



REGULAR MEETING AGENDA

Date: 1/25/2022
Time: 6:00 p.m.
Location: [Zoom.us/join](https://zoom.us/join) – ID# 831 3316 9409

This amended agenda includes updates to items F5. and F6.

NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

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

How to participate in the meeting

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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
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Press *9 to raise hand to speak

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

- Watch meeting:
 - Cable television subscriber in Menlo Park, East Palo Alto, Atherton, and Palo Alto:
Channel 26
 - Online:
menlopark.org/streaming

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

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

A. Call To Order

B. Roll Call

C. Agenda Review

D. Presentations and Proclamations

D1. Proclamation: Condemning Anti-Semitism ([Attachment](#))

D2. Proclamation: Taking a Stand Against Human Trafficking in the Bay Area ([Attachment](#))

D3. Proclamation: Recognizing Starla Jerome-Robinson

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 December 28, 2021 and January 7, 2022 ([Attachment](#))

F2. Adopt a resolution approving the City Council Community Funding Subcommittee’s recommendations for 2021-22 community funding allocations; and authorizing a fiscal year 2021-22 budget amendment and appropriation in the amount of \$17,000 from general fund unassigned fund balance ([Staff Report #22-012-CC](#))

F3. Waive the competitive bidding process; and authorize the city manager to execute a master agreement with Optony Inc. in an amount not to exceed \$130,000 per year to support 2030 climate action plan implementation and clean energy infrastructure for the Menlo Park Community Campus project ([Staff Report #22-013-CC](#))

F4. Adopt a resolution to accept Federal Emergency Management Agency Building Resilient Infrastructure and Communities grant funds, if awarded, and authorize the city manager to execute a memorandum of understanding with partners for a portion of the Strategy to Advance Flood Protection, Ecosystems and Recreation along the San Francisco Bay project ([Staff Report #22-014-CC](#))

F5. Award a construction contract to Radius Earthwork Inc. for the Middle Avenue and Nealon Park pedestrian improvement project ([Staff Report #22-018-CC](#))

F6. Award a construction contract to Columbia Electric, Inc. and appropriate \$211,300 in assigned funds from the general fund for the series circuit and street light replacement in the Suburban Park and Flood Triangle neighborhood project ([Staff Report #22-019-CC](#))

G. Regular Business

- G1. Adopt an urgency ordinance temporarily closing the north bound travel lane on the 600 block of Santa Cruz Avenue and a portion of Ryan's Lane, and authorizing the establishment and issuance of temporary outdoor activity permits allowing businesses to safely conduct their businesses outdoors during the COVID-19 state of emergency ([Staff Report #22-021-CC](#))
- G2. Provide feedback on the Caltrain quiet zone implementation plan request for proposals ([Staff Report #22-020-CC](#)) ([Presentation](#))

H. Informational Items

- H1. City Council agenda topics: January – February 22, 2022 ([Staff Report #22-015-CC](#))
- H2. Police department quarterly update – Q2 July – September 2021 ([Staff Report #22-016-CC](#))
- H3. Personnel activity report as of January 2022 ([Staff Report #22-017-CC](#))

I. City Manager's Report

J. City Councilmember Reports

K. Closed Session

Public Comment on these items will be taken before adjourning to Closed Session.

- K1. CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of Section 54956.9)
Name of case: David Fogel et al. v. City of Menlo Park, Case No. 21-CIV-06674

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: 1/20/2022)

CONDEMNING ANTISEMITISM

WHEREAS, antisemitism remains a serious and growing danger for Jews in the United States and around the world; and

WHEREAS, antisemitism is the centuries-old bigotry and form of hate faced by Jewish people simply because they are Jews, often involving the use of stereotypes and myths; and

WHEREAS, nearly one in four Jewish Americans said they experienced antisemitism in the past year according to a study released on October 25, 2021, by the American Jewish Committee; and

WHEREAS, according to the Federal Bureau of Investigation, nearly 60 percent of religious-biased hate crimes in 2020 targeted Jewish Americans, who make up no more than 2 percent of the U.S. population; and

WHEREAS, according to an Anti Defamation League report, 2,024 antisemitic incidents were reported nationwide in 2020 – the third highest year on record – and 289 incidents occurred in California; and

WHEREAS, on January 15, 2022, in Colleyville, Texas, a man with a gun entered Congregation Beth Israel during services and took three congregants and a rabbi as hostages. And in California, recent antisemitic incidents have included fliers at Santa Monica elementary schools linking Jewish people to the COVID-19 pandemic and the anti-vaccine movement (January 13, 2022), in Santa Rosa, vandalism of a Holocaust Memorial statue (January 7th, 2022), and in Los Angeles, two Jewish diners were assaulted outside a restaurant after the assailants asked who was Jewish (May 18, 2021); and

WHEREAS, Jewish neighbors in our own community are fearful of the current uptick in antisemitic incidents and hateful rhetoric; and

WHEREAS, the City of Menlo Park has a duty to speak out against all forms of discrimination and hate, and draws its strength from its diverse population, of which many self-identify as Jewish; and

NOW, THEREFORE, BE IT PROCLAIMED, that I, Betsy Nash, Mayor of the City of Menlo Park, on behalf of the City Council and City, hereby condemn antisemitism and stand with the Jewish people.

Betsy Nash, Mayor
January 25, 2022

TAKING A STAND AGAINST HUMAN TRAFFICKING IN THE BAY AREA

WHEREAS, the United States Senate designated January 11 as National Human Trafficking Awareness Day in 2007 and, beginning in 2010 by Presidential Proclamation, each January has been designated National Slavery and Human Trafficking Prevention Month; and

WHEREAS, human trafficking involves commercial sexual exploitation and labor exploitation. Sex trafficking is defined as “a commercial sex act that is induced by force, fraud, or coercion,” but if the person has not attained the age of 18 years old, force, fraud or coercion is not required. Labor trafficking is defined as, “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery”; and

WHEREAS, human trafficking is a human rights violation, and a violation of both federal and California law, it also promotes the breakdown of families and communities, fuels organized crime, deprives countries of human capital, undermines public health, and imposes large economic costs; and

WHEREAS, the FBI has identified California and the San Francisco Bay Area as an area of high prevalence for human trafficking. Although human trafficking is illegal, victims often do not recognize their victimization, do not know that help is available, or where to seek assistance; and

WHEREAS, forced labor, involuntary domestic servitude, and commercial sexual exploitation of adults and youth and have been found to exist within local communities; and

WHEREAS, public awareness about human trafficking still needs to reach broader communities and communicate more information about the nuances of this crime; and

WHEREAS, the County of San Mateo has dedicated resources including the San Mateo County Human Trafficking Program, and has supported the efforts of the San Mateo County Police Chiefs and Sheriff Association, and has partnered with other governmental and non-governmental organizations to identify and address human trafficking within San Mateo County; and

NOW, THEREFORE, BE IT PROCLAIMED, that I, Betsy Nash, Mayor of the City of Menlo Park, on behalf of the City Council and City, do hereby recognize January 2022 as Human Trafficking Prevention Month, and encourage Council Members, Employees, and Residents to support the County of San Mateo’s efforts in the fight against human trafficking in the following ways:

Betsy Nash, Mayor
January 25, 2022

Report Suspicious Activity:

- Add the National Human Trafficking Hotline to your contacts: 1-888-373-7888 or text BE FREE (233733); and
- Call the Hotline to report suspicious activity.

Organize an Awareness Training for Your Workplace, Faith Community or Neighborhood Group:

- Contact the San Mateo County Human Trafficking Program to learn about available training opportunities. Email stophumantrafficking@smcgov.org to make a training request.

Educate Yourself About Your Slavery Footprint and How to Buy Slave Free:

- Take your “slavery footprint” at slaveryfootprint.org
- Check out the End Slavery Now website <http://www.endslaverynow.org/act/buy-slave-free> and learn how to be a better consumer and buy slave free

Get Involved:

- Join the San Mateo County Human Trafficking Initiative (SMCHTI) to help out with local educational and advocacy efforts. E-mail stophumantrafficking@smcgov.org to be added to the SMCHTI mailing list and find out about local events.

Encourage Businesses to Post Anti-Trafficking Posters:

- California Civil Code Section 52.6 requires certain businesses to post a notice that promotes resources available to victims of human trafficking and the community.
- Where posting requirements have been enacted, there has been an increase in the number of reported human trafficking situations and rescues of victims.
- A copy of the notice is available free of charge from the San Mateo County Human Trafficking Program. E-mail stophumantrafficking@smcgov.org to request a copy.



SPECIAL MEETING MINUTES – DRAFT

Date: 12/28/2021
Time: 10:00 a.m.
Location: Zoom

Closed Session

A. Call To Order

Mayor Nash called the meeting to order at 10:06 a.m.

B. Roll Call

Present: Combs, Mueller, Nash, Taylor, Wolosin
Absent: None
Staff: Legal Counsel Genevieve Ng, City Clerk Judi A. Herren

C. Closed Session

- C1. Closed Session pursuant to Government Code Section 54957
Public Employee Employment – City Manager

No reportable action.

D. Adjournment

Mayor Nash adjourned the meeting at 10:56 a.m.

Judi A. Herren, City Clerk

NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

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Meeting ID 878 9607 4668
Press *9 to raise hand to speak

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SPECIAL MEETING MINUTES – DRAFT

Date: 1/7/2022
Time: 3:00 p.m.
Location: Zoom

Closed Session

A. Call To Order

Mayor Nash called the meeting to order at 3:05 p.m.

B. Roll Call

Present: Combs, Mueller, Nash, Taylor, Wolosin
Absent: None
Staff: Legal Counsel Genevieve Ng, Executive Administrative Assistant to the City Manager
Nicole Casados

C. Closed Session

- C1. Closed Session pursuant to Government Code Section 54957
Public Employee Employment – City Manager
- C2. Closed session pursuant to Government Code 54957
Public Employee Appointment – Interim City Manager
- C3. Closed session pursuant to Government Code 54957.6: Conference with Labor Negotiator
Agency Designated Representative: Mayor
Unrepresented Employee: Interim City Manager

D. Adjournment

Mayor Nash adjourned to the open session at 3:57 p.m.

Call To Order

Mayor Nash Called the meeting to order at 3:59 p.m.

Report from Closed Session

Legal Counsel Genevieve Ng reported out on the resignation of City Manager Starla Jerome-Robinson, effective January 28, 2022, and the appointment of Deputy City Manager Justin Murphy as interim city manager.

Adjournment

Mayor Nash adjourned the meeting at 4:01 p.m.

Judi A. Herren, City Clerk

NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

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STAFF REPORT

City Council
Meeting Date: 1/25/2022
Staff Report Number: 22-012-CC

Consent Calendar: **Adopt a resolution approving the City Council Community Funding Subcommittee’s recommendations for 2021-22 community funding allocations; and authorizing a fiscal year 2021-22 budget amendment and appropriation in the amount of \$17,000 from general fund unassigned fund balance**

Recommendation

The City Council Community Funding Subcommittee (Subcommittee) recommends that the City Council adopt a resolution (Attachment A) approving the Subcommittee’s recommended 2021-22 community funding allocations to local nonprofit agencies totaling \$297,000; and authorizing a fiscal year 2021-22 budget amendment and appropriation in the amount of \$17,000 from general fund unassigned fund balance.

Policy Issues

The Subcommittee’s recommendations are consistent with the City Council’s current community funding program policy.

Both Subcommittee members, City Councilmembers Combs and Taylor, indicated that they had no current or recent affiliations with any of the applicant organizations.

Background

The City of Menlo Park adopted a formal policy guiding allocation of general fund dollars to community organizations in 1996 (see “Community Funding Program,” Attachment B) to leverage City funds in response to the human service needs of Menlo Park residents.

The policy guidelines stipulate that eligible programs must address a verified community need and have a significant Menlo Park client base. Priority service areas include emergency assistance for those who are homeless or low-income; assistance to the disabled; help for seniors to be independent; senior day care support; youth services including recreational and summer academic support; crisis and family counseling; and substance abuse prevention. Applicants must maintain accounting records with an independent audit at least once every two years.

Each fiscal year, according to the policy, no more than 1.7 percent of projected general fund property tax revenue (approximately \$508,000 in fiscal year 2021-22) may be allocated to the community funding program.

The approved general fund budget for fiscal year 2021-22 currently includes \$280,000 for community funding allocations. This is a slight increase from the fiscal year 2020-21 amount of \$276,000.

Analysis

City Councilmembers Combs and Taylor were appointed as the Community Funding Subcommittee for fiscal year 2021-22. The Subcommittee is charged with evaluating funding requests and making recommendations to the full City Council as to the allocation of the funds budgeted for the community funding program.

This year, the City provided notice of the grant program to agencies that received funding in prior years as well as additional organizations referred by City Councilmembers and staff. Thirty-one agencies responded with requests totaling \$500,000, a decrease of \$49,500 from the amount requested in fiscal year 2020-21. Seven organizations submitted applications that did not apply last year. Applicant agencies provide services such as counseling, crisis intervention, employment assistance, shelter, hospice services, community health, risk reduction education, and youth and senior services.

The Subcommittee reviewed the criteria established to assess the applications against factors aligned with the community funding policy such as: verified program results; impact on the Menlo Park community; percentage of total budget spent on administrative overhead; receipt of City funding in previous years; community need for the program; unduplicated service or, if duplicated, evidence of collaboration; and alignment with City Council goals for the program.

All agencies that applied for funding this year were recommended for awards of at least \$1,500. The largest grants, were to Star Vista, \$25,000, for youth counseling services at Menlo Atherton High School; to Samaritan House, \$20,000, for emergency financial assistance for at-risk individuals and families helping with rent or critical bills, as well as meal delivery to those facing food insecurity; LifeMoves, \$20,000, to aid the Haven Family House facility and provide shelter to homeless families; and Peninsula Volunteers, to support Meals on Wheels, Rosener House Adult Day Center, and transportation program for seniors.

In total, the Subcommittee recommends a total \$297,000 in funding awards for fiscal year 2021-22. This total amount exceeds the adopted fiscal year 2021-22 budgeted amount for funding awards by \$17,000. Approving the recommended total \$297,000 in funding awards would require the City Council to adopt a budget amendment and appropriation in the amount of \$17,000 from general fund unassigned fund balance. The Subcommittee recommends this action in recognition of the extraordinary needs in the community at the current time.

The table on the following page outlines funding allocations approved by the City Council in fiscal year 2020-21, requests for fiscal year 2021-22, and the Subcommittee recommendation.

Table 1: Funding requests for fiscal year 2021-22			
Agency	Fiscal year 2020-21 allocation	Fiscal year 2021-22 request	Subcommittee recommendation for fiscal year 2021-22
AbilityPath	-	\$10,000	\$1,500
Acknowledge Alliance	\$16,500	\$25,000	\$17,500
AFT(war)DS	*	\$15,000	\$1,500
All Five	\$8,000	\$10,000	\$10,000



Boys & Girls Clubs of the Peninsula	\$15,000	\$15,000	\$15,000
Community Overcoming Relationship Abuse (CORA)	\$7,500	\$7,500	\$7,500
County of San Mateo Jobs for Youth	\$1,500	\$4,000	\$2,000
East Palo Alto Tennis and Tutoring (EPATT)	*	\$100,000	\$12,500
Eternal Life Church	*	\$30,000	\$1,500
Family Connections	\$7,500	\$15,000	\$7,500
Human Investment Project, Inc.	\$15,000	\$15,000	\$15,000
JobTrain, Inc.	\$8,000	\$10,000	\$10,000
Legal Aid Society of San Mateo County	\$7,000	\$8,000	\$8,000
LifeMoves	\$20,000	\$20,000	\$20,000
Live In Peace, Inc.	*	\$10,000	\$10,000
Midpen Media Center	*	\$10,000	\$5,000
Nuestra Casa de East Palo Alto	\$5,000	\$10,000	\$10,000
Ombudsman Services of San Mateo County, Inc.	*	\$3,000	\$2,500
Peninsula Volunteers Inc.	\$17,000	\$20,000	\$20,000
Ravenswood Classroom Partners (All Students Matter)	\$5,000	\$10,000	\$10,000
Ravenswood Education Foundation	\$10,000	\$10,000	\$10,000
Rebuilding Together Peninsula	\$6,500	\$10,000	\$10,000
S.F. Study Center / Belle Haven Community Dev. Fund	*	\$8,000	\$8,000
Samaritan House	\$20,000	\$27,500	\$20,000
Service League of San Mateo County	\$2,500	\$3,000	\$2,500
StarVista	\$25,000	\$45,000	\$25,000
Sustainable San Mateo County	*	\$5,000	\$2,500
Upward Scholars	\$7,000	\$7,000	\$2,500
Vista Center for the Blind and Visually Impaired	\$15,000	\$15,000	\$15,000
WeHOPE	\$7,000	\$7,000	\$7,000
Youth Community Service	\$5,000	\$15,000	\$7,500
Other fiscal year 2020-21 awardees that did not apply	\$45,000	-	-
TOTAL	\$276,000	\$500,000	\$297,000

*New applicant in 2021-22

Additional information about each organization's application is available in the city manager's office.

Impact on City Resources

The fiscal year 2021-22 adopted budget includes \$280,000 in appropriations to fund the Subcommittee's recommended grants. Approving the Subcommittee's recommended total funding amount of \$297,000 requires City Council adoption of a fiscal year 2021-22 budget amendment and appropriation in the amount of \$17,000 from general fund unassigned fund balance.

Environmental Review

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

Public Notice

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

Attachments

- A. Resolution approving the City Council Community Funding Subcommittee's recommendations regarding the 2021-22 community funding allocation
- B. City Council Policy #CC-01-1996 Community Funding Program

Report prepared by:

Nicole Casados, Executive Assistant to the City Manager

Rani Singh, Interim Management Analyst

Rondell Howard, Interim Assistant Community Services Director

Theresa DellaSanta, Interim Administrative Services Director

Sean Reinhart, Library and Community Services Director

RESOLUTION NO. XXXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
APPROVING THE CITY COUNCIL COMMUNITY FUNDING SUBCOMMITTEE
RECOMMENDATIONS REGARDING ALLOCATION OF FISCAL YEAR 2021-
22 COMMUNITY FUNDING; AND AMENDING THE FISCAL YEAR 2021-22
BUDGET TO APPROPRIATE \$17,000 FROM GENERAL FUND UNASSIGNED
FUND BALANCE**

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

BE IT AND IT IS HEREBY RESOLVED by the City Council of the City of Menlo Park that the City Council hereby approves the City Council Community Funding Subcommittee recommendations regarding fiscal year 2021-22 community funding allocations in the total amount of \$297,000, as more particularly set forth in the staff report presented to the City Council on January 25, 2022.

BE IT FURTHER RESOLVED that City Council hereby amends the fiscal year 2021-22 budget and appropriates \$17,000 from general fund unassigned fund balance to increase total authorized expenditures for Community Funding Grants from \$280,000 to \$297,000.

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

COMMUNITY FUNDING PROGRAM

City Council Policy #CC-01-1996

Effective 06/04/1996

**Purpose**

To provide guidelines for the award of monetary support to local nonprofit agencies whose programs respond to the human service needs of Menlo Park residents. This funding is not intended for use as the sole support of any agency. All recipients of financial assistance grants enter into a contractual agreement with the City detailing the specific objectives to be accomplished as a result of the grant.

Policy

1. Goals and Philosophy

The City of Menlo Park recognizes that:

- 1.1 The availability of basic human service programs is a key determining factor in the overall quality of life of Menlo Park residents;
- 1.2 The most cost-effective and efficient manner to insure that these services are available to local residents is through the development of agreements with existing nonprofit agencies;
- 1.3 Contractual agreements with nonprofit agencies allow the City to influence the human service programs offered to Menlo Park residents; and
- 1.4 Financial assistance grants demonstrate the City's support of the activities of specific nonprofits and make it possible for these agencies to leverage additional funds that will benefit local residents.

2. Eligibility

- 2.1 All applicants must be formally incorporated nonprofit entities and must be tax exempt (under Section 501(c)(3) of the IRS Code, and Section 2370(d) of the California Revenue and Taxation Code).
- 2.2 All applicants must be agencies based in Menlo Park or agencies that provide services throughout the County of San Mateo who can demonstrate a significant Menlo Park client base.
- 2.3 All applications must provide a service that is not a duplication of an existing public sector program, OR if the service is duplicated, the applicant must show why it is not an unnecessary duplication of service.
- 2.4 All applicants shall maintain accounting records that are in accordance with generally accepted accounting practices. The agency must have an independent audit performed at least once every two years.
- 2.5 The agency must have bylaws that define the organization's purposes and functions, its organization and the duties, authority and responsibilities of its governing body and officers.
- 2.6 Governance of the agency should be vested in a responsible and active board that meets at least quarterly and establishes and enforces policies. The board should be large enough and so structured to be representative of the community it serves. It should have a specific written plan for rotation or other arrangements to provide for new members.

- 2.7 The agency must provide for adequate administration of the program to insure delivery of the services. The agency must provide that it has a written job description for each staff position and an organizational chart approved by the board. One individual should be designated as the full time director of the agency.
- 2.8 No less than 85 percent of City funds granted must be used for direct services as opposed to administrative costs.
- 2.9 City grants can represent no more that 20 percent of an applicant's total operating budget.
- 2.10 All recipients agree to actively participate in City efforts to coordinate and to improve human services within the City.
- 2.11 The program described must respond to a verified community need as defined by the City Council:

Disabled. Emphasizes support of programs that will allow the disabled to actively participate in their community and maintain independence from institutional support.

Emergency Assistance and Low Income Support. Emphasizes support of programs that can meet emergency needs for people in crisis such as victims of homelessness, rape, and domestic violence and the basic needs such as food, etc., for low-income residents.

Seniors. Emphasizes support of programs which serve predominantly low income, frail and minority seniors; and those programs which make it possible for seniors to continue to be independent and active community participants.

Youth. Emphasizes support of delinquency prevention services including recreation; crisis and family counseling; substance abuse prevention; child care and acculturation of ethnic minorities.

3. Procedure

Any agency requesting financial assistance must complete the required application and submit it to the Administrative Services Department. The City Council Community Funding Subcommittee is responsible for reviewing all proposals and submitting recommendations for funding to the City Council.

4. Funding

Grants are funded by the General Fund. Each fiscal year, no more than 1.7 percent of general fund property tax will be allocated to the Community Funding Program.



STAFF REPORT

City Council

Meeting Date:

1/25/2022

Staff Report Number:

22-013-CC

Consent Calendar:

Waive the competitive bidding process; and authorize the city manager to execute a master agreement with Optony Inc. in an amount not to exceed \$130,000 per year to support 2030 climate action plan implementation and clean energy infrastructure for the Menlo Park Community Campus project

Recommendation

Staff recommends that the City Council waive the competitive bidding process and authorize the city manager to execute a three-year master agreement with Optony Inc. (Optony) in an amount not to exceed \$130,000 per year to provide technical, strategic, and planning support for eliminating fossil fuels from city operations (Climate Action Plan strategy No.5) including continued support on the Menlo Park Community Campus (MPCC) clean energy infrastructure project, and any other on-call energy analysis related to climate action plan (CAP) implementation (Attachment A.)

Policy Issues

The proposed action is consistent with the City of Menlo Park purchasing policies (municipal code Chapter 2.42.) This chapter complies with the California Public Contracts Code, including the provisions of section 10298(a) which allow local agencies to piggy back on other public agency's service contracts with suppliers who have been previously awarded contracts authorized under California Public Contracts Code Chapter 2 (section 10290 to 10490) without further competitive bidding.

Use of multiyear master agreements also assist in the timely delivery of multiyear projects, such as the implementation of CAP strategies. In 2019, the City Council declared a climate emergency that demanded accelerated action to address the climate crisis (Resolution No. 6535.) In 2020, the City adopted a new CAP with a bold goal to reach carbon neutral by 2030. These actions require expeditious and efficient implementation of climate action strategies.

Background

The implementation of the CAP has been and continues to be part of the City Council annual work plan. The 2030 CAP established a goal of carbon neutrality by 2030 and identifies six strategies to meet this goal.

One of the CAP's strategies is to lead the community by example through eliminating fossil fuels from city operations (CAP strategy No. 5.) The city has taken action in this area by approving the installation of clean energy infrastructure for the MPCC project at the January 11, 2022 meeting. This includes installing a renewable microgrid (solar plus battery storage), solar thermal pool heating, and electric vehicle (EV) charging stations. In October, the City Council also approved the purchase of three Tesla patrol vehicles to

pilot with the police department. It was noted at those meetings that additional and specialized skillsets will be needed to successfully implement the City Council's direction, and that staff would return at a later time with a request for resources.

The city also hired a consultant in the summer of 2021 to kick off the transition of municipal assets and facilities from fossil fuel to electricity (CAP No. 5), including the decarbonization of the municipal fleet. This initial phase of work has been completed, and it was identified that additional technical skillsets, expertise, and experience will be needed for the next phase of CAP No. 5 strategy implementation.

The City Council also provided direction in August to develop programs to electrify low income homes. While this is important toward achieving greenhouse gas (GHG) emission reductions, these programs may need to incorporate smaller scale renewable microgrids to address equity by enabling greater access to utility bill savings and protection against utility rate increases while having more access to energy during a power outage. This could require additional energy analysis expertise.

Optony has been working with the city since January 2021 to support the procurement of a renewable microgrid for the MPCC project, and has worked with the city between 2012 and 2016 to procure installation of solar photovoltaics on four city facilities. Optony has also supported other numerous cities' on similar scopes of work, including the Tesla patrol pilot for the Fremont police department.

Thus, the next phase of Optony's work includes the following:

- Continued project management on the clean energy infrastructure project for the MPCC project as identified in the staff report January 11.
- Supporting, evaluating, and reporting on the police department's Tesla patrol pilot.
- Developing a strategic plan to be presented to departments and the City Council regarding timeline and ability for city operations to achieve carbon neutrality by 2030 that also considers the following:
 - Energy resiliency needs in the event of emergencies or power shut-offs;
 - Ability to achieve operational savings or at minimum no net cost increases as a result of the transition away from fossil fuel equipment and assets through design savings, financing options or incentive offerings; and
 - Analyzing the electrical infrastructure needed to support the transition from fossil fuels, such as landscaping equipment and the type and amount of EV charging needed to support the fleet over the long term.
- Providing on-call support for departments to quickly obtain analysis to move forward on CAP initiatives.

Over the years, the City Council has authorized the city manager to execute master agreements with consulting firms to augment staffing resources experiencing higher demand. Master agreements have been established by the City for specialized services such as engineering, transportation and climate action policy/program development and implementation. The City regularly establishes master professional agreements. The most recent were authorized by the City Council June 9, 2020, with a duration of up to five years for on-call architectural, landscape architectural, civil engineering, construction inspection, municipal engineering and materials testing services.

Analysis

The proposed master agreement with Optony would supplement staff capacity needed to support decarbonization/electrification programs and policies primarily for CAP strategy No. 5, including the MPCC microgrid and police Tesla patrol pilot, over the next three years (February 2022 to January 2025)

(Attachment A.)

Optony was selected to manage the procurement process to find qualified microgrid vendors for the MPCC project with a total budget of \$75,000. Staff solicited quotes from three qualified firms to complete this work. The microgrid portion of the MPCC project, including engineering review and quality management, is expected to continue through October 2023. Additional support is needed, and has been included as part of the proposed master agreement.

Staff believes the competitive bidding process should be waived and the contract awarded to Optony for the following reasons:

1. Continued project management and technical oversight will be necessary to ensure the MPCC's clean energy infrastructure meets and preforms according to the terms in the energy services agreement with ENGIE Services US. This was acknowledged when the city procured solar power infrastructure on four city facilities in 2015/2016 where a third party consultant, Optony, was hired to provide oversight for quality assurance. Similar services will be needed for this project particularly given the staff shortages in the public works department.
2. Optony will assist in ensuring that the renewable microgrid project for the MPCC stays on track and coordinate associated incentives to receive the maximum savings once the project is completed.
3. Optony is currently performing the contract efficiently and competently and has served the City of Menlo Park to the satisfaction of staff through the renewable microgrid project and the collaborative solar purchase between 2012 and 2016.
4. Staff reached out to another qualified firm on the tasks outlined in the scope of the agreement, and each time Optony has submitted lower quotes, and where it was not lower, it was on par with other quotes with differences of less than \$3,000.
5. Optony has knowledge of the city's current and future clean energy infrastructure creating efficiency for staff to focus on other CAP priorities and saving time for staff to educate and guide a consultant on city practices, processes and community values.
6. Numerous other cities have undergone a public procurement process that resulted in selecting Optony for many of the tasks outlined in Attachment A. Optony has provided services in energy consulting to over 20 cities in California with the majority of its work in the Bay Area, including Gilroy, Morgan Hill, Cupertino, San Jose, Palo Alto, Sunnyvale, Mountain View, Fremont, Berkeley and Oakland. Most recent awards include Solano Community College District for on-call support for energy projects in February 2021, as well as EV infrastructure on-call support for City of Fremont in June 2021. The Optony team is also currently working with the City of Palo Alto to decarbonize their fleet, and was recently selected as part of a team in a competitive bid process to provide a plan to decarbonize city operations for the City of San Luis Obispo.
7. Optony provides analysis, strategy, and planning services rather than the sale of product and construction services, an approach that supports objective considerations and recommendations.

Staff recommends that the City Council determine that piggybacking on other public agency's procurement of service contracts in this instance is appropriate. The term would be for three years starting February 1, 2022 through January 31, 2025.

Table 1 below provides "estimated" total costs over the next three years. However, the costs are dependent on project complexity such as external stakeholders involved and incentive programs, ability to engage staff given other City Council priorities and filling vacancies in the public work's department to support Optony and the CAP goals. Note that work must be agreed upon before beginning and is reported to the city before payment.

Table 1: Proposed scope of work and estimated cost by task	
Task description	Estimated costs over three years
MPCC clean energy infrastructure design & project management	\$149,898
Facilities electrification roadmap	\$86,258
Immediate electric vehicle charging and police department pilot and vehicle electrification planning, and project analysis	\$58,179
On-call	\$TBD

Impact on City Resources

The CAP capital improvement plan project has sufficient funds to support consultant services over the next three years (\$130,000 per year.) The available budget is \$227,000, and the City Council typically appropriates \$100,000 per year to this project as part of the annual capital improvement budget approval process. In addition, funds are available in the MPCC project to cover a portion of these consultant services.

