Pursuant to AB 361 Palo Alto City Council meetings will be held as “hybrid” meetings with the option to attend by teleconference/video conference 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.

HOW TO PARTICIPATE

VIRTUAL PARTICIPATION

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

The meeting will be broadcast on Cable TV Channel 26, live on YouTube at https://www.youtube.com/c/cityofpaloalto, and streamed to Midpen Media Center at https://midpenmedia.org.

TIME ESTIMATES

Time estimates are provided as part of the Council's effort to manage its time at Council meetings. **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.

REVISED 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 email 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 City 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.
CALL TO ORDER

SPECIAL ORDERS OF THE DAY (5:00 – 5:20 PM)

1. Appreciation for Joe Simitian, Santa Clara County Supervisor, for Advocacy on Behalf of the Palo Alto Community for affordable housing and support for mental health, and services to unhoused Palo Altans (including the $4 Million Challenge Grant in Support of Palo Alto Homekey)

2. The Great California Shakeout

STUDY SESSION (5:20 – 6:20 PM)

3. Crime Mitigation Strategies through the Use of Automated License Plate Recognition (ALPR) Technology

AGENDA CHANGES, ADDITIONS AND DELETIONS

PUBLIC COMMENT (6:20 – 6:40 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.

CONSENT CALENDAR (6:40 – 6:45 PM)

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

4. Approval of Contract Amendment No. Two with GovernmentJobs.com, Inc. dba Neogov for Recruiting and Onboarding Services, to Extend the Term through June 30, 2025, Add Services, and Increase Compensation by an Amount Not-To-Exceed $249,883 for a New Contract Total Not-To-Exceed Amount of $411,323

5. Adoption of a Resolution Authorizing a City Application for the State Permanent Local Housing Allocation (PLHA) Funds and Authorization of City Manager or Designee to Manage the Allocation

6. Approval of Fiscal Year 2022 Reappropriation Requests to be Carried Forward Into Fiscal Year 2023 and Budget Amendments in Various Funds

7. Approval of a Professional Services Agreement Contract Number C23185658 With BKF Engineers for the Amount of $900,000 Over a 3-year Term for On-Call Surveying and Design Support Services

Supplemental Report Added
8. Approve the Parks and Recreation Commission Recommendation for a New Skate Park; Authorize the Friends of Palo Alto Parks to begin Fundraising; and Direct Staff to Support Outreach

Supplemental Report Added

CITY MANAGER COMMENTS (6:45 – 7:00 PM)

ACTION ITEMS

9. PUBLIC HEARING: Staff Recommend the City Council Review the North Ventura Coordinated Area Plan (NVCAP) Refined Preferred Alternative, Take Public Comment, and Endorse the Refined Preferred Alternative Plan. (7:00 - 9:00 PM)

10. Review and Provide Direction to Staff on the Draft Permanent Parklet Program Standards and Policies; Adopt an Interim Ordinance and Resolution to Continue the Pilot Parklet Program and Other On-Street Uses During Transition Period; and Direct Staff to Return with Legislation Implementing a Permanent Parklet Program (9:00 – 10:30 PM)

COUNCIL MEMBER QUESTIONS, COMMENTS, ANNOUNCEMENTS
Members of the public may not speak to the item(s)

ADJOURNMENT

OTHER INFORMATION
Standing Committee Meetings - None

Public Comment Letters

Schedule of Meetings
Title: Study Session – Crime Mitigation Strategies through the Use of Automated License Plate Recognition (ALPR) Technology

From: City Manager

Lead Department: Police

Recommendation
This is a study session and no action is needed from City Council.

Executive Summary
Automated License Plate Reader (ALPR) technology uses a combination of cameras and computer software to scan the license plates of passing vehicles. The use of ALPR technology provides several potential benefits, including crime deterrence, real-time alerts to police when stolen or wanted vehicles enter an area, and enhanced investigative capabilities when a crime has already occurred. The Police Department is exploring the installation of fixed ALPR cameras at strategic locations in the City and is seeking the Council’s feedback and discussion so as to inform staff’s review and potential recommendation for Council approval of implementation of this technology. If the Department moves forward with deployment, it would complete a procurement process and return to Council with a proposed contract, deployment plan, and policy. This report outlines the uses and benefits of fixed ALPR technology, as well as associated privacy considerations and applicable law.

Background
Automated License Plate Reader (ALPR) technology uses a combination of cameras and computer software to scan the license plates of passing vehicles. The cameras, which can be fixed (e.g., mounted on road signs or traffic lights), or mobile (i.e., mounted on a vehicle), capture computer-readable images that allow law enforcement to compare plate numbers against plates of known stolen vehicles or vehicles associated with individuals wanted on criminal charges. When a match is found, a real-time alert is generated, notifying police of the location where the image of the stolen or wanted vehicle was captured. ALPR data can also be used by investigators after a crime has been committed to identify and locate associated vehicles.

The Palo Alto Police Department has utilized a single mobile ALPR unit for over ten years, and has recovered stolen vehicles and located wanted criminals as a result. The limitation of a single
The use of ALPR technology is specifically regulated by California Civil Code §1798.90.5, et seq. and is also subject to the City’s Surveillance Technology ordinance, PAMC §2.30.620, et seq.

Discussion
The addition of fixed ALPR cameras provides the City with a cost-effective force multiplier that helps direct officers to where crimes are occurring and provides invaluable investigative leads following a crime. Strategically placed fixed ALPR cameras provide greater geographic and temporal coverage without the necessity of an officer or patrol vehicle. The use of fixed ALPR technology has become widespread in the region and is being used by many local police agencies to successfully locate stolen vehicles and solve other crimes where a vehicle has been used. In recent years, ALPR technology has continued to evolve in terms of quality and accuracy, while also becoming less cost-prohibitive.

Uses of ALPR
Recent years have seen regional increases in catalytic converter thefts, auto burglaries, vehicle thefts and organized retail thefts. And, although still rare, the community has experienced several brazen armed robberies. Those responsible for such crimes commonly use a vehicle to travel to and flee from the crime scene. Moreover, such offenders often engage in a series of criminal offenses involving multiple jurisdictions and victims, and commonly arrive in a stolen vehicle, a vehicle bearing stolen plates, or a vehicle that law enforcement has previously connected to verified criminal activity. Identifying stolen or wanted vehicles, via fixed ALPR, as they enter a target area provides law enforcement an opportunity to intervene before additional crimes are committed, and potentially apprehend wanted persons or recover stolen property. ALPR data also provides investigators with an additional technique to identify, locate and apprehend offenders once a crime has already occurred.

Logistics: A fixed ALPR system captures the date, time, location, license plate (state, partial, paper, and no plate), and vehicle characteristics (make, model, type, and color) of passing vehicles. The cameras function well under daylight and low light conditions and are capable of capturing images of vehicles traveling at freeway speeds. ALPR cameras are positioned to capture rear license plates only and are not designed to capture images of vehicle occupants or utilize facial recognition technology. To derive maximum benefit with the fewest cameras needed, cameras are typically placed at strategically selected locations based on several factors: crime statistics, common vehicular ingress and egress points, and traffic volume. Accounting for these factors provides the greatest likelihood of capturing images of suspects’ vehicles and their license plates.
ALPR data is transmitted in an encrypted format, and stored remotely by a third-party vendor, consistent with Criminal Justice Information System (CJIS) protocols. Departments utilizing an ALPR system access the data via a web-based platform.

**Neighboring Agency Usage:** Other local communities are currently using fixed ALPR technology, including Menlo Park, Atherton, Los Altos Hills, Saratoga, Campbell, San Jose, Los Gatos, Gilroy, Morgan Hill, Milpitas, and Santa Clara, with several other local jurisdictions in the process of implementing the technology. These jurisdictions anecdotally report that, since the deployment of fixed ALPR, they have experienced a marked increase in the recovery of stolen vehicles, as well as investigative success stories attributable to ALPR data.

**Benefits of Usage:** The use of ALPR technology provides several potential benefits, including crime deterrence, real-time alerts to police when stolen or wanted vehicles enter an area, and enhanced investigative capabilities when a crime has already occurred.

- **Real-Time Alerts:** When a real-time ALPR alert occurs, notifying police of the presence of a wanted or stolen vehicle, officers can respond to the area to search for the vehicle. If officers locate the vehicle, prior to making an enforcement stop, they visually confirm the plate number and manually check it against law enforcement databases to confirm the accuracy of the ALPR information and the legal justification for the stop.

- **Deterrence:** Even if officers are unable to locate and stop the vehicle in question, suspects may see the police response and be deterred from further criminal activity. Indeed the mere presence of the ALPR cameras, visibly mounted on public infrastructure and potentially accompanied by signage, may act as a deterrent. Police personnel have reported to staff that some criminals will intentionally target jurisdictions without ALPR technology to increase their chances of successfully avoiding detection while committing crimes.

- **Solve Crimes Already Committed:** In addition to providing opportunities to prevent crime and apprehend wanted persons via real-time alerts, ALPR data can be used by investigators to solve crimes that have already occurred. Commonly, by the time a crime is reported to police, the suspects have already fled the area, and it is the job of police to identify and locate the suspects at a later time. While victims and witnesses can often provide responding officers with a description of the vehicle used by a suspect, those descriptions are frequently incomplete (e.g., a partial license plate number, vehicle type and color only) or consist of a license plate number that corresponds to a stolen vehicle or a stolen plate. Investigators can turn that imperfect or incomplete information into actionable leads by querying the ALPR database.

For example, investigators can search the database for vehicles matching even an incomplete description, which entered or exited the area of the crime, and use any responsive images as the basis for further investigation. Or, in the case of suspects using a stolen vehicle or a vehicle bearing stolen plates, investigators can search the database for
other locations that vehicle has been observed and use that as a way to locate it or connect it to other offenses.

- **Regional Coordination:** ALPR data sharing among local law enforcement partners allows agencies to collaboratively investigate, identify and apprehend multi-jurisdictional offenders, or those who commit crimes in one jurisdiction but reside in another. For example, if a vehicle wanted in connection with a Palo Alto crime is frequently captured, via ALPR, at a particular location in another city, that may provide Palo Alto investigators the lead they need to locate the vehicle and apprehend the suspect. Or, in the case of organized retail thieves, ALPR data sharing may allow investigators to connect multiple cases across disparate jurisdictions, share evidence, and obtain the best prosecutorial outcomes.

- **Expanded Searchable Data Set:** Private entities (e.g., Home Owners Associations, shopping centers, individual retailers) utilizing ALPR cameras can also elect to share their data with local law enforcement, to include real-time alerts when wanted or stolen vehicles are captured. The Department is informed that multiple such entities exist in Palo Alto, including the City’s largest shopping center. This is a one-way share. A private entity that shares its ALPR data with law enforcement does not gain access to law enforcement data in return. The investigative usefulness of an ALPR system is greatly enhanced as its searchable data set increases, whether from other law enforcement contributors or private entities.

One of the four priorities of the City Council this calendar year is Community Health and Safety with an emphasis on crime (among others). Further, the 2030 Comprehensive Plan includes policies S-1.6 and S-1.7, which supports a balanced approach of utilizing safety technology with policy driven safeguards. The Department believes that the deployment of a fixed ALPR system, with sound polices and training, would support crime prevention, criminal apprehension, stolen vehicle recovery, and criminal investigation, by providing police with real-time alerts when wanted or stolen vehicles enter targeted areas and by capturing footage of fleeing suspect vehicles.

**Privacy Considerations**
Organizations such as the American Civil Liberties Union (ACLU), have expressed concerns about the use of ALPR. Among its concerns are data access, storage, retention, sharing, and reporting. If fixed ALPR were to be deployed in Palo Alto, the Department would implement policies responsive, in whole or in part, to each of these concerns. For example, many local law enforcement agencies retain ALPR data for 1 year, or even longer; the Department believes that a retention period as short as 30 days would adequately support investigative needs. Only data which has been identified as relevant to a specific criminal investigation would be retained longer than that 30 day period.
Internally, data would only be accessible to properly trained staff with a legitimate law enforcement need, and all queries would be logged and subject to audit. When implementing this technology, an organization has choices on its policies regarding sharing of data. Some local law enforcement agencies share data with federal and out of state law enforcement agencies. The Department would recommend restrictions on sharing of data collected by the City to only share data with other local law enforcement agencies who adhere to similar policies, and those queries would likewise be logged. Neither the Department, nor the third-party vendor, would share the Department’s data with any non law enforcement entities. The Department would make readily-accessible to the public its relevant policies as well as information concerning the number of cameras deployed, the data retention period, and the names of law enforcement agencies with whom it shares data.

**Legal and Policy Considerations**
California Civil Code § 1798.90.5, *et seq.* governs the collection and use of license plate information by government agencies. It spells out the policies that an agency must implement when collecting ALPR data. These policies, largely, address the same concerns set forth above under Privacy Considerations. If fixed ALPR were to be deployed in Palo Alto, the Department would ensure that its policies and training satisfied the requirements of this statute.

Palo Alto’s Surveillance Technology ordinance (No. 5420) modified PAMC § 2.30.620, *et seq.* to establish criteria and procedures to protect personal privacy in the acquisition and use of surveillance technology, and provide for ongoing monitoring and reporting. Fixed ALPR is “surveillance technology” as defined by the ordinance. The ordinance requires Council approval of the acquisition of new surveillance technology and of a Surveillance Use Policy specific to each new approved technology. In approving new surveillance technology, the Council must determine that its benefits outweigh the associated costs and concerns. The ordinance sets forth specific elements that must be present in a Surveillance Use Policy, including limitations on access, use, and retention, as well as a description of compliance procedures. Prior to the acquisition of fixed ALPR for deployment in Palo Alto, the Department would return for Council approval and ensure that its Surveillance Use policy and training satisfy the requirements of the ordinance.

**Resource Impact**
Should the City move forward with the acquisition of fixed ALPR technology, the Department would complete a procurement process in which costs and other factors are examined, and return to the Council with a recommended vendor and proposed agreement.

A fixed ALPR system could be deployed either by leasing the equipment, with installation, maintenance and replacement being the responsibility of the vendor, or via purchase of the equipment, with installation, maintenance and replacement being the responsibility of the City. In either case, there would be an additional annual subscription cost, associated with accessing the ALPR database.
Preliminary research, based on open source vendor information and publicly-available information regarding the cost of ALPR programs in other local cities, suggests that a deployment of fixed ALPR cameras in Palo Alto would come at a cost, in year one, of $75,000-$200,000, and an on-going annual cost thereafter of approximately $50,000-$150,000. If the City elected to purchase the cameras, it would expect to replace the equipment approximately every 5 years, given the useful life of equipment exposed to the elements and advances in technology.

**Stakeholder Engagement**

The Department has reviewed a variety of relevant materials prepared by the ACLU, including its recommendations specific to the use of ALPR technology by law enforcement. In addition, the Department proactively contacted local and regional ACLU representatives to request a meeting to discuss the group’s concerns with ALPR technology. To date, the ACLU has not been able to accommodate the Department’s request but the Department is hopeful this will occur in the near future.

The Department has consulted with several local law enforcement agencies to gather best practices for the acquisition, deployment, and oversight of a fixed ALPR program.

**Attachments:**

- Attachment3.b: Attachment B: ACLU Surveillance Guidelines
Ordinance No. 5450
Ordinance of the Council of the City of Palo Alto Adding Sections 2.30.620 – 2.30.690 to Title 2 of the Palo Alto Municipal Code to Establish Criteria and Procedures to Protect Personal Privacy in the Acquisition and Use of Surveillance Technology and Provide for Ongoing Monitoring and Reporting

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and Recitals. The Council of the City of Palo Alto finds and declares as follows:

To promote public trust and ensure protection of privacy, the Palo Alto City Council desires to establish a general policy governing consideration, acquisition and use of technologies by the City, including its contractors and partners, that gather information about specific individuals or groups of individuals;

The City also recognizes the value of and wishes to foster Smart City initiatives that enhance City programs and services to citizens and visitors through the use of technology;

Accordingly, the City adopts the following ordinance to increase transparency, oversight and accountability in the acquisition and deployment of technologies that collect and retain personally identifiable information of persons not accused of unlawful activity.

SECTION 2. PART 6A – SURVEILLANCE AND PRIVACY PROTECTIONS, Sections 2.30.620 – 2.30.690, is added to Chapter 2.30 [Contracts and Purchasing Procedures], of Title 2 [Administrative Code] of the Palo Alto Municipal Code to read as follows:

2.30.620 Title.

This Part 6A shall be known as the Surveillance and Privacy Protection Ordinance.

2.30.630 Council Approval Required for Contracts, Agreements, Grant Applications and Donations Involving Surveillance Technology.

The Council shall approve each of the following:

(a) Applications for grants, acceptance of state or federal funds, or acceptance of in-kind or other donations of Surveillance Technology;

(b) Notwithstanding any delegation of authority to award contracts in this Chapter 2.30, contracts of any type and any amount that include acquisition of new Surveillance Technology;

(c) Use of Council-approved Surveillance Technology for a purpose, in a manner, or in a location outside the scope of prior Council approval; or
(d) Agreements with a non-City entity to acquire, share, or otherwise use Surveillance Technology or the information it provides.

2.30.640 Council Approval of Surveillance Use Policy.

The Council shall approve a Surveillance Use Policy addressing each activity that it approves that is listed in Section 2.30.630. If no current Surveillance Use Policy covers an approved activity, Council shall adopt a new policy or amend an existing policy to address the new activity.

2.30.650 Information Required.

Unless it is not reasonably possible or feasible to do so, before Council approves a new activity listed in Section 2.30.630, the City should make available to the public a Surveillance Evaluation and a proposed Surveillance Use Policy for the proposed activity.

