



REGULAR MEETING AGENDA – AMENDED

Date: 1/11/2022
Time: 6:00 p.m.
Location: [Zoom.us/join](https://zoom.us/join) – ID# 831 3316 9409

This amended agenda includes an updated title for item G1.

NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

Consistent with Government Code section 54953(e), and in light of the declared state of emergency, the meeting will not be physically open to the public and all members will be teleconferencing into the meeting via a virtual platform. To maximize public safety while still maintaining transparency and public access, members of the public can listen to the meeting and participate using the following methods.

- How to participate in the meeting
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city.council@menlopark.org *
Please include the agenda item number you are commenting on.
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[Zoom.us/join](https://zoom.us/join) – Meeting ID 831 3316 9409
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(669) 900-6833
Meeting ID 831 3316 9409
Press *9 to raise hand to speak

*Written public comments are accepted up to 1-hour before the meeting start time.

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

Regular Session ([Zoom.us/join](https://zoom.us/join) – ID# 831 3316 9409)

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 City Council on any subject not listed on the agenda. Each speaker may address the City Council once under public comment for a limit of three minutes. Please clearly state your name and address or political jurisdiction in which you live. The City Council cannot act on items not listed on the agenda and, therefore, the City Council cannot respond to non-agenda issues brought up under public comment other than to provide general information.

F. Consent Calendar

F1. Accept the City Council meeting minutes for October 13, November 9, 16, December 7, 8, and 14, 2021 ([Attachment](#))

F2. Adopt a resolution to continue conducting the City’s Council and advisory body meetings remotely due to health and safety concerns for the public and to authorize the use of hybrid meetings ([Staff Report #22-006-CC](#))

F3. Transmittal of the annual report on the status of the transportation impact, storm drainage, recreation in-lieu, below market rate housing in-lieu, and construction impact fees collected as of June 30, 2021 ([Staff Report #22-001-CC](#))

F4. Authorize the city manager to execute a cost sharing agreement with the County of San Mateo for the Coleman and Ringwood Avenues transportation study and appropriate funding to the capital improvement plan for the study ([Staff Report #22-007-CC](#))

G. Public Hearing

G1. ~~Public hearing regarding the adoption of a resolution adopting required findings and authorizing city to execute an energy services contract pursuant to Government Code Section 4217 and authorizing the city manager to execute an agreement with ENGIE Services US Inc. to design, construct, operate, and maintain clean energy infrastructure for the Menlo Park Community Campus project in an amount not to exceed \$5.72 million to design and construct the clean energy infrastructure; and appropriate \$5.72 million from the unassigned funds in the general fund for the project; and finding the project exempt from the California Environmental Quality Act Guidelines~~

Public hearing regarding the adoption of Resolution No. 6693 adopting required findings and authorizing city to execute an energy services contract pursuant to Government Code section 4217 and authorizing the city manager to execute an agreement with ENGIE Services US Inc. to design, construct, operate, and maintain clean energy infrastructure for the Menlo Park Community Campus project in an amount not to exceed \$5.72 million to design and construct the clean energy infrastructure; and appropriate \$5.72 million from the assigned and unassigned funds in the general

fund for the project; and finding the project exempt from the California Environmental Quality Act Guidelines ([Staff Report #22-008-CC](#))

H. Regular Business

- H1. Appointment of interim city manager and approval of compensation for interim city manager services ([Staff Report #22-009-CC](#))
- H2. Adopt a resolution approving and authorizing the Mayor to execute the second amendment to and restatement of the joint powers agreement establishing the Peninsula Traffic Congestion Relief Alliance and appoint representatives to the Peninsula Traffic Congestion Relief Alliance board of directors ([Staff Report #22-004-CC](#))
- H3. Adopt a resolution to approve changes to the transportation impact analysis guidelines related to vehicle miles traveled thresholds and other minor corrections ([Staff Report #22-005-CC](#)) ([Presentation](#))
- H4. Adopt Resolution No. 6690 authorizing 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 in association therewith consistent with the certified El Camino Real and Downtown specific plan environmental impact report and the certified addendum to the specific plan environmental impact report ([Staff Report #22-003-CC](#)) ([Presentation](#))
- H5. Consideration and direction on 1) the composition and charge of the Housing Element Community Engagement and Outreach Committee and 2) amendments to the consultant's scope of work ([Staff Report #22-010-CC](#)) ([Presentation](#))

I. Informational Items

- I1. City Council agenda topics: January 25 – February 8, 2022 ([Staff Report #22-011-CC](#))
- I2. Update – Re-Imagining Public Safety Subcommittee ([Staff Report #22-002-CC](#))

J. City Manager's Report

K. City Councilmember Reports

L. Adjournment

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

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

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

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

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

Agendas are posted in accordance with Government Code Section 54954.2(a) or Section 54956. Members of the public can view electronic agendas and staff reports by accessing the City website at menlopark.org/agenda and can receive email notification of agenda and staff report postings by subscribing to the “Notify Me” service at menlopark.org/notifyme. Agendas and staff reports may also be obtained by contacting City Clerk at 650-330-6620. (Posted: 1/7/2022)



SPECIAL MEETING MINUTES – DRAFT

Date: 10/13/2021

Time: 5:00 p.m.

Special Meeting Location: [Zoom.us/join](https://zoom.us/join) – ID# 843 5347 5661

Closed Session ([Zoom.us/join](https://zoom.us/join) – ID# 843 5347 5661)

A. Call To Order

Mayor Combs called the meeting to order at 5:06 p.m.

B. Roll Call

Present: Combs, Mueller Nash, Taylor, Wolosin

Absent: None

Staff: City Clerk Judi A. Herren, Assistant City Attorney Greg Rubens

C. Closed Session

Before entering the closed session, the Mayor requested that any reportable action from the closed session be made at the conclusion of the closed session and not at the October 26, 2021 City Council meeting.

- C1. Closed session conference pursuant to Government Code §54957(b)(1) regarding public employee performance evaluation of the City Manager

No reportable action.

D. Adjournment

Mayor Combs adjourned the meeting at 7:08 p.m.

Judi A. Herren, City Clerk

NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

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menlopark.org/publiccommentOctober13*
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REGULAR MEETING MINUTES – DRAFT

Date: 11/9/2021

Time: 5:00 p.m.

Regular Meeting Location: [Zoom.us/join](https://zoom.us/join) – ID# 998 8073 4930

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

A. Call To Order

Mayor Combs called the meeting to order at 5:25 p.m.

B. Roll Call

Present: Combs, Mueller, Nash, Taylor, Wolosin

Absent: None

Staff: City Manager Starla Jerome-Robinson, City Attorney Nira Doherty, City Clerk Judi A. Herren

C. Agenda Review

City staff pulled item L2. to provide an update.

D. Closed Session

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

D2. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9: (One case)

- Jim Fehrle spoke in support of refunding all user utility tax and ceasing future collection.

E. Adjournment

Mayor Combs adjourned to the regular session at 5:43 p.m.

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

F. Call To Order

Mayor Combs called the meeting to order at 5:46 p.m.

G. Roll Call

Present: Combs, Mueller, Nash, Taylor, Wolosin

Absent: None

Staff: City Manager Starla Jerome-Robinson, City Attorney Nira Doherty, City Clerk Judi A. Herren

H. Report from Closed Session

None.

I. Presentations and Proclamations

- I1. Proclamation: Recognizing United Against Hate Week November 14 – 20, 2021 ([Attachment](#))

Mayor Combs read the proclamation ([Attachment](#)).

- I2. Proclamation: Recognizing November 2021 as National American Indian Heritage Month ([Attachment](#))

Mayor Combs read the proclamation ([Attachment](#)).

- I3. Proclamation: Recognizing Ruby Bridges Walk to School Day as November 17, 2021 ([Attachment](#))

Mayor Combs read the proclamation ([Attachment](#)).

San Mateo County Office of Education representative Theresa Vallez-Kelly accepted the proclamation.

- I4. Presentation: Independent Redistricting Commission update ([Presentation](#))

City Clerk Judi Herren made the presentation ([Attachment](#)).

J. Study Session

- J1. Provide direction on Federal Emergency Management Agency Building Resilient Infrastructure and Communities grant opportunity to fund a portion of the Strategy To Advance Flood Protection, Ecosystems And Recreation along the San Francisco Bay project ([Staff Report #21-218-CC](#)) ([Presentation](#))

Mayor Combs was recused from item J1. and exited the meeting.

Public Works Director Nikki Nagaya made the presentation ([Attachment](#)).

The City Council received clarification on programmatic environmental impact report (EIR), sea level rise impacts along the San Francisco Bay shoreline, the need for additional staff resources to complete this project, the extent of the project sections defined as “Reach 1” and “Reach 2” including how they connect leaving no gaps in the shoreline, applicability of the funds to be used for other projects, and the City contribution to this project.

The City Council discussed including residential areas on the exhibits presenting this project, and potentially incorporating emergency preparedness into this project.

The City Council directed staff to confirm the City’s role as a grant applicant and project lead, to return with a resolution accepting the grant funds and a memorandum of understanding between the project partners, to return with the mid-year budget review with a staffing request, and to return with options during the fiscal year 2022-23 budget development to maintain positive cash flow while

awaiting receipt of Federal Emergency Management Agency (FEMA) grant reimbursements.

Mayor Combs rejoined the meeting.

- J2. Provide direction on the use of below market rate housing funds for MidPen Housing, Inc. to create a community land trust as part of their proposed request of \$3.6 million to build 12 ownership units at 335 Pierce Road ([Staff Report #21-219-CC](#)) ([Presentation](#))

[Web form public comment on item J2.](#)

Acting Housing Manager Mike Noce made the presentation ([Attachment](#)).

MidPen Housing, Inc. representative Jan Lindenthal made a presentation ([Attachment](#)).

- Karen Grove spoke in support of the creation of a community land trust (CLT) as part of the MidPen 335 Pierce Road project.

The City Council received clarification on the structure of the CLT, current below market rate (BMR) homes outside of CLT compared to within a CLT, costs related to CLT, the relationship between MidPen and CLT, protections on the transfer of titles, infrastructure improvements outside of the proposed project, current BMR funds, multiple CLTs, and purchasing 12 BMR units without CLT.

The City Council discussed the neighborhood based preference and options for current residents of 335 Pierce Road.

The City Council directed the use of funds for MidPeh Housing to create a CLT as it relates to approved uses of the BMR housing funds (Section 13.3 of the BMR housing program guidelines), initial distribution of \$200,000 in BMR housing funds to MidPen Housing to support legal formation of a CLT and community engagement, and staff to return to City Council with specific recommended actions based on the direction of the above items.

K. Public Comment

- Pam Jones spoke in support of linking presentations to the agenda before the item is heard at the City Council meeting.

The City Council reordered the agenda.

P. City Councilmember Reports

City Councilmember Taylor and Vice Mayor Nash requested a special City Council meeting to discuss the Community Engagement and Outreach Committee (CEOC).

Vice Mayor Nash reported out an update on a Peninsula Clean Energy programs.

City Councilmember Mueller reported out on the Menlo Park Community Campus groundbreaking and expressed an interest in establishing an educational equity subcommittee.

Mayor Combs reported out on the San Francisquito Creek Joint Powers Authority meeting.

L. Consent Calendar

- L1. Accept the City Council meeting minutes for October 12 and 26, 2021 ([Attachment](#))
- L2. Adopt Resolution No. 6684 modifying the remainder of the 2021 City Council’s regular meeting start time to 7 p.m. ([Staff Report #21-215-CC](#))

City Manager Jerome-Robinson announced the November 16, 2021 meeting special start time at 5 p.m. and a regular meeting at 6 p.m.

The City Council discussed the timing of the full meeting.

ACTION: Motion and second (Combs/ Taylor), to update and approve Resolution No. 6684 modifying the remainder of the 2021 City Council’s regular meeting start time to 6 p.m. and direct staff to update the Menlo Park Municipal Code (MPMC) Section 2.04.010 Regular meetings—Days and start time to 6 p.m. from 5 p.m., passed unanimously.

- L3. Library Commission work plan 2021-2022 ([Staff Report #21-217-CC](#))
- L4. Adopt Resolution No. 6685, adopting amendments to Resolution No. 6682 to continue conducting the City’s Council and advisory body meetings remotely due to health and safety concerns for the public and to authorize the use of hybrid meetings ([Staff Report #21-220-CC](#))

The City County received clarification on State laws and City resolution and options for who may participate in-person and virtually.

The City Council discussed comfortability of returning to in-person and hybrid vaccination requirements.

ACTION: Motion and second (Wolosin/ Combs), to direct staff to draft and return to City Council a resolution allowing City Council and staff to conduct hybrid meetings, passed unanimously.

ACTION: Motion and second (Nash/ Combs), to approved consent calendar items L1. and L3., passed unanimously.

M. Regular Business

- M1. Introduction of Ordinance No. 1079 repealing Chapter 7.04 [Garbage and Rubbish Disposal] of Title 7 [Health and Sanitation] and enacting Chapter 7.04 [Solid Waste, Recyclables, and Organic Waste Disposal] ([Staff Report #21-216-CC](#)) ([Presentation](#))

Management Analyst I Joanna Chen made the presentation ([Attachment](#)).

ACTION: Motion and second (Wolosin / Taylor), to waive the reading and introduce Ordinance No. 1079 repealing Chapter 7.04 [Garbage and Rubbish Disposal] of Title 7 [Health and Sanitation] and enacting Chapter 7.04 [Solid Waste, Recyclables and Organic Waste Disposal], passed unanimously.

N. Informational Items

- N1. City Council agenda topics: November - December 7, 2021 ([Staff Report #21-214-CC](#))

O. City Manager's Report

None.

Q. Adjournment

Mayor Combs adjourned the meeting at 9:08 p.m.

Judi A. Herren, City Clerk

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SPECIAL AND REGULAR MEETING MINUTES – DRAFT

Date: 11/16/2021

Time: 5:00 p.m.

Regular Meeting Location: [Zoom.us/join](https://zoom.us/join) – ID# 998 8073 4930

5:00 p.m. Special Session ([Zoom.us/join](https://zoom.us/join) – ID# 998 8073 4930)

A. Call To Order

Mayor Combs called the meeting to order at 5:12 p.m.

B. Roll Call

Present: Combs, Mueller, Nash, Taylor

Absent: Wolosin

Staff: City Manager Starla Jerome-Robinson, City Attorney Nira Doherty, City Clerk Judi A. Herren

C. Consent Calendar

- C1. Adopt Resolution No. 6685, adopting amendments to Resolution No. 6682 to continue conducting the City’s Council and advisory body meetings remotely due to health and safety concerns for the public and to authorize the use of hybrid meetings ([Staff Report #21-222-CC](#))

ACTION: Motion and second (Nash/ Combs), to approve the consent calendar, passed 4-0 (Wolosin absent).

D. Public Hearing

- D1. Consider the Planning Commission’s Recommendation and approve a general plan amendment and rezoning for a City stormwater pump station project at 1395 Chrysler Drive and 105-155 Constitution Drive ([Staff Report #21-229-CC](#))

Acting Principal Planner Tom Smith made the presentation (Attachment).

Mayor Combs opened the public hearing.

Mayor Combs closed the public hearing.

The City Council received clarification on the new parcel and public right of way access.

ACTION: Motion and second (Nash/ Combs), to approve the following entitlements related to a new City stormwater pump station to replace an existing pump station located at 1395 Chrysler Drive (formerly addressed 1221 Chrysler Drive):

1. General plan amendment to change the land use designation of an approximately 3,600 square-foot portion of an existing approximately 8.9-acre parcel at 105-155 Constitution Drive from Commercial Business Park to Public/Quasi-Public and to change the land use designation of an approximately 3,600 square-foot portion of an existing approximately 5,000 square-foot parcel at 1395 Chrysler Drive from Public/Quasi-Public to Commercial Business Park; and
2. Rezoning to change the zoning of a portion of the parcel with a resulting Public/Quasi-Public land use designation from M-3-X (Commercial Business Park, Conditional Development District) to the P-F

(Public Facilities) district and to change the zoning of a portion of the parcel with a resulting Commercial Business Park land use designation from P-F to M-3-X zoning, passed 4-0 (Wolosin absent)

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

E. Closed Session

E1. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9: (One case)

F. Adjournment

Mayor Combs adjourned to the regular session at 6:17 p.m.

6:00 p.m. Regular Session ([Zoom.us/join](#) – ID# 998 8073 4930)

G. Call To Order

Mayor Combs called the meeting to order at 6:27 p.m.

H. Roll Call

Present: Combs, Mueller, Nash, Taylor

Absent: Wolosin

Staff: City Manager Starla Jerome-Robinson, City Attorney Nira Doherty, City Clerk Judi A. Herren

I. Agenda Review

None.

J. Report from Closed Session

City Attorney Nira Doherty report out from the November 9, 2021 closed session on an approved settlement with Save Our Menlo Park Neighborhood Case # 20-CIV-01717.

K. Study Session

K1. Provide direction on development of an ordinance to regulate wireless facilities on private property and in the public right-of-way ([Staff Report #21-221-CC](#)) ([Presentation](#))

Public Works Director Nikki Nagaya and Assistant City Attorney Denise Bazzano made the presentation (Attachment).

- AT&T representative Richard Hackman spoke in support of wireless facilities on private property and in the public right-of-way.
- Crown Castle representative Michael Cintron spoke in support development of an ordinance to regulate wireless facilities.

The City Council received clarification on ability to regulate locations so that wireless facilities are not immediately adjacent to homes, City authority of wireless facilities placement, City preferences versus regulation, and next steps of ordinance drafting and review.

The City Council discussed commercial area options for wireless facilities, equitable placement, including best practices from neighboring cities, and balancing being aggressive and consideration of staff resources.

The City Council directed staff to begin developing an ordinance to regulate wireless facilities on private property and in the public right-of-way.

L. Public Comment

None.

M. Consent Calendar

- M1. ~~Adopt Resolution No. 6687 to approve the through and left turn restrictions from southbound Garwood Way and northbound Merrill Street at Oak Grove Avenue ([Staff Report #21-224-CC](#))~~
- M2. Waive second reading and adopt Ordinance No. 1079, enacting Chapter 7.04 [Solid Waste, Recyclables and Organic Waste Disposal] of Title 7 [Health and Sanitation] ([Staff Report #21-230-CC](#))

ACTION: Motion and second (Taylor/ Combs), to approve consent calendar, passed 4-0 (Wolosin absent).

N. Regular Business

- N1. Receive annual report from Environmental Quality Commission, approve the commission's annual year work plan, and provide direction on the commission's recommendation regarding banning gas powered leaf blowers ([Staff Report #21-225-CC](#))

[Web form public comment on item N1.](#)

Sustainability manager Rebecca Lucky made the presentation (Attachment).

- Amy Roleder spoke in support of the ban of gas powered leaf blowers (GLBs).
- David Axelrod spoke in support of the ban of GLBs and provided information on air and noise pollutions cause by GLBs.
- Jeffrey Hook spoke in support of the ban of GLBs.
- Elliot Krane spoke in support of the ban of GLBs and provided information on the effects to health from GLBs.
- Carlos Myers-Ascencio spoke in support of the ban of GLBs.
- Kathleen Daly spoke in support of the ban of GLBs.
- Shaun Maguire spoke in support of the ban of GLBs and considerations to other gas powered gardening equipment.
- Lisa Williams spoke in support of the ban of GLBs and provided examples of the climate impact of GLBs.

The City Council bifurcated the item for discussion.

Work plan:

The City Council received clarification on urban canopy related to the heritage tree ordinance and creating a baseline of tree canopy across the City.

Gas powered leaf blower ban:

The City Council received clarification on the recent State legislation related to the future ban of GLBs, engagement with the Gardeners Association, and GLB buyback program options.

The City Council discussed reaching out to the stakeholders impacted, implementing the ban immediately and delaying enforcement for one year, enforcement and implementation approach, possible next steps and timeline.

ACTION: Motion and second (Combs/ Mueller), to

1. Receive the annual report from the Environmental Quality Commission (EQC),
2. Approve the Commission's annual work plan, and
3. Direct staff to engage with landscaping stakeholders, and return to city council as a study session with how enforcement, implementation, and staff resources regarding an ordinance banning gas powered leaf blowers in early 2022, passed 4-0 (Wolosin absent).

N2. Introduction and first reading of Ordinance No. 1080 amending Ordinance No. 1074, modifying the City Council's regular meeting schedule ([Staff Report #21-226-CC](#))

City Clerk Judi Herren introduced the item.

ACTION: Motion and second (Nash/ Combs), to waive the first reading and introduce Ordinance No. 1080 amending Ordinance No. 1074, modifying the City Council's regular meeting schedule, passed 4-0 (Wolosin absent).

N3. Adopt Resolution No. 6686 approving the 2021 San Mateo County Multijurisdictional Local Hazard Mitigation Plan ([Staff Report #21-223-CC](#)) ([Presentation](#))

Public Works Director Nikki Nagaya, Assistant Public Works Director Brian Henry, and Management Analyst Joanna Chen made the presentation (Attachment).

The City Council received clarification on the safety element and environmental justice element incorporation and options related to communication and infrastructure funding, including the Federal Emergency Management Agency's Building Resilient Infrastructure and Communities (BRIC) program for hazard mitigation.

The City Council discussed the importance of CalEnviroScreen incorporation and printing the approved plan for public viewing at City libraries.

ACTION: Motion and second (Combs/ Nash), to adopt Resolution No. 6686 approving the 2021 San Mateo County Multijurisdictional local hazard mitigation plan:

- Volume 1: Planning area wide elements; and

- Volume 2: City of Menlo Park annex plan; and direct staff to provide annual reporting to the City Council and increased public engagement and outreach, passed 4-0 (Wolosin absent).

N4. Consideration of a City Council meeting date to discuss the composition of the Community Engagement and Outreach Committee and future charge ([Staff Report #21-227-CC](#))

City Manager Starla Jerome-Robinson introduced the item.

- Dan McMahon spoke in support of the City Council discussing the Community Engagement and Outreach Committee (CEOC).

The City Council discussed the current purview of the CEOC limited to outreach and engagement, establishing best practices, District 1 representation, meeting on a Saturday to increase community participation to discuss CEOC and the housing element, the housing element notice of preparation (NOP), and bringing in additional resources (e.g., community organizations) to assist with building best practices for the CEOC.

ACTION: Motion and second (Combs/ Nash), to direct staff to prioritize scheduling a housing element, if possible combined with CEOC discussion, or, add CEOC to a future agenda as soon as possible, passed 4-0 (Wolosin absent).

O. Informational Items

O1. City Council agenda topics: December 7 – 14, 2021 ([Staff Report #21-231-CC](#))

O2. Response to Questions from City Councilmembers on housing element update ([Staff Report #21-228-CC](#))

P. City Manager's Report

City Manager Jerome-Robinson announced the cancellation of the Rail Subcommittee.

Q. City Councilmember Reports

Mayor Combs reported out on State of the City on November 30, 2021, upcoming tree lightening ceremony, housing element subcommittee meeting, and requested Neighborhood Traffic Management Program (NTMP) update added to a future City Council meeting.

City Councilmember Mueller reported out on the convention center COVID-19 booster shot availability and booster shots provided to District 1.

City Councilmember Taylor reported out on the Ruby Bridges walk to school day on November 17, 2021 and on locations to receive the COVID-19 booster.

R. Adjournment

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

Judi A. Herren, City Clerk

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REGULAR MEETING MINUTES – DRAFT

Date: 12/7/2021

Time: 6:00 p.m.

Regular Meeting Location: [Zoom.us/join](https://zoom.us/join) – ID# 998 8073 4930

6:00 p.m. Closed Session ([Zoom.us/join](https://zoom.us/join) – ID# 998 8073 4930)

A. Call To Order

Mayor Combs called the meeting to order at 6:06 p.m.

B. Roll Call

Present: Combs, Mueller, Nash, Taylor, Wolosin

Absent: None

Staff: City Manager Starla Jerome-Robinson, City Attorney Nira Doherty, Assistant City Attorney Megan Burke, City Clerk Judi A. Herren

C. Agenda Review

City staff pulled item L1. and continued to a future meeting.

The City Council pulled items J3., J4., and J8. for discussion.

D. Closed Session

D1. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2): (One case)

D2. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9 of the Government Code: (Two potential cases)

E. Adjournment

Mayor Combs adjourned to the regular session at 7:20 p.m.

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

F. Call To Order

Mayor Combs called the meeting to order at 7:29 p.m.

G. Roll Call

Present: Combs, Mueller, Nash, Taylor, Wolosin

Absent: None

Staff: City Manager Starla Jerome-Robinson, City Attorney Nira Doherty, City Clerk Judi A. Herren

H. Report from Closed Session

None.

I. Public Comment

- Lynne Bramlett spoke in support of a Saturday study session in January 2022 to discuss disaster preparedness.

J. Consent Calendar

- J1. Adopt Resolution No. 6691 authorizing the city manager to submit a grant application with California Department of Education to offset operational costs at the Belle Haven Child Development Center in fiscal year 2022-23 ([Staff Report #21-239-CC](#))
- J2. Adopt Resolution No. 6689 to continue conducting the City's Council and advisory body meetings remotely due to health and safety concerns for the public and to authorize the use of hybrid meetings ([Staff Report #21-232-CC](#))
- J3. Adopt Resolution No. 6687 to approve the through and left-turn restrictions from southbound Garwood Way and northbound Merrill Street at Oak Grove Avenue ([Staff Report #21-224-CC](#))

[Web form public comment on item J3.](#)

The City Council discussed the letter received from the Town of Atherton, concerns about traffic overflow, a request for a comprehensive look at managing traffic from the Springline project, a 120 to 180-day report back to City Council following substantial occupancy of the Springline project, and a request for a City-wide evaluation of bike and pedestrian safety.

The City Council received clarification on the Town of Atherton's concerns and identification of metrics.

ACTION: Motion and second (Wolosin / Combs), to adopt Resolution No. 6687 to approve the through and left-turn restrictions from southbound Garwood Way and northbound Merrill Street at Oak Grove Avenue to minimize anticipated safety concerns and direct staff to report back to City Council, passed 4-0 (Mueller abstaining).

- J4. Approve and appropriate \$10,000 for a grant to support the Menlo Park Sister Cities Association and ongoing sister cities program, and authorize the city manager to execute a grant agreement ([Staff Report #21-179-CC](#))

The City Council received clarification on grants supporting associations and programs compared to the City's annual community grant program and no City oversight of Menlo Park Sister Cities Association.

The City Council discussed future requests going through the community grant program process.

ACTION: Motion and second (Nash/ Combs), to approve and appropriate \$10,000 for a grant to support the Menlo Park Sister Cities Association and ongoing sister cities program, and authorize the city manager to execute a grant agreement with the association and that the Menlo Park Sister Cities Association are not to

represent itself on behalf of the City of Menlo Park, passed unanimously.

J5. Approve a modified design for the Sharon Road sidewalk project ([Staff Report #21-233-CC](#))

- Tina Messerlian spoke in support of adding Sharon Road and Eastridge Avenue safety painting to the project.
- Allison spoke in support of enforcing construction hours and noise ordinances during this project.

The City Council discussed restriping of Sharon Road and Eastridge Avenue.

J6. Waive second reading and adopt Ordinance No. 1082 rezoning property at 1395 Chrysler Drive and 105-155 Constitution Drive for a City stormwater pump station project ([Staff Report #21-234-CC](#))

J7. Adopt Resolution No. 6692 authorizing the city manager to submit a grant application from the California Department of Parks and Recreation for the Haven Avenue streetscape project ([Staff Report #21-242-CC](#))

J8. Receive and file the general fund budget report as of October 31, 2021 ([Staff Report #21-238-CC](#))

The City Council received clarification on the next budget report to City Council.

The City Council discussed availability of printed copies of the budget.

ACTION: Motion and second (Combs/ Wolosin), to receive and file the general fund budget report as of October 31, 2021, passed unanimously.

ACTION: Motion and second (Nash/ Wolosin), to approved the consent calendar excluding items J3., J4., and J8., passed unanimously.

K. Public Hearing

K1. Public hearing regarding the adoption of a resolution adopting required findings and authorizing City to execute an energy services contract pursuant to Government Code Section 4217 and authorizing the city manager to negotiate and execute a final agreement with ENGIE Services US Inc. to procure, install, operate, and maintain clean energy infrastructure for the Menlo Park Community Campus Project in an amount not to exceed \$5.72 million to procure and install clean energy infrastructure equipment; and Appropriate \$5.72 million from the unassigned funds in the general fund to procure and install clean energy infrastructure; and finding the action exempt from the California Environmental Quality Act guidelines ([Staff Report #21-241-CC](#))

Sustainability Manager Rebecca Lucky made the presentation (Attachment).

Mayor Combs opened the public hearing.

- Lynne Bramlett had questions on community input, the name of the center, costs, and the necessity of electric vehicle (EV) charging stations.
- Pam Jones spoke on concerns about a lack of public engagement.

Mayor Combs closed the public hearing.

The City Council received clarification on proceeding with a sustainable building, impacts to the construction timeline, grants (e.g., Peninsula Clean Energy) for EV chargers, public noticing, language access, and maintenance costs.

The City Council discussed EV charging stations, costs, and the addition of including community outreach as a best practice.

ACTION: Motion and second (Taylor/ Nash), that the City Council make the following findings:

1. The key financial terms of the energy services agreement presented at this evening's meeting are in the best interest of the City because the anticipated costs to the City for electrical energy services provided by the Project will be less than the anticipated marginal cost to the City of electrical and other energy that would have been consumed by the City in the absence of the proposed Project; and
2. The Menlo Park Community Campus project is exempt from the requirements of California Environmental Quality Act (CEQA) under Section 15302 as a CEQA Class 2 project because the Project consolidates the senior center, youth center, community center, and library facilities, which previously existed as separate buildings on or near the project site, into a single building, including construction of a new pool to replace the existing pool to serve substantially the same purpose, thereby exempting the Project from the provisions of CEQA pursuant to the State CEQA Guidelines and triggering no exceptions to such exemption; and
3. Continue resolution No. 6693 to December 14, 2021 City Council meeting, passed unanimously.

- K2. Consider the Planning Commission's Recommendation to approve specific plan amendments and an amendment to the development agreement for a project at 1300 El Camino Real ([Staff Report #21-237-CC](#)) ([Staff Presentation](#)) ([Applicant Presentation](#))

Acting Principle Planner Corinna Sandmeier made a presentation (Attachment).

Springline representative Cyrus Sanandaji made a presentation (Attachment).

Mayor Combs opened the public hearing.

- Brittani Baxter spoke in support of funding sidewalk and safety projects.
- Fran Dehn spoke in support of the Planning Commission recommendations.

Mayor Combs closed the public hearing.

The City Council received clarification on including a quiet zone in the Downtown amenities fund and public amenities fund, administrative costs related to creating capital improvement projects (CIP), the development agreement regulations to the access funds, and funding allocated to a CIP.

ACTION: Motion and second (Nash/ Combs), to waive first reading and introduce Ordinance No. 1083 amending the specific plan to increase the maximum public benefit bonus-level floor area ratio (FAR) from 1.50 to 1.55 in the ECR NE-R District under certain circumstances; and waive first reading and introduce Ordinance No. 1084 approving an amendment to the development agreement (DA) for the project sponsor to secure vested rights, and for the City to secure a public benefit, passed unanimously.

L. Regular Business

- L1. Adopt Resolution No. 6690 authorizing 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 crossing project ([Staff Report #21-236-CC](#))

Item L1. was continued to a future meeting.

- L2. Introduce Ordinance No. 1081 repealing and replacing Sections 2.04.200, “Advisory Boards and Commissions,” 2.04.210 “District-Based Electoral System,” and 2.04.220 “Establishment of City Council Electoral Based System” of Chapter 2.04 within Title 2 of the Menlo Park Municipal Code; and adopting Resolution No. 6688 updating City’s Conflict of Interest Code to add the Independent Redistricting Commissioners and Alternate Commissioners ([Staff Report #21-240-CC](#))

ACTION: Motion and second (Combs/ Muller), to waive the first reading and introduce Ordinance No. 1081 repealing and replacing Sections 2.04.200, “Advisory Boards and Commissions,” 2.04.210 “District-Based Electoral System,” and 2.04.220 “Establishment of City Council Electoral Based System” of Chapter 2.04 within Title 2 of the Menlo Park Municipal Code; and adopting Resolution No. 6688 updating City’s Conflict of Interest Code to add the Independent Redistricting Commissioners and Alternate Commissioners, passed unanimously.

M. Informational Items

- M1. City Council agenda topics: December 8, 2021 – January 2022 ([Staff Report #21-235-CC](#))

N. City Manager's Report

City Manager Starla Jerome-Robinson reported out on the reopening of the 800 block of Santa Cruz Avenue and an update on Senate Bill 9.

O. City Councilmember Reports

Mayor Combs reported out on City Councilmember Taylor’s application to One Shoreline and supported drafting a letter in support.

City Councilmember Taylor reported out on the upcoming City/County Association of Governments of San Mateo County (C/CAG) meeting and San Mateo County Joint Powers Authority (JPA) board meeting.

City Councilmember Mueller reported out that Vice Mayor Nash will now be serving on the Downtown Street Closure Task Force and thanked City Councilmember Taylor for previously serving.

P. Adjournment

Mayor Combs adjourned the meeting at 10:24 p.m.

Judi A. Herren, City Clerk

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SPECIAL MEETING MINUTES – DRAFT

Date: 12/8/2021

Time: 5:00 p.m.

Special Meeting Location: [Zoom.us/join](https://zoom.us/join) – ID# 880 0219 5038

Special Session ([Zoom.us/join](https://zoom.us/join) – ID# 880 0219 5038)

A. Call To Order

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

B. Roll Call

Present: Combs, Mueller, Nash, Taylor, Wolosin

Absent: None

Staff: City Manager Starla Jerome-Robinson, City Attorney Nira Doherty, City Clerk Judi A. Herren

C. Regular Business

- C1. Review and recommend the potential housing opportunity sites and land use strategies for initiating the environmental and fiscal reviews to meet the City’s Regional Housing Needs Allocation (RHNA) as part of the housing element for the planning period 2023-2031 ([Staff Report #21-243-CC](#))

Assistant Community Development Director Deanna Chow introduced the item.

M-Group representative Asher Kohn and Brittany Bendix made the presentation (Attachment).

- Julie Shanson spoke in support of upzoning in Districts 2 – 5.
- Lorena Cuffy spoke in opposition of disproportional housing density in District 1 and in support of upzoning in District 2 – 5 and less in District 1.
- Kalisha Webster spoke in support of additional below market rate (BMR) housing.
- Karen Grove spoke in support of the Housing Commission’s recommendations, increased units in the SRI project, and utilizing Senate Bills (SB) 9 and 10.
- Misha Silin spoke in support of additional housing and on concerns related to site selection.
- Adina Levin spoke in support of rezoning outside District 1 and harmonizing density and policies in District 1.
- Pam Jones spoke in support of downzoning in District 1.
- Michal Bortnik spoke on concerns with the Allied Arts neighborhood being priced out and not aligned with housing policies and utilizing SB 10.
- Cynthia Harris spoke in support of meeting State requirement while increasing BMR units.
- Erik Burmeister spoke in support of increasing community input and providing clarity to the public.
- Andrew Bielak spoke in support of higher density within a half mile of transit and density levels where appropriate.
- Katie Behroozi spoke in support of equal density across the Districts.

The City Council discussed public engagement and input, BMR housing program inclusionary requirements from 15 percent or 20 percent, the draft housing element given to the City Council before submitting to the State, the number of units required, increasing the density through the

increase of height, potential sites on Santa Cruz Avenue, mandating mixed-use opposed to strictly residential, population and open space increases, the Housing Commission's recommendations, public outreach and the Community Engagement and Outreach Commission (CEOC), adding Marsh Road and Bohannon Office zoning sites, and USGS and SRI projects as opportunity sites

The City Council received clarification on additional opportunity sites for housing, timeline of rezoning and housing element adoption, job/ housing imbalance compared to office development, environmental impact report (EIR) impacts from BMR inclusionary percentages, commercial language fee, Regional Housing Needs Allocation (RHNA) cycles five and six numbers, downzoning District 1 and upzoning other Districts to balance, affordable housing overlay, and square foot minimum lot size requirement for R-3 properties located around Downtown.

The City Council took a recess at 7:30 p.m.

The City Council reconvened at 7:58 p.m.

The City Council directed staff to explore below market rate housing program inclusionary requirements of 20 percent, lowering floor area ratios (FAR) on office in Downtown, consider square footage in addition to number of units, encourage property owners to include residential, establish a minimum density to achieve more units on a site, consider open space tradeoffs (e.g., higher builds to keep open space), minimize luxury units, connect with CEOC members (current and former) and schedule an agenda item related to public outreach in January 2022, and draft a memo on different density types that can be used in the area and clarifying maximum density bonus with images.

ACTION: Motion and second (Wolosin/ Taylor), to direct staff to research and analyze the process to effectuate a downzoning and corresponding upzoning consistent with SB 330 requirements and effects to the planning target for new housing in the housing element period, passed 3-1-1 (Combs dissenting and Mueller abstaining).

ACTION: Motion and second (Combs/ Mueller), to accept:

- rezone for approximately 4,000 housing units that are geographically dispersed throughout the City, primarily in City Council Districts 2 to 5. These units would be in addition to projects that are considered in the 'pipeline', a majority which are located in District 1, which are a combination of projects recently approved, but not yet constructed, projects under construction but anticipated to not be complete before June 30, 2022, and projects under review. There are approximately 3,650 pipeline units. Densities would allow at least 30 dwelling units per acre (du/ac) and may increase as part of additional site refinement.
- Upzone sites within the El Camino Real/Downtown specific plan area to allow 30 du/ac at the base level density and potential increases to the maximum bonus level density. The intent is to remove the existing residential cap of 680 units to allow for greater development potential in the specific plan area.
- Modifications to the affordable housing overlay (AHO) to allow up to 100 du/ac for 100 percent affordable housing developments and/or an increase in the density bonus for both affordable and mixed-income projects.
- Removal of the 10,000 square foot minimum lot size requirement for R-3 properties located around Downtown, which would allow all sites up to 30 du/ac, passed unanimously.

ACTION: Motion and second (Mueller/ Nash), to direct staff to do an analysis in order to designate 10 acres of the USGS site for Menlo Park school district educational facility, passed unanimously.

D. Adjournment

Mayor Combs adjourned the meeting at 10:26 p.m.

Judi A. Herren, City Clerk

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REGULAR MEETING MINUTES – DRAFT

Date: 12/14/2021

Time: 6:00 p.m.

Regular Meeting Location: [Zoom.us/join](https://zoom.us/join) – ID# 998 8073 4930

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

A. Call To Order

Mayor Combs called the meeting to order at 6:08 p.m.

B. Roll Call

Present: Combs, Mueller, Nash, Taylor, Wolosin

Absent: None

Staff: City Manager Starla Jerome-Robinson, City Attorney Nira Doherty, City Clerk Judi A. Herren

C. Agenda Review

Staff reordered Regular Business, bringing item F6. first.

The City Council pulled items E1., E2., E6., and E9. for discussion.

D. Public Comment

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

- Senator Josh Becker congratulated Mayor Combs on outstanding pandemic leadership and welcomed the incoming mayor and vice mayor.
- Charlotte Willner spoke in support of rezoning for educational purposes.

E. Consent Calendar

E1. Adopt Resolution No. 6694 to continue conducting the City’s Council and advisory body meetings remotely due to health and safety concerns for the public and to authorize the use of hybrid meetings ([Staff Report #21-246-CC](#))

The City Council received clarification on Menlo Park legislative bodies conducting hybrid meetings.

E2. Waive second reading and adopt Ordinance No. 1080 amending Ordinance No. 1074, modifying the City Council’s regular meeting schedule ([Staff Report #21-244-CC](#))

The City Council discussed how to agendize future closed sessions.

E3. Adopt Ordinance No. 1081 repealing and replacing Sections 2.04.200, “Advisory Boards and Commissions,” 2.04.210 “District-Based Electoral System,” and 2.04.220 “Establishment of City Council Electoral Based System” of Chapter 2.04 within Title 2 of the Menlo Park Municipal Code ([Staff Report #21-245-CC](#))

E4. Waive second reading and adopt Ordinance No. 1083 amending the specific plan and Ordinance

No. 1084 approving an amendment to the development agreement for a project at 1300 El Camino Real ([Staff Report #21-254-CC](#))

E5. Retain professional services to support Measure T bond issuance in 2022 ([Staff Report #21-255-CC](#))

E6. Adopt a resolution rescinding Resolution Nos. 4354, 5832, 6479 and adopting City Council Procedures No. CC-21-024 updating the City's purchasing policy ([Staff Report #21-256-CC](#))

The City Council received clarification on removing the authorization of the city manager, or designee, to make payments in excess of \$79,000, updating the procedure to include city manager reporting, current emergency procedures, emergency funding, and funding amounts related to Federal Emergency Management Agency (FEMA) requirements.

City Councilmember Taylor spoke in opposition of amending the city manager, or designee, authority and in support of Senate Bill (SB) 1383.

ACTION: Motion and second (Mueller/ Wolosin), to adopt a resolution rescinding Resolution Nos. 4354, 5832, 6479 and adopt City Council Procedures No. CC-21-024 updating the City's purchasing policy to incorporate the new state requirements under SB 1383 and to establish new processes and procedures, and direct the city manager to provide the City Council reports when expenditures are equal to or more than the city manager's spending authority, passed 4-1 (Taylor dissenting).

E7. Approve the 2022 City Council regular meeting schedule ([Staff Report #21-248-CC](#))

~~E8. Consider adoption of a resolution to authorize the city manager to enter into an agreement with ENGIE Services US Inc. to design, construct, operate, and maintain clean energy infrastructure for the Menlo Park Community Campus project in an amount not to exceed \$5.72 million and appropriate \$5.72 million from the unassigned funds in the general fund for the project ([Staff Report #21-252-CC](#))~~

E9. Adopt fiscal year 2021-22 budget amendments and authorize city manager to execute agreement amendments for public works maintenance, city arborist contract services, and community development professional services ([Staff Report #21-250-CC](#))

The City Council received clarification on fund transfer timing of capital improvement projects (CIP) for a quiet zone and Haven Avenue streetscape projects.

~~E10. Receive and file personnel update as of November 30, 2021 ([Staff Report #21-257-CC](#))~~

ACTION: Motion and second (Combs/ Wolosin), to approve consent calendar excluding item E6., passed unanimously.

F. Regular Business

F6. Adopt a resolution directing the city manager and city attorney to develop interim guidance rules and regulations for implementation of Senate Bill 9 (SB 9) before January 1, 2022 ([Staff Report #21-251-CC](#))

~~Adopt a resolution directing the preparation of interim guidance rules and regulations to implement Senate Bill 9 (SB 9) – The California Home Act; and directing the preparation of an SB-9 implementing ordinance~~

Acting Planning Manager Kyle Perata made the presentation (Attachment).

- Karen Grove spoke in opposition of the preclusion of accessory dwelling units (ADUs).
- Safaei Design Group had questions related to floor area limit (FAL) on single family with ADUs and two story residences.
- Brittani Baxter spoke in support of increased flexibility for ADUs and more options for property owners related to parking.

The City Council discussed what other jurisdictions are doing to implement SB 9, objective standards, deed restrictions, and square footage,

The City Council received clarification on ADUs, State and City proposed requirements, deed restrictions on affordability, application timing, and FALS.

ACTION: Motion and second (Wolosin/ Taylor), to adopt a resolution directing City staff to prepare interim guidance rules and regulations and all other direction provided therein with the revision in Section 3 of the resolution to remove the language “where the maximum floor area limit is 1,600 square feet” and direct staff to develop interim guidance, and to make publications available in English and Spanish, passed 3-2 (Mueller and Combs dissenting).

The City Council took a recess at 8:24 p.m.

The City Council reconvened at 8:36 p.m.

F1. Recognition of outgoing Mayor

- Adina Levin commended Mayor Combs on his term as Mayor.
- Pam Jones commended Mayor Combs on his term as Mayor.
- Kathleen Daly commended Mayor Combs on his term as Mayor.

Vice Mayor Nash read the proclamation (Attachment).

Mayor Combs accepted the proclamation.

F2. Selection of the 2022 Mayor and Vice Mayor

City Clerk Judi A. Herren introduced the item.

ACTION: Motion and second (Wolosin/ Mueller), to appoint Betsy Nash as Mayor, passed unanimously.

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

F3. Appoint City Council representatives and alternates to various local and regional agencies and as liaisons and members to City Council advisory bodies ([Staff Report #21-258-CC](#))

City Clerk Judi A. Herren introduced the item.

The City Council discussed the Community Outreach and Engagement Committee (CEOC) liaison.

ACTION: Motion and second (Wolosin/ Combs), to make appointments as representatives and alternates to various local and regional agencies and as liaisons and members to City Council advisory bodies, passed unanimously (Attachment).

- F4. Appoint City Councilmembers to various standing and ad hoc subcommittees, and disband inactive ad hoc subcommittees ([Staff Report #21-249-CC](#))

City Clerk Judi A. Herren introduced the item.

The City Council discussed the West Menlo Triangle Annexation ad hoc subcommittee.

ACTION: Motion and second (Nash/ Wolosin), to make appointments to various standing and ad hoc subcommittees, and disband the inactive Emergency Response Homeless Encampment in Bayfront ad hoc subcommittee, passed unanimously (Attachment).

- F5. Provide direction to the City’s voting delegate regarding regional vacancies for the next City Selection Committee meeting December 17, 2021 ([Staff Report #21-247-CC](#))

ACTION: Motion and second (Combs/ Mueller), to select Mayor Nash as the City’s voting delegate regarding regional vacancies for the next City Selection Committee meeting December 17, 2021, passed unanimously.

G. Informational Items

- G1. City Council agenda topics: January 2022 ([Staff Report #21-253-CC](#))

H. City Manager's Report

None.

I. City Councilmember Reports

Mayor Nash reported out on the San Mateo County Mayor’s Mental Health Coalition.

J. Adjournment

Mayor Nash adjourned the meeting at 9:55 p.m.

Judi A. Herren, City Clerk

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Subject to Change: Given the current public health emergency and the rapidly evolving federal, state, county and local orders, the format of this meeting may be altered or the meeting may be canceled. You may check on the status of the meeting by visiting the City's website www.menlopark.org. The instructions for logging on to the webinar and/or the access code is subject to change. If you have difficulty accessing the webinar, please check the latest online edition of the posted agenda for updated information (menlopark.org/agenda).

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



STAFF REPORT

City Council

Meeting Date:

1/11/2022

Staff Report Number:

22-006-CC

Consent Calendar:

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

Recommendation

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

Policy Issues

Assembly Bill 361 (AB 361) was signed into law September 16, 2021 allowing cities to continue holding virtual meetings during any emergency proclaimed by the governor. AB 361 sunsets January 1, 2024. The City Council would need to declare every 30 days that the City's legislative bodies must continue to meet remotely in order to ensure the health and safety of the public.

Background

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

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

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

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

Analysis

The City is still under a local state of emergency, and the County's indoor mask order is still in effect, so the emergency findings required under AB 361 are still in effect. The resolution authorizes the use of hybrid meetings, whereby City Councilmembers and staff may choose to attend either remotely or in person.

Impact on City Resources

There is no impact on City resources.

Environmental Review

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

Public Notice

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

Attachments

A. Resolution

Report prepared by:
Judi A. Herren, City Clerk

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

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

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

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

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

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

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

WHEREAS, the SARS-CoV-2 Delta Variant (Delta Variant) is highly transmissible in indoor settings; and

WHEREAS, on July 28, 2021, the California Department of Public Health issued guidance calling for the use of face coverings and stating that the Delta Variant is two times as contagious as early COVID-19 variants, leading to increasing infections, the Delta Variant accounts for over 80% of cases sequenced, and cases and hospitalizations of COVID-19 are rising throughout the state; and

WHEREAS, the Delta Variant has caused, and will continue to cause, conditions of imminent peril to the health and safety of persons within the City; and

WHEREAS, in light of the Delta Variant and the risk of infection among even those who have been vaccinated against COVID-19, the City Council finds that reducing the number of persons present in City Council chambers is necessary to reduce imminent health risks associated with large groups of members of varying households gathering indoors; and

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

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

1. Find that current conditions authorize teleconference public meetings of Legislative Bodies. Based on the California Governor’s continued declaration of a State of Emergency and current conditions, the City Council finds that meeting in person only, without the option for certain populations and persons to participate remotely, would present imminent risks to the health or safety of attendees. The City Council does therefore find that Legislative Bodies and members of Legislative Bodies of the City may elect to use teleconferencing to hold public meetings in accordance with Government Code section 54953(e)(2) to ensure members of the public have continued access to safely observe and participate in local government meetings.
2. Authorize Legislative Bodies to Conduct Teleconference Meetings. The Legislative Bodies are hereby authorized to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting open and public meetings in accordance with Government Code section 54953(e)(2) and other applicable provisions of the Brown Act.
3. Authorize Legislative Bodies to Conduct Hybrid Meetings. The Legislative Bodies are hereby authorized to conduct meetings in a “hybrid” format, where both members of the Body and members of the public may elect to be present in person, utilizing appropriate distancing and masking practices, or participate by teleconferencing technology. Such meetings of the Legislative Bodies that occur using teleconferencing technology will provide an opportunity for any and all members of the public who wish to address Legislative Bodies and will otherwise occur in a manner that protects the statutory and constitutional rights of parties and the members of the public attending the meeting via teleconferencing
4. The State of California and the City of Menlo Park continue to follow safety measures in response to COVID-19 as ordered or recommended by the Centers for Disease Control and Prevention (CDC), California Department of Public Health (DPH), and/or County of San Mateo, as applicable, including facial coverings when required. Based upon that guidance, in-person attendance indoors at public meetings continues to present a health risk for certain segments of the population, necessitating the need to reduce the number of in-person meeting attendees.

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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 eleventh day of January, 2022, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Judi A. Herren, City Clerk



STAFF REPORT

City Council

Meeting Date:

1/11/2022

Staff Report Number:

22-001-CC

Consent Calendar:

Transmittal of the annual report on the status of the transportation impact, storm drainage, recreation in-lieu and construction impact fees collected as of June 30, 2021

Recommendation

Staff recommends the City Council review the City's Assembly Bill 1600 (AB1600) report providing data on the revenues collected from the transportation impact, storm drainage, recreation in-lieu and construction impact fees. The below market rate housing in-lieu fees are included in this report to inform the City Council.

Policy Issues

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

Background

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

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

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

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

Analysis

Transportation impact fees

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

The transportation impact fee methodology was put in place effective December 6, 2009, with the addition of Section 13.26 to the municipal code, which created a more systematic way for applying the fees. In 2019, the City prepared an updated transportation impact fee study which demonstrates the reasonable relationship between the amount of the fees and the purpose for which they are charged. In addition, the 2019 update set the fees for child care facilities and secondary dwelling units to \$0. The current fees became effective in February 2020, and are listed below:

Transportation impact fee		
Land use	Unit	2021 fee amount*
Office	Sq.Ft.	\$ 19.18
Research and development	Sq.Ft.	8.17
Manufacturing	Sq.Ft.	11.18
Warehousing	Sq.Ft.	3.17
Restaurant	Sq.Ft.	11.18
Retail	Sq.Ft.	11.18
Single-family	Dwelling units	16,516.73
Multifamily	Dwelling units	5,566.90
Hotel	Per room	10,010.13
Medical office	Sq.Ft.	57.73
Child care	Sq.Ft.	0
Secondary dwelling unit	Dwelling units	0

* As of June 2021, ENR Construction Cost Index % change for San Francisco = 3.4
 If land use is not one of the above, use this formula: \$16,683.56 * Total PM Peak hour trips

For fiscal year 2020-21, the City received total revenue of \$221,184 primarily from transportation impact fees and interest income. For the same period, the City expended a total of \$532,994 on projects eligible for funding under this revenue source. Accordingly, net revenue for the year totaled (\$311,810) and the ending balance as of June 30, 2021, is \$6,891,142. Of this amount, all funds are available for use to meet current or planned projects eligible for this funding source. In the next five fiscal years, it is planned that the City will require \$22,801,570, from transportation impact fees to finance needed infrastructure projects. The City Council adopted the transportation master plan in November 2020 and staff has included new projects to the future five-year capital improvement program. As such, there exists a continued need for this fee. Detail of current year and historical financials as well as current year project expenditures are available in Attachment A.

Storm drainage fees

The storm drainage fee commenced before 1989. The fee is levied to mitigate impacts on the storm drainage system either directly or indirectly resulting from development projects. The fee does not cover all federally or regionally mandated stormwater permitting requirements imposed since 1990 under the National Pollutant Discharge Elimination System permits. Storm drainage connection fees are charged for property development as shown in the City's 2019 master fee schedule:

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

For fiscal year 2020-21, the City received total revenue of \$3,186, primarily from storm drainage fees and interest income. For the same period, the City expended \$68,363 on projects eligible for funding under this revenue source. Accordingly, net revenue for the year for the year totaled (\$65,177) and the ending balance as of June 30, 2021, is \$94,899. Of this amount, all funds are available for use to meet current or planned projects eligible for this funding source. The City plans to use the remaining funds to support green stormwater infrastructure projects and street storm drain improvements. At this time, there still exists a continued need for this fee. Detail of current year and historical financials as well as current year project expenditures are available in Attachment B.

Recreation in-lieu fees

The recreation in-lieu fee commenced before 1989. The purpose of the fee is to provide improved and expanded recreation facilities to serve new residential uses. The fee is assessed as an option for residential developments in-lieu of providing dedication of land for new facilities. The fee is charged on new residential development as shown Municipal Code section 15.16.020 and summarized in the City's 2019 master fee schedule:

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

For fiscal year 2020-21, the City received total revenue of \$753,147, primarily from recreation in-lieu fees and interest income. For the same period, the City expended a total of \$76,410 on projects eligible for funding under this revenue source. Accordingly, net revenue for the year for the year totaled \$676,737 and the ending balance as of June 30, 2021, is \$3,640,777. Of this amount, all funds are available for use to meet current or planned projects eligible for this funding source. In the next five fiscal years, it is planned that the City will require \$5,794,334 from recreation in-lieu fees to finance needed infrastructure projects. As such, there exists a continued need for this fee. Detail of current year and historical financials as well as

current year project expenditures are available in Attachment C.

Construction impact fees

The construction impact fee took effect in November 2005 and was adopted to recover the cost of repairing damage to streets caused by construction-related vehicle traffic. On August 5, 2008, the City Council adopted a resolution extending this fee beyond the three-year sunset provision initially established. The fee is charged on the value of the construction project as shown in the 2019 master fee schedule:

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

For fiscal year 2020-21, the City received total revenue of \$910,784, primarily from construction impact fees and interest income. For the same period, the City expended a total of \$5,273,790 on projects eligible for funding under this revenue source. Accordingly, net revenue for the year totaled (\$4,363,006) and the ending balance as of June 30, 2021, is \$5,120,689. Of this amount, all funds are available for use to meet current or planned projects eligible for this funding source. In the next five fiscal years, it is planned that the City will require \$10,522,990 from construction impact fees to finance needed infrastructure projects. As such, there exists a continued need for this fee. Detail of current year and historical financials as well as current year project expenditures are available in Attachment D.

Below market rate housing in-lieu fee

The below market rate (BMR) in-lieu fee is not an impact fee; therefore, staff is not required to include the following summary per Assembly Bill 1600. Staff is including this summary to solely inform City Council of housing fund activity. The BMR housing program was established in 1987 to increase the housing supply for people who live and/or work in Menlo Park and have very low, low, or moderate incomes as defined by income limits set by the California Department of Housing and Community Development for San Mateo County. The primary objective of the fee is to create actual housing units rather than generate a capital fund. Residential developers are subject to the following requirements, but may be permitted to pay an in-lieu fee for a fractional unit in certain situations:

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

For new commercial developments equal to or greater than 10,000 square feet that generate employment opportunities, the in-lieu fee for fiscal year 2020-21 was established as follows:

- Group A: \$19.61 per square foot of net new gross floor area for most commercial uses
- Group B: \$10.64 per square foot of net new gross floor area for defined uses that generate fewer employees

For fiscal year 2020-21, the City received total revenue of \$1,162,607, primarily from below market rate housing in-lieu fees from commercial developments and interest income. For the same period, the City expended a total of \$924,674 on projects eligible for funding under this revenue source. Accordingly, net revenue for the year totaled \$237,933 and the ending balance as of June 30, 2021, is \$31,551,159. Of this amount, \$6,942,890 is available for use to meet current or planned projects eligible for this funding source.

In May 2021, the City Council authorized \$1.2 million (staff report 21-099-CC) from the BMR housing fund to support Habitat for Humanity Greater San Francisco's proposal to create a Homeownership Preservation Program. The program will assist low income homeowners in Menlo Park with major repairs and rehabs that

address acute safety issues and enable homeowners to age in place and remain in the community they have been a part of for many years. The funding transfer for \$1.2 million is being prepared by staff and the program is scheduled to begin in 2022. In October 2021, the City Council held a study session (staff report 21-219-CC) to provide direction on the use of BMR funds for the creation of a Community Land Trust (CLT) as part of MidPen Housing's proposal to build 12 attached single family homes for low income homebuyers. City Council expressed support for the creation of CLT, and staff will return with potential recommendations in early 2022. The total funding request for this project is \$3.6 million. It is estimated at this time that the abovementioned activities will utilize the majority of available fund balance and additional projects will be identified in coming years. As such, there exists a continued need for the City to collect this fee to support the preservation and production of affordable housing. Detail of current year and historical financials as well as current year project expenditures are available in Attachment E. Previously approved proposals with completed transfer of funds, such as the \$5.5 million approved for HIP Housing's acquisition of 6-8 Coleman Place (Staff Report 21-042-CC), are reflected in Attachment E within the "adjustments for notes and receivables" line item.

Impact on City Resources

There is no impact on City resources resulting from this annual report, and this report meets the compliance requirements of the Mitigation Fee Act. Impact fees collected in 2020-21 represented \$1,643,162. As described above, the below market rate housing in-lieu fee is not an impact fee, and therefore, is not included in this total.

Environmental Review

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

Public Notice

Public notification to comply with the Mitigation Fee Act is achieved by posting the annual report December 23, 2021, at least 15 days before the meeting at which the City Council is anticipated to make required findings as outlined in the recommendation.

Attachments

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

Report prepared by:

Mike Noce, Acting Housing Manager

Eren Romero, Business Manager

Teresa DellaSanta, Interim Administrative Services Director

**City of Menlo Park
Transportation Impact Fee Financial Report**

Transportation Impact Fees	2016-17	2017-18	2018-19	2019-20	2020-21
Beginning balance	\$ 3,680,652	\$ 3,671,623	\$ 4,827,758	\$ 7,339,432	\$ 7,202,952
Developer Fees	1,565,803	1,525,690	2,410,325	255,091	106,028
Interest earnings and other	27,687	36,360	404,242	197,163	115,156
Expenditures	(385,171)	(405,915)	(302,893)	(588,734)	(532,994)
Non-traffic impact fee transfer	(1,217,348)	0	0	0	0
Ending Balance	\$3,671,623	\$4,827,758	\$7,339,432	\$7,202,952	\$6,891,142

2020-21 Transportation Impact Fee Project Expenditures	Total Cost 2020-21	Total TIF Expended	Other Funding Sources	Fee % Share	Construction start date ¹
Haven Avenue Streetscape	\$ 113,360	\$ 4,787	\$ 108,573	4%	2022
Middle Avenue Caltrain Crossing Study	\$ 65,567	\$ 65,567	\$ -	100%	2025
Marsh Road/Constitution Drive- Independence Drive Improvements	\$ 177,480	\$ 177,480	\$ -	100%	April 2017
Traffic Signal Modifications	\$ 17,084	\$ 17,084	\$ -	100%	April 2021
Pierce Road Sidewalk & San Mateo Bike Route Installation	\$ 470,260	\$ 245,311	\$ 224,949	52%	August 2020
Haven Avenue Hotel Development*	\$ -	\$ 18,670	\$ -	100%	n/a
Other	\$ -	\$ 4,096	\$ -	100%	n/a
Total	843,751	553,994			

*Expense to be reimbursed by developer

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

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

Transportation Impact Fee Future Projects	Total budget 2021-22	TIF funding 2021-22	Other Funding sources 2021-22	TIF Funding 2022-26	Total TIF future needs
Middle Avenue Caltrain Crossing Study Design and Construction	\$ 5,954,095	\$ 5,954,095	\$ 6,000,000	\$ 8,900,000	\$ 14,854,095
Traffic Signal Modifications	\$ 1,319,013	\$ 1,319,013	\$ -	\$ 1,400,000	\$ 2,719,013
Transportation project (minor)	\$ 866,457	\$ 368,784	\$ 497,673	\$ 700,000	\$ 1,068,784
Transit Improvemets	\$ 37,278	\$ 37,278	\$ -	\$ -	\$ 37,278
Willow Oaks Bike Connector	\$ 500,000	\$ 500,000	\$ -	\$ -	\$ 500,000
Willow Road/Newbridge St Bicycle and Pedestrian Improvement	\$ -	\$ -	\$ -	\$ 2,800,000	\$ 2,800,000
El Camino Real Crossings Improvements	\$ 307,087	\$ 307,087	\$ -	\$ -	\$ 307,087
Pierce Road Sidewalk and San Mateo Bike Route Installation	\$ 630,626	\$ 315,313	\$ 315,313	\$ -	\$ 315,313
Middle Avenue Complete Streets Study	\$ 200,000	\$ 200,000	\$ -	\$ -	\$ 200,000
				Total	\$22,801,570

Collected Developer Fees	2020-21
1800 El Camino Real	\$ 15,308
1072 Del Norte Avenue	\$ 772
870 Santa Cruz Avenue	\$ 89,947
Total	\$ 106,028

**City of Menlo Park
Storm Drainage Impact Fee Financial Report**

Storm Drainage Impact Fees	2016-17	2017-18	2018-19	2019-20	2020-21
Beginning balance	\$172,555	\$176,446	\$168,480	\$174,688	\$160,066
Developer fees	2,250	7,270	2,250	6,150	900
Interest income/(expense)	1,641	2,166	3,958	4,206	2,286
Expenditures	0	(17,402)	0	(24,978)	(68,363)
Ending Balance	\$176,446	\$168,480	\$174,688	\$160,066	\$94,889

Storm Drainage Impact Fee Fund Expenditures	Total Cost 2020-21	Total SDIF Expended	Other Funding Sources	Fee % Share	Construction start date ¹
Santa Cruz Avenue/Merrill Street and Alma Street Storm Drain Improvement	\$ 67,814	\$ 67,814	\$ -	100%	November 2020
Other	\$ 549	\$ 549	\$ -	100%	n/a
Total	\$ 68,363				

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

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

Storm Drainage Impact Fee Future Projects	Total Budget 2021-22	SDIF Funding	Other funding Sources 2021-22	2022-2026	Total
Green stormwater infrastructure implementation	\$ -	\$ -	\$ -	\$ 82,000	\$ 82,000
Santa Cruz Avenue and Middle Avenue Street Rehabilitation	\$ 23,000	\$ 23,000	\$ -	\$ -	\$ 23,000
Total					\$ 105,000

Collected Developer Fees	2020-21
1010 Mallet Court	\$ 150
115 El Camino Real	\$ 600
617 Partridge Avenue	\$ 150
Total	\$ 900

**City of Menlo Park
Recreation In-Lieu Impact Fee Financial Report**

Recreation In-Lieu Impact Fees	2016-17	2017-18	2018-19	2019-20	2020-21
Beginning balance	\$1,296,910	\$1,167,732	\$3,745,549	\$3,553,462	\$2,964,040
Developer Fees	64,000	2,619,200	205,800	313,600	705,600
Interest Income/(Expense)	6,433	36,958	81,234	97,406	47,547
Expenditures	(199,611)	(78,341)	(479,121)	(1,000,428)	(76,410)
Ending balance	\$1,167,732	\$3,745,549	\$3,553,462	\$2,964,040	\$3,640,777

Recreation In-Lieu Fee Expenditures	Total Cost 2020-21	Total RIL Expended	Other Funding Sources	Fee % Share	Construction start date ¹
Willow Oaks Park Improvements	\$ 11,909	\$ 809	\$ 11,100	7%	2022
Park Playground Equipment	\$ 75,601	\$ 75,607	\$ -	100%	2022
Total	\$ 87,510	\$ 76,416	\$ 11,100	87%	

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

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

Recreation In-Lieu Fee Future Projects	Total budget 2021-22	RIL funding 2021-22	Other funding Sources 2021-22	RIL funding 2022-26	Total RIL future needs
Menlo Park Community Campus	\$ 15,752,425	\$ 1,570,000	\$ 14,182,425	\$ -	\$ 1,570,000
Park Playground Equipment	\$ 725,414	\$ 725,414		\$ 600,000	\$ 1,325,414
Parks and Recreation Master Plan Implementation	\$ -	\$ -	\$ -	\$ 2,000,000	\$ 2,000,000
Willow Oaks Park Improvements	\$ 898,920	\$ 898,920	\$ -	\$ -	\$ 898,920
	\$ 17,376,759	\$ 3,194,334	\$ 14,182,425	\$ 2,600,000	\$ 5,794,334

Collected Developer Fees	2020-21
661 Partridge Avenue	\$ 156,800
966 Menlo Avenue	\$ 78,400
908 Menlo Avenue	\$ 78,400
1010 Mallet Ct	\$ 78,400
115 El Camino Real	\$ 313,600
Total	\$ 705,600

**City of Menlo Park
Construction Impact Fee Financial Report**

Construction Impact Fee Fund	2016-17	2017-18	2018-19	2019-20	2020-21
Beginning balance	\$4,103,887	\$6,915,392	\$5,344,627	\$7,814,172	\$9,483,695
Developer Fees	3,095,422	2,976,022	3,655,133	2,809,763	830,634
Interest Income/(Expense)	62,254	51,713	179,535	236,374	80,150
Expenditures	(346,171)	(4,598,500)	(1,365,123)	(1,376,614)	(5,273,790)
Transfers					
Ending balance	\$6,915,392	\$5,344,627	\$7,814,172	\$9,483,695	\$5,120,689

Construction Impact Fee Fund Expenditures	Total Cost 2020-21	Total CIF Expended	Other Funding Sources	Fee % Share	Construction start date ¹
Street Resurfacing Project	\$ 1,741,176	\$ 390,405	\$ 1,350,771	22%	July 2020
Chilco Streetscape & Sidewalk Installation ²	\$ 2,855,541	\$ 2,853,410	\$ 2,131	100%	May 2019
Santa Cruz & Middle Resurfacing	\$ 2,405,256	\$ 1,967,895	\$ 437,361	82%	April 2020
Willow Road Resurfacing	\$ 8,205	\$ 8,205	\$ -	100%	September 2021
Operating Expenditures:					
Street Maintenance	\$ 2,623,800	\$ 53,876	\$ 2,569,924	2%	July 2020
Total Expenditures:	\$ 9,633,978	\$ 5,273,790	\$ 4,360,188	55%	

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

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

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

Construction Impact Fee Future Projects	Total budget 2021-22	CIF Funding 2021-22	Other Funding sources 2021-22	CIF Funding 2022-26	Total CIF future needs
Middlefield Rd (Woodland to Ravenswood)	\$ 150,000	\$ 150,000	\$ -	\$ 4,050,000	\$ 4,200,000
Street Resurfacing Project	\$ 5,162,140	\$ 2,479,000	\$ 2,683,140	\$ 1,400,000	\$ 3,879,000
Willow Road Resurfacing	\$ 1,150,000	\$ 1,150,000	\$ -	\$ -	\$ 1,150,000
Chilco Streetscape & Sidewalk Installation	\$ 926,695	\$ 926,695	\$ -	\$ -	\$ 926,695
Santa Cruz & Middle Ave Resurfacing	\$ 367,295	\$ 367,295		\$ -	\$ 367,295
			Total		\$ 10,522,990

Collected Developer Fees	2020-21
4025 Bohannon Dr	17,400
2775 Sand Hill Rd	17,400
1800 Bay Laurel Dr	18,560
2250 Tioga Dr	19,117
328 Central Ave	19,570
1190 Bellair Way	19,720
212 Hedge Rd	31,900
247 Hedge Rd	38,773
495 permits less than \$17,000	648,194
Total	830,634

City of Menlo Park
Below Market Rate Housing Financial Report

Below Market Rate Housing Special Fund	2016-17	2017-18	2018-19	2019-20	2020-21
Beginning balance	\$14,135,309	\$15,903,862	\$21,920,888	\$22,476,969	\$31,313,226
Fiscal Year Activity					
Charges for Services	1,824,526	6,109,892	354,517	5,437,462	808,964
Use of Money and Property	125,375	125,117	517,831	646,128	272,111
Expenditures	(181,348)	(217,983)	(316,267)	(515,156)	(924,674)
Proceeds from the Sale of Assets	0	0	0	0	0
Prior period adjustment	0	0	0	3,267,823	0
Adjustment for accounts payable					81,532
Ending balance	\$15,903,862	\$21,920,888	\$22,476,969	\$31,313,226	\$31,551,159
Adjustment for notes and interest receivable	(\$8,823,986)	(\$8,861,591)	(\$8,980,996)	(\$9,052,369)	(\$24,608,269)
Adjusted available balance	\$7,079,876	\$13,059,297	\$13,495,973	\$22,260,857	\$6,942,890

Below Market Rate Housing Special Fund Expenditures	
BMR housing program administration	\$ 924,674

Below Market Rate Housing Special Fund Future Projects	2021-25	Total
HGSF Homeownership Preservation Program (approved)	\$ 1,200,000	\$ 1,200,000
335 Pierce Road (pending)	\$ 3,600,000	\$ 3,600,000
Non-earmarked funds (expenditures, NOFAs, etc.)	\$ 2,142,890	\$ 2,142,890
		\$ 6,942,890

Collected Developer Fees ¹	2020-21
1305 O'Brien Drive commercial in-lieu fee	\$ 410,414

¹ Included within "Charges for Services" line item



STAFF REPORT

City Council

Meeting Date:

1/11/2022

Staff Report Number:

22-007-CC

Consent Calendar:

Authorize the city manager to execute a cost sharing agreement with the County of San Mateo for the Coleman and Ringwood Avenues transportation study and appropriate funding to the capital improvement plan for the study

Recommendation

Staff recommends that the City Council authorize the city manager to execute a cost sharing agreement with San Mateo County (Attachment A) for the Coleman and Ringwood Avenues transportation study (Study) and appropriate \$225,000 from Measure W to the capital improvement plan for the Study.

Policy Issues

The Coleman and Ringwood Avenues Study is consistent with general plan circulation element policies to improve bicycle and pedestrian safety (CIRC-1.7 and 1.8), support safe routes to school programs (CIRC-1.9), accommodate all modes (CIRC-2.1), support use of streets for people walking and bicycling (CIRC-2.7), and expand the bikeway network (CIRC-2.9.)

Background

The study area for this Study is the extent of Coleman Avenue from Willow Road to Ringwood Avenue and Ringwood Avenue from Bay Road to Middlefield Road (Attachment B.) Coleman and Ringwood Avenues are both important routes for students walking and bicycling to several area schools, including Menlo-Atherton High School, Laurel Elementary School (both campuses), the Peninsula School, KIPP Valiant Community Prep, and Silicon Valley International School. The Menlo Park transportation master plan identifies improved bicycle facilities as a priority project on Coleman Avenue from Willow Road to the City border, as well as a desired extension of that route north through the County-owned portion of Coleman Avenue to Ringwood Avenue.

Coleman Avenue is one of three roads (along with Bay Road and Middlefield Road) that connect Ringwood Avenue with Willow Road. The traffic volumes on Coleman are lower than Bay and Middlefield, making it a potentially less stressful route for children that bicycle or walk to school. Ringwood Avenue, while primarily located within the County, is an important part of a bicycling and walking route that connects from downtown and Caltrain to the Belle Haven neighborhood and the Bayfront area. The Ringwood Avenue pedestrian and bicycle bridge is an integral component of that route, offering a less stressful, separated alternative to crossings over US 101 at Marsh Road or Willow Road and allowing many students to travel to schools on both sides of US 101.

In 2007, the City hired a consultant to conduct a safe routes to school plan for Laurel School that identified improvements along Coleman Avenue, including along the County's portion of the street. The study

identified several improvement options, including one-way traffic on the County portion, adding bicycle lanes or a multiuse path along one side of the street.

Laurel School's Upper Campus opened in 2016 in the Willows neighborhood serving fourth and fifth grade students in the Laurel School attendance area. For students in the Lindenwood (Atherton), Menlo Oaks (unincorporated), and South of Seminary-Vintage Oaks neighborhoods, the most direct route to the Upper Campus is via Coleman Avenue. Similarly, students in the Willows use Coleman to access both Lower Laurel Elementary and Menlo-Atherton High School. However, the lack of sidewalks in the County portion of Coleman Avenue and the lack of bicycle facilities along the entire length of Coleman mean that students walking and bicycling must share street space with automobiles, school buses and SamTrans 'school tripper' buses.

Analysis

In summer 2021, County Supervisor Don Horsley requested that staff from the County of San Mateo Office of Sustainability develop a study to look at potential redesign of Coleman and Ringwood Avenues within District 3 of the County. County staff approached City staff to request coordination on the study and extension of the study to cover the portion of Coleman Avenue within the City of Menlo Park. The study has a primary goal to determine preferred conceptual designs for Ringwood and Coleman Avenues through a robust community engagement process, including gathering and analyzing data, developing and applying evaluation criteria, and identifying improvements to active transportation, safety and mobility.

At the September 21, 2021 meeting, the Menlo Park City Council received a status update on City Council work plan and priorities for FY 2021-22 and added participation in the Coleman and Ringwood Avenues Study to the list of priorities. Since then, staff has coordinated with the County to develop a scope of work, fee estimate and schedule. To support the efficient launch of this study, the County engaged the consulting firm W-Trans through an existing on-call agreement that W-Trans holds with the County Department of Public Works.

Since then, staff have been negotiating a cost sharing agreement (Attachment A) between the City and the County to jointly fund and cooperate on the delivery of this Study. As the contracting agent and primary funder, the agreement establishes the County as the primary authority for the Study, with the City serving as a funding and project management partner and the lead on coordination with City Council and the Complete Streets Commission. Both parties have the right to withdraw from the contract after a 30-day notice, minimizing any potential expenditure of funds that would occur should the City opt to withdraw for any reason.

The scope of work, included as an exhibit to the cost sharing agreement (Attachment A) identifies a robust effort that includes multiple methods and opportunities for public engagement in the study process. The study will be led jointly by staff from the County and City. The two roadways are primarily within the City of Menlo Park or County of San Mateo jurisdiction, though a small portion of Ringwood Avenue (one side of the street adjacent to a portion of the Menlo-Atherton High School campus) is within the Town of Atherton. The Town of Atherton is not a funding partner for this study, but will be participating as a stakeholder.

The study will be guided by a Technical Advisory Committee and a Community Advisory Committee. The Technical Advisory Committee will include representation from public agencies (including Menlo Park, San Mateo County and Atherton), respective law enforcement agencies, the Menlo Park Fire District, and administrators from several schools. The Community Advisory Committee will include a diverse set of representatives including students and parents from several schools, members of relevant commissions (City of Menlo Park Complete Streets Commission, County Bicycle Pedestrian Advisory Committee, and

Town of Atherton Transportation Commission), local residents, community-based organizations (CBOs) serving the Belle Haven neighborhood and East Palo Alto, and local businesses. Staff are working with the County to identify and invite individuals to participate on the Community Advisory Committee.

The study will also include directly engaging two or three CBOs to help ensure participation by residents of the Belle Haven neighborhood and East Palo Alto. The County and the City will partner on a process to contract with these organizations using an approach similar to an existing set of contracts that the County holds with community organizations to support engagement on a range of County projects.

The study is expected to start in January 2022 and take approximately 18 months to complete. Major anticipated milestones for the study include:

- Summary of existing conditions and travel patterns – Spring 2022
- Development of improvement alternatives – Summer 2022
- Evaluation of alternatives – Winter 2022/23
- Development of final report – Spring 2023
- Community outreach and CAC and TAC meetings – throughout the study process

In addition to these core work tasks, the scope of work includes several optional tasks that would only be initiated at the joint request of the City and County. These potential tasks include renderings of proposed improvements, additional analysis of traffic impacts, additional data collection and additional outreach.

Staff will provide regular updates to both the Complete Streets Commission and the City Council on study progress and will return with more substantial updates and potential requests for direction at major study milestones and for adoption of a final report.

Impact on City Resources

The cost sharing agreement sets the City contribution as one-third of the cost of the study. Staff are requesting that the City Council appropriate \$225,000 to the capital improvement plan for this project from San Mateo County Measure W funds, the eighth-cent sales tax measure passed in 2018 for local safety, pothole and congestion relief improvements. Table 1 identifies the total costs by line item.

Item	Study budget	CIP request	Notes
W-Trans Core tasks	\$361,000	\$120,000	
W-Trans Optional tasks	\$136,000	\$45,000	To be initiated at joint request of City and County
W-Trans subtotal	\$497,000	\$165,000	
CBO Outreach*	\$30,000	\$10,000	\$10,000 per CBO, up to 3
Total Potential cost	\$527,000	\$175,000	
Menlo Park staff time		\$50,000	Offset by a commensurate reduction in staff time spent on other projects funded by the General Capital Fund.
Total CIP request		\$225,000	

Note: all amounts rounded to nearest thousand

* CBO Outreach is still being contracted and is not included in the current agreement. An amendment to the agreement or additional agreement would be completed to fund this work.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§15378. Future proposed improvements identified by this study will undergo environmental review as needed.

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. Cost sharing agreement
- B. Study area map

Report prepared by:
Hugh Louch, Assistant Public Works Director

Report reviewed by:
Nikki Nagaya, Public Works Director

Agreement No. _____

**AGREEMENT
BETWEEN THE CITY OF MENLO PARK AND THE COUNTY OF SAN MATEO
FOR FUNDING OF THE COLEMAN AND RINGWOOD AVENUES STUDY**

This Agreement (Agreement) is entered into this ____ day of _____, 2022, by and between the County of San Mateo, a political subdivision of the state of California, (County), and the City of Menlo Park, an incorporated place of the state of California (City), each a "Party" and collectively the "Parties".

* * *

WITNESSETH:

WHEREAS, Coleman and Ringwood Avenues are both used by students walking and bicycling to school; and

WHEREAS, the City of Menlo Park Transportation Master Plan identifies proposed improvements for bicycling on Coleman Avenue as a Tier 1 priority; and

WHEREAS, the County Unincorporated Active Transportation Plan identifies Coleman and Ringwood Avenues as Tier 1 priorities for bicycle improvements; and

WHEREAS, the County Unincorporated Active Transportation Plan also identifies both Coleman and Ringwood Avenues as part of a Pedestrian Priority Destination Area in the vicinity of Laurel Elementary and Menlo Atherton High Schools, as well as other schools in adjacent neighborhoods; and

WHEREAS, it is desirable to provide a connected bicycle and pedestrian network across jurisdictional boundaries and that the Parties work together in a coordinated, holistic approach to improve bicycle and pedestrian access, and collectively participate in funding the Coleman and Ringwood Avenues Study (Project) given that both Parties own and maintain road right of way in the project area; and

WHEREAS, the Project is located on Coleman Avenue between Ringwood Avenue and Willow Road, and on Ringwood Avenue between Middlefield Road and Bay Road; and

WHEREAS, The County has prepared a Scope of Work for the Project at a cost not to exceed \$497,574, pursuant its competitive on-call engineering professional services agreement with W-Trans (Consultant); and

WHEREAS, on September 21, 2021, the City included the Project in its City Council adopted 2021 Priorities and Work Plan Progress Report and on January 11, 2022, the City authorized its City Manager to execute this MOU on behalf of the City with the County and appropriated funding for the Project; and

WHEREAS, the County is the lead agency administering the Project with the Consultant; and,

WHEREAS, the Parties have agreed to a cost-share of 67%, not to exceed \$333,375 (County), and 33%, not to exceed \$164,199 (City), for a total Project cost not to exceed \$497,574.

NOW, THEREFORE, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following **exhibits** and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Consultant Scope of Work and Fee Proposal

Exhibit B—On-call Professional Engineering Services Agreement between County of San Mateo and W-Trans

2. Funding and Scope of Services

The County and City agree to collaborate on the Project as described in Exhibit A, attached hereto and incorporated herein by this reference. The County has retained the Consultant through an existing County Department of Public Works on-call engineering professional services agreement (Exhibit B, attached hereto and incorporated herein by this reference) to provide the Scope of Work as described in Exhibit A.

The Scope of Work (Exhibit A) consists of primary tasks (Tasks 1-8) and optional tasks (Task 9). While the County will collaborate with and seek input from City Project Team members on any optional tasks or increases in the Project Scope of Work in Exhibit A or total cost of the project, the County reserves the right to unilaterally execute optional tasks or increase the Scope of Work in Exhibit A and total cost of the project beyond the \$497,574 total. If the County elects to do so, the City may, but is not obligated to, reimburse the County for those optional tasks or excess costs. Any agreement by the City to reimburse for such optional tasks or excess costs, shall be in the form of approval through written correspondence for optional tasks or an Amendment to this Agreement for costs in excess of the Project total.

The City may request that the County execute optional tasks or increase in the Scope of Work in Exhibit A and total cost of the project beyond the \$497,574 total. If such a request by the City is granted, the County may, but is not obligated to, share in those optional or excess costs. Any agreement by the County to share in such excess costs, shall be in the form of approval through written correspondence for optional tasks or an Amendment to this Agreement for costs in excess of the Project total.

Labor provided by personnel from one Party to complete any project tasks authorized per this agreement is to be provided without expectation of payment or reimbursement by the other Party.

3. Payments

In consideration of the cost-share in accordance with all terms, conditions, and specifications set forth in this Agreement, the City agrees to reimburse the County for 33% of the total Project costs, not to exceed \$164,199.

Costs from the Consultant will be tracked and approved by deliverable by the County. All deliverables, or portions thereof, shall be approved by County personnel prior to payment in a timeframe that is mutually agreed upon with the Consultant. The County will review and pay invoices issued by the Consultant on a monthly basis and will be solely responsible for ensuring all invoices are consistent with the Scope of Work and work performed. The County reserves the right to withhold payment to the contractor if the County determines that the quantity or quality of the work performed is unacceptable, as set forth in Exhibit B.

The County will submit the contractor's invoices to the City on a quarterly basis, accompanied by a record of County payments to the Consultant (pursuant to Exhibit B) as proof that services were rendered and paid for by the County. City payments shall be tied to the completion of Consultant deliverables or portions of completed deliverables by subtask. Upon receipt of each invoice and its accompanying documentation, the City shall acknowledge receipt of said invoice and shall pay a 33% share of each invoice, up to the maximum amount described by this Agreement, within thirty (30) days of receipt of the invoice, delivered by mail or paid by electronic funds transfer (EFT) to the County as follows:

To San Mateo County: Attention: Jessica Stanfill Mullin, Program Manager
 San Mateo County Office of Sustainability
 455 County Center, 4th Floor
 Redwood City, CA 94063

Estimated Payment Schedule*:

Month/Year	Invoice #
Apr 2022	1, covering Jan – Mar 2022
Jul 2022	2, covering Apr – Jun 2022
Oct 2022	3, covering Jul – Sep 2022
Jan 2023	4, covering Oct – Dec 2022
Apr 2023	5, covering Jan – Mar 2023
Jul 2023	6, covering Apr – Jun 2023

** Additional invoices may be added on an as-needed basis to extend over the duration of the project schedule, until project completion.*

4. Term

The term of this Agreement shall commence upon execution of the Agreement by both Parties and terminate upon Project completion, unless further extended by mutual written agreement of both Parties.

5. Termination

Either Party may terminate this Agreement without cause at any time by written notice. Unless the Parties agree otherwise, the termination shall become effective thirty (30) days after the written notice to terminate.

The County shall be entitled to receive payment for 33% share of expenses incurred prior to termination of the Agreement. If this Agreement is terminated, within thirty (30) days of termination, County shall invoice the City all actual costs related to the Project, authorized by both Parties and incurred by County up to the date of termination; the County shall not invoice or otherwise seek from the City any costs incurred by the County after the date of termination.

6. Relationship of Parties

As set forth in Section 3, the County shall act as the fiscal agent and the City shall act as a funding partner and reimburse the County for services performed by the Contractor as described in Exhibits A and B.

City and County personnel will jointly serve on a Project Team that meets weekly or as needed. The County will work in collaboration with and gather input from City personnel through Project Team meetings and communications on interpretation of scope and draft Consultant deliverables (pursuant to Exhibit A). The City Assistant Public Works Director – Transportation shall be the main point of contact for all City input on project scope and deliverables.

As Project Manager, the County will be responsible for providing final direction and approval to the Consultant prior to work being initiated. In the event of a disagreement between the County and City on interpretation of scope that cannot be resolved, the County reserves the right to direct the Consultant's work as the Project Manager and as the party in contractual privity with the Consultant.

County personnel will serve as the lead on correspondence and meetings with the San Mateo County Board of Supervisors and County commissions, and City staff will serve as the lead on correspondence and meetings with City Council and City commissions.

7. Indemnity

- a. It is agreed that each Party shall defend, hold harmless, and indemnify the other Party and its officers, employees, agents, and servants from any and all claims, suits, or actions of every name, kind, and description brought by a third party which arise out of the terms and conditions of this Agreement and which result from the acts or omissions of either Party and/or its officers, employees, agents, and servants.
- b. Each Party shall defend, hold harmless, and indemnify the other Party from and against any and all claims for wages, salaries, benefits, taxes, and all other withholdings and charges payable to, or in respect to, either Party's representatives for services provided under this Agreement.
- c. The duty of each Party to defend, hold harmless, and indemnify the other as set forth herein shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
- d. In the event of concurrent negligence (or intentional/reckless acts) of County and/or its officers and employees, on the one hand, and City and/or its officers, employees, agents, and servants, on the other hand, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative fault.

8. Insurance

- a. Each Party agrees to maintain its status as a legally self-insured public entity for general, auto and professional liability insurance coverage with limits of no less than \$1,000,000 per occurrence and no less than two million dollars (\$2,000,000) aggregate. Each Party's insurance will be considered primary for all claims arising out of acts of that Party. Each Party also agrees to require all consultant, contractors and subcontractors engaged to work on this Project to name the other Party as an additional insured as well.
- b. Each Party will maintain Workers' Compensation as required by law for all its employees with limits not less than \$1,000,000 per occurrence. Neither Party's insurance shall be called upon to satisfy any claim for workers' compensation filed by an employee of the other Party. Each Party will provide the other with a Waiver of Subrogation endorsement for Workers Compensation.

Each Party also agrees to require all consultants, contractors and subcontractors engaged to work on this Project to carry the same Workers Compensation insurance limits and endorsements.

- c. Each Party will require all consultants, contractors, and subcontractors engaged to work on this Project to carry insurance in levels commensurate with the exposure of the respective work provided by the consultant, contractor or subcontractor. of the respective work provided by the consultant, contractor or subcontractor.

9. Severability

If any term or provision of this Agreement is found to be invalid or not enforceable to its full extent, such term or provision shall be enforced to the fullest extent permitted by law, and the validity of the remaining provisions hereof shall not be affected thereby.

10. Headings

The headings of each section of this Agreement are for the purposes of convenience only and shall not be construed to either expand or limit the express terms and language of each section.

11. Representations of Authority

Each Party signing this Agreement on behalf of a Party which is not a natural person hereby represents and warrants to the other Party that all necessary legal prerequisites to that Party's execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the Party on whose behalf he or she signs.

12. Governing Law

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

14. Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

15. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via email to the email address listed below; and

(2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Carolyn Bloede, Director, Office of Sustainability
Address: 455 County Center, 4th Floor, Redwood City, CA, 94063
Telephone: 650-400-0098
Email: cbloede@smcgov.org

In the case of City, to:

Name/Title: Nicole Nagaya, Public Works Director
Address: City of Menlo Park
701 Laurel Street, 1st Floor, Menlo Park, CA, 94025
Telephone: (650) 330-6740
Email: PWSupportStaff@menlopark.org

17. Electronic Signature

Both County and City wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

* * *

THIS AGREEMENT IS NOT VALID UNTIL SIGNED BY ALL PARTIES.

For City:

Starla Jerome-Robinson
City Manager
City of Menlo Park

Date

Approve as to Form
Nira Doherty
City Attorney
City of Menlo Park

Attest
Judi Herren
City Clerk
City of Menlo Park

For County:

Purchasing Agent Signature
(Department Head or
Authorized Designee)
County of San Mateo

Date

Purchasing Agent Name (please print)
(Department Head or **Authorized** Designee)
County of San Mateo

Purchasing Agent or **Authorized** Designee
Job Title (please print)
County of San Mateo

Exhibit A

[insert copy of W-Trans Scope of Work]

Exhibit B

[insert copy of Agreement and Amendment between County of San Mateo and W-Trans]



December 10, 2021

Mr. Krzysztof Lisaj
County of San Mateo Department of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063

Draft Proposal to Prepare the Coleman and Ringwood Avenues Transportation Study

Dear Mr. Lisaj;

W-Trans is pleased to provide this proposal to prepare the Coleman and Ringwood Avenues Transportation Study. The following scope of services is suggested based on our recent correspondence, our knowledge of the study area, and our experience with numerous other transportation studies in the Bay Area.