Environmental Review

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

Public Notice

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

Attachments

- A. Proposed master agreement with Optony

Report prepared by:
 Rebecca Lucky, Sustainability Manager

PROFESSIONAL SERVICES AGREEMENT

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



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

4. COMPENSATION AND PAYMENT

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

5. EQUAL EMPLOYMENT OPPORTUNITY

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

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

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

7. INDEPENDENT WORK CONTROL

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

8. CONSULTANT QUALIFICATIONS

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

9. NOTICES

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

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

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

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

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

10. HOLD HARMLESS

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

11. INSURANCE

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

12. PAYMENT OF PERMITS/LICENSES

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

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

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

14. OWNERSHIP OF WORK PRODUCT

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

15. REPRESENTATION OF WORK

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

16. TERMINATION OF AGREEMENT

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

17. INSPECTION OF WORK

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

18. COMPLIANCE WITH LAWS

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

19. BREACH OF AGREEMENT

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

20. SEVERABILITY

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

21. CAPTIONS

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

22. LITIGATION OR ARBITRATION

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

23. RETENTION OF RECORDS

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

24. TERM OF AGREEMENT

This agreement shall remain in effect for the period of February 1, 2022 through January 31, 2025 unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

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

26. STATEMENT OF ECONOMIC INTEREST

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

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

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

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I. C. Murphy, Interim City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date

EXHIBIT "A" – SCOPE OF SERVICES

A1. SCOPE OF WORK

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

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

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

A2. COMPENSATION

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

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

A3. SCHEDULE OF WORK

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

A4. CHANGES IN WORK -- EXTRA WORK

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

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

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

A5. BILLINGS

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

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

EXHIBIT “B” - DISPUTE RESOLUTION

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

Delivery by email
Thursday, January 13, 2022:

RLLucky@menlopark.org
Rebecca Lucky, Sustainability Manager
City of Menlo Park

Proposal for:

Master Services for On-going Clean Energy & Related Consulting Support

Presented to:

City of Menlo Park

Presented by:

Byron Pakter, CEO Optony Inc.
Byron.Pakter@OptonyUSA.com



Conserve Resources by Using Recycled Paper When Printing This Proposal

Cover Letter

Good Day Ms. Lucky,

Optony is pleased to offer continued support for the City of Menlo Park on a Task Order basis within a Master Services Agreement, with the understanding that the cost and scope of each new Task Order will be submitted and approval will be received from the City before starting any work.

The firm is prepared to provide services for any, or all, of the City's needs regarding General On-call Technical Energy Consulting and Project Management with a focus on the following areas:

- MPCC Microgrid Project Management
- City Facilities Electrification and Resilience Roadmap Planning
- Tesla EV Pilot Analysis and Project Management, and General Vehicle Electrification Planning
- EV Infrastructure Procurement Support
- Low-Income Electrification Demonstration Projects

Optony's project management capabilities match well with these desired scopes of service. We have supported Menlo Park, and dozens of other public agencies in California with similar advanced projects, including managing the current procurement of the Menlo Park Community Campus microgrid. Optony was selected by the City of Palo Alto to create a plan to decarbonize their fleet, and Optony has also recently been selected as part of an open competitive bid process to provide a plan to decarbonize fleet and municipal operations at the City of San Luis Obispo.

Optony's team brings the technical knowledge needed in microgrids, all electric development, community resiliency and energy efficiency. Additionally, we are an independent clean energy consultant with a focus on supporting public agencies through complex energy projects from beginning to end.

Please do not hesitate to contact me to discuss next steps and how we can tailor our services to meet your needs.

Sincerely,

Byron Pakter, Optony Inc.
5201 Great America Pkwy.,
Suite 320, Santa Clara, CA 95054



Background of the Firm

Optony is an award-winning independent energy advisory consulting firm founded in 2008 and in operation continuously for 15 years. Optony has assisted hundreds of clients worldwide with clean energy planning and program development and has been instrumental in the success of clean energy developments through services in feasibility, site evaluation, financial analysis, procurement, policy development, or a combination of these tasks. Optony has provided expert site assessment, financial feasibility assessment, contracting and project monitoring services since its founding. In recent years, Optony's work has evolved into the field of battery energy storage, microgrids, and electric vehicles.

Summary of Expected Workplan Items to be Performed

For clarity the Task numbers here continue to follow the existing Menlo Park service agreement workplan. Note that "Task 1" from the original workplan has already been completed.

Continuing MPCC Microgrid Project Tasks (Feb 2022 – Dec 2023)

Task 2. Engineering Review and Construction Quality Management of Solar Microgrid

City Facilities Electrification and Resilience Roadmap Planning (Start date TBD, Task duration 12 months)

Task 3. Produce a high-level roadmap for fleet and equipment electrification with a mid-term time horizon of 2030.

Vehicle Electrification Planning, Analysis and Project Management (estimated, Feb 2022 – Sept 2022)

Task 4. Support for immediate charging stations needed for the 3 Tesla patrol vehicles by summer 2022, and EV pilot analysis and support

Additional On-call Technical, Project Management and Procurement Support (Feb 2022 – Jun 2024)

Task 5. Support for building electrification, clean energy, EV infrastructure, low-income electrification, resiliency demonstration projects, general microgrid guidance for City facilities planning, site-specific microgrid designs, and other as-needed assistance

Proposed Fees, and Estimated Project Staffing Hours

Total Task Order Estimates all Years	
Task 2.	\$149,898
Task 3.	\$86,258
Task 4.	\$58,179
Task 5.	TBD
Total MSA Budget Not to Exceed \$295,000	

YEAR ONE (FEB 2022 - JUN 2022)						
Task Description	Estimated Staff Hours & Cost by Task					Year Sub-total by Task
	Principal ---	Director ---	Manager ---	Sr. Analyst ---	Assoc. Analyst ---	
	B. Pakter \$ 325/hr	J. Whelan \$ 200/hr	S. Hill-Cristol \$ 185/hr	L. Fernandez \$ 175/hr	A. Craparotta \$ 165/hr	
2. MPCC Design & Project Management	\$20,963	\$17,200	\$0	\$0	\$10,643	\$48,805
Hours	64.50	86.00	-	-	64.50	215
3. Facilities Electrification Roadmap	\$13,975	\$0	\$15,910	\$3,763	\$3,548	\$37,195
Hours	43.00	-	86.00	21.50	21.50	172
4. Immediate EV Charging and PD Pilot	\$13,975	\$0	\$19,888	\$7,525	\$7,095	\$48,483
Hours	43.00	-	107.50	43.00	43.00	236.5

YEAR TWO (JUL 2022 - JUN 2023)						
Task Description	Estimated Staff Hours & Cost by Task					Year Sub-total by Task
	Principal ---	Director ---	Manager ---	Sr. Analyst ---	Assoc. Analyst ---	
	B. Pakter \$ 330/hr	J. Whelan \$ 205/hr	S. Hill-Cristol \$ 190/hr	L. Fernandez \$ 180/hr	A. Craparotta \$ 175/hr	
2. MPCC Design & Project Management	\$17,028	\$21,156	\$0	\$0	\$18,060	\$56,244
Hours	51.60	103.20	-	-	103.20	258
3. Facilities Electrification Roadmap	\$9,933	\$0	\$28,595	\$0	\$10,535	\$49,063
Hours	30.10	-	150.50	-	60.20	240.8
4. Immediate EV Charging and PD Pilot	\$2,795	\$0	\$3,978	\$1,505	\$1,419	\$9,697
Hours	8.60	-	21.50	8.60	8.60	47.3

YEAR THREE (JUL 2023 - JUN 2024)						
Task Description	Estimated Staff Hours & Cost by Task					Year Sub-total by Task
	Principal ---	Director ---	Manager ---	Sr. Analyst ---	Assoc. Analyst ---	
	B. Pakter \$ 335/hr	J. Whelan \$ 210/hr	S. Hill-Cristol \$ 195/hr	L. Fernandez \$ 185/hr	A. Craparotta \$ 175/hr	
2. MPCC Design & Project Management	\$10,084	\$18,963	\$0	\$0	\$15,803	\$44,849
Hours	30.10	90.30	-	-	90.30	210.7



Key Personnel

The key personnel who will work on the City of Menlo Park are profiled in brief below. Full resumes or additional project references are available if desired. Optony support staff may be used on an as-needed basis.



Byron Pakter, Chief Executive and Director of Program Development

Byron Pakter will be the officer in charge of this Master Service Agreement. He is an expert in microgrids and electrification. He is also active on renewable planning and compliance in WECC as a member of the Western Renewable Energy Generation Information System (WREGIS) Stakeholder Advisory Committee. He was the team lead on integrated resource planning work for East Bay Community Energy's business plan for local resource development. His work influenced and informed the IRP sections on methodology; procurement and scheduling development impacts; new generation; analysis of risks and mitigations; and analysis of strategies for enhancing long-term stability and reliability. He is coauthor to energy economics development research and strategy for wind, solar, and advanced energy technologies, prepared for the Governors' offices of Colorado, Iowa, and Virginia. He holds a Master of Engineering in Advanced Energy Technology and a Bachelor of Science in Mechanical Engineering, both from the University of California, Berkeley.



Jonathan Whelan, Director and Chief Officer of Operations

Jonathan Whelan will be Optony's responsible agent in project management for consultancy services with the City of Menlo Park. He is well known for his rigorous project management methodologies; and meeting short deadlines with tight project scheduling and efficient lines of communication. Throughout the project term he will manage accountability for action items, as well as share and maintain project status timelines and milestone progress.

Mr. Whelan is a veteran of multiple energy resource planning programs for public agencies. He is known as a pioneering leader in multi-jurisdictional solar PPA brokerage and negotiations. Over the course of the last ten years, he has assisted dozens of municipal agencies to achieve some of the most favorable PPA contract terms seen in the industry. He holds a Bachelor of Science in Business Administration and Biology, with Minor in Environmental Studies from Trinity University.



Sam Hill-Cristol, Energy Program Manager

Mr. Hill-Cristol serves as a Project Manager and Energy Analyst at Optony. Mr. Hill-Cristol has worked in all facets of the renewable energy -- public policy nexus and uses that experience to interface with public and private stakeholders in order to catalyze clean technology deployment at the local level. Prior to joining Optony, Mr. Hill-Cristol served as the Sustainable Energy & Transportation Associate at Alameda County, where he led the County's efforts to overcome the charging constraints hindering efforts to achieve mass deployment of electric vehicles in their fleet. He is the lead author of a paper analyzing how energy markets could support utility scale battery storage deployment in the New England ISO. He holds a Bachelor of Arts in Environmental Studies, with Honors, from Brown University.



Luis Fernandez, EV and Energy Storage Analyst

Luis oversees technical site assessments, technical and economic modeling efforts to incorporate the most up to date information. He leads analytical tasks such as solar PV technical project design, DER financial modeling, electric vehicle data analysis, and optimization for economic valuations of IFOM energy storage applications. He specializes in electric vehicle and energy storage market research. Throughout his career, she has developed an interest in wholesale electricity markets and utility rate design as they relate to renewable energy, battery storage and electric vehicles. He holds a Master of Engineering from UC Berkeley, and a Bachelor of Science in Mechanical Engineering from the University of Notre Dame.



Amanda Craparotta, Associate Energy Analyst

Amanda provides policy and incentives research, project management, as well as technical and economic modeling. She leads data collection and integration for solar PV procurements and electric vehicle fleet planning. At Optony, she has contributed to multi-jurisdictional clean energy procurements in California, and supports fleet electrification vehicle feasibility and replacement suitability studies nationally. Her background in data security and Geographic Information Systems (GIS) add to her capacities in product and program evaluations. She holds a Bachelor of Arts from Virginia Polytechnic Institute in National and Security Studies.



STAFF REPORT

City Council

Meeting Date:

1/25/2022

Staff Report Number:

22-014-CC

Consent Calendar:

Adopt a resolution to accept Federal Emergency Management Agency Building Resilient Infrastructure and Communities grant funds, if awarded, and authorize the city manager to execute a memorandum of understanding with partners for a portion of the Strategy to Advance Flood Protection, Ecosystems and Recreation along the San Francisco Bay project

Recommendation

Staff recommends that the City Council adopt a resolution (Attachment A) to:

- Accept the grant funds, if awarded, from the Federal Emergency Management Agency (FEMA) Building Resilient Infrastructure and Communities (BRIC) program to fund a portion of the Strategy to Advance Flood protection, Ecosystems and Recreation along the San Francisco Bay (SAFER Bay) project;
- Confirm the City's role and responsibilities as the grant applicant and project lead, as generally defined in Section 4 of the memorandum of understanding (MOU), including future operations and maintenance of the infrastructure improvements; and
- Authorize the city manager to execute a MOU (Exhibit A to Attachment A) between the project partners, the San Francisquito Creek Joint Powers Authority (SFCJPA), PG&E, and Meta (formerly Facebook), documenting roles, responsibilities and obligations.

Policy Issues

This project is a portion of SAFER Bay project, which is consistent with land use element goal LU-7, "promote the implementation and maintenance of sustainable development, facilities and services to meet the needs of Menlo Park's residents, businesses, workers and visitors." The SAFER Bay project is specifically identified as program LU-7.G, "coordinate with the SAFER Bay process to ensure that the Menlo Park community's objectives for sea level rise/flood protection, ecosystem enhancement, and recreational trails are adequately taken into consideration." This project is also consistent with the City's adopted 2030 climate action plan action item No. 6 to develop a climate action adaptation plan to protect the community from sea level rise and flooding, and was included in the City Council's 2021 work plan.

Background

On November 9, 2021, the City Council held a study session to provide direction regarding the potential opportunity for a FEMA BRIC grant to fund a portion of the SAFER Bay project. The staff report, which includes background on the SAFER Bay project and the FEMA BRIC grant program is included as Attachment B. The grant opportunity represents a collaborative effort between the City, the SFCJPA, PG&E and Meta to pursue an application for public outreach, design, environmental documentation, permitting, and construction for a portion of the SAFER Bay project within Menlo Park, from approximately the north

side of the Dumbarton Bridge to the southeast side of Bedwell Bayfront Park. This portion of the shoreline is approximately 3.7 miles (or 52 percent of the total shoreline distance in Menlo Park.) At its November 9, 2021, meeting, the City Council:

1. Confirmed the City's role and responsibilities as the grant applicant and project lead;
2. Directed staff to return with a resolution accepting the grant funds and a MOU between the project partners, documenting roles, responsibilities and obligations;
3. Directed staff to return during the midyear budget review with a request for anticipated resource needs including the addition of a provisional, full-time employee for an initial three-year term; and
4. Directed staff to return with options during the fiscal year 2022-23 budget process for the project to maintain positive cash flow while awaiting receipt of FEMA grant reimbursements.

Analysis

Staff is returning to City Council with the resolution (Attachment A) and MOU (Exhibit A to Attachment A) between the project partners, corresponding to item 2 above. Items 3 and 4 will return to the City Council for consideration at future meetings.

The resolution authorizes the city manager, public works director or their designees, to accept the grant funds, if awarded by FEMA. In addition, it outlines the City's role and responsibilities to administer the project and ensure that grant requirements are completed satisfactorily:

- Lead role in preparation of the project-level environmental documents;
- Oversee design, construction, and operations and maintenance responsibilities, including holding the contracts for design and construction;
- Lead, in collaboration with SFCJPA, acquisition of certain property rights, such as temporary construction and permanent access easements needed to construct and operate and maintain the project; and
- Project management, oversight and grant administration.

The MOU memorializes the roles and responsibilities of the project partners, including SFCJPA's commitment to develop a programmatic environmental impact report for the entire SAFER Bay project, provide technical expertise to support the Menlo Park portion of the SAFER Bay project, and assist with coordination with the adjacent SAFER Bay project in East Palo Alto. Additionally, the MOU memorializes the commitment of local match funding for the project from PG&E (\$10 million) and Meta (\$7.808 million.) In total, the \$17.808 million commitments allow the City to access the maximum \$50 million in federal funds for an application from the FEMA BRIC program resulting in a total project cost of \$67.808 million. Since the City is reliant on outside funding sources to meet its local match funding obligation, the MOU should be approved and executed before accepting any federal grant award.

Key topics covered in the MOU are summarized in Table 1. No changes to the MOU terms were made since the draft version was shared for the City Council feedback November 9, 2021.

Table 1: Summary of key MOU provisions

Section	Summary
3. Effectiveness	MOU would become effective upon (i) execution by all parties and (ii) City receives notification from FEMA of BRIC grant funding award. If FEMA BRIC grant funds are not awarded before October 1, 2024, each party may withdraw from the agreement.
4. General role of each party	The City would be the lead for most aspects of the project. The SFCJPA would provide technical support in coordination with the overall SAFER Bay project. PG&E and Meta would contribute funds, as previously committed, and provide design input about project elements adjacent to their facilities.
6. Funding, budgeting and cash flow	Memorializes PG&E’s and Meta’s promised financial contributions to the project, with 20 percent of the matching funds due once the MOU becomes effective after confirmation of FEMA BRIC funding. This initial contribution would be used to advance the initial design and environmental tasks. Since the FEMA grant reimburses the City for expenses on a quarterly basis, obtaining reimbursement can take up to six months, so maintaining a fund balance is needed to keep the project advancing while FEMA processes reimbursements. Partners would make pro-rata contributions throughout the design phase, with the balance of contributions due at the beginning of project construction. Per City Council direction November 9, 2021, staff will return with options to maintain positive cash flow in the fiscal year 2022-23 budget and capital improvement program. A maximum of \$14.7 million is expected to be needed to maintain positive cash flow.
12. Operations and maintenance	Establishes the City’s role in long-term operations and maintenance, for which a plan must be in place prior to awarding a construction contract. Potential long-term operations and maintenance could include strategies such as an assessment district for properties that benefit from the improvements, a community facilities district, a property tax measure, the City’s Bayfront Mitigation fund, or partnering with other regional stakeholders, such as OneShoreline, with a role in flood protection and sea level rise resiliency.

Next steps

The SFCJPA board of directors is tentatively scheduled to take action to approve the MOU January 27, 2022. Once approved by the City Council and the SFCJPA board, the MOU will be circulated for execution by all partners. Table 2 summarizes the proposed schedule and next steps for the project.

Table 2: Project schedule and next steps	
Task	Anticipated schedule
City Council adopts resolution accepting grant funds, authorizing City’s Project role, and authorizing city manager to execute MOU	January 25, 2022
SFCJPA board of directors anticipated to authorize executive director to execute MOU	January 27, 2022
MOU routed for signatures	February 2022
FEMA award letter	TBD, currently anticipated no sooner than February 2022
City Council considers midyear budget review for staffing request	Tentatively March 2022
Fiscal year 2022-23 budget review and adoption, incorporating plans for maintaining positive cash flow for this project	May – June 2022
Outreach, design, environmental clearance and permitting	Twenty-four months from FEMA award letter
Procurement/construction contract award	Six months from completion of design, environmental clearance and permitting
Construction	Thirty-six months from contract award
Earliest potential construction completion date	July 2027

Impact on City Resources

The fiscal year 2021-22 capital improvement program budget included \$250,000 in funding for the staff time and expenses associated with the initial grant administration and project design development. If awarded grant funding from the FEMA BRIC program, project expenses will be recuperated on a reimbursement basis. As described above, staff anticipates additional project management and financial resources will be needed to deliver this project successfully.

Environmental Review

The SFCJPA plans to develop a programmatic EIR for the entire SAFER Bay project. If the City is successful in securing grant funding for additional SAFER Bay reaches through this grant opportunity, it may be possible to include a detailed project-level assessment in the SFCJPA’s ongoing effort, depending on timing. Alternatively, a standalone, project-level EIR may be prepared.

Public Notice

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

Attachments

- A. Resolution

Staff Report #: 22-014-CC

B. Hyperlink – November 9, 2021 City Council staff report #21-218-CC:
menlopark.org/DocumentCenter/View/29998/J1-20211109-CC-FEMA-BRIC-grant

Report prepared by:
Eric Hinkley, Associate Engineer
Nikki Nagaya, Public Works Director

RESOLUTION NO. XXXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK APPROVING ACCEPTANCE OF GRANT FUNDS, IF AWARDED, FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY BUILDING RESILIENT INFRASTRUCTURE AND COMMUNITIES PROGRAM TO FUND A SEGMENT OF THE MENLO PARK PORTION OF THE STRATEGY TO ADVANCE FLOOD PROTECTION, ECOSYSTEMS AND RECREATION ALONG THE SAN FRANCISCO BAY PROJECT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE ATTACHED MEMORANDUM OF UNDERSTANDING WITH THE CITY'S PROJECT PARTNERS: THE SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY, PACIFIC GAS & ELECTRIC COMPANY, AND META (FORMERLY FACEBOOK), DOCUMENTING ROLES, RESPONSIBILITIES AND OBLIGATIONS

WHEREAS, as enunciated in more detail in the Memorandum of Understanding (MOU) attached hereto as Exhibit A, the City of Menlo Park, the San Francisquito Creek Joint Powers Authority, Pacific Gas & Electric Company (PG&E), and Meta (formerly Facebook) (collectively, Parties) worked collaboratively commencing in the Fall of 2020 to develop a grant application for submittal to the Federal Emergency Management Agency (FEMA) seeking funds from FEMA's Building Resilient Infrastructure and Communities (BRIC) Program to fund a segment of the Menlo Park portion (Project) of the Strategy to Advance Flood Protection, Ecosystems and Recreation project along San Francisco Bay, referred to as the SAFER Bay Project; and

WHEREAS, on January 29, 2021, the Parties received notification that the Menlo Park SAFER Bay Project application was accepted by FEMA for review and funding consideration; and

WHEREAS, on July 2, 2021, the Parties received notification that the Menlo Park SAFER Bay Project application was selected by FEMA for further review; and

WHEREAS, following a Study Session on November 9, 2021, the City Council directed staff to return with a Resolution accepting the grant funds, if awarded, and a Memorandum of Understanding between the Parties documenting roles, responsibilities and obligations; and

WHEREAS, in anticipation of FEMA awarding Menlo Park \$50 Million in BRIC grant funding for the Menlo Park SAFER Bay Project and subject to such award, the Parties have negotiated the MOU attached as Exhibit A to establish a framework for funding, planning, permitting, designing, constructing, and operating and maintaining the Project; and

WHEREAS, the \$17.808 million in committed funds from PG&E and Meta as a local match and memorialized in the attached MOU allows the City to access the maximum \$50 million in federal funds available from the FEMA BRIC grant program resulting in a total project cost of \$67.808 million, representing over 50 percent of the funds presently estimated to be needed to implement the entire SAFER Bay project in Menlo Park and East Palo Alto, with a total cost estimate of approximately \$130 million; and

WHEREAS, approval of the MOU attached as Exhibit A will enable the City to accept FEMA BRIC funds when made available and proceed with public outreach and the design, environmental clearance, and construction of the Project.

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

1. Authorizes the City Manager or their designee to accept the grant funds, if awarded, from the Federal Emergency Management Agency Building Resilient Infrastructure and Communities program to fund a segment of the Menlo Park portion of the Strategy to Advance Flood protection, Ecosystems and Recreation along the San Francisco Bay project; and
2. Confirms the City's role and responsibilities as the FEMA BRIC grant applicant and project lead, including future operations and maintenance of the infrastructure improvements; and
3. Approves and authorizes the City Manager to execute the Memorandum of Understanding between the City of Menlo Park and the San Francisquito Creek Joint Powers Authority, PG&E, and Meta (formerly Facebook) in substantially the form attached hereto as Exhibit A, and to execute any other necessary documents to effectuate the terms of the Memorandum of Understanding.

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

MEMORANDUM OF UNDERSTANDING

AMONG THE CITY OF MENLO PARK, SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY, PACIFIC GAS AND ELECTRIC COMPANY, AND META PLATFORMS, INC. IN CONNECTION WITH THE MENLO PARK PORTION OF THE SAFER BAY PROJECT

This MEMORANDUM OF UNDERSTANDING (this **MOU** or **Agreement**) is dated for convenience [REDACTED], 2022, to be effective as of the Effective Date (defined below), among the CITY OF MENLO PARK, a municipal corporation (**Menlo Park** or **City**), the SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY, an entity comprised of the cities of East Palo Alto, Palo Alto, and Menlo Park, the San Mateo County Flooding and Sea Level Resiliency District and the Santa Clara Valley Water District for the purpose of exercising special powers to lead projects that mitigate the risk of flooding along the San Francisquito Creek and the Bay (**SFCJPA** or **JPA**), PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (**PG&E**) and META PLATFORMS, INC., a Delaware corporation (**Meta**) formerly known as Facebook, Inc., individually referred to as a **Party** and collectively referred to as the **Parties** and is for the purpose of collaborating on the Menlo Park portion of the SAFER Bay Project.

RECITALS

WHEREAS: The SFCJPA has released two Public Draft Feasibility Reports (**Feasibility Studies**) for a Strategy to Advance Flood protection, Ecosystems and Recreation along San Francisco Bay, referred to as the **SAFER Bay Project**; an October 2016 Feasibility Study with respect to portions of the SAFER Bay Project in East Palo Alto and Menlo Park; and a June 2019 Feasibility Study with respect to portions of the SAFER Bay Project in Palo Alto; and

WHEREAS: The Menlo Park portion of the SAFER Bay Project is a portion of the overall SAFER Bay Project in Menlo Park comprised of 3.7 miles of engineered levees and floodwalls that would protect segments of California State Route 84 and PG&E's Ravenswood Substation, which are anchors for power service and transportation to the area, and would include construction of new levees surrounding the Meta classic campus (formerly referred to as the east campus) (**Classic Campus**), along an alignment known as SAFER Bay Reach 4 and along Bayfront Expressway (Reaches 2 and 3) as depicted in the Vicinity Map attached as part of Exhibit A. The Menlo Park portion of the SAFER Bay Project will also increase recreational access to the Bay shoreline; and, by leveraging nature-based design, enable habitat restoration work in sections of the Don Edward San Francisco Bay National Wildlife Refuge; and

WHEREAS: The Parties acknowledge and agree that an overall San Francisco Bay flood control and sea level rise resiliency project is critical to the long term viability of the Parties' and the region's operations and facilities. For example, the networked infrastructure located within and serving residents of the City, which contains roads and highways, electric substations, and wastewater treatment plants that are essential to day-to-day community and economic functions and a complex grid of

services means that sea level rise could adversely affect regional businesses and residents. Thus, a flooded highway, wastewater treatment plant or electrical substation could temporarily shut-down businesses, close roads and lead to many community wide disruptions; and

WHEREAS: The goals of the Menlo Park SAFER Bay Project include protection of the PG&E Ravenswood Substation, a critical power supply for over 300,000 people, as well as the construction of flood control elements designed to provide a 100-year level of coastal flood protection and 3.5 feet of sea level rise adaptation; and

WHEREAS: In planning the SAFER Bay Project, the Parties recognize the importance of both “mitigation” and “adaptation” as strategies to reduce overall vulnerability to the adverse effects of flooding and sea-level rise; and

WHEREAS: In September 2020, PG&E expressed a desire to plan, design, and construct a flood control and sea level rise resiliency project around PG&E’s Ravenswood electrical substation located adjacent to 2005 Willow Road in Menlo Park, corresponding to a portion of Reach 5 identified in the SFCJPA’s SAFER Bay Project Feasibility Studies; and

WHEREAS: Menlo Park agreed to assume the role of applicant for the purpose of submitting an application for the Federal Emergency Management Agency (**FEMA**) fiscal year 2020 Building Resilient Infrastructure and Communities (**BRIC**) grant opportunity on behalf of a project for a portion of the overall SAFER BAY Project within Menlo Park (**Menlo Park SAFER Bay Project** or **Project**); and

WHEREAS: PG&E offered to contribute \$10 million to meet the grant program’s 25% minimum local match funding requirement and for flood control and sea level rise resiliency facilities around its Ravenswood electrical substation; and

WHEREAS: The SFCJPA, being familiar with the proposed project scope of work due to developing the SAFER Bay Project Feasibility Study, agreed to become a project partner; and

WHEREAS: Meta offered to contribute an additional \$7.808 million of local match funding to expand the proposed Project scope of work to include measures regarding its approximately 56.9 acre “Classic Campus” (including Buildings 10-19) located at 1 Hacker Way in Menlo Park; and

WHEREAS: The proposed Project scope of work was expanded to include a portion of Reach 2, a portion of Reach 5 and all of Reaches 3 and 4, all as described in the Feasibility Studies; and

WHEREAS: The Parties worked collaboratively to develop a complete Project grant application for submittal to FEMA; and

WHEREAS: On the basis of PG&E and Meta’s assurances of their support for the Project, Menlo Park confirmed in the BRIC grant application that it has secured the grant program’s 25% minimum local match funding requirement; and

WHEREAS: On January 29, 2021, the Parties received notification that the Menlo Park SAFER Bay Project application was accepted by FEMA for review and funding consideration; and

WHEREAS: On July 2, 2021, the Parties received notification that the Menlo Park SAFER Bay Project application was selected by FEMA for further review; and

WHEREAS: In anticipation of FEMA awarding Menlo Park \$50 Million in BRIC grant funding for the Menlo Park SAFER Bay Project and subject to such award, the Parties wish to enter into this MOU to establish a framework for funding, planning, permitting, designing, constructing, and operating and maintaining the Project.

NOW, THEREFORE, the parties hereby agree as follows:

1. **Definitions.**

Capitalized terms not defined elsewhere in this MOU shall have the following meanings:

AHJ's means all federal, state, regional and local authorities having jurisdiction.

Applicable Laws mean all applicable federal, state, regional and local statutes, ordinances, laws, rules, regulations, orders and other laws, including without limitation all BRIC grant and AHJ requirements.

City is defined in the Preamble.

Contractor means any contractor, designer, consultant, supplier, vendor, manufacturer, or other third party hired by any of the Parties to perform any of the services or work in connection with the Project which is paid for, in whole or in part, with any Project funds.

Council means the City's City Council.

Effective Date is defined in Section 3.

Meta is defined in the Preamble.

O&M means long-term operations and maintenance of the completed Project.

Phase is a Project phase more particularly described in Section 5.

PG&E is defined in the Preamble.

Project EIR is defined in Section 8.

Programmatic EIR is defined in Section 8.

2. **Purpose of MOU.** This MOU establishes a framework for funding, planning, permitting, designing, constructing, and operating and maintaining the Project, and establishes certain contractual obligations concerning, inter alia, commitment to pay promised local matching funds between and among the Parties in connection with the Project.

3. **Effectiveness.** This MOU is effective (**Effective Date**) immediately upon mutual execution by all Parties. The obligations of this MOU (with the exception of this Effectiveness provision) do not become legally enforceable until the date Menlo Park receives assurance adequate to the City Council or its designee and the Parties that an adequate level of FEMA grant funding, currently anticipated to be \$50 million, has been committed to this Project (“Assurance”). If by October 1, 2024, such Assurance has not been received, then at any time thereafter and prior to transmittal of such Assurance, any Party may terminate this Agreement by giving written notice to the other Parties.

4. **General Role of Each Party.** As more specifically described in this MOU, the general roles and responsibilities of each Party for the Project are as follows:

(a) Menlo Park.

- (i) “Applicant” under the BRIC grant.
- (ii) “Lead Agency” for the Project EIR.
- (iii) “Lead” for certain property rights acquisition.
- (iv) “Lead” for Project design and construction, including being the “Owner” (i.e., holder) of the Project consulting, design, and construction contracts.
- (v) Subject to Section 12, responsibility for long-term Project O&M.

(b) SFCJPA.

- (i) Provide technical support to Menlo Park under the BRIC application.
- (ii) “Lead Agency” for the Programmatic EIR.
- (iii) “Lead” for certain property rights acquisition.

(c) PG&E.