2.30.660 Determination by Council that Benefits Outweigh Costs and Concerns.

Before approving any new activity listed in Section 2.30.630, the Council shall assess whether the benefits of the Surveillance Technology outweigh its costs. The Council should consider all relevant factors, including financial and operational impacts, enhancements to services and programs, and impacts on privacy, civil liberties, and civil rights.

2.30.670 Oversight Following Council Approval.

Beginning after the close of fiscal year 2019 and annually thereafter, the City shall produce and make available to the public an Annual Surveillance Report. The Annual Surveillance Report should be noticed as an informational report to the Council. The Council may calendar the Annual Surveillance Report or any specific technology included in the report for further discussion or action, and may direct that (a) use of the Surveillance Technology be modified or ended; (b) the Surveillance Use Policy be modified; or (c) other steps be taken to address Council and community concerns.

2.30.680 Definitions.

The following definitions apply to this Section:

(a) “Annual Surveillance Report” means a written report, submitted after the close of the fiscal year and that includes the following information with respect to the prior fiscal year:

(1) A description of how each Council-approved Surveillance Technology was used, including whether it captured images, sound, or information regarding members of the public who are not suspected of engaging in unlawful conduct;

(2) Whether and how often data acquired through the use of the Surveillance Technology was shared with outside entities, the name of any recipient entity, the types of data disclosed, and the reason for the disclosure;
(3) A summary of any community complaints or concerns about the surveillance technology;

(4) Non-privileged and non-confidential information regarding the results of any internal audits, information about violations of the Surveillance Use Policy, and any actions taken in response;

(5) Whether the Surveillance Technology has been effective at achieving its identified purpose;

(6) The number and nature of Public Records Act requests relating to the Surveillance Technology;

(7) Annual costs for the Surveillance Technology and for compliance with this Surveillance and Privacy Protection Ordinance, including personnel and other ongoing costs, and sources of funding; and

(8) Other relevant information as determined by the City Manager.

The Annual Surveillance Report will not include information that may compromise the integrity or limit the effectiveness of a law enforcement investigation.

(b) "Surveillance Evaluation" means written information, including as part of a staff report, including:

(1) A description of the Surveillance Technology, including how it works and what information it captures;

(2) Information on the proposed purpose, use and benefits of the Surveillance Technology;

(3) The location or locations where the Surveillance Technology may be used;

(4) Existing federal, state and local laws and regulations applicable to the Surveillance Technology and the information it captures; the potential impacts on civil liberties and privacy; and proposals to mitigate and manage any impacts;

(5) The costs for the Surveillance Technology, including acquisition, maintenance, personnel and other costs, and current or potential sources of funding.

(c) "Surveillance Technology" means any device or system primarily designed and actually used or intended to be used to collect and retain audio, electronic, visual, location, or similar information constituting personally identifiable information associated with any specific individual or group of specific individuals, for the purpose of tracking, monitoring or analysis associated with that individual or group of individuals. Examples of Surveillance Technology include drones with cameras or monitoring capabilities, automated license plate readers,
closed-circuit cameras/televisions, cell-site simulators, biometrics-identification technology and facial-recognition technology. For the purposes of this Ordinance, “Surveillance Technology” does not include:

(1) Any technology that collects information exclusively on or regarding City employees or contractors;

(2) Standard word-processing software; publicly available databases; and standard message tools and equipment, such as voicemail, email, and text message tools;

(3) Information security tools such as web-filtering, virus detection software;

(4) Audio and visual recording equipment used exclusively at open and public events, or with the consent of members of the public;

(5) Medical devices and equipment used to diagnose, treat, or prevent disease or injury.

(d) "Surveillance Use Policy" means a stand-alone policy or a section in a comprehensive policy that is approved by Council and contains:

(1) The intended purpose of the Surveillance Technology.

(2) Uses that are authorized, any conditions on uses, and uses that are prohibited.

(3) The information that can be collected by the Surveillance Technology.

(4) The safeguards that protect information from unauthorized access, including, but not limited to, encryption, access-control, and access-oversight mechanisms.

(5) The time period for which information collected by the Surveillance Technology will be routinely retained; the process by which the information is regularly deleted after that period lapses; and conditions and procedures for retaining information beyond that period.

(6) If and how non-City entities can access or use the information, including conditions and rationales for sharing information, and any obligations imposed on the recipient of the information.

(7) A description of compliance procedures, including functions and roles of City officials, internal recordkeeping, measures to monitor for errors or misuse, and corrective procedures that may apply.
2.30.690 No Private Right of Action.

This Surveillance and Privacy Protection Ordinance is not intended and shall not be interpreted to create a private right of action for damages or equitable relief on behalf of any person or entity against the City or any of its officers or employees.

SECTION 3. Severability. If any provision, clause, sentence or paragraph of this ordinance, or the application to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this ordinance are hereby declared to be severable.

SECTION 4. CEQA. This ordinance is exempt from the requirements of the California Environmental Protection Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations since it can be seen with certainty that there is no possibility the adoption and implementation of this ordinance may have significant effect on the environment.

SECTION 5. Effective Date. This ordinance shall be effective on the thirty-first date after the date of its adoption.

INTRODUCED: September 10, 2018

PASSED: October 1, 2018

AYES: DuBois, Filseth, Fine, Holman, Kniss, Kou, Scharff, Tanaka, Wolbach

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

[Signature]
City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney

APPROVED:

[Signature]
Mayor

[Signature]
City Manager
Certificate Of Completion

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- Beth.Minor@CityofPaloAlto.org
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- Molly Stump
- molly.stump@cityofpaloalto.org
- City Attorney
- City of Palo Alto
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MAKING SMART DECISIONS ABOUT SURVEILLANCE

A GUIDE FOR COMMUNITY TRANSPARENCY, ACCOUNTABILITY & OVERSIGHT
Surveillance is on the rise in our communities, but basic transparency, oversight, and accountability remain the exception, not the rule. Police are spending billions of dollars on very sophisticated and invasive surveillance technology from license plate readers and cell phone trackers to facial recognition and drones. Too many of these programs are moving forward without public conversation, careful consideration of the costs and benefits, or adequate policies in place to prevent misuse and protect rights. As a result, surveillance may enable high-tech profiling, perpetuate systems of abusive policing, and undermine trust in law enforcement, particularly in communities of color where police misconduct has been rampant and community relationships have been strained. It’s time for change.

Communities must be equal partners in any decision about the use of surveillance technology. They need to know when and why surveillance is being considered, what it is intended to do, and what it will really cost — both in dollars and in individual rights. They need to be certain that any proposal includes strong mechanisms for transparency, accountability, and oversight. Otherwise, public trust can be easily damaged, and communities can end up saddled with systems that are too invasive, very expensive, and much less effective at accomplishing community safety goals than initially imagined.

This guide provides a step-by-step framework to approach surveillance proposals, properly evaluate their true costs, and develop policies that provide transparency, oversight, and accountability. Its checklist walks community members, policymakers, and law enforcement officials through essential questions to ask and answer about surveillance proposals, and includes dozens of case studies highlighting smart approaches and missteps to avoid. The guide concludes with model language for policymakers to adopt to make sure the right process is used every time a surveillance proposal is considered.

We hope you will find this document and its supporting materials (available online at aclunc.org/smartaboutsurveillance) useful in ensuring your community is making informed decisions about surveillance.

Nicole A. Ozer
Technology and Civil Liberties Policy Director
ACLU of California

Peter Bibring
Police Practices Director
ACLU of California
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TECHNOLOGY OVERVIEW

**Automatic License Plate Readers (“ALPRs”):** Sophisticated camera systems mounted to police cars or light posts that scan license plates that come into view. They are often used to look for vehicles of interest, such as stolen cars, but in the process may record the time and place of every single vehicle that drives by.

**Body Cameras:** Small cameras worn by police that record audio and video. These cameras can record anything from typical public interactions with police to sounds and images at rallies or even loud banter in a squad car. Some body cameras are always on, others are controlled by the wearer.

**Drones:** Unmanned aerial vehicles that may carry cameras, microphones, or other sensors or devices. Drones range from small “quadcopters” that can maneuver near ground level to high-altitude planes with extremely powerful cameras. Drones are often quieter than traditional aircraft, making it possible to use them for surreptitious surveillance.

**Video Surveillance:** Camera systems that allow remote observation or recording of activity in public spaces. Video feeds may be actively monitored in hopes of spotting crime as it happens or recorded for potential use for investigation and prosecution. Studies have repeatedly shown cameras are costly and of limited use in preventing or solving serious crime.

**Facial Recognition:** Software that identifies a person in photos or videos based on various characteristics of the person’s face. The accuracy of facial recognition can vary widely.

**Location Tracking:** A range of techniques used to remotely track a person’s location. GPS (Global Positioning System) devices, ranging from modern cell phones to “darts” that can be fired at a moving car, determine their own location based on satellite signals. Electronic communications devices including phones can also be tracked by identifying the cell towers or wireless networks the device uses. Location information can be obtained every few seconds and may be accurate to within a few feet.

**Automated Social Media Monitoring:** Software tools that collects posts and other information on sites such as Twitter and Facebook. These tools may also analyze the collected data in order to derive information such as social connections or political views.

**International Mobile Subscriber Identity (“IMSI”) Catchers:** A device that emulates a cell phone tower in order to interact with nearby cell phones. IMSI catchers, commonly known as Stingrays (the brand name of one such device), identify nearby devices and can also be configured to intercept and capture the contents of communications including calls, text messages, or Internet activity. Many IMSI catchers operate in dragnet fashion, scooping up information about every phone in range.

**Data Mining:** Techniques to discover statistical patterns, trends and other information in a collection of data. For example, analysis of connections on social networks can reveal hidden, sensitive information such as sexual orientation.
KEY QUESTIONS TO ANSWER BEFORE MOVING FORWARD WITH ANY SURVEILLANCE PROPOSAL

WHY ARE YOU CONSIDERING SURVEILLANCE?

- What specific problem is your community trying to address?
- How effective will surveillance be in addressing this concern?
- Are there alternatives that would be more effective, less expensive, or have less impact on civil liberties?

WHAT ARE THE COSTS AND RISKS?

- What are the financial costs of surveillance, including long-term training, operation and maintenance?
- What impact would surveillance have on privacy, free speech, and civil rights?
- How could surveillance affect trust in law enforcement?
- Have you completed a Surveillance Impact Report?

IS THE ENTIRE COMMUNITY ENGAGED IN EVALUATING THE PROPOSAL FROM THE OUTSET?

- Have you sought input on priorities, costs and risks from all segments of your community?
- Is there a Surveillance Impact Report and Surveillance Use Policy for the community to review?
- Will there be public hearings and debate before seeking any funds or purchasing any technology?

IS SURVEILLANCE THE RIGHT CHOICE?

- Have elected policymakers reviewed the Surveillance Impact Report and Surveillance Use Policy? Have they had an opportunity to hear public concerns?
- Will local policymakers specifically vote to approve the project moving forward? Will this happen before seeking any funds or purchasing any technology?
- Will your community re-evaluate any surveillance program annually and determine whether the program should be continued, modified, or abandoned?

WILL THESE QUESTIONS BE ANSWERED EVERY TIME?

- Has your community passed a Surveillance & Community Safety Ordinance to make sure these questions are consistently asked and answered every time surveillance is considered and to ensure proper transparency, oversight and accountability?
Why It Matters: The Costs and Consequences of Surveillance

Surveillance technology is often proposed as an efficient public safety tool. But too often, proposals ignore not only the true financial costs of surveillance technology but also their potential to infringe on civil rights and undermine public trust and effective policing. Communities should identify and assess all of the harms and costs of surveillance as early in the consideration process as possible in order to determine whether moving forward with a surveillance technology is really the right choice.

A. SURVEILLANCE IMPACTS CIVIL RIGHTS AND COMMUNITY TRUST

The community at large can pay a heavy price if surveillance technology is acquired and deployed without evaluating its impact on civil rights and its potential for misuse. Surveillance can easily intrude upon the individual rights of residents and visitors, perpetuate discriminatory policing, or chill freedom of expression, association, and religion — freedoms that public officials are sworn to protect. As a result, surveillance can erode trust in law enforcement, making it harder for officers and community members to work together to keep the community safe.

1. SURVEILLANCE CAN INTRUDE UPON COMMUNITY MEMBERS’ RIGHTS

The greatest cost of surveillance technology may not be financial but personal: the invasion and infringement of civil rights. Various types of surveillance technology are capable of capturing and storing vast amounts of information about community members and visitors: the political rallies and religious services they attend, the health services they use, the romantic partners they have, and more. Just the perceived threat of surveillance has the potential to harm community members by discouraging individuals from participating in political advocacy, opposing police misconduct, evaluating reproductive choices, exploring their sexuality, and engaging in other activities that are clearly protected by the federal and California constitutions. And, too often, this perception is grounded in reality, as demonstrated by Fresno's use of social media monitoring software that flagged “#blacklivesmatter” as an indicator of criminal activity.

There are many examples of the misuse of surveillance to target individuals based on their race, ethnicity, associations, or religious or political activities. Police in Santa Clara used a GPS device to track a student due to his father’s association with the local Muslim Community Association. Police in Michigan sought “information on all the cell phones that were congregating in an area where a labor-union protest was expected.” The NSA specifically monitored the email of several prominent Muslim-Americans with no evidence whatsoever of wrongdoing. In Britain, where video surveillance is pervasive, a European Parliament

“[S]urveillance programs follow a long history of law enforcement targeting African American and other minority groups…. We need ... a future in the city where our police department and other public institutions have true community oversight and accountability.”

The Rev. B.T. Lewis and Taymah Jahsi, Organizers, Faith in Community in Fresno

Civil Rights Principles in an Era of Big Data, signed by fourteen of the nation’s leading civil and human rights groups, sounds the alarm on how surveillance technology often disproportionately affects communities of color and religious and ethnic minorities. It calls for technology to be “designed and used in ways that respect the values of equal opportunity and equal justice” and urges users to “stop high-tech profiling” and “preserve constitutional principles.” The document further calls for search warrants and other independent oversight of law enforcement and “clear limitations and robust audit mechanisms to make sure that if these tools are used it is in a responsible and equitable way.”

MAKING SMART DECISIONS ABOUT SURVEILLANCE: A GUIDE FOR COMMUNITIES
study showed that “the young, the male and the black were systematically and disproportionately targeted not because of their involvement in crime or disorder, but for ‘no obvious reason.’”

Surveillance programs that do not focus on individual targets can be particularly problematic. Tracking entire groups or communities extends “guilt by association” to those who have done nothing wrong, discourages participation in local activities, and alienates community members. And once members of the group are tainted with such suspicion, it becomes easy to justify prying into their private lives, or even threatening them with further consequences if they do not cooperate with additional surveillance efforts.

SURVEILLANCE OF POLITICAL AND SOCIAL ACTIVISTS

The government has a long and troubled history of abusing surveillance powers to target political and social activists. From the “Red Squads” of the early 20th century to the FBI’s efforts to infiltrate and discredit antiwar and civil rights activists in the 1960s, to recent surveillance of the Black Lives Matter movement:

- The Department of Homeland Security monitored the social media accounts of Black Lives Matter members and collected details about the locations of members and plans for peaceful protests in Ferguson, Baltimore, and New York City. This led many to question why the DHS — formed to combat terrorism — was surveilling members of a peaceful domestic social justice movement.

- Police in Fresno, California, secretly acquired and tested multiple social media surveillance tools that encouraged surveillance of hashtags like #BlackLivesMatter, #donthoot, and #wewantjustice and assigned individuals a “threat level.” This led to nationwide negative press attention and calls for reform from community members, all of which forced the police chief to issue a public apology.

- Authorities in the Oregon Department of Justice came under fire when it was revealed that a senior investigator had used software to conduct surveillance of hashtags including #BlackLivesMatter, which returned results for civil rights advocates, including the president of the Urban League of Portland. The story triggered a public apology by Oregon’s Attorney General and led to an internal investigation.

Intelligence reforms born from lawsuits and congressional inquiries have led many law enforcement agencies to bar the collection of information about political activism and other First Amendment-protected activities without a justifiable suspicion of criminal activity. But surveillance of Black Lives Matter demonstrates a need for similar restrictions on the use of surveillance technology today to ensure that it is not used to chill or undermine political and social activism.
“Dragnet” surveillance often targets communities of color: for example, in Oakland, the police have disproportionately used license plate readers in African-American and Latino neighborhoods. In Compton, police flew a plane rigged with high-powered surveillance cameras overhead for weeks without the public’s knowledge or consent. Because it involves collecting vast amounts of information, dragnet surveillance also creates the potential for all sorts of abuse, from NSA analysts tracking romantic partners to a Washington, D.C. police lieutenant blackmauling patrons of a gay bar.

Surveillance carries privacy and free speech threats even if it is conducted solely in public places. This is particularly true when surveillance information is aggregated to build a robust data profile that can “reveal much more in combination than any isolated record.” As Supreme Court Justice Sonia Sotomayor has noted, “a precise, comprehensive record of a person’s public movements … reflects a wealth of detail about her familial, political, professional, religious, and sexual associations.” In addition, “[a]wareness that the Government may be watching chills associational and expressive freedoms.”

2. SURVEILLANCE CAN ERODE TRUST IN LAW ENFORCEMENT

When law enforcement fails to fully engage with community members about the impact of surveillance — or, worse, entirely skirts the democratic process by acquiring and deploying surveillance technology without public discussion at all — it erodes trust even further, making it even harder for law enforcement officers to work with the community to solve crimes and protect public safety.

