



**REGULAR MEETING AGENDA – AMENDED**

**Date:** 5/23/2023  
**Time:** 6:00 p.m.  
**Locations:** [Zoom.us/join](https://zoom.us/join) – ID# 814 7839 7160 and  
City Council Chambers  
751 Laurel St., Menlo Park, CA 94025

This amended agenda includes updated California Environmental Quality Act (CEQA) language for items I1., I2., and I3.

Members of the public can listen to the meeting and participate using the following methods. If you have issues viewing the meeting, please email the city clerk at [jaherren@menlopark.gov](mailto:jaherren@menlopark.gov).

How to participate in the meeting

- Submit a written comment online up to one-hour before the meeting start time:
- [city.council@menlopark.gov](mailto:city.council@menlopark.gov)
- Access the meeting real-time online at:  
[Zoom.us/join](https://zoom.us/join) – Meeting ID 814 7839 7160
- Access the meeting real-time via telephone at:  
(669) 900-6833  
Meeting ID 814 7839 7160  
Press \*9 to raise hand to speak

Watch meeting:

- Access the meeting in-person at **Belle Haven Branch Library, 413 Ivy St.**, where the meeting will be shown live on a big screen using Zoom videoconference technology.
- Cable television subscriber in Menlo Park, East Palo Alto, Atherton and Palo Alto:  
Channel 26
- City Council Chambers

Subject to Change: The format of this meeting may be altered or the meeting may be cancelled. 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))

**Regular Session**

- A. Call To Order**
- B. Roll Call**
- C. Agenda Review**
- D. Report from Closed Session**

**E. Public Comment**

Under “Public Comment,” the public may address the Commission on any subject not listed on the agenda. Each speaker may address the Commission once under Public Comment for a limit of three minutes. The Commission cannot act on items not listed on the agenda and, therefore, the Commission cannot respond to non-agenda issues brought up under Public Comment other than to provide general information.

**F. Presentations and Proclamations**

F1. Proclamation: Gun Violence Awareness Day ([Attachment](#))  
Not a California Environmental Quality Act (CEQA) project.

F2. Presentation: Menlo Park Youth Poetry Voices  
Not a CEQA project.

**G. Advisory Body Vacancies and Appointments**

G1. Consider applicants and make appointments to fill vacancies on the Finance and Audit Committee ([Staff Report #23-122-CC](#))  
Not a CEQA project.

**H. Consent Calendar**

H1. Accept the City Council meeting minutes for March 28, 2023 ([Attachment](#))  
Not a CEQA project.

H2. Adopt a resolution authorizing the city manager to execute an agreement with Bigbreak, LLC (Chefables) in an amount not to exceed \$100,000 for the delivery of food services at the Belle Haven Child Development Center during fiscal year 2023-24 ([Staff Report #23-118-CC](#))  
Not a CEQA project.

H3. Adopt a resolution approving the preliminary engineer’s report for the Menlo Park Landscaping Assessment District and adopt a resolution intending to order the levy and collection of assessments for the Landscaping Assessment District for fiscal year 2023-24 ([Staff Report #23-119-CC](#))  
Not a CEQA project.

H4. Authorize the city manager to enter into a professional services agreement for audit services ([Staff Report #23-120-CC](#))  
Not a CEQA project.

H5. Adopt a resolution to support the 2023 Southeast San Mateo County Community Based Transportation Plan ([Staff Report #23-121-CC](#))  
Not a CEQA project.

H6. Authorize the city manager to execute an amendment to the professional services agreement with Optony, USA ([Staff Report #23-124-CC](#))



Not a CEQA project.

## **I. Public Hearing**

- I1. Consider a City Council call-up of the Planning Commission denial of a use permit to allow electric pool heating equipment to exceed the nighttime noise limit at 100 Terminal Ave.

([Staff Report #23-123-CC](#))

Determine the project is categorically exempt from CEQA Guidelines under §15302 (Replacement or Reconstruction).

- I2. Consider a City Council call-up of the Planning Commission's decision to approve a use permit for live entertainment, on-site consumption of alcohol, and outdoor seating until 2 a.m. for the proposed restaurant use and architectural control for exterior modifications to the existing commercial building, including modifications to the storefront along the El Camino Real frontage and a new deck and trellis area in the rear of the building to accommodate outdoor dining for the proposed restaurant located at 961 El Camino Real ([Staff Report #23-131-CC](#))

Determine the project is categorically exempt from CEQA Guidelines under §15301 (Existing Facilities).

- I3. Consider the Planning Commission's recommendation to approve a request for a revision to an existing planned development permit to reduce the minimum required lot size, reduce the number of required onsite parking spaces from 360 to 315 spaces and modify percentage based development standards (e.g., building coverage and floor area ratio) associated with the reduction in site area ([Staff Report #23-125-CC](#))

Determine the project is categorically exempt from CEQA Guidelines §§15301 (Existing Facilities), 15305 (Minor Alterations in Land Use Limitations) and 15601(b)(3) (Common Sense Exemption).

## **J. Regular Business**

- J1. Adopt a Resolution to amend Resolution No. 6738 to remove the drought surcharge that corresponds to stage 2 drought measures from Menlo Park Municipal Water customer bills; Rescind stage 2 drought measures if/when the State Water Board ends its drought regulations that require Menlo Park Municipal Water to implement drought measures in its Water Shortage Contingency Plan ([Staff Report #23-126-CC](#))

Determine that this action is exempt from California Environmental Quality Act pursuant to CEQA Guidelines sections 15307 (actions to protect natural resources), 15308 (actions to protect the environment) and 15269 (actions to prevent or mitigate an emergency).

- J2. Resolution to reduce the Utility Users Tax ([Staff Report #23-127-CC](#))  
Not a CEQA project.

## **K. Informational Items**

- K1. City Council agenda topics: May 30 – June 27 ([Staff Report #23-128-CC](#))  
Not a CEQA project.

- K2. Progress report on implementing the 2030 Climate Action Plan ([Staff Report #23-129-CC](#))  
Not a CEQA project.

- K3. Menlo Park Community Campus – preliminary staffing, operations and programming plan considerations ([Staff Report #23-130-CC](#))  
Not a CEQA project.

**L. City Manager Report's**

**M. City Councilmember Reports**

**N. Adjournment**

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

At every special meeting of the commission, members of the public have the right to directly address the commission 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 commission 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 commission meetings, may call the City Clerk's Office at 650-330-6620.

Agendas are posted in accordance with California Government Code §54954.2(a) or §54956. Members of the public can view electronic agendas and staff reports by accessing the city website at [menlopark.gov/agendas](http://menlopark.gov/agendas) and can receive email notification of agendas by subscribing at [menlopark.gov/subscribe](http://menlopark.gov/subscribe). Agendas and staff reports may also be obtained by contacting the city clerk at 650-330-6620. (Posted: 5/18/2023)

# Proclamation

## NATIONAL GUN VIOLENCE AWARENESS DAY

**WHEREAS**, every day, more than 120 Americans are killed by gun violence and Americans are 26 times more likely to die by gun homicide than citizens of other high-income countries, with an average of more than 17,000 gun homicides every year; and

**WHEREAS**, California has an average of 3,253 gun deaths every year, a crisis that costs the state \$1060 per resident each year for a total of \$4 billion of which \$1 billion is paid by taxpayers; and

**WHEREAS**, cities across the nation, including in Menlo Park, are working to end the senseless violence with evidence-based solutions; and

**WHEREAS**, gun violence prevention is more important than ever as we see an increase in firearm homicides, and nonfatal shootings across the country, increased calls to domestic violence hotlines, and an increase in city gun violence; and

**WHEREAS**, in January 2013, Hadiya Pendleton was tragically shot and killed at age 15; and on June 2, 2023 to recognize the 26th birthday of Hadiya Pendleton (born: June 2, 1997), people across the United States will recognize National Gun Violence Awareness Day and wear orange in tribute to Hadiya Pendleton and other victims of gun violence, and the loved ones of those victims; and

**WHEREAS**, the idea was inspired by Hadiya's friends, who asked their classmates to commemorate her life by wearing orange because hunters wear orange to announce themselves to other hunters when out in the woods, symbolizing the value of human life; and

**WHEREAS**, by wearing orange on June 2, 2023, Americans will raise awareness about gun violence and honor the lives of gun violence victims and survivors; and

**WHEREAS**, we renew our commitment to reduce gun violence and pledge to do all we can to keep firearms out of the hands of people who should not have access to them, and encourage responsible gun ownership to help keep our families and communities safe; and

**NOW, THEREFORE, BE IT PROCLAIMED**, I, Jen Wolosin, Mayor of the City of Menlo Park, on behalf of the City Council and City, hereby declare the first Friday in June, June 2, 2023, to be National Gun Violence Awareness Day. I encourage all citizens to support their local communities' efforts to prevent the tragic effects of gun violence and to honor and value human lives.

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Jen Wolosin, Mayor  
May 23, 2023



## STAFF REPORT

### City Council

**Meeting Date:** 5/23/2023  
**Staff Report Number:** 23-122-CC

**Advisory Body Vacancies:** Consider applicants and make appointments to fill vacancies on the Finance and Audit Committee

### Recommendation

Staff recommends the City Council consider applicants for appointment to vacant seats on the Finance and Audit Committee (FAC).

### Policy Issues

City Council Policy CC-23-004 (Attachment A) establishes the policies, procedures, roles and responsibilities for the City's appointed advisory bodies, including the manner in which members are selected.

### Background

Annually, staff conducts a recruitment to fill advisory body vacancies that exist due to expiring terms, members terming out or unexpected vacancies (e.g., resignations). That recruitment period involved a two-month period of advertisements and announcements from February 6 to April 7, 2023. Incumbent members who were expiring but not terming out were informed of their ability to apply for reappointment. Incumbent members who were expiring and terming out were informed of their ability to apply for a different advisory body. Residents who expressed interest in serving or were not appointed in a previous recruitment were also invited to apply.

Following the April 25 City Council appointments to various advisory bodies, the City Council directed staff to extend the FAC recruitment to fill the remaining two vacancies. This recruitment period involved a two-week period of advertisements and announcements from April 26 to May 12, 2023. Residents who expressed interest in serving or were not appointed in a previous recruitment were also invited to apply.

The city clerk's office will provide onboarding and orientation for the new members. This includes the oath of office, commissioner handbook, introduction of advisory body liaison staff, and Brown Act training.

The city clerk's office regularly reviews all agendas and minutes, tracks attendance (Attachment B) and serves as the principal staff contact for all advisory body members. The City has designated staff to act as a subject matter expert and serves as a liaison between the advisory body and the City Council

### Analysis

Pursuant to City Council Policy CC-23-0004, members must be residents of the City of Menlo Park and serve for designated terms of two years.

Residency for all applicants has been verified by the city clerk's office. In addition, the City Council's policy

states the selection/appointment process by the City Council shall be conducted open to the public. Nominations will be made and a vote will be called for each nomination in the order received. Applicants receiving the highest number of affirmative votes from a majority of the City Council present shall be appointed. The number of votes for each City Councilmember is limited to the number of vacancies.

Appointments will be for two-year terms expiring April 30, 2025.

Note, all applications will be provided to the City Council under separate cover and are also available for public viewing at the city clerk's office during regular business hours or by request (Attachment C). The City Council also has the opportunity to ask applicants if they would consider appointments to an alternate commission. Attachment D lists all applicants including their residency District and Attachment E lists currently seated members and their residency District. These appointments can be made by the City Council at this meeting.

The City received the following applications, listed in alphabetical order by last name:

Finance and Audit Committee – two vacancies:

- Lynne Bramlett
- Jayanta Dey
- Linda Itskovitz
- Susan Prohaska
- Noria Zasslow

### **Impact on City Resources**

Staff support for advisory bodies and funds for recruitment advertising are provided in the annual budget.

### **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 Policy CC-23-004
- B. Hyperlink – March 28 City Council attendance Staff Report #23-080-CC:  
<https://menlopark.gov/files/sharedassets/public/agendas-and-minutes/city-council/2023-meetings/agendas/20230328-city-council-agenda-packet.pdf#page=96>
- C. Applications
- D. Applications by District
- E. Current advisory body members by District

Report prepared by:

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

# COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-23-004  
 Adopted January 10, 2023  
 Resolution No. 6803



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|--|
| <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> |

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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

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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.



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### 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 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,

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

City Council Policy #CC-23-004

Adopted January 10, 2023

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6

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).

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

City Council Policy #CC-23-004

Adopted January 10, 2023

Resolution No. 6803

**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

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

City Council Policy #CC-23-004

Adopted January 10, 2023

Resolution No. 6803

- 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 |

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

City Council Policy #CC-23-004

Adopted January 10, 2023

Resolution No. 6803

|                    |           |                     |
|--------------------|-----------|---------------------|
| Procedure adoption | 9/20/2022 | Resolution No. 6776 |
| Procedure adoption | 1/10/2023 | Resolution No. 6803 |

# Advisory body application



Submission date: **24 April 2023, 6:50PM**  
 Receipt number: **75**  
 Related form version: **7**

|  |                                    |
|--|------------------------------------|
| Applicant's full name (first and last)       | <b>Lynne Bramlett</b>              |
| Desired advisory body (check all that apply) | <b>Finance and Audit Committee</b> |

## Applicant interest, experience and qualifications

|  |  |
|--|--|
| Education  | <b>BA. Individual Major, UCLA. Teaching Credential. English. San Jose State University. MA. Literature. Notre Dame de Namur University. Certificate to teach English language learners.</b>  |
| Civic affiliations and community activities, including service on other advisory bodies, commissions or committees | <p><b>Currently: President, MPC Ready, a neighborhood-level disaster preparedness organization. Trustee, Trinity School. Vice President, Mid Peninsula Newcomers Club. Member, San Mateo County Chamber of Commerce. Member, San Mateo County Medical Reserve Corps. Member, Trinity Church. Member, Belle Haven Climate Change Community Team (CCCT).</b></p> <p><b>Previous: City of Menlo Park Library Commissioner. Led a City of Menlo Park Library affiliated Film Discussion group for almost 6 years. Found a replacement and turned group over to a new leader in January 2023. Participated in 2 City of Menlo Park temporary working groups in likely 2003 or 2004 timeframe.</b></p> |

Describe your understanding of the responsibilities of the advisory body that you are applying for and how your personal community or professional experience relate to these responsibilities

I routinely attended the Finance and Audit Committee meetings for approximately 2.5 years, stopping around March 2020. I read the City's financial documents closely, including the footnotes. My attendance led to my helping a FAC subcommittee working on aspects of the FAC workplan. The then budget director also asked for my research and writing help with a special project. I also helped staff to put on a budget workshop.

The overall role is stated at the City's website: 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.

My background includes public relations and marketing communications at HP. There, I routinely had to write about complex technology so that it was understandable by non technology professionals. I've also taught writing, including at the college level. This skill set could be helpful with the City's financial documents and especially the budget document. I could also do some benchmarking-related research to identify examples from elsewhere for the staff's consideration.

My background also includes planning events and workshops. I could help the staff, as needed, with presenting the City's budget information. My aim is to support staff. I also have other volunteer responsibilities that require my time.

As for the other financial reports, I would read them closely and prepare questions. I've also been part of many teams. I recognize the importance of teamwork and building trusting relationships with the staff and my counterparts.



Describe why you want to serve on this advisory body and what you hope to accomplish as a member

I planned to originally apply during the initial application period. However, I decided to just attend the meetings. I apply now due to the staff report for the April 25 meeting. I see that the FAC needs one more applicant. I would like to see the FAC remain at 7 people, so I apply.

I would like to help increase transparency for the City's financial reporting. For example, I would like to see the Vendor Payments posted to the City's website. They used to be posted but I no longer see them. These payments are like the City's checkbook. As some Council members know, the City was paying \$50K per year to a another government entity for services the City did not receive. The contract lapsed and the reporting stopped soon after. However, the \$50K yearly payments continued for years. The City employee who was to oversee the "outsourced" work left the City and so the outsourced work had no oversight. I learned about this accidentally because I was in a position to ask questions and to "connect the dots."

A FAC review could identify a category of payments that warrant follow up by the staff. The staff could ask questions and/or make sure the paperwork was in order. Some jurisdictions present the "vendor payments" to their governing bodies. However, I think the FAC would be the right Committee to do a first pass review.

I would also like to see the awarded RFP responses posted. I think the public should be able to see the vendors' statement of work and what the vendor is being paid for the work. These used to be posted at the City's website but I can no longer find them.

I would also like to see Developer Agreements turned into a a yearly or bi-yearly report. This is something that a FAC could help achieve, especially by dividing up the work. Developer agreements bring in a considerable amount of money to the City. These will phase out at some point and the lost revenue will impact the City. At the last FAC meeting I attended, I believe I heard the Interim Finance Director say that revenue from developers was the City's second highest revenue stream. Sales tax revenue was third. I think the Developer agreements, especially the financial aspects, need holistic reporting in a clear report. The report would help new Council members to also become informed on this important financial topic.

I am also interested in benchmarking and general research pertaining to best practices. For example, the City could move to a two-year budget cycle. The City could also add some participatory budgeting opportunities. The first could save staff time and the second would increase community engagement.

## Contact and residency information

Email

[REDACTED]

|  |  |
|--|--|
| Cell phone   | [REDACTED]   |
| Home phone   | [REDACTED]   |
| Business phone   |  |
| Address 1  | [REDACTED]   |
| Address 2  |  |
| City   | Menlo Park   |
| State  | CA   |
| Zip code   | 94025  |
| Business address   |  |
| Number of years as a Menlo Park resident                       | 27   |
| Current City Council district                                  | District 3   |
| How did you hear about this opportunity (check all that apply) | <input checked="" type="checkbox"/> City website<br><input type="checkbox"/> Email |

If I am appointed, the City is authorized to post the following information on the city website (please select at least one):

Cellphone: **Yes**  
 Business phone: **No**  
 Home phone: **No**  
 Email: **Yes**

### Application acknowledgement and submittal

I certify that the answers given herein are true and complete to the best of my knowledge. **I agree**

Signature



[Link to signature](#)

# Advisory body application



Submitted on date: 1 May 2023, 8:18PM

Receipt number: 77

Related form versions on: 8

Applicant's full name (first and last) Jayanta Dey

Desired advisory body (check all that apply) Finance and Audit Committee

Advisory body preference

## Applicant interest, experience and qualifications

Education

PhD, Computer Science

Civic affiliations and community activities, including service on other advisory bodies, commissions or committees

Sample Community services activities:

Founder and organizing committee for summer youth conferences for Peace, Justice and Activism

Past Advisory board member of a Women in Tech non profit in the Bay Area,

Advisor to a startup focusing on building ADUs to ameliorate the housing crisis with more sustainable development

Describe your understanding of the responsibilities of the advisory body that you are applying for and how your personal community or professional experience relate to these responsibilities

Financial prudence and compliance is essential to proper functioning of any organization. This is particularly the case with the City today as we navigate an unique time period. It is essential that we manage our budget and finance the community priorities appropriately, while being financially responsible.

I have had the privilege of being raised in a family without a lot of means (in India) - and had the fortune of experience personal finance management, and being careful about budgets. Also, in the silicon valley, I have managed large budgets in my organization (in excess of 250 mil USD) and had to run a business generating much larger revenues. That also taught me how to manage budget during high growth periods as well as periods of slow growth or no growth. I can bring these experiences to the table.

Describe why you want to serve on this advisory body and what you hope to accomplish as a member

I have been a citizen of Menlo Park for almost two decades, and I want to be an active member of the community. I leverage a lot of Menlo Park facilities, especially, recently, the work around sustainable development and eco sensitivity.

As a Belle Haven resident, I want to ensure that our city is prioritizing and managing budget thoughtfully, while being mindful of the needs of different communities across the city with different abilities, densities and needs. I would love to see more social equity in our budget spend, particularly with a ESG (Environmental, Social, Governance) and DEI mindset.

## Contact and residency information

|   |   |
|---|---|
| Email   | [REDACTED]  |
| Cell phone  | [REDACTED]  |
| Home phone  |   |
| Business phone  | [REDACTED]  |
| Address 1   | [REDACTED]  |
| Address 2   |   |
| City  | Menlo Park  |
| State   | CA  |
| Zip code  | 94025   |
| Business address  | [REDACTED]  |
| Number of years as a Menlo Park resident  |   |
| Current City Council district   | District 1  |
| How did you hear about this opportunity (check all that apply)  | Email   |
| If I am appointed, the City is authorized to post the following information on the city website (please select at least one): | Cellphone: No<br>Business phone: No<br>Home phone: No<br>Email: Yes |

## Application acknowledgement and submittal

I certify that the answers given here are true and complete to the best of my knowledge. I agree

Signature



[Link to signature](#)

# Advisory body application



Submitted on 3 May 2023, 7:36PM  
 Receipt number 79  
 Related form version 8

Applicant's full name (first and last) Linda tskovitz (this is a replacement application as I did not fill in the community service section last time)

Desired advisory body (check all that apply) Finance and Audit Committee

Advisory body preference

## Applicant interest, experience and qualifications

Education Haverford College BA Math / Concentration Computer Science  
 Stanford Graduate School of Business MBA

Civic affiliations and community activities, including service on other advisory bodies, commissions or committees  
 Las Lomas Education Foundation Board Member  
 La Entrada School Led a group of 7th and 8th graders to prepare for state math competitions  
 Santa Clara University's GSB (global social benefit institute) mentored social entrepreneurs  
 Berkeley Skydeck Accelerator Program Advisor and Go to market lecturer (CURRENT)

Describe your understanding of the responsibilities of the advisory body that you are applying for and how your personal community or professional experience relate to these responsibilities.

UNDERSTANDING OF RESPONSIBILITIES  
 Provide oversight of the financial reporting process the audit process and the city's system of internal controls and compliance with laws and regulations would assume this would include income statements/investments expenditures/budget cash flow etc. Ensure that the community has an appropriate understanding of the city's fiscal status

RELEVANT PROFESSIONAL EXPERIENCE  
 1) After college joined Chemical Bank (now Chase/J.P. Morgan) where completed a 9 month formal credit training program was selected to be my district's credit department 'head' and ultimately became a lending officer in the bank's middle market organization. Through this experience became well versed in accounting financial reporting and analysis of year to year business trends (via annual and quarterly income statements cash flows balance sheets etc) to support my lending decision recommendations. 2) For the past 10 years have served as CMO/VP Marketing & Chief of Staff for a variety of marketing organizations (high tech) where have managed budgets up to \$20million and served on the exec leadership teams responsible for the financial outcomes of the companies. I am known for being fiscally responsible and have partnered closely with CFO colleagues on financial initiatives and decisions affecting our reporting (ie capitalizing / accruing expenses spend / income decisions etc). Given that I have a deep understanding of business reporting (both internally as an exec responsible for financial outcomes as well as an external party looking to make a lending decision based on financial reports) I feel I am well equipped to contribute to Menlo Park's finance and audit committee.

Describe why you want to serve on this advisory body and what you hope to accomplish as a member

1) Give back to the city leveraging my financial / analytical background  
 2) Ensure that the MP community has an appropriate level of understanding about our city's finances



## Contact and residency information

|   |  |
|---|--|
| Email   | [REDACTED]   |
| Cell phone  | [REDACTED]   |
| Home phone  |  |
| Business phone  |  |
| Address 1   | [REDACTED]   |
| Address 2   |  |
| City  | Menlo Park   |
| State   | CA   |
| Zip code  | 94025  |
| Business address  |  |
| Number of years as a Menlo Park resident  | 27   |
| Current City Council district   | District 5   |
| How did you hear about this opportunity (check all that apply)  | Other Other A classmate from the Stanford GSB (Sally Cole Chair Complete Streets Commission) emailed me "Linda you would be amazing at this What do you think? xx Sally" and thought "this is my opportunity to give back" ) |
| If I am appointed, the City is authorized to post the following information on the city website (please select at least one): | Cellphone: No<br>Business phone: No<br>Home phone: No<br>Email: Yes  |

## Application acknowledgement and submittal

I certify that the answers given herein are true and complete to the best of my knowledge.  agree

Signature



[Link to signature](#)

# Advisory body application



Submission date: 7 April 2023, 3:26PM

Receipt number: 67

Related form version: 6

Applicant's full name (first and last)

Susan Prohaska

Desired advisory body (check all that apply)

Environmental Quality Commission

## Applicant interest, experience and qualifications

Education

PHD, Immunology, Stanford University  
MS, Biological Sciences, Stanford University  
BA, Microbiology and Immunology, UC Berkeley

Civic affiliations and community activities, including service on other advisory bodies, commissions or committees

I have been volunteering with the Menlo Park City Team to support their efforts including the petition to encourage electrification. The petition and Fact Sheet created serve to garner support for electrification by informing residents of the benefits to the environment of moving away from gas and towards renewable sources of energy, as well as the financial and logistical resources available to make voluntary switch to electric home appliances (with induction and heat pump technologies) when they need replacing, a feasible and economically realistic option for everyone. Similarly, I participated in recent 350 Palo Alto canvassing efforts to publicize the Palo Alto's "Switch to Electric" program for heat pump water heaters. I continue to work with the Menlo Park City Team to support Earth Day and other upcoming activities.

Describe your understanding of the responsibilities of the advisory body that you are applying for and how your personal community or professional experience relate to these responsibilities

The Environmental Quality Commission provides guidance to the City Council on matters involving environmental protection, improvement, and sustainability. As a scientist in the biomedical field, I have always been interested in nature, health, and our environment. I am personally committed to reducing my impact where I can and believe that everyone doing a little is the best way to start, but collectively we need to do a lot to overcome the challenges to our environment with sustainable practices that significantly reduce the current harmful and unsustainable uses of fossil fuels and single use plastics around the world. My commitment, scientific training, professional experience and skills would allow me to contribute to the researching, identification and communication of potential solutions to the environmental quality issues addressed by the commission.

Describe why you want to serve on this advisory body and what you hope to accomplish as a member

I am very concerned about the impact of climate change, as well as the overuse and overproduction of single use plastics, in the world today. Collectively, we need to improve awareness and reduce the financial and logistical barriers to implementing mitigation strategies such as electrification of homes and businesses, creating and improving green spaces with native drought tolerant species, and sustainable alternatives to single use plastic and packaging. It can be overwhelming even for those of us who want to make meaningful changes, to sift through the available information to identify tangible, actionable steps. It can also be challenging to combat the "gloom and doom" of the messaging around climate change crisis. I would hope that being a member of this Environmental Quality Commission would allow me to learn more about solutions and their implementation, and to help Menlo Park continue to lead in equitable climate action by being part of the team that advises the City Council on these important environmental matters.

## Contact and residency information

|   |   |
|---|---|
| Email   | [REDACTED]  |
| Cell phone  | [REDACTED]  |
| Home phone  |   |
| Business phone  |   |
| Address 1   | [REDACTED]  |
| Address 2   |   |
| City  | Menlo Park  |
| State   | CA  |
| Zip code  | 94025   |
| Business address  |   |
| Number of years as a Menlo Park resident  | 2   |
| Current City Council district   | District 2  |
| How did you hear about this opportunity (check all that apply)  | Other: I have been working with the Menlo Park City Team            |
| If I am appointed, the City is authorized to post the following information on the city website (please select at least one): | Cellphone: No<br>Business phone: No<br>Home phone: No<br>Email: Yes |

## Application acknowledgement and submittal

I certify that the answers given herein are true and complete to the best of my knowledge. I agree



Signature

A handwritten signature in black ink, appearing to read "James P. White". The signature is written in a cursive style with a prominent initial "J" and a long horizontal stroke at the end.

[Link to signature](#)

# Advisory body application



Submission date: **13 April 2023, 12:15PM**

Receipt number: **74**

Related form version: **6**

Applicant's full name (first and last) **Noria Zasslow**

Desired advisory body (check all that apply) **Finance and Audit Committee**

## Applicant interest, experience and qualifications

Education **Law School**

Civic affiliations and community activities, including service on other advisory bodies, commissions or committees **Former Park and Rec Commissioner**

Describe your understanding of the responsibilities of the advisory body that you are applying for and how your personal community or professional experience relate to these responsibilities **Must attend a once a month meeting ans study issues.**

Describe why you want to serve on this advisory body and what you hope to accomplish as a member **Hope to improve the quality of life of Menlo Park residents.**

## Contact and residency information

Email **[REDACTED]**

Cell phone **[REDACTED]**

Home phone

Business phone

Address 1 **[REDACTED]**

Address 2

City **Menlo Park**

State **CA**

Zip code **94025**

Business address

Number of years as a Menlo Park resident

Current City Council district **District 5**

How did you hear about this opportunity (check all that apply) **Email**

If I am appointed, the City is authorized to post the following information on the city website (please select at least one):

Cellphone: **No**

Business phone: **No**

Home phone: **No**

Email: **Yes**

## Application acknowledgement and submittal

I certify that the answers given herein are true and complete to the best of my knowledge. **I agree**

Signature

A handwritten signature in black ink, appearing to be 'MB' with a flourish extending to the right.

[Link to signature](#)

| Table 1: Finance and Audit Committee by District |                 |          |
|--|-----------------|----------|
| Advisory body                                    | Applicant       | District |
| Finance and Audit Committee                      | Lynne Bramlett  | 3        |
| Finance and Audit Committee                      | Jayanta Dey     | 1        |
| Finance and Audit Committee                      | Linda Itskovitz | 5        |
| Finance and Audit Committee                      | Susan Prohaska  | 2        |
| Finance and Audit Committee                      | Noria Zasslow   | 5        |

| Member          | Last appointment date | Expiration date | District |
|-----------------|-----------------------|-----------------|----------|
| Michael DeMoss  | 5/10/2022             | 4/30/2024       | 5        |
| Susannah Hill   | 5/10/2022             | 4/30/2024       | 3        |
| Jeff Leroux     | 4/25/2023             | 4/30/2025       | 2        |
| Matt Normington | 4/25/2023             | 4/30/2025       | 3        |
| Carol Wong      | 4/25/2023             | 4/30/2025       | 4        |



**REGULAR MEETING MINUTES – DRAFT**

**Date:** 3/28/2023  
**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 Wolosin called the meeting to order at 6:04 p.m.

**B. Roll Call**

Present: Combs (exited the meeting at 9:39 p.m.), Doerr, Nash, Taylor (remote – AB 2449 Just Cause), 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 to provide update on item F5.

**D. Public Comment**

- Amin Ahmadi requested their tree removal permit application be reconsidered.

**E. Presentations and Proclamations**

**E1. Presentation: Environmental Quality Commission Chair Report (Attachment)**

Environmental Quality Commission Chair Tom Kabat made the presentation (Attachment).

- Virginia Portillo requested more information for the conservation planning and City hired consultants.
- Katie Behroozi spoke in support grants to expedite solar permitting

The City Council received clarification on grant money to expedite solar permitting, electrification activities and viability of electric appliances during outages, electrification incentives, and efforts to provide electric heat pumps for low income homes.

The City Council discussed the proposed revised roles and responsibilities for the Environmental (EQC) Quality Commission and pursuing case studies for electrification.

The City Council directed staff return with updated roles and responsibilities for the EQC.

## F. Consent Calendar

- F1. Accept the City Council meeting minutes for March 14, 2023 (Attachment)
- F2. Waive the second reading and adopt an ordinance to amend Title 15 [Subdivisions] and Title 16 [Zoning] of the Menlo Park Municipal Code to comply with Senate Bill 9 for urban lot splits and two-unit developments (Staff Report #23-071-CC)

The City Council discussed the proposed parking ratio of .5 spaces per dwelling unit as directed by the City Council at the March 14 meeting and one space per dwelling unit as recommended by staff for new units created under Senate Bill 9 (SB 9). The City Council noted existing overnight parking regulations and if the requirement would create more restrictions to development, existing commute behavior by vehicles, the tracking proposed parking spaces, and potential housing opportunities as a result of Senate Bill 9.

**ACTION:** Motion and second (Wolosin/ Combs) to waive the second reading and adopt an ordinance amending Titles 15 [Subdivisions] and 16 [Zoning] of the Menlo Park Municipal Code in order to make City regulations consistent with applicable California law regarding urban lot splits and two-unit developments on single-family-zoned parcels reverting the parking requirement as presented during first reading at one parking space per unit, passed unanimously.

- F3. Adopt a resolution approving the Water Service Priority Policy for Menlo Park Municipal Water (Staff Report #23-072-CC)
- F4. Receive and file the investment portfolio as of December 31, 2022 (Staff Report #23-074-CC)
- F5. Receive and file City Council and advisory body annual attendance report for March 2022 – February 2023 (Staff Report #23-080-CC)

City Clerk Judi Herren updated the appointed dates for City Councilmembers Wolosin and Mueller.

**ACTION:** Motion and second (Doerr/ Taylor), to approved the consent calendar, with the exception of item F2., passed unanimously.

## G. Regular Business

- G1. Consider an appeal of the Complete Streets Commission's approval to remove four on-street parking spaces at 660 Roble Avenue (Staff Report #23-073-CC)

Senior Transportation Engineer Kevin Chen made a presentation (Attachment).

- Carole Hyde spoke in support of permanent traffic calming measures on Roble Avenue.
- Jon Kho spoke in support of permanent traffic calming measures on Roble Avenue and the removal of parking.
- Katie Behroozi provided information related to compliance for traffic safety violations with the current parking on Robel Avenue.
- Carol Collins spoke in opposition of the removal of parking at 660 Roble Ave.
- Tony Crumrine commented on a cypress tree blocking the line of sight and in opposition of the proposed parking removal.

The City Council received clarification on the line of sight and parking removal mandates.

The City Council discussed ownership and maintenance of the cypress tree and traffic calming measures on Roble Avenue.

The City Council directed staff redraft the resolution to uphold the appeal, research the removal of the cypress tree, and to return with other mitigations for improved line of sight.

The City Council took a recess at 7:43 p.m.

The City Council reconvened at 7:52 p.m.

G2. Amend the fiscal year 2022-23 budget (Staff Report #23-075-CC)

Administrative Services Director Brittany Mello made the presentation (Attachment).

The City Council received clarification on hotel reimbursement line item, current expenditures, and potential reimbursements from PG&E, city water accounts line item, and the budget timeline.

**ACTION:** Motion and second (Combs/ Taylor), to adopt a resolution to amend the fiscal year 2022-23 budget, passed unanimously.

G3. Adopt a resolution to approve amendments to the salary schedule as of April 9, 2023, related to and supporting Menlo Park Community Campus supervision, programs and operations (Staff Report #23-076-CC)

Library and Community Services Director Sean Reinhart made the presentation (Attachment).

- Pam Jones requested clarification on employee displacement by updating the salary schedule.

The City Council received clarification on employee displacement with new position titles, incorporating new titles and positions into the departmental organizational chart, classification details, succession planning, and paths of advancement.

The City Council discussed the combination of the community services department and library department into the library and community services department.

The City Council directed staff to include departmental organizational charts in future salary schedule amendments.

**ACTION:** Motion and second (Wolosin/ Combs), to adopt a resolution to approve the following amendments to the City of Menlo Park salary schedule:

- Update position title with no change to salary range – library and community services manager
- Update position title with no change to salary range – assistant library and community services director
- Delete – assistant community services director,

passed unanimously.

G4. Appoint City Councilmembers to various standing and ad-hoc subcommittees, and disband inactive ad-hoc subcommittees (Staff Report #23-081-CC)



City Clerk Judi Herren introduced the item.

- Jenny Michele requested clarification on the scope and tracking of inactive subcommittees.

The City Council received clarification on standing versus ad-hoc subcommittees.

The City Council discussed inactive subcommittees, citywide challenges with homelessness and encampments, and West Menlo Triangle access to an application fee waiver.

The City Council requested information on the charge of the Climate Action Plan Subcommittees.

**ACTION:** Motion and second (Taylor/ Nash), to disband inactive City Council subcommittees, passed unanimously (Attachment).

**ACTION:** Motion and second (Taylor/ Doerr), to make appointments to City Council standing and ad-hoc subcommittees, passed unanimously (Attachment).

## **H. Informational Items**

H1. City Council agenda topics: April 4 – April 25, 2023 (Staff Report #23-082-CC)

H2. Update on the emergency water storage/supply project (Staff Report #23-077-CC)

H3. Annual City Council priority and goal setting workshop update (Staff Report #23-078-CC)

The City Council discussed organization effectiveness in concert with all priorities and for the full City Council to review and adopt norms.

H4. Re-Imagining Public Safety Ad Hoc Subcommittee update (Staff Report #23-079-CC)

- Adina Levin spoke in support of San Mateo County mental health program and the creation of a mental health advisory body.
- Pam Jones spoke in support of additional advisory body report outs.

H5. Racial and Identity Profiling Act (RIPA) data annual report for calendar year 2022 (Staff Report #23-083-CC)

- Adina Levin spoke in support of the reporting and requested clarification on the number of police stops of Latinos.
- Pam Jones spoke in support of the reporting out and requested a next report to include analysis.

The City Council received clarification on the RIPA data analysis, percentage of Menlo Park residents stopped, and location requirements of traffic stops.

H6. California Public Records Act internal procedures (Staff Report #23-084-CC)

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

City Manager Justin Murphy reported out on storms, power outages, downed trees, the upcoming

April 4 City Council meeting at Belle Haven Branch Library, and a request for proposals for the administration of the Below Market Rate program.

**J. City Councilmember Reports**

City Councilmember Doerr reported out on the Bay Area Water Supply and Conservation Agency meeting.

Vice Mayor Taylor reported out South Bayside Waste Management Authority retreat cancellation and requested a City Council initiated item for commissioner stipends.

City Councilmember Nash reported out on Peninsula Clean Energy meeting and HayWired scenario.

Mayor Wolosin reported out on the quiet zone community meeting, San Mateo County Chamber of Commerce meeting, and commented on the blood shortage and promotion of blood donations.

**K. Adjournment**

Mayor Wolosin adjourned the meeting at 10:04 p.m.

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



## STAFF REPORT

### City Council

Meeting Date:

5/23/2023

Staff Report Number:

23-118-CC

### Consent Calendar:

**Adopt a resolution authorizing the city manager to execute an agreement with Bigbreak, LLC (Chefables) in an amount not to exceed \$100,000 for the delivery of food services at the Belle Haven Child Development Center during fiscal year 2023-24**

### Recommendation

City staff recommends that the City Council adopt a resolution (Attachment A) authorizing the city manager to enter into an agreement with Bigbreak, LLC (Chefables) (Attachment C) in an amount not to exceed \$100,000 for the delivery of food services at the Belle Haven Child Development Center (BHCDC) during fiscal year 2023-24.

### Policy Issues

City Council provides authorization to the city manager to negotiate and execute professional services agreements with service providers; and sets prioritization for the use of City resources to serve the community. State and Federal grants the City receives for operating the BHCDC require an annual contract with a food service provider meeting specific standards. The recommended vendor, Chefables conforms to State and Federal requirements for food service delivery.

### Background

The City of Menlo Park has operated the BHCDC for over 30 years. An important component of the program is service of breakfast and lunch to each child every day. Meal services must comply with the California Child and Adult Care Food Program (CACFP) meal pattern requirements (including quantity of food and food types for each age group) as well as the nutritional standards for breakfast and lunch as established by the United States Department of Agriculture (USDA).

### Analysis

The City receives meal reimbursements from the USDA through the child care food program for a fixed amount for each child's meals based upon the income level of families served and daily attendance. BHCDC is licensed for up to 96 children and has an average daily meal count of approximately 90 breakfasts and 90 lunches when operating at maximum capacity. BHCDC is contracted by the State of California to remain open for 244 days a year, which results in the need for up to approximately 43,920 meals per year. Since the COVID-19 pandemic, BHCDC has operated at reduced capacity to comply with state and local public health restrictions. Current enrollment is 66 children. COVID-19 restrictions have changed to allow increased capacity and the BHCDC is predicting reaching full capacity by mid-fall 2023. The current reimbursement rate varies based on the child's family income and ranges from a base rate to

the free rate of \$ 0.45 to \$2.21 for breakfast, \$0.47 to \$4.03 for lunch, and \$0.19 to \$1.18 for snacks. Data from the current fiscal year indicates that of the children qualifying for a meal subsidy, approximately 38% (24 children) qualified for the base reimbursement rate, 22% (14 children) qualified for the reduced-price reimbursement rate and 40% (25 children) qualified for full subsidy or free reimbursement rate. By comparison, data from the previous fiscal year 2021-22 indicated that of the children qualifying for a meal subsidy, approximately 33% (16 children) qualified for the base reimbursement rate, 16% (eight children) qualified for the reduced-price reimbursement rate and 51% (25 children) qualified for full subsidy or free reimbursement rate.

In 2019, bids for the delivery of breakfast and lunch were solicited from food vendors providing meals in accordance to State CACFP regulations including: Kidango, School Foodies and Bigbreak, LLC (Chefables.) Chefables was selected based on their years of experience, the quality and convenience of their food delivery services, competitive pricing, and importantly, their ability to meet strict CACFP regulations. Chefables supports building a foundation of healthy children's food habits through providing food that is nutritious, creative and varied. The quality of the product provided by Chefables has consistently been high and dependable.

Contracts for food services must be completed annually due to USDA requirements limiting the length of food service agreements to one year and disallowing automatic renewal provisions. Agreements for food services must also be submitted to the California Department of Education in order to ensure compliance with all the provisions and standards set forth by the USDA. The current agreement between the city and Bigbreak, LLC (Chefables) expires June 30. City staff recommend that the City Council authorize an agreement for one additional year to continue the uninterrupted delivery of food services at the Belle Haven Child Development Center for fiscal year 2023-24.

City staff plans to solicit new bids for the breakfast and lunch delivery per State CACFP regulations in early 2024, so as to bid out the contract at least every five years.

### **Impact on City Resources**

There are no direct impacts to the general fund related to the recommended agreement. Meal costs are reimbursed by the State of California. Food service costs are partially covered by the BHDC's contract with the California Department of Education, with the remainder covered by federal funds (USDA) through CACFR. The estimated full-year contract cost with Bigbreak, LLC (Chefables) is \$100,000 for fiscal year 2023-24. The estimated expenditures and revenues will be included in the City of Menlo Park fiscal year 2023-24 operating budget proposal.

### **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. CACFP-17 agreement
- C. Professional services agreement

Report prepared by:

Kira Storms, Library and Community Services Supervisor  
Nick Szegda, Assistant Library and Community Services Director

Report reviewed by:

Sean S. Reinhart, Library and Community Services Director

**RESOLUTION NO. XXXX**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
AUTHORIZING AN AGREEMENT WITH CHEFABLES (BIGBREAK, LLC) TO  
PROVIDE VENDED MEALS FOR THE BELLE HAVEN CHILD DEVELOPMENT  
CENTER**

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

WHEREAS, the BHDCDC offers nutritionally appropriate meals for breakfast, lunch and snack to the children in its care; and

WHEREAS, the City receives partial reimbursement from the United States Department of Agriculture (USDA) and is regulated by the California Child and Adult Food Program (CACFP) for providing nutritious meals to BHDCDC children; and

WHEREAS, agreements for child nutrition services that receive USDA reimbursement must be completed annually due to USDA requirements limiting the length of a contract to one year and disallowing automatic renewal provisions, and these agreements must meet standards set by CACFP; and

WHEREAS, a resolution must be adopted to continue with the current food vendor, Chefables (Bigbreak, LLC), in order to renew the contract with the CACFP and to continue to be a part of the USDA's reimbursable nutrition program.

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 entering into an agreement with Chefables (Bigbreak, LLC) for the total of \$100,000 to provide CACFP approved vended meals to children in the Belle Haven Child Development Center.

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

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Judi A. Herren, City Clerk



## **INSTRUCTIONS FOR USE**

### **CHILD CARE STANDARD FOOD SERVICE VENDING AGREEMENT (DELIVERY)**

The attached sample *Standard Agreement to Furnish Food Service* can be used when an agency contracts with a food service vendor for meals that will be claimed for reimbursement under the Child and Adult Care Food Program (CACFP).

Agencies should familiarize themselves with procurement procedures and requirements as found in Title 2 *Code of Federal Regulations*, sections 200.318–326 (2 *CFR* 200.318–326) and Title 7 *Code of Federal Regulations*, Section 226.22 (7 *CFR* 226.22).

This agreement may be used **only** if the aggregate value of your contract is below the purchase threshold appropriate to your agency. The current Federal purchase threshold is \$250,000, per 2 *CFR* 200.88. As part of your agency's procurement standards, ensure that when you are purchasing goods over \$10,000 that obtain an adequate number of price quotes and select the lowest cost vendor. Please note that if you intend to purchase anything above the aggregate value of \$250,000 or would like a contract longer than one year, you must follow formal procurement process.

The agreement must be signed by both the agency and the vendor. This agreement contains the requirements outlined in the Code of Federal Regulations. **No deletions of clauses or items will be allowed without the approval of the Nutrition Services Division.** The Schedule B–Meal Pattern appropriate to your agency type is a required part of the agreement. Additional clauses may be added to bring the agreement into conformance with applicable State or local laws governing your agency.

If you are a public agency you may use your customary form of contract **if that form incorporates all of the provisions set forth in 7 *CFR* 226.6(i), 226.21, and 226.22.**

This agreement is **valid for one year only** (Ex: January 5, 2018–January 4, 2019). A new agreement must be executed annually. Submit a photocopy of each agreement to the CACFP for review **prior** to beginning program operations covered under the agreement. Copies of the completed agreement and all amendments must be retained by both the agency and the vendor. If only one original agreement is signed, we recommend that you retain it in your files.

If you have any questions regarding the use of this agreement or need clarification of the regulatory requirements for contracting, please call the Nutrition Services Division at (916) 445-0850 or toll free at (800) 952-5609.



VENDOR #:20780004312-CACFP-41-GM-CS  
AGREEMENT #:

## STANDARD AGREEMENT TO FURNISH FOOD SERVICE BETWEEN A CHILD AND ADULT CARE FOOD PROGRAM AGENCY AND A FOOD SERVICE VENDOR

THIS ENTERED INTO ON THIS FIRST DAY OF JULY MONTH, 2023 YEAR BY  
AND BETWEEN CITY OF MENLO PARK – BELLE HAVEN CHILD DEVELOPMENT CENTER, HEREINAFTER REFERRED TO AS THE  
NAME OF AGENCY  
AGENCY, AND BIGBREAK, LLC DBA) CHEFABLES HEREINAFTER REFERRED TO AS THE  
NAME OF VENDOR/FOOD SERVICE MANAGEMENT COMPANY  
VENDOR.

**WHEREAS**, IT IS NOT WITHIN THE CAPABILITY OF THE AGENCY TO PREPARE SPECIFIED MEALS UNDER THE CHILD AND ADULT CARE FOOD PROGRAM (CACFP) FOR ENROLLED PARTICIPANTS; AND

**WHEREAS**, THE FACILITIES AND CAPABILITIES OF THE VENDOR ARE ADEQUATE TO PREPARE SPECIFIED MEALS FOR THE AGENCY'S FACILITY(IES); AND

**WHEREAS**, THE VENDOR IS WILLING TO PROVIDE SUCH SERVICES TO THE AGENCY ON A COST REIMBURSEMENT BASIS.

**THEREFORE**, BOTH PARTIES HERETO AGREE AS FOLLOWS:

### THE VENDOR AGREES TO:

- PREPARE THE MEALS (INCLUSIVE/EXCLUSIVE) OF MILK FOR Belle Haven CDC  
NAME OF SITE (ATTACH SHEET IF MULTIPLE)  
DELIVERY TO THE AGENCY AT 410 Ivy Drive, Menlo Park, CA BY Noon  
ADDRESS TIME  
EACH weekday, IN ACCORDANCE WITH THE NUMBER OF MEALS REQUESTED AND  
\* WEEKDAY OR SPECIFIC DAYS AS APPROPRIATE

AT THE COST(S) PER MEAL LISTED BELOW:

|                  |                |      |        |                |      |
|------------------|----------------|------|--------|----------------|------|
| BREAKFAST        | <u>\$ 1.67</u> | EACH | LUNCH  | <u>\$ 3.83</u> | EACH |
| SUPPLEMENT/SNACK | <u>\$ 1.00</u> | EACH | SUPPER | <u>\$ N/A</u>  | EACH |

1) BREAKFAST PRICING ABOVE ASSUMES GRAINS. IF AGENCY WOULD LIKE MA IN LIEU OF GRAINS (UP TO 3 TIMES/WEEK) THERE WILL BE A SURCHARGE AT COST PER MEAL. (2) ALLERGIES/MEAL MODS COME SEPARATELY PACKAGED AND WILL HAVE A SURCHARGE AT COST FOR THE PACKAGING. (3) SPECIALTY MILK CAN BE SUBSTITUTED FOR 1%/WHOLE MILK AT COST. (4) PRICING ABOVE ASSUMES FAMILY STYLE DINING PACKAGING. IF CUSTOMER REQUIRES INDIVIDUALIZED/UNITIZED PACKAGING A SURCHARGE FOR THE PACKAGING WILL BE AT COST.

- ASSURE THE AGENCY THAT NO TITLE III(C) FUNDS HAVE BEEN APPLIED TO THE COST OF OR TITLE III(C) COMMODITIES USED FOR THE PREPARATION OF THESE MEALS.

\_\_\_\_\_

\* Negotiable time frame but should be no longer than 24 hours.

VENDOR #:20780004312-CACFP-  
41-GM-CS  
AGREEMENT #:

**STANDARD AGREEMENT TO FURNISH FOOD SERVICE  
BETWEEN A CHILD AND ADULT CARE FOOD PROGRAM AGENCY  
AND A FOOD SERVICE VENDOR**

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3. PROVIDE THE AGENCY, FOR APPROVAL, A PROPOSED MENU FOR EACH MONTH AT LEAST \* 5 DAYS PRIOR TO THE BEGINNING OF THE MONTH TO WHICH THE MENU APPLIES. ANY CHANGES TO THE MENU MADE AFTER AGENCY APPROVAL, MUST BE AGREED UPON BY THE AGENCY AND DOCUMENTED ON THE MENU RECORDS.
4. ASSURE THAT EACH MEAL PROVIDED TO THE AGENCY UNDER THIS CONTRACT MEETS THE MINIMUM REQUIREMENTS AS TO THE NUTRITIONAL CONTENT AS SPECIFIED BY THE CHILD AND ADULT CARE FOOD PROGRAM'S SCHEDULE B--MEAL PATTERN (ATTACHED) WHICH IS EXCERPTED FROM THE TITLE 7 CODE OF FEDERAL REGULATIONS, SECTION 226.20.
5. MAINTAIN COST RECORDS SUCH AS INVOICES, RECEIPTS, AND/OR OTHER DOCUMENTATION THAT SHOWS THE PURCHASE, OR AVAILABILITY TO THE VENDOR, OF MEAL COMPONENTS, AS ITEMIZED IN THE MEAL PREPARATION RECORDS.
6. MAINTAIN FULL AND ACCURATE RECORDS WHICH DOCUMENT: (1) THE MENUS LISTING ALL MEALS PROVIDED TO THE AGENCY DURING THE TERM OF THIS CONTRACT; (2) A LISTING OF ALL NUTRITIONAL COMPONENTS OF EACH MEAL; AND, (3) AN ITEMIZATION OF THE QUANTITIES OF EACH COMPONENT USED TO PREPARE SAID MEAL. THE VENDOR AGREES TO PROVIDE MEAL PREPARATION DOCUMENTATION BY USING YIELD FACTORS FOR EACH FOOD ITEM AS LISTED IN THE USDA FOOD BUYING GUIDE WHEN CALCULATING AND RECORDING THE QUANTITY OF FOOD PREPARED FOR EACH MEAL.
7. MAINTAIN, ON A DAILY BASIS, AN ACCURATE COUNT OF THE NUMBER OF MEALS, BY MEAL TYPE, PREPARED FOR THE AGENCY. MEAL COUNT DOCUMENTATION MUST INCLUDE THE NUMBER OF MEALS REQUESTED BY THE AGENCY.
8. ALLOW THE AGENCY TO INCREASE OR DECREASE THE NUMBER OF MEAL ORDERS, AS NEEDED, WHEN THE REQUEST IS MADE WITHIN \* 48 HOURS OF THE SCHEDULED DELIVERY TIME.
9. PRESENT TO THE AGENCY AN INVOICE, ACCOMPANIED BY REPORTS, NO LATER THAN THE \* 15 DAY OF EACH MONTH THAT ITEMIZES THE PREVIOUS MONTH'S DELIVERY. THE VENDOR AGREES TO FORFEIT PAYMENT FOR MEALS WHICH ARE NOT READY WITHIN 1 HOUR OF THE AGREED UPON DELIVERY TIME, ARE SPOILED OR UNWHOLESOME AT THE TIME OF DELIVERY, OR DO NOT OTHERWISE MEET THE MEAL REQUIREMENTS CONTAINED IN THIS AGREEMENT.
10. PROVIDE THE AGENCY WITH A COPY OF CURRENT HEALTH CERTIFICATIONS FOR THE FOOD SERVICE FACILITY IN WHICH IT PREPARES MEALS FOR USE IN THE CACFP. THE VENDOR SHALL ENSURE THAT ALL HEALTH AND SANITATION REQUIREMENTS OF THE CALIFORNIA RETAIL FOOD FACILITIES LAW AND CHAPTER 4 OF THE CALIFORNIA HEALTH AND SAFETY CODE ARE MET AT ALL TIMES.
11. OPERATE IN ACCORDANCE WITH CURRENT CACFP REGULATIONS.
12. RETAIN ALL REQUIRED RECORDS FOR A PERIOD OF THREE (3) YEARS AFTER THE END OF THE FISCAL YEAR TO WHICH THEY PERTAIN (OR LONGER, IF AN AUDIT IS IN PROGRESS) AND, UPON REQUEST, MAKE ALL ACCOUNTS AND RECORDS PERTAINING TO THE AGREEMENT AVAILABLE TO THE AGENCY, REPRESENTATIVES OF THE CALIFORNIA STATE DEPARTMENT OF EDUCATION, THE U. S. DEPARTMENT OF AGRICULTURE, AND THE U.S. GENERAL ACCOUNTING OFFICE FOR AUDIT OR ADMINISTRATIVE REVIEW AT A REASONABLE TIME AND PLACE.
13. NOT SUBCONTRACT FOR THE TOTAL MEAL, WITH OR WITHOUT MILK, OR FOR THE ASSEMBLY OF THE MEAL.

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\* Negotiable time frame.

## STANDARD AGREEMENT TO FURNISH FOOD SERVICE BETWEEN A CHILD AND ADULT CARE FOOD PROGRAM AGENCY AND A FOOD SERVICE VENDOR

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### THE VENDOR CERTIFIES:

1. NEITHER IT NOR ITS PRINCIPALS ARE PRESENTLY DEBARRED, SUSPENDED, PROPOSED FOR DEBARMENT, DECLARED INELIGIBLE, OR VOLUNTARILY EXCLUDED FROM PARTICIPATION IN THIS TRANSACTION BY ANY FEDERAL DEPARTMENT OR AGENCY.

WHERE THE BIDDER IS UNABLE TO CERTIFY TO ANY OF THE STATEMENTS IN THIS CERTIFICATION, SUCH AGENCY SHALL ATTACH AN EXPLANATION TO THIS PROPOSAL.

2. AS REQUIRED BY THE STATE DRUG-FREE WORKPLACE ACT OF 1990 (GOVERNMENT CODE SECTION 8350 ET. SEQ.) AND THE FEDERAL DRUG-FREE WORKPLACE ACT OF 1988, AND IMPLEMENTED AT TITLE 34 CODE OF FEDERAL REGULATIONS, PART 85, SUBPART F, FOR GRANTEES, AS DEFINED AT TITLE 34 CODE OF FEDERAL REGULATIONS, PART 85, SECTIONS 85.605 AND 85.610, THE BIDDER CERTIFIES THAT IT WILL CONTINUE TO PROVIDE A DRUG-FREE WORKPLACE.

### THE AGENCY AGREES TO:

1. THE AGENCY SHALL PROVIDE THE VENDOR WITH A LIST OF APPROVED SERVING LOCATIONS TO BE FURNISHED MEALS BY THE VENDOR AND THE NUMBER OF MEALS, BY TYPE, TO BE DELIVERED TO EACH LOCATION.
2. REQUEST BY TELEPHONE NO LATER THAN Wednesday, 10am AN ACCURATE NUMBER OF  
TIME OF DAY AND DAY OF WEEK  
MEALS TO BE DELIVERED TO THE AGENCY ON EACH weekday. NOTIFY THE  
WEEKDAY OR SPECIFIC DAYS AS APPROPRIATE  
VENDOR OF NECESSARY INCREASES OR DECREASES IN THE NUMBER OF MEAL ORDERS WITHIN \* 48 HOURS OF THE SCHEDULED DELIVERY TIME. ERRORS IN MEAL ORDER COUNTS MADE BY THE AGENCY SHALL BE THE RESPONSIBILITY OF THE AGENCY.
3. ENSURE THAT AN AGENCY REPRESENTATIVE RECEIVES THE MEALS FOR EACH SITE, AT THE SPECIFIED TIME ON EACH SPECIFIED DAY. THIS INDIVIDUAL WILL INSPECT AND SIGN FOR THE REQUESTED NUMBER OF MEALS. THIS INDIVIDUAL WILL VERIFY THE TEMPERATURE, QUALITY, AND QUANTITY OF EACH MEAL DELIVERED. THE AGENCY ASSURES THE VENDOR THAT THIS INDIVIDUAL WILL BE TRAINED AND KNOWLEDGEABLE IN THE RECORD KEEPING AND MEAL REQUIREMENTS OF THE CACFP, AND IN HEALTH AND SANITATION PRACTICES.
4. PROVIDE PERSONNEL TO SERVE MEALS, CLEAN THE SERVING AND EATING AREAS, AND ASSEMBLE TRANSPORT CARTS AND AUXILIARY ITEMS FOR RETURN TO THE VENDOR NO LATER THAN Next day.  
TIME EACH DAY
5. NOTIFY THE VENDOR WITHIN 2 DAYS OF RECEIPT OF THE NEXT MONTH'S PROPOSED MENU OF ANY CHANGES CHANGES, ADDITIONS, OR DELETIONS, WHICH WILL BE REQUIRED IN THE MENU REQUEST.
6. PROVIDE THE VENDOR WITH A COPY OF TITLE 7 CODE OF FEDERAL REGULATIONS, PART 226; THE CHILD AND ADULT CARE FOOD PROGRAM SCHEDULE B--MEAL PATTERN; AND THE USDA FOOD BUYING GUIDE (AS APPLICABLE); AND ALL OTHER TECHNICAL ASSISTANCE MATERIALS PERTAINING TO THE FOOD SERVICE REQUIREMENTS OF THE CACFP. THE AGENCY WILL, WITHIN 24 HOURS OF RECEIPT FROM THE STATE AGENCY, ADVISE THE VENDOR OF ANY CHANGES IN THE FOOD SERVICE REQUIREMENTS OF THE CACFP.

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\* Negotiable time frame.

**STANDARD AGREEMENT TO FURNISH FOOD SERVICE  
BETWEEN A CHILD AND ADULT CARE FOOD PROGRAM AGENCY  
AND A FOOD SERVICE VENDOR**

- 7. PAY THE VENDOR BY THE 20th DAY OF EACH MONTH THE FULL AMOUNT AS PRESENTED ON THE MONTHLY ITEMIZED INVOICE. THE AGENCY AGREES TO NOTIFY THE VENDOR WITHIN 48 HOURS OF RECEIPT OF ANY DISCREPANCY IN THE INVOICE.
- 8. THE MEALS SERVED UNDER THE CONTRACT SHALL CONFORM TO THE CYCLE MENUS UPON WHICH THE CONTRACT WAS BASED, AND TO MENU CHANGES AGREED UPON BY THE AGENCY AND VENDOR.

**TERMS OF THE AGREEMENT:**

THIS AGREEMENT WILL TAKE EFFECT COMMENCING July 1, 2023 AND SHALL BE FOR A PERIOD  
DATE  
OF ONE CALENDAR YEAR. IT MAY BE TERMINATED BY WRITTEN NOTIFICATION GIVEN BY EITHER PARTY HERETO THE OTHER PARTY AT LEAST 30 DAYS PRIOR TO THE DATE OF TERMINATION.

**SCHOOL FOOD AUTHORITY VENDING TO AN AGENCY:**

PER TITLE 7, CODE OF FEDERAL REGULATIONS, SECTION 226.20 (o), AGENCIES WHICH VEND FROM A SCHOOL THAT PARTICIPATES IN THE NATIONAL SCHOOL LUNCH AND SCHOOL BREAKFAST PROGRAMS MAY USE THE SCHOOL'S MEAL PATTERN. ENTER THE MEAL PATTERN YOU WILL USE: N/A

If the Agency agrees to the menu planning option, the school will train the Agency by: N/A

**AGENCY:**

Agrees to allow the school to use the SMI menu planning option noted above (submit menu for NSD's approval):  
Yes  No

**IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT AS OF THE DATES INDICATED BELOW:**

|                                    |  |
|------------------------------------|--|
| VENDOR OFFICIAL SIGNATURE          | AGENCY OFFICIAL SIGNATURE                              |
| VENDOR OFFICIAL NAME (PLEASE TYPE) | AGENCY OFFICIAL NAME (PLEASE TYPE)                     |
| BIGBREAK, LLC DBA) CHEFABLES       | CITY OF MENLO PARK                                     |
| TITLE                              | TITLE  |
| Lesley Kohn, Executive Director    | SEAN REINHART, LIBRARY AND COMMUNITY SERVICES DIRECTOR |
| TELEPHONE NUMBER                   | TELEPHONE NUMBER                                       |
| 888-808-2433 x201                  | 650-330-2249   |
| DATE                               | DATE   |

**SCHEDULE B—NSD 2050B**

**CHILD AND ADULT CARE FOOD PROGRAM  
MEAL PATTERN FOR INFANTS**

|           |
|-----------|
| CNIPS #:  |
| VENDOR #: |

|   | BIRTH THROUGH FIVE MONTHS   | SIX THROUGH ELEVEN MONTHS   |
|---|---|---|
| <b>BREAKFAST,<br/>LUNCH,<br/>AND<br/>SUPPER</b> | 4 TO 6 FLUID (FL) OUNCE (OZ)<br>BREAST MILK <sup>1</sup><br>OR FORMULA <sup>2</sup> | 6 TO 8 FL OZ BREAST MILK <sup>1</sup><br>OR FORMULA <sup>2</sup> AND<br><br>0 TO 4 TABLESPOON (TBSP) INFANT CEREAL <sup>2,3</sup><br>MEAT, FISH,<br>POULTRY, WHOLE EGG,<br>COOKED DRY BEANS OR<br>COOKED DRY PEAS OR<br>0 TO 2 OZ CHEESE OR<br>0 TO 4 OZ YOGURT <sup>4</sup> OR<br>(½ CUP) COMBINATION OF THE ABOVE <sup>5</sup> AND<br><br>0 TO 2 TBSP FRUIT, VEGETABLE, OR COMBINATION OF BOTH <sup>5,6</sup> |
| <b>SNACK</b>                                    | 4 TO 6 FL OZ BREAST MILK <sup>1</sup><br>OR FORMULA <sup>2</sup>                    | 2 TO 4 FL OZ BREAST MILK <sup>1</sup><br>OR FORMULA <sup>2</sup> AND<br><br>0 TO ½ SLICE BREAD <sup>3,7</sup> OR<br>0 TO 2 CRACKERS <sup>3,7</sup> OR<br>0 TO 4 TBSP INFANT CEREAL <sup>2,3,7</sup> OR<br>READY-TO-EAT BREAKFAST CEREAL <sup>3,5,7,8</sup> AND<br><br>0 TO 2 TBSP FRUIT, VEGETABLE, OR COMBINATION OF BOTH <sup>5,6</sup>   |

<sup>1</sup> Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.

<sup>2</sup> Infant formula and dry infant cereal must be iron-fortified.

<sup>3</sup> Beginning October 1, 2019, oz equivalents (eq) are used to determine the quantity of creditable grains.

<sup>4</sup> Yogurt must contain no more than 23 grams (g) of total sugars per 6 oz.

<sup>5</sup> A serving of this component is required when the infant is developmentally ready to accept it.

<sup>6</sup> Fruit and vegetable juices must not be served.

<sup>7</sup> A serving of grains must be whole grain-rich (WGR), enriched meal, or enriched flour.

<sup>8</sup> Breakfast cereals must contain no more than 6 g of sugar per dry oz (no more than 21 g sucrose and other sugars per 100 g of dry cereal).

**CERTIFICATION**

I hereby certify that all meals claimed shall meet the minimum requirements set forth in the meal patterns for infants and older children as prescribed by Title 7, Code of Federal Regulations (7 CFR), Section 226.20.

|  |           |      |
|--|-----------|------|
| PRINTED NAME OF AGENCY'S AUTHORIZED REPRESENTATIVE         | SIGNATURE | DATE |
| AGENCY NAME<br><b>CITY OF MENLO PARK – BELLE HAVEN CDC</b> |           |      |

**SCHEDULE B—NSD 2050B**

**CHILD AND ADULT CARE FOOD PROGRAM  
MEAL PATTERN FOR OLDER CHILDREN**

| <b>BREAKFAST (SELECT ALL THREE COMPONENTS)<sup>1</sup></b>  | <b>AGES 1–2</b>  | <b>AGES 3–5</b>   | <b>AGES 6–12</b>   | <b>AGES 13–18<sup>2</sup></b>  |
|---|--|---|--|--|
| MILK, FL <sup>3</sup>   | ½ CUP (4 OZ)   | ¾ CUP (6 OZ)  | 1 CUP (8 OZ)   | 1 CUP (8 OZ)   |
| VEGETABLE, FRUIT, OR BOTH <sup>4</sup>  | ¼ CUP  | ½ CUP   | ½ CUP  | ½ CUP  |
| GRAINS <sup>5, 6, 7</sup><br>WGR OR ENRICHED BREAD<br><b>OR</b> WGR OR ENRICHED BISCUIT, ROLL, MUFFIN, ETC.<br><b>OR</b> WGR, ENRICHED, OR FORTIFIED COOKED BREAKFAST CEREAL <sup>8</sup> , CEREAL GRAIN, AND/OR PASTA<br><b>OR</b> WGR, ENRICHED OR FORTIFIED READY-TO-EAT BREAKFAST CEREAL (DRY COLD) <sup>8, 9</sup><br>FLAKES OR ROUNDS<br>PUFFED CEREAL<br>GRANOLA   | ½ SLICE<br>½ SERVING<br>¼ CUP<br><br>½ CUP<br>¾ CUP<br>⅛ CUP                         | ½ SLICE<br>½ SERVING<br>¼ CUP<br><br>½ CUP<br>¾ CUP<br>⅛ CUP                            | 1 SLICE<br>1 SERVING<br>½ CUP<br><br>1 CUP<br>1¼ CUP<br>¼ CUP                        | 1 SLICE<br>1 SERVING<br>½ CUP<br><br>1 CUP<br>1¼ CUP<br>¼ CUP                        |
| <b>LUNCH OR SUPPER (SELECT ALL FIVE COMPONENTS)<sup>1</sup></b>   |  |   |  |  |
| MILK, FL <sup>3</sup>   | ½ CUP  | ¾ CUP   | 1 CUP  | 1 CUP  |
| VEGETABLES <sup>4</sup>   | ⅛ CUP  | ¼ CUP   | ½ CUP  | ½ CUP  |
| FRUITS <sup>4, 10</sup>   | ⅛ CUP  | ¼ CUP   | ¼ CUP  | ¼ CUP  |
| GRAINS <sup>6, 7</sup><br>WGR OR ENRICHED BREAD<br><b>OR</b> WGR OR ENRICHED BISCUIT, ROLL, MUFFIN, ETC.<br>WGR, ENRICHED OR FORTIFIED COOKED BREAKFAST CEREAL <sup>8</sup> , CEREAL GRAIN, AND/OR PASTA  | ½ SLICE<br>½ SERVING<br>¼ CUP  | ½ SLICE<br>½ SERVING<br>¼ CUP   | 1 SLICE<br>1 SERVING<br>½ CUP  | 1 SLICE<br>1 SERVING<br>½ CUP  |
| MEAT/MEAT ALTERNATES (M/MA)<br>LEAN MEAT, FISH, OR POULTRY<br><b>OR</b> TOFU, SOY PRODUCT, OR ALTERNATE PROTEIN PRODUCTS <sup>11</sup><br><b>OR</b> CHEESE<br><b>OR</b> EGG (LARGE)<br><b>OR</b> COOKED DRY BEANS OR DRY PEAS <sup>12</sup><br><b>OR</b> PEANUT BUTTER, SOY NUT BUTTER,<br><b>OR</b> OTHER NUT OR SEED BUTTERS<br><b>OR</b> PEANUTS, SOY NUTS, TREE NUTS, OR SEEDS <sup>13</sup><br><b>OR</b> YOGURT, PLAIN OR FLAVORED, UNSWEETENED OR SWEETENED <sup>14</sup> | 1 OZ<br>1 OZ<br>1 OZ<br>½ EGG<br>¼ CUP<br>2 TBSP<br><br>½ OZ<br>½ CUP <b>OR</b> 4 OZ | 1½ OZ<br>1½ OZ<br>1½ OZ<br>¾ EGG<br>⅜ CUP<br>3 TBSP<br><br>¾ OZ<br>¾ CUP <b>OR</b> 6 OZ | 2 OZ<br>2 OZ<br>2 OZ<br>1 EGG<br>½ CUP<br>4 TBSP<br><br>1 OZ<br>1 CUP <b>OR</b> 8 OZ | 2 OZ<br>2 OZ<br>2 OZ<br>1 EGG<br>½ CUP<br>4 TBSP<br><br>1 OZ<br>1 CUP <b>OR</b> 8 OZ |

**SCHEDULE B—NSD 2050B**

**CHILD AND ADULT CARE FOOD PROGRAM  
MEAL PATTERN FOR OLDER CHILDREN**

| <b>SNACKS (SELECT TWO OF THESE FIVE COMPONENTS)<sup>15</sup></b>   | <b>AGES 1–2</b>   | <b>AGES 3–5</b>   | <b>AGES 6–12</b>  | <b>AGES 13–18<sup>2</sup></b>   |
|--|---|---|---|---|
| MILK, FL <sup>3</sup>  | ½ CUP (4 OZ)  | ½ CUP (4 OZ)  | 1 CUP (8 OZ)  | 1 CUP (8 OZ)  |
| VEGETABLES <sup>4</sup>  | ½ CUP   | ½ CUP   | ¾ CUP   | ¾ CUP   |
| FRUITS <sup>4</sup>  | ½ CUP   | ½ CUP   | ¾ CUP   | ¾ CUP   |
| GRAINS <sup>6, 7</sup><br>WGR OR ENRICHED BREAD<br><b>OR</b> WGR OR ENRICHED BISCUIT, ROLL, MUFFIN, ETC.<br><b>OR</b> WGR, ENRICHED, OR FORTIFIED COOKED BREAKFAST CEREAL <sup>8</sup> , CEREAL GRAIN, AND/OR PASTA<br><b>OR</b> WGR, ENRICHED, OR FORTIFIED READY-TO-EAT BREAKFAST CEREAL (DRY COLD) <sup>8, 9</sup><br>FLAKES OR ROUNDS<br>PUFFED CEREAL<br>GRANOLA  | ½ SLICE<br>½ SERVING<br>¼ CUP<br><br>½ CUP<br>¾ CUP<br>⅛ CUP          | ½ SLICE<br>½ SERVING<br>¼ CUP<br><br>½ CUP<br>¾ CUP<br>⅛ CUP          | 1 SLICE<br>1 SERVING<br>½ CUP<br><br>1 CUP<br>1¼ CUP<br>¼ CUP         | 1 SLICE<br>1 SERVING<br>½ CUP<br><br>1 CUP<br>1¼ CUP<br>¼ CUP         |
| M/MA<br>LEAN MEAT, FISH, OR POULTRY<br><b>OR</b> TOFU, SOY PRODUCT, OR ALTERNATE PROTEIN PRODUCTS <sup>11</sup><br><b>OR</b> CHEESE<br><b>OR</b> EGG (LARGE)<br><b>OR</b> YOGURT, PLAIN OR FLAVORED, UNSWEETENED OR SWEETENED <sup>14, 16</sup><br><b>OR</b> COOKED DRY BEANS OR DRY PEAS <sup>12</sup><br><b>OR</b> PEANUT BUTTER, SOY NUT BUTTER, OR OTHER NUT OR SEED BUTTERS<br><b>OR</b> PEANUTS, SOY NUTS, TREE NUTS, OR SEEDS | ½ OZ<br>½ OZ<br>½ OZ<br>½ EGG<br>¼ CUP<br>⅛ CUP<br>1 TBSP<br><br>½ OZ | ½ OZ<br>½ OZ<br>½ OZ<br>½ EGG<br>¼ CUP<br>⅛ CUP<br>1 TBSP<br><br>½ OZ | 1 OZ<br>1 OZ<br>1 OZ<br>½ EGG<br>½ CUP<br>¼ CUP<br>2 TBSP<br><br>1 OZ | 1 OZ<br>1 OZ<br>1 OZ<br>½ EGG<br>½ CUP<br>¼ CUP<br>2 TBSP<br><br>1 OZ |

- <sup>1</sup> Offer versus serve is an option for at-risk afterschool participants only.
- <sup>2</sup> Age group applies to at-risk programs and emergency shelters. Larger portion sizes than specified may need to be served to children ages 13–18 to meet their nutritional needs.
- <sup>3</sup> Must serve unflavored whole milk to children age one. Must serve unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children ages 2–5. Must serve unflavored low-fat (1 percent), unflavored fat-free (skim), or flavored fat-free (skim) milk to children six years and older.
- <sup>4</sup> Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.
- <sup>5</sup> M/MA may be used to meet the entire grains requirement a maximum of three times a week for breakfast. One oz of M/MA is equal to 1 oz eq of grains.
- <sup>6</sup> At least one serving per day, across all eating occasions, must be WGR. Grain-based desserts do not count towards meeting the grains requirement.
- <sup>7</sup> Beginning October 1, 2019, oz eq are used to determine the quantity of creditable grains.
- <sup>8</sup> Breakfast cereals must contain no more than 6 g of sugar per dry oz (no more than 21.2 g sucrose and other sugars per 100 g of dry cereal).
- <sup>9</sup> Beginning October 1, 2019, the minimum serving size specified in this section for ready-to-eat breakfast cereals must be served. Until October 1, 2019, the minimum serving size for any type of ready-to-eat breakfast cereals is ¼ cup for children ages 1–2; ½ cup for children ages 3–5; and ¾ cup for children ages 6–18.
- <sup>10</sup> A vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different types of vegetables must be served.
- <sup>11</sup> Alternate protein products must meet the requirements in Appendix A per 7 CFR, Section 226.20.
- <sup>12</sup> Cooked dry beans or dry peas may be used as a meat alternate or as a vegetable component; but **cannot** be counted as both components in the same meal.
- <sup>13</sup> No more than 50 percent of the requirement shall be met with nuts (peanuts, soy nuts, tree nuts) or seeds. Nuts or seeds shall be combined with another M/MA to fulfill the requirement. To determine combinations, 1 oz of nuts or seeds is equal to 1 oz of cooked lean meat, poultry, or fish.
- <sup>14</sup> Yogurt must contain no more than 23 g of total sugars per 6 oz.
- <sup>15</sup> Juice cannot be served when milk is served as the only other component.
- <sup>16</sup> Commercially added fruit or nuts in flavored yogurt cannot be used to satisfy the second component requirement in snacks.

| <b>Breakfast</b>  |   |  |
|---|---|--|
| <b>Milk<sup>1</sup>, Fluid (fl)</b>   | <b>Milk<sup>1</sup>, fl</b>   | 1 cup <sup>2</sup>   |
| <b>Vegetable/Fruit<sup>3</sup></b>  | <b>Vegetables/Fruits<sup>3</sup>, or portions of both</b>   | ½ cup  |
| <b>Grains {ounce (oz) equivalent (eq)}<sup>4, 5, 6</sup></b>  | <ul style="list-style-type: none"> <li>• Whole grain-rich (WGR) or enriched bread</li> <li>• WGR or enriched bread product, such as rolls, muffins, or biscuits</li> <li>• WGR, enriched or fortified cooked breakfast cereal<sup>7</sup>, cereal grain, and/or pasta</li> <li>• WGR, enriched or fortified ready-to-eat breakfast cereal (dry, cold)<sup>7, 8</sup> <ul style="list-style-type: none"> <li>○ Flakes or rounds</li> <li>○ Puffed cereal</li> <li>○ Granola</li> </ul> </li> </ul> | 2 slices<br>2 servings   |
|   |   | 1 cup<br><br>2 cup<br>2½ cup<br>½ cup  |
| <b>Lunch or Supper</b>  |   |  |
| <b>Milk<sup>1</sup>, fl</b>   | <b>Milk<sup>1</sup>, fl (lunch only—milk is not required for supper)</b>  | 1 cup <sup>2</sup>   |
| <b>Vegetable<sup>3</sup></b>  | <b>Vegetables<sup>3</sup></b>   | ½ cup  |
| <b>Fruit<sup>3, 9</sup></b>   | <b>Fruits<sup>3, 9</sup></b>  | ½ cup  |
| <b>Grains (oz eq)<sup>4, 6</sup></b>  | <ul style="list-style-type: none"> <li>• WGR or enriched bread</li> <li>• WGR or enriched bread product, such as rolls, muffins, or biscuits</li> <li>• WGR, enriched, or fortified cooked breakfast cereal<sup>7</sup>, cereal grain, and/or pasta</li> </ul>  | 2 slices<br>2 servings<br>1 cup  |
|   |   |  |
| <b>Meat/Meat Alternates (M/MA)<sup>10</sup></b><br>Lean Meat, Fish, Poultry (edible portion) or one of the following: | <ul style="list-style-type: none"> <li>• Lean meat, fish, poultry</li> <li>• Tofu, soy product, or alternate protein product<sup>11</sup></li> <li>• Cheese</li> <li>• Yogurt, plain or flavored, sweetened or unsweetened<sup>12</sup></li> <li>• Egg (large)</li> <li>• Cooked dry beans or peas</li> <li>• Peanut butter, soy nut butter, other nut or seed butters</li> <li>• Peanuts, soy nuts, tree nuts, seeds, or whole roasted peas</li> </ul>   | 2 oz<br>2 oz<br>2 oz<br>1 cup or 8 oz<br>1 egg<br>½ cup<br>4 tablespoon (tbsp)<br>1 oz = 50% |
|   |   |  |
| <b>AM or PM Snack (select two different food components)</b>  |   |  |
| <b>Milk<sup>1</sup>, fl</b>   | <b>Milk<sup>1</sup>, fl</b>   | 1 cup  |
| <b>Vegetable<sup>3</sup></b>  | <b>Vegetables<sup>3</sup></b>   | ½ cup  |
| <b>Fruit<sup>3</sup></b>  | <b>Fruits<sup>3</sup></b>   | ½ cup  |
| <b>Grains (oz eq)<sup>4, 6</sup></b>  | <ul style="list-style-type: none"> <li>• WGR or enriched bread</li> <li>• WGR or enriched bread product, such as rolls, muffins, or biscuits</li> <li>• WGR, enriched, or fortified cooked breakfast cereal<sup>7</sup>, cereal grain, and/or pasta</li> <li>• WGR, enriched, or fortified ready-to-eat breakfast cereal (dry, cold)<sup>7, 8</sup> <ul style="list-style-type: none"> <li>○ Flakes or rounds</li> <li>○ Puffed cereal</li> <li>○ Granola</li> </ul> </li> </ul>                  | 1 slice<br>1 serving   |
|   |   | ½ cup<br><br>1 cup<br>1¼ cup<br>¼ cup  |
| <b>M/MA<sup>10</sup></b><br>Lean Meat, Fish, Poultry or one of the following:   | <ul style="list-style-type: none"> <li>• Lean meat, fish, poultry</li> <li>• Tofu, soy product, or alternate protein product<sup>11</sup></li> <li>• Cheese</li> <li>• Yogurt, plain or flavored, sweetened or unsweetened<sup>12</sup></li> <li>• Egg (large)</li> <li>• Cooked dry beans or peas</li> <li>• Peanut butter, soy nut butter, other nut, or seed butters</li> <li>• Peanuts, soy nuts, tree nuts, seeds, or whole roasted peas</li> </ul>  | 1 oz<br>1 oz<br>1 oz<br>½ cup or 4 oz<br>½ egg<br>¼ cup<br>2 tbsp<br>1 oz                    |
|   |   |  |



### Offer versus Serve

Adult day care centers may use the offer versus serve (OVS) option for breakfast, lunch, and supper. The OVS option allows participants to refuse some of the food items required while still allowing those meals to be claimed for reimbursement. Under OVS, each adult care center shall offer its participants all of the required food components as set forth in the requirements for meals (7 CFR, Section 226.20). However, at the discretion of the adult day care center, participants may be permitted to decline the following:

- Breakfast: Participants may decline one serving of the four food items (one serving of milk, one serving of vegetable or fruit, or two servings of bread or bread alternate)
- Lunch: Participants may decline two servings of the six food items (one serving of milk, two servings of vegetable or fruit, two servings of bread or bread alternate, or one serving of M/MA)
- Supper: Participants may decline two servings of the five food items (two servings of vegetables and/or fruit, two servings of bread or bread alternate, or one serving of M/MA)

The price of a reimbursable meal shall not be affected if an adult participant declines a food item.

### CERTIFICATION

|  |           |      |
|--|-----------|------|
| Are meals provided using the OVS option?    Yes <input type="checkbox"/> No <input checked="" type="checkbox"/><br>If yes, which meals    ( ) Breakfast    ( ) Lunch    ( ) Supper<br>If yes, what date will you begin the OVS option? _____ |           |      |
| <b>I hereby certify that all meals claimed shall meet the minimum requirements set forth in the meal pattern for adults as prescribed by 7 CFR, Section 226.20.</b>  |           |      |
| PRINTED NAME OF AGENCY'S AUTHORIZED REPRESENTATIVE   | SIGNATURE | DATE |
| AGENCY NAME<br><b>CITY OF MENLO PARK – BELLE HAVEN CDC</b>   |           |      |

## NONDISCRIMINATION STATEMENT

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the agency (state or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at 800-877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (AD-3027), found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call 866-632-9992. Submit your completed form or letter to USDA by:

- (1) Mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410
- (2) Fax: 202-690-7442
- (3) E-mail: [program.intake@usda.gov](mailto:program.intake@usda.gov)

This institution is an equal opportunity provider.

**PROFESSIONAL SERVICES AGREEMENT**

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



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

#### 4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$100,000 as described in Exhibit "A," Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

#### 5. EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

## 7. INDEPENDENT WORK CONTROL

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

## 8. CONSULTANT QUALIFICATIONS

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

## 9. NOTICES

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

Sean Reinhart  
Library and Community Services  
City of Menlo Park  
701 Laurel St.  
Menlo Park, CA 94025  
650-330-2510  
ssreinhart@menlopark.gov

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

Lesley Kohn  
Bigbreak, LLC DBA) Chefables  
P.O. Box 228  
South San Francisco, 94083  
1-888-808-2433x201  
lesley@chefables.com

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

## 10. HOLD HARMLESS

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

## 11. INSURANCE

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

## 12. PAYMENT OF PERMITS/LICENSES

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

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

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

## 14. OWNERSHIP OF WORK PRODUCT

Intentionally left blank.

## 15. REPRESENTATION OF WORK

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

## 16. TERMINATION OF AGREEMENT

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

**17. INSPECTION OF WORK**

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

**18. COMPLIANCE WITH LAWS**

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

**19. BREACH OF AGREEMENT**

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

**20. SEVERABILITY**

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

**21. CAPTIONS**

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

**22. LITIGATION OR ARBITRATION**

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

**23. RETENTION OF RECORDS**

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

**24. TERM OF AGREEMENT**

This agreement shall remain in effect for the period of July 1, 2021 through June 30, 2022 unless extended, amended, or terminated in writing by CITY.



**25. ENTIRE AGREEMENT**

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

**26. STATEMENT OF ECONOMIC INTEREST**

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

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

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

**FOR FIRST PARTY:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Title

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

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
Date

**FOR CITY OF MENLO PARK:**

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

\_\_\_\_\_  
Date

**ATTEST:**

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

\_\_\_\_\_  
Date

## EXHIBIT "A" – SCOPE OF SERVICES

### A1. SCOPE OF WORK

FIRST PARTY agrees to provide consultant services for CITY's Library and Community Services Department. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

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

### A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

### A3. SCHEDULE OF WORK

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

### A4. CHANGES IN WORK -- EXTRA WORK

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

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

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

**A5. BILLINGS**

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

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

**EXHIBIT "B" - DISPUTE RESOLUTION**

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



## STAFF REPORT

### City Council

Meeting Date:

5/23/2023

Staff Report Number:

23-119-CC

### Consent Calendar:

**Adopt a resolution approving the preliminary engineer's report for the Menlo Park Landscaping Assessment District and adopt a resolution intending to order the levy and collection of assessments for the Landscaping Assessment District for fiscal year 2023-24**

## Recommendation

Staff recommends that the City Council:

1. Adopt a resolution (Attachment A) approving of the preliminary engineer's report for the Landscaping Assessment District for fiscal year 2023-24, which proposes an increase to the tree maintenance assessment by approximately 3%, resulting in \$91.38 per single family equivalent (SFE) per year and to the sidewalk assessment by approximately 3%, resulting in \$48.82 per SFE per year; and
2. Adopt a resolution (Attachment B) intending to order the levy and collection of assessments for the Landscaping Assessment District for fiscal year 2023-24 pursuant to the Landscaping and Lighting Act of 1972 and set the date for the public hearing for June 27.

## Policy Issues

If the City Council does not order the levy and collection of assessments, the impact on City general fund resources would be approximately \$1,148,100. This represents the total amount of the proposed tree and sidewalk assessments. Without the levy, the programs to repair sidewalks, maintain street trees, and sweep streets would be suspended.

## Background

The Landscaping Assessment District provides funding throughout the City for the maintenance of street trees, the removal of debris by street sweeping, and the repair and replacement of sidewalks due to damages by city street trees.

### Tree maintenance

Between 1960 and 1982, the City had a three-person tree crew to care for City parks, medians, and street trees and they trimmed street trees as requested by residents. There was no specific long-term plan in place to address tree maintenance. As the number of street trees increased, the City did not have enough resources to provide proper routine maintenance care.

The voters approved Measure N in 1982 as an advisory measure to the City Council regarding formation of the City Landscaping Assessment District. The Landscaping Assessment District formalized in 1983 to provide proper street tree maintenance. Programmatic changes occurred over the past 39 years to address new regulations and maintain the existing tree canopy. Proper care of the tree canopy remained a top priority as identified by residents, the Environmental Quality Commission, and the City Council. In 1998, the

City expressed concern regarding the declining health of the trees, of which 80% were classified as mature trees. Due to the lack of City resources to maintain older trees, there was a growing concern that most of the street trees would fail around the same time. As a result, the City moved forward in adopting proactive measures to minimize the risk of failure by replacing mature unhealthy trees with younger healthier trees.

In 1998, the City went through a Proposition 218 ballot measure to increase the landscape assessment fees. Proposition 218 required property owners to be given written notice and the opportunity to protest before the City increased any property-related fees. Voters approved the ballot measure to increase the landscape assessment fee. This increased the frequency of the tree trimming/evaluation schedule from once every seven years to once every five years. In addition, the City implemented a reforestation program with a portion of the Landscaping Assessment District funds in fiscal year 2008-09.

#### Debris removal

Street sweeping removes debris for aesthetic purposes, bicycle and pedestrian safety, and health reasons, as well as compliance with stormwater regulations to improve water quality. The City uses a contractor for street sweeping work since 1992.

#### Sidewalk, curb, gutter, and parking strip repair and removal

As trees mature, their extensive network of roots inevitably breaks through and uplifts sidewalks, curbs, gutters and parking strips. Without a proactive sidewalk repair and replacement program, the sidewalks become tripping hazards, progressively worse, and more costly to repair over time.

Before 1990, property owners and the City split the cost of repairing damaged sidewalks by city street trees. Each year, the City executed individual agreements with approximately 200 property owners to conduct these repairs. The annual cost was a financial burden to some residents on fixed incomes and burdensome for the City to administer; therefore, the City established an assessment for sidewalk repair in 1990 to make the program more cost-effective and efficient to operate. Other damages to sidewalks not caused by city street trees remain the responsibility of the adjacent property owner to repair, according to the Menlo Park Municipal Code Chapter 13.08.

### **Analysis**

Each fiscal year, the City Council directs the preparation of an engineer's report, budget and proposed assessments before the assessments can be levied. The engineer's report establishes the foundation and justification for the continued collection of the landscape assessments. On March 14, the City Council adopted Resolution No. 6818 directing the preparation of an engineer's report for the Landscaping Assessment District for fiscal year 2023-24. In developing the engineer's report, staff and the consultant reviewed the existing budget and operating needs to maintain street trees and sidewalk repair requirements at the current level of service.

The preliminary engineer's report (Attachment C) for the Landscaping Assessment District includes the proposed fiscal year 2023-24 budget. The budget covers tree maintenance, the street sweeping program, and the sidewalk repair and replacement program. The report describes in detail the method used for apportioning the total assessment among properties within the Landscaping Assessment District. This method involves identifying the benefit received by each property in relation to a single-family residence. Below is a summary of the proposed budget and findings from the engineer's report.

#### Tree maintenance assessment

Staff has contracted with West Coast Arborists since 2004 to perform tree routine grid trimming, planting and removal, and emergency services as necessary. Street trees are trimmed on a five-year rotating

schedule, which means a set number of trees is scheduled annually. This is a common practice within municipal arboriculture, as it is more cost effective to maintain the trees on a regular basis. When trimming is deferred for longer periods, fast growing trees could become prone to limb failure and hazards, requiring maintenance that becomes more expensive.

On Aug. 26, 2014, the City Council approved a five-year contract with authorization to extend the contract term for up to five additional years with West Coast Arborists for tree maintenance. The contract with West Coast Arborists is on the seventh amendment, which expires June 30, but has up to two additional years unless terminated earlier by the City. For fiscal year 2023-24, the contract cost would escalate by 3%. This increase is generally consistent with annual Engineering News Record Construction Cost Index (CCI) for the San Francisco Bay Area and an increased demand for tree services due to maintenance being performed by utility companies in response to wildfire risk near electric lines. The Tree Maintenance Program expenditures include the contract for grid tree trimming services, debris removal (includes street sweeping), general operating expenses, vehicle and equipment maintenance and the salaries and benefits associated with the staff time required to manage the program and work on street trees.

On June 19, 2018, the City Council approved a five-year contract with authorization to extend the contract term for up to four additional years with Contract Sweeping Services, Inc. for street sweeping. The five-year contract expires June 30, but the City intends to exercise the option to extend it for an additional year, expiring June 30, 2024. The contract identifies rates for each fiscal year, and the identified increase for fiscal year 2023-24 is 5%. Currently, the San Mateo County Measure M funds and the landscape assessment fees fund the street sweeping contract services. The Measure M funding, administered by the City/County Association of Governments of San Mateo County, was approved by the voters of San Mateo County in 2010. It imposes an annual fee of \$10 on registered motor vehicles for congestion and water pollution mitigation programs. Based on estimates from City/County Association of Governments, Measure M funding remains the same for fiscal year 2023-24.