- (i) Funding supporter of \$10,000,000 when, as, and subject to applicable conditions in this MOU.
- (ii) Provider of review, comment, input and suggestions (as applicable) to whatever other aspects of the Project around the Ravenswood substation it chooses.
- (iii) Contributor (without additional cost to the Project and subject to California Public Utilities Commission approval pursuant to a Public Utilities Code Section 851 process,) of all mutually agreed upon, reasonably required and operationally feasible rights to Ravenswood electrical substation lands required for the Project facilities to be constructed, operated and maintained on Ravenswood substation land, so long as the easements and rights of access do not adversely impact PG&E’s operations, in PG&E’s reasonable discretion. Land rights are currently anticipated to be mutually

agreed upon easements or rights of entry and/or access for levees – contingent / predicated upon environmental review / preliminary designs. This clause presumes the existing levee will remain in relatively the same position to protect the Ravenswood electrical substation and enable restoration. However, ecotone and t-zone area may be moved off of PG&E property at the discretion of Saltpond Project Management Team and Refuge, so long as this new location protects the Ravenswood Substation.

- (iv) Following Project completion (i.e., during the O&M phase), having the same rights and responsibilities of any other private landowner within the Project area, e.g., in the event a special assessment district is formed, PG&E will be treated in the same manner as other property owners within the special assessment district.
 - (v) The obligations of this subsection will survive any withdrawal from this MOU by PG&E as long as the Project proceeds, except that the obligations of this subsection will not survive if this Agreement is terminated pursuant to Section 3.
- (d) Meta.
- (i) Funding supporter of \$7,808,000 when, as, and subject to applicable conditions in this MOU.
 - (ii) Provider of review, comment, input and suggestions (as applicable) to whatever other aspects of the Project it chooses. Meta will not, however, have any obligation to provide any review, comment, input or suggestions.
 - (iii) Contributor (without additional cost to the Project) of incidental easements, licenses, and/or rights of access over the Classic Campus that are reasonably required for the Project facilities to be constructed, operated and maintained, so long as the easements, licenses, and/or rights of access do not adversely impact Meta's operations, in Meta's reasonable discretion.
 - (iv) Following Project completion (i.e., during the O&M phase), having the same rights and responsibilities of any other private landowner within the Project area, e.g., in the event a special assessment district is formed, Meta will be treated in the same manner as other property owners within the special assessment district.
 - (v) The obligations of this subsection will survive any withdrawal from this MOU by Meta, as long as the Project proceeds, except that the obligations of this subsection will not survive if this Agreement is terminated pursuant to Section 3.
- (e) There remain subjects that the Parties may require further refinement as to their respective responsibilities, as provided in more detail in Section 7 below.

- (f) Nothing in this MOU or the Project will alter or modify any pre-existing obligations of:
 - (i) PG&E to maintain the flood gate/wall in front of its Ravenswood electrical substation; and
 - (ii) Meta for infrastructure on its Classic Campus under its pre-existing conditional development permit with Menlo Park; provided, however, that if the existing levees protecting Classic Campus are made obsolete by the Project, then the City agrees to cooperate with Meta to remove its obligation under the conditional development permit for the Classic Campus to maintain the existing levees.

In the event of any conflict between any provision of this Section 4 and any other provision of this MOU, the provisions of this Section 4 will control.

5. Project Description and Phases.

- (a) The current Project description is attached as Exhibit A. Exhibit A will be revised from time to time as provided in this MOU. The Project may not be revised in a manner that adversely impacts Meta's property without Meta's prior written approval or in a manner that adversely impacts PG&E's property without PG&E's prior written approval.
- (b) For planning and budgeting purposes, the Project is expected to proceed in the following general Phases. Phases may run concurrently:
 - (i) Phase 1. Includes generally:
 - (1) CEQA/NEPA.
 - (2) Permitting.
 - (3) Project budgeting.
 - (4) Seeking additional funding sources.
 - (5) Pre-design and preliminary design.
 - (6) Initial property rights acquisition.
 - (7) Initial development of mitigation and monitoring plan.
 - (8) Initial development of O&M-related matters.
 - (ii) Phase 2. Includes generally:
 - (1) Final property rights acquisition.
 - (2) Final design.

- (3) Procurement and construction.
 - (4) Construction phase mitigation and monitoring activities.
 - (5) Final development of O&M-related matters.
- (iii) Phase 3. Includes generally:
- (1) O&M.
 - (2) Post-construction mitigation and monitoring activities.

6. Funding, Budgeting and Cash Flow.

- (a) Concurrently with its approval of this MOU, the Council has adopted a Resolution accepting the BRIC grant funding.
- (b) The current Project funding sources and uses and timeline are attached hereto as Exhibit B and Exhibit C, respectively. The Parties will update Exhibit B and Exhibit C in a mutually agreed upon manner as further information becomes available.
- (c) The current Project Cash Flow Projections are attached hereto as Exhibit D. The Parties will update Exhibit D in a mutually agreed upon manner as further information becomes available.
- (d) PG&E and Meta will contribute their agreed \$10,000,000 and \$7,808,000, respectively, when and as required by the agreed Exhibit B and Exhibit C. PG&E and Meta will contribute 20% of their agreed contributions within thirty days of the date Assurance is received, then make pro rata contributions with the City throughout the design phase of the Project, then make the balance of their respective agreed contributions upon the commencement of Project construction. The obligations of this subsection will survive any withdrawal from this MOU by PG&E or Meta, as long as the Project proceeds.
- (e) The City and SFCJPA or other public partners will be responsible for seeking any and all grant funding and other funding sources to be used for the Project. Meta and PG&E agree to continue to collaborate and provide non-monetary support for such efforts.
- (f) Parties to align on engagement and outreach for this portion and future portions of the overall SAFER Bay Project.
- (g) The Parties acknowledge and agree that PG&E and Meta are not responsible for providing funding above the agreed respective \$10,000,000 and \$7,808,000 amounts.
- (h) If final Project costs are less than the amounts raised, the Parties will discuss uses of remaining funds for O&M and other costs.

7. **Subsequent Agreements.** As the Project progresses, the Parties anticipate developing further memoranda of understanding or agreements between some or all of them, including:
- (a) Permitting including potential timing and coordination between Programmatic EIR and Project EIR (see Section 8);
 - (b) Procurement: In-kind contributions for the Project (such as, for example, surplus soil or equipment);
 - (c) Real estate acquisition: Allocation of specific Project property rights acquisition; it is presently anticipated that SFCJPA will take the lead on initial outreach, communication, collaboration, and stakeholder coordination for property / easement / right of entry acquisition and that the City will undertake any eminent domain proceedings where necessary;
 - (d) Responsibility, oversight and management of design and construction phases;
 - (e) Responsibilities for review and approval of Project designs;
 - (f) Creation of a special district(s) or other regional solution(s) to perform or pay for long-term O&M;
 - (g) Ultimate ownership of Project facilities: Identifying specific owner(s) (public or otherwise), e.g., One Shoreline, of actual Project facilities, currently anticipated to be City and/or JPA;
 - (h) Agreements with other potential Project stakeholders;
 - (i) Project Administration; and
 - (j) Negotiation cost and design of potential relocation of existing PG&E transmission / distribution facilities (if required by Project).

Neither Meta nor PG&E will be obligated to participate in or contribute to any of the preceding subjects.

8. **Environmental Review.**

- (a) SFCJPA will serve as the Lead Agency for the CEQA self-mitigating programmatic EIR for the entire SAFER Bay Project (**Programmatic EIR**). The current timetable for the Programmatic EIR is attached as on Exhibit E. SFCJPA will update Exhibit E in a mutually agreed upon manner as further information becomes available.
- (b) Menlo Park will serve as the Lead Agency for the CEQA Project-specific (non-programmatic) EIR (**Project EIR**). The current timetable for the Project EIR is attached as Exhibit F. Menlo Park will update Exhibit F in a mutually agreed upon manner as further information becomes available

9. Project Definition and Contracts.

- (a) The Parties intend that except for specific CEQA/NEPA or other (if any) matters for which SFCJPA is the Lead Agency, Menlo Park will hold all third-party contracts to accomplish the Phase 1 and Phase 2 portions of the Project. As for Phase 3, the Parties intend that Menlo Park will hold all third-party contracts, except to the extent O&M responsibilities can be assumed by a third party. Contracting responsibility includes responsibility for requiring other parties to maintain reasonable and appropriate insurance, any to pay prevailing wages if otherwise required by Applicable Law. However, nothing herein will require Menlo Park or SFCJPA to enter into any contract unless it has reasonable assurances of available funds.
- (b) Subject to Section 6(g), the City and SFCJPA or other public partners will be responsible for seeking any and all grant funding and other funding sources to be used for the Project in addition to the funds contributed by Meta and PG&E pursuant to this Agreement. Meta and PG&E agree to continue to collaborate and provide non-monetary support for such efforts.
- (c) Until final construction completion of the Project and for three years thereafter, City and SFCJPA shall maintain in accordance with their standard record retention procedures (and require any Contractor to maintain) all such records concerning expenditures of Project funds relating to the funding, planning, permitting, designing, constructing, and operating and maintaining the Project. The preceding shall include correspondence, internal memoranda, calculations, books and accounts, accounting records, and invoices, payrolls, records and all other data related to matters covered by this MOU and as may be required by FEMA or its designee(s). Upon the City's request, Meta and PG&E shall provide evidence of payment of the funds they have contributed to the Project pursuant to this Agreement.

10. Project Permits, Entitlements and Approvals.

- (a) Subject to the specifically agreed "lead" and other responsibilities of Menlo Park and the SFCJPA (as applicable), the City and SFCJPA will cooperate to obtain and/or provide all mutually agreed upon and reasonably required entitlements, permits and approvals for the Project and that do not unreasonably interfere with operational requirements. Meta and PG&E agree to continue to collaborate and provide non-monetary support for such efforts.

11. Project Design and Construction.

- (a) The City and SFCJPA will cooperate to obtain approval of all project designs and applicable construction requirements. Meta and PG&E agree to continue to collaborate and provide non-monetary support for such efforts. All Project designs for facilities on PG&E or Meta's properties will be subject to PG&E or Meta's (as applicable) reasonable approval, so long as it is consistent with prior approvals.

12. Project O&M.

- (a) Concurrently with its approval of this MOU, and consistent with the BRIC grant documents, the Council has adopted a Resolution undertaking a commitment to provide for the Project's long term operations and maintenance expenses.
- (b) Menlo Park and SFCJPA will, with input from PG&E and Meta, have responsibility for developing a long-term O&M plan in compliance with all applicable laws and subject to approval of all AHJ's, ideally before final design is completed and construction contracts are let.
- (c) As for O&M funding, Menlo Park and SFCJPA and other regional stakeholders will cooperate to develop other, citywide or regional-based solutions, such as a potential assessment district. PG&E and Meta will be encouraged to provide meaningful input in developing the solutions. PG&E and Meta acknowledge that any solution may require them to make Project-related payments in addition to those described elsewhere in this MOU. However, provided that the final regional solution does not treat PG&E or Meta differently than any other similarly situated private property owner within the Project area, and PG&E and Meta have been given a reasonable opportunity to provide meaningful input, PG&E and Meta will not assert this MOU as a basis for different treatment than any other similarly situated private property owner within the Project area.
- (d) Nothing in this MOU or the Project will alter or modify any pre-existing obligations of:
 - (i) PG&E to maintain the flood gate/wall adjacent to its Ravenswood electrical substation [as required or necessary based on design of project]; and
 - (ii) Meta for infrastructure under its pre-existing conditional development permit for the Classic Campus (except as set forth in Section 4(f)(ii)).

13. Term and Termination/Withdrawal.

- (a) This MOU will be effective as of the Effective Date, and will unless terminated earlier by the Parties or superseded by other agreements will be effective until five years after construction of the Project is completed and accepted.
- (b) PG&E and Meta may withdraw from this MOU (subject to Section 13(c)) upon 120 days written notice to the other Parties.
- (c) The following obligations will survive expiration or termination of this MOU or withdrawal by a party: (i) PG&E and Meta agreements regarding their \$10,000,000 and \$7,808,000 contributions, respectively; and (ii) PG&E and Meta obligations under Section 4(c)(iii) and Section 4(d)(iii) respectively. Notwithstanding the preceding, if this MOU is terminated pursuant to Section 3 then all of PG&E's and Meta's obligations will also terminate and PG&E and Meta will not be obligated to make any further contributions to the Project.

14. General Conditions.

- (a) Project Communications and Meetings. Throughout the Project, the Parties, will reasonably communicate with each other in all matters relating to the Project. The Parties will agree on schedule of periodic meetings to apprise the Parties and other Project stakeholders regarding overall Project statuses, funding, design and construction, etc.
- (b) Revisions to Exhibits and Schedules. All Exhibits and Schedules to this MOU are subject to revision and updating from time to time. The Parties will reasonably cooperate in such revisions.
- (c) No Consequential Damages. The Parties hereby agree that, in the event of default, any damages awarded or arising under this MOU shall be exclusively limited to actual direct damages incurred and which have been demonstrated with substantial certainty. In no instance shall the Parties be entitled to special, incidental, indirect, consequential or punitive damages, lost profits or attorney's fees. By acceptance and execution of this MOU, the Parties hereby agree that the only monetary damages contemplated by them as arising from this MOU are actual or direct damages. The Parties specifically agree that damages suffered by Menlo Park as a result of PG&E or Meta's failure to pay their monetary contributions when and as required are actual and direct damages.

15. Representations and Warranties.

Each Party represents, warrants and covenants to the other parties as follows:

- (a) Authority. The Party has the legal power and authority to execute and deliver this MOU and to perform its obligations under this MOU.
- (b) Due Authorization. The approval, execution, and delivery of this MOU, and the performance by such Party of its obligations under this MOU, have been authorized by all requisite actions of the Party.
- (c) Due Execution and Delivery. The persons executing this MOU on behalf of the Party are duly authorized to execute and deliver this MOU on behalf of the Party.
- (d) No Conflict. The approval, execution, delivery and performance of this MOU does not conflict with any other agreement to which the Party is a party and does not violate or require any action which has not been taken under any law, statute, rule, regulation, ordinance, general plan, tribal law, specific plan or court order or decree applicable to the Party.

16. Miscellaneous.

- (a) Indemnification. Pursuant to Government Code Section 895.4, Menlo Park and SFCJPA agree to fully indemnify, defend, and hold the other Parties (including their appointed and elected officials, officers, employees, and agents) harmless and free from any damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or

willful misconduct of the indemnifying Party, its appointed or elected officials, officers, employees, or agents, under or in connection with any work, authority, or jurisdiction delegated to such Party under this MOU. Neither Menlo Park nor SFCJPA, nor any appointed or elected official, officer, employee, or agent thereof, shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of any other Party, its appointed or elected officials, officers, employees, or agents, under or in connection, with any work, authority, or jurisdiction delegated to such other Party under this MOU. Menlo Park and SFCJPA, while conducting their respective activities set forth above in Section 4 above shall each procure, carry, and maintain, in full force and effect, at all applicable times during the term of this MOU, such insurance and bonds to protect the Parties, inclusive of causing each Contractor to indemnify and defend the Parties and name the Parties as additional insureds in any contracts entered into to effectuate this MOU.

- (b) Further Assurances. The Parties shall cooperate with each other and execute such instruments or documents and take such other actions as may reasonably be requested from time to time in order to carry out, evidence or confirm their rights or obligations under this MOU.
- (c) Amendments. Any mutually agreed changes, modifications, revisions or amendments to this MOU shall be incorporated by written instrument, and effective when executed and signed by all Parties.
- (d) Severability. If any provision of this MOU shall be held to be invalid, void, or unenforceable, the validity, legality, or enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.
- (e) Applicable Law. The construction, interpretation and enforcement of this MOU shall be governed by the laws of the State of California applicable to contracts executed and wholly performed within that state. The courts of the State of California shall have jurisdiction over any action arising out of this MOU, with venue in San Mateo County.
- (f) Construction of Agreement. In the event of a dispute between the Parties as to the language of this MOU or any amendment to this MOU or the construction or meaning of any term contained in this MOU or any amendment to this MOU, this MOU or any amendment to this MOU shall be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against, or in favor of, any Party based on the preparation or negotiation of this MOU or any amendment to this MOU.
- (g) Notices. All notices, demands and other formal communications hereunder shall be deemed given if: (a) delivered personally or by courier, (b) sent by overnight express delivery, (c) mailed by registered or certified mail (return receipt requested), postage prepaid, or (d) sent by email in PDF format (**Email Notification**); provided that (i) notice received after 5:00 p.m. on a business day or on a non-business day shall be deemed received on the next business day, and (ii) any sender of an Email Notification also delivers the notice by one of the methods listed in (a)-(c) (**Secondary Notice**) (provided that if the recipient of the

Email Notification responds with an email acknowledgement of receipt (an automatic "read receipt" does *not* constitute acknowledgement), Secondary Notice is not required), to a party at its respective address(es) set forth below (or at such other address as shall be specified by the party by like notice given to the other party(ies):

<p>To: City of Menlo Park Justin I.C. Murphy Interim City Manager City Hall, 2nd Floor 701 Laurel St Menlo Park, CA 94025</p>	<p>To: San Francisquito Creek Joint Powers Authority Margaret Bruce Executive Director 2100 Geng Road, Suite 210 Palo Alto, CA 94303</p>	<p>To: Pacific Gas and Electric Company Heather Rock Chief of Staff for Engineering, Planning and Strategy 300 Lakeshore Drive Oakland, CA 94612</p>	<p>To: Meta Platforms, Inc. Lauren Swezey Sustainability & Landscape Project Lead 1 Hacker Way Menlo Park, CA 94025</p>
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- (h) Entirety of Agreement. This MOU, including Exhibits A through F, represents the entire and complete agreement among the Parties with respect to the subject matter hereof and supersedes any prior negotiations, representations and agreements, whether written or oral.
- (i) Debt Limitation. Menlo Park and SFCJPA are subject to laws or policies which limit their ability to incur debt in future years. Nothing in this MOU shall constitute an obligation of future governing bodies of the Parties to appropriate funds for the purpose of this MOU.
- (j) Conflict of Interest. The Parties shall undertake reasonable efforts to avoid conflicts of interest in the performance of this MOU and shall immediately notify the other Parties should a conflict of interest arise that would prohibit or impair the ability to perform under this MOU.
- (k) Disputes. The Parties agree that, with regard to all disputes or disagreements arising under this MOU that are not resolved informally at the staff level after a good faith attempt, the Parties may, at their sole and mutual discretion, agree to engage in mediation, and the costs of any such mediation shall be divided equally among the Parties involved in the mediation.
- (l) Non-Discrimination. Each Party shall comply with its own non-discrimination policies and practices and laws applicable to it.
- (m) Counterparts. This MOU may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.
- (n) Facsimile and Electronic Signatures. Facsimile or electronic signatures may be used in place of original signatures on this MOU. Each Party intends to be bound by the signatures on the facsimile or electronic document, is aware that the other Parties will rely on the facsimile or electronic signatures, and hereby waives any

defenses to the enforcement of the terms of this MOU based on the use of a facsimile or electronic signature.

- (o) Exhibits and Schedules. The following Exhibits and Schedules are attached and incorporated into this MOU:
 - (i) Exhibit A: Project Description and Vicinity Map
 - (ii) Exhibit B: Project Funding Sources and Uses
 - (iii) Exhibit C: Project Timeline
 - (iv) Exhibit D: Cash Flow Projections
 - (v) Exhibit E: Programmatic EIR Timetable
 - (vi) Exhibit F: Project EIR Timetable

- (p) Signatures. In witness whereof, the Parties, through their respective duly-authorized representatives, have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

[Signature Blocks Follow on Next Page]

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Memorandum of Understanding.

CITY OF MENLO PARK

Justin I. C. Murphy, Interim City Manager

Date

ATTEST:

Judi Herren, City Clerk

Date

APPROVED AS TO FORM:

Nira Doherty, City Attorney

Date

SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY

[Name, Title]

Date

ATTEST:

[Name], Agency Clerk

Date

APPROVED AS TO FORM:

[Name, Title]

Date

PACIFIC GAS AND ELECTRIC COMPANY

[Name, Title]

Date

META PLATFORMS, INC.

[Name, Title]

Date

EXHIBIT A

PROJECT DESCRIPTION

Menlo Park SAFER Bay Project Scope of Work

The proposed Menlo Park SAFER Bay Project involves preparation of environmental documentation, permitting, public outreach, field investigation, design, and construction for solutions to tidal and sea-level rise flooding along an approximately 3.7-mile alignment of the southeast San Francisco Bay shoreline near the City of Menlo Park (Attachment 1). The flood control elements will be designed to provide a 100-year level of flood protection in addition to 3.5 feet of sea-level rise adaptation.

The proposed Project will incorporate nature-based solutions and habitat enhancements. In total, the project will create approximately 31 acres of tidal marsh transition zone on the bayside slopes of multiple flood control levees. By extending the transition zones to elevations that account for 100-year storm events, in addition to 3.5 feet for sea level rise adaptation, the proposed project will create long-term, resilient, high-quality habitat and high tide refuge. The Project also proposes to enhance approximately 5 acres of western snowy plover breeding habitat in Pond R3 by placing oyster shells or pea gravel to enhance the breeding habitat of endangered bird species.

A primary focus of the proposed project is flood protection of Pacific Gas and Electric Company's (PG&E) Ravenswood Substation, which is part of critical power supply infrastructure to eight cities and nearly 300,000 people. The substation is sited at the margin of San Francisco Bay, and is at risk of tidal flooding and sea-level rise. When flooded, the substation must be de-energized until flood waters recede, and repair and maintenance activities must be completed before re-powering the substation. Hydrologic and infrastructure analysis has shown that flooding of the substation would result in an interruption of power supply for between 5 and 15 days to the project impact area, negatively impacting many community lifelines that are critical for human health and safety and to economic security.

The Project would be developed in phases. Phase 1 would include procurement of environmental and engineering services, public outreach, environmental permitting, and design to the 90% level. Phase 2 would include final design, procurement for construction management and contracting services, and construction activities.

The proposed Project is a significant portion of the overall SAFER Bay alignment that, when completed, will provide the additional benefit of protecting the communities of Menlo Park, East Palo Alto and others from tidal and sea level rise flooding.

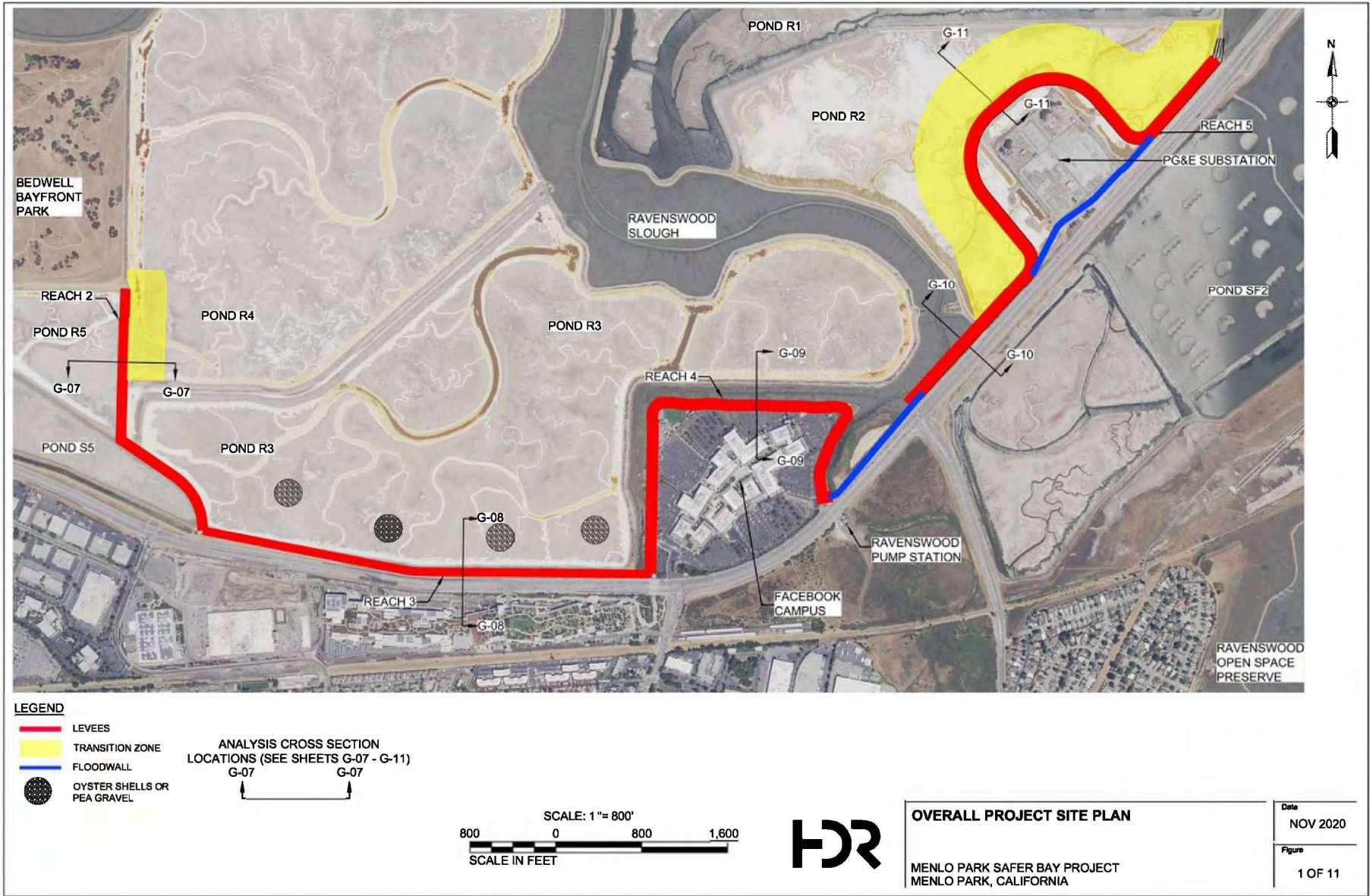


EXHIBIT B

PROJECT FUNDING SOURCES AND USES

Funding Sources	Amount
FEMA BRIC grant	\$ 50,000,000
PG&E	\$ 10,000,000
Facebook	\$ 7,808,000
Total	\$ 67,808,000

Funding Uses	Amount
Pre-award Cost	\$ 190,000
Phase 1	
Task 1.1 - Procurement for Design and Environmental Services	\$ 26,000
Task 1.2 - Project Management including Kick-Off Meeting	\$ 150,000
Task 1.3 - Public Outreach	\$ 63,000
Task 1.4 - Environmental Permits	\$ 1,178,000
Task 1.5 - Right-of-Way Acquisition Negotiations	\$ 540,000
Task 1.6 - Engineering and Design	\$ 3,150,000
Phase 2	
Task 2.1 - Project Management	\$ 208,000
Task 2.2 - Public Outreach	\$ 75,000
Task 2.3 - Final Design	\$ 198,000
Task 2.4 - Procurement for Construction Management Service	\$ 26,000
Task 2.5 - Construction Bidding	\$ 42,000
Task 2.6 - Engineering During Construction	\$ 233,000
Task 2.7 - Construction Management	\$ 3,752,000
Task 2.8 - Construction Activities	\$ 57,844,087
Operation & Maintenance	
O&M (5 years)	\$ 1,050,000
Total	\$ 68,725,087

EXHIBIT C

PROJECT TIMELINE

Estimated Project Timeline

	Q1 Oct-Dec 21	Q2 Jan-Mar 22	Q3 Apr-Jun 22	Q4 Jul-Sep 22	Q5 Oct-Dec 22	Q6 Jan-Mar 23	Q7 Apr-Jun 23	Q8 Jul-Sep 23	Q9 Oct-Dec 23	Q10 Jan-Mar 24	Q11 Apr-Jun 24	Q12 Jul-Sep 24	Q13 Oct-Dec 24	Q14 Jan-Mar 25	Q15 Apr-Jun 25	Q16 Jul-Sep 25	Q17 Oct-Dec 25	Q18 Jan-Mar 26	Q19 Apr-Jun 26	Duration	
Phase 1																				~ 21 months	
FEMA NEPA Review																					~ 11 months
FEMA Phase 2 Review																					~ 8 months
Phase 2																					~ 29 months
Total Duration																					~ 57 months

* Dates are subject to change as the project evolves

EXHIBIT D CASH FLOW PROJECTIONS

Cash Flow Forecast

- Scenario: • Maintain minimum of \$1 M cash balance through completion of Phase 1
- 20% of local match contribution upfront
 - Local match reimbursements on pro rata basis through completion of Phase 1
 - Remainder of local match contribution at beginning of Phase 2

	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10	Q11	Q12	Q13	Q14	Q15	Q16	Q17	Q18	Q19	Q20	Q21	Q22	TOTAL		
Description	Oct-Dec 23	Jan-Mar 24	Apr-Jun 24	Jul-Sep 24	Oct-Dec 24	Jan-Mar 25	Apr-Jun 25	Jul-Sep 25	Oct-Dec 25	Jan-Mar 26	Apr-Jun 26	Jul-Sep 26	Oct-Dec 26	Jan-Mar 27	Apr-Jun 27	Jul-Sep 27	Oct-Dec 27	Jan-Mar 28	Apr-Jun 28	Jul-Sep 28	Oct-Dec 28	Jan-Mar 29			
Expenditures																									
Pre-award Cost																									
FEMA BRIC sub-application Preparation	(180,000)																							(180,000)	
Phase 1																									
Task 1.1 - Procurement for Design and Environmental Services	(26,000)																							(26,000)	
Task 1.2 - Project Management including Kick-Off Meeting	(7,500)	(23,750)	(23,750)	(23,750)	(23,750)	(23,750)	(23,750)	(23,750)	(23,750)															(235,000)	
Task 1.3 - Public Outreach	(1,400)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)	(8,100)															(85,000)	
Task 1.4 - Environmental Permits	(94,000)	(200,200)	(273,400)	(295,600)	(211,800)	(246,300)	(48,370)																	(1,378,000)	
Task 1.5 - Right-of-Way Acquisition Negotiations			(80,000)	(163,000)	(162,000)	(133,000)																		(540,000)	
Task 1.6 - Engineering and Design	(184,900)	(1,021,050)	(1,313,820)	(1,103,510)	(1,133,610)	(138,050)	(174,750)	(28,120)																(5,335,000)	
FEMA NEPA Review																									
FEMA Phase 2 Review																									
Phase 2																									
Task 2.1 - Project Management										(20,840)	(21,890)	(21,890)	(21,890)	(21,890)	(21,890)	(21,890)	(21,890)	(21,890)	(21,890)	(21,890)	(21,890)	(21,890)	(21,890)	(208,000)	
Task 2.2 - Public Outreach										(4,050)	(8,090)	(8,090)	(8,090)	(8,090)	(8,090)	(8,090)	(8,090)	(8,090)	(8,090)	(8,090)	(8,090)	(8,090)	(8,090)	(75,000)	
Task 2.3 - Final Design										(86,000)	(86,000)													(172,000)	
Task 2.4 - Procurement for Construction Management Service										(8,660)	(17,310)													(35,000)	
Task 2.5 - Construction Bidding											(45,000)													(45,000)	
Task 2.6 - Engineering During Construction											(1,430)	(2,860)	(5,720)	(11,440)	(17,160)	(22,880)	(28,600)	(34,320)	(40,040)	(45,760)	(51,480)	(57,200)	(62,920)	(1,000,000)	
Task 2.7 - Construction Management											(1,400)	(2,800)	(5,600)	(11,200)	(16,800)	(22,400)	(28,000)	(33,600)	(39,200)	(44,800)	(50,400)	(56,000)	(61,600)	(1,000,000)	
Task 2.8 - Construction Activities																								(17,844,060)	
TOTAL EXPENDITURES	(734,800)	(1,253,150)	(1,428,970)	(804,020)	(541,930)	(471,190)	(254,970)	(28,120)	0	(122,830)	(391,570)	(4,925,780)	(8,406,670)	(8,414,320)	(8,418,140)	(8,418,140)	(8,418,140)	(8,418,140)	(8,418,140)	(8,418,140)	(8,418,140)	(8,418,140)	(8,418,140)	(87,675,080)	
Payments																									
FEMA Reimbursements (75% expenditures/less 30% retention)			482,490	843,880	964,134	407,720	365,388	328,056	378,111	33,636	0	83,777	223,810	2,893,804	3,674,307	3,679,669	3,682,248	3,682,248	3,682,248	3,682,248	3,682,248	3,682,248	3,682,248	48,000,000	
FEMA Retention Release (30%)																								0	
Local Match Contribution - PG&E	3,000,000	1,003,349	175,628	200,514	84,797	75,985	66,149	35,799	4,089	2,256,175														3,000,000	
Local Match Contribution - Facebook	3,361,600	78,353	137,360	336,570	66,210	58,337	51,649	27,949	3,192	5,663,777															7,800,000
TOTAL PAYMENTS	3,361,600	1,081,702	352,478	3,027,274	1,145,181	549,052	489,181	381,101	179,382	12,841,811	0	80,777	223,810	2,919,904	3,674,307	3,679,669	3,682,248	3,682,248	3,682,248	3,682,248	3,682,248	3,682,248	3,682,248	67,800,000	
NET QUARTERLY CASH FLOW	2,626,799	(1,071,448)	(105,492)	3,088,047	373,801	71,869	228,217	352,279	179,392	12,841,811	(333,571)	(4,240,003)	(8,182,860)	(5,494,410)	(3,743,833)	(2,738,471)	(2,735,891)	(2,740,892)	(2,740,892)	(2,740,892)	(2,740,892)	(2,740,892)	(2,740,892)	(2,740,892)	312,814
NET QUARTERLY CASH BALANCE	2,646,791	1,772,343	1,336,744	3,738,690	2,312,522	2,384,391	2,612,397	2,965,279	3,144,671	15,963,944	13,632,273	11,398,266	3,206,199	(2,288,611)	(5,033,611)	(7,772,139)	(10,508,037)	(13,233,931)	(14,664,199)	(16,975,847)	(19,720,987)	(22,461,879)	(25,202,771)	312,814	

PG&E percentage share of local match - 56.15% of 25%

EXHIBIT E

PROGRAMMATIC EIR TIMETABLE

(Provided by SFCJPA)

TASK	ANTICIPATED DATE
Notice of Preparation (NOP) Publication	Dec '21
NOP Public Comment Period	Dec '21 – Jan '22
Project Description	Mar '22 – Jun '22
Administrative Draft EIR	Jun '22 – Jan '23
Publish Draft EIR	Feb '23
Final EIR Certified	Aug '23

*These dates are subject to change as the project evolves

EXHIBIT F

PROJECT EIR TIMETABLE

(Provided by City of Menlo Park)

TASK	ANTICIPATED DATE
Project Description	Dec '21 – Feb. '22
Notice of Preparation / Scoping	Feb '22 – May '22
Draft EIR	May '22 – Feb '23
Final EIR	Oct '22 – Feb '23
Notice of Determination	Feb '23 – Mar '23

*These dates are subject to change as the project evolves

**STAFF REPORT – AMENDED****City Council****Meeting Date:** 1/25/2022**Staff Report Number:** 22-018-CC**Consent Calendar:****Award a construction contract to Radius Earthwork Inc. for the Middle Avenue and Nealon Park pedestrian improvement project****Recommendation**

Staff recommends that the City Council award a construction contract (Attachment A) to Radius Earthwork Inc., in the amount of \$398,704, approve construction administration in the amount of \$36,000, and approve contingency in the amount of \$40,000 (held by the City), for the Middle Avenue and Nealon Park pedestrian improvement project.

