



CITY COUNCIL
Regular Meeting
Monday, September 18, 2023
Council Chambers & Hybrid
5:30 PM

Palo Alto City Council meetings will be held as “hybrid” meetings with the option to attend by teleconference or in person. To maximize public safety while still maintaining transparency and public access, members of the public can choose to participate from home or attend in person. Information on how the public may observe and participate in the meeting is located at the end of the agenda. Masks are strongly encouraged if attending in person. The meeting will be broadcast on Cable TV Channel 26, live on YouTube <https://www.youtube.com/c/cityofpaloalto>, and streamed to Midpen Media Center <https://midpenmedia.org>.

VIRTUAL PARTICIPATION **CLICK HERE TO JOIN** (<https://cityofpaloalto.zoom.us/j/362027238>)
Meeting ID: 362 027 238 Phone:1(669)900-6833

PUBLIC COMMENTS

Public comments will be accepted both in person and via Zoom for up to three minutes or an amount of time determined by the Chair. All requests to speak will be taken until 5 minutes after the staff’s presentation. Written public comments can be submitted in advance to city.council@CityofPaloAlto.org and will be provided to the Council and available for inspection on the City’s website. Please clearly indicate which agenda item you are referencing in your subject line.

PowerPoints, videos, or other media to be presented during public comment are accepted only by email to city.clerk@CityofPaloAlto.org at least 24 hours prior to the meeting. Once received, the Clerk will have them shared at public comment for the specified item. To uphold strong cybersecurity management practices, USB’s or other physical electronic storage devices are not accepted.

TIME ESTIMATES

Listed times are estimates only and are subject to change at any time, including while the meeting is in progress. The Council reserves the right to use more or less time on any item, to change the order of items and/or to continue items to another meeting. Particular items may be heard before or after the time estimated on the agenda. This may occur in order to best manage the time at a meeting or to adapt to the participation of the public.

CALL TO ORDER

This meeting will be called to order in honor of Hispanic Heritage Month, [California Native American Day](#), and [National Preparedness Month](#).

SPECIAL ORDERS OF THE DAY (5:30 - 5:40 PM)

1. Appointment of Candidates for the Architectural Review Board

AGENDA CHANGES, ADDITIONS AND DELETIONS

PUBLIC COMMENT (5:40 - 5:55 PM)

Members of the public may speak to any item NOT on the agenda. Council reserves the right to limit the duration of Oral Communications period to 30 minutes.

COUNCIL MEMBER QUESTIONS, COMMENTS, ANNOUNCEMENTS (5:55 - 6:00 PM)

Members of the public may not speak to the item(s).

CONSENT CALENDAR (6:00 - 6:05 PM)

Items will be voted in one motion unless removed from the calendar by three Council Members.

2. Approval of Minutes from September 5, 2023 Meeting
3. Approval of Amendment No. 1 to the Lease Agreement Between the City of Palo Alto and the County of Santa Clara (Contract No. 1557819) at 2000 Geng Road for Safe Parking to Extend the Term for Three Years; Prioritize Local Populations; and Clarify City's Landscaping Duties; CEQA Status – categorically exempt.
4. Approval of Construction Contract C24187742 with OBS Engineering Inc., in the Amount Not-to-Exceed \$383,400 for Cameron Park Improvements, Capital Improvement Project PG-14002; Authorization of Contract Contingency in an Amount Not-to-Exceed \$38,340 for Related, Additional but Unforeseen Work Which May Develop During the Project; and Approval of a Budget Amendment in the Capital Improvement Fund; CEQA status - Categorically exempt per regulation 15301 (existing facilities).
5. Approve the Appointment of Caio A. Arellano to the Position of Chief Assistant City Attorney; CEQA Status- not a project.

CITY MANAGER COMMENTS (6:05 - 6:20 PM)

BREAK (5-10 MINUTES)

ACTION ITEMS (Item 6: 6:20 - 7:20 PM, Item 7: 7:20 - 8:20 PM, Item 8: 8:20 - 9:20 PM)

Include: Report of Committees/Commissions, Ordinances and Resolutions, Public Hearings, Report of Officials, Unfinished Business and Council Matters.

6. PUBLIC HEARING: Adoption of Resolution to Establish a New Priority Development Area (PDA) in South Palo Alto and Support for the Nomination of one Parcel as a Priority Site. Environmental Assessment: Not a 'Project' and Exempt from California Environmental Quality Act (CEQA) Review.
7. LEGISLATIVE: Adopt an Ordinance Amending Planned Community 2343 zoning for 2901-2905 Middlefield Road and Adopt an Ordinance Establishing a new Planned Community Zoning Designation to Enable the Development of a new Single-Story, Single-Family Residence on 702 Ellsworth Place.
8. Public Hearing: Adoption of a Resolution Approving Capped-Price Winter Natural Gas Purchases for Winter 2023-24 and Amending the FY 2024 Gas Fund Budget to Fund These Purchases; Amending the Gas Utility Long-term Plan Objectives, Strategies and Implementation Plan; and Amending Rate Schedules G-1 (Residential Gas Service), G-2 (Residential Master-Metered and Commercial Gas Service), G-3 (Large Commercial Gas Service), and G-10 (Compressed Natural Gas Service); CEQA status: not a project under Public Resources Code 15378(b)(5) and exempt under Public Resources Code 15273(a)

ADJOURNMENT

INFORMATION REPORTS

Information reports are provided for informational purposes only to the Council and the public but are not listed for action during this meeting's agenda.

9. Informational Report on the Annual Review of the City's Renewable Procurement Plan, Renewable Portfolio Standard Compliance, and Carbon Neutral Electric Supplies for 2022
10. Avenidas Community Assessment Survey for Older Adults
11. Independent Police Auditor's (IPA) Report of Review of Investigations as of June 1, 2023 and Police Department Use of Force Report for January - June 2023

OTHER INFORMATION

OTHER INFORMATION

[Standing Committee Meetings this week](#)

Rail Committee September 19, 2023

Finance Committee September 19, 2023

City Schools Liaison Committee September 21, 2023

[Public Comment Letters](#)

[Schedule of Meetings](#)

PUBLIC COMMENT INSTRUCTIONS

Members of the Public may provide public comments to teleconference meetings via email, teleconference, or by phone.

1. **Written public comments** may be submitted by email to city.council@cityofpaloalto.org.
2. **For in person public comments** please complete a speaker request card located on the table at the entrance to the Council Chambers and deliver it to the Clerk prior to discussion of the item.
3. **Spoken public comments using a computer or smart phone** will be accepted through the teleconference meeting. To address the Council, click on the link below to access a Zoom-based meeting. Please read the following instructions carefully.
 - You may download the Zoom client or connect to the meeting in- browser. If using your browser, make sure you are using a current, up-to-date browser: Chrome 30 , Firefox 27 , Microsoft Edge 12 , Safari 7 . Certain functionality may be disabled in older browsers including Internet Explorer. Or download the Zoom application onto your smart phone from the Apple App Store or Google Play Store and enter in the Meeting ID below.
 - You may be asked to enter an email address and name. We request that you identify yourself by name as this will be visible online and will be used to notify you that it is your turn to speak.
 - When you wish to speak on an Agenda Item, click on “raise hand.” The Clerk will activate and unmute speakers in turn. Speakers will be notified shortly before they are called to speak.
 - When called, please limit your remarks to the time limit allotted. A timer will be shown on the computer to help keep track of your comments.
4. **Spoken public comments using a phone** use the telephone number listed below. When you wish to speak on an agenda item hit *9 on your phone so we know that you wish to speak. You will be asked to provide your first and last name before addressing the Council. You will be advised how long you have to speak. When called please limit your remarks to the agenda item and time limit allotted.

CLICK HERE TO JOIN Meeting ID: 362-027-238 Phone: 1-669-900-6833

Americans with Disability Act (ADA) It is the policy of the City of Palo Alto to offer its public programs, services and meetings in a manner that is readily accessible to all. Persons with disabilities who require materials in an appropriate alternative format or who require auxiliary aids to access City meetings, programs, or services may contact the City’s ADA Coordinator at (650) 329-2550 (voice) or by emailing ada@cityofpaloalto.org. Requests for assistance or accommodations must be submitted at least 24 hours in advance of the meeting, program, or service.



City Council Staff Report

Report Type: SPECIAL ORDERS OF THE DAY

Lead Department: City Clerk

Meeting Date: September 18, 2023

Report #:2308-1968

TITLE

Appointment of Candidates for the Architectural Review Board

RECOMMENDATION

Staff recommends City Council vote to appoint one candidate to the Architectural Review Board with a term expiring on March 31, 2024.

BACKGROUND

Boards and Commissions are established as advisory bodies to the City Council, made up of community volunteers that provide essential feedback on matters of importance to the community. The City Clerk's office advertises and recruits for vacancies, the Council considers the applications, interviews desired candidates, and makes appointments for the open positions.

Board Member Osma Thompson resigned from the Architectural Review Board effective September 1, 2023. As such, the current vacancy staff is requesting to be filled is:

- One (1) position on the Architectural Review Board, with term expiring March 31, 2024

A total of six applications were submitted during the recruitment period. Interviews were conducted at the September 5, 2023 City Council meeting. Video recordings of the interviews are available on our [City of Palo Alto YouTube Channel](#)¹.

Membership Requirements

Per [PAMC 2.21.010](#)², the Architectural Review Board (ARB) requires at least three of its five members to be architects, landscape architects, building designers or other design professionals. All four current Board Members are architects. As a result, the current ARB

¹ City of Palo Alto YouTube Channel: <https://www.youtube.com/@cityofpaloalto>

² Palo Alto Municipal Code 2.21.010: https://codelibrary.amlegal.com/codes/paloalto/latest/paloalto_ca/0-0-0-61294

Members fulfill these requirements.

Architectural Review Board: One position

Term ending March 31, 2024

- At least three members must be architects, landscape architects, building designers or other design professionals. *(Fulfilled by current members)*
- No Palo Alto residency requirement ([PAMC 2.21.010](#))
- Applicants
 1. Alex Lew
 2. John Kunz
 3. Mousam Adcock
 4. Naveen Govind
 5. Sam Zucker
 6. Stephen Sun

PUBLIC OUTREACH

Palo Alto Municipal Code 2.16.060 requires public notification regarding vacancies of the Commissions as follows, “The City Clerk shall exercise their discretion in choosing the method of advertisement that will most effectively reach potential candidates.” Based on the September 14, 2021 Policy & Services Committee meeting report³ regarding Board and Commission Member demographics and community representation the City Clerk’s office expanded recruitment efforts through additional means to “most effectively reach potential candidates.”

The Architectural Review Board special recruitment invited applications from June 30, 2023 through August 14, 2023. The vacancy was advertised through various methods in partnership with the City Manager’s Office, Communications Office. This included paid digital/print advertisements in the Daily Post, Palo Alto Weekly, and social media; City communications channels including the website, social media, Nextdoor, LinkedIn, and digital newsletter; in physical locations of the Palo Alto Libraries and Community Centers; and, distributed by e-mail to community-based organizations and community member networks.

APPROVED BY:

Mahealani Ah Yun, Interim City Clerk

³ Policy & Services Committee, September 14, 2021, Agenda Item #3;
<https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/item-presentations/2021/20210914/20210914pptpsr-item-3.pdf>



City Council Staff Report

Report Type: CONSENT CALENDAR

Lead Department: City Clerk

Meeting Date: September 18, 2023

Report #:2309-1985

TITLE

Approval of Minutes from September 5, 2023 Meeting

RECOMMENDATION

That the minutes be reviewed and approved.

ATTACHMENTS

Attachment A: September 5, 2023 Draft Action Minutes

APPROVED BY:

Mahealani Ah Yun



CITY COUNCIL DRAFT ACTION MINUTES

Item 2
Attachment A - Sept 5,
2023 Draft Action
Minutes

Special Meeting
September 5, 2023

The City Council of the City of Palo Alto met on this date in the Council Chambers and by virtual teleconference at 5:30 P.M.

Present In Person: Burt, Kou, Lauing, Lythcott-Haims, Stone, Tanaka

Present Remotely:

Absent: Veenker

Special Orders of the Day

1. Interviews for the Architectural Review Board.

Consent Calendar

Council Member Tanaka registered a no vote on Agenda Item Numbers 4, 5, and 6.

Council Member Lythcott-Haims registered a no vote on Agenda Item Number 4.

Item 3 Removed from the Agenda.

MOTION: Council Member Burt moved, seconded by Council Member Lauing to approve Agenda Item Numbers 2, 4-6.

MOTION PASSED ITEM 2: 6-0-1, Veenker Absent

MOTION PASSED ITEMS 4-6: 4-2-1, Tanaka no, Lythcott-Haims no, Veenker Absent

2. Approval of Minutes from August 14, 2023 Meeting
3. ~~Approval of Revocable Non-Exclusive License for use of a portion of the former Los Altos Treatment Plant (LTP) located at 1237 San Antonio Road by GreenWaste of Palo Alto (GreenWaste) through June 30, 2026~~ Item Removed From Agenda

DRAFT ACTION MINUTES

4. Approval of First Amendment to Tenant Work Letter for the Roth Building at 300 Homer Avenue between the City of Palo Alto and the Palo Alto History Museum; CEQA Status-- Not a Project.
5. Approval of Amended and Restated Purchase Order Number 4522000178 with Interstate Truck Center, to Increase the Purchase Order Amount by \$96,767 for a New Not-to-Exceed Amount of \$487,768, Which Includes a 5% Contingency in the Amount of \$23,227 for Unforeseen Price Increases, for the Purchase of a 2024 Peterbilt 537 with a Western Truck Fab Service Body; CEQA status – exempt under CEQA Guidelines, Section 15061.
6. Approval of a Donation of \$25,000 From the City Council Contingency Account to Support Maui Wildfire Relief and Recovery

Action Items

7. Quasi-Judicial/Legislative. 3200 Park Boulevard/340 Portage [22PLN-00287 and 22PLN-00288]: Adoption of a Resolution Certifying an EIR, Adopting Findings of Overriding Considerations, and Adopting a Mitigation Monitoring and Reporting Program; Approval of Applicant's Request for a Development Agreement, Comprehensive Plan Amendment, Rezoning to Planned Community Zones, and a Vesting Tentative Map with Exceptions to the Private Street Width to Allow Redevelopment of a 14.65-acre site at 200-404 Portage Avenue, 3040-3250 Park Boulevard, 3201-3225 Ash Street and 278 Lambert. Environmental Assessment: A Draft EIR for the 200 Portage Townhome Development Project was Circulated September 16, 2022 through November 15, 2022. A Revised Final EIR was Made Available for Public Review on June 2, 2023. The Proposed Development Agreement and Associated Actions is Evaluated as Alternative 3 in the Draft EIR. For More Information Contact the Project Planner, Claire Raybould at Claire.Raybould@Cityofpaloalto.org.

MOTION: Mayor Kou moved, seconded by Council Member Lythcott-Haims to direct staff to release the financial analysis to the public.

MOTION PASSED: 6-1, Veenker Absent

Adjournment: The meeting was adjourned at 10:01 P.M.

DRAFT ACTION MINUTES

ATTEST:

APPROVED:

City Clerk

Mayor

NOTE: Action minutes are prepared in accordance with Palo Alto Municipal Code (PAMC) 2.04.160(a) and (b). Summary minutes (sense) are prepared in accordance with PAMC Section 2.04.160(c). Beginning in January 2018, in accordance with [Ordinance No. 5423](#), the City Council found action minutes and the video/audio recordings of Council proceedings to be the official records of both Council and committee proceedings. These recordings are available on the City's website.



City Council Staff Report

From: City Manager

Report Type: CONSENT CALENDAR

Lead Department: Administrative Services

Meeting Date: September 18, 2023

Report #:2308-1886

TITLE

Approval of Amendment No. 1 to the Lease Agreement Between the City of Palo Alto and the County of Santa Clara (Contract No. 1557819) at 2000 Geng Road for Safe Parking to Extend the Term for Three Years; Prioritize Local Populations; and Clarify City's Landscaping Duties; CEQA Status – categorically exempt.

RECOMMENDATION

Staff recommends that the City Council approve and authorize the City Manager or their designee to execute Amendment No. 1 (Attachment A) to the Lease Agreement by and between the City of Palo Alto (City), as landlord, and the County of Santa Clara, as tenant, at 2000 Geng Road for Safe Parking for an additional three (3) year term.

EXECUTIVE SUMMARY

Approval of the amended Lease Agreement will allow the continued operation of a 24-hour safe parking program at 2000 Geng Road (Site). Safe parking provides places where people living in their vehicles can safely and legally park and connect with services and support. The programs provide a place for households to park temporarily, as well as connect to services and a path to stable, permanent housing. Under the Lease Agreement, the site has been leased to the County for 3 years, since September 2020. The County contracted with a local nonprofit organization, Move Mountain View, to operate the safe parking program at the site. The proposed amendment would extend the Lease Agreement for 3 years, add language to define safe parking program participant preferences at the site, and clarify landscape maintenance responsibilities.

BACKGROUND

On September 14, 2020, City Council approved an interim safe parking ordinance and 3-year lease with the County at 2000 Geng Road for safe parking.¹ The County, leasing property from the City, contracted with Move Mountain View to operate a safe parking program with 12 recreational vehicles (RVs) parking spaces, each space may fit one RV or two cars, at 2000 Geng Road. In addition to the City/County partnership at Geng Road for RVs, there are several congregation-based sites that host safe parking for passenger vehicles. City staff is currently working on drafting the safe parking ordinance and will be reporting back to Council with recommendations. Besides safe parking, the Geng Road site also provides a variety of services including a kitchen, laundry facilities, shower facilities, and a children's library, and served 25 households, comprising 84 individuals. Approximately 64 percent of households served were affiliated with Palo Alto. A household is considered affiliated with Palo Alto if they answered 'Palo Alto' to any of the following questions:

1. If employed, what city do you work in?
2. If you go to school, in which city is your school?
3. In which city do you spend most of your time?
4. Which city did you live in prior to becoming homeless?

For context, in 2022, 276 unhoused Palo Altans interacted with service providers, taking an assessment that helps providers understand individuals support needs.² Of these Palo Altans, 29 percent reported sleeping in a vehicle.

ANALYSIS

Approval of the amendment to the lease agreement extends the term of the agreement an additional three years, adds provisions to prioritize Palo Altans for program participation, and clarifies landscape maintenance responsibilities.

In mid-July, the County released city-specific data from the January 2023 point-in-time (PIT) count of people experiencing homelessness.³ The PIT count provides a snapshot of the number of people experiencing homelessness, as counted by volunteers, on a particular day. The City of

¹ City Council, September 14, 2020, Item #9: <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmr/yr-archive/2020-2/id-11513.pdf?t=58031.91>.

Lease Agreement was included as a Supplemental Memo, found here:

<https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmr/yr-archive/2020-2/09142020-item-9-at-places-memo.pdf>

² City Council, March 10, 2023, Item #14, Attachment A, Appendix:

<https://portal.laserfiche.com/Portal/DocView.aspx?id=65474&repo=r-704298fc&searchid=9f3f6fbe-2fe0-4c87-b91c-6715e49e2a20>

³ Santa Clara County Homeless Census and Survey Reports, <https://osh.sccgov.org/continuum-care/reports-and-publications/santa-clara-county-homeless-census-and-survey-reports>

Palo Alto count of people experiencing homelessness decreased 25 percent, from 274 in 2022 to 206 in 2023. The 206 people counted included 187 unsheltered, 181 of which were sleeping in vehicles. Of those vehicles, 68 percent were RVs. This indicates an ongoing need for safe parking sites in Palo Alto. Additionally, the Geng Road site could be considered critical given that it is the only safe parking in Palo Alto which can legally accommodate RVs.

To ensure that Palo Altans sleeping in their vehicles receive first consideration at safe parking in their home community, staff is proposing adding program participation language to the lease agreement. This same language will be considered by staff for inclusion in the permanent safe parking ordinance, currently being drafted by staff.

Finally, in the original lease, there is language referring to tenant’s responsibility for maintenance within the property boundary. The map accompanying the lease shows an aerial where the property boundary includes landscaping down to the sidewalk is unclear. Given the City’s commitment to a well-maintained community and its contribution towards ensuring all Palo Altans can be housed, staff recommends adding language clarifying the landscaping maintenance from along the sidewalks and edges of the property outside of the fence line will be maintained as part of the City’s regular citywide maintenance activities.

The substantively amended sections are listed in the table below.

Lease Section	Proposed Language
Term	The term of this Agreement shall commence upon the Effective Date and end on September 16, 2026 (“Term”). Notwithstanding anything to the contrary this Agreement, the Term shall expire no later than the date Government Code Section 8698.4 (or any statutory replacement thereof) is repealed. It is understood that this Agreement is intended to give County a temporary use of the Premises and that County shall not be entitled to relocation benefits, assistance, damages (liquidated or otherwise), costs, claims or fees from City upon expiration, termination, or cancellation of this Agreement.
Acceptance of Premises	Beginning October 1, 2023, the City shall, at its own expense and on a schedule determined by the City, maintain the landscaping extending from the right-of-way along Geng Road to the fence line and the adjoining contiguous line created by the exterior wall of the building on the Premises.
Exhibit C – Performance Standards	Target Population. The Safe Parking Program Operator shall give preference to households who reside in or have a connection to the City.

FISCAL/RESOURCE IMPACT

The Community Services Department anticipates allocating approximately \$8,000-\$9,000 annually from its City Facilities Operating Budget to cover the landscaping maintenance costs along the Geng Road side of the property; no additional funding is needed. This landscaping maintenance will be absorbed into a multiyear General Services Agreement with BrightView Landscape Services.

STAKEHOLDER ENGAGEMENT

Stakeholder engagement includes regular and as-needed meetings between partners (e.g., Santa Clara County and Move Mountain View).

ENVIRONMENTAL REVIEW

This activity is categorically exempt under CEQA regulations 15301 (existing facilities); 15303 (conversion of small structures); and 15304 (minor alterations).

ATTACHMENTS

Attachment A: Amendment No. 1 to Contract No. 1557819 Between the City of Palo Alto and the County of Santa Clara

APPROVED BY:

Kiely Nose, Assistant City Manager

**AMENDMENT NO. 1 TO CONTRACT NO. 1557819
BETWEEN THE CITY OF PALO ALTO AND
THE COUNTY OF SANTA CLARA**

This Amendment No. 1 (this "Amendment") to Contract No. 1557819 (the "Contract" as defined below) is entered into as of September 12, 2023 by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and the COUNTY OF SANTA CLARA, a political subdivision of the State of California ("COUNTY"). CITY and COUNTY are referred to collectively as the "Parties" in this Amendment.

RECITALS

A. The Contract (as defined below) was entered into by and between the Parties hereto for the provision of the use of a portion of 2000 Geng Road for the County's 24-hour safe parking program for recreational and other vehicles and persons residing in such vehicles on a temporary basis ("Safe Parking"), as detailed therein.

B. The Parties now wish to amend the Contract in order to extend the term of the lease, revise Exhibit C entitled "Performance Standards", and revise miscellaneous provisions.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the Parties agree:

SECTION 1. Definitions. The following definitions shall apply to this Amendment:

- a. **Contract.** The term "Contract" shall mean Contract No. 1557819 between COUNTY and CITY, dated September 17, 2020.
- b. **Other Terms.** Capitalized terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Contract.

SECTION 2. Section 2 of the Contract is hereby amended to read as follows:

2. Term. The term of this Agreement shall commence upon the Effective Date and end on September 16, 2026 ("Term"). Notwithstanding anything to the contrary this Agreement, the Term shall expire no later than the date Government Code Section 8698.4 (or any statutory replacement thereof) is repealed. It is understood that this Agreement is intended to give County a temporary use of the Premises and that County shall not be entitled to relocation benefits, assistance, damages (liquidated or otherwise), costs, claims or fees from City upon expiration, termination, or cancellation of this Agreement.

SECTION 3. Section 4 of the Contract is hereby amended to read as follows:

Item 3

Attachment A -
Amendment No. 1 to
Contract No. 1557819
Between the City of Palo
Alto and the County of
Santa Clara

4. Acceptance of Premises.

a. County expressly acknowledges and agrees that the Premises is being made available for County's use "as is" "where-is" "with all faults" and the City makes no warranties or representations whatsoever regarding the condition of the Premises or of its suitability for Safe Parking.

b. The City shall not have any obligation to make any alterations, repairs, maintenance or improvements to the Premises prior to the commencement of the Term or at any time thereafter.

c. County shall not alter the Premises without the prior written consent of the City. County shall obtain, maintain and pay for all permits and licenses that may be or are required for the use of the Premises. County acknowledges and agrees that construction or improvement work performed under this Agreement may be considered a public work within the meaning of California Labor Code Section 1720 and that the requirements of Section 1771, et. seq. apply to such public work. County is solely responsible and liable for ensuring compliance with all applicable prevailing wage laws. County shall not allow any mechanic's or other liens to be made against the property and shall indemnify and save harmless City against all costs, liabilities, suits, claims and demands, including legal fees and court costs, resulting from any such liens.

d. Prior to opening the Premises for Safe Parking, County shall, at its own expense, make the following improvements to the Premises:

- i. Ensure the Premises have two pedestrian exiting gates that allow persons to exit the Premises towards Geng Road. Notwithstanding anything to the contrary in this Agreement, the County shall not be required to remove or restore any new exiting improvements added to the Premises at the end of the Term. The plans for any new exiting gates shall be subject the reasonable approval of the City.
- ii. Install means of controlling access to the garage bays on the Premises. Such means of controlling access may be chain link fencing and gates or other means. County shall remove the means of access control at the end of this Lease unless City waives this in writing.
- iii. The County is permitted, though not required, to stripe the surface of the parking area to demarcate where vehicles may be permitted. The County shall submit to the City plans for the layout of the vehicles prior to operating the Safe Parking program. Such layout plan shall be reviewed by the City for compliance with the local and state Fire Code. Should County stripe the surface of the parking area, County shall remove the striping at the end of this Lease unless City waives this in writing.
- iv. County shall provide City with a copy of all keys, access codes, etc.

Vers.: Aug. 5, 2019

Item 3

Attachment A -
Amendment No. 1 to
Contract No. 1557819
Between the City of Palo
Alto and the County of
Santa Clara

for any locks or other means of access control. The City shall return these keys at the end of this term or when being returned to County.

Notwithstanding subsection c. above, the County may make the improvements set forth in subsection d. above without the prior consent of the City, except as may be specifically set forth in subsection d. above.

e. Beginning October 1, 2023, the City shall, at its own expense and on a schedule determined by the City, maintain the landscaping extending from the right-of-way along Geng Road to the fence line and the adjoining contiguous line created by the exterior wall of the building on the Premises.

f. County shall provide and pay for its own power and utilities, if necessary, to operate on the Premises.

g. County shall not open the Premises to Safe Parking clients until the City's ordinance permitting safe parking in its PF Districts becomes effective. Prior to this, the County may prepare the Premises for Safe Parking use, including making the improvements listed in Section d. above.

SECTION 4. The following exhibit(s) to the Contract is/are hereby amended or added, as indicated below, to read as set forth in the attachment(s) to this Amendment, which is/are hereby incorporated in full into this Amendment and into the Contract by this reference:

- a. Exhibit "C" entitled "Performance Standards", AMENDED, REPLACES PREVIOUS.

SECTION 5. Legal Effect. Except as modified by this Amendment, all other provisions of the Contract, including any exhibits thereto, shall remain in full force and effect.

SECTION 6. Incorporation of Recitals. The recitals set forth above are terms of this Amendment and are fully incorporated herein by this reference.

(SIGNATURE BLOCK FOLLOWS ON THE NEXT PAGE.)

Vers.: Aug. 5, 2019

Item 3

Attachment A -
Amendment No. 1 to
Contract No. 1557819
Between the City of Palo
Alto and the County of
Santa Clara

SIGNATURES OF THE PARTIES

IN WITNESS WHEREOF, the Parties have by their duly authorized representatives executed this Amendment effective as of the date first above written.

CITY OF PALO ALTO

City Manager

APPROVED AS TO FORM:

City Attorney or designee

COUNTY OF SANTA CLARA

DocuSigned by:



BE6829EDA68F4E9...

Name: Jeff Draper

Title: Director, Facilities and Fleet
Department

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:



F889A27CD9EB463...

Name: Karen M. Willis

Title: Deputy County Counsel

Attachments:

Exhibit C – Performance Standards

Vers.: Aug. 5, 2019

Item 3

Attachment A -
Amendment No. 1 to
Contract No. 1557819
Between the City of Palo
Alto and the County of
Santa Clara

EXHIBIT C
PERFORMANCE STANDARDS

County and its safe parking operator(s) shall adhere to these performance standards under this Agreement:

- (1) **Target Population.** The Safe Parking Program Operator shall give preference to households who reside in or have a connection to the City.
- (2) **Noise.** Audio, video, generator, or other amplified sound that is audible outside the vehicles parked in the Safe Parking program is prohibited.
- (3) **Shelter in vehicles.** All persons receiving Safe Parking shall shelter within their vehicles overnight. No person shall be housed in tents, lean-tos, pop-outs, or other temporary facilities outside of vehicles.
- (4) **Required facilities.** Accessible restroom facilities, including a toilet and handwashing sink, shall be available to persons utilizing the site for Safe Parking at all times during the hours of operation. These facilities may be the existing onsite facilities or mobile facilities brought onsite on a temporary basis to serve persons utilizing Safe Parking.
- (5) **Contact information.** The following emergency contact information shall be posted on site in a place readily visible to persons utilizing Safe Parking: (i) a contact phone number for the Safe Parking Program Operator; (ii) the police non-emergency phone number; and (iii) 911. The Safe Parking Program Operator shall be available at all hours of operation at the posted phone number and shall be the first contact for non-emergency matters.
- (6) **Connection to Homeless Management Information System.** The Safe Parking use shall be managed and operated by a Safe Parking Program Operator that participates in the Santa Clara County Homeless Management Information System.
- (7) **Safe, clean, orderly premises.** The Safe Parking Area and other onsite areas accessed by persons utilizing Safe Parking shall be maintained in a safe, clean and orderly condition and manner.
- (8) **No leakage of contaminants.** Black/grey water from vehicles shall be properly disposed offsite in accordance with all relevant laws and regulations. Vehicles that leak domestic sewage (including black/gray water) or other waste fluids or solids, or other fluids (including, but not limited to, gasoline, transmission or radiator fluid or engine oil), excluding potable water, are prohibited.
- (9) **Compliance with laws.** The Safe Parking use shall be operated in a manner that is fully in conformance with all State and local laws.

Vers.: Aug. 5, 2019



City Council Staff Report

From: City Manager

Report Type: CONSENT CALENDAR

Lead Department: Community Services

Meeting Date: September 18, 2023

Report #:2308-1921

TITLE

Approval of Construction Contract C24187742 with OBS Engineering Inc., in the Amount Not-to-Exceed \$383,400 for Cameron Park Improvements, Capital Improvement Project PG-14002; Authorization of Contract Contingency in an Amount Not-to-Exceed \$38,340 for Related, Additional but Unforeseen Work Which May Develop During the Project; and Approval of a Budget Amendment in the Capital Improvement Fund; CEQA status - Categorically exempt per regulation 15301 (existing facilities).

RECOMMENDATION

Staff recommends that Council:

1. Approve and authorize the City Manager or their designee to execute construction contract C24187742 with OBS Engineering Inc. in the amount not-to-exceed \$421,740 (includes \$38,340 contingency), for Cameron Park playground replacement and installation of site amenities;
2. Authorize the City Manager or their designee to negotiate and execute one or more change orders to the contract with OBS Engineering Inc. for related, additional but unforeseen work which may develop during the contract period, the total value of which shall not exceed \$38,340; and
3. Amend the Fiscal Year 2024 Budget Appropriation for the Capital Improvement Fund (requires 2/3 approval) by:
 - a. Increasing the Cameron Park Improvements capital project (PG-14002) by \$75,929; and
 - b. Decreasing the Infrastructure Reserve by \$75,929.

BACKGROUND

In 1996, the Cameron Park playground was installed and has now exceeded its useful life. The playground is a wooden structure and frame that has been repaired over the past several years to extend its use. With the play structure now in need of a full replacement, staff solicited for

construction bids to replace the playground and site furnishings. The City Council adopted a park improvement ordinance for this project in February 2021.¹

ANALYSIS

Staff recommends approval of Contract No. C24187742 to remove and replace the play structure, replace the sand surfacing with rubber surfacing, add new site furnishings, and install a concrete walkway. The work is to be completed during fall 2023.

Bid Process

This project has been out for bid solicitations on four occasions. The first solicitation, IFB 178594, was issued in March 2020. However, this solicitation was canceled due to the onset of the COVID-19 pandemic and a County Health Order prohibiting most construction activities.

A second solicitation, IFB 181798, was issued on July 2, 2021 and received nine bids; all of which were higher than the project budget. A third solicitation, IFB 181798, was issued on May 12, 2022 and received five bids; all of which were also higher than the project budget. The City did not issue an intent to award during either of these solicitations due to a nonconformance administrative error in the bid process or lack of a responsible proposer.

A fourth solicitation, IFB 187742 was issued on March 30, 2023 and received one bid from OBS Engineering Inc. Despite being publicized on the City's PlanetBids portal and sent to 21 contractors and two Builder's Exchanges, the solicitation did not result in multiple bids. The responsive proposal was also above projected budgeted funds, consistent with the prior two solicitations in 2021 and 2022.

Table 1: Summary of Invitation for Bids

Bid Name / Number	Cameron Park Improvements / IFB 187742
Proposed Length of Project	90 Days
Number of Bid Notices Emailed to Contractors and Builder's Exchanges	23 Notices
Total Days to Respond to Bid	48 Days
Pre-Bid Meeting	Yes; Non-Mandatory
Number of Bids Received	1 Bid
Bid Price Range	\$383,400

Staff recommends proceeding as this project has been solicited for bids on four occasions. Staff

¹ City Council, February 8, 2021; Agenda Item #7; SR #11890, <https://www.cityofpaloalto.org/files/assets/public/v/1/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2021/id-11890-%5b80087%5d.pdf>

has reviewed the bid submitted by OBS Engineering Inc. and recommends that the base bid of \$383,400 be accepted and that OBS Engineering Inc. be declared the lowest responsible bidder. The change order amount of \$38,340 (which equals 10 percent of the base bid) is requested for related, additional, but unforeseen work which may develop during the contract term. The contract total amount not to exceed is \$421,740.

FISCAL/RESOURCE IMPACT

A portion of the funding for the Cameron Park Improvements project (\$345,811) is recommended to come from funds appropriated as part of the Fiscal Year 2024 Adopted Capital Budget in the Cameron Park Improvements capital project (PG-14002). An additional \$75,929 is recommended to be appropriated to PG-14002 through a Budget Amendment from the Capital Improvement Fund's Infrastructure Reserve to fully fund the total not to exceed contract of \$421,740. The Infrastructure Reserve was adopted with \$3.6 million in FY 2024.

STAKEHOLDER ENGAGEMENT

The Cameron Park Improvements repair project was coordinated between Community Services and Public Works Engineering staff for the design with input from a community survey and two virtual community outreach meetings on May 6 and July 2, 2020. The project was also reviewed with the Parks and Recreation Commission on June 30² and September 22³, 2020. Lastly, Community Services staff also coordinated with the Purchasing Division on bid review and re-bids.

ENVIRONMENTAL REVIEW

This project is categorically exempt from the California Environmental Quality Act (CEQA) under Section 15301 (existing facilities) of the CEQA regulations as maintenance to an existing facility.

ATTACHMENTS

Attachment A: Contract C24187742 with OBS Engineering Inc.

APPROVED BY: Kristen O'Kane, Community Services Director

² Parks and Recreation Commission, June 30, 2020; Agenda Item #4;
<https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/parks-and-recreation-commission/agendas-minutes/2020-agenda-and-minutes/cameron-park-staff-report-063020-final.pdf>

³ Parks and Recreation Commission, September 22, 2020; Agenda Item #2;
<https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/parks-and-recreation-commission/agendas-minutes/2020-agenda-and-minutes/september-22-2020-parks-and-recreation-commission-agenda-item-2-cameron-park-staff-report-with-pio.pdf>



CITY OF
**PALO
ALTO**

CONSTRUCTION CONTRACT

Contract No. C24187742

City of Palo Alto

Cameron Park Improvements Project

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CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT entered into on August 21, 2023 ("Execution Date") by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("City"), and OBS Engineering Inc., ("Contractor"), is made with reference to the following:

RECITALS:

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.

B. Contractor is a Corporation duly organized and in good standing in the State of California, Contractor's License Number 1006244 and Department of Industrial Relations Registration Number 1000056697. 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 Construction Contract.

C. On March 30, 2023 City issued an Invitation for Bids (IFB) to contractors for the Cameron Park Improvements ("Project"). In response to the IFB, Contractor submitted a Bid.

D. City and Contractor desire to enter into this Construction Contract for the Project, and other services as identified in the Contract Documents for the Project upon the following terms and conditions.

NOW THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed by and between the undersigned parties as follows:

SECTION 1 INCORPORATION OF RECITALS AND DEFINITIONS.

1.1 Recitals.

All of the recitals are substantive parts of this Construction Contract and are hereby incorporated herein by reference.

1.2 Definitions.

Capitalized terms shall have the meanings set forth in this Construction Contract (sometimes referred to herein as the "Contract") and/or in the General Conditions. If there is a conflict between the definitions in this Construction Contract and in the General Conditions, the definitions in this Construction Contract shall prevail.

SECTION 2 THE PROJECT.

The Project is the Cameron Park Improvement Project, located at 2101 Wellesley Street, Palo Alto, CA 94306 ("Project").

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SECTION 3 THE 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 Purchasing Division and are hereby incorporated into this Construction Contract by reference.

- 1) Change Orders
- 2) Field Orders
- 3) Construction Contract
- 4) Bidding Addenda
- 5) Special Provisions
- 6) General Conditions
- 7) Project Plans and Drawings
- 8) Technical Specifications
- 9) Instructions to Bidders
- 10) Invitation for Bids
- 11) Contractor's Bid/Non-Collusion Declaration
- 12) Reports listed in the Contract Documents
- 13) Public Works Department’s Standard Drawings and Specifications (most current version at time of Bid)
- 14) Utilities Department’s Water, Gas, Wastewater, Electric Utilities Standards (most current version at time of Bid)
- 15) City of Palo Alto Traffic Control Requirements
- 16) City of Palo Alto Truck Route Map and Regulations
- 17) Notice Inviting Pre-Qualification Statements, Pre-Qualification Statement, and Pre-Qualification Checklist (if applicable)
- 18) Performance and Payment 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.

SECTION 4 CONTRACTOR’S DUTY.

4.1 Contractor’s Duties

Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents, all of which are fully incorporated herein. Contractor shall provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including, but not limited to, provision of all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor also agrees to use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

SECTION 5 PROJECT TEAM.

5.1 Contractor's Co-operation.

In addition to Contractor, City has retained, or may retain, consultants and contractors to provide professional and technical consultation for the design and construction of the Project. The Contract requires that Contractor operate efficiently, effectively and cooperatively with City as well as all other members of the Project Team and other contractors retained by City to construct other portions of the Project.

SECTION 6 TIME OF COMPLETION.

6.1 Time Is of Essence.

Time is of the essence with respect to all time limits set forth in the Contract Documents.

6.2 Commencement of Work.

Contractor shall commence the Work on the date specified in City's Notice to Proceed.

6.3 Contract Time.

Work hereunder shall begin on the date specified on the City's Notice to Proceed and shall be completed

- ☐ not later than .
- ☒ within Ninety calendar days (90) after the commencement date specified in City's Notice to Proceed.
- ☐ within working days () after the commencement date specified in City's Notice to Proceed.

By executing this Construction Contract, Contractor expressly waives any claim for delayed early completion.

6.4 Liquidated Damages.

Pursuant to Public Contract Code Section 7203, if Contractor fails to achieve Final Completion of the entire Work within the Contract Time, including any approved extensions thereto, City may assess liquidated damages on a daily basis for each day of Unexcused Delay in achieving Final Completion, based on the amount of Five Hundred dollars (\$500) per day, or as otherwise specified in the Special Provisions. Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents, regardless of impact on the time for achieving Final Completion. The assessment of liquidated damages is not a penalty but considered to be a reasonable estimate of the amount of damages City will suffer by delay in completion of the Work. The City is entitled to setoff the amount of liquidated damages assessed against any payments otherwise due to Contractor, including, but not limited to, setoff against release of retention. If the total amount of liquidated damages assessed exceeds the amount of unreleased retention, City is entitled to recover the balance from Contractor or its sureties. Occupancy or use of the Project in whole or in part prior to Final Completion, shall not operate as a waiver of City's right to assess liquidated damages.

6.4.1 Other Remedies. 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 Final Completion of the entire Work within the Contract Time.

6.5 Adjustments to Contract Time.

The Contract Time may only be adjusted for time extensions approved by City and memorialized in a Change Order approved in accordance with the requirements of the Contract Documents.

SECTION 7 COMPENSATION TO CONTRACTOR.

7.1 Contract Sum.

Contractor shall be compensated for satisfactory completion of the Work in compliance with the Contract Documents the Contract Sum of Three Hundred Eighty-Three Thousand Four Hundred Dollars (\$383,400.00).

☐ [This amount includes the Base Bid and Additive or Deductive Alternates _____.]

7.2 Supplemental Unit Pricing.

With respect to the "Supplemental Unit Price" ("SUP") bid items, as described in Section ____ of Specification Section ____ (_____) and referenced as SUP Bid Items ____ (inclusive) on the Bid Form, the Contract is hereby awarded solely for the Base Scope, and the Alternates identified in Section 7.1, above, if any, and without including SUP Bid Items _____. Whether or not the Work encompassed in SUP Bid Items ____ will be needed for the Project is unknown as of the Execution Date of this Contract. However, with respect to SUP Bid Items ____, Contractor agrees to be bound by the unit pricing provided in Contractor's Bid if the scope of Work encompassed in one or more of SUP Bid Items ____ is required, as determined by the City, acting in its sole discretion, during the course of Work on the Project and as memorialized in a Field Order or Change Order.

7.2.1 Adjustment for Actual vs. Estimated Quantities.

If the City determines that Work encompassed in one or more of SUP Bid Items ____ is required for the Project, the City may also determine the quantity required for each such SUP Bid Item, subject to the Project needs and applicable circumstance. The estimated quantities for SUP Bid Items ____ are subject to adjustment for payments due to the Contractor based on actual quantities required for the Project pursuant to Section 7.2.9 of the General Conditions. Nothing in this Contract is intended to entitle Contractor to inclusion of SUP Bid Items ____ in the Contract Sum, except as authorized by the City pursuant to this Section 7 of the Contract.

7.2.2 Adjustment for Corresponding Base Scope.

☐ SUP Bid Items ____ inclusive include alternate methodology which may be needed, as determined by the City, to replace a corresponding quantity of Work within the Base Scope, as follows:

.1 SUP Bid Items _____. If and to the extent the City directs Work pursuant to SUP Bid Item ___, there will be a corresponding reduction of the estimated scope under corresponding SUP Bid Item ____.

.2 SUP Bid Items _____. If and to the extent the City directs Work pursuant to SUP Bid Item ___, there will be a corresponding reduction of the estimated scope under corresponding SUP Bid Item ____.

7.2.3 Schedule of Values.

Contractor will include the unit prices provided in its bid for SUP Bid Items ____ in the Schedule of Values submitted pursuant to Section 9.1 of the General Conditions.

7.3 Full Compensation.

The Contract Sum shall be full compensation to Contractor for all Work provided by Contractor and, except as otherwise expressly permitted by the terms of the Contract Documents, shall cover all Losses arising out of the nature of the Work or from the acts of the elements or any unforeseen difficulties or obstructions which may arise or be encountered in performance of the Work until its Acceptance by City, all risks connected with the Work, and any and all expenses incurred due to suspension or discontinuance of the Work, except as expressly provided herein. The Contract Sum may only be adjusted for Change Orders approved in accordance with the requirements of the Contract Documents.

SECTION 8 STANDARD OF CARE.

8.1 Standard of Care.

Contractor agrees that the Work shall be performed by qualified, experienced and well-supervised personnel. All services performed in connection with this Construction 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.

SECTION 9 INDEMNIFICATION.

9.1 Hold Harmless.

To the fullest extent allowed by law, Contractor will defend, indemnify, and hold harmless City, its City Council, boards and commissions, officers, agents, employees, representatives and volunteers (hereinafter individually referred to as an "Indemnitee" and collectively referred to as "Indemnites"), through legal counsel acceptable to City, from and against any and liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. Contractor shall pay City for any costs City incurs to enforce this provision. Except as provided in Section 9.2 below, nothing in the Contract Documents shall be construed to give rise to any implied right of indemnity in favor of Contractor against City or any other Indemnitee.

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

9.2 Survival.

The provisions of Section 9 shall survive the termination or expiration of this Construction Contract.

SECTION 10 NON-DISCRIMINATION.

10.1 Municipal Code Requirement.

As set forth in Palo Alto Municipal Code section 2.30.510, Contractor certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person due to the race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person. Contractor acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to

Nondiscrimination Requirements, and the penalties for violation thereof, and will comply with the provisions of Section 2.30.510 pertaining to nondiscrimination in employment.

SECTION 11 INSURANCE AND BONDS.

11.1 Evidence of coverage.

Within ten (10) business days following issuance of the Notice of Award, Contractor shall provide City with evidence that it has obtained insurance and shall submit Performance and Payment Bonds satisfying all requirements in Article 11 of the General Conditions.

SECTION 12 PROHIBITION AGAINST TRANSFERS.

12.1 Assignment.

City is entering into this Construction Contract in reliance upon the stated experience and qualifications of the Contractor and its Subcontractors set forth in Contractor's Bid. Accordingly, Contractor shall not assign, hypothecate or transfer this Construction Contract or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of City. Any assignment, hypothecation or transfer without said consent shall be null and void, and shall be deemed a substantial breach of contract and grounds for default in addition to any other legal or equitable remedy available to the City.

12.2 Assignment by Law.

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 the Contractor is a partnership or joint venture or syndicate or co-tenancy 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.

SECTION 13 NOTICES.

13.1 Method of Notice.

All notices, demands, requests or approvals to be given under this Construction Contract shall be given in writing and shall be deemed received on the earlier of the following:

- (i) On the date delivered if delivered personally;
- (ii) On the third business day after the deposit thereof in the United States mail, postage prepaid, and addressed as hereinafter provided;
- (iii) On the date sent if sent by facsimile transmission;
- (iv) On the date sent if delivered by electronic mail; or
- (v) On the date it is received by the recipient if sent by certified mail.

13.2 Notice to Recipients.

All notices, demands or requests (including, without limitation, Change Order Requests and Claims) from Contractor to City shall include the Project name and the number of this Construction Contract and shall be addressed to City at:

To City: City of Palo Alto
City Clerk
250 Hamilton Avenue
P.O. Box 10250
Palo Alto, CA 94303

Copy to: ☒ City of Palo Alto

Public Works Administration
250 Hamilton Avenue
Palo Alto, CA 94301
Attn: Jeanette Serna

☐ [Include Construction Manager, If Applicable.]

☐ City of Palo Alto
Utilities Engineering
250 Hamilton Avenue
Palo Alto, CA 94301
Attn:

In addition, copies of all Claims by Contractor under this Construction Contract shall be provided to the following:

Palo Alto City Attorney's Office
250 Hamilton Avenue
P.O. Box 10250
Palo Alto, California 94303

All Claims shall be sent by registered mail or certified mail with return receipt requested.

All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at:

To Contractor:

OBS Engineering, Inc.
1555 Yosemite Ave., Suite 2
San Francisco, CA 94124
Attn: Drew Thompson

13.3 Change of Address.

In advance of any change of address, Contractor shall notify City of the change of address in writing. Each party may, by written notice only, add, delete or replace any individuals to whom and addresses to which notice shall be provided.

SECTION 14 DEFAULT.

14.1 Notice of Default.

In the event that 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, City may give written notice of default to Contractor in the manner specified for the giving of notices in the Construction Contract, with a copy to Contractor's performance bond surety.

14.2 Opportunity to Cure Default.

Except for emergencies, Contractor shall cure any default in performance of its obligations under the Contract Documents within two (2) Days (or such shorter time as City may reasonably require) 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 (or such shorter time as City may reasonably require) 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.

SECTION 15 CITY'S RIGHTS AND REMEDIES.

15.1 Remedies Upon Default.

If Contractor fails to cure any default of this Construction Contract within the time period set forth above in Section 14, then City may pursue any remedies available under law or equity, including, without limitation, the following:

15.1.1 Delete Certain Services. City may, without terminating the Construction Contract, delete certain portions of the Work, reserving to itself all rights to Losses related thereto.

15.1.2 Perform and Withhold. City may, without terminating the Construction Contract, engage others to perform the Work or portion of the Work that has not been adequately performed by Contractor and withhold the cost thereof to City from future payments to Contractor, reserving to itself all rights to Losses related thereto.

15.1.3 Suspend the Construction Contract. City may, without terminating the Construction 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.

15.1.4 Terminate the Construction Contract for Default. City shall have the right to terminate this Construction Contract, in whole or in part, upon the failure of Contractor to promptly cure any default as required by Section 14. City's election to terminate the Construction 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 Construction Contract. Any notice of termination given to Contractor by City shall be effective immediately, unless otherwise provided therein.

15.1.5 Invoke the Performance Bond. City may, with or without terminating the Construction Contract and reserving to itself all rights to Losses related thereto, exercise its rights under the Performance Bond.

15.1.6 Additional Provisions. All of City's rights and remedies under this Construction 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 waive the City's authority to designate other breaches as material nor limit City's right to terminate the Construction Contract, or prevent the City from terminating the Agreement for breaches that are not material. City's determination of whether there has been noncompliance with the Construction Contract so as to warrant exercise by City of its rights and remedies for default under the Construction 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.

15.2 Delays by Sureties.

Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven (7) calendar days from the date of the notice of termination, Contractor's surety shall be deemed to have waived its right to complete the Work under the Contract, and

City may immediately make arrangements for the completion of the Work through use of hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety shall be jointly and severally liable for any additional cost incurred by City to complete the Work following termination. In addition, City shall have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.

15.3 Damages to City.

15.3.1 For Contractor's Default. City will be entitled to recovery of all Losses under law or equity in the event of Contractor's default under the Contract Documents.

15.3.2 Compensation for Losses. In the event that City's Losses arise from Contractor's default under the Contract Documents, City shall be entitled to deduct the cost of such Losses from monies otherwise payable to Contractor. If the Losses incurred by City exceed the amount payable, Contractor shall be liable to City for the difference and shall promptly remit same to City.

15.4 Suspension by City

15.4.1 Suspension for Convenience. City may, at any time and from time to time, without cause, order Contractor, in writing, 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. The order shall be specifically identified as a Suspension Order by City. Upon receipt of a Suspension Order, Contractor shall, at City's expense, comply with the order and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order. During the Suspension or extension of the Suspension, if any, City shall either cancel the Suspension Order or, by Change Order, delete the Work covered by the Suspension 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. A Suspension Order shall not be the exclusive method for City to stop the Work.

15.4.2 Suspension for Cause. In addition to all other remedies available to City, if Contractor fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Work, or any portion thereof, suspended until the cause for the suspension has been eliminated to City's satisfaction. Contractor shall not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents. City's right to suspend the Work shall not give rise to a duty to suspend the Work, and City's failure to suspend the Work shall not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

15.5 Termination Without Cause.

City may, at its sole discretion and without cause, terminate this Construction Contract in part or in whole upon written notice to Contractor. Upon receipt of such notice, Contractor shall, at City's expense, comply with the notice and take all reasonable steps to minimize costs to close out and demobilize. The compensation allowed under this Paragraph 15.5 shall be the Contractor's sole and exclusive compensation for such termination and Contractor 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 resulting from termination without cause. Termination pursuant to this provision does not relieve Contractor or its sureties from any of their obligations for Losses arising from or related to the Work performed by Contractor.

15.5.1 Compensation. Following such termination and within forty-five (45) days after termination, City shall pay the following to Contractor as Contractor's sole compensation for performance of the Work:

- .1 For Work Performed.** 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 For Close-out Costs.** Reasonable costs of Contractor and its Subcontractors:
 - (i) Demobilizing and
 - (ii) 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.
- .3 For Fabricated Items.** Previously unpaid cost of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work.
- .4 Profit Allowance.** An allowance for profit calculated as four percent (4%) of the sum of the above items, provided Contractor can prove a likelihood that it would have made a profit if the Construction Contract had not been terminated.

15.5.2 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 Construction Contract and that afford no greater rights of recovery against Contractor than are afforded to Contractor against City under this Section.

15.6 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:

- (i) Immediately discontinue the Work to the extent specified in the notice;
- (ii) 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 that is not discontinued;
- (iii) 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;
- (iv) 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
- (v) Thereafter 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.

Upon termination, whether for cause or for convenience, the provisions of the Contract Documents remain in effect as to any Claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

SECTION 16 **CONTRACTOR'S RIGHTS AND REMEDIES.**

16.1 Contractor's Remedies.

Contractor may terminate this Construction Contract only upon the occurrence of one of the following:

16.1.1 For Work Stoppage. 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. This provision shall not apply to any work stoppage resulting from the City's issuance of a suspension notice issued either for cause or for convenience.

16.1.2 For City's Non-Payment. If City does not pay Contractor undisputed sums within ninety (90) Days after receipt of notice from Contractor, Contractor may terminate the Construction Contract (30) days following a second notice to City of Contractor's intention to terminate the Construction Contract.

16.2 Damages to Contractor.

In the event of termination for cause by Contractor, City shall pay Contractor the sums provided for in Paragraph 15.5.1 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.

SECTION 17 **ACCOUNTING RECORDS.**

17.1 Financial Management and City Access.

Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Construction Contract in accordance with generally accepted accounting principles and practices. City and City's accountants during normal business hours, may 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. Contractor shall retain these documents for a period of three (3) years after the later of (i) Final Payment or (ii) final resolution of all Contract Disputes and other disputes, or (iii) for such longer period as may be required by law.

17.2 Compliance with City Requests.

Contractor's compliance with any request by City pursuant to this Section 17 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. City may enforce Contractor's obligation to provide access to City of its business and other records referred to in Section 17.1 for inspection or copying 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.

SECTION 18 INDEPENDENT PARTIES.

18.1 Status of parties.

Each party is acting in its independent capacity and not as agents, employees, partners, or joint venturers of the other party. City, its officers or employees shall have no control over the conduct of Contractor or its respective agents, employees, subconsultants, or subcontractors, except as herein set forth.

SECTION 19 NUISANCE.

19.1 Nuisance Prohibited.

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

SECTION 20 PERMITS AND LICENSES.

Except as otherwise provided in the Special Provisions and Technical Specifications, the Contractor shall provide, procure and pay for all licenses, permits, and fees, required by the City or other government jurisdictions or agencies necessary to carry out and complete the Work. Payment of all costs and expenses for such licenses, permits, and fees shall be included in one or more Bid items. No other compensation shall be paid to the Contractor for these items or for delays caused by non-City inspectors or conditions set forth in the licenses or permits issued by other agencies.

SECTION 21 WAIVER.

A waiver by either party of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

SECTION 22 GOVERNING LAW AND VENUE; COMPLIANCE WITH LAWS.

22.1 Governing Law and Venue.

This Construction Contract shall be construed in accordance with and governed by the laws of the State of California, without regard to conflict of law provisions, and venue shall be in a court of competent jurisdiction in the County of Santa Clara, California and no other place.

22.2 Compliance with Laws.

Contractor shall comply with all applicable federal and California laws and city laws, including, without limitation, ordinances and resolutions, in the performance of work under this Construction Contract.

22.2.1 **Palo Alto Minimum Wage Ordinance.** Contractor shall comply with all Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the City, Contractor shall pay such employees no less than the minimum wage set forth in Palo Alto Municipal Code section 4.62.030 for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, Contractor shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code section 4.62.060.

SECTION 23 COMPLETE AGREEMENT.

23.1 Integration.

This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This Agreement may be amended only by a written instrument, which is signed by the parties.

SECTION 24 SURVIVAL OF CONTRACT.

24.1 Survival of Provisions.

The provisions of the Construction Contract which by their nature survive termination or expiration of the Construction Contract or Final Completion, including, without limitation, all warranties, indemnities, payment obligations, and City's right to audit Contractor's books and records, shall remain in full force and effect after Final Completion or any termination or expiration of the Construction Contract.

SECTION 25 PREVAILING WAGES.

☐ **This Project is not subject to prevailing wages and related requirements.** Contractor is not required to pay prevailing wages and meet related requirements under the California Labor Code and California Code of Regulations in the performance and implementation of the Project if the Contract:

- (1) is not a public works contract;
- (2) is for a public works construction project of \$25,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j); or
- (3) is for a public works alteration, demolition, repair, or maintenance project of \$15,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j).

Or

☒ **This Project is subject to prevailing wages and related requirements as a "public works" under California Labor Code Sections 1720 et seq. and related regulations.** Contractor is required to pay general prevailing wages as defined in California Labor Code Section 1773.1 and Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq., as amended from time to time. Pursuant to Labor Code Section 1773, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute the contract for this Project from the State of California Department of Industrial Relations ("DIR"). Copies of these rates may be obtained at the City's Purchasing Department office. The general prevailing wage rates are also available at the DIR, Division of Labor Statistics and Research, website (see e.g. <http://www.dir.ca.gov/DLSR/PWD/index.htm>) as amended from time to time. Contractor shall post a copy of the general prevailing wage rates at all Project job sites and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with all applicable provisions of Division 2, Part 7, Chapter 1 of the California Labor Code (Labor Code Section 1720 et seq.), including, but not limited to, Sections 1720, 1725.5, 1771, 1771.1, 1771.4, 1773.2, 1774, 1775, 1776, 1777.5, 1782, 1810, 1813 and 1815, and all applicable implementing regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq. (8 CCR Section 16000 et seq.), as amended from time to time.

SECTION 26 NON-APPROPRIATION.

26.1 Appropriations.

This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that the City does not appropriate funds for the following fiscal year for this event, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Construction Contract are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

SECTION 27 AUTHORITY.

27.1 Representation of Parties.

The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

SECTION 28 COUNTERPARTS

28.1 Multiple Counterparts.

This Agreement may be signed in multiple counterparts, which, when executed by all the parties, shall together constitute a single binding agreement.

SECTION 29 SEVERABILITY.

29.1 Severability.

In case a provision of this Construction Contract is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

SECTION 30 STATUTORY AND REGULATORY REFERENCES.

30.1 Amendments to Laws.

With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that the Contract was awarded by City, as may be amended from time to time, unless otherwise required by law.

SECTION 31 WORKERS' COMPENSATION CERTIFICATION.

31.1 Workers Compensation.

Contractor shall secure the payment of workers' compensation to its employees as provided in Labor Code Sections 1860 and 3700.

Pursuant to Labor Code Section 1861, by signing this Contract, Contractor thereby certifies as follows:

"I am aware of the provisions of Section 3700 of the 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 that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

SECTION 32 DIR REGISTRATION AND OTHER REQUIREMENTS.

32.1 General Notice to Contractor.

City requires Contractor and its Subcontractors to comply with all applicable requirements of the California Labor Code including but not limited to Labor Code Sections 1720 through 1861, and all applicable related regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq., as amended from time to time. Additional information regarding public works and prevailing wage requirements is available on the DIR website (see e.g. <http://www.dir.ca.gov>) as amended from time to time.

32.2 Labor Code section 1771.1(a)

City provides notice to Contractor of the requirements of California Labor Code section 1771.1(a), which reads:

“A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

32.3 DIR Registration Required.

City will not accept a bid proposal from or enter into this Construction Contract with Contractor without proof that Contractor and its Subcontractors are registered with the California Department of Industrial Relations (“DIR”) to perform public work, subject to limited exceptions.

32.4 Posting of Job Site Notices; Compliance Monitoring.

City gives notice to Contractor and its Subcontractors that Contractor is required to post all job site notices prescribed by law or regulation and Contractor is subject to compliance monitoring and enforcement by DIR.

32.5 Payroll Records.

Contractor shall furnish certified payroll records directly to the Labor Commissioner (DIR) in accordance with Subchapter 3, Title 8 of the California Code of Regulations Section 16461 (8 CCR Section 16461).

City requires Contractor and its Subcontractors to comply with the requirements of Labor Code section 1776, including but not limited to:

32.5.1 Keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by, respectively, Contractor and its Subcontractors, in connection with the Project.

32.5.2 The payroll records shall be verified as true and correct and shall be certified and made available for inspection at all reasonable hours at the principal office of Contractor and its Subcontractors, respectively.

32.5.3 At the request of City, acting by its Project Manager, Contractor and its Subcontractors shall make the certified payroll records available for inspection or furnished upon request to the City’s Project Manager within ten (10) days of receipt of City’s request.

☐ City requests Contractor and its Subcontractors to submit the certified payroll records to the City's Project Manager at the end of each week during the Project.

32.5.4 If the certified payroll records are not provided as required within the 10-day period, then Contractor and its Subcontractors shall be subject to a penalty of one hundred dollars (\$100.00) per calendar day, or portion thereof, for each worker, and City shall withhold the sum total of penalties from the progress payment(s) then due and payable to Contractor. This provision supplements the provisions of Section 15 hereof.

32.5.5 Inform the City's Project Manager of the location of Contractor's and its Subcontractors' payroll records (street address, city and county) at the commencement of the Project, and also provide notice to the City's Project Manager within five (5) business days of any change of location of those payroll records.

32.6 Employment of Apprentices.

Contractor shall comply with the statutory requirements regarding employment of apprentices including without limitation Labor Code Section 1777.5. The statutory provisions will be enforced for penalties for failure to pay prevailing wages and for failure to comply with wage and hour laws.

IN WITNESS WHEREOF, the parties have caused this Construction Contract to be executed on the date and year first above written.

CITY OF PALO ALTO

OBS ENGINEERING INC.

City Manager

Officer 1

By: _____

APPROVED AS TO FORM:

Name: _____

City Attorney or designee

Title: _____

APPROVED:

Officer 2

Public Works Director

By: _____

Name: _____

Title: _____

CITY OF PALO ALTO

GENERAL CONDITIONS

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ATTACHMENTS:

- A: FIELD ORDER
- B: CHANGE ORDER REQUEST
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- D. REQUEST FOR INFORMATION (for Utilities Department projects only; RFI form provided by City's Project Manager if required)

ARTICLE 1 – PRELIMINARY PROVISIONS

1.1 DEFINITIONS

Terms appearing in the Contract Documents with initial capitalization shall have the meanings set forth below:

1.1.1 ACCEPTANCE: The point after Final Completion when Contractor has fully performed all of the requirements of the Contract Documents and the Work is accepted by City in writing.

1.1.2 ADDENDA, ADDENDUM: Written or graphic information (including, without limitation, Drawings or Special Provisions and Technical Specifications) prepared and issued by City Engineer prior to the deadline for submission of Bids, which modify or interpret the Contract Documents by additions, deletions, clarifications or corrections

1.1.3 ALLOWABLE COSTS: Actual and direct costs for performing Extra Work, including labor, materials, supplies, and equipment, as further specified herein, in Article 7 – Changes.

1.1.4 ALLOWANCE: An amount included in the Bid for Work that may or may not be included in the Project, or for portions of Work where the amount or scope of the Work cannot be ascertained at the time of Bid submissions.

1.1.4 ALTERNATE(S): Those portions of the Bid setting forth the price(s) for optional or alternative items of Work not covered by the Base Bid.

1.1.5 APPLICABLE CODE REQUIREMENTS: All applicable federal, state and municipal laws, statutes, building codes, ordinances and regulations of governmental authorities having jurisdiction over the Project, Work, Site, Contractor or City.

1.1.6 APPLICATION FOR PAYMENT: An itemized application for payment prepared and submitted by Contractor for review and approval by City, which is prepared, submitted and accompanied by supporting documentation in accordance with the requirements of the Contract Documents.

1.1.7 APPROVE, APPROVED or APPROVAL: Whether capitalized or not capitalized, shall mean, unless otherwise stated, either an express approval contained in a written statement signed by the approving authorized individual or deemed approved in accordance with the terms, conditions and procedures set forth in the Contract Documents. All such approvals by or on behalf of City (including, without limitation, approvals by Construction Manager) may be granted or withheld in the sole discretion of City.

1.1.8 AS-BUILT DOCUMENTS: The Contract Documents showing the condition of the Work as actually built, including, without limitation, the locations of mechanical, electrical, plumbing, HVAC or similar portions of the Work that are shown diagrammatically in the Contract Documents approved by City. These documents are maintained by Contractor on the Site and delivered, along with an electronic version of the set, to City upon Final Completion.

1.1.9 BASE BID: The sum stated in the Bid to perform the Work, exclusive of any Alternate(s).

1.1.10 BENEFICIAL OCCUPANCY: City's right, at its option and convenience, to occupy or otherwise make use of all or any part of the Work prior to either Substantial Completion, Final Completion, or Acceptance.

1.1.11 BID: A written bid proposal submitted to City for the Project in response to City's Invitation for Bids.

1.1.12 BIDDER: An individual or entity that submits a Bid.

1.1.13 CERTIFICATE FOR PAYMENT: The form for approval by the Construction Manager of Contractor's Application for Payment.

1.1.14 CHANGE: Additions, deletions, or other modifications to the Work, which may or may not involve Extra Work and which may or may not involve an adjustment (increase or decrease) to the Contract Sum or the Contract Time under the terms of the Contract Documents.

1.1.15 CHANGE ORDER: A duly authorized written instrument signed by City, or by City and Contractor, which operates to amend the scope of Work, and which may also amend the Contract Sum or the Contract Time.

1.1.16 CHANGE ORDER REQUEST: Contractor's written request for a Change Order.

1.1.17 CITY: City of Palo Alto, a California chartered Municipal Corporation.

1.1.18 CITY ENGINEER: City Engineer of City of Palo Alto or its designee.

1.1.19 CLAIM: A separate demand by Contractor, submitted in writing by registered or certified mail with return receipt requested, for change in the Contract Time, including a time extension or relief from liquidated damages, or a change in the Contract Price, which has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected or disputed by City, in whole or in part.

1.1.20 CLIENT DEPARTMENT: Department or Division of City of Palo Alto identified as the end user of the facilities.

1.1.21 CONSTRUCTION CONTRACT or CONTRACT: The written contract executed between City and Contractor for construction of the Project.

1.1.22 COMPENSABLE DELAY: A Delay for which Contractor may be entitled under the Contract Documents to both an extension of the Contract Time and an adjustment of the Contract Sum for additional compensation.

1.1.23 CONSTRUCTION MANAGER: The City designated employee, project manager or an individual, partnership, corporation, joint venture or other legal entity under contract with City to perform construction management services for the Project. The term "Construction Manager" means Construction Manager or Construction Manager's authorized representative.

1.1.24 CONSTRUCTION SCHEDULE: The Approved graphical representation of Contractor's as-planned schedule for performance of the Work, and all Approved updates thereto, prepared in accordance with the requirements of the Contract Documents and that provides for Final Completion of the Work within the Contract Time.

1.1.25 **CONTRACT DISPUTE:** A dispute arising out of or related to the Construction Contract or the interpretation, enforcement or breach thereof, except as specified in Article 4 herein.

1.1.26 **CONTRACT DISPUTE RESOLUTION PROCESS:** The process of resolution of Contract Disputes, and, upon election of City, disputes as set forth in Article 4 of these General Conditions.

1.1.27 **CONTRACT DOCUMENTS:** This term shall be as defined in Section 3 of the Construction Contract.

1.1.28 **CONTRACT SUM:** The total amount of compensation stated in the Construction Contract that is payable to Contractor for the performance of the Work in accordance with the Contract Documents, including adjustments made by Change Order.

1.1.29 **CONTRACT TIME:** The total number of days set forth in the Construction Contract within which Final Completion of the Work must be achieved by Contractor, including any adjustments of time (increases or decreases) made by Change Order.

1.1.30 **CONTRACTOR:** The individual or firm under contract with City to serve as the General Contractor for construction of the Project, including Contractor's authorized representative.

1.1.31 **CONTRACTOR MARKUP:** The markup that the Contractor or Subcontractor may make on Extra Work that it performs with its own forces. A fixed sum calculated as ten percent (10%) of applicable Allowable Costs incurred by Contractor or Subcontractor for performing Extra Work with its own forces, which is deemed to be full compensation for Contractor's or Subcontractor's indirect costs associated with Extra Work, including, overhead, profit, and other indirect costs not included in the Allowable Costs. Contractor Markup is separate from and does not include Subcontractor Markup as defined herein.

1.1.32 **DAY:** Whether capitalized or not, unless otherwise specifically provided, means calendar day, including weekends and legal holidays.

1.1.33 **DEFECTIVE WORK:** Work by Contractor that is unsatisfactory, faulty, omitted, incomplete, deficient or does not conform to the Applicable Code Requirements, the Contract Documents, the directives of City or the requirements of any inspection, reference standard, test, code or approval specified in the Contract Documents.

1.1.34 **DELAY:** Whether capitalized or not, includes any circumstances involving disruption, hindrance, or interference in the performance of the Work within the Contract Time.

1.1.35 **DELETED WORK:** Work that is eliminated due to a Change in the Work requested by City or Contractor for which City is entitled to a deductive adjustment in the Contract Sum.

1.1.36 DESIGN CONSULTANT: The individual(s) or firm(s) under contract with City to provide design or engineering services for the Project and responsible for preparing the Contract Documents for the Project. The term "Design Consultant" means Design Consultant or Design Consultant's authorized representative.

1.1.37 DRAWINGS: The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, subparagraphs, details, schedules and diagrams. The Drawings are outlined in the Drawing Index. The term "Drawings" may be used interchangeably with "Plans."

1.1.38 ESCROW AGENT: A state or federally chartered bank in the State of California which holds securities pursuant to an escrow agreement as set forth in Section 9.5 of these General Conditions.

1.1.39 EXCUSABLE DELAY: A Delay for which Contractor may be entitled under the Contract Documents to an extension of time, but not compensation.

1.1.40 EXISTING IMPROVEMENTS: All improvements located on the Site as of the date of execution of the Construction Contract, whether above or below the surface of the ground, including but not limited to existing buildings, utilities, infrastructure improvements and other facilities.

1.1.41 EXTRA WORK: Additional Work or costs due to a Change in the Work that is not described in or reasonably inferable from the Contract Documents which may be the basis for an adjustment of the Contract Sum and/or the Contract Price under the terms of the Contract Documents. Extra Work shall not include additional Work or costs arising from Contractor's failure to perform any of its duties or obligations under the Contract Documents.

1.1.42 FIELD ORDER: A written instrument signed by the City or its Construction Manager that authorizes and directs performance of the Work described therein, and which may or may not include adjustments (increase or decrease) to the Contract Sum and/or Contract Time.

1.1.43 FINAL COMPLETION: Full completion of all Work required by the Contract Documents, including all punch list items, and submission of Record Documents, all to City's satisfaction.

1.1.44 FINAL PAYMENT: Final payment of the Contract Sum following Final Completion, including release of undisputed retention, less any amounts withheld or offset pursuant to the Contract Documents, including, but not limited to, liquidated damages, unreleased stop notices, amounts subject to setoff, and up to 150% of unresolved third-party claims for which Contractor is required to indemnify City, and up to 150% of any amounts in dispute as authorized by Public Contract Code Section 7107.

1.1.45 FRAGNET: A "Fragnet", sometimes referred to as "time impact analysis," is a contemporaneous, fragmentary scheduling network, which graphically identifies the sequencing of all critical and non-critical new activities and/or activity revisions affected by a Change Order or Delay, with logic ties to all affected existing activities noted on the Construction Schedule. Its objective is to isolate and quantify any time impact of a specific issue, determine and demonstrate any such specific Delay in relation to past and/or other current Delays and to provide a method for incorporating adjustments to the Contract Time into the Construction Schedule.

1.1.46 GENERAL CONDITIONS: That portion of the Contract Documents relating to the administrative procedures to be followed by Contractor in carrying out the Work.

1.1.47 **HAZARDOUS SUBSTANCES:** Refers to, without limitation, the following: any chemical, material or other substance defined as or included within the definition of hazardous substances, hazardous materials, hazardous wastes, extremely hazardous substances, toxic substances, toxic material, restricted hazardous waste, special waste, universal wastes or words of similar import under any Environmental Law.

1.1.48 **LOSSES:** Any and all losses, costs, liabilities, Claims, damages, liquidated damages, actions, judgments, settlements, expenses, fines and penalties. "Losses" do not include attorneys' fees.

1.1.49 **NOTICE OF AWARD:** Written notice issued by City notifying Contractor of issuance of the Construction Contract.

1.1.50 **NOTICE TO PROCEED:** Written notice issued by City to Contractor to begin the Work. The Notice to Proceed may also specify the date for the Pre-Construction Meeting or the date(s) for specified pre-construction submittals.

1.1.51 **PERFORMANCE BOND, PAYMENT BOND:** The performance and payment bonds to be provided by Contractor for the Project.

1.1.52 **PLANS:** The graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, subparagraphs, details, schedules and diagrams. The term "Plans" may be used interchangeably with "Drawings."

1.1.53 **PRE-CONSTRUCTION MEETING:** A meeting held with the Project Team prior to beginning construction in order to review Contract Documents and any required pre-construction submittals and clarify roles, responsibilities and authority of the Project Team.

1.1.54 **PROJECT:** The total construction, of which the Work performed by Contractor under the Contract Documents may be the whole or part and which may include Work performed by City's own forces or by Separate Contractors.

1.1.55 **PROJECT TEAM:** Collectively, the Contractor, City, Design Consultant, Separate Contractors, Construction Manager and other consultants and contractors providing professional and technical consultation for the design and construction of the Project.

1.1.56 **RECORD DOCUMENTS:** The term "Record Documents" refers to the As-Built Documents, warranties, guarantees and other documents required to be submitted by Contractor as a condition of Final Completion.

1.1.57 **REQUEST FOR INFORMATION:** A written instrument, prepared by Contractor, which requests an interpretation or clarification in the Work or a response to a question concerning the Work. A Request for Information does not entitle Contractor to an adjustment in the Contract Sum unless it requires Extra Work and Contractor requests and is entitled to such an adjustment in accordance with the provisions of the Contract Documents.

1.1.58 **REQUEST FOR INFORMATION RESPONSE:** A written instrument, usually prepared by the Design Consultant, provided in response to a Request for Information, setting forth an interpretation or clarification in the Work or a response to a Contractor question concerning the Work.

1.1.59 **SCHEDULE OF VALUES:** A detailed, itemized breakdown of the Contract Sum, which provides for a fair and reasonable allocation of the dollar values to each of the various parts of the Work.

1.1.60 **SEPARATE CONTRACTOR:** A person or firm under separate contract with City or other entity performing other Work at the Site.

1.1.61 **SITE:** The physical site located within City where the Project is to be constructed, including all adjacent areas for staging, storage, parking and temporary offices.

1.1.62 **SPECIAL PROVISIONS AND TECHNICAL SPECIFICATIONS:** The portions of the Contract Documents consisting of the written requirements for materials, equipment, standards, skill, quality for the Work and performance of related services. These provisions may also contain amendments, deletions or additions to the General Conditions.

1.1.63 **STATEMENT OF CONTRACT DISPUTE:** The Contractor's written statement prepared in accordance with Article 4 of these General Conditions required as a condition of its initiating the Contract Dispute Resolution Process set forth in the Construction Contract.

1.1.64 **SUBCONTRACTOR:** A person or firm that has a contract with a Contractor to perform a portion of the Work. The term "Subcontractor" includes suppliers and vendors and is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. "Subcontractor" includes Subcontractors of any tier.

1.1.65 **SUBCONTRACTOR MARKUP:** The markup the Contractor may make on Extra Work performed by a Subcontractor. A fixed sum calculated as fifteen percent (15%) of the Subcontractor's Allowable Costs incurred by Subcontractor for performing Extra Work, which is deemed to be full compensation for Contractor's indirect costs for having the Extra Work performed by the Subcontractor, including, overhead, profit, and other indirect costs not included in Allowable Costs. Subcontractor Markup is made on the Subcontractor's incurred Allowable Costs only, which is separate from and does not include Contractor Markup, as defined herein, made by the Subcontractor.

1.1.66 **SUBMITTALS:** All shop drawings, samples, exemplars, product data and other submittals required to be submitted by Contractor under the Contract Documents.

1.1.67 **SUBSTANTIAL COMPLETION, SUBSTANTIALLY COMPLETE:** As determined by City, the point at which the Work is sufficiently complete to be occupied and utilized by City for its intended purpose, and Contractor has fulfilled its obligations under the Contract Documents, except for minor punchlist items which do not impair City's ability to so occupy and utilize the Project.

1.1.68 **SUPERINTENDENT:** The person appointed by Contractor, subject to approval by City, to supervise and coordinate Contractor's own forces and Subcontractors in all aspects of the Work.

1.1.69 **UNEXCUSED DELAY:** Any Delay in the path of activities that is critical to Final Completion of the Work within the Contract Time and which Delay is not attributable to the City. An Unexcused Delay shall not entitle Contractor to either an extension of the Contract Time or an adjustment of the Contract Sum. To the extent an Unexcused Delay is concurrent with an Excused Delay, the Excusable Delay shall be conclusively deemed an Unexcused Delay.

1.1.70 **WEATHER DELAY DAY:** A day for which Work is scheduled as allowed by Sections 8.3 and 8.4, below, during which Contractor and its forces, including Subcontractors, are unable to safely or effectively perform at least four hours of scheduled critical path Work based on actual (not forecast) weather or weather-related conditions that day during normal construction hours, as specified in Section 8.3. .

1.1.71 **WORK:** All labor, materials, equipment, services, permits, fees, licenses and taxes, and all other things necessary for Contractor to perform its obligations and complete the Project, including, without limitation, any changes or additions requested by City, in accordance with the Contract Documents and all Applicable Code Requirements.

1.1.72 **WORKING DAY:** As applied to a Project awarded on the basis of completion within a specified number of working days, and only if specified in Section 5 of the IFB Summary and Section 6.3 of the Construction Contract, a working day, whether or not capitalized, means a day during which the Work may be performed under the terms of the Contract Documents, including, but not limited to the provisions of Sections 8.3 and 8.4, below, but excluding Weather Delay Days.

1.2 OWNERSHIP AND USE OF DOCUMENTS

1.2.1 All originals, copies and electronic forms of Plans and Drawings, Technical Specifications, (including, without limitation, the Contract Documents) shall not be used by Contractor, or any Subcontractor, for any purpose other than performance of the Work. Contractor and Subcontractors are granted a limited license, revocable at will by City, to use and reproduce applicable portions of the Contract Documents appropriate to and for performing the Work under the Contract Documents; provided however, that such use shall not reduce Owner's rights to use and ownership of the documents.

1.2.2 Contractor shall keep on the Site of the Project, at all times, a complete set of City approved, permitted Contract Documents for use by City.

1.2.3 Proposed Changes or refinements and clarifications will be provided to Contractor in the form of reproducible prints. Contractor shall, at its own expense and without adjustment to the Contract Sum, reproduce and distribute such prints as are necessary for the complete pricing of the Change and for performance of the Work.

1.2.4 Contractor shall include a provision in all contracts with Subcontractors who perform Work on the Project, protecting and preserving City's rights to ownership and use of documents as set forth in this Section 1.2.

1.3 INTERPRETATION OF CONTRACT DOCUMENTS

1.3.1 The Contract Documents are complementary and what is required by one shall be as binding as if required by all.

1.3.2 In general, the Drawings will show dimensions, positions, and type of construction to be completed; and the Special Provisions and Technical Specifications will define materials, quality and standards. Any Work called for on the Drawings and not mentioned in the Special Provisions and Technical Specifications, or vice versa, shall be performed as though fully set forth in both. Work not particularly detailed, marked or specified, shall be the same as similar parts that are detailed, marked or specified.

1.3.3 Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood construction industry meanings and non-technical words and abbreviations are used in accordance with their commonly understood meanings.

1.3.4 The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an." If a modifier or an article is not included in one statement and appears in another it is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters whether or not non-limiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

1.3.5 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include the other gender, and each shall include corporation, partnership, trust, or other legal entity whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only as a matter of reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

1.3.6 Any cross-references indicated between various subparagraphs or Drawings and Documents are provided for the Contractor's convenience and shall not be all-inclusive.

1.3.7 Unless specifically noted to the contrary, all Work, equipment, casework, mechanical, electrical and similar devices of whatever nature in the Contract Documents shall be completely installed, hooked-up, made operational and made functional for the purpose such are intended, and all costs therefore are included in the Contract Sum.

1.3.8 Figured dimensions on scale Drawings and on full size Drawings shall govern over scale Drawings without figured dimensions. The Drawings shall not be scaled to determine dimensions, and (except in the case of diagrammatic Drawings) shall be calculated from figures shown on the Drawings. Obvious discrepancies between scale and figured dimensions, unless marked "not to scale," must be brought to the Construction Manager's attention before proceeding with the Work affected by the discrepancy.

1.3.9 If there is a conflict between any of the Contract Documents, Contractor shall immediately bring such conflict to the attention of City, whose decisions regarding such conflict shall be final and binding as to the requirements of the Contract Documents. In the event of any conflicts between or among the Applicable Code Requirements, the more stringent shall govern. In the event a conflict between any of the Contract Documents is not resolved by the order of precedence established in the Contract Documents, the highest standard of quality and skill, the most stringent requirements, and the most specific provision of the Contract Documents shall govern and shall be required in the performance of the Work.

1.3.10 The general character of the Work is shown in the Contract Documents, but Changes, modifications, clarifications and refinements may be made in details when needed to more fully explain the Work. Provided that they are a logical evolution of the Contract Documents that were bid by Contractor or were reasonably inferable as necessary to provide a completed and fully operational system, facility or structure, the same shall be considered part of the scope of the Work to be performed without adjustment in the Contract Sum or the Contract Time.

1.3.11 Where on any Drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply also to all other like portions of the Work.

1.3.12 Contractor will provide all necessary labor, equipment, transportation and incidentals required to complete the Work, even if the Contract Documents do not describe the Work in complete detail.

1.3.13 Drawings and diagrams for mechanical, plumbing and electrical Work shall be considered as diagrammatic only and shall not to be used for any structural guidance or physical layout, unless specifically detailed or dimensioned, and Contractor shall be responsible to provide any and all numbers and lengths of mechanical, plumbing or electrical fittings, wire, conduit, connections, attachments or similar materials needed to complete the Work, at no adjustment to the Contract Sum or Contract Time, whether or not they exceed the numbers of such pieces or the lengths indicated by the Drawings.

1.3.14 City, in its sole discretion, will interpret the Contract Documents and make the determination of whether or not Contractor has fulfilled the requirements of the Contract Documents. Such interpretations and decisions of City shall be final and binding upon Contractor.

ARTICLE 2 –CITY’S RIGHTS AND OBLIGATIONS

2.1 INFORMATION AND SERVICES PROVIDED BY CITY

2.1.1 Except as otherwise provided in the Special Provisions and Technical Specifications, Contractor shall obtain and pay for any permits, easements and governmental approvals, including City building and related permits, for the use or occupancy of permanent structures required in connection with the Work.

2.1.2 If Contractor becomes aware of any ambiguity, uncertainty, conflict, inconsistency, discrepancy, omission, or error in or among the Contract Documents, Contractor must promptly submit a Request for Information (“RFI”) requesting clarification, interpretation, or direction. A Contractor RFI will be considered excessive or unnecessary if City determines that the explanation or response to the RFI is clearly and unambiguously discernable from the Contract Documents. City’s costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.

2.1.3 A Request for Information Response providing clarification, interpretation or direction will be final and binding on Contractor. If Contractor proceeds with the related Work before obtaining City’s Request for Information Response, Contractor will be responsible for any resulting costs, including the cost of correcting any incorrect or defective Work that results. Timely submission of a clear and complete RFI is essential to avoiding delay. Delay resulting from Contractor’s failure to submit a timely and complete RFI is not Excusable Delay. If Contractor believes that City’s response to an RFI justifies a change to the Contract Sum or Contract Time, Contractor must perform the Work as directed, but may submit a timely Change Order request in accordance with the Contract Documents.

2.1.4 Unless otherwise specified in the Contract Documents, including the Notice to Proceed, Contractor must submit all required pre-construction submittals to City for review and acceptance no later than ten days following the Execution Date set forth in the first paragraph of the Construction Contract. City will schedule a mandatory Pre-Construction Meeting, which is a condition precedent to commencement of on the Project. Contractor’s primary representative and Superintendent must attend the Pre-Construction Meeting. Additional supervisory personnel and representatives of key Subcontractors may also attend the Pre-Construction Meeting, which is intended to address matters including the scope of Work, sequencing, and Project requirements. Contractor is solely responsible for any delay to Project commencement due to Contractor’s failure to timely or properly submit any required pre-construction submittals as specified in the Contract Documents, including the Notice to Proceed.

2.2 ACCESS TO PROJECT SITE

City will make available, no later than the commencement date designated in the current construction Schedule accepted by City, the lands and facilities upon which the Work is to be performed, including such access and other lands and facilities designated in the Contract Documents, for use by Contractor.