As shown in Table 1, a fund balance of approximately \$743,000 is projected to be carried over from fiscal year 2022-23. According to the Landscape and Lighting Act, the assessment is reduced by the projected balance, which is less than or equal to the costs necessary to perform maintenance and services until the County distributes the first assessment payment. The program revenues and expenditures are typically equivalent. However, in the fiscal year 2023-24, the estimated expenses increased due to the increase costs of the contract services and city personnel.

| Table 1: Tree maintenance assessments for proposed fiscal year 2023-24 budget |                       |
|---|-----------------------|
| Projected beginning fund balance  | \$743,057.00          |
| Estimated revenues:   |                       |
| Tree assessment revenue   | \$815,603.67          |
| General fund contribution   | \$106,939.94          |
| Measure M funds   | \$140,000.00          |
| <b>Total</b>  | <b>\$1,062,543.61</b> |
| Estimated expenses:   |                       |
| Street tree maintenance   | \$890,362.59          |
| Debris removal (including street sweeping services)                           | \$297,022.18          |
| Administrative and County assessment fees                                     | \$195,375.00          |
| <b>Total</b>  | <b>\$1,382,759.77</b> |
| Projected ending fund balance   | \$422,840.84          |

Table 2 summarizes the proposed rates with a 3% increase for parcels with and without street trees. The assessment for properties without street trees, but in close proximity to parcels with street trees, is 50% of the tree assessment due to the direct benefit of the nearby trees.

| Table 2: Annual tree assessment rates for proposed fiscal year 2023-24 |   |   |
|--|---|---|
| Property type  | Properties with street trees                        | Properties without street trees                 |
| Single family  | \$91.38 per parcel                                  | \$45.69 per parcel                              |
| R-2 zone, in use as single family                                      | \$91.38 per parcel                                  | \$45.69 per parcel                              |
| Condominium/townhouse  | \$82.24 per unit<br>(\$411.21 max. per project)     | \$41.12 per unit<br>(\$205.61 max. per project) |
| Other multifamily  | \$73.10 per unit<br>(\$365.52 max. per project)     | \$36.55 per unit<br>(\$182.76 max. per project) |
| Commercial   | \$91.38 per 1/5 acre<br>(\$456.90 max. per project) | \$45.69 per 1/5 acre<br>(\$228.45 max.)         |
| Industrial   | \$91.38 per 1/5 acre<br>(\$456.90 max. per project) | \$45.69 per 1/5 acre<br>(\$228.45 max.)         |
| Parks, educational   | \$91.38 per parcel                                  | \$45.69 per parcel                              |

Sidewalk assessment

The sidewalk assessment includes repairing and replacing damaged sidewalk, curb, gutter and parking strip caused by street trees. The sidewalk repair and replacement programs have two separate contracts with a proposed budget of \$605,000 (including a 10% contingency fee) in fiscal year 2023-24. Significant cost increases in this contract are not expected for fiscal year 2023-24. Under the repair program, the City retains a contractor to address minor tripping hazards by performing horizontal saw cuts rather than removing the entire sidewalk section. This method reduces the need to remove a whole sidewalk section, which results in significant cost savings from purchasing new raw materials and environmental benefits from



reducing waste.

For the sidewalk replacement program, the City’s contract with Golden Bay Construction expires at the end of this fiscal year. As a result, staff will enter a bidding process before the end of the fiscal year and anticipates the contract cost to increase by approximately 10% due to the rising cost of materials and labor. The contractor will replace approximately 50 locations during the fiscal year 2022-23 (Attachment D.) However, despite increased funding and service levels the last two years, the annual sidewalk replacement needs continue to exceed the budgeted amount and a backlog of requests still exists. While the program has made progress in reducing the number of backlogged locations, approximately 30 locations identified from previous years remain.

| Table 3: Sidewalk assessments for proposed fiscal year 2023-24 budget |                     |
|---|---------------------|
| Projected beginning fund balance                                      | \$90,831.00         |
| Estimated revenues:   |                     |
| Sidewalk assessment revenue   | \$332,476.89        |
| General fund contribution   | \$250,000.00        |
| <b>Total</b>  | <b>\$582,476.89</b> |
| Estimated expenses:   |                     |
| Sidewalk, curb, gutter, parking strip repair/replacement              | \$605,000.00        |
| <b>Total</b>  | <b>\$605,000.00</b> |
| Projected ending fund balance   | \$68,307.89         |

Table 4 summarizes the proposed rates with a 3% increase to the sidewalk assessment to continue addressing ongoing sidewalk maintenance.

| Table 4: Annual sidewalk assessment rates for proposed fiscal year 2023-24 budget |                            |
|---|----------------------------|
|   | Assessment rate per parcel |
| Parcels with street trees:  |                            |
| Sidewalks, curbs and gutters  | \$48.82                    |
| Parking strips and gutters  | \$48.82                    |
| Curbs and/or gutters only   | \$32.71                    |
| No improvements   | \$16.11                    |
| Parcels without street trees  |                            |
| Parcels with or without improvements  | \$16.11                    |

Landscape assessment

The assessments are subject to an annual adjustment based on the Engineering News Record CCI for the San Francisco Bay Area. Table 5 summarizes the maximum authorized assessment rate for fiscal year 2023-24, which is based on current and accumulated unused CCI increases reserved from prior years.

These increases are legally permissible without additional ballot proceedings. The comparison assessments for SFE with City street trees and sidewalks levied in fiscal year 2023-24 and the proposed rates for fiscal year 2023-24 are shown in Table 5.

| Table 5: Proposed landscape assessment rate per SFE |                          |                  |                          |                 |                              |
|---|--------------------------|------------------|--------------------------|-----------------|------------------------------|
| Assessment  | Fiscal year 2022-23 rate | Percent increase | Fiscal year 2023-24 rate | Amount increase | Maximum allowable assessment |
| Tree assessment                                     | \$88.72                  | 3.0%             | \$91.38                  | \$2.66          | \$128.47                     |
| Sidewalk assessment                                 | \$47.40                  | 3.0%             | \$48.82                  | \$1.42          | \$57.36                      |

While the ongoing cost of maintenance of trees and sidewalks has significantly increased since the inception of the Landscaping Assessment District, the City has tried to minimize rate increases. Incremental rate increases combined with monies allocated from the general fund ensures the maintenance program remains proactive while maintaining a balanced funding approach and minimizing rate increases to the extent feasible. The proposed landscape assessment rates per SFE for tree and sidewalk are approximately 70 percent and 85 percent, respectively, of the maximum allowable rates.

If the City Council approves the attached resolutions, staff would publish a legal notice of the assessment public hearing at least 10 days before the hearing. The public hearing is tentatively scheduled for June 27. Once the assessments are confirmed and approved, the levies are submitted to the County Controller for inclusion onto the property tax roll for fiscal year 2023-24.

**Impact on City Resources**

Funding for the entire tree maintenance, street sweeping and sidewalk repair programs under the Landscaping Assessment District come from a variety of sources, including the carry-over of unspent funds from prior years, annual tax assessment revenues, and contributions from the general fund. If the City Council does not order the rate increase, levy and collection of assessments, the impact on City general fund resources would be approximately \$1,148,100 or the program to repair sidewalks, maintain street trees, and sweep streets would be suspended.

**Environmental Review**

The action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it has no potential for resulting 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 approving the preliminary engineer’s report
- B. Resolution intending to order the levy and collection of assessments

Staff Report #: 23-119-CC

C. Engineer's report

D. Hyperlink – Sidewalk repair program: [menlopark.gov/Government/Departments/Public-Works/Maintenance-Division/Sidewalk-repair-program](https://menlopark.gov/Government/Departments/Public-Works/Maintenance-Division/Sidewalk-repair-program)

Report prepared by:

Joanna Chen, Management Analyst II

Reviewed by:

Tanisha Werner, Assistance Public Works Director – Engineering

**RESOLUTION NO. XXXX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
APPROVING THE PRELIMINARY ENGINEER'S REPORT FOR THE CITY OF  
MENLO PARK LANDSCAPING ASSESSMENT DISTRICT FOR FISCAL YEAR  
2023-24**

WHEREAS, on the fourteenth day of March, 2023, the City Council of the City of Menlo Park adopted Resolution No. 6818, directing preparation of the Engineer's Report for the City of Menlo Park Landscaping Assessment District (District) for fiscal year 2023-24, pursuant to provisions of Article XIID of the California Constitution and the Landscaping and Lighting Act of 1972, in said City and did refer the proposed improvements to SCI Consulting Group and did therein direct SCI Consulting Group to prepare and file with the Clerk of said City a report, in writing, all as therein more particularly described, under and in accordance with Section 22565, et. seq., of the Streets and Highways Code and Article XIID of the California Constitution; and

WHEREAS, said SCI Consulting Group prepared and filed with the City Clerk of said City a report in writing as called for in Resolution No. 6818 and under and pursuant to said Article and Act, which report has been presented to this City Council for consideration; and

WHEREAS, said City Council has duly considered said report and each and every part thereof, and finds that each and every part of said report is sufficient, and that neither said report, nor any part thereof, should be modified in any respect.

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

1. That the plans and specifications for the existing improvements and the proposed new improvements to be made within the District contained in said report, be, and they are hereby, preliminarily approved; and
2. That the Engineer's estimate of the itemized and total costs and expenses of said improvements, maintenance, and servicing thereof, and of the incidental expenses in connection therewith, contained in said report be, and each of them is hereby, preliminarily approved; and
3. That the diagram (Exhibit A) showing the exterior boundaries of the District referred to and described in said Resolution No. 6818 and the lines and dimensions of each lot or parcel of land within said District as such lot or parcel of land is shown on the County Assessor's maps for the fiscal year to which the report applies, each of which lot or parcel of land has been given a separate number upon said diagram, as contained in said report be, and it is hereby, preliminarily approved; and
4. That the proposed continued assessment of the total amount of the estimated costs and expenses of the proposed improvements upon the several lots or parcels of land in said District in proportion to the estimated benefits to be received by such lots or parcels, respectively, from said improvements including the maintenance or servicing, or both, thereof, and of the expenses incidental thereto, as contained in said report be, and they are hereby, preliminarily approved; and
5. That said report shall stand as the Engineer's Report for the purpose of all subsequent proceedings to be had pursuant to said Resolution No. 6818.

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

---

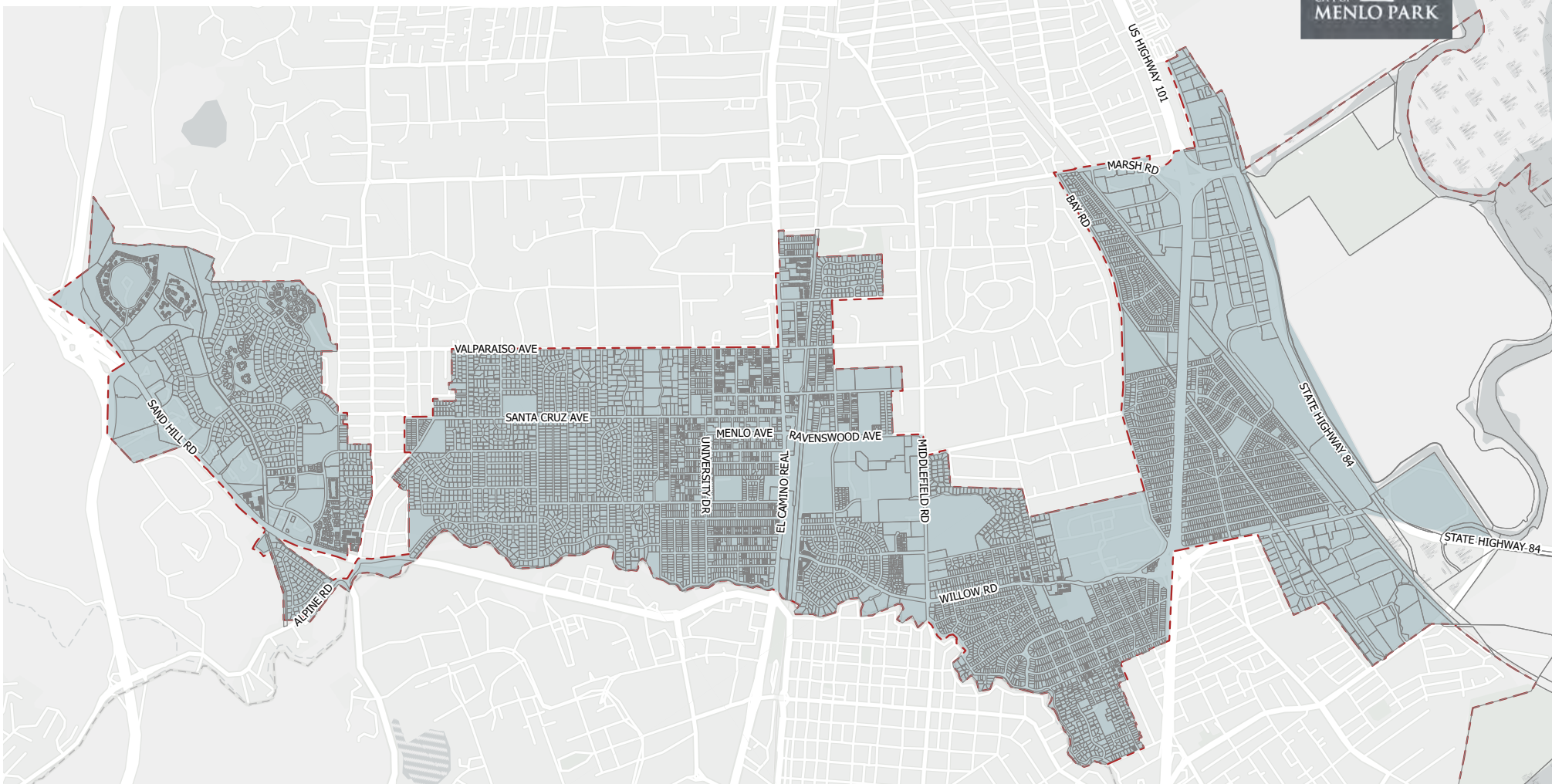
Judi A. Herren, City Clerk




Exhibits:



A. Exterior boundaries of the District



# Landscape Assessment District



 City Limits  
 Landscape Assessment District  
 Parcels

Reference is hereby made to the maps and deeds recorded in the Office of The Assessor of the County of San Mateo for a detailed description of the lines and dimensions of any parcels shown herein. Those maps shall govern for all details concerning the lines and dimensions of such parcels. Each parcel is identified in said maps by its distinctive parcel number.

**RESOLUTION NO. XXXX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
INTENDING TO ORDER THE LEVY AND COLLECTION OF ASSESSMENTS  
FOR THE LANDSCAPING ASSESSMENT DISTRICT FOR FISCAL YEAR 2023-  
24 PURSUANT TO THE LANDSCAPING AND LIGHTING ACT OF 1972**

WHEREAS, pursuant to Resolution No. 6818 directing the preparation of the Engineer's Report for fiscal year 2023-24 for the City of Menlo Park Landscaping Assessment District (District), adopted on March 14, 2023, by the City Council of Menlo Park; and

WHEREAS, pursuant to provisions of Article XIID of the California Constitution and the Landscaping and Lighting Act of 1972, SCI Consulting Group for said City has prepared and filed with the City Clerk of this City the written report called for under and in accordance with Section 22565, et. seq., of the Streets and Highways Code and Article XIID of the California Constitution; and

WHEREAS, by said Resolution No. 6818, which said report has been submitted and preliminarily approved by this City Council in accordance with said Article and Act.

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

1. In its opinion, the public interest and convenience require, and it is the intention of this City Council, to order the continuation and collection of assessments for fiscal year 2023-24 pursuant to the provisions of Article XIID of the California Constitution and the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the Streets and Highways Code of the State of California, for the construction or installation of the improvements, including the maintenance or servicing, or both, thereof, more particularly described in Exhibit A hereto attached and by reference incorporated herein; and
2. The cost and expense of said improvements, including the maintenance or servicing, or both, thereof, are to be made chargeable upon the assessment district designated as "City of Menlo Park Landscaping District" the exterior boundaries of which District are the composite and consolidated area as more particularly described on a map thereof on file in the office of the Clerk of said City, to which reference is hereby made for further particulars. Said map indicates by a boundary line the extent of the territory included in the District and the general location of said District; and
3. Said Engineer's Report prepared by SCI Consulting Group, preliminarily approved by this City Council, and on file with the Clerk of this City, is hereby referred to for a full and detailed description of the improvements, the boundaries of the assessment district and the proposed assessments upon assessable lots and parcels of land within the District; and
4. The authorized maximum assessment rates for the District include an annual adjustment by an amount equal to the annual change in the Engineering News Record Index, not to exceed 3.00 percent per year, plus any uncaptured excesses. Assessment rates for the tree portion of the assessments are proposed to increase during fiscal year 2023-24 by 3.00 percent. Including the authorized annual adjustment, the maximum authorized assessment rate for street tree maintenance for fiscal year 2023-24 is \$128.47 per single family equivalent benefit unit, and the assessment rate per single family equivalent benefit unit for

fiscal year 2023-24 is \$91.38 which is less than the maximum authorized rate. Assessment rates for the sidewalk repairs portion of the assessments are proposed to increase during fiscal year 2023-24 by 3.00 percent. Including the authorized annual adjustment, the maximum authorized assessment rate for sidewalk maintenance for fiscal year 2023-24 is \$57.36 per single family equivalent benefit unit, and the assessment rate per single family equivalent benefit unit for fiscal year 2023-24 is \$48.82, which is less than the maximum authorized rate; and

5. Notice is hereby given that Tuesday, the twenty-seventh day of June, 2023, at the hour of 6 p.m., or as soon thereafter as the matter may be heard, by hybrid meeting, at which time and place interested persons may participate and be heard on, and the same are hereby appointed and fixed as the time and place for a Public Hearing by this City Council on the question of the continuation and collection of the proposed assessment for the construction or installation of said improvements, including the maintenance and servicing, or both, thereof, and when and where it will consider all oral statements and all written protests made or filed by any interested person at or before the conclusion of said hearing, against said improvements, the boundaries of the assessment district and any zone therein, the proposed diagram or the proposed assessment, to the Engineer's estimate of the cost thereof, and when and where it will consider and finally act upon the Engineer's Report; and
6. The City Clerk of said City is hereby directed to give notice of said Public Hearing by causing a copy of this resolution to be published once in The Examiner, a newspaper circulated in said City, and by conspicuously posting a copy thereof upon the official bulletin board customarily used by the City for the posting of notices, said posting and publication to be had and completed at least ten (10) days prior to the date of public hearing specified herein; and
7. The Office of the Public Works Director of said City is hereby designated as the office to answer inquiries regarding any protest proceedings to be had herein, and may be contacted during regular office hours at the City Hall, 701 Laurel Street, Menlo Park, California, 94025, or by calling (650) 330-6740.

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

---

Judi A. Herren, City Clerk



Exhibits:

- A. City of Menlo Park Landscaping Assessment District

**City of Menlo Park Landscaping Assessment District**

Maintaining and servicing of street trees, including the cost of repair, removal or replacement of all or any part thereof, providing for the life, growth, health, and beauty of landscaping, including cultivation, trimming, spraying, fertilizing, or treating for disease or injury, the removal of trimmings, rubbish, debris, and other solid waste, and water for the irrigation thereof, and the installation or construction, including the maintenance and servicing thereof, of curbs, gutters, sidewalks, and parking strips.

Fiscal Year 2023-24

# ENGINEER'S REPORT

## City of Menlo Park

Landscaping Assessment District

May 2023



Pursuant to the Landscape and Lighting Act of 1972 and Article XIID of the California Constitution

**Engineer of Work:**



4745 Mangles Boulevard  
Fairfield, California 94534  
707.430.4300

[www.sci-cg.com](http://www.sci-cg.com)  
Page H-3.15



## City of Menlo Park

Menlo Park City Council

Mayor Jen Wolosin

Vice Mayor Cecilia Taylor

Councilmember Drew Combs

Councilmember Maria Doerr

Councilmember Betsy Nash

---

City Manager

Justin Murphy

---

City Clerk

Judi A. Herren

---

City Attorney

Nira Doherty

---

Engineer of Work

SCI Consulting Group

Lead Assessment Engineer, Edric Kwan, P.E.



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## Introduction

### Assessment Background

Between 1960 and 1982, the City of Menlo Park had one three-person crew to care for approximately 9,000 City trees. As the trees grew, it took considerably more time per tree to provide proper care. Consequently, one tree crew was unable to perform the necessary work to maintain all of the street trees in proper condition. The Landscape Assessment District was originally formed in 1983 for the purpose of levying annual special assessments in order to properly maintain street trees in the City of Menlo Park. Currently, there are approximately 11,000 street trees that are maintained by the assessments.

Prior to 1990, property owners and the City would split the cost of repairing sidewalks damaged by City trees. The City would annually enter into an agreement with approximately 200 individual property owners. The one-time cost was a financial burden to some residents on fixed incomes. In order to make the program more cost-effective and less of a financial burden for property owners, an assessment for repair of sidewalks/parking strips due to City street-tree related damages was established in 1990.

The increased cost of the necessary work made the assessment amounts levied in Fiscal Year 1997-98 insufficient for adequately maintaining the City's street trees, curbs, gutters and sidewalks. An increase in the assessments was required to provide funding for continued tree maintenance and sidewalk repairs. However, with the passage of Proposition 218 on November 6, 1996, assessments can only be raised after the City conducts an assessment ballot proceeding and the ballots submitted in opposition to the assessments do not exceed the ballots in favor of the assessments. (Each ballot is weighted by the amount of assessment for the property it represents.)

---

### Assessment Process

In 1998, the City conducted an assessment ballot proceeding for increased tree maintenance and sidewalk repair assessments pursuant to the requirements of Article XIID of the California Constitution (Proposition 218) and the Landscaping and Lighting Act of 1972. The proposed tree maintenance assessments for fiscal year 1998-99 were \$64.28 per single family equivalent unit and the proposed sidewalk repair assessments were \$28.70 per single family equivalent. The proposed maximum assessments also included an annual assessment cost escalator tied to the annual change in the Engineering News Record Construction Cost Index for the San Francisco Bay Area ("ENR Index"). These proposed assessments were supported by 73% of assessment ballots received from property owners (with each ballot weighted by the amount of assessments it represented). Therefore, on June 16, 1998 by its Resolution Number 4840-D, the City Council levied the new assessments.

---

### Engineer's Report and Continuation of Assessments

In each subsequent year for which the assessments will be continued, the City Council must direct the preparation of an Engineer's Report, budgets and proposed assessments for the upcoming fiscal year. After the Engineer's Report is completed, the City Council may preliminarily approve the Engineer's Report and proposed assessments and establish the date for a public hearing on the continuation of the assessments. This Report was prepared pursuant to the direction of the Council.

The maximum authorized assessment rate, as increased each year by the change in the ENR Index, is the maximum assessment rate that can be levied in the given fiscal year without approval from property owners in another assessment ballot proceeding. In fiscal year 1998-99, the assessments were levied at the maximum rate for that fiscal year. Since this first fiscal year after the ballot proceeding, the assessments for tree maintenance have been levied below the maximum authorized rate, and the assessment rate for sidewalk repairs has not been increased above the original rate.

From December 2021 to December 2022, the ENR Index increased 5.27%. The maximum amount assessments can be increased annually is the ENR Index plus any uncaptured excess reserved from prior years, to a maximum increase to the ENR not to exceed 3%.

Based on accumulated excess reserves from prior years, the maximum authorized rates for fiscal year 2023-24 are \$128.47 for trees and \$57.36 for sidewalks without another ballot proceeding. (No additional ballot proceeding is required because the maximum authorized assessment rates, including the annual adjustments in these rates, were approved in the 1998 ballot proceeding. The actual rate levied in any given fiscal year can be revised up, with an annual maximum increase of 3%, or down, by any amount that does not cause the actual rates levied to exceed the maximum authorized assessment rates.)

The City reduced the assessment rate for tree maintenance in fiscal year 2000-01 and increased the assessment rate in fiscal years 2002-03, 2005-06 through 2009-10, 2014-15, and 2016-17 through 2022-23. In other fiscal years it was not necessary to increase the rate, due to sufficient reserve funds carried forward from prior fiscal years, combined with general benefit contributions. For fiscal year 2023-24 the proposed assessments for tree maintenance were proposed to increase 3.00% from fiscal year 2022-23, and the assessments for sidewalk maintenance are proposed to increase 3.00%. The proposed rates are \$91.38 per Single Family Equivalent (SFE) for tree maintenance and \$48.82 per SFE for sidewalk maintenance. The comparison of actual rates levied in fiscal year 2022-23 and the proposed rates for fiscal year 2023-24 are shown below.

**Sidewalk Maintenance**

| FY 2022-23 Rate | ENR Increase Applied | FY 2023-24 Rate | Increase |
|-----------------|----------------------|-----------------|----------|
| \$47.40         | 3.00%                | <b>\$48.82</b>  | \$1.42   |

**Tree Maintenance**

| FY 2022-23 Rate | ENR Increase Applied | FY 2023-24 Rate | Increase |
|-----------------|----------------------|-----------------|----------|
| \$88.72         | 3.00%                | <b>\$91.38</b>  | \$2.66   |

If the Council approves this Engineer's Report and the continuation of the assessments by resolution, a notice of assessment levies must be published in a local newspaper at least 10 days prior to the date of the public hearing. The resolution preliminarily approving the Engineer's Report and establishing the date for a public hearing is used for this notice.

Following the minimum 10-day time period after publishing the notice, a public hearing is held for the purpose of allowing public testimony about the proposed continuation of the assessments. This hearing is currently scheduled for June 27, 2023. At this hearing, the Council will consider approval of a resolution confirming the continuation of the assessments for fiscal year 2023-24. If so confirmed and approved, the assessments will be submitted to the County Controller for inclusion on the property tax roll for fiscal year 2023-24.

## Legal Analysis

### Proposition 218

This assessment is consistent with Proposition 218, The Right to Vote on Taxes Act, which was approved by the voters of California on November 6, 1996 and is now Article XIIC and XIID of the California Constitution. Proposition 218 provides for benefit assessments to be levied to fund the cost of providing services, improvements, as well as maintenance and operation expenses to a public improvement which benefits the assessed property.

Proposition 218 describes a number of important requirements, including a property-owner balloting, for the formation and continuation of assessments, and these requirements are satisfied by the process used to establish this assessment.

The original assessment existed prior to the passage of Proposition 218. Although the original assessment is also consistent with Proposition 218, the California judiciary has generally referred to pre-Proposition 218 assessments as “grandfathered assessments” and held them to a lower standard than post Proposition 218 assessments.

### Silicon Valley Taxpayers Association, Inc. v Santa Clara County Open Space Authority

In July of 2008, the California Supreme Court issued its ruling on the Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority (“SVTA vs. SCCOSA”). This ruling is the most significant court case in further legally clarifying the substantive assessment requirements of Proposition 218. Several of the most important elements of the ruling included further emphasis that:

- Benefit assessments are for special, not general, benefit
- The services and/or improvements funded by assessments must be clearly defined
- Special benefits are directly received by and provide a direct advantage to property in the assessment district

---

**Dahms v. Downtown Pomona Property**

On June 8, 2009, the 4<sup>th</sup> Court of Appeal amended its original opinion upholding a benefit assessment for property in the downtown area of the City of Pomona. On July 22, 2009, the California Supreme Court denied review. On this date, Dahms became good law and binding precedent for assessments. In Dahms the Court upheld an assessment that was 100% special benefit (i.e., 0% general benefit) on the rationale that the services and improvements funded by the assessments were directly provided to property in the assessment district. The Court also upheld discounts and exemptions from the assessment for certain properties.

---

**Bonander v. Town of Tiburon**

On December 31, 2009, the 1<sup>st</sup> District Court of Appeal overturned a benefit assessment approved by property owners to pay for placing overhead utility lines underground in an area of the Town of Tiburon. The Court invalidated the assessments on the grounds that the assessments had been apportioned to assessed property based in part on relative costs within sub-areas of the assessment district instead of proportional special benefits.

---

**Beutz v. County of Riverside**

On May 26, 2010 the 4<sup>th</sup> District Court of Appeal issued a decision on the Steven Beutz v. County of Riverside (“Beutz”) appeal. This decision overturned an assessment for park maintenance in Wildomar, California, primarily because the general benefits associated with improvements and services were not explicitly calculated, quantified and separated from the special benefits.

---

**Golden Hill Neighborhood Association v. City of San Diego**

On September 22, 2011, the San Diego Court of Appeal issued a decision on the Golden Hill Neighborhood Association v. City of San Diego appeal. This decision overturned an assessment for street and landscaping maintenance in the Greater Golden Hill neighborhood of San Diego, California. The court described two primary reasons for its decision. First, like in *Beutz*, the court found the general benefits associated with services were not explicitly calculated, quantified and separated from the special benefits. Second, the court found that the City had failed to record the basis for the assessment on its own parcels.

---

### Compliance with Current Law

This Engineer's Report is consistent with the requirements of Article XIII C and XIII D of the California Constitution and with the *SVTA* decision because the Improvements to be funded are clearly defined; the Improvements are directly available to and will directly benefit property in the Assessment District; and the Improvements provide a direct advantage to property in the Assessment District that would not be received in absence of the Assessments.

This Engineer's Report is consistent with *Beutz, Dahms* and *Greater Golden Hill* because the Improvements will directly benefit property in the Assessment District and the general benefits have been explicitly calculated and quantified and excluded from the Assessments. The Engineer's Report is consistent with *Bonander* because the Assessments have been apportioned based on the overall cost of the Improvements and proportional special benefit to each property.

## Plans & Specifications

Following is a description of the Services that are provided for the benefit of property in the Assessment District. Prior to the residential development in Menlo Park, the Level of Service on these improvements was effectively zero. The formula below describes the relationship between the final level of improvements, the baseline level of service (pre-development) had the assessment not been instituted, and the enhanced level of improvements funded by the assessment.

|                               |   |   |   |                                  |
|-------------------------------|---|---|---|----------------------------------|
| <b>Final Level of Service</b> | = | <b>Baseline Level of Service<br/>(≈zero, pre-development)</b> | + | <b>Enhanced Level of Service</b> |
|-------------------------------|---|---|---|----------------------------------|

The City of Menlo Park maintains street trees, sidewalks, curbs, gutters, and parking strips throughout the City.

The proposed improvements to be undertaken by the City of Menlo Park and financed by the levy of the annual assessment provide special benefit to Assessor Parcels within the District as defined in the Method of Assessment herein. The said improvements consist of maintaining, trimming, disease treatment, and replacement of street trees; street sweeping to remove debris; and the repair and replacement of damaged sidewalks, curbs, gutters, and parking strips damaged by street trees throughout the City of Menlo Park.

## Method of Assessment

This section of the Engineer's Report includes an explanation of the benefits to be derived from the maintenance, repair, and replacement of street trees, sidewalks, curbs, gutters, and parking strips throughout the City, and the methodology used to apportion the total assessment to properties within the Landscaping Assessment District.

The Landscaping Assessment District consists of all Assessor Parcels within the boundaries of the City of Menlo Park as defined by the County of San Mateo tax code areas. The method used for apportioning the assessment is based upon the proportional special benefits to be derived by the properties in the Landscaping Assessment District over and above general benefits conferred on real property or to the public at large. The apportionment of special benefit is a two-step process: the first step is to identify the types of special benefit arising from the improvements and the second step is to allocate the assessments to property based on the estimated relative special benefit for each type of property.

### Discussion of Benefit

In summary, the assessments can only be levied based on the special benefit to properties. This benefit is received by property over and above any general benefits and such benefit is not based on any one property owner's use of the amenities or a property owner's specific demographic status. With reference to the requirements for assessment, Section 22573 of the Landscaping and Lighting Act of 1972 states:

*"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements."*

Article XIID, Section 4 of the California Constitution has confirmed that assessments must be based on the special benefit to property:

*"No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel."*



The following benefit categories summarize the types of special benefit to residential, commercial, industrial and other lots and parcels resulting from the installation, maintenance and servicing of landscaping and lighting improvements to be provided with the assessment proceeds. These categories of special benefit are derived from the statutes passed by the California Legislature and other studies which describe the types of special benefit received by property from maintenance and improvements such as those within by the District. These types of special benefit are summarized as follows:

- A. Proximity to improved landscaped areas within the Assessment District.
- B. Access to improved landscaped areas within the Assessment District.
- C. Improved Views within the Assessment District.
- D. Enhanced environment because of the vigorous street tree program for owners of property in the Landscaping Assessment District.
- E. Increased safety against tripping and other hazards caused by cracked or damaged sidewalks, curbs and gutters.
- F. Enhanced desirability of the property.
- G. Reduced liability for landscape maintenance.

In this case, the recent the SVTA v. SCCOSA decision provides enhanced clarity to the definitions of special benefits to properties in three distinct areas:

- ◆ Proximity
- ◆ Expanded or Improved Access
- ◆ Views

The SVTA v. SCCOSA decision also clarifies that a special benefit is a service or improvement that provides a direct advantage to a parcel and that indirect or derivative advantages resulting from the overall public benefits from a service or improvement are general benefits. The SVTA v. SCCOSA decision also provides specific guidance that landscaping improvements are a direct advantage and special benefit to property that is proximate to landscaping that is improved by an assessment:

*The characterization of a benefit may depend on whether the parcel receives a direct advantage from the improvement (e.g. proximity to a park) or receives an indirect, derivative advantage resulting from the overall public benefits of the improvement (e.g. general enhancement of the district's property values).*

Proximity, improved access and views, in addition to the other special benefits listed above further strengthen the basis of these assessments.

## Benefit Factors

The special benefits from the Improvements are further detailed below:

---

### Proximity to improved landscaped areas within the Assessment District

Only the specific properties within close proximity to the Improvements are included in the Assessment District. Therefore, property in the Assessment District enjoys unique and valuable proximity and access to the Improvements that the public at large and property outside the Assessment District do not share.

In absence of the assessments, the Improvements would not be provided and the landscaping areas in the Assessment District would be degraded due to insufficient funding for maintenance, upkeep and repair. Therefore, the assessments provide Improvements that are over and above what otherwise would be provided. Improvements that are over and above what otherwise would be provided do not by themselves translate into special benefits, but when combined with the unique proximity and access enjoyed by parcels in the Assessment District, they provide a direct advantage and special benefit to property in the Assessment District.

---

### Access to improved landscaped areas within the Assessment District

Since the parcels in the Assessment District are nearly the only parcels that enjoy close access to the Improvements, they directly benefit from the unique close access to improved landscaping areas that are provided by the Assessments. This is a direct advantage and special benefit to property in the Assessment District.

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### Improved views within the Assessment District

The City, by maintaining these landscaped areas, provides improved views to properties in the Assessment District. The properties in the Assessment District enjoy close and unique proximity, access and views of the Improvements; therefore, the improved and protected views provided by the Assessments are another direct and tangible advantage that is uniquely conferred upon property in the Assessment District. The Landscaping Assessment District provides funding to maintain and protect these public resources and facilities of the City. For example, the assessments provide funding to trim and maintain the street trees to maintain them in a healthy condition. This benefits properties by maintaining and improving the public resources in the community.

In order to allocate the proposed assessments, the Engineer begins by identifying the types of special benefit arising from the maintenance, repair, and replacement of the aforementioned facilities and that would be provided to property within the District. These types of special benefit are as follows:

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### **Enhanced environment because of the vigorous street tree program for owners of property in the Landscaping Assessment District**

Residential properties benefit from the enhanced environment provided by a vigorous program to install and maintain the street trees at a level beyond that followed by other cities throughout the County. The increased use of street trees provides an atmosphere of beauty beyond the norm. The improvements to the trees will be available to residents and guests of properties within the District.

Non-residential properties also will benefit from these improvements in many ways. The use of street trees softens the environment making it more pleasant for employees during commute time and at breaks from their work. These improvements, therefore, enhance an employer's ability to attract and keep quality employees. The benefits to employers ultimately flow to the property because better employees improve the employment prospects for companies and enhanced economic conditions benefit the property by making it more valuable.

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### **Increased safety against tripping and other hazards caused by cracked or damaged sidewalks, curbs and gutters**

An aggressive inspection program identifies hazardous conditions in sidewalks, curbs and gutters caused by street trees and allows for these conditions to be repaired on a timely basis. Timely repair of hazardous conditions greatly improves the overall safety of the environment, thereby providing for safer use of property.

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### **Enhanced desirability of the property**

The assessments will provide funding to improve the City's street tree program, raising the quality to a more desired level, and to ensure that the sidewalks, curbs, and gutters remain operable, safe, clean and well maintained. Such improved and well-maintained facilities enhance the overall desirability of property. This is a benefit to residential, commercial and industrial properties.

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### **Reduced liability for landscape maintenance**

The assessments will reduce the liability for landscape maintenance to street trees and other improvements. This is a benefit to residential, commercial and industrial properties.

## General vs. Special Benefit

Article XIII D of the Constitution specifies that only special benefits are assessable, and that the City must separate the general benefits from the special benefits conferred on any parcel. The complete analysis of special benefits and their allocation are found elsewhere in this report. For the Landscaping Assessment District, the City has identified a general benefit and has separated it from the special assessments.

The City's maintenance of street trees and sidewalk facilities provides a general benefit to the community and to the general public to some degree. The measure of this general benefit is the enhancement of the environment and safety provided to the greater public at large. This general benefit can be measured by the proportionate amount of time that the City's sidewalks and street trees are used and enjoyed by the greater public at large<sup>1</sup>. It is reasonable to assume that approximately 1/4 or 25% of the usage and enjoyment of the improvements is by the greater public. Therefore, approximately 25% of the benefits conferred by the improvements are general in nature.

The City's total budget for maintenance and improvement of its trees and sidewalk facilities is \$1,987,759. Of this total budget amount, the City will contribute \$250,000 from sources other than the assessments for sidewalk repair and \$106,939 for street tree maintenance. These contributions by the City, as well as \$140,000 in funds from Measure M, total \$688,715, equating to approximately 25.0% of the total budget for maintenance to offset the cost of the general benefits resulting from the improvements.

In the 2009 Dahms case, the court upheld an assessment that was 100% special benefit on the rationale that the services funded by the assessments were directly provided within the assessment district. It is also important to note that the improvements and services funded by the assessments in Pomona are similar to the improvements and services funded by the Assessments described in this Engineer's Report and the Court found these improvements and services to be 100% special benefit. Also similar to the assessments in Pomona, the Assessments described in this Engineer's Report fund improvements and services directly provided within the Assessment District and every benefiting property in the Assessment District enjoys proximity and access to the Improvements. Therefore, Dahms establishes a basis for minimal or zero general benefits from the Assessments. However, in this Report, the general benefit is more conservatively estimated and described, and then budgeted so that it is funded by sources other than the Assessment.

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<sup>1</sup> . The greater public at large is generally defined as those who are not residents, property owners, customers or employees within the City, and residents who do not live in close proximity to the improvements.

## Method of Assessment

The second step in apportioning assessments is to determine the relative special benefit for each property. This process involves determining the relative benefit received by each property in relation to a single-family home, or, in other words, on the basis of Single-Family Equivalents (“SFE”). This SFE methodology is commonly used to distribute assessments in proportion to estimated special benefit and is generally recognized as providing the basis for a fair and appropriate distribution of assessments. For the purposes of this Engineer’s Report, all properties are designated an SFE value, which is each property’s relative benefit in relation to a single-family home on one parcel. The "benchmark" property is the single family detached dwelling, which is one Single Family Equivalent, or one SFE.

As stated previously, the special benefits derived from the assessments are conferred on property and are not based on a specific property owner’s use of the improvements, on a specific property owner’s occupancy of property, or the property owner’s demographic status such as age or number of dependents. However, it is ultimately people who enjoy the special benefits described above, use and enjoy the City’s trees and sidewalks, and control property values by placing a value on the special benefits to be provided by the improvements. In other words, the benefits derived to property are related the average number of people who could potentially live on, work at or otherwise could use a property, not how the property is currently used by the present owner. Therefore, the number of people who could or potentially live on, work at or otherwise use a property is an indicator of the relative level of benefit received by the property.

## Assessment Apportionment - Street Trees

### Properties with Street Trees

All improved residential properties that represent a single residential dwelling unit and have a street tree on or fronting the property are assigned 1.0 SFE. All single-family houses with tree(s) and those units in R-2 zones that are being used as single-family dwellings (with trees) are included in this category.

Properties with more than one residential unit are designated as multi-family residential properties. These properties benefit from the improvements in proportion to the number of dwelling units that occupy each property and the relative number of people who reside in multi-family residential units compared to the average number of people who reside in a single-family home. The population density factors for the County of San Mateo from the 1990 US Census (the most recent data available when the Assessment was established) are depicted below. The SFE factors for condominium, townhouse, and multi-family parcels, as derived from relative dwelling unit population density, are also shown below.

**Figure 1 – Residential Assessment Factors**

| <i>Property Type</i>      | <i>Total Population</i> | <i>Occupied Households</i> | <i>Persons per Household</i> | <i>SFE Factor*</i> |
|---------------------------|-------------------------|----------------------------|------------------------------|--------------------|
| Single Family Residential | 412,685                 | 140,248                    | 2.94                         | 1.0                |
| Condominium/Townhouse     | 54,284                  | 19,331                     | 2.81                         | 0.9                |
| Multi-Family Residential  | 158,004                 | 65,981                     | 2.39                         | 0.8                |

Source: 1990 Census, San Mateo County

The SFE factor for condominium, townhouse, and multi-family parcels is based on the ratio of average persons per household for the property type versus the average persons per household for a single-family residential home. Multi-family units are assessed at 0.80 per unit up to a maximum of 4.0 SFE per parcel (maximum of 5 units multiplied by 0.80). Condominium and townhouse parcels are assessed at 0.90 per unit, up to a maximum of 4.5 SFEs per development (maximum of 5 units multiplied by 0.90).

SFE values for commercial and industrial land uses are based on the equivalence of special benefit on a land area basis between single-family residential property and the average commercial/industrial property. The average size of a parcel for a single-family home in the District is approximately 0.18 acres, and such single-family property has an SFE value of 1.0. Using the equivalence of benefit on a land area basis, improved commercial and industrial parcels of approximately 0.20 acres or less would also receive an SFE benefit factor of 1.0. Commercial and industrial parcels in excess of a fifth of an acre in size are assigned 1.0 SFE per 0.20 acre or portion thereof, and the maximum benefit factor for any commercial/industrial parcel is 5.0 SFE.

Vacant parcels are also benefited from the street tree improvement and maintenance program. An example of a benefit is enhancement of the visual appeal that will accrue to a vacant parcel from the presence or proximity of the community's street trees based on its future potential use. Undeveloped property also benefits from the installation and maintenance of street trees, because if the property is developed during the year, the street trees will be available to the developed property. The relative benefit to vacant property is determined to be generally equal to the benefit to a single-family home property. Therefore, vacant property with street tree(s) are assessed 1 SFE.

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### **Properties without Street Trees**

The special benefit factors conferred on property can be defined by the benefits conferred to properties with and without street trees. The types of benefits conferred to all property in the community include protection of views, screening, and resource values and enhanced desirability of the property. A higher level of special benefits is conferred directly on parcels with street trees because these parcels obtain additional benefits from well-maintained, healthy trees fronting the property. The types of special benefits that are increased for properties with street trees include enhanced levels of safety, desirability, unique proximity, access and views of resources and facilities from healthy trees on the property. Therefore, individual properties without street trees but in close proximity to parcels with street trees receive a direct benefit from the street trees and should pay 50% of the rate for a similar property with street trees. Such properties are assigned an SFE benefit factor that is 50% of that for a similar property with street trees.

### **Assessment Apportionment - Sidewalk Program**

The benefits to property for sidewalks, curbs, gutters and parking strips are closely related to a parcel's proximity to these improvements and the parcel's proximity to street trees. Street trees are the most common cause of sidewalk problems. Therefore, the highest benefit from the proposed sidewalk improvements is to properties with street trees and sidewalks, curbs and gutters, or street trees and parking strips and gutters, because without the maintenance work, these improvements would degrade more quickly, which would affect the parcel's appearance and safety. It is estimated that 1/3 of the special benefits are conferred to property with street trees and sidewalks or parking strips. Another 1/3 of the special benefits are conferred to property with street trees and curbs and gutters. Special benefit factors are also conferred on property without street trees or adjoining sidewalk, curb, gutter and/or parking strip improvements that are in close proximity to these types of improvements. It is estimated that the remaining 1/3 of the special benefit factors from the Sidewalk Program are conferred to these parcels that are in close proximity to the improvements but that do not have improvements directly adjacent to their property.

Consequently, properties with street trees and sidewalks or parking strips and curbs and gutters or valley gutters are assigned a benefit factor of 1 SFE. Properties with street trees, curbs and gutters are assigned a benefit factor of 0.67 SFE. If there are street trees but no improvements along the frontage of a parcel, or no street trees on a parcel, its benefit is 1/3 or 0.33 SFE.

### Assessment Apportionment - Other Properties

Improved, publicly owned parcels that are used for residential, commercial or industrial purposes are assessed at the rates specified previously. Other improved public property; institutional property and properties used for educational purposes, typically generate employees on a less consistent basis than other non-residential parcels. Moreover, many of these parcels provide some degree of on-site amenities that serve to offset some of the benefits from the District. Therefore, these parcels, with or without street trees, receive minimal benefit and are assessed an SFE factor of 1 for street tree assessments and an SFE factor of 1 for sidewalks, curbs and gutter assessments.

All properties that are specially benefited have been assessed. Agricultural parcels without living units, public right-of-way parcels, well, reservoir or other water rights parcels, unimproved open space parcels, watershed parcels and common area parcels generally provide recreational, open space and/or scenic benefits to the community. As such, they tend to provide similar benefits as provided by the improvements in the District. Any benefits they would receive from the landscaping maintenance are generally offset by the equivalent benefits they provide. Moreover, these parcels typically do not generate employees, residents or customers. Such parcels are, therefore, not specially benefited and are not assessed.



## Appeals and Interpretation

Any property owner who feels that the assessment levied on the subject property is in error as a result of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with the Public Works Director of the City of Menlo Park or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the Public Works Director or his or her designee will promptly review the appeal and any information provided by the property owner. If the Public Works Director or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County of San Mateo for collection, the Public Works Director or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any dispute over the decision of the Public Works Director or his or her designee shall be referred to the City Council of the City of Menlo Park and the decision of the City Council of the City of Menlo Park shall be final.

Figure 2 – Tree Maintenance Assessments

| Property Type                       | 2023-24 Assessment Rates      |   |
|-------------------------------------|-------------------------------|---|
| <b><i>Parcels with Trees</i></b>    | <b><i>Assessment Rate</i></b> |   |
| Single Family                       | \$91.38                       | (per Parcel)                              |
| R-2 Zone, in use as single family   | \$91.38                       | (per Parcel)                              |
| Condominium/Townhouse               | \$82.24                       | (per Unit, \$411.21 max. per Project)     |
| Other Multi-family                  | \$73.10                       | (per Unit, \$365.52 max. per Project)     |
| Commercial                          | \$91.38                       | (per 1/5 acre, \$456.90 max. per Project) |
| Industrial                          | \$91.38                       | (per 1/5 acre, \$456.90 max. per Project) |
| Parks, Educational                  | \$91.38                       | (per Parcel)                              |
| Miscellaneous, Other                | \$0.00                        | (per Parcel)                              |
| <b><i>Parcels without Trees</i></b> |                               |   |
| Single Family                       | \$45.69                       | (per Parcel)                              |
| R-2 Zone, in use as single family   | \$45.69                       | (per Parcel)                              |
| Condominium/Townhouse               | \$41.12                       | (per Unit, \$205.61 max. per Project)     |
| Other Multi-family                  | \$36.55                       | (per Unit, \$182.76 max. per Project)     |
| Commercial                          | \$45.69                       | (per 1/5 acre, \$228.45 max.)             |
| Industrial                          | \$45.69                       | (per 1/5 acre, \$228.45 max.)             |
| Parks, Educational                  | \$45.69                       | (per Parcel)                              |
| Miscellaneous, Other                | \$0.00                        | (per Parcel)                              |

Figure 3 – Sidewalk, Curb, Gutter, Parking Strip Assessments

| Property Type                        | 2023-24 Assessment Rates      |              |
|--------------------------------------|-------------------------------|--------------|
| <b><i>Parcels with Trees</i></b>     | <b><i>Assessment Rate</i></b> |              |
| Sidewalks, curbs, gutters            | \$48.82                       | (per Parcel) |
| Parking strips and gutters           | \$48.82                       | (per Parcel) |
| Curbs and/or gutters only            | \$32.71                       | (per Parcel) |
| No improvements                      | \$16.11                       | (per Parcel) |
| Miscellaneous, Other                 | \$0.00                        | (per Parcel) |
| <b><i>Parcels without Trees</i></b>  |                               |              |
| Parcels with or without improvements | \$16.11                       | (per Parcel) |
| Miscellaneous, Other                 | \$0.00                        | (per Parcel) |

Note: All total combined tree and sidewalk assessment amounts are rounded to the lower even penny.

## Assessment

WHEREAS, on March 14, 2023, the City Council of the City of Menlo Park, County of San Mateo, California, pursuant to the provisions of the Landscaping and Lighting Act of 1972 and Article XIID of the California Constitution (collectively “the Act”), adopted its Resolution Initiating Proceedings for the Levy of Assessments within the Landscaping Assessment District; and

WHEREAS, said Resolution directed the undersigned Engineer of Work to prepare and file a report presenting an estimate of costs, a diagram for the assessment district and an assessment of the estimated costs of the improvements upon all assessable parcels within the assessment district, to which Resolution and the description of said proposed improvements therein contained, reference is hereby made for further particulars.

NOW, THEREFORE, the undersigned, by virtue of the power vested in me under said Act and the order of the City Council of said City of Menlo Park, hereby make the following assessment to cover the portion of the estimated cost of said improvements, and the costs and expenses incidental thereto to be paid by the assessment district.

The amount to be paid for said improvements and the expense incidental thereto, to be paid by the Landscaping Assessment District for the fiscal year 2023-24 is generally as follows:

**Figure 4 – Summary Cost Estimate**

|  | <i>F.Y. 2023-24<br/>Budget</i> |
|--|--------------------------------|
| Street Tree Program                        | \$ 890,362.59                  |
| Street Sweeping                            | \$ 297,022.18                  |
| Sidewalk Program                           | \$ 605,000.00                  |
| Incidental Expenses                        | \$ 195,375.00                  |
| <b>TOTAL BUDGET</b>                        | <b>\$1,987,760</b>             |
| Plus:                                      |                                |
| Projected Fund Balance                     | \$ 491,149.03                  |
| Less:                                      |                                |
| City Contribution for General Benefits     | (\$496,939.94)                 |
| Contribution from Carry-Over Fund Balances | \$ (833,888.00)                |
| <b>NET AMOUNT TO ASSESSMENTS</b>           | <b>\$ 1,148,080.86</b>         |

As required by the Act, an Assessment Diagram is hereto attached and made a part hereof showing the exterior boundaries of said Landscaping Assessment District. The distinctive number of each parcel or lot of land in the said Landscaping Assessment District is its Assessor Parcel Number appearing on the Assessment Roll.

And I do hereby assess and apportion said net amount of the cost and expenses of said improvements, including the costs and expenses incidental thereto, upon the parcels and lots of land within said Landscaping Assessment District, in accordance with the special benefits to be received by each parcel or lot, from the improvements, and more particularly set forth in the Cost Estimate and Method of Assessment hereto attached and by reference made a part hereof.

The assessment is made upon the parcels or lots of land within the Landscaping Assessment District in proportion to the special benefits to be received by the parcels or lots of land, from said improvements.

The assessment is subject to an annual adjustment tied to the Engineering News Record (ENR) Construction Cost Index for the San Francisco Bay Area, with a maximum annual adjustment not to exceed 3%. Any change in the ENR in excess of 3% shall be cumulatively reserved as the "Unused ENR" and shall be used to increase the maximum authorized assessment rate in years in which the ENR is less than 3%. The maximum authorized assessment rate is equal to the maximum assessment rate in the first fiscal year the assessment was levied adjusted annually by the minimum of 1) 3% or 2) the change in the ENR plus any Unused ENR as described above. The initial, maximum assessment rate balloted and established in Fiscal Year 1998-99 was \$64.28 per single family equivalent benefit unit for tree maintenance, and \$28.70 per single family equivalent benefit unit for sidewalk maintenance.

Based on the preceding annual adjustments, the maximum assessment rate for Fiscal Year 2022-23 was \$124.73 for tree maintenance and \$55.69 for Sidewalk maintenance. The change in the ENR from December 2021 to December 2022 was 5.27%. Therefore, the maximum authorized assessment rate for Fiscal Year 2023-24 has been increased from \$124.73 to \$128.47 per single family equivalent benefit unit for tree maintenance, and from \$55.69 to \$57.36 per single family equivalent benefit unit for sidewalk maintenance. However, the estimate of cost and budget in this Engineer's Report proposes assessments for fiscal year 2023-24 at the rate of \$91.38 per single family equivalent benefit unit for tree maintenance, which is less than the maximum authorized assessment rate and is a 3.00% increase over the rate assessed in the previous fiscal year. The proposed assessment rate for fiscal year 2023-24 for sidewalk maintenance is \$48.82 per single family equivalent benefit unit, which is also less than the maximum authorized assessment rate and is a 3.00% increase over the rate assessed in the previous fiscal year.

Property owners in the Assessment District, in an assessment ballot proceeding, approved the initial fiscal year benefit assessment for special benefits to their property including the ENR adjustment schedule. As a result, the assessment may continue to be levied annually and may be adjusted by up to the maximum annual ENR adjustment without any additional assessment ballot proceeding. In the event that in future years the assessments are levied at a rate less than the maximum authorized assessment rate, the assessment rate in a subsequent year may be increased up to the maximum authorized assessment rate without any additional assessment ballot proceeding.

Each parcel or lot of land is described in the Assessment Roll by reference to its parcel number as shown on the Assessor's Maps of the County of San Mateo for the fiscal year 2023-24. For a more particular description of said property, reference is hereby made to the deeds and maps on file and of record in the office of the County Recorder of said County.

I hereby place opposite the Assessor Parcel Number for each parcel or lot within the Assessment Roll, the amount of the assessment for the fiscal year 2023-24 for each parcel or lot of land within the said Landscaping Assessment District.

Dated: May 8, 2023

Engineer of Work




By   
Edric W. H. Kwan, P.E.  
License No. C062829

Figure 5 – Engineer’s Cost Estimate, Fiscal Year 2023-24

| Fiscal Year 2023-24<br>CITY OF MENLO PARK LANDSCAPING ASSESSMENT DISTRICT<br>ENGINEER'S COST ESTIMATE |           |                     |
|---|-----------|---------------------|
| A. Tree Maintenance   |           |                     |
| Salaries & Benefits   | \$        | 503,643.84          |
| Operating Expense   | \$        | 32,360.00           |
| Fixed Assets & Capital Outlay   | \$        | 4,500.00            |
| Vehicle & Equipment Maintenance   | \$        | 15,250.00           |
| Professional Services<br>(Tree Spraying, Tree Trimming, Misc.)  | \$        | 334,608.75          |
| Subtotal - Tree Maintenance   | \$        | 890,362.59          |
| B. Debris Removal   |           |                     |
| Salaries & Benefits   | \$        | 75,022.18           |
| Street Sweeping Contract  | \$        | 222,000.00          |
| Subtotal - Debris Removal   | \$        | 297,022.18          |
| C. Sidewalk, Curb, Gutter, Parking Strip Repair/Replacement   |           |                     |
| Construction Costs  | \$        | 605,000.00          |
| Subtotal - S/W,C,G, & PS Repair/Replace   | \$        | 605,000.00          |
| Subtotal Tree/Debris/Reforestation/Sidewalk   | \$        | 1,792,384.77        |
| D. Incidentals  |           |                     |
| Indirect Costs & Administration   | \$        | 180,375.00          |
| County Collection Fees  | \$        | 15,000.00           |
| Subtotal - Incidentals  | \$        | 195,375.00          |
| <b>Total Cost</b>   | <b>\$</b> | <b>1,987,759.77</b> |

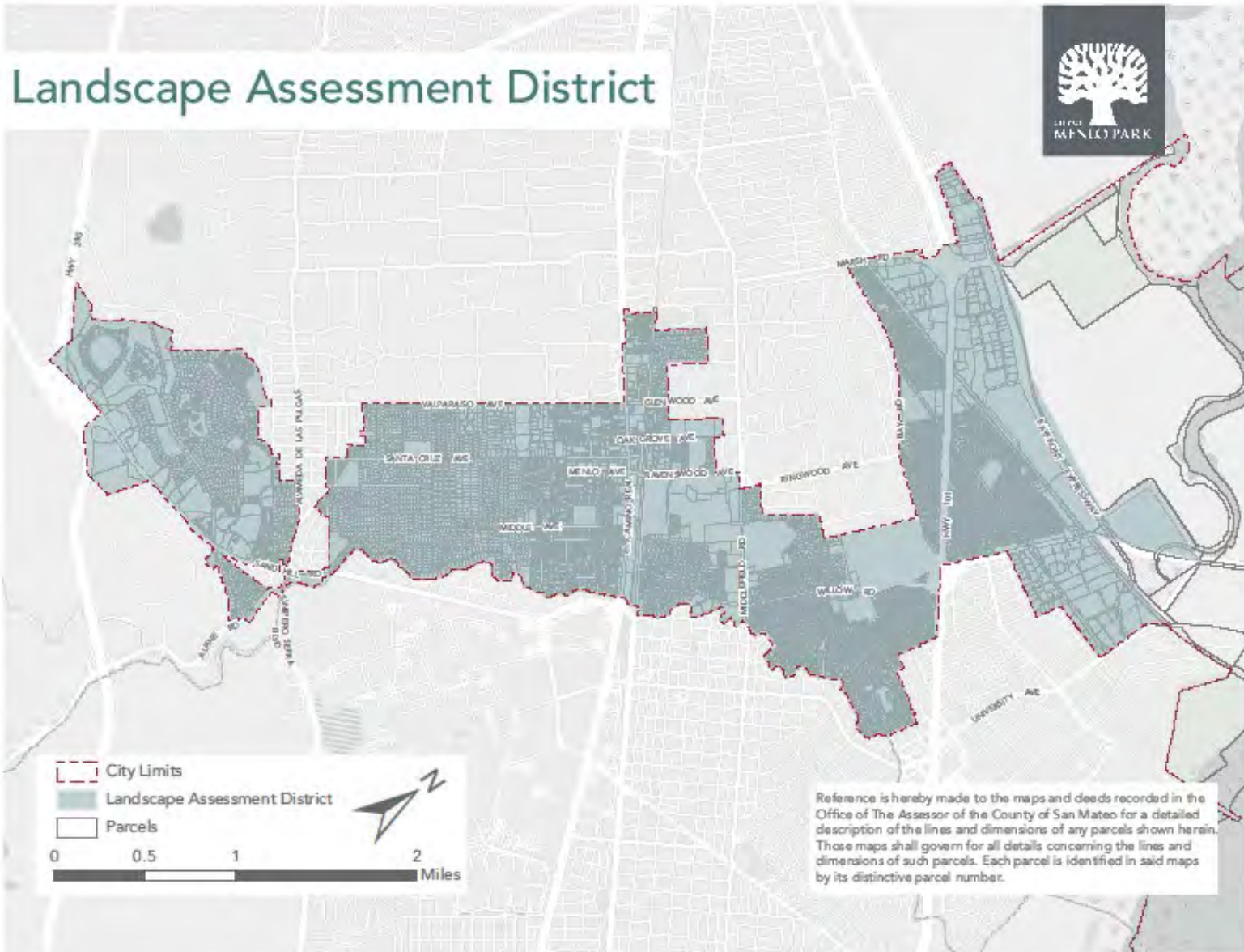
| Engineer's Cost Estimate, Fiscal Year 2023-24 (continued)   |  |           |                       |
|---|--|-----------|-----------------------|
| Projected Fund Balance  |  | \$        | 491,149.03            |
| Tree Maintenance Ending Fund Balance  |  | \$        | (743,057.00)          |
| Less General Fund Contribution  |  | \$        | (106,939.94)          |
| Measure M   |  | \$        | (140,000.00)          |
| Sidewalk Fund Ending Balance  |  | \$        | (90,831.00)           |
| Less General Fund CIP Contribution to Sidewalk Fund   |  | \$        | (250,000.00)          |
| <b>Net to Assessment</b>  |  | <b>\$</b> | <b>1,148,080.86</b>   |
| Revenue   |  |           |                       |
| Single Family Equivalent Benefit Units - Trees  |  |           | 8,925.41              |
| Single Family Equivalent Benefit Units - Sidewalks  |  |           | 6,810.26              |
|   |  | 2023-24   | 2022-23               |
| Assessment Rate for Tree Fund/ SFE  |  | \$91.38   | \$88.72               |
| Assessment Rate for Sidewalk Fund/ SFE  |  | \$48.82   | \$47.40               |
| Revenue for Tree Fund   |  |           | \$815,603.97          |
| Revenue for Sidewalk Fund   |  |           | \$332,476.89          |
| <b>Total Revenue *</b>  |  |           | <b>\$1,148,080.86</b> |
| * Total revenue is slightly less than SFEs times the assessment rate because all combined assessments are rounded down to the even penny. |  |           |                       |

## Assessment Diagram

The Landscaping Assessment District includes all properties within the boundaries of the City of Menlo Park.

The boundaries of the Landscaping Assessment District are displayed on the following Assessment Diagram.





**Appendix A – Assessment Roll, FY 2023-24**

Reference is hereby made to the Assessment Roll in and for the assessment proceedings on file in the office of the City Clerk of the City of Menlo Park, as the Assessment Roll is too voluminous to be bound with this Engineer's Report.



## STAFF REPORT

### City Council

Meeting Date:

5/23/2023

Staff Report Number:

23-120-CC

Consent Calendar:

**Authorize the city manager to enter into a professional services agreement for audit services**

### Recommendation

Staff recommends City Council authorize the city manager to enter into a professional services agreement with the Pun Group, LLP, for audit services.

### Policy Issues

The fiscal year 2022-23 award authority and bid requirements requires professional service agreements in excess of the city manager's threshold of \$86,000 receive approval from City Council (Policy CC-21-024). Also, the Award Authority and Bid Requirement Policy (Policy CC-19-001) indicates the mechanism to follow when procuring given dollar amounts.

### Background

The City is required to issue audited financial statements by independent auditors on an annual basis. Management is responsible for preparing the annual financial statements, which are subsequently audited by an independent auditor. The City contracted with the firm Lance, Soll & Lunghard, LLP ("LSL," Certified Public Accountants) in 2019 to provide these services over a three-year engagement.

It is a best practice to update professional services agreements every five years to ensure the City remains competitive in the use of public funds. Staff published the attached request for proposal (RFP) (Attachment B) outlining the City's scope of service, requirements, selection process, and request for the firm's compensation schedule. In addition, the professional service agreement (PSA) template was provided. The RFP was published through the City's PlanetBids portal. Several of the firms had follow-up questions and staff responded to these questions through the portal. The City received timely proposals from the following three firms:

- The Pun Group, LLP
- SingerLewak
- Badawi & Associates

The City's current auditor, LSL, did not submit a proposal.

### Analysis

Staff evaluated the proposals based on the firm's qualifications, years of experience, size, client list, and fee schedule. After evaluating and ranking each firm's proposal, staff invited Badawi & Associates and the Pun Group for interviews. Upon invitation to interview, Badawi & Associates withdrew their application citing a lack of capacity due to newly-awarded contracts. Staff proceeded with an interview with the Pun Group,

which presented a thoughtful and comprehensive approach to delivering these services. Between the experience of the firm's engagement team and utilization of current information technology tools, staff is confident in the Pun Group's ability to meet the City's audit needs.

The Pun Group is well equipped to provide audit services to the City. Therefore, staff is seeking authority to enter into a three-year agreement with two options to extend the agreement for one year at a time for a total maximum term of five years.

### **Impact on City Resources**

Financial audit services to the City are budgeted annually in its non-departmental category of the General Fund. The fee schedule is included in the proposed agreement (Attachment A), totaling \$177,727 over the three-year agreement.

### **Environmental Review**

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

### **Public Notice**

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

### **Attachments**

- A. Agreement with the Pun Group, LLP
- B. RFP – audit services (published March 16)

Report prepared by:  
Ying Chen, Senior Accountant

Reviewed by:  
Marvin Davis, Interim Finance Director  
Brittany Mello, Administrative Services Director

**PROFESSIONAL SERVICES AGREEMENT**

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



| <b>Agreement #:</b>   |
|---|
| <b>AGREEMENT FOR SERVICES BETWEEN<br/>THE CITY OF MENLO PARK AND THE PUN GROUP, LLP</b>   |
| THIS AGREEMENT made and entered into at Menlo Park, California, this _____,<br>by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as<br>"CITY," and THE PUN GROUP, LLP, hereinafter referred to as "FIRST PARTY."  |
| <p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: Request for proposal dated March 16</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>   |
| <b>1. SCOPE OF WORK</b>   |
| In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.   |
| <b>2. SCHEDULE FOR WORK</b>   |
| <p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p> |
| <b>3. PROSECUTION OF WORK</b>   |
| FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).   |

#### 4. COMPENSATION AND PAYMENT

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

#### 5. EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

## 7. INDEPENDENT WORK CONTROL

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

## 8. CONSULTANT QUALIFICATIONS

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

## 9. NOTICES

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

Brittany Mello  
 Administrative Services Department  
 City of Menlo Park  
 701 Laurel St.  
 Menlo Park, CA 94025  
 650-330-6675  
 bkmello@menlopark.gov

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

The Pun Group, LLP  
 2121 North California Blvd, Suite 290  
 Walnut Creek, CA 94596  
 949-777-8801  
 Email: ken.pun@pungroup.cpa

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

## 10. HOLD HARMLESS

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

## 11. INSURANCE

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



## 12. PAYMENT OF PERMITS/LICENSES

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

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

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

## 14. OWNERSHIP OF WORK PRODUCT

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

## 15. REPRESENTATION OF WORK

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

## 16. TERMINATION OF AGREEMENT

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

**17. INSPECTION OF WORK**

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

**18. COMPLIANCE WITH LAWS**

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

**19. BREACH OF AGREEMENT**

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

**20. SEVERABILITY**

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

**21. CAPTIONS**

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

**22. LITIGATION OR ARBITRATION**

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

**23. RETENTION OF RECORDS**

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

**24. TERM OF AGREEMENT**

This agreement shall remain in effect for the period of June 1, 2023 through June 1, 2026 unless extended, amended, or terminated in writing by CITY.

**25. ENTIRE AGREEMENT**

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

**26. STATEMENT OF ECONOMIC INTEREST**

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

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

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

**FOR FIRST PARTY:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Title

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

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
Date

**FOR CITY OF MENLO PARK:**

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

\_\_\_\_\_  
Date

**ATTEST:**

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

\_\_\_\_\_  
Date

## EXHIBIT "A" – SCOPE OF SERVICES

### A1. SCOPE OF WORK

FIRST PARTY agrees to provide consultant services for CITY's Administrative Services Department. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

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

### A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

### A3. SCHEDULE OF WORK

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

### A4. CHANGES IN WORK -- EXTRA WORK

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

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

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

**A5. BILLINGS**

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

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

## EXHIBIT "B" - DISPUTE RESOLUTION

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

**AUDIT SERVICES  
PROFESSIONAL SERVICES AGREEMENT  
EXHIBIT A**



**Scope of services**

Professional audit services shall include, but are not necessarily limited to, the following described below.

The City of Menlo Park desires the auditor to express an opinion on the fair presentation of its basic financial statements in conformity with generally accepted accounting principles. The audit shall include an examination of all City funds by certified public accountants duly authorized to practice as such by the State of California. The auditor shall also be responsible for performing certain limited procedures involving required supplementary information required by the Governmental Accounting Standards Board, as mandated by generally accepted auditing standards.

The auditor shall review and verify all trial balance worksheets and summary schedules including balance sheets, revenues, expenditures, and changes in fund balance for each City fund. The data source for the schedules will be the financial statements supplied by the City. An initial draft of the Annual Comprehensive Financial Report (ACFR) will be prepared by City staff and will be given to the auditors during the final stage of the audit. Final report preparation and necessary editing shall be the responsibility of the auditor.

The auditor shall submit for management review a draft of all reports. The final reports are subject to review by the City Council. The auditor shall incorporate, as part of the basic proposal, meeting time with staff and City Council for the purpose of discussing the audits or management letter and its conclusions.

**Reports to be issued**

- Annual Comprehensive Financial Report, including a web-ready ACFR PDF to be issued on the fair presentation of the financial statements in conformity with generally accepted accounting principles.
- Single Audit Report which includes a City prepared Schedule of Expenditures of Federal Awards
- A report on the compliance with the Propositions 4 and 111 appropriations limit increment (Gann Limit calculation).
- A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles and the format required by the Area Agency on Aging with the County of San Mateo for the Senior Program.
- Management and SAS 114 Letters, which includes findings, statements, observations, opinion, comments or recommendations, related to:
  - Systems of internal control based upon the auditors' understanding of the control structure and assessment of control risk.
  - Compliance with applicable laws and regulations.
  - Accounting systems, functions, procedures and processes, especially regarding cost effectiveness.

In the required reports on internal controls, the auditor shall communicate any reportable conditions found during the audit. A reportable condition shall be defined as a significant deficiency in the design or operation of the internal control structure that could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. Reportable conditions that are also material weaknesses shall be identified as such in the report. Non-reportable conditions discovered by the auditor shall be reported in a separate letter to management, which shall be referred to in the report on internal controls.

This scope of work is a general guide to the work the city expects to be performed and is not a complete listing of all services that may be required or desired.

## Compensation

| Work to be performed:                     | Optional         |                  |                  |                  |                  |
|---|------------------|------------------|------------------|------------------|------------------|
|   | FY 22-23         | FY 23-24         | FY 24-25         | FY 25-26         | FY 26-27         |
| City's ACFR Audit and Related Reports     | \$ 40,000        | \$ 41,200        | \$ 42,436        | \$ 43,709        | \$ 45,020        |
| Single Audit - 1 Major Program*           | 5,000            | \$ 5,150         | \$ 5,305         | \$ 5,464         | \$ 5,628         |
| GANN Limit                                | 500              | \$ 515           | \$ 530           | \$ 546           | \$ 563           |
| Measures A & W                            | \$ 4,000         | \$ 4,120         | \$ 4,244         | \$ 4,371         | \$ 4,502         |
| Child Care Programs                       | \$ 4,500         | \$ 4,635         | \$ 4,774         | \$ 4,917         | \$ 5,065         |
| State Controller's Report                 | \$ 3,500         | \$ 3,605         | \$ 3,713         | \$ 3,825         | \$ 3,939         |
| <b>Total All-Inclusive Maximum Price:</b> | <b>\$ 57,500</b> | <b>\$ 59,225</b> | <b>\$ 61,002</b> | <b>\$ 62,832</b> | <b>\$ 64,717</b> |

(1) Single Audit fees based on one (1) major program. The fee for auditing additional major programs will be \$5,000 each. The number of programs determined to be "major" will be based on OMB Uniform Guidance. The Engagement Team will discuss this with the City of Menlo Park's Management before starting Single Audit work.

Hourly rates for additional professional services billed at the following rates:

- Partners: \$300
- Directors: \$250
- Senior managers: \$225
- Managers: \$200
- Supervisors: \$175
- Senior accountants: \$150
- Staff accountants: \$125
- Clerical: \$100



# RFP – PROFESSIONAL AUDIT SERVICES

Rani Singh  
Finance and Budget Manager  
rmsingh@menlopark.gov



## Purpose

The City of Menlo Park seeks proposals for the preparation of both financial and compliance audit reports covering the City and its related operations from qualified firms of certified public accountants.

## Background

The City of Menlo Park is a city of beautiful, tree-lined neighborhoods and active commercial districts. Located conveniently between the major metropolitan areas of San Francisco and San Jose, Menlo Park is home to approximately 36,000 residents in its 19 square miles. Menlo Park's residents reflect a range of backgrounds and interests who tend to be actively engaged in community life. Known worldwide as the "Capital of Venture Capital," Menlo Park is well situated to benefit from and help shape new technologies and markets originating from the Silicon Valley. The city hosts such major employers as Facebook, SRI International, Intersect ENT, Grail and Pacific Biosciences of California. Menlo Park, like many communities, is one in which disparities exist. The city is committed to acknowledging those disparities, as well as the history that produced them, and improving the quality of life of all residents.

### Mission statement

"It is the mission of the city government to ensure that Menlo Park is a desirable and vibrant community in which to live and do business and to respond to the values and priorities of the residents so as to provide for the community's current and future needs."

### Organizational structure

The City of Menlo Park is a full-service general law city. A five-member City Council, elected by district, serves as the governing body of the city. The City Council appoints a city manager to serve as the chief executive officer of the city and is responsible for its day-to-day operations. The City Council also appoints the city attorney. Fire services in Menlo Park and surrounding communities are delivered by the Menlo Park Fire Protection District, an independent special district.

The City's fiscal year begins July 1 and ends June 30. For fiscal year 2022-23, the City of Menlo Park has a total adopted budget of approximately \$123.6 million for all funds of which the General Fund makes up approximately \$80.4 million of that total. While City operations generate revenue from various public services, such as licensing, permitting and building activity, the three primary sources of revenue for the General Fund are sales tax, property tax and transient occupancy tax. View the city website at [menlopark.gov/finance](http://menlopark.gov/finance) for the most recent city operating and capital improvement program budget and the annual comprehensive financial report (ACFR).

## RFP schedule

Listed below are the events and target dates. The City reserves the right to change these events and dates at any time.

|                                       |                        |
|---------------------------------------|------------------------|
| RFP issued                            | March 16, 2023         |
| Deadline for questions/clarifications | 5 p.m., April 7, 2023  |
| Proposals due                         | 5 p.m., April 14, 2023 |
| Finalist notified                     | May 1, 2023            |
| Contract awarded                      | May 9, 2023            |

## Scope of services

The City seeks qualified firms to provide professional audit services. Services shall include, but are not necessarily limited to, the following described below.

The City of Menlo Park desires the auditor to express an opinion on the fair presentation of its basic financial statements in conformity with generally accepted accounting principles. The audit shall include an examination of all City funds by certified public accountants duly authorized to practice as such by the State of California. The auditor shall also be responsible for performing certain limited procedures involving required supplementary information required by the Governmental Accounting Standards Board, as mandated by generally accepted auditing standards.

The auditor shall review and verify all trial balance worksheets and summary schedules including balance sheets, revenues, expenditures, and changes in fund balance for each City fund. The data source for the schedules will be the financial statements supplied by the City. An initial draft of the ACFR will be prepared by City staff and will be given to the auditors during the final stage of the audit. Final report preparation and necessary editing shall be the responsibility

of the auditor.

The auditor shall submit for management review a draft of all reports. The final reports are subject to review by the City Council. The auditor shall incorporate, as part of the basic proposal, meeting time with staff and City Council for the purpose of discussing the audits or management letter and its conclusions.

Reports to be issued

- Annual Comprehensive Financial Report, including a web-ready ACFR PDF to be issued on the fair presentation of the financial statements in conformity with generally accepted accounting principles.
- Single Audit Report which includes a City prepared Schedule of Expenditures of Federal Awards
- A report on the compliance with the Propositions 4 and 111 appropriations limit increment (Gann Limit calculation).
- A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles and the format required by the Area Agency on Aging with the County of San Mateo for the Senior Program.
- Management and SAS 114 Letters, which includes findings, statements, observations, opinion, comments or recommendations, related to:
  - Systems of internal control based upon the auditors' understanding of the control structure and assessment of control risk.
  - Compliance with applicable laws and regulations.
  - Accounting systems, functions, procedures and processes, especially regarding cost effectiveness.

In the required reports on internal controls, the auditor shall communicate any reportable conditions found during the audit. A reportable condition shall be defined as a significant deficiency in the design or operation of the internal control structure that could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. Reportable conditions that are also material weaknesses shall be identified as such in the report. Non-reportable conditions discovered by the auditor shall be reported in a separate letter to management, which shall be referred to in the report on internal controls.

This scope of work is a general guide to the work the city expects to be performed and is not a complete listing of all services that may be required or desired.

**General requirements**

The city reserves the right to reject any or all responses, to waive any informality in any responses, and to select the consulting firm that best meets the city's needs.

Responses must be submitted no later than the date and time stated in this request for proposals. Responses shall be reviewed and rated as set forth in the selection process section of this request for proposals. The City will then determine which consulting firm best meets the city requirements.

The City reserves the right to negotiate final pricing with the most qualified consulting firm.

Upon award of the contract, it is expected that the successful proposer will accept the agreement terms and conditions "as is" without modification. Any contract modifications are to be stated upfront, at the time of submittal.

The proposer shall furnish the City with such additional information as the City may reasonably require.

All data, documents and other products used or developed during performance of the services will remain the property of the city.

**Submittal requirements**

All proposals must be submitted according to the specifications in the section above. Failure to adhere to these specifications may be cause for rejection of the proposal. Proposals shall be submitted electronically through the city bid portal at [menlopark.gov/RFP](http://menlopark.gov/RFP).

NOTE: Proposals must be received no later than 5 p.m., Friday, April 14, 2023. All proposals received after that time will not be considered. The proposer shall submit its proposal electronically in PDF format. No paper proposals will be accepted.

The City requests that responses be organized in a logical format that is relevant to these services. The responses shall also be concise, excluding excessive or irrelevant material.

All proposals submitted to the city must contain the following minimum information:

- a. A cover letter with contact information.
- b. Company and General Information
  - Company name and address.
  - Letter of transmittal signed by an individual authorized to bind the respondent, stating that the respondent has read and will comply with all terms and conditions of the RFP.
  - General information about the primary contact who would be able to answer questions about the proposal. Include name, title, telephone number and email address of the individual.
- c. Qualifications and Experience of the firm
  - Describe your firm's history and organizational structure. Include the size of the firm, location of offices, years in business, organizational chart and name(s) of owner(s) and principal parties.
  - Identify partners, manager, and seniors who will be assigned to work on this project and the firm's office in which they are each located. Include brief summaries of their background (including if they hold a current CPA license) and experience in auditing cities, as well as their assigned responsibilities under the proposal.
  - What is your firm's experience in public sector accounting and auditing?
  - Comment on other areas that may make your firm different from your competitors.
- d. Questions/Response to Scope of Services
  - Describe the audit approach and methodology to be used to perform the services. This may include a discussion of:
    - Approach to selection of sample size;
    - Use of specialized software;
    - Analytical procedures;
    - Approach to internal control structure;
    - Approach to determining laws / regulations subject to audit test work;
    - Identification of any anticipated problems, or special assistance required from city staff; and the format of the report
- e. Fees
  - Provide your fees for the proposed service.
  - Detail costs and hourly billing rates, as well as any proposed method of adjustment in the cost of services for subsequent years of the engagement, if applicable.
  - Outline billing and payment expectations, including timing and method of payment.
  - Describe any remaining fees not already detailed above.
  - Present a specific "not to exceed" fixed fee, including associated fees (i.e., printing costs, attendance at meetings, travel) and all direct and indirect costs.
- f. References
  - Provide a list of the municipal agencies for which the respondent has provided audit services for the past three calendar years.
  - Provide the following information for three client cities that are similar in size and scope to the project requested by this proposal:
    - Name of Public Agency
    - Name and title of contact person
    - Telephone number and email address of contact person
    - Brief description of the scope of the audit performed
- g. Implementation Schedule
  - Include a work schedule and note key project milestones and timelines for deliverables. Identify any assumptions used in developing the schedule. Any assumptions regarding turnaround time for City Staff review should be clearly noted.
  - Please note that auditor is responsible for identifying required review times for the City input and must account for printing and distribution within any timelines identified in this RFP

Please also provide Information, if any, on topics of diversity, inclusion and equity, and how these topics factor into your firm's work. This information could involve explaining how the firm addresses these topics both within the organization and/or in the community through trainings, hiring policies, community volunteering, etc.

### **Selection process**

The City will determine the process by which the proposals are reviewed. Proposed fee arrangements, experience, service delivery and other qualifications will all be important selection factors. The top-ranked firms/individual may be requested to be interviewed. Interviews will allow the designated firms or individuals an opportunity to answer any questions the City may have regarding their proposals. Participation in the interviews will be at no cost to the city. The City will make the final determination of the successful firm/individual.

The City reserves the rights and options to

- Reject any or all of the submittals
- Waive any of the provisions in the request for proposals
- Issue subsequent requests for proposals
- Cancel the request for proposal process
- Waive any technical error in the responses it receives, and negotiate with any, all, or none of the respondents to the request for proposals in regard to statements or explanation of information that may reflect negatively on the consulting firm which the City may discover during the background process, i.e., disclosure of judgments or other findings against the firm or its personnel.

### **Communications and questions**

Should discrepancies or omissions be found in this RFP or should there be a need to clarify this RFP, questions or comments regarding this RFP must be put in writing and received no later than 5 p.m., Friday, April 7, 2023. Written questions may be submitted electronically through the city bid portal at [menlopark.gov/RFP](http://menlopark.gov/RFP).

Responses from the City will be communicated in writing to all recipients of this RFP. All addenda shall become part of this RFP. The City shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by the City.

### **Compensation**

All tasks within the enclosed Scope of Work shall be included within the proposal's fee schedule and itemized according to required and optional tasks.

Proposals shall describe how the firm intends to bill for the services provided, special services subject to additional charges, and the rates that would be charged for those special services. If hourly billing rates would be charged and those rates would vary for different types of work, such as litigation, indicate what rates will be charged for each type of service. Proposals shall identify what charges the firm will impose for travel time.

### **Attachments**

A. City's standard professional services agreement

Choose agreement type

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



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

#### 4. COMPENSATION AND PAYMENT

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

#### 5. EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

**7. INDEPENDENT WORK CONTROL**

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

**8. CONSULTANT QUALIFICATIONS**

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

**9. NOTICES**

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

Department Head  
Department  
City of Menlo Park  
701 Laurel St.  
Menlo Park, CA 94025  
650-330-xxxx  
Email

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

Name  
Company  
Address  
City, State Zip  
Phone  
Email

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

**10. HOLD HARMLESS**

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

## 11. INSURANCE

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



## 12. PAYMENT OF PERMITS/LICENSES

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

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

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

## 14. OWNERSHIP OF WORK PRODUCT

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

## 15. REPRESENTATION OF WORK

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

## 16. TERMINATION OF AGREEMENT

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

**17. INSPECTION OF WORK**

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

**18. COMPLIANCE WITH LAWS**

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

**19. BREACH OF AGREEMENT**

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

**20. SEVERABILITY**

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

**21. CAPTIONS**

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

**22. LITIGATION OR ARBITRATION**

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

**23. RETENTION OF RECORDS**

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

**24. TERM OF AGREEMENT**

This agreement shall remain in effect for the period of **Select start date** through **Select end date** unless extended, amended, or terminated in writing by CITY.

**25. ENTIRE AGREEMENT**

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

**26. STATEMENT OF ECONOMIC INTEREST**

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

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant **Choose an item** required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

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

**FOR FIRST PARTY:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Title

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

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
Date

**FOR CITY OF MENLO PARK:**

\_\_\_\_\_  
**Signature Authority, Title**

\_\_\_\_\_  
Date

**ATTEST:**

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

\_\_\_\_\_  
Date

## EXHIBIT “A” – SCOPE OF SERVICES

### A1. SCOPE OF WORK

FIRST PARTY agrees to provide consultant services for CITY’s **Department**. In the event of any discrepancy between any of the terms of the FIRST PARTY’s proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

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

### A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY’s standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

### A3. SCHEDULE OF WORK

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

### A4. CHANGES IN WORK -- EXTRA WORK

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

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

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

**A5. BILLINGS**

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

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

**EXHIBIT "B" - DISPUTE RESOLUTION**

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



**STAFF REPORT**

**City Council Meeting Date:** 5/23/2023  
**Staff Report Number:** 23-121-CC

**Consent Calendar:** Adopt a resolution to support the 2023 Southeast San Mateo County Community Based Transportation Plan

**Recommendation**

Staff recommends that the City Council adopt a resolution (Attachment A) to support the recommendations and responsibilities included in the 2023 Southeast San Mateo County Community Based Transportation Plan (CBTP).

**Policy Issues**

Supporting the CBTP is consistent with policies (e.g., CIRC-1.7, CIRC-2.1, CIRC-2.15) in the General Plan Circulation Element that seek to coordinate transportation planning efforts with appropriate neighboring jurisdictions to improve transportation options and to maintain a safe, efficient, attractive, user friendly circulation system that promotes a healthy, safe and active community and quality of life throughout Menlo Park.

**Background**

In 2001, the Metropolitan Transportation Commission (MTC) established the CBTP program to identify improvements to transportation mobility for residents in equity priority communities.

The City/County Association of Governments of San Mateo County (C/CAG), as the County's Congestion Management Agency, developed the 2005 East Palo Alto CBTP (Attachment B). That plan included the City of East Palo Alto as the study area and recommended a list of projects and plans aimed to improve transportation mobility within the study area.

Since 2005, there have been significant changes in demographics, land use, and transportation mobility options within the Bay Area. In 2019, C/CAG began an update the 2005 CBTP.

**Analysis**

Based on demographic characteristics from the census, C/CAG expanded the 2005 East Palo Alto study area to include portions of the City of Menlo Park, the City of Redwood City, and the unincorporated area of North Fair Oaks. Attachment C illustrates the new study area. C/CAG renamed the Plan the 2023 Southeast San Mateo County CBTP to reflect this change.

Table 1 describes the tasks accomplished by the C/CAG team, including a shift in public outreach methodology due to the pandemic:

| Table 1: 2023 CBTP planning scope  |   |
|--|---|
| Task   | Deliverable   |
| Established advisory group – provide oversight and direction                                   | Meetings with agency and stakeholder staff  |
| Conducted public outreach – community feedback on transportation mobility needs and priorities | Awareness campaign, bilingual digital surveys <sup>1</sup> , presentations at various community advisory bodies and community events <sup>2</sup> |
| Reviewed agency plans – consistency with CBTP project/plan recommendations                     | General plans, local transportation and land use related plans, and countywide plans and studies  |
| Developed recommendations – improve future mobility  | Pedestrian, bicycle and micromobility, transit and paratransit, safety projects and plans   |
| Developed evaluation methodology – prioritization  | Prioritization criteria (reflects community priorities, increase access, financially feasible, ease of implementation) and scoring system         |

Notes:

1. Menlo Park promoted the transportation survey through City's newsletter (i.e., Weekly Digest) and social media platforms.
2. Menlo Park Complete Streets Commission received presentation from C/CAG team March 10, 2021.

In total, the 2023 CBTP (Attachment D) recommends 46 projects across all jurisdictions to close mobility gaps in the study area.

Table 2 summarizes the recommended projects in or around the City of Menlo Park. These projects are consistent with the City's Transportation Master Plan and general plan policies and programs.



**Table 2: 2023 CBTP projects – located within the City of Menlo Park**

| Category                | CBTP project  | TMP/GP consistency  |
|-------------------------|---|---|
| Pedestrian              | Perform safety audits and install intersection safety improvements such as signalization controls, pedestrian islands, flashing beacons, high-visibility crosswalks and/or physical traffic calming elements, at the following intersections: <ul style="list-style-type: none"> <li>Marsh Road and Bay Road</li> <li>Willow Road and Newbridge Street</li> <li>Willow Road and Ivy Drive</li> <li>Willow Road and O'Brien Drive</li> </ul> | TMP #s 39, 40, 41   |
| Bicycle & Micromobility | Upgrade the existing bike facility on Willow Road between Bayfront Expressway and Highway 101 to a Class IV separated bikeway   | TMP #37   |
| Bicycle & Micromobility | Design and develop a bicycle/pedestrian bridge over Highway 101 north of Marsh Road, with connections to Bay Trail and Bedwell Bayfront Park  | TMP #178  |
| Bicycle & Micromobility | Install Class II buffered bike lanes on Marsh Road from Bay Road to Scott Drive.  | TMP #14   |
| Bicycle & Micromobility | Improve access to electronic bikes via equity programs for both shared e-bikes and individually owned e-bikes.  | TMP #167<br>GP Policy CIRC-3.3                                    |
| Transit & Paratransit   | Implement transit-only lanes or transit signal priority infrastructure on Newbridge Street, Bay Road and University Avenue from Menlo Park to the Palo Alto Transit Station to improve Caltrain access by Menlo Park and East Palo Alto residents   | TMP #36<br>GP Policy CIRC-3.3                                     |
| Transit & Paratransit   | Audit ground and curb conditions at bus stops and paratransit boarding areas at the following facilities to identify uneven sidewalks, lack of red paint and other parking/vehicle deterrents and missing or Americans with Disabilities Act (ADA) noncompliant bus shelters: <ul style="list-style-type: none"> <li>Menlo Park VA Medical Center</li> </ul>  | GP Policy CIRC-1.2  |
| Transit & Paratransit   | Develop implementation strategies for equity mobility programs that encourage mode shift, such as the 2021 101 Express Lanes Community Benefits Program   | GP Policy CIRC-2.14<br>GP Policy CIRC-5.1                         |
| Transit & Paratransit   | Decrease current 1+ hour headways of City of Menlo Park Belle Haven Shuttle by 25%.   | GP Policy CIRC-5.1<br>Ongoing Menlo Park Shuttle Evaluation study |
| Safety                  | Assess queuing impacts to public streets during peak drop-of/pickup hours at: <ul style="list-style-type: none"> <li>Belle Haven Elementary School</li> <li>TIDE Academy</li> </ul>   | TMP #198<br>GP Policy CIRC-1.9                                    |
| Safety                  | Implement Safe Routes to School infrastructure, including traffic calming techniques such as lane narrowing, speed humps, bulb-outs, and rapid flashing beacons at: <ul style="list-style-type: none"> <li>Belle Haven Elementary School</li> <li>TIDE Academy</li> </ul>   | TMP #198<br>GP Policy CIRC-1.9                                    |
| Safety                  | Improve bike and pedestrian infrastructure on Coleman Avenue and Ringwood Avenue  | TMP #61<br>Ongoing San Mateo County transportation study          |

Next steps

Given the diverse recommendations from the plan, C/CAG recognizes that a successful implementation of the 2023 CBTP will require collaboration and coordination across local and regional jurisdictions. Adopting

the resolution (Attachment A) provides the following:

- Demonstrates City Council support of the plan recommendations to the C/CAG Board of Directors
- Commits to continued collaboration with C/CAG and other agencies to seek funding to implement the projects and plans in the CBTP
- Commits to submit an annual CBTP tracking checklist (Attachment F)

Because the plans and programs in the CBTP are consistent with the City's Transportation Master Plan and other programs and policies, staff recommends adopting resolution of support for the 2023 Southeast San Mateo County CBTP (Attachment A). The C/CAG team anticipates C/CAG Board approval in early summer.

### **Impact on City Resources**

Staff participation in this planning process is considered part of baseline operations. The identified projects are included in the Transportation Master Plan, making them eligible for funding from Transportation Impact Fees. Implementation of specific projects will depend on staff availability and, for those not already underway, will be considered in future City Council work plan prioritization efforts.

### **Environmental Review**

The 2023 CBTP 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. Future projects or plans identified in the CBTP will be subject to their own independent environmental review.