Policy Issues

This project is consistent with the City's goal of Policy CIRC-2: increasing accessibility for and use of streets by pedestrians, bicyclists, and transit riders and Policy LU-7: promoting the implementation and maintenance of sustainable development, facilities and services to meet the needs of Menlo Park's residents, businesses, workers and visitors.

Background

Measure A is a one-half of one percent sales tax, administered by the San Mateo County Transportation Authority (TA), to implement highway and transit improvements per the transportation expenditure plan. On November 2, 2004, residents of San Mateo County voted to approve the continuation of Measure A through December 31, 2034.

On November 6, 2017, the TA issued a call-for-projects for the Measure A Pedestrian and Bicycle Program. In response to the call-for-projects, Menlo Park's City Council adopted Resolution No. 6417 supporting the submittal of a grant application for the Menlo Park bicycle and pedestrian enhancement project. The application sought \$805,600 in grant funds, with a City match of 20 percent or \$201,400 from the City's transportation impact fee (TIF), for a total of \$1,007,000. On July 5, 2018, the TA and City of Menlo Park entered into a funding agreement to establish processes and terms for allocating Measure A grant funds.

This agreement resulted in the following scopes of work:

1. Pierce Road sidewalk improvements
2. Coleman Avenue sidewalk improvements
3. San Mateo Drive / Wallea Drive and Ringwood Avenue bike route markings
4. Middle Avenue and Blake Street crosswalk enhancements
5. Middle Avenue and San Mateo Drive crosswalk enhancements

The scope of work is being delivered in two projects. To date, items 1 through 3 have been substantially completed. Items 4 and 5 are part of this project as described in the analysis section.

Analysis

Project description

The project is located on Middle Avenue, the majority of which is near Nealon Park, with limits shown per Attachment B (Project Map.) The work to be done is described below and illustrated in Attachment C (Site Plan):

- Installing rectangular rapid flashing beacons (RRFBs) and curb ramps at Blake Street and San Mateo Drive
- Reconstructing roadway areas to mitigate sloping hazards, including the driveway entry at Nealon Park
- Installing a three-inch asphalt overlay at existing on-street parking areas fronting Nealon Park
- Installing signing and striping per plan (including new crosswalks and parking stalls)
- Installing concrete sidewalks, ramps, and gutters along Nealon Park's frontage and its connecting intersections per City standards.

Coordination with Middle Avenue complete streets project

The Nealon Park and Middle Avenue Pedestrian Improvement project has some overlap with the Middle Avenue complete streets project (a 2021 City Council priority.) Staff are planning to conduct public outreach later this spring for the Middle Avenue complete streets project, which will investigate the addition of bicycle lanes and potential traffic calming opportunities from El Camino Real to Olive Street. As part of the development agreement with Stanford University for 500 El Camino Real, Stanford is responsible for implementing bike lanes between El Camino Real and University Avenue.

While the Nealon Park and complete streets projects share common goals, staff have been investigating opportunities to reduce conflicts between people parking along the frontage of Nealon Park and people traveling by bicycle, especially as an enhanced bicycle facility is developed. One opportunity that staff has explored is to convert the parking along the frontage of Nealon Park into "back in angle parking," which is parking that requires drivers to back into the stall at an angle and pull out forward (see Attachment C for an example on Stanford Avenue in Palo Alto.) Back in angle parking reduces conflicts between people parking and people using the travel lane as follows:

- When drivers are parking, other road users (bicyclists and other people driving) can see the vehicle come to a stop and can then wait for them to park (or go around if safe) before proceeding.
- When pulling out of a back-in space, drivers are positioned such that oncoming traffic from the left is clearly visible to them. This is the exact opposite of head in angled or perpendicular parking (as exists today), where the driver of a parked vehicle is challenged to see any oncoming bicyclists or vehicles when they leave a parking space.

The project is currently designed with perpendicular on-street parking along Nealon Park. However, staff believes that this could be substituted with back in angle parking, with no net loss of parking spaces, and within the construction budget per Table 2. Because this would be the first time that Menlo Park has used this treatment, staff is proposing to conduct additional outreach as part of the proposed outreach for the Middle Avenue complete streets project, on this proposed change prior to construction. If this change were to move forward, staff would also develop educational materials and signage to help explain how to use back in angle parking and why it provides a safety benefit.

Construction bidding

On September 29, 2021, the City solicited bids from prospective contractors for the project. Project bids were opened October 26, 2021, with results per Table 1. Of the eight bids received, Radius Earthwork, Inc.

offered the lowest price at \$398,704 which was under the engineer’s estimate of \$548,677. Staff found the lowest bidder to be experienced with projects involving similar scopes of work. Additionally, staff determined the low bidder to be both responsive and responsible per the public contracting code.

Table 1: Bid results	
Bidder	Construction estimate
Engineer’s estimate	\$548,677
Radius Earthwork, Inc.	\$398,704
Guerra Construction Group	\$414,785
JJR Construction, Inc.	\$496,547
Sposeto Engineering, Inc.	\$598,718
Redgwick Construction Company	\$624,265
Ray’s Electric	\$639,190
Cato’s General Engineering, Inc.	\$639,621
NBC Construction & Engineering, Inc.	\$885,876

Impact on City Resources

The project is included in the fiscal year 2021-22 capital improvement program and there is sufficient funding for construction and related soft costs including construction administration. The anticipated budget is summarized in Table 2 with construction costs, contingencies and administration fees totaling \$474,704.

Table 2: Construction budget	
Item	Estimated cost
Construction subtotal	\$398,704
10% contingency	\$40,000
Construction administration	\$36,000
Total construction cost	\$474,704

The project is funded through a combination of the park pathways repairs project (funded by the general capital fund) and the TIF. Work pertaining to crosswalk enhancements at Blake Street and San Mateo Drive is funded through the TIF of which an estimated \$143,200, or 80 percent of the construction cost, is eligible for reimbursement through the project’s Measure A grant. The final reimbursable amount will be confirmed upon project completion based on construction costs incurred. The remaining work is funded through the Park Pathway repairs project. Refer to Table 3 below for a summary of the project’s funding sources.

Table 3: Estimated funding	
Item	Estimated cost
Parks pathway repairs	\$295,704
Transportation impact fee (TIF)	\$179,000
Total construction cost	\$474,704
Measure A grant (reimbursable to TIF)	(\$143,200)

Staff recommends that the City Council award a construction contract to Radius Earthwork Inc., in the amount of \$398,704, approve construction administration fees in the amount of \$36,000, and approve contingency in the amount of \$40,000 (held by the City), for the Middle Avenue and Nealon Park pedestrian improvement project.

Environmental Review

This project is categorically exempt pursuant to California Environmental Quality Act (CEQA) Guidelines §§ 15301(b) Existing Facilities.

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. Construction contract
- B. Project map
- C. Site plan

Report prepared by:
Mike Owyang, Assistant Engineer

Report reviewed by:
Karen Pachmayer, Interim Assistant Public Works Director

CONSTRUCTION AGREEMENT

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



Agreement #:
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND FIRST PARTY
THIS CONSTRUCTION CONTRACT ("Contract") is made and entered into this ____ day of _____, _____ ("Execution Date") by and between the CITY OF MENLO PARK, a California municipal corporation, ("City") and <u>Radius Earthwork, Inc.</u> ("Contractor").
RECITALS
<p>A. Contractor is a <u>California Corporation</u> duly organized and in good standing in the State of California, License Number <u>1059010</u>. Contractor represents and warrants that it has the background and experience set forth in the Contractor's responses to the notice inviting bids.</p> <p>B. Contractor represents that it is duly licensed by the State of California and has the background, knowledge, experience and expertise to perform the obligations set forth in this Contract.</p> <p>C. On <u>September 29, 2021</u>, the City issued a Notice to Contractors inviting bids for the Project. A copy of the Contractor's Bid proposal and List of Subcontractors is attached herein and incorporated by this reference.</p> <p>D. The City desires to retain Contractor as an independent contractor to provide the construction and other services identified in this Contract for the Project upon the terms and conditions contained herein.</p>
AGREEMENT
<p>NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants and conditions contained herein, the parties hereby agree as follows:</p> <p>1. DEFINITIONS. Capitalized terms used throughout the Contract Documents shall have the meanings set forth in this Contract and/or the Special Provisions. If there is a conflict between the definitions in this Contract and the Special Provisions, the definitions in this Contract shall prevail.</p> <p>2. PROJECT. The project is the construction of <u>Middle Avenue and Nealon Park Pedestrian Improvement project</u> ("Project"). The work includes all labor, materials, equipment, services, permits, licenses and taxes, and all other things necessary for Contractor to perform its obligations and complete the Project, including, without limitation, any Change Orders executed by City and Contractor in</p>

accordance with the requirements of the Contract Documents (“Work”).

3. CONTRACT DOCUMENTS.

3.1 List of Documents. The Contract Documents (sometimes collectively referred to as “Agreement” or “Bid Documents”) consist of the following documents which are on file with the Public Works Department and are hereby incorporated by reference.

- 1) Change Orders
- 2) Field Orders
- 3) Contract
- 4) Bidding Addenda
- 5) Special Provisions
- 6) Project Plans and Drawings
- 7) Technical Specifications
- 8) City Standard Details
- 9) State of California Department of Transportation Specifications, 2006 Edition (Cal Trans specifications)
- 10) Notice to Contractors
- 11) Contractor's Bid
- 12 Bidder Certifications, Questionnaire and Statements
- 13) Reports listed in the Contract Documents
- 14) City of Menlo Park Waste Management Form, Waste Management Daily Transport Report
- 15) City of Menlo Park Truck Route Map and Regulations
- 16) Performance, Payment and Maintenance Bonds

3.2 Order of Precedence. For the purposes of construing, interpreting and resolving inconsistencies between and among the provisions of this Contract, the Contract Documents shall have the order of precedence as set forth in the preceding section. If a claimed inconsistency cannot be resolved through the order of precedence, the City shall have the sole power to decide which document or provision shall govern as may be in the best interests of the City.

4. PERMITS. Contractor, at its sole expense, shall obtain and maintain during the term of this Contract, all appropriate permits, licenses and certificates that may be required in connection with the performance of the Work, including, but not limited to, a City business license.

5. DEPARTMENT OF INDUSTRIAL RELATIONS. Contractor and any subcontractor performing Work on this Project shall be registered with the Department of Industrial Relations (“DIR”) pursuant to Labor Code Section 1725.5. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code Section 1725.5, with limited exceptions from this requirement for bid purposes only under Labor Code Section 1771.1(a). This Project is subject to compliance monitoring and enforcement by the DIR. It is the responsibility of the Contractor to ensure all DIR requirements and regulations are met and stay current. For more information, see <http://dir.ca.gov/Public-Works/SB854.html>.

6. TERM. This Contract is effective on the Execution Date set forth in the initial paragraph of

this Contract and shall remain in effect until the Project has been satisfactorily completed by Contractor, unless earlier terminated pursuant to the terms of this Contract.

7. TIME OF COMPLETION. Time is of the essence with respect to all time limits set forth in the Contract Documents. Contractor shall commence the Work on the date specified in the City's Notice to Proceed. Contractor shall diligently prosecute the Work to Substantial Completion within 140 calendar days after the date specified in the City's Notice to Proceed ("Contract Time"). The Contract Time may only be adjusted for extensions of time approved by the City and agreed to by Change Order executed by City and Contractor in accordance with the requirements of the Contract Documents.

8. COMPENSATION. The City agrees to compensate Contractor for its satisfactory completion of the Work in compliance with the Contract Documents for the not to exceed amount of Three Hundred Ninety-Eight Thousand Seven Hundred and Four (\$398,704) ("Contract Sum"). Payment shall be as set forth in the Plans, Special Provisions and/or Technical Specifications. The Contract Sum may only be adjusted by Change Orders issued, executed and satisfactorily performed by Contractor in accordance with the requirements of the Contract Documents. The Contract Sum shall be adjusted (upward or downward) only to account for Change Orders. The Contract Sum is and shall be full compensation for all Work performed by Contractor. The Contract Sum shall cover all losses arising out of the nature of the Work or from the elements or any unforeseen difficulties or obstructions which may arise or be encountered in performance of the Work until its Acceptance by the City, all risks connected with the Work and any and all expenses incurred due to the suspension or discontinuance of the Work.

9. STANDARD OF PERFORMANCE. As a material inducement to the City to enter into this Contract, Contractor hereby represents and warrants that it has the qualifications and experience necessary to undertake the Work to be provided and the Project to be completed pursuant to this Contract. Contractor agrees that the Work shall be performed by qualified, experienced and well-supervised personnel. The Work performed pursuant to this Contract shall be performed in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope and complexity of the Project.

10. COMPLAINT WITH LAW. This Project constitutes a public work within the meaning of California Labor Code Section 1720 et. seq. and is subject to prevailing wage laws. The Work performed by Contractor pursuant to this Contract shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of the City, and any federal, state or local governmental agency having jurisdiction in effect at the time the work is rendered.

11. REPRESENTATIVE. Janamjit Gondara is hereby designated as the project manager/superintendent/foreman of Contractor authorized to act on its behalf with respect to the Work specified in this Contract. It is expressly understood that the experience, knowledge, capability and reputation of Radius Earthwork, Inc. were a substantial inducement for City to enter into this Contract. Therefore, Janamjit Gondara shall be responsible during the term of this Contract for directing all activities of Contractor and devoting sufficient time to personally

supervise the services hereunder. The representative may not be changed by Contractor without the express written approval of the City.

12. LIQUIDATED DAMAGES.

12.1 Entitlement. City and Contractor acknowledge and agree that if Contractor fails to fully and satisfactorily complete the Work within the Contract Time, the City will suffer, as a result of Contractor's failure, substantial damages which are both extremely difficult and impracticable to ascertain. Such damages may include, but are not limited to: (a) loss of public confidence in the City and its contractors; (b) loss of public use of public facilities; and (c) extended disruption to public.

12.2 Daily Amount. City and Contractor have reasonably endeavored, but failed, to ascertain the actual damage that the City will incur if the Contractor fails to achieve Substantial Completion of the Work within the Contract Time. Therefore, the parties agree that in addition to all other damages to which the City may be entitled other than delay damages, in the event the Contractor shall fail to achieve Substantial Completion of the Work within the Contract Time, Contractor shall pay City as liquidated damages the amount of Five Hundred Dollars (\$500) per day for each calendar day after the expiration of the Contract Time until Contractor achieves Substantial Completion of the Work. The liquidated damages amount is not a penalty, but a reasonable estimate of the amount of damages the City will suffer.

12.3 Apportionment. Such liquidated damages shall be subject to reduction for delays for which Contractor is entitled to receive an extension of time under the Contract Documents ("Apportionment"). Such Apportionment shall not be affected by the fact that liquidated damages may not be applied for periods of time during which delays have occurred that are caused by both City and Contractor. It is agreed that the liquidated damages shall not be applied for portions of the Work completed prior to the expiration of the Contract Time.

12.4 Exclusive Remedy. City and Contractor acknowledge and agree that this Section 11, Liquidated Damages, shall be the City's only remedy for delay damages caused by the Contractor's failure to achieve Substantial Completion of the Work within the Contract Time.

12.5 Damages upon Abandonment. In the event that the Contractor either abandons the Work or is terminated for default in accordance with the provisions of this Contract, City shall have the right, in its sole discretion exercised by written notice issued either before or after Substantial Completion, to elect to either assert or waive its right to liquidated damages. If City elects to assert its right to liquidated damages, then the liquidated damages shall be calculated from expiration of the Contract Time to the date that Substantial Completion of the Work is achieved by the City or its replacement contractor employed to complete Contractor's performance. If City elects to waive its right to liquidated damages, then Contractor shall be liable to the City, in lieu of the liquidated damages, for all actual Losses (as defined in the General Conditions) proximately resulting from Contractor's failure to complete the Work within the Contract Time.

12.6 Other Remedies. The parties further acknowledge and agree that the City is entitled to

any and all available legal and equitable remedies City may have where City's Losses are caused by any reason other than Contractor's failure to achieve Substantial Completion of the Work within the Contract Time.

13. INDEPENDENT CONTRACTOR. Contractor is, and shall at all times remain as to the City, a wholly independent contractor and not an agent or employee of the City. Contractor shall receive no premium or enhanced pay for work normally understood as overtime, nor shall Contractor receive holiday pay, sick leave, administrative leave, or pay for any other time not actually worked. The intention of the parties is that Contractor shall not be eligible for benefits and shall receive no compensation from the City except as expressly set forth in this Contract. Contractor shall have no power to incur any debt, obligation, or liability on behalf of the City or otherwise act on behalf of the City as an agent. Neither the City, nor any of its agents shall have control over the conduct of Contractor, any of Contractor's employees, or any subcontractors, except as set forth in this Contract. Contractor shall at no time, or in any manner, represent that it or any of its agents or employees or subcontractors are in any manner employees of the City. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Contract, and to indemnify and hold the City harmless from any and all taxes, assessments, penalties, and interest asserted against the City by reason of the independent contractor relationship created by this Contract. Contractor shall fully comply with the worker's compensation law regarding Contractor, Contractor's employees and subconsultants. Contractor further agrees to indemnify and hold the City harmless from any failure of Contractor and any subconsultants to comply with applicable worker's compensation laws.

14. CONFLICT OF INTEREST. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the work to be performed by Consultant under this Contract, or which would conflict in any manner with the performance of its services hereunder. Contractor further covenants that, in performance of this Contract, no person having any such interest shall be employed by it. Furthermore, Contractor shall avoid the appearance of having any interest which would conflict in any manner with the performance of the work pursuant to this Contract. Contractor agrees not to accept any employment during the term of this Contract which is or may make Contractor financially interested, as provided in California Government Code Sections 1090 and 87100, in any decision made by the City on any matter in connection with which Contractor has been retained pursuant to this Contract. However, nothing herein shall preclude Contractor from accepting other engagements with the City.

15. INDEMNIFICATION.

15.1 To the fullest extent permitted by law, Contractor shall indemnify, defend, with independent counsel approved by the City, and hold harmless the City, and its elective or appointive boards, officers, employees agents and volunteers ("Indemnitee") from and against any and all claims, losses, or liability that may arise out of or result from damages to property or personal injury received by reason of, or in the course of work performed under this Contract due to the acts or omissions of Contractor or Contractor's officers, employees, agents or subcontractors. The indemnification provisions survive completion of the Work or the

termination of this Contract. The acceptance of such services shall not operate as a waiver of such right of indemnification. Notwithstanding the foregoing, nothing contained herein shall be construed as obligating Contractor to indemnify any Indemnitee for any claims, losses or liability resulting from the sole or active negligence or willful misconduct of the Indemnitee. Contractor shall pay City for any costs incurred in enforcing this provision.

15.2 The City does not and shall not waive any rights that they may possess against Contractor because of the acceptance by the City or the deposit with the City 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.

15.3 Pursuant to Public Contract Code Section 9201, the City shall timely notify Contractor upon receipt of any third-party claim relating to the Contract.

16. ASSIGNABILITY. The parties agree that the experience and qualifications of Contractor as set forth in the Contractor's Bid are material considerations for the City entering into this Contract. Consultant shall not assign or transfer any interest in this Contract, without the prior written consent of the City, and any attempt by Contractor to do so shall be void and of no effect and a breach of this Contract. For purposes of this section, the sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor or of any general partner or joint venturer or syndicate member of Contractor, if a partnership or joint venture or syndicate or co-tenancy exists, which shall result in changing the control of Contractor, shall be construed as an assignment of this Construction Contract. Control means more than fifty percent (50%) of the voting power of the corporation or other entity.

17. INSURANCE AND BOND REQUIREMENTS.

17.1 Prior to the commencement of any Work, the Contractor shall provide the City with evidence that it has obtained the insurance required by this Section and all bonds, including, but not limited to, payment and performance bonds, required in the Special Provisions. Failure to obtain and maintain the required insurance and bonds to so shall be deemed a material breach of this Contract.

17.2 Insurance Requirements. Contractor shall obtain the following insurance.

A. Worker's Compensation and Employer's Liability Insurance: The CONTRACTOR shall have in effect during the entire life of this Contract workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Contract, the CONTRACTOR makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Contract."

B. Commercial General Liability Insurance: The CONTRACTOR shall take out and maintain

during the life of this Contract such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this Contract from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the CONTRACTOR's operations under this Contract, whether such operations be by CONTRACTOR or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) in aggregate, or four million dollars (\$4,000,000) combined single limit bodily injury and property damage for each occurrence. CONTRACTOR shall provide the City with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions.

C. Automobile Liability Insurance: CONTRACTOR shall maintain Automobile Liability Insurance pursuant to this Contract in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.

17.3 CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.

17.4 In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this Contract to the contrary, immediately declare a material breach of this Contract and suspend all further work pursuant to this Contract.

17.5. Before the execution of this Contract, any deductibles or self-insured retentions must be declared to and approved by CITY.

18. SUSPENSION. The City may, at any time and from time to time, without cause, order Contractor, in writing ("Suspension Order"), to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to an aggregate of fifty percent (50%) of the Contract Time, as City may determine, with such period of suspension to be computed from the date of the Suspension Order. Upon receipt of a Suspension Order, Contractor shall, at City's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of work stoppage. Within the period of the above noted aggregate time, or such extension to that period as is agreed upon by Contractor and City, City shall either cancel the Suspension Order or delete the work covered by the Suspension Order by issuing a Change Order. If a Suspension Order is canceled or expires,

Contractor shall resume and continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension.

19. BOOKS AND RECORDS. Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract in accordance with generally accepted accounting principles and practices consistently applied. City and City's accountants shall be afforded access at all times during normal business hours, to inspect, audit and copy Contractor's records, books, estimates, take-offs, cost reports, ledgers, schedules, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and Contractor shall preserve these for a period of three years after the later of (i) final payment or (ii) final resolution of all Contract Disputes and other disputes or for such longer period as may be required by law. Contractor's compliance with any request by City pursuant to this Section 18 shall be a condition precedent to filing or maintenance of any legal action or proceeding by Contractor against City and to Contractor's right to receive further payments under the Contract Documents. Any failure by Contractor to provide access to its business records for inspection or copying by City shall be specifically enforceable by issuance of a writ or a provisional or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court, without the necessity of oral testimony.

20. WAIVER. Waiver by either party of any breach or violation of any one or more terms or conditions of this Contract shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. Acceptance by the City of the performance of any work by the Contractor shall not be deemed to be a waiver of any term or condition of this Contract. In no event shall the City's making of any payment to Contractor constitute or be construed as a waiver by the City of any breach of this Contract, or any default which may then exist on the part of Contractor, and the making of any such payment by the City shall in no way impair or prejudice any right or remedy available to the City with regard to such breach or default.

21. DEFAULT. In the event the City determines, in its sole discretion, that Contractor has failed or refused to perform any of the obligations set forth in the Contract Documents, or is in breach of any provision of the Contract Documents, the City may give written notice of default to Contractor in the manner specified for this giving of notices in this Contract. Except for emergencies, Contractor shall cure any default in performance of its obligations under the Contract Documents within two (2) business days after receipt of written notice. However, if the breach cannot be reasonably cured within such time, Contractor will commence to cure the breach within two (2) days and will diligently and continuously prosecute such cure to completion within a reasonable time, which shall in no event be later than ten (10) days after receipt of such written notice.

22. CITY RIGHTS AND REMEDIES.

22.1 Remedies Upon Default. In the event that Contractor fails to cure any default of this Contract within the time period set forth in Section 20, then City may pursue any remedies

available under law or equity, including, without limitation, the following: (1) the City may, without terminating the Contract, delete certain portions of the Work, reserving to itself all rights to losses related thereto; (2) the City may, without terminating the Contract, engage others to perform the Work or portion of the Work that has not been performed by the Contractor and withhold the cost thereof to City from future payments to the Contractor, reserving to itself all rights to Losses related thereto; or (3) the City may, without terminating the Contract and reserving to itself all rights to Losses related thereto, suspend all or any portion of this Construction Contract for as long a period of time as City determines, in its sole discretion, appropriate, in which event City shall have no obligation to adjust the Contract Sum or Contract Time, and shall have no liability to Contractor for damages if City directs Contractor to resume Work; (4) the City may terminate all or any part of this Contract for default, reserving to itself all rights of Losses related thereto; or (5) the City may, without terminating the Contract and reserving to itself all rights to Losses related thereto, exercise its rights under the Performance Bond.

22.2 Additional Provisions. All of City's rights and remedies under this Contract are cumulative, and shall be in addition to those rights and remedies available in law or in equity. Designation in the Contract Documents of certain breaches as material shall not be construed as implying that other breaches not so designated are not material nor shall such designations be construed as limiting City's right to terminate the Contract, or the exercise of its other rights or remedies for default, to only material breaches. City's determination of whether there has been noncompliance with the Contract so as to warrant exercise by City of its rights and remedies for default under the Contract, shall be binding on all parties. No termination or action taken by City after such termination shall prejudice any other rights or remedies of City provided by law or equity or by the Contract Documents upon such termination; and City may proceed against Contractor to recover all liquidated damages and Losses suffered by City.

22.3 Delays by Sureties. Without limitation to any of City's other rights or remedies under the law, City has the right to suspend the performance by Contractor's sureties in the event of any of the following: (1) failure of the sureties to begin Work within a reasonable time in such manner as to insure full compliance with the Contract within the Contract Time; (2) abandonment of the Work; (3) if at any time City is of the opinion the Work is unnecessarily or unreasonably delayed; (4) willful violation of any terms of the Contract; (5) failure to perform according to the Contract Documents; or (6) failure to follow instructions of City for its completion within the Contract Time. City will serve notice of such failure upon the sureties and in the event the sureties neglect or refuse to cure the breach within the time specified in such notice, City shall have the power to suspend the performance or any part thereof of the sureties.

22.4 Damages to the City. The City will be entitled to recovery of all Losses under law or equity in the event of Contractor's default under the Contract Documents. In the event that City's Losses arise from Contractor's default under the Contract Documents, City shall be entitled to withhold monies otherwise payable to Contractor until Final Completion, as defined in the General Conditions, of the Project. If City incurs Losses due to Contractor's default, then the amount of Losses shall be deducted from the amounts withheld. Should the amount withheld exceed the amount deducted, the balance will be paid to Contractor or its designee upon Final

Completion of the Project. If the Losses incurred by City exceed the amount withheld, Contractor shall be liable to City for the difference and shall promptly remit same to City.