Understanding of the Study Goal

We understand that the project goal is to determine a preferred corridor conceptual design for Ringwood and Coleman through a robust community engagement process, including gathering and analyzing data, developing evaluation criteria, and identifying improvements that improve active transportation, safety and mobility. Throughout the process there will be oversight from a Technical Advisory Committee as well as engagement with community stakeholders through a Community Advisory Committee and through direct community and stakeholder engagement. Preferred conceptual design options will be presented to the San Mateo County Board of Supervisors and Menlo Park City Council.

Study Area and Periods

The study area will consist of Coleman Avenue between Willow Road and Ringwood Avenue, Ringwood Avenue between Middlefield Road and Bay Road, and the surrounding streets connecting to Coleman Avenue and Ringwood Avenue. Conditions during three time periods will be documented and analyzed:

- weekday a.m. commute/school drop off
- weekday p.m. school pickup
- weekday p.m. commute

Project Tasks

Task 1: Project Initiation and Administration

Task 1.1. Kick-Off Meeting

W-Trans will meet with County/City staff to discuss the scope of work and project schedule, establish communication protocols, coordinate preparation activities, and collect studies, data, and other information that will be used throughout the project. During the kick-off, W-Trans will conduct a brainstorming session to clarify roles, schedules, the community engagement strategy, study goals, identification of key stakeholders, and the composition of the Community Advisory Committee (CAC) and Technical Advisory Committee (TAC).

Task 1.2 Final Scope of Work and Project Schedule

Based on the discussions at the project kick-off meeting and follow-up correspondence, W-Trans will work with the County/City to make any minor refinements as needed to the Scope of Work and Project Schedule, including the Community Engagement Schedule.

Task 1.3 Project Administration

W-Trans will schedule project management team coordination meetings with County/City staff as well as ongoing project coordination via conference calls, video conferencing, e-mail or other means. Coordination meetings will occur on an ongoing basis throughout each of the project tasks listed below, on a projected bi-weekly basis as needed for a total of up to 40 meetings over an approximate 18-month time frame.

Deliverables:

- Ongoing: Meeting Notes
- 1.1: Draft Study Goals
- 1.2: Final Scope of Work
- 1.2: Project Schedule

Task 2: Community and Technical Advisory Committee Meetings (4-5 each)

County/City staff will gather and communicate with TAC and CAC members. W-Trans, Toole Design and funded Community-Based Organizations will work with County/City staff to prepare meeting agenda and presentation materials for each meeting, will facilitate as needed, and present material and respond to questions at meetings. Meeting notes will be taken by W-Trans Team staff and distributed to County/City staff following each meeting.

The topic and agenda for each meeting will be reviewed and confirmed prior to each meeting. Agendas will be finalized at least one week prior to meeting date. We have assumed one meeting with the CAC and TAC for each of the following topics:

1. Review and provide feedback on study goals (Task 1), needs, and existing conditions (Task 4)
2. Input on criteria and alternatives to be considered (Task 5)
3. Review and evaluate draft alternatives (Tasks 5 and 6, possible need for two meetings)
4. Review Preferred Alternative (Task 6)

Deliverables:

Meeting agendas, presentations, meeting minutes and graphic materials

Task 3: Public Participation and Outreach

This task will be led by Toole Design, who will develop community engagement activities / tools and facilitate events to solicit feedback from local residents and other stakeholders. The amount of activity that occurs within each of the individual subtasks to implement the Community Engagement Strategy may be subject to change as the study progresses. Presentation material developed during key outreach phases will be designed so that it can be re-purposed and revised as needed for use during the different engagement activities. The County and consultant team acknowledge the need for adaptability in the engagement process and while the level of effort and work product may be subject to change between the subtasks, the overall level of effort and work products to achieve sufficient public participation and feedback to reach all stakeholders will remain the same. Due to potential COVID-19 restrictions, community engagement activities may be held in-person or virtually and will be designed with this flexibility in mind.

All public-facing community engagement materials shall be made available in grade-8 reading level English. The County will provide interpretation at events, and Toole Design will coordinate translations of the engagement

materials and provide an initial round of QA/QC. Toole Design assumes that the materials will be translated into Spanish. The W-Trans Team will provide one round of revisions for each deliverable based on a single set of non-conflicting, consolidated comments from County/City staff.

Task 3.1. Community Engagement Strategy

We will prepare a draft Community Engagement Strategy for County staff that will identify:

- Goals for community engagement
- Key issues and opportunities regarding community process and perspectives
- Engagement strategies and activities, including target dates, materials, involvement of CBOs, and staffing responsibilities

We will revise the draft Community Engagement Strategy based on input from County/City staff and key stakeholders. County/City staff will be responsible for providing one consolidated set of comments representing feedback from County/City staff, the TAC, CAC, and CBO partners.

The Strategy will include four phases of engagement:

Phase		Activity
Phase 1	Project initiation	Introduction; gathering initial input
Phase 2	Draft alternatives	Presentation and review of draft alternatives
Phase 3	Preferred Alternative	Presentation and review of Preferred Alternative and Draft Study components
Phase 4	Final Study	Project wrap-up; presentation of the Final Study

Task 3.2. Develop and maintain Study webpage

The W-Trans Team will develop materials (copy and graphics) for a project webpage and will provide content updates during each of the four phases. We will prepare draft and final copy and materials to the webpage text at each interval, based on one set of non-conflicting, consolidated comments from County/City staff. The proposed budget assumes that the webpage will be hosted on the County website and updated by County staff.

Task 3.3. Community Surveys

The W-Trans Team will develop two online surveys to solicit input from the community during the first two phases of engagement. The purpose of the first survey (during Phase 1) will be to solicit input on existing conditions and potential improvements for the two corridors. The purpose of the second survey (during Phase 2) will be to solicit input on the draft alternatives. The surveys can be integrated into and/or referenced in an online, interactive project map provided by the County.

Survey distribution will align with the scheduled community workshops. At the close of each survey, we will prepare a high-level summary of the comments, which will be incorporated into the engagement summary memo (Task 3.10) and the next design phase.

For each survey, we will prepare draft survey text and questions for County/City staff review.

Task 3.4. Interactive Community Workshops (3)

The W-Trans Team will design and facilitate up to three (3) community workshops, one during each phase of engagement (for Phases 1-3). The workshops will either be held virtually or in-person, per San Mateo County public health mandates. If the workshops are held in person, they could be “pop up” events at pre-existing community gatherings such as a Farmers’ Market, or could take the form of an independent open house/workshop. If held virtually, the meetings will be held via Zoom or similar video conferencing platform. County staff will be responsible for identifying the location of the workshops.

The W-Trans Team will prepare a workshop presentation. Additional materials will include a project information postcard/flyer developed for the workshop, a sign-in sheet to collect email addresses, large maps of the project area, and additional activities as budget allows. The online surveys will be advertised at the workshops during Phase 1 and 2, and paper copies will be available for participants to fill out at the event. County/City staff will print and distribute flyers about the events, while the W-Trans team will print the workshop materials. County staff will collate and digitize the responses to any paper survey responses

The W-Trans Team will prepare a high-level summary of the key takeaways from each workshop to be incorporated into the engagement summary memo (Task 3.10). Input gathered at the workshops will inform the refinement of the strategies and recommendations to be included in the next design phase.

Task 3.5. Walking Tours (2)

The W-Trans Team will design and host up to two walking tours – one for each corridor. These tours will focus on site-specific transportation issues and opportunities on Coleman Avenue and Ringwood Avenue. Participants may include TAC and CAC members, or other stakeholders, to be determined with County/ City staff. We anticipate that County/City staff and/or CBO partners will be needed to serve as tour hosts, in addition to the consultant team, and that County/City staff will send out invitations.

The tours will be designed to be about 60-90 minutes in length and would take place during times that allow for community and stakeholder participation (e.g., weekday afternoon after the school bell or a weekend morning). Meeting locations, days and times will be determined with County/City staff.

Materials for the tours will include:

- Route map
- Comment sheet for participants

The W-Trans Team will hold a short “host” training prior to the event to review the route and safety reminders with tour hosts. After the tour, the W-Trans Team will review the comments collected on the comment sheets.

The W-Trans Team will prepare a high-level summary of the key takeaways from the two tours to be incorporated into the engagement summary memo (Task 3.10). Input gathered at the workshops will inform the refinement of the strategies and recommendations to be included in the next design phase.

Task 3.6. Presentations to decision-making, Council/advisory bodies, and stakeholder groups

The W-Trans Team will revise presentation material prepared for other engagement tasks as needed and be available to present and/or respond to questions for up to three rounds of meetings during Engagement Phases 1, 2 and 3 to decision-making/advisory bodies (e.g., the County BPAC, the Menlo Park Complete Streets Commission, and the Menlo Park City Council) for up to nine meetings total.

The W-Trans Team will also use these presentation materials, or materials prepared for other engagement tasks, to present at or support meetings with up to nine other stakeholder groups. The total number of decision maker and stakeholder meetings may vary depending on project needs and level of effort required for each meeting.

The W-Trans Team will prepare one presentation template (draft/final) for meetings held during each of the Engagement Phases. County/City staff will be responsible for edits to the presentation between meetings as needed. The W-Trans Team will prepare meeting notes following each meeting.

Task 3.7. Community Engagement Summary Memorandum

In collaboration with County/City staff, Toole Design will prepare a “living document” where key takeaways from each phase of the engagement (one per Phase, total of three memos) will be documented. The document will be high-level and focus on the input that will be incorporated into the next phase of the design work, or the Draft Study. Both County/City staff and W-Trans team members will be able to contribute to the report as various staff will be facilitating events and activities. Once the engagement activities are completed, the document will be incorporated into the Final Study report.

Deliverables:

- 3.1: Community Engagement Strategy (draft/final)
- 3.2: Development and maintenance of project web page (one round of revisions at each engagement phase)
- 3.3: Preparation and analysis of two community surveys (paper, mobile app and online)
- 3.4: Community Workshops (3): presentations and materials, facilitation, workshop summary notes
- 3.5: Walking tours (2): facilitation and materials, summary notes
- 3.6: Presentations to Board/Councils/Advisory Bodies/Stakeholder Groups: presentations, attendance, and summary notes (meeting support up to the available budget at the request of County/City)
- 3.7: Community Engagement Summary Memorandum

Task 4: Existing Conditions

Task 4.1 Data Collection (including bike/ped and traffic counts, collision data, ROW/utilities)

The W-Trans Team will compile and summarize existing data and transportation operating conditions for the following:

- A. Safety: W-Trans will analyze and summarize the most recent 5-years of SWITRS data in addition to any crash reports provided by County and Menlo Park not reflected in SWITRS. We will map all high crash location intersections and segments, documenting crash participants and crash types/ collision factors.
- B. On-Street Parking Restrictions, Right of Way, Utilities, As-Built, tree locations, GIS files. We will coordinate with County/City staff and local agencies to obtain data that may inform and/or affect design decisions.

Traffic Counts: W-Trans will gather recent intersection and roadway traffic and bicycle/ pedestrian counts from readily available sources (including, if available, vehicle classification, speed, volume, time of day, and number of vehicles). This will help inform the traffic operations discussion during the initial TAC, CAC and community engagement meetings.

Any new traffic counts for each intersection and/or a study period will be conducted after the initial TAC, CAC and community engagement meetings. If County/City staff decide that a change in data collection is warranted then the scope and budget will be augmented via an optional task for additional traffic counts.

Task 4.2 Review relevant plans, policies, and background documents

The W-Trans Team will review transportation-related studies and documents to be provided by County/City staff (e.g., San Mateo County Active Transportation Plan, Menlo Park Transportation Master Plan, bicycle and pedestrian plans, safe routes to school maps and recommendations, traffic impact studies, grant applications, programmed improvements, road standards etc.) and briefly summarize the needs, opportunities and recommendations identified in these studies. The purpose of this task is to reconcile the various recommendations, identify any policy or road standard conflicts, and bring the information to a common point in time (2021).

Task 4.3 Existing Conditions Memorandum

We will prepare an Existing Conditions Memorandum with all the information identified above. One draft will be prepared.

Deliverables:

- 4.1: Data collection and analysis
- 4.2: Plan, policy and background document review
- 4.3: Existing Conditions Memorandum

Task 5: Evaluation Criteria and Street Design Alternatives Development**Task 5.1 Develop evaluation criteria**

W-Trans will prepare a draft list of performance metrics and prioritization criteria tied to the Study goals approved by the TAC and CAC, to be used to evaluate street design alternatives. The metrics and criteria will include industry standard operational considerations as well as conditions particular to the study area and priorities heard during stakeholder and community outreach. Potential considerations for evaluation criteria, which should tie into the Study goals, can be modified in consultation with the TAC/CAC and County/City staff, may include the following:

- Safety (based on collision data analysis)
- Equity considerations
- Transportation sustainability (promotion of active transportation mobility options)
- Green infrastructure
- Drainage, utilities
- Congestion and speed management (reduce cut-through traffic or vehicle delay)
- Access to nearby schools and employment centers
- Traffic circulation and on-street parking impacts
- Cost
- Other prioritization criteria to facilitate project ranking and phasing
- Weighting of evaluation criteria based on input from the TAC/CAC and community/ stakeholders

Task 5.2 Develop Street Design Alternatives

W-Trans will develop three to five street design alternatives for both Coleman Avenue and Ringwood Avenue, including one no-build alternative. The alternatives will be informed by input from the TAC, CAC and other stakeholders as part of the community engagement processes. We will prepare preliminary illustrative layouts (e.g., 10-percent concept plans) and preliminary concept level cost estimates for each alternative.

Task 5.3 Street Design Alternatives Memorandum

W-Trans will prepare a Street Design Alternatives Memorandum describing the process used to determine evaluation criteria, and a description of three to five conceptual alternatives each for Coleman Avenue and Ringwood Avenue with preliminary illustrative layouts and concept level costs. One draft Memo is assumed.

Deliverables:

- 5.1: Evaluation Criteria
- 5.2: Street Design Alternatives
- 5.3: Street Design Alternatives Memorandum

Task 6: Street Design Alternatives Evaluation and Selection**Task 6.1 Evaluation of Street Design Alternatives**

Using the evaluation criteria developed in Task 5 W-Trans will analyze each alternative and highlight the key benefits, impacts and tradeoffs and choices for each corridor.

Task 6.2 Selection/Refinement of preferred street design alternatives(s)

A preferred street design alternative or alternatives will be selected based on the analysis of the benefits, impacts and tradeoffs of each alternative with input from County/City staff, the TAC and CAC and the community during the engagement process. The goal will be a single preferred street design alternative for each corridor that the TAC and CAC agree upon, which could include a hybrid of alternatives. However, in the event that there is a difference of opinion, there may be a need to refine certain alternatives and/or present more than one alternative to the Board of Supervisors/City Council, with an explanation of pros and cons of each one. County staff have noted that a consensus will be required for the County Board of Supervisors to consider a change to the existing County road standards.

Task 6.3 Street Design Alternatives Evaluation Memorandum

A memorandum presenting the analysis of impacts of each defined alternative, the alternatives evaluation process, and the rationale for selection of a preferred alternative will be prepared. One draft Memo is assumed.

Deliverables:

- 6.3: Street Design Alternatives Evaluation Memorandum

Task 7: Administrative Draft Study, Draft Study**Task 7.1 Administrative Draft Study**

We will consolidate the draft memoranda into one comprehensive report, including an executive summary and technical appendices. One Administrative Draft Study is assumed. The draft technical memoranda to be included are:

- Community Engagement Activities and Outcomes Memorandum
- Existing Conditions Memorandum
- Street Design Alternatives Memorandum
- Street Design Alternatives Evaluation Memorandum

Task 7.2 Draft Study

W-Trans will incorporate County/City staff and TAC comments on the Administrative Draft Study and prepare a Draft Study. One Draft Study is assumed.

Deliverables:

- 7.1: Administrative Draft Study
- 7.2: Draft Study

Task 8: Final Study**Task 8.1 Prepare Final Study**

W-Trans will incorporate County/City staff and TAC/CAC comments and prepare a Final Study for presentation to the County Board of Supervisors and Menlo Park City Council.

Task 8.2 Board and Council Adoption

W-Trans will present the Final Study to the Board of Supervisors and Menlo Park City Council.

Deliverables:

- 8.1: Final Study
- 8.2: Presentation for County Board of Supervisors and Menlo Park City Council

Task 9: Optional Tasks/Contingency

A contingency reserve should be set aside to address additional work items that may arise over the course of the project. This could include additional meetings that may be requested by the County/City which are outside of the current scope, data collection, alternatives development and analysis, additional public participation and outreach, report drafts, environmental documentation, or other additional items deemed appropriate and as directed by County/City staff. The W-Trans Team will use this budget only with prior written consent from the County/City.

Potential Optional Tasks

The following are potential optional tasks.

Task 3: Public Participation and Outreach

Task 3.0. Translation Services

If additional languages are requested, the time for translation and the initial QAQC can be billed to an optional task.

Task 3.8. Road Show Materials

As an optional task, so that County/City staff can extend the reach of public input beyond what the consultant team can attend, the W-Trans Team will provide "road show" outreach materials to staff that can be used at other events. This way, a similar set of questions can be asked, and input can be collected in the same format. County/City staff anticipates three (3) road show events for each phase of outreach, for a total of nine (9) events. Road show events could also be an opportunity to have CBO-led events.

Examples of road show materials may include the following:

- *A one-page Facilitator's Guide (i.e., key talking points for staff); one version for each round of engagement (3)*
- *Project information fact sheet (postcard or flyer); one version for each round of engagement (3)*
- *Maps of the corridor / draft alternatives*

The draft materials will be reviewed by County/City staff and will be revised based on one set of consolidated comments from County/City staff. County/City staff will be responsible for printing the road show materials and summarizing the input received at road show events. Additional materials can be developed as budget allows. NOTE: consultant team attendance is not anticipated at the road show events.

Task 3.9. Demonstrations (2)

As an optional task, the W-Trans Team will plan two demonstration events to allow local residents and stakeholders to visualize and experience potential changes along Coleman and Ringwood Avenues. We will coordinate with County/City staff on the timing, materials, traffic control needs, and notification requirements for each event. Generally, these events last several hours, with staff on hand to explain the design alternatives and solicit feedback. The demonstration events may possibly be combined with the Road Show events.

Task 3.10. Coordination with Community-Based Organizations

As an optional task, the W-Trans Team will provide strategic support to County-led partnerships with Community-Based Organizations on the engagement tasks. Support to County staff can take several forms and can be further defined through the duration of the project. Examples include:

- *Guidance on selecting suitable CBO partners, and best practices for CBO partnerships*
- *Providing sample MOUs/ work plans for CBOs*
- *Providing culturally appropriate materials for CBO use (e.g., fliers, posters, email blasts)*
- *Meeting facilitation with CBOs*

We have assumed that County/City staff will identify the CBOs and be responsible for contracting directly with selected partners. All CBO input on consultant deliverables and materials will be provided directly to County/City staff for review and approval.

Task 3.11. Renderings of concept alternatives

As an optional task, the W-Trans Team will develop up to three (3) illustrative renderings (computer generated) communicating "Before and After" conditions showing all modes of transportations including bicyclists and pedestrians as well as trees and adjacent uses. Renderings can be more effective at helping stakeholders visualize the proposed changes in the actual project context rather than relying on engineering concepts or photo examples from other communities. The renderings will reflect localized demographics and may include students, families, older adults, people in wheelchairs/strollers, and ethnic diversity that is representative of the community.

Optional deliverables:

- 3.10: Road show materials: Fact sheets, posters of study area, and facilitators guide (revised for each round of engagement in phases 1-3)
- 3.11: Coordination and implementation of demonstration events (2)
- 3.12: Illustrative project renderings (3)
- 3.13: CBO coordination: specific deliverables TBD

Task 4.1 Data Collection (including bike/ped and traffic counts)

As an optional task, additional traffic counts may be collected at study intersections to supplement the available data.

Task 5.4 Traffic assessment and modeling

The level of traffic assessment and modeling will depend on the preferred alternatives that are selected for evaluation. As an optional task, W-Trans will analyze the Existing plus Project operation of the selected street design alternatives using Synchro software, which will include near-term approved projects and programmed capital improvements (5-10-year horizon). Only one future horizon year is assumed (near-term Existing plus Project) as design alternatives will be developed to address existing concerns, and therefore the analysis will also need to focus on near-term conditions. Traffic operations, vehicular congestion and safety analysis will be conducted to test the efficacy of potential improvements.

Optional deliverable:

- 5.4: Draft Traffic Operations Report for base (Existing Conditions) and horizon (Existing plus Project) years.

Task 6.4 Refined Street Design Alternatives Evaluation Memorandum

If requested, traffic analysis of a refined design may be prepared as an optional task.

Optional deliverable:

- 6.4: Traffic Operations Report for horizon year (Existing plus Project) of a refined design.

Schedule

A detailed project schedule will be prepared and presented at the kick-off meeting. In general, the anticipated schedule is as follows:

Coleman and Ringwood Avenues Study

Project Schedule

1. Project Initiation	February 2022
2. Community and TAC Meetings	March 2022 - March 2023 (approx. quarterly)
3. Public Participation and Outreach	at Key Milestones (February 2022– May 2023)
4. Existing Conditions	February 2022 - May 2022
5. Analysis and Design Alternatives Development	June 2022 – November 2022
6. Alternatives Evaluation and Selection	September 2022 - February 2023
7. Admin Draft Study, Draft Study	March - May 2023
8. Final Study	June - July 2023
Board/City Council Adoption	August 2023
Meetings, Website, Project Administration	Ongoing

Exclusions

The scope of services includes only those items that are specifically identified above. Any additional services beyond those identified above, if needed, would be provided on a time and materials basis after receiving written authorization for the extra work.

Thank you for giving us the opportunity to propose on these services. We look forward to working with you on this important project.

Sincerely,



Mark E. Spencer, PE
Senior Principal, Vice President

MES/mes/SMX901-2.P1-7

Enclosure: Fee Estimate by Deliverable

Estimation of Fee Breakdown by Deliverable (for payment of invoices by deliverable)			
Tasks	Deliverables	Subtask % of Task Total	Task/Subtask Cost
Task 1: Project Initiation and Administration		100%	\$50,958
1.1 Kick Off Meeting, Draft Study Goals	Meeting Notes, Draft Study Goals	6.7%	\$3,408
1.2 Final Scope of Work, Project Schedule	Final Scope of Work and Schedule	5.8%	\$2,948
1.3 Project Administration	Meeting Notes	87.5%	\$44,602
Task 2: Technical and Community Advisory Meetings		100%	\$44,480
Technical and Community Advisory Committee Meetings	Agendas, Materials, Meeting Notes - TAC and CAC 1	100%	\$44,480
	Agendas, Materials, Meeting Notes - TAC and CAC 2		
	Agendas, Materials, Meeting Notes - TAC and CAC 3		
	Agendas, Materials, Meeting Notes - TAC and CAC 4		
	Agendas, Materials, Meeting Notes - TAC and CAC 5		
Task 3: Identification and Analysis of Existing Conditions		100%	\$107,794
3.1 Community Engagement Plan	Draft and Final Community Engagement Plan	6.3%	\$6,803
3.2 Development & maintenance of Study webpage	Draft and Final Website Copy & Graphics - Phase 1	9.0%	\$9,724
	Draft and Final Website Copy & Graphics - Phase 2		
	Draft and Final Website Copy & Graphics - Phase 3		
	Draft and Final Website Copy & Graphics - Phase 4		
3.3 Community Surveys (2)	Draft and Final Survey 1, Summary of comments	16.7%	\$17,956
	Draft and Final Survey 2, Summary of comments		
3.4 Interactive Community Workshops (3)	Presentation and Materials, Facilitation, Workshop Summary notes - Workshop 1	24.0%	\$25,851
	Presentation and Materials, Facilitation, Workshop Summary notes - Workshop 2		
	Presentation and Materials, Facilitation, Workshop Summary notes - Workshop 3		
3.5 Walking and Bicycling Tours (2)	Materials, Facilitation, Summary notes - Tour 1	11.4%	\$12,292
	Materials, Facilitation, Summary notes - Tour 2		
3.6 Presentations to decision-making, Council/advisory bodies, and stakeholder groups	Completion of Phase I Presentation Material, Facilitation, Meeting Summary	22.1%	\$23,854
	Completion of Phase 2 Presentation Material, Facilitation, Meeting Summary notes		
	Completion of Phase 3 Presentation Material, Facilitation, Meeting Summary notes		
3.7 Community Engagement Summary Memorandum	Draft Community Engagement Summary Memo - Phase 1	10.5%	\$11,314
	Draft Community Engagement Summary Memo - Phase 2		
	Draft Community Engagement Summary Memo - Phase 3		
Task 4: Existing Conditions		100%	\$19,720
4.1 Data collection	Data Package consisting of documents and files identified in the scope of work	38.6%	\$7,620
4.2 Review relevant plans, policies, and background docs	Plan, Policy and Background Document Table	22.4%	\$4,420
4.3 Existing Conditions Memorandum	Draft Existing Conditions Memo	38.9%	\$7,680
Task 5: Evaluation Criteria and Street Design Alternatives Development		100%	\$74,980
5.1 Development of Evaluation Criteria	Draft and Final Evaluation Criteria	3.9%	\$2,940
5.2 Development of Street Design Alternatives	Draft Street Design Alternatives and Cost Estimates (3-5 alternatives for both Coleman, Ringwood)	84.4%	\$63,260
5.3 Street Design Alternatives Memorandum	Draft Street Design Alternatives Memo	11.7%	\$8,780
Task 6: Street Design Alternatives Evaluation and Selection		100%	\$17,700
6.3 Street Design Alternatives Evaluation Memorandum	Draft Street Design Alternatives Evaluation and Selection Memo	100%	\$17,700

Task 7: Administrative Draft Study and Draft Study		100%	\$29,150
7.1: Administrative Draft Study	Administrative Draft Study	65.9%	\$19,210
7.2: Draft Study	Draft Study	34.1%	\$9,940
Task 8: Final Study		100%	\$16,630
8.1: Final Study	Final Study	54.7%	\$9,090
8.2: Presentations for County Board of Supervisors and Menlo Park City Council	Presentation, Facilitation for County BOS and Menlo Park City Council meetings	45.3%	\$7,540
Optional Tasks		100%	\$136,162
3.0: Translate materials in a language other than Spanish	Translated community engagement materials	3.7%	\$5,000
3.8: Road show materials	Fact sheets, posters and maps, facilitators guide - Phase 1	9.6%	\$13,036
	Fact sheets, posters and maps, facilitators guide - Phase 2		
	Fact sheets, posters and maps, facilitators guide - Phase 3		
3.9: Coordination and implementation of demonstration events (2)	Coordination and implementation of demonstration event - 1	42.5%	\$57,866
	Coordination and implementation of demonstration event - 2		
3.10: CBO coordination: specific deliverables TBD	Materials and meeting facilitation - Phase 1	10.7%	\$14,558
	Materials and meeting facilitation - Phase 2		
	Materials and meeting facilitation - Phase 3		
3.11: Illustrative project renderings (3)	Project renderings (3)	14.4%	\$19,642
4.1: Data Collection	Collect additional traffic counts, beyond what is in Task 4.1	8.5%	\$11,620
5.4: Draft Traffic Operations Report for base (Existing Conditions) and horizon (Existing plus Project) years	Draft Traffic Operations Report for base (Existing Conditions) and horizon (Existing plus Project) years	7.7%	\$10,500
6.4: Traffic Operations Report for horizon year (Existing plus Project) of a refined design alternative	Traffic Operations Report for horizon year (Existing plus Project) of a refined design	2.9%	\$3,940



County of San Mateo

Inter-Departmental Correspondence

Department: PUBLIC WORKS

File #: 18-988

Board Meeting Date: 10/23/2018

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors
From: James C. Porter, Director of Public Works
Subject: Retention of Consulting Firms for On-Call Engineering Professional Services

RECOMMENDATION:

Adopt a resolution authorizing:

- A) On-call engineering professional services agreements with: Engineering Design firms: BKF Engineers, Quincy Engineering, and AECOM Technical Services, Inc.; Environmental Study and Document Preparation firms: MIG, Inc., Horizon Water and Environment, and Kimley-Horn and Associates, Inc.; Structural Engineering firms: Quincy Engineering, AECOM Technical Services, Inc., and Biggs Cardosa Associates; Surveying firms: Towill, Inc., BKF Engineers, Ruggeri-Jensen-Azar; Hydraulic and Hydrologic Studies firms: WRECO, Moffatt & Nichol, Schaaf & Wheeler; Geotechnical Engineering firms: Parikh Consultants, Inc., Cal Engineering & Geology, and Alan Kropp & Associates; Traffic Engineering and Analysis firms: Kimley-Horn and Associates, Inc., Hexagon Transportation Consultants, Inc., and W-Trans; Biological Monitoring firms: Avila and Associates Consulting Engineers, Inc., Swaim Biological, Inc., Coast Ridge Ecology, LLC; and Construction Management firms: TRC/Vali Cooper & Associates, AECOM Technical Services, Inc., Park Engineering, Inc., for the term of October 23, 2018 through October 22, 2021, for an aggregate amount of \$19,400,000; and
- B) The Director of Public Works to execute contract amendments to modify the County's maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services if the modified term of services is/are within the current or revised fiscal provision.

BACKGROUND:

The consultant selection procedures in the County of San Mateo's Administrative Memorandum B-1 and Contract Handbook were used to select consultants for the On-Call Engineering Professional Services Agreements. The Request for Proposals Process Matrix describing the process and selected firms is attached as Exhibit "A".

DISCUSSION:

On October 20, 2015, your Board adopted Resolution No. 074153, which authorized agreements with consulting firms for on-call engineering professional services for the Department of Public Works for the term of October 23, 2015 through October 22, 2018.

Retaining on-call consultants enables the Department to utilize consultants with specific expertise for certain projects or project components, which may include engineering design, environmental study and document preparation, structural engineering, surveying, hydraulic and hydrologic engineering, geotechnical engineering, traffic engineering and analysis, biological monitoring, and construction management. It is anticipated that roadway, bridge, retaining wall, slide repair, drainage and other miscellaneous facility infrastructure projects may need to be designed and constructed within the next three years. These projects may include repair work required to deteriorated infrastructure or construction of new infrastructure. Additionally, environmental, hydraulic, and geotechnical analysis or studies may be required to complete the design and obtain the necessary environmental clearances and permits to construct the projects.

Proposals were solicited from engineering and environmental firms with expertise in specific categories, as outlined in Exhibit "A", by e-mail, through advertising in the newspaper, and by posting information to the Department's website and the County's Public Purchase website. Department staff reviewed proposals submitted by fifty-two firms. Based on the results of the review, the Department is recommending that the firms listed in Exhibit "A" be retained to provide on-call professional consulting services for the various work categories on an as-needed basis. The consulting service agreements are for maximum amounts ranging from \$500,000 to \$3,000,000.

Consultants will be selected for specific projects by the Department and Task Orders will be issued to the firms, which will detail the requirements of the projects, including a scope of work and a not-to-exceed amount. Fees for individual Task Orders for specific projects or the sum of the fees for the various individual Task Orders, should the firm be assigned to more than one project, will not be greater than the not-to-exceed amount of the agreement. We are also requesting that your Board authorize the Director or Director's designee to execute contract amendments, which modify the County's maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services provided the modified term or services is/are within the current or revised fiscal provisions. Any contract amendments above the Director's authority would be brought to your Board for approval.

County Counsel has reviewed and approved the resolution and agreements as to form.

Approval of this resolution will contribute to the Shared Vision 2025 outcome of a Livable Community by enabling the Department to expedite projects that improve and maintain the integrity of County infrastructure and protect the environment for the benefit of the public.

FISCAL IMPACT:

Each On-Call Professional Service Agreement has a not-to-exceed amount ranging from \$500,000 to \$3,000,000, depending on the project category and number of firms to be retained for work in that category. Funds to pay for the assigned work will be from the appropriate funding source, which will include the Road Fund.

There is no impact to the General Fund.

Attachment: Exhibit "A"

Exhibit "A"

**Request for Proposals Process Matrix
On-Call Engineering Professional Services for
Public Works Projects within the County of San Mateo
Construction, Survey, Drafting, Design and Engineering Section
County of San Mateo Department of Public Works**

1.	General Description of RFP	<p>Provide on-call engineering professional services for Public Works projects in the following work categories:</p> <p>Category 1 – Engineering Design Category 2 – Environmental Study and Document Preparation Category 3 – Structural Engineering Category 4 – Surveying Category 5 – Hydraulic and Hydrologic Studies Category 6 – Geotechnical Engineering Category 7 – Traffic Engineering and Analysis Category 8 – Biological Monitoring Category 9 – Construction Management</p>
2.	List of key evaluation criteria	<p>Understanding of scope and contract requirements, firm's approach, budget/financial controls, quality of experience of firm, quality of experience of key personnel, experience with other public agencies, project management, and schedules/timing.</p>
3.	Where advertised	<p>Examiner, posted on the Department of Public Works website, and posted on Public Purchase website</p>
4.	In addition to any advertisement, list others to whom RFP was sent	<p>E-mailed two hundred and forty-two (242) consulting firms in the Bay Area and California.</p>
5.	Total number of RFP's sent to prospective proposers	<p>Two hundred and forty-two (242) consulting firms were emailed with a link to download the RFP from the Public Purchase website.</p>
6.	Number of proposals received	<p>Fifty-two (52) firms submitted proposals. Several firms submitted proposals for multiple categories. A breakdown of the number of proposals submitted for each category of work is listed as follows:</p> <p>Category 1 – Nine (9) Category 2 – Eleven (11) Category 3 – Six (6) Category 4 – Five (5) Category 5 – Seven (7) Category 6 – Seven (7) Category 7 – Seven (7) Category 8 – Ten (10) Category 9 – Ten (10)</p>
7.	Who evaluated the proposals	<p>Representatives from the Department of Public Works</p>

8.	In alphabetical order, names of proposers (or finalists, if applicable) and work category recommended for On-Call Services	Firm Name and Address	Contract – (Dollar Amount) in Category (list all categories)
		AECOM Technical Services 100 W. San Fernando Street, Suite 200 San Jose, CA 95113	\$3,000,000 in Category 1 Engineering Design, Category 3 Structural Engineering, and Category 9 Construction Management
		Alan Kropp & Associates 2140 Shattuck Avenue, Suite 910 Berkeley, CA 94704	\$500,000 in Category 6 Geotechnical Engineering
		Avila and Associates Consulting Engineers, Inc. 490 Post Street, Suite 1415 San Francisco, CA 94102	\$500,000 in Category 8 Biological Monitoring
		Biggs Cardosa Associates 865 The Alameda San Jose, CA 95126	\$500,000 in Category 3 Structural Engineering
		BKF Engineers 255 Shoreline Drive, Suite 200 Redwood City, CA 94065	\$800,000 in Category 1 Engineering Design, and Category 4 Surveying
		Cal Engineering & Geology 23785 Chabot Blvd., Suite 321 Hayward, CA 94545	\$500,000 in Category 6 Geotechnical Engineering
		Coast Ridge Ecology, LLC 1410 31 st Avenue San Francisco, CA 94122	\$500,000 in Category 8 Biological Monitoring
		Hexagon Transportation Consultants, Inc. 4 North Second Street, Suite 400 San Jose, CA 95113	\$500,000 in Category 7 Traffic Engineering and Analysis
		Horizon Water and Environment, LLC 266 Grand Avenue, Suite 210 Oakland, CA 94610	\$500,000 in Category 2 Environmental Study and Document Preparation
		Kimley-Horn & Associates, Inc. 100 West San Fernando Street, Suite 250 San Jose, CA 95113	\$800,000 in Category 2 Environmental Study and Document Preparation, and Category 7 Traffic Engineering and Analysis
		MIG, Inc. 2635 N 1 st Street, #149 San Jose, CA 95134	\$500,000 in Category 2 Environmental Study and Document Preparation
		Moffatt & Nichol 2185 N. California Blvd., Suite 500 Walnut Creek, CA 94596	\$500,000 in Category 5 Hydraulic and Hydrologic Engineering

	Parikh Consultants, Inc. 2360 Qume Drive, Suite A San Jose, CA 95131	\$500,000 in Category 6 Geotechnical Engineering
	Park Engineering, Inc. 3960 Adeline Street, #3 Emeryville, CA 94608	\$3,000,000 in Category 9 Construction Management
	Quincy Engineering 2950 Buskirk Avenue #122 Walnut Creek, CA 94597	\$800,000 in Category 1 Engineering Design, and Category 3 Structural Engineering
	Ruggeri-Jensen-Azar 4690 Chabot Drive, Suite 200 Pleasanton, CA 94588	\$500,000 in Category 4 Surveying
	Schaaf & Wheeler 1171 Homestead Road, Suite 255 Santa Clara, CA 95050	\$500,000 in Category 5 Hydraulic and Hydrologic Engineering
	Swaim Biological, Inc. 4463 First Street #312 Livermore, CA 94551	\$500,000 in Category 8 Biological Monitoring
	Towill, Inc. 2300 Clayton Road, Suite 1200 Concord, CA 94520	\$500,000 in Category 4 Surveying
	TRC/Vali Cooper and Associates, Inc. 1850 Gateway Blvd. Suite 100 Concord, CA 94520	\$3,000,000 in Category 9 Construction Management
	Wreco 1243 Alpine Road, Suite 108 Walnut Creek, CA 94596	\$500,000 in Category 5 Hydraulic and Hydrologic Engineering
	W-Trans 505 17 th Street, 2 nd Floor Oakland, CA 94612	\$500,000 in Category 7 Traffic Engineering and Analysis
		Total Contract Amount: \$19,400,000

RESOLUTION NO. 076242 (a-v)

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * *

RESOLUTION AUTHORIZING: A) ON-CALL ENGINEERING PROFESSIONAL SERVICES AGREEMENTS WITH: ENGINEERING DESIGN FIRMS: BKF ENGINEERS, QUINCY ENGINEERING, AND AECOM TECHNICAL SERVICES, INC.; ENVIRONMENTAL STUDY AND DOCUMENT PREPARATION FIRMS: MIG, INC., HORIZON WATER AND ENVIRONMENT, AND KIMLEY-HORN AND ASSOCIATES, INC.; STRUCTURAL ENGINEERING FIRMS: QUINCY ENGINEERING, AECOM TECHNICAL SERVICES, INC., AND BIGGS CARDOSA ASSOCIATES; SURVEYING FIRMS: TOWILL, INC., BKF ENGINEERS, AND RUGGERI-JENSEN-AZAR; HYDRAULIC AND HYDROLOGIC STUDIES FIRMS: WRECO, MOFFATT & NICHOL, AND SCHAAF & WHEELER; GEOTECHNICAL ENGINEERING FIRMS: PARIKH CONSULTANTS, INC., CAL ENGINEERING & GEOLOGY, AND ALAN KROPP & ASSOCIATES; TRAFFIC ENGINEERING AND ANALYSIS FIRMS: KIMLEY-HORN AND ASSOCIATES, INC., HEXAGON TRANSPORTATION CONSULTANTS, INC., AND W-TRANS; BIOLOGICAL MONITORING FIRMS: AVILA AND ASSOCIATES CONSULTING ENGINEERS, INC., SWAIM BIOLOGICAL, INC., COAST RIDGE ECOLOGY LLC; AND CONSTRUCTION MANAGEMENT FIRMS: TRC/VALI COOPER & ASSOCIATES, AECOM TECHNICAL SERVICES, INC., AND PARK ENGINEERING, INC., FOR THE TERM OF OCTOBER 23, 2018 THROUGH OCTOBER 22, 2021, FOR AN AGGREGATE AMOUNT OF \$19,400,000; AND B) THE DIRECTOR OF PUBLIC WORKS TO EXECUTE CONTRACT AMENDMENTS TO MODIFY THE COUNTY'S MAXIMUM FISCAL OBLIGATION BY NO MORE THAN \$25,000 (IN AGGREGATE), AND/OR MODIFY THE CONTRACT TERM AND/OR SERVICES AS LONG AS THE MODIFIED TERM OF SERVICES IS/ARE WITHIN THE CURRENT OR REVISED FISCAL PROVISION

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, the Board of Supervisors of County of San Mateo is authorized to engage the services of professional technical experts; and

WHEREAS, the public interest and general welfare will be served by selecting and utilizing consultants for various professional services; and

WHEREAS, the Board of Supervisors did, on October 20, 2015, adopt Resolution No. 074153, which resolution authorized agreements with consulting firms for on-call engineering professional services for the Department of Public Works for the term of October 20, 2015 through October 19, 2018; and

WHEREAS, the Construction, Survey, Drafting, Design and Engineering Section of the Department of Public Works is interested in executing new On-Call Professional Services agreements for another three-year period; and

WHEREAS, the firms of AECOM Technical Services, Inc., Alan Kropp & Associates, Avila and Associates Consulting Engineers, Inc., Biggs Cardosa Associates, BKF Engineers, Cal Engineering & Geology, Coast Ridge Ecology, LLC, Hexagon Transportation Consultants, Inc., Horizon Water and Environment, Kimley-Horn and Associates, Inc., MIG, Inc., Moffatt & Nichol, Parikh Consultants, Inc., Park Engineering, Inc., Quincy Engineering, Ruggeri-Jensen-Azar, Schaaf & Wheeler, Swaim Biological, Inc., Towill, Inc., TRC/Vali Cooper & Associates, WRECO, and W-Trans are consultant firms qualified to perform professional services on a variety of projects as may be assigned at a future time by Task Orders issued by the Director of Public Works or his designee; and

WHEREAS, the Director of Public Works has recommended that agreements be entered into with the consultants to perform various professional services to supplement staff as the need arises; and

WHEREAS, this Board has considered and concurs with the recommendation of the Director of Public Works.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the

1. The firms of AECOM Technical Services, Inc., Alan Kropp & Associates, Avila and Associates Consulting Engineers, Inc., Biggs Cardosa Associates, BKF Engineers, Cal Engineering & Geology, Coast Ridge Ecology, LLC, Hexagon Transportation Consultants, Inc., Horizon Water and Environment, Kimley-Horn and Associates, Inc., MIG, Inc., Moffatt & Nichol, Parikh Consultants, Inc., Park Engineering, Inc., Quincy Engineering, Ruggeri-Jensen-Azar, Schaaf & Wheeler, Swaim Biological, Inc., Towill, Inc., TRC/Vali Cooper & Associates, WRECO, and W-Trans be retained to provide professional services under the direction of the Director of Public Works when and if said services are needed as determined by the Director of Public Works.

2. The President of this Board of Supervisors shall be, and is, hereby authorized and directed to execute said Agreements on behalf of County of San Mateo, and the Clerk of the Board shall attest to the President's signature thereto.

3. Authority is given to the Director of Public Works or designee to execute contract amendments to modify the County's maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services as long as the modified term of services is/are within the current or revised fiscal provision.

* * * * *

Regularly passed and adopted this 23rd day of October, 2018

AYES and in favor of said resolution:

Supervisors: _____ *DAVE PINE*

_____ *DON HORSLEY*

_____ *WARREN SLOCUM*

_____ *DAVID J. CANEPA*

NOES and against said resolution:

Supervisors: _____ *NONE*

Absent:

Supervisor: _____ *CAROLE GROOM*

*President, Board of Supervisors
County of San Mateo
State of California*

Certificate of Delivery

I certify that a copy of the original resolution filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.

Deputy Clerk of the Board of Supervisors

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND W-TRANS

The County intends to make use of federal funding from the Department of Homeland Security to partially reimburse the County for costs associated with this agreement.

This Agreement is entered into this 23 day of October, 2018, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and W-Trans, hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of engineering and other related professional and technical services required for the delivery of various types of improvement projects.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A - Services
- Exhibit B - Payments and Rates
- Exhibit C - FEMA Requirements

- Appendix A – Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements
- Appendix B – Disclosure of Lobbying Activities (if applicable)
- Appendix C – DBE Information – Good Faith Effort

2. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed Five Hundred Thousand Dollars (\$500,000). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 23, 2018, through October 22, 2021.

5. Termination

This Agreement may be terminated by Contractor or by the County Manager or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

6. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.

7. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

8. Hold Harmless

a. General Hold Harmless

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

b. Intellectual Property Indemnification

Contractor hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement.

Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion

be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

- (a) Contractor will assure that any authorized subcontracts with a third party for services complies with all terms and conditions set forth in this Agreement and pursuant to the requirements of applicable federal, state and local law, including but not limited to Title 2 of the CFR.
- (b) Debarment and Suspension: Contractor will assure that as provided in CFR, Title 2 as applicable, that it must not award subcontracts with at any time to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.
- (c) Procurement of Sub-contractors: Contractor's procurement procedures must conform to applicable federal, state and local law including procedures outlined in Title 2 of the CFR. In the event of any conflict between federal, state, and local requirements, the most restrictive requirement must be applied.
- (d) Monitoring: Contractor will be responsible for managing and monitoring routine operations of services performed under this Agreement including each project, program, sub grants or any other function supported by Contractor's sub-contractors/sub-grantees to ensure compliance with all applicable terms and conditions of this Agreement, including the requirements in Title 2 of the CFR . If Contractor at any time discovers that services under this Agreement have not been used in accordance with the terms and conditions of this Agreement including federal, state and local law, Contractor will take action to recover such funding.
- (e) In addition to complying with the Uniform Rules and the enabling laws, implementing regulations, and FEMA policies for a grant or cooperative agreement program, the contractor must also comply with all other applicable Federal laws, regulations, and executive orders, including those contained in the Department of Homeland Security Standard Terms and Conditions in effect at the time federal financial assistance funds are awarded.

10. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is 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 Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- (a) Comprehensive General Liability... \$1,000,000
- (b) Motor Vehicle Liability Insurance... \$1,000,000
- (c) Professional Liability..... \$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

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, County, 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 and payment pursuant to this Agreement.

11. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

The Contractor agrees to comply with Federal requirements and procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Furthermore, the Contractor shall require and enforce similar compliance with all subcontractors.

12. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County’s Equal Benefits Ordinance

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor’s employee is of the same or opposite sex as the employee.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled “Compliance with Laws”. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

13. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

14. Retention of and Access to Records; Right to Monitor and Audit

- (a) The contractor shall retain all project records for a minimum of three years after all agency projects funded under this grant award (not just this present contract) are completed. In addition to this storage requirement, the contractor shall provide an electronic copy of all records in a bon fide electronic documents management format which provides unalterable copies. This requirement applies to the prime contractor and all sub contractor's project records. However, it is the responsibility of the prime contractor to provide all of the records, both the prime contractor and subcontractor's records. Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.
- (b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.
- (c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.
 - i. The contractor agrees to provide San Mateo County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

- (d) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (e) The Contractor agrees to provide the FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the contract.

15. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

16. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

17. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Gilles Tourel, P.E.
Address: County of San Mateo
Department of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063
Telephone: (650)363-4100
Facsimile: (650)361-8220
Email: gtourel@smcgov.org

In the case of Contractor, to:

Name/Title: Mark Spencer
Address: W-Trans
505 17th Street, 2nd Floor
Oakland, CA 94612
Telephone: (510) 444-2600
Facsimile: (707) 542-9590
Email: mspencer@w-trans.com

18. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

19. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

20. Contract Remedies:


Upon breach or default of any of the provisions, obligations, or duties embodied in this Agreement by Contractor, County shall retain the right to exercise any administrative, contractual, equitable, or legal remedies available without limitation. A waiver by County of any occurrence of breach or default is not a waiver of subsequent occurrences and shall be limited to that particular occurrence.

* * *


THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES. NO WORK WILL COMMENCE UNTIL THIS DOCUMENT HAS BEEN SIGNED BY THE COUNTY PURCHASING AGENT OR AUTHORIZED DESIGNEE.

For Contractor:

W-Trans


Contractor Signature 10/9/18 Dalene J. Whitlock
Date Contractor Name (please print)

For County:


By: _____ Date: October 23, 2018
President, Board of Supervisors,
San Mateo County

ATTEST: 
By: _____
Clerk of Said Board

Exhibit A – Services

1. Description of Services to be Performed by the Contractor:

Contractor shall provide on-call engineering professional services that may include but not be limited to traffic engineering and analysis.

2. Task Order Negotiation, Authorization, and Amount and Method of Payment:
 - A. Negotiation: Contractor shall be entitled to payments in consideration for work performed per above, and based on those professional fees set forth in Exhibit B. Separate and NTE) cost proposals may be requested from Contractor during the term of the Agreement. The Department shall review the proposal as to scope, cost and delivery schedule.
 - B. Task Order Authorization: Each task order shall include specific work requirements, time frames for completion and NTE cost amount, which shall be mutually agreed upon by Contractor and County in writing prior to commencement of each task order. Once a proposal is found to be acceptable, a task order authorization shall be issued, as needed and in the task order. Contractor shall commence work upon receipt of task order authorization. Contractor agrees to complete the approved project or task order work for an amount equal to or less than the approved project or task order NTE amount and within the time limits set forth in the approved project or task order timetable.
 - C. Amount and Method of Payment: The Contractor may have several task orders assigned by the County as part of this on-call agreement. Payment shall not be made for any work unless approved and authorized in advance by the County. Total compensation paid to the Contractor for all task orders assigned will not be greater than the NTE amount of the agreement and may be less than the NTE amount of the agreement. Since this is an on-call agreement, the number of task orders issued is indeterminate, the resulting total compensation paid to the Contractor may be significantly less than the NTE amount of the approved through a contract amendment by the Contractor and the County. Invoice(s) may be submitted by Contractor according to progress achieved and recognized by the Department, for payment by the County thirty (30) working days from date of receipt, provided that the invoices are complete and absent errors and/or corrections as may be found upon review of invoice(s).

3. Reimbursable Expenses:

Reasonable and necessary expenses related to the services performed and actually incurred shall be reimbursed at cost, or as stipulated in expense report with backup documentation and County approval. Reimbursable expenses shall be in related expenses directly incurred by the Contractor in the performance of services provided

under the Agreement. These include mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs, and similar, and travel expenses within a 50 mile
Reimbursement for all other travel in connection
with the project or task order shall be at the same rate granted to employees of the County and
must be approved in advance and in writing by the County. Mile reimbursements shall be
506 17th Street, 2nd Floor, Oakland, CA 94612).

4. Changes in Work:

Upon agreement by both County and Contractor,
der must be approved in writing and will result
in an amendment to the task order. All other terms and conditions of the Agreement shall
remain in full force and effect.

5. Task Order Form:

A copy of the Task Order Authorization letter is attached to the Agreement.

Exhibit B – Payments and Rates

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

1. County shall pay Contractor upon receipt in Accounting Section of the Department of Public Works of a written itemized invoice identifying the task order, County project number (if applicable), specific work completed, number of hours involved and breakdown of charges. The Approved Project total not-to-exceed amount will be stipulated in each task order. Costs for services deemed necessary by the County for completion of each task order shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this Agreement shall be based upon the Contractor's most recent fee schedule and by reference made a part of this Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.
2. The County shall pay Contractor reimbursable expenses. The Contractor shall be entitled to mileage, meals and lodging at the same rate granted to employees of the County whenever the Contractor is required to travel outside of San Mateo County in the performance of his duties under this Agreement. Such travel must first be approved in writing by the County. The Contractor shall also be reimbursed for expenses associated with reproduction (drawings, project manuals, reports, etc.); telephone or fax outside 650, 415, 408, 510, 707, and 925 area codes; fees paid for securing necessary permits and approvals of authorities having jurisdiction over the project; and special delivery service.
3. The County's total fiscal obligation under this Agreement shall not exceed \$500,000 unless said amount is authorized to be increased by the County Board of Supervisors by written amendment to this agreement. Specific projects that may be assigned to the Contractor shall have individual not-to-exceed amounts as stated in the specific task orders. The sum of individual task order not-to-exceed fees for multiple projects that may be assigned to the Contractor shall not exceed the total \$500,000 not-to-exceed amount for this Agreement without prior written approval by the County Board of Supervisors.
4. Escalation on salaries may be applied annually at an aggregate rate not to exceed a 2% maximum per year.

Invoices are to be submitted to:

Accounting Unit
Department of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063



Fee Schedule

2018-2021 Staff Billing Rates

Position	Billing Rate (per hour)
Principal	\$205 – \$290
Associate Principal	\$185 – \$235
Senior Engineer/Planner	\$175 – \$210
Engineer/Planner	\$150 – \$185
Associate Engineer/Planner	\$130 – \$160
Assistant Engineer/Planner	\$100 – \$140
Technician/Administrative	\$85 – \$110
Intern	\$30 – \$90
Field Technician	\$20 – \$60

2018-2021 Expense Charges

Item	Charge
Mileage	\$0.60/mile*
Services and Expenses	10% surcharge

These rates are valid for work initiated prior to December 31, 2021. Work initiated after January 1, 2022, and any subsequent year may be billed at the revised rates established for that year.

* Mileage charge will be based on the IRS Standard Mileage Rate (set at \$0.545 effective January 1, 2018; subject to change) plus 10 percent.

490 Mendocino Avenue, Suite 201 **SANTA ROSA**, CA 95401 707.542.9500

505 17th Street, 2nd Floor **OAKLAND**, CA 94612 510.444.2600

1276 Lincoln Avenue, Suite 204 **SAN JOSE**, CA 95125 650.314.8313

w-trans.com

Exhibit C – FEMA Requirements

As specified herein the following provisions shall apply unless otherwise noted:

1. Compliance with the Clean Air Act and the Federal Water Pollution Control Act

Clean Air Act

- (a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (b) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (c) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA. For contracts in excess of \$150,000, the contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401-7671q and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

Federal Water Pollution Control Act

- (a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (b) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (c) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

2. Suspension and Debarment

- (a) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (b) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (c) This certification is a material representation of fact relied upon by the County of San Mateo. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2

C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California and the County of San Mateo, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- (d) The contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.
- (e) Contractor certifies to the best of its knowledge and belief, that it and its subcontractors:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency [45 CFR § 92.35];
 - (2) Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (e)(2) of this section; and
 - (4) Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default;
- (f) Contractor shall report immediately to the County Department of Public Works ("DPW") in writing any incidents of alleged fraud and/or abuse by either Contractor or Contractor's subcontractor. Contractor shall maintain any records, documents or other evidence of fraud and abuse until otherwise notified by DPW.
- (g) Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by County.
- (h) Contractor agrees to timely execute any and all amendments to this Agreement or other required documentation relating to their subcontractors' debarment/suspension status.

3. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

4. Drug- Free Workplace

The Contractor certifies that it will continue to provide a drug-free workplace by;

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an on-going drug-free awareness program to inform employees about—
 - (1) The dangers of drug abuse in the workplace;
 - (2) The Applicant's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the award be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the award, the employee will—
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of the employee's conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the Department, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title of any such convicted employee to the Department, as follows:

For COPS award recipients - COPS Office, 145 N Street, NE, Washington, DC, 20530;

For OJP and OVW award recipients - U.S. Department of Justice, Office of Justice Programs, ATTN: Control Desk, 810 7th Street, N.W., Washington, D.C. 20531.

Notice shall include the identification number(s) of each affected award;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

5. DHS Seal, Logo, Flags:

The Contractor shall not use the DHS seal (s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

6. Compliance with Federal Law, regulations, and Executive Orders

This is an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

7. No Obligation by Federal Government

The Federal government is not party to this contract and is not subject to any obligations or liabilities to the County, contractor, or any other party pertaining to any matter resulting from this contract.

8. Program Fraud and False or Fraudulent Statements or Related Acts

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

9. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms

- (a) The Prime Contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring the sub contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

10. Cost Analysis

The contractor shall perform cost analysis on all change orders. The cost analysis for all change orders will include a separate determination of profit for each change order requested

11. Assurances – Non Construction Programs

The contractor shall comply with FEMA Assurance-Non-Construction Programs. For more detail regarding the program, please reference to link [https://www.fema.gov/media-library-data/20130726-1856-25045-1085/sf424b_assurances_non_construction .pdf](https://www.fema.gov/media-library-data/20130726-1856-25045-1085/sf424b_assurances_non_construction.pdf).

Appendix A – Certification Regarding Lobbying

As required by 44 C.F.R. Part 18:

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, W-Trans, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Dalene J. Whitlock, Principal
Name and Title of Contractor's Authorized Official


10/9/18
Date

Appendix B – Disclosure of Lobbying Activities (if applicable)

Approved by OMB

0348-0046

Disclosure of Lobbying Activities
 Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
 (See reverse for public burden disclosure)

1. Type of Federal Action: a. contract _____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application _____ b. initial award c. post-award	3. Report Type: a. initial filing _____ b. material change For material change only: Year _____ quarter _____ Date of last report _____
4. Name and Address of Reporting Entity: _____ Prime _____ Subawardee Tier _____, if Known: Congressional District, if known:		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature:  Print Name: <u>Dalene J. Whitlock</u> Title: <u>Principal</u> Telephone No.: <u>707-542-9500</u> Date: <u>10/9/18</u> W-Trans has no lobbying activities to disclose	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

Appendix C – DBE Information – Good Faith Effort

MBE / WBE REQUIREMENTS

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONTRACTOR shall make every effort to procure Minority and Women's Business Enterprises ("DBEs") through the "Good Faith Effort" process as required in 2 CFR 200.321. Failure to perform the "Good Faith Effort" process and submit the forms listed below with the bid shall be cause for a bid to be rejected as nonresponsive and/or be considered as a material breach of the contract.

PRIME CONTRACTOR RESPONSIBILITIES All recipients of this grant funding, as well as their prime contractors and subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible make every effort to solicit bids from eligible DBEs. This information must be documented and reported.

"GOOD FAITH" EFFORT PROCESS Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs. The process to attract MBE/WBEs is referred to as the "Good Faith" effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that MBE/WBEs are used whenever possible as sources of supplies, construction, equipment, or services. If a CONTRACTOR fails to take the steps outlined below shall cause the bid to be rejected as non-responsive and/or be deemed a material breach of the contract.

- A. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- B. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- C. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- D. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- E. If subcontracts are to be let, Contractor shall take the affirmative steps listed in 2 CFR 200.321.

**AMENDMENT TO AGREEMENT
BETWEEN THE COUNTY OF SAN MATEO AND W-TRANS**

THIS AMENDMENT TO THE AGREEMENT, entered into this 23 day of October, 2018, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and W-Trans, hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, the parties entered into an Agreement for services on October 23, 2018; and

WHEREAS, the parties wish to amend the Agreement to W-Trans - Contract.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:


1. Section 4 "Term" of the agreement is amended to read as follows:

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 23, 2018, through October 22, 2023.

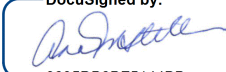
- 2. All other terms and conditions of the agreement dated October 23, 2018, between the County and Contractor shall remain in full force and effect.**

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: W-TRANS

<p>DocuSigned by:  <small>0B0E2F03FE024DC...</small></p>	<p>August 18, 2021</p>	<p>Mark Spencer</p>
<p>Contractor Signature</p>	<p>Date</p>	<p>Contractor Name (please print)</p>

COUNTY OF SAN MATEO

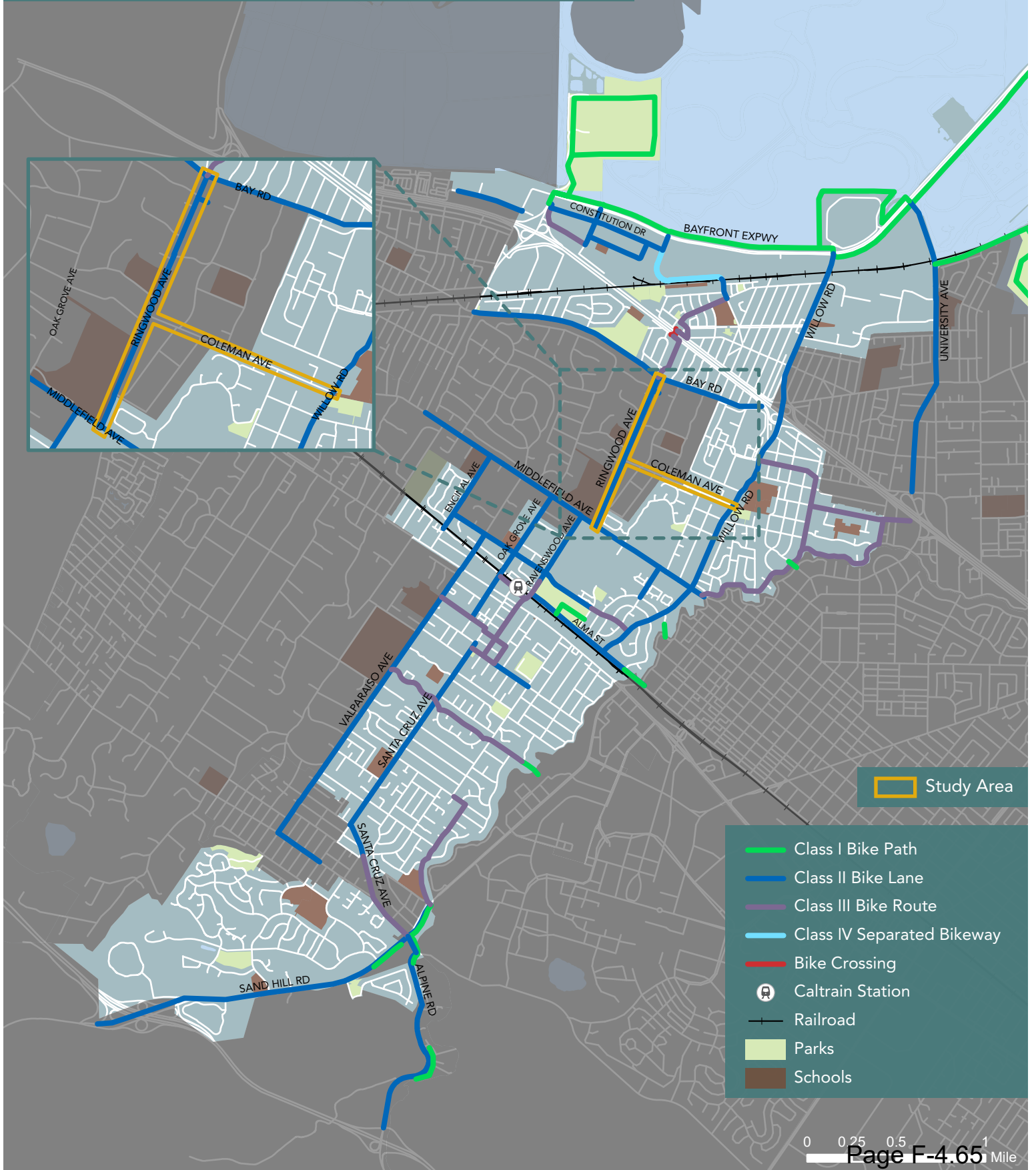
By: 
6695DB3BF5144BB...

Interim Director of Public Works, Department of Public Works

Date: 8/18/2021 | 11:03 AM PDT



Coleman/Ringwood Study Area



Study Area

- Class I Bike Path
- Class II Bike Lane
- Class III Bike Route
- Class IV Separated Bikeway
- Bike Crossing
- Caltrain Station
- Railroad
- Parks
- Schools



STAFF REPORT

City Council

Meeting Date:

1/11/2022

Staff Report Number:

22-008-CC

Public Hearing:

Public hearing regarding the adoption of Resolution No. 6693 adopting required findings and authorizing city to execute an energy services contract pursuant to Government Code section 4217 and authorizing the city manager to execute an agreement with ENGIE Services US Inc. to design, construct, operate, and maintain clean energy infrastructure for the Menlo Park Community Campus project in an amount not to exceed \$5.72 million to design and construct the clean energy infrastructure; and appropriate \$5.72 million from the assigned and unassigned funds in the general fund for the project; and finding the project exempt from the California Environmental Quality Act Guidelines

Recommendation

Staff recommends that the City Council consider and approve Resolution No. 6693 (Attachment A):

1. Adopting required findings and authorizing the city manager to execute an agreement with ENGIE Services US Inc. to design, construct, operate, and maintain clean energy infrastructure consisting of a solar plus battery storage microgrid, a solar photovoltaic thermal pool heating system, and 27 electric vehicle (EV) charging capable spaces for the Menlo Park Community Campus (MPCC) project in an amount not to exceed \$5.72 million (inclusive of nine percent contingency of \$470,178) for the design and construction aspects of the clean energy infrastructure; and
2. Appropriating \$3.22 million from the unassigned fund balance and \$2.5 million from the economic stabilization assigned fund balance in the general fund for the design and construction aspects of this project; and
3. Finding the project exempt from the California Environmental Quality Act (CEQA) Guidelines.

Procedure

1. Open the public hearing
2. Confirm required public notice by law (Attachment B)
3. Confirm written comments/protests with the city clerk
4. Receive staff presentation
5. Receive public comment
6. Move to close the public hearing
7. Move to act on the recommendation

Policy Issues

Installing renewable electric power on city facilities is consistent with the 2030 climate action plan strategy No. 5 to eliminate fossil fuels from city operations, and is consistent with sustainable budget practices by reducing long term operating costs.

Government Code Section 4217.10 et seq. authorizes a public agency to forego its standard low-bid public procurement processes to implement turn-key water and energy services projects when the public agency finds such a procurement method to be in its best interest. The Government Code further authorizes a public agency to enter into an energy service contract on terms that its governing body determines are in the best interests of the public agency if the determination is made at a regularly scheduled public hearing, public notice of which is given at least two weeks in advance that the anticipated cost to the agency for the energy services project will be less than the anticipated marginal cost to the agency of electrical energy that would have been consumed by the agency in the absence of the energy services contract.

Background

The MPCC clean energy infrastructure project would install a solar plus battery storage microgrid (microgrid), solar thermal pool heating to reduce energy loads, and 27 on-site electric vehicle charging spaces in a neighborhood where tenants living in multifamily units are unlikely to have adequate access to at-home EV charging.

According to an article published on Microgrid Knowledge by Elisa Wood March 28, 2020, a microgrid is defined as a self-sufficient energy system that serves a discrete geographic footprint, such as a college, campus, hospital complex, business center or even neighborhood. Within microgrids there are one or more kinds of distributed energy (solar panels, wind turbines, combined heat power, generators) that produce power. Newer microgrids contain energy storage from batteries, and some now also include electric vehicle charging stations that can take energy from a car to support providing power to a building.

Microgrids create energy locally for its buildings. They are also independent as it can disconnect from the central grid (e.g., PG&E.) This islanding capability allows microgrids to supply power to buildings when a storm or other outage occurs on the power grid. A microgrid controller is also used that intelligently manages energy so that maximum savings and reliably can be achieved.

The MPCC clean energy infrastructure has been discussed by the City Council over the last few years with the most recent activity occurring December 7 2021 where a public hearing was held to make the necessary findings to consider awarding an energy services agreement to ENGIE to install the clean energy infrastructure at the MPCC. Advanced notice of the public hearing was properly published in the Examiner November 19 2021.

At the conclusion of the public hearing, the City Council took action to find that the project and preliminary draft version of energy services agreement with ENGIE met the requirements of Government Code Section 4217.10, anticipating the project contemplated by the energy service agreement would result in energy savings compared to using power from the standard grid (e.g., Peninsula Clean Energy or PG&E.) However, there were several elements of the draft agreement still under review and negotiation. The City Council directed staff to return with a finalized fully negotiated agreement at the next available City Council meeting.

Although another public hearing was not required at the time, staff and the city's energy consultants,

Optony, have continued to pursue the greatest clarity and security possible regarding anticipated savings from the microgrid and solar thermal pool heating at the MPCC resulting in changes since the previous microgrid presentation December 7, 2021. Thus, holding another public hearing is in the best interest of the city. Public notice was published in the Examiner December 19, 2021 in both English and Spanish (Attachment B.) In addition, the public hearing was also included in the City Council’s weekly digest the week of December 27, 2021.

The final terms of the agreement are included in Attachment A, Exhibit 1. If approved, the total cost for the clean infrastructure project is not to exceed \$5.72 million inclusive of a 9 percent contingency (\$470,178.) Contingency may be used for remaining design elements for the carparks and other unforeseen/immeasurable circumstances deemed reasonable and approved by the city.

Project schedule and review process

The desire for incorporating resilient clean energy infrastructure into the project began when the City Council adopted the resolution of intent to pursue the project in January 2020. More detailed aspects were discussed a little over a year ago, and are tracked on the city’s webpage for the MPCC project (Attachment D.) Below is a summary of City Council direction provided to date regarding the clean infrastructure package.

Table 1: Summary of City Council direction		
Meeting date	Agenda title summary	Summary action or direction provided
January 28, 2020	Resolution of intent for the construction of a new community center and library in the Belle Haven neighborhood	Directed staff to evaluate and propose specific environmental, sustainability, and resiliency goals for the project.
October 13, 2020	Consider which city requested work to accompany Meta’s (formerly Facebook) offer to rebuild community facilities located at 100-110 Terminal Avenue.	This included additional sustainability aspects, such as solar power, battery storage, LEED achievement goals. The City Council directed that these aspects be pursued and would be funded by the city (not Meta.)
November 11, 2020	Consider the funding options for the city requested work to accompany Meta’s offer to rebuild community facilities located at 100-110 Terminal Avenue and the plan for interim services during construction	Directed to pursue funding options for the clean energy infrastructure.
January 12, 2021	Consideration of the final approvals for the Menlo Park Community Campus project	Move forward with procuring clean energy infrastructure. Staff and the city’s consultant Optony Inc. coordinated the procurement process between February and August 2021.
October 12, 2021	Provide direction on purchasing options for renewable microgrid, electric vehicle charging, and solar thermal pool heating for the Menlo Park Community Campus project.	Negotiate and pursue a direct purchase contract for the clean energy package (microgrid, EV charging and solar thermal pool heating) for the MPCC project.
December 7, 2021	Public hearing was held to make necessary findings to consider awarding an energy services agreement to ENGIE.	While the City Council did make the necessary findings regarding energy savings, it was requested that a fully negotiated contract be presented for approval at the next available meeting.

Analysis

The remaining terms of the agreement finalized in Attachment A, Exhibit 1 include service response times, performance guarantee provisions, terminology between production and savings, and insurance and indemnification and bonding requirements.

Anticipated savings finding

It is important to note that the electric vehicle charging stations were not included in the calculation of anticipated savings requirements under Government Code Section 4217.10 et seq. as the electric vehicle charging stations would be in operation with or without the microgrid. The charging stations were included in the procurement project process for efficiency. ENGIE’s bid for EV charging was in the midrange between other bidders, and staff recommended that the city pursue procurement of EV charging on its own in October 2021 to access incentives from Peninsula Clean Energy (PCE.) However, ENGIE has reduced its costs from original bidding pricing (from approximately to \$450,094 to \$347,683) prompting staff to recommend that ENGIE procure the EV chargers instead of the city. ENGIE will work to access any available incentives and discounts as part of the agreement.

The current financial forecast includes clarifications and addresses City Council concerns for increased savings guaranties from the December 7, 2021 meeting.

To respond to uncertainty regarding future performance of the microgrid and solar thermal pool heating, the current contract from ENGIE now provides a yearly performance guaranty payment to the City for each year that the system fails to deliver at least 90 percent of the expected savings. Although the inclusion of the performance guaranty has resulted in an increase to the on-going costs and has reduced savings from the previous staff report December 7 2021, it provides an increased level of certainty regarding the performance of the system.

In a worst-case scenario of the microgrid and solar thermal pool heating failing to deliver at least 90 percent of expected savings, the City would rely solely on the guaranteed savings payments from Engie over years 1 through 20. The savings in this worst-case scenario after recovering all construction and operating costs are estimated at year 20 between \$0.65M and \$0.14M depending on the use of contingency. The contract was also further negotiated to provide monthly rebates to the City for any period in which multiple EV charging stations are not operating.

Although, there are increased cost associated with these guaranties, the current savings estimates include a more complete itemization of additional avoided costs for the diesel generator and future air-source pool heat pump replacement. Regardless of these revisions, the estimated payback period for the microgrid and solar thermal pool heating remains between 17 and 18 years, similar to the previous presentations of 16 to 18 years. The total savings after recovering purchase cost is now estimated as shown in the table below.

Table 2: Estimated project savings for the renewable microgrid and solar thermal pool heating system		
Year	No contingency spend (millions)	Full contingency spend (millions)
20 year savings	\$1.61 M	\$1.10 M
25 year savings	\$3.38 M	\$2.87 M
30 year savings	\$5.78 M	\$5.27 M

For the purposes of evaluating projected savings over the life of the project, the following variables and methods were used:

- The system would perform as provided in the product specifications and design at 100 percent. This differs from the performance guarantee offering the city up to 90 percent of savings if the system does not perform as anticipated.
- Avoided costs for the back-up diesel generator and air-source pool heat pump replacement were added to the analysis since the December 7 meeting. The solar thermal pool heating provides a reduction in electrical needs resulting in less use of the heat pumps, reducing the costs of replacement timeframes and maintenance by \$500K.
- Because the facility has not been constructed, the payback was estimated using an hourly base building electrical load simulated by the MPCC electrical engineering design team, and a microgrid operation simulation validated by city's energy consultant, Optony. This was provided to all bidders in the request for proposals' documentation.
- Saving projections include the annual maintenance and measurement and verification services for 20 years starting at \$62,348 (reduced from December 7 meeting) with an escalation rate of 3 percent per year, and is assumed that the city could either continue with ENGIE or another contractor to maintain the system or provide the maintenance itself beyond 20 years. Note that EV charging is excluded as there is no savings projected with or without the microgrid, and cost will be recouped through user fees.
- Financial forecasts of this length are based on long-term trends in utility energy costs and the lifetime of some components may be called into question when looking at savings beyond 20 years, however the core energy product of this microgrid is the solar electric panels, which are warranted for 25 years. The solar thermal panels are solid metal and are likely to last 30 years without any degradation. It is anticipated that the equipment can continue to work beyond their warranty life to continue to provide some savings to the city before having to be replaced or removed.
- The forecast uses a low-moderate to weighted average energy charge escalation of 4.5 percent, therefore the savings achieved may be higher than anticipated. The savings forecast is dependent on a future trend in utility energy prices, in particular the escalation of demand charges. Although energy rates escalation are often given in the range of 3 percent, historical increases for the expected demand rate at MPCC (using PG&E's B10/A10 commercial rate) have experienced a compounding yearly increase between approximately 5.7 percent - 9.5 percent."
- The savings assume the use of California Self Generation Incentive Program (SGIP) at \$226,625 and \$235,199 from Renewable Energy Certificates (REC) sales. The REC sales value was updated to reflect current trends.

Attachment C includes details on how the projected savings were calculated by ENGIE and analyzed for final determination on anticipated savings by the City's energy consultant, Optony Inc.

Attachment E provides an overview of questions and answers regarding this project that may be helpful for understanding project costs, benefits, number of EV charging spaces, and impacts of not approving the project.

Impact on City Resources

Attachment A authorizes appropriation and associated budget amendment transfers to purchase the clean energy infrastructure for the MPCC project. It is important to note that the ongoing maintenance, measurement and verification services for the clean energy infrastructure will be budgeted on an annual

basis, and is not part of the \$5.72 million appropriation. However, the maintenance and measurement and verification services are accounted for in the saving projections to determine if the city will experience overall savings compared to a business as usual approach using the power grid.

The action transfers \$5.72 million from the general fund's unassigned fund balance (fund 100) to the MPCC fund (fund 304.) As of June 30, 2021, the City's independent auditor has preliminarily confirmed the City's unassigned fund balance as \$7.41 million. On December 14, 2021, the City Council adopted budget amendments appropriating \$1.457 million resulting in a remaining unassigned fund balance of \$5.953 million in the general fund to support this project. Alternatively, City Council may fund the project using \$24.3 million in general fund assigned reserve accounts for emergency contingency (\$10.3 million) or economic stabilization (\$14.0 million.) Additional work on the 2020-21 Annual Comprehensive Financial Report (ACFR) is needed which is likely to affect the unassigned fund balance. As such, the City Council may wish to consider using a portion of the assigned fund balance, namely \$2.5 million from the economic stabilization, at this time for this project and replenish the reserve accounts at a later date.

The current contract with Optony does cover some project management, but additional assistance will be needed to support staff and the city in navigating the first renewable microgrid project at a city facility. At an upcoming meeting, staff will be bringing forward a master agreement to provide on-call support for this multiyear project by Optony as well as to support other climate action plan related items to strategy No.5 (eliminate fossil fuels from city operations.)

Environmental Review

On January 12 2021, the City Council found demolition and building of the MPCC project categorically exempt pursuant to the CEQA Guidelines Section 15302 replacement of existing facilities. These findings are also being considered for adoption in Attachment A.

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 notice was published in the Examiner December 19, 2021 in both English and Spanish (Attachment B.) In addition, the public hearing was also included in the City Council's weekly digest the week of December 27, 2021, and the City sent electronic notices via Nextdoor, Facebook and directly to Project email and text update subscribers from the MPCC Project page (Attachment D.)

Attachments

- A. Resolution No. 6693 that includes final contract agreement with ENGIE
- B. Copy of public notice confirmation
- C. Anticipated savings datasheets
- D. Hyperlink – project page: menlopark.org/communitycampus
- E. Microgrid frequently asked questions
- F. Illustrative site plan

Report prepared by:
Rebecca Lucky, Sustainability Manager

Staff Report #: 22-008-CC

Reviewed by:
Justin Murphy, Deputy City Manager

RESOLUTION NO. 6693**RESOLUTION OF THE CITY COUNCIL OF CITY OF MENLO PARK ADOPTING REQUIRED FINDINGS AND AUTHORIZING CITY TO EXECUTE AN ENERGY SERVICES CONTRACT PURSUANT TO GOVERNMENT CODE SECTION 4217 AND AUTHORIZING THE CITY MANAGER TO EXECUTE A FINAL AGREEMENT WITH ENGIE SERVICES US INC. TO DESIGN, CONSTRUCT, OPERATE, AND MAINTAIN CLEAN ENERGY INFRASTRUCTURE FOR THE MENLO PARK COMMUNITY CAMPUS PROJECT IN AN AMOUNT NOT TO EXCEED \$5.72 MILLION FOR PROCURING AND INSTALLING CLEAN INFRASTRUCTURE EQUIPMENT AND APPROPRIATE \$5.72 MILLION FROM THE ASSIGNED AND UNASSIGNED FUNDS IN THE GENERAL FUND FOR THE PROCUREMENT AND INSTALLATION OF CLEAN INFRASTRUCTURE; AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES**

WHEREAS, the City Council has declared a climate emergency that demands accelerated action to address the climate crisis (Resolution No. 6535); and

WHEREAS, it is the policy of the State of California and the intent of the State Legislature to promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources; and

WHEREAS, California Government Code Sections 4217.10 to 4217.18, authorize the City Council to enter into an Energy Services Agreement (Exhibit A) for the implementation of energy related improvements if the City Council finds that it is in the best interest of the City to enter into such Energy Service Agreement and that the anticipated cost to the City for thermal or electrical energy or conservation services provided by ENGIE Services US Inc. under the agreement will be less than the anticipated marginal cost to the City of thermal, electrical, or other energy that would have been consumed by the City in absent of those purchases; and

WHEREAS, the City of Menlo Park desires to avoid increasing greenhouse gas emissions related to building energy use (natural gas consumption) and utilize renewable, resilient energy to meet the needs of its facilities in a fiscally responsible manner; and

WHEREAS, the City Manager will execute an agreement in Exhibit A and one or more amendments within the approval parameters provided in this Resolution to the proposed Energy Service Agreement (Exhibit A) by and between the City and ENGIE Services US Inc. as necessary to complete the design, construction, operation, and maintenance of a solar photovoltaic battery microgrid, solar photovoltaic thermal system (pool heating), and electric vehicle charging stations at the Menlo Park Community Campus project in an amount not to exceed \$5.72 million for the design and construction aspects of this project inclusive of a nine percent contingency (\$0.47 million); and

WHEREAS, as of June 30, 2021, the city's independent auditor has preliminarily confirmed that the city maintains a sufficient unassigned fund balance of \$7.41 million and assigned fund balance of \$14.3 million to cover the costs of the project.

WHEREAS, the cost to the City for such thermal or electrical energy or conservation services provided under the proposed Energy Services Agreement in Exhibit A will be less than the anticipated marginal cost to the City of thermal, electrical, or other energy that would have been consumed by the City in the absence of the implementation of the improvements under the Energy Services Agreement; and

WHEREAS, the Menlo Park Community Campus project is a "Project" for purposes of the California Environmental Quality Act (CEQA); and

WHEREAS, the Guidelines for CEQA, California Code of Regulations Title 14, Chapter 13, exempt certain projects from further CEQA evaluation; and

WHEREAS, the City has reviewed the Menlo Park Community Campus project and has determined that it is exempt from the provisions of CEQA pursuant to the State CEQA Guidelines and that no exceptions to the exemption apply.

NOW, THEREFORE, the Menlo Park City Council finds and adopts the following:

1. Per California Government Code section 4217.10 to 4217.18, all of the recitals set forth above are true and correct.
2. The terms of the Energy Services Agreement in the form presented at this meeting and in Exhibit A are in the best interest of the City.
3. In accordance with California Government Code section 4217.10 to 4217.18, and based on the data provided by the Analysis, the anticipated costs to the city for electrical energy services provided by the Project will be less than the anticipated marginal cost to the city of electrical and other energy that would have been consumed by the City in absence of the Project.
4. Approves, authorizes and directs the City Manager to execute an Energy Services Agreement in Exhibit A with ENGIE Services US Inc. for the design, construction, operation, and maintenance of a solar photovoltaic battery microgrid, solar photovoltaic thermal system (pool heating), and electric vehicle charging at the Menlo Park Community Campus project as defined by the Energy Services Agreement, and appropriate a total of \$5.72 million comprised of \$3.22 million from the unassigned fund balance and \$2.5 million from the assigned economic stabilization fund in the General Fund to fund the design and construction aspects of this project inclusive of a nine percent contingency (\$0.47 million).
5. The Menlo Park Community Campus project is exempt from the requirements of CEQA exempt under Section 15302 as a California Environmental Quality Act Class 2 (Replacement or Reconstruction) as the Menlo Park Community Campus project consolidates the senior center, youth center, community center, and library facilities which previously existed as separate buildings on or near the project site, into a single building, including construction of a new pool to replace the existing pool to serve substantially the same purpose. The consolidation would increase the gross floor area by approximately 8.8 percent resulting primarily from interior circulation necessary to connect the facilities and allows the project to meet LEED certification and other green building standards and strategies not incorporated into the existing facilities

6. The City Manager, or their designee, is hereby authorized and directed to execute the agreement in Exhibit A and such amendments/change orders as are reasonably deemed necessary within the approval parameters provided in this Resolution to the Energy Services Agreement following the City Council's adoption of this Resolution. The City Manager is further authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this Resolution and said agreements.
7. The Resolution shall take effect immediately upon its passage.

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 eleventh day of January 2022, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Judi A. Herren, City Clerk

**Energy Services Contract
Menlo Park and ENGIE Services U.S.**

**DIR Project Registration # _____
ENGIE Services Project #: CN-001192
ENGIE Services Contract # R 3558**

ENERGY SERVICES CONTRACT

DRAFT DATED 23 December 2021

This **ENERGY SERVICES CONTRACT** (this "Contract") is made and entered into as of the date of execution by all parties (the "Contract Effective Date") by and between **ENGIE Services U.S. Inc.**, a Delaware corporation, with California State Contractor's License Number 995037 ("ENGIE Services U.S."), and **City of Menlo Park** ("Menlo Park" and together with ENGIE Services U.S. the "Parties" and each of Menlo Park and ENGIE Services U.S. a "Party").

CONTRACT RECITALS

WHEREAS, Menlo Park owns and/or operates certain public facilities specifically described in Attachment A (the "Facilities") and Menlo Park wishes to reduce the Facilities' energy consumption and costs and improve the Facilities' energy quality and reliability; and

WHEREAS, ENGIE Services U.S. is a full-service energy services company with the technical capabilities to provide services to Menlo Park including identifying supply-side and/or demand-side energy conservation measures ("ECMs"), engineering, procurement, construction management, installation, construction and training; and

WHEREAS, in its Request for Proposal response submitted on May 25, 2021, ENGIE Services U.S. identified energy and operational savings opportunities at Menlo Park's Facilities together with program costs to implement the recommended ECMs and presented an overall potential energy cost and consumption savings for implementing the ECM recommendations ("Recommendations"); and

WHEREAS, ENGIE Services U.S. delivered the Recommendations, on an arms' length basis, to designated personnel of Menlo Park; and

WHEREAS, Menlo Park has accepted the recommended ECMs and determined that the anticipated cost to Menlo Park to implement the recommended ECMs will be less than the anticipated cost to Menlo Park for thermal, electrical, and other energy, together with anticipated operational, maintenance and other costs, that would have been consumed by Menlo Park in the absence of the recommended ECMs in compliance with California Government Code §§4217.10 through 4217.18; and

WHEREAS, pursuant to California Government Code §4217.12, Menlo Park held two regularly scheduled public hearings on December 7, 2021 and January 11, 2022, with two weeks advance public notice provided for each meeting regarding this Contract and its subject matter, and

WHEREAS, Menlo Park has determined that entering into this energy services contract to implement the ECM recommendations is in the best interests of Menlo Park and that California Government Code §4217.10 *et seq.* authorizes Menlo Park to enter into such an agreement; and

WHEREAS, by adoption of Resolution No. _____ at the January 11, 2022 meeting, Menlo Park approved this Contract and authorized its execution.

NOW, THEREFORE, Menlo Park and ENGIE Services U.S. hereby agree as follows:

ARTICLE 1. DEFINITIONS

For purposes of this Contract and its Attachments, defined terms will have the following meanings:

"Abnormally Severe Weather Conditions" means typhoons, hurricanes, tornadoes, lightning storms and other climatic and weather conditions that are abnormally severe for the period of time when, and the area where, such storms or conditions occur, in each case occurring at a property, the access roads to a property, or any other location where Work or Professional Services are then being performed. The term "Abnormally Severe Weather Conditions" specifically includes rain, snow or sleet in excess of one hundred fifty percent (150%) of the median level over the preceding ten (10) year period for the local geographic area and time of year in which such rain, snow or sleet accumulates.

"Act" is defined in ARTICLE 15.

"Affiliate" means any Person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means

the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise; ownership of fifty percent (50%) or more of the voting securities of another Person creates a rebuttable presumption that such Person controls such other Person.

“**Applicable Law**” means any applicable statute, law, treaty, building code, rule, regulation, ordinance, code, enactment, injunction, writ, order, decision, authorization, judgment, decree, protocol, procedure or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, as may be in effect at the time the Work or Professional Services are undertaken.

“**Applicable Permits**” means all permits, approvals, inspections and certifications required to be issued by any Governmental Authority in connection with the Professional Services or the design, construction, installation and start-up of the Work as of the Contract Effective Date including without limitation obtaining authorization from the local utility provider to connect the solar installation to the local distribution grid.

“**Application for Payment**” means a monthly progress payment as described in Section 8.01 or an invoice for materials stored off-site as described in Section 8.02.

“**Arbitral Panel**” is defined in Section 19.04(ii).

“**Arbitration Rules**” is defined in Section 19.04(ii).

“**Attachment**” means the following attachments to this Contract, each of which is an “Attachment.”

Attachment A	Facilities
Attachment B	Preliminary Project Schedule
Attachment C	Scope of Work
Attachment D	Monitoring Installation Scope of Work
Attachment E	Measurement and Verification Services
Attachment F	Maintenance Services
Attachment G	EV Charging Support Services

“**Beneficial Use**” means when major new equipment and systems included in the Scope of Work are properly installed, inspected, operational, and are capable of being used for their intended purpose. Criteria for Beneficial Use of equipment / systems will be established as defined in Attachment C.

“**Business Day**” means any calendar day other than a Saturday, a Sunday or a calendar day on which banking institutions in San Francisco, California, are authorized or obligated by law or executive order to be closed.

“**CEQA**” means the California Environmental Quality Act, codified at California Public Resource Code § 21000 *et seq.*, and the applicable state and local guidelines promulgated thereunder.

“**Certificate of Beneficial Use**” means the certificate, issued by ENGIE Services U.S. to Menlo Park and subcontractor(s), which identifies when Menlo Park took Beneficial Use of the Work or any portion thereof. A Certificate of Beneficial Use may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“**Certificate of Final Completion**” means the certificate issued by ENGIE Services U.S. to Menlo Park, in accordance with Section 6.03. A Certificate of Final Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“**Certificate of Substantial Completion**” means the certificate issued by ENGIE Services U.S. to Menlo Park, in accordance with Section 6.02. A Certificate of Substantial Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“**Change**” means any addition to, deletion from, suspension of, or other modification to the quality, function, or intent of the Work or Professional Services.

“**Change in Law**” means any of the following events or circumstances occurring after the Contract Effective Date: (i) an amendment, modification, interpretation, construction, enforcement standard, supplement or other change in or repeal of an existing Applicable Law; or (ii) an enactment or making of a new Applicable Law (excluding a change in any income or franchise tax law, worker’s compensation, payroll or withholding tax law).

“**Change Order**” means a written document, signed by both ENGIE Services U.S. and Menlo Park, authorizing ENGIE Services U.S. to perform a Change. The Change Order modifies the Scope of Work and should identify: (i) the applicable Change; (ii) any additional compensation to be paid to ENGIE Services U.S. to perform such Change; and (iii) any extension of time to complete the Project.