### **Public Notice**

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

### **Attachments**

- A. Resolution
- B. Hyperlink – 2005 East Palo Alto CBTP:  
<https://mtc.ca.gov/sites/default/files/CBTP%20East%20Palo%20Alto%202004.pdf>
- C. 2023 Southwest San Mateo County CBTP study area
- D. Hyperlink – 2023 Southwest San Mateo County CBTP: [ccag.ca.gov/wp-content/uploads/2023/03/SoutheastSanMateo\\_CBTP\\_2-9-2023\\_FINAL\\_Optimized\\_FullAppendix.pdf](https://ccag.ca.gov/wp-content/uploads/2023/03/SoutheastSanMateo_CBTP_2-9-2023_FINAL_Optimized_FullAppendix.pdf)
- E. 2023 CBTP project list – Menlo Park related
- F. Annual tracking checklist

Report prepared by:  
Kevin Chen, Senior Transportation Engineer

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

**RESOLUTION NO. XXXX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
SUPPORTING THE RECOMMENDATIONS AND RESPONSIBILITIES  
INCLUDED IN THE 2023 SOUTHEAST SAN MATEO COUNTY COMMUNITY  
BASED TRANSPORTATION PLAN**

WHEREAS, the Metropolitan Transportation Commission (MTC) initiated the Community-Based Transportation Planning (CBTP) program in 2002 to enhance mobility for residents of Equity Priority Communities (EPC); and

WHEREAS, in 2019, the City/County Association of Governments of San Mateo County (C/CAG), as the County's Congestion Management Agency, obtained funding through an MTC Community- Based Transportation Planning Grant to prepare an update to the 2005 East Palo Alto CBTP (now expanded and renamed as the 2023 Southeast San Mateo County CBTP); and

WHEREAS, the City of Menlo Park is one of four jurisdictions included in the 2023 Southeast San Mateo County CBTP study area, in addition to the cities of Redwood City and East Palo Alto and the County of San Mateo; and

WHEREAS, the 2023 Southeast San Mateo County CBTP was led by the C/CAG in partnership with the project's local Advisory Group, comprised of staff members of the cities of Menlo Park, Redwood City and East Palo Alto, San Mateo County, SamTrans, Commute.org, Peninsula Family Services, Silicon Valley Bicycle Coalition and other stakeholders; and

WHEREAS, the 2023 Southeast San Mateo County CBTP project team implemented a bilingual community input process composed of electronic and traditional survey distribution; solicitation of feedback from the North Fair Oaks Community Council on February 25, 2021; East Palo Alto City Council on March 2, 2021; Redwood City Transportation Advisory Committee on March 9, 2021, and Menlo Park Complete Streets Commission on March 10, 2021; and hosting of in-person community outreach events at farmers' markets and community centers; and

WHEREAS, based on community input and technical expertise, the project team recommended one pedestrian project, four bicycle and micromobility projects, four transit and paratransit projects and three safety projects to close mobility gaps for residents of EPCs in the City of Menlo Park; and

WHEREAS, City of Menlo Park staff provided comments to the draft CBTP recommendations in August, 2022; and comments to the Administrative Draft CBTP in November, 2022; and

WHEREAS, the City of Menlo Park supports the recommendations of the Plan as they relate to its jurisdiction and to pursuing future implementation of project recommendations for which the City of Menlo Park is identified as a Responsible Agency; and

WHEREAS, the City of Menlo Park agrees to participate in the annual project tracking process outlined in the CBTP; and

WHEREAS, the 2023 Southeast San Mateo County CBTP is not a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and

WHEREAS, the recommendations identified in the 2023 Southeast San Mateo County CBTP may be considered, evaluated as appropriate under CEQA by the applicable decision-making body at a future time; and

NOW, THEREFORE, LET IT BE RESOLVED, that the City of Menlo Park City Council does hereby support the recommendations and responsibilities (seek funding for implementation and track progress) included in the 2023 Southeast San Mateo County Community Based Transportation Plan as they relate to its jurisdiction.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the twenty-third day of May, 2023, by the following votes:

AYES:

NOES:

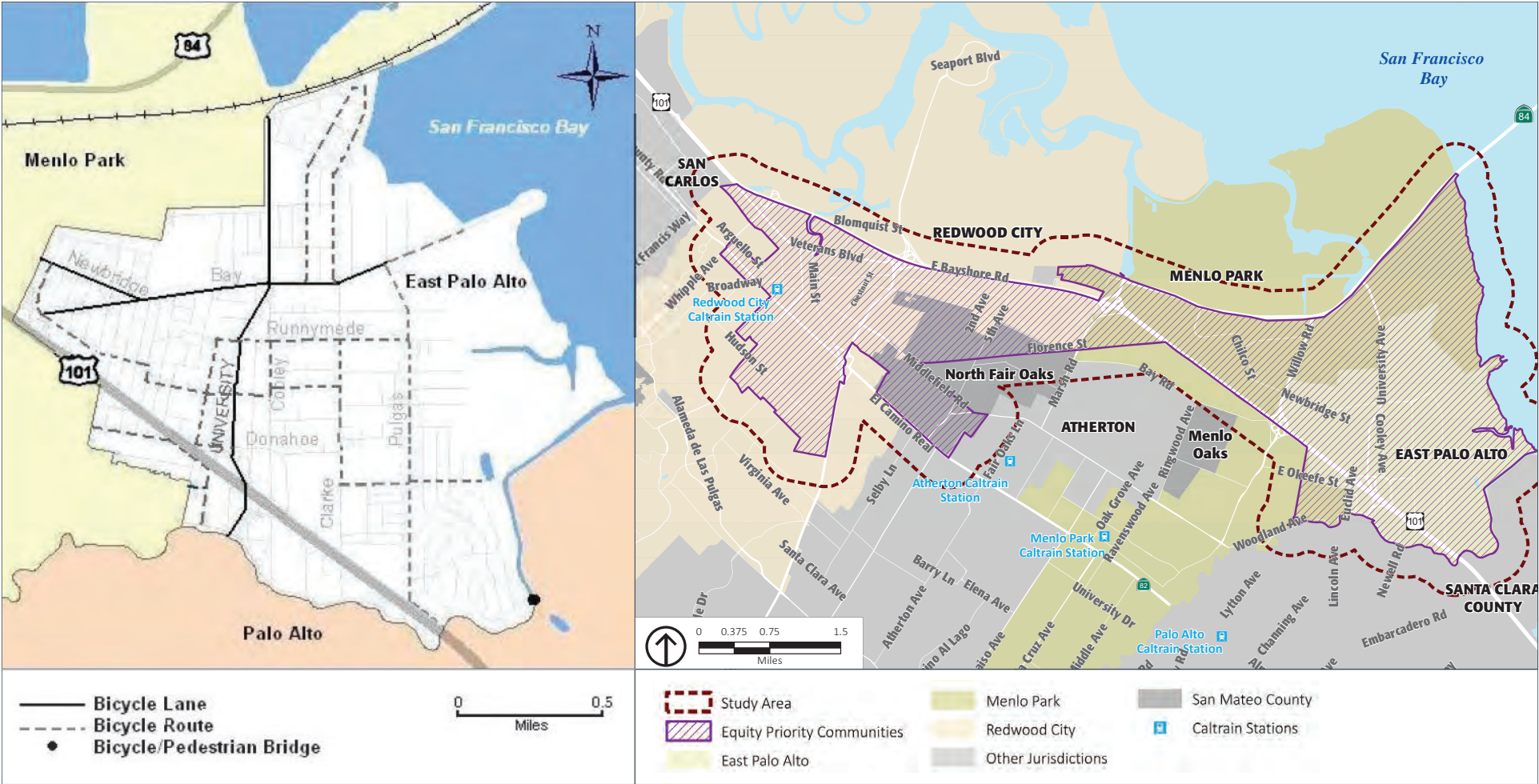
ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this \_\_\_ of May, 2023.

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Judi A. Herren, City Clerk



**Figure ES-1 2005 and Current CBTP Study Area**

**Table 5-1 Recommended Pedestrian Projects and Plans**

| Recommendation   | Average Score | Area Need Score | Project Potential Score | Estimated Cost                       | Implementation Timeframe | Responsible Agency   |
|--|---------------|-----------------|-------------------------|--------------------------------------|--------------------------|--|
| Close all sidewalk gaps on East Bayshore Road from Poplar Avenue to Euclid Avenue in response to pedestrian fatalities.  | 4.75          | 5               | 4.5                     | \$50,000 to \$75,000                 | ST                       | East Palo Alto   |
| <p>Perform safety audits and install intersection safety improvements such as signalization controls, pedestrian islands, flashing beacons, high-visibility crosswalks and/or physical traffic calming elements, at the following intersections:</p> <ul style="list-style-type: none"> <li>• University Ave. and Runnymede St.</li> <li>• Marsh Rd. and Bay Rd.</li> <li>• Marsh Rd. and Middlefield Rd.</li> <li>• Cooley Ave. and University Ave.</li> <li>• Oakwood Dr. and East Bayshore Rd.</li> <li>• Newbridge St. and Willow Rd.</li> <li>• Willow Rd. and Ivy Dr.</li> <li>• Willow Rd. and O'Brien Dr.</li> </ul> | 4             | 4.5             | 3.5                     | \$4,000 to \$15,000 per intersection | ST                       | East Palo Alto, Redwood City, City of Menlo Park, San Mateo County |
| Widen sidewalks, close all sidewalk gaps and install parking controls along West Bayshore Rd. between Cooley Ave. and Woodland Ave. in East Palo Alto.   | 4             | 4               | 4                       | \$75,000 to \$125,000                | ST                       | East Palo Alto   |
| Assess sidewalk deficiencies and implement feasible recommendations for new sidewalks on the west side of Pulgas Ave. from East Bayshore Rd. to University Avenue in East Palo Alto.   | 3.75          | 4.5             | 3                       | \$100,000 to \$200,000               | MT                       | East Palo Alto   |
| Install Rectangular Rapid-Flashing Beacons (RRFB) with curb extensions at on- and off-ramps on both sides of Highway 101 at the Whipple Ave. overcrossing in Redwood City.   | 3.75          | 3.5             | 4                       | \$150,000 to \$200,00                | MT                       | Redwood City, Caltrans   |
| Install a High-Intensity Activated Crosswalk ("HAWK") and median improvements at intersection of SR 82 and Selby Lane in Atherton.   | 3.5           | 4.5             | 3                       | \$125,000 to \$150,000               | ST                       | Atherton, San Mateo County   |

**Table 5-2 Recommended Bicycle and Micromobility Projects and Plans**

| Recommendation   | Average Score | Area Need Score | Project Potential Score | Estimated Cost         | Implementation Timeframe | Responsible Agency                    |
|--|---------------|-----------------|-------------------------|------------------------|--------------------------|---------------------------------------|
| Implement the North Fair Oaks bicycle boulevards network in the area between Middlefield Rd., 5th Ave., El Camino Real and the unincorporated County/ Redwood City limits, per the <i>North Fair Oaks Bicycle and Pedestrian Railroad Crossing and Community Connections Study</i> .   | 4.25          | 4.5             | 4                       | \$3.5M to \$7M         | MT                       | San Mateo County                      |
| Improve bike facilities on Seaport Blvd. by installing a Class I bike path from Broadway to East Bayshore Road, per the <i>2021 C/CAG San Mateo County Comprehensive Bicycle and Pedestrian Master Plan</i> , and from Veterans Boulevard Highway 101 per <i>RWC Moves</i> .   | 4             | 4.5             | 3.5                     | \$1M to \$1.25M        | ST                       | San Mateo County, Redwood City        |
| Install grade- separated pedestrian/bicycle crossing of Caltrain tracks in North Fair Oaks between 5th Avenue and Redwood City limits, labeled high-priority project in the <i>2021 Unincorporated San Mateo County Active Transportation Plan</i> .   | 4             | 4.5             | 3.5                     | \$10M-\$15M            | LT                       | San Mateo County, Caltrain            |
| Install Class IV cycle track on SR 82 (El Camino Real) between Finger Ave. and north of Berkshire Avenue per <i>RWC Walk Bike Thrive</i> .   | 4             | 5               | 3                       | \$2.5M to \$4M         | MT                       | Redwood City                          |
| Install a Class IV bikeway on the segment of SR 82 (El Camino Real) that forms the border of North Fair Oaks, per the <i>Unincorporated San Mateo County Active Transportation Plan</i> .  | 4             | 5               | 3                       | \$750,000 to \$1.5M    | MT                       | San Mateo County                      |
| Fill missing bikeways gap on Middlefield Rd. between 5th Ave. and Town of Atherton with a Class II bikeway, per the <i>Unincorporated San Mateo County Active Transportation Plan</i> .  | 4             | 5               | 3                       | \$500,000 to \$750,000 | ST                       | San Mateo County                      |
| Install Class IV facility on Brewster Avenue from Main St. to King St. to connect Sequoia High School and Caltrain transit center, per <i>RWC Walk Bike Thrive</i> .   | 3.75          | 4               | 3.5                     | \$1M to \$1.5M         | ST                       | Redwood City                          |
| Study upgrading the existing Class III bike route along Woodland Avenue in East Palo Alto to a Class IV or other separated bike facility and implement the most feasible option.   | 3.75          | 4               | 3.5                     | \$750,000 to \$2M      | ST                       | East Palo Alto                        |
| Study bicycle and pedestrian network conditions and conflicts within ½ mile of Caltrain stations and major transit stops in the study area. Include recommendations for active transportation network improvements, infrastructure projects and micromobility programs designed to increase bike/ped safety and close “first-mile-last-mile” gaps.   | 3.5           | 4               | 3                       | \$275,000              | ST                       | C/CAG, San Mateo County, Redwood City |
| Develop a micromobility implementation guidebook for local jurisdictions to support efficient roll-out of bikeshare, e-scooter and other micromobility programs. The guidebook should include a framework for: <ul style="list-style-type: none"> <li>Engaging community members to get input on preferred micromobility programs.</li> <li>Identifying type(s) of micromobility program(s) for maximum community benefit.</li> <li>Locating micromobility vehicle access and parking areas.</li> <li>Designing safe and accessible micromobility routes that close “first-mile-last-mile” transit gaps.</li> <li>Contracting with third party vendors.</li> </ul> | 3.5           | 3.5             | 3.5                     | \$325,000              | ST                       | C/CAG                                 |

**Table 5-2 Recommended Bicycle and Micromobility Projects and Plans (Continued)**

| Recommendation  | Average Score | Area Need Score | Project Potential Score | Estimated Cost        | Implementation Timeframe | Responsible Agency  |
|---|---------------|-----------------|-------------------------|-----------------------|--------------------------|---|
| Upgrade the existing bike facility on Willow Road between Bayfront Expressway and Highway 101 to a Class IV separated bikeway, per the <i>City of Menlo Park Transportation Master Plan</i> .   | 3.5           | 3.5             | 3.5                     | \$1M to \$1.5 M       | MT                       | City of Menlo Park  |
| Implement <i>City of Menlo Park Transportation Master Plan</i> project #178 and Catrans District 4 Bike Plan Project Number SM-101-X14: Design and develop a bicycle/pedestrian bridge over Highway 101 north of Marsh Road, with connections to Bay Trail and <b>Bedwell Bayfront Park</b> . | 3.5           | 4.5             | 3                       | \$30M to \$35M        | LT                       | Caltrans, Menlo Park  |
| Install Class II buffered bike lanes on Marsh Road from Bay Road to Scott Drive in the <b>City of Menlo Park</b> per the <b>Menlo Park Transportation Master Plan</b> .   | 3.5           | 3.5             | 3.5                     | \$1.5M to \$2M        | MT                       | City of Menlo Park  |
| Improve access to electronic bikes via equity programs for both shared e-bikes and individually owned e-bikes.  | 3.5           | 3.5             | 3.5                     | \$50,000 to \$500,000 | MT                       | C/CAG, San Mateo County, Redwood City, East Palo Alto, Menlo Park |
| Install buffered bike lanes on Alameda de las Pulgas, from Brewster Avenue to De Anza Avenue in Redwood City, as considered in <i>RWC Walk Bike Thrive</i> .  | 3.5           | 3.5             | 3.5                     | \$500,000 to \$1M     | MT                       | City of Redwood City  |
| Install Class IV bikeways on Bay Rd. and Marsh Rd. in North Fair Oaks per the <i>2021 Unincorporated San Mateo County Active Transportation Plan</i> .  | 3.25          | 4.5             | 2                       | \$1.5M to \$2M        | MT                       | San Mateo County  |



**Table 5-3 Recommended Transit and Paratransit Projects and Plans**

| Recommendation  | Average Score | Area Need Score | Project Potential Score | Estimated Cost                | Implementation Timeframe | Responsible Agency  |
|---|---------------|-----------------|-------------------------|-------------------------------|--------------------------|---|
| Broaden awareness campaign of Clipper START program to include multi-lingual information at transit stops, stations and high-activity destinations in SESM Equity Priority Communities.   | 4.25          | 4               | 4.5                     | \$15,000 to \$30,000          | ST                       | MTC   |
| Implement a multi-lingual awareness campaign of SamTrans' new East Palo Alto On-Demand Zone. Potential riders should made aware of: <ul style="list-style-type: none"> <li>• How to download and use the program App</li> <li>• How to use the service</li> <li>• The difference between the On-Demand program and traditional bus service</li> <li>• The On-Demand zone service area limits</li> </ul>   | 4.25          | 3.5             | 5                       | \$15,000 to \$30,000          | ST                       | SamTrans  |
| Implement transit-only lanes or transit signal priority infrastructure on Newbridge St., Bay Rd. and University Avenue from Menlo Park to the Palo Alto Transit Station to improve Caltrain access by Menlo Park and East Palo Alto residents.  | 4             | 5               | 3                       | \$10M to \$20M                | LT                       | SamTrans, East Palo Alto, Menlo Park, Palo Alto, Caltrain, San Mateo County |
| Implement a 2022 San Mateo County Paratransit Rider's Guide "How-to Tour." Introduce participants at senior centers, medical facilities and social service organizations to the basics of paratransit eligibility, sign-up, routing and ride process.   | 4             | 4               | 4                       | \$10,000 to \$20,000          | ST                       | SamTrans  |
| Audit ground and curb conditions at bus stops and paratransit boarding areas at the following facilities to identify uneven sidewalks, lack of red paint and other parking/vehicle deterrents and missing or ADA noncompliant bus shelters: <ul style="list-style-type: none"> <li>• East Palo Alto Senior Center</li> <li>• Ravenswood Health Clinic</li> <li>• Kaiser Permanente Medical Center, Redwood City</li> <li>• Fair Oaks Health Center</li> <li>• Menlo Park VA Medical Center</li> </ul> | 3.75          | 3               | 4.5                     | \$20,000 to \$40,000          | ST                       | SamTrans  |
| Develop implementation strategies for equity mobility programs that encourage mode shift, such as the 2021 101 Express Lanes Community Benefits Program.  | 3.75          | 4               | 3                       | \$20,000 to \$35,000          | MT                       | C/CAG, San Mateo County, Redwood City, East Palo Alto, Menlo Park           |
| Add shelters to SamTrans route 296 stops at Middlefield Road and Fifth Avenue to improve shopping experience for those at Chavez Supermarket at 3282 Middlefield Rd., Menlo Park  | 3.75          | 3               | 4.5                     | \$20,000 to \$30,000 per stop | ST                       | SamTrans, San Mateo County  |
| Survey physically and sensory-impaired visitors to hospitals, senior centers and social service facilities in SamTrans' SESM Equity Priority Area to identify drop-off-to-destination (and reverse) wayfinding and access challenges and solutions.   | 3.5           | 3.5             | 3.5                     | \$7,500 to \$10,000           | MT                       | SamTrans  |
| Add shelters to SamTrans route 270 stops at Bay Road and Fifth Avenue to improve shopping experience for those at Mi Tienda Market, 812 Fifth Avenue, Redwood City  | 3.5           | 3               | 4                       | \$20,000 to \$30,000 per stop | ST                       | SamTrans, City of Redwood City  |
| Decrease current 1+ hour headways of City of Menlo Park Belle Haven Shuttle by 25 percent.  | 3             | 3.5             | 2.5                     | \$500,000 to \$1M annually    | LT                       | Menlo Park  |
| Program an east-west running SamTrans route along 5th Avenue through North Fair Oaks to provide better connections from Middlefield Rd to SamTrans Routes 296 and ECR.  | 3             | 4.5             | 1.5                     | \$1.5M to \$3M start-up       | LT                       | SamTrans  |

**Table 5-4 Recommended Safety Projects and Plans**

| Recommendation  | Average Score | Area Need Score | Project Potential Score | Estimated Cost                  | Implementation Timeframe | Responsible Agency  |
|---|---------------|-----------------|-------------------------|---------------------------------|--------------------------|---|
| <p>Assess queuing impacts to public streets during peak drop-off/pick-up hours at:</p> <ul style="list-style-type: none"> <li>• Belle Haven Elementary School</li> <li>• Garfield Community School</li> <li>• North Star Academy/McKinley</li> <li>• Aspire East Palo Alto Charter School</li> <li>• TIDE Academy</li> </ul>  | 4.25          | 4               | 4.5                     | \$10,000 to \$15,000 per school | ST                       | Ravenswood City School District, Redwood City School District, Aspire Public Schools, Sequoia Union High School District, East Palo Alto, Menlo Park, Redwood City                      |
| <p>Complete an assessment of pedestrian safety in North Fair Oaks North, including audits and recommendations for:</p> <ul style="list-style-type: none"> <li>• Areas of dumping and/or blight</li> <li>• Lighting “deserts”</li> <li>• Poor sidewalk conditions</li> </ul>   | 3.75          | 4               | 3.5                     | \$25,000 to \$50,000            | MT                       | San Mateo County  |
| <p>Implement Safe Routes to School infrastructure, including traffic calming techniques such as lane narrowing, speed humps, bulb-outs, and rapid flashing beacons at:</p> <ul style="list-style-type: none"> <li>• Belle Haven Elementary School</li> <li>• Garfield Community School</li> <li>• North Star Academy/McKinley</li> <li>• Aspire East Palo Alto Charter School</li> <li>• TIDE Academy</li> <li>• Sequoia High School</li> <li>• KIPP Esperanza High School</li> </ul> | 3.75          | 4               | 3.5                     | \$300,000 to \$500,000          | MT                       | Ravenswood City School District, Redwood City School District, Aspire Public Schools, Sequoia Union High School District, KIPP Public Schools, East Palo Alto, Menlo Park, Redwood City |
| <p>Support the completion of Objective 4, Data Gathering, and Objective 5, Engineering Routes to School, of the <i>East Palo Alto Safe Routes to School 5 Year Work Plan</i>.</p>   | 3.75          | 4               | 3.5                     | \$40,000 to \$80,000            | ST                       | East Palo Alto  |
| <p>Increase safety for students of Menlo-Atherton High School who live in East Palo Alto and Belle Haven, via improved bike/ped infrastructure on Coleman Ave. and Ringwood Ave. in unincorporated Menlo Oaks and Menlo Park, per 2023 <i>Coleman/Ringwood Transportation Study</i>.</p>  | 3.25          | 3.5             | 3                       | \$3M TO \$6M                    | ST                       | San Mateo County<br>City of Menlo Park  |





## STAFF REPORT

**City Council**

**Meeting Date:**

**5/23/2023**

**Staff Report Number:**

**23-124-CC**

**Consent Calendar:**

**Authorize the city manager to execute an amendment to the professional services agreement with Optony, USA**

### Recommendation

Staff recommends that the City Council authorize the city manager to execute an amendment to the three-year master agreement with Optony Inc. (Optony) to allocate an additional \$40,000 for Menlo Park Community Campus (MPCC) project management this fiscal year and increase the annual amount not to exceed from \$130,000 to \$175,000 per year for the remaining term of the master services agreement. The proposed amended master agreement is included as Attachment A.

### Policy Issues

Use of multiyear master agreements assist in the timely delivery of multiyear projects. The City Council also adopted Climate Action Plan (CAP) with a bold goal to be carbon neutral by 2030. Currently, a multiyear master agreement provides assistance with CAP strategy goal No. 5 calls for the City to eliminate fossil fuels from its operations.

### Background

The City Council approved the installation of clean energy infrastructure for the MPCC project at its Jan. 11, 2022 meeting. The contract was awarded to ENGIE to design and install solar and battery storage, electric vehicle (EV) charging, and electric pool heating at 100 Terminal Ave.

Due to the project's technical nature and its project delivery schedule, the City Council authorized a master services agreement with Optony (Attachment B) for \$130,000 per year for three years to support project management. Optony's scope also included technical support to support the City in eliminating greenhouse gas emissions from the City's vehicle fleet and buildings, and exploring methods to reduce costs to electrify buildings and vehicles. The Jan. 25, 2022 City Council staff report authorizing the agreement with Optony is included as Attachment C.

To avoid project delivery delays, an additional \$40,000 is needed for this fiscal year (ending June 30) for work outside of the original MPCC scope, and an increase in the annual contract amount from \$130,000 per year to \$175,000 for the remaining term of the agreement (ending Jan. 31, 2025) to support ongoing MPCC assistance and implementation of municipal greenhouse gas reduction strategies aligned with CAP strategy goal No. 5.

### Analysis

Optony's year-to-date expenditures through March 31 are \$121,018. They have completed the following

tasks:

- Design review for the clean energy infrastructure at MPCC and Kelly Park
- Provided additional studies to verify solar thermal system and air source heat pump outputs
- Provided additional support for compiling information regarding potential contract change orders
- Developed the scope of the police department's Tesla patrol pilot
- Provided an initial analysis of cost and potential savings for city operations to achieve carbon neutrality by 2030
- Analyzed the electrical infrastructure at City Hall and the corporation yard for fleet EV charging
- Provided tools to develop the immediate and long term fleet EV charging plans
- Provided on-call support and analysis (e.g., review of incentive program requirements for EV charging, support on calls with PG&E and Willdan Engineering regarding Burgess pool electrification)

Optony has been critical to the MPCC project team and a source of institutional knowledge, helping to maintain progress and ensure consistent coordination with partner organizations like Meta and ENGIE. Optony has provided, and is expected to continue to provide, additional support beyond their original scope this fiscal year, requiring an additional \$40,000. The completed work included:

- Evaluating structural columns for solar carports
- Evaluating changes in EV charger models
- Evaluating changes to the microgrid electrical equipment,
- Reviewing reports addressing noise impacts from air-source heat pumps for the pool and
- Evaluating change orders due to supply chain issues and project schedule delays.

The original agreement included an average budget of approximately \$50,000 per year for MPCC project support. The increased activities are expected to continue through the first half of the next fiscal year. The increased project management scope is estimated at \$51,000 for next fiscal year, for a total of \$101,000 of the proposed \$175,000 contract amount.

Optony has also played an important role in the analysis of existing conditions, development of strategies to meet CAP No. 5 goals to eliminate fossil fuels from city operations and support to participate in incentive or technical assistance programs for building and fleet electrification. The original contract had an average budget of \$75,000 per year for tasks related to CAP support. It is anticipated that this amount will be needed for various activities. Staff are proposing to restructure the agreement to designate the remaining budget for on-call services to support CAP projects, such as: developing a plan for the electrification of the Belle Haven Child Development Center, peer review and support through the PCE Solar and Battery Program, developing a request for proposals (RFP) for the electrification of the Burgess Campus, including the Burgess Aquatic center pool, supporting the immediate EV charging plan with project management services through construction, and/or evaluating new electric heavy vehicles and equipment. Staff would prioritize projects to utilize the on-call services from this list, as the budget would not cover completion of all projects listed.

The increased scope for MPCC project management requires increasing the annual contract amount from \$130,000 to \$175,000 to accommodate the additional MPCC needs and maintain the current scope for on-call services at the same costs.

### **Impact on City Resources**

Optony's project management and technical assistance services increase staff's capacity to work on other CAP priorities. Costs for Optony's on-call services to support CAP projects will be included as part of the

upcoming City Council budget adoption process through specific Capital Improvement Projects related to eliminating fossil fuels from City operations such as fleet EV charging, Belle Haven Child Development Center electrification, and Burgess Campus electrification. Additional funds are being requested for the MPCC project to cover change orders on the main construction project and will include requests for the clean energy project management portion of the projected consultant service needs.

### **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. Proposed amended master agreement with Optony
- B. Agreement No. 3631 Approved master agreement with Optony
- C. Hyperlink – Jan. 25, 2022 City Council staff report: [menlopark.gov/files/sharedassets/public/agendas-and-minutes/city-council/2022-meetings/agendas/20220125-city-council-agenda-packet.pdf#page=18](https://menlopark.gov/files/sharedassets/public/agendas-and-minutes/city-council/2022-meetings/agendas/20220125-city-council-agenda-packet.pdf#page=18)

Report prepared by:

Ori Paz, Management Analyst II

Report reviewed by:

Rebecca Lucky, Sustainability Manager

Tanisha Werner, Assistant Public Works Director

**PROFESSIONAL SERVICES AGREEMENT**

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



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

#### 4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$175,000 annually as described in Exhibit "A," Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

#### 5. EQUAL EMPLOYMENT OPPORTUNITY

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

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

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



## 7. INDEPENDENT WORK CONTROL

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

## 8. CONSULTANT QUALIFICATIONS

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

## 9. NOTICES

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

Rebecca Lucky  
 City Manager's Office, Sustainability Division  
 City of Menlo Park  
 701 Laurel St.  
 Menlo Park, CA 94025  
 650-330-6720  
 rlucky@menlopark.gov

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

Byron Pakter  
 Optony, Inc.  
 5201 Great America Pkwy., Suite 320  
 Santa Clara, CA 95054  
 (510) 705-2811  
 byron.pakter@optonyusa.com

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

## 10. HOLD HARMLESS

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

## 11. INSURANCE

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

## 12. PAYMENT OF PERMITS/LICENSES

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

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

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

## 14. OWNERSHIP OF WORK PRODUCT

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

## 15. REPRESENTATION OF WORK

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

## 16. TERMINATION OF AGREEMENT

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

**17. INSPECTION OF WORK**

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

**18. COMPLIANCE WITH LAWS**

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

**19. BREACH OF AGREEMENT**

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

**20. SEVERABILITY**

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

**21. CAPTIONS**

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

**22. LITIGATION OR ARBITRATION**

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

**23. RETENTION OF RECORDS**

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

**24. TERM OF AGREEMENT**

This agreement shall remain in effect for the period of May 23, 2023 through January 31, 2025 unless extended, amended, or terminated in writing by CITY.

**25. ENTIRE AGREEMENT**

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

**26. STATEMENT OF ECONOMIC INTEREST**

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

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

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

**FOR FIRST PARTY:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Title

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

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
Date

**FOR CITY OF MENLO PARK:**

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

\_\_\_\_\_  
Date

**ATTEST:**

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

\_\_\_\_\_  
Date

## EXHIBIT "A" – SCOPE OF SERVICES

### A1. SCOPE OF WORK

FIRST PARTY agrees to provide consultant services for CITY's City Manager's Office. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

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

### A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

### A3. SCHEDULE OF WORK

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

### A4. CHANGES IN WORK -- EXTRA WORK

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

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

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

**A5. BILLINGS**

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

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

## EXHIBIT “B” - DISPUTE RESOLUTION

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



## EXHIBIT A-1 - SCOPE OF SERVICES

| TASK NAME                                  | BUDGET    | DESCRIPTION OF SERVICES TO BE PROVIDED  |
|--|-----------|---|
| Task 1: MPCC Design and Project Management | \$101,000 | Ongoing project management tasks for MPCC design and construction: Attending/scheduling meetings; Evaluating contractor change orders; Tracking incentive/funding applications; As needed design review and construction management |

### Additional Project Support Options Offered

| TASK NAME   | BUDGET   | DESCRIPTION OF SERVICES TO BE PROVIDED   |
|---|----------|--|
| Task 2: Facilities Electrification Roadmap                            | \$5,000  | Respond to questions and data requests from City reviewers/stakeholders                    |
| Task 3: Immediate EV Charging and PD Pilot                            | \$24,000 | RFP development review and comments; Construction oversight of EV charging at PD/Corp Yard |
| Task 4: Belle Haven Child Development Center Building Electrification | \$16,000 | Development of RFP   |
| Task 5: Burgess Pool Heating Electrification                          | \$29,000 | Project feasibility study, peer review as needed, RFP approach and RFP outline             |

# PROFESSIONAL SERVICES AGREEMENT

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



|   |
|---|
| <b>Agreement #: 3631</b>  |
| <b>AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND OPTONY INC.</b>  |
| THIS AGREEMENT made and entered into at Menlo Park, California, this <u>          \$!\$"\$\$\$          </u> , by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and OPTONY INC., hereinafter referred to as "FIRST PARTY."  |
| <p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: Climate action plan implementation support for on-going clean energy and electrification related consulting services</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>  |
| <b>1. SCOPE OF WORK</b>   |
| In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.   |
| <b>2. SCHEDULE FOR WORK</b>   |
| <p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p> |
| <b>3. PROSECUTION OF WORK</b>   |
| FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).   |

#### 4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$130,000 annually as described in Exhibit "A," Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

#### 5. EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

**7. INDEPENDENT WORK CONTROL**

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

**8. CONSULTANT QUALIFICATIONS**

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

**9. NOTICES**

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

Rebecca Lucky  
City Manager's Office, Sustainability Division  
City of Menlo Park  
701 Laurel St.  
Menlo Park, CA 94025  
650-330-6720  
rlucky@menlopark.org

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

Byron Pakter  
Optony, Inc.  
5201 Great America Pkwy., Suite 320  
Santa Clara, CA 95054  
(510) 705-2811  
byron.pakter@optonyusa.com

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

**10. HOLD HARMLESS**

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

## 11. INSURANCE

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

**12. PAYMENT OF PERMITS/LICENSES**

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

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

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

**14. OWNERSHIP OF WORK PRODUCT**

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

**15. REPRESENTATION OF WORK**

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

**16. TERMINATION OF AGREEMENT**

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



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|---|
| <p><b>17. INSPECTION OF WORK</b></p>  |
| <p>It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.</p>  |
| <p><b>18. COMPLIANCE WITH LAWS</b></p>  |
| <p>It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.</p>   |
| <p><b>19. BREACH OF AGREEMENT</b></p>   |
| <p>A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.</p> <p>B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.</p> |
| <p><b>20. SEVERABILITY</b></p>  |
| <p>The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.</p>   |
| <p><b>21. CAPTIONS</b></p>  |
| <p>The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.</p>   |
| <p><b>22. LITIGATION OR ARBITRATION</b></p>   |
| <p>In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.</p>  |
| <p><b>23. RETENTION OF RECORDS</b></p>  |
| <p>Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.</p>  |
| <p><b>24. TERM OF AGREEMENT</b></p>   |
| <p>This agreement shall remain in effect for the period of February 1, 2022 through January 31, 2025 unless extended, amended, or terminated in writing by CITY.</p>  |

**25. ENTIRE AGREEMENT**

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

**26. STATEMENT OF ECONOMIC INTEREST**

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

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

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

**FOR FIRST PARTY:**

DocuSigned by:  
*Byron Pakter*  
F04017B330B643A...  
Signature

\$\_#!\$"\$\$  
Date

.HB@?Ä46=D8B  
Printed name

-CÄ3AD@?HÄ2?7 Ä/;<89Ä1G87ED<F8  
Title

+"Ä"&&\*)" "  
Tax ID#

**APPROVED AS TO FORM:**

DocuSigned by:  
*Nira Doherty*  
44FFE23C8E6B458...  
Nira F. Doherty, City Attorney

\$\_!\$"\$\$  
Date

**FOR CITY OF MENLO PARK:**

DocuSigned by:  
*Justin I. C. Murphy*  
F779B6466FAE414...  
Justin I. C. Murphy, Interim City Manager

\$\_!\$"\$\$  
Date

**ATTEST:**

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

\$\_%!\$"\$\$  
Date



**EXHIBIT “A” – SCOPE OF SERVICES**

|   |
|---|
| <b>A1. SCOPE OF WORK</b>  |
| <p>FIRST PARTY agrees to provide consultant services for CITY’s City Manager’s Office. In the event of any discrepancy between any of the terms of the FIRST PARTY’s proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:</p> <p>Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.</p> <p>FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY’s satisfaction.</p>  |
| <b>A2. COMPENSATION</b>   |
| <p>CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY’s standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.</p> <p>FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.</p>   |
| <b>A3. SCHEDULE OF WORK</b>   |
| <p>FIRST PARTY’S proposed schedule for the various services required will be set forth in Exhibit A-1.</p>  |
| <b>A4. CHANGES IN WORK -- EXTRA WORK</b>  |
| <p>In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:</p> <ul style="list-style-type: none"> <li>• Change in the services because of changes in scope of the work.</li> <li>• Additional tasks not specified herein as required by the CITY.</li> </ul> <p>The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY’s services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Sustainability Manager.</p> |

**A5. BILLINGS**

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

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

**EXHIBIT "B" - DISPUTE RESOLUTION**

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

Delivery by email

Thursday, January 13, 2022:

[RLLucky@menlopark.org](mailto:RLLucky@menlopark.org)

Rebecca Lucky, Sustainability Manager  
City of Menlo Park

Proposal for:

## Master Services for On-going Clean Energy & Related Consulting Support

Presented to:

City of Menlo Park

Presented by:

Byron Pakter, CEO Optony Inc.  
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## Cover Letter

Good Day Ms. Lucky,

Optony is pleased to offer continued support for the City of Menlo Park on a Task Order basis within a Master Services Agreement, with the understanding that the cost and scope of each new Task Order will be submitted and approval will be received from the City before starting any work.

The firm is prepared to provide services for any, or all, of the City's needs regarding General On-call Technical Energy Consulting and Project Management with a focus on the following areas:

- MPCC Microgrid Project Management
- City Facilities Electrification and Resilience Roadmap Planning
- Tesla EV Pilot Analysis and Project Management, and General Vehicle Electrification Planning
- EV Infrastructure Procurement Support
- Low-Income Electrification Demonstration Projects

Optony's project management capabilities match well with these desired scopes of service. We have supported Menlo Park, and dozens of other public agencies in California with similar advanced projects, including managing the current procurement of the Menlo Park Community Campus microgrid. Optony was selected by the City of Palo Alto to create a plan to decarbonize their fleet, and Optony has also recently been selected as part of an open competitive bid process to provide a plan to decarbonize fleet and municipal operations at the City of San Luis Obispo.

Optony's team brings the technical knowledge needed in microgrids, all electric development, community resiliency and energy efficiency. Additionally, we are an independent clean energy consultant with a focus on supporting public agencies through complex energy projects from beginning to end.

Please do not hesitate to contact me to discuss next steps and how we can tailor our services to meet your needs.

Sincerely,

Byron Pakter, Optony Inc.  
5201 Great America Pkwy.,  
Suite 320, Santa Clara, CA 95054



## Background of the Firm

Optony is an award-winning independent energy advisory consulting firm founded in 2008 and in operation continuously for 15 years. Optony has assisted hundreds of clients worldwide with clean energy planning and program development and has been instrumental in the success of clean energy developments through services in feasibility, site evaluation, financial analysis, procurement, policy development, or a combination of these tasks. Optony has provided expert site assessment, financial feasibility assessment, contracting and project monitoring services since its founding. In recent years, Optony’s work has evolved into the field of battery energy storage, microgrids, and electric vehicles.

## Summary of Expected Workplan Items to be Performed

*For clarity the Task numbers here continue to follow the existing Menlo Park service agreement workplan. Note that “Task 1” from the original workplan has already been completed.*

### Continuing MPCC Microgrid Project Tasks (Feb 2022 – Dec 2023)

**Task 2.** Engineering Review and Construction Quality Management of Solar Microgrid

### City Facilities Electrification and Resilience Roadmap Planning (Start date TBD, Task duration 12 months)

**Task 3.** Produce a high-level roadmap for fleet and equipment electrification with a mid-term time horizon of 2030.

### Vehicle Electrification Planning, Analysis and Project Management (estimated, Feb 2022 – Sept 2022)

**Task 4.** Support for immediate charging stations needed for the 3 Tesla patrol vehicles by summer 2022, and EV pilot analysis and support

### Additional On-call Technical, Project Management and Procurement Support (Feb 2022 – Jun 2024)

**Task 5.** Support for building electrification, clean energy, EV infrastructure, low-income electrification, resiliency demonstration projects, general microgrid guidance for City facilities planning, site-specific microgrid designs, and other as-needed assistance

## Proposed Fees, and Estimated Project Staffing Hours

| Total Task Order Estimates all Years            |           |
|---|-----------|
| Task 2.   | \$149,898 |
| Task 3.   | \$86,258  |
| Task 4.   | \$58,179  |
| Task 5.   | TBD       |
| <b>Total MSA Budget Not to Exceed \$295,000</b> |           |

| YEAR ONE (FEB 2022 - JUN 2022)        |                                      |                        |                              |                           |                            |                        |
|---------------------------------------|--------------------------------------|------------------------|------------------------------|---------------------------|----------------------------|------------------------|
| Task Description                      | Estimated Staff Hours & Cost by Task |                        |                              |                           |                            | Year Sub-total by Task |
|                                       | Principal<br>---                     | Director<br>---        | Manager<br>---               | Sr. Analyst<br>---        | Assoc. Analyst<br>---      |                        |
|                                       | B. Pakter<br>\$ 325/hr               | J. Whelan<br>\$ 200/hr | S. Hill-Cristol<br>\$ 185/hr | L. Fernandez<br>\$ 175/hr | A. Craparotta<br>\$ 165/hr |                        |
| 2. MPCC Design & Project Management   | \$20,963                             | \$17,200               | \$0                          | \$0                       | \$10,643                   | \$48,805               |
| Hours                                 | 64.50                                | 86.00                  | -                            | -                         | 64.50                      | 215                    |
| 3. Facilities Electrification Roadmap | \$13,975                             | \$0                    | \$15,910                     | \$3,763                   | \$3,548                    | \$37,195               |
| Hours                                 | 43.00                                | -                      | 86.00                        | 21.50                     | 21.50                      | 172                    |
| 4. Immediate EV Charging and PD Pilot | \$13,975                             | \$0                    | \$19,888                     | \$7,525                   | \$7,095                    | \$48,483               |
| Hours                                 | 43.00                                | -                      | 107.50                       | 43.00                     | 43.00                      | 236.5                  |

| YEAR TWO (JUL 2022 - JUN 2023)        |                                      |                        |                              |                           |                            |                        |
|---------------------------------------|--------------------------------------|------------------------|------------------------------|---------------------------|----------------------------|------------------------|
| Task Description                      | Estimated Staff Hours & Cost by Task |                        |                              |                           |                            | Year Sub-total by Task |
|                                       | Principal<br>---                     | Director<br>---        | Manager<br>---               | Sr. Analyst<br>---        | Assoc. Analyst<br>---      |                        |
|                                       | B. Pakter<br>\$ 330/hr               | J. Whelan<br>\$ 205/hr | S. Hill-Cristol<br>\$ 190/hr | L. Fernandez<br>\$ 180/hr | A. Craparotta<br>\$ 175/hr |                        |
| 2. MPCC Design & Project Management   | \$17,028                             | \$21,156               | \$0                          | \$0                       | \$18,060                   | \$56,244               |
| Hours                                 | 51.60                                | 103.20                 | -                            | -                         | 103.20                     | 258                    |
| 3. Facilities Electrification Roadmap | \$9,933                              | \$0                    | \$28,595                     | \$0                       | \$10,535                   | \$49,063               |
| Hours                                 | 30.10                                | -                      | 150.50                       | -                         | 60.20                      | 240.8                  |
| 4. Immediate EV Charging and PD Pilot | \$2,795                              | \$0                    | \$3,978                      | \$1,505                   | \$1,419                    | \$9,697                |
| Hours                                 | 8.60                                 | -                      | 21.50                        | 8.60                      | 8.60                       | 47.3                   |

| YEAR THREE (JUL 2023 - JUN 2024)    |                                      |                        |                              |                           |                            |                        |
|-------------------------------------|--------------------------------------|------------------------|------------------------------|---------------------------|----------------------------|------------------------|
| Task Description                    | Estimated Staff Hours & Cost by Task |                        |                              |                           |                            | Year Sub-total by Task |
|                                     | Principal<br>---                     | Director<br>---        | Manager<br>---               | Sr. Analyst<br>---        | Assoc. Analyst<br>---      |                        |
|                                     | B. Pakter<br>\$ 335/hr               | J. Whelan<br>\$ 210/hr | S. Hill-Cristol<br>\$ 195/hr | L. Fernandez<br>\$ 185/hr | A. Craparotta<br>\$ 175/hr |                        |
| 2. MPCC Design & Project Management | \$10,084                             | \$18,963               | \$0                          | \$0                       | \$15,803                   | \$44,849               |
| Hours                               | 30.10                                | 90.30                  | -                            | -                         | 90.30                      | 210.7                  |



## Key Personnel

The key personnel who will work on the City of Menlo Park are profiled in brief below. Full resumes or additional project references are available if desired. Optony support staff may be used on an as-needed basis.



**Byron Pakter**, Chief Executive and Director of Program Development

Byron Pakter will be the officer in charge of this Master Service Agreement. He is an expert in microgrids and electrification. He is also active on renewable planning and compliance in WECC as a member of the Western Renewable Energy Generation Information System (WREGIS) Stakeholder Advisory Committee. He was the team lead on integrated resource planning work for East Bay Community Energy's business plan for local resource development. His work influenced and informed the IRP sections on methodology; procurement and scheduling development impacts; new generation; analysis of risks and mitigations; and analysis of strategies for enhancing long-term stability and reliability. He is coauthor to energy economics development research and strategy for wind, solar, and advanced energy technologies, prepared for the Governors' offices of Colorado, Iowa, and Virginia. He holds a Master of Engineering in Advanced Energy Technology and a Bachelor of Science in Mechanical Engineering, both from the University of California, Berkeley.



**Jonathan Whelan**, Director and Chief Officer of Operations

Jonathan Whelan will be Optony's responsible agent in project management for consultancy services with the City of Menlo Park. He is well known for his rigorous project management methodologies; and meeting short deadlines with tight project scheduling and efficient lines of communication. Throughout the project term he will manage accountability for action items, as well as share and maintain project status timelines and milestone progress.

Mr. Whelan is a veteran of multiple energy resource planning programs for public agencies. He is known as a pioneering leader in multi-jurisdictional solar PPA brokerage and negotiations. Over the course of the last ten years, he has assisted dozens of municipal agencies to achieve some of the most favorable PPA contract terms seen in the industry. He holds a Bachelor of Science in Business Administration and Biology, with Minor in Environmental Studies from Trinity University.





**Sam Hill-Cristol, Energy Program Manager**

Mr. Hill-Cristol serves as a Project Manager and Energy Analyst at Optony. Mr. Hill-Cristol has worked in all facets of the renewable energy -- public policy nexus and uses that experience to interface with public and private stakeholders in order to catalyze clean technology deployment at the local level. Prior to joining Optony, Mr. Hill-Cristol served as the Sustainable Energy & Transportation Associate at Alameda County, where he led the County's efforts to overcome the charging constraints hindering efforts to achieve mass deployment of electric vehicles in their fleet. He is the lead author of a paper analyzing how energy markets could support utility scale battery storage deployment in the New England ISO. He holds a Bachelor of Arts in Environmental Studies, with Honors, from Brown University.



**Luis Fernandez, EV and Energy Storage Analyst**

Luis oversees technical site assessments, technical and economic modeling efforts to incorporate the most up to date information. He leads analytical tasks such as solar PV technical project design, DER financial modeling, electric vehicle data analysis, and optimization for economic valuations of IFOM energy storage applications. He specializes in electric vehicle and energy storage market research. Throughout his career, she has developed an interest in wholesale electricity markets and utility rate design as they relate to renewable energy, battery storage and electric vehicles. He holds a Master of Engineering from UC Berkeley, and a Bachelor of Science in Mechanical Engineering from the University of Notre Dame.



**Amanda Craparotta, Associate Energy Analyst**

Amanda provides policy and incentives research, project management, as well as technical and economic modeling. She leads data collection and integration for solar PV procurements and electric vehicle fleet planning. At Optony, she has contributed to multi-jurisdictional clean energy procurements in California, and supports fleet electrification vehicle feasibility and replacement suitability studies nationally. Her background in data security and Geographic Information Systems (GIS) add to her capacities in product and program evaluations. She holds a Bachelor of Arts from Virginia Polytechnic Institute in National and Security Studies.



## STAFF REPORT

### City Council

Meeting Date:

5/23/2023

Staff Report Number:

23-123-CC

### Public Hearing:

**Consider a City Council call-up of the Planning Commission denial of a use permit to allow electric pool heating equipment to exceed the nighttime noise limit at 100 Terminal Ave.**

## Recommendation

Staff recommends that the City Council consider and uphold the Planning Commission's denial of a use permit to allow electric heating equipment for the Menlo Park Community Campus (MPCC) swimming pools, located at 100 Terminal Avenue, to exceed the nighttime noise limits measured from residential property lines. The draft resolution is included as Attachment A.

Staff further recommends that the City Council direct staff to install the electric heating equipment at the MPCC swimming pools as designed, then conduct live measurements of the actual sound levels produced by the equipment as installed. If the actual sound levels produced by the installed equipment exceed the nighttime noise limits when measured from residential property lines, then return to City Council for authorization to implement one or more of the post-installation sound mitigation strategies recommended in this report, including a potential new sound wall at the residential property lines, and/or operational adjustments to preheat the pools during daytime hours and retain the heat through the night with pool covers. The heating equipment would not exceed the daytime limitations of the noise ordinance, so the heating equipment could be installed and operate during daytime hours without use permit approval.

## Policy Issues

Each use permit request is considered individually. The City Council should consider whether the required use permit findings can be made for the proposal. The use of all-electric equipment in the MPCC facility is consistent with the City's Climate Action Plan to eliminate use of fossil fuels in city operations by 2030.

## Background

In an effort to further the City's environmental policies and goals and in accordance with the Climate Action Plan, the MPCC building was designed to achieve LEED Platinum and the entire development, including the new pool facilities, was designed to not require use of natural gas. These decisions were guided by a desire to reduce emissions and improve air quality by reducing the use of natural gas.

### Project location

The project site is located at 100 Terminal Ave. in the P-F (Public Facilities) zoning district. The project site is bordered by the Dumbarton rail corridor to the north, U.S. Highway 101 to the west, Beechwood School and residences in the R-2 (Low Density Apartment) zoning district to the east, and a Pacific Gas and Electric (PG&E) substation and other residences in the R-1-U zoning district to the south and southeast. A location map is included as Attachment B.

### Project description

Chapter 8.06 of the Menlo Park Municipal Code (MPMC) regulates noise, and places limitations on noise emanating from any source measured at residential property lines at 60 decibels (dBA) during daytime hours (between 7 a.m. and 10 p.m.) and 50 dBA during nighttime hours (between 10 p.m. and 7 a.m.). §8.06.050 enumerates certain exemptions from the noise limitations, including for any use for which a use permit is granted that specifically allows noise levels to be exceeded. Between 7 a.m. and 10 p.m., athletic fields, playgrounds and other public recreation facilities are exempt from the noise ordinance according to §8.06.050(g). The applicant proposed to exceed the maximum nighttime noise limit for the pool heating equipment at MPCC based on initial modeling results that indicated they would need to run overnight to maintain the pool's desired temperature for early morning swimming.

The heating equipment, as currently designed, consists of five air source heat pumps (ASHPs) that would be located on the southern side of the new MPCC building. If all five ASHPs were running, the noise was estimated to exceed 50 dBA at residential properties along Del Norte Avenue and Terminal Avenue. The noise would not exceed the daytime limit of 60 dBA at any residential property line. An in-depth analysis of the proposed project is included in the staff report from the April 24 Planning Commission meeting (Attachment C).

### Planning Commission review

On April 24, the Planning Commission denied the use permit to exceed the maximum nighttime noise limits of 50 dBA. In denying the use permit, the Planning Commission found that allowing the pool equipment to exceed the nighttime noise limit would be detrimental to the health and welfare of the residents residing in the affected area because they would be exposed to increased noise levels on an ongoing basis, which could affect sleep patterns and general comfort. The Planning Commission had previously reviewed the project October 3, 2022, February 27, and March 27. Before the February, March and April meetings, staff conducted door-to-door outreach to residents along Del Norte Avenue to ensure they were aware of the meeting and proposal. Throughout the series of Planning Commission meetings, the City investigated alternative locations for the heat pumps, explored options to enclose them to reduce the noise, and considered the impacts on pool operations. Additional alternatives are described further in the Analysis section below. An in-depth recap of the Planning Commission discussions at each meeting is included in the staff report for the April 24 Planning Commission meeting (Attachment C), and an excerpt of the draft minutes from the April 24 Planning Commission meeting is included as Attachment D.

### City Council call-up of the Planning Commission action

MPMC 16.86.025 states that the City Council or any member of the City Council may call up any final decision of the Planning Commission by filing a notice of call-up with the city clerk within 15 days of the Planning Commission action. On May 3, Vice Mayor Taylor requested to call up the Planning Commission's action to allow the full City Council to discuss the use permit further.

## **Analysis**

### Pool modeling

The MPCC pool designer, PACE, provided the original pool modeling that was described in the Project Description Letter (Attachment A, Exhibit B) and discussed at the Planning Commission meeting February 27. The model was based on conservative assumptions, and used monthly average temperatures and heating times that were calculated over a 24-hour period (no daily or hourly data was provided). The use of a pool cover was not included in the modeling. Because there was no hourly data yet available to indicate when the heat pumps would need to be operated, the application for the use permit was intended to provide maximum flexibility in usage of the ASHPs and therefore, maximum flexibility in the hours of operation of the

swimming pools for use by Menlo Park community members.

Upon denial of the use permit, additional pool modeling and mitigation measures have been explored by the applicant. The City sought further refinement of the modeling, and asked its energy consultant, Optony, to run a simulation of estimated pool temperatures on an hourly basis. Optony modeled a weather-variable hourly temperature simulation to align with the heat load provided by PACE. Optony estimated that in a normal year, the combined ASHPs plus solar thermal system can provide sufficient overnight heating without needing to run the ASHPs overnight. The consultant also estimated the weather limits in which the pool system, as currently designed, could operate during exceptionally cold weather:

- The instructional pool was estimated to operate normally until temperatures fall 4 degrees Fahrenheit below normal (minimum 33 degrees overnight air temperatures); according to National Oceanic and Atmospheric Administration (NOAA) data from San Francisco, daily minima below 33 degrees occurred five days in the last 50 years, and 17 days in the last 100 years
- The lap pool was estimated to operate normally until temperatures fall nine degrees Fahrenheit below normal (minimum 28 degrees overnight air temperatures); this daily minimum has occurred twice in the last 100 years in San Francisco

With the heat pumps turned off at night, there would be a very slim chance that the pools would not be at the required temperature upon opening.

### Potential mitigation measures

#### *Sound walls*

Sound walls are a proven effective measure that would reduce the noise levels produced by the ASHPs. A sound wall could be a concrete masonry unit (CMU) block wall or a wooden fence with a mass loaded vinyl inner layer. In the currently designed location, in between the building face and the PG&E property line, a sound wall enclosure would not fit around the air ASHPs. The heat pumps require six feet of clear distance from a solid wall for proper airflow and efficient operation.

A sound wall placed between the ASHPs and the residences, however, would be feasible and would provide a significant measure of noise mitigation. The estimated cost for design and construction of a seven-foot tall mass loaded vinyl wooden fence along the length of the residential property lines (approximately 540 linear feet) is approximately \$200,000. Preliminary estimates indicate that a seven-foot tall fence would reduce the noise levels from over 50 dBA to 49 dBA for first-story occupants. In residential zoning districts, fence and wall heights are limited to seven feet. If the sound wall were proposed to be taller than seven feet, a use permit would be required to be granted to allow for the taller fence height along the residential property lines. Attachment E shows the potential location, preliminary estimates of dBAs, and pictures of the mass loaded vinyl fence. There currently exists sections of both wooden and chainlink fence along the entire length of the residential property lines; a new sound wall would replace the existing fences, some of which could benefit from replacement.

#### *Relocation of equipment*

The ASHPs with a sound wall enclosure would physically fit on the west side of the building, closer to the Kelly Park running track, new youth center, new children's play area, and new children's library courtyard (Attachment F). However, the clearance to the running track would be just four feet. The recommended safety zone is 3.2 feet (one meter) along the long sides of the track, and 6.4 feet (two meters) along the short sides, according to the World Athletics Track and Field Facilities Manual (2019). Relocation may require removal of 3-4 additional heritage trees, and a building permit revision would be required. The cost for the sound wall plus additional pipe routing to the new location would be approximately \$200,000. The system would be less efficient due to the increased distance to the pool building, which may increase the ASHP run time. Additionally, noise impacts to the children's play area, youth center, children's library

courtyard, and running track users would need additional study, as would potential impacts to the MPCC project completion timeline. For these reasons, relocation to the west side of the building is not recommended.

#### *Upsizing of solar thermal heating system*

The solar thermal heating system will provide heated water from collectors located on the solar panels to the pool. This system will be in continuous operation, pumping heated water directly from the collectors to the pool during the day, and heating water via the solar thermal pump (located in the pool equipment building) during the night. The system is designed to provide the required heating to the pools in all but the coldest temperatures, with the ASHPs providing additional heating as needed. The solar thermal system could potentially be upsized by adding additional collectors to the solar panels and upsizing the solar thermal pump, thus reducing the dependence on the ASHPs. The cost to upsize the system would be approximately \$250,000, plus a potential additional cost to upsize the electrical panel. The schedule delays would be significant and would likely affect the pool opening, as a building permit revision would be required and there are long lead times for the equipment. The solar thermal system could be retrofitted (at generally the same cost) after installation if needed or desired, with construction causing little or no impact to pool operations. For these reasons, upsizing the solar thermal heating system is not recommended at this time.

#### Construction schedule

The ASHPs were scheduled to be installed the week of June 23, with the concrete pad preparation work starting May 15. On May 10, the contractor was directed to stop work associated with the ASHPs until the city provides further direction.

#### City Council options on the call-up

Per §16.86.040 of the zoning ordinance, the City Council may affirm, reverse, or modify the decision of the Planning Commission. To reverse or modify the Planning Commission's decision shall require the affirmative vote of three-fifths of the City Council (or three City Councilmembers.) If the City Council does not take any action on the call-up, the Planning Commission's action shall be deemed affirmed. The City Council's action would be considered final and the decision may not be appealed. Per §16.82.200 of the zoning ordinance, a use permit application for substantially the same project on the same property may not be considered within one year of the date of denial.

#### Correspondence

Staff has not received any additional items of correspondence on this item as of publication of the staff report.

#### Conclusion

Staff believes that the conditions that formed the basis of the Planning Commission's denial of the use permit have not changed since the Planning Commission's action on the project. The applicant is actively investigating sound mitigation measures, such as a sound wall, which would bring the noise level at the residential properties below the nighttime noise limit and operational adjustments, which would eliminate the need to run the electrical heating equipment during the nighttime hours.

Staff recommends the City Council uphold the Planning Commission's denial of the use permit, and further recommends that the City Council direct staff to install the electric heating equipment at the MPCC swimming pools as designed, then conduct live measurements of the actual sound levels produced by the installed equipment. If the actual sound levels produced by the equipment as installed exceed the nighttime noise limits when measured from residential property lines, then return to City Council for authorization to implement one or more of the post-installation sound mitigation strategies recommended in this report. If the actual measurements showed the noise levels exceeding the nighttime noise limits, the heat pumps would

not be permitted to run overnight unless mitigation strategies were installed that reduced the noise along the residential property lines.

### **Impact on City Resources**

Development fees have been waived per the agreement with Meta for the funding and construction of the MPCC. The pool components of the project, and any additional analysis or mitigation measures to address potential noise issues, is fully the City's financial responsibility.

### **Environmental Review**

The project is categorically exempt under Class 2 (§15302, "Replacement or Reconstruction") of the current California Environmental Quality Act (CEQA) Guidelines.

### **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 300-foot radius of the subject property.

### **Attachments**

- A. Draft City Council resolution upholding the Planning Commission's denial of the project use permit  
Exhibits to Attachment A:
  - A. Project plans
  - B. Project description letter
- B. Location map
- C. Hyperlink – April 24, 2023 Planning Commission staff report:  
[menlopark.gov/files/sharedassets/public/agendas-and-minutes/planning-commission/2023-meetings/agendas/20230424-planning-commission-agenda-packet.pdf](https://menlopark.gov/files/sharedassets/public/agendas-and-minutes/planning-commission/2023-meetings/agendas/20230424-planning-commission-agenda-packet.pdf)
- D. Excerpt of draft minutes from the April 24 Planning Commission meeting
- E. Sound wall exhibit
- F. ASHPs at sand pit area

Report prepared by:

Chris Turner, Associate Planner

Theresa Avedian, Senior Civil Engineer

Report reviewed by:

Deanna Chow, Assistant Community Development Director

Sean S. Reinhart, Library and Community Services Director



**RESOLUTION NO. XXXX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
DENYING A USE PERMIT TO ALLOW POOL HEATING EQUIPMENT TO  
EXCEED THE NIGHTTIME NOISE LIMIT MEASURED AT RESIDENTIAL  
PROPERTY LINES**

WHEREAS, the City of Menlo Park (“City”) received an application requesting to be permitted to exceed the noise limits established in Section 8.06.030 of the Menlo Park Municipal Code at a parcel in the in the P-F (Public Facilities) zoning district, (collectively, the “Project”) from the City of Menlo Park (“Applicant”), located at 100 Terminal Avenue (APN 055-280-040) (“Property”); and

WHEREAS, the Property is located in the Public Facilities (P-F) district; and

WHEREAS, the Property is currently under construction as part of the new Menlo Park Community Campus (MPCC) project; and

WHEREAS, the proposed pool heating equipment would be all-electric. Electric pool heating equipment is noisier than natural gas pool heating equipment and, as proposed, would exceed the maximum nighttime noise limit of 50 dBA measured at residential property lines; and

WHEREAS, Section 8.06.050 of the Menlo Park Municipal Code includes an exemption from the noise limitations for projects that are granted a use permit that allows noise limits to be exceeded; and

WHEREAS, the Planning Commission reviewed the project at the October 3, 2022 meeting and continued the item with the direction to study alternative methods of heating, noise-dampening barriers, and alternate locations for the equipment in addition to conducting outreach to the affected community; and

WHEREAS, the Applicant completed robust outreach to the neighboring properties, including door-to-door outreach, to receive feedback from residents who would be affected by the amplified noise and inform them of the public hearing, and 11 persons commented in opposition to the project at the February 27, 2023 meeting; and

WHEREAS, the Planning Commission reviewed the project at the February 27, 2023 meeting and considered additional analysis regarding alternative options for the equipment and continued the item with the direction to prepare a resolution denying the use permit for the Project because the required findings could not be made; and

WHEREAS, the Planning Commission reviewed the project at the March 27, 2023 meeting and considered the resolution to deny the project and found the information in the staff report and updated resolution to insufficiently summarize the discussion of the February 27, 2023 Planning Commission meeting, and continued the project with direction to staff to include additional information regarding past discussions in the staff report and to update the resolution to accurately reflect the Planning Commission’s motion to deny the project and include language in the resolution expressing the Commission’s desire for the applicant to reduce the noise from the pool equipment to below 50 dBA; and

WHEREAS, the Planning Commission believes that the residents of Belle Haven are entitled to clean air and relative quiet from neighboring developments; and

WHEREAS, the Planning Commission believes the residents of Belle Haven are entitled to the same level of pool services as residents who utilize the Burgess Campus pool; and

WHEREAS, the Planning Commission desires the project to be modified to include noise-reducing measures, such as relocation of equipment, noise-dampening enclosures, or alternate equipment, in order to reduce noise emanating from the to below 50 dBA; and

WHEREAS, the Project, requires discretionary actions by the City as summarized above, and therefore the California Environmental Quality Act ("CEQA," Public Resources Code Section §21000 et seq.) and CEQA Guidelines (Cal. Code of Regulations, Title 14, §15000 et seq.) require analysis and a determination regarding the Project's environmental impacts; and

WHEREAS, the City is the lead agency, as defined by CEQA and the CEQA Guidelines, and is therefore responsible for the preparation, consideration, certification, and approval of environmental documents for the Project; and

WHEREAS, the Project is categorically exempt from environmental review pursuant to Cal. Code of Regulations, Title 14, §15302 et seq. (Replacement or Reconstruction); and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, at a duly and properly noticed public hearing held on April 24, 2023, the Planning Commission fully reviewed, considered, and evaluated the whole of the record including all public and written comments, pertinent information, documents and plans, prior to taking action regarding the Project; and

WHEREAS, the Planning Commission voted to deny the use permit to allow the pool equipment to exceed the nighttime noise limit; and

WHEREAS, the Planning Commission's decision was called up to the City Council pursuant to Section 16.86.025 of the Menlo Park Municipal Code; and

WHEREAS, at a duly and properly noticed public hearing held on May 23, 2023, the City Council fully reviewed, considered, and evaluated the whole of the record including all public and written comments, pertinent information, documents and plans, prior to taking action regarding the Project.

NOW, THEREFORE, THE MENLO PARK CITY COUNCIL HEREBY RESOLVES AS FOLLOWS:

Section 1. Recitals. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, public testimony, and other materials and evidence submitted or provided, and the City Council finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

Section 2. Conditional Use Permit Findings. The City Council of the City of Menlo Park does hereby make the following Findings:



The use permit to exceed nighttime noise limits measured at residential property lines is denied based on the following findings which are made pursuant to Menlo Park Municipal Code Section 16.82.030:

1. That the establishment, maintenance, or operation of the use applied for will, under the circumstance of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing in the neighborhood of such proposed use, or injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city because:
  - a. Consideration and due regard were given to the nature and condition of all adjacent uses and structures, and to general plans for the area in question and surrounding areas, and the impact of the application hereon would create the potential for a noise disturbance without any certainty of the number of hours per day or days per year that nearby residences may be impacted. Furthermore, granting the use permit may have negative impacts on the health and comfort of individuals whose residences would be exposed to noise from the equipment that would exceed the maximum nighttime sound levels because increased noise in uncertain intervals could have detrimental effects to sleep patterns of nearby residents.
  - b. Studies of alternatives, such as different equipment locations, distribution of equipment across multiple locations on the site, alternate heating equipment types, modifications to the proposed heating and operating schedules of the pools, and sound barriers that would reduce noise levels below the maximum limits were not exhausted, and other alternatives may be viable.

Section 3. Conditional Use Permit. The City Council upholds the Planning Commission's decision to deny Use Permit No. PLN2022-00017, which use permit is depicted in and subject to the development plans and project description letter, which are attached hereto and incorporated herein by this reference as Exhibit A and Exhibit B, respectively.

Section 4. Environmental Review. The City Council makes the following findings, based on its independent judgment after considering the Project, and having reviewed and taken into consideration all written and oral information submitted in this matter:

- A. The Project is categorically exempt from environmental review pursuant to Cal. Code of Regulations, Title 14, §15302 et seq. (Replacement or Reconstruction).

#### Section 5. SEVERABILITY

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

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

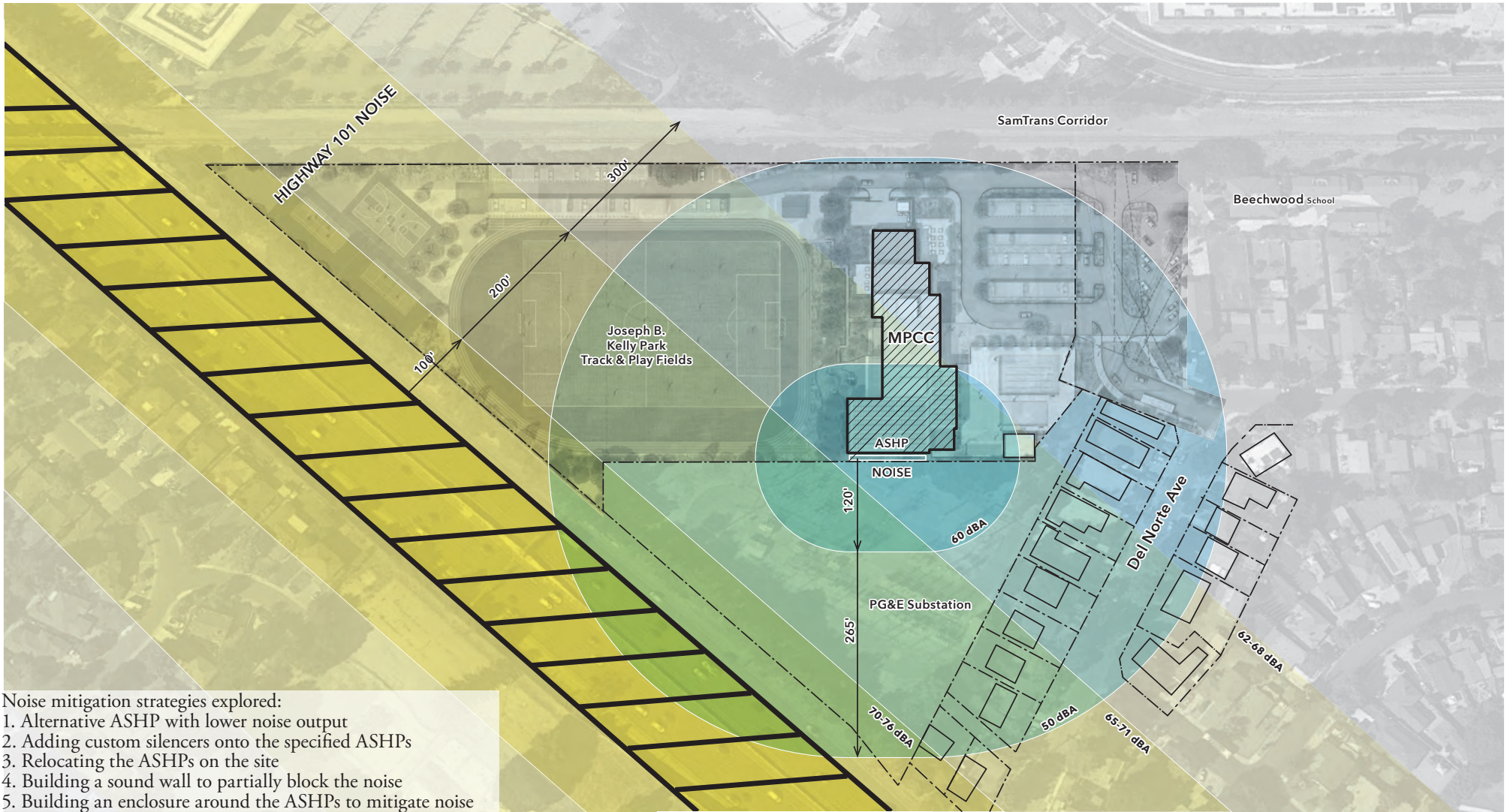
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Judi A. Herren, City Clerk

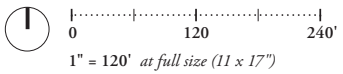
Exhibits:

A. Project plans

B. Project description letter



- Noise mitigation strategies explored:
1. Alternative ASHP with lower noise output
  2. Adding custom silencers onto the specified ASHPs
  3. Relocating the ASHPs on the site
  4. Building a sound wall to partially block the noise
  5. Building an enclosure around the ASHPs to mitigate noise





February 21, 2023

**RE: Project description letter  
100 Terminal Ave  
Air Source Heat Pump (ASHP) Use Permit – Menlo Park Community Campus**

Dear Menlo Park Planning Commission,

The Menlo Park Community Campus (MPCC), located at 100 Terminal Avenue, is under construction and is scheduled to open in 2024. The new facility will include a public gymnasium, library, senior center, youth center, commercial-grade kitchen, community meeting room, dining hall, and outdoor aquatics center for the community's benefit. To meet the City's goals of sustainable design and construction and to comply with the "reach code" ordinance passed by the City Council in 2019, fossil fuels will not be used in the operation of the building. The City of Menlo Park has taken great strides in reducing greenhouse gas (GHG) emissions from the building sector. Electrifying new buildings reduces GHG emissions and helps improve air quality and environmental health and safety for residents, because all-electric appliances emit very little GHG emission compared to natural gas appliances.

Two new pools will be constructed as part of the MPCC project. Since natural gas was not an option for heating the pools (per the City's ordinance described above), it is included for comparison purposes only. Other heating methods that were considered were solar heating, air source heat pumps, electric heaters, and cogeneration.

- Gas heaters heat water quickly and keep the temperatures stable regardless of outdoor temperature. They have a lower initial purchase price and installation cost. However, they use finite natural resources to operate, and are not environmentally friendly. Operating costs are high due to the high cost of natural gas. The Lochinvar gas heater was evaluated as a baseline pool heating system. Noise levels for gas heaters are typically 30-40 decibels at a distance of 5 feet. Additionally, gas heaters can be placed indoors.
- Solar heating is an effective and cost-efficient way to heat pools. However, solar heating alone rarely meets the temperature requirements due to lack of sun, overcast skies, and system inefficiencies. Solar heating was selected as the primary source of heating for the pools, and is paired with heat pumps for the most efficient and cost-effective system.
- Air source heat pumps (ASHPs) are powered by electricity. They operate by

extracting heat from the outside air, increasing the heat with a compressor, delivering the heat to the water, and ejecting the cold air out the top of the unit. This method of heating is environmentally friendly and uses less energy than other heating methods. ASHPs must be located outdoors and require clear space all around for proper air flow.

- Electric heaters are also powered by electricity, and generate heat from a heating element. Electric heaters are less efficient and more expensive to operate than air source heat pumps. They are ideal for small pools or spas, but the electrical load to heat the two new swimming pools would be too large, resulting in an ineffective and expensive heating method.
- Cogeneration is a system that produces both heat and electricity from one primary energy source. While cogeneration can provide high energy efficiency, the most widely used cogeneration technologies burn fuel such as natural gas or oil, and therefore do not comply with the City's reach codes. Additionally, cogeneration systems can be very expensive to install, and were cost prohibitive.

Ultimately, it was determined that solar thermal piping in conjunction with a series of five ASHPs was the most efficient and cost effective heating method for the pools. Heat pumps and solar heaters complement each other because they utilize different forms of renewable energy. Air source heat pumps work very well when average air temperatures exceed 50°F (10°C). They work less efficiently in air temperatures below 50°F (10°C), however, and they stop altogether in freezing temperatures. Solar heaters depend on sunlight, and operate very efficiently in sunny weather. They work less efficiently in cloudy weather, however, and cannot operate at night. By utilizing both solar heating and heat pumps, the swimming pools can be heated to the desired temperatures in almost all weather conditions.

The air source heat pump selected was the AquaCal "Great Big Bopper" (see Attachment A). This particular unit was selected due to its heating capacity and relatively low noise level, as compared to similar pumps from other manufacturers. The table below shows heat pump noise levels from a variety of manufacturers.

| <b>Manufacturer</b> | <b>Model</b> | <b>Sound level decibels</b> |
|---------------------|--------------|-----------------------------|
| AquaCal             | SQ175        | 55 db                       |
| Hayward             | HP21404T     | 60 db                       |
| Jandy               | EE3000T      | 59 db                       |
| Pentair             | 140          | 58 db                       |
| Rheem               | M8350ti      | 64 db                       |

Using smaller heat pumps was also considered. However, it was found that at least 28 of AquaCals smaller pumps (model SQ225) would be required, and would more noise would result.

The ASHPs will be in operation when heating the pool, year round. The ASHPs are



expected to be on most of the time the pool is open. The table below includes the maximum and minimum heating time according to month. In the coldest months, the maximum run time would be 7.4-7.6 hours over a 24-hour period. In the summer, the maximum run time would be 4.3-4.8 hours over a 24-hour period. It is not possible to specify the exact heating time every night.

| MENLO PARK - AVERAGE MONTHLY TEMPERATURE and HEATING TIME |     |     |     |     |     |     |     |     |     |     |     |     |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Month   | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
| Min. Temp. (F)  | 41  | 44  | 46  | 48  | 52  | 55  | 58  | 58  | 55  | 51  | 45  | 40  |
| Max. Temp.(F)   | 59  | 62  | 65  | 69  | 72  | 76  | 77  | 77  | 73  | 65  | 59  | 59  |
| Max. Heating time (Hr.)                                   | 7.4 | 6.8 | 6.5 | 6.1 | 5.4 | 4.8 | 4.3 | 4.3 | 4.8 | 5.6 | 6.7 | 7.6 |
| Min. Heating time (Hr.)                                   | 4.1 | 3.5 | 3.0 | 2.3 | 1.7 | 1.0 | 0.8 | 0.8 | 0.8 | 1.5 | 3.0 | 4.1 |

The ASHPs will be on at nighttime to heat the pool to the desired temperatures to be ready for morning use. There will be times when the ASHPs are running and exceed the Menlo Park noise ordinance. The residential noise limits are 50 decibels during nighttime hours, and 60 decibels during daytime hours. When all 5 pumps are running, the sound levels emanating from the ASHPs may exceed the nighttime residential limit of 50 decibels, however they would be below the daytime limit of 60 decibels. Please see the Noise Attenuation Diagram (Attachment B) which shows the decibel readings at the property lines.

Several noise mitigation strategies were evaluated, including aftermarket attenuators, sound barriers, and moving the pumps to other locations on the site.

A noise analysis (Attachment C) was conducted by Salter, an acoustics consultant, in September 2021, to provide recommendations to achieve a 10 decibel sound reduction. Salter analyzed the locations for the attenuators to be attached to the ASHPs (two of the sides and the top were found to emit the most noise), and recommended that a third party manufacturer design the dimensions of the attenuators. Norman S. Wright Mechanical Equipment Corporation sized custom silencers manufactured by VibroAcoustics to fit the ASHPs. To achieve the requested 10 decibels reduction, the silencers would need to be 60"x 54"x 90". The ASHPs are located between the building and the PG&E property line, in a space that is 10'-7" wide. The ASHPs with the added silencers would not physically fit in the space provided (see Attachment D).

Solid sound barriers were also considered to reduce noise, however, the ASHPs require 6' of clearance on all sides, and 12' of clearance overhead, in order that air flow is not restricted. See Attachment E for clearance requirements. Additionally, sound barriers would not fit due to the site constraints. The proximity of the ASHPs to the PG&E property line on the south (and clearance required by the ASHPs for air circulation), the building to the north, and required Fire Access Clearance required on the East and West do not make it possible to install sound barriers anywhere on site. This required clearance between the gym wall and the units means that the fence on the south side of the property must be chain link and cannot be blocked.

The ASHPs come with the compressors wrapped to reduce noise emissions. Other types of sound blankets would restrict the air flow and would not be feasible. It should be noted that the heat pump warranty would be void if not installed within specifications.

Relocating the ASHPs to alternate locations on the site was also considered. The ASHPs are located at the maximum design length possible (180 feet from the instructional pool, and 200 feet from the lap pool). If the pumps were moved farther away than this distance, additional piping and recirculation pumps would be needed to pump water from the pool to the heaters and back. More pumps would result in more noise. Additionally, if the pumps were moved to the pool house area (either adjacent to or on top of the pool equipment building), they would be closer to the residential property line and the sound level would increase.

In summary, the ASHPs as proposed are the only feasible option to effectively heat the pools to the desired temperature and operating hours. The ambient noise will be limited to no more than 60 decibels at any time, but will exceed the ordinance of 50 decibels at night.

Sincerely,

Theresa Avedian, Senior Civil Engineer, Public Works

List of Attachments

- Attachment A: Great Big Bopper specification
- Attachment B: Noise attenuation diagram
- Attachment C: Noise analysis memo
- Attachment D: Silencer schedule and diagram
- Attachment E: Clearance requirements for ASHPs

## Unit Specifications



|  | 50 Hz - 380-415V                     | 60 Hz - 208-230V  | 60 Hz - 460V      |                 |
|--|--------------------------------------|-------------------|-------------------|-----------------|
| <b>Performance/Heating</b><br><small>@26.7°C Air/80% RH/26.7°C Water<br/>@80°F Air/80% RH/80°F Water</small>   | kW Output                            | 123.7             | 154.4             | 154.4           |
|  | BTU Output                           | 422,000           | 527,000           | 527,000         |
|  | C.O.P. (Coefficient of Performance)  | 6.8               | 6.6               | 6.6             |
|  | kW Input                             | 18.1              | 23.3              | 23.3            |
| <b>Performance/Heating</b><br><small>@10°C Air/63% RH/26.7°C Water<br/>@50°F Air/63% RH/80°F Water</small>   | kW Output                            | 73.3              | 91.7              | 91.7            |
|  | BTU Output                           | 250,000           | 313,000           | 313,000         |
|  | C.O.P. (Coefficient of Performance)  | 4.1               | 4.1               | 4.1             |
|  | kW Input                             | 17.9              | 22.4              | 22.4            |
| <b>Performance/Chilling</b><br><small>@37.8°C Air/26.7°C Water<br/>@100°F Air/80°F Water</small>   | kW Absorption                        | 91.3              | 106.4             | 106.4           |
|  | BTU Absorption                       | 311,516           | 363,153           | 363,153         |
|  | kW Input                             | 21.2              | 23.8              | 23.8            |
|  |                                      |                   |                   |                 |
| <b>Electrical</b>  | Voltage/Hz/Phase                     | 380-415V/50Hz/3ph | 208-230V/60Hz/3ph | 460V/60Hz/3ph   |
|  | Min. Circuit Ampacity                | 58.0              | 134.6             | 60.9            |
|  | Recommended Fuse Size                | 80                | 150               | 80              |
|  | Max. Fuse Size                       | 80                | 150               | 80              |
| <small>Over Temperature Alarm Kit available: part number STK0221 for single phase, STK0222 for three phase. Strongly recommended for all spa applications.</small> |                                      |                   |                   |                 |
| <b>Pool Water Flow</b>   | Min./Max. l/min                      | 454/1059          | 454/1059          | 454/1059        |
|  | Min./Max. gpm                        | 120/280           | 120/280           | 120/280         |
|  | Pressure Drop/Pool Water @ 568 l/min | 0.12 bar          | 0.12 bar          | 0.12 bar        |
|  | Pressure Drop/Pool Water @ 150 gpm   | 1.8 PSI           | 1.8 PSI           | 1.8 PSI         |
|  | Pool Water Connections               | 4" U.S.           | 4" U.S.           | 4" U.S.         |
| <b>Refrigerant</b>   | R410A                                | R410A             | R410A             |                 |
| <b>Physical</b>  | Weight (lbs)                         | 1,540             | 1,540             | 1,540           |
|  | Weight (kg)                          | 700               | 700               | 700             |
|  | Length x Width x Height (in)         | 90" x 54" x 86"   | 90" x 54" x 86"   | 90" x 54" x 86" |
|  | Length x Width x Height (cm)         | 229 x 138 x 219   | 229 x 138 x 219   | 229 x 138 x 219 |
| <b>Shipping</b>  | Weight (lbs)                         | 2,100             | 2,100             | 2,100           |
|  | Weight (kg)                          | 953               | 953               | 953             |
|  | Length x Width x Height (in)         | 91" x 58" x 86"   | 91" x 58" x 86"   | 91" x 58" x 86" |
|  | Length x Width x Height (cm)         | 232 x 148 x 219   | 232 x 148 x 219   | 232 x 148 x 219 |

Specifications subject to change without notice



**GBB**  
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**CONVENIENT**  
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# High Performance Air Source Heating & Cooling

- Heavy Duty Design and Construction
- SuperQuiet Operation

- Superior Energy Efficiency
- Guaranteed AquaCal® Quality

## Titanium Heat Exchanger

- Patented counter-flow water management system
- Heats water faster and more efficiently
- Impervious to chemical corrosion
- Durability without sacrificing performance
- Lifetime warranty

## Microprocessor Controlled with LCD Display

- SMART control panel with 24 character full-text display provides easy-to-read menu options and unit status
- On-board self diagnostics
- Microprocessor controlled defrost cycle

## Now PoolSync™ Ready

- Adjust the mode to heat, cool or autotemp, and set your temperature through the PoolSync app

\*Additional purchase of PoolSync WiFi Controller required

## ICEBREAKER® Heat & Cool with Active Defrost

- Extends swimming season longer than any other heat pump on the market
- Continues to heat in freezing temperatures to minimize heat loss
- Cool your pool to a refreshing temperature
- Set to heat, cool or autotemp

## Corrosion Resistant Cabinet

- Rust resistant, heavy gauge G90 Galvanneal steel with 7 step Powder Coat process
- ElectroFin® epoxy polymer coated evaporator coils
- Polymer condensate drain system
- Polymer coated fan guards



Lease and Rental Programs Available

Dual Plumbing Configuration: easily plumbed from either side of unit, allowing for convenient installation

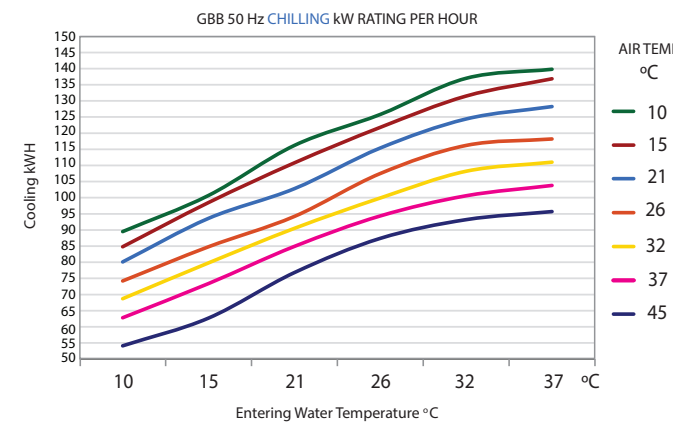
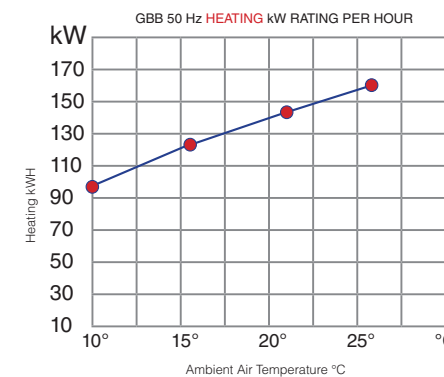
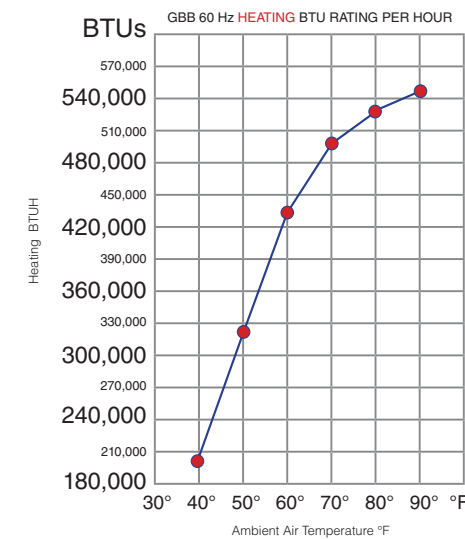
Free sizing program that provides ROI & cost savings analysis for your specific pool

Multi-System Capability: GBB is capable of heating & cooling even the largest swimming pools

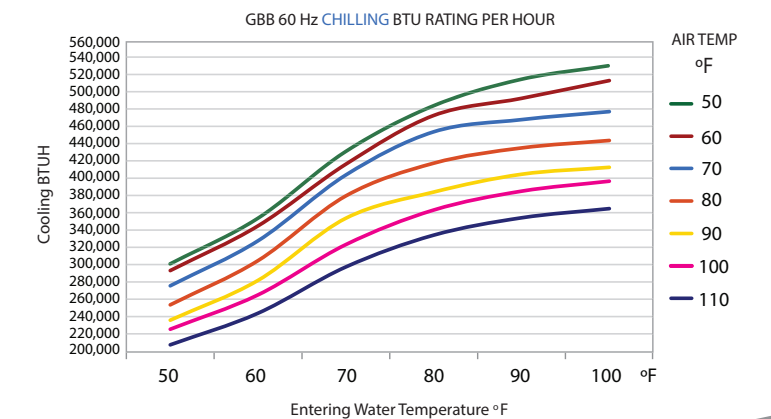
Performance driven for demanding climates everywhere, from Los Angeles to Boston to Paris to Abu Dhabi



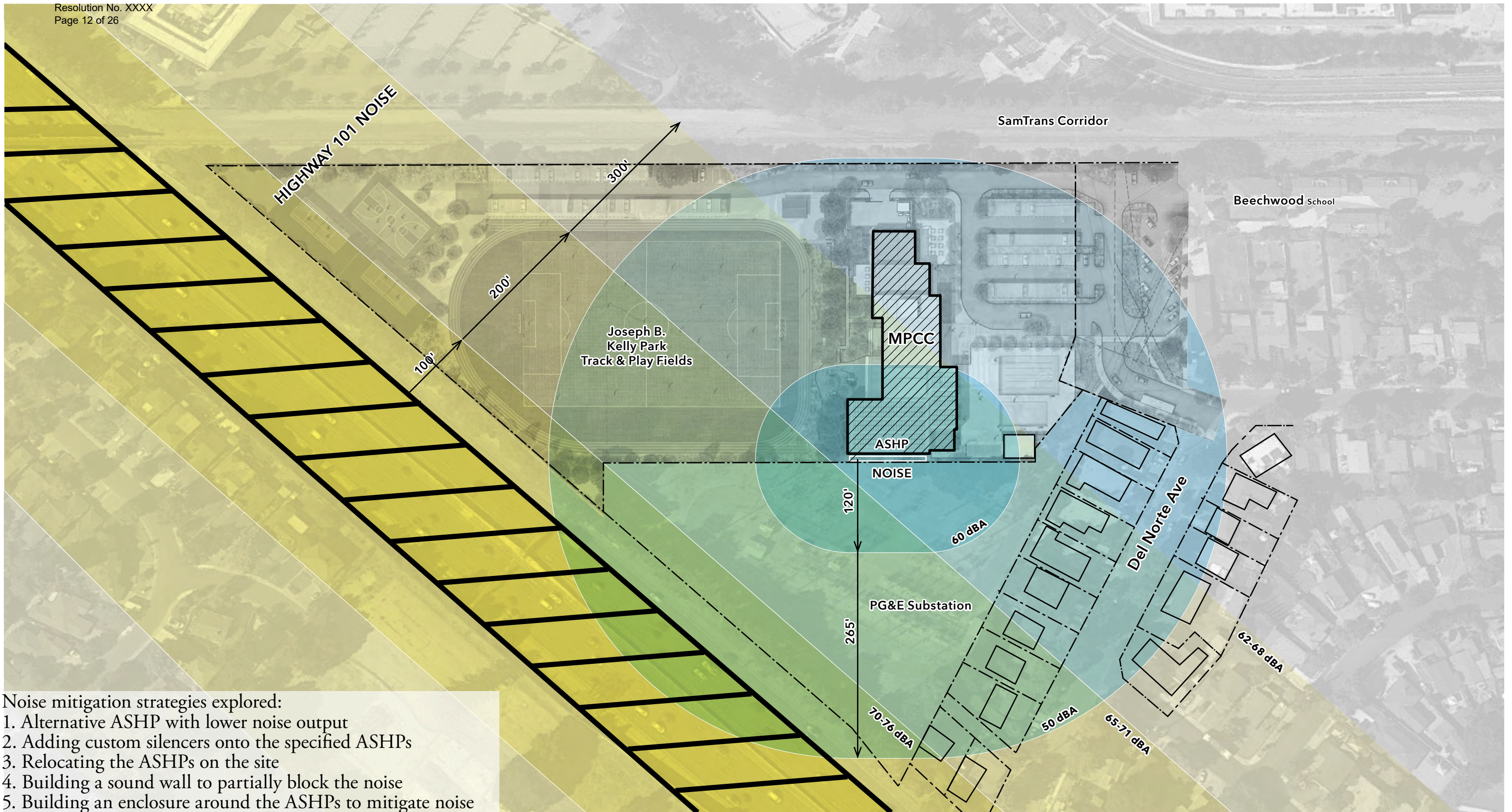
## A Real Commercial Sized Heat Pump That Heats & Cools Large Commercial Pools



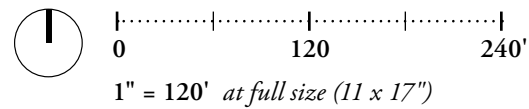
Up to a **Half Million BTUs** in One Single Unit







- Noise mitigation strategies explored:
1. Alternative ASHP with lower noise output
  2. Adding custom silencers onto the specified ASHPs
  3. Relocating the ASHPs on the site
  4. Building a sound wall to partially block the noise
  5. Building an enclosure around the ASHPs to mitigate noise





## MEMORANDUM

---

**DATE:** 8 September 2021

**NAME:**  
Jon Swain

**COMPANY:**  
Hart Howerton

**EMAIL:**  
jswain@harthowerton.com

**FROM:** Skyler Carrico and Ethan Salter, PE, LEED® AP

**SUBJECT:** Menlo Park Community Center (MPCC) Pool Equipment Building  
ASHP Acoustic Attenuator/Enclosure Memo

**PROJECT:** 20-0145

---

We understand that five at-grade AquaCal model GBB air-source heat pumps (ASHPs) serving the community center pools are to be provided along the south façade of the gymnasium, near the PG&E substation to the south, and residential property lines along Del Norte Avenue to the east. Menlo Park Municipal Code requires that noise from these units not exceed 50 dBA during nighttime hours (i.e., 10pm to 7am) at nearby residential property lines (per Section 8.06.030).