2.3 CITY'S RIGHT TO STOP THE WORK

If Contractor fails to correct Defective Work as required by Section 12.2 of these General Conditions, fails to perform the Work in accordance with the Contract Documents, or violates any Applicable Code Requirement, City may, without terminating the Contract, direct Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated by Contractor. Contractor shall not be entitled to any adjustment of Contract Time or Contract Sum as a result of any such order. City shall have no duty or responsibility to Contractor or any other party to exercise the right to stop the Work.

2.4 CITY'S RIGHT TO CARRY OUT THE WORK

If Contractor fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools and services to maintain the Construction Schedule, or otherwise fails to comply with any requirement of the Contract Documents, and fails within the time specified in the Contract Documents, after receipt of notice from City to promptly commence and thereafter diligently continue to completion the correction of such failure, City may, without prejudice to other remedies City may have and without terminating the Contract, correct such failure at Contractor's expense. In such case, City shall be entitled to deduct from payments then or thereafter due Contractor the cost of correcting such failure, including compensation for the additional services and expenses of City and City's consultants made necessary thereby. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the additional amount to City.

2.5 ACCESS TO MUNICIPAL SERVICE CENTER

For all Projects which require Contractor access to City's Municipal Service Center (MSC), all Contractors shall provide and all Contractor's personnel shall at all times display, in the form of badges, identification which shall include the Contractor's name, the employee's name, City's Project Managers name and telephone number, and the name and number of the Project being performed. Badge identification information shall correspond with information contained in the bearer's driver license or with other City approved identification. Any discrepancies, or failure of Contractor's personnel to display proper identification, will in result their removal from the Project, or in refusal of access to the MSC.

2.6 EMERGENCY TERMINATION OF CONTRACT

The Construction Contract is subject to termination as provided by Section 4410 and Section 4411 of the Government Code of the State of California, being portions of the Emergency Termination of Public Contract Act of 1949. In the event that the Construction Contract is terminated pursuant to said section, compensation to the Contractor shall be determined on the basis of the reasonable value of the Work done, including preparatory work. As an exception of the foregoing, in the case of any fully completed separate item or portion of the work for which there is a separate unit or contract price, the unit or contract price shall control.

ARTICLE 3 – CONTRACTOR’S RIGHTS AND OBLIGATIONS

3.1 REVIEW OF THE SITE, CONTRACT DOCUMENTS AND FIELD CONDITIONS

3.1.1 Contractor warrants that it is satisfied as to character, quality, and quantities of surface and subsurface materials or obstacles to be encountered insofar as reasonably ascertainable from a careful inspection of the Site (including, without limitation, Existing Improvements on the Site) and from the geological investigation reports, data and similar information, if any, made available to Contractor by City. Any failure by Contractor to take such information or conditions into consideration will not relieve Contractor from responsibility for estimating the difficulty and cost of successfully completing the Work within the Contract Sum and Contract Time.

3.1.2 Contractor warrants and represents that it has carefully reviewed the Bid and Contract Documents prior to submitting its Bid and executing the Contract. The Contractor shall not be entitled, and conclusively waives any right, to an adjustment in the Contract Sum or Contract Time for any additional or unforeseen costs or Delay in the performance of Work due to conditions in Contract Documents constituting errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with Applicable Code Requirements, if such conditions were either discovered by Contractor or could have been reasonably discovered by Contractor or its Subcontractors in the exercise of care and diligence in the review of the Contract Documents, subject to the limitations of Public Contract Code Section 1104.

3.1.3 If Contractor discovers what it perceives to be errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with Applicable Code Requirements in the Contract Documents, then Contractor shall, within two (2) days of discovery, notify City or the Construction Manager in writing stating both of the following:

- (i) A detailed description of the conditions discovered.
- (ii) Contractor’s request for clarification, further details or correction of the Contract Documents.

Failure by Contractor to provide written notice within the period of time required shall result in Contractor waiving any right to adjustment in the Contract Sum or Contract Time on account thereof.

3.1.4 If Contractor believes it is entitled to an adjustment of the Contract Sum or Contract Time for Extra Work based upon additional written or verbal instructions, information, or direction from City, Design Consultant, or Construction Manager, it may submit a Change Order Request pursuant to Article 7 of the General Conditions within ten (10) days of receipt of such instructions, information, or direction.

3.1.5 The Contractor shall take field measurements of the existing field conditions verified. Contractor shall carefully compare the field conditions with the Contract Documents and other information known to Contractor before commencing the Work. Contractor shall promptly report in writing to the Construction Manager any errors, inconsistencies, or omissions the Contractor discovers.

3.1.6 If Contractor performs any portion of the Work which it knows, or in the exercise of care and diligence should have known, involves an error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Code Requirements, without notifying and obtaining the written Approval of City or before obtaining a written clarification, interpretation, instruction or decision from Construction Manager, then any Work that is performed that is not in conformance with the clarifications, interpretation, instruction or decision of City, Design Consultant or Construction Manager shall be removed or replaced and Contractor shall be responsible for the resultant Losses with no adjustment in the Contract Sum or Contract Time.

3.1.7 Existing Improvements at the Site, for which no specific description is made on the Drawings, but which could be reasonably assumed to interfere with the satisfactory completion of the Work, shall be removed and disposed of by Contractor, but only upon the specific direction and control of City. Without limitation to the foregoing, and notwithstanding any information provided by City pertaining to groundwater elevations and/or geological and soils conditions encountered, it is understood that it is Contractor's responsibility to determine and allow for the elevation of groundwater, and the geological and soils conditions at the date of performance of the Work.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 Contractor shall supervise, coordinate and direct the Work using Contractor's best skill and attention and shall provide supervision sufficient to assure proper coordination and timely completion of the Work. Contractor shall be solely responsible for and have control over construction means, methods, techniques, safety, sequences, procedures and the coordination of all portions of the Work.

3.2.2 Contractor shall be responsible for the accurate layout of all portions of the Work and shall verify all dimensions on the Drawings and shall report to City any discrepancies before proceeding with related Work.

3.2.3 Contractor may be assigned working space adjacent to the Site, and all field offices, materials and equipment shall be kept within this area. Contractor shall be responsible for leaving the space in as good condition as Contractor found it, or restoring it to the condition it was in prior to Contractor commencing the Work.

3.2.4 Contractor shall be responsible to City for acts and omissions of Contractor's agents, employees, and of Contractor's Subcontractors, and their respective agents and employees. Unless otherwise stated in or a contrary intention is reasonably inferable from the Contract Documents, references to Contractor, when used in reference to an obligation bearing upon performance of the Work, shall be deemed to include Contractor's Subcontractors.

3.2.5 Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents by the act(s) or omission(s) by City in the administration of the Contract, or by tests, inspections or Approvals required or performed by persons or firms other than Contractor.

3.3 RESPONSIBILITY FOR THE WORK

3.3.1 Contractor shall be in charge of and responsible for all portions of the Work of the Contract, and shall be responsible for conforming such portions to the requirements of the Contract Documents and readying such portions to receive subsequent Work.

3.3.2 Contractor shall at all times maintain good discipline and order among its employees and Subcontractors. Contractor shall provide competent, fully qualified personnel to perform the Work, and shall ensure that each Subcontractor and Sub-subcontractor engaged on the Site arranges the storage of materials and equipment and performance of its Work so as to interfere as little as possible with Separate Contractors or other persons engaged in work for City on the Site.

3.3.3 During the installation of Work, Contractor shall insure that existing facilities, fences, and other structures are all adequately protected. Upon Final Completion of all Work, all facilities that may have been damaged shall be restored to a condition acceptable to City.

3.3.4 Contractor is responsible for the security of the Site and all Work provided under the terms of this Contract, as well as all Work provided by Separate Contractors that occurs on the Site at any time prior to Final Completion and Acceptance of the Work by City.

3.4 LABOR, WORKMANSHIP, MATERIALS AND MANUFACTURED ITEMS

Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Unless otherwise provided in the Contract Documents or otherwise Approved by the Construction Manager, all articles, equipment and materials incorporated in the Work shall be new, of good quality, undamaged and not defective.

3.5 CONTRACTOR'S WARRANTY

3.5.1 In addition to the guarantee to repair referenced in Article 12 and any specific warranty mentioned in the Project specifications, Contractor warrants to City that all materials and equipment used in or incorporated into the Work will be of good quality, new and free of liens, Claims and security interests of third parties; that all labor, installation, materials and equipment used or incorporated into the Work will be of good quality and free from defects; and that the Work will conform with the requirements of the Contract Documents and Applicable Code Requirements. If required by City, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Manufactured items installed in the Work and not specifically covered in the Contract Documents are to be installed in strict accordance with manufacturers' current printed instructions.

3.5.2 All materials to be incorporated in the Work shall be protected from damage during delivery, storage, and handling, and after installation until Acceptance of the Work, and Contractor shall, without charge to City, be responsible for all damage to the materials or the Work due to Contractor's failure to provide such proper protection.

3.6 CONSTRUCTION METHODS AND PROCEDURES

3.6.1 The methods and procedures adopted by Contractor shall be such as to secure a quality of Work satisfactory to City and to enable completion of the Work in the time agreed upon. If at any time such methods and procedures appear inadequate, City may order Contractor to improve the character or increase efficiency, and Contractor shall conform to such order; but the failure of City to order such improvement of methods or increase of efficiency will not relieve Contractor from its obligation to perform the Work in accordance with the Contract Documents or within the Contract Time.

3.6.2 If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, Contractor shall be fully and solely responsible for the Site safety for implementing such means, methods, techniques, sequences or procedures. If Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, Contractor shall give written notice to City and shall not proceed with that portion of the Work without further written instruction by City.

3.7 TAXES

3.7.1 Contractor and Subcontractors are responsible for paying all sales, consumer, business license, use, income and payroll, and similar taxes for the Work or portions thereof provided by Contractor and Subcontractors.

3.7.2 All Contractors and Subcontractors for Construction Contracts equal to or greater than \$5 million dollars shall be required to obtain a sub permit with the California Board of Equalization for a direct allocation of any and all applicable use tax to the City of Palo Alto, where the jobsite is located. Contractor and applicable Subcontractors shall apply for and comply with all of the conditions of the sub permit pursuant to Section 260.020 of the California State Board of Equalization, Chapter 2, "Compliance Policy and Procedures Manual: Registration, subchapter Contractors," as may be amended from time to time.

3.8 LEGAL REQUIREMENTS

3.8.1 Contractor shall perform the Work in accordance with all Applicable Code Requirements, even though such requirements are not specifically referenced in the Contract Documents.

3.8.2 When the Work required by the Contract Documents is in conflict with any Applicable Code Requirement, Contractor shall notify Construction Manager and shall not proceed with the Work until Construction Manager provides direction to the Contractor.

3.9 PROJECT STAFF

3.9.1 Contractor shall employ a complete and competent project staff for the duration of the Work, which shall include separate individuals designated to act as Superintendent, project manager, project engineer(s) and administrative assistant(s), plus such other persons necessary to diligently prosecute the Work. Contractor shall not replace the designated Superintendent or project manager without a minimum seven (7) Day written notice. Any Project staff member and any replacement member shall be subject to the approval of City, which may be granted or withheld in its sole discretion. Upon notice from City requesting replacement of any Project staff member who is unsatisfactory to City, Contractor shall in a timely manner, but in no event longer than three (3) Days after notification, replace such member with a competent member satisfactory to City. Failure by Contractor to comply with the provisions of this Paragraph shall entitle City, at its option exercised in its sole discretion, to terminate the Contract or suspend the Work until Contractor complies with this Paragraph. All costs or damages associated with such termination or suspension shall be borne by Contractor, without adjustment in the Contract Sum or Contract Time.

3.9.2 The Superintendent shall be at the Site at all times during the performance of the Work. The Superintendent shall represent Contractor and communications given to and acknowledged by the Superintendent shall be binding on Contractor. Further, communications issued by or received from the Superintendent shall be deemed as binding on Contractor. The Superintendent must be able to read, write and communicate fluently in English.

3.10 SCHEDULES REQUIRED OF CONTRACTOR

Unless otherwise specified in the Contract Documents, including the Notice to Proceed, Contractor shall submit a preliminary Construction Schedule to City in a form approved by the Construction Manager at the Pre-Construction Meeting.

3.10.2 Updated Construction Schedules shall be submitted in the form and frequency required by the Construction Manager.

3.10.3 The Construction Schedule and Construction Schedule updates shall meet the following requirements:

- .1 Schedules must be suitable in format and clarity for monitoring progress of the Work and shall utilize the critical path method of scheduling.
- .2 Schedules must provide necessary data about the timing for City's decisions and City-furnished items.
- .3 Schedules must be in sufficient detail to demonstrate adequate planning and staffing for the Work.
- .4 Schedules must represent a practical plan to complete the Work within the Contract Time, which includes factoring time for reasonably foreseeable Weather Delay Days. Based on historic rainfall records for the City, the Contractor's schedule should assume the following number of Weather Delay Days for each month:*

<i>Month</i>	<i># Normal Weather Delay Days</i>
January	7
February	7
March	6
April	3
May	2
June	0
July	0
August	0
September	0
October	2
November	4
December	7

*Weather Delay Days which do not occur during a given month based on the number of days allocated for that month (above) do not carry over to another month.

- .5 If at any time during the Work, any activity is not completed by its latest scheduled completion date, Contractor shall notify the Construction Manager within five (5) Days of Contractor's plans to reorganize the work force to return to the schedule and prevent Delays on any other activity.

- .6 An updated Construction Schedule shall be submitted with each progress payment request, but no less frequently than monthly, and shall include all of the following:
- (i) A written narrative report detailing the actual progress of the Work as of the date of submission;
 - (ii) The expected progress of the Work as of such date according to the approved Construction Schedule;
 - (iii) The reasons for any variance between the approved Construction Schedule and the updated Construction Schedule; and
 - (iv) If required, Contractor's plan for placing the Work back on Schedule, at Contractor's expense.

Failure to timely comply with the above requirements may be grounds for rejection of a request for extension of time.

3.10.4 Contractor shall plan, develop, supervise, control and coordinate the performance of the Work so the progress, sequence and timing of the Work conform to the current accepted Construction Schedule. Contractor shall continuously obtain from Subcontractors information and data about the planning for and progress of the Work, the ordering and fabrication of materials, required Submittals, and the delivery of equipment, shall coordinate and integrate such information and data in updated Construction Schedules and Record Documents, and shall monitor the progress of the Work and the delivery of equipment. Contractor shall act as the expeditor of potential and actual delays, interruptions, hindrances or disruptions for its own forces and those forces of Subcontractors, regardless of tier. Contractor shall cooperate with City in the development of the Construction Schedule and updated Construction Schedules.

3.10.5 City's review, comments, requests for revisions, or acceptance of any schedule or scheduling data shall not:

- (i) Relieve Contractor from its sole responsibility for the feasibility of the schedule and to plan for, perform, and complete the Work within the Contract Time;
- (ii) Transfer responsibility for any schedule from Contractor to City; nor
- (iii) Imply City's agreement with any assumption upon which such schedule is based or any matter underlying or contained in such schedule.

3.10.6 Failure of City to discover errors or omissions in Construction Schedules that it has reviewed or Approved, or to inform Contractor that Contractor, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Construction Schedule, shall not relieve Contractor from its sole responsibility to perform and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.

3.10.7 Contractor shall cooperate with and coordinate its Construction Schedule with work of City and City's Separate Contractors.

3.10.8 Adverse conditions contributing to a Weather Delay Day may include rain, saturated soil, and site clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, City-approved schedule. Contractor must take reasonable steps to anticipate and mitigate the consequences of Weather Delay Days, including prudent workforce management and protecting the Project site.

3.11 DOCUMENTS AND SAMPLES AT PROJECT SITE

3.11.1 Contractor shall maintain one (1) set of As-Built Documents at the Site, which shall be kept up to date on a daily basis during the performance of the Work. All performed changes, deletions or additions in the Work from that shown in the Contract Documents shall be recorded accurately and completely in the Record Documents. Upon Final Completion and as a condition to Final Payment, each sheet of the As-Built Documents and other Record Documents shall be signed and attested to by the Contractor's Superintendent as being complete and accurate.

3.11.2 Contractor shall, at all times during performance of the Work, also maintain the following at the Site:

- (i) The latest updated Construction Schedule approved by City;
- (ii) Shop Drawings, product data, and samples; and
- (iii) All other required Submittals.

At all times during the course of the Project, these documents shall be available to City, the Construction Manager and the Design Consultant to audit, excerpt, or copy as they see fit. Upon Final Completion or termination of the Construction Contract, these documents shall be delivered to City in the format requested by the City.

3.11.3 It shall be the responsibility of Contractor to maintain a current and complete record of all Changes performed during the progress of the Project construction. The record shall be in the form of a complete set of prints of the As-Built Documents on which daily recordings are made by Contractor, indicating in detail and dimension each variation from the original set of Contract Documents for all of the Work. At the completion of construction, Contractor shall, as a requirement of the Final Completion of the Work, certify that to the best of its knowledge, the As-Built Documents are true and accurate, and that the indications thereon represent all Changes performed during the construction of the Project. At Final Completion, the As-Built and other Record Documents shall become the property of City.

3.11.4 Contractor, in concert with the Design Consultant and the Construction Manager, shall review Contractor's As-Built Documents for conformance with all current Changes prior to presenting its monthly Application For Payment. The monthly progress payment statement will not be accepted or processed by City unless the As-Built Documents are current and complete, and Approved by City.

3.11.5 At Final Completion, the Contractor shall provide the fully As-Built Documents to the City. These As-Built Documents will become the permanent property of City at Final Completion. If the As-Built Documents are prepared on a computer, then the revised computer files shall also be provided to City in the file format specified by City.

3.12 SUBMITTALS

3.12.1 Submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of the Work for which Submittals are required, how Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Prior to starting Work or as otherwise specified in the Contract Documents, including the Notice to Proceed, Contractor shall provide to City an initial schedule for submission of the Submittals for which shop drawings are required by the Contract Documents. For each required shop drawing, Contractor shall provide to City the date for the drawing's intended Submittal to the Design Consultant for review. The date required for its return to avoid Delay in any activity beyond the scheduled start date shall also be given. Contractor is solely responsible for any delay to Project commencement or to Final Completion resulting from Contractor's failure to timely provide required Submittals as specified.

3.12.2 All shop drawings and other Submittals shall be provided at Contractor's expense, and at the time required by the Contract Documents or requested by the Construction Manager.

3.12.3 Contractor shall review, approve, and submit to the Construction Manager, all Submittals required by the Contract Documents to be submitted and reviewed by the Design Consultant. Submittals to the Construction Manager without evidence thereon of Contractor's approval shall be returned, without review, for resubmission in accordance with these requirements. Submittals shall be provided within the time frame specified in the Special Provisions and Technical Specifications in accordance with the Construction Schedule, and in such sequence as to cause no Delay in the Work or in the activities of City or of Separate Contractors. Submittals made by Contractor which are not required by the Contract Documents, may be returned without action by the Construction Manager or Design Consultant. Submittal to the Construction Manager and Design Consultant must include a statement, in writing, identifying any deviations from the Contract Documents required due to manufacturing or installation limitations contained in the Submittal.

3.12.4 Unless otherwise specified, and excluding samples, all Submittals shall be submitted electronically, accompanied by letters of transmittal, and addressed to the Construction Manager for review. Unless otherwise specified in the Contract Documents, Submittals consisting of Drawings or Plans shall be submitted in PDF form via email to the Construction Manager at _____. The Submittal must be prepared and submitted in accordance with all applicable provisions in the Contract Documents. If the Submittal involves a request for substitution of materials, the request shall be clearly identified on the Submittal that it is a "Request for Substitution." Unless so clearly marked, Submittals shall not be considered as a request for substitution. The Construction Manager shall return to Contractor three (3) marked-up prints. Submittals shall include all relevant catalog sheets, material lists, manufacturer's brochures, technical bulletins, specifications, diagrams, or product samples, necessary to describe a system, product, or item. The letter of transmittal shall include a list of the accompanying documents and the numbers of the sheets submitted. All sheets shall be marked with the name of the Project and the name of Contractor, shall be numbered consecutively, and shall be referenced to the sheets or paragraphs of the Contract Documents, referenced by sheet or subparagraph affected. Submittals shall be combined for singular assemblies, items or materials.

3.12.5 No Work requiring a Submittal shall be performed by Contractor until the Submittal has been reviewed and approved by City, Construction Manager or Design Consultant, as appropriate, and the Design Consultant has documented the exceptions noted on the Submittal. Contractor shall allow twenty (20) Days for review of timely and complete Submittals. Once the Submittal is returned to Contractor by the Construction Manager with a statement that it has been reviewed and no exceptions are taken or further action requested, such Work shall be performed in accordance with the Submittal and the Contract Documents.

3.12.6 Contractor's Submittals represent that Contractor has determined or verified materials and field measurements and conditions related thereto and that it has checked and coordinated the information contained within such Submittals with the requirements of the Contract Documents and Submittals for related Work.

3.12.7 If Contractor discovers any conflicts, omissions or errors in Submittals, Contractor shall notify the Construction Manager and receive instruction before proceeding with the affected Work.

3.12.8 Contractor shall remain solely responsible, notwithstanding City, Construction Manager or Design Consultant's review or approval of Submittals, for deviations (including, without limitation, those arising from standard shop practice) from the Contract Documents, unless Contractor has specifically informed City, Construction Manager or Design Consultant in writing of such deviation at the time of transmitting the Submittal and City, Construction Manager or Design Consultant has given written approval of such deviation. No adjustment in the Contract Sum or Contract Time shall be permitted with respect to any such deviations that are noted in writing by Contractor and as to which City, Construction Manager or Design Consultant takes no exception or approves.

3.12.9 After review of Contractor's Submittals by City, Construction Manager or Design Consultant, as appropriate, the Construction Manager will transmit to Contractor one set of Submittals. If the Submittals are found to be incomplete or incorrect, Contractor shall resubmit after corrective action has been taken. Contractor shall reimburse City, or City may withhold from payments due Contractor, sums owing by City for any fees charged by City, Construction Manager or Design Consultant or City's other consultants for more than two (2) reviews of a Submittal, or for accelerated review in a shorter time than set forth in the approved Construction Schedule, if requested by Contractor or caused by late Submittals by Contractor. The return of a Submittal due to failure to comply with the Contract Documents or for correction or additional information shall be considered a review.

3.12.10 Review of Submittals by City, Construction Manager or Design Consultant will be general and for conformance with design intent, and shall not relieve Contractor from the responsibility for proper fitting and construction of the Work, nor from furnished materials and Work required by the Contract which may not be indicated on the reviewed Submittals.

3.12.11 Submittals shall be in English, be of good quality, and be of a size and scale to clearly show all necessary details. Submittals shall show in detail the size, sections and dimensions of all members; the arrangement and construction of all connections, joints and other pertinent details; and all holes, straps and other fittings required by other Separate Contractors for attaching their Work. When required by City, Construction Manager or Design Consultant, engineering computations shall be submitted. Contractor shall be responsible for delivering duplicates of Submittals to all other persons whose Work is dependent thereon.

3.12.12 Contractor shall, at all times, maintain at the Site a complete file of all City, Construction Manager or Design Consultant-reviewed Submittals.

3.13 TRADE NAMES, SUBSTITUTIONS

3.13.1 Any request for substitution of "or equal" items by the Contractor shall be made within 35 days of award of the contract, unless otherwise specified in these Contract Documents, and shall be governed by Public Contract Code Section 3400.

3.13.2 If City accepts for use in the Project a substitute material or process which in the opinion of City, Construction Manager or Design Consultant is not the equal of that specified, a Change Order shall be issued issuing a credit to City for the difference in value.

3.13.3 Substitutions by Contractor that are incorporated into the Work without the prior review and Approval by City, Construction Manager or Design Consultant in accordance with the requirements of the Contract Documents shall be deemed to be Defective Work.

3.13.4 The specified Construction Contract completion time shall not be affected by any circumstance developing from the substitution provisions of this Section.

3.14 DAILY REPORTS BY CONTRACTOR

3.14.1 At the end of each working day, Contractor shall submit a daily report to the Construction Manager (on a form provided by or accepted by the Construction Manager) listing:

- (i) Labor - Names of workers, classification, hourly rates and hours worked.
- (ii) Material - Description and list of quantities of materials used.
- (iii) Equipment - Type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable.
- (iv) Inspection and Testing Activities - Name, City or company and items involved.
- (v) Areas of Work - The areas of the Site on which Work was performed and a detailed description of the stage, status and progress of the Work in each such area at the beginning and end of the day.
- (vi) Accidents, Delays, Defective Work - Description in detail of any injuries to workers, accidents, Delays, or Defective Work that were encountered.
- (vii) Other Services and Expenditures - Description in such detail as City may require of other services and expenditures.

3.14.2 Reports by Subcontractors that comply with the requirements of this Section 3.14 shall also be submitted to the Construction Manager through Contractor at the end of each working day

3.14.3 Submission of daily reports by Contractor and Subcontractors performing Work on the Site shall be a condition precedent to Contractor's right to payment under the Contract.

3.14.4 Facts, notice or information contained in daily reports of Contractor or its Subcontractors, whether known or not known to City or Construction Manager, shall under no circumstances be considered evidence of compliance by Contractor with any of the specific written notice requirements of the Contract Documents.

3.15 CUTTING AND PATCHING

3.15.1 Contractor shall do all cutting, fitting, or patching of the Work required to make all parts of the Work join properly and to allow the Work to join the work of Separate Contractors shown in, or reasonably implied by, the Contract Documents.

3.15.2 Contractor shall not endanger the Work, the Project, Existing Improvements, or adjacent property by cutting, digging, or otherwise. Contractor shall not cut or alter the work of any Separate Contractor without the prior written consent of City.

3.15.3 In all cases, cutting shall be performed under the supervision of competent workers skilled in the applicable trade and shall cause the openings to be cut as small as possible to minimize unnecessary damage.

3.16 ACCESS TO THE WORK

3.16.1 City, Construction Manager, Design Consultant, their consultants and other persons authorized by City shall at all times have access to the Work wherever it is in preparation or progress. Contractor shall provide safe and proper facilities for such access and for inspection.

3.16.2 City may, at any time, and from time to time during the performance of the Work, enter the Project for the purpose of installing any necessary other work by City labor or other contracts or for any other purpose. Contractor shall cooperate with City and not interfere with other work being done by or on behalf of City.

3.17 ROYALTIES AND PATENTS

Contractor shall pay all royalties and license fees required for the performance of the Work. Contractor shall immediately notify City if it learns of any circumstances that may constitute an infringement of patent rights and shall defend and indemnify City and the members of the Project Team in accordance with the indemnity provision in the Construction Contract against Losses, liabilities, suits or Claims resulting from Contractor's or any Subcontractor's or Sub-subcontractor's infringement of patent rights.

3.18 PERMITS AND LICENSES

The Contractor shall comply with all provisions of any permits necessary to accomplish the Work as presented in this Contract. Contractor shall obtain and be responsible for the cost of all permits and applications related to the construction of the Project.

3.19 DIFFERING SITE CONDITIONS

3.19.1 This provision is applicable if the Project involves digging trenches or other excavations that extend deeper than four (4) feet below the surface. Contractor shall promptly, and before the following conditions are disturbed, provide written notice to City if the Contractor finds any of the following conditions:

- .1 Material that Contractor believes may be a hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.
- .2 Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.
- .3 Unknown physical conditions at the site of any unusual nature, differing materially different from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.
- .4 Except as otherwise provided in this Section 3.19, and as specified under law, including Public Contract Code Section 7104, Contractor is responsible for performing the Work subject to existing site conditions, without adjustment to the Contract Sum or Contract Time.

3.19.2 City shall promptly investigate any of the above the conditions and if City finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described in the Contract Documents. The City may, acting in its sole discretion, extend the applicable deadline for submitting a Change Order Request when it is based upon differing conditions subject to Public Contract Code Section 7104.

3.19.3 In the event that a dispute arises between the City and the Contractor regarding any of the matters specified in subsection 3.19.1, above, Contractor shall not be excused from any scheduled completion date provided for in the Contract Documents, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between Contractor and City.

3.20 INSPECTIONS

3.20.1 In order to allow for inspection by City and other agencies, or any inspection required elsewhere in the Special Provisions and Technical Specifications, Contractor shall notify City in writing three (3) Days in advance of the permanent concealment of any materials or Work.

3.20.2 Whenever Contractor desires to carry on the Work of this Construction Contract at hours other than those specifically required by the City or 8:00 AM to 6:00 PM, Monday through Friday or from 9:00 AM to 5:00 PM on Saturdays, it shall request authorization in writing from City for such Work at least twelve (12) Days in advance and, if approved to proceed, Contractor agrees to pay the costs incurred by the City to provide inspectors during these times and the costs incurred for the Construction Manager, Design Consultant and/or other City consultants whose presence at the Site is necessary. City offices are closed on alternate Fridays commencing January 12, 2001, and every other Friday thereafter. Inspections by City Building Department may not be available on these days.

3.20.3 If any Work is concealed or performed without the prior notice specified above, then the Work shall be subject to such tests or exposure as may be necessary to prove to City that the materials used and the Work done are in conformity with the Contract Documents. All labor and equipment necessary for exposing and testing shall be furnished by Contractor at its expense. Contractor shall replace, at its own expense and without reimbursement by City, any materials or Work damaged by exposure and any faulty materials or work evidenced by such exposure or testing, and shall be responsible for any Delay caused thereby.

3.20.4 When, in order to comply with the intent of the Contract Documents, inspection must be made at the plant or mill of the manufacturer or fabricator of material or equipment, Contractor shall notify City a sufficient length of time in advance to allow for arrangements to be made for such inspection. If required testing and/or inspection must be conducted at a location more than one hundred (100) miles from the Site, Contractor shall be responsible for the additional travel costs required for testing and/or inspection at such location.

3.20.5 Any inspection or approval by any representative or agent of City will not relieve Contractor of the responsibility of incorporating into the Work only those materials which conform to the Contract Documents, and any nonconforming materials shall be removed from the Site whenever identified, at Contractor's sole expense.

3.20.6 When Contractor believes it has achieved either Substantial or Final Completion of the Work, Contractor shall notify City and the Construction Manager in writing and request a Substantial or Final Completion inspection of the Work. City, Design Consultant and Construction Manager will make such inspection as soon thereafter as possible.

3.21 STOP NOTICES

Contractor must promptly pay its Subcontractors in accordance with the subcontract requirements and California prompt payment statutes. If any stop notice or other claim is served, filed or recorded in connection with the Work, City shall have the option, in its sole discretion, to permit Contractor immediately and at its own expense obtain a bond executed by a good and sufficient surety, in accordance with Civil Code section 9364, in a sum equal to one hundred twenty-five percent (125%) of the amount of such stop notice or claim. Such bond shall guarantee the payment of any amounts which the claimant may recover on the stop notice or claim, together with the claimant's costs of suit in any action to enforce such stop notice or claim if the claimant recovers therein. This remedy shall be in addition to all other rights and remedies of City under the Contract Documents and applicable law, including, without limitation, the right to withhold funds from sums due to Contractor. **Contractor shall timely notify City of Contractor's receipt of any stop notice or other third-party claim, valid or invalid, relating to the Contract Documents.**

3.22 PARKING

Contractor shall provide and maintain suitable parking areas, for use by all construction workers and others performing work or furnishing services in connection with the Project, as required to avoid any need for parking personal vehicles where they may interfere with public traffic, construction activities or public parking. The Construction Manager shall approve the location of all off-site parking in the City.

3.23 USE OF THE PROJECT SITE AND CLEAN UP

3.23.1 Contractor shall confine operations at the Site to areas permitted by Applicable Code Requirements and the Contract Documents. Contractor shall not encumber the Site with materials or equipment so that Separate Contractors' work is hindered or impeded due to such encumbrances.

3.23.2 Contractor shall, during performance of the Work, keep the Site and surrounding area free from the accumulation of excess dirt, dust, waste materials, water and rubbish caused by Contractor or any Subcontractors. Contractor shall continuously and daily remove all excess dirt, waste material, water and rubbish caused by Contractor and all tools, equipment, machinery and surplus materials from the Site and surrounding area at end of each day. Adequate cleanup will be a condition for progress payments.

3.23.3 Personnel of Contractor shall not occupy, live upon, or otherwise make use of the Site during any time that Work is not being performed at the Site, except as otherwise provided in the Contract Documents.

3.23.4 Upon Final Completion of the Work, Contractor shall remove all construction facilities, appurtenances, tools, material and other articles from the Site. The entire area, including all fixed equipment, floors, surfaces and hardware shall be cleaned and restored to their original condition in accordance with the Special Provisions and Technical Specifications.

3.23.5 In addition to water sprinkling, temporary enclosures and anti-dust sweeping compounds should be used to limit dust and dirt rising and to keep the Site clean.

3.23.6 Construction materials shall be neatly stacked by Contractor when not in use. Loose materials, whether on the Site or in transit, shall be covered to prevent dust. Contractor shall promptly remove splattered concrete, asphalt, oil, paint, corrosive liquids and cleaning solutions from the affected surfaces to prevent marring or other damage to the Work.

3.23.7 Volatile wastes shall be properly stored in covered metal containers and removed daily. All other trash receptacles shall be promptly emptied when full.

3.23.8 Contractor shall promptly and legally transport and dispose of removed and demolished items and waste materials not identified to be recycled or reused in compliance with local ordinances and anti-pollution laws. No rubbish or waste materials shall be burned, buried, or otherwise disposed of on the Site.

3.23.9 The Contractor shall provide sanitary facilities at the Site, which shall be of reasonable capacity, properly maintained throughout the construction period, and obscured from public view to the greatest practical extent. Contractor shall require all personnel to use the sanitary facilities. Sanitary facilities shall be on a portable trailer and shall be removed from the Site at the end of each workday. For sewer lining projects, Contractor shall provide additional sanitary facilities on a portable trailer to be used by the residents during lining installation (one sanitary facility per each 30 meters [100 feet]). Contractor shall remove the sanitary facilities as soon as relief holes are cut and notices of completion are delivered.

3.24 ENVIRONMENTAL CONTROLS

Full compensation for conforming to the requirements of this Section shall be considered as included in the prices paid for the various contract items of Work involved and no additional compensation will be allowed.

3.24.1 AIR POLLUTION CONTROL. Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the Contract, including rules promulgated by the Bay Area Air Quality Management District, the California Department of Public Health or any other applicable agency. In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, all solvents, including but not limited to the solvent portions of paint thinners, curing compounds, parts cleaners and degreasers and liquid asphalt used on the Project shall comply with the applicable material requirements of the Bay Area Air Quality Management District. All containers of paint thinner, curing compound parts cleaners and degreasers or liquid asphalt shall be labeled to indicate that the contents fully comply with said requirements. Material to be disposed of shall not be disposed of onsite (i.e. used up inappropriately or burned). Compressed gases contained within cylinders or aerosol cans shall never be released for any purpose other than that intended by the manufacturer.

- .1 **Mold.** The Contractor shall take steps to prevent mold from developing on the Site, or being released into the air and shall promptly decontaminate any areas of mold that develop.
- .2 **VOC's.** Only construction materials that emit low levels of volatile organic compounds (VOC) shall be used within indoor areas. Adequate ventilation of packaged dry products shall be used prior to installation. Contractor is responsible to ventilate the building during the application of wet products (e.g., paints, glues, sealants), which release their highest levels of VOC's during the curing period immediately after the application. Also, wet products shall be applied before installing materials that act as "sinks" such as carpets, fabric, ceiling tiles, movable partitions, furniture, etc. in order to reduce the chance of the "sinks" absorbing contaminants and slowly releasing them into the building over time.

- .3 **Off-Gassing.** Contractor is responsible for identifying specific materials that require more complex ventilation to accelerate off-gassing. In addition to paints, glues and sealants, those materials that generally require temporary ventilation include, without limitation: composite wood products, plastics, waterproofing, insulation, fireproofing, caulking, acoustical ceilings, resilient flooring and wood preservatives.
- .4 **Barriers.** Barriers shall be used to prevent the migration of airborne pollutants from areas under construction and to mitigate any construction noise that may disrupt occupant activities. If effective controls for pollution emissions cannot be practically implemented, activities involving significant airborne pollutants shall be scheduled during off-hours at Contractor's expense. The Site shall be ventilated with fresh outside air during and immediately after the noxious activity.
- .5 **Exhaust.** Contractor shall install temporary exhaust systems in construction areas to prevent contaminated air from entering the building's return-air system, including, without limitation:
- (i) Removing windows in a space.
 - (ii) Using available or dedicated exhaust systems (e.g., kitchen or toilet exhaust) that are not tied into the building's overall return-air system.
- .6 **Treated wood waste (TWW).** TWW is any wood treated with preserving chemicals that protect the wood from insect attack or fungal decay (typically railroad ties, power poles, or bollards) shall be managed by Contractor to minimize dust generation. Contractor shall never grind TWW and shall be properly dispose TWW at a permitted TWW disposal facility. If Contractor size-reduces the TWW then Contractor shall collect all dust generated for proper offsite disposal.
- .7 **Contaminated Soil Removal.** Unless approved by the City, contaminated soils that are being removed shall be loaded directly into truck trailers that shall transport the soils directly to disposal facilities and not stockpiled onsite or elsewhere. If the City approves the temporary stockpiling of soils onsite, then Contractor shall cover the soil with visqueen (or other suitable material) within 1 hour.

The building shall be flushed with full outdoor air for seven (7) Days prior to occupancy. Full capacity of the HVAC system shall be used for at least 2.5 ACH (air changes per hour), provided by temporary fans. During this time, the interiors shall be thoroughly cleaned, the HVAC ducts vacuumed, and air and HVAC system filters replaced.

3.24.2 WATER POLLUTION CONTROL.

- .1 Contractor shall at a minimum use applicable Best Management Practices listed in the California Stormwater Quality Association Construction Handbook <http://www.cabmphandbooks.com/Construction.asp> to prevent the pollution of storm drains and watercourses by discharges of materials other than uncontaminated storm water. Prohibited discharges include storm water runoff discharges that may threaten to cause pollution, contamination or nuisance, sanitary waste, sediment and debris from erosion and other substances resulting from construction activities. Sanitary wastes will not be permitted to enter any storm drain or watercourse and must be routed to the sanitary sewer system. No sediment, debris or construction materials will be permitted to enter sanitary sewers.
- .2 Contractor shall provide effective and continuous control of water pollution, including Work in small or multiple units, on an out of phase schedule or with modified construction procedures. Contractor shall determine which methods are most effective in achieving control of water pollution as a result of Contractor's operations. Contractor shall coordinate water pollution control work with all other Work performed by Contractor and Separate Contractors.
- .3 Before starting any Work on the Project, Contractor shall submit to the Construction Manager for acceptance a Storm Water Pollution Prevention Plan (SWPPP) for effective control of storm water pollution. Such plan shall show the schedule and detailed description for the storm water pollution prevention and erosion control work or practices included in the Construction Contract and for all storm water pollution control measures which Contractor proposes to employ in connection with construction of the Project to minimize the effects of their operations upon storm drains, adjacent streams, and other bodies of water. Contractor shall not perform any clearing and grubbing or earthwork on the Project, other than that specifically authorized in writing by the Construction Manager, until such SWPPP has been approved by a City representative or the Construction Manager. Contractor shall revise and bring up to date said SWPPP at any time the Construction Manager makes written request for such revisions.
- .4 City shall not be liable to Contractor for failure to accept all or any portion of any originally submitted or revised SWPPP, or for any Delays to the Work due to Contractor's failure to submit an acceptable SWPPP. Contractor assumes sole responsibility for all costs associated with treatment of storm water polluted as a result of Contractor's Site activities, whether treatment is initiated by Contractor or City.
- .5 Contractor may request the Construction Manager to waive the requirement for submission of a written SWPPP when the nature of Contractor's operation is such that pollutant discharge or soil erosion is not likely to occur. Waiver of this requirement will not relieve Contractor from responsibility for compliance with the other provisions of this Section. Waiver of the requirement for a written SWPPP will not preclude City requiring submittal of a SWPPP at a later time if the Construction Manager deems it necessary because of the effect of Contractor's operations.
- .6 Where erosion damage which will cause storm water pollution is probable due to the nature of the material or the season of the year, Contractor's operation shall be so scheduled that permanent erosion control features will be installed concurrently with or immediately following grading operations.

- .7 All storm water pollution control work required elsewhere in the Contract Documents which may be accomplished under the various contract items of Work will be measured and paid for as provided in said items of Work elsewhere in these Contract Documents.

3.24.3 URBAN RUNOFF. At a minimum, the following specific Best Management Practices which address the potential pollution impacts of urban runoff shall apply to all projects undergoing construction in City. The Best Management Practices listed below (in addition to those listed in the Technical Specifications) are required by City, and shall apply at the time of demolition of an existing structure or commencement of construction until receipt of a certificate of occupancy or certificate of completion:

- .1 Sediment and construction waste from construction sites and parking areas shall not leave the Site.
- .2 Any sediments or other construction materials which are tracked off the Site shall be removed the same day. Straw wattles or another temporary sediment barrier shall be installed around the perimeter of the Site to prevent the sediment from leaving the Site.
- .3 On an emergency basis only, plastic covering may be utilized to prevent erosion of an otherwise unprotected area, along with runoff devices to intercept and safely convey the runoff.
- .4 Excavated soil shall be located on the Site in a manner that eliminates the possibility of sediment running into the street, storm drains, water bodies, or adjoining properties. Material stockpiles shall be covered within 1 hour of stockpiling the material until the material is either used or removed.
- .5 No washing of construction vehicles shall be allowed on or adjacent to the Site.
- .6 Drainage controls shall be utilized as needed, depending on the extent of proposed grading and topography of the Site, including, but not limited to the following: (i) detention ponds or sedimentation ponds; and (ii) dikes, berms or ditches; and (iii) down drains, chutes or flumes.

3.24.4 STORM WATER POLLUTION PREVENTION DURING ROADWORK. To avoid storm water pollution, Contractor shall plan roadwork and pavement construction as follows:

- .1 Apply concrete, asphalt, and seal coat during dry weather to prevent contaminants from contacting storm water runoff.
- .2 Cover storm drain inlets and manholes when paving or applying seal coat, slurry seal, fog seal, etc.
- .3 Always park paving machines over drip pans or absorbent materials.
- .4 When making saw-cuts in pavement, use as little water as possible. Cover each catch basin completely with filter fabric during the sawing operation. Shovel or vacuum the slurry residue from the pavement and remove from the Site.

3.24.5 STORMWATER POLLUTION. To avoid stormwater pollution, Contractor shall plan roadwork and pavement construction as follows:

- .1 Apply concrete, asphalt, and seal coat during dry weather to prevent contaminants from contacting stormwater runoff.
- .2 Cover storm drain inlets and personnel access holes when paving or applying seal coat, slurry seal, fog seal, etc.
- .3 Always park paving machines over drip pans or absorbent materials, since they tend to drip continuously.
- .4 When making saw-cuts in pavement, use as little water as possible. Cover each catch basin completely with filter fabric during the sawing operation and contain the slurry by placing straw bales, sand bags, or gravel dams around the catch basin. After the liquid drains or evaporates, shovel or vacuum the slurry residue from the pavement or gutter and remove from the Site.

3.24.6 DRAINAGE CONTROL. Contractor shall provide for the drainage of storm water and such water as may be applied or discharged on the Site in performance of the Work. Drainage facilities shall be adequate to prevent damage to the Work, Site and adjacent property. Also drainage facilities shall be constructed to minimize the potential pollution to the ocean.

Existing drainage channels and conduits shall be cleaned, enlarged or supplemented as necessary to carry all increased runoff attributable to Contractor's operations. Dikes shall be constructed as necessary to divert increased runoff from entering adjacent property (except in natural channels), to protect City's private property and utility owner's facilities and the Work, and to direct water to drainage channels or conduits. Retention of drainage on the Site shall be provided as necessary to prevent downstream flooding.

3.24.7 DUST CONTROL. As elsewhere provided herein, the Contractor shall be responsible for all dust alleviation and control measures necessary and required for the public safety and convenience during the life of the contract. The Contractor shall use reclaimed water to control dust from unpaved surfaces as needed on a daily basis or as directed by the Construction Manager. The water shall be applied at a limited rate so as to avoid the creation of runoff from the site. The Contractor shall not use water to flush down paved or impervious surfaces as a means of dust control. Paved or impervious surfaces shall be swept with a street sweeper as needed to control dust on the site. Compensation for water applied as alleviation and/or prevention of dust nuisance and street sweeping shall be considered as included in the prices paid for the various contract items of work and no additional allowance will be made therefore.

3.24.8 SPECIAL HAZARDOUS SUBSTANCES AND PROCESSES. Contractor shall comply with the provisions of all applicable hazardous materials Standards including but not limited to California Code of Regulations (CCR) Title 8, Chapter 4, Group 16 (CalOSHA Control of Hazardous Substances), CCR Title 22, Division 4.5, (hazardous waste management standards), California Health & Safety Code Division 20, Section 6.5 (hazardous waste control), California Fire Code, Code of Federal Regulations (CFR) 49 (DOT regulations), CFR 40, Part 60 (U.S. hazardous waste standards) and applicable sections of the Palo Alto Municipal Code. Contractor shall at all times maintain an inventory of hazardous materials stored onsite and all applicable Material Safety Data Sheets (MSDSs) available for review by the City.

For City-generated hazardous waste removal, the City will take full generator status for the hazardous wastes as described under CCR 22. The City will obtain any EPA Identification numbers for the project and will sign each manifest as the generator before the material is transported. Contractor shall fully manage the hazardous wastes for the City including the removing, storing, transporting and disposing of the hazardous wastes. For construction activities that remove existing hazardous wastes, such as,

asbestos removal, contaminated soil removal, lead paint removal or other contamination abatement projects, Contractor shall develop a hazardous materials management plan (HMMP). The HMMP shall contain sufficient information that shall demonstrate how the Contractor will remove, secure and store, transport to a permitted disposal facility. Contractor shall submit the HMMP to the City for approval. At a minimum, the HMMP shall include:

- Project map that shall show hazardous waste removal areas, storage areas (including all fencing, gates, locks, structures etc.;
- Hazardous waste expected inventory including quantities and types of wastes;
- Security program – how the Contractor will keep hazardous materials secure from public contact;
- Monitoring and inspection program;
- Inventory of emergency equipment onsite;
- Transportation Plan includes how the Contractor plans to package and transport the hazardous wastes;
- Disposal facility name and location;
- Any other information that would reasonably describe Contractor hazardous waste removal, storage and disposal plans.

City has the sole right to reject the hazardous waste transporter and/or disposal facility from Contractor's consideration.

Hazardous wastes that are generated from Contractor's activities while completing the project (i.e. equipment maintenance fluids, empty oil or solvent drums, etc. shall be the sole responsibility of the Contractor who is the generator of the wastes under the Hazardous Waste Generator Regulations CCR Title 22. Wastes must be handled, recycled or disposed of in the United States.

3.24.09 ENVIRONMENTAL PURCHASING POLICY. The Contractor shall comply with the City of Palo Alto's Environmental Purchasing Policy, as amended from time to time. A copy is available at the City's Purchasing Division.

3.24.10 ZERO WASTE REQUIREMENTS. The Contractor shall comply with waste reduction, reuse, recycling and disposal requirements of the City's Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, Contractor shall comply with the following zero waste requirements:

- All printed materials provided by Contractor to City generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by the City's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable-based inks.
- Goods purchased by Contractor on behalf of the City shall be purchased in accordance with the City's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Office.
- Reusable/returnable pallets shall be taken back by the Contractor, at no additional cost to the City, for reuse or recycling. Contractor shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

3.24.11 SOUND CONTROL.

- .1** Contractor shall comply with the City's Noise Ordinance set forth in Chapter 9.10 of the Palo Alto Municipal Code, except as modified in the Special Provisions and Technical Specifications. Copies of the Noise Ordinance are available in the Purchasing Division.
- .2** Each internal combustion engine used for any purpose on the Site or otherwise within the City of Palo Alto shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the Project without said muffler. This requirement in no way relieves Contractor from responsibility for complying with local ordinances regulating noise level.
- .3** The noise level requirement shall apply to all equipment on the Work or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by Contractor. The use of loud sound signals shall be avoided in favor of light warnings except those required by safety laws for the protection of personnel.
- .4** Prior to starting construction, all equipment to be used on the Project shall be inspected and tested for compliance with the requirements of this Project. Sound blankets or other sound mitigation equipment approved by the Construction Manager shall be required to bring equipment into compliance with the requirements of this Project.

3.25 TEMPORARY WATER, LIGHT AND POWER

Water for any purpose shall be obtained by Contractor, at its expense, from City. Contractor is to contact the Construction Manager for a phone number and contact person. In no case may Contractor obtain water from unmetered fire hydrants. The costs of obtaining water shall be included in the prices paid for the various contract items of work included and no additional compensation will be allowed therefore, unless otherwise specified in the Contract Documents. The City imposes a penalty for taking water from an unmetered fire hydrant. The penalty shall be deducted from the payment due Contractor. Contractor shall purchase power from the City, at Contractor's expense.

3.26 CITY TRUCK ROUTE ORDINANCE

The Contractor and any subcontractors or suppliers shall at all times comply with the requirements of the City of Palo Alto Truck Route Ordinance set forth in Chapter 10.48 of the Palo Alto Municipal Code.

3.27 UNFAIR BUSINESS PRACTICES CLAIMS

Contractor offers and agrees to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15), or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract Documents. This assignment shall be made and become effective at the time City tenders Final Payment to Contractor, without further acknowledgment by the parties. Contractor shall incorporate this provision in all Subcontractor contracts.

3.28 EXISTING UTILITIES

3.28.1 Prior to the start of any grinding or any excavation, the Contractor shall be responsible for notifying Underground Services Alert (USA) 800-642-2444 at least five (5) days prior to beginning underground work so that existing utilities can be marked in the field. The Contractor is responsible for the location of all utilities, both public and private. Contractor shall give specific address for grinding or excavation location. Each location shall be marked by the Contractor in the field with white paint.

3.28.2 The Contractor shall acknowledge that the marking of underground utilities is only approximate, and shall take all necessary precautions to avoid damaging these utilities.

3.28.3 All Underground Services Alert marking shall be removed by the Contractor. Any utilities damaged or altered in any way during the performance of the work under this Contract shall be promptly reported to the Engineer, and shall be restored to their original condition at the Contractor's expense.

3.28.4 If the Contractor comes into contact with any existing utilities during its operations, the Contractor shall notify the Engineer before proceeding with the work involved.

3.28.5 Pursuant to Government Code Section 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract Documents, Contractor shall immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site, if such utilities are not identified in the Contract Documents. Contractor shall be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans or specifications with reasonable accuracy and for equipment on the Project necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay in completion of the Work, to the extent such delay was caused by City's failure to provide for removal or relocation of such utility facilities.

ARTICLE 4 – ADMINISTRATION OF THE CONTRACT

4.1 CONTRACT ADMINISTRATION BY CITY, DESIGN CONSULTANT AND CONSTRUCTION MANAGER

4.1.1 City and the Construction Manager will provide administration of the Construction Contract as provided in the Contract Documents.

4.1.2 No actions taken by City, Construction Manager or Design Consultant shall relieve Contractor of its obligations described in the Contract Documents.

4.1.3 The Construction Manager will be present on the Site during the performance of the Work primarily for the purposes of providing administration, inspection and expediting communications between City, Design Consultant and Contractor.

4.1.4 Neither City, Design Consultant nor Construction Manager will have control over, will be in charge of, or will be responsible for construction means, methods, techniques, safety, sequences or procedures or for safety precautions and programs in connection with the Work, all of which are the sole responsibility of Contractor.

4.1.5 Unless otherwise provided in the Contract Documents or when direct communications have been specifically authorized, communications between Contractor and City or Design Consultant shall be in writing through Construction Manager. Communications by Contractor or Subcontractors and with Separate Contractors shall be through the Construction Manager. Contractor shall not rely on oral or other non-written communications.

4.1.6 Based on the Construction Manager's Site visits and evaluations of Contractor's Applications For Payment, the Construction Manager will review and recommend to City for City approval the amounts, if any, due Contractor.

4.1.7 Construction Manager will make recommendations to City to reject the Work, or any portion thereof, which does not conform to the Contract Documents. City alone shall have the authority to stop the Work or any portion thereof. Whenever City considers it necessary or advisable, City will have the authority to require additional inspection or testing of the Work in accordance with the Contract Documents, whether or not such Work is fabricated, installed or completed. However, no authority of City conferred by the Contract Documents nor any decision made in good faith either to exercise or not exercise such authority, nor any recommendation by the Construction Manager, shall give rise to a duty or responsibility of City or the Construction Manager to Contractor or its Subcontractors.

4.1.8 Construction Manager's authority includes, but is not limited to the following:

- .1 Conduct or direct inspections to determine suitability of the Project or portion thereof for Beneficial Occupancy.
- .2 Assist City in determining the dates of Substantial Completion and Final Completion;
- .3 Review any records, written warranties and related documents required by the Contract Documents and assembled by Contractor; and
- .4 Make recommendations to City for issuance of Final Payment upon Contractor's compliance with the requirements of the Contract Documents.

4.1.9 City, with the assistance of recommendations from the Design Consultant and/or Construction Manager, shall be the ultimate interpreter of the requirements of the Contract Documents and the judge of performance thereunder by Contractor. Such decisions by City will be final and binding upon Contractor.

4.2 CLAIMS

4.2.1 Public Contract Code Section 9204. Public Contract Code Section 9204 ("Section 9204") sets forth certain pre-litigation claims procedures for public works projects that City is required to include in its Contract Documents. In summary, Section 9204 requires public entities to respond to claims within 45 days, to meet and confer if requested by the contractor, to promptly pay undisputed amounts, and to mediate unresolved claims prior to litigation, absent a mutual waiver of mediation. It expressly provides for the submission of subcontractor "pass-through" claims, and allows public entities to prescribe reasonable additional change order, claim, and dispute resolution procedures and requirements, so long as the additional provisions do not conflict with or otherwise impair the timeframes and procedures set forth in Section 9204. The requirements of Section 9204 are incorporated and included in the following provisions, which also include reasonable additional procedures.

4.2.2 Scope and Authority. This Section 4.2 applies to any Claim, as defined in Section 1.1.19, above, arising from or related to the Contract or performance of the Work. It is intended to provide the exclusive procedures for submission and resolution of Claims of any amount, and applies in addition to the provisions of Public Contract Code Section 9204, and Public Contract Code Sections 20104 et seq., which are incorporated by reference herein and included in these provisions.

4.2.3 Accrual of Claim. A Claim accrues and arises upon issuance of a written decision by the City or Construction Manager denying, in whole or in part, a Change Order Request, which was previously submitted in compliance with these Contract Documents. A Claim that demands an extension of time or an increase in the Contract Sum does not accrue unless Contractor has previously submitted such demand(s) in a Change Order Request.

4.2.4 Claims Submission Requirements and Deadlines. All Claims must be submitted in writing by registered mail or certified mail with return receipt requested. Except for Claims disputing the amount of Final Payment, all Claims and all supporting documentation and certifications, as further detailed below, must be received by the City Clerk's office within twenty-one (21) Days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with the Contract Documents, has been rejected in whole or in part; any Claim which is not submitted prior to Final Payment is deemed waived. A Claim disputing the amount of Final Payment must be submitted within fourteen (14) Days of the effective date of Final Payment. Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. **Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.**

4.2.5 Supporting Documentation. A Claim submittal must include the following:

- .1 A statement that it is a Claim, clearly specifying the amount requested (with respect to Claims for payment), and/or the number of days requested (with respect to Claims for an extension of the Contract Time);
- .2 A detailed description of the act, error, omission, Differing Site Condition, event or other circumstance giving rise to the Claim; and
- .3 A statement demonstrating that a Change Order Request was submitted in a timely manner as required by Section 7.2 of these General Conditions, along with a copy of the Change Order Request and the City's written rejection of the subject Claim.
- .4 All documents necessary to substantiate the Claim, including, without limitation:
 - (i). A detailed cost breakdown in the form required for submittal of Change Order Requests, and subject to the limitations described in Article 7, below.
 - (ii). Copies of actual job cost records demonstrating that the costs have been incurred.
 - (iii). If the Claim is based on an error, omission, conflict or ambiguity in the Contract Documents: (i) a sworn statement by Contractor and any Subcontractor involved in the Claim, to the effect that the error, omission, conflict or ambiguity was not discovered prior to submission of the Bid, and (ii) if not discovered, a sworn statement demonstrating that the error, omission, conflict or ambiguity could not have been discovered by Contractor, its Subcontractor(s) or in exercise of the degree of care required of them under the Contract Documents for review of the Contract Documents prior to submission of the Bid.
- .5 If the Claim involves a request for adjustment of the Contract Time, written documentation demonstrating that Contractor has complied with the requirements of the Contract Documents pertaining to proving the right to an extension of time and demonstrating that Contractor is entitled to an extension of time under the Contract Documents.
- .6 A written certification signed by a responsible managing officer of Contractor's organization, who has the authority to sign subcontracts and purchase orders on behalf of Contractor and who has personally investigated and confirmed the truth and accuracy of the matters set forth in such certification, in the following form:

I hereby certify under penalty of perjury under the laws of the State of California that I am a managing officer of _____ and that I have reviewed the Claim presented herewith on Contractor's behalf and/or on behalf of _____ and that the following statements are true and correct.

(i) The facts alleged in or that form the basis for the Claim are true and accurate; and,

(ii) Contractor does not know of any facts or circumstances, not alleged in the Claim, that by reason of their not being alleged render any fact or statement alleged in the Claim materially misleading; and,

(iii) Contractor has, with respect to any request for money or damages alleged in or that forms the basis for the Claim, reviewed the job cost records (including those maintained by Contractor and by any Subcontractor of any Tier, that is asserting all or any portion of the Claim) and confirmed with reasonable certainty that the Losses or damages suffered by Contractor and/or such Subcontractor were in fact suffered in the amounts and for the reasons alleged in the Claim; and,

(iv) Contractor has, with respect to any request for extension of time or claim of Delay, disruption, hindrance or interference alleged in or that forms the basis for the Claim, reviewed the job schedules (including those maintained by Contractor and by any Subcontractor involved in the Claim) and confirmed on an event-by-event basis that the delays or disruption suffered by Contractor and /or such Subcontractor were in fact experienced for the durations, in the manner, and with the consequent effects on the time and/or sequence of performance of the Work, as alleged in the Claim; and,

(v) Contractor has not received payment from City for, nor has Contractor previously released City from, any portion of the Claim; and

(vi) Contractor understands that submission of a Claim which has no basis in fact or which Contractor knows to be false may violate the False Claims Act (Government Code Section 12650 et seq.).

Signature: _____

Name: _____

Title: _____

Company: _____

Date: _____

4.2.6 Strict Compliance Required. No Claim may be asserted unless Contractor has strictly complied with the requirements of Section 4.2 of these General Conditions, which shall be considered conditions precedent to Contractor's rights to assert the Claim and to initiate the Contract Dispute Resolution Process set forth below with respect to such Claim.

4.2.7 No Work Delay. Notwithstanding the submission of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by City, Contractor shall not delay, slow or stop performance of the Work, but shall diligently proceed with performance in accordance with the Contract Documents and City will continue to make payments as required by the Contract Documents.

4.2.8 City Response. City shall respond in writing within forty-five (45) Days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed or undisputed, unless the 45 Day period is extended by mutual agreement of City and Contractor or as otherwise allowed under Public Contract Code Section 9204. However, if City determines that the Claim is not adequately documented, City may first request in writing, within thirty (30) days of receipt of the Claim, additional information or documentation supporting the Claim, or relating to defenses to the Claim that City may have against the Claim, in which case City shall respond to the Claim within forty-five 45 Days after receipt of the further information or documentation. If Contractor fails to submit the additional documentation to City within fifteen (15) Days of receipt of City's request, the Claim will be deemed waived. If City Council authorization is necessary for City to respond to a Claim, City will respond within three (3) Days following the Council's consideration of the Claim, which shall be scheduled in accordance with Section 9204.

4.2.9 Non-Waiver. Any failure by City to respond within the times specified above may not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

4.2.10 Payment on Undisputed Portion. Any payment due on an undisputed portion of the Claim shall be paid within 60 Days after the City issues its written response.

4.2.11 Meet and Confer. If Contractor disputes City's response, or if City fails to respond within the prescribed time set forth above, Contractor may so notify City and demand a meet and confer conference for settlement of the issues in dispute, in writing sent by registered mail or certified mail, return receipt requested, within fifteen (15) Days of City's response or within fifteen (15) Days of City's failure to respond. If Contractor fails to dispute City's response within the specified time, Contractor's Claim shall be deemed waived.

- .1 Schedule Meet and Confer. Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within 30 days, or later if needed to ensure the mutual availability of each of the individuals that each party requires to represent its interests at the meet and confer conference.
- .2 Location for Meet and Confer. The meet and confer conference will be scheduled at a location at or near City's principal office.
- .3 Written Statement After Meet and Confer. Within ten (10) working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.
- .4 Submission to Mediation. If the Claim or any portion remains in dispute following the meet and confer conference, within ten (10) working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the disputed portion(s) will be submitted for nonbinding mediation, as set forth below.

4.2.12 Mediation. Within ten (10) working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute following the meet and confer, City and Contractor will mutually agree to a mediator and mediation process, consistent with and as provided under Public Contract Code section 9204. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. All discussions that occur during the mediation and all documents prepared solely for the purpose of the mediation shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152. The parties will share the costs of mediation equally, except costs incurred by each party for its representation by legal counsel or any other consultants.

4.2.13 The Claim procedures set forth herein do not apply to the following:

- (i) Penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency.
- (ii) Tort claims for personal injury or death.
- (iii) False claims liability under California Government Code Section 12650, et seq.
- (iv) Defects in the Work first discovered by City after Final Payment by City to Contractor.
- (v) Stop notices.
- (vi) The right of City to specific performance or injunctive relief to compel performance of any provision of the Contract Documents.

4.2.14 If the Claim is not fully resolved during the meet and confer conference or through mediation, as to those portions of the Claim which remain in dispute, Contractor may commence the Contract Dispute Resolution Process set forth below by filing a Statement of Contract Dispute with the City within thirty (30) Days following the meet and confer conference if the parties have mutually waived mediation, or within thirty (30) Days following the mediation result. If Contractor fails to submit a Statement of Contract Dispute within the applicable thirty (30) Day period, City's last written response will become final and binding upon Contractor, and Contractor shall be deemed to have waived and release any further right to pursue the Claim.

4.3 RESOLUTION OF CONTRACT DISPUTES.

Contract Disputes shall be resolved by the parties in accordance with the Contract Dispute Resolution Process set forth in this Section 4.3 of the General Conditions in lieu of any and all rights under the law that either party have its rights adjudged by a trial court or jury. All Contract Disputes shall be subject to the Contract Dispute Resolution Process set forth in this Section 4.3, which shall be the exclusive recourse of Contractor and City for such Contract Disputes.

4.3.1 Non-Contract Disputes. Contract Disputes shall not include any of the following:

- (i) Penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency;
- (ii) Third party tort claims for personal injury, property damage or death relating to any Work performed by Contractor or its Subcontractors or Sub-subcontractors of any tier;
- (iii) False claims liability under California Government Code Section 12650, et. seq.;
- (iv) Defects in the Work first discovered by City after Final Payment by City to Contractor;
- (v) Stop notices; or
- (vi) The right of City to specific performance or injunctive relief to compel performance of any provision of the Contract Documents.

4.3.2 Litigation, City Election. Matters that do not constitute Contract Disputes shall be resolved by way of an action filed in the Superior Court of the State of California, County of Santa Clara, and shall not be subject to the Contract Dispute Resolution Process. However, the City reserves the right, in its sole and absolute discretion, to treat such disputes as Contract Disputes. Upon written notice by City of its election as provided in the preceding sentence, such dispute shall be submitted by the parties and finally decided pursuant to the Contract Dispute Resolution Process in the manner as required for Contract Disputes, including, without limitation, City's right under Paragraph 4.3.5 to defer resolution and final determination until after Final Completion of the Work.

4.3.3 Submission of Contract Dispute.

.1 By Contractor.

Contractors may commence the Contract Dispute Resolution Process upon conclusion of the Claims process set forth in Section 4.2 above. Contractor shall submit a written Statement of Contract Dispute (as set forth below) to City within thirty (30) Days after conclusion of the meet and confer process or mediation, as applicable, set forth in Section 4.2. Failure by Contractor to submit its Statement of Contract Dispute in a timely manner shall result in City's decision by City on the Claim becoming final and binding. Contractor's Statement of Contract Dispute shall be signed under penalty of perjury and shall state with specificity the events or circumstances giving rise to the Contract Dispute, the dates of their occurrence and the asserted effect on the Contract Sum and the Contract Time. The Statement of Contract Dispute shall include adequate supporting data to substantiate the disputed Claim, in compliance with the Change Order Request requirements set forth herein.

.2 By City.

City's right to commence the Contract Dispute Resolution Process shall arise at any time following City's actual discovery of the circumstances giving rise to the Contract Dispute. City may also assert a Contract Dispute in response to a Contract Dispute asserted by Contractor. A Statement of Contract Dispute submitted by City shall state the events or circumstances giving rise to the Contract Dispute, the dates of their occurrence and the damages or other relief claimed by City as a result of such events.

.3 Contract Dispute Resolution Process.

The parties shall utilize each of the following steps in the Contract Dispute Resolution Process in the sequence they appear below. Each party shall participate fully and in good faith in each step in the Contract Dispute Resolution Process, and good faith effort shall be a condition precedent to the right of each party to proceed to the next step in the process.

4.3.4 Direct Negotiations. Designated representatives of City and Contractor shall meet as soon as possible (but not later than ten (10) Days after receipt of the Statement of Contract Dispute) in a good faith effort to negotiate a resolution to the Contract Dispute. Each party shall be represented in such negotiations by an authorized representative with full knowledge of the details of the Claims or defenses being asserted by such party in the negotiations, and with full authority to resolve such Contract Dispute then and there, subject only to City's obligation to obtain administrative and/or City Council approval of any agreed settlement or resolution. If the Contract Dispute involves the assertion of a right or claim by a Subcontractor against Contractor that is in turn being asserted by Contractor against City ("Pass-Through Claim"), then the Subcontractor shall also have a representative attend the negotiations, with the same authority and knowledge as described above. Upon completion of the meeting, if the Contract Dispute is not resolved, the parties may either continue the negotiations or any party may declare negotiations ended. All discussions that occur during such negotiations and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

4.3.5 Deferral of Contract Disputes. Following the completion of the negotiations required by Paragraph 4.3.4, above, all unresolved Contract Disputes shall be deferred pending Final Completion of the Project, subject to City's right, in its sole and absolute discretion, to require that the Contract Dispute Resolution Process proceed prior to Final Completion. All Contract Disputes that have been deferred until Final Completion shall be consolidated within a reasonable time after Final Completion and thereafter pursued to resolution pursuant to this Contract Dispute Resolution Process. The parties can continue informal negotiations of Contract Disputes; provided, however, that such informal negotiations shall not be alter the provision for deferring final determination and resolution of unresolved Contract Disputes until after Final Completion.

4.3.6 Mediation. If the Contract Dispute remains unresolved after negotiations pursuant to Paragraph 4.3.4, above, the parties may choose, by mutual agreement, to conduct further mediation, however they shall be under no obligation to do so.

4.3.7 Binding Arbitration. Any remaining Contract Dispute shall be submitted for binding arbitration.

- .1 Process. Any Claim submitted for binding arbitration, as set forth above, shall be determined by arbitration at the San Francisco JAMS' offices, and administered by JAMS pursuant to its Engineering and Construction Arbitration Rules & Procedures for Expedited Arbitration. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction within Santa Clara County, and no other place.
- .2 Waiver of Jury Trial. Contractor and City each voluntarily waives its right to a jury trial with respect to any Contract Dispute that is subject to binding arbitration in accordance with the provisions of this Paragraph 4.3. Contractor shall include this provision in its contracts with its Subcontractors who provide any portion of the Work.

4.3.8 Non-Waiver. Participation in the Contract Dispute Resolution Process shall not waive, release or compromise any defense of City, including, without limitation, any defense based on the assertion that the rights or Claims of Contractor that are the basis of a Contract Dispute were previously waived by Contractor due to Contractor's failure to comply with the Contract Documents, including, without limitation, Contractor's failure to comply with any time periods for providing notice of requests for adjustments of the Contract Sum or Contract Time or for submission of Claims or supporting documentation of Claims.

ARTICLE 5 – SUBCONTRACTORS

5.1 CONTRACTOR'S AWARD OF SUBCONTRACTS

5.1.1 Contractor shall comply with the Subletting and Subcontracting Fair Practices Act, Public Contract Code Sections 4100 through 4114. Nothing herein shall be deemed to entitle Contractor, without the written approval of City, to substitute other Subcontractors for those named in Contractor's List of Subcontractors contained in the completed Bid; and, except with such approval, no such substitution shall be made. Should Contractor violate any of the provisions of the Subletting and Subcontracting Fair Practices Act, such violation shall be deemed a violation of the Construction Contract, entitling City, without limitation to any other rights or remedies under the law, to suspend or terminate the Construction Contract.

5.1.2 Except as hereinafter provided, any increase in the cost of the Work or Contract Time resulting from the replacement or substitution of a Subcontractor, shall be borne solely by Contractor and without any adjustment in Contract Sum or Contract Time.

5.1.3 Where a hearing is held pursuant to the provisions of Chapter 2, Division 5, Title 1 of the Public Contract Code (commencing with Subparagraph 4100), by the awarding authority or a duly appointed hearing officer, City's representative shall prepare and certify a statement of all costs incurred by City for investigation and conduct of the hearing, including the costs of any hearing officer and reporter appointed. The statement shall then be sent to Contractor who shall reimburse City for such costs. If not paid separately, such reimbursement may be deducted from any money due and owing to Contractor.

5.2 SUBCONTRACTOR RELATIONS

5.2.1 Prior to the execution of each subcontract agreement, Contractor shall make available to each proposed Subcontractor, copies of the Contract Documents. Contractor must incorporate the terms of these Contract Documents into each subcontract, so that each Subcontractor will be bound by the terms of these Contract Documents, including, but not limited to, the provisions for dispute resolution. Within thirty (30) Days of the Notice To Proceed, Contractor shall provide City with a complete listing of all Subcontractors, which shall include, but not be limited to, the Work contracted for, Subcontractor's name, address, telephone and facsimile numbers, form for doing business (i.e. sole proprietor, corporation, partnership), point-of-contact and Subcontractor's license classification and number.

5.2.2 Any part of the Work performed for Contractor by a first Tier Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require that the Subcontractor:

- (i) Perform the Work in accordance with the terms of the Contract Documents.
- (ii) Assume toward Contractor all the obligations and responsibilities which Contractor assumes towards City by the Contract Documents.

- (iii) Preserve and protect the rights of City under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights.
- (iv) Waive all rights that the Subcontractor may have against City for damages caused by fire or other perils covered by builder's risk property insurance carried by Contractor or City, except for such rights Subcontractor may have to the proceeds of such insurance held by City under Article 11 of these General Conditions.
- (v) Afford City and entities and agencies designated by City the same rights and remedies with respect to access to and the right to audit and the right to copy at City's cost all of the Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders and memoranda relating to the Work and requiring the Subcontractor to preserve all such records and other items for a period of at least three (3) years after Final Completion.
- (vi) Recognize the rights of City under Section 5.3 of the General Conditions, Contingent Assignment of Subcontracts, including, without limitation, City's right to elect to accept assignment of the subcontract and to retain Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by City, to execute a written agreement on terms acceptable to City confirming that the Subcontractor is bound to City under the same terms as the subcontract.
- (vii) Submit Applications for payment, requests for Change Orders and extensions of time and Claims, and to comply with all other notice and submission requirements of the Contract Documents, sufficiently in advance to allow Contractor time to comply with its obligations under the Contract Documents.
- (viii) Purchase and maintain insurance in accordance with the requirements of the Contract Documents and reserving the right to Owner to purchase, in its sole discretion, such insurance pursuant to an Owner Controlled Insurance or other form of wrap-up program.
- (ix) Provide the same defense indemnification of the City as is required of the Contractor.
- (x) Agree to participate in the dispute resolution procedures specified in the Construction Contract, at the election of City.

5.2.3 Contractor shall promptly, after execution, furnish to City true, complete, and executed copies of all subcontracts, and any change orders and modifications thereto. Progress payments shall not be made for items of Work for which City has not received executed subcontracts and, if applicable, Change Orders.

5.2.4 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and City, except when, and only to the extent that, City elects to accept the assignment of the subcontract with such Subcontractor pursuant to Section 5.3, Contingent Assignment of Subcontracts. Notwithstanding the foregoing, City is deemed a third-party beneficiary of each subcontract agreement.

5.2.5 City and the Construction Manager shall have the right to communicate with Contractor's Subcontractors with respect to matters that are related to Contractor's performance of its obligations under the Contract Documents. Contractor shall be provided with a copy of all such written communications. Such communications shall not create or be interpreted as creating any contractual relationship between City or the Construction Manager and any such Subcontractor.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

In the event of any suspension or termination of the Construction Contract, Contractor is hereby deemed to have offered to assign to City all its interest in contracts with Subcontractors now or hereafter entered into by Contractor for performance of any part of the Work. The assignment will be effective upon acceptance by City in writing and only as to those contracts which City designates in writing. City may accept, at its sole election, said assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of Contractor's rights under the Contract Documents. Such assignment is part of the consideration to City for entering into the Contract with Contractor and may not be withdrawn prior to Final Completion.

5.4 CONTRACTOR AND SUBCONTRACTOR RESPONSIBILITY

Contractor shall be responsible to City for acts and omissions of Contractor's agents, employees, and of Contractor's Subcontractors, and their respective agents and employees. Unless otherwise stated in or a contrary intention is reasonably inferable from the Contract Documents, references to Contractor, when used in reference to an obligation bearing upon performance of the Work, shall be deemed to include Contractor's Subcontractors.

ARTICLE 6 – CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

6.1 CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 City reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Site, including portions of the Work which have been deleted by modification. Contractor shall cooperate with City's forces and Separate Contractors.

6.1.2 City shall provide coordination of the activities of City forces and of each Separate Contractor with the Work of Contractor. Contractor shall participate with City and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. Contractor shall make necessary revisions to the Construction Schedule after such joint review.

6.1.3 Without limitation upon any of the rights or remedies of City under the Contract Documents or under law arising from a default by Contractor, in the event that Contractor fails to have personnel on Site to supervise the Work, City shall have the right, in its sole discretion, but not the responsibility, upon twenty-four (24) hours' telephonic notice to Contractor, to provide such supervision on a temporary basis. Contractor shall, notwithstanding City's providing such temporary supervision, remain solely responsible for all actions of its personnel and Subcontractors and shall defend and indemnify City in accordance with the Construction Contract against any Losses arising therefrom. City shall have the right, in its discretion, to deduct from the sums owing to Contractor the reasonable cost of such temporary supervision.

6.2 MUTUAL RESPONSIBILITY

6.2.1 Contractor shall be responsible for affording Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. Contractor shall schedule and coordinate its construction and operations with the construction and operations of Separate Contractors as required by the Contract Documents.

6.2.2 If a portion of the Work is dependent upon the proper execution or results of other construction or operations by Separate Contractors, Contractor shall inspect such other construction or operations before proceeding with its portion of the Work. Contractor shall promptly report to City apparent discrepancies or defects which render the other construction or operations unsuitable to receive the Contractor's Work. Unless otherwise directed by City, Contractor shall not proceed with the portion of the Work affected until apparent discrepancies or defects have been corrected. Failure of Contractor to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by City or Separate Contractors is suitable to receive the Work, except as to defects not then reasonably discoverable.

6.2.3 In the event of Delays, improperly timed activities or Defective Work by the Contractor or the Separate Contractors, the costs of such occurrences shall be borne by the party responsible therefor.

6.2.4 If Contractor wrongfully causes damage to completed or partially completed construction or to property of City or Separate Contractors, Contractor shall promptly remedy damage as provided in Paragraph 12.2 of these General Conditions.

6.2.5 If a dispute, or other matters in question arise between Contractor and a Separate Contractor, these occurrences shall be subject to the provisions of Section 4.2 and 4.3 of the General Conditions. Contractor shall immediately notify the Construction Manager in writing of such occurrences.

6.3 CITY'S RIGHT TO CLEAN UP

If a dispute arises between Contractor and Separate Contractors as to the responsibility under their respective contracts for maintaining the Site and surrounding areas free from waste materials and rubbish, City may clean up and allocate the cost between those firms it deems, in its sole discretion, to be responsible.

ARTICLE 7 – CHANGES

7.1 CHANGES

7.1.1 City may, at any time and without notice to Contractor's sureties, order Changes in the Work without invalidating the Construction Contract and without relieving Contractor's sureties of their obligations to City.

7.1.2 City shall receive a deductive adjustment in the Contract Sum for Changes that result in a reduction in the cost to perform the Work and shall be entitled to an adjustment reducing the Contract Time for Changes that enable the Contractor to complete the Work earlier than the Contract Time.

7.1.3 Unless such rights have been waived and provided that Contractor has complied with the requirements of the Contract Documents with respect to, without limitation, complete and timely submission of all notices, requests and supporting documentation, Contractor shall receive an additive adjustment to the Contract Sum for Changes that increase the cost to perform the Work and/or an adjustment extending the Contract Time for Excusable Delay (subject to offset for concurrent Unexcused Delay).

7.1.4 Contractor shall not be entitled to an adjustment of the Contract Sum or Contract Time for Changes that are not authorized by an Approved Change Order or Field Order signed by City or Construction Manager. All Changes in the Work that are the basis of an adjustment to the Contract Sum or Contract Time must be authorized in advance, in writing, by City or Construction Manager. Accordingly, no verbal directions, course of conduct between the parties or express or implied Acceptance of Changes or Work, and no claim that the Owner has been unjustly enriched (whether or not there has been such enrichment) shall be the basis for an adjustment to the Contract Sum or Contract Time if Contractor has not obtained advance written authorization to perform the Change in the manner required herein.

7.1.5 City or the Construction Manager may authorize and direct Changes by requesting that Contractor submit a Change Order Request or by issuing a Field Order. A Field Order may be issued to direct performance of Work under the following circumstances:

- .1 When there is a dispute as to whether or not the Work described therein constitutes or includes a Change or Extra Work,
- .2 When there is a dispute regarding the basis or amount of compensation for Changed or Extra Work,
- .3 When there is a dispute regarding whether or how the Contract Time should be adjusted, or
- .4 As otherwise deemed necessary by City to ensure the timely performance of the Work and timely completion of the Project.

The purpose of a Field Order is to ensure the timely performance of the Work and timely completion of the Project, and issuance of a Field Order shall not be construed as an acknowledgment by City that the Work described constitutes a Change or Extra Work if that is in fact not the case.

7.1.6 City can make whatever Changes that it determines in its sole discretion are necessary and in its best interests and under no circumstances shall the number (individual or cumulative value) or scope of Changes become a basis for Contractor to claim that the Construction Contract has been rescinded, terminated, abandoned or should be reformed nor shall such circumstances be the basis for Contractor, or any Subcontractor to recover any compensation or damages not permitted by, or in excess of that allowed under, the Contract Documents.

7.1.7 City shall have authority to order minor Changes in the Work that do not increase the cost or time to perform the Work, and which are consistent with the intent of the Contract Documents. Such changes may be directed by a Field Order, and shall be binding on City and Contractor. Contractor shall carry out such written orders promptly.

7.2 CHANGE ORDER REQUESTS AND CHANGE ORDERS

7.2.1 Contractor may request adjustments to the Contract Sum or Contract Time or the terms of a Field Order by submitting a written Change Order Request if, and only if, Contractor follows the procedures specified in the Contract Documents, including, without limitation, the procedures set forth in this Section 7.2. A Change Order Request must be submitted within ten (10) Days after the occurrence of the circumstances giving rise thereto. At the City's election, the Contractor shall submit all Change Order requests on a form prepared by the City. The Change Order Request must clearly describe the circumstances that are the basis of the Change, with reference, to the particular provisions of the Contract Documents involved, and also to all other directly relevant documents, including, but not limited to, related Requests for Information and responses thereto, and Field Orders. A Change Order Request seeking an adjustment to the Contract Sum must identify the proposed basis of compensation, the amount of the requested adjustment, and a detailed breakdown of the amount requested. A Change Order Request seeking an adjustment to the Contract Time must include all information required by the Contract Documents, including, but not limited to strict compliance with Section 8.5 of the General Conditions pertaining to requests for extension of Contract Time. A request for an extension of Contract Time must be accompanied by a "Fragnet" or "time impact analysis," which identifies all critical and non-critical activities affected by the Change Order Request and showing logic ties into all existing affected activities noted on the latest approved, updated Construction Schedule. Change Order Requests must be submitted to the Construction Manager. Incomplete Change Order Requests or requests that are not submitted on the City's Change Order Request Form will be returned without review.

7.2.2 Adjustments to the Contract Sum, whether increases or decreases, shall be computed at City's sole election on the basis of one or more of the following methods:

- .1 Unit Pricing: Unit prices stated in the Contract Documents or agreed upon by City and Contractor, which shall be deemed to include all Allowable Costs, Contractor Markup and Subcontractor Markup.
- .2 Lump Sum Pricing: A lump sum agreed upon by City and Contractor, based on the estimated Allowable Costs, Contractor Markup, and Subcontractor Markup computed in accordance with this Section.
- .3 Time and Materials: Work performed on a time and materials basis shall be calculated as the sum of Allowable Costs, plus applicable Contractor Markup, as set forth herein.

The above methods are the exclusive methods for calculating adjustments to the Contract Sum. Under no circumstances will adjustment to the Contract Sum be based upon any methodology such as total cost or modified total cost methodologies that purports to calculate Contractor's additional costs based on the difference between Contractor's total actual Project or line item costs and its original bid estimate for the Project or any original bid estimate line item.

7.2.3 Changes involving Extra Work that City elects to have performed on a time and material basis, whether performed by Contractor's forces or the forces of Subcontractors, shall be compensated by an increase in the Contract Sum based on actual Allowable Costs and applicable Markup, as set forth herein. When Work is performed on a time and material basis, by Contractor or any of its Subcontractors, Contractor shall submit on a daily basis to the Construction Manager daily time and material tickets which include the identification number assigned to the Change; the location and description of the Change; the classification of labor employed (and names and social security numbers if requested); the materials used; the equipment rented (not tools); and such other receipts, invoices, or other evidence of cost as the Construction Manager may require. The Construction Manager may require authentication of all time and material tickets and invoices by persons designated by the Construction Manager for such purpose. The failure of Contractor to provide any required authentication shall, if City elects to treat it as such, constitute a waiver by Contractor of any right to adjustment of the Contract Sum for the cost of all or that portion of the Extra Work covered by a non-authenticated ticket or subsequent invoice. The adjustment to the Contract Sum for the Extra Work will be based on the total sum of Allowable Costs for performance of that Extra Work and applicable Markup as provided herein.

.1 Minimum Shift Payment. This provision applies for each day that (1) the time during which the Extra Work is performed is less than a full day's work based on normal working hours for the Project, and (2) an applicable DIR wage determination would result in the Contractor or any of its Subcontractors having to pay a worker assigned Extra Work for more time than spent actually performing the Extra Work. Under those circumstances, once the Extra Work has been completed for the day, the worker will be reassigned to perform other Work for the duration of the shift that day unless the City reassignment is impractical.

7.2.4 Allowable Costs include and are limited to the sum of direct, actual costs necessarily incurred by Contractor and any Subcontractors that actually perform Extra Work, and are strictly limited to the following:

- .1 Labor.** The actual costs for straight-time (and the premium time portion of overtime, if approved in writing in advance by City or the Construction Manager) wages or salaries for employees performing the Extra Work, whether at the Site, or at fabrication sites off the Site, plus employer payments collectively referred to as "Fringe Benefits and Payroll Taxes," of payroll, taxes and insurance, health and welfare pension, vacation, apprenticeship funds, and other direct costs required by Federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of employees with a labor classification, which would increase the Allowable Costs will not be permitted unless Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be payable under this Paragraph only when such costs are not included in the invoice for equipment rental.
- .2 Material.** The actual cost of materials, supplies and consumable items which are required for the Work at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, including sales tax, freight and delivery. City reserves the right to approve materials and sources of supply, or to supply materials to Contractor, if necessary, for the Work. No Markup shall be applied to any material provided by City. Material re-stocking charges shall be limited to 5% of the amount of material. All discounts, rebates and refunds from the sale of surplus materials and consumable items shall accrue to City, and Contractor shall make provision so that they may be obtained.
- .3 Tool and Equipment Rental.** Rental charges actually incurred for necessary machinery and equipment, whether owned or hired, as authorized in writing by City or the Construction Manager, exclusive of hand tools. No payment will be made for the use of

tools that have a replacement value of \$500 or less. When the equipment is owned by Contractor, the rental rate shall be as listed for such equipment in the California Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates," which is in effect on the date the Work is accomplished. When equipment is not listed in said publication, the rate to be paid shall be as herein defined, or a suitable rental rate for such equipment will be established by the Construction Manager. Regardless of ownership, the rates to be used in determining equipment rental cost shall not exceed listed rates prevailing locally at equipment rental agencies or distributors at the time the work is performed. The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals. If equipment is used intermittently, when not in use it shall be returned to its rental source unless Contractor elects to keep it at the Site at no expense to City. The reported rental time for equipment already at the Site shall be the duration of its use on the Extra Work, commencing at the time it is first put into actual operation on the Extra Work, plus the time required to move it from its previous site and back, or to a closer site.