“Construction” means any and all Work to be performed that involves construction, alteration, repair, installation or removal of equipment, addition to, subtraction from, improving, moving, wrecking or demolishing any building, parking facility, excavation, or other structure or improvement, or any part thereof.

“Construction Documents” means the final designs, drawings, specifications and submittals that are used for Construction, including without limitation Menlo Park’s Agreement Forms, General Provisions and Special Provisions to the extent they are not inconsistent with this Contract, and any Change Orders affecting those documents, that describe the technical requirements for the installation of all the materials and equipment pursuant to this Contract.

“Construction Period” means the period beginning with the first day of the month in which material or equipment is first installed at the Facilities and continuing until the M&V Commencement Date.

“Contract” is defined in the Preamble, and includes all Attachments hereto (all of which are incorporated herein by this reference), as well as all Change Orders, amendments, restatements, supplements and other modifications hereto.

“Contract Amount” means a fixed price, lump sum of Five Million Two Hundred Eight Thousand Nine Hundred Twenty-Nine Dollars (\$5,208,929), which is exclusive of any fees for Professional Services. Compensation for the Professional Services shall be fixed annual fees as set forth in the applicable Attachment.

“Contract Bonds” is defined in Section 12.02.

“Contract Effective Date” is defined in the Preamble.

“Delay” means any circumstances involving delay, disruption, hindrance or interference affecting the time of performance of the Work or the Professional Services.

“Dispute” is defined in Section 19.02.

“ECM” is defined in the Recitals.

“Energy Delivery Point” means, for each Generating Facility, the point at which Utility meter energy is being delivered, as designated in the Interconnection Agreement.

“Energy Usage Data” is defined in Section 2.05.

“ENGIE Services U.S.” is defined in the Preamble.

“ENGIE Services U.S. Warranty” is defined in Section 9.01.

“EV Charging Support Services” are defined in Attachment G.

“Event of Default” is defined in ARTICLE 16.

“Excusable Event” means an act, event, occurrence, condition or cause beyond the control of ENGIE Services U.S., including, but not limited to, the following: (i) any act or failure to act of, or other Delay caused by any Menlo Park Person; (ii) the failure to obtain, or delay in obtaining, any Interconnection Agreement, Applicable Permit, or approval of a Governmental Authority (including due to failure to make timely inspection), or Delays caused by Changes and/or modifications to the Scope of Work required by a Governmental Authority, other than a failure caused by the action or inaction of ENGIE Services U.S.; (iii) changes in the design, scope or schedule of the Work required by any Governmental Authority or Menlo Park Person; (iv) undisclosed or unforeseen conditions encountered at the Project Location, including discovery or existence of Hazardous Substances; (v) the failure to obtain, or delay in obtaining, approval of any Governmental Authority for design and installation of any portion of the Work, including any further or subsequent approval required with respect to any Change, other than a failure caused by the action or inaction of ENGIE Services U.S.; (vi) information provided to ENGIE Services U.S. by any Menlo Park Person or Utility is later found to be inaccurate or incomplete; (vii) any Change in Law; (ix) acts of God; (x) acts of the public enemy or terrorist acts; (xi) relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; (xii) work by Utility; (xiii) flood, earthquake, tornado, storm, fire, explosions, lightning, landslide or similar cataclysmic occurrence; (xiv) sabotage, vandalism, riots or civil disobedience; (xv) labor disputes or strikes; (xvi) labor or material shortages not caused by COVID-19, supply chain disruptions not caused by COVID-19 (labor or material shortages and supply chain disruptions attributable to COVID-19 may result in a non-compensable time extension upon presentation of adequate proof of causation, but will not otherwise constitute an Excusable Event), delay in manufacturing and deliveries of equipment; (xvii) Abnormally Severe Weather Conditions; (xviii) an annual level of direct beam solar resource availability that is less than or equal to 90% of historical averages as measured by long-term weather data (minimum 5 years) collected at the applicable Facility and/or other reliable calibrated and appropriate weather station representative of such Facility; (xix) requirement by Utility that any Generating Facility discontinue operation; (xx) any action by a Governmental Authority that prevents or inhibits the Parties from carrying out their respective obligations under this Contract (including an unstayed order of a court or administrative agency having the effect of subjecting the sales of energy output to federal or state regulation of prices and/or services); (xxi) any Utility power outage at a Facility; or

(xxii) regional epidemic or global pandemic with the exception of COVID-19 and other epidemics known at the time of this Agreement.

“**Facilities**” is defined in the Recitals.

“**Final Completion**” means the stage in the progress of the Work at which the Construction Work as identified in the Scope of Work, or a designated portion thereof, has been completed and commissioned, including completion of all Punch List items, completion of all required training, and delivery to Menlo Park of the final documentation (as-built drawings, operation and maintenance manuals, warranty documentation and final submittals).

“**Generating Facility**” means each of the photovoltaic, solar powered generating facilities located at the sites listed in Attachment E, and includes all associated photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wires and other equipment that may be necessary to connect the Generating Facility to the applicable Energy Delivery Point.

“**Governmental Authority**” means any federal, state, regional, town, county, city, municipal or local government agency, department or regulatory body having jurisdiction under Applicable Law over the matter in question.

“**Hazardous Substances**” means (i) any hazardous, toxic, or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials and any other carcinogenic, liquids, corrosive, ignitable, radioactive, reactive, toxic, or otherwise hazardous substances or mixtures (whether solids, liquids, gases) now or at any time subject to regulation, control, remediation, or otherwise addressed under Applicable Laws; (ii) any “hazardous substance” as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. §6901 *et seq.*), as amended, and regulations promulgated thereunder; (iii) any “hazardous, toxic or dangerous waste, substance or material” specifically defined as such in 42 U.S.C. §9601 *et seq.*), as amended and regulations promulgated thereunder; and (iv) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called “superfund” or “superlien” law.

“**Installation**” means the setting up, construction, and placement of any equipment or materials in the manner it will be operated, in accordance with the Scope of Work and in accordance with all Applicable Laws.

“**Instruments of Service**” is defined in Section 10.01(c).

“**Interconnection Agreement**” means the Interconnection Agreement to be entered into between Menlo Park and the Utility with respect to the Generating Facilities.

“**Interconnection Facilities**” is defined in Section 18.02.

“**Interest**” means interest calculated at the lesser of (i) the prime rate plus two percent (2%) or (ii) the maximum rate permitted by Applicable Law. The “prime rate” will be the “Prime Rate” of interest per annum for domestic banks as published in The Wall Street Journal in the “Money Rates” section.

“**Losses**” is defined in Section 11.01.

“**Measurement and Verification (M&V) Commencement Date**” means the first day of the month immediately following the later of (i) ENGIE Services U.S.’s receipt of the fully signed Certificate of Final Completion, and (ii) ENGIE Services U.S.’s receipt of the full Contract Amount.

“**Measurement and Verification (M&V) Services**” (if any) are defined in Attachment E.

“**Maintenance Services**” (if any) are defined in Attachment F.

“**Measurement Period**” means each one-year period following the M&V Commencement Date.

“**Menlo Park**” is defined in the Preamble.

“**Menlo Park Persons**” means Menlo Park, its agents, employees, subcontractors, architects, general contractors, lease/leaseback contractors or other Persons acting on behalf of Menlo Park or for whom Menlo Park is responsible.

“**NEC**” means the National Electric Code.

“**Notice to Proceed**” is defined in Section 2.04.

“**Party**” and “**Parties**” are defined in the Preamble.

“**Person**” means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental Authority.

“**Professional Services**” means professional services (such as EV Charging Support Services, Resiliency Services, Maintenance Services and M&V Services, if any) provided by ENGIE Services U.S. to Menlo Park under this Contract.

“**Project**” means the entirety of Work to be performed by ENGIE Services U.S. pursuant to the Scope of Work, and any Change Orders.

“**Project Location**” means the area or areas where the Project materials and equipment and any other energy related equipment, as described in the Scope of Work, are installed, and the general area where the Work is performed.

“**Punch List**” means, with respect to any portion of the Work, a list of minor corrective items which need to be completed or corrected in order to complete such portion of the Work, but do not impair Menlo Park’s ability to beneficially operate and utilize such portion of the Work.

“**Recommendations**” is defined in the Recitals.

“**Retained Items**” is defined in Section 10.02.

“**Retention**” is defined in Section 8.03.

“**Schedule of Values**” is defined in Section 8.01.

“**Scope of Work**” means the Work set forth in Attachments C and D, and E, as modified by any Change Order.

“**Substantial Completion**” means the stage in the progress of the Work at which the Work, or a designated portion thereof, is sufficiently complete, in conformance with the Scope of Work, the Construction Documents and any Change Orders, so that Menlo Park can take Beneficial Use thereof.

“**Surety**” means the surety supplying the Contract Bonds, which must be an “admitted surety insurer,” as defined by California Code of Civil Procedure §995.120, authorized to do business in the State of California, and reasonably satisfactory to Menlo Park.

“**Utility**” is defined in Section 18.02.

“**Work**” means the Work to be done by ENGIE Services U.S. pursuant to the Scope of Work including design and construction services but excluding Professional Services, subject to any Change Orders.

ARTICLE 2. TERM; PERFORMANCE OF THE WORK

Section 2.01 Contract Term. The term of this Contract commences on the Contract Effective Date and ends on the last day on which Work is performed, unless terminated earlier as provided in this Contract. Provisions applicable to the Professional Services provided under the Attachments hereto shall survive until the last day on which the applicable Professional Services are performed.

Section 2.02 Performance of Work. The Work and Professional Services to be performed hereunder will be provided in accordance with the terms of this Contract and Menlo Park’s Agreement Forms, General Provisions, and Special Provisions where applicable, and the applicable standard of care. ENGIE Services U.S. will perform its obligations under this Contract (i) using the degree of skill and care that is required by current, good and sound professional procedures and practices, and (ii) in conformance with (a) generally accepted professional standards prevailing at the time the Work is performed, (b) the covenants, terms and conditions of this Contract, and (c) applicable laws, codes, rules and regulations, including, without limitation, the applicable provisions of the Menlo Park Code Requirements and the California Building Code. ENGIE Services U.S. represents and warrants that it is fully experienced in projects of the nature and scope of the Work and Professional Services, and that it is properly qualified, licensed (as a Class A General Engineering Contractor and/or a Class C-10 Electrical Contractor) and equipped to supply and perform the Work and Professional Services. The Work completed herein will be subject to Menlo Park’s general right of inspection and supervision to secure the satisfactory completion thereof in accordance with this Contract.

Section 2.03 Scope of Work.

- (a) The Scope of Work may not exceed that set forth in Attachments C and D, except pursuant to a Change Order.
- (b) The Professional Services may not exceed those set forth in Attachments E, F and G, except pursuant to a Change Order.

Section 2.04 Notice to Proceed. Menlo Park will issue to ENGIE Services U.S. a written Notice to Proceed (“Notice to Proceed”) upon receipt from ENGIE Services U.S. of required contract documents, bonds and insurance, and other pre-construction deliverables set forth herein. ENGIE Services U.S. will begin Work within thirty (30) calendar days after ENGIE Services U.S.’s receipt of the Notice to Proceed.

Section 2.05 Project Schedule. A preliminary project schedule is attached hereto as Attachment B. No later than forty-five (45) calendar days after receipt of the Notice to Proceed, ENGIE Services U.S. will develop, with input from Menlo Park, a master project schedule using Microsoft Project®. ENGIE Services U.S. will establish a weekly construction meeting at which time the Work of the previous week will be reviewed and a two-week look ahead will be coordinated. The project schedule will be updated monthly.

Section 2.06 Menlo Park's Records and Data. If ENGIE Services U.S. requests, Menlo Park will provide to ENGIE Services U.S., within thirty (30) calendar days after such request or to the best of Menlo Park's abilities, Menlo Park's design documents and other documents and data relating to Menlo Park's larger project underway at the Project Location ("Project Data"). "Project Data" means all of Menlo Park's records, drawings and complete data concerning the new construction plans and project, including, without limitation, descriptions of any present or anticipated changes in a building's structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment expected to be used in the Facilities; applicable building drawings, specifications, existing AutoCAD files, operation and maintenance manuals, and as-builts;. Menlo Park agrees that ENGIE Services U.S. may rely on the Project Data as being accurate in all respects.

Section 2.07 Proof of Financial Arrangements. Prior to the commencement of the Work, Menlo Park will provide ENGIE Services U.S. mutually agreeable proof that financial arrangements have been made to fulfill Menlo Park's obligations under this Contract. Menlo Park's requirement to furnish such proof to ENGIE Services U.S. is a condition precedent to commencement of the Work. After commencement of the Work, ENGIE Services U.S. may request such proof if (i) Menlo Park fails to make payments to ENGIE Services U.S. as this Contract requires; (ii) a Change in the Work materially changes the Contract Amount; or (iii) ENGIE Services U.S. has other reasonable concerns regarding Menlo Park's ability to fulfill its payment obligations under this Contract when due. Menlo Park will furnish such proof as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change.

ARTICLE 3. PROJECT IMPLEMENTATION - GENERAL

Section 3.01 Registrations, Permits and Approvals.

- (a) Prior to issuing the Notice to Proceed, Menlo Park must register the Project with the California Department of Industrial Relations, using Form PWC-100.
- (b) ENGIE Services U.S. is responsible for obtaining, but not paying for, Applicable Permits. Menlo Park will cooperate fully with and assist ENGIE Services U.S. in obtaining all Applicable Permits, certifications, exemptions or approvals that may be required under this Contract.
- (c) Menlo Park is responsible for hiring and paying inspectors, and for fees associated with plan checks (including expedited plan checks), permits, inspections, , annual operating permits (if any), approvals or exemptions from CEQA, and utility interconnection(s), including any additional Scope of Work that may be required by the Utilities as part of the Interconnection Agreement(s).

Section 3.02 Coordination. Menlo Park will be responsible for coordinating the activities of ENGIE Services U.S. and ENGIE Services U.S.'s subcontractors and suppliers with those of Menlo Park Persons.

Section 3.03 Project Meetings/Status Updates. During the course of the Work, ENGIE Services U.S. will periodically meet with Menlo Park to report on the general status and progress of the Work. Frequency of the meetings will be as agreed upon by the Parties. ENGIE Services U.S. may (but is not required to) make food and beverage items of nominal value available to Menlo Park and Menlo Park's employees and agents at such meetings, which if offered will be deemed part of the Scope of Work and included in the Contract Amount.

Section 3.04 Project Location Access. Menlo Park hereby grants to ENGIE Services U.S., without cost to ENGIE Services U.S., all rights of ingress and egress at the Project Location, necessary for ENGIE Services U.S. to perform the Work and provide all services contemplated by this Contract. ENGIE Services U.S. will provide twenty-four-hour advance notice to Menlo Park for access to any Menlo Park Facilities. All persons entering the Project Location, including Menlo Park and its employees and agents, must follow ENGIE Services U.S.'s safety procedures. ENGIE Services U.S. may (but is not required to) make transportation available to Menlo Park and Menlo Park's employees and agents between and within Project Locations, which if offered will be deemed part of the Scope of Work and included in the Contract Amount.

Section 3.05 Consents; Cooperation. Whenever a Party's consent, approval, satisfaction, or determination will be required or permitted under this Contract, and this Contract does not expressly state that the Party may act in its sole discretion, such consent, approval, satisfaction, or determination will not be unreasonably withheld, qualified, conditioned, or delayed, whether or not such a "reasonableness" standard is expressly stated in this Contract. Whenever a Party's cooperation is required for the other Party to carry out its obligations hereunder, each Party agrees that it will act in good faith and reasonably in so cooperating with the other Party or its designated representatives or assignees or subcontractors. Each Party will furnish decisions, information, and approvals required by this Contract in a timely manner so as not to delay the other Party's performance under this Contract.

Section 3.06 Independent Contractor. The Parties hereto agree that ENGIE Services U.S., and any agents and employees of ENGIE Services U.S., its subcontractors and/or consultants, is acting in an independent capacity in the performance of this Contract, and not as a public official, officer, employee, partner, consultant, or agent of Menlo Park for purposes of conflict of interest laws, federal income tax or any other Applicable Law. Menlo Park and ENGIE

Services, in performing any of their obligations hereunder, shall be independent parties and shall discharge their contractual obligations at their own risk

ARTICLE 4. FINAL DESIGN PHASE – CONSTRUCTION DOCUMENTS / EQUIPMENT PROCUREMENT

Section 4.01 General Provisions.

- (a) After receipt of the Notice to Proceed, ENGIE Services U.S. will proceed with the preparation of any necessary designs, drawings, and specifications related to the Scope of Work.
- (b) After completion of the design phase and approval of the final plans and specifications by Menlo Park, ENGIE Services U.S. will commence ordering the equipment identified in the Scope of Work, and any other necessary materials and supplies in order to meet the project schedule.
- (c) Menlo Park will designate a single-point representative with whom ENGIE Services U.S. may consult on a reasonable, regular basis and who is authorized to act on Menlo Park's behalf with respect to the Project design. Menlo Park's representative will render decisions in a timely manner with regard to any documents submitted by ENGIE Services U.S. and to other requests made by ENGIE Services U.S. in order to avoid delay in the orderly and sequential progress of ENGIE Services U.S.'s design services.
- (d) Within ten (10) Business Days after ENGIE Services U.S.'s request, Menlo Park will:
 - (i) furnish all surveys or other information in Menlo Park's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Project Location;
 - (ii) disclose any prior environmental review documentation and all information in its possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Substances, in or around the general area of the Project Location;
 - (iii) supply ENGIE Services U.S. with all relevant information in Menlo Park's possession, including any as-built drawings and photographs, of prior construction undertaken at the Project Location;
 - (iv) obtain any and all easements, zoning variances, planning approvals, including any resolution of any environmental impact issues, and any other legal authorization regarding utilization of the Project Location for the execution of the Work; and
 - (v) obtain any and all title reports for those Project Locations reasonably requested by ENGIE Services U.S.
- (e) All information furnished pursuant to this Section 4.01 will be supplied at Menlo Park's expense, and ENGIE Services U.S. will be entitled to rely upon the accuracy and completeness of all information provided. If ENGIE Services U.S. is adversely affected by any failure to provide, or delay in providing, the information specified in Section 4.01(d), ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount as mutually agreed to by the Parties.
- (f) If any information disclosed under this Section 4.01 gives rise to a Change to the Work or an Excusable Event, ENGIE Services U.S. will notify Menlo Park. The Parties will meet and confer with respect to those Changes, and ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. If the Parties, however, are unable to agree on whether Menlo Park's disclosed information gives rise to a Change to the Work or an Excusable Event, those disputes are to be resolved in accordance with ARTICLE 19.
- (g) ENGIE Services U.S. contemplates that it will not encounter any Hazardous Substances at the Project Location, except as has been disclosed as a pre-existing condition by Menlo Park prior to the Contract Effective Date. However, any disclosure of Hazardous Substances that will affect the performance of the Work after the Contract Effective Date will constitute a valid basis for a Change Order.

Section 4.02 Review of Construction Documents. ENGIE Services U.S. will prepare and submit all drawings and specifications to Menlo Park for review. Menlo Park / Authorities with Jurisdiction will review the documents and provide any comments in writing to ENGIE Services U.S. within thirty (30) Days or within such time as is reasonably required after receipt of the documents. Menlo Park will notify ENGIE Services U.S. in writing within thirty (30) days of submittals if the review of the Construction Documents will take more than thirty (30) Days. ENGIE Services U.S. will incorporate appropriate Menlo Park comments into the applicable drawings and specifications. ENGIE Services U.S. reserves the right to issue the drawings and specifications in phases to allow Construction to be performed in phases. Menlo Park's review of Construction Documents will include without limitation confirmation that the designed installation complies with structural and electrical requirements and applicable fire safety provisions, confirmation that the design contemplates adequate rooftop support for any additional rooftop weight contemplated for the solar facility ("dead load") and any rooftop weight required for the Work ("live load") and any loads generated by seismic forces on the planned solar panels.

Section 4.03 Permits. The respective obligations of the Parties in obtaining inspections and permits are as specified in Section 3.01. Menlo Park will agree to any nonmaterial changes to the designs, drawings, and specifications required by any Governmental Authority. The Contract Amount must be increased by any additional cost incurred by ENGIE Services U.S. due to a Change required by a Governmental Authority and the time required to complete the Work must be increased by the number of additional days required to complete the Work because of a Change imposed by a Governmental Authority.

Section 4.04 Changes During Final Design Phase. If during the design phase any Menlo Park Person requests Changes and/or modifications to the Work that materially affects the Project Schedule and/or Contract Amount, and/or an Excusable Event occurs, ENGIE Services U.S. may be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. Valid bases for additional compensation and/or time extension include, but are not limited to: (i) any Menlo Park Person requests changes and/or modifications to the Project Scope of Work during the Project design phase; (ii) any Menlo Park Person causes delays during ENGIE Services U.S.'s design work; (iii) the discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed as of the Contract Effective Date; (iv) the discovery of Hazardous Substances at or impacting the Project Location; (v) changes to the Scope of Work required to obtain Applicable Permits; (vi) damage to any equipment or other Work installed by ENGIE Services U.S. caused by the act or omission of any Menlo Park Person; (vii) changes and/or modifications to Scope of Work ordered by any Governmental Authority; and (viii) any other condition that would not reasonably have been anticipated by ENGIE Services U.S., that modifies and/or changes the Scope of Work, that increases the agreed-upon Contract Amount or increases the time needed to complete the Work.

Section 4.05 Approval by Authorities with Jurisdiction. ENGIE Services U.S. understands and agrees that pursuant to the Public Contract Code, it cannot proceed with the construction phase until Menlo Park and other required Authorities with Jurisdiction, e.g., the Building Official and/or Menlo Park Fire Marshal, have approved the final design documents. Menlo Park shall promptly notify ENGIE Services U.S. upon receipt of all required approvals of the Construction Documents.

ARTICLE 5. CONSTRUCTION PHASE

Section 5.01 General Provisions. Upon securing the requisite Applicable Permits pursuant to Section 3.01, and completion of Construction Documents, ENGIE Services U.S. will commence the construction of the Project in accordance with the Construction Documents. The construction will be performed in accordance with all Applicable Laws and Applicable Permits, by ENGIE Services U.S. and/or one or more licensed subcontractors qualified to perform the Work.

(a) In accordance with the Construction Documents, ENGIE Services U.S. will designate the City of Menlo Park as the Project Location and final shipping address and the address at which Project-related purchases will be installed. The parties will cooperate to ensure that the City of Menlo Park benefits from the receipt of local sales tax revenues where possible.

Section 5.02 ENGIE Services U.S.'s Responsibilities during Construction Phase.

- (a) As an independent contractor to Menlo Park, ENGIE Services U.S. will provide, or cause to be provided by its subcontractor(s), all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution, construction, and completion of the Work. ENGIE Services U.S. will purchase in advance all necessary materials and supplies for the construction of the Project in order to assure the prompt and timely delivery of the completed Work pursuant to the project schedule. ENGIE Services U.S. will also be responsible for all means, methods, techniques, sequences, and procedures required by the Construction Documents.
- (b) ENGIE Services U.S. will make commercially reasonable efforts to coordinate construction activities and perform the Work to minimize disruption to Menlo Park's operations at the Project Location. ENGIE Services U.S. will provide at least thirty (30) calendar days' written notice (or as many days as possible if thirty (30) days' notice cannot be given) to Menlo Park of any planned power outages that will be necessary for the construction. ENGIE Services U.S. will cooperate with Menlo Park in scheduling such outages, and Menlo Park agrees to provide its reasonable approval of any scheduled outage.
- (c) ENGIE Services U.S. will initiate and maintain a safety program in connection with its Construction of the Project. ENGIE Services U.S. will take reasonable precautions for the safety of, and will provide reasonable protection to prevent damage, injury, or loss to: (i) employees of ENGIE Services U.S. and subcontractors performing Work under this Contract; (ii) ENGIE Services U.S.'s property and other materials to be incorporated into the Project, under the care, custody, and control of ENGIE Services U.S. or its subcontractors; and (iii) other property at or adjacent to the Project Location not designated for removal, relocation, or replacement during the course of construction. ENGIE Services U.S. will not be responsible for Menlo Park's employees' safety unless ENGIE Services U.S.'s negligence in the performance of its Work is the actual and/or proximate cause of the employee's injury.

- (d) ENGIE Services U.S. will provide notice to Menlo Park of scheduled test(s) of installed equipment, if any, and Menlo Park and/or its designees will have the right to be present at any or all such tests conducted by ENGIE Services U.S., any subcontractor, and/or manufacturers of the equipment.
- (e) Pursuant to California Labor Code §6705, if the Work is a public work involving an estimated expenditure in excess of \$25,000 and includes the excavation of any trench or trenches five (5) feet or more in depth, ENGIE Services U.S. will, in advance of excavation, submit to Menlo Park and/or a registered civil or structural engineer, employed by Menlo Park, to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, which provisions will be no less effective than the current and applicable CAL-OSHA Construction Safety Orders. No excavation of such trench or trenches may be commenced until this detailed plan has been accepted by Menlo Park or by the person to whom authority to accept has been delegated by Menlo Park. Pursuant to California Labor Code §6705, nothing in this Section 5.02(e) imposes tort liability on Menlo Park or any of its employees.
- (f) Pursuant to California Public Contract Code §7104, if the Work is a public work involving digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground:
 - (i) ENGIE Services U.S. will promptly, and before the following conditions are disturbed, notify Menlo Park, in writing, of any:
 - 1) Material that ENGIE Services U.S. believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
 - 2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to ENGIE Services U.S. before the Contract Effective Date;
 - 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
 - (ii) Menlo Park will promptly investigate the conditions and, if it finds that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in ENGIE Services U.S.'s cost of, or the time required for, performance of any part of the Work will issue a Change Order under the procedures described in this Contract.
 - (iii) If a dispute arises between Menlo Park and ENGIE Services U.S., whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in ENGIE Services U.S.'s cost of, or time required for, performance of any part of the Work, ENGIE Services U.S. will not be excused from any scheduled completion date provided for by this Contract but will proceed with all Work to be performed under this Contract. ENGIE Services U.S. will retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.

Section 5.03 Menlo Park's Responsibilities during Construction Phase.

- (a) Menlo Park will designate a single-point representative authorized to act on Menlo Park's behalf with respect to Project construction and/or equipment installation. Menlo Park may from time to time change the designated representative and will provide written notice to ENGIE Services U.S. of such change. Any independent review of the construction will be undertaken at Menlo Park's sole expense, and will be performed in a timely manner so as to not unreasonably delay the orderly progress of ENGIE Services U.S.'s Work.
- (b) Menlo Park will provide a temporary staging area for ENGIE Services U.S., or its subcontractors, to use during the construction phase to store and assemble equipment for completion of the Work, if needed. Menlo Park will provide sufficient space at the Facilities for the performance of the Work and the storage, installation, and operation of any equipment and materials and will take reasonable steps to protect any such equipment and materials from harm, theft and misuse. Menlo Park will provide access to the Facilities, including parking permits and identification tags, for ENGIE Services U.S. and subcontractors to perform the Work during regular business hours, or such other reasonable hours as may be requested by ENGIE Services U.S. and acceptable to Menlo Park. Menlo Park will also either provide a set or sets of keys to ENGIE Services U.S. and its subcontractors (signed out per Menlo Park policy) or provide a readily available security escort to unlock and lock doors. Menlo Park will not unreasonably restrict ENGIE Services U.S.'s access to Facilities to make emergency repairs or corrections as ENGIE Services U.S. may determine are needed.
- (c) Menlo Park will maintain the portion of the Project Location that is not directly affected by ENGIE Services U.S.'s Work. Menlo Park will keep the designated Project Location and staging area for the Project free of obstructions, waste, and materials within the control of Menlo Park.

- (d) Menlo Park will obtain any required environmental clearance from, and any inspections, including special inspections, required by, any federal, state, and local jurisdictions, including any clearances required under CEQA, prior to scheduled construction start date.
- (e) Menlo Park will prepare the Project Location for construction, including, but not limited to, clearance of above and below ground obstructions, such as buildings, appurtenances, and utilities, as detailed in Attachment C, Section 1.3. Subsurface conditions and obstacles (buried pipe, utilities, etc.) that are not otherwise previously and accurately documented by Menlo Park and such documentation made available to ENGIE Services U.S. are the responsibility of Menlo Park. If ENGIE Services U.S. encounters such unforeseen conditions in the performance of the Work, ENGIE Services U.S. may be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.
- (f) Menlo Park will remove any Hazardous Substances either known to Menlo Park prior to the commencement of the Work or encountered by ENGIE Services U.S. during the construction of the Project, if necessary in order for the Work to progress safely, that were not knowingly released or brought to the site by ENGIE Services U.S. ENGIE Services U.S. will respond to the discovery of Hazardous Substances at or around the Project Location during the course of ENGIE Services U.S.'s construction in accordance with Section 5.06.
- (g) Menlo Park will coordinate the Work to be performed by ENGIE Services U.S. with its own operations and with any other construction project that is ongoing at or around the Project Location, with the exception that ENGIE Services U.S. will coordinate the Interconnection Facilities work, if any, which will be performed by the local utility.
- (h) Menlo Park will, and will cause Menlo Park Persons to, allow ENGIE Services U.S. and its subcontractors access to and reasonable use of necessary quantities of Menlo Park's water and other utilities, including electrical power, as needed for the construction of the Work, at no cost to ENGIE Services U.S.
- (i) Menlo Park will, and will cause Menlo Park Persons to, provide ENGIE Services U.S. and/or its subcontractors with reasonable access to the Project Location to perform the Work, including without limitation and at no extra cost to ENGIE Services U.S., access to perform Work on Saturdays, Sundays, legal holidays, and non-regular working hours when necessary for utility interconnection and microgrid testing. ENGIE Services U.S. will notify Menlo Park in advance to coordinate Work required during non-regular working hours.
- (j) Menlo Park will also do the following:
 - (i) Attend the regularly scheduled progress meetings. Participate as needed regarding scheduling of the Work.
 - (ii) When requested by ENGIE Services U.S., participate in the job inspection walk-through with ENGIE Services U.S. to determine Substantial Completion or Beneficial Use of major equipment, and will sign the Certificate(s) of Substantial Completion.
 - (iii) Perform a final walk-through of the Project and, upon receipt of the operation and maintenance manuals and as-built drawings, sign the Certificate of Final Completion for the related Work.
 - (iv) Upon the completion of the entire Scope of Work listed in Attachment C, including training, if any, and submission of close-out documents, sign a Certificate of Final Completion for the entire Project.

Section 5.04 Changes.

- (a) Change Orders Generally. Changes and/or modifications to the Scope of Work will be authorized by a written Change Order issued by Menlo Park and signed by both Parties. The Change Order should state the change and/or modification to the Scope of Work, any additional compensation to be paid, and any applicable extension of time. ENGIE Services U.S. may, at its election, suspend performance of that portion of the Work affected by any proposed Change until a written Change Order with respect to the Changed or modified Work has been signed by both Menlo Park and ENGIE Services U.S. ENGIE Services U.S. will use its reasonable efforts to continue other portions of the Work not affected or impacted by such proposed Change until such time as the applicable Change Order is resolved. In addition, if any Menlo Park Person requests a proposal from ENGIE Services U.S. for a Change and Menlo Park subsequently elects to not proceed with such Change, Menlo Park agrees that a Change Order will be issued to reimburse ENGIE Services U.S. for any costs reasonably incurred for estimating services, design services, and/or preparation of the proposal requested by such Menlo Park Person.
- (b) Change Orders Requiring Additional Compensation. If during construction any Menlo Park Person requests changes and/or modifications to the Work, and/or there are Excusable Events, Menlo Park will pay the extra costs caused by such modifications and/or changes and/or Excusable Event and ENGIE Services U.S. will be entitled to additional compensation for the following reasons, that include, but are not limited to: (i) any Menlo Park Person requests changes and/or modifications to the Scope of Work during the construction phase of the

Project; (ii) any Menlo Park Person causes delays during ENGIE Services U.S.'s construction work; (iii) discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed prior to the commencement of the Work; (iv) discovery of Hazardous Substances at or impacting the Project Location; (v) changes and/or modifications to the Scope of Work required to obtain required permits and approvals as required by any Governmental Authority; (vi) damage to any equipment or other Work installed by ENGIE Services U.S. caused by the act or omission of any Menlo Park Person; (vii) changes and/or modifications to Scope of Work ordered by any Governmental Authority; and (viii) any other condition that would not reasonably have been anticipated by ENGIE Services U.S., that modifies and/or changes the Scope of Work or the Contract Amount.

- (c) Change Orders Requiring Additional Time. If during construction any Menlo Park Person requests changes and/or modifications to the Scope of Work and/or an Excusable Event occurs, the Parties agree that an equitable extension of time to complete the Work may be necessary. Menlo Park and ENGIE Services U.S. acknowledge and agree that changes to price based on delay of schedule due to supply chain shall not be requested or accepted. Prior to any extension of time, ENGIE Services U.S. will use commercially reasonable efforts to make up such delays, including authorizing overtime payments; *provided* that Menlo Park has issued a Change Order authorizing any such overtime payment and has specifically agreed to pay all costs, including administrative charges and expenses, associated therewith.
- (d) Method for Adjustment. An increase or decrease in the Contract Amount and/or time resulting from a Change in the Work and/or Excusable Event must be determined by one or more of the following methods:
- (i) unit prices set forth in this Contract or as subsequently agreed;
 - (ii) a mutually accepted, itemized lump sum; or
 - (iii) costs calculated on a basis agreed upon by Menlo Park and ENGIE Services U.S. plus a fee (either a lump sum or a fee based on a percentage of cost) to which the Parties agree.
- (e) Disagreements. If there is a disagreement between Menlo Park and ENGIE Services U.S. as to whether ENGIE Services U.S. is entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount, those disputes are to be resolved in accordance with the provisions of ARTICLE 19. Pending the resolution of any such dispute, ENGIE Services U.S. may not suspend undisputed Work.

Section 5.05 Minor Changes to Scope of Work. ENGIE Services U.S. has the authority to make minor changes that do not change the total Contract Amount and are consistent with the quality expected from and intent of the Construction Documents, without prior notice to Menlo Park. ENGIE Services U.S. will either promptly inform Menlo Park, in writing, of any minor changes made during the implementation of the Project, or make available to Menlo Park at the site a set of as-built drawings that will be kept current that point out those minor changes.

Section 5.06 Hazardous Substances.

- (a) ENGIE Services U.S. will promptly provide written notice to Menlo Park if ENGIE Services U.S. observes any Hazardous Substance, as defined herein, at or around the Facilities during the course of construction or installation of any equipment which have not been addressed as part of the Scope of Work. ENGIE Services U.S. will have no obligation to investigate the Facilities for the presence of Hazardous Substances prior to commencement of the Work unless otherwise specified in the Scope of Work. Menlo Park will be solely responsible for investigating Hazardous Substances and determining the appropriate removal and remediation measures with respect to the Hazardous Substances. Menlo Park will comply with all Applicable Laws with respect to the identification, removal and proper disposal of any Hazardous Substances known or discovered at or around the Facilities, and in such connection will execute all generator manifests with respect thereto. ENGIE Services U.S. will comply with all Applicable Laws in connection with the use, handling, and disposal of any Hazardous Substances in the performance of its Work. In connection with the foregoing, Menlo Park will provide ENGIE Services U.S., within ten (10) Business Days after the Contract Effective Date, a written statement that represents and warrants (i) whether or not, to its knowledge, there are Hazardous Substances either on or within the walls, ceiling or other structural components, or otherwise located in the Project Location, including, but not limited to, asbestos-containing materials; (ii) whether or not, to its knowledge, conditions or situations exist at the Facilities which are subject to special precautions or equipment required by federal, state, or local health or safety regulations; and (iii) whether or not, to its knowledge, there are unsafe working conditions at the Facilities.
- (b) Menlo Park shall indemnify, defend, and hold ENGIE Services U.S. harmless from and against any and all Losses that in any way result from, or arise under, such Menlo Park owned or generated Hazardous Substances, except for liabilities to the extent due to the negligence or willful or reckless misconduct of ENGIE Services U.S., or its subcontractors, agents or representatives, in the handling, disturbance or release of Hazardous Substances. ENGIE Services U.S. shall indemnify, defend and hold harmless Menlo Park, its directors, officers, shareholders, partners, members, agents and employees from and against any and all Losses that in any way result from, or arise under, any Hazardous Substance (as defined in Article 1) to the

extent deposited at the Project Location, by ENGIE Services U.S. or any of its contractors or agents. This indemnification will survive any termination of this Contract.

Section 5.07 Pre-Existing Conditions. Certain pre-existing conditions may be present within the Facilities that (i) are non-compliant with applicable codes, (ii) may become non-compliant with applicable codes upon completion of ENGIE Services U.S.'s Work, (iii) may cause ENGIE Services U.S.'s completed Work to be non-compliant with applicable codes, (iv) may prevent Menlo Park from realizing the full benefits of ENGIE Services U.S.'s Work, (v) may present a safety or equipment hazard, or (vi) are otherwise outside the scope of ENGIE Services U.S.'s Work. Regardless of whether or not such conditions may have been readily identifiable prior to the commencement of Work, ENGIE Services U.S. will not be responsible for repairing such pre-existing conditions unless such responsibility is expressly provided for in the Scope of Work or an approved Change Order, if agreed to by both Parties.

ARTICLE 6. PROJECT COMPLETION

Section 6.01 Occupancy or Use of Work. Menlo Park may take occupancy or use of any completed or partially completed portion of the Work at any stage, whether or not such portion is Substantially Complete, *provided* that such occupancy or use is authorized by Governmental Authority and, *provided further*, that Menlo Park assumes responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. If Substantial Completion of a portion of the Construction Work is not yet achieved, occupancy or use of such portion of the Work will not commence until Menlo Park's insurance company has consented to such occupancy or use. When occupancy or use of a portion of the Work occurs before Substantial Completion of such portion, Menlo Park and ENGIE Services U.S. will accept in writing the responsibilities assigned to each of them for title to materials and equipment, payments and Retention with respect to such portion.

Section 6.02 Substantial Completion. When ENGIE Services U.S. considers the Work, or any portion thereof, to be Substantially Complete, ENGIE Services U.S. will supply to Menlo Park a written Certificate of Substantial Completion with respect to such portion of the Work, including a Punch List of items and the time for their completion or correction. Menlo Park will within ten (10) Business Days of receipt of the Certificate of Substantial Completion or the time reasonably necessary, provided that additional time is requested in writing to ENGIE Services U.S. within the ten (10) business day period, review such portion of the Work for the sole purpose of determining that it is Substantially Complete, and sign and return the Certificate of Substantial Completion to ENGIE Services U.S. acknowledging and agreeing: (i) that such portion of the Work is Substantially Complete; (ii) the date of such Substantial Completion; (iii) that from the date of Substantial Completion Menlo Park will assume responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. Menlo Park agrees that approval of a Certificate of Substantial Completion will not be unreasonably withheld, delayed or conditioned.

Section 6.03 Final Completion. When ENGIE Services U.S. considers the entirety of the Work to be Finally Complete, ENGIE Services U.S. will notify Menlo Park that the Work is fully complete and ready for final inspection. Menlo Park will inspect the Work to verify the status of Final Completion, confirm that the entirety of the Scope of Work has been installed properly and according to the approved plans, and confirm the installation complies with structural and electrical requirements and applicable fire safety provisions, and confirm Menlo Park's eligibility for a Temporary Occupancy Permit within ten (10) Business Days after its receipt of ENGIE Services U.S.'s certification that the Work is complete or within such timeframe as is reasonably necessary to complete inspection of the Work; provided that additional time is requested in writing to ENGIE Services U.S. within the ten (10) business day period. When Menlo Park confirms in writing that the Work is fully completed, ENGIE Services U.S. will issue a Certificate of Final Completion, which Menlo Park must sign. Menlo Park agrees that its signing of the Certificate of Final Completion will not be unreasonably withheld, delayed or conditioned. Within 60 days after final acceptance of the Work, Menlo Park will pay ENGIE Services U.S. any remaining Contract Amount due and any outstanding Retention being withheld by Menlo Park, in accordance with Section 8.03. Menlo Park may give ENGIE Services U.S. written notice of acceptance of the Work and will promptly record a notice of completion or notice of acceptance in the office of the county recorder in accordance with California Civil Code §9204.

Section 6.04 Transfer of Title; Risk of Loss. Title to all or a portion of the Project equipment, supplies and other components of the Construction Work will pass to Menlo Park upon the earlier of (i) the date payment for such Project equipment, supplies or components is made by Menlo Park or (ii) the date any such items are incorporated into the Project Location. ENGIE Services U.S. will retain care, custody and control and risk of loss of such Project equipment, supplies and components until the earlier of Beneficial Use or Substantial Completion. Transfer of title to Menlo Park will in no way affect Menlo Park's and ENGIE Services U.S.'s rights and obligations as set forth in other provisions of this Contract.

ARTICLE 7. SUBCONTRACTORS

Section 7.01 Authority to Subcontract. ENGIE Services U.S. may delegate its duties and performance under this Contract, and has the right to enter into agreements with any subcontractors and other service or material providers as ENGIE Services U.S. may select in its discretion to perform the Work, so long as such subcontractors are procured utilizing a competitive process and provided that such subcontractors shall be duly licensed and shall provide

any work in accordance with applicable industry standards. ENGIE Services U.S. shall comply with the requirements of Public Contract Code Section 4107 in the event it seeks to substitute any subcontractor selected to perform a portion of the Work. ENGIE Services U.S. will not be required to enter into any subcontracts with parties whom ENGIE Services U.S. has not selected or subcontractors whom ENGIE Services U.S. has objection to using. Notwithstanding the foregoing, ENGIE Services U.S. shall continue to be responsible for the quality of the work performed by its subcontractors. ENGIE Services U.S. shall ensure that its insurance coverage covers the work and liability of all of its subcontractors or its subcontractors' insurance coverage meets the requirements of the Contract.

Section 7.02 Prompt Payment of Subcontractors. ENGIE Services U.S. shall pay when due all valid charges from subcontractors and suppliers supplying goods or services to ENGIE Services U.S. under this Contract and shall keep the Project free and clear of any liens related to such charges, except for those liens which ENGIE Services U.S. is permitted by law to place on the Project following non-payment by Menlo Park of amounts due under this Agreement. ENGIE Services U.S. shall indemnify Menlo Park for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Project. In the event any lien is filed against the Project in connection with any work performed or materials furnished to ENGIE Services U.S., within thirty (30) calendar days after the filing of such lien ENGIE Services U.S. shall either discharge and cancel such lien of record or post a bond sufficient under the laws of the State of California to release the same as a lien against the Project. If ENGIE Services U.S. fails to timely satisfy the foregoing obligations, ENGIE Services U.S. shall pay to Menlo Park within one (1) business day of written request all amounts so paid by Menlo Park, including attorney's fees, together with Interest at the rate of 2% per month or such other rate as may be required by the Prompt Payment Act set forth in the Public Contract Code.

Section 7.03 Relationship. Nothing in this Contract constitutes or will be deemed to constitute a contractual relationship between any of ENGIE Services U.S.'s subcontractors and Menlo Park, or any obligation on the part of Menlo Park to pay any sums to any of ENGIE Services U.S.'s subcontractors.

Section 7.04 DIR Registration. Prior to the Contract Effective Date, ENGIE Services U.S. and all subcontractors shall be registered with the Department of Industrial Relations and qualified to perform public work pursuant to California Labor Code §1725.5.

Section 7.05 Prevailing Wages. To the extent required by California Labor Code §1771 or other Applicable Law, all employees of ENGIE Services U.S. and ENGIE Services U.S.'s subcontractors performing Work at the Project Location will be paid the per diem prevailing wages for the employee's job classification in the locality in which the Work is performed. In accordance with California Labor Code §§1773 and 1773.2, Menlo Park will obtain from the Director of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute the Work at the Project Location, and will cause copies of such determinations to be kept on file at its principal office and posted at each Project Location. Menlo Park will promptly notify ENGIE Services U.S. of any changes to any such prevailing wage determination. For the Construction Phase of the Work, ENGIE Services U.S. shall comply with the duty enunciated in California Labor Code §1777.5 to hire apprentices, unless the craft or trade does not require the use of apprentices, as indicated in the corresponding prevailing wage determination. This duty applies to all contractors and subcontractors on a project, even if their part of the project is less than \$30,000. PCC §§ 2600- 2603 (Chapter 2.9, Part 1, Division 2). Such "skilled and trained workforce" shall meet the requirements of Chapter 2.9 of the California Public Contract Code. (Public Contract Code §§ 2600- 2603 (Chapter 2.9, Part 1, Division 2).)

ARTICLE 8. PAYMENTS

Section 8.01 Monthly Progress Payments. Promptly after the Contract Effective Date, ENGIE Services U.S. will invoice Menlo Park for a mobilization payment in the amount of Ten Percent (10%) of the Contract Amount. These amounts must be paid to ENGIE Services U.S. within thirty (30) calendar days after Menlo Park's receipt of an invoice for those amounts. In addition, as the Work progresses, ENGIE Services U.S. will submit to Menlo Park its applications for monthly payments based on the progress made on the Project through the date on which ENGIE Services U.S. submits such Application for Payment. Attachment C, Section 11 contains a schedule of values apportioned to the various divisions or phases of the Work ("Schedule of Values"). Each line item contained in the Schedule of Values is assigned a value such that the total of all items equals the Contract Amount. All Applications for Payment will be in accordance with the Schedule of Values.

Section 8.02 Materials Stored Off-Site. In addition to the monthly progress payments specified in Section 8.01, ENGIE Services U.S. may invoice Menlo Park for materials purchased in advance and not stored at the Project Location, if any. Payment of such invoice(s) by Menlo Park is contingent upon the following conditions: (i) the invoice shall specifically identify the quantity, manufacturer and unique description of each of the materials stored off-site ("Listed Items"); (ii) ENGIE Services U.S. shall certify that the Listed Items are in accordance with the Contract; (iii) ENGIE Services U.S. shall provide proof that (x) title to the Listed Items has vested in ENGIE Services U.S. and (y) the Listed Items are insured while stored or in transit until delivered to the Project Location; (iv) ENGIE Services U.S. shall include an anticipated schedule for delivery of the Listed Items to the Project Location; (v) Listed Items must be clearly and visibly marked as belonging to ENGIE Services U.S. and/or Menlo Park, as applicable and segregated from other materials; and (vi) Menlo Park shall be entitled to inspect the Listed Items at the off-site storage facility. Menlo Park will

pre-pay one hundred percent (100%) of ENGIE Services U.S.'s Application for Payment for the materials delivered, less Retention as indicated in Section 8.03. ENGIE Services U.S. will protect stored materials from damage. Damaged materials, even though paid for, will not be incorporated into the Work and will be replaced at ENGIE Services U.S. expense.

Section 8.03 Retention. Subject to Section 8.05 below, Menlo Park, or its designee, must approve and pay each Application for Payment, less a retention amount ("Retention") of five percent (5%) in accordance with California Public Contract Code §7201, within thirty (30) calendar days after its receipt of the Application for Payment. A failure to approve and pay an approved Application for Payment in a timely manner is a material default by Menlo Park under this Contract. Menlo Park may make progress payments in full without Retention at any time after fifty percent (50%) of the Work has been completed, as permitted pursuant to California Public Contract Code §9203. In lieu of Retention being held by Menlo Park, ENGIE Services U.S. may request that securities be substituted or Retention be held in an escrow account pursuant to California Public Contract Code §22300.

Section 8.04 Final Payment. The final Application for Payment may be submitted after Final Completion. The final payment amount must also include payment to ENGIE Services U.S. for any remaining Retention withheld by Menlo Park.

Section 8.05 Disputed Invoices/Late Payments. Menlo Park may in good faith dispute any Application for Payment, or part thereof, within fifteen (15) calendar days after the date the Application for Payment was received by Menlo Park. If Menlo Park disputes all or a portion of any Application for Payment, Menlo Park will pay the undisputed portion when due and provide ENGIE Services U.S. a written notice and explanation of the basis for the dispute and the amount of the Application for Payment being withheld related to the dispute. If any amount disputed by Menlo Park is finally determined to be due to ENGIE Services U.S., either by agreement between the Parties or as a result of dispute resolution pursuant to ARTICLE 19 below, it will be paid to ENGIE Services U.S. within ten (10) Business Days after such final determination, plus Interest from the date billed or claimed until such amount is paid.

ARTICLE 9. WARRANTY / LIMITATION OF LIABILITY

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS ARTICLE 9, ENGIE SERVICES U.S. MAKES NO WARRANTIES IN CONNECTION WITH THE WORK PROVIDED UNDER THIS CONTRACT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. MENLO PARK'S SOLE REMEDY FOR A BREACH OF MATERIAL OR EQUIPMENT WARRANTY BY ENGIE SERVICES U.S. OR ANY ENGIE SERVICES U.S. SUBCONTRACTOR OR VENDOR SHALL BE THE REPAIR OR REPLACEMENT OF THE DEFECTIVE MATERIALS OR EQUIPMENT IN ACCORDANCE WITH THE WARRANTIES INDICATED BELOW.

Section 9.01 ENGIE Services U.S. warrants to Menlo Park that material and equipment furnished under this Contract will be of good quality and new, unless otherwise specifically required or permitted by this Contract. ENGIE Services U.S. further warrants that its workmanship provided hereunder, including its subcontractors' workmanship, will be free of material defects for a period of one (1) year or as otherwise required by state law from the date of Substantial Completion as indicated on the executed Certificate of Substantial Completion, or the date of Beneficial Use as indicated on the executed Certificate of Beneficial Use ("ENGIE Services U.S. Warranty"). Notwithstanding the preceding sentence, the date the ENGIE Services U.S. Warranty commences with respect to a specific piece or pieces of equipment may be further defined in Attachment C.

Section 9.02 Equipment and material warranties that exceed the ENGIE Services U.S. Warranty period will be provided directly by the equipment and/or material manufacturers and such warranties will be assigned directly to Menlo Park, after the one (1) year period. While ENGIE Services U.S. provides Maintenance Services as specified in Attachment F, ENGIE Services U.S. will be Menlo Park's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. If any material defects are discovered within the ENGIE Services U.S. Warranty period, ENGIE Services U.S., or ENGIE Services U.S.'s subcontractors, will correct its defects, and/or ENGIE Services U.S. will work with the equipment or material manufacturer as Menlo Park's agent to facilitate the manufacturer's correction of the equipment or material defect. Such warranty services will be performed in a timely manner and at the reasonable convenience of Menlo Park. If a warranty issue arises on any equipment or material installed after ENGIE Services U.S. no longer provides the Maintenance Services specified in Attachment F, and the equipment or material has a warranty period that exceeds one (1) year, Menlo Park will contact the manufacturer directly to resolve such warranty issues and Menlo Park acknowledges that the manufacturer will have sole responsibility for such issues.

Section 9.03 The warranties in this ARTICLE 9 expressly exclude any remedy for damage or defect caused by improper or inadequate maintenance of the installed equipment by service providers other than ENGIE Services U.S. or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized ENGIE Services U.S. subcontractor, improper use or operation, or normal wear and tear under normal usage. ENGIE Services U.S. shall not be responsible for the cost of correcting a breach of warranty or defect to the extent that the manufacturer of the equipment that is the subject of a warranty hereunder does not honor its equipment warranty as a

result of its termination of operations, insolvency, liquidation, bankruptcy or similar occurrence. Unless otherwise specified, all warranties hereunder, including without limitation those for defects, whether latent or patent, in design, engineering, or construction, will terminate one (1) year from the date of Substantial Completion or Beneficial Use; and thereafter, ENGIE Services U.S. will have no liability for breach of any warranty or for any latent or patent defect of any kind pursuant to California Code of Civil Procedure §§337.1 and 337.15.

Section 9.04 Menlo Park and ENGIE Services U.S. have discussed the risks and rewards associated with this Project, as well as the Contract Amount to be paid to ENGIE Services U.S. for performance of the Work. Menlo Park and ENGIE Services U.S. agree to allocate certain of the risks so that, to the fullest extent permitted by Applicable Law, ENGIE Services U.S.'s total aggregate liability to Menlo Park and all third parties is limited to two times (2x) the Contract Amount, exclusive of applicable insurance, for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this Contract from any cause or causes. Such causes include, but are not limited to, negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

ARTICLE 10. OWNERSHIP OF CERTAIN PROPERTY AND EXISTING EQUIPMENT

Section 10.01 Ownership of Certain Proprietary Property Rights.

- (a) Ownership: Except as expressly provided in this Contract, Menlo Park will not acquire, by virtue of this Contract, any rights or interest in any formulas, patterns, devices, software, inventions or processes, copyrights, patents, trade secrets, other intellectual property rights, or similar items of property which are or may be used in connection with the Work. ENGIE Services U.S. will own all inventions, improvements, technical data, models, processes, methods, and information and all other work products developed or used in connection with the Work, including all intellectual property rights therein.
- (b) License: Solely in connection with the Facilities, ENGIE Services U.S. grants to Menlo Park a limited, perpetual, royalty-free, non-transferrable license for any ENGIE Services U.S. intellectual property rights necessary for Menlo Park to operate, maintain, and repair any modifications or additions to Facilities, or equipment delivered, as a part of the Work.
- (c) Ownership and Use of Instruments of Service. All data, reports, proposals, plans, specifications, flow sheets, drawings, and other products of the Work (the "Instruments of Service") furnished directly or indirectly, in writing or otherwise, to Menlo Park by ENGIE Services U.S. under this Contract will remain ENGIE Services U.S.'s property and may be used by Menlo Park only for the Work. ENGIE Services U.S. will be deemed the author and owner of such Instruments of Service and will retain all common law, statutory and other reserved rights, including copyrights. The Instruments of Service may not be used by Menlo Park or any Menlo Park Person for future additions or alterations to the Project or for other projects, without the prior written agreement of ENGIE Services U.S. Any unauthorized use of the Instruments of Service will be at Menlo Park's sole risk and without liability to ENGIE Services U.S. If Menlo Park uses the Instruments of Service for implementation purposes, including additions to or completion of the Project, without the written permission of ENGIE Services U.S., Menlo Park agrees to waive and release, and indemnify and hold harmless, ENGIE Services U.S., its subcontractors, and their directors, employees, subcontractors, and agents from any and all Losses associated with or resulting from such use.

Section 10.02 Ownership of any Existing Equipment. Ownership of any equipment and materials presently existing at the Facilities on the Contract Effective Date will remain the property of Menlo Park even if such equipment or materials are replaced or their operation made unnecessary by work performed by ENGIE Services U.S. If applicable, ENGIE Services U.S. will advise Menlo Park in writing of all equipment and materials that will be replaced at the Facilities and Menlo Park will, within five (5) Business Days of ENGIE Services U.S.'s notice, designate in writing to ENGIE Services U.S. which replaced equipment and materials should not be disposed of off-site by ENGIE Services U.S. (the "Retained Items"). Menlo Park will be responsible for and designate the location and storage for the Retained Items. ENGIE Services U.S. will be responsible for the disposal of replaced equipment and materials, except for the Retained Items. ENGIE Services U.S. will use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done. ENGIE Services U.S. will not be responsible for the removal and/or disposal of any Hazardous Substances except as required by the Scope of Work.

Section 10.03 Design Documents, Final Design, and "As-Built" Documents. Prior to delivery of the final Application for Payment, ENGIE Services U.S. shall deliver to Menlo Park the final design specifications for the Project, final "as-built" plans and drawings, and all shop drawings and test reports, including performance test reports and commissioning documents, as applicable.

ARTICLE 11. INDEMNIFICATION / LIMITATION ON LIABILITY

Section 11.01 Indemnification. In respect to claims arising solely from the performance of professional services as defined in California Civil Code Section 2782.8, ENGIE Services U.S. shall indemnify and hold Menlo Park, its officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions,

damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, or other cause to the extent caused by the negligent, reckless, or intentional acts or omissions of ENGIE Services U.S., its employees, subcontractors, or agents, to the fullest extent allowed by law, except for any such claim arising out of the sole active negligence, or willful misconduct of the City, its officers, employees, agents, or volunteers.

Section 11.02 In respect to all other claims, to the fullest extent permitted by Applicable Laws, ENGIE Services U.S. will indemnify, defend with independent counsel reasonably approved by Menlo Park, and hold harmless Menlo Park, and its elected or appointed boards, officers, employees, agents and volunteers ("Indemnitees") from and against any and all actions, claims, suits, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants' and attorneys' fees and other defense expenses) and liabilities of any nature ("Losses") that may be asserted by any person or entity, to the extent arising out of ENGIE Services U.S.'s performance or activities hereunder, including the performance or activities of other persons employed or utilized by ENGIE Services U.S. in the performance of this Contract, excepting liabilities to the extent due to the sole active negligence or willful misconduct of the Indemnitees. This indemnification obligation will continue to bind the Parties after completion of the Work or the termination of this Contract.

Section 11.03 Menlo Park does not and shall not waive any rights that they may possess against ENGIE Services U.S. because of the acceptance by Menlo Park or the deposit with Menlo Park of any insurance policy or certificate required pursuant to this Contract. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

Section 11.04 Waiver of Consequential Damages and Limitation of Liability. Except for damages resulting from the gross negligence or willful misconduct of a defaulting Party, the liability of a defaulting Party will be limited to direct, actual damages. Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense. Any Guarantee Payment(s) required to be made pursuant to Attachment E are excepted from the foregoing waiver.

ARTICLE 12. INSURANCE / BONDS

Section 12.01 ENGIE Services U.S. Insurance. ENGIE Services U.S. will maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined in (a) through (f) below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to Menlo Park via an insurance certificate.

- (a) Workers' Compensation/Employers Liability for states in which ENGIE Services U.S. is not a qualified self-insured. Limits as follows:

*	Workers' Compensation:	Statutory
*	Employers Liability:	Bodily Injury by accident \$1,000,000 each accident Bodily Injury by disease \$1,000,000 each employee Bodily Injury by disease \$1,000,000 policy limit

- (b) Commercial General Liability insurance with limits of:

*	\$1,000,000 each occurrence for Bodily Injury and Property Damage
*	\$2,000,000 General Aggregate - other than Products/Completed Operations
*	\$2,000,000 Products/Completed Operations Aggregate
*	\$1,000,000 Personal and Advertising Injury
*	\$ 100,000 Damage to premises rented to ENGIE Services U.S.

Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 0001 (04/13) or its equivalent forms, without endorsements that limit the policy terms with respect to: (1) provisions for severability of interest or (2) explosion, collapse, underground hazard.

- (c) Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an occurrence form.

- (d) Professional Liability insurance with limits of:

*	\$1,000,000 per occurrence
*	\$1,000,000 aggregate

If coverage is written on a claims-made basis, any retroactive date shall be no later than the start date of the work; and continuous coverage shall be maintained throughout the term of this Contract, including the performance of all Professional Services, to the extent applicable to such Professional Services.

- (e) Builders Risk Insurance shall be applicable only to building construction projects. ENGIE Services U.S. will cause to be taken out and maintain in the name of Menlo Park and ENGIE Services U.S. until final completion and acceptance of the project, all builder's risk insurance including but not limited to coverage against loss of damage to the project by fire and lightning, extended coverage, vandalism, malicious mischief, flood, earthquake and collapse; said extended coverage shall cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and other such hazards as are normally covered by such coverage. Such insurance (except the earthquake and flood coverage in the event that they are not fully or reasonably available) shall be in an amount equal to the replacement cost (without deduction for depreciation and subject to stipulated value in lieu of average clause) of all structures constituting any part of the work, excluding the cost of excavations, of grading and of filling of the land and except that such insurance (except earthquake and flood insurance) may be subject to deductible clauses not to exceed \$100,000 for any one loss. Earthquake and flood insurance may be subject to deductible clauses not to exceed five percent (5%) of such replacement cost for any one loss. Such insurance will not cover loss or damage to ENGIE Services U.S. equipment, scaffolding or other materials not to be consumed in the construction of the project.

- (f) Umbrella/Excess Liability Insurance. Limits as follows:

- * \$5,000,000 each occurrence
- * \$5,000,000 aggregate

Coverage terms on the following form and limits to apply excess of the per occurrence and/or aggregate limits provided for Employers Liability, Commercial General Liability and Automobile Liability.

- (g) Policy Endorsements.

- * The insurance provided for Workers' Compensation and Employers' Liability above will contain a waiver of subrogation endorsement in favor of Menlo Park, its officers, officials, employees and volunteers to the extent of ENGIE Services U.S.'s contractual obligations.
- * The insurance provided for Commercial General Liability and Auto Liability above will:
 - (i) include Menlo Park, its officers, officials, employees and volunteers. as an additional insured with respect to Work performed under this Contract to the extent of ENGIE Services U.S.'s contractual obligations. The Commercial General Liability policy will provide Additional Insured coverage for ongoing operations and completed operations. Coverage shall be provided on forms CG 20 10 and CG 20 37 or their equivalent.
 - (ii) provide that the insurance is primary and non-contributory to Menlo Park, its officers, officials, employees and volunteer's coverage to the extent of ENGIE Services U.S.'s contractual obligations.

- (h) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (b), (c), (d), or (e) of this section of the Contract is reduced, limited, or materially affected in any other manner, ENGIE Services U.S. shall provide written notice to Menlo Park at ENGIE Services U.S.'s earliest possible opportunity and in no case later than ten (10) business days after ENGIE Services U.S. is notified of the change in coverage.

Section 12.02 Menlo Park's Insurance. Menlo Park will maintain, or cause to be maintained, for the duration of this Contract, commercial general liability and excess liability insurance, and all such other insurance as required by Applicable Law.

Section 12.03 Waivers of Subrogation. The Parties waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this ARTICLE 12 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance.

Section 12.04 Performance and Payment Bonds. Prior to commencing Work under this Contract, ENGIE Services U.S. will furnish a performance bond, in an amount equal to one hundred percent (100%) of the Contract Amount, and a payment bond to guarantee payment of all claims for labor and materials furnished, in an amount equal to one hundred percent (100%) of the Contract Amount (collectively, the "Contract Bonds"). The Contract Bonds shall be maintained in full force and effect until Final Completion; provided that upon the achievement of Substantial Completion, the value of the Contract Bonds shall be reduced to the value of the Retainage being withheld by Menlo Park. The Contract Bonds are not being furnished to cover the performance of any Professional Services, including any energy guaranty or guaranteed savings under this Contract, nor to cover any equipment and/or material manufacturer's warranty or other third-party warranty being assigned to Menlo Park. Menlo Park agrees that upon Final Completion and expiration

of the ENGIE Services U.S. Warranty period set forth in Article 9 herein, the Contract Bonds shall be returned to ENGIE Services U.S., and all obligations arising thereunder are terminated and the surety company that issued the bond is forever discharged from any and all liabilities of whatever nature arising in connection with the Contract Bonds.

ARTICLE 13. Intentionally Deleted.

ARTICLE 14. MUNICIPAL ADVISOR

Section 14.01 THE PARTIES ACKNOWLEDGE AND AGREE THAT ENGIE SERVICES U.S. IS NOT A MUNICIPAL ADVISOR AND CANNOT GIVE ADVICE TO MENLO PARK WITH RESPECT TO MUNICIPAL SECURITIES OR MUNICIPAL FINANCIAL PRODUCTS ABSENT MENLO PARK BEING REPRESENTED BY, AND RELYING UPON THE ADVICE OF, AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR. ENGIE SERVICES U.S. IS NOT SUBJECT TO A FIDUCIARY DUTY WITH REGARD TO MENLO PARK OR THE PROVISION OF INFORMATION TO MENLO PARK.

ARTICLE 15. TRADE SECRETS

If any materials or information provided by ENGIE Services U.S. to Menlo Park under this Contract are designated by ENGIE Services U.S. as a "trade secret" or otherwise exempt from disclosure under the Public Records Act (California Government Code §6250 *et seq.*, the "Act") and if a third party makes a request for disclosure of the materials under the Act, as soon as practical (but not later than ten (10) calendar days) after receipt of such request, Menlo Park will notify ENGIE Services U.S. of such request. Within ten (10) calendar days after a third party's request for disclosure of materials under the Act, ENGIE Services U.S. will (i) authorize Menlo Park to release the documents or information sought; or (ii) if ENGIE Services U.S. reasonably believes that the information is exempt from disclosure, advise Menlo Park not to release the materials. If ENGIE Services U.S. timely identifies any "proprietary, trade secret, or confidential commercial or financial" information that ENGIE Services U.S. determines is not subject to public disclosure, and requests Menlo Park to refuse to comply with the records request, ENGIE Services U.S. shall take all appropriate legal action and defend Menlo Park's refusal to produce the information in all forums; otherwise, Menlo Park will make such information available to the extent required by applicable law, without restriction.

ARTICLE 16. EVENTS OF DEFAULT

Section 16.01 Events of Default by ENGIE Services U.S. Each of the following events or conditions will constitute an "Event of Default" by ENGIE Services U.S.:

- (i) Any material failure by ENGIE Services U.S. to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for ten (10) business days after notice to ENGIE Services U.S. demanding that such failure to perform be cured; *provided* that (a) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract, and (ii) ENGIE Services U.S. will be deemed to have cured the default upon the commencement of a cure within ten (10) business days and diligent subsequent completion thereof; or
- (ii) any representation or warranty furnished by ENGIE Services U.S. in this Contract which was false or misleading in any material respect when made.

Section 16.02 Events of Default by Menlo Park. Each of the following events or conditions will constitute an "Event of Default" by Menlo Park:

- (i) any material failure by Menlo Park to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for ten (10) business days after notice to Menlo Park demanding that such failure to perform be cured; *provided* that (a) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract; and (b) if such cure cannot be effected in ten (10) business days, Menlo Park will be deemed to have cured the default upon the commencement of a cure within ten (10) calendar days and diligent subsequent completion thereof; or
- (ii) any representation furnished by Menlo Park in this Contract which was false or misleading in any material respect when made.

ARTICLE 17. REMEDIES UPON DEFAULT

Section 17.01 Termination for Cause. If there is an Event of Default by either Party under this Contract, unless such Event of Default has been cured within the applicable time periods for a cure set forth in ARTICLE 16, the non-defaulting Party may terminate this Contract by providing three (3) Business Days' written notice to the defaulting Party in the case of a monetary default and ten (10) Business Days' written notice to the defaulting Party in the case of a

non-monetary default. Upon termination of this Contract, each Party will promptly return to the other all papers, materials, and property of the other held by such Party in connection with this Contract. Each Party will also assist the other in the orderly termination of this Contract and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party. If this Contract is so terminated, ENGIE Services U.S. will be entitled to payment for Work satisfactorily performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination.

Section 17.02 Remedies Upon Default by ENGIE Services U.S. If an Event of Default by ENGIE Services U.S. occurs, Menlo Park will be entitled to obtain any available legal remedies through arbitration proceedings instituted pursuant to ARTICLE 19, including, without limitation, terminating this Contract, or recovering amounts due and unpaid by ENGIE Services U.S. and/or damages, which will include Menlo Park's reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

Section 17.03 Remedies upon Default by Menlo Park. If an Event of Default by Menlo Park occurs, ENGIE Services U.S. will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to ARTICLE 19 including, without limitation, terminating this Contract or recovering amounts due and unpaid by Menlo Park, and/or damages which will include ENGIE Services U.S.'s reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including Interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

ARTICLE 18. CONDITIONS BEYOND CONTROL OF THE PARTIES

Section 18.01 Excusable Events. If any Party is delayed in, or prevented from, performing or carrying out its obligations under this Contract by reason of any Excusable Event, such circumstance will not constitute an Event of Default, and such Party will be excused from performance hereunder and will not be liable to the other Party for or on account of any loss, damage, injury or expense resulting from, or arising out of, such delay or prevention. Notwithstanding the foregoing, no Party will be excused from any payment obligations under this Contract as a result of an Excusable Event.

Section 18.02 Utility Work. Menlo Park expressly understands and agrees that Excusable Events may occur due to Interconnection Facilities work that may need to be performed by the local electric utility ("Utility") in order for ENGIE Services U.S. to fully implement the Project. "Interconnection Facilities" means any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the Utility. ENGIE Services U.S. will not perform any Interconnection Facilities work that may be required by the Utility under the Interconnection Agreement.

ARTICLE 19. GOVERNING LAW AND RESOLUTION OF DISPUTES

Section 19.01 Governing Law. This Contract is governed by and must be interpreted under the laws of the State of California, without regard to the jurisdiction's choice of law rules.

Section 19.02 Initial Dispute Resolution. If a dispute arises out of or relates to this Contract, the transaction contemplated by this Contract, or the breach of this Contract (a "Dispute"), the parties shall comply with Public Contract Code Section 9204. Either Party may initiate the dispute resolution process set forth in this ARTICLE 19 by giving notice to the other Party. The Parties will endeavor to settle the Dispute as follows:

- (i) *Field Representatives' Meeting:* Within fifteen (15) Business Days after notice of the Dispute, ENGIE Services U.S.'s senior project management personnel will meet with Menlo Park's project representative in a good faith attempt to resolve the Dispute.
- (ii) *Management Representatives' Meeting:* If ENGIE Services U.S.'s and Menlo Park's project representatives fail to meet, or if they are unable to resolve the Dispute, senior executives for ENGIE Services U.S. and for Menlo Park will meet, within thirty (30) calendar days after notice of the Dispute, in an attempt to resolve the Dispute and any other identified disputes or any unresolved issues that may lead to a dispute. If the senior executives of ENGIE Services U.S. and Menlo Park are unable to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may submit the Dispute to mediation in accordance with Section 19.03.

Section 19.03 Mediation. If the Dispute is not settled pursuant to Section 19.02, the Parties will endeavor to settle the Dispute by mediation under the Commercial Mediation Procedures of the American Arbitration Association. Mediation is a condition precedent to arbitration or the institution of legal proceedings by either Party. Once one Party files a request for mediation with the other Party and with the American Arbitration Association, the Parties agree to conclude the mediation within sixty (60) calendar days after filing the request so long as qualified mediators are available.

Either Party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the Party's representative to the other Party's representative and the mediator. If the Dispute is not resolved by mediation within sixty (60) calendar days after the date of filing of the request for mediation, then the exclusive means to resolve the Dispute is final and binding arbitration, as described in Section 19.04. Either Party may initiate arbitration proceedings by notice to the other Party and the American Arbitration Association.

Section 19.04 Arbitration Proceedings. The following provisions apply to all arbitration proceedings pursuant to this ARTICLE 19:

- (i) The place of arbitration will be the American Arbitration Association office closest to where the Work was performed.
- (ii) One arbitrator (or three arbitrators if the monetary value of the Dispute is more than \$2,000,000) (the "Arbitral Panel") will conduct the arbitral proceedings in accordance with the Construction Arbitration Rules and Mediation Procedures (Excluding the Procedures for Large, Complex Commercial Disputes) of the American Arbitration Association currently in effect ("Arbitration Rules"). To the extent of any conflicts between the Arbitration Rules and the provisions of this Contract, the provisions of this Contract prevail.
- (iii) The Parties will submit true copies of all documents considered relevant with their respective statement of claim or defense, and any counterclaim or reply. In the discretion of the Arbitral Panel, the production of additional documents that are relevant and material to the determination of the Dispute may be required.
- (iv) The Arbitral Panel does not have the power to award, and may not award, any punitive, indirect or consequential damages (however denominated). All arbitration fees and costs are to be shared equally by the parties, regardless of which Party prevails. Each Party will pay its own costs of legal representation and witness expenses.
- (v) The award must be in the form of a reasoned award.
- (vi) The Dispute will be resolved as quickly as possible. The Arbitral Panel will endeavor to issue the arbitration award within three (3) months after the date on which the arbitration proceedings were commenced.
- (vii) The award will be final and binding and subject to confirmation and enforcement proceedings in any court of competent jurisdiction.

Section 19.05 Multiparty Proceeding. Either Party may join third parties whose joinder would facilitate complete resolution of the Dispute and matters arising from the resolution of the Dispute.

Section 19.06 Lien Rights. Nothing in this ARTICLE 19 limits any rights or remedies not expressly waived by ENGIE Services U.S. that ENGIE Services U.S. may have under any lien laws or stop notice laws.

ARTICLE 20. REPRESENTATIONS AND WARRANTIES

Section 20.01 Each Party warrants and represents to the other that:

- (i) it has all requisite power and authority to enter into this Contract, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (ii) the execution, delivery, and performance of this Contract have been duly authorized by its governing body, or are in accordance with its organizational documents, and this Contract has been duly executed and delivered for it by the signatories so authorized, and constitutes its legal, valid, and binding obligation;
- (iii) the execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under, its organizational documents or any contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any Applicable Laws, awards or permits which would materially and adversely affect its ability to perform hereunder.

ARTICLE 21. NOTICE

Any notice required or permitted hereunder will be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO ENGIE SERVICES U.S.: ENGIE Services U.S. Inc.
500 12th Street, Suite 300
Oakland, CA 94607
Tel: 510-334-6917
Email: Johnathan.seminoff@engie.com
Attention: Johnathan Seminoff, Project Manager

With a COPY TO: Legal Department
ENGIE Services U.S. Inc.
150 East Colorado Boulevard, Suite 360
Pasadena, CA 91105-3711
Tel: 626-377-4948
Email: marcia.amos@engie.com
Attention: Contract Administrator

TO Menlo Park: City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Tel: 650.330.6780
Email: nhnagaya@menlopark.org
Attention: Nicole Nagaya, Public Works Director

With a COPY TO: Burke Williams & Sorensen, LLP
181 Third Street, Suite 200
San Rafael, CA 94901
Tel: 415.755.2600
Email: NDoherty@bwslaw.com
Attention: Nira Doherty, City Attorney

ARTICLE 22. CONSTRUCTION OF CONTRACT

This Contract is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it will not be construed for or against either Party, but will be construed in a manner that most accurately reflects the intent of the Parties as of the Contract Effective Date. Each of the Parties acknowledges and agrees that neither Party has provided the other with any legal, accounting, regulatory, financial, or tax advice with respect to any of the transactions contemplated hereby, and each Party has consulted its own legal, accounting, regulatory, financial and tax advisors to the extent it has deemed appropriate.

ARTICLE 23. BINDING EFFECT

Except as otherwise provided herein, the terms and provisions of this Contract will apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

ARTICLE 24. NO WAIVER

The failure of ENGIE Services U.S. or Menlo Park to insist upon the strict performance of this Contract will not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of ENGIE Services U.S. or Menlo Park.

ARTICLE 25. SEVERABILITY

If any clause or provision of this Contract or any part thereof becomes or is declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Contract will continue in full force and effect without said provisions; *provided* that no such severability will be effective if it materially changes the benefits or obligations of either Party hereunder.

ARTICLE 26. HEADINGS

Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle will modify or be used to interpret the text of any section.

ARTICLE 27. COUNTERPARTS; INTEGRATION

This Contract may be executed in counterparts (and by different Parties hereto in different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. This Contract constitutes

the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Contract cannot be amended, modified, or terminated except by a written instrument, executed by both Parties hereto. Delivery of an executed counterpart of a signature page of this Contract by email will be effective as delivery of a manually executed counterpart of this Contract.

[The Parties' signatures appear on the following page]

DRAFT

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

DRAFT

ATTACHMENT A
FACILITIES

(a) The following Facilities are included under the Scope of Work as listed below:

Facility	Address
Menlo Park Community Campus (including Kelly Field)	100 Terminal Ave, Menlo Park, CA 94025

DRAFT

ATTACHMENT B
PRELIMINARY PROJECT SCHEDULE

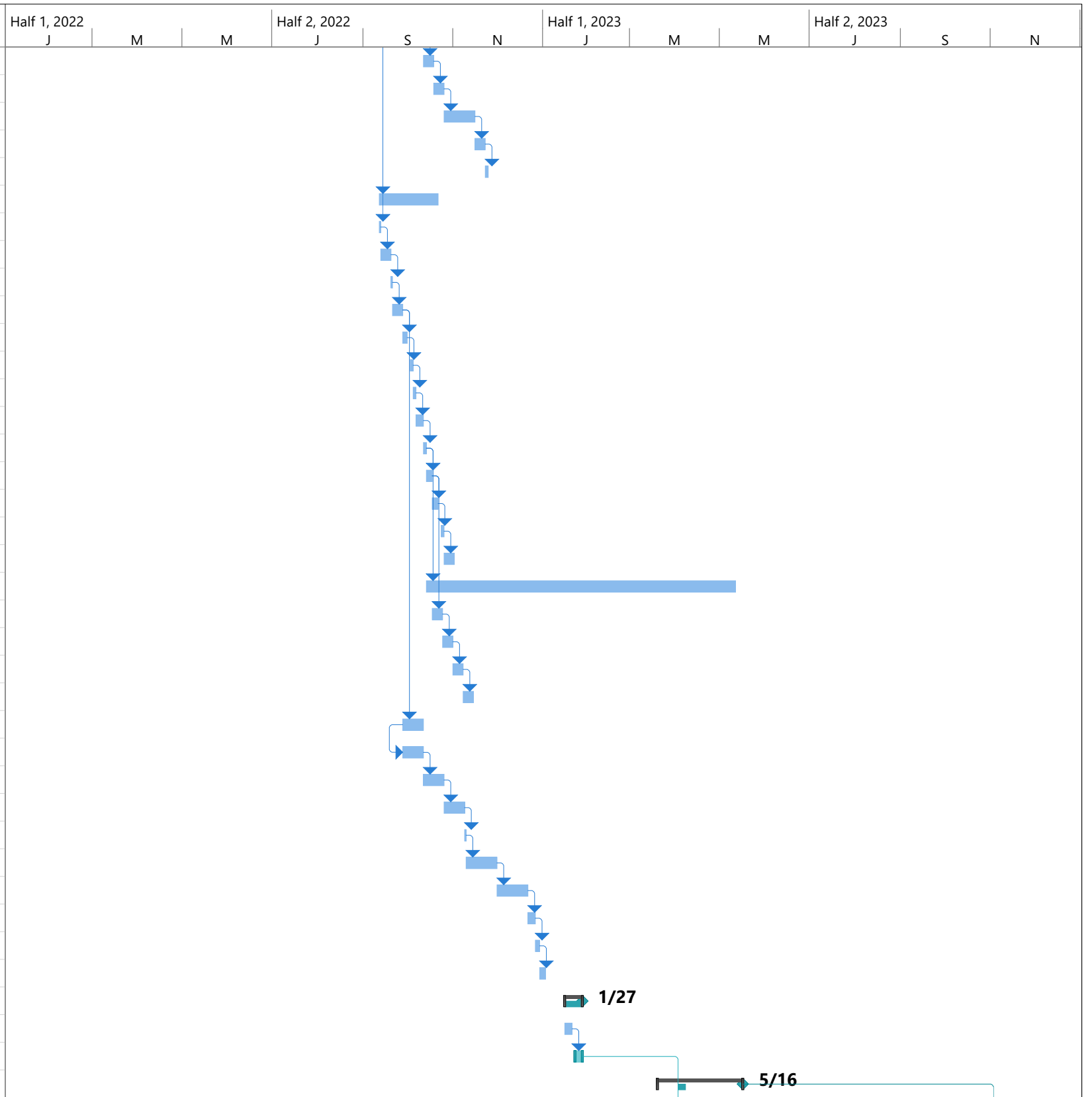
See attached PDF

ID	Task Mod	Task Name	Duration	Start	Finish	Predecessors	Half 1, 2022			Half 2, 2022			Half 1, 2023			Half 2, 2023					
							J	M	M	J	S	N	J	M	M	J	S	N			
1		Menlo Park	520 days	Wed 1/19/22	Tue 1/16/24																
2		NTP from Menlo Park	1 day?	Wed 1/19/22	Wed 1/19/22																
3		Engineering	200 days	Thu 1/20/22	Wed 10/26/22																
4		Site Survey	2 days	Thu 1/20/22	Fri 1/21/22																
5		Soils Engineering	20 days	Thu 1/20/22	Wed 2/16/22	4SS															
6		UG Survey	2 days	Thu 2/17/22	Fri 2/18/22	5															
7		Microgrid System Design	180 days	Wed 1/19/22	Tue 9/27/22																
8		Tesla MegaPack BESS Design	90 days	Wed 1/19/22	Tue 5/24/22																
9		Microgrid Controls Design	90 days	Wed 1/19/22	Tue 5/24/22	8SS															
10		Electrical Engineering Design	110 days	Wed 1/19/22	Tue 6/21/22	9SS															
11		Structural Foundation Design	60 days	Wed 1/19/22	Tue 4/12/22	10SS															
12		Solar Thermal Engineering	60 days	Wed 1/19/22	Tue 4/12/22																
13		System Integration Process	30 days	Wed 6/22/22	Tue 8/2/22	10															
14		Project Design	135 days	Mon 3/21/22	Fri 9/23/22																
15		Prepare Permit Packages	90 days	Mon 4/11/22	Fri 8/12/22																
16		30% Design Review	30 days	Mon 4/25/22	Fri 6/3/22	15SS+10 day															
17		60% Design Review	30 days	Mon 6/6/22	Fri 7/15/22	16															
18		City/AHJ Permit	30 days	Mon 7/18/22	Fri 8/26/22	17															
19		Procurement	300 days	Wed 1/19/22	Tue 3/14/23																
20		Tesla Megapack BESS	300 days	Wed 1/19/22	Tue 3/14/23																
21		Structural Subcontractor Canopy Steel	40 days	Wed 5/25/22	Tue 7/19/22	11FS+30 day															
22		Structural Rooftop Racking	70 days	Wed 4/13/22	Tue 7/19/22	11															
23		Electrical Inverters	40 days	Wed 8/3/22	Tue 9/27/22	10FS+30 day															
24		Electrical Equipment / Panels	90 days	Wed 6/22/22	Tue 10/25/22	10															
25		EV Charging Stations	65 days	Wed 6/22/22	Tue 9/20/22	10															
26		Solar Thermal Collectors SunDrum	60 days	Wed 4/13/22	Tue 7/5/22	12															
27		Pre-Construction	5 days	Mon 9/5/22	Fri 9/9/22																
28		Mobilization	5 days	Mon 9/5/22	Fri 9/9/22																
29		Construction	326 days	Tue 9/6/22	Tue 12/5/23																
30		Rooftop	20 days	Tue 9/6/22	Mon 10/3/22																
31		Rooftop	20 days	Tue 9/6/22	Mon 10/3/22																
32		Crane Lift - Materials to Roof	1 day	Tue 9/6/22	Tue 9/6/22	31SS															
33		Assemble Racking	10 days	Wed 9/7/22	Tue 9/20/22	32															
34		Install Modules	10 days	Wed 9/21/22	Tue 10/4/22	33															
35		Cleanup	2 days	Wed 10/5/22	Thu 10/6/22	34															
36		Punchlist Walk	1 day	Fri 10/7/22	Fri 10/7/22	35															
37		Rooftop - Electrical	30 days	Wed 10/5/22	Tue 11/15/22	34															
38		Module String Wiring	5 days	Wed 10/5/22	Tue 10/11/22	34															

Project: Project1
Date: Wed 12/22/21

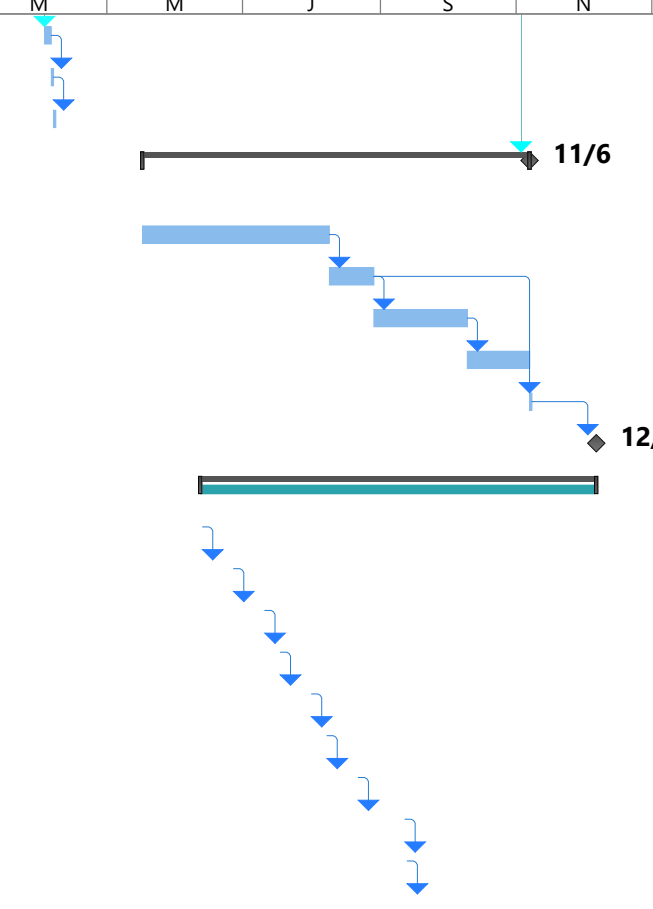
Task		Project Summary		Manual Task		Start-only		Deadline	
Split		Inactive Task		Duration-only		Finish-only		Progress	
Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
Summary		Inactive Summary		Manual Summary		External Milestone			

ID	Task Mod	Task Name	Duration	Start	Finish	Predecessors	Half 1, 2022			Half 2, 2022			Half 1, 2023			Half 2, 2023		
							J	M	M	J	S	N	J	M	M	J	S	N
39	→	DC Wiring and System Grounding	5 days	Wed 10/12/22	Tue 10/18/22	38												
40	→	Inverter Installation	5 days	Wed 10/19/22	Tue 10/25/22	39												
41	→	Install Conduits and Equipment	15 days	Wed 10/26/22	Tue 11/15/22	40												
42	→	Conductor Installation	5 days	Wed 11/16/22	Tue 11/22/22	41												
43	→	Cleanup	2 days	Wed 11/23/22	Thu 11/24/22	42												
44	→	Structural - Carport Canopy	30 days	Mon 9/12/22	Fri 10/21/22	28												
45	→	Phase 1 Layout	1 day	Mon 9/12/22	Mon 9/12/22	28												
46	→	Phase 1 Drill / Set / Pour	5 days	Tue 9/13/22	Mon 9/19/22	45												
47	→	Phase 2 Layout	1 day	Tue 9/20/22	Tue 9/20/22	46												
48	→	Phase 2 Drill / Set / Pour	5 days	Wed 9/21/22	Tue 9/27/22	47												
49	→	Phase 1 Steel Erection	3 days	Wed 9/28/22	Fri 9/30/22	48												
50	→	Phase 1 Module Installation	2 days	Mon 10/3/22	Tue 10/4/22	49												
51	→	Phase 1 Solar Thermal collector installation	2 days	Wed 10/5/22	Thu 10/6/22	50												
52	→	Phase 2 Steel Erection	3 days	Fri 10/7/22	Tue 10/11/22	51												
53	→	Phase 2 Module Installation	2 days	Wed 10/12/22	Thu 10/13/22	52												
54	→	Phase 2 Solar Thermal collector installation	2 days	Fri 10/14/22	Mon 10/17/22	53												
55	→	Complete Asphalt patching and Island demo	4 days	Tue 10/18/22	Fri 10/21/22	54												
56	→	Structural Final Cleanup	2 days	Mon 10/24/22	Tue 10/25/22	55												
57	→	Solar Thermal Plumbing and Piping	5 days	Wed 10/26/22	Tue 11/1/22	56												
58	→	Electrical Contractor - Carport Canopy	150 days	Fri 10/14/22	Thu 5/11/23	53												
59	→	Phase 2 Module String Wiring	5 days	Tue 10/18/22	Mon 10/24/22	54												
60	→	Phase 2 Inverter and Lighting Install	5 days	Tue 10/25/22	Mon 10/31/22	59												
61	→	Phase 1 Module String Wiring	5 days	Tue 11/1/22	Mon 11/7/22	60												
62	→	Phase 1 Inverter and Lighting Install	5 days	Tue 11/8/22	Mon 11/14/22	61												
63	→	UnderGround Work	10 days	Wed 9/28/22	Tue 10/11/22	48												
64	→	Install Conduits	10 days	Wed 9/28/22	Tue 10/11/22	63SS												
65	→	Install Electrical Panel Boards and Equipmen	10 days	Wed 10/12/22	Tue 10/25/22	64												
66	→	Install Tesla Battery Units and Controls	10 days	Wed 10/26/22	Tue 11/8/22	65												
67	→	Install Microgrid Battery Control Panel	1 day	Wed 11/9/22	Wed 11/9/22	66												
68	→	Pull In Conductors	15 days	Thu 11/10/22	Wed 11/30/22	67												
69	→	Install Monitoring Equipment	15 days	Thu 12/1/22	Wed 12/21/22	68												
70	→	Electrical IRT Testing	3 days	Thu 12/22/22	Mon 12/26/22	69												
71	→	Electrical Grounding Tests	3 days	Tue 12/27/22	Thu 12/29/22	70												
72	→	Electrical Solar V-Test	2 days	Fri 12/30/22	Mon 1/2/23	71												
73	→	Utility Interconnection	10 days	Mon 1/16/23	Fri 1/27/23													
74	→	Interconnect Solar PV System	5 days	Mon 1/16/23	Fri 1/20/23													
75	→	Interconnect BESS	5 days	Mon 1/23/23	Fri 1/27/23	74												
76	→	Microgrid Functionality Testing	42 days	Mon 3/20/23	Tue 5/16/23													



Project: Project1 Date: Wed 12/22/21	Task		Project Summary		Manual Task		Start-only		Deadline	
	Split		Inactive Task		Duration-only		Finish-only		Progress	
	Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
	Summary		Inactive Summary		Manual Summary		External Milestone			

ID	Task Mod	Task Name	Duration	Start	Finish	Predecessors	Half 1, 2022			Half 2, 2022			Half 1, 2023			Half 2, 2023		
							J	M	M	J	S	N	J	M	M	J	S	N
77		Specialized 3rd Party Testing	3 days	Mon 4/3/23	Wed 4/5/23	75FS+45 day												
78		Coordinated Functional Preperation Test	1 day	Thu 4/6/23	Thu 4/6/23	77												
79		Shutdown Required - Islanding Functionality	1 day	Fri 4/7/23	Fri 4/7/23	78												
80		Microgrid PPI Testing - PG&E (60 day Review period)	124 days	Wed 5/17/23	Mon 11/6/23	76												
81		PPI - Submit G5 Forms and Testing Documer	60 days	Wed 5/17/23	Tue 8/8/23													
82		PG&E PPI Test (Pre-Parrallell Inspection)	14 days	Wed 8/9/23	Mon 8/28/23	81												
83		Contractor Punchlist	30 days	Tue 8/29/23	Mon 10/9/23	82												
84		Customer Punchlist	20 days	Tue 10/10/23	Mon 11/6/23	83												
85		Final Completion	1 day	Tue 11/7/23	Tue 11/7/23	82FS+50 day												
86		Commercial Operation Date	1 day	Wed 12/6/23	Wed 12/6/23	85FS+20 day												
87		Phase 2 - Kelly Field Carport Canopies	128 days	Mon 6/12/23	Wed 12/6/23													
88		Layout	1 day	Mon 6/12/23	Mon 6/12/23													
89		Drill/Set/Pour Structural Foundations	10 days	Tue 6/13/23	Mon 6/26/23	88												
90		Steel Erection	10 days	Tue 6/27/23	Mon 7/10/23	89												
91		Module Installation	5 days	Tue 7/11/23	Mon 7/17/23	90												
92		Electrical Inverters	10 days	Tue 7/18/23	Mon 7/31/23	91												
93		Electrical Lighting	5 days	Tue 8/1/23	Mon 8/7/23	92												
94		Electrical DC	10 days	Tue 8/8/23	Mon 8/21/23	93												
95		Electrical AC	15 days	Tue 8/22/23	Mon 9/11/23	94												
96		Punchlist Walk	1 day	Tue 9/12/23	Tue 9/12/23	95												
97		PG&E PTO Process	60 days	Wed 9/13/23	Tue 12/5/23	96												



Project: Project1 Date: Wed 12/22/21	Task	Project Summary		Manual Task		Start-only	[Deadline	↓
	Split	Inactive Task	Duration-only		Finish-only]	Progress	
	Milestone	Inactive Milestone	◆	Manual Summary Rollup		External Tasks		Manual Progress	
	Summary	Inactive Summary	—	Manual Summary		External Milestone	◆		

ATTACHMENT C

SCOPE OF WORK

California State Contractor's License Number 995037
California Public Works Contractor Registration Number 1000001498

Energy Conservation Measures to Be Implemented

ECM #	Description
1	Photovoltaic (PV) Systems
2	Solar Thermal Collection – Pool Heating
3	Electric Vehicle (EV) Charging Stations
4	Microgrid and Battery Energy Storage Systems (BESS)

Equipment

QTY	Equipment List
1248	LG460N2W-E6 Photovoltaic (PV) modules or equivalent
7	Chint Inverters - CPS SCA50KTL-DO/US-480 (50kVA) or equivalent
1	Chint Inverters - CPS SCA60KTL-DO/US-480 (60kVA) or equivalent
2	Solaredge SE40KUS or equivalent Inverters
108	SolarEdge P960 Power Optimizers
892	SunDrum Solar Thermal Collectors SunDrum 100-50 (2 per module) or equivalent
3	BTCPower 100kW DC Fast Charger w/integrated Cord Retractor and CHAdeMO and SAE J1772 Combo CCS1 Level 3 DC Fast Chargers or equivalent
12	BTCPower EVP-2002-30-P-0001 Level 2 Electric Vehicle (EV) Charging Stations or equivalent
1	265kW/1483kWh Tesla Megapack 2 Energy Storage System or equivalent
1	PXiSE microgrid control hardware and software, or equivalent

Appendices

Appendix	Description
A	Photovoltaic 30% Single Line Diagram
B	Microgrid and Energy Storage Equipment Schedule and Specifications
C	Microgrid and BESS 30% Drawings
D	Tesla Warranty Terms

Site Description

Building Name
Menlo Park Community Campus, 100 Terminal Ave. Menlo Park, CA 94025

1. PHOTOVOLTAIC (PV) SYSTEMS

1.1. Scope Summary

1.1.1. The table below lists the locations, estimated system sizing, and structure type for the PV system

Est. kW dc	Structure Type
575 kW	Rooftop Solar & Parking Canopy

1.2. General Scope of Work

- 1.2.1. Prepare and submit design drawings to AHJ for approval and to local Utility for interconnection permits.
- 1.2.2. System designs will be based upon preliminary single line diagram provided.
- 1.2.3. Provide geotechnical evaluations necessary for design requirements.
- 1.2.4. Procure materials and equipment necessary for construction.
- 1.2.5. ENGIE Services assumes that any existing lighting bollards in the parking lot will be demolished to build the new parking lot and therefore we have excluded lighting fixture and bollard removal, as required to complete the installation of the new solar canopy system.
- 1.2.6. ENGIE Services U.S. has assumed Construction will be allowed to proceed smoothly and in a continuous flow. An additional mobilization to complete the Kelly Field canopies is also included.
- 1.2.7. All project management and construction management necessary for a full and complete installation.
- 1.2.8. Provide and install solar canopy structures. The canopy structures design will include a painted canopy structure 10' in minimum clearance, a pier depth of 8' and assumes no de-watering, benching, shoring, or casing is required. Any de-watering, benching, shoring, casing work or increases in foundation depth will require a Change Order for additional cost, scope and schedule delay.
- 1.2.9. Provide and install roof top solar racking system to attach the PV system to the roof, maintaining the roof warranty and providing a waterproof seal of any and all roof penetrations.
- 1.2.10. Provide labor, supervision, and coordination with Menlo Park for the installation of photovoltaic modules and supporting structures, electrical distribution and control systems.
- 1.2.11. Provide and install photovoltaic modules and all necessary mounting hardware for each system.
- 1.2.12. Provide and install Chint Power Systems or similar string inverters on parking canopies and Solaredge SE40KUS or similar string inverters on roof top mounted PV arrays with necessary electrical equipment and conduits to connect system to the electrical pre-wired equipment identified on Exhibit A.7 - Electrical Drawings_SLD.
- 1.2.13. Electrical shutdowns are anticipated at each site for the electrical connection of the PV systems to the facility electrical service. The time of shutdown will be coordinated with Menlo Park and Utility and may include weekends.
- 1.2.14. Provide and install a total of approximately forty (approximately 40) new LED lighting fixtures (RAB PRT42N or equivalent) under the PV parking canopies. Actual total number of lights to be determined upon completion of Microgrid drawing set, typically one light per canopy bay.
- 1.2.15. Canopy structures will be tilted 7 degrees from horizontal, roof mounted systems will be tilted 10 degrees from horizontal.
- 1.2.16. Provide and coordinate install of the Net Generation Output Meters (NGOM)
- 1.2.17. Secure the project location and provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment. Menlo Park will assist with the foregoing site logistics by coordinating access and scheduling with ENGIE Services U.S.
- 1.2.18. Provide as-built drawings and Operations & Maintenance manuals in electronic format upon Project completion.
- 1.2.19. Excluded are any backfill and restoration of landscaping in areas of work, except to the extent damaged by ENGIE Services U.S.
- 1.2.20. The PV parking canopy structures are not weather tight and will not provide shelter from rain.
- 1.2.21. Installation of water hose bibs for washing the panels are excluded.
- 1.2.22. Decorative covering underneath the panels is excluded; fascia or cap along the edges of open purlins is included.
- 1.2.23. Start-up, test, and commission the PV systems in accordance with design plan and applicable industry standards.
- 1.2.24. The images below are schematic engineering layouts and are subject to change due to field conditions and upon completion of final engineering. Image is based upon location of new building currently under construction.