Salter has conducted noise analyses and provided insight to the design team with respect to Code compliance through numerous conference calls and email correspondence, finding noise from the ASHPs to be in exceedance of property line noise requirements by approximately 10 dBA. It is our understanding that as a mitigation solution, constructing solid barrier walls is not a feasible or otherwise desirable option, and aftermarket enclosures/attenuators surrounding each unit are instead preferred.

After coordinating with your firm and Aquacal, a Salter employee in Hawaii conducted field measurements of a similar AquaCal GBB ASHP installation on 28 July 2021. Our measurements and analysis indicate that the dominant source of noise emissions is the top of the unit and the also intake sides (Sides 1 and 3, per the image markups attached below). Utilizing these measurements, we have updated our ASHP property line noise calculations to determine the amount of insertion loss (in dB) necessary for an ASHP enclosure/attenuator to achieve the 50 dBA property line noise requirement at the Menlo Park Community Center.





Our analysis assumes the following:

- o All five ASHPs could run simultaneously and at full capacity within nighttime hours (i.e., 10pm to 7am)
- o The City's 50 dBA at 50-foot Code requirement for roof-mounted mechanical equipment (Section 16.08.095) is not applicable to this equipment since it is to be mounted at-grade

At Side 1, Side 3, and at the top of each unit, we recommend that attenuators be designed to provide at least 10 dB insertion loss in each octave band between 125 Hz to 2000 Hz.

We understand that these attenuators will increase the overall dimensions of the units, which could cause clearance issues due to space constraints. A third-party enclosure/attenuator manufacturer (e.g., a firm such as Vibro-Acoustics offers "custom" schemes to reduce noise of similar machines<sup>1</sup>) should confirm the overall width of the silencers, which the AquaCal team can then evaluate with respect to clearance. If there are resulting clearance constraints, it may be possible to eliminate one of the side-wall attenuators by adding surface-mounted absorption to the façade at the side of the building. The silencer vendor should also coordinate with AquaCal to understand the mechanical constraints of the system, such as fan static pressure, accessibility, etc.

AquaCal also noted that their GBB ASHPs could also have the compressors wrapped (lagged) to reduce radiated noise emissions. Compressor noise was measured along with all the other sources during our July 2021 measurements, but they were not able to be parsed out from the other sound energy. As the different dominant sources of noise are addressed, other sources may become evident.

We look forward to continuing our analysis as the design and noise mitigation solution progresses. Please let us know if you have any questions.

---

<sup>1</sup> <https://noisecontrol.vibro-acoustics.com/applications/chillers/>.

| SILENCER SCHEDULE (VIBRO-ACOUSTICS)   |        |                  |                       |                        |               |                 |                              |                                    |  |   |     |     |     |      |      |      |      |  |       |
|---|--------|------------------|-----------------------|------------------------|---------------|-----------------|------------------------------|------------------------------------|--|---|-----|-----|-----|------|------|------|------|--|-------|
| TAG   | SYSTEM | TYPE<br>(NOTE 1) | DIMENSIONS            |                        |               | AIRFLOW,<br>CFM | VELOCITY,<br>FPM<br>(NOTE 2) | IDEAL<br>DP<br>IN.W.G.<br>(NOTE 3) | MAX.DP<br>W/SYS EFF<br>IN.W.G.<br>(NOTE 4) | MINIMUM DYNAMIC INSERTION LOSS, dB (NOTE 5) |     |     |     |      |      |      |      | BASIS OF DESIGN<br>VIBRO-ACOUSTICS<br>MODEL NUMBER | NOTES |
|   |        |                  | DUCT<br>WIDTH,<br>IN. | DUCT<br>HEIGHT,<br>IN. | LENGTH<br>IN. |                 |                              |                                    |  | OCTAVE BAND CENTER FREQUENCY, HZ            |     |     |     |      |      |      |      |  |       |
|   |        |                  |                       |                        |               |                 |                              |                                    |  | 63  | 125 | 250 | 500 | 1000 | 2000 | 4000 | 8000 |  |       |
| SA  |        | RD               | 54                    | 90                     | 60            | 30000           | +889                         | 0.13                               | 0.26                                       | 5   | 11  | 19  | 25  | 27   | 21   | 16   | 13   | RD-MV-27818  | 6, 7  |
| <p>Notes:</p> <ol style="list-style-type: none"> <li>1. TYPE R - RECTANGULAR D - DISSIPATIVE</li> <li>2. VELOCITY SHOWN IS + (FORWARD FLOW) OR - (REVERSE FLOW) AS DEFINED BY ASTM E477-13.</li> <li>3. IDEAL PRESSURE DROP AS DETERMINED PER ASTM E477-13 IN A NVLAP-ACCREDITED ACOUSTICAL LABORATORY.</li> <li>4. PRESSURE DROP PER ASTM E477-13 PLUS SYSTEM EFFECTS FOR NEARBY DUCT ELEMENTS.</li> <li>5. MINIMUM DYNAMIC INSERTION LOSS DETERMINED PER ASTM E477-13 IN A NVLAP-ACCREDITED ACOUSTICAL LABORATORY.</li> <li>6. NON-BASIS OF DESIGN SILENCER MANUFACTURER SHALL PROVIDE, FOR APPROVAL, PROFESSIONAL ENGINEER STAMPED PRESSURE DROP CALCULATIONS FOR ALL SYSTEMS WITH SILENCERS TO DEMONSTRATE THAT THE RESULTANT INSTALLED PRESSURE DROP WITH SYSTEM EFFECTS DOES NOT EXCEED SCHEDULED VALUES.</li> <li>7. FOR NON-BASIS OF DESIGN PRODUCT SUPPLIED, CONTRACTOR IS FINANCIALLY RESPONSIBLE TO ENSURE NOISE CONTROL SOLUTION IS DELIVERED TO ACHIEVE SPECIFIED NC LEVEL IN SPACES.</li> </ol> |        |                  |                       |                        |               |                 |                              |                                    |  |   |     |     |     |      |      |      |      |  |       |

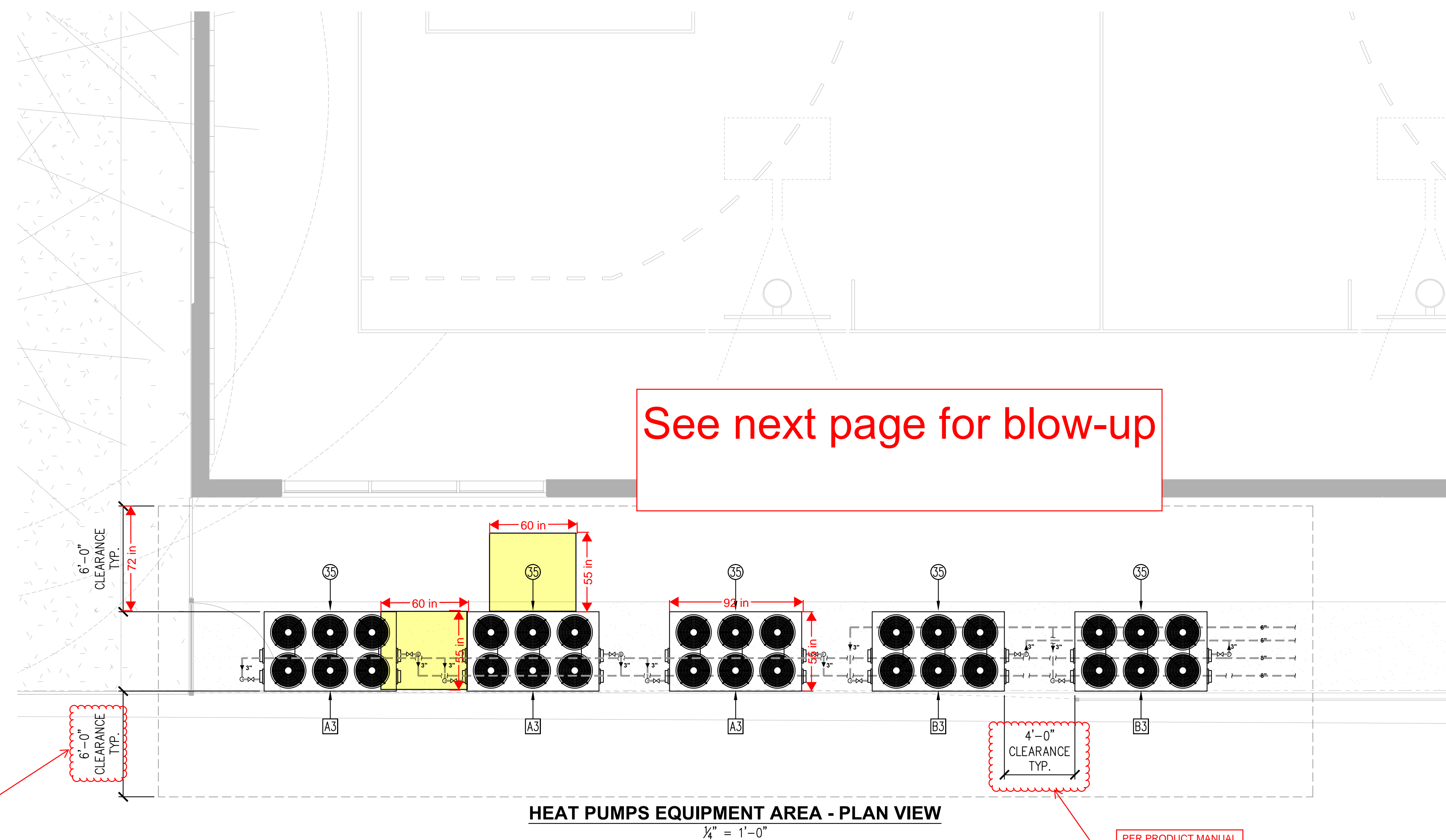
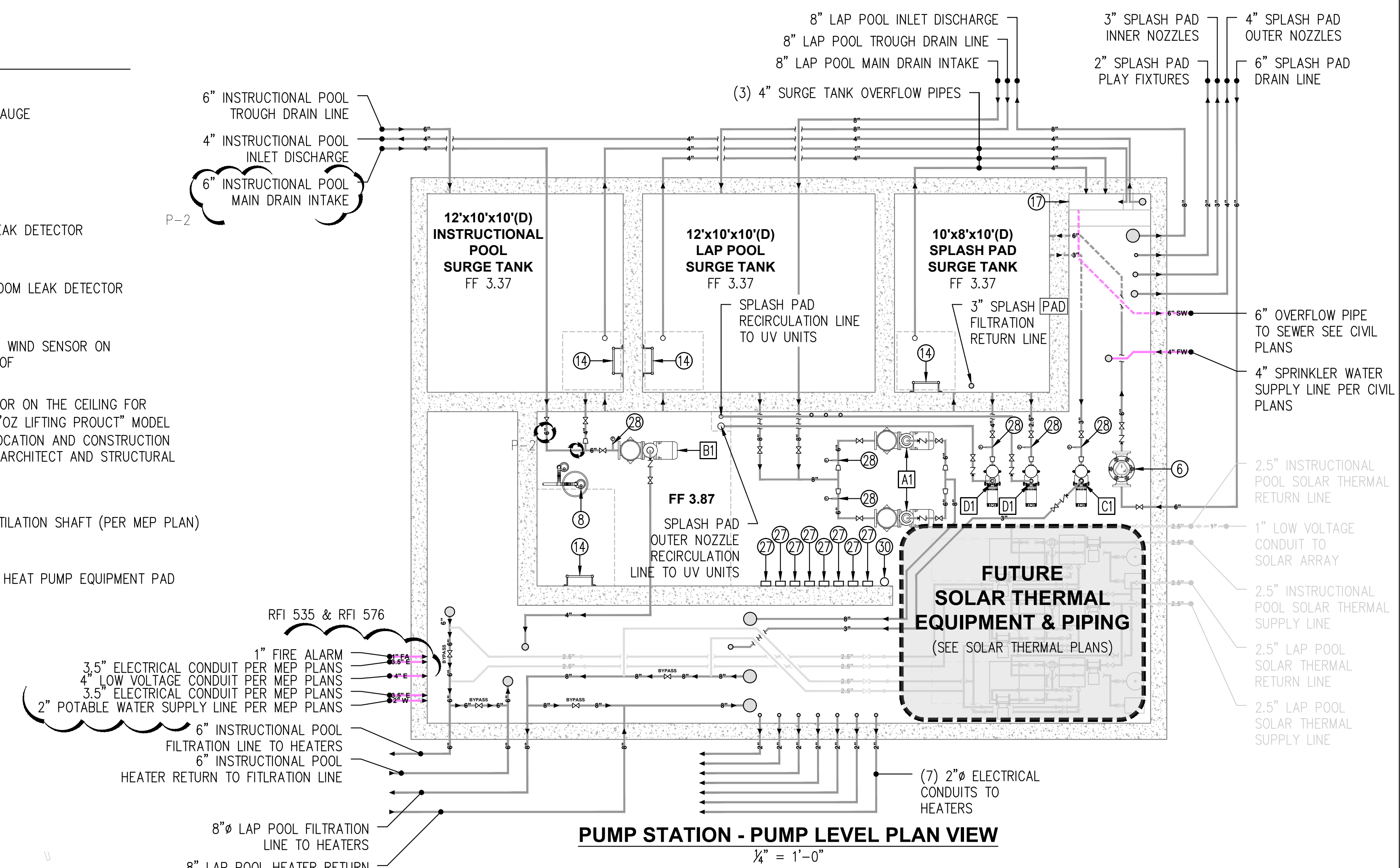


**EQUIPMENT LIST:**

| NUMBER | SYSTEM             | 1 PUMP |     |     |  | 2 FILTER                        |                        |                                 |                     | 3 HEATER                    |                              |                    | 4 CHLORINE DOSING SPECIFICATION                  | 5       |                                  | 6 DISINFECTION                        |   | 7 UV UNIT SPECIFICATION                                     | 8 CHEMISTRY CONTROLLER  |  |                       |
|--------|--------------------|--------|-----|-----|--|---------------------------------|------------------------|---------------------------------|---------------------|-----------------------------|------------------------------|--------------------|--|---------|----------------------------------|---------------------------------------|---|---|---|--|-----------------------|
|        |                    | FLOW   | TDH | BHP | SPECIFICATION  | BASKET STRAINER PER NEMATO CORP | TOTAL FILTER AREA REQ. | FILTER AREA PER TANK (1 FILTER) | NO. OF FILTERS REQ. | TOTAL FILTER AREA AVAILABLE | ACTUAL GPM/SQFT (PER FILTER) | SPECIFICATION      |  | NOTES   | SPECIFICATIONS (BTU HEAT OUTPUT) | HEAT UP TIME (HR)                     | HEATER MODEL  |   |   | ACID AND CO2 DOSING SPECIFICATION  | UV UNIT SPECIFICATION |
| A      | LAP POOL           | 640    | 68  | 7.5 | (2) FILTRATION PUMPS PER "PENTAIR" C-SERIES MODEL CMK-75, 5"x4", RATED 320 GPM AT 68' TDH, 7.5 HP, 460V, 3PH, EACH | INCLUDED WITH PUMPS             | 42.67                  | 21                              | 2                   | 42                          | 15.24                        | GEN 2 EKO-42210-T2 | USE GEN2 EKO-42210-T2 (2 TANKS) W/ AUTO BACKWASH | 529,000 | 28.17                            | (3) HEAT PUMP PER "AQUACAL" MODEL GBB | (3) CHLORINE METERING PUMP, STENNER 45MHP22, 1.1-22GPD, 100 PSI | (1) ACID METERING PUMP, STENNER 45MHP10, 0.5-10GPD, 100 PSI | (1) EK03 SYSTEMS CO2 FEEDER MODEL CO2 20-200 SCFH #WS-009-04000 WITH (1) TAYLOR WHARTON TANK MODEL NOV0750 SUREFILL SYSTEM CO2 STORAGE TANK | (1) UV UNIT SAG ULTRAVIOLET LIGHT MODEL SAG-960A, RATED 770 GPM MAX., 120V, 1PH.           | BECSys7               |
| B      | INSTRUCTIONAL POOL | 225    | 61  | 5   | (1) FILTRATION PUMPS PER "PENTAIR" C-SERIES MODEL CMK-50, 5"x4", RATED 225 GPM AT 61' TDH, 5 HP, 460V, 3PH         | INCLUDED WITH PUMP              | 15.00                  | 7.06                            | 2                   | 14.12                       | 15.93                        | TR140C             | USE (2) TR-140C FILTER                           | 529,000 | 13.81                            | (2) HEAT PUMP PER "AQUACAL" MODEL GBB | (2) CHLORINE METERING PUMP, STENNER 45MHP22, 1.1-22GPD, 100 PSI | (1) ACID METERING PUMP, STENNER 45MHP10, 0.5-10GPD, 100 PSI | (1) EK03 SYSTEMS CO2 FEEDER MODEL CO2 20-200 SCFH #WS-009-04000 WITH (1) TAYLOR WHARTON TANK MODEL NOV0750 SUREFILL SYSTEM CO2 STORAGE TANK | (1) UV UNIT SAG ULTRAVIOLET LIGHT MODEL SAG-480A, RATED 350 GPM MAX., 120V, 1PH.           | BECSys5               |
| C      | SPLASH PAD         | 135    | 62  | 3   | (1) FILTRATION PUMPS PER "PENTAIR" WHISPERFLO MODEL WFK-12, RATED 135 GPM AT 62' TDH, 3 HP, 460V, 3PH              | INCLUDED WITH PUMP              | 9.00                   | 7.06                            | 1                   | 7.06                        | 19.12                        | TR140C             | USE (1) TR-140C FILTER                           | N/A     | N/A                              | N/A                                   | (1) CHLORINE METERING PUMP, STENNER 45MHP10, 0.5-10GPD, 100 PSI | (1) ACID METERING PUMP, STENNER 45MHP10, 0.5-10GPD, 100 PSI | N/A   | (1) UV UNIT PER "AQUIONICS" SWIM U SERIES MODEL U-152, 3" FLANGE RATED 180 GPM MAX., 120V. | BECSys5               |
| D      | SPLASH PAD FEATURE | 160    | 35  | 2   | (2) WATER FEATURE PUMPS PER "PENTAIR" WHISPERFLOX MODEL XFK-8, RATED 160 GPM AT 35' TDH, 2HP, 460V, 3PH, EACH      | INCLUDED WITH PUMP              | N/A                    | N/A                             | N/A                 | N/A                         | N/A                          | N/A                | N/A  | N/A     | N/A                              | N/A                                   | N/A   | N/A   | N/A   | (2) UV UNIT PER "AQUIONICS" SWIM U SERIES MODEL U-152, 3" FLANGE RATED 180 GPM MAX., 120V. | N/A                   |

**KEY NOTES:**

- |   |   |  |  |
|---|---|--|--|
| <ul style="list-style-type: none"> <li>① CHLORINE TANK (500 GALLON)</li> <li>② ACID TANK (50 GALLON)</li> <li>③ 4" PVC VENT CHLORINE VENT PIPE (TERMINATE ON BUILDING ROOF)</li> <li>④ CHLORINE FILL PORT</li> <li>⑤ CO2 FILL PORT</li> <li>⑥ SPLASH PAD SURGE TANK BASKET STRAINER</li> <li>⑦ AUTOFILL MANIFOLD</li> <li>⑧ DUAL SUMP PUMPS (DISCHARGE TO BACKWASH TANK).</li> <li>⑨ FILTER BOOSTER PUMP FOR AUTO BACKWASH</li> </ul> | <ul style="list-style-type: none"> <li>⑩ FIBERGLASS DOUBLE DOORS</li> <li>⑪ FIBER GLASS DOOR W/ LOUVERS</li> <li>⑫ CONTAINMENT CURB</li> <li>⑬ EMERGENCY EYE WASH STATION</li> <li>⑭ STEEL LADDER W/ SAFETY EXTENSION.</li> <li>⑮ GUARD RAIL</li> <li>⑯ ALUMINUM 3'X3' FLOOR ACCESS HATCH</li> <li>⑰ SURGE TANK OVERFLOW BOX W/ SEWER CONNECTION.</li> <li>⑱ ROOF ACCESS WITH LADDER</li> </ul> | <ul style="list-style-type: none"> <li>⑲ METAL GRATE LANDING W/ STEP (PER ARCHITECTURE PLAN)</li> <li>⑳ STRUCTURE COLUMNS (PER STRUCTURE PLAN)</li> <li>㉑ MAINTENANCE WORKSTATION</li> <li>㉒ BACKWASH TANK FLOOR DRAIN (PER MEP PLANS)</li> <li>㉓ FLOOR DRAIN (PER MEP PLAN)</li> <li>㉔ NETWORK CABINET (BY PAE ENGINEERS)</li> <li>㉕ TRANSFORMER</li> <li>㉖ CONTROL PANEL</li> <li>㉗ PUMP DISCONNECT SWITCH (PER ELECTRICAL SHEET)</li> </ul> | <ul style="list-style-type: none"> <li>㉘ PRESSURE GAUGE</li> <li>㉙ FLOW METER</li> <li>㉚ PUMP PIT LEAK DETECTOR</li> <li>㉛ CHEMICAL ROOM LEAK DETECTOR</li> <li>㉜ SPLASH PAD WIND SENSOR ON BUILDING ROOF</li> <li>㉝ WINCH ANCHOR ON THE CEILING FOR WINCH PER "OZ LIFTING PRODUCT" MODEL OBH1000 (LOCATION AND CONSTRUCTION DETAIL PER ARCHITECT AND STRUCTURAL PLAN)</li> <li>㉞ 12"x12" VENTILATION SHAFT (PER MEP PLAN)</li> <li>㉟ AIR SOURCE HEAT PUMP EQUIPMENT PAD (5 TYP.)</li> </ul> |
|---|---|--|--|



See next page for blow-up

CURRENTLY NO SPACE PROVIDED BETWEEN HEAT PUMP AND CHAIN LINK FENCE.

PER PRODUCT MANUAL 6" CLEARANCE ON SIDES IS REQUIRED.



**HART HOWERTON**  
New York, San Francisco  
One Union Street, San Francisco, CA 94111  
Tel: 415-439-2200 Fax: 415-439-2201  
Email: SH@hartowerton.com



**Menlo Park Community Campus**  
100 TERMINAL AVENUE  
MENLO PARK, CA 95025

SCALE: AS SHOWN  
MILESTONES

| DATE       | ISSUE                         |
|------------|-------------------------------|
| 06/14/2021 | DESIGN DEVELOPMENT PERMIT SET |
| 08/05/2021 | WORKING FACILITY PERMIT SET   |

**REVISIONS**

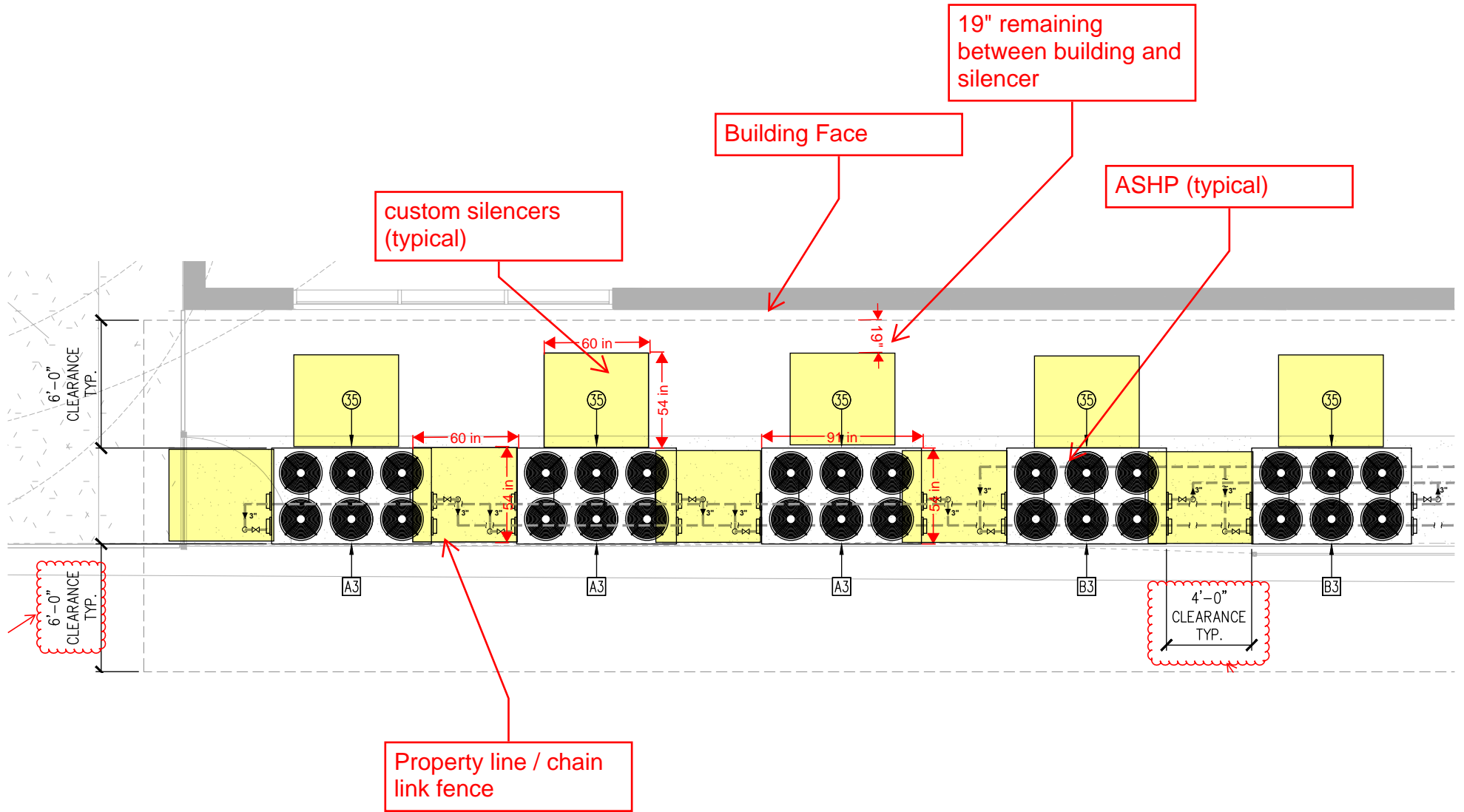
| NO. | DATE       | ISSUE                |
|-----|------------|----------------------|
| 01  | 06/14/2021 | PERMIT SUBMITTAL SET |
| 02  | 06/14/2021 | PERMIT SUBMITTAL SET |
| 03  | 06/14/2021 | FOR CONSTRUCTION SET |

DRAWING TITLE:  
**SWIMMING FACILITY PUMP STATION PLAN**

PROJECT #: B664  
DRAWN BY: RC/BL  
CHECKED BY: ZS

DRAWING NO:  
**W4.10**





Clearances on pages 8 and 9

# AquaCal® Installation Manual



*Firmware Version 1.xxx*



### Important

Read this document before operating / installing this product

For additional product manuals and operation / installation procedures, please visit [www.AquaCal.com](http://www.AquaCal.com)

MODEL / SERIAL NUMBER





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For further assistance, please contact the distributor or installer of this product.

If unavailable, please contact AquaCal® for a partner in your area. To better assist you, please have the heat pump model and serial number available.

- See "Identifying Model Specifications" on page 67.

| Product Information: |  |
|----------------------|--|
| Website              | www.AquaCal.com                            |
| Phone                | (1) 727-823-5642                           |
| Hours                | 8-5 pm, Eastern M-F                        |
| Service Information: |  |
| Website              | www.AquaCal.com/request-heat-pump-service/ |

## SAFETY INSTRUCTIONS

- For personal safety, and to avoid damage to equipment, follow all safety instructions displayed on the equipment and within this manual. Repair and service of heat pump must be performed by an authorized service center.
- Warranties may be voided if the equipment has been improperly installed, maintained or serviced.
- If service is deemed necessary, please contact AquaCal. See "Contacting AquaCal AutoPilot, Inc." above.

### SAFETY SIGNALS

Throughout this document, safety signals have been placed where particular attention is required.



Failure to heed the following will result in injury or death.



Failure to heed the following may result in injury or death.



Failure to heed the following may result in damage to equipment.

When installing and using your heat pump basic safety precautions must always be followed, including the following:



Failure to heed the following will result in injury or death.

- The heat pump utilizes high voltage and rotating equipment. Use caution when servicing.
- Follow all National Electric Codes (NEC) and/or State and Local guidelines.

Failure to heed the following may result in injury or death.

- Installation and repairs must be performed by a qualified technician.
- The heat pump contains refrigerant under pressure. Repairs to the refrigerant circuit must not be attempted by untrained and/or unqualified individuals. Service must be performed only by qualified HVAC technicians. Recover refrigerant before opening the system.
- Improper water chemistry can present a serious health hazard. To avoid possible hazards, maintain pool/spa water per standards as detailed in the product's operation manual.
- Prolonged immersion in water warmer than normal body temperature may cause a condition known as Hyperthermia. The symptoms of Hyperthermia include unawareness of impending hazard, failure to perceive heat, failure to recognize the need to exit the pool or spa, and unconsciousness. The use of alcohol, drugs, or medication can greatly increase the risk of fatal Hyperthermia. People having an adverse medical history, or pregnant women should consult a physician before using a hot tub or spa. Children and the elderly should be supervised by a responsible adult.
- Prolonged immersion in water colder than normal body temperature may cause a condition known as Hypothermia. The symptoms of Hypothermia include shivering (although as hypothermia worsens, shivering stops), clumsiness or lack of coordination, slurred speech or mumbling, confusion and poor decision-making, drowsiness or low energy, lack of concern about personal welfare, progressive loss of consciousness, weak pulse and slow or shallow breathing. Persons having an adverse medical history, or pregnant women, should consult a physician before immersing in a cold body of water. Children and the elderly should be supervised by a responsible adult.
- This appliance is not to be used by persons (including children) with reduced physical, sensory, or mental capabilities, or lack of experience and knowledge, unless they have been given supervision or instruction.
- Children must be supervised and are not to play with the appliance.

## **NOTICE**

Failure to heed the following may result in damage to equipment.

- Maintain proper water chemistry to avoid damage to the pump, filter, pool shell, etc.
- Water flow exceeding the maximum flow rate requires a bypass. Damage due to excessive water flow will void the warranty.

**SAVE THESE INSTRUCTIONS**

**WARNING**

Failure to heed the following may result in injury or death.

- Installation of this equipment by anyone other than a qualified installer can result in a safety hazard.
- The information contained throughout the "Installation" section is intended for use by qualified installation technicians familiar with the swimming Pool/Spa safety standards.

**NOTICE**

Failure to heed the following may result in damage to equipment.

- Failure to protect equipment against corrosive conditions will adversely affect the life of the equipment and will void equipment warranty.

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## 1.1 Positioning Equipment

Resolution No. XXXX  
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### NOTICE

Failure to heed the following may result in damage to equipment.

- Do not install equipment inside of a building.

## Outdoor Use Only

### Do not install equipment inside of a room or building.

- Heat Pumps require unobstructed airflow for proper operation. Heat Pumps should never be installed indoors or in a location where airflow is restricted.
- If an indoor installation is being considered, the installer and dealer are strongly urged to contact the AquaCal Application Department, or a local Professional Engineer prior to proceeding.
- See "*Clearances*" on the facing page.

## Controlling Irrigation and Rainwater Runoff

- Irrigation water may damage heat pump components. Direct irrigation water away from the heat pump.
- The heat pump will withstand normal rainfall. Do not allow a roof slope to direct rainwater onto the heat pump. Have a gutter installed on the roof edge to direct this water away from the heat pump. Or install the heat pump in another location.

## Planning for Condensation

The heat pump can produce a large amount of condensation. The amount of water depends on air temperature and humidity.

- Install the heat pump with enough height to allow for water drainage.
- 1" PVC can be connected to the drainage outlet to redirect water as needed. This connection is under the lower access panel.

## Mounting Pad Requirements

- The heat pump's base must be installed on a flat and level surface that completely supports the entire base.
- Build the heat pump pad out of concrete or other code-approved material.
- Confirm the pad can support the weight of the heat pump. See "*Weights*" on page 68.
- Elevate the pad enough to allow for drainage.
- Make sure the pad is flat and level.
- Have the pad support the entire heat pump base in all directions.
- Do not install the heat pump on soil or grass.
- Do not allow the heat pump base to touch the building's foundation.
- Do not place the heat pump directly on a concrete floor. This can cause noise to be transmitted to an occupied space. If necessary install vibration dampers between the heat pump base and floor.
- Equipment pad must meet all requirements of authorities having code-related jurisdiction.

## Anchoring to Pad

- Follow all applicable local, state, and national requirements regarding wind load anchoring.
- The shipping brackets used to secure the heat pump to the pallet are approved mounting (hurricane) brackets. They should be used to anchor the heat pump to the pad.
- If needed, contact AquaCal® to obtain anchoring kit information. Please have the heat pump model number and serial number when requesting support. See "*Identifying Model Specifications*" on page 67.

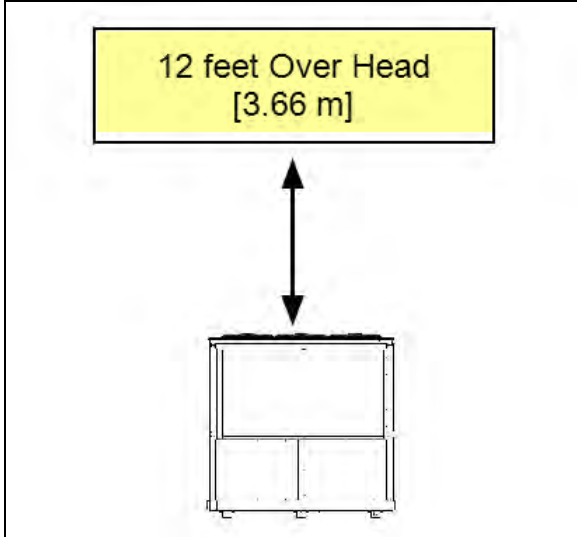
## 1.2 Clearances

Resolution No. XXXX

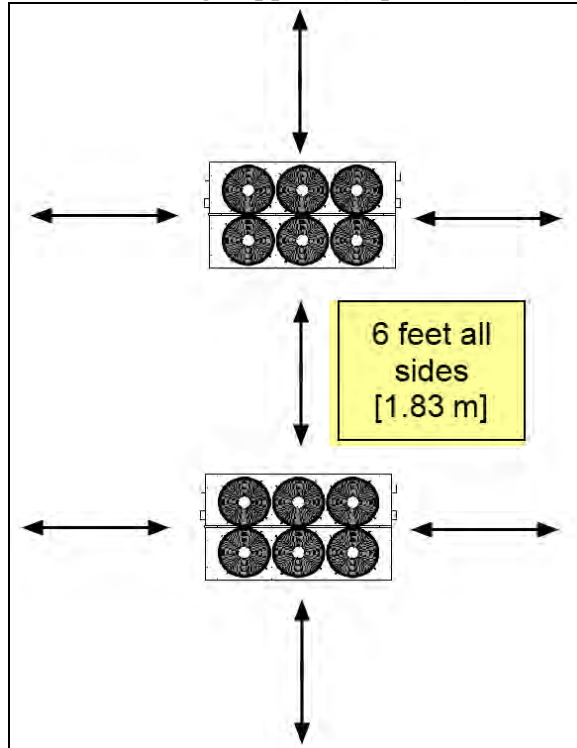
Page 26 of 26

- Proper air circulation is required for the heat pump to operate efficiently. The following diagrams show the minimum clearances required for the proper operation of the heat pump.
- Avoid storing chemical containers near the heat pump. The chemicals can cause equipment damage.
- Avoid placing objects near or on top of the heat pump. This includes shrubbery and lawn furniture. These objects will reduce performance and efficiency and hinder maintenance access.

Great Big Bopper® (Side View)

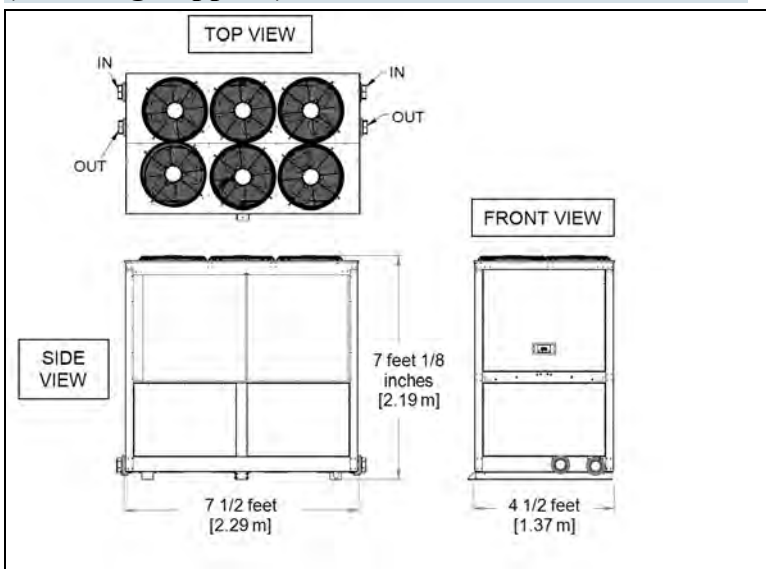


Great Big Bopper® (Top View)

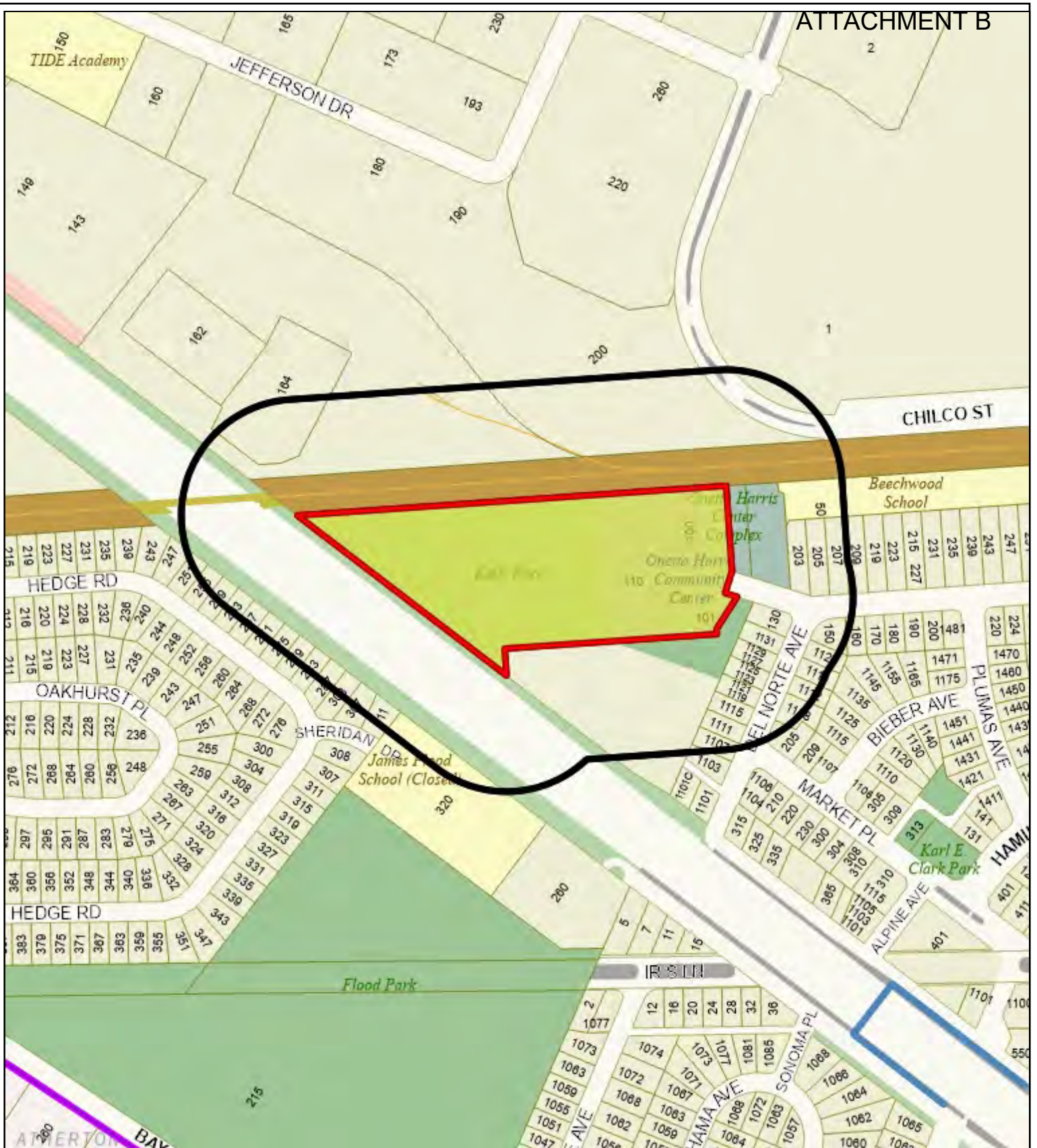


## 1.3 Dimensions

(Great Big Bopper®)







City of Menlo Park  
 Location Map  
 100 TERMINAL AVENUE (MPCC)



Scale: 1:4,000

Drawn By: CRT

Checked By: DMC

Date: 5/23/2023

Sheet: 1



REGULAR MEETING DRAFT EXCERPT MINUTES – 100 TERMINAL AVENUE

**Date:** 04/24/2023  
**Time:** 7:00 p.m.  
**Location:** Zoom.us/join – ID# 862 5880 9056 and  
City Council Chambers  
751 Laurel St., Menlo Park, CA 94025

**A. Call To Order**

Acting Chair Cynthia Harris called the meeting to order at 7:00 p.m.

**B. Roll Call**

Present: Cynthia Harris (Acting Chair), Henry Riggs, Jennifer Schindler, Michele Tate

Absent: Andrew Barnes, Linh Dan Do

Staff: Theresa Avedian, Senior Civil Engineer; Corinna Sandmeier, Principal Planner; Chris Turner, Associate Planner

**F. Public Hearing**

Acting Chair Harris said the item F1 agenda listing was revised; she read the revised listing into the record.

- F1. Use Permit/City of Menlo Park/100 Terminal Avenue:  
Consider ~~and~~ **continue** and adopt a resolution to deny a use permit to exceed the maximum nighttime noise limit of 50 dBA, measured at residential property lines, to accommodate electric pool heating equipment for the *approved* Menlo Park Community Campus development currently under construction ~~located~~ at 100 Terminal Avenue *in the PF Public Facilities Zoning District. Continued from meeting of 3/27/23.* (Staff Report #23-023-PC)

Associate Planner Chris Turner said an additional piece of correspondence was sent late that afternoon directly to the Planning Commission generally expressing concern with exceeding the zoning requirement and current excessive noise in the area from construction.

Acting Chair Harris opened the public hearing.

Public Comment:

- Arlene Navarro spoke but her comments were not audible on the recording.
- Ruby (no last name given) suggested pool covers to keep the pool warm rather than the use of heat pumps and exceeding the noise ordinance.

- Pam Jones, District 1, requested that an exemption be made to allow for fuel energy heating of the pools as the electric technology was not advanced enough to run quietly.
- Luis Reyes, said the noise issue should be resolved now when construction was occurring to avoid larger future problems and a noise compliant issue system should be used.

Acting Chair Harris closed the public hearing.

Commissioner Tate said she thought when this item was brought back to the commission that additional information on potential heating units would be reported.

Senior Civil Engineer Theresa Avedian said at the last meeting on this item staff was requested to address a public comment inquiring about the use of some different heat pumps. She said they had previously studied using a smaller heat pump. She said 28 of those smaller heat pumps would be needed to achieve the heating needed. She said it was not feasible to put those on the roof of the pool building as the structure was not meant to support such weight. She said to space those elsewhere on the site on the south part of the building meant they would need to extend along the property line, which would be closer to residences and would not meet the noise limitation either.

Commissioner Tate said that information was in the staff report, but she recalled from the previous meeting on the item that several options were mentioned, and she believed it was Commissioner Riggs who had asked if any additional research had been done and were told no. She said unfortunately it seemed the commission had not made it understood that it wanted to hear about additional research at tonight's meeting.

Planner Sandmeier said the use permit request was specific to the exceedance of the noise limits and staff was directed to prepare findings of denial so beyond that any changes of design that would not require exceedance of the noise limitations was not really part of the use permit request nor within the commission's purview.

Commissioner Riggs said his concern and he thought that might reflect the neighborhood's concern was that city volunteers were first asked to review the noise situation from the proposed heat pumps in October 2022. He said the question asked was if equipment could be designed that would provide less noise. He said it was concerning that three meetings later it appeared that after a brief effort prior to January 12<sup>th</sup> that no further effort had been made by the design team to solve and respond to the concerns of the public. He said he understood the planning commission's purview was limited to approval or denial of the request for additional noise at the project site. He said with three meetings in which the neighbors expressed specific concerns about this matter that he thought it appropriate for the design team to respond to the planning commission's urgings.

Acting Chair Harris said some constituents had made suggestions in writing to bring the pool heating noise levels into compliance. She said she understood the commission's purview was to approve or deny the use permit. She asked if any of those suggestions had been considered and noted the letter from Angela Evans.

Planner Turner said that Ms. Avedian had responded to those suggestions in writing to Ms. Evans.

Ms. Avedian said that Ms. Evans' suggestions were addressed in the written staff report. She said although they were not currently looking at alternative equipment to heat the pool that they were



looking at other options to reduce the noise level. She said they were working on their modeling to make it more accurate noting their previous modeling was very conservative and did not account for the pool cover or solar thermal heating. She said they were finding that solar thermal heating should be able to provide much of the needed heat most of the time. She said they were doing an hourly simulation to see if it was possible to overheat the pools between 8 and 10 p.m. and avoid nighttime running of the heat pumps. She said they were continuing to solve for the issue.

Acting Chair Harris asked what and when the public might expect to hear about such solutions.

Ms. Avedian said they expected the calculations she mentioned to be done soon. She said she was unaware of any formal way they planned to present those results to the public. She said if there was interest that they could look into that.

Acting Chair Harris said there was a great deal of interest from the community and hoped they would be updated frequently as developments were managed.

Commissioner Riggs moved to approve a resolution to deny the use permit and direct staff and the project consultant to continue to evaluate options that would allow the project to operate at a level under 50 decibels at night. Commissioner Tate seconded the motion.

Mariam Sleiman and said legally if the planning commission wanted the city to explore other options and to keep the research that was something the city manager would need to determine as to whether staff time should be spent on that. She said the commission's scope now was to take action on the item to deny the use permit.

Acting Chair Harris asked if the motion could request that the city manager direct staff and the consultant to continue evaluating options that would allow the project to operate under 50 decibels at night.

Counsel said the decision was approval to deny and no conditions.

Acting Chair Harris said part of the reason the item was continued to tonight was that the language the planning commission expected to see the last time it came for denial was not there, which included looking at ways for the project to operate at a level under 50 decibels at night.

Counsel said that language was in the resolution to reduce the noise to below 50 decibels and the municipal code was clear that 50 decibels was the requirement. She said the decision before the commission now was about the denial and it was limited to that action.

Acting Chair Harris said some of them were frustrated with that and were interested in having city staff and the project consultant continue to evaluate options that would allow the project to operate at a level under 50 decibels at night. She said she guessed that was now in the record and that was the best the planning commission could do.

Counsel said staff could pass the information along to the city manager and ask to determine if staff time should be spent on that.

Commissioner Tate asked if the city manager was unaware of this request noting that the item had been continued to allow for inclusion of language to continue to evaluate options that would allow

the project to operate at a level under 50 decibels at night. She said when they discussed that language the city attorney present said that was within the commission's purview to put that language in as something it would like to see and so that the city council would start looking into it. She said she was confused why this had not come to the attention of the city manager that this was an issue as now the commission was stalled and the people it represented in the community were not happy and were not going to get what was best for them.

Planner Sandmeier said Mr. Reinhardt just sent her a message that the city manager was aware of the situation. She said the resolution was updated to include the planning commission's desire that the project operate below 50 decibels.

Commissioner Riggs noted instances in which the commission required second story homes to not have windows on the second floor that caused privacy impacts although that was not illegal by code.

Planner Sandmeier said an approval of a use permit might be conditioned but a denial of a use permit could not be conditioned.

Acting Chair Harris said she would be comfortable approving the denial as she thought the record made it clear that the city should continue to seek options for the project to operate under 50 decibels at night. She said for the record also that the community should be kept apprised by the city of what the ensuing developments were from that research.

Commissioner Riggs said he would change his motion to simply adopt a resolution to deny the use permit. Commissioner Tate said she would not second the motion. Commissioner Schindler seconded the motion. She said the city and the city as an applicant in this case was going to be a leader in this case in terms of exceeding the expectations the community had for it and doing better than just what the regulation allowed by having less than 50 decibel noise levels at night.

**ACTION:** Motion and second (Riggs/Schindler) to adopt a resolution to deny a use permit to exceed the maximum nighttime noise limit of 50 dBA, measured at residential property lines, to accommodate electric pool heating equipment for the approved Menlo Park Community Campus development currently under construction at 100 Terminal Avenue in the PF Public Facilities Zoning District; passes 3-1 with Commissioner Tate opposed and Commissioners Barnes and Do absent.

-end-

Potential location of wooden fence



## Estimated Noise Levels in Decibels (dBA)

| Barrier Height | Estimated Noise Level at Nearest First-Story Listener | Estimated Noise Level at the Second Story of 1101 Del Norte <sup>1</sup> |
|----------------|---|--|
| 6 feet         | 55 dBA  | 50 dBA   |
| 7 feet         | 49 dBA  |  |
| 8 feet         | 48 dBA  | 43 dBA   |
| 10 feet        | 43 dBA  | 40 dBA   |
| 12 feet        | 40 dBA  | 39 dBA   |
| 14 feet        | 38 dBA  |  |
| 16 feet        | 35 dBA  | 35 dBA   |
| 18 feet        |   |  |
| 20 feet        |   |  |

<sup>1</sup> 1101 Del Norte is the only home along the property line with a second story.

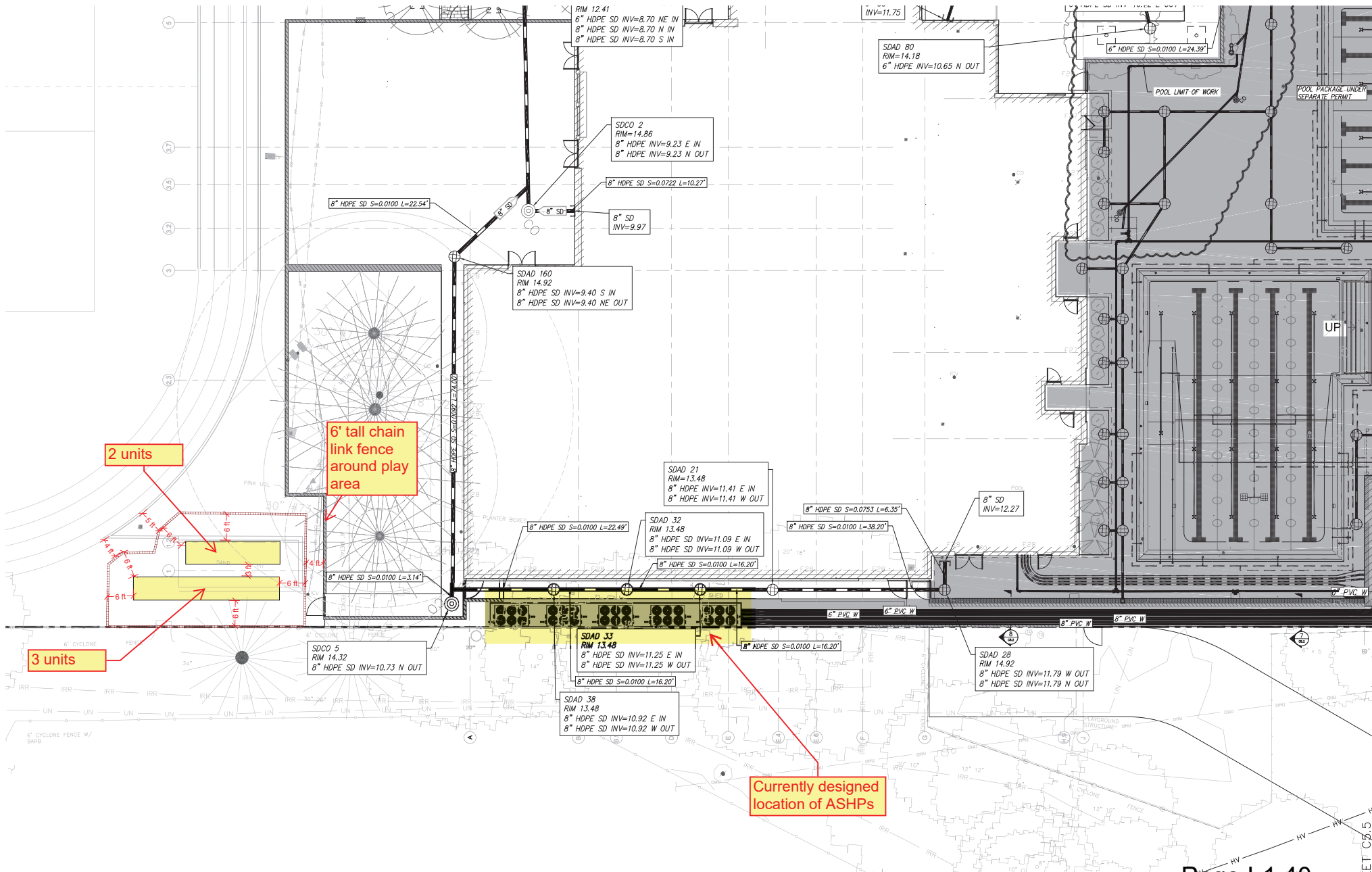


## Images of a typical mass loaded vinyl wooden fence

(This example is merely to illustrate the inner vinyl layering of this fence type, which is enclosed on both sides with wooden fence planks when finished. The concrete block base shown in this illustration is a retaining wall, and would not be needed for the proposed sound wall.)









**STAFF REPORT**

**City Council**

**Meeting Date:**

**5/23/2023**

**Staff Report Number:**

**23-131-CC**

**Public Hearing:**

**Consider a City Council call-up of the Planning Commission's decision to approve a use permit for live entertainment, on-site consumption of alcohol, and outdoor seating until 2 a.m. for the proposed restaurant use and architectural control for exterior modifications to the existing commercial building, including modifications to the storefront along the El Camino Real frontage and a new deck and trellis area in the rear of the building to accommodate outdoor dining for the proposed restaurant located at 961 El Camino Real**

**Recommendation**

Staff recommends that the City Council consider the City Council call-up request of the Planning Commission's approval of a use permit for live entertainment, on-site consumption of alcohol, and outdoor seating until 2 a.m. for the proposed restaurant use and architectural control for exterior modifications to the existing commercial building, including modifications to the storefront along the El Camino Real frontage and a new deck and trellis area in the rear of the building to accommodate outdoor dining for the proposed restaurant located at 961 El Camino Real.

Per §16.86.040 of the Zoning Ordinance, the City Council may affirm, reverse, or modify the decision of the Planning Commission. To reverse or modify the Planning Commission's decision shall require the affirmative vote of three-fifths of the City Council (or three City Councilmembers.) If the City Council does not take any action on the call-up, the Planning Commission's action shall be deemed affirmed. The City Council's action would be considered final and the decision may not be appealed.

Staff recommends that the City Council uphold the Planning Commission's approval with modifications to end the indoor live entertainment at 11 p.m., as previously recommended by staff. A draft resolution, including Staff's previously recommended conditions, is included as Attachment A. Depending on the action of the City Council, the resolution could be revised to reflect any modifications.

**Policy Issues**

Each use permit and architectural control request is considered individually. The City Council should consider whether the required use permit and architectural control findings can be made for the proposal, and whether the proposed project furthers the goals of the City and is consistent with the El Camino Real/Downtown Specific Plan. One of the City Council's priorities is enhancing the Downtown's vibrancy and a goal of the Specific Plan is to preserve and enhance community life, character and vitality through public space improvements. The proposed project would retain the existing character of the building and increase downtown activity, foot traffic, and enhance community life by creating a public gathering space.

## **Background**

### Project location

The subject property is located on El Camino Real, between Menlo Avenue and Live Oak Avenue, at 961 El Camino Real. The project site is within the El Camino Real/Downtown Specific Plan's El Camino Real South-West (ECR SW) district and has a land use designation of El Camino Real Mixed-Use Residential (ECR-MU). The surrounding lots are all part of the SP-ECR/D zoning district. Surrounding properties near the subject property include a mixture of commercial uses, such as retail, restaurant, and a live entertainment theater and residential uses on Live Oak Avenue. The project site is in close proximity to the recently completed mixed-use office and residential development at 650-660 Live Oak Avenue. A location map is included as Attachment B.

### Planning Commission review and action

On April 10, the Planning Commission reviewed the use permit requests for live entertainment, on-site consumption of alcohol, and outdoor seating for the proposed restaurant use, and architectural control for exterior modifications to the existing commercial building. Staff recommended that the indoor live entertainment end by 11 p.m. to coincide with the end time for performances at the Guild Theatre next door and to reduce any potential noise impacts or other disturbances to the surrounding neighborhood. At the meeting, the Planning Commission discussed the hours of operation and how the new restaurant could complement the Guild Theater next door, where the patrons of the Guild would be able to take advantage of the restaurant before and after an event. The Planning Commission stated that the extended hours for the indoor live entertainment and sale of alcohol associated with a restaurant use generally seemed appropriate along El Camino Real. The current property owner spoke in favor of the proposed project.

The Planning Commission approved the use permit and architectural control for the proposed live entertainment, on-site consumption of alcohol and outdoor seating associated with a restaurant until 2 a.m. with the following condition of approval:

- Twelve months after occupancy, staff shall review complaints within the community. If, depending on trend lines in the community, staff believes this establishment may be responsible for disturbances between 11 p.m. to 2 a.m., the live entertainment use between the hours of 11 p.m. and 2 a.m. shall be scheduled for review by the Planning Commission. The Commission's review would be limited to the live entertainment use between the hours of 11 p.m. and 2 a.m.

More details about the proposed project are included in the Planning Commission staff report, Planning Commission resolution, and the draft meeting minutes included as Attachments C, D and E, respectively.

### *City Council call-up of the Planning Commission action*

Menlo Park Municipal Code (MPMC) §16.86.025 states the City Council or any member of the City Council may call up any final decision of the Planning Commission by filing a notice of call-up with the city clerk within 15 days of the Planning Commission action. On April 23, City Councilmember Nash requested to call-up the Planning Commission's action on the project at 961 El Camino Real. The call-up letter is included as Attachment F.

### Planning Commission and City Council purview

In the ECR-SW district, a restaurant is a permitted use, and the hours of operation for the use is permitted until 2 a.m. and not subject to the permit requirements in MPMC Chapter 8.12. This means the proposed restaurant use is permitted by right and the applicant may utilize the proposed location for a restaurant without discretionary review or approval by City staff, the Planning Commission or the City Council. Table

E1 on pages E6 and E7 of the Specific Plan identifies the allowable uses by sub-district.

In contrast, the proposed three ancillary uses associated with the restaurant ((1) the sale of alcohol in conjunction with a restaurant, (2) live entertainment and (3) outdoor seating) are administratively permitted uses, and are not permitted by right. Administrative permits are reviewed and approved by the community development director and appealable to the Planning Commission, and ultimately appealable to the City Council. Administrative actions, at the request of the applicant, may be reviewed through a use permit by the Planning Commission, typically when bundled with other applications requiring Planning Commission review. In this case, the applicant requested to have the Planning Commission review the three administratively permitted uses concurrently with the architectural control application.

As a City Council call-up, the City Council may uphold the Planning Commission's action, modify the Planning Commission's action, or reverse the Planning Commission's action and deny the proposed project in whole or in part. As part of its review, the City Council has the ability to consider additional performance standards, conditions, or limitations on the requests for live entertainment, alcohol sales associated with the restaurant, and the outdoor seating. These requirements could include limiting the hours for the sale of alcohol, use of the outdoor seating area, and live entertainment. These potential limitations could be independent of the hours of operation of the restaurant. Additional options for City Council consideration include, but are not limited to, limiting the number of live entertainment events over a specific duration (e.g., three events per week), prohibiting speakers and/or televisions on the outdoor patio, setting a maximum occupancy for the outdoor seating, or modifying the permitted Alcohol Beverage Control (ABC) license type.

## **Analysis**

### Proposed project

The project is requesting use permits for live entertainment, on-site consumption of alcohol, and outdoor seating until 2 a.m. for the proposed restaurant use, and architectural control for exterior modifications to the existing commercial building, including modifications to the storefront along the El Camino Real frontage and modifications to landscaping, including a new deck and trellis area in the rear of the building to accommodate outdoor dining, as detailed below.

The proposed project includes requests for live entertainment, outdoor seating, and alcohol sales associated with a restaurant. These uses are administratively permitted within the El Camino Real Specific Plan. When these uses are requested alongside another discretionary action (e.g., architectural control), applicants may request to have the Planning Commission review these administratively permitted uses through a use permit. This process can be more streamlined for applicants and potentially allow prospective businesses to begin operations sooner. The applicant for the proposed project requested the live entertainment, outdoor seating, and the sale of alcohol be reviewed through the use permit process.

### *Live entertainment*

The applicant is proposing to provide live entertainment inside the proposed restaurant, which would include unamplified acoustical music and other performances, to coincide with the hours of operation (11 a.m. and 2 a.m.). Pursuant to Municipal code section 8.12.020, the proposed hours of operation (11 a.m. to 2 a.m.) are permitted for a restaurant. As explained above, live entertainment uses are not permitted by right and only permitted subject to an administrative permit. The determination on whether to allow live entertainment is discretionary. The Planning Commission reviewed the proposal and determined that indoor unamplified live entertainment until 2 a.m. would be appropriate at this location and modified the conditions of approval to permit the hours of live entertainment to coincide with the permitted hours of the proposed restaurant.

### *Outdoor seating*

The applicant is requesting an outdoor seating area to provide additional seating for the restaurant. The additional seating would be located in the rear yard behind the building and accessed through a walkway to the right side of the building. The outdoor seating is proposed under a new trellis, which is anticipated to accommodate approximately 32 seats. The project plans and project description letter identify eight tables with four seats within the outdoor seating area and the Planning Commission's resolution of approval referenced eight tables. Through the City Council call-up staff has revised the resolution to clarify that the proposal would include capacity for up to approximately 32 seats outdoors. Since table configurations can fluctuate, staff believes the recommended draft resolution should reference the approximate capacity referencing seats instead of tables. The Planning Commission action would not limit the hours for outdoor seating; however compliance with the City's noise ordinance would be required. The City's noise ordinance limits noise at the nearest residential property line to 60 decibels during the daytime hours and 50 decibels during the nighttime hours. Nighttime hours begin at 10 p.m. This lower noise threshold could potentially limit the hours for outdoor seating or result in modifications necessary to reduce noise (e.g., turning off or lowering the volume of any potential outdoor speakers). As a point of reference, the nearest residential property line at 650 Live Oak Avenue is approximately 55 feet away from the proposed outdoor seating area.

### *Alcohol sales and determination of public convenience or necessity*

The applicant is requesting a use permit for a Type 47 ABC license to sell beer, wine and spirits for on-site consumption at the proposed restaurant. A Type 47 ABC license allows for sale of beer, wine, and distilled spirits associated with a bona fide eating place (restaurant). To qualify for this license type a business must include suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on-site. This license type also allows minors to be on the premises. The ABC regulates bars and nightclubs through a Type 48 license, which does not require food service and prohibits minors from being on-site. Bars in the El Camino Real Downtown Specific Plan require a use permit, where restaurants are permitted uses and restaurants with alcohol service are administratively permitted. As explained above, this means that restaurants with alcohol service must obtain discretionary review and approval in order to serve alcohol.

The ABC looks at the number of businesses with permits for the sale of alcohol for on-site consumption in a particular census track to determine if a census track is considered over concentrated. If a census track is considered over concentrated, a project requires a finding of public convenience or necessity from the Planning Commission to obtain an ABC license for the sale of alcohol for on-site consumption. The Planning Commission reviewed the proposal and made the necessary findings for public convenience or necessity.

### *Architectural control*

The proposed project would include exterior and interior modifications to an existing commercial building to reconfigure gross floor area to enclose an existing recessed area, and create a new entry to the side of the building, among other proposed storefront modifications. Additionally, the proposed project includes modifications to the landscaping, which would include new decking, a new trellis to accommodate outdoor seating, and planting of new trees to the rear (west) of the property. The project would exceed the ECR SW open space requirement of 30% of the lot, with approximately 42% (1,800 square feet) proposed. Landscaped areas along the back of the restaurant, used for outdoor seating and accessed by a walkway, would provide approximately 1,800 square feet of open space, which counts toward the total open space requirement for the parcel.



### Parking and circulation

The subject property does not have any parking spaces on-site. The Specific Plan requires six parking spaces per 1,000 square feet for restaurant use, resulting in a requirement of 18 parking spaces for the proposal. However, Assembly Bill (AB) 2097, passed in September 2022, added Section 65863.2 to the Government Code prohibiting public agencies from imposing any minimum parking requirement on any residential, commercial, or other development project located within one-half of a mile of public transit. In this case, the City has determined AB 2097 applies because the development is within one-half of a mile of the Menlo Park Caltrain station. Therefore, the project is not subject to minimum parking requirements. Patrons of the restaurant that arrive by car could utilize street parking or the City's public parking plazas in the downtown area.

Pedestrian access to the restaurant would be through a building entry facing El Camino Real, and a side access through a passageway, which would have a ramp for American with Disabilities Act (ADA) accessibility. Loading and unloading would occur in the existing yellow curb loading zone on El Camino Real in front of the project site. The yellow curb allows for both pedestrian and commercial loading and unloading. The applicant proposes to utilize the loading zone for deliveries as well as for loading and unloading of any equipment for the live entertainment. City staff informed the applicant during the review process that future bicycle and pedestrian improvements along El Camino Real could result in the removal or modification of this loading zone.

### Correspondence

As of noon May 19, staff has received three additional items of correspondence from neighbors identifying concerns regarding parking, hours of operation of the outdoor seating, noise from the live entertainment extending beyond the hours of operation for the Guild, and safety. Staff also received an email relaying concerns regarding bicycle and pedestrian circulation and the potential for the existing loading zone use to impact future bicycle lanes on El Camino. In response to a commenter's questions, staff clarified for that commenter that the proposed live entertainment would be indoors only and unamplified, and that per Assembly Bill 2097, the City's parking requirements are not applicable to the proposed project. Lastly, staff received two letters of support for the project that were sent to the Planning Commission without a copy to the City Council. These six letters are included as Attachment G.

Additionally, as of noon May 19, the City Council email log has received approximately 65 letters in support of the proposed project and three letters in opposition to the proposed project, generally raising concerns about potential noise. Those letters are available on the City Council email log and can be accessed through the link in Attachment H. The applicant team has also shared with staff a letter detailing the Planning Commission meeting, discussion and approval, and a request that the City Council uphold the Planning Commission's approval (Attachment I).

### Conclusion

The proposal would meet the Specific Plan's Base level standards, which were established to achieve inherent public benefits, such as the redevelopment of underutilized properties, the creation of more vitality and activity, and the promotion of healthy living and sustainability. The proposed design elements would provide an update to the building's existing design while maintaining the earlier appearance of the building, and the addition of a restaurant with live entertainment and outdoor seating would add vibrancy to the downtown area.

Staff believes the proposed sale for on-site consumption of beer, wine, and spirits at the proposed restaurant would provide a convenience and service to the residents, visitors and employees of the area. The live entertainment would be indoors and unamplified. The outdoor seating would be required to comply

with the City's noise ordinance limitations. Staff recommends that the City Council consider and uphold the Planning Commission's approval with a modification to end the indoor live entertainment at 11 p.m. per the staff's previous recommendation to the Planning Commission. Staff's previous recommendation was drafted with input from the Police Department through the development review process. Staff also recommends that the City Council remove the Planning Commission's 12-month review condition if the live entertainment is required to end at 11 p.m.

### **Impact on City Resources**

The project sponsor is required to pay planning, building and public works permit fees, based on the City's Master Fee Schedule, to fully cover the cost of staff time spent on the review of the project through the appeal period for the Planning Commission's action. As a City Council call-up, the time spent evaluating the proposed project after the Planning Commission appeal period is not the responsibility of the applicant and will be accommodated by the City's general fund.

### **Environmental Review**

The proposed project is categorically exempt under Class 1 (Section 15301, "Existing Facilities") of the current California Environmental Quality Act (CEQA) Guidelines.

### **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 500-foot radius of the subject property.

### **Attachments**

A. Draft City Council resolution of approval adopting findings for project use permit and architectural control including project conditions of approval as recommend by staff.

#### Exhibits to Attachment A

- A. Project plans
  - B. Project description letter
  - C. Conditions of approval
  - D. Mitigation monitoring and reporting program
- B. Location Map
- C. Hyperlink – April 10 Planning Commission staff report:  
[menlopark.gov/files/sharedassets/public/agendas-and-minutes/planning-commission/2023-meetings/agendas/20230410-planning-commission-agenda-packet.pdf#page=16](https://menlopark.gov/files/sharedassets/public/agendas-and-minutes/planning-commission/2023-meetings/agendas/20230410-planning-commission-agenda-packet.pdf#page=16)
- D. Planning Commission resolution
- E. Draft April 10 Planning Commission meeting minutes – excerpt
- F. Notice of call up
- G. Correspondence
- H. Hyperlink – City Council email log: <https://www.hiago.app/en/organizations/menlo-park>
- I. Applicant letter on City Council call-up

Report prepared by:  
Fahteen Khan, Associate Planner

Report reviewed by:  
Kyle Perata, Planning Manager  
Deanna Chow, Assistant Community Development Director



**RESOLUTION NO. XXXX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
APPROVING A USE PERMIT FOR LIVE ENTERTAINMENT, ONSITE  
CONSUMPTION OF ALCOHOL AND OUTDOOR SEATING FOR A PROPOSED  
RESTAURANT AND ARCHITECTURAL CONTROL REVIEW FOR EXTERIOR  
AND INTERIOR MODIFICATIONS TO AN EXISTING COMMERCIAL BUILDING  
AND LANDSCAPING AT 961 EL CAMINO REAL**

WHEREAS, the City of Menlo Park (“City”) received an application requesting architectural control review for exterior and interior modifications to an existing commercial building. The proposal also includes use permit requests for live entertainment, onsite consumption of alcohol and outdoor seating in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district (collectively, the “Project”) from Jaime D’Alessandro – Clockworks DHJ, LLC (“Applicant”), on behalf of the property owner Alexander Delly – 961 El Camino Real, LLC (“Owner”), located at 961 El Camino Real (APN 071-288-210) (“Property”). The Architectural Control and Use Permit are depicted in and subject to the development plans and project description letter which are attached hereto as Exhibits A and B incorporated herein by this reference; and

WHEREAS, the Property is located in the El Camino Real/Downtown Specific Plan (SP-ECR/D) zoning district, and the El Camino Real South-West (SW) sub-district, which supports a variety of uses including restaurants, retail, residential, and business and professional offices; and

WHEREAS, the findings and conditions for the architectural control and use permit would ensure that all City requirements are applied consistently and correctly as part of the project’s implementation; and

WHEREAS, the proposed Project was reviewed by the Engineering Division and found to be in compliance with City standards; and

WHEREAS, the Applicant submitted an arborist report prepared by Urban Tree Management Inc., which was reviewed by the City Arborist and found to be in compliance with the Heritage Tree Ordinance and proposes mitigation measures to adequately protect heritage trees in the vicinity of the project; and

WHEREAS, the Project, requires discretionary actions by the City as summarized above, and therefore the California Environmental Quality Act (“CEQA,” Public Resources Code Section §21000 et seq.) and CEQA Guidelines (Cal. Code of Regulations, Title 14, §15000 et seq.) require analysis and a determination regarding the Project’s environmental impacts; and

WHEREAS, the City is the lead agency, as defined by CEQA and the CEQA Guidelines, and is therefore responsible for the preparation, consideration, certification, and approval of environmental documents for the Project; and

WHEREAS, the Project is categorically exempt under Class 1 (Section 15301, “Existing Facilities”) of the current California Environmental Quality Act (CEQA) Guidelines; and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, at a duly and properly noticed public hearing held on April 10, 2023, the Planning Commission fully reviewed, considered, and evaluated the whole of the record including all public and written comments, pertinent information, documents and plans, prior to taking action regarding the architectural control permit, and use permit.

WHEREAS, the Planning Commission voted to conditionally approve the use permit and architectural control with modifications to permit the live entertainment to extend until 2 a.m. to correspond with the permitted hours of operation for the restaurant; and

WHEREAS, the Planning Commission's decision was called up to the City Council pursuant to Section 16.86.025 of the Menlo Park Municipal Code; and

WHEREAS, at a duly and properly noticed public hearing held on May 23, 2023, the City Council fully reviewed, considered, and evaluated the whole of the record including all public and written comments, pertinent information, documents and plans, prior to taking action regarding the Project.

NOW, THEREFORE, THE MENLO PARK CITY COUNCIL HEREBY RESOLVES AS FOLLOWS:

Section 1. Recitals. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, public testimony, and other materials and evidence submitted or provided, and the City Council finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

Section 2. Conditional Use Permit Findings. The City Council of the City of Menlo Park does hereby make the following Findings:

The approval of the use permit to allow live entertainment, onsite consumption of alcohol and outdoor dining is granted based on the following findings which are made pursuant to Menlo Park Municipal Code Section 16.82.030:

1. That the establishment, maintenance, or operation of the use applied for will, under the circumstance of the particular case, not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing in the neighborhood of such proposed use, or injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city because:
  - a. Consideration and due regard were given to the nature and condition of all adjacent uses and structures, and to general plans for the area in question and surrounding areas, and impact of the application hereon; in that, the proposed use permit is consistent with the El Camino Real/Downtown Specific Plan (SP-ECR/D) zoning district, and the El Camino Real South-West (SW) sub-district and the General Plan because live entertainment, onsite consumption of alcohol and outdoor seating with granting of a use permit is permitted.
  - b. The proposed Project is designed to meet all the applicable codes and ordinances of the City of Menlo Park Municipal Code, and the City Council concludes that the Project would not be detrimental to the health, safety, and welfare of the surrounding community as the sale of alcohol would require permitting from the State ABC to ensure compliance with all applicable ABC requirements and has been reviewed by the City's Police Department. The live entertainment would be limited to the hours of 11 a.m. to 11 p.m. pursuant to conditions of approval (Exhibit C), and outdoor seating would accommodate approximately 32 seats. The proposal is consistent with the surrounding area, including

the adjacent Guild theater and nearby restaurants that sell alcohol for on-site consumption. The limited size of the outdoor seating would reduce the likelihood of noise or other disturbances to nearby residences. Additionally, the project would be subject to the City's noise ordinance.

- c. The proposed on-site sale of alcohol would serve a public convenience, because the proposed use would allow new and existing residents (including those of the newly constructed developments at 500 El Camino Real and 1300 E Camino Real), visitors and employees of the immediate vicinity a convenient location to dine and purchase alcohol for on-site consumption.

Section 3. Architectural Control Findings. The City Council of the City of Menlo Park does hereby make the following Findings:

The approval of the architectural control for the modifications to the exterior of an existing building and modifications to the landscaping is granted based on the following findings which are made pursuant to Menlo Park Municipal Code Section 16.68.020:

1. That the general appearance of the structure is in keeping with the character of the neighborhood; in that, the project is designed in an eclectic architectural style consistent with the diverse aesthetic of the surrounding neighborhood. There would be no increase in Gross Floor Area (GFA) as part of the project.
2. That the development will not be detrimental to the harmonious and orderly growth of the city; in that the project which is a remodel project fits within the eclectic architectural styles seen in the area. The proposed project is designed in a manner that is consistent with all applicable requirements of the City of Menlo Park Municipal Code and the Specific Plan, and the Project land uses would represent a balanced project.
3. That the development will not impair the desirability of investment or occupation in the neighborhood; in that, the Project consists of exterior and interior modifications consistent with the Municipal Code. The proposed materials and colors used for the front façade will be compatible with the appearance of the existing neighboring buildings. Therefore, the Project would not impair the desirability of investment or occupation in the neighborhood.
4. The development is subject to Assembly Bill 2097 (AB 2097), as such, it is not required to provide parking. AB 2097 prohibits the imposition of parking requirements on any residential, commercial or other development project located within half a mile of public transit. The development is located within half a mile from the Menlo Park Caltrain station. In this case, the City has determined AB 2097 applies because the development is within a half mile of the Menlo Park Caltrain station, and the development results in a change of use and substantial modifications. Therefore, no minimum parking requirements may be imposed.
5. That the project is consistent with applicable specific plan regulations and guidelines, in that, pursuant to Menlo Park Municipal Code Section 16.80.120, existing buildings approved in the El Camino Real/Downtown specific plan area prior to the adoption of the El Camino Real/Downtown specific plan, on June 12, 2012, shall be exempt from the development standards of El Camino Real/Downtown specific plan, and may undergo interior and/or exterior improvements to the existing building if there is no increase in the gross floor area. The proposal complies with applicable standards summarized in the Specific Plan Standards and Guidelines Worksheet incorporated herein as Exhibit D. The proposal includes removing GFA along the left side of the building and enclosing a recessed area along the front of the building, which is permitted as this would reconfigure but not increase the GFA of the existing building.

Section 4. Architectural Control Permit, and Conditional Use Permit. The City Council hereby approves the Architectural Control Permit and Use Permit PLN2022-00041, which Architectural Control and Use Permit are depicted in and subject to the development plans and project description letter, which are attached hereto and incorporated herein by this reference as Exhibit A and Exhibit B, respectively. The Architectural Control and Use Permit are conditioned in conformance with the conditions attached hereto and incorporated herein by this reference as Exhibit C. Further the Use Permit and Architectural Control Permit would comply with the applicable Specific Plan Mitigation Monitoring and Reporting Program measures incorporated herein by this reference as Exhibit E.

Section 5. ENVIRONMENTAL REVIEW. The City Council makes the following findings, based on its independent judgment after considering the Project, and having reviewed and taken into consideration all written and oral information submitted in this matter:

A. The Project is categorically exempt under Class 1 (Section 15301, "Existing Facilities") of the current California Environmental Quality Act (CEQA) Guidelines.

Section 6. SEVERABILITY

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

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

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Judi A. Herren, City Clerk

Exhibits:

- A. Project plans
- B. Project description letter
- C. Conditions of approval
- D. Specific plan standards and guidelines worksheet
- E. Applicable measures from the Specific Plan Mitigation Monitoring and Reporting Program

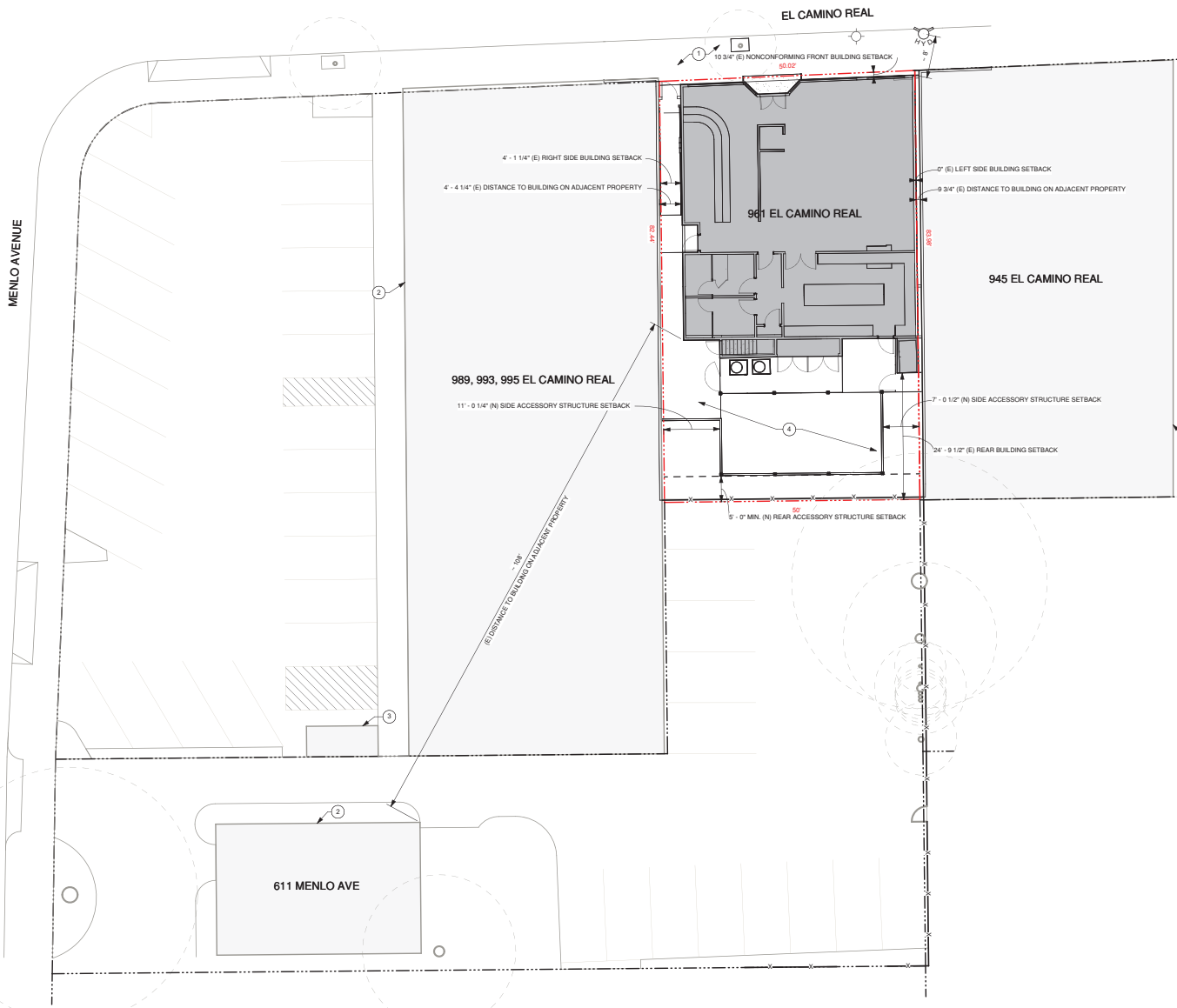


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PREPARED BY: CAW ARCHITECTS, INC.

**GENERAL NOTES**

- ALL DIMENSIONS ARE APPROXIMATED AND ARE MEASURED TO EXTERIOR FACE OF WALLS OR EXTERIOR FACE OF COLUMNS.
- PER MENLO PARK MUNICIPAL CODE § 13.24.030, PROVIDE A TEMPORARY PROTECTIVE FENCE FOR HERITAGE TREES (AS DEFINED IN § 13.24.005) DURING ANY WORK PERFORMED WITHIN AN AREA 10 TIMES THE DIAMETER OF THE TREE. FOLLOW TREE PROTECTION MEASURES PROVIDED BY MENLO PARK PLANNING.
- PER MENLO PARK EL CAMINO REAL AND DOWNTOWN SPECIFIC PLAN, SUBJECT PROPERTY IS LOCATED WITHIN ZONE ECR SW. SINCE THE PROPERTY IS LOCATED NORTH OF LIVE OAK AVENUE AND HAS NO FLOORS ABOVE GROUND FLOOR, THE FOLLOWING SETBACKS APPLY TO BUILDINGS (PER § 64, PAGE 174 OF SPECIFIC PLAN):
  - FRONT/SIDE FACING R.O.W.: 5' MIN. - 8' MAX. NO MIN. - 25' MAX.
  - INTERIOR SIDE: 10' MIN.
  - REAR: 10' MIN.
 ALLOWABLE PROJECTIONS INTO SETBACK MAY NOT EXCEED THE FOLLOWING DIMENSIONS AND MUST MAINTAIN A CLEAR HEIGHT OF AT LEAST 8':
  - BUILDING PROJECTIONS: 5' MAX. (PER § E3.3.05)
  - ARCH. PROJECTIONS: 6' MAX. (PER § E3.3.07)
 PER MMPAC § 16.68.030(C), THE FOLLOWING SETBACKS APPLY TO ACCESSORY STRUCTURES (SUCH AS THE PROPOSED TRELIS):
  - FRONT: ESTABLISHED BUILDING SETBACK (SEE ABOVE)
  - INTERIOR SIDE (FRONT HALF OF LOT): ESTABLISHED BUILDING SETBACK (SEE ABOVE)
  - INTERIOR SIDE (REAR HALF OF LOT): 3' MIN., 5' MIN. IF ABUTTING AN ALLEY
  - REAR: 3' MIN., 5' MIN. IF ABUTTING AN ALLEY



**KEYNOTES**

- (E) SIDEWALK
- (E) COMMERCIAL BUILDING
- (E) TRASH ENCLOSURE
- SEE FLOOR PLANS ON A-4 FOR DETAIL AT REAR YARD

**LEGEND**

- (E) BUILDING FOOTPRINT
- SUBJECT BUILDING FOOTPRINT
- (E) FIRE HYDRANT
- (E) STREET LIGHT
- FENCE
- ASSUMED PROPERTY LINES
- ASSUMED PROPERTY LINES OF SUBJECT PROPERTY

STAMP

CONSULTANTS

APPROVAL STAMP

| △ MILESTONE           | DATE       |
|-----------------------|------------|
| PLANNING SUBMITTAL V1 | 2022.06.17 |
| PLANNING SUBMITTAL V2 | 2022.08.01 |
| PLANNING SUBMITTAL V3 | 2022.11.29 |
| PLANNING SUBMITTAL V4 | 2023.02.24 |
| PLANNING SUBMITTAL V5 | 2023.03.16 |

PROJECT NAME

CLOCKWORKS

961 EL CAMINO REAL

MENLO PARK, CA 94025

SHEET TITLE

SITE AREA PLAN

PROJECT NO.

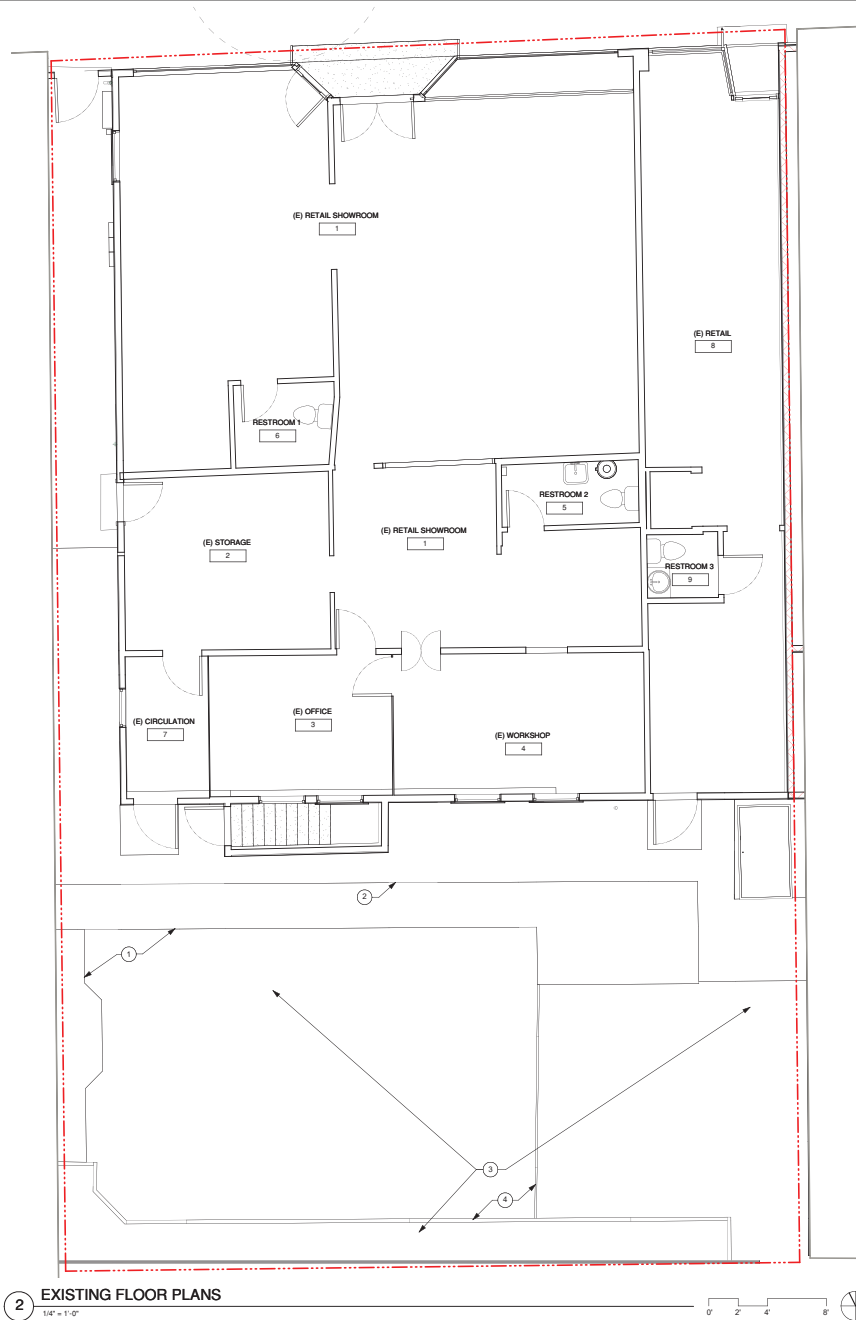
DRAWN BY SW

CHECKED BY CW

SHEET

A-1

1 PROPOSED SITE AREA PLAN  
1" = 10'-0"



**KEYNOTES** ④

- 1 (E) CONCRETE PAVERS
- 2 (E) CONCRETE WALK
- 3 (E) MULCH AREA
- 4 (E) HEADER BOARDS



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|-----------------------|------------|
| PLANNING SUBMITTAL V1 | 2022.06.17 |
| PLANNING SUBMITTAL V2 | 2022.08.01 |
| PLANNING SUBMITTAL V3 | 2022.11.29 |
| PLANNING SUBMITTAL V4 | 2023.02.24 |
| PLANNING SUBMITTAL V5 | 2023.03.16 |

PROJECT NAME

CLOCKWORKS

961 EL CAMINO REAL  
MENLO PARK, CA 94025

SHEET TITLE

EXISTING FLOOR PLANS

PROJECT NO.