- .4 Royalties and Permits.** Costs of royalties and permits solely related to the Extra or Deleted Work.
- .5 Insurance and Bonds.** Additional costs of insurance and bonds, not to exceed two percent (2%) of the total of Parts .1 through .4, above.

7.2.5 Allowable Costs shall not include any of the following, which are deemed to be included in the Contractor Markup:

- (i) Superintendent(s)
- (ii) Assistant Superintendent (s)
- (iii) Project Engineer(s), Assistant Project Engineer(s).
- (iv) Project Manager(s), Assistant Project Manager(s).
- (v) Scheduler(s), Administrative Assistant(s), Health and Safety personnel.
- (vi) Estimator(s), Clerk(s), Secretary(s), Accountant(s) or any Home Office personnel.
- (vii) Drafting or detailing.
- (viii) Small tools (with a replacement value under \$500).
- (ix) Home or field office expenses, including staff, materials, and supplies.
- (x) Trailer or storage rental and expense, whether on the Site or off the Site.
- (xi) Data processing personnel and equipment.
- (xii) Site fencing.

- (xiii) Utilities, including, without limitation, gas, electric, sewer, water, telephones.
- (xiv) Telephone, cell phone, radios, computer, tablet devices, facsimile, e-mail and copier.
- (xv) Overhead, administrative, or general expenses of any kind.
- (xvi) Loss of efficiency or productivity, or other impact cost due to the effect of the Extra Work on the performance of other Work or the Work of other trades on the Project.
- (xvii) Capital expenses, including interest on capital employed in connection with Extra Work.
- (xviii) Legal costs.
- (xix) Federal, State, or local income and franchise taxes.
- (xx) Profit.
- (xxi) Costs incurred more than twenty (20) Days prior to submission of a Change Order Request seeking compensation for those costs.
- (xxii) Cost of any item not specifically and expressly included in Allowable Costs.

7.2.6 Contractor Markup for Extra Work is to be calculated as ten percent (10%) of the Allowable Costs the Contractor or Subcontractor actually incurred to perform the Extra Work with its own forces. Subcontractor Markup by Contractor for Extra Work performed by Subcontractor is to be calculated as fifteen percent (15%) of the total Allowable Costs the Subcontractor incurred for Extra Work. The total amount of markup for Extra Work may not exceed twenty-five percent (25%) of the total Allowable Costs.

7.2.7 Change Order Requests or requests for payment for time and material work directed by a Field Order must include a complete breakdown of actual costs, including credits, and shall itemize all Allowable Costs, subcontract costs if applicable, Contractor Markup, and Subcontractor Markup if applicable. All claimed costs must be fully documented and objectively verifiable. In connection with the foregoing, Contractor must generate and maintain complete and accurate cost accounting records that will reflect:

- .1 The actual Allowable Costs incurred or saved for each individual item of Extra Work or Deleted Work, and
- .2 On an event-by-event basis, the effect of each Delay that forms the basis of any request for extension of time, regardless of scope, number, complexity, cumulative effect or time of issuance or occurrence.

7.2.8 The Contract Sum will be adjusted for direct Allowable Costs incurred due to Excusable Delay only if and to the extent allowed by the Contract for Compensable Delay. Such adjustments in the Contract Sum shall be Contractor's sole and exclusive remedy and recovery for Excusable Delay, including any alleged disruption, hindrance, interference, loss of productivity, labor or material cost escalations, inefficiency, acceleration, impact costs, extended or extraordinary overhead (direct or indirect), home office overhead, or other Losses or damages due to Delay, of any kind.

7.2.9 City has the right to increase or decrease the quantity of any unit price item for which an estimated quantity is stated in the Contract Documents, and the Contract Sum will be adjusted accordingly.

7.2.10 Allowance Adjustments: An Allowance is an amount included in the Bid for Work that may or may not be included in the Project, depending on conditions that will not become known until after Bid time. If the Contract Sum includes an Allowance and the cost of performing the Work covered by that Allowance is greater or less than the stated amount, the Contract Sum shall be increased or decreased accordingly by the amount of the difference. The Contract Sum shall also be adjusted by the amount of any unused Allowance that was specifically and expressly included in the original Contract Sum.

7.2.11 Change Orders: Approved Change Order Requests and Changes directed by a Field Order, including adjustments to Contract Sum and Contract Price, shall be incorporated into a Change Order for approval by the City. City shall prepare each Change Order for execution by Contractor and the City. Change Orders shall be in substantially the same form as Attachment B to the General Conditions. An Approved Change Order becomes binding upon City and Contractor when fully executed by both parties. Full execution of a Change Order is deemed full resolution, settlement, accord and satisfaction with respect to any and all pending or future Claims for cost and extensions of time that were asserted, or that could have been asserted, in connection with the Work covered by the Change Order, whether known or unknown at the time of execution of the Change Order, and that are related to the subject matter of the Change Order, including, without limitation, all Claims, costs or damages for Delay, disruption, hindrance, interference, extended or extraordinary direct and indirect overhead, multiplicity of Changes, loss of productivity, labor or material cost escalations, inefficiency, the impact of the Change on the Work, legal expenses, consultant costs, interest, lost profits or revenue, bond or insurance costs, currency fluctuations, changes in taxes or other related Claims, costs or damages. Change Orders shall be executed by Contractor within ten (10) days after issuance by City, in the form approved by the City Council or its authorized designee, and without any express reservation of rights by Contractor to reserve for the future the right to assert or recover from City any such Claims, costs or damages.

7.2.12 If Contractor refuses or fails to timely execute a Change Order, upon receipt of Contractor's written refusal or if Contractor fails to execute the Change Order within ten (10) days following issuance, the City may unilaterally approve the Change Order to increase the Contract Sum and/or to extend the Contract Time. Contractor may dispute the terms of a unilaterally-approved Change Order, in whole or in part, by submitting a Claim in accordance with the Dispute Resolution Procedures set forth herein within fourteen (14) days after the Change Order is approved by the City. If Contractor fails to submit a Claim within that 14-day period, with respect to all or part of the unilaterally-approved Change Order, those portions of the Change Order which have not been disputed by timely submission of a Claim shall be deemed to have the same effect as if the Change Order was fully executed by both parties as set forth above.

7.3 FIELD ORDERS

A Field Order will include a description of the Work to be performed, and the selected basis for adjusting the Contract Sum (increase or decrease) as set forth herein (i.e., unit pricing if applicable, lump sum, or time and materials). A Field Order may or may not include the total amount of the City's proposed adjustment to the Contract Sum or Contract Time, and may also include a not-to-exceed limit for any increases to the Contract Sum. Upon receipt of a Field Order, Contractor shall sign the Field Order to acknowledge receipt of the Field Order and, within a reasonable time, proceed with the Work described in the Field Order. Contractor's signature acknowledging receipt of the Field Order will not operate to impair Contractor's right to dispute the Field Order as set forth herein. If Contractor disputes the proposed basis or amount of adjustment to the Contract Sum or Contract Time, it may request to change the disputed portions of the Field Order by submitting a Change Order Request within ten (10) Days following issuance of the disputed Field Order. Failure by Contractor to submit a timely Change Order Request seeking modification of the terms of the Field Order shall be deemed full acceptance of and agreement to all of the terms of the Field Order, and a release and waiver of any right to subsequently dispute any or all of the terms of that Field Order. Field Orders shall be in substantially the same form as Attachment A to the General Conditions.

7.4 DISPUTES REGARDING CHANGES

No dispute, disagreement, nor failure of the parties to reach agreement regarding the amount, if any, of any adjustment to the Contract Sum or Contract Time, shall relieve Contractor from the obligation to proceed with performance of the Work, including, without limitation, performance of Work directed by a Field Order or as modified by a Change Order, promptly and expeditiously. Contractor shall not delay, slow, interrupt, or suspend the performance of any Work or any Change because of a dispute between the parties, including, but not limited to, disputes pertaining to an adjustment in the Contract Sum or Contract Time. If Contractor disputes the rejection of any Change Order Request in whole or in part, Contractor's exclusive remedy is to submit a Claim in compliance with the Dispute Resolution Procedures set forth in Article 4 herein.

ARTICLE 8 – CONTRACT TIME

8.1 COMMENCEMENT OF THE WORK

Commencement of the Work shall begin on the date specified in the Notice to Proceed.

8.2 PROGRESS AND COMPLETION

8.2.1 Contractor agrees that the Contract Time is reasonable for performing the Work and that Contractor is able to perform the Work within the Contract Time.

- .1 The Construction Schedule may reflect a period of performance that is shorter than the Contract Time; provided however, that the difference shall be deemed as float and nothing in this Paragraph or in any other provision of the Contract Documents shall be construed as creating any contractual right, express or implied, on the part of Contractor to finish the Project earlier than the Contract Time and under no circumstances shall City be liable to Contractor for any costs, damages or compensation due to the inability of Contractor to complete the Work earlier than the Contract Time, regardless of the cause, including, without limitation, acts or omissions (intentional or negligent) of City.

- .2 Contractor has included in its Bid price the costs of all Contractor and Subcontractor overhead (direct and indirect) for the entire duration of the Contract Time. The above costs are included in Contractor's Bid notwithstanding Contractor's anticipation of completion in fewer days than established by the Contract Time.
- .3 No increase in the Contract Sum shall be made or granted for Delay if Contractor completes the Work before expiration of the Contract Time.
- .4 No reduction in the Contract Sum shall be made nor will Contractor be required to remain on the Project Site if the Work is completed before expiration of the Contract Time.
- .5 The Construction Manager will schedule and hold weekly progress meetings and other meetings to be required by progress of the Work as determined by the Construction Manager. Contractor and/or Contractor's designee shall be present at each meeting. Contractor may also be required to request attendance by representatives of Contractor's suppliers, manufacturers and Subcontractors.

8.2.2 Except by agreement or instruction of City in writing, Contractor shall not commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by Contractor. Contractor's obligations to commence the Work and to complete the Work within the Contract Time shall not be changed by the effective date of such insurance.

8.2.3 Contractor shall proceed expeditiously with adequate forces and shall achieve Final Completion within the Contract Time. If City determines and notifies Contractor that Contractor's progress is such that Contractor will not complete the Work within the Contract Time, Contractor shall, immediately and at no additional cost to City, take all measures necessary, including working such overtime and additional shifts (other than City's normal working hours of 8:00 AM to 6:00 PM, Monday through Friday and 9:00 AM to 6:00 PM on Saturday), to ensure that the Work is Substantially Completed within the Contract Time. Upon receipt of such notice from City, Contractor shall immediately respond in writing setting forth a detailed plan for accelerating the Work in a manner acceptable to City. Contractor shall not be entitled to any reimbursement or payment of costs, expenses or damages incurred as a result of an acceleration of the Work. City may also take all necessary measures to prevent the need for subsequent accelerations of the Work. Contractor shall reimburse City, or City may withhold from payment due to Contractor, sums expended by City to perform such measures.

8.2.4. During unfavorable weather, wet ground or other unsuitable construction conditions, Contractor shall confine the operations to Work that will not be affected adversely by such conditions. No portion of the Work shall be constructed under conditions which would affect adversely the quality thereof or be detrimental to the quality of water discharges, unless special means or precautions are taken by Contractor to perform the Work in a proper and satisfactory manner.

8.3 CONSTRUCTION HOURS

Based on the Citywide noise ordinance and normal City business hours, Contractor is limited to performing the Work during **an eight-hour period between** the hours of 8:00 AM to 6:00 PM Monday through Friday, excluding holidays as set forth in Section 8.4 below, unless otherwise specified in the Special Provisions or authorized by Change Order. A Change Order Request to work beyond the authorized working hours will not be approved unless Contractor agrees to be solely responsible for any and all additional costs, including overtime payments for workers or for City staff or consultants, inspection costs, and additional traffic control costs.

8.4 HOLIDAYS

No work may be performed on the City holidays identified:

January 1 (New Year's Day)
Third Monday in January (Martin Luther King Day)
Third Monday in February (Washington's Birthday)
Last Monday in May (Memorial Day)
July 4 (Independence Day)
First Monday in September (Labor Day)
Second Monday in October (Columbus Day)
November 11 (Veteran's Day)
Fourth Thursday in November (Thanksgiving Day)
Day after Thanksgiving
December 25 (Christmas Day)

In the event that any of the aforementioned days falls on a Sunday, the following Monday shall be considered a holiday. In the event that any of the above days falls on a Saturday, then the preceding Friday shall be considered a holiday.

8.5 DELAY

8.5.1 Contractor may request an extension of the Contract Time for an Excusable Delay or a Compensable Delay, subject to the following:

- .1 In order to avoid double counting concurrent Delays, if an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first Delay to the cessation of the Delay which ends last.
- .2 If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which the Excusable Delay or the Compensable Delay exceeds the Unexcused Delay.
- .3 If an Unexcused Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which the number of Days of Excusable Delay, as determined pursuant these General Conditions, exceeds the number of Days of the Unexcused Delay.

8.5.2 As a condition precedent to Contractor's right to an extension of Time adjusting the Contract Time and the Contract Sum for Compensable Delay, Contractor must provide written notice to City within ten (10) Days of the date that Contractor learned of the Delay or should have learned of the Delay in exercise of diligence and reasonable care, setting forth:

- (i) A description of the Delay;
- (ii) A statement that the Delay is critical to completion; and
- (iii) The probable effect of the Delay in terms of the number of Days' extension Contractor believes are required to the Contract Time.

The written notice required by this Paragraph is necessary for City to adequately monitor the progress of the Work, to differentiate between critical and non-critical Delays, and to prioritize its actions in a manner that is appropriately targeted to mitigate the effect of Delays. Accordingly, Contractor's failure to provide

written notice in the manner required by this Paragraph 8.5.2 shall constitute Contractor's waiver of the right to an adjustment of the Contract Sum and Contract Time on account thereby, regardless of whether the circumstances of the Delay may have been known or suspected by City or the Construction Manager and that no other form of notice (including, without limitation, meeting minutes, log entries or schedule updates) shall suffice as constituting notice to City in accordance with this Paragraph 8.5.2.

8.5.3 Adequate supporting data for a request for extension of time shall include both of the following:

- (i) All relevant scheduling data including a Fragnet, and
- (ii) A detailed, event-by-event description of the impact of each event on completion of Work. Documentary support for any related increase in the Contract Sum must include both of the following:
 - (a) A detailed cost breakdown, and
 - (b) Supporting cost data in such form and including such information and other supporting data as required for submission of Change Order Requests.

8.5.4 City may order Changes, whether or not resulting in Extra Work and regardless of the extent and number of Changes, or may suspend the Work.

8.5.5 The determination of whether a Delay is an Excusable Delay, Compensable Delay or Unexcused Delay shall not be affected by the fact that any earlier Delay occurred, regardless of fault or causation.

8.5.6 All time limits stated in the Contract Documents are of the essence.

8.5.7 Excusable Delay means any Delay to the path of activities that is critical to Substantial Completion of the Work within the Contract Time caused by conditions beyond the control or foreseeability, and without the fault or negligence of Contractor or its Subcontractors, such as, but not limited to: war, embargoes, fire, unavoidable casualties, unusual delays in transportation, national emergency, and stormy and inclement weather conditions that are unusual and unseasonable and in which the Work cannot continue. Without limitation to the foregoing, the financial inability of Contractor or any Subcontractor, shall not be deemed conditions beyond Contractor's control or foreseeability. Contractor may claim an Excusable Delay only if it is unable to perform at least four (4) hours of scheduled critical path Work during a normal eight (8) hour work day., even with reasonable mitigation measures..

8.5.7.1 Excusable Delay does not include Delay caused by rainfall which is normal for that month in the City as specified in Section 3.10.3.4.

8.5.7.2 Excusable Delay does not include Delay caused by Contractor's failure to order equipment and materials sufficiently in advance of the time needed for the Work.

8.5.7.3 Excusable Delay does not include Delay caused by Contractor's failure to provide adequate notification to utility companies for connections or services necessary for the timely performance and completion of the Work.

8.5.7.4 Excusable Delay does not include Delay caused by foreseeable conditions Contractor could have ascertained from reasonably diligent inspection of the Site and/or review of the Contract Documents.

8.5.8 Compensable Delay means any Excusable Delay to the path of activities that is critical to Contractor's Substantial Completion of the Work within the Contract Time, which Delay is all of the following:

- (i) Solely due to acts or omissions within the City's control, including but not limited to Changes requested by City that involve Extra Work;
- (ii) Not due, in whole or in part, to the fault or negligence or breach of Contractor or any Subcontractor; and
- (iii) Not concurrent with another Excusable Delay or any Unexcused Delay.

8.5.9 Compensation for delay shall be limited to actual, direct, reasonable, and substantiated Project costs, and shall not include home office overhead, or markup for overhead and profit.

ARTICLE 9 – PAYMENTS AND COMPLETION

9.1 SCHEDULE OF VALUES

Within thirty (30) Days after signing the Contract, but in any event not later than fourteen (14) Days following receipt of the Notice to Proceed, Contractor shall submit to City through the Construction Manager a Schedule of Values reflecting cost breakdown of the Contract Sum in a form approved by the Construction Manager. The Schedule of Values shall itemize as separate line items the cost of each scheduled Work activity and all other costs, including warranties, Record Documents, insurance, bonds, overhead and profit, the total of which shall equal the Contract Sum and shall be made out in a form approved by the Construction Manager. The Schedule of Values, when approved by City, shall become the basis for determining the cost of Work requested on Contractor's Applications For Payment. Contractor shall submit a statement based upon this breakdown, and if required, itemized in such form and supported by such evidence as the Construction Manager may direct, showing Contractor's right to the payment claimed.

9.2 PROGRESS PAYMENT

9.2.1 City shall retain five percent (5%) of the undisputed amount due on each progress payment, or the percentage stated in the Notice Inviting Bids, whichever is greater, as retention to ensure full and complete performance of the Work. Subject to City's right of withholding under Paragraph 9.4.2 of these General Conditions, City agrees to pay to Contractor within thirty (30) Days of receipt of a properly submitted Application for Payment an amount equal to ninety-five percent (95%), or a lesser amount if corresponding to a higher retention percentage, if applicable, of the sum of the following, excepting therefrom any amounts which are disputed by City:

- (i) Construction Manager's determination of the value, expressed as a percentage of the Contract Sum, of the Work in permanent place that has been tested and accepted as of the end of the preceding month.
- (ii) Construction Manager's determination of the value of materials suitably stored but not yet incorporated into the Work, subject to Paragraph 9.3.6 of these General Conditions.
- (iii) Less amounts previously paid.

9.2.2 At any Time after fifty percent (50%) of the Work has been determined by Construction Manager to be completed, City may in its sole discretion, make any of the remaining progress payments in accordance with the calculation in Paragraph 9.2.1 of these General Conditions based on one hundred percent (100%) of City's determination of the value of the Work in place and of stored materials not yet incorporated into the Work.

9.2.3 Progress payments shall not be construed as City's Acceptance of any or all of the Work and shall not be a waiver of any or all rights City has under the Contract Documents.

9.3 APPLICATION FOR PAYMENT

9.3.1 At the end of each month, Contractor shall submit to City an itemized Application for Payment, requesting payment for Work as of the end of that month that is calculated in accordance with the formula for payment set forth in Paragraph 9.2.1 of these General Conditions. The Application for Payment shall be prepared:

- (i) Utilizing the format as designated by City or the Construction Manager.
- (ii) Itemized in accordance with the Approved Schedule of Values.
- (iii) Showing the results of a successful system test (for example a pressure test for gas project) of the system installed or completed in the pay period covering the Application for Payment.
- (iv) Including such data substantiating Contractor's right to payment as City may reasonably require, such as invoices, payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Section 9.5, a certification of the market value of all such securities as of a date not earlier than five (5) Days prior to the date of the Application for Payment.
- (v) Showing itemized amounts for Change Orders, Modifications and retention.

9.3.2 Applications for Payment shall not include requests for payment on account of increases to the Contract Sum which have not been authorized by Change Orders or amounts Contractor does not intend to pay a Subcontractor because of a dispute or other reason.

9.3.3 If required by City, an Application for Payment shall be accompanied by all of the following:

- (i) A summary showing payments that Contractor will make to Subcontractors covered by such application.
- (ii) Conditional waivers and releases of claims and stop notices from Contractor and each Subcontractor and Sub-subcontractor, of every Tier, listed in the current Application for Payment covering sums requested in the current Application for Payment.
- (iii) Unconditional waivers and releases of claims and stop notices, from Contractor and each Subcontractor and Sub-subcontractor, of every Tier, listed in the preceding Application for Payment covering sums disbursed pursuant to that preceding Application for Payment.

9.3.4 Contractor warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payment has been received from City, shall be free and clear of all claims, stop notices, security interests and encumbrances in favor of Contractor or Subcontractors or other persons or firms entitled to make claims by reason of having provided labor, materials or equipment relating to the Work.

9.3.6 At the sole discretion of City, the Construction Manager may approve for inclusion in Contractor's Application for Payment the cost of materials to be incorporated in the Work but not yet incorporated in the Work and already delivered and suitably stored either at the Site or at some other appropriate location acceptable to City. In such case, Contractor shall furnish evidence satisfactory to City:

- (i) Of the cost of such materials.
- (ii) That such materials are under the exclusive control of Contractor, or if not, that title to the materials is in City's name, free of any lien or encumbrance and that the materials are safely and suitably stored in a bonded warehouse with appropriate insurance coverage satisfactory to City to cover any Loss.
- (iii) Photographs of such materials if requested by the City.

Any payment pursuant to this Paragraph shall not be construed as an inspection or acceptance of the materials nor shall it relieve Contractor of its continuing and sole responsibility for the care and protection of such materials nor shall it relieve Contractor from sole responsibility for any loss or damage to the materials from any cause whatsoever nor act as a waiver of the right of City to require strict fulfillment by Contractor with all terms of the Contract Documents.

9.3.7 City shall have the right, in its sole discretion, to make payments of monies owing to Contractor by means of direct payment to Subcontractors of any unpaid work performed by any Subcontractor or by joint payment to Contractor and to Subcontractors. The making of such payments shall not be construed as the assumption of any obligation on the part of City or as creating any contractual relationship between City and any Subcontractor and shall not relieve Contractor of any of its obligations under the Contract Documents.

9.3.8 If the Contract Sum includes an Allowance from the Bid and the cost of performing the Work covered by that Allowance is greater or less than the amount of that Allowance, the Contract Sum shall be increased or decreased accordingly.

9.4 CERTIFICATE FOR PAYMENT

9.4.1 Approval of all or any part of an Application for Payment may be withheld, a Certificate For Payment may be withheld or all or part of a previous Certificate For Payment may be nullified and that amount withheld from a current Certificate For Payment in order to protect City against actual or threatened loss as a result of any of the following:

- (i) Defective Work not remedied or failure to pass required system tests.
- (ii) Third-party claims against Contractor or City arising from the acts or omissions of Contractor, or Subcontractors.
- (iii) Stop notices.

- (iv) Failure of Contractor to make timely payments due Subcontractors for material or labor.
- (v) A reasonable doubt that the Work can be completed for the balance of the Contract Sum then unpaid.
- (vi) Damage to City or Separate Contractor for which Contractor is responsible.
- (vii) Reasonable evidence that the Work will not be completed within the Contract Time.
- (viii) Failure of Contractor to maintain and update As-Built or Record Documents.
- (ix) Failure of Contractor to timely submit Construction Schedules, reports, Submittals or their updates as required by the Contract Documents.
- (x) Performance of Work by Contractor without Approved Submittals.
- (xi) Liquidated or actual damages assessed in accordance with the Construction Contract.
- (xii) Any other failure of Contractor to perform an obligation under the Contract Documents.

9.4.2 Subject to the withholding provisions of Paragraph 9.4.2 and when any or all of the noted deficiencies or others have been removed, City shall pay Contractor the amount set forth in the Certificate for Payment in accordance with its normal disbursement procedures.

9.4.3 Neither City nor the Construction Manager shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by Law.

9.4.4 Neither a Certificate for Payment nor any payment (progress or final) shall be construed as a waiver of any rights arising from Defective Work.

9.4.5 City may, at any time, require that payment of any undisputed amount is contingent upon Contractor furnishing City with a release of all claims against City which are related to those undisputed payments. Any disputed amount may be expressly excluded from such release.

9.4.6 The City may require a tri-party agreement among the City, the Contractor, and the Contractor's surety as a condition to making full progress payments if the Work is behind schedule, in order to avoid exoneration of the surety bond or impairment of the surety's security.

9.5 DEPOSIT OF SECURITIES IN LIEU OF RETENTION AND DEPOSIT OF RETENTION INTO ESCROW

9.5.1 At the request and expense of Contractor, a substitution of securities may be made as found in Government Code Section 16430 and as authorized by the Public Contract Code Section 22300 in lieu of monies retained by City under Section 9.2 of these General Conditions to ensure performance under the Contract Documents. Securities equivalent in value to the retention amount required by the Contract Documents for each Certificate For Payment shall be deposited by Contractor with a state or federally chartered bank in the State of California ("Escrow Agent"), which shall hold such securities pursuant to the escrow agreement referred to in Paragraph 9.5.3 until Final Payment is due in accordance with Section 9.8. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. Contractor shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention.

9.5.2 Alternatively to Paragraph 9.5.1 of these General Conditions, and at the request and expense of Contractor, City shall deposit retention directly with the Escrow Agent. Contractor may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or securities shall be held by the Escrow Agent upon the same terms provided for securities deposited by Contractor.

9.5.3 A prerequisite to the substitution of securities in lieu of retention or the deposit of retention into escrow shall be the execution by Contractor, City, and the Escrow Agent of an Escrow Contract for Deposit of Securities in Lieu of Retention and Deposit of Retention in the form specified by Public Contract Code section 22300, subject to review and approval as to form by the City, or, if applicable, using a form provided by the City. The terms of such escrow agreement are incorporated into the requirements of this Section 9.5.

9.5.4 Release of funds or securities from escrow to Contractor shall be made upon receipt by Escrow Agent of written notification by City that the Contractor has complied with all requirements and procedures applicable to the Contract.

9.5.5 City has the right to draw upon the securities in the event of default by Contractor, as determined by City pursuant to the provisions of these Contract Documents. Within seven (7) days following receipt of the City's written notice of such default, Escrow Agent must immediately convert the securities to cash and distribute the cash as instructed by City.

9.6 BENEFICIAL OCCUPANCY

9.6.1 City reserves the right, at its option and convenience, to occupy or otherwise make use of all or any part of the Work, at any time prior to issuing the Certificate of Substantial Completion, upon seven (7) Days' notice to Contractor. Such occupancy or use is herein referred to as "Beneficial Occupancy." Beneficial Occupancy shall be subject to the following conditions:

- .1 City, Design Consultant and Construction Manager will make an inspection of the portion of the Work to be beneficially occupied and prepare a list of items to be completed or corrected prior to issuing the Certificate of Substantial Completion.
- .2 Beneficial Occupancy by City shall not be construed by Contractor as Acceptance by City of that portion of the Work which is to be occupied. City may, however, at its sole option, relieve Contractor of Contract requirements to protect Work being beneficially occupied by City where such relief is specifically designated by City in writing.
- .3 Beneficial Occupancy by City shall not constitute a waiver of City's right to assess liquidated damages as otherwise provided in these Contract Documents.
- .4 Contractor shall provide, in the areas beneficially occupied and on a continual basis (if required), utility services, heating, and cooling for systems which are in operable condition at the time of Beneficial Occupancy. All responsibility for the operation and maintenance of equipment shall remain with Contractor while the equipment is so operated. Contractor shall submit to City an itemized list of each piece of equipment so operated with the date operation commences.
- .5 The Guarantee to Repair Periods, as defined in Section 12.2 of these General Conditions, will commence upon the first dates of actual occupancy or use of portions of the Work to which the City has taken Beneficial Occupancy and to equipment or systems fully utilized.

- .6 City shall pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.
- .7 City shall pay all utility costs which arise out of the Beneficial Occupancy.
- .8 Contractor shall not be responsible for providing security in areas beneficially occupied.
- .9 City shall use its best efforts to prevent its Beneficial Occupancy from interfering with the conduct of Contractor's remaining Work.
- .10 Contractor shall not be required to repair damage caused by City in its Beneficial Occupancy.
- .11 Except as provided in this Section 9.6 of these General Conditions, there shall be no added cost to City due to Beneficial Occupancy.
- .12 Contractor shall continue to maintain all insurance required by the Contract in full force and effect.

9.7 SUBSTANTIAL COMPLETION

9.7.1 When Contractor gives notice to City that the Work, or portion thereof designated by City for separate delivery, is Substantially Complete, unless City determines that the Work or designated portion thereof is not sufficiently complete to warrant an inspection to determine Substantial Completion, Design Professional or Construction Manager will inspect the Work, or such designated portion thereof, and prepare and give to Contractor a comprehensive list of items, if any, to be completed or corrected before establishing Substantial Completion. Contractor shall promptly proceed to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. City will then make a further inspection to determine whether the Work or such designated portion thereof is Substantially Complete. If City's inspection discloses any item, whether or not included on the list, which must be completed or corrected before Substantial Completion, Contractor shall, before City's issuance of the Certificate of Substantial Completion, complete or correct such item. Contractor shall then submit a request for another inspection by City to determine Substantial Completion.

9.7.2 When City determines that the Work or such designated portion thereof is Substantially Complete, City will prepare a Certificate of Substantial Completion on City's form, which when signed by City shall establish the date of Substantial Completion and the responsibilities of City and Contractor for security, maintenance, heat, utilities, insurance, completion of minor items and correction or repair of the Work or such designated portion thereof. Unless otherwise provided in the Certificate of Substantial Completion, the Guarantee To Repair Period for the Work (which is defined in Article 12, Section 12.2.1), or such designated portion thereof covered by the Certificate of Substantial Completion, excluding any systems provided by Separate Contractors which are not yet fully operational or accepted by City, shall commence on the date of Substantial Completion of the Work or such designated portion thereof. The Guarantee To Repair Period for systems which become fully operational or Accepted subsequent to Substantial Completion will begin on the later of the date they are operational or Acceptance of the Project by City.

9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Upon receipt of notice from Contractor that the Work is ready for final inspection, City will make such inspection. City will file a notice of completion with the County Clerk within fifteen (15) Days after Acceptance by City. Thirty-five (35) Days after filing the notice of completion, the City may release the final retention provided the requirements in this paragraph are met.

9.8.2 Without limitation to any other provisions of the Contract Documents, before Final Payment (including release of undisputed retention) for Work under this Construction Contract is authorized, the Contractor shall have completed the Work in accordance with the Contract Documents and all applicable standards of care and the following requirements of the Contract Documents must be fulfilled by Contractor:

- (i) The submittal of an application for Final Payment, together with supporting documentation, as required by Section 9.3 of these General Conditions. By submitting an application for final payment, Contractor warrants that all workers and persons employed, all firms supplying the materials, and all Subcontractors have been paid in full with the exception of any Subcontractor retention payments that are not yet due pursuant to Public Contract Code section 7107(d) or (e), and that there are no bills outstanding against the Work for either labor or materials, except certain items, documented as disputed claims or pending stop payment notices.
- (ii) Completion and delivery by Contractor to City of all required written guarantees, warranties, operation and maintenance manuals, As-Built Documents and other Record Documents, drawings, schedules, certificates and such other documents as required by the Contract Documents. All approvals and acceptances shall have been made pursuant to Applicable Code Requirements.
- (iii) Completion of all construction Work, including corrective and punch list items, in a manner acceptable to City. All rubbish, tools, scaffolding and surplus materials and equipment have been removed from the Site.
- (iv) Submission of conditional releases of claims and stop notices from Contractor and its Subcontractors with no reservation of rights for disputed claims or amounts.
- (v) If a Stop Notice(s) is received by the City after the Notice of Completion has been filed and prior to Final Payment, the City may, at its election, withhold the amount specified in the Stop Notice plus reasonable cost of any litigation pursuant to Civil Code Section 9358 from the Final Payment or permit the Contractor to supply a stop notice release bond in the amount of 125% of the stop notice amount from a Surety acceptable to the City.

9.8.3 For purposes of determining the last day for submission of a Claim pursuant to Article 4, the date of Final Payment is deemed to be the date that the City acts to release undisputed retention as part of Final Payment, either by transmitting a written request to the retention Escrow Agent or by transmitting a payment directly to Contractor, whichever occurs first. Acceptance of Final Payment by Contractor shall constitute a complete waiver of all Claims, except those previously made in writing and identified by Contractor as unsettled at the time of the Application for Final Payment.

9.8.4 Contractor shall pay or cause to be paid to Subcontractors, the amount stated in the conditional releases within five (5) Days after receipt of the Final Payment, and shall promptly thereafter furnish evidence of such payment to City.

ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 Contractor shall be solely and completely responsible for initiating, maintaining and supervising all safety precautions and programs on the Site in connection with the performance of the Construction Contract, including safety of all persons for the duration of the Work, on a 24-hour day, 7-day week basis.

10.1.2 Prior to the start of construction, Contractor shall submit to Construction Manager a copy of Contractor's safety program for the Project. A copy of this program shall be maintained on Site at all times. The safety program shall include, at a minimum:

- (i) Management policy, illness and injury prevention program (as described below).
- (ii) Safety meetings.
- (iii) Accident investigation.
- (iv) Basic accident causes.
- (v) Safety inspection check list.
- (vi) Fire prevention and control.
- (vii) Report forms.
- (viii) Employee safety manual.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall be solely and completely responsible for job site conditions and safety during the life of the contract. This obligation shall include the safety of all persons within or affected by the line of construction and all private property affected by the work

10.2.2 At its sole expense, Contractor shall furnish, erect and maintain such temporary fences, barricades, signs, lights, ramps, and temporary construction of whatever nature as may be necessary to provide access to abutting properties and to warn the public of the work in progress and of any dangerous conditions as may exist due to the work in progress. The Contractor's responsibility shall be continuous and not be limited to working hours or days, and shall not cease until formal acceptance of the work by the City except that if the City should make partial acceptance of the work, the Contractor's responsibility for the portion of the work so accepted shall thereupon cease, except for latent errors in the work or faulty construction.

10.2.3 The duty of the Construction Manager, its agents, or employees, to conduct construction review of the Contractor's performance and operations is not intended to, and does not include review of or responsibility for the adequacy of the Contractor's safety measures and procedures in, on, or adjacent to the site of the Work.

10.2.4 Contractor shall protect persons and property on the Site at all times. Contractor shall have available at the Site copies or suitable extracts of "Construction Safety Orders" and "General Industrial Safety Orders" issued by the California Division of Industrial Safety. Contractor shall comply with provisions of these and all other applicable laws, ordinances, and regulations.

10.2.5 Contractor shall immediately respond to notice from City of unsafe conditions, shall take adequate precautions for safety of persons on the Site, and shall provide adequate protection to prevent injury or Loss to the following:

- (i) Employees involved in the Work and other persons who may be affected thereby.
- (ii) The Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody, or control of Contractor or Subcontractors.
- (iii) Other property at the Site and adjoining property(ies).

10.2.6 Contractor shall promptly remedy damage and Loss (other than damage or Loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by Contractor or its Subcontractors or anyone for whose acts they may be liable and for which Contractor is responsible.

10.2.7 Contractor shall erect and maintain, as required by existing conditions and performance of the Work, adequate safeguards for safety and protection of persons and property, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.8 When use or storage of hazardous materials, equipment, or unusual methods are necessary for execution of the Work, Contractor shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

10.2.9 Contractor shall be required to provide at the Site a member of Contractor's organization, typically the Superintendent, whose responsibility it shall be to provide instruction to persons present on the Site about prevention of accidents and overall jobsite safety. Contractor shall notify City in writing if Contractor replaces the person responsible for safety.

10.2.10 Contractor shall be responsible for locating, providing, and coordinating the storage and staging of materials and equipment on-Site and off-Site and shall not load/store or permit any part of the Work on the Site to be loaded/stored so as to endanger the safety of persons or property.

10.2.11 Contractor shall protect its materials and the Work from damage in a manner satisfactory to City and shall make good, without charge to City, all damage due to negligence in providing proper protection.

10.2.12 Contractor shall take necessary precautions to guard against and eliminate possible fire hazards and to prevent damage to the Work, building materials, equipment, temporary field offices, storage sheds and public and private property.

10.2.13 Contractor shall not permit the possession or use of alcohol or controlled substances on the Site.

10.2.14 Explosives may be used only when authorized in writing by City. Explosives shall be handled, used and stored in accordance with applicable regulations.

10.3 EMERGENCIES

In an emergency affecting the safety of persons or property, Contractor shall immediately act to prevent or minimize damage, injury or loss. Contractor shall immediately notify the Construction Manager and City, which notice may be oral, followed within twenty-four (24) hours after occurrence of the incident by written confirmation, of the occurrence of such an emergency and Contractor's action.

10.4 TRENCH SAFETY

In accordance with the California Labor Code, where the work will involve trenches five feet or more in depth and the estimated or bid cost of excavation is in excess of \$25,000, the Contractor shall submit to and receive from the City of Palo Alto, or its designee, the acceptance of a detailed plan showing design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazards of caving ground. Such plan shall be submitted at least five (5) days before the Contractor intends to begin work on the trenches.

If such plan varies from the shoring system standards established by the Construction Safety Orders of the State of California Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer.

The Contractor shall not use shoring, sloping, or protective systems less effective than that required by the Construction Safety Orders of the Division of Industrial Safety.

The City shall not be responsible or liable for the safety of such trenching or trenching plans.

Whenever the work called for on these plans or contract documents involves the construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or excavations, which are five feet or deeper, bidder shall include as a bid item, the cost of design and construction of adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb, which shall conform to applicable safety orders.

ARTICLE 11 – INSURANCE AND BONDS

11.1 CONTRACTOR'S INSURANCE

11.1.1 Contractors to the City, at their sole expense, shall for the term of the Contract obtain and maintain insurance in the amounts for the coverage specified below, or as modified by the Special Provisions (if applicable), **afforded by companies with AM Best's Key Rating of A-:VII, or higher, licensed or authorized to transact insurance business in the State of California.**

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000

YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE			
		ALL DAMAGES	\$1,000,000	
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONTRACTORS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS’ COMPENSATION, EMPLOYER’S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

I. INSURANCE COVERAGE MUST INCLUDE:

- A. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.

II. CONTACTOR MUST SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE AT THE FOLLOWING URL: <https://www.planetbids.com/portal/portal.cfm?CompanyID=25569>

III. ENDORSEMENT PROVISIONS WITH RESPECT TO THE INSURANCE AFFORDED TO ADDITIONAL INSUREDS:

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONTRACTOR SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONTRACTOR SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

EVIDENCE OF INSURANCE AND OTHER RELATED NOTICES ARE REQUIRED TO BE FILED WITH THE CITY OF PALO ALTO AT THE FOLLOWING URL:

[HTTPS://WWW.PLANETBIDS.COM/PORTAL/PORTAL.CFM?COMPANYID=25569](https://www.planetbids.com/portal/portal.cfm?CompanyID=25569)

OR

[HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET_BIDS_HOW_TO.ASP](http://www.cityofpaloalto.org/gov/depts/asd/planet_bids_how_to.asp)

11.1.2 Contractor shall furnish City with the certificates of insurance and with original endorsements affecting coverage required under this Contract within ten (10) business days following issuance of the Notice of Award. The certificates and endorsements for each insurance policy shall be signed by a person who is authorized by that insurer to bind coverage on its behalf.

11.1.3 Subcontractors: Contractor shall include all Subcontractors and as insureds under its policies, or shall furnish separate certificates and endorsements for each Subcontractor in compliance with this Article. All coverages for Subcontractors shall be subject to all of the requirements stated herein.

11.1.4 At the request of City, Contractor shall submit to City copies of the policies obtained by Contractor. In the event Contractor does not comply with these insurance requirements, City may, at its option, provide insurance coverage to protect City; and the cost of such insurance shall be paid by Contractor and may be deducted from the Contract Sum.

11.1.5 The requirements of this Section may only be modified in writing by the City's Risk Manager.

11.2 BOND REQUIREMENTS

11.2.1 Within ten (10) Days after the issuance of the Notice of Award and prior to commencing Work on the Project, Contractor shall file with City good and sufficient Labor and Material Payment and Performance Bonds each in the amount of 100% of the Contract Sum. The bonds shall be in substantially the same form as contained in this IFB Packet or such other form as required by City and shall be signed by both Contractor and Surety and properly notarized. Should any bond required hereunder or any surety on such bond become or be determined by City to be insufficient, it shall be replaced within ten (10) Days by a bond that fully complies with the requirements of this Section 11.2. No further payments to Contractor for Work performed shall be made or due until Contractor has fully complied with the requirements of this Section 11.2.

11.2.2 The Payment Bond shall remain in effect at least until the time for filing a claim on a stop notice has expired pursuant to the California Civil Code. The Performance Bond provided by Contractor shall remain in effect for the duration of the period of all warranties required by the Contract Documents and shall assure faithful performance of all Contractor's obligations under the Contract Documents, including, without limitation, all obligations that survive Final Completion or termination or expiration, such as, but not limited to Contractor's warranty and indemnity obligations.

11.2.3 Contractor shall promptly furnish such additional security as may be required by City to protect its interests and those interests of persons or firms supplying labor or materials to the Work.

11.2.4 Surety companies used by Contractor shall be, on the date the Contract is signed by City and at all times while the bonds are in effect, either California Admitted Sureties or listed in the latest published United States Treasury Department list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies and either have a current A.M. Best A VIII rating or be an admitted surety that meets the requirements of Code of Civil Procedure Section 995.660.

11.2.5 The premiums for all Bonds are included in the Contract Sum and shall be paid by Contractor.

11.2.6 The bonds shall name City as obligee.

11.2.7 Change Orders, Field Orders, Modifications, Changes in the Work and adjustments in the scope of Work Contract Sum or Contract Time shall in no way release or exonerate Contractor or its sureties from their obligations and notice thereof shall be waived by such sureties.

11.2.8 City and the Construction Manager shall have the right to communicate with Contractor's sureties with respect to matters that are related to Contractor's performance of its obligations under the Contract Documents. Contractor shall be provided with a copy of all such written communications. Such communications shall not create or be interpreted as creating any contractual relationship between City or the Construction Manager and any such surety.

11.2.9 In the event of a significant (15% or more) increase in Contract Sum, replacement bonds totaling the new Contract Sum may be required by City.

ARTICLE 12 – DEFECTIVE WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to Construction Manager's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by City, be uncovered for City's observation and be replaced at Contractor's expense without adjustment of the Contract Time or the Contract Sum.

12.1.2 If a portion of the Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which City has not specifically requested to observe prior to its being covered, City may request to see such Work and it shall be uncovered and replaced by Contractor. If such Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Work shall be added to the Contract Sum by Change Order; and if the uncovering and replacing of the Work extends the Contract Time, an appropriate adjustment of the Contract Time shall be made by Change Order. If such Work is not in accordance with the Contract Documents, Contractor shall pay such costs and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

12.2.1 In addition to any specific warranty mentioned in these Contract Documents, the Contractor shall guarantee that all material, apparatus, equipment, and workmanship used, installed, or incorporated in the work is free from defects, and agrees to replace at no expense to the City any and all defective Work or materials which become evident within one (1) year ("Guarantee To Repair Period"), unless a longer period of time is specified in the Special Provisions and Technical Specifications, commencing as follows:

- (i) For any Work not described as incomplete in the Certificate of Substantial Completion, on the date of Substantial Completion.

- (ii) For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion pursuant to Section 9.6, from the first date of such Beneficial Occupancy or actual use, as established an appropriate written authorization for Beneficial Occupancy.
- (iii) For all Work other than (I) or (ii) above, from the date of filing of notice of completion pursuant to Section 9.8 above.

12.2.2 Contractor shall (i) correct Defective Work that becomes apparent during the progress of the Work or during the Guarantee To Repair Period and (ii) replace, repair, or restore to City's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work, without any expense whatsoever to City. City will give notice of observed Defective Work with reasonable promptness, and Contractor shall promptly commence such correction, replacement, repair or restoration upon notice from City, but in no case later than seven (7) Days after receipt of such notice. Contractor shall diligently and continuously prosecute such correction to completion. Contractor shall bear all costs of such correction, replacement, repair, or restoration and all Losses resulting from such Defective Work, including additional testing, inspection and compensation for City's or City's services and expenses. Contractor shall perform corrective Work at such times that are acceptable to City and in such a manner as to avoid, to the extent practicable, disruption to City's activities. Ordinary wear and tear, unusual abuse or neglect are excepted from this guarantee. Contractor shall notify City upon completion of repairs.

12.2.3 If immediate correction of Defective Work is required for life safety or the protection of property or, if in the opinion of City, Defective Work creates a dangerous condition or requires immediate corrections or attention to prevent further Loss to City or to prevent interruption of operations of City, City will attempt to give immediate notice to Contractor. If Contractor cannot be contacted or does not comply with City's request for correction within a reasonable time as determined by City, City or Separate Contractors under City's direction, may, notwithstanding the provisions of this Article, proceed to make such corrections or provide such attention; and the costs of such correction or attention shall be charged against Contractor. Such action by City will not relieve Contractor of the guarantees provided in this Article or elsewhere in the-Construction Contract. Contractor shall replace, repair or restore to City's satisfaction any other parts of the Work and any other real or personal property, which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

12.2.4 Contractor shall promptly remove from the Site those portions of the Work and materials which are not in accordance with the Contract Documents and which are neither corrected by Contractor nor accepted by City.

12.2.5 If Contractor fails to commence correction of Defective Work within seven (7) Days as required in Section 12.2.3 after notice from City or fails to diligently prosecute such correction to completion, City may correct the Defective Work in accordance with Section 2.4; and, in addition, City may remove the Defective Work and store salvageable materials and equipment at Contractor's expense.

12.2.6 If Contractor fails to pay the costs of such removal and storage as required by Paragraphs 12.2.4 and 12.2.5 within seven (7) Days after written demand, City may, without prejudice to other remedies, sell such materials at auction or at private sale or otherwise dispose of such material. Contractor shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which Contractor is liable to City, including compensation for City's services and expenses. If such proceeds of sale do not cover costs and damages for which Contractor is liable to City, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due Contractor or the remaining payments are insufficient to cover such deficiency, Contractor shall promptly pay the difference to City.

12.2.7 Contractor's obligations under this Article are in addition to and not in limitation of its warranty under Section 3.5 or any other obligation of Contractor under the Contract Documents.

Enforcement of Contractor's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies City may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations of Contractor under the Contract Documents, which may be longer specified periods. Establishment of the Guarantee To Repair Period relates only to the specific obligation of Contractor to correct the Work and in no way limits either Contractor's liability for Defective Work or the time within which proceedings may be commenced to enforce Contractor's obligations under the Contract Documents.

12.3 ACCEPTANCE OF DEFECTIVE WORK

Notwithstanding the provisions of Section 12.2 of these General Conditions, City shall have the option, at its sole discretion and by notice to Contractor, to accept Defective Work instead of requiring its removal or correction, in which case the Contract Sum shall be reduced by an amount equal to the difference between the value to City the Work would have had were it complete, correct and in conformity with the Contract Documents and the value to City of such Defective Work. Such option shall be exercised solely by notice to Contractor and shall not be implied from any act or omission by City or Construction Manager. If there are no remaining payments of the Contract Sum to be made to Contractor, or if the remaining payments and retention are insufficient to cover the amount of the reduction of the Contract Sum, Contractor shall promptly pay to City the amount of any such deficiency.

ARTICLE 13 – STATUTORY REQUIREMENT

13.1 STATE LABOR LAW

Contractor, its agents, and employees shall be bound by and comply with all applicable provisions of the Labor Code and such federal, state and local laws which affect the conduct of the Work. If prevailing wages are required for this Project, copies of the prevailing rate of per diem wages may be obtained at the Department of Industrial Relations' website: <http://www.dir.ca.gov/>

13.2 WORK DAY

Eight (8) hours labor constitutes a legal day's work. Contractor shall not permit any worker to labor more than eight (8) hours during any one (1) Day or more than forty (40) hours during any one (1) calendar week, unless overtime is paid pursuant to Labor Code Section 1815 or except as otherwise permitted by law. Contractor shall forfeit to City, as a penalty, twenty-five dollars (\$25.00) for each worker employed in the execution of this Construction Contract by Contractor, or any Subcontractor, for each Day during which such worker is required or permitted to Work more than eight (8) hours in any one (1) Day and forty (40) hours in any one (1) calendar week in violation of the terms of this Paragraph or in violation of the provisions of any law of the State of California, including but not limited to Labor Code Sections 1810 through 1815. Such forfeiture amounts may be deducted from the Contract Sum. Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each Day and each calendar week by each worker employed on the Project, which record shall be kept open at all reasonable hours to the inspection of City, its officers and agents, and to the inspection of the appropriate enforcement agency or representative and the State of California.

ARTICLE 14- JOB SITE NOTICES AND COMPLIANCE MONITORING

14.1 LABOR PROVISIONS

Item 4

Attachment A - Contract

C24187742 with OBS

Engineering Inc.

As required by California Labor Code section 1771.4(a)(1) and (a)(2), the City provides notice to all contractors and subcontractors that the Project that is the subject of this IFB and the Construction Contract, is a public works project, the contractor is required to post all job site notices prescribed by law or regulation, and the contractor is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR).



FIELD ORDER

CITY OF PALO ALTO
DEPARTMENT OF PUBLIC WORKS
_____ Project

This Field Order, issued pursuant to Article 7 of the Contract General Conditions directs and authorizes Contractor to proceed with the Work described below. Upon receipt of this Field Order, Contractor shall execute the Field Order to acknowledge receipt and, within a reasonable time, proceed with the Work described in the Field Order. Contractor's acknowledgment of the Field Order will not operate to impair its rights to dispute the Field Order as specified in the General Conditions. Unless otherwise stated below, this Field Order shall not be construed as an acknowledgment by City that the Work described constitutes a Change or Extra Work. If Contractor disputes the proposed basis or amount of adjustment to the Contract Sum or Contract Time, it may request to change the disputed portions of this Field Order by submitting a Change Order Request within ten (10) Days following issuance of this Field Order. Failure by Contractor to submit a timely Change Order Request seeking modification of the terms of this Field Order shall be deemed full acceptance of and agreement to all of the terms herein, and a release and waiver of any right to subsequently dispute any or all of the terms of this Field Order.

Project Number: _____		Field Order Number: XXX	
Contract Number: _____		Issuance Date: ____/____/____	
Contractor's Name: _____		Prepared by: _____	
<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p><u>Description of Work:</u></p> <p>Title: _____</p> <p>1. _____</p> </div> <div style="width: 35%;"> <p>Ref:</p> </div> </div>			
<p>City has determined that the above Work:</p> <p>___ is Extra Work</p> <p>___ is not Extra Work</p> <p>City has determined that Contractor is:</p> <p>___ not entitled to an extension of time</p> <p>___ entitled to an extension of ___ days</p> <p>Basis of Extra Work Cost:</p> <p>___ Unit Cost*</p> <p>___ Lump Sum: \$ _____</p> <p>___ Time and Materials*</p> <p>___ Other*</p> <p>*The Contract Sum will be [increased][decreased] by an amount not to exceed: \$ _____</p>		<p>1. Consultant shall sign prior to Contractor and return to City. Indicate N/A if not applicable.</p> <p>Consultant Approval: _____</p> <p>Title: <u>Senior Project Manager</u></p> <p>Date: _____</p>	
<p>2. Project Manager signature required for Field Orders.</p> <p>City Approval: _____</p> <p>Title: <u>Project Manager</u></p> <p>Date: _____</p>		<p>3. Division Manager signature required for Field Orders exceeding \$5,000. Indicate N/A if not applicable.</p> <p>City Approval: _____</p> <p>Title: <u>Engineering Manager of Department/Division</u></p> <p>Date: _____</p>	
<p>4. Division Head signature required for Field Orders exceeding \$15,000.</p> <p>City Approval: _____</p> <p>Title: <u>Assistant Director of Department/Division</u></p> <p>Date: _____</p>		<p>5. Department Head signature required for Field Orders exceeding \$25,000.</p> <p>City Approval: _____</p> <p>Title: <u>Director of Department</u></p> <p>Date: _____</p>	
<p>6. Contractor acknowledges receipt of FO.</p>			

Item 4

Attachment A - Contract
C24187742 with OBS
Engineering Inc.

Contractor Signature: _____
Title: Project Manager
Date: _____

Distribution:

☐ Contractor
☐ Consultant

☐ Division Head
☐ Project Manager
☐ Inspector

☐ File



CHANGE ORDER REQUEST

CITY OF PALO ALTO
 DEPARTMENT OF PUBLIC WORKS
 _____ Project

<h2 style="margin: 0;">Contract Change Order Request</h2>			
Project Title:		Project No.:	
Contract Number:		Date:	
Contractor:		Change Order Request No.:	
Description of Change Order Request (Attach additional sheets as needed)			
Reason for Change Order Request:			
Description of Work to be Performed:			
Requested Change to Contract Sum: <input type="checkbox"/> No cost change: N/A <input type="checkbox"/> Increase cost by \$ _____ <input type="checkbox"/> Decrease cost by \$ _____		Request for Extension of Contract Time (check one): <input type="checkbox"/> No Change to Contract Time <input type="checkbox"/> Time Extension Requested for ____ days* <ul style="list-style-type: none"> <input type="radio"/> ____ days Excusable Delay <input type="radio"/> ____ days Compensable Delay <input type="checkbox"/> Decrease time by ____ days <small>* Include all information and documentation required by Section 8.5 of the Contract General Conditions.</small>	
Basis for requested change in cost: <input type="checkbox"/> Unit pricing <input type="checkbox"/> Lump sum: \$ _____ <input type="checkbox"/> Time and Materials not to exceed: * \$ _____ <input type="checkbox"/> Compensable Delay Costs: \$ _____ <input type="checkbox"/> Other: _____ <small>* Final value shall not exceed amount shown without additional written CO authorization. Complete Time and Materials Breakdown on following page.</small>		Reference Documents:* RFI: ASI: Field Order: Specifications: Plans: Other: (specify): <small>* Provide specific number/section/sheet references as applicable</small>	

Contract Change Order Request – continued			
Line	Time and Materials Breakdown (Reference General Conditions, e.g. Sections 1 and 7.2, for Allowable Costs and markup)	Added	Credit
	All lines shall be filled in (zero values acceptable)		
	CONTRACTOR'S WORK		
1.	Material (attach itemized quantity and unit cost)		
2.	Labor (attached itemized hours and rates)		
3.	Equipment (attach invoices)		
4.	Royalties and Permits		
5.	Additional insurance and bond costs, not to exceed two percent (2%) of lines 1-4		
6.	Subtotal (sum of lines 1 through 5)		
7.	Contractor Markup (Section 1.1.31 of the General Conditions) by Contractor on Extra Work performed by Contractor's forces, not to exceed ten percent (10%) of line 6		
8.	Subtotal for Contractor's Work (sum of lines 6 and 7)		
	SUBCONTRACTED WORK (Provide separate breakdown for each subcontract) ¹		
9.	Material (attach itemized quantity and unit cost)		
10.	Labor (attach itemized hours and rates)		
11.	Equipment (attach invoices)		
12.	Royalties and Permits		
13.	Additional insurance and bond costs, not to exceed two percent (2%) of lines 9-12		
14.	Subtotal (sum of lines 9 through 13)		
15.	Contractor Markup (Section 1.1.31 of the General Conditions) by Subcontractor on Extra Work performed by Subcontractor's forces, not to exceed ten percent (10%) of line 14		
16.	Subcontractor Markup (Section 1.1.65 of General Conditions) by Contractor on Subcontractor's Allowable Costs, not to exceed fifteen percent (15%) of line 14		
17.	Subtotal for Subcontracted Work (sum of lines 14, 15 and 16)		
18.	TOTAL (sum of lines 8 and 17)		

¹ Attach additional copies of this page as required to summarize additional subcontracts.

Contract Change Order Request – continued

CONTRACTOR CERTIFICATION: By signing below, the undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order Request are true and correct. Contractor warrants that this Change Order Request is comprehensive and complete with respect to the Change in the Work described herein, and agrees that any costs, expenses, or time extension request, including, but not limited to, compensation for delay, lost productivity, inefficiency, or disruption, which is not included with this Change Order Request, shall be deemed waived. Contractor understands that submission of claims which have no basis in fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq.

Submitted by Contractor:

Signature:

By:

Title:

Date:

Design Consultant Recommendation

By:

Title:

Date:

Recommendation:

Construction Manager Recommendation

By:

Title:

Date:

Recommendation:

City Approval – Division Head – Signature required on all Change Order Requests

By:

Title:

Date:

City Approval – Department Head – Signature required when any individual Change Order Request exceeds \$10,000.

By:

Title:

Date:



CONTRACT CHANGE ORDER

CITY OF PALO ALTO
DEPARTMENT OF PUBLIC WORKS
_____ Project

Contract Change Order

Project Title:		Project No.:	
Contract Number:		Date:	
Contractor:		Change Order No.:	

Description of Change Order

Background Information:	
Change Order Justification:	
Description of Work to be Performed:	
Incorporates Field Order Number(s):	

Cost	Time
This Change Order will: <input type="checkbox"/> No cost change: N/A <input type="checkbox"/> Increase cost by \$ 0.00 <input type="checkbox"/> Decrease cost by \$ N/A G/L account number (s): _____ Basis for change in cost: <input type="checkbox"/> Unit price(s) <input type="checkbox"/> Lump sum Time and Materials <input type="checkbox"/> Compensation for Compensable Delay <input type="checkbox"/> Other: _____	This Change Order will: <input type="checkbox"/> <u>Not change time</u> <input type="checkbox"/> Increase time by _____ days ○ _____ days Excusable Delay ○ _____ days Compensable Delay <input type="checkbox"/> Decrease time by _____ days The date of completion as of this Change Order is: _____

Contract Change Order – continued

CONTRACTOR CERTIFICATION: By signing below, Contractor agrees that this Change Order constitutes full resolution, settlement, accord and satisfaction with respect to any and all pending or future Claims for cost and extensions of time that were asserted, or that could have been asserted, in connection with the Work covered by this Change Order, as more fully set forth in Article 7 of the Contract General Conditions.

FAILURE TO EXECUTE: If Contractor fails to execute this Change Order within ten (10) days after it has been submitted for Contractor's signature or refuses, in writing, to execute the Change Order, the City may unilaterally approve this Change Order as set forth in Article 7 of the Contract General Conditions. Contractor may dispute the terms of a unilaterally-approved Change Order, in whole or in part, by submitting a Claim in accordance with the Dispute Resolution Procedures set forth herein within fourteen (14) days after the Change Order is approved by the City. If Contractor fails to submit a Claim within that 14-day period, with respect to all or part of the unilaterally-approved Change Order, those portions of the Change Order which have not been disputed by timely submission of a Claim shall be deemed to have the same effect as if the Change Order was fully executed by both parties as set forth above.

Accepted for Contractor:	Accepted for City of Palo Alto:
By:	By:
Title:	Title:
Date:	Date:

Scope of Work							
PCO No.	ASI	FO	COR	CO	Description	Amount	Reason for Change
					Total for this Change Order	\$ 0.00	

Contract Change Order – continued			
Summary of Amounts Payable Under Contract (For Internal Purposes Only)			
Original Contract Sum:	\$	0.00	
Previous Change Orders	\$	0.00	
This Change Order	\$	0.00	
Revised Contract Sum:	\$	0.00	
Compare to:			
<i>Original Contract Authorization:</i>	\$	0.00	<i>Contingency:</i> 0.00
<i>Contract Amendment Authorizations</i>	\$	0.00	<i>Contingency added:</i> 0.00
<i>Contingency Authorizations:</i>	\$	0.00	<i>Used to date</i> (0.00)
<i>Total Authorized Funding:</i>	\$	0.00	<i>Balance remaining</i> 0.00
Change Orders shall not be initiated for Council-approved contracts if the revised Contract Sum exceeds the total authorized funding amount.			

Document Preparation	
By:	
Title:	
Date:	

City Approval – Division Head Signature required on all Change Orders	
By :	
Title :	
Date:	

City Approval – Department Head Signature required when any individual Change Order exceeds \$10,000.	
By:	
Title:	
Date:	

SPECIAL PROVISIONS

IFB NO. 187742 Cameron Park Improvements

NONE

END OF SECTION



City Council Staff Report

From: City Attorney

Report Type: CONSENT CALENDAR

Lead Department: City Attorney

Meeting Date: September 18, 2023

Report #:2309-1988

TITLE

Approve the Appointment of Caio A. Arellano to the Position of Chief Assistant City Attorney;
CEQA Status- not a project.

RECOMMENDATION

The City Attorney recommends that the Council approve the appointment of Caio A. Arellano to the position of Chief Assistant City Attorney.

BACKGROUND

The City Attorney makes appointments to positions in the City Attorney's Office. The City Attorney's appointment to the Chief Assistant position is subject to approval of the Council. (Palo Alto Municipal Code § 2.08.120(4).)

The Chief Assistant City Attorney is the City Attorney's Office "second in command." The Chief Assistant advises key departments with respect to complex and high-risk matters while also managing the day-to-day operations of the City Attorney's Office and supporting legal team members. The Chief Assistant stands in for the City Attorney in her absence and supports the City Manager and the Council on selected matters.

ANALYSIS

The City Attorney requests approval of the appointment of Caio A. Arellano to the position of Chief Assistant City Attorney.

Mr. Arellano has been providing legal services to cities for 15 years. He joined the Palo Alto City Attorney's Office in February 2022 in the role of Assistant City Attorney, advising on complex projects such as the Regional Water Quality Control Plant reconstruction and Fiber to the Premises. In March 2023, Mr. Arellano began serving as Interim Chief Assistant City Attorney.

Prior to his service in Palo Alto, Mr. Arellano advised the cities of Santa Clara, San Mateo, Santa

Cruz and Half Moon Bay, where he provided legal services to support planning and community development, public works, utilities, finance and public safety. Mr. Arellano earned his Juris Doctor from the University of San Francisco School of Law and holds a Bachelor of Arts in Political Science from University of Michigan, Ann Arbor.

The Chief Assistant is an at-will employee serving at the pleasure of the City Attorney. Mr. Arellano's appointment will begin September 23, 2023, with an annual salary of \$258,648, which is within the Council-approved range for the position as provided in the December 31, 2022 Management and Professional Personnel Compensation Plan. Benefits will be as provided in the Council-approved Compensation Plan for Management and Professional Personnel.

FISCAL/RESOURCE IMPACT

There are no new resource impacts from this appointment. The Chief Assistant position is budgeted within the City Attorney's Office's FY 24 budget.

STAKEHOLDER ENGAGEMENT

During the interim appointment period, key City staff have had an opportunity to work with the candidate and provide input on the appointment.

ENVIRONMENTAL REVIEW

Approval of the appointment is not a project subject to environmental review. (CEQA Guidelines § 15378(b)(2).)

APPROVED BY:

Molly Stump, City Attorney



City Council Staff Report

From: City Manager

Report Type: ACTION ITEMS

Lead Department: Planning and Development Services

Meeting Date: September 18, 2023

Report #:2308-1862

TITLE

PUBLIC HEARING: Adoption of Resolution to Establish a New Priority Development Area (PDA) in South Palo Alto and Support for the Nomination of one Parcel as a Priority Site.

Environmental Assessment: Not a 'Project' and Exempt from California Environmental Quality Act (CEQA) Review.

RECOMMENDATION

Staff recommends that the City Council:

1. Adopt a Resolution (Attachment A) designating a new Priority Development Area in South Palo Alto, named the Bayshore Alma San Antonio (BASA) Priority Development Area; and
2. Support the nomination of one property as a Priority Site, as reflected in Attachment B.

EXECUTIVE SUMMARY

Staff seeks Council's adoption of a resolution supporting a new Priority Development Area described in this report and the nomination of one existing parcel as Priority Sites. This action would provide opportunities for the City to participate in regional grant funding initiatives for local planning.

Priority Development Areas

With designation of the new Bayshore Alma San Antonio (BASA) PDA in South Palo Alto, the City can apply for regionally competitive PDA Planning Grants for this geographic area. The Metropolitan Transportation Commission (MTC) opened this PDA opportunity for cities to include emergent planning priorities from work on their 6th Cycle Housing Element updates. This is particularly relevant for Palo Alto, with its Housing Opportunity Sites in the ROLM and GM zoning districts, the City's work on the Housing Incentive Program (HIP), and Council's requested San Antonio Corridor Study.

The PDA designation window closes September 30, 2023, and a City Council approval resolution is necessary to submit to MTC (Attachment A).

Priority Sites

Staff requests support from City Council on the nomination of an existing parcel as a Priority Sites listed in Attachment B. This property is the subject of a pending development agreement application and, if approved, would include a potential affordable housing and park site dedicated to the City. There is money available for technical assistance funding and pre-development assistance funding for local, yet regionally significant, Priority Sites that cities can nominate; this funding is part of Regional Early Action Planning (REAP 2.0).

The Priority Sites nomination window closes September 30, 2023, and a City Council approval resolution is not necessary to submit to MTC.

BACKGROUND

This section provides contextual information on Priority Development Areas and Priority Sites.

Priority Development Areas (PDAs)

Priority Development Areas are considered regional growth geographies utilized in regional planning by MTC and the Association of Bay Area Governments (ABAG).¹ Other regional growth geographies include Priority Conservation Areas and Priority Production Areas.

Palo Alto's currently designated regional growth geographies are as follows: ^{2,3,4,5}

- California Avenue Priority Development Area – 120 acres;
- Downtown/University Avenue Priority Development Area – 206 acres;
- Baylands Priority Conservation Area – 2,628 acres; and
- Foothills Priority Conservation Area – 5,226 acres.

The PDA is first a funding tool and is part of Plan Bay Area, a strategic regional planning document. By State law (California Government Code Section 65080(b)(2)(K), Plan Bay Area cannot supersede local land use authority. Any changes to local planning and land use policies are solely the authority and control of the City. The City's land use policies and regulations, including Comprehensive Plan policies, are not required to be consistent with Plan Bay Area. In fact, jurisdictions may 'un-designate' these PDAs and PCAs at any point. With designation of a PDA, there are no requirements to amend the City's policies, codes, or Comprehensive Plan.

¹ Priority Development Areas website: <https://mtc.ca.gov/planning/land-use/priority-development-areas-pdas>.

² City Council Resolution No. 8743, August 6, 2007: <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2020/id-10717.pdf>.

³ City Council City Manager Report ID #10717, January 13, 2020: <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2020/id-10717.pdf>.

⁴ City Council Resolution No. 9876, January 13, 2020: <https://www.cityofpaloalto.org/files/assets/public/city-clerk/resolutions/reso-9876.pdf?t=43662.63>.

⁵ City Council Resolution No. 9877, January 13, 2020: <https://www.cityofpaloalto.org/files/assets/public/city-clerk/resolutions/reso-9877.pdf?t=43692.66>.

Benefit of PDA Designations

Designating a PDA or another type of regional growth geography allows the city to apply for regional funding for conducting planning work, including the creation of area plans, specific plans, or technical studies. In the past, the City applied for and received two competitive PDA Planning Grants:

- \$638K for the North Ventura Coordinated Area Plan (NVCAP), which covers a subarea within the designated California Avenue PDA designated in 2007; and
- \$800K for the Downtown Housing Plan, which is a focused housing plan within a subarea of the Downtown/University Avenue PDA designated in 2020.

MTC and ABAG required submittal of any proposed new or modified PDAs by July 31, 2023, which was an interim deadline. Staff submitted the proposed BASA PDA for MTC/ABAG staff consideration on July 31, 2023. This action was taken to preserve the City Council's ability to take action to enact the new PDA or decline submittal prior to the September 30, 2023 deadline. MTC/ABAG staff reviewed the initial BASA PDA boundary submitted by staff and confirmed eligibility and recommended support with no changes to the proposed boundary area. The BASA PDA is included with other cities' proposed new and modified PDAs; the ABAG Administrative Committee is scheduled to consider these at its September 8, 2023 meeting and is authorized to adopt PDAs on behalf of the ABAG Executive Board.⁶ MTC/ABAG staff noted that the BASA PDA designation is contingent upon receipt of a City Council Resolution in September 2023. If Council does not approve the BASA PDA, it would be removed by MTC/ABAG staff. If Council approves a modified boundary, then this modified boundary would be submitted with any approval Resolution.

Priority Sites

Priority Sites are defined as regionally significant places that will offer homes affordable to people of all incomes, backgrounds, and abilities.⁷ Priority Sites funding (REAP 2.0) would be given as technical assistance for early-phase sites, or as low-interest loans at 3%, to support affordable housing development near transit and other essential services. The anticipated funding amount is likely \$3M per Priority Site, or \$5M if construction could be completed within 24 months. Of note, funds could be used for:

- Architectural and engineering services, entitlement and permitting fees, legal expenses, environmental review, and other approved predevelopment activities required to accelerate construction commencement;
- Construction of affordable housing or infrastructure required to complete the affordable housing described in the application; and
- Acquisition of land required for an affordable housing project.

⁶ MTC/ABAG Priority Development Areas staff report - ABAG Administrative Committee - September 8, 2023 meeting: <https://mtc.legistar.com/Calendar.aspx>.

⁷ MTC Priority Sites website: <https://mtc.ca.gov/planning/land-use/priority-sites#>.

Priority Sites must be within a regional growth geography or a transit priority area. Additionally, Priority Sites must meet one of the following development capacity criteria:

- Regionally Significant – Capacity* for 500 or more homes;
- Community Anchor – Capacity for 100+ homes and 10,000+ square feet or more of civic, cultural, or community facilities, e.g., community centers, recreation facilities, clinics, etc.; or
- Public Sites Portfolio – Multiple parcels with cumulative capacity for 200+ homes being planned in concert.

The potential affordable housing and park site identified for dedication to the City in the pending Sobrato Development Agreement would qualify under the Community Anchor criteria, as the public park component would constitute the requisite 10,000+ square feet or more of community facilities.^{8, 9}

ANALYSIS

This section presents an overview of any pros and cons of designating a new Priority Development Area and nominating Priority Sites.

Priority Development Areas (PDAs)

Given the successful receipt of two PDA Planning Grants in the past, a new BASA PDA would similarly open a new and large geographic area of the City for which the City could apply for regional funding for planning and technical assistance grants. The City could also apply for a grant that is more focused on a sub-portion of the BASA PDA area, as was done for NVCAP or the Downtown Housing Plan. Finally, the City could apply for a grant to support efforts that are technical in nature, such as urban design, economic studies, or curb management. Staff anticipates that either an area plan or a technical study that could yield useful results for other cities/scalable would be most competitive.

BASA PDA Boundary Creation

Staff created the proposed BASA PDA boundary based upon awareness of significant city efforts in the area, including:

- Council's requested San Antonio Corridor study,
- Locations of Housing Incentive Program (HIP) sites,
- Locations of Housing Element Opportunity sites,
- Historic properties along Alma,
- Activity east of Highway 101 at Homekey and other efforts,
- Future redesign of the San Antonio/HWY 101 cloverleaf,

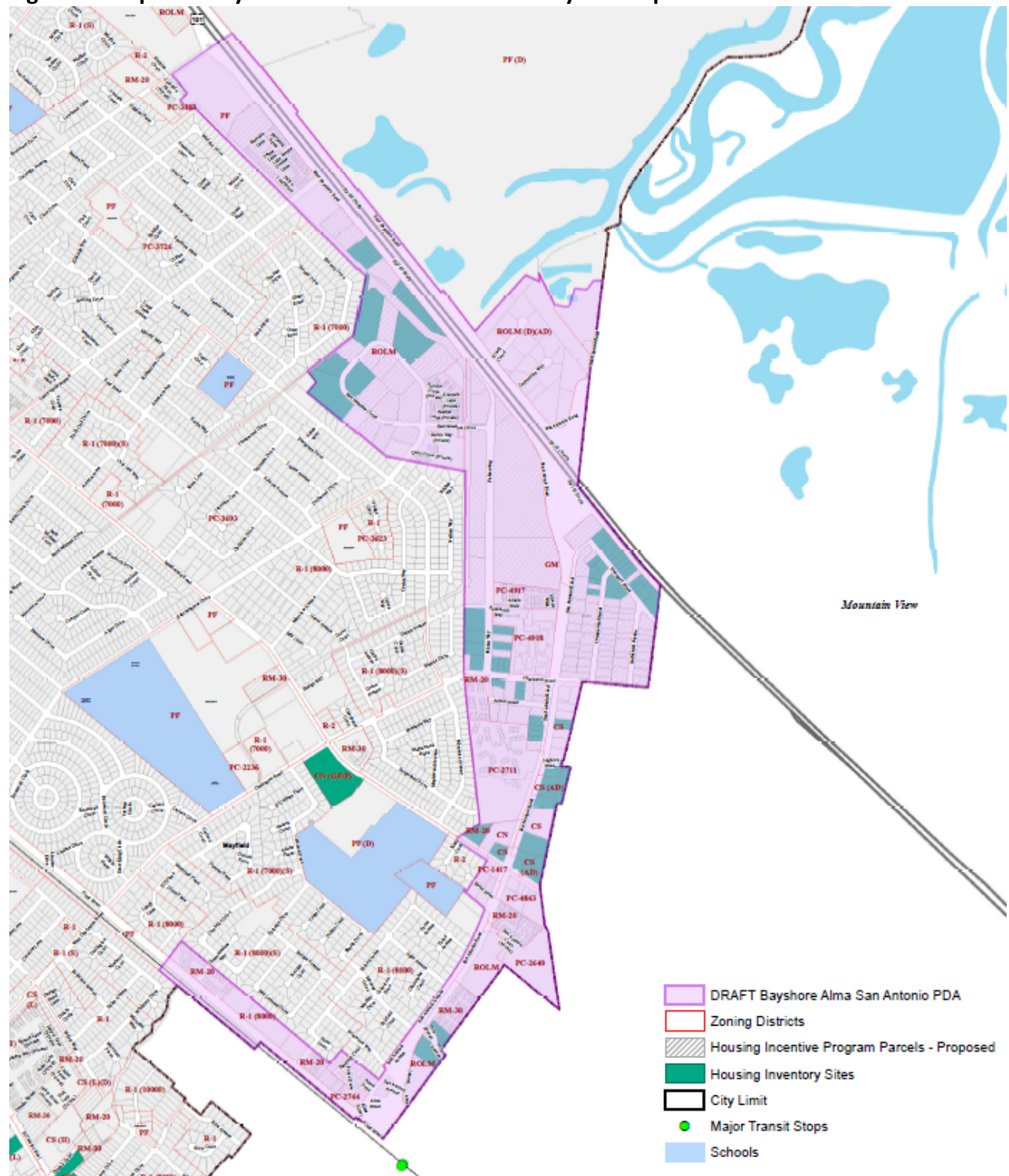
⁸ Sobrato Development Agreement Application - 3200 Park Boulevard (22PLN-00287 and 22PLN-00288): <https://www.cityofpaloalto.org/Departments/Planning-Development-Services/Current-Planning/Projects/3200-Park-Boulevard>.

⁹ City Council City Manager Report #:2306-1663: 3200 Park Boulevard/340 Portage [22PLN-00287 and 22PLN-00288], September 5, 2023: <https://cityofpaloalto.primegov.com/Portal/Meeting?meetingTemplateId=13261>.

- The desire to add Complete Street components throughout the area to support additional transit service, improved bicycling, and a more comfortable pedestrian experience,
- Efforts in the area to create road diets and streetscape improvements,
- The desire to improve overall transportation connectivity in South Palo Alto,
- The Housing Element, S/CAP, the Sea Level Rise Adaptation plan, and other current city initiatives representing significant focus on South Palo Alto, and
- The significant change envisioned in adjacent Mountain View alongside the proposed BASA PDA boundary (Figure 2).

The proposed BASA PDA qualifies as a Connected Community PDA. Some portions of the proposed area would otherwise not be eligible for inclusion had staff not advocated for them due to their importance for connectivity across Highway 101 and adjacent to areas planned for change in Mountain View. Staff recommends designation of the proposed BASA PDA boundary, as this larger boundary captures more land use and connectivity opportunities than a smaller PDA.

Figure 2: Proposed Bayshore Alma San Antonio Priority Development Area



Palo Alto's Existing PDAs

Presently, the acreage of the California Avenue PDA (120 acres) and the Downtown/University Avenue PDA (206 acres) reflect 5% of the City's PDA eligible area. The addition of a new BASA PDA would represent the City designating 10% of the City's PDA eligible area (Attachment C). Of the City's 16,542 total acreage, which includes the Foothills and the Baylands, 6,321 acres (38%) within the City are eligible for PDA designation (Attachment C and Table 1).

Staff conducted extensive vetting with MTC of the pros/cons of designating these PDAs in 2019-2020. The City later learned in 2020-2021 that if it had designated 50% of PDA eligible area in 2020, MTC and ABAG would have modeled all Plan Bay Area 2050 growth within the PDAs, instead of citywide. Staff's understanding is that this modeling decision was made after the regional PDA designation opportunity window. However, this modeling decision was moot, as Palo Alto was not considering designating that much land area of the City as a PDA, given that the great majority of the developed area in Palo Alto would have had to be designated.

Table 1: Breakdown of MTC Mapped PDA Eligible Acreage in the City of Palo Alto

Area	Total Acreage	MTC Mapped PDA Eligible Acreage
City Boundary	16,542 acres	6,321 acres
Palo Alto PDAs:		
Downtown/University Avenue PDA	206 acres	206 acres
California Avenue PDA	120 acres	120 acres
Bayshore Alma San Antonio PDA	379 acres*	331 acres*
*Some portions of the BASA PDA west of Highway 101 and mostly east of Highway 101 are not currently on the MTC mapped PDA eligible area (Attachment C). However, MTC/ABAG staff supports Palo Alto including these areas in the BASA PDA given the desire to address overall area transportation connectivity, the future redesign of the San Antonio/HWY 101 cloverleaf, and other considerations.		

MTC Transit Oriented Communities Policy

The westernmost portion of the proposed BASA PDA boundary is within ½ mile of the San Antonio Caltrain station. MTC recently adopted Resolution No: 4530, which contains MTC's Transit Oriented Communities (TOC) policy¹⁰ and is already applicable to this area. The TOC policy mostly focuses on areas in the region within a ½ mile radius of fixed guideway transit stations, such as BART stations and Caltrain stations. MTC previously signaled that it might require cities to develop plans that are compliant with the TOC policy if those plans are funded or supported by some sources of regional funding (specifically OBAG funding, as opposed to REAP funding). If MTC approves this funding/TOC policy relationship, an OBAG grant, if received, could obligate the City to create Tier 3 TOC policy compliant regulations for the

¹⁰ MTC Resolution No. 4530: https://mtc.ca.gov/sites/default/files/documents/2022-10/MTC_Resolution_4530.pdf.

portion of the BASA PDA area within ½ mile of the San Antonio Caltrain station only, not the entire BASA PDA area and only if the City elected to accept the grant funding.¹¹

Future Grants

MTC staff acknowledged to City staff that MTC policies could come forward that apply to PDAs as it relates to either qualifying for future PDA planning grants or being competitive for those grants. However, PDA designation does not mean that the City would need to apply for these grants. Cities could also undesignate areas if desired. The benefit of designation remains that designation is a gatekeeping requirement for the opportunity to apply for grant funding for all the PDA area or subareas either for an area plan or for technical assistance.

Any future application for a PDA Planning Grant or Technical Assistance grant would go before City Council for approval prior to submittal. At that time, staff would outline any pros/cons of applying for a grant. City Council would be deciding at that time what overall and specific planning efforts it would like to undertake, including if MTC TOC policy compliance would be of interest.

Priority Sites

As discussed above, identifying Priority Sites provides access to potentially significant funding sources for affordable housing development. Staff sees no disadvantages associated with nominating the potential affordable housing site and park site identified for dedication to the City in the pending Sobrato Development Agreement. The nomination does not obligate the City to develop in any way. It is akin to submitting a letter of interest; any application for funding would be a separate process.

Nomination of the one site (Attachment B) only helps to create a later opportunity to apply for a regional funding source for affordable housing development. If the City was to receive a dedication of land for an affordable housing and park site identified in the pending Sobrato Development Agreement, the identification of these land uses qualifies the site as a Community Anchor under the Priority Sites Program.

Private developers, Stanford University, and the Palo Alto Unified School District (PAUSD) can nominate sites on their own and do not require the City to initiate this request on the behalf of a third party.

¹¹ Geographic areas subject to the TOC Policy are categorized by tier according to the level of transit service at a fixed guideway transit station within ½ mile. The San Antonio Caltrain Station qualifies as a Tier 3 fixed guideway transit station. For more information, please refer to the Draft MTC Administrative Guidance: Transit-Oriented Communities Policy, Guidance for Public Agency Staff Implementing Metropolitan Transportation Commission Resolution 4530, Draft March 2023: https://mtc.ca.gov/sites/default/files/documents/2023-03/MTC_Draft_TOC_Policy_Administrative_Guidance_Mar2023.pdf. Appendix B of the Draft MTC Administrative Guidance outlines TOC Policy Density Requirements, Appendix C outlines TOC Policy Housing and Commercial Stabilization Policy Requirements. Appendix D outlines TOC Policy Parking Management Requirements.

FISCAL/RESOURCE IMPACT

Staff would formalize the BASA PDA application through the submittal of any City Council approval resolution. Staff would utilize the online Priority Sites nomination portal to nominate the one parcel. There is no cost to designate a new PDA or nominate Priority Sites other than already budgeted staff time. In the future, staff would bring PDA Planning Grant applications or Priority Site funding applications to City Council for approval. Award of any PDA Planning Grant or Priority Site funding would then be recognized in the City budget.

STAKEHOLDER ENGAGEMENT

Brief discussion of the BASA PDA boundary and forthcoming discussion of BASA PDA designation occurred at the August 10, 2023 City Council Housing Ad Hoc Committee meeting. Staff received feedback to proceed with bringing the BASA PDA to City Council for discussion. Staff did not engage directly with any members of the public regarding the BASA PDA boundary or nomination of Priority Sites. Public discussion of these items will occur at the September 18, 2023 City Council meeting. Notification of this agenda item was sent to the newspaper for publication on September 8, 2023.

ENVIRONMENTAL REVIEW

The designation of a Priority Development Area and nomination of Priority Sites are not a project as defined by the California Environmental Quality Act (CEQA) and is exempted from CEQA review.

ATTACHMENTS

Attachment A: Draft Resolution

Attachment B: Proposed Priority Sites Nomination List

Attachment C: Palo Alto Existing and Proposed Priority Development Areas and PDA Eligible Areas

APPROVED BY:

Jonathan Lait, Planning and Development Services Director

Resolution No. _____

Resolution of the City Council of the City of Palo Alto to Nominate the Bayshore Alma San Antonio Area in South Palo Alto to the Association of Bay Area Governments and Metropolitan Transportation Commission for Adoption as a Designated Priority Development Area

RECITALS

WHEREAS, the Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) prepared Plan Bay Area 2050 (the Plan), a long-range plan charting the course for the future of the nine-county San Francisco Bay Area; and

WHEREAS, the Plan serves as the Bay Area's Regional Transportation Plan and Sustainable Communities Strategy, outlining strategies for growth and investment through the year 2050; and

WHEREAS, ABAG and the MTC are created a Regional Growth Framework to be used in the Plan;

WHEREAS, this Framework includes locally nominated Priority Development Areas (PDAs) as locations to coordinate local and regional planning for housing, jobs, and future investment; and

WHEREAS, MTC and ABAG are updating the Regional Growth Framework to allow for local designation of new Priority Development Areas or modified Priority Development Areas,

WHEREAS, the adoption of a PDA does not change the zoning, comprehensive plan, or other land use designation of the geographic area encompassed by the PCA, with local jurisdictions retaining full land use control;

WHEREAS, jurisdictions with PDAs have access to regional funding that is dedicated to plans and infrastructure improvements in PDAs; and

WHEREAS, the City adopted a 6th Cycle Housing Element and many identified Housing Opportunity sites are in the Bayshore Alma San Antonio Area in South Palo Alto;

WHEREAS, additional City planning initiatives will involve the Bayshore Alma San Antonio Area in South Palo Alto;

WHEREAS, the designation of the Bayshore Alma San Antonio Area in South Palo Alto as a local priority development area will open funding opportunities for future development and infrastructure improvements.

NOW THEREFORE, the Council of the City of Palo Alto does RESOLVE as follows: the Council approves of the designation of the Bayshore Alma San Antonio Area in South Palo Alto as shown in Attachment A as a Priority Development Area and authorizes the City Manager or designee to submit to ABAG and MTC to designate this area as a Priority Development Area.