1.3. Scope of Work provided by Menlo Park

- 1.3.1. The items listed below will be provided by Menlo Park and will not be the responsibility of ENGIE. In general, Menlo Park is responsible for all Microgrid tethering points into the existing facility and corresponding locations of the Microgrid equipment, including all location specific conduits to be identified in the final Microgrid designs.
 - 1.3.1.1. Canopy PV at Kelly Field will include the following:

- 1.3.1.1.1. All Underground conduits and trenching required to connect the photovoltaic system inverters, lighting, communications and AC subpanel to the ST4PV-1 pre-wired panel; note 8 on sheet E7.01 of "Exhibit A.7 - Electrical Drawings_SLD."
- 1.3.1.2. Canopy PV will include the following:
 - 1.3.1.2.1. All Underground conduits and trenching required to connect the photovoltaic system inverters, lighting, communications and AC subpanel to the ST4PV-1 pre-wired panel; note 7 on sheet E7.01 of "Exhibit A.7 - Electrical Drawings_SLD."
- 1.3.1.3. Rooftop Solar PV System will include the following:
 - 1.3.1.3.1. All conduits required to connect the photovoltaic system inverters, lighting and communications to the ST4PV-R-A pre-wired panel; note 6 on sheet E7.01 of "Exhibit A.7 - Electrical Drawings_SLD."
- 1.3.1.4. All underground trenching for electric conduits or piping.
- 1.3.1.5. All underground conduits and piping.
- 1.3.1.6. Switchgear for connection to facility electrical system. Menlo Park shall provide circuit breakers to allow tie in of all new equipment to facility electrical system.
- 1.3.1.7. Trenching backfill and restoration of landscaping or hardscaping.
- 1.3.1.8. Procurement and installation of any required Utility service meters and Net Energy Meters (NEM).
- 1.3.1.9. Procurement and installation of any required visible disconnect switches required by the Utility.

1.4. Site Specific Scope

1.4.1. Menlo Park Community Campus



- 1.4.1.1. Inclusions:
 - 1.4.1.1.1. Remove all trees and shrubs in the area where the solar PV arrays will be located.
 - 1.4.1.1.2. Temporary fencing during construction
 - 1.4.1.1.3. Ten (10) foot minimum clearance on low end for all arrays.
- 1.4.1.2. Exclusions:
 - 1.4.1.2.1. Permanent fencing or other security measures including cameras
 - 1.4.1.2.2. Cost of any site improvements, material, or engineering necessary for ADA compliance. Menlo Park may hire third party contractor or request ENGIE Services U.S. propose a Change Order for any work required for ADA compliance.
 - 1.4.1.2.3. Asphalt patching or restriping, except as expressly set forth above in the Scope of Work
 - 1.4.1.2.4. Signage
 - 1.4.1.2.5. No allowance has been made for screening, bird spikes, or other mitigations to eliminate nesting or occupation of wildlife on or within major equipment. Wildlife debris cleanup is excluded.

2. SOLAR THERMAL SWIMMING POOL HEATING

2.1. Scope Summary

- The Solar Thermal scope of work includes providing and installing eight hundred and ninety two (892) SunDrum 100-50 thermal collectors (Two per each LG PV module) onto the backside of four hundred and forty six (446) of the new PV panels converting them to hybrid modules or (PV-T). The thermal collectors will be installed on the back side of the Photovoltaic panels on the three PV canopies adjacent to the new swimming pools. Contractor shall design, procure and install one (1) water source heat pump and the solar thermal control system to be located in the Community Center's pool equipment room.

2.1.1. The pool temperature may fluctuate above the pool temperature setpoint as much as one degree Fahrenheit to allow the control system to maximize energy savings.

2.2. Scope of Work

- 2.2.1. Procurement and installation of manifolds and hot water piping in PV Canopies.
- 2.2.2. Procurement and installation of Solar Thermal Control System in the Pool Equipment Room near the other pool control systems.
- 2.2.3. Procurement and installation of one (1) Water Sourced Heat Pump in the Pool Equipment Room.
- 2.2.4. Procurement of Solar Thermal plumbing pipes and connections; Underground trenching and/or boring is excluded, installation of all above ground fixtures and connections are included.
- 2.2.5. Procurement and installation of Heat Exchanger and valves for interconnection with the Aquacal Heat Pump system or equivalent.
- 2.2.6. Water sourced heat pump shall be mounted to pool equipment room floor.
- 2.2.7. Start-up, test, and commission the systems in accordance with design plan and applicable industry standards.

2.3. Scope of Work provided by Menlo Park

- 2.3.1. The items listed below will be provided by Menlo Park and will not be the responsibility of ENGIE.
 - 2.3.1.1. All underground trenching for electric conduits or piping.
 - 2.3.1.2. All underground conduits and piping.
 - 2.3.1.3. All mounting surfaces and concrete pads as required.
 - 2.3.1.4. Switchgear for connection to facility electrical system. Menlo Park shall provide circuit breakers to allow tie in of all new equipment to facility electrical system.
 - 2.3.1.5. Trenching backfill and restoration of landscaping or hardscaping.

3. ELECTRIC VEHICLE (EV) CHARGING STATIONS

3.1. Scope of Work

- 3.1.1. Install Twelve (12) Level 2 EV Chargers and Three (3) DC Fast Chargers.
- 3.1.2. EV charging stations shall be mounted to existing hardscape.
- 3.1.3. Wiring between each system's charging stations shall be with copper or aluminum wire. Aluminum wire will be used from each system's AC combiner to the main point of connection at the site's electrical tethering point.
- 3.1.4. Start-up, test, and commission the systems in accordance with design plan and applicable industry standards.
- 3.1.5. Coordinate billing parameter and website setup between vendor and Menlo Park.
- 3.1.6. Exclusions
 - 3.1.6.1. Yearly licensing and billing fees for the EV charging stations will be the responsibility of Menlo Park.
 - 3.1.6.2. Bollards, Signage, parking lot restriping

- 3.1.6.3. Ongoing fees, including manufacturer’s yearly network service and software fees are the responsibility of Menlo Park.
 - 3.1.6.3.1. Cost of any site improvements, material, or engineering necessary for ADA compliance. Menlo Park may hire third party contractor or request ENGIE Services U.S. propose a Change Order for any work required for ADA compliance.
- 3.1.7. At the request of Menlo Park, apply for, and support Menlo Park to receive, any incentives that could reduce the purchase cost of the EV charging station equipment.
- 3.2. Scope of Work provided by Menlo Park
 - 3.2.1. The items listed below will be provided by Menlo Park and will not be the responsibility of ENGIE.
 - 3.2.1.1. All underground trenching for electric conduits or piping.
 - 3.2.1.2. All Equipment identified in Exhibit A.7 - Electrical Drawings_SLD sheet E4.02 note 3, to pre-wired “EV Distribution Enclosure” including conduits to each EV charger location for conductors and communications.
 - 3.2.1.3. Switchgear for connection to facility electrical system. Menlo Park shall provide circuit breakers to allow tie in of all new equipment to facility electrical system.
 - 3.2.1.4. Trenching backfill and restoration of landscaping or hardscaping.

4. MICROGRIDS and BATTERY ENERGY STORAGE SYSTEMS (BESS)

- 4.1. Scope Summary
 - 4.1.1. The table below lists the location, BESS sizing and summary of microgrid.

BESS Size	Microgrid Energy Management System
1 (One) 265 kW/1483 kWh Tesla Megapack 2 energy storage system	PXiSE Microgrid Controller

- 4.1.2. BESS, electrical schematics and equipment locations are in “Appendix G - Microgrid and Energy Storage 30% Drawings.” Equipment specifications are detailed in “Addendum H Microgrid and Energy Storage Equipment Schedule and Specifications.”
- 4.1.3. Process Overview
 - 4.1.3.1. The Microgrid Energy Management System (MEMS) will manage the new Photovoltaic Systems (as described above), the new BESS, and the portable emergency generators as applicable, to enable the integrated generation system to island from the grid during planned or unplanned utility power outages. In general, the goal is to provide sufficient energy to meet building’s critical load requirements from the photovoltaic systems and the BESS for 24 hours. The MEMS will control the charge/discharge of the BESS to meet both the changing load demand and the PV systems changing generation. Menlo Park provided portable emergency generators can also act as a tertiary backup providing power to buildings as necessary if the PV and BESS are out of service.
 - 4.1.3.2. MEMS controls and monitoring can be accessed both on site through a Human Machine Interface (HMI), as well as remotely through a cloud-based platform.
 - 4.1.3.3. The MEMS is not designed to provide uninterrupted power supply in case of grid failure. The sites will experience a brief outage from the time that the system detects a utility outage, island itself from the utility grid and then the microgrid system restores power. Once Utility power is restored and is stabilized, the MEMS will reconnect the microgrid to the utility grid with minimal interruption.
 - 4.1.3.4. For outages lasting longer than 24 hours, it will be Menlo Park’s responsibility to provide the portable diesel generators and provide diesel fuel as required for back-up operation and maintain all the portable emergency generators.
 - 4.1.3.5. In addition to providing a microgrid system, the BESS will reduce Utility energy charges by controlling the electrical load demand. The MEMS will charge/discharge the BESS to reduce Utility demand charges. The load demand control at times will discharge the BESS, but MEMS will maintain a minimum state-of-charge (SOC) as agreed with Menlo Park to provide emergency backup power for unplanned Utility outages.
 - 4.1.3.6. The MEMS will shut down non-essential loads, as identified in the design documents, during an islanding event.
 - 4.1.3.7. The design assumes that facilities’ load profile during an outage will be similar to and within the parameters provided by Menlo Park in the facility usage and baselines. If increased loads occur, Engie Services U.S. cannot guarantee that microgrid will be able to power and sustain building loads without manual building load curtailment.

- 4.2. General Scope of Work

- 4.2.1. Provide design, engineering, and installation of a Microgrid System that includes BESS, microgrid controls as detailed in "Appendix G – Microgrid and Energy Storage 30% Drawings
- 4.2.2. The Microgrid System will comply with PG&E and CA Rule 21 interconnection standards.
- 4.2.3. The Microgrid System design is based on the PXiSE microgrid controls platform or an equivalent control system.
- 4.2.4. All equipment shall meet the relevant NEC, NEMA or IP enclosure requirements.
- 4.2.5. Sequence construction activities to maintain electrical service to each building with minimal interruption to the building occupants. Menlo Park will assist Engie Services U.S. in scheduling required shutdowns and provide trained facility personnel to assist in the shutdown and restarting of building systems. No temporary power supply has been included in the scope.
- 4.2.6. Field test, pre-commission, and commission each system with written documentation of the testing.
- 4.2.7. ENGIE Services U.S. will provide up to eight (8) hours of training for Menlo Park facility personnel providing an overview of maintenance and operation of the Microgrid System.
- 4.3. Scope of Work provided by Menlo Park
 - 4.3.1. The items listed below will be provided by Menlo Park and will not be the responsibility of ENGIE.
 - 4.3.1.1. All underground trenching for electric conduits or piping.
 - 4.3.1.2. Switchgear for connection to facility electrical system. Menlo Park shall provide circuit breakers to allow tie in of all new equipment to facility electrical system.
 - 4.3.1.3. Procurement and installation of an automated breaker at the microgrid's point-of-common-coupling (PCC) with the utility, the 2500A main utility breaker capable of opening/closing within 30 milliseconds.
 - 4.3.1.4. Procurement and installation of an SEL-700G (or comparable) synchronizing relay at the PCC to facilitate the isolation of the microgrid from the utility and the synchronization of the microgrid back to the utility.
 - 4.3.1.5. Trenching backfill and restoration of landscaping or hardscaping.
 - 4.3.1.6. Procurement and installation of any required Utility service meters and Net Energy meters (NEM)
 - 4.3.1.7. Procurement and installation of any required visible disconnect switches required by the Utility.
 - 4.3.1.8. Concrete pads for mounting equipment including the BESS.
 - 4.3.1.9. The portable emergency generator, the installed equipment to tie the portable emergency generator to the facility electrical system and the equipment required to interface the generator controls with the MEMS.

5. GENERAL PROJECT CLARIFICATIONS APPLICABLE TO ALL SCOPES

- 5.1. Menlo Park will be responsible for obtaining permits and ENGIE Services U.S. will be responsible for scheduling inspections
- 5.2. Engineering and work shall comply with the latest applicable Codes and per Authority Having Jurisdiction (AHJ).
- 5.3. Menlo Park Drawing Submittal Review Process:
 - 5.3.1. 30% drawing sets may be submitted for review and Menlo Park will have thirty (30) days to review submittals, if response is not provided in thirty (30) days, Engie Services U.S. will assume submittal is approved in full unless within thirty (30) days, Menlo Park has communicated to Engie its need for additional time to review and comment.
 - 5.3.2. 60% drawing sets may be submitted for review and Menlo Park will have ten (30) days to review submittals, if response is not provided in thirty (30) days, Engie Services U.S. will assume submittal is approved in full unless within thirty (30) days, Menlo Park has communicated to Engie its need for additional time to review and comment.
- 5.4. ENGIE Services U.S. assumes one mobilization, which includes free access to the entire mobilized portion of the construction area for the full scope of work, except as otherwise noted with respect to Kelly Park.
- 5.5. All work will be scheduled Monday through Friday, 7am to 5pm, except as otherwise noted with respect to Utility and microgrid testing.
- 5.6. Menlo Park will provide to ENGIE Services U.S. the underground utility survey previously prepared and provided by Facebook. As part of its due diligence, ENGIE Services U.S. shall coordinate with USA Dig and a private line locator service in advance of any digging to identify any known existing utilities that are in the path of horizontal boring, vertical boring or trenching.
- 5.7. All electrical equipment shall be new, UL listed material and equipment that carry the manufacturers' original warranties.
- 5.8. Provide utility (PG&E) interconnection drawings and related application management services.
- 5.9. Coordinate with PG&E for electrical interconnection.
- 5.10. Coordinate with PG&E for any required infrastructure upgrades.
- 5.11. Shutdowns will be coordinated with Utility and Menlo Park to minimize impact on facilities
- 5.12. Menlo Park is responsible for any PG&E Interconnection fees.

- 5.13. ENGIE Services U.S. has assumed Construction will be allowed to proceed smoothly and in a continuous flow. No allowance has been made to demobilize and remobilize resources due to schedule interruptions, except as otherwise noted with respect to Kelly Park.
- 5.14. Temporary utilities are to be provided by Menlo Park at no cost to ENGIE Services U.S. (including, without limitation, trailer power, phone lines, water and construction power).
- 5.15. ENGIE Services U.S. will require the assistance of Menlo Park personnel to secure the project location and to provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment.
- 5.16. ENGIE Services U.S. standard construction means and methods will be used.
- 5.17. Provide as-built drawings and Operations & Maintenance manuals upon project completion.
- 5.18. Menlo Park will provide access to the Facilities, laydown areas at the work sites, and a reasonable number of parking spaces for ENGIE Services U.S. and ENGIE Services U.S.'s subcontractor vehicles in parking lots at the Facilities.
- 5.19. All construction waste, including lamps, ballasts and material packaging, will be properly disposed of by ENGIE Services U.S. in accordance with local and EPA regulations.

9. GENERAL PROJECT EXCLUSIONS APPLICABLE TO ALL SCOPES

- 9.1. Cost of all permits, cost of any inspections, including special inspections. Hiring and paying all inspectors, including special inspectors.
- 9.2. Bringing existing systems up to code.
- 9.3. Any ongoing landscaping maintenance.
- 9.4. Removal and disposal of hazardous substances, including asbestos containing materials. If ENGIE Services U.S. encounters material suspected to be hazardous, ENGIE Services U.S. will notify Menlo Park representative and stop further work in the area until the material is removed.
- 9.5. Contaminated soils, for their handling or disposal
- 9.6. Additional costs related to underground obstructions or unsuitable soil conditions encountered during trenching or other excavation.
- 9.7. Structural upgrades to existing structures.
- 9.8. Screening of new or existing equipment.
- 9.9. Temporary heating, cooling or pumping services.
- 9.10. Repair or replacement of damaged or inoperable existing equipment that is not specifically being replaced under the Scope of Work. When such items are discovered, ENGIE Services U.S. will immediately notify a Menlo Park representative.
- 9.11. Smoke detectors, fire alarm system work, or fire life safety work.
- 9.12. Parking lot repairs are excluded, except to the extent of damage caused by ENGIE Services U.S. or its subcontractors.
- 9.13. Repair or replacement of existing housekeeping pads, concrete pads, or base repair of existing walkway lighting are excluded.
- 9.14. Painting, unless specified in Scope of Work, is excluded, including any patch painting, where a new fixture's footprint does not match footprint of existing fixture and wall color differences show.
- 9.15. Stormwater Pollution Prevention Plan or Discharge Permit. Normal construction related Best Management Practices (BMP) for pollution control is included.
- 9.16. With respect to Projects with new equipment connecting to the Building's existing electrical distribution system, ENGIE Services U.S. will not be responsible for the electrical integrity of the existing electrical system, e.g., the condition and proper termination of current-carrying, grounded, and grounding conductors, bus taps, protective elements, the proper protection of existing wire through knockouts, or missing components. Menlo Park is responsible for providing and maintaining the building's electrical distribution system that meets the latest NEC and guidelines adopted by the authority having jurisdiction.
- 9.17. Costs of compliance with Americans with Disabilities Act (ADA) regulation requirements. Menlo Park may hire third party contractor or request ENGIE Services U.S. propose a Change Order for any work required for ADA compliance.
- 9.18. No allowance has been made for screening of new or existing equipment, except as specifically set forth in this Scope of Work.

10. ENGIE SERVICES U.S. BENEFICIAL USE AND WARRANTY CRITERIA FOR SPECIFIC PIECES OF EQUIPMENT

- 10.1. All materials and workmanship warranties are for 1 year, unless specified otherwise or as required by state law.
- 10.2. Solar rooftop racking warranty is for 25 years.
- 10.3. POOL MECHANICAL AND CONTROLS - With respect to the site's Scope of Work, the ENGIE Services U.S. Warranty commences immediately upon uninterrupted operation for a duration of 2 weeks. ENGIE Services U.S. will provide written notice to Menlo Park of the date the ENGIE Services U.S. Warranty commences.

- 10.4. SOLAR GENERATING FACILITIES - The ENGIE Services U.S. Warranty commences immediately when the Generating Facility is capable of generating expected energy and the Utility is ready to issue the permission-to-operate letter.
 - 10.4.1. Solar Module Warranty – solar modules will be provided with a 25-year manufacturer production warranty.
 - 10.4.2. Solar Inverter Warranty – inverters will be provided with a 20-year manufacturer warranty.
 - 10.4.3. Solar Power Optimizer Warranty – power optimizers will be provided with a 25-year manufacturer warranty.
- 10.5. EV CHARGING STATIONS – The ENGIE Services U.S. Warranty commences immediately upon the occurrence of uninterrupted operation for a duration, as necessary, with a maximum of 2 weeks, to determine proper operation.
- 10.6. BESS – The ENGIE Services U.S. Warranty commences immediately when the BESS is interconnected and operational, and the Utility is ready to issue the permission-to-operate letter.
 - 10.6.1. BESS – Tesla batteries include a 20-year manufacturer warranty.
- 10.7. Microgrid Hardware and Software – The PXiSE 20-year warranty commences immediately when the microgrid is interconnected and operational.

11. SCHEDULE OF VALUES

Monthly payments will be submitted based upon the work completed to date on the following categories:

Item No. A	Description of Work B	Schedule of Values C	Schedule of Values D	Retention, as sp in Sections 6.0 8.03 E
1	Mobilization / Final Design NTP	10%	\$520,892.90	\$26,044.65
2	Completed Plan sets, permits applied	5%	\$260,446.45	\$13,022.32
3	All building permits issued, and NTP on construction	10%	\$520,892.90	\$26,044.65
4	Proof of PV+BESS equipment purchase	25%	\$1,302,232.25	\$65,111.61
5	All PV Panels mounted (roof + parking). Excluding Kelly Field.	15%	\$781,339.35	\$39,066.97
6	Battery energy storage system (plus PV thermal) installed	10%	\$520,892.90	\$26,044.65
7	EV stations installed and wiring completed	5%	\$260,446.45	\$13,022.32
8	All systems operational, City inspection, PG&E all inspections, interconnection, and PTO. Excluding Kelly Field.	10%	\$520,892.90	\$26,044.65
9	Punchlist, microgrid island test. Excluding Kelly Field.	5%	\$260,446.45	\$13,022.32
10	2nd Mobilization - Kelly Field Parking Canopy,	5%	\$260,466.45	\$13,022.32
	TOTAL CONTRACT AMOUNT	100%	\$5,208,929	\$26,044.65

ATTACHMENT D
MONITORING INSTALLATION SCOPE OF WORK

Overview of DAS Network Installation and Equipment Requirements

ENGIE Services U.S. will provide a revenue-grade billing, data acquisition system (DAS). This will provide readily available online access to various internal and external information collected on the distributed generation (i.e., solar PV) plants.

ENGIE Services U.S. DAS Monitoring Installation:

- Supply and install hardware specific to the DAS system.
- Supply and install, terminate, label, and test all Data Point of Connection (DPOC) communication cabling from each DAS node to the predetermined and respective DPOC(s), in accordance with Menlo Park's specifications.
- Test and verify generating system(s) network connectivity.
 - a. TCP/IP internal addressing and verification
- Connect the data portion of digital NEM(s) to their respective DPOC(s).
- Supply, install, and configure a Modbus based digital Net Generation Output Meter (NGOM).
- Perform the physical installation, labeling, testing and certification testing of each data circuit from the digital NEM(s) to their respective DPOC(s).
- Provide public-facing ENVI dashboard/slideshow and Menlo Park/Facility staff internal dashboard.
- Provide basic system training to designated Menlo Park/Facility maintenance staff.
- Provide Qualified Reporting Entity services to the Western Renewable Energy Generation Information System in order to create Renewable Energy Certificates on behalf of Menlo Park. All Renewable Energy Certificates of other environmental attributes shall remain the property of Menlo Park.
- Provide and install 40" screen/monitor for public display of DAS data

**ATTACHMENT E
MEASUREMENT AND VERIFICATION SERVICES**

EQUIPMENT AND FACILITIES COVERED

ENGIE Services U.S. will perform measurement and verification services (“M&V Services”) as set forth in this Attachment E with respect to Menlo Park’s property at the Project Locations as shown in table in Attachment A.

I. Definitions:

Capitalized terms used in this Attachment E and not defined in the Contract, have the meanings set forth below:

“**Actual Energy Rate**” means, for any Measurement Period, utility rates calculated by ENGIE Services U.S. using actual utility billing information supplied by Menlo Park for that Measurement Period.

“**Annual M&V Fee**” means a fee payable annually in advance by Menlo Park to ENGIE Services U.S., in consideration of the provision of up to twenty (20) years of M&V Services. The Annual M&V Fee for the first Measurement Period will be as shown in schedule of payment table below and will be increased annually thereafter at the rate of three percent (3%) per annum, each increase to be effective on the first day of the corresponding Measurement Period.

Measurement Period	Annual M&V Fee
1	\$13,816
2	\$14,230
3	\$14,657
4	\$15,097
5	\$15,550
6	\$16,017
7	\$16,498
8	\$16,993
9	\$17,503
10	\$18,028
11	\$18,569
12	\$19,126
13	\$19,700
14	\$20,291
15	\$20,900
16	\$21,527
17	\$22,173
18	\$22,838
19	\$23,523
20	\$24,229

“**Assessment Work**” means work required to assess the effect on EC Savings for any significant changes to the Facilities (including, but not limited to, building additions, new buildings, and new or changed HVAC equipment).

“**Base Energy Rate**” means the dollars per energy unit for each building and/or each ECM, set forth in this Attachment E, Section (III), and used by ENGIE Services U.S. to calculate the EC Savings.

“**Baseline**” means the energy use that would have occurred if the Scope Of Work were not implemented, taking into consideration Energy Use Factors for related buildings.

“**EC Savings**” means the savings in units of dollars (\$) calculated by ENGIE Services U.S. in the manner set forth in this Attachment E, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

“**Energy Rate Factors**” means factors identified by ENGIE Services U.S. which may affect utility rates from the local utility companies.

“**Energy Savings Report**” is defined in this Attachment E, Section (II)(D).

“**Energy Savings Term**” means the period beginning on the first day of the Construction Period and ending on the earlier of: (i) the day immediately preceding the twentieth (20th) anniversary of the M&V Commencement Date; (ii) the termination of the Contract; (iii) the termination by Menlo Park of the M&V Services in accordance with this Attachment E, Section (II)(G); or (iv) the failure by Menlo Park to pay the Annual M&V Fee in accordance with this Attachment E, Section (II)(H)(i).

“**Energy Unit Savings**” means the savings in units of energy, power, water, etc., calculated by ENGIE Services U.S. in the manner set forth in this Attachment E, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

“**Energy Use Factors**” means factors identified by ENGIE Services U.S. which may affect the Baselines or energy use for the Facilities, including but not limited to: hours and levels of occupancy; adjustments in labor force; building use and operational procedures; temperature, humidification, and ventilation levels; installed lighting and scheduled use; building construction and size; general level of repair and efficiency of heating and air conditioning equipment and other energy-using equipment; and amount of heating and air conditioning and other energy-using equipment.

“**Energy Use Savings**” means, for any Measurement Period, those savings, having units of dollars (\$), achieved for such Measurement Period through reductions in energy use, energy demand, water use, and the use of other commodities.

“**Guarantee Payment**” means, for any True-Up Term, either: (i) a cash payment by ENGIE Services U.S. to Menlo Park in an amount equal to the Guarantee Shortfall for that True-Up Term pursuant to this Attachment E, Section (II)(A)(ii); or (ii) additional energy services or energy saving retrofits requested by Menlo Park with an agreed value equal to the Guarantee Shortfall for that True-Up Term pursuant to this Attachment E, Section (II)(A)(iii).

“**Guarantee Shortfall**” means an amount calculated in accordance with this Attachment E, Section (II)(I)(v).

“**Guaranteed Savings**” means, for any True-Up Term, the dollar amount set forth below for such True-Up Term, as the same may be adjusted from time to time by ENGIE Services U.S. for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline:

True-Up Term (Measurement Period)	Guaranteed Savings
1	\$176,417
2	\$181,229
3	\$186,173
4	\$191,251
5	\$196,469
6	\$201,829
7	\$207,335
8	\$212,992
9	\$218,803
10	\$224,773
11	\$230,906
12	\$237,207
13	\$243,681
14	\$250,330
15	\$257,162
16	\$264,181
17	\$271,390
18	\$278,797
19	\$286,406
20	\$294,223

“**IPMVP**” means the International Performance Measurement and Verification Protocol prepared by Efficiency Valuation Organization.

“**Projected Energy Savings**” means those Energy Unit Savings, which ENGIE Services U.S. anticipates will be realized from the installation and continued operation of the Work, as set forth in this Attachment E, Section (III). ENGIE Services U.S. guarantees that not less than ninety percent (90%) of the Projected Energy Savings will be realized every True-Up Term during the Energy Savings Term.

“**Savings Guarantee**” is defined in this Attachment E, Section (II)(A)(i).

True-Up Term” means each 12-month period beginning on the M&V Commencement Date.

II. Terms and Conditions

A. Guaranteed Savings.

- i. Savings Guarantee. In consideration of the payment of the Annual M&V Fee, and upon the terms and subject to the conditions set forth herein, ENGIE Services U.S. warrants that Menlo Park will realize total EC Savings during the Energy Savings Term of not less than the total Guaranteed Savings (the “Savings Guarantee”), as the same may be adjusted from time to time for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline.
- ii. Guarantee Payment. For any True-Up Term in which there is a Guarantee Shortfall, ENGIE Services U.S. will pay to Menlo Park, within thirty (30) calendar days after the acceptance by Menlo Park of the Energy Savings Report for such True-Up Term, the Guarantee Payment for that True-Up Term.
- iii. Services or Retrofits in Lieu of Guarantee Payment. If in the judgment of Menlo Park, Menlo Park would benefit from additional energy services or energy saving retrofits, Menlo Park and ENGIE Services U.S. may mutually agree that ENGIE Services U.S. will provide such services or retrofits in lieu of the Guarantee Payment for such True-Up Term. For the purposes of this Contract, such services or retrofits will have a deemed value equal to the Guarantee Shortfall for that True-Up Term.
- iv. *Not Used.*
- v. Excusable Events. If ENGIE Services U.S. is delayed in, or prevented from, accurately calculating the actual EC Savings for any day of any Measurement Period by reason of any Excusable Event, such circumstance will not constitute a default, and ENGIE Services U.S. will be excused from performing the M&V Services while such event is continuing. During such event, Projected Energy Savings for the month(s) in which such event is continuing will be used in lieu of actual data; *provided* that if three (3) or more years of post M&V Commencement Date data are available for such month(s), the historical average of such data for such month(s) will be used in lieu of Projected Energy Savings.

B. Changes in Energy Use Factors.

- i. Adjustments to Baselines. Menlo Park will notify ENGIE Services U.S. in writing within ten (10) Business Days of any change in any Energy Use Factor. In addition, data collected by ENGIE Services U.S. during or before the Energy Savings Term may indicate a change in the energy use pattern at the Facilities or any portion thereof and require a change to one or more Baselines. ENGIE Services U.S. will determine the effect that any such change will have on EC Savings and present to Menlo Park a written analysis of the effects of such changes. ENGIE Services U.S. will also make corresponding revisions to the Baselines and/or EC Savings that it deems appropriate in its reasonable discretion.
- ii. Adjustments to Guaranteed Savings. If a change in any Energy Rate Factor or Energy Use Factor results in a reduction of EC Savings, then the Guaranteed Savings for the corresponding Measurement Period(s) will be decreased by the same amount. ENGIE Services U.S. will notify Menlo Park, in writing within ten (10) business days, of all such changes.
- iii. Changes to Facilities. Menlo Park or ENGIE Services U.S. may from time to time propose to make changes to the Facilities for the express purpose of increasing EC Savings or addressing events beyond its control. It is agreed that these changes will only be made with the written consent of both Parties, which will not be unreasonably withheld. The Baseline will not be adjusted to reflect any changes agreed to under this Attachment E, Section (II)(B)(iii).
- iv. Baseline Adjustment. If ENGIE Services U.S. proposes changes to the Facilities that would not unreasonably interfere with the conduct of Menlo Park’s business or cause Menlo Park to incur additional costs, and Menlo Park does not consent to the changes, then ENGIE Services U.S. will adjust the Baselines upward by the amount of savings projected from the changes.

- v. Projected Energy Savings. During the Energy Savings Term, when the ultimate effect of the Work on EC Savings cannot be accurately determined due to pending construction or changes to the Scope of Work, Projected Energy Savings for the Facilities will be used until the effect of the changes can be determined by ENGIE Services U.S.
- vi. Assessment Work. ENGIE Services U.S. has the right to charge Menlo Park for Assessment Work, which will be billed at current ENGIE Services U.S. engineering rates and will be paid by Menlo Park within thirty (30) calendar days after receiving ENGIE Services U.S.'s invoice. Before initiating Assessment Work, ENGIE Services U.S. will notify Menlo Park in writing of the intent and estimated cost associated with the Assessment Work. Menlo Park will, within forty-five (45) calendar days, give ENGIE Services U.S. written permission to proceed or, alternatively at no charge to ENGIE Services U.S., to stipulate that the Projected Energy Savings for the portion of the Facility in question be used for the purpose of meeting the Savings Guarantee for such Measurement Period and thereafter. If ENGIE Services U.S. does not receive written notice within forty-five (45) calendar days, the Projected Energy Savings for the portion of the Facility in question will be used until such time as Menlo Park approves the Assessment Work.
- vii. Changes in Energy Use Factors. If Menlo Park fails to notify ENGIE Services U.S. of changes in Energy Use Factors or fails to supply ENGIE Services U.S. in a timely manner with information that is requested by ENGIE Services U.S. for the calculation of EC Savings, the Energy Unit Savings for the relevant Measurement Period will be deemed equal to the corresponding Projected Energy Savings for such period. If information for the relevant Measurement Period is supplied at a later date, the Energy Unit Savings will be modified only if and to the extent that the calculated savings for such period exceed the Projected Energy Savings for such period.
- viii. Change Order – Savings Effect. ENGIE Services U.S. will calculate the energy impact of any Change Orders.
- ix. Changes in Savings Calculations. Any changes made by ENGIE Services U.S. to the savings calculations will be presented to Menlo Park in advance. Menlo Park will have thirty (30) calendar days to challenge or question the changes in writing.
- x. Inspection of Facilities. Menlo Park agrees that ENGIE Services U.S. will have the right, with prior notice, to inspect the Facilities to determine if Menlo Park has consistently complied with its obligations as set forth above. If any inspection discloses that Menlo Park has failed, on or prior to the date of such inspection, to be in compliance with any of its obligations, then the Guaranteed Savings will be assumed to have been achieved for the portion of the Energy Savings Term during which such failure will have existed.
- xi. Interference. Menlo Park may not cause, and will take all commercially reasonable steps to prevent any third party from causing, any overshadowing, shading or other interference with the solar insolation that falls on the Generating Facility. Upon discovering, or otherwise becoming aware of, any actual or potential overshadowing, shading or other interference with insolation, Menlo Park will promptly notify ENGIE Services U.S. If an unforeseeable overshadowing or shading condition not caused by ENGIE Services U.S. or its subcontractors exists and continues for five (5) Business Days or more, Menlo Park agrees that the Guaranteed Savings for such Generating Facility will be reduced based upon such shading condition, and ENGIE Services U.S. may present Menlo Park with a proposed reduction to the Guaranteed Savings reflecting such overshadowing, shading or other interference.

C. Menlo Park Maintenance. Beginning at Beneficial Use or Substantial Completion for any portion of the Work, Menlo Park will maintain such portion of the Work and upon Final Completion will maintain the Project, in accordance with the maintenance schedules and procedures recommended by ENGIE Services U.S. and by the manufacturers of the relevant equipment, such maintenance to include maintaining all landscaping (including tree trimming) in and around the Generating Facilities.

D. Energy Savings Report. Annually during the Energy Savings Term, ENGIE Services U.S. will submit to Menlo Park an energy savings report as updated from time to time and attached for example only as Exhibit E-2 containing a precise calculation of the EC Savings during the applicable Measurement Period (an "Energy Savings Report"). Each Energy Savings Report will include an updated Table of Records in the form attached as Exhibit E-1. ENGIE Services U.S. will use its best efforts to submit such Energy Savings Report within ninety (90) calendar days after receipt of all needed information for a Measurement Period, unless additional information is needed to accurately calculate the EC Savings, in which case Menlo Park will be notified of such a situation within the ninety (90) calendar-day period. Menlo Park shall have the right to request, at its own cost, a third-party audit of any Energy Savings Report(s) within three (3) years of submission. ENGIE Services U.S. shall review and respond to any findings of an audit which provide proof of error in an Energy Savings Report.

E. On-Site Measurements. Menlo Park irrevocably grants to ENGIE Services U.S. the right, during the Energy Savings Term, to monitor EC Savings and energy management performance by conducting on-site measurements, including, but not limited to, reading meters and installing and observing on-site monitoring equipment. ENGIE Services U.S. will not exercise such right in a manner that unreasonably interferes with the business of Menlo Park as conducted at the Facilities as of the date hereof. Menlo Park will cooperate fully with the exercise of such right by ENGIE Services U.S. pursuant to this Attachment E, Section (II)(E). Menlo Park will further cooperate with ENGIE Services U.S.'s performance of the M&V Services by providing utility information, changes in Energy Use Factors, and/or additional information as reasonably requested by ENGIE Services U.S.

F. *Not Used*.

G. Termination of Guaranteed Savings. If (i) Menlo Park notifies ENGIE Services U.S. in writing of its intent to terminate the M&V Services, (ii) the Contract is terminated by ENGIE Services U.S. for default by Menlo Park or by Menlo Park for any reason permitted by the Contract, (iii) ENGIE Services U.S. is no longer the provider of the Maintenance Services set forth in Attachment F, or (iv) Menlo Park fails to maintain the Project in accordance with this Attachment E, Section (II)(C), or is in default of any of its other obligations under this Attachment E, the obligation of ENGIE Services U.S. to prepare and deliver the Energy Savings Report and to make a Guarantee Payment will also be terminated. If such termination occurs on a date other than the last day of a True-Up Term, ENGIE Services U.S. will have no obligation to make a Guarantee Payment or prepare and deliver an Energy Savings Report for such True-Up Term.

H. Annual M&V Fee.

- i. Invoicing and Payment. The Annual M&V Fee for the first Measurement Period will be invoiced by ENGIE Services U.S. to Menlo Park in a lump sum on the M&V Commencement Date. All subsequent Annual M&V Fees will be invoiced by ENGIE Services U.S. on the first day of the corresponding Measurement Period. Menlo Park, or its designee, will pay ENGIE Services U.S. such Annual M&V Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Unless Menlo Park gives ENGIE Services U.S. prior written notice of its intent to terminate the M&V Services, any failure to timely pay the Annual M&V Fee in accordance with this Attachment E, Section (II)(H) will be a material default by Menlo Park under the Contract, and ENGIE Services U.S., in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to perform M&V Services or to make Guarantee Payments.
- ii. Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.
- iii. Not Refundable. The Annual M&V Fee is not refundable for any reason.

I. Calculations.

- i. Calculation of EC Savings. EC Savings for any Measurement Period will be equal to, for such Measurement Period, the Energy Use Savings, in each case as adjusted for changes in Energy Use Factors during such Measurement Period. EC Savings achieved during the Construction Period will be included in the EC Savings for the first Measurement Period and subsequent True-Up Term only.
- ii. Calculation of Energy Use Savings. Energy Use Savings will be calculated by ENGIE Services U.S. as the *product* of (i) the Energy Unit Savings *multiplied by* (ii) the greater of (a) the applicable Base Energy Rate or (b) the applicable Actual Energy Rate.
- iii. Calculation of Guarantee Shortfall. The Guarantee Shortfall, for any True-Up Term, will be calculated by ENGIE Services U.S. as the *difference*, to the extent positive, between (i) the Guaranteed Savings for such True-Up Term *minus* (ii) the sum of EC Savings for such True-Up Term.

III. Methodologies and Calculations

The following details the methodologies and calculations to be used in determining the Energy Unit Savings under this Contract.

Table E-1: Measurement and Verification Methods

ECM	ECM Description	M&V Method	
		Electric Usage	Electric Demand
1	Photovoltaic (PV) Systems	Option B	N/A
2	Solar Thermal Collection - Pool Heating	Option B	N/A

4	Microgrid and Battery Energy Storage Systems (BESS)	N/A	Option B
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1. M&V Option B: Energy savings performance of Scope of Work are measured and verified at the end-use site. Option B techniques are designed for projects where long-term continuous measurement of performance is desired and warranted. Under Option B, while some parameter may be stipulated or measured once then stipulated, some individual loads are continuously monitored to determine performance; and this measured performance is compared with an equipment-use Baseline to determine the Energy Unit Savings.
 - a. ENGIE Services U.S. will supply a one-time report to Menlo Park detailing any initial measurements taken to establish usage Baselines or other parameters. Ongoing post-retrofit measurements will be compared to the Baselines, and the quantified Energy Unit Savings will be calculated and presented in ongoing reports. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.
 - b. Monitoring shall provide measurements on a 15-minute and 60-minute interval basis. Metering data shall be sufficient to separately record solar power production, and BESS charging/discharging power, EV charging load, and total facility load.
 - c. Scope of Work:

ECM – 1: Photovoltaics (PV) Systems

- i. No baseline measurements are necessary because pre-retrofit PV production is zero. Kilowatt-hours produced by the PV system will be measured using automated metering. Measured interval production kilowatt-hours will be compared against production shown on the monthly utility bills and any differences will be reconciled. Projected kWh production is shown in *Table E-3* below and is projected to degrade by 0.3% per year.

Table E-2: First Year Solar PV Production

ECM Description	Projected Energy Savings (kWh)
Photovoltaic (PV) Systems	968,129
PV Module Cooling from Solar Thermal	13,221
Total	981,350

- ii. Assumptions: Once Work is Substantially Complete, these savings will be measured and verified monthly for the Energy Savings Term.
- iii. Baselines and Projected Savings: EC Savings will be determined by multiplying the Energy Unit savings by the applicable Base Energy Rate. EC Savings will be calculated and presented in ongoing reports.

ECM – 2: Solar Thermal Collection – Pool Heating

- i. ENGIE Services U.S. will continuously measure electrical energy savings delivered by the solar thermal pool heating system compared to an assumed baseline system. Efficiency improvement in the solar photovoltaic system resulting from cooler module temperatures will not be captured in this measurement plan but instead will be captured in the ECM-1 M&V methodology above.
- ii. Metering and Instrumentation: Energy delivered by the pool heating system to two different pools will be measured using BTU energy meters. Additionally, electricity supplied to the heat pump and electricity supplied to auxiliary pumps will be measured using electric meters. Outdoor air temperature and pool water temperature will also be measured. All metering will be connected to an on-site Data Acquisition System which will sample each meter multiple times per minute and will log readings from each meter every 15 minutes continuously.
- iii. Baseline Condition: The swimming pools being heated have not been in service to allow for the establishment of historical baseline, but the baseline condition is agreed to be that the pools would have been heated using air to water heat pumps. Consequently, the baseline pool heating efficiency will be assumed from published manufacturer performance data by developing an efficiency equation that relates electricity input, heat output, and ambient air temperature from manufacturer data using as many data points as the manufacturer can provide, thus establishing a performance curve for the heat pump that can be used to determine how much electricity would have been

needed from the baseline system if the solar thermal heating system were not installed. Using this equation, the presumed baseline electricity input will be determined using the measured post-retrofit heating delivered to the pools.

- iv. **Assumptions:** Since the solar heating system requires sunlight to operate most efficiently, pool heating will be biased to occur during daylight hours. This may result in slight overheating of pools during the daytime while nighttime water temperatures will be allowed to drift up to two (2) degrees from the target setpoint of 80 degrees Fahrenheit. Due to the thermal mass of water in the pools, actual temperature deviations from day to night are expected to be small. In the event that data necessary for the calculation of Energy Unit Savings becomes unavailable for a period of time, missing data will be substituted from a comparable time period, and the substitution will be called out and explained to Menlo Park.

Some examples (not all possible examples) of situations that would require non-routine adjustments to the savings calculation would include the following: entirely or partially draining the pool, pool use or occupancy changes, pool water temperature setpoint is changed, or if a pool cover is used.

- v. **Post-retrofit Measurements:** Post-retrofit or actual heating system energy consumption will be the electricity consumed by the auxiliary heating pumps, and the heat pump unit itself. Energy delivered to each pool will also be measured along with outside air temperature. This data will be logged every 15 minutes and summed for the duration of the performance measurement period.
- vi. **Savings Calculations:** Energy Unit Savings measured in units of kWh will be the Baseline electric energy minus the Actual post-retrofit electric energy calculated every 15 minutes.

Table E-3: Annual Savings (ECM-2)

ECM Description	Projected Energy Savings (kWh)
Solar Thermal Collection - Pool Heating	37,769

ECM – 4: Microgrid and Battery Energy Storage Systems (BESS)

- i. **Metering Plan:** Four meters will be needed to measure savings associated with this ECM. M1 – measures the electricity imported from and exported to Utility. M2 – measures the PV Production flowing into the facility electrical distribution system. M3 – will measure the flow of electricity into and out of the energy storage system. M4 – will measure the actual energy consumed by facility electrical loads. In some facilities, the installation of M4 is not feasible. Installation of M4 offers redundancy of metering such that with one non-functional meter, the BESS savings can still be determined. All meters will be configured to read positive in the direction of facility load and negative away from the facility load.
- ii. **Baselines and Projected Savings:** The baseline consumption will be determined every 15 minutes and will be the consumption recorded by the sum of meters M1 and M3. The energy and demand recorded by this meter will be divided into time-of-use categories that correspond to the appropriate Utility rate structure in effect on the date of execution of this agreement. Projected Savings are presented in Table E-4.
- iii. **Post-retrofit Usage Determination:** Post-Retrofit usage will also be determined every 15 minutes and will be divided into the same time-of-use categories as the baseline use. The equation used to determine the Post-Retrofit use will be meter M1.
- iv. **Energy Unit Savings:** Energy Unit Savings (kWh) will be calculated for each time of use category by subtracting the post-retrofit consumption from the baseline consumption within each time-of-use category, then summing for all intervals within each time-of-use category.

$$Energy\ Unit\ Savings = \sum_{intervals} Baseline - PostRetrofit$$

Energy Unit Savings (kW) will be calculated by selecting the maximum baseline demand measured in each month in any 15-minute interval for each time-of-use category and subtracting the post-retrofit demand measured at the same time interval for each month and each time-of-use category.

$$Energy\ Unit\ Savings = \sum_{Months} Baseline_{Max} - Post\ Retrofit_{Max}$$

- v. **Non-routine Adjustments:** Non-routine baseline adjustments may be calculated when operating conditions change from those that existed during the baseline. Events where the continuously sustained peak demand duration within any time of use category increases, significant loads are shifted between peak, mid-peak, or off-peak periods, backup generation is energized, or the occurrence of utility outages can all necessitate the calculation of a non-routine baseline adjustment in order to accurately reflect the savings associated with this ECM.
- vi. Energy Use Savings will be determined by multiplying the Energy Unit savings by the applicable Base Energy Rate. Energy Use Savings will be calculated and presented in on-going reports.

Table E-4: BESS Projected Energy Savings by Month (ECM-3)

TOU Element	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Maximum Peak Demand (kW)	-	-	-	-	-	-	-	-	-	-	-	-
Maximum Part Peak (kW)	-	-	-	-	-	-	-	-	-	-	-	-
Maximum Demand (kW)	48	41	48	84	46	58	67	81	61	43	57	48

- 2. **Base Energy Rates:** EC Savings will be calculated using the Base Energy Rates. The Base Energy Rates listed in the tables below are to be increased each Measurement Period on a cumulative basis by three percent (3%), beginning on the first anniversary of the M&V Commencement Date and continuing on the first day of each Measurement Period thereafter.

Table E-5: Base Energy Rates

ECM	Electricity Rate (\$/kWh)
1	0.1760
2	0.2690

Table E-6: Base Energy Rates - PG&E B-10 TOU (ECM-4)

TOU Element	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Maximum Peak Demand (\$/kW)	-	-	-	-	-	-	-	-	-	-	-	-
Maximum Part Peak (\$/kW)	-	-	-	-	-	-	-	-	-	-	-	-
Maximum Demand (\$/kW)	19.01	19.01	19.01	19.01	19.01	19.93	19.93	19.93	19.93	19.01	19.01	19.01

Time of the year and times of the day are defined as follows:

SUMMER: (June 1 through September 30)

Peak:	4:00pm to 9:00pm	Every day, including weekends and holidays
Partial-peak:	2:00pm to 4:00pm AND 9:00pm to 11:00pm	Every day, including weekends and holidays
Off-peak:	All other Hours.	

WINTER (October 1 through May 31)

Peak:	4:00pm to 9:00pm	Every day, including weekends and holidays
Super Off-peak:	9:00am to 2:00pm	Every day in March, April and May, including weekends and holidays
Off-peak:	All other Hours.	

EXHIBIT E-1

FORM OF MEASUREMENT AND VERIFICATION TABLE OF RECORDS

See attached PDF.

Measurement Period	Period Covered (Dates)	Solar PV Performance - Table of Records				Solar Thermal Pool Heating Performance - Table of Records				BESS Performance - Table of Records				Project Performance		
		PV Production - Projected (kWh)	PV Production - Guaranteed (kWh)	PV Production - Actual (kWh)	Over/Under Production (Actual - Projected) (kWh)	Thermal Production - Projected (kWh)	Thermal Production - Guaranteed (kWh)	Thermal Production - Actual (kWh)	Over/Under Production (Actual - Projected) (kWh)	BESS Savings - Projected (\$)	BESS Savings - Guaranteed (\$)	BESS Savings - Actual (\$)	Over/Under Savings (Actual - Projected) (\$)	Total EC Savings (\$)	Projected Savings (\$)	Guaranteed Savings (\$)
1	TBD at Construction Completion	981,350	883,215	TBD - Annually	TBD - Annually	37,769	33,992	TBD - Annually	TBD - Annually	\$13,141	\$11,827	TBD - Annually	TBD - Annually		\$196,019	\$176,417
2		978,406	880,565			37,769	33,992			\$13,535	\$12,182				\$201,366	\$181,229
3		975,471	877,924			37,769	33,992			\$13,941	\$12,547				\$206,859	\$186,173
4		972,544	875,290			37,769	33,992			\$14,360	\$12,924				\$212,501	\$191,251
5		969,627	872,664			37,769	33,992			\$14,790	\$13,311				\$218,299	\$196,469
6		966,718	870,046			37,769	33,992			\$15,234	\$13,711				\$224,254	\$201,829
7		963,818	867,436			37,769	33,992			\$15,691	\$14,122				\$230,372	\$207,335
8		960,926	864,834			37,769	33,992			\$16,162	\$14,546				\$236,658	\$212,992
9		958,043	862,239			37,769	33,992			\$16,647	\$14,982				\$243,114	\$218,803
10		955,169	859,652			37,769	33,992			\$17,146	\$15,432				\$249,748	\$224,773
11		952,304	857,073			37,769	33,992			\$17,661	\$15,894				\$256,562	\$230,906
12		949,447	854,502			37,769	33,992			\$18,190	\$16,371				\$263,564	\$237,207
13		946,599	851,939			37,769	33,992			\$18,736	\$16,862				\$270,756	\$243,681
14		943,759	849,383			37,769	33,992			\$19,298	\$17,368				\$278,145	\$250,330
15		940,927	846,835			37,769	33,992			\$19,877	\$17,889				\$285,736	\$257,162
16		938,105	844,294			37,769	33,992			\$20,473	\$18,426				\$293,534	\$264,181
17		935,290	841,761			37,769	33,992			\$21,088	\$18,979				\$301,545	\$271,390
18		932,484	839,236			37,769	33,992			\$21,720	\$19,548				\$309,774	\$278,797
19		929,687	836,718			37,769	33,992			\$22,372	\$20,135				\$318,229	\$286,406
20		926,898	834,208			37,769	33,992			\$23,043	\$20,739				\$326,915	\$294,223

For demonstration purposes only.

EXHIBIT E-2

SAMPLE ANNUAL ENERGY SAVINGS REPORT

See attached PDF, which is provided as an example for illustrative purposes only.

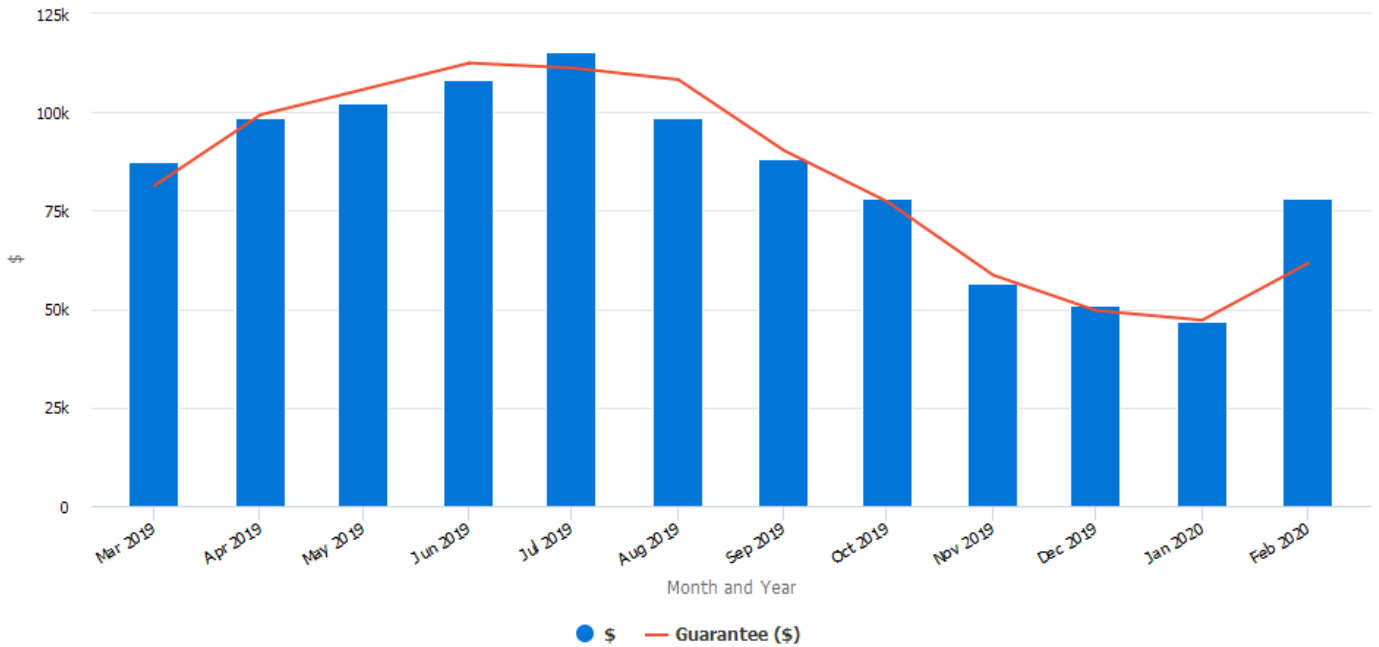
Executive Summary



Under a performance-based Energy Services Contract, ENGIE Services U.S. installed Solar Photovoltaic Systems in two locations, a Battery Energy Storage System at the Wastewater Plant, and a Solar Thermal Pool Heating system for the Customer. ENGIE has guaranteed energy savings in dollars (\$) from the project for 20 years in accordance with the Energy Services Contract. This report summarizes the annual performance of the program as a whole as well as individual components that make up the program.

Reporting Period:
Year 2
March 2020 through February 2021

Cost Savings by Month



1 Month (Month and Year): 3/1/2020 12:00 AM - 2/29/2021 11:59 PM

For Year 2, the Actual PV Production was X,XXX,XXX kWh for Cost Savings of \$XXX,XXX.

The Year 2 BESS savings were \$XX,XXX, while the solar thermal pool heating savings were \$XX,XXX.

The Total Program Savings for Year 2 were \$XXX,XXX. This exceeded the guaranteed savings of \$XXX,XXX by \$X,XXX.

Photovoltaic System Performance

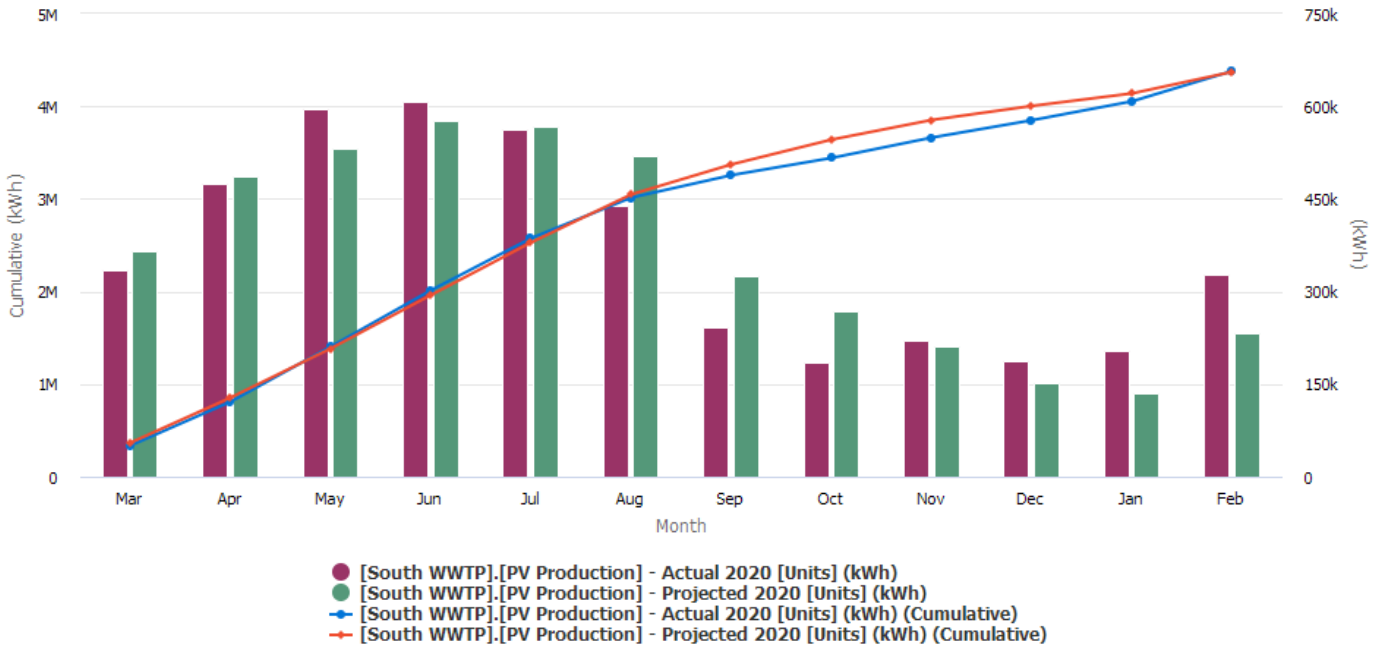


South WWTP

System Description:
2,446 kWp - 2,000 kWac

2 Solectria 750 kW Inverters, 1 Solectria 500 kW Inverter
Ground Mounted, Single Axis Tracking System

Actual PV Production Compared to Projected PV Production



Period : 3/1/2020 12:00 AM - 2/28/2021 11:59 PM

Notes:

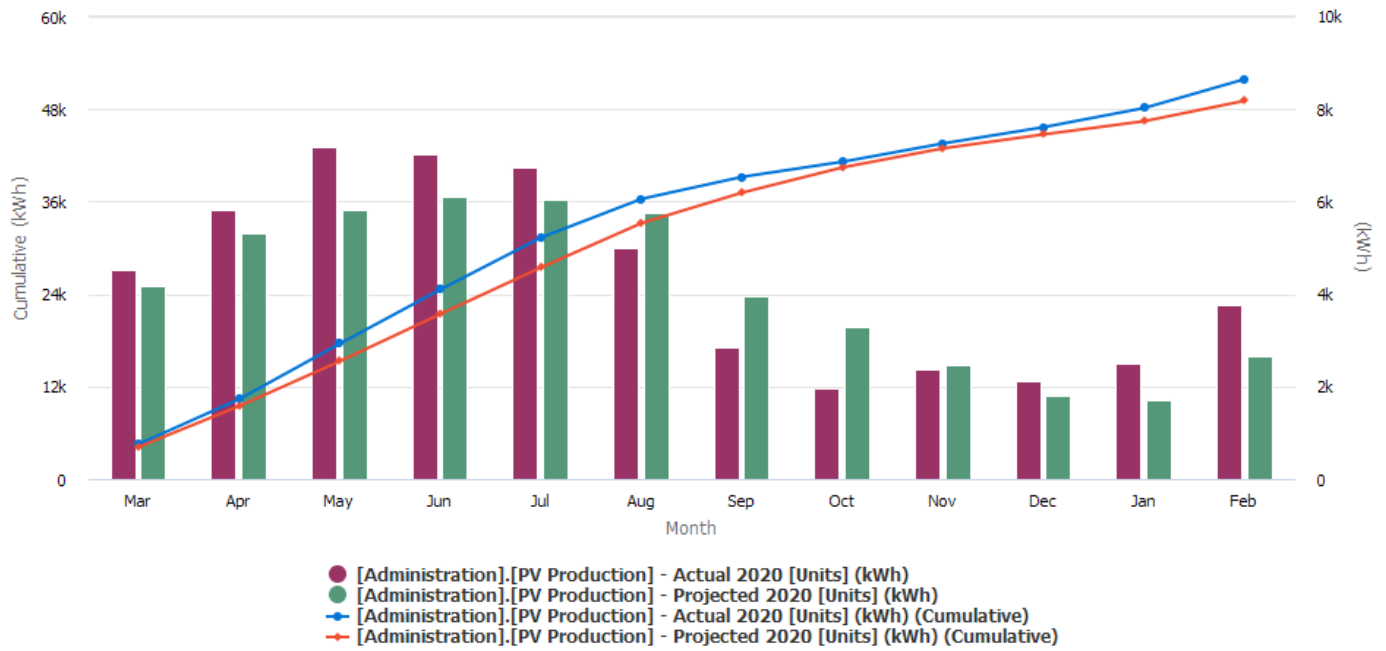
Actual: the actual electricity production by the photovoltaic system.
Projected: the electricity predicted by the solar model using 30-year average weather data.

Administration Building

System Description:
37.9 kWp - 28.0 kWac

2 Solectria 14 kW Inverters
Canopy Mounted, Fixed System

Actual PV Production Compared to Projected PV Production



Period : 3/1/2020 12:00 AM - 2/28/2021 11:59 PM

Notes:
Actual: the actual electricity production by the photovoltaic system.
Projected: the electricity predicted by the solar model using 30-year average weather data.

Monthly PV Production for All Sites

From Timestamp	Administration Canopy (kWh)	Ground Mount Tracker (kWh)
3/1/2020 12:00:00 AM	4,537	335,431
4/1/2020 12:00:00 AM	5,835	473,763
5/1/2020 12:00:00 AM	7,198	594,868
6/1/2020 12:00:00 AM	7,026	608,403
7/1/2020 12:00:00 AM	6,737	562,377
8/1/2020 12:00:00 AM	5,016	438,701
9/1/2020 12:00:00 AM	2,857	242,286
10/1/2020 12:00:00 AM	1,963	185,898
11/1/2020 12:00:00 AM	2,378	220,024
12/1/2020 12:00:00 AM	2,112	187,494
1/1/2021 12:00:00 AM	2,485	204,378
2/1/2021 12:00:00 AM	3,754	327,449
	51,899	4,381,071

1 Month (Month and Year) : 3/1/2020 12:00 AM - 2/28/2021 11:59 PM

Due to rounding of the individual months, savings may not equal the total at the bottom.

BESS Peak Day Summary

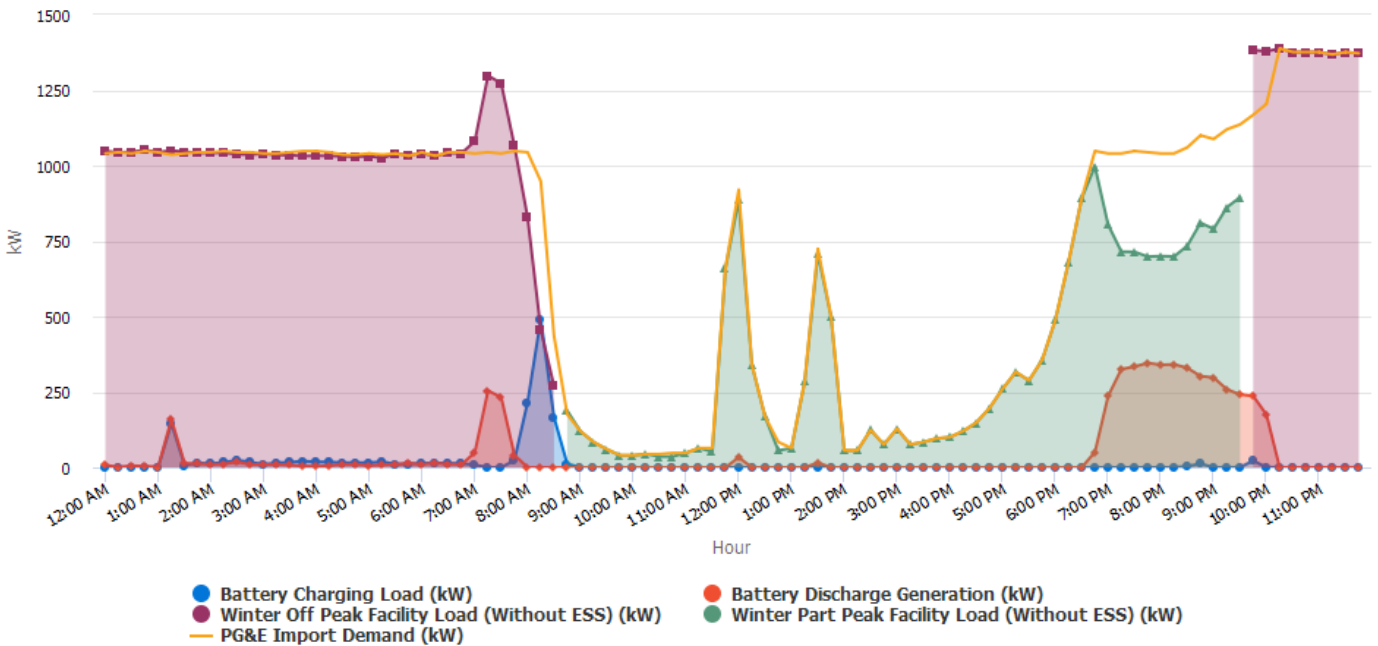


Monthly Maximum PG&E Demand

From Timestamp	South WWTP.PEAK PGE Demand Occurrence (kW)
3/1/2020 12:00:00 AM	1,388
4/1/2020 12:00:00 AM	1,364
5/1/2020 12:00:00 AM	980
6/1/2020 12:00:00 AM	680
7/1/2020 12:00:00 AM	1,004
8/1/2020 12:00:00 AM	1,296
9/1/2020 12:00:00 AM	1,276
10/1/2020 12:00:00 AM	1,220
11/1/2020 12:00:00 AM	1,116
12/1/2020 12:00:00 AM	1,172
1/1/2021 12:00:00 AM	1,012
2/1/2021 12:00:00 AM	1,192
	1,388

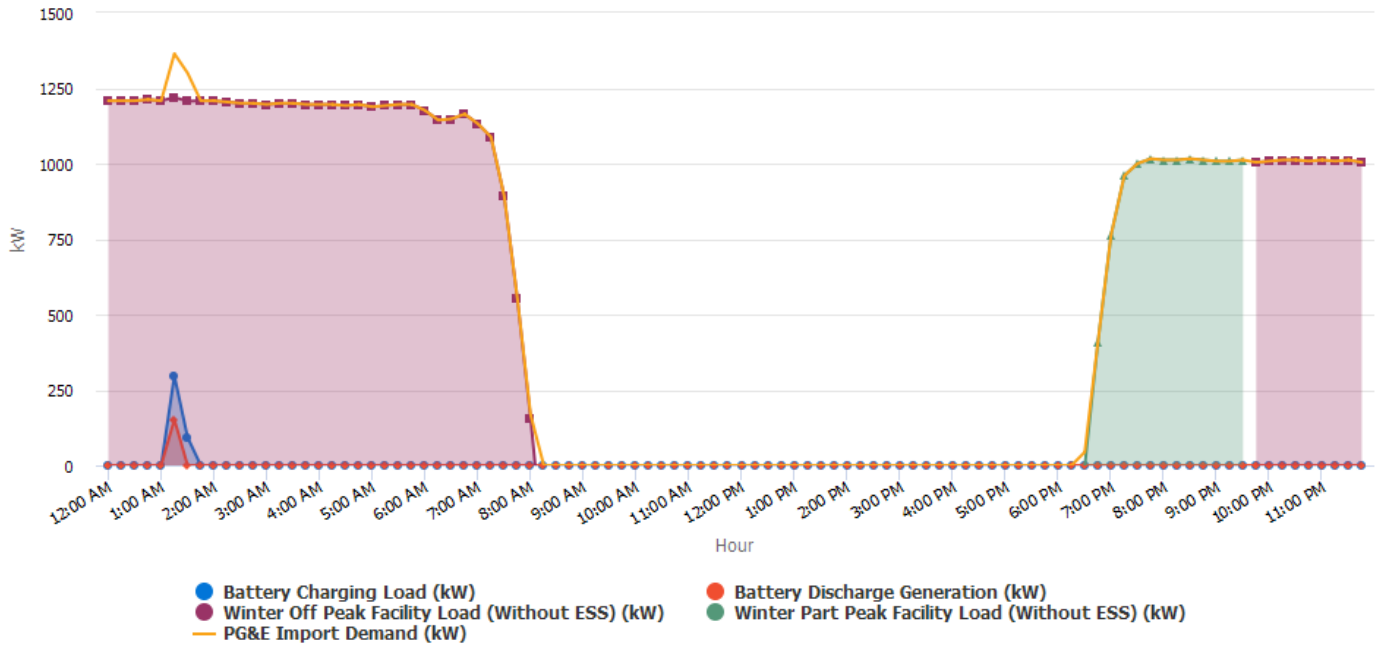
1 Month (Month and Year) : 3/1/2020 12:00 AM - 2/28/2021 11:59 PM

March 2020



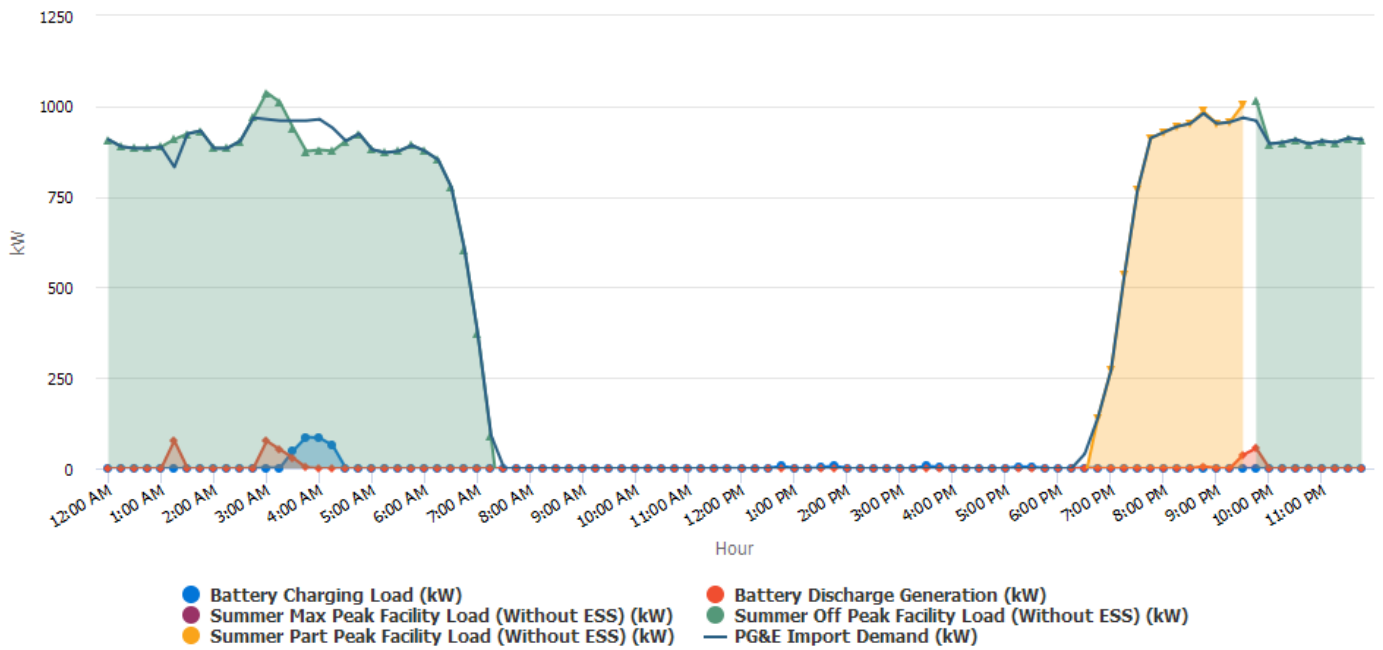
Quarter Hour : 3/30/2020 12:00 AM - 3/30/2020 11:59 PM

April 2020



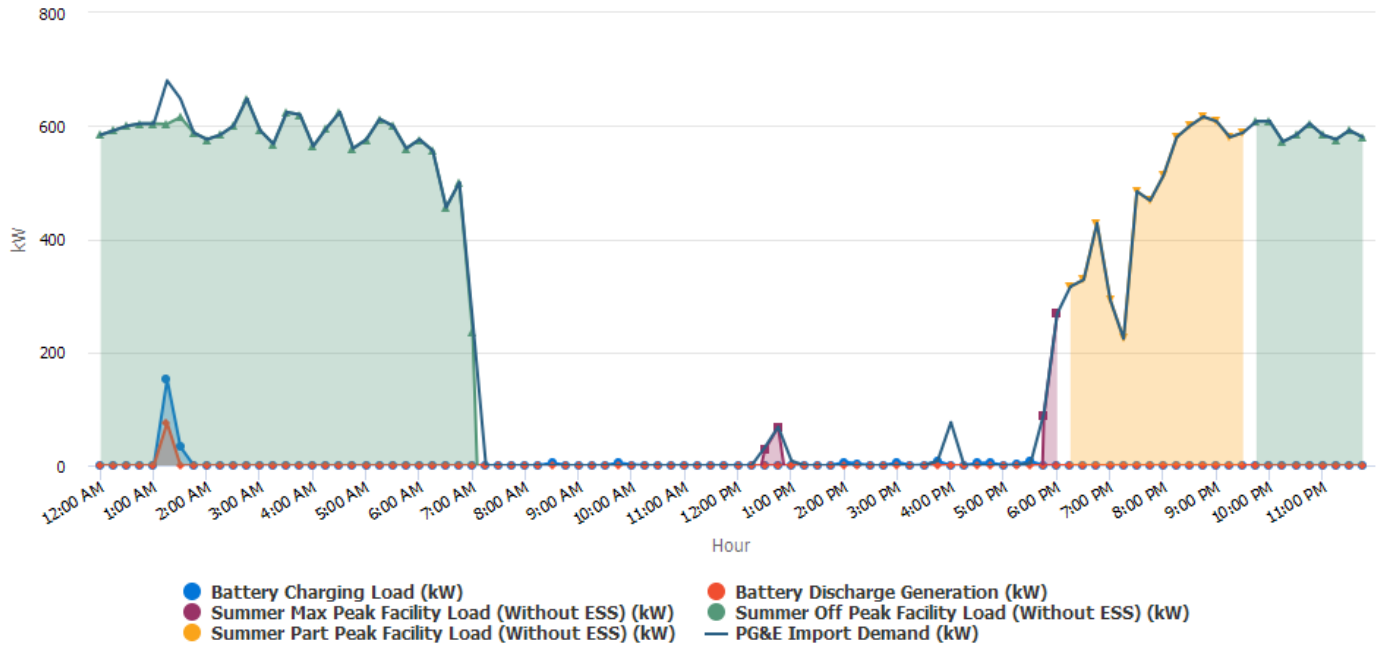
Quarter Hour : 4/2/2020 12:00 AM - 4/2/2020 11:59 PM

May 2020



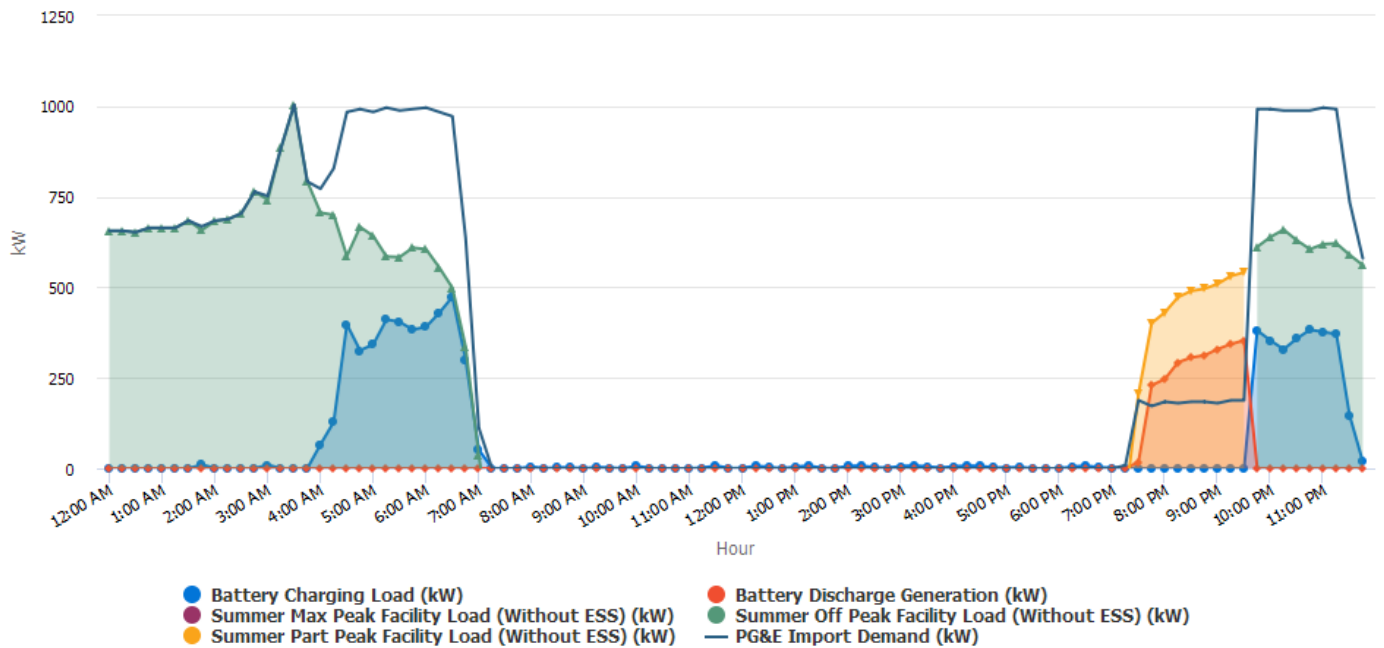
Quarter Hour : 5/7/2020 12:00 AM - 5/7/2020 11:59 PM

June 2020



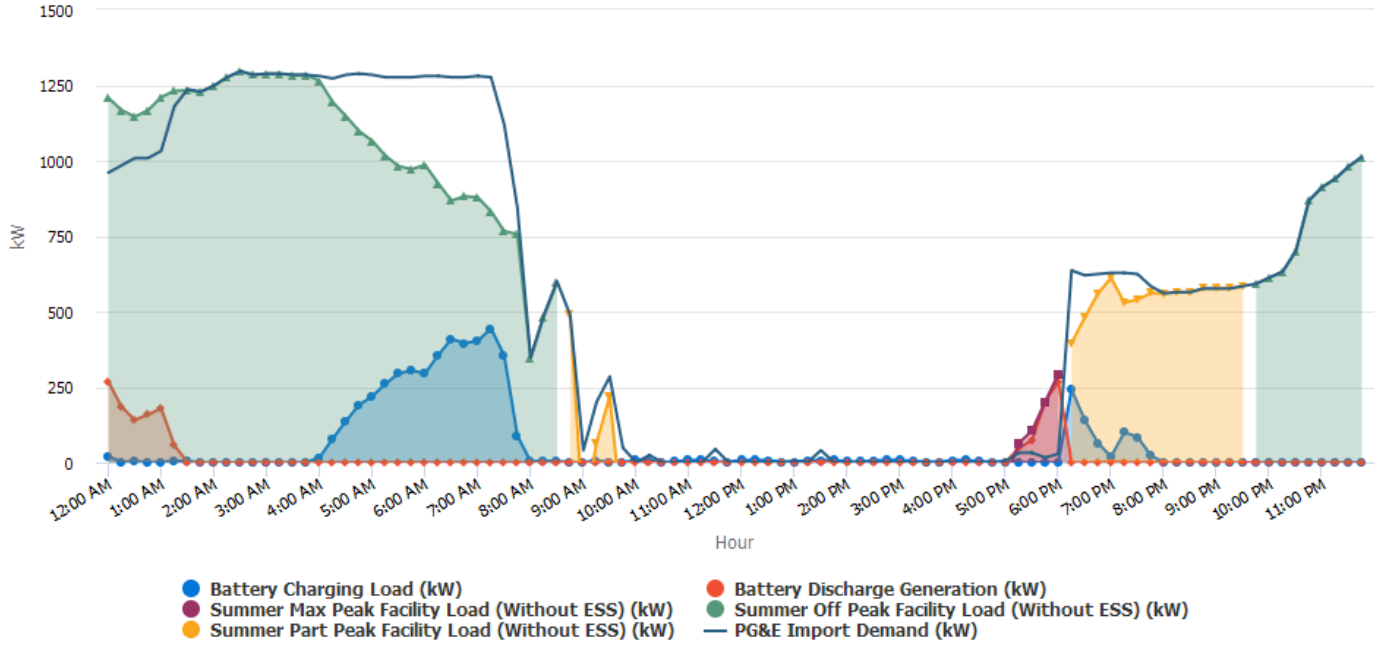
Quarter Hour : 6/5/2020 12:00 AM - 6/5/2020 11:59 PM