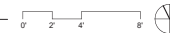
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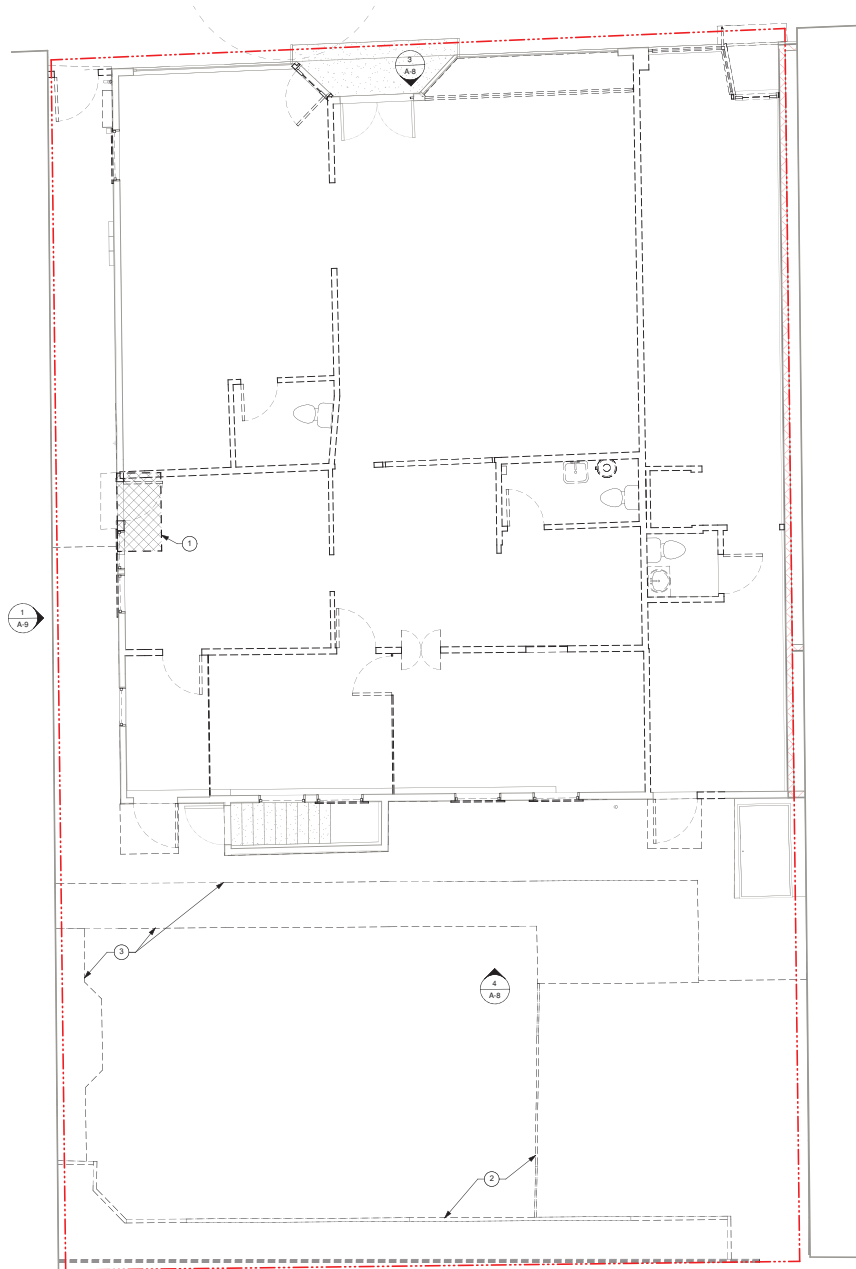
CHECKED BY CW

SHEET

**A-2**

② EXISTING FLOOR PLANS  
1/4" = 1'-0"





1 DEMOLITION FLOOR PLANS  
1/4" = 1'-0"

**KEYNOTES**

- 1 AREA OF BUILDING TO BE REMOVED, SEE A-4 FOR CALCULATION
- 2 (E) HEADER BOARDS TO BE REMOVED
- 3 (E) CONCRETE PAVERS AND CONCRETE WALK TO BE REMOVED



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APPROVAL STAMP

| △ MILESTONE           | DATE       |
|-----------------------|------------|
| PLANNING SUBMITTAL V1 | 2022.06.17 |
| PLANNING SUBMITTAL V2 | 2022.08.01 |
| PLANNING SUBMITTAL V3 | 2022.11.29 |
| PLANNING SUBMITTAL V4 | 2023.02.24 |
| PLANNING SUBMITTAL V5 | 2023.03.16 |

PROJECT NAME  
**CLOCKWORKS**

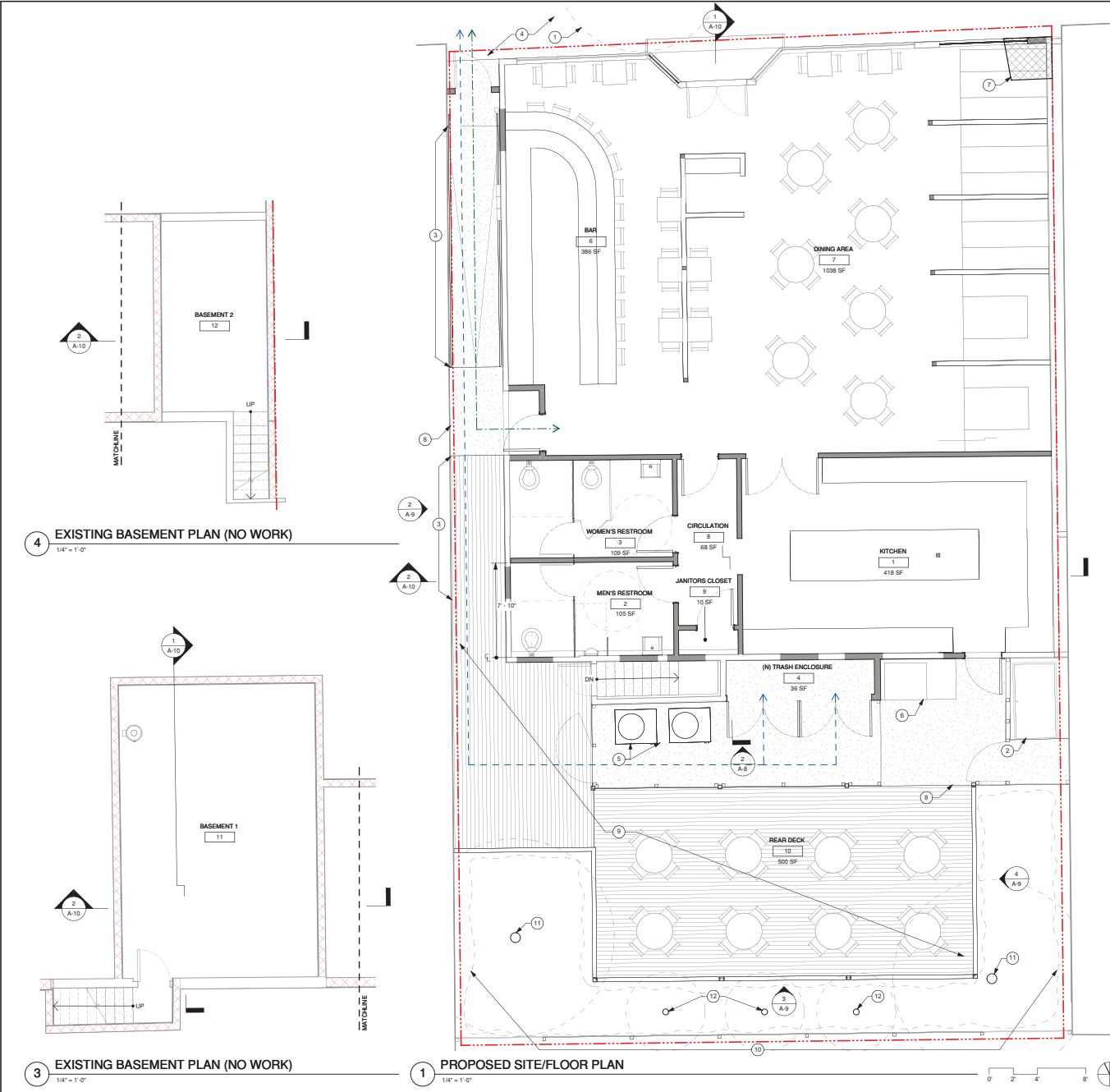
961 EL CAMINO REAL  
MENLO PARK, CA 94025

SHEET TITLE  
**DEMOLITION FLOOR PLANS**

PROJECT NO. \_\_\_\_\_  
DRAWN BY **SW**  
CHECKED BY **CW**

SHEET  
**A-3**

3/16/2023 13:17:11



**GENERAL NOTES**

- SEE SHEET A-1 FOR NOTES ABOUT TREE PROTECTION.
- WITH THE EXCEPTION OF THE TRASH ENCLOSURE ROOF, NO OTHER CHANGES TO ROOF PLAN ARE PROPOSED.
- OCCUPANT LOAD OF REAR DECK**  
 AREA OF REAR DECK: 600 SF  
 OCCUPANT LOAD FACTOR: 15 NET  
 MAXIMUM ALLOWABLE OCCUPANTS: 33  
 PROPOSED NUMBER OF MOVABLE CHAIRS: 32  
 PROPOSED NUMBER OF MOVABLE TABLES: 8

**KEYNOTES** (N)

- (E) STREET TREE TO REMAIN
- (E) SCUTTLE OVER BASEMENT ACCESS
- (N) EXTERIOR ACCESSIBLE RAMP
- (E) SIDEWALK
- (N) PAD MOUNTED CONDENSERS
- (N) PIZZA OVEN
- AREA OF ADDITION, SEE A-4 FOR CALCULATION
- (N) CONCRETE PAVING
- (N) RAISED WOOD DECK (PERMEABLE)
- (N) LANDSCAPE AREA
- (N) TREE, PISTACHIA CHINESIS (CHINESE PISTACHIO), 24" BOX
- (N) TREE, PRYUS KAWAKAMI (EVERGREEN PEAR), 15 GAL.

**LEGEND**

- ACCESSIBLE PATH OF TRAVEL
- TRASH COLLECTION PATH



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| MILESTONE             | DATE       |
|-----------------------|------------|
| PLANNING SUBMITTAL V1 | 2022.06.17 |
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| PLANNING SUBMITTAL V4 | 2023.02.24 |
| PLANNING SUBMITTAL V5 | 2023.03.16 |

PROJECT NAME  
**CLOCKWORKS**

961 EL CAMINO REAL  
MENLO PARK, CA 94025

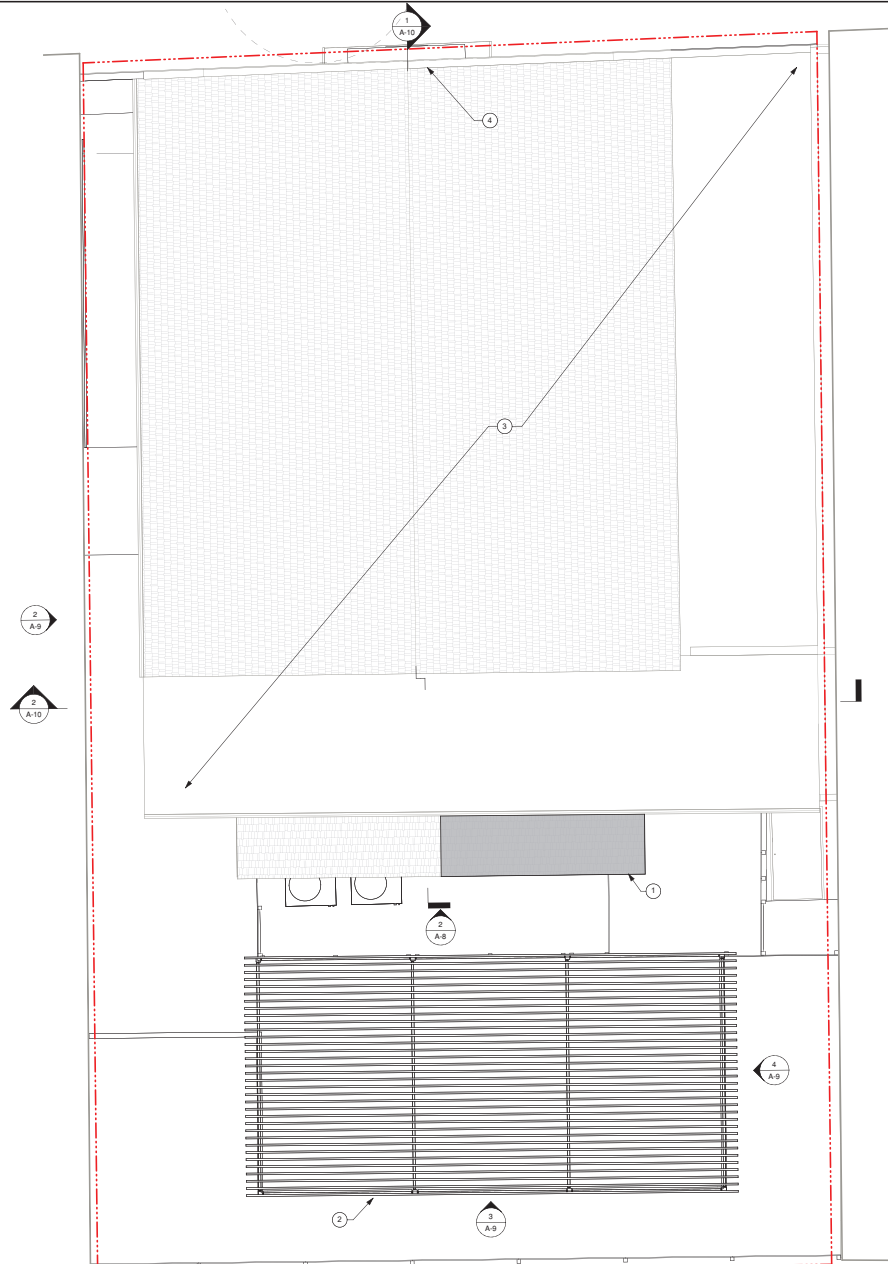
SHEET TITLE  
**FLOOR PLANS**

PROJECT NO.  
DRAWN BY SW  
CHECKED BY CW

SHEET  
**A-4**

3/15/2023 13:17:12





1 PROPOSED ROOF PLAN  
1/4" = 1'-0"



**GENERAL NOTES**

1. SEE SHEET A-1 FOR NOTES ABOUT TREE PROTECTION.
2. WITH THE EXCEPTION OF THE TRASH ENCLOSURE ROOF, NO OTHER CHANGES TO ROOF PLAN ARE PROPOSED.
3. **OCCUPANT LOAD OF REAR DECK**  
 AREA OF REAR DECK: 500 SF  
 OCCUPANT LOAD FACTOR: 15 NET  
 MAXIMUM ALLOWABLE OCCUPANTS: 33  
 PROPOSED NUMBER OF MOVABLE CHAIRS: 32  
 PROPOSED NUMBER OF MOVABLE TABLES: 8

**KEYNOTES** (E)

- 1 (N) SHED ROOF OVER (N) TRASH ENCLOSURE
- 2 (N) TRELLIS
- 3 (E) ROOF
- 4 (E) PARAPET

**LEGEND**

- - - - - ACCESSIBLE PATH OF TRAVEL
- — — — TRASH COLLECTION PATH



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| △ MILESTONE           | DATE       |
|-----------------------|------------|
| PLANNING SUBMITTAL V1 | 2022.06.17 |
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| PLANNING SUBMITTAL V3 | 2022.11.29 |
| PLANNING SUBMITTAL V4 | 2023.02.24 |
| PLANNING SUBMITTAL V5 | 2023.03.16 |

PROJECT NAME  
**CLOCKWORKS**

961 EL CAMINO REAL  
MENLO PARK, CA 94025

SHEET TITLE  
**ROOF PLAN**

PROJECT NO.  
DRAWN BY **SW**  
CHECKED BY **CW**

SHEET  
**A-5**

3/16/2023 13:17:12

AREA SUMMARY

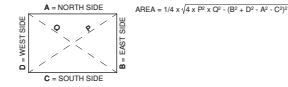
| TYPE              | EXISTING AREA | % OF PARCEL | PROPOSED AREA | % OF PARCEL |
|-------------------|---------------|-------------|---------------|-------------|
| SITE AREA         | 4160.50 SF    | 100%        | 4160.50 SF    | 100%        |
| GROSS FLOOR AREA  | 2564.99 SF    | 72%         | 2261.81 SF    | 71%         |
| BUILDING COVERAGE | 2363.37 SF    | 58%         | 2403.80 SF    | 58%         |
| IMPERVIOUS AREA   | 3104.56 SF    | 75%         | 2916.17 SF    | 71%         |
| LANDSCAPING       | 1055.94 SF    | 25%         | 488.96 SF     | 11%         |

LEGEND

- AREA CALCULATION POLYGON
- GROSS FLOOR AREA
- BUILDING COVERAGE
- (E) IMPERVIOUS AREA
- (E) IMPERVIOUS AREA TO (N) IMPERVIOUS AREA

GENERAL NOTES

- DIMENSIONS AND AREAS SHOWN ON THIS SHEET ARE FOR REFERENCE ONLY AND SHALL BE CONSIDERED APPROXIMATED. DIMENSIONS ARE ROUNDED TO NEAREST 1/4" FOR CLARITY. CALCULATED AREAS ARE ROUNDED TO THE NEAREST 2 DECIMAL PLACES (ROUNDING ERRORS MAY OCCUR).
- AREA BOUNDARIES ARE MEASURED TO EXTERIOR FACE OF EXTERIOR WALLS, TO EDGES OF PAVING, AND/OR TO ASSUMED PROPERTY LINES.
- ALL AREAS ARE CALCULATED USING BRETSCHNEIDER'S FORMULA FOR THE AREA OF A NON-RECTANGULAR QUADRILATERAL. THIS METHOD IS USED DUE TO THE IRREGULARITY OF EXISTING SITE/BUILDING CONDITIONS. THIS METHOD USES THE LENGTHS OF EACH SIDE AND THE LENGTHS OF THE DIAGONALS TO DETERMINE THE AREA.



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|-----------------------|------------|
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| PLANNING SUBMITTAL V3 | 2022.11.29 |
| PLANNING SUBMITTAL V4 | 2023.02.24 |
| PLANNING SUBMITTAL V5 | 2023.03.16 |

PROJECT NAME

CLOCKWORKS

961 EL CAMINO REAL  
MENLO PARK, CA 94025

SHEET TITLE

AREA CALCULATIONS

PROJECT NO.

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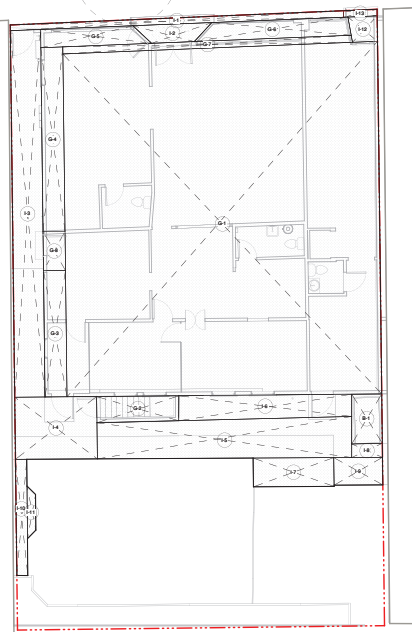
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SHEET

A-6

EXISTING AREA CALCULATIONS

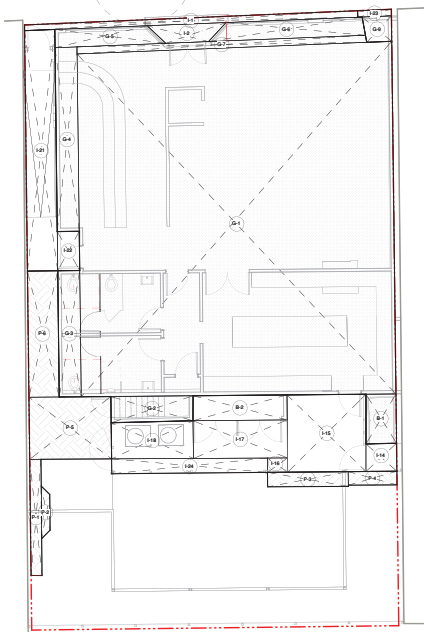
| NO.                            | A           | B           | C           | D           | P           | Q          | AREA       |
|--------------------------------|-------------|-------------|-------------|-------------|-------------|------------|------------|
| B-1                            | 4'-1"       | 6'-8-1/2"   | 4'-2"       | 6'-9-1/4"   | 7'-11-1/4"  | 7'-10-1/2" | 27.83 SF   |
| G-1                            | 42'-10-3/4" | 48'-0-1/2"  | 42'-10-1/2" | 46'-8-1/2"  | 64'-3-1/2"  | 63'-6"     | 2031.21 SF |
| G-2                            | 11'-2-1/2"  | 3'-4-3/4"   | 11'-1-3/4"  | 3'-7"       | 11'-9"      | 11'-8"     | 38.97 SF   |
| G-3                            | 3'-0"       | 17'-2-1/2"  | 3'-0"       | 17'-2-1/2"  | 17'-5-1/2"  | 17'-5-1/2" | 51.81 SF   |
| G-4                            | 3'-0"       | 25'-1-1/2"  | 3'-0"       | 25'-0-1/2"  | 25'-3-3/4"  | 25'-3-3/4" | 75.25 SF   |
| G-5                            | 12'-7"      | 3'-6"       | 15'-1-1/4"  | 2'-6"       | 12'-10-3/4" | 15'-2-3/4" | 34.57 SF   |
| G-6                            | 18'-6-1/2"  | 2'-6-1/4"   | 21'-4-3/4"  | 3'-6-1/4"   | 21'-2-1/4"  | 19'-0-3/4" | 49.86 SF   |
| G-7                            | 39'-3-3/4"  | 0'-11-3/4"  | 39'-5-3/4"  | 0'-11-1/2"  | 39'-4-1/4"  | 39'-5-3/4" | 38.06 SF   |
| G-8                            | 3'-0"       | 6'-4"       | 3'-0"       | 5'-4"       | 6'-1-1/2"   | 6'-1-1/2"  | 16.00 SF   |
| I-1                            | 45'-5"      | 0'-10-3/4"  | 45'-5-1/4"  | 0'-9-1/4"   | 45'-5-1/4"  | 45'-5"     | 37.85 SF   |
| I-2                            | 10'-9-1/4"  | 3'-6-1/4"   | 5'-10"      | 3'-6"       | 8'-8-1/4"   | 8'-7-3/4"  | 20.71 SF   |
| I-3                            | 4'-1-1/2"   | 50'-0-3/4"  | 4'-1-1/2"   | 48'-11-1/4" | 50'-2-3/4"  | 50'-1-1/2" | 206.21 SF  |
| I-4                            | 11'-2"      | 8'-4"       | 11'-2"      | 8'-5-1/2"   | 13'-11-3/4" | 14'-0-1/2" | 84.61 SF   |
| I-5                            | 34'-8-3/4"  | 5'-7"       | 34'-7-3/4"  | 4'-11"      | 35'-1-1/2"  | 35'-0-1/4" | 182.32 SF  |
| I-6                            | 23'-6-3/4"  | 3'-0-1/4"   | 23'-7"      | 3'-4-3/4"   | 23'-10-1/4" | 23'-8-3/4" | 75.75 SF   |
| I-7                            | 11'-0"      | 3'-11"      | 11'-0"      | 3'-11"      | 11'-7-3/4"  | 11'-8-1/4" | 43.10 SF   |
| I-8                            | 4'-2"       | 1'-11"      | 4'-2-1/4"   | 1'-10-1/4"  | 4'-7-1/4"   | 4'-6-3/4"  | 7.86 SF    |
| I-9                            | 6'-7-3/4"   | 3'-9"       | 6'-7-3/4"   | 3'-9"       | 7'-7-1/4"   | 7'-7-3/4"  | 24.93 SF   |
| I-10                           | 1'-6-1/2"   | 15'-10-1/4" | 1'-6"       | 15'-9-3/4"  | 15'-10-1/2" | 15'-11"    | 23.99 SF   |
| I-11                           | 1'-1-1/2"   | 4'-10-1/4"  | 1'-7-1/2"   | 7'-2"       | 6'-1-1/2"   | 6'-1-1/2"  | 6.93 SF    |
| I-12                           | 4'-0"       | 3'-5-1/2"   | 3'-5"       | 3'-6"       | 4'-11-1/4"  | 5'-2-1/2"  | 12.82 SF   |
| I-13                           | 4'-7-1/4"   | 0'-10-3/4"  | 4'-7"       | 0'-10-3/4"  | 4'-8-1/4"   | 4'-8"      | 4.11 SF    |
| TOTAL EXISTING IMPERVIOUS AREA |             |             |             |             |             |            | 3104.56 SF |



2 EXISTING AREA - MAIN LEVEL  
1/8" = 1'-0"

PROPOSED IMPERVIOUS AREA CALCULATIONS

| NO.                              | A           | B           | C           | D           | P           | Q           | AREA       |
|----------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|------------|
| B-2                              | 12'-9-1/2"  | 3'-4-3/4"   | 12'-10-1/4" | 3'-4-3/4"   | 13'-3-1/2"  | 13'-3"      | 43.61 SF   |
| G-9                              | 4'-0"       | 3'-5-1/2"   | 3'-5"       | 3'-6"       | 4'-11-1/4"  | 5'-2-1/2"   | 12.82 SF   |
| I-14                             | 4'-2"       | 3'-9-3/4"   | 4'-2-1/2"   | 3'-9"       | 5'-8"       | 5'-7-1/4"   | 15.84 SF   |
| I-15                             | 10'-8"      | 10'-6-1/4"  | 10'-8"      | 10'-6-1/4"  | 15'-0-1/2"  | 14'-11-3/4" | 112.71 SF  |
| I-16                             | 2'-9-1/4"   | 11'-11-1/4" | 2'-9"       | 11'-11-1/2" | 9'-4-1/2"   | 9'-4-1/2"   | 5.38 SF    |
| I-17                             | 12'-10-1/4" | 5'-2-1/4"   | 12'-10"     | 5'-1-3/4"   | 13'-9-3/4"  | 13'-10-1/4" | 66.23 SF   |
| I-18                             | 11'-1-3/4"  | 5'-1-3/4"   | 11'-1-3/4"  | 4'-11"      | 12'-2-3/4"  | 12'-2-1/2"  | 56.06 SF   |
| I-21                             | 4'-1-1/2"   | 32'-10-1/2" | 4'-1-1/2"   | 32'-9"      | 33'-1-1/2"  | 33'-0-1/4"  | 135.20 SF  |
| I-22                             | 3'-0"       | 5'-4"       | 3'-0"       | 5'-4"       | 6'-1-1/2"   | 6'-1-1/2"   | 16.00 SF   |
| I-23                             | 4'-7-1/4"   | 0'-10-3/4"  | 4'-7"       | 0'-10-3/4"  | 4'-8-1/4"   | 4'-8"       | 4.11 SF    |
| I-24                             | 4'-1"       | 0'-8-1/2"   | 4'-2"       | 0'-8-1/4"   | 7'-11-1/4"  | 7'-10-1/2"  | 27.83 SF   |
| G-1                              | 42'-10-3/4" | 48'-0-1/2"  | 42'-10-1/2" | 46'-8-1/2"  | 64'-3-1/2"  | 63'-6"      | 2031.21 SF |
| G-2                              | 11'-2-1/2"  | 3'-4-3/4"   | 11'-1-3/4"  | 3'-7"       | 11'-9"      | 11'-8"      | 38.97 SF   |
| G-3                              | 3'-0"       | 17'-2-1/2"  | 3'-0"       | 17'-2-1/2"  | 17'-5-1/2"  | 17'-5-1/2"  | 51.81 SF   |
| G-4                              | 3'-0"       | 25'-1-1/2"  | 3'-0"       | 25'-0-1/2"  | 25'-3-3/4"  | 25'-3-3/4"  | 75.25 SF   |
| G-5                              | 12'-7"      | 3'-6"       | 15'-1-1/4"  | 2'-6"       | 12'-10-3/4" | 15'-2-3/4"  | 34.57 SF   |
| G-6                              | 18'-6-1/2"  | 2'-6-1/4"   | 21'-4-3/4"  | 3'-6-1/4"   | 21'-2-1/4"  | 19'-0-3/4"  | 49.86 SF   |
| G-7                              | 39'-3-3/4"  | 0'-11-3/4"  | 39'-5-3/4"  | 0'-11-1/2"  | 39'-4-1/4"  | 39'-5-3/4"  | 38.06 SF   |
| G-8                              | 3'-0"       | 6'-4"       | 3'-0"       | 5'-4"       | 6'-1-1/2"   | 6'-1-1/2"   | 16.00 SF   |
| I-1                              | 45'-5"      | 0'-10-3/4"  | 45'-5-1/4"  | 0'-9-1/4"   | 45'-5-1/4"  | 45'-5"      | 37.85 SF   |
| I-2                              | 10'-9-1/4"  | 3'-6-1/4"   | 5'-10"      | 3'-6"       | 8'-8-1/4"   | 8'-7-3/4"   | 20.71 SF   |
| IMPERVIOUS AREA TO REMAIN        |             |             |             |             |             |             | 2405.92 SF |
| PERVIOUS AREA TO IMPERVIOUS AREA |             |             |             |             |             |             | 42.22 SF   |
| TOTAL PROPOSED IMPERVIOUS AREA   |             |             |             |             |             |             | 2916.17 SF |
| P-1                              | 1'-6-1/2"   | 15'-10-1/4" | 1'-6"       | 15'-9-3/4"  | 15'-10-1/2" | 15'-11"     | 23.99 SF   |
| P-2                              | 1'-7-1/2"   | 4'-10-1/4"  | 1'-7-1/2"   | 7'-2"       | 6'-1-1/2"   | 6'-1-1/2"   | 6.93 SF    |
| P-3                              | 11'-0"      | 3'-11"      | 11'-0"      | 3'-11"      | 11'-7-3/4"  | 11'-8-1/4"  | 43.10 SF   |
| P-4                              | 6'-7-3/4"   | 3'-9"       | 6'-7-3/4"   | 3'-9"       | 7'-7-1/4"   | 7'-7-3/4"   | 24.93 SF   |
| P-5                              | 11'-2"      | 8'-4"       | 11'-2"      | 8'-5-1/2"   | 13'-11-3/4" | 14'-0-1/2"  | 84.61 SF   |
| P-6                              | 17'-2-1/2"  | 4'-1-1/2"   | 17'-2-1/4"  | 4'-1-1/2"   | 17'-8-1/4"  | 17'-8"      | 70.92 SF   |
| IMPERVIOUS AREA TO PERVIOUS AREA |             |             |             |             |             |             | 230.61 SF  |



1 PROPOSED AREA - MAIN LEVEL  
1/8" = 1'-0"

AREA SUMMARY

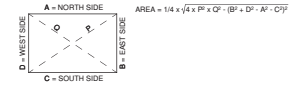
| TYPE             | EXISTING AREA | % OF PARCEL | PROPOSED AREA | % OF PARCEL |
|------------------|---------------|-------------|---------------|-------------|
| SITE AREA        | 4160.50 SF    | 100%        | 4160.50 SF    | 100%        |
| GROSS FLOOR AREA | 2363.37 SF    | 57%         | 2403.80 SF    | 58%         |
| IMPERVIOUS AREA  | 3104.56 SF    | 75%         | 2916.17 SF    | 71%         |
| LANDSCAPING      | 1055.94 SF    | 25%         | 468.96 SF     | 11%         |

LEGEND

- AREA CALCULATION POLYGON
- GROSS FLOOR AREA
- BUILDING COVERAGE
- (E) IMPERVIOUS AREA
- (E) IMPERVIOUS AREA TO (N) IMPERVIOUS AREA

GENERAL NOTES

- DIMENSIONS AND AREAS SHOWN ON THIS SHEET ARE FOR REFERENCE ONLY AND SHALL BE CONSIDERED APPROXIMATED. DIMENSIONS ARE ROUNDED TO NEAREST 1/4" FOR CLARITY. CALCULATED AREAS ARE ROUNDED TO THE NEAREST 2 DECIMAL PLACES (ROUNDING ERRORS MAY OCCUR).
- AREA BOUNDARIES ARE MEASURED TO EXTERIOR FACE OF EXTERIOR WALLS, TO EDGES OF PAVING, AND/OR TO ASSUMED PROPERTY LINES.
- ALL AREAS ARE CALCULATED USING BRETSCHNEIDER'S FORMULA FOR THE AREA OF A NON-RECTANGULAR QUADRILATERAL. THIS METHOD IS USED DUE TO THE IRREGULARITY OF EXISTING SITE/REBUILDING CONDITIONS. THIS METHOD USES THE LENGTHS OF EACH SIDE AND THE LENGTHS OF THE DIAGONALS TO DETERMINE THE AREA.



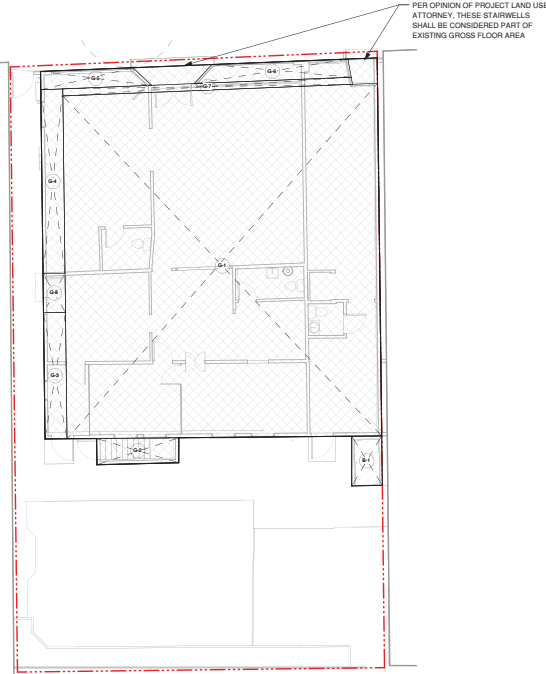
EXISTING AREA CALCULATIONS AND SUMMARY

| NO.               | A           | B          | C           | D          | P           | Q          | AREA       |
|-------------------|-------------|------------|-------------|------------|-------------|------------|------------|
| B-1               | 4'-1"       | 6'-8 1/2"  | 4'-2"       | 6'-9 3/4"  | 7'-11 1/4"  | 7'-10 1/2" | 27.83 SF   |
| G-1               | 12'-10 3/4" | 48'-0 1/2" | 42'-10 1/2" | 46'-8 1/2" | 64'-3 1/2"  | 63'-6"     | 2031.21 SF |
| G-2               | 11'-2 1/2"  | 3'-4 3/4"  | 11'-1 3/4"  | 3'-7"      | 11'-9"      | 11'-8"     | 38.97 SF   |
| G-3               | 3'-0"       | 17'-2 1/2" | 3'-0"       | 17'-2 1/2" | 17'-5 1/2"  | 17'-5 1/2" | 51.61 SF   |
| G-4               | 3'-0"       | 25'-1 1/2" | 3'-0"       | 25'-0 1/2" | 25'-3 3/4"  | 25'-2 3/4" | 75.25 SF   |
| G-5               | 12'-7"      | 3'-6"      | 15'-1 1/4"  | 2'-6"      | 12'-10 3/4" | 15'-2 3/4" | 34.57 SF   |
| G-6               | 18'-8 1/2"  | 2'-6 1/4"  | 21'-4 3/4"  | 3'-6 1/4"  | 21'-2 1/4"  | 19'-0 3/4" | 49.86 SF   |
| G-7               | 39'-3 3/4"  | 0'-11 3/4" | 39'-5 3/4"  | 0'-11 1/2" | 39'-4 1/4"  | 39'-3 3/4" | 38.06 SF   |
| G-8               | 3'-0"       | 5'-4"      | 3'-0"       | 5'-4"      | 6'-1 1/2"   | 6'-1 1/2"  | 16.00 SF   |
| GROSS FLOOR AREA  |             |            |             |            |             |            | 2335.54 SF |
| BUILDING COVERAGE |             |            |             |            |             |            | 2363.37 SF |

PROPOSED AREA CALCULATIONS - MAIN LEVEL

| NO.               | A           | B          | C           | D          | P           | Q          | AREA       |
|-------------------|-------------|------------|-------------|------------|-------------|------------|------------|
| B-1               | 4'-1"       | 6'-8 1/2"  | 4'-2"       | 6'-9 3/4"  | 7'-11 1/4"  | 7'-10 1/2" | 27.83 SF   |
| B-2               | 12'-9 1/2"  | 3'-4 3/4"  | 12'-10 1/4" | 3'-4 3/4"  | 13'-3 1/2"  | 13'-3"     | 43.61 SF   |
| G-1               | 12'-10 3/4" | 48'-0 1/2" | 42'-10 1/2" | 46'-8 1/2" | 64'-3 1/2"  | 63'-6"     | 2031.21 SF |
| G-2               | 11'-2 1/2"  | 3'-4 3/4"  | 11'-1 3/4"  | 3'-7"      | 11'-9"      | 11'-8"     | 38.97 SF   |
| G-3               | 3'-0"       | 17'-2 1/2" | 3'-0"       | 17'-2 1/2" | 17'-5 1/2"  | 17'-5 1/2" | 51.61 SF   |
| G-4               | 3'-0"       | 25'-1 1/2" | 3'-0"       | 25'-0 1/2" | 25'-3 3/4"  | 25'-2 3/4" | 75.25 SF   |
| G-5               | 12'-7"      | 3'-6"      | 15'-1 1/4"  | 2'-6"      | 12'-10 3/4" | 15'-2 3/4" | 34.57 SF   |
| G-6               | 18'-8 1/2"  | 2'-6 1/4"  | 21'-4 3/4"  | 3'-6 1/4"  | 21'-2 1/4"  | 19'-0 3/4" | 49.86 SF   |
| G-7               | 39'-3 3/4"  | 0'-11 3/4" | 39'-5 3/4"  | 0'-11 1/2" | 39'-4 1/4"  | 39'-3 3/4" | 38.06 SF   |
| G-9               | 4'-0"       | 3'-5 1/2"  | 3'-5"       | 3'-6"      | 4'-11 1/4"  | 5'-2 1/2"  | 12.82 SF   |
| GROSS FLOOR AREA  |             |            |             |            |             |            | 2332.36 SF |
| BUILDING COVERAGE |             |            |             |            |             |            | 2403.80 SF |
| IMPERVIOUS AREA   |             |            |             |            |             |            | 2403.80 SF |

3 EXISTING AREA - MAIN LEVEL  
1/8" = 1'-0"

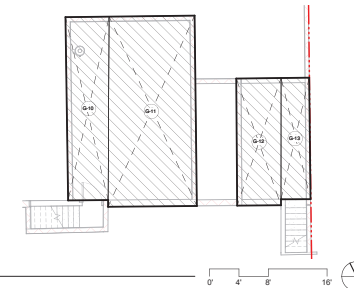
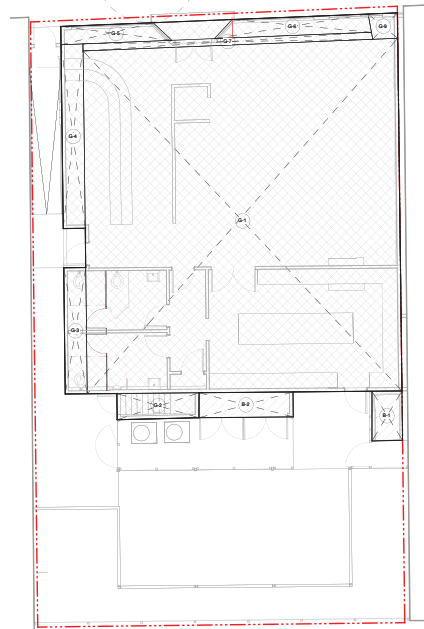


2 PROPOSED AREA - MAIN LEVEL  
1/8" = 1'-0"

PROPOSED AREA CALCULATIONS - BASEMENT

| NO.              | A          | B           | C          | D           | P          | Q           | AREA      |
|------------------|------------|-------------|------------|-------------|------------|-------------|-----------|
| G-10             | 5'-11 1/2" | 24'-11 3/4" | 5'-5 1/2"  | 24'-11 1/2" | 25'-7 3/4" | 25'-7"      | 142.32 SF |
| G-11             | 11'-7 3/4" | 25'-11 1/4" | 12'-1"     | 25'-10 3/4" | 26'-7"     | 26'-5 1/4"  | 307.62 SF |
| G-12             | 6'-1 1/4"  | 17'-4"      | 5'-11 3/4" | 17'-3 3/4"  | 18'-4 1/2" | 18'-3 3/4"  | 104.58 SF |
| G-13             | 3'-10"     | 16'-5 1/2"  | 4'-0 1/4"  | 16'-6 1/4"  | 17'-0"     | 16'-11 3/4" | 64.93 SF  |
| GROSS FLOOR AREA |            |             |            |             |            |             | 619.45 SF |

1 AREA - BASEMENT (NO WORK)  
1/8" = 1'-0"



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STAMP

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APPROVAL STAMP

| MILESTONE             | DATE       |
|-----------------------|------------|
| PLANNING SUBMITTAL V1 | 2022.06.17 |
| PLANNING SUBMITTAL V2 | 2022.08.01 |
| PLANNING SUBMITTAL V3 | 2022.11.29 |
| PLANNING SUBMITTAL V4 | 2023.02.24 |
| PLANNING SUBMITTAL V5 | 2023.03.16 |

PROJECT NAME

CLOCKWORKS

961 EL CAMINO REAL  
MENLO PARK, CA 94025

SHEET TITLE  
AREA CALCULATIONS

PROJECT NO.  
DRAWN BY SW  
CHECKED BY CW

SHEET

A-7

3/19/2023 13:17:20

**KEYNOTES** ④

- 1 EXISTING DOOR, WINDOW, AND AWNING TO BE REMOVED
- 2 (E) PAINT COLOR AND SIGNAGE TO REMAIN, TOUCH UP AS NEEDED.
- 3 (N) WALL FINISH TO MATCH (E) WALL FINISH. SEE 3/A-5 FOR COLOR PHOTO.
- 4 FACE OF FINISHED CEILING (INTERIOR)
- 5 (N) TRASH ENCLOSURE
- 6 (N) WINDOWS



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| PLANNING SUBMITTAL V4 | 2023.02.24 |
| PLANNING SUBMITTAL V5 | 2023.03.16 |

PROJECT NAME

CLOCKWORKS

961 EL CAMINO REAL  
MENLO PARK, CA 94025

SHEET TITLE

BUILDING ELEVATIONS

PROJECT NO.

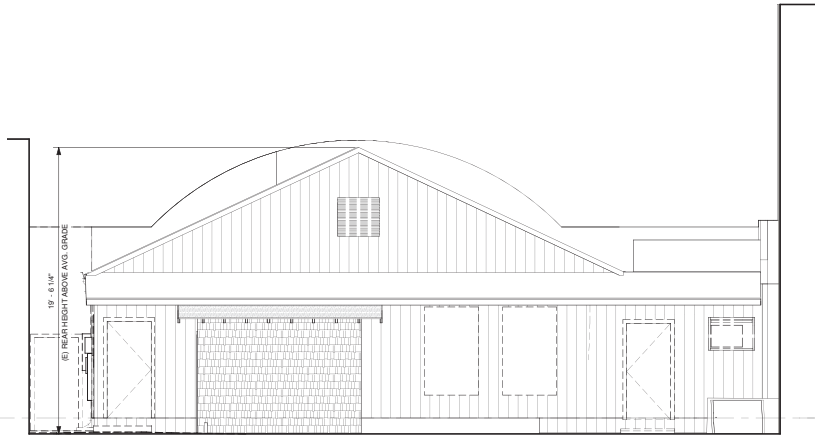
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CHECKED BY CW

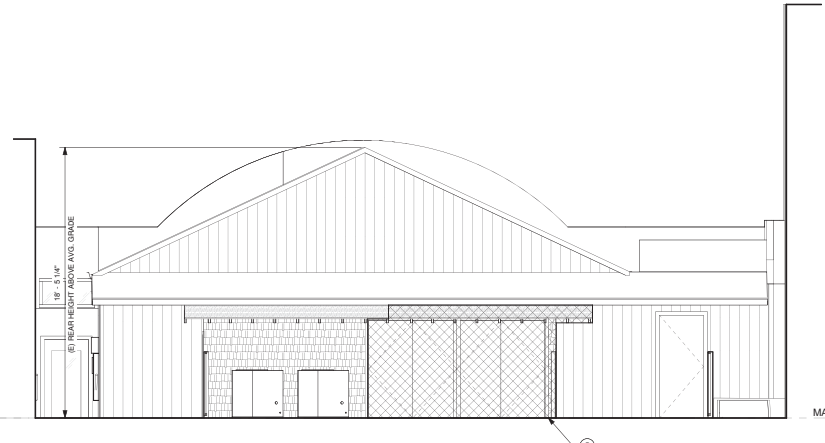
SHEET

**A-8**

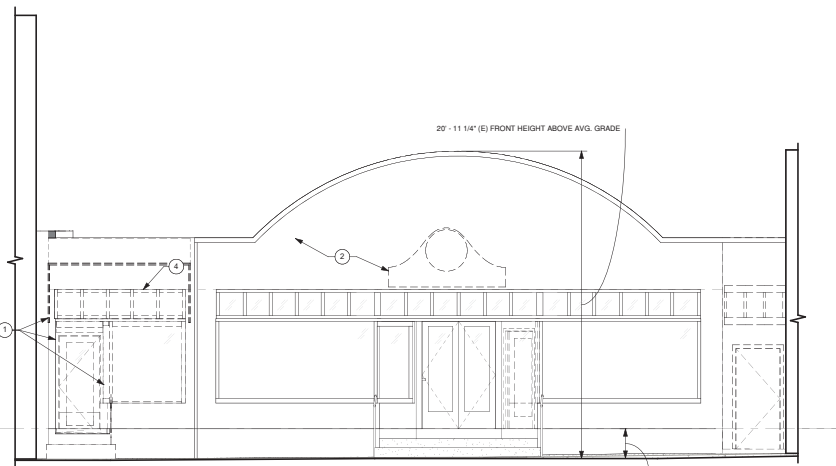
3/15/2023 13:17:22



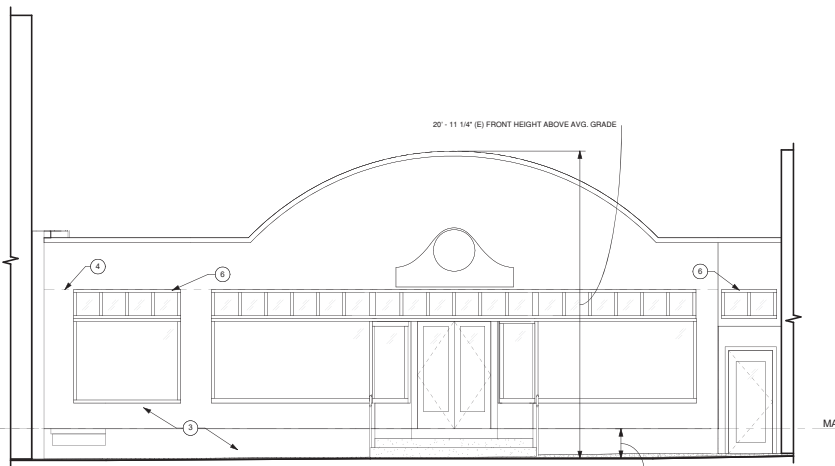
**4 DEMO SOUTH (BACK) ELEVATION**  
1/4" = 1'-0"



**2 PROPOSED SOUTH (BACK) ELEVATION**  
1/4" = 1'-0"



**3 DEMO NORTH (FRONT) ELEVATION**  
1/4" = 1'-0"



**1 PROPOSED NORTH (FRONT) ELEVATION**  
1/4" = 1'-0"

MAIN LEVEL  
0'-0"

MAIN LEVEL  
0'-0"



**KEYNOTES** ④

- 1 EXISTING DOOR, WINDOW, AND AWNING TO BE REMOVED
- 2 (E) PAINT COLOR AND SIGNAGE TO REMAIN, TOUCH UP AS NEEDED.
- 3 (N) WALL FINISH TO MATCH (E) WALL FINISH. SEE 3/A-5 FOR COLOR PHOTO.
- 4 FACE OF FINISHED CEILING (INTERIOR)
- 5 (N) TRASH ENCLOSURE
- 6 (N) WINDOWS



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| PLANNING SUBMITTAL V2 | 2022.08.01 |
| PLANNING SUBMITTAL V3 | 2022.11.29 |
| PLANNING SUBMITTAL V4 | 2023.02.24 |
| PLANNING SUBMITTAL V5 | 2023.03.16 |

PROJECT NAME

CLOCKWORKS

961 EL CAMINO REAL  
MENLO PARK, CA 94025

SHEET TITLE

BUILDING ELEVATIONS  
(COLOR)

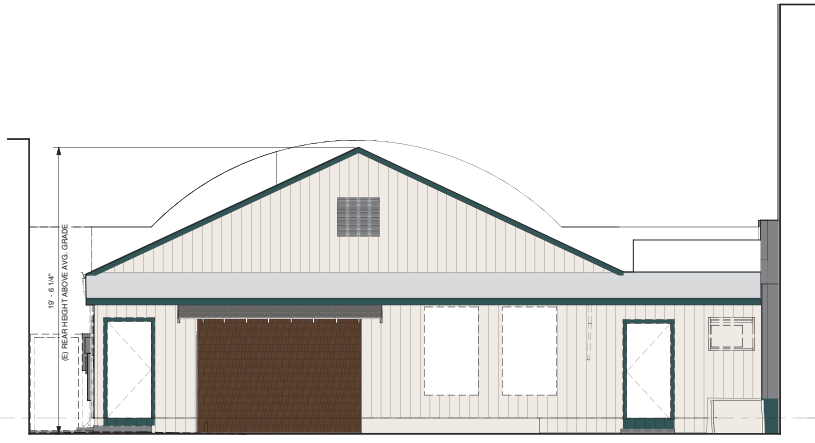
PROJECT NO.

DRAWN BY SW

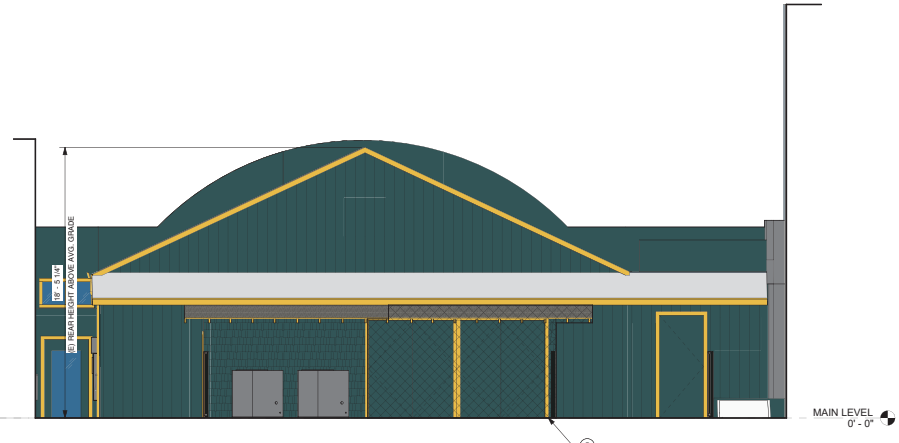
CHECKED BY CW

SHEET

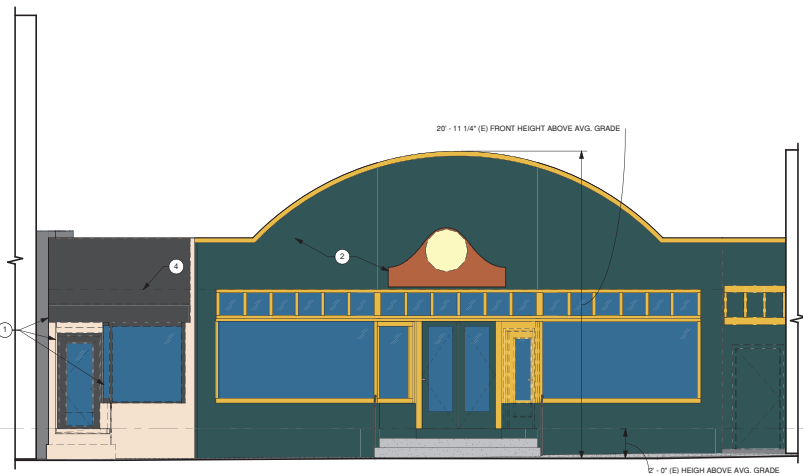
**A-8A**



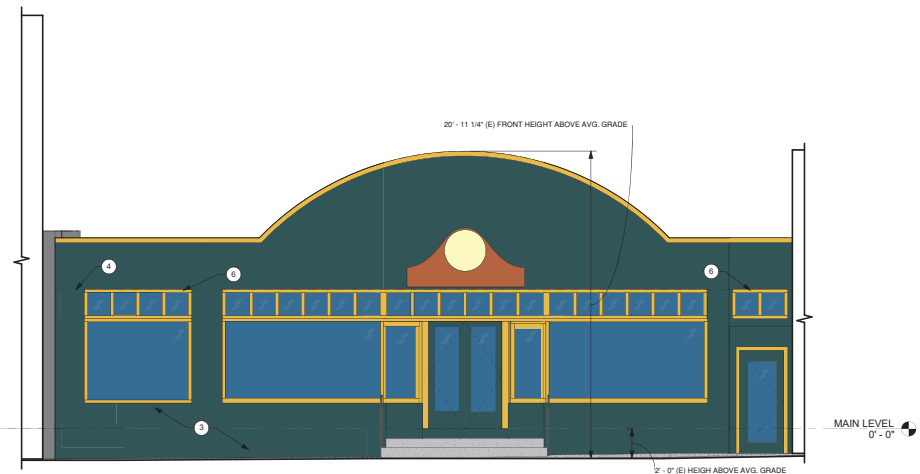
④ DEMO SOUTH (BACK) ELEVATION  
1/4" = 1'-0"



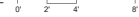
② PROPOSED SOUTH (BACK) ELEVATION  
1/4" = 1'-0"



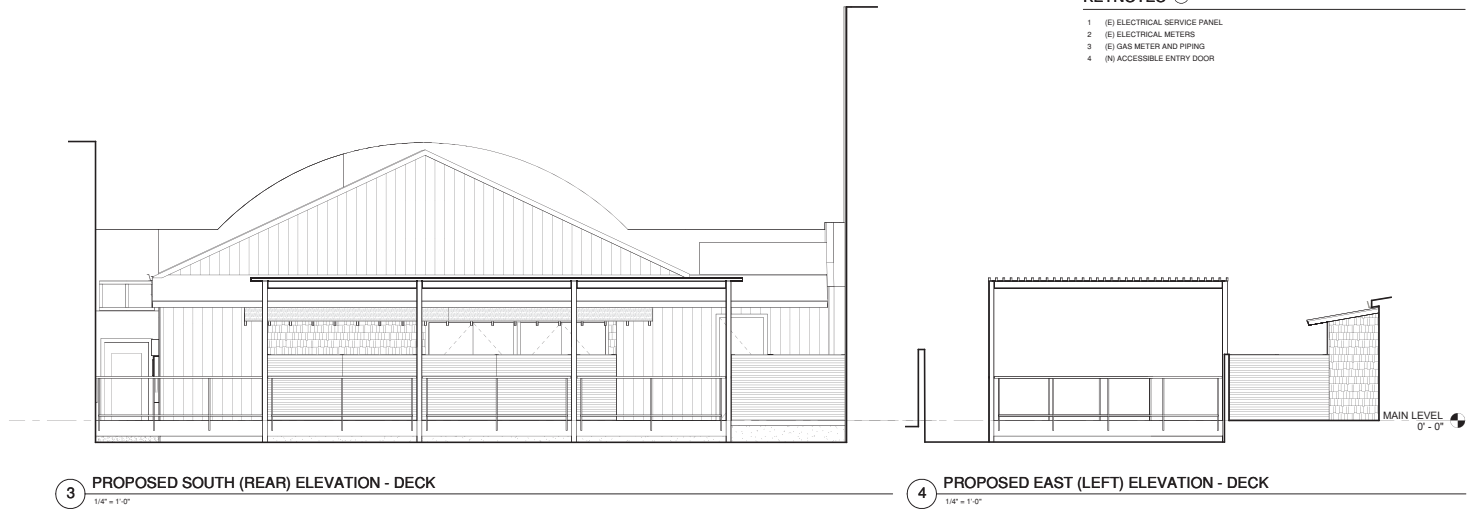
③ DEMO NORTH (FRONT) ELEVATION  
1/4" = 1'-0"



① PROPOSED NORTH (FRONT) ELEVATION  
1/4" = 1'-0"



3/15/2023 13:17:24

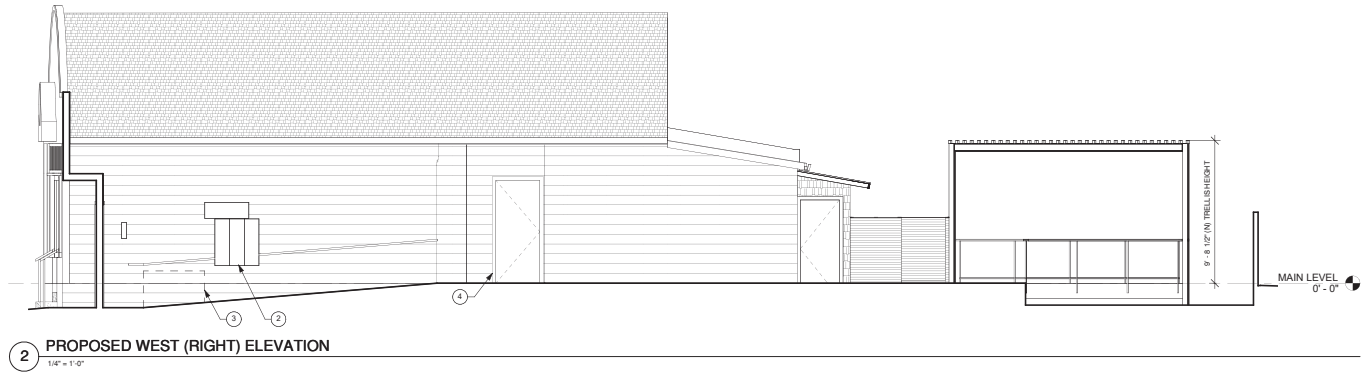


**KEYNOTES** Ⓢ

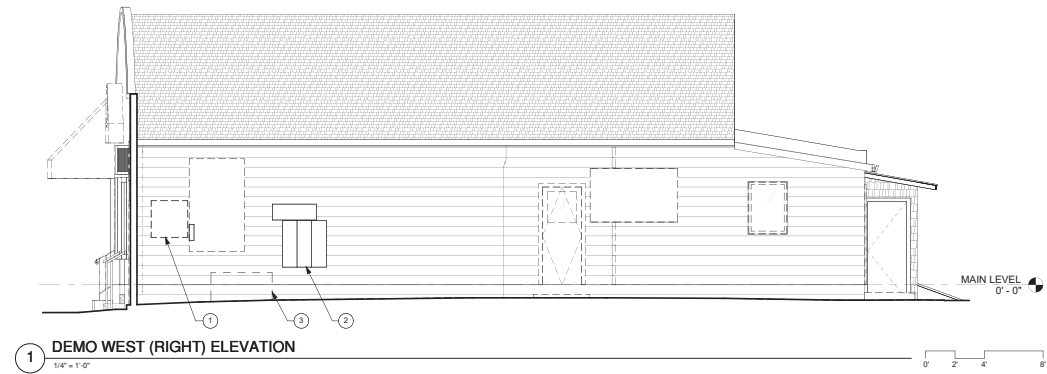
- 1 (E) ELECTRICAL SERVICE PANEL
- 2 (E) ELECTRICAL METERS
- 3 (E) GAS METER AND PIPING
- 4 (N) ACCESSIBLE ENTRY DOOR

3 PROPOSED SOUTH (REAR) ELEVATION - DECK  
1/4" = 1'-0"

4 PROPOSED EAST (LEFT) ELEVATION - DECK  
1/4" = 1'-0"



2 PROPOSED WEST (RIGHT) ELEVATION  
1/4" = 1'-0"



1 DEMO WEST (RIGHT) ELEVATION  
1/4" = 1'-0"



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| PLANNING SUBMITTAL V3 | 2022.11.29 |
| PLANNING SUBMITTAL V4 | 2023.02.24 |
| PLANNING SUBMITTAL V5 | 2023.03.16 |

PROJECT NAME

CLOCKWORKS

961 EL CAMINO REAL  
MENLO PARK, CA 94025

SHEET TITLE

DECK AND TRELLIS  
ELEVATIONS

PROJECT NO.

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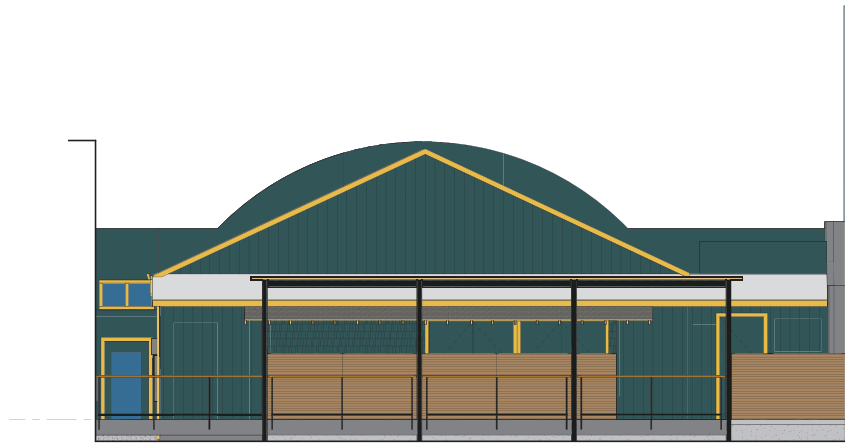
SHEET

A-9

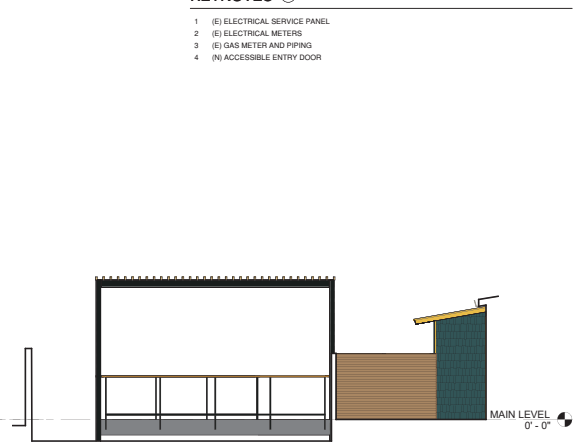
3/19/2023 13:17:25

KEYNOTES ④

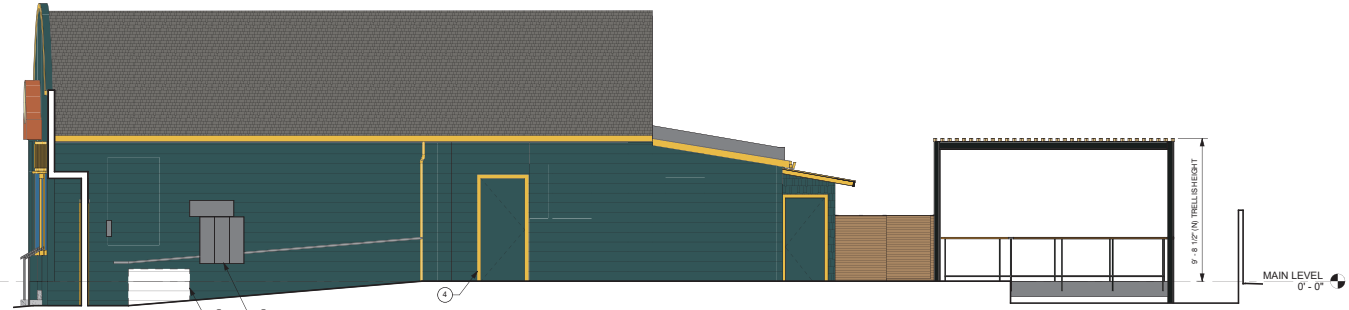
- 1 (E) ELECTRICAL SERVICE PANEL
- 2 (E) ELECTRICAL METERS
- 3 (E) GAS METER AND PIPING
- 4 (N) ACCESSIBLE ENTRY DOOR



③ PROPOSED SOUTH (REAR) ELEVATION - DECK  
1/4" = 1'-0"



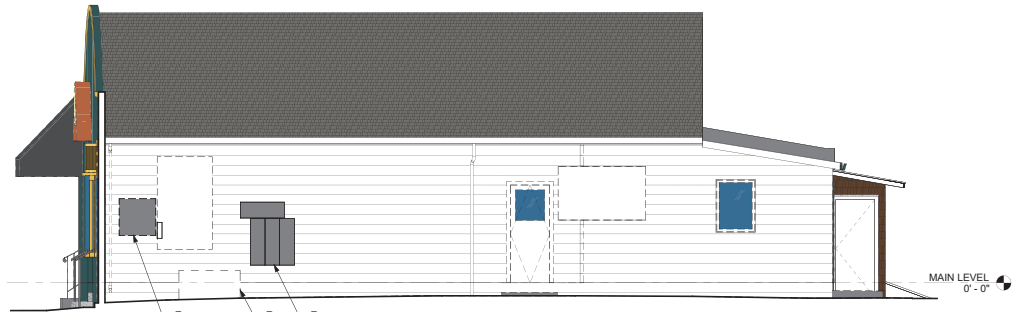
④ PROPOSED EAST (LEFT) ELEVATION - DECK  
1/4" = 1'-0"



② PROPOSED WEST (RIGHT) ELEVATION  
1/4" = 1'-0"



⑤ RENDERING OF PROPOSED REAR DECK & TRELLIS  
1/2" = 1'-0"



① WEST (RIGHT) ELEVATION  
1/4" = 1'-0"



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| PLANNING SUBMITTAL V4 | 2023.02.24 |
| PLANNING SUBMITTAL V5 | 2023.03.16 |

PROJECT NAME

CLOCKWORKS

961 EL CAMINO REAL

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SHEET TITLE

DECK AND TRELLIS  
ELEVATIONS (COLOR)

PROJECT NO.

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SHEET

A-9A

**KEYNOTES**

- 1 (E) CURVING PARAPET BEYOND
- 2 (E) CURVING PARAPET

**GENERAL NOTES**

- 1. SEE ELEVATIONS ON A-6 FOR ADDITIONAL HEIGHT DIMENSIONS.



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| PLANNING SUBMITTAL V5 | 2023.03.16 |

PROJECT NAME

CLOCKWORKS

961 EL CAMINO REAL  
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SHEET TITLE

BUILDING SECTIONS

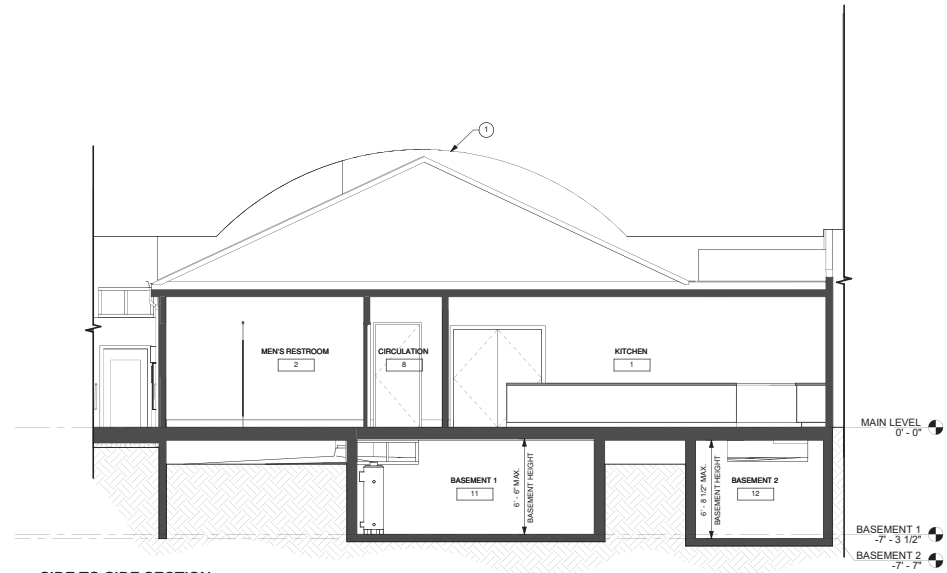
PROJECT NO.

DRAWN BY SW

CHECKED BY CW

SHEET

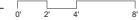
**A-10**



**2** SIDE TO SIDE SECTION  
1/4" = 1'-0"



**1** FRONT TO REAR SECTION  
1/4" = 1'-0"



31/12/2023 13:17:29



STAMP

CONSULTANTS

APPROVAL STAMP

| △ MILESTONE           | DATE       |
|-----------------------|------------|
| PLANNING SUBMITTAL V1 | 2022.06.17 |
| PLANNING SUBMITTAL V2 | 2022.08.01 |
| PLANNING SUBMITTAL V3 | 2022.11.29 |
| PLANNING SUBMITTAL V4 | 2023.02.24 |
| PLANNING SUBMITTAL V5 | 2023.03.16 |

PROJECT NAME

CLOCKWORKS

961 EL CAMINO REAL  
MENLO PARK, CA 94025

SHEET TITLE

EXISTING SITE PHOTOS

PROJECT NO.

DRAWN BY SW

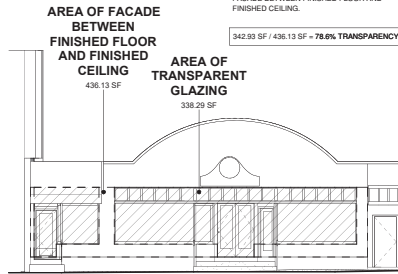
CHECKED BY CW

SHEET

**A-11**

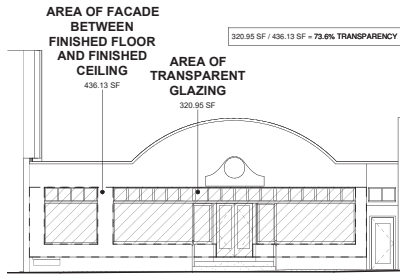
3/16/2023 13:17:34

PER MPAC § 16.63 (3)(3), TRANSPARENCY CALCULATIONS SHALL INCLUDE TOTAL AREA OF TRANSPARENT ELEMENTS AND AREA OF FACADE BETWEEN FINISHED FLOOR AND FINISHED CEILING.



6 EXISTING FRONT ELEVATION - TRANSPARENCY  
1/8" = 1'-0"

PER MPAC § 16.63 (3)(3), TRANSPARENCY CALCULATIONS SHALL INCLUDE TOTAL AREA OF TRANSPARENT ELEMENTS AND AREA OF FACADE BETWEEN FINISHED FLOOR AND FINISHED CEILING.



5 PROPOSED FRONT ELEVATION - TRANSPARENCY  
1/8" = 1'-0"



3 NORTH (FRONT) ELEVATION PHOTO  
NOT TO SCALE



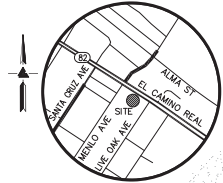
4 STREETScape DIAGRAM WITH PROPOSED ELEVATION  
1/16" = 1'-0"



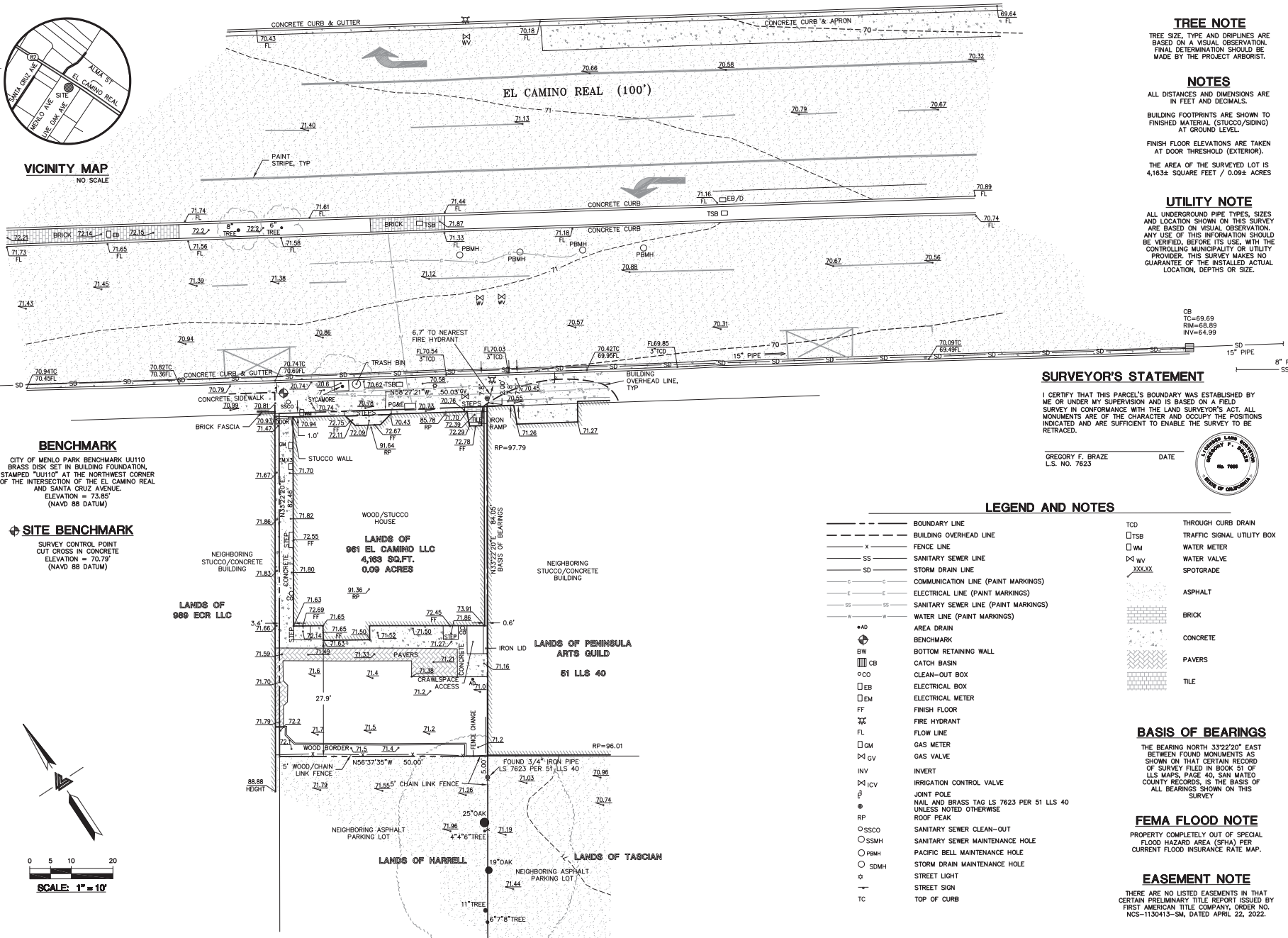
2 (E) SOUTH (REAR) ELEVATION PHOTOS  
NOT TO SCALE



1 (E) STREETScape PHOTOS  
NOT TO SCALE



VICINITY MAP  
NO SCALE



**TREE NOTE**

TREE SIZE, TYPE AND DRIFLINES ARE BASED ON A VISUAL OBSERVATION. FINAL DETERMINATION SHOULD BE MADE BY THE PROJECT ARBORIST.

**NOTES**

ALL DISTANCES AND DIMENSIONS ARE IN FEET AND DECIMALS.  
BUILDING FOOTPRINTS ARE SHOWN TO FINISHED MATERIAL (STUCCO/SIDING) AT GROUND LEVEL.  
FINISH FLOOR ELEVATIONS ARE TAKEN AT DOOR THRESHOLD (EXTERIOR).  
THE AREA OF THE SURVEYED LOT IS 4,163.5 SQUARE FEET / 0.094 ACRES

**UTILITY NOTE**

ALL UNDERGROUND PIPE TYPES, SIZES AND LOCATION SHOWN ON THIS SURVEY ARE BASED ON VISUAL OBSERVATION. ANY USE OF THIS INFORMATION SHOULD BE VERIFIED BEFORE ITS USE, WITH THE CONTROLLING MUNICIPALITY OR UTILITY PROVIDER. THIS SURVEY MAKES NO GUARANTEE OF THE INSTALLED ACTUAL LOCATION, DEPTHS OR SIZE.

**SURVEYOR'S STATEMENT**

I CERTIFY THAT THIS PARCEL'S BOUNDARY WAS ESTABLISHED BY ME OR UNDER MY SUPERVISION AND IS BASED ON A FIELD SURVEY IN CONFORMANCE WITH THE LAND SURVEYOR'S ACT. ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

GREGORY F. BRAZE DATE \_\_\_\_\_  
L.S. NO. 7623



**LEGEND AND NOTES**

- |       |   |      |                            |
|-------|---|------|----------------------------|
| —     | BOUNDARY LINE   | TC   | THROUGH CURB DRAIN         |
| - - - | BUILDING OVERHEAD LINE  | TSB  | TRAFFIC SIGNAL UTILITY BOX |
| x     | FENCE LINE  | WM   | WATER METER                |
| SS    | SANITARY SEWER LINE   | WV   | WATER VALVE                |
| SD    | STORM DRAIN LINE  | XXXX | SPOTGRADE                  |
| - - - | COMMUNICATION LINE (PAINT MARKINGS)                             |      |                            |
| - - - | ELECTRICAL LINE (PAINT MARKINGS)                                |      |                            |
| - - - | SANITARY SEWER LINE (PAINT MARKINGS)                            |      |                            |
| - - - | WATER LINE (PAINT MARKINGS)                                     |      |                            |
| +*    | AREA DRAIN  |      |                            |
| BW    | BENCHMARK   |      |                            |
| CB    | CATCH BASIN   |      |                            |
| CO    | CLEAN-OUT BOX   |      |                            |
| EB    | ELECTRICAL BOX  |      |                            |
| EM    | ELECTRICAL METER  |      |                            |
| FF    | FINISH FLOOR  |      |                            |
| FL    | FIRE HYDRANT  |      |                            |
| FL    | FLOW LINE   |      |                            |
| GM    | GAS METER   |      |                            |
| GV    | GAS VALVE   |      |                            |
| INV   | INVERT  |      |                            |
| ICV   | IRRIGATION CONTROL VALVE  |      |                            |
| g     | JOINT POLE  |      |                            |
| N     | NAIL AND BRASS TAG LS 7623 PER 51 LLS 40 UNLESS NOTED OTHERWISE |      |                            |
| RP    | ROOF PEAK   |      |                            |
| SSCO  | SANITARY SEWER CLEAN-OUT  |      |                            |
| SSMH  | SANITARY SEWER MAINTENANCE HOLE                                 |      |                            |
| PBMH  | PACIFIC BELL MAINTENANCE HOLE                                   |      |                            |
| SDMH  | STORM DRAIN MAINTENANCE HOLE                                    |      |                            |
| S     | STREET LIGHT  |      |                            |
| T     | STREET SIGN   |      |                            |
| TC    | TOP OF CURB   |      |                            |

**BASIS OF BEARINGS**

THE BEARING NORTH 33°22'20" EAST BETWEEN FOUND MONUMENTS AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED IN BOOK 51 OF LLS MAPS, PAGE 40, SAN MATEO COUNTY RECORDS, IS THE BASIS OF ALL BEARINGS SHOWN ON THIS SURVEY

**FEMA FLOOD NOTE**

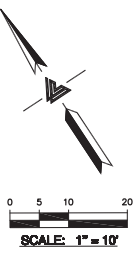
PROPERTY COMPLETELY OUT OF SPECIAL FLOOD HAZARD AREA (SFHA) PER CURRENT FLOOD INSURANCE RATE MAP.

**EASEMENT NOTE**

THERE ARE NO LISTED EASEMENTS IN THAT CERTAIN PRELIMINARY TITLE REPORT ISSUED BY FIRST AMERICAN TITLE COMPANY, ORDER NO. NCS-1130413-SM, DATED APRIL 22, 2022.

**BENCHMARK**  
CITY OF MENLO PARK BENCHMARK UJ110 BRASS DISK SET IN BUILDING FOUNDATION, STAMPED "UJ110" AT THE NORTHWEST CORNER OF THE INTERSECTION OF THE EL CAMINO REAL AND SANTA CRUZ AVENUE. ELEVATION = 73.85' (NAVD 88 DATUM)

**SITE BENCHMARK**  
SURVEY CONTROL POINT CUT CROSS IN CONCRETE ELEVATION = 70.79' (NAVD 88 DATUM)



**LEA & BRAZE ENGINEERING, INC.**  
CIVIL ENGINEERS | LAND SURVEYORS  
REGIONAL OFFICES:  
MAIN OFFICE: 1000 AVENUE WEST  
PULPITON SAN JOSE, CALIFORNIA 95128  
(510) 887-4986  
WWW.LEABRAZE.COM

961 EL CAMINO REAL  
MENLO PARK  
CALIFORNIA

TOPOGRAPHIC SURVEY

REVISIONS BY

|           |          |
|-----------|----------|
| JOB NO:   | 2221941  |
| DATE:     | 12-13-22 |
| SCALE:    | 1"=10'   |
| BNDR BY:  | DN       |
| FIELD BY: | AO       |
| DRAWN BY: | DDR      |
| SHEET NO: | SU1      |

1 OF 1 SHEETS

Clockworks  
Project Description  
March 21, 2023

Project Site

The subject property is located at 961 El Camino Real to the south of the corner of El Camino Real and Menlo Avenue, on the edge of the Downtown area. The parcel is located within the El Camino Real/Downtown Specific Plan's El Camino Real South-West (ECR SW) sub-district. The parcel consists of a one-story commercial building (Menlo Clock Works). The Clock Works store provides for watch and clock repair, as well as retail sales. The surrounding properties are also located in the SP/ECR-D zoning district. The parcels to the north, across El Camino Real, and to the south are developed with offices. The property to the west, consists of a small shopping center with a variety of retail, service and restaurant uses. Directly adjacent to the east is the Guild Theater, and to the south (rear of the property) is a parking lot that is part of the office use located at 611 Menlo Avenue.

Project Description

The project is proposing a restaurant within the existing commercial building. The restaurant is intended to be a full-service restaurant (including the serving of alcohol) that will include an interior and outdoor dining area, as well as a kitchen/preparation area, counter, as well as storage, etc. The restaurant would occupy approximately 2,952 square feet, which is equivalent to the existing building area, plus a small trash area to be located at the rear of the building. Loading and deliveries would take place by using the side entry located at the northern portion of the building. Delivery trucks can park directly in front of the building at the loading zone along the El Camino Real.

It is intended that the restaurant would be open daily, with the typical hours of operation between 11 a.m to 2 a.m. The restaurant would have approximately 4-6 employees at any given time depending on the demand. Per the project plans, the restaurant would include seating for between 10-12 tables and the outdoor seating would include up to 8 tables. The project proposes a small indoor area to be used for live entertainment. This would only include unamplified music or other similar performances that would take place during the restaurant operating hours of 11 am to 2 am. The project would obtain a On Sale General-Eating Place license (Type 47) from the California Department of Alcohol Beverage Control.

The project has completed public outreach by talking with and notifying their immediate neighbors by informing them of the project and sharing the project plans. In addition, the City sent out a project notice to a required radius.

Architectural Style/Site Layout

Very minimal exterior changes to the building are proposed (please refer to Project Plans) and would retain the overall current building form and elements (main entry and windows) of the existing building. The existing and proposed architectural style is considered early 20th century commercial architectural style

The project does propose removal of a door, window and awning along the El Camino Real frontage in order to provide for restrooms with the building. The project would add a trash enclosure along the rear elevation. Access to the rear of the building would continue to be located via a walkway along the northern portion of the building. This walkway would also provide for ADA access to the restaurant. As stated above, the project proposes to construct new tenant improvements within the space, including the construction of new bathrooms, a kitchen/preparation area, oven area, dining room/seating area and a counter seating area.

### Parking and Circulation

The project is proposed in a building that is currently used for retail uses that predates the developments with on-site parking, as such there is no parking on the project site. Customer parking demands are not expected to be excessive based on the hours of operation and the alternative transportation modes (such as biking and walking) available to customers due to the proposed restaurant's location. Based on the project location (within 1/2 mile of transit), the proposed use and the passage of AB 2097, there are no minimum parking requirements applicable to the project.

|                                     |                                      |                                      |                                       |
|-------------------------------------|--------------------------------------|--------------------------------------|---------------------------------------|
| <b>LOCATION:</b> 961 El Camino Real | <b>PROJECT NUMBER:</b> PLN2022-00041 | <b>APPLICANT:</b> Jaime D'Alessandro | <b>OWNER:</b> 961 El Camino Real, LLC |
|-------------------------------------|--------------------------------------|--------------------------------------|---------------------------------------|

**CONDITIONS OF APPROVAL:**

1. Approve the use permit subject to the following **standard** conditions:
  - a. The applicant shall be required to apply for a building permit within one year from the date of approval (by April 10, 2024) for the use permit to remain in effect.
  - b. Development of the project shall be substantially in conformance with the plans prepared by CAW Architects consisting of 13 plan sheets, dated received March 16, 2023 and approved by the Planning Commission on April 10, 2023, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
  - c. Prior to building permit issuance, the applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.
  - d. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
  - e. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval by the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
  - f. Simultaneous with the submittal of a complete building permit application, the applicant shall submit plans indicating that the applicant shall remove and replace any damaged and significantly worn sections of frontage improvements. The plans shall be submitted for review and approval of the Engineering Division.
  - g. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a Grading and Drainage Plan for review and approval of the Engineering Division. The Grading and Drainage Plan shall be approved prior to the issuance of grading, demolition or building permits.
  - h. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance and the arborist report prepared by Urban Tree Management Inc., dated December 9, 2022.
  - i. Prior to building permit issuance, the applicant shall pay all fees incurred through staff time spent reviewing the application.
  - j. The applicant or permittee shall defend, indemnify, and hold harmless the City of Menlo Park or its agents, officers, and employees from any claim, action, or proceeding against the City of Menlo Park or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit, or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.
  - k. Notice of Fees Protest – The applicant may protest any fees, dedications, reservations, or other exactions imposed by the City as part of the approval or as a condition of approval of this

|                                     |                                      |                                      |                                       |
|-------------------------------------|--------------------------------------|--------------------------------------|---------------------------------------|
| <b>LOCATION:</b> 961 El Camino Real | <b>PROJECT NUMBER:</b> PLN2022-00041 | <b>APPLICANT:</b> Jaime D'Alessandro | <b>OWNER:</b> 961 El Camino Real, LLC |
|-------------------------------------|--------------------------------------|--------------------------------------|---------------------------------------|

**CONDITIONS OF APPROVAL:**

development. Per California Government Code 66020, this 90-day protest period has begun as of the date of the approval of this application.

2. Approve the use permit subject to the following **project-specific** conditions:

- a. The applicant shall adhere to and/or implement all mitigation measures which apply to this Project and were adopted as a part of the Mitigation Monitoring and Reporting Programs (MMRPs) for the ConnectMenlo General Plan and the Downtown Specific Plan. These mitigation measures are set forth in Attachment E, attached hereto and incorporated herein by this reference. Failure to meet these requirements may result in delays to the building permit issuance, stop work orders during construction, and/or fines.
- b. Live entertainment shall be limited to the hours of 11 a.m. to 11 p.m.