INTRODUCED and PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

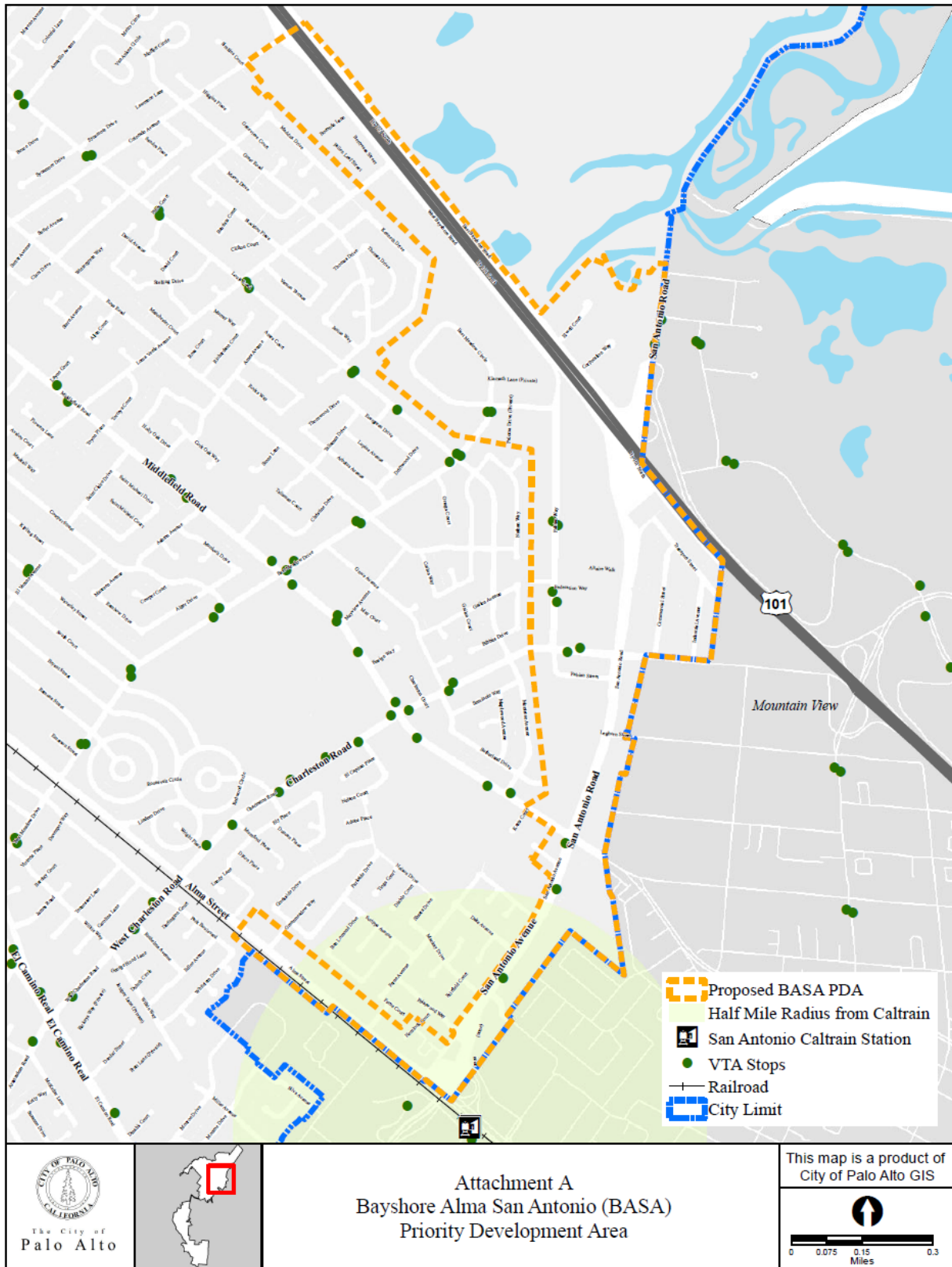
APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Director of Planning and
Development Services



List of Proposed Sites for Nomination as Priority Sites

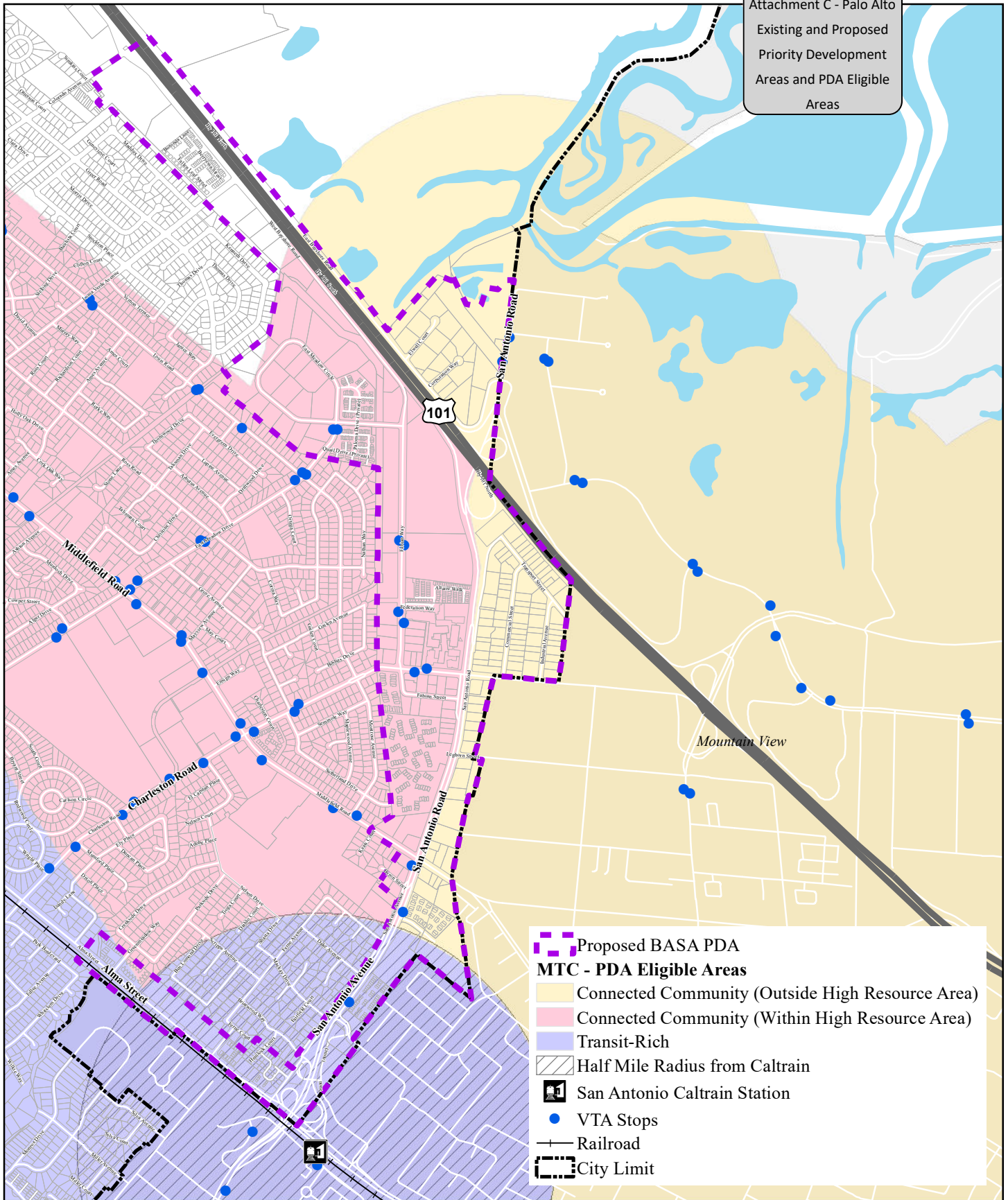
Site	Address	Assessor's Parcel Number	Size and Development Capacity Notes/Source
Dedicated Affordable Housing and Park Site*	3200 Park Boulevard	132-38-071 & 132-38-043	*Status: dedication of a site proposed to City, Development Agreement entitlement under review

Sources:

1. Sobrato Development Agreement Application - 3200 Park Boulevard (22PLN-00287 and 22PLN-00288): <https://www.cityofpaloalto.org/Departments/Planning-Development-Services/Current-Planning/Projects/3200-Park-Boulevard>.

Item 6

Attachment C - Palo Alto
Existing and Proposed
Priority Development
Areas and PDA Eligible
Areas



- Proposed BASA PDA
- MTC - PDA Eligible Areas**
 - Connected Community (Outside High Resource Area)
 - Connected Community (Within High Resource Area)
 - Transit-Rich
 - Half Mile Radius from Caltrain
 - T San Antonio Caltrain Station
 - VTA Stops
 - Railroad
 - City Limit



The City of
Palo Alto



Proposed Bayshore Alma
San Antonio (BASA)
Priority Development Area

This map is a product of
City of Palo Alto GIS



0 0.075 0.15 0.3
Miles



City Council Staff Report

From: City Manager

Report Type: **ACTION ITEMS**

Lead Department: **Planning and Development Services**

Meeting Date: **September 18, 2023**

Report #:2307-1763

TITLE

LEGISLATIVE: Adopt an Ordinance Amending Planned Community 2343 zoning for 2901-2905 Middlefield Road and Adopt an Ordinance Establishing a new Planned Community Zoning Designation to Enable the Development of a new Single-Story, Single-Family Residence on 702 Ellsworth Place.

RECOMMENDATION

Staff recommends that City Council:

1. Adopt an ordinance amending ordinance Planned Community 2343 (Attachment A) for 2901-2905 Middlefield Road and adopt a new Planned Community ordinance (Attachment B) to enable the development of a single-family residence at 702 Ellsworth Place.

EXECUTIVE SUMMARY

The recommendation in this report is to approve two ordinances that would modify an existing planned community zoning site into two different planned community zoned sites. This action reflects a change in land ownership for one of the parcels and enables the construction of one net new housing unit. The previously approved planned community zoned apartment site gets slightly modified to reflect a new parking arrangement and other minor changes. The new planned community zoned property, previously used as parking for the apartment building, would be redeveloped as a single-family home.

There was a City Council prescreening study session for the subject application held on March 13, 2023.¹ Area residents raised several initial concerns about the recent selling of one of the planned community zoned properties and were instrumental in identifying a zoning map error that showed one of the parcels as zoned for single family residential use instead of being part of

¹ The March 13, 2023 Council prescreening report, minutes and video are viewable on the City Council's webpages. The project webpage for 2901 Middlefield is viewable at this URL:
<https://www.cityofpaloalto.org/Departments/Planning-Development-Services/Current-Planning/Projects/2901-Middlefield-Road>

a larger planned community project. The subject application seeks to amend prior legislative action to reflect the current status and ownership of the different properties. The Planning and Transportation Commission held several public meetings and makes a recommendation to support an amendment to the existing, and establishment of a new, planned community zoning for 702 Ellsworth Place.

BACKGROUND

In 1967 a planned community zoning ordinance was approved for the subject property to allow a 12-unit apartment building. The development site consists of four parcels adjacent to the northeast side of Middlefield Road and extends from Sutter Avenue to Matadero Canal (Attachment B). The apartment building is located nearest Sutter Avenue. Access to the apartment is provided via an easement across one of the development site's parcels referred to as 702 Ellsworth Place, which also has guest parking spaces for the apartment building. The easement also provides access to Ellsworth Place, a private street with 13 residential properties; these properties are not associated with the PC development.

In 2017, the development site was sold to a new owner who also owns several apartment buildings in the area. In 2022, one of the four parcels that comprise the development site, 702 Ellsworth Place, was sold to another separate entity. This more recent purchase was reportedly based, at least in part, on information provided by the City indicating that 702 Ellsworth Place could be developed with a single family home. This guidance, however, is not consistent with the administrative record and occurred because the zoning map from 1960s was never updated to reflect the approved PC zoning designation. For decades the City's records regarding these parcels appeared to show the incorrect zoning. Similarly, when the City implemented its online property parcel records, the subject property (2901-2905 Middlefield Road and 702 Ellsworth Place) did not include information about the applicable PC zoning designation. Real estate professionals, developers and property owners rely in part on this online information to make decisions about property acquisition and development; staff too consults these records when providing information to the public.

It was not until residents filed a code enforcement complaint concerning new fencing around 702 Ellsworth Place in anticipation of a future development that research began and uncovered this mapping error. Since then, staff has been engaged with area residents and the two owners of the PC development site. In addition to being concerned about redevelopment of 702 Ellsworth Place, area residents have also expressed a desire for the City to take ownership of the private street to improve its condition, address drainage problems and maintain the street. Ellsworth Place is neither owned nor maintained by the City. Similar conditions exist at other locations in the City, dating from development that occurred on formerly-unincorporated land before annexation to the City.

The City Council conducted a study session prescreening for the subject application on March 13, 2023; summary minutes from the meeting are available online.² Shortly following the meeting, an application was submitted for review by the Planning and Transportation Commission.

Planning and Transportation Commission (PTC) Review

The PTC reviewed the project over three public hearings on June 28, July 12, and August 9, 2023. Links to the minutes and videos of all three PTC hearings are available online;³ draft meeting minutes from August 9 are included as Attachment D.

The PTC in its review considered a variety of concerns expressed by area residents related to the project. The linked reports and minutes provide greater detail but in summary, the residents were concerned with the private street (Ellsworth Place), ingress and egress from Middlefield Road, viewing angles when exiting the private street, access to parking spaces for apartment dwellers at 2901 Middlefield Road, temporary parking for package delivery trucks, the removal of protected trees and other property maintenance matters. The Commission further considered the applicant's request to remove the 702 Ellsworth Place property from the previously entitled planned community zoning site and rezone the property to R1 zoning to permit a new single family home on the site. In its review, the Commission considered the legislative history and previously highlighted error on the City's zoning map that contributed to the current situation.

The PTC's recommended actions to approve the applicant's request is reflected in the two attached ordinances, except for one component related to area resident's request for a wider easement accessing a portion of Ellsworth Place, which is expanded upon below.

Analysis

The PTC's deliberation and recommended actions largely address the many of the outstanding issues related to this application. There are a couple of points highlighted below for Council's awareness and consideration.

² March 13, 2023 City Council Summary Minutes:

<https://cityofpaloalto.primegov.com/Public/CompiledDocument?meetingTemplateId=1096&compileOutputType=1>.

³ Links to staff reports, minutes and videos of PTC hearings:

June 28 report: www.cityofpaloalto.org/files/assets/public/v/1/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2023/ptc-6.28-2901-middlefield.pdf

June 28 minutes: www.cityofpaloalto.org/files/assets/public/v/2/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2023/ptc-6.28.2023-summary-minutes_revised.pdf

June 28 video: <https://midpenmedia.org/planning-transportation-commission-63-6282023/>

July 12 (report was unchanged from June 28) minutes: www.cityofpaloalto.org/files/assets/public/v/2/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2023/ptc-7.12.2023-summary2.pdf

July 12 video: <https://midpenmedia.org/planning-transportation-commission-63-7122023/>

August 9 report: www.cityofpaloalto.org/files/assets/public/v/1/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2023/ptc-8.09-2901-middlefield-702-ellsworth.pdf

August 9 video: <https://midpenmedia.org/category/government/city-of-palo-alto/boards-and-commissions/planning-and-transportation-commission/>

Planned Community Zoning versus R1 Zoning

The application reviewed by the PTC included a request to remove 702 Ellsworth Place from a planned community zoning and to convert it to R1 zoning. This application would have applied all the relevant R1 standards to 702 Ellsworth Place allowing for potentially less setbacks and greater fence heights in the front yard adjacent to Middlefield Road as well as ministerial (by-right) approval of the proposed one-story single family home. However, in its deliberation, the PTC sought to impose additional restrictions on the future single family development to address contextual issues related to the property's orientation relative to other properties on Ellsworth Place and to address area resident's concerns related to line of sight visibility to and from Middlefield Road and the width of the Ellsworth Place easement that provides access to other properties further distant from Middlefield Road. Regulating 702 Ellsworth Place with a new planned community zoning allows the City to address certain concerns while still enabling the applicant to build a new one-story single family home through the City's ministerial building permit process.

2901 Middlefield Road's planned community zoning is simply amended to reflect the ownership boundaries, expands easement access to widen a portion of Ellsworth Place and accounts for a new on-site parking arrangement that serves the apartment units.

Ellsworth Place Private Street Easement

Ellsworth Place is a private street. Access to the private street is provided from Middlefield Road. An easement was previously conveyed by the developer of the 1960s era apartment building that grants access across portions of 2901 Middlefield Road, and the now proposed to be separated 702 Ellsworth Place property. This 20-foot wide easement provides access to 13 residential properties.

To improve ingress and egress access and sight line access for motorists, pedestrians and cyclists, area residents sought to increase the easement to 26-feet wide. The applicant proposed a 24-foot wide easement and submitted a safety study prepared by a traffic engineer to support their position that a wider easement was not necessary. Moreover, the applicant expressed concerns about the feasibility of increasing the easement width further and constraints imposed by existing utility infrastructure. The July 12th minutes and August 9th excerpt minutes captured these concerns and the PTC's struggles to pass a recommendation regarding street width.

The PTC recommendation is to increase the proposed expansion of Ellsworth Place by two feet beyond the 24' the applicant had offered. A City-imposed condition expanding the width of Ellsworth Place to 26-feet would be considered an "exaction" of property from the applicants. The City has the authority to make such exactions only when there is an "essential nexus" between the property being exacted and the public impacts of the application, as well as "rough proportionality" between the amount of the exaction and the amount of impact. Staff are unable to make this nexus and the attached ordinances reflect a 24-foot wide easement. Notably, this finding of essential nexus and rough proportionality do not apply to voluntary

offers of property made by the applicant and the City Council is its deliberation can explore this topic further with the applicant.

Additionally, some public commenters have asserted that the prior PC (PC 1810) for the subject property required the widening of Ellsworth Place. This is not accurate; the PC 1810 condition was not to 'widen' a private street, but rather to 'modify' the 'driveway to Middlefield Road,' as stated in Section 2 of that ordinance.

Ellsworth Place Ownership

Some area residents have expressed concern about the ongoing maintenance and drainage related concerns of the private street and assert that the City is, or ought to be, the owner. County assessor parcels maps and other information about property taxes related to the private street are offered as arguments that the street is publicly owned. Staff has conducted an extensive review of the record and finds no evidence to support this conclusion. Moreover, the request that the City take ownership and related maintenance responsibilities for the street is not a matter relevant to the subject application. The only connection the subject property has with Ellsworth Place is the access easement across the applicant's private property to provide a connection between the private roadway and Middlefield Road. If the City Council were interested in exploring the possibility of taking over ownership of Ellsworth Place that would need to be agendized as a separate discussion. In contemplating such direction, the City Council may also want to be aware that there are many private streets in the City and may want to give consideration to the establishment of criteria for selecting and prioritizing which streets the City might have an interest in being publicly owned; the potential rebuilding and maintenance costs associated with street ownership; the needs of public safety services to access streets; as well as potentially complex legal considerations when such streets are held in common ownership such as may be the case with a homeowners association.

FISCAL/RESOURCE IMPACT

There are no resource impacts associated with this action.

STAKEHOLDER ENGAGEMENT

The June 28 PTC report noted prior community engagement. Additional engagement at the project site occurred on July 3, 2023, and during the PTC hearings of July 12 and August 9, 2023. The installation of markers to show the sight distance triangles on each side of Ellsworth Place, and three-foot temporary fence was per the PTC's July 12 direction and to engage the neighbors in reviewing the proposal. The PTC packets and webpage include links to the correspondence. Additional correspondence received after the August 9th PTC hearing is provided as Attachment C to this report. Photographs taken by the applicant and staff, shared with the PTC in presentations, are provided as Attachments E and F.

ENVIRONMENTAL REVIEW

The two attached draft Planned Community ordinances refer to several CEQA exemptions for the project(s) and the PTC report of August 9 included analysis of these exemptions. The PC for 2901-2905 Middlefield Road (Attachment A) cites the existing facilities exemption (15301) and

the common-sense exemption (15061(b)(3)). The PC for 702 Ellsworth Place (Attachment B) cites the common-sense exemption as well as the new small structure exemption (15303).

ATTACHMENTS

Attachment A: PC Ordinance for 2901-2905 Middlefield Road & Exhibit A (Development Plan)

Attachment B: PC Ordinance for 702 Ellsworth Place & Exhibit B (Development Plan)

Attachment C: Correspondence received from neighbors after August 9th

Attachment D: August 9th excerpt verbatim PTC minutes

Attachment E: Geotechnical memo from applicant received after August 9

Attachment F: Correspondence and photographs received from applicant after August 9

Attachment G: Photographs taken by staff shared with the PTC

APPROVED BY:

Jonathan Lait, Planning and Development Services Director

Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Amending Section 18.08.040 of the Palo Alto Municipal Code (the Zoning Map) to Rezone the Property at 2901 Middlefield Rd. from Planned Community Ordinance 2343 (PC-2343) to Planned Community Ordinance XXXX (PC-XXXX).

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and Declarations.

- (a) On _____, Dewey Land Company LLC (“Dewey”) and Handa Developer’s Group/RRP (“Handa”) applied to amend Planned Community (“PC”) Ordinance 2343 to apply solely to the property at 2901-2905 Middlefield Road, APN 127-35-194, (“Middlefield Parcel”) and rezone the property at 702 Ellsworth Place, APN 127-35-152, (“Ellsworth Parcel”) from Planned Community to Single Family Residential (R-1).
- (b) The City Council at its March 13, 2023 study session considered the prescreening application and indicated the project applicants should proceed with a formal PC rezoning application to the Planning and Transportation Commission for a recommendation.
- (c) On June 28, 2023, July 12, 2023, and August 9, 2023 the Palo Alto Planning and Transportation Commission (“PTC”) held a series of public hearings to consider the application. The PTC recommended that PC-2343 be amended to remove the Ellsworth Parcel and to establish two new PC ordinances to govern the Middlefield Parcel and Ellsworth Parcel, respectively.
- (d) The rezoning recommended by the PTC would reduce the area of the Planned Community PC 2343 from 26,386 sf to 19,893 square feet to encompass 2901-2905 Middlefield Road, a 12-unit apartment building currently owned by Dewey, and amend the development plan for the PC to:
- (i) restripe the tenant parking facility to assign four uncovered parking spaces to meet current code requirements for tenant parking spaces,
 - (ii) provide a truck delivery space,
 - (iii) maintain trash enclosure and pickup from Sutter Avenue,
 - (iv) the 35-foot sight triangle at the intersection of Ellsworth Place and Middlefield Road shall not be obstructed by plants, fences, or other objects taller than 1 foot, and
 - (v) add a 3’6”-wide swath of paving alongside Ellsworth Place beginning at the Middlefield Road curb line and extending to the location of an existing utility pole guy-wire to increase the perceived width of Ellsworth Place.
- (e) The PTC recommended concurrent adoption of a companion ordinance (Ordinance No. XXXX) to designate the remaining 6,493 square foot parcel currently owned by Handa at 702 Ellsworth as PC, for the purpose of constructing a single-story, single-family residence.

(f) The Planning and Transportation Commission, after duly noticed public hearings on June 28, July 12, and August 9, 2023, made the findings set forth below and recommended that Section 18.08.040 (the Zoning Map) of the Palo Alto Municipal Code be amended.

- (g) The Council, after due consideration of the recommendations, finds:
- (i) The site is so situated and the uses proposed for the site are of such characteristics that the application of general districts or combining zoning districts will not provide sufficient flexibility to allow the proposed development; the City's conventional zoning district RM20 would not permit the existing 12 unit structure on the proposed 0.46 acre site
 - (ii) Amendment to the existing Planned Community PC2343 will provide public benefits expected to result from the Project, including an expanded public access easement over the first 37 feet of Ellsworth Place, and the construction of an additional dwelling unit.
 - (iii) The Council further finds that the Project provides public benefits, as described above, that are of sufficient importance to make the Project, as a whole, one with reasonable public benefit.
 - (iv) The existing use and improvements are generally remaining unchanged and are compatible with existing and potential uses on adjoining sites or within the general vicinity.
 - (v) The use permitted and the site development regulations are consistent with the following Palo Alto Comprehensive Plan policies and are, on balance, consistent with the goals and purposes of the Comprehensive Plan:

Policy L-1.1	Infill development in the urban service area should be compatible with its surroundings and the overall scale and character of the city to ensure a compact, efficient development pattern.
Policy L-1.2	Hold new development to the highest development standards in order to maintain Palo Alto's livability and achieve the highest quality development with the least impacts.
Policy L-1.3	Ensure that new or remodeled structures are compatible with the neighborhood and adjacent structures.
Policy L-1.4	Avoid negative impacts of basement construction for single-family homes on adjacent properties, public resources, and the natural environment.
Policy L-1.5	Design buildings to complement streets and public spaces; to promote personal safety, public health and well-being; and to enhance a sense of community safety.
Policy L-1.6	Discourage the use of fences that obscure the view of the front of houses from the street. The use and improvements on the site are remaining unchanged from existing conditions, which are compatible with existing and potential uses on adjoining sites.

SECTION 2. Amendment of Zoning Map.

Section 18.08.040 of the Palo Alto Municipal Code, the "Zoning Map," is hereby amended to rezone the certain property known as 2901-2905 Middlefield Road from PC-2343 to "PC-XXXX." The subject property and revised zoning designation is shown on the map labeled Exhibit "A," attached hereto and incorporated herein by reference.

SECTION 3. Development Plan

Those certain plans entitled PROPOSED PC AMENDMENT TO PC 2343, DATED 1967, a copy of which is attached hereto as Exhibit "B" and incorporated herein, are hereby approved as the Development Plan for the subject property.

SECTION 4. Uses.

(a) Permitted Uses. The permitted uses within the PC boundary shall be limited to a 12-unit apartment building: The existing apartment building shall remain on the 2901-2905 Middlefield site within the PC boundary. Covered and uncovered parking for the tenants shall be provided in accordance with Section 5(b) of this ordinance.

SECTION 5. Site Development Regulations.

(a) Compliance with Development Plan. All improvements and development shall be substantially in accordance with the Development Plan, except as modified herein.

- (i) A 30-inch-wide swath of paving shall be created alongside Ellsworth Place beginning at the Middlefield Road curb line and extending approximately 37 feet to the location of an existing utility pole guy-wire, to increase the perceived width of Ellsworth Place.
- (ii) This additional paved area shall be maintained clear of obstructions.
- (iii) Prior to final inspection of any improvements on the site, Dewey shall offer an ingress and egress easement over this additional paved area to the other properties on Ellsworth Place.
- (iv) Any exterior changes to the apartment building or any new construction not specifically permitted by the Development Plan or by these site development regulations shall require an amendment to this Planned Community Zone or, if eligible, Architectural Review approval under Section 18.76 of the Palo Alto Municipal Code, as it is amended from time to time.

(b) Parking and Loading Requirements. One covered parking space shall be provided for each of the 12 residential apartments. In addition, four uncovered spaces and a truck delivery space shall be provided on the 2901-2905 Middlefield property, accessible from Ellsworth Place, as shown on the Development Plan.

(c) Trash Enclosures and Pickup. Trash enclosures and pickup shall be maintained with access from Sutter Avenue, and not from Ellsworth Place.

(d) Development Schedule. The parking lot striping on 2901-2905 Middlefield Road shall be immediately implemented upon the effective date of this ordinance. Construction of the improvements to Ellsworth Place shall be completed within twelve (12) months of the effective date of this ordinance.

(e) Minor Variations in Project. Minor changes to the Project may be approved by the Director, according to the provisions of Palo Alto Municipal Code Section 18.76.020(b)(3)(D) for architectural review. "Minor" changes do not include changes in land use.

SECTION 6. The City Council finds that this ordinance is categorically exempt from review under the California Environmental Quality Act (CEQA) Guidelines, Section 15061(b)(3) because it can be seen with certainty that minor changes to the parking configuration at 2901-2905 Middlefield Road and construction of a single-family home pursuant to Ordinance No. XXXX will not result in a significant impact on the environment. The City Council finds that this ordinance is additional categorically exempt under Section 15303 of the CEQA Guidelines, as it requires only a minor change to an existing facility.

SECTION 7. This ordinance shall be effective on the thirty-first day after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Director of Planning and Development Services



HAYES GROUP ARCHITECTS, INC.
2657 SPRING STREET
REDWOOD CITY, CA 94063
P: 650.365.0600
F: 650.365.0670
www.thehayesgroup.com

PROJECT ADDRESS:
2901-2905
MIDDLEFIELD RD.
PALO ALTO, CA 94306

ISSUANCE:

NO.	DESCRIPTION:	DATE:
	PLANNING SUBMITTAL	02.01.2023
	CITY COUNCIL	09.18.2023

DRAWING CONTENT
TITLE SHEET

STAMP

JOB NUMBER:
2202.00
SCALE:
AS NOTED
DRAWN BY:
LB
All drawings and written materials contained herein constitute the original & unpublished work of the Architect and the same may not be duplicated, used or disclosed without the written consent of the Architect.
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DRAWING NUMBER

A0.1A

PROPOSED DEVELOPMENT PLAN

2901-2905 MIDDLEFIELD

PROJECT DIRECTORY

CLIENT
RLD LAND LLC
240 LORTON AVENUE
4TH FLOOR
BURLINGAME, CA 94063
650.571.1010

ARCHITECT
HAYES GROUP ARCHITECTS
2657 SPRING STREET
REDWOOD CITY, CA 94063
650.365.0600 PH
650.365.0670 FAX
CONTACT: Ken Hayes x15
khayes@thehayesgroup.com

VICINITY MAP



PROJECT INFORMATION

PROJECT DESCRIPTION: SEE ATTACHED LETTER.

APN 127-35-194

ZONE PC-2343

OCCUPANCY R-2

CONSTRUCTION V-B

BUILDING CODE 2022 CRC CALIFORNIA RESIDENTIAL CODE
2022 CPC CALIFORNIA FIRE CODE
2022 CMC CALIFORNIA MECHANICAL CODE
2022 CPC CALIFORNIA PLUMBING CODE
2022 CEC CALIFORNIA ENERGY CODE
2022 CSC CALIFORNIA GREEN CODE
2022 CBC CALIFORNIA BUILDING CODE

PARCEL LOT 19,893 SF

SHEET INDEX

ARCHITECTURAL

A0.1A TITLE SHEET

T-1 SPECIAL TREE PROTECTION INSTRUCTION SHEET

A1.0A EXISTING PC 2343 DEVELOPMENT PLAN, FOR REFERENCE ONLY

A2.1 DEVELOPMENT PLAN

A3.0A PHOTOS

A3.1A PHOTOS SIGHT LINES

M a k e s u r e y o u r c r e w s a n d s u b s d o t h e j o b r i g h t!

Under trees are essential to protect the m by keep inogntlaetfblyiaegqueicpa m cepty, annattdorriaadsc hainndg asdtiuvctiuerse, clea r fr
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 formation on Palo Alto's regulated trees and Cpirt o t(eTtRf e Mn)T d e uc n h m G c a h t e w M w a o p, u m e l y n o, f p e a v o e a l w o t, h o e g / t r e e s /.

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Table 2: Palo Alto Tree Technical Manual

CONTRACTOR & ARBORIST INSPECTION SCHEDULE

(Reference the Palo Alto Tree Technical Manual is available at www.cityofpaloalto.net/contractors)

ALL CHECKLISTS ITEMS APPLY TO THIS PROJECT:

- ☒ **Pre-Construction Tree Fencing, for Public Projects.** The project site owner must provide a signed **Monthly Tree Activity Report** during a photo-graphic visit that has been conducted for all trees within the project site and that the correct type of protective fencing is in place around the designated trees within the TFCZ prior to commencing of demolition, grading, or building project. (See TDM, Verification of Tree Activity Report, Section 1.39.)
- ☒ **Pre-Construction Meeting.** Prior to commencement of construction, the applicant or contractor shall conduct a pre-construction meeting to discuss tree protection with the job supervisor/contractor, project site arborist, City Arborist, and, if a city maintained arborist system is involved, the Palo Alto Manager (Section 400-606-002).
- ☒ **Inspection of Rough Grading or Tree Clearing.** Contractor shall ensure the project site arborist performs an inspection during the course of rough grading or tree clearing activities to verify the TFCZ inspection results will not be impacted by excavation, cut, or fill, dewatering and trenching, and, if required, inspect sensitive systems, wetlands, dunes and special grazing. The contractor shall provide the project site arborist within 24 hours after issuance of building permit. See TDM (650) 32-2154. (See TDM, Monthly Tree Activity Report Report, Addendum 1.8 in section 1.37.)
- ☒ **Monthly Tree Activity Report Inspections.** The project site arborist shall perform a minimum quarterly inspection to monitor and evaluate tree condition, tree health and performance, if necessary. If there are any violations to the approved plan or protection measures, the Palo Alto Manager Monthly Tree Activity Report Form shall be used and sent to the Planning Dept. Inspectors within no later than 14 days after issuance of building permit. See TDM (650) 32-2154. (See TDM, Monthly Tree Activity Report Report, Addendum 1.8 in section 1.37.)
- ☒ **Special activity within the Tree Protection Zone.** Work in the TFCZ area (see also 7) below) requires the direct supervision of the project arborist (see TDM, Tree Protection, Enclosures & Equipment, Section 2.20 C).
- ☒ **Landscape Architect Inspection.** For discretionary development projects, prior to temporary or final occupancy the project contractor shall arrange for the Landscape Architect to perform an on-site inspection of the plant species, quality of the materials and planting (see TDM, Planting Quality, Section 3.11, A) and that the equipment in functioning condition with the approved certification plan. The Planning Dept. Inspectors review will be as a receipt of meeting, verification of Landscape Architect approval prior to scheduling the final inspection, unless otherwise approved.
- ☒ **List Other (please describe as called out in the TDM Tree Activity Report, Sheet 7.4, T-2, etc.)**

Arbitrator Firm Data Here		City of Palo Alto Tree Technical Manual		APPENDIX II
				encl
				RCATA Central Admin #92-00 Contract #24
Monthly Tree Activity Report- Construction Site				
Inspection Date:	Site address:	Contractor: Main Site Contact information	#1 Job site superintendent Company: Email: Cell: Job site Office: Cell: Mail:	
Inspection #	Palo Alto, CA			
		Also present:	• _____	
			• _____	
Distribution:	1 City of Palo Alto 2 Others	Attn: Dave Dochter	dave.dochter@rcata.org 950-333-2440	
<p>Provide for required minimum information with input, comments as necessary. It is completed by project or relevant staff monthly to stay current as above and allow proper response. The additional data are as desired.</p>				
<p>1. Assignment Activity (Demolition/grading/tree trenching/foundations list relevant trees)</p> <p>1. Protection (tree protection measures)</p> <p>b. Inspect to verify that tree protection measures are in place</p> <p>c. Determine if field adjustments, watering or pump revisions may be needed</p>				
<p>2. Field Observations (general site-wide and list by individual tree number)</p> <p>1. Tree Protection Measures (TP) are ...</p> <p>b. Trenching has/will occur ...</p>				
<p>3. Action Items (list site-wide, by tree number and date to be satisfied) and Date Due</p> <p>a. Tree Protection Fence (TPF) signs adjusting (Tree # x S, x)</p> <p>b. Root zone buffer material (wood chips) can be installed next</p> <p>c. Schedule severe trench, foundation dig with ...</p>				
<p>4. Photographs (see annex)</p> <p>5. Tree Locations Map (minimum 8.5 x 11 sheet)</p>				
<p>6. Recommendations, notes or monitor items for project staff/contractor</p> <p>•</p>				
<p>7. Past visits (list carry-over items unresolved with contractor)</p> <p>•</p>				
<p>Project fully submitted.</p> <p>Project site address</p> <p>Consistent contact information (include email, cell#, and mailing)</p> <p>Cc:</p>				
Enter Date	CPA Monthly Tree Activity Report: Type site address here			Page #1 of 1

[illegible][illegible][illegible]

Project Data

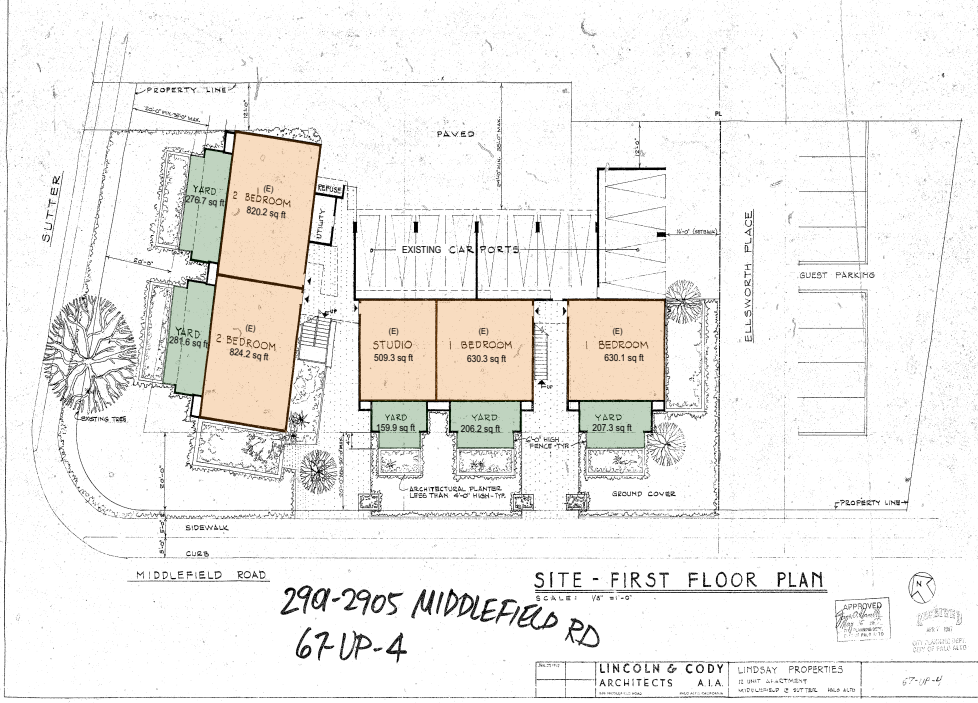


24X

PALO ALTO 2ND FLOOR PLAN

SCALE: 1/16" = 1'-0"

4



24X

Item 7: Staff Report Pg. 13

Packet Pg. 155 of 449



2

(E) PRIVATE OPEN SPACE (NO CHANGE)	2861
(E) BIKE PARKING (NO CHANGE)	INSIDE UNITS



VIEW OF EXISTING 702 ELLSWORTH

SCALE:

6



VIEW FROM SUTTER AVE.

SCALE:

4



VIEW OF SUTTER APARTMENT FROM ELLSWORTH PLACE

SCALE:

2



VIEW OF INTERIOR PARKING

SCALE:

5



ISSUANCE:

NO. DESCRIPTION: DATE:

PLANNING SUBMITTAL	02.01.2023
CITY COUNCIL	08.18.2023

DRAWING CONTENT
PHOTOS SIGHT LINES

STAMP

JOB NUMBER:
2202.00
SCALE:
AS NOTED
DRAWN BY:
LB
All drawings and written materials contained herein constitute the original & unpublished work of the Architect and the same may not be duplicated, used or disclosed without the written consent of the Architect.
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DRAWING NUMBER

A3.1A

Item 7
Attachment A - Ordinance for
2901 Middlefield



VIEW APPROACHING STOP SIGN 2

SCALE: 4



VIEW FROM STOP SIGN 2

SCALE: 2



VIEW APPROACHING STOP SIGN 3

SCALE: 3



VIEW FROM STOP SIGN 3

SCALE: 1

* FENCE 3'-0" TALL SETBACK 4'-0" FROM BACK OF CITY SIDEWALK PER CITY OF PALO ALTO
TRANSPORTATION PLANNING DEPARTMENT RECOMMENDATION

ORDINANCE NO. _____

Ordinance of the Council of the City of Palo Alto Amending Section 18.08.040 of the Palo Alto Municipal Code (the Zoning Map) to Rezone the Property at 702 Ellsworth Place from Planned Community Ordinance 2343 (PC-2343) to Planned Community Ordinance XXXX (PC-XXXX).

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and Declarations.

- (a) On _____, Dewey Land Company LLC (“Dewey”) and Handa Developer’s Group/RRP (“Handa”) applied to amend Planned Community (“PC”) Ordinance 2343 to apply solely to the property at 2901-2905 Middlefield Road, APN 127-35-194, (“Middlefield Parcel”) and rezone the property at 702 Ellsworth Place, APN 127-35-152, (“Ellsworth Parcel”) from Planned Community to Single Family Residential (R-1).
- (b) The City Council at its March 13, 2023 study session considered the prescreening application and indicated the project applicants should proceed with a formal PC rezoning application to the Planning and Transportation Commission for a recommendation.
- (c) On June 28, 2023, July 12, 2023, and August 9, 2023 the Palo Alto Planning and Transportation Commission (“PTC”) held a series of public hearings to consider the application. The PTC recommended that PC-2343 be amended to remove the Ellsworth Parcel and to establish two new PC ordinances to govern the Middlefield Parcel and Ellsworth Parcel, respectively.
- (d) The rezoning recommended by the PTC would remove the 6,493 square foot parcel currently owned by Handa at 702 Ellsworth from PC-2343 and redesignate it as a separate PC, for the purpose of constructing a single-story, single-family residence. The PTC recommended the following conditions:
- (i) the development plan shall include a 2’6”-wide swath of pavement alongside Ellsworth Place beginning at the Middlefield Road curb line and extending to the proposed walkway to the single-family residence to increase the perceived width of Ellsworth Place,
 - (ii) the 35-foot sight triangle at the intersection of Ellsworth Place and Middlefield Road shall not be obstructed by plants, fences, or other objects taller than 1 foot,
 - (iii) the 24-foot special setback from Middlefield Road shall be observed,
 - (iv) the setback from the creek shall be determined by a slope stability analysis,
 - (v) and a 6-foot setback shall apply to the rear property line, except with respect to a detached garage.
- (e) The PTC recommended concurrent adoption of a companion ordinance (Ordinance No. XXXX) to reduce the area of the Planned Community PC 2343 from 26,386 sf to 19,893 square feet

to encompass 2901-2905 Middlefield Road, a 12-unit apartment building currently owned by Dewey.

(f) The Planning and Transportation Commission, after duly noticed public hearings on June 28, July 12, and August 9, 2023, made the findings set forth below and recommended that Section 18.08.040 (the Zoning Map) of the Palo Alto Municipal Code be amended.

(g) The Council, after due consideration of the recommendations, finds:

- (i) The site is so situated and the uses proposed for the site are of such characteristics that the application of general districts or combining zoning districts will not provide sufficient flexibility to allow the proposed development; the City's conventional zoning district RM20 would not permit the existing 12 unit structure on the proposed 0.46 acre site
- (ii) Amendment to the existing Planned Community PC2343 will provide public benefits expected to result from the Project, including an expanded public access easement over the first 35 feet of Ellsworth Place, and the construction of an additional dwelling unit.
- (iii) The Council further finds that the Project provides public benefits, as described above, that are of sufficient importance to make the Project, as a whole, one with reasonable public benefit.
- (iv) The proposed single-family residence is compatible with existing and potential uses on adjoining sites or within the general vicinity, which are typically single-family residences and one 12-unit apartment complex.
- (v) The use permitted and the site development regulations are consistent with the following Palo Alto Comprehensive Plan policies and are, on balance consistent with the goals and purposes of the Comprehensive Plan:

Policy L-1.1	Infill development in the urban service area should be compatible with its surroundings and the overall scale and character of the city to ensure a compact, efficient development pattern.
Policy L-1.2	Hold new development to the highest development standards in order to maintain Palo Alto's livability and achieve the highest quality development with the least impacts.
Policy L-1.3	Ensure that new or remodeled structures are compatible with the neighborhood and adjacent structures.
Policy L-1.4	Avoid negative impacts of basement construction for single-family homes on adjacent properties, public resources, and the natural environment.
Policy L-1.5	Design buildings to complement streets and public spaces; to promote personal safety, public health and well-being; and to enhance a sense of community safety.
Policy L-1.6	Discourage the use of fences that obscure the view of the front of houses from the street. The use and improvements on the site are remaining unchanged from existing conditions, which are compatible with existing and potential uses on adjoining sites.

SECTION 2. Amendment of Zoning Map.

Section 18.08.040 of the Palo Alto Municipal Code, the "Zoning Map," is hereby amended to rezone the certain property known as 702 Ellsworth Place from PC-2343 to "PC-XXXX." The subject property and revised zoning designation is shown on the map labeled Exhibit "A," attached hereto and incorporated herein by reference.

SECTION 3. Development Plan

Those certain plans entitled _____, a copy of which is attached hereto as Exhibit "B" and incorporated herein, are hereby approved as the Development Plan for the subject property.

SECTION 4. Uses.

- (a) Permitted Uses. The permitted uses within the PC boundary shall be limited to a single-family residence.

SECTION 5. Site Development Regulations.

- (a) Compliance with Development Plan. All improvements and development shall be substantially in accordance with the Development Plan, except as modified herein.
- (i) Any exterior changes to the single-family residence or any new construction not specifically permitted by the Development Plan or by these site development regulations shall require an amendment to this Planned Community Zone or, if eligible, Architectural Review approval under Section 18.76 of the Palo Alto Municipal Code, as it is amended from time to time.
 - (ii) The development plan shall include a 18-inch-wide swath of pavement alongside Ellsworth Place beginning at the Middlefield Road curb line and extending approximately 42 feet to the proposed walkway to the single-family residence, to increase the perceived width of Ellsworth Place.
 - (iii) This additional paved area shall remain clear of obstructions.
 - (iv) Prior to final inspections for any structure on the site, Handa shall offer an ingress and egress easement over this additional paved area to the other properties on Ellsworth Place.
 - (v) The 35-foot sight triangle at the intersection of Ellsworth Place and Middlefield Road shall not be obstructed by new impediments taller than 1 foot,
 - (vi) The 24-foot special setback from Middlefield Road shall be observed,
 - (vii) The setback from the creek shall be determined by a slope stability analysis, but no less than 6 feet.
 - (viii) A 6-foot setback shall apply to the rear property line, except with respect to a detached garage

(b) Development Schedule. Construction of the improvements to Ellsworth Place shall be completed within twelve (12) months of the effective date of this ordinance. Construction of other improvements shall be completed within twenty-four (24) months of the effective date of this ordinance.

(c) Minor Variations in Project. Minor changes to the Project may be approved by the Director, according to the provisions of Palo Alto Municipal Code Section 18.76.020(b)(3)(D) for architectural review. "Minor" changes do not include changes in land use.

SECTION 6. The City Council finds that this ordinance is categorically exempt from review under the California Environmental Quality Act (CEQA) Guidelines, Section 15061(b)(3) because it can be seen with certainty that construction of a single-family home pursuant to will not result in a significant impact on the environment. The City Council finds that this ordinance is additional categorically exempt under Section 15301 of the CEQA Guidelines, as it approves construction of a single-family residence.

SECTION 7. This ordinance shall be effective on the thirty-first day after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Director of Planning and Development Services



HAYES GROUP ARCHITECTS, INC.
2657 SPRING STREET
REDWOOD CITY, CA 94063
P: 650.365.0600
F: 650.365.0670
www.thehayesgroup.com

PROJECT ADDRESS:
702 ELLSWORTH PLACE
PALO ALTO CA 94306

PROPOSED DEVELOPMENT PLAN 702 ELLSWORTH

ISSUANCE:

NO. DESCRIPTION: DATE:

PTC SUBMITTAL 07.28.2023

PROJECT DIRECTORY	VICINITY MAP	PROJECT INFORMATION	SHEET INDEX
<p>PROPERTY OWNER: HANDE DEVELOPERS GROUP 408.406.3964 CONTACT: Nalin Handa handa@handadevelopers.com</p> <p>ARCHITECT: HAYES GROUP ARCHITECTS 2657 SPRING STREET REDWOOD CITY, CA 94063 650.365.0600 PH 650.365.0670 FAX CONTACT: Ken Hayes x.15 khayes@thehayesgroup.com</p>		<p>PROJECT DESCRIPTION: SEE ATTACHED LETTER.</p> <p>APN: 127-35-152</p> <p>ZONE: PC-2343</p> <p>OCCUPANCY: R-3</p> <p>CONSTRUCTION: V-B</p> <p>BUILDING CODE: 2022 CRC CALIFORNIA RESIDENTIAL CODE 2022 CPC CALIFORNIA FIRE CODE 2022 CMC CALIFORNIA MECHANICAL CODE 2022 CPC CALIFORNIA PLUMBING CODE 2022 CEC CALIFORNIA ENERGY CODE 2022 CSC CALIFORNIA GREEN CODE 2022 CBC CALIFORNIA BUILDING CODE</p> <p>PARCEL LOT: 6.493 SF</p>	<p><u>ARCHITECTURAL</u></p> <p>A0.1 TITLE SHEET</p> <p>T-1 SPECIAL TREE PROTECTION INSTRUCTION SHEET</p> <p>A1.0 EXISTING PC 2343 DEVELOPMENT PLAN, FOR REFERENCE ONLY.</p> <p>A2.0 PROPOSED SITE PLAN</p> <p>A3.0 PHOTOS</p> <p>REF-1 BGT SURVEY</p>

DRAWING CONTENT
TITLE SHEET

STAMP

JOB NUMBER:
2202.00

SCALE:
AS NOTED

DRAWN BY:
LB

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DRAWING NUMBER

A0.1

Item 7
Attachment B - Ordinance 702
Ellsworth PPlace

und trees are essential to protect the m by keepinognthae t f b h i a e g q u i c p a m o e p y, amn alt d b r i a a n d s c h a i n n d g a s c t r i u v c i u e r s e , c l e a n f r
conditions in an intact and non-compatcehdns bas eo, i l a d i d s t i u d r e b n a t f c y e i n g p l e e m t i r t e e d p a r n d e a t i o w i t z o n s e r e t r b e z t r i e n t e w
tree protection in the se po l t r e m i u s s e t a b p e p a o d v e e d d . t o t h i s s h e e t w h e n p r o j e c t a c t i v i t y o c c u r s w i t h i n t h e T P Z
formation on Palo Alto's regulated trees and Cpirt o t (E t C r l e o n) T d i e u c n i m d e c a n t e w M w a o w p , u n e l n o , f p e a v o e a w t o t h o e r g / t r e e s / .

Table 2

Palo Alto Tree Technical Manual

CONTRACTOR & ARBORIST INSPECTION SCHEDULE

Reference the Palo Alto Tree Technical Manual is available at www.cityofpaloalto.org/enr/arboret/

ALL CHECKS MUST APPLY TO THIS PROJECT:

1. ☒ **Inspection of Protective Tree Fencing.** For Public Trees, the Street Tree Verification Form shall be completed. For Protected Trees, the Project Protection sheet must be provided as noted. Monthly Tree Activity Report forms with a photograph verifying that has been conducted, a detailed inspection of the trees and that the contract for protective fencing is in place around the designated trees. The inspection must be completed within 14 days of building permit or building permit. (See TTM, Verification of Tree Protection, Section 1.39).
2. ☒ **Pre-Construction Meeting.** Prior to commencement of construction, the applicant or contractor shall conduct a pre-construction meeting to discuss tree protection with the city staff representative, grader/operator, project arborist, project arborist. City arborist. And, if a city maintained inspection system is involved, the Palo Alto Manager (406-498-0042).
3. ☒ **Inspection of Rough Grading or Trenching.** Contractor shall ensure the project arborist and inspection personnel are capable of checking rough grading or trenching operation to be within the 10% to ensure trees will not be injured by compaction, soil or fill, drainage and trenching, and if required, assist inspection system, tree walk, drain and special paving. The contractor shall provide the project arborist at least 14 hours advance notice of each activity.
4. ☒ **Monthly Tree Activity Report Inspection.** The project arborist shall prepare a minimum monthly activity report inspection to monitor and note on conditions, tree health and retention or, immediately if there are any evidence to the approved plans or protection measures. The Tree Technical Manual Monthly Tree Activity Report Form shall be used and sent to the Planning Department. Monthly tree walk must be done 14 days after issuance of building permit date. (See 8039-2154, See TTM, Monthly Tree Activity Report Inspection, Addendum 1.18 (section 1.17)).
5. ☒ **Special activity within the Tree Protection Zone.** Work in the TTPZ or on (also 8039-2154) requires a special activity inspection of the project arborist (See TTM, Trenching, Excavation & Equipment, Section 2.20 C).
6. ☐ **Landscaping Activities Inspection.** For discretionary development projects, prior to temporary or final acceptance of project, contractor shall arrange for the Landscape Architect to perform an on site inspection of all plant stock, quality of materials and materials planting (see TTM, Planting Guidelines, Section A) and that the project arborist and inspection system are approved for construction plans. The Planning Dept. Landscape arborist staff will be a receipt of written verification of Landscape Architect approval prior to scheduling the final site inspection, unless otherwise noted.
7. ☐ **List Other places discussed as called out on the site Tree Protection Report, Sheet T-1, T-2, etc.**

[illegible][illegible][illegible]

Project Data

ISSUANCE:

NO. DESCRIPTION: DATE:
PTC SUBMITTAL 07.28.2023

DRAWING CONTENT
EXISTING PC 2343
DEVELOPMENT PLAN.
FOR REFERENCE ONLY.

STAMP

JOB NUMBER:
2202.00
SCALE:
AS NOTED
DRAWN BY:
LB

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DRAWING NUMBER

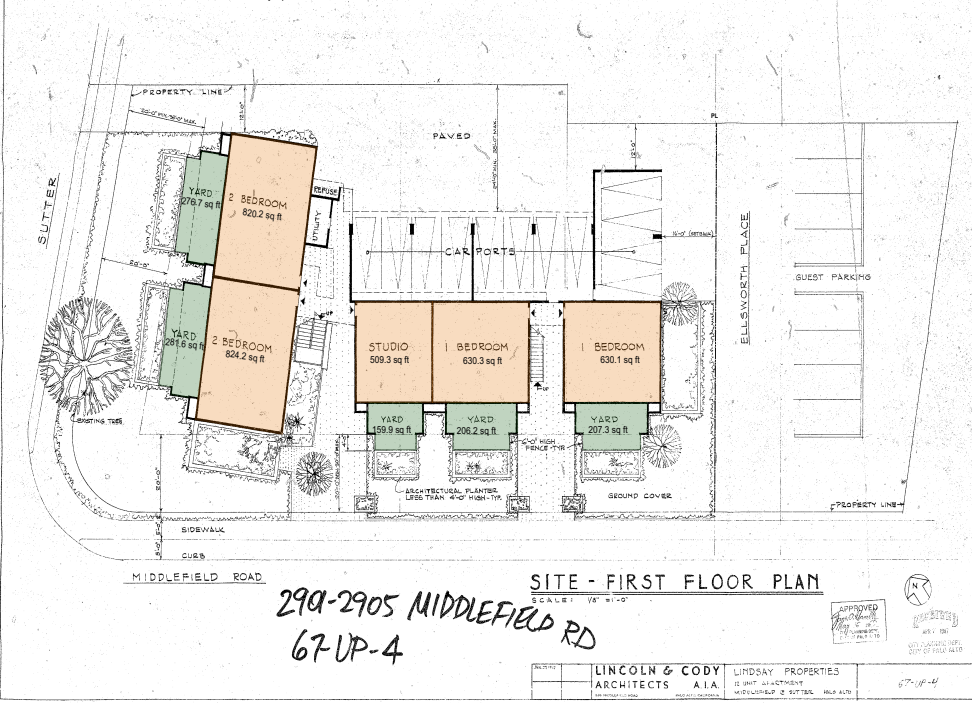
A1.0



24X

PALO ALTO 2ND FLOOR PLAN
SCALE: 1/16" = 1'-0"

4



290-2905 MIDDLEFIELD RD
67-UP-4

24X

ISSUANCE:

NO. DESCRIPTION: DATE:

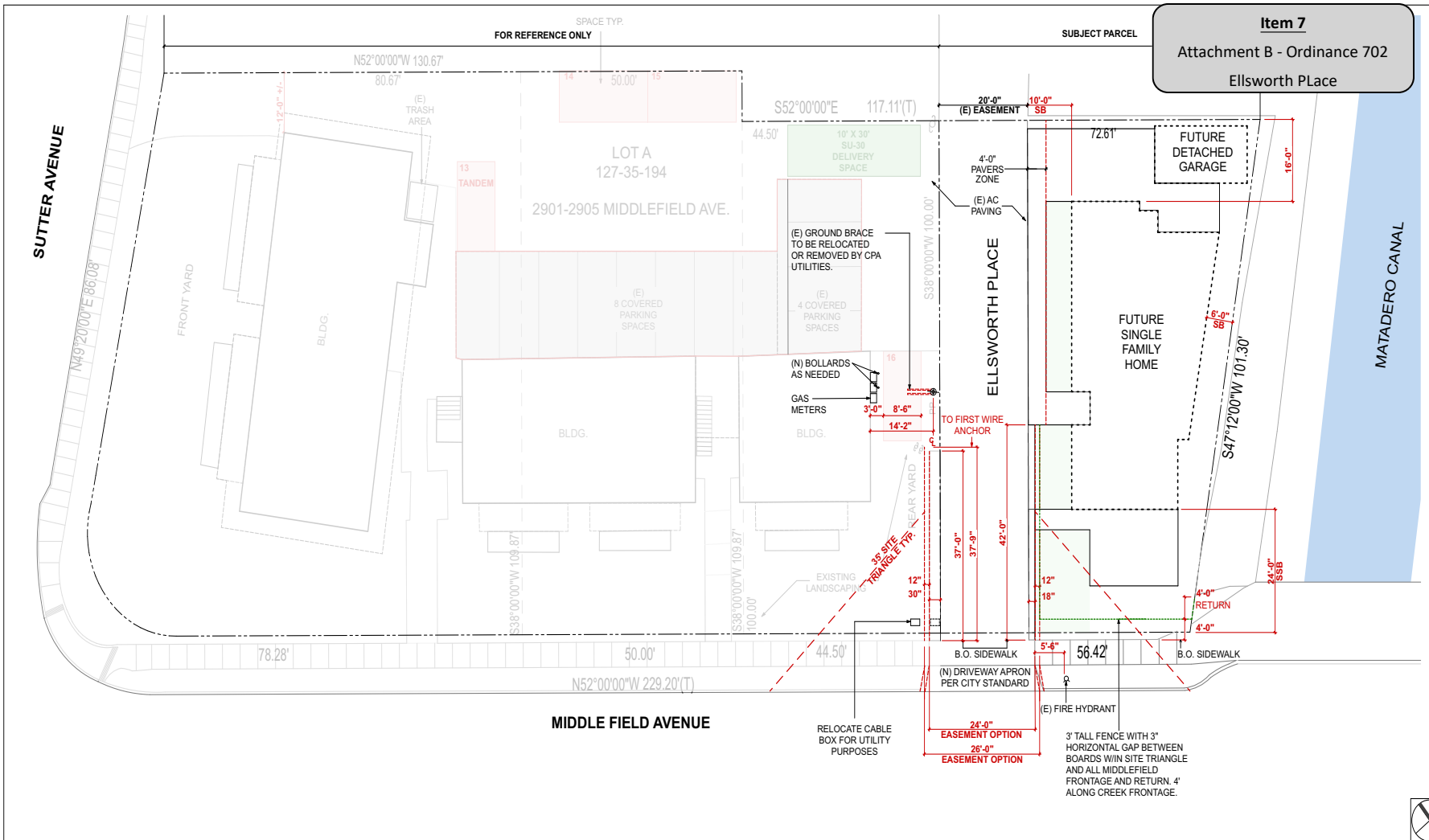
PTC SUBMITTAL 07.28.2023

DRAWING CONTENT
PROPOSED SITE PLAN

STAMP

JOB NUMBER:
2202.00
SCALE:
AS NOTED
DRAWN BY:
LB
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written consent of the Architect.
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DRAWING NUMBER

A2.0



PROPOSED PLAN

SCALE 3/32" = 1'-0"

2

LOT-B
127-35-152
702 ELLSWORTH PLACE

(E) SITE AREA (INCLUDE EASEMENT) 6493 SF

ISSUANCE:

NO. DESCRIPTION: DATE:

PTC SUBMITTAL 07.28.2023

DRAWING CONTENT

PHOTOS

STAMP

JOB NUMBER:

2202.00

SCALE:

NOT TO SCALE

DRAWN BY:

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DRAWING NUMBER



VIEW LOOKING TOWARDS MIDDLEFIELD

SCALE:

5



VIEW OF EXISTING 702 ELLSWORTH

SCALE:

4



VIEW FROM MIDDLEFIELD RD.

SCALE:

2



BASIS OF BEARINGS

THE BEARING, SOUTH 52°00'00" EAST, OF THE CENTERLINE OF MIDDLEFIELD ROAD, AS SHOWN ON THAT CERTAIN RECORD OF SURVEY WHICH WAS FILED FOR RECORD IN BOOK 874 MAPS 13 ON JULY 23, 2014, SANTA CLARA COUNTY RECORDS, WAS USED AS THE BASIS OF BEARINGS FOR THIS SURVEY.

 BENCHMARK

ELEVATIONS SHOWN HEREON ARE BASED UPON NAVD 88
DATUM BASED ON THE SANTA CLARA VALLEY BENCHMARK "BM
52-RESET" AS SHOWN BELOW, WITH A PUBLISHED ELEVATION
OF 19.10 FEET

NOTES:

BGT RELIED UPON A FIRST AMERICAN TITLE COMPANY
PRELIMINARY TITLE REPORT, ORDER NO. 1003122, AS
TITLE REFERENCE FOR ALL EASEMENTS OF RECORD PLOTTED
HEREON.

UTILITIES SHOWN HEREON TAKEN FROM VISUAL SURFACE EVIDENCE AND SHOULD BE CONSIDERED AS APPROXIMATE ONLY. ACTUAL LOCATIONS OF UTILITIES MAY VARY. TRUE LOCATION OF UTILITIES CAN ONLY BE OBTAINED BY EXPOSING THE UTILITY.

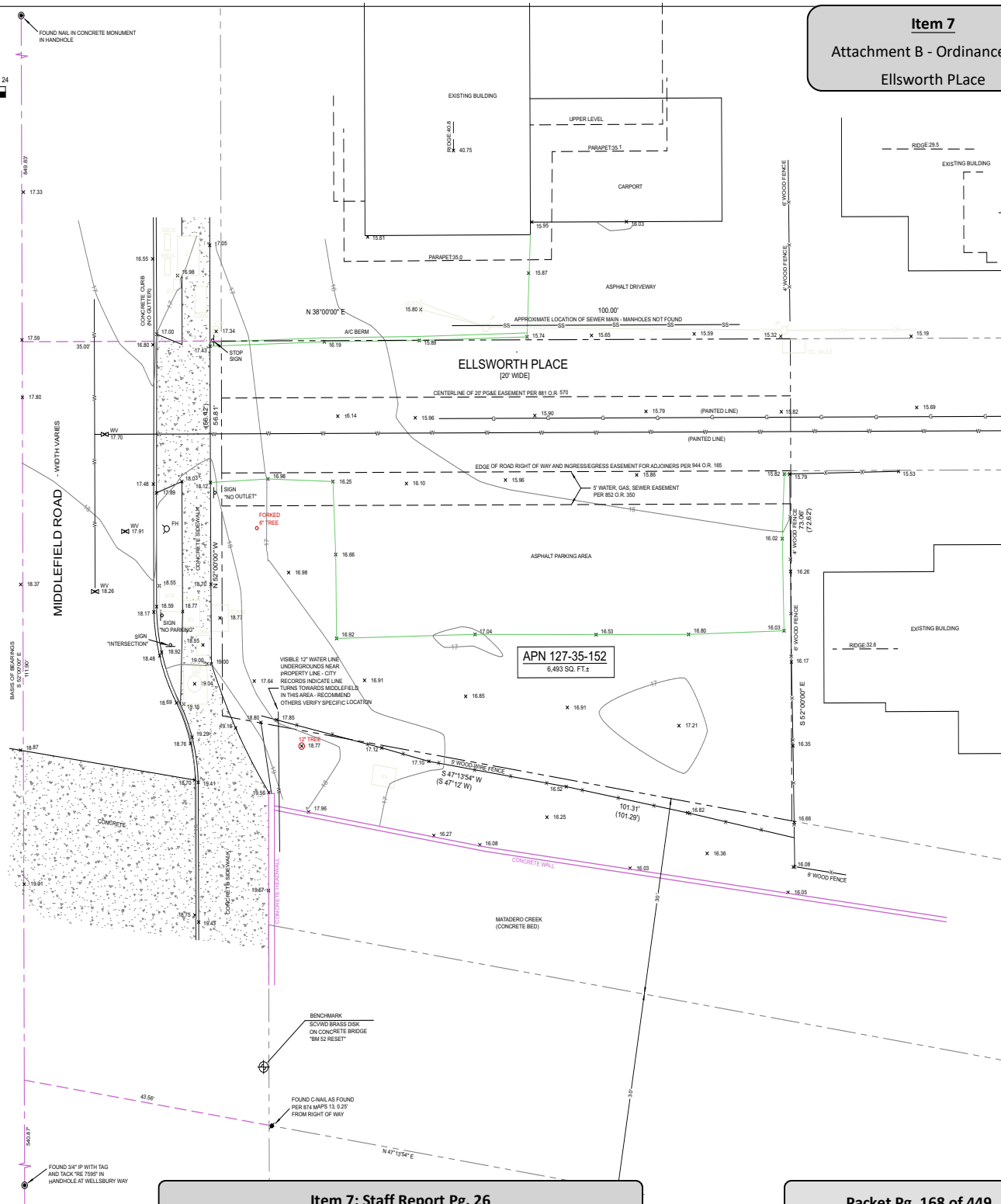
THE LOCATION OF THE SEWER CLEANOUT WAS NOT FOUND BY THE FIELD CREW. THEREFORE, THE CLEANOUT(S), AND THE PROBABLE LOCATION OF THE SEWER LATERAL COULD NOT BE VERIFIED. VERIFICATION TO BE DONE BY OTHERS.

TREE LOCATIONS SHOWN HEREON ARE SHOWN SYMBOLICALLY WITH SYMBOL SIZES BASED UPON TRUNK DIAMETER AT CHEST HEIGHT, AT THE LOCATION WHERE THE TREE ENTERS THE GROUND SURFACE. LOCATIONS AND SIZES OF TREE TRUNKS CAN ONLY BE CONSIDERED APPROXIMATE UNLESS OTHERWISE STATED ON THE MAP. TREES OF TRUNK DIAMETER SIZES OF 6 INCHES OR GREATER WERE LOCATED BY THE FIELD CREW.

SURVEY PERFORMED BY: BGT LAND SURVEYING
www.bgtlandsurveying.com

DATE OF FIELD SURVEY: JANUARY 28, 2022

AW	22-01TASPHALT CONCRETE
BW	BACK OF WALK
CB	CATCH BASIN
CE	CENTER LINE
CM	CORRUGATED METAL PIPE
CP	CAST IRON PIPE
CO	CLEAN OUT BOX
CP	SURVEY CONTROL POINT
CPP	CORRUGATED PLASTIC PIPE
CT	CABLE TELEVISION LINE
DI	DROP INLET
EM	ELECTRIC METER
EL	ELECTRIC VALVE
FF	FINISHED FLOOR
FL	FLOWLINE
FI	FIRE HYDRANT
GM	GAS METER
GRD	GROUND
GU	GUY ANCHOR
GV	GAS VALVE
HCR	HANDICAP RAMP
HLV	HIGH VOLTAGE ELECTRIC
INP	INVERT
IP	IRON PIPE
KV	KILOVOLT
LAT	LATERAL
LG	LIP OF GUTTER
MH	MH (TYPE UNKNOWN)
MON-MON	MONUMENT TO MONUMENT DIRECTION
MS	PACKED SUBSOIL VAULT
PGE	PG&E VAULT
PV	POST INDICATOR VALVE
PM	POWER POLE
PSMH	STORM DRAIN MANHOLE
SLB	STREET LIGHT BOX
SLV	STREET LIGHT VAULT
SS	SANITARY SEWER MANHOLE
SSV	SANITARY SEWER VAULT
TBC	TOP BACK OF CURB
TBM	TEMPORARY BENCHMARK
TS	TRAFFIC SIGNAL
TSS	TRAFFIC SIGNAL BOX
UNKN	UNKNOWN TYPE
VCP	VITRIFIED CLAY PIPE
WBF	WATER BACK FLOW VALVE
WM	WATER METER BOX
WW	WATER VALE
-CTV	CABLE TELEVISION LINE
-EL	ELECTRICAL LINE
-G	GAS LINE
-OH	OVERHEAD LINE
-SD	STORM DRAIN LINE
-SS	SANITARY SEWER LINE
-T	TELEPHONE LINE
-W	WATER LINE



August 9th

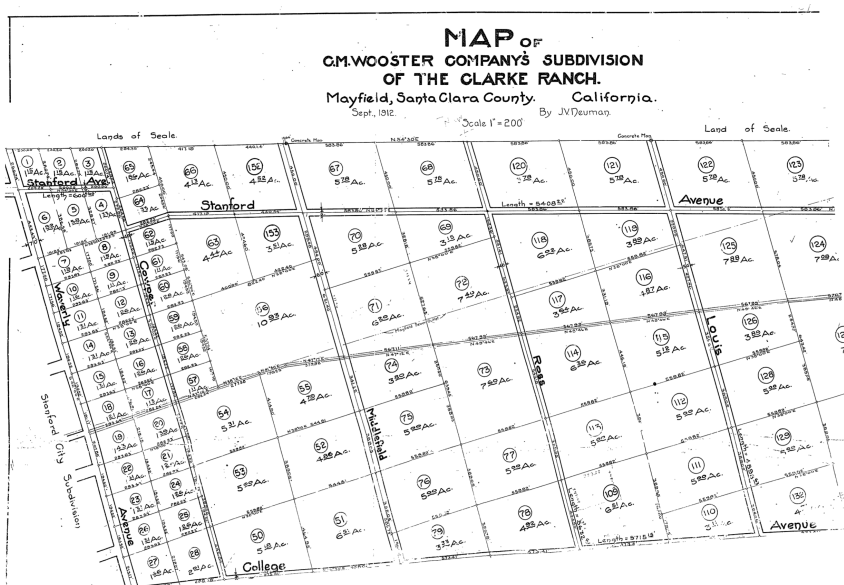
From: [Kristen Van Fleet](#)**To:** [French, Amy](#)**Cc:** [McRee, Sarah](#); [Sauls, Garrett](#); [Lait, Jonathan](#); [Council, City](#); [City Attorney](#); [PlannerOnDuty](#); [Planning Commission](#); [City Mgr](#); [Brandt, Iyer](#); [Chin Chong](#); [Gala Beykin](#); [Hanh Nguyen](#); [John Abraham](#); [Natalie Fisher](#); [On Chong](#); [Robert Chaoqiang Chen](#); [Robyn Ziegler](#); [Shan Wang](#); [Susan Light](#); [Tsing Xue](#); [Vadim Axelrod](#); [Venketa Kurra](#); [Yevgeny Yoni Khasin](#); [William Ross](#); [Glanckopf, Annette](#); [Furman, Sheri](#)**Subject:** Re: Follow Up - Application Request - ELLSWORTH PLACE - Abandoned Road/Road Ownership**Date:** Tuesday, August 15, 2023 2:24:28 PM**Attachments:** [image009.png](#)
[image024.png](#)
[image002.png](#)
[image003.png](#)
[image005.png](#)
[image007.png](#)
[image008.png](#)
[image010.png](#)
[image014.png](#)
[image015.png](#)
[Screenshot 2023-08-15 at 1.06.39 PM.png](#)
[Screenshot 2023-08-15 at 1.26.12 PM.png](#)
[Screenshot 2023-08-15 at 1.52.47 PM.png](#)
[Screenshot 2023-08-15 at 2.04.08 PM.png](#)
[Ellsworth Place Storm Drain Public Records Search Renummer CB.pdf](#)
[Ellsworth Place GIS 8-2023.png](#)**CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.**

Dear Amy French, City Council, and Pertinent City of Palo Alto Departments,

How does CPA wish to handle having a 170.8-foot-long piece of abandoned road under its jurisdiction? Part of the Ellsworth Place "private road" has been "abandoned" since its last owner died on September 11, 1987. This section of road was once attached to the 702 Ellsworth Place parcel. It was not sold to the original apartment developers, Ray T. Lindsay & Mildred Lindsay, when they purchased that 702 Ellsworth Place lot from Helen M. Kenny on November 10, 1958. Per our understanding, the statute of limitations on real estate in the State of California is 5 years. This section of road has been abandoned for almost 26 years.

The original Wooster Subdivision land map of 1912 was for the overall larger parcels. The only roads that existed in this area at that time are Middlefield, Ross, Louis, Stanford Avenue, and College Avenue, and some of these road names have since been changed. (See below).

Ellsworth Place is located on what was Parcel 71 on this map, and it followed the Mayfield Sewer Outlet.



It should also be noted that where Ellsworth Place is concerned, the Palo Alto GIS has been wrong now on two occasions that we know of, and also CPA Utilities didn't know they owned the storm drain until 2006, according to public records, (see below). So it is also plausible that Palo Alto already owns the road and has not

properly documented it or has since lost the information, and land laws were different in they are now. The Santa Clara County (SCC) Assessor's maps have shown Ellsworth Pl since 1968, and county maps supersede the City maps. I've been told the SCC Assessors do not make a mistake of this magnitude, and the fact that NO ONE PAYS TAXES ON THIS ROAD, nor have they since at least 1968 or earlier, is further evidence that Ellsworth Place is already a public road.

When I looked into what is required to add this length of road to the existing parcels, it is a very complicated and costly process that requires redrawing parcel lines. No one on Ellsworth Place is willing to do this as there is no benefit to having the road attached to a parcel. I was told by our surveyor that **the far more efficient means of handling this situation is for the CPA to assume responsibility for it.** CPA already owns ALL utilities on this road and has contributed to its wear and tear by punching through it to maintain utilities over the years, (fixing the sewer line and checking the gas lines, etc.) I have a bunch of photos showing this utility repair history over the last 10+ years.

As we understand it, CPA can choose to write an Ordinance to cover the Ellsworth Place road that leaves the existing houses grandfathered in as they are, in which the homes were built between 1938 - 1949 with the lots all sold prior to annexation on May 2, 1947.

In addition to GIS recording what was historically "702 Ellsworth", currently the parking lot of the Sutter Arms Apartments located at 2901 - 2905 Middlefield Road, as an R-1 parcel, the other mistake on GIS was the creek-side property line for ALL of the even house numbers, shortened our property lines as shown in the attached photo. To get this corrected prior to my own remodel process, which began in 2014, a very expensive survey was required to be recorded with the County. (That survey was conducted by a former SCC head surveyor, and it has been referred to many times recently!)

The screenshot below is the original GIS map, which had the property line cutting through the existing garages of homes 724, 730, and 732 Ellsworth Place.

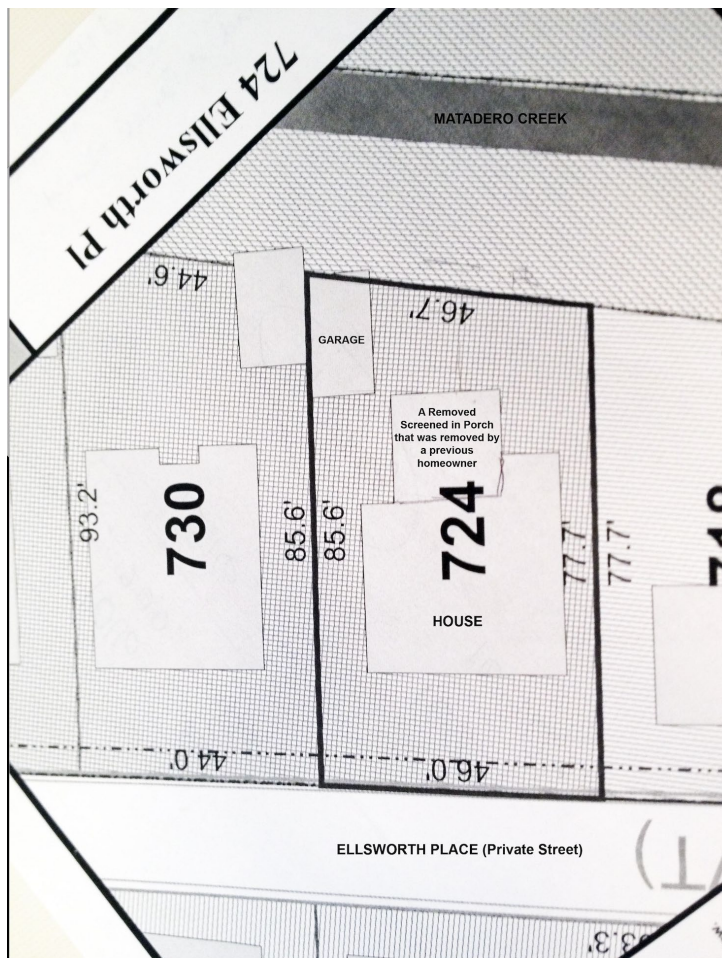


Diagram illustrating a property layout with dimensions and lot numbers. The highlighted area is a rectangular lot with dimensions 81.4' (top), 46.0' (right), 44.0' (bottom), and 46.6' (left). The lot is situated adjacent to a road labeled "Lisworth Place (Private)". Other lots shown include 718, 724, 730, 732, 736, 729, and 731, with various dimensions labeled around them.

Silva, Vanessa

it, which were established prior to the annexation of this area. How do we proceed with

This request should be remedied prior to the amended PC Ordinance 2343 and "new" ordinance for the parking lot parcel, a.k.a. 702 Ellsworth Place, as road ownership does have a bearing on that project.

Sincerely,

Kristen A. Van Fleet

on behalf of Ellsworth Place Home Owners, who are included in the Cc

On Mon, Aug 7, 2023 at 7:07 PM French, Amy <Amy.French@cityofpaloalto.org> wrote:

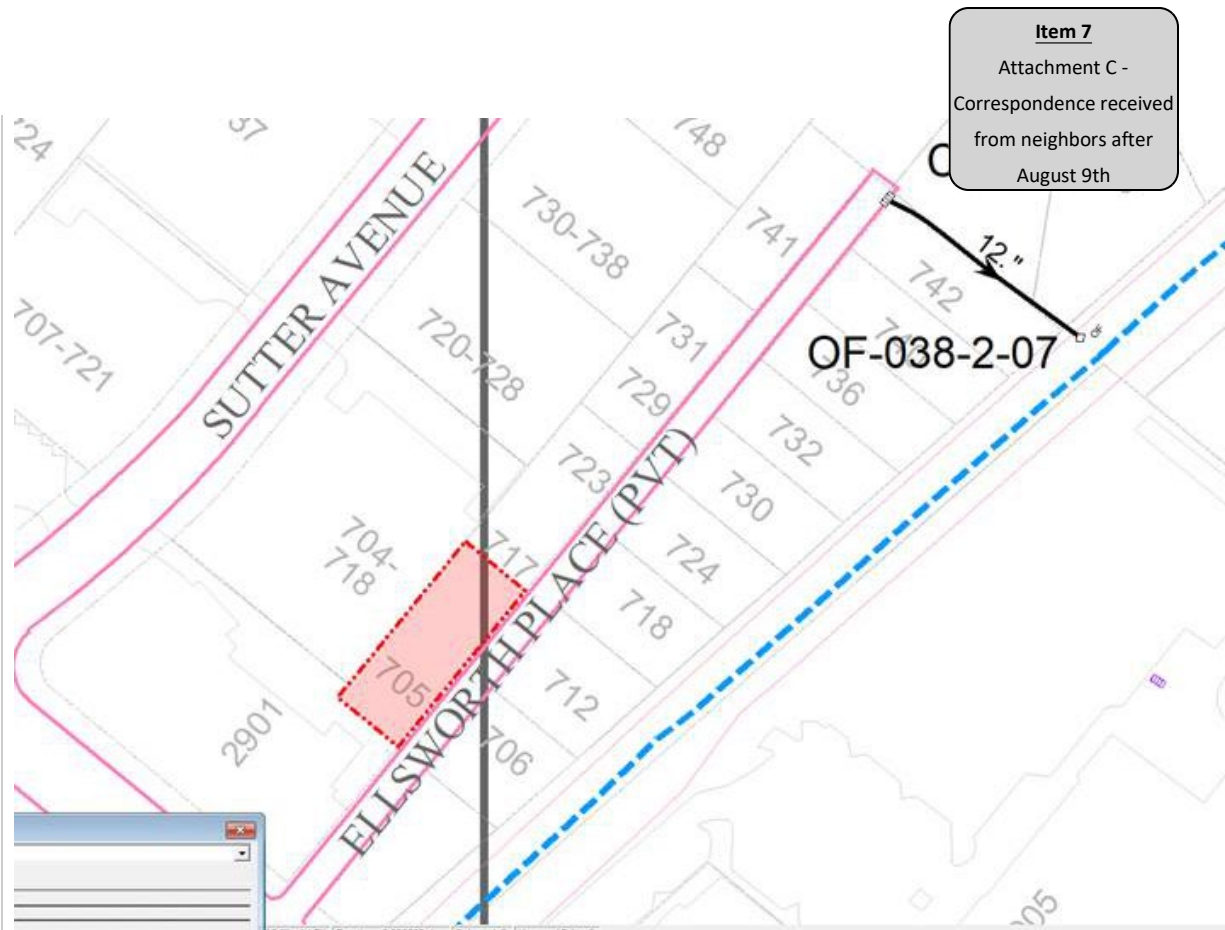
Hello Kristen,

Staff forwarded the email you had sent early this afternoon (pasted at bottom of this email) to the Planner on Duty (and Council, Commission, City Attorneys, neighborhood association members, etc.) on this same topic to Garrett and me. I respectfully copy Garrett now to help him track this email response, and the planners on duty so they are not working on an overlapping response.

Today, I reached out to Real Estate and Public Works staff members, to see if they are aware of the type of application you asked about. Planning does not have this type of application. Real Estate staff told me they are not aware of this type of application. I have not yet heard back from Public Works Engineering staff as to this type of application related to their application types but I scanned their webpage and did not see any such application; see: <https://www.cityofpaloalto.org/Departments/Public-Works/Engineering-Services/Forms-and-Permits>.

Months ago doing this research in our system (GIST), PDS reached out to our Real Estate Division, Public Works Engineering staff, and attorneys to answer this question of ownership, with these results.

- GIST shows a 1950's 12-inch storm drain line at the end of Ellsworth Place that might have been done as part of an adjacent subdivision of Clara Drive / Sutter Court and so Public Works should maintain the storm line and catch basin.
- As for the street, it was not shown on the original 1912 tract map, it did not exist and therefore was not offered or accepted by the County. They assumed the street was required in an effort to comply with access requirements after 1912. Without the street, the lots could not have been created, subdivided, and sold.
- Ellsworth Place is too narrow to comply with City standards, and City staff would not recommend the City acquire a substandard street.



The list of private streets in Palo Alto includes Ellsworth Place. Here is the list:

Palo Alto Private Streets

Alder Lane
Alma Village Lane
Alma Village Circle
Almanor Lane
Berryessa St.
Boronda Lane
Brassinga Court
Cashel St.
Cole Court
Colorado Place
Curlew Lane
Cypress Lane
Donner Lane
Driscoll Place
Dymond Court
Egret Lane
Ellsworth Place
Fallen Leaf St.
Feather Lane
Federation Way
Gene Court
Green Manor
Heron Way
Jacobs Court
Juniper Lane
Juniper Way
Klamath Lane
Lake Ave.
Lane 56

Madeline Court
Mallard Lane
Medical Foundation Way
Monte Bello Rd.
Noble St.
O'Brine Lane
Orchard Court
Paloma Dr.
Plover Lane
Pratt Lane
Quail Dr.
Ramos Way
Rickeys Way
Rickeys Lane
Robel Ridge
Ryan Lane
San Antonio Court
San Carlos Court
Sandpiper Lane
Spruce Lane
Stanislaus Lane
Tahoe Lane
Tierra Arboles Court
Trinity Lane
Tuolumne Lane
Villa Vera
Villa Vista
Waverley Oaks
Wisteria Lane

If you decide to direct your follow-up communications to Garrett and me, we will continue to do our best to respond promptly.



AMY FRENCH

Chief Planning Official

Planning and Development Services

(650) 329-2336 | amy.french@cityofpaloalto.org

www.cityofpaloalto.org



From: McRee, Sarah <Sarah.McRee@CityofPaloAlto.org>
Sent: Monday, August 7, 2023 4:19 PM
To: kvanfleet@gmail.com; French, Amy <Amy.French@CityofPaloAlto.org>
Cc: Lait, Jonathan <Jonathan.Lait@CityofPaloAlto.org>
Subject: Follow Up - Application Request

Hi Kristen,

Following up on our call today – Amy French, our Chief Planning Official, will be able to assist with your inquiry.

Amy, Kristen is reaching out understand the application process to established ownership of a road on Ellsworth Place. To my knowledge, there is currently not a process, but defer to you as our planning expert. Please follow up with Kristen via email.