22.5 Termination of the Contract for Default. Without limitation to any of City's other rights or remedies at law or in equity, and reserving to itself all rights to Losses related thereto, City shall have the right to terminate this Contract, in whole or in part, upon the failure of Contractor to promptly cure any default. City's election to terminate the Contract for default shall be communicated by giving Contractor a written notice of termination in the manner specified for the giving of notices in the Contract. Any notice of termination given to Contractor by City shall be effective immediately, unless otherwise provided therein.

22.6 Termination Without Cause. City shall have the option, at its sole discretion and without cause, of terminating this Contract in part or in whole by giving thirty (30) days written notice to Contractor. Contractor agrees to accept such sums as allowed under this Section as its sole and exclusive compensation and waives any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect or incidental damages of any kind.

22.7 Compensation. Following termination without cause and within forty-five (45) days after receipt of a billing from Contractor seeking payment of sums authorized by this Section, City shall pay to Contractor as its sole compensation for performance of the Work the following: (1) the amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor; (2) reasonable costs of Contractor and its Subcontractors and Sub-subcontractors for demobilizing and administering the close-out of its participation in the Project (including, without limitation, all billing and accounting functions, not including attorney or expert fees) for a period of no longer than thirty (30) days after receipt of the notice of termination in an amount not to exceed the daily sum payable to Contractor for Compensable Delays; (3) previously unpaid cost of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work.

22.8 Subcontractors. Contractor shall include provisions in all of its subcontracts, purchase orders and other contracts permitting termination for convenience by Contractor on terms that are consistent with this Contract and that afford no greater rights of recovery against Contractor than are afforded to Contractor under this Section.

22.9 Contractor's Duties Upon Termination. Upon receipt of a notice of termination for default or for convenience, Contractor shall, unless the notice directs otherwise, do the following: (1) immediately discontinue the Work to the extent specified in the notice; (2) place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued; (3) provide to City a description, in writing no later than fifteen (15) days after receipt of the notice of termination, of all subcontracts, purchase orders and contracts that are outstanding, including, without limitation, the terms of the original price, any changes, payments, balance owing, the status of the portion of the Work covered and a copy of the subcontract, purchase order or contract and any written changes, amendments or modifications thereto, together with such other

information as City may determine necessary in order to decide whether to accept assignment of or request Contractor to terminate the subcontract, purchase order or contract; (4) promptly assign to City those subcontracts, purchase orders or contracts, or portions thereof, that City elects to accept by assignment and cancel, on the most favorable terms reasonably possible, all subcontracts, purchase orders or contracts, or portions thereof, that City does not elect to accept by assignment; and (5) hereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project Site or in transit thereto.

23. CONTRACTOR'S RIGHTS AND REMEDIES. Contractor may terminate this Construction Contract for cause only upon the occurrence of one of the following: (1) the Work is stopped for sixty (60) consecutive days, through no act or fault of Contractor, any subcontractor or any employee or agent of Contractor or any subcontractor, due to issuance of an order of a court or other public authority other than City having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable; or (2) if the City does not make payment of sums that are not in good faith disputed by the City and does not cure such default within ninety (90) days after receipt of notice from Contractor, then upon an additional thirty (30) days' notice to City, Contractor may terminate the Contract.

23.1 Damages to Contractor. In the event of termination for cause by Contractor, City shall pay Contractor the sums provided for in Section 21 above. Contractor agrees to accept such sums as its sole and exclusive compensation and agrees to waive any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect and incidental damages, of any kind.

24. NOTICES. Any notices or other communications required or permitted to be given under this Contract shall be given in writing by personal delivery, by a recognized courier service, or by U.S. mail, postage prepaid, and return receipt requested, addressed to the respective parties as follows:

To City:

Assistant Public Works Director/City Engineer
City of Menlo Park
City Hall, 701 Laurel St.
Menlo Park, CA 94025

To Contractor:

Radius Earthwork, Inc.
197 Hamilton Ave
Campbell, CA 95008

25. Notice shall be deemed communicated on the earlier of actual receipt or 48 hours after deposit in the U.S. mail, or the date of delivery shown on deliverer's receipt. In the event of any change of address, the moving party is obligated to notify the other party of the change of address in writing within a reasonable period of time.

In addition, copies of all Claims by Contractor under this contract shall be provided to the City Attorney as follows:

To City Attorney:

City Attorney
Burke, Williams & Sorensen, LLP
181 Third Street, Suite 200
San Rafael, CA 94901

All claims shall be delivered personally or sent by certified mail.

26. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY. In the performance of this Contract, Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental handicap, or medical condition. Contractor will take affirmative action to ensure that employees are treated without regard to race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental handicap, or medical condition.

27. CONTRACT DOCUMENTS AND PRECEDENCE. The Contract Documents shall consist of the following documents. In case of inconsistencies between Contract Documents, the documents are listed in order of precedence.

28. PUBLIC WORKS CLAIMS. This Contract is subject to Public Contracts Code Section 9204 governing contractor claims.

29. ATTORNEYS' FEES; VENUE. In the event that any party to this Contract commences any legal action or proceeding to enforce or interpret the provisions of this Contract, the prevailing party in such action or proceeding shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled. The venue for any litigation shall be San Mateo County.

30. COOPERATION. In the event any claim or action is brought against the City relating to Contractor's performance or services under this Agreement, Contractor shall render any reasonable assistance and cooperation which City might require.

31. NUISANCE. Contractor shall not maintain, commit, nor permit the maintenance or commission of any nuisance in connection with the performance of services under this Contract.

32. GOVERNING LAW. This Contract shall be construed in accordance with and governed by the laws of the State of California.

33. COMPLETE AGREEMENT; SEVERABILITY. This Contract, and any other documents incorporated herein by reference, represent the entire and integrated agreement between the City and Contractor. This Contract supersedes all prior oral and written negotiations, representations or agreements. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Contract may only be modified by

a written amendment duly executed by the parties to this Contract. In case a provision of this Contract is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

34. COUNTERPARTS. This Contract may be signed in multiple counterparts, which shall, when executed by all the parties constitute a single binding contract.

Signatures on next page.

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

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I. C. Murphy, Interim City Manager

Date

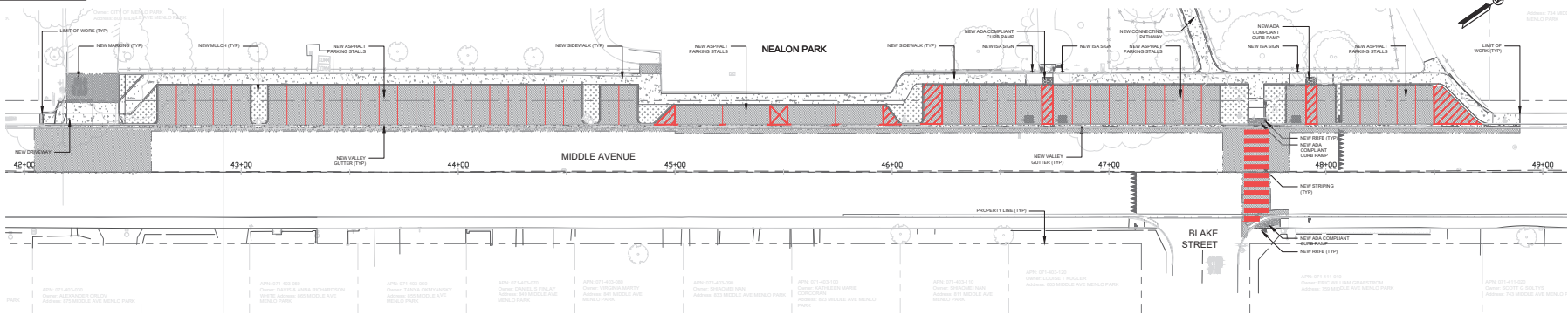
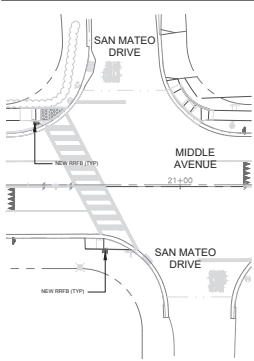
ATTEST:

Judi A. Herren, City Clerk

Date

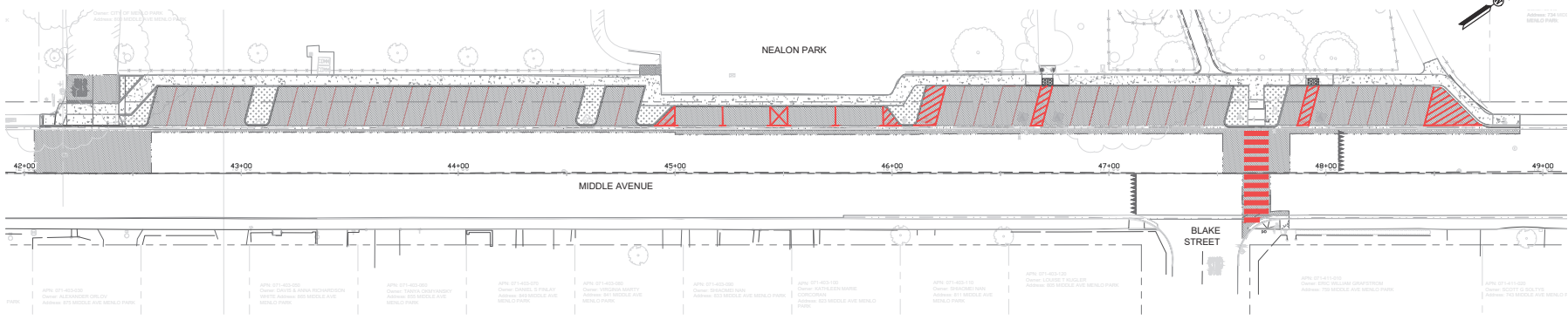


SITE PLAN



RRFB AT SAN MATEO DRIVE

SITE IMPROVEMENTS WITH PERPENDICULAR PARKING PER CURRENT DESIGN



SITE IMPROVEMENTS WITH ALTERNATIVE BACK-IN ANGLE PARKING LAYOUT



BACK-IN ANGLE PARKING EXAMPLE FROM PALO ALTO (STANFORD AVENUE)



STAFF REPORT – AMENDED

City Council

Meeting Date: 1/25/2022

Staff Report Number: 22-019-CC

Consent Calendar: **Award a construction contract to Columbia Electric, Inc. and appropriate \$211,300 in assigned funds from the general fund for the series circuit and street light replacement in the Suburban Park and Flood Triangle neighborhood project**

Recommendation

Staff recommends that the City Council award a construction contract (Attachment A) to Columbia Electric, Inc. in the amount of \$746,635, approve a contingency in the amount of \$74,663 (held by the City) in the general fund for the series circuit and street light replacement in the Suburban Park and Flood Triangle neighborhood project. and appropriate \$211,300 from the economic stabilization fund assigned fund balance for the project to allow completion of both the base and alternate bid

Policy Issues

This project is consistent with the policies and programs (i.e., CIRC-1.1, CIRC-1.7, CIRC-1.8) stated in the 2016 general plan circulation element. These policies and programs seek to maintain and improve a circulation system through a street classification system that provides safe and efficient movement of people and goods throughout Menlo Park for residential and commercial purposes.

Background

The City hired Kimley-Horn and Associates, a transportation engineering consultant, to evaluate five existing series street light circuits with parallel circuitry in the Menlo Park neighborhoods shown in Attachment B. The existing circuits are more than 40-years old, service 126 street lights throughout the City, and consist of direct buried and overhead wires that are unreliable and prone to damage. Whenever one part of the circuit is damaged, or one of the street lights goes out, all lights on the circuit go out as well.

The existing circuits are high voltage, between 4,000 and 6,000 volts, carrying approximately 650 amps of electric current. These high-voltage circuits pose a safety risk when street lights need to be repaired or maintained, making timely repairs a significant public-safety issue. The current process of repairing the circuit and restoring power to the street lights requires the City to coordinate with PG&E to disconnect power to the street-light circuits for any repair or maintenance. This often delays the City's ability to repair circuits and sustains the public's safety risk unnecessarily. This issue can be resolved with the insertion of an intermediate cutoff (like a circuit breaker in an electric service enclosure) that the City's maintenance staff and/or contractor can access when completing repairs.

Relying on PG&E to initiate repairs makes it difficult for the City to address resident's concerns and safety in a timely manner. This situation is exacerbated when circuits go down during storms because PG&E is busy addressing other weather-related outages and often cannot respond to the City's needs quickly.

This intensive coordination, maintenance, and repair process has resulted in extended periods of time during which the series circuits have been out of service. Examples of these impacts include:

- In February 2017, the Linfield Oaks neighborhood street lights were out of service for one month due to a failed PG&E electrical component.
- In early 2018, the Suburban Park street lights were turned off for three months while the Town of Atherton street light project removed street lights on the shared series circuit.
- Recent repair work on the series circuits in the Suburban Park, Linfield Oaks, and West Menlo Park neighborhoods in 2020 and 2021 cost the City approximately \$35,000.

If modern parallel circuits and street light infrastructure were in place, these outages would likely have been significantly shorter in duration, with a lower cost of repair.

The series circuit and street light replacement in the Suburban Park and Flood Triangle neighborhood project will be the first of three series circuit and street light replacement projects, all of which are identified in the City's capital improvement plan. These projects will install modern and more reliable infrastructure that will reduce the occurrence of widespread street light outages through rewiring the existing circuits, eliminating the need for PG&E involvement in routine street light maintenance or repairs, and improving energy efficiency by replacing existing high-pressure sodium (HPS) lamps with light emitting diode (LED) lamps.

Analysis

On December 3, 2021, bids were solicited from prospective contractors for the series circuit and street light replacement in the Suburban Park and Flood Triangle neighborhood project via a competitive bidding process. The work to be done consists of removal and replacement of existing HPS luminaires with new LED luminaires; installation of new underground street light infrastructure including conduits, conductors and pull boxes; removal of existing high voltage series circuits and implementation of low voltage parallel circuits, and installation of new street light poles and fixtures in the Suburban Park and Flood Triangle neighborhoods (Attachment C.)

The requested bids included two components:

- A base bid for the Suburban Park neighborhood, which requires conversion of high voltage series circuit into 120/240 parallel circuitry. The base bid includes new conduits and wiring to replace existing conduits and direct buried wiring. All existing street light poles will remain but HPS fixtures will be replaced with LED fixtures.
- An alternate bid for the Flood Triangle neighborhood, which has existing 120/240 parallel circuitry (not high voltage.) This would upgrade light poles to have new LED fixtures, including replacing a number of rusting light poles that are past their useful life. It would also install additional street lighting at the intersection of Bay Road and Ringwood Avenue

Bids for this project were received December 22, 2021, with the results shown on Table 1.

Table 1: Bid results			
Contractor	Base bid (Suburban Park)	Bid alternate A (Flood Triangle)	Total bid
Engineer’s Construction Contract Cost Estimate (excluding contingency)	\$589,500	\$214,600	\$804,100
Columbia Electric, Inc.	\$482,082	\$264,553	\$746,635
St. Francis Electric, Inc.	\$514,000	\$235,000	\$749,000
Bear Electrical Solutions, Inc.	\$546,265	\$253,150	\$799,415
Ray’s Electric	\$647,450	\$206,650	\$854,100
Tennyson Electric, Inc.	\$1,025,775	\$241,850	\$1,267,625

Upon bid evaluation, Columbia Electric, Inc. is the apparent lowest ~~responsivereasonable~~ bid for the work involved in the project. Staff has previously worked with Columbia Electric on traffic signal installation and traffic signal and intersection modification projects in conjunction with mitigation measures required for development projects in the City. Staff also checked references for Columbia Electric on various projects and found the references to have favorable responses regarding the apparent lowest bidder’s performance.

Due to the fact that City-standard and decorative street light poles need to be ordered in advance, it is estimated that the project will begin construction around April 15, 2022. Because construction will cause street light outages in the Suburban Park neighborhood, staff will work with the contractor on a construction schedule that will complete the project in this neighborhood no later than June 30, 2022 (assuming an on-time start.) The Flood Triangle neighborhood will not incur similar street light outages since the work there will not involve a series circuit removal and replacement. The Flood Triangle portion of the project is anticipated to be completed by August 15, 2022.

Because the bids for the project were below the engineer’s estimate, staff is requesting City Council direction on completing both the base bid and bid alternate A as part of this contract. To complete both, City Council would need to authorize additional funding for the current fiscal year and complete a budget amendment. The City’s capital improvement plan does include the potential for funding in both fiscal year 2022-23 and fiscal year 2023-24 to complete the work on additional neighborhoods, so the proposed budget appropriation from the economic stabilization fund assigned fund balance would be restored in the next fiscal year. If City Council prefers to proceed with only the base bid, work in the Flood Triangle neighborhood would be rebid as part of a future phase of this project in a future fiscal year.

Impact on City Resources

The anticipated construction budget and required additional appropriation for the project is summarized in Table 2. Construction contingencies were applied at 10 percent of the construction contract amount. Contract administration and inspection fees are 15 percent of the construction contract amount, including construction management and professional consulting fees for inspection services. The total project construction budget, including contingencies and contract administration and inspection, is approximately \$933,300.

Table 2: Construction contract budget		
Item	Base bid	Base bid + bid alternate A
Construction contract amount	\$482,000	\$746,600
Contract administration and Inspection (15%)	\$72,300	\$112,000
Contingency (10%)	\$48,200	\$74,700
Total budget	\$602,500	\$933,300
Available funding	\$722,000	\$722,000
Appropriation request	\$0	\$211,300

This project is included in the fiscal year 2021-22 capital improvement program with an available budget of \$722,000 remaining for project construction. An additional appropriation of \$211,300 is requested to fund the bid alternate. The appropriation would be from the economic stabilization fund assigned fund balance, to be restored in the next fiscal year. The capital improvement project includes an additional \$1.2 million and \$1.3 million planned for the series circuit and street light replacements in fiscal year 2022-23 and fiscal year 2023-24, respectively.

Environmental Review

The series circuit and street light replacement work per Attachment C is categorically exempt as a Class 1 exemption under Section 15301 of the California Environmental Quality Act (CEQA). Class 1 allows for minor alterations of existing facilities, including highways and streets, sidewalks, gutters, bicycle and pedestrian access, and similar facilities, as long as there is negligible or no expansion of use.

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. Construction contract
- B. Menlo Park neighborhoods with series circuit lighting
- C. Construction contract plan

Report prepared by:
 Rene C. Baile, Associate Transportation Engineer

Report reviewed by:
 Kristiann M. Choy, Senior Transportation Engineer
 Hugh Louch, Assistant Public Works Director – Transportation

CONSTRUCTION AGREEMENT

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



Agreement #:
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND COLUMBIA ELECTRIC, INC.
THIS CONSTRUCTION CONTRACT ("Contract") is made and entered into this ____ day of _____, _____ ("Execution Date") by and between the CITY OF MENLO PARK, a California municipal corporation, ("City") and <u>Columbia Electric, Inc.</u> ("Contractor").
RECITALS
<p>A. Contractor is a <u>California Corporation</u> duly organized and in good standing in the State of California, License Number <u>765902</u>. Contractor represents and warrants that it has the background and experience set forth in the Contractor's responses to the notice inviting bids.</p> <p>B. Contractor represents that it is duly licensed by the State of California and has the background, knowledge, experience and expertise to perform the obligations set forth in this Contract.</p> <p>C. On <u>December 3, 2021</u>, the City issued a Notice to Contractors inviting bids for the Project. A copy of the Contractor's Bid proposal and List of Subcontractors is attached herein and incorporated by this reference.</p> <p>D. The City desires to retain Contractor as an independent contractor to provide the construction and other services identified in this Contract for the Project upon the terms and conditions contained herein.</p>
AGREEMENT
<p>NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants and conditions contained herein, the parties hereby agree as follows:</p> <p>1. DEFINITIONS. Capitalized terms used throughout the Contract Documents shall have the meanings set forth in this Contract and/or the Special Provisions. If there is a conflict between the definitions in this Contract and the Special Provisions, the definitions in this Contract shall prevail.</p> <p>2. PROJECT. The project is the construction of <u>Series Circuit and Street Light Replacement in the Suburban Park and Flood Triangle Neighborhood project</u> ("Project"). The work includes all labor, materials, equipment, services, permits, licenses and taxes, and all other things necessary for Contractor to perform its obligations and complete the Project, including, without limitation, any Change Orders executed by City and Contractor in</p>

accordance with the requirements of the Contract Documents ("Work").

3. CONTRACT DOCUMENTS.

3.1 List of Documents. The Contract Documents (sometimes collectively referred to as "Agreement" or "Bid Documents") consist of the following documents which are on file with the Public Works Department and are hereby incorporated by reference.

- 1) Change Orders
- 2) Field Orders
- 3) Contract
- 4) Bidding Addenda
- 5) Special Provisions
- 6) Project Plans and Drawings
- 7) Technical Specifications
- 8) City Standard Details
- 9) State of California Department of Transportation Specifications, 2006 Edition (Cal Trans specifications)
- 10) Notice to Contractors
- 11) Contractor's Bid
- 12 Bidder Certifications, Questionnaire and Statements
- 13) Reports listed in the Contract Documents
- 14) City of Menlo Park Waste Management Form, Waste Management Daily Transport Report
- 15) City of Menlo Park Truck Route Map and Regulations
- 16) Performance, Payment and Maintenance Bonds

3.2 Order of Precedence. For the purposes of construing, interpreting and resolving inconsistencies between and among the provisions of this Contract, the Contract Documents shall have the order of precedence as set forth in the preceding section. If a claimed inconsistency cannot be resolved through the order of precedence, the City shall have the sole power to decide which document or provision shall govern as may be in the best interests of the City.

4. PERMITS. Contractor, at its sole expense, shall obtain and maintain during the term of this Contract, all appropriate permits, licenses and certificates that may be required in connection with the performance of the Work, including, but not limited to, a City business license.

5. DEPARTMENT OF INDUSTRIAL RELATIONS. Contractor and any subcontractor performing Work on this Project shall be registered with the Department of Industrial Relations ("DIR") pursuant to Labor Code Section 1725.5. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code Section 1725.5, with limited exceptions from this requirement for bid purposes only under Labor Code Section 1771.1(a). This Project is subject to compliance monitoring and enforcement by the DIR. It is the responsibility of the Contractor to ensure all DIR requirements and regulations are met and stay current. For more information, see <http://dir.ca.gov/Public-Works/SB854.html>.

6. TERM. This Contract is effective on the Execution Date set forth in the initial paragraph of

this Contract and shall remain in effect until the Project has been satisfactorily completed by Contractor, unless earlier terminated pursuant to the terms of this Contract.

7. TIME OF COMPLETION. Time is of the essence with respect to all time limits set forth in the Contract Documents. Contractor shall commence the Work on the date specified in the City's Notice to Proceed. Contractor shall diligently prosecute the Work to Substantial Completion within 140 calendar days after the date specified in the City's Notice to Proceed ("Contract Time"). The Contract Time may only be adjusted for extensions of time approved by the City and agreed to by Change Order executed by City and Contractor in accordance with the requirements of the Contract Documents.

8. COMPENSATION. The City agrees to compensate Contractor for its satisfactory completion of the Work in compliance with the Contract Documents for the not to exceed amount of Seven Hundred Forty-Six Thousand Six Hundred Thirty-Five (\$746,635) ("Contract Sum"). Payment shall be as set forth in the Plans, Special Provisions and/or Technical Specifications. The Contract Sum may only be adjusted by Change Orders issued, executed and satisfactorily performed by Contractor in accordance with the requirements of the Contract Documents. The Contract Sum shall be adjusted (upward or downward) only to account for Change Orders. The Contract Sum is and shall be full compensation for all Work performed by Contractor. The Contract Sum shall cover all losses arising out of the nature of the Work or from the elements or any unforeseen difficulties or obstructions which may arise or be encountered in performance of the Work until its Acceptance by the City, all risks connected with the Work and any and all expenses incurred due to the suspension or discontinuance of the Work.

9. STANDARD OF PERFORMANCE. As a material inducement to the City to enter into this Contract, Contractor hereby represents and warrants that it has the qualifications and experience necessary to undertake the Work to be provided and the Project to be completed pursuant to this Contract. Contractor agrees that the Work shall be performed by qualified, experienced and well-supervised personnel. The Work performed pursuant to this Contract shall be performed in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope and complexity of the Project.

10. COMPLAINT WITH LAW. This Project constitutes a public work within the meaning of California Labor Code Section 1720 et. seq. and is subject to prevailing wage laws. The Work performed by Contractor pursuant to this Contract shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of the City, and any federal, state or local governmental agency having jurisdiction in effect at the time the work is rendered.

11. REPRESENTATIVE. Joanne Scruggs is hereby designated as the project manager/superintendent/foreman of Contractor authorized to act on its behalf with respect to the Work specified in this Contract. It is expressly understood that the experience, knowledge, capability and reputation of Columbia Electric, Inc. were a substantial inducement for City to enter into this Contract. Therefore, Joanne Scruggs shall be responsible during the term of this Contract for directing all activities of Contractor and devoting sufficient time to personally

supervise the services hereunder. The representative may not be changed by Contractor without the express written approval of the City.

12. LIQUIDATED DAMAGES.

12.1 Entitlement. City and Contractor acknowledge and agree that if Contractor fails to fully and satisfactorily complete the Work within the Contract Time, the City will suffer, as a result of Contractor's failure, substantial damages which are both extremely difficult and impracticable to ascertain. Such damages may include, but are not limited to: (a) loss of public confidence in the City and its contractors; (b) loss of public use of public facilities; and (c) extended disruption to public.

12.2 Daily Amount. City and Contractor have reasonably endeavored, but failed, to ascertain the actual damage that the City will incur if the Contractor fails to achieve Substantial Completion of the Work within the Contract Time. Therefore, the parties agree that in addition to all other damages to which the City may be entitled other than delay damages, in the event the Contractor shall fail to achieve Substantial Completion of the Work within the Contract Time, Contractor shall pay City as liquidated damages the amount of Five Hundred Dollars (\$500) per day for each calendar day after the expiration of the Contract Time until Contractor achieves Substantial Completion of the Work. The liquidated damages amount is not a penalty, but a reasonable estimate of the amount of damages the City will suffer.

12.3 Apportionment. Such liquidated damages shall be subject to reduction for delays for which Contractor is entitled to receive an extension of time under the Contract Documents ("Apportionment"). Such Apportionment shall not be affected by the fact that liquidated damages may not be applied for periods of time during which delays have occurred that are caused by both City and Contractor. It is agreed that the liquidated damages shall not be applied for portions of the Work completed prior to the expiration of the Contract Time.

12.4 Exclusive Remedy. City and Contractor acknowledge and agree that this Section 11, Liquidated Damages, shall be the City's only remedy for delay damages caused by the Contractor's failure to achieve Substantial Completion of the Work within the Contract Time.

12.5 Damages upon Abandonment. In the event that the Contractor either abandons the Work or is terminated for default in accordance with the provisions of this Contract, City shall have the right, in its sole discretion exercised by written notice issued either before or after Substantial Completion, to elect to either assert or waive its right to liquidated damages. If City elects to assert its right to liquidated damages, then the liquidated damages shall be calculated from expiration of the Contract Time to the date that Substantial Completion of the Work is achieved by the City or its replacement contractor employed to complete Contractor's performance. If City elects to waive its right to liquidated damages, then Contractor shall be liable to the City, in lieu of the liquidated damages, for all actual Losses (as defined in the General Conditions) proximately resulting from Contractor's failure to complete the Work within the Contract Time.

12.6 Other Remedies. The parties further acknowledge and agree that the City is entitled to

any and all available legal and equitable remedies City may have where City's Losses are caused by any reason other than Contractor's failure to achieve Substantial Completion of the Work within the Contract Time.

13. INDEPENDENT CONTRACTOR. Contractor is, and shall at all times remain as to the City, a wholly independent contractor and not an agent or employee of the City. Contractor shall receive no premium or enhanced pay for work normally understood as overtime, nor shall Contractor receive holiday pay, sick leave, administrative leave, or pay for any other time not actually worked. The intention of the parties is that Contractor shall not be eligible for benefits and shall receive no compensation from the City except as expressly set forth in this Contract. Contractor shall have no power to incur any debt, obligation, or liability on behalf of the City or otherwise act on behalf of the City as an agent. Neither the City, nor any of its agents shall have control over the conduct of Contractor, any of Contractor's employees, or any subcontractors, except as set forth in this Contract. Contractor shall at no time, or in any manner, represent that it or any of its agents or employees or subcontractors are in any manner employees of the City. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Contract, and to indemnify and hold the City harmless from any and all taxes, assessments, penalties, and interest asserted against the City by reason of the independent contractor relationship created by this Contract. Contractor shall fully comply with the worker's compensation law regarding Contractor, Contractor's employees and subconsultants. Contractor further agrees to indemnify and hold the City harmless from any failure of Contractor and any subconsultants to comply with applicable worker's compensation laws.

14. CONFLICT OF INTEREST. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the work to be performed by Consultant under this Contract, or which would conflict in any manner with the performance of its services hereunder. Contractor further covenants that, in performance of this Contract, no person having any such interest shall be employed by it. Furthermore, Contractor shall avoid the appearance of having any interest which would conflict in any manner with the performance of the work pursuant to this Contract. Contractor agrees not to accept any employment during the term of this Contract which is or may make Contractor financially interested, as provided in California Government Code Sections 1090 and 87100, in any decision made by the City on any matter in connection with which Contractor has been retained pursuant to this Contract. However, nothing herein shall preclude Contractor from accepting other engagements with the City.

15. INDEMNIFICATION.

15.1 To the fullest extent permitted by law, Contractor shall indemnify, defend, with independent counsel approved by the City, and hold harmless the City, and its elective or appointive boards, officers, employees agents and volunteers ("Indemnitee") from and against any and all claims, losses, or liability that may arise out of or result from damages to property or personal injury received by reason of, or in the course of work performed under this Contract due to the acts or omissions of Contractor or Contractor's officers, employees, agents or subcontractors. The indemnification provisions survive completion of the Work or the

termination of this Contract. The acceptance of such services shall not operate as a waiver of such right of indemnification. Notwithstanding the foregoing, nothing contained herein shall be construed as obligating Contractor to indemnify any Indemnitee for any claims, losses or liability resulting from the sole or active negligence or willful misconduct of the Indemnitee. Contractor shall pay City for any costs incurred in enforcing this provision.

15.2 The City does not and shall not waive any rights that they may possess against Contractor because of the acceptance by the City or the deposit with the City 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.

15.3 Pursuant to Public Contract Code Section 9201, the City shall timely notify Contractor upon receipt of any third-party claim relating to the Contract.

16. ASSIGNABILITY. The parties agree that the experience and qualifications of Contractor as set forth in the Contractor's Bid are material considerations for the City entering into this Contract. Consultant shall not assign or transfer any interest in this Contract, without the prior written consent of the City, and any attempt by Contractor to do so shall be void and of no effect and a breach of this Contract. For purposes of this section, the sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor or of any general partner or joint venturer or syndicate member of Contractor, if a partnership or joint venture or syndicate or co-tenancy exists, which shall result in changing the control of Contractor, shall be construed as an assignment of this Construction Contract. Control means more than fifty percent (50%) of the voting power of the corporation or other entity.

