclean@hklaw.com)

(ii) Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt or, if by electronic mail transmission, on the date when sent provided that the sender receives no notice of non-delivery.

(d) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto, and upon such transfer in accordance with the provisions set forth herein, the Developers shall be released from its obligations hereunder. Any assignment of rights and obligations under this Agreement shall be in writing between City, Developers and its assignee, shall clearly identify the scope of the rights and/or obligations assigned and shall be subject to the approval of the Director and City Attorney,

including, but not limited to, the requirement that the assignee provides replacement bonds that are consistent with **Exhibits G-1** and **G-2** in an amount required to secure any remaining obligations as approved by City, the assignee provides proof of adequate insurance in the amount previously provided by Developers and by an insurer with an equal or better credit rating, and the assignee has obtained all rights, title and interest in and to the Property and any other real estate rights reasonably required to satisfy all other conditions required to complete the Work contemplated by this Agreement.

(e) Legal and Equitable Relief. Each Party shall have the right (but not the obligation) to prosecute any proceedings at law or in equity against any other Party, or any other person or entity, violating or attempting to violate or defaulting in the performance of any of the provisions contained in this Agreement in order to prevent such party, person or entity from violating or attempting to violate or defaulting in the performance of any of the provisions of this Agreement or to recover damages for any such violation or default. It is agreed that damages would be an inadequate remedy for violation of this Agreement by any party and, therefore, injunctive or other appropriate equitable relief shall be available to the other party. The remedies available under this Section 10(e) shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of this Agreement. The result of every action or omission whereby any covenant, condition or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against any party, either public or private, shall be applicable against every such result and may be exercised by any party.

(f) Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by another Party, or the failure by a Party to exercise its rights upon the default of another Party, shall not constitute a waiver of such Party's right to insist upon and demand strict compliance by the other Party with the terms of this Agreement thereafter.

(g) Parties in Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City and the Developers, any rights, remedies or claims under or by reason of this Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Agreement contained by or on behalf of the City, or the Developers shall be for the sole and exclusive benefit of the named Parties.

(h) Amendment. This Agreement may be amended, from time to time, by written supplement or amendment hereto and executed by the City and the Developers. The Director of Public Works, with the consent and approval of the City Attorney, is authorized to execute on behalf of the City any amendment that the Director determines is in the City's best interests and does not materially increase the City's obligations or materially diminish the City's rights under this Agreement. The foregoing notwithstanding, nothing herein shall preclude the Director from seeking and securing approval or concurrence of any amendment by the City Council.

(i) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

(j) Interpretation of Agreement. The recitals above and exhibits attached hereto are incorporated herein by reference and comprise part of this Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and no prior oral or written understanding shall be of any force or effect with respect to the matters covered herein. The titles to the sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This Agreement shall be interpreted as though prepared jointly by both Parties. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement. This Agreement shall be interpreted as though jointly prepared by both Parties.

(k) Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

(l) Recording Agreement. This Agreement shall be recorded against the title of the Property.

(m) Purpose and Effect of Recording. This Agreement shall be recorded for the purpose of providing constructive notice to any future owner of the Property of Developers’ obligations and responsibilities under this Agreement.

(n) Notice of Termination. At the time all the obligations and requirements specified in this Agreement are fully satisfied as determined by the Director of Public Works in consultation with affected City departments, the Parties shall execute and record (if applicable) a Notice of Termination.

IN WITNESS WHEREOF, the City, and MF Owner and TH Owner have executed this Agreement in one or more copies as of the day and year first above written.

[SIGNATURES ON NEXT PAGE]

**MF OWNER:**

CLPF GRP Uptown Menlo Park, LLC, a Delaware limited liability company

By: GS Uptown MP Manager, LLC, a Delaware limited liability company, its Managing  
Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**TH OWNER:**

CLPF CRP TH Menlo Park, LLC, a Delaware limited liability company

By: GS Uptown MP Manager, LLC, a Delaware limited liability company, its Managing  
Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY:**

CITY OF MENLO PARK,  
a municipal corporation

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

CITY ATTORNEY

\_\_\_\_\_  
City Attorney

## **LIST OF EXHIBITS**

Exhibit A-1 – Legal Description of Multifamily Property

Exhibit A-2 – Legal Description of Townhome Property

Exhibit B – List of Off-Site Improvements

Exhibit C – List of Transportation Improvements

Exhibit D – Documents Required by City Pursuant to Section 2(g)(i) and 2(g)(ii)

Exhibit E – Documents Required by City Pursuant to Section 2(g)(iii) to Request Notice of Completion

Exhibit F – Documents Required by City Pursuant to Section 2(g)(iv) to Request Acceptance by Public Works Director

Exhibit G-1 – Performance Bond

Exhibit G-2 – Payment Bond

## EXHIBIT A-1

### Legal Description of Multifamily Property

#### PARCEL A:

ADJUSTED PARCEL 1 AS SHOWN ON LOT LINE ADJUSTMENT NO. 20180527-10, AS EVIDENCED BY DOCUMENT RECORDED JANUARY 18, 2022 AS INSTRUMENT NO. 2022-003974 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 1, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON JANUARY 17, 1978 IN BOOK 40 OF PARCEL MAPS AT PAGES 38 AND 39, RECORDS OF SAN MATEO COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THAT CERTAIN CENTERLINE MONUMENT OF CONSTITUTION DRIVE LOCATED AT THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE LABELED "N. 67°17' W. 821.51" ON THAT CERTAIN MAP ENTITLED "BOHANNON INDUSTRIAL PARK UNIT NO. 6" FILED FOR RECORD ON OCTOBER 22, 1963, IN BOOK 59 OF MAPS AT PAGE 11, RECORDS OF SAN MATEO COUNTY;

THENCE ALONG SAID CENTERLINE, SOUTH 67°17'00" EAST, 20.51 FEET;

THENCE AT A RIGHT ANGLE SOUTH 22°43'0" WEST, 30.00 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL 1 AND THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID CONSTITUTION DRIVE;

THENCE LEAVING SAID RIGHT-OF-WAY LINE, ALONG THE NORTHWESTERLY LINE OF SAID PARCEL 1, SOUTH 22°43'00" WEST, 225.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE LEAVING SAID NORTHWESTERLY LINE, SOUTH 67°17'00" EAST, 267.00 FEET TO THE SOUTHEASTERLY LINE OF SAID PARCEL 1;

THENCE ALONG THE SOUTHEASTERLY, SOUTHWESTERLY, AND NORTHWESTERLY LINES OF SAID PARCEL 1 THE FOLLOWING THREE (3) COURSES:

1. SOUTH 22°43'00" WEST, 225.00 FEET TO THE NORTHEASTERLY LINE OF JEFFERSON DRIVE;
2. ALONG SAID NORTHEASTERLY LINE, NORTH 67°17'00" WEST, 267.00 FEET;
3. LEAVING SAID NORTHEASTERLY LINE, NORTH 22°43'00" EAST, 225.00 FEET TO THE POINT OF BEGINNING.

PARCEL B:

ADJUSTED PARCEL 2 AS SHOWN ON LOT LINE ADJUSTMENT NO. 20180527-10, AS EVIDENCED BY DOCUMENT RECORDED JANUARY 18, 2022 AS INSTRUMENT NO. 2022-003974 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 1, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON JANUARY 17, 1978 IN BOOK 40 OF PARCEL MAPS AT PAGES 38 AND 39, RECORDS OF SAN MATEO COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THAT CERTAIN CENTERLINE MONUMENT OF CONSTITUTION DRIVE LOCATED AT THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE LABELED "N. 67°17' W. 821.51" ON THAT CERTAIN MAP ENTITLED "BOHANNON INDUSTRIAL PARK UNIT NO. 6" FILED FOR RECORD ON OCTOBER 22, 1963, IN BOOK 59 OF MAPS AT PAGE 11, RECORDS OF SAN MATEO COUNTY;

THENCE ALONG SAID CENTERLINE, SOUTH 67°17'00" EAST, 20.51 FEET;

THENCE AT A RIGHT ANGLE SOUTH 22°43'00" WEST, 30.00 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL 1 AND THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID CONSTITUTION DRIVE, SAID CORNER ALSO BEING THE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE ALONG SAID RIGHT-OF-WAY LINE, AND ALONG THE NORTHEASTERLY AND SOUTHEASTERLY LINES OF SAID PARCEL 1, THE FOLLOWING TWO (2) COURSES:

1. SOUTH 67°17'00" EAST, 267.00 FEET;
2. LEAVING SAID RIGHT OF WAY LINE, SOUTH 22°43'00" WEST, 225.00 FEET;

THENCE LEAVING SAID SOUTHEASTERLY LINE OF PARCEL 1, NORTH 67°17'00" WEST, 267.00 FEET TO THE NORTHWESTERLY LINE OF SAID PARCEL 1;

THENCE ALONG SAID NORTHWESTERLY LINE, NORTH 22°43'00" EAST, 225.00 FEET TO THE POINT OF BEGINNING.



## **EXHIBIT A-2**

### **Legal Description of Townhome Property**

Real property in the City of Menlo Park, County of San Mateo, State of California, described as follows:

ADJUSTED PARCEL 3 AS SHOWN ON LOT LINE ADJUSTMENT, AS EVIDENCED BY DOCUMENT RECORDED JANUARY 18, 2022 AS INSTRUMENT NO. 2022-003974 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF LOTS 18, 19, AND 20, AS SAID LOTS ARE SHOWN ON THAT CERTAIN MAP ENTITLED "BOHANNON INDUSTRIAL PARK UNIT NO 6" FILED FOR RECORD ON OCTOBER 22, 1963, IN BOOK 59 OF MAPS AT PAGE 11, RECORDS OF SAN MATEO COUNTY.

## **EXHIBIT B**

### **List of Off-Site Improvements**

#### **Off-Site Improvements for Multifamily Component:**

- Sewer Upsize on Jefferson
- Sewer Upsize on Chrysler
- Portion of Water Main Relocation on Constitution (along MF frontage)
- Portion of Gas Main Relocation on Constitution (along MF frontage)
- Gas main relocation on Jefferson
- Electric Undergrounding across Jefferson

#### Parcel adjacent improvements

- Asphalt Paving Improvements
- Concrete Improvements
- Sanitary Sewer
- Storm Drain
- Landscape & Irrigation
- Water
- Dry Utility
- Demolition
- Green Infrastructure

#### **Off-Site Improvements for Townhome Component:**

- Portion of Water Main Relocation on Constitution (along TH Frontage)
- Portion of Gas Main Relocation on Constitution (along TH Frontage)

#### Parcel adjacent improvements

- Asphalt Paving Improvements
- Concrete Improvements
- Sanitary Sewer
- Storm Drain
- Landscape & Irrigation
- Water
- Dry Utility
- Demolition
- Green Infrastructure

## EXHIBIT C

### List of Transportation Improvements

#### Transportation Improvements:

#### **Near Term Transportation Improvements - Requiring Plans and Specifications for Construction (unless modified by City Council):**

##### **Condition of Approval 2.w.iii.**

Under the Near Term scenario, the proposed intersection improvement at the intersection of Willow Road and Bay Road is to modify southbound Bay Road to have two left-turn lanes and one right turn lane. This improvement was studied and is included in the City's TIF program. The proposed improvement would require Caltrans approval. Both above and below ground utilities may require modification due to the widening. Simultaneous with the submittal of a complete building permit application, the applicant shall submit complete plans for this improvement. Complete plans shall include all necessary requirements to construct the improvements, including but not limited to, grading and drainage improvements, utility relocations, tree protection requirements, striping modifications, and a detailed cost estimate. The plans are subject to review by the City. Upon obtaining approval from the Director of Public Works or designee, the applicant shall construct the improvements prior to occupancy of the first building. If Caltrans approval has not been obtained prior to occupancy of the first building, but the applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Director of Public Works or designee, the applicant shall submit to the City a performance bond for 100 percent of the estimated costs plus a 30 percent contingency. The applicant shall continue to pursue approval and construction for a period of five years from the date of issuance of the first 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 to construct the improvement, then the applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City of Menlo Park.

##### **Condition of Approval 2.w.ii.iv.**

Under the Near Term scenario, the proposed intersection improvement at the intersection of Willow Road and Coleman Avenue is to install a right-turn lane on eastbound Willow Road and restripe the shared through/right lane to through lane resulting in having one left-turn lane, one through lane, and one right-turn lane in this direction. Both above and below ground utilities may require modification due to the widening. This improvement is not included in the City's TIF program. Simultaneous with the submittal of a complete building permit application, the applicant shall submit complete plans for this improvement. Complete plans shall include all necessary requirements to construct the improvements, including but not limited to, grading and drainage improvements, utility relocations, tree protection requirements, striping modifications, and a detailed cost estimate. The plans are subject to review by the City. Upon obtaining approval from the Director of Public Works or designee, the applicant shall construct the improvements prior to occupancy. Any project(s) approved within 10 years of the approval date

of the Menlo Uptown project and required to implement the same intersection improvement shall reimburse the Menlo Uptown applicant or its proportional fair share of the improvement costs.

**Condition of Approval 2.ww.v.**

Under the Near Term scenario, the proposed intersection improvement at the intersection of Willow Road and Gilbert Avenue is to install a right-turn lane on eastbound Willow Road and restripe the shared through/right lane to through lane resulting in having one left-turn lane, one through lane, and one right-turn lane in this direction. Both above and below ground utilities may require modification due to the widening. This improvement is not included in the City's TIF program. Simultaneous with the submittal of a complete building permit application, the applicant shall submit complete plans for this improvement. Complete plans shall include all necessary requirements to construct the improvements, including but not limited to, grading and drainage improvements, utility relocations, tree protection requirements, striping modifications and a detailed cost estimate. The plans are subject to review by the City. Upon obtaining approval from the Director of Public Works or designee, the applicant shall construct the improvements prior to occupancy. Any project(s) approved within 10 years of the approval date of the Menlo Uptown project and required to implement the same intersection improvement shall reimburse the Menlo Uptown applicant for its proportional fair share of the improvement costs.

**Cumulative Transportation Improvements - Transportation Improvements Requiring Conceptual Plans and Cost Estimates for Fees (unless modified by City Council):**

**Condition of Approval 2.ww.vi.**

Under the Cumulative scenario, the proposed intersection improvements at the intersection of Chrysler Drive and Jefferson Drive are to install 1) a traffic signal and 2) convert the shared left/right lane to one left-turn lane and one right-turn lane on northbound Jefferson Drive. The installation of a traffic signal was studied and is included in the City's TIF program. The TIF payment will fulfill this requirement. To fulfill the other intersection improvement, 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. The fair share contribution for the intersection improvement, calculated as 7.4% of the cost estimate, shall be paid prior to the issuance of a building permit. If these funds are not used within a 5-year period, they will be returned to the Applicant.

**Condition of Approval 2.ww.vii.**

Under the Cumulative scenario the proposed intersection improvement at the intersection of Chilco Street and Bayfront Expressway is to modify the center left-turn lane to shared left-/right lane on Chilco Street and re-design the existing shared bike lane, resulting in having one left-turn lane, one shared left/right lane, and one right-turn lane. This improvement is not included in the City's TIF program. To fulfill this improvement, 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. The fair share contribution for the intersection improvement, calculated as 2.2% of the cost estimate, shall be paid prior to the issuance of a

building permit. If these funds are not used within a 5-year period, they will be returned to the Applicant.

**Condition of Approval 2.ww.viii.**

Under the Cumulative scenario, the proposed improvement at the intersection of Chilco Street and Constitution Drive is to install a left-turn lane and convert the shared left/through lane to through lane on southbound Constitution Drive resulting in having one left-turn lane, one through lane, and one right-turn lane. Applicant shall provide a conceptual plan of the following improvement and a cost estimate (including design engineering) for approval by the Transportation Division to determine the fair share contribution. This improvement is not included in the City's TIF program. The fair share contribution for the intersection improvement, calculated as 3.5% of the cost estimate, shall be paid prior to the issuance of a building permit. If these funds are not used within a 5-year period, they will be returned to the Applicant.

**Transportation Improvements Not Required to be Constructed**

**Condition of Approval 2.ww.i**

Under the Near Term scenario, the proposed intersection improvement at the intersection of Marsh Road and Bayfront Expressway/Haven Avenue is to restripe the through lane on Haven Avenue to a shared through/right lane resulting in having one shared left/through lane, one shared through/right lane, and one right-turn lane. This improvement was studied and is included in the city's TIF program. Note this improvement has been initiated. The applicant shall consult with the City for direction prior to proceeding to the next step and the applicant's obligation. Simultaneous with the submittal of a complete building permit application, the applicant shall submit complete plans for this improvement. Complete plans shall include all necessary requirements to construct the improvements, including but not limited to, grading and drainage improvements, utility relocations, tree protection requirements, striping modifications, and a detailed cost estimate. The plans are subject to review by the City. Upon obtaining approval from the Director of Public Works or designee, the applicant shall construct the improvement prior to occupancy.

**Condition of Approval 2.ww.ii**

Under the Near Term scenario, the proposed intersection improvement at the intersection of Willow Road and Newbridge Street is to modify signal timing to a protected left-turn phasing operation on Newbridge Street. Provide a leading left-turn phase on southbound Newbridge Street and a lagging left-turn phase on northbound Newbridge Street and optimize the signal timing. This improvement was studied and is included in the City's TIF program. The proposed improvement would require Caltrans approval. Signal and other electrical utilities and equipment will also require modification. Note this improvement has been initiated. The applicant shall consult with the City for direction prior to proceeding to the next step and the applicant's obligation. Simultaneous with the submittal of a complete building permit application, the applicant shall submit complete plans for this improvement. Complete plans shall include all necessary requirements to construct the improvements, including but not limited

to, grading and drainage improvements, utility relocations, tree protection requirements, striping modifications, and a detailed cost estimate. The plans are subject to review by the City. Upon obtaining approval from the Director of Public Works or designee, the applicant shall construct the improvements prior to occupancy of the first building. If Caltrans approval has not been obtained prior to occupancy of the first building, but the applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Director of Public Works or designee, the applicant shall submit to the City a performance bond for 100 percent of the estimated costs plus a 30 percent contingency. The applicant shall continue to pursue approval and construction for a period of five years from the date of issuance of the first 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 to construct the improvement, then the applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City of Menlo Park.