In the years after the September 11th attacks, the New York Police Department created a secretive intelligence wing that infiltrated Muslim neighborhoods with undercover officers, where they monitored the daily lives of and compiled dossiers about Muslim-Americans engaging in constitutionally protected activities in cafes, bookstores, and private residences with no evidence of illegal activity. These activities gravely harmed the community’s trust in law enforcement and led to a multi-year lawsuit and settlement that barred the NYPD from conducting investigations on the basis of race, religion, or ethnicity, and mandated implementation of a series of reforms designed to deter warrantless surveillance.

In Compton, news broke about an aerial surveillance program that watched the whole community and was intentionally kept “hush-hush” by the Sheriff’s Department to deter civil rights complaints. Both citizens and lawmakers were up in arms that they had been kept in the dark about such intrusive surveillance. Angry community members rightly questioned, “Why are we the target? As citizens we deserve [to know]. We are not all criminals.... It’s an invasion of privacy.” The Mayor called for a “citizen private protection policy,” ensuring that the community would be notified before any new surveillance equipment was deployed or used.

“One of the most alarming parts of that history has been the ways that surveillance has been misused against Black people who have been advocating for their justice. It’s been used to discredit, abuse, and incarcerate.”

Opal Tometi, Black Lives Matter co-founder

“Those of us from marginalized communities grew up in environments very much shaped by surveillance, which has been utilized to ramp up the criminal justice system and increase deportations....”

Steven Renderos, Center for Media Justice

“The effects of surveillance on New York Muslim communities have been devastating…. Community members’ ties to local police precincts have deteriorated due to distrust and fear.”

Hina Shamsi, ACLU National Security Project Director

“Making Smart Decisions about Surveillance: A Guide for Communities”
B. SURVEILLANCE CARRIES BOTH IMMEDIATE AND ONGOING FINANCIAL COSTS

In addition to the costs to civil rights and civil liberties, the fiscal impact of surveillance can be extensive. Modifying current infrastructure, operating and maintaining systems, and training staff can consume limited time and money, even if federal or state grants fund initial costs. Surveillance technologies may also fail or be misused, resulting in costly lawsuits. To calculate the full financial cost of surveillance technology, communities must look beyond the initial sticker price.

1. SURVEILLANCE REQUIRES INFRASTRUCTURE, STAFFING, TRAINING, AND MAINTENANCE

The hidden costs of infrastructure, training and staffing, operations and maintenance, and the potential for budget overruns, can dwarf the cost of acquiring surveillance technology in the first place. Communities that have failed to accurately estimate the full financial cost of a surveillance system have dealt with massive cost overruns and programs that failed to accomplish their stated purpose. For example, Philadelphia planned to spend $651,672 for a video surveillance program featuring 216 cameras. Instead, it spent $13.9 million on the project and wound up with only 102 functional cameras after a year, a result the city controller described as “exceedingly alarming, and outright excessive — especially when $13.9 million is equivalent to the cost of putting 200 new police recruits on our streets.” To avoid a similar incident in your community, it is essential to identify all of the costs required to install, use, and maintain surveillance technology before making a decision about whether to do so.

2. SURVEILLANCE CAN CREATE FINANCIAL RISKS INCLUDING LITIGATION AND DATA BREACH

Surveillance programs that fail to include proper safeguards to prevent errors or misuse and protect freedom of expression, association, and religion, or that inadequately enforce such safeguards, can lead to expensive litigation that diverts resources from other public services. For example, Muslim residents in Orange County filed a discrimination lawsuit when it was revealed that state agents were sending informants into mosques to collect information on the identities and activities of worshippers. The NYPD paid $2 million in attorney fees for spying on New York’s Muslim communities. Even technical glitches can create the potential for costly lawsuits and other expenses: the City of San Francisco was embroiled in a multi-year civil rights lawsuit after wrongly pulling over, handcuffing, and holding at gunpoint an innocent woman due to an error by its ALPR system.

The collection of surveillance data also creates the risk of data breaches that can incur significant public costs as well as endanger residents’ privacy and economic security. Even following best practices (which itself can entail significant expense) is not enough to prevent every breach. California law requires that a local agency notify residents about a security breach. And the fiscal costs of a breach of sensitive surveillance data could be very high: a 2015 report found that companies spent an average of $3.7 million to resolve a data security breach. The more information your community collects and retains, the greater the risk and potential cost of a breach.

“When you’re considering a new technology, it’s important to evaluate not only the upfront costs but also the costs of maintenance and upgrades that will occur down the road.”

Captain Michael Grinstead, Newport News (VA) Police Department

“After public backlash about Oakland’s proposed Domain Awareness Center, we really had to regroup and think about how we needed to proceed.”

Renee Domingo, former Oakland Emergency Services Coordinator
3. LACK OF PROPER PROCESS CAN WASTE TIME AND MONEY

Failing to thoroughly discuss surveillance proposals and listen to community concerns early in the process can result in massive backlash and wasted time and funds when plans are suspended or ultimately cancelled. Oakland was forced to scrap most of the planning for its ill-fated Domain Awareness Center and scale the project back considerably after community members protested the misleading mission statement and lack of transparency for the project. In Santa Clara County, a secretive process to purchase a Stingray cell surveillance device was derailed by the County Executive after it sidestepped necessary community debate and county oversight. Community members grounded San Jose’s secret drone purchase and the police were forced to apologize for the lack of transparency and community input. Engaging with the community before taking steps to go forward with a surveillance proposal is essential to avoiding similar mistakes that spark widespread community outrage and waste time and resources.

C. SURVEILLANCE MUST TAKE EVOLVING PRIVACY LAW INTO ACCOUNT

The use of surveillance technology is facing increased scrutiny and limits. Courts and lawmakers at the state and federal level, driven by increased public concern about privacy, are acting to protect individual rights and civil liberties. As a result, your community needs to consider both the existing laws and the potential for legal change, including the policy and individual rights concerns that are driving that change, when evaluating a surveillance proposal.

In recent years, federal courts have repeatedly reinforced legal protections for individual rights in the context of today’s technology. In 2015, the U.S. Supreme Court unanimously told law enforcement to “get a warrant” to search an arrestee’s cell phone. In another unanimous decision, the Court also ruled a warrant is required to use a GPS beeper to track a suspect’s vehicle, with a majority of the Court suggesting that using technology to track an individual’s location — even in public — over an extended period of time triggers constitutional scrutiny. Finally, multiple federal courts declared the NSA’s warrantless collection of telephone metadata unlawful, with one criticizing its “almost Orwellian” scope. Surveillance programs that fail to account for this trend may well be held unconstitutional, and criminal investigations based on evidence from those programs could be jeopardized.

The California Constitution is even more protective of community members’ privacy, including in public spaces. The state right to privacy expressly gives Californians a legal and enforceable “right to be left alone” that protects interests in privacy beyond the home. The California Supreme Court has held that covertly “infiltrating” and monitoring the activities of students and professors at classes and public meetings without any indication of criminal activity violated the California Constitution, as did warrantless aerial surveillance of a resident’s backyard. Californians’ right to free expression also extends outside of the home, even to privately owned areas like shopping centers.

Numerous laws and regulations also place limits or requirements on the use of surveillance technology. The federal Wiretap Act and its California counterpart limit the use of surveillance technology capable of

"The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought.”

_Riley v. California_, U.S. Supreme Court

"SJPD should have done a better job of communicating the purpose and acquisition of the UAS (Unmanned Aerial System) device to our community....The community should have the opportunity to provide feedback, ask questions, and express their concerns before we move forward with this project.”

San Jose Police Department

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 MAKING SMART DECISIONS ABOUT SURVEILLANCE: A GUIDE FOR COMMUNITIES
intercepting the contents of live communications. And in 2015, California lawmakers enacted three separate laws that specifically address issues related to surveillance technology:

- **Collection of Electronic Information:** The California Electronic Communications Privacy Act requires a search warrant when collecting electronic information with surveillance technology like cell phone tracking technology. It also requires a warrant for searching electronic devices or compelling email, location information, or other metadata from service providers. The law creates additional procedural safeguards, including notice to the suspect, and allows for suppression or court-mandated deletion of information obtained or retained in violation of the law.43

- **Automated License Plate Readers:** Newly enacted California law requires an opportunity for public comment, a written, publicly available use policy that is “consistent with respect for an individual’s privacy and civil liberties,” and reasonable security safeguards for any use of automated license plate readers. Individuals can sue for harms due to a security breach or other unauthorized disclosures.44

- **Cell Phone Tracking Technology:** Newly enacted California law requires public process, local legislative approval for all agencies other than sheriffs, a public use and privacy policy that is “consistent with respect for an individual's privacy and civil liberties,” and the disclosure of agreements with other agencies concerning the use of IMSI catchers and other cell phone tracking technology. The law also allows an individual to sue an agency for violating these provisions.45

There have also been bipartisan legal changes at both the federal and state level to rein in surveillance. In 2016, federal lawmakers adopted reforms related to NSA spying.46 Eighteen other states have enacted laws restricting law enforcement access to location information,47 and a majority of states have introduced legislation aimed at curbing the use of drones for surveillance purposes.48

These state and federal changes are driven by a clear shift in public attitudes towards surveillance. Community members want and expect reform at both the state and local level to increase transparency, accountability, and oversight for surveillance technology. Two thirds of California voters want to see local elected officials like City Councilmembers or County Supervisors approve new surveillance technologies before they can be used. Similarly, a strong majority of voters want to see both local (65 percent) and state (64 percent) policies

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**SURVEY OF LIKELY 2016 CALIFORNIA VOTERS FINDS STRONG SUPPORT FOR REFORMS TO SURVEILLANCE TECHNOLOGY USE BY LAW ENFORCEMENT**

Likely 2016 voters polled in a California statewide survey strongly favor local and state level reforms of law enforcement surveillance technology practices.49 A summary of key findings from the survey:

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<th>Reform Proposal</th>
<th>Support</th>
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<td>Require the local City Council or Board of Supervisors to vote to approve new surveillance technology before it is used by local police.</td>
<td>67%</td>
</tr>
<tr>
<td>Develop and enforce local policies to set limits on surveillance technology used by police.</td>
<td>65%</td>
</tr>
<tr>
<td>Develop and enforce statewide policies to set limits on surveillance technology used by police.</td>
<td>64%</td>
</tr>
<tr>
<td>Require law enforcement agencies to publicly report how often they are using surveillance.</td>
<td>62%</td>
</tr>
<tr>
<td>Provide public notification prior to local police buying new technology for surveillance.</td>
<td>58%</td>
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developed and enforced that set limits on police use of surveillance technology. Voters also want to see steps taken to require public reporting from law enforcement agencies regarding the frequency of use of surveillance technologies (62 percent) as well as public notification before the purchase of any new surveillance technologies (58 percent).50

All of these factors have led many communities to move forward with local ordinances that ensure transparency, accountability, and oversight for all surveillance technologies.52 Your community should follow their lead and thoroughly evaluate any surveillance proposal in order to protect the rights of your community members, identify hidden costs and financial risks, and ensure that you comply with existing laws and are consistent with increasing public concerns about privacy.

“With a surveillance equipment ordinance, any of the existing equipment that Oakland might already have or any that is soon to come out will have to go through the vetting process.”
Brian Hofer, Chair, Oakland Domain Awareness Center Privacy Committee51

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ENACT A SURVEILLANCE & COMMUNITY SAFETY ORDINANCE TO MAKE SURE THE RIGHT PROCESS IS FOLLOWED EVERY TIME

Passing the Surveillance & Community Safety Ordinance included in the Appendix to this guide will help your community avoid problems down the line by following the right process every time. It ensures that there is community analysis of surveillance technology whenever it is considered, that local lawmakers approve each step, and that any surveillance program that is approved includes both a Surveillance Use Policy that safeguards individual rights and transparency and accountability mechanisms to ensure that the Policy is followed.
Necessary Steps when Considering a Surveillance Proposal

Surveillance can be misused in ways that harm community members, undermine public safety goals, and saddle taxpayers with unnecessary costs. That’s why it is essential to publicly and thoroughly evaluate surveillance proposals. The following section will help your community — including diverse residents, public officials, and law enforcement — work together to determine whether surveillance really makes sense and put in place robust rules to ensure proper use, oversight, and accountability if your community decides to move forward with a surveillance proposal.

A. COLLECTIVELY EVALUATE THE EFFECTIVENESS, COSTS AND ALTERNATIVES BEFORE MAKING DECISIONS ABOUT SURVEILLANCE

Surveillance should only be a means to an end, never an end in itself. That means that your community should have an actual purpose in mind or problem that needs to be addressed before even considering surveillance technology. Once you have that, you can collectively evaluate whether surveillance is likely to effectively accomplish your goals, as well as estimate the costs to both your community’s budget and to individual rights.

1. DECIDE AS A COMMUNITY: INVOLVE THE ENTIRE COMMUNITY FROM THE START

The best way to consider whether surveillance is the right choice and to avoid costly mistakes is to engage the entire community — including law enforcement, local lawmakers, and members of the public — in a thorough discussion about any surveillance proposal. Different segments of your community are likely to bring valuable perspectives to the process of evaluating whether to acquire and use surveillance technology. And the time to engage with your community is at the very beginning of the process, before any funding is sought, technology is acquired, or system is used.

Several cities considering proposals to introduce or expand surveillance have found it useful to actively engage community members through working groups and ad-hoc committees to shape policy and provide oversight. The Redlands Police Department convened a Citizens’ Privacy Council, open to any city resident of the city, to provide advice on surveillance-camera policies and oversee police use of the cameras. Richmond formed an ad-hoc committee to evaluate policies for its video surveillance system. The public debate that the surveillance ordinance will require on new technologies and their uses will be beneficial for everyone, including city officials, to help them learn more about how these programs work and what they mean to the public. Joe DeVries, Oakland Assistant to the City Administrator.

Fewer than 15 percent of California communities publicly debated surveillance programs before moving forward. (ACLU 2014)
surveillance program.\textsuperscript{57} And in 2014, following community backlash and the vote not to expand Oakland’s Domain Awareness Center, the City Council created a Privacy and Data Retention Ad Hoc Advisory Committee comprised of diverse community members to create safeguards to protect privacy rights and prevent the misuse of data for a scaled-back system to be used at the Port of Oakland.\textsuperscript{59} Oakland now has a formal Privacy Commission, which will provide advice to the City of Oakland on best practices to protect privacy rights in connection with the City’s purchase and use of surveillance equipment and other technology that collects or stores data.\textsuperscript{60}

- \textbf{Is the community engaged in an informed debate about any surveillance proposal?}

It is never too early for a public debate about a surveillance proposal. Community members should know what kind of surveillance is being considered, what it is intended to do and how it will affect them at the earliest stages of the process, when their input can bring out important information, highlight community concerns, and help avoid unforeseen problems and community backlash.

\begin{quote}
\textit{Technology can only serve democracy to the degree that it is democratized.}
\end{quote}

Malkia Cyril, Director, Center for Media Justice\textsuperscript{58}

\begin{quote}
\textbf{CASE STUDY: SANTA CLARA COUNTY CANCELS STINGRAY BUY DUE TO TRANSPARENCY CONCERNS}

In 2015, the Santa Clara County Executive rejected the Sheriff’s proposal to purchase a Stingray after the Board of Supervisors questioned the expense and secrecy of the project. The Board questioned how they could be asked to spend more than $500,000 of taxpayer money to approve a purchase that was shrouded in secrecy even from the Board itself. The County Executive ultimately rejected the purchase because the company providing the Stingray refused to “agree to even the most basic criteria we have in terms of being responsive to public records requests... We had to do what we thought was right.”\textsuperscript{61}

The public should be given effective notice that surveillance is being considered. Effective notice means more than a line item in a public meeting agenda. Law enforcement should proactively contact community groups, including those representing ethnic and religious communities, and local media to increase public awareness early in the process and engage the entire community with the issue.

\begin{quote}
\textbf{CASE STUDY: OAKLAND’S “DOMAIN AWARENESS CENTER” FORCED TO SCALE BACK AFTER KEEPING COMMUNITY IN THE DARK}

In 2013, the City of Oakland tried to expand its “Domain Awareness Center,” originally focused on the Port of Oakland, into a citywide surveillance network linking together video cameras from local streets and schools, traffic cameras, and gunshot microphones. Instead of soliciting early public input about the expanded system, Oakland tried to move forward without any meaningful engagement with the community. Residents were outraged, and the City Council voted against expanding the system.\textsuperscript{62}
\end{quote}
An informed debate also requires that your community have access to a wide range of information in order to assess how surveillance would work in practice and whether it would advance local goals. Community meetings with various speakers representing different perspectives (not just law enforcement and the technology vendor) can help the community understand how the surveillance technology actually works and its potential implications. The entity seeking to acquire new surveillance technology should also prepare and release a Surveillance Impact Report and a Surveillance Use Policy to help everyone understand how a technology will work, its potential costs, and the safeguards that will prevent its misuse if the proposal were approved. Your community may also consider convening an ad-hoc committee of local residents, experts and advocates who can work together to make recommendations or help complete these documents.

“It is critical to our judicial system and our democracy that the public and our elected representatives be informed about the use of these devices so that we can have a discussion about their privacy implications and make informed decisions about policies for their use.”

Joe Simitian, Santa Clara County Supervisor

USE A SURVEILLANCE IMPACT REPORT TO MAKE AN INFORMED DECISION

The scope and potential costs of a surveillance technology should be assessed and made available to the community through a Surveillance Impact Report. This report should include:

- Information describing the technology, how it works, and what it collects, including technology specification sheets from manufacturers;
- The proposed purposes(s) for the surveillance technology;
- The location(s) it will be deployed and crime statistics for any location(s);
- An assessment identifying any potential impact on civil liberties and civil rights and discussing any plans to safeguard the rights of the public; and
- The fiscal costs for the surveillance technology, including initial purchase, personnel and other ongoing costs, and any current or potential sources of funding.