17. INSURANCE AND BOND REQUIREMENTS.

17.1 Prior to the commencement of any Work, the Contractor shall provide the City with evidence that it has obtained the insurance required by this Section and all bonds, including, but not limited to, payment and performance bonds, required in the Special Provisions. Failure to obtain and maintain the required insurance and bonds to so shall be deemed a material breach of this Contract.

17.2 Insurance Requirements. Contractor shall obtain the following insurance.

A. Worker's Compensation and Employer's Liability Insurance: The CONTRACTOR shall have in effect during the entire life of this Contract workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Contract, the CONTRACTOR makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Contract."

B. Commercial General Liability Insurance: The CONTRACTOR shall take out and maintain

during the life of this Contract such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this Contract from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the CONTRACTOR's operations under this Contract, whether such operations be by CONTRACTOR or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) in aggregate, or four million dollars (\$4,000,000) combined single limit bodily injury and property damage for each occurrence. CONTRACTOR shall provide the City with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions.

C. Automobile Liability Insurance: CONTRACTOR shall maintain Automobile Liability Insurance pursuant to this Contract in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.

17.3 CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.

17.4 In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this Contract to the contrary, immediately declare a material breach of this Contract and suspend all further work pursuant to this Contract.

17.5. Before the execution of this Contract, any deductibles or self-insured retentions must be declared to and approved by CITY.

18. SUSPENSION. The City may, at any time and from time to time, without cause, order Contractor, in writing ("Suspension Order"), to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to an aggregate of fifty percent (50%) of the Contract Time, as City may determine, with such period of suspension to be computed from the date of the Suspension Order. Upon receipt of a Suspension Order, Contractor shall, at City's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of work stoppage. Within the period of the above noted aggregate time, or such extension to that period as is agreed upon by Contractor and City, City shall either cancel the Suspension Order or delete the work covered by the Suspension Order by issuing a Change Order. If a Suspension Order is canceled or expires,

Contractor shall resume and continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension.

19. BOOKS AND RECORDS. Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract in accordance with generally accepted accounting principles and practices consistently applied. City and City's accountants shall be afforded access at all times during normal business hours, to inspect, audit and copy Contractor's records, books, estimates, take-offs, cost reports, ledgers, schedules, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and Contractor shall preserve these for a period of three years after the later of (i) final payment or (ii) final resolution of all Contract Disputes and other disputes or for such longer period as may be required by law. Contractor's compliance with any request by City pursuant to this Section 18 shall be a condition precedent to filing or maintenance of any legal action or proceeding by Contractor against City and to Contractor's right to receive further payments under the Contract Documents. Any failure by Contractor to provide access to its business records for inspection or copying by City shall be specifically enforceable by issuance of a writ or a provisional or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court, without the necessity of oral testimony.

20. WAIVER. Waiver by either party of any breach or violation of any one or more terms or conditions of this Contract shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. Acceptance by the City of the performance of any work by the Contractor shall not be deemed to be a waiver of any term or condition of this Contract. In no event shall the City's making of any payment to Contractor constitute or be construed as a waiver by the City of any breach of this Contract, or any default which may then exist on the part of Contractor, and the making of any such payment by the City shall in no way impair or prejudice any right or remedy available to the City with regard to such breach or default.

21. DEFAULT. In the event the City determines, in its sole discretion, that Contractor has failed or refused to perform any of the obligations set forth in the Contract Documents, or is in breach of any provision of the Contract Documents, the City may give written notice of default to Contractor in the manner specified for this giving of notices in this Contract. Except for emergencies, Contractor shall cure any default in performance of its obligations under the Contract Documents within two (2) business days after receipt of written notice. However, if the breach cannot be reasonably cured within such time, Contractor will commence to cure the breach within two (2) days and will diligently and continuously prosecute such cure to completion within a reasonable time, which shall in no event be later than ten (10) days after receipt of such written notice.

22. CITY RIGHTS AND REMEDIES.

22.1 Remedies Upon Default. In the event that Contractor fails to cure any default of this Contract within the time period set forth in Section 20, then City may pursue any remedies

available under law or equity, including, without limitation, the following: (1) the City may, without terminating the Contract, delete certain portions of the Work, reserving to itself all rights to losses related thereto; (2) the City may, without terminating the Contract, engage others to perform the Work or portion of the Work that has not been performed by the Contractor and withhold the cost thereof to City from future payments to the Contractor, reserving to itself all rights to Losses related thereto; or (3) the City may, without terminating the Contract and reserving to itself all rights to Losses related thereto, suspend all or any portion of this Construction Contract for as long a period of time as City determines, in its sole discretion, appropriate, in which event City shall have no obligation to adjust the Contract Sum or Contract Time, and shall have no liability to Contractor for damages if City directs Contractor to resume Work; (4) the City may terminate all or any part of this Contract for default, reserving to itself all rights of Losses related thereto; or (5) the City may, without terminating the Contract and reserving to itself all rights to Losses related thereto, exercise its rights under the Performance Bond.

22.2 Additional Provisions. All of City's rights and remedies under this Contract are cumulative, and shall be in addition to those rights and remedies available in law or in equity. Designation in the Contract Documents of certain breaches as material shall not be construed as implying that other breaches not so designated are not material nor shall such designations be construed as limiting City's right to terminate the Contract, or the exercise of its other rights or remedies for default, to only material breaches. City's determination of whether there has been noncompliance with the Contract so as to warrant exercise by City of its rights and remedies for default under the Contract, shall be binding on all parties. No termination or action taken by City after such termination shall prejudice any other rights or remedies of City provided by law or equity or by the Contract Documents upon such termination; and City may proceed against Contractor to recover all liquidated damages and Losses suffered by City.

22.3 Delays by Sureties. Without limitation to any of City's other rights or remedies under the law, City has the right to suspend the performance by Contractor's sureties in the event of any of the following: (1) failure of the sureties to begin Work within a reasonable time in such manner as to insure full compliance with the Contract within the Contract Time; (2) abandonment of the Work; (3) if at any time City is of the opinion the Work is unnecessarily or unreasonably delayed; (4) willful violation of any terms of the Contract; (5) failure to perform according to the Contract Documents; or (6) failure to follow instructions of City for its completion within the Contract Time. City will serve notice of such failure upon the sureties and in the event the sureties neglect or refuse to cure the breach within the time specified in such notice, City shall have the power to suspend the performance or any part thereof of the sureties.

22.4 Damages to the City. The City will be entitled to recovery of all Losses under law or equity in the event of Contractor's default under the Contract Documents. In the event that City's Losses arise from Contractor's default under the Contract Documents, City shall be entitled to withhold monies otherwise payable to Contractor until Final Completion, as defined in the General Conditions, of the Project. If City incurs Losses due to Contractor's default, then the amount of Losses shall be deducted from the amounts withheld. Should the amount withheld exceed the amount deducted, the balance will be paid to Contractor or its designee upon Final

Completion of the Project. If the Losses incurred by City exceed the amount withheld, Contractor shall be liable to City for the difference and shall promptly remit same to City.

22.5 Termination of the Contract for Default. Without limitation to any of City's other rights or remedies at law or in equity, and reserving to itself all rights to Losses related thereto, City shall have the right to terminate this Contract, in whole or in part, upon the failure of Contractor to promptly cure any default. City's election to terminate the Contract for default shall be communicated by giving Contractor a written notice of termination in the manner specified for the giving of notices in the Contract. Any notice of termination given to Contractor by City shall be effective immediately, unless otherwise provided therein.

22.6 Termination Without Cause. City shall have the option, at its sole discretion and without cause, of terminating this Contract in part or in whole by giving thirty (30) days written notice to Contractor. Contractor agrees to accept such sums as allowed under this Section as its sole and exclusive compensation and waives any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect or incidental damages of any kind.

22.7 Compensation. Following termination without cause and within forty-five (45) days after receipt of a billing from Contractor seeking payment of sums authorized by this Section, City shall pay to Contractor as its sole compensation for performance of the Work the following: (1) the amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor; (2) reasonable costs of Contractor and its Subcontractors and Sub-subcontractors for demobilizing and administering the close-out of its participation in the Project (including, without limitation, all billing and accounting functions, not including attorney or expert fees) for a period of no longer than thirty (30) days after receipt of the notice of termination in an amount not to exceed the daily sum payable to Contractor for Compensable Delays; (3) previously unpaid cost of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work.

22.8 Subcontractors. Contractor shall include provisions in all of its subcontracts, purchase orders and other contracts permitting termination for convenience by Contractor on terms that are consistent with this Contract and that afford no greater rights of recovery against Contractor than are afforded to Contractor under this Section.

22.9 Contractor's Duties Upon Termination. Upon receipt of a notice of termination for default or for convenience, Contractor shall, unless the notice directs otherwise, do the following: (1) immediately discontinue the Work to the extent specified in the notice; (2) place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued; (3) provide to City a description, in writing no later than fifteen (15) days after receipt of the notice of termination, of all subcontracts, purchase orders and contracts that are outstanding, including, without limitation, the terms of the original price, any changes, payments, balance owing, the status of the portion of the Work covered and a copy of the subcontract, purchase order or contract and any written changes, amendments or modifications thereto, together with such other

information as City may determine necessary in order to decide whether to accept assignment of or request Contractor to terminate the subcontract, purchase order or contract; (4) promptly assign to City those subcontracts, purchase orders or contracts, or portions thereof, that City elects to accept by assignment and cancel, on the most favorable terms reasonably possible, all subcontracts, purchase orders or contracts, or portions thereof, that City does not elect to accept by assignment; and (5) hereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project Site or in transit thereto.

23. CONTRACTOR'S RIGHTS AND REMEDIES. Contractor may terminate this Construction Contract for cause only upon the occurrence of one of the following: (1) the Work is stopped for sixty (60) consecutive days, through no act or fault of Contractor, any subcontractor or any employee or agent of Contractor or any subcontractor, due to issuance of an order of a court or other public authority other than City having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable; or (2) if the City does not make payment of sums that are not in good faith disputed by the City and does not cure such default within ninety (90) days after receipt of notice from Contractor, then upon an additional thirty (30) days' notice to City, Contractor may terminate the Contract.

23.1 Damages to Contractor. In the event of termination for cause by Contractor, City shall pay Contractor the sums provided for in Section 21 above. Contractor agrees to accept such sums as its sole and exclusive compensation and agrees to waive any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect and incidental damages, of any kind.

24. NOTICES. Any notices or other communications required or permitted to be given under this Contract shall be given in writing by personal delivery, by a recognized courier service, or by U.S. mail, postage prepaid, and return receipt requested, addressed to the respective parties as follows:

To City:

Assistant Public Works Director/City Engineer
City of Menlo Park
City Hall, 701 Laurel St.
Menlo Park, CA 94025

To Contractor:

Columbia Electric, Inc.
1980 Davis St.
San Leandro, CA 94577

25. Notice shall be deemed communicated on the earlier of actual receipt or 48 hours after deposit in the U.S. mail, or the date of delivery shown on deliverer's receipt. In the event of any change of address, the moving party is obligated to notify the other party of the change of address in writing within a reasonable period of time.

In addition, copies of all Claims by Contractor under this contract shall be provided to the City Attorney as follows:

To City Attorney:

City Attorney
Burke, Williams & Sorensen, LLP
181 Third Street, Suite 200
San Rafael, CA 94901

All claims shall be delivered personally or sent by certified mail.

26. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY. In the performance of this Contract, Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental handicap, or medical condition. Contractor will take affirmative action to ensure that employees are treated without regard to race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental handicap, or medical condition.

27. CONTRACT DOCUMENTS AND PRECEDENCE. The Contract Documents shall consist of the following documents. In case of inconsistencies between Contract Documents, the documents are listed in order of precedence.

28. PUBLIC WORKS CLAIMS. This Contract is subject to Public Contracts Code Section 9204 governing contractor claims.

29. ATTORNEYS' FEES; VENUE. In the event that any party to this Contract commences any legal action or proceeding to enforce or interpret the provisions of this Contract, the prevailing party in such action or proceeding shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled. The venue for any litigation shall be San Mateo County.

30. COOPERATION. In the event any claim or action is brought against the City relating to Contractor's performance or services under this Agreement, Contractor shall render any reasonable assistance and cooperation which City might require.

31. NUISANCE. Contractor shall not maintain, commit, nor permit the maintenance or commission of any nuisance in connection with the performance of services under this Contract.

32. GOVERNING LAW. This Contract shall be construed in accordance with and governed by the laws of the State of California.

33. COMPLETE AGREEMENT; SEVERABILITY. This Contract, and any other documents incorporated herein by reference, represent the entire and integrated agreement between the City and Contractor. This Contract supersedes all prior oral and written negotiations,

representations or agreements. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Contract may only be modified by a written amendment duly executed by the parties to this Contract. In case a provision of this Contract is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

34. COUNTERPARTS. This Contract may be signed in multiple counterparts, which shall, when executed by all the parties constitute a single binding contract.

Signatures on next page.

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

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I. C. Murphy, Interim City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date

Legend

- Direct Bury Conductors
- Aerial Conductors
- Conductors in Conduit
- PG&E Service Point

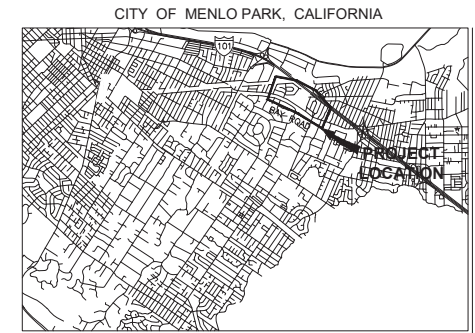


ABBREVIATIONS

AB	ABANDON CONDUIT AND REMOVE CONDUCTORS
BC	INSTALL PULL BOX IN EXISTING CONDUIT RUN
EX.	EXISTING
MIN	MINIMUM
PVC	POLYVINYL CHLORIDE

SERIES CIRCUIT AND STREET LIGHT REPLACEMENT IN THE SUBURBAN PARK AND FLOOD TRIANGLE NEIGHBORHOODS

PROJECT NO. 20-081



VICINITY MAP
NOT TO SCALE

SHEET INDEX

SHEET	DESCRIPTION
1	COVER SHEET
2	ELECTRICAL PLAN - SUBURBAN PARK
3	ELECTRICAL PLAN - FLOOD TRIANGLE
4	DETAIL - ELECTROLIER AND CONDUIT INSTALLATION

GENERAL NOTES

- ALL WORK SHALL CONFORM TO CURRENT CITY OF MENLO PARK STANDARDS AND THE CALTRANS STANDARD PLANS AND SPECIFICATIONS DATED 2018.
- EXISTING LIGHTING CIRCUITS TO BE PRESERVED DURING CONSTRUCTION TO MINIMIZE DURATION WITHOUT LIGHTING. CONTRACTOR SHALL POST 48"x48" SIGNS ON TEMPORARY SUPPORTS AT EACH STREET LIGHT LOCATION STATING DATES STREET LIGHTS WILL NOT FUNCTION. SIGNS SHALL BE POSTED A MINIMUM OF 7 CALENDAR DAYS BEFORE LIGHTS ARE DISCONNECTED FROM SERIES POWER.
- EXISTING LIGHTING CIRCUITS AND NEW LIGHTING CIRCUITS ARE TO BE COORDINATED WITH CITY AND PG&E.
- ALL EXISTING EQUIPMENT SHALL REMAIN IN PLACE UNLESS OTHERWISE NOTED.
- THE CONTRACTOR SHALL NOTIFY UNDERGROUND SERVICE ALERT NORTH (CALL 811 OR 1-800-227-2800) A MINIMUM OF 2 WORKING DAYS PRIOR TO COMMENCING ANY EXCAVATION.
- NO ELECTRICAL WORK SHALL BE PERFORMED ON ANY SYSTEM WITHIN THE PROJECT SITE UNTIL ALL CONTRACTOR FURNISHED ELECTRICAL MATERIALS HAVE BEEN TESTED AND DELIVERED TO THE CONTRACTOR.
- ALL PULLBOXES TO BE NO. 3 1/2 UNLESS OTHERWISE NOTED. MAXIMUM DISTANCE BETWEEN PULLBOXES IS 300'.
- INSTALLATION OF CONDUIT RUNS UNDER THE PAVEMENT SHALL BE BY THE HORIZONTAL BORING METHOD. ALL UTILITY LINES CROSSING THE CONDUIT PATH SHALL BE POTHOLED AND POSITIVELY IDENTIFIED BEFORE BORING ACTIVITY COMMENCES.
- ALL POLES SHALL BE FACTORY PAINTED "MESA BROWN." COLOR SAMPLE SHALL BE SUBMITTED TO CITY FOR APPROVAL.
- PRIOR TO BEGINNING WORK, CONTRACTOR SHALL IDENTIFY ANY PRIVATE FACILITIES (SUCH AS FENCES, LANDSCAPING, IRRIGATION, DRIVEWAYS, ETC.) THAT WILL BE DIRECTLY IMPACTED BY CONSTRUCTION ACTIVITIES. CONTRACTOR IS RESPONSIBLE FOR NOTIFYING AND COOPERATING WITH ADJACENT PROPERTY OWNER REGARDING DISMANTLING, REPAIRING, AND/OR REPLACING THE FACILITIES, AS DIRECTED AND APPROVED BY THE ENGINEER. SEE SECTIONS 15 AND 19-1.2 OF THE SPECIAL PROVISIONS FOR FURTHER INFORMATION.



LOCATION MAP
NOT TO SCALE

THIS PLAN ACCURATE FOR ELECTRICAL WORK ONLY



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1300 CLAY ST, STE 325 OAKLAND, CA 94612
PHONE: 510-625-0712
WWW.KIMLEY-HORN.COM

DATE: OCTOBER 2021	APPROVED:	▲							
SCALE: NONE		▲							
DRAWN BY: TG		▲							
DRAWING NAME: CV-01	NICOLE H. NAGAYA	▲							
DESIGNED BY: RJD	PUBLIC WORKS DIRECTOR	▲							
CHECKED BY: KAA	CITY OF MENLO PARK	▲							
SURVEYED BY: N/A	DATE: 76085	▲							
	C.E. # 6/30/2022	▲							
	EXPIRES	▲							
		▲	NO.	BY	DATE	REVISIONS			



**CITY OF MENLO PARK
TRANSPORTATION DIVISION**

701 LAUREL STREET, MENLO PARK, CA 94025-3483
PHONE (650) 330-6740 FAX (650) 327-5497

IMPROVEMENT PLANS FOR THE
CITY OF MENLO PARK - SERIES
CIRCUIT STREET LIGHT
COVER SHEET

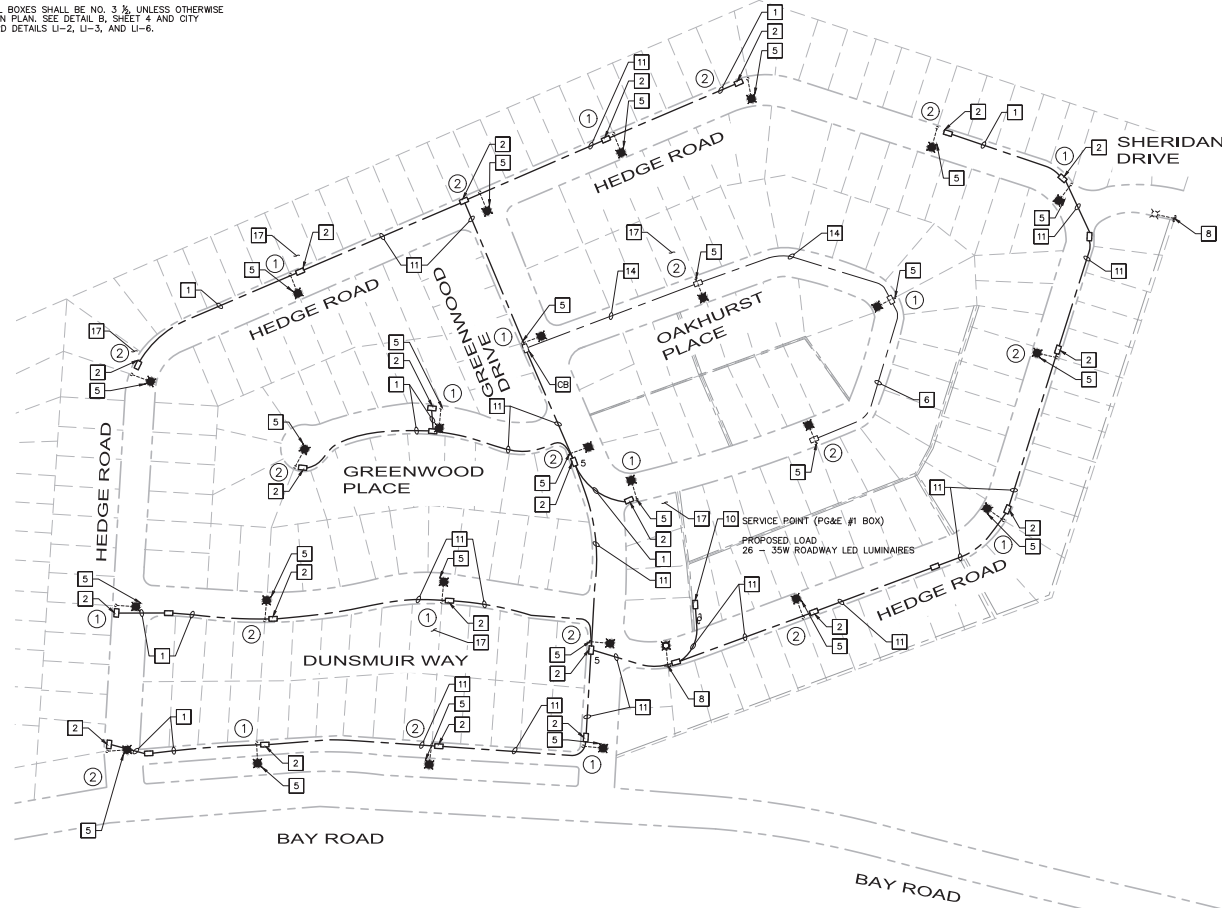


Know what's below.
Call before you dig.

SHEET
1
OF 4 SHEETS
PROJ. NAME
MENLO PARK SERIES CIRCUIT STREET
LIGHT REPLACEMENT PROGRAM
OCTOBER 2021

GENERAL NOTES: (SHEETS 2 THROUGH 4)

1. ALL PULL BOXES SHALL BE NO. 3 1/2 UNLESS OTHERWISE NOTED ON PLAN. SEE DETAIL B, SHEET 4 AND CITY STANDARD DETAILS U-2, U-3, AND U-6.



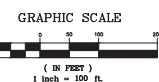
CONSTRUCTION NOTES: (THIS SHEET ONLY)

- 1 FURNISH AND INSTALL NEW 2" CONDUIT, 2#8 (240V LIGHTING), AND 1#8 (GROUND) CONDUCTORS.
- 2 FURNISH AND INSTALL NEW PULL BOX. INSTALL NEW CONDUIT AND CONDUCTORS TO STREET LIGHT POLE PER DETAIL ON SHEET 4.
- 5 REMOVE AND DISPOSE OF EXISTING LUMINAIRE. FURNISH AND INSTALL ROADWAY LED LUMINAIRE.
- 8 REMOVE EXISTING CONDUCTORS AND INSTALL 2#8 (240V LIGHTING) AND 1#8 (GROUND) CONDUCTORS IN EXISTING CONDUIT.
- 8 EXISTING UTILITY POLE WITH LED LUMINAIRE TO REMAIN.
- 10 INSTALL 13"x24"x18" PG&E SPLICE BOX (PG&E CODE 040933). PULL BOX INSTALLATION SHALL CONFORM TO PG&E REQUIREMENTS AND SHALL BE WITHIN 5' OF THE BASE OF THE EXISTING PG&E UTILITY POLE. FURNISH AND INSTALL 2" CONDUIT FROM SPLICE BOX TO PG&E INSTALLED RISER. CONTRACTOR SHALL COORDINATE WITH PG&E FOR INSPECTIONS AND TO ESTABLISH SERVICE CONNECTION. SEE PG&E DESIGN DRAWING (PM 31519282) FOR FURTHER INFORMATION.
- 11 FURNISH AND INSTALL NEW 2" CONDUIT, 4#8 (240V LIGHTING), AND 1#8 (GROUND) CONDUCTORS.
- 14 REMOVE EXISTING CONDUCTORS AND INSTALL 4#8 (240V LIGHTING) AND 1#8 (GROUND) CONDUCTORS IN EXISTING CONDUIT.
- 17 EXISTING PRIVATE PROPERTY FENCE ADJACENT TO EXISTING STREETLIGHT TO BE MODIFIED. CONTRACTOR SHALL COORDINATE WITH CITY ENGINEER AND PROPERTY OWNER REGARDING TEMPORARY REMOVALS REQUIRED TO COMPLETE WORK. CONTRACTOR SHALL RESTORE FENCING TO PRE-PROJECT CONDITIONS TO THE APPROVAL OF THE ENGINEER.
- CB INSTALL CONDUIT TO BOX.

LEGEND

- PROPERTY LINES
- - - RIGHT-OF-WAY
- - - EASEMENT
- - - EXISTING CONDUIT
- NEW CONDUIT
- ⊙ EXISTING STREET LIGHT POLE WITH NEW LUMINAIRE
- ⊙ EXISTING STREET LIGHT ON JOINT UTILITY POLE WITH NEW LUMINAIRE
- EXISTING PULL BOX
- ⊙ NEW PULL BOX
- CIRCUIT NO.
- ⊙ EXISTING LIGHT TO REMAIN

SEE SHEET 3 MATCH LINE



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 PHONE: 510-625-0712
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DATE:	OCTOBER 2021
SCALE:	1"=100'
DRAWN BY:	TG
DRAWING NAME:	L-01
DESIGNED BY:	RJD
CHECKED BY:	KAA
SURVEYED BY:	N/A

NO.	BY	DATE	REVISIONS

CITY OF MENLO PARK
 TRANSPORTATION DIVISION
 701 LAUREL STREET, MENLO PARK, CA 94025-3483
 PHONE (650) 330-6740 FAX (650) 327-5497

IMPROVEMENT PLANS FOR THE CITY OF MENLO PARK – SUBURBAN PARK SERIES CIRCUIT STREET LIGHT ELECTRICAL PLAN

SHEET	2
OF 4 SHEETS	
PROJ. NAME	MENLO PARK SERIES CIRCUIT STREET LIGHT REPLACEMENT PROGRAM
DATE	OCTOBER 2021

GENERAL NOTES: (THIS SHEET ONLY)

- ALL PULL BOXES SHALL BE NO. 3 1/2, UNLESS OTHERWISE NOTED ON PLAN. SEE DETAIL B, SHEET 4 AND CITY STANDARD DETAILS U-2, U-3, AND U-6.

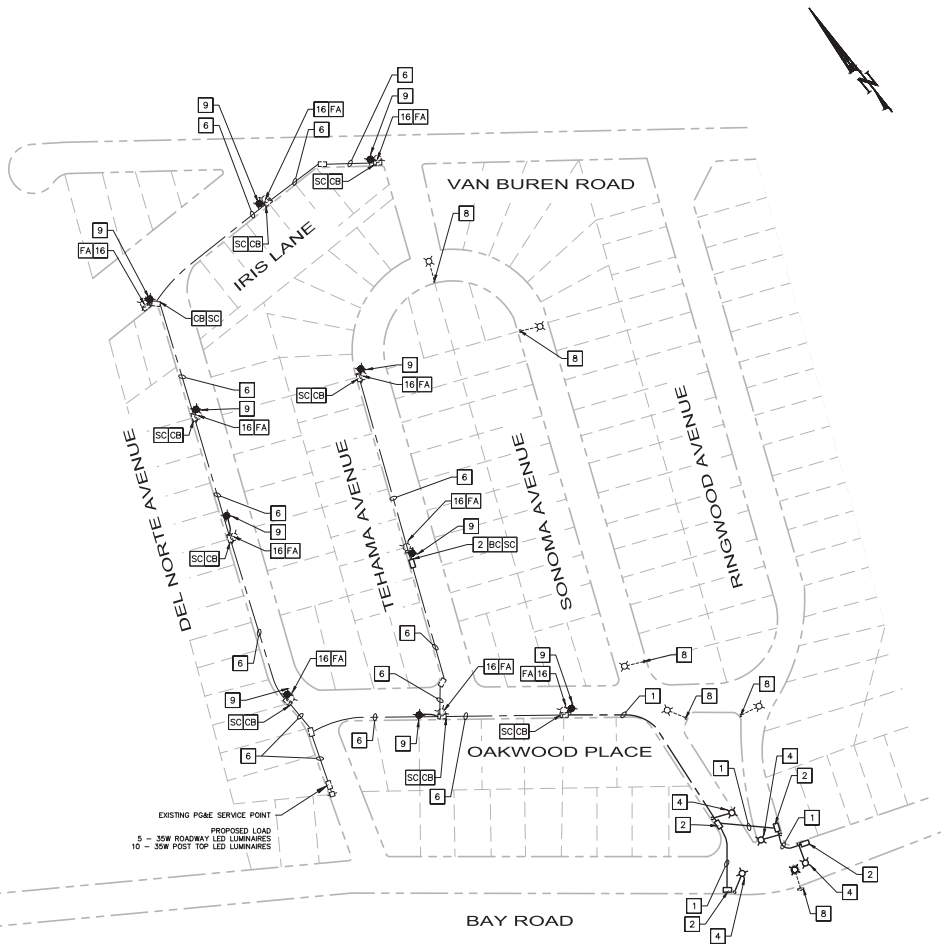
CONSTRUCTION NOTES: (THIS SHEET ONLY)

- FURNISH AND INSTALL NEW 2" CONDUIT, 2# (240V LIGHTING), AND 1# (GROUND) CONDUCTORS.
- FURNISH AND INSTALL NEW PULL BOX. INSTALL NEW CONDUIT AND CONDUCTORS TO STREET LIGHT POLE PER DETAIL ON SHEET 4.
- FURNISH AND INSTALL STREET LIGHT POLE AND LED LUMINAIRE PER CITY OF MENLO PARK STANDARD DETAIL U-1. NEW STREET LIGHT POLES SHALL BE 25' HEIGHT WITH 10' MAST ARMS.
- EXISTING CONDUIT AND CONDUCTORS TO REMAIN.
- EXISTING UTILITY POLE WITH LED LUMINAIRE TO REMAIN.
- FURNISH AND INSTALL NEW POST TOP POLE WITH LED FIXTURE PER CITY OF MENLO PARK STANDARD DETAIL U-6.
- EXISTING STREET LIGHT POLE AND LUMINAIRE TO BE REMOVED AND BECOME PROPERTY OF CONTRACTOR.
- INSTALL PULL BOX IN EXISTING CONDUIT RUN.
- INSTALL CONDUIT INTO EXISTING PULL BOX.
- FOUNDATION TO BE ABANDONED.
- SPLICE NEW TO EXISTING CONDUCTORS.