## **EXHIBIT D**

### **Documentation Required by City Pursuant to Sections 2 (g) (i) and 2 (g) (ii)**

#### **Multifamily Component Requirements Pursuant to Section 2 (g) (i)**

1. Approved Multifamily Improvement Plans and Transportation Improvement Plans
2. Offer of dedication of Off-Site Improvements for the Multifamily Component from Developer to City upon Acceptance of Off-Site Improvements
3. Offer of dedication of Near Term Transportation Improvements for the Project from Developer to City upon Acceptance of Near Term Transportation Improvements
4. Offer of dedication of real property interests, if any, from Developer to City upon Acceptance of Off-Site Improvements and Near Term Transportation Improvements
5. Deeds/public easement agreements, if necessary
6. Insurance Certificates
7. Multifamily Engineer's Estimate
8. Payment and Performance/Warranty Bonds in amount of Multifamily Engineer's Estimate and Transportation Engineer's Estimate
9. Encroachment Permits for work in public right of way.

#### **Townhome Component Requirements Pursuant to Section 2 (g) (ii)**

1. Approved Townhome Improvement Plans
2. Offer of dedication of Off-Site Improvements for the Townhome Component from Developer to City upon Acceptance of Off-Site Improvements
3. Offer of dedication of real property interests, if any, from Developer to City upon Acceptance of Off-Site Improvements and Near Term Transportation Improvements
4. Deeds/public easement agreements, if necessary
5. Insurance Certificates
6. Townhome Engineer's Estimate
7. Payment and Performance/Warranty Bonds in amount of Townhome Engineer's Estimate
8. Encroachment Permits for work in public right of way.

## **EXHIBIT E**

### **Documentation Required by City Pursuant to Section 2 (g) (iii) to Request Notice of Completion**

1. Developer Request Letter for Determination of Completeness (“DOC”)
2. Contractor Substantial Completion Letter
3. Civil Engineer Completion Notice
4. Geotechnical Engineer Completion Letter
5. Landscape Architect Completion Notice
6. City Final Punch-list Approval
7. Utility Conformance Letter (as applicable)
8. As-Built Plan Approval
9. Recorded Notice of Completion
10. Survey Monuments
11. Test Reports
12. Joint Trench Conduits mandrel test (as applicable)
13. Confirmation of Removal of all Non-Compliance Reports (“NCR”)
14. Confirmation of all Change Orders/Instructional Bulletins
15. Confirmation from City that Spare Parts have been provided (as applicable)
16. Operation and Maintenance Manuals (as applicable)
17. DOC Recommendation from Public Works



## **EXHIBIT F**

### **Documentation Required by City Pursuant to Section 2 (g) (iv) to Request Acceptance by Public Works Director**

1. Developer Request for Acceptance Letter
2. Lien Notification to General Contractor and Subs
3. Utility Bill of Sale (as applicable)
4. 3rd Party Reimbursement Checks-Copies
5. Assignment of Warranties and Guaranties
6. License Agreements (as applicable)
7. Mechanic's Lien Guarantee
8. Modified Offers of Off-Site Improvements (as applicable)
9. Updated Grant Deeds (as applicable)

## EXHIBIT G-1

### Performance/Warranty Bond

(Chapter 5, Division 2, Title 7 of California Government Code)

Bond no. \_\_\_\_\_

WHEREAS, the CITY OF MENLO PARK, a California municipal corporation (“**Owner**”), has approved the [*Multifamily Improvement Plans OR Townhome Improvement Plans (insert actual title of plans)*], prepared by [*Name of Engineering Firm*] and dated \_\_\_\_\_, 2022 (“**Improvement Plans**”), which improvements described therein are required to be constructed as set forth in that certain Public Improvement Agreement dated \_\_\_\_\_, 2022, by and between Owner, CLPF GRP Uptown Menlo Park, LLC, and CLPF CRP TH Menlo Park, LLC (“**Agreement**”); and

WHEREAS, [*insert name of developer*](“**Developer**”) is required to furnish a bond in connection with the construction of the improvements shown on said Improvement Plans in the amount of the Engineer’s Estimate (as said term is defined in the Agreement) (\$ \_\_\_\_\_) (“**Penal Sum**”) as security for the faithful performance of the work to be performed, which upon completion and acceptance of the constructed improvements by the Owner, converts to a warranty bond equal to ten (10%) of the Engineer’s Estimate (\$ \_\_\_\_\_), for the warranty of the accepted improvements for a period of one (1) year; and

WHEREAS, this Bond consists of this page and the Bond Terms And Conditions, Paragraphs 1 through 14, attached to this page.

NOW, THEREFORE, we the undersigned Developer and, \_\_\_\_\_, as Surety are held and firmly bound unto the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) to be paid to the Owner, for which payment, we bind ourselves, jointly and severally.

[Signature Pages to Follow]

Dated: \_\_\_\_\_, 2022

**DEVELOPER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**SURETY:**

[insert name of Surety]

By: \_\_\_\_\_  
Attorney-in-fact

Correspondence or claims relating to this bond should be sent to the Surety at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note: Signature of those executing for the Surety must be properly acknowledged, and a power of attorney attached.

**CERTIFICATE OF ACKNOWLEDGMENT**

State of California, County of San Mateo.

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2022 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument as the attorney-in-fact of \_\_\_\_\_, and acknowledged to me that he (she) subscribed the name of the said company thereto as surety, and his (her) own name as attorney-in-fact.

(SEAL)

\_\_\_\_\_  
Notary Public

## BOND TERMS AND CONDITIONS

1. Developer and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner for the complete and proper performance of the Agreement, which is incorporated herein by reference.
2. If Developer completely and properly performs all of its obligations under the Agreement, Surety and Developer shall have no obligation under this Bond.
3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
  - 3.1 Owner provides Surety with written notice that Owner has declared a default under the Agreement pursuant to the terms of the Agreement.
4. When Owner has satisfied the conditions of Paragraph 3 above, Surety shall promptly (within forty (40) days) and at Surety's expense elect to take one of the following actions:
  - 4.1 Arrange for Developer, with consent of Owner, to perform and complete the Agreement (but Owner may withhold consent, in which case the Surety must elect an option described in Paragraphs 4.2, 4.3 or 4.4 below); or
  - 4.2 Undertake to perform and complete the Agreement itself, through its agents or through independent contractors or construction entities; provided, that Surety may not select Developer as its agent or independent contractor or Developer without Owner's consent; or
  - 4.3 Undertake to perform and complete the Agreement by obtaining bids from qualified contractors or Construction entities acceptable to Owner for a contract for performance and completion of the Agreement and, upon determination by Owner of the lowest responsive and responsible Bidder, arrange for a contract to be prepared for execution by Surety and the contractor or Developer selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Agreement; or
  - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor or Developer, and with reasonable promptness under the circumstances and, after investigation and consultation with Owner, determine in good faith its monetary obligation to Owner under Paragraph 6 below, for the performance and completion of the Agreement and, as soon as practicable after the amount is determined, tender payment therefor to Owner with full explanation of the payment's calculation. If Owner accepts Surety's tender under this Paragraph 4.4, Owner may still hold Surety liable for future damages then unknown or unliquidated resulting from the Developer's default, as agreed by Owner and Surety at the time of tender. If Owner disputes the amount of Surety's tender under this Paragraph 4.4, Owner may exercise all remedies available to it at law to enforce Surety's liability under Paragraphs 6 and 7 below.

5. At all times Owner shall be entitled to enforce any remedy available to Owner at law or under the Agreement including, without limitation, and by way of example only, rights to perform work, protect Work, mitigate damages, advance critical Work to mitigate schedule delay, and coordinate Work with other consultants or contractors.
6. If Surety elects to act under Paragraphs 4.1, 4.2 or 4.3 above, within the time period provided in Paragraph 4, above, and complies with its obligations under this Bond, Surety's obligations under this Bond are commensurate with Developer's obligations under the Agreement. Surety's obligations include, but are not limited to:
  - 6.1 Developer's obligations to complete the Agreement and correct Defective Work;
  - 6.2 Developer's obligations to pay liquidated damages, if applicable; and
  - 6.3 To the extent otherwise required of Developer under the Agreement, Developer's obligations to pay additional legal, design professional, and other costs not included within liquidated damages resulting from Developer Default (but excluding attorney's fees incurred to enforce this Bond).
7. If Surety does not elect to act under Paragraphs 4.1, 4.2, 4.3, or 4.4, above, within the time period provided in Paragraph 4, above, or comply with its obligations under this Bond, then Surety shall be deemed to be in default on this Bond ten Days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond. Such Surety default shall be independent of the Developer Default. To the extent Surety's independent default causes Owner to suffer damages including, but not limited to, delay damages, which are different from, or in addition to (but not duplicative of) damages which Owner is entitled to receive under the Agreement, Surety shall also be liable for such damages. In the event any Surety obligation following its independent default is inconsistent or conflicts with California Civil Code Section 2809, or any other law which either prohibits, restricts, limits or modifies in any way any obligation of a surety which is larger in amount or in any other respect more burdensome than that of the principal, Surety hereby waives the provisions of such laws to that extent.
8. If Surety elects to act under Paragraphs 4.1, 4.3 or 4.4 above, within the time period provided in Paragraph 4, above, and complies with all obligations under this Bond, Surety's monetary obligation under this Bond is limited to the Penal Sum.
9. No right of action shall accrue on this Bond to any person or entity other than Owner or its successors or assigns.
10. Surety hereby waives notice of any change, alteration or addition to the Agreement or to related subcontracts, design agreements, purchase orders and other obligations, including changes of time, and of any Owner action in accordance with Paragraph 5 above. Surety consents to all terms of the Agreement, including provisions on changes to the Agreement. No extension of time, change, alteration, modification, deletion, or addition to the Agreement, Plans and Specifications, or of the work (including services) required thereunder, or any Owner action in accordance with Paragraph 5 above shall release or

exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond, unless such action is an Owner Default.

11. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between Owner and Developer regarding the Agreement, or in the courts of the County of San Mateo, or in a court of competent jurisdiction in the location in which the work is located.
12. All notices to Surety or Developer shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to Owner shall be mailed or delivered as provided in the Agreement. Actual receipt of notice by Surety, Owner or Developer, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
13. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted here from and provisions conforming to such statutory requirement shall be deemed incorporated herein.
14. Definitions
  - 14.1 Agreement: That certain Public Improvement Agreement dated \_\_\_\_\_, 2022, by and between Developer and Owner, including any amendments or addenda thereto.
  - 14.2 Developer Default: Material failure of Developer, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Agreement.
  - 14.3 Owner Default: Material failure of Owner, which has neither been remedied nor waived, to perform material terms of the Agreement, if such failure is the cause of the asserted Developer Default.

**END OF DOCUMENT**

## EXHIBIT G-2

### Payment Bond

(Chapter 5, Title 3, Part 6, Division 4 of California Civil Code or Chapter 5, Division 2, Title 7 of California Government Code)

Bond No. \_\_\_\_\_

WHEREAS, the CITY OF MENLO PARK, a California municipal corporation (“**Owner**”), has approved the [*Multifamily Improvement Plans OR Townhome Improvement Plans (insert actual title of plans)*], prepared by [*Name of Engineering Firm*] and dated \_\_\_\_\_, 2022 (“**Improvement Plans**”), which improvements described therein are required to be constructed as set forth in that certain Public Improvement Agreement dated \_\_\_\_\_, 2022, by and between Owner, CLPF GRP Uptown Menlo Park, LLC, and CLPF CRP TH Menlo Park, LLC (“**Agreement**”); and

WHEREAS, [*insert name of developer*] (“**Developer**”) is required to furnish a Payment Bond in connection with said Agreement, to secure the payment of claims of laborers, mechanics, material men and other persons as provided by law.

NOW, THEREFORE, we, the undersigned Developer and \_\_\_\_\_, as Surety, are held and firmly bound unto Owner in the sum of the Engineer’s Estimate (as defined in the Agreement) (\$ \_\_\_\_\_) (“**Penal Sum**”), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if Developer, or its executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Agreement, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Developer and subcontractors pursuant to Section 13020 of the State of California Unemployment Insurance Code with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the Penal Sum specified in this bond, plus reasonable attorneys’ fees, otherwise the above obligation shall become and be null and void.

This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic’s Lien Law.

Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the



Agreement, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder.

Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with the Agreement; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.

Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_ day of \_\_\_\_\_, 2022.

[Signature Pages to Follow]

Dated: \_\_\_\_\_, 2022

**DEVELOPER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**SURETY:**

[insert name of Surety]

By: \_\_\_\_\_

Attorney-in-fact

Correspondence or claims relating to this bond should be sent to the Surety at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note: Signature of those executing for the surety must be properly acknowledged, and a power of attorney attached.

**CERTIFICATE OF ACKNOWLEDGMENT**

State of California, County of San Mateo.

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2022 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument as the attorney-in-fact of \_\_\_\_\_, and acknowledged to me that he (she) subscribed the name of the said company thereto as surety, and his (her) own name as attorney-in-fact.

(SEAL)

\_\_\_\_\_  
Notary Public



## STAFF REPORT

### City Council

**Meeting Date:**

**1/10/2023**

**Staff Report Number:**

**23-010-CC**

### Regular Business:

**Appoint City Council representatives and alternates to various local and regional agencies and as liaisons and members to City Council advisory bodies**

### Recommendation

Staff recommends that the City Council:

1. Appoint representatives and alternates to various local and regional agencies
2. Appoint members to applicable advisory bodies
3. Appoint liaisons to applicable advisory bodies

### Policy Issues

The proposed action conforms to the current practice of annually updating the City Council's appointments to various local and regional agencies, boards and City Council-appointed advisory bodies.

### Discussion

Each year, after the City Council reorganization, City Council appoints its members to represent the City or liaison for City Council. Attachment A is a full roster of current City Council assignments for 2022. Attachment B includes a brief description of each agency's purpose and respective meeting schedule.

On November 13, 2022 City Councilmember Combs, notified then Mayor Nash and the city manager of the intention to resign from Bay Area Water Supply and Conservation Agency (BAWSCA) board before the end of the term (June 25, 2025.) As such, the City Council should identify a replacement.

On October 11, 2022 then City Councilmember Wolosin, requested that the City Council consider whether appointments should be made to the Palo Alto Community Fund Advisory Board and Community Trust.

The City Council may also wish to consider whether to establish a liaison with each school district or whether to broaden the scope of the liaison role to all school districts. If the City Council decides to broaden the scope, then it could be appropriate to include the Community Trust as part of the scope of the school district liaison.

The cities of East Palo Alto and Palo Alto have expressed a desire to reestablish quarterly meetings of the mayors of all three cities and include the vice mayors as well.

The City Council should also determine whether to appoint someone to the Searsville Advisory Group.

### **Impact on City Resources**

There is no impact on City resources associated with this action outside of any associated membership dues, meeting related expenses, and/or staff assistance required and budgeted.