A worksheet to help your community prepare a Surveillance Impact Report is available at aclunc.org/smartaboutsurveillance.

CASE STUDY: SANTA CRUZ COUNCILMEMBERS LACK INFORMATION FOR ALPR DECISION

After the Santa Cruz City Council approved the use of federal funds to purchase ALPRs for the police department, councilmembers noted that they did not have a lot of information about the technology or its impact on the community at the time of its decision. When one councilmember was asked what effect the scanners might have on community members, he replied, “I don’t know enough about the technology.” Another was unaware of privacy issues, admitting, “The council didn’t get much correspondence about the potential for the erosion of civil rights that these kinds of devices can cause....”
How will the community decide whether to proceed with a surveillance proposal?
Community members deserve more than just information about surveillance proposals: they need the opportunity to help determine whether the proposal actually benefits the community and how or whether it should move forward, either by giving input to local policymakers at public hearings or by casting their own ballot on the issue.

In either case, initial community approval should be obtained before any steps towards acquiring surveillance technology are taken, including applying for funding from outside entities. This ensures that external grants do not circumvent the proper democratic process and cut community members out of the loop. Local policymakers or the community as a whole should be given additional opportunities to weigh in if the proposal changes or as more details become available.

CASE STUDY: SAN JOSE’S DRONE GROUNDED UNTIL COMMUNITY APPROVES
San Jose residents were outraged when they learned that their police department had purchased a drone without any public debate. Amid critical media coverage and protests from community groups, civil-rights advocates, and local residents, police apologized and said they would ground the drone until they could conduct adequate public outreach.

2. DEFINE THE PURPOSE: ASK HOW AND WHETHER THIS TECHNOLOGY WILL AID YOUR COMMUNITY
Your community cannot determine whether surveillance is an appropriate solution if you have not first identified the problem. Defining the specific purpose or issues that surveillance is intended to address is essential to evaluate the likely effectiveness of surveillance and to identify alternatives that might provide a better fit for your community’s needs and budget. It can help highlight the individuals or communities who are likely to be most impacted by surveillance and ensure that their thoughts and concerns are fully understood. It also provides a starting point for crafting a Surveillance Use Policy by defining specific objectives for which surveillance is appropriate and barring its use outside of those purposes.

What specific community purposes will be aided by adopting this technology?
A well-defined community purpose should include a specific problem and a measurable outcome that the community desires. Vague purposes such as “protecting our city from criminals” make it difficult for the community to understand how surveillance might be used or how its effectiveness might be measured. In contrast, a purpose such as “increase recovery of stolen vehicles” succinctly identifies an outcome desired by community members and helps frame public discussion. That discussion may in turn lead you to narrow or alter the purposes for which surveillance should be used, if you decide to use it at all.

CASE STUDY: OAKLAND SPENDS $2M ON “HARDLY USED” POLICE TECHNOLOGY
The cash-strapped city of Oakland learned the hard way that acquiring new police technology without a clearly defined purpose can be a waste of time and money. A city audit revealed that the city had squandered almost $2 million on hardly used police technology between 2006 and 2011. The auditor recommended steps to ensure that technology purchases were intended to fulfill specific strategic objectives and regular evaluation of their effectiveness.
Will this surveillance technology help your community achieve that purpose?
After your community identifies the purposes that surveillance technology might be able to address, you should evaluate whether the proposed technology would actually achieve them. Manufacturer’s claims should not be taken at face value, and certainly not in isolation. Instead, your community should look at all of the evidence or arguments suggesting that surveillance will or will not effectively help you achieve your defined purpose.

Are there better alternatives to achieve your purpose?
Even if the proposed surveillance technology does seem likely to help your community achieve its purpose, there still may be alternatives that are just as (or more) effective, less expensive, and/or less likely to be misused or otherwise negatively impact your community members.

In particular, you should compare the effectiveness and costs of technology-based solutions with non-technology-oriented approaches to address the problem. For example, multiple studies have shown that traditional approaches such as increased lighting and foot patrols significantly reduce crime.

CASE STUDY: CITIES REPLACE RED LIGHT CAMERAS WITH LONGER YELLOW LIGHTS
California cities are increasingly shutting down red light cameras as evidence mounts that the cameras increase, rather than decrease, traffic accidents. For example, in Walnut, CA, a study found that red light cameras resulted in dramatic increases in “red light running collisions” (400%), “rear end collisions” (71%) and “broadside collisions” (100%) and that “no argument can be made that photo enforcement has improved safety . . . within the city of Walnut. In fact, the use of red light cameras appears to have decreased safety and put roadway users at increased risk.” In light of this evidence, more than half of the California cities that once used red light cameras have ended their programs, turning instead to alternatives that have proven more effective at preventing accidents such as longer yellow lights at dangerous intersections.

CASE STUDY: SAN FRANCISCO RECONSIDERS PLANS TO EXPAND SAFETY CAMERA PROGRAM THAT FAILS TO IMPROVE COMMUNITY SAFETY
In 2005, San Francisco set out to deter violent crime and provide police with an investigative tool by installing video cameras in the City’s high-crime, high-traffic areas. However, post-installation crime statistics published by mandate under a city ordinance revealed that the cameras neither reduced crime nor assisted in solving them in any meaningful way. In fact, the cameras only led to six suspects being charged by the SFPD between 2005 and 2008. As a result, the Police Commission reconsidered its plans to expand the program.

3. **Identify the Costs and Risks: Examine Financial, Legal, and Practical Consequences**
Even if a specific technology is appropriate for your community’s purposes, there still may be financial, legal and practical concerns that may make adopting it undesirable. This section will help you measure the likely costs of surveillance so that you can determine whether they are truly outweighed by the expected benefits.
How much will the technology cost your community to acquire and operate?

Deciding how to allocate funds is one of your community’s most important tasks. Every dollar your community spends on surveillance technology is a dollar it cannot spend on some other community need. Costs related to surveillance technology will include personnel time, training costs, maintenance and upkeep, as well as any network and storage costs for the data your community may collect. Potential costs associated with risks of data breach or lawsuits based on abuse of surveillance also need to be recognized.

Questions about costs cannot be dismissed solely because your community is seeking grant funding to pay for the technology. These grants are attractive for obvious reasons: they appear to allow your community to buy a technology without having to spend local taxpayer dollars. But outside grants may not cover the costs that follow a technology’s adoption, particularly the long-term costs of operation, repairs, and personnel. Estimating these costs as accurately as possible — and making sure those estimates are shared with the community and made part of the debate about adopting surveillance — is key.

What are the legal risks and associated potential costs of the surveillance proposal?

Surveillance technology can carry a number of significant legal risks and requirements, in part because of rapid changes to privacy and surveillance law. Even under current law, misuse of surveillance systems or data, or technical glitches outside of your control could subject your community to potential legal liability.

And as courts and lawmakers continue to reassess how privacy and free speech rights should apply in the digital age, there is a risk that your community’s investment in surveillance technology could leave it saddled with equipment that can no longer be legally used as intended. These factors need to be accounted for when performing a cost-benefit analysis of any surveillance proposal.

CASE STUDY: FBI REMOVES GPS TRACKERS AFTER SUPREME COURT RULES THAT WARRANTLESS TRACKING IMPLICATES FOURTH AMENDMENT

The FBI had installed approximately 3,000 GPS trackers on cars throughout the United States, without a warrant, when the U.S. Supreme Court ruled in 2012 that their use implicated the Fourth Amendment. As a result, the FBI deactivated the warrantless trackers, and its agents had to physically retrieve them. Obtaining warrants before using those GPS trackers would have ensured the constitutionality of obtained evidence and saved the FBI considerable time and effort.
How could the surveillance proposal negatively impact public safety or individual rights?

A surveillance proposal designed to benefit your community may carry side effects that undermine that objective. Insecure systems can present a tempting target for hackers, potentially making your community less safe in the process. Surveillance programs that target or disproportionately impact communities of color or other marginalized groups can make it harder for law enforcement to work cooperatively with those groups to investigate crimes. And surveillance can chill political and social engagement such as attendance at political rallies, gun shows, or religious ceremonies if community members fear that their lives are constantly being monitored. Identifying the harms as well as benefits of surveillance is an important part of evaluating any proposal.

**CASE STUDY: REDLANDS DEPLOYS INSECURE CAMERA NETWORK**

The surveillance camera network in the city of Redlands made the news for the wrong reasons when computer security experts demonstrated how easily they could take control of the cameras. Although the police department expressed concern about “people with criminal intent using the public camera feed to case homes or businesses or track the police force,” the network was deployed with no security at all. Even after the story broke, the network was secured with an outdated encryption protocol that a researcher described as “putting a diary lock on your front door.”

**B. ESTABLISH A SURVEILLANCE USE POLICY TO MITIGATE HARMs AND PROTECT RIGHTS**

If after careful consideration and public debate your community decides that a particular surveillance technology is worth adopting, you need to ensure that policies are in place so that it is used properly. A clear, legally enforceable Surveillance Use Policy that provides guidance about when and how to use surveillance can safeguard individual rights while protecting local law enforcement and your entire community from costly lawsuits, bad press, loss of community trust, and more. Recognizing the necessity of use policies, Seattle and Spokane, Washington, recently passed ordinances requiring police to develop use guidelines for new surveillance equipment before using it.

**CASE STUDY: ALAMEDA COUNTY SOLICITS PUBLIC INPUT FOR STINGRAY POLICY**

Before upgrading its cell phone surveillance technology, the Alameda County District Attorney publicly released its draft use policy and solicited feedback from the community. In response to feedback, the District Attorney made changes that resulted in a policy requiring a warrant for the use of the device and strict limits on how data could be used. This transparent and democratic process helped build community trust and ensured a stronger set of safeguards would be in place from the start.
Here are some of the key elements of a robust, legally enforceable Surveillance Use policy:

1. **Use Appropriately: Place Clear Limits on Surveillance**

If your community has been following this guide, you’ve already defined community purposes that justify a particular technology. Now it’s time to use those purposes to decide and codify both the acceptable uses that will benefit the community and those that are simply prohibited. Doing so safeguards against use of the technology in a manner the community never intended.

- **When is surveillance permitted or prohibited?**
  The first step is straightforward but essential: defining how and when the technology may be used. Every entity in your community that conducts surveillance should have a policy that clearly specifies appropriate uses of each technology and bars all other uses.

In order to benefit from and reflect community input and oversight, technology should only be used for the particular purposes for which it was acquired. Any proposed new uses should be subject to the same public discussion as the acquisition of new technology, allowing the community to weigh in on the appropriateness of any expanded purpose.

Your policy needs to be consistent with constitutional guarantees of privacy, equal protection, freedom of speech, and freedom of religion. In fact, your use policy should not only address clearly unlawful but also potentially unlawful uses of surveillance technology. If there are questions about the legality of a specific practice, your use policy should prohibit that practice until there is a definite answer.

- **What legal or internal process is required to use surveillance?**
  It is also important to ensure that all legally required and internal processes are followed each time surveillance is used. These processes help to prevent unauthorized or outright illegal uses and also make sure that even appropriate uses of the surveillance technology minimize the impact on individual rights.

In many cases, the best way to ensure that legal requirements are satisfied is to require a search warrant prior to conducting surveillance, allowing the court system to play a role in overseeing the program. With the streamlined modern warrant process, officers can seek a judge’s approval quickly and easily by simply placing a phone call or using a mobile device.

Internal recordkeeping, including recording the reason for each use of surveillance, can also help ensure compliance with the appropriate use policy and create an audit trail for ongoing feedback and oversight.

- **How are officers trained before they conduct surveillance?**
  Having clear policies is not helpful if the people using the technology or the data it collects lack the underlying knowledge to comply with those policies. Training programs for anyone involved with surveillance must be comprehensive, encompassing not just the technology and Surveillance Use Policy but the purposes and legal rules that inform the Policy. Training should spell out both the obligations of anyone using the technology and the consequences for policy violations.
Are you only collecting necessary data?
Ensuring that surveillance technology is used in a way that accomplishes its stated purpose without collecting additional data is a straightforward way to reduce the risk of privacy invasions. That’s why the federal statute authorizing wiretaps has from its inception required “minimization” — an effort to make sure that even after a warrant has been issued and collection is underway, police only intercept communications relevant to the investigation, not every communication made by the target.78

The same principle should be applied to other forms of surveillance, requiring a reasonable effort to avoid collecting superfluous information. For example, a police department that deploys drones to an accident scene to quickly identify any need for police or emergency intervention does not need to record and retain video footage.79

2. PREVENT MISUSE OF DATA: LIMIT WHEN DATA CAN BE USED AND WHO CAN ACCESS IT
Even data collected for a legitimate purpose can be put to illegitimate uses. It is essential that your community establish clear rules so that surveillance data is used only for approved purposes. Doing so not only prevents outright abuses of the data that can erode public trust but also keeps “mission creep” from altering the balance that you have already worked out between government actions and individual liberties.

How will surveillance data be secured?
The first step in preventing misuse of data is ensuring that it is stored securely. Technical safeguards are necessary to help protect community members’ data from accidental disclosure and misuse. You should consult with experts and implement safeguards at multiple levels that protect data at all points in its lifespan.

Your community may already possess secure storage space separated from other databases and computer systems. This provides you with an obvious level of control. If you choose to store data elsewhere, you must ensure that it is secure and subject to your safeguards. Your community should also designate someone as an authority or custodian with responsibility over community members’ data and your storage systems.

CASE STUDY: OHIO STATE HIGHWAY PATROL RETAINS ONLY ALPR HITS
The Ohio State Highway Patrol policy for automated license plate readers (ALPRs) states, “all ‘non-hit’ captures shall be deleted immediately.” The ALPR program is intended to detect stolen vehicles, Amber Alerts, and persons with outstanding warrants. As a result, retaining data about “non-hit” vehicles does not further that purpose, and a policy of deleting that data immediately protects the community from unnecessary risks.79

CASE STUDY: MONTEREY COUNTY SUFFERS DATA BREACH DUE TO “TOTALLY OBSOLETE” DATA PRACTICES
Monterey County’s computer systems were breached in 2013 and the personal information of over 140,000 local residents was stolen. A subsequent grand jury investigation concluded that the breach stemmed from “totally obsolete” data practices and a failure to follow privacy laws. The grand jury warned of “serious financial consequences” if the county failed to change its practices.80
Under what circumstances can collected data be accessed or used?

In addition to technical safeguards to protect data, you should also limit the circumstances under which it can be legitimately accessed or used. These limits should be based on the specific purposes your community agreed to when it adopted the technology. For example, if the purpose of the technology is to address specific violent crimes, your policy might allow database searches only as part of an official investigation of a violent crime, and only for data that is related to that investigation. Data access and use policies that are consistent with the articulated purposes for the system will provide guidance to operators and engender community trust by deterring abuses that can follow unfettered access to surveillance data.

Your community’s goal of balancing privacy and security will be easier to achieve if particular data access and use limits are accompanied by steps to ensure the rules are followed. Database access should be limited — for example, by only allowing junior staff to access data with the permission and guidance of a more senior officer, or by limiting data access solely to senior officers. As explained earlier, training is a must. Restricting data access to a limited set of trained employees decreases the potential that community members’ data can be misused. To ensure targeted use of data, it may be appropriate to require a search warrant or similar external process before the data can be accessed at all.

What limits exist on sharing data with outside entities?

Placing limits on how data use is a great step, but third parties that receive the collected data may not have the same limits in place. To protect residents’ privacy and prevent uses of information contrary to community desires, it is important to articulate when — if ever — the technology’s purposes justify sharing any collected information. During the public debate over your Surveillance Use Policy, the community should decide when sharing is permissible and when it is prohibited.

If data can be shared, your community must also determine how to ensure that the entity receiving the data lives up to your community’s standards. This may require contractual language binding the third party to your data policies and safeguards. For example, the city of Menlo Park, California, specifically requires by ordinance that any agreement with Northern California’s fusion center demand compliance with the City’s own retention policy. If a potential recipient of your data cannot agree with your policies or conditions, the best choice is to not share your data.

3. Limit Data Retention: Keep Information Only as Long as Necessary

The longer you retain information, the greater the potential privacy and security risks. The easiest way to minimize these risks is to retain only necessary information and to delete it after the purpose for its collection is achieved.

CASE STUDY: LAX POLICIES LEAD TO “LOVEINT” ABUSE

Without strong policies limiting access to data, the temptation to misuse government databases for personal interests can be hard to resist. The NSA even has a specific term, LOVEINT, for employees who monitor their significant others. Two Fairfield, CA, officers could face criminal charges after using a statewide police database to screen women from online dating sites.
Does retaining data help accomplish the purpose for which the technology was acquired?
To maximize the usefulness of your technology and minimize civil liberties concerns, a retention period should not be longer than necessary to directly advance community purposes. For instance, deploying automated license plate readers to locate stolen or Amber Alert vehicles is not aided by the collection of historical data. Retaining data “just in case it becomes useful” increases the risk that data will be used contrary to the purpose agreed upon by the community or wind up in the hands of a bad actor. Retaining data can also increase the costs of surveillance by requiring expensive storage solutions and making it harder to effectively use the system. Focusing on the specific objective that surveillance is intended to accomplish can help you determine a retention period that balances that objective with the costs and risks associated with data retention.

Are there other legal or policy reasons that inform your data retention policy?
There may be other legal and policy issues that affect your data retention policy, informed by legal concerns unrelated to your community’s purposes. For example, your community should choose a retention period that balances a desire to be responsive to public records requests with residents’ civil liberties, including privacy. Responsiveness to records requests should not be a primary justification for an extended retention period, however, since community concerns about surveillance are better addressed by retaining less information in the first place.