Thank you,

Sarah



SARAH MCREE

Senior Operations Manager

Planning and Development Services

(650) 329-2276 | sarah.mcree@cityofpaloalto.org

www.cityofpaloalto.org



EMAIL EARLIER TODAY:

From: Kristen Van Fleet
<kvanfleet@gmail.com>

Sent: Monday, August 7,
To: PlannerOnDuty
 <planner@CityofPaloAlto.org>; Council,
 City <city.council@cityofpaloalto.org>;
 Planning Commission
 <Planning.Commission@cityofpaloalto.org>;
 City Attorney
 <city.attorney@CityofPaloAlto.org>; City
 Mgr <CityMgr@cityofpaloalto.org>;
 Glanckopf, Annette <annette_g@att.net>;
 Furman, Sheri <sheri11@earthlink.net>;
 William Ross <wross@lawross.com>
Subject: Ellsworth Place - Requesting an
 Application for Establishing Road Ownership

To Whom it may concern,

Ownership of the Ellsworth Place "private" road is still an unanswered question. There is evidence it is already a public CPA road, per the 1968 County Assessor's Parcel Map, but this has recently been refuted by CPA during the Planning and Transportation Commission meetings regarding a proposed development on Ellsworth Place, Applications: 23PLN-00025, and 23PLN-00027. No one pays taxes for this road.

The Ellsworth Place Homeowners would like to start an application process with the City of Palo Alto to get ownership of the road determined. Per the research, a 170.8 foot portion of this road is abandoned and is, therefore, potential liability to the City of Palo Alto, (or does an abandoned road revert to County or State ownership?)

How do we go about starting this process?

Sincerely,

Kristen Van Fleet

on behalf of Ellsworth Place Homeowners

650-646-8677

Item 7

Attachment C -
Correspondence received
from neighbors after
August 9th



Planning & Transportation Commission

Draft Excerpt Minutes: August 9, 2023

Council Chambers & Virtual
6:00 PM

Commissioners present: Summa, Chang, Akin, Hechtman, Lu, Reckdahl
Commissioner absent: Templeton

ITEM 3. LEGISLATIVE: 2901-2905 Middlefield Road and 702 Ellsworth Place: Review of Demonstration Structures Following the July 12, 2023 PTC Hearing and Recommendation on Rezoning to Amend Planned Community 2343 (PC 2343) and Create a New PC Zone for 702 Ellsworth Place to Enable the Development of a Single-Story, Single-Family Residence. Environmental Analysis: Categorically Exempt.

Chair Summa: Okay, thanks. Alright so we're on to our second item which is 2901 to 2905 and 702 Ellsworth and this is a review of the demonstration items that were put up and also a recommendation on two separate PCs. So (interrupted)

Commissioner Hechtman: ~~off mic~~ Disclosures first?

Chair Summa: You know, it says it's legislative but we can do disclosures.

Commissioner Hechtman: Yeah, I think that at least because I was absent at the July 12th, the last meeting on this. I need to basically declare and disclose that I have reconstituted myself. I have watched the video of that meeting. I have read the minutes of that meeting. I've reviewed the Staff Report and the materials submitted by... submitted related to that meeting. So, I'm ready to participate and able to vote tonight.

Chair Summa: Thank you for that. Does anyone else have (interrupted)

Commissioner Reckdahl: Same for me.

Chair Summa: Okay.

Commissioner Akin: And I just wanted to mention~~ed~~ that I have made another site visit at which I did a whole lot of measurement of markings. Fencings and utility poles as well as tracking high voltage and low voltage lines in response to a public comment. Thanks.

1. Spokespersons that are representing a group of five or more people who are identified as present at the meeting at the time of the spokesperson's presentation will be allowed up to fifteen (15) minutes at the discretion of the Chair, provided that the non-speaking members agree not to speak individually.
2. The Chair may limit Oral Communications to 30 minutes for all combined speakers.
3. The Chair may reduce the allowed time to speak to three minutes to accommodate a larger number of speakers.

1
2 Commissioner Lu: I also drove through. I did not take such detailed measurements.

3
4 Chair Summa: I also... Vice-Chair Chang and I met together and visited the site yet again and we
5 did some measuring as well. So, okay, so Staff (interrupted)

6
7 Mr. Albert Yang, City Attorney: I'm sorry, just to interrupt. With respect to all the
8 measurements that were taken, was there anything that differed from what's presented in the
9 plans or in the Staff Report?

10
11 Commissioner Akin: In my case, there was no substantial difference. The main things of concern
12 where the locations of the poles in particular, but the other markings seems consistent with the
13 description in the report for me.

14
15 Chair Summa: For me, they seemed generally consistent, but you know, I mean a more precise
16 measurement would I assume be done with survey markers. Going off of survey markers but I
17 think it was, as far as I could tell, generally accurate.

18
19 Ms. French: Are we done with disclosures?

20
21 Chair Summa: We are so.

22
23 Ms. French: I don't think that I need to disclose that I visited the site and made photographs
24 myself.

25
26 Chair Summa: Do we have a Staff Report?

27
28 Ms. French: Yes please. On the screen is a list of to-dos in my estimation at the top of this
29 screen. We're back here, ~~our~~ are meeting, after meetings on June 28th and July 12th. We have a
30 number of photographs that document the installation that's out on the site. Following the
31 plan for the installation that Staff received on July 17th indicating the sight distance triangles
32 which follow the Code required 35-foot... you know according to the Code. And so, proceeding
33 on, we do have this PC plan that documents what was shown to the Planning and
34 Transportation Commission on July 12th with the delivery space perpendicular to Ellsworth. The
35 four spaces on site, including one tandem that's space 13 and another tandem that's in the rear
36 setback of the Middlefield apartment building property. We do have showing in this
37 Development Plan the applicant's proposal, offer of 24-feet going back to the guy wire and the
38 PTC 3-2 recommendation of a 26-foot width up to the pole guide wire which is... guy wire
39 sorry.. the cable that attaches to that utility pole. So, the yellow arrow indicates 37-feet 9
40 inches to the first anchor wire and then the truck delivery space is above in that drawing.

-
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1
2 Then we have the 702 Ellsworth plan which the applicant has requested an R-1 Zone. The
3 Planning and Transportation Commission recommended coming back with a PC. So, this is then
4 the PC plan for that showing the setbacks. So, it's a 24-foot special setback at the front, that's
5 the front of the parcel per Code, 16-feet for the rear of the home, half the home, and then side
6 which is the side along the easement line. Also known as Ellsworth Place ~~r~~Roadway or partial
7 pavement of that easement, and then 6-feet from the Matadero Creek property.

8
9 So, moving on, on Packet Page 94, this was the drawing ~~July~~... on July 7th that Staff received and
10 signed off on, as ~~CS-~~ yes, ~~t~~This is what you should show, the planned installations. I did a little
11 montage here showing what's in and what's out. So, just to be clear, just because there's a
12 hypotenuse of the triangle, which is indicated by those blue dashed ~~ed~~ lines, ~~i-~~It doesn't mean that
13 now they have to remove everything ~~in~~-forward of that hypotenuse in the triangle. We allow
14 trees, trees have to be limbed up to 9-feet above grade and shrubs typically cannot be more
15 than 3-feet in that same area, 3-feet tall from grade so, but we have a number of things. We
16 have a stop sign, we have ~~a~~ no outlet sign, the fire hydrant, utility boxes and nobody is saying
17 those need to be removed as part of this application.

18
19 This is documenting what was placed. There's the hypotenuse here as a string going past the
20 redwood tree, so that they didn't have to paint the redwood tree, and you can see the sight
21 triangles on the lower right measurement of 35-feet along the curb of Middlefield and 35-feet
22 along the edge of the easement on Ellsworth. Some more images showing where the stakes
23 were placed showing the hypotenuse of that right triangle... of the... it is a right triangle but
24 the sight triangle, sight distance triangle with the sticks. Here's another image showing those
25 installations. The multi-trunk tree again. It's a beautiful tree, we're not saying you need to
26 remove it to have clear sight.

27
28 This shows the orange plastic fencing indicating the 3-foot tall fence proposed within the sight
29 distance triangle as well as continuing on past the sight distance triangle along Middlefield and
30 along Ellsworth. Again, and this Handa's property, showing there's a fire hydrant and everything
31 else within the sight triangle. Typically, well our Code in the Fence Code... sorry, it says 4-feet.
32 It's... typically, it's a 3-foot fence allowed within the sight distance triangle I believe and then I
33 think I read that wrong. I have the Code later in this presentation. So, what's proposed is a 3-
34 foot ~~-~~tall proposal 4-feet back from the Middlefield sidewalk shown here and as far as
35 placement, I mocked up what I thought was being said about the horizontal fence with
36 openings that are 3-feet. This is not precise but it's to indicate what would be expected if a 3-
37 foot fence were allowed in that sight ~~te~~ distance triangle with those spacings of 3-feet. So, I just
38 kind of found something online and showing it here approximation of what I imagined.

39
40 Vice-Chair Chang: 3-inches I think you meant.

-
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1
2 Ms. French: 3-inches, what did I say, 3-feet? 3 inches, so this... for instance, this little example is
3 to screen an air conditioning equipment or something and that is a 2 1/2... 2 ¼-inch space
4 between the slats as per the spec and 2 ¾-inch slates. So, it would be larger, you know instead 2
5 ¼ it's a 3 inch is what I heard the applicant, Mr. Handa, say. There's some other point of views.
6 So, I literally got down on my knees and where the drive... where I would have stopped in my
7 car and then I measured to my eyes to the pavement. And you know, I was taller when I was on
8 my knees than when I was sitting in my car, it was kind of funny. Just because I was curious and
9 then our planner went out, this is on the right. On the left is when I went out after the sticks
10 were installed and... on the left and on the right is we had our planner go out and do the same
11 but in a City car; stopped at the stop line and he's taller than I am. So, these are some more
12 photos.

13
14 I have some additional items as I mentioned. The Fence Code, this kind of shows the picture
15 from our Fence Code Guidelines showing the 35-foot standard distance and then showing this
16 3-foot maximum height in the sight distance triangle there so that's that. We also have about
17 vegetation that I thought could be helpful where it talks about lim**bing**, you know trimming up
18 the trees so that the lowest limb is up a little higher for bushy kind of trees.

19
20 Again, this is that sight distance triangle and these are some more conditions... existing
21 conditions prior to the trimming that happened out there. I thought I would show that because
22 its interesting. You can see taller shrubs there. I think those have been cleared ~~or they have~~
23 ~~been cleared~~ because I've seen that they're not there. So, those show kind of taller than 1-foot I
24 think.

25
26 Okay, so that's my presentation and we have the ability for the applicant to speak because it's a
27 public hearing ~~but~~.

28
29 Chair Summa: I was just going to ask the applicant if he wanted... they wanted to present.

30
31 Ms. French: Would you like me to put back my presentation?

32
33 Mr. Ken Hayes: Maybe just Slide 13 I think, let me look. Slide 14. Yeah, I'm going to keep this
34 really brief. Ken Hayes with Hayes Group Architects, I'm here on behalf of my client Richard
35 Dewey with RLD Land. Also, joined by Camas Steinmetz with Jorgenson, Siegel, McClure &
36 Flegel and Nit**in** Handa is here as well, the owner of 702 Ellsworth.

37
38 Our comments **are** really in the letter that we submitted so hopefully you had an opportunity to
39 read the letter. I want to thank you for moving 702 Ellsworth in your recommendation at the

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1 July 12th hearing and just wanted to make a comment regarding something that is very
2 important to us and that is regarding the width of Ellsworth.

3
4 So, we're not in agreement with your condition requiring the 26-foot width and the 30-foot
5 curb cut at the driveway. Instead of the 24-foot width that we're recommending and the 28-
6 foot curb cut at the driveway. The existing width is 20-feet and per our transportation
7 consultant Hexagon. This is a sufficient and safe width for... it's sufficient and safe. Increasing
8 the width to 24-feet as we propose is a 20 percent increase over what's recommended by
9 Hexagon in terms of being safe and sufficient. This is a private street width and or private street
10 and those private street width requirements are not triggered~~ed~~s by this project because it's not a
11 subdivision. It's really just a modification to an existing development that proposes to get rid of
12 eight cars and build a single-family home. So, burdening this project with an additional width
13 would not meaningfully improve the safety, but it does create other issues that that's what I
14 want to point out.

15
16 The 24-foot width as proposed will require already the relocation of the fiber box that you see
17 there in the lower middle. We've been in contact with the fiber communication company, they
18 cannot tell us what the costs are to deal with that box, but my client has made a commitment
19 that we're going to move the box. Increasing the width 26-feet add~~s~~s much more complexity and
20 risk to the project, because in addition to the above, moving that box, ~~it~~ will likely involve the
21 relocation of an underground utility vault in the 2901 sidewalk which is right to the right of the
22 vault but it's in the sidewalk. And that's a communication vault as well that we believe feeds
23 the big green monument that's out in the landscape strip and possibly relocation of the fire
24 hydrant on the other side, on the 702 side and you can see the fire hydrant there in the picture
25 on the bottom left. The distance from the fire hydrant right now to where the 18... to where the
26 24-foot wide driveway would be is essentially what's there today because after we've striped it
27 we see that that 24-foot width is the edge of the pavement. It's 5 ½-feet from the fire hydrant.
28 We ran it by ~~K~~Carl Schneider with the fire department, we ran it by Public Works. Public Works
29 said ah, that's okay. ~~K~~Carl Schneider said he's not excited about it, believes the distance is a
30 problem. So, if we go to 26-feet, now we're moving another foot closer to the fire hydrant will
31 be 4 ½-feet away and fire department thinks that's a problem waiting to happen. So, we can't
32 relocate the fire hydrant with this project. It's just not possible. We don't know what the risk is
33 in this other underground utility vault so it's just not feasible. The 24-feet is something that we
34 can do, let's keep the increased width at 24-feet. We know we can get this done and let's move
35 on.

36
37 Last comment, just some housekeeping comments regarding the drafted ordinances. In the
38 draft ordinance for 2901, the 2901 special setback is 25-feet. At 702, it's also listed as 25-feet.
39 It's really 24-feet and that's in Section E, triple I. The access easement on the Development Plan
40 that we submitted on the 7... I'm sorry, on the 2901 property is shown at 37-feet. In the draft

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1 ordinance, G double I, it says 35-feet so there's a disconnect between the two. I don't care
2 which one you use, but you need to be aware of that and then as the reciprocal for the 702
3 draft ordinance. 2901 special setback is 25, 702 is 24, D triple I says 25 for 702 and the access
4 easement again it says 35-feet when we're showing 37-feet.

5
6 So, we look forward to moving this on tonight and getting a recommendation from you that is
7 favorable. Thank you.

8
9 Chair Summa: Thank you, Mr. Hayes. Do we have any clarifying questions from the
10 Commission? Commissioner Akin.

11
12 Commissioner Akin: Hi, this is for Staff, have we had any contact with utilities concerning the
13 feasibility or cost of moving the terminal utility pole in the string?

14
15 Ms. French: I was detained by a spider.

16
17 Commissioner Akin: I was afraid of that.

18
19 Ms. French: Can you repeat that?

20
21 Commissioner Akin: Have we had any information from utilities about the feasibility or cost of
22 relocating that terminal utility pole in the string?

23
24 Ms. French: No, no disclosures on the cost of that or feasibility.

25
26 Commissioner Akin: Or, or yeah or feasibility at all?

27
28 Ms. French: Correct.

29
30 Commissioner Akin: So, I noticed there's a reference to having one of the braces removed in
31 order to make room for the parking space.

32
33 Ms. French: Right, right, that is something that can happen.

34
35 Commissioner Akin: So, there's been some consultation but just not anything more substantial
36 than that.

37
38 Ms. French: Correct and I would concur about the... I meant to... I think I put it in my slide
39 presentation. The 24-foot is the special setback for the 702 so that needs to be (interrupted)
40

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1 Vice-Chair Chang: So, the feasibility regarding the comments that Mr. Hayes just spoke about
2 regarding the widening of the driveway... like the flange.

3
4 Ms. French: We did not invite fire or utilities here. We did have a conversation with Public
5 Works Engineering where they assured us the distance was acceptable as far as Public Works
6 Engineering is concerned.

7
8 Vice-Chair Chang: Okay, so it didn't raise any red flags there at least because I wanted to... you
9 know I imagine that they would know if there was a standard distance that we typically see
10 from fire hydrants, etc.

11
12 Ms. French: Oh, the (interrupted)

13
14 Vice-Chair Chang: Okay, thank you.

15
16 Ms. French: I can comment on the standard distance for a new fire hydrant and that would be a
17 10-foot would be preferred.

18
19 Vice-Chair Chang: Right but it's not 10-feet right now, okay.

20
21 Ms. French: Correct.

22
23 Vice-Chair Chang: Thank you.

24
25 Chair Summa: Commissioner Hechtman.

26
27 Commissioner Hechtman: Thank you, so let's see, I've got... let me start with a couple... so these
28 are questions for the applicant group and I think probably the first couple could be Mr. Hayes
29 but it's probably going to be Ms. Steinmetz to answer them. So, the first question is in the
30 history of the paperwork here the applicant initially based apparently on a preliminary title
31 report that they had which didn't show an easement for the 13 properties down Ellsworth. It
32 had indicated that there wasn't an easement but as a part of this project that we're going to
33 grant one. We subsequently received information from at least one of the neighbors that their
34 title report showed that there was an easement and so... and I would imagine you're team has
35 seen that. And so, I'm wondering if we've received any... if you have any clarity now as to
36 whether 702 Ellsworth is or is not subject to an easement that serves those 13 or 12 parcels
37 behind. Yeah, that's my first question.

- 38
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1 Ms. Camas Steinmetz: Yes, so we did contact out title company and we... our title company
2 concurs with Chicago Title that there is an easement over the property that serves the other 13
3 residences.

4
5 Commissioner Hechtman: Okay, so that was a... that's a good result for this process.
6

7 Ms. Steinmetz: Oh, one thing I would like to note, in the letter from Chicago Title on Page 34 of
8 the public comments. It does address that matter but it also states in the Chicago Title's letter
9 that Ellsworth is a private way connecting to Middlefield, a public street. So, I think that also is
10 conclusive on the status of Ellsworth.

11
12 Commissioner Hechtman: Okay thank you and stay... put... at the lecture~~ne~~ because I think this
13 next one will be for you too, but I think that's very helpful because I think that maybe it will
14 provide some comfort to all of the folks that live down Ellsworth that there's really... no longer
15 question that there's an existing 20-foot easement across 702 Ellsworth severing all those
16 properties. So, I mean I think that's a good... title companies make mistakes and it's good when
17 they clear them up.

18
19 Ms. Steinmetz: And that's for the existing way.
20

21 Commissioner Hechtman: For the existing 20-foot -easement.
22

23 Ms. Steinmetz: Correct.
24

25 Commissioner Hechtman: Right, okay and my next question is actually related to that. I know
26 that the combination of the two applicants are proposing a widening of the drive path. A total
27 of... from 20-feet to widen it to a total of 24-feet which would be 2 ½-feet on the Middlefield
28 side and 18 inches on the Ellsworth... on the 702 Ellsworth side for a particular distance which
29 was mentioned by Mr. Hayes earlier. What wasn't entirely clear to me is whether the proposal
30 that we're looking at is to simply improve that... those two stripes so that they are drivable
31 surfaces or to grant an easement for the property owners... you know the 13 property owners
32 that would essentially fold into their existing 20-foot easement. I just wasn't clear on the
33 proposal.
34

35 Ms. Steinmetz: So, the proposal is to improve the surface to match the existing paved Ellsworth.
36 There... if the proposal would be... if the approval would remove 702 Ellsworth into an R-1
37 zoning. Then the additional width would be documented in an easement and I think the idea
38 would be that the PC... remaining PC for 2901 Middlefield would govern the additional width
39 and that... the PC would document that width.
40

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1 Commissioner Hechtman: Okay, so the... so if I'm understanding correctly, on the Middlefield
2 side there wouldn't be an easement granted but the requirement of the PC Development Plan
3 would be that you have to have this 30-inches, 2 ½-foot, of pavement (interrupted)

4
5 Ms. Steinmetz: Correct.

6
7 Commissioner Hechtman: That bleeds into the existing 20-foot private road.

8
9 Ms. Steinmetz: That's right.

10
11 Commissioner Hechtman: Okay, alright thank you, thank you. I think I've got a couple of
12 questions for Mr. Handa and the first one is just regarding the slate fence that's been discussed.
13 I just wanted to... Staff indicated that you were comfortable with a 3-inch gap between the
14 slates and I just wanted to make sure I understood that right.

15
16 Mr. Nitin Handa: Yes, that's correct.

17
18 Commissioner Hechtman: Alright and then the other question I had and I don't think I've got a
19 good diagram but it's really revisiting the first meeting we had where I was here and I asked you
20 this question and I'm sorry I don't remember the response. But on your side of the private road,
21 you're proposing 18-inches of pavement to blend into the existing pavement for the first I think
22 it's 35-feet.

23
24 Mr. Handa: Something like that, yeah.

25
26 Commissioner Hechtman: Something... yeah, okay and then along the edge of the road my
27 memory is and I'm sorry I don't have a... and maybe if Staff can pull up a diagram. There's a
28 little bit of a gap and then we start your pavers which is like a sidewalk kind of feature that runs
29 to your front door, along the frontage of the road and then it's your driveway back to your
30 garage.

31
32 Mr. Handa: Right, yeah connects to the driveway.

33
34 Commissioner Hechtman: Right and so my memory was there's this gap between the... that 35-
35 feet of 18-inch wide pavement and the start of those pavers as they run to your front door. And
36 so, I'm curious what's happening... what improvements are going to be in that gap?

37
38 Mr. Handa: You know, actually that... it might be 44-feet total then.

39
40 Mr. Hayes: [off mic] 42.

-
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1
2 Mr. Handa: 42-feet, it connects all the way to the sidewalk, that 18-inch (interrupted)

3
4 Commissioner Hechtman: Okay, that (interrupted)

5
6 Mr. Handa: Extends all the way to the sidewalk so that there's no gap in between. So, I think it's
7 not 35, its 42 all the way to the (interrupted)

8
9 Commissioner Hechtman: And really what I was getting at because I know I had been curious
10 about that last time but I didn't remember if that had resulted. Okay, so now... so the proposal
11 by the applicants is we're going to have basically it's going to be a hard surface really along the
12 entire frontage of your property I think. Right, 18-inches for the first 42-feet and that's paved
13 until it runs into the pavers.

14
15 Mr. Handa: Right.

16
17 Commissioner Hechtman: Right.

18
19 Mr. Handa: Into the sidewalk pavers.

20
21 Commissioner Hechtman: Right, sidewalk pavers which is a potentially drivable surface? I mean
22 I know those pavers are going to ~~extent~~extend to your driveway so you're going to definitely
23 driving on those.

24
25 Mr. Handa: Right, right.

26
27 Commissioner Hechtman: Okay, so that clears up my other question, so those are the
28 questions. Thanks very much.

29
30 Chair Summa: Other questions, Commissioners? [note – video skipped]

31
32 Ms. Veronica Dao, Administrative Associate: Yes, we have a couple of speakers. First Kristen
33 Van Fleet speaking as a group on behalf of Carolyn Garbarino, Chuck Effinger, Jessica Sheldon,
34 and Mimi Wolf and she has a presentation.

35
36 Mr. Kristen Van Fleet: Hi Commissioners, thank you for (interrupted)

37
38 Chair Summa: Good evening.
39

-
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1 Ms. Van Fleet: Hearing me again. Let her get the slides loaded. Alright, so we had five days with
2 the poles installed correctly. We've done our best to make use of those five days. When they
3 were originally installed I did email Amy the next day to say they're not done, they're not right
4 and that was on July 27th. They were fixed last Thursday. A lot of people were out of town this
5 weekend, it was the weekend before school started. So not everybody has seen them and
6 commented but we'll give you what we have thus far and we'll go from there.

7
8 So, next slide please. We want to definitely enforce that a PC needs to remain over this so that
9 it is enforceable and we also want to say, especially after hearing Mr. Hayes's presentation.
10 More harm is being done here than good at this point for the residents of Ellsworth Place and
11 our circulation. They are not providing public benefits for us, they really aren't and we'll
12 through... I'll through that in a few slides. And then the ownership of the road, yes it was
13 mentioned in the Chicago Title letter that it's a private road and that's what they're going on
14 right now. But the County maps don't lie and it's been saying it's a public road since 1968 so
15 that needs to be solved. It's still an open question, I ~~tr~~ied to get that open with the City in an
16 application over the last couple of weeks and I've gotten no-where with it. Amy sent me a reply
17 that there's no such application that exists, so more has to be done there and that is a potential
18 benefit of this whole project if we could add that on. And then all of the false information still
19 needs to be corrected in the Packet and some of that was already mentioned and we'll go
20 through more of that.

21
22 We'll reiterate that this has been... sorry, the next slide. This has been our road circulation for
23 this Ellsworth Place for 50 years plus, actually 56 years plus. The current plan is to remove every
24 benefit of the current PC, that is our road circulation and they want to replace it with less. What
25 they're replacing does not improve our~~t~~ road circulation, it makes it worse and we were directly
26 impacted by a fence that was set 4-feet back from the property line. It had been hit by trucks, it
27 had been pushed back a couple of feet. So that... it wanted to be at that 26-foot line and that
28 was a nightmare. We all sent in code enforcement complaints about that and here they are
29 wanting to give us less than that. So, next slide~~e~~ please.

30
31 As I'd mentioned before, the proposed public benefits are inadequate and we are potentially
32 losing our ability to get deliveries. This was mentioned by planning Staff during an onsite
33 meeting of July 3rd that transportation was considering banning delivery trucks from our street.
34 That's a problem in today's day and age when most of us deliver... we all depend on deliveries
35 or we can't really live here in Palo Alto without them. We want to preserve that ability and we
36 want to maintain our line of sight or actually to improve our~~t~~ ~~linegh~~t of ~~sight~~e as we exit and
37 we'll... I'll mention that in a next slide on how we think it should be done. Not what they're
38 proposing which we disagree with. There is inadequate street circulation by this, so right now
39 the parking lot, even if cars are parked there.

- 40
-
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[note – video skipped] away from us and replacing 24-feet, which is 2 ½-foot increase over what it is now, it is currently 21 ½-feet if you look at where the white line is for the 20-foot mark out there. They keep saying its 20, we're living with 21 ½-feet. They're going to give us 2 ½-feet of driveway width over the first 25-feet of the actual road because mind you 10-feet is the sidewalk and driveway itself. So, they're going to give us 25-feet of road at 24-feet and narrow us down from our 26 that we have now down to 20-feet is what they're doing with it. That's okay with us. That driveway entrance is the only benefit they're offering us and it's not enough.

Next slide, it says perceived width in the Packet and this is again, I heard Hechtman clarifying the materials that they want to use. That path of even if it's paved is going to end in his pavers where his family walks. We don't find that safe. We want that all the way across to the fence because having paved road end at somebody's pavers is crazy to us. Like who comes up with that? It's dangerous and we don't want to live in a situation that's dangerous. Plus, they've changed those placement again. They call it landscaped strip, they've called it pavers, they've called it paving. We don't know what it is. It's still unclear and every time we show up here there's a new plan in place. Including last time when we were here, there were new slides that the public hadn't even seen that you were going to vote on and we hadn't even been allowed to make comments on them. So, we want clarity in this and we want to make sure that it's a safe situation that does give a public benefit because right now we are really not getting a benefit of any kind at this point. Oh, and the one that they were telling us we were going to get with them giving us easement, that's already been proven that we already have that.

So, next slide, the parking lot, I'll show you this again. This is our cul de sac. We are use to 26-foot width of road over this parking lot. It doesn't matter if the whole thing is full of cars. We have 26-feet. They want to narrow us down to 20, keep that in mind, next slide.

So, I did some mock ups here over using Google Maps and you can see what we are used to working with now in the yellow on the left. What they're proposing is that they'll give us this 24-feet over the entrance. As I said we currently have 21 ½-feet, so they want to give us basically 2 ½-feet of extended width over the first 25-feet of road. That's it and you can't drive on someone's pavers. We all know this, next slide.

So, we've come up with some options that do provide public benefit. As I mentioned, if they extend these road widths for the full length of the road and maintain our 26-feet, including 26-feet at the driveway. We already have 26-feet, we are used to 26-feet, we want to maintain that and also have it go over the driveway. That's a public benefit and there are a couple ways that that can be done. Obviously, the utility pole needs to be investigated. Can it be moved? I did find a... I found a solution online where they make poles that are end poles. I don't know if we have those in California but it is there. So, can we take the pole before it and... that's where the electricity seems to end anyway and make that the end pole and then underground

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1 Comcast and a telephone. It's not that much is going to that last pole, so if they can
2 underground that or do some other configuration to remove the utility pole and open up
3 circulation. It solves a lot of problems. It needs to be investigated. If they can't then you can see
4 that you can still take the 6-feet on Handa's side and he can still build a house so go to the next
5 slide. The house still fits there and the other thing about this is that his house footprint [note –
6 video skipped] 1,090-square feet. So, this will be the largest home on the block by a lot, by 55
7 percent larger. If the house had to reduce in size a small bit to keep the safety and circulation
8 on our road. We actually don't see a problem with that and it would be more in scale with the
9 community.

10
11 Next slide and again, this is our goal. It's not about preventing his house, it's about keeping our
12 circulation and safety intact and how we integrate with Middlefield Road and the pedestrian on
13 the sidewalk. Next slide. So, they keep saying that 20-feet is sufficient. If you notice they're little
14 car diagram has it stopped at the stop bar. In order to see to get out, we're on the side walk
15 right now with the current conditions. Even that orange netting, we can't see over it so we're
16 on the sidewalk to get out. I tried to do a little photoshop demonstration to move the car into
17 the sidewalk and you can see if another car tries to turn in while someone is trying to turn out.
18 You'll have an impact so right now we end up backing up and then someone goes around over
19 the parking the lot and that's how we've dealt with it. We would like the situation improved,
20 next slide.

21
22 We are looking to this point of the sidewalk where the curve is. That's where the road narrows
23 down and the sidewalk follows it. That is where we're looking when we leave and we only really
24 care about this sight line on the creek side. The apartment side, the olive tree, the sweet maple
25 or not... what is that thing called? The sweet... I'm not using my cards. Liquid amber tree,
26 they're not bothering us and neither are those utility boxes that are tall. We... they don't... none
27 of that bothers us. It's the creek side and we've said this over and over and over again. We
28 need about a car width back from what would be the stop bar. Visible to that point basically
29 where the creek fence is. That's about where that corner is. There's still room for his fence, it
30 just has to be moved back. His patio is untouched. It would be a good compromise all around
31 but right now where the fence is located with the orange netting. It does not work; every
32 neighbor has complained. Next slide and the six of us that went out and took pictures. You can
33 see this is our reality and there's another slide of these as well if you want to go to the next
34 slide. And there you can see what it's like when the pedestrian is coming down the street. He's
35 already gone by the curve and when I took this picture of my neighbor there. She actually
36 backed up to allow him to pass. That happens a lot. We always give right of way to pedestrian...
37 to the pedestrians and this is what we could get done in the five days we've had so.

38
39 Additionally, we've asked can we have an asphalt approach. That would probably solve it, right?
40 If you're on a regular street, you have an asphalt approach so you actually get to go past the

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sidewalk and the pedestrian stops. But when you're on a sidewalk, the pedestrian has the right of way so you have to back up. That causes the problems, so at an asphalt approach with things like bumpy plates on the sidewalks. Things that tell pedestrians hey, there's a road here. Maybe a step down curve or a well, wheelchair or bicycle friendly type curve. It would make them aware that there's a street there. They'd stop running into our cars because this has happened many, many times. It should show Key School on the other side of the street that there's a street there. It would fix a lot of things and right now to get out of Ellsworth Place. We go up an incline but it's actually kind of over a hill. Like a little bump, so if that was smoothed out with an asphalt approach. It might solve a lot of our issues getting on and off Middlefield Road. In addition to having that road width there of 26-feet. As I said, right now we're used to 21 1/2 . They keep telling you 20, we have 21 1/2. That needs to be stated over and over and over.

Next slide and we asked about this. They mentioned they're going to move that bracing. Well, if they're going to look into moving that bracing, can they look into undergrounding the pole? Because right now that's not a useable spot and undergrounding or getting rid of that pole just causes or I mean it just helps solve a lot of problems. Thank you.

Chair Summa: Thank you very much. Do we have other speakers?

Ms. Dao: Yes, we have Susan Light who's I believe going to speak on some later slides.

Ms. Susan Light: Yeah, well you know I think I'm going to be really short and hopefully Kristen will forgive me. The real question that has come up is who owns the street and I came up with the analogy of being an adopted child and growing up in a household and then not getting invited to Thanksgiving dinner. We have Palo Alto on our address, we send our kids to school in Palo Alto, Palo Alto utilities is an important part of our lives and when something happens we call the Palo Alto police. So, the idea that our street is not part of Palo Alto is really difficult and when... I don't know what the exact number of feet of streets there are in Palo Alto, but adding 500-feet from Ellsworth is not going to be a huge impact on the budget of the City of Palo Alto. But it would solve a lot of problems and that's the... that's why the adopted child analogy I think is something to think about. We want to be adopted, we want to be legally adopted by the City. I'll leave it at that.

Chair Summa: Thank you.

Ms. Dao: And then one more, Ms. Bill Ross.

Chair Summa: Thanks.

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1 Mr. Bill Ross: Good evening. I'd like to make a couple points for purposes of the record. One
2 was in a communication to you tonight. It's from the handbook for the Commission and the
3 duties of the Staff liaison which also happens to be the principal planner for this project.
4 There is a 7-day requirement for all material to come to not only the Commission but also
5 members of the public. Ellsworth residents don't waive that.

6
7 Upon review of the revised Staff Report, we raised the same issues. Specifically, the PC
8 ordinance isn't complied with. The ordinance itself is the mode is the measure of the power.
9 We mentioned last time and it's still not here. There's no analysis of the consistency of this
10 project, which is a zone change, with the Comprehensive or General Plan. There's a cherry
11 picked section in the ordinances now that picks out I think six goals. That's how you do a
12 Consistency Analysis. You got to do it where you balance and examine goals and policies of the
13 General Plan. It's not done.

14
15 I... with respect to the CEQA analysis, I'm going to make this analogy. This is a zone change,
16 almost from the beginning of CEQA, zone changes are characterized as projects that are not
17 other wise exempt, right? What's Staff's done on Page 239 is to try to add mitigation to an
18 exemption. You can't do that so and that's an adjudicatory function. Evidence based, it's not
19 legislative. We made that clear in the first go around, it's applicable the second go around. So,
20 the Consistency Analysis, a real CEQA analysis, which would need an Initial Study. This is a zone
21 change, it's not what's characterized as any of the exemptions on Page 239 and withstanding
22 that, we raised the issue under CEQA Guideline Section 15300.2. That you have again,
23 substantial evidence by the neighbors raising genuine issues about access, transportation,
24 visual clarity based on safety and those are issues that could be easily examined in an Initial
25 Study by Staff. So, you know, these aren't inconsequential, you could go back to the beginning
26 and say look, if the Staff liaison who's also the principal [note – video skipped] still lacking an
27 analysis for both Streambank Protection and for the PC analysis. You can't cherry pick those
28 things. You have to go down and establish them.

29
30 Finally, I'd like to note for the record that as far as I'm aware there's no... any type of urgency
31 ordinance that's in effect, either in Covid, either locally or in a State-wide basis. AB 214... 2449
32 is applicable to decision makers. Right, it allows for participations in adjudicatory hearings and
33 the CEQA part of this hearing is adjudicatory and I think the evidence based that's required to
34 come into compliance with the PC Zone is also evidence based. Staff's got to come up with that.

35
36 Right, my point is I'd have no idea whether counsel to the Commission is watching now,
37 whether it's online and I see the cameras when I've looked on what's available to the public
38 and you can't see what's going on here. There are evidentiary conclusions that are before you
39 that you have to make. I'm suggesting that's an additional element of due process that's not
40 present for this hearing. Counsel and Staff should all be present. I don't know where counsel is.

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1 You know, I've been informed several times but I don't know that there's a policy for that for
2 participation of Palo Alto employees in another state. I've raised it, 2449 is applicable to
3 decision makers. As far as I can see there's no exemption for Staff but the principle issues are
4 with respect to compliance with the PC Ordinance and the CEQA analysis. Thank you for your
5 consideration.

6
7 Chair Summa: Thank you Mr. Ross. Was that our final speaker?

8
9 Ms. Dao: Yes, I have no raised hands on Zoom.

10
11 Chair Summa: Okay, thank you for that. Oh, would the applicant like to speak?

12
13 Mr. Hayes: Hi, Chair Summa, Ken Hayes again with Hayes Group Architects. So, this is really
14 getting blown out of proportion. We need to remember why we were here. We were caught in
15 a situation where there were inaccurate City records that created big problems for my client
16 and Mr. Handa and so we're trying to fix that mistake from 1976. The safety concerns that the
17 neighbors are bringing up, you know I'm not going to dispute them. If they feel they have safety
18 issues, but how is our project creating those safety issues? You know, we're removing eight cars
19 from traveling on Ellsworth. We've removed the trash pick up on Ellsworth. We've provided a
20 space for a delivery truck to park on our property off of Ellsworth, not blocking cars, that sort of
21 thing. So, I just don't see... and the home that we're building is actually set back further outside
22 of the 35-foot sight triangle than if there were vans parked in those existing eight guest parking
23 spaces. Because as those spaces got closer to Ellsworth they would block or I'm sorry closer to
24 Middlefield. They would block sight lines. We're improving all of that to get through this
25 process.

26
27 The road is 20-feet legally for their access. We're willing to make that a foot and a half wider on
28 Mr. Nitin's side. Yes, just so happens that's where the existing pavement is today but they don't
29 have the right to be on that part of the street right? It's private property but we're now giving
30 them the right to drive on that part of the street that is now defined by that asphalt edge.

31
32 Undergrounding the utilities, honestly if we need to underground more or move [note – video
33 skipped]. It's... we just can't do that is what I've been told. It's just not going to happen. So,
34 we're making improvements that we truly believe we can do to help mitigate this. The road's
35 going to be 20 percent wider than it is today. The ownership of the public way or I'm sorry of
36 this private street, it's irrelevant. I don't... we don't care who owns it. It's not pertinent to what
37 we're trying to do tonight, alright? We're giving our private property to them ~~visa~~ via an
38 easement or a PC Development Plan and that's what we're doing. I don't care who owns the
39 road, so if they have an issue with road ownership. That's outside of this project in my opinion.

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1 And then lastly, just and then I'm done, the public benefits, really? We're widening the road 20
2 percent, giving them access to private land, we're doing a new driveway apron curb cut, the
3 sight triangle. It's not really public benefit, I had it listed. It's required by the City. We are
4 creating fewer cars using Ellsworth. We're creating a temporary delivery truck space on private
5 property. We've already moved the trash from Ellsworth and let's not forget, we're creating a
6 single-family home. Alright, so thank you very much.

7
8 Chair Summa: Thank you, Mr. Hayes and with that we will bring it back to the Commission for
9 discussion. So, who would like start us off? Anyone? Okay, oh Commissioner Hechtman.

10
11 Commissioner Hechtman: Yeah, I'll start off just very briefly with kind of a simple one. One of
12 the... a part of the motion at the last meeting had to do with the setback of the building from
13 the creek and the way the language was translated and it appears on Packet Page 89. The
14 condition is the setback from the creek shall be determined by a slope stability analysis. So, I
15 wanted to ask Staff just a couple of questions about that. It looked to me like the applicant's
16 proposal for the house utilized a 6-foot setback from what is said... what is described as the
17 creek property. And so, I wanted to understand if that... if we have some guideline that tells us
18 what a standard setback from the creek property is absent of soil stability analysis?

19
20 Ms. French: Well, the 6-foot setback is indicating the interior side setback, so that's what that 6-
21 feet is.

22
23 Commissioner Hechtman: Because in the absence of the creek that side of that (interrupted)

24
25 Ms. French: To the property line.

26
27 Commissioner Hechtman: Edge of the house is considered the side, right?

28
29 Ms. French: Correct because Middlefield Road is the shorter of the property's facing... and is a
30 facing a street. Right so that's the front and the right side is to the property line of the creek of
31 the ownership of that creek.

32
33 Commissioner Hechtman: Okay so I... and I just want to focus on that setback from the creek.
34 So, and I'll just finish tackling this issue and then I'll come back to do some other ones but on
35 the slope stability issue, and I think Mr. Sauls, I don't know if he's here tonight or not.

36
37 Ms. French: He's watching.

38
39 Commissioner Hechtman: At the last meeting he kind of explained... I mean we can understand
40 what the issue is in general. Right, you're building a structure which will have weight and

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1 density and that could... will put pressure on the soil beneath it and if you're close to a creek.
2 You don't want that pressure to basically push the dirt toward the creek in a way that will cause
3 it to erode or crumble and effect the creek. Right and I think Mr. Sauls explained at the last
4 meeting that here, Matadero Creek, is a channelized concrete culvert and so there is no dirt to
5 get pushed into the creek. You would have to have enough force to actually bust the concrete
6 and force it into the Matadero Creek. So, I don't know that a slope stability analysis is really
7 necessary here but I don't really have a problem with utilizing it. The concern I had is the way
8 this condition was written, drafted, is we have a setback and that setback is 6-feet. And that
9 should be the setback unless the slope stability analysis says a larger setback is needed. And
10 that's really what this condition should say and hopefully there won't be an objection because
11 my concern is if we get a report back that just says the slope is stable, a house won't effect it.
12 The soils guy or gal won't necessarily tell us what the setback should be. So, I'd like to put that
13 6-foot marker in there and then the slope stability analysis can say if that's to o close or not. So,
14 anyway, that's... we're not anywhere near motions but when we get to it. I would like to see
15 that changed in that condition, so I'll leave it with that issue for now. I've got more later.

16
17 Mr. Garrett Sauls, Planner: Good evening, Commissioners. This is Garrett, hello. Yes,
18 Commissioner Hechtman, what you reiterated is what I had said previously. That it is the
19 outward forces of that foundation of the structure putting pressure towards the channelized
20 culvert wall that the Santa Clara Valley Water District has had more issues with. Obviously,
21 again as you mentioned before, that it would either rupture, bust or damage that integrity of
22 that culvert wall. Such that obviously it would collapse, so that would be what an analysis
23 would demonstrate is whether or not those outward forces would create that impact so.

24
25 Chair Summa: Are you...?

26
27 Commissioner Hechtman: [off mic] That's it for now.

28
29 Chair Summa: That's it for now, okay. Do I have other lights or? Okay, well I will say a few things
30 then and that is that I would concur with Mr. Hayes that there's some... those... there's
31 inconsistency in the proposed ordinance that he already mentioned. And I think Staff would
32 agree with that and that needs to be fixed.

33
34 And then I want to clarify that no... we are not proposing that any significant trees be removed
35 from the sight triangle. Most particularly, I would like to call out the multi-trunk olive tree
36 which is of some age and I would also agree with the comments from the public that turning
37 right isn't the issue. It's the other side that's an issue and it has to do with two grade changes.
38 One as you slope on the sidewalk to Ellsworth Place and you slope up to the sidewalk from
39 Ellsworth Place. And it's also where the... there's a curve in the sidewalk and the street narrows

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1 and that's what makes it so tricky. So, I think any of the existing trees, there's was no intention
2 ever to remove them, especially that large mature olive.

3
4 I... sadly we haven't been given real determining information on what it would take to remove
5 utilities that are in the way and it seems like though maybe not ideal the hydrant is alright. But I
6 have another question and that is that the way the language is in the proposed ordinance, I
7 don't... find the page. In both... oh here it is... in both cases, [note – video skipped] regardless of
8 whether it's 24 or 26-feet as a swath of pavement along-side Ellsworth Place. Now what
9 Ellsworth Place is legally is a 20-foot easement that we generally believe all the parties that
10 have an interest in it have a right to traverse. I'm really worried about this language I wonder
11 what I means and maybe it's a question for our legal counsel. It's... there's no mention of
12 adjusting or the easement or making it a condition of granting either of both PCs that that be...
13 that the widening of the street be guaranteed in perpetuity as far as I'm reading it. And I think...
14 so maybe Mr. Yang can help with this but I don't see anything except a swath of pavement
15 which gives the impression of a useable area. But I don't think it's guaranteed and I think that
16 we know what happens when sort of institutional memory, especially of PC, is lost and I'm... I
17 mean we have direct information here. And when I read this, I think about somebody in the
18 future thinking well, if that's my land, I'd like to put on that little paved area pots of geraniums.
19 So, I don't see how this is guaranteed at all the way it's written, so I see our counsel.

20
21 Mr. Yang: Yeah, [unintelligible] that this paved area would be incorporated into the PC
22 Development Plan for each site would ensure that it would remain in that state. But I
23 understand your concern that maybe something like something could be placed on top planters
24 or something like that. So, it could be included as a condition that the area shall remain clear.

25
26 Chair Summa: Yeah and I would say probably for perpetuity. I mean and it's... that was... that
27 concept of... because what they had before was sort of the feel of a 26-foot wide street
28 because of the extra space in the parking lot basically. And so, I think to have anything
29 successful happen here we have to either condition it as a prerequisite of the PCs and that it
30 should be required to survive these two PCs as a concept, or that I don't... that an additional
31 easement be created. It's so essential and I agree that that is... so that needs to be resolved and
32 it's just totally missing from the proposed draft ordinance.

33
34 And I would say the other problem for me (interrupted)

35
36 Commissioner Reckdahl: Can I have a follow up? Why would we not do an easement? I don't...
37 it seems strange that you would make the... it's effectively an easement but you're making it a
38 condition of the PC and that seems rather awkward.

- 39
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1 Chair Summa: It's neither right now and it has to be. There has to be some reason why
2 somebody's not going to be able to just say oh, there's no... they don't have a right to be... drive
3 there. It's not guaranteed the way I read it and I think Mr. Yang agreed just now. I mean that's a
4 pretty essential part of this situation.

5
6 So, that would need to be resolved for me before I could make any recommendation and -the
7 other issue [note – video skipped] along Middlefield is two high still. It's to high, it seems
8 even higher than it is because of the grade and I believe it needs to be... the fence needs
9 brought back. Mr. Handa or whoever occupies that house would be able to use all the area in
10 front of the fence but it's blocking and it's very difficult to see small people there especially and
11 by that I mean children. So, it was my observation that that was not adequate and I think I don't
12 know exactly how far back it needs to go because it's not something I can imagine but I would
13 think a reasonable place would be kind of outside of his patio where he wants it there to
14 protect that area. And the rest of the yard would still be his yard but it just wouldn't be fenced
15 in and I would say it is not the case that everybody has a fence. You know, most people can
16 have a 3-foot fence across their front yard but many people do not. I don't... I mean I don't
17 know, I cannot say with any certainty the percentage of people in Palo Alto that do and don't,
18 but I would say most yards that I can think of, of people I know don't have that kind of fence.
19 Some people like it and it's fine and I think if Mr. Handa wants a fence, he should have a fence,
20 but it should be placed... this is a different intersection because of the grade change. And he
21 should certainly have a fence but it should be in a location that does not obscure the view of
22 exiting vehicles. Particularly for, you know, because of the grade, so I am going to leave it there
23 for now and Commissioner Akin.

24
25 Commissioner Akin: Thank you, Chair Summa. I don't have any dispositive comments to make
26 here but a few observations. Yes, I agree that the 3-foot fence still interferes with visibility in an
27 area where it's important. A shorter fence might solve that problem. There are other
28 alternatives that the applicants might want to consider. As someone who lives near... lives at a
29 6,000 vehicle a day corner where noise from traffic is a constant problem and is a fraction of
30 what the noise at this site near Middlefield would be. The yard... the front yard is not going to
31 be useable as a front yard. So, it's not wise to place too much weight on that particular use, but
32 there are things that can be done to improve that space and one is to build a larger interior
33 fence. Setback sufficiently so that greater height is possible and make it out of some dense
34 material like concrete and that's a sound wall. That's what you need to make that patio space
35 useable, despite the traffic on Middlefield. So, I would suggest that that might be worth
36 considering if the original 3-foot fence farther out proves not to be viable for other reasons.

37
38 There was some debate at the last meeting about 24 versus 26 and I ended up supporting the
39 minimum of 26 because I believe it does add value, particularly at the intersection with
40 Middlefield. However, I could see expecting 24 if the bottle neck that's caused [note – video

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1 [skipped] more flexibility along the length of the road which is where it exists... which is what
2 exists today. But it allows the other sections of the road not to be widened as much as what
3 otherwise be needed. So, there's I think room for compromise there as well if we had the key
4 information about whether that pole could be moved or eliminated. It does appear that the...
5 those are low voltage lines at that terminal pole. So, there... it seems to me that there's some
6 hope that could be done provided the strictly mechanical requirements of support for the
7 penultimate pole are taken care of. I don't know any way to do that other than asking utilities
8 or Public Works about their standards for the span lengths and support angles whether that's
9 feasible in the space that we have available. So, we just don't have the information we need to
10 know whether that's doable. Alright, I think that's everything I have for the moment.

11
12 Chair Summa: Thank you. Commissioner Lu.

13
14 Commissioner Lu: [off mic] Commissioner Chang [note – Vice-Chair Chang] had her hand up
15 first.

16
17 Chair Summa: She was first, oh okay. Commissioner Chang [note – Vice-Chair Chang].

18
19 Vice-Chair Chang: Thank you, Commissioner Lu. So, I do remember my original motion asking
20 for the wider easement to be granted to all the neighbors and yes, that's a good catch that
21 Chair Summa made that the actual PC language doesn't grant that easement. And so, on Packet
22 Page 81, the top of the page for 2B, it does say the new width of the easement be granted to all
23 the neighbors on Ellsworth. So, we just need to make sure that that actually gets properly
24 reflected in the two PCs.

25
26 And then I concur with my colleagues who visited the site and said that the 3-foot fence height
27 does obstruct visibility. One of my thoughts, but I... one of my thoughts was that because of the
28 very unusual topography at Ellsworth and Middlefield with the sloping of Middlefield as well as
29 the sloping of Ellsworth. It make a conventional sight triangle kind of insufficient and it really
30 isn't the Dewy side as everyone has noted. And so, one of my thought was that it's not that a
31 fence... a front yard fence isn't possible, but that the fence shouldn't be within the sight triangle
32 and not only within the 35-foot sight triangle but also right along Middlefield in the front... I
33 don't know. If you're looking at A-2.0 in the architecture sheets, kind of in the lower right
34 corner of the property so at the corner here Matadero Creek meets Middlefield. That's also a
35 real problem area for where a fence would be and so if you could push the fence further back
36 than 4-feet in that corner. That also helps and so actually when I was listening to the public
37 comments. The diagram drawn by... the diagram shown by... I'm so sorry... by Kristen. I can't...
38 her last name is escaping me at this particular moment. Where she proposed a compromise for
39 where the fence could be is... that actually makes a lot of sense I think in terms [note – video
40 [skipped] from Middlefield than 4-feet. But actually, I think that the compromise that was... that

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1 Kristen drew was a much more elegant solution and creates a much nicer front yard, but
2 achieves the same goal. But I think essentially what she drew puts into drawing what I observed
3 at the site which is where the obstruction to vision occurs. So, those are my comments.

4
5 Chair Summa: Commissioner Lu.

6
7 Commissioner Lu: I'll make a few quick comments and welcome any additions or thoughts from
8 other Commissioners on this. Firstly, I definitely agree that the language on the easement
9 should be clear. Visiting the site, I didn't get a... I mean it's always difficult to truly imagine the
10 day to day lived experience but I didn't see as much of a large qualitative difference to me
11 between the 24 versus 26 feet. But I did feel like the wider flare would actually be a material
12 improvement as you actually pull out and to that point, I find some of the framing around the
13 sight triangle a little bit odd. In the examples that Ms. Van Fleet presented, it seems like most
14 cars really just pull up right up to the stop sign right on that little hump and that kind of goes a
15 little bit past the fence anyways. And so, from that perspective you area little bit higher, maybe
16 a foot higher and you have a more clear view at the very base of the sight triangle. So, I kind of
17 understand how that would be the preferred way to pull out regardless and that's where you
18 would really start looking at Middlefield. To me the sight triangle is important for peripheral
19 vision as you pull out but its like... it's not like the critical point. I think the sight triangle does a
20 lot of work for cars that are turning right onto Middlefield, to have a sense who is pulling out of
21 Ellsworth, but qualitatively, you know it just gets so tricky. It's hard for me to really make clear
22 statements about how the fence should be or how the intersection should work besides the
23 wider flares.

24
25 The last point that I'll shout out is that we discussed last time that we should keep this as a PC...
26 as a separate PC. I think it's actually... there's a reasonable case to make, if we decide to move
27 forward just on the merits of the project at all, to just keep it as an R-1 with deed restrictions.
28 The PC symbolically has more continuity but it's also marginally worse for the applicant. If we
29 actually think this project should move forward, I don't know if it makes sense to have any sort
30 of minor symbolic, almost punishment of keeping it as a PC versus having it as an R-1 with deed
31 restrictions. I don't know that that would actually make a practical difference, but seems like
32 the more lenient or generous thing to do and so I think we should do that if we move forward.

33
34 Chair Summa: Commissioner Reckdahl.

35
36 Commissioner Reckdahl: Could Staff bring up Slide 3 in the Packet, in the presentation Packet?
37 Yeah, so the think that bothers me is that the visibility really is bad when you pull up to that
38 side [note – video skipped]. I mean you're going to be hugging that curve and then the curb

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comes out just at the wrong time and that current sight triangle doesn't protect you against that... the bicycles that are down the street. So, I really do think that having that flatter so it doesn't have to go... doesn't have to be as deep on Ellsworth but it should extend flatter, more parallel to Middlefield to protect you again that... those bicyclists and pedestrians who are coming around that curve there. That's a really dangerous feature.

The other thing that's problematic is the fact that that sidewalk is higher. Is transportation online?

Ms. French: They are.

Commissioner Reckdahl: A question for them is this is a private street and really is treated like a driveway. Other places in the City where we have private streets, are they treated more as a street crossing? The public comment had expressed making this appear more like a street as opposed to a driveway and I wonder how uniform are we around the City?

Ms. Sylvia Star-Lack, Transportation Planning Manager: This is Sylvia Star-Lack, Transportation Planning Manager, good evening Commissioners. I can't speak for all of the private streets in town. This one is built as a driveway. I don't know why it was built that way but that is how drivers should treat it. It is a private street but it should be used the way that one would use a driveway and just to clarify, the proper maneuver for leaving this private street that is built with a driveway entrance is to stop before the sidewalk, check if the sidewalk is clear and then move forward and stop before the roadway, check if the roadway is clear.

Commissioner Reckdahl: Okay, so on other private streets do you have a feeling about... are they usually like driveways or do you not have...?

Ms. Star-Lack: I don't have a working knowledge of all of the private streets in town. It just depends, yeah.

Commissioner Reckdahl: Fair enough, okay thank you.

Commissioner Hechtman: Alright, so two little issues and then a big issue. First of all, on the fence issues on 702, you know I'm... I saw the design of the fence and I'm hearing concerns from Commissioners that notwithstanding the 3-inch gap between the slates. We're still going to have issues of visibility so I wanted to ask Staff if these... I guess it's a front yard. Basically the 3-foot version of the fence is the front yard fence, right? Okay.

Ms. French: Correct.

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1 Commissioner Hechtman: And is there a prohibition in Palo Alto from using wrought iron for
2 a front yard fence?

3
4 Ms. French: No.
5

6 Commissioner Hechtman: Okay, so I would just like to put that out in the atmosphere for
7 people to think about. Wrought iron fences are typically a more open design, so you could
8 see better through them. My perception is part of the reason the owner wants a 3-foot fence
9 and at this location is they... it's really sort of a modest security to dissuade people from just
10 walking in or like stepping over a 2-foot fence. You know, you got to have a pretty good stride
11 to get over a three and so this might be something that solves the visibility problem while
12 allowing the fence to remain... I think it's proposed at 4-feet back, right? So, I'm not [note-
13 video skipped]
14

15 First of all, I agree that at a minimum 702 and Middlefield Field should have separate PCs. It's
16 not good practice to lump properties owned by separate people in one PC. So, there does need
17 to be a division that way and Middlefield needs to stay in a... it's in a PC. For 702, I don't know
18 that I have a real strong impression. I mean my gut and training is that while I can't say that a
19 PC has ever been used in Palo Alto before for a single-family home. I don't know that, but I
20 know that PCs are definitionally built to be flexible. You could use them in almost any kind of
21 setting and they have benefits in that way, whereas R-1 I've very seldom seen conditions
22 imposed upon a standard rezoning and gives me a little bit of cause for concern. So, I'm... I
23 don't feel strongly about that, but I would say I feel more comfortable with a PC Zone and I
24 haven't really understood from the applicant what their level of discomfort is with it that makes
25 the conventional zoning with a deed restriction more desirable to them.
26

27 Alright, so those are the smaller issues, here's the big issue and I'm sorry I wasn't here at the
28 last meeting to articulate it. There's a natural inclination when a proposal is made to develop a
29 property to kind of look not at the project being proposed but at the surroundings and ask
30 yourself well, okay they want to do this on this land. What problems can we solve while they're
31 doing this on this land and there can be in that process over reaches. You would... how do I
32 explain this. There are limitations on conditions that we can impose or require and for example,
33 we have limitations in CEQA if there's... you can't impose... you can't require a mitigation
34 measures if there's not an impact that needs to be mitigated. And even outside CEQA, you can't
35 exact rights from property owners unless [note – video skipped] impacts. So, there are real
36 limitations in doing that, so where you often see this is in -with public street where somebody
37 wants to develop something and the City wants them to improve a public street and you have
38 to go through this analysis. Well, is what they're doing creating a traffic impact because if it's
39 not creating a traffic impact then you can't make them fix the public street. It's just a public
40 street that needs to be fixed and [note – video skipped] because we don't have a public street.

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1 We have a private street and what the Commission is talking about doing last time and a little
2 bit tonight is requiring one private property owner to give its property rights not to the public in
3 relation to some impact of the project, but actually to 13 other private property owners. That's
4 what we're talking about when we talk about requiring that these owners grant easements to
5 the folks down the street and I don't believe we have the power to do that as a City. To
6 require... you know, anymore than we would have to say gosh, this new development is
7 impacting the value of your 13 properties. So, we're going to make the property owner give
8 each of you \$10,000. Right, we can't do that and it's particularly troubling here where again, if
9 we look at the impacts of what is being proposed. The only traffic impact on Ellsworth from the
10 totality of the proposal is a beneficial traffic impact. It's beneficial, right compared to the
11 existing conditions, the long existing condition which according to the photographs we've seen
12 for example, has had shrubs on the Matadero side for who knows how long. I know Mr. Dewey I
13 think has owned the property since 2017 and we didn't hear anything from the neighbors that
14 they've been on him routinely to cut those shrubs down but now they're gone and they will
15 stay gone. Staff has been in communication with the water district to trim the farther shrubs
16 closest to Matadero Creek and actually, it was odd because I thought the Staff Report said it
17 had been done but then when I was out there today and I did visit the site today. It seemed like
18 there were shrubs right up against the concrete abutment and so I wasn't entirely clear
19 on that or whether there were some more shrubs that needed to be removed.

20
21 But you know what is... the totality of the proposal is they're taking pavement that is... well,
22 first of all, there's really two sections to this Ellsworth Road that I think we can break into. One
23 is most of it which starts at the very back and it comes up until the point where you have to be
24 concerned about the intersection with Middlefield and whether that's one car length or two
25 length, whatever it is. So, that back section, that's 20-feet. It's been 20-feet for over 50 years
26 and I went to the back of it today and what I noticed is that at least half of those folks that live
27 in those houses have either a fence or dense shrubbery or a curb that closes down that 20-feet
28 or closes it down to 20-feet in that area. So, and then the other thing I noticed was a few
29 people have pavers in the front which they park on and I was curious about the... you know a
30 comment of the... one of the commenters that can't park on pavers. That's how they're used on
31 the street in a number of places and that's the intention I think of Mr. Handa, to have his
32 driveway which will be drivable pavers that can be used that way. So, you've got this back
33 section that's 20-feet and it's necked down by a lot of the neighbors who are feeling put upon
34 by this development. But those neighbors, and this is a point that Commissioner Templeton
35 raised last time, those neighbors are not saying hey, we really need 26-feet here. Right, this
36 road really needs to be 26-feet and so we are each willing to give the City 3-feet... the 3-foot
37 frontage of our property to make it a 26-foot public road. We're not hearing that. What we're
38 hearing is a frustration by these neighbors that property they don't own, that happens to be in
39 front of us for development, isn't going to 26-feet which is as near as I can tell it's never been at
40 least at the front part which is the most important part up at Middlefield. Because that's where

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1 the action is and that's where I think the public benefit of what's being proposed really exists
2 because that's where it is expanding from 21 ½-feet which it is currently; 20-foot easement plus
3 another foot and a half of pavement. It's going to now be widened by another 2 ½-feet so that's
4 24-feet and then it's going to, again this is part of the proposal, bow out to 28-feet which is
5 actually happening on City property because that's the... that sidewalk is City property. So, and
6 then what we've learned is so it's going to start at 28, neck down to 24 which is wider in the
7 most important area than it currently is, it's going to travel at 24-feet back I think 35-feet and
8 then it's going to have if I'm understanding correctly another 7-feet on the Ellsworth side at 18-
9 inches. So that section is 21 ½-feet and then past that you actually have the pavers on the 702
10 side which again, create more space and this temporary parking area on the Middlefield side so
11 it widens out again. So, I think in the most critical area we have clear traffic safety improvement
12 and public benefit and we can't require private property owners to give other private property
13 owners rights over their property.

14
15 Now a quirk in that rule is that while we can't require it, if they volunteer it, we can take it and
16 make a condition and that's really what's happened here is these private property owners have
17 offered to provide these improvements to widen the road. I think I understood Ms. Steinmetz
18 to say that if we did an R-1 rezoning then they would grant an easement on the 702 side for the
19 18-inch wide strip which I think is 42-foot long and I think I also heard her say that they
20 wouldn't be offering an easement on the Middlefield side for it's 30-inches for roughly I think
21 35 or 37-feet. But instead, that would be a requirement in the PC Development Plan which
22 could only be changed through a PC Development Plan Amendment, which would not make it
23 permanent to address the Chair's concern but it would require a public process to make that
24 change which I'm sure if... I can't imagine it ever being tire. But if it was, you would have 13
25 residents behind expressing the same kinds of concerns we've heard about necking down their
26 street.

27
28 So, I am... I'm supportive of taking as much as we can get from these applicants, as much as
29 they will voluntarily offer. I would encourage them to consider the concerns regarding the
30 permanence of that 30-inch travel way on the Middlefield side that you've heard from other
31 Commissioners. And I would just kind of close on this, this really... this issue really also impacts
32 the utility pole issue because again, we... what we'd be talking about there is requiring that
33 utility pole to be removed. Actually, not... that's not actually a public benefit because it's really
34 for the private benefit of the 13 residents... 13 homeowners who live down the street and so I
35 just don't think we can do that. So, I'm going to be supporting something more in line with
36 what the developers are offering, so thank you for giving me an unusually long time to make
37 that... make those remarks.

38
39 Chair Summa: Commissioner Chang [note – Vice-Chair Chang].
40

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1 Vice-Chair Chang: I would just like to provide a different perspective with what Commissioner
2 Hechtman spoke about. I actually agree with a lot of what Commissioner Hechtman said in
3 terms of it is not our job to reassign property rights but in this situation its actually a little bit
4 different. The application at hand that we were first asked to consider was to amend a PC and
5 in that situation we're being asked to grant a property owner additional rights which was to
6 give them the ability to build an additional house where one is not allowed and permitted right
7 now. And so, we're actually being asked to give rights and in exchange, we're asking to make
8 something safer. Not necessarily to give rights to only 13 property owners but really what we're
9 doing is trying to make things safer for all... for the rest of our City. For all the people who
10 traverse that opening on Ellsworth. There's quite a lot of bicyclists and pedestrians who are
11 using that sidewalk. Particularly, given the proximity to the Midtown shopping area and also
12 lots of young children using it to get to Winder Lodge and the Kim Grant Tennis Center and just
13 lots of pedestrians in general. Those of us who did site visits I'm sure saw lots of pedestrians
14 and bicyclists and in addition, there's the school across the street and the Middlefield itself is a
15 really busy thoroughfare so lots of cars. And so, we're just trying to make this area safer
16 because no matter what those... no matter what those 13 households do have to use Ellsworth
17 for ingress and egress and if we make it safer for them to go in and out at that opening. We
18 make it safer for everybody else at that intersection and so that's how I looked at it.

19
20 And I agree 100 percent with Commissioner Hechtman that it is the front section, the front
21 most section that is the most important and the reason when I was making the motion last time
22 I heard this. That I settled on 26-feet was because I looked at our City's own ordinances and
23 what is currently considered the bare minimum in terms of safety for a private street serving
24 this number of residents and the bare minimum is 26-feet. In fact, it requires special Director
25 approval to go down to 20 and usually it's not in this type of situation. There's actually a whole
26 bunch of other situations mentioned but not this situation. Usually its if there's parking
27 separating a building and the private street and there just isn't any of those things in this
28 situation that would grant the exception to be... that would allow a Director to make that
29 exception. That said, I understand that this is an existing situation but also, we're... it's an
30 existing situation and we are granting the applicant the ability to change the existing situation.
31 And so that's why it's incumbent upon us as the Planning and Transportation Commission to
32 make sure that it remains safe for the rest of Midtown Palo Alto. There's lots of accidents that
33 happen on Middlefield, lots and lots of accidents that happen on Middlefield. So, that's an
34 alternative perspective and why at least regardless of how we decide to do this. An execution
35 PC or R-1 with deed restriction, I think it's pretty important to do it. Thanks.

36
37 Chair Summa: Thank you. Commissioner Akin.

38
39 Commissioner Akin: I'd just like to put in a word of support for the section of Ellsworth that's
40 not immediately at Middlefield. Folks have pointed out that we have a delivery vehicle problem

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1 and its recognized that it's difficult enough for delivery vehicles to get in and out, but the
2 applicants are generously willing to reserve some space to allow the delivery vehicles to park.
3 And when I raised the question of what the turning movements would be at the previous
4 meeting. The transportation consultant described well, you would pull in there and then you
5 would back up into Mr. Handa's driveway so that you could complete the turn and then exit. So,
6 we find ourselves in this odd position of arguing on the one hand that this property that
7 comprises the parking spaces now is private property and not useable for the folks who live
8 further down on Ellsworth. And yes, the only solutions we can come up with involve using other
9 private property to solve the same problems. So, I think there's a clue here that there is just not
10 enough space for a simple answer. Thanks.

11
12 Chair Summa: Put those thoughts on hold for a second, it's not 10:30. Do we want to... we have
13 I think Staff waiting for Item 3. Do we want to... I think we should let them go if we're thinking
14 we're not going to get to that item, but I'm happy to go ahead and try to get that item done
15 too. What are my colleagues thinking?

16
17 Commissioner Lu: I'm personally also happy to get to it but also want to be sensitive of... I mean
18 restriction for anyone else.

19
20 Ms. French: I was going to note, we don't... I don't think we have Staff. I think we have
21 consultants here and then we (interrupted)

22
23 Chair Summa: Well, their feelings count too.

24
25 Ms. French: I know, I'm Staff for the project and possible George Hoyt is here. He's not here,
26 okay, so they're getting paid.

27
28 Chair Summa: Commissioner Hechtman, your... did you want to...?

29
30 Commissioner Hechtman: I can go either way.

31
32 Chair Summa: Okay, let's just carry on then. I don't see any lights so I'm going to make a
33 comment and I also agree with some of what Commissioner Hechtman said but I feel like... and
34 I have a lot of respect for Commissioner Hechtman but he is not our City Attorney. He's a very
35 fine attorney I'm sure and I... so I don't know. That argument was unusual. I didn't hear from
36 our City Attorney and but I will note that as an R-1... the PC allows Mr. Handa more flexibility
37 than he would have as an R-1 property because the City doesn't even have to grant... the City
38 does not have to allow a new non-conforming property to be built on it at all. So, I think the PC
39 initially... I also recall that I think Mr. Handa wanted his own PC and the PC gives us a little

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1 control but also gives Mr. Handa much more flexibility and the final decision makers and what
2 Mr. Handa it does give him more flexibility.

3
4 I'm very moved by what Commissioner Akin just said and I think it's... if I heard him right he was
5 expressing concern that there's sort of conundrum here that we don't have enough space to
6 need what we... to do what we need to do in this location. And that's kind of the Palo Alto... I
7 won't say process but the problem that I often see is and my analogy is somebody with a size
8 ten foot is trying to squeeze into a size 6 shoes. So, we have... we really need to compromise
9 here to get something that makes everybody happy and I believe there was overreach in the
10 process and we have not allowed that. For instance, the determination of private or public
11 street was not our Agenda as much as I know the people... people really care about it. It wasn't
12 agendized, it wasn't part of this process but this is an amendment of a PC and a creation of a
13 new PC and those are supposed to have public benefit.

14
15 I cannot find a way to think that 26-foot, which is a minimum width for a private street in Palo
16 Alto, and by the way does not serve a street with that many houses at the end of it legally. So, it
17 is a real compromise, the 26 and I do not think it keeps... I think Mr. Dewey gets to do what he
18 wants to do and that makes me happy. I think Mr. Handa gets to do what he wants to do with
19 maybe a slight change to where his front fence is or the nature of the fence. Meaning material
20 and how open it as Commissioner Hechtman pointed out. And it also gives the other people
21 that use this private street, their guests and all the future people that will own houses or own
22 properties that are served by this a real improvement to the intersection. So, I don't know,
23 I'm... I don't think it's an unreasonable compromise at 26-feet and I really appreciate that all
24 the parties have offered so much.

25
26 I also think Commissioner Akin had an interesting idea earlier this evening in proposing that if it
27 was 24-feet but the last pole, which doesn't have high... what does it have? It doesn't have a lot
28 of equipment on it.

29
30 Commissioner Akin: Yeah, it's not power, just low voltage stuff.

31
32 Chair Summa: Yeah, it's just internet and stuff, it doesn't have power. You know that... all...
33 even... you know at one point we were going to underground all the power poles in Palo Alto
34 and that has been abandoned but this is just one pole. So, we have to find a compromise here
35 and I'm not sure exactly what to do but I do see Mr. Yang.

36
37 Mr. Yang: Yeah so I just wanted to comment that I think many of the principles that
38 Commissioner Hechtman laid out are correct and there are potentially some limitations on the
39 City's ability to exact more than what the applicant is offering here. Specifically, the difference
40 between 24 and 26-feet, but it's something that I would want to look into further and so if that

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1 did make it into a final recommendation from the Commission. I guess I would just request that
2 there be a caveat subject to additional legal research.

3
4 Chair Summa: Okay and I would like to suggest that another caveat that we... the... regardless
5 that any body considering this be brought real information about the cost of underground poles
6 or removing poles and that sort of thing. Because I think that would be helpful to for the City
7 Council or us if this should happen to come back to us again. Would... oh, I see Commissioner
8 Reckdahl has a light.

9
10 Commissioner Reckdahl: I had a question for Mr. Yang. This original PC is many years old and
11 people have been using this extra width for many years. Have they met the threshold for a
12 prescriptive easement?

13
14 Mr. Yang: I'm not able to comment on that. I think it's unlikely but yeah, I can't provide a
15 definitive answer.

16
17 Commissioner Reckdahl: Okay, thank you.

18
19 Chair Summa: Commissioner Hechtman.

20
21 Commissioner Hechtman: Yeah, kind of comment and a question. First just to point out to the
22 Vice-Chair Chang that the sort of the premise that here's why we can do what we're trying to
23 do. They've come to us asking for permission to do something that they currently can't do.
24 Well, that's true, it also perfectly describes every permit application in the City because that's
25 the only time you apply for a permit is when you can't do it without a permit and so I think that
26 that is a distinction. The fact that they are... the thing they are asking to do is build a house
27 doesn't really change the rules.

28
29 I was curious about one of the suggestions that Ms. Van Fleet had mentioned because I hadn't
30 thought of it and I hadn't heard about it before but her comment was on the apron. You know,
31 the apron that connects Middlefield to the asphalt of Ellsworth and how it's concrete
32 composition makes it feel more like a driveway whereas an asphalt composition would make it
33 feel more like a street. And I think she even mentioned, you know maybe you put bots, those
34 little bumper bots like we do our streets, to make it feel more like a street and I think the
35 concept there is to alert bicyclists and pedestrians approach that this is a street. This is more
36 like a street because it again, it's feeding 13 plus houses and maybe even to have that kind of
37 effect on the travelers along Middlefield who see something that looks more like a street
38 emptying into their drive path. And so, I'm just wondering, of course I realize that would be an
39 extra expense to the developers but I was... what I'm mostly wondering is whether in Staff's
40 discussion with the applicants was this ever explored? Are there reasons why it can't be done?

-
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1
2 Ms. French: Sorry, I was thinking about the next item and the people but the suggestion was to
3 make the pavement go (interrupted)
4

5 Commissioner Hechtman: Yeah, so this idea of... yeah, this asphalt... so some work is going to
6 have to be done on that apron right now to widen it out to 28 as proposed, 30 as the motion
7 last week. So, works... it's going to be torn up and the question is could you tear out the rest of
8 it and make it asphalt so it looked more like... the streets in both directions. Those are asphalt
9 coming into Middlefield and so I don't know if we have... because it's a private road it's not
10 allowed to have asphalt in that location?
11

12 Ms. French: So (interrupted)
13

14 Commissioner Hechtman: I don't know if Ms. Star-Lack is still with us.
15

16 Ms. French: Maybe... Sylvia Star-Lack is here but then... so I mean obviously having pedestrians
17 step down, we'd want to have ADA curb from the sidewalk. If you're carving in (interrupted)
18

19 Commissioner Hechtman: It would have to be just like the streets, right? They have a required
20 grade down with those bumper bots and then it's flat across the street. There also may be
21 drainage issues because of the way this... right and so all of that would have to be taken into
22 account.
23

24 Ms. French: Sure, it would have to be studied.
25

26 Commissioner Hechtman: I'm just wondering if it's... I'm mostly wondering was it ever
27 discussed and discarded or just never came up before?
28

29 Ms. French: It wasn't... it didn't come up during this process. It would have to be studied. We'd
30 need Public Works Engineering at the table.
31

32 Commissioner Hechtman: Okay, thank you.
33

34 Chair Summa: Okay I guess at this point I should be looking for motions from colleagues.
35 Anyone like to take a stab at it? Well, it would be... Commissioner Hechtman, are you hitting a
36 button?
37

38 Commissioner Hechtman: Yeah, I was waiting to see if anyone else... I'm... again I don't like to
39 hog all the motion making but I'm happy to take the first stab at it.
40

-
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[note- video skipped]

Commissioner Akin: I don't have any sense of... I don't have any feeling of consensus so there's a... are we just developing something to shoot down and the move on to the next? Sorry, as my experience is limited, I'm not quite sure how to proceed.

Commissioner Hechtman: Well (interrupted)

Chair Summa: I can (interrupted)

Commissioner Hechtman: I'm willing to take a... yeah, why don't I put a motion on the table. Maybe if somebody could second it for discussion purposes and then we can start picking it apart and finding where the issues are. Alright?

Chair Summa: If that's what you'd like to do, thank you.

MOTION #1

Commissioner Hechtman: Yep, okay. Before I make the motion, I just want to mention that when I read the two draft ordinance which are attached as Attachment A and B. One thing I noticed is that there was kind of a bleed over in the first one, the Middlefield, of a bunch of stuff about 702 Ellsworth. And in the 702 Ellsworth, it was kind of the flip, a bleed over of the Middlefield stuff and that kind of... and so the result was things particularly for example, when you had the environmental provisions there. They got kind of... the distinctions got kind of blurred. So, I did bring that to Mr. Yang's attention earlier today that I thought you really don't need all the redundancy and repetition. What you really just need is in each of the ordinance which is already in Subpart C, kind of a cross reference that we had this one PC that covered two properties. Now we're doing two separate PCs and so there may be... Mr. Yang and our legal counsel have to decide how to handle that but that... so the motion I'm going to make is basically subject to whatever sort of these non-substantive changes that Staff may make to the ordinance as it travels to Council.

So, with that background, I will move that the PTC recommend to the Council adoption of the attached draft Planned Community PC Ordinances and the accompanying development exhibit plans for... well, I guess I got to read all this. PC 2343 Amendment Ordinance, Attachment A for the existing 12 unit apartment building at 2901 to 2905 Middlefield Road; to remove the parcel at 702 Ellsworth Place, expand the width of the roadway onto the property at 2901 to 2905 Middlefield as proposed by the applicant meaning 30 inch expansion; provide one on site delivery truck space to serve Ellsworth Place frontage properties and four on site uncovered parking spaces and relocate a purtenances to enable the Ellsworth Place road widening.

-
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1
2 B) 702 Ellsworth Place PC Ordinance, Attachment B, to able the removal of the apartments
3 guest parking lot previously required with PC 2343 and the development of a single-family
4 residences show in the Development Plan with indicated specific minimum setbacks. Including
5 a 6-foot setback on the creek side unless a greater setback is determined through a soil stability
6 analysis; the expansion of the width of Ellsworth Place roadway by 18-inches for approximately
7 42-feet as proposed by the applicant; and the restrictions on the front yard height and
8 landscaping with a suggestion that the applicant consider utilizing a 3-foot rod iron fence in
9 place of a wood fence with 3-inch wide slates between.

10
11 Chair Summa: I think you might have meant 24, not 42.

12
13 Commissioner Hechtman: Sorry, it said a 42-foot long 18-inch strip.

14
15 Chair Summa: Oh [unintelligible]

16
17 Commissioner Hechtman: Is... right, the 24-feet is a different measurement. Yeah, that's the
18 special setback, right and then I'm proposing that that is per the ordinance... per the draft
19 ordinance which references with the correct as Mr. Hayes noted and Staff also noted in their
20 slides. It's 25-feet for the Middlefield and 24 for the Ellsworth. There's actually different special
21 setbacks for those. Okay, so I think that is the complete motion.

22
23 Chair Summa: Do I have a seconder?

24
25 SECOND

26
27 Commissioner Lu: I'll second.

28
29 Chair Summa: Seconded by Commissioner Lu. Discussion or would you like to speak to your
30 motion? Sorry.

31
32 Commissioner Hechtman: Well, just very briefly to say I think this is the right way to go. I think
33 it's the way we need to go. I want to deliver to our City Council a recommendation that ideally
34 they would just adopt and I'm concerned that the alternatives considered for this motion may
35 present them a situation where they can't adopt our recommendation an are wondering why
36 we made it. So, I have some what of a concern about our credibility with the Council and
37 wanting to avoid risking that. Recognizing that they have the ability to themselves explore a
38 wider initial portion of the road than we might recommend.

39
40 Chair Summa: Commissioner Lu, did you want to speak to your second?

-
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1
2 Commissioner Lu: I generally agree with Commissioner Hechtman. I think urban infill is
3 generally how we should build and I mean specially when you compare it to the open space
4 project that we were just looking at. I think the concessions from the applicants are reasonable.
5 I think the safety issues are largely preexisting. I think there's still a lot of problems that need
6 solving but it's hard for me to clearly reconcile how this project makes those worse. So, yeah, I
7 second.

8
9 Chair Summa: Thank you. I don't see any lights so I will say that I think the Council would find
10 equally creditable the very small difference between 24-foot street and 26-foot street, a fence
11 further back or as Commissioner Hechtman recommended a fence that is largely open. Really
12 largely open but sort of symbolic of like don't come across... up this. But what I find entirely
13 missing from this is any idea... any... that it does not address my concern that this is something
14 that could evaporate because it does not contain a... any new easement or even a condition of
15 approval for the PC that would give certainty that this was available for everybody to use as
16 part of the road. And my example earlier was what if somebody some day decides they want to
17 put pots of geraniums in the 18-inches or 2 ½-feet or whatever it is. And I think built into a PC
18 Zone is the idea of public benefit and I think negotiating that I have never known negotiating
19 the public benefit to be considered not legal for some reason. I'm just... I never have. I mean it
20 is a real negotiation so I don't find the lack of credibility compelling. I find a slight difference in
21 the two things but with a fence and a 26 versus 24-feet. But it completely lacks any certainty
22 that the additional whatever it ends up being part of the street would remain... would be
23 guaranteed for everybody to use. Including people in the apartment building and anybody who
24 lives in any of the Ellsworth addresses or owns them. So, that's where I'm at. Comments?
25 Commissioner Chang [note – Vice-Chair Chang].

26
27 Vice-Chair Chang: Sure, as written I won't be supporting this motion. I would have supported a
28 motion that recommended the Staff recommendation with a few modifications. The change
29 about the 6-foot setback with the creek unless [unintelligible] back is recommended makes
30 sense to me. The rod iron fence, I would support fence that's largely see through up front. That
31 would be fine or no fence or a very short fence. And then I'm... I concur with Commissioner
32 Summa's or with Chair Summa's comments about needing something that indicates that the
33 widening of the private street is a Condition of Approval or an easement or something that is
34 more permanent. And I stand by needing the 26-feet which is kind of where we had landed last
35 time.

36
37 Chair Summa: Commissioner Lu.

38
39 Commissioner Lu: I'll just agree that we should make the language about the easement explicit
40 in the recommendation.

-
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1
2 Chair Summa: So, would you like to withdrawn your second or would you like to suggest an
3 amendment or...?

4
5 Commissioner Lu: I'm reading it and thinking about an amendment but I'll... get back to me.
6

7 Chair Summa: Other comments?
8

9 Commissioner Hechtman: I have a couple. Sorry and really just responsive. First, the Chair,
10 even though this won't sway you to support the motion. Mr. Yang did mention earlier that this
11 concept of including language in both PCs about... and what I wrote down here as this view is to
12 effect that the areas that this 30-inch wide either... I can't... I don't know if it's 35 or 37-foot
13 long strip on the Middlefield parcel and this 18-inch wide, 42-foot long strip on the Ellsworth
14 property parcel. That will be paved and blended into the pavement of the road be kept clear of
15 impediments to traffic travel. So, I would add that... make that amendment to my own motion
16 to address that. It doesn't solve the permanence problem with I acknowledge but because
17 we're moving... again, my belief is we can't extract easements and what we've heard from the
18 applicant is that they are not offering to grant any easement on the Middlefield side. They
19 would only grant the easement on the Ellsworth side if we were using conventional R-1 zoning,
20 which my motion does not do. It uses the PC Zone and so we don't have in my estimation an
21 offer to grant and easement and for the reasons I expressed before. I'm not wanting to include
22 that in the motion. So, our protection will be the PC zoning, the same reason that people are
23 here today to change... to make a change to the PC zoning that exists, the 2343. This is the
24 process that you would have to go through to get rid of that 30-inch strip on the Middlefield
25 side or the 18-inch strip. Right, you'd have to apply to the City for a permit, there would be
26 public hearings and notice to neighbors and that's our protection. That it's permanent unless
27 something different comes along and a decision making body of this City decides that that
28 different thing justifies a change.
29

30 Chair Summa: Commissioner Lu, did you want to... are you still thinking?

31
32 Commissioner Lu: [unintelligible -off mic]
33

34 Chair Summa: Okay, yeah I think it would be better done as an easement to be honest and I
35 guess that this whole case really is proof of why I think that would be better done that way
36 because PCs... the meanings of PCs get lost over time and I don't find this strong enough. And I
37 also think... I think you might find that giving the Council a range from 24 to 26 for them to
38 decide might be a more successful type of motion here because I think a lot of people really feel
39 it's reasonable the 26. I mean a significant benefit; financial benefit has been given to both
40 sides and there are other benefits. Such as a nice new home in Palo Alto. No one denies that

-
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1 but I just think we've kind of lost perspective a little bit. That we can offer a range to the
2 Council and let them decide what they think is better since they are the decision making body
3 and that might be more agreeable to a majority of the Commission.

4
5 Commissioner Hechtman: I feel like Chair, at least you may not be... well, if you understand the
6 nature of my motion and its reasoning. You know that I can't offer... the only range I could offer
7 is a reduction. Since my range is premised, since my motion is premised on the most that we
8 can ask for is what they are offering. That's a premise is so I can't make a motion consistent
9 with that premise that includes more than they are offering and so and I'm not going to do that.
10 It may be that my... it could be that Commissioner Lu, you know now that I've clarified that I
11 don't want to make easements explicit. In fact, I explicitly don't want to include easements.
12 That may cause him to withdraw his second that and that's fine and if so then then motion will
13 die for lack of a second and somebody else can make a motion with a range or with some other
14 figure.

15
16 Chair Summa: Okay. Commissioner Lu, are you (interrupted)

17
18 Commissioner Lu: Can we briefly check with the applicants just to confirm that they are... would
19 not be willing to have easements on both sides for two PCs zones?

20
21 Chair Summa: We can but we... we could do that if you need to but I thought you were
22 considering either withdrawing your second or suggesting an amendment. And I (interrupted)

23
24 Commissioner Lu: Well, if the applicants agree to that then we can add an amendment with
25 explicit reference to easements and I would be happy to keep the motion as it is.

26
27 Chair Summa: Okay so (interrupted)

28
29 Commissioner Lu: Or, I think both Commissioner Hechtman and I would be open to that
30 amendment and I think it would maybe make some other folks happier too.

31
32 Chair Summa: Because I am kind of concerned we're getting a little in the weeds here and we
33 should vote on this pretty soon if (interrupted)

34
35 Commissioner Hechtman: I like Mr. Lu's [note – Commissioner Lu] suggestion and it may well
36 be that the applicants are not comfortable offering easements on Middlefield or with a PC on
37 Ellsworth. And if so, then we'll have that answer and that Mr. Lu [note – Commissioner Lu] can
38 decide whether to withdraw his second.