### **Environmental Review**

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

### **Public Notice**

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

### **Attachments**

- A. List of current 2022 City Council assignments
- B. 2023 City Council assignments to regional boards and advisory bodies

Report prepared by:

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

<b>MAYOR ASSIGNMENTS</b>	<b>2022 Primary</b>	<b>2022 Alternate</b>
Association of Bay Area Governments (ABAG)	Betsy Nash	Jen Wolosin
League of California Cities (Peninsula Division)	Betsy Nash	Jen Wolosin
Menlo Park Chamber of Commerce / City liaison position	Betsy Nash	Jen Wolosin
San Mateo County Council of Cities and City Selection Committee	Betsy Nash	Jen Wolosin
<b>REGIONAL BOARD MEMBERS</b>	<b>2022 Member</b>	
Bay Area Water Supply & Conservation Agency (BAWSCA) - through June 25, 2025	Drew Combs	
<b>REGIONAL ASSIGNMENTS</b>	<b>2022 Primary</b>	<b>2022 Alternate</b>
Caltrain Modernization Local Policy Group	Jen Wolosin	Ray Mueller
City/County Association of Governments of San Mateo County (C/CAG)	Cecilia Taylor	Drew Combs
County of Santa Clara Community Resources Group for Stanford University	Ray Mueller	Cecilia Taylor
Emergency Services Council (San Mateo County JPA)	Cecilia Taylor	Drew Combs
Facebook Local Community Fund	Cecilia Taylor	Betsy Nash
Grand Boulevard Task Force	Jen Wolosin	Drew Combs
HEART Board Member Agency Committee (MAC)	Ray Mueller	Jen Wolosin
Home for All	Cecilia Taylor	n/a
Peninsula Clean Energy (PCE) Community Choice Energy	Betsy Nash	Jen Wolosin
Peninsula Traffic Congestion Relief Alliance (Commute.org)	Jen Wolosin	Drew Combs
San Francisquito Creek Joint Powers Authority	Drew Combs	Cecilia Taylor
San Mateo County Mosquito and Vector Control District - through December 31, 2024	Catherine Carlton*	n/a
SFO Airport/Community Roundtable	Cecilia Taylor	Jen Wolosin
South Bayside Waste Management Authority (SBWMA)	Cecilia Taylor	Drew Combs
<b>CITY COUNCIL ADVISORY BODY MEMBERS</b>	<b>2022 Member 1</b>	<b>2022 Member 2</b>
Finance and Audit Committee	Cecilia Taylor	Jen Wolosin
<b>ADVISORY BODY LIAISONS</b>	<b>2022 Member</b>	
Complete Streets Commission	Cecilia Taylor	
Environmental Quality Commission	Betsy Nash	
Housing Commission	Drew Combs	
Library Commission	Ray Mueller	
Parks and Recreation Commission	Drew Combs	
Planning Commission	Jen Wolosin	
<b>OUTSIDE AGENCY LIAISONS</b>	<b>2022 Member 1</b>	<b>2022 Member 2</b>
Menlo Park City School District	Ray Mueller	Drew Combs
Menlo Park Fire Protection District	Ray Mueller	Drew Combs
San Mateo County Flood and Sea Level Rise District (FSLR, OneShoreline)	Cecilia Taylor	Betsy Nash

\*appointed on December 14, 2021 to serve through December 31, 2024

# 2023 CITY COUNCIL ASSIGNMENTS TO REGIONAL BOARDS AND ADVISORY BODIES



City Council  
 701 Laurel St., Menlo Park, CA 94025  
 tel 650-330-6610  
[menlopark.gov/citycouncil](http://menlopark.gov/citycouncil)

Regional assignments (Mayor and/or Vice Mayor)			
Assignment	Details	Meeting time / location	Representative / alternate
<p><b>Association of Bay Area Governments (ABAG)</b></p> <p>The Association of Bay Area Governments (ABAG) is the comprehensive regional planning agency and Council of Governments for the nine counties and 101 cities and towns of the San Francisco Bay Region. The region encompasses Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma counties. Its work covers areas such as land use, housing, environmental quality and economic development.</p>	<p>Type:                      Joint Powers Authority                      Brown Act body</p> <p>Started:                      1961</p> <p>Website:  <a href="https://abag.ca.gov/">https://abag.ca.gov/</a></p>	<p>Meets 1-2 times annually at 11 a.m.                      Bay Area Metro Center                      375 Beale St, San Francisco, CA</p>	<p>Primary (Mayor):                      Wolosin</p> <p>Alternate (Vice Mayor):                      Taylor</p>
<p><b>League of California Cities – Peninsula Division</b></p> <p>The Peninsula Division includes 36 cities in San Francisco, San Mateo, and Santa Clara counties and provides members with the opportunity to exchange ideas and information and share the advantages of cooperative advocacy.</p>	<p>Website: <a href="https://www.calcities.org/get-involved/regional-divisions/peninsula-division">https://www.calcities.org/get-involved/regional-divisions/peninsula-division</a></p>	<p>The Peninsula Division holds four meetings a year, with an occasional special meeting as warranted. Division dinners are open to all division members. Tentative meeting dates in various locations:                      January 25, 2023                      March 22, 2023                      June 22, 2023                      September 13, 2023 (CitiPAC Event) – in-person: Filoli Historic House and Garden                      86 Cañada Rd, Woodside, CA                      October 25, 2023</p>	<p>Primary (Mayor):                      Wolosin</p> <p>Alternate (Vice Mayor):                      Taylor</p>

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<b>Regional assignments (Mayor and/or Vice Mayor) (continued)</b>			
Assignment	Details	Meeting time / location	Representative / alternate
<p><b>Menlo Park Chamber of Commerce</b></p> <p>The Mayor and Mayor Pro Tem generally serve as the liaisons to the Chamber of Commerce and attend Chamber board meetings to provide updates and hear from board members.</p>	<p>Type: Community organization Not a Brown Act body</p> <p>Website: <a href="http://menloparkchamber.com">http://menloparkchamber.com</a></p>	<p>Meets monthly on the third Thursday with City representatives joining at 9 a.m. Chamber of Commerce-Board Room virtual</p>	<p>Primary (Mayor): Wolosin</p> <p>Alternate (Vice Mayor): Taylor</p>
<p><b>Peninsula Traffic Congestion Relief Alliance (Commute.org)</b></p> <p>Commute.org's mission is to reduce the number of vehicle miles traveled (VMT) by commuters to decrease congestion, improve the environment, and enhance quality of life. This is done by encouraging and supporting the use of sustainable alternatives to driving alone. They envision a region where all residents and employees have access to equitable, sustainable, affordable, and safe transportation options and use them as their primary modes when commuting on the Peninsula.</p>	<p>Type: Brown Act body</p> <p>Website: <a href="https://commute.org/about/">https://commute.org/about/</a></p>	<p>Five scheduled meetings each year at 8 a.m. Various locations</p>	<p>Primary (Mayor): Wolosin</p> <p>Alternate (Vice Mayor): Taylor</p>
<p><b>San Mateo County Council of Cities and City Selection Committee</b></p> <p>The San Mateo County elected officials meet once a month to discuss issues of interest and usually a speaker is part of the program. (Bylaws require the Mayor to be the voting member.)</p> <p>The City Selection Committee is required to appoint city representatives to board, commissions, and agencies as required by law (California Government Code §50270). City Selection Committee is comprised of Mayors of all 20 incorporated cities/towns in San Mateo County.</p>	<p>Type: Brown Act body</p> <p>Website: <a href="https://www.smcgov.org/ceo/city-selection-committee">https://www.smcgov.org/ceo/city-selection-committee</a></p>	<p>The San Mateo County Council of Cities meets monthly, generally at 5:30 p.m., and typically on Fridays. Various locations</p> <p>The City Selection Committee meets annually in December. Colma Fire House 50 Reiner St, Colma, CA</p>	<p>Primary (Mayor): Wolosin</p> <p>Alternate (Vice Mayor): Taylor</p>



Regional board appointments			
Assignment	Details	Meeting time / location	Representative
<p><b>Bay Area Water Supply &amp; Conservation Agency (BAWSCA)</b></p> <p>The Bay Area Water Supply &amp; Conservation Agency (BAWSCA) was enabled by Assembly Bill No. 2058 and has the authority to coordinate water conservation, supply and recycling activities for its members; acquire water and make it available to other agencies on a wholesale basis; finance projects, including improvements to the regional water system; and build facilities jointly with other local public agencies or on its own to carry out BAWSCA's purposes.</p>	<p>Type: Brown Act body</p> <p>Website: <a href="http://bawasca.org">http://bawasca.org</a></p>	<p>Meets on the third Thursday of every other month at 6:30 p.m. Various locations</p>	<p>Drew Combs through June 25, 2025</p>

<b>Regional assignments</b>			
<b>Assignment</b>	<b>Details</b>	<b>Meeting time / location</b>	<b>Representative / alternate</b>
<p><b>Airport Community Roundtable</b></p> <p>Eighteen cities, the operator of San Francisco International Airport (SFO) the City and County of San Francisco and the County of San Mateo comprise the Roundtable, a voluntary public forum established in 1981 for the discussion and implementation of noise mitigation strategies at SFO.</p>	<p>Type: Voluntary public forum Brown Act body</p> <p>Started: 1981</p> <p>Website: <a href="http://sforoundtable.org">http://sforoundtable.org</a></p>	<p>Generally, first Wednesday of the month at 7 p.m. Millbrae City Hall 621 Magnolia Ave, Millbrae, CA</p>	<p>Primary:</p> <p>Alternate:</p>
<p><b>Caltrain Modernization Local Policy Group</b></p> <p>The Caltrain Modernization Program will electrify and upgrade the performance, operating efficiency, capacity, safety and reliability of Caltrain's commuter rail service.</p>	<p>Type: Advisory body Brown Act body</p> <p>Started: 2012</p> <p>Website: <a href="http://www.caltrain.com/projectsplans/CaltrainModernization/Local_Policy_Maker_Group.html">http://www.caltrain.com/projectsplans/CaltrainModernization/Local_Policy_Maker_Group.html</a></p>	<p>Meets monthly on the fourth Thursday, 5:30 p.m. Edward J. Bacciocco Auditorium, SamTrans Administrative Offices 2nd Floor, 1250 San Carlos Ave, San Carlos, CA</p>	<p>Primary:</p> <p>Alternate:</p>
<p><b>City/County Association of Governments (C/CAG)</b></p> <p>The City/County Association of Governments of San Mateo County (C/CAG) deals with issues that affect the quality of life in general; transportation, air quality, stormwater runoff, hazardous waste, solid waste and recycling, land use near airports and abandoned vehicle abatement. C/CAG provides a unique forum for the cities and the County to work together on common issues to develop cost-effective solutions. The Board consists of 21 members with one from each city (20) and the County of San Mateo.</p>	<p>Type: Joint Powers Authority Brown Act body</p> <p>Website: <a href="http://ccag.ca.gov">http://ccag.ca.gov</a></p>	<p>Meets monthly on the second Thursday at 6:30 p.m. San Mateo County Transit District Office 1250 San Carlos Ave, 2nd Floor Auditorium San Carlos, CA</p>	<p>Primary:</p> <p>Alternate:</p>
<p><b>Stanford Community Resource Group</b></p> <p>The Stanford Community Resource Group (CRG) is composed of 8-12 members. The group serves as a mechanism for information exchange and perspectives on Stanford development issues. Members are appointed by the County Planning Director in consultation with the District 5 Supervisor.</p>	<p>Type: Brown Act body</p> <p>Website: <a href="https://plandev.sccgov.org/policies-programs/stanford-university/stanford-community-resource-group">https://plandev.sccgov.org/policies-programs/stanford-university/stanford-community-resource-group</a></p>	<p>Meets monthly on the second Thursday at 7 p.m. Palo Alto Art Center 1313 Newell Road, Palo Alto, CA</p>	<p>Primary:</p> <p>Alternate:</p>

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<b>Regional assignments (continued)</b>			
<b>Assignment</b>	<b>Details</b>	<b>Meeting time / location</b>	<b>Representative / alternate</b>
<p><b>Emergency Services Council (San Mateo County Joint Powers Authority)</b></p> <p>The Emergency Services Council oversees the emergency planning, training and exercises in the various cities and reviews and recommends policies, programs and plans for adoption.</p>	<p>Type: Joint Powers Authority Brown Act body</p> <p>Website: <a href="https://www.smcgov.org/ceo/emergency-management-governance">https://www.smcgov.org/ceo/emergency-management-governance</a></p>	Meets quarterly on Thursdays, 5:30 p.m.	<p>Primary:</p> <p>Alternate:</p>
<p><b>Facebook Local Community Fund</b></p> <p>The Facebook Local Community Fund, a partner fund of Philanthropic Ventures Foundation, designed to support 501(c)(3) non-profits serving the East Palo Alto and Belle Haven communities through grant funds awarded following review by the community fund board of directors.</p>	<p>Type: 501(c)(3) public charity Not a Brown Act body</p> <p>Website: <a href="http://www.venturesfoundation.org/programs/community-initiatives/facebook-local-community-fund/">http://www.venturesfoundation.org/programs/community-initiatives/facebook-local-community-fund/</a></p>	Meets as needed.	<p>Primary:</p> <p>Alternate:</p>
<p><b>Grand Boulevard Initiative Taskforce</b></p> <p>The Grand Boulevard is a collaboration of 29 cities, counties, local and regional agencies united to improve the performance, safety and aesthetics of El Camino Real. Starting at the northern Daly City limit (where it is named Mission Street) and ending near the Diridon Caltrain Station in central San Jose (where it is named The Alameda), the initiative brings together for the first time all of the agencies having responsibility for the condition, use and performance of the street.</p>	<p>Type: Not a Brown Act body</p> <p>Website: <a href="http://grandboulevard.net">http://grandboulevard.net</a></p>	Meets annually.	<p>Primary:</p> <p>Alternate:</p>
<p><b>HEART Board Member Agency Committee (MAC)</b></p> <p>The MAC is composed of nine public HEART Board Members and a City Council member from each member city that does not have a representative on the HEART Board. The purpose of the MAC is to engage with cities that are not on the HEART Board and to provide you with the opportunity to comment on HEART's financial and program activities.</p>	<p>Type: Brown Act body</p> <p>Website: <a href="https://www.heartofsmc.org/events/member-agency-committee-mac-annual-meeting/">https://www.heartofsmc.org/events/member-agency-committee-mac-annual-meeting/</a></p>	Meets as needed at various times. County of San Mateo Dept. of Housing 264 Harbor Blvd Building A, Belmont, CA	<p>Primary:</p> <p>Alternate:</p>

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<b>Regional assignments (continued)</b>			
<b>Assignment</b>	<b>Details</b>	<b>Meeting time / location</b>	<b>Representative / alternate</b>
<p><b>Peninsula Clean Energy Authority (PCE)</b></p> <p>Peninsula Clean Energy is San Mateo County's official electricity provider. Peninsula Clean Energy offers lower rates and the added benefit of two electricity options, each with a different percentage of sustainable energy. ECOplus rates are 5% below PG&amp;E's standard rates. ECO100 offers 100% renewable, ghg-free energy at a cost of just \$0.01 per kWh extra.</p>	<p>Type: Joint Powers Authority Brown Act body</p> <p>Started: 2016</p> <p>Website: <a href="http://www.peninsulacleanenergy.com">http://www.peninsulacleanenergy.com</a></p>	<p>Meets monthly on the fourth Thursday at 6:30 p.m. Peninsula Clean Energy Office 2075 Woodside Rd, Redwood City, CA</p>	<p>Primary:</p> <p>Alternate:</p>
<p><b>San Francisquito Creek Joint Powers Authority</b></p> <p>The San Francisquito Creek JPA is an agency empowered to protect and maintain the 14-mile San Francisquito Creek and its 45 square-mile watershed and address concerns regarding flooding and environmental preservation. Members include the cities of Menlo Park, East Palo Alto, and Palo Alto; the counties of San Mateo and Santa Clara; as well as Stanford and the Santa Clara Valley Water District.</p>	<p>Type: Joint Powers Authority Brown Act body</p> <p>Website: <a href="http://sfcjpa.org">http://sfcjpa.org</a></p>	<p>Meets monthly on the fourth Thursday of the month at 3:30 p.m. Rotates: Menlo Park City Council Chambers 751 Laurel Ave, Menlo Park, CA East Palo Alto City Council Chambers 2415 University Ave, East Palo Alto, CA California Palo Alto City Council Chambers 250 Hamilton Ave, Palo Alto, CA</p>	<p>Primary:</p> <p>Alternate:</p>
<p><b>San Mateo County Mosquito and Vector Control District</b></p> <p>San Mateo County Mosquito and Vector Control District uses an integrated pest management strategy to safeguard the health and comfort of the residents of San Mateo County. Their service area includes the entirety of San Mateo County</p>	<p>Type: Brown Act body</p> <p>Website: <a href="https://www.smcmvcd.org/board-of-trustees">https://www.smcmvcd.org/board-of-trustees</a></p>	<p>Meets monthly on the second Wednesday of the month at 6 p.m. District Office 1351 Rollins Rd, Burlingame, CA</p>	<p>Primary: Carlton through December 31, 2024*</p>

\*appointed on December 14, 2021 to serve through December 31, 2024

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Regional assignments (continued)			
Assignment	Details	Meeting time / location	Representative / alternate
<p><b>South Bayside Waste Management Authority (SBWMA)</b></p> <p>RethinkWaste is a joint powers authority of twelve public agencies in San Mateo County, and organized to jointly manage the franchise agreement with Recology San Mateo County for the collection of garbage, recycling and green waste.</p>	<p>Type: Joint Powers Authority Brown Act body</p> <p>Website: <a href="https://rethinkwaste.org/about/board-of-directors/">https://rethinkwaste.org/about/board-of-directors/</a></p>	<p>Meets monthly on the fourth Thursday of the month at 3 p.m. Silicon Valley Clean Water Administrative Offices 2nd Floor, Pelican Conference Room 1400 Radio Rd Redwood Shores, CA</p>	<p>Primary:</p> <p>Alternate:</p>

City Council advisory body members assignments			
Assignment	Details	Meeting time / location	Members
<p><b>Finance and Audit Committee</b> (2 members, not liaisons)</p> <p>The Finance and Audit Committee is charged primarily to support delivery of timely, clear and comprehensive reporting of the City's fiscal status to the community at large.</p>	<p>Type: City Council-appointed advisory body Brown Act body</p> <p>Website: <a href="http://menlopark.gov/FAC">menlopark.gov/FAC</a></p>	<p>Meets third Thursday of every quarter at 5:30 p.m. Menlo Park City Hall-Downtown Conference Room 1st Floor, 701 Laurel St, Menlo Park, CA City Hall</p>	<p>Member:</p> <p>Member:</p>