LEGEND

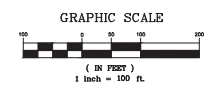
- PROPERTY LINES
- - - RIGHT-OF-WAY
- - - EXISTING CONDUIT
- NEW CONDUIT
- ⊕ EXISTING STREET LIGHT POLE WITH NEW LUMINAIRE
- ⊕ EXISTING POST TOP STREET LIGHT POLE
- ⊕ EXISTING PULL BOX
- ⊕ NEW PULL BOX
- ⊕ NEW POST TOP POLE WITH LED FIXTURE
- ⊕ EXISTING LIGHT TO REMAIN
- ⊕ NEW STREET LIGHT POLE WITH NEW LUMINAIRE

MATCH LINE
SEE SHEET 2



EXISTING PG&E SERVICE POINT
PROPOSED LOAD
8 - 35W ROADWAY LED LUMINAIRES
10 - 35W POST TOP LED LUMINAIRES

**BID
ALTERNATE A**



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PHONE: 510-625-0712
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THIS PLAN ACCURATE FOR ELECTRICAL WORK ONLY

DATE: OCTOBER 2021	APPROVED:				
SCALE: 1"=100'	NICOLE H. NAGAYA				
DRAWN BY: TG	PUBLIC WORKS DIRECTOR				
DRAWING NAME: L-02	CITY OF MENLO PARK				
DESIGNED BY: RJD					
CHECKED BY: KAA					
SURVEYED BY: N/A					
	DATE: 7/20/22	C.E. #	6/30/2022	EXPIRES	
	NO.	BY	DATE	REVISIONS	



**CITY OF MENLO PARK
TRANSPORTATION DIVISION**
701 LAUREL STREET, MENLO PARK, CA 94025-3483
PHONE (650) 330-6740 FAX (650) 327-5497

**IMPROVEMENT PLANS FOR THE CITY
OF MENLO PARK - FLOOD TRIANGLE
SERIES CIRCUIT STREET LIGHT
ELECTRICAL PLAN**

SHEET 3
OF 4 SHEETS
PROJ. NAME MENLO PARK SERIES CIRCUIT STREET LIGHT REPLACEMENT PROGRAM
OCTOBER 2021



STAFF REPORT

City Council

Meeting Date:

1/25/2022

Staff Report Number:

22-021-CC

Regular Business:

Adopt an urgency ordinance temporarily closing the north bound travel lane on the 600 block of Santa Cruz Avenue and a portion of Ryan's Lane, and authorizing the establishment and issuance of temporary outdoor activity permits allowing businesses to safely conduct their businesses outdoors during the COVID-19 state of emergency

Recommendation

Staff recommends that the City Council adopt an urgency ordinance (Attachment A) to continue the Downtown street closure program to reflect continued temporary closure of the north bound 600 block of Santa Cruz Avenue and a portion of Ryan's Lane.

Currently the following sections of roadway are closed, but would reopen February 1, 2022, because the current urgency Ordinance authorizing such closure, expires January 31, 2022:

- 600 block (odd) of Santa Cruz Avenue northbound lane toward El Camino Real from Curtis Street to Doyle Street;
- Ryan's Lane both directions from Crane Street to Escondido Lane.

Other elements of the temporary outdoor use permit program to allow parklets/street cafes in off-street parking spaces remain on a month to month basis.

Policy Issues

With the added impact of the Omicron variant, the COVID-19 pandemic continues to force businesses to adjust and adapt. The City's current program closes the 600 block of Santa Cruz Avenue and portion of Ryan's Lane, suspends certain zoning requirements, waives processing fees for temporary outdoor use permits, and utilizes funding from the Downtown streetscape capital improvement plan (CIP) fund to acquire materials for the street closure and assistance with barricades for businesses. As conditions change, the City Council should consider whether modifications to the program and street closures are warranted.

Background

The City Council took steps to help mitigate the economic impacts of COVID-19 by ensuring that local businesses remain viable while operating in a safe manner. Over the past 20 months, the City Council has considered this topic multiples times and adopted five urgency ordinances as summarized below.

On June 19, 2020, the City Council adopted urgency Ordinance No. 1070 that allowed the partial closure of Santa Cruz Avenue and for staff to implement a temporary outdoor use program. The City Council subsequently adopted urgency Ordinance No. 1071 July 16, 2020, to expand the allowed uses eligible for a

temporary outdoor use permit and to modify the street closure pattern.

As part of a 45-day review, staff prepared an information item for August 11, 2020. On August 25, the City Council received public testimony and had a robust discussion about the components of the urgency ordinance. While the City Council generally supported the extension of the temporary outdoor use permit beyond September 17, 2020, there were various considerations for potential modifications to the Santa Cruz Avenue closure configuration. The City Council continued the item to allow City Councilmembers to visit Downtown with these specific considerations in mind and meet with merchants.

On September 8, 2020, the City Council adopted urgency Ordinance No. 1072, which resulted in an extension of the outdoor use permit until February 28, 2021 and additional modifications to the street closure by reopening the southbound travel lane along Santa Cruz Avenue. This change reflected a balancing of the interests of businesses who rely on pass-by vehicle traffic and businesses who wish to expand their outdoor operations into the street. The City Council also supported the use of the travel lane on the closed portion of Santa Cruz Avenue between Doyle and Curtis Streets for business operations during the weekends. Because the use of the travel lane would require rerouting of bicycle traffic to the side streets, the City Council requested that staff return with additional options for the City Council to consider.

On September 22, 2020, the city manager briefed the City Council with an update on the Santa Cruz Avenue street closure and temporary outdoor use permit program. At that time, members of the City Council also expressed interest in modifying the urgency ordinance and provided additional direction to staff on revisions on how Santa Cruz Avenue can be used. On October 6, 2020 the City Council adopted urgency Ordinance No. 1073 to reflect changes discussed September 22 and summarized as follows:

- Install “walk your bike” signs for the closed portions of Santa Cruz Avenue.
- Allow use of the travel lanes without limitations to time of day or day of week.
- Close a portion of Ryan’s Lane between Crane Street and Escondido Lane.

On January 12, 2021, the city manager briefed the City Council on her intention for staff to return at the next meeting with an updated ordinance to reopen the travel lanes on Santa Cruz given the fact that outdoor dining was not allowed and projections assumed that it would not resume until March at the earliest.

On January 26, the City Council considered urgency Ordinance No. 1075 that would have reopened travel lanes on Santa Cruz Avenue January 27 while keeping travel lanes on a portion of Ryan’s Lane closed. The City Council decided to defer action until February 23 given the fact that the regional intensive care unit (ICU) bed capacity had dramatically improved and the Governor had allowed outdoor dining to restart January 25.

On February 23, the City Council received clarification on Menlo Park Fire Protection District impacts and tent/canopy capacity and enclosure. The City Council also discussed several desired improvements to the Downtown, in addition to the street closure. The Chamber spoke in support of retaining the closure. The City Council adopted Ordinance No. 1085 to extend the street closure and temporary outdoor use permit program through January 31, 2022.

On October 26, the Chamber and the Downtown Alliance kicked off the new Bon Marche farmers market. The market has been very successful in creating a place to gather in the Downtown Wednesday afternoon and evenings. Any decision to reopen the street would impact the Bon Marche market, especially in the current location.

On December 7, the city manager briefed the City Council regarding the reopening of the north bound 800 block of Santa Cruz Avenue. The decision was based on the lack of use of the roadway for dining or other retail purposes. In addition, there was a community desire to use the roadway for traveling through this area of the Downtown. Finally, there was a need for easier traffic flow to increase shopper convenience during the holiday shopping season. The 800 block of Santa Cruz Avenue was reopened by Public Works as of Friday, December 10.

All of the previous urgency ordinances have or will expire as of January 31, 2022.

Analysis

The Downtown street closure and temporary outdoor use permit pilot program was adopted with the understanding that it was both temporary and would need to be assessed and possibly adjusted periodically in order to be successful. The City relied on its emergency authorities to close the previously mentioned traffic lanes. The target date for opening up the remaining block of travel lanes per Ordinance No. 1085 adopted February 23, 2021 is February 1, 2022. With the ongoing State of Emergency and the continued desire for outdoor dining, staff recommends continued closure of the 600 block of Santa Cruz Avenue and a portion of Ryan's Lane. Such closure will allow businesses additional space to safely continue offering services, goods and meals outdoors, thereby significantly reducing the likelihood of transmission of the deadly COVID-19 virus. The closure will also enable businesses to sustain themselves during these economically uncertain times.

The proposed urgency ordinance (Attachment A) will be needed if the City Council desires to keep the 600 north bound block of Santa Cruz and a portion of Ryan's Lane closed beyond February 1. If the City Council does not take action, then staff would reopen travel ways after January 31, pending coordination with adjacent businesses and availability of staff resources.

The businesses that either have been using or intend to use the travel lanes are as follows:

- 600 block of Santa Cruz Avenue: Bistro Vida and Left Bank on a daily basis and Bon Marche farmers market (Wednesday afternoons and evenings)
- Portion of Ryan's Lane: Carpaccio

All of these businesses would prefer to keep the respective blocks closed. Other businesses downtown have expressed a desire to reopen the street segments.

The City Council's Economic Development Subcommittee comprised of Mayor Nash and City Councilmember Mueller supports the continued closure as does the Chamber of Commerce.

If the travel lanes were reopened, businesses would continue to be able to use other on-street or off-street parking spaces consistent with the temporary outdoor use permit program. The attached ordinance includes the applicable edits to continue the street segments closure during the existing emergency under the State Health and Safety Code with no specific expiration date. If conditions change, specifically if the State of Emergency ends, the City Council will need to consider taking action under the authority provided by the State Vehicle Code.

For future consideration, the City Council has the authority for a longer-term closure of portions of Santa Cruz Avenue, if the City Council wishes to consider such a policy action, pursuant to the Vehicle Code, the City has the authority to permanently close streets if it finds the street is "no longer needed for vehicular traffic. The City Council may adopt a resolution to permanently close one lane of traffic on a portion of Santa

Cruz Avenue for example. The action to adopt such a resolution would be subject to environmental review consistent with the California Environmental Quality Act (CEQA.) Staff intends to return to City Council in six to 12 months with options for the City Council's consideration.

The proposed urgency ordinance (Attachment A) also establishes the temporary outdoor use permit for business, suspend various City laws related to certain zoning and minimum parking requirements, and allows businesses to conduct their business outside. These are necessary to for health and safety to minimize the number of people conducting business inside in order to minimize the spread of the highly transmissible COVID-19 virus and its variants. The proposed urgency ordinance is necessary for the preservation of public health, safety, and welfare and immediate action is required. The ordinance would become effective immediately with a four-fifths vote of the City Council.

With respect to the temporary outdoor use permits, staff is preparing recommendations for City Council with the economic development consultants from HdL. Recommendations will focus on considering expanding the parklets/street café program with modifications to establish design standards for construction and maintenance of the parklets/street café's. In addition, staff will be exploring options for encroachment permits. Staff will also be developing options to for a uniform standard of safety barriers for consideration. Finally, staff will be working with HdL to bring forward the Downtown market study for City Council consideration in the near future.

Impact on City Resources

The City Council made \$300,000 in the downtown streetscape capital improvement project available for any unexpected expenses related to the closure of Santa Cruz and implementation of the temporary outdoor use permit process. Approximately \$85,000 of the funds have been used over the last couple of years in the procurement of trees, water-filled barricades and concrete k-rail additional to that which was provided by the Menlo Park Fire Protection District and a donation of used concrete planters boxes by Meta (formerly Facebook.) Staff will continue to utilize those funds on unexpected expenses related to the program. The current additional estimate for the remainder of the year is \$20,000 to \$25,000.

Environmental Review

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

Public Notice

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

Attachments

A. Urgency ordinance

Staff Report #: 22-021-CC

Report prepared by:
Starla Jerome-Robinson, Outgoing City Manager

Report reviewed by:
Justin Murphy, Interim City Manager

ORDINANCE NO. XXXX

URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK AUTHORIZING TEMPORARY OUTDOOR ACTIVITIES, ESTABLISHING A TEMPORARY OUTDOOR USE PERMIT FOR RESTAURANTS AND OTHER BUSINESSES AND TEMPORARILY CLOSING SANTA CRUZ AVENUE TO ALLOW FOR SUCH TEMPORARY OUTDOOR ACTIVITIES

The City Council of the City Menlo Park does hereby ordain as follows:

FINDINGS. The City Council of the City of Menlo Park hereby finds:

A. The Centers for Disease Control and Prevention has stated that based on current information a novel coronavirus named “COVID-19” is a serious public health threat; and

B. On March 3, 2020, and pursuant to Section 101080 of the California Health and Safety Code, the San Mateo County Health Officer (the “Health Officer”) declared a local health emergency throughout San Mateo County related to the novel coronavirus (“COVID-19”); and

C. On March 4, 2020, the Governor of the State of California declared a state of emergency to help the state prepare for the spread of COVID-19; and

D. On March 11, 2020, the City Council of the City of Menlo Park declared a local emergency based on the current COVID-19 world pandemic; and

E. COVID-19 continues to threaten the health and lives of City residents; and

F. Following COVID 19 the SARS-CoV-2 Delta Variant (Delta Variant) was highly transmissible in indoor settings; and

G. On July 28, 2021, the California Department of Public Health issued a statement that the Delta Variant is two times as contagious as early COVID-19 variants; and

H. By early December 2021 a new variant Omicron was first identified in the San Francisco Bay Area. By late December 2021, Omicron had been detected throughout the United States and rapidly increased the proportion of COVID-19 cases it is causing; and

I. By mid-January 2022 San Mateo County reported the number of COVID cases to be double the cases compared to January 2021. The Omicron exposures and cases are creating impacts causing staffing shortages in all sectors of the economy; and

J. In light of the Omicron variant and the high risk of infection among even those who have been vaccinated against COVID-19, the City Council finds that continuing to allow the use of the roadways to provide additional outdoor seating is necessary to reduce imminent health risks associated with large groups of members of varying households gathering indoors; and

K. The City Council supports continued assistance to local businesses during this time of public health and economic hardships, by encouraging the patronization of local restaurants and other business in a safe manner and therefore desires to establish standards that allow restaurants

and other businesses to temporarily operate in an expanded outdoor capacity in the public right-of-way, public parking plazas and private property throughout the Downtown and to give the City Manager more flexibility to close streets to allow for social distancing, while providing greater pedestrian access and opportunities for outdoor dining and the sale of goods; and

L. On February 23, 2021, the City Council extend the street closure and temporary outdoor use permit program through January 31, 2022.

M. Based upon the findings above, the City Council finds that this urgency ordinance is necessary for the preservation of the public health, safety, and welfare and its urgency is hereby declared. The City Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36937(b) and take effect immediately upon adoption. As described above, businesses in Menlo Park are facing unprecedented hardships related to COVID-19 and variants. This Ordinance needs to become effective immediately in order to allow the City to permit businesses to expand into adjacent open public spaces.

SECTION 1. DEFINITIONS

“Business” shall mean for-profit businesses, not-for profit entities, religious institutions, childcare facilities, schools, and any other public or private entity requiring outdoor space in order to safely operate in compliance with State and local social distancing requirements.

“Downtown” shall mean the area of the Menlo Park bounded by El Camino Real, Menlo Avenue, University Drive and Oak Grove Avenue.

SECTION 2. OUTDOOR ACTIVITIES PERMITTED

To facilitate the safe operation of Menlo Park businesses, ensure the economic viability of these businesses, and in order to encourage safe social distancing and reduce the likelihood of transmission of the deadly COVID-19 virus, all City of Menlo Park laws, regulations and/or policies that would otherwise prohibit businesses from engaging in their business activities outside are hereby suspended.

SECTION 3. ELIGIBLE BUSINESSES. Only those businesses that require outdoor space in order to effectively and safely run their business while complying with State and local social distancing requirements are eligible to operate pursuant to this Urgency Ordinance.

SECTION 4. TEMPORARY OUTDOOR USE PERMIT ESTABLISHED. To be eligible to engage in outdoor activities pursuant to this Urgency Ordinance, businesses shall be required to obtain a temporary outdoor use permit. The City Council authorizes the City Manager to establish an application for such use permit, to review applications for such use permit, and to issue such use permits subject to conditions of approval necessary to ensure public health, safety, welfare and compliance with existing laws and regulations. Before issuing a Temporary Outdoor Use Permit, the applicant’s design and layout plans shall be approved by the Public Works Director or designee.

The temporary outdoor use permit may authorize the use of any outdoor space directly adjacent to a business for engaging in outdoor activities, subject to the limitations set forth in this Urgency Ordinance, and including any additional limitations established by the City Manager.

Temporary outdoor use permits shall be subject to applicable Federal, State and County of San Mateo laws and health orders, and applicable provisions of the Menlo Park Municipal Code, including but not limited to sections 13.18.080 through 13.18.160.

SECTION 5. ENCROACHMENT INTO PUBLIC RIGHT-OF-WAY. To streamline the issuance of temporary rights of encroachment into the public right-of-way, the City hereby amends its encroachment permit and agreement process as follows: Businesses seeking to encroach into the public right way for purposes of conducting business outdoors pursuant to this Urgency Ordinance shall obtain a temporary outdoor use permit in lieu of obtaining an encroachment permit.

SECTION 6. PARKING. To streamline the issuance of temporary outdoor use permits, the City hereby suspends applicable minimum parking requirements set forth in the Menlo Park Municipal Code or in a previously granted entitlement, for the duration of the term of a temporary outdoor use permit.

SECTION 7. NO INTERFERENCE WITH PRIVATE PROPERTY. Nothing in this Resolution relieves a business from any obligations or laws requiring consent of adjacent property owners for use of private property. Businesses seeking to operate outdoors shall obtain consent of any private property owners whose property will be used for outdoor operations.

SECTION 8. CLOSURE OF CERTAIN STREETS TO FACILITATE TEMPORARY OUTDOOR USE PERMITS. Pursuant to Section 21101(e) of the California Vehicle Code, the City may adopt rules and regulations for highways under its jurisdiction by resolution regarding the temporarily closure of a portion of any street for local special events, and other purposes when, in the opinion of City, or a public officer or employee that the City designates by resolution, the closing is necessary for the safety and protection of persons who are to use that portion of the street during the temporary closing. The City Council desires that portions of Santa Cruz Avenue from Doyle Street to Curtis Street and, and a portion of Ryan's Lane from Crane Street for approximately 50 feet shall be temporarily closed and/or limited to one-way vehicular traffic as shown and depicted on Exhibit A incorporated herein to temporarily allow for the outdoor activities identified in this Urgency Ordinance. Use of the travel lane in the closed portions of the street is permitted by local businesses, subject to the installation of 'walk your bike' signs at the closed portions of the street. The Public Works Director or designee shall have the authority to approve the final street closure plan, barrier placement and signage to implement this ordinance.

The City finds and resolves that the closure of such streets is necessary for the protection of persons using such streets for the outdoor activities identified in this Urgency Ordinance. The City Council authorizes the City Manager to establish a schedule for outdoor dining/business events.

SECTION 9. TEMPORARY SUSPENSION OF CERTAIN FEES AND ZONING REQUIREMENTS. The City Council hereby temporarily suspends for the effective period of this Ordinance the payment of any fees associated with the uses described in Section 2. In addition, the City Council temporarily suspends the application of any zoning requirements inconsistent with the uses described in Section 2.

SECTION 10. ENVIRONMENTAL DETERMINATION. In accordance with the California Environmental Quality Act ("CEQA") guidelines section 15061(b)(3), adoption of this ordinance is exempt from the provisions of CEQA, because there is no possibility that the implementation of this ordinance may have a significant effect on the environment.

SECTION 11. SEVERABILITY. In the event any section, clause or provision of this ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

SECTION 12. EFFECTIVE DATE AND POSTING. For the reasons set forth above in the recitals, this Ordinance is an urgency ordinance and shall take effect immediately upon adoption by a 4/5 vote of the City Council, due to the immediate need to protect the public health, safety and welfare.

PASSED AND ADOPTED as an urgency ordinance of the City of Menlo Park at a regular meeting of said City Council on the twenty-fifth day of January, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Betsy Nash, Mayor

ATTEST:

Judi A. Herren, City Clerk

Color Key

-  Roadblocks
-  Street Closures
-  Restaurants
-  Cafe Dining (existing)
-  Outdoor Expansion (as requested)
-  Bicycle Parking Zone
-  Directional Traffic Pattern

Place barricades (see examples below) along outline of parking spaces for street cafe area per permit proposal.



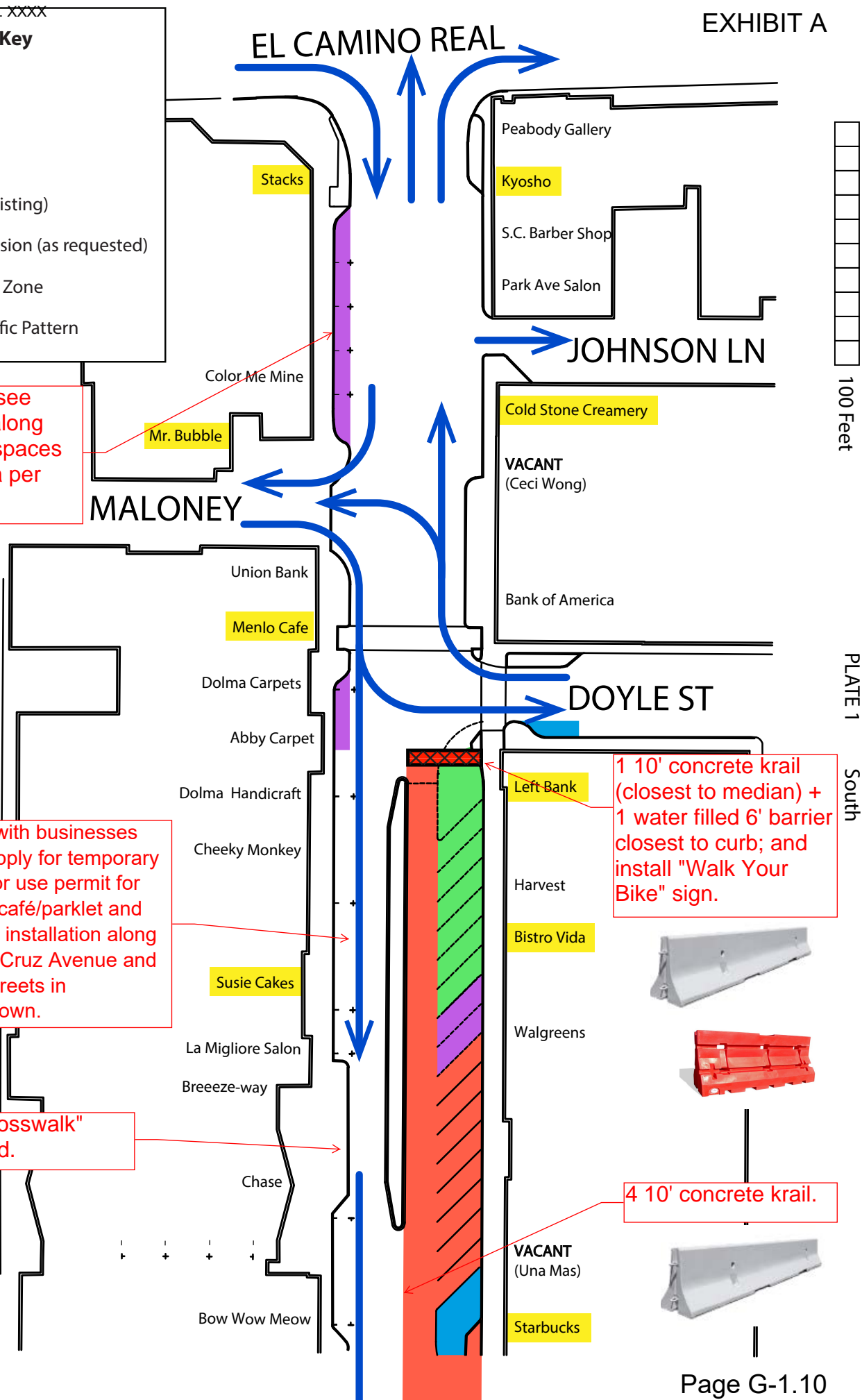
North

Work with businesses who apply for temporary outdoor use permit for street café/parklet and barrier installation along Santa Cruz Avenue and side streets in Downtown.

"Pedestrians Use Crosswalk" A-frame sign installed.



Match Line



100 Feet

PLATE 1 South

1 10' concrete krail (closest to median) + 1 water filled 6' barrier closest to curb; and install "Walk Your Bike" sign.



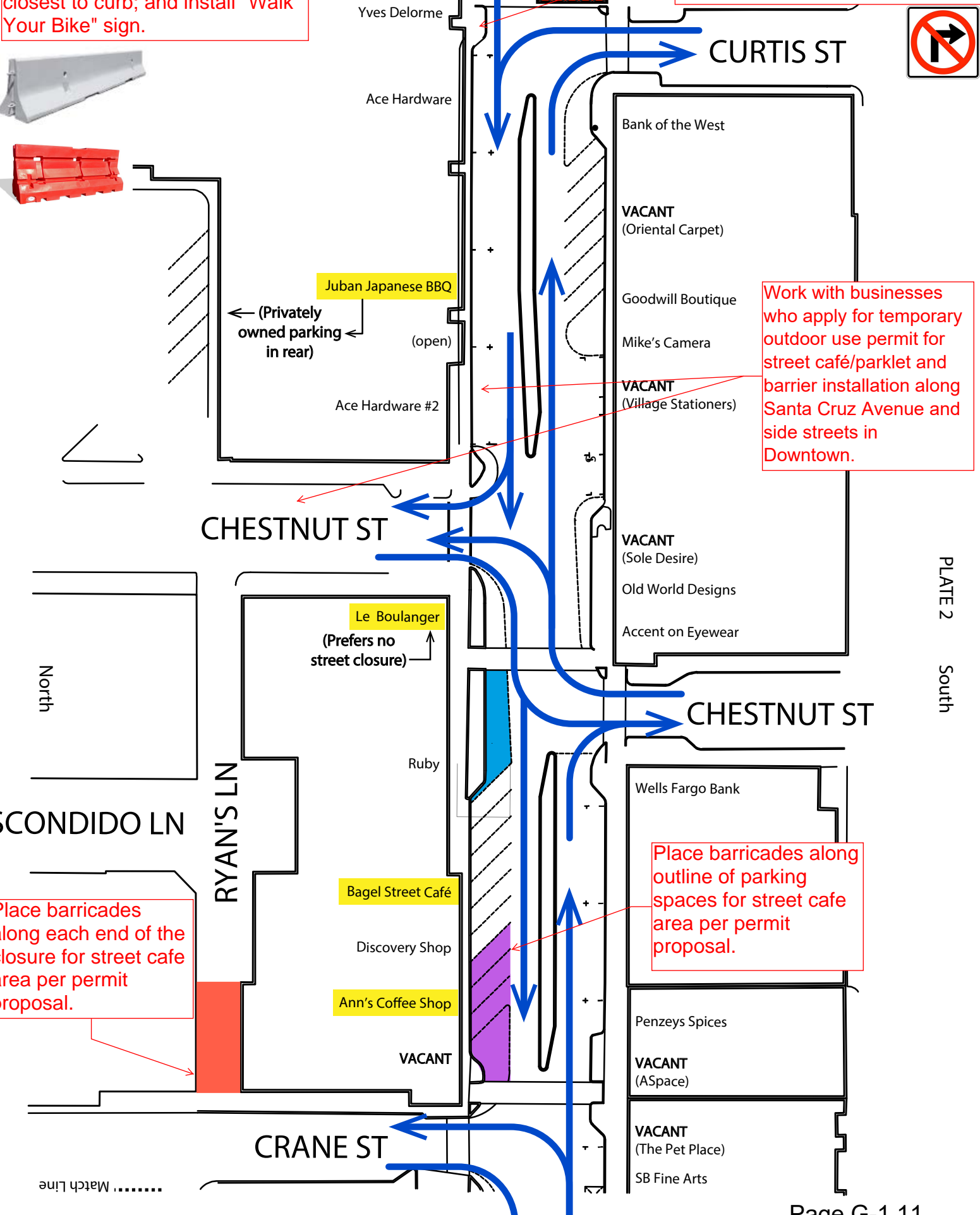
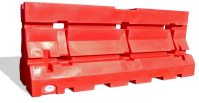
4 10' concrete krail.



1 10' concrete kral (closest to median) - 1 water filled 6' barrier closest to curb; and install "Walk Your Bike" sign.

Ordinance No. XXXX
Page 6 of 7

"No Right-Turn" sign installed at intersection to prohibit right turns from Curtis St. to Santa Cruz Ave.



Work with businesses who apply for temporary outdoor use permit for street café/parklet and barrier installation along Santa Cruz Avenue and side streets in Downtown.

Place barricades along outline of parking spaces for street cafe area per permit proposal.

Place barricades along each end of the closure for street cafe area per permit proposal.

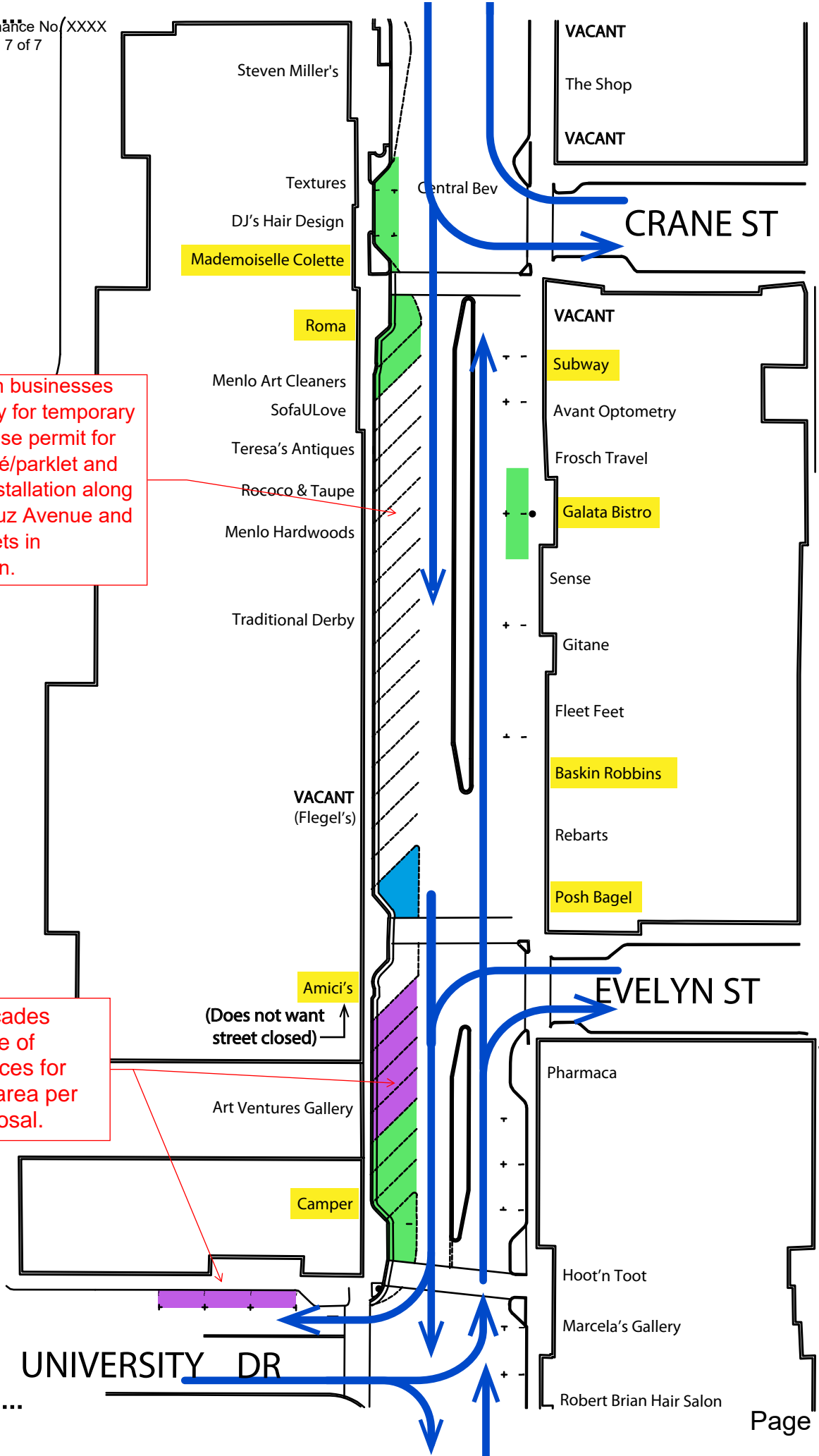
PLATE 2
South

North

PLATE 3
South

Work with businesses who apply for temporary outdoor use permit for street café/parklet and barrier installation along Santa Cruz Avenue and side streets in Downtown.