July 2020



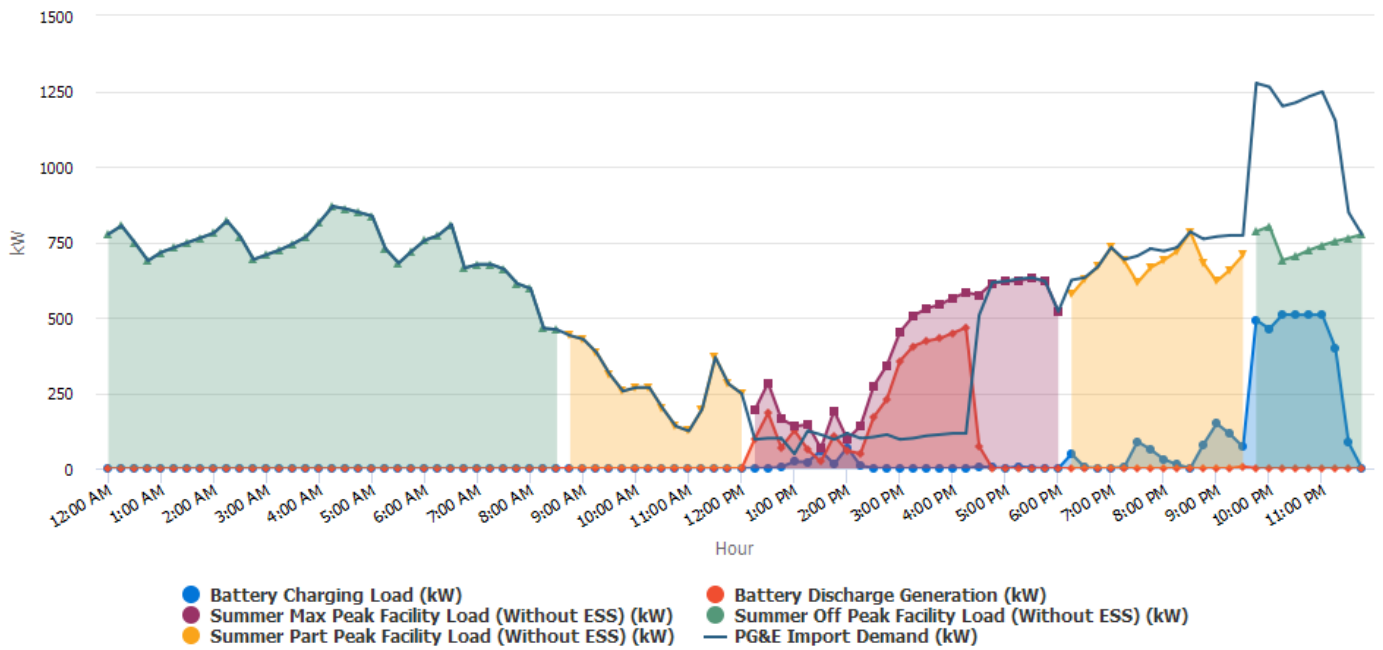
Quarter Hour : 7/22/2020 12:00 AM - 7/22/2020 11:59 PM

August 2020



Quarter Hour : 8/19/2020 12:00 AM - 8/19/2020 11:59 PM

September 2020

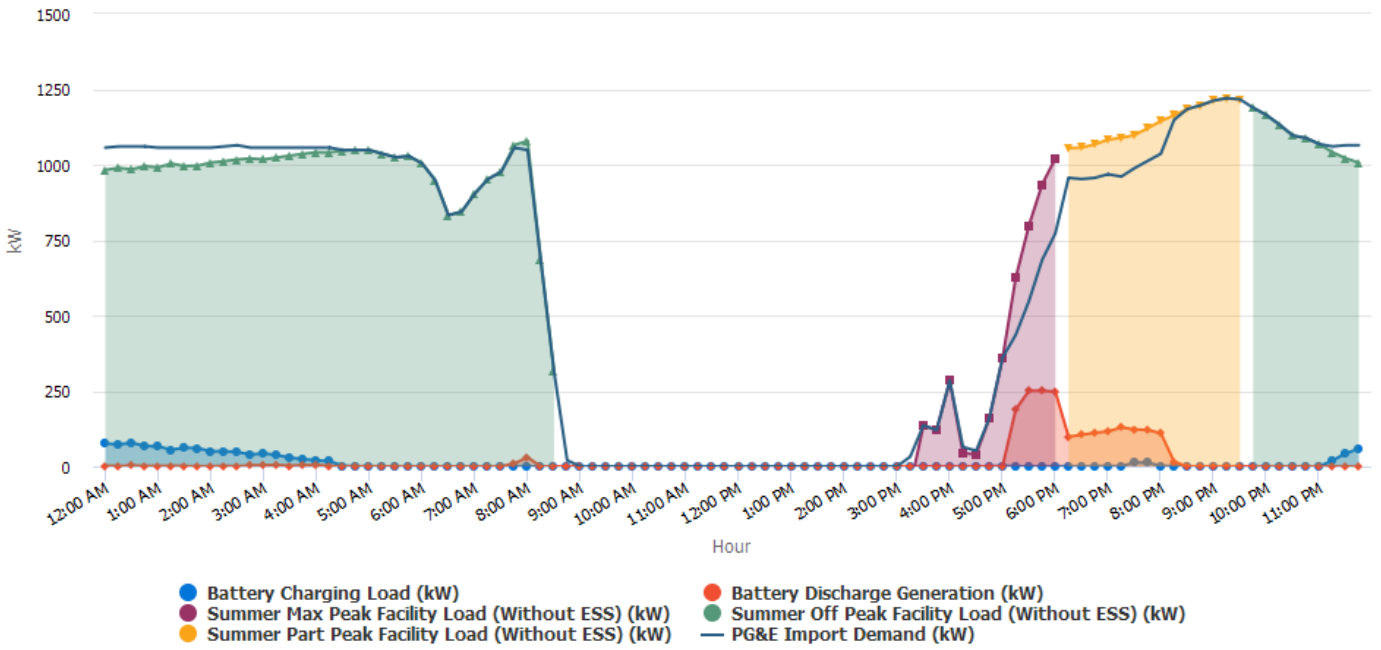


Quarter Hour : 9/10/2020 12:00 AM - 9/10/2020 11:59 PM

BESS Peak Day Summary

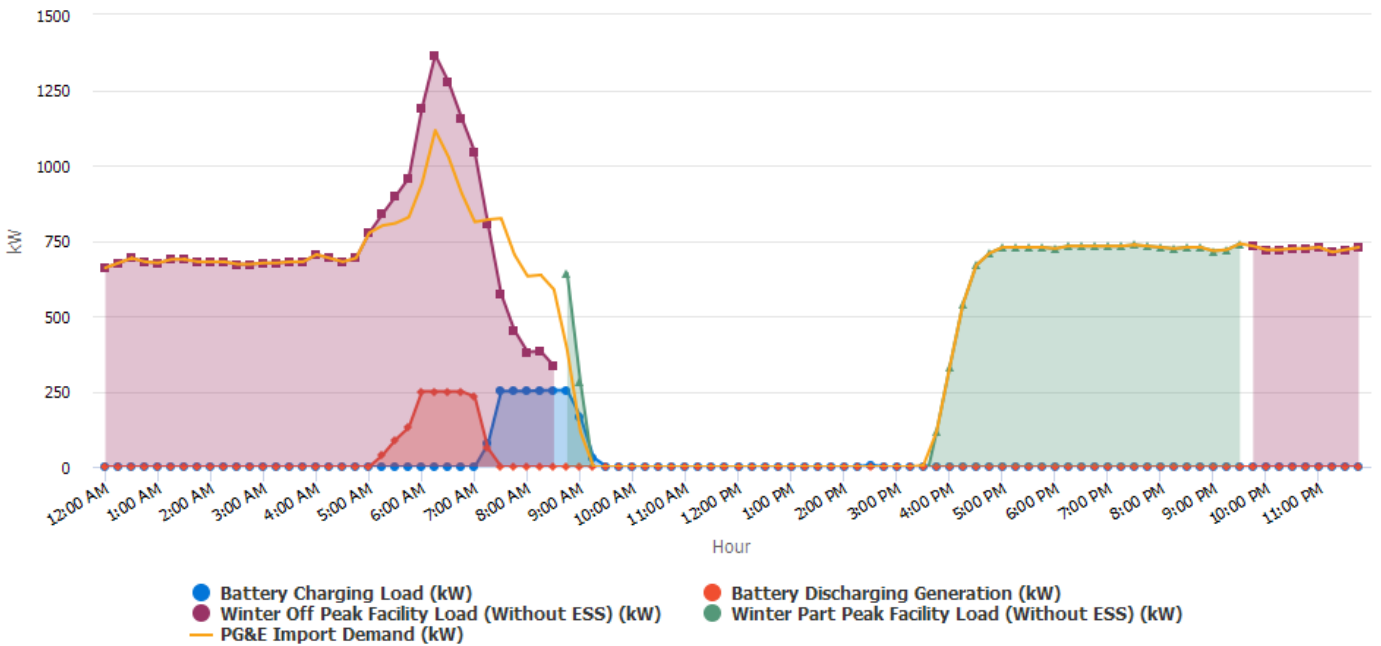


October 2020



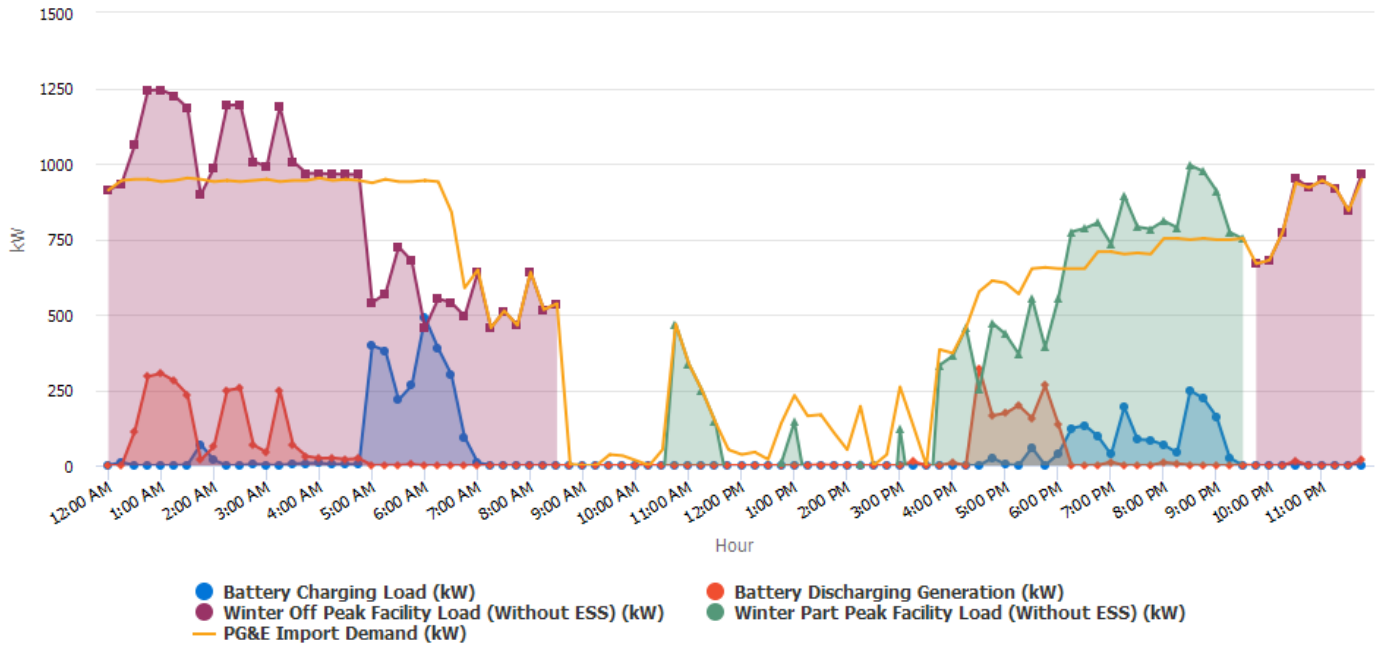
Quarter Hour : 10/23/2020 12:00 AM - 10/23/2020 11:59 PM

November 2020



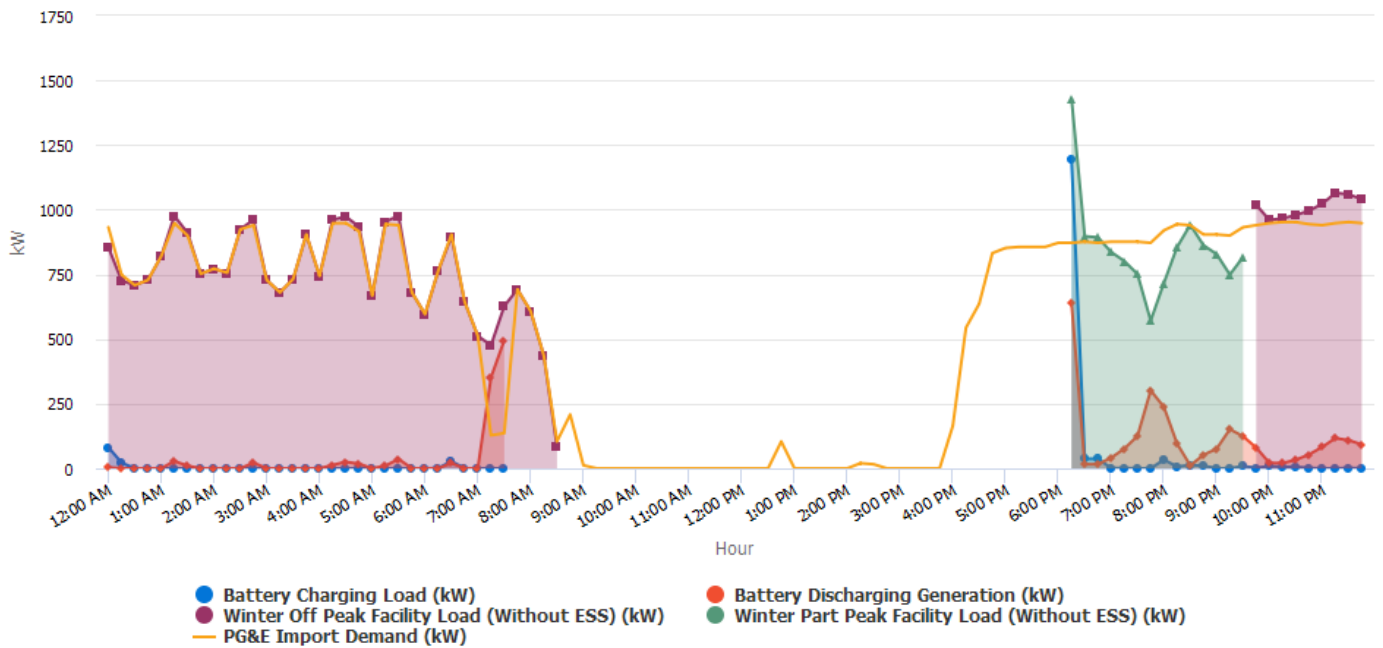
Quarter Hour : 11/3/2020 12:00 AM - 11/3/2020 11:59 PM

December 2020



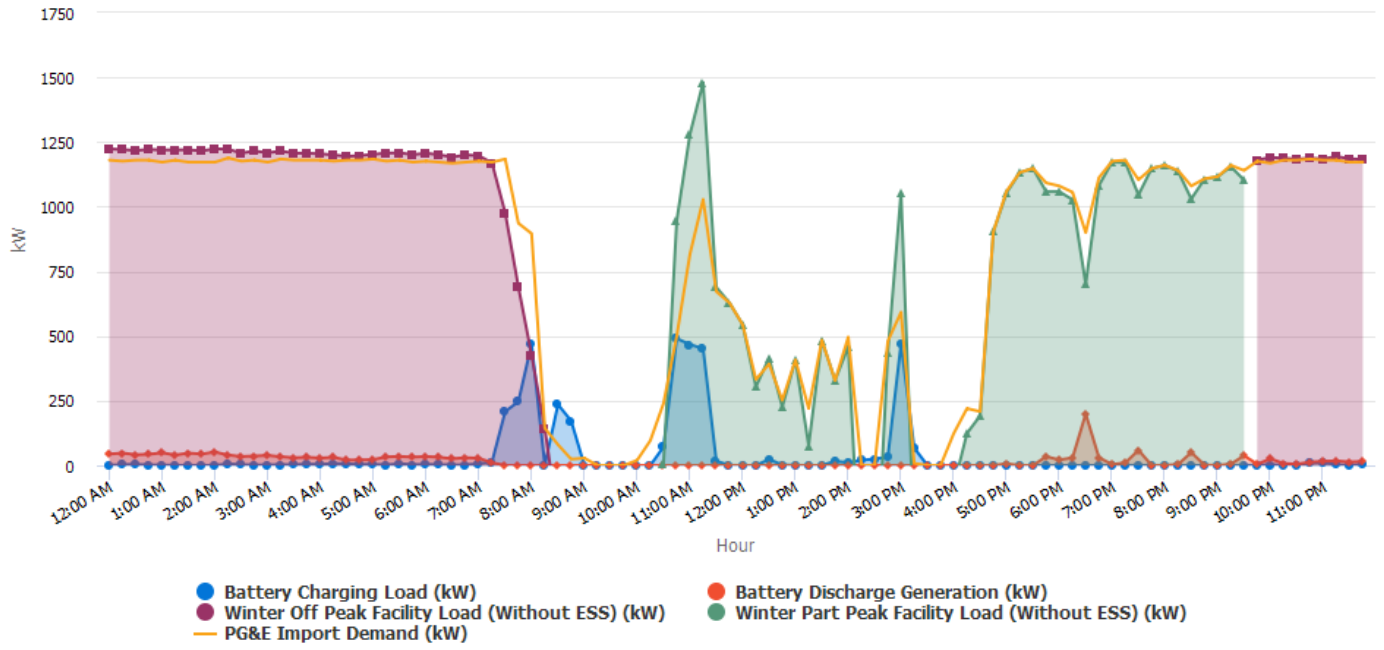
Quarter Hour : 12/17/2020 12:00 AM - 12/17/2020 11:59 PM

January 2021



Quarter Hour : 1/14/2021 12:00 AM - 1/14/2021 11:59 PM

February 2021



Quarter Hour : 2/12/2021 12:00 AM - 2/12/2021 11:59 PM

Battery Energy Storage System Performance

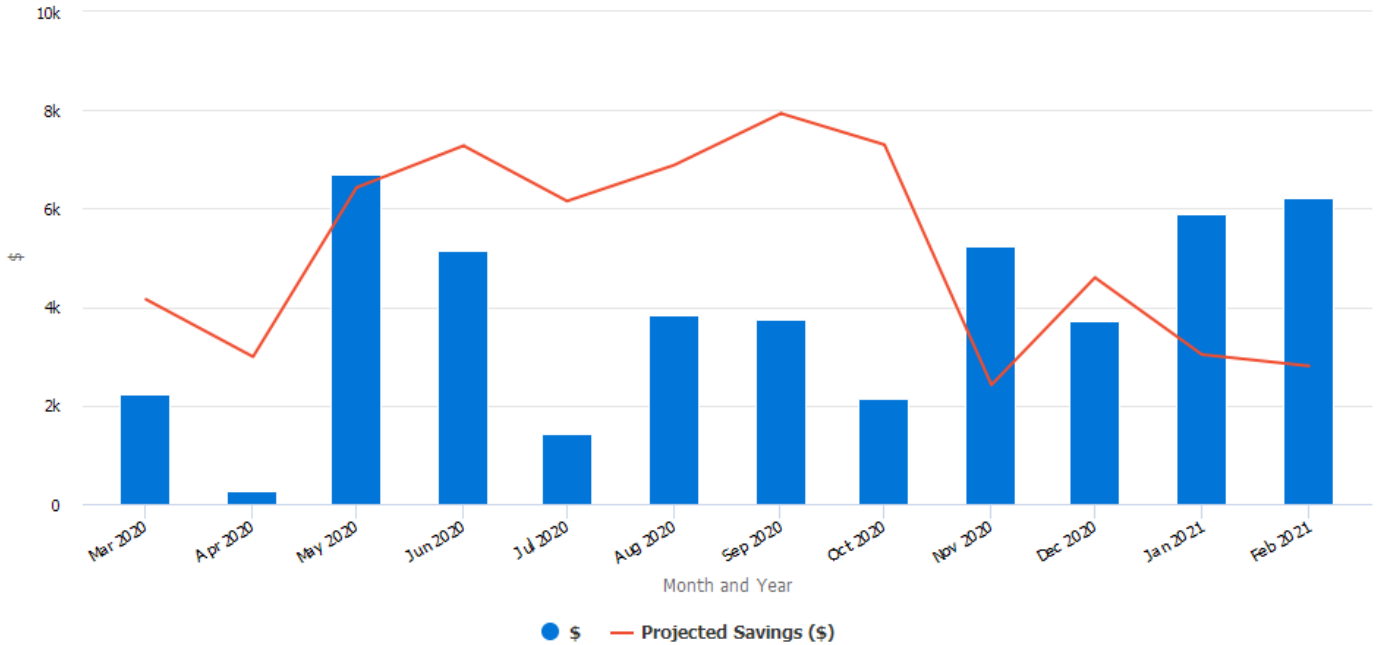


South Wastewater Treatment Plant

System Description:

500 kW / 1000 kWh Green Charge Networks (Engie Storage) system connected to the 12kV distribution system.

Cost Savings by Month



1 Month (Month and Year) : 3/1/2020 12:00 AM - 2/28/2021 11:59 PM

From Timestamp	Dollar Savings (\$)
March 2020	\$2,237.88
April 2020	\$276
May 2020	\$6,701.50
June 2020	\$5,159.16
July 2020	\$1,435.96
August 2020	\$3,836.15
September 2020	\$3,759.10
October 2020	\$2,138.74
November 2020	\$5,234.19
December 2020	\$3,722.74
January 2021	\$5,891.65
February 2021	\$6,212.59
	46,605.66

1 Month (Month and Year) : 3/1/2020 12:00 AM - 2/28/2021 11:59 PM

Dollar Savings by Time-of-Use Category

From Timestamp	Maximum Demand kW (\$)	Summer Max Peak kW (\$)	Summer Off Peak kWh (\$)	Summer Part Peak kW (\$)	Summer Part Peak kWh (\$)	Summer Peak kWh (\$)	Winter Off Peak kWh (\$)	Winter Part Peak kW (\$)	Winter Part Peak kWh (\$)
Mar-20	2,382.68	0	0	0	0		-59.13	6.24	-91.91
Apr-20	346.32	0	0	0	0		-149.99	5.02	74.65
May-20	6,510.82	375.44	-86.49	-125.36	-0.42	27.51	0	0	0
Jun-20	4,987.01	0	-578.82	-31.09	919.6	-137.54	0	0	0
Jul-20	886.58	224.96	-1,278.93	-87.65	1,864.63	-173.63	0	0	0
Aug-20	3,407.79	623.2	-430.87	-255.31	450.61	40.73	0	0	0
Sep-20	3,380.08	72.96	-226.51	-159	-94.62	786.19	0	0	0
Oct-20	1,468.40	375.44	-148.43	0	-141	584.33	0	0	0
Nov-20	5,305.62	0	0	0	0	0	5.29	9.05	-85.77
Dec-20	3,795.67	0	0	0	0	0	-46.65	7.99	-34.27
Jan-21	5,998.26	0		0			-108.58	13.29	-11.32
Feb-21	6,496.96	0		0			362.76	14.07	-661.2
	44,966.19	1,672.00	-2,750.05	-658.41	2,998.80	1,127.59	3.70	55.66	-809.82
1 Month (Month and Year) : 3/1/2020 12:00 AM - 2/28/2021 11:59 PM									

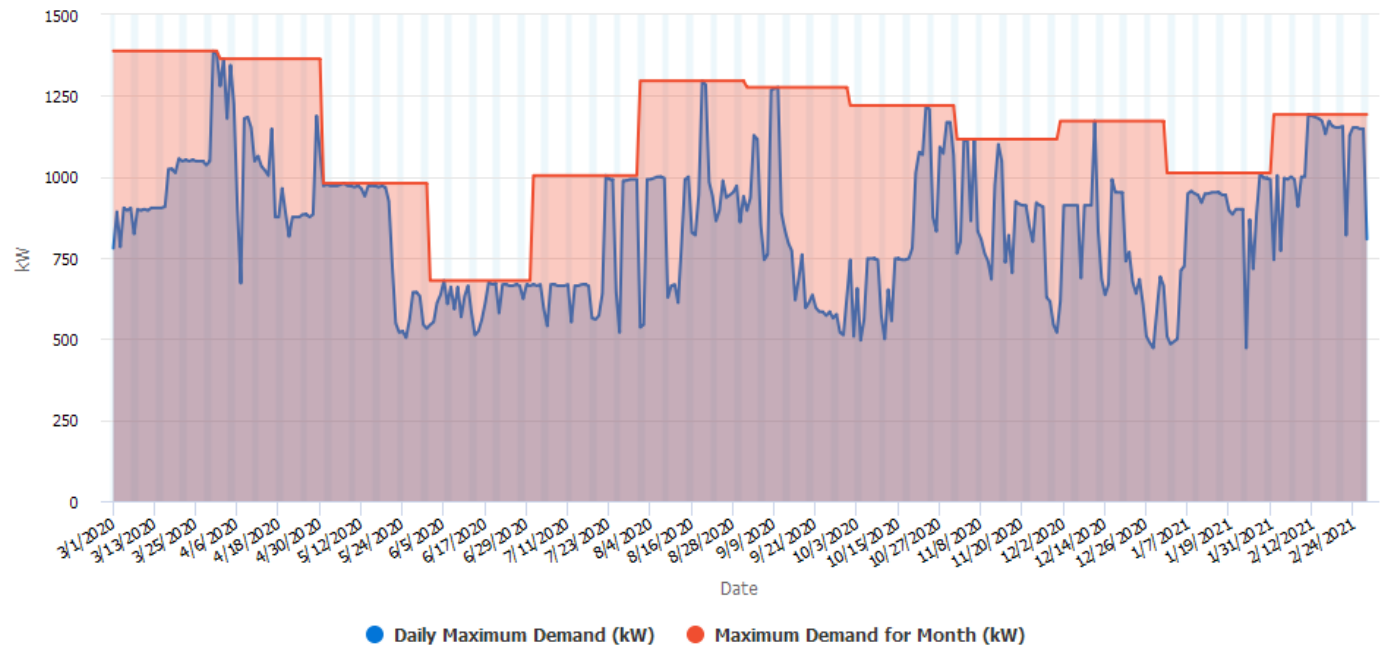
Savings by Time-of-Use Category

From Timestamp	Maximum Demand Savings (kW)	Summer Max Peak Demand Savings (kW)	Summer Off Peak Energy Savings (kWh)	Summer Part Peak Demand Savings (kW)	Summer Part Peak Energy Savings (kWh)	Summer Peak Energy Savings (kWh)	Winter Off Peak Energy Savings (kWh)	Winter Part Peak Demand Savings (kW)	Winter Part Peak Energy Savings (kWh)
3/1/2020 12:00:00 AM	172	0		0			-659	200	-882
4/1/2020 12:00:00 AM	25	0		0			-1,672	161	716
5/1/2020 12:00:00 AM	470	247	-1,038	-246	-3	81		0	
6/1/2020 12:00:00 AM	360	0	-6,947	-61	5,955	-403		0	
7/1/2020 12:00:00 AM	64	148	-15,350	-172	12,074	-508		0	
8/1/2020 12:00:00 AM	246	410	-5,171	-501	2,918	119		0	
9/1/2020 12:00:00 AM	244	48	-2,719	-312	-613	2,301		0	
10/1/2020 12:00:00 AM	106	247	-1,781	0	-913	1,710		0	
11/1/2020 12:00:00 AM	383	0		0			59	290	-823
12/1/2020 12:00:00 AM	274	0		0			-520	256	-329
1/1/2021 12:00:00 AM	433	0		0			-1,210	426	-109
2/1/2021 12:00:00 AM	469	0		0			4,044	451	-6,344
	3,246	1,100	-33,006	-1,292	19,419	3,300	41	1,784	-7,770

1 Month (Month and Year) : 3/1/2020 12:00 AM - 2/28/2021 11:59 PM

Since the Battery Energy Storage System is intended to discharge to limit utility import during expensive time periods and recharge during less expensive time periods; demand savings (kW) should be positive, peak demand (kW) should be positive, and off peak energy consumption savings (kWh) should be negative because the battery recharges during these periods.

Daily Demand Progression



1 Day (ByDate) : 3/1/2020 12:00 AM - 2/28/2021 11:59 PM

Solar Thermal Pool Heating Performance



Solar Thermal Pool Heating

System Description:

Solar Thermal Pool Heating Savings Summary

From Timestamp	Actual Production (kWh)	Actual Savings (\$)	Guaranteed Savings (\$)
3/1/2020 12:00:00 AM	2,833	762	762
4/1/2020 12:00:00 AM	2,833	762	762
5/1/2020 12:00:00 AM	2,833	762	762
6/1/2020 12:00:00 AM	2,833	762	762
7/1/2020 12:00:00 AM	2,833	762	762
8/1/2020 12:00:00 AM	2,833	762	762
9/1/2020 12:00:00 AM	2,833	762	762
10/1/2020 12:00:00 AM	2,833	762	762
11/1/2020 12:00:00 AM	2,833	762	762
12/1/2020 12:00:00 AM	2,833	762	762
1/1/2021 12:00:00 AM	2,833	762	762
2/1/2021 12:00:00 AM	2,833	762	762
	33,992	\$9,144	\$9,144

1 Month (Month and Year) : 3/1/2020 12:00 AM - 2/28/2021 11:59 PM

Due to rounding of the individual months, savings may not equal the total at the bottom.

**ATTACHMENT F
MAINTENANCE SERVICES**

EQUIPMENT AND FACILITIES COVERED

ENGIE Services U.S. will perform preventive maintenance services (“Maintenance Services”) as set forth in this Attachment F with respect to Generating Facilities being constructed on Menlo Park’s property at the following Project Locations:

Site Name	Site Address	City	County	State	Zip Code
Menlo Park Community Campus (including Kelly Field)	100 Terminal Way	Menlo Park	San Mateo	CA	94025

Capitalized terms used in this Attachment F and not defined in the Contract, have the meanings set forth below:

I. Definitions

“**Annual Maintenance Fee**” means a fee payable annually in advance by Menlo Park to ENGIE Services U.S., in consideration of the provision of up to twenty (20) years of Maintenance Services. The Annual Maintenance Fee for the first Measurement Period will be as shown in schedule of payment table below and will be increased annually thereafter at the rate of three percent (3%) per annum, each increase to be effective on the first day of the corresponding Measurement Period.

Measurement Period	Annual Maintenance Fee
1	\$48,532
2	\$49,988
3	\$51,488
4	\$53,032
5	\$54,623
6	\$56,263
7	\$57,951
8	\$59,689
9	\$61,480
10	\$63,324
*11	\$149,389
12	\$56,106
13	\$57,789
14	\$59,522
15	\$61,308
16	\$63,147
17	\$65,042
18	\$66,993
19	\$69,004
20	\$71,074

*Year 11 – (1) EV Charging maintenance expires, and (2) Pool Heater Heat Pump Replacement

II. Term

So long as Menlo Park pays to ENGIE Services U.S. the Annual Maintenance Fee, ENGIE Services U.S. will provide the Maintenance Services, as described herein, up to twenty (20) years from the M&V Commencement Date on an annualized basis. At the end of this term, Menlo Park may:

- a. Enter into another agreement with ENGIE Services U.S. to perform Maintenance Services
- b. Enter into an agreement with another service provider

- c. Self-perform preventive maintenance

III. Annual Maintenance Fee; Reporting

The Annual Maintenance Fee for the first Measurement Period will be invoiced by ENGIE Services U.S. to Menlo Park in a lump sum on the M&V Commencement Date. All subsequent Annual Maintenance Fees will be invoiced by ENGIE Services U.S. on the first day of the corresponding Measurement Period. Menlo Park, or its designee, will pay ENGIE Services U.S. such Annual Maintenance Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Any failure to timely pay the Annual Maintenance Fee in accordance with this Attachment F will be a material default by Menlo Park, and ENGIE Services U.S., in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to provide Maintenance Services.

Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.

The Annual Maintenance Fee is not refundable for any reason.

Upon completion of any maintenance or repair work, ENGIE Services U.S. will update service logs detailing the work performed, location and any notes relevant to safe and efficient operations. These service logs will be compiled and submitted to Menlo Park on a quarterly basis.

If ENGIE Services U.S. is no longer the provider of Maintenance Services, Menlo Park's new provider will maintain similar service logs. ENGIE Services U.S. will have reasonable access to inspect service logs to determine that adequate Maintenance Services are being performed.

IV. Preventive Maintenance Services Provided

ENGIE Services U.S. will provide the following Maintenance Services during the term:

- a. PV System Inspection: Inspect PV modules, combiner boxes, inverters, isolation transformers, and PV service roof penetrations and support structure on an annual basis.
- b. PV System Testing: Perform voltage testing, amperage testing, and infrared scans of inverters, combiner boxes, disconnects and switchgear on an annual basis.
- c. PV System Monitoring: Monitor system performance on a daily basis.
- d. PV System Module Cleaning:
 - i. Remove dust, dirt, and debris from outside cabinets of combiner boxes, inverters, transformers, and disconnect switches on an annual basis.
 - ii Wash PV modules and remove accumulated dust and debris on an annual basis.
- e. EV-Charging Station Maintenance Services Scope – Above project locations (Ten-year term only)

Inspection:

Perform the following Inspection for the Electric Vehicle Charging stations on an annual basis:

1. Check outside unit for any damage
2. Check casing of charger
3. Check cable plug of charger
4. Fully extend and test retractor mechanism
5. Check Led ring
6. Open and check internal components of charger
7. Check clamps to hold components to dinrails
8. Check CCID for rust caused by condensation
9. Check connection of Power Supply to terminal block
10. Check connections in PCB

Testing:

- a. Measure Power Quality, Voltage, Amperage on Electrical Vehicle Charging station on an annual basis.
- f. Pool Hot Water Thermal System Scope of Work:

Inspection: Semi-Annual

Modules:

- Weather integrity, wiring, insulation integrity, leaks, and surface condition
- Check for any Shading
- Flow balance, (check of surface temps)
- Joints, leaks, integrity
- Insulation integrity
- Pipe Supports, tightness, adequacy
- Ballast to cap interface integrity

System Mounts:

- Tightness and integrity

Tanks and Heat Exchangers:

- Inspect Solar tank, Insulation, leaks
- Back up heater, insulation, leaks
- Expansion tank, Integrity, leaks

Pump Stations:

- Leaks
- Adequate flow rate

Valves & Fittings:

- Corrosion, leaks
- Mixing valve operation
- Vacuum breaker function, leaks

Heat Transfer Fluid:

- Pressure, proper level
- Ph, appropriate value
- Freeze point, appropriate level

Control and Monitor:

- Sensors
- Faults

Performance:

- PV operating within specification
- Thermal operating within specification
- Hot Water tank operating within specification

Reporting:

- Semi-annual checklist will be completed and submitted after each inspection along with any corrective action reports if necessary. Inspections should occur in spring to inspect for snow and Ice damage and in fall to ensure array is prepared for winter.

Heat Pump Replacement:

- Replace heat Pump in Year 11 or as needed within the period

g. Battery Energy Storage and Micro Grid Scope of Work:

The following Maintenance Services, with the following frequency, during the Maintenance Term

Frequency:	Maintenance Services:
Annual Maintenance: Once during each Operating Year in the Preventative Maintenance Term	Torque checks within the System, calibration checks, visual inspection (rodents, etc.)
	Harness inspection or replacement in kind if damaged (protective sleeve failure, rodents, etc.)
	Enclosure integrity – touch up paint and gasket inspection or replacement in kind if damaged
	Cabinet cleaning
	Cabinet ventilation system inspection – radiator area cleaning
	Coolant level check
	Battery and meter communications check
5-Yearly Maintenance: Once every 5 Operating Years in the Preventative Maintenance Term	Refrigerant Refill
	Pump Replacement
10-Yearly Maintenance: Once every 10 Operating Years in the Preventative Maintenance Term	Inverter coolant refill
	Inverter fan replacement
	Inverter pump replacement
	Powerpack coolant refill
	Powerpack fan replacement
	Powerpack bypass valve replacement
	Powerpack door gasket replacement

h. Microgrid Scope of Work:

The following Maintenance Services, with the following frequency, during the Maintenance

1. **Microgrid Equipment Inspection:** Inspect microgrid related switchgear, circuit breakers, transformers, and controllers on an annual basis.
2. **Microgrid Equipment Testing:** Perform voltage testing, amperage testing, and infrared scans of microgrid related switchgear, circuit breakers, transformers, and controllers on an annual basis.
3. **Microgrid Readiness Testing:** Perform one annual simulated resiliency event readiness test coordinated with Menlo Park (during Standard Business Hours) and review results with city staff.
4. **Microgrid Equipment Monitoring:** Monitor system performance on a daily basis.

i. PxiSE Microgrid monitoring platform:

Reporting

- Quarterly report on MEMS performance and resiliency metrics
- Report will be delivered via PDF or digitally within future HMI

- Report will be available within 60 days of the end of each quarter
- Quarterly report will include an analysis of the previous quarter's:
 - Total PV production (kWh or MWh) and energy usage including carbon-based fuel offset estimate (SGIP)
 - Battery charging source, grid vs. PV (kW or MW)
 - Battery cycling (number of total cycles)
 - Number of islanding events including detail of seamless starts and grid reconnects (ST) and load/critical load served
 - Quantity and length of prolonged events (LT)
 - Load shedding events and signals sent to BMS
 - Battery and inverter maintenance events

j. Optional Public Safety Power Shutoff (PSPS) Event Related Services (to be charged on a per event basis per fee schedule in Section V, Repair Services below):

- i) Menlo Park and ENGIE Services U.S. will communicate via email as soon as either party becomes aware that a pre-planned utility power outage (i.e. Public Safety Shutoff Events) is Scheduled. The non-initiating party will promptly respond to the initiating party in confirmation of receipt of the email notification.
- ii) ENGIE Services U.S. will notify Menlo Park upon utility power outage commencement
- iii) Provide digital signage management for Menlo Park supplied display
 - a. Alert building occupants of power event status (Planned, Active, Completed).
 - b. Building occupant tips for extending resilient power coverage.
- iv) ENGIE Services U.S. will notify Menlo Park upon utility power outage conclusion
- v) Post-event review of resilient system performance with Menlo Park
 - a. Assess system run-time performance.
 - b. ENGIE Services U.S. will calculate the emissions benefit of having renewable based microgrid vs only diesel back-up.
 - c. Recommendations for extending resilient coverage if more time is needed
- vi) Assist with implementing lessons learned from review.

V. Repair Services

If a Generating Facility is damaged and requires safe-off, repair, demolition and/or reconstruction, or otherwise requires repair outside of warranty which is not caused by a failure by ENGIE Service U.S. to maintain per this Attachment F, Menlo Park must contact the ENGIE Services U.S. PV Operations & Maintenance Manager. In the event of damage, any component of the Generating Facility installed by ENGIE Services U.S. can be repaired or reconstructed by ENGIE Services U.S. at Menlo Park's request. Menlo Park must submit a request for quotation to the ENGIE Services U.S. PV Operations & Maintenance Manager. ENGIE Services U.S. will inspect the damage and provide a written quotation and complete scope of work to Menlo Park to restore the Generating Facility to normal operational condition. Before proceeding with repairs, ENGIE Services U.S. and Menlo Park must execute a work order, on ENGIE Services U.S.'s form, for the agreed scope of work and quotation amount. Repair work is done on a time and materials basis. Standard Business Hours are M-F, 7am to 5pm. Non-business Hours & Saturdays Equals 1.5x Rates. Sundays & Holidays Equals 2.0x Rates. ENGIE Services U.S. will respond to unscheduled equipment outages and be on site within seven (7) business days to troubleshoot and repair; timing is dependent upon manufacturer parts availability.

Labor Category		Straight Time
Hourly Rate – PV Electrical Journeyman Technician ¹	\$/hr.	Menlo Park Labor Rate
Hourly Rate – PV Electrical Apprentice Technician ¹	\$/hr.	Menlo Park Labor Rate
Hourly Rate – Engineering ²	\$/hr.	\$ 170.00
Hourly Rate – Administrative ²	\$/hr.	\$ 65.00
Service call-out - Daily minimum fee	\$	\$ 550.00
Mileage	\$	IRS Rate
Material mark-up %	%	15.00
Lift rental fee	\$	Current Market Price

PSPS Event Related Services (per event)	\$	\$900
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¹Trade Hourly rate will be adjusted based on the current year of the local prevailing wage determination plus Burden, requirement for either travel or subsistence and lodging, and markup for services being requested.

²Escalated according to an inflation rate to the year in which service will occur.

VI. Warranty Services

The ENGIE Services U.S. PV Operations & Maintenance Manager will also be Menlo Park’s point of contact for all issues related to the ENGIE Services U.S. Warranty set forth in Article 9 of the Contract. Menlo Park should refer to Article 9 of the Contract for services provided by ENGIE Services U.S. to Menlo Park in relation to manufacturer’s warranties. The terms and conditions of the relevant manufacturer’s warranties can be found in the operation and maintenance manuals delivered to Menlo Park at Final Completion.

VII. Services and Equipment to Be Covered by Menlo Park

ENGIE Services U.S.’s obligations under this Attachment F are expressly conditioned upon Menlo Park’s payment of the Annual Maintenance Fee and providing and being responsible for the following, without cost to ENGIE Services U.S.:

- a. Making the Generating Facilities described herein available to ENGIE Services U.S. as of the Contract Effective Date.
- b. Operating and maintaining security systems associated with the Generating Facilities.
- c. Maintaining all landscaping in and around Generating Facilities including tree trimming.
- d. Allowing ENGIE Services U.S. and its personnel access as necessary to the Generating Facilities, and any related areas that may be reasonably necessary for performance of the Maintenance Services, including reasonable work, parking, and equipment staging areas.
- e. Allowing ENGIE Services U.S. and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for ENGIE Services U.S. to satisfy its obligations under the Contract.
- f. Remediating, pursuant to Applicable Law, any known Hazardous Substances encountered by ENGIE Services U.S. during the performance of the Maintenance Services which Hazardous Substances were not deposited by ENGIE Services U.S., including any backfill with clean soil as may be reasonably required.
- g. Insuring the Generating Facilities against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.

ENGIE Services U.S. will have no obligation to provide the Maintenance Services to the extent such provision of Maintenance Services is materially adversely affected by Menlo Park’s failure to satisfy the conditions set forth in this Attachment F.

Menlo Park may terminate the Maintenance Services for its convenience by giving ENGIE Services U.S. ninety (90) days written notice prior to termination. Menlo Park understands that should Menlo Park elect to terminate for convenience the Maintenance Services, ENGIE’s M&V Services and savings guarantee pursuant to Attachment E would simultaneously end.

**ATTACHMENT G
EV CHARGING SUPPORT SERVICES**

EQUIPMENT AND FACILITIES COVERED

ENGIE Services U.S. will provide EV Charging Support Services as set forth in this Attachment G with respect to the EV Chargers being constructed on Menlo Park’s property at the following Project Locations:

Site Name	Site Address	City	State	Zip Code
Menlo Park Community Campus	100 Terminal Ave,	Menlo Park	CA	94025

Capitalized terms used in this Attachment G and not defined in the Contract, have the meanings set forth below:

I. Definitions

“**Monthly EV Charging Support Services Fee**” means a fee payable monthly by Menlo Park to ENGIE Services U.S., in consideration of the provision of up to ten (10) years of EV Charging Support Services. The Fee for the first Measurement Period will be as shown in the table below and will be increased annually thereafter at the rate of three percent (3%) per annum, each increase to be effective on the first day of the corresponding Measurement Period.

Measurement Period	Monthly EV Charging Support Services Fee
1	\$806
2	\$828
3	\$850
4	\$873
5	\$896
6	\$920
7	\$945
8	\$971
9	\$997
10	\$1,024

“**Monthly EV Charging Transaction Fee**” means a fee collected and retained by ENGIE Services U.S. from end users of the EV Chargers. This fee will be 11% of the charging revenue collected, comprised of 9.5% for software and credit card fees and 1.5% for ENGIE Services U.S. administrative costs.

II. Term / Termination

ENGIE Services U.S. will provide the EV Charging Support Services, as described herein, up to ten (10) years from the M&V Commencement Date on an annualized basis. At the end of this term, Menlo Park may:

1. Enter into another agreement with ENGIE Services U.S. to perform EV Charging Support Services
2. Enter into an agreement with another service provider
3. Self-perform services

Menlo Park may terminate the EV Charging Support Services for convenience by giving ENGIE Services U.S. ninety (90) days written notice prior to termination.

III. Scope of Work

ENGIE Services U.S. will provide the following EV Charging Support Services during the term:

Public Charging Services

- a) Monthly Reporting showing
 - i. EV Charger Utilization

- ii. Charger availability
- iii. Revenue by charger
- iv. Electricity cost by charger
- b) Time of use Pricing Support
 - i) Coordination between Engie Services U.S. and Menlo Park to set charging fees to cover electricity charges incurred.
- c) Direct Deposit – Monthly electronic transfer of charging revenues to a bank account designated by Menlo Park.
- d) Remote Troubleshooting
- e) Fault alarming
- f) Ticketing and repair management

IV. Service Level Agreement

For any month in which more than one charger of either type; DC Fast Charger or Level 2 Charger at the same location are concurrently incapable of charging a vehicle; ENGIE Services U.S. will provide a credit against the Monthly EV Charging Support Services Fee as follows:

For the second and third concurrently inoperative DC Fast Charger in a given month: 20% of the Monthly EV Charging Support Service Fee per inoperative charger beyond the first inoperative charger. No credit for Monthly EV Charging Transaction Fees will be given.

For the second, third, fourth, etc. concurrently inoperative Level 2 charger where both plugs in a dual port charger are inoperative in a given month; 10% of the Monthly EV Charging Support Service Fee per inoperative charger beyond the first inoperative charger. No credit for Monthly EV Charging Transaction Fees will be given.

In no case will a credit in any month exceed the entire Monthly EV Charging Support Services Fee for that month.

ENGIE Services U.S.'s obligations under this Attachment G are expressly conditioned upon the following, without cost to ENGIE Services U.S.:

1. A lack of adequate supply of electricity to the EV chargers for any reason not caused by ENGIE Services U.S. or its subcontractors will not constitute an inoperative charger.
2. One or more chargers that are incapable of charging electric vehicles due to vandalism, accidental damage, misuse or mistreatment will not be considered inoperative chargers in regard to this Article IV until 28 days from the date at which Menlo Park provides a purchase order to ENGIE Services U.S. for the repair or replacement of such damaged equipment, provided that no more than 4 chargers are damaged in this way concurrently.
3. Menlo Park will notify ENGIE Services U.S. within two (2) business days of becoming aware of any EV Charger damage or failure. Within two (2) business days of notification of an EV Charger failure, ENGIE Services U.S. will troubleshoot and communicate to Menlo Park a repair timeline for the failed EV Charger.
4. Menlo Park will make the EV Charging Facilities described herein available to ENGIE Services U.S. during the term of the EV Charging Support Services.

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JUDI HERREN
 MENLO PARK/CITY MANAGER, CITY CLERK'S OFFICE
 701 LAUREL ST/ CITY HALL 2ND FL.
 MENLO PARK, CA 94025

COPY OF NOTICE

Notice Type: HRG NOTICE OF HEARING

Ad Description
 CITY OF MENLO PARK CITY COUNCIL MEETING ? ADOPTING CERTAIN FINDINGS AND APPROVING AN ENERGY SERVICE CONTRACT AWARD

To the right is a copy of the notice you sent to us for publication in the REDWOOD CITY TRIBUNE. Please read this notice carefully and call us with any corrections. The Proof of Publication will be filed with the County Clerk, if required, and mailed to you after the last date below. Publication date(s) for this notice is (are):

12/19/2021

The charge(s) for this order is as follows. An invoice will be sent after the last date of publication. If you prepaid this order in full, you will not receive an invoice.

Publication	\$159.50
Total	\$159.50

SPEN# 3539825

REUNION DEL CONSEJO DE LA CIUDAD DE MENLO PARK - ADOPCIÓN DE CIERTAS CONCLUSIONES Y APROBACIÓN DE LA ADJUDICACIÓN DE UN CONTRATO DE SERVICIOS ENERGÉTICOS A ENGIE SERVICES US INC. PARA LAS MEJORAS RELACIONADAS CON LA ENERGÍA EN LAS INSTALACIONES DE LA CIUDAD PARA EL PROYECTO DEL CAMPUS COMUNITARIO DE MENLO PARK UBICADO EN 100-110 TERMINAL AVENUE NUEVO CORONAVIRUS, COVID-19, AVISO DE EMERGENCIA

La suspensión temporal del gobernador Newsom de las normas de teleconferencia para las reuniones de un organismo legislativo local expiró el 30 de septiembre de 2021. El proyecto de ley (AB) 361 fue firmado por el Gobernador y entró en vigor como una medida de urgencia para continuar permitiendo el uso de las reglas de teleconferencia modificadas a partir del 1 de octubre de 2021. Basado en la declaración continua del Gobernador Newsom de un Estado de Emergencia y las condiciones actuales, el Concejo de la Ciudad encierra que reunirse únicamente en persona presentaría en riesgos inminentes para la salud o la seguridad de los asistentes, de tal manera que las condiciones continúan existiendo de acuerdo con la sección 54953(e)(3) del Código de Gobierno para permitir que los Cuerpos Legislativos usen teleconferencias para celebrar reuniones públicas de acuerdo con la sección 54953(e)(2) del Código de Gobierno para asegurar que los miembros del público tengan acceso continuo para observar y participar de manera segura en las reuniones del gobierno local. El orden del día se publicará el jueves anterior a la reunión del Concejo Municipal y proporcionará una descripción más detallada de los procedimientos de la audiencia.

SE NOTIFICA que el Concejo Municipal de la ciudad de Menlo Park, California, celebrará una audiencia pública el 11 de enero de 2022 con el fin de presentar ciertas conclusiones, recibir comentarios del público y aprobar una

resolución que adopte las conclusiones y apruebe un contrato de servicios energéticos de compra directa con ENGIE Services US Inc. para la implementación de determinadas mejoras relacionadas con la energía en las instalaciones de la Ciudad, de conformidad con la Sección 4217.10 a 4217.18 del Código de Gobierno de California, incluyendo la instalación de una micro red solar fotovoltaica, un sistema térmica solar fotovoltaico (calentamiento de piscinas) y la carga de vehículos eléctricos para el proyecto del Campus Comunitario de Menlo Park que se encuentra actualmente en construcción y que estará ubicado en 100-110 Terminal Avenue, APN 055-280-040. De conformidad con lo dispuesto en el artículo 4217.10 y siguientes del Código de Gobierno de California, el contrato de servicios energéticos exigirá que el costo que suponga para la ciudad la aplicación de las mejoras relacionadas con la energía sea inferior al coste marginal previsto para la ciudad de la energía térmica, eléctrica o de otro tipo que habría consumido la ciudad en ausencia de la adquisición de las mejoras energéticas.

SE NOTIFICA ADEMÁS que dicho Consejo Municipal celebrará una audiencia pública sobre este punto a través de una reunión virtual, el 11 de enero de 2022, a partir de las 6 p.m. o lo más cerca posible de esa hora, en la cual las personas interesadas podrán comparecer y ser escuchadas al respecto. Si usted impugna este tema ante un tribunal, puede limitarse a plantear únicamente las cuestiones que usted u otra persona haya planteado en la reunión pública descrita en este aviso, o en la correspondencia escrita entregada a la Ciudad de Menlo Park en la reunión pública o antes de ella. La correspondencia escrita se considera normalmente un registro público y puede adjuntarse a los informes del personal, que se publican en el sitio web de la ciudad.

Por favor, póngase en contacto con la Directora de Sostenibilidad Rebecca Lucky en rlucky@menlopark.org o al 650-330-6765 si tiene alguna



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pregunta o comentario sobre este proyecto.

Visite el sitio web de la ciudad en menlo-park.org/agenda para ver el orden del día de la reunión del Ayuntamiento y los enlaces al informe del personal de la reunión pública.

DATED: December 16, 2021
BY: Judi A. Herren, City Clerk
12/19/21

SPEN-3539825#
EXAMINER - REDWOOD
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COPY OF NOTICE

Notice Type: HRG NOTICE OF HEARING

Ad Description

CITY OF MENLO PARK CITY COUNCIL MEETING ? ADOPTING CERTAIN FINDINGS AND APPROVING AN ENERGY SERVICE CONTRACT AWARD

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Publication	\$139.70
Total	\$139.70

SPEN# 3539820

**CITY OF MENLO PARK
CITY COUNCIL MEETING –
ADOPTING CERTAIN
FINDINGS AND APPROVING
AN ENERGY SERVICE
CONTRACT AWARD TO
ENGIE SERVICES US INC.
FOR ENERGY RELATED
IMPROVEMENTS TO CITY
FACILITIES FOR THE
MENLO PARK COMMUNITY
CAMPUS PROJECT
LOCATED AT 100-110
TERMINAL AVENUE**

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

Governor Newsom's temporary suspension of the teleconferencing rules for meetings of a local agency legislative body expired as of September 30, 2021. Assembly Bill (AB) 361 was signed by the Governor and went into effect as an urgency measure to continue to allow use of the modified teleconferencing rules as of October 1, 2021. Based on Governor Newsom's continued declaration of a State of Emergency and current conditions, the City Council finds that meeting solely in person would present imminent risks to the health or safety of attendees, such that the conditions continue to exist pursuant to Government Code section 54953(e)(3) to allow Legislative Bodies to use teleconferencing to hold public meetings in accordance with Government Code section 54953(e)(2) to ensure members of the public have continued access to safely observe and participate in local government meetings. The agenda will be published on Thursday before a City Council meeting and will provide a more detailed description of hearing procedures.

NOTICE IS HEREBY GIVEN that the City Council of the City of Menlo Park, California shall hold a public hearing on January 11, 2022 for the purpose of presenting certain findings, taking public comment, and approving a resolution adopting the findings and approving a direct purchase Energy Services Contract with ENGIE Services US Inc. for the implementation of certain energy related improvements to City facilities in accordance with California Government Code Section 4217.10 to 4217.18, including installation of a solar photovoltaic microgrid,

solar photovoltaic thermal system (pool heating), and electric vehicle charging for the Menlo Park Community Campus project currently under construction and to be located at 100-110 Terminal Avenue, APN 055-280-040. Pursuant to the provisions of California Government Code Section 4217.10, et seq., the Energy Services Contract shall require that the cost to the City to implement the energy related improvements will be less than the anticipated marginal cost to the City of thermal, electrical or other energy that would have been consumed by the City in the absence of purchasing the energy improvements.

NOTICE IS HEREBY FURTHER GIVEN that said City Council will hold a public hearing on this item via virtual meeting, on January 11, 2022, beginning at 6 p.m. or as near as possible thereafter, at which time and place interested persons may appear and be heard thereon. If you challenge this item in court, you may be limited to raising only those issues you or someone else raised at the public meeting described in this notice, or in written correspondence delivered to the City of Menlo Park at, or before, the public meeting. Written correspondence is typically considered a public record and may be attached to staff reports, which are posted on the city website.

Please contact Sustainability Manager Rebecca Lucky at rlucky@menlopark.org or 650-330-6765 if you have any questions or comments on this project.
Si usted necesita más información sobre este proyecto, por favor llame al 650-330-6765, y pregunte por un asistente que hable español.

Visit the City's website at menlopark.org/agenda for the City Council meeting agenda and links to the public meeting staff report.
DATED: December 16, 2021
BY: Judi A. Herren, City Clerk
12/19/21
SPEN-3539820#
EXAMINER - REDWOOD CITY TRIBUNE



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Total M/G System Cost	\$	5,208,929
Project Cost Less EVSE	\$	4,861,246
Soft Costs	\$	40,000
Allowance	\$	511,071
SGIP Rebate	\$	226,625
Utility rate increase		105.50%
Inflation		103%

Degradation 0.997

Year	Solar kwh	Solar rate	BESS savings	Thermal kwh	Thermal rate	Total Savings	EVCS monthly costs	EVCS Annual costs	O&M Costs	M&V costs
0										
1	981,350	\$ 0.176	\$ 13,141	37,769	\$ 0.269	\$ 196,018	\$ 806	\$ 9,672	\$ 48,532	\$ 13,816
2	978,406	\$ 0.186	\$ 13,535	37,769	\$ 0.284	\$ 205,924	\$ 828	\$ 9,936	\$ 49,988	\$ 14,230
3	975,471	\$ 0.196	\$ 13,941	37,769	\$ 0.299	\$ 216,337	\$ 850	\$ 10,200	\$ 51,488	\$ 14,657
4	972,544	\$ 0.207	\$ 14,360	37,769	\$ 0.316	\$ 227,282	\$ 873	\$ 10,476	\$ 53,032	\$ 15,097
5	969,627	\$ 0.218	\$ 14,790	37,769	\$ 0.333	\$ 238,787	\$ 896	\$ 10,752	\$ 54,623	\$ 15,550
6	966,718	\$ 0.230	\$ 15,234	37,769	\$ 0.352	\$ 250,882	\$ 920	\$ 11,040	\$ 56,263	\$ 16,017
7	963,818	\$ 0.243	\$ 15,691	37,769	\$ 0.371	\$ 263,596	\$ 945	\$ 11,340	\$ 57,951	\$ 16,498
8	960,926	\$ 0.256	\$ 16,162	37,769	\$ 0.391	\$ 276,961	\$ 971	\$ 11,652	\$ 59,689	\$ 16,993
9	958,043	\$ 0.270	\$ 16,647	37,769	\$ 0.413	\$ 291,011	\$ 997	\$ 11,964	\$ 61,480	\$ 17,503
10	955,169	\$ 0.285	\$ 17,146	37,769	\$ 0.436	\$ 305,781	\$ 1,024	\$ 12,288	\$ 63,324	\$ 18,028
11	952,304	\$ 0.301	\$ 17,660	37,769	\$ 0.459	\$ 321,309			\$ 149,389	\$ 18,569
12	949,447	\$ 0.317	\$ 18,190	37,769	\$ 0.485	\$ 337,634			\$ 56,106	\$ 19,126
13	946,599	\$ 0.335	\$ 18,736	37,769	\$ 0.511	\$ 354,796			\$ 57,789	\$ 19,700
14	943,759	\$ 0.353	\$ 19,298	37,769	\$ 0.540	\$ 372,839			\$ 59,522	\$ 20,291
15	940,927	\$ 0.372	\$ 19,877	37,769	\$ 0.569	\$ 391,808			\$ 61,308	\$ 20,900
16	938,105	\$ 0.393	\$ 20,473	37,769	\$ 0.601	\$ 411,751			\$ 63,147	\$ 21,527
17	935,290	\$ 0.415	\$ 21,087	37,769	\$ 0.634	\$ 432,719			\$ 65,042	\$ 22,173
18	932,484	\$ 0.437	\$ 21,720	37,769	\$ 0.668	\$ 454,764			\$ 66,993	\$ 22,838
19	929,687	\$ 0.461	\$ 22,372	37,769	\$ 0.705	\$ 477,943			\$ 69,004	\$ 23,523
20	926,898	\$ 0.487	\$ 23,043	37,769	\$ 0.744	\$ 502,313			\$ 71,074	\$ 24,229
21	924,117	\$ 0.514		37,769	\$ 0.785	\$ 504,202				
22	921,345	\$ 0.542		37,769	\$ 0.828	\$ 530,431				
23	918,581	\$ 0.572		37,769	\$ 0.874	\$ 558,025				
24	915,825	\$ 0.603		37,769	\$ 0.922	\$ 587,054				
25	913,078	\$ 0.636		37,769	\$ 0.972	\$ 617,594				
26	910,338	\$ 0.671				\$ 610,980				
27	907,607	\$ 0.708				\$ 642,650				
28	904,885	\$ 0.747				\$ 675,962				
29	902,170	\$ 0.788				\$ 711,000				
30	899,463	\$ 0.831				\$ 747,855				

SREC Starting Value	15.8	No Contingency Spend		Full Contingency Spend
SREC Escalation	1.05	20 Yr Savings	\$ 2,050,638	\$ 1,539,567
SREC Value Yr 21	100	25 Yr Savings	\$ 5,060,669	\$ 4,549,598
SREC Value Yr 26	165	30 Yr Savings	\$ 8,716,566	\$ 8,205,495

Total Costs	SGIP Rebate	LCFS Credits	Avoided Heat Pump Costs	SRECS	SREC Value \$/MWh	SREC Tot Value \$	Avoided Generator Costs	Total Rebates / Avoided Costs	Net Benefit Each Year	Cumulative Benefit
			\$ 35,000							
\$ 72,020	\$ 45,325	\$ 102,543		981	15.80	\$ 15,505	\$ 250,000	\$ 448,374	\$ 572,372	\$ 572,372
\$ 74,154	\$ 45,325	\$ 102,543		978	16.59	\$ 16,232	\$ 3,000	\$ 167,100	\$ 298,870	\$ 871,242
\$ 76,345	\$ 45,325	\$ 102,543		975	17.42	\$ 16,992	\$ 3,090	\$ 167,951	\$ 307,942	\$ 1,179,185
\$ 78,605	\$ 45,325	\$ 95,707		973	18.29	\$ 17,788	\$ 3,183	\$ 162,003	\$ 310,680	\$ 1,489,865
\$ 80,925	\$ 45,325	\$ 95,707		970	19.20	\$ 18,622	\$ 3,278	\$ 162,932	\$ 320,794	\$ 1,810,659
\$ 83,320		\$ 95,707		967	20.17	\$ 19,494	\$ 3,377	\$ 118,578	\$ 286,140	\$ 2,096,799
\$ 85,789		\$ 95,707		964	21.17	\$ 20,407	\$ 3,478	\$ 119,592	\$ 297,399	\$ 2,394,198
\$ 88,334		\$ 88,871		961	22.23	\$ 21,363	\$ 3,582	\$ 113,817	\$ 302,443	\$ 2,696,642
\$ 90,947		\$ 88,871		958	23.34	\$ 22,364	\$ 3,690	\$ 114,925	\$ 314,989	\$ 3,011,630
\$ 93,640				955	24.51	\$ 23,412	\$ 3,800	\$ 27,212	\$ 239,354	\$ 3,250,984
\$ 167,958				952	25.74	\$ 24,509	\$ 3,914	\$ 28,423	\$ 181,775	\$ 3,432,759
\$ 75,232				949	27.02	\$ 25,657	\$ 4,032	\$ 29,689	\$ 292,091	\$ 3,724,850
\$ 77,489				947	28.37	\$ 26,859	\$ 4,153	\$ 31,012	\$ 308,319	\$ 4,033,168
\$ 79,813				944	29.79	\$ 28,118	\$ 4,277	\$ 32,395	\$ 325,420	\$ 4,358,589
\$ 82,208				941	31.28	\$ 29,435	\$ 4,406	\$ 33,841	\$ 343,440	\$ 4,702,029
\$ 84,674				938	32.85	\$ 30,814	\$ 4,538	\$ 35,352	\$ 362,429	\$ 5,064,458
\$ 87,215				935	34.49	\$ 32,258	\$ 4,674	\$ 36,932	\$ 382,436	\$ 5,446,893
\$ 89,831				932	36.21	\$ 33,769	\$ 4,814	\$ 38,583	\$ 403,516	\$ 5,850,410
\$ 92,527				930	38.02	\$ 35,351	\$ 4,959	\$ 40,310	\$ 425,725	\$ 6,276,135
\$ 95,303				927	39.93	\$ 37,007	\$ 5,107	\$ 42,114	\$ 449,124	\$ 6,725,259
\$ -				924	41.92	\$ 38,741		\$ 38,741	\$ 542,943	\$ 7,268,201
\$ -				921	44.02	\$ 40,556		\$ 40,556	\$ 570,987	\$ 7,839,188
\$ -				919	46.22	\$ 42,456		\$ 42,456	\$ 600,481	\$ 8,439,669
\$ -				916	48.53	\$ 44,445		\$ 44,445	\$ 631,499	\$ 9,071,168
\$ -				913	50.96	\$ 46,527		\$ 46,527	\$ 664,122	\$ 9,735,290
				910	53.50	\$ 48,707		\$ 48,707	\$ 659,687	\$ 10,394,977
				908	56.18	\$ 50,989		\$ 50,989	\$ 693,639	\$ 11,088,616
				905	58.99	\$ 53,378		\$ 53,378	\$ 729,340	\$ 11,817,956
				902	61.94	\$ 55,879		\$ 55,879	\$ 766,879	\$ 12,584,835
				899	65.03	\$ 58,497		\$ 58,497	\$ 806,352	\$ 13,391,187

	OPT Estimate	OPT Estimate	OPT Estimate	OPT Estimate	OPT Estimate	OPT Estimate	OPT Estimate
Year	Total Savings	EVCS Annual costs	O&M Costs	M&V costs	Total Costs	Avoided Heat Pump Costs	SREC Tot Value \$
1	\$ 224,795	\$ 9,672	\$ 48,532	\$ 13,816	\$ 72,020	\$ -	\$ 14,720
2	\$ 232,316	\$ 9,936	\$ 49,988	\$ 14,230	\$ 74,154	\$ -	\$ 14,647
3	\$ 240,614	\$ 10,200	\$ 51,488	\$ 14,657	\$ 76,345	\$ -	\$ 14,573
4	\$ 248,676	\$ 10,476	\$ 53,032	\$ 15,097	\$ 78,605	\$ -	\$ 14,501
5	\$ 257,490	\$ 10,752	\$ 54,623	\$ 15,550	\$ 80,925	\$ -	\$ 14,428
6	\$ 266,042	\$ 11,040	\$ 56,263	\$ 16,017	\$ 83,320	\$ -	\$ 14,356
7	\$ 275,319	\$ 11,340	\$ 57,951	\$ 16,498	\$ 85,789	\$ -	\$ 14,284
8	\$ 285,305	\$ 11,652	\$ 59,689	\$ 16,993	\$ 88,334	\$ -	\$ 14,213
9	\$ 295,985	\$ 11,964	\$ 61,480	\$ 17,503	\$ 90,947	\$ -	\$ 14,142
10	\$ 306,344	\$ 12,288	\$ 63,324	\$ 18,028	\$ 93,640	\$ 235,000	\$ 14,071
11	\$ 317,364	\$ 72,657	\$ 149,389	\$ 18,569	\$ 240,615	\$ -	\$ 9,334
12	\$ 329,027	\$ 13,036	\$ 56,106	\$ 19,126	\$ 88,268	\$ -	\$ 9,287
13	\$ 341,313	\$ 13,427	\$ 57,789	\$ 19,700	\$ 90,916	\$ -	\$ 9,241
14	\$ 353,199	\$ 13,830	\$ 59,522	\$ 20,291	\$ 93,643	\$ -	\$ 9,194
15	\$ 366,666	\$ 14,245	\$ 61,308	\$ 20,900	\$ 96,453	\$ -	\$ 9,148
16	\$ 380,689	\$ 14,673	\$ 63,147	\$ 21,527	\$ 99,347	\$ -	\$ 9,103
17	\$ 395,242	\$ 15,113	\$ 65,042	\$ 22,173	\$ 102,328	\$ -	\$ 9,057
18	\$ 410,301	\$ 15,566	\$ 66,993	\$ 22,838	\$ 105,397	\$ -	\$ 9,012
19	\$ 426,840	\$ 16,033	\$ 69,004	\$ 23,523	\$ 108,560	\$ -	\$ 8,967
20	\$ 443,830	\$ 16,514	\$ 71,074	\$ 24,229	\$ 111,817	\$ 315,000	\$ 8,922
21	\$ 461,238	\$ 17,009	\$ 223,206	\$ 24,956	\$ 265,172	\$ -	
22	\$ 479,033	\$ 17,520	\$ 75,402	\$ 25,705	\$ 118,627	\$ -	
23	\$ 499,180	\$ 18,045	\$ 77,664	\$ 26,476	\$ 122,186	\$ -	
24	\$ 519,641	\$ 18,587	\$ 79,994	\$ 27,270	\$ 125,851	\$ -	
25	\$ 540,378	\$ 19,144	\$ 82,394	\$ 28,088	\$ 129,627	\$ -	
26	\$ 563,348	\$ 19,719	\$ 84,866	\$ 28,931	\$ 133,515	\$ -	
27	\$ 586,509	\$ 20,310	\$ 87,412	\$ 29,799	\$ 137,521	\$ -	
28	\$ 611,812	\$ 20,919	\$ 90,034	\$ 30,693	\$ 141,646	\$ -	
29	\$ 638,208	\$ 21,547	\$ 92,735	\$ 31,613	\$ 145,896	\$ -	
30	\$ 665,645	\$ 22,193	\$ 95,518	\$ 32,562	\$ 150,273	\$ -	

				No Contingency Spend	Full Contingency Spend
OPT Estimate				OPT Estimate	OPT Estimate
Avoided Generator Costs	Total Rebates & Avoided Costs	Net Benefit Each Year	Cumulative Benefit	Cumulative Benefit Including M/G System Purchase Cost	Cumulative Benefit Including M/G System Purchase Cost
\$ 315,000	\$ 315,000	\$ 315,000	\$ 315,000	\$ (4,546,246)	\$ (5,057,317)
\$ 3,300	\$ 165,889	\$ 318,663	\$ 318,663	\$ (4,542,583)	\$ (5,053,654)
\$ 3,399	\$ 165,914	\$ 324,076	\$ 642,739	\$ (4,218,507)	\$ (4,729,578)
\$ 3,501	\$ 165,943	\$ 330,212	\$ 972,951	\$ (3,888,295)	\$ (4,399,366)
\$ 3,606	\$ 159,139	\$ 329,210	\$ 1,302,161	\$ (3,559,085)	\$ (4,070,156)
\$ 3,714	\$ 159,174	\$ 335,739	\$ 1,637,901	\$ (3,223,345)	\$ (3,734,416)
\$ 3,826	\$ 113,889	\$ 296,611	\$ 1,934,512	\$ (2,926,734)	\$ (3,437,805)
\$ 3,940	\$ 113,932	\$ 303,462	\$ 2,237,974	\$ (2,623,272)	\$ (3,134,343)
\$ 4,059	\$ 107,142	\$ 304,113	\$ 2,542,087	\$ (2,319,159)	\$ (2,830,230)
\$ 4,180	\$ 107,193	\$ 312,231	\$ 2,854,318	\$ (2,006,928)	\$ (2,517,999)
\$ 4,306	\$ 253,377	\$ 466,081	\$ 3,320,399	\$ (1,540,847)	\$ (2,051,918)
\$ 4,435	\$ 13,769	\$ 90,518	\$ 3,410,916	\$ (1,450,330)	\$ (1,961,401)
\$ 4,568	\$ 13,855	\$ 254,613	\$ 3,665,530	\$ (1,195,716)	\$ (1,706,787)
\$ 4,705	\$ 13,946	\$ 264,342	\$ 3,929,872	\$ (931,374)	\$ (1,442,445)
\$ 4,846	\$ 14,041	\$ 273,597	\$ 4,203,468	\$ (657,778)	\$ (1,168,849)
\$ 4,992	\$ 14,140	\$ 284,353	\$ 4,487,822	\$ (373,424)	\$ (884,495)
\$ 5,141	\$ 14,244	\$ 295,586	\$ 4,783,408	\$ (77,838)	\$ (588,909)
\$ 5,296	\$ 14,353	\$ 307,267	\$ 5,090,675	\$ 229,429	\$ (281,642)
\$ 5,454	\$ 14,466	\$ 319,371	\$ 5,410,046	\$ 548,800	\$ 37,729
\$ 5,618	\$ 14,585	\$ 332,865	\$ 5,742,911	\$ 881,665	\$ 370,594
\$ 75,787	\$ 399,709	\$ 731,721	\$ 6,474,632	\$ 1,613,386	\$ 1,102,315
\$ 5,960	\$ 5,960	\$ 202,027	\$ 6,676,659	\$ 1,815,413	\$ 1,304,342
\$ 6,139	\$ 6,139	\$ 366,545	\$ 7,043,204	\$ 2,181,958	\$ 1,670,887
\$ 6,323	\$ 6,323	\$ 383,318	\$ 7,426,522	\$ 2,565,276	\$ 2,054,205
\$ 6,513	\$ 6,513	\$ 400,303	\$ 7,826,825	\$ 2,965,579	\$ 2,454,508
\$ 6,708	\$ 6,708	\$ 417,459	\$ 8,244,284	\$ 3,383,038	\$ 2,871,967
\$ 6,909	\$ 6,909	\$ 436,742	\$ 8,681,026	\$ 3,819,780	\$ 3,308,709
\$ 7,117	\$ 7,117	\$ 456,104	\$ 9,137,131	\$ 4,275,885	\$ 3,764,814
\$ 7,330	\$ 7,330	\$ 477,496	\$ 9,614,627	\$ 4,753,381	\$ 4,242,310
\$ 7,550	\$ 7,550	\$ 499,863	\$ 10,114,489	\$ 5,253,243	\$ 4,742,172
\$ 7,777	\$ 7,777	\$ 523,149	\$ 10,637,638	\$ 5,776,392	\$ 5,265,321

Microgrid frequently asked questions

What is a microgrid?

According to an article published on Microgrid Knowledge by Elisa Wood on March 28, 2020, a microgrid is defined as a self-sufficient energy system that serves a discrete geographic footprint, such as a college, campus, hospital complex, business center or even neighborhood. Within microgrids there are one or more kinds of distributed energy (solar panels, wind turbines, combined heat power, generators) that produce power. Newer microgrids contain energy storage from batteries, and some now also include electric vehicle charging stations that can take energy from a car to support providing power to a building.

Microgrids create energy locally for its buildings. They are also independent as it can disconnect from the central grid. This islanding capability allows them to supply power to buildings when a storm or other outage occurs on the power grid. They also use microgrid controller that intelligently manages energy so that maximum savings and reliably can be achieved.

What contributes to the cost of a project like this?

The largest cost component for the clean energy infrastructure for the MPCC project is the solar and battery storage microgrid. This includes solar carport canopies that will provide shaded parking, panels to generate energy, batteries to store the energy and electrical infrastructure to operate the site for at least 24-hours during a power outage with the ability to harness and access power the next day using solar power. The contract also includes the local labor to install all parts of the solar, EV charging, pool heating and microgrid. The itemized cost for clean energy infrastructure are as follows:

- \$3,687,307 for the solar and batter storage microgrid
- \$1,165,939 for the solar photovoltaic thermal pool heating system (reduced from original bid)
- \$347,683 for the EV charging (reduced from original bid)

How has this project addressed design features and community values?

The solar panel locations have been adjusted to account for community values and design features of the building, including preservation of existing trees and which areas are covered by solar. ENGIE has been designing solar panel installations to visually match the renderings and site plan proposals presented to the community as part of the design process.

What are the benefits of this project?

- The solar and battery microgrid will provide the site with local clean energy year-round and allow the site to operate during grid outages.
- Installing renewable electric power on city facilities is consistent the 2030 climate action plan strategy No. 5 to eliminate fossil fuels from city operations and is consistent with sustainable budget practices by reducing long term operating costs.

- The microgrid will generate clean on-site solar electricity for the facility during the day and store extra solar energy in a battery for evening/nighttime energy needs, reducing operating costs and providing an extra layer of guaranteed clean energy consumed at all times of the day.
- The facility is also being designed to provide shelter and services in the event of an emergency, requiring backup power. The microgrid component means neighbors can charge devices and come to a safe and climate-controlled space when the power is out at home. It will reduce the need for diesel backup generators in the neighborhood, both at individual homes and at the MPCC site. Diesel generators emit exhaust that can worsen asthma symptoms and pose risks for people with heart and lung diseases.
- The solar power will serve the center during normal operations, reducing the purchases of power from PG&E and PCE for the City over the next 25 years.
- A key objective of the microgrid is to provide resilience with clean backup power rather than the traditional use of diesel-powered generators. The microgrid system will be able to provide emergency power at least 24 hours without the need for diesel generators with the ability to harness and access power the next day using solar power. If an emergency lasts longer than a few days or solar power is unavailable, a mobile backup diesel generator could be used to supplement the clean power onsite. Working in concert with the solar and battery microgrid will allow the diesel generator to run much less if it's required during a longer-term emergency.
- The project also includes installing 27 EV charging spaces in a neighborhood where less than 3 percent of multifamily properties have access to charging at or near their home. This will enable more residents and city employees/contractors to confidently chose a cleaner transportation option for themselves if charging is nearby. In addition, the number of charging spaces reflects the city's currently adopted green building standards for commercial developments in this neighborhood. There will be a total of 164 parking spaces at the MPCC project site once construction is completed, and the city's green building standards require 15 percent of spaces to be pre-wired for future EV charging s with 10 percent of those spaces having access to actual charging at the time of project completion. The city is taking a leadership role by demonstrating that all 15 percent of the parking spaces will have charging access on day one of the completed project.
- On October 12, the City Council also directed staff to pursue inclusion of solar thermal pool heating for additional electric load savings and reduced reliance on the power grid. City requirements mean the pool would use an electric heater in the absence of this project. The solar thermal system will be more cost-effective for the City in the long run.

What programs exist to help Belle Haven residents purchase electric vehicles?

In addition to the long-term savings opportunities, Peninsula Clean Energy offers up to \$4,000 in rebates for used plug-in hybrid and fully electric EVs, with increased rebates available for income-qualified residents that can be combined with incentives from other state and local programs. There are also federal and state incentives and rebates for making the EV switch. Purchasing electric vehicles helps to reduce air pollution that causes health problems and lung irritants.

What are the impacts of not approving this project?

- The city will lose an opportunity for the next 20 to 30 years to enhance air quality as it would need to install an onsite diesel generator, and will reduce the city's ability to

reduce greenhouse gas emissions to meet the 2030 Climate Action Plans goal to be carbon neutral by 2030.

- If the city decides not to pursue the project, then the cost of procuring energy from Peninsula Clean Energy or PG&E will be subject to anticipated annual increases in energy costs and potential uncertainties of energy production. These costs are expected to be more than the cost to build the microgrid as proposed. The fixed cost of this project as proposed in the requested \$5.72 million dollar budget allocation will protect the City against anticipated and uncontrollable increases in energy prices over the 20 to 30-year life span of the project.
- If the City decides not to pursue the project, then any power outages in the area will cause the facility to lose power and may increase the reliance on diesel backup generators.
- If the project is not approved, the City and Meta project team will be required to update the construction design plans to remove the solar and microgrid components, and plan for power from the utility only. This could delay construction, especially given challenges in the global supply chain for vital electrical equipment.

What are the impacts of delaying this project for three to six months?

This project is the result of a comprehensive development and competitive procurement process which selected ENGIE as the preferred vendor to support the implementation of the City Council's goals for sustainable enhancements for the MPCC project. Significant delays to the project will put at risk design, construction, and financing options, which have the potential to delay the opening of the MPCC for the community. In addition, it will be difficult to secure the same pricing given the global supply chain issues.

Are there any other cities in the Bay Area pursuing projects like this one?

The City of Fremont, City of Milpitas, Solano County, Santa Barbara schools and the have all contracted for or completed similar projects. Menlo Park would be on the leading edge of cities making a statement about local clean air and sustainability by incorporating multiple clean energy features.



A	Menlo Park Community Campus Building	F	Bicycle Parking	K	Parking Lot
B	Boardwalk	G	Outdoor Dining Terrace	L	Pool Area
C	Playground	H	Community Terrace & Garden	M	Samtrans Bus Stop & Layover
D	Existing Redwood Trees to Remain	I	Service Area	N	Fire Access Lane
E	Children's Outdoor Courtyard	J	Pedestrian Pathway		

Proposed Site Plan



 0 60 120'

 1" = 60' at 11" x 17"

 October 21, 2021

 HART HOWERTON



STAFF REPORT

City Council

Meeting Date:

1/11/2022

Staff Report Number:

22-009-CC

Regular Business:

Appointment of Justin Murphy as interim city manager and approval of compensation for interim city manager services

Recommendation

Appoint Justin Murphy as interim city manager and approve compensation for interim city manager services.

Policy Issues

The City Council has the responsibility of appointing the city manager. The city manager serves as the City's chief executive officer.

Background

City Manager Starla Jerome-Robinson's employment contract with the City is set to expire March 31, 2022. The City Council created a subcommittee consisting of City Councilmember Taylor and Vice Mayor Wolosin to work with the Hawkins Group to manage the outreach and recruitment for a new permanent city manager, which is currently underway.

On December 27th, City Manager Starla Jerome-Robinson provided the City Council with 60 days' notice of her resignation, but asked if City Council would allow her to waive the 60 days' notice requirement if an interim could be appointed sooner than the 60 days. The City Council has agreed to waive the 60-day notice requirement. To that end, it is necessary to appoint a city manager on an interim basis to serve pending the completion of the outreach and recruitment for a new permanent city manager and maintain City services especially in light of the ongoing COVID-19 pandemic.

Analysis

Appointing current Deputy City Manager Justin Murphy to perform duties of the city manager position will provide continuity for the City Council's priorities. The interim city manager will serve while recruitment for a permanent city manager is underway.

Given the need for continuity and a highly trained and experienced professional to lead the City, particularly in the midst of the COVID-19 pandemic, appointing Mr. Murphy as interim city manager will serve the organization and community well. Effective January 12, 2022 and ending on the date immediately preceding the date on which the permanent appointee to the vacant position of city manager commences their employment unless the interim appointment is terminated earlier by the City at a regularly noticed City Council meeting or by Mr. Murphy. Mr. Murphy would then return to his position as deputy city manager.

In recognition of the additional duties Mr. Murphy is taking on in the interim role, City Council will be considering increasing Mr. Murphy salary while he serves as interim city manager. A five percent to 10 percent increase is standard practice and is also aligned with the City's practice and policies with respect to "out of class" and interim assignments.

Impact on City Resources

There are no additional financial impacts associated with this engagement as the city manager salary is currently budgeted.

Environmental Review

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

Public Notice

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

Attachments

None.

Report prepared by:
Genevieve Ng
Sloan Sakai Young & Wong



STAFF REPORT

City Council

Meeting Date:

1/11/2022

Staff Report Number:

22-004-CC

Regular Business:

Adopt a resolution approving and authorizing the Mayor to execute the second amendment to and restatement of the joint powers agreement establishing the Peninsula Traffic Congestion Relief Alliance and appoint representatives to the Peninsula Traffic Congestion Relief Alliance board of directors

Recommendation

Staff recommends that the City Council adopt a resolution (Attachment A) approving and authorizing the mayor to execute the second amendment to and restatement of the joint powers agreement establishing the Peninsula Traffic Congestion Relief Alliance (Alliance), which will formalize the City of Menlo Park's membership in the Alliance, and to appoint a representative and alternate to the Alliance board of directors.

Policy Issues

The City's membership in the Alliance supports the City's transportation demand management (TDM) program guidelines and implements policies and programs in the 2016 General Plan Circulation Element. Policy CIRC-6.1 identifies a priority to coordinate "transportation demand management efforts with other agencies providing similar services within San Mateo and Santa Clara Counties" and Program CIRC-6.D specifically states that the City should "consider joining the Peninsula Traffic Congestion Relief Alliance ("Commute.org") to assist local employers with increasing biking and walking, transit, carpool, and vanpool and shuttle use for their employees."

Background

In 2000, 15 cities and towns in San Mateo County joined together to form the Alliance, commonly known as Commute.org. Commute.org serves as San Mateo County's Transportation Demand Management agency. TDM is a set of strategies, policies, and programs that aim to reduce the demand for single-occupant vehicle (SOV) travel. Some of Commute.org's TDM programs include commuter support services, incentive programs, trip logging software, emergency ride home, first/last mile commuter shuttles from Caltrain, and partnerships with public agencies and private groups and employers.

Later in 2005, Commute.org added two additional municipalities and the County of San Mateo to create the current 18 member Alliance. The City of Menlo Park and the Towns of Portola Valley and Woodside are not currently members.

The City of Menlo Park has an existing TDM program that was established in the early 1990s. At the time that Commute.org was formed in 2000, the City opted not to join. City staff currently shares information with Commute.org and promotes their free TDM programs in San Mateo County. Additionally, City staff coordinates with Commute.org on regional events such as Bike to Work Day, and with Commute.org and

the Peninsula Corridor Joint Powers Board (“Caltrain”) on a joint shuttle contract.

In recent years, the City has explored formally joining Commute.org as a member agency. The 2016 general plan circulation element includes Program CIRC-6.D to join Commute.org. At its May 22, 2018, meeting, the City Council previously authorized the Mayor to sign a letter of intent to join Commute.org, but action was delayed while Commute.org revised its joint powers agreement to address pension liability requirements for joint powers authorities as a result of state law changes (AB 1912.)

Analysis

In 2019, the City initiated a transportation management association (TMA) feasibility study to better understand how the City could address traffic issues and commuting patterns. The study, approved by City Council at its October 12, 2021 meeting, recommended working more closely with Commute.org, including joining the organization as an effective short-term action. This recommendation coincided with Commute.org amending its joint powers agreement in September 2021, enabling the addition of new members. In late September 2021, Commute.org Executive Director John Ford sent the Mayor a letter formally asking Menlo Park to join the organization (Attachment B.)

Joining Commute.org as a member would give the City an official vote on the board of directors, while continuing the existing, strong working relationship the City has with the organization. Working with or promoting Commute.org supports all three objectives of the TMA feasibility study: endorsing regional TDM efforts, serving as an example of an employer with a robust TDM program, and ensuring TDM support is available to all businesses. Joining Commute.org as a member is a key action to achieve the first of these objectives – endorsing regional TDM efforts.

The City’s membership in Commute.org would enhance the ability to coordinate on employer outreach, support and incentive programs. The City currently promotes Commute.org’s services to City employees as alternatives to driving to work, including their trip logging software, incentive programs and emergency ride home program. Per recommendations in the TMA feasibility study, the City would continue to promote Commute.org and work with City Council to identify funding for paid services with Commute.org and Manzanita Transit to ensure TDM support is available for all businesses in Menlo Park.

Commute.org’s board of directors approved the Second Amendment to and Restatement of the Joint Powers Agreement Establishing the Peninsula Traffic Congestion Relief Alliance (Attachment C) in September 2021, which will facilitate membership entry for the City Menlo Park, Towns of Portola Valley and Woodside. Adoption of the resolution would complete Menlo Park’s process of joining Commute.org. Portola Valley has since adopted a resolution to join Commute.org and Woodside is expected to complete the process, but as of this publication has yet to set a timeline.

As part of joining Commute.org, the City Council needs to appoint a City Councilmember (and an alternate) to participate on the Commute.org board of directors. Each year there are five scheduled public meetings, each about an hour and a half in duration. In addition, agency staff from some member agencies participate in a Supervisory Committee and a Finance Committee that advise the board of directors. Participation in these advisory committees is not required of each agency, but board members may nominate staff to serve on each committee. Staff participation on the advisory committees would represent a new effort under the City’s TDM program that could take time away from other efforts. Staff estimate that each committee assignment could require up to eight hours of staff time per month.

Impact on City Resources

No financial resources are required for this action. Staff time associated with participating in Commute.org could increase by up to 16 hours per month if staff were requested to participate in the Supervisory and/or Finance Committees of Commute.org.

Environmental Review

Adoption of the resolution to join Commute.org is exempt from the California Environmental Quality Act under section 15320, Changes in Organization of Local Agencies.

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. Invitation letter to join the Peninsula Traffic Congestion Relief Alliance
- C. Second amendment to and restatement of joint powers agreement establishing the Peninsula Traffic Congestion Relief Alliance

Report prepared by:

Nicholas Yee, Transportation Demand Management Coordinator

Report reviewed by:

Kristiann Choy, Senior Transportation Engineer

Hugh Louch, Assistant Public Works Director - Transportation

RESOLUTION NO. XXXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
APPROVING THE SECOND AMENDMENT TO AND RESTATEMENT OF THE
JOINT POWERS AGREEMENT ESTABLISHING THE PENINSULA TRAFFIC
CONGESTION RELIEF ALLIANCE AND AUTHORIZING THE MAYOR TO
EXECUTE THE AGREEMENT**

WHEREAS, the Peninsula Traffic Congestion Relief Alliance (Alliance) was established in 2000 through a Joint Powers Agreement (JPA) executed by fifteen cities in the County of San Mateo, to assist the public and private sectors in achieving traffic congestion relief; and

WHEREAS, in 2005, the JPA was amended to include the County of San Mateo, and the Towns of Atherton and Hillsborough as members of the Alliance, bringing the total membership to 18 agencies, all of which approved and executed the Amendment to and Restatement of the Joint Powers Agreement; and

WHEREAS, the City of Menlo Park and the Town of Portola Valley desire to join the Alliance and the Town of Woodside may consider membership as well; and

WHEREAS, adding members to the Alliance requires all of the current members as well as the new members to approve and execute a Second Amendment of the Joint Powers Agreement; and

WHEREAS, in addition to expanding the membership of the Alliance, the proposed Second Amendment to the Joint Powers Agreement takes the opportunity to update and refresh the JPA by (1) revising the first section on "Purpose" to reflect the Alliance's recently adopted Mission and Vision Statements as set forth in its Strategic Plan and (2) clarifying that the Alliance has developed a new brand and has become known to the public as "Commute.org"; and

WHEREAS, at its meeting on September 16, 2021, the Alliance Board of Directors reviewed the proposed Second Amendment to and Restatement of the Joint Powers Agreement Establishing the Peninsula Traffic Congestion Relief Alliance that incorporates the changes recited above and approved this Second Amendment for presentation to the San Mateo County Board of Supervisors and the city councils of current and new members for approval and execution of same; and

WHEREAS, 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.