<b>Advisory body liaison assignments</b>			
<b>Assignment</b>	<b>Details</b>	<b>Meeting time / location</b>	<b>Liaison</b>
<p><b>Complete Streets Commission</b></p> <p>The Complete Streets Commission is charged primarily with advising the City Council on realizing the City's adopted goals for complete streets, vision zero, climate action plan, and provide input on major land use and development projects as it relates to transportation.</p>	<p>Type: City Council-appointed advisory body Brown Act body</p> <p>Website: <a href="http://menlopark.gov/CSC">menlopark.gov/CSC</a></p>	<p>Meets monthly on the second Wednesday, 6:30 p.m. Menlo Park City Hall-Downtown Conference Room 1st Floor, 701 Laurel St, Menlo Park, CA City Hall</p>	Liaison:
<p><b>Environmental Quality Commission</b></p> <p>The Environmental Quality Commission is charged primarily with advising the City Council on matters involving environmental protection, improvement and sustainability.</p>	<p>Type: City Council-appointed advisory body Brown Act body</p> <p>Website: <a href="http://menlopark.gov/EQC">menlopark.gov/EQC</a></p>	<p>Meets monthly on the third Wednesday, 6 p.m. Menlo Park City Hall-Downtown Conference Room 1st Floor, 701 Laurel St, Menlo Park, CA City Hall</p>	Liaison:
<p><b>Housing Commission</b></p> <p>The Housing Commission is charged primarily with advising the City Council on housing matters including housing supply and housing related problems.</p>	<p>Type: City Council-appointed advisory body Brown Act body</p> <p>Website: <a href="http://menlopark.gov/HC">menlopark.gov/HC</a></p>	<p>Meets monthly on the second Wednesday, 6:30 p.m. Menlo Park City Hall-Downtown Conference Room 1st Floor, 701 Laurel St, Menlo Park, CA City Hall</p>	Liaison:
<p><b>Library Commission</b></p> <p>The Library Commission is charged primarily with advising the City Council on matters related to the maintenance and operation of the City's libraries and library systems.</p>	<p>Type: City Council-appointed advisory body Brown Act body</p> <p>Website: <a href="http://menlopark.gov/LC">menlopark.gov/LC</a></p>	<p>Meets monthly on the third Monday, 6:30 p.m. Menlo Park Main Library- Senior Annex 800 Alma St, Menlo Park, CA 94025</p>	Liaison:
<p><b>Parks and Recreation Commission</b></p> <p>The Parks and Recreation Commission is charged primarily with advising the City Council on matters related to City programs and facilities dedicated to recreation.</p>	<p>Type: City Council-appointed advisory body Brown Act body</p> <p>Website: <a href="http://menlopark.gov/PRC">menlopark.gov/PRC</a></p>	<p>Meets monthly on the fourth Wednesday, 6:30 p.m. Arrillaga Family Recreation Center-Cypress Room 700 Alma St, Menlo Park, CA 94025</p>	Liaison:

CONTINUED ON NEXT PAGE

Advisory body liaison assignments (continued)			
Assignment	Details	Meeting time / location	Liaison
<p><b>Planning Commission</b></p> <p>The Planning Commission is organized according to State Statute.</p>	<p>Type: City Council-appointed advisory body Brown Act body</p> <p>Website: <a href="http://menlopark.gov/PC">menlopark.gov/PC</a></p>	<p>Meets twice monthly on a Monday, schedule adopted once a year, at 7 p.m. Menlo Park City Council Chambers 751 Laurel Ave, Menlo Park, CA</p>	<p>Liaison:</p>



<b>City Council outside agency liaison assignments</b>			
Assignment	Details	Meeting time / location	Representative / alternate / member
<b>Menlo Park City School District and Community Trust</b>		Meets as needed	Member:
<b>Menlo Park Fire Protection District</b>		Meets as needed	Member:
<b>Flood and Sea Level Rise Agency (FSLR)</b>	Website: <a href="https://resilientsanmateo.org/">https://resilientsanmateo.org/</a>	Meets monthly on the second and fourth Monday at 4 p.m.	Primary: Alternate:

City Council requested assignments			
Assignment	Details	Meeting time / location	Member
<p><b>Home for All</b></p> <p>Home for All SMC is a collaborative initiative comprised of the County of San Mateo, local governments, school districts, community-based organizations, faith-based organizations, advocacy groups and businesses. The mission of Home for All is to establish a climate in San Mateo County where a diversity of housing is produced and preserved so that San Mateo County is a culturally, generationally, and economically diverse community with housing for all. It is administratively supported and funded by the County of San Mateo.</p>	<p>Type: Not a Brown Act body</p> <p>Website: <a href="https://homeforallsmc.org/">https://homeforallsmc.org/</a></p>	Meets as needed	Member:
<p><b>Palo Alto Community Fund Advisory Board</b></p> <p>Focuses on the unique needs of the community and channeling charitable giving of local donors to effective organizations that improve the quality of life for everyone in Palo Alto, East Palo Alto and Menlo Park.</p>	<p>Type: Not a Brown Act body</p> <p>Website: <a href="https://paloaltocommfund.org/about/team/">https://paloaltocommfund.org/about/team/</a></p>	Meets as needed	Member:
<p><b>Searsville Advisory Group</b></p> <p>In 2011, Stanford University formed a faculty and staff Steering Committee to evaluate options and ultimately develop a recommended course of action to address the future of Searsville Dam and Reservoir. To ensure that the study process had the benefit of a broad range of community perspectives and expertise, Stanford University also invited a group of public agency representatives, non-government organizations and community members to be part of a Searsville Advisory Group.</p>	<p>Type: Not a Brown Act body</p> <p>Website: <a href="https://searsville.stanford.edu/overview">https://searsville.stanford.edu/overview</a></p>	Meets as needed	Member:



**STAFF REPORT**

**City Council**

**Meeting Date:** 1/10/2023  
**Staff Report Number:** 23-008-CC

**Informational Item:** City Council agenda topics: January 24 – February 14, 2023

**Recommendation**

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

**Policy Issues**

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

**Analysis**

In an effort to provide greater access to the City Council's future agenda items, staff has compiled a listing of anticipated agenda items, Attachment A, through February 14, 2023. The topics are arranged by department to help identify the work group most impacted by the agenda item.

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

**Public Notice**

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

**Attachments**

A. City Council agenda topics: January 24 – February 14, 2023

Report prepared by:

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

**Tentative City Council Agenda**

#	Title	Department	Item type	City Council action
1	Personnel Activity Report	ASD	Informational	No action
2	Receive the annual comprehensive financial report for the fiscal year ended June 30, 2022	ASD	Consent	Receive and file
3	Existing litigation	CAO	Closed Session	No action
4	Vesting Tentative Map Extension for 201 El Camino Real	CDD	Regular	Adopt resolution
5	Housing Commission work plan approval	CDD	Consent	Approve
6	Housing Element	CDD	Regular	Approve
8	Introduce an ordinance-Senate Bill 9 (SB 9)	CDD	Public Hearing	First read/intro ordinance
9	Adopt a resolution approving the City Council Community Funding Subcommittee's recommendations for 2022-23 community funding allocations	CMO	Regular	Adopt resolution
7	Adopt Resolution to continue conducting the City's Council and advisory body meetings remotely due to health and safety concerns for the public	CMO	Consent	Adopt resolution
10	Authorize the city manager to executed a revised agreement with HdL for economic development services	CMO	Consent	Contract award or amend
11	City Council agenda topics	CMO	Informational	No action
12	Electric vehicle charging for City operations-status update and next steps	CMO	Informational	Info from staff
13	Proclamation: Black History Month	CMO	Proclamation	No action
14	Proclamation: National Human Trafficking Awareness Day	CMO	Proclamation	No action
15	Receive and file 2021 priorities, work plan quarterly report as of December 31, 2022 and advisory body work plan update	CMO	Consent	Receive and file
16	Appoint City Councilmembers to various standing and ad hoc subcommittees, and disband inactive ad hoc subcommittees	CMO	Regular	Decide
17	Adopt a resolution establishing City Council Policy CC-22-XXX Commemorative Park Amenities Policy	LCS	Consent	Adopt resolution
18	Approve a notice of funding availability for cultural and special events community grants	LCS	Regular	Approve
19	Aquatics request for proposals -execute agreement	LCS	Consent	Contract award or amend
20	Menlo Park Community Center-furniture and non-fixed equipment procurement	LCS	Regular	Approve
21	Menlo Park Community Center-staffing considerations	LCS	Informational	No action
22	Pickleball update	LCS	Informational	No action
23	Presentation: Youth Poster Exhibition: "What Black History Means to Me"	LCS	Proclamation	No action
24	Provide direction for updating City Council Policy CC-86-001, "Naming and/or changing the name of facilities"	LCS	Regular	Direction to staff
25	Police department quarterly update – Q4 October 2022 - December 2022	PD	Informational	Receive and file
26	Adopt a Resolution for Urban Community Drought Relief Grant	PW	Consent	Adopt resolution

**Tentative City Council Agenda**

<i>#</i>	<i>Title</i>	<i>Department</i>	<i>Item type</i>	<i>City Council action</i>
27	Adopt resolution abandon 10' wide public utility easements along the rear of properties at 1701 Bay Laurel Drive and 1715 Bay Laurel Drive	PW	Public Hearing	Adopt resolution
28	Adopt resolution to remove parking on Middle Avenue to implement complete streets project	PW	Regular	Adopt resolution
29	Approve service agreement with Caltrain for Middle Avenue undercrossing project	PW	Consent	Approve
30	Consider an appeal of the Complete Streets Commission decision to remove two parking spaces on Roble Avenue	PW	Regular	Adopt resolution, Decide
31	Presentation: East Palo Alto Sanitary District	PW	Proclamation	No action
32	Provide direction on whether to consider elevated alternatives for Caltrain grade separation	PW	Study Session	Direction to staff



**STAFF REPORT**

**City Council**  
**Meeting Date:** 1/10/2023  
**Staff Report Number:** 23-009-CC

**Informational Item:** Transmittal of city attorney billing

**Recommendation**

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

**Policy Issues**

In accordance with the City Council informational requests, this staff report transmits information to the public.

**Background**

On February 23, 2021, the City Council approved an agreement with Burke Williams Sorenson, LLP (BWS) for city attorney services.

**Analysis**

As requested by the City Council, the city attorney has prepared monthly summaries of billing activity (costs/fees) for legal services that could be shared with the public. This staff report transmits the summary for the month of November 2022.

**Public Notice**

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

**Attachments**

- A. Billing summary – November 2022

Report prepared by:  
Justin I.C. Murphy, City Manager

## NOVEMBER 2022 LEGAL SERVICES - Burke, Williams &amp; Sorensen, LLP

Description	Fees	Costs	Total Billed
GENERAL MUNICIPAL MATTERS	\$29,858.00	\$74.25	\$29,932.25
REAL ESTATE, COMPLEX HOUSING, CEQA, NEPA	\$6,976.00	\$100.75	\$7,076.75
HOUSING ELEMENT	\$10,974.00	\$0.00	\$10,974.00
CONSTRUCTION AND COMPLEX PUBLIC WORKS	\$716.00	\$0.00	\$716.00
MENLO UPTOWN	\$1,296.00	\$0.00	\$1,296.00
123 INDEPENDENCE	\$3,915.00	\$0.00	\$3,915.00
WILLOW VILLAGE	\$120,100.00	\$0.00	\$120,100.00
1350 ADAMS COURT	\$2,640.00	\$0.00	\$2,640.00
1075 O'BRIEN/CS BIO	\$2,688.00	\$0.00	\$2,688.00
162-164 JEFFERSON	\$336.00	\$0.00	\$336.00
1105-1165 O'BRIEN DRIVE	\$3,264.00	\$0.00	\$3,264.00
BOHANNAN DEVELOPMENT	\$672.00	\$0.00	\$672.00
FEES	\$434.00	\$0.00	\$434.00
CODE ENFORCEMENT/ PITCHES / NUISANCE PR	\$785.50	\$0.00	\$785.50
SRI CAMPUS	\$3,072.00	\$0.00	\$3,072.00
MPCC PG&E EMINENT DOMAIN	\$682.00	\$0.00	\$682.00
HOTEL MOXY / 3723 HAVEN AVENUE	\$6,144.00	\$0.00	\$6,144.00
1005 O'BRIEN	\$768.00	\$0.00	\$768.00
UUT CLAIM/LITIGATION	\$34,800.00	\$207.65	\$35,007.65
PUBLIC RECORDS ACT	\$2,214.00	\$0.00	\$2,214.00
CITY COUNCIL	\$459.00	\$0.00	\$459.00
980-1030 O'BRIEN	\$2,236.00	\$0.00	\$2,236.00
3705 HAVEN	\$336.00	\$0.00	\$336.00
<b>FEES PAID BY CITY</b>			<b>\$88,281.15</b>
<b>FEES PAID BY DEVELOPERS</b>			<b>\$147,467.00</b>
<b>TOTAL</b>			<b>\$235,748.15</b>



**STAFF REPORT**

**City Council**  
**Meeting Date:** 1/10/2023  
**Staff Report Number:** 23-011-CC

**Informational Item:** Update on draft outdoor dining design standards

**Recommendation**

Staff recommends that the City Council receive an update on draft outdoor dining design standards that would potentially take effect when the City's temporary outdoor use permit (TOUP) program expires at the end of February 2023. The draft outdoor dining design standards are a key part of an outdoor dining program. Staff is working to create a detailed outdoor dining program for City Council consideration in February.

**Policy Issues**

In June 2020, the Menlo Park City Council adopted an urgency ordinance to establish a TOUP program to accommodate safe outdoor business operations at the early stages of the COVID-19 pandemic, as well as to close portions of Santa Cruz Avenue and Ryan's Lane for pedestrian use. The decision was exempt from the California Environmental Quality Act (CEQA) due to its temporary, emergency nature. The City's TOUP program is set to expire with the end of the California COVID-19 State of Emergency Order February 28, 2023. City staff are currently creating a more permanent outdoor dining program with enhanced and clearly defined design and maintenance standards. The initial draft outdoor dining design standards are now available for City Council review. This release of the draft outdoor dining design standards also launches the City's outreach to business owners for feedback.

**Background**

Before the pandemic, the City Council approved the Santa Cruz Street Café Pilot Program in 2015 to allow merchants to convert street parking to parklets for outdoor uses. The program included City-approved designs by Ian Moore Designs and the City Council agreed to a cost-sharing structure that paid for part of the base design of the parklets and installation of the improvements. Owners of the parklets signed license agreements that expired in 2021 and are now operating on a month-to-month basis through the TOUP program.

The actions of the City Council to mitigate economic impacts of COVID-19 have helped many businesses remain viable while operating in a safe manner. The City Council considered the topics of parklets and outdoor use permits multiple times since the start of the pandemic and adopted a number of urgency ordinances as summarized below.

- June 19, 2020 – Urgency Ordinance No. 1070: Allowed staff to implement the TOUP program and close portions of Santa Cruz Avenue for pedestrian use.
- July 16, 2020 – Urgency Ordinance No. 1071: Expanded the uses eligible for a TOUP.
- September 2020 – Urgency Ordinance No. 1072: Extended the TOUP and street closure through February 28, 2021.



- October 6, 2020 – Urgency Ordinance No. 1073: Expanded the TOUP program to include:
  - Installation of “walk your bike” signs on closed portions of Santa Cruz Avenue
  - Use of travel lanes without limitations to time of day or day of week
  - Closure of a portion of Ryan’s Lane between Crane Street and Escondido Lane
- February 23, 2021 – Ordinance No. 1085: Extended TOUP program and street closure through January 2022.
- January 25, 2022 – Ordinance No. 1086: Extended the TOUP program to allow parklets and street cafes in off-street parking spaces to remain on a month-to-month basis until the COVID-19 State of Emergency Order ends. At this meeting, the City Council directed staff to create design standards for parklets.

See Attachment A for a graphic of the Santa Cruz Avenue street closure and the downtown TOUPs. One additional TOUP is located at Café Zoe on Menalto Avenue.

## Analysis

There are 15 businesses currently operating an outdoor use through the TOUP program, and most have indicated to the City’s Economic Development Consultant, HdL Companies, a desire to continue their outdoor operations in some capacity. Over the last year, several participating businesses have also indicated to HdL Companies that many members of the public continue to choose outdoor dining instead of indoor.

The draft outdoor dining design standards (Attachment B) establish design and development related requirements for use of the public right-of-way by dining establishments. To create these standards, HdL Companies considered similar programs approved in nearby cities including Redwood City, San Mateo, San Carlos and Burlingame.

The draft design standards apply to outdoor dining in the public right-of-way in two categories: 1) sidewalk cafés and 2) parklets in public parking spaces. The standards will:

- Provide objective design standards related to setbacks, platforms, barriers, tables and seating, as well as shading, lighting, heating, plants and planters, and overhead structures for sidewalk cafes and parklets.
- Streamline the review process for new parklet applications with parklet site plan and design templates for use by applicants.
- Applicants can choose to create their own parklet designs as long as the proposed design is within the design criteria outlined in the guidelines.
- Sidewalk cafés can be unique to the business but must be set up in accordance with the required setbacks and furnishing and fixture design criteria.

Other key provisions in the standards include:

- Overhead structures, particularly solid roof structures, may be permitted as a special allowance in order to maintain the open and airy feeling of outdoor dining. Fabric awnings, umbrellas, and other soft retractable material would be encouraged to provide shade and limited weather protection while maximizing light.
- Landscaping and plants must be maintained and in good health.

### Transition from TOUP to outdoor dining program

Several cities such as Redwood City, Burlingame, and Morgan Hill that have implemented longer term outdoor dining programs have created transitional periods that provide time for businesses with existing parklets or sidewalk cafés to meet new design standards. City staff are currently creating parameters for a potential transitional period to allow existing outdoor dining parklet or sidewalk café owners to meet new outdoor dining design standards. In addition, City staff in partnership with HdL Companies are researching a potential fee structure for permitting and use of the public right-of-way, possibly to include a cost sharing aspect and/or fee waivers/reductions.

### Alignment with Specific Plan

In alignment with the El Camino Real and Downtown Specific Plan Section D – Public Space, the proposed outdoor dining design standards are specific to outdoor dining and identify the functional zones of the sidewalk and parking / travel lane to help establish locations for parklets and sidewalk cafés. The El Camino Real and Downtown Specific Plan identifies a need to improve the pedestrian realm on Santa Cruz Avenue, which includes sitting and outdoor dining options in functional sidewalk zones. The Plan establishes sidewalk functional zones, ensuring a pedestrian clear zone and more pleasant and functional sidewalks. It redistributes the right-of-way between traffic lanes, on-street parking, and sidewalks in order to focus on an enhanced pedestrian experience while still accommodating vehicular circulation and on-street parking. Per the Santa Cruz Avenue Sidewalks section (D10) of the Specific Plan, activities outside the building, such as outdoor dining, can enliven adjacent sidewalks. These are desirable attributes in areas with high levels of activity such as the downtown and station area.