Menlo Park El Camino Real/Downtown Specific Plan Standards  
and Guidelines: 961 El Camino Real Compliance Worksheet

| <u>Section</u>  | <u>Standard or Guideline</u> | <u>Requirement</u>  | <u>Evaluation</u>   |
|---|------------------------------|---|---|
| <b>E.3.1 Development Intensity</b>                    |                              |   |   |
| <b>E.3.1.01</b>                                       | Standard                     | Business and Professional office (inclusive of medical and dental office) shall not exceed one half of the base FAR or public benefit bonus FAR, whichever is applicable.   | <b>Complies:</b><br>The base FAR is 1.1 (4,579.3 sf). Project is a restaurant and has no Professional or Business Office use.   |
| <b>E.3.1.02</b>                                       | Standard                     | Medical and Dental office shall not exceed one third of the base FAR or public benefit bonus FAR, whichever is applicable.  | <b>Not applicable:</b><br>No medical or dental office proposed at this time.  |
| <b>E.3.2 Height</b>                                   |                              |   |   |
| <b>E.3.2.01</b>                                       | Standard                     | Roof-mounted mechanical equipment, solar panels, and similar equipment may exceed the maximum building height, but shall be screened from view from publicly-accessible spaces.   | <b>Complies:</b><br>Project has no rooftop equipment.   |
| <b>E.3.2.02</b>                                       | Standard                     | Vertical building projections such as parapets and balcony railings may extend up to 4 feet beyond the maximum façade height or the maximum building height, and shall be integrated into the design of the building.   | <b>Not Applicable:</b><br>Existing building, no change in height and no existing or proposed parapet.   |
| <b>E.3.2.03</b>                                       | Standard                     | Rooftop elements that may need to exceed the maximum building height due to their function, such as stair and elevator towers, shall not exceed 14 feet beyond the maximum building height. Such rooftop elements shall be integrated into the design of the building.  | <b>Complies:</b><br>Project is well below height limit and has no access to the roof.   |
| <b>E.3.3 Setbacks and Projections within Setbacks</b> |                              |   |   |
| <b>E.3.3.01</b>                                       | Standard                     | Front setback areas shall be developed with sidewalks, plazas, and/or landscaping as appropriate.   | <b>Not Applicable:</b><br>The front building wall abuts the front lot line with minimal setback.  |
| <b>E.3.3.02</b>                                       | Standard                     | Parking shall not be permitted in front setback areas.  | <b>Not Applicable:</b><br>No parking is provided on site.   |
| <b>E.3.3.03</b>                                       | Standard                     | In areas where no or a minimal setback is required, limited setback for store or lobby entry recesses shall not exceed a maximum of 4-foot depth and a maximum of 6-foot width.   | <b>Not Applicable:</b><br>The building is not in a no or limited setback area.  |
| <b>E.3.3.04</b>                                       | Standard                     | In areas where no or a minimal setback is required, building projections, such as balconies, bay windows and dormer windows, shall not project beyond a maximum of 3 feet from the building face into the sidewalk clear walking zone, public right-of-way or public spaces, provided they have a minimum 8-foot vertical clearance above the sidewalk clear walking zone, public right-of-way or public space. | <b>Complies:</b><br>Building projections such as balconies, bay windows and dormer windows are not proposed. No building projections extend into the sidewalk clear walking zone. |

Menlo Park El Camino Real/Downtown Specific Plan Standards  
and Guidelines: 961 El Camino Real Compliance Worksheet

|                 |          |  |   |
|-----------------|----------|--|---|
| <b>E.3.3.05</b> | Standard | In areas where setbacks are required, building projections, such as balconies, bay windows and dormer windows, at or above the second habitable floor shall not project beyond a maximum of 5 feet from the building face into the setback area. | <b>Complies:</b><br>Building projections such as balconies, bay windows and dormer windows are not proposed. No building projections extend into the sidewalk clear walking zone. |
|-----------------|----------|--|---|

| <b>Section</b>  | <b>Standard or Guideline</b> | <b>Requirement</b>  | <b>Evaluation</b>  |
|-----------------|------------------------------|---|--|
| <b>E.3.3.06</b> | Standard                     | The total area of all building projections shall not exceed 35% of the primary building façade area. Primary building façade is the façade built at the property or setback line.   | <b>Complies:</b><br>No existing or proposed building projections are provided.   |
| <b>E.3.3.07</b> | Standard                     | Architectural projections like canopies, awnings and signage shall not project beyond a maximum of 6 feet horizontally from the building face at the property line or at the minimum setback line. There shall be a minimum of 8-foot vertical clearance above the sidewalk, public right-of-way or public space. | <b>Complies:</b><br>No existing or proposed building projections are provided.   |
| <b>E.3.3.08</b> | Standard                     | No development activities may take place within the San Francisquito Creek bed, below the creek bank, or in the riparian corridor.  | <b>Complies:</b><br>No development activities are proposed within the San Francisquito Creek bed, below the creek bank, or in the riparian corridor. |

**E.3.4 Massing and Modulation**

**E.3.4.1 Building Breaks**

|                   |          |   |   |
|-------------------|----------|---|---|
| <b>E.3.4.1.01</b> | Standard | The total of all building breaks shall not exceed 25 percent of the primary façade plane in a development.  | <b>Not Applicable:</b><br>Required for buildings south of Live Oak Avenue.  |
| <b>E.3.4.1.02</b> | Standard | Building breaks shall be located at ground level and extend the entire building height.   | <b>Not Applicable:</b><br>Required for buildings south of Live Oak Avenue.  |
| <b>E.3.4.1.03</b> | Standard | In all districts except the ECR-SE zoning district, recesses that function as building breaks shall have minimum dimensions of 20 feet in width and depth and a maximum dimension of 50 feet in width. For the ECR-SE zoning district, recesses that function as building breaks shall have a minimum dimension of 60 feet in width and 40 feet in depth. | <b>Not Applicable:</b><br>The subject property is in the zoning district: ECR-SW and it is an existing building which is not proposing a façade change other than adding windows. |
| <b>E.3.4.1.04</b> | Standard | Building breaks shall be accompanied with a major change in fenestration pattern, material and color to have a distinct treatment for each volume.  | <b>Not Applicable:</b><br>Required for buildings south of Live Oak Avenue.  |
| <b>E.3.4.1.05</b> | Standard | In all districts except the ECR-SE zoning district, building breaks shall be required as shown in Table E3.   | <b>Not Applicable:</b><br>Required for buildings south of Live Oak Avenue.  |



Menlo Park El Camino Real/Downtown Specific Plan Standards  
and Guidelines: 961 El Camino Real Compliance Worksheet

| Section  | Standard or Guideline | Requirement   | Evaluation  |
|--|-----------------------|---|---|
| E.3.4.1.06                                     | Standard              | <p>In the ECR-SE zoning district, and consistent with Table E4 the building breaks shall:</p> <ul style="list-style-type: none"> <li>• Comply with Figure E9;</li> <li>• Be a minimum of 60 feet in width, except where noted on Figure E9;</li> <li>• Be a minimum of 120 feet in width at Middle Avenue;</li> <li>• Align with intersecting streets, except for the area between Roble Avenue and Middle Avenue;</li> <li>• Be provided at least every 350 feet in the area between Roble Avenue and Middle Avenue; where properties under different ownership coincide with this measurement, the standard side setbacks (10 to 25 feet) shall be applied, resulting in an effective break of between 20 to 50 feet.</li> <li>• Extend through the entire building height and depth at Live Oak Avenue, Roble Avenue, Middle Avenue, Partridge Avenue and Harvard Avenue; and</li> <li>• Include two publicly-accessible building breaks at Middle Avenue and Roble Avenue.</li> </ul> | <p><b>Not Applicable:</b><br/>The subject property is in the zoning district: ECR-SW. The building is existing.</p>                       |
| E.3.4.1.07                                     | Standard              | <p>In the ECR-SE zoning district, the Middle Avenue break shall include vehicular access; publicly-accessible open space with seating, landscaping and shade; retail and restaurant uses activating the open space; and a pedestrian/bicycle connection to Alma Street and Burgess Park. The Roble Avenue break shall include publicly-accessible open space with seating, landscaping and shade.</p>   | <p><b>Not Applicable:</b><br/>The subject property is in the zoning district: ECR-SW. The building is existing.</p>                       |
| E.3.4.1.08                                     | Guideline             | <p>In the ECR-SE zoning district, the breaks at Live Oak, Roble, Middle, Partridge and Harvard Avenues may provide vehicular access.</p>  | <p><b>Not Applicable:</b><br/>The subject property is in the zoning district: ECR-SW</p>  |
| <b>E.3.4.2 Façade Modulation and Treatment</b> |                       |   |   |
| E.3.4.2.01                                     | Standard              | <p>Building façades facing public rights-of-way or public open spaces shall not exceed 50 feet in length without a minor building façade modulation. At a minimum of every 50' façade length, the <b>minor vertical façade modulation</b> shall be a minimum 2 feet deep by 5 feet wide recess or a minimum 2 foot setback of the building plane from the primary building façade.</p>  | <p><b>Not Applicable:</b><br/>The existing building is 20'-11 1/4" tall, and is a single story. The width of the building is 45'-11".</p> |

Menlo Park El Camino Real/Downtown Specific Plan Standards  
and Guidelines: 961 El Camino Real Compliance Worksheet

| <u>Section</u>   | <u>Standard or Guideline</u> | <u>Requirement</u>   | <u>Evaluation</u>  |
|--|------------------------------|--|--|
| <b>E.3.4.2.02</b>  | Standard                     | Building façades facing public rights-of-way or public open spaces shall not exceed 100 feet in length without a major building modulation. At a minimum of every 100 feet of façade length, a <b>major vertical façade modulation</b> shall be a minimum of 6 feet deep by 20 feet wide recess or a minimum of 6 feet setback of building plane from primary building façade for the full height of the building. This standard applies to all districts except ECR NE-L and ECR SW since those two districts are required to provide a building break at every 100 feet. | <b>Not Applicable:</b><br>The existing width of the building is 45'-11".   |
| <b>E.3.4.2.03</b>  | Standard                     | In addition, the major building façade modulation shall be accompanied with a 4-foot minimum height modulation and a major change in fenestration pattern, material and/or color.  | <b>Not Applicable:</b><br>There is no change to the existing building other than addition of new windows and reconfiguration of GFA. |
| <b>E.3.4.2.04</b>  | Guideline                    | Minor façade modulation may be accompanied with a change in fenestration pattern, and/or material, and/or color, and/or height.  | <b>Not Applicable:</b><br>There is no change to the existing building other than addition of new windows and reconfiguration of GFA. |
| <b>E.3.4.2.05</b>  | Guideline                    | Buildings should consider sun shading mechanisms, like overhangs, <i>bris soleils</i> and clerestory lighting, as façade articulation strategies.  | <b>N/A:</b><br>There are no shading strategies proposed. Existing building to remain.  |
| <b>E.3.4.3 Building Profile</b>                                    |                              |  |  |
| <b>E.3.4.3.01</b>  | Standard                     | The 45-degree building profile shall be set at the minimum setback line to allow for flexibility and variation in building façade height within a district.  | Building height doesn't change and is well below height limit and 45 degree requirement.   |
| <b>E.3.4.3.02</b>  | Standard                     | Horizontal building and architectural projections, like balconies, bay windows, dormer windows, canopies, awnings, and signage, beyond the 45-degree building profile shall comply with the standards for Building Setbacks & Projection within Setbacks (E.3.3.04 to E.3.3.07) and shall be integrated into the design of the building.   | <b>Complies:</b><br>No items listed are provided.  |
| <b>E.3.4.3.03</b>  | Standard                     | Vertical building projections like parapets and balcony railings shall not extend 4 feet beyond the 45-degree building profile and shall be integrated into the design of the building.  | <b>Not applicable:</b><br>There are no projections proposed.   |
| <b>E.3.4.3.04</b>  | Standard                     | Rooftop elements that may need to extend beyond the 45-degree building profile due to their function, such as stair and elevator towers, shall be integrated into the design of the building.  | <b>Not applicable:</b><br>There are no rooftop elements proposed.  |
| <b>E.3.4.4 Upper Story Façade Length</b>                           |                              |  |  |
| <b>E.3.4.4.01</b>  | Standard                     | Building stories above the 38-foot façade height shall have a maximum allowable façade length of 175 feet along a public right-of-way or public open space.  | <b>Not applicable:</b><br>The existing building is below 39 feet.  |
| <b>E.3.5 Ground Floor Treatment, Entry and Commercial Frontage</b> |                              |  |  |
| <b>Ground Floor Treatment</b>                                      |                              |  |  |

Menlo Park El Camino Real/Downtown Specific Plan Standards  
and Guidelines: 961 El Camino Real Compliance Worksheet

| <u>Section</u>          | <u>Standard or Guideline</u> | <u>Requirement</u>   | <u>Evaluation</u>  |
|-------------------------|------------------------------|--|--|
| <b>E.3.5.01</b>         | Standard                     | The retail or commercial ground floor shall be a minimum 15-foot floor-to-floor height to allow natural light into the space.  | <b>Not Applicable:</b><br>No changes are proposed to the first floor height.   |
| <b>E.3.5.02</b>         | Standard                     | Ground floor commercial buildings shall have a minimum of 50% transparency (i.e., clear-glass windows) for retail uses, office uses and lobbies to enhance the visual experience from the sidewalk and street. Heavily tinted or mirrored glass shall not be permitted.  | <b>Complies:</b><br>The proposed front façade meets the 50% transparency requirements. The proposed transparency is 73.6%  |
| <b>E.3.5.03</b>         | Guideline                    | Buildings should orient ground-floor retail uses, entries and direct-access residential units to the street.   | <b>Complies:</b><br>The restaurant's main entry faces El Camino Real.  |
| <b>E.3.5.04</b>         | Guideline                    | Buildings should activate the street by providing visually interesting and active uses, such as retail and personal service uses, in ground floors that face the street. If office and residential uses are provided, they should be enhanced with landscaping and interesting building design and materials.  | <b>Complies:</b><br>The existing single-story building will be used for a restaurant, which would help in activating the street. The main entry will be facing El Camino Real. |
| <b>E.3.5.05</b>         | Guideline                    | For buildings where ground floor retail, commercial or residential uses are not desired or viable, other project-related uses, such as a community room, fitness center, daycare facility or sales center, should be located at the ground floor to activate the street.   | <b>Not applicable:</b><br>A restaurant is proposed.  |
| <b>E.3.5.06</b>         | Guideline                    | Blank walls at ground floor are discouraged and should be minimized. When unavoidable, continuous lengths of blank wall at the street should use other appropriate measures such as landscaping or artistic intervention, such as murals.  | <b>Complies:</b><br>Blank walls are minimized on the ground floor.   |
| <b>E.3.5.07</b>         | Guideline                    | Residential units located at ground level should have their floors elevated a minimum of 2 feet to a maximum of 4 feet above the finished grade sidewalk for better transition and privacy, provided that accessibility codes are met.   | <b>Not applicable:</b><br>No residential units are proposed.   |
| <b>E.3.5.08</b>         | Guideline                    | Architectural projections like canopies and awnings should be integrated with the ground floor and overall building design to break up building mass, to add visual interest to the building and provide shelter and shade.  | <b>Not applicable:</b><br>There are no projections proposed.   |
| <b>Building Entries</b> |                              |  |  |
| <b>E.3.5.09</b>         | Standard                     | Building entries shall be oriented to a public street or other public space. For larger residential buildings with shared entries, the main entry shall be through prominent entry lobbies or central courtyards facing the street. From the street, these entries and courtyards provide additional visual interest, orientation and a sense of invitation. | <b>Complies:</b><br>Building entry is oriented to the public street. Accessible entrance is on the side for ramp access.   |

Menlo Park El Camino Real/Downtown Specific Plan Standards  
and Guidelines: 961 El Camino Real Compliance Worksheet

| <b>Section</b>             | <b>Standard or Guideline</b> | <b>Requirement</b>  | <b>Evaluation</b>   |
|----------------------------|------------------------------|---|---|
| <b>E.3.5.10</b>            | Guideline                    | Entries should be prominent and visually distinctive from the rest of the façade with creative use of scale, materials, glazing, projecting or recessed forms, architectural details, color, and/or awnings.  | <b>Complies:</b><br>The main entry is visually distinct from the rest of the façade with it being recessed from the main façade.  |
| <b>E.3.5.11</b>            | Guideline                    | Multiple entries at street level are encouraged where appropriate.  | <b>Complies:</b><br>Two entries are provided. Building entry is oriented to the public street. Accessible entrance is on the side for ramp access.  |
| <b>E.3.5.12</b>            | Guideline                    | Ground floor residential units are encouraged to have their entrance from the street.   | <b>Not applicable:</b><br>No residential unit/s are proposed.   |
| <b>E.3.5.13</b>            | Guideline                    | Stoops and entry steps from the street are encouraged for individual unit entries when compliant with applicable accessibility codes. Stoops associated with landscaping create inviting, usable and visually attractive transitions from private spaces to the street. | <b>Not applicable:</b><br>No residential unit/s are proposed. Existing stoop is to remain.  |
| <b>E.3.5.14</b>            | Guideline                    | Building entries are allowed to be recessed from the primary building façade.   | <b>Complies:</b><br>The building entrance facing El Camino Real is considered as the primary façade and is recessed.  |
| <b>Commercial Frontage</b> |                              |   |   |
| <b>E.3.5.15</b>            | Standard                     | Commercial windows/storefronts shall be recessed from the primary building façade a minimum of 6 inches   | <b>Does not comply:</b><br>Existing windows to remain do not meet this standard. Proposed windows will meet the standard.   |
| <b>E.3.5.16</b>            | Standard                     | Retail frontage, whether ground floor or upper floor, shall have a minimum 50% of the façade area transparent with clear vision glass, not heavily tinted or highly mirrored glass.   | <b>Complies:</b><br>The proposed building meets the 50% transparency requirement. No retail is being proposed.  |
| <b>E.3.5.17</b>            | Guideline                    | Storefront design should be consistent with the building's overall design and contribute to establishing a well-defined ground floor for the façade along streets.  | <b>Complies:</b><br>The proposed storefront windows facilitate meeting the transparency requirement.  |
| <b>E.3.5.18</b>            | Guideline                    | The distinction between individual storefronts, entire building façades and adjacent properties should be maintained.   | <b>Complies:</b><br>The existing building is unique and has clear distinction with adjacent properties.   |
| <b>E.3.5.19</b>            | Guideline                    | Storefront elements such as windows, entrances and signage should provide clarity and lend interest to the façade.  | <b>Complies:</b><br>Project meets this guideline.   |
| <b>E.3.5.20</b>            | Guideline                    | Individual storefronts should have clearly defined bays. These bays should be no greater than 20 feet in length. Architectural elements, such as piers, recesses and projections help articulate bays.  | <b>Partly Complies:</b><br>What is lacking, clearly defined bays and/or repetition of bays/storefronts as well as piers, projections or other visual cues that provide the scale and identity of retail frontage indicated by this guideline and the drawings and photographic images on page E33 of the Specific Plan. For this reason, it cannot be determined that the proposal would be |

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|                 |           |   |  |
|-----------------|-----------|---|--|
|                 |           |   | consistent with this guideline   |
| <b>E.3.5.21</b> | Guideline | All individual retail uses should have direct access from the public sidewalk. For larger retail tenants, entries should occur at lengths at a maximum at every 50 feet, consistent with the typical lot size in downtown.  | <b>Not Applicable:</b><br>Retail use is not being proposed. However, the restaurant will have direct access to public sidewalk.                                |
| <b>E.3.5.22</b> | Guideline | Recessed doorways for retail uses should be a minimum of two feet in depth. Recessed doorways provide cover or shade, help identify the location of store entrances, provide a clear area for out-swinging doors and offer the opportunity for interesting paving patterns, signage and displays. | <b>Complies:</b><br>Recess at the doorway are more than 2'-0" in depth. The recess will provide cover, shade, and help identify the location of the entrances. |

| <u>Section</u>          | <u>Standard or Guideline</u> | <u>Requirement</u>  | <u>Evaluation</u>   |
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| <b>E.3.5.23</b>         | Guideline                    | Storefronts should remain un-shuttered at night and provide clear views of interior spaces lit from within. If storefronts must be shuttered for security reasons, the shutters should be located on the inside of the store windows and allow for maximum visibility of the interior.  | <b>Complies:</b><br>Per the applicant: No shutters are proposed as part of the proposed design. |
| <b>E.3.5.24</b>         | Guideline                    | Storefronts should not be completely obscured with display cases that prevent customers and pedestrians from seeing inside.   | <b>Complies:</b><br>Per the applicant: No shutters are proposed as part of the proposed design. |
| <b>E.3.5.25</b>         | Guideline                    | Signage should not be attached to storefront windows.   | <b>Complies:</b><br>Per the applicant signage is not included in submittal.                     |
| <b>E.3.6 Open Space</b> |                              |   |   |
| <b>E.3.6.01</b>         | Standard                     | Residential developments or Mixed Use developments with residential use shall have a minimum of 100 square feet of open space per unit created as common open space or a minimum of 80 square feet of open space per unit created as private open space, where private open space shall have a minimum dimension of 6 feet by 6 feet. In case of a mix of private and common open space, such common open space shall be provided at a ratio equal to 1.25 square feet for each one square foot of private open space that is not provided. | <b>Not applicable:</b><br>No residential use.   |
| <b>E.3.6.02</b>         | Standard                     | Residential open space (whether in common or private areas) and accessible open space above parking podiums up to 16 feet high shall count towards the minimum open space requirement for the development.  | <b>Not applicable:</b><br>No residential use.   |

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| <b>E.3.6.03</b>                             | Guideline | Private and/or common open spaces are encouraged in all developments as part of building modulation and articulation to enhance building façade.  | <b>Complies:</b><br><br>Private open space in the form of outdoor seating is proposed to the rear of the property.  |
| <b>E.3.6.04</b>                             | Guideline | Private development should provide accessible and usable common open space for building occupants and/or the general public.  | <b>Complies:</b><br><br>Open space is provided in the rear.   |
| <b>E.3.6.05</b>                             | Guideline | For residential developments, private open space should be designed as an extension of the indoor living area, providing an area that is usable and has some degree of privacy.                   | <b>Not applicable:</b><br><br>No residential use.   |
| <b>E.3.6.06</b>                             | Guideline | Landscaping in setback areas should define and enhance pedestrian and open space areas. It should provide visual interest to streets and sidewalks, particularly where building façades are long. | <b>Complies:</b><br><br>New landscape proposed to the rear of the property, which is considered as a side property line as it is adjacent to a property that is also in the Specific Plan area. |
| <b>E.3.6.07</b>                             | Guideline | Landscaping of private open spaces should be attractive, durable and drought-resistant.   | <b>Complies.</b><br>The private open space will be landscaped as follows:<br>Rear yard landscaping will meet this guideline.  |
| <b>E.3.7 Parking, Service and Utilities</b> |           |   |   |
| <b>General Parking and Service Access</b>   |           |   |   |

| <u>Section</u>  | <u>Standard or Guideline</u> | <u>Requirement</u>   | <u>Evaluation</u>  |
|-----------------|------------------------------|--|--|
| <b>E.3.7.01</b> | Guideline                    | The location, number and width of parking and service entrances should be limited to minimize breaks in building design, sidewalk curb cuts and potential conflicts with streetscape elements. | <b>Not applicable:</b><br>Service entrances and parking is not proposed. |
| <b>E.3.7.02</b> | Guideline                    | In order to minimize curb cuts, shared entrances for both retail and residential use are encouraged. In shared entrance conditions, secure access for residential parking should be provided.  | <b>Not applicable:</b><br>Curb cuts are not being proposed.              |
| <b>E.3.7.03</b> | Guideline                    | When feasible, service access and loading docks should be located on secondary streets or alleys and to the rear of the building.  | <b>Not applicable:</b><br>Loading docks are not proposed or needed.      |
| <b>E.3.7.04</b> | Guideline                    | The size and pattern of loading dock entrances and doors should be integrated with the overall building design.  | <b>Not applicable:</b><br>Loading docks are not proposed or needed.      |

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| <b>E.3.7.05</b>        | Guideline                    | Loading docks should be screened from public ways and adjacent properties to the greatest extent possible. In particular, buildings that directly adjoin residential properties should limit the potential for loading-related impacts, such as noise. Where possible, loading docks should be internal to the building envelope and equipped with closable doors. For all locations, loading areas should be kept clean. | <b>Not applicable:</b><br>Loading docks are not proposed or needed.  |
| <b>E.3.7.06</b>        | Guideline                    | Surface parking should be visually attractive, address security and safety concerns, retain existing mature trees and incorporate canopy trees for shade. See Section D.5 for more complete guidelines regarding landscaping in parking areas.  | <b>Not applicable:</b><br>No existing or proposed onsite parking.  |
| <b>Utilities</b>       |                              |   |  |
| <b>E.3.7.07</b>        | Guideline                    | All utilities in conjunction with new residential and commercial development should be placed underground.  | <b>Not applicable:</b><br>Existing building.   |
| <b>E.3.7.08</b>        | Guideline                    | Above ground meters, boxes and other utility equipment should be screened from public view through use of landscaping or by integrating into the overall building design.   | <b>Complies:</b><br>The applicant has indicated that only the existing gas meter is to remain. No additional meter or utility equipment is proposed. |
| <b>Parking Garages</b> |                              |   |  |
| <b>E.3.7.09</b>        | Standard                     | To promote the use of bicycles, secure bicycle parking shall be provided at the street level of public parking garages. Bicycle parking is also discussed in more detail in Section F.5 "Bicycle Storage Standards and Guidelines."   | <b>Not applicable:</b><br>A parking garage is not proposed.  |
| <b>E.3.7.10</b>        | Guideline                    | Parking garages on downtown parking plazas should avoid monolithic massing by employing change in façade rhythm, materials and/or color.  | <b>Not applicable:</b><br>A parking garage is not proposed.  |
| <b>Section</b>         | <b>Standard or Guideline</b> | <b>Requirement</b>  | <b>Evaluation</b>  |
| <b>E.3.7.11</b>        | Guideline                    | To minimize or eliminate their visibility and impact from the street and other significant public spaces, parking garages should be underground, wrapped by other uses (i.e. parking podium within a development) and/or screened from view through architectural and/or landscape treatment.   | <b>Not applicable:</b><br>A parking garage is not proposed.  |
| <b>E.3.7.12</b>        | Guideline                    | Whether free-standing or incorporated into overall building design, garage façades should be designed with a modulated system of vertical openings and pilasters, with design attention to an overall building façade that fits comfortably and compatibly into the pattern, articulation, scale and massing of surrounding building character.   | <b>Not applicable:</b><br>A parking garage is not proposed.  |

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| <b>E.3.7.13</b>   | Guideline | Shared parking is encouraged where feasible to minimize space needs, and it is effectively codified through the plan's off-street parking standards and allowance for shared parking studies.                           | <b>Not applicable:</b><br>A parking garage is not proposed.                                 |
| <b>E.3.7.14</b>   | Guideline | A parking garage roof should be approached as a usable surface and an opportunity for sustainable strategies, such as installment of a green roof, solar panels or other measures that minimize the heat island effect. | <b>Not applicable:</b><br>A parking garage is not proposed.                                 |
| <b>E.3.8 Sustainable Practices</b>                                    |           |   |   |
| <b>Overall Standards</b>  |           |   |   |
| <b>E.3.8.01</b>   | Standard  | Unless the Specific Plan area is explicitly exempted, all citywide sustainability codes or requirements shall apply.  | <b>Tentatively Complies:</b><br>Staff will confirm compliance at the building permit stage. |
| <b>Overall Guidelines</b>   |           |   |   |
| <b>E.3.8.02</b>   | Guideline | Because green building standards are constantly evolving, the requirements in this section should be reviewed and updated on a regular basis of at least every two years.   | <b>Tentatively Complies:</b><br>Staff will confirm compliance at the building permit stage. |
| <b>Leadership in Energy and Environmental Design (LEED) Standards</b> |           |   |   |



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| Section  | Standard or Guideline | Requirement  | Evaluation  |
|--|-----------------------|--|---|
| E.3.8.03   | Standard              | <p>Development shall achieve LEED certification, at Silver level or higher, or a LEED Silver equivalent standard for the project types listed below. For LEED certification, the applicable standards include LEED New Construction; LEED Core and Shell; LEED New Homes; LEED Schools; and LEED Commercial Interiors. Attainment shall be achieved through LEED certification or through a City-approved outside auditor for those projects pursuing a LEED equivalent standard. The requirements, process and applicable fees for an outside auditor program shall be established by the City and shall be reviewed and updated on a regular basis. LEED certification or equivalent standard, at a Silver level or higher, shall be required for:</p> <ul style="list-style-type: none"> <li>• Newly constructed residential buildings of Group R (single-family, duplex and multi-family);</li> <li>• Newly constructed commercial buildings of Group B (occupancies including among others office, professional and service type transactions) and Group M (occupancies including among others display or sale of merchandise such as department stores, retail stores, wholesale stores, markets and sales rooms) that are 5,000 gross square feet or more;</li> <li>• New first-time build-outs of commercial interiors that are 20,000 gross square feet or more in buildings of Group B and M occupancies; and</li> <li>• Major alterations that are 20,000 gross square feet or more in existing buildings of Group B, M and R occupancies, where interior finishes are removed and significant upgrades to structural and mechanical, electrical and/or plumbing systems are proposed.</li> </ul> <p>All residential and/or mixed use developments of sufficient size to require LEED certification or equivalent standard under the Specific Plan shall install one dedicated electric vehicle/plug-in hybrid electric vehicle recharging station for every 20 residential parking spaces provided. Per the Climate Action Plan the complying applicant could receive incentives, such as streamlined permit processing, fee discounts, or design templates.</p> | <p><b>Not applicable:</b><br/>Proposed project is not among the project types requiring LEED.</p> |
| <b>Leadership in Energy and Environmental Design (LEED) Guidelines</b> |                       |  |   |

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| <u>Section</u>                    | <u>Standard or Guideline</u> | <u>Requirement</u>  | <u>Evaluation</u>  |
|-----------------------------------|------------------------------|---|--|
| <b>E.3.8.04</b>                   | Guideline                    | The development of larger projects allows for more comprehensive sustainability planning and design, such as efficiency in water use, stormwater management, renewable energy sources and carbon reduction features. A larger development project is defined as one with two or more buildings on a lot one acre or larger in size. Such development projects should have sustainability requirements and GHG reduction targets that address neighborhood planning, in addition to the sustainability requirements for individual buildings (See Standard E.3.8.03 above). These should include being certified or equivalently verified at a LEED-ND (neighborhood development), Silver level or higher, and mandating a phased reduction of GHG emissions over a period of time as prescribed in the 2030 Challenge.<br>The sustainable guidelines listed below are also relevant to the project area. They relate to but do not replace LEED certification or equivalent standard rating requirements. | <b>Not applicable:</b><br>The proposed project does not meet the definition of a larger development project.         |
| <b>Building Design Guidelines</b> |                              |   |  |
| <b>E.3.8.05</b>                   | Guideline                    | Buildings should incorporate narrow floor plates to allow natural light deeper into the interior.   | <b>Not applicable:</b><br>Existing floor plate to remain.  |
| <b>E.3.8.06</b>                   | Guideline                    | Buildings should reduce use of daytime artificial lighting through design elements, such as bigger wall openings, light shelves, clerestory lighting, skylights, and translucent wall materials.  | <b>Complies:</b><br>Project will have ample glazing on front facade, however no skylights are proposed.              |
| <b>E.3.8.07</b>                   | Guideline                    | Buildings should allow for flexibility to regulate the amount of direct sunlight into the interiors. Louvered wall openings or shading devices like <i>bris soleils</i> help control solar gain and check overheating. <i>Bris soleils</i> , which are permanent sun-shading elements, extend from the sun-facing façade of a building, in the form of horizontal or vertical projections depending on sun orientation, to cut out the sun's direct rays, help protect windows from excessive solar light and heat and reduce glare within.   | <b>Partially Complies:</b><br>Windows face northeast which is a favorable solar orientation.                         |
| <b>E.3.8.08</b>                   | Guideline                    | Where appropriate, buildings should incorporate arcades, trellis and appropriate tree planting to screen and mitigate south and west sun exposure during summer. This guideline would not apply to downtown, the station area and the west side of El Camino Real where buildings have a narrower setback and street trees provide shade.   | <b>Not applicable:</b><br>This project is on the west side of El Camino Real. Trellis will be provided on rear deck. |
| <b>E.3.8.09</b>                   | Guideline                    | Operable windows are encouraged in new buildings for natural ventilation.   | <b>Not applicable:</b><br>No operable windows provided; however,   |

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|  |                              |   | this is not a new building. Also, it is not clear that operable windows would be suited to the proposed restaurant.                                  |
|--|------------------------------|---|--|
| <u>Section</u>   | <u>Standard or Guideline</u> | <u>Requirement</u>  | <u>Evaluation</u>  |
| <b>E.3.8.10</b>  | Guideline                    | To maximize use of solar energy, buildings should consider integrating photovoltaic panels on roofs.  | <b>Not applicable:</b><br>There appears to be limited space on the roof. Staff will confirm compliance with all City codes at building permit stage. |
| <b>E.3.8.11</b>  | Guideline                    | Inclusion of recycling centers in kitchen facilities of commercial and residential buildings shall be encouraged. The minimum size of recycling centers in commercial buildings should be 20 cubic feet (48 inches wide x 30 inches deep x 24 inches high) to provide for garbage and recyclable materials.   | <b>Complies:</b><br>Recycling containers will be included in the trash enclosure.  |
| <b>Stormwater and Wastewater Management Guidelines</b> |                              |   |  |
| <b>E.3.8.12</b>  | Guideline                    | Buildings should incorporate intensive or extensive green roofs in their design. Green roofs harvest rain water that can be recycled for plant irrigation or for some domestic uses. Green roofs are also effective in cutting-back on the cooling load of the air-conditioning system of the building and reducing the heat island effect from the roof surface. | <b>Not applicable:</b><br>Existing building/roof to remain.  |
| <b>E.3.8.13</b>  | Guideline                    | Projects should use porous material on driveways and parking lots to minimize stormwater run-off from paved surfaces.   | <b>Not applicable:</b><br>No paved areas.  |
| <b>Landscaping Guidelines</b>                          |                              |   |  |
| <b>E.3.8.14</b>  | Guideline                    | Planting plans should support passive heating and cooling of buildings and outdoor spaces.  | <b>Complies:</b><br>Project will meet this guideline.  |
| <b>E.3.8.15</b>  | Guideline                    | Regional native and drought resistant plant species are encouraged as planting material.  | <b>Complies:</b><br>Project will meet this guideline.  |
| <b>E.3.8.16</b>  | Guideline                    | Provision of efficient irrigation system is recommended, consistent with the City's Municipal Code Chapter 12.44 "Water-Efficient Landscaping".   | <b>Complies:</b><br>Project will meet this guideline.  |
| <b>Lighting Standards</b>                              |                              |   |  |
| <b>E.3.8.17</b>  | Standard                     | Exterior lighting fixtures shall use fixtures with low cut-off angles, appropriately positioned, to minimize glare into dwelling units and light pollution into the night sky.  | <b>Complies:</b><br>Project will meet this guideline.  |
| <b>E.3.8.18</b>  | Standard                     | Lighting in parking garages shall be screened and controlled so as not to disturb surrounding properties, but shall ensure adequate public security.  | <b>Not applicable.</b>   |
| <b>Lighting Guidelines</b>                             |                              |   |  |
| <b>E.3.8.19</b>  | Guideline                    | Energy-efficient and color-balanced outdoor lighting, at the lowest lighting levels possible, are encouraged to provide for safe pedestrian and auto circulation.   | <b>TBD:</b><br>Per applicant project will meet this guideline. Compliance with City codes to be verified at building permit stage.                   |

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| <b>E.3.8.20</b>                           | Guideline | Improvements should use ENERGY STAR-qualified fixtures to reduce a building's energy consumption.  | <b>TBD:</b><br>Per applicant project will meet this guideline. Compliance with City codes to be verified at building permit stage. |
| <b>E.3.8.21</b>                           | Guideline | Installation of high-efficiency lighting systems with advanced lighting control, including motion sensors tied to dimmable lighting controls or lighting controlled by timers set to turn off at the earliest practicable hour, are recommended. | <b>TBD:</b><br>Per applicant project will meet this guideline. Compliance with City codes to be verified at building permit stage. |
| <b>Green Building Material Guidelines</b> |           |  |  |

| <b><u>Section</u></b> | <b><u>Standard or Guideline</u></b> | <b><u>Requirement</u></b>   | <b><u>Evaluation</u></b>   |
|-----------------------|-------------------------------------|---|--|
| <b>E.3.8.22</b>       | Guideline                           | The reuse and recycle of construction and demolition materials is recommended. The use of demolition materials as a base course for a parking lot keeps materials out of landfills and reduces costs. | <b>TBD:</b><br>Per applicant project will meet this guideline. Compliance with City codes to be verified at building permit stage. |
| <b>E.3.8.23</b>       | Guideline                           | The use of products with identifiable recycled content, including post-industrial content with a preference for post-consumer content, are encouraged.  | <b>TBD:</b><br>Per applicant project will meet this guideline. Compliance with City codes to be verified at building permit stage. |
| <b>E.3.8.24</b>       | Guideline                           | Building materials, components, and systems found locally or regionally should be used, thereby saving energy and resources in transportation.  | <b>TBD:</b><br>Per applicant project will meet this guideline. Compliance with City codes to be verified at building permit stage. |
| <b>E.3.8.25</b>       | Guideline                           | A design with adequate space to facilitate recycling collection and to incorporate a solid waste management program, preventing waste generation, is recommended.                                     | <b>TBD:</b><br>Per applicant project will meet this guideline. Compliance with City codes to be verified at building permit stage. |
| <b>E.3.8.26</b>       | Guideline                           | The use of material from renewable sources is encouraged.   | <b>TBD:</b><br>Per applicant project will meet this guideline. Compliance with City codes to be verified at building permit stage. |

| Mitigation Monitoring and Reporting Program   |  |   |   |                  |
|---|--|---|---|------------------|
| Mitigation Measure  | Action   | Timing  | Implementing Party                          | Monitoring Party |
| <b>AIR QUALITY</b>  |  |   |   |                  |
| <b>Specific Plan Impact AIR-1: Implementation of the Specific Plan would result in increased long-term emissions of criteria pollutants associated with construction activities that could contribute substantially to an air quality violation. (Significant)</b>  |  |   |   |                  |
| <p><i>Mitigation Measure AIR-1a</i>: During construction of individual projects under the Specific Plan, project applicants shall require the construction contractor(s) to implement the following measures required as part of Bay Area Air Quality Management District's (BAAQMD) basic dust control procedures required for construction sites. For projects for which construction emissions exceed one or more of the applicable BAAQMD thresholds, additional measures shall be required as indicated in the list following the Basic Controls.</p> <p><u>Basic Controls that Apply to All Construction Sites</u></p> <p>1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.</p> <p>2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.</p> <p>3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.</p> <p>4. All vehicle speeds on unpaved roads shall be limited to 15 mph.</p> <p>5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.</p> <p>6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.</p> <p>7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.</p> <p>8. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.</p> <p>9. Minimizing the idling time of diesel powered construction equipment to two minutes.</p> | <p>Exposed surfaces shall be watered twice daily.</p> <p>Trucks carrying demolition debris shall be covered.</p> <p>Dirt carried from construction areas shall be cleaned daily.</p> <p>Speed limit on unpaved roads shall be 15 mph.</p> <p>Roadways, driveways, sidewalks and building pads shall be laid as soon as possible after grading.</p> <p>Idling times shall be minimized to 5 minutes or less; Signage posted at all access points.</p> <p>Construction equipment shall be properly tuned and maintained.</p> <p>Signage will be posted with the appropriate contact information regarding dust complaints.</p> <p>Idling time of diesel powered equipment will not exceed two minutes.</p> | <p>Measures shown on plans, construction documents and on-going during demolition, excavation and construction.</p> | <p>Project sponsor(s) and contractor(s)</p> | <p>PW/CDD</p>    |

| Mitigation Monitoring and Reporting Program  |  |  |                    |                  |
|--|--|--|--------------------|------------------|
| Mitigation Measure   | Action   | Timing   | Implementing Party | Monitoring Party |
| 10. The project shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet- average 20 percent nitrogen oxides reduction and 45 percent particulate matter reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available. | Plan developed that demonstrates emissions from use of off-road equipment during construction will be reduced as specified.  |  |                    |                  |
| 11. Use low volatile organic compound (VOC) (i.e., reactive organic gases) coatings beyond the local requirements (i.e., Regulation 8, Rule 3: Architectural Coatings).  | Low VOC coatings shall be used.  |  |                    |                  |
| 12. Requiring that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of nitrogen oxides and particulate matter.   | Require Best Available Control Technology for all construction equipment, diesel trucks, and generators.   |  |                    |                  |
| 13. Requiring all contractors use equipment that meets the California Air Resources Board's most recent certification standard for off-road heavy duty diesel engines.   | Equipment shall meet standards for off-road heavy duty diesel engines.   |  |                    |                  |
| <b>Specific Plan Impact AIR-5: Implementation of the Specific Plan would locate sensitive receptors in an area of elevated concentrations of toxic air contaminants associated with roadway traffic which may lead to considerable adverse health effects. (Potentially Significant)</b>   |  |  |                    |                  |
| <b>Mitigation Measure AIR-5:</b> The Mitigation Monitoring and Reporting Program shall require that all developments that include sensitive receptors such as residential units that would be located within 200 feet of the edge of El Camino Real or within 100 feet of the edge of Ravenswood Avenue, Oak Grove Avenue east of El Camino Real, or Santa Cruz Avenue west of University Avenue shall undergo, prior to project approval, a screening-level health risk analysis to determine if cancer risk, hazard index, and/or PM <sub>2.5</sub> concentration  | A health risk analysis shall be prepared.<br><br>If one or more thresholds are exceeded, a filtration system shall be installed; Certified engineer to provide report documenting that system reduces health risks | Simultaneous with submittal for a building permit. | Project sponsor(s) | CDD              |

| Mitigation Monitoring and Reporting Program  |  |  |                    |                  |
|--|--|--|--------------------|------------------|
| Mitigation Measure   | Action   | Timing   | Implementing Party | Monitoring Party |
| would exceed BAAQMD thresholds. If one or more thresholds would be exceeded at the site of the subsequent project, the project (or portion of the project containing sensitive receptors, in the case of a mixed-use project) shall be equipped with filtration systems with a Minimum Efficiency Reporting Value (MERV) rating of 14 or higher. The ventilation system shall be designed by an engineer certified by the American Society of Heating, Refrigeration and Air-Conditioning Engineers, who shall provide a written report documenting that the system reduces interior health risks to less than 10 in one million, or less than any other threshold of significance adopted by BAAQMD or the City for health risks. The project sponsor shall present a plan to ensure ongoing maintenance of ventilation and filtration systems and shall ensure the disclosure to buyers and/or renters regarding the findings of the analysis and inform occupants as to proper use of any installed air filtration. Alternatively, if the project applicant can prove at the time of development that health risks at new residences due to DPM (and other TACs, if applicable) would be less than 10 in one million, or less than any other threshold of significance adopted by BAAQMD for health risks, or that alternative mitigation measures reduce health risks below any other City-adopted threshold of significance, such filtration shall not be required. | Plan developed for ongoing maintenance and disclosure to buyers and/renters.   |  |                    |                  |
| <b>Specific Plan EIR Impact AIR-6: Implementation of the Specific Plan would locate new sensitive receptors in an area of elevated concentrations of PM<sub>2.5</sub> associated with roadway traffic which may lead to considerable adverse health effects. (Potentially Significant)</b>   |  |  |                    |                  |
| Mitigation Measure AIR-5 associated with Impact AIR-5 regarding DPM exposure would also reduce PM <sub>2.5</sub> exposure impacts along El Camino Real and other high volume streets to a less than significant level.   | See Mitigation Measure AIR-5.  |  |                    |                  |
| <b>Specific Plan EIR Impact AIR-7: Implementation of the Specific Plan would expose sensitive receptors to elevated concentrations of Toxic Air Contaminants (TACs) associated with Caltrain operations which may lead to considerable adverse health effects. (Potentially Significant)</b>   |  |  |                    |                  |
| Mitigation Measure AIR-7: The Mitigation Monitoring and Reporting Program shall require that all developments that include sensitive receptors such as residential units that would be located within approximately 1,095 feet of the edge of the Caltrain right-of-way shall undergo, prior to project approval, a screening-level health risk analysis to determine if cancer risk, hazard index, and/or PM <sub>2.5</sub> concentration would exceed BAAQMD thresholds. If one or more thresholds would be exceeded at the site of the subsequent project, the  | A health risk analysis shall be prepared.<br><br>If one or more thresholds are exceeded, a filtration system shall be installed; Certified engineer to provide report documenting that system reduces health risks | Simultaneous with submittal for a building permit. | Project sponsor(s) | CDD              |

| <b>Mitigation Monitoring and Reporting Program</b>   |  |  |  |                         |
|--|--|--|--|-------------------------|
| <b>Mitigation Measure</b>  | <b>Action</b>  | <b>Timing</b>  | <b>Implementing Party</b>  | <b>Monitoring Party</b> |
| <p>project (or portion of the project containing sensitive receptors, in the case of a mixed-use project) shall be equipped with filtration systems with a Minimum Efficiency Reporting Value (MERV) rating of 14 or higher. The ventilation system shall be designed by an engineer certified by the American Society of Heating, Refrigeration and Air-Conditioning Engineers, who shall provide a written report documenting that the system reduces interior health risks to less than 10 in one million, or less than any other threshold of significance adopted by BAAQMD or the City for health risks. The project sponsor shall present a plan to ensure ongoing maintenance of ventilation and filtration systems and shall ensure the disclosure to buyers and/or renters regarding the findings of the analysis and inform occupants as to proper use of any installed air filtration. Alternatively, if the project applicant can prove at the time of development that health risks at new residences due to DPM (and other TACs, if applicable) would be less than 10 in one million, or less than any other threshold of significance adopted by BAAQMD for health risks, or that alternative mitigation measures reduce health risks below any other City-adopted threshold of significance, such filtration shall not be required.</p> | <p>Plan developed for ongoing maintenance and disclosure to buyers and/renters.</p>  |  |  |                         |
| <p><b>General Plan EIR Impact AQ-3: Implementation of the proposed project would expose sensitive receptors to substantial concentrations of air pollutions). (Potentially Significant)</b></p>  |  |  |  |                         |
| <p><b>BIOLOGICAL RESOURCES</b></p>   |  |  |  |                         |
| <p><b>Specific Plan EIR Impact BIO-1: The Specific Plan could result in the take of special-status birds or their nests. (Potentially Significant)</b></p>   |  |  |  |                         |
| <p><b>Mitigation Measure BIO-1a: Pre-Construction Special-Status Avian Surveys.</b> No more than two weeks in advance of any tree or shrub pruning, removal, or ground-disturbing activity that will commence during the breeding season (February 1 through August 31), a qualified wildlife biologist will conduct pre-construction surveys of all potential special-status bird nesting habitat in the vicinity of the planned activity. Pre-construction surveys are not required for construction activities scheduled to occur during the non-breeding season (August 31 through January 31). Construction activities commencing during the non-breeding season and continuing into the breeding season do not require surveys (as it is assumed that any breeding birds taking up nests would be acclimated to project-related activities already under way). Nests initiated during construction activities would be presumed to be unaffected by the activity, and a buffer zone around such nests would not be necessary. However, a nest initiated during construction cannot be moved or altered.</p> <p><b>If pre-construction surveys indicate that no nests of special-status birds are present or that nests are inactive or potential habitat is unoccupied:</b> no further mitigation is required.</p>                                 | <p>A nesting bird survey shall be prepared if tree or shrub pruning, removal or ground-disturbing activity will commence between February 1 through August 31.</p> | <p>Prior to tree or shrub pruning or removal, any ground disturbing activity and/or issuance of demolition, grading or building permits.</p> | <p>Qualified wildlife biologist retained by project sponsor(s)</p> | <p>CDD</p>              |



| Mitigation Monitoring and Reporting Program  |   |   |                                      |                  |
|--|---|---|--------------------------------------|------------------|
| Mitigation Measure   | Action  | Timing  | Implementing Party                   | Monitoring Party |
| <b>If active nests of special-status birds are found during the surveys:</b><br>implement Mitigation Measure BIO-1b.   |   |   |                                      |                  |
| <b>Mitigation Measure BIO-1b: Avoidance of active nests.</b> If active nests of special-status birds or other birds are found during surveys, the results of the surveys would be discussed with the California Department of Fish and Game and avoidance procedures will be adopted, if necessary, on a case-by- case basis. In the event that a special-status bird or protected nest is found, construction would be stopped until either the bird leaves the area or avoidance measures are adopted. Avoidance measures can include construction buffer areas (up to several hundred feet in the case of raptors), relocation of birds, or seasonal avoidance. If buffers are created, a no disturbance zone will be created around active nests during the breeding season or until a qualified biologist determines that all young have fledged. The size of the buffer zones and types of construction activities restricted will take into account factors such as the following:<br>1. Noise and human disturbance levels at the Plan area and the nesting site at the time of the survey and the noise and disturbance expected during the construction activity;<br>2. Distance and amount of vegetation or other screening between the Plan area and the nest; and<br>3. Sensitivity of individual nesting species and behaviors of the nesting birds. | If active nests are found during survey, the results will be discussed with the California Department of Fish and Game and avoidance procedures adopted.<br><br>Halt construction if a special-status bird or protected nest is found until the bird leaves the area or avoidance measures are adopted. | Prior to tree or shrub pruning or removal, any ground-disturbing activities and/or issuance of demolition, grading or building permits. | Project sponsor(s) and contractor(s) | CDD              |
| <b><i>Specific Plan EIR Impact BIO-3: Impacts to migratory or breeding special-status birds and other special-status species due to lighting conditions. (Potentially Significant)</i></b>   |   |   |                                      |                  |
| <b>Mitigation Measure BIO-3a: Reduce building lighting from exterior sources.</b><br>a. Minimize amount and visual impact of perimeter lighting and façade up-lighting and avoid uplighting of rooftop antennae and other tall equipment, as well as of any decorative features;<br>b. Installing motion-sensor lighting, or lighting controlled by timers set to turn off at the earliest practicable hour;<br>c. Utilize minimum wattage fixtures to achieve required lighting levels;<br>d. Comply with federal aviation safety regulations for large buildings by installing minimum intensity white strobe lighting with a three-second flash interval instead of continuous flood lighting, rotating lights, or red lighting<br><br>e. Use cutoff shields on streetlight and external lights to prevent upwards lighting.  | Reduce building lighting from exterior sources.   | Prior to building permit issuance and ongoing.  | Project sponsor(s) and contractor(s) | CDD              |
| <b>Mitigation Measure BIO-3b: Reduce building lighting from interior sources.</b><br>a. Dim lights in lobbies, perimeter circulation areas, and atria;<br>b. Turn off all unnecessary lighting by 11pm thorough sunrise, especially during peak migration periods (mid-March to early June and late August through late October);  | Reduce building lighting from interior sources.   | Prior to building permit issuance and ongoing.  | Project sponsor(s) and contractor(s) | CDD              |

| Mitigation Monitoring and Reporting Program  |  |   |   |                  |
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| Mitigation Measure   | Action   | Timing  | Implementing Party  | Monitoring Party |
| <p>c. Use gradual or staggered switching to progressively turn on building lights at sunrise.</p> <p>d. Utilize automatic controls (motion sensors, photosensors, etc.) to shut off lights in the evening when no one is present;</p> <p>e. Encourage the use of localized task lighting to reduce the need for more extensive overhead lighting;</p> <p>f. Schedule nightly maintenance to conclude by 11 p.m.;</p> <p>g. Educate building users about the dangers of night lighting to birds.</p>  |  |   |   |                  |
| <b>Specific Plan Impact BIO-5: The Specific Plan could result in the take of special-status bat species. (Potentially Significant)</b>   |  |   |   |                  |
| <p><b>Mitigation Measure BIO-5a: Preconstruction surveys.</b> Potential direct and indirect disturbances to special-status bats will be identified by locating colonies and instituting protective measures prior to construction of any subsequent development project. No more than two weeks in advance of tree removal or structural alterations to buildings with closed areas such as attics, a qualified bat biologist (e.g., a biologist holding a California Department of Fish and Game collection permit and a Memorandum of Understanding with the California Department of Fish and Game allowing the biologist to handle and collect bats) shall conduct pre-construction surveys for potential bats in the vicinity of the planned activity. A qualified biologist will survey buildings and trees (over 12 inches in diameter at 4.5-foot height) scheduled for demolition to assess whether these structures are occupied by bats. No activities that would result in disturbance to active roosts will proceed prior to the completed surveys. If bats are discovered during construction, any and all construction activities that threaten individuals, roosts, or hibernacula will be stopped until surveys can be completed by a qualified bat biologist and proper mitigation measures implemented.</p> <p><b>If no active roosts present:</b> no further action is warranted.</p> <p><b>If roosts or hibernacula are present:</b> implement Mitigation Measures BIO-5b and 5c.</p> | <p>Retain a qualified bat biologist to conduct pre-construction survey for bats and potential roosting sites in vicinity of planned activity.</p> <p>Halt construction if bats are discovered during construction until surveys can be completed and proper mitigation measures implemented.</p> | <p>Prior to tree pruning or removal or issuance of demolition, grading or building permits.</p> | <p>Qualified bat biologist retained by project sponsor(s)</p> | <p>CDD</p>       |

| <b>Mitigation Monitoring and Reporting Program</b>   |  |   |   |                         |
|--|--|---|---|-------------------------|
| <b>Mitigation Measure</b>  | <b>Action</b>  | <b>Timing</b>   | <b>Implementing Party</b>                                     | <b>Monitoring Party</b> |
| <p><b>Mitigation Measure BIO-5b: Avoidance.</b> If any active nursery or maternity roosts or hibernacula of special-status bats are located, the subsequent development project may be redesigned to avoid impacts. Demolition of that tree or structure will commence after young are flying (i.e., after July 31, confirmed by a qualified bat biologist) or before maternity colonies forms the following year (i.e., prior to March 1). For hibernacula, any subsequent development project shall only commence after bats have left the hibernacula. No-disturbance buffer zones acceptable to the California Department of Fish and Game will be observed during the maternity roost season (March 1 through July 31) and during the winter for hibernacula (October 15 through February 15). Also, a no-disturbance buffer acceptable in size to the California Department of Fish and Game will be created around any roosts in the Project vicinity (roosts that will not be destroyed by the Project but are within the Plan area) during the breeding season (April 15 through August 15), and around hibernacula during winter (October 15 through February 15). Bat roosts initiated during construction are presumed to be unaffected, and no buffer is necessary. However, the “take” of individuals is prohibited.</p> | <p>If any active nursery or maternity roosts or hibernacula are located, no disturbance buffer zones shall be established during the maternity roost and breeding seasons and hibernacula.</p> | <p>Prior to tree removal or pruning or issuance of demolition, grading or building permits</p>  | <p>Qualified bat biologist retained by project sponsor(s)</p> | <p>CDD</p>              |
| <p><b>Mitigation Measure BIO-5c: Safely evict non-breeding roosts.</b> Non-breeding roosts of special-status bats shall be evicted under the direction of a qualified bat biologist. This will be done by opening the roosting area to allow airflow through the cavity. Demolition will then follow no sooner or later than the following day. There should not be less than one night between initial disturbance with airflow and demolition. This action should allow bats to leave during dark hours, thus increasing their chance of finding new roosts with a minimum of potential predation during daylight. Trees with roosts that need to be removed should first be disturbed at dusk, just prior to removal that same evening, to allow bats to escape during the darker hours. However, the “take” of individuals is prohibited.</p>  | <p>A qualified bat biologist shall direct the eviction of non-breeding roosts.</p>   | <p>Prior to tree removal or pruning or issuance of demolition, grading or building permits.</p> | <p>Qualified bat biologist retained by project sponsor(s)</p> | <p>CDD</p>              |
| <p><b>Specific Plan Impact BIO-6a: The Specific Plan could result in impacts to special-status amphibians and reptiles; California red-legged frog, California tiger salamander, and western pond turtle. (Potentially Significant)</b></p>  |  |   |   |                         |
| <p><b>Mitigation Measure BIO 6a:</b> The following measures shall be implemented to mitigate the effects of the project on special-status amphibians and reptiles: Staging areas, and all fueling and maintenance of vehicles and other equipment and staging areas shall be at least 100 feet from the riparian corridor of San Francisquito Creek. For any construction that takes place within 100 feet of the riparian corridor of San Francisquito Creek:</p>   | <p>Buffer areas of at least 100 feet shall be created for the riparian corridor of San Francisquito Creek.</p>   | <p>Prior to issuance of a grading permit and ongoing during construction</p>                    | <p>Project sponsor(s)</p>                                     | <p>CDD</p>              |

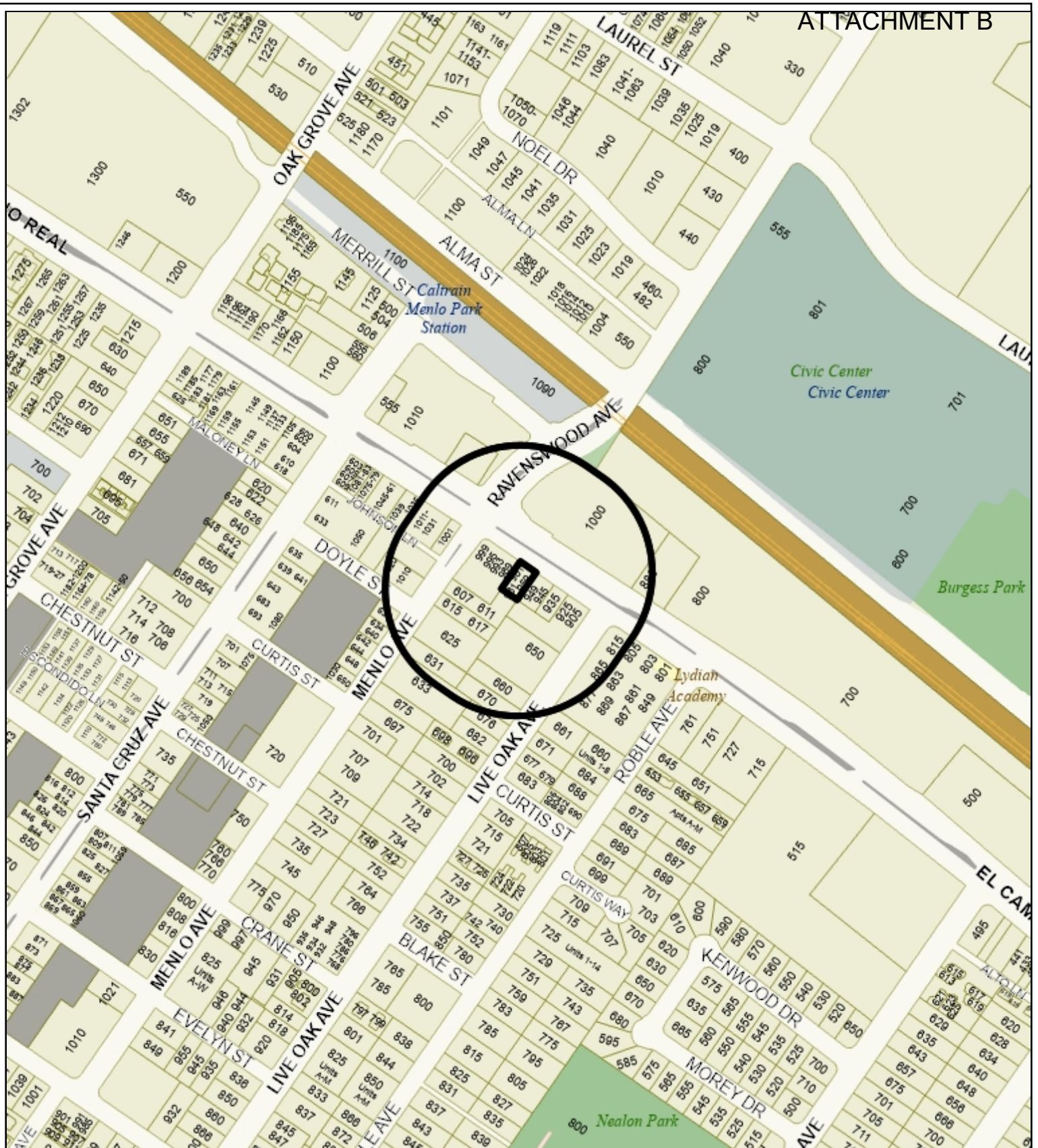
| Mitigation Monitoring and Reporting Program   |   |  |  |                  |
|---|---|--|--|------------------|
| Mitigation Measure  | Action  | Timing   | Implementing Party   | Monitoring Party |
| <p>The project sponsor shall install exclusionary fencing, such as silt fences, along San Francisquito Creek and around all construction areas that are within 100 feet of or adjacent to potential California red-legged frog, California tiger salamander, or western pond turtle habitat, which includes San Francisquito Creek and its riparian corridor. Once fencing is in place, it shall be maintained by the project sponsor until completion of construction within or adjacent to the enclosure.</p> <p>Prior to commencement of any earthmoving activities, the project sponsor shall retain a qualified monitoring biologist to train all construction personnel and work crews on the sensitivity and identification of the California red-legged frog, California tiger salamander, and western pond turtle and the penalties for the "take" of these species. In addition, species identification cards shall be provided to all construction personnel. Training sessions shall be conducted for all new employees before they access the Plan area and periodically throughout project construction.</p> <p>During project construction the qualified monitoring biologist who is familiar with the identification and life history of California red-legged frog, California tiger salamander, and western pond turtle, and with the appropriate agency authorization, shall be designated to periodically inspect onsite compliance with all mitigation measures, consistent with the training sessions.</p> <p>The qualified monitoring biologist shall perform a daily survey of the San Francisquito Creek and its riparian corridor within 100 feet of the project site during initial ground-breaking activities and during the rainy season. During these surveys, the qualified monitoring biologist shall inspect the exclusion fencing for individuals trapped within the fence and determine the need for fence repair.</p> <p>After ground-breaking activities and during the non-rainy season, the qualified monitoring biologist shall continue to perform daily fence surveys and compliance reviews at the project site.</p> <p>If a California red-legged frog or California tiger salamander is identified in the project work area, all work in the immediate area shall cease and the U.S. Fish and Wildlife Service shall be contacted. Work shall not begin again until so authorized by the U.S. Fish and Wildlife Service.</p> | <p>Install fencing along San Francisquito Creek and around all construction areas within 100 feet of or adjacent to potential California red-legged frog, California tiger salamander, or western pond turtle habitat.</p> <p>Retain a qualified biologist to train all construction personnel.</p> <p>Inspection of onsite compliance shall be conducted by a qualified monitoring biologist.</p> <p>Retain a qualified monitoring biologist to perform a daily survey of riparian corridors within 100 feet of the project site.</p> <p>Halt all work in the immediate area if a special-status amphibian is identified and contact the U.S. Fish and Wildlife Service.</p> |  | <p>Qualified biologist retained by the project sponsor(s)</p>                |                  |
| <b>CULTURAL RESOURCES</b>   |   |  |  |                  |
| <b>Impact CUL-1: The proposed Specific Plan could have a significant impact on historic architectural resources. (Potentially Significant)</b>  |   |  |  |                  |
| <p><b>Mitigation Measure CUL-1:</b> Site Specific Evaluations and Treatment in Accordance with the Secretary of the Interior's Standards:</p>   | <p>A qualified architectural historian has completed a site-specific historic resources study. The existing structure has not been</p>  | <p>Submitted by applicant. Prepared by Architecture + History,</p> | <p>Qualified architectural historian retained by the Project sponsor(s).</p> | <p>CDD</p>       |

| Mitigation Monitoring and Reporting Program   |  |  |                                      |                  |
|---|--|--|--------------------------------------|------------------|
| Mitigation Measure  | Action   | Timing   | Implementing Party                   | Monitoring Party |
| <p><b>Site-Specific Evaluations:</b> In order to adequately address the level of potential impacts for an individual project and thereby design appropriate mitigation measures, the City shall require project sponsors to complete site-specific evaluations at the time that individual projects are proposed at or adjacent to buildings that are at least 50 years old.</p> <p>The project sponsor shall be required to complete a site-specific historic resources study performed by a qualified architectural historian meeting the Secretary of the Interior's Standards for Architecture or Architectural History. At a minimum, the evaluation shall consist of a records search, an intensive-level pedestrian field survey, an evaluation of significance using standard National Register Historic Preservation and California Register Historic Preservation evaluation criteria, and recordation of all identified historic buildings and structures on California Department of Parks and Recreation 523 Site Record forms. The evaluation shall describe the historic context and setting, methods used in the investigation, results of the evaluation, and recommendations for management of identified resources. If federal or state funds are involved, certain agencies, such as the Federal Highway Administration and California Department of Transportation (Caltrans), have specific requirements for inventory areas and documentation format.</p> <p><b>Treatment in Accordance with the Secretary of the Interior's Standards.</b><br/>Any future proposed project in the Plan Area that would affect previously recorded historic resources, or those identified as a result of site-specific surveys and evaluations, shall conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties and Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995). The Standards require the preservation of character defining features which convey a building's historical significance, and offers guidance about appropriate and compatible alterations to such structures.</p> | found to be historic, specify treating conforming to Secretary of the Interior's standards, as applicable. | LLC. Dated July 11, 2009   |                                      |                  |
| <b>HAZARDOUS MATERIALS</b>  |  |  |                                      |                  |
| <b>Impact HAZ-3: Hazardous materials used on any individual site during construction activities (i.e., fuels, lubricants, solvents) could be released to the environment through improper handling or storage. (Potentially Significant)</b>  |  |  |                                      |                  |
| <p><b>Mitigation Measure HAZ-3:</b> All development and redevelopment shall require the use of construction Best Management Practices (BMPs) to control handling of hazardous materials during construction to minimize the potential negative effects from accidental release to groundwater and soils. For projects that disturb less than one acre, a list of BMPs to be implemented shall be part of building specifications and approved of by the City Building Department prior to issuance of a building permit.</p>  | Implement best management practices to reduce the release of hazardous materials during construction.      | Prior to building permit issuance for sites disturbing less than one acre and on-going during construction for all project sites | Project sponsor(s) and contractor(s) | CDD              |
| <b>NOISE</b>  |  |  |                                      |                  |
| <b>Specific Plan Impact NOI-1: Construction activities associated with implementation of the Specific Plan would result in substantial temporary or periodic increases in ambient noise</b>   |  |  |                                      |                  |

| Mitigation Monitoring and Reporting Program   |  |   |   |                  |
|---|--|---|---|------------------|
| Mitigation Measure  | Action   | Timing  | Implementing Party                          | Monitoring Party |
| <p><b>Mitigation Measure NOI-1a:</b> Construction contractors for subsequent development projects within the Specific Plan area shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds, etc.) when within 400 feet of sensitive receptor locations. Prior to demolition, grading or building permit issuance, a construction noise control plan that identifies the best available noise control techniques to be implemented, shall be prepared by the construction contractor and submitted to the City for review and approval. The plan shall include, but not be limited to, the following noise control elements:</p> <p>* Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler shall achieve lower noise levels from the exhaust by approximately 10 dBA. External jackets on the tools themselves shall be used where feasible in order to achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible;</p> <p>* Stationary noise sources shall be located as far from adjacent receptors as possible and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible; and</p> <p>* When construction occurs near residents, affected parties within 400 feet of the construction area shall be notified of the construction schedule prior to demolition, grading or building permit issuance. Notices sent to residents shall include a project hotline where residents would be able to call and issue complaints. A Project Construction Complaint and Enforcement Manager shall be designated to receive complaints and notify the appropriate City staff of such complaints. Signs shall be posted at the construction site that include permitted construction days and hours, a day and evening contact number for the job site, and day and evening contact numbers, both for the construction contractor and City representative(s), in the event of problems.</p> | <p>A construction noise control plan shall be prepared and submitted to the City for review.</p> <p>Implement noise control techniques to reduce ambient noise levels.</p> | <p>Prior to demolition, grading or building permit issuance</p> <p>Measures shown on plans, construction documents and ongoing through construction</p> | <p>Project sponsor(s) and contractor(s)</p> | <p>CDD</p>       |

| Mitigation Monitoring and Reporting Program   |  |  |   |                  |
|---|--|--|---|------------------|
| Mitigation Measure  | Action   | Timing   | Implementing Party  | Monitoring Party |
| <p><i>Mitigation Measure NOI-1b:</i> Noise Control<br/> Measures for Pile Driving: Should pile-driving be necessary for a subsequently proposed development project, the project sponsor would require that the project contractor predrill holes (if feasible based on soils) for piles to the maximum feasible depth to minimize noise and vibration from pile driving. Should pile-driving be necessary for the proposed project, the project sponsor would require that the construction contractor limit pile driving activity to result in the least disturbance to neighboring uses.</p> | <p>If pile-driving is necessary for project, predrill holes to minimize noise and vibration and limit activity to result in the least disturbance to neighboring uses.</p> | <p>Measures shown on plans, construction documents and specifications and ongoing during construction</p>              | <p>Project sponsor(s) and contractor(s)</p>   | <p>CDD</p>       |
| <p><i>Mitigation Measure NOI-1c:</i> The City shall condition approval of projects near receptors sensitive to construction noise, such as residences and schools, such that, in the event of a justified complaint regarding construction noise, the City would have the ability to require changes in the construction control noise plan to address complaints.</p>  | <p>Condition projects such that if justified complaints from adjacent sensitive receptors are received, City may require changes in construction noise control plan.</p>   | <p>Condition shown on plans, construction documents and specifications. When justified complaint received by City.</p> | <p>Project sponsor(s) and contractor(s) for revisions to construction noise control plan.</p> | <p>CDD</p>       |





City of Menlo Park  
 Location Map  
 961 El Camino Real



Scale: 1:4,000

Drawn By: FNK

Checked By: KTP

Date: 5/23/2023

Sheet: 1



**PLANNING COMMISSION RESOLUTION NO. 2023-XX**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MENLO PARK APPROVING (1) ARCHITECTURAL CONTROL REVIEW FOR EXTERIOR AND INTERIOR MODIFICATIONS TO AN EXISTING COMMERCIAL BUILDING AND LANDSCAPING (2) USE PERMIT APPROVAL FOR LIVE ENTERTAINMENT, ONSITE CONSUMPTION OF ALCOHOL AND OUTDOOR SEATING FOR A PROPOSED RESTAURANT AT 961 EL CAMINO REAL**

**WHEREAS**, the City of Menlo Park (“City”) received an application requesting architectural control review for exterior and interior modifications to an existing commercial building. The proposal also includes use permit requests for live entertainment, onsite consumption of alcohol and outdoor seating in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district (collectively, the “Project”) from Jaime D’Alessandro – Clockworks DHJ, LLC (“Applicant”), on behalf of the property owner Alexander Delly – 961 El Camino Real, LLC (“Owner”), located at 961 El Camino Real (APN 071-288-210) (“Property”). The Architectural Control and Use Permit are depicted in and subject to the development plans and project description letter which are attached hereto as Exhibit A and B incorporated herein by this reference; and

**WHEREAS**, the Property is located in the El Camino Real/Downtown Specific Plan (SP-ECR/D) zoning district, and the El Camino Real South-West (SW) sub-district, which supports a variety of uses including restaurants, retail, residential, and business and professional offices; and

**WHEREAS**, the findings and conditions for the architectural control and use permit would ensure that all City requirements are applied consistently and correctly as part of the project’s implementation; and

**WHEREAS**, the proposed Project was reviewed by the Engineering Division and found to be in compliance with City standards; and

**WHEREAS**, the Applicant submitted an arborist report prepared by Urban Tree Management Inc., which was reviewed by the City Arborist and found to be in compliance with the Heritage Tree Ordinance and proposes mitigation measures to adequately protect heritage trees in the vicinity of the project; and

**WHEREAS**, the Project, requires discretionary actions by the City as summarized above, and therefore the California Environmental Quality Act (“CEQA,” Public Resources Code Section §21000 et seq.) and CEQA Guidelines (Cal. Code of Regulations, Title 14, §15000 et seq.) require analysis and a determination regarding the Project’s environmental impacts; and

**WHEREAS**, the City is the lead agency, as defined by CEQA and the CEQA Guidelines, and is therefore responsible for the preparation, consideration, certification, and approval of environmental documents for the Project; and

**WHEREAS**, the Project is categorically exempt under Class 1 (Section 15301, "Existing Facilities") of the current California Environmental Quality Act (CEQA) Guidelines; and

**WHEREAS**, all required public notices and public hearings were duly given and held according to law; and

**WHEREAS**, at a duly and properly noticed public hearing held on April 10, 2023, the Planning Commission fully reviewed, considered, and evaluated the whole of the record including all public and written comments, pertinent information, documents and plans, prior to taking action regarding the architectural control permit, and use permit.

**NOW, THEREFORE, THE MENLO PARK PLANNING COMMISSION HEREBY RESOLVES AS FOLLOWS:**

**Section 1. Recitals.** The Planning Commission has considered the full record before it, which may include but is not limited to such things as the staff report, public testimony, and other materials and evidence submitted or provided, and the Planning Commission finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

**Section 2. Architectural Control Findings.** The Planning Commission of the City of Menlo Park does hereby make the following Findings:

The approval of the architectural control for the modifications to the exterior of an existing building and modifications to the landscaping is granted based on the following findings which are made pursuant to Menlo Park Municipal Code Section 16.68.020:

1. That the general appearance of the structure is in keeping with the character of the neighborhood; in that, the project is designed in an eclectic architectural style consistent with the diverse aesthetic of the surrounding neighborhood. There would be no increase in Gross Floor Area (GFA) as part of the project.
2. That the development will not be detrimental to the harmonious and orderly growth of the city; in that the project which is a remodel project fits within the eclectic architectural styles seen in the area. The proposed project is designed in a manner that is consistent with all applicable requirements of the City of Menlo Park Municipal Code and the Specific Plan, and the Project land uses would represent a balanced project.

3. That the development will not impair the desirability of investment or occupation in the neighborhood; in that, the Project consists of exterior and interior modifications consistent with the Municipal Code. The proposed materials and colors used for the front façade will be compatible with the appearance of the existing neighboring buildings. Therefore, the Project would not impair the desirability of investment or occupation in the neighborhood.
4. The development is subject to Assembly Bill 2097 (AB 2097), as such, it is not required to provide parking. AB 2097 prohibits the imposition of parking requirements on any residential, commercial or other development project located within half a mile of public transit. The development is located within half a mile from the Menlo Park Caltrain station. In this case, the City has determined AB 2097 applies because the development is within a half mile of the Menlo Park Caltrain station, and the development results in a change of use and substantial modifications. Therefore, no minimum parking requirements may be imposed.
5. That the project is consistent with applicable specific plan regulations and guidelines, in that, pursuant to Menlo Park Municipal Code Section 16.80.120, existing buildings approved in the El Camino Real/Downtown specific plan area prior to the adoption of the El Camino Real/Downtown specific plan, on June 12, 2012, shall be exempt from the development standards of El Camino Real/Downtown specific plan, and may undergo interior and/or exterior improvements to the existing building if there is no increase in the gross floor area. The proposal includes removing GFA along the left side of the building and enclosing a recessed area along the front of the building, which is permitted as this would reconfigure but not increase the GFA of the existing building.

**Section 3. Conditional Use Permit Findings.** The Planning Commission of the City of Menlo Park does hereby make the following Findings:

The approval of the use permit to allow live entertainment, onsite consumption of alcohol and outdoor dining is granted based on the following findings which are made pursuant to Menlo Park Municipal Code Section 16.82.030:

1. That the establishment, maintenance, or operation of the use applied for will, under the circumstance of the particular case, not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing in the neighborhood of such proposed use, or injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city because:
  - a. Consideration and due regard were given to the nature and condition of all adjacent uses and structures, and to general plans for the area in question and surrounding areas, and impact of the application hereon; in that, the proposed use permit is consistent with the El Camino Real/Downtown Specific Plan (SP-ECR/D) zoning district, and the El Camino Real South-West (SW) sub-district and the General Plan because live entertainment, onsite consumption of alcohol and outdoor seating with granting of a use permit is permitted.

- b. The proposed Project is designed to meet all the applicable codes and ordinances of the City of Menlo Park Municipal Code, and the Commission concludes that the Project would not be detrimental to the health, safety, and welfare of the surrounding community as the sale of alcohol would require permitting from the State ABC to ensure compliance with all applicable ABC requirements and has been reviewed by the City's Police Department. Live entertainment between the hours of 11 pm and 2 am would be reviewed again by the Planning Commission, one year after occupancy, if trend lines in the community show that the use may be responsible for disturbances between 11 pm and 2 am, pursuant to conditions of approval (Exhibit C), and outdoor seating would be limited to eight tables. The proposal is consistent with the surrounding area, including the adjacent Guild theater and nearby restaurants that sell alcohol for on-site consumption. The limitation of eight tables for outdoor seating would reduce the likelihood of noise or other disturbances to nearby residences, and if one year after occupancy trend lines indicate disturbances may be caused by live entertainment at the project site between the hours of 11 pm and 2 am, live entertainment between those hours would again be reviewed by the Planning Commission. Additionally, the project would be subject to the City's noise ordinance.
- c. The proposed on-site sale of alcohol would serve a public convenience, because the proposed use would allow new and existing residents (including those of the newly constructed developments at 500 El Camino Real and 1300 E Camino Real, visitors and employees of the immediate vicinity a convenient location to dine and purchase alcohol for on-site consumption.

**Section 4. Architectural Control Permit, and Conditional Use Permit.** The Planning Commission hereby approves the Architectural Control Permit and Use Permit PLN2022-00041, which Architectural Control and Use Permit are depicted in and subject to the development plans and project description letter, which are attached hereto and incorporated herein by this reference as Exhibit A and Exhibit B, respectively. The Architectural Control and Use Permit are conditioned in conformance with the conditions attached hereto and incorporated herein by this reference as Exhibit C.

**Section 5. ENVIRONMENTAL REVIEW.** The Planning Commission makes the following findings, based on its independent judgment after considering the Project, and having reviewed and taken into consideration all written and oral information submitted in this matter:

- A. The Project is categorically exempt under Class 1 (Section 15301, "Existing Facilities") of the current California Environmental Quality Act (CEQA) Guidelines.

**Section 6. SEVERABILITY**

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining

provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

I, Corinna Sandmeier, Principal Planner and Planning Commission Liaison of the City of Menlo Park, do hereby certify that the above and foregoing Planning Commission Resolution was duly and regularly passed and adopted at a meeting by said Planning Commission on April 10, 2023, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS THEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this 10<sup>th</sup> day of April, 2023

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Corinna Sandmeier  
Principal Planner and Planning Commission Liaison  
City of Menlo Park

Exhibits

- A. Project Plans
- B. Project Description Letter
- C. Conditions of Approval
- D. Specific Plan Standards and Guidelines Worksheet



**REGULAR MEETING DRAFT MINUTES**

**Date:** 04/10/2023  
**Time:** 7:00 p.m.  
**Location:** Zoom.us/join – ID# 862 5880 9056 and  
Council Chambers  
751 Laurel St., Menlo Park, CA 94025

**A. Call To Order**

Acting Chair Cynthia Harris called the meeting to order at 7:00 p.m.

**B. Roll Call**

Present: Cynthia Harris (Acting Chair), Andrew Barnes, Henry Riggs, Michele Tate

Absent: Linh Dan Do, Jennifer Schindler

Staff: David Hogan, Contract Planner; Fahteen Khan, Associate Planner; Kyle Perata, Planning Manager; Matt Pruter, Associate Planner; Corinna Sandmeier, Principal Planner; Ed Shaffer, Assistant City Attorney; Mariam Sleiman, City Attorney's Office

**C. Reports and Announcements**

None

**D. Public Comment**

- Gita Dev spoke on behalf of the Sierra Club Loma Prieta chapter to share that they hosted a webinar recently entitled "Planning for Life Sciences for Bay Area Cities" and that they wanted to provide more information about different levels of laboratories to the city as Menlo Park had designated a life sciences zoning district adjacent to the Facebook mixed use area.

**E. Consent Calendar**

E1. Approval of minutes from the December 12, 2022, Planning Commission meeting. ([Attachment](#))

E2. Approval of minutes from the January 9, 2023, Planning Commission meeting. ([Attachment](#))

Acting Chair Harris noted a typo on page 14 under item F5 in the January 9 minutes "Planner Turned," noting it was "Planner Turner."

**ACTION:** Motion and second (Riggs/Barnes) to approve the Consent Calendar consisting of the minutes from the December 12 and January 9 Planning Commission meetings with the typographical error to be corrected as noted for the January 9 minutes; passes 3-0-1-2 with Commissioner Tate abstaining and Commissioners Do and Schindler absent.

## F. Public Hearing

- F1. Architectural Control and Use Permit/Jamie D'Alessandro/961 El Camino Real:  
Consider and adopt a resolution to approve an architectural control for exterior and interior modifications to an existing commercial building to remove a door and window, reconfigure gross floor area to close off an existing recessed area, add a window to the front facade and create a new entry to the side of the building, in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district. The gross floor area of the building would not increase as part of the project. Additionally, the proposal includes modifications to the landscaping including a new deck and trellis. The request also includes. As part of the review, the Planning Commission will need to determine whether the sale of alcohol at a use permit for a live entertainment, on-site consumption of alcohol and outdoor seating for the proposed restaurant use; determine this action is categorically exempt under CEQA Guidelines Section 15301's Class 1 exemption for existing facilities this location serves a public convenience or necessity, in accordance with the requirements of the State Department of Alcoholic Beverage Control (ABC). (Staff Report #23-025-PC)

Associate Planner Fahteen Khan noted correspondence received from both the property owner and applicant after publication of the staff report.

Jaime D'Alessandro, applicant, and Chris Wasney, project architect, spoke on behalf of the project.

Acting Chair Harris opened the public hearing and closed it as no persons requested to speak.

The Commission discussed the site circulation, potential electrification uses rather than gas, solar installation, and the area and hours proposed for entertainment. Ensuing discussion highlighted addressing noise and safety concerns with the intent that noise complaints were not unfairly assigned unilaterally to the subject property in recognition of the existing nightlife in the area with a note that noise disturbance prevention from entertainment be applied equitably citywide.

**ACTION:** Motion and second (Barnes/Riggs) to adopt a resolution to approve an architectural control for exterior and interior modifications to an existing commercial building to remove a door and window, reconfigure gross floor area to close off an existing recessed area, add a window to the front facade and create a new entry to the side of the building in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district, a use permit for a live entertainment, on-site consumption of alcohol and outdoor seating for the proposed restaurant use, and determine this action is categorically exempt under CEQA Guidelines Section 15301's Class 1 exemption for existing facilities with the following added condition; passes 4-0 with Commissioners Do and Schindler absent.

**Add Condition 2b:** Twelve months after occupancy, staff shall review complaints within the community. If, depending on trend lines in the community, staff believes this establishment may be responsible for disturbances between 11 p.m. to 2 a.m., the live entertainment use between the hours of 11 p.m. and 2 a.m. shall be scheduled for review by the Planning Commission. The Commission's review would be limited to live entertainment use between the hours of 11 p.m. and 2 a.m.

**Herren, Judi A**

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**From:** Nash, Betsy  
**Sent:** Tuesday, April 25, 2023 5:00 PM  
**To:** Herren, Judi A  
**Cc:** Doherty, Nira F; Murphy, Justin I C  
**Subject:** notice of call-up - 961 El Camino Real

**Categories:** Follow Up

Hi Judi,

I am calling up the Clockworks project at 961 El Camino Real pursuant to Menlo Park Municipal Code 16.86.025. I have concerns about the Planning Commission decision to approve live entertainment and alcoholic beverage service until 2a.m. rather than 11p.m. as staff recommended. I wish to understand the basis for this decision, and related implementation issues. I also wish to evaluate implications to the neighboring properties and the city at large. After considering these issues I may withdraw my request.

Betsy



**Betsy Nash**  
City Councilmember  
City Hall - 2nd Floor  
701 Laurel St.  
tel 650-380-3986  
[menlopark.gov](http://menlopark.gov)

\*Note our emails have changed to @menlopark.gov



**Sandmeier, Corinna D**

---

**From:** Ingrid K [REDACTED] >  
**Sent:** Wednesday, May 17, 2023 1:07 PM  
**To:** \_Planning Commission  
**Subject:** Clockworks Restaurant

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

I support the new restaurant Clockworks Restaurant

Ingrid Katz

**Sandmeier, Corinna D**

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**From:** Elizabeth Lambird Youngblood <[REDACTED]>  
**Sent:** Wednesday, May 17, 2023 3:11 PM  
**To:** \_Planning Commission  
**Subject:** Support -- Clockworks Restaurant

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

A fun new place to eat and drink in Menlo Park?? Heck, yes, please! What are we waiting for? Support all of it, please!

Thanks  
Elizabeth Y  
Marmona Drive  
The Willows

May 16, 2023

Dear Fahteen Khan, Dear Menlo Park City Council:

Thank you for inviting public comment on the permit for 961 El Camino Real. As a Menlo Park resident, I see that a new local restaurant could be very convenient for the community; however, I am concerned about the potential noise impact on nearby residents of outdoor seating until 2 a.m. at this proposed restaurant site. Late-night/early-morning outdoor seating at this proposed restaurant site could potentially create noise that disturbs the peace for nearby residents who might be sleeping, studying, working from home, and/or relaxing at that time.

Late-night/early-morning outdoor gatherings until 2 a.m. are not typical in this local residential area; on the contrary, both private and public regulations often restrict these types of gatherings.

In many multi-family residential buildings that I have lived in in this area, private regulations (usually included as an addendum to the lease) generally state that quiet hours start sometime between 8 and 10 p.m. and that outdoor common areas where the community can gather are closed starting sometime between 8 and 10 p.m. as well. In other words, based on my experience as a renter, private landlords and private management companies at multi-family residences in this area generally close outdoor seating areas starting sometime between 8 and 10 p.m. in order to safeguard residents' right to quiet enjoyment of a peaceful night.

In the public domain, two nearby city parks close to residential areas—Burgess Park and Nealon Park—include outdoor seating areas, yet have signs indicating that the park closes a half-hour after dusk. So the city of Menlo Park effectively closes outdoor seating areas in these parks several hours before midnight—and long before the 2 a.m. proposed stop time of outdoor seating at 961 El Camino Real.

In order to safeguard nearby residents' right to quiet enjoyment of their home at night, I respectfully request that the City Council negotiate with the owner of 961 El Camino Real for an earlier stop time to outdoor seating use, ideally by 10 p.m.

Thank you for your consideration.

Sincerely,

Galaxy Starborn

**From:** [Khan, Fahteen N](#)  
**To:** "Katie Behroozi"; [Louch, Hugh](#)  
**Cc:** [Chen, Kevin](#); [Perata, Kyle T](#); [Sandmeier, Corinna D](#)  
**Subject:** RE: Yikes – Guild + Clockworks circulation needs more thought  
**Date:** Wednesday, May 10, 2023 12:53:00 PM  
**Attachments:** [image001.png](#)

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Thank you Katie for your email. The project at 961 El Camino Real has been called-up for review to be heard by the City Council on May 23<sup>rd</sup>. We will assume to include your email as part of the staff report, unless told otherwise.

As you have noted in your email, the project falls under Assembly Bill (AB) 2097, thus parking is not part of the project's evaluation due to State Law, and State Law preempts City's parking requirements.

Regards,  
Fahteen

---

**From:** Katie Behroozi <kbehroozi@gmail.com>  
**Sent:** Tuesday, May 9, 2023 5:45 PM  
**To:** Louch, Hugh <HLouch@menlopark.gov>  
**Cc:** Chen, Kevin <KChen@menlopark.gov>; Khan, Fahteen N <FNKhan@menlopark.gov>  
**Subject:** Re: Yikes – Guild + Clockworks circulation needs more thought

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Thanks so much for the quick response.

I realized after looking through the staff report to planning that this project falls under the auspices of SB2097. I'm guessing as downtown properties get redeveloped we will see more people using this provision. Great!

But if we're hoping to induce less driving through requiring less parking, we probably need to revisit our city ordinances around bike parking and bike and ped facilities, especially in the DSP area.

Santa Cruz seems to be working on this: <https://www.cityofsantacruz.com/Home/Components/Topic/Topic/12024/3916?alpha=K&sortn=EDate&toggle=allpast>  
<http://www.cyclelicio.us/tag/california/>

We should, too.

On Tue, May 9, 2023 at 4:59 PM Louch, Hugh <[HLouch@menlopark.gov](mailto:HLouch@menlopark.gov)> wrote:

Hi Katie,

Thanks for your email. I've moved all of the original folks on your email to bcc on this response as we need to be careful about communications among multiple Complete Streets Commission members outside of a meeting or an existing subcommittee.

I am also cc'ing the planner working on the proposed development project so that your comment is captured.

Transportation staff will review the development as it relates to circulation, but that process is led by our planning staff.

I also want to acknowledge your previous request for bike racks near the Guild. We've received a few bike rack requests over the last year or so and are trying to get to those as we can. It does make sense to provide secure bike parking near the Guild.

Thanks,  
Hugh



**Hugh Louch**  
Assistant Public Works Director - Transportation  
City Hall - 1st Floor  
701 Laurel St.  
tel 650-330-6741  
[menlopark.gov](http://menlopark.gov)  
\*Note our emails have changed to [@menlopark.gov](mailto:@menlopark.gov)

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**From:** Katie Behroozi [REDACTED]  
**Sent:** Tuesday, May 9, 2023 4:09 PM  
**To:** Chen, Kevin <[KChen@menlopark.gov](mailto:KChen@menlopark.gov)>; Louch, Hugh <[HLouch@menlopark.gov](mailto:HLouch@menlopark.gov)>  
**Cc:** Cole, Sally <[sallycolehome@gmail.com](mailto:sallycolehome@gmail.com)>; Cynthia Harris <[cynthiaruthharris@gmail.com](mailto:cynthiaruthharris@gmail.com)>; Jacqui Cebrian <[jsquared2k3@gmail.com](mailto:jsquared2k3@gmail.com)>; Betsy Nash <[betsynashcouncil@gmail.com](mailto:betsynashcouncil@gmail.com)>  
**Subject:** Yikes – Guild + Clockworks circulation needs more thought

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Hi Kevin and Hugh,

First, THANK YOU for all the amazing work your team has been doing around town. I'm seeing a ton of community outreach AND projects getting done and it's giving me hope.

I also love the fact that we're converting underutilized retail into new entertainment spaces

and think the Guild is an amazing anchor asset. Yay!

That said, I'm concerned about the fact that we're going to be adding another dining/entertainment venue next door to the Guild ([as presented to Planning back on April 10](#)) without adequately planning for multi-modal circulation (or even addressing existing circulation deficits in that immediate area.)

We missed that step with the Guild – see [Jen's email from 2018](#). I don't remember that project coming to Complete Streets before it got fast-tracked through Planning and Council. I do think we would have pushed back on the introduction of a loading/bus parking zone in a location where both city + Caltrans had plans for bike lanes – given the amount of resources being poured into that venue, they surely could have figured out a rear access point for tour buses to unload, as well as bike parking (how are we not requiring bike parking for these kinds of venues?)

On [the Guild's own website](#), they suggest that residents avoid driving if at all possible and consider walking or biking. There isn't much nearby on-street parking, so folks who plan to drive to either venue will need to walk at least a block.

For the typical Guild patron living w/in a 3-mile radius (which basically covers Menlo Park and most of Atherton) it *\*should\** be a no-brainer to bike there. And yet...when I biked to the Guild, I ended up locking my bike to a tree because other nearby locations were taken. I also biked on the sidewalk to get there because riding on that segment of El Camino at night is super sketchy.

Please, let's not double down on our original oversight. The owners of the Guild and the adjacent planned restaurant could and should get creative about both bus AND bike parking to support better local access to their venues. (I'll also point out that the drinks at the Guild are stiff and while I'd never encourage biking under the influence, I'd rather see people biking and walking home than driving.)

In summary:

1) *Near-term*, let's fix bike access/parking, even if it means asking the developers to be creative/flexible about loading zones (e.g. creating a shared loading zone behind the Guild).

2) Given all the potential changes we're considering in and around downtown (new housing and retail zones opening up, additional redevelopment encouraged through zoning changes in the HE update, a bike/ped undercrossing at Middle, as well as the new Middle Avenue bike facilities), I think it would be good to revisit our old 2015 El Camino Corridor study, check in with neighboring cities and Caltrans, and see what's possible for safe/comfortable bike access along El Camino (especially between residential areas and our retail district).

Thanks so much.

Katie

--

Katie Behroozi  
650.804.1812 (cell)

--

Katie Behroozi  
650.804.1812 (cell)

**From:** [Kristen L](#)  
**To:** [Khan, Fahteen N](#)  
**Cc:** [Perata, Kyle T](#); [Sandmeier, Corinna D](#)  
**Subject:** Re: 961 El Camino permit for late night noise  
**Date:** Monday, May 15, 2023 8:13:29 PM  
**Attachments:** [CMP Email Logo 100dpi 05d92d5b-e8e3-498f-93a6-d0da509bd602111111111.png](#)

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And please do send me the agenda. Thank you so much for your help!!

On Mon, May 15, 2023 at 7:57 PM Kristen L [REDACTED] wrote:

Hello! Thank you for your reply. Please include all emails. I don't mind being redundant. I shouldn't have to call the police to report when the new establishment breaks the noise ordinance. Those rules are notoriously difficult to enforce. Like I said, I teach kindergarten and it's not fair for the new establishment to

And would the indoor entertainment be behind closed doors and windows with soundproofing like the Guild? The Guild has shown me that entertainment can be quiet for neighbors. If the new establishment will be entirely self contained and as quiet as the Guild and silent after 10pm, I give it my blessing. But the outdoor component and possibility of noise pollution after 10pm are absolutely untenable. I moved into a quiet neighborhood and expect to be allowed to continue to live in one. I understand that the establishment is concerned about running a viable business but so are my property owners. If there is new noise behind our building, it will eat into my property owners' ability to run their business.

Thank you for your help.  
Kristen

On Mon, May 15, 2023 at 5:35 PM Khan, Fahteen N <[FNKhan@menlopark.gov](mailto:FNKhan@menlopark.gov)> wrote:

Hi Kristen,

I am responding to your email as the project planner for the project. For the proposed project the live entertainment will be unamplified and indoors. The City has a noise ordinance under municipal code section [8.06](#), which they will need to abide by. The City Council will be reviewing the project and may consider modifications to the Planning Commission's action that could include additional conditions/modifications.

The agenda for the May 23<sup>rd</sup> City Council will be published at the end of the week which I can email you a link to. You are welcome to join the meeting in-person or zoom (instructions will be on the agenda) to voice your concerns. Would you like to consolidate your emails into one (letter or email) so that I may attach it to the staff report as neighbor correspondence, or would you rather have both emails included?



Regards,

Fahteen



**Fahteen N. Khan**  
Associate Planner  
City Hall - 1st Floor  
701 Laurel St  
tel 650-330-6739  
[menlopark.gov](http://menlopark.gov)

\*Note our emails have changed to [@menlopark.gov](mailto:@menlopark.gov)

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**From:** Kristen L [REDACTED]  
**Sent:** Sunday, May 14, 2023 1:12 PM  
**To:** Perata, Kyle T <[ktperata@menlopark.gov](mailto:ktperata@menlopark.gov)>  
**Subject:** Re: 961 El Camino permit for late night noise

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Hello!!

Is there anything that I can do to prevent this permit from being issued? Or is it a question of meeting some criteria and then it gets issued? Are there noise thresholds that are allowed and not? I live behind the Guild. They've done a great job of staying quiet for neighbors. I teach kindergarten and need a peaceful home to recover from chaotic days and to be able to get sleep so I'm not cranky when I go in to work. I moved in to a peaceful neighborhood and I'd like to continue living in one. If they have late night entertainment and consumption indoors with good sound insulation, great! Or outdoor noise until 10, just fine! After 10, ends badly for my 5-6 year old students who don't deserve that.

Thank you for your advice!

Kristen

On Thu, May 11, 2023 at 2:36 PM Khan, Fahteen N <[FNKhan@menlopark.gov](mailto:FNKhan@menlopark.gov)> wrote:

Good Afternoon Kristen,

Thank you for your email. We will be attaching your correspondence to the City Council staff report for the project for the May 23<sup>rd</sup> meeting, unless told otherwise.

[961 El Camino Real](#) is a call-up item to discuss the Planning Commission's decision on the project, which will be discussed by Council members. You are welcome to attend the meeting, whether in-person or via zoom.