What happens when the data retention period expires?
To prevent misuse of data after your community’s desired retention period has lapsed, ensure that data is regularly deleted after that time. This can be accomplished via automated technical measures or periodic audits.

Before data is collected, your community should also decide whether there are any specific circumstances that justify the retention of data beyond your community’s chosen retention period. For instance, it might be appropriate to preserve data relevant to a specific ongoing investigation, data necessary to complete an investigation of internal data misuse, and data relevant to a criminal defendant’s case. Any such conditions should be informed by your community’s purposes and clearly articulated in your Surveillance Use Policy.

C. ENSURE ACCOUNTABILITY BY ENFORCING POLICIES AND ENCOURAGING ONGOING PUBLIC ENGAGEMENT
Even if your community has already deployed surveillance technology, the community as a whole has a crucial role in ensuring that the public interest is promoted through its use. One key question is whether your Surveillance Use Policy is effectively safeguarding individual rights and preventing abuses. A second is whether the assumptions you made when you approved surveillance in the first place still hold true after actual experience with the technology and its impact. Revamping or even cancelling an ineffective or imbalanced program is better than wasting time, money, and community trust on a tool that does more harm than good.

“If there’s anything of a criminal nature recorded on video, it’s grabbed and inventoried within hours. Most everything else is never looked at again, so it’s purged automatically.”
Commander Steven Caluris, Chicago Police Department

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ONLINE AT ACLUNC.ORG/SMARTABOUTSURVEILLANCE
1. **Identify and Address Abuses: Audit Use of Technologies and Data and Address Any Misuse**

The safeguards in your Surveillance Use Policy are only worthwhile if the policy is actually followed. But given the secretive nature of many forms of surveillance, ensuring compliance takes conscious effort. Strong internal and external oversight and auditing can help identify isolated or systemic abuses of surveillance technology, and legally enforceable sanctions can deter both.

- **How are operators supervised?**
  Personnel management and technical measures both facilitate internal oversight of your technology and data. Designating a chain of command for a given surveillance technology helps specific personnel understand what responsibilities they have over the equipment or data and makes it easy to trace where misuse occurred. All of this helps your community deter abuses and guarantee that resources are used wisely.

- **How will misuses of the technology be identified?**
  The best way to identify misuse of surveillance is to “watch the watchers” by keeping thorough records of each time surveillance is deployed or surveillance data is called up. The person or persons with oversight responsibility should be independent, given full access to the technology and database, and empowered to receive complaints about misuse and draw conclusions that can lead to legally enforceable consequences. To catch what human oversight misses, your community should ensure that technical measures including access controls and audit logs are in place. Placing the oversight authority with a third party such as the City Council or a citizen panel may also increase the likelihood that the misuses are accurately identified.

- **What legally enforceable sanctions exist to deter misuse and abuse of this technology?**
  By establishing consequences for violations of the guidelines, your community encourages proper use of the technology and sends a message that community values apply to everyone. Depending on the circumstances, sanctions ranging from retraining to fines, suspensions, or termination may be appropriate for violations of your Surveillance Use Policy. In addition, your community should provide an appropriate remedy for anyone harmed by an abuse. Legally enforceable sanctions discourage misuse and guarantee that aggrieved community members will be made whole.

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**CASE STUDY: FRESNO ADOPTS ANNUAL AUDIT OF VIDEO SURVEILLANCE**

When the Fresno Police Department proposed a citywide video-policing program using live-feed cameras, the city council required an annual independent audit to ensure that all of the privacy and security guidelines for the system’s use were being followed. Fresno Police Chief Jerry Dyer said he supported the audit: “I have no doubt the audit will be very helpful to our ongoing video policing operations.” The city appointed a retired federal district court judge as auditor, who then examined current use of the system and made specific policy recommendations.

“As stewards of the public’s interests, we know the government doesn’t get to simply say ‘trust us’ and carry on: we have to earn that trust on a daily basis. We have to be accountable and transparent....”

Former Oakland Mayor Jean Quan

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**Making Smart Decisions about Surveillance: A Guide for Communities**
2. **Keep the Dialog Open: Encourage Public Oversight and Ongoing Discussion**

Community oversight and feedback plays two essential roles in ensuring that any current surveillance program actually benefits your community. First, transparency about abuses of surveillance allows the community to determine whether the Surveillance Use Policy or any associated sanctions need to be revised to address the issue. Second, as your community learns first-hand whether surveillance is effective and how it impacts different individuals and groups, you may wish to reassess the purposes for which surveillance should be used or even whether it should still be used at all. Surveillance should be under the control of the community at all times, not just when it is initially being considered.

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- **How will the community continue to be informed about the surveillance program?**

It is important that your community’s oversight mechanisms not only are in place before surveillance is used but also remain available as long as the surveillance program continues or any collected data remains. This allows the community to continue to learn about and provide feedback on the effectiveness and impact of surveillance, and provides the information you will need to evaluate any changes going forward.

One of the most effective ways to keep your community informed is to produce an annual report about each surveillance technology that has been used in the past year. This report should include:

- A description of how and how often the technology was used;
- Information, including crime statistics, that indicate whether the technology was effective at accomplishing its stated purpose;
- A summary of community complaints or concerns about the technology;
- Information about any violations of the Surveillance Use Policy, data breaches, or similar incidents, including the actions taken in response, or results of any internal audits;
- Whether and how data acquired through the use of the technology was shared with any outside entities;
- Statistics and information about Public Records Act requests, including responses; and
- The total annual costs for the technology, including personnel and other ongoing costs, and any external funding available to fund any or all of those costs in the coming year.

In addition, there may be other ways to provide your community with information about the operation and effectiveness of the surveillance program. Responding to Public Records Act requests with as much information as possible, taking into account factors such as the privacy rights of individuals whose information may be included in the requested data, is one way to allow interested community members access to concrete information about the program. Creating standing committees of community members, regularly holding public events and forums, and establishing open inspection periods for the technology can also help keep the community informed.

- **How will local officials and the public re-evaluate the decision to engage in surveillance or the existing policies and safeguards?**

The community’s decision to approve surveillance should be reconsidered on an annual basis. If there is evidence that calls into question the conclusion that the benefits of surveillance outweigh costs and concerns, or that there are better ways to achieve the same purpose with fewer costs or risks, policymakers should seek community input and take whatever action is appropriate to address these concerns. That may involve narrowing the purpose or scope of surveillance, requiring modifications to the Surveillance Use Policy, or exploring alternatives that better address community needs.
Conclusion

Communities increasingly understand the need to make smart choices about surveillance technology and ensure that time, energy, and resources are not spent on systems that cost more, do less, and threaten the rights of community members. Community members demand — and deserve — a voice in any decisions about surveillance technology. Proper transparency, accountability, and oversight must be the rule in considering any surveillance technology proposal. We hope the recommendations in this guide help you work to enact local and state policies to ensure consistent public process each time surveillance technology is considered.
Appendix: Model Surveillance & Community Safety Ordinance

A. KEY PRINCIPLES OF THE MODEL ORDINANCE

- **Informed Public Debate at Earliest Stage of Process**: Public notice, distribution of information about the proposal, and public debate prior to seeking funding or otherwise moving forward with surveillance technology proposals.

- **Determination that Benefits Outweigh Costs and Concerns**: Local leaders, after facilitating an informed public debate, expressly consider costs (fiscal and civil liberties) and determine that surveillance technology is appropriate or not before moving forward.

- **Thorough Surveillance Use Policy**: Legally enforceable Surveillance Use Policy with robust civil liberties, civil rights, and security safeguards approved by policymakers.

- **Ongoing Oversight & Accountability**: Proper oversight of surveillance technology use and accountability through annual reporting, review by policymakers, and enforcement mechanisms.

B. MODEL ORDINANCE TEXT

The [Council/Board of Supervisors] finds that any decision to use surveillance technology must be judiciously balanced with the need to protect civil rights and civil liberties, including privacy and free expression, and the costs to [City/County]. The [Council/Board] finds that proper transparency, oversight, and accountability are fundamental to minimizing the risks posed by surveillance technologies. The [Council/Board] finds it essential to have an informed public debate as early as possible about whether to adopt surveillance technology. The [Council/Board] finds it necessary that legally enforceable safeguards be in place to protect civil liberties and civil rights before any surveillance technology is deployed. The [Council/Board] finds that if surveillance technology is approved, there must be continued oversight and annual evaluation to ensure that safeguards are being followed and that the surveillance technology’s benefits outweigh its costs.

NOW, THEREFORE, BE IT RESOLVED that the [Council/Board] of [City/County] adopts the following:

**Section 1. Title**

This ordinance shall be known as the Surveillance & Community Safety Ordinance.

**Section 2. [Council/Board] Approval Requirement**

1) A [City/County] entity must obtain [Council/Board] approval at a properly-noticed public hearing prior to any of the following:
   a) Seeking funds for surveillance technology, including but not limited to applying for a grant or soliciting or accepting state or federal funds or in-kind or other donations;
   b) Acquiring new surveillance technology, including but not limited to procuring such technology without the exchange of monies or consideration;
   c) Using new surveillance technology, or using existing surveillance technology for a purpose, in a manner or in a location not previously approved by the [Council/Board]; or
   d) Entering into an agreement with a non-[City/County] entity to acquire, share or otherwise use surveillance technology or the information it provides.

2) A [City/County] entity must obtain [Council/Board] approval of a Surveillance Use Policy prior to engaging in any of the activities described in subsection (1)(b)-(d).
Section 3. Information Required

1) The [City/County] entity seeking approval under Section 2 shall submit to the [Council/Board] a Surveillance Impact Report and a proposed Surveillance Use Policy at least forty-five (45) days prior to the public hearing.

2) The [Council/Board] shall publicly release in print and online the Surveillance Impact Report and proposed Surveillance Use Policy at least thirty (30) days prior to the public hearing.

Section 4. Determination by [Council/Board] that Benefits Outweigh Costs and Concerns

The [Council/Board] shall only approve any action described in Section 2, subsection (1) of this ordinance after making a determination that the benefits to the community of the surveillance technology outweigh the costs and that the proposal will safeguard civil liberties and civil rights.

Section 5. Compliance for Existing Surveillance Technology

Each [City/County] entity possessing or using surveillance technology prior to the effective date of this ordinance shall submit a proposed Surveillance Use Policy no later than ninety (90) days following the effective date of this ordinance for review and approval by [Council/Board]. If such review and approval has not occurred within sixty (60) days of the submission date, the [City/County] entity shall cease its use of the surveillance technology until such review and approval occurs.

Section 6. Oversight Following [Council/Board] Approval

1) A [City/County] entity which obtained approval for the use of surveillance technology must submit a Surveillance Report for each such surveillance technology to the [Council/Board] within twelve (12) months of [Council/Board] approval and annually thereafter on or before November 1.

2) Based upon information provided in the Surveillance Report, the [Council/Board] shall determine whether the benefits to the community of the surveillance technology outweigh the costs and whether civil liberties and civil rights are safeguarded. If the benefits do not outweigh the costs or civil rights and civil liberties are not safeguarded, the [Council/Board] shall direct that use of the surveillance technology cease and/or require modifications to the Surveillance Use Policy that will resolve the above concerns.

3) No later than January 15 of each year, the [Council/Board] shall hold a public meeting and publicly release in print and online a report that includes, for the prior year:
   a. A summary of all requests for [Council/Board] approval pursuant to Section 2 or Section 5, including whether the [Council/Board] approved or rejected the proposal and/or required changes to a proposed Surveillance Use Policy before approval; and
   b. All Surveillance Reports submitted.

Section 7. Definitions

The following definitions apply to this Ordinance:

1) “Surveillance Report” means a written report concerning a specific surveillance technology that includes all of the following:
   a. A description of how the surveillance technology was used;
   b. Whether and how often data acquired through the use of the surveillance technology was shared with outside entities, the name of any recipient entity, the type(s) of data disclosed, under what legal standard(s) the information was disclosed, and the justification for the disclosure(s);
   c. A summary of community complaints or concerns about the surveillance technology;
d. The results of any internal audits, any information about violations of the Surveillance Use Policy, and any actions taken in response;

e. Information, including crime statistics, that help the community assess whether the surveillance technology has been effective at achieving its identified purposes;

f. Statistics and information about public records act requests, including response rates; and

g. Total annual costs for the surveillance technology, including personnel and other ongoing costs, and what source of funding will fund the technology in the coming year.

2) “[City/County] entity” means any department, bureau, division, or unit of the [City/County].

3) “Surveillance technology” means any electronic device, system utilizing an electronic device, or similar used, designed, or primarily intended to collect, retain, process, or share audio, electronic, visual, location, thermal, olfactory or similar information specifically associated with, or capable of being associated with, any individual or group.

4) “Surveillance Impact Report” means a publicly released written report including at a minimum the following: (a) Information describing the surveillance technology and how it works, including product descriptions from manufacturers; (b) information on the proposed purposes(s) for the surveillance technology; (c) the location(s) it may be deployed and crime statistics for any location(s); (d) an assessment identifying any potential impact on civil liberties and civil rights and discussing any plans to safeguard the rights of the public; and (e) the fiscal costs for the surveillance technology, including initial purchase, personnel and other ongoing costs, and any current or potential sources of funding.

5) “Surveillance Use Policy” means a publicly released and legally enforceable policy for use of the surveillance technology that at a minimum specifies the following:

a. **Purpose:** The specific purpose(s) that the surveillance technology is intended to advance.

b. **Authorized Use:** The uses that are authorized, the rules and processes required prior to such use, and the uses that are prohibited.

c. **Data Collection:** The information that can be collected by the surveillance technology.

d. **Data Access:** The individuals who can access or use the collected information, and the rules and processes required prior to access or use of the information.

f. **Data Protection:** The safeguards that protect information from unauthorized access, including encryption and access control mechanisms.

g. **Public Access:** How collected information can be accessed or used by members of the public, including criminal defendants.

h. **Third Party Data Sharing:** If and how other [City/County] or non-[City/County] entities can access or use the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information.

i. **Training:** The training required for any individual authorized to use the surveillance technology or to access information collected by the surveillance technology, including any training materials.

j. **Auditing and Oversight:** The mechanisms to ensure that the Surveillance Use Policy is followed, including internal personnel assigned to ensure compliance with the policy, internal recordkeeping of the use of the technology or access to information collected by the technology, technical measures to monitor for misuse, any independent person or entity with oversight authority, and the legally enforceable sanctions for violations of the policy.
Section 8. Enforcement

1) Any violation of this Ordinance constitutes an injury, and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance.

2) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.

3) In addition, for a willful, intentional, or reckless violation of this Ordinance, an individual shall be deemed guilty of a misdemeanor and may be punished by a fine not exceeding $1,000 per violation, imprisonment in the county jail for not more than six months, or both such a fine and imprisonment.

Section 9. Severability

The provisions in this Ordinance are severable. If any part or provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

Section 10. Effective Date

This Ordinance shall take effect on [DATE].
Endnotes

1 For example, the San Francisco Police Department’s Mission Statement states that “policing strategies must preserve and advance democratic values” and that “police must respect and protect the rights of all citizens as guaranteed by the state’s Constitution.” Police Department, Mission Statement, http://sf-police.org/index.aspx?page=1616.


7 David Kravets, Rights Groups Decry New NSA Leak: Snooping on Muslim-Americans’ E-mail, Ars Technica (July 9, 2014), http://arstechnica.com/tech-policy/2014/07/rights-groups-decry-new-nsa-leak-snooping-on-muslim-americans-e-mail/.


ONLINE AT ACLUNC.ORG/SMARTABOUTSURVEILLANCE


41 People v. Cook 41 Cal. 3d 373 (1985).

42 Robins v. Pruneyard Shopping Center, 592 P.2d 899 (Cal. 1979) (holding that, under the California Constitution, members of the public have a right to pass out pamphlets and seek signatures in a privately owned shopping center), aff’d, 447 U.S. 74 (1980).


44 Cal. Gov’t Code § 53166.

45 Cal. Civil Code §§ 1798.29, 1798.82, and 1798.90.5.


51 Id.


70 PERF Report, supra note 24, at 44.
77 PERF Report, supra note 24, at 36.
79 Ohio State Highway Patrol Policy No. OSP-103.29 (revised Dec. 23, 2008).
83 PERF Report, supra note 24, at 44.

Back Cover Citations


Police are spending billions of dollars on very sophisticated and invasive surveillance technology. Too many of these programs are moving forward without public conversation, careful consideration of the costs and benefits, or adequate policies in place to prevent misuse and protect rights.

This guide provides a step-by-step framework to ask and answer the right questions about surveillance proposals and build in proper mechanisms for transparency, accountability, and oversight. The guide also includes dozens of case studies highlighting smart approaches and missteps to avoid and model language for policymakers to adopt to make sure the right process is used every time a surveillance proposal is considered.

“The ACLU’s approach to vetting new technologies is so pragmatic that cities, counties and law enforcement agencies throughout California would be foolish not to embrace it.”
—Editorial, Los Angeles Times

“We urge more city and county governments to…[study] an ordinance that would set specific rules about what can be done with citizens’ private information.”
—Editorial, San Francisco Chronicle

“It’s easy to see the value in [ACLU’s] approach—in all areas of government…”
—Steven Greenhut, San Diego Union-Tribune

“Elected leaders, not police departments, should set policy for the use of surveillance equipment. This is the ACLU recommendation. It’s also common sense.”
—Editorial, San Jose Mercury News
City of Palo Alto
City Council Staff Report

Meeting Date: 10/24/2022  Report Type: Consent Calendar

Title: Approval of Contract Amendment No. Two with GovernmentJobs.com, Inc. dba Neogov for Recruiting and Onboarding Services, to Extend the Term through June 30, 2025, Add Services, and Increase Compensation by an Amount Not-To-Exceed $249,883 for a New Contract Total Not-To-Exceed Amount of $411,323

From: City Manager

Lead Department: IT Department

Recommendation
Staff recommends that Council approve and authorize the City Manager or their designee to execute the attached contract Amendment No. Two (Attachment A) to Contract No. S17167826 with Governmentjobs.com, Inc. D/B/A NeoGov, for the provision of hiring, onboarding and performance review services, in order to add three-years and two months to the term (to end June 30, 2025), add services, and to increase the compensation by the amount of $249,883 for a new total not-to-exceed contract amount of $411,323.