### **Impact on City Resources**

Future items for City Council consideration will include a potential fee structure for an outdoor dining program. The City's current TOUP program waived all processing fees for temporary outdoor dining in the sidewalk or parking stalls, and utilized funding from the Downtown Streetscape Capital Improvement Plan (CIP) fund to purchase barriers for businesses use.

### **Environmental Review**

This action is not a project within the meaning of the CEQA Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment. Approval of an ordinance to allow outdoor dining will be subject to further CEQA review.

### **Public Notice**

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

### **Attachments**

- A. Santa Cruz Avenue closure graphic
- B. Draft outdoor dining design standards








Report prepared by:

Kirstin Hinds, Senior Advisor, HdL Companies

Staff Report #: 23-011-CC

Report prepared by:  
Stephen Stolte, Assistant City Manager

**Color Key**

-  Roadblocks
-  Street Closures
-  Restaurants
-  Cafe Dining (Santa Cruz Ave Pilot program)
-  Outdoor Expansion (TOUP)
-  Bicycle Parking Zone
-  Directional Traffic Pattern

EL CAMINO REAL

Peabody Gallery  
 Kyosho  
 S.C. Barber Shop  
 Park Ave Salon

JOHNSON LN

Cold Stone Creamery

MALONEY

Mr. Bubble

Union Bank  
 Menlo Cafe

Bank of America

DOYLE ST

Dolma Carpets  
 Abby Carpet

Left Bank

Dolma Handicraft  
 Cheeky Monkey

Harvest

Susie Cakes

Bistro Vida

La Migliore Salon  
 Breeze-way

Walgreens

Chase

Tilak Indian Cuisine

Bow Wow Meow

Starbucks

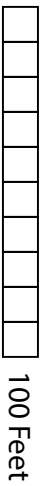


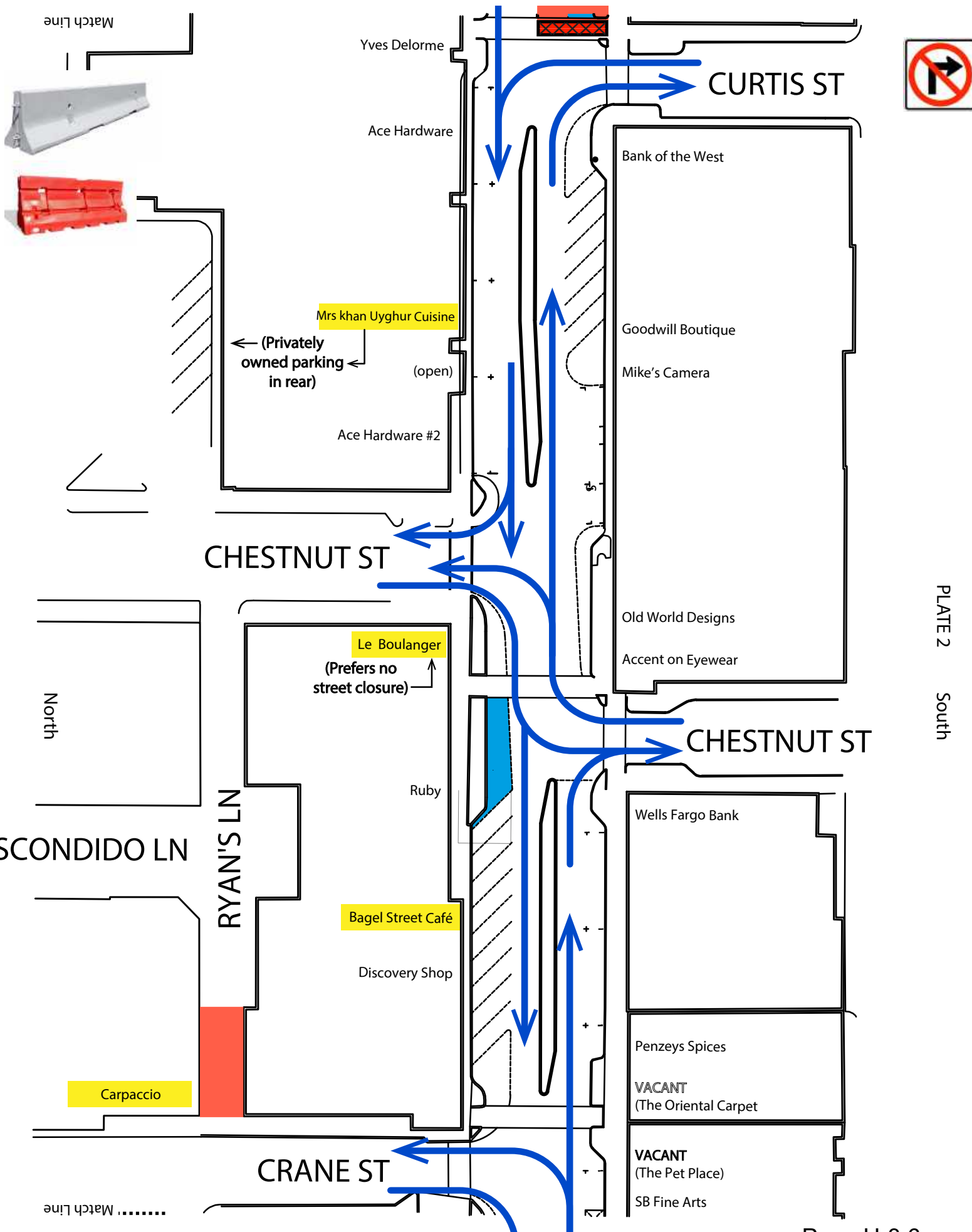
PLATE 1 South



North

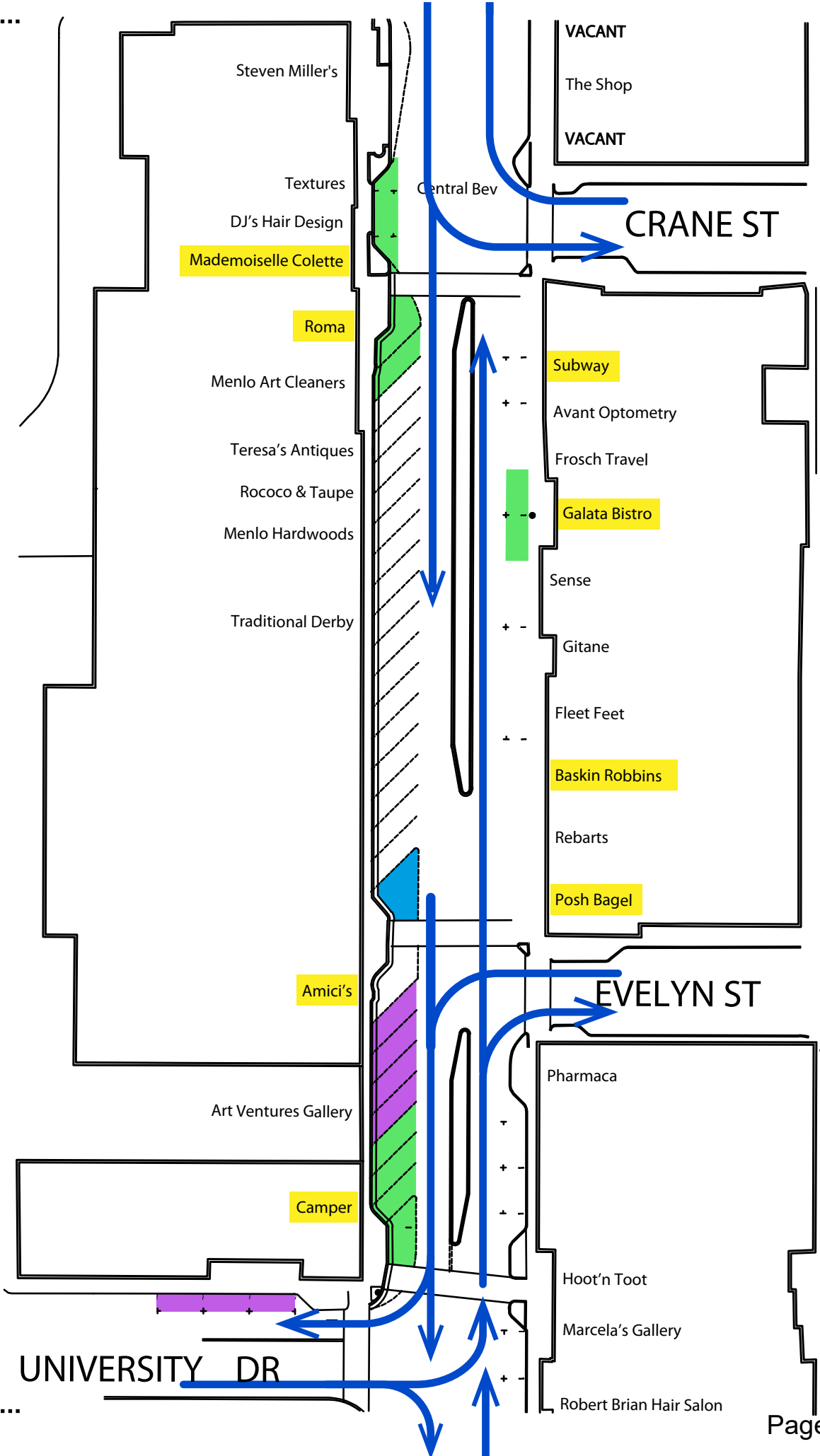


Match Line



..... Match Line

North



..... Match Line

VACANT  
The Shop  
VACANT

CRANE ST

Subway  
Avant Optometry  
Frosch Travel  
Galata Bistro  
Sense  
Gitane  
Fleet Feet  
Baskin Robbins  
Rebarts  
Posh Bagel

EVELYN ST

UNIVERSITY DR

Pharmaca  
Hoot'n Toot  
Marcela's Gallery  
Robert Brian Hair Salon

PLATE 3 South

Coffeebar is using two parking spaces on Chesnut St. and five spaces in the Oak Grove Plaza parking lot

Coffeebar

North

ESCONDIDO LN

OAK GROVE PLAZA

Carpaccio

Refuge is using two parking spaces on Crane St

Refuge

CHESTNUT ST

RYAN'S LN

Le Boulanger  
(Prefers no street closure)

Ruby

Bagel Street Café

Discovery Shop

CRANE ST

Old World Designs

Accent on Eyewear

CHESTNUT ST

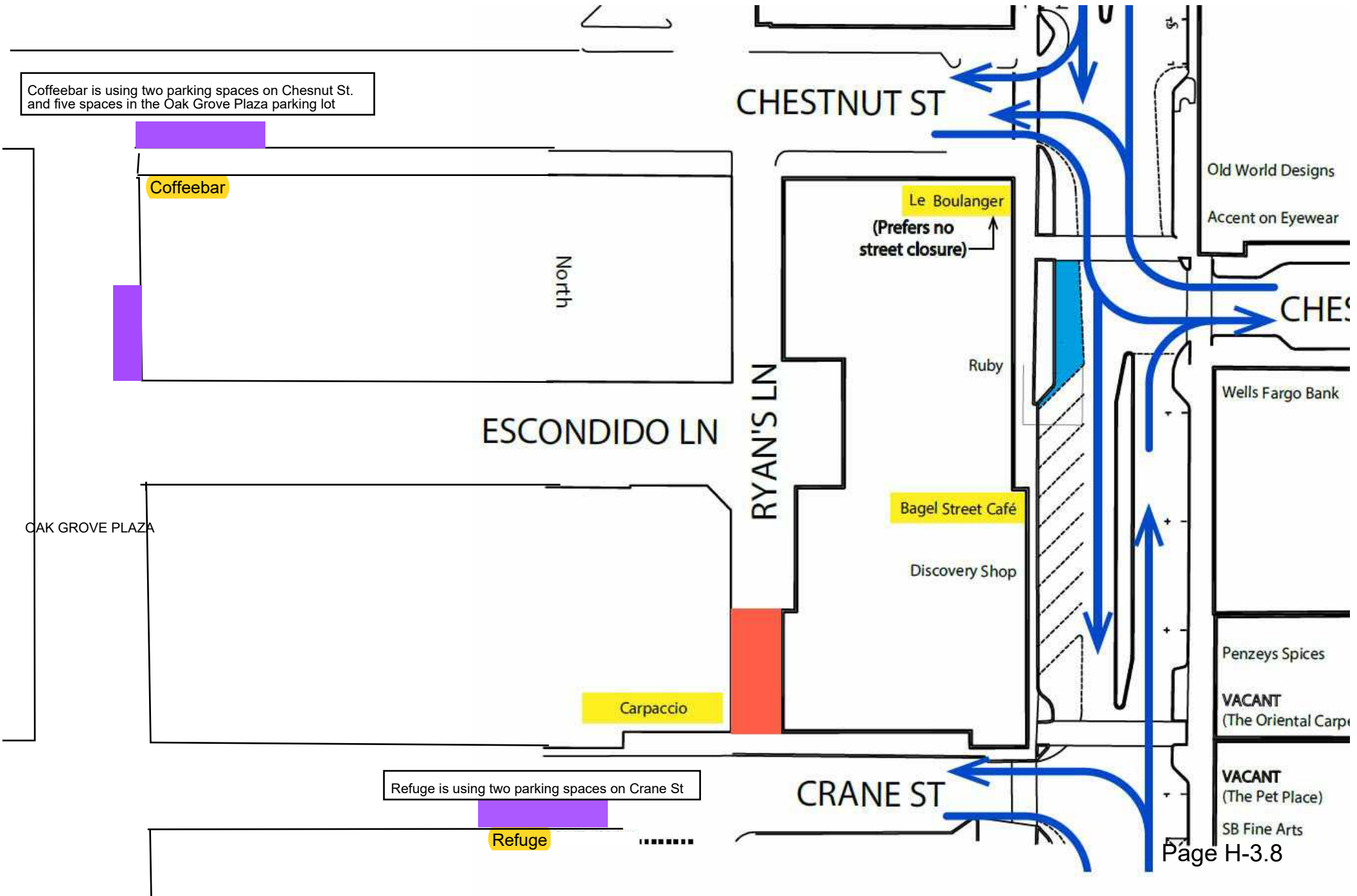
Wells Fargo Bank

Penzeys Spices

VACANT  
(The Oriental Carpa)

VACANT  
(The Pet Place)

SB Fine Arts



# City of Menlo Park Outdoor Dining Draft Design Standards





## OUTDOOR PARKLET DESIGN STANDARDS

### SELECT A PARKLET TEMPLATES

Each template reflects conditions that generally exist for on-street parking spaces in commercial areas: parallel parking spaces, diagonal parking spaces, and special condition parklets. The applicant shall select a parklet template based on the existing conditions along the site frontage.

Special condition parklets allow for unique or site-specific conditions. Each special condition template has a unique icon that is used throughout these guidelines to indicate where a program requirement is specific to that special condition parklet.

Once the applicant has selected a parklet template, the applicant may then select an option for each of the design components listed on page 14. These include enclosure or platform materials, seating options, and other considerations. Parklets shall meet all additional design requirements listed on page 15.

- ### Parklet Template Options
- A. Parklet in parallel parking space(s):
    - A-1 One Space
    - A-2 Two Space
  - B. Parklet in a diagonal parking space
  - C. Special Condition Parklets:
    - C-1 Parklet/Sidewalk Café Combination
    - C-2 Parklet/Sidewalk Café Curb Extension
    - C-3 Parklet/Pedestrian Street Combination

### A-1 PARALLEL SPACE PARKLET (1 PARKING SPACE)

The Parallel Parklet template occupying one parking space is a compact parklet that provides an intimate outdoor dining setting.

This template limits the maximum parklet area to one parking space and can be utilized in areas where available on-street parking spaces are limited.

Parklets proposed for perpendicular parking spaces can use a modified version of this template.



**A-2 PARALLEL SPACE PARKLET (2 PARKING SITES)**

The Parallel Parklet template occupying two parking spaces provides a larger outdoor dining setting.

This template limits the maximum parklet area to two parallel parking spaces.

Parklets proposed for perpendicular parking spaces can also use a modified version of this template.



**B-DIAGONAL SPACE PARKLET**

The Diagonal Space Parklet template provides a larger outdoor dining setting.

When including the necessary setbacks, this template would need three spaces.



### C-1 PARKLET/SIDEWALK CAFÉ COMBINATION

The Parklet/Sidewalk Cafe Combination template is for conditions where an applicant has the opportunity to incorporate both a sidewalk cafe and a parklet for a combined space.

This Special Condition template can be used in either a parallel parking or diagonal parking site.

The combined space should be designed as a comprehensively planned singular space.



### C-2 PARKLET/SIDEWALK CAFÉ CURB EXTENSION COMBINATION

The Parklet/Sidewalk Cafe Curb Extension Combination template is provided for sites where a business would like to incorporate a sidewalk cafe on an adjacent curb extension with a parklet.

This Special Condition template can be used in either a parallel or diagonal parking site adjacent to an intersection.

The combined space should be designed as a comprehensively planned singular space.



### C-3 PARKLET/PEDESTRIAN STREET COMBINATION

The Parklet/Pedestrian Street Combination template is designed with flexibility for parklets that are proposed on streets the City has permanently closed to vehicular through-traffic to enable pedestrian access and circulation.