Regards,

Fahteen



**Fahteen N. Khan**  
Associate Planner  
City Hall - 1st Floor  
701 Laurel St  
tel 650-330-6739  
[menlopark.gov](http://menlopark.gov)

\*Note our emails have changed to [@menlopark.gov](mailto:@menlopark.gov)

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**From:** Kristen L [REDACTED]  
**Sent:** Wednesday, May 10, 2023 7:36 PM  
**To:** Khan, Fahteen N <[FNKhan@menlopark.gov](mailto:FNKhan@menlopark.gov)>; Betsy Nash  
[REDACTED]  
**Subject:** 961 El Camino

**CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.**

Hello!! I just got the notice that City Council is considering approving live entertainment, serving alcohol, and outdoor seating until 2am at 961 El Camino. I find this very concerning. I live at 650 Live Oak, which was very quiet when I moved in and is now mostly quiet because the Guild has good sound proofing and is considerate of neighbors. We only have patrons walking by to their cars and they've been quiet.

If 961 has live music and people outside until 2am, they will be right outside of many of the apartments at my mini-complex. I spend my days teaching rowdy kindergarteners and I need my home to be a quiet sanctuary. Even with double paned glass, I still get occasional Guild noise. If there are people in the back of 961 chatting, drinking and enjoying live entertainment, the volume will be much louder and much later, barging into the time when my neighbors and I need to sleep so that we can do our jobs. If a kindergarten teacher doesn't get enough sleep because the neighbors were noisy, it can be detrimental to her 32 students. Yes, 32.

I moved to a home where the only consistent loud noise is the train that I've listened to since I was a child. How can I help make sure that my home remains a peaceful oasis?

Thank you so much for your help!!

Kristen Leep

**From:** [Nash, Betsy](#)  
**To:** [Murphy, Justin I C](#); [Chow, Deanna M](#)  
**Subject:** FW: 961 El Camino  
**Date:** Friday, May 19, 2023 11:23:13 AM  
**Attachments:** [CMP\\_Email\\_Logo\\_100dpi\\_05d92d5b-e8e3-498f-93a6-d0da509bd60211111111.png](#)

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Here's a resident's letter and followup to be included in the public record, please.



**Betsy Nash**  
City Councilmember  
City Hall - 2nd Floor  
701 Laurel St.  
tel 650-380-3986  
[menlopark.gov](http://menlopark.gov)  
\*Note our emails have changed to @menlopark.gov

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**From:** arlene gonsalves [REDACTED]  
**Date:** Thursday, May 18, 2023 at 5:13 PM  
**To:** "Nash, Betsy" <[BNash@menlopark.gov](mailto:BNash@menlopark.gov)>  
**Subject:** Re: 961 El Camino

CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.

Thank you Betsy.  
Yes, you may share my concerns. Another concern I did not mention is the safety issue. Serving liquor until 2:00 am may cause problems. The police may have to get involved.  
We need to study this further.  
Thank you, Betsy for responding to my email.  
Arlene Gonsalves

---

From: arlene gonsalves [REDACTED]  
Date: Wednesday, May 17, 2023 at 11:57 AM  
To: "Nash, Betsy" <[BNash@menlopark.gov](mailto:BNash@menlopark.gov)>  
Subject: 961 El Camino

CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.

Betsy:

I am a resident at 650 Live Oak and I am concerned about the proposed business at 961 El Camino. We live in a quiet apartment complex and the thought of a restaurant serving liquor inside and outside until 2:00am is not acceptable. Please consider the noise, parking and congestion the restaurant will bring to the area.

Not acceptable.

Arlene Gonsslves

Sent from my iPhone



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May 8, 2023

**VIA EMAIL: [FNKHAN@MENLOPARK.GOV](mailto:FNKHAN@MENLOPARK.GOV)**

Fahteen Khan  
City of Menlo Park  
701 Laurel St.  
Menlo Park, CA 94025

**Re: Clockworks Restaurant 961 El Camino Real**

Dear Ms. Kahn:

On April 10, 2023, the City of Menlo Park Planning Commission unanimously approved a project that would allow a restaurant at 961 El Camino Real (Clockworks) adjacent to the Guild Theater. The following provides a summary of the Planning Commission meeting and action:

1. Architectural Control. Planning Commission approved exterior and interior modifications to the existing building. Staff supported the modifications. There was no public comment. The changes were positively received by the Planning Commission.
2. Use Permit. The Planning Commission approved the use permit to allow live entertainment until 2 a.m. subject to a one-year check-in, on-site consumption of alcohol until 2 a.m. and outdoor seating. It should be noted that the hours of restaurant operation are not part of the use permit as restaurants are permitted to operate until 2 a.m. without a permit pursuant to Menlo Park Municipal Code Section 8.12.020. Although the staff report recommended that live entertainment cease at 11 p.m. it was only for consistency with the Guild, and was without specific concerns about noise or public safety. Neighbors were noticed, however, there was no public comment in opposition to the proposed hours of liquor service and/or live entertainment and no neighbor expressed concern about noise. After

A Pennsylvania Limited Liability Partnership



a thoughtful discussion, the Planning Commission determined live entertainment (and alcohol service) was:

- Appropriate until 2 a.m.
- Appropriate at this location on El Camino Real.
- Appropriate as it was limited to indoor unamplified entertainment.
- Appropriate to compliment the Guild as people could patronize the restaurant before or after a show.
- Appropriate to enliven downtown in accordance with the Downtown Specific Plan.

The only potential noise concern raised by staff was regarding live entertainment was the possibility of noise related to the loading of equipment. The amount of equipment to load would be limited and small consistent with the unamplified nature of the entertainment. Any noise would also be similar to any closing activities that would take place at the end of permitted restaurant operating hours that extend until 2 a.m. Nevertheless, to alleviate any concerns, the Planning Commission included a condition of approval requiring a one-year review related to the hours permitted for live entertainment. One year after the restaurant begins operating staff would conduct a review to determine if there were any complaints about this location after 2 a.m. If there were complaints, staff would bring the item to the Planning Commission, which could then modify hours of live entertainment if appropriate.

Despite unanimous support from the Planning Commission and no concerns (noise or otherwise) being raised by the community, including residents within the notice radius, a member of the City Council has exercised her right to call-up the Planning Commission decision for review pursuant to Municipal Code Section 16.86.025. The call-up indicated that the Councilmember had concerns about the Planning Commission decision to approve live entertainment and alcoholic beverage service until 2 a.m. The call-up indicated a wish to evaluate implications to neighboring properties and to the city at large.

Based on the concerns identified by the Councilmember in her call-up, the Council discussion should be limited. The call-up did not indicate that the appeal related to the architectural control approval. Therefore, this portion of the Planning Commission approval should not be re-opened. The call-up did not indicate that the appeal related to the on-site consumption of alcohol generally or the outdoor seating; therefore, these portions of the Planning Commission approval should also not be re-opened. If the City Council desires to consider hours for alcoholic beverage service or live entertainment across the city that cannot be done on this appeal; it would be a separate discussion and separate legislative action. Therefore, considerations related to the city at large should also not be a part of the Council discussion regarding this project.

Although on appeal, the Council could modify the hours of alcoholic beverage service and/or live entertainment, there does not appear to be a rational basis to do so. As noted above, restaurant operating hours until 2 a.m. are permitted. The Planning Commission voted unanimously to approve the alcoholic beverage service and live entertainment until 2 a.m. and found that such hours would be appropriate, complimentary to the Guild and in keeping with the goal of the Downtown Specific Plan to enliven the downtown core. No neighbor or any member of the public spoke; no concerns about alcoholic beverage service or noise were expressed by the community. The only potential concern raised for consideration regarding the hours was the potential for noise at closing. The loading of equipment at the end of live entertainment would be limited and similar to other closing activities that would take place at the end of permitted restaurant operating hours that extend until 2 a.m. The same is true with regard to potential noise from patrons leaving the restaurant.

As noted above, to alleviate any concerns, the Planning Commission thoughtfully included a condition of approval requiring a one-year review related to the hours permitted for live entertainment. Therefore, any potential concerns of the Council regarding noise from live entertainment are adequately addressed in the current approval and there is no need to modify the decision for which there was unanimous Planning Commission support and no concern expressed by the public.

In addition to the check-in condition, the Municipal Code provides a mechanism to address any noise impacts to the community. Municipal Code Section 8.06.020(12) defines a noise disturbance as any source of sound which exceeds the limitations in the code and provides examples including but not limited to amplified music, loudspeakers, stereos, musical instruments and concerts. The examples suggest the concern is more about the music itself, not the loading of equipment. Again, the concern was not about the noise from the music as that was limited and small on the inside of the building.

To violate the nighttime noise limitation the source of sound would need to be 50 dBA at the residential property. While there are residents downtown, sound attenuates with distance and because of intervening structures. Therefore, noise exceeding 50 dBA is not anticipated. Furthermore, if noise from 2 a.m. restaurant closing activities, including patrons leaving, was anticipated to cause noise in violation of the ordinance it would have been identified in the Downtown Specific Plan Environmental Impact Report and it was not. Nevertheless, if noise does exceed the limitation, there are provisions to address violations in Municipal Code Section 8.06.090.

Between the City's Noise Ordinance and the one-year check-in condition, any concerns about noise would be more than adequately addressed. Therefore, on behalf of the applicant, I respectfully request that the decision of the Planning Commission be affirmed in its entirety.





Fox Rothschild LLP  
ATTORNEYS AT LAW

Sincerely,

Leigh F. Prince

cc: Jamie D'Alessandro, [jaimed@windyhillpv.com](mailto:jaimed@windyhillpv.com)  
Lisa Ring, [lisa@ringcal.com](mailto:lisa@ringcal.com)  
Justin Murphy, [jicmurphy@menlopark.org](mailto:jicmurphy@menlopark.org)  
Corinna Sandmeier, [cgsandmeier@menlopark.gov](mailto:cdsandmeier@menlopark.gov)  
Nira Doherty, [ndoherty@bwslaw.com](mailto:ndoherty@bwslaw.com)



## STAFF REPORT

### City Council

Meeting Date:

5/23/2023

Staff Report Number:

23-125-CC

### Public Hearing:

**Consider the Planning Commission's recommendation to approve a request for a revision to an existing planned development permit to reduce the minimum required lot size, reduce the number of required onsite parking spaces from 360 to 315 spaces and modify percentage based development standards (e.g., building coverage and floor area ratio) associated with the reduction in site area**

## Recommendation

Staff recommends that the City Council consider the Planning Commission's recommendation to approve revisions to the Menlo Station Planned Development Permit (PDP). The revisions would reduce the lot size, reduce the number of required onsite parking spaces from 360 to 315 spaces, and modify percentage based development standards (e.g., building coverage and floor area ratio) based on the reduced lot size to allow for the future purchase of a portion of the existing site, currently used for parking, by the City of Menlo Park for the Middle Avenue Caltrain crossing project. The revision to the PDP would not result in any increase in gross floor area, or any modifications to the existing buildings on the project site. The site is located in the ECR/D-SP (El Camino Real/Downtown Specific Plan) zoning district. The draft City Council resolution on the proposed revisions to the PDP is included in Attachment A. The revised draft PDP is included as Exhibit A within Attachment A.

## Policy Issues

Each PDP request is considered individually. Revisions to the PDP require a recommendation from the Planning Commission to the City Council for revisions that involve changes to land uses, expansion or intensification of development, or a relaxation in the standards of development. The City Council should review the Planning Commission's recommendation and make a decision on whether to approve the proposed revisions.

## Background

### Site location and history

Using El Camino Real in the north-south orientation, the project site is located at the eastern side of El Camino Real, near the intersection of Ravenswood and El Camino Real, at 700-800 El Camino Real. The surrounding parcels are all part of the SP-ECR/D zoning district. The project site is located to the west of the Caltrain rail corridor. A location map is included as Attachment B.

The project site is approximately 5.9-acres in size, which was developed in the mid-1980s through a PDP (Attachment C). The purpose for the PDP was to consolidate smaller parcels into larger parcels to provide benefits to the City which otherwise could not have been obtained, this included specific development

controls to develop more usable open space, efficient use of land, utilities and circulation systems, to develop creative and integrated design and to allow for mixed use developments consistent with the density and intensity requirements of the preexisting zoning designation.

The project site includes an approximately 56,424 square foot one-story commercial/retail building, and a 45,408 square foot four-story office building. The project plans are included as Attachment D.

#### Middle Avenue Caltrain Crossing project

The City is in the design phase for the Middle Avenue Caltrain crossing project. The project would provide a grade separated crossing through the Caltrain right-of-way, from El Camino Real to Alma Street at Middle Avenue to create a pedestrian and bicycle connection between east and west Menlo Park. The crossing project was identified in the El Camino Real and Downtown Specific Plan, Transportation Master Plan, and has since been identified as a City Council goal and priority related to safe streets. On Aug. 27, 2019, the City Council unanimously selected its preferred concept for the proposed pedestrian and bicycle undercrossing. The preferred concept for the Middle Avenue Caltrain crossing project requires the City to purchase a portion of 700-800 El Camino Real project site, which the City Council authorized in January 2022.

#### Planning Commission review and recommendation

At its meeting May 1, the Planning Commission reviewed the proposed revisions to the PDP and voted unanimously to recommend approval of the proposed revisions to the City Council. The Planning Commission staff report is included as Attachment E and provides more details on the proposed revisions to the PDP. The Planning Commission Resolution recommending the City Council approve the PDP revisions is included as Attachment F.

### **Analysis**

As stated previously, the Middle Avenue Caltrain crossing project would require the City to purchase a portion of the 700-800 El Camino Real project site, currently used for parking. The area proposed for acquisition is approximately 17,000 square feet in size. Attachment G highlights the area of acquisition in more detail. The purchase would require a revision to the existing PDP to reduce the required minimum lot size and parking, and modify percentage based development standards (e.g., building coverage and floor area ratio) based on the reduced lot size. The revision to the PDP would not result in any increase in gross floor area, or any modifications to the existing buildings on the project site. The acquisition would reduce the overall lot size from approximately 5.9 to approximately 5.5 acres, which in turn would increase the allowable building coverage and floor area ratio. However, there would be no change to the existing gross floor area or design parameters, as the existing commercial/retail and office buildings are proposed to be retained without any modifications as part of the PDP revision.

Table 1 below shows the proposed revisions to the PDP, including modification of the percentage based development standards.

| Table 1: Modifications to development standards |            |                       |
|---|------------|-----------------------|
| Development standards                           | Proposed   | Existing/PDP standard |
| Lot size  | 239,777 SF | 257,260 SF            |
| Gross floor area (700 + 800 ECR)                | 101,832 SF | 101,832 SF            |
| Floor area ratio                                | 42.5%      | 39.6%                 |
| Building coverage (percentage)                  | 27.6%      | 25.6 %                |
| Building coverage (square feet)                 | 66,216     | 66,216                |
| Parking spaces                                  | 315        | 353*                  |

\*The property was originally approved with 360 parking spaces, which over the years were reduced to 353 spaces due to installation of accessible parking spaces and trash enclosures.

On May 1, the Planning Commission adopted a resolution (Attachment F) recommending the City Council approve the revisions.

Parking reduction

The purchase of this portion of the site would result in a reduction of 38 parking spaces. City staff conducted a parking utilization study of the project site in September and October 2019 that revealed an occupancy rate for the entire property between 22% and 47%. The proposed 315 parking spaces to remain would provide capacity beyond the observed utilization rates. Staff believes that the parking reduction would not negatively impact the operations of the project site given the observed parking utilization rates.

Correspondence

Staff has not received any items of correspondence on the proposed project.

Conclusion

The proposed revisions would not increase the gross floor area of the existing building, modify the existing buildings, or change the permitted uses on the project site. The reduction in parking would not result in any parking issues at the project site given the current utilization rate surveyed by the City staff. Additionally, the PDP revision would allow for the City to purchase a portion of the existing site for the Middle Avenue Crossing project. The proposed undercrossing would help improve bicycle and pedestrian connectivity for neighborhoods and schools on both sides of the Caltrain tracks and improve access to downtown Menlo Park. It would support the City’s goal to complete the Middle Avenue Caltrain crossing project. Staff recommends that the City Council consider the Planning Commission’s recommendation and adopt a resolution to approve the revisions to the PDP.

**Impact on City Resources**

As the applicant, the City is responsible for covering the cost for Planning Staff time to review the proposed project. Planning Staff time will be accommodated through the General Fund.

**Environmental Review**

The proposed project is categorically exempt under three California Environmental Quality Act (CEQA) exemptions - Class 1 (Section 15301, “Existing Facilities”) Class 5 (Section 15305, “Minor Alterations in Land Use Limitations”) and “Common Sense Exemption,” Section 15601(b)(3) of the current California Environmental Quality Act (CEQA) Guidelines, and as such, no additional environmental analysis is required.

## 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 300-foot radius of the subject property.

## Attachments

- A. Draft resolution to approve revised PDP
  - Exhibits to Attachment A:
    - A. Revised PDP
- B. Location map
- C. PDP (1980)
- D. Project plans
- E. Hyperlink – Planning Commission staff report from May 1:  
[menlopark.gov/files/sharedassets/public/agendas-and-minutes/planning-commission/2023-meetings/agendas/20230501-planning-commission-agenda-packet.pdf#page=136](https://menlopark.gov/files/sharedassets/public/agendas-and-minutes/planning-commission/2023-meetings/agendas/20230501-planning-commission-agenda-packet.pdf#page=136)
- F. Planning Commission Resolution No. 2023-20
- G. 700-800 El Camino Real site plan

Report prepared by:  
Fahteen Khan, Associate Planner

Report reviewed by:  
Kyle Perata, Planning Manager

## RESOLUTION NO. XXXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK APPROVING REVISIONS TO AN EXISTING PLANNED DEVELOPMENT PERMIT TO REDUCE THE LOT SIZE, REDUCE THE NUMBER OF REQUIRED ONSITE PARKING SPACES FROM 360 TO 315 SPACES, AND MODIFY PERCENTAGE BASED DEVELOPMENT STANDARDS (E.G. BUILDING COVERAGE AND FLOOR AREA RATIO) BASED ON THE REDUCED LOT SIZE TO ALLOW FOR THE FUTURE PURCHASE OF A PORTION OF THE EXISTING SITE, CURRENTLY USED FOR PARKING, BY THE CITY OF MENLO PARK FOR THE MIDDLE AVENUE CALTRAIN CROSSING PROJECT. THE REVISIONS TO THE PLANNED DEVELOPMENT PERMIT WOULD NOT RESULT IN ANY INCREASE IN GROSS FLOOR AREA, BUILDING COVERAGE, OR ANY MODIFICATIONS TO THE EXISTING BUILDINGS ON THE PROJECT SITE**

WHEREAS, the City of Menlo Park (“City”) received an application requesting revisions to an existing Planned Development Permit (“PDP”) at 700-800 El Camino Real (Exhibit A) to reduce the lot size, reduce the number of required onsite parking spaces from 360 to 315 spaces, and modify percentage based development standards (e.g. building coverage and floor area ratio) based on the reduced lot size to allow for the future purchase of a portion of the existing site, currently used for parking, by the City of Menlo Park for the Middle Avenue Caltrain crossing project (collectively, the “Project”) from City of Menlo Park (“Applicant”), on behalf of the property owner Menlo Station Development, LLC (“Owner”), located at 700-800 El Camino Real (APN 071-333-200; previous APNs - 071-333-13, 071-333-030, 071-333-040, 071-333-050, 071-333-060, 071-333-070, 071-333-080, 872-41-12-D and 071-333-090) (“Property”). The revised Planned Development Permit (PDP), attached hereto as Exhibit A incorporated herein by this reference; and

WHEREAS, on August 27, 2019, the City Council unanimously selected a preferred concept for the proposed pedestrian and bicycle undercrossing of the Caltrain tracks at Middle Avenue Caltrain Crossing; and

WHEREAS, on January 11, 2022, the City Council adopted Resolution Number 6690 to authorize the city manager to execute a purchase and sale agreement for a portion of 700-800 El Camino Real to support implementation of the Middle Avenue pedestrian and bicycle rail undercrossing project and making specified findings consistent with the certified El Camino Real and Downtown specific plan environmental report and the certified addendum to the specific plan environmental impact report; and

WHEREAS, the El Camino Real and Downtown Specific Plan and the City’s Transportation Master Plan identify a new pedestrian and bicycle crossing of the Caltrain tracks from approximately Middle Avenue to Burgess Park; and

WHEREAS, the City has negotiated with Menlo Station Development, LLC, a California limited liability company, owner of 700-800 El Camino Real (Owner), to develop a Purchase and Sale Agreement that would transfer the Property from the Owner to the City and provide for construction, and access easements for use by the City during construction of the undercrossing; and

WHEREAS, an approximately 17,000 square foot portion of 700-800 El Camino Real (APN 071-333-200) lies between the Caltrain railroad tracks and the 500 El Camino Real property and is the location selected for the construction of ramps to access the proposed undercrossing; and

WHEREAS, the proposed Middle Avenue Caltrain crossing project would require purchase of a portion of the existing site at 700-800 El Camino Real of approximately 17,000 square feet, which would reduce the existing lot size from approximately 5.9 to approximately 5.5 acres, and based on the reduced lot size modify percentage based development standards such as building coverage and floor area ratio; and

WHEREAS, there will be no modifications to the existing height and gross floor area of the existing buildings on the subject property; and

WHEREAS, City staff conducted a parking utilization count between September and October of 2019 and found the portion of the project site to be purchased by the City to be an underutilized parking area. The study revealed a parking occupancy rate for the entire project site between 22 percent and 47 percent. The proposed reduction in site area would result in a reduction of 38 parking spaces. The proposed 315 parking spaces to remain would provide capacity beyond the observed utilization rates; and

WHEREAS, a public hearing by the Planning Commission, and a recommendation by the Planning Commission to the City Council shall be required prior to issuance of a Permit for revisions of the Development Plan which involve changes in land use, expansion or intensification of development or a relaxation in the standards of development; and

WHEREAS, approving the revised PDP, a draft of which is attached hereto as Exhibit A, is necessary to authorize the development of the Middle Avenue Caltrain crossing project, consistent with the Specific Plan; and

WHEREAS, the Project, requires discretionary actions by the City as summarized above, and therefore the California Environmental Quality Act ("CEQA," Public Resources Code Section §21000 et seq.) and CEQA Guidelines (Cal. Code of Regulations, Title 14, §15000 et seq.) require analysis and a determination regarding the Project's environmental impacts; and

WHEREAS, the City is the lead agency, as defined by CEQA and the CEQA Guidelines, and is therefore responsible for the preparation, consideration, certification, and approval of environmental documents for the Project; and

WHEREAS, the Project is categorically exempt under each of the following three California Environmental Quality Act (CEQA) exemptions - Class 1 (Section 15301, "Existing Facilities"), Class 5 (Section 15305, "Minor Alterations in Land Use Limitations") and "Common Sense Exemption" (Section 15601(b)(3), of the current California Environmental Quality Act (CEQA) Guidelines, and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, at a duly and properly noticed public hearing held on May 1, 2023, the Planning Commission fully reviewed, considered, and evaluated the whole of the record including all public and written comments, pertinent information, documents and plans, prior to making a recommendation to the City Council regarding revision to the Planned Development Permit; and

WHEREAS, after public notice having been lawfully given, a public hearing was scheduled and held before the Planning Commission of the City of Menlo Park on May 1, 2023, whereat all persons interested therein might appear and be heard. After closing the public hearing, the Planning Commission considered all pertinent information, documents, exhibits, and all other evidence in the public record on the request; and adopted Planning Commission Resolution No. 2023-20 to recommend approval of the revisions to the planned development permit to the City Council; and

WHEREAS, after notice having been lawfully given, a public hearing was scheduled and held before the City Council of the City of Menlo Park on May 23, 2023 whereat all persons interested therein might appear and be heard; and

WHEREAS, the City Council of the City of Menlo Park having fully reviewed, considered, and evaluated all the testimony and evidence submitted in this matter voted affirmatively to approve the findings and conditions for the revisions to the planned development permit.

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

Section 1. Recitals. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, public testimony, and other materials and evidence submitted or provided, and the City Council finds the foregoing recitals are true and correct.

Section 2. Planned Development Permit Findings. The City Council of the City of Menlo Park does hereby make the following findings:

1. Consideration and due regard were given to the proposed revisions to the PDP to be consistent with PDP condition (V)(H):  
This Permit may be amended by majority vote of the City Council. Application for the amendment shall be made by the property owner, in writing, to the Planning Commission. The Commission shall then forward their recommendation to the City Council.
2. The Planning Commission reviewed the revisions to the PDP and voted unanimously to recommend approval of the proposed revisions at its meeting on May 1, 2023.

Section 4. Environmental review. The City Council makes the following findings, based on its independent judgment after considering the Project, and having reviewed and taken into consideration all written and oral information submitted in this matter:

1. The Project is categorically exempt under each of the following: Class 1 (Section 15301, "Existing Facilities"), Class 5 (Section 15305, "Minor Alterations in Land Use Limitations"), and "Common Sense Exemption" Section 15601(b)(3), of the current California Environmental Quality Act (CEQA) Guidelines.

Section 5. Planned Development Permit. The City Council hereby approve the revised Planned Development Permit (Application #PLN2020-00007), which Planned Development Permit is depicted in and subject to the revised Planned Development attached hereto and incorporated herein by this reference as Exhibit A.



Section 6. Severability.

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

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

---

Judi A. Herren, City Clerk

Exhibits:

A. Revised planned development permit

Planned Development Permit

"MENLO STATION"

P-D Zone #1

- I. Statement of Purpose: The intent of the P-D Zone is to promote comprehensive planning of large parcels of land to protect the natural environment by allowing flexibility from the strict requirements of the conventional zoning regulations; to encourage development of more usable open space; to promote more efficient use of land, utilities and circulation systems; to promote creative design and to permit the application of innovative and desirable development techniques, consistent with the aesthetic and environmental qualities of the community.
  
- II. General Information:
  - A. Applicant: The Cortana Corporation
  - B. Nature of Project for which the P-D Zone is being requested: A one-story enclosed retail mall and a 4-story office building.
  - C. Property Location: 700-888800 El Camino Real
  - D. Assessor's Parcel Numbers: 071-333-200 (previous APNs: 071-333-13, 071-333-030, 071-333-040, 071-333-050, 071-333-060, 071-333-070, 071-333-080, 872-41-12-D and 071-333-090),
  - E. Area of Property: 5.5 5.93 acres
  - F. Present Zoning: C-4 (General Commercial) El Camino Real Downtown Specific Plan (ECR-SP/D)
  - F.G. Sub-district: El Camino Real South East (ECR-SE)
  - G. Proposed Zoning: P-D (Planned Development) Zone
  - H. Permitted Uses and Conditional Uses: This permit regulates all uses at the site.:- There are no permitted uses in the P-D Zone.
  - I. Conditional Uses: Conditional uses allowed in the P-D Zone are as follows: Retail stores, offices, personal services, cafes and restaurants. Other uses may be allowed, subject to obtaining a Use Permit.
  
- III. Project Plans and Approvals:
  - A. General Development Plans:

The General Development Plans for the project shall be reviewed by both the City Council and the Planning Commission. They will consist of the following: Site Plan, Preliminary Grading Plan, Building Elevations, Parking Plan/Preliminary Off-Site

Improvement Plans, Preliminary Landscaping Plan, and Circulation Plan. The zone reclassification will not be approved until both the City Council and the Planning Commission have approved the General Development Plans.

B. Precise Development Plans:

The Precise Development Plans shall be submitted to the Planning Commission for Architectural Control review and approval prior to the issuance of Building Permits. The precise plans shall conform with the General Development Plans and shall be comprised of the following:

1. Site Plan: Site Plan shall show all major dimensions and exact location of all proposed buildings and related improvements, e.g. walls, fences, patios, driveways, external lighting, fire hydrants, etc.
2. Final Grading and Drainage: The final grading and drainage plan shall show the exact finish grade elevation and final design of the drainage system. Site drainage shall be directed to Alma Street storm drain as approved by the City Engineer.
3. Building Elevation and Floor Plans: Elevation drawings shall show all exterior finishes, colors and all painted and stained surfaces and major building dimensions. Floor plans shall fully describe the proposed use of all the interior space.
4. Detail Landscaping Plan: The detailed landscaping plan shall show the exact location of all plant material and a plant schedule (listing size and quantity of plant material) and all other landscaping materials (including paved areas). The plan shall also show the construction of all fences, walls and exterior lighting fixtures. All landscaping affected by repairs to existing water lines within easements shall be restored to its original condition by the owner.
5. Parking Plan: The parking plan shall show the exact number and location of all the off-street parking to be developed to serve the project. The plan shall also include provisions for employee parking and designate specific areas for this purpose. A Contingency Plan shall be prepared and approved by the Planning Commission to implement in case the 19 ft. wide easement is revoked by the Southern Pacific Railroad. Two off-street loading areas shall be provided with either plan.
6. Off-Site Improvement Plans: The off-site improvement plans shall delineate all the off-site improvements that are to be constructed in conjunction with the project and shall show all construction details.

7. Circulation Plan: The circulation plan shall show the on-site circulation pattern and its relation to the off-site peripheral traffic pattern.
8. Subdivision Maps: The Tentative Parcel Map for the resubdivision of the subject property shall show all the existing and newly created easements, including a reciprocal access easement between the project and Ken's Pancake House restaurant. In the event the office building and the retail mall were to be resubdivided into two separate parcels, provisions shall be included in the resubdivision documents to retain the parking area as in common use.

#### IV. Development Standards

- A. Building setbacks, building coverage and open space shall be in accordance with the approved development plans. Building coverage shall not exceed 268% of the total site; driveways and paved areas shall not exceed 51% of the site area and the remaining 23% shall be developed in appropriate landscaping and walks.
- B. Building height shall not exceed 56 feet for the office building and 32 feet for retail mall, as measured from the average elevation of the natural grade adjacent to the topmost point of the structure, including elevator penthouses, ventilating and air conditioning equipment.
- C. Buildings floor areas shall be as follows:
- |                  |   |
|------------------|---|
| Gross floor area | Retail Mall shall not exceed 57,214 square feet, including public spaces. Office Building shall not exceed 45,848 square feet.  |
| Net floor area:  | Retail sales space shall not exceed 44,534 square feet. Office Building shall not exceed 36,952 square feet. Area designated for restaurant use shall not exceed 7,500 square feet of net floor area. |
- D. Public improvements: Improvements to full City and State standards for all public rights of way abutting the development shall be required. In addition, if determined necessary for proper traffic circulation, applicant agrees to work with the City's Staff to provide proper methods of ingress and egress to the development and appropriate parking regulations along the El Camino Real frontage. Determination shall be made by the City.
- E. The applicant shall contribute \$10.00 for each A.D.T. generated by the project for related traffic improvements or post a bond covering 100% of the cost of the installation of a traffic signal at El Camino Real/Roble Avenue for the period of 5 years from completion of the project, whichever shall be greater, and shall work with Caltrans and the City to implement said traffic improvements, including a traffic signal at El Camino Real and Roble Avenue, if required by the City.
- F. Three hundred sixty-five on-site parking spaces shall be provided to serve the project. In the event the 19 foot wide easement is revoked by Southern Pacific, the Contingency Plan shall be implemented to provide no less than 329 parking spaces
- G. Provide covered, secure bicycle parking for employees and the general public.
- F.H. All utilities shall be placed underground.

~~G-I.~~ All air conditioning equipment, roof mounted equipment, etc., shall be properly screened and sound-proofed.

~~H-J.~~ Install separate water meters for domestic and landscape irrigation use.

~~I-K.~~ Incorporate appropriate life safety system into the project for emergencies.

~~J-L.~~ All hard surfaces affected by repairs to water lines in easements shall be resurfaced by the owner.

~~K-M.~~ Fence along property line at the Southern Pacific Railroad shall be painted to blend with landscaping.

V. Other Conditions:

- A. A Soils Report shall be submitted for the City's Geologist review.
- B. The project shall be constructed and maintained in accordance with the approved Precise Development Plans.
- C. Revision of Plan - A public hearing by the Planning Commission and City Council shall be required prior to issuance of a Permit for revisions of the Development Plan which involve changes in land use, expansion or intensification of development or a relaxation in the standards of development. All other revisions may be allowed after a permit is approved by the Planning Commission and City Council. A public hearing may be called regarding such changes if deemed necessary by the Planning Commission.
- D. On special occasions, under the supervision of the City's Police Department, the owner/operator of the development may be required to employ private security patrol to assist in law enforcement on the property.
- E. Development Schedule - 1) A Development Plan shall be accompanied by a development schedule indicating the approximate date when construction of the project can be expected to begin, which date shall be no later than eighteen months from the effective date of rezoning of the property, the anticipated rate of development, and completion date. The development schedule, if approved by the City Council, shall be adhered to by the owner of the property in the "P-D" Zone and his successors in interest; 2) Periodically the Planning Commission shall compare the actual development in the "P-D" Zone with the approved development schedule.
- F. Revocation - If, in the opinion of the Planning Commission, the owner, or owners, are failing or have failed to meet the approved schedule, the Commission may initiate proceedings to reclassify the property and revoke the approval of the Development Plan, or to amend the Development Plan. Upon the recommendation of the Planning Commission and for good cause shown by the property owner, the Council may extend the limits imposed by the development schedule.
- G. This Permit is deemed to be in force for the lifetime of the project and is, therefore, binding on the applicant and any subsequent owner of the property or any portion thereof. Failure to comply with any of the conditions of this Permit may result in the revocation of this Permit.
- H. This Permit may be amended by majority vote of the City Council. Application for amendment shall be made by the property owner, in writing, to the Planning Commission. The Commission shall then forward their recommendation to the City

~~Acknowledged and agreed to by applicant:~~

~~David A. Wobentzen~~

~~Executive Vice President~~

~~for the Cortana Corporation~~

~~Approved by the Planning Commission~~

~~Approved by the City Council~~

~~on October 15, 1979~~

~~January 8, 1980~~

attest

attest

~~Leon C. Pirofalo~~  
Leon C. Pirofalo, Director of Community  
Development

~~Margaret E. Snowden~~  
Margaret Snowden, City Clerk

Acknowledged and agreed to by the property owner:

The Cortana Corporation

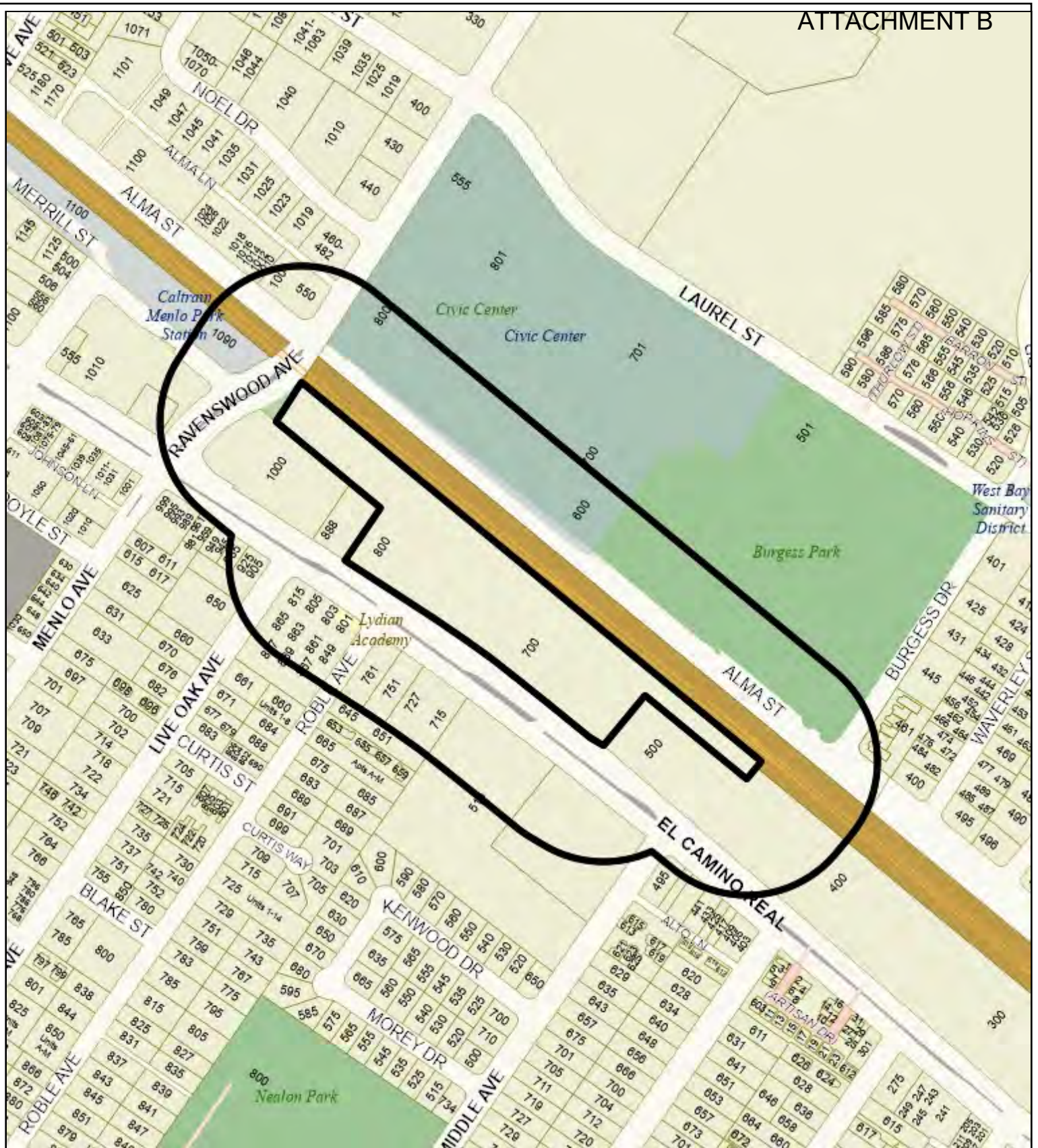
By: \_\_\_\_\_

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

Title: \_\_\_\_\_

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





City of Menlo Park  
 Location Map  
 700-800 El Camino Real



Scale: 1:4,000

Drawn By: FNK

Checked By: KTP

Date: 5/23/2023

Sheet: 1

**FILE COPY**

## Planned Development Permit

"MENLO STATION"

P-D Zone #1

## I. Statement of Purpose:

The intent of the P-D Zone is to promote comprehensive planning of large parcels of land to protect the natural environment by allowing flexibility from the strict requirements of the conventional zoning regulations; to encourage development of more usable open space; to promote more efficient use of land, utilities and circulation systems; to promote creative design and to permit the application of innovative and desirable development techniques, consistent with the aesthetic and environmental qualities of the community.

## II. General Information:

- A. Applicant: The Cortana Corporation
- B. Nature of Project for which the P-D Zone is being requested: A one-story enclosed retail mall and a 4-story office building.
- C. Property Location: 700-888 El Camino Real
- D. Assessor's Parcel Numbers: 071-333-13, 071-333-030, 071-333-040, 071-333-050, 071-333-060, 071-333-070, 071-333-080, 872-41-12-D and 071-333-090.
- E. Area of Property: 5.93 acres
- F. Present Zoning: C-4 (General Commercial)
- G. Proposed Zoning: P-D (Planned Development) Zone
- H. Permitted Uses: There are no permitted uses in the P-D Zone.
- I. Conditional Uses: Conditional uses allowed in the P-D Zone are as follows: Retail stores, offices, personal services, cafes and restaurants. Other uses may be allowed, subject to obtaining a Use Permit.

## III. Project Plans and Approvals:

## A. General Development Plans:

The General Development Plans for the project shall be reviewed by both the City Council and the Planning Commission. They will consist of the following: Site Plan, Preliminary Grading Plan, Building Elevations, Parking Plan/Preliminary Off-Site Improvement Plans, Preliminary Landscaping Plan, and Circulation Plan. The zone reclassification will not be approved until both the City Council and the Planning Commission have approved the General Development Plans.



III. Project Plans and Approvals (cont'd.):

B. Precise Development Plans:

The Precise Development Plans shall be submitted to the Planning Commission for Architectural Control review and approval prior to the issuance of Building Permits. The precise plans shall conform with the General Development Plans and shall be comprised of the following:

1. Site Plan: Site Plan shall show all major dimensions and exact location of all proposed buildings and related improvements, e.g. walls, fences, patios, driveways, external lighting, fire hydrants, etc.
2. Final Grading and Drainage Plans: The final grading and drainage plan shall show the exact finish grade elevation and final design of the drainage system. Site drainage shall be directed to Alma Street storm drain as approved by the City Engineer.
3. Building Elevation and Floor Plans: Elevation drawings shall show all exterior finishes, colors and all painted and stained surfaces and major building dimensions. Floor plans shall fully describe the proposed use of all the interior space.
- ✓ 4. Detailed Landscaping Plan: The detailed landscaping plan shall show the exact location of all plant material and a plant schedule (listing size and quantity of plant material) and all other landscaping materials (including paved areas). The plan shall also show the construction details of all fences, walls and exterior lighting fixtures. All landscaping affected by repairs to existing water lines within easements shall be restored to its original condition by the owner.
5. Parking Plan: The parking plan shall show the exact number and location of all the off-street parking to be developed to serve the project. The plan shall also include provisions for employee parking and designate specific areas for this purpose. A Contingency Plan shall be prepared and approved by the Planning Commission to implement in case the 19 ft. wide easement is revoked by the Southern Pacific Railroad. Two off-street loading areas shall be provided with either plan.
- ✓ 6. Off-Site Improvement Plans: The off-site improvement plans shall delineate all the off-site improvements that are to be constructed in conjunction with the project and shall show all construction details.

- ✓ 7. Circulation Plan: The circulation plan shall show the on-site circulation pattern and its relation to the off-site peripheral traffic pattern.
8. Subdivision Maps: The Tentative Parcel Map for the resubdivision of the subject property shall show all the existing and newly created easements, including a reciprocal access easement between the project and Ken's Pancake House restaurant. In the event the office building and the retail mall were to be resubdivided into two separate parcels, provisions shall be included in the resubdivision documents to retain the parking areas in common use.

IV. Development Standards:

- A. Building setbacks, building coverage and open space shall be in accordance with the approved development plans. Building coverage shall not exceed 26% of the total site; driveways and paved areas shall not exceed 51% of the site area and the remaining 23% shall be developed in appropriate landscaping and walks.
- B. Building height shall not exceed 56 feet for the office building and 32 feet for retail mall, as measured from the average elevation of the natural grade adjacent to the topmost point of the structure, including elevator penthouses, ventilating and air conditioning equipment.
- C. Buildings' floor areas shall be as follows:  
Gross floor area: Retail Mall shall not exceed 57,214 square feet, including public spaces. Office Building shall not exceed 45,848 square feet.  
Net floor area: Retail sales space shall not exceed 44,534 square feet. Office Building shall not exceed 36,952 square feet. Area designated for restaurant use shall not exceed 7,500 square feet of net floor area.
- ✓ D. Public improvements: Improvements to full City and State standards for all public rights of way abutting the development shall be required. In addition, if determined necessary for proper traffic circulation, applicant agrees to work with the City's Staff to provide proper methods of ingress and egress to the development and appropriate parking regulations along the El Camino Real frontage. Determination shall be made by the City.
- ✓ E. The applicant shall contribute \$10.00 for each A.D.T. generated by the project for related traffic improvements or post a bond covering 100% of the cost of the installation of a traffic signal at El Camino Real/ Roble Avenue for the period of 5 years from completion of the project, whichever shall be greater, and shall work with Caltrans and the City to implement said traffic improvements, including a traffic signal at El Camino Real and Roble Avenue, if required by the City.

- F. Three hundred sixty on-site parking spaces shall be provided to serve the project. In the event the 19 foot wide easement is revoked by Southern Pacific, the Contingency Plan shall be implemented to provide no less than 329 parking spaces.
- ✓ G. Provide covered, secure bicycle parking for employees and the general public.
- ✓ H. All utilities shall be placed underground.
- ✓ I. All air conditioning equipment, roof mounted equipment, etc., shall be properly screened and sound-proofed.
- ✓ J. Install separate water meters for domestic and landscape irrigation use.
- K. Incorporate appropriate life safety system into the project for emergencies.
- L. All hard surfaces affected by repairs to water lines in easements shall be resurfaced by the owner.
- ✓ M. Fence along property line at the Southern Pacific Railroad shall be painted to blend with landscaping.

V. Other Conditions:

- A. A Soils Report shall be submitted for the City's Geologist review.
- B. The project shall be constructed and maintained in accordance with the approved Precise Development Plans. ✓
- C. Revision of Plan - A public hearing by the Planning Commission and City Council shall be required prior to issuance of a Permit for revisions of the Development Plan which involve changes in land use, expansion or intensification of development or a relaxation in the standards of development. All other revisions may be allowed after a Permit is approved by the Planning Commission and City Council. A public hearing may be called regarding such changes if deemed necessary by the Planning Commission.
- D. On special occasions, under the supervision of the City's Police Department, the owner/operator of the development may be required to employ private security patrol to assist in law enforcement on the property.
- E. Development Schedule - 1) A Development Plan shall be accompanied by a development schedule indicating the approximate date when construction of the project can be expected to begin, which date shall be no later than eighteen months from the effective date of the rezoning of the property, the anticipated rate of development, and completion date. The development schedule, if approved by the City Council, shall be adhered to by the owner of the property in the "P-D" Zone and his successors in interest; 2) Periodically the Planning Commission shall compare the actual development in the "P-D" Zone with the approved development schedule.

- F. Revocation - If, in the opinion of the Planning Commission, the owner, or owners, are failing or have failed to meet the approved schedule, the Commission may initiate proceedings to reclassify the property and revoke the approval of the Development Plan, or to amend the Development Plan. Upon the recommendation of the Planning Commission and for good cause shown by the property owner, the Council may extend the limits imposed by the development schedule.
- G. This Permit is deemed to be in force for the lifetime of the project and is, therefore, binding on the applicant and any subsequent owner of the property or any portion thereof. Failure to comply with any of the conditions of this Permit may result in the revocation of this Permit.
- H. This Permit may be amended by majority vote of the City Council. Application for amendment shall be made by the property owner, in writing, to the Planning Commission. The Commission shall then forward their recommendation to the City Council.

Acknowledged and agreed to by applicant:

David A. Wolkenberg  
Executive Vice President

for the Cortana Corporation

Approved by the Planning Commission

Approved by the City Council

on October 15, 1979

January 8, 1980

attest

attest

Leon C. Pirofalo  
Leon C. Pirofalo, Director of Community  
Development

Margaret E. Snowden  
Margaret Snowden, City Clerk



**ATTACHMENT D  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION**

701 Laurel Street  
Menlo Park, CA 94025  
phone: (650) 330-6702  
fax: (650) 327-1653  
planning@menlopark.org  
<http://www.menlopark.org>

**DATA SHEET**

Please provide the appropriate information pertaining to your application. It is important to complete the existing and proposed development items even if the existing structure is being demolished or if there is no specific zoning ordinance requirement.

|  |   |  |                         |  |
|--|---|--|-------------------------|--|
| <b>LOCATION:</b><br>700-800 El Camino Real, Menlo Park, CA 94025 |   |  |                         |  |
| <b>EXISTING USE:</b><br>Office / Commercial                      |   | <b>APPLICANT:</b><br>City of Menlo Park                |                         |  |
| <b>PROPOSED USE:</b><br>Office / Commercial                      |   | <b>PROPERTY OWNER(S):</b><br>Menlo Station Development |                         |  |
| <b>ZONING:</b><br>SP-ECR-D                                       |   | <b>APPLICATION(S):</b>                                 |                         |  |
| <b>DEVELOPMENT STANDARDS</b>                                     | <b>PROPOSED PROJECT</b>   | <b>EXISTING DEVELOPMENT</b>                            | <b>ZONING ORDINANCE</b> |  |
| Lot area   | 239,777 sf  | 257,260 sf   | sf min.                 |  |
| Lot width  | 1,133 ft.   | 1,529 ft.  | ft. min.                |  |
| Lot depth  | 220 ft.   | 220 ft.  | ft. min.                |  |
| <b>Setbacks</b>  |   |  |                         |  |
| Front  | ~2 ft.  | ~2 ft.   | ft. min.                |  |
| Rear   | ~123.48 ft.   | ~123.48 ft.  | ft. min.                |  |
| Side (left)  | 8.09 ft.  | 8.09 ft.   | ft. min.                |  |
| Side (right)   | 58.61 ft.   | 58.61 ft.  | ft. min.                |  |
| Building coverage  | 66,112 sf   | 66,112 sf  | sf max.                 |  |
|  | 27.57 %   | 25.70 %  | % max.                  |  |
| FAR (Floor Area Ratio)*  | 101,832 sf  | 101,832 sf   | sf max.                 |  |
|  | 42.47 %   | 39.58 %  | % max.                  |  |
| FAL (Floor Area Limit)**   |   |  | sf                      |  |
| <b>Square footage by floor</b>                                   |   |  |                         |  |
| below grade  | -- sf   | -- sf  |                         |  |
| 1 <sup>ST</sup>  | 66,216 sf   | 66,216 sf  |                         |  |
| 2 <sup>ND</sup> , 3 <sup>RD</sup> , 4 <sup>TH</sup>              | 11,872/11,872/11,872 sf   | 11,872/11,872/11,872 sf                                |                         |  |
| garage   |   |  | sf                      |  |
| accessory building(s)  |   |  | sf                      |  |
| other  |   |  | sf                      |  |
| Square footage of buildings                                      | 96,610 sf   | 96,610 sf  | sf max.                 |  |
| Building height  | 50 ft.  | 50 ft.   | ft. max.                |  |
| Landscaping**  | 57,005 sf   | 61,305 sf  | sf min.                 |  |
|  | 23.77 %   | 23.83 %  | % min.                  |  |
| Paving***  |   |  | sf min.                 |  |
|  |   |  | % min.                  |  |
| Parking  | 315 spaces  | 356 spaces   | spaces                  |  |
| Define Basis for Parking   | Per AB 2097, signed in 2022 legislative session, no parking minimums within ½ mile of transit |  |                         |  |
| Trees  | # of existing <b>Heritage</b> trees   | # of existing <b>non-Heritage</b> trees                | # of new trees          |  |
|  | # of existing <b>Heritage</b> trees to be removed   | # of <b>non-Heritage</b> trees to be removed           | <b>Total #</b> of trees |  |

\* Commercial and Multiple-residential properties | \*\* Single family residential and R-2 residential, and R-2 zoned properties





# 700-800 El Camino Real

Property being purchased

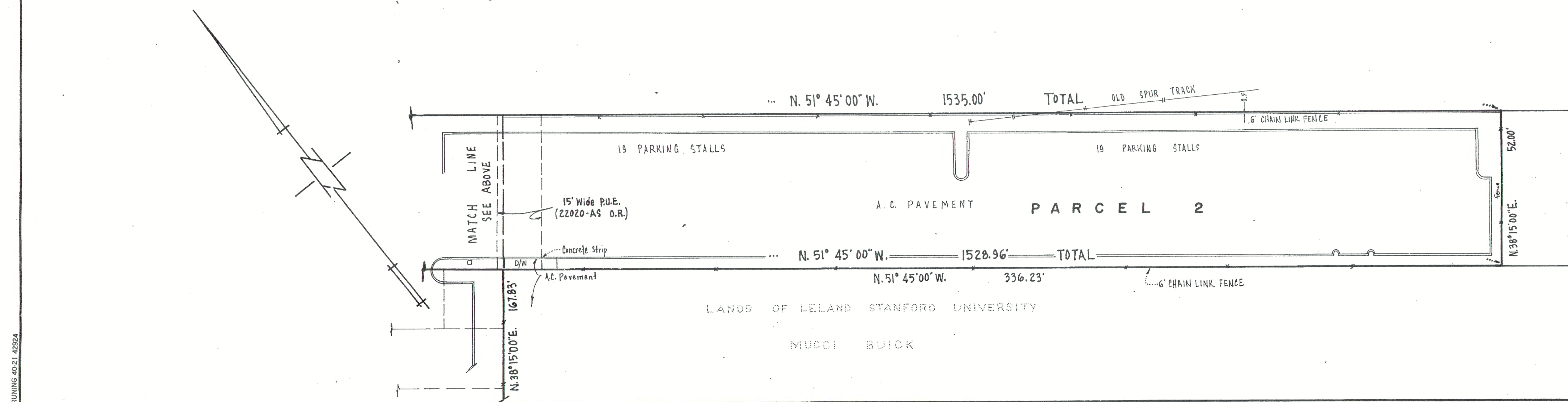
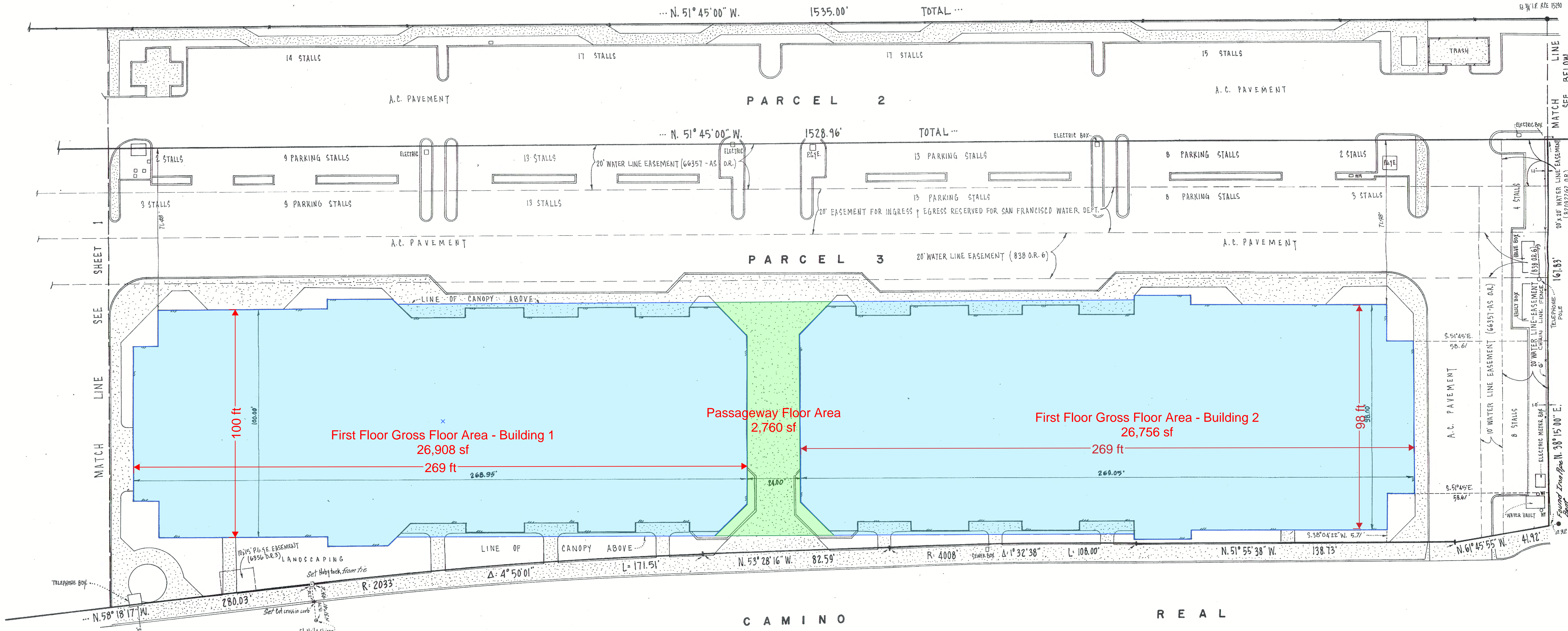
800 El Camino Real

700 El Camino Real

0 125 250 500 Feet  
Page | 3.21 Feet



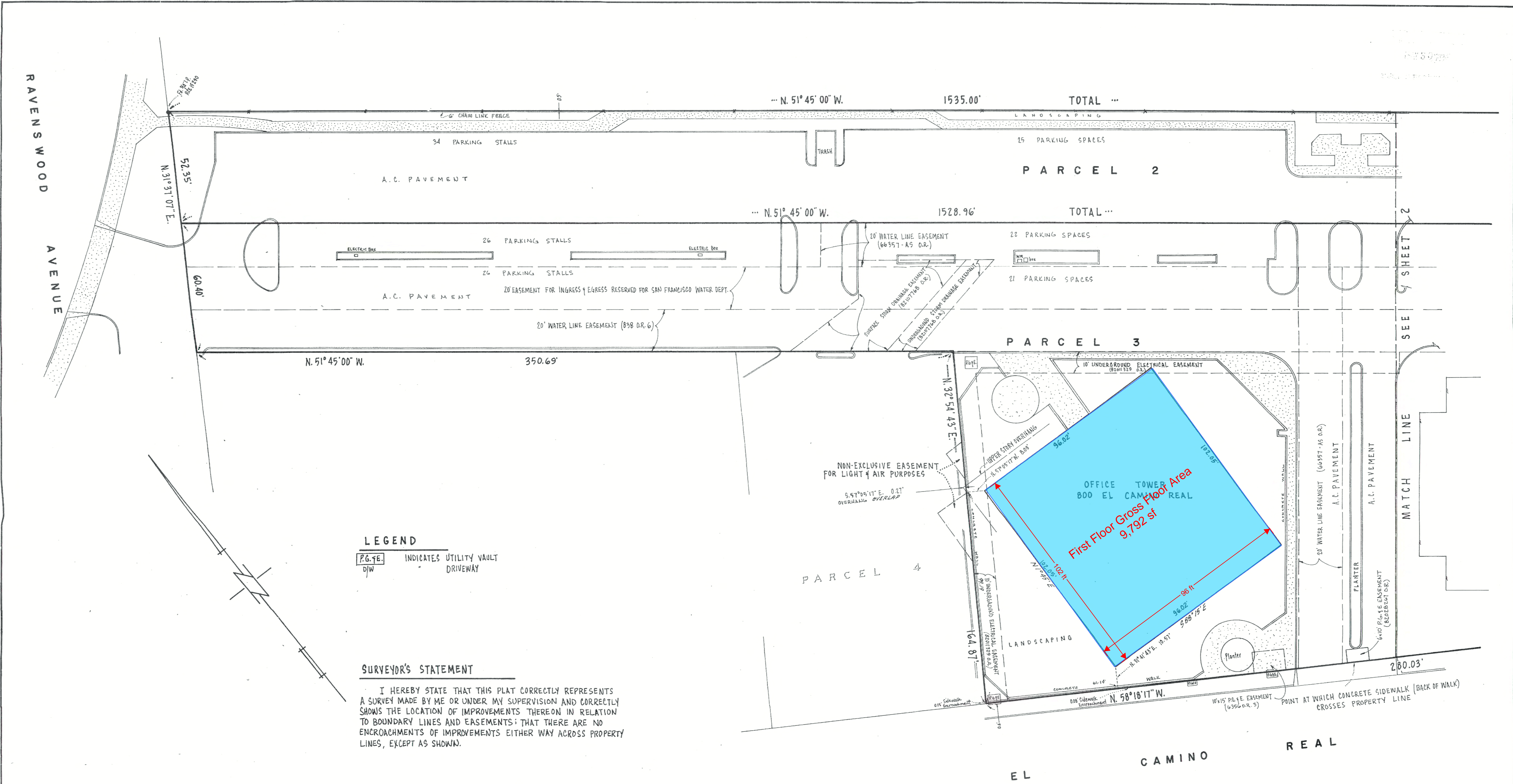
Gross floor area for 700 El Camino Real



|  |                          |
|--|--------------------------|
| A.L.T.A. SURVEY  |                          |
| OF PARCELS 2 and 3 AS SHOWN ON THE PARCEL MAP FILED IN VOLUME 51, PAGE 5, 6 & 7 OF PARCEL MAPS, RECORDS OF SAN MATEO COUNTY CITY OF MENLO PARK SAN MATEO COUNTY CALIFORNIA |                          |
| RANDLETT, FOULK & STOCK, INC.<br>CIVIL ENGINEERS and LAND SURVEYORS<br>REDWOOD CITY, CALIFORNIA  |                          |
| SCALE: 1" = 20'  | FOR: CORTANA CORPORATION |
| DATE: APRIL 1984   | DRAWING NO: 81-44B-D     |

DRAWING NO. 81-44B-D





**LEGEND**  
 P.G.V.E. INDICATES UTILITY VAULT  
 D.W. DRIVEWAY

**SURVEYOR'S STATEMENT**  
 I HEREBY STATE THAT THIS PLAT CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY SUPERVISION AND CORRECTLY SHOWS THE LOCATION OF IMPROVEMENTS THEREON IN RELATION TO BOUNDARY LINES AND EASEMENTS; THAT THERE ARE NO ENCROACHMENTS OF IMPROVEMENTS EITHER WAY ACROSS PROPERTY LINES, EXCEPT AS SHOWN.

*George T. Stock*  
 GEORGE T. STOCK, L.L.S. #3581



|  |                                 |                       |
|--|---------------------------------|-----------------------|
| <b>A.L.T.A. SURVEY</b>   |                                 |                       |
| OF PARCELS 2 and 3 AS SHOWN ON THE PARCEL MAP FILED IN VOLUME 51, PAGE 5, 6 & 7 OF PARCEL MAPS, RECORDS OF SAN MATEO COUNTY CITY OF MENLO PARK SAN MATEO COUNTY CALIFORNIA |                                 |                       |
| <b>RANDLETT, FOULK &amp; STOCK, INC.</b>   |                                 |                       |
| CIVIL ENGINEERS and LAND SURVEYORS<br>REDWOOD CITY, CALIFORNIA   |                                 |                       |
| SCALE 1" = 20'   | FOR: <b>CORTANA CORPORATION</b> | DRAWING NO: 81-49 B-D |
| DATE: APRIL 1984   |                                 |                       |









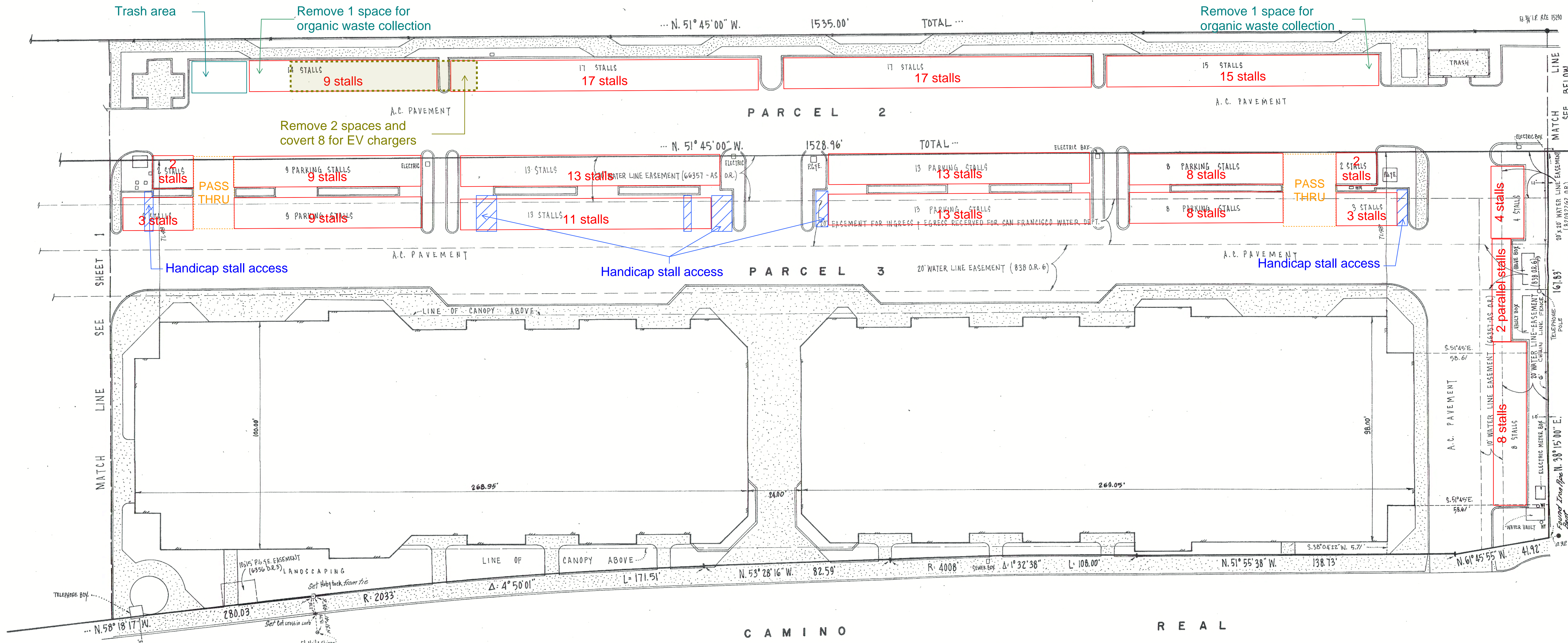






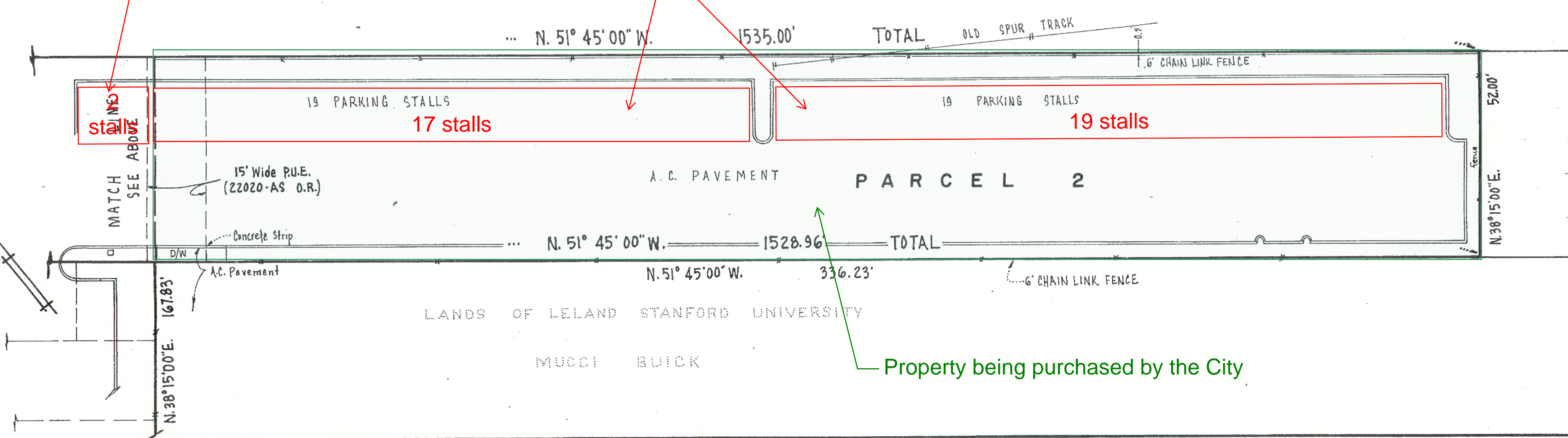


Parking areas adjacent to the 700 El Camino Real building



2 Parking stalls to remain, addition of one stall feasible

36 Parking Spaces to be removed



Property being purchased by the City

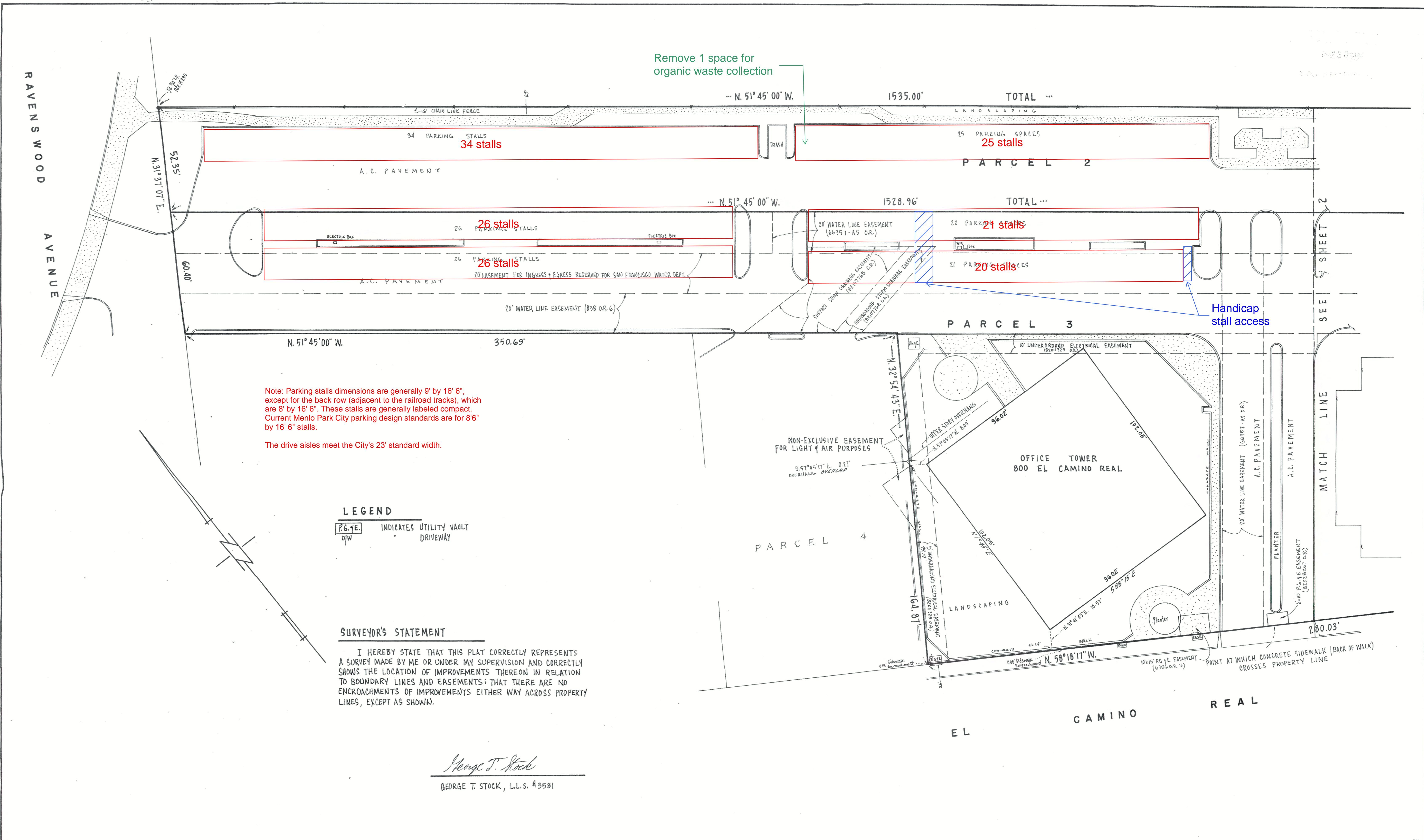
Note: Parking stalls dimensions are generally 9' by 16' 6", except for the back row (adjacent to the railroad tracks), which are 8' by 16' 6". These stalls are generally labeled compact. Current Menlo Park City parking design standards are for 8'6" by 16' 6" stalls.

The two parallel stalls meet the City's 7' by 22' design standard.

The drive aisles meet the City's 23' standard width.

|  |                          |
|--|--------------------------|
| A.L.T.A. SURVEY  |                          |
| OF PARCELS 2 and 3 AS SHOWN ON THE PARCEL MAP FILED IN VOLUME 51, PAGE 5, 6 & 7 OF PARCEL MAPS, RECORDS OF SAN MATEO COUNTY CITY OF MENLO PARK SAN MATEO COUNTY CALIFORNIA |                          |
| RANDLETT, FOULK & STOCK, INC.<br>CIVIL ENGINEERS and LAND SURVEYORS<br>REDWOOD CITY, CALIFORNIA  |                          |
| SCALE: 1" = 20'  | FOR: CORTANA CORPORATION |
| DATE: APRIL 1984   | DRAWING NO: 81-44B-D     |





**LEGEND**

PG. 7E. INDICATES UTILITY VAULT  
 DW DRIVEWAY

**SURVEYOR'S STATEMENT**

I HEREBY STATE THAT THIS PLAT CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY SUPERVISION AND CORRECTLY SHOWS THE LOCATION OF IMPROVEMENTS THEREON IN RELATION TO BOUNDARY LINES AND EASEMENTS; THAT THERE ARE NO ENCROACHMENTS OF IMPROVEMENTS EITHER WAY ACROSS PROPERTY LINES, EXCEPT AS SHOWN.

*George T. Stock*  
 GEORGE T. STOCK, L.L.S. #3581

**A.L.T.A. SURVEY**  
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**RANDLETT, FOULK & STOCK, INC.**  
 CIVIL ENGINEERS and LAND SURVEYORS  
 REDWOOD CITY, CALIFORNIA

SCALE 1" = 20'  
 DATE: APRIL 1984 FOR: **CORTANA CORPORATION** DRAWING NO: 81-49 B-D





**PLANNING COMMISSION RESOLUTION NO. 2023-XX**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MENLO PARK RECOMMENDING THE CITY COUNCIL APPROVE REVISIONS TO AN EXISTING PLANNED DEVELOPMENT PERMIT TO REDUCE THE LOT SIZE, REDUCE THE NUMBER OF REQUIRED ONSITE PARKING SPACES FROM 360 TO 315 SPACES, AND MODIFY PERCENTAGE BASED DEVELOPMENT STANDARDS (E.G. BUILDING COVERAGE AND FLOOR AREA RATIO) BASED ON THE REDUCED LOT SIZE TO ALLOW FOR THE FUTURE PURCHASE OF A PORTION OF THE EXISTING SITE, CURRENTLY USED FOR PARKING, BY THE CITY OF MENLO PARK FOR THE MIDDLE AVENUE CALTRAIN CROSSING PROJECT. THE REVISIONS TO THE PLANNED DEVELOPMENT PERMIT WOULD NOT RESULT IN ANY INCREASE IN GROSS FLOOR AREA, BUILDING COVERAGE, OR ANY MODIFICATIONS TO THE EXISTING BUILDINGS ON THE PROJECT SITE.**

**WHEREAS**, the City of Menlo Park (“City”) received an application requesting revisions to an existing Planned Development Permit (“PDP”) at 700-800 El Camino Real (Exhibit A) to reduce the lot size, reduce the number of required onsite parking spaces from 360 to 315 spaces, and modify percentage based development standards (e.g. building coverage and floor area ratio) based on the reduced lot size to allow for the future purchase of a portion of the existing site, currently used for parking, by the City of Menlo Park for the Middle Avenue Caltrain crossing project (collectively, the “Project”) from City of Menlo Park (“Applicant”), on behalf of the property owner Menlo Station Development, LLC (“Owner”), located at 700-800 El Camino Real (APN 071-333-200; previous APNs - 071-333-13, 071-333-030, 071-333-040, 071-333-050, 071-333-060, 071-333-070, 071-333-080, 872-41-12-D and 071-333-090) (“Property”). The revised Planned Development Permit (PDP), project plans and project description letter are attached hereto as Exhibit B, C and D and incorporated herein by this reference; and

**WHEREAS**, on August 27, 2019, the City Council unanimously selected a preferred concept for the proposed pedestrian and bicycle undercrossing of the Caltrain tracks at Middle Avenue Caltrain Crossing; and,

**WHEREAS**, on January 11, 2022, the City Council adopted Resolution Number 6690 to authorize the city manager to execute a purchase and sale agreement for a portion of 700-800 El Camino Real to support implementation of the Middle Avenue pedestrian and bicycle rail undercrossing project and making specified findings consistent with the certified El Camino Real and Downtown specific plan environmental report and the certified addendum to the specific plan environmental impact report; and,

**WHEREAS**, the El Camino Real and Downtown Specific Plan and the City’s Transportation Master Plan identifies a new pedestrian and bicycle crossing of the Caltrain tracks from approximately Middle Avenue to Burgess Park; and,



**WHEREAS**, the City has negotiated with Menlo Station Development, LLC, a California limited liability company, owner of 700-800 El Camino Real (Owner), to develop a Purchase and Sale Agreement that would transfer the Property from the Owner to the City and provide for construction, and access easements for use by the City during construction of the undercrossing; and,

**WHEREAS**, an approximately 17,000 square foot portion of 700-800 El Camino Real (APN 071-333-200) lies between the Caltrain railroad tracks and the 500 El Camino Real property and is the location selected for the construction of ramps to access the proposed undercrossing; and,

**WHEREAS**, the proposed Middle Avenue Caltrain crossing project would require purchase of a portion of the existing site at 700-800 El Camino Real of approximately 17,000 square feet, which would reduce the existing lot size from approximately 5.93 to approximately 5.5 acres, and based on the reduced lot size modify percentage based development standards such as building coverage and floor area ratio; and

**WHEREAS**, there will be no modifications to the existing height and gross floor area of the existing buildings on the subject property; and

**WHEREAS**, City staff conducted a parking utilization count in 2019 and found the area to be a heavily underutilized parking lot with 38 parking spaces for the onsite commercial and office development; and

**WHEREAS**, a public hearing by the Planning Commission, and a recommendation by the Planning Commission to the City Council shall be required prior to issuance of a Permit for revisions of the Development Plan which involve changes in land use, expansion or intensification of development or a relaxation in the standards of development.

**WHEREAS**, approving the revised PDP, a draft of which is attached hereto as Exhibit B, is necessary to authorize the development of the Middle Avenue Caltrain crossing project, consistent with the Specific Plan; and

**WHEREAS**, the Project, requires discretionary actions by the City as summarized above, and therefore the California Environmental Quality Act ("CEQA," Public Resources Code Section §21000 et seq.) and CEQA Guidelines (Cal. Code of Regulations, Title 14, §15000 et seq.) require analysis and a determination regarding the Project's environmental impacts; and

**WHEREAS**, the City is the lead agency, as defined by CEQA and the CEQA Guidelines, and is therefore responsible for the preparation, consideration, certification, and approval of environmental documents for the Project; and

**WHEREAS**, the Project is categorically exempt under each of the following three California Environmental Quality Act (CEQA) exemptions - Class 1 (Section 15301, "Existing Facilities"), Class 5 (Section 15305, "Minor Alterations in Land Use Limitations") and "Common

Sense Exemption” (Section 15601(b)(3), of the current California Environmental Quality Act (CEQA) Guidelines, and;

**WHEREAS**, all required public notices and public hearings were duly given and held according to law; and

**WHEREAS**, at a duly and properly noticed public hearing held on May 1, 2023, the Planning Commission fully reviewed, considered, and evaluated the whole of the record including all public and written comments, pertinent information, documents and plans, prior to making a recommendation to the City Council regarding revision to the Planned Development Permit.

**NOW, THEREFORE, THE MENLO PARK PLANNING COMMISSION HEREBY RECOMMENDS THE CITY COUNCIL TO RESOLVES AS FOLLOWS:**

**Section 1. Recitals.** The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, public testimony, and other materials and evidence submitted or provided, and the City Council finds the foregoing recitals are true and correct.

**Section 2. Planned Development Permit Findings.** The City Council of the City of Menlo Park does hereby make the following Findings:

Consideration and due regard were given to the proposed revisions to the PDP to be consistent with PDP (V)(H):

This Permit may be amended by majority vote of the City Council. Application for the amendment shall be made by the property owner, in writing, to the Planning Commission. The Commission shall then forward their recommendation to the City Council.

**Section 4. Planned Development Permit.** The Planning Commission hereby recommends the City Council to approve the revised Planned Development Permit (Application #PLN2020-00007), which Planned Development Permit is depicted in and subject to the revised Planned Development attached hereto and incorporated herein by this reference as Exhibit B and development plans and project description letter, which are attached hereto and incorporated herein by this reference as Exhibit C and Exhibit D, respectively.

**Section 5. ENVIRONMENTAL REVIEW.** The Planning Commission recommends that the City Council makes the following findings, based on its independent judgment after considering the Project, and having reviewed and taken into consideration all written and oral information submitted in this matter:

- A. The Project is categorically exempt under each of the following: Class 1 (Section 15301, “Existing Facilities”), Class 5 (Section 15305, “Minor Alterations in Land Use

Limitations”), and “Common Sense Exemption” Section 15601(b)(3), of the current California Environmental Quality Act (CEQA) Guidelines.

**Section 6. SEVERABILITY**

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

I, Corinna Sandmeier, Principal Planner and Planning Commission Liaison of the City of Menlo Park, do hereby certify that the above and foregoing Planning Commission Resolution was duly and regularly passed and adopted at a meeting by said Planning Commission on May 1, 2023, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS THEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this 1<sup>st</sup> day of May, 2023

---

Corinna Sandmeier  
Principal Planner and Planning Commission Liaison  
City of Menlo Park

Exhibits

- A. Planned Development Permit, 1980
- B. Revised Planned Development Permit
- C. Project Plans
- D. Project Description Letter



700-800 El Camino Real

Property being purchased

800 El Camino Real

700 El Camino Real







## STAFF REPORT

City Council

Meeting Date:

5/23/2023

Staff Report Number:

23-126-CC

Regular Business:

**Adopt a Resolution to amend Resolution No. 6738 to remove the drought surcharge that corresponds to stage 2 drought measures from Menlo Park Municipal Water customer bills; Rescind stage 2 drought measures if/when the State Water Board ends its drought regulations that require Menlo Park Municipal Water to implement drought measures in its Water Shortage Contingency Plan; Determine that this action is exempt from California Environmental Quality Act pursuant to CEQA Guidelines sections 15307 (actions to protect natural resources), 15308 (actions to protect the environment) and 15269 (actions to prevent or mitigate an emergency)**

### Recommendation

Staff recommends that the City Council adopt a resolution (Attachment A) to amend Resolution No. 6738 to remove the drought surcharge that corresponds to stage 2 drought measures from Menlo Park Municipal Water (MPMW) customer bills starting May 1; rescind stage 2 drought measures when the State Water Board modifies or ends its drought regulations that require MPMW to implement drought measures in its Water Shortage Contingency Plan (WSCP); and determine this action is exempt from California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15307, 15308 and 15269.

### Policy Issues

MPMW is a city-owned water service provider for a portion of the City of Menlo Park. The City Council acts as its governing body and is responsible for ensuring the financial stability of the water system by setting customer rates and approving capital plans and other operational expenditures. The City Council has the authority to declare a drought and specify one of six drought stages, as outlined in the adopted 2020 WSCP.

The adopted 2020 WSCP has prescribed actions for each of the six drought stages, which have varying levels of response for changes to or shortages in water supplies. It provides flexibility to incorporate additional water measures based on several factors: the State Water Board adopting future emergency water regulations, the San Francisco Public Utilities Commission (SFPUC) imposing drought-related actions as the water wholesaler, or other appropriate actions in order to meet MPMW's water reduction goal. Attachment B lists the six drought stages along with corresponding conservation measures and response.

Per Menlo Park Municipal Code, Chapter 7.35 (Water Conservation), the City may also enforce drought regulations adopted by the State Water Board, or drought-related actions imposed by SFPUC under an adopted Water Conservation Plan. This chapter allows the City to implement these requirements by

adopting, by resolution, a Water Conservation Plan.

## Background

MPMW supplies water to about half of the City's residences and businesses through approximately 4,300 service connections. MPMW's sole water supply is purchased from SFPUC for two distinct areas: the upper zone in the Sharon Heights area, and the lower zone located north and east of El Camino Real. MPMW is a member of the Bay Area Water Supply and Conservation Agency (BAWSCA), a special district that represents the interest of 26 cities, water districts, and private utilities that are long-term purchasers of SFPUC wholesale water.

On May 11, 2021, the City Council adopted Resolution No. 6625 approving MPMW water rate increases through fiscal year 2025-26. The new rates met several objectives that included updating drought surcharges to match the State Water Board's six drought stages as outlined in MPMW's WSCP. The purpose of the drought surcharge is to recover lost revenue (due to less water sales) so the water fund can meet target reserves and cover operating, maintenance and capital expenditures. Drought surcharges are only in effect if the City Council declares a drought and specifies the drought stage.

In May 2022, in response to the Governor's March 2022 Executive Order N-7-22, the State Water Board adopted emergency regulations requiring urban water suppliers to implement stage 2 of their WSCPs and prohibit irrigation of "non-functional" turf by June 10, 2022. The State Water Board defines non-functional turf as turf that is solely ornamental and not regularly used for human recreational purposes or for civic or community events (does not include sports fields).

On May 24, 2022, the City Council adopted Resolution No. 6738 (Attachment C) to implement stage 2 of the City's 2020 WSCP and a drought surcharge effective Aug. 1, 2022. The resolution also prohibited irrigation of "non-functional" turf for commercial, industrial and institutional water users. Section 8 of Resolution No. 6738 outlines the process to declaring an end to the water shortage emergency by stating that "This resolution shall become effective June 10, 2022, and shall remain in effect until the supply of water available for distribution within such area has been replenished or augmented, at which time the City Council will declare an end to the water shortage emergency by resolution." Attachment E lists current water regulations, who initiated them and when they expire. On the same day, SFPUC adopted a drought surcharge for their retail customers and a system-wide water use reduction of 11% compared to baseline water use during fiscal year 2019-20 (stage 2 of SFPUC's WSCP), for alignment with State requirements.

In December 2022, the State Water Board extended its ban on wasteful water practices to Dec. 22.

On March 24, in response to the greatly improved local and statewide hydrologic conditions, the Governor issued Executive Order N-5-23 to rescind the relevant portions of Executive Order N-7-22 that prompted the State Water Board to require urban water suppliers to implement level 2 of their WSCPs. However, it does keep the water restriction on use of potable water for commercial, industrial, and institutional water users to irrigate non-functional, ornamental turf. The regulations do not become law until the State Water Board adopts them. While it is likely that the State Water Board will act in response to the Governor's March 24 termination, the State Water Board has not indicated if or when it plans to lift this requirement in its regulations. It should be noted that if the State Water Board takes no action, the level 2 drought regulations will automatically expire June 10.

On April 11 based on system-wide hydrologic conditions and water storage in the SFPUC's reservoirs, SFPUC rescinded the temporary drought surcharge for their retail customers (effective May 1). They also authorized rescinding the voluntary system-wide water use reduction of 11% (compared to fiscal year 2019-



20 water use) when the State Water Board modifies or ends its drought regulations that require SFPUC to implement the drought response actions of its WSCP.

**Analysis**

For the last 12 months from March 2022 through February 2023, MPMW water customers have reduced water use overall by 18% which exceeds SFPUC’s voluntary system-wide water use reduction of 11% (compared to fiscal year 2019-20 water use). Almost every customer category decreased water use during this period as shown below in Table 1. Institutional customers (i.e., schools and City public facilities) used more water in the last 12 months compared to fiscal year 2019-20 likely due to the pandemic when these facilities closed in March 2020.

| Table 1: Water use (March 2022 – February 2023)<br>compared to fiscal year 2019-20 |                                  |
|--|----------------------------------|
| Customer category  | Percent (%)<br>increase/decrease |
| Single-family residential  | -17                              |
| Multi-family residential   | -9                               |
| Commercial/Industrial  | -17                              |
| Institutional  | +13                              |
| Irrigation   | -45                              |
| Overall average  | -18                              |

As of March 31, the City has collected about 61% of total budgeted revenues for fiscal year 2022-23 from water sales (monthly meter charges and water consumption charges) which is less than the 75% that would normally be anticipated for nine months of the fiscal year.

The drought surcharge helps recover lost revenue due to less water sales. The current drought surcharge for stage 2 is \$1.40 per centum cubic feet (CCF) with one CCF equivalent to 748 gallons. The surcharge, which became effective for bills issued in August 2022, applies to all customers, based on total metered water use, and is itemized separately on customer monthly bills. As of March 31, the City has collected approximately \$830,000 in revenue from drought surcharges, which has helped to offset lost revenue due to less water sales.

Staff is recommending removing drought surcharges on water bills retroactively starting May 1. Staff will work with the billing contractor to issue customer credits as needed. Staff is also recommending rescinding stage 2 drought measures in the future if/when the State Water Board rescinds stage 2 drought measures that requires MPMW to implement drought response actions in its WSCP. Attachment D shows Resolution No. 6738 redlined with proposed amendments.

Next steps

It is unknown at this time if or when the State Water Board will modify or implement additional drought restrictions. Staff is bringing this item forward now in order to retroactively remove the drought surcharge back to May 1 (which matches SFPUC’s timeline to remove the drought surcharge for their retail customers), and in anticipation that the State Water Board allows the drought restrictions to implement stage 2 of water suppliers’ WSCP to expire June 10. If the State Water Board decides to implement other drought restrictions not included in the proposed amended Resolution No. 6738, staff will return to City

Council to take any necessary actions.

### Other rate adjustments

As identified in the five-year rate study adopted May 11, 2021, the annual rate increase for fiscal year 2023-24 will be implemented starting July 1. On May 9, SFPUC adopted the fiscal year 2023-24 wholesale water rate of \$5.21 per CCF, representing a 9.7% increase, effective July 1. The adopted rate is higher than the projected fiscal year 2023-24 wholesale water rate of \$4.87 per CCF provided previously by SFPUC and assumed for purposes of the 2021 five-year water rate study. Pursuant to California Government Code 53756, MPMW is able to pass-through any additional increases in SFPUC wholesale water rates when the actual SFPUC rates exceed estimates, given that all water customers receive at least 30 days' notice. The fiscal year 2023-24 SFPUC wholesale pass-through rate will be decreasing from \$0.56 to \$0.34 per CCF due to SFPUC anticipating increased water use as drought conditions have improved. The new pass-through rate will be implemented at the same time as the annual water rate increase based on July water use and appear on customers' August water bills.

### **Impact on City Resources**

Removing the drought surcharge will eliminate future revenues that help offset reduced revenue due to less water sales, however, staff anticipates that water use will increase as drought restrictions are lifted which will increase water sales and revenues. These revenues are used to cover the cost of purchasing water from SFPUC and operating and maintaining the water system.

### **Environmental Review**

City Council's adoption of the proposed resolution 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.

If this action were a project, it would be categorically exempt from CEQA under CEQA Guidelines §15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and CEQA Guidelines §15308 (Actions for Protection of the Environment), in that it is intended to ensure adequate water supplies for the preservation of public health, safety, fire prevention, during a declared period of drought.