Background
The City’s Human Resources Department is responsible for recruiting, onboarding and retaining a talented and diverse workforce to serve our community. On average, the City recruits and onboards more than 150 new employees annually. To help facilitate this process, the City uses a cloud-based applicant management and employee onboarding portal from Governmentjobs.com, Inc. D/B/A NeoGov (NeoGov). NeoGov is an industry leader in providing cloud-based software that centralizes the process of attracting, screening, and onboarding a new employee. NeoGov is utilized by more than 6,000 public sector organizations across the United States.

In 2011, the City entered into a contract with NeoGov to provide its cloud-based Applicant Management System called “NeoGov Insight.” Insight allowed the City to automate its hiring process by providing a robust platform to post job announcements, accept online job applications and track applicants through each step of the recruitment process.

In 2016, the City added the Onboarding module called NeoGov Onboard. Onboard
seamlessly integrated with NeoGov Insight to enhance and simplify the applicant experience. Once hired, applicants complete all new hire paperwork through a centralized online dashboard. Onboard is also used to provide newly hired employees with an overview of all City benefits, including the ability to complete their benefit enrollment paperwork online. Onboard has significantly eliminated manual paperwork process for both applicants and City staff. Two additional modules were added in 2020, Candidate Text Messaging and Background Checks, via contract Amendment No. One (Attachment B).

Discussion
NeoGov has provided many efficiencies to the City’s recruitment and onboarding process. The Insight portal has made the recruitment process more efficient by providing a centralized method to post job announcements and intake, automated application review for hiring managers, automated interview scheduling and completing job offers. The Onboard portal provided a solution to move manual, time consuming, paper-based process to an online platform for an efficient and streamlined experience for all involved. Insight’s built-in analytics and reporting on recruitment status based on individual positions provides the capability for the Human Resources team to make data-driven decisions about current and future recruitments. With this amendment, the City will also have the capability for SSO (Single Sign On) for users, which will provide further security and a streamlined login process for staff. This additional feature is in alignment with the City’s ongoing cybersecurity priorities and enhancements as outlined in the recent Baker Tilly Risk Assessment.

After recruiting and onboarding an employee, the next step in the NeoGov employee lifecycle is performance management and employee development. NeoGov’s “Perform” module provides an online platform for managers and employees to complete performance evaluations. NeoGov’s Perform module will replace the current manual, paper-based process the City utilizes. Perform will allow employees and managers to set short- and long-term performance and development goals that can be tracked using an online automated process. This will assist managers and employees to have frequent check-ins and provide continuous feedback. Staff expects to roll out Perform in 2023. With this roll out, staff will have access to reports and dashboards which increase our ability to analyze individual employees, teams, or departmental data to identify skill gaps across the organization and optimize employee development.

Upcoming Procurement Process
The City’s current need to stabilize recruitment and retain talented employees is a priority. Staff acknowledge and agree that a formal solicitation is needed. At this moment, staff also recognize the potential time intensive process to both select and transition to a new vendor and that will distract from current priorities of focusing on and prioritizing robust recruitment. In addition, changes in platform will require thousands of potential applicants who have registered with the current system to re-apply and create a new candidate profile, this additional friction point may impact
interest and applicant pool.

To address these priorities and the need for a procurement process, during the next three years of this contract, staff has a three-step process that they will engage in:

1. Step 1: During the first year of the contract, staff will continue to stabilize and enhance the City's recruitment and retention efforts.
2. Step 2: During the second year of the contract, staff will engage and conduct a formal public procurement (RFP) process.
3. Step 3: During the third year of the contract, staff will complete the implementation process (or continue with existing services depending on the results of the procurement process).

An exemption to competitive solicitation was approved by the City Manager pursuant to PAMC 2.30.360(b)(2) in acknowledgement of the critical time the organization faces and with the clear understanding of next steps outlined above.

**Resource Impact**
Funds for Fiscal Year 2023 costs have been budgeted in the Information Technology Fund. Ongoing maintenance costs are subject to annual appropriation of costs through the annual budgeting cycle.

<table>
<thead>
<tr>
<th>Breakdown of Costs for Amendment No. Two:</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/9/2022 - 6/30/2022</td>
</tr>
<tr>
<td>$8,971.14</td>
</tr>
</tbody>
</table>

**Stakeholder Engagement**
Stakeholder engagement is not required for execution of this contract amendment for current services. During the implementation of new modules and processes, the Human Resources department will partner with departments to ensure seamless transition from current processes.

**Policy Implications**
This recommendation does not present any changes to existing City policies.

**Environmental Review**
Approval of this agreement does not constitute a project under the California Environmental Quality Act (CEQA); therefore, an environmental assessment is not required.

**Attachments:**
- Attachment4.a: Attachment A: S17167826_Amend_No2_NeoGov_final_vendor_signed
• Attachment 4.b: Attachment B: Amendment 1 S17167826 GovernmentJobs
AMENDMENT NO. 2 TO CONTRACT NO. S17167826
BETWEEN THE CITY OF PALO ALTO AND
GOVERNMENTJOBS.COM dba., NEOGOV

This Amendment No. 2 (this “Amendment”) to contract no. S17167826 (the “Contract” as defined in Section 1(a) below) by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and GOVERNMENTJOBS.COM, INC. dba NEOGOV, a California Corporation, located at 222 N. Sepulveda Blvd., Suite 2000, El Segundo, CA 90245 (“CONTRACTOR”), is entered into on the date of full execution by the parties hereto (the “Signing Date”), to be effective as of April 9, 2022 (the “Effective Date”). CITY and CONTRACTOR are referred to collectively as the “Parties” in this Amendment.

RECORDS

A. WHEREAS, CITY and CONTRACTOR entered into that certain General Services Agreement contract no. S17167826, dated as of April 9, 2017, for the provision of software for recruitment, as detailed therein, as amended by Amendment No. 1, dated June 1, 2020, which extended the term, added to the scope of services, and increased the not-to-exceed amount by $161,439.70, as detailed in Amendment No. 1; and

B. WHEREAS, the term of that certain General Services Agreement, as amended by Amendment No. 1, expired as of April 8, 2022, and the CITY and CONTRACTOR each desire for CONTRACTOR to continue to provide software for recruitment and related services (the Services as detailed more fully in Exhibit A entitled “Scope of Services”); and

C. WHEREAS, the Parties now wish to amend the Contract in order to correct a typographical/clerical error in the CONTRACTOR’s name as stated in the Contract, extend the term, add to the scope of services, increase the not-to-exceed amount of the Contract by $249,882.47, for a new total maximum compensation of $411,322.17, and add SaaS services terms, as detailed herein;

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 that certain General Services Agreement, contract no. S17167826, between CONTRACTOR and CITY, dated April 9, 2017, as amended by:

   Amendment No. 1, dated June 1, 2020.

Vers.: Aug. 5, 2019

Page 1 of 59
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.** The Parties understand and agree that the CONTRACTOR’s legal name is “GOVERNMENTJOBS.COM, INC.” and that its doing business as (“dba”) name is “NEOGOV”, that the “INC.” was mistakenly left out of the CONTRACTOR’s legal name as stated in the Contract due to a typographical/clerical error, and the Parties hereby amend the Contract as follows: Wherever in the Contract the CONTRACTOR is referred to as “GOVERNMENTJOBS.COM” or as “GOVERNMENTJOBS.COM dba., NEOGOV”, for each such instance, that reference to the CONTRACTOR is hereby deleted and replaced to read “GOVERNMENTJOBS.COM, INC. dba NEOGOV”.

**SECTION 3.** Section 2, “EXHIBITS”, of the Contract is hereby deleted and replaced in the entirety with Section 2, “EXHIBITS; ORDER OF PRECEDENCE,” to read as follows:

“2. EXHIBITS; ORDER OF PRECEDENCE. The following exhibits are hereby attached and incorporated into this Agreement by reference as though fully set forth herein. In the event of any conflict between the provisions of this General Services Agreement document including its Exhibits A through F as compared to the provisions of Exhibit G (including Exhibit G’s own Exhibits A through D), the provisions of this General Services Agreement including its Exhibits A through F shall take precedence, followed by the provisions of Exhibit G (including Exhibit G’s own Exhibits A through D). This Section 2 (Exhibits; Order of Precedence) shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

- “A” – Scope of Services
- “B” – Schedule of Performance
- “C” – Compensations
- “D” – Insurance Requirements
- “E” - Cybersecurity Terms and Conditions
- “F” – Information Privacy Policy
- “G” – Services Agreement (including Exhibit G’s own Exhibit A, Government Customer Addendum; Exhibit B, PowerEngage Platform Addendum; Exhibit C, HRIS Addendum; and Exhibit D, Integration Terms Addendum)

*CONTRACT IS NOT COMPLETE UNLESS ALL INDICATED EXHIBITS ARE ATTACHED.*

**SECTION 4.** Section 3, “TERM”, of the Contract is hereby amended to read as follows:

“The term of this Agreement is from 04/09/2017 to 06/30/2025 inclusive, subject to the provisions of Sections R and W of the General Terms and Conditions.”
SECTION 5. Section 5, “COMPENSATION FOR ORIGINAL TERM”, of the Contract is hereby amended to read as follows:

“CITY shall pay and CONTRACTOR agrees to accept as not-to-exceed compensation for the full performance of the Services and reimbursable expenses, if any:

A sum calculated in accordance with the fee schedule set forth at Exhibit C (Compensation), not to exceed a total maximum compensation amount of Four Hundred Eleven Thousand Three Hundred Twenty Two Dollars and Seventeen Cents ($411,322.17).

CONTRACTOR agrees that it can perform the Services for an amount not to exceed the total maximum compensation set forth above. Any hours worked or services performed by CONTRACTOR for which payment would result in a total exceeding the maximum amount of compensation set forth above for performance of the Services shall be at no cost to CITY.”

SECTION 6. Section O “HOLD HARMLESS” of the General Terms and Conditions of the Contract is hereby deleted in its entirety and replaced with the following:

“O. HOLD HARMLESS. To the fullest extent permitted by law and without limitation by the provisions of section N relating to insurance, CONTRACTOR shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents from and against any and all third-party demands, claims, injuries, losses, or liabilities of any nature, including death or injury to any person, property damage or any other loss and including without limitation all damages, penalties, fines and judgments associated investigative and administrative expenses and defense costs, including, but not limited to reasonable attorney’s fees, courts costs and costs of alternative dispute resolution, to the extent arising out of, or resulting in any way from or in connection with CONTRACTOR’S: (a) negligence, (b) willful misconduct, or (c) recklessness. CONTRACTOR’s obligations under this Section apply regardless of whether or not a liability is caused or contributed to by any negligent (passive or active) act or omission of CITY, except that CONTRACTOR shall not be obligated to indemnify for liability arising from the sole negligence or willful misconduct of CITY. The acceptance of the Services by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section survive the completion of the Services or termination of this Agreement.”

SECTION 7. The following exhibits to the Contract are hereby amended or added, as indicated below, to read as set forth in the attachments to this Amendment, which are incorporated in full into this Amendment and into the Contract in accordance with herein-amended Section 2 (Exhibits; Order of Precedence) of the Contract:

a. Exhibit “A” entitled “SCOPE OF SERVICES”, AMENDED, REPLACES PREVIOUS.
b. Exhibit “B” entitled “SCHEDULE OF PERFORMANCE”, AMENDED, REPLACES PREVIOUS.

c. Exhibit “C” entitled “COMPENSATION”, AMENDED, REPLACES PREVIOUS.

d. Exhibit “D” entitled “INSURANCE REQUIREMENTS”, AMENDED, REPLACES PREVIOUS.

e. Exhibit “E” entitled “SAAS SECURITY AND PRIVACY TERMS AND CONDITIONS” of the Contract, is hereby amended and replaced with the attached Exhibit “E” entitled “CYBERSECURITY TERMS AND CONDITIONS”, AMENDED, REPLACES PREVIOUS.

f. Exhibit “F” entitled “INFORMATION PRIVACY POLICY”, ADDED.

g. Exhibit “G” entitled “SERVICES AGREEMENT” (including Exhibit G’s own Exhibit A, Government Customer Addendum; Exhibit B, PowerEngage Platform Addendum; Exhibit C, HRIS Addendum; and Exhibit D, Integration Terms Addendum), ADDED.

SECTION 8. 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 9. 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.)
SIGNATURES OF THE PARTIES

IN WITNESS WHEREOF, the Parties have by their duly authorized representatives executed this Amendment as of the Signing Date, to be effective as of the Effective Date.

CITY OF PALO ALTO

By: Mike Burns
Name: Mike Burns
Title: Accounting Director
City Manager APPROVED

AS TO FORM:

GOVERNMENTJOBS.COM, INC. dba NEOGOV

By: Ana Alfaro
Name: Ana Alfaro
Title: Revenue Accounting Manager
City Attorney or designee

Attachments:
EXHIBIT “A”: SCOPE OF SERVICES (AMENDED, REPLACES PREVIOUS)
EXHIBIT “B”: SCHEDULE OF PERFORMANCE (AMENDED, REPLACES PREVIOUS)
EXHIBIT “C”: COMPENSATION (AMENDED, REPLACES PREVIOUS)
EXHIBIT “D”: INSURANCE REQUIREMENTS (AMENDED, REPLACES PREVIOUS)
EXHIBIT “E”: CYBERSECURITY TERMS AND CONDITIONS (AMENDED, REPLACES PREVIOUS)
EXHIBIT “F”: INFORMATION PRIVACY POLICY (ADDED)
EXHIBIT “G”: SERVICES AGREEMENT (including Exhibit G’s own Exhibit A, Government Customer Addendum; Exhibit B, PowerEngage Platform Addendum; Exhibit C, HRIS Addendum; and Exhibit D, Integration Terms Addendum) (ADDED)
EXHIBIT A
SCOPE OF SERVICES

CONTRACTOR shall provide to CITY the following Software as Service (SAAS) subscriptions (also referred to herein as the “Services”) with the functionality and services described, during the time periods specified below in this Exhibit A (Scope of Services). Maintenance and support of the SAAS are included as part of the Services, as detailed in Exhibit G (Services Agreement) of this Agreement.

Services to Be Provided During the Period Covering 04/09/2017 – 04/08/2020

1. **Insight Enterprise (IN)**

   **License Subscription to NEOGOV IN**

   The CITY’s subscription to the Insight platform includes the following functionality:

   **Recruitment**
   - Online job application
   - Online job announcements and descriptions
   - Automatic online job interest cards
   - Recruitment and examination planning

   **Selection**
   - Configurable supplemental questions
   - Define unique scoring plans
   - Test analysis and pass-point setting
   - Score, rank, and refer applicants

   **Applicant Tracking**
   - Email and hardcopy notifications
   - EEO Data collection and reports
   - Track applicants by step/hurdle
   - Schedule written, oral, and other exams
   - Candidate Self-Service Portal for scheduling and application status

   **Reporting and Analysis**
   - 90 standard system reports
   - Ad Hoc reporting tool

   **HR Automation**
   - Create and route job requisitions for approval
   - Certification/eligible lists

2. **NEOGOV Onboarding (ON)**

   **License Subscription to NEOGOV ON**
● Electronic Employee File
● W4
● I9
● Configurable Workflow
● Task Manager
● Employee data upload
● Attachments
● Build your own Onboarding forms*

*NEOGOV ON includes I9 and W4 standard forms that are updated by CONTRACTOR.

Additional forms or form maintenance is available by NEOGOV Professional Services at the following cost:

- Background forms $295 per form
- Dynamic Forms $195 per form
- Updates to existing forms $200 per hour

3. **GovernmentJobs.com Job Posting Subscription**

    (GJC) License Subscription

- Enables organizations to advertise their job postings created in Insight on the GovernmentJobs.com website.
- May add an unlimited number of postings

4. **NEOGOV Integrations**

    CONTRACTOR provides Standard Integrations as well as platform application program interfaces (APIs) for third party system integration(s).

    Standard Integrations include:

    - Conduct project scope, review integration plan, discuss timeline, and set schedule for required meetings
    - Annual Maintenance by CONTRACTOR

    Note: CONTRACTOR APIs are to be configured directly by CITY staff using CONTRACTOR documentation.

5. **Customer Support and Product Upgrades**

    The following are included with the subscription services:

    - Unlimited Customer Support M-F, 6:00AM – 6:00 PM PT
    - Product upgrades to licensed software
Services to Be Provided During the Period Covering 4/9/2020 – 4/8/2022 (except as performance dates are otherwise specified in Exhibit B, Schedule of Performance)

CONTRACTOR shall provide the Services detailed below during the period covering 4/9/2020 – 4/8/2022, except as performance dates are otherwise specified in Exhibit B (Schedule of Performance).