This template shall not be used where streets are only temporarily closed.

Expanded seating areas would not be allowed unless the supplementary seating is specifically reflected in plans submitted and approved by the City.



DRAFT

### SELECT PARKLET DESIGN COMPONENTS

Each of the Parklet templates can be constructed with a series of components of a variety of materials to ensure quality design and an enhancement of the public realm. The applicant shall select a feature from the Required Design Components, below, and then select additional, optional design features. The applicant may propose to use an alternative material that may be approved upon review by City staff.

REQUIRED DESIGN COMPONENTS		OPTIONAL DESIGN COMPONENTS	
<b>Platform</b> <i>Select one of the following:</i>		<b>Shading</b> <i>Select one of the following:</i>	
Brick pavers _____	Concrete Pavers _____	Umbrella (Fire resistant) _____	Fabric sail shade (Fire resistant) _____
Wood boards _____	Other: _____		
<b>Platform Support</b> <i>Select one of the following:</i>		<b>Lighting</b> <i>Select one of the following:</i>	
Wood platform support _____	Steel-frame platform support _____	String Lights _____	Light post _____ (No new foundations allowed)
<b>Barriers</b> <i>Select one of the following:</i>		<b>Overhead Structures as a Special Condition</b> <i>Select one of the following:</i>	
Wood planter _____	Concrete Planter _____	Pergola _____	Solid Roof _____
Steel planter _____	Perforated steel Railing _____	Tent/Membrane Structure _____	Other: _____
<b>Tables and Seating</b> <i>Select one of the following:</i>		<b>Other</b> <i>Select one of the following:</i>	
Movable café tables and chairs _____	Metal benches _____	Additional planters _____	Bike rack _____
Wooden benches _____	Café counter _____	Portable heaters _____	Other: _____

A building permit is required for the installation of any platform, electrical, plumbing, mechanical, or other improvements such as cooling, electric heating, lighting, or roof structures. Heating devices are prohibited inside of cloths, umbrellas, tents, canopies, and membrane structures.

## DETAILED DESIGN STANDARDS

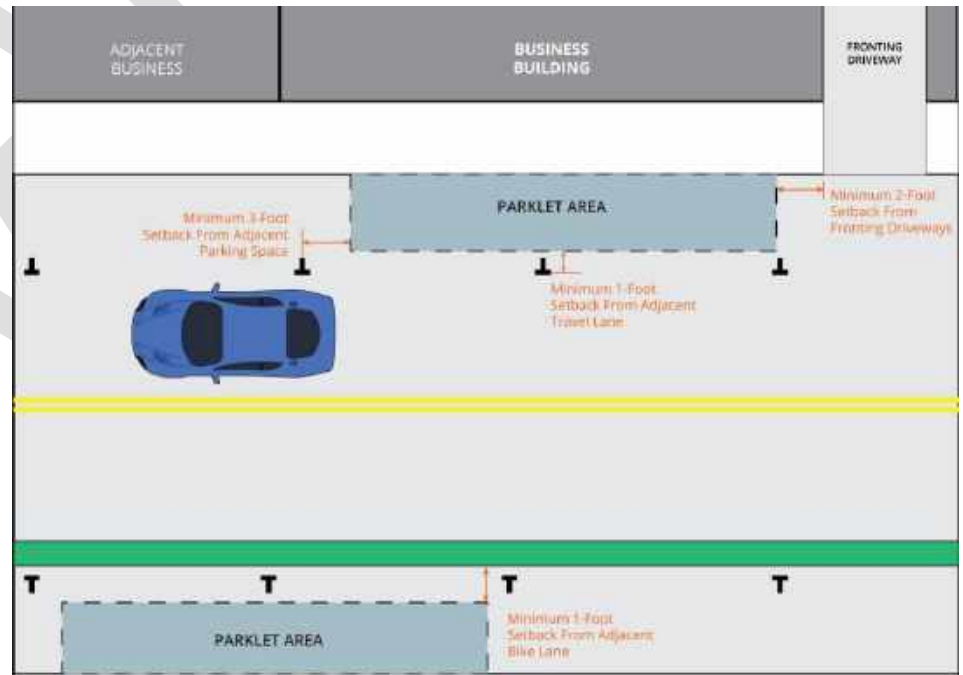
This section provides detailed requirements and standards that are applicable to all parklet templates. These requirements are established to maintain safety, accessibility, and an enhanced design that connects the public realm. The applicant's compliance with these requirements shall be shown on the applicant's site plan, submitted as part of the parklet permit application.

Parklet design elements and materials consist of the following elements, generally: (A) Location and Setback; (B) Platforms; (C) Railings or enclosures; and (D) Overhead Structures as a Special Allowance. Furnishing & Fixture Design Standards and General Operation & Maintenance Requirements for parklets and sidewalk cafes are at the end of the document.

### A. LOCATION AND SETBACK CRITERIA

Parklets are generally allowed in commercial districts along the curbside on public streets where on-street parking spaces exist. However, parklets are not allowed along El Camino Real because it is a State-controlled roadway and is not under the City's jurisdiction. Parklets are not allowed in ADA/handicap parking spaces or red curb zones. Parklets proposed in loading zones and in parking spaces with time limits of less than 1-hour will be considered on a case by case basis.

1. **Permitted areas within City:** Outdoor Parklets & Sidewalk Cafes are intended for outdoor dining within the Downtown Business District and other commercially zoned areas where outdoor uses are permitted.
2. **Parklet Size**
  - A typical parklet occupies no more than 360 square feet (the space of 2 parallel parking spaces). Parklets that occupy more than 360 square feet may be approved at the City's discretion.
  - A parklet located in an angled space shall occupy a minimum of 3 diagonal spaces to allow for sufficient buffering to vehicles parking in adjacent parking spaces. This may be reduced to 2 diagonal parking spaces where a parklet is proposed in combination with a curb extension.



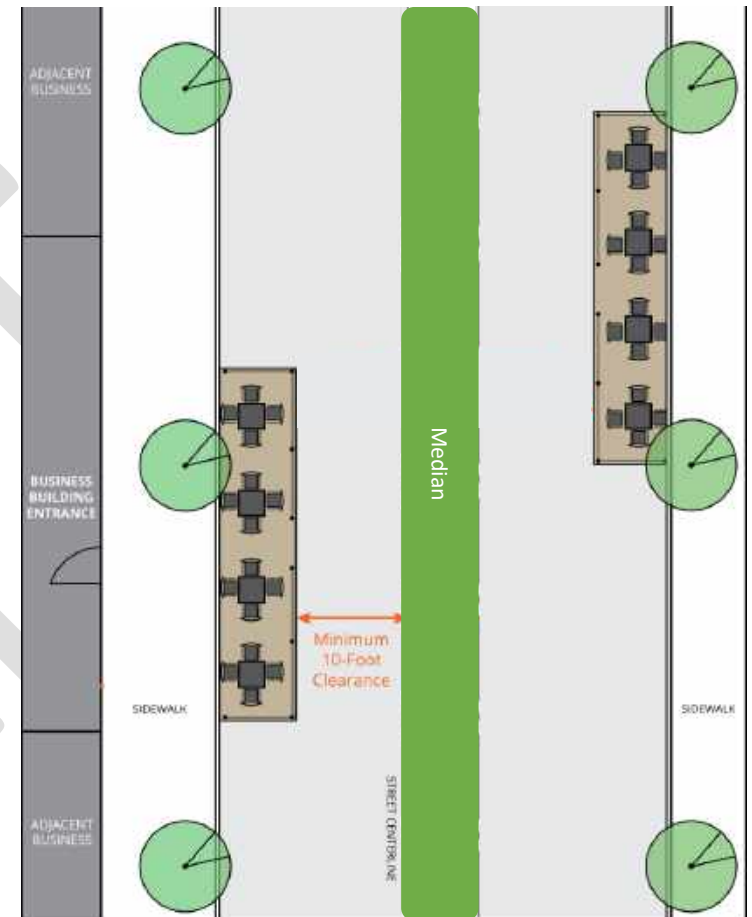
### 3. Parklet Setback Requirements

- 2.5-feet from driveway flare
- 2-feet from the travel lane (1-foot from the travel lane may be acceptable where the travel lane is 11 or 12-feet in width), measured from the parking striping adjacent to the travel lane. Where the parking striping does not exist, the applicant shall confirm with City staff the width of the travel lane measured from the street centerline and provided the setback from the identified travel lane edge. The 2-foot setback must be kept clear at all times, unless occupied by reflective delineator posts or their equal
- 2-feet from a bike lane
- 3-feet from the side to the adjacent parking space, parallel or diagonal. Where parking striping does not exist, the applicant shall confirm with City staff the width and location of each parking space and shall measure the setback from the identified parking space location

4. **Crosswalk & Bulb-out Setback:** When located near an intersection, parklets must be located at least 20-feet from the nearest boundary (edge of the crosswalk that is closest to the parklet) of a crosswalk at the nearest intersection or street corner. A curb extension (commonly referred to as a “bulb-out”), some other physical barrier that would protect the parklet in a corner location, or other specific site condition may allow the City to consider variations from the 20-foot minimum requirement. (see design example)

### 5. Other Location Criteria:

- **Utilities:** Parklets may not be constructed over or obstruct utility access panels, manhole covers, storm drains, survey monuments, or fire hydrants. Be sure to take a thorough inventory of utility access covers in your proposed parklet area by working with city staff to determine utility locations, surveying your proposed parklet area, and checking under parked cars.
  - A minimum clearance of 8-feet from storm drains and manhole covers will be required to allow for maintenance access.
  - Parklets proposed under overhead utility lines will be required to meet the minimum distance requirements as established by the CPUC.
  - Parklets that block the outlet of a sidewalk underdrain will be required to ensure the outlet is functional and flowing.



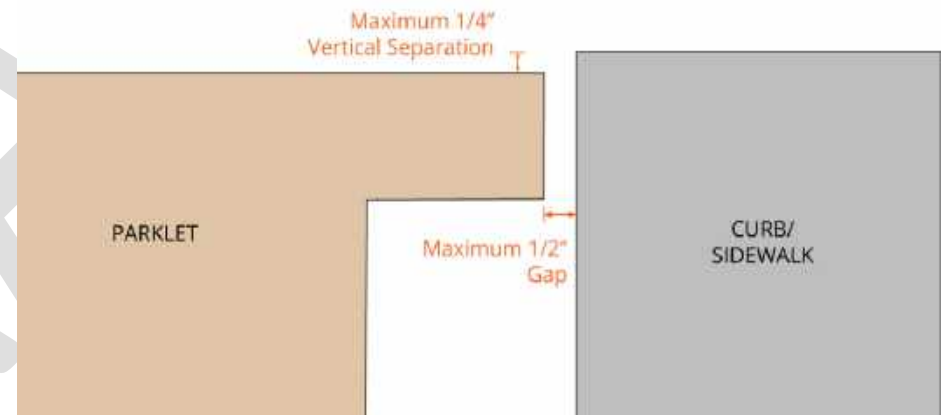
- Parklet sponsors must provide for access to any City or utility company that may have underground conduits beneath the constructed parklet at all times, or immediately following a request for access. No notice can be guaranteed for emergency access to underground utilities. For planned access, 72-hour notice will be issued to the parklet sponsor. Access to utilities may require that a parklet sponsor temporarily remove all or a portion of the constructed parklet at the parklet sponsor/owner's expense.
- **Fire Hydrants:** Fire hydrants shall not be blocked and parklet owners must maintain a 15-foot clearance around the hydrant
- **Fire District Connections (FDCs):** to maintain access to FDCs, five-foot wide openings should be provided between every two adjacent parklets (and no more than 75-feet apart).

## B. PARKLET PLATFORM DESIGN CRITERIA

1. **Materials:** Platforms must be constructed with durable, fire resistant materials and be able to withstand the effects of the outdoor environment. **Examples:** naturally durable wood, preservative-treated wood, or other engineered material suitable for exterior conditions.

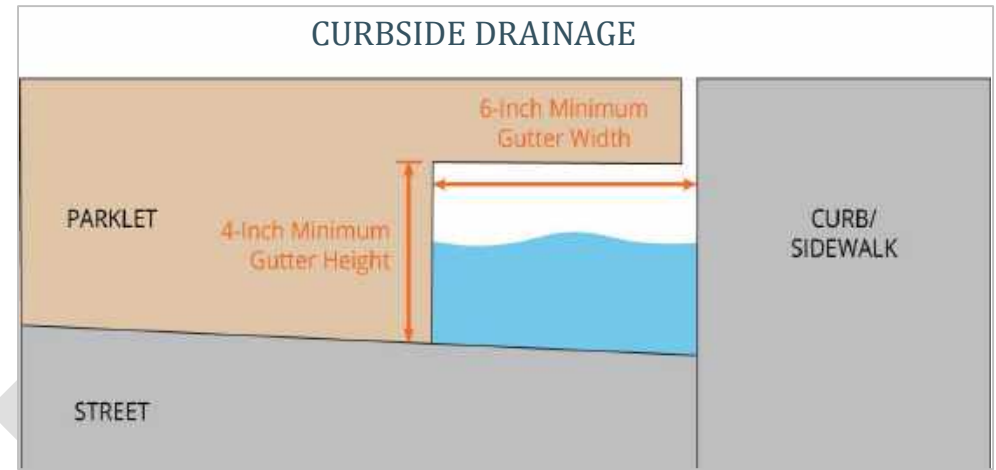
- Concrete platforms are **not** permitted; however, you may use concrete pavers on a platform structure.
- Surface materials must be textured or treated with a non-skid coating to ensure a safe walking surface. Loose particles, such as sand and loose stone, are **not** permitted.
- Applicants interested in utilizing fabric sails or other architectural features which may “catch” wind, must provide proof of wind loads.

### PLATFORM AND SIDEWALK LEVELING





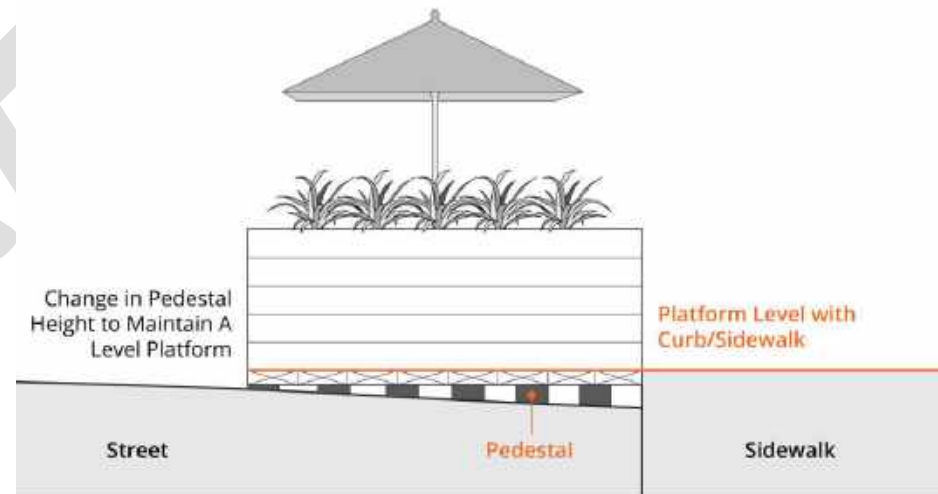
2. **Maintain access to utilities:** Parklets must be designed to provide access to site-specific utilities, such as storm sewer covers, utility cabinets, and underground vaults, by employing in their design and construction access panels or removable pavers.
  - A minimum 15-foot clearance shall be maintained from a fire hydrant and all other fire appurtenances



3. Platforms must be flush and even with the sidewalk and must not leave a gap greater than one-half (1/2) an inch, nor a vertical separation greater than one-quarter (1/4) inch.
4. A parklet platform or it's enclosure shall not be mounted on wheels

5. **Drainage, Ventilation and Rodent Proofing:** Platforms shall allow curbside draining flow with the following:
  - A four-inch (4") height by six-inch (6") width minimum clear gutter space shall be provided along the entire length of the proposed platform
  - Openings under the platform shall be screened with corrosion-resistant material with a maximum one quarter inch mesh to prevent rodent access and debris buildup beneath the platform and in the gutter
  - The parklet permittee shall clean covers or screens to prevent any blockage of flow in the gutter
  - All parklets shall provide access through the parklet platform or threshold to the gutter adjacent to the curb. Access may be provided through removable panels, pavers, or other means.

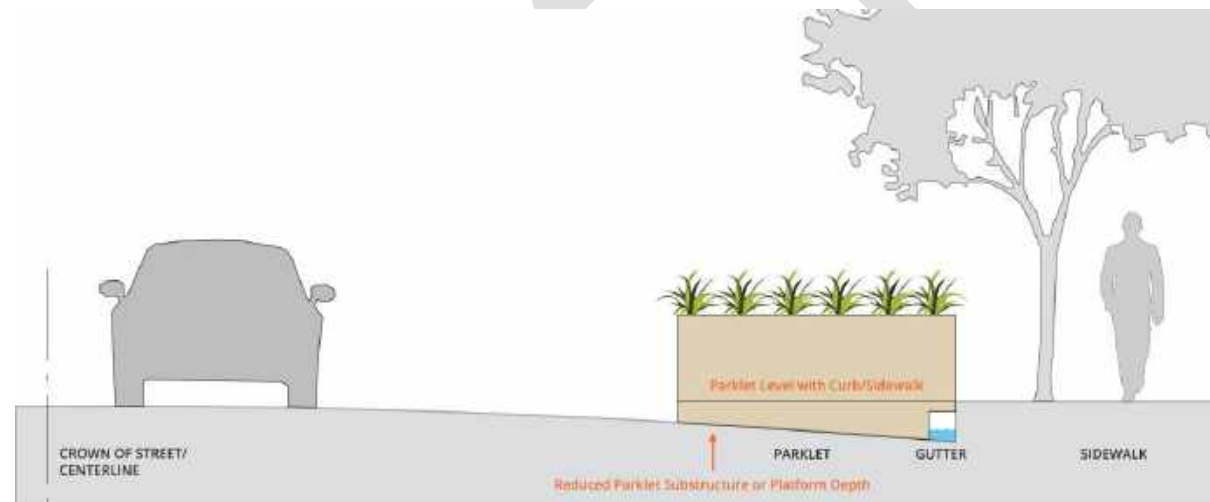
### PEDESTAL SYSTEM LEVELING



6. **Bolting Not Allowed:** At no time may structures be bolted or affixed in any way to the roadway or any structure (including but not limited to: buildings, fire hydrants, street trees, streetlight, parking meters, or traffic poles, etc.).