Place barricades along outline of parking spaces for street cafe area per permit proposal.



12 Restaurants in closed area; 3 not



STAFF REPORT

City Council

Meeting Date:

1/25/2022

Staff Report Number:

22-020-CC

Regular Business:

Provide feedback on the Caltrain quiet zone implementation plan request for proposals

Recommendation

Staff recommends that the City Council provide feedback on the draft quiet zone implementation plan request for proposals (RFP) scope of work and consultant selection criteria, which is included as Attachment A.

Policy Issues

The City Council identified the Caltrain quiet zone implementation plan (project) as a high priority project in their 2021 work plan.

Background

The City of Menlo Park currently has four at-grade crossings with Caltrain:

- Ravenswood Avenue
- Oak Grove Avenue
- Glenwood Avenue
- Encinal Avenue

In addition, there is a pedestrian crossing located approximately 250 feet north of the Ravenswood crossing and an at-grade crossing at Palo Alto Avenue in Palo Alto, just across the city boundary that requires trains to sound their horns in Menlo Park. A map of the five crossings is included as Attachment B.

The Federal Railroad Administration (FRA) requires all passenger and freight trains to activate their horns four times: two long blasts, one short blast, then one long blast beginning one-quarter mile before each crossing. The purpose of these blasts is to warn people of the train approaching the crossings. FRA has a process to establish a “quiet zone” that eliminates the horn requirements. There is currently no existing railroad quiet zone within the City of Menlo Park.

Since only one-fifth of a mile separates each of Menlo Park’s four crossings, the four “one-quarter mile before” horn blast sequences are repeated continuously, resulting in as many as 16 total blasts per passing train over the short span of 1.12 miles, depending on whether trains are stopping in Menlo Park. In practical terms, this can manifest as nearly continuous horn blasts with the maximum volume level for the train horn up to 110 decibels.

The City has received complaints from residents and business owners about the volume, frequency, duration, and time frame of train horns. A quiet zone was requested to be implemented in the City of Menlo Park to address current and future expected growth in train horn use as Caltrain expands service and

because quiet zone crossings often involve installation of measures to improve safety. Atherton has a quiet zone on the Caltrain corridor and similar zones have recently been established across California (including in Marin County, Orange County, and the cities of San Diego, Fremont and San Jose, among other locations.)

Analysis

FRA establishes several methods to reduce train horn noise that range from installation of quad gates (railroad gates that protect both sides of each crossing) to installing 'wayside horns' that reduce the number of people impacted, to conducting a risk analysis using an FRA designated approach. For the risk-based approach, a quiet zone can be established if the risk score at a crossing falls below a threshold set by FRA, but must be monitored as the FRA adjusts this threshold over time.

The City intends to release a RFP (Attachment A) to hire a qualified consultant to develop an implementation plan to establish a quiet zone along the Caltrain corridor in Menlo Park. The focus of this project will be on the four at-grade crossings within the City boundary of Menlo Park, but may be expanded to consider the Palo Alto Avenue crossing due to the impact on Menlo Park residents and businesses from train horns at this crossing if budget allows. Palo Alto staff are aware of this optional task. Because there is less than a quarter mile between each of the four Menlo Park crossings as shown in Attachment B, a quiet zone could only to be established at all four. The Palo Alto Avenue crossing could have a separate quiet zone.

A draft RFP was shared publicly for a planned Rail Subcommittee in November 2021. That meeting was canceled and the Rail Subcommittee was subsequently eliminated in favor of rail related issues coming to the full City Council. Staff did receive feedback on the draft RFP from residents of Menlo Park and neighboring jurisdictions and revised the RFP to reflect the comments received. The revised RFP (Attachment A) incorporated the following comments from the public:

- Renames the study to be an "Implementation Plan" to reflect the fact that there are known investments that can allow the City to implement a quiet zone. The Implementation Plan will evaluate the costs and trade-offs to achieve that goal.
- Revise the scope to clearly indicate that the City is interested in understanding the full range of options for implementing a quiet zone.
- Staff also received comments about the potential inclusion of Palo Alto Avenue in the RFP, including individuals both for and against. We have retained this option in the RFP because this optional task does not commit the City to including it in the study.

Staff anticipates that the study would proceed as follows:

- The City would release the RFP (Attachment A), with any updates requested by the City Council, evaluate proposals from qualified consultants, and select a preferred consultant.
- Staff would return to Council to authorize the agreement with the selected consultant.
- Staff and the consultant would develop an outreach plan that would include presentations or study sessions with the City Council and the Complete Streets Commission, as well as potential community meetings to gather input and feedback at key project milestones.
- The consultant would lead the technical elements of the work, including identification of potential improvements, calculation of the risk scores, and identification of costs for proposed improvements.
- At the conclusion of the study, staff would present a final report to City Council for adoption and identify any implementation actions.

Staff is requesting feedback from the City Council on the scope of work and selection criteria for the RFP. Depending on the type of feedback, staff anticipates releasing the RFP within two weeks of this Council meeting.

Impact on City Resources

City Council established a budget of up to \$75,000 to conduct the quiet zone study as part of the fiscal year 2021-22 budget. An additional \$300,000 was allocated to the quiet zone project from the Springline development December 7, 2021. Funding for future investments identified by the study would likely exceed available funding and would need to be allocated in the future.

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. Future improvements identified by the quiet zone study may require environmental review, to be determined at the conclusion of the study.

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. Draft RFP for a quiet zone implementation plan for Menlo Park
- B. Map of Caltrain crossings with one-quarter mile buffer

Report prepared by:
Phong Vo, Associate Transportation Engineer

Report reviewed by:
Hugh Louch, Assistant Public Works Director



Request for Proposals
(RFP)

Professional Consulting Services for:

Caltrain Quiet Zone Implementation Plan for
the City of Menlo Park

Proposals Due:
February 28, 2022 5:00 p.m.

Attn: Phong Vo, Associate Transportation Engineer
Department of Public Works
701 Laurel Street
Menlo Park, CA 94025
ptvo@menlopark.org
650-330-6729

STATEMENT OF PURPOSE

The City is requesting proposals from qualified consultants to develop an implementation plan for the establishment of a quiet zone along the Caltrain corridor in Menlo Park. The consultant shall gather all information and relevant factors that may be appropriate in determining the necessary modifications to meet any and all requirements for creating a quiet zone.

BACKGROUND INFORMATION

The City of Menlo Park currently has four at-grade crossings with Caltrain:

- Ravenswood Avenue
- Oak Grove Avenue
- Glenwood Avenue
- Encinal Avenue

In addition, there is a pedestrian crossing located approximately 250 feet north of the Ravenswood crossing and an at-grade crossing at Palo Alto Avenue in Palo Alto, just across the city boundary, that requires trains to sound their horns in Menlo Park. The focus of this project will be on the four at-grade crossings within the City boundary of Menlo Park, but the City would like to understand the additional scope and cost required to expand the effort to include the Palo Alto Avenue crossing.

There is currently no existing railroad quiet zone within the City of Menlo Park. Without a quiet zone, the Federal Railroad Administration (FRA) requires all passenger and freight train to activate their horns four times: 2 long blasts, 1 short blast, then 1 long blast beginning $\frac{1}{4}$ mile before each crossing. The purpose of these blasts is to warn vehicles approaching the crossings.

Since only $\frac{1}{5}$ of a mile separates each of Menlo Park's four crossings, the four "1/4 mile before" horn blast sequences are repeated continuously, resulting in as many as 16 total blasts per passing train over the short span of 1.12 miles, depending on whether trains are stopping in Menlo Park. In practical terms, this can manifest as near continuous horn blasts with the maximum volume level for the train horn up to 110 decibels.

The City has received complaints from residents and business owners about the volumes, frequency, duration, and time frame of train horns. A quiet zone was requested to be implemented in the City of Menlo Park because quiet zone crossings are typically safer than standard crossings and are becoming increasingly common in populated areas. Atherton has a quiet zone on the Caltrain corridor and similar zones have recently been established across California (including in Marin County, Orange County, San Diego, Fremont and San Jose, among other locations).

SCOPE OF WORK

The project scope of work is anticipated to include the following tasks for the four Menlo Park crossings. Proposers should provide a recommended scope of work that addresses these requirements, while focusing on achieving the objective of implementing a quiet zone in Menlo Park.

1. **Kick-off meeting and Final Scope/Schedule:** The consultant will meet with the City Project Manager and key staff to discuss and finalize the scope and schedule, and agree on communications protocols and recurring meeting schedule. The consultant will submit a final scope and schedule to the City's project manager for approval prior to proceeding with Task 2. The consultant will prepare monthly progress reports on the status of scope, schedule, and budget.
2. **Document Review, Data Collection, Field Survey, and Coordination:** This task will include the following sub-tasks:
 - Conduct site visit and review existing conditions.
 - Review FRA policies and requirements.
 - Participate in up to three coordination meetings with the City, Caltrain, and other stakeholders.
 - Prepare a technical memo summarizing the opportunities and constraints identified through this task.
3. **Quiet Zone Analysis:**
 - Calculate Quiet Zone Risk Index (QZRI) for the proposed quiet zone without improvements (existing conditions).
 - Compare the existing conditions QZRI to the Nationwide Significant Risk Threshold (NSRT) and Risk Index with Horns (RIWH)
 - Determine the applicability of each supplemental safety measure (SSM) and each alternative safety measure (ASM) to each crossing
 - Provide a measurement of Quiet Zone Risk Index (QZRI) for each crossing based on implementation of applicable ASMs.
 - Based on this analysis, develop a small set of alternatives (up to 3) for implementing a quiet zone in Menlo Park, including identifying tradeoffs and costs across potential safety measures at intersections.
 - Complete the required safety analysis.
 - Summarize the quiet zone analysis and present findings to the Complete Streets Commission
4. **Cost Estimate:** Develop cost estimates for recommended improvements.
5. **Prepare Draft and Final Report:** The consultant will prepare a draft Implementation Plan incorporating all the previous tasks and submit to the City staff for review. The report will document and summarize the findings related to the implementation of a quiet zone in the City of Menlo Park. The report will include proposed options and a recommendation for implementing a quiet zone, including the estimated cost of each option and the specific improvements and costs at each crossing. Based on feedback from the community and the City, the consultant will update the draft Report into a Final Report.
6. **Outreach and coordination.** This project will include ongoing coordination with the City's elected and appointed bodies and the public. Subtasks include:
 - a. Develop an outreach plan that identifies the appropriate opportunities during the development of the work to meet with publicly elected bodies, commissions, and the public.
 - b. Support up to four presentations to the Complete Streets Commission and the City Council.
 - c. Conduct any public outreach meetings as identified in the outreach plan.

As an optional task, consultants should identify the level of effort to extend the quiet zone evaluation to include the Palo Alto Avenue crossing in Palo Alto.

DELIVERABLES

The following deliverables will be required for this RFP:

1. Final Scope and Schedule, including public outreach plan, by 4/18/2022
2. Opportunities and Constraints Technical Memo by 5/30/2022
3. Summary of quiet zone analysis by 8/15/2022
4. Draft Implementation Plan by 9/26/2022
5. Final Implementation Plan by 11/14/2022
6. Presentation to the Complete Streets Commission by 1/11/2023
7. Presentation to City Council by 2/28/2023

PROPOSAL PREPARATION AND SUBMITTAL

Submit an electronic pdf file no later than **Monday, February 28, 2022 at 5:00 p.m.** to:

Attn: Phong Vo, T.E.
 Associate Transportation Engineer
 701 Laurel St.
 Menlo Park CA 94025
ptvo@menlopark.org
 (650) 330-6729

Each proposal must be limited to a maximum of 30 pages for all materials and shall contain in the following order:

1. A letter of transmittal, addressed to the above. The letter should identify the submitting firm or consultant as well as the name, title, telephone, fax number and email address of the person authorized to contractually obligate the firm or consultant. The letter should be signed by an individual authorized to bind the firm.
2. An executive summary of the proposal, not to exceed 2 pages in length.
3. A summary of the qualifications of the firm or consultant including the firm or consultant's history, its capabilities and relevant experience. This section should demonstrate experience with similar projects and any qualifications such as professional licenses or certifications.
4. Related Project Experience. Provide at least five (5) recent rail projects related to the development of quiet zones. Provide all pertinent information including project description, key staff, client or agency contact person, phone number, email address, project duration and current project status.
5. A description of the project team along with resumes for each person. Please describe in appropriate detail the role each individual proposed will perform on this project. Project team members should be available for the duration of the project or alternates should be named in the proposal, along with their qualifications. Resumes are not included in the page limit.
6. A project work plan/approach that describes your understanding of the project, intended methodology, critical tasks, and assumptions. List any resources you expect the City of Menlo Park to provide that have not been previously described.
7. A detailed project schedule that clearly shows:
 - a. The overall project duration from notice to proceed to completion. See the Process Schedule below for the desired project duration
 - b. The overall duration for each task

c. The occurrence of milestones, meetings, a deliverable within each task

9. A detailed cost proposal that clearly shows:

- a. The overall cost of the project
- b. The hours for each individual, associate hourly rate, and cost for each person and task
- c. The cost for each meeting or presentation associated with each task
- d. A fixed price cost per meeting for optional additional meetings or presentations
- e. Estimated reimbursable expenses

10. A list of three references for which you have recently provided similar services. Include contact names, phone numbers and email addresses for each reference.

11. Disclosure – Please disclose whether your firm and/or any personnel or sub-consultants to be considered as part of this RFP have previously performed work for a Menlo Park property owner, developer or utility, including agencies such as Caltrain and the California High Speed Rail Authority, over the past 10 years. Please identify for whom such work was performed and the type and timeframe of the work performed. In addition, please disclose any work currently being performed for any jurisdiction or substantial property owner/developer within a five (5) mile radius of Menlo Park. (Not included in page count)

12. Litigations – List any and all litigations that your firm and/or sub-consultants are currently engaged in. (Not included in page count)

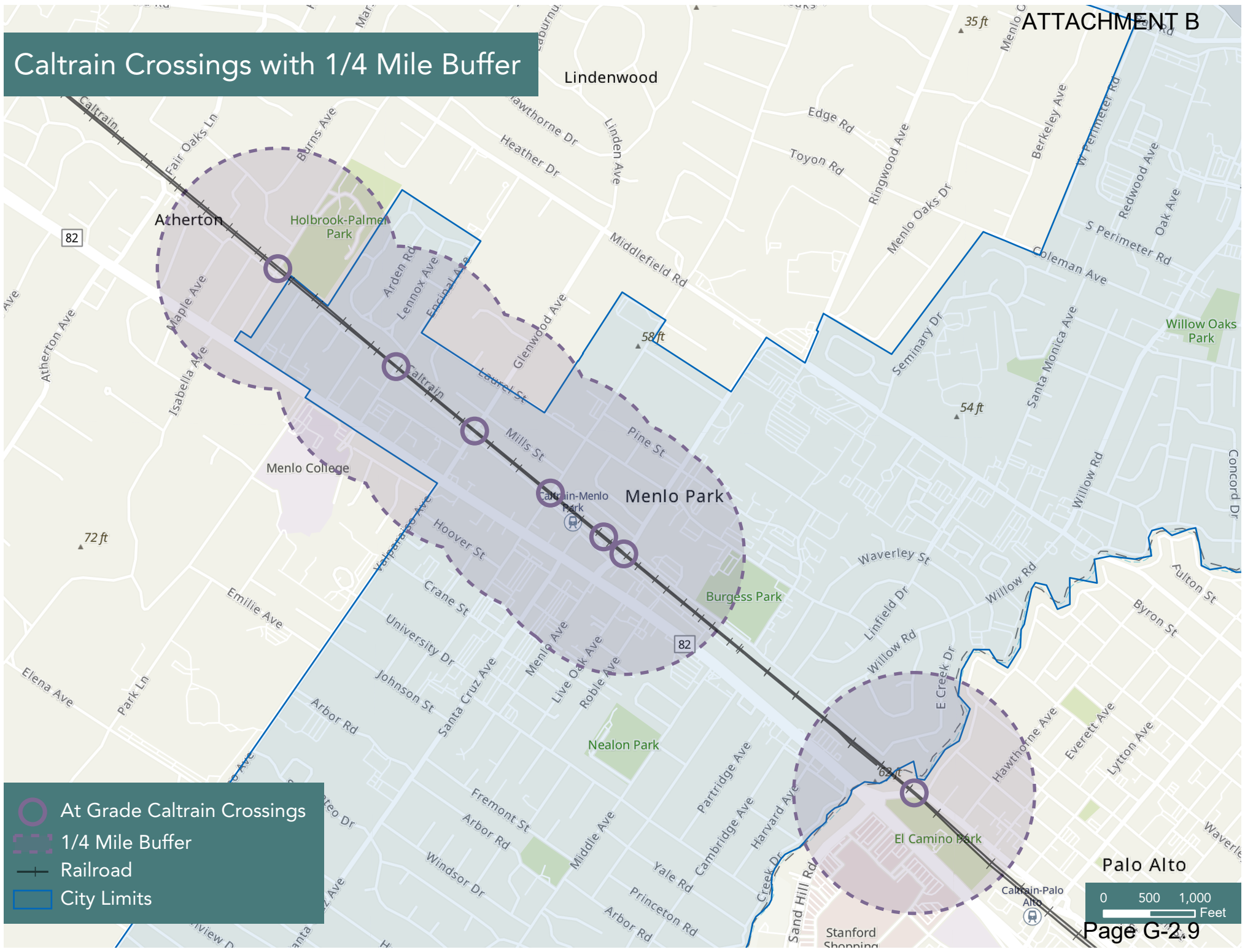
13. Any additional documentation or information that the firm or consultant deems necessary to assist Menlo Park in the selection process such as any exclusions or exceptions noting any parts of the proposal that is beyond the expertise of the consultant. This should also include any requested changes to the City's standard agreement provided below.





City staff will review the proposals and select the most qualified firm based on the following criteria:

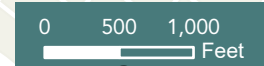
- Direct experience working on rail projects, calculating the QZRI, and developing railroad crossing improvements and cost estimates to support implementation of quiet zones
- Ability to perform the specific tasks
- Qualifications of the specific individuals who will work on the project
- Appropriateness of the proposed methods or techniques to be used in the study
- Reasonableness of the schedule to complete each task element
- Overall cost of the proposal

After reviewing each proposal, the City will notify each consultant in writing. The City reserves the right to complete the selection project without proceeding to an interview phase, and the City may choose to select a consultant based upon information supplied in the proposal.

Caltrain Crossings with 1/4 Mile Buffer



-  At Grade Caltrain Crossings
-  1/4 Mile Buffer
-  Railroad
-  City Limits





STAFF REPORT

City Council

Meeting Date: 1/25/2022

Staff Report Number: 22-015-CC

Informational Item: City Council agenda topics: January – February 22, 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 22, 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 – February 22, 2022

Report prepared by:
Judi A. Herren, City Clerk

Tentative City Council Agenda

#	Title	Department	Item type	City Council action
1	Belle Haven Branch Library joint use agreement renewal	LCS	Consent	Contract award or amend
2	Mid-year budget report and amendments	ASD	Regular	Approve
3	Receive the comprehensive annual financial report for the fiscal year ended June 30, 2021	ASD	Consent	Receive and file
4	City manager recruitment	CAO	Closed Session	
5	1350 Adams Court water supply assessment approval	CDD	Regular	Approve
6	Approve funding for 335 Pierce Rd	CDD	Regular	Approve
7	BMR guidelines preference amendments	CDD	Consent	Adopt resolution
8	Clarification on zoning changes from City Council	CDD	Regular	Direction to staff
9	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	CDD	Regular	Direction to staff
10	Update to Signage Regulations in Specific Plan (Springline)	CDD	Public Hearing	Approve
11	Willow Village Community Amenities Review	CDD	Study Session	Direction to staff
12	Willow Village water supply assessment approval	CDD	Regular	Approve
13	2021 priorities and work plan year-end report as of December 31	CMO	Consent	Receive and file
14	Adopt Community Amenity Implementing Regulations and Updated Amenities List	CMO	Regular	Adopt resolution
15	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
16	Direction on Aquatics operator agreement	LCS	Regular	Direction to staff
17	Parks and Recreation Commission work plan	LCS	Consent	No action
18	Approve no parking restrictions on a portion of El Camino Real	PW	Consent	Approve
19	Records destruction	VARIOUS	Consent	Adopt resolution



STAFF REPORT

City Council

Meeting Date:

1/25/2022

Staff Report Number:

22-016-CC

Informational Item:

Police department quarterly update – Q2 July – September 2021

Recommendation

The purpose of this informational item is to provide an update to the public and to the City Council as requested in City Council discussions in spring and summer 2021. No City Council action is required.

Policy Issues

In accordance with the City Council informational requests and interest in Menlo Park Police Department (MPPD) activities and use of equipment, this staff report transmits information to the public.

Analysis

In public discussions with City Council, the following information was requested for regular updates by the MPPD:

1. Results of required periodic auditing of the department's automated license plate reader (ALPR) technology. The department is required to conduct regular audits of the system to ensure it is being used appropriately.
2. Reports of interactions with animal control. Specifically, the City Council requested to be notified of any animal control hearings being held for dangerous animal in Menlo Park.
3. Use of force and Taser incidents. Committed to transparency, the MPPD will provide the number of documented use of force incidents and Taser deployments regularly. Every documented use of force incident (including Taser deployments) is investigated and reviewed by the supervisor and command staff by policy.
4. Complaints. Also in the spirit of transparency, the MPPD will provide the number of complaints received and reviewed regularly.

In addition, the following is being included in this report.

1. Community engagement. For a more holistic perspective, the MPPD will also be sharing a general overview of outreach activities completed by the department on a regular basis.

Quarterly update – July – September 2021

ALPR update

City Council authorized procurement of new ALPR equipment for patrol vehicles previously equipped with ALPR technology that had become outdated. The outdated equipment was inoperable during this quarterly period as we procured and arranged installation of the new equipment. No data for this quarter from MPPD's ALPRs.

Additionally, MPPD also audits inquiries to the overall ALPR databases made by members of MPPD staff. Each inquiry to the database requires an articulable investigative reason (case investigation.) MPPD made 27 inquiries this quarter, and 100 percent of inquiries were accompanied by a case number for accountability.

Animal control update

From July through September 2021, no dangerous/vicious animal investigations were conducted in Menlo Park, and no citations were issued by animal control in our jurisdiction.

Use of force update

From July through September 2021, MPPD was attached to 7143 incidents, including calls for police service and proactive patrol activity. One use of force meeting the threshold for further documentation was reported, and as with each such incident, evaluated and investigated in relation to law and policy. Each use of force report is presented for review to the chief and command staff, and any training issues are identified and addressed. This quarter's single use of force was evaluated, documented and presented to command, and was found to be within policy.

Complaints update

From July through September 2021, MPPD was attached to 7,143 incidents, including calls for police service and proactive patrol activity. One complaint was documented either from the community or self-initiated by this Department. Each complaint is always evaluated and/or investigated according to policy.

Community engagement update

MPPD officers encounter opportunities regularly to interact with the community in a positive way. During the quarter of July through September 2021, MPPD police officers documented 68 distinct incidents as "OUTREACH" in the computer dispatch system (CAD.) While this number is the floor, not the ceiling of the total positive interactions MPPD has with the public, these incidents were entirely community engagement and public service oriented.

The 68 incidents included officers engaging in conversations over coffee with community members, passing out stickers to children, interactive visits to children's lemonade stands, engagement at Farmers' Markets, participation in a soccer game with teens and young adults, and acceptance of a challenge by some teams to a footrace with officers, and others. This also included a number of block party visits and outreach on National Night Out.

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:
Dave Norris, Police Chief



STAFF REPORT

City Council
Meeting Date: 1/25/2022
Staff Report Number: 22-017-CC

Informational Item: Personnel activity report as of January 2022

Recommendation

This is an informational item and does not require City Council action.

Policy Issues

City Council authorizes the annual budget, including approved full-time equivalent (FTE) personnel budgets, and delegates personnel management to the city manager. The purpose of this report is to transmit the recruitment status of all authorized vacancies as of the reporting period.

Background

Personnel activity updates provide a report of activity as of specific dates in time. The report identifies the status of active and pending recruitments, new hires, and separations for regular appointed benefited employees.

Analysis

The fiscal year 2021/22 budget authorized 271.75 staff. As of January 2022, the city has 233.5 regular FTE filled positions.

Table 1: Personnel report – January 2022	
Personnel activity	January 2022
Under recruitment, as of month end	20
New hires, month of December/January	14
New vacancies, month of December/January	10
Recruitment pending prioritization, as of month end	18

Impact on City Resources

As an informational update, this data does not directly impact City resources. The information does illustrate the number of vacant positions and efforts to successfully fill the vacancies.

Environmental Review

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

Public Notice

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

Attachments

A. None

Report prepared by:

Theresa N. DellaSanta, Interim Administrative Services Director



CALTRAIN QUIET ZONE RFP

City Council – January 25, 2022



OUTLINE

- Objectives
- Quiet Zone Background and Requirements
- Draft Request for Proposals
- Questions and Discussion





TODAY'S OBJECTIVES



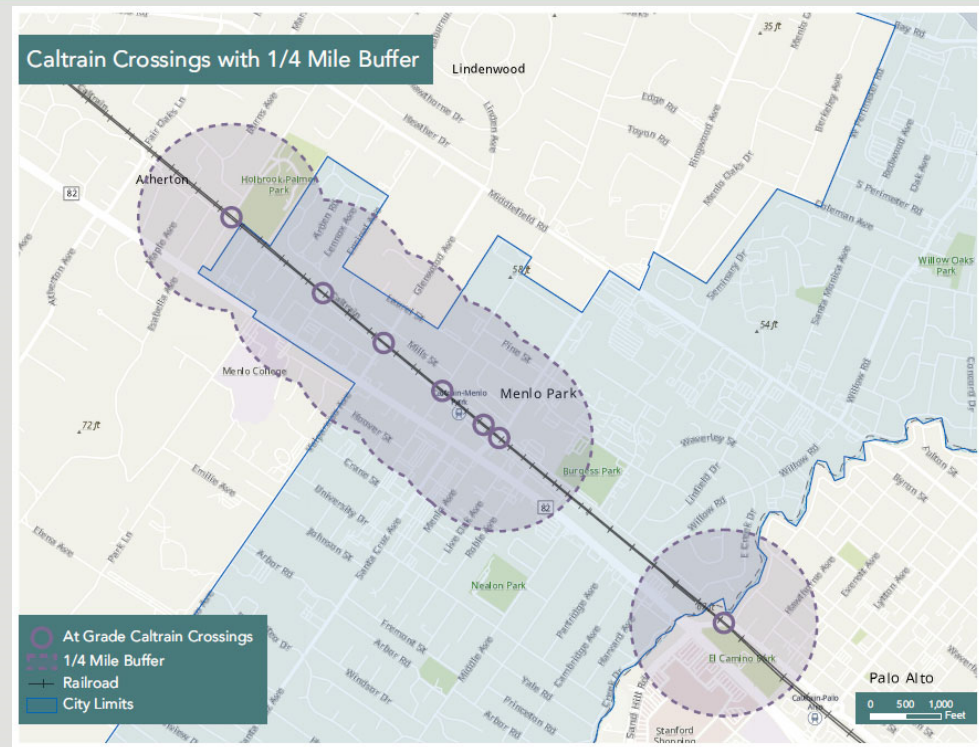
- Provide information to the City Council and the public on quiet zone requirements and opportunities
- Receive feedback from the City Council and the public on draft Request for Proposal



BACKGROUND



- Caltrain has four at-grade crossings – 0.2 miles apart
- No existing quiet zone
- Trains activate horns 4 times ¼ mile before each crossing (16 blasts per train over 0.6 miles)
- Received complaints from residents and business owners





FRA REQUIREMENTS



- Federal Rail Administration (FRA) minimum requirements for a quiet zone:
 - Each crossing must have gates, flashing lights, warning time devices
 - Can include one or multiple crossings
 - Must be at least 1/2 mile in total length
 - Must not have a non-quiet zone crossing within 1/4 mile of the first or last crossing in the zone
- Quiet zones can be implemented by installing specific safety improvements or by installing alternate improvements that reduce the risk at the crossing



QUIET ZONE SAFETY IMPROVEMENTS



- Crossing closure or grade separation
- Four quadrant gate system
- Gates with channelization devices
- Gates with medians
- Wayside horns





REQUEST FOR PROPOSAL DELIVERABLES



- Final Work Plan
 - Includes outreach plan
- Document Review, Data Collection, Field Survey
- Quiet Zone Analysis
 - Identify options for achieving a quiet zone
 - Calculate risk index
- Cost Estimate
- Draft and Final Report



FEED BACK FROM RESIDENTS OF MENLO PARK



The draft RFP includes feedback from the public:

- Renames the study to be an “Implementation Plan”
- Clarifies the scope to indicate that we are interesting in understanding the full range of options for implementing a quiet zone
- Mixed feedback on potentially including the Palo Alto Avenue crossing in the RFP – retained as an option



REQUEST OF CITY COUNCIL



- Provide feedback on the RFP and selection criteria



NEXT STEPS



- Incorporate feedback from the City Council and community
- Release RFP in February
- Select consultant and negotiate contract
- Return to Council for award in April



QUESTIONS & DISCUSSION