CONTRACTOR shall provide to CITY the following Software as Service (SAAS) subscriptions with the functionality and services described:

1. **Insight Enterprise (IN)**

   **License Subscription to NEOGOV IN**
   The CITY's subscription to the Insight platform includes the following functionality:

   Recruitment
   - Online job application
   - Online job announcements and descriptions
   - Automatic online job interest cards
   - Recruitment and examination planning
   - Selection
   - Configurable supplemental questions
   - Define unique scoring plans
   - Test analysis and pass-point setting
   - Score, rank, and refer applicants

   Applicant Tracking
   - Email and hardcopy notifications
   - EEO Data collection and reports
   - Track applicants by step/hurdle
   - Schedule written, oral, and other exams
   - Candidate Self-Service Portal for scheduling and application status
   - Reporting and Analysis
   - 90 standard system reports
   - Ad Hoc reporting tool
   - HR Automation
   - Create and route job requisitions for approval
   - Certification/eligible lists

2. **NEOGOV Onboarding (ON)**

   **License Subscription to NEOGOV ON**
   - Electronic Employee File
   - W4
   - I9
   - Configurable Workflow
   - Task Manager
● Employee data upload
● Attachments
● Build your own Onboarding forms*

*NEOGOV ON includes I9 and W4 standard forms that are updated by CONTRACTOR.

Additional forms or form maintenance is available by NEOGOV Professional Services at the following cost:

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   - Enables organizations to advertise their job postings created in Insight on the GovernmentJobs.com website.
   - May add an unlimited number of postings

4. **NEOGOV Integrations**

   CONTRACTOR provides Standard Integrations as well as platform APIs for 3rd party system integration(s).

   Standard Integrations include:
   - Conduct project scope, review integration plan, discuss timeline, and set schedule for required meetings
   - Annual Maintenance by CONTRACTOR

   Note: CONTRACTOR APIs are to be configured directly by CITY staff using CONTRACTOR documentation.

5. **Customer Support and Product Upgrades**

   The following are included with the subscription services:
   - Unlimited Customer Support M-F, 6:00AM – 6:00 PM PT
   - Product upgrades to licensed software

6. **Background Check**

   Allows agencies to initiate background checks directly from Insight or OHC. Choose from a wide and ever-growing selection of background check vendors to find one that suits the needs of your agency. Control who has access to view or initiate background checks via security role customization in OHC and track the status of the background check from the referred list.
7. **Candidate Text Messaging**

Select Your Candidates:
If subscribed, candidate will have a mobile icon next to their name. Select the subscribed candidates and click “Text Message Notify”.

Select a Template:
Send personalized, relevant texts to applicants. Create custom message templates with easy-to-use merge fields for hiring managers to choose from.

Generate Text Messages:
Texts can be sent at any step in the evaluation process, in bulk or individually.

Ensure Delivery:
Once you have sent your message, view the status to see if candidates have received the text.

---

**Services to Be Provided During the Period Covering 4/9/2022 – 6/30/2025**

CONTRACTOR shall provide the Services detailed below during the period covering 4/9/2022 – 6/30/2025.

CONTRACTOR shall provide to CITY the following Software as Service (SAAS) subscriptions with the functionality and services described:

1. **Insight Enterprise (IN)**

   **License Subscription to NEOGOV IN**

   The CITY’s subscription to the Insight platform includes the following functionality:

   **Recruitment**
   - Online job application
   - Online job announcements and descriptions
   - Automatic online job interest cards
   - Recruitment and examination planning
   - Selection
   - Configurable supplemental questions
   - Define unique scoring plans
   - Test analysis and pass-point setting
   - Score, rank, and refer applicants

   **Applicant Tracking**
   - Email and hardcopy notifications
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- Configurable Workflow
- Task Manager
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Standard Integrations include:

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- Annual Maintenance by CONTRACTOR

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   - Unlimited Customer Support M-F, 6:00AM – 6:00 PM PT
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   Allows agencies to initiate background checks directly from Insight or OHC. Choose from a wide and ever-growing selection of background check vendors to find one that suits the needs of your agency. Control who has access to view or initiate background checks via security role customization in OHC and track the status of the background check from the referred list.

7. **Candidate Text Messaging**

   Select Your Candidates:
   If subscribed, candidate will have a mobile icon next to their name. Select the subscribed candidates and click “Text Message Notify”.

   Select a Template:
   Send personalized, relevant texts to applicants. Create custom message templates with easy-to-use merge fields for hiring managers to choose from.

   Generate Text Messages:
   Texts can be sent at any step in the evaluation process, in bulk or individually.

   Ensure Delivery:
   Once you have sent your message, view the status to see if candidates have received the text.

8. **Perform Module**

   CONTRACTOR’s employee evaluation software, Perform, is a full-featured performance management software that automates annual and probationary employee evaluations. Perform provides the following features:

   - Use Perform to provide continuous feedback to employees based on desired competencies established by our organization.
   - Create employee or role-specific criteria for measuring performance, identify areas for growth, and schedule regular check-ins to see how employees are progressing.
   - Avoid recency bias by regularly adding confidential journal entries to help you compose annual performance reviews.
   - Pinpoint shortcomings and growth opportunities for professional development
   - Department heads have a bird’s eye view of everyone’s performance appraisal within their department, which allows them to review goals, check progress etc.
• Ability to see employee ratings based on specific skill and competency within the entire organization
• Run customized reports to review performance data within the organizations. Review and compare performance of employees within several departments.

Perform is designed to address the major areas of human resource activities centered around employee performance management. As described below, Perform includes built-in workflow for business processes, configurable tasks, performance evaluations and reports. A subscription to Perform will include the following:

• Configurable Performance Evaluations
• Ability to build Library of Goals, Competencies, and Writing Assistants
• Shareable Competency Content
• Development Plans
• Configurable Process Workflows
• Scored and Non-scored Rating Scales Log of Performance Observations throughout the year
• Configurable Email Notifications
• Automatic Evaluation Creation
• Ability to perform actions in bulk for Employees & Evaluations
• Peer Reviews & Multi-rater capability

9. Employee Integration Subscription

Employee integration subscription will provide ongoing import of data from a pipe delimited text file to CONTRACTOR’s NEOGOV applications. Employee integration files will add or update employee information on NEOGOV.

NEOGOV will provide access to a folder on the NEOGOV SFTP server. File imports are supported 24 hours a day, and 7 days a week. NEOGOV will check for new files every hour at 30 minutes past the hour and, if a file exists in the CITY’s inbound folder, NEOGOV will import the file and generate a delivery notification email.

10. Professional Services

10.A Provide Perform Implementation and Training:

During the Perform implementation and Training phase, CONTRACTOR will provide step by step assistance in setting up Perform for use for the first time by employees and managers, including:

• Provide an implementation consultant to provide guidance during the implementation phase
• Implementation consultant will provide an implementation workbook to review the current evaluation process
• Implementation consultant will provide step by step guidance through each phase of the implementation process. Phases include:

Vers.: Aug. 5, 2019
Project Kickoff
- Learning and configuring Perform
- System validation, employee workbook and production review
- Deployment of Perform module

- Provide access to training modules that will help with implementation process
- Provide access to test user accounts for process validation
- Provide workbook to help transfer employee information to NEOGOV. Once employee information is sent to NEOGOV, help with uploading employee information to NEOGOV in a timely manner.
- Setup production review call to confirm and validate understanding of Perform system.
- Provide access to end user training modules for employees and managers

10.B Provide Employee Integration Setup:

- Provide information on data requirements to create a report that can be used to change and/or add employee information on NEOGOV.
- Provide instructions and information on how to upload file onto NEOGOV servers.
- Setup email notification that will outline number of rows added to the system, number of rows updated and number of rows that contained errors. Rows that contain errors should include information on what prevented that

11. Single sign-on

Provide the Single Sign On (SSO) option to allow CITY users to securely authenticate and login to NEOGOV applications without having to re-enter their credentials. Currently NEOGOV offers two SSO options: SAML and Azure AD. NEOGOV implementation team will work with the CITY to implement SSO.

12. Position Control

Provide Position Control (Position Import) to provide CITY with an ongoing load of Position data from a file to the NEOGOV application. This data will be used to populate the Requisition and Hire forms with Position information once the Position Number is entered onto the Requisition or Hire form.
EXHIBIT B
SCHEDULE OF PERFORMANCE

CONTRACTOR shall provide the Services detailed in Exhibit A (Scope of Services) during the periods specified as follows:

<table>
<thead>
<tr>
<th>Services to Be Provided During the Period Covering:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Onboard Software License</td>
<td>04/09/2017 – 04/08/2020</td>
</tr>
<tr>
<td>API License</td>
<td>04/09/2017 – 04/08/2020</td>
</tr>
<tr>
<td>Insight Enterprise Software License</td>
<td>04/09/2017 – 04/08/2020</td>
</tr>
<tr>
<td>Governmentjobs.com Subscription</td>
<td>04/09/2017 – 04/08/2020</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Services to Be Provided During the Period Covering:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Onboard Software License</td>
<td>04/09/2020 – 04/08/2022</td>
</tr>
<tr>
<td>API License</td>
<td>04/09/2020 – 04/08/2022</td>
</tr>
<tr>
<td>Insight Enterprise Software License</td>
<td>04/09/2020 – 04/08/2022</td>
</tr>
<tr>
<td>Governmentjobs.com Subscription</td>
<td>04/09/2020 – 04/08/2022</td>
</tr>
<tr>
<td>Background Check</td>
<td>12/13/2019 – 04/08/2022</td>
</tr>
<tr>
<td>Candidate Text Messaging</td>
<td>01/09/2020 – 04/08/2022</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Services to Be Provided During the Period Covering:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Onboard Software License</td>
<td>04/09/2022 – 06/30/2025</td>
</tr>
<tr>
<td>API License</td>
<td>04/09/2022 – 06/30/2025</td>
</tr>
<tr>
<td>Insight Enterprise Software License</td>
<td>04/09/2022 – 06/30/2025</td>
</tr>
<tr>
<td>Governmentjobs.com Subscription</td>
<td>04/09/2022 – 06/30/2025</td>
</tr>
<tr>
<td>Background Check</td>
<td>04/09/2022 – 06/30/2025</td>
</tr>
<tr>
<td>Candidate Text Messaging</td>
<td>04/09/2022 – 06/30/2025</td>
</tr>
<tr>
<td>Perform Subscription</td>
<td>11/1/2022 – 06/30/2025</td>
</tr>
<tr>
<td>Employee Integration Subscription</td>
<td>11/1/2022 – 06/30/2025</td>
</tr>
<tr>
<td>Professional Services</td>
<td>11/1/2022 – 06/30/2025</td>
</tr>
<tr>
<td>- Perform Implementation and Training</td>
<td></td>
</tr>
<tr>
<td>- Employee Import Setup</td>
<td></td>
</tr>
<tr>
<td>- Single Sign On Setup</td>
<td></td>
</tr>
<tr>
<td>- Position Import Setup</td>
<td></td>
</tr>
<tr>
<td>Single Sign-on (SSO)</td>
<td>11/12022 – 06/30/2025</td>
</tr>
<tr>
<td>Position Import Subscription</td>
<td>11/12022 – 06/30/2025</td>
</tr>
</tbody>
</table>
EXHIBIT C
COMPENSATION

CITY shall compensate CONTRACTOR for performance of the Services according to the following fee schedules for the applicable time period, with the maximum amount of compensation not to exceed the amount stated in Sections 5 of this Agreement. Any Services provided for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY. The parties understand and agree that the fees payable to the CONTRACTOR under this Agreement are provided in the fee schedules below and that there are no per-user fees under this Agreement.

Schedule of Fees for the Period Covering: 04/09/2017 – 04/08/2020

<table>
<thead>
<tr>
<th>ITEM</th>
<th>3-Year Total License Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insight Enterprise</td>
<td>$38,755.26</td>
</tr>
<tr>
<td>Onboard Software License</td>
<td>$42,300.00</td>
</tr>
<tr>
<td>API License</td>
<td>$1,410.00</td>
</tr>
<tr>
<td>Governmentjobs.com Subscription</td>
<td>$5,499.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$87,964.26 (Paid in full)</strong></td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Insight</td>
<td>$14,430.15</td>
<td>$15,151.66</td>
</tr>
<tr>
<td>Onboard</td>
<td>$15,750.00</td>
<td>$16,537.50</td>
</tr>
<tr>
<td>Onboard API</td>
<td>$500.00</td>
<td>$500.00</td>
</tr>
<tr>
<td>Governmentjobs.com Subscription</td>
<td>$2,047.50</td>
<td>$2,149.88</td>
</tr>
<tr>
<td>Background Check</td>
<td>$2,000.00</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>Candidate Text Messaging</td>
<td>$1,175.00</td>
<td>$1,233.75</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$35,902.65</strong></td>
<td><strong>$37,572.79</strong></td>
</tr>
</tbody>
</table>

(CONTINUED ON THE NEXT PAGE.)
## Schedule of Fees for the Period Covering: 4/9/2022 – 6/30/2025

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Insight</td>
<td>$3,617.72</td>
<td>$15,909.24</td>
<td>$16,704.70</td>
<td>$17,539.94</td>
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<tr>
<td>Onboard</td>
<td>$3,948.61</td>
<td>$17,364.38</td>
<td>$18,232.60</td>
<td>$19,144.23</td>
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</tr>
<tr>
<td>Onboard API</td>
<td>$119.38</td>
<td>$525.00</td>
<td>$551.25</td>
<td>$578.81</td>
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</tr>
<tr>
<td>Governmentjobs.com</td>
<td>$513.32</td>
<td>$2,257.37</td>
<td>$2,370.24</td>
<td>$2,488.75</td>
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</tr>
<tr>
<td>Background Check</td>
<td>$477.53</td>
<td>$2,100.00</td>
<td>$2,205.00</td>
<td>$2,315.25</td>
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</tr>
<tr>
<td>Candidate Text Messaging</td>
<td>$294.58</td>
<td>$1,295.44</td>
<td>$1,360.21</td>
<td>$1,428.22</td>
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</tr>
<tr>
<td>Perform Subscription</td>
<td>--</td>
<td>--</td>
<td>$10,135.16</td>
<td>$30,573.00</td>
<td>$32,101.65</td>
</tr>
<tr>
<td>Employee Import</td>
<td>--</td>
<td>--</td>
<td>$1,044.25</td>
<td>$3,150.00</td>
<td>$3,307.50</td>
</tr>
<tr>
<td>Professional Services:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Perform Implementation &amp; Training</td>
<td>--</td>
<td>--</td>
<td>$8,000.00</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>• Employee Import Setup</td>
<td>--</td>
<td>--</td>
<td>$6,300.00</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>• Position Import Setup</td>
<td>--</td>
<td>--</td>
<td>$6,300.00</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>• Single Sign On Setup</td>
<td>--</td>
<td>--</td>
<td>$3,000.00</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Single Sign-On (SSO)</td>
<td>--</td>
<td>--</td>
<td>$713.74</td>
<td>$2,153.00</td>
<td>$2,260.65</td>
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<tr>
<td>Position Import</td>
<td>--</td>
<td>--</td>
<td>$1,044.25</td>
<td>$3,150.00</td>
<td>$3,307.50</td>
</tr>
<tr>
<td>TOTALS</td>
<td>$8,971.14</td>
<td>$39,451.43</td>
<td>$36,537.40</td>
<td>$80,450.00</td>
<td>$84,472.50</td>
</tr>
</tbody>
</table>

**GRAND TOTAL** $249,882.47

### Total not-to-exceed amount of the Agreement:

- For the Period Covering: 04/09/2017 – 04/08/2020: $87,964.26 (Paid in full)
- For the Period Covering: 04/09/2020 – 04/08/2022: $73,475.44 (Paid in full)
- For the Period Covering: 04/09/2022 – 06/30/2025: $249,882.47

**Total not-to-exceed:** $411,322.17
EXHIBIT “D”
INSURANCE REQUIREMENTS

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, AFFORDED BY COMPANIES WITH AM BEST’S KEY RATING OF A-:VII, OR HIGHER, AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY’S INSURANCE REQUIREMENTS SPECIFIED HEREIN.