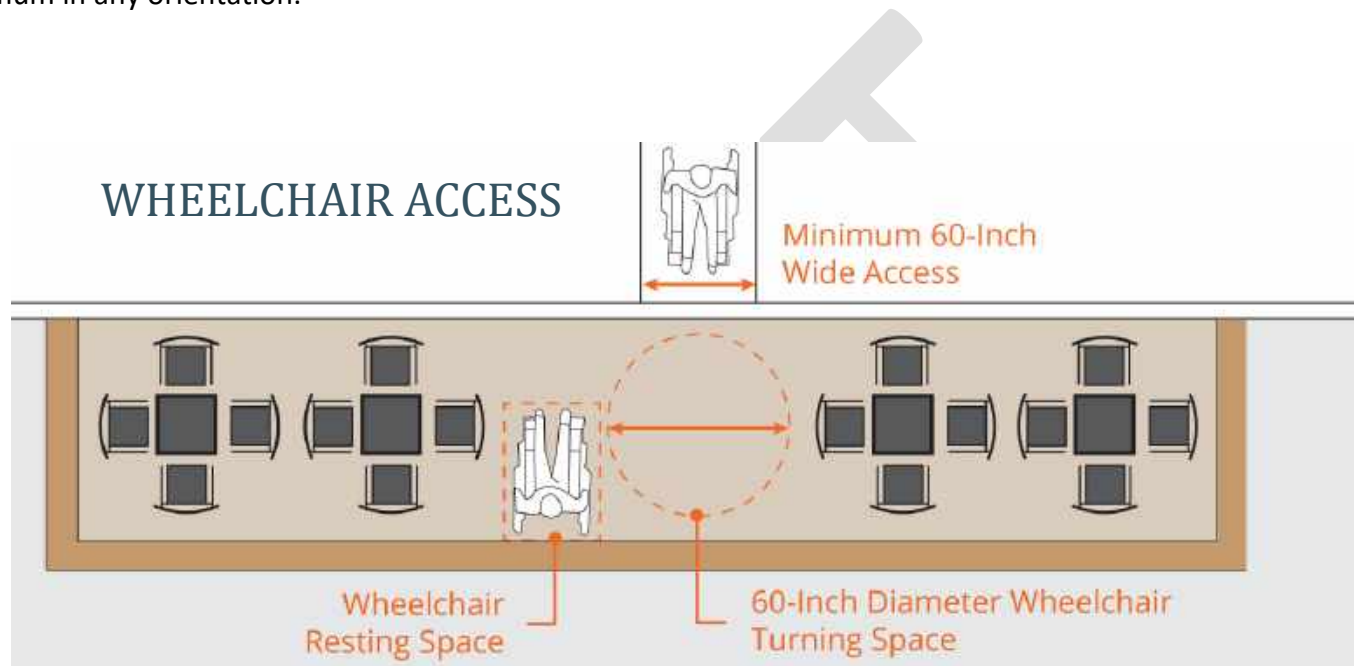
- An exception to this is that wheel stops for traffic protection must be bolted to the roadway as described in the Traffic Protection section of these Guidelines. However, in case of removal, the establishment shall be responsible for repairing the pavement holes at the permit holder’s expense.
7. **Sub-structure:** Designs for the sub-structure of a parklet vary and depend on the slope of the street and overall design for the structure. The sub-structure must accommodate the crown of the road and provide a level surface for the parklet.
- “Bison pedestals” spaced under the surface and of different heights are a common application. Another method is to provide steel sub-structure and angled beams.

### SUBSTRUCTURE OR PLATFORM LEVELING



8. **ADA Accessibility:** All accessibility elements of the proposed platform shall be designed, constructed and/or conform to the applicable provisions, rules, regulations and guidelines of the California Building Code and Americans with Disabilities Act.
- **Accessible Platform Surface:** The portion of the parklet platform connected by the accessible path of travel to the wheelchair turning space and wheelchair resting space must be level. The accessible platform surface maximum cross slope (perpendicular to the sidewalk or curb) and running slope (parallel to the curb) cannot exceed 2%. Platform surface shall be made of slip resistant material.
  - **Accessible entry:** Shall be a minimum of 48 inches wide.
  - **Accessible path of travel:** It must connect the sidewalk to the accessible entry, platform surface, wheelchair turning space and wheelchair resting space.

- **Wheelchair turning space:** Shall be 60 inches in diameter and located entirely within the platform; a 12-inch maximum overlap on the curb and sidewalk is acceptable.
- **Wheelchair landing:** A 30- by 48-inch clear floor area. It's permitted to overlap with the Wheelchair Turning Space by 24-inches maximum in any orientation.



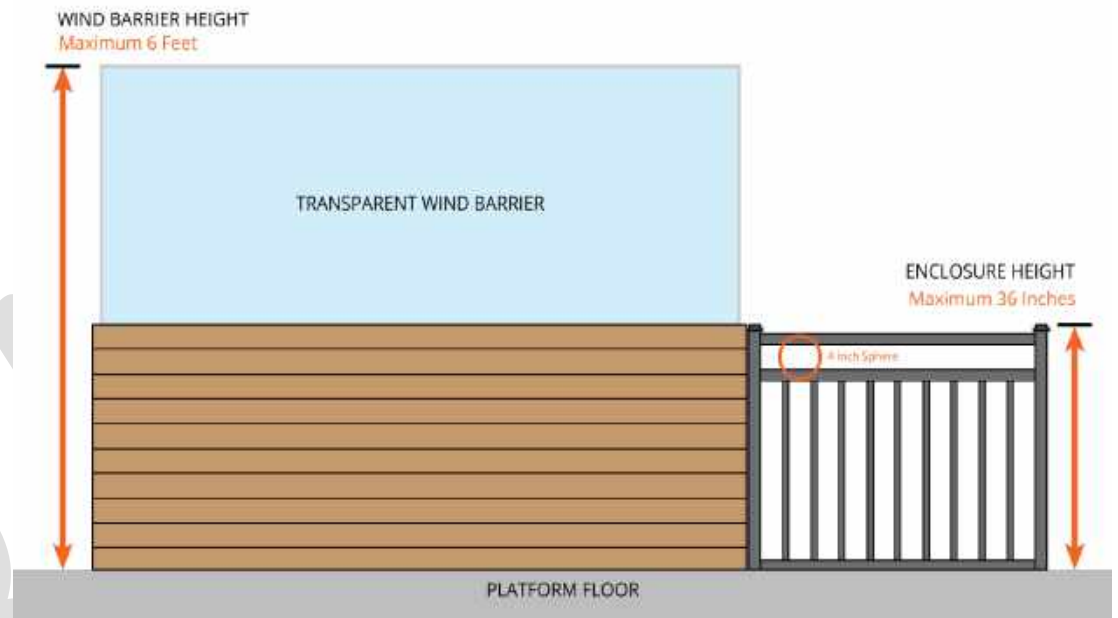
### C. BARRIERS, RAILINGS, OR ENCLOSURES

The parklet railing or enclosure marks the boundary between the parklet and the street or sidewalk. Traffic barriers are required to surround the parklet on three sides to protect from oncoming traffic and patrons inadvertently entering the vehicular way. It should serve as a safe edge while also being visually appealing, permeable, and inviting. The following standards and guidelines should inform your design:

1. Barriers, Railings or Enclosures must be stable and sturdy enough not to fall over or be pushed over (must withstand 250-lbs of force).
2. **Edge Buffers:** the parklet should have an edge as a buffer from the street. This can take the form of planters, railing, cabling, or some other appropriate enclosure.

3. **Height:** The height should not exceed 36-inches from the parklet platform floor to the top of the railing.
  - Wind barriers taller than 36-inches shall incorporate transparent materials like acrylic, plexus-glass, plastic films. Wind barriers shall be installed and engineered to withstand wind loads, in conformance with any necessary building permits. The height of the railing, including the transparent materials, should not extend more than 6 feet from the floor platform, unless it is designed within an overhead structure per requirements for overhead structures.
  - Openings in rails must prevent passage of 4-inch sphere.

## PLATFORM BARRIER HEIGHT

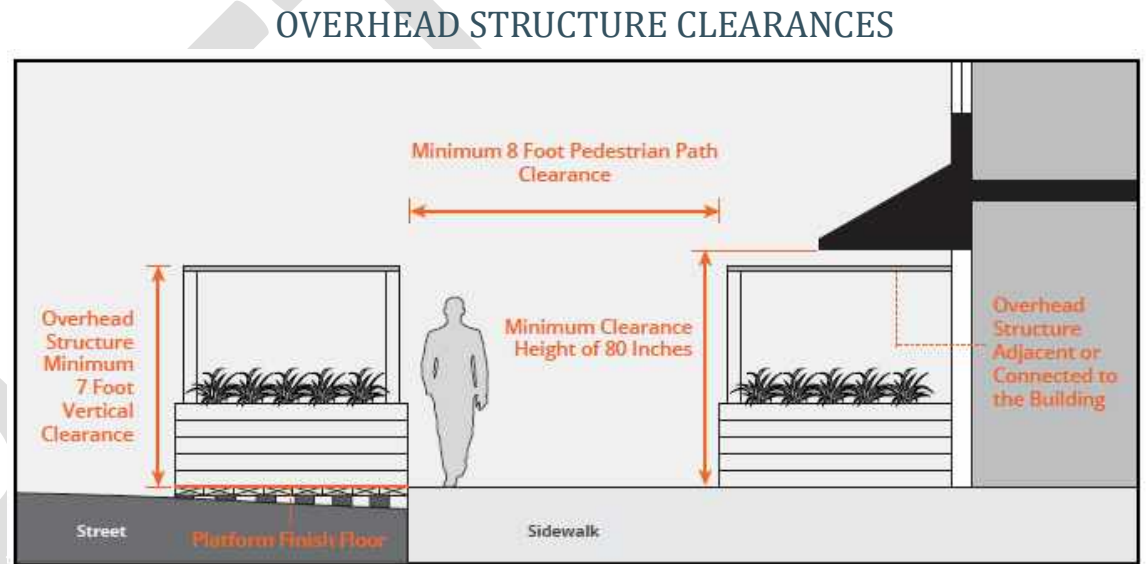


4. **Visibility:** The enclosure should not block the view of conflicting movements of traffic, including pedestrian traffic, nor block the view of traffic control devices such as traffic signs, traffic signals, and other traffic warning devices.
5. **Reflectors:** All railings/enclosures must have retro-reflective reflectors or retro-reflective tape on the corners of the parklet facing the travel lane such that they are visible by vehicle traffic at night.
6. To accommodate seasonal conditions, the applicant may propose alternative platform and wind barrier materials and designs for review and approval by City.
7. **Posts or Bollards:** Parklets shall have vertical elements that make them visible to traffic, such as flexible posts or bollards both with retroreflective tape. One possible measure are safe hits posts (as shown in the picture below). These vertical elements shall be placed 2 feet from the edge of the parklet on both sides of the parklet not adjacent to the travel lane. Structural bollards may be required if deemed necessary by the City.

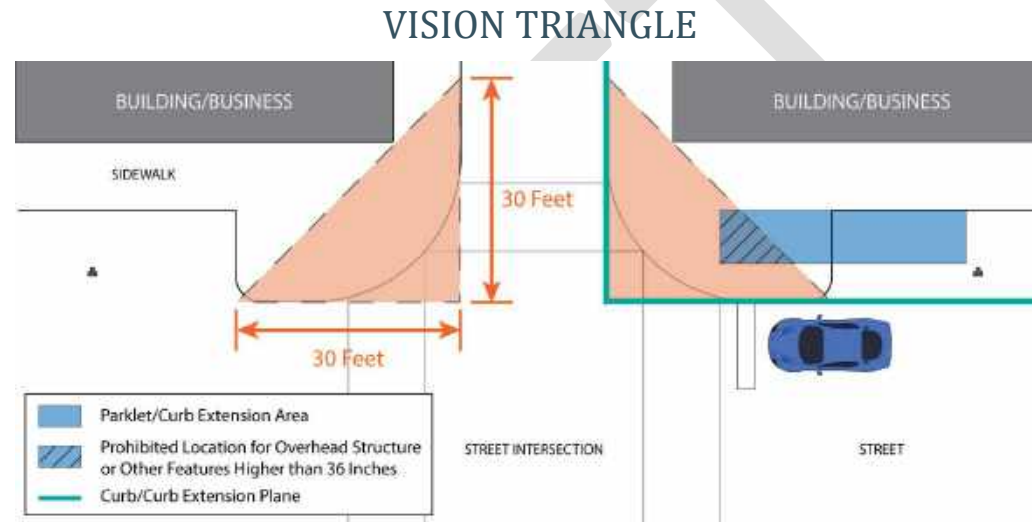
## D. OVERHEAD STRUCTURES AS A SPECIAL ALLOWANCE

Overhead structures are not used in typical parklets and require a special allowance with a longer approval process subject to staff discretion. Typical parklets preferred by the city include the use of colorful umbrellas, fabric awnings, or other retractable and soft material for shading that still allow light to the public realm. Where allowed, overhead structures are located on either side of the sidewalk, preferably adjacent to the building.

1. A building permit is required for the installation of any roof or overhead structure and is subject to review by the city.
2. A site plan and elevation drawing of the parklet shall be provided with a structural engineer or architect's stamp if the applicant proposes to include an overhead structure, such as a pergola or other affixed roof structure. Umbrellas or fabric sail shades are not considered overhead structures. However, umbrellas and fabric sail shades must be identified in the site plan for the city to review for compliance with standards such as sight lines, height, wind/fire resistance, etc.
3. The City will review any proposed overhead structures to ensure that sufficient visibility for pedestrians, traffic, businesses, and other site-specific conditions, are properly maintained. The city may require modifications or deny the proposed overhead structure.
4. The minimum vertical clearance for an overhead structure within the parklet footprint, a sidewalk cafe, or curb extension is 7 feet above the finished floor level.
5. In order to ensure motorist sight lines at street intersections, overhead structures or other parklet feature higher than 36 inches are prohibited within a 30-foot vision triangle measured from the intersection of the curb or curb extension line.
6. Parklets with overhead structures may only be placed where a minimum 8-foot pedestrian clearance is provided along the pedestrian path. No portion of the structure may encroach within this clearance.



7. Overhead structures shall maintain a visual connection to the street by designing the structure to provide some openness with transparent wind barriers required in C.4. on page 32 or with openings in the enclosure. Shading materials should be soft to reduce prominence and retractable so it can be pulled back when not in use or when more light is desired in the space.
8. Any fabric, membrane shade, or other weather protection, including umbrellas and tents of any size, needs to be constructed of fire-resistant treated material as per the California Code of Regulations, Title 19, Division 1, Section 315(a). Heating devices within overhead structures shall meet requirements on page 28.



## SECTION 2. SIDEWALK CAFÉ PROGRAM

### SIDEWALK CAFÉ PROGRAM OVERVIEW

#### PURPOSE

The purpose of these guidelines is to help clarify and provide standards for sidewalk cafe uses in order to enhance the quality and safety of the pedestrian experience and reinforce a sense of place and economic vitality. These guidelines and requirements are established to achieve the Outdoor Dining goals by maintaining safety, accessibility, and an enhanced design that connects the public realm. Compliance with all applicable sections of these guidelines is required at all times.

#### DEFINITION OF A SIDEWALK CAFÉ

An outdoor area located on the public right-of-way within the sidewalk area which is used to provide more space and amenities for Outdoor Dining operated and maintained by the business establishment conducting the Outdoor Dining.

#### SIDEWALK CAFÉ AREA

The sidewalk cafe area can be defined as one or a combination of:

1. The space delineated by the facade of the building to the adjacent street, perpendicular to the public right-of-way.
2. The recessed entries immediately adjacent to the outdoor sidewalk cafes.
3. Certain alleys determined by the city that are adjacent to the operating business.

#### SIDEWALK CAFÉ AREA CLEARANCE REQUIREMENTS

The cafe operators are required to maintain all minimum distances and clearance requirements at all times: *Minimum 5-foot pedestrian path clearance; min. 5-foot entrance clearance radius; and min. 5-foot pedestrian path at crosswalks from edge of curb at all times.* City staff will perform compliance inspections. Application submittals are required to comply with all Americans with Disabilities Act (ADA) requirements.

#### MOVEABLE IMPROVEMENTS

The sidewalk cafe area contains various sidewalk patterns which affect the placement of improvements such as tables and chairs in the public right-of-way. The installation of these improvements is considered temporary in nature. The operator shall locate moveable flower boxes or planters adjacent to the street in such a way as to visually define and contain the sidewalk cafe area. The sidewalk cafe improvements shall be set up during the applicable hours of operation.