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

1. Hereby approves the Second Amendment to and Restatement of the Joint Powers Agreement Establishing the Peninsula Traffic Congestion Relief Alliance; and
2. Authorizes the Mayor to execute this Agreement

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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 eleventh day of January, 2022, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Judi A. Herren, City Clerk



October 5, 2021

Drew Combs
Mayor
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

SENT VIA ELECTRONIC MAIL

Re: Invitation to join the Peninsula Traffic Congestion Relief Alliance (Commute.org) Joint Powers Authority

Dear Mayor Combs:

On behalf of the Board of Directors of Commute.org, I would like to formally invite the City of Menlo Park to join the Peninsula Traffic Congestion Relief Alliance Joint Powers Authority (JPA).

At our meeting on September 16, 2021, the Board unanimously approved amending the Joint Powers Agreement to allow the cities and towns in San Mateo County that are not yet members (Menlo Park, Portola Valley, and Woodside) to join the JPA. Completing the “alliance” by bringing together all the municipalities in the county is one of the key objectives in our newly adopted Strategic Plan.

The JPA was originally formed in 2000 through the merger of two agencies – ITSMA and MITSMA. Between the two agencies there were 14 members and the City of East Palo Alto also joined when the merger took place. In 2005, the JPA was expanded to include the towns of Atherton and Hillsborough as well as the County of San Mateo bringing the total to 18 members. Over the past decade the JPA has become better known as Commute.org.

The mission of Commute.org is to reduce traffic congestion and greenhouse gas emissions while enhancing the quality of life in San Mateo County by promoting the use of sustainable transportation and commute alternatives. We envision a region where all residents and employees have access to equitable, sustainable, affordable, and safe transportation options and use them as their primary modes when commuting.

Commute.org provides transportation demand management (TDM) programs to employers, commuters, residents, and stakeholders throughout the county. Programs promote alternatives to driving alone such as carpools, vanpools, transit, bicycles, and remote work. Additionally, Commute.org works closely with JPA members’ staff to support their city/town specific TDM objectives. Commute.org is funded, primarily, by the San Mateo County Transportation Authority (Measure A) and C/CAG of San Mateo County (Congestion Relief Program).

Approximately 20 percent of the agency's funding comes from private-sector contributions to the Commute.org shuttle program.

Of course, it is important for you and your fellow council member to understand the requirements of members of the Joint Powers Authority:

- There are no dues or fees for members.
- As a member of the Joint Powers Authority, each member has one seat with one vote on the Board. Each member appoints one Council Member as the Board representative and is encouraged to appoint one other Council Member as an alternate to the Board (similar to representation on C/CAG).
- The Board meets five times per year on the third Thursday of the month in February, April, June, September, and November. Meetings are currently held from 8:00 a.m. – 9:30 a.m. at locations throughout San Mateo County. Of course, during the pandemic all our meetings have been held remotely.
- There are currently two standing committees – Finance and Supervisory. The Supervisory Committee is comprised solely of staff from member and stakeholder agencies whereas the Finance Committee includes a mix of Board and Supervisory Committee members.

The process to join the JPA is very straight-forward. The *Second Amendment and Restatement of the Joint Powers Agreement* (attached) has been updated to include the City of Menlo Park. If your council supports joining and votes to approve this Second Amendment, then your signature as well as that of the City Clerk on the agreement is all that is needed. To help facilitate the process, we have included a draft resolution and draft staff report to present to your council. Additionally, John Ford (Executive Director) and I would be honored to attend a council meeting to answer any questions that you, your council members, or your constituents might have about becoming a member.

Thank you, in advance, for your time and consideration of this invitation. Should you or your town staff have any questions or need additional information, please contact John Ford by phone at (650) 588-8170 or by email at jford@commute.org.

Sincerely,



Cliff Lentz, Chair, Peninsula Traffic Congestion Relief Alliance (Commute.org) and Mayor Pro Tempore, City of Brisbane

cc: Starla Jerome-Robinson, City Manager
Judi Herren, City Clerk
Nikki Nagaya, Public Works Director
Hugh Louch, Assistant Public Works Director - Transportation

**SECOND AMENDMENT TO AND RESTATEMENT OF
JOINT POWERS AGREEMENT ESTABLISHING THE
PENINSULA TRAFFIC CONGESTION RELIEF ALLIANCE**

THIS AGREEMENT by and among the cities and the County of San Mateo who become signatories to this agreement (hereinafter referred to as “Party” in the singular and “Parties” collectively, as the content requires) is made and entered into as of the ____ day of _____, 2021 and in light of the following recitals:

- A. The Parties have authority to undertake transportation demand management activities in their respective communities and desire to establish and continue the Peninsula Traffic Congestion Relief Alliance under which the parties will work together essentially to reduce the number of single occupant vehicles traveling on streets and highways in San Mateo County.
- B. The Parties are authorized to contract with each other for the joint exercise of any common power pursuant to Government Code Sections 6500 *et seq.*
- C. The Parties desire to establish and continue the Peninsula Traffic Congestion Relief Alliance as a joint powers authority in accordance with the terms and conditions outlined in this Agreement and to brand and make this entity known to the public as "Commute.org."

NOW, THEREFORE, the Parties, in consideration of the mutual promises and agreements contained herein, agree as follows:

1. **Purpose:**

The Parties enter into this Agreement for the purpose of establishing and operating the Peninsula Traffic Congestion Relief Alliance (“Alliance”) to reduce traffic congestion and greenhouse gas emissions while enhancing the quality of life in San Mateo County by promoting the use of sustainable transportation and commute alternatives. The Parties envision a region where all residents and employees have access to equitable, sustainable, affordable, and safe transportation options and use them as their primary modes when commuting.

2. **Definitions:**

- (a) “Employer” shall mean any public or private employer or group thereof, including a city or the County, who has a permanent place of business in the County of San Mateo.

- (b) “Party” or “Parties” shall mean a member of the Peninsula Traffic Congestion Relief Alliance and a party signator to this Agreement establishing the Alliance.
 - (c) “TDM or Transportation Demand Management” shall mean a program or activity to improve the efficiency of the existing transportation system by increasing the use of alternative modes of transportation such as carpools, vanpools, public transit, bicycles, walking and telecommuting.
3. **Establishment of Alliance:** The Parties hereby create an entity originally called the Peninsula Traffic Congestion Relief Alliance to exercise in the manner set forth in this Agreement the specified powers common to each of the Parties. For purposes of name identification and branding, the Alliance shall be known to the public as "Commute.org." The Alliance shall be a public entity that is separate from the Parties and shall be responsible for the administration of this Agreement. Except as provided herein, the debts, liabilities, and/or obligations of the Alliance shall be the debts, liabilities, and/or obligations solely of the Alliance and shall not be the debts, liabilities, and/or obligations of any Party to this Agreement.
4. **Term:** This Agreement shall be effective on the date by which any nine Parties have executed it and shall continue in effect until terminated as provided herein.
5. **Powers of the Alliance:** The Alliance shall have the powers and duties:
- (a) To make and enter into contracts;
 - (b) To incur debts, liabilities or obligations;
 - (c) To solicit, receive, and use grants, advances and contributions from all available sources, public or private, including federal, state and local subventions;
 - (d) To adopt bylaws;
 - (e) To employ employees or agents or contract for the services of agents, employees, consultants and such other persons or firms as it deems necessary;
 - (f) To sue and be sued in its own name;
 - (g) To invest any surplus funds not required for the immediate necessities of the Alliance as the Governing Board determines is advisable, in the same manner and upon the same conditions as local agencies pursuant to Government Code Section 53601;

- (h) To enforce all provisions of this Agreement;
- (i) To negotiate for, acquire, hold, manage, maintain, control or dispose of real and personal property;
- (j) To levy and collect fees and charges, including administrative and operating costs, to third parties who receive the benefit of services from the Alliance; and
- (k) To do all other acts deemed necessary or convenient to achieve the purposes and objectives of the Alliance.

6. **Governing Board:** There is hereby created a Governing Board (also referred to as “Board”) to govern the Alliance. Each Party shall appoint one Councilmember or, in the case of the County, one member of the Board of Supervisors, to serve on the Governing Board and another Councilmember, or Supervisor in the case of the County, to serve as an alternate, with each continuing in such capacity until replaced. The Governing Board shall elect one of its members to serve as Chairperson. The Board shall meet as needed, but at least one time a year. Meetings shall be held in San Mateo County at a place to be designated. Each member of the Board shall have one vote.

The Governing Board shall be responsible for establishing the policy direction of the Alliance. On an annual basis, the Board shall adopt a work plan and budget for programs, services and subsidies that support the Alliance’s purposes. The Governing Board may from time to time give public recognition to Employers and other participants for notable efforts and achievements with respect to TDM programs. The Board shall exercise all powers and authority on behalf of the parties and may do any and all things necessary to carry out this Agreement.

7. **Committees:** The Governing Board shall establish such committees, either standing or ad hoc, as it deems necessary and appropriate to assist the Alliance in carrying out the purposes of this Agreement. The establishment of standing committees, as well as their composition, method of appointment, role and purpose, shall be designated in the Bylaws of the Alliance as adopted by the Governing Board.

8. **Budget:** The Executive Director annually shall prepare a budget for the Alliance setting forth anticipated expenses, financing sources and proposed service levels and programs necessary to carry out the purposes of this Agreement. The Executive Director shall recommend the budget to the Governing Board for approval after reviewing same with any committee the Governing Board may establish and designate for this purpose. In the event the budget contemplates revenue in the form of

monetary contributions from the parties, the budget shall be submitted to each Party for approval.

9. **Staff of the Alliance:** The Governing Board shall appoint an Executive Director. The Executive Director may hire other staff people for the Alliance, as needed, provided that such hiring conforms to the approved budget. The Executive Director may contract for the provision of other staff services, provided that such contracts conform to the approved budget. In lieu of an Executive Director, the Governing Board may contract for such management services. Staff or contractors will be employee(s) or contractee(s) of the Alliance. The Executive Director and other staff shall serve at the pleasure of the hiring or appointing authority. At the direction of the Governing Board, the Executive Director shall work with such committees as may be established and designated for this purpose.

The Executive Director shall be employed by the Alliance and shall:

- (a) Be responsible for Alliance management, strategic planning, financial management, personnel, and implementation of the Board-adopted annual work program and budget; and
- (b) Be responsible for day to day personnel matters and for the hiring and firing of subordinate staff members; and
- (c) Prepare an annual report describing the results of program implementation, transportation surveys, TDM programs and other information including the successes in attaining the goals and objectives to advance the purpose of the Alliance.

The Governing Board may also appoint legal counsel to represent the Alliance.

10. **Fiscal Agent:** The member Party designated by resolution of the Governing Board and reflected in the Bylaws of the Alliance shall act as Fiscal Agent for the Alliance and shall be charged with the following responsibilities:

- (a) The custody of all money, property and assets of the Alliance;
- (b) The maintenance of all financial books and records necessary to conduct the business of the Alliance; and
- (c) The development of periodic reports to the Governing Board and the Executive Director regarding receipts, disbursements and the financial condition of the Alliance.

The Alliance, through the Fiscal Agent, shall retain an independent certified public accountant each year to conduct a fiscal year end audit and to prepare financial statements for the Alliance.

11. **Withdrawal:** Any participating Party may withdraw from this Agreement by filing written notice of intention to do so with the other parties. Termination will take effect on July 1 of any year, provided there is a least six months advance notice. The withdrawal of any Party from this Agreement shall in no way affect the rights and obligations of the remaining Parties. If a Party withdraws from this Agreement, it is not entitled to return of any funds contributed to the Agency nor to the return in cash or in kind of any materials or supplies contributed. Withdrawing Parties still are obligated for all payments due from them for the fiscal year of the withdrawal.
12. **Termination and Disposition of Property:** This Agreement shall be deemed terminated when only one Party continues to participate, or when all participating Parties choose to terminate it. Upon termination, all assets shall be distributed in equal shares to the Parties still active at the time of termination or to the one Party continuing to participate or to a successor agency designated by all of the remaining parties at the time of termination, with the exception that if any surplus money of the Alliance at the time of termination represents monetary contributions from still active member Parties, said money shall be refunded to such Parties in proportion to the contributions made.
13. **Amendment:** This Agreement may be amended from time to time with the written consent of a majority of the participating Parties.
14. **Insurance and Indemnification:** The Alliance shall acquire such insurance protection, including coverage for workers' compensation and commercial general liability, as is necessary to protect the interests of the Governing Board, the Parties, the Alliance staff, representatives, volunteers and other participants. The Alliance shall, at its sole expense, assume the defense of and indemnify and save harmless each Party to this Agreement and its respective councilmembers, officers, agents and employees, from all claims, losses, damages, costs, injury and liability of every kind, nature and description directly or indirectly arising from the performance of any of the activities, programs or services of the Alliance, its Governing Board, or staff.
15. **Execution in Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives, have executed this Agreement.

ATTEST:

TOWN OF ATHERTON

By _____
City Clerk

By _____
Mayor

ATTEST:

CITY OF BELMONT

By _____
City Clerk

By _____
Mayor

ATTEST:

CITY OF BRISBANE

By _____
City Clerk

By _____
Mayor

ATTEST:

CITY OF BURLINGAME

By _____
City Clerk

By _____
Mayor

ATTEST:

TOWN OF COLMA

By _____
City Clerk

By _____
Mayor

ATTEST:

CITY OF DALY CITY

By _____
City Clerk

By _____
Mayor

ATTEST

By _____
City Clerk

ATTEST:

By _____
City Clerk

ATTEST:

By _____
City Clerk

ATTEST:

By _____
City Clerk

ATTEST:

By _____
City Clerk

ATTEST:

By _____
City Clerk

CITY OF EAST PALO ALTO

By _____
Mayor

CITY OF FOSTER CITY

By _____
Mayor

CITY OF HALF MOON BAY

By _____
Mayor

TOWN OF HILLSBOROUGH

By _____
Mayor

CITY OF MILLBRAE

By _____
Mayor

CITY OF PACIFICA

By _____
Mayor

ATTEST:

By _____
City Clerk

CITY OF REDWOOD CITY

By _____
Mayor

ATTEST:

By _____
City Clerk

CITY OF SAN BRUNO

By _____
Mayor

ATTEST:

By _____
City Clerk

CITY OF SAN CARLOS

By _____
Mayor

ATTEST:

By _____
City Clerk

CITY OF SAN MATEO

By _____
Mayor

ATTEST:

By _____
City Clerk

CITY OF SO. SAN FRANCISCO

By _____
Mayor

ATTEST:

By _____
Clerk of the Board

COUNTY OF SAN MATEO

By _____
President of Board of Supervisors

ATTEST:

By _____
City Clerk

ATTEST:

By _____
City Clerk

ATTEST:

By _____
City Clerk

CITY OF MENLO PARK

By _____
Mayor

TOWN OF PORTOLA VALLEY

By _____
Mayor

TOWN OF WOODSIDE

By _____
Mayor



STAFF REPORT

City Council

Meeting Date:

1/11/2022

Staff Report Number:

22-005-CC

Regular Business:

Adopt a resolution to approve changes to the transportation impact analysis guidelines related to vehicle miles traveled thresholds and other minor corrections

Recommendation

Staff recommends that the City Council adopt a resolution (Attachment A) to approve a set of technical updates to the City's transportation impact analysis (TIA) guidelines and repeal all prior versions of the TIA guidelines to address calculation of the vehicle miles traveled (VMT) thresholds and other minor changes (Attachment B.)

Policy Issues

Updating the VMT thresholds in the TIA guidelines is consistent with policies CIRC-2.14 and 3.1 which relate to new development and reducing VMT.

Background

In June 2020, the City Council approved adding new VMT thresholds and methodology to the City's TIA guidelines to comply with Senate Bill (SB) 743. The thresholds are used to determine whether a transportation impact is significant under the California Environmental Quality Act (CEQA.) The City Council also referred the development of multimodal metrics to be reviewed by the Complete Streets Commission. In addition, staff had recommended that the VMT thresholds be reviewed regularly to allow the City to ensure that the VMT thresholds reflect the current land uses and transportation network. The VMT thresholds are based on existing average VMT in the city or region, which the City has defined as the nine Bay Area counties. The existing average VMT is calculated using travel demand models that include data on land uses and the roadway network and is validated against existing traffic counts. As travel demand models are updated and refined, the average VMT used to calculate the VMT thresholds will also need to be reviewed and updated. The City's travel demand model was recently updated to be consistent with the most recent set of traffic counts, which occurred in the spring of 2019, and reflective of the land uses built and occupied from that timeframe. This travel demand model update leads to the need for updating the City's VMT thresholds.

Analysis

The City's VMT thresholds were developed according to guidance from the Governor's Office of Planning and Research (OPR), which recommended the following when developing agency thresholds:

- Use of either a citywide or a regional VMT standard is permitted. A citywide standard captures average VMT generated within the city and a regional standard captures average VMT generated within the nine Bay Area counties.

- For residential and commercial developments, efficiency metrics such as “VMT per capita” and “VMT per employee” are more appropriate for assessing impacts, respectively, than total VMT.
- A 15 percent reduction below these VMT per capita or employee standards by future residential and commercial developments is both achievable and necessary to meet the State’s emission goals.

The average VMT per capita and per employee were calculated based on the City’s travel demand model that was developed in 2015 for the general plan update adopted in November 2016. City staff compared the results for both citywide and regional averages, and recommended using the regional average VMT per capita for residential development and the citywide average VMT per employee. City Council adopted these recommendations June 23, 2020.

Since approval of the VMT thresholds, staff have processed environmental impact reports (EIRs) for a number of residential and non-residential projects. Recently, three residential developments (known as 111 Independence, Menlo Uptown and Menlo Portal) were approved using the VMT thresholds and a draft EIR comment period closed December 9, 2021 for another proposed residential development (Menlo Flats.) In addition, draft EIRs are in process for two non-residential developments (1350 Adams Court and Commonwealth Building 3.) Notice of preparations (NOPs) for these draft EIRs were released in the end of 2018 and spring of 2019 respectively, meaning that the transportation analyses for these projects are substantially complete. All of these projects used the general plan model that was used to determine the VMT thresholds and would continue to use this model version and the VMT thresholds in place at the time of the NOPs.

Another project currently under review is the proposed Willow Village project. Given the size and mixed use nature of the project, staff worked with Hexagon Transportation Consultants, Inc. to update the City’s travel demand model with the project’s proposed land uses. The timing of this update is also consistent with best practice, which recommends that travel demand models be updated every five to seven years to incorporate current land uses and travel patterns. Updating the model produced updated average VMT per capita and VMT per employee calculations, which need to be incorporated into the TIA guidelines.

Proposed development projects located at 123 Independence Drive, 1125 O’Brien Drive and 1075 O’Brien Drive (CSBio Expansion) released NOPs in the summer and fall of 2021. Because the transportation impact analyses for these projects are not substantially complete, they would use the updated model and related VMT thresholds, if adopted by the City Council. Future development projects and other projects that have not begun review or released an NOP would also use the updated model and related VMT thresholds.

In addition, staff is recommending several technical corrections to the TIA guidelines:

1. Using regional averages for both VMT per capita and VMT per employee. Using the regional averages for residential and office land uses provides consistency for the analysis and reduces confusion for potential developers. It also allows more transparent comparison of results from the City’s model to regional models to ensure reasonableness and consistency.
2. Revising the language in the TIA guidelines to note that thresholds are set at 15 percent below the regional averages provided by the version of the City’s travel demand model that is current at the time of evaluation of transportation impacts. This would allow for the thresholds to change as the model is updated in the future without further City Council action.
3. Making other minor language clarifications and corrections that do not materially impact the TIA guidelines.

Table 1 summarizes the current and proposed VMT thresholds as a result of this change. The proposed thresholds represent 15 percent below the regional averages from the current version of the City’s travel

demand model. Updates to the TIA guidelines are shown in tracked changes in Attachment B and a clean version is provided as an exhibit to the resolution (Attachment A.)

Table 1: Current and proposed VMT thresholds of significance				
Land use	Current		Proposed ¹	
	Threshold	Area	Threshold	Area
Residential	13.7 ²	Regional	11.2 ²	Regional
Office	12.7 ³	Citywide	13.6 ³	Regional

Note:

1. Thresholds shown are based on the 2019 updated travel demand model and may change as the model is updated in the future.
2. Expressed in VMT per capita

Staff is also working with the Complete Streets Commission to update the TIA guidelines to include multimodal metrics and expects to return to the City Council for review and approval once that update is complete.

Impact on City Resources

Review of development projects is funded by the applicants and considered part of the baseline staff workload. No additional resources are being requested at this time. Professional services resources are anticipated to be required to develop multimodal metrics for inclusion in the TIA guidelines, and staff anticipates incorporating that request into the fiscal year 2022-23 budget proposal.

Environmental Review

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

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. Draft TIA guidelines modifications – tracked changes

Report prepared by:
 Kristiann Choy, 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 TO
ADOPT UPDATED TRANSPORTATION IMPACT GUIDELINES**

WHEREAS, on June 23, 2020, the City Council approved adding vehicle miles traveled (VMT) thresholds and methodology to the Transportation Impact Analysis (TIA) Guidelines in order to comply with Senate Bill (SB) 743; and,

WHEREAS, the City uses the VMT thresholds to determine whether a transportation impact is significant under the California Environmental Quality Act (CEQA); and,

WHEREAS, the City's VMT thresholds were developed according to guidance from the Governor's Office of Planning and Research (OPR), which recommended using efficiency metrics such as VMT per capita and VMT per employee in order to assess impacts of residential and commercial development, respectively; and,

WHEREAS, the land uses within City's travel demand model were recently updated to 2019 conditions and validated to 2019 traffic counts resulting in updated average vehicle miles traveled calculations; and,

WHEREAS, updates to the City's TIA Guidelines include using the nine county Bay Area regional averages for both VMT per capita and VMT per employee, noting that the thresholds are set at 15 percent below the regional averages provided by City's latest travel demand model at any pertinent time, and making other minor language clarifications and corrections; and,

WHEREAS, 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.

NOW, THEREFORE BE IT RESOLVED, that the City Council of Menlo Park does hereby repeal any prior versions of the TIA Guidelines and adopt the updated TIA Guidelines, attached hereto and incorporated herein by this reference as Exhibit A.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Judi A. Herren, City Clerk

Exhibits

A. Transportation Impact Analysis Guidelines

TRANSPORTATION IMPACT ANALYSIS GUIDELINES

Public Works
701 Laurel St., Menlo Park, CA 94025
City Council Procedure #CC-20-012



Purpose
To define guidelines for analysis of development or capital projects related to transportation on local streets, pedestrian, bicycle and transit circulation.
Authority
This policy sets forth the guidelines (methods, standards, and thresholds of significance) to conduct a TIA for a development or capital project to ensure that a thorough transportation analysis occurs for all projects that might result in impacts under the California Environmental Quality Act and in conformance with the City's General Plan.
Background
<p>Development and capital projects wishing to obtain approval need to satisfy a wide array of state and local requirements, including but not limited to full disclosure of the potential environmental impacts of the project. Possible environmental impacts include but are not limited to noise, air quality, greenhouse gas emissions and transportation. For purposes of disclosing potential transportation impacts, projects in the City of Menlo Park has adopted the City's TIA guidelines to ensure compliance with both state and local requirements.</p> <p>Senate Bill (SB) 743 required the Governor's Office of Planning and Research (OPR) to establish a new metric for identifying and mitigating transportation impacts within CEQA in an effort to meet the State's goals to reduce greenhouse gas (GHG) emissions, encourage infill development, and improve public health through more active transportation. OPR identified vehicle miles travelled (VMT) as the required transportation metric and beginning July 1, 2020, VMT (not level of service (LOS)) is the legally required threshold for transportation impacts pursuant to CEQA. OPR has identified recommendations regarding assessment of VMT and thresholds of significance, but the City may adopt local metrics and thresholds.</p>
Policies and procedures
<p>Projects shall analyze both Vehicle Miles Travelled (VMT) and Level of Service (LOS) transportation metrics independently using the methodologies outlined below, except those meeting the exemption criteria. Only the VMT impacts and safety hazards can be considered for transportation impacts under CEQA.</p> <p><u>Exemption Criteria</u> The exemption criteria are illustrated in Attachment A.</p> <p>The following projects would generally be exempt from carrying out VMT and LOS analysis:</p> <ol style="list-style-type: none"> 1. Projects generating less than 100 vehicle trips/day 2. Local servicing retail projects and other commercial projects where the total square footage is 10,000 square feet or less 3. Residential or office developments located in a low VMT area (defined below) and within ½ mile of an existing "major transit stop" or within ½ mile of a "high-quality transit corridor" 4. Affordable housing developments with 100% affordable units, either in a low VMT area or within ½ mile of an existing major transit stop or within ½ mile of a high-quality transit corridor 5. Local serving public facilities where the total new or added square footage is 10,000 square feet or less, such as libraries, police stations, fire stations, or parks. Facility type and size outside the description shall provide evidence of local serving status to City satisfaction. 6. Projects in compliance with the El Camino Real and Downtown Specific Plan <p>"Major transit stop" means an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. A "high-quality transit corridor" means a fixed bus route with service intervals no longer than 15 minutes during peak commute hours.</p> <p>Local serving retail projects where the total square footage is 50,000 square feet or less would be exempt from carrying out VMT analysis.</p>

All other projects involving a change of use and/or new construction will be required to submit a TIA report performed by a qualified consultant selected by the City and paid for by the project applicant.

Report Outline

For any project that is not exempt, the TIA report shall include the following:

1. Executive Summary
2. Introduction
 - Project Description
 - Study Scope
3. Existing Conditions – Conditions should be described based upon the most recent count data and include the following:
 - Description of existing street system serving the site (Number of lanes, classification, etc.)
 - Description of VMT (definition and methods)
 - Existing traffic volumes – ADT's and AM & PM peak hours (Figure to be included in report)
 - Existing levels of service – AM & PM (Table to be included in report)
 - Public transit (Service providers to the area)
 - On and off-street parking conditions/availability
 - Pedestrian and bicycling conditions in the project area
4. VMT analysis
 - A. To determine the appropriate VMT analysis tool (e.g., C/CAG VMT sketch model or City's travel demand model), refer to Attachment B.
 - B. To determine if the project is located in a low VMT area, refer to the City's online mapping tool for average VMT values in the applicable traffic analysis zone (TAZ): <http://menlopark.org/vmtzone>.
 - C. Significance Criteria

A project is considered to have a significant impact on VMT if the project's VMT exceeds the following threshold values:

 - Residential: 15% below the regional average VMT per resident as estimated by the most recent City travel demand model
 - Office: 15% below the regional average VMT per employee as estimated by the most recent City travel demand model
 - Retail, hotel, school, and transportation projects: a net increase in total City VMT
 - Mixed use projects: components are analyzed independently against the appropriate threshold
 - Other: Public Works Director or designee will provide direction on a case-by-case basis
 - D. Cumulative VMT Analysis

Projects that are assessed using a total VMT threshold (i.e. retail, hotel, school, and transportation) and require a general plan or area plan/specific plan amendment for increased density or change in circulation that would affect regional travel patterns must evaluate cumulative VMT impacts according to the same thresholds as identified above in significance criteria.
5. Mitigation for Exceeding VMT Significance Criteria
 - A. Projects that exceed the VMT significance criteria as defined above must demonstrate that they can reduce their VMT to below the threshold values using a mixture of trip reduction measures and transportation demand management (TDM) strategies in order to be reduce their impacts to less than significant. TDM strategies work by offering a wider range of transportation options to users of the development. Projects may select strategies from "Quantifying Greenhouse Gas Mitigation Measures" report by the California Air Pollution Control Officers Association (CAPCOA), or other peer-reviewed publications as newer data becomes available, including but not limited to:
 - Transportation Demand Management: commute trip reduction program, transit subsidies, parking cash-out
 - Parking Management: unbundled parking, pricing
 - Transit improvements: proximity/access improvements, increased service frequency
 - Active Transportation Projects: pedestrian & bicycle networks, traffic calming
 - B. All measures must first be discussed with the City Transportation Division before they are included in the report. Consultant shall identify and submit supporting documents for selected TDM strategies and mitigation measures for City review and approval.
6. Near Term LOS Analysis – Near Term conditions without project should be discussed using the most recent near term traffic counts and information. Project traffic should then be added to the near term traffic counts. If the project build-out is beyond the near term data, future conditions should be projected to the first year of

assumed project occupancy. A supplemental list of planned and or/approved projects will be provided to the consultants for inclusion in the analysis process. For large projects of regional magnitude (projects generating 100 or more trips during peak hours), the consultants will also analyze the impacts of the project for under cumulative conditions.

- A. Description of new or planned changes to the street system serving the site including changes in on-street parking
- B. Near term volumes – ADT's and AM & PM peak hours
 - List project trip generation rates
 - Discuss trip distribution
 - Discuss impact of project traffic on intersections in the project vicinity
- C. Near term levels of service – AM & PM for both near term and near term plus project analysis. Table to be included in report. Also a comparison table of existing conditions including a column showing the difference in seconds of delay between existing, near term conditions and near term conditions with project and percent of increase.

7. LOS Analysis

- A. Discuss impacts of near term conditions and near term conditions with project, illustrated in the Intersection Compliance flowchart (Attachment C).
 - a. A project is considered potentially non-compliant with local policies if the addition of project traffic causes an intersection on a collector street operating at LOS "A" through "C" to operate at an unacceptable level (LOS "D", "E" or "F") or to have an increase of 23 seconds or greater in average vehicle delay, whichever comes first. Potential non-compliance shall also include a project that causes an intersection on arterial streets or local approaches to State controlled signalized intersections operating at LOS "A" through "D" to operate at an unacceptable level (LOS "E" or "F") or have an increase of 23 seconds or greater in average vehicle delay, whichever comes first.
 - b. A project is also considered potentially non-compliant if the addition of project traffic causes an increase of more than 0.8 seconds of average delay to vehicles on all critical movements for intersections operating at a near term LOS "D" through "F" for collector streets and at a near term LOS "E" or "F" for arterial streets. For local approaches to State controlled signalized intersections, a project is considered to be potentially non-compliant if the addition of project traffic causes an increase of more than 0.8 seconds of delay to vehicles on the most critical movements for intersections operating at a near term LOS "E" or "F".
- B. In certain circumstances as determined by the Public Works Director or designee, analysis may be necessary for impacts on City street segments. If any of the thresholds listed below are exceeded, the analysis should make a recommendation as to whether the traffic impact is considered potentially non-compliant, illustrated in the Roadway Compliance flowchart (Attachment D).
 - a. On Main Street, Avenue-Mixed Use, and Avenue-Neighborhood (FHWA equivalent: minor arterial streets), a traffic impact may be considered potentially non-compliant if the existing Average Daily Traffic Volume (ADT) is: (1) greater than 18,000 (90% of capacity), and there is a net increase of 100 trips or more in ADT due to project related traffic; (2) the ADT is greater than 10,000 (50% of capacity) but less than 18,000, and the project related traffic increases the ADT by 12.5% or the ADT becomes 18,000 or more; or (3) the ADT is less than 10,000, and the project related traffic increases the ADT by 25%.
 - b. On Mixed-Use Collector and Neighborhood Collector (FHWA equivalent: collector streets), a traffic impact may be considered potentially non-compliant if the existing Daily Traffic Volume (ADT) is: (1) greater than 9,000 (90% of capacity), and there is a net increase of 50 trips or more in ADT due to project related traffic; (2) the ADT is greater than 5,000 (50% of capacity) but less than 9,000, and the project related traffic increases the ADT by 12.5% or the ADT becomes 9,000 or more; or (3) the ADT is less than 5,000, and the project related traffic increases the ADT by 25%.
 - c. On Neighborhood Connector, Bicycle Boulevard, and Local Access (FHWA equivalent: local streets), a traffic impact may be considered potentially non-compliant if the existing Daily Traffic Volume (ADT) is: (1) greater than 1,350 (90% of capacity), and there is a net increase of 25 trips or more in ADT due to project related traffic; (2) the ADT is greater than 750 (50% of capacity) but less than 1,350, and the project related traffic increases the ADT by 12.5% or the ADT becomes 1,350; or (3) the ADT is less than 750, and the project related traffic increases the ADT by 25%.
- C. Discuss project site circulation and access and identify any deficiencies.

- D. Discuss compliance of project site parking with adopted City code including loading and disabled spaces. If a shared parking arrangement is proposed, an analysis of the adequacy of this aspect shall be provided. Discuss any off-site parking impacts (such as neighborhood parking intrusion) of the project.
- E. Analyze project in relation to relevant policies of the Circulation Element of the General Plan.
- F. Analyze potential cut-through traffic generated by the project impacting other City neighborhoods.
- G. Pedestrian conditions and bicycle access, including safety issues, should be discussed.
- H. Analyze project using the requirements outlined in the San Mateo County Congestion Management Plan Land Use Analysis Program guidelines, if applicable.

8. Improvement Measures for Circulation or Access Deficiencies

- A. Discuss specific measures in detail to address non-compliance with local policies, which may occur as a result of the addition of project traffic (provide table comparing before and after improvement measure). Analysis shall focus on improving circulation or access deficiencies to comply with local policies. All feasible and reasonable measures that could reduce circulation or access deficiencies should be identified, whether or not they are caused by the project. The goal of these measures should be such that the project is in compliance with local policies. Measures may include roadway improvements, operational changes, TDM or Transportation Systems Management measures, or changes in the project. If roadway or other operational measures would not achieve this objective, the consultant shall identify a reduction in the project size, which would with other measures, make the project compliant with local policies. All measures must first be discussed with the City Transportation Division before they are included in the report.
- B. Discuss possible measures to address future traffic conditions with the project. All feasible and reasonable measures that would make the project compliant with local policies shall be identified. Measures should be designed to address the project's share of non-compliance. Measures that should be jointly required of the project and any other on-going related projects in a related geographical area should also be identified, as applicable.
- C. Discuss possible measures to address any site circulation or access deficiencies.
- D. Note that if roadway improvements include capacity increases for vehicular traffic (e.g. adding lanes or turn lanes), additional VMT analysis may be required to determine if the measure would increase VMT. Increasing VMT is considered a significant impact under SB 743.
- E. Discuss possible measures to address any parking deficiencies.
- F. Discuss possible measures to address any impacts on pedestrian amenities, bicycle access, safety and bus/shuttle service.

9. Alternatives

In the event any potential non-compliance with local policies is identified in the analysis, alternatives to the proposed project shall be evaluated or considered to determine what the impacts of an alternative project or use might be. The alternatives to be considered shall be determined in consultation with the Community Development Director and the Public Works Director or designee.

10. Summary and Conclusions

Upon receipt by the City of a TIA report indicating that a project may have potentially significant traffic impacts related to VMT or safety hazards, the applicant shall consult with the Planning Division to determine whether a negative declaration, mitigated negative declaration or an EIR is most appropriate for the project.

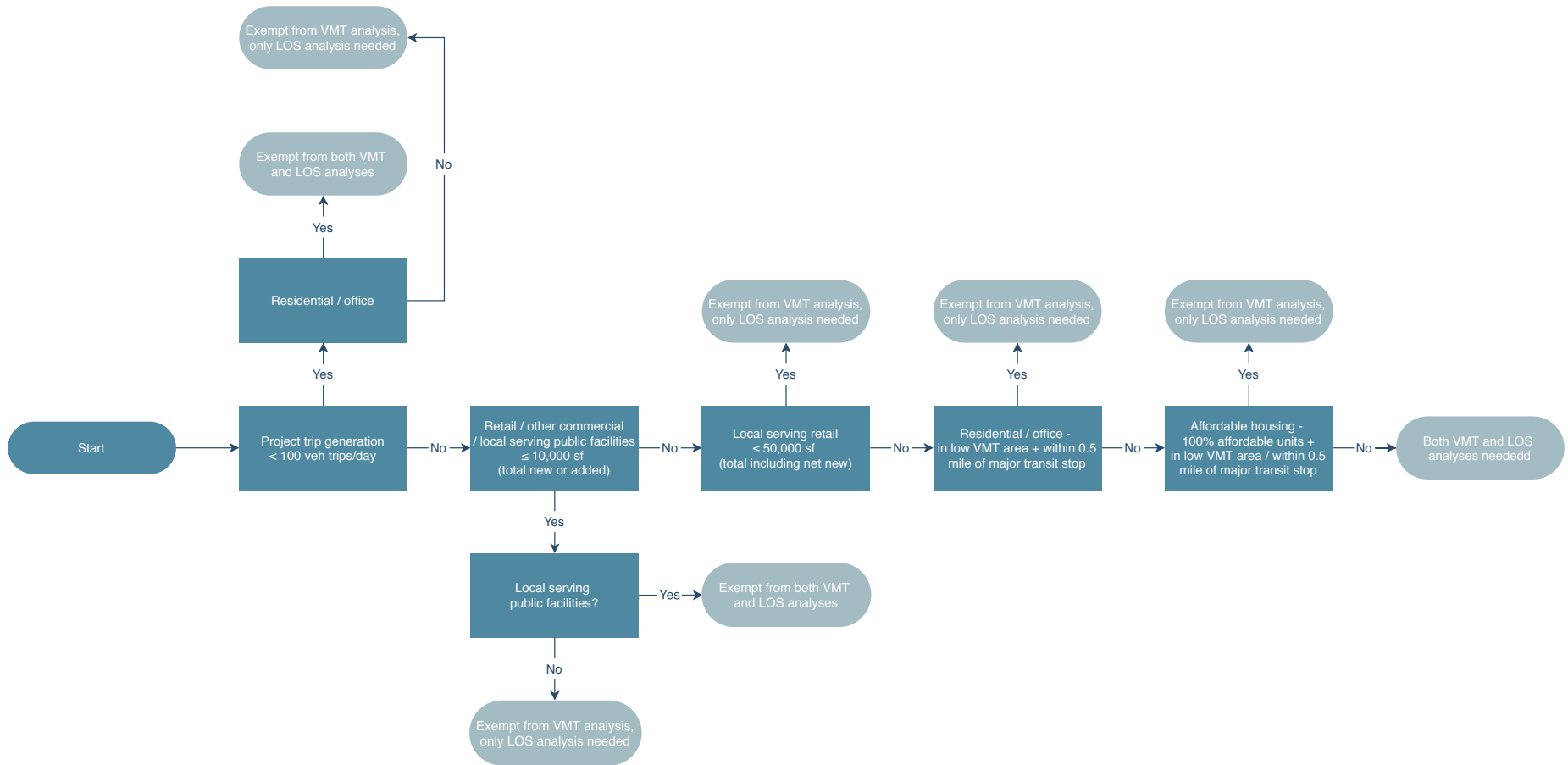
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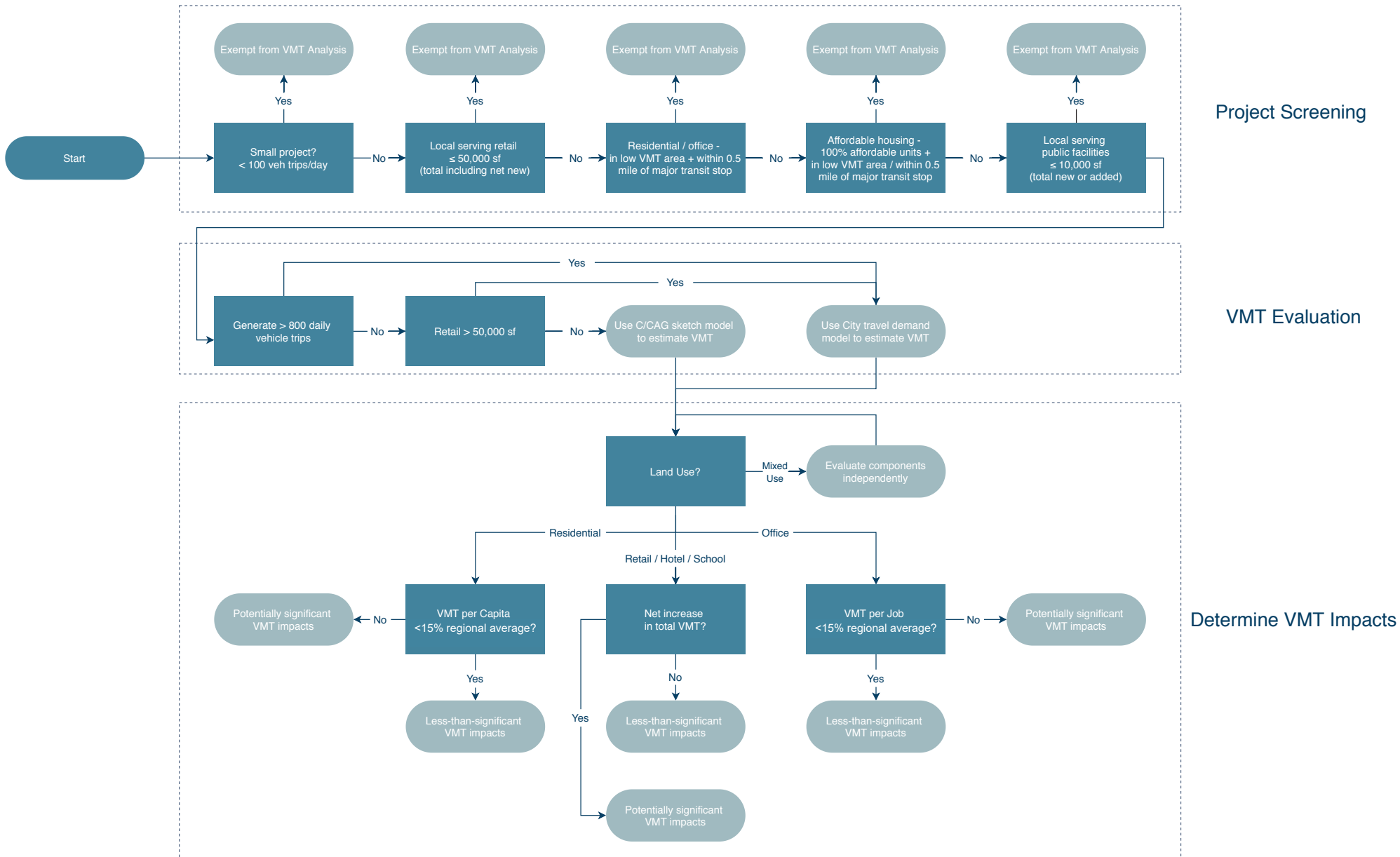
1. The Highway Capacity Manual (HCM), latest version shall be used for intersection analysis. The consultant shall use the Citywide Transportation model with the HCM analysis. The City utilizes a VISTRO analysis model for transportation analysis.
2. The LOS study boundary should include intersections expected to add ten or more peak hour project trips per travel lane and roadway segments likely to generate project impact based on existing demand.
3. The most recent Vistro files shall be used for all information regarding existing and near term conditions.
4. Traffic counts that may be required beyond the counts contained in the Vistro files shall be less than 6 months old unless approved by the Public Works Director or designee.
5. The consultant shall submit proposed assumptions to the Public Works Director or designee for review and approval prior to commencement of the Analysis relating to the following:
 - trip rates
 - trip distribution
 - trip assignment
 - study intersections
 - roadways to be analyzed
6. The consultant shall submit all traffic count sheets in pdf format to the City's Transportation Division.

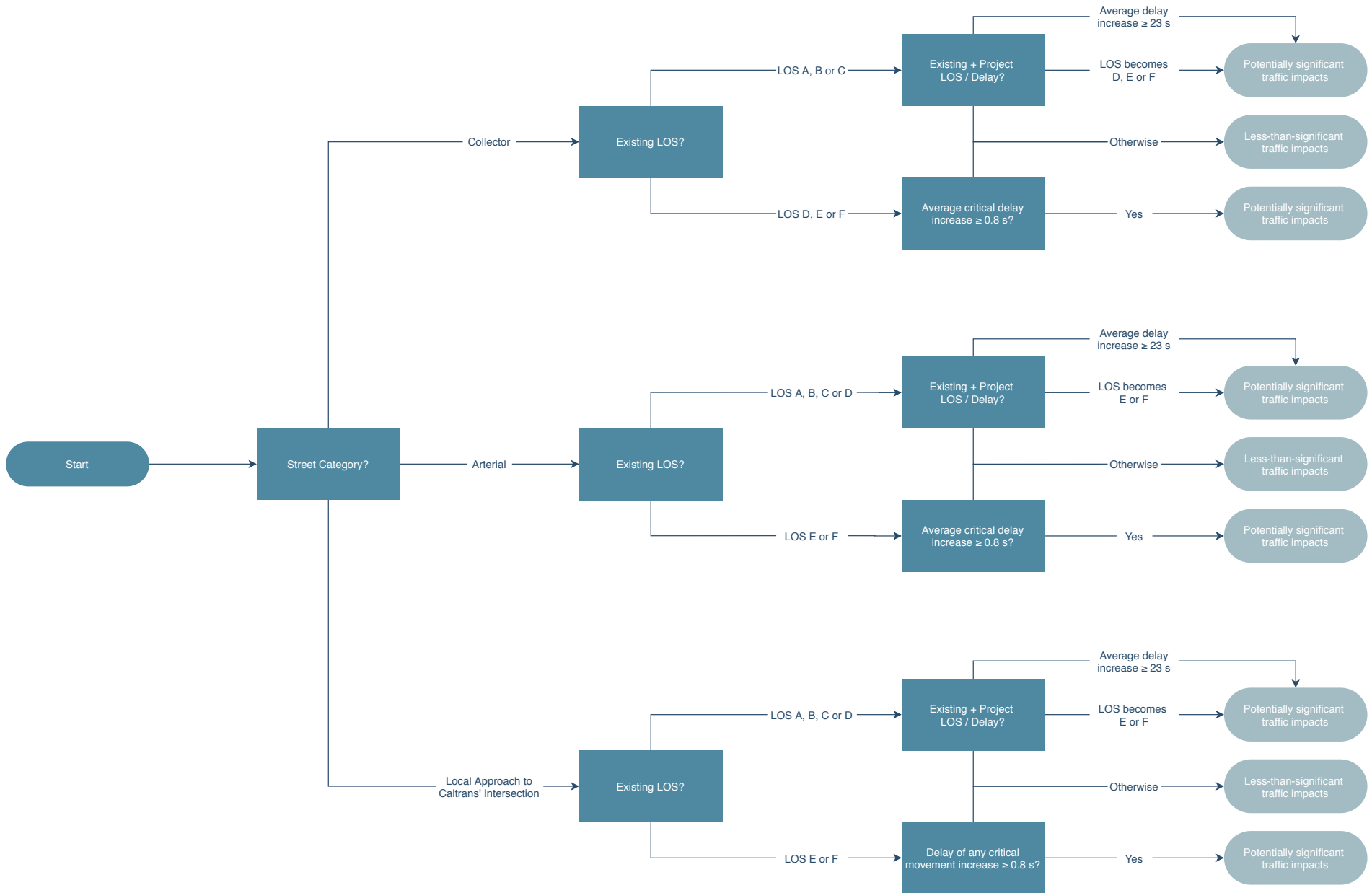
7. Figures of existing and any proposed intersection configurations should be provided in the appendix.
8. Trip generation rates from Institute of Transportation Engineer's (ITE) publication, "Trip Generation", latest version should be used unless local or project-specific data is provided and approved by the Public Works Director or designee.
9. Street widening and on-street parking removal are measures which may be technically feasible, but which are generally considered undesirable. If such measures appear potentially appropriate to the consultant, they should consult the Transportation Division in preparing the analysis and improvement measure recommendations. If such measures are to be proposed, alternate measures, which would be equally effective, should also be identified. These measures may result in secondary impacts and be subjected to additional VMT analysis.
10. Existing uses at the site, which would be removed as part of the project, may be deducted from the calculation of the project traffic based on their traffic distribution patterns.
11. Refer to the San Mateo County Congestion Management Program (CMP) Land Use Impact Analysis Program guidelines for performing CMP analysis. Consistency with the CMP is based on LOS and not considered an impact under CEQA.
12. The "Quantifying Greenhouse Gas Mitigation Measures" report by the California Air Pollution Control Officers Association (CAPCOA), or other peer-reviewed publications, shall be used to determine the efficacy of TDM measures and land use context on reducing VMT.

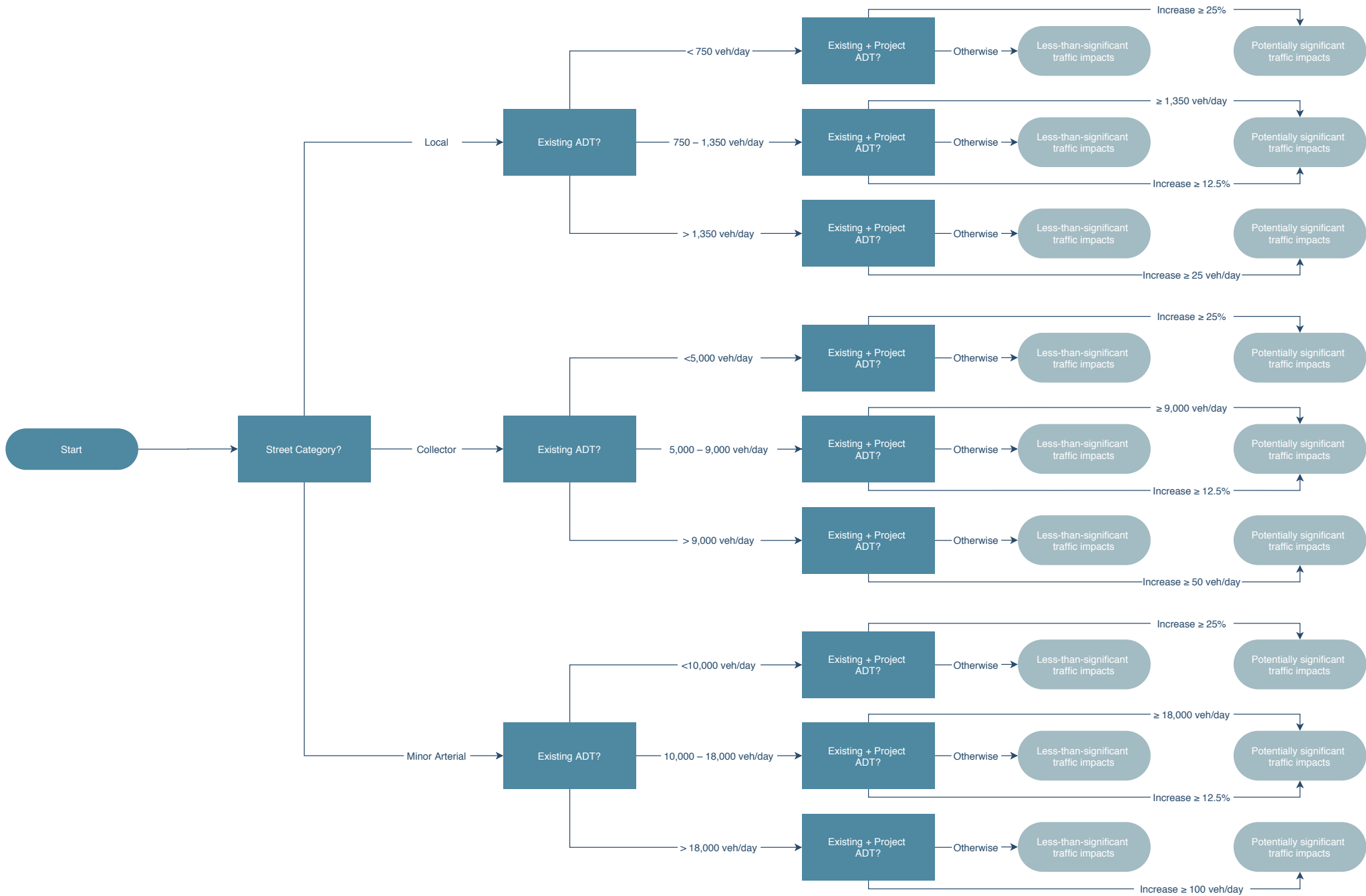
Legislative History

Action	Date	Notes
Adoption by City Council motion	6/23/2020	Update TIA guidelines to be consistent with SB 743 and adopt VMT thresholds
Revision by City Council	1/11/2022	Technical updates and clarification of calculation of VMT thresholds.









TRANSPORTATION IMPACT ANALYSIS GUIDELINES

Public Works
701 Laurel St., Menlo Park, CA 94025
City Council Procedure #CC-20-012



<p>Purpose</p> <p>To define guidelines for analysis of development or capital projects related to transportation on local streets, pedestrian, bicycle and transit circulation.</p>
<p>Authority</p> <p>This policy sets forth the guidelines (methods, standards, and thresholds of significance) to conduct a TIA for a development or capital project to ensure that a thorough transportation analysis occurs for all projects that might result in impacts under the California Environmental Quality Act and in conformance with the City's General Plan.</p>
<p>Background</p> <p>Development and capital projects wishing to obtain approval need to satisfy a wide array of state and local requirements, including but not limited to full disclosure of the potential environmental impacts of the project. Possible environmental impacts include but are not limited to noise, air quality, greenhouse gas emissions and transportation. For purposes of disclosing potential transportation impacts, projects in the City of Menlo Park has adopted the City's TIA guidelines to ensure compliance with both state and local requirements.</p> <p>Senate Bill (SB) 743 required the Governor's Office of Planning and Research (OPR) to establish a new metric for identifying and mitigating transportation impacts within CEQA in an effort to meet the State's goals to reduce greenhouse gas (GHG) emissions, encourage infill development, and improve public health through more active transportation. OPR identified vehicle miles travelled (VMT) as the required transportation metric and beginning July 1, 2020, VMT (not level of service (LOS)) is the legally required threshold for transportation impacts pursuant to CEQA. OPR has identified recommendations regarding assessment of VMT and thresholds of significance, but the City may adopt local metrics and thresholds. Adoption of a local VMT threshold requires City Council adoption; the City Council approved the VMT thresholds for incorporation into these updated TIA guidelines on June 16, 2020.</p>
<p>Policies and procedures</p> <p>Projects shall analyze both Vehicle Miles Travelled (VMT) and Level of Service (LOS) transportation metrics independently using the methodologies outlined below, except those meeting the exemption criteria. Only the VMT impacts and safety hazards can be considered for transportation impacts under CEQA.</p>
<p>Exemption Criteria</p> <p>The exemption criteria are illustrated in Attachment A.</p> <p>The following projects would generally be exempt from carrying out VMT and LOS analysis:</p> <ol style="list-style-type: none"> 1. Projects generating less than 100 vehicle trips/day 2. Local servicing retail projects and other commercial projects where the total square footage is 10,000 square feet or less 3. Residential or office developments located in a low VMT area (defined below) and within ½ mile of an existing "major transit stop" or within ½ mile of a "high-quality transit corridor" 4. Affordable housing developments with 100% affordable units, either in a low VMT area or within ½ mile of an existing major transit stop or within ½ mile of a high-quality transit corridor 5. Local serving public facilities where the total new or added square footage is 10,000 square feet or less, such as libraries, police stations, fire stations, or parks. Facility type and size outside the description shall provide evidence of local serving status to City satisfaction. 6. Projects in compliance with the El Camino Real and Downtown Specific Plan <p>"Major transit stop" means an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. A "high-quality transit corridor" means a fixed bus route with service intervals no longer than 15 minutes during peak commute hours.</p> <p>Local serving retail projects where the total square footage is 50,000 square feet or less would be exempt from carrying out VMT analysis.</p>

All other projects involving a change of use and/or new construction will be required to submit a TIA report performed by a qualified consultant selected by the City and paid for by the project applicant.

Report Outline

For any project that is not exempt, the TIA report shall include the following:

1. Executive Summary
2. Introduction
 - Project Description
 - Study Scope
3. Existing Conditions – Conditions should be described based upon ~~information found in~~ the most recent count data and include the following: Circulation System Assessment (CSA) document when applicable. The CSA existing traffic counts and information should be used as existing conditions.
 - Description of existing street system serving the site (Number of lanes, classification, etc.)
 - Description of VMT (definition and methods)
 - ~~ECSA~~ existing traffic volumes – ADT's and AM & PM peak hours (Figure to be included in report)
 - ~~CSA~~ Existing levels of service – AM & PM (Table to be included in report)
 - Public transit (Service providers to the area)
 - On and off-street parking conditions/availability
 - Pedestrian and bicycling conditions in the project area
4. VMT analysis
 - A. To determine the appropriate VMT analysis tool (e.g., C/CAG VMT sketch model or City's travel demand model), refer to Attachment B.
 - B. To determine if the project is located in a low VMT area, refer to the City's online mapping tool for average VMT values in the applicable traffic analysis zone (TAZ): <http://menlopark.org/vmtzone>.
 - C. Significance Criteria

A project is considered to have a significant impact on VMT if the project's VMT exceeds the following threshold values:

 - Residential: 15% below the regional average VMT per resident as estimated by the most recent City travel demand model ~~13.7 VMT per capita¹~~
 - Office: 15% below the regional average VMT per employee as estimated by the most recent City travel demand model ~~12.7 VMT per employee²~~
 - Retail, hotel, school, and transportation projects: a net increase in total City VMT
 - Mixed use projects: components are analyzed independently against the appropriate threshold
 - Other: Public Works Director or designee will provide direction on a case-by-case basis
 - ~~Note:~~
 1. ~~Threshold is defined as 15% below the regional average VMT per resident of 16.1.~~
 2. ~~Threshold is defined as 15% below the citywide average VMT per employee of 14.9.~~
 - D. Cumulative VMT Analysis

Projects that are assessed using a total VMT threshold (i.e. retail, hotel, school, and transportation) and requiring a general plan or area plan/specific plan amendment and use the City's travel demand model for increased density or change in circulation that would affect regional travel patterns must evaluate cumulative VMT impacts according to the same thresholds as identified above in significance criteria.
5. Mitigation for Exceeding VMT Significance Criteria
 - A. Projects that exceed the VMT significance criteria as defined above must demonstrate that they can reduce their VMT to below the threshold values ~~using a mixture of trip reduction measures and transportation demand management (TDM) strategies~~ in order to be reduce their impacts to less than significant. TDM strategies work by offering a wider range of transportation options to users of the development. Projects may select strategies from "Quantifying Greenhouse Gas Mitigation Measures" report by the California Air Pollution Control Officers Association (CAPCOA), or other peer-reviewed publications as newer data becomes available, including but not limited to:
 - Transportation Demand Management: commute trip reduction program, transit subsidies, parking cash-out
 - Parking Management: unbundled parking, pricing
 - Transit improvements: proximity/access improvements, increased service frequency
 - Active Transportation Projects: pedestrian & bicycle networks, traffic calming

B. All measures must first be discussed with the City Transportation Division before they are included in the report. Consultant shall identify and submit supporting documents for selected TDM strategies and mitigation measures for City review and approval.

~~C. As determined by the Public Works Director or designee, development of a monitoring program may be requested.~~

6. Near Term LOS Analysis – Near Term conditions without project should be discussed using the most recent ~~CSA~~ near term traffic counts and information. Project traffic should then be added to the ~~CSA~~ near term traffic counts. If the project build-out is beyond the ~~CSA~~ near term data, future conditions should be projected to the first year of assumed project occupancy. A supplemental list of planned and or/approved projects will be provided to the consultants for inclusion in the analysis process. For large projects of regional magnitude (projects generating 100 or more trips during peak hours), the consultants will also analyze the impacts of the project for under cumulative a span of ten years from the existing conditions.
- A. Description of new or planned changes to the street system serving the site including changes in on-street parking
 - B. Near term volumes – ADT's and AM & PM peak hours
 - List project trip generation rates
 - Discuss trip distribution
 - Discuss impact of project traffic on intersections in the project vicinity
 - C. Near term levels of service – AM & PM for both near term and near term plus project analysis. Table to be included in report. Also a comparison table of existing conditions including a column showing the difference in seconds of delay between existing, near term conditions and near term conditions with project and percent of increase.
7. LOS Analysis
- A. Discuss impacts of ~~CSA~~ near term conditions and ~~CSA~~ near term conditions with project, illustrated in the Intersection Compliance flowchart (Attachment C).
 - a. A project is considered potentially non-compliant with local policies if the addition of project traffic causes an intersection on a collector street operating at LOS "A" through "C" to operate at an unacceptable level (LOS "D", "E" or "F") or to have an increase of 23 seconds or greater in average vehicle delay, whichever comes first. Potential non-compliance shall also include a project that causes an intersection on arterial streets or local approaches to State controlled signalized intersections operating at LOS "A" through "D" to operate at an unacceptable level (LOS "E" or "F") or have an increase of 23 seconds or greater in average vehicle delay, whichever comes first.
 - b. A project is also considered potentially non-compliant if the addition of project traffic causes an increase of more than 0.8 seconds of average delay to vehicles on all critical movements for intersections operating at a near term LOS "D" through "F" for collector streets and at a near term LOS "E" or "F" for arterial streets. For local approaches to State controlled signalized intersections, a project is considered to be potentially non-compliant if the addition of project traffic causes an increase of more than 0.8 seconds of delay to vehicles on the most critical movements for intersections operating at a near term LOS "E" or "F".
 - B. In certain circumstances as determined by the Public Works Director or designee, analysis may be necessary for impacts on City street segments. If any of the thresholds listed below are exceeded, the analysis should make a recommendation as to whether the traffic impact is considered potentially non-compliant, illustrated in the Roadway Compliance flowchart (Attachment D).
 - a. On Main Street, Avenue-Mixed Use, and Avenue-Neighborhood (FHWA equivalent: minor arterial streets), a traffic impact may be considered potentially non-compliant if the existing Average Daily Traffic Volume (ADT) is: (1) greater than 18,000 (90% of capacity), and there is a net increase of 100 trips or more in ADT due to project related traffic; (2) the ADT is greater than 10,000 (50% of capacity) but less than 18,000, and the project related traffic increases the ADT by 12.5% or the ADT becomes 18,000 or more; or (3) the ADT is less than 10,000, and the project related traffic increases the ADT by 25%.
 - b. On Mixed-Use Collector and Neighborhood Collector (FHWA equivalent: collector streets), a traffic impact may be considered potentially non-compliant if the existing Daily Traffic Volume (ADT) is: (1) greater than 9,000 (90% of capacity), and there is a net increase of 50 trips or more in ADT due to project related traffic; (2) the ADT is greater than 5,000 (50% of capacity) but less than 9,000, and the project related traffic increases the ADT by 12.5% or the ADT becomes 9,000 or more; or (3) the ADT is less than 5,000, and the project related traffic increases the ADT by 25%.
 - c. On Neighborhood Connector, Bicycle Boulevard, and Local Access (FHWA equivalent: local streets), a traffic impact may be considered potentially non-compliant if the existing Daily Traffic Volume (ADT) is:

(1) greater than 1,350 (90% of capacity), and there is a net increase of 25 trips or more in ADT due to project related traffic; (2) the ADT is greater than 750 (50% of capacity) but less than 1,350, and the project related traffic increases the ADT by 12.5% or the ADT becomes 1,350; or (3) the ADT is less than 750, and the project related traffic increases the ADT by 25%.

- C. Discuss project site circulation and access and identify any deficiencies.
 - D. Discuss compliance of project site parking with adopted City code including loading and disabled spaces. If a shared parking arrangement is proposed, an analysis of the adequacy of this aspect shall be provided. Discuss any off-site parking impacts (such as neighborhood parking intrusion) of the project.
 - E. Analyze project in relation to relevant policies of the Circulation Element of the General Plan.
 - F. Analyze potential cut-through traffic generated by the project impacting other City neighborhoods.
 - G. Pedestrian conditions and bicycle access, including safety issues, should be discussed.
 - H. Analyze project using the requirements outlined in the San Mateo County Congestion Management Plan Land Use Analysis Program guidelines, if applicable.
8. Improvement Measures for Circulation or Access Deficiencies
- A. Discuss specific measures in detail to address non-compliance with local policies, which may occur as a result of the addition of project traffic (provide table comparing before and after improvement measure). Analysis shall focus on improving circulation or access deficiencies to comply with local policies. All feasible and reasonable measures that could reduce circulation or access deficiencies should be identified, whether or not they are caused by the project. The goal of these measures should be such that the project is in compliance with local policies. Measures may include roadway improvements, operational changes, TDM or Transportation Systems Management measures, or changes in the project. If roadway or other operational measures would not achieve this objective, the consultant shall identify a reduction in the project size, which would with other measures, make the project compliant with local policies. All measures must first be discussed with the City Transportation Division before they are included in the report.
 - B. Discuss possible measures to address future traffic conditions with the project. All feasible and reasonable measures that would make the project compliant with local policies shall be identified. Measures should be designed to address the project's share of non-compliance. Measures that should be jointly required of the project and any other on-going related projects in a related geographical area should also be identified, as applicable.
 - C. Discuss possible measures to address any site circulation or access deficiencies.
 - D. Note that if roadway improvements include capacity increases for vehicular traffic (e.g. adding lanes or turn lanes), additional VMT analysis may be required to determine if the measure would increase VMT. Increasing VMT is considered a significant impact under SB 743.
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9. Alternatives
- In the event any potentially non-compliance with local policies is/are identified in the analysis, alternatives to the proposed project shall be evaluated or considered to determine what the impacts of an alternative project or use might be. The alternatives to be considered shall be determined in consultation with the Community Development Director and the Public Works Director or designee.
10. Summary and Conclusions
- Upon receipt by the City of a TIA report indicating that a project may have potentially significant traffic impacts related to VMT or safety hazards, the applicant shall have consult with the Planning Division the option of proceeding directly with the preparation of an EIR in accordance with the City's procedures for preparation of an EIR, or requesting a determination by the City Council as to determine whether a negative declaration, mitigated negative declaration or an EIR is most appropriate for the project.

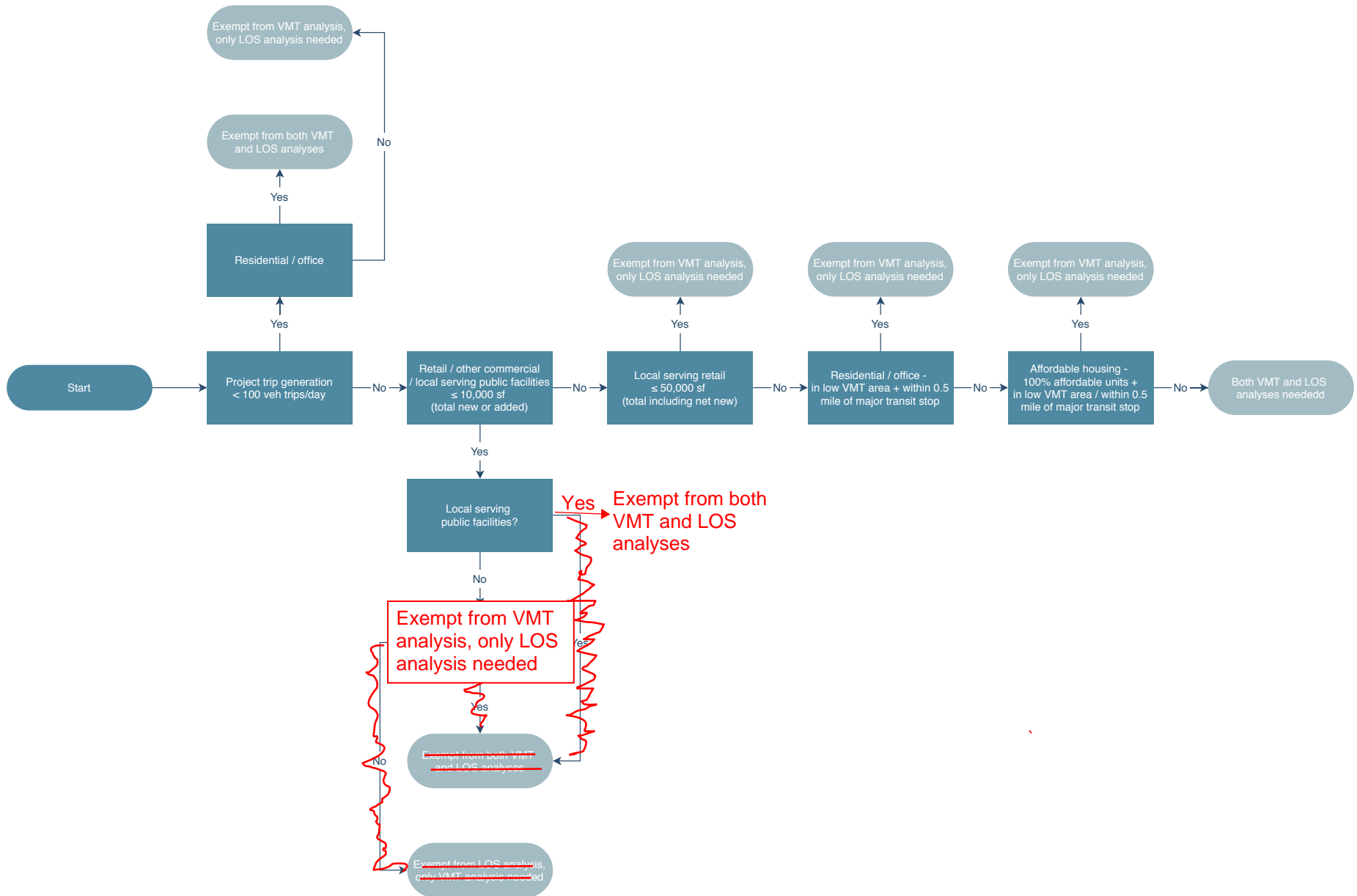
NOTES:

1. The Highway Capacity Manual (HCM), latest version shall be used for intersection analysis. The consultant shall use the Citywide Transportation model with the HCM analysis. The City utilizes a VISTRO analysis model for transportation analysis.
2. The LOS study boundary should include intersections expected to add ten or more peak hour project trips per travel lane and roadway segments likely to generate project impact based on existing demand.
3. The most recent Vistro files Circulation System Assessment (CSA) shall be used for all information regarding existing and near term conditions.

4. Traffic counts that may be required beyond the counts contained in the [Vistro files -CSA document](#) shall be less than 6 months old [unless approved by the Public Works Director or designee](#).
5. The consultant shall submit proposed assumptions to the Public Works Director or designee for review and approval prior to commencement of the Analysis relating to the following:
 - trip rates
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6. The consultant shall submit all traffic count sheets in pdf format to the City's Transportation Division.
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12. The "Quantifying Greenhouse Gas Mitigation Measures" report by the California Air Pollution Control Officers Association (CAPCOA), or other peer-reviewed publications, shall be used to determine the efficacy of TDM measures and land use context on reducing VMT.

Legislative History

Action	Date	Notes
Adoption by City Council motion	6/2346/2020	Update TIA guidelines to be consistent with SB 743 and adopt VMT thresholds
Revision by City Council	1/11/2022	Technical updates and clarification of calculation of VMT thresholds.



TRANSPORTATION IMPACT ANALYSIS GUIDELINES

City Council Procedure #CC-20-012



Purpose
To define guidelines for analysis of development or capital projects related to transportation on local streets, pedestrian, bicycle and transit circulation.
Authority
This policy sets forth the guidelines (methods, standards and thresholds of significance) to conduct a transportation impact analysis (TIA) for a development or capital project to ensure that a thorough transportation analysis occurs for all projects that might result in impacts under the California Environmental Quality Act and in conformance with the City's General Plan.
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<p>Development and capital projects wishing to obtain approval need to satisfy a wide array of state and local requirements, including but not limited to full disclosure of the potential environmental impacts of the project. Possible environmental impacts include but are not limited to noise, air quality, greenhouse gas emissions and transportation. For purposes of disclosing potential transportation impacts, the City of Menlo Park has adopted TIA guidelines to ensure compliance with both state and local requirements.</p> <p>Senate Bill 743 required the Governor's Office of Planning and Research (OPR) to establish a new metric for identifying and mitigating transportation impacts within CEQA in an effort to meet the State's goals to reduce greenhouse gas (GHG) emissions, encourage infill development, and improve public health through more active transportation. OPR identified vehicle miles traveled (VMT) as the required transportation metric and beginning July 1, 2020, VMT (not level of service (LOS)) is the legally required threshold for transportation impacts pursuant to CEQA. OPR has identified recommendations regarding assessment of VMT and thresholds of significance, but the City may adopt local metrics and thresholds. Adoption of a local VMT threshold requires City Council approval; the City Council approved the VMT thresholds for incorporation into these updated TIA guidelines on June 16, 2020.</p>
Policies and procedures
<p>Projects shall analyze both vehicle miles traveled (VMT) and level of service (LOS) transportation metrics independently using the methodologies outlined below, except those meeting the exemption criteria.</p> <p><u>Exemption criteria</u> The exemption criteria are illustrated in Attachment A.</p> <p>The following projects would generally be exempt from carrying out VMT and LOS analysis:</p> <ol style="list-style-type: none">1. Projects generating less than 100 vehicle trips/day2. Local servicing retail projects and other commercial projects where the total square footage is 10,000 square feet or less3. Residential or office developments located in a low VMT area (defined below) and within ½ mile of an existing "major transit stop" or within ½ mile of a "high-quality transit corridor"4. Affordable housing developments with 100 percent affordable units, either in a low VMT area or within ½ mile of an existing major transit stop or within ½ mile of a high-quality transit corridor5. Local serving public facilities where the total new or added square footage is 10,000 square feet or less, such as libraries, police stations, fire stations or parks. Facility type and size outside the description shall provide evidence of local serving status to City satisfaction.6. Projects in compliance with the El Camino Real and Downtown Specific Plan <p>"Major transit stop" means an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. A "high-quality transit corridor" means a fixed bus route with service intervals no longer than 15 minutes during peak commute hours.</p> <p>Local serving retail projects where the total square footage is 50,000 square feet or less would be exempt from carrying out VMT analysis.</p>

All other projects involving a change of use and/or new construction will be required to submit a TIA report performed by a qualified consultant selected by the City and paid for by the project applicant.

Report outline

For any project that is not exempt, the TIA report shall include the following:

1. Executive summary
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 - Description of VMT (definition and methods)
 - CSA existing traffic volumes – Average daily traffic volume (ADT) and AM and PM peak hours (Figure to be included in report)
 - CSA existing levels of service – AM and PM (Table to be included in report)
 - Public transit (Service providers to the area)
 - On and off-street parking conditions/availability
 - Pedestrian and bicycling conditions in the project area
4. VMT analysis
 - A. To determine the appropriate VMT analysis tool (e.g., C/CAG VMT sketch model or City's travel demand model), refer to Attachment B.
 - B. To determine if the project is located in a low VMT area, refer to the city's online mapping tool for average VMT values in the applicable traffic analysis zone (TAZ): <http://menlopark.org/vmtzone>.
 - C. Significance Criteria

A project is considered to have a significant impact on VMT if the project's VMT exceeds the following threshold values:

 - Residential: 13.7 VMT per capita¹
 - Office: 12.7 VMT per employee²
 - Retail, hotel, school and transportation projects: a net increase in total City VMT
 - Mixed use projects: components are analyzed independently against the appropriate threshold
 - Other: Public works director or designee will provide direction on a case-by-case basis
 - Note:
 1. Threshold is defined as 15 percent below the regional average VMT per resident of 16.1.
 2. Threshold is defined as 15 percent below the citywide average VMT per employee of 14.9.
 - D. Cumulative VMT analysis

Projects requiring a general plan or area plan/specific plan amendment and use the City's travel demand model must evaluate cumulative VMT impacts according to the same thresholds as identified above in significance criteria.
5. Mitigation for exceeding VMT significance criteria
 - A. Projects that exceed the VMT significance criteria as defined above must demonstrate that they can reduce their VMT to below the threshold values using a mixture of trip reduction measures and transportation demand management (TDM) strategies. TDM strategies work by offering a wider range of transportation options to user of the development. Projects may select strategies from "Quantifying Greenhouse Gas Mitigation Measures" report by the California Air Pollution Control Officers Association (CAPCOA), or other peer-reviewed publications as newer data becomes available, including but not limited to:
 - Transportation Demand Management: commute trip reduction program, transit subsidies, parking cash-out
 - Parking Management: unbundled parking, pricing
 - Transit improvements: proximity/access improvements, increased service frequency
 - Active Transportation Projects: pedestrian and bicycle networks, traffic calming
 - B. All measures must first be discussed with the City Transportation Division before they are included in the report. Consultant shall identify and submit supporting documents for selected TDM strategies and mitigation measures for City review and approval.

- C. As determined by the public works director or designee, development of a monitoring program may be requested.
6. Near-term LOS analysis – Near-term conditions without project should be discussed using the most recent CSA near-term traffic counts and information. Project traffic should then be added to the CSA near-term traffic counts. If the project build-out is beyond the CSA near-term data, future conditions should be projected to the first year of assumed project occupancy. A supplemental list of planned and or/approved projects will be provided to the consultants for inclusion in the analysis process. For large projects of regional magnitude (projects generating 100 or more trips during peak hours), the consultants will analyze the impacts of the project for a span of 10 years from the existing conditions.
- A. Description of new or planned changes to the street system serving the site including changes in on-street parking
- B. Near-term volumes – ADTs and AM and PM peak hours
- List project trip generation rates
 - Discuss trip distribution
 - Discuss impact of project traffic on intersections in the project vicinity
- C. Near-term levels of service – AM and PM for both near-term and near-term plus project analysis. Table to be included in report. Also a comparison table of existing conditions including a column showing the difference in seconds of delay between existing, near-term conditions and near-term conditions with project and percent of increase.
7. LOS Analysis
- A. Discuss impacts of CSA near-term conditions and CSA near-term conditions with project, illustrated in the Intersection Compliance flowchart (Attachment C).
- a. A project is considered potentially noncompliant with local policies if the addition of project traffic causes an intersection on a collector street operating at LOS “A” through “C” to operate at an unacceptable level (LOS “D,” “E” or “F”) or have an increase of 23 seconds or greater in average vehicle delay, whichever comes first. Potential noncompliance shall also include a project that causes an intersection on arterial streets or local approaches to State controlled signalized intersections operating at LOS “A” through “D” to operate at an unacceptable level (LOS “E” or “F”) or have an increase of 23 seconds or greater in average vehicle delay, whichever comes first.
- b. A project is also considered potentially noncompliant if the addition of project traffic causes an increase of more than 0.8 seconds of average delay to vehicles on all critical movements for intersections operating at a near-term LOS “D” through “F” for collector streets and at a near-term LOS “E” or “F” for arterial streets. For local approaches to State controlled signalized intersections, a project is considered to be potentially noncompliant if the addition of project traffic causes an increase of more than 0.8 seconds of delay to vehicles on the most critical movements for intersections operating at a near-term LOS “E” or “F.”
- B. In certain circumstances as determined by the public works director or designee, analysis may be necessary for impacts on City street segments. If any of the thresholds listed below are exceeded, the analysis should make a recommendation as to whether the traffic impact is considered potentially noncompliant, illustrated in the roadway compliance flowchart (Attachment D).
1. On Main Street, Avenue-Mixed Use and Avenue-Neighborhood (FHWA equivalent: minor arterial streets), a traffic impact may be considered potentially noncompliant if the existing ADT is: (1) greater than 18,000 (90 percent of capacity), and there is a net increase of 100 trips or more in ADT due to project related traffic; (2) the ADT is greater than 10,000 (50 percent of capacity) but less than 18,000, and the project related traffic increases the ADT by 12.5 percent or the ADT becomes 18,000 or more; or (3) the ADT is less than 10,000, and the project related traffic increases the ADT by 25 percent.
 2. On Mixed-Use Collector and Neighborhood Collector (FHWA equivalent: collector streets), a traffic impact may be considered potentially noncompliant if the existing ADT is: (1) greater than 9,000 (90 percent of capacity), and there is a net increase of 50 trips or more in ADT due to project related traffic; (2) the ADT is greater than 5,000 (50 percent of capacity) but less than 9,000, and the project related traffic increases the ADT by 12.5 percent or the ADT becomes 9,000 or more; or (3) the ADT is less than 5,000, and the project related traffic increases the ADT by 25 percent.
 3. On Neighborhood Connector, Bicycle Boulevard and Local Access (FHWA equivalent: local streets), a traffic impact may be considered potentially noncompliant if the existing ADT is: (1) greater than 1,350 (90 percent of capacity), and there is a net increase of 25 trips or more in ADT due to project related traffic; (2) the ADT is greater than 750 (50 percent of capacity) but less than 1,350, and the project related traffic increases the ADT by 12.5 percent or the ADT becomes 1,350; or (3) the ADT is less than 750, and the project related traffic increases the ADT by 25 percent.
- C. Discuss project site circulation and access and identify any deficiencies.

- D. Discuss compliance of project site parking with adopted City code including loading and disabled spaces. If a shared parking arrangement is proposed, an analysis of the adequacy of this aspect shall be provided. Discuss any off-site parking impacts (such as neighborhood parking intrusion) of the project.
- E. Analyze project in relation to relevant policies of the Circulation Element of the General Plan.
- F. Analyze potential cut-through traffic generated by the project affecting other City neighborhoods.
- G. Pedestrian conditions and bicycle access, including safety issues, should be discussed.
- H. Analyze project using the requirements outlined in the San Mateo County Congestion Management Plan Land Use Analysis Program guidelines, if applicable.
8. Improvement measures for circulation or access deficiencies
- A. Discuss specific measures in detail to address noncompliance with local policies, which may occur as a result of the addition of project traffic (provide table comparing before and after improvement measure). Analysis shall focus on improving circulation or access deficiencies to comply with local policies. All feasible and reasonable measures that could reduce circulation or access deficiencies should be identified, whether or not they are caused by the project. The goal of these measures should be such that the project is in compliance with local policies. Measures may include roadway improvements, operational changes, TDM or Transportation Systems Management measures or changes in the project. If roadway or other operational measures would not achieve this objective, the consultant shall identify a reduction in the project size, which would with other measures, make the project compliant with local policies. All measures must first be discussed with the City Transportation Division before they are included in the report.
- B. Discuss possible measures to address future traffic conditions with the project. All feasible and reasonable measures that would make the project compliant with local policies shall be identified. Measures should be designed to address the project's share of noncompliance. Measures that should be jointly required of the project and any other on-going related projects in a related geographical area should also be identified, as applicable.
- C. Discuss possible measures to address any site circulation or access deficiencies.
- D. Note that if roadway improvements include capacity increases for vehicular traffic (e.g., adding lanes or turn lanes), additional VMT analysis may be required to determine if the measure would increase VMT. Increasing VMT is considered a significant impact under SB 743.
- E. Discuss possible measures to address any parking deficiencies.
- F. Discuss possible measures to address any impacts on pedestrian amenities, bicycle access, safety and bus/shuttle service.
9. Alternatives
- In the event any potentially noncompliance with local policies are identified in the analysis, alternatives to the proposed project shall be evaluated or considered to determine what the impacts of an alternative project or use might be. The alternatives to be considered shall be determined in consultation with the community development director and the public works director or designee.
10. Summary and conclusions
- Upon receipt by the City of a TIA report indicating that a project may have potentially significant traffic impacts, the applicant shall have the option of proceeding directly with the preparation of an EIR in accordance with the City's procedures for preparation of an EIR, or requesting a determination by the City Council as to whether a negative declaration, mitigated negative declaration or an EIR is most appropriate for the project.