39
40 Chair Summa: Okay, why don't you pose your question to the applicants.

-
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1
2 Commissioner Lu: I think they understand the question.

3
4 Chair Summa: Okay.

5
6 Commissioner Lu: Hopefully, yeah I think or just the way we've used our terminology
7 (interrupted)

8
9 Chair Summa: You're probably not (interrupted)

10
11 Commissioner Lu: Yeah, the way we've used our terminology over the last two meetings has
12 been a little bit sloppy so I think this point is not actually clear to me.

13
14 Mr. Hayes: I'm sorry, I had to take a minute there.

15
16 Chair Summa: That's fine.

17
18 Mr. Hayes: I can only speak on behalf of my client and so that would be the Middlefield parcel
19 and we would be willing to make an easement as part of the PC for that 30-inch portion. Mr.
20 Handa would have to speak for himself.

21
22 Mr. Handa: You know, for my parcel I would still prefer if you can do it as R-1 zoning and then
23 we can do it as an easement but if that doesn't work and you know, there's... that option is
24 completely out of table and the only way forward is to make it as an easement as PC. Then you
25 know that... then it is what it is.

26
27 Chair Summa: So, the option of R-1 is not on the table right now so if you would like to answer
28 the... Commissioner Lu's question it might be helpful.

29
30 Mr. Handa: I'm sorry, can you repeat the question that is...?

31
32 Commissioner Lu: I think he did answer. I think you said as very un-ideal but it would be
33 acceptable to have an easement on an additional PC.

34
35 Mr. Handa: Right.

36
37 Commissioner Lu: Yeah.

38
39 Mr. Handa: If that's the only way to move forward, you know then (interrupted)
40

-
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1 Commissioner Lu: Sure.

2
3 Chair Summa: Thank you, Mr. Handa.

4
5 MOTION AMENDED BY THE MAKER

6
7 Commissioner Hechtman: And so, then I would clarify that the motion I made, which in this
8 regard relates to the proposals of the owner of Middlefield and of Ellsworth, includes the
9 proposals that they've just verified. That the specified paved strip, 30-inches by either 35 or 37-
10 feet on Middlefield and 18-inches by 42, would be the subject of an easement granted
11 respectively by each of those two owners to the owners of the existing 20-foot wide easement
12 for Ellsworth Place and that's voluntarily offered by each of those two property owners. So, I
13 would clarify that that is the intent of my motion.

14
15 Chair Summa: Thank you, Commissioner Hechtman. I'm just going to read it really quickly.

16
17 Commissioner Hechtman: [note- video skipped – began mid-sentence] finish typing and then I
18 have at least one correction to get the language right. You ready?

19
20 Ms. Dao: Yeah, what's your correction?

21
22 Commissioner Hechtman: So, in B, the fourth line that start "6-foot setback from"... it's the
23 creek part property. Yeah, "unless", and "it's a greater setback is recommended by the stability
24 analysis" rather than a lesser so it could be more. It's not going to be closer than 6-feet but it
25 could end up being more. Okay, alright and in B, the next line, "expansion of the paved" lets put
26 "paved width of Ellsworth Place by 18-inches for" it's the first 42-feet. The first 42-feet length.

27
28 Ms. French: Commissioner Hechtman, can I just throw out there something because you're
29 talking about the paved width and as we know it's not... the paved width is currently beyond
30 the 20-foot easement so a factor.

31
32 Commissioner Hechtman: Oh, "by 18-inches" I guess we would say "from the edge of the 20-
33 foot easement". That would... that should work. After 18-inches, "from the edge of the 20-foot
34 easement".

35
36 Chair Summa: Commissioner Hechtman, do you want to add language that is analogist to the
37 42-feet for the other?

38
39 Commissioner Hechtman: Yeah, I do, I do. So, I just want to make sure we got this right. Yeah,
40 so now let's go up to A and its "expand the"... so in the second line, "expand the paved width of

-
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1 Ellsworth Place roadway on the property at 2901 to 2905 Middlefield by" ... here's where we're
2 going to add "by 30-inches from the edge of the 20" ... well, it's actually from the property line,
3 right which... because that easement runs... right? "For the first" and here Staff, is it 35 or 37-
4 feet?

5
6 Ms. French: 37 is to the guy wire.

7
8 Commissioner Hechtman: Okay, 37-feet, "for the first 37-foot length"

9
10 [note – several folks started talking at once off mic]

11
12 Commissioner Hechtman: Okay, "the first 37 length as proposed by applicant". Okay, so
13 because we've... and then C, we have now the specified "paved strips would be the subject to
14 an easement which has been voluntarily offered to the residents on Ellsworth by both
15 applicants respectively". Okay, so let me just point out that with this iteration of the motion,
16 this idea that the area has to be kept clear of impediments, we don't need that because the
17 nature of an easement is it has to be useable for it's purpose. And so, like that's why we don't
18 have to tell the Ellsworth person he can't put stuff in the middle of the 20-foot roadway. Yeah,
19 so I'm just saying that's why I'm not including it here (interrupted)

20
21 Chair Summa: Yes, thanks.

22
23 Commissioner Hechtman: Because we've not got it covered in C in a better way and I thank the
24 applicant, both of them for considering this. Hopefully this is the path forward, we'll see.
25 Alright, so that my revised motion and I guess the question for you, Commissioner Lu, is are you
26 standing by your second?

27
28 Commissioner Lu: Yes.

29
30 Chair Summa: Awesome, thank you for that and thank you to the applicants for being flexible.
31 So, unless somebody has something to say, I'm going to call... ask for the vote.

32
33 Mr. Sauls: I did just want to clarify one last item on B. Just at the end about the 3-foot
34 wrought~~red~~ iron fence, if there's any sort of specific location as was discussed earlier, that
35 should be referenced too.

36
37 Commissioner Hechtman: So (interrupted)

38
39 Mr. Sauls: Meaning, you know is this respective to the sight distance triangle or other locations
40 shown on the plans.

-
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1
2 Commissioner Hechtman: So, my intention was to utilize the location of the fence shown on the
3 plans submitted for 702 Ellsworth, which as I understand it are 4-feet behind the sidewalk. Is
4 that right?

5
6 Mr. Sauls: Correct.

7
8 Commissioner Hechtman: Yeah, so my motion does not propose a relocation of that fence
9 beyond what... from the location proposed by the applicant.

10
11 Mr. Sauls: Okay, thank you.

12
13 Chair Summa: Everybody ready to vote? Okay.

14
15 VOTE

16
17 Ms. Dao: Commissioner Akin?

18
19 Commissioner Akin: With great reluctance, yes.

20
21 Ms. Dao: Vice-Chair Chang?

22
23 Vice-Chair Chang: No.

24
25 Ms. Dao: Commissioner Hechtman?

26
27 Commissioner Hechtman: Yes.

28
29 Ms. Dao: Commissioner Lu?

30
31 Commissioner Lu: Yes.

32
33 Ms. Dao: Commissioner Reckdahl?

34
35 Commissioner Reckdahl: No.

36
37 Ms. Dao: Chair Summa?

38
39 Chair Summa: Nope.

- 40
-
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1 Ms. Dao: Motion fails 3-3.

2
3 MOTION FAILED 3(Akin, Lu, Hechtman) -3(Chang, Reckdahl, Summa) -1 (Templeton absent)

4
5 Chair Summa: So, in order, Commissioner Chang [note – Vice-Chair Chang], Commissioner
6 Reckdahl, would you like to speak to your no votes?

7
8 Vice-Chair Chang: Sure, I think I said it before. I mean the... my reason for the 26, I know it feel
9 small but at the sidewalk the 26 is really important for safety. There's a reason it's in our Code, I
10 feel strongly about the safety of Midtown, I think it is incumbent upon us as the Planning and
11 Transportation Commission to look out for the safety of our residents. Thanks.

12
13 Commissioner Reckdahl: I would echo that, also the sight triangle I think we need to have
14 nothing above 1-foot in the south sight triangle.

15
16 Chair Summa: I would agree with my colleagues who just spoke. So, I think given the hour, we
17 should make a decision about whether we're hearing the third thing because now we have to
18 continue with this item.

19
20 Ms. French: Well, I gave George permission to leave. He has to be awake in the morning at 7 so
21 or start work. So, if anyone where to have Building Code related questions, we don't have our
22 Chief Building Official for that third item.

23
24 Chair Summa: Colleagues, would you like to continue the item or would like to... I mean we
25 have to continue with Mr. Handa and Dewey project but would you like to continue the third
26 item?

27
28 Commissioner Reckdahl: Yeah, I don't see any way that we're going to make that in a timely
29 manner so I think we're going to... probably just punt that one to the next meeting.

30
31 Chair Summa: Go ahead.

32
33 Commissioner Hechtman: Yeah, so I think so too. I think this could... this ~~could~~ item could take
34 us a while longer and so really the... I guess the question I would have for Staff is right now we
35 have nothing on our 8/30 Agenda, for August 30th. Right, we talked about that at the beginning
36 of the meeting so we could move this last item, the electrification, to that. It would be the sole
37 item or we could move it to September 13th and so I guess one of the questions I have is your
38 sense of the September 13th that's it's already going to be a very full Agenda?

39
40 Ms. French: Yes, that's a full Agenda.

-
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1
2 Commissioner Hechtman: Alright, so it sounds like we should move it to... just move it to August
3 30th and have a short meeting.

4
5 Chair Summa: Does that work for you Ms. French because I know there was (interrupted)

6
7 Ms. French: There's been pressure to bring it back to Council, the electrification item.

8
9 Chair Summa: But does it work for you to have to have a meeting on the 30th?

10
11 Ms. French: Yes.

12
13 Chair Summa: Okay, alright, would you like to make a motion... would somebody like to make...
14 would you like to make a motion to move it to the 30th?

15
16 Commissioner Hechtman: Maybe somebody else can.

17
18 Mr. Yang: We should wait until we can conclude with this and then we can make that formal
19 motion to continue it later. Yeah, thanks.

20
21 Chair Summa: Alright, so back to the matter at hand. So, what I'm looking for is an alternate
22 motion.

23
24 Commissioner Lu: Would... oh, do you want to go first?

25
26 Commissioner Hechtman: It seems like from what I've heard from the Commissioners who
27 voted no, the interest by those Commissioners would be at a minimum increasing the 30-inches
28 on Middlefield and the 18-inches on Ellsworth. And it wasn't really clear to me whether the
29 intention there, since we're 2-feet short... since 24 was that motion and there's Commissioners
30 looking for 26. Whether they were thinking it was 1-foot on each side or 2-feet on just one
31 side? So, I think you could clarify that and that would fit it.

32
33 I also think probably to address Commissioner Reckdahl's issue, there would need to be a
34 change at the end of B where I've referenced the rod iron fence.

35
36 Also, I know that in the motion on... at the last meeting, there was... I think it was part of the
37 motion that the easement would not just be for the first 37-feet on Middlefield or 42-feet on
38 the Ellsworth property but for the full 100-feet.

- 39
-
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1 Chair Summa: No, no, we actually... that was what was initially proposed and then we modified
2 that to accommodate both Mr. Dewey and Mr. Handa.

3
4 Commissioner Hechtman: Okay, alright so I'm happy that's not on the [unintelligible].

5
6 Chair Summa: So, and I think Ms. French can explain this but I think it was not evenly
7 distributed and I think it's probably because it's sort of unused area on... in a sense on the
8 Dewey side where as Mr. Handa is trying to put a house there. So, the distribution, it's in our
9 Staff Report somewhere, it was (interrupted)

10
11 Vice-Chair Chang: It was an additional foot on each side. I have my hand up so I'm going to
12 (interrupted)

13
14 Commissioner Hechtman: Okay, yeah.

15
16 Vice-Chair Chang: I've having my hand up for a while.

17
18 Ms. French: That's correct, that's what (interrupted)

19
20 Chair Summa: It's 36-inches and Ms. French will... it's 36-inches I believe on 2901 and
21 (interrupted)

22
23 Ms. French: It was 3-foot 6 I believe, so it's... it was going to be 30-inches but then you add a
24 foot to that and that makes it (interrupted)

25
26 Chair Summa: So, it's 30... yeah.

27
28 Ms. French: It's 36 plus another six so yeah.

29
30 Chair Summa: Okay, could you just verify where those numbers are in our Staff Report? I know
31 they're here but...?

32
33 Ms. French: I was thinking it might be in the motion so Packet Page... sorry. Not (interrupted)

34
35 Commissioner Akin: There's the clarification on Page 80 which describes an additional foot on
36 each property. Was that what you were after?

37
38 Chair Summa: I am looking... I am asking for if it where to be wider than the street to 26-feet.
39 What the distribution was on either side. It was not even from the middle the way Staff had
40 suggested it and it's in here some place but if somebody could (interrupted)

-
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1
2 Ms. French: Let's see, 3-foot 6-inch wide asphalt is stated on Page 70... Packet Page 77 for the
3 Middlefield. It says 3-foot 6-inch wide asphalt.

4
5 Chair Summa: Okay.

6
7 Ms. French: Which is the same as saying 42-inches, right?

8
9 Chair Summa: And then what is it for Ellsworth?

10
11 Ms. French: Well, then it would be 30-inches because it's... right?

12
13 Commissioner Hechtman: No, well yeah, 30-inches.

14
15 Ms. French: 18-inches plus 12-inches.

16
17 Chair Summa: Yeah, okay that's what I was doing [unintelligible](interrupted)

18
19 Commissioner Hechtman: Its on Packet Page 89, actually the draft resolution which refers to a
20 2-foot 6 inch which is 30-inch. So, it was an addition of 12-inches on each of the parcels.

21
22 Chair Summa: Okay, so if we make those changes, we can keep all of this language but make
23 the changes. The appropriate changes in both A and B.

24
25 Commissioner Hechtman: Yeah.

26
27 Chair Summa: And Commissioner Reckdahl, would you like to work on language for the sight
28 triangle on Ellsworth while Ms. Dao is working on updating the motion?

29
30 Commissioner Reckdahl: Can we assume that the term sight triangle is well defined or do we
31 have to define what a sight triangle is?

32
33 Mr. Sauls: The sight triangle is very clearly defined in our Fence Code handout so if you use that
34 term we'll understand what you mean by it.

35
36 Commissioner Reckdahl: Okay, very good.

37
38 Mr. Sauls: But if you're thinking of a different sight distance triangle that's not described as that
39 45 degree angle with 35-feet on each side at the intersection of the curbs then obviously we
40 don't have that.

-
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1
2 Commissioner Reckdahl: As I mentioned earlier, I think flatter would be better but at this point
3 I'm happy with just the standard 45 degree.

4
5 Commissioner Hechtman: Chair, let me mention that in the motion that we're looking at now.
6 The draft motion that somebody might make, you need to take out of A and B "as proposed by
7 the applicant" because this version is not what they proposed.

8
9 Chair Summa: Yes.

10
11 Commissioner Hechtman: Right so its... okay and then similarly, I'll wait for Ms. Dao to take care
12 of B. And then in C, I think you just have to take out everything after easement because those
13 26... those easements have not been offered.

14
15 Chair Summa: And then also the bit about the fence needs to be changed a bit too.

16
17 Commissioner Hechtman: That's... yeah Keith's [note – Commissioner Reckdahl] working on
18 that.

19
20 Chair Summa: And that's... yeah.

21
22 Ms. Dao: Yes.

23
24 Commissioner Reckdahl: Oh okay, I'm sorry, so at the end of B, delete everything starting "and
25 restrictions on the front yard fence" and say "the sight triangle on the south side of Ellsworth"
26 (interrupted)

27
28 Vice-Chair Chang: It is by definition on Ellsworth because this... B is regarding Ellsworth.

29
30 Commissioner Reckdahl: Oh okay, well to... it doesn't hurt to be clear about that I guess but it is
31 kind of redundant. "Shall not be obstructed by plants, fences or other objects taller than 1-
32 foot".

33
34 Vice-Chair Chang: Sight should be s-i-g-h-t.

35
36 Commissioner Reckdahl: Oh yes.

37
38 Vice-Chair Chang: Just to be clear because I think we're getting... we always get confused.

39
40 Ms. French: Might I weigh in just for a moment?

-
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1
2 Chair Summa: Please.

3
4 Ms. French: Because there's a fire hydrant that's taller than 1-foot. There's some other things
5 that are there like (interrupted)

6
7 Chair Summa: Yeah, I don't think this language (interrupted)

8
9 Ms. French: Stop signs and things.

10
11 Chair Summa: I think we want to be specific to the fence here. We don't want them
12 (interrupted)

13
14 Commissioner Reckdahl: Yeah, I (interrupted)

15
16 Chair Summa: We've already said that they can keep existing trees and we don't want to imply
17 that they have to remove the fire hydrant which is sort of okay... which is okay. So (interrupted)

18
19 Commissioner Reckdahl: I would say the fire hydrant if we say on the property (interrupted)

20
21 Chair Summa: And I think you want to just say where you want the fence and how high you
22 want it to be because the fence is the issue.

23
24 Commissioner Reckdahl: I don't care where they put the fence as long as they don't put it in the
25 sight triangle.

26
27 Chair Summa: Okay.

28
29 Commissioner Reckdahl: If they wanted to put a 1-foot fence in the sight triangle, I have no
30 problem with that.

31
32 Chair Summa: Why don't we say "shall not be obstructed by new"... what was your word,
33 [unintelligible]?

34
35 Commissioner Hechtman: Impediments.

36
37 Chair Summa: Impediments.

38
39 Commissioner Reckdahl: Okay.

- 40
-
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1 Chair Summa: Including a fence but new impediments. We're not telling them to move things
2 that are there. We don't want new things.

3
4 Commissioner Reckdahl: Yeah, I mean right now there's one tree there and the fire hydrant and
5 then a post. Okay, the fire hydrant is not on the property so they have no control over that
6 anyway.

7
8 Ms. French: True, just that it's in the sight triangle.

9
10 MOTION #2

11
12 Chair Summa: Sight triangle on the south. Everybody happy with that language? Okay. Do I have
13 a second?

14
15 Commissioner Hechtman: Just before you second, I think... and again, I'm not supportive of this
16 motion. I'm just helping to craft it so it's clear.

17
18 Chair Summa: Thank you.

19
20 Commissioner Hechtman: In C I think I had us take out a little too much language because we
21 have to say who the easement is to be granted too and that's to... maybe we can go back up to
22 the motion that failed and see. I thought we made a reference to the residences on Ellsworth.
23 Okay, so back down to this one, "to an easement granted to the residents on Ellsworth".

24
25 Chair Summa: That's helpful, thank you.

26
27 Ms. French: Would it be residents or property owners?

28
29 Commissioner Hechtman: Well, it's actually it's the property owners. Right, it's actually... it's
30 not even the property owners. It's the parcels. The easements granted, right, it runs with the
31 land. It's to the... yeah.

32
33 Chair Summa: Everyone ready to vote? Okay Ms. Dao, would you please call the vote?

34
35 Vice-Chair Chang: Who is it moved by and who is it seconded by?

36
37 Chair Summa: Oh, good point.

38
39 Commissioner Hechtman: I think the Chair. I kind of got the sense that the Chair was building
40 the motion.

-
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1
2 Chair Summa: Okay, do I have a second for my motion?

3
4 SECOND

5
6 Commissioner Akin: I'll second.

7
8 Chair Summa: Okay, seconded by... would you like to speak to your second?

9
10 Commissioner Akin: I think this is a better compromise that I hope we can make stand in
11 Council.

12
13 Chair Summa: Okay thank you. I don't need to speak and if I may now ask Ms. Dao to call the
14 vote.

15
16 VOTE

17
18 Ms. Dao: Chair Summa?

19
20 Chair Summa: Yes.

21
22 Ms. Dao: Commissioner Reckdahl?

23
24 Commissioner Reckdahl: Yes.

25
26 Ms. Dao: Commissioner Lu?

27
28 Commissioner Lu: No.

29
30 Ms. Dao: Commissioner Hechtman?

31
32 Commissioner Hechtman: No.

33
34 Ms. Dao: Vice-Chair Chang?

35
36 Vice-Chair Chang: Yes.

37
38 Ms. Dao: Commissioner Akin?

39
40 Commissioner Akin: Yes.

-
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1
2 Ms. Dao: Motion carries 4-2.

3
4 MOTION PASSED 4(Akin, Chang Reckdahl, Summa) -2(Lu, Hechtman) -1(Templeton absent)

5
6 Chair Summa: Thank you very much. Would you like to speak to your no vote?

7
8 Commissioner Hechtman: Oh, well I guess I think I've made pretty clear my concern about our
9 ability to require an applicant to grant rights over it's property to other private property
10 owners. At least under these circumstances if under... if not under all circumstances.

11
12 Chair Summa: Thank you. Commissioner Lu?

13
14 Commissioner Lu: I think my position is also mostly clear. I'm not so hung up on the 26 versus
15 24-foot but I think the sight triangle language is a bit new and it's pretty uncertain on how that
16 would actually pan out and so I'm not comfortable recommending that to Council.

17
18 Chair Summa: Okay, thank you very much and thank you very to the applicants and all the other
19 interested parties who attended tonight and our Staff for being so helpful so.

20
21 **Commission Action:** Motion by Hechtman, seconded by Lu. Failed 3-3 (Chang, Reckdahl,
22 Summa no; Templeton absent)

23
24 **Commission Action:** Motion by Summa, seconded by Akin. Passed 4-2 (Hechtman, Lu no;
25 Templeton absent)

-
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SILICON VALLEY SOIL ENGINEERING

GEOTECHNICAL CONSULTANTS

File No. SV2505

August 31, 2023

Handa Developers Group
4381 Samson Way
San Jose, CA 95124

Attention: Nitin Handa

Subject: Proposed Residence
APN 127-35-152
700 Ellsworth Place
Palo Alto, California

GEOTECHNICAL CLARIFICATION

Reference:

- *Geotechnical Investigation* report (File No. SV2505 dated December 27, 2022).

Dear Nitin Handa:

Pursuant to your request, we are pleased to transmit herein the results of our geotechnical clarification for the proposed residence with detached garage. The subject site is located at 700 Ellsworth Place in Palo Alto, California.

Based on our review of the above-mentioned soil report and project civil plans, the proposed structure loading including detached garage will not impact the integrity of the existing adjacent concrete lined Matadero Creek and the creek will not impact the proposed building structure foundation. The bottom of the creek is approximately 8 feet elevation and the proposed garage floor is 17.52 feet elevation. The proposed garage foundation bottom elevation is 2.5 feet plus slab section (~1 foot) which is approximately 13.7 feet elevation. As a result (worst case scenario), the vertical difference is 6 feet $((17.52 - 2.5 - 1) - 8 = \sim 6)$. The horizontal distance at the closet location to the creek bank is approximately 9 feet. Therefore, the location of the proposed structures will not impact the influence zone of creek. The influence zone is defined as the imaginary line extending at the outer edge of the foundation at a downward slope of 1H:1V (one unit horizontal distance to one unit vertical distance) - extending downward towards the creek bottom. The influence line is (9H:6V) less than 1H:1V whereas the structure load is not impacting the creek.

If you have any questions or require additional information, please feel free to contact our office at your convenience.

Very truly yours,
SILICON VALLEY SOIL ENGINEERING



Sean Deivert
Project Manager



Vien Vo, P.E.



SV2505.AGR/Copies: 1 to Handa Developers Group

From: [Ken Hayes](#)
To: [Nitin Handa](#)
Subject: Fwd: Ellsworth. Photos (3) of a person on bike
Date: Monday, August 14, 2023 10:21:05 AM

FYI

Thanks,
Ken
Sent from my iPhone

Begin forwarded message:

From: Richard Dewey <rrd@deweyland.com>
Date: August 13, 2023 at 10:30:45 AM PDT
To: cjs@jsmf.com, khayes@thehayesgroup.com, gblack@hextrans.com
Subject: Ellsworth. Photos (3) of a person on bike

All. 3 photos of a person on a bike. She is 5'3" tall. FYI.

Taken from the STOP SIGN at Ellsworth on Sat Aug 12

Note in each photo that the biker is clearly visible from the driver's seat in the car.

Note in each photo that the BIKER IS VISIBLE FROM WAY ABOVE THE TOP OF THE PROPOSED FENCE at 3' tall set back 4' from back of sidewalk

Staff at City of PC: planning and transportation should see these photos for the perspective of safety and visibility and why the PTC is so off base to limit the fence to 12" in height in the safety triangle.

Seeing the top of sidewalk is irrelevant

Seeing the pedestrian, biker or a car over the 3' fence is

As these photos clearly show, all are clearly visible over the 3' proposed fence.

Comments?

Thx,

Rich



Item 7

Attachment F - Applicant
Correspondence and
photographs received
from applicant after
August 9

702 Ellsworth/Middlefield PC Applicant Bicycle Rider Photo



Item 7

Attachment F - Applicant
Correspondence and
photographs received
from applicant after
August 9



Photographs by City staff: Ellsworth Intersection with Middlefield Road







City Council Staff Report

From: City Manager
Report Type: ACTION ITEMS
Lead Department: Utilities

Meeting Date: September 18, 2023
Report Staff:2306-1660

TITLE

Public Hearing: Adoption of a Resolution Approving Capped-Price Winter Natural Gas Purchases for Winter 2023-24 and Amending the FY 2024 Gas Fund Budget to Fund These Purchases; Amending the Gas Utility Long-term Plan Objectives, Strategies and Implementation Plan; and Amending Rate Schedules G-1 (Residential Gas Service), G-2 (Residential Master-Metered and Commercial Gas Service), G-3 (Large Commercial Gas Service), and G-10 (Compressed Natural Gas Service); CEQA status: not a project under Public Resources Code 15378(b)(5) and exempt under Public Resources Code 15273(a)

RECOMMENDATION

The Finance Committee recommends that City Council (Council) adopt a resolution (Attachment A):

1. Implementing capped-price winter natural gas purchases for winter 2023-24 with a maximum commodity rate impact of 15 cents per therm;
2. Amending the FY 2024 Budget Appropriation in the Gas Fund (requires 2/3 approval) by:
 - a. Increasing the Gas Operating Budget for Commodity Purchases by \$2,000,000; and
 - b. Increasing the Gas Operating Retail revenue estimate by \$2,000,000
3. Amending the Gas Utility Long-term Plan (GULP) Objectives, Strategies and Implementation Plan (Attachment B) to implement the capped-price winter gas purchases intended to manage potential winter 2023 gas price spikes; and
4. Amending Rate Schedules G-1 (Residential Gas Service), G-2 (Residential Master-Metered and Commercial Gas Service), G-3 (Large Commercial Gas Service), and G-10 (Compressed Natural Gas Service) (Attachment C), effective November 1, 2023.

EXECUTIVE SUMMARY

Based on the Finance Committee's recommendation on August 15, 2023 ([Finance Committee Aug 15, 2023¹](#)), staff is seeking Council approval to implement capped-price winter natural gas purchasing for winter 2023-24.

Capped-price winter gas purchasing involves continuing to purchase monthly gas at prices tied to a published market monthly index, but purchasing the gas with a price cap in place. Purchasing capped price gas functions as an insurance policy, in which the City will pay an additional charge to a gas supplier, in order to limit the price the City pays for gas to a maximum of \$2 per therm, and thus avoiding exposure to extremely high market prices like those seen during winter 2022-23.

The City's current monthly market-price-based gas purchasing and pass-through commodity rate strategy has been in place since 2012 when the strategy was approved by Council ([Council Approval of Pass-through Rates](#))². Under this strategy, the City purchases baseload gas at prices tied to a published gas market monthly index, adjusted to account for delivery losses to the customer's meter and a municipal purchase discount.

This past winter (2022-23), natural gas prices rose dramatically across the western United States, resulting in high customer bills and numerous customer inquiries. In response, staff explored alternatives for mitigating the impact of similar market events in the future. Staff identified a gas procurement strategy – capped-price winter gas purchasing – that could limit the impact of another unexpected surge in prices and be implemented in time for this upcoming winter (2023-24).

The actual cost of this product cannot be precisely determined until staff receives proposals from eligible counterparties; staff estimates that implementing capped-price winter gas purchasing for winter 2023-24 could result in an additional cost of \$1.93 million-\$3.03 million and an increase of 4-6% in the median monthly residential customer gas bill over the year, assuming the product is available. Staff recommends Council approve a maximum customer commodity rate impact of 15 cents per therm on gas sales over a 12-month period. Staff recommends Council approve a maximum customer commodity rate impact of 15 cents per therm on gas sales over a 12-month period. Resulting in a percentage breakdown of an 8% increase on an annual bill. The City will purchase as much capped-price winter gas as is available and projected to be necessary to serve load while staying within the 15 cents per therm impact limit. The Council-approved \$4 per therm maximum commodity charge will not change.

GULP is the vehicle by which the gas supply portfolio is managed consistently, transparently, and with input from Council. Council amended the GULP Objectives, Strategies, and Implementation

¹ <https://cityofpaloalto.primegov.com/Portal/Meeting?meetingTemplateId=12741>

² https://www.cityofpaloalto.org/files/assets/public/from-archive/agendas-minutes-reports/reports/city-manager-reports-cmrs/2012/final-staff-report-id-2552_gas-utility-long-term-plan-revisions.pdf

Plan most recently in 2017 ([Staff Report #7967](#))³. Council adoption of staff's proposed capped price winter natural gas purchases to manage potential winter 2023 natural gas price spikes requires conforming changes to GULP which are reflected in Attachment B. Since 2017, there have been a number of other Council-approved changes to policies and operations that require conforming changes to GULP. For simplicity, those changes will be addressed in a separate future staff report.

BACKGROUND

Prior to the 2001 energy crisis, Palo Alto engaged in minimal short-term natural gas commodity hedging. Hedging is a risk management strategy used to achieve some level of cost stability despite fluctuations in commodity prices. The energy crisis sent market prices soaring, and the City's largely unhedged gas portfolio experienced gas supply cost shocks that required four major retail gas rate increases in FY 2001 (15%, 25%, 35% and 67%). In addition, \$9 million was withdrawn from the Gas Supply Rate Stabilization Reserve (G-SRSR) leaving a near-zero balance.

In 2001, in direct response to the financial pain caused by gas rate increases experienced during the energy crisis, staff developed and Council approved a gas laddering strategy, whereby a portion of the City's gas needs would be purchased at fixed-prices and capped-prices over a 36-month time horizon. The goal of this purchasing strategy was to smooth or stabilize gas supply costs relative to the extremely volatile market. The gas laddering strategy was only applicable to residential and small commercial customers. Palo Alto's eight largest customers managed their own gas portfolio costs by electing either a monthly market-based commodity rate, a fixed rate for 12 or 24 months, or a custom rate.

In the summer of 2008, the credit crisis combined with increased gas supply from new shale developments sent market prices plummeting. As anticipated in a falling market, Palo Alto's average gas supply cost became higher than wholesale market prices, and commodity rates were therefore higher since some fixed-price gas was purchased prior to the price decline. This prompted a review of the laddering strategy.

In 2012, Council approved a new monthly market-price-based purchasing and pass-through commodity rate strategy. The City began purchasing gas at prices tied to a published gas market monthly index, adjusted to account for delivery losses to the customer's meter and a municipal purchase discount. That purchase price, which made up the commodity charge, was passed through in customer's retail gas rates. This monthly market-price-based purchasing and pass-through commodity rate strategy has remained in place since.

DISCUSSION

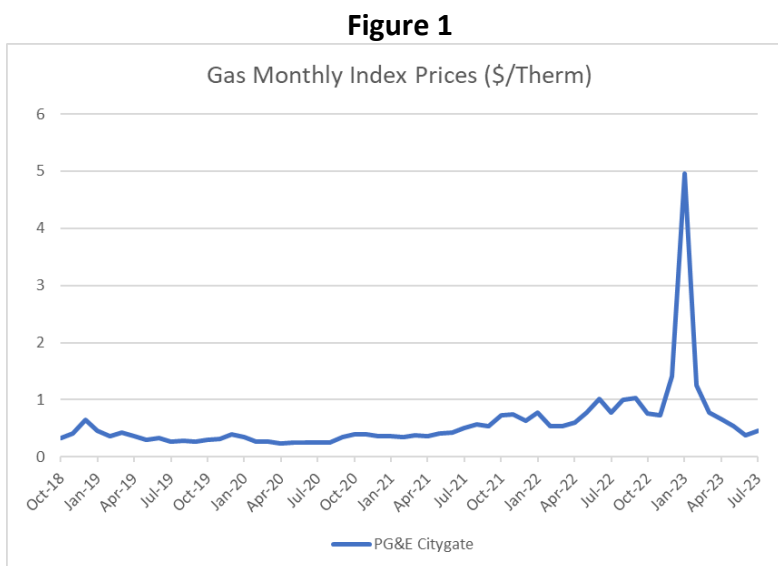
Winter 2022-23 Gas Prices

This past winter (2022-23), natural gas prices rose dramatically across the western United States due to a confluence of factors, including: (a) historically cold December temperatures, (b)

³ <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2017/id-7967-6-5-17-ccm.pdf>

unusually low regional gas storage levels, (c) constraints on the availability of natural gas supplies flowing into California, and (d) an increased reliance on natural gas in the electric power sector as a result of the ongoing drought's impact on hydroelectric supplies. Though fundamental conditions were influencing the increase in prices, those factors alone do not explain the unprecedented price spike. January natural gas prices were five times greater than November prices. In December 2022, Council increased the maximum allowed commodity rate passed through to customers from \$2 per therm to \$4 per therm, but the City's price to purchase January gas was \$5 per therm, resulting in a \$1.8M shortfall discussed in more detail below. The sudden and extreme increase in natural gas prices is under investigation by Federal Energy Regulatory Commission (FERC) and California Public Utilities Commission (CPUC). The preliminary timeline for these investigations to yield findings is in the spring of 2026, subject to change.

Figure 1 shows the published gas market monthly indexes from October 2018 through July 2023, including the winter 2022-23 price surge. The PG&E Citygate hub in Northern California is a delivery point for Palo Alto's gas purchases and the index on which the city gas commodity rates are based.



When staff began to see signs of higher gas prices in late November and early December 2022, attempts were made to inform customers in advance through utility bill messaging, website notices, social media, email newsletters, and other community forums. Customers were encouraged to take action and save energy to try to avoid surprisingly high utility bills. The gas market monthly index for January 2023 settled at just below \$5 per therm, above the Council-approved maximum commodity rate for the first time in history.

Because the gas market monthly index exceeded the maximum Council-approved commodity rate, the full cost of January gas was not passed through to customers; instead about \$1.84 million in reserves was withdrawn to cover the difference between the maximum commodity

rate and market purchase price. Even so, the impact on customer bills was significant, and the City received a large number of customer inquiries. The City responded by offering resources to help customers with higher than anticipated utility bill costs, including access to free home efficiency assessments through the Home Efficiency Genie and payment arrangements. In April 2023 Council approved gas and electric ([Staff Report 2303-1209](#))⁴ rebates of \$2.4 million, funded by the City's General Fund, to compensate residential customers for the high energy bills they experienced.

Gas prices dropped and began to stabilize to levels under \$1 per therm in March 2023, and monthly indexes as well as price forecasts for the upcoming winter 2023-24 have remained below the \$1 per therm level to present. However, due to the dramatic rise in gas prices and resulting high customer bills, staff explored alternative gas procurement strategies that would limit the risk and impact of another unexpected surge in prices and could be implemented in time for this upcoming winter 2023-24.

Recommended Capped-Price Winter Gas Purchase

The capped-price winter gas purchasing alternative involves continuing to purchase monthly gas at prices tied to a published market monthly index, but also purchasing the gas needed for the coldest winter months with a price cap in place. The estimated cost of purchasing the price cap is \$2.0 million-\$3.0 million for December 2023-February 2024. This functions as an insurance policy and limits the price paid to a maximum of \$2 per therm, a price consistent with the pre-winter 2022-23 Council-approved maximum commodity rate. For example, if the monthly index settles below \$2 per therm, the City's purchase price would be the monthly index; on the other hand, if the monthly index settles at or above \$2 per therm, the City's purchase price would be \$2 per therm.

In order to minimize customer bill impacts, staff proposes spreading the cost of the price cap over the calendar year. Commodity charges are one part of the City's [monthly gas volumetric and service charges](#)⁵, which are listed in the City's gas rate schedules and shown by month.

December, January, and February are typically the coldest and most expensive months for gas in California and the most at risk for dramatic rises in gas prices due to winter supply and demand and market fundamentals. These were the three months during this past winter 2022-23 when the market monthly indexes settled at the highest levels, from above \$1.25 per therm to just shy of \$5/therm. Given the cost of a \$2 per therm price cap, staff only recommends purchasing gas with the price cap in place for the December, January, and February months and recommends continuing to purchase gas without the price cap for the other months of the year.

⁴ <https://cityofpaloalto.primegov.com/Portal/viewer?id=1954&type=0>

⁵ <https://www.cityofpaloalto.org/files/assets/public/utilities/rates-schedules-for-utilities/residential-utility-rates/monthly-gas-volumetric-and-service-charges-residential.pdf>

If approved by Council, the capped-price winter purchasing strategy will be implemented in accordance with the Energy Risk Management [Policy](#)⁶, Guidelines, and Procedures. The City solicit bids from a list of pre-approved counterparties ([Staff Report 14551](#))⁷ for all natural gas purchases to ensure competitive pricing and consistent, robust contract terms. The amended rate schedules associated with this change will be effective November 1, 2023.

Finance Committee Review

Staff presented the two alternatives to the Finance Committee on August 15, 2023, seeking their recommendation on whether to maintain the current market-price-based gas purchasing and pass-through commodity rate strategy or implement the capped-price winter gas purchasing alternative for winter 2023-24. Their recommendation (by a vote of 3-0) for Council approval was to implement capped-price winter gas purchasing for winter 2023-24.

Alternative Strategies Not Recommended

The default alternative is to maintain the current market-price-based gas purchasing and pass-through commodity rate strategy for this upcoming winter 2023-24 with no price spike mitigation measures. Considerations for maintaining the current policy include: 1) energy market prices are inherently unpredictable and volatile, but gas prices (including for the upcoming winter) have come down significantly and stabilized since March 2023; 2) Palo Alto's commodity rates are generally less than PG&E's; and 3) this policy yields the lowest average supply cost over many years of implementation.

Considerations for revising the current strategy and implementing capped-price winter gas purchasing include: 1) reserve levels will be protected, protecting against the need for future rate increases; 2) customer costs will be higher if implemented over many years; 3) this acts as an insurance policy that adds cost but may not be used; 4) this is an uncommon strategy in gas markets, and thus the capped-price product may not be readily available from suppliers; and 5) this may result in an additional cost that is even greater than staff's estimate, if the market is very volatile, or lower than staff's estimate if the market is relatively stable.

Staff is presenting the capped-price winter gas purchasing alternative because it could be implemented in time for this upcoming winter. There are also other alternatives that could potentially be considered for the future. These alternatives, which would take additional resources and time to evaluate, plan, and implement, include: 1) establishing an additional special reserve to manage gas price spikes; 2) making a limited volume of fixed-price gas purchases; 3) reverting to a full laddering strategy; 4) investing in gas production assets; and 5) investing in gas storage.

⁶ <https://www.cityofpaloalto.org/files/assets/public/sustainability/policies-and-plans/attachment-c-energy-risk-management-policy-2018.pdf>

⁷ <https://portal.laserfiche.com/Portal/DocView.aspx?id=59239&repo=r-704298fc&searchid=6445f704-ce44-46fc-adc1-0d9e3606c5af>

Changes to GULP Needed if Council Adopts Capped Price Winter Gas Purchase Strategy

The 2017 GULP update included the change from a hedged portfolio to market-based retail gas rates. Those commodity rates have been in effect since 2013. Cost containment applied to winter 2023 gas purchases, if adopted, requires changes to GULP as shown in Table 1 below. The GULP Objectives, Strategies and Implementation Plans are attached. While some other items also need updates, staff is not proposing changes other than those associated with the gas purchasing strategy at this time for the sake of simplicity. Administrative updates will be brought to Council in a separate staff report.

Table 1: Market Price Transparency in GULP

GULP	Current	Proposed
Objective 1	Pass a market cost signal through to customers.	Pass a market supply cost signal through to customers with measures to protect against price spikes applied during winter months.
Strategy 1	<ul style="list-style-type: none"> a. Purchase natural gas at monthly and daily market index prices. b. Change gas supply rate monthly to reflect market prices. 	<ul style="list-style-type: none"> a. Purchasing natural gas at monthly and daily market index prices; b. Changing gas supply rates monthly to reflect market prices; and c. Purchasing physical capped-price gas for some or all forecasted natural gas volumes for December through February, provided that the cost of the price caps results in no more than a 15 cents per therm impact on retail commodity gas rates.
Implementation Plan Item 1	<ul style="list-style-type: none"> a. Continue to implement market-based supply purchases and commodity rates. 	Implement market-based supply purchases and commodity rates with measures to protect against price spikes applied during winter months by: <ul style="list-style-type: none"> a. Developing a new purchasing plan to be approved by the Director of Utilities; and c. Conducting customer communication and outreach.

FISCAL/RESOURCE IMPACT

There are no additional fiscal or resource impacts of maintaining the current market-price-based natural gas purchasing and pass-through commodity rate strategy.

There is a fiscal impact associated with implementing the capped-price winter natural gas purchasing alternative for winter 2023-24; no additional staff resources are needed. The cost of the price cap for December 2023-February 2024 is estimated at \$0.175-\$0.275 per therm, based on recent supplier quotes, resulting in an additional estimated gas supply cost of \$2.0 million-\$3.0 million to the City, assuming the capped price product is available on the market. Staff recommends an appropriation of \$2.0 million in the FY 2024 Gas Operating budget in the Commodity Purchase category to increase the budget from \$20.8 million to \$22.8 million, which will be offset by increased retail gas prices and corresponding revenues from customers.

The commodity charge for customer gas rates would continue to be based on the monthly market price, which will include the cost of the December 2023-February 2024 purchase price cap, applied over 12 months. The estimated cost impact is \$0.07-\$0.11 per therm, which would result in an increase of 4-6% in the median monthly residential customer bill over the year if capped price purchases prove necessary and available. The increase would be 4-6% for the winter bill months (November 2023-March 2024) and 3-5% for the summer bill months (April 2024-October 2024).

Table 2 shows the median monthly residential customer bill and the projected impact based on the estimated cost of \$0.07 per therm or \$0.11 per therm for the price cap.

Table 2

Median Monthly Residential Bill - Projected Impact						
Season	Therms	Bill Estimate	Commodity Cost Increase		Commodity Cost Increase/Bill Estimate	
			\$0.07	\$0.11	\$0.07	\$0.11
Winter (Nov-Mar)	54	\$ 99.80	\$ 3.78	\$ 5.94	4%	6%
Summer (Apr-Oct)	18	\$ 40.52	\$ 1.26	\$ 1.98	3%	5%
Annual	33	\$ 65.22	\$ 2.31	\$ 3.63	4%	6%

STAKEHOLDER ENGAGEMENT

The Finance Committee reviewed the alternatives presented by staff at its August 15, 2023 ([Finance Committee Aug 15, 2023](https://cityofpaloalto.primegov.com/Portal/Meeting?meetingTemplateId=12741))⁸ meeting and voted unanimously to recommend the capped price gas purchasing strategy to Council. If adopted by Council, the website will be updated to reflect the change in the commodity rate calculation in the [Monthly Gas Volumetric and Service Charges](https://www.cityofpaloalto.org/files/assets/public/utilities/rates-schedules-for-utilites/residential-utility-rates/monthly-gas-volumetric-and-service-charges-residential.pdf)⁹ document. In addition, customers will be notified via bill inserts and social media.

⁸ Finance Committee Staff Report

<https://cityofpaloalto.primegov.com/Portal/Meeting?meetingTemplateId=12741>

⁹ Monthly Gas Volumetric and Service Charges <https://www.cityofpaloalto.org/files/assets/public/utilities/rates-schedules-for-utilites/residential-utility-rates/monthly-gas-volumetric-and-service-charges-residential.pdf>

ENVIRONMENTAL REVIEW

Council's approval of capped-price winter natural gas purchasing for winter 2023-24, amendments to the FY 2024 Gas Fund budget appropriation and amendments to the Gas Utility Long-term Plan (GULP) Objectives, Strategies and Implementation Plan does not require California Environmental Quality Act review, since these actions do not meet the definition of a project under Public Resources Code Section 21065 and CEQA Guidelines Section 15378(b)(5), because these are administrative governmental activities which will not cause a direct or indirect physical change in the environment, and therefore, no environmental assessment is required. The Council finds that changing the Commodity Charge Cost Component of gas rates schedules to meet operating expenses, purchase supplies and materials, meet financial reserve needs and obtain funds for capital improvements necessary to maintain service is not subject to the California Environmental Quality Act (CEQA), pursuant to California Public Resources Code Sec. 21080(b)(8) and Title 14 of the California Code of Regulations Sec.15273(a). After reviewing the staff report and all attachments presented to Council, the Council incorporates these documents herein and finds that sufficient evidence has been presented setting forth with specificity the basis for this claim of CEQA exemption.

ATTACHMENTS

Attachment A: Resolution Approving Capped-Price Winter Natural Gas Purchase for Winter 2023-24 and Amending the FY24 Gas Fund Budget

Attachment B: GULP Revisions 2023 Winter Hedging

APPROVED BY:

Dean Batchelor, Director of Utilities

Staff: Karla Dailey, Acting Assistant Director

Jason Huang, Resource Planner

* NOT YET APPROVED *

Resolution No. _____

Resolution of the Council of the City of Palo Alto Approving Capped Natural Gas Purchases for Winter 2023-24 and Amending the FY 2024 Gas Fund Budget by \$2,000,000 to Fund These Purchases; Amending the Gas Utility Long-term Plan Objectives, Strategies and Implementation Plan; and Amending Rate Schedules G-1 (Residential Gas Service), G-2 (Residential Master-Metered and Commercial Gas Service), G-3 (Large Commercial Gas Service), and G-10 (Compressed Natural Gas Service)

Item 8

Attachment A -
Resolution Approving
Capped-Price Winter
Natural Gas Purchase for
Winter 2023-24 and
Amending the FY24 Gas
Fund Budget

nt A

R E C I T A L S

A. On March 7, 2011, the Council adopted Resolution No. 9151, which approved the Gas Utility Long-term Plan Objectives, Strategies and Implementation Plan (the “Plan”).

B. On April 23, 2012, the Council adopted Resolution No. 9244, which amended the Gas Utility Long-term Plan Objectives, Strategies and Implementation Plan (the “Plan”).

C. The Council’s Finance Committee has recommended the Council approve implementation of capped-price winter natural gas purchases for Winter 2023-24, which requires Council’s approval of certain amendments to the Plan, which are attached and incorporated by reference as Exhibit A to this Resolution.

D. Resolution No. 9244 is intended to be amended to reflect the current version of the Plan.

E. Pursuant to Chapter 12.20.010 of the Palo Alto Municipal Code, the Council of the City of Palo Alto may by resolution adopt rules and regulations governing utility services, fees and charges.

F. Implementing capped-price winter natural gas purchasing requires amending the FY 2024 Gas Fund Budget by \$2,000,000 to fund these purchases.

G. Implementing capped-price winter natural gas purchasing requires amending the Commodity Charge cost component of Rate Schedules G-1 (Residential Gas Service), G-2 (Residential Master-Metered and Commercial Gas Service), G-3 (Large Commercial Gas Service), and G- 10 (Compressed Natural Gas Service); attached and incorporated as Exhibits B through E to this Resolution.

H. On September 18, 2023, the City Council heard and approved the proposed gas rate increases at a noticed public hearing.

The Council of the City of Palo Alto does hereby RESOLVE as follows:

* NOT YET APPROVED *

Item 8
Attachment A -
Resolution Approving
Capped-Price Winter
Natural Gas Purchase for
Winter 2023-24 and
Amending the FY24 Gas
Fund Budget

SECTION 1. The Council hereby approves the amendments to the term Plan Objectives, Strategies and Implementation Plan (GULP), attached as Exhibit A.

SECTION 2. Resolution No. 9244 is hereby amended in so far as the Plan, as amended, is hereby approved.

SECTION 3. The Council hereby approves increasing the FY 2024 Gas Fund budget and gas operating revenues by \$2,000,000.

SECTION 4 Pursuant to Section 12.20.010 of the Palo Alto Municipal Code, Utility Rate Schedule G-1 (Residential Gas Service) is hereby amended to read as attached and incorporated to this Resolution as Exhibit B. Utility Rate Schedule G-1, as amended, shall become effective November 1, 2023.

SECTION 5. Pursuant to Section 12.20.010 of the Palo Alto Municipal Code, Utility Rate Schedule G-2 (Residential Master-Metered and Commercial Gas Service) is hereby amended to read as attached and incorporated to this Resolution as Exhibit C. Utility Rate Schedule G-2, as amended, shall become effective November 1, 2023.

SECTION 6. Pursuant to Section 12.20.010 of the Palo Alto Municipal Code, Utility Rate Schedule G-3 (Large Commercial Gas Service) is hereby amended to read as attached and incorporated to this Resolution as Exhibit D. Utility Rate Schedule G-3, as amended, shall become effective November 1, 2023.

SECTION 7. Pursuant to Section 12.20.010 of the Palo Alto Municipal Code, Utility Rate Schedule G-10 (Compressed Natural Gas Service Service) is hereby amended to read as attached and incorporated to this Resolution as Exhibit E. Utility Rate Schedule G-10, as amended, shall become effective November 1, 2023.

SECTION 8. The City Council finds as follows:

- a. Revenues derived from the gas rates approved by this resolution do not exceed the funds required to provide gas service.
- b. Revenues derived from the gas rates approved by this resolution shall not be used for any purpose other than providing gas service, and the purposes set forth in Article VII, Section 2, of the Charter of the City of Palo Alto.

SECTION 9. The Council finds that the fees and charges adopted by this resolution are charges imposed for a specific government service or product provided directly to the payor that are not provided to those not charged, and do not exceed the reasonable costs to the City of providing the service or product.

* NOT YET APPROVED *

Item 8
Attachment A -
Resolution Approving
Capped-Price Winter
Natural Gas Purchase for
Winter 2023-24 and
Amending the FY24 Gas
Fund Budget

SECTION 10. The Council finds that approving the changes to the budget appropriation and Plan does not meet the California Environmental definition of a project under Public Resources Code Section 21065 and CEQA Guidelines Section 15378(b)(5), because these actions are administrative governmental activities which will not cause a direct or indirect physical change in the environment, and therefore, no environmental assessment is required. The Council finds that changing the Commodity Charge cost component of gas rates to meet operating expenses, purchase supplies and materials, meet financial reserve needs and obtain funds for capital improvements necessary to maintain service is not subject to the California Environmental Quality Act (CEQA), pursuant to California Public Resources Code Sec. 21080(b)(8) and Title 14 of the California Code of Regulations Sec. 15273(a). After reviewing the staff report and all attachments presented to Council, the Council incorporates these documents herein and finds that sufficient evidence has been presented setting forth with specificity the basis for this claim of CEQA exemption.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Director of Utilities

Director of Administrative Services

Proposed Gas Utility Long-term Plan (GULP) Objectives, Strategies and Implementation Plan

Item 8
Attachment A -
Resolution Approving
Capped-Price Winter
Natural Gas Purchase for
Winter 2023-24 and
Amending the FY24 Gas
Fund Budget

Adopted by Council on _____ via Resolution No. _____.

GULP Objectives:

1. Market price transparency – Pass a market supply cost signal through to customers with measures to protect against price spikes applied during winter months.
2. Supply Cost Management – Lower delivered gas cost over the long term.
3. Energy Efficiency – Ensure the deployment of all feasible, reliable, cost-effective energy efficiency measures.
4. Climate Protection – Reduce the carbon intensity of the gas portfolio in accordance with the Sustainability and Climate Protection Plan.
5. Parity with PG&E – At a reasonable cost, protect the City’s interests and maintain access to transportation on par with PG&E’s core customers.

GULP Strategies:

1. Pass a market supply cost signal through to customers with measures to protect against price spikes applied during winter months by:
 - a. Purchasing natural gas at monthly and daily market index prices;
 - b. Changing gas supply rates monthly to reflect market prices; and
 - c. Purchasing physical capped-price gas for some or all forecasted natural gas volumes for December through February, provided that the cost of the price caps results in no more than a 15 cents per therm impact on retail commodity gas rates.
2. Lower delivered gas cost over the long term by:
 - a. Acquiring pipeline assets that yield supply costs below market and meet operational needs;
 - b. Taking advantage of the City’s low cost of capital to acquire gas supply and assets; and
 - c. Optimizing existing assets.
3. Ensure the deployment of all feasible, reliable, cost-effective energy efficiency measures by:
 - a. Developing a ten-year gas efficiency plan every four years maintaining consistency with the electric energy efficiency goals update schedule; and
 - b. Considering the impacts of electrification on gas demand.
4. Reduce the carbon intensity of the gas portfolio in accordance with the Climate Protection Plan by:
 - a. Terminating the PaloAltoGreen Gas program established by Resolution 9405; and
 - b. Designing and implementing the Carbon Neutral Gas Plan to achieve carbon reduction with no more than a 10 cent per therm rate impact.
5. At a reasonable cost, protect the City’s interests and maintain access to transportation on par with PG&E’s core customers by:
 - a. Participating in the regulatory and legislative arenas when the potential impact on the City is aligned with the cost to intervene and the probability of success;
 - a. Negotiating with PG&E for fair access to transportation and storage; and
 - b. Exploring potential joint action with other public agencies.

GULP Implementation Plan:

1. Implement market-based supply purchases and commodity rates with protection against price spikes applied during winter months by:
 - a. Developing a new purchasing plan to be approved by the Director of Utilities; and
 - b. Conducting customer communication and outreach.
2. Pursue below-market assets available through the Gas Transportation and Storage Settlement by:
 - a. Evaluating the pipeline capacity reservation options available; and
 - b. Contracting with PG&E for any pipeline capacity with an estimated cost below the forecasted market value.
3. Monitor the prepay market and prepare for implementation in preparation for a future MuniGas transaction.
4. Implement gas efficiency programs to meet the gas efficiency goals.
5. Track and report on gas efficiency by:
 - a. Providing quarterly updates to the UAC about the gas efficiency programs; and
 - b. Providing annual updates to Council on gas efficiency achievements compared to the goals and overall cost effectiveness.
6. Continue evaluating new gas efficiency technologies and undertake pilot studies where appropriate.
7. Pursue potential modifications to the Carbon Neutral Gas Plan by:
 - a. Determining an acceptable premium, if any, to be paid for a local offset project if and when a certified project is identified; and
 - b. Investigating alternatives to offsets, including methods involving voter approval.

EXHIBIT B

Item 8
 Attachment A -
 Resolution Approving
 Capped-Price Winter
 Natural Gas Purchase for
 Winter 2023-24 and
 Amending the FY24 Gas
 Fund Budget

RESIDE
RVICE

UTILITY
LE G-1

A. APPLICABILITY:

This schedule applies to the following Customers receiving Gas Service from City of Palo Alto Utilities:

1. Separately-metered single-family residential Customers;
2. Separately-metered multi-family residential Customers in multi-family residential facilities.

B. TERRITORY:

This schedule applies anywhere the City of Palo Alto provides Gas Service.

C. UNBUNDLED RATES:

Per Service

Monthly Service Charge:\$14.01

Tier 1 Rates:

Per Therm

Supply Charges:

- | | |
|--|---------------|
| 1. Commodity (Monthly Market Based)..... | \$0.10-\$4.00 |
| 2. Cap and Trade Compliance Charge | \$0.00-\$0.25 |
| 3. Transportation Charge | \$0.00-\$0.25 |
| 4. Carbon Offset Charge | \$0.00-\$0.10 |

Distribution Charge:..... \$0.6807

Tier 2 Rates: (All usage over 100% of Tier 1)

Supply Charges:

- | | |
|--|---------------|
| 1. Commodity (Monthly Market Based)..... | \$0.10-\$4.00 |
| 2. Cap and Trade Compliance Charge | \$0.00-\$0.25 |
| 3. Transportation Charge | \$0.00-\$0.25 |
| 4. Carbon Offset Charge | \$0.00-\$0.10 |

Distribution Charge:..... \$1.7406

D. SPECIAL NOTES:

1. Calculation of Cost Components

CITY OF PALO ALTO UTILITIES

Issued by the City Council

Supersedes Sheet No G-1-1
dated 74-1-2023



Sheet No **G-1-1**
Effective 117-1-2023

The actual bill amount is calculated based on the applicable rates in Section C above and adjusted for any applicable discounts, surcharges and/or Taxes. On a Customer's bill statement, the bill amount may be broken down into appropriate components as calculated under Section C.

The Commodity Charge is based on the monthly natural gas Bidweek Price Index for delivery at PG&E Citygate, adjusted to account for delivery losses to the Customer's Meter. The Commodity Charge also includes adjustments to account for Council-approved programs implemented to reduce the cost of gas, including a municipal purchase discount¹, and a maximum \$0.15/per therm cost for capped price winter natural gas purchases².

~~The Commodity Charge is based on the monthly natural gas Bidweek Price Index for delivery at PG&E Citygate, accounting for delivery losses to the Customer's Meter.~~

The Cap and Trade Compliance Charge reflects the City's cost of regulatory compliance with the state's Cap and Trade Program, including the cost of acquiring compliance instruments sufficient to cover the City's Gas Utility's compliance obligations. The Cap and Trade Compliance Charge will change in response to changing market conditions, retail sales volumes and the quantity of allowances required.

The Carbon Offset Charge reflects the City's cost to purchase offsets for greenhouse gases produced in the burning of natural gas. The Carbon Offset Charge will change in response to changing market conditions, changing sales volumes and the quantity of offsets purchased within the Council-approved per therm cap.

The Transportation Charge is based on the current PG&E G-WSL rate for Palo Alto, accounting for delivery losses to the Customer's Meter.

1 Adopted via Resolution 9451, on September 15, 2014.

2 Adopted via Resolution XXXX, on September 18, 2023.

CITY OF PALO ALTO UTILITIES

Issued by the City Council

Supersedes Sheet No G-1-2
dated 74-1-2023



Sheet No **G-1-2**
Effective 117-1-2023

The Commodity, Cap and Trade Compliance, Carbon Offset and Transportation Charges will fall within the minimum/maximum ranges set forth in Section C. Current and historic per therm rates for the Commodity, Cap and Trade Compliance, Carbon Offset and Transportation Charges are posted on the City Utilities website.³

1.2. Seasonal Rate Changes:

The Summer period is effective April 1 to October 31 and the Winter period is effective from November 1 to March 31. When the billing period includes use in both the Summer and the Winter periods, the usage will be prorated based on the number of days in each seasonal period, and the charges based on the applicable rates for each period. For further discussion of bill calculation and proration, refer to Rule and Regulation 11.

2.3. Calculation of Usage Tiers

Tier 1 natural gas usage shall be calculated and billed based upon a level of 0.667 therms per day during the Summer period and 2.0 therms per day during the Winter period, rounded to the nearest whole therm, based on meter reading days of service. As an example, for a 30 day bill, the Tier 1 level would be 20 therms during the Summer period and 60 therms during the Winter period months. For further discussion of bill calculation and proration, refer to Rule and Regulation 11.

{End}

³ Monthly gas and commodity and volumetric rates are available [here](https://www.cityofpaloalto.org/files/assets/public/utilities/rates-schedules-for-utilites/residential-utility-rates/monthly-gas-volumetric-and-service-charges-residential.pdf), or by visiting <https://www.cityofpaloalto.org/files/assets/public/utilities/rates-schedules-for-utilites/residential-utility-rates/monthly-gas-volumetric-and-service-charges-residential.pdf>

CITY OF PALO ALTO UTILITIES

Issued by the City Council

Supersedes Sheet No G-1-3
dated ~~7~~4-1-2023



Sheet No **G-1-3**
Effective ~~11~~7-1-2023

RESIDENTIAL MASTER-METERED AND COMMERCIAL GAS SERVICE

UTILITY RATE G-2

A. APPLICABILITY:

This schedule applies to the following Customers receiving Gas Service from the City of Palo Alto Utilities:

- Commercial Customers who use less than 250,000 therms per year at one site;
- Master-metered residential Customers in multi-family residential facilities.

B. TERRITORY:

This schedule applies anywhere the City of Palo Alto provides Gas Service.

C. UNBUNDLED RATES: Per Service

Monthly Service Charge:\$129.78

Per Therm

Supply Charges:

- | | |
|---|---------------|
| 1. Commodity (Monthly Market Based) | \$0.10-\$4.00 |
| 2. Cap and Trade Compliance Charges | \$0.00-\$0.25 |
| 3. Transportation Charge | \$0.00-\$0.25 |
| 4. Carbon Offset Charge | \$0.00-\$0.10 |

Distribution Charge: \$0.8941

D. SPECIAL NOTES:

1. Calculation of Cost Components

The actual bill amount is calculated based on the applicable rates in Section C above and adjusted for any applicable discounts, surcharges and/or Taxes. On a Customer's bill statement, the bill amount may be broken down into appropriate components as calculated under Section C.

The Commodity Charge is based on the monthly natural gas Bidweek Price Index for delivery at PG&E Citygate, adjusted to account for delivery losses to the Customer's Meter. The Commodity Charge also includes adjustments to account for Council-approved programs implemented to reduce the cost of gas, including a municipal purchase discount¹, and a maximum \$0.15/per therm cost for capped price winter natural

¹ Adopted via Resolution 9451, on September 15, 2014.

CITY OF PALO ALTO UTILITIES

Issued by the City Council

RESIDENTIAL MASTER-METERED AND COMMERCIAL UTILITY SERVICE RATE G-2

gas purchases².

~~The Commodity Charge is based on the monthly natural gas Bidweek Price Index for delivery at PG&E Citygate, accounting for delivery losses to the Customer's Meter.~~

The Cap and Trade Compliance Charge reflects the City's cost of regulatory compliance with the state's Cap and Trade Program, including the cost of acquiring compliance instruments sufficient to cover the City's Gas Utility's compliance obligations. The Cap and Trade Compliance Charge will change in response to changing market conditions, retail sales volumes and the quantity of allowances required.

The Carbon Offset Charge reflects the City's cost to purchase offsets for greenhouse gases produced in the burning of natural gas. The Carbon Offset Charge will change in response to changing market conditions, changing sales volumes and the quantity of offsets purchased within the Council-approved per therm cap.

The Transportation Charge is based on the current PG&E G-WSL rate for Palo Alto, accounting for delivery losses to the Customer's Meter.

The Commodity, Cap and Trade Compliance, Carbon Offset and Transportation Charges will fall within the minimum/maximum ranges set forth in Section C. Current and historic per therm rates for the Commodity, Cap and Trade Compliance, Carbon Offset and Transportation Charges are posted on the City Utilities website.³

{End}

² Adopted via Resolution XXXX, on September 18, 2023

³ Monthly gas and commodity and volumetric rates are available [here](https://www.cityofpaloalto.org/files/assets/public/utilities/business/business-rates/monthly-gas-volumetric-and-service-charges-commercial.pdf), or by visiting <https://www.cityofpaloalto.org/files/assets/public/utilities/business/business-rates/monthly-gas-volumetric-and-service-charges-commercial.pdf>

CITY OF PALO ALTO UTILITIES

Issued by the City Council



LARGE COMMERCE UTILITY SERVICE SCHEDULE G-3

A. APPLICABILITY:

This schedule applies to the following Customers receiving Gas Service from the City of Palo Alto Utilities:

1. Commercial Customers who use at least 250,000 therms per year at one site;
2. Customers at City-owned generation facilities.

B. TERRITORY:

This schedule applies anywhere the City of Palo Alto provides Gas Service.

C. UNBUNDLED RATES:

Per Service

Monthly Service Charge:

\$593.79

Per Therm

Supply Charges:

- | | |
|---|---------------|
| 1. Commodity (Monthly Market Based)..... | \$0.10-\$4.00 |
| 2. Cap and Trade Compliance Charges | \$0.00-\$0.25 |
| 3. Transportation Charge | \$0.00-\$0.25 |
| 4. Carbon Offset Charge | \$0.00-\$0.10 |

Distribution Charge:\$0.8852

D. SPECIAL NOTES:

1. Calculation of Cost Components

The actual bill amount is calculated based on the applicable rates in Section C above and adjusted for any applicable discounts, surcharges and/or Taxes. On a Customer's bill statement, the bill amount may be broken down into appropriate components as calculated under Section C.

The Commodity Charge is based on the monthly natural gas Bidweek Price Index for delivery at PG&E Citygate, adjusted to account for delivery losses to the Customer's Meter. The Commodity Charge also includes adjustments to account for Council-approved programs implemented to reduce the cost of gas, including a municipal

CITY OF PALO ALTO UTILITIES

Issued by the City Council



LARGE COMMERCE UTILITY SERVICE SCHEDULE G-3

purchase discount¹, and a maximum \$0.15/per therm cost for capped price winter natural gas purchases².

The Commodity Charge is based on the monthly natural gas Bidweek Price Index for delivery at PG&E Citygate, accounting for delivery losses to the Customer's Meter.

The Cap and Trade Compliance Charge reflects the City's cost of regulatory compliance with the state's Cap and Trade Program, including the cost of acquiring compliance instruments sufficient to cover the City's Gas Utility's compliance obligations. The Cap and Trade Compliance Charge will change in response to changing market conditions, retail sales volumes and the quantity of allowances required.

The Carbon Offset Charge reflects the City's cost to purchase offsets for greenhouse gases produced in the burning of natural gas. The Carbon Offset Charge will change in response to changing market conditions, changing sales volumes and the quantity of offsets purchased within the Council-approved per therm cap.

The Transportation Charge is based on the current PG&E G-WSL rate for Palo Alto, accounting for delivery losses to the Customer's Meter.

The Commodity, Cap and Trade Compliance, Carbon Offset and Transportation Charges will fall within the minimum/maximum ranges set forth in Section C. Current and historic per therm rates for the Commodity, Cap and Trade Compliance, Carbon Offset and Transportation Charges are posted on the City Utilities website.³

2. Request for Service

A qualifying Customer may request service under this schedule for more than one account or meter if the accounts are located on one site. A site consists of one or more contiguous parcels of land with no intervening public right-of- ways (e.g. streets).

3. Changing Rate Schedules

¹ Adopted via Resolution 9451, on September 15, 2014.

² Adopted via Resolution XXXX, on September 18, 2023.

³ Monthly gas and commodity and volumetric rates are available [here](https://www.cityofpaloalto.org/files/assets/public/utilities/business/business-rates/monthly-gas-volumetric-and-service-charges-commercial.pdf), or by visiting <https://www.cityofpaloalto.org/files/assets/public/utilities/business/business-rates/monthly-gas-volumetric-and-service-charges-commercial.pdf>

CITY OF PALO ALTO UTILITIES

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Item 8

Attachment A -
Resolution Approving
Capped-Price Winter
Natural Gas Purchase for
Winter 2023-24 and
Amending the FY24 Gas
Fund Budget

LARGE COMMERCE SERVICE
UTILITY RATE G-3

Customers may request a rate schedule change at any time to any applicable City of Palo Alto full-service rate schedule.

{End}

CITY OF PALO ALTO UTILITIES

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Supersedes Sheet No G-3-3
dated 7-1-2023



CITY OF
PALO ALTO
UTILITIES

Item 8: Staff Report Pg. 22

Effective 11-1-2023
Sheet No G-3-3

Packet Pg. 254 of 449

COMPRESSED NATURAL GAS SERVICE UTILITY RATE G-10

A. APPLICABILITY:

This schedule applies to the sale of natural gas to the City-owned compressed natural gas (CNG) fueling station at the Municipal Service Center in Palo Alto.

B. TERRITORY:

Applies to the City's CNG fueling station located at the Municipal Service Center in City of Palo Alto.

C. UNBUNDLED RATES: Per Service

Monthly Service Charge:\$87.77

Per Therm

Supply Charges:

Commodity (Monthly Market Based)..... \$0.10-\$4.00

Cap and Trade Compliance Charges..... \$0.00-\$0.25

Transportation Charge \$0.00-\$0.25

Carbon Offset Charge \$0.00-\$0.10

Distribution Charge.....\$0.0145

D. SPECIAL CONDITIONS

1. Calculation of Cost Components

The actual bill amount is calculated based on the applicable rates in Section C above and adjusted for any applicable discounts, surcharges and/or Taxes. On a Customer's bill statement, the bill amount may be broken down into appropriate components as calculated under Section C.

The Commodity Charge is based on the monthly natural gas Bidweek Price Index for delivery at PG&E Citygate, adjusted to account for delivery losses to the Customer's Meter. The Commodity Charge also includes adjustments to account for Council-approved programs implemented to reduce the cost of gas, including a municipal purchase discount¹, and a

¹ Adopted via Resolution 9451, on September 15, 2014.

CITY OF PALO ALTO UTILITIES

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CITY OF
PALO ALTO
UTILITIES

Item 8: Staff Report Pg. 23

Effective 117-1-2023

Sheet No. G-10-1

Packet Pg. 255 of 449

COMPRESSED NATURAL GAS SERVICE
UTILITY RATE E G-10

maximum \$0.15/per therm cost for capped price winter natural gas purchases².

~~The Commodity charge is based on the monthly natural gas Bidweek Price Index for delivery at PG&E Citygate, accounting for delivery losses to the Customer's Meter.~~

The Cap and Trade Compliance Charge reflects the City's cost of regulatory compliance with the state's Cap and Trade Program, including the cost of acquiring compliance instruments sufficient to cover the City's Gas Utility's compliance obligations. The Cap and Trade Compliance Charge will change in response to changing market conditions, retail sales volumes and the quantity of allowances required.

The Carbon Offset Charge reflects the City's cost to purchase offsets for greenhouse gases produced in the burning of natural gas. The Carbon Offset Charge will change in response to changing market conditions, changing sales volumes and the quantity of offsets purchased within the Council-approved per therm cap.

The Transportation Charge is based on the current PG&E G-WSL rate for Palo Alto, accounting for delivery losses to the Customer's Meter.

The Commodity, Cap and Trade Compliance, Carbon Offset and Transportation Charges will fall within the minimum/maximum range set forth in Section C. Current and historic per therm rates for the Commodity, Cap and Trade Compliance, Carbon Offset and Transportation Charges are posted on the City Utilities website.³

{End}

2 Adopted via Resolution XXXX, on September 18, 2023.

3 Monthly gas and commodity and volumetric rates are available [here](https://www.cityofpaloalto.org/files/assets/public/utilities/business/business-rates/monthly-gas-volumetric-and-service-charges-commercial.pdf), or by visiting <https://www.cityofpaloalto.org/files/assets/public/utilities/business/business-rates/monthly-gas-volumetric-and-service-charges-commercial.pdf>

CITY OF PALO ALTO UTILITIES

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Supersedes Sheet No G-10-2
dated 74-1-2023



CITY OF
PALO ALTO
UTILITIES

Item 8: Staff Report Pg. 24

Effective 117-1-2023
Sheet No. **G-10-2**

Packet Pg. 256 of 449

Proposed Gas Utility Long-term Plan (GULP) Objectives, Strategies and Implementation Plan

(applicable if Council approves winter gas cost containment alternative)

GULP Objectives:

1. Market price transparency – Pass a market supply cost signal through to customers with measures to protect against price spikes applied during winter months.
2. Supply Cost Management – Lower delivered gas cost over the long term.
3. Energy Efficiency – Ensure the deployment of all feasible, reliable, cost-effective energy efficiency measures.
4. Climate Protection – Reduce the carbon intensity of the gas portfolio in accordance with the Sustainability and Climate Protection Plan.
5. Parity with PG&E – At a reasonable cost, protect the City's interests and maintain access to transportation on par with PG&E's core customers.

GULP Strategies:

1. Pass a market supply cost signal through to customers with measures to protect against price spikes applied during winter months by:
 - a. Purchasing natural gas at monthly and daily market index prices;
 - b. Changing gas supply rates monthly to reflect market prices; and
 - c. Purchasing physical capped-price gas ~~of~~ for some or all forecasted natural gas volumes for December through February, provided that the cost of the price caps such capped-price gas purchases results in with no more than a 15 cents per therm impact on retail commodity gas rates.
2. Lower delivered gas cost over the long term by:
 - a. Acquiring pipeline assets that yield supply costs below market and meet operational needs;
 - b. Taking advantage of the City's low cost of capital to acquire gas supply and assets; and
 - c. Optimizing existing assets.
3. Ensure the deployment of all feasible, reliable, cost-effective energy efficiency measures by:
 - a. Developing a ten-year gas efficiency plan every four years maintaining consistency with the electric energy efficiency goals update schedule; and
 - b. Considering the impacts of electrification on gas demand.
4. Reduce the carbon intensity of the gas portfolio in accordance with the Climate Protection Plan by:
 - a. Terminating the PaloAltoGreen Gas program established by Resolution 9405; and
 - b. Designing and implementing the Carbon Neutral Gas Plan to achieve carbon reduction with no more than a 10 cent per therm rate impact.
5. At a reasonable cost, protect the City's interests and maintain access to transportation on par with PG&E's core customers by:
 - a. Participating in the regulatory and legislative arenas when the potential impact on the City is aligned with the cost to intervene and the probability of success;
 - a. Negotiating with PG&E for fair access to transportation and storage; and
 - b. Exploring potential joint action with other public agencies

GULP Implementation Plan:

1. ~~Continue to~~ implement market-based supply purchases and commodity rates with measures to protect against price spikes applied during winter months by:
 - a. Developing a new purchasing plan to be approved by the Director of Utilities; and
 - b. Conducting customer communication and outreach.
- 1.2. Pursue below-market assets available through the Gas Transportation and Storage Settlement by:
 - a. Evaluating the pipeline capacity reservation options available; and
 - b. Contracting with PG&E for any pipeline capacity with an estimated cost below the forecasted market value.
- 2.3. Monitor the prepay market and prepare for implementation in preparation for a future MuniGas transaction.
- 3.4. Implement gas efficiency programs to meet the gas efficiency goals.
- 4.5. Track and report on gas efficiency by:
 - a. Providing quarterly updates to the UAC about the gas efficiency programs; and
 - b. Providing annual updates to Council on gas efficiency achievements compared to the goals and overall cost effectiveness.
- 5.6. Continue evaluating new gas efficiency technologies and undertake pilot studies where appropriate.
- 6.7. Pursue potential modifications to the Carbon Neutral Gas Plan by:
 - a. Determining an acceptable premium, if any, to be paid for a local offset project if and when a certified project is identified; and
 - b. Investigating alternatives to offsets, including methods involving voter approval.



City Council Staff Report

From: City Manager

Report Type: INFORMATION REPORTS

Lead Department: Utilities

Meeting Date: September 18, 2023

Report Staff: 2307-1743

TITLE

Informational Report on the Annual Review of the City's Renewable Procurement Plan, Renewable Portfolio Standard Compliance, and Carbon Neutral Electric Supplies for 2022

EXECUTIVE SUMMARY

Like all electric utilities in California, Palo Alto is subject to the state's Renewable Portfolio Standard (RPS) mandate of 60% by 2030. The City has also adopted a Carbon Neutral Plan, which led to the achievement of a carbon neutral electric supply portfolio starting in 2013 (and which was updated by Council in August 2020). In 2011, in compliance with state RPS regulations, the Council also formally adopted an RPS Procurement Plan and an RPS Enforcement Program that recognize certain elements of the state's RPS law applicable to publicly-owned utilities. The RPS Enforcement Program requires the City Manager, or their designee, the Utilities Director, to conduct an annual review of the Electric Utility's compliance with the procurement targets set forth in the City's RPS Procurement Plan.

This staff report satisfies the reporting requirements of the City's RPS Enforcement Program, while also providing an update on the City's compliance with the Carbon Neutral Plan. The City continues to meet both its RPS and Carbon Neutral Plan objectives—even after selling 184,000 MWh of renewable energy in 2022.

BACKGROUND

The City currently has two independent procurement targets related to renewable and carbon neutral electricity:

- RPS Procurement Plan (60% by 2030): The City's official renewable electricity goal is contained in the RPS Procurement Plan that the City was required to adopt under Section 399.30(a) of California's Public Utilities Code. This was adopted in December 2011 ([Staff](#)

[Report 2225](#)¹, [Resolutions 9214](#)² and [9215](#)³) and updated in November 2013 ([Staff Report 4168](#)⁴, [Resolution 9381](#)⁵), December 2018 ([Staff Report 9761](#)⁶, [Resolution 9802](#)⁷), and December 2020 ([Staff Report 11650](#)⁸, [Resolution 9929](#)⁹). The last update to the RPS Procurement Plan brought it into alignment with the state's 60% RPS requirement (SB 100), which was signed into law in 2018. The RPS Procurement Plan and RPS Enforcement Program complement each other: the Procurement Plan establishes official procurement targets, while the Enforcement Program specifies the reporting and monitoring that is required of the Utilities Director while working to achieve those targets.

The procurement requirement in the current version of the City's RPS Procurement Plan is that the City acquire renewable electricity supplies equal to 60% of retail sales by 2030, which is in line with the state's current RPS mandate. The RPS Procurement Plan also contains an escalating set of targets for six interim Compliance Periods (2011-2013, 2014-2016, 2017-2020, 2021-2024, 2025-2027, and 2028-2030), as well as subsequent 3-year compliance periods beginning in 2031.

- Carbon Neutral Plan (100% Carbon Neutral Electricity by 2013): The Carbon Neutral Plan was adopted in March 2013 ([Staff Report 3550](#)¹⁰, [Resolution 9322](#)¹¹) and updated in August 2020 ([Staff Report 11556](#)¹², [Resolution 9913](#)¹³), and requires that the City procure a carbon neutral electric supply portfolio, which started in calendar year (CY) 2013. In general, this goal is primarily met through purchases made under the City's long-term

¹ Staff Report 2225 <https://www.cityofpaloalto.org/files/assets/public/from-archive/agendas-minutes-reports/reports/city-manager-reports-cmrs/2011/final-staff-report-id-2225-renewable-energy-procurement-enforcement-prog-12-12-11.pdf>

² Resolution 9381 <https://www.cityofpaloalto.org/files/assets/public/city-clerk/resolutions/reso-9214.pdf>

³ Resolution 9251 <https://www.cityofpaloalto.org/files/assets/public/city-clerk/resolutions/reso-9215.pdf>

⁴ Staff Report 4168 https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2013/final-staff-report-id-4168_rps-procurement-plan-update.pdf

⁵ Resolution 9381 <https://www.cityofpaloalto.org/files/assets/public/city-clerk/resolutions/reso-9381.pdf>

⁶ Staff Report 9761 https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2018/final-staff-report-id9761_approval-of-the-2018-electric-integrated-resource-plan-and-related-documents.pdf

⁷ Resolution 9802 <https://www.cityofpaloalto.org/files/assets/public/city-clerk/resolutions/reso-9802.pdf?t=40498.07>

⁸ Staff Report 11650 <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2020-2/id-11650.pdf?t=41063.12>

⁹ Resolution 9929 <https://www.cityofpaloalto.org/files/assets/public/city-clerk/resolutions/resolutions-1909-to-present/2020/reso-9929.pdf>

¹⁰ Staff Report 3550 https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2013/final-staff-report-id-3550_electric-supply-portfolio-carbon-neutral-plan.pdf

¹¹ Resolution 9322 <https://www.cityofpaloalto.org/files/assets/public/city-clerk/resolutions/reso-9322-33835.pdf>

¹² Staff Report 11556 <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2020-2/id-11566.pdf>

¹³ Resolution 9913 <https://www.cityofpaloalto.org/files/assets/public/city-clerk/resolutions/reso-9913.pdf?t=40151.26>

renewable power purchase agreements (PPAs) and output from its hydroelectric resources. However, when the City Council approved an update to the Carbon Neutral Plan in August 2020, they also approved a new procurement strategy whereby the City does not keep all of the output of its long-term, in-state PPAs, but instead exchanges that output for less expensive out-of-state renewable generation (with the net proceeds used to fund local decarbonization programs).

ANALYSIS

The City continues to meet its objectives under the RPS Procurement Plan and the Carbon Neutral Plan, and achieved an RPS level of 38.8% in 2022. This value slightly exceeded the state's 38.5% RPS procurement "soft target" for the year, and the City remains compliant with the state RPS procurement mandate, which is evaluated over a multi-year horizon (2021-2024 in this case). The City also has more than enough RPS supplies under contract to far exceed the state's soft target levels in the later years of the four-year compliance period. Below is a summary of CPAU's progress toward satisfying its renewable energy and carbon neutral procurement targets¹⁴.

RPS Procurement Plan Compliance

In CY 2022, the City initially received 469,064 MWh of renewable energy through its long-term contracts for wind, solar, landfill gas, and small hydro resources (which represents 56.7% of the City's total retail sales for that period). Additionally, the City received 156,090 MWh of large hydroelectric generation (representing 18.9% of the City's total retail sales), which is not classified as eligible renewable generation by the state. Based on the Council's decision in August 2020 to pursue the "REC Exchange Program" ([Staff Report 11556¹⁵](#), [Resolution 9913¹⁶](#)) the City sold 184,000 MWh of in-state renewable energy supplies, yielding \$2.77 million in sales revenue, while purchasing 428,000 MWh of out-of-state renewable energy¹⁷, at a cost of \$2.03 million. Figure 1 below depicts the City's load and supply resources for CY 2022, before and after the REC Exchanges described above. Accounting for these transactions, the City's net renewable energy supplies totaled 713,064 MWh, which represents 86.2% of the City's total retail sales for 2022. However, under the state's RPS regulations the majority of the out-of-state renewable energy purchases were not able to be applied to the City's RPS requirement, hence the City's official RPS level was only 38.8%.

¹⁴ Renewable and Carbon Neutral Electricity Supply Procurement Details

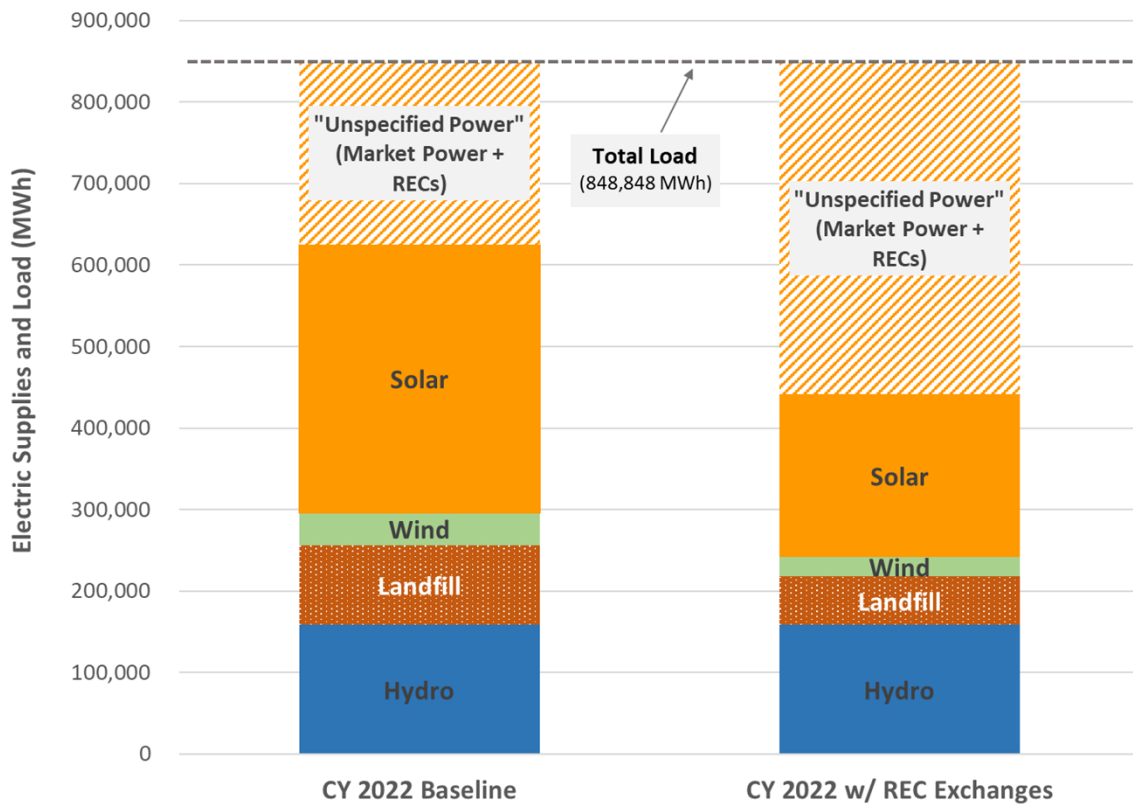
<https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmrs/attachments/09-18-2023-id-2307-1743-linked-document.pdf>

¹⁵ Staff Report 11556 <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2020-2/id-11566.pdf>

¹⁶ Resolution 9913 <https://www.cityofpaloalto.org/files/assets/public/city-clerk/resolutions/reso-9913.pdf?t=40151.26>

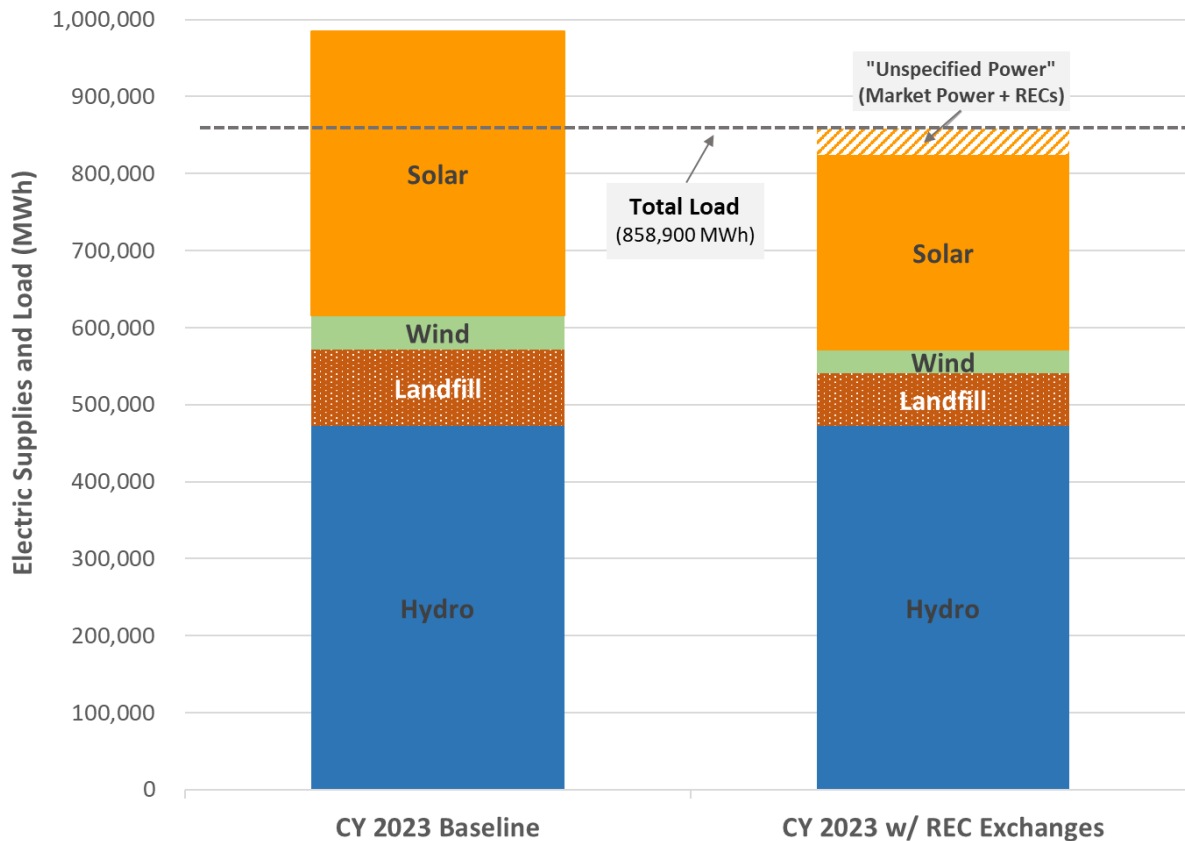
¹⁷ Not including 28,000 MWh of RECs purchased on behalf of PaloAltoGreen customers.