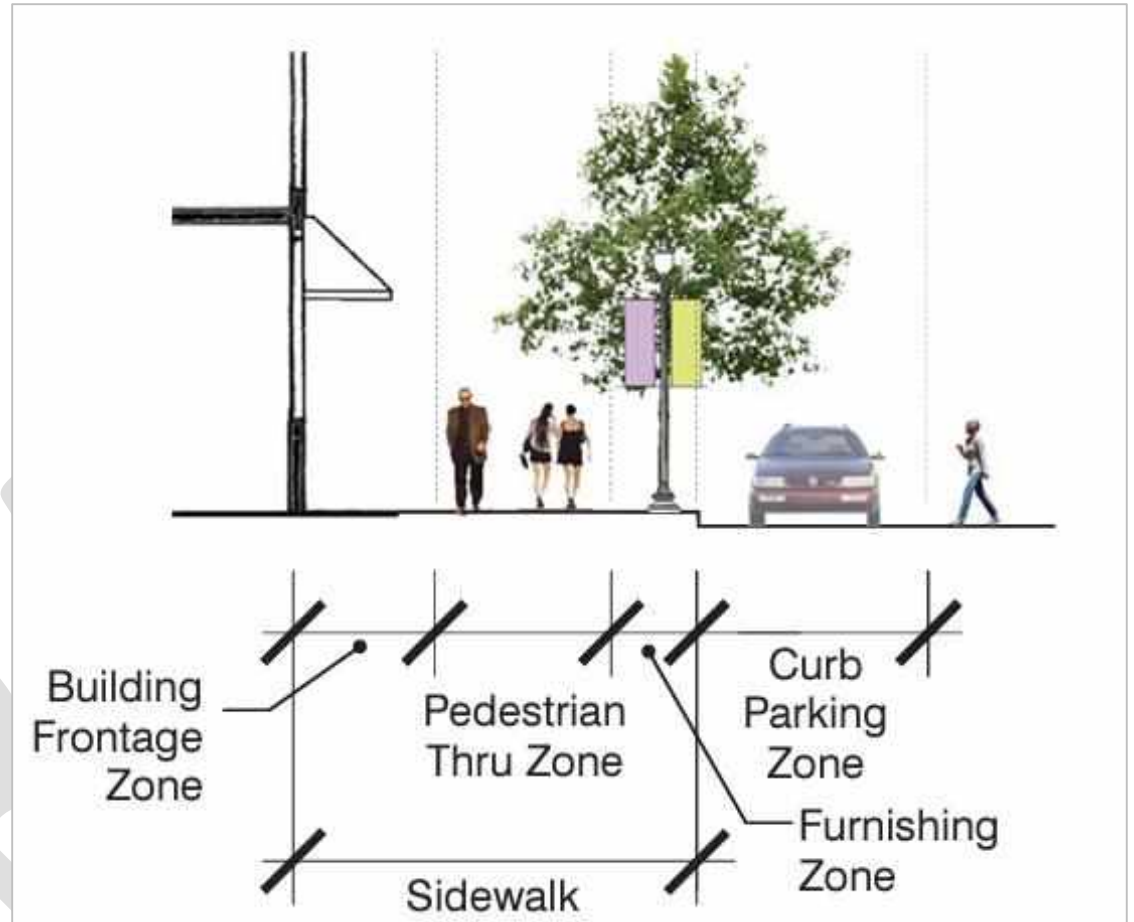
#### PERMANENT IMPROVEMENTS

Unless the applicant obtains a building permit and a revocable license agreement, the operator shall not make any permanent changes, such as building structures or bolting tables to the ground. Permanent improvements within sidewalk areas must be in conformance with the applicable provisions and guidelines of the California Building Code and the Americans with Disabilities Act (ADA) accessibility requirements, and all other life, health, and safety requirements.

## SIDEWALK CAFÉ ZONES

Any sidewalk cafe area may be viewed as containing several functional zones which must be respected at all times. The El Camino Real and Downtown Specific Plan establishes sidewalk functional zones, ensuring a pedestrian clear zone and more pleasant and functional sidewalks. Understanding these zones will assist the applicant in determining the best layout for their sidewalk cafe area. These zones include:

- **Sidewalks:** The area dedicated to pedestrian activity made up of the building frontage, pedestrian thru, and furnishing zones, and adjacent to the curb parking or street traffic zone.
- **Building Frontage Zone:** The area of a public sidewalk located between the pedestrian thru zone and adjacent building or property line, assuming the sidewalk dimension allows for it. Depending on the location of the building, a frontage zone may accommodate outdoor seating and planting
- **Pedestrian Thru Zone:** Allows for unimpeded pedestrian circulation, free of all obstruction, including utility boxes and fences for outdoor dining.
- **Furnishing Zone:** The buffer between the pedestrian thru zone and curb parking/street traffic. The furnishings zone accommodates public amenities such as street trees, streetlamps, benches, bike racks, kiosks, news racks, mailboxes, transit shelters, public art, plantings, utility poles and utility boxes. In some cases, the furnishings zone is also used for outdoor seating and dining by shops, cafes, and restaurants.
- **Curb Parking Zone:** The interface between the roadway and sidewalk and accommodates vehicular parking, and in most cases parklets.



Sidewalk Cafes are permitted in the Building Frontage Zone and Furnishing Zone.



## FURNISHINGS & FIXTURE DESIGN STANDARDS

### FURNISHINGS & FIXTURE DESIGN STANDARDS FOR PARKLETS AND SIDEWALK CAFÉS

#### FURNISHINGS AND FIXTURES DESIGN STANDARDS

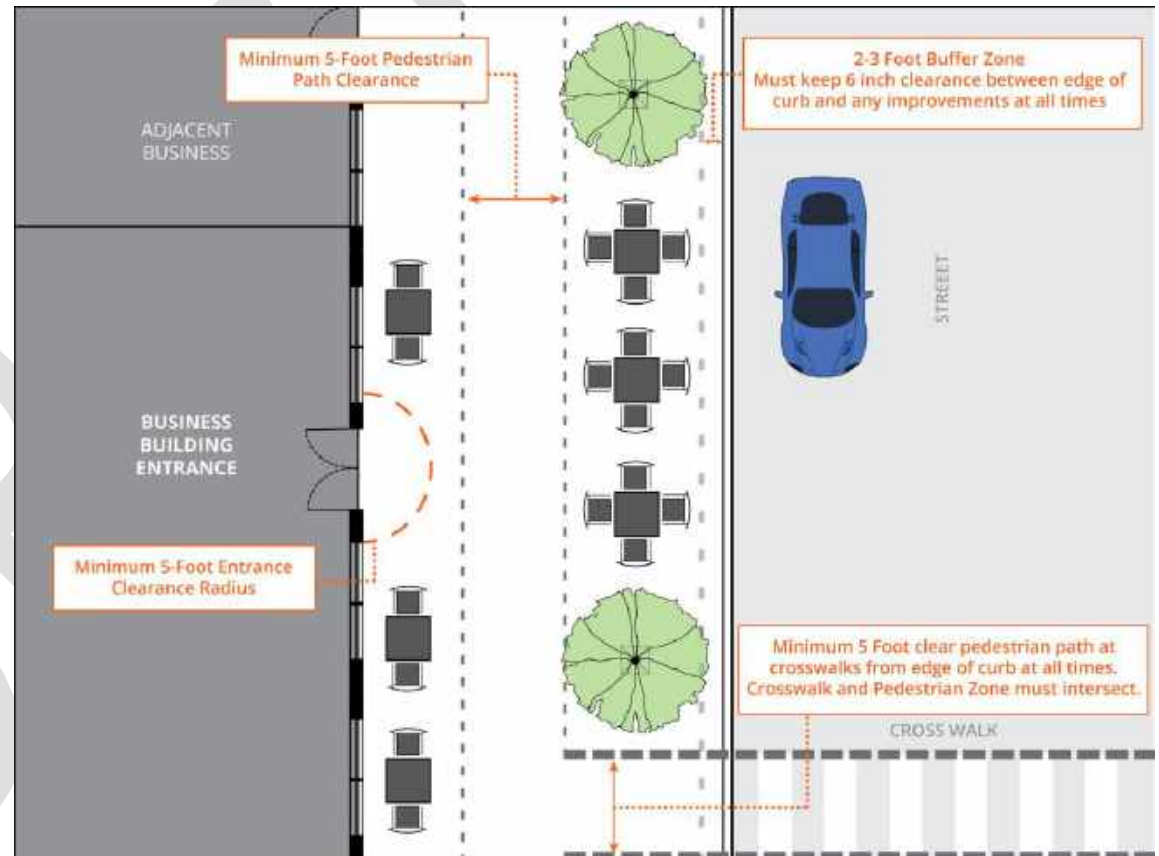
All furnishings and fixtures in parklets and sidewalk cafes shall comply with the California Building Code, California Fire Code, and the Americans with Disabilities Act accessibility requirements.

#### 1. TABLES, CHAIRS, AND SEATING

Tables and chairs shall match and be made of safe, sturdy, and durable material, such as wood, steel, plastic, and wrought iron. All furniture shall be commercial grade and manufactured for outdoor commercial use. Vinyl tablecloths are not recommended.

- As a general recommendation, round tables should be no larger than 2½ feet wide and square tables should be no larger than 3 feet wide. Tables shall meet clearance requirements for parklets and sidewalk cafes.
- Accessible seating shall be provided and comply with the following California Building Code Sections:
  - 11B-305 Clear floor space of 30" by 48" at 5% of seating
  - 11B-306 Minimum knee and toe clearances

- **Seating in Sidewalk Cafes:** Small round or square tables shall seat no more than four people unless otherwise approved by the City, subject to compliance with any required pedestrian clearance. Use of larger tables may be granted by the City provided that all clearance requirements are met.



**2. FURNISHINGS IN IMPROVEMENT**

Furnishings and fixtures must be designed to be weighted down (or fixed to parklet) for wind protection. Items may need to be stored inside the business during periods of high winds. Please ensure that the weights used do not create tripping hazards for pedestrians. No furniture or any parts of a parklet or sidewalk café shall be attached, chained, or in any manner affixed to any tree, post, signs, sidewalk, streetlight, fire hydrant, or other public fixture within or near the licensed area.

**3. FIRE RESISTANT MATERIALS**

Any fabric, membrane shade, or other weather protection, including umbrellas and tents of any size, needs to be constructed of fire-resistant treated material as per the California Code of Regulations, Title 19, Division 1, Section 315(a). Fire-resistant materials must have documentation of a California State Marshal’s Seal on all panels, or meet NFPA 702 testing requirements by a NRTL, or meet CPAI 84 standards.

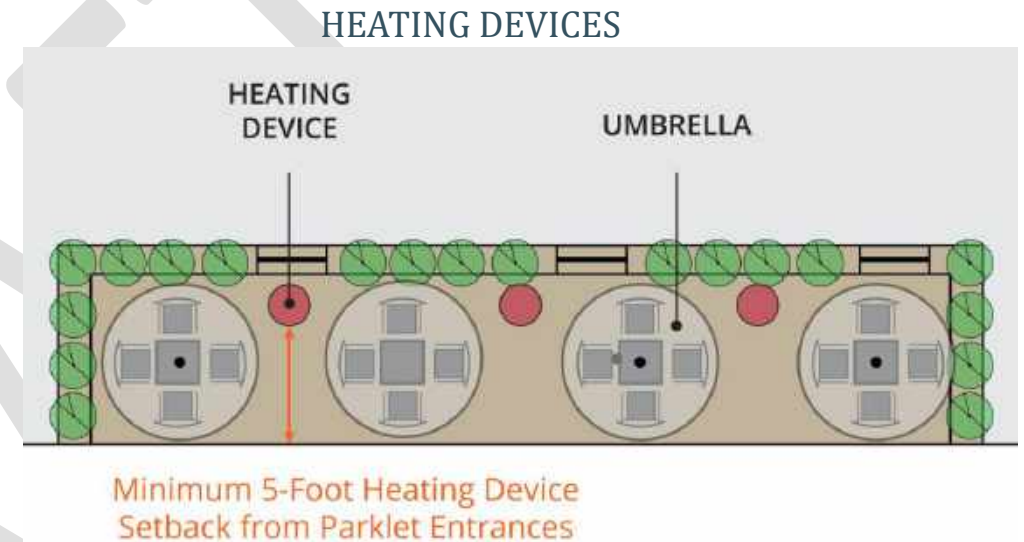
**4. PORTABLE HEATERS & OTHER HEATING DEVICES**

Heating devices may be electric, propane, or natural gas powered, and shall meet the following requirements:

- Heating devices are prohibited inside of tents, canopies, and membrane structures.
- A minimum 5-foot clearance shall be provided between a building and the heating device.
- A minimum 5-foot clearance shall be provided between combustible materials and a heating device.
- A minimum 5-foot clearance shall be provided between exits or exit discharges and a heating device.
- Propane or natural gas heating devices shall have a tip over switch that shuts off the flow of gas.
- Propane or natural gas heating devices shall have a maximum of 20 pounds’ capacity gas container.
- **Gas heating appliances are NOT permitted on wood-based parklets, only electrical**

**5. SHADING & UMBRELLAS**

- Individual canvas or other non-vinyl umbrellas of a compatible design may be permitted in the right-of-way and shall not extend over the Pedestrian Zone.



- Umbrellas shall be made for outdoor commercial use subject to City approval. Any fabric, membrane shade, or other weather protection, including umbrellas and tents of any size, needs to be constructed of fire-resistant treated material as per the California Code of Regulations, Title 19, Division 1, Section 315(a). Fire-resistant materials must have documentation of a California State Marshal's Seal on all panels, or meet NFPA 702 testing requirements by a NRTL, or meet CPAI 84 standards.
- Umbrellas must be at least 80-inches above the parklet platform or sidewalk.
- Umbrellas and shading must not block sight lines for traffic or pedestrians in crosswalks.

#### 6. ELECTRICAL CONNECTIONS

Electrical service to any parklet requires a permit. All wiring and electrical cords must be exterior rated, GFCI protected, and UL listed. Electrical extension cords between buildings and a parklet are not allowed.

- Cords within the parklet must not create tripping hazards on the sidewalk.
- The use of adapters is prohibited.
- Businesses are not allowed to tap into existing City electrical connections such as twinkle light outlets or streetlight poles.
- Generators are not allowed in association with parklets.

#### 7. LIGHTING

Lighting is encouraged and may be provided through separately permitted electrical connections to the building. Solar powered (small scale) or battery powered lighting is encouraged.

- Lighting shall not be directed towards the roadway to unintentionally cause glare for vehicles, bicyclists, or pedestrians.
- Light strings must be hung to allow for a minimum clearance of 10 feet above the sidewalk and the platform of the parklet.
- Candles and open flames are prohibited within a parklet.
- No new foundations are permitted for light poles.

#### 8. SIGNAGE

Non-illuminated signs are allowed provided the sign area does not exceed 6 square feet (24 inches by 36 inches). Sign copy is limited to business identification, except that if the parklet is meant to serve the general public, signage should reflect such. If the parklet is meant to serve as restaurant seating, signage should correlate in design with the signage on the primary building.

- **Menu Boards & Signs in Sidewalk Cafes:** Menu boards, both portable and on walls, shall be subject to sign permit approval and shall comply with the Menlo Park Sign Ordinance.

#### 9. LANDSCAPING AND PLANTERS

All planters and planting areas must contain seasonal blooming live plants year round. The sidewalk café and/or parklet owner shall be responsible for the prompt removal of all empty or poorly maintained planting areas. Landscaping and planters must be maintained, kept healthy and free of litter/debris at all times.

- Neither the planter or plant material shall impede or hinder pedestrian and vehicular visibility.
- Landscaping or planter options include planter boxes within the setback area or serving as the parklet platform enclosure; hanging planters; or raised planter beds.
- Plants must be drought tolerant and/or native. Edible or fragrant plants are encouraged. Plants that have thorns, spikes, or sharp edges, or that are poisonous or invasive, are not permitted.
- **Parklet Landscaping & Planters Standards:**
  - i. Planters are allowed within the parklet setback area.
  - ii. The height shall be between 30 and 36-inches in height.
  - iii. The height of plants within planters in parklet setback areas or planters serving as parklet platform enclosures shall not exceed 6-inches in height.
- **Sidewalk Café Landscaping & Planters Standards:**
  - i. The cafe owner may use flower boxes or planters to define the boundaries of the cafe seating area.
  - ii. To avoid blocking the patron’s vision while seated, the combined height of the planters and live plants shall not exceed 4 feet from sidewalk grade.
  - iii. The boxes or planters in Sidewalk Cafes shall be no greater in height than 2½ feet and no wider than 2 feet at the base.
  - iv. Plant materials and containers shall remain at or below shoulder height of a seated person so as to not block visibility of the seating area.
  - v. The flower boxes, planters, and storage bins shall be portable and be made of safe, durable and attractive material such as wood or steel.

#### 10. BARRIERS/FENCES

- **Parklet Barriers/Fences:** Refer to Parklet Design Standard Section C. “Platform barriers, railings, or enclosures”
- **Sidewalk Café Barriers/Fences:** Barriers should provide visual and physical connections with the surrounding public realm. Barriers should have a low height that allow views into and out of the space with at least one opening between barriers for an area of passage. The use of barriers should be limited and only occur where needed. All in-ground improvements require a building permit and/or license agreement which are subject to approval by the Engineering Department. All barriers and fences shall be shown on the application site plan and are subject to approval by the City.

#### 11. TRASH RECEPTACLES

The number, type, and location of trash receptacles shall be determined by the City and shall comply with the public right-of-way access code. Trash receptacles shall be made of durable material to match the existing facade and shall be commercial grade as determined by the City.