### **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. Proposed resolution amending Resolution No. 6738
- B. Table – Drought stages and actions, 2020 WSCP
- C. Resolution No. 6738 that adopted a drought stage 2 Water Conservation Plan
- D. Resolution No. 6738 redlined with proposed amendments
- E. Current regulations and expiration dates

Report prepared by:  
Pam Lowe, Senior Civil Engineer

Reviewed by:  
Tanisha Werner, Assistant Public Works Director - Engineering

**RESOLUTION NO. XXXX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
AMENDING RESOLUTION NO. 6738 TO REMOVE THE DROUGHT LEVEL 2  
SURCHARGE AND RESCIND STAGE 2 DROUGHT MEASURES IF/WHEN THE  
STATE WATER RESOURCES CONTROL BOARD ENDS ITS DROUGHT  
REGULATIONS THAT REQUIRE MENLO PARK MUNICIPAL WATER TO  
IMPLEMENT DROUGHT MEASURES IN ITS WATER SHORTAGE  
CONTINGENCY PLAN PER SECTION 8 OF THE RESOLUTION NO. 6738**

WHEREAS, on March 28, 2022, the Governor issued Executive Order N-7-22, which directed the State Water Resources Control Board (State Water Board) to adopt emergency regulations requiring each urban water supplier that has submitted a Water Shortage Contingency Plan (WSCP) to the California Department of Water Resources to implement, at a minimum, shortage response actions adopted under Section 10632 of the California Water Code for a shortage level of up to 20% (Shortage Level 2) and prohibiting irrigating non-functional turf, and

WHEREAS, on May 24, 2022, the State Water Board adopted such regulations by State Water Board Resolution No. 2022-0018, Resolution to Adopt an Emergency Regulation to Reduce Demand and Improve Water Conservation, which went into effect on June 10, 2022, and will remain in effect for one year unless the State Water Board modifies or extends them; and

WHEREAS, in response to the State Water Board Regulations, on May 24, 2022, SFPUC adopted an increased system-wide water use reduction of 11% compared to baseline water use during fiscal year 2019-2020, consistent with Shortage Level 2 of the SFPUC's WSCP, effective July 1, 2022; and

WHEREAS, in response to the State Water Board proposed regulations, on May 24, 2022, the City Council adopted Resolution No. 6738 to implement Shortage Level 2 measures in the adopted 2020 Water Shortage Contingency Plan and prohibit irrigating non-functional turf, as well as additional conservation measures; and Section 8 of Resolution No. 6738 states that "This resolution shall become effective June 10, 2022 and shall remain in effect until the supply of water available for distribution within such area has been replenished or augmented, at which time the City Council will declare an end to the water shortage emergency by resolution" and

WHEREAS, on February 13, 2023, the Governor issued Executive Order N-3-23, which continued the statewide drought emergency and regulations in effect, but also directed state agencies to provide recommendations on whether any existing provisions in the Governor's drought proclamations and executive orders are still needed to mitigate drought conditions; and

WHEREAS, on March 24, 2023, the Governor issued Executive Order N-5-23, which among other actions terminated the portion of Executive Order N-7-22 that prompted the State Water Board to adopt Resolution No. 2022-0018 that requires urban water suppliers to implement, at minimum, Shortage Level 2 of their water shortage contingency plans; and

WHEREAS, based on system-wide hydrologic conditions and water storage in SFPUC's reservoirs, on April 11, 2023, SFPUC rescinded the temporary drought surcharge for their retail customers (effective on May 1). SFPUC also authorized rescinding the voluntary system-wide

water use reduction of 11 percent (compared to fiscal year 2019-20 water use) when the State Water Board modifies or ends its drought regulations that require SFPUC to implement the drought response actions of its WSCP; and

WHEREAS, adoption of this resolution 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. If this action were a project, it would be categorically exempt from California Environmental Quality Act (CEQA) under CEQA Guidelines 15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and CEQA Guidelines section 15308 (Actions for Protection of the Environment), in that it is intended to ensure adequate water supplies for the preservation of public health, safety, fire prevention, during a declared period of drought.

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

1. The above recitals are true and accurate.
2. Section 2 of Resolution No. 6738 is hereby repealed and shall retroactively become effective on May 1, 2023.
3. Sections 3 and 4(e) through 4(g) of Resolution No. 6738 are hereby repealed effective on the date if/when the State Water Board rescinds stage 2 drought measures, or if the State Water Board allows the stage 2 drought measures to expire on June 10, 2023.

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

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Judi A. Herren, City Clerk

| Shortage Level | Percent Shortage Range | WSCP Shortage Response Actions  | WSCP Table 6-1<br>Demand Reduction Actions<br>(DWR Table 8-2)   | WSCP Table 6-2<br>Supply Augmentation and Other Actions<br>(DWR Table 8-3) |
|----------------|------------------------|---|---|--|
| No-Drought     | N/A                    | <ul style="list-style-type: none"> <li>Includes water waste prohibitions effective at all times.</li> </ul> | <ol style="list-style-type: none"> <li>Hoses must be equipped with a shut-off valve for washing vehicles, sidewalks, walkways, or buildings.</li> <li>Ornamental fountains shall use only re-circulated or recycled water.</li> <li>Potable water shall not be applied in any manner to any driveway, sidewalk, or other hard surface except when necessary to address immediate health or safety concerns.</li> <li>Potable water shall not be used to water outdoor landscapes in a manner that causes more than incidental runoff onto non-irrigated areas, walkways, roadways, parking lots, or other hard surfaces.</li> <li>Potable water cannot be applied to outdoor landscapes during and up to 48 hours after measurable rainfall.</li> <li>Potable water shall not be used to irrigate ornamental turf on public street medians.</li> <li>Hotels and motels shall provide guests an option whether to launder towels and linens daily. Hotels and motels shall prominently display notice of this option in each bathroom using clear and easily understood language.</li> <li>Restaurants and other food service operations shall serve water to customers only upon request during a period for which the Governor has issued a proclamation of a state of emergency.</li> <li>Broken or defective plumbing and irrigation systems must be repaired or replaced within a reasonable period.</li> <li>Recreational water features shall be</li> </ol> | None   |



Drought Stages & Actions (Tables from the adopted 2020 Water Shortage Contingency Plan, WSCP)

| Shortage Level | Percent Shortage Range | WSCP Shortage Response Actions  | WSCP Table 6-1 Demand Reduction Actions (DWR Table 8-2)   | WSCP Table 6-2 Supply Augmentation and Other Actions (DWR Table 8-3)   |
|----------------|------------------------|---|---|--|
|                |                        |   | covered when not in use.<br>11. Single-pass cooling systems on new construction shall not be allowed.<br>12. Other measures as may be approved by the State Water Resources Control Board or City Council Resolution.   |  |
| 1              | Up to 10%              | <ul style="list-style-type: none"> <li>Declaration by the City Council upon the determination that the SFPUC or another governing authority (e.g., the SWRCB) has required a voluntary or mandatory reduction in water use of up to 10% due to water supply shortages or an emergency.</li> <li>Includes implementation of mandatory restrictions on end uses (see WSCP Table 6-1) as well as agency actions (see WSCP Table 6-2).</li> </ul> | 1. Continue with “no drought” restrictions and prohibitions except where superseded by more stringent requirements.<br>2. Newly constructed homes and buildings must irrigate with drip or microspray only.<br>3. Other measures as may be approved by City Council Resolution.   | 1. Initiate public outreach to inform customers that there is a water shortage emergency.<br>2. Implement Stage 1 drought surcharge.   |
| 2              | Up to 20%              | <ul style="list-style-type: none"> <li>Declaration by the City Council upon the determination that the SFPUC or another governing authority (e.g., the SWRCB) has required a voluntary or mandatory reduction in water use from 10% to 20% due to water supply shortages or emergency.</li> <li>Includes implementation of mandatory restrictions on end uses (see WSCP Table 6-1) as well as agency actions (see WSCP Table 6-2).</li> </ul> | 1. Continue with Stage 1 restrictions and prohibitions except where superseded by more stringent requirements.<br>2. Irrigating outdoor ornamental landscapes or turf with potable water is limited to no more than two (2) days per week on a schedule established by the Director and posted on the City’s website, except for hand watering. Water customers may be granted an exception upon review and approval of a Drought Response Plan by the Public Works Director pursuant to such policies and procedures as may be established by the Public Works Director provided that such plan results in an equivalent or greater reduction in water | 1. Continue with actions and measures from Stage 1.<br>2. Increase public outreach for added restrictions and prohibitions, and to provide information regarding fines or penalties for non-compliance.<br>3. Coordinate with BAWSCA, SFPUC, and other Menlo Park water agencies (California Water Service, O’Connor Cooperative Water Tract, East Palo Alto, Palo Alto Park Mutual Water Company).<br>4. Evaluate if participation in BAWSCA’s subscription water conservation programs can be increased.<br>5. Train City staff and billing contractor customer service representatives how to |

Drought Stages & Actions (Tables from the adopted 2020 Water Shortage Contingency Plan, WSCP)

| Shortage Level | Percent Shortage Range | WSCP Shortage Response Actions  | WSCP Table 6-1 Demand Reduction Actions (DWR Table 8-2)   | WSCP Table 6-2 Supply Augmentation and Other Actions (DWR Table 8-3)   |
|----------------|------------------------|---|---|--|
|                |                        |   | <p>use.</p> <ol style="list-style-type: none"> <li>3. Hand watering must be with a continuously monitored hose fitted with an automatic shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use or monitored.</li> <li>4. Other measures as may be approved by City Council Resolution.</li> </ol>  | <ol style="list-style-type: none"> <li>respond to customer calls, reports and complaints.</li> <li>6. Evaluate options to capture water during routine flushing of water mains.</li> <li>7. Implement Stage 2 drought surcharge.</li> </ol>  |
| 3              | Up to 30%              | <ul style="list-style-type: none"> <li>• Declaration by the City Council upon the determination that the SFPUC or another governing authority (e.g., the SWRCB) has required a voluntary or mandatory reduction in water use from 20% to 30% due to water supply shortages or emergency.</li> <li>• Includes implementation of mandatory restrictions on end uses (see WSCP Table 6-1) as well as agency actions (see WSCP Table 6-2).</li> </ul> | <ol style="list-style-type: none"> <li>1. Continue with Stage 2 restrictions and prohibitions except where superseded by more stringent requirements.</li> <li>2. Permits for construction of new pools shall include a requirement that MPMW water shall not be used to fill new pools.</li> <li>3. Vehicles may only be washed at vehicle washing facilities using recycled or recirculating water.</li> <li>4. Other measures as may be approved by City Council Resolution.</li> </ol>  | <ol style="list-style-type: none"> <li>1. Continue with actions and measures from Stage 2.</li> <li>2. Increase public outreach for added restrictions and prohibitions, and to provide information how to report water waste to the City.</li> <li>3. Increase public outreach to the top 10% water users in each customer category.</li> <li>4. Coordinate with Police code enforcement to investigate water waste reports.</li> <li>5. Request cooperation from Menlo Park Fire District to reduce fire training water use.</li> <li>6. Implement Stage 3 drought surcharge.</li> </ol> |
| 4              | Up to 40%              | <ul style="list-style-type: none"> <li>• Declaration by the City Council upon the determination that the SFPUC or another governing authority (e.g., the SWRCB) has required a voluntary or mandatory reduction in water use from 30% to 40% due to water supply shortages or emergency.</li> <li>• Includes implementation of mandatory restrictions on end uses (see WSCP Table 6-1) as well</li> </ul>   | <ol style="list-style-type: none"> <li>1. Continue with Stage 3 restrictions and prohibitions except where superseded by more stringent requirements.</li> <li>2. Irrigating outdoor ornamental landscapes or turf with potable water is limited to no more than one (1) day per week on a schedule established by the Director and posted on the City’s website, except for hand watering. Water customers may be granted an exception upon review and approval of a Drought Response Plan by the Public Works Director pursuant to</li> </ol> | <ol style="list-style-type: none"> <li>1. Continue with actions and measures from Stage 3.</li> <li>2. Increase public outreach for added restrictions and prohibitions.</li> <li>3. Increase public outreach to the top 20% water users in each customer category.</li> <li>4. Evaluate staff resources. May include hiring temporary staff or training additional City staff to assist with customer service and enforcement.</li> </ol>   |

Drought Stages & Actions (Tables from the adopted 2020 Water Shortage Contingency Plan, WSCP)

| Shortage Level | Percent Shortage Range | WSCP Shortage Response Actions   | WSCP Table 6-1<br>Demand Reduction Actions<br>(DWR Table 8-2)  | WSCP Table 6-2<br>Supply Augmentation and Other Actions<br>(DWR Table 8-3)  |
|----------------|------------------------|--|--|---|
|                |                        | <p>as agency actions (see WSCP Table 6-2).</p>   | <p>such policies and procedures as may be established by the Public Works Director provided that such plan results in an equivalent or greater reduction in water use.</p> <ol style="list-style-type: none"> <li>3. Potable water shall not be used for construction or dust control.</li> <li>4. Potable water shall not be used for commercial vehicles that provide street washing, sweeping, or cleaning.</li> <li>5. Other measures as may be approved by City Council Resolution.</li> </ol>  | <ol style="list-style-type: none"> <li>5. Reevaluate routine flushing of water mains except when necessary to address immediate health or safety concerns.</li> <li>6. Consider increasing fines for multiple violations.</li> <li>7. Implement Stage 4 drought surcharge.</li> </ol>   |
| 5              | Up to 50%              | <ul style="list-style-type: none"> <li>• Declaration by the City Council upon the determination that the SFPUC or another governing authority (e.g., the SWRCB) has required a voluntary or mandatory reduction in water use from 40% to 50% due to water supply shortages or emergency.</li> <li>• Includes implementation of mandatory restrictions on end uses and water use budgets for customers (see WSCP Table 6-1), as well as agency actions and groundwater supply augmentation (see WSCP Table 6-2).</li> </ul> | <ol style="list-style-type: none"> <li>1. Continue with Stage 4 restrictions and prohibitions except where superseded by more stringent requirements.</li> <li>2. Water use shall not exceed water budgets established for each customer.</li> <li>3. Hand watering outdoor ornamental landscapes is only allowed between designated hours, as determined by the Public Works Director.</li> <li>4. Turf irrigation is prohibited at all times, including artificial turf.</li> <li>5. Existing irrigation systems shall not be expanded.</li> <li>6. Other measures as may be approved by City Council Resolution.</li> </ol> | <ol style="list-style-type: none"> <li>1. Continue with actions and measures from Stage 4.</li> <li>2. Increase public outreach for added restrictions and prohibitions.</li> <li>3. Increase public outreach to the top 30% water users in each customer category.</li> <li>4. Implement water waste patrols and increase enforcement.</li> <li>5. Halt installations of new potable water meters (temporary or permanent) or meter upgrades except if a valid, unexpired building permit has been issued for the project; or the project is necessary to protect the public's health, safety, and welfare.</li> <li>6. Halt issuing statements of immediate ability to serve or provide potable water service.</li> <li>7. Consider increasing fines for multiple violations.</li> <li>8. Develop water budgets for all accounts.</li> <li>9. Use emergency groundwater well(s).</li> <li>10. Implement Stage 5 drought surcharge.</li> </ol> |

Drought Stages & Actions (Tables from the adopted 2020 Water Shortage Contingency Plan, WSCP)

| Shortage Level | Percent Shortage Range | WSCP Shortage Response Actions  | WSCP Table 6-1<br>Demand Reduction Actions<br>(DWR Table 8-2)  | WSCP Table 6-2<br>Supply Augmentation and Other Actions<br>(DWR Table 8-3)  |
|----------------|------------------------|---|--|---|
| 6              | >50%                   | <ul style="list-style-type: none"> <li>• Declaration by the City Council upon the determination that the SFPUC or another governing authority (e.g., the SWRCB) has required a voluntary or mandatory reduction in water use greater than 50% due to water supply shortages or emergency.</li> <li>• Includes implementation of mandatory restrictions on end uses and water use budgets for customers (see WSCP Table 6-1), as well as agency actions and groundwater supply augmentation (see WSCP Table 6-2).</li> </ul> | <ol style="list-style-type: none"> <li>1. Continue with Stage 5 restrictions and prohibitions except where superseded by more stringent requirements.</li> <li>2. Hand watering outdoor ornamental landscapes is prohibited at all times.</li> <li>3. Other measures as may be approved by City Council Resolution.</li> </ol> | <ol style="list-style-type: none"> <li>1. Continue with actions and measures from Stage 5.</li> <li>2. Increase public outreach for added restrictions and prohibitions.</li> <li>3. Increase public outreach to the top 40% water users in each customer category.</li> <li>4. Halt installations of new potable water meters (temporary or permanent) even if a valid, unexpired building permit has been issued for the project.</li> <li>5. Consider increasing fines for multiple violations.</li> <li>6. Increase water budget reduction requirements.</li> <li>7. Implement other short-term emergency actions from the Emergency Response Plan.</li> <li>8. Implement Stage 6 drought surcharge.</li> </ol> |

**RESOLUTION NO. 6738**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
ADOPTING WATER CONSERVATION PLAN PURSUANT TO MENLO PARK  
MUNICIPAL CODE CHAPTER 7.35 TO IMPLEMENT WATER SHORTAGE  
CONSERVATION PLAN STAGE 2 MEASURES**

WHEREAS, on May 11, 2021, pursuant to its rate setting authority and in accordance with all applicable requirements under Proposition 218, the City Council adopted Resolution No. 6625 to approve MPMW’s five-year schedule of water rates, which included analysis and approval of drought surcharges in the proposed 2020 Water Shortage Contingency Plan; and

WHEREAS, on May 25, 2021, the City Council adopted its 2020 Urban Water Management Plan and the 2020 Water Shortage Contingency Plan, as required by the California Water Code, and which includes six drought stages; and

WHEREAS, on April 21, May 10, and July 8, 2021, Governor Newsom issued proclamations that a state of emergency exists in a total of 50 counties due to severe drought conditions and directed state agencies to take immediate action to preserve critical water supplies and mitigate the effects of drought and ensure the protection of health, safety, and the environment; and

WHEREAS, on October 19, 2021, Governor Newsom’s emergency drought proclamation expanded the drought emergency statewide and encouraged the State Water Board to supplement voluntary conservation measures by prohibiting certain wasteful water uses; and

WHEREAS, on November 23, 2021, the San Francisco Public Utilities Commission (“SFPUC”) declared a water shortage emergency and adopted a voluntary system-wide water use reduction of 10 percent from fiscal year 2019-2020 use; and

WHEREAS, in response to the declared drought emergency, the State Water Board adopted emergency regulations, set forth in 23 California Code of Regulations section 995, effective January 18, 2022 for a one-year period, that prohibits wasteful water use practices statewide and enables any agency that has authority to enforce infractions to enforce these prohibitions at their discretion; and

WHEREAS, the State Water Board’s regulations prohibit among other things the following, except to the extent use is necessary to address an immediate health and safety need:

- A. The application of potable water to outdoor landscapes in a manner that causes more than incidental runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;
- B. The use of a hose that dispenses water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;
- C. The use of potable water for washing sidewalks, driveways, buildings, structures, patios, parking lots, or other hard surfaced areas, except in cases where health and safety are at risk;

- D. The use of potable water for street cleaning or construction site preparation purposes, unless no other method can be used or as needed to protect the health and safety of the public;
- E. The use of potable water for decorative fountains or the filling or topping-off of decorative lakes or ponds, with exceptions for those decorative fountains, lakes, or ponds that use pumps to recirculate water and only require refilling to replace evaporative losses;
- F. The application of water to irrigate turf and ornamental landscapes during and within 48 hours after measurable rainfall of at least one fourth of one inch of rain.
- G. The use of potable water for irrigation of ornamental turf on public street medians.

WHEREAS, on March 1, 2022, in response to these actions, pursuant to authority granted under Water Code section 350 and Menlo Park Municipal Code section 7.35.020, the City Council of the City of Menlo Park adopted Resolution No. 6716 declaring a drought state of emergency, implementing Stage 1 measures of the City's adopted 2020 Water Shortage Contingency Plan, adopting and providing for local enforcement of the State Water Board's emergency regulations set forth in 23 California Code of Regulations section 995, and imposing the drought stage 1 surcharge effective for water bills issued July 2022, and setting forth penalties; and

WHEREAS, on March 28, 2022, the Governor adopted Executive Order N-7-22, requiring among other things that the State Water Board consider imposing emergency regulations that would require each urban water supplier implement, at a minimum, the Stage 2 shortage provisions of their adopted water shortage contingency plans and prohibiting irrigating non-functional turf, and the State Water Board has drafted, published, and will consider adopting [has adopted] such requirements on May 24, 2022, which requires action by the City Council by no later than June 10, 2022 [if adopted]; and

WHEREAS, the City Council finds that the conditions of drought and water shortage leading to the declaration of water shortage emergency by the City Council on March 1, 2022 continue to persist, and that in the interest of protecting public health and safety and ensuring the adequacy of the public water supply that the City Council must require the implementation of Stage 2 conservation measures in the adopted Water Shortage Contingency Plan, as well as additional conservation measures specified herein; and

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

1. The above recitals are true and accurate.
2. Pursuant to Menlo Park Municipal Code section 7.35.020, and for the reasons set forth in this recitals, the staff report, and the testimony of staff, the City Council declares that a water shortage emergency now exists throughout the area served by Menlo Park Municipal Water.
3. Pursuant to Menlo Park Municipal Code chapter 7.35, the City Council hereby adopts this resolution as its water conservation plan, determines that it is necessary to declare and implement drought stage 2 of the 2020 Water Shortage Contingency Plan and to implement the following drought surcharges, effective with July 2022 water use, which will appear on water bills issued in August 2022:

Fiscal year 2022-23

\$1.40 per CCF



4. Pursuant to Menlo Park Municipal Code section 7.35.020 and the adopted Water Shortage Contingency Plan, the following additional conservation measures are hereby imposed and required of all MPMW users:
  - a. Hotels and motels shall provide guests an option whether to launder towels and linens daily.
  - b. Restaurants and other food service operations shall serve water to customers only upon request.
  - c. Broken or defective plumbing and irrigation systems must be repaired or replaced within a reasonable period, not exceeding seven days.
  - d. Recreational water features shall be covered when not in use.
  - e. Newly constructed homes and buildings must irrigate with drip or microspray only.
  - f. Irrigating ornamental landscapes or turf with portable water is limited to no more than two days per week on the following schedule, except for hand watering:
    - i. Odd street addresses shall irrigate only on Tuesday and Saturday.
    - ii. Even street addresses and properties without a street address may irrigate only on Wednesday and Sunday.
    - iii. Irrigation shall be prohibited during the hours of 8:00 a.m. to 6:00 p.m.
    - iv. Exceptions to these restrictions may be granted upon review and approval of a drought response plan by the Public Works Director provided that such plan results in an equivalent or greater reduction in water use.
  - g. Hand watering shall be conducted with a hose fitted with an automatic shut-off nozzle or via some other device that ceases dispensing water immediately when not in use.
5. The City Council adopts the State Water Board’s emergency regulations as set forth in Title 23 California Code of Regulations, Section 995, as set forth in Exhibit A and incorporated herein by reference, as part of the City’s adopted water conservation plan, and violations shall be subject to enforcement and penalties as provided herein.
6. In accordance with Title 23 California Code of Regulations, section 996(e), the use of potable water for the irrigation of non-functional turf at commercial, industrial and institutional sites, except to the extent necessary to ensure the health of trees and other perennial non-turf plantings or to the extent necessary to address an immediate health and safety need. For purposes of this prohibition, “non-functional turf” means turf that is solely ornamental and not regularly used for human recreational purposes or for civic or community events, and does not include sports fields.
7. Violations of the regulations set forth above or otherwise adopted in this resolution shall be subject to the following penalties:

| <b>Violation</b> | <b>Enforcement Action</b>  |
|------------------|--|
| 1st              | Warning and education  |
| 2nd              | \$50 fine  |
| 3rd              | \$200 fine, and review by the Public Works Director (or his or her designee) to determine if a flow restricting device should be installed, in the Director’s discretion as may be necessary to deter water waste. |
| 4th              | \$500 fine, and review by the Public Works Director (or his or her designee) to determine if water service should be discontinued, in the Director’s discretion as may be necessary to deter water waste.          |

Violators shall also be subject to the following charges for installation or removal of flow restricting devices and disconnection or reconnection of service.

| <b>Meter Size</b> | <b>Charges</b> |   |
|-------------------|----------------|---|
| 5/8" to 2"        | \$155.00       | Installation of flow restricting device |
|                   | \$155.00       | Removal of flow restricting device      |
| 3" or larger      | Actual cost    | Installation of flow restricting device |
|                   | Actual cost    | Removal of flow restricting device      |
| All sizes         | \$108.00       | Disconnecting water service             |
|                   | \$108.00       | Reconnecting water service              |

8. This resolution shall become effective June 10, 2022, and shall remain in effect until the supply of water available for distribution within such area has been replenished or augmented, at which time the City Council will declare an end to the water shortage emergency by resolution.
9. Resolution No. 6716 shall be rescinded as of June 10, 2022.

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

AYES: Combs, Mueller, Nash, Taylor, Wolosin

NOES: None

ABSENT: None

ABSTAIN: None

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

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

Exhibits:

- A. State Water Board's emergency regulations as set forth in Title 23 California Code of Regulations, Section 995

**STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 2022-0002**

**TO ADOPT AN EMERGENCY REGULATION  
TO SUPPLEMENT VOLUNTARY WATER CONSERVATION**

WHEREAS:

1. On April 21, May 10, and July 8, 2021, Governor Newsom issued proclamations that a state of emergency exists in a total of 50 counties due to severe drought conditions and directed state agencies to take immediate action to preserve critical water supplies and mitigate the effects of drought and ensure the protection of health, safety, and the environment.
2. On October 19, 2021, Governor Newsom signed a proclamation extending the drought emergency statewide and further urging Californians to reduce their water use.
3. There is no guarantee that winter precipitation will alleviate the current drought conditions.
4. Many Californians have taken bold steps over the years to reduce water use; nevertheless, the severity of the current drought and uncertainty about Water Year 2022 require additional conservation actions from residents and businesses.
5. Water conservation is the easiest, most efficient, and most cost-effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved is water available next year, giving water suppliers the flexibility to manage their systems efficiently. The more water that is conserved now, the less likely it is that a community will experience such dire circumstances or that water rationing will be required.
6. Most Californians use more water outdoors than indoors. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes would not suffer greatly from receiving a decreased amount of water.

7. Public information and awareness are critical to achieving conservation goals, and the Save Our Water campaign ([SaveOurWater.com](http://SaveOurWater.com)), run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response.
8. [SaveWater.CA.Gov](http://SaveWater.CA.Gov) is an online tool designed to help save water in communities. This website lets anyone easily report water waste from their phone, tablet, or computer by simply selecting the type of water waste they see, typing in the address where the waste is occurring, and clicking send. These reports are filed directly with the State Water Resources Control Board (State Water Board or Board) and relevant local water supplier.
9. Enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated.
10. On October 19, 2021, the Governor suspended the environmental review required by the California Environmental Quality Act to allow State Water Board-adopted drought conservation emergency regulations and other actions to take place quickly to respond to emergency conditions.
11. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: “prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.”
12. On November 30, 2021, the State Water Board issued public notice that the State Water Board would consider the adoption of the regulation at the Board’s regularly scheduled January 4, 2022 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations.
13. The emergency regulation sets a minimum standard that many communities are already doing more but not everyone is taking these low-cost, easy to implement actions that can save significant amounts of water during a drought emergency.

14. Disadvantaged communities may require assistance in increasing water conservation, and state and local agencies should look for opportunities to provide assistance in promoting water conservation, including but not limited to translation of regulation text and dissemination of water conservation announcements into languages spoken by at least 10 percent of the people who reside in a water supplier's service area, such as in newspaper advertisements, bill inserts, website homepage, social media, and notices in public libraries.
15. The Board directs staff to consider the following in pursuing any enforcement of section 995, subdivision (b)(1)(A)-(F): before imposing monetary penalties, staff shall provide one or more warnings; monetary penalties must be based on an ability to pay determination, consider allowing a payment plan of at least 12 months, and shall not result in a tax lien; and Board enforcement shall not result in shutoff.
16. The Board encourages entities other than Board staff that consider any enforcement of this regulation to apply these same factors identified in resolved paragraph 15. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Moreover, the Water Code does not impose a mandatory penalty for violations of the regulation adopted by this resolution, and local agencies retain their enforcement discretion in enforcing the regulation, to the extent authorized, and may develop their own progressive enforcement practices to encourage conservation.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, section 995, as appended to this resolution as an emergency regulation.
2. State Water Board staff will submit the regulation to the Office of Administrative Law (OAL) for final approval.
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or designee may make such changes.

4. This regulation shall remain in effect for one year after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions or unless the State Water Board renews the regulation due to continued drought conditions, as described in Water Code section 1058.5.
5. The State Water Board directs State Water Board staff to work with the Department of Water Resources and the Save Our Water campaign to disseminate information regarding the emergency regulations.
6. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Local agencies are encouraged to develop their own progressive enforcement practices to promote conservation.

### CERTIFICATION

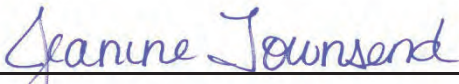
The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 4, 2022.

AYE: Vice Chair Dorene D'Adamo  
Board Member Sean Maguire  
Board Member Laurel Firestone  
Board Member Nichole Morgan

NAY: None

ABSENT: Chair E. Joaquin Esquivel

ABSTAIN: None

  
\_\_\_\_\_  
Jeanine Townsend  
Clerk to the Board



## ADOPTED TEXT OF EMERGENCY REGULATION

### **Title 23. Waters**

#### **Division 3. State Water Resources Control Board and Regional Water Quality Control Boards**

#### **Chapter 3.5. Urban Water Use Efficiency and Conservation**

#### **Article 2. Prevention of Drought Wasteful Water Uses**

#### § 995. Wasteful and Unreasonable Water Uses.

(a) As used in this section:

(1) "Turf" has the same meaning as in section 491.

(2) "Incidental runoff" means unintended amounts (volume) of runoff, such as unintended, minimal overspray from sprinklers that escapes the area of intended use. Water leaving an intended use area is not considered incidental if it is part of the facility or system design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.

(b)(1) To prevent the unreasonable use of water and to promote water conservation, the use of water is prohibited as identified in this subdivision for the following actions:

(A) The application of potable water to outdoor landscapes in a manner that causes more than incidental runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;

(B) The use of a hose that dispenses water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;

(C) The use of potable water for washing sidewalks, driveways, buildings, structures, patios, parking lots, or other hard surfaced areas, except in cases where health and safety are at risk;

(D) The use of potable water for street cleaning or construction site preparation purposes, unless no other method can be used or as needed to protect the health and safety of the public;

(E) The use of potable water for decorative fountains or the filling or topping-off of decorative lakes or ponds, with exceptions for those decorative fountains, lakes, or ponds that use pumps to recirculate water and only require refilling to replace evaporative losses;

(F) The application of water to irrigate turf and ornamental landscapes during and within 48 hours after measurable rainfall of at least one fourth of one inch of rain. In determining whether measurable rainfall of at least fourth of one inch of rain occurred in a given area, enforcement may be based on records of the National Weather Service, the closest CIMIS station to the parcel, or any other reliable source of rainfall data available to the entity undertaking enforcement of this subdivision; and

(G) The use of potable water for irrigation of ornamental turf on public street medians.

(2) Notwithstanding subdivision (b)(1), the use of water is not prohibited by this section to the extent necessary to address an immediate health and safety need. This may include, but is not limited to, the use of potable water in a fountain or water feature when required to be potable because human contact is expected to occur.

(c)(1) To prevent the unreasonable use of water and to promote water conservation, any homeowners' association or community service organization or similar entity is prohibited from:

- (A) Taking or threatening to take any action to enforce any provision of the governing documents or architectural or landscaping guidelines or policies of a common interest development where that provision is void or unenforceable under section 4735, subdivisions (a) and (b) of the Civil Code;
- (B) Imposing or threatening to impose a fine, assessment, or other monetary penalty against any owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during a declared drought emergency, as described in section 4735, subdivision (c) of the Civil Code; or
- (C) Requiring an owner of a separate interest upon which water-efficient landscaping measures have been installed in response to a declared drought emergency, as described in section 4735, subdivisions (c) and (d) of the Civil Code, to reverse or remove the water-efficient landscaping measures upon the conclusion of the state of emergency.

(2) As used in this subdivision:

- (A) "Architectural or landscaping guidelines or policies" includes any formal or informal rules other than the governing documents of a common interest development.
- (B) "Homeowners' association" means an "association" as defined in section 4080 of the Civil Code.
- (C) "Common interest development" has the same meaning as in section 4100 of the Civil Code.
- (D) "Community service organization or similar entity" has the same meaning as in section 4110 of the Civil Code.
- (E) "Governing documents" has the same meaning as in section 4150 of the Civil Code.
- (F) "Separate interest" has the same meaning as in section 4185 of the Civil Code.

(3) If a disciplinary proceeding or other proceeding to enforce a rule in violation of subdivision (c)(1) is initiated, each day the proceeding remains pending shall constitute a separate violation of this regulation.

(d) To prevent the unreasonable use of water and to promote water conservation, any city, county, or city and county is prohibited from imposing a fine under any local maintenance ordinance or other relevant ordinance as prohibited by section 8627.7 of the Government Code.

(e) The taking of any action prohibited in subdivision (b), (c) or (d) is an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(f) A decision or order issued under this section by the Board or an officer or employee of the Board is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 4080, 4100, 4110, 4150, 4185, and 4735, Civil Code; Section 8627.7, Government Code; Sections 102, 104, 105, 275, 350, 491, and 1122, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

Proposed amendments are shown in red text

**RESOLUTION NO. 6738**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
ADOPTING WATER CONSERVATION PLAN PURSUANT TO MENLO PARK  
MUNICIPAL CODE CHAPTER 7.35 TO IMPLEMENT WATER SHORTAGE  
CONSERVATION PLAN STAGE 2 MEASURES**

WHEREAS, on May 11, 2021, pursuant to its rate setting authority and in accordance with all applicable requirements under Proposition 218, the City Council adopted Resolution No. 6625 to approve MPMW’s five-year schedule of water rates, which included analysis and approval of drought surcharges in the proposed 2020 Water Shortage Contingency Plan; and

WHEREAS, on May 25, 2021, the City Council adopted its 2020 Urban Water Management Plan and the 2020 Water Shortage Contingency Plan, as required by the California Water Code, and which includes six drought stages; and

WHEREAS, on April 21, May 10, and July 8, 2021, Governor Newsom issued proclamations that a state of emergency exists in a total of 50 counties due to severe drought conditions and directed state agencies to take immediate action to preserve critical water supplies and mitigate the effects of drought and ensure the protection of health, safety, and the environment; and

WHEREAS, on October 19, 2021, Governor Newsom’s emergency drought proclamation expanded the drought emergency statewide and encouraged the State Water Board to supplement voluntary conservation measures by prohibiting certain wasteful water uses; and

WHEREAS, on November 23, 2021, the San Francisco Public Utilities Commission (“SFPUC”) declared a water shortage emergency and adopted a voluntary system-wide water use reduction of 10 percent from fiscal year 2019-2020 use; and

WHEREAS, in response to the declared drought emergency, the State Water Board adopted emergency regulations, set forth in 23 California Code of Regulations section 995, effective January 18, 2022 for a one-year period, that prohibits wasteful water use practices statewide and enables any agency that has authority to enforce infractions to enforce these prohibitions at their discretion; and

WHEREAS, the State Water Board’s regulations prohibit among other things the following, except to the extent use is necessary to address an immediate health and safety need:

- A. The application of potable water to outdoor landscapes in a manner that causes more than incidental runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;
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WHEREAS, on March 28, 2022, the Governor adopted Executive Order N-7-22, requiring among other things that the State Water Board consider imposing emergency regulations that would require each urban water supplier implement, at a minimum, the Stage 2 shortage provisions of their adopted water shortage contingency plans and prohibiting irrigating non-functional turf, and the State Water Board has drafted, published, and will consider adopting [has adopted] such requirements on May 24, 2022, which requires action by the City Council by no later than June 10, 2022 [if adopted]; and

WHEREAS, the City Council finds that the conditions of drought and water shortage leading to the declaration of water shortage emergency by the City Council on March 1, 2022 continue to persist, and that in the interest of protecting public health and safety and ensuring the adequacy of the public water supply that the City Council must require the implementation of Stage 2 conservation measures in the adopted Water Shortage Contingency Plan, as well as additional conservation measures specified herein; and

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

1. The above recitals are true and accurate.
- ~~2. Pursuant to Menlo Park Municipal Code section 7.35.020, and for the reasons set forth in this recitals, the staff report, and the testimony of staff, the City Council declares that a water shortage emergency now exists throughout the area served by Menlo Park Municipal Water.~~
- ~~3. Pursuant to Menlo Park Municipal Code chapter 7.35, the City Council hereby adopts this resolution as its water conservation plan, determines that it is necessary to declare and implement drought stage 2 of the 2020 Water Shortage Contingency Plan and to implement the following drought surcharges, effective with July 2022 water use, which will appear on water bills issued in August 2022:~~

~~Fiscal year 2022-23 \$1.40 per CCF~~

4. Pursuant to Menlo Park Municipal Code section 7.35.020 and the adopted Water Shortage Contingency Plan, the following additional conservation measures are hereby imposed and required of all MPMW users:
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7. Violations of the regulations set forth above or otherwise adopted in this resolution shall be subject to the following penalties:

| <b>Violation</b> | <b>Enforcement Action</b>  |
|------------------|--|
| 1st              | Warning and education  |
| 2nd              | \$50 fine  |
| 3rd              | \$200 fine, and review by the Public Works Director (or his or her designee) to determine if a flow restricting device should be installed, in the Director's discretion as may be necessary to deter water waste. |
| 4th              | \$500 fine, and review by the Public Works Director (or his or her designee) to determine if water service should be discontinued, in the Director's discretion as may be necessary to deter water waste.          |



Violators shall also be subject to the following charges for installation or removal of flow restricting devices and disconnection or reconnection of service.

| <b>Meter Size</b> | <b>Charges</b> |   |
|-------------------|----------------|---|
| 5/8" to 2"        | \$155.00       | Installation of flow restricting device |
|                   | \$155.00       | Removal of flow restricting device      |
| 3" or larger      | Actual cost    | Installation of flow restricting device |
|                   | Actual cost    | Removal of flow restricting device      |
| All sizes         | \$108.00       | Disconnecting water service             |
|                   | \$108.00       | Reconnecting water service              |

8. This resolution shall become effective June 10, 2022, and shall remain in effect until the supply of water available for distribution within such area has been replenished or augmented, at which time the City Council will declare an end to the water shortage emergency by resolution.
9. Resolution No. 6716 shall be rescinded as of June 10, 2022.

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

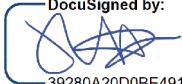
AYES: Combs, Mueller, Nash, Taylor, Wolosin

NOES: None

ABSENT: None

ABSTAIN: None

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

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

Exhibits:

- A. State Water Board's emergency regulations as set forth in Title 23 California Code of Regulations, Section 995

**STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 2022-0002**

**TO ADOPT AN EMERGENCY REGULATION  
TO SUPPLEMENT VOLUNTARY WATER CONSERVATION**

WHEREAS:

1. On April 21, May 10, and July 8, 2021, Governor Newsom issued proclamations that a state of emergency exists in a total of 50 counties due to severe drought conditions and directed state agencies to take immediate action to preserve critical water supplies and mitigate the effects of drought and ensure the protection of health, safety, and the environment.
2. On October 19, 2021, Governor Newsom signed a proclamation extending the drought emergency statewide and further urging Californians to reduce their water use.
3. There is no guarantee that winter precipitation will alleviate the current drought conditions.
4. Many Californians have taken bold steps over the years to reduce water use; nevertheless, the severity of the current drought and uncertainty about Water Year 2022 require additional conservation actions from residents and businesses.
5. Water conservation is the easiest, most efficient, and most cost-effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved is water available next year, giving water suppliers the flexibility to manage their systems efficiently. The more water that is conserved now, the less likely it is that a community will experience such dire circumstances or that water rationing will be required.
6. Most Californians use more water outdoors than indoors. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes would not suffer greatly from receiving a decreased amount of water.

7. Public information and awareness are critical to achieving conservation goals, and the Save Our Water campaign ([SaveOurWater.com](http://SaveOurWater.com)), run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response.
8. [SaveWater.CA.Gov](http://SaveWater.CA.Gov) is an online tool designed to help save water in communities. This website lets anyone easily report water waste from their phone, tablet, or computer by simply selecting the type of water waste they see, typing in the address where the waste is occurring, and clicking send. These reports are filed directly with the State Water Resources Control Board (State Water Board or Board) and relevant local water supplier.
9. Enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated.
10. On October 19, 2021, the Governor suspended the environmental review required by the California Environmental Quality Act to allow State Water Board-adopted drought conservation emergency regulations and other actions to take place quickly to respond to emergency conditions.
11. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: “prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.”
12. On November 30, 2021, the State Water Board issued public notice that the State Water Board would consider the adoption of the regulation at the Board’s regularly scheduled January 4, 2022 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations.
13. The emergency regulation sets a minimum standard that many communities are already doing more but not everyone is taking these low-cost, easy to implement actions that can save significant amounts of water during a drought emergency.

14. Disadvantaged communities may require assistance in increasing water conservation, and state and local agencies should look for opportunities to provide assistance in promoting water conservation, including but not limited to translation of regulation text and dissemination of water conservation announcements into languages spoken by at least 10 percent of the people who reside in a water supplier's service area, such as in newspaper advertisements, bill inserts, website homepage, social media, and notices in public libraries.
15. The Board directs staff to consider the following in pursuing any enforcement of section 995, subdivision (b)(1)(A)-(F): before imposing monetary penalties, staff shall provide one or more warnings; monetary penalties must be based on an ability to pay determination, consider allowing a payment plan of at least 12 months, and shall not result in a tax lien; and Board enforcement shall not result in shutoff.
16. The Board encourages entities other than Board staff that consider any enforcement of this regulation to apply these same factors identified in resolved paragraph 15. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Moreover, the Water Code does not impose a mandatory penalty for violations of the regulation adopted by this resolution, and local agencies retain their enforcement discretion in enforcing the regulation, to the extent authorized, and may develop their own progressive enforcement practices to encourage conservation.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, section 995, as appended to this resolution as an emergency regulation.
2. State Water Board staff will submit the regulation to the Office of Administrative Law (OAL) for final approval.
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or designee may make such changes.

4. This regulation shall remain in effect for one year after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions or unless the State Water Board renews the regulation due to continued drought conditions, as described in Water Code section 1058.5.
5. The State Water Board directs State Water Board staff to work with the Department of Water Resources and the Save Our Water campaign to disseminate information regarding the emergency regulations.
6. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Local agencies are encouraged to develop their own progressive enforcement practices to promote conservation.

### CERTIFICATION

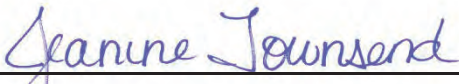
The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 4, 2022.

AYE: Vice Chair Dorene D'Adamo  
Board Member Sean Maguire  
Board Member Laurel Firestone  
Board Member Nichole Morgan

NAY: None

ABSENT: Chair E. Joaquin Esquivel

ABSTAIN: None

  
\_\_\_\_\_  
Jeanine Townsend  
Clerk to the Board

## ADOPTED TEXT OF EMERGENCY REGULATION

### **Title 23. Waters**

#### **Division 3. State Water Resources Control Board and Regional Water Quality Control Boards**

#### **Chapter 3.5. Urban Water Use Efficiency and Conservation**

#### **Article 2. Prevention of Drought Wasteful Water Uses**

#### § 995. Wasteful and Unreasonable Water Uses.

(a) As used in this section:

(1) "Turf" has the same meaning as in section 491.

(2) "Incidental runoff" means unintended amounts (volume) of runoff, such as unintended, minimal overspray from sprinklers that escapes the area of intended use. Water leaving an intended use area is not considered incidental if it is part of the facility or system design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.

(b)(1) To prevent the unreasonable use of water and to promote water conservation, the use of water is prohibited as identified in this subdivision for the following actions:

(A) The application of potable water to outdoor landscapes in a manner that causes more than incidental runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;

(B) The use of a hose that dispenses water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;

(C) The use of potable water for washing sidewalks, driveways, buildings, structures, patios, parking lots, or other hard surfaced areas, except in cases where health and safety are at risk;

(D) The use of potable water for street cleaning or construction site preparation purposes, unless no other method can be used or as needed to protect the health and safety of the public;

(E) The use of potable water for decorative fountains or the filling or topping-off of decorative lakes or ponds, with exceptions for those decorative fountains, lakes, or ponds that use pumps to recirculate water and only require refilling to replace evaporative losses;

(F) The application of water to irrigate turf and ornamental landscapes during and within 48 hours after measurable rainfall of at least one fourth of one inch of rain. In determining whether measurable rainfall of at least fourth of one inch of rain occurred in a given area, enforcement may be based on records of the National Weather Service, the closest CIMIS station to the parcel, or any other reliable source of rainfall data available to the entity undertaking enforcement of this subdivision; and

(G) The use of potable water for irrigation of ornamental turf on public street medians.



(2) Notwithstanding subdivision (b)(1), the use of water is not prohibited by this section to the extent necessary to address an immediate health and safety need. This may include, but is not limited to, the use of potable water in a fountain or water feature when required to be potable because human contact is expected to occur.

(c)(1) To prevent the unreasonable use of water and to promote water conservation, any homeowners' association or community service organization or similar entity is prohibited from:

- (A) Taking or threatening to take any action to enforce any provision of the governing documents or architectural or landscaping guidelines or policies of a common interest development where that provision is void or unenforceable under section 4735, subdivisions (a) and (b) of the Civil Code;
- (B) Imposing or threatening to impose a fine, assessment, or other monetary penalty against any owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during a declared drought emergency, as described in section 4735, subdivision (c) of the Civil Code; or
- (C) Requiring an owner of a separate interest upon which water-efficient landscaping measures have been installed in response to a declared drought emergency, as described in section 4735, subdivisions (c) and (d) of the Civil Code, to reverse or remove the water-efficient landscaping measures upon the conclusion of the state of emergency.

(2) As used in this subdivision:

- (A) "Architectural or landscaping guidelines or policies" includes any formal or informal rules other than the governing documents of a common interest development.
- (B) "Homeowners' association" means an "association" as defined in section 4080 of the Civil Code.
- (C) "Common interest development" has the same meaning as in section 4100 of the Civil Code.
- (D) "Community service organization or similar entity" has the same meaning as in section 4110 of the Civil Code.
- (E) "Governing documents" has the same meaning as in section 4150 of the Civil Code.
- (F) "Separate interest" has the same meaning as in section 4185 of the Civil Code.

(3) If a disciplinary proceeding or other proceeding to enforce a rule in violation of subdivision (c)(1) is initiated, each day the proceeding remains pending shall constitute a separate violation of this regulation.

(d) To prevent the unreasonable use of water and to promote water conservation, any city, county, or city and county is prohibited from imposing a fine under any local maintenance ordinance or other relevant ordinance as prohibited by section 8627.7 of the Government Code.

(e) The taking of any action prohibited in subdivision (b), (c) or (d) is an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(f) A decision or order issued under this section by the Board or an officer or employee of the Board is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 4080, 4100, 4110, 4150, 4185, and 4735, Civil Code; Section 8627.7, Government Code; Sections 102, 104, 105, 275, 350, 491, and 1122, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

**Regulation expiration dates**  
**Staff recommendation**

| Who/What   | When in effect   | Prohibitions  |
|--|--|---|
| State Water Board regulations for urban water suppliers to implement Stage 2 of their Water Shortage Contingency Plans | Effective until June 10, 2023, unless the State Water Board modifies, extends, or ends them.     | <ul style="list-style-type: none"> <li>• Watering “non-functional turf” in commercial, industrial, and institutional areas, including common areas of homeowners’ associations (HOAs).</li> <li>• <del>Newly constructed homes and buildings must irrigate with drip or microspray only.</del></li> <li>• <del>Irrigating outdoor ornamental landscapes or turf with potable water more than two (2) days per week, except for hand watering.</del></li> </ul>  |
| State Water Board regulations to ban wasteful water practices  | Effective until December 21, 2023, unless the State Water Board modifies, extends, or ends them. | <ul style="list-style-type: none"> <li>• Applying water to outdoor landscapes that cause more than incidental runoff (e.g., excessive application, negligence, intentional overflow).</li> <li>• Washing vehicles without an automatic shut-off nozzle.</li> <li>• Washing impervious areas unless it addresses an immediate health and safety need.</li> <li>• Using potable water for street cleaning or construction site preparation purposes unless no other method is available (e.g., mixing concrete) or as needed to protect the health and safety of the public.</li> <li>• Using/filling/topping off decorative fountains, lakes, or ponds with potable water unless pumps recirculate water.</li> <li>• Irrigating turf and ornamental landscapes within 48 hours of measurable rainfall (1/4” of rainfall) - does not apply to trees.</li> <li>• Irrigating turf on public medians.</li> </ul> |
| City Council adopted regulations   | Effective until the City Council ends them.  | <p>Additional regulations:</p> <ul style="list-style-type: none"> <li>• <del>Stage 2 drought surcharges</del></li> <li>• Hotels and motels shall provide guests an option whether to launder towels and linens daily.</li> <li>• Restaurants and other food service operations shall serve water to customers only upon request.</li> <li>• Broken or defective plumbing and irrigation systems must be repaired or replaced within a reasonable period, not exceeding seven days.</li> <li>• Recreational water features shall be covered when not in use.</li> </ul>  |



**STAFF REPORT**

**City Council**

**Meeting Date:** 5/23/2023

**Staff Report Number:** 23-127-CC

**Regular Business:** Resolution to reduce the Utility Users Tax

**Recommendation**

Staff recommends the City Council adopt a resolution reducing the Utility Users Tax to zero percent (0%) pursuant to Section 3.14.130 of the Menlo Park Municipal Code.

**Policy Issues**

Menlo Park Municipal Code §3.14.130 allows the City by resolution and upon a majority vote of the City Council, to temporarily reduce the Utility Users Tax percentage

**Background**

Ordinance No. 950 of the City Council of the City of Menlo Park, Adopting a Utility Users Tax (the “Tax”), became effective upon approval by a majority of voters at the General Election of Nov. 7, 2006. Ordinance No. 950 established Chapter 3.14 of the City of Menlo Park Municipal Code, known as the “Utility Users Tax Ordinance,” which imposed a communication users tax at a rate of 2.5%, an electricity users tax at a rate of 3.5%, a gas tax at the rate of 3.5%, and a water users tax at the rate of 3.5%.

**Analysis**

On Dec. 28, 2021, Petitioners, in the case of *David Fogel et al. v. City of Menlo Park* (Case No. 21-CIV-06674) (the “Case”) filed a Complaint for Declaratory and Injunctive Relief and Tax Refund in the San Mateo County Superior Court. On April 26, 2023, the Court issued a Statement of Decision in the Case. The Court found that the Tax terminated Dec. 31, 2016, because the City had not made requisite findings to continue the Tax pursuant to the Utilities Users Tax Ordinance.

The Court has not issued a final judgment or injunction invalidating the Tax or ordering the City to cease collection of the Tax, but the City anticipates that the Court may subsequently do so pursuant to the Statement of Decision. Given this, staff recommends the City Council reduce the Tax to zero percent (0%) because the City will likely be required to refund any future Tax revenues that it collects.

Pursuant to Municipal Code §3.14.130, reduction of the Tax rate to a rate of zero percent would be effective for a period of no more than 12 months, at which point the City would need to extend the reduction of the Tax rate to zero percent if it wished to retain the zero percent tax rate. Following adoption of this resolution, City staff will provide notice to utility providers pursuant to Public Utilities Code §799(a)(5) and the reduction in the Utility User’s Tax rate would become effective on the earliest date possible following notification, but no later than 60 days following notification.

### **Impact on City Resources**

Reduction of the Tax to zero percent removes approximately \$1.6 million in annual revenue from the General Fund moving forward. The City's proposed 2023-24 budget will not include any revenues from the Tax; therefore, the City has is accounting and budgeting for the assumption that the City would cease to collect the Tax.

### **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:  
Brittany K. Mello, Administrative Services Director

Report reviewed by:  
Nira Doherty, City Attorney

**RESOLUTION NO. XXXX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
REDUCING THE UTILITY USERS TAX TO ZERO PERCENT (0%) PURSUANT  
TO SECTION 3.14.130 OF THE MENLO PARK MUNICIPAL CODE**

WHEREAS, Ordinance No. 950 of the City Council of the City of Menlo Park, adopting a Utility Users Tax (the "Tax"), became effective upon approval by a majority of voters at the General Election of November 7, 2006; and

WHEREAS, Ordinance No. 950 established Chapter 3.14 of the City of Menlo Park Municipal Code, known as the "Utility Users Tax Ordinance," which imposed a communication users tax at a rate of 2.5 percent, an electricity users tax at a rate of 3.5 percent, a gas tax at the rate of 3.5 percent, and a water users tax at the rate of 3.5 percent; and

WHEREAS, Menlo Park Municipal Code section 3.14.130 allows the City by resolution and upon a majority vote of the City Council, to temporarily reduce the Tax percentage; and

WHEREAS, on December 28, 2021, Petitioners, in the case of *David Fogel et al. v. City of Menlo Park* (Case No. 21-CIV-06674) (the "Case") filed a Complaint for Declaratory and Injunctive Relief and Tax Refund in the San Mateo County Superior Court; and

WHEREAS, on April 26, 2023, the Court issued a Statement of Decision in the Case; and

WHEREAS, the Court found that the Tax terminated on December 31, 2016, because the City had not made requisite findings to continue the Tax pursuant to the Utilities Users Tax Ordinance;

WHEREAS, the Court has not issued a final judgment or injunction invalidating the Tax or ordering the City to cease collection of the Tax, but the City anticipates that the Court may subsequently do so pursuant to the Statement of Decision;

WHEREAS, the temporary tax reduction shall not adversely affect the City's ability to meet its financial obligations as contemplated in its current or its proposed budget because, in response to the Statement of Decision, the City's proposed budget does not include any revenues from the Tax and because the City will likely be required to refund any future Tax revenues that it collects, so the City's financial position will most likely be the same if the City ceases to collect the Tax as it would be if the City continued to collect the Tax at its current rate.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Menlo Park finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

BE IT FURTHER RESOLVED, that the City Council of the City of Menlo Park at its regular meeting of May 23, 2023 hereby establishes a reduction in the Utility Users' Tax rate to a rate of zero percent (0%) for a period of no more than twelve (12) months. Said reduction in the Utility User's Tax rate shall become effective on the earliest date possible following notification by the City pursuant to Public Utilities Code section 799(a)(5). No other provisions of the Utility Users' Tax Ordinance are affected by this Resolution. Nothing herein shall preclude the City Council from modifying the Tax rate set herein during said twelve-month period.



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

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Judi A. Herren, City Clerk



**STAFF REPORT**

**City Council**

**Meeting Date:** 5/23/2023

**Staff Report Number:** 23-128-CC

**Informational Item:** City Council agenda topics: May 30 – June 27

**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 June 27. 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: May 30 – June 27

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  | Authorize the city manager to execute an investment advisor professional services agreement  | ASD        | Consent        | Contract award or amend            |
| 2  | Adopt Successor Labor Agreements with SEIU and AFSCME  | ASD        | Regular        | Adopt resolution                   |
| 3  | Fiscal Year 2023-24 Budget and Capital Improvement Plan Adoption   | ASD        | Regular        | Adopt resolution                   |
| 4  | Fiscal Year 23-24 Budget Public Hearing  | ASD        | Public Hearing | Direction to staff                 |
| 5  | Closed session: Labor  | ASD, CA    | Closed Session | No action                          |
| 6  | Environmental Justice and Safety Elements Study Session  | CDD        | Study Session  | Direction to staff                 |
| 7  | Review and authorize staff to submit the revised Housing Element to HCD  | CDD        | Regular        | Direction to staff                 |
| 8  | Authorize the Mayor to sign a letter on behalf of the City Council to SM County re: Flood School Flood Park  | CMO        | Consent        | Approve                            |
| 9  | First read and intro administrative citation ordinance   | CMO        | Regular        | First read/intro ordinance         |
| 10 | Proclamation: Recognizing June 2022 as Pride Month   | CMO        | Proclamation   | No action                          |
| 11 | Proclamation: Recognizing Juneteenth Day   | CMO        | Proclamation   | No action                          |
| 12 | Transmittal of city attorney billing (Apr 2023)  | CMO        | Informational  | No action                          |
| 13 | City Council policy CC-23-004 Environmental Quality Commission and Finance and Audit Committee updates   | CMO        | Consent        | Adopt resolution                   |
| 14 | First reading and intro zero emission landscaping equipment (ZELE) and approve an electric landscaping equipment rebate program ordinance          | CMO        | Regular        | First read/intro ordinance         |
| 15 | Waive the second reading and adopt of the Zero Emission Landscaping Equipment (ZELE) Ordinance and adopt a resolution                              | CMO        | Consent        | Second read/adopt ordinance        |
| 16 | Aquatics operator agreement  | LCS        | Regular        | Contract award or amend            |
| 17 | First reading and intro of Safe Storage ordinance  | PD         | Regular        | First read/intro ordinance         |
| 18 | Police Department AB 481 Annual Review and Ordinance Renewal   | PD         | Regular        | Receive and file, Adopt resolution |
| 19 | Police department quarterly update – Q1 January 2023 - March 2023  | PD         | Informational  | Receive and file                   |
| 20 | Adopt a resolution identifying streets to be resurfaced utilizing SB1 funds in fy23-24   | PW         | Consent        | Adopt resolution                   |
| 21 | Adopt a resolution overruling protests and ordering the levy and collection of assessments for Landscape Assessment District for FY23-24           | PW         | Public Hearing | Adopt resolution                   |
| 22 | Authorize the city manager to enter into a five-year agreement for the Preventative Maintenance and Repair Services for HVAC within City buildings | PW         | Consent        | Contract award or amend            |
| 23 | Award of construction contract for Haven Avenue Streetscape project  | PW         | Consent        | Contract award or amend            |
| 24 | Joint meeting the Menlo Park Fire Protection District  | Various    | Regular        | No action                          |



## STAFF REPORT

### City Council

Meeting Date:

5/23/2023

Staff Report Number:

23-129-CC

Informational Item:

Progress report on implementing the 2030 Climate Action Plan

### Recommendation

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

### Policy Issues

In 2019, the City Council declared a climate emergency (Resolution No. 6535) committing to catalyze accelerated climate action implementation. In July 2020, the City adopted the 2030 Climate Action Plan (CAP) with a bold goal to be carbon neutral by 2030 (Attachment A).

### Background

This year the City Council has prioritized CAP implementation as one of five top priorities. The purpose of this report is to provide information on CAP progress and activities over the next year. High level progress on the CAP was provided by staff on a quarterly basis as part of the City Council's priorities and work plan progress reports throughout 2022. A specific staff report was provided to the City Council in March 2022 for three of the six CAP strategies (Attachment B). A formal progress report on the CAP is planned for early 2024, and is typically undertaken every one to three years based upon implementing City Council CAP priorities and available staff resources. The last formal progress report was completed Oct. 12, 2021 (Attachment C).

### Analysis

The CAP has six strategies to begin on a path to be carbon neutral by 2030:

1. Explore policy/program options to electrify 95% of existing buildings by 2030
2. Set citywide goal for increasing electric vehicles (EVs) and decreasing gasoline sales
3. Expand access to EV charging for multifamily and commercial properties
4. Reduce vehicle miles traveled (VMT) by 25%
5. Eliminate the use of fossil fuels from municipal operations
6. Develop a climate adaptation plan to protect the community from sea level rise and flooding

The CAP defines carbon neutral as achieving a 90% reduction in community and municipal greenhouse gas emissions from 2005 levels, and eliminating the remaining 10% of emissions through direct carbon removal measures. In 2005, Menlo Park's greenhouse gas emissions totaled 350,000 tons.

### Climate action beyond Menlo Park

There's been both good and bad news regarding climate change. The most recent 2023 report from the

United Nations Intergovernmental Panel on Climate Change (IPCC) indicates that global temperature will reach or surpass 1.5 degrees C (2.7 degrees F) before 2037, continuing to cause significant negative impacts on quality of life, health and safety, and on economies. Deeper reductions are required immediately to not exceed 1.5 degrees with the report identifying the following global greenhouse gas emission reduction needs:

- 43% reduction from 2019 levels by 2030
- 60% reduction from 2019 levels by 2035
- 69% reduction from 2019 by 2040

The report calls for a rapid shift away from burning fossil fuels and to invest significantly in climate adaptation and resiliency strategies.

Federal, state, and regional government agencies recognize the dire situation, and over the years continue to provide funding and adopt policies and programs to help local governments and individuals address climate change. Examples include:

- Peninsula Clean Energy (PCE) providing 100% greenhouse gas free electricity to customers in San Mateo County (including Menlo Park) and offering technical assistance, incentives, and financing programs for building electrification, EVs and EV charging stations.
- Bay Area Regional Energy Network (BayREN) building electrification incentives, resources and workforce training.
- State of California approved significant funding to incentivize the installation of heat pumps through the TECH Clean California program.
- The Bay Area Air Quality Management District will prohibit the sale of gas-fired water heating and space heating equipment starting in 2027.
- State of California will prohibit the sale of gas powered gardening equipment starting Jan. 1, 2024.
- The Inflation Reduction Act provides incentives to individuals and businesses to transition to clean energy equipment and vehicles.
- Formation of the San Mateo County Flood and Sea Level Rise Resiliency District, known as OneShoreline.

The climate action activities from outside agencies and higher levels of government help support Menlo Park in reaching its 2030 CAP goal and can be leveraged by Menlo Park to create additional complimentary policies, programs, and outreach to accelerate greenhouse gas reductions. Menlo Park continues to have lasting leadership impacts due to its aggressive climate goal to be carbon neutral by 2030. To date, over 60 cities have adopted Menlo Park's electrification requirements in new buildings. Menlo Park is also at the forefront of eliminating fossil fuels from its city operations by 2030.

#### Staff resources, work streams and volunteer support

Up until recently the Sustainability Division had not been fully staffed since the CAP was adopted in July 2020. The Sustainability Manager primarily works on implementing CAP strategy No. 1 to electrify existing buildings as described later in this report. Other activities include securing funding and financing opportunities for CAP activities, supporting education and outreach activities led by other organizations and volunteers, supporting City sponsored events such as Arbor Day and Earth Day, managing and coaching sustainability staff, managing relationships with advocacy organizations and supporting Environmental Quality Commission (EQC) activities and agenda items. In addition, the sustainability manager has been leading the policy development of proposed zero emission landscaping equipment (ZELE) rules.

A management analyst was hired in March 2022 and is working on CAP strategy No. 5 to eliminate fossil

fuels from city operations. Although the intent for the position was to initially focus on building electrification education and outreach, a group of citizen volunteers that included three EQC members offered to provide outreach and education to the community. To date, staff have supported the volunteers in securing meeting venues where possible, researching rules and processes for city participation, and continue to promote their events and meetings using available City communication tools. See Attachment D for a list of educational and outreach efforts provided to date.

The volunteer education efforts increased capacity for the newly hired management analyst to take advantage of time sensitive technical and financial assistance programs to electrify city owned buildings and vehicles and support identifying operational and upfront cost saving opportunities. It also aligns with the EQC and City Council's preference for the City to lead the community in showcasing the ability to be carbon neutral by 2030. Details regarding this work stream are described later in this report.

A second management analyst was hired in February 2023 to focus on climate adaptation and resiliency efforts over the long term (CAP strategy goal No. 6), and is also supporting outreach and education for gas powered gardening equipment rules and building electrification, and applying for multiple grant opportunities for expediting permit issuance of solar projects (CalAPP Grant program) and funding to install public EV charging.

#### Building electrification activities (CAP strategy No. 1)

The following activities have been undertaken since the last update to the City Council in March 2022, and highlights have been included in the quarterly City Council reports up to December 2022:

- Spring 2022: Staff supported Menlo Spark in submitting an application for a \$1 million grant from ICLEI (Local Governments for Sustainability) that would support BlocPower and reduce project costs for low to moderate income building owners who want to electrify. Ultimately, the grant was not awarded to the City or Menlo Spark.
- March 2022: Recommendations on new and existing building electrification requirements were presented to the EQC.
  - EQC supported staff recommendations and added additional measures for the City Council to consider. However, the EQC requested that staff delay presenting to the City Council until the release of model reach codes from the Bay Area Reach Code Initiative.
  - The Bay Area Reach Code Initiative released model codes in June 2022.
  - Staff met with City Council CAP subcommittee (Mayor Wolosin and City Councilmember Nash) four times in the spring and summer of 2022 on proposed measures and provided a comparison table of staff, EQC, and the Bay Area Reach Code initiative recommendations.
  - The subcommittee supported moving forward with re-adopting the City's current requirements for new buildings and enhancing EV charging requirements for new construction, and decided to reconvene with staff in late 2022 to work on existing building electrification requirements.
- June 2022: City Council adopted a resolution of support to promote BlocPower services in the community.
- August 2022: City Council approved a permit fee waiver and credit program for existing building projects that involve electrification or EV charging.
  - Over the next several months, staff incorporated the program into the City's online building permit system.
  - Staff expanded the criteria to allow a greater range of electrification projects to be eligible for the waiver/credit consistent with the intent. The following projects are now included:
    - Homes that do not have a central heating system (HVAC system), but applicant chooses to



install an electric heating system instead of a gas central heating system.

- Air conditioners that use a reverse valve that allows electric heating in the winter.
- A \$250 permit fee credit for incorporating 1 electrification element into the project with other building improvements (e.g., kitchen remodel that includes a water heater gas to electric conversion) or \$500 credit for more than 1 electrification element incorporated into a project scope (e.g., panel upgrade, EV charging, electric water heating with a kitchen remodel).
- To date, \$11,446.26 in permit fee waivers and credits have been provided for:
  - Twenty-eight gas to electric/heat pump water heater conversions
  - Nine gas to electric/heat pump space heating (HVAC) conversions
  - Ten electrical panel upgrades to support future electrification
  - Four EV chargers installations
  - One back up battery installations
- November 2022: City Council readopted the City's previous electrification requirements for new buildings as part of the new building code cycle that started Jan. 1.
- January 2023: Presented to the EQC proposed rule changes to allow electrification equipment to be located in garages and protective enclosures within required side and rear yard setbacks for existing single-family homes to help facilitate electrification and support permit streamlining.
- February 2023: Staff met with the City Council CAP subcommittee three times in February to discuss potential electrification requirements for existing buildings for an upcoming City Council study session.
- April 2023: Applied for the CalAPP grant and reserved \$40,000 in funding to implement online permit issuance of solar projects.
- May 2023: Presented public education and outreach ideas to the EQC, and received supportive feedback from the commission to implement.
- Sustainability and Building Division staff worked on developing webpage materials to provide information about electrification incentives, rebates, and resources on how to electrify. New webpages were posted to identify permit submittal requirements more clearly to help streamline project review.

Work planned for the remainder of this calendar year includes:

- Continue to promote the volunteer-led community collaboration discussions and other relevant and credible sources of education and outreach resources, such as the City of San Jose May webinar series on building electrification.
- Implement public education and outreach activities for existing building electrification.
- Begin program planning to expend \$4.5 million from the California Energy Commission for communitywide electrification efforts:
  - Present options to the EQC (anticipated June 2023)
  - Present options at a City Council study session
  - Implement programs based on City Council direction
- Continue policy work for developing electrification requirements for existing buildings.
- Planning Commission and City Council meetings to consider adopting modifications to garage and yard space clearance requirements to allow greater flexibility to install electrification equipment, particularly for heat pump water heaters that cannot be located in the same location due to upsizing tank.
- Continue to update relevant City webpages to include incentive, updated permit processes, and how to electrify your home or business.
- Continue to work on streamlining the electrification building permit process by engaging with other cities on their permit process, and enhancing internal plan checking processes.

- Support the Building Division in obtaining the CalAPP grant.

Set citywide goal for increasing EVs and decreasing gasoline sales (CAP strategy No. 2)

Implementation of this strategy was to announce and promote goals of 1) increasing the purchase of all new vehicles to be electric by 2025 and 2) reducing gasoline sales each year by 10%, based on the total reported in 2018, and track progress on both goals publicly on an annual basis.

Coltura, a nonprofit, was implementing this strategy on behalf of the City. Staff is exploring how to use some of the information provided on Coltura's website and other government sources to include in the upcoming formal progress report in early 2024.

Expand access to EV charging for multifamily and commercial properties (CAP strategy No. 3)

In August 2022, the City Council approved a permit fee waiver and credit program for existing building projects that involve EV charging. The 2022 building code update that was adopted by the City Council in November 2022 included enhanced EV charging requirements for new (not existing) multifamily and commercial developments. Implementation of the enhanced requirements began Jan. 1. The Menlo Park Community Campus (MPCC) project will also include 27 EV charging spaces that will be installed in 2023.

Installing EV charging for existing multifamily properties (condos and apartments) continues to be challenging. 40% of Menlo Park residents live in multifamily unit properties with shared parking, and less than 1% have access to at-home charging. At-home charging is the most significant deciding factor in whether someone determines to purchase or continue to use an EV. Staff provided a detailed analysis on this topic in October 2020. Incentivizing at-home charging for multifamily properties, particularly for existing rental apartments, will be a key component in reaching Menlo Park's 2030 climate goal. The City may want to consider a similar approach to the City of San Carlos which offers a matching incentive to PCE's EV charging rebate for existing multifamily properties.

City Council directed that staff resources be used to monitor the effectiveness of state and regional charging infrastructure incentives, and the City will promote/market the incentives to multifamily property owners using existing databases and communication mediums.

Marketing efforts were undertaken in fall 2021, and have continued as outlined in Attachment D. PCE also promotes incentives in Menlo Park. The marketing efforts have had a small impact on increasing participation in EV charging incentive programs. To date, six condo properties in Menlo Park have begun to install a small amount of EV chargers. Rental apartments with shared parking have had little to no participation.

Work planned for the remainder of this calendar year includes:

- Present updated information to the EQC on existing multifamily participation in PCE's EV charging rebate program, share information about the City of San Carlos matching incentive, and receive advice on increasing participation
- Present a recommendation to the City Council on how to increase installing EV charging at existing multifamily properties
- Continue to apply for public EV charging grants

Reduce VMT by 25% (CAP strategy No. 4)

The City works to reduce VMT by (1) building connected and safer multimodal transportation networks that make walking and bicycling more viable for more trips locally and regionally; (2) applying and updating transportation demand management (TDM) requirements to help produce development that is not

dependent on single occupant vehicles; (3) operating programs, including the shuttle program and safe routes to school to enhance transportation options for students, commuters and transit dependent populations; and (4) by developing land use plans to incorporate mixed use, transit-oriented development and housing near jobs that will reduce the demand for vehicle trips.

Eliminate the use of fossil fuels from municipal operations (CAP strategy No.5)

The following activities have been undertaken since the last update to the City Council in March 2022:

- Continuing to support project management and related contracts to install clean energy infrastructure for the MPCC project that includes solar and battery storage, electric heat pumps for pool heating, and 27 public EV charging spaces.
  - Secured \$120,000 EV charging incentive from PCE
  - Submitted an application to the California Public Utility Commission (CPUC) Self-Generation Incentive Program (SGIP) requesting \$367,200 in incentives over the life of the project
  - MPCC start of operations expected in 2024
- Replaced existing natural gas appliances and equipment that reached the end of its life, including water heater at the City's corporation yard and clothes dryers at the child care centers
- Secured \$110,871 incentive through PG&Es Government/ K-12 program, covering 100% of project cost to convert nine water heaters from gas to electric heat pumps at eight city-owned buildings. Installations are expected to be completed by fall 2023.
- Working with PCE to identify further funding and financing for municipal electrification and EV charging projects.
- Completed Facilities Conditions Assessments (FCAs) to inventory and evaluate the condition and replacement timeline of buildings and equipment for all City facilities in December 2022
  - High priority gas equipment reaching the end of its life within five years include:
    - Burgess Aquatic Center pool heater
    - Five Belle Haven Child Development Center furnaces
    - Two Corporation yard furnaces
    - Two Arrillaga Family Gymnasium tankless water heaters
    - Two Arrillaga Family Recreation Center water heaters
    - Two Rosener House water heaters (leased facility)
    - Menlo Children Center water heater
    - Gate House water heater and two furnaces (leased facility)
- Analyzed Burgess Aquatic Center pool heating electrification options
  - Pool heating equipment is expected to reach the end of its life in the next two years
  - Project to explore options for the Burgess Campus is anticipated to be proposed in the five-year capital improvement program budget
  - Estimated cost to electrify is \$1.8 million
  - Working on securing a \$450,000 incentive from PG&E Government/K-12 Program
  - Working with PCE to pilot a cash incentive and financing program for electrification for public pool heating equipment
- Launched the Tesla police patrol pilot program
- Addressing fleet EV charging needs
  - This is an immediate and urgent need to comply with the City Council goal to be carbon neutral by 2030. There is currently not enough charging to support the City's existing EVs or future purchases.
  - Developed a fleet EV charging plan that involves two phases with a mix of level 2 chargers with 7-19 kW output and direct current fast chargers (DCFC) with 22-100 kW output

- Immediate phase installing the following number of ports:
  - Corporation yard lot
    - Two battery-integrated direct current fast charger (DCFC) ports
    - Two Level 2 ports
  - City hall PD lot
    - Two battery-integrated direct current fast charger (DCFC) ports
    - Six low-power DCFC ports
  - City Council Chambers lot
    - Two Level 2 ports
- Later phase
  - Corporation yard lot
    - Two expandable DCFC ports
    - Two battery-integrated DCFC ports
  - City hall PD lot
    - Four low-power DCFC ports
  - City Council Chambers lot
    - Three Level 2 ports
- Presented Fleet EV charging plan to the EQC in January 2023
- Submitted applications for technical assistance and funding programs through PCE in December 2022 and Pacific Gas and Electric (PG&E) in April 2023
- Solar and battery storage projects at city facilities
  - Supports minimizing increases in operational cost as a result of building electrification projects
  - Working extensively with PCE staff on potential power purchase agreements to install solar and battery storage at eight city buildings
  - Site analysis performed in February 2023
  - Submitted interconnect applications to PG&E in April 2023, qualifying the city to receive greater incentives from the state for producing renewable energy (Net Energy Metering 2.0).
- Assessing vehicle replacement purchases consistent with the Sustainable Fleet Policy and 2030 carbon neutral goal
  - Vehicle purchase presented to the EQC at a special meeting Aug. 31, 2022
    - The EQC recommended approval of the police department purchases and for staff to look into further alternatives for public works fossil fuel equipment purchases (particularly for a field lawnmower).
  - Public works incorporated additional electric equipment that was approved by the City Council Oct. 11, 2022
  - Approved purchases included:
    - Five electric non-patrol police vehicles
    - Three lower emission police traffic enforcement motorcycles
    - Three electric light-duty public works trucks
    - Electric reel mower for parks (found through additional research following EQC direction)
    - Four pieces of renewable diesel powered equipment (chipper, vibratory roller, farm tractor, stump grinder)
- Ongoing analysis on:
  - How and when to transition fossil fuel equipment and vehicles for city operations to be carbon neutral by 2030
  - Exploring solutions to reduce upfront costs and utility bill increases for city operations

Work planned for the remainder of this calendar year includes:

- Create plan to convert handheld gas powered landscaping equipment, particularly leaf blowers and string trimmers, in City operations
- Plan for implementation of immediate phase of EV charging project
- Develop request for proposals (RFPs) for the Burgess Campus and Belle Haven Child Development Center electrification projects, and the Corporation Yard Needs Assessment which would incorporate options for improved energy and water efficiency
- Present final findings from the Tesla police patrol pilot to the EQC and City Council
- Support vehicle and equipment replacement purchase research and selection
- Review and determine whether to proceed with the Solar and Battery Program offerings from PCE
- Evaluate ongoing water heater replacement incentive offerings to limit costs for the City to electrify
- Project management and support for the immediate EV charging plan through construction

Develop a climate adaptation plan to protect the community from sea level rise and flooding (CAP strategy No.6)

In 2021, the City Council provided the following direction on the scope of work for this goal:

- Update the Safety Element in Menlo Park's General Plan to bring it into compliance with recent changes in General Plan law, including Senate Bill 379 (Climate Adaptation and Resiliency)
- Continue progress on the Menlo Park SAFER Bay grant application
- Continue to participate in and monitor OneShoreline
- Hold a City Council study session by July 2021 on the City's local hazard mitigation plan

Since that time, significant progress was made on sea level rise protection as follows:

- July 2021: Received notification from the Federal Emergency Management Agency and California Office of Emergency Services (CalOES) that the \$67 million Menlo Park SAFER Bay grant application to the FEMA BRIC program was selected for further review. Staff responded to requests for information from CalOES and FEMA throughout 2021 and 2022 as they were received.
- October 2021: Responded to the San Mateo County grand jury report on sea level rise.
- November 2021: City Council provided direction to return with a staffing request (1.0 provisional FTE) to support this project.
- January 2022: City Council adopted a resolution affirming the City's role in leading the FEMA BRIC grant, if awarded, and authorized execution of a memorandum of understanding with funding and technical project partners, the San Francisquito Creek Joint Powers Authority (SFCJPA), Meta and PG&E. The agreement outlines SFCJPA's role in the overall project and completing programmatic environmental clearance, while the City would be responsible for project-level environmental clearance.
- May 2022: Staff participated in the SFCJPA's notice of preparation and scoping sessions for programmatic environmental clearance for SAFER Bay.
- June 2022: City Council authorized the staffing request (1.0 provisional FTE) for this project. Pending formal award of the grant, this position is still vacant as of May 2023.
- On May 16, staff received a notice of award of grant funds from FEMA for the first phase of Menlo Park SAFER Bay. A kick-off meeting with FEMA and CalOES is scheduled for the week of May 23. The five-year capital improvement program shows the anticipated expenditures over the next five years for this project.

Throughout the last two years, staff has also continued to monitor and engage with OneShoreline including efforts to:



- Pursue options to advance shoreline protection in the remaining areas along Menlo Park's shoreline, with a focus on the area north and west of Bedwell Bayfront Park adjacent to Redwood City.
- Complete construction of the Bayfront Canal and Atherton Channel flood protection project in 2022.
- Review and comment on the draft sample ordinances OneShoreline released in April 2023 for sea level rise and stormwater considerations.
- Monitor OneShoreline board meeting activities
- Respond to the San Mateo County grand jury report on sea level rise

Flood protection efforts have also advanced, including:

- Continued work to develop a citywide stormwater master plan that is nearly complete as of early 2023
- Continued annual storm drain preventative maintenance
- Continued annual Atherton Channel and San Francisquito Creek cleanups to remove debris
- Constructed storm system improvements at the Caltrain station in 2021
- Implemented new stormwater permit regulations required under the Municipal Regional Permit 3.0, which are significantly more stringent than 2.0 in fiscal year 2022-23
- Awarded a construction contract in February 2023 to replace and upgrade the Chrysler Stormwater Pump Station, utilizing a \$5 million FEMA hazard mitigation grant. Construction began in May 2023 and is expected to take approximately 18 months.
- Included funds for a storm system funding study in the five-year capital improvement program
- Maintained the City's participation in the Community Rating System (CRS) program, which provides discounts to residents on flood insurance based on the City's flood protection practices and outreach
- Continued to participate in the SFCJPA, with an emphasis on delivery of the upstream of US 101 project
- Responded to the major storms of early 2023, tracking flooding locations, assessing damage, repairs and clean up needs
- In May 2023, initiated an assessment of the San Francisquito Creek banks for erosion and the condition of the stormwater outfalls that drain to the creek

The City's annex to the San Mateo County local hazard mitigation plan was adopted by the City Council Nov. 16, 2021. An annual progress report, at the City Council's request, is prepared in the fall, with the most recent update Oct. 11, 2022.

In addition, a management analyst (referenced above as well) was hired (March 2023) to work on long term resiliency and climate adaption planning and implementation.

Work planned for the remainder of this calendar year includes:

- Formally initiate Menlo Park SAFER Bay project
- Continue construction on Chrysler Pump Station
- Continue efforts to monitor and engage with OneShoreline, with an emphasis on securing funding for the area near Bedwell Bayfront Park
- Continue to engage with the SFCJPA on the upstream of US 101 project, focusing on analysis of the 2023 winter storms and potential adjustments to the scope of the project in response
- Continue preventative maintenance efforts on San Francisquito Creek, Atherton Channel and the storm system
- Prepare the annual progress report on the local hazard mitigation plan progress
- Prepare for winter storms, including potential for El Nino weather pattern that appears to be developing
- Work on long-range climate adaptation and resiliency planning and implementation



### **Impact on City Resources**

The City maintains the resources to support City Council's direction to implement the 2030 CAP. Activities or projects that require additional budget are included in the proposed 2023-24 budget. The City will be receiving \$4.5 million from the California Energy Commission for communitywide electrification efforts. Staff also actively engages with local, regional, and state agencies to find available incentives and grants to support implementation of the CAP.

### **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. Hyperlink – 2030 CAP: [menlopark.gov/files/sharedassets/public/city-managers-office/documents/sustainability/2030-climate-action-plan-amended-2021.pdf](https://menlopark.gov/files/sharedassets/public/city-managers-office/documents/sustainability/2030-climate-action-plan-amended-2021.pdf)
- B. Hyperlink - March 22, 2022, City Council staff report: [menlopark.gov/files/sharedassets/public/agendas-and-minutes/city-council/2022-meetings/agendas/20220322-city-council-agenda-packet.pdf#page=446](https://menlopark.gov/files/sharedassets/public/agendas-and-minutes/city-council/2022-meetings/agendas/20220322-city-council-agenda-packet.pdf#page=446)
- C. Hyperlink – 2030 CAP progress report- Oct. 12, 2021: [menlopark.org/DocumentCenter/View/29886/Menlo-Park-Climate-Action-Plan-progress-report](https://menlopark.org/DocumentCenter/View/29886/Menlo-Park-Climate-Action-Plan-progress-report)
- D. Outreach activities since March 2022

Report prepared by:  
Rebecca Lucky, Sustainability Manager

**CAP Outreach – March 2022 to May 2023**

| Date                 | CAP Strategy Goal      | Outreach Activities  | Method                         |
|----------------------|------------------------|--|--------------------------------|
| 3/1/2022             | No.3                   | Incentive information for installing electric vehicle charging for existing multifamily buildings                          | Waste bill insert              |
| 3/1/2022             | No.3                   | Incentive information for electric vehicle rentals and purchases   | Waste bill insert              |
| 3/28/2022            | General outreach       | Information about the April 16, 2022 Earth Day event   | Weekly digest                  |
| 5/30/2022            | City Council direction | Information to take part in Menlo Park's gas-powered landscape equipment survey  | Weekly digest                  |
| 6/15/2022            | No.1                   | Promotion of BlocPower Services  | Weekly digest                  |
| 8/22/2022            | No.3                   | Incentive information for EV charging  | Weekly digest                  |
| 9/1/2022             | No.3                   | Incentive information for installing electric vehicle charging for existing multifamily buildings                          | Waste bill insert              |
| 9/1/2022             | No.2                   | Incentive information for electric vehicle rentals and purchases   | Waste bill insert              |
| 9/1/2022             | No.1                   | Information on available rebates for heat pump water heaters   | Waste bill insert              |
| 9/1/2022             | No.1                   | Information on available rebate for installing solar and battery backup system   | Waste bill insert              |
| 9/12/2022            | General outreach       | Information on the volunteer community collaboration sessions focus on Climate Action Plan progress                        | Weekly digest                  |
| 9/26/2022            | General outreach       | Information on the volunteer community collaboration sessions "What's your 2040?" climate movie and community conversation | Weekly digest                  |
| October 2022         | General outreach       | Information on the volunteer Community collaboration sessions Environmental Justice and Safety Element                     | Weekly digest                  |
| 10/17/2022           | City Council direction | Information on the City Council zero-emission landscape equipment ordinance study session                                  | Weekly digest                  |
| 11/7/2022            | No.5                   | Information on meeting the newest electric members of the city fleet-  | Weekly digest                  |
| 12/22/2022           | No.1                   | Information on heat pump water heater rebates  | Weekly digest                  |
| 1/1/2023             | City Council direction | Information on proposed zero emissions landscape equipment requirements  | Waste bill insert              |
| 1/1/2023             | No.3                   | Incentive information for installing electric vehicle charging for existing multifamily buildings                          | Waste bill insert              |
| 1/19/2023            | No.1                   | Information on the volunteer community collaboration session - Home Electrification  | Weekly digest                  |
| 2/6/2023             | City Council direction | Information on the proposed Zero Emission Landscaping Equipment rules-   | Weekly digest                  |
| March and April 2023 | City Council direction | Webinars and tabling events to inform and receive feedback on proposed zero emission landscaping equipment rules           | Meetings and in-person tabling |
| 3/1/2023             | City Council direction | Information on proposed zero emissions landscape equipment requirements  | Waste bill insert              |
| 3/1/2023             | No.3                   | Incentive information for installing electric vehicle charging for existing multifamily buildings                          | Waste bill insert              |
| 3/6/2023             | City Council direction | Information about webinars for proposed rules for gas powered landscaping equipment  | Weekly digest                  |
| 3/6/2023             | General outreach       | Information on volunteer community collaboration session How to get youth involved in Climate Action                       | Weekly digest                  |
| 4/3/2023             | General outreach       | Information on the Love our Earth Festival April 22 Event  | Weekly digest                  |
| April                | General outreach       | Information about the Love our Earth Festival  | Banners on Santa Cruz Ave      |
| 4/17/2023            | City Council direction | Information about the Environmental Quality Commission discussing zero emission landscape equipment ordinance              | Weekly digest                  |

| Date      | CAP Strategy Goal | Outreach Activities  | Method        |
|-----------|-------------------|--|---------------|
| 5/1/2023  | No.1              | Information about home electrification at Climate Smart San José's webinars                | Weekly digest |
| 5/11/2023 | No.6              | Information on volunteer community collaboration session - Lessons Learned from the Storms | Weekly digest |



**STAFF REPORT**

**City Council**

**Meeting Date:**

**5/23/2023**

**Staff Report Number:**

**23-130-CC**

**Informational Item:**

**Menlo Park Community Campus – preliminary staffing, operations and programming plan considerations**

**Recommendation**

No City Council action is requested related to this informational report at this time. City staff recommends that City Council review Menlo Park Community Campus (MPCC) preliminary staffing, operations, and programming plan considerations in advance of the upcoming fiscal year 2023-24 budget deliberations.

**Policy Issues**

City Council provides policy direction to the city manager regarding services to the Menlo Park community; allocates resources to support City services and capital projects; reviews and approves staffing and budget proposals; and sets prioritization for the use of City resources to serve the community. City Council has identified the MPCC project as one of the City's top priorities.

**Background**

In January and February 2021, City Council approved the architectural control, use permit, funding and improvements agreement for the MPCC project located at 100-110 Terminal Ave. The new multiservice facility will incorporate a community center, senior programs, school age child care, aquatics center, and branch library among other public amenities, and is on track to open in 2024.

On April 4, City Council reviewed MPCC proposed programming elements that were developed with robust community input, including consultation with the MPCC subcommittee and working group, the Library Commission (LC) and Parks and Recreation Commission (PRC), and with insights from a citywide survey of Menlo Park residents (Attachment A).

On April 26, the LC and PRC received extensive preparatory information related to MPCC programming and policy elements, including current operational policies and proposed new policies to be reviewed and updated in advance of the new facility opening (Attachment B).

**Analysis**

Who the MPCC will serve

The following statement was developed with input from the MPCC subcommittee and working group, and reviewed by the City Council April 4: "Programs and services in the MPCC will reflect and prioritize the people for whom this facility is being created: Menlo Park residents, especially Belle Haven neighborhood residents, and in particular, long time Belle Haven residents who relied heavily on the services in the previous center. The MPCC facility can and should serve these residents even more meaningfully, with

even greater priority, and with even more responsiveness, inclusion, and belonging than existed in the previous center.”

### Proposed program summaries

At the direction of City Council, MPCC proposed program summaries have been developed with robust community input and in consultation with the MPCC subcommittee and working group of Belle Haven neighborhood residents and stakeholders.

City staff presented to the LC May 15 proposed program summaries related to library services, school age child care, and older adult senior services in the new facility (Attachment C).

- Seniors – Nutrition program
- Seniors – Enrichment and transportation
- Library – Books, media, technology access
- Library – Makerspace and teen zone
- Library – Cultural and educational programs
- Youth center – School age child care and enrichment

City staff will present to the PRC May 24 proposed program summaries related to recreation services, indoor and outdoor sports, facility rentals, general operations, and aquatics in the new facility (Attachment D).

- Recreation – Fitness center, movement studio
- Recreation – Facility rentals, meeting rooms
- Sports – Indoor
- Sports – Outdoor
- Aquatics – Community-oriented aquatics programs
- Operations – Emergency preparedness and response

### **Impact on City Resources**

The MPCC is expected to open during fiscal year 2023-24. To operate the new facility, some existing services and personnel that are currently housed in interim locations will be relocated to the new facility, and some service level enhancements are needed to operate the facility in the manner and capacity envisioned by the City Council and the community.

Upon the new facility’s opening, some currently existing personnel and resources will relocate from interim/current locations to the MPCC, including the senior center, youth center and branch library. In addition, some new personnel and resources will be requested in the context of the proposed fiscal year 2023-24 operating budget to support:

- Restoring programs and services that were suspended or reduced during the MPCC construction, such as the gymnasium, fitness center, recreation services, aquatics center and facility rentals
- Staffing an expanded public library space that spans two floors instead of the current one floor space
- New programs and services that do not currently exist, such as the makerspace and teen zone
- Creating a new job classification to support enhanced nutrition services to oversee the planning and daily preparation of nutritious meals for senior center and youth center participants, and provide nutrition and health/wellness education services to program participants.
- Reinstating overhead and operating costs such as utilities, supplies and services.

The MPCC staffing and budget proposal is informed by multiple factors including but not limited to: input

from the City Council and MPCC subcommittee and working group; the June 2022 survey of community needs and desired programs; programmatic advice and feedback from the LC and PRC; past staffing to support pre-MPCC construction and pre-pandemic operations; current staffing to support interim services that will relocate to MPCC; new staffing to support desired new programs and services in the MPCC that have not been provided before; and to accommodate an anticipated increase in overall usage which is commonly experienced when new facilities open to the public. In the current fiscal year 2022-23, the library and community services department is authorized by City Council to employ 66.25 full-time equivalent (FTE) personnel. In 2019 before the previous center was closed and before the pandemic, the department was authorized to employ 71.0 FTE personnel.

Based on the above considerations, City staff estimates that approximately 6.0 FTE new personnel, in addition to hourly personnel, will be needed to support the gymnasium, recreation center, makerspace, teen lounge, expanded library space, and other desired new programs when the MPCC opens in 2024. These personnel expenditures are estimated \$950,000 annually. In addition, City staff estimates approximately \$820,000 in new (non-personnel) annual operating expenses offset by approximately \$720,000 in new annual revenues. These budgetary implications will be outlined in detail for City Council consideration in the context of the fiscal year 2023-24 operating budget proposal anticipated to be released for the June 1 budget workshop and June 13 City Council public hearing, before adoption June 27.

### **Environmental Review**

This report is focused on proposed operational and programming elements in the MPCC, and 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. In addition, the City sent electronic notices directly to project email and text update subscribers from the project page (Attachment B).

### **Attachments**

- A. MPCC proposed programming plan elements. April 4, City Council staff report: [menlopark.gov/files/sharedassets/public/agendas-and-minutes/city-council/2023-meetings/agendas/20230404-city-council-agenda-packet.pdf#page=122](https://menlopark.gov/files/sharedassets/public/agendas-and-minutes/city-council/2023-meetings/agendas/20230404-city-council-agenda-packet.pdf#page=122)
- B. Current operational policies related to MPCC programming and operations. April 26, PRC and LC joint meeting staff report: [menlopark.gov/files/sharedassets/public/agendas-and-minutes/library-commission/2023-meetings/agendas/20230426-library-and-parks-and-recreation-commissions-and-prc-special-agenda-packet.pdf#page=3](https://menlopark.gov/files/sharedassets/public/agendas-and-minutes/library-commission/2023-meetings/agendas/20230426-library-and-parks-and-recreation-commissions-and-prc-special-agenda-packet.pdf#page=3)
- C. MPCC proposed program summaries – library, senior center, youth center; May 15, LC staff report: [menlopark.gov/files/sharedassets/public/agendas-and-minutes/library-commission/2023-meetings/agendas/20230515-library-commission-agenda-packet.pdf#page=3](https://menlopark.gov/files/sharedassets/public/agendas-and-minutes/library-commission/2023-meetings/agendas/20230515-library-commission-agenda-packet.pdf#page=3)
- D. MPCC proposed program summaries – recreation, sports, general operations and aquatics; May 24, PRC staff report: [menlopark.gov/files/sharedassets/public/agendas-and-minutes/parks-and-recreation-commission/2023-meetings/agendas/20230524-parks-and-recreation-commission-agenda-packet.pdf#page=6](https://menlopark.gov/files/sharedassets/public/agendas-and-minutes/parks-and-recreation-commission/2023-meetings/agendas/20230524-parks-and-recreation-commission-agenda-packet.pdf#page=6)



Staff Report #: 23-130-CC

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