Figure 1: CY 2022 Electric Load and Supply Resources, With and Without REC Exchanges



For CY 2023 to date, staff has contracted to sell about 160,000 MWh of in-state renewable generation and has purchased about 200,000 MWh of out-of-state renewable generation. Figure 2 below depicts the City's projected load and supply resources for CY 2023, before and after the REC Exchanges described above. Once these transactions are accounted for, they will yield a total of about \$2.8 million in net revenue, and an official RPS level of 41.25% (equal to the state's RPS soft target for 2022).

Figure 2: Projected CY 2023 Electric Load and Supply Resources, With and Without REC Exchanges



In accordance with the state’s RPS Program requirements, CPAU’s Procurement Plan develops a renewable electric supply portfolio that balances environmental goals with system reliability while maintaining stable and low retail electric rates. The state RPS program requires retail electricity suppliers like CPAU to procure progressively larger renewable electricity supplies across a series of separate multi-year Compliance Periods. CPAU’s procurement targets, as well as its actual/projected procurement volumes and RPS levels, for the first three Compliance Periods are summarized in Table 1 below.

Table 1: RPS Compliance Period Procurement Targets and Actual Procurement

RPS Compliance Period	Years	Retail Sales (MWh)	Procurement Target (MWh)	Actual/Projected Procurement (MWh)	% of Retail Sales
1	2011-2013	2,837,773	567,555	607,740	21.4%
2	2014-2016	2,801,056	605,949	826,855	29.5%
3	2017-2020	3,487,686	1,043,424	1,619,303	46.4%
4	2021-2024	3,286,954	1,311,952	1,311,952	39.9%
TOTALS		12,413,469	3,528,880	4,365,850	35.2%

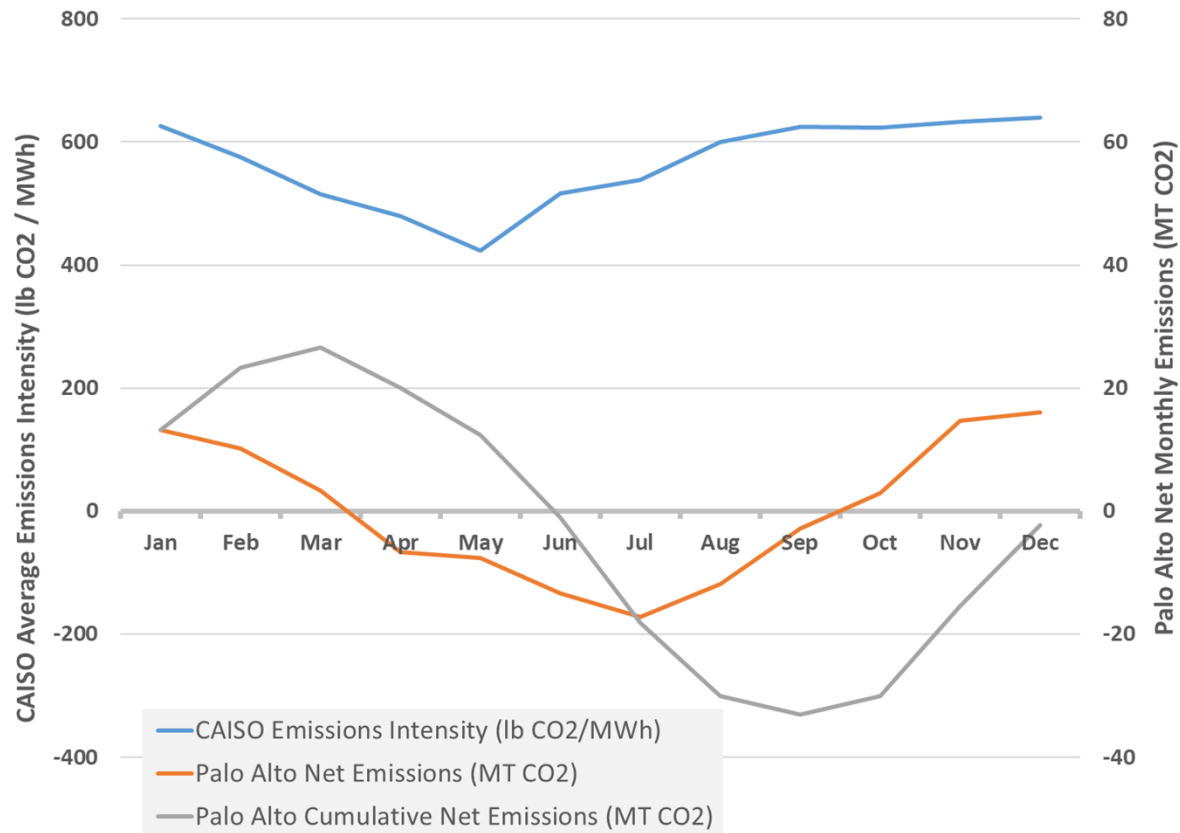
Carbon Neutral Plan

In CY 2022, CPAU achieved its goal, set forth in the Carbon Neutral Plan, of an electric supply portfolio with zero net greenhouse (GHG) emissions for the eighth consecutive year. Carbon neutrality was achieved in CY 2022 through existing hydro and renewable generation (wind, solar, and landfill gas). As discussed above, due to the Council's adoption of the REC Exchange Program in August 2020, the City sold 184,000 MWh of in-state renewable energy supplies in CY 2022, yielding \$2.77 million in sales revenue, while purchasing 428,000 MWh of out-of-state renewable energy, at a cost of \$2.03 million (resulting in net revenue of \$0.74 million). Accounting for these transactions, the City's net renewable energy supplies totaled 713,064 MWh, which represents 86.2% of the City's total retail sales for 2022. The remainder of the City's needs were supplied by large hydroelectric resources.

When the City Council approved an update to the Carbon Neutral Plan in August 2020, the primary change was to adopt an *hourly* carbon accounting methodology as the basis for determining whether the City has met its carbon neutrality objective. Using an annual accounting approach, the City had an overall *surplus* of 20,306 MWh of carbon neutral generation compared to its load (equal to 2.4% total load), and thus substantially *exceeded* the carbon neutrality standard. Meanwhile, under the hourly carbon accounting approach,¹⁸ the City's electric supply portfolio also exceeded the carbon neutrality standard, being responsible for a net negative amount of GHG emissions: -27,335 metric tons of CO₂ equivalent. See Figure 3 below for a depiction of the City's monthly total net CO₂ emissions for 2022, as well as the monthly average emissions intensity for the California electric grid.

¹⁸ The City's hourly carbon accounting methodology entails calculating the City's net surplus or deficit carbon neutral supply position relative to its load in every hour of the year. The grid average electricity emissions intensity for each hour is then applied to each of these hourly surpluses or deficits to yield a net emissions contribution (or reduction) that the City's electric supply portfolio is responsible for in that hour. These hourly emissions totals are then summed across the entire year to yield the City's annual emissions total for the year.

Figure 3: CY 2022 Monthly Net Electric Supply Emissions and CAISO Emissions Intensity



For CY 2023, above average hydro conditions are expected to result in about 54% of the City's electric supply needs being supplied by hydroelectric resources (compared to a long-term annual average of about 45%), with the remainder coming from non-hydro renewable energy resources.

POLICY IMPLICATIONS

This report implements Sections 4 and 5 of the City's RPS Enforcement Program, which require an annual review of the Electric Utility's compliance with the CPAU RPS Procurement Plan to ensure that CPAU is making reasonable progress toward meeting the compliance obligations established in the CPAU RPS Procurement Plan.

FISCAL/RESOURCE IMPACT

This is an informational report that has no fiscal or resource impact to the Utilities Department or the City. As noted above, the implementation of the REC Exchange Program resulted in net revenue of \$0.74 million for CY 2022.

ENVIRONMENTAL REVIEW

The Council's review of this report does not meet the definition of a "project" pursuant to Public Resources Code Section 21065, thus California Environmental Quality Act review is not required.

APPROVED BY:

Dean Batchelor, Director Utilities

Staff: James Stack, PhD, Senior Resource Planner



City Council Staff Report

From: City Manager

Report Type: INFORMATION REPORTS

Lead Department: City Manager

Meeting Date: September 18, 2023

Report #:2306-1676

TITLE

Avenidas Community Assessment Survey for Older Adults

INFORMTIONAL REPORT

In early 2023, Avenidas, a nonprofit organization serving seniors, released the results of the Community Assessment Survey of Older Adults (CASOA). Avenidas has conducted community wide research into the changing needs and interests of older adults every ten years since 1962. The report includes years of data collected from The Community Assessment of Older Adults (CASOA), a survey that measures what older people think about quality of life in their state, county, city, or town. The report is intended to enable local governments, community-based organizations, the private sector and other community members to understand more thoroughly and predict more accurately the services and resources required to serve an aging population. As with the Annual Community Survey, the City of Palo Alto values this information to evaluate its facilities and senior programming meets the needs of its residents.

Conducted by Polco NRC, the survey was mailed to 12,000 households selected at random, with an adult member 60 years or older. A total of 669 responses were obtained, providing an overall response rate of 5.82%. Results were statistically weighted to reflect the proper demographic composition of older adults in the entire community. Aspects of livability are explored within six community dimensions: Community design, Employment and Finances, Equity and Inclusivity, Health and Wellness, Information and Assistance, and Productive Activities.

Below are a few key findings of the report:

OVERALL COMMUNITY QUALITY

About 89% of older residents living in the region rated their overall quality of life as excellent or good. Most of the older respondents scored their communities positively as a place to live and would recommend their communities to others. About 85% residents planned to stay in their community throughout their retirement.

COMMUNITY DESIGN

About 63% of respondents rated the overall quality of the transportation system (auto, bicycle, foot, bus) in their community as excellent or good. In many communities, ease of travel by walking or bicycling is given lower ratings than travel by car. Here, ease of travel by car was considered excellent or good by 88% of respondents, while ease of travel by walking and bicycling was considered excellent or good by 80% and 79% of respondents, respectively.

EMPLOYMENT AND FINANCES

About 92% of older residents rated the overall economic health of their communities positively, although the cost of living was rated as excellent or good by only 13%.

About 15% older adults reported financial challenges and 14% reported employment needs.

EQUITY AND INCLUSION

About 64% of older residents rated the sense of community in their towns as excellent or good, and neighborliness was rated positively by 59% of residents.

About 64% of the respondents positively rated their community's openness and acceptance toward older residents of diverse backgrounds, and 57% indicated that their community valued older residents.

HEALTH AND WELLNESS

About 83% older residents in the region rated their overall physical health as excellent or good and 89% rated their mental health as excellent or good.

In most places, opportunities for health and wellness receive higher ratings from older adults than do health care ratings. Here, community opportunities for health and wellness were scored positively by 86% residents, while the percent giving ratings of excellent or good to the availability of physical health care was 56%, to mental health care 39%, and to long term care options 45%.

The full report can be found online at <https://www.avenidas.org/media/news/avenidas-casoa-final-report/>, and linked as Attachment A in this report.

ATTACHMENTS

Attachment A: 2022 Avenidas Community Assessment Survey for Older Adults

APPROVED BY:

Ed Shikada, City Manager

CASOA™

COMMUNITY ASSESSMENT SURVEY
FOR OLDER ADULTS™

Avenidas

Community Assessment Survey for Older Adults

September 2022



8001 Terrace Ave Middleton, WI 53562
info.polco.us • 608-709-8683

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Section 1: Introduction

About the Community Assessment Survey for Older Adults®

The Community Assessment Survey for Older Adults (CASOA)® provides a statistically valid survey of the strengths and needs of older adults as reported by older adults themselves. This report is intended to enable local governments, community-based organizations, the private sector and other community members to understand more thoroughly and predict more accurately the services and resources required to serve an aging population. With this data, community stakeholders can shape public policy, educate the public and assist communities and organizations in their efforts to sustain a high quality of life for older adults.








Objectives		Methods	
<ul style="list-style-type: none">• Identify community strengths to support successful aging• Articulate the specific needs of older adults in the community• Estimate contributions made by older adults to the community• Develop estimates and projections of resident need in the future		<ul style="list-style-type: none">• Random sample of older adult households• Multi-contact method mailed and online survey• Data statistically weighted to reflect older adult population	
Goals			
Immediate Make more informed decisions in: <ul style="list-style-type: none">• Planning• Resource allocation and development• Advocacy• Engagement	Intermediate Create and offer: <ul style="list-style-type: none">• Programs to meet community needs• Better-quality programs• More effective policies	Long-term Support a community of older adults that is: <ul style="list-style-type: none">• Healthier• More engaged• More empowered• More independent• More productive• More vibrant	

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The results of this exploration will provide useful information for planning and resource development as well as strengths and needs efforts and stakeholder engagement. The ultimate goal of the assessment is to create empowered communities that support vibrant older adult populations.

This report summarizes how older residents view their community and its success in creating a thriving environment for older adults. Aspects of livability are explored within six community dimensions: Community Design, Employment and Finances, Equity and Inclusivity, Health and Wellness, Information and Assistance, and Productive Activities. Overall community quality also is assessed.

Domain of Community Livability	Description	Community Livability Topics
 Overall Community Quality	Measuring community livability starts with assessing the quality of life of those who live there, and ensuring that the community is attractive, accessible, and welcoming to residents of all ages.	<ul style="list-style-type: none"> Place to Live and Retire Recommend and Remain in Community
 Community Design	A well-designed community enhances the quality of life for its residents by encouraging smart land use and zoning, ensuring that affordable housing is accessible to all, and providing mobility options to support residents aging in place.	<ul style="list-style-type: none"> Housing Mobility Land Use
 Employment and Finances	Communities that work to foster sustainable growth, create jobs and workforce training for persons of all ages, and promote equitable economies ensure older adults are able to sustain their financial well-being through retirement and not outlive their life investments.	<ul style="list-style-type: none"> Employment Finances
 Equity and Inclusivity	A community is often greater than the sum of its parts. Having a sense of community entails not only a sense of membership and belonging, but also feelings of safety and trust in the other members of the community.	<ul style="list-style-type: none"> Equity Community Inclusivity
 Health and Wellness	The amenities available in the communities have a direct impact on the health and wellness of residents, and thus, on their quality of life overall.	<ul style="list-style-type: none"> Safety Physical Health Mental Health Health Care Independent Living
 Information and Assistance	Government programs, policies and information assistance can support successful aging initiatives allowing older residents to remain independent contributors to community quality.	<ul style="list-style-type: none"> Quality of Older Adult Services Information on Available Older Adult Services
 Productive Activities	Productivity is the touchstone of a thriving old age. Older adults' engagement and contribution to the community can be determined by their time spent in civic meetings and social activities or providing help to others.	<ul style="list-style-type: none"> Civic Engagement Social Engagement Caregiving

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Survey Methods

The CASOA survey instrument and its administration are standardized to assure high-quality survey methods and comparable results across communities. Households with an adult member 60 years or older were selected at random. Multiple mailed contacts gave each household more than one prompt to participate. A total of 12,000 older adult households were randomly selected to receive the survey. These households first received a half-page postcard inviting them to complete the survey online, followed by a mailed hard copy survey packet which included a cover letter, a copy of the questionnaire and a postage-paid return envelope. A total of 669 completed surveys was obtained, providing an overall response rate of 5.82% and a margin of error plus or minus 3.79% around any given percent and one point around any given average rating for the entire sample (e.g., average number of caregiving hours). Results were statistically weighted to reflect the proper demographic composition of older adults in the entire community.

In addition to the random sample "probability" survey, an open participation survey was conducted, in which all older adults 60 years or older were invited to participate. The open participation survey instrument was identical to the probability sample survey. This survey was conducted entirely online. A total of 143 surveys were completed by open participation survey respondents. The open participation survey results were combined with responses from the probability sample survey, for a total of 812 completed surveys. With the inclusion of the open participation survey participants, it is likely that the precision of the responses would be even greater (and thus the margin of error smaller).

Results were statistically weighted to reflect the proper demographic composition of older adults in the entire community.

Because Avenidas doesn't have any prior measurements, trends aren't available. Trends will be available after this survey has been conducted a second time. Differences in responses between the survey administrations will be tested for statistical significance, and

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statistically significant differences are noted in the charts, represent important comparisons and should be examined for improvements or declines.

For additional details on the survey methodology, see the Methods section.

How the Results Are Reported

Don't Know Responses and Rounding

On many of the questions in the survey, respondents could provide an answer of don't know. The proportion of residents giving this reply can be seen in Responses. However, these responses have been removed from the analyses presented in the body of the report, unless otherwise indicated. In other words, the majority of the tables and graphs in the body of the report display the responses from respondents who had an opinion about a specific item.

For some questions, respondents were permitted to select multiple responses. When the total exceeds 100% in a table for a multiple response question, it is because some respondents are counted in multiple categories. When a table for a question that only permitted a single response does not total to exactly 100%, it is due to the customary practice of rounding percentages to the nearest whole number.

Benchmark Comparison Data

National Research Center at Polco has developed a database that collates responses to CASOA and related surveys administered in other communities, which allows the results from Avenidas to be compared against a set of national benchmarks. This benchmarking database includes responses from more than 35,000 older adults (age 55 and over) in over 326 communities across the nation.

Ratings are compared when similar questions are included in Polco's database and when there are at least five other communities in which the question was asked. Where comparisons for ratings are available, Avenidas's results are shown as more favorable than the benchmark, less favorable than the benchmark or similar to the benchmark. In

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instances where ratings are considerably more or less favorable than the benchmark, these ratings have been further demarcated with the attribute of "much" (for example, much more favorable or much less favorable).

Section 2: Key Findings

Background

Most older adults desire to age in place. Communities that assist older adults in remaining or becoming active community participants must provide the requisite opportunities for recreation, transportation, culture, education, communication, social connection, spiritual enrichment and health care.

To better understand the strengths and challenges of Avenidas area communities aging in place, Avenidas partnered with Polco to administer The Community Assessment Survey for Older Adults (CASOA®) across all service areas. Data in this report focus specifically on older residents in the Avenidas service area.

Survey participants rated the overall quality of life in their community. They also evaluated their communities as livable communities for older adults within six domains:

- Community Design
- Employment and Finances
- Equity and Inclusivity
- Health and Wellness
- Information and Assistance
- Productive Activities.

The extent to which older adults experience challenges within these domains is also described.

Overall Community Quality

Measuring community livability for older adults starts with assessing the quality of life of those who live there, and ensuring that the community is attractive, accessible, and welcoming to all. Exploring how older residents view their community overall and how likely they are to recommend and remain in their communities can provide a high-level overview of the quality and livability of the community.

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- About 89% of older residents living in the region rated quality of life as excellent or good. Most of the older residents scored their communities positively as a place to live and would recommend their communities to others. About 85% residents planned to stay in their community throughout their retirement.
- Positive scores were given to their communities as places to retire by 70% of older residents.

Overall Scores of Community Livability

The Community Assessment Survey of Older Adults (CASOA) is designed to examine the status of older adults and the community around many (17) topics of livability within six domains: Community Design, Employment and Finances, Equity and Inclusivity, Health and Wellness, Information and Assistance, and Productive Activities. Summary scores of community livability were created through the aggregation of a series of resident ratings within each of these different livability aspects and domains. Of the 17 aspects of livability examined, the aspects found to be strongest in the region related to areas of Safety (average positive score of 85%), Physical Health (77%), and Social Engagement (76%). The areas showing the greatest need for improvement related to Housing (19%), Employment (32%) and Mental Health (39%). More detailed information about each livability domain follows.

Community Design

Livable communities (which include those with mixed-use neighborhoods, higher-density development, increased connections, shared community spaces and more human-scale design) will become a necessity for communities to age successfully. Communities that have planned and been designed for older adults tend to emphasize access, helping to facilitate movement and participation.

- About 63% of respondents rated the overall quality of the transportation system (auto, bicycle, foot, bus) in their community as excellent or good. In many communities, ease of travel by walking or bicycling is given lower ratings than travel by car. Here, ease of travel by car was considered excellent or good by 88% of

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respondents, while ease of travel by walking and bicycle was considered excellent or good by 80% and 79% of respondents respectively.

- When considering aspects of housing (affordability and variety) and community features of new urbanism (where people can live close to places where they can eat, shop, work, and receive services), relatively lower scores were given by older adults compared to many other items on the survey. Only 11% of respondents gave a positive score to the availability of affordable quality housing in their communities, and only about 32% older adults gave excellent or good ratings to the availability of mixed-use neighborhoods.
- About 44% of older residents in the region reported experiencing housing needs and 24% reported mobility needs.

Employment and Finances

The life expectancy for those born between 1940 and 1960 has increased dramatically due to advances in health care and lifestyle changes. While this is a very positive trend overall, it also highlights both the importance of communities providing employment opportunities for older adults and the need for older adults to plan well for their retirement years.

- About 92% of older residents rated the overall economic health of their communities positively, although the cost of living was rated as excellent or good by only 13%.
- Employment opportunities for older adults (quality and variety) received low ratings (23% and 20% positive, respectively), and the opportunity to build work skills also was found to be lacking (51% excellent or good).
- About 15% older adults reported financial challenges and 14% reported employment needs.

Equity and Inclusion

A community is often greater than the sum of its parts. Having a sense of community entails not only a sense of membership and belonging, but also feelings of equity and trust in the other members of the community.

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- About 64% of older residents rated the sense of community in their neighborhoods as excellent or good, and neighborliness was rated as excellent or good by 59% of residents.
- About 64% of the respondents positively rated their community's openness and acceptance toward older residents of diverse backgrounds, and 57% indicated that their community valued older residents.
- Inclusion challenges were reported by about 18% of older residents and equity challenges by 4%.

Health and Wellness

Of all the attributes of aging, health poses the greatest risk and the biggest opportunity for communities to ensure the independence and contributions of their aging populations. Health and wellness, for the purposes of this study, included not only physical and mental health, but issues of safety, independent living and health care.

- About 83% older residents in the region rated their overall physical health as excellent or good and 89% rated their mental health as excellent or good.
- In most places, opportunities for health and wellness receive higher ratings from older adults than do health care ratings. Here, community opportunities for health and wellness were scored positively by 86% residents, while the percent giving ratings of excellent or good to the availability of physical health care was 56%, to mental health care 39%, and to long term care options 45%.
- Health-related problems were some of the most common challenges listed by older adults in the survey, with 36% reporting physical health challenges and 25% reporting mental health challenges. Health care was also a challenge for about 24% of older residents.

Information and Assistance

The older adult service network, while strong, is under-resourced and unable to single-handedly meet the needs of the continuously growing population of older adults. Providing useful and well-designed

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programs, as well as informing residents about other assistive resources, is an important way that government agencies reach residents age in place.

- The overall services provided to older adults in the region were rated as excellent or good by 73% of survey respondents.
- About 70% of survey respondents reported being somewhat informed or very informed about services and activities available to older adults. The availability of information about resources for older adults was rated positively by 54% of older residents and the availability of financial or legal planning services was rated positively by 54% of older residents.
- About 30% of older adults were found to have information access challenges in the region.

Productive Activities

Productive activities outside of work (such as volunteerism and social activity) promote quality of life and contribute to active aging. This domain examines the extent of older adults' participation in social and leisure programs and their time spent attending or viewing civic meetings, volunteering or providing help to others.

- About 73% of older adults surveyed felt they had excellent or good opportunities to volunteer, and 53% participated in some kind of volunteer work.
- The caregiving contribution of older adults was substantial in the region. About 32% of older residents reported providing care to individuals 55 and older, 12% to individuals 18-54 and 19% to individuals under 18.
- Older adults in the region reported challenges with being civically engaged 19%, being socially engaged 19% and caregiving 10%.

The Economic Contribution of Older Adults

The contribution older adults make through employment, volunteerism and caregiving was calculated for all older adults living in the region. It is estimated that older residents contribute \$895,616,087 annually to their community through paid and unpaid work.

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Older Resident Needs

Through the survey, more than 40 challenges commonly facing older adults were assessed by respondents. These challenges were grouped into 15 larger categories of needs. In the region, the largest challenges were in the areas of housing, physical health, and information about older adult services. At least 44% of older residents reported at least one item in these categories was a major or moderate problem in the 12 months prior to taking the survey.

Comparison to National Benchmarks

Community Characteristics Benchmarks

To better provide context to the survey data, resident responses for the region were compared to Polco's national benchmark database or older adult opinion. Of the 52 assessments of community livability that were compared to the benchmark database, 34 were similar, 14 above, and 4 below the benchmark comparisons.

The areas in which the region ratings were lower than benchmark comparisons were:

- Quality of employment opportunities for older adults
- Cost of living in your community
- Availability of affordable quality housing
- Variety of housing options

The areas in which the region rating was higher than benchmark comparisons were:

- Overall economic health of your community
- Overall design or layout of your community's residential and commercial areas (e.g., homes, buildings, streets, parks, etc.)
- Overall quality of the utility infrastructure in your community (water, sewer, storm water, electric/gas, broadband)
- Overall health and wellness opportunities in your community
- Overall opportunities for education, culture, and the arts
- How would you rate the overall services provided to older adults in your community?
- Ease of travel by car in your community
- Ease of walking in your community

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- Ease of bicycling in your community
- Opportunities to build work skills
- Availability of information about resources for older adults
- Availability of financial or legal planning services
- Availability of daytime care options for older adults
- Opportunities to enroll in skill-building or personal enrichment classes

Older Adult Challenges Benchmarks

Comparisons to the benchmark database can also be made for the proportion of residents experiencing a variety of challenges. In region, there was a lower proportion of older adults experiencing challenges for 9 item(s), a greater proportion of older adults experiencing challenges for 1 item(s), and a similar proportion experiencing challenges for 32 item(s).

The challenge for which a **greater** proportion of residents reported a problem compared to benchmarks was:

- Maintaining your home


The challenges for which a **lower** proportion of residents reported a problem compared to benchmarks were:


- Having enough money to meet daily expenses
- Having enough money to pay your property taxes
- Finding affordable health insurance
- Getting the health care you need
- Getting the oral health care you need
- Affording the medications you need
- Maintaining a healthy diet
- Feeling like your voice is heard in the community
- Having interesting recreational or cultural activities to attend


Section 3: Understanding the Report

Throughout this report, iconography is used to denote trends and benchmarks. While some pages will show the legend, others won't for the sake of space. Keep this page handy for reference.

Trends


- 


Favorably
At least 7 percentage points more favorable than last measure
- 


Similar
No statistically significant difference
- 


Unfavorably
At least 7 percentage points less favorable than last measure


Benchmarks

- 

Much more favorable
At least 20 points more favorable than benchmark
- 

More favorable
10-20 points more favorable than benchmark
- 

Similar
No statistically significant difference
- 

Less favorable
10-20 points less favorable than benchmark
- 

Much less favorable
At least 20 points less favorable than benchmark

Section 4: Community Readiness

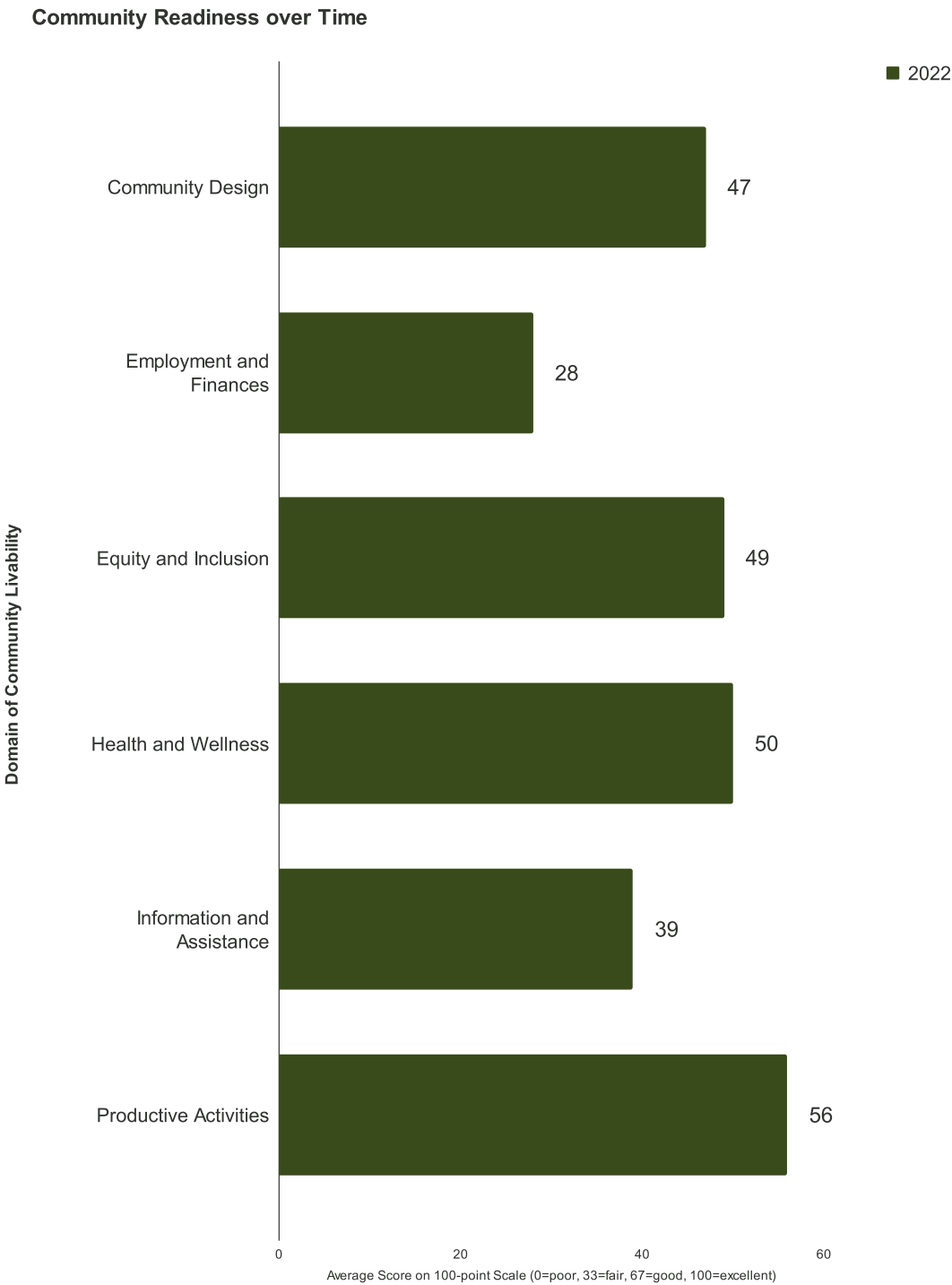
Communities that assist older adults to remain or become active community participants must provide the requisite opportunities for recreation, transportation, culture, education, communication, social connection, spiritual enrichment and health care. Because every community is different, each must identify what its older adults value most and what the community offers its older residents. The judgments of these residents provide the elements used to calculate the overall community quality in Avenidas.

Survey respondents were asked to rate a number of aspects of the community. These ratings were converted to an average scale of 0 (the lowest rating, such as poor) to 100 (the highest rating, such as excellent) and then combined to provide one overall rating (index¹) for each of the six dimensions of Community Readiness, as well as an overall rating of the Quality of the Community. If trend data prior to 2022 are shown, it should be noted that community readiness scores have been updated from previous reports to improve these metrics. Readiness scores for past surveys were recalculated using the new dimensions to make them comparable to the current structure.

Community Readiness Chart

Dimension	Community Livability Topics	Score (out of 100)
Overall Community Quality	<ul style="list-style-type: none">Place to Live and RetireRecommend and Remain in Community	64
Community Design	<ul style="list-style-type: none">HousingMobilityLand Use	38
Employment and Finances	<ul style="list-style-type: none">EmploymentFinances	27
Equity and Inclusivity	<ul style="list-style-type: none">EquityCommunity Inclusivity	45

Dimension	Community Livability Topics	100)
Health and Wellness	• Safety	41
	• Physical Health	
	• Mental Health	
	• Health Care	
	• Independent Living	
Information and Assistance	• Quality of Older Adult Services	31
	• Information on Available Older Adult Services	
Productive Activities	• Civic Engagement	45
	• Social Engagement	
	• Caregiving	



¹These ratings are not to be understood like ratings from school tests, because they are summaries of several questions that range from 0 as poor, 33 as fair, 67 as good and 100 as excellent. For example, a score

of 58 should be interpreted as closer to good than to fair (midpoint of the scale, 50, representing equidistance between fair).

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Section 5: Community livability topics

The Community Assessment Survey of Older Adults (CASOA) is designed to examine the status of older adults and the community around many (17) aspects of livability within six domains: Community Design, Employment and Finances, Equity and Inclusivity, Health and Wellness, Information and Assistance, and Productive Activities. Overall community quality also is assessed with two topics. (See **Introduction** section *About the Community Assessment Survey for Older Adults* for an overview of all the community livability topics within these domains.) For each of these 19 community livability topic areas, survey questions evaluated the community's ability to accommodate the needs of older residents, as well as the actual experiences and challenges of older adults.

To summarize the data, an index score was calculated for each aspect of livability by averaging the ratings given to the questions related to the specific community livability topic. (This index includes only the ratings of community amenities, not those items related to the respondents' own status or the challenges faced by the respondent.)

**Livability score trend unavailable.**

Because Avenidas doesn't have a prior livability score, trends for livability aren't available. Trends will be available after this survey has been conducted a second time.

Overall Community Quality



Place to Live and Retire
87 / 100



Recommend and Remain in Community
77 / 100

Community Design



Housing
19 / 100



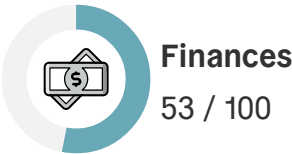
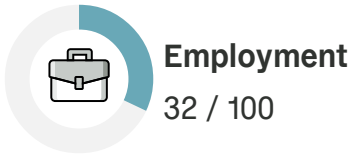
Land Use
63 / 100



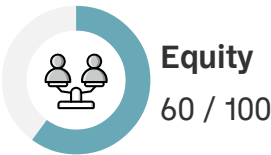
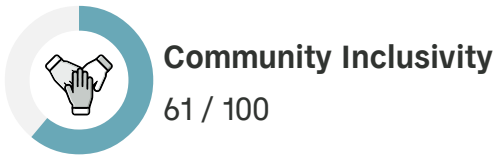
Mobility
72 / 100

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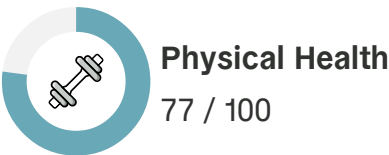
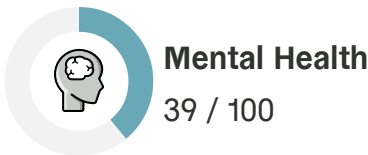
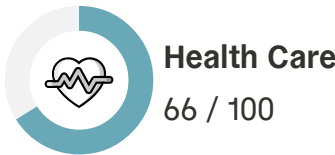
Employment and Finances



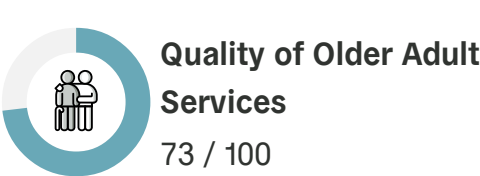
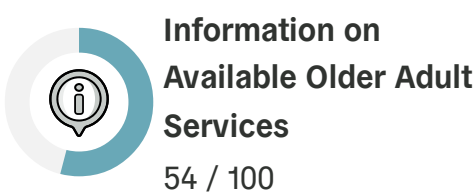
Equity and Inclusivity



Health and Wellness



Information and Assistance



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Productive Activities



Caregiving
Scoring not applicable



Civic Engagement
69 / 100



Social Engagement
76 / 100

Section 6A: Place to Live and Retire

Successful aging communities are attractive and welcoming to older adults and provide the support necessary for residents to age in place.



i Livability score trend unavailable.
Because Avenidas doesn't have a prior livability score, trends for livability aren't available. Trends will be available after this survey has been conducted a second time.

Related survey results

Items on the survey related to this topic are shown below. These tables display the ratings given by respondents, as well as a comparison to the national benchmark (average ratings from communities across the nation) and, if available, comparisons to ratings from the most recently implemented survey.

i

Trends unavailable

Because Avenidas doesn't have any prior measurements, these trends aren't available. Trends will be available after this survey has been conducted a second time.

Quality of Community

Percent reporting *excellent* or *good*.

Characteristic	% positive	National Benchmark
Your community as a place to live	94%	<div>—</div>
Your neighborhood as a place to live	93%	<div>—</div>
The overall quality of life in your community	89%	<div>—</div>
Your community as a place to retire	70%	<div>—</div>

Status Indicators - Personal Quality of Life

Percent reporting *excellent* or *good*.

Characteristic	% positive	National Benchmark
Your overall quality of life	91%	<div>—</div>

Section 6B: Recommend and Remain in Community

A strong testament to the quality of a community is the likelihood of recommending and remaining in the community. Generally, residents will not recommend a community to friends unless they believe that community is offering the right amenities and services. Furthermore, communities that do a good job supporting seniors allow their residents to remain throughout their retirement years.



i Livability score trend unavailable.

Because Avenidas doesn't have a prior livability score, trends for livability aren't available. Trends will be available after this survey has been conducted a second time.

Related survey results

Items on the survey related to this topic are shown below. These tables display the ratings given by respondents, as well as a comparison to the national benchmark (average ratings from communities across the nation) and, if available, comparisons to ratings from the most recently implemented survey.

i

Trends unavailable

Because Avenidas doesn't have any prior measurements, these trends aren't available. Trends will be available after this survey has been conducted a second time.

Quality of Community

Percent reporting *very likely* or *somewhat likely*.

Characteristic	% likely	National Benchmark
Remain in your community throughout your retirement	85%	<div>—</div>
Recommend living in your community to older adults	69%	<div>∨</div>

Section 7A: Housing

Most older adults want to age in place; however, many do not have homes that feature universal design allowing access for walkers and wheelchairs and providing safety for those who are frail or experiencing mobility impairments. Ensuring the availability of housing stock that is both affordable and suitable for seniors is necessary as a community’s population ages.



i Livability score trend unavailable.
Because Avenidas doesn't have a prior livability score, trends for livability aren't available. Trends will be available after this survey has been conducted a second time.

Related survey results

Items on the survey related to this topic are shown below. These tables display the ratings given by respondents, as well as a comparison to the national benchmark (average ratings from communities across the nation) and, if available, comparisons to ratings from the most recently implemented survey.

Trends unavailable

Because Avenidas doesn't have any prior measurements, these trends aren't available. Trends will be available after this survey has been conducted a second time.

Potential Problems

Percent reporting *minor problem, moderate problem or major problem*.

Characteristic	% problematic	National Benchmark
Doing heavy or intense housework	61%	–
Maintaining your home	59%	▼
Maintaining your yard	56%	–
Having housing to suit your needs	23%	–

Quality of Community

Percent reporting *excellent* or *good*.

Characteristic	% positive	National Benchmark
Availability of accessible housing (e.g., homes with a no step entry, single-floor living, wide hallways and doorways)	28%	–
Variety of housing options	23%	▼
Availability of affordable quality housing	11%	▼

Section 7B: Land Use

The movement in America towards designing more livable communities (which include mixed-use neighborhoods, higher-density development, increased connections, shared community spaces and more human-scale design) will become a necessity for communities to age successfully. Communities that have planned and been designed for older adults tend to emphasize access, helping to facilitate movement and participation.



i Livability score trend unavailable.
Because Avenidas doesn't have a prior livability score, trends for livability aren't available. Trends will be available after this survey has been conducted a second time.

Related survey results

Items on the survey related to this topic are shown below. These tables display the ratings given by respondents, as well as a comparison to the national benchmark (average ratings from communities across the nation) and, if available, comparisons to ratings from the most recently implemented survey.

i

Trends unavailable

Because Avenidas doesn't have any prior measurements, these trends aren't available. Trends will be available after this survey has been conducted a second time.

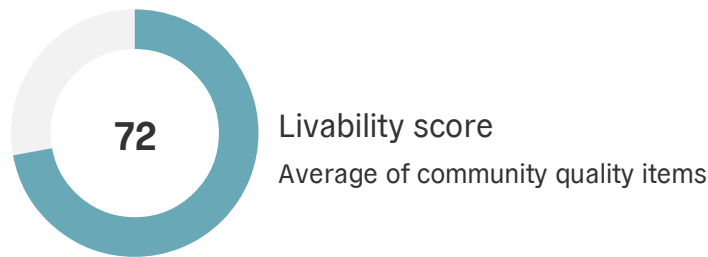
Quality of Community

Percent reporting *excellent* or *good*.

Characteristic	% positive	National Benchmark
Overall quality of the utility infrastructure in your community (water, sewer, storm water, electric/gas, broadband)	83%	<div>^</div>
Overall design or layout of your community's residential and commercial areas (e.g., homes, buildings, streets, parks, etc.)	79%	<div>^</div>
Public places where people want to spend time	52%	<div>-</div>
Availability of mixed-use neighborhoods where people live close to places where they can eat, shop, work, and receive services	32%	<div>-</div>

Section 7C: Mobility

The ease with which older residents can move about their community, whether for commuting, leisure, or recreation, plays a major role in the quality of life for all who live, work, and play in the community. Those who reside in livable communities where they can reach their destinations easily and comfortably by auto, on foot or in public transportation are more likely to remain engaged in their communities and to demonstrate signs of successful aging. Residents that must give up driving are more likely to be able to age in place if other modes of transportation are easily accessed in their neighborhood and community.



i Livability score trend unavailable.
Because Avenidas doesn't have a prior livability score, trends for livability aren't available. Trends will be available after this survey has been conducted a second time.

Related survey results

Items on the survey related to this topic are shown below. These tables display the ratings given by respondents, as well as a comparison to the national benchmark (average ratings from communities across the nation) and, if available, comparisons to ratings from the most recently implemented survey.

i

Trends unavailable

Because Avenidas doesn't have any prior measurements, these trends aren't available. Trends will be available after this survey has been conducted a second time.

Potential Problems

Percent reporting *minor problem, moderate problem or major problem*.

Characteristic	% problematic	National Benchmark
Having safe and affordable transportation available	41%	–
No longer being able to drive	16%	–

Quality of Community

Percent reporting *excellent* or *good*.

Characteristic	% positive	National Benchmark
Ease of travel by car in your community	88%	<div>^</div>
Ease of getting to the places you usually have to visit	84%	<div>—</div>
Ease of walking in your community	80%	<div>^</div>
Ease of bicycling in your community	79%	<div>^</div>
Overall quality of the transportation system (auto, bicycle, foot, bus) in your community	63%	<div>—</div>
Ease of travel by public transportation in your community	30%	<div>—</div>

Section 8A: Employment

People in the U.S. are working longer and retiring at an older age than they have in the past. Older adults are postponing retirement for a variety of reasons: improved health, the desire to accumulate additional wealth and/or benefit from delayed pension plans, and because the information age-based economy is less physically demanding than jobs from the industrial age. Older workers are an untapped resource for many communities seeking economic stability and growth.



i Livability score trend unavailable.

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Related survey results

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- i

Trends unavailable

Because Avenidas doesn't have any prior measurements, these trends aren't available. Trends will be available after this survey has been conducted a second time.
- i

Certain benchmarks unavailable

Because this survey includes new characteristics, we can't determine your benchmark performance on the new characteristics until a sufficient number of communities have completed surveying.

Potential Problems

Percent reporting *minor problem, moderate problem or major problem*.

Characteristic	% problematic	National Benchmark
Building skills for paid or unpaid work	30%	–
Finding work in retirement	29%	–

Quality of Community

Percent reporting *excellent* or *good*.

Characteristic	% positive	National Benchmark
Opportunities to build work skills	51%	
Quality of employment opportunities for older adults	23%	
Variety of employment opportunities for older adults	20%	

Section 8B: Finances

With longer life spans, the importance of financial well-being in our lives has increased dramatically. Financial independence and the ability to economically contribute to a community have become critical factors in enhancing the quality of life of older adults.



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Related survey results

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i

Trends unavailable

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Potential Problems

Percent reporting *minor problem, moderate problem or major problem*.

Characteristic	% problematic	National Benchmark
Having enough money to meet daily expenses	24%	<div>^</div>
Having enough money to pay your property taxes	16%	<div>^</div>

Quality of Community

Percent reporting *excellent or good*.

Characteristic	% positive	National Benchmark
Overall economic health of your community	92%	<div>⧗</div>
Cost of living in your community	13%	<div>∨</div>

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Older Adults

Status Indicators - Household Financial Status

Percent reporting *very positive* or *somewhat positive*.

Characteristic	% positive	National Benchmark
What impact, if any, do you think the economy will have on your family income in the next 6 months? Do you think the impact will be:	20%	–

Section 9A: Community Inclusivity

Inclusivity refers to a cultural and environmental feeling of belonging, creating places in which any individual or group can be and feel welcomed, respected, supported, and valued increases the overall livability of communities.



i Livability score trend unavailable.
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Related survey results

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- i

Certain benchmarks unavailable

Because this survey includes new characteristics, we can't determine your benchmark performance on the new characteristics until a sufficient number of communities have completed surveying.

Potential Problems

Percent reporting *minor problem, moderate problem or major problem*.

Characteristic	% problematic	National Benchmark
Feeling lonely or isolated	36%	–
Having friends or family you can rely on	35%	–
Feeling like you don't fit in or belong	28%	–

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Quality of Community

Percent reporting *excellent* or *good*.

Characteristic	% positive	National Benchmark
Sense of community in your community	64%	–
Neighborliness of your community	59%	–
Making all residents feel welcome	59%	–

Section 9B: Equity

Opportunities for health, income, housing and other life circumstances are often disproportionate. Strong communities work to decrease inequalities so that all residents can successfully age in place.



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Related survey results

Items on the survey related to this topic are shown below. These tables display the ratings given by respondents, as well as a comparison to the national benchmark (average ratings from communities across the nation) and, if available, comparisons to ratings from the most recently implemented survey.

i

Trends unavailable

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Potential Problems

Percent reporting *minor problem, moderate problem or major problem*.

Characteristic	% problematic	National Benchmark
Being treated unfairly or discriminated against because of your age	20%	–

Quality of Community

Percent reporting *excellent or good*.

Characteristic	% positive	National Benchmark
Openness and acceptance of the community towards older residents of diverse backgrounds	64%	–
Valuing older residents in your community	57%	–

Section 10A: Health Care

Poor health does not need to be an inevitable consequence of aging. Adoption of healthy lifestyles and the use of preventive services will reduce the risk of morbidity and increase healthy longevity of older residents.



i Livability score trend unavailable.
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Related survey results

Items on the survey related to this topic are shown below. These tables display the ratings given by respondents, as well as a comparison to the national benchmark (average ratings from communities across the nation) and, if available, comparisons to ratings from the most recently implemented survey.

i

Trends unavailable

Because Avenidas doesn't have any prior measurements, these trends aren't available. Trends will be available after this survey has been conducted a second time.

Potential Problems

Percent reporting *minor problem, moderate problem or major problem*.

Characteristic	% problematic	National Benchmark
Finding affordable health insurance	29%	<div>^</div>
Getting the health care you need	26%	<div>^</div>
Getting the vision care you need	21%	<div>—</div>
Getting the oral health care you need	21%	<div>^</div>
Affording the medications you need	20%	<div>^</div>

Quality of Community

Percent reporting *excellent* or *good*.

Characteristic	% positive	National Benchmark
Availability of preventive health services (e.g., health screenings, flu shots, educational workshops)	75%	–
Availability of affordable quality physical health care	56%	–

Section 10B: Independent Living

If the community cannot help maintain the independence of residents who experience the decline in health that often accompanies aging, the potential contribution of older residents will be lost to hospitals and nursing homes.



i Livability score trend unavailable.

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Related survey results

Items on the survey related to this topic are shown below. These tables display the ratings given by respondents, as well as a comparison to the national benchmark (average ratings from communities across the nation) and, if available, comparisons to ratings from the most recently implemented survey.

i

Trends unavailable

Because Avenidas doesn't have any prior measurements, these trends aren't available. Trends will be available after this survey has been conducted a second time.

Average Number of Hours Providing Care

Average number of hours spent per respondent in a typical week

Why aren't statistical comparisons to trends/benchmarks shown?

Characteristic	Average # of Hours	National Benchmark
Receiving assistance, paid or unpaid (e.g., with shopping, cooking, etc.)	1.2	<div></div>

Potential Problems

Percent reporting *minor problem*, *moderate problem* or *major problem*.

Characteristic	% problematic	National Benchmark
Performing regular activities, including walking, eating and preparing meals	25%	<div>-</div>

Quality of Community

Percent reporting *excellent* or *good*.

Characteristic	% positive	National Benchmark
Availability of long-term care options	45%	–
Availability of daytime care options for older adults	41%	^

Status Indicators - Activities

Percent reporting *1 to 3 hours*, *4 to 5 hours*, *6 to 10 hours*, *11 to 19 hours* or *20 or more hours*.

Characteristic	% of respondents	National Benchmark
Receiving assistance, paid or unpaid (e.g., with shopping, cooking, etc.)	19%	∨

Status Indicators - Long-term Care Admissions

Percent reporting *1-2 days*, *3-5 days* or *6 or more days*.

Characteristic	% of respondents	National Benchmark
In a long-term care facility (including nursing home or in-patient rehabilitation facility)	5%	–

Section 10C: Mental Health

Mental health plays a vital role in the well-being of residents. Depression, isolation, anxiety and memory loss can have a direct and profound effect on older adults’ quality of life.



i Livability score trend unavailable.
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Related survey results

Items on the survey related to this topic are shown below. These tables display the ratings given by respondents, as well as a comparison to the national benchmark (average ratings from communities across the nation) and, if available, comparisons to ratings from the most recently implemented survey.

i

Trends unavailable

Because Avenidas doesn't have any prior measurements, these trends aren't available. Trends will be available after this survey has been conducted a second time.

Potential Problems

Percent reporting *minor problem, moderate problem or major problem*.

Characteristic	% problematic	National Benchmark
Dealing with the loss of a close family member or friend	41%	–
Experiencing confusion or forgetfulness	35%	–
Feeling depressed	35%	–

Quality of Community

Percent reporting *excellent or good*.

Characteristic	% positive	National Benchmark
Availability of affordable quality mental health care	39%	–

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Status Indicators - Personal Health Status

Percent reporting *excellent* or *good*.

Characteristic	% positive	National Benchmark
Your overall mental health/emotional wellbeing	89%	–

Section 10D: Physical Health

Of all the attributes of aging, health poses the greatest risk and opportunity. When good health can be sustained, the individuals benefit by living a life of better quality, friends and family benefit from reduced caregiving burdens, and the community benefits by harnessing the power of older adults' contributions.



i Livability score trend unavailable.
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Related survey results

Items on the survey related to this topic are shown below. These tables display the ratings given by respondents, as well as a comparison to the national benchmark (average ratings from communities across the nation) and, if available, comparisons to ratings from the most recently implemented survey.

i

Trends unavailable

Because Avenidas doesn't have any prior measurements, these trends aren't available. Trends will be available after this survey has been conducted a second time.

Potential Problems

Percent reporting *minor problem, moderate problem or major problem*.

Characteristic	% problematic	National Benchmark
Your physical health	59%	–
Staying physically fit	50%	–
Falling or injuring yourself in your home	34%	–
Maintaining a healthy diet	33%	^
Having enough food to eat	8%	–

Quality of Community

Percent reporting *excellent* or *good*.

Characteristic	% positive	National Benchmark
Overall quality of natural environment in your community	88%	–
Overall health and wellness opportunities in your community	86%	^
Fitness opportunities (including exercise classes and paths or trails, etc.)	76%	–
Availability of affordable quality food	59%	–

Status Indicators - Falls

Percent reporting *1 to 2 times*, *3 to 5 times* or *more than 5 times*.

Characteristic	% of respondents	National Benchmark
Thinking back over the past 12 months, how many times have you fallen and injured yourself?	34%	–

Status Indicators - Hospitalizations

Percent reporting *1-2 days*, *3-5 days* or *6 or more days*.

Characteristic	% of respondents	National Benchmark
As a patient in a hospital	21%	–

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Status Indicators - Personal Health Status

Percent reporting *excellent* or *good*.

Characteristic	% positive	National Benchmark
Your overall physical health	83%	–

Section 10E: Safety

Safety is one of the most essential components of community livability. The extent to which older residents feel safe from crime and other adverse events can strengthen their feelings of comfort and trust and impact their ability to live independently.



i Livability score trend unavailable.
Because Avenidas doesn't have a prior livability score, trends for livability aren't available. Trends will be available after this survey has been conducted a second time.

Related survey results

Items on the survey related to this topic are shown below. These tables display the ratings given by respondents, as well as a comparison to the national benchmark (average ratings from communities across the nation) and, if available, comparisons to ratings from the most recently implemented survey.

i

Trends unavailable

Because Avenidas doesn't have any prior measurements, these trends aren't available. Trends will be available after this survey has been conducted a second time.

Potential Problems

Percent reporting *minor problem, moderate problem or major problem*.

Characteristic	% problematic	National Benchmark
Being a victim of fraud or a scam	16%	–
Being a victim of crime	9%	–
Being physically or emotionally abused	5%	–

Quality of Community

Percent reporting *excellent or good*.

Characteristic	% positive	National Benchmark
Overall feeling of safety in your community	85%	–

Section 11A: Information on Available Older Adult

Sometimes residents of any age fail to take advantage of services in their community solely because they are not aware of the opportunities that exist. Educating a large community of older adults is not simple, but raising awareness about attractive, useful and well-designed programs will lead more residents to benefit from becoming participants.



i Livability score trend unavailable.

Because Avenidas doesn't have a prior livability score, trends for livability aren't available. Trends will be available after this survey has been conducted a second time.

Related survey results

Items on the survey related to this topic are shown below. These tables display the ratings given by respondents, as well as a comparison to the national benchmark (average ratings from communities across the nation) and, if available, comparisons to ratings from the most recently implemented survey.

- i

Trends unavailable

Because Avenidas doesn't have any prior measurements, these trends aren't available. Trends will be available after this survey has been conducted a second time.
- i

Certain benchmarks unavailable

Because this survey includes new characteristics, we can't determine your benchmark performance on the new characteristics until a sufficient number of communities have completed surveying.

Potential Problems

Percent reporting *minor problem, moderate problem or major problem*.

Characteristic	% problematic	National Benchmark
Not knowing what services are available to older adults in your community	62%	—
Having adequate information or dealing with public programs such as Social Security, Medicare, and Medicaid	45%	—

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Older Adults

Quality of Community

Percent reporting *excellent* or *good*.

Characteristic	% positive	National Benchmark
Availability of information about resources for older adults	54%	<div>^</div>
Availability of financial or legal planning services	54%	<div>^</div>

Status Indicators - Informed about Services

Percent reporting *very informed* or *somewhat informed*.

Characteristic	% informed	National Benchmark
In general, how informed or uninformed do you feel about services and activities available to older adults in your community?	70%	N/A

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Status Indicators - Use of Technology

Percent reporting *several times a day, once a day or a few times a week.*

Characteristic	% of respondents	National Benchmark
Use or check email	96%	–
Access the internet from your home using a computer, laptop, or tablet computer	94%	–
Access the internet from your cell phone	76%	–
Visit social media sites such as Facebook, Twitter, Nextdoor, etc.	61%	–
Shop online	38%	–
Share your opinions online	25%	–

Percent reporting yes.

Characteristic	% yes	National Benchmark
I have high-speed internet/broadband at home	91%	N/A

Section 11B: Quality of Older Adult Services

Strong local governments play a major role in producing communities that meet the needs of older residents while making the best use of available resources. Providing services that are responsive to the present and future needs of the older community is an important responsibility and a vital component of livable communities.



i Livability score trend unavailable.
Because Avenidas doesn't have a prior livability score, trends for livability aren't available. Trends will be available after this survey has been conducted a second time.

Items on the survey related to this topic are shown below. These tables display the ratings given by respondents, as well as a comparison to the national benchmark (average ratings from communities across the nation) and, if available, comparisons to ratings from the most recently implemented survey.

Because Avenidas doesn't have any prior measurements, these trends aren't available. Trends will be available after this survey has been conducted a second time.

Percent reporting *excellent* or *good*.

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Section 12A: Caregiving

According to the Centers for Disease Control, about 2 in 5 adults 65 years of age and older have a disabling condition that affects their ability to live independently¹. Those who provide care to a loved one or friend with such a condition often feel a sense of contribution and personal worth despite the physical, emotional and financial burden such care can produce. While such caregiving is most often provided by family members and is unpaid, AARP researchers estimate the value of the care as \$470 billion annually. A caregiving crunch is predicted in the future, where the average American will spend more years caring for their parents than for their own children².

¹ Prevalence of Disabilities and Health Care Access by Disability Status and Type Among Adults — United States, 2016

² AARP Family Caregiver Contribution study

i Livability scoring is not applicable.

Because data for this topic are informational and not evaluative, no livability score is calculated.

Related survey results

Items on the survey related to this topic are shown below. These tables display the ratings given by respondents, as well as a comparison to the national benchmark (average ratings from communities across the nation) and, if available, comparisons to ratings from the most recently implemented survey.

i

Trends unavailable

Because Avenidas doesn't have any prior measurements, these trends aren't available. Trends will be available after this survey has been conducted a second time.

Average Number of Hours Providing Care

Average number of hours spent per respondent in a typical week

Why aren't statistical comparisons to trends/benchmarks shown?

Characteristic	Average # of Hours	National Benchmark
Providing care to someone age 55+	2.7	–
Providing care someone under age 18	1.3	–
Providing care to someone age 18 to 54	0.6	–

Potential Problems

Percent reporting *minor problem, moderate problem or major problem.*

Characteristic	% problematic	National Benchmark
Feeling EMOTIONALLY burdened by providing care for another person	23%	–
Feeling PHYSICALLY burdened by providing care for another person	17%	–
Feeling FINANCIALLY burdened by providing care for another person	15%	–

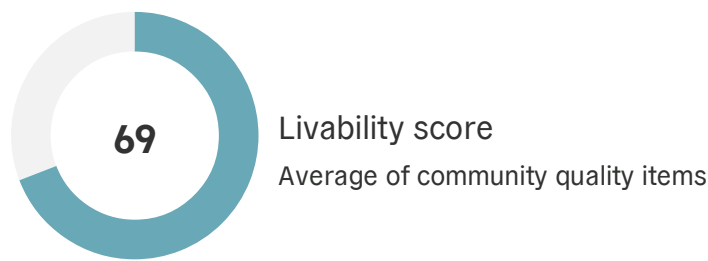
Status Indicators - Activities

Percent reporting *1 to 3 hours, 4 to 5 hours, 6 to 10 hours, 11 to 19 hours or 20 or more hours.*

Characteristic	% of respondents	National Benchmark
Providing care to someone age 55+	32%	–
Providing care someone under age 18	19%	–
Providing care to someone age 18 to 54	12%	–

Section 12B: Civic Engagement

In communities where residents care about local politics and social issues, where they feel engaged and effective, there tends to be greater social, economic and cultural prosperity. Civic activity of any kind, such as volunteering, participating in political groups or being active in community decision-making, benefits both communities and seniors themselves.



i Livability score trend unavailable.

Because Avenidas doesn't have a prior livability score, trends for livability aren't available. Trends will be available after this survey has been conducted a second time.

Related survey results

Items on the survey related to this topic are shown below. These tables display the ratings given by respondents, as well as a comparison to the national benchmark (average ratings from communities across the nation) and, if available, comparisons to ratings from the most recently implemented survey.

i

Trends unavailable

Because Avenidas doesn't have any prior measurements, these trends aren't available. Trends will be available after this survey has been conducted a second time.

Average Number of Hours Providing Care

Average number of hours spent per respondent in a typical week

Why aren't statistical comparisons to trends/benchmarks shown?

Characteristic	Average # of Hours	National Benchmark
Volunteering your time	2.3	–

Potential Problems

Percent reporting *minor problem, moderate problem or major problem*.

Characteristic	% problematic	National Benchmark
Feeling like your voice is heard in the community	37%	^
Finding productive or meaningful activities to do	30%	–
Finding meaningful volunteer work	25%	–

Quality of Community

Percent reporting *excellent* or *good*.

Characteristic	% positive	National Benchmark
Opportunities to volunteer	73%	<div>–</div>
Opportunities to participate in community matters	73%	<div>–</div>
Residents' connection and engagement with their community	62%	<div>–</div>

Status Indicators - Activities

Percent reporting *1 to 3 hours*, *4 to 5 hours*, *6 to 10 hours*, *11 to 19 hours* or *20 or more hours*.

Characteristic	% of respondents	National Benchmark
Volunteering your time	53%	<div>–</div>

Status Indicators - Participation

Percent reporting yes.

Characteristic	% yes	National Benchmark
Voted in your most recent local election	88%	–
Watched (online or on television) a local public meeting	31%	–
Attended a local public meeting (of local elected officials like City Council or County Commissioners, advisory boards, town halls, HOA, neighborhood watch, etc.)	22%	–
Participated in a civic group (including Elks, Kiwanis, Masons, etc.)	17%	–

Section 12C: Social Engagement

It is well documented that social support also has many mental and physical health benefits. Extensive opportunities for recreation, the arts and social interaction make a community more attractive, especially to older adults.



i Livability score trend unavailable.

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Related survey results

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i

Trends unavailable

Because Avenidas doesn't have any prior measurements, these trends aren't available. Trends will be available after this survey has been conducted a second time.

Average Number of Hours Providing Care

Average number of hours spent per respondent in a typical week

Why aren't statistical comparisons to trends/benchmarks shown?

Characteristic	Average # of Hours	National Benchmark
Talking or visiting with friends/family	6.5	–
Assisting friends, relatives, or neighbors	3.9	–

Potential Problems

Percent reporting *minor problem, moderate problem or major problem*.

Characteristic	% problematic	National Benchmark
Having interesting social events or activities to attend	43%	–
Having interesting recreational or cultural activities to attend	35%	^
Feeling bored	34%	–

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Quality of Community

Percent reporting *excellent* or *good*.

Characteristic	% positive	National Benchmark
Overall quality of parks and recreation opportunities	85%	–
Overall opportunities for education, culture, and the arts	84%	^
Opportunities to attend religious or spiritual activities	80%	–
Recreation opportunities (including games, arts, library services, etc.)	75%	–
Opportunities to enroll in skill-building or personal enrichment classes	68%	^
Opportunities to attend social events or activities	61%	–

Status Indicators - Activities

Percent reporting *1 to 3 hours*, *4 to 5 hours*, *6 to 10 hours*, *11 to 19 hours* or *20 or more hours*.

Characteristic	% of respondents	National Benchmark
Talking or visiting with friends/family	97%	–
Assisting friends, relatives, or neighbors	78%	–

Status Indicators - Participation

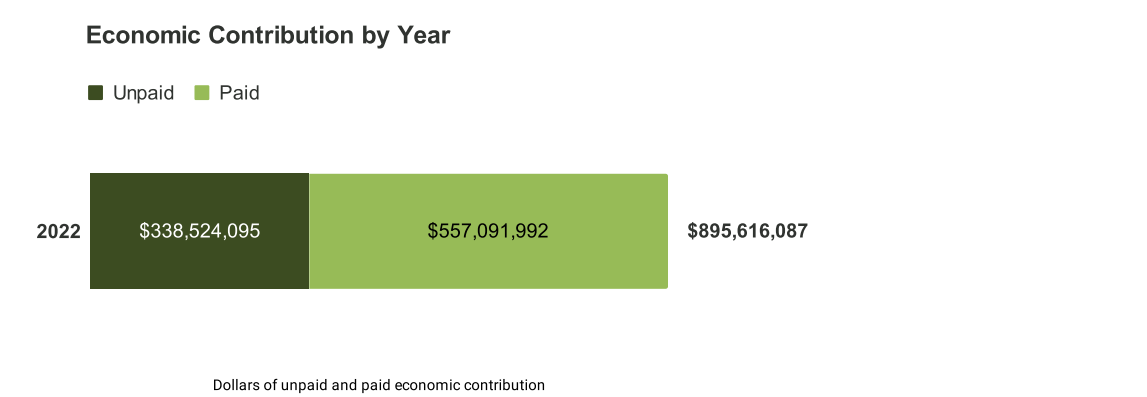
Percent reporting yes.

Characteristic	% yes	National Benchmark
Used a public library in your community	62%	<div>^</div>
Participated in a club (including book, dance, game, and other social)	45%	<div>^</div>
Participated in religious or spiritual activities with others	41%	<div>—</div>
Participated in a recreation program or group activity	40%	<div>—</div>
Used a recreation center in your community	30%	<div>—</div>
Used a senior center in your community	24%	<div>—</div>

Section 13: Economic Contribution

Productive behavior is “any activity, paid or unpaid, that generates goods or services of economic value.”¹ Productive activities include many types of paid and unpaid work, as well as services provided to friends, family or neighbors. Older adults make significant contributions (paid and unpaid) to the communities in which they live. In addition to their paid work, older adults contribute to the economy through volunteering, providing informal help to family and friends, and caregiving.

Economic Contribution of Older Adults in Avenidas



The calculations of the economic contributions of older adults in Avenidas were rough estimates using data from the U.S. Department of Labor Bureau of Labor Statistics (Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates).

Economic Contribution of Older Adults

% of older adults	# of older adults*	Average # of hours**	Average hourly rate***	Annual total
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Providing care to older adult(s)	33%	18,128	2.97	\$16.35	
Providing care to adult(s)	13%	7,218	0.6	\$16.35	\$3,691,291
Providing care to child(ren)	20%	11,132	1.41	\$17.99	\$14,637,369
Providing help to family and friends	79%	43,548	4.09	\$20.28	\$187,911,966
Volunteering	54%	29,971	2.38	\$23.32	\$86,501,535
Subtotal unpaid					\$338,524,095
Working part time	12%	6,580	15	\$41.14	\$211,159,079
Working full time	9%	5,053	32	\$41.14	\$345,932,913
Subtotal paid					\$557,091,992
Total contribution					\$895,616,087

¹Rowe JW, Kahn RL. Successful Aging. New York: Pantheon Books; 1998.

* Based on U.S. Census Bureau - 2019 American Community Survey; about 55,229 adults age 60 and over in the state.

** Respondents were asked to select a range of hours. The average number of hours was calculated from the mid-point of the response scale. For example, a response of 1 to 3 hours equated to 2 hours and a response of never was assumed to be zero hours. In cases where the respondent chose a response that indicated 11 or more hours or 20 or more hours, the number of hours was calculated as 125% of 11 and

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125% of 20 (i.e., 13.75 and 25 respectively). Working full assumed to be 32 hours per week and working part time to be 15 hours per week.

*** The economic value of an hour worked was assumed to be the same as the average hourly wage as calculated by the Bureau of Labor statistics for similar types of work in undefined. Providing care for older adults and adults was assumed to be the equivalent of "Personal and Home Care Aides." Providing care for children was assumed to be the equivalent of "Child Care Workers." Providing help to family and friends was assumed to be the equivalent of "Personal Care and Service Occupations." Volunteering was assumed to be the equivalent of "Office Clerks, General." Working full time and part time was assumed to be the equivalent of "All Occupations."

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Section 14: Community Needs

The individual survey questions about specific problems faced by older community members were summarized into the 17 larger categories to provide a broad picture of older resident needs in Avenidas. The figure below shows the percent of respondents who reported that one or more items within each of these 17 areas was a major or moderate problem. (See Methods for more information on the items included in each area.)

Typically, it is understood that the self-reported needs of older adults represent a minimum level, a conservative estimate attenuated by respondents' strong desire to feel and appear self-reliant and further reduced by the silent voice of some older adults who, no matter how sensitive the attempt, are too frail to participate in any survey enterprise.

Percent and Estimated Number of Older Adults With a Need

	Percent with need	Number affected (N=55,229)*
Housing	44%	24,518
Mobility	24%	13,400
Employment	14%	7,738
Finances	15%	8,408
Equity	4%	2,381
Community Inclusivity	18%	9,769
Safety	9%	4,839
Physical Health	36%	19,848
Mental Health	25%	14,057
Health Care	24%	13,417
Independent Living	7%	4,027

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	Percent with need	Number of people
Housing	44%	24,518
Mobility	24%	13,400
Information on Available Older Adult Services	30%	16,549
Civic Engagement	19%	10,718
Social Engagement	19%	10,306
Caregiving	10%	5,678

Populations at Higher Risk

As people age, many learn to take better care of themselves, to plan for retirement and, generally, to move more deliberately. Aging builds wisdom but can sap resources — physical, emotional and financial. Even those blessed by good luck or prescient enough to plan comprehensively for the best future may find themselves with unanticipated needs or with physical, emotional or financial strengths that could endure only with help. Some people age better than others, and aging well requires certain strengths that are inherent and others that can be supported by assistance from the private sector and government.

The tables below show the reported needs within each category of livability of Avenidas's older adult population, by demographic subgroup. This information can help identify which groups are at higher risk in the community and account for sociodemographic disparities when addressing these needs.

Percent Needs of Older Population by Sociodemographic Characteristics, (55,229)*

The sociodemographic characteristics examined included Gender, Age, Race, Ethnicity, Annual Household Income, Housing Tenure (Rent or Own), and Household Composition (Lives alone or Lives with others)

Housing	Mobility	Employment	Finances	Equity
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Female	48%	27%	16%	18%	1%
Male	40%	21%	12%	12%	1%
60 to 64 years	42%	11%	11%	20%	5%
65 to 74 years	45%	22%	17%	15%	2%
75 or over	46%	37%	13%	12%	6%
White	40%	25%	12%	12%	5%
Not white	55%	21%	19%	23%	4%
Hispanic	56%	14%	40%	33%	6%
Not Hispanic	43%	25%	12%	13%	4%
Less than \$75,000	64%	45%	25%	31%	6%
\$75,000 to \$199,999	43%	20%	13%	12%	6%
\$200,000 or more	21%	9%	1%	3%	0%
Rent	53%	39%	23%	35%	12%
Own	42%	20%	11%	9%	2%
Lives alone	51%	33%	15%	17%	7%
Lives with others	40%	19%	13%	14%	2%
Overall	44%	24%	14%	15%	4%

	Community Inclusivity	Safety	Physical Health	Mental Health	Health Care	Independent Living
Female	22%	11%	44%	32%	25%	9%
Male	13%	6%	27%	18%	24%	5%

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60 to 64 years	20%	7%	33%	26%		
65 to 74 years	16%	8%	27%	24%	24%	5%
75 or over	17%	10%	47%	26%	17%	9%
White	17%	8%	36%	27%	19%	7%
Not white	17%	10%	35%	21%	37%	8%
Hispanic	18%	13%	61%	36%	40%	13%
Not Hispanic	17%	8%	34%	24%	22%	7%
Less than \$75,000	30%	13%	60%	36%	38%	10%
\$75,000 to \$199,999	17%	9%	31%	24%	19%	9%
\$200,000 or more	7%	7%	16%	16%	13%	2%
Rent	28%	15%	53%	37%	37%	9%
Own	14%	7%	31%	22%	21%	7%
Lives alone	27%	11%	43%	34%	25%	10%
Lives with others	12%	7%	31%	20%	24%	5%
Overall	18%	9%	36%	25%	24%	7%

Information on Available Older Adult Services	Civic Engagement	Social Engagement	Caregiving
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	Information on Available Older Adult Services	Civic Engagement	Social Engagement	Caregiving
Female	35%	21%	23%	11%
Male	24%	17%	14%	9%
60 to 64 years	32%	22%	22%	9%
65 to 74 years	34%	17%	13%	13%
75 or over	24%	21%	22%	8%
White	28%	20%	16%	10%
Not white	33%	15%	24%	8%
Hispanic	45%	20%	30%	26%
Not Hispanic	28%	19%	17%	9%
Less than \$75,000	46%	26%	34%	11%
\$75,000 to \$199,999	29%	24%	17%	11%
\$200,000 or more	16%	8%	6%	7%
Rent	40%	28%	31%	8%
Own	27%	17%	15%	11%
Lives alone	32%	21%	19%	8%
Lives with others	28%	17%	18%	12%
Overall	30%	19%	19%	10%

* Source: U.S. Census Bureau, 2019 American Community Survey 5-Year Estimates

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Section 15: Full Results (with No Opinion)

These results include all questions. The results include the percentage that responded for each answer choice and the number of responses. If the choices included a choice with no opinion (like don't know or not applicable), they will be shown in this section. The following section shows the results with no opinion choices.

1. In which category is your age?

Answer Choice	Percent
50-54 years	6% (47)
55-59 years	10% (83)
60-64 years	22% (179)
65-69 years	17% (141)
70-74 years	14% (113)
75-79 years	15% (122)
80-84 years	10% (78)
85-89 years	4% (34)
90-94 years	1% (10)
95 years or older	0% (3)

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2. Please rate each of the following aspects of quality of life in your community.

Characteristic	Excellent	Good	Fair	Poor	Don't know
Your community as a place to live	55% (372)	38% (254)	5% (33)	1% (5)	1% (9)
Your neighborhood as a place to live	56% (373)	36% (236)	6% (41)	1% (6)	1% (5)
Your community as a place to retire	32% (211)	36% (234)	21% (140)	7% (48)	3% (20)
Sense of community in your community	27% (178)	35% (234)	26% (170)	10% (63)	3% (18)
The overall quality of life in your community	45% (300)	43% (281)	10% (65)	1% (6)	1% (8)

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3. Please rate each of the following characteristics as they relate to your community as a whole.

Characteristic	Excellent	Good	Fair	Poor	Don't know
Overall economic health of your community	45% (304)	42% (285)	7% (48)	1% (6)	5% (34)
Overall quality of the transportation system (auto, bicycle, foot, bus) in your community	16% (106)	44% (292)	28% (183)	8% (54)	4% (27)
Overall design or layout of your community's residential and commercial areas (e.g., homes, buildings, streets, parks, etc.)	25% (163)	52% (346)	18% (119)	3% (19)	3% (19)
Overall quality of the utility infrastructure in your community (water, sewer, storm water, electric/gas, broadband)	32% (210)	49% (330)	13% (89)	3% (19)	3% (20)
Overall feeling of safety in your community	38% (252)	47% (316)	13% (90)	1% (9)	0% (3)
Overall quality of natural environment in your community	37% (248)	50% (331)	11% (72)	2% (11)	1% (5)
Overall quality of parks and recreation opportunities	39% (261)	44% (296)	12% (81)	3% (19)	2% (11)
Overall health and wellness opportunities in your community	39% (258)	42% (276)	11% (75)	2% (13)	6% (42)
Overall opportunities for education, culture, and the arts	47% (317)	36% (239)	12% (82)	3% (21)	2% (12)
Residents' connection and engagement with their community	17% (117)	39% (261)	28% (185)	7% (48)	9% (60)

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4. How would you rate the overall services provided to older adults in your community?

Answer Choice	Percent
Excellent	15% (103)
Good	39% (265)
Fair	16% (108)
Poor	4% (28)
Don't know	25% (168)

5. Please indicate how likely or unlikely you are to do each of the following.

Characteristic	Very likely	Somewhat likely	Somewhat unlikely	Very unlikely	Don't know
Recommend living in your community to older adults	23% (152)	42% (281)	18% (124)	11% (74)	6% (41)
Remain in your community throughout your retirement	52% (338)	29% (188)	7% (48)	7% (47)	5% (30)

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6. In general, how informed or uninformed do you feel about services and activities available to older adults in your community?

Answer Choice	Percent
Very informed	21% (139)
Somewhat informed	50% (336)
Somewhat uninformed	20% (131)
Very uninformed	10% (67)

7. Please rate the quality of each of the following.

Characteristic	Excellent	Good	Fair	Poor	Don't know
Your overall physical health	21% (146)	62% (422)	15% (99)	2% (14)	0% (0)
Your overall mental health/emotional wellbeing	35% (235)	54% (362)	10% (64)	1% (6)	0% (1)
Your overall quality of life	38% (255)	53% (356)	9% (58)	1% (4)	0% (0)

8. What impact, if any, do you think the economy will have on your family income in the next 6 months?

will be:

Impact

Answer Choice	Percent
Very positive	3% (18)
Somewhat positive	17% (116)
Neutral	47% (320)
Somewhat negative	30% (205)
Very negative	2% (15)

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9. Please rate each of the following characteristics as they relate to older adults in your community.

Characteristic	Excellent	Good	Fair	Poor	Don't know
Ease of travel by public transportation in your community	5% (31)	19% (131)	28% (186)	29% (194)	20% (132)
Ease of travel by car in your community	33% (220)	52% (351)	10% (65)	2% (16)	3% (17)
Ease of walking in your community	34% (228)	45% (304)	16% (111)	3% (21)	1% (8)
Ease of bicycling in your community	25% (165)	40% (267)	14% (94)	3% (21)	18% (121)
Ease of getting to the places you usually have to visit	33% (220)	50% (334)	13% (90)	2% (14)	1% (9)
Opportunities to build work skills	4% (29)	17% (112)	13% (84)	7% (49)	58% (383)
Quality of employment opportunities for older adults	2% (11)	6% (42)	13% (89)	13% (89)	65% (431)
Variety of employment opportunities for older adults	2% (12)	6% (37)	16% (106)	14% (89)	63% (413)
Cost of living in your community	3% (17)	10% (66)	35% (232)	48% (316)	4% (29)
Availability of affordable quality food	21% (142)	36% (243)	32% (214)	8% (57)	3% (17)
Availability of affordable quality housing	3% (19)	7% (46)	18% (118)	63% (420)	10% (67)
Variety of housing options	2% (15)	17% (111)	28% (183)	37% (248)	16% (106)
Availability of accessible housing (e.g., homes with a no step entry, single-floor living, wide hallways and doorways)	2% (13)	14% (95)	22% (146)	20% (133)	42% (282)
Availability of mixed-use neighborhoods where people live close to places where they can eat, shop, work, and receive services	6% (42)	21% (139)	35% (235)	21% (143)	16% (107)

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Characteristic	Excellent	Good			Don't know
Public places where people want to spend time	13% (85)	34% (232)	33% (224)	11% (73)	9% (58)
Availability of information about resources for older adults	9% (64)	33% (225)	24% (159)	12% (83)	21% (142)
Availability of financial or legal planning services	10% (69)	23% (155)	17% (115)	11% (73)	39% (261)
Availability of long-term care options	5% (35)	23% (151)	21% (138)	14% (92)	38% (253)
Availability of daytime care options for older adults	3% (22)	18% (117)	17% (115)	12% (82)	49% (326)
Availability of affordable quality physical health care	14% (96)	29% (190)	23% (152)	11% (74)	23% (149)
Availability of affordable quality mental health care	6% (40)	14% (94)	18% (118)	14% (93)	48% (315)
Availability of preventive health services (e.g., health screenings, flu shots, educational workshops)	25% (167)	42% (278)	17% (111)	5% (35)	10% (66)
Recreation opportunities (including games, arts, library services, etc.)	25% (169)	44% (294)	20% (131)	3% (22)	8% (53)
Fitness opportunities (including exercise classes and paths or trails, etc.)	27% (180)	40% (272)	18% (119)	4% (27)	11% (73)
Opportunities to participate in community matters	19% (126)	38% (257)	18% (120)	3% (20)	22% (146)
Opportunities to volunteer	22% (144)	33% (223)	16% (110)	3% (22)	25% (170)
Opportunities to enroll in skill-building or personal enrichment classes	11% (76)	36% (241)	17% (111)	6% (38)	30% (198)
Opportunities to attend social events or activities	14% (96)	34% (226)	25% (164)	6% (41)	21% (136)
Opportunities to attend religious or spiritual activities	28% (184)	34% (223)	13% (88)	2% (11)	23% (153)

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Characteristic	Excellent	Good			Don't know
Openness and acceptance of the community towards older residents of diverse backgrounds	15% (101)	35% (237)	21% (140)	7% (48)	22% (144)
Making all residents feel welcome	14% (93)	35% (236)	25% (167)	9% (62)	17% (111)
Valuing older residents in your community	11% (75)	33% (220)	24% (157)	10% (69)	22% (147)
Neighborliness of your community	17% (112)	39% (260)	29% (192)	10% (66)	6% (40)

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10. Older adults may or may not face a number of challenges. Thinking back over the last 12 months, if at all, have each of the following been for you?