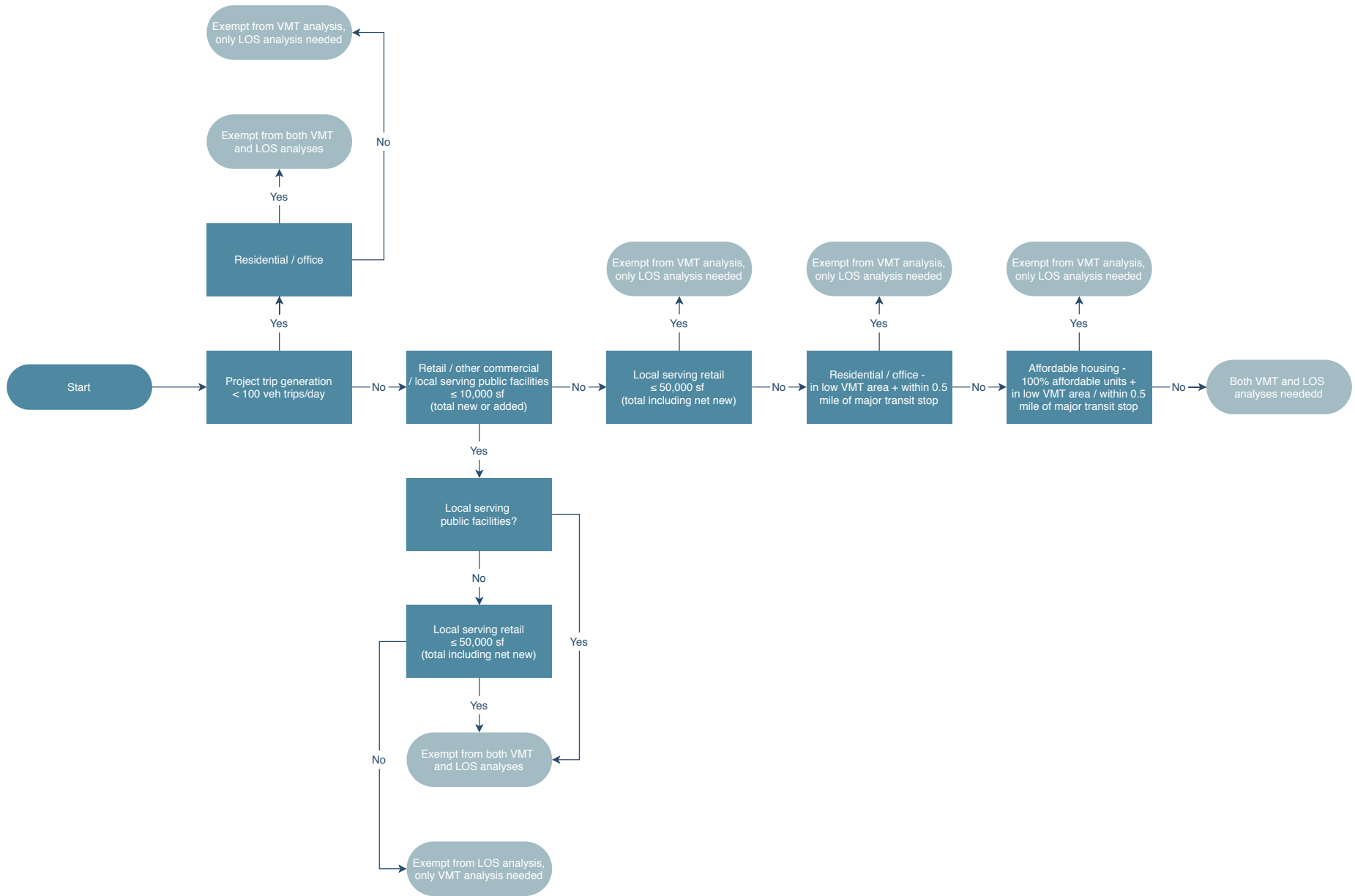
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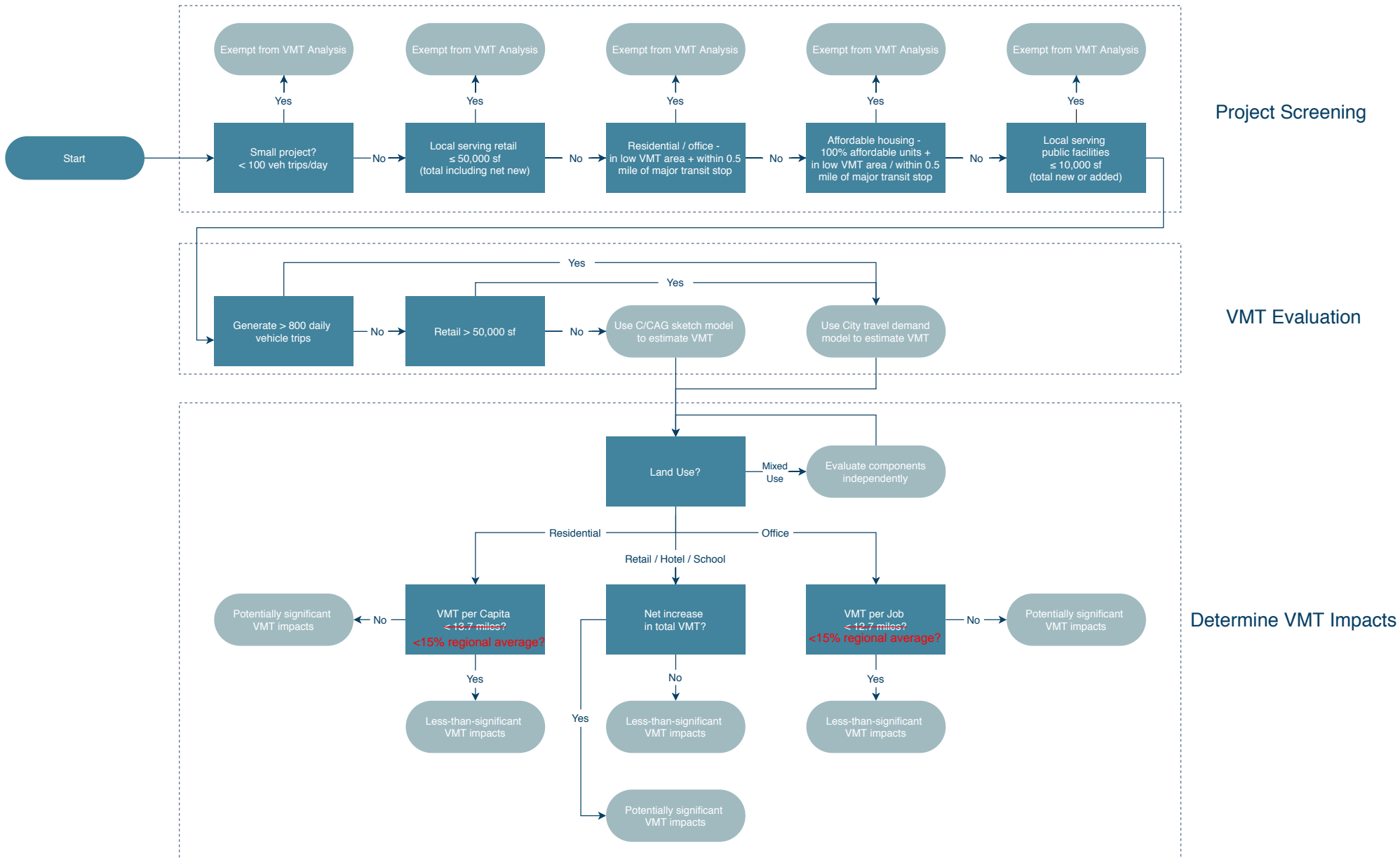
1. The Highway Capacity Manual (HCM), latest version shall be used for intersection analysis. The consultant shall use the citywide transportation model with the HCM analysis. The City utilizes a VISTRO analysis model for transportation analysis.
2. The LOS study boundary should include intersections expected to add 10 or more peak hour project trips per travel lane and roadway segments likely to generate project impact based on existing demand.
3. The most recent Circulation System Assessment (CSA) shall be used for all information regarding existing and near-term conditions.
4. Traffic counts that may be required beyond the counts contained in the CSA document shall be less than six months old.
5. The consultant shall submit proposed assumptions to the public works director or designee for review and approval before commencement of the analysis relating to the following:
 - trip rates
 - trip distribution
 - trip assignment
 - study intersections

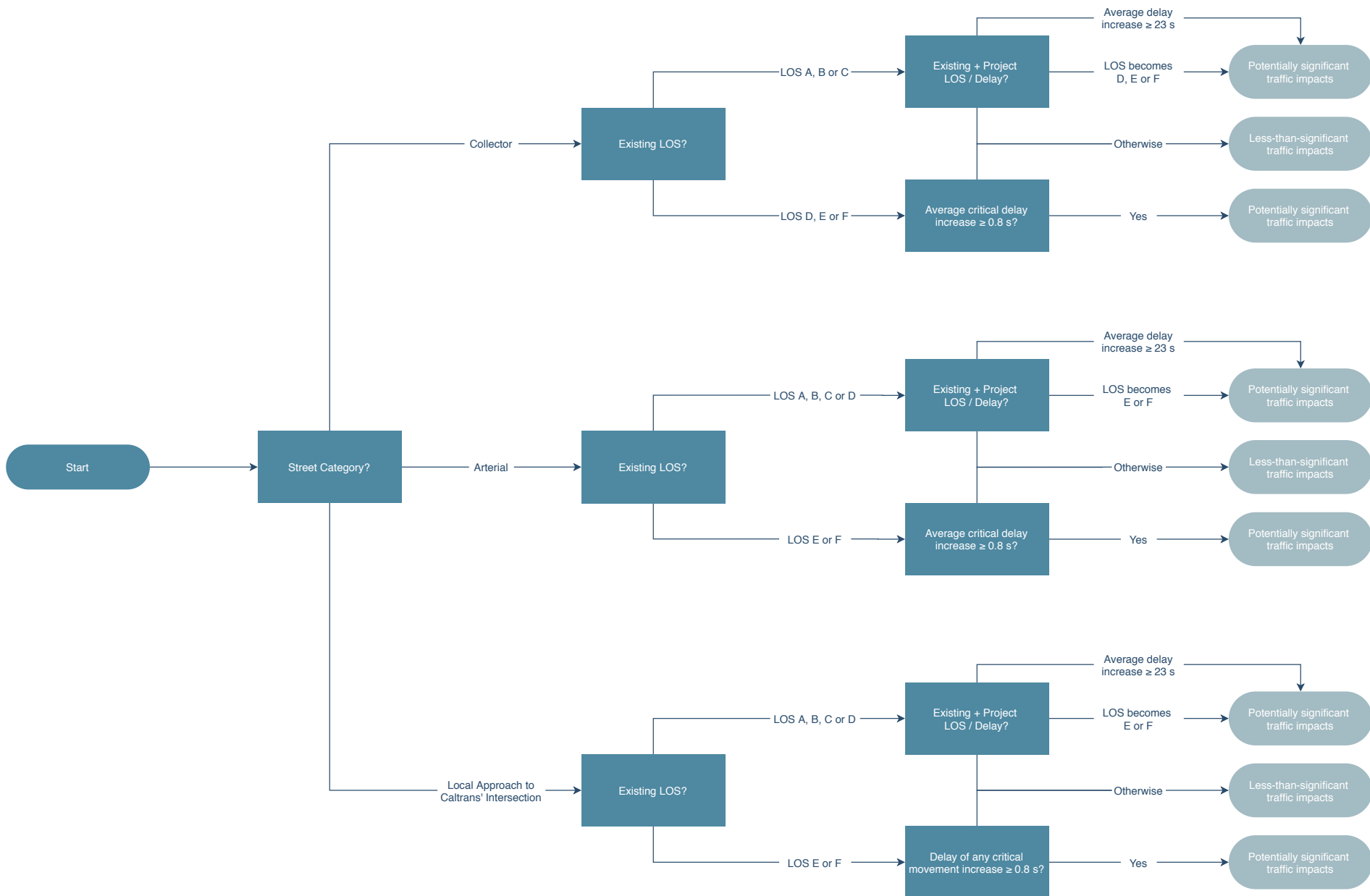
- roadways to be analyzed
6. The consultant shall submit all traffic count sheets in pdf format to the City's Transportation Division.
 7. Figures of existing and any proposed intersection configurations should be provided in the appendix.
 8. Trip generation rates from Institute of Transportation Engineer's (ITE) publication, "Trip Generation," latest version should be used.
 9. Street widening and on-street parking removal are measures which may be technically feasible, but which are generally considered undesirable. If such measures appear potentially appropriate to the consultant, they should consult the Transportation Division in preparing the analysis and improvement measure recommendations. If such measures are to be proposed, alternate measures, which would be equally effective, should also be identified. These measures may result in secondary impacts and be subjected to additional VMT analysis.
 10. Existing uses at the site, which would be removed as part of the project, may be deducted from the calculation of the project traffic based on their traffic distribution patterns.
 11. Refer to the San Mateo County Congestion Management Program (CMP) Land Use Impact Analysis Program guidelines for performing CMP analysis.
 12. The "Quantifying Greenhouse Gas Mitigation Measures" report by the California Air Pollution Control Officers Association (CAPCOA), or other peer-reviewed publications, shall be used to determine the efficacy of TDM measures and land use context on reducing VMT.

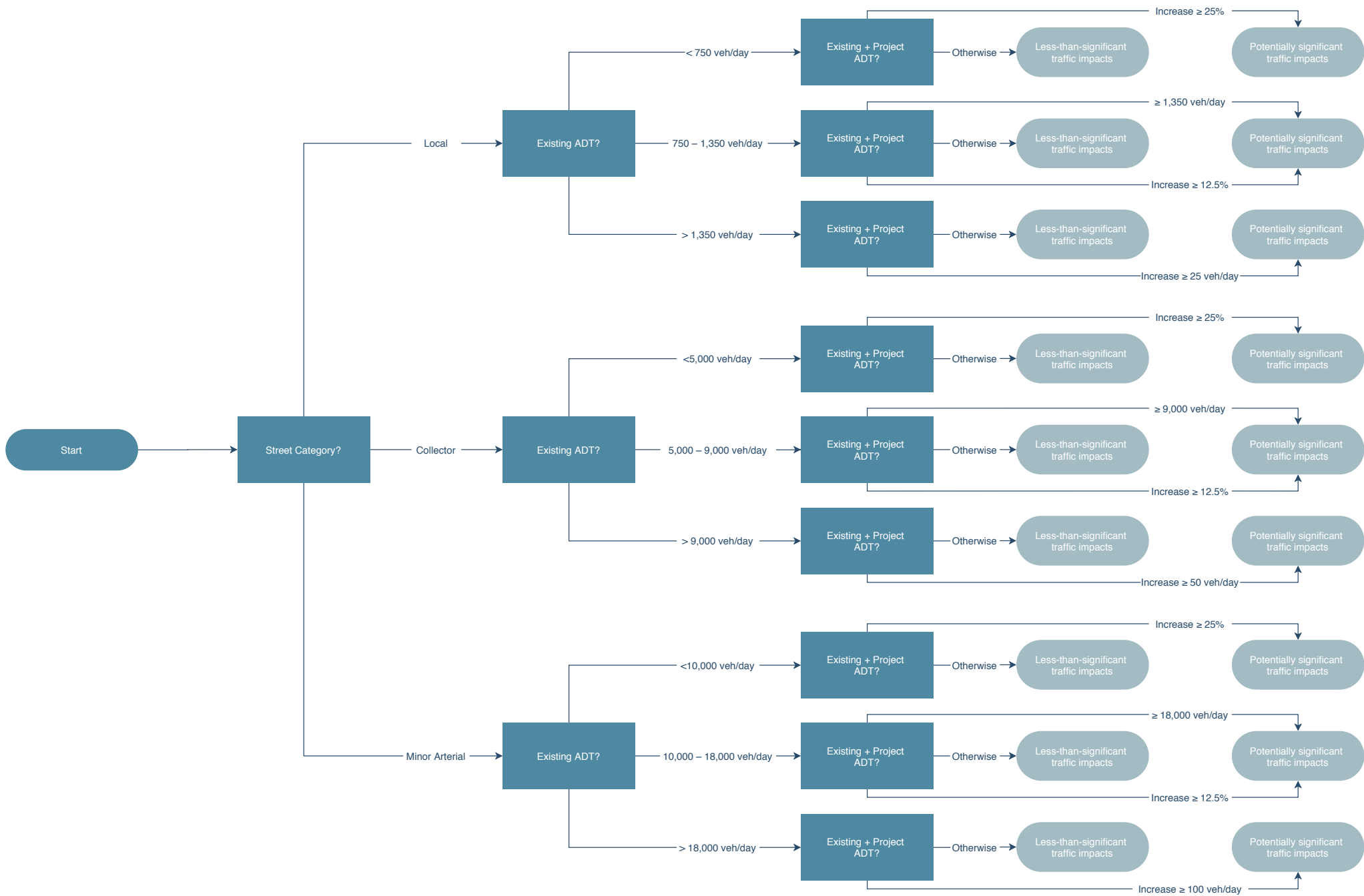
Procedure history

Action	Date	Notes
Approved	June 16, 2020	











STAFF REPORT

City Council

Meeting Date:

1/11/2022

Staff Report Number:

22-003-CC

Regular Business:

Adopt Resolution No. 6690 authorizing 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 in association therewith consistent with the certified El Camino Real and Downtown specific plan environmental impact report and the certified addendum to the specific plan environmental impact report

Recommendation

Staff recommends that the City Council adopt Resolution No. 6690 (Attachment A) authorizing the city manager to execute a purchase agreement in substantially the same form as Exhibit A of Attachment A with Menlo Station Development, LLC, for a portion of 700-800 El Camino Real (APN 071-333-200) to support implementation of the Middle Avenue pedestrian and bicycle rail crossing project and making specified findings in association therewith consistent with the certified El Camino Real and Downtown specific plan environmental impact report and the certified addendum to the specific plan environmental impact report.

Policy Issues

The 2021 City Council work plan identifies the Middle Avenue pedestrian and bicycle rail crossing project (project) as a high priority project. The project is consistent with policies stated in the 2016 general plan circulation element, the El Camino Real and Downtown specific plan and is included in the City's capital improvement program (CIP.) These policies seek 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

On July 20, 2016, the San Mateo County Transportation Authority programmed funds from the Measure A Grade Pedestrian and Bicycle Program in the amount of \$490,000 for the preliminary engineering and environmental clearance phases of the Middle Avenue pedestrian and bicycle rail crossing project. The City hired AECOM Technical Services, Inc. (AECOM) to prepare 30 percent design documents, complete required environmental analysis, and conduct community engagement. Staff also coordinated with Caltrain on design criteria and the ongoing electrification project.

On August 27, 2019, the City Council unanimously passed a motion to select Concept 3 (Attachment B) as the preferred alternative for the crossing. The project will construct an undercrossing approximately 10-12 feet below the street/plaza elevation that generally aligns with a proposed raised crosswalk on Alma Street and is slightly offset from the plaza at 500 El Camino Real (Stanford's Middle Plaza project.) The crossing

location is outside of the existing Caltrain crossover tracks, which was required by Caltrain for constructability and maintenance reasons.

On January 28, 2020, the City Council certified the project environmental document, an addendum to the El Camino Real and Downtown specific plan environmental impact report, and approved the 30 percent project plans.

Analysis

The project is critical to providing improved east-west bicycle and pedestrian connectivity, as El Camino Real and the Caltrain railroad tracks present real and perceived barriers to bicycling and walking. This undercrossing would improve connectivity for neighborhoods on both sides of the Caltrain tracks with City amenities, and improve access to public transit and downtown Menlo Park. It would encourage the use of more active modes of transportation and contribute to a healthier Menlo Park.

The proposed concept design for the Middle Avenue pedestrian and bicycle crossing includes an access ramp on the west side of the railroad tracks that is located on the 700-800 El Camino Real property. Approximately 17,000 square foot of the 700-800 El Camino Real Property extends south from the main property, lying between the railroad tracks and 500 El Camino Real.

On August 27, 2019, the City Council directed staff to make an offer to purchase the property needed to construct the undercrossing. Staff engaged Associated Right of Way Services, Inc. to appraise the property and identify a fair market price. This work was completed in mid-2020 and established a fair market price of \$210 per square foot. The City is required to pay “just compensation” for the acquisition of property, generally defined as the fair market value for the property. The fair market value of the property must consider the legally permissible, physically possible, financially feasible, and maximally productive use of the property considering the entire site, not simply the existing use of the land in question as parking. The appraisal was based on comparable property sales in the vicinity of El Camino Real in San Mateo County.

Because of the location of the property and to support construction of the undercrossing, the City also negotiated with the seller for a construction easement adjacent to the purchase property and an access easement needed for construction. The purchase and sale agreement (Exhibit A to Attachment A) includes a graphic depiction of the area to be purchased and each of the easements.

Using the appraised price, the negotiated price for the purchase and two easements yields a total purchase price of \$3,894,500, comprised of:

- Purchase of 17,483 square feet at \$210 per square foot for a total of \$3.7 million, plus approximately \$137,000 for the value of the assets (paving, landscaping, light fixtures, and trees on the property to be acquired)
- A construction easement of 1,248 square feet valued at 10 percent of the fair market value, or approximately \$26,000, to aid in the construction of the undercrossing
- An access easement of 5,626 square feet valued at five percent of the fair market value, or approximately \$59,000 for truck access to the site during construction

The purchase of this property requires an update to the planned development permit for 700-800 El Camino Real to reduce the parking required for this property, which will require recommendation by the Planning Commission and approval by the City Council. The City and seller are collaborating on an application for the parking reduction, with the City taking the lead. In preparation for applying for the permit, staff conducted parking utilization counts in 2019 that indicated that the reduction in parking at the site would not impact the

operation of the businesses at 700 El Camino Real. During the construction of 500 El Camino Real, the property proposed for purchase has been used for construction staging, which is expected to continue through most or all of 2022.

Staff are also working with Caltrain to coordinate on the approach to final design and construction of the undercrossing. Because the undercrossing will be on Caltrain property, Caltrain will take the lead on some elements of the final design and construction. The City and Caltrain are also evaluating creative project delivery methods, such as design-build that may lead to more efficient delivery of the project.

Following execution of the purchase and sales agreement, the City must take the following actions:

- Within 10 days make an initial deposit of \$10,000 into escrow.
- Within 90 days, approve the purchase of the property, following inspection of the property, and deposit an additional \$90,000 into escrow.
- Initiate the parking reduction approvals, expected to take six to eight months, with completion of this task required within 24 months of signing the purchase and sale agreement.
- Within 24 months, close the purchase of the property. Closing can take place as soon as 30 days after receiving both the parking reduction approval and construction approvals from PUC and Caltrain, but cannot be more than 24 months total after the execution of the purchase and sale agreement.

Impact on City Resources

AECOM estimated the cost of project construction (assuming construction by 2025) at \$20 million, including final design, right of way, utility relocations and construction, though the cost estimate will be updated as part of final design. The City's CIP includes \$6.5 million to advance the Middle Avenue undercrossing from Transportation Impact Fees. As part of the 500 El Camino Real (Middle Plaza) development agreement, Stanford is required to contribute 50 percent of the cost, up to \$5 million, toward the project. The County of Santa Clara also awarded the City an additional \$1 million for this project as part of the Stanford University's Recreation Mitigation fund.

Staff continues to explore sources of revenue for the \$7.5 million needed to construct this project. Possible sources for this funding may come from the federal level. Representative Eshoo included \$6.5 million for the Middle Avenue pedestrian and bicycle undercrossing as a member designated project, though this funding is dependent on the progress of future federal legislation. Member designated projects were not included in the recently signed Federal Infrastructure Investment and Jobs Act. Other potential sources of funding may include grants from new Federal grant programs for active transportation that were included in the Federal Infrastructure Investment and Jobs Act, existing regional and state grant programs or other local funding sources such as transportation impact fees, Measure A or Measure W funds.

Environmental Review

The construction of the Middle Avenue pedestrian and bicycle undercrossing project is within the scope of the El Camino Real and Downtown specific plan environmental impact report, State Clearinghouse Number 2009122048 (Specific Plan EIR), certified by City Council June 5, 2012, consistent with CEQA Guidelines Section 15168. The City prepared an addendum to the Specific Plan EIR because changes and additions to the document were necessary, but none of the conditions described in Section 15162 of the California Environmental Quality Act (CEQA) Guidelines calling for the preparation of a subsequent EIR occurred. On January 28, 2020, the City Council certified an addendum to the Specific Plan EIR, which analyzed potential impacts from the implementation of the Middle Avenue pedestrian and bicycle rail crossing project as provided for under Section 15164 of the 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.

Attachments

- A. Resolution No. 6690
- B. Preferred concept for the Middle Avenue pedestrian and bicycle undercrossing

Report prepared by:
Hugh Louch, Assistant Public Works Director

Report reviewed by:
Nikki Nagaya, Public Works Director

RESOLUTION NO. 6690**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE AND
SALE AGREEMENT FOR A PORTION OF REAL PROPERTY AT 700-800 EL
CAMINO REAL TO SUPPORT THE MIDDLE AVENUE PEDESTRIAN AND
BICYCLE UNDERCROSSING PROJECT AND MAKING SPECIFIED FINDINGS
IN ASSOCIATION THEREWITH CONSISTENT WITH THE CERTIFIED EL
CAMINO REAL AND DOWNTOWN SPECIFIC PLAN ENVIRONMENTAL
IMPACT REPORT AND THE CERTIFIED ADDENDUM TO THE SPECIFIC PLAN
ENVIRONMENTAL IMPACT REPORT**

WHEREAS, on June 5, 2012, the City Council certified the El Camino Real and Downtown Specific Plan Environmental Impact Report, State Clearinghouse Number 2009122048 (Specific Plan EIR) consistent with CEQA Guidelines Section 15168; and,

WHEREAS, on June 5, 2012, the City Council adopted Resolution Number 6073 to adopt the El Camino Real and Downtown Specific Plan for all specific plan districts except El Camino Real South-East and South-West, Resolution Number 6075 to adopt the El Camino Real and Downtown Specific Plan for the El Camino Real South-East District, and Resolution Number 6077 to adopt the El Camino Real and Downtown Specific Plan for the El Camino Real South-West District; and,

WHEREAS, Policy CIRC-2.11 of the circulation element of the City's General Plan requires new development to incorporate design that prioritizes safe pedestrian and bicycle travel and accommodates senior citizens, people with mobility challenges and children; and,

WHEREAS, the El Camino Real and Downtown Specific Plan and the City's Transportation Master Plan identifies a new pedestrian and bicycle undercrossing of the Caltrain tracks from approximately Middle Avenue to Burgess Park; and,

WHEREAS, as part of the 500 El Camino Real (Middle Plaza) development agreement, Stanford is required to contribute 50 percent of the cost, up to \$5 million, toward the construction of this undercrossing; 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 (Project); and,

WHEREAS, the City evaluated the Specific Plan EIR, found that its analysis covers the geographic area of the Project and that the Project would not result in any new or a substantial increase in the severity of significant impacts not discussed in the Specific Plan EIR, and determined an Addendum to the Specific Plan EIR should be prepared pursuant to CEQA Guidelines Section 15164; and

WHEREAS, none of the conditions described in Section 15162 of the CEQA Guidelines calling for the preparation of a subsequent EIR occurred; and

WHEREAS, on January 28, 2020, the City Council certified the project environmental document, an Addendum completed November 2019 to the Specific Plan EIR consistent with CEQA Guidelines Section 15164 (EIR Addendum), and approved the 30 percent project plans; 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 City hired Applied Right of Way Services, Inc. to appraise the value of the property and has received an appraisal of \$210 a square foot; and,

WHEREAS, the City has negotiated with the 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, 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.

NOW, THEREFORE BE IT RESOLVED, that the City Council of Menlo Park does hereby authorize the City Manager to execute the Purchase and Sale Agreement in substantially the same form as Exhibit A, and all ancillary documents attached thereto, with Owner for the Property.

BE IT FURTHER RESOLVED, consistent with CEQA Guidelines Section 15168(e), the City finds and determines that the construction of the Project is within the scope of the Specific Plan EIR, as further described in the EIR Addendum pursuant to CEQA Guidelines, and the acquisition of a portion of the Property is part of the construction of the Project.

BE IT FURTHER RESOLVED that the City Manager or designee is directed to cause a notice of determination to be filed with the San Mateo County clerk, pursuant to the CEQA Guidelines Section 15094, following adoption of this Resolution.

BE IT FURTHER RESOLVED that this Resolution shall take immediate effect from and after its passage.

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 eleventh day of January, 2022, by the following votes:

AYES:

NOES:

ABSENT:

RECUSED:

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

Judi A. Herren, City Clerk

Exhibits

A. Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of _____, 2022 (the "Effective Date"), by and between Menlo Station Development, LLC, a California limited liability company (the "Seller"), and the City of Menlo Park ("City"). This Agreement is made with reference to the following facts.

RECITALS

A. Seller is the owner of real property situated in County of San Mateo, State of California and being APN Portion of 071-333-200 (the "Site"). A map of the Site is shown as Exhibit A.

B. City desires to purchase, and Seller is willing to sell and convey to City for the price and under the terms and conditions specified herein, a fee simple interest in a portion of the Site (the "Fee Property") and a temporary construction easement and a temporary access easement over a portion of the Site (the "Easement Property"). The Fee Property and the Easement Property are referred to collectively in this Agreement as the "Property". A site plan of the Fee Property and Easement Property are show in Exhibit B. The legal description and plat for the Fee Property is shown in Exhibit B-1 and the legal description and plat for the Easement Property is shown in Exhibit B -2.

C. City and Seller acknowledge and agree that the Property being acquired by City is for public use and is necessary for the construction, operation and maintenance of the Middle Avenue Bicycle and Pedestrian Rail Crossing Project, a public project (the "Project").

D. Seller understands and agrees that City cannot enter into this Agreement until such time as the City Council has approved this Agreement.

E. City is a public entity with the power of eminent domain and, prior to the Effective Date, City commenced certain pre-condemnation activities, including obtaining an appraisal for the purpose of acquiring the Property. The parties acknowledge that the proposed purchase and sale of the Property is under threat of eminent domain.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Seller hereby agree as follows:

1. **AGREEMENT TO PURCHASE AND SELL.**

Subject to all the terms and conditions of this Agreement, Seller agrees to sell, transfer, and convey to City, and City agrees to acquire and purchase from Seller, the Property upon the terms and conditions set forth herein. For the avoidance of doubt, references in this Agreement to the "sale" of the Property, or the "transfer," "conveyance" or similar words with respect to the Property shall mean the sale, transfer and conveyance of a fee interest in the Fee Property, in the

form attached as Exhibit C, and the grant of easements, in the forms attached as Exhibits D and E to this Agreement, in and to the Easement Property.

2. **PURCHASE PRICE; DEPOSITS.**

The purchase price for the Property (the "Purchase Price") shall be Three Million Eight Hundred Ninety-Eight Thousand Dollars (\$3,894,500) payable at Closing. [Note: Purchase price to be adjusted based on final square footage of easements.] The "Closing" shall occur when the Grant Deed, Temporary Construction Easement and a Temporary Access Easement in the forms attached as Exhibits C, D, and E, respectively, are fully executed and recorded in the Official Records of San Mateo County (the "Official Records"). The Closing will occur through an escrow ("Escrow") established by the City with Lawyer's Title Company at 1460 El Camino Real, Suite 150, Menlo Park, California 94025 Attn: Susan Burnett ("Escrow Holder" or "Title Company"). Within ten days of this Agreement, the City will deposit Ten Thousand Dollars (\$10,000) into Escrow (the "First Deposit"). The Deposits (as defined below) will be counted against the Purchase Price at Closing.

If City gives an Approval Notice (as defined in Section 7) to Seller and the Escrow Holder on or before the end of the Contingency Period pursuant to Section 7 below, (i) within five (5) business days after City's delivery of the Approval Notice, City shall deliver to Escrow Holder an additional deposit of Ninety Thousand and No/100 Dollars (\$90,000.00) (the "Second Deposit"), and (ii) the First Deposit and the Second Deposit (collectively, the "Deposits") will become non-refundable to City except as follows: the Deposits and any interest earned thereon while in Escrow shall be refunded to City if this Agreement terminates and Escrow fails to close as the result of (A) Seller's default under this Agreement, (B) the failure of a City Condition to closing set forth in Section 12.1 (provided, however, that if the failure to Close arises solely from the conditions set forth in Section 12.1.2 or 12.1.3, Seller may retain \$1,500 of the Deposits for each month starting from the date of this Agreement and continuing until such time as this Agreement is terminated (the "Termination Consideration")); (C) pursuant to Section 16 below or as otherwise expressly provided in this Agreement. If City does not timely give the Approval Notice to Seller and the Escrow Holder or if, after City delivers the Approval Notice to Seller and Escrow as provided above, the Closing does not occur for any of the reasons described in clauses (A), (B) or (C) above, then (1) this Agreement shall automatically terminate and the parties shall have no further obligations hereunder except as expressly provided otherwise herein, and (2) the First Deposit and Second Deposit (if previously deposited into Escrow), together with any interest earned thereon while in Escrow, shall be returned to City, and the Escrow shall be terminated. In such event, any escrow cancellation fees shall be paid by City.

3. **INDEPENDENT CONSIDERATION.**

As independent consideration for this Agreement, City shall pay to Seller within three (3) business days of the Effective Date One Hundred Dollars (\$100), which amount shall be nonrefundable and shall not count against the Purchase Price.

4. **RELEASE OF CERTAIN CLAIMS.**

Seller understands and agrees that City has the power to acquire the Property under eminent domain and that if City were to do so, City would be required to compensate Seller for the fair value of the Property, including compensation for the value of any improvements, severance damages, relocation expenses, and other amounts in accordance with applicable law. Seller further acknowledges and agrees that in lieu of determining such compensation through litigation, the amounts paid to the Seller and the covenants and other obligations of Seller made pursuant to this Agreement are in full settlement of all claims, costs, expenses or demands that the Seller has made or could have made against the City with respect to claims for compensation for the Property, improvements thereon or interests therein, severance damages, any amounts for relocation expenses, benefits and/or assistance pursuant to Government Code Sections 7260 et seq or other state and federal relocation laws, rules and regulations, loss of goodwill, eminent domain, condemnation, inverse condemnation, unreasonable pre-condemnation activities, and interest, costs, demands, damages, litigation expenses and reasonable attorneys' fees (collectively, "Seller Condemnation and Relocation Claims"). The Seller shall not be entitled to receive and hereby waives all rights to receive any compensation, damages, or other amounts by reason of the Seller Condemnation and Relocation Claims relating to the Property, and releases the City from any such Seller Condemnation and Relocation Claims.

The release will survive Closing or earlier termination of this Agreement, set forth in this Section 4 but will not apply to any defense by Seller due to a post-termination condemnation or eminent domain action by the City with respect to the Property (collectively, "Post Termination Defenses").

The release set forth in this Section 4 includes Seller Condemnation and Relocation Claims relating to the Property of which Seller is presently unaware or which Seller does not presently suspect to exist which, if known by Seller, would materially affect Seller's release of the City. Seller specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, Seller realizes and acknowledges that factual matters now unknown to Seller may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected relating to the Seller Condemnation and Relocation Claims, and Seller further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Seller nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses relating to the Seller Condemnation and Relocation Claims. Accordingly, with respect to the Seller Condemnation and Relocation Claims, the Seller, on behalf of itself and anyone claiming by, through or under the Seller, hereby assumes the above-mentioned risks and hereby expressly waives and relinquishes any right the Seller and anyone claiming by, through or under the Seller, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her

would have materially affected his or her settlement with the debtor or released party."

Seller's Initials: _____

Notwithstanding the preceding provisions of this Section 4 or anything to the contrary set forth herein, the waivers and releases set forth in this Section 4 shall not apply to and Seller reserves any claims that it may have under this Agreement with respect to the following: (a) City's fraud or criminal conduct; (b) third party claims for bodily injury or personal injury arising out of the acts or omissions of the events occurring prior to Closing in connection with this Agreement; (c) any other claims not related to Seller Condemnation and Relocation Claims; and (d) Post-Termination Defenses (collectively, the "Excluded Claims").

The performance of this Agreement constitutes the entire consideration for the Property.

5. PROPERTY DOCUMENTS.

Within five (5) days following the Effective Date, Seller will deliver to City for review and copying to the extent in Seller's possession and reasonable control and to the extent reasonably pertaining to the Property including all leases, license agreements, final property condition reports, environmental reports, notices from governmental authorities (excluding any such notices provided by the City), surveys, maps, title insurance policies and contracts relating to the Property and any records relating to any lawsuits pending against the Seller, its agents or employees in connection with the ownership, operation, or management of the Property (collectively, the "Property Documents"). Notwithstanding the foregoing, Seller shall not be obligated to deliver to City (i) any document or item that is subject to attorney client or attorney-work product privilege, provided that Seller shall notify City if Seller is withholding any documents or items subject to any such privilege, which notice shall include a brief description of the subject matter of the item being withheld; (ii) any document or item that is proprietary to Seller (including any appraisals, estimations of value, purchase offers, letters of intent, or similar inquiries of interest concerning the acquisition or lease of the Property) or which Seller is contractually bound to keep confidential, provided that Seller shall notify City if Seller is withholding any document or item subject to confidentiality restrictions, which notice shall include a brief description of the subject matter of the item being withheld; and (iii) any documents or other materials that materially affect or pertain only to other portions of the Site and that do not materially affect or materially pertain to the Property. At Seller's option, some or all of the Property Documents may be provided to City by Seller in electronic format or by posting such documents on a web room (such as Dropbox). City acknowledges and agrees that Seller shall have no obligation to prepare any reports, studies or documentation pertaining to the Property and that except as set forth in Section 10.5 below, Seller makes no representation or warranty with respect to the Property Documents. City agrees that such materials are not intended as a substitute for City's own investigation of the Property. City shall rely on its own investigation of the Property and the Seller's representations and warranties in determining whether to proceed with the purchase of the Property.

6. INVESTIGATIONS.

Subject to the terms and conditions in this Section 6, at all reasonable times from the Effective Date until the Closing or earlier termination of this Agreement and upon not less than two (2) business days' prior email and telephone notice to Seller of any City Inspection, which notice shall be given to Seller via e-mail at the address set forth below and PBI (as defined in Section 11.7) via e-mail to Scott Clark at the following e-mail at sclark@palisadebuilders.com, City and its agents, employees, representatives, and independent contractors (collectively, "City's Representatives") shall be entitled, at City's sole cost and expense, to (i) enter onto the Property during normal business hours to perform any inspections, investigations, studies and tests of the Property that City deems prudent ("City Inspections"), including, without limitation, physical, engineering, soils, geotechnical and environmental investigations and assessments; and (ii) interview occupants of the Property, if any. City shall conduct all City Inspections pursuant to this section so as not to unreasonably interfere with or disturb the operations of any lawful tenants or lawful occupants of the Property. Prior to entering the Property, City shall obtain, or cause the City's Representatives that will enter the Property in connection with the investigations pursuant to this Section to obtain, general liability insurance (including umbrella or excess policies) in the amount of at least \$1,000,000 per occurrence, and at least \$1,000,000 in the aggregate, which insurance shall name Seller as an additional insured. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, City shall not conduct or allow, any City Inspection that includes physical or invasive testing, sampling, assessment, analysis or environmental or engineering investigations of the Property which include test holes, wells, or any other drilling, subsurface work, or physical sampling or explorations of the Property ("Physical Testing") without first obtaining Seller's written consent as to the timing and scope of the Physical Testing to be performed, which consent may be withheld by Seller in Seller's sole good faith discretion (and may be conditioned upon Seller's review and approval of a work plan). Subject to the City's compliance with the other terms and conditions of this Section 6, Seller hereby consents to the Physical Testing described as Option A (and the referenced location included in the figure) in the AECOM report to the City dated December 10, 2019 and pertaining to the Property, which report is attached as Exhibit G. In addition, with respect to any such Physical Testing, (a) City will perform such City inspections in a manner that will not unreasonably interfere with the activities of Seller and PBI, its subcontractors, or their respective employees, agents, and representatives on the Property; and (b) City will cause the following to occur at its cost and expense and in accordance with applicable legal requirements: (1) Soil that has been pre-characterized by in-situ soil testing and found to require disposal as a Class II or Class I waste shall be loaded directly into trucks for transport to the receiving facility once the appropriate off-site disposal location and permitting has been completed; (2) If direct disposal is not contemplated, the soil shall be placed in temporary on-site stockpiles on impermeable plastic sheeting (minimum 10-mil-thick) with a berm around the perimeter of the stockpile, separate from non-contaminated soil. Such stockpiled soil shall be well maintained at all times to prevent runoff/runoff and fugitive dust emissions. The stockpiled soil shall be disposed of no later than 30 days after removal in accordance with applicable requirements after testing of samples has been completed.

As a condition precedent to any City Inspections, City shall provide Seller with proof of such insurance and an additional insured endorsement naming Seller, its mortgage lender, and The Cortana Corporation as additional insured prior to commencing any City Inspections of the Property. In addition, unless otherwise agreed to by Seller, City shall repair any material damage to the Property caused by any entry by City or City's Representatives thereon and shall restore

the Property substantially to the condition in which it existed prior to such entry; provided, however, that City shall have no obligation to repair any damage caused by the acts or omissions of Seller or its agents, employees, contractors, representatives, guests, invitees, or tenants or to remediate, contain, abate or control any condition of the Property that existed prior to City's entry thereon unless such condition is exacerbated as the result of the City Inspections.

City will indemnify, defend, and hold Seller and Seller's officers, directors, shareholders, beneficiaries, members, partners, affiliates, agents, employees and attorneys, and their respective successors and assigns (collectively, the "Seller Parties") harmless for, from, and against any and all claims, damages, injuries, costs, liabilities, losses (including mechanics' liens), and expenses (including, without limitation, reasonable attorneys' fees) for property damage, bodily injury or death arising from any City Inspection, provided, however, that this indemnity shall not extend to, and City shall not be liable to any Seller Party for, (i) the mere discovery of any pre-existing Hazardous Materials (as defined in Section 10.8 below) arising from the conduct of any City's Inspection, including Physical Testing and any other investigation, sampling or testing of the Property performed by or on behalf of City or City's Representatives pursuant to this Section 6 (provided that City shall be liable for any exacerbation of any pre-existing Hazardous Materials caused by the active negligence or willful misconduct of the City or City's Representatives) or (ii) the gross negligence or willful misconduct of Seller, or any agent, contractor, representative or employee of Seller, in connection with City's entry on, or City's inspections, investigations or tests conducted at, the Property. Within five (5) days after Seller's written request, City will provide Seller with copies of any test or inspection reports prepared in connection with any City Inspection, at no cost to Seller. City's obligations under this Section 6 shall survive Closing or the termination of this Agreement.

7. CONTINGENCY PERIOD.

City in City's sole and absolute discretion, shall approve or disapprove the Property, including the condition of the Property and the feasibility of City's intended current or future use of the Property during the period beginning on the Effective Date and ending at 5:00 p.m. (California time) on the date that is ninety (90) days after the Effective Date (such period, the "Contingency Period"). On or before expiration of the Contingency Period, City shall deliver written notice to Seller either approving the Property (the "Approval Notice") or disapproving the Property (the "Disapproval Notice"). City's failure to deliver an Approval Notice or a Disapproval Notice shall be deemed disapproval. If City disapproves (or is deemed to have disapproved) the Property, the Deposits (to the extent previously paid by City) will be returned to the City, this Agreement shall automatically terminate and be of no further force or effect and neither party shall have any further rights or obligations hereunder except for those obligations of City or Seller that expressly survive such termination. If City approves the Property and provides the Approval Notice pursuant to this Section 7, this Agreement will continue, City shall deposit into Escrow the Second Deposit in accordance with Section 1, and the Deposits will become nonrefundable to the City (except as otherwise provided in this Agreement, including Section 2).

8. CITY COVENANTS.

In connection with the design and construction of Improvements for the Project, Buyer shall determine whether any storm drainage, sewer, electrical, gas, telephone, or other utility lines, pipes or comparable improvements are located on the Fee Property and serve the balance of the Site ("Existing Site Improvements"). To the extent any Existing Site Improvements are located on the Fee Property, if such Existing Site Improvements must be modified, capped or relocated to accommodate the Project (the "Modified Site Improvements"), then at its sole cost and expense City will modify, cap and/or relocate such Existing Site Improvements to a location and/or a manner such that balance of the Site will receive benefits from the Modified Site Improvements that are comparable to the Existing Site Improvements. Seller agrees to cooperate with City in connection with any Modified Site Improvements, provided that any such cooperation will be at no cost or expense to Seller.

9. TITLE.

City may advise Seller in writing by not later than forty-five (45) days after the Effective Date what exceptions to title, if any, listed in the Preliminary Title Report from the Title Company dated September 10, 2021 Title Order No. FLNP-0061900603 (the "Preliminary Report") and identified on the survey by Towill Engineers and dated December 12, 2019 (the "Survey") are not acceptable to City (collectively, the "Title Objections"). The Preliminary Report, and the exceptions to title referred to therein, the Survey and the PBI License Agreement are collectively referred to as the "Title Documents." Seller shall have five (5) Business Days after receipt of City's Title Objections to give City notice that (a) Seller will remove any Title Objections from title (or afford the Title Company necessary information or certifications to permit it to insure over such exceptions) or (b) Seller elects not to cause such exceptions to be removed. Seller's failure to provide notice to City within such five (5) Business Day period as to any Title Objection shall be deemed an election by Seller not to remove the Title Objection. If Seller so notifies or is deemed to have notified City that Seller shall not remove any or all of the Title Objections, City shall have until the later of close of the Contingency Period or ten (10) Business Days after receipt of Seller's notice (or deemed disapproval) to determine whether (i) to proceed with the purchase and take the Property subject to such exceptions or (ii) to terminate this Agreement. If, within such period, City elects to terminate the Agreement due to Seller's election not to remove a Title Objection, then the Deposits shall be refundable to City notwithstanding anything to the contrary stated in Section 7. "Permitted Exceptions" shall include and refer to any and all exceptions to title shown on the Preliminary Report, excepting solely Title Objections that have been timely identified by City and that Seller has notified City pursuant to this Section that Seller is willing to remove, and any other exceptions to title approved in writing by City. Notwithstanding anything to contrary herein, Permitted Exceptions shall not include and Seller shall be obligated to remove (collectively, the "Prohibited Exceptions"): all title exceptions created by Seller in violation of this Agreement; any mechanic's liens or materialman's liens created by or through Seller unless arising in connection with City's activities on the Property; and all mortgages, deeds of trust and encumbrances executed by, assumed by or caused by Seller that secure an obligation to pay money (other than installments of real estate taxes and assessments not delinquent as of the Closing Date.)

The provisions of this paragraph apply in the event a title exception is identified after the City's objection period has expired, and such exception (each, a "New Exception") was not

included on the Preliminary Report or Survey (other than the PBI License): (1) City may object in writing to such exception; (2) if Seller does not agree to remove such New Exception (and the Seller shall promptly respond to the City following receipt of City's objection), City may either (a) terminate this Agreement, in which event the Deposits will be refundable to the City notwithstanding anything to the contrary in Section 7 or (b) agree to waive such exception, in which event such an exception will be a Permitted Exception. The City will make good faith and diligent efforts to (1) object to any New Exception within fifteen (15) days from the Public Works Director or the City Attorney's identification of the New Exception (the "City New Exception Objection Deadline") and (2) if it elects to terminate this agreement due to a New Exception that the Seller will not remove, terminate this agreement within ten (10) days after the Seller's notice that it will not remove a New Exception (the "City New Exception Termination Deadline"). If the City misses the City New Exception Objection Deadline and/or the City New Exception Termination Deadline, but later terminates this Agreement pursuant to this paragraph, then the Seller may retain from the Deposit an amount equal to \$50 for each day between the City New Exception Objection Deadline and the date the City provides notice of objection to the Seller or the City New Exception Termination Deadline and the date the City provides the notice of termination, as applicable (the "Per Diem Payment"). Such payment shall be paid to Seller by Escrow Holder's deduction of such amount from the Deposit and releasing such payment to Seller promptly after this Agreement is terminated. In no event will such payment be due if the New Exception is a Prohibited Exception. Notwithstanding the foregoing, if the City fails to object to any New Exception within thirty (30) days after the City New Exception Objection Deadline, or to terminate this Agreement by giving notice to Seller of such termination within thirty (30) days after the City New Exception Termination Deadline, then in either case Seller shall have the right to give written notice to City ("Seller's First Notice") stating that if City fails to make an objection or to terminate this Agreement within ten (10) business days from the date of Seller's First Notice, then Seller shall have the right in its sole and absolute discretion to terminate this Agreement by giving written notice to City ("Seller's Second Notice") at any time after lapse of such ten (10) business day period unless City, within ten (10) business days after its receipt of Seller's Second Notice, elects in writing to waive all objections to the applicable New Exception(s) and to waive City's right to terminate this Agreement pursuant to this Section 9. In the event City does not waive its objections and/or right to terminate pursuant to this Section 9 and Seller elects to terminate this Agreement after giving Seller's Second Notice, then the Deposits less any Per Diem Payment accruing prior to such termination shall be promptly returned to City and the parties shall have no further rights or obligations under this Agreement except to the extent such rights or obligations expressly survive termination.

During the Due Diligence Period, the City and Seller will prepare and use good faith efforts to agree upon a form of agreement to be executed at Closing (the "Easement Removal Document"), under which (a) City will release its rights and obligations with respect to the Site under that certain declaration of covenants, conditions and restrictions of Menlo Station Development, recorded in the Office of the County Recorder of San Mateo County, State of California on March 23, 1981 under File No. 26228-AS Records of San Mateo County, California (the "1981 Easement"); and (b) Seller will release its rights and obligations with respect to the Fee Property under the 1981 Easement.

10. REPRESENTATIONS AND WARRANTIES

As an essential inducement to City entering into this Agreement, Seller represents and warrants to City as of the date hereof and as of the Closing Date:

10.1. No Conflicts. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and compliance with the terms of this Agreement will not conflict with, or, with or without notice or the passage of time or both, result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, deed of trust, mortgage, loan agreement, or other document or instrument to which Seller is a party or by which Seller is bound, or any applicable regulation of any governmental agency, or any judgment, order or decree of any court having jurisdiction over Seller or any portion of the Property.

10.2. Due Organization; Consents. Seller is a California limited liability company. All requisite action has been taken by Seller in connection with entering into this Agreement and will be taken prior to the Closing in connection with the execution and delivery of the instruments referenced herein and the consummation of the transactions contemplated hereby. No consent of any partner, member, shareholder, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party is required in connection herewith that has not been obtained.

10.3. Seller's Authority; Validity of Agreements. Seller has full right, power, and authority to convey the Property to City as provided in this Agreement and to carry out its obligations hereunder. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms hereof and thereof. This Agreement is and all other documents and instruments to be executed and delivered by Seller in connection with this Agreement shall be duly authorized, executed and delivered by Seller and shall be valid, binding, and enforceable obligations of Seller.

10.4. Bankruptcy. Seller has not (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors; (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets; (iv) suffered the attachment or other judicial seizure of all or substantially all of its assets; (v) admitted in writing its inability to pay its debts as they come due; or (vi) made an offer of settlement, extension or composition to its creditors generally.

10.5. Property Documents. Except as otherwise provided in this Agreement, Seller has made available or will make available to City in compliance with this Agreement, copies of all Property Documents. Property Documents that are furnished to City by Seller are and will be true and to Seller's knowledge complete copies of such materials in Seller's possession.

10.6. Litigation. To Seller's knowledge, there is no litigation or proceeding (including, but not limited to pending grievances or arbitration proceedings or foreclosure proceedings threatened) existing, pending or threatened, against or relating to the Seller or the Property. Except

as set forth in the Title Documents, Seller has not received notice of any special assessment from any governmental authority.

10.7. Leases and Use Rights. Excepting for the PBI License Agreement, as defined in Section 11.7 and as it may be amended in accordance with Section 11.7, and the Commercial Leases, as defined in Section 11.5, (a) Seller has not entered into or assumed any Lease relating to the Property that is currently in effect and (b) to Seller's actual knowledge no person or entity is currently occupying the Property or is a party to any "Lease." As used in this Agreement "Lease" will mean any lease, rental agreement, easement, license, or other right to occupy or use the Property, or portion thereof. The Commercial Leases allow (c) for parking uses on the Property at the reasonable discretion of the Seller and (d) for Seller to terminate use of the Property by any tenant or tenant's invitees upon notice and without the consent of or payment to any tenant or other third party and following such termination the Property will not be subject to the any Commercial Leases.

10.8. Hazardous Materials. To Seller's knowledge, except as may be otherwise disclosed in the Property Documents delivered by Seller to the City pursuant to this Agreement, and/or the Natural Hazard Disclosure Report (as defined in Section 19.4 below), the Property does not contain any hazardous or toxic materials, including but not limited to, any chemicals or materials regulated as hazardous or toxic under any federal, state or local law ("Hazardous Materials") in violation of applicable law. Seller agrees to provide City promptly in writing any information that Seller may acquire regarding the presence and location of any Hazardous Materials. Seller hereby discloses that the Property is located adjacent to a rail line and that in connection with railroad operations and activities, it is possible that Hazardous Materials were disposed of or released from trains operating on the rail line or in connection with the cleaning, repairing, maintaining and/or operating trains.

10.9. Service and Other Contracts. There are no maintenance, operating agreements, or other agreements affecting the Property, excepting those contracts and agreements relating to the operation and maintenance of the Site (the "Service Contracts"), the easements and other documents set forth in the Title Documents and the PBI License Agreement. All Service Contracts will be terminated by Seller with respect to the Property prior to the Closing. Except for the PBI License Agreement and easements or other agreements disclosed in or described in the Title Documents, Seller has not entered into any other contract, agreement, easement, license, understanding or commitment that will be binding on City or the Property after the Closing Date.

10.10. Non-Foreign Status. Seller is not a "foreign person" as defined in Internal Revenue Code Section 1445 or Sections 18805 and 26131 of the California Revenue and Taxation Code or any related regulations.

Whenever reference is made in this Agreement to the knowledge of Seller, such reference shall be deemed to mean the knowledge of David Wollenberg and not any implied, imputed or construction knowledge of such individual, Seller or any of Seller's agents, and, without any independent investigation or inquiry having been made or any implied duty to investigate or make any inquiries. Furthermore, it is understood and agreed that such individual is named in this Agreement solely for the purpose of establishing the scope of Seller's knowledge, and such individuals shall have no personal liability in any manner whatsoever hereunder or otherwise

related to the transactions contemplated hereby. Seller represents and warrants that the foregoing person is the person affiliated with Seller most knowledgeable regarding the ownership and operation of the Property and leasing of the Site.

All of the representations and warranties of Seller set forth in this Section 10 (collectively, "Seller's Warranties") shall be deemed re-made by Seller as of the Closing Date with the same force and effect as if in fact made at that time, subject to any qualifications made by Seller and accepted by City pursuant to the provisions set forth below. All of Seller's Warranties, in the form deemed re-made by Seller and accepted by City as of the Closing Date, shall survive the Closing for a period of twelve (12) months (provided that the representations and warranties in Section 10.7 pertaining to the Commercial Leases, which shall survive the Closing for 48 months, and shall not be subject to the twelve (12) month time limitation.)

11. COVENANTS OF SELLER.

In addition to the covenants and agreements of Seller set forth elsewhere in this Agreement, Seller covenants and agrees that between the date hereof and the Closing Date:

11.1. Notice of Change in Circumstances. Seller shall promptly notify City upon Seller acquiring knowledge of any material change in the physical condition of any portion of the Property after the Effective Date or of any other event or circumstance that (a) materially, adversely affects the Property or (b) makes any Seller's representation or warranty untrue or misleading, (collectively, the "Seller Representation Notice") it being expressly understood that Seller's obligation to provide information to City under this Section shall, in no way relieve Seller of any liability for a breach by Seller of any of Seller's warranties or of any of Seller's covenants or agreements under this Agreement. Notwithstanding the foregoing, in no event shall Seller be liable to City for, or be deemed to be in default hereunder by reason of, any breach of representation or warranty for which Seller has provided a Seller Representation Notice prior to Closing, which breach results from any change not prohibited under the terms of this Agreement and beyond the reasonable control of Seller to prevent or cure. The City may terminate this Agreement upon notice to Seller if Seller delivers a Seller Representation Notice to City or if City has actual knowledge of a breach of any representation or warranty prior, in which event (c) the Deposits shall promptly be released to City and (d) neither party shall thereafter have any rights or obligations to the other hereunder. In addition, Seller shall not be liable with respect to any representation or warranty if, prior to Closing, the City Public Works Director or its senior project manager has actual knowledge of any breach of representation or warranty that contradicts any of Seller's representations or warranties and City nevertheless consummates the transaction contemplated by this Agreement.

11.2. Maintenance of Property. Seller shall not default with respect to the performance of any material obligation relating to the Property. Subject to the provisions of the PBI License Agreement, Seller shall maintain the Property prior to the Closing Date in substantially the same

manner as it has been previously maintained. Seller shall make no material alterations in the Property without City's prior written consent.

11.3. Exclusive Negotiations. For so long as this Agreement remains in effect, Seller shall (i) remove the Property from the market, and (ii) cease and refrain from any and all negotiations with any other prospective optionees or buyers of the Property.

11.4. Service Contracts; Other Contracts. Subject to Section 11.5, Seller shall not enter into, extend, renew or replace any existing Service Contracts or other contracts to the extent affecting the Property without City's prior written consent (which consent may be withheld in City's reasonable discretion), unless the same shall be cancelable, without penalty or premium (including but not limited to any cost or liability to the City) prior to Closing. Seller shall, at Seller's sole cost and expense, terminate all Service Contracts and agreements affecting the Property (excepting any Permitted Exception) on or before the Closing Date. Notwithstanding the foregoing, Seller shall have the right to modify, amend, cancel or terminate any Service Contracts that relate primarily to the maintenance, repair and operation of the Site (and not specifically to the Property) without City's consent so long as such Service Contracts are terminated without penalty or premium (including but not limited to any cost or liability to the City) with respect to the Property prior to Closing.

11.5. Leases. Notwithstanding anything to the contrary in Section 11.4, Seller shall not enter into any Leases or provide any other rights of occupancy or use with respect to the Property without City's prior written consent, which may be withheld by City in its sole and absolute discretion. The Seller is a party to the commercial leases listed in Exhibit H (the "Commercial Leases"). Seller will not modify the Commercial Leases in a manner that will breach or cause a conflict with the representation and warranty provided to City in Section 10.7. On or prior to the Closing, the Seller shall provide any required notice to each tenant of a Commercial Lease (each a "Commercial Tenant") that the Common Area will not include the Property. Seller shall, defend (with counsel acceptable to the City), and hold harmless the City, its councilmembers, officers, agents and employees (the "City Indemnitees") for all claims, losses, damages, costs and expenses (including attorneys' fees, charges and disbursements) for all actual damages sustained and incurred by the City and arising from or relating to Seller's breach of this Section 11.5 or 10.7 or in connection with any claims from a Commercial Tenant for compensation for the Property (or a portion thereof) and/or relocation expenses, benefits and/or assistance relating to the sale of the Property, including but not limited to, any compensation or benefits that the City is required to pay to the person or entity other than Seller under the Eminent Domain Law (Civil Procedure Code Sections 1230.010 et seq.) or the Relocation Law (Government Code Sections 7260 et seq.) in connection with the City's acquisition of that person or entity's interest in the Property and relocation from the Property. The provisions of this Section will survive Closing or earlier termination of this Agreement for 48 months.

11.6. Cooperation With City's Entitlement Activities and Transition. Seller desires to achieve the Parking Reduction prior to Closing and is conditioning its sale of the Property to the City on receipt of the Parking Reduction. The Parking Reduction approval process is estimated to take six to eight months from commencement. The City and Seller will, at no cost or expense to Seller, cooperate in applying to amend and restate the planned development permit to reduce the parking requirements for the remainder of Seller's real property located at 700-800 El Camino Real

APN 071-333-200 to permit Seller and its tenants and occupants to continue to use the remainder of the Site, without material adverse effect on Seller, notwithstanding the reduction in the available parking at the Site due to the sale of the Fee Property contemplated under this Agreement (the "Parking Reduction"). Nothing in this Agreement will obligate the City to approve or obtain the Parking Reduction, which shall be approved or disapproved by the City in its capacity as a regulatory entity. In the event the City disapproves the Parking Reduction prior to the Closing, this Agreement shall automatically terminate and be of no further force or effect and neither party shall have any further rights or obligations except for those obligations that expressly survive this Agreement.

11.7. PBI License Agreement. The Seller and Palisade Builders, Inc. ("PBI") are parties to a License Agreement dated June 17, 2019 and License Agreement No. 2 dated as of January 1, 2021 (collectively, the "PBI License Agreement"). The PBI License Agreement is a Property Document, and a copy of the PBI License Agreement was delivered to the City by Seller prior to the date of this Agreement. If requested by City at or prior to Closing, the Seller will execute and use commercially reasonable efforts to cause PBI to execute a City-standard form of license agreement or reasonable amendments to the existing PBI License Agreement to allow for such agreement to meet standard City requirements (the "Amended and Restated PBI License Agreement"), which shall include an assignment to the City. Any Amended and Restated PBI License Agreement will be reasonably acceptable to City. If Seller cannot secure PBI's execution of the Amended and Restated PBI License Agreement, Seller will provide PBI with notice of termination of the PBI License Agreement concurrently with the Closing.

12. **CONDITIONS PRECEDENT TO CLOSING.**

12.1. City's Conditions. The obligation of City to render performance under this Agreement is subject to satisfaction of the following conditions precedent to Closing (and conditions concurrent, with respect to deliveries to be made by the parties at Closing or at such earlier times as may be set forth below) ("City's Conditions"), which conditions may be waived, or the time for satisfaction thereof extended, by City only in a writing executed by City; provided, however, that any such waiver shall not affect City's ability to pursue any remedy City may have with respect to any breach hereunder by Seller:

12.1.1. Due Diligence. City shall have approved the Property in accordance with Sections 7 and 9 on or before the dates set forth in Sections 7 and 9, as applicable.

12.1.2. Construction Approvals and Agreements. City (a) shall have received all governmental approvals necessary to develop the Project, as determined by the City and all periods for the filing of an application for a referendum or other challenge regarding any such approval, have expired without the filing of an appeal or application, or if an appeal or application is filed, that the appeal or application is resolved on terms satisfactory to the City (b) shall have entered into one or more agreements with Caltrain, which will allow the construction of the Project on the Property and on and through the adjacent property owned by Caltrain (or subject to a Caltrain right of way or use) in a manner and cost acceptable to the City, as determined by the City in its sole and absolute discretion (the "Construction Agreements"). The Construction

Agreements are subject to City Council approval, which approval or disapproval shall be within the sole and absolute discretion of the City Council.

12.1.3. Parking Reduction. The City shall have obtained the Parking Reduction pursuant to Section 11.6 above and all administrative and judicial appeal periods for such approval, and all periods for the filing of an application for a referendum or other challenge regarding any such approval, have expired without the filing of an appeal or application, or if an appeal or application is filed, that the appeal or application is resolved on terms satisfactory to the City and Seller (collectively, the "Final Approval").

12.1.4. Title. Title Company shall be prepared and irrevocably committed to issue a CLTA standard coverage policy (or, if City obtains an ALTA survey acceptable to the Title Company, an ALTA extended coverage owner's policy of title insurance (2006 form)) in favor of City in an amount equal to the Purchase Price showing indefeasible fee simple title to the Fee Property vested in City and easement rights in the Easement Property, subject only to the Permitted Exceptions (collectively, the "Owner's Title Policy").

12.1.5. Seller's Warranties; No Default. All of Seller's representations and warranties set forth in this Agreement shall be true and correct in all material respects as of the Closing Date and Seller shall not be in default under this Agreement.

12.1.6. Seller's Deliveries. Seller shall have delivered all items to be delivered by Seller pursuant to Section 14.1 on or prior to the Closing Date.

12.1.7. Bankruptcy. No action or proceeding shall have been commenced by or against Seller under the federal bankruptcy code or any state law for the relief of debtors or for the enforcement of the rights of creditors and no attachment, execution, lien or levy shall have attached to or been issued with respect to any portion of the Property.

12.2. Failure of City's Conditions. If any of City's Conditions have not been fulfilled within the applicable time periods, City may either waive such condition in writing and proceed to the Closing pursuant to this Agreement or terminate this Agreement, in which event (i) the Deposits (less any Termination Consideration owed) shall promptly be released to City and (ii) neither party shall thereafter have any rights or obligations to the other hereunder. Notwithstanding the foregoing, if any of City's Condition is not satisfied due to a default on the part of Seller, then City shall have the rights and remedies set forth in Section 17.2. In addition, notwithstanding anything in this Agreement to the contrary, if the City terminates this Agreement pursuant to Section 12.2 or Section 12.3, the Termination Consideration shall be deducted from the Deposits prior to the return of the Deposits to City.

12.3. Seller's Conditions. The obligation of Seller to render performance under this Agreement is subject to the satisfaction of the following conditions precedent to Closing (and conditions concurrent with respect to deliveries to be made by the parties at Closing) ("Seller's

Conditions"), which conditions may be waived, or the time for satisfaction thereof extended, by Seller only in a writing executed by Seller:

12.3.1. Subdivision Map Compliance. At its sole cost and expense, City shall issue concurrently with Closing a certificate of compliance reasonably acceptable to the Title Company and Seller evidencing that the Property and remainder of the Site constitute legal parcels in compliance with the California Subdivision Map Act and the subdivision ordinance and other regulations of the City.

12.3.2. Parking Reduction. At its sole cost and expense, The City shall have obtained the Parking Reduction pursuant to Section 11.6 and the Final Approval (as defined in Section 12.1.3) shall have occurred.

12.3.3. City's Due Performance. City shall have delivered all items and funds to be delivered by City pursuant to Section 14.2, on or prior to the Closing and shall not be in default of its representations, warranties, covenants or other obligations under this Agreement.

12.4. Failure of Seller's Conditions. If any of Seller's Conditions have not been fulfilled within the applicable time periods, Seller may terminate this Agreement by delivery of written notice thereof to City. Upon such termination, (i) the Deposits shall be released to Seller except as provided in Sections 12.2, 16 or 17.2, and (ii) neither party shall thereafter have any rights or obligations to the other hereunder. Notwithstanding the foregoing, if any Seller's Condition is not satisfied due to a default on the part of City, then Seller shall have the rights and remedies set forth in Section 17.1.

13. **CLOSING.**

13.1. Closing Date. Subject to the provisions of this Agreement, the Closing shall take place on the date which is thirty (30) days following the later of (a) the Final Approval of the Parking Reduction and the satisfaction of Section 12.1.2 or (b) on such other date as the parties hereto may agree. In no event will the Closing be later than twenty-four (24) months from the date of this Agreement. The date on which the Closing occurs or is scheduled to occur pursuant to this Section 13.1 is referred to as the "Closing Date."

13.2. Condition of Title at Closing. Upon the Closing, Seller shall sell, transfer and convey to City indefeasible fee simple title to the Fee Property pursuant to the Grant Deed and an easement pursuant to the Temporary Access and Construction Easement, subject only to the Permitted Exceptions.

13.3. Prorations; Closing Costs. Any license fees or other amounts payable under the Amended and Restated PBI License Agreement shall be prorated as of Closing. All property taxes and assessments owing on the Property shall be prorated as of the Closing. Each party shall pay its own costs and expenses arising in connection with the Closing (including, without limitation,

its own attorneys' and advisors' fees), except the City shall pay all escrow and recording fees and all title insurance premiums for the Owner's Title Policy.

14. CLOSING DELIVERIES.

14.1. Deliveries by Seller to Escrow. In time sufficient to permit the Closing on the scheduled Closing Date (in no event later than 1 Business Day in advance), Seller, at its sole cost and expense, shall deliver or cause to be delivered into Escrow the following documents and instruments, each effective as of the Closing Date and executed by Seller, in addition to the other items and payments required by this Agreement to be delivered by Seller:

14.1.1. Grant Deed. The original executed and acknowledged Grant Deed conveying the Fee Property to City;

14.1.2. Temporary Construction Easement and Temporary Access Easement. Original executed and acknowledged Temporary Construction Easement and Temporary Access Easement conveying the easements and rights described therein to the City;

14.1.3. Amended and Restated PBI License Agreement. An original Amended and Restated PBI License Agreement executed by Seller and PBI;

14.1.4. Other. Such other documents and instruments, signed and properly acknowledged by Seller, if appropriate, as may be reasonably required Title Company or otherwise in order to effectuate the provisions of this Agreement and the Closing of the transactions contemplated herein, including, without limitation, reasonable or customary resolutions, proof of authority, title affidavits (in a form reasonably acceptable to Seller) and required by Title Company to issue the Owner's Title Policy.

14.2. Deliveries by City. In time sufficient to permit the Closing on the scheduled Closing date (in no event later than 1 Business Day in advance), City, at its sole cost and expense, shall deliver or cause to be delivered into Escrow the following:

14.2.1. Temporary Construction Easement and Temporary Access Easement. Original executed and acknowledged Temporary Construction Easement and Temporary Access Easement conveying the easements and rights described therein to the City;

14.2.2. Amended and Restated PBI License Agreement. An original executed Amended and Restated PBI License Agreement executed by the City.

14.2.3. Balance, Prorations & Closing Costs. The balance of the Purchase Price and City's share of prorations and Closing Costs;

14.2.4. Other. Such other documents and instruments signed and properly acknowledged by City, if appropriate, as may reasonably be required by Escrow agent or otherwise in order to effectuate the provisions of this Agreement and the closing of the transactions contemplated herein.

14.3. Closing Procedure. When the Title Company has timely received all documents and funds identified in Sections 14.1 and 14.2, and has received written notification from City and Seller that all conditions to Closing have been satisfied or waived; and the Title Company is irrevocably committed to issue the Owner's Title Policy, the Title Company shall

14.3.1. Record the Grant Deed, Temporary Construction Easement and Temporary Access Easement in the Official Records;

14.3.2. Issue the Owner's Title Policy to City;

14.3.3. Deliver to City (i) a conformed copy showing all recording information of the Grant Deed, Temporary Construction Easement and Temporary Access Easement and (ii) City's closing statement; and

14.3.4. Deliver to Seller (i) the Purchase Price (as adjusted for prorations and Seller's share of closing costs), and (ii) Seller's closing statement.

15. **PRORATIONS.**

The following shall be prorated between City and Seller as of 12:01 a.m. on the Closing date: real property taxes and assessments, management, service, operating and maintenance expenses relating to contracts to be assigned to City; water, gas, electricity, sewer and other utility charges, annual permits and/or inspection fees and all other items of income and expense relating to the Property.

16. **RISK OF LOSS.**

16.1. Condemnation. In the event that prior to the Closing Date, the Property, or any part thereof, is subject to a taking by a public authority (other than the City), then City shall have the right, exercisable by giving notice to Seller within 30 days after receiving written notice of such taking either (a) to terminate this Agreement, in which case neither party shall have any further rights or obligations hereunder and the Deposits shall be released to the City, or (b) to accept the Property in its then condition and proceed to close this transaction, and to receive an assignment of all of Seller's rights to any condemnation awards payable by reason of such taking. If City elects to proceed under clause (b) above, Seller shall not compromise, settle or adjust any claims to such awards without City's prior written consent, which consent shall not unreasonably be withheld. Seller agrees to give City prompt notice of any taking of the Property promptly after Seller receives notice of the same. Notwithstanding any provision of this Section 16.2 to the contrary, if any other part of the Site becomes subject to a taking by any public authority, Seller shall have the right to terminate this Agreement by written notice to City, in which event the Deposits shall be returned to City. For as long as this Agreement remains in effect, and provided Seller is not in default hereunder, the City agrees that it shall not acquire the Property under power of eminent domain.

16.2. Casualty. City acknowledges that the Property is not currently improved with any buildings or other structures and that the Purchase Price is based on the land value of the Property.

16.2.1. The City may terminate this Agreement in the event of any casualty affecting the Property, where the cost to repair or restore the Property to its

previous condition exceeds \$380,000. Upon such termination, the Deposit shall be released to City and neither party shall have any further rights or obligations hereunder, other than pursuant to any provision hereof that expressly survives the termination of this Agreement.

16.2.2. If the cost to repair or restore the Property following a casualty does not exceed \$380,000 or if the City does not terminate this Agreement as set forth in 16.2.1, this Agreement shall remain in full force and effect and City shall bear the risk of loss if the Property is damaged as the result of fire, earthquake, flood, sinkhole or other casualty or act of God, and there shall be no diminution in the Purchase Price as the result of any such casualty or act of God.

17. **DEFAULT.**

17.1. **DEFAULT BY CITY.**

IN THE EVENT THAT THE ESCROW AND THIS TRANSACTION FAIL TO CLOSE AS A RESULT OF THE DEFAULT OF CITY IN THE PERFORMANCE OF ITS OBLIGATION TO PURCHASE THE PROPERTY UNDER THIS AGREEMENT, CITY AND SELLER AGREE THAT SELLER'S ACTUAL DAMAGES WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX AND THAT THE AMOUNT OF THE DEPOSITS REPRESENTS THE PARTIES' REASONABLE ESTIMATE OF SUCH DAMAGES. THE PARTIES THEREFORE AGREE THAT IN THE EVENT THAT ESCROW AND THIS TRANSACTION FAIL TO CLOSE SOLELY AS A RESULT OF THE DEFAULT OF CITY IN THE PERFORMANCE OF ITS OBLIGATION TO PURCHASE THE PROPERTY HEREUNDER AND SELLER IS READY, WILLING AND ABLE TO PERFORM ITS OBLIGATIONS HEREUNDER., SELLER, AS SELLER'S SOLE AND EXCLUSIVE REMEDY FOR SUCH DEFAULT, IS ENTITLED TO LIQUIDATED DAMAGES IN THE AMOUNT OF THE DEPOSITS THEN HELD BY THE TITLE COMPANY. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. NOTWITHSTANDING ANYTHING IN THIS SECTION 17.1 TO THE CONTRARY, THIS SECTION 17.1 SHALL NOT WAIVE, LIMIT OR AFFECT (1) CITY'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT, (2) SELLER'S RIGHT TO RECOVER REASONABLE ATTORNEYS' FEES, COSTS INCURRED BY SELLER TO REPAIR ANY DAMAGE TO THE PROPERTY RESULTING FROM CITY'S INSPECTIONS, (3) SELLER'S RIGHTS IF IT IS THE PREVAILING PARTY IN ANY SUIT OR ACTION PURSUANT TO SECTION 20.16 (ATTORNEY'S FEES), AND (4) ANY COSTS INCURRED BY SELLER IN ENFORCING ITS RIGHTS TO RECEIVE THE DEPOSITS AS LIQUIDATED DAMAGES. SELLER AND CITY ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE

PROVISIONS OF THIS SECTION 17.1, AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

Seller's Initials

City's Initials

17.2. DEFAULT BY SELLER

In the event that Seller breaches its obligation to sell and transfer the Property to City pursuant to this Agreement, and if such breach is not cured within five (5) business days after Seller's receipt of written notice from City specifying such breach, then City may either (i) terminate this Agreement by delivery of notice of termination to Seller, whereupon City shall have the right to the return of all Deposits previously deposited by City into Escrow and to recover from Seller its actual out-of-pocket costs for legal and inspection fees incurred by City and all other out-of-pocket expenses incurred by City in connection with this transaction, including, without limitation, attorneys' fees, application fees, architect fees, environmental and engineering consultants' fees not to exceed, in the aggregate, One Hundred Thousand Dollars, and neither party shall have any further rights or obligations hereunder except for those provisions specified to survive or (ii) assert an action for specific performance of Seller's obligations to sell and transfer the Property to City pursuant to this Agreement. Except for those claims specified to survive, claims of breach asserted against Seller must be expressly asserted in a lawsuit filed and service on Seller within the twelve (12) month period immediately following the Closing Date, and Seller shall have no liability whatsoever for any such alleged breach if such claim is not expressly asserted in a lawsuit filed and service on Seller within such twelve (12) month period.

17.3 Waiver of Certain Damages. Without limiting the other provisions of this Article 17, neither City nor Seller shall be liable for consequential or punitive damages (including any damages for lost profits, lost opportunity, or lost revenue). City waives its right to record a lis pendens or similar notice against all or any portion of the Property except in connection with a specific performance action brought in accordance with the terms of Section 17.2 or following termination of this Agreement. In no event does or will the City waive any of its rights to proceed in eminent domain if this Agreement is terminated as the result of Seller's breach of this Agreement.

18. BROKERS.

18.1. Seller. Seller hereby represents, warrants, and covenants to City that Seller has not dealt with any third party in a manner that would obligate City to pay any brokerage commission, finder's fee or other compensation due or payable with respect to the transaction contemplated hereby. Seller hereby indemnifies and agrees to protect, defend and hold City harmless from and against any and all claims, losses, damages, costs and expenses (including attorneys' fees, charges and disbursements) incurred by City by reason of any breach or inaccuracy of the representation, warranty and agreement of Seller contained in this Section. The provisions of this Section shall survive the Closing or earlier termination of this Agreement.

18.2. City. City hereby represents, warrants, and covenants to Seller that City has not dealt with any third party in a manner that would obligate Seller to pay any brokerage commission,

finder's fee or other compensation due or payable with respect to the transaction contemplated hereby. City hereby indemnifies and agrees to protect, defend and hold Seller harmless from and against any and all claims, losses, damages, costs and expenses (including attorneys' fees, charges and disbursements) incurred by Seller by reason of any breach or inaccuracy of the representation, warranty and agreement of City contained in this Section. The provisions of this Section shall survive the Closing or earlier termination of this Agreement.

19. DISCLOSURES; AS-IS SALE; RELEASE OF CLAIMS.

19.1. Health and Safety Code Notice. Section 25359.7 of the California Health and Safety Code requires owners of non-residential real property who know, or have reasonable cause to believe, that any release of hazardous substance has come to be located on or beneath the real property to provide written notice of such to a buyer of the real property. City and Seller acknowledge that Seller has advised City that the sole inquiry and investigation Seller has conducted in connection with the environmental condition of the Property is to obtain and/or review those certain environmental assessments and studies of the Property, if any, delivered to City pursuant to this Agreement (collectively, "Seller's Environmental Reports"). City (a) acknowledges City's receipt of the foregoing notice given pursuant to Section 25359.7 of the California Health and Safety Code; (b) will be, prior to the expiration of the Contingency Period, fully aware of the matters described in Seller's Environmental Reports; and (c) after receiving advice of City's legal counsel, waives, to the extent permitted by law, any and all rights City may have to assert that Seller has not complied with the requirements of Section 25359.7 of the California Health and Safety Code. City further acknowledges that City retained AECOM Technical Services ("AECOM") to obtain a Phase I Environmental Site Assessment for the Property and has received and reviewed the Final Phase I Environmental Site Assessment prepared by AECOM dated December 10, 2019.

19.2. As-Is Sale. Except as otherwise provided in this Agreement, Seller hereby specifically disclaims any warranty, guaranty, or representation, oral or written, past, present, or future, of, as to, or concerning (a) the nature and condition of the Property, including, but not by way of limitation, the Improvements, the water, soil, geology, environmental conditions (including the presence or absence of any environmental contamination, or toxic pollution as a result of the presence, use, discharge, or release of Hazardous Materials on, about, or in the Property), and the suitability thereof for any and all activities and uses which City may elect to conduct thereon; (b) the nature and extent of any right-of-way, lease, possessory interest, lien, encumbrance, license, reservation, condition, or otherwise; (c) the compliance of the Property or its operation with any laws, codes, ordinances, policies, statutes, ordinances or regulations of any government or other body; (d) the quality, nature, adequacy, and physical condition of soils, geology, and any groundwater, including the presence of fill or the adequacy of soils compaction or the possibility or extent of any subsidence; (e) the size, square footage, acreage or boundaries of the Property; (e) the existence, nature or adequacy of ingress and egress to the Property; (f) the existence, nature, and adequacy of parking and of utilities serving the Property, including without limitation water, sewer, electric, gas, phone and cable service; (f) the nature, adequacy and quality of drainage on the Property, including the occurrence of any flooding, and the presence or adequacy of any sloughs or levees; (g) the present or future zoning or other legal status of the Property or any other private restrictions on use of the Property; (h) the development potential of the Property, and the Property's use, habitability, merchantability or fitness, or the suitability, value or adequacy of the

Property for any purpose; (i) the presence of Hazardous Materials, on, under or about the Property, or adjoining or neighboring property; (j) the manner, quality or adequacy of existing construction, site or grading work on the Property or any construction materials; (k) the condition of title to the Property and the terms and conditions of the Leases; (l) the economics of operation of the Property, including but not limited to the projected income or expenses for any of the Property; and (m) any aspect, whether latent or patent, of any of the Property (collectively, all of the foregoing shall be hereinafter referred to as the “Property Condition Matters”). City represents that City is a knowledgeable purchaser of real estate and that City is relying solely on the Seller's representations and warranties as set forth in this Agreement and City's own expertise and the expertise of City's consultants and advisors and is making and relying upon its own inspections of all aspects of the Property. The sale of the Property as provided for herein is made on an “AS-IS AND WITH ALL FAULTS” basis, and City expressly acknowledges that, in consideration of the agreements of Seller herein, and except as otherwise expressly specified herein, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, OF THE PROPERTY. In particular, but without limiting the foregoing and except as otherwise expressly set forth in this Agreement, Seller makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, economic viability, value, safety or security issues relating to the Property, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters, compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements. City acknowledges that it is entering into this Agreement on the basis of City's own investigation of the physical and environmental conditions of the Property and all other matters affecting the Property, including without limitation subsurface or latent conditions, and City assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigations. Without limiting the foregoing, City acknowledges that neither Seller nor anyone on behalf of Seller has made any representations, statements or warranties regarding the location of the Property within any natural hazard areas or other areas, or with respect to any other matters of concern, which are the subject of the Natural Hazard Disclosure Report(s). City acknowledges and agrees that Seller has not made, is not making and shall make no representation or warranty of any nature concerning the accuracy or completeness of the Natural Hazard Disclosure Report(s), except as expressly provided in this Agreement, notwithstanding any statement, term or condition set forth in the Natural Hazard Disclosure Report(s). Seller shall have absolutely no liability if the Property is located in any natural hazard area or other area of concern, and City assumes all risk relating thereto. City acknowledges and agrees that the matters set forth in the Natural Hazard Disclosure Report(s) may change on or prior to the Closing and that Seller has no obligation to update, modify or supplement the Natural Hazard Disclosure Report(s).

As of the expiration of the Contingency Period, City agrees that it shall have conducted or shall have been provided with the opportunity to conduct, such investigations of the Property, including, but not limited to, the physical and environmental condition thereof, as City reasonably deems necessary to satisfy itself as to the condition of the Property, and will rely solely upon the same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than the representations and warranties of Seller that are expressly set

forth in this Agreement. City further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Property, by Seller, any of the Seller Parties, any agent of Seller or any third party except for Seller's express representations and warranties in this Agreement. Seller is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any real estate broker, agent, employee, servant or other person, unless the same are specifically set forth or referred to in this Agreement. City acknowledges that the Purchase Price reflects the "AS IS, WHERE IS" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property, except as to Seller's representations and warranties in Section 10. City, with City's counsel, has fully reviewed the disclaimers, waivers and other provisions set forth in this Agreement, and understands the significance and effect thereof. City acknowledges and agrees that the disclaimers and other agreements set forth herein are an integral part of this Agreement, and that Seller would not have agreed to sell the Property to City for the Purchase Price without the disclaimers, waivers and other provisions set forth in this Agreement. The terms and conditions of this Section 19.2 will expressly survive the Closing and will not merge with the provisions of any closing documents.

19.3. RELEASE OF CLAIMS. Effective from and after the Closing, except for actions to enforce this Agreement, as limited by the terms and conditions of this Agreement and for actions by the City in its governmental or regulatory capacity, City hereby waives, releases, acquits, and forever discharges Seller, and Seller's agents, directors, officers, and employees to the maximum extent permitted by law, of and from any and all claims, actions, causes of action, demands, rights, liabilities, damages, losses, costs, expenses, or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, arising from or relating to the (including but not limited to the existence of any of Hazardous Materials on or about) the Property. In no event will the City's release of Seller include matters arising Seller's breach, fraud or intentional misrepresentation or conduct, a claim for the return of any deposit, Seller's indemnification obligations under this Agreement, Seller's obligations under any other agreements with the City, Seller's obligations under any other provision that survives this Agreement, matters arising from the remainder of the Site or Seller's actions or omissions following Closing. City expressly waives its rights granted under the provisions of any law that provides that a general release does not extend to claims that buyer does not know or suspect to exist in its favor at the time of executing the release, which if known by it must have materially affected its agreement to release Seller including, without limitation, California Civil Code §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The provisions of this Section will survive the Closing.

Seller's Initials

City's Initials

19.4. Natural Hazard Disclosures. City and Seller acknowledge that Seller may be required to disclose if the Property lies within the following natural hazard areas or zones: (a) a special flood hazard area designated by the Federal Emergency Management Agency (California Civil Code Section 1102.17); (b) an area of potential flooding (California Government Code Section 8589.4); (c) a very high fire hazard severity zone (California Government Code Section 51183.5); (d) a wild land area that may contain substantial forest fire risks and hazards (Public Resources Code Section 4136); (e) an earthquake fault zone (California Public Resources Code Section 2621.9); or (f) a seismic hazard zone (Public Resources Code Section 2694) (collectively, the “Natural Hazard Matters”). Prior to the expiration of the Contingency Period, Seller will engage through Escrow Holder the services of an organization satisfactory to Seller and Escrow Holder (which, in such capacity, is herein called the “Natural Hazard Expert”) to examine maps and other information specifically made available to the public by government agencies for the purposes of enabling Seller to fulfill its disclosure obligations, if and to the extent such obligations exist, with respect to the natural hazards referred to above and to report the result of its examination to City and Seller in writing, which report shall be delivered to City the “Natural Hazard Disclosure Report(s)”). City acknowledges that the Property may be within a special study zone as designated under the Alquist-Priolo-Geologic Hazard Act (Section 2621 *et seq.* of the California Public Resources Code); if the Property is so located, construction or development on the Property of any structures intended for human occupancy may be subject to the findings of a geological report prepared by a geologist registered in the State of California.

20. MISCELLANEOUS PROVISIONS.

20.1. Right of Possession and Use. It is agreed and confirmed by the parties hereto that, notwithstanding the other provisions in this Agreement, the right of possession and use of the Fee Property by City, and/or its designees or assignees including the right to remove and dispose of improvements, and install and connect utilities shall commence following the Closing Date and that the Purchase Price includes, but is not limited to, full payment for such possession and use, including interest and damages if any, from said date.

20.2. Governing Law. This Agreement and the legal relations between the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

20.3. Entire Agreement. This Agreement, including the exhibits and schedules attached hereto, constitutes the entire agreement between City and Seller pertaining to the subject matter hereof and supersedes all prior agreements, understandings, letters of intent, negotiations and discussions, whether oral or written, of the parties.

20.4. Modifications; Waiver. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other

provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

20.5. Notices. All notices, consents, requests, reports, demands or other communications hereunder (collectively, "Notices") shall be in writing and may be given personally or by reputable overnight delivery service to each of the parties at the following addresses:

To City: City of Menlo Park
 Attn: City Manager
 701 Laurel Street
 Menlo Park, CA 94025

With a copy to: City of Menlo Park
 Attn: Public Works Director
 701 Laurel Street
 Menlo Park, CA 94025

To Seller: Menlo Station Development, LLC
 Attn: David Wollenberg
 800 El Camino Real Suite 210
 Menlo Park, CA 94025

or to such other address or such other person as the addressee party shall have last designated by written notice to the other party. Notices shall have been deemed to have been delivered on the date of delivery or refusal. All copies of Notices (i.e., those provided to any person or entity other than Seller, City, or Escrow Holder) shall be given as a courtesy only, and the failure or inability to deliver any courtesy copy of any Notice will not invalidate the Notice given to Seller, City, or Escrow Holder.

20.6. Severability. Any provision or part of this Agreement which is invalid or unenforceable in any situation in any jurisdiction shall, as to such situation and such jurisdiction, be ineffective only to the extent of such invalidity and shall not affect the enforceability of the remaining provisions hereof or the validity or enforceability of any such provision in any other situation or in any other jurisdiction.

20.7. Successors and Assigns; Third Parties. All the rights, duties, benefits, liabilities and obligations of the parties shall inure to the benefit of, and be binding upon, their respective successors and assigns. Except as specifically set forth or referred to herein, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties hereto and their successors or assigns, any rights or remedies under or by reason of this Agreement.

20.8. Counterparts. This Agreement may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts,

each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.

20.9. Headings. The section headings of this Agreement are for convenience of reference only and shall not be deemed to modify, explain, restrict, alter or affect the meaning or interpretation of any provision hereof.

20.10. Time of the Essence. Time shall be of the essence with respect to all matters contemplated by this Agreement.

20.11. Further Assurances. In addition to the actions recited herein and contemplated to be performed, executed, and/or delivered by Seller and City, Seller and City agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered at the Closing or after the Closing any and all such further acts, instruments, deeds and assurances as may be reasonably required to consummate the transactions contemplated hereby.

20.12. Joint and Several Liability. If Seller consists of more than one person or entity, the obligations of each person or entity executing this Agreement as Seller shall be joint and several.

20.13. Number and Gender. Whenever the singular number is used, and when required by the context, the same includes the plural, and the masculine gender includes the feminine and neuter genders.

20.14. Construction. This Agreement shall not be construed more strictly against one party hereto than against any other party hereto merely by virtue of the fact that it may have been prepared by counsel for one of the parties.

20.15. Exhibits. All exhibits attached hereto are hereby incorporated by reference as though set out in full herein.

20.16. Attorneys' Fees. If any action is brought by either party against the other party, relating to or arising out of this Agreement, the transaction described herein or the enforcement hereof, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action. The provisions of this Section shall survive the entry of any judgment, and shall not merge, or be deemed to have merged, into any judgment.

20.17. Business Days. As used herein, the term "Business Day" or "business day" shall mean a day that is not a Saturday, Sunday or legal holiday. If the date for the performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday or legal holiday under the laws of the State of California, the date for performance thereof shall be extended to the next Business Day.

20.18. Memorandum of Purchase Agreement. If City delivers an Approval Notice pursuant to Section 7, then within ten (10) days after the expiration of the Contingency Period, at the request of the City the parties shall record a Memorandum of this Agreement substantially in the form attached as Exhibit F. As a condition to the recordation of the Memorandum of Agreement, City shall concurrently with depositing its signed Memorandum of Agreement into

escrow, execute, acknowledge and deposit into escrow (a) a quitclaim deed or other instrument sufficient to remove the Memorandum of Agreement from record (the "Memorandum Termination"), and (b) irrevocable escrow instructions directing the Escrow Holder to record the Memorandum Termination upon the termination of this Agreement. In the event the Memorandum of Agreement is recorded in the Official Records of San Mateo County pursuant to the terms hereof and this Agreement alter terminates prior to Closing, then, City and Seller shall promptly execute and deliver any documents reasonably required by the Title Company to remove the Memorandum of Agreement from record title

20.19. City's Design and Construction. The Project includes a tunnel that will traverse the adjacent Caltrain right of way. The City agrees that the City's development (including design and construction) of the Project will not create direct access from the tunnel to the Site without the prior written consent of the Seller, unless such access is required by an instrument or document recorded against the Property that constitutes a Permitted Exception, including but not limited to the 1981 Easement. The provisions of this Section shall survive until such time as the construction of the Project is completed. Nothing in this Section shall obligate the City to construct the Project or from later exercising its powers in eminent domain.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth next to their respective signatures.

CITY: CITY OF MENLO PARK

Starla L. Jerome-Robinson, City Manager

APPROVED AS TO FORM:

By: _____
Heather Gould, Special Counsel

ATTEST:

Judi A. Herren, City Clerk

SELLER:

MENLO STATION DEVELOPMENT, LLC,

By: The Cortana Corporation, a California
corporation

Its: Manager

By: _____

Title: _____

Acceptance by Lawyer's Title

Lawyer's Title Company acknowledges receipt of the foregoing Agreement and
accepts the instructions contained herein.

LAWYER'S TITLE COMPANY

By _____

Name _____

Title _____

Date of Execution by Title Company: _____

List of exhibits

- A. Site Map
- B. Property Description
- C. Grant Deed
- D. Temporary Construction Easement
- E. Temporary Access Easement
- F. Memo of Purchase Agreement
- G. Description of Physical Inspection
- H. Commercial Leases

EXHIBIT A

SITE MAP*



*Note that the Property to be acquired is only a portion of the Site (highlighted in yellow) and is shown in more detail in Exhibit B.

EXHIBIT B

Property Description

(R/W Acquisition Area = Fee Property)

TCE and Temporary Access Easement = Easement Property.

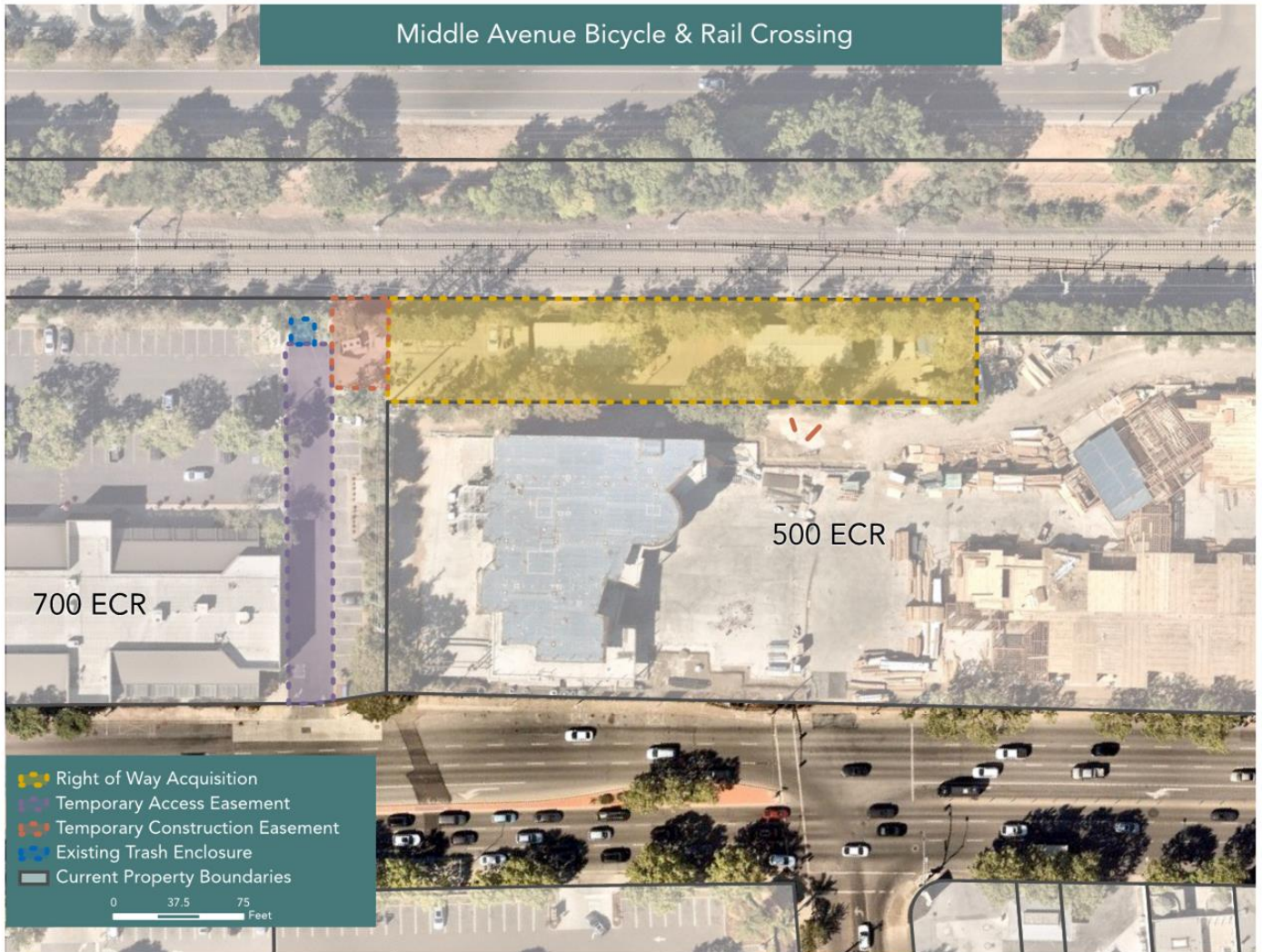


EXHIBIT B-1

Fee Property (Plat and Legal Description.)