Characteristic	Not a problem	Minor problem	Moderate problem	Major problem	Don't know
Having enough money to meet daily expenses	76% (497)	11% (74)	11% (71)	2% (13)	0% (0)
Having enough money to pay your property taxes	75% (485)	8% (51)	6% (38)	1% (6)	11% (68)
Having housing to suit your needs	76% (501)	11% (70)	9% (57)	3% (23)	1% (6)
Doing heavy or intense housework	39% (254)	28% (187)	19% (125)	12% (82)	2% (12)
Maintaining your home	40% (263)	32% (212)	19% (126)	7% (48)	2% (12)
Maintaining your yard	41% (266)	25% (162)	20% (132)	6% (40)	7% (47)
Having safe and affordable transportation available	54% (357)	18% (121)	12% (78)	8% (51)	8% (56)
No longer being able to drive	74% (472)	4% (26)	5% (32)	5% (35)	12% (73)
Finding work in retirement	40% (256)	5% (30)	7% (44)	5% (30)	44% (282)
Building skills for paid or unpaid work	35% (217)	6% (39)	7% (40)	2% (12)	50% (309)
Having adequate information or dealing with public programs such as Social Security, Medicare, and Medicaid	49% (323)	22% (143)	14% (93)	4% (23)	11% (75)
Not knowing what services are available to older adults in your community	32% (207)	28% (178)	20% (128)	5% (32)	16% (102)
Your physical health	41% (269)	34% (225)	21% (135)	4% (28)	0% (0)
Falling or injuring yourself in your home	64% (420)	22% (141)	11% (70)	1% (10)	2% (14)

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Characteristic	Not a problem	Minor problem	Moderate problem	Major problem	Don't know
Finding affordable health insurance	69% (454)	18% (118)	8% (54)	2% (14)	3% (20)
Getting the health care you need	74% (489)	16% (104)	9% (57)	1% (9)	0% (2)
Getting the oral health care you need	79% (519)	9% (61)	7% (46)	5% (32)	0% (1)
Getting the vision care you need	79% (516)	11% (72)	7% (48)	3% (20)	0% (1)
Affording the medications you need	80% (527)	14% (92)	4% (30)	1% (10)	0% (1)
Staying physically fit	50% (326)	32% (206)	12% (78)	7% (43)	0% (0)
Maintaining a healthy diet	67% (437)	22% (147)	10% (65)	1% (6)	0% (0)
Having enough food to eat	92% (606)	6% (38)	2% (13)	0% (1)	0% (0)
Experiencing confusion or forgetfulness	64% (426)	27% (180)	6% (43)	1% (9)	1% (3)
Feeling depressed	65% (429)	26% (170)	7% (44)	2% (13)	1% (5)
Feeling bored	66% (431)	25% (166)	7% (44)	2% (10)	1% (4)
Having friends or family you can rely on	66% (432)	24% (159)	5% (35)	5% (34)	0% (0)
Feeling lonely or isolated	64% (418)	25% (160)	8% (53)	3% (18)	0% (0)
Dealing with the loss of a close family member or friend	56% (370)	22% (145)	11% (73)	6% (41)	5% (31)
Being a victim of crime	85% (558)	5% (32)	3% (17)	1% (4)	7% (43)
Being a victim of fraud or a scam	80% (523)	9% (58)	5% (33)	1% (9)	5% (32)

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Characteristic	Not a problem	Minor problem	Moderate problem	Major problem	Don't know
Being physically or emotionally abused	92% (595)	3% (22)	1% (4)	1% (4)	4% (24)
Being treated unfairly or discriminated against because of your age	76% (503)	15% (101)	2% (16)	2% (12)	4% (25)
Feeling like you don't fit in or belong	70% (458)	22% (143)	4% (25)	2% (13)	2% (13)
Feeling like your voice is heard in the community	52% (335)	19% (122)	8% (51)	3% (23)	18% (119)
Feeling PHYSICALLY burdened by providing care for another person	78% (507)	11% (68)	4% (29)	2% (10)	5% (35)
Feeling EMOTIONALLY burdened by providing care for another person	73% (475)	13% (84)	5% (35)	3% (19)	6% (38)
Feeling FINANCIALLY burdened by providing care for another person	81% (527)	10% (65)	3% (17)	1% (9)	5% (32)
Performing regular activities, including walking, eating and preparing meals	75% (484)	17% (111)	5% (34)	2% (13)	1% (6)
Finding meaningful volunteer work	55% (357)	10% (65)	6% (39)	3% (18)	26% (167)
Finding productive or meaningful activities to do	66% (432)	19% (125)	8% (50)	2% (11)	6% (36)
Having interesting recreational or cultural activities to attend	62% (405)	20% (128)	10% (69)	3% (20)	5% (34)
Having interesting social events or activities to attend	53% (343)	26% (170)	11% (69)	3% (20)	8% (50)

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11. Thinking back over the past 12 months, how much time did you spend in each of the following?

Characteristic	0 days	1-2 days	3-5 days	6 or more days
As a patient in a hospital	79% (516)	12% (78)	5% (36)	4% (25)
In a long-term care facility (including nursing home or in-patient rehabilitation facility)	95% (622)	2% (10)	0% (2)	3% (20)

12. Thinking back over the past 12 months, how many times have you fallen and injured yourself?

Answer Choice	Percent
Never	66% (443)
1 to 2 times	30% (202)
3 to 5 times	3% (18)
More than 5 times	1% (10)
Don't know	0% (2)

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13. Please indicate whether or not you have done each of the following in the last 12 months.

Characteristic	No	Yes
Attended a local public meeting (of local elected officials like City Council or County Commissioners, advisory boards, town halls, HOA, neighborhood watch, etc.)	78% (523)	22% (151)
Watched (online or on television) a local public meeting	69% (462)	31% (211)
Voted in your most recent local election	12% (82)	88% (590)
Participated in a civic group (including Elks, Kiwanis, Masons, etc.)	84% (558)	17% (110)
Used a senior center in your community	76% (508)	24% (164)
Used a public library in your community	38% (253)	62% (420)
Used a recreation center in your community	70% (466)	30% (203)
Participated in a recreation program or group activity	60% (400)	40% (270)
Participated in religious or spiritual activities with others	59% (399)	41% (273)
Participated in a club (including book, dance, game, and other social)	55% (366)	45% (301)

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14. During a typical week, how many hours do you spend:

Characteristic	Never	1 to 3 hours	4 to 5 hours	6 to 10 hours	11 to 19 hours	20 or more hours	Don't know
Assisting friends, relatives, or neighbors	21% (138)	47% (304)	14% (92)	7% (46)	3% (19)	5% (33)	3% (20)
Volunteering your time	46% (304)	33% (217)	11% (74)	4% (26)	2% (14)	2% (13)	2% (17)
Talking or visiting with friends/family	3% (19)	33% (218)	27% (177)	23% (155)	7% (46)	7% (46)	1% (7)
Providing care to someone age 55+	67% (446)	14% (94)	5% (32)	4% (27)	2% (14)	6% (40)	2% (11)
Providing care to someone age 18 to 54	87% (576)	7% (45)	2% (15)	2% (12)	0% (2)	1% (4)	1% (9)
Providing care someone under age 18	80% (525)	10% (64)	3% (17)	2% (14)	2% (11)	2% (15)	2% (12)
Receiving assistance, paid or unpaid (e.g., with shopping, cooking, etc.)	81% (536)	12% (80)	3% (18)	1% (8)	2% (10)	2% (13)	0% (1)

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15. Please answer the following, as they relate to Internet access at your home:

Characteristic	No	Yes
I have high-speed internet/broadband at home	9% (61)	91% (603)
High speed internet is not available	90% (514)	10% (57)
I can't afford high speed internet	91% (532)	9% (51)
I'm not interested in high speed internet	91% (516)	9% (53)
High speed internet is available, but is not reliable	88% (485)	12% (67)

16. In general, how many times do you:

Characteristic	Several times a day	Once a day	A few times a week	Every few weeks	Less often or never	Don't know
Access the internet from your home using a computer, laptop, or tablet computer	78% (526)	11% (73)	4% (26)	1% (8)	5% (33)	1% (4)
Access the internet from your cell phone	60% (399)	10% (63)	5% (36)	3% (19)	21% (136)	2% (12)
Visit social media sites such as Facebook, Twitter, Nextdoor, etc.	28% (188)	18% (118)	14% (95)	6% (39)	33% (223)	1% (6)
Use or check email	77% (513)	16% (107)	3% (18)	1% (5)	4% (24)	0% (1)
Share your opinions online	10% (69)	5% (32)	9% (63)	13% (87)	60% (405)	2% (15)
Shop online	7% (49)	5% (33)	26% (170)	39% (257)	22% (149)	1% (5)

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17. How many years have you lived in your community?

Answer Choice	Percent
Less than 2 years	4% (27)
2-5 years	4% (26)
6-10 years	6% (38)
11-20 years	12% (81)
More than 20 years	75% (508)

18. Which best describes the building you live in?

Answer Choice	Percent
Single family home	69% (471)
Townhouse, condominium, duplex, or apartment	25% (168)
Mobile home	2% (12)
Assisted living residence	2% (11)
Nursing home	0% (0)
Other	3% (18)

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19. Do you rent or own your home?

Answer Choice	Percent
Rent	24% (160)
Own (with a mortgage payment)	29% (194)
Own (free and clear; no mortgage)	47% (319)

20. About how much is your monthly housing cost for the place you live (including rent, mortgage payment, property tax, property insurance, and homeowners' association (HOA) fees)?

Answer Choice	Percent
Less than \$300 per month	7% (43)
\$300 to \$599 per month	13% (85)
\$600 to \$999 per month	15% (96)
\$1,000 to \$1,499 per month	14% (91)
\$1,500 to \$2,499 per month	16% (106)
\$2,500 or more per month	35% (226)

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21. How many people, including yourself, live in your household?

Answer Choice	Percent
1 person (live alone)	38% (258)
2 people	51% (344)
3 people	7% (49)
4 or more people	4% (25)

22. How many of these people, including yourself, are 60 or older?

Answer Choice	Percent
1 person	45% (304)
2 people	53% (353)
3 people	1% (7)
4 or more people	1% (8)

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23. What is your employment status?

Answer Choice	Percent
Fully retired	77% (527)
Working full time for pay	9% (62)
Working part time for pay	12% (81)
Unemployed, looking for paid work	2% (11)

24. At what age do you expect to retire completely and not work for pay at all?

Answer Choice	Percent
60-64	5% (10)
65-67	9% (18)
68-69	8% (17)
70-72	20% (40)
73 or older	58% (119)

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25. How much do you anticipate your household's total income before taxes will be for the current year (your total income money from all sources for all persons living in your household.)

Answer Choice	Percent
Less than \$25,000	8% (47)
\$25,000 to \$49,999	15% (90)
\$50,000 to \$74,999	10% (62)
\$75,000 to \$99,999	11% (70)
\$100,000 to \$149,999	19% (115)
\$150,000 to \$199,999	12% (72)
\$200,000 or more.	25% (156)

26. Are you Spanish, Hispanic, or Latino?

Answer Choice	Percent
No, not of Hispanic, Latino/a/x, or Spanish origin	93% (617)
Yes, I consider myself to be of Hispanic, Latino/a/x, or Spanish origin	7% (50)

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Answer Choice	Percent
American Indian or Alaska Native	2% (14)
Asian	17% (119)
Black or African American	2% (15)
Native Hawaiian or Other Pacific Islander	1% (4)
White	73% (506)
A race not listed	5% (32)

28. What is your gender?

Answer Choice	Percent
Woman	54% (368)
Man	46% (308)
Identify in another way	0% (1)

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30. What is your sexual orientation?

Answer Choice	Percent
Heterosexual	96% (611)
Lesbian	1% (4)
Gay	1% (6)
Bisexual	2% (15)
Identify in another way	1% (5)

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Section 16: Full Results (excluding No Opinion)

These results include all questions. The results include the percentage that responded for each answer choice and the number of responses. If the choices included a choice with no opinion (like don't know or not applicable), the tables in the prior section show the results with those no opinion choices. This section shows the results without those choices.

1. In which category is your age?

Not including don't know

Answer Choice	Percent
50-54 years	6% (47)
55-59 years	10% (83)
60-64 years	22% (179)
65-69 years	17% (141)
70-74 years	14% (113)
75-79 years	15% (122)
80-84 years	10% (78)
85-89 years	4% (34)
90-94 years	1% (10)
95 years or older	0% (3)

2. Please rate each of the following aspects of quality of life in your community.

Not including don't know

Characteristic	Excellent	Good	Fair	Poor
Your community as a place to live	56% (372)	38% (254)	5% (33)	1% (5)
Your neighborhood as a place to live	57% (373)	36% (236)	6% (41)	1% (6)
Your community as a place to retire	33% (211)	37% (234)	22% (140)	8% (48)
Sense of community in your community	28% (178)	36% (234)	26% (170)	10% (63)
The overall quality of life in your community	46% (300)	43% (281)	10% (65)	1% (6)

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3. Please rate each of the following characteristics as they relate to your community as a whole.

Not including don't know

Characteristic	Excellent	Good	Fair	Poor
Overall economic health of your community	47% (304)	44% (285)	8% (48)	1% (6)
Overall quality of the transportation system (auto, bicycle, foot, bus) in your community	17% (106)	46% (292)	29% (183)	8% (54)
Overall design or layout of your community's residential and commercial areas (e.g., homes, buildings, streets, parks, etc.)	25% (163)	53% (346)	18% (119)	3% (19)
Overall quality of the utility infrastructure in your community (water, sewer, storm water, electric/gas, broadband)	32% (210)	51% (330)	14% (89)	3% (19)
Overall feeling of safety in your community	38% (252)	47% (316)	13% (90)	1% (9)
Overall quality of natural environment in your community	38% (248)	50% (331)	11% (72)	2% (11)
Overall quality of parks and recreation opportunities	40% (261)	45% (296)	12% (81)	3% (19)
Overall health and wellness opportunities in your community	41% (258)	44% (276)	12% (75)	2% (13)
Overall opportunities for education, culture, and the arts	48% (317)	36% (239)	12% (82)	3% (21)
Residents' connection and engagement with their community	19% (117)	43% (261)	30% (185)	8% (48)

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4. How would you rate the overall services provided to older adults in your community?

Not including don't know

Answer Choice	Percent
Excellent	20% (103)
Good	53% (265)
Fair	21% (108)
Poor	6% (28)

5. Please indicate how likely or unlikely you are to do each of the following.

Not including don't know

Characteristic	Very likely	Somewhat likely	Somewhat unlikely	Very unlikely
Recommend living in your community to older adults	24% (152)	45% (281)	20% (124)	12% (74)
Remain in your community throughout your retirement	54% (338)	30% (188)	8% (48)	8% (47)

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6. In general, how informed or uninformed do you feel about services and activities available to older adults in your community?

Not including don't know

Answer Choice	Percent
Very informed	21% (139)
Somewhat informed	50% (336)
Somewhat uninformed	20% (131)
Very uninformed	10% (67)

7. Please rate the quality of each of the following.

Not including don't know

Characteristic	Excellent	Good	Fair	Poor
Your overall physical health	21% (146)	62% (422)	15% (99)	2% (14)
Your overall mental health/emotional wellbeing	35% (235)	54% (362)	10% (64)	1% (6)
Your overall quality of life	38% (255)	53% (356)	9% (58)	1% (4)

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8. What impact, if any, do you think the economy will have on your family income in the next 6 months? **Impact will be:**

Not including don't know

Answer Choice	Percent
Very positive	3% (18)
Somewhat positive	17% (116)
Neutral	47% (320)
Somewhat negative	30% (205)
Very negative	2% (15)

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9. Please rate each of the following characteristics as they relate to older adults in your community.

Not including don't know

Characteristic	Excellent	Good	Fair	Poor
Ease of travel by public transportation in your community	6% (31)	24% (131)	34% (186)	36% (194)
Ease of travel by car in your community	34% (220)	54% (351)	10% (65)	2% (16)
Ease of walking in your community	34% (228)	46% (304)	17% (111)	3% (21)
Ease of bicycling in your community	30% (165)	49% (267)	17% (94)	4% (21)
Ease of getting to the places you usually have to visit	33% (220)	51% (334)	14% (90)	2% (14)
Opportunities to build work skills	11% (29)	41% (112)	31% (84)	18% (49)
Quality of employment opportunities for older adults	5% (11)	18% (42)	39% (89)	39% (89)
Variety of employment opportunities for older adults	5% (12)	15% (37)	43% (106)	37% (89)
Cost of living in your community	3% (17)	10% (66)	37% (232)	50% (316)
Availability of affordable quality food	22% (142)	37% (243)	33% (214)	9% (57)
Availability of affordable quality housing	3% (19)	8% (46)	20% (118)	70% (420)
Variety of housing options	3% (15)	20% (111)	33% (183)	45% (248)
Availability of accessible housing (e.g., homes with a no step entry, single-floor living, wide hallways and doorways)	3% (13)	25% (95)	38% (146)	34% (133)
Availability of mixed-use neighborhoods where people live close to places where they can eat, shop, work, and receive services	8% (42)	25% (139)	42% (235)	26% (143)

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Characteristic	Excellent	Good	Fair	Poor
Public places where people want to spend time	14% (85)	38% (232)	37% (224)	12% (73)
Availability of information about resources for older adults	12% (64)	42% (225)	30% (159)	16% (83)
Availability of financial or legal planning services	17% (69)	38% (155)	28% (115)	18% (73)
Availability of long-term care options	8% (35)	36% (151)	33% (138)	22% (92)
Availability of daytime care options for older adults	7% (22)	35% (117)	34% (115)	24% (82)
Availability of affordable quality physical health care	19% (96)	37% (190)	30% (152)	14% (74)
Availability of affordable quality mental health care	12% (40)	27% (94)	34% (118)	27% (93)
Availability of preventive health services (e.g., health screenings, flu shots, educational workshops)	28% (167)	47% (278)	19% (111)	6% (35)
Recreation opportunities (including games, arts, library services, etc.)	27% (169)	48% (294)	21% (131)	4% (22)
Fitness opportunities (including exercise classes and paths or trails, etc.)	30% (180)	45% (272)	20% (119)	5% (27)
Opportunities to participate in community matters	24% (126)	49% (257)	23% (120)	4% (20)
Opportunities to volunteer	29% (144)	45% (223)	22% (110)	4% (22)
Opportunities to enroll in skill-building or personal enrichment classes	16% (76)	52% (241)	24% (111)	8% (38)
Opportunities to attend social events or activities	18% (96)	43% (226)	31% (164)	8% (41)
Opportunities to attend religious or spiritual activities	36% (184)	44% (223)	17% (88)	2% (11)
Openness and acceptance of the community towards older residents of diverse backgrounds	19% (101)	45% (237)	27% (140)	9% (48)

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Characteristic	Excellent	Good	Fair	Poor
Making all residents feel welcome	17% (93)	42% (236)	30% (167)	11% (62)
Valuing older residents in your community	14% (75)	42% (220)	30% (157)	13% (69)
Neighborliness of your community	18% (112)	41% (260)	30% (192)	11% (66)

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10. Older adults may or may not face a number of challenges. Thinking back over the last 12 months, if at all, have each of the following been for you?

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Not including don't know

Characteristic	Not a problem	Minor problem	Moderate problem	Major problem
Having enough money to meet daily expenses	76% (497)	11% (74)	11% (71)	2% (13)
Having enough money to pay your property taxes	84% (485)	9% (51)	7% (38)	1% (6)
Having housing to suit your needs	77% (501)	11% (70)	9% (57)	4% (23)
Doing heavy or intense housework	39% (254)	29% (187)	19% (125)	13% (82)
Maintaining your home	41% (263)	33% (212)	19% (126)	7% (48)
Maintaining your yard	44% (266)	27% (162)	22% (132)	7% (40)
Having safe and affordable transportation available	59% (357)	20% (121)	13% (78)	8% (51)
No longer being able to drive	84% (472)	5% (26)	6% (32)	6% (35)
Finding work in retirement	71% (256)	8% (30)	12% (44)	8% (30)
Building skills for paid or unpaid work	70% (217)	13% (39)	13% (40)	4% (12)
Having adequate information or dealing with public programs such as Social Security, Medicare, and Medicaid	55% (323)	25% (143)	16% (93)	4% (23)
Not knowing what services are available to older adults in your community	38% (207)	33% (178)	23% (128)	6% (32)
Your physical health	41% (269)	34% (225)	21% (135)	4% (28)
Falling or injuring yourself in your home	66% (420)	22% (141)	11% (70)	2% (10)

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Characteristic	Not a problem	Minor problem	Major problem
Finding affordable health insurance	71% (454)	18% (118)	8% (54)
Getting the health care you need	74% (489)	16% (104)	9% (57)
Getting the oral health care you need	79% (519)	9% (61)	7% (46)
Getting the vision care you need	79% (516)	11% (72)	7% (48)
Affording the medications you need	80% (527)	14% (92)	4% (30)
Staying physically fit	50% (326)	32% (206)	12% (78)
Maintaining a healthy diet	67% (437)	22% (147)	10% (65)
Having enough food to eat	92% (606)	6% (38)	2% (13)
Experiencing confusion or forgetfulness	65% (426)	27% (180)	6% (43)
Feeling depressed	65% (429)	26% (170)	7% (44)
Feeling bored	66% (431)	26% (166)	7% (44)
Having friends or family you can rely on	66% (432)	24% (159)	5% (35)
Feeling lonely or isolated	64% (418)	25% (160)	8% (53)
Dealing with the loss of a close family member or friend	59% (370)	23% (145)	12% (73)
Being a victim of crime	91% (558)	5% (32)	3% (17)
Being a victim of fraud or a scam	84% (523)	9% (58)	5% (33)

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Characteristic	Not a problem	Minor problem	Major problem
Being physically or emotionally abused	95% (595)	3% (22)	1% (4)
Being treated unfairly or discriminated against because of your age	80% (503)	16% (101)	2% (12)
Feeling like you don't fit in or belong	72% (458)	22% (143)	2% (13)
Feeling like your voice is heard in the community	63% (335)	23% (122)	4% (23)
Feeling PHYSICALLY burdened by providing care for another person	83% (507)	11% (68)	2% (10)
Feeling EMOTIONALLY burdened by providing care for another person	77% (475)	14% (84)	3% (19)
Feeling FINANCIALLY burdened by providing care for another person	85% (527)	11% (65)	1% (9)
Performing regular activities, including walking, eating and preparing meals	75% (484)	17% (111)	2% (13)
Finding meaningful volunteer work	75% (357)	14% (65)	4% (18)
Finding productive or meaningful activities to do	70% (432)	20% (125)	2% (11)
Having interesting recreational or cultural activities to attend	65% (405)	21% (128)	3% (20)
Having interesting social events or activities to attend	57% (343)	28% (170)	3% (20)

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11. Thinking back over the past 12 months, how much time did you spend in each of the following?

Not including don't know

Characteristic	0 days	1-2 days	3-5 days	6 or more days
As a patient in a hospital	79% (516)	12% (78)	5% (36)	4% (25)
In a long-term care facility (including nursing home or in-patient rehabilitation facility)	95% (622)	2% (10)	0% (2)	3% (20)

12. Thinking back over the past 12 months, how many times have you fallen and injured yourself?

Not including don't know

Answer Choice	Percent
Never	66% (443)
1 to 2 times	30% (202)
3 to 5 times	3% (18)
More than 5 times	1% (10)

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13. Please indicate whether or not you have done each of the following in the last 12 months.

Not including don't know

Characteristic	No	Yes
Attended a local public meeting (of local elected officials like City Council or County Commissioners, advisory boards, town halls, HOA, neighborhood watch, etc.)	78% (523)	22% (151)
Watched (online or on television) a local public meeting	69% (462)	31% (211)
Voted in your most recent local election	12% (82)	88% (590)
Participated in a civic group (including Elks, Kiwanis, Masons, etc.)	84% (558)	17% (110)
Used a senior center in your community	76% (508)	24% (164)
Used a public library in your community	38% (253)	62% (420)
Used a recreation center in your community	70% (466)	30% (203)
Participated in a recreation program or group activity	60% (400)	40% (270)
Participated in religious or spiritual activities with others	59% (399)	41% (273)
Participated in a club (including book, dance, game, and other social)	55% (366)	45% (301)

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14. During a typical week, how many hours do you spend:

Not including don't know

Characteristic	Never	1 to 3 hours	4 to 5 hours	6 to 10 hours	11 to 19 hours	20 or more hours
Assisting friends, relatives, or neighbors	22% (138)	48% (304)	15% (92)	7% (46)	3% (19)	5% (33)
Volunteering your time	47% (304)	34% (217)	11% (74)	4% (26)	2% (14)	2% (13)
Talking or visiting with friends/family	3% (19)	33% (218)	27% (177)	23% (155)	7% (46)	7% (46)
Providing care to someone age 55+	68% (446)	14% (94)	5% (32)	4% (27)	2% (14)	6% (40)
Providing care to someone age 18 to 54	88% (576)	7% (45)	2% (15)	2% (12)	0% (2)	1% (4)
Providing care someone under age 18	81% (525)	10% (64)	3% (17)	2% (14)	2% (11)	2% (15)
Receiving assistance, paid or unpaid (e.g., with shopping, cooking, etc.)	81% (536)	12% (80)	3% (18)	1% (8)	2% (10)	2% (13)

15. Please answer the following, as they relate to Internet access at your home:

Not including don't know

Characteristic	No	Yes
I have high-speed internet/broadband at home	9% (61)	91% (603)
High speed internet is not available	90% (514)	10% (57)
I can't afford high speed internet	91% (532)	9% (51)
I'm not interested in high speed internet	91% (516)	9% (53)

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Yes

Characteristic

High speed internet is available, but is not reliable

88% (485)

12% (67)

16. In general, how many times do you:

Not including don't know

Characteristic	Several times a day	Once a day	A few times a week	Every few weeks	Less often or never
Access the internet from your home using a computer, laptop, or tablet computer	79% (526)	11% (73)	4% (26)	1% (8)	5% (33)
Access the internet from your cell phone	61% (399)	10% (63)	6% (36)	3% (19)	21% (136)
Visit social media sites such as Facebook, Twitter, Nextdoor, etc.	28% (188)	18% (118)	14% (95)	6% (39)	34% (223)
Use or check email	77% (513)	16% (107)	3% (18)	1% (5)	4% (24)
Share your opinions online	11% (69)	5% (32)	10% (63)	13% (87)	62% (405)
Shop online	7% (49)	5% (33)	26% (170)	39% (257)	23% (149)

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17. How many years have you lived in your community?

Not including don't know

Answer Choice	Percent
Less than 2 years	4% (27)
2-5 years	4% (26)
6-10 years	6% (38)
11-20 years	12% (81)
More than 20 years	75% (508)

18. Which best describes the building you live in?

Not including don't know

Answer Choice	Percent
Single family home	69% (471)
Townhouse, condominium, duplex, or apartment	25% (168)
Mobile home	2% (12)
Assisted living residence	2% (11)
Nursing home	0% (0)
Other	3% (18)

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19. Do you rent or own your home?

Not including don't know

Answer Choice	Percent
Rent	24% (160)
Own (with a mortgage payment)	29% (194)
Own (free and clear; no mortgage)	47% (319)

20. About how much is your monthly housing cost for the place you live (including rent, mortgage payment, property tax, property insurance, and homeowners' association (HOA) fees)?

Not including don't know

Answer Choice	Percent
Less than \$300 per month	7% (43)
\$300 to \$599 per month	13% (85)
\$600 to \$999 per month	15% (96)
\$1,000 to \$1,499 per month	14% (91)
\$1,500 to \$2,499 per month	16% (106)
\$2,500 or more per month	35% (226)

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21. How many people, including yourself, live in your household?

Not including don't know

Answer Choice	Percent
1 person (live alone)	38% (258)
2 people	51% (344)
3 people	7% (49)
4 or more people	4% (25)

22. How many of these people, including yourself, are 60 or older?

Not including don't know

Answer Choice	Percent
1 person	45% (304)
2 people	53% (353)
3 people	1% (7)
4 or more people	1% (8)

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23. What is your employment status?

Not including don't know

Answer Choice	Percent
Fully retired	77% (527)
Working full time for pay	9% (62)
Working part time for pay	12% (81)
Unemployed, looking for paid work	2% (11)

24. At what age do you expect to retire completely and not work for pay at all?

Not including don't know

Answer Choice	Percent
60-64	5% (10)
65-67	9% (18)
68-69	8% (17)
70-72	20% (40)
73 or older	58% (119)

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25. How much do you anticipate your household's total income before taxes will be for the current year (not including money from all sources for all persons living in your household.)

Not including don't know

Answer Choice	Percent
Less than \$25,000	8% (47)
\$25,000 to \$49,999	15% (90)
\$50,000 to \$74,999	10% (62)
\$75,000 to \$99,999	11% (70)
\$100,000 to \$149,999	19% (115)
\$150,000 to \$199,999	12% (72)
\$200,000 or more.	25% (156)

26. Are you Spanish, Hispanic, or Latino?

Not including don't know

Answer Choice	Percent
No, not of Hispanic, Latino/a/x, or Spanish origin	93% (617)
Yes, I consider myself to be of Hispanic, Latino/a/x, or Spanish origin	7% (50)

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Not including don't know

Answer Choice	Percent
American Indian or Alaska Native	2% (14)
Asian	17% (119)
Black or African American	2% (15)
Native Hawaiian or Other Pacific Islander	1% (4)
White	73% (506)
A race not listed	5% (32)

28. What is your gender?

Not including don't know

Answer Choice	Percent
Woman	54% (368)
Man	46% (308)
Identify in another way	0% (1)

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30. What is your sexual orientation?

Not including don't know

Answer Choice	Percent
Heterosexual	96% (611)
Lesbian	1% (4)
Gay	1% (6)
Bisexual	2% (15)
Identify in another way	1% (5)

Section 17: National Benchmark Comparisons

Rated characteristics are eligible for trend and benchmark comparisons. For trends, the characteristic must have been asked in a prior survey, and to be statistically significant the difference between the last measurement and current measurements must be at least 7 percentage points. All characteristics should have benchmarks, and to be statistically significant (more/less favorable), the difference must be at least 10 points. To be much more favorable/unfavorable, difference must be at least 20 points.

Demographic questions aren't eligible for trend and benchmark comparisons. Though all survey questions are listed in this section, demographic questions are noted as not having trends or benchmarks.

1. In which category is your age?

Percent positive, trends, and benchmarks do not apply to this question

2. Please rate each of the following aspects of quality of life in your community.

Percent positive is the percentage of responses that rated the characteristic as: "Excellent" or "Good"











Characteristic	% positive	National Benchmark	Rank	# of Compared Communities
Your community as a place to live	94	<div>–</div>	36	296
Your neighborhood as a place to live	93	<div>–</div>	31	257
Your community as a place to retire	70	<div>–</div>	138	296
Sense of community in your community	64	<div>–</div>	110	296
The overall quality of life in your community	89	<div>–</div>	37	257

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3. Please rate each of the following characteristics as they relate to your community as a whole.

Percent positive is the percentage of responses that rated the characteristic as: "Excellent" or "Good"


Characteristic	% positive	National Benchmark	Rank	# of Compared Communities
Overall economic health of your community	92		4	257
Overall quality of the transportation system (auto, bicycle, foot, bus) in your community	63		122	257
Overall design or layout of your community's residential and commercial areas (e.g., homes, buildings, streets, parks, etc.)	79		21	257
Overall quality of the utility infrastructure in your community (water, sewer, storm water, electric/gas, broadband)	83		19	163
Overall feeling of safety in your community	85		93	296
Overall quality of natural environment in your community	88		48	257
Overall quality of parks and recreation opportunities	85		48	163
Overall health and wellness opportunities in your community	86		29	257
Overall opportunities for education, culture, and the arts	84		14	257
Residents' connection and engagement with their community	62		45	163

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4. How would you rate the overall services provided to older adults in your community?

Percent positive is the percentage of responses that rated the characteristic as: "Excellent" or "Good"

Characteristic	% positive	National Benchmark	Rank	# of Compared Communities
How would you rate the overall services provided to older adults in your community?	73		6	101

5. Please indicate how likely or unlikely you are to do each of the following.

Percent positive is the percentage of responses that rated the characteristic as: "Very likely" or "Somewhat likely"

Characteristic	% likely	National Benchmark	Rank	# of Compared Communities
Recommend living in your community to older adults	69		239	296
Remain in your community throughout your retirement	85		31	101

6. In general, how informed or uninformed do you feel about services and activities available to older adults in your community?

Percent positive is the percentage of responses that rated the characteristic as: "Very informed" or "Somewhat informed"

Characteristic	% informed	National Benchmark	Rank	# of Compared Communities
In general, how informed or uninformed do you feel about services and activities available to older adults in your community?	70			

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7. Please rate the quality of each of the following.

Percent positive is the percentage of responses that rated the characteristic as: "Excellent" or "Good"

Characteristic	% positive	National Benchmark	Rank	# of Compared Communities
Your overall physical health	83	<div>–</div>	130	295
Your overall mental health/emotional wellbeing	89	<div>–</div>	25	101
Your overall quality of life	91	<div>–</div>	11	101

8. What impact, if any, do you think the economy will have on your family income in the next 6 months? Do you think the impact will be:

Percent positive is the percentage of responses that rated the characteristic as: "Very positive" or "Somewhat positive"

Characteristic	% positive	National Benchmark	Rank	# of Compared Communities
What impact, if any, do you think the economy will have on your family income in the next 6 months? Do you think the impact will be:	20	<div>–</div>	170	257

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9. Please rate each of the following characteristics as they relate to older adults in your community.

Percent positive is the percentage of responses that rated the characteristic as: "Excellent" or "Good"

Characteristic	% positive	National Benchmark	Rank	# of Compared Communities
Ease of travel by public transportation in your community	30	–	150	279
Ease of travel by car in your community	88	^	15	296
Ease of walking in your community	80	^	43	296
Ease of bicycling in your community	79	^	1	21
Ease of getting to the places you usually have to visit	84	–	2	61
Opportunities to build work skills	51	^	6	59
Quality of employment opportunities for older adults	23	∇	230	295
Variety of employment opportunities for older adults	20	–	27	59
Cost of living in your community	13	∇	282	296
Availability of affordable quality food	59	–	140	288
Availability of affordable quality housing	11	∇	267	295
Variety of housing options	23	∇	246	296
Availability of accessible housing (e.g., homes with a no step entry, single-floor living, wide hallways and doorways)	28	–	20	59

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Characteristic	% positive	National Benchmark	Attachment A - 2022 Avenidas Community Assessment Survey for Older Adults	Compared Communities
Availability of mixed-use neighborhoods where people live close to places where they can eat, shop, work, and receive services	32	–	11	59
Public places where people want to spend time	52	–	144	256
Availability of information about resources for older adults	54	^	8	101
Availability of financial or legal planning services	54	^	6	101
Availability of long-term care options	45	–	23	101
Availability of daytime care options for older adults	41	^	7	101
Availability of affordable quality physical health care	56	–	148	287
Availability of affordable quality mental health care	39	–	136	285
Availability of preventive health services (e.g., health screenings, flu shots, educational workshops)	75	–	46	285
Recreation opportunities (including games, arts, library services, etc.)	75	–	83	294
Fitness opportunities (including exercise classes and paths or trails, etc.)	76	–	100	293
Opportunities to participate in community matters	73	–	63	294
Opportunities to volunteer	73	–	73	203
Opportunities to enroll in skill-building or personal enrichment classes	68	^	10	101

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Characteristic	% positive	National Benchmark	Count	Count Compared Communities
Opportunities to attend social events or activities	61	<div>—</div>	126	294
Opportunities to attend religious or spiritual activities	80	<div>—</div>	35	101
Openness and acceptance of the community towards older residents of diverse backgrounds	64	<div>—</div>	85	296
Making all residents feel welcome	59	<div>—</div>	97	163
Valuing older residents in your community	57	<div>—</div>	32	101
Neighborliness of your community	59	<div>—</div>	90	202

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10. Older adults may or may not face a number of challenges. Thinking back over the last 12 months, if at all, have each of the following been for you?

Percent positive is the percentage of responses that rated the characteristic as: "Minor problem", "Moderate problem", or "Major problem"

Characteristic	% problematic	National Benchmark	Rank	# of Compared Communities
Having enough money to meet daily expenses	76		8	101
Having enough money to pay your property taxes	84		7	101
Having housing to suit your needs	77		36	101
Doing heavy or intense housework	39		56	101
Maintaining your home	41		77	101
Maintaining your yard	44		86	101
Having safe and affordable transportation available	59		80	101
No longer being able to drive	84		46	100
Finding work in retirement	71		30	101
Building skills for paid or unpaid work	70		35	100
Having adequate information or dealing with public programs such as Social Security, Medicare, and Medicaid	55		31	101
Not knowing what services are available to older adults in your community	38		22	101

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Characteristic	% problematic	National Benchmark	Compared Communities
Your physical health	41	—	58 101
Falling or injuring yourself in your home	66	—	62 101
Finding affordable health insurance	71	^	5 101
Getting the health care you need	74	^	13 101
Getting the oral health care you need	79	^	9 101
Getting the vision care you need	79	—	15 101
Affording the medications you need	80	^	4 101
Staying physically fit	50	—	17 101
Maintaining a healthy diet	67	^	9 101
Having enough food to eat	92	—	15 100
Experiencing confusion or forgetfulness	65	—	52 101
Feeling depressed	65	—	23 101
Feeling bored	66	—	14 101
Having friends or family you can rely on	65	—	74 101

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Characteristic	% problematic	National Benchmark	Community Assessment Survey for Older Adults	Compared Communities
Feeling lonely or isolated	64	–	49	100
Dealing with the loss of a close family member or friend	59	–	48	101
Being a victim of crime	91	–	20	99
Being a victim of fraud or a scam	84	–	13	101
Being physically or emotionally abused	95	–	25	99
Being treated unfairly or discriminated against because of your age	80	–	22	59
Feeling like you don't fit in or belong	72	–	10	59
Feeling like your voice is heard in the community	63	^	10	101
Feeling PHYSICALLY burdened by providing care for another person	83	–	17	101
Feeling EMOTIONALLY burdened by providing care for another person	77	–	32	101
Feeling FINANCIALLY burdened by providing care for another person	85	–	21	101
Performing regular activities, including walking, eating and preparing meals	75	–	3	21
Finding meaningful volunteer work	75	–	9	21

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Characteristic	% problematic	National Benchmark	Rank	# of Compared Communities
Finding productive or meaningful activities to do	70	–	4	21
Having interesting recreational or cultural activities to attend	65	^	3	21
Having interesting social events or activities to attend	57	–	6	21

11. Thinking back over the past 12 months, how much time did you spend in each of the following?

Percent positive is the percentage of responses that rated the characteristic as: "1-2 days", "3-5 days", or "6 or more days"

Characteristic	% of respondents	National Benchmark	Rank	# of Compared Communities
As a patient in a hospital	21	–	54	101
In a long-term care facility (including nursing home or in-patient rehabilitation facility)	5	–	14	85

12. Thinking back over the past 12 months, how many times have you fallen and injured yourself?

Percent positive is the percentage of responses that rated the characteristic as: "1 to 2 times", "3 to 5 times", or "More than 5 times"

Characteristic	% of respondents	National Benchmark	Rank	# of Compared Communities
Thinking back over the past 12 months, how many times have you fallen and injured yourself?	34	–	60	101

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13. Please indicate whether or not you have done each of the following in the last 12 months.

Percent positive is the percentage of responses that rated the characteristic as: "Yes"

Characteristic	% yes	National Benchmark	Rank	# of Compared Communities
Attended a local public meeting (of local elected officials like City Council or County Commissioners, advisory boards, town halls, HOA, neighborhood watch, etc.)	22	–	156	295
Watched (online or on television) a local public meeting	31	–	11	100
Voted in your most recent local election	88	–	51	161
Participated in a civic group (including Elks, Kiwanis, Masons, etc.)	17	–	23	101
Used a senior center in your community	24	–	19	99
Used a public library in your community	62	^	15	101
Used a recreation center in your community	30	–	33	101
Participated in a recreation program or group activity	40	–	24	101
Participated in religious or spiritual activities with others	41	–	83	101
Participated in a club (including book, dance, game, and other social)	45	^	1	101

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14. During a typical week, how many hours do you spend:

Percent positive is the percentage of responses that rated the characteristic as: "1 to 3 hours", "4 to 5 hours", "6 to 10 hours", "11 to 19 hours", or "20 or more hours"

Characteristic	% of respondents	National Benchmark	Rank	# of Compared Communities
Assisting friends, relatives, or neighbors	78	–	49	101
Volunteering your time	53	–	31	101
Talking or visiting with friends/family	97	–	15	101
Providing care to someone age 55+	32	–	48	101
Providing care to someone age 18 to 54	12	–	77	101
Providing care someone under age 18	19	–	34	100
Receiving assistance, paid or unpaid (e.g., with shopping, cooking, etc.)	19	⋈	19	21

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15. Please answer the following, as they relate to Internet access at your home:

Percent positive is the percentage of responses that rated the characteristic as: "Yes"

Characteristic	% yes	National Benchmark	Rank	# of Compared Communities
I have high-speed internet/broadband at home	91			
High speed internet is not available	10			
I can't afford high speed internet	9			
I'm not interested in high speed internet	9			
High speed internet is available, but is not reliable	12			

16. In general, how many times do you:

Percent positive is the percentage of responses that rated the characteristic as: "Several times a day", "Once a day", or "A few times a week"

Characteristic	% of respondents	National Benchmark	Rank	# of Compared Communities
Access the internet from your home using a computer, laptop, or tablet computer	94	–	40	162
Access the internet from your cell phone	76	–	93	162
Visit social media sites such as Facebook, Twitter, Nextdoor, etc.	61	–	109	161
Use or check email	96	–	37	162
Share your opinions online	25	–	74	162

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Characteristic	% of respondents	National Benchmark	Percent Positive	Percent of Respondents	Percent of National Benchmark	Percent of Compared Communities
Shop online	38	–	74			162

17. How many years have you lived in your community?
Percent positive, trends, and benchmarks do not apply to this question

18. Which best describes the building you live in?
Percent positive, trends, and benchmarks do not apply to this question

19. Do you rent or own your home?
Percent positive, trends, and benchmarks do not apply to this question

20. About how much is your monthly housing cost for the place you live (including rent, mortgage payment, property tax, property insurance, and homeowners' association (HOA) fees)?
Percent positive, trends, and benchmarks do not apply to this question

21. How many people, including yourself, live in your household?
Percent positive, trends, and benchmarks do not apply to this question

22. How many of these people, including yourself, are 60 or older?
Percent positive, trends, and benchmarks do not apply to this question

23. What is your employment status?
Percent positive, trends, and benchmarks do not apply to this question

24. At what age do you expect to retire completely and not work for pay at all?
Percent positive, trends, and benchmarks do not apply to this question

25. How much do you anticipate your household's total income before taxes will be for the current year? (Please include in your total income money from all sources for all persons living in your household.)
Percent positive, trends, and benchmarks do not apply to this question

26. Are you Spanish, Hispanic, or Latino?
Percent positive, trends, and benchmarks do not apply to this question

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27. What is your race? (Mark one or more races to indicate what race you consider yourself to be.)

Percent positive, trends, and benchmarks do not apply to this question

28. What is your gender?

Percent positive, trends, and benchmarks do not apply to this question

30. What is your sexual orientation?

Percent positive, trends, and benchmarks do not apply to this question

Section 18: Methods

About the Community Assessment Survey for Older Adults (CASOA)[®]

The Community Assessment Survey for Older Adults (CASOA)[®] was developed by National Research Center at Polco (NRC) to provide an accurate, affordable and easy way to assess and interpret the experience of older adults in the community. The CASOA[®] survey instrument and its administration are standardized to assure high-quality survey methods and comparable results across CASOA communities. The CASOA was customized for Avenidas to reflect the correct local age definition of older adults and to use official Avenidas graphics, contact information and signatures on survey invitation mailing materials. The undefined sponsored and funded this research. Please contact John Sink of the Avenidas at jsink@avenidas.org if you have any questions about the survey.

Questionnaire Development

The CASOA questionnaire contains many questions related to the life of older residents in the community. The instrument includes questions related to overall quality of life, characteristics of the community, perceptions of safety, and many different needs common to older adults.

The questionnaire grew from a synthesis of numerous data collection processes, including a national search of needs assessments conducted by communities across the United States, a review of the literature on aging, and numerous surveys and large-scale needs assessments conducted by NRC. A blue-ribbon panel of national experts contributed to the concept and content of CASOA.

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The items in the questionnaire were pilot tested on older residents using a “think-aloud” method in which older adults were asked to complete the survey and describe their thought processes related to specific questions and question sets. The results of the pilot test were used to alter the questionnaire for better understanding by senior participants. The final questionnaire was tested in a set of diverse U.S. communities and modifications again were made as necessary.

Random (Probability) Sample Survey

Selecting Survey Recipients

One of the first steps taken to ensure survey results are representative of the target population is to use a source from which survey recipients are selected that provides adequate to good coverage of the target population. This source is referred to as the sampling frame.

The target population for this survey was residents age 60 years or older in households within the Avenidas service area boundaries.

Since it would be cost prohibitive to survey every person age 60 years or older in the Avenidas service area, a random selection of records from the sampling frame was made. This process can be illustrated using an example that may be familiar from a math or statistics class of a jar of marbles of various colors. If the jar has two-thirds red marbles and one-third blue marbles, a random selection of marbles from that jar should result in a similar proportion (although perhaps not identical) of red and blue marbles as in the original jar.

The sampling frame used for this survey was a list of households with a high likelihood of having a resident age 60 years or older within the Avenidas service area boundaries from Mail Graphics. These lists, compiled by sampling and marketing firms based on data from

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multiple sources (such as warranty information, voting list) to provide fairly complete coverage of all members of the target population.

Data Collection

Each randomly selected household received two mailings, about one week apart, beginning on August, 1, 2022. The first mailing was a prenotification postcard announcing the upcoming survey. This half-sheet postcard included a URL so that recipients could immediately go online to complete the survey if they wished. The second mailing contained a letter from the Vice President, Enrichment Services inviting the household to participate, a printed questionnaire and a postage-paid return envelope. The survey was available in English, Spanish, Traditional Chinese, Vietnamese, Korean, and Arabic. Completed surveys were collected over the following 7 weeks.

About 505 (4%) of the 12,000 surveys mailed were returned because the housing unit was vacant or the postal service was unable to deliver the survey as addressed. Of the remaining 11,495 households that received the survey, 669 completed the survey, providing an overall response rate of 5.82%. Of the total surveys received, 463 were completed using the hard copy surveys while 206 were submitted online. Response rates are calculated using AAPOR's response rate #2¹ for mailed surveys of unnamed persons.

Open Participation Survey

In addition to the random sample "probability" survey described above, an open participation survey was conducted, in which all older adults age 60 years or older were invited to participate. The open participation survey instrument was identical to the probability sample survey. This survey was conducted entirely online. For the open participation survey a single URL was provided to contacts from Avenidas to share with residents through email lists, social media accounts, service settings and community partners. The URL directed

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community members to a short survey where they indicated their geographic location and were directed to the survey for their appropriate city. Avenidas conducted all outreach, after receiving guidance on best practices for conducting such outreach from Polco. This guidance suggested the use of social media, press releases, newsletters and e-newsletters, existing resident email lists, printed materials, and invitations publicized at local and virtual meetings. This survey became available to all residents on 9/2/2022 and remained open until 9/16/2022. A total of 143 surveys were completed by open participation survey respondents.

Analysis and Reporting

Confidence Intervals

It is customary to describe the precision of estimates made from probability surveys by a “level of confidence” and accompanying “confidence interval” (or margin of error). A traditional level of confidence, and the one used here, is 95%. The 95% confidence interval can be any size and quantifies the sampling error or imprecision of the survey results because some residents’ opinions are relied on to estimate all residents’ opinions.²

The margin of error for the Avenidas survey is no greater than plus or minus 3.79 percentage points around any given percent reported for all probability survey respondents (669). For subgroups of responses, the margin of error increases because the number of respondents for each subgroup is smaller. For subgroups of approximately 100 respondents, the margin of error is plus or minus 10 percentage points.

The open participation survey results were combined with responses from the probability sample survey, for a total of 812 completed surveys. With the inclusion of the open participation survey participants, it is likely that the precision of the responses would be even greater (and thus the margin of error smaller).

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Survey Processing (Data Entry)

Upon receipt, completed hard copy surveys were assigned a unique identification number. Additionally, each survey was reviewed and “cleaned” as necessary. An example of cleaning would be if a question asked a respondent to pick two items out of a list of five, but the respondent checked three; in this case, NRC would use protocols to randomly choose two of the three selected items for inclusion in the dataset.

All surveys then were entered twice into an electronic dataset; any discrepancies were resolved in comparison to the original survey form. Range checks as well as other forms of quality control were also performed.

The online survey data was collected on Polco, an online civic engagement platform. Use of Polco means all collected data are entered into the dataset immediately when the respondents submit the surveys. Skip patterns are programmed into the system so respondents are automatically directed to the appropriate question (skipping irrelevant questions, when applicable) based on the individual responses given.

A series of quality control checks were also performed in order to ensure the integrity of the web data. Steps may include (and are not limited to) reviewing the data for clusters of repeat IP addresses and time stamps (indicating duplicate responses) and removing empty submissions (questionnaires submitted with no questions answered).

Survey Data Weighting

The primary objective of weighting survey data is to make the survey sample reflective of the larger population of Avenidas. This is done by reviewing the demographic profile of respondents and comparing it to the demographic profile of older adults based on the most recent Census data. Those respondent subgroups that were less likely to respond are statistically adjusted to be given more weight, while those

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subgroups that were more likely to respond are given less weight. The characteristics used for weighting were age, gender, race, ethnicity, housing type, rent or own home, and area. No adjustments were made for design effects. Weights were calculated using an iterative, multiplicative raking model known as the ANES Weighting Algorithm (see <https://surveyinsights.org/wp-content/uploads/2014/07/Full-anesrake-paper.pdf> for more details). The results of the weighting scheme are presented in the following table.

Weighting Scheme for the 2022 Avenidas CASOA

Demographic Group	Unweighted	Weighted	Population Target
Rent or Own Home			
Rent	10.6 %	23.8 %	23.9 %
Own	89.4 %	76.2 %	76.1 %
Housing Type			
Detached	75.1 %	71 %	71.2 %
Attached	24.9 %	29 %	28.8 %
Race			
White	83.1 %	73 %	72.6 %
Not white	16.9 %	27 %	27.4 %
Ethnicity			
Hispanic	3.5 %	7.5 %	6.4 %
Not Hispanic	96.5 %	92.5 %	93.6 %
Gender			
Female	62 %	54.4 %	54.4 %
Male	38 %	45.6 %	45.6 %
Age			
Age 60 to 64	15.9 %	26.2 %	26.3 %
Age 65 to 74	41.4 %	37.3 %	37.3 %
Age 75 and over	42.8 %	36.4 %	36.4 %

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Gender and Age			
Female 60 to 64	8.9 %	13.2 %	13.2 %
Female 65 to 74	25.7 %	20.1 %	20.1 %
Female 75 and over	27.4 %	21.2 %	21.1 %
Male 60 to 64	6.7 %	13.1 %	13.1 %
Male 65 to 74	15.7 %	17.3 %	17.3 %
Male 75 and over	15.6 %	15.2 %	15.2 %

Reporting

For the most part, the percentages presented in the reports represent the “percent positive.” The percent positive is the combination of the top two most positive response options (i.e., excellent and good, very safe and somewhat safe, essential and very important, etc.), or, in the case of resident behaviors/participation, the percent positive represents the proportion of respondents indicating yes or participating in an activity at least once a month.

On many of the questions in the survey respondents may answer don’t know. The proportion of respondents giving this reply is shown in the full set of responses included in the Responses tab. However, these responses have been removed from the analyses presented in the main body of the report. In other words, the tables and graphs display the responses from respondents who had an opinion about a specific item.

Multiple Response Questions

For some questions, respondents were permitted to select multiple responses. When the total exceeds 100% in a table for a multiple response question, it is because some respondents are counted in multiple categories.

Rounding

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Excluding the Participants tab, percentages shown are rounded to the nearest whole number. This can sometimes mean that the responses across all the possible response categories may sum to something other than exactly 100%. It also means that in some instances, the “percent positive,” “percent problem,” or other summaries of data may not equal the rounded percentages of the two categories. For example, if 30.4% of respondents rated quality of life as excellent, and 20.4% of respondents rated it as good, a display of all the responses will show 30% excellent and 20% good. However, a display of the percent rating quality of life as excellent or good will show 51% (as 30.4% + 20.4% equals 50.8%, which rounds to 51%).

Making Comparisons to Benchmarks

National Research Center at Polco has developed a database that collates responses to CASOA and related surveys administered in other communities, which allows the results from Avenidas to be compared against a set of national benchmarks. This benchmarking database includes responses from more than 35,000 older adults (age 55 and over) in over 326 communities across the nation.

Ratings are compared when similar questions are included in Polco’s database, and there are at least five other communities in which the question was asked. Where comparisons for ratings were available, Avenidas’s results are shown as being more favorable than the benchmark, less favorable than the benchmark or similar to the benchmark. In instances where ratings are considerably more or less favorable than the benchmark, these ratings have been further demarcated by the attribute of “much,” (for example, much more favorable or much less favorable).

Reporting Statistical Significance

For the crosstabs of survey results by selected respondent characteristic, chi-square or ANOVA (Analysis of Variance) tests of significance were applied to these breakdowns of selected survey questions. A p-value of 0.05 or less indicates that there is less than a

5% probability that differences observed between groups chance; or in other words, a greater than 95% probability differences observed in the selected categories of the sample represent “real” differences among those populations. However, it should be noted that while these tests of statistical significance were used to help guide readers and policy makers to differences that are likely not due to chance alone, these types of probabilistic inferences were designed for use when results come from random sampling alone (for more information, see Hirschauer, N., Gruner, S., Mußhoff, O., Becker, C., & Jantsch, A. (2020). Can p-values be meaningfully interpreted without random sampling? Statistics Surveys, 14, 71-91).

Community Readiness Scores

The community readiness scores presented in Community Readiness represents the average of the questions included in the index. Although the evaluative or frequency questions were made on 4- or 5-point scales, with 1 representing the best rating, the scales had different labels (e.g., excellent, very likely). To calculate these average scores, the questions used in the index were converted to a common scale where 0 is the worst possible rating and 100 is the best possible rating. If everyone answered excellent, then the result would be 100 on the 0-100 scale. If the average rating for quality of life was right in the middle of the scale (halfway between good and fair), then the result would be 50. This scale can be thought of like the thermometer that is often used to illustrate total donations received by charitable organizations—the higher the thermometer reading, the closer to the goal. In this case, 100 (the top of the thermometer) would represent the most positive response possible. The table below shows the individual questions comprising each summary score for the six dimensions of community readiness, as well as the overall rating for the Quality of the Community.

Dimension of Community Readiness	Items Included in Community Readiness Score
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Dimension of Community Readiness	Items Included in Community Readiness Score
Overall Community Quality	<ul style="list-style-type: none"> • Your community as a place to live • Your neighborhood as a place to live • Your community as a place to retire • The overall quality of life in your community • Recommend living in your community to older adults • Remain in your community throughout your retirement
Community Design	<ul style="list-style-type: none"> • Housing • Mobility • Land Use
Employment and Finances	<ul style="list-style-type: none"> • Employment • Finances
Equity and Inclusivity	<ul style="list-style-type: none"> • Equity • Community Inclusivity
Health and Wellness	<ul style="list-style-type: none"> • Overall feeling of safety in your community • Overall quality of natural environment in your community • Overall health and wellness opportunities in your community • Availability of affordable quality food • Availability of long-term care options • Availability of daytime care options for older adults • Availability of affordable quality physical health care • Availability of affordable quality mental health care • Availability of preventive health services (e.g., health screenings, flu shots, educational workshops) • Fitness opportunities (including exercise classes and paths or trails, etc.)

Dimension of Community Readiness	Items Included in Community Readiness Score
Information and Assistance	<ul style="list-style-type: none">• How would you rate the overall services provided to older adults in your community?• Availability of information about resources for older adults• Availability of financial or legal planning services
Productive Activities	<ul style="list-style-type: none">• Overall quality of parks and recreation opportunities• Overall opportunities for education, culture, and the arts• Residents' connection and engagement with their community• Recreation opportunities (including games, arts, library services, etc.)• Opportunities participate in community matters

Needs Summary

Each livability topic covered in the survey includes a summary of needs identified by respondents. For almost all of these needs summaries, a respondent was counted as having a need if they had a major problem or moderate problem with any of the items examined in each score area. The one exception is for the independent living topic; for this needs score, a respondent was counted as having a need if they reported spending any time in a hospital or in a long-term care facility in the last year.

Needs Score	Items Included in the Score
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Needs Score	Items Included in the Score
Caregiving	<ul style="list-style-type: none"> • Any of the following were a major or moderate problem: • Feeling PHYSICALLY burdened by providing care for another person • Feeling EMOTIONALLY burdened by providing care for another person • Feeling FINANCIALLY burdened by providing care for another person
Civic Engagement	<ul style="list-style-type: none"> • Any of the following were a major or moderate problem: • Feeling like your voice is heard in the community
Community Inclusivity	<ul style="list-style-type: none"> • Any of the following were a major or moderate problem: • Having friends or family you can rely on • Feeling lonely or isolated • Feeling like you don't fit in or belong
Employment	<ul style="list-style-type: none"> • Any of the following were a major or moderate problem: • Finding work in retirement • Building skills for paid or unpaid work
Equity	<ul style="list-style-type: none"> • Any of the following were a major or moderate problem: • Being treated unfairly or discriminated against because of your age
Finances	<ul style="list-style-type: none"> • Any of the following were a major or moderate problem: • Having enough money to meet daily expenses • Having enough money to pay your property taxes

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Needs Score	Items Included in the Score
Health Care	<ul style="list-style-type: none"> Any of the following were a major or moderate problem: Finding affordable health insurance Getting the health care you need Getting the oral health care you need Getting the vision care you need Affording the medications you need
Housing	<ul style="list-style-type: none"> Any of the following were a major or moderate problem: Having housing to suit your needs Doing heavy or intense housework Maintaining your home Maintaining your yard
Independent Living	<ul style="list-style-type: none"> Spent one or more days: In a long-term care facility (including nursing home or in-patient rehabilitation facility) As a patient in a hospital
Information and Assistance	<ul style="list-style-type: none"> Any of the following were a major or moderate problem: Having adequate information or dealing with public programs such as Social Security, Medicare, and Medicaid Not knowing what services are available to older adults in your community
Mental Health	<ul style="list-style-type: none"> Any of the following were a major or moderate problem: Experiencing confusion or forgetfulness Feeling depressed Dealing with the loss of a close family member or friend
Mobility	<ul style="list-style-type: none"> Any of the following were a major or moderate problem: Having safe and affordable transportation available No longer being able to drive

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Needs Score	Items Included in the Score
Physical Health	<ul style="list-style-type: none"> • Any of the following were a major or moderate problem: • Your physical health • Falling or injuring yourself in your home • Staying physically fit • Maintaining a healthy diet • Having enough food to eat
Safety	<ul style="list-style-type: none"> • Any of the following were a major or moderate problem: • Being a victim of crime • Being a victim of fraud or a scam • Being physically or emotionally abused
Social Engagement	<ul style="list-style-type: none"> • Any of the following were a major or moderate problem: • Feeling bored

¹See AAPOR's Standard Definitions here:

[http://www.aapor.org/Standards-Ethics/Standard-Definitions-\(1\).aspx](http://www.aapor.org/Standards-Ethics/Standard-Definitions-(1).aspx)
for more information

²A 95% confidence interval indicates that for every 100 random samples of this many residents, 95 of the confidence intervals created will include the "true" population response. This theory is applied in practice to mean that the "true" perspective of the target population lies within the confidence interval created for a single survey. For example, if 75% of residents rate a service as excellent or good, then a 4% margin of error (for the 95% confidence interval) indicates that the range of likely responses for the entire community is between 71% and 79%. This source of uncertainty is called sampling error. In addition to sampling error, other sources of error may affect any survey, including the non-response of residents with opinions different from survey responders. Though standardized on CASOA, on other surveys, differences in question wording, order, translation and data entry (as examples) can lead to somewhat varying results.

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*Source: U.S. Census Bureau - 2019 American Community
year estimates Age, rent or own home, and gender estima
those age 60+, while type of housing unit, race and ethnicity are for
those age 65+.



City Council Staff Report

From: City Manager

Report Type: INFORMATION REPORTS

Lead Department: City Manager

Meeting Date: September 18, 2023

Report #:2309-1982

TITLE

Independent Police Auditor's (IPA) Report of Review of Investigations as of June 1, 2023 and Police Department Use of Force Report for January - June 2023

BACKGROUND/ANALYSIS

Since 2006, Palo Alto has utilized an Independent Police Auditor (IPA) to conduct secondary review of certain investigations of uniformed Police Department personnel and provide related services. Since the inception of the independent police auditing program, the City has contracted with the Office of Independent Review (OIR Group), to provide these services. The following report transmits the Independent Police Auditor Report on Investigations Completed as of June 1, 2023.

Attachment A contains the IPA report for investigations completed as of June 1, 2023.

For reference, the prior IPA report was published on June 5, 2023 as an Informational Item¹, and covered the time period of July – December 2022. The IPA also published a recruitment and hiring special report on May 8, 2023.² The Police Department's website lists all past Independent Police Auditor Reports, [here](#). For an overview of the history of the expanded scope of the IPA work, please visit the City's Race and Equity webpage at: www.cityofpaloalto.org/raceandequity.

¹ <https://www.cityofpaloalto.org/files/assets/public/v/1/police-department/accountability/ipa-reports/january-2023-independent-police-auditors-report-and-papd-use-of-force-report.pdf>

² <https://www.cityofpaloalto.org/files/assets/public/v/1/police-department/accountability/ipa-reports/february-2023-review-of-papd-recruitment-and-hiring.pdf>

Police Department's Response to IPA Recommendations

On March 14, 2022, the City Council directed the Police Department to provide written responses to future IPA recommendations (Minutes). The first report of Police Department responses to the IPA report after the March City Council action was June 20, 2022.³

Attachment B has the Department's responses to the current IPA Report on Investigations Completed as of June 1, 2023.

Police Department's Use of Force Report for January 2023-June 2023

In 2020, the City Council directed staff to include use of force information when transmitting the IPA reports to the City Council. *Attachment C* contains the Department's Use of Force Report for January 2023 – June 2023.

Process to File a Complaint to the IPA

The public can find more information about filing a complaint through the link here:
<https://www.cityofpaloalto.org/Departments/Police/Accountability/Employee-Complaint>

Complaints may also be directed to the Independent Police Auditor as follows:

Contact: Mr. Mike Gennaco Phone: (323) 412-0334 Email: Michael.gennaco@oirgroup.com	Or mail to: OIR Group 1443 E. Washington Blvd., #234 Pasadena, CA 91104
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RESOURCE IMPACT

The cost for contract services provided by Office of Independent Review (OIR Group) is included in the FY 2024 Adopted Operating Budget. Staff support is provided from the Police Department, City Attorney's Office, and City Manager's Office.

ENVIRONMENTAL REVIEW

Not a project.

ATTACHMENTS

Attachment A: Palo Alto Review of Investigations Completed as of Jun. 1, 2023

Attachment B: PAPD Response to OIR Recommendations Jun. 1, 2023

Attachment C: PAPD Use of Force Supplemental Report Jan. - Jun. 2023

APPROVED BY:

Ed Shikada, City Manager

³ <https://www.cityofpaloalto.org/files/assets/public/v/1/police-department/accountability/ipa-reports/june-2022-independent-police-auditors-report-and-papd-use-of-force-report.pdf>

INDEPENDENT POLICE AUDITORS' REPORT

Review of Investigations Completed as of June 1, 2023

Presented to the Honorable City Council

City of Palo Alto

2023

Prepared by: Michael Gennaco and Stephen Connolly
Independent Police Auditors for
the City of Palo Alto



Introduction

As we have for several years now, OIR Group publishes reports semiannually in Palo Alto for consideration by City Council and the general public. This Report covers six months of recent activity within the Palo Alto Police Department, across the designated range of categories that is subject to our review in our capacity as the City's Independent Police Auditor.¹

The goals of our work are straightforward: to offer increased transparency about processes that have long been primarily internal and confidential within policing, to increase the scrutiny of the Department's internal review processes from the perspective of an independent outsider, and offer recommendations where applicable with an eye toward strengthening PAPD performance in the future.

The IPA scope of responsibility in Palo Alto, as defined by the City Council in a way that has evolved over time, calls for evaluation of all Department investigations into alleged misconduct. The IPA is now also responsible to review select incidents involving use of force by officers – a grouping that includes all Taser cases, dog bites, and instances of significant injury or hospital treatment.

The pool of matters covered below is, as with our previous Report from earlier this year, is a relatively small one. Only one complaint investigation emerged during the relevant months. We also looked at one relatively straightforward use of force and one that was part of a more complicated incident – and ended up involving a vehicle pursuit with a car that crashed, followed by a foot pursuit and use of physical force.

For the second time, this Report also features a discussion about PAPD's administrative process with regard to the review of "pointed firearm" incidents. Public recognition of these events as a significant exercise of police authority has increased in recent years, and what was once treated as a routine tactic is now subject not only to policy limitations but to a new level of formal review.

As we mentioned in our last Report and describe below, the Department's process is still developing, and we note a couple of concerns and suggestions in the discussion that follows. Importantly, though, PAPD appears to be committed to smoothing the bumps in its protocol and achieving the goals of more rigorous evaluation.

¹OIR Group has served as Palo Alto's Independent Police Auditor since 2007. It is led by Michael Gennaco, a former federal prosecutor, and a nationally renowned authority on the civilian oversight of law enforcement. Its website, which includes past versions of its semi-annual reports on PAPD, is www.oirgroup.com.

In developing the summaries, analyses, and recommendations that fo from our full access to the underlying records associated with each case. The Department continues to be cooperative in providing us with the requisite reports and other evidence (including body-worn camera recordings), and it remains open to our feedback. We appreciate the opportunities to engage with PAPD and, ideally, contribute on behalf of the public to the enhancement of its operations.

External Complaint Investigations

Case 1: Third-Party Complaint about Failure To Properly Handle an Allegation of Sexual Assault

Factual Overview:

An adult male underwent two surgical procedures in the same Palo Alto hospital, several weeks apart. A few months later, he contacted PAPD to make a rape allegation that was based on his contention that he had been given a catheter without his consent during both hospital visits.

A supervisor spoke with him and took some investigative steps in relation to the man's report. The man eventually agreed to a release of his medical records, which included signed copies of the consent form to which he had agreed prior to both surgeries. Based on the language within the form, and on a consultation with the District Attorney's Office as to whether the conduct at issue was criminal in nature, the Department decided not to move forward with developing charges and making a formal submission for prosecution.

This was disappointing to the man, who energetically maintained that he was a crime victim and accused the supervisor and others of not doing their job. He expressed his frustration through communications with the initial supervisor and PAPD management that included references to possible legal action in response.

PAPD Investigation and Outcome

The Department decided to formalize the man's concerns and the PAPD analysis within a Supervisor Inquiry Investigation. It essentially recounted the history of the interactions with the complainant, and reached a conclusion that any misconduct allegations were "Unfounded."

IPA Review and Analysis

We concur with the finding that no violations of policy occurred. The initial supervisor had handled the man's report with appropriate due diligence, and PAPD took several additional steps to ensure that its interpretation of the facts was sound.

Use of Force Cases:

Case 1:

Factual Summary

This case involved officers' efforts to take a man into custody after he had allegedly assaulted employees without provocation upon entering a restaurant. The PAPD

involvement began when police received a call for service from employee at the restaurant, reporting that the subject had entered the restaurant, began yelling, and throwing furniture, and then assaulted two employees. The body-worn camera recording from the initial officer to arrive at the scene shows two employees holding a man down who is on his back.

The officer called for backup, and a number of additional officers arrived within seconds to assist. The officer rolled the subject onto his stomach, which resulted in the subject's hands being beneath him. After three additional officers arrived, the subject did not comply with instructions in both English and Spanish to put his hands behind his back so that he could be handcuffed. As a result, one officer reported delivering several punches to the subject's thigh, while a second officer reported delivering several knee strikes to the man's rib area. Eventually, the officers were able to roll the man onto his stomach and secure him with handcuffs. The subject suffered no visible injuries from PAPD's reported uses of force and declined medical attention.

PAPD Review:

The case went through the Department's supervisory review process, which utilizes a detailed template to ensure that relevant evidence is gathered and that compliance with policy is thoroughly evaluated. Here, the assigned supervisor showed due diligence in moving through the relevant investigative steps. These included review of body-worn camera recordings and reports, as well as interviews of the restaurant employees who were victims and witnesses to the earlier assaultive behavior.

The reviewing supervisor determined that the force was justified by the circumstances and consistent with policy. The supervisor found that the exigency of arriving to an incident in which the subject had reportedly just punched two employees made it impracticable to deploy de-escalation techniques other than the instructions given to the subject to place his hands behind his back.

IPA Review and Analysis:

We reviewed body-worn camera footage and reports from this incident, and we concur with the Department's finding that the force was an appropriate response to the subject's resistive behavior.

Vehicle Pursuit -- Pointed Firearm -- Foot Pursuit -- Use of Force

Factual Summary

This case began when officers were asked to respond to a reported retail theft at a local shopping center. The involved officer responded to the call and observed a female sitting in a vehicle in a nearby parking lot whom he suspected of being involved. He pulled behind her car. The subject then exited her car while talking on her cell phone. She spoke briefly to the officer before returning to her car and closing the door over the officer's objections. The officer unholstered his firearm as he moved toward the driver's side of the vehicle and pointed his gun at the woman. The officer then immediately backed away from the subject's vehicle as the subject placed her car in reverse, striking the patrol car. The subject then put her car in forward gear and drove over the curb and away from the location.

The officer pursued the subject while utilizing the lights and siren of his vehicle. After losing sight of the subject at one point, he reacquired her location and continued to pursue her. After approximately two minutes, the officer observed the subject's vehicle roll over. As he approached the subject, the officer again drew his weapon and pointed it at the woman. The woman ignored the officer's commands and began to run away. The officer ran after her and tackled her to the ground after a brief foot pursuit. Additional officers arrived and assisted in handcuffing the subject. Paramedics were called to the location and the subject was transported to a local hospital.

We were further advised that as a result of the incident, the involved officer received an injury to his wrist which caused him to be out of work for several weeks.

PAPD Review

The initial review focused on the vehicle pursuit. The reviewing supervisor concluded that the pursuit was within policy since the subject had just rammed the officer's car – an act which met the requisite "violent felony" standard that PAPD policy requires before a pursuit can be initiated. The supervisor further concluded that the pursuit was controlled and the direction of travel was appropriately called out by the officer. In evaluating the driving of the officer, the supervisor noted that the officer had failed to stop at a controlled intersection on one occasion and crossed the center line on another occasion to pass a box truck.

To his credit, the supervisor further noted that the officer had failed to include in his initial report that he had pointed his firearm at the subject at the initial stop. The supervisor

indicated he discussed with the officer the need to document that action. The officer had prepared a supplemental report documenting his decision to unholster his weapon and the rationale for doing so.

Finally, to the supervisor's additional credit, he noted that as the subject was being directed into a vehicle, the officer said: "It's not that hard to get into a fucking car." The supervisor said he reminded the officer of PAPD policy restricting the use of profanity and counseled him on its use. Department management's use of such "teachable moments" occasions for course correction is a practice we endorse.

IPA Review and Analysis

IPA was provided and reviewed the recordings from both the officer's in-car video system and his body-worn camera, the police reports, and the supervisory memorandum. As discussed below, we noted a few issues for further consideration.

The Vehicle Pursuit

PAPD's vehicle pursuit policy acknowledges that vehicle pursuits are one of the most dangerous enforcement actions an officer may be involved in. As a result, the policy sets out a series of detailed expectations for initiating and terminating a pursuit, as well as expectations that supervisors carefully review the incident to determine whether the policy requirements have been met.

As detailed above, the review of the vehicle pursuit was set out in a supervisory memorandum. However, in that memorandum, certain aspects of the pursuit were not fully documented. For example, PAPD's vehicle pursuit policy states that pursuing units should exercise due caution when proceeding through controlled intersections. The memorandum notes that the officer failed to stop at one controlled intersection. Yet a close review of the MAV ("dash-cam") footage shows that the officer failed to stop or slow through six controlled intersections.

The memorandum further notes that the officer crossed over to the opposite lane of a two-lane road in order to pass a large truck. The MAV footage, however, shows that it was actually *two* large trucks that were passed in the maneuver. The MAV footage also shows that later in the pursuit, the radio car again briefly crossed into the opposing lane.

The analysis of the pursuit suffers from the omission of important facts that were captured by the video equipment. While a more careful analysis may have still concluded that the pursuit was in policy, the failure of the supervisory memorandum to include all salient

facts – and to base any subsequent analysis on all those facts –under of the Department’s bottom-line conclusion.²

Recommendation ONE :

PAPD should ensure that supervisors include all salient facts in their vehicle pursuit evaluations.

Foot Pursuit

Current PAPD policy advises officers that “the safety of department members and the public should be the primary consideration when determining whether a foot pursuit should be initiated or continued. Officers must be mindful that immediate apprehension of a suspect is rarely more important than the safety of the public and department members.”

The policy further requires officers involved in foot pursuits to complete the appropriate crime/arrest reports documenting, at minimum, the following:

- (a) The reason for initiating the foot pursuit.
- (b) The identity of involved personnel.
- (c) The course and approximate distance of the pursuit.
- (d) Whether a suspect was apprehended as well as the means and methods used.
 - 1. Any use of force shall be reported and documented in compliance with the Department Use of Force Policy.
- (e) Any injuries or property damage.

While in this case the initiating officer documented some of the above information in his police report, information such as the course and approximate distance of the pursuit was not specifically included. More critically, the foot pursuit sets out certain criteria an officer should consider in determining whether to initiate and continue a foot pursuit. In reviewing this incident, the supervising officer did not evaluate the officer’s actions to determine whether the officer’s actions were “reasonable” and followed the criteria set out in policy. There should have been an evaluation of the officer’s conduct and whether his actions complied with the Department’s foot pursuit policy, especially given the use of force that terminated the pursuit.

² The reader should not conclude that IPA found any intent to deceive as a result of the memorandum failing to include all salient facts.

Recommendation TWO:

The Department should expressly evaluate compliance with its foot pursuit policy, particularly when the end of the pursuit involves a use of force involving potential injury or pain to the subject.

The Use of Force

*The repeated pointing of the involved officer's firearm.*³ The supervisory memorandum appropriately notes that the pointing of the firearm at the initiation of the incident should have been documented, along with the rationale for doing so. However, the memorandum fails to note that the officer actually unholstered his firearm and pointed it at the subject on two separate occasions: first at the initiation of the contact and again after the subject's car rolled over and she got out of the car. To the officer's credit, he described both "pointing a firearm" incidents in his supplementary memorandum.

The tackling of the subject. There is no apparent PAPD review of the officer's admitted "tackling" of the subject, causing her to go to the ground – an action he reported to a supervisor on scene immediately after the incident. The body-worn camera recording shows that, at one point, the officer told a supervisor that he saw blood on the subject's hands after she went down but did not know if it occurred because of the tackle or the accident.

The officer then said it probably didn't occur from the tackle since they had landed on grass. There are no indicia that the subject was interviewed relating to the use of force.⁴ As a result, there is insufficient documentation of the take-down, which leaves a question as to whether a more formal force review process was needed per policy. That gap should have been closed.

Recommendation THREE:

PAPD should ensure that sufficient inquiry is made at the scene regarding any reported use of force to determine whether a more formal review is required.

³ We note here that PAPD does not technically categorize the pointing of a firearm as a "use of force" per the definitions of its policy manual. However, the Department has recently subjected this tactic to a greater degree of formal scrutiny, as discussed further below in the "Pointed Firearm" section of this Report.

⁴ If the subject had been interviewed and indicated that any injury or pain that she had received had been a result of the rollover accident, that would have dropped the physical contact at the end of the foot pursuit below the level of PAPD's process for the formal supervisory review of force.

Interviews of Witnesses

One civilian witness assisted the responding officer in controlling the subject until backup officers arrived. Another civilian witnessed the incident. According to the body-worn camera recording, the responding officers encountered the two individuals after the incident and asked if they had in fact been participants. When they replied affirmatively, the initially involved officer advised them that since he himself had been involved, it would be better for a non-involved officer to obtain their statements. The officer then creditably followed up with a supervisor and the civilians were interviewed by another officer. And the subject was also interviewed by non-involved officers about aspects of the incident.

These were noteworthy instances in which Department members showed a consciousness of best practices to ensure the objectivity of the review. As such, they deserve acknowledgement.

"Pointed Firearm" Incidents

As noted above, this is the second audit cycle that provided us with the opportunity to evaluate the Department's administrative handling of incidents in which officers point their firearms at a subject in the context of an enforcement encounter. PAPD reported five instances that fit the criteria, and gave us available materials, including police reports and relevant body-worn camera recordings.⁵ A new feature was also included for each case: a brief memo from a reviewing supervisor who had assessed the incident and evaluated the legitimacy of the involved officer's actions.

This supervisory memo is the product of the Department's evolving system for addressing these incidents with completeness, appropriate rigor, and efficiency. Our previous Report cited "growing pains" in this endeavor that were of two types. First was the need for more timely and accurate identification of these incidents when they occur, and second was the need for a further vision for developing and documenting a review process – one that effectively balanced meaningful accountability against new impositions on supervisory time and attention.

New mechanisms for ensuring the "capture" of relevant incidents have been implemented – and in fact led to the surfacing of an instance that was missed in 2022 and belatedly

⁵ A sixth incident was one element of a larger encounter that had several "reviewable" features, and which we discuss above.

reviewed for this cycle.⁶ We expect that ongoing refinements will enter the identification process even further going forward.

As for the supervisor's memo, it constitutes a useful step in the right direction. While the initial examples have been quite brief, they constitute formal documentation of a purposeful assessment that itself is adding accountability in an arena that members of the public clearly care about. However, as discussed below, we questioned the *substance* of the evaluations in at least a couple of instances.

The context for the five deployments was as follows:

- Police received an early morning call from a grocery store employee regarding a young male subject who had allegedly brandished a firearm in the context of a dispute at a checkout register. Different officers responded to the area in an attempt to locate the subject. A responding supervisor encountered the person, who was walking in the neighborhood. Because of the reports that the subject was armed, the supervisor unholstered his duty weapon and pointed it at the subject while giving commands for him to get on his knees. The subject was initially non-compliant but was then taken into custody without further incident.
- Using a locator app, officers tracked the subject in a robbery/assault into a neighboring city and found him seated in a stolen vehicle. The male subject initially fled from officers. One officer trailed him, first in his radio car and then on foot. He eventually re-encountered the subject in a parking lot and ordered him at gun point to get on the ground. Though initially non-compliant, the subject was eventually taken into custody without further incident.
- In responding to the same call for service as the robbery/assault case above, a responding officer noted a second subject walking away at the stolen car location from which the first subject had fled. The officer continued to monitor the vehicle location, saw the second subject back in the car's vicinity, and pointed his firearm to gain compliance with commands for the person to get on the ground.
- Responding officers located a subject who was wanted in connection with a residential burglary that had just occurred. He was walking along a freeway onramp, and an officer who spotted him got out of his own vehicle and, using his car as cover, pointed his weapon in the man's general direction while giving commands. The man complied eventually and was arrested.
- Several officers responded to a broadcast regarding a reckless male driver who was involved in several hit and run collisions (and was eventually arrested for

⁶ To be clear, our sense is that any gaps have been a function of adapting to new expectations and clarifying definitional ambiguities, and not a matter of intentional evasion on the part of officers. And we reiterate a point from our last report: the very small number of apparent deployments reflects appropriate restraint on the part of PAPD personnel in the field.

being under the influence of drugs). One of the officers who fo and who used his radio car to block the subject's escape route briefly unholstered his weapon and pointed it in the man's general direction while giving initial commands.

Each of these tactical choices was found by PAPD to be consistent with policy and training, and we concurred with these "bottom line" conclusions. At the same time, we noted a couple of concerns.

First, in one case, the officer had simultaneously unholstered both his Taser and his firearm, and briefly pointed both at the subject while giving commands as the man approached. Because of the potential for "weapons confusion" and inadvertent trigger pull, this is considered tactically problematic, to the point where a specific admonitory reference is included in Department policy.

Here, the officer seemed very much in control, and he quickly and overtly holstered his gun so as to de-escalate the situation. In our view, though, the supervisor's memo should have – and did not – make note of the tactical misstep. This effort would not be for the sake of nitpicking or undermining the officer, but instead to constructively enhance future performance. This, along with accountability where appropriate, is an important way to make administrative review meaningful and worthwhile.

We also disagreed with a supervisor's assessment that a particular use of "terse and provocative language" was an effective factor in gaining the subject's compliance in conjunction with a pointed firearm. In our viewing of it, the subject was *already* cooperating – to the point of lying down on the sidewalk and extending his arms – when the officer punctuated an additional command with a particularly harsh profanity.

While flagging the issue at all was to the supervisor's credit, we reiterate a point we have made often: although there are indeed instances when understandable adrenaline or the desire to give a verbal "jolt" make officer profanity excusable, the bar would ideally be higher than what we saw (and heard) here.

Recommendation FOUR:

PAPD should encourage supervisors to treat the "pointed firearm" review process as an opportunity for holistic assessment of officer performance, and should document and address issues where relevant.

Recommendation FIVE:

PAPD should continue to scrutinize officer profanity and emphasize the limited nature of exceptions to the general prohibition.

Item 11

Attachment A - Palo Alto
Review of Investigations
Completed as of June
2023 (OIR Group)

On the whole, we consider PAPD's enhanced attention to the pointing of firearms as an important addition to its mechanisms for meaningful internal review. And the process, if imperfect, is already being refined in positive ways.



DATE: AUGUST 31, 2023

TO: HONORABLE CITY COUNCIL

FROM: CHIEF ANDREW BINDER

SUBJECT: RESPONSE TO IPA RECOMMENDATIONS IN JUNE 1, 2023 REPORT

RECOMMENDATION 1: PAPD should ensure that supervisors include all salient facts in their vehicle pursuit evaluations.

The Department agrees and will reinforce to supervisors that all relevant and factual details should be included in vehicle pursuit evaluations.

RECOMMENDATION 2: The Department should expressly evaluate compliance with its foot pursuit policy, particularly when the end of the pursuit involves a use of force involving potential injury or pain to the subject.

The Department agrees and will reinforce that foot pursuit details be included in reports as required by policy and that supervisors evaluate compliance with the foot pursuit policy.

RECOMMENDATION 3: PAPD should ensure that sufficient inquiry is made at the scene regarding any reported use of force to determine whether a more formal review is required.

The Department agrees and will remind supervisors to make sufficient inquiries at the scene of any reported use of force to determine if a formal Supervisor's Report on Use of Force is required by policy.

RECOMMENDATION 4: PAPD should encourage supervisors to treat the "pointed firearm" review process as an opportunity for holistic assessment of officer performance, and should document and address issues where relevant.

The Department agrees and will continue to use "pointed firearm" reviews (and all supervisor reports) as an opportunity to assess officer performance and to document and address issues as appropriate.

RECOMMENDATION 5: PAPD should continue to scrutinize officer profanity and emphasize the limited nature of exceptions to the general prohibition.

The Department agrees and will continue to evaluate an officer's use of profanity to ensure its use is consistent with policy directives.



DATE: AUGUST 31, 2023

TO: HONORABLE CITY COUNCIL

FROM: CHIEF ANDREW BINDER

SUBJECT: USE OF FORCE REPORT SUPPLEMENT TO IPA REPORT DATED JUNE 1, 2023

This memorandum responds to the City Council's November 2020 direction to provide use of force summary data (which encompasses all use of force incidents in which a "Supervisor's Report on Use of Force" has been completed by the Police Department) as an attachment to each Independent Police Auditor (IPA) report. Policy Manual §300 ("Use of Force") requires that all uses of force by Police Department members "be documented promptly, completely, and accurately in an appropriate report."¹ The policy also requires that, under certain circumstances, a "Supervisor's Report on Use of Force" also be completed by the supervisor, and that report is routed for approval through the chain of command up to and including the Police Chief. Most commonly, a "Supervisor's Report on Use of Force" is completed after an officer uses some form of force that results in a visible or apparent physical injury to a subject or the subject complains of pain or alleges they were injured.

Consistent with the IPA's expanded scope of administrative review established by the City Council in November 2020, the Department forwards the following types of use of force cases to the IPA for review and recommendations: all cases where a subject's injuries necessitate any treatment beyond minor medical treatment in the field, and all cases where an officer uses a baton, chemical agent, TASER, less-lethal projectile, canine, or firearm. The IPA's scope of administrative review was further expanded in July 2021 to include cases when a firearm is pointed at a subject.

Continuing the practice established in the last iteration of this memorandum, the Department is choosing to release the race of the recipient(s) of any force used.

This summary covers the period of January 1, 2023 through June 30, 2023.

Use of Force Cases

From January 1, 2023 through June 30, 2023, the Police Department responded to more than 20,000 calls for service and effected more than 700 arrests. During that time, there was one case where force requiring a "Supervisor's Report on Use of Force" was used. The IPA's review of that case appears in the current IPA report (as "Case 1"), and they concurred with the Department's findings that the use of force was justified by the circumstances and consistent with policy.

The race of the subject upon whom force was used was Hispanic.

¹ The Palo Alto Police Department Policy Manual is updated quarterly and posted online at <https://www.cityofpaloalto.org/Departments/Police/Public-Information-Portal/Police-Policy-Manual>.

Firearm Pointed at Person Cases

Item 11
Attachment C - PAPD Use
of Force (UOF)
Supplemental Report
Jan. - Jun. 2023

From January 1, 2023 through June 30, 2023, officers pointed a firearm at a person

The current IPA report includes a review of six total incidents during which officers pointed a firearm at a person. Three of those incidents occurred in 2022 but were discovered in early 2023 (as described in the last iteration of this memorandum). The other three incidents occurred between January 1, 2023 through June 30, 2023.

In their review of these six incidents, the IPA concurred in each case with the Department's findings that the pointing of the firearm was justified by the circumstances and consistent with policy.

In the "'Pointed Firearm' Incidents" section of the current IPA report, the race of the subjects at whom a firearm was pointed were white, Black, Black, Hispanic, and Hispanic (respectively). In the case described in the "Vehicle Pursuit – Pointed Firearm – Foot Pursuit – Use of Force" section, the race of the subject at whom a firearm was pointed was Black.

For the Next Use of Force Report

Due to continued refinement of our auditing procedures, the Department has identified two final cases from 2022 where firearms were pointed at people. Those cases will be sent to the IPA for their review in the near future, and the Department expects them to be included in the next IPA report. Also being sent to the IPA in the near future for inclusion in their next report are three additional incidents that occurred between January 1, 2023 through June 30, 2023. The administrative review of those three incidents had not been completed in time for inclusion into the current report.

January – June 2023 Use of Force Report Summary

Type of Force	Number of Cases	Status of IPA Review
Physical Strength	1	Reviewed in current report
Chemical Agent	0	
TASER	0	
Baton	0	
Less-Lethal Projectile	0	
Canine	0	
Firearm	0	