Legal description for Fee Area City of Menlo Park, County of San Mateo, State of California

All that real property situate in the City of Menlo Park, County of San Mateo, State of California, said property being a portion of Parcel 5 as described in that certain grant deed to the Menlo Station Development, a California General Partnership, recorded May 23, 2005 as Document 2005-084651, San Mateo County Records, being more particularly described as follows:

BEGINNING at the intersection of the westerly corner of Parcel "B" as shown on Parcel Map filed March 19, 1981 in Book 49 of maps at page 86, San Mateo County Records, with the most southerly corner of a Parcel 2 as shown on Parcel Map filed June 25, 1980 in Book 51 at pages 5-7, San Mateo County Records, thence along the line common to said Parcel "B" and said Parcel 2, North 39°27'27" East 52.00 feet to the northerly line of said Parcel 2; Thence leaving said Parcel "B", along the northerly line of said Parcel 2, North 50°32'49" West 336.21 feet; Thence South 39°27'11" West 52.00 feet to a corner of said Parcel 2; Thence along the westerly line of said Parcel 2, South 50°32'49" East 336.20 feet to the **POINT OF BEGINNING**.

Containing an area of 17,483 square feet, more or less.

Exhibit "B" attached hereto and made a part hereof.

END OF DESCRIPTION

The distances stated in this description is per record mapping. The southwesterly line of Parcel 2 having a record of North 51°45'00" West 336.23 per Parcel Map filed June 25, 1980 in Book 51 at pages 5-7, San Mateo County Records, said line being described as South 50°32'49" East 3336.20 feet for this description.

This land description has been prepared by me, or under my direction, pursuant to Chapter 15, Article 3, Section 8726(1), of the Professional Land Surveyors' Act, and in conformance with Division 2, Chapter 2, Article 1, Section 66428(a)(2) of the Subdivision Map Act of the State of California and shall not be utilized in any conveyance which may violate said act(s) or local ordinances.

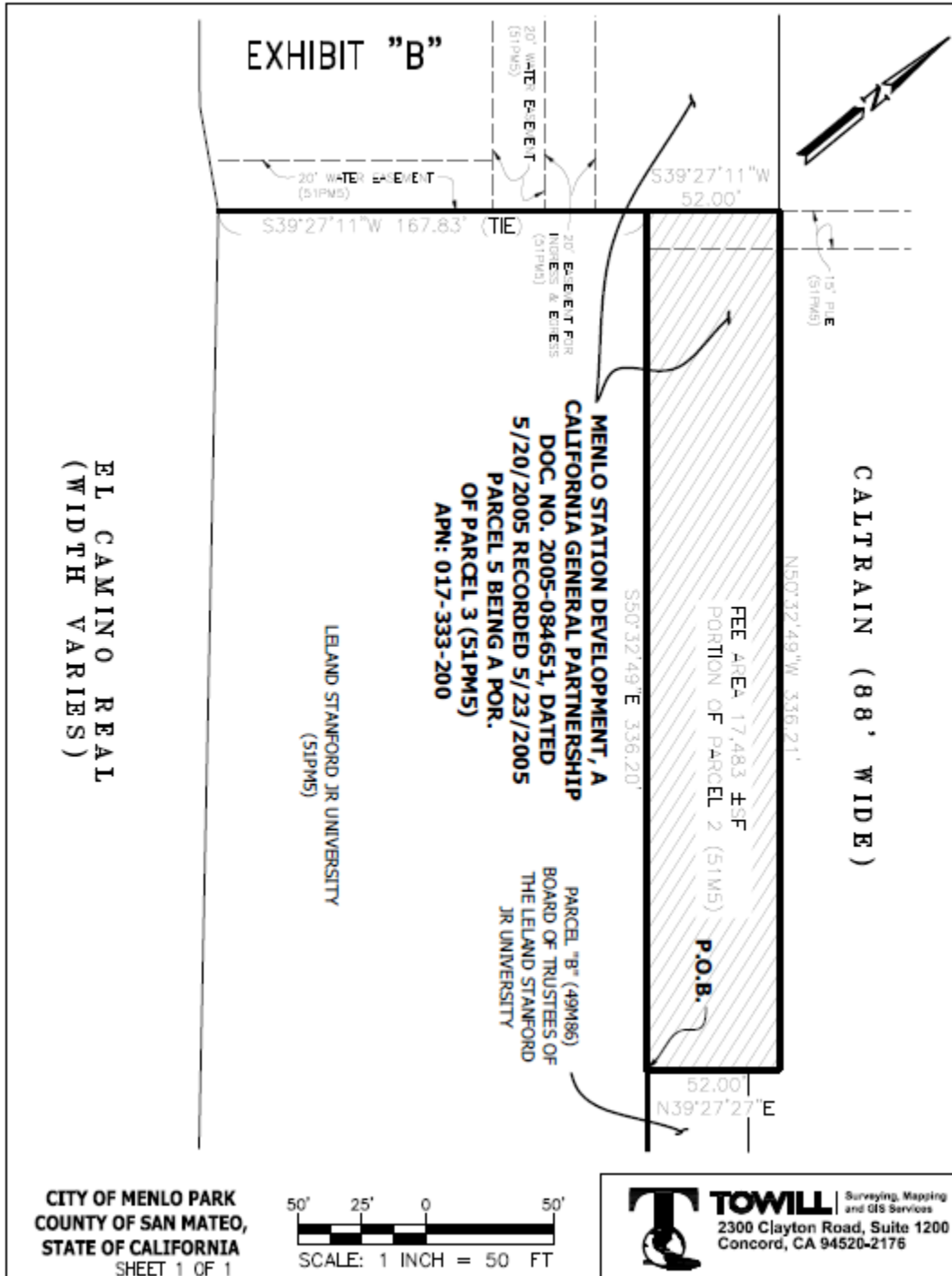


EXHIBIT B-2

Easement Property (Plat and Legal Description.)

**Legal description Temporary Construction Easement
City of Menlo Park, County of San Mateo, State of California**

TEMPORARY CONSTRUCTION EASEMENT:

All that real property situate in the City of Menlo Park, County of San Mateo, State of California, said property being a portion of Parcel 1 as described in that certain grant deed to the Menlo Station Development, a California General Partnership, recorded May 23, 2005 as Document 2005-084651, San Mateo County Records, being more particularly described as follows:

COMMENCING at the most southerly corner of Parcel 3 as shown on Parcel Map filed June 25, 1980 in Book 51 at pages 5-7, San Mateo County Records, said point being on the northeasterly right of way line of El Camino Real (width varies), thence leaving said corner, along the northeasterly right of way line El Camino Real, North 60°33'44" West 26.40 feet; Thence leaving said right of way line, North 39°27'11" East 176.42 feet to the **True Point of Beginning**; Thence continuing northeasterly, North 39°27'11" East 6.00 feet; Thence North 0°19'44" West 15.63 feet; Thence North 39°27'11" East 30.00 feet, to the northeasterly parcel line of said Parcel 3 of the parcel map filed in Book 51 at pages 5-7, San Mateo County Records; Thence along said parcel line, South 50°32'49" East 36.00; Thence South 39°27'11" West 48.01 feet; Thence North 50°32'49" West 26.00 feet to the **True Point of Beginning**.

Containing an area of 1,608 square feet, more or less.

Exhibit "B" attached hereto and made a part hereof.

END OF DESCRIPTION

The distances stated in this description are approximate per record mapping. The northeasterly right of way line of El Camino Real having a record of North 51°55'38" West per Parcel Map filed June 25, 1980 in Book 51 at pages 5-7, San Mateo County Records, said line being described as North 50°43'27" West for this description.

This land description has been prepared by me, or under my direction, pursuant to Chapter 15, Article 3, Section 8726(l), of the Professional Land Surveyors' Act, and in conformance with Division 2, Chapter 2, Article 1, Section 66428(a)(2) of the Subdivision Map Act of the State of California and shall not be utilized in any conveyance which may violate said act(s) or local ordinances.

**Legal description Temporary Access Easement
City of Menlo Park, County of San Mateo, State of California**

TEMPORARY ACCESS EASEMENT:

All that real property situate in the City of Menlo Park, County of San Mateo, State of California, said property being a portion of Parcel 1 as described in that certain grant deed to the Menlo Station Development, a California General Partnership, recorded May 23, 2005 as Document 2005-084651, San Mateo County Records, being more particularly described as follows:

COMMENCING at the most southerly corner of Parcel 3 as shown on Parcel Map filed June 25, 1980 in Book 51 at pages 5-7, San Mateo County Records, said point being on the northeasterly right of way line of El Camino Real (width varies), thence leaving said corner, along the northeasterly right of way line El Camino Real, North 60°33'44" West 26.40 feet to the **True Point of Beginning**; Thence continuing along said northeasterly right of way line, North 60°33'44" West 15.52 feet; Thence North 50°43'27" West 11.72 feet; Thence leaving said northeasterly right of way line, North 39°27'11" East 197.15 feet; Thence South 50°34'51" East 17.00 feet; Thence South 0°19'44" East 15.63 feet; Thence South 39°27'11" West 182.42 feet to the **True Point of Beginning**.

Containing an area of 5,242 square feet, more or less.

Exhibit "B" attached hereto and made a part hereof.

END OF DESCRIPTION

The distances stated in this description are approximate per record mapping. The northeasterly right of way line of El Camino Real having a record of North 51°55'38" West per Parcel Map filed June 25, 1980 in Book 51 at pages 5-7, San Mateo County Records, said line being described as North 50°43'27" West for this description.

This land description has been prepared by me, or under my direction, pursuant to Chapter 15, Article 3, Section 8726(I), of the Professional Land Surveyors' Act, and in conformance with Division 2, Chapter 2, Article 1, Section 66428(a)(2) of the Subdivision Map Act of the State of California and shall not be utilized in any conveyance which may violate said act(s) or local ordinances.

EXHIBIT C

GRANT DEED

RECORDING REQUESTED BY:
City of Menlo Park

WHEN RECORDED MAIL TO:
City of Menlo Park
701 Laurel Street
Menlo Park, California 94025

Attn: City Clerk

APN: 071-333-200 (portion of)

MAIL TAX STATEMENTS TO: SAME AS ABOVE

SPACE ABOVE FOR RECORDER'S USE

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103, and Documentary Transfer Tax of \$0.00, exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922 (Governmental Agency Acquiring Title).

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **MENLO STATION DEVELOPMENT, LLC, a California limited liability company ("Grantor")** HEREBY GRANT(S) TO **CITY OF MENLO PARK, A MUNICIPAL CORPORATION ("Grantee")**, the following Property.

That certain property in the County of San Mateo, State of California, more particularly described in the legal description as Exhibit A and depicted in plat map as Exhibit B, attached hereto and by this reference incorporated herein.

THE PROPERTY IS CONVEYED TO GRANTEE SUBJECT TO THE FOLLOWING: (a) easements, claims of easements, and other encumbrances and matters that are matters of public record; and (b) encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of the Property.

THE PROPERTY IS CONVEYED TO GRANTEES SUBJECT TO THE FOLLOWING:

GRANTOR

Dated: _____, 20__

Menlo Station Development, LLC, a California
limited liability company

By: The Cortana Corporation, a California
corporation

Its: Manager

Name: _____

Title: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA
COUNTY OF _____

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

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

WITNESS MY HAND AND OFFICIAL SEAL the day and year first above written.

NOTARY PUBLIC

Exhibit C-1

Exhibit C to Grant Deed
(Certificate of Acceptance)

CERTIFICATE OF ACCEPTANCE
(Pursuant to Government Code §27281)

This is to certify that the interest in real property conveyed by the Grant Deed from Menlo Station Development, LLC, a California limited liability company, to the City of Menlo Park, a municipal corporation, being a portion of a parcel located at 700 El Camino Real, Menlo Park, CA (Assessor's Parcel Number: 071-333-200 (portion) is hereby accepted on behalf of the City of Menlo Park by its City Manager pursuant to authority conferred by Resolution No. 20__-_____, adopted by order of the Menlo Park City Council on _____, 20___, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

By: _____
Starla L. Jerome-Robinson
City Manager

ATTEST:

By: _____
Judi A. Herren, City Clerk

Approved as to Form:

By: _____
Heather Gould, Special Counsel

EXHIBIT D

TEMPORARY CONSTRUCTION EASEMENT

RECORDING REQUESTED BY

City of Menlo Park

WHEN RECORDED MAIL TO:

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

No Tax Due
Exempt Transfer
Rev.& Tax Code § 11922

Exempt from recording fee: Gov. Code § 27383

SPACE ABOVE FOR RECORDER’S USE ONLY

APN: Portion of 071-333-200

**CITY OF MENLO PARK
TEMPORARY CONSTRUCTION EASEMENT**

MENLO STATION DEVELOPMENT, LLC, a California limited liability company, hereinafter referred to as “**GRANTOR**”, GRANTS to **CITY OF MENLO PARK**, a Municipal Corporation, hereinafter referred to as “**GRANTEE**”, in the County of San Mateo, State of California, a temporary work area easement and right-of-way, and access thereto (collectively, the “**Easement**”), in, on, over and across the land described in Exhibit “A” and shown in the site map attached as Exhibit “B” attached hereto and made a part hereof (the “**Burdened Property**” or the “**Easement Area**”) for the benefit of the real property described on Exhibit B-1 attached hereto and made a part hereof (the “**Benefitted Property**”). This Temporary Construction Easement (the "Easement Agreement") is made pursuant to that certain Purchase and Sale Agreement between Grantor and Grantee dated _____, 2022 (the “**Purchase and Sale Agreement**”) pursuant to which Grantee acquired the Benefitted Property.

1. The Easement shall commence on the date that the Owner, or Owner’s representative or contractor enters onto the Easement Area to commence construction of the City’s Middle Avenue Bicycle Tunnel Project (the “**Commencement Date**”). The Commencement Date shall be not later than ten (10) months from the date of recordation of this Temporary Access Easement. The Easement granted hereunder shall continue until the date that is 12 months following the Commencement Date (the “**Expiration Date**”). Grantee shall give written notice to Owner at least thirty (30) days prior to the Commencement Date together with a written description of the work or other activities to be performed, the name of all contractors or subcontractors who

- will be performing work or otherwise performing activities in the Easement Area, the insurance documentation required by Section 6, and the name and contact information of the individual or individuals at the City who are supervising such work or other activities. If requested by Owner or Grantee, Grantee and Owner shall execute an amendment to this Easement Agreement to confirm the Commencement Date and the Expiration Date. Notwithstanding the foregoing, in all events, the Easement shall terminate not later than 24 months after the date that Grantee consummates the purchase of the Benefitted Property from Grantor.
2. Grantee's rights under this agreement include exclusive use of the portion of the Easement Area show on Exhibit B as the "TCE". The access to such portion of the Easement Area shall be in Exhibit B as "Temporary Access Easement" and shall be non-exclusive. The Easement shall be used and enjoyed by the City in such a manner so as not to unreasonably interfere with, obstruct, or delay the conduct of the business at any time of Owner or of any Owner's employees, agents, contractors, tenants, subtenants, and other occupants and invitees (collectively, the "**Owner's Invitees**").
 3. The grant of easement hereunder provides Grantee, its representatives, agents, contractors, subcontractors, employees, and officers ("**Permittees**") the right to access and use the Easement Area for construction staging and temporary storage purposes and temporary construction work activities, including but not limited to the right to temporarily deposit fill, soils and excavated materials thereon, to move, store and remove equipment and supplies, erect and remove temporary structures on the land, fence the exclusive portion of the Easement Area, and to perform any other work reasonably necessary and incident to the construction of the Middle Avenue Bicycle and Pedestrian Rail Crossing Project, together with the right to trim, cut, fell and remove therefrom underbrush, trees, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; provided, however, that (a) Grantee's and the Permittees' use of the Easement Area shall not interfere with the use of the Easement Area in connection with the customary operation of the Burdened Property. For any damage caused by the City in connection with this Agreement, the City at its sole cost and expense shall make all repairs and replacements as may be necessary to restore the Easement Area to substantially the same condition prior to the Commencement Date. Without limiting the foregoing, in the event Grantee excavates and removes pavement or soil from the Easement Area, prior to the termination of the Easement, Grantee shall replace any removed soil with controlled density fill or compacted backfill and repave and, if applicable, restripe the affected portion of the Easement Area to a condition substantially similar to the condition on the Commencement Date. Prior to the termination of the Easement, Grantee shall also remove any temporary construction fencing and any of Grantee's equipment or personal property from the Easement Area. The obligation of the City under this paragraph shall survive any termination of this Easement Agreement.
 4. The City shall not allow any Permittee to spill, store, handle or otherwise use within the Easement Area any materials that are defined as "hazardous" under applicable laws, excepting those typically used in connection with construction contemplated in

- connection of the type anticipated by the City. All work or other activities undertaken by the City or any Permittee shall be done in a good and workmanlike manner and in compliance with all applicable ordinances, codes, laws and other requirements of the City and any other governmental authorities having jurisdiction. The obligation of the City under this paragraph shall survive any termination of this Easement Agreement.
5. The City, the Permittees, and their respective successors and assigns shall indemnify, defend, protect, and hold harmless Owner Owner's Invitees, and Owner's managers, members, partners, officers, directors, trustees, employees, property managers, agents, representatives, and their respective successors and assigns (collectively "**Indemnitees**") free and harmless from and against all liabilities, losses, judgments, claims, penalties, costs, and expenses (including reasonable attorneys' fees) arising from or in connection with (a) the City's breach of this Easement Agreement and (b) for death, physical injury or damage or destruction of property occurring as a result of or otherwise arising from the City's use of the Easement except to the extent any liability is attributable to the negligence or willful misconduct of one or more Indemnitees. The foregoing obligation of the City to defend, indemnify, protect, and hold harmless the Indemnitees shall survive any termination of this Easement Agreement.
 6. The City at all times shall maintain in effect bodily injury and property damage liability insurance for all operations, the Work, contractual obligations and products and completed operations as set forth in Exhibit "C" to this Easement Agreement. Such coverages, terms and limits are minimum requirements (the "**Required Insurance**") to be provided by the City and its contractors, subcontractors, engineers, and other design professionals (collectively, "**Contractors**"). All Contractors shall procure and maintain for the duration of the work insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by each Contractor, his agents, representatives, employees or subcontractors as set forth on Exhibit C.
 7. Nothing herein contained shall be deemed to be a gift or dedication of the Easement Area or any portion of the Property to the general public or for the general public or for any public purposes whatsoever, it being the intention of Owner and the City that this Agreement shall be strictly limited to and for the purposes expressed herein. The right of any person to make any use whatsoever of the Easement Area or any portion thereof, other than any use expressly allowed herein, is by permission and subject to the control of the Owner and its successors and assigns as the owner of the Property.
 8. No waiver of any default of any obligation by any party hereto shall be implied from any omission by any other party to take any action with respect to such default. Nothing in this Agreement shall be deemed or construed by any party or by any third person to create the relationship of principal and agent, or of limited or general partners, or of joint venturers, or of any other association among such parties.

9. In the event a party institutes any legal action or proceeding for the interpretation or enforcement of any right or obligation contained herein, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

This instrument shall bind and inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF the first parties have executed this Temporary Construction Easement this _____ day of _____, 20__.

Dated: _____, 20__

GRANTOR

Menlo Station Development, LLC, a California limited liability company

By: The Cortana Corporation, a California corporation

Its: Manager

Name: _____

Title: _____

EXHIBIT D-1

EXHIBIT C TO TEMPORARY CONSTRUCTION EASEMENT

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability "occurrence" form CG 0001, or its equivalent.
2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. Contractor shall maintain limits no less than lesser of the current standard limits required by the City of Menlo Park, or the following:

1. Commercial General Liability: \$2,000,000 annual aggregate for bodily injury, personal injury and property damage; and with a minimum of \$1,000,000.00 per occurrence.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
4. Errors and Omissions: All engineers or other design professionals shall carry Professional Errors and Omissions Liability insurance with limits of not less than \$1,000,000 and with deductibles in amounts reasonably acceptable to the Owner. Such insurance shall be maintained for a period of one (1) year following completion of the work.

C. At no expense to Owner, the City shall provide an additional insured endorsement approved by Owner naming Owner and the Owner's property manager, and their respective officers, directors, partners, members and employees, as additional insureds with respect to the City's use, maintenance, repairs and other activities on or about the Property. The insurance afforded by the policy for the benefit of the additional insureds will be primary with respect to claims relating to the City's use, maintenance, repairs, and other activities on or about the Property, and no contribution shall be permitted nor required from any insurance or self-insurance maintained by the additional insureds. Concurrently with the execution of the Agreement, the City will provide to Owner original certificates of insurance and endorsements showing the Required Insurance to be in force. Certificates of insurance alone, without the requisite endorsements, are not acceptable to satisfy the provisions of the Required Insurance.

- D.** The commercial liability insurance policy shall include no exclusionary language or limitations relating to soils subsidence or earth movement of any kind regardless of cause for any contractor, subcontractor or other Permittee engaged in any grading or trenching activities.
- E.** Owner and the City (each, a “**Party**”) hereby release each other from any and all liability to the other Party or to anyone claiming by, through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any other casualty, regardless of the cause or origin, excluding willful acts, but including the negligent act or omission of the other Party, or anyone for whom such other Party may be responsible. Each Party further agrees that its respective insurance company shall have no right of subrogation against the other Party on account of such loss, and each Party shall procure from its respective insurer under all policies of property insurance, a waiver of all rights against the other Party which the insurers might otherwise have under such policies.

EXHIBIT D-2

EXHIBIT TO TEMPORARY CONSTRUCTION EASEMENT
Certificate of Acceptance

CERTIFICATE OF ACCEPTANCE
(Temporary Construction Easement)
(Pursuant to Government Code §27281)

This is to certify that the interest in real property conveyed by the Temporary Construction Easement from Menlo Station Development, LLC to the City of Menlo Park, a municipal corporation, being a portion of a parcel located at 700 El Camino Real, Menlo Park, CA (Assessor's Parcel Number: 071-333-200 (portion) is hereby accepted on behalf of the City of Menlo Park by its City Manager pursuant to authority conferred by Resolution No. 20__ - ____
_____, adopted by order of the Menlo Park City Council on _____
_____, 20__, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

By: _____
Starla L. Jerome-Robinson
City Manager

ATTEST:

By: _____
Judi A. Herren, City Clerk

Approved as to Form:

By: _____
Heather Gould, Special Counsel

EXHIBIT E

TEMPORARY ACCESS EASEMENT

RECORDING REQUESTED BY

City of Menlo Park

WHEN RECORDED MAIL TO:

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

No Tax Due
Exempt Transfer
Rev.& Tax Code § 11922

Exempt from recording fee: Gov. Code § 27383

SPACE ABOVE FOR RECORDER’S USE ONLY

APN: Portion of 071-333-200

**CITY OF MENLO PARK
TEMPORARY ACCESS EASEMENT**

MENLO STATION DEVELOPMENT, LLC, a California limited liability company hereinafter referred to as “**GRANTOR**”, GRANTS to **CITY OF MENLO PARK**, a Municipal Corporation, hereinafter referred to as “**GRANTEE**”, in the County of San Mateo, State of California, a temporary and non-exclusive right-of-way and access easement (collectively, “**the Easement**”), in, on, over and across the land described in Exhibit “A” and shown in the site map attached as Exhibit “B” (the “**Burdened Property**”) attached hereto and made a part hereto (the “**Easement Area**”) for the benefit of the real property described on Exhibit B-1 attached hereto and made a part hereof (the “**Benefitted Property**”). This Temporary Access Easement (the “**Easement Agreement**”) is made pursuant to that certain Purchase and Sale Agreement between Grantor and Grantee dated _____, 2022 (the “**Purchase and Sale Agreement**”).

1. The Easement shall commence on the date that the Owner, or Owner’s representative or contractor enters onto the Easement Area to commence construction of the City’s Middle Avenue Bicycle Tunnel Project (the “**Commencement Date**”). The Commencement Date shall be not later than ten (10) months from the date of recordation of this Temporary Access Easement. The Easement granted hereunder shall continue until the date that is 12 months following the Commencement Date. Notwithstanding the foregoing, for the avoidance of doubt, in all events the Easement shall terminate not later than 24 months after the date that Grantee consummates the purchase of the Benefitted Property from Grantor.

2. The grant of easement hereunder provides Grantee, its representatives, agents, contractors, subcontractors, employees, and officers (“**Permittees**”) the right to use the Easement Area solely for access to the Benefitted Property and the TCE area shown on Exhibit B as "Temporary Access Easement" and no construction or other activities shall be permitted in the Easement Area. At its sole cost, the City shall keep the Easement Area free of dirt, mud and debris left by vehicles or equipment used by contractors, subcontractors or other Permittees and shall clean the Easement Area on a daily basis to a standard of cleanliness consistent with Grantor’s use of its property as a commercial development. For any damage caused by the City or Permittees in connection with this Easement Agreement, the City at its sole cost and expense shall make all repairs and replacements as may be necessary to restore the Easement Area (including any required soil compaction, repaving and re-striping) to substantially the same condition prior to the Commencement Date. The obligation of the City under this paragraph shall survive any termination of this Easement Agreement.
3. The City shall not allow any Permittee to spill, store, handle or otherwise use within the Easement Area any materials that are defined as “hazardous” under applicable laws, excepting those typically used in connection with construction contemplated in connection of the type anticipated by the City.
4. The City, the Permittees, and their respective successors and assigns shall indemnify, defend, protect, and hold harmless Owner Owner’s Invitees, and Owner’s managers, members, partners, officers, directors, trustees, employees, property managers, agents, representatives, and their respective successors and assigns (collectively “**Indemnitees**”) free and harmless from and against all liabilities, losses, judgments, claims, penalties, costs, and expenses (including reasonable attorneys’ fees) arising from or in connection with (a) the City’s breach of this Easement Agreement and (b) for death, physical injury or damage or destruction of property occurring as a result of or otherwise arising from the City’s use of the Easement except to the extent any liability is attributable to the negligence or willful misconduct of one or more Indemnitees. The foregoing obligation of the City to defend, indemnify, protect, and hold harmless the Indemnitees shall survive any termination of this Easement Agreement.
5. The City at all times shall maintain in effect bodily injury and property damage liability insurance for all operations, the Work, contractual obligations and products and completed operations as set forth in Exhibit “C” to this Easement Agreement. Such coverages, terms and limits are minimum requirements (the “**Required Insurance**”) to be provided by the City and its contractors, subcontractors, engineers, and other design professionals (collectively, “**Contractors**”). All Contractors shall procure and maintain for the duration of the work insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by each Contractor, his agents, representatives, employees or subcontractors as set forth on Exhibit C.

6. Nothing herein contained shall be deemed to be a gift or dedication of the Easement Area or any portion of the Property to the general public or for the general public or for any public purposes whatsoever, it being the intention of Owner and the City that this Agreement shall be strictly limited to and for the purposes expressed herein. The right of any person to make any use whatsoever of the Easement Area or any portion thereof, other than any use expressly allowed herein, is by permission and subject to the control of the Owner and its successors and assigns as the owner of the Property.
7. No waiver of any default of any obligation by any party hereto shall be implied from any omission by any other party to take any action with respect to such default. Nothing in this Agreement shall be deemed or construed by any party or by any third person to create the relationship of principal and agent, or of limited or general partners, or of joint venturers, or of any other association among such parties.
8. In the event a party institutes any legal action or proceeding for the interpretation or enforcement of any right or obligation contained herein, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.
9. Grantee's rights under this agreement include non-exclusive use of the portion of the Easement Area show on Exhibit B as "Temporary Access Easement".
10. The grant of easement hereunder provides Grantee, its representatives, agents, contractors, subcontractors, employees, and officers the right to access and use the Easement Area for access to the TCE area shown on Exhibit B. The right of any person to make any use whatsoever of the Easement Area or any portion thereof, other than any use expressly allowed herein is by permission and subject to the control of the Owner and its successors and assigns as the owner of the Easement Area.

This instrument shall bind and inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF the first parties have executed this Temporary Construction Easement this _____ day of _____, 20____.

GRANTOR

Dated: _____, 20__

Menlo Station Development, LLC, a California
limited liability company

Name: _____

Title: _____

EXHIBIT E-1

EXHIBIT C TO TEMPORARY CONSTRUCTION EASEMENT

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability "occurrence" form CG 0001, or its equivalent.
2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. Contractor shall maintain limits no less than lesser of the current standard limits required by the City of Menlo Park, or the following:

1. Commercial General Liability: \$2,000,000 annual aggregate for bodily injury, personal injury and property damage; and with a minimum of \$1,000,000.00 per occurrence.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
4. Errors and Omissions: All engineers or other design professionals shall carry Professional Errors and Omissions Liability insurance with limits of not less than \$1,000,000 and with deductibles in amounts reasonably acceptable to the Owner. Such insurance shall be maintained for a period of one (1) year following completion of the work.

C. At no expense to Owner, the City shall provide an additional insured endorsement approved by Owner naming Owner and the Owner's property manager, and their respective officers, directors, partners, members and employees, as additional insureds with respect to the City's use, maintenance, repairs and other activities on or about the Property. The insurance afforded by the policy for the benefit of the additional insureds will be primary with respect to claims relating to the City's use, maintenance, repairs, and other activities on or about the Property, and no contribution shall be permitted nor required from any insurance or self-insurance maintained by the additional insureds. Concurrently with the execution of the Agreement, the City will provide

to Owner original certificates of insurance and endorsements showing the Required Insurance to be in force. Certificates of insurance alone, without the requisite endorsements, are not acceptable to satisfy the provisions of the Required Insurance.

D. The commercial liability insurance policy shall include no exclusionary language or limitations relating to soils subsidence or earth movement of any kind regardless of cause for any contractor, subcontractor or other Permittee engaged in any grading or trenching activities.

E. Owner and the City (each, a “**Party**”) hereby release each other from any and all liability to the other Party or to anyone claiming by, through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any other casualty, regardless of the cause or origin, excluding willful acts, but including the negligent act or omission of the other Party, or anyone for whom such other Party may be responsible. Each Party further agrees that its respective insurance company shall have no right of subrogation against the other Party on account of such loss, and each Party shall procure from its respective insurer under all policies of property insurance, a waiver of all rights against the other Party which the insurers might otherwise have under such policies.

EXHIBIT E-2

EXHIBIT D TO TEMPORARY ACCESS EASEMENT
CERTIFICATE OF ACCEPTANCE

CERTIFICATE OF ACCEPTANCE
(Temporary Access Easement)
(Pursuant to Government Code §27281)

This is to certify that the interest in real property conveyed by the Temporary Access Easement from Menlo Station Development, LLC to the City of Menlo Park, a municipal corporation, being a portion of a parcel located at 700 El Camino Real, Menlo Park, CA (Assessor's Parcel Number: 071-333-200 (portion) is hereby accepted on behalf of the City of Menlo Park by its City Manager pursuant to authority conferred by Resolution No. 202_-_____, adopted by order of the Menlo Park City Council on _____, 202_, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

By: _____
Starla L. Jerome-Robinson
City Manager

ATTEST:

By: _____
Judi A. Herren, City Clerk

Approved as to Form:

By: _____
Heather Gould, Special Counsel

EXHIBIT F

MEMO OF PURCHASE AGREEMENT

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

CITY OF MENLO PARK

NO FEE FOR RECORDING PURSUANT
TO GOVERNMENT CODE SECTION
27383

THIS SPACE FOR RECORDER'S USE ONLY

MEMORANDUM OF PURCHASE AGREEMENT

THIS MEMORANDUM OF PURCHASE AGREEMENT is dated as of _____, 202_, and is by and between the City of Menlo Park (the "City") and Menlo Station Development, LLC, a California limited liability company (the "Owner").

The Owner and the City have entered into that certain Purchase and Sale Agreement (the "Purchase Agreement") for certain real property and the improvements thereon (the "Property") located in the City of Menlo Park, more fully described in Attachment No. 1 and by recordation of this Memorandum of Purchase Agreement give notice of the unrecorded Purchase Agreement and place on public record the following information:

Pursuant to the terms of the Purchase Agreement, the Owner intends to sell to the City and the City intends to acquire from the Owner all of Owner's right, title, and interest in the Property.

Attachment No. 1 attached hereto and referenced herein shall be deemed incorporated herein by this reference.

This Memorandum of Purchase Agreement in no way modifies or amends the provisions of the Purchase Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Purchase Agreement as of the date first set forth above.

CITY:

SELLER:

THIS DOCUMENT MUST BE NOTARIZED

Exhibit G

DESCRIPTION OF PHYSICAL INSPECTION

Exhibit G-1 is the agreed on scope of work for physical inspection as defined in Section 6 of the purchase and sale agreement.

Potholes will be performed with medium truck mounted vacuum equipment. Both potholes will be done on the same day and will take approximately 4-6 hours.

Borings will be done with small truck mounted drills, and will be done on a different day as potholes. Borings will also take about 4-6 hours.

AECOM
300 Lakeside Drive, Suite 400
Oakland, CA 94612
aecom.com

Project name:
Middle Avenue Pedestrian and Bicycle Rail
Crossing

Project ref:
60538683

From:
Gita Datt

Revised from:
Emma Rawnsley, April 19, 2019

Date:
November 8, 2019

To:
Peter Destefano

CC:

Memo

Subject: Phase II Soil Assessment Work Plan

Project Understanding

The Middle Avenue Pedestrian and Bicycle Rail Crossing Project will require excavation of native soils within the railroad right of way (ROW) and adjacent to the ROW in the City of Menlo Park and Stanford University properties for the construction of a tunnel, pedestrian and bike ramp, and retaining walls. The maximum depth of excavation will be approximately 20 feet below ground surface (bgs). Total excavation volume will be approximately 5,000 cubic yards of soil, which would need to be characterized for off-site disposal based on the results of a Phase I Environmental Site Assessment (ESA; AECOM, 2019).

A Phase I ESA was recently completed in general conformance with the scope and limitations of American Society for Testing and Materials International (ASTM) Standard Practice Designation E 1527-13. The Phase I ESA discovered one recognized environmental concern (REC) for the subject property. The REC is based on the subject property being adjacent to active railroad tracks since the late 1800's and thus soils on the subject property may be contaminated from these historical railroad activities. Constituents of potential concern (COPCs) typically associated with railroad use include: petroleum hydrocarbons (e.g., diesel, polynuclear aromatic hydrocarbons (PAHs), volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), metals, organochlorine pesticides, and polychlorinated biphenyls (PCBs).

Review of the California Environmental Protection Agency Department of Toxic Substances Control and Regional Water Quality Control Board Envirostor and Geotracker online databases, respectively, did not reveal the presence of any nearby hazardous materials or hazardous waste sites that may have affected groundwater or soil quality at the project site.

Due to the potential presence of COPCs at the project site, investigation is required to determine appropriate disposal methods for excess soil generated during construction. Any soil that is to be disposed off-site will need to be tested to meet landfill acceptance criteria. Soils exceeding federal or state hazardous waste criteria would require handling and disposal at a permitted Class I hazardous waste landfill, in accordance with state and federal regulations. Two options are available for the soil investigation:

- Option A involves in-situ drilling and sampling of site soils prior to excavation. Benefits of this option include early identification of contaminated soils, which may allow for segregation of those soils during the actual excavation that would be considered state or federal hazardous waste, which may minimize the volume

(and associated costs) of soil that needs to be handled and disposed of as such. Early identification of COPCs would also allow for advance identification of which landfills can be used for disposal, and can also inform worker health and safety procedures. Disadvantages of this option include higher costs (drilling subcontractor would be required to obtain samples from maximum depth of proposed excavations), and the sampling activities must be scheduled prior excavation activities.

- Option B involves composite sampling of the soils stockpile after excavation. Benefits of this option include reduced sampling costs (sampling can be undertaken by hand, rather than using drill rig), no additional work prior to excavations (all sampling would be undertaken from the stockpile after excavation). Disadvantages of this option include less certainty in the type of contaminants present and which landfills may be used for disposal, and would require adequate space at or near the project site for soil stockpiling.

A proposed scope of work has been prepared for each of these options, as detailed below.

Option A (in-situ sampling prior to excavation)

Proposed Scope of Work – Option A

Task 1: Health & Safety Plan Update/Work Plan/Utility Clearance

AECOM will create a work plan and update the existing project Health and Safety Plan to reflect the proposed activities within this additional scope. As required by California law, a minimum of 48 hours prior to subsurface activities, the investigation area will be marked with white paint, and Underground Service Alert (USA) will be contacted for utility clearance. AECOM will also have each of the boring locations cleared by a private utility locator prior to conducting drilling operations.

Task 2: Drilling and Soil Sampling

AECOM will conduct drilling and sampling activities to assess subsurface conditions prior to planned construction activities. Soil borings will be drilled across the site utilizing a direct push drilling rig. During the drilling of each of the borings, soil samples will be collected and submitted for analysis. Each soil boring will be logged by a qualified field technician under the oversight of a California Professional Geologist. During drilling activities soils will be visibly inspected for signs of contamination. Each soil boring will be drilled to the proposed maximum depth of excavation (up to 20 feet bgs). Following the completion of the drilling activities at each boring location, the boring will be backfilled with grout.

During drilling, soil samples will be collected from approximately 3.0 feet bgs, 6.0 feet bgs, and from the maximum proposed depth of excavation within each boring. Each sample will be labeled with the time and date of collection, project and sample identification codes, and the sampler's initials. Each sample will be placed on ice in an insulated cooler, and accompanied by chain-of-custody documentation. All samples collected will be submitted to a State of California certified laboratory for analysis.

AECOM will store investigation derived waste (IDW) soil and water in drums on the site. The drums will be labeled as non-hazardous pending receipt of analytical results. AECOM will not arrange for separate collection and disposal of IDW, but rather assumes that IDW will be disposed of during construction as part of the disposal of other excavation soils.

Approximate sample locations will be marked on a map, included as a figure with our report. The locations will not be professionally surveyed.

Sample Analysis

Samples will be transported to a State of California certified analytical laboratory. An AECOM Chain-of-Custody form will accompany all transported samples. Samples will be submitted for the following analysis:

- Total petroleum hydrocarbons (TPH) as diesel (TPH-d) and motor-oil (TPH-mo) by EPA Method 8015B.
- TPH as gasoline (TPH-g) and volatile organic compounds (VOCs) by EPA Method 8260B.
- Semi-volatile organic compounds (SVOCs) and Polynuclear Aromatic Hydrocarbons (PAHs) by EPA Method SW8270C.

- Title 22 Metals by EPA Method 6010B/7471B.
- Organochlorine pesticides by EPA Method 8081B.
- Polychlorinated biphenyls (PCBs) by EPA Method 8082.

Because excavation and disposal of any impacted soils may be necessary, the highest concentration of each metal from all samples that exceed 10 times the Soluble Threshold Limit Concentration (STLC), a Waste Extraction Test (WET) will be performed, and the highest concentration of each metal from all samples that exceed 20 times the total constituent analysis value, a Toxicity Characteristic Leaching Procedure (TCLP) analysis will also be performed. For this proposal, AECOM has assumed that up to two metals will require STLC and TCLP analysis. Additional STLC and TCLP analyses can be performed at an additional cost per metal per sample.

Task 3: Reporting

Following completion of the field investigation and receipt of analytical results from the laboratory, AECOM will prepare a brief report presenting the investigation findings. The report will include a table of analytical results and figures showing sample locations, and will include recommendations for handling and disposal of excavated materials, including segregation recommendations, if appropriate.

SCHEDULE – Option A

AECOM is prepared to begin work immediately upon written authorization. AECOM will work with the City to gain access to the site and commence sampling activities. Drilling and sampling activities are expected to be completed within one 10-hour work day. Samples will be analyzed on a standard 5-day turnaround time. WET analysis may require additional processing time. Draft analytical data will be provided to the City upon receipt from the laboratory. AECOM will require approximately 2 weeks to complete a draft report following the receipt of analytical data.

ESTIMATED COSTS – Option A

Our costs to complete the tasks, as outlined above, can be provided upon request. Estimates based on the scope could range from approximately \$20,000 to \$30,000.

Option B (composite samples from stockpile during construction)

Proposed Scope of Work – Option B

Task 1: Health & Safety Plan Update/Work Plan

AECOM will create a work plan and update the existing project Health and Safety Plan to reflect the proposed activities within this additional scope. Because sampling will occur from within the excavation soils stockpile, no utility clearance is required.

Task 2: Soil Sampling

Soil will be collected from 12 random locations throughout the stockpile using a hand-auger, and retained in glass jars. Each sample jar will be labeled with the time and date of collection, project and sample identification codes, and the sampler's initials. Each sample will be placed on ice in an insulated cooler, and accompanied by chain-of-custody documentation, including soil compositing instructions for the laboratory. Soil samples will be composited by the analytical laboratory, to create three 4-point composite samples.

All sampling equipment will be decontaminated prior to and after completing each sampling location by scrubbing with a brush, water, and liquinox, then rinsing twice with distilled or deionized water, and then being allowed to air-dry. No investigation-derived waste is anticipated to be generated. Personal protection equipment such as nitrile gloves will be placed in plastic garbage bags and put in onsite dumpsters for disposal at the local sanitary landfill.

Sample Analysis

Samples will be transported to Torrent Laboratory, Inc. (Torrent), of Milpitas, California, a State of California certified analytical laboratory. An AECOM Chain-of-Custody form will accompany all transported samples. Samples will be submitted for the following analysis:

- TPH-d and TPH-mo by EPA Method 8015B.
- TPH-g and VOCs by EPA Method 8260B.
- SVOCs and PAHs by EPA Method SW8270C.
- Title 22 Metals by EPA Method 6010B/7471B.
- Organochlorine pesticides by EPA Method 8081B.
- PCBs by EPA Method 8082.

Because excavation and disposal of any impacted soils may be necessary, the highest concentration of each metal from all samples that exceed 10 times the Soluble Threshold Limit Concentration (STLC), a Waste Extraction Test (WET) will be performed, and the highest concentration of each metal from all samples that exceed 20 times the total constituent analysis value, a Toxicity Characteristic Leaching Procedure (TCLP) analysis will also be performed.

Task 3: Reporting

Following completion of the field investigation and receipt of analytical results from the laboratory, AECOM will prepare a brief report presenting the investigation findings. The report will include a table of analytical results and recommendations regarding appropriate disposal of the stockpile.

SCHEDULE – Option B

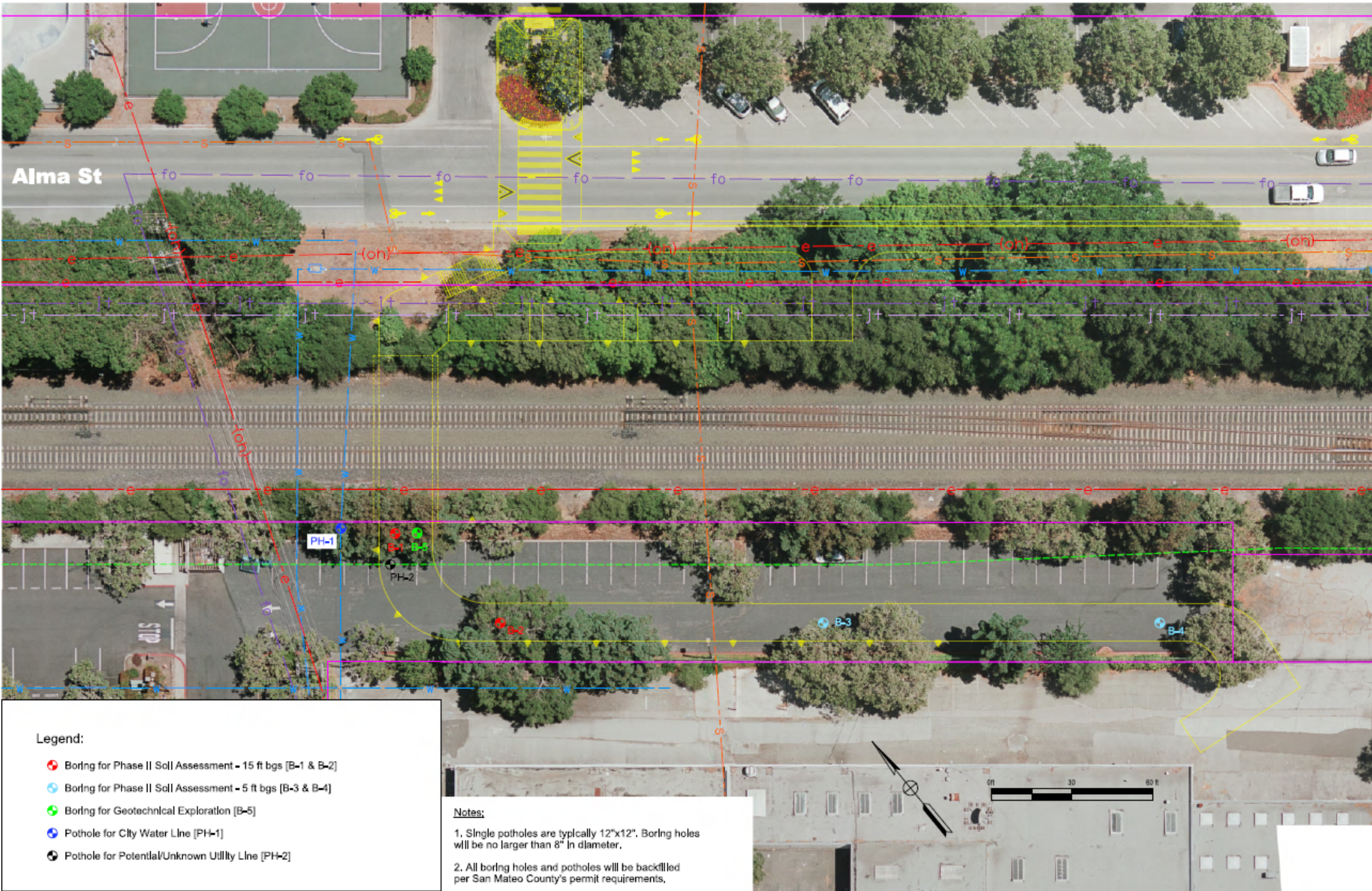
Field sampling activities are expected to be completed in one 8-hour day, following completion of excavation activities and creation of the stockpile. Samples will be analyzed on a standard 5-day turnaround time. WET analysis may require additional processing time. Draft analytical data will be provided to the City upon receipt from Torrent. AECOM will require approximately 2 weeks to complete a draft report following the receipt of analytical data.

ESTIMATED COSTS– Option B

Our costs to complete the tasks, as outlined above, can be provided upon request. Estimates based on the scope range from approximately \$15,000 to \$20,000.

References

AECOM Technical Services, Inc. Phase I Environmental Site Assessment, 700 El Camino Real, Menlo Park, California. September 2019.



Legend:

- Boring for Phase II Soil Assessment - 15 ft bgs [B-1 & B-2]
- Boring for Phase II Soil Assessment - 5 ft bgs [B-3 & B-4]
- Boring for Geotechnical Exploration [B-5]
- ⊕ Pothole for City Water Line [PH-1]
- ⊕ Pothole for Potential/Unknown Utility Line [PH-2]

Notes:

1. Single potholes are typically 12"x12". Boring holes will be no larger than 8" in diameter.
2. All boring holes and potholes will be backfilled per San Mateo County's permit requirements.

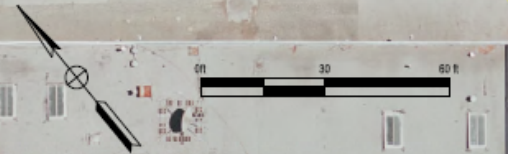


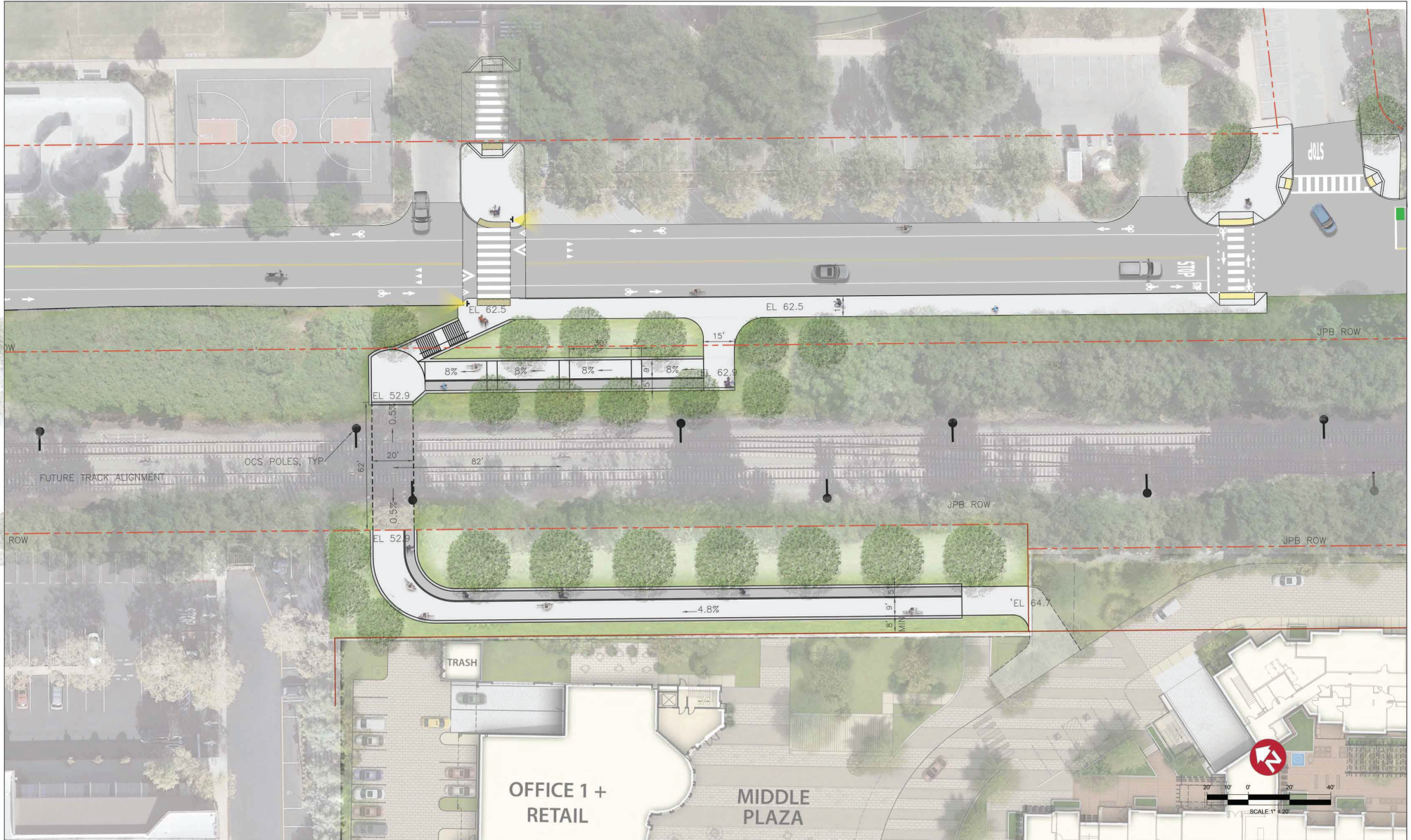
Exhibit H

COMMERCIAL LEASES

The following is a complete list of commercial leases for tenants of Menlo Station:

1. T- Mobile (Formerly Cingular):
 - a. 800 El Camino Real, Menlo Park, CA 94025
 - b. Communications site lease agreement is entered into as of 10/27/1995
2. Garfield Beach CVS, L.L.C.:
 - a. 700 El Camino Real, Menlo Park, CA 94025
 - b. Lease agreement is entered into as of 8/8/2012
3. Atherton Fine Art:
 - a. 700 El Camino Real, Menlo Park, CA 94025
 - b. Lease agreement is entered into as of 6/29/2006, as amended
4. Bay Area Cellular Telephone Company (CellularOne or AT&T)
 - a. 800 El Camino Real, Menlo Park, CA 94025
 - b. Microcell Site Lease is entered into as of 6/9/1997, as amended
5. Beverages & More Inc.:
 - a. 700 El Camino Real, Menlo Park, CA 94025
 - b. Lease agreement is entered into as of 4/30/2010, as amended
6. United Merchandising Corp. (Big 5)
 - a. 700 El Camino Real, Menlo Park, CA 94025
 - b. Lease agreement is entered into as of 7/19/1990, as amended
7. In- Q-Tel, Inc.:
 - a. 800 El Camino Real, Menlo Park, CA 94025
 - b. Lease agreement is entered into as of 1/1/2015, as amended
8. Luxottica Retail North America (LensCrafters, Inc.):
 - a. 700 El Camino Real, Menlo Park, CA 94025
 - b. Lease agreement is entered into as of 9/4/1986, as amended
9. Charles and Jenny Ma, dba: Mongolian Barbeque:
 - a. 700 El Camino Real, Menlo Park, CA 94025
 - b. Lease agreement is entered into as of 11/20/2011, as amended
10. Charles Schwab & CO., Inc.:
 - a. 800 El Camino Real Suite, Menlo Park, CA 94025
 - b. Lease agreement is entered into as of 6/16/1983, as amended
11. Staples the Office Superstore, LLC:
 - a. 700 El Camino Real, Menlo Park, CA 94025
 - b. Lease agreement is entered into as of 3/10/2004, as amended
12. The Cortana Corporation:
 - a. 800 El Camino Real, Menlo Park, CA 94025

- b. Lease agreement is entered into as of 1/1/2011
- 13. Palisade Builders Inc.:
 - a. 700 El Camino Real, Menlo Park, CA 94025
 - b. License agreement is entered into as of 6/17/2019
- 14. Palisade Builders Inc. License Agreement No.2
 - a. 700 El Camino Real, Menlo Park, CA 94025
 - b. License agreement is entered into as of 1/1/2021
- 15. MPOC Investors, LLC
 - a. 800 El Camino Real, Menlo Park, CA 94025
 - b. License agreement is entered into as of 6/11/2019



DRAFT

Middle Avenue Bicycle & Pedestrian Rail Crossing
CONCEPT 3



STAFF REPORT

City Council

Meeting Date:

1/11/2022

Staff Report Number:

21-010-CC

Regular Business:

Consideration and direction on 1) the composition and charge of the Housing Element Community Engagement and Outreach Committee and 2) amendments to the consultant's scope of work

Recommendation

Staff recommends that the City Council:

1. Modify the composition of the Community Engagement and Outreach Committee (CEOC) to a maximum membership of 10;
2. Update and modify the CEOC charge to focus on engagement and outreach on the environmental justice and updated safety element;
3. Direct staff to identify a community based organization or similar organization to provide additional outreach in District 1 and return with a budget amendment; and
4. Direct staff to return with amendments to the consultant's scope of work for consideration by City Council.

Following direction from the City Council, staff will return at a future meeting to authorize any modifications to the CEOC and/or the project scope of work.

Policy Issues

The components of the housing element update will consider a number of land use, environmental and housing policies.

Background

In March 2021, the City Council authorized the city manager to negotiate a scope of work and fee and execute an agreement with the M-Group for an amount not to exceed \$982,000 for the housing element (2023-2031) update and related rezonings, and the preparation of a new environmental justice element, safety element update, fiscal impact analysis and environmental impact report. The collective elements are commonly referred to as the housing element update. In April 2021, the City Council authorized the formation of the CEOC and subsequently appointed 13 members of a 14-member body in May and June 2021.

Since the Spring 2021, the project team has been diligently working on the housing element update, hosting community meetings, focus group discussions, pop-up events and meetings with the CEOC, Housing Commission, Planning Commission and City Council. Most recently, the City Council provided direction to the project team at its December 8, 2021 meeting to study up to 4,000 housing units, primarily in Districts 2 through 5, in combination with strategies to upzone, increase opportunities for mixed-use development and potentially downzone sites in the Bayfront Area in District 1. The project reached a milestone with the release of the notice of preparation (NOP) (Attachment A) December 23, 2021 to initiate the preparation of the environmental impact report (EIR.) The Planning Commission will be conducting a scoping session on

the EIR at its January 24 meeting. All comments received before January 31, 2022 will be considered during the preparation of the EIR.

With a state-mandated deadline of January 15, 2023 for submittal of an adopted housing element, the project timeline is aggressive given the required components and desired level of engagement. The timeline is further accelerated given the State Housing and Community Development Department's (HCD) required review of the draft housing element (90-day period) and 30-day public review before submittal of the draft document to HCD. The project team is planning to wrap up formal engagement on the housing element following a tentatively scheduled housing element community meeting February 3. This will then allow the project team to complete a draft of the housing element and release it for public review in Spring 2022. The environmental review and fiscal review of the housing element will continue through Summer and Fall 2022.

The work continues with a shift in focus to the preparation of the City's first environmental justice element and an update to the City's safety element of the general plan. Outreach and engagement will continue to be a key component of the project, particularly the environmental justice element. Therefore, staff is seeking direction from the City Council on the role and composition of the CEOC as a follow up to the City Council's initial discussion at its November 16, 2021 meeting. Depending on the direction, modifications to the CEOC and/or scope of work may be required, which are further discussed below. The November 16, 2021 staff report is included as Attachment B.

Analysis

CEOC charge

From the outset of this project, the City Council stressed the importance of community engagement. The CEOC was created as an advisory group focused on community engagement and outreach for the housing element update. The CEOC's overall purpose is to assist the City in ensuring a broad and inclusive community outreach and engagement process.

The primary roles and responsibilities of the CEOC are:

- Serve as an ambassador of the project and encourage people to participate in the process;
- Help guide and provide feedback on the community engagement plan; and
- Serve as a community resource to provide information to and receive input from the community on matters related to community engagement and public outreach.

Members have had an opportunity to help guide and provide on the types and frequency of activities/event/meetings and the strategies and methods for communicating the various stakeholders in the community. The committee does not provide policy guidance, though members are welcome to participate in planned events and meetings as individuals. The project team anticipated monthly meetings between May 2021 and November 2021, with the intent to conduct the outreach and engagement on the components of the project early in the process, and conduct check-in meetings as needed. The CEOC conducted five meetings between May and August 2021. Given the need for additional focus on some of the technical aspects of the housing element, additional public engagement on the environmental justice element and safety element update was put on pause. The housing element outreach is wrapping up and the project's team will be turning its attention to the environmental justice element, and safety element update. Outreach will continue to be an important aspect of the upcoming work, particularly the environmental justice work where identifying objectives and policies to promote civic engagement in the public decision-making process is required by State law.

The CEOC has provided valuable feedback in helping refine past outreach efforts and participating in events. The project team is seeking direction from the City Council on the charge of the CEOC. For

example, should the CEOC:

1. continue in its current capacity,
2. continue in a modified capacity such as focus the engagement and outreach on the environmental justice element and/or safety element update,
3. be dissolved as a formal committee, or
4. other direction as provided by the City Council?

If option #2 is preferred or similar option where the role of the CEOC is modified, staff would want to connect with the current CEOC members to determine their continued interest in serving on the committee in a modified role. Modification or dissolution of the CEOC would require action by the City Council, and staff would return to the City Council at a future meeting date, potentially the meeting of January 25.

With any of the above options, however, the project team believes that additional resources would likely be needed to enhance the outreach in District 1. Members of the CEOC previously provided feedback on the need for more on-the-ground/in-the-neighborhood outreach. This type of work would likely best be led by a community based organization (CBO) who has the expertise and could partner with the City to help develop appropriate engagement strategies, conduct the work, and increase community participation in District 1. Additional time from staff and the City's consultant (M-Group) would also likely be required to help support the work and provide oversight. If the City Council would like to pursue the use of a CBO or other similar organization, the project team would need to reach out to organizations to check on their availability and fees, and return to the City Council with the information for review and approval. Staff may start with the County of San Mateo for additional insights as they released a request for qualifications for on-call contracts with CBOs to conduct outreach and engagement activities with hard to reach populations in San Mateo County.

CEOC size and composition

If the City Council would like the CEOC to continue, the City Council should provide guidance on the composition. Since the creation of the CEOC, the City has received five resignations from the 14-member body. One position in District 5 has remained unfilled, therefore, there are six total vacancies. All eight members are needed for a quorum of the body. The following table shows the current and vacant positions:

Table 1: Current and vacant CEOC positions	
Member	City Council District
Vacant	1
Vacant	1
Lesley Feldman	2
Dan McMahon	2
Vacant	2
Max Fennell, Chair	3
Aaron Spaulding	3
Michal Bortnik	4
Rich Cline	4
Tiffany Dao	4
Vacant	4
Vacant	4
Richard Li	5
Vacant	5

When the CEOC was formed, the intent was to create diverse group of residents that reflect the varied interests, expertise, demographic characteristics such as gender, age, race, ethnicity and residential tenancy (renter or homeowner), and geographic areas of the City. With the resignations of two members from District 1, the lack of representation from all City Council Districts does not meet the CEOC’s composition goal. City Council Districts 2, 3 and 4 contain at least two members, while District 5 has had only one member and one unfilled seat. With the primary focus of the upcoming environmental justice work in District 1, the project team believes the perspectives and experiences from District 1 members are needed to help inform the outreach and engagement efforts.

There are two primary factors for the City Council’s consideration – the size of the body and the composition. The original intent was to have a 10-member body, with likely two members from each City Council district. The limited size was intended to promote efficiencies in meeting management and help with logistical issues such as a meeting quorum. With respect to the size of the CEOC, the City Council could consider reducing the number of members from 14 to the current number of filled positions (8), although staff would recommend against this change given the lack of District 1 representatives. Alternatively, the size of the body could be reduced to 10, which would allow for all current members to remain and add two District 1 members. This would result in all Districts being represented, but District 5 would have only one member and District 4 would have three (note District 4 originally had five members.) A reduction in the total number of members could help with filling the vacant positions, and would improve the ability to achieve a meeting quorum. If the focus is to fill vacancies in District 1, options include the following:

1. reaching out to the former District 1 CEOC members to see if there is interest in returning,
2. identifying interested parties by City Councilmember Taylor, or
3. conducting a formal recruitment process.

A formal recruitment process can be lengthy and as such, would also present challenges to meeting the project team's desired schedule to commence outreach on the environmental justice and the safety elements in February. Staff would suggest starting with option #1 and if the former members are not interested in being reappointed, then pursue option #2 as the preferred alternative. This process was also implemented for District 5's recruitment following the initial formal CEOC recruitment. Ultimately, the full City Council would need to formally appoint members selected by City Councilmember Taylor, which could occur as early as January 25 if potential appointees are identified no later than noon January 20. If the City Council is not interested in reducing the total number and fulfilling all of the vacancies, the respective City Councilmembers where there are vacancies could also identify person(s) to fill those role(s.) The City Council could also consider changing the composition of the group (e.g., three District 1 members instead of the previous two members.) The goal is to maintain a diverse group of residents, with at least one member from each District.

Augmentations to the scope of work

While a considerable amount of work has been accomplished by the project team, more outreach and engagement will need to be conducted. Bringing on a CBO or another firm to assist with engagement in District 1 would require a modification to the scope of work. This additional work would also likely require support from the consultant team, which would be outside the scope of the current tasks.

The current contract amount was approved for a not exceed amount of \$982,000. As Mayor Combs, at the time, noted at the November 16, 2021 City Council meeting, staff will be bringing forward to the City Council a scope of work amendment for tasks that have occurred outside of the original scope of work and for projected work items that are needed to complete the project. Much of the work has been focused on additional outreach, including focus group meetings, pop-up events, Spanish translation, and committee and Commission/City Council meetings, as well as unanticipated levels of review and refinement. The scope of work amendment request, which is approximately \$250,000, along with any additional direction from the City Council that would result in additional work and fees, would be presented to the City Council for review and approval at an upcoming meeting.

Impact on City Resources

On November 10, 2020, the City Council authorized up to \$1.69 million for the preparation of the housing element, including consultant services and partial funding for two full-time equivalents for the fiscal year 2020-21. On March 23, 2021, the City Council authorized the city manager to negotiate a scope of work and fee and execute an agreement with the M-Group for a fee, not to exceed \$982,000. Augments to the scope of work would return to the City Council for review and approval.

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. As part of the housing element update process, an EIR will be prepared.

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, each CEOC member (former and current) received notification of the meeting via email.

Attachments

- A. Hyperlink - Housing element update notice of preparation:
menlopark.org/files/sharedassets/public/community-development/documents/projects/housing-element-update-nop.pdf
- B. Hyperlink – November 16, 2021 City Council staff report:
menlopark.org/DocumentCenter/View/30024/N4-20211116-CC-CEOC-review

Report prepared by:
Deanna Chow, Assistant Community Development Director

Report reviewed by:
Justin Murphy, Deputy City Manager



STAFF REPORT

City Council

Meeting Date: 1/11/2022

Staff Report Number: 22-011-CC

Informational Item: City Council agenda topics: January 25 – February 8, 2022

Recommendation

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

Policy Issues

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

Analysis

In an effort to provide greater access to the City Council's future agenda items, staff has compiled a listing of anticipated agenda items, Attachment A, through February 8, 2022. The topics are arranged by department to help identify the work group most impacted by the agenda item.

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

Public Notice

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

Attachments

A. City Council agenda topics: January 25 – February 8, 2022

Report prepared by:
Judi A. Herren, City Clerk

Tentative City Council Agenda

#	Title	Department	Item type	City Council action
2	Mid-year budget report and amendments	ASD	Regular	Approve
3	1350 Adams Court water supply assessment approval	CDD	Regular	Approve
5	Approve funding for 335 Pierce Rd (predevelopment CLT, loan authorization docs)	CDD	Regular	Approve
4	Clarification on zoning changes from City Council	CDD	Regular	Direction to staff
6	Update to Signage Regulations in Specific Plan (Springline)	CDD	Regular	Approve
7	Willow Village Community Amenities Review	CDD	Study Session	Direction to staff
8	Willow Village water supply assessment approval	CDD	Regular	Approve
1	Adopt Resolution to continue conducting the City's Council and advisory body meetings remotely due to health and safety concerns for the public	CMO	Consent	Adopt resolution
9	Adopt Community Amenity Implementing Regulations and Updated Amenities List	CMO	Regular	Adopt resolution
10	Adopt Resolution approving the City Council Community Funding Subcommittee's recommendations regarding the 2021-22 community funding allocation	CMO	Regular	Adopt resolution
11	Climate Action Plan resource request	CMO	Regular	Decide, Direction to staff
12	Direction on Aquatics operator agreement	LCS	Study Session	Direction to staff
13	February 2022 - Parks and Recreation Commission work plan	LCS	Consent	No action
14	Adopt resolution and approve MOU for FEMA BRIC grant/SAFER Bay	PW	Consent	Adopt resolution, Approve
15	Award a construction contract to XXX for the streetlight conversion project	PW	Consent	Contract award or amend
16	Quiet Zone RFP	PW	Regular	Direction to staff
17	Consider modifications to the Downtown street closure and temporary outdoor use permit pilot program and adopt urgency Ordinance No. 1075 regarding travel lanes on Santa Cruz Avenue and Ryan's Lane	PW, CMO	Regular	Decide, Direction to staff



STAFF REPORT

City Council

Meeting Date:

1/11/2022

Staff Report Number:

22-002-CC

Informational Item:

Update – Re-Imagining Public Safety Subcommittee

Recommendation

The purpose of this informational item is to provide an update to the public and to the City Council on the work being done in the *Ad Hoc* Re-Imagining Public Safety Subcommittee since its inception in August 2021.

Policy Issues

In accordance with the City Council procedures manual, the city manager and the Mayor set the agenda for City Council meetings. The subcommittee consists of Vice Mayor Wolosin and City Councilmember Taylor, who wanted to update the City Council and public on the proposed strategic plan for public input.

Analysis

The *Ad Hoc* Subcommittee to Re-imagine Public Safety (Subcommittee) was formed in August 2021 to facilitate communication and understanding between the police department and the community and explore contemporary policing practices that meet the interests and needs of the community for the feeling of safety and satisfaction with professional provision of public safety services in this City. The Subcommittee has met eight times to date, and has made substantial progress, with significant work planned in the future. Attachment A provides an informational report which outlines the progress to date and the priorities and objectives being proposed. Dr. Terri Givens, a local academic and author, is supporting the development of the public input plan and will serve as a facilitator for the recommended community conversations.

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. Memorandum - Informational Report - Re-imagining Public Safety Subcommittee Update

Report prepared by:

Dave Norris – Chief of Police

Reviewed by:

Starla Jerome-Robinson – City Manager



MEMORANDUM

Date: 12/10/2021
To: City Council via City Manager Jerome-Robinson
From: Re-imagining Public Safety Ad Hoc Subcommittee (via Chief Norris)
Re: Informational Report - Re-imagining Public Safety Subcommittee Update

Honored Council –

The following is an update on the Subcommittee, which has had eight interactive sessions to date. The Subcommittee has engaged with Dr. Terri Givens, a local Author and Professor, to help facilitate and provide some organization and structure to the Subcommittee's work. Structural discrimination and bias are an ongoing challenge for the city and its institutions. Menlo Park, as a predominantly White city, is reckoning with ways to create a more welcoming environment for all citizens. Within this context, the subcommittee has identified the following areas of concern:

- Members of the public have expressed concerns regarding the conduct of police officers. Some are fearful and feel intimidated by the police. Some have expressed privately a concern that police pre-judge persons of color as criminals, and there were concerns expressed that some of the public presumes that a stop by the police involving minorities is an act of bias in and of itself.
- There is apprehension among some members of the public that concerns and complaints about the police may be dismissed when brought to police authorities, and/or police may retaliate against people reporting these issues.
- There have been a series of community meetings over the past few years where residents of Menlo Park have shared fears and concerns about the police. Along with issues that have been raised in the area, the national narrative has struck an emotional cord with many in the public, and the concerns raised require dialogue and understanding.
- There is an expressed desire for our public to know our local police better, and have opportunities for discussion and understanding. The pandemic has impeded direct and personal interactions between the police and the public to dialogue face to face and discuss some of these issues in person. While the City held a Town Hall focused on these issues as well as five district specific sessions with the Interim Police Chief, further community interaction is needed. The public has a strong curiosity about policing services within our community, how the City resources those services, and what measures have been put in place to manage and control performance of police, accountability strategies, and transparency.
- There are public questions about how and why police conduct stops, who police stop, and what the outcomes are for these stops. While some data is available through MPPD's [Open Data Portal](#), that portal can be difficult to navigate. Beginning in January 2022, Menlo Park PD, along with all other California Law Enforcement Agencies, will be collecting specific data related to any time a person is detained for any reason, including all stops and arrests. This information will be reported to the California Department of Justice (DOJ) and will be publicly reported, as specified in the [Racial and Identity Profiling Act \(RIPA\)](#).

- Further, there is curiosity among the public about alternatives to police response for conditions that may be better served by social services such as mental health, poverty, homelessness and other conditions that create an at-risk situation for parties involved.
- We are planning to work on a glossary of terms to address issues with communication, terminology used by police is often misunderstood and this will be an important component of connecting with the community.

Priorities were identified to create some structure to this initiative.

- Explore Concerns about Compromised Trust, Especially in Vulnerable Communities
- Re-Establish a Police and Community Advisory Team
- Inform the Community through Presentations and Increased Transparency
- Review Issues around Progressive Policing and Reform
- Gain Understanding and Create Vision for the Future of Policing in Menlo Park
- **Seek to Understand, and Then to be Understood**

The Subcommittee has discussed the following strategies as ways to fulfill these priorities:

1. Create a “safe space focus group” to have small forums in each District for discussing community concerns about policing with a facilitator independent of the Police Department. The facilitator would ensure that themes among the comments are relayed to the Police Department so that they can be explored and addressed, and any specific performance complaints regarding Menlo Park PD personnel are relayed so that they can be investigated and addressed.
2. Refresh the police advisory group previously known as the “Chief’s Advisory Board” to restore some outside perspective with transparency. The long-term goal would be to supplement this advisory group with members of the “safe space” group and police officers for a “roundtable” style advisory team.
3. Bring police officers into dialogue with members of our public, so that the public understands the human factors that make officers want to serve the community. This will begin with some officers featured in our regular Subcommittee meetings, and evolve into broader-scale meetings as well as some “Behind the Badge” features in person and through multimedia opportunities.
4. Working with public feedback, create an informative and user-friendly dashboard space on the Police Department website to present data on police actions as well as progress of the overall Re-Imagining Public Safety initiatives.
5. Conduct structured meetings with the public to provide information and perspective in the way the police department operates and the reasoning behind how the department operates. These meetings will be interactive and provide an opportunity to receive feedback and generate questions from the public.

Initially, these structured meetings will include the following, with topics generated for more detailed and focused meetings in the future:

- a. Organizational Overview – Staffing, Budget, and Structure of the Organization
 - b. Operational Overview – How the parts of the organization address the responsibilities and serve the mission of public safety
 - c. Preparation and Accountability – How the department recruits, hires, and trains our personnel; continuing professional training; policy setting and accountability management; complaints, and discipline
 - d. Additional informative meetings to be added based on interest and curiosity of the public
6. Do some public and transparent exploration of progressive policing topics like:
- a. Alternatives to service delivery for social-response oriented conditions like mental health problems, homelessness, and other service calls requiring non-safety expertise. This would include outside alternatives, co-response, and alternative non-armed police response.
 - b. Use of technology to augment public safety response, potentially reduce the need for unnecessary armed response or saturation patrols that might otherwise be seen as intimidating to some members of the public.
 - c. Dialogue regarding traditional police response tactics with a new perspective and an interest in either educating the community to reduce uncertainty, the development of more comfortable and useful alternatives, or a combination of these.
 - d. Review current California laws that are already providing industry-leading accountability and transparency in comparison with other states, and other non-legislated measures that progressive departments are taking in advance of such legislation.

Upcoming meetings of the Re-Imagining Public Safety Subcommittee will be evaluating some distinct action plans and timelines based on these priorities, followed by a presentation of Subcommittee recommendations to the City Council

A photograph of a train crossing a street at night. The train is white with red accents and has the number "119" on its front. Its headlights are on, and it is moving towards the camera. In the foreground, there are people waiting on the sidewalk. To the left, there are traffic lights and a "KEEP LEFT" sign. The background shows trees and a cloudy sky.

TRANSPORTATION IMPACT ANALYSIS GUIDELINES UPDATE

City Council

January 11, 2022



AGENDA

- Background
- Current VMT Thresholds
- Recent Updates
- Recommendations
- Council Action



BACKGROUND

- SB 743 no longer allows use of LOS to determine transportation impacts for CEQA
- June 2020 – City Council added VMT thresholds to TIA Guidelines based on City’s travel demand model developed for the General Plan update in 2015-16
- Fall 2020 – City’s travel demand model is calibrated based on Spring 2019 counts



CURRENT VMT THRESHOLDS

- Residential projects use VMT per capita at 15 percent below the regional average, currently 13.7 VMT/capita
- For office projects use VMT per employee at 15 percent below the citywide average, currently 12.7 VMT/employee
- Used in four residential developments EIRs (111 Independence, Menlo Uptown, Menlo Portal and Menlo Flats)
- Currently being used for two other non-residential EIRs that are nearing completion (1350 Adams Court and Commonwealth Building 3)



RECENT UPDATES

- Travel demand models are typically updated every 5 to 7 years
- City's model recently updated to evaluate the proposed Willow Village development
- Model update produced updated averages



RECOMMENDATIONS

- Approve using regional averages for both VMT per capita and VMT per employee
- Revise the language in the TIA guidelines to set thresholds at 15 percent below the regional averages provided by the version of the City's travel demand model that is current at the time of evaluation of transportation impacts
- Make other minor language clarifications and corrections that do not materially impact the TIA guidelines



COUNCIL ACTION

- Adopt a resolution to approve the recommended changes to the Transportation Impact Analysis Guidelines and repeal any prior version of the guidelines



THANK YOU



MIDDLE AVE BIKE & PED CROSSING

City Council Meeting

January 11, 2021



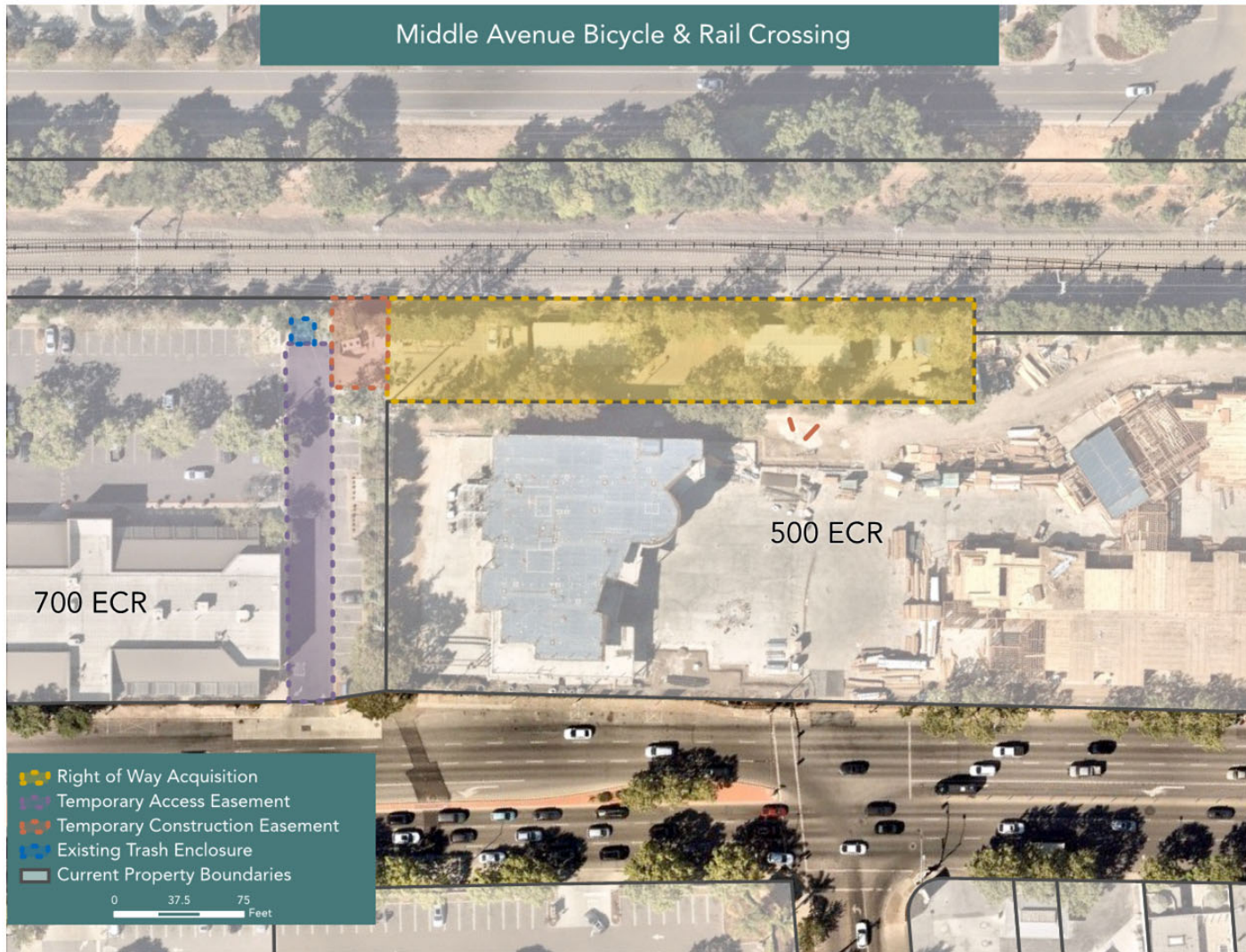
MIDDLE BIKE & PED CROSSING





700-800 EL CAMINO REAL







PROJECT HISTORY

- July 2016 – City received San Mateo Measure A funding for design
- August 2019 – Council selected preferred concept
 - Directed staff to make offer to purchase portion of 700-800 El Camino Real
 - September 2019 – Initial offer made to seller
- January 2020 – Council certified environmental review
- Fall 2021 – completed negotiations with seller



FINAL TERMS

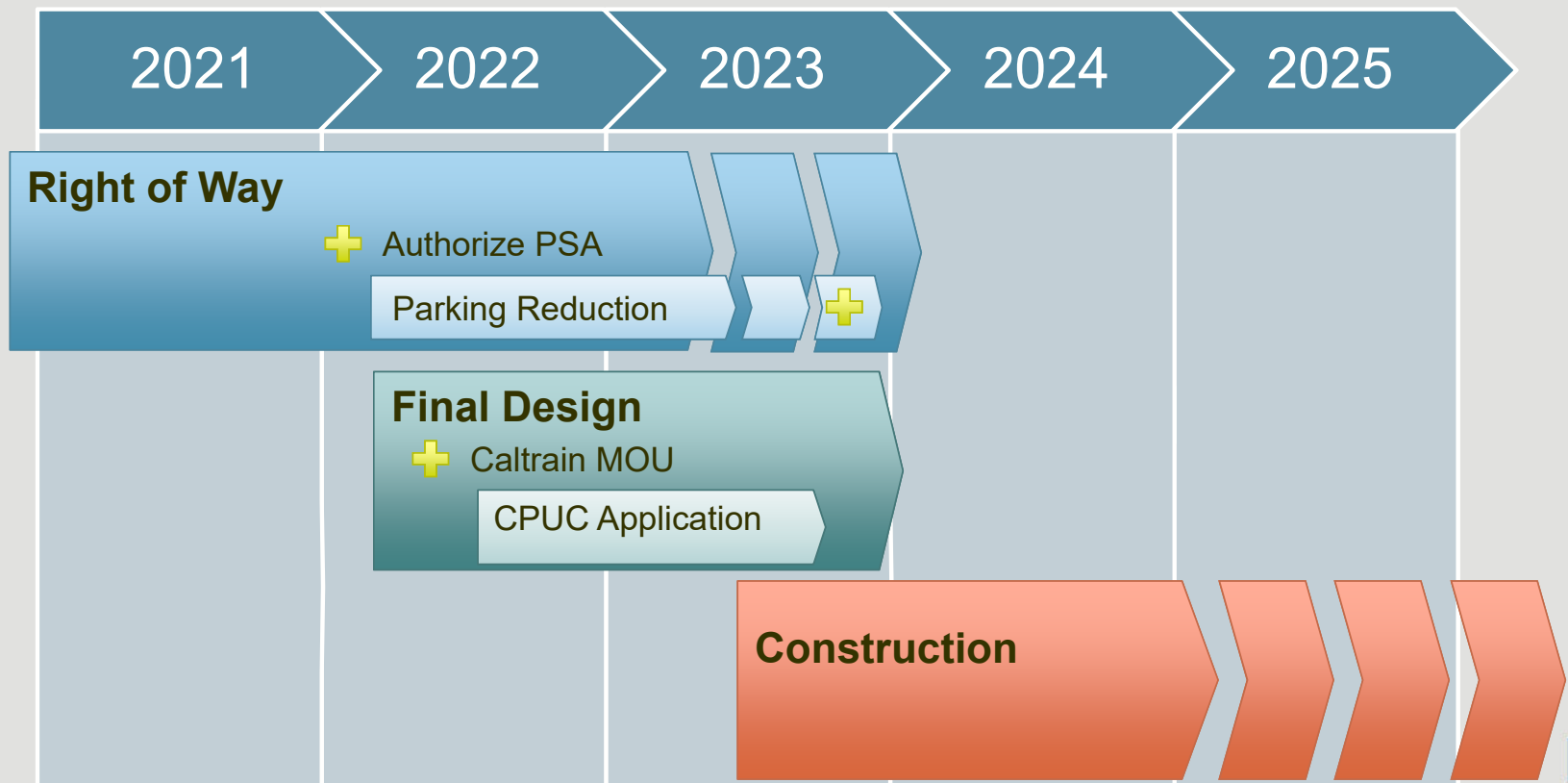
- Purchase Price: \$3,894,500 (final price based on exact square footage)
- Deposit: Initial Deposit = \$10,000. Additional \$90,000 if City approves PSA within a 90-day contingency period. Non-refundable after contingency period unless:
 - Seller defaults,
 - Certain property damage, or
 - Condemnation.
- Parking Reduction Approval: City and Seller (at no cost to Seller) will cooperate in applying to amend the planned development permit to reduce parking. Nothing obligates the City to approve the parking reduction.
- Pre-Approval of Testing: Seller has pre-approved soil testing necessary for final design and construction



FINAL TERMS

- Closing Conditions: Standard plus City shall have obtained:
 - Parking reduction approval, after expiration of appeal periods
 - Caltrain and CPUC approvals, to ensure project can proceed
- Closing Date: 30 days following the parking reduction and Caltrain/CPUC approvals, but not later than 24 months from date of PSA.
- Seller's Remedies for City Default: Liquidated damages equal to deposit, i.e. \$10k or \$100k depending on timing.
- City's Remedies for Seller Default: Potential Condemnation Proceedings.

NEXT STEPS



+ Upcoming City Council Actions



QUESTIONS & THANK YOU!





**CONSIDERATION AND DIRECTION ON HOUSING
ELEMENT CEOC AND SCOPE OF WORK AMENDMENTS**
January 11, 2022 City Council





AGENDA

- Continue City Council's November 16, 2021 discussion on composition and role of Community Engagement and Outreach Committee (CEOC)
- Direction to staff on:
 - Composition and charge of the Housing Element CEOC
 - Amendments to the consultant's scope of work





CEOC BACKGROUND - ROLE



- Established the CEOC in April 2021 to serve as an advisory group focused on community engagement and outreach for the Housing Element Update
- Roles and Responsibilities
 - Serve as an ambassador of the project
 - Help guide and provide feedback on the community engagement plan
 - Serve as a community resource
- Conducted five meetings between May and August 2021



CEOC BACKGROUND - COMPOSITION



- Goal to have representation from each City Council district
- City Council appointed 13 members of a 14-member body in May/June 2021
 - One position remain unfilled in District 5
 - 8 members currently remain as of January 2022

City Council District	Members
1	0 of 2
2	2 of 3
3	2 of 2
4	3 of 5
5	1 of 2



CEOC – FUTURE CHARGE



- Options to consider:
 1. Continue its current capacity
 2. Continue in a modified role
 3. Dissolve as a formal committee
 4. Other direction as provided by the City Council
- If Option #2 or similar is preferred, connect with current CEOC members to seek interest
- Additional resources (e.g. work with a Community-based organization) needed to enhance outreach in District 1
- Staff recommendation: Modify the current role to focus outreach and engagement on Environmental Justice and Safety and collaborate with a community-based organization to conduct outreach in District 1



CEOC – SIZE AND COMPOSITION



- Number and Composition of Committee Members Options:
 - Maintain 14-member body
 - Reduce to existing 8-member body
 - Reduce to 10-member body (add to two District 1 representatives to the current 8 members)
 - Modify the number of representatives from each Council District
 - Other direction as provided by the City Council
- Recruitment (District 1)
 - Reach out to former members in District 1
 - Councilmember Taylor identify interested parties
 - Conduct formal recruitment process
- Staff recommendation: Modify the composition of the CEOC to a maximum membership of 10 with representation from every Council District



AUGMENTATION TO THE SCOPE OF WORK



- Identify additional areas as directed by Council at tonight's meeting
- Augment scope of work for tasks that have occurred outside of the original scope and for projected work items needed to complete the work, anticipated to be \$250,000.
- Staff recommendation: Return with amendments to the consultant's scope of work for consideration by the City Council at a future meeting.



STAFF RECOMMENDATIONS AND NEXT STEPS



- Staff recommends that the City Council:
 - Modify the composition of the CEOC to a maximum of 10 members
 - Update the CEOC charge to focus on engagement and outreach on the environmental justice and updated safety element
 - Direct staff to identify a community based organization or similar organization to provide additional outreach in District 1
 - Direct staff to return with amendments to the scope of work for consideration by City Council
- Recruitment of CEOC Members; due by January 20 (for meeting of January 25)
- Return to City Council to authorize changes as directed for the CEOC and augmentations to the scope of work



THANK YOU