<table>
<thead>
<tr>
<th>REQUIRED</th>
<th>TYPE OF COVERAGE</th>
<th>REQUIREMENT</th>
<th>MINIMUM LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>EACH OCCURRENCE</td>
<td>AGGREGATE</td>
</tr>
<tr>
<td>YES</td>
<td>WORKER’S COMPENSATION</td>
<td>STATUTORY</td>
<td></td>
</tr>
<tr>
<td>YES</td>
<td>EMPLOYER’S LIABILITY</td>
<td>STATUTORY</td>
<td></td>
</tr>
<tr>
<td>YES</td>
<td>GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE CONTRACTUAL, PRODUCTS/COMPLETED OPERATIONS AND FIRE LEGAL LIABILITY</td>
<td>BODILY INJURY</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PROPERTY DAMAGE</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>BODILY INJURY &amp; PROPERTY DAMAGE COMBINED.</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>YES</td>
<td>TECHNOLOGY ERRORS AND OMISSIONS LIABILITY COVERAGE. THE POLICY SHALL AT A MINIMUM COVER PROFESSIONAL MISCONDUCT OR LACK OF REQUISITE SKILL FOR THE PERFORMANCE OF SERVICES DEFINED IN THE CONTRACT AND SHALL ALSO PROVIDE COVERAGE FOR THE FOLLOWING RISKS: (i) NETWORK SECURITY LIABILITY ARISING FROM UNAUTHORIZED ACCESS TO, USE OF, OR TAMPERING WITH COMPUTERS OR COMPUTER SYSTEMS, INCLUDING HACKERS, EXTORTION, AND (ii) LIABILITY ARISING FROM INTRODUCTION OF ANY FORM OF MALICIOUS SOFTWARE INCLUDING COMPUTER VIRUSES INTO, OR OTHERWISE CAUSING DAMAGE TO THE CITY’S OR THIRD PERSON’S COMPUTER, COMPUTER SYSTEM, NETWORK, OR SIMILAR COMPUTER RELATED PROPERTY AND THE DATA, SOFTWARE AND PROGRAMS THEREON. CONTRACTOR SHALL MAINTAIN IN FORCE DURING THE FULL LIFE OF THE CONTRACT. THE POLICY SHALL PROVIDE COVERAGE FOR BREACH RESPONSE COSTS AS WELL AS REGULATORY FINES AND PENALTIES AS WELL AS CREDIT MONITORING EXPENSES WITH LIMITS SUFFICIENT TO RESPOND TO THESE OBLIGATIONS.</td>
<td>ALL DAMAGES</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>
# Cyber and Privacy Insurance

Cyber and privacy insurance shall include coverage for liability arising from damage to, alteration of, loss of, theft, dissemination or destruction of electronic data and/or use of confidential information, “property” of the City of Palo Alto that will be in the care, custody, or control of contractor, information including but not limited to, bank information or personal information, such as name, address, social security numbers, protected health information or other personal identification information, stored or transmitted in electronic form.

| YES | CYBER AND PRIVACY INSURANCE. SUCH INSURANCE SHALL INCLUDE COVERAGE FOR LIABILITY ARISING FROM DAMAGE TO, ALTERATION OF, LOSS OF, THEFT, DISSEMINATION OR DESTRUCTION OF ELECTRONIC DATA AND/OR USE OF CONFIDENTIAL INFORMATION, “PROPERTY” OF THE CITY OF PALO ALTO THAT WILL BE IN THE CARE, CUSTODY, OR CONTROL OF CONTRACTOR, INFORMATION INCLUDING BUT NOT LIMITED TO, BANK INFORMATION OR PERSONAL INFORMATION, SUCH AS NAME, ADDRESS, SOCIAL SECURITY NUMBERS, PROTECTED HEALTH INFORMATION OR OTHER PERSONAL IDENTIFICATION INFORMATION, STORED OR TRANSMITTED IN ELECTRONIC FORM. | ALL DAMAGES | $2,000,000 | $2,000,000 |

| YES | AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, (if any) HIRED, NON-OWNED BODILY INJURY AND PROPERTY DAMAGE, COMBINED | $1,000,000 | $1,000,000 |

| YES | THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED ON THE COMMERCIAL GENERAL LIABILITY POLICY WITH RESPECT TO LIABILITIES FALLING WITHIN NEOGOV’S INDEMNITY OBLIGATIONS PURSUANT TO THE TERMS OF THIS AGREEMENT: 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, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, SUBCONTRACTORS AND EMPLOYEES ON THE COMMERCIAL GENERAL LIABILITY POLICY WITH RESPECT TO LIABILITIES FALLING WITHIN NEOGOV’S INDEMNITY OBLIGATIONS PURSUANT TO THE TERMS OF THIS AGREEMENT. |

## Insurance Coverage Must Include:

## Contractor Must Submit Certificates(S) of Insurance Evidencing Required Coverage at the Following URL: [https://www.planetbids.com/portal/portal.cfm?CompanyID=25569](https://www.planetbids.com/portal/portal.cfm?CompanyID=25569).

## 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, commercial general liability insurance, technology errors and omissions and cyber and privacy liability 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, but only to the extent of liabilities falling within contractor’s indemnity obligations pursuant to this agreement. Any insurance or self-insurance maintained by the city of Palo Alto, its officers, officials, employees, or volunteers shall be excess of the contractor’s insurance and shall not contribute with it.

### B. Cross Liability

The naming of more than one person, firm, or corporation as insureds under the commercial general liability 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 commercial general liability 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 endeavor to 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.

CONTRACTORS ARE REQUIRED TO FILE THEIR EVIDENCE OF INSURANCE AND ANY OTHER RELATED NOTICES WITH THE CITY OF PALO ALTO.
INFORMATION PRIVACY POLICY

POLICY STATEMENT

The City of Palo Alto (the “City”) strives to promote and sustain a superior quality of life for persons in Palo Alto. In promoting the quality of life of these persons, it is the policy of the City, consistent with the provisions of the California Public Records Act, California Government Code §§ 6250 – 6270, to take appropriate measures to safeguard the security and privacy of the personal (including, without limitation, financial) information of persons, collected in the ordinary course and scope of conducting the City’s business as a local government agency. These measures are generally observed by federal, state and local authorities and reflected in federal and California laws, the City’s rules and regulations, and industry best practices, including, without limitation, the provisions of California Civil Code §§ 1798.3(a), 1798.24, 1798.79.8(b), 1798.80(e), 1798.81.5, 1798.82(e), 1798.83(e)(7), and 1798.92(c). Though some of these provisions do not apply to local government agencies like the City, the City will conduct business in a manner which promotes the privacy of personal information, as reflected in federal and California laws. The objective of this Policy is to describe the City’s data security goals and objectives, to ensure the ongoing protection of the Personal Information, Personally Identifiable Information, Protected Critical Infrastructure Information and Personally Identifying Information of persons doing business with the City and receiving services from the City or a third party under contract to the City to provide services. The terms “Personal Information,” “Protected Critical Infrastructure Information”, “Personally Identifiable Information” and “Personally Identifying Information” (collectively, the “Information”) are defined in the California Civil Code sections, referred to above, and are incorporated in this Policy by reference.

PURPOSE

The City, acting in its governmental and proprietary capacities, collects the Information pertaining to persons who do business with or receive services from the City. The Information is collected by a variety of means, including, without limitation, from persons applying to receive services provided by the City, persons accessing the City’s website, and persons who access other information portals maintained by the City’s staff and/or authorized third-party contractors. The City is committed to protecting the privacy and security of the Information collected by the City. The City acknowledges federal and California laws, policies, rules, regulations and procedures, and industry best practices are dedicated to ensuring the Information is collected, stored and utilized in compliance with applicable laws.
POLICY AND PROCEDURES 1-64/IT
Revised: December 2017

The goals and objectives of the Policy are: (a) a safe, productive, and inoffensive work environment for all users having access to the City’s applications and databases; (b) the appropriate maintenance and security of database information assets owned by, or entrusted to, the City; (c) the controlled access and security of the Information provided to the City’s staff and third party contractors; and (d) faithful compliance with legal and regulatory requirements.

SCOPE

The Policy will guide the City’s staff and, indirectly, third party contractors, which are by contract required to protect the confidentiality and privacy of the Information of the persons whose personal information data are intended to be covered by the Policy and which will be advised by City staff to conform their performances to the Policy should they enjoy conditional access to that information.

CONSEQUENCES

The City’s employees shall comply with the Policy in the execution of their official duties to the extent their work implicates access to the Information referred to in this Policy. A failure to comply may result in employment and/or legal consequences.

EXCEPTIONS

In the event that a City employee cannot fully comply with one or more element(s) described in this Policy, the employee may request an exception by submitting Security Exception Request. The exception request will be reviewed and administered by the City’s Information Security Manager (the “ISM”). The employee, with the approval of his or her supervisor, will provide any additional information as may be requested by the ISM. The ISM will conduct a risk assessment of the requested exception in accordance with guidelines approved by the City’s Chief Information Officer ("CIO") and approved as to form by the City Attorney. The Policy’s guidelines will include at a minimum: purpose, source, collection, storage, access, retention, usage, and protection of the information identified in the request. The ISM will consult with the CIO to approve or deny the exception request. After due consideration is given to the request, the exception request disposition will be communicated, in writing, to the City employee and his or her supervisor. The approval of any request may be subject to countermeasures established by the CIO, acting by the ISM.

MUNICIPAL ORDINANCE

This Policy will supersede any City policy, rule, regulation or procedure regarding information privacy.

RESPONSIBILITIES OF CITY STAFF
POLICY AND PROCEDURES 1-64/IT
Revised: December 2017

A. RESPONSIBILITY OF CIO AND ISM

The CIO, acting by the ISM, will establish an information security management framework to initiate and coordinate the implementation of information security measures by the City’s government.

The City’s employees, in particular, software application users and database users, and, indirectly, third party contractors under contract to the City to provide services, shall by guided by this Policy in the performance of their job responsibilities.

The ISM will be responsible for: (a) developing and updating the Policy, (b) enforcing compliance with and the effectiveness of the Policy; (c) the development of privacy standards that will manifest the Policy in detailed, auditable technical requirements, which will be designed and maintained by the persons responsible for the City’s IT environments; (d) assisting the City’s staff in evaluating security and privacy incidents that arise in regard to potential violations of the Policy; (e) reviewing and approving department-specific policies and procedures which fall under the purview of this Policy; and (f) reviewing Non-Disclosure Agreements (NDAs) signed by third party contractors, which will provide services, including, without limitation, local or ‘cloud-based’ software services to the City.

B. RESPONSIBILITY OF INFORMATION SECURITY STEERING COMMITTEE

The Information Security Steering Committee (the “ISSC”), which is comprised of the City’s employees, drawn from the various City departments, will provide the primary direction, prioritization and approval for all information security efforts, including key information security and privacy risks, programs, initiatives and activities. The ISSC will provide input to the information security and privacy strategic planning processes to ensure that information security risks are adequately considered, assessed and addressed at the appropriate City department level.

C. RESPONSIBILITY OF USERS

All authorized users of the Information will be responsible for complying with information privacy processes and technologies within the scope of responsibility of each user.

D. RESPONSIBILITY OF INFORMATION TECHNOLOGY (IT) MANAGERS

The City’s IT Managers, who are responsible for internal, external, direct and indirect connections to the City’s networks, will be responsible for configuring, maintaining and securing the City’s IT networks in compliance with the City’s information security and privacy policies. They are also responsible for timely internal reporting of events that may have compromised network, system or data security.
E. RESPONSIBILITY OF AUTHORIZATION COORDINATION

The ISM will ensure that the City’s employees secure the execution of Non-Disclosure Agreements (NDA), whenever access to the Information will be granted to third party contractors, in conjunction with the Software as a Service (SaaS) Security and Privacy Terms and Conditions. An NDA must be executed prior to the sharing of the Information of persons covered by this Policy with third party contractors. The City’s approach to managing information security and its implementation (i.e. objectives, policies, processes, and procedures for information security) will be reviewed independently by the ISM at planned intervals, or whenever significant changes to security implementation have occurred.

The CIO, acting by the ISM, will review and recommend changes to the Policy annually, or as appropriate, commencing from the date of its adoption.

GENERAL PROCEDURE FOR INFORMATION PRIVACY

A. OVERVIEW

The Policy applies to activities that involve the use of the City’s information assets, namely, the Information of persons doing business with the City or receiving services from the City, which are owned by, or entrusted to, the City and will be made available to the City’s employees and third party contractors under contract to the City to provide Software as a Service consulting services. These activities include, without limitation, accessing the Internet, using e-mail, accessing the City’s intranet or other networks, systems, or devices.

The term “information assets” also includes the personal information of the City’s employees and any other related organizations while those assets are under the City’s control. Security measures will be designed, implemented, and maintained to ensure that only authorized persons will enjoy access to the information assets. The City’s staff will act to protect its information assets from theft, damage, loss, compromise, and inappropriate disclosure or alteration. The City will plan, design, implement and maintain information management systems, networks and processes in order to assure the appropriate confidentiality, integrity, and availability of its information assets to the City’s employees and authorized third parties.

B. PERSONAL INFORMATION AND CHOICE

Except as permitted or provided by applicable laws, the City will not share the Information of any person doing business with the City, or receiving services from the City, in violation of this Policy, unless that person has consented to the City’s sharing of such information during the conduct of the City’s business as a local government agency with third parties under contract to the City to provide services.
C. METHODS OF COLLECTION OF PERSONAL INFORMATION

The City may gather the Information from a variety of sources and resources, provided that the collection of such information is both necessary and appropriate in order for the City to conduct business as a local government agency in its governmental and proprietary capacities. That information may be gathered at service windows and contact centers as well as at web sites, by mobile applications, and with other technologies, wherever the City may interact with persons who need to share such formation in order to secure the City's services.

The City's staff will inform the persons whose Information are covered by this Policy that the City's web site may use "cookies" to customize the browsing experience with the City of Palo Alto web site. The City will note that a cookie contains unique information that a web site can use to track, among others, the Internet Protocol address of the computer used to access the City's web sites, the identification of the browser software and operating systems used, the date and time a user accessed the site, and the Internet address of the website from which the user linked to the City's web sites. Cookies created on the user's computer by using the City's web site do not contain the Information, and thus do not compromise the user's privacy or security. Users can refuse the cookies or delete the cookie files from their computers by using any of the widely available methods. If the user chooses not to accept a cookie on his or her computer, it will not prevent or prohibit the user from gaining access to or using the City's sites.

D. UTILITIES SERVICE

In the provision of utility services to persons located within Palo Alto, the City of Palo Alto Utilities Department ("CPAU") will collect the Information in order to initiate and manage utility services to customers. To the extent the management of that information is not specifically addressed in the Utilities Rules and Regulations or other ordinances, rules, regulations or procedures, this Policy will apply; provided, however, any such Rules and Regulations must conform to this Policy, unless otherwise directed or approved by the Council. This includes the sharing of CPAU-collected Information with other City departments except as may be required by law.

Businesses and residents with standard utility meters and/or having non-metered monthly services will have secure access through a CPAU website to their Information, including, without limitation, their monthly utility usage and billing data. In addition to their regular monthly utilities billing, businesses and residents with non-standard or experimental electric, water or natural gas meters may have their usage and/or billing data provided to them through non-City electronic portals at different intervals than with the standard monthly billing.
POLICY AND PROCEDURES 1-64/IT  
Revised: December 2017

Businesses and residents with such non-standard or experimental metering will have their information covered by the same privacy protections and personal information exchange rules applicable to information under applicable federal and California laws.

E. PUBLIC DISCLOSURE

The Information that is collected by the City in the ordinary course and scope of conducting its business could be incorporated in a public record that may be subject to inspection and copying by the public, unless such information is exempt from disclosure to the public by California law.

F. ACCESS TO PERSONAL INFORMATION

The City will take reasonable steps to verify a person’s identity before the City will grant anyone online access to that person’s Information. Each City department that collects Information will afford access to affected persons who can review and update that information at reasonable times.

G. SECURITY, CONFIDENTIALITY AND NON-DISCLOSURE

Except as otherwise provided by applicable law or this Policy, the City will treat the Information of persons covered by this Policy as confidential and will not disclose it, or permit it to be disclosed, to third parties without the express written consent of the person affected. The City will develop and maintain reasonable controls that are designed to protect the confidentiality and security of the Information of persons covered by this Policy.

The City may authorize the City’s employee and or third party contractors to access and/or use the Information of persons who do business with the City or receive services from the City. In those instances, the City will require the City’s employee and/or the third party contractors to agree to use such Information only in furtherance of City-related business and in accordance with the Policy.

If the City becomes aware of a breach, or has reasonable grounds to believe that a security breach has occurred, with respect to the Information of a person, the City will notify the affected person of such breach in accordance with applicable laws. The notice of breach will include the date(s) or estimated date(s) of the known or suspected breach, the nature of the Information that is the subject of the breach, and the proposed action to be taken or the responsive action taken by the City.

H. DATA RETENTION / INFORMATION RETENTION
POLICY AND PROCEDURES 1-64/IT
Revised: December 2017

The City will store and secure all information for a period of time as may be required by law, or if no period is established by law, for seven (7) years, and thereafter such information will be scheduled for destruction.

I. SOFTWARE AS A SERVICE (SAAS) OVERSIGHT

The City may engage third party contractors and vendors to provide software application and database services, commonly known as Software-as-a-Service (SaaS).

In order to assure the privacy and security of the Information of those who do business with the City and those who received services from the City, as a condition of selling goods and/or services to the City, the SaaS services provider and its subcontractors, if any, including any IT infrastructure services provider, shall design, install, provide, and maintain a secure IT environment, while it performs such services and/or furnishes goods to the City, to the extent any scope of work or services implicates the confidentiality and privacy of the Information.

These requirements include information security directives pertaining to: (a) the IT infrastructure, by which the services are provided to the City, including connection to the City's IT systems; (b) the SaaS services provider's operations and maintenance processes needed to support the IT environment, including disaster recovery and business continuity planning; and (c) the IT infrastructure performance monitoring services to ensure a secure and reliable environment and service availability to the City. The term “IT infrastructure” refers to the integrated framework, including, without limitation, data centers, computers, and database management devices, upon which digital networks operate.

Prior to entering into an agreement to provide services to the City, the City's staff will require the SaaS services provider to complete and submit an Information Security and Privacy Questionnaire. In the event that the SaaS services provider reasonably determines that it cannot fulfill the information security requirements during the course of providing services, the City will require the SaaS services provider to promptly inform the ISM.

J. FAIR AND ACCURATE CREDIT TRANSACTION ACT OF 2003

CPAU will require utility customers to provide their Information in order for the City to initiate and manage utility services to them.

Federal regulations, implementing the Fair and Accurate Credit Transactions Act of 2003 (Public Law 108-159), including the Red Flag Rules, require that CPAU, as a “covered financial institution or creditor” which provides services in advance of payment and which can affect consumer credit, develop and implement procedures for an identity theft program for new and existing accounts to detect, prevent, respond and mitigate potential identity theft of its customers’ Information.
POLICY AND PROCEDURES 1-64/IT
Revised: December 2017

CPAU procedures for potential identity theft will be reviewed independently by the ISM annually or whenever significant changes to security implementation have occurred. The ISM will recommend changes to CPAU identity theft procedures, or as appropriate, so as to conform to this Policy.

There are California laws which are applicable to identity theft; they are set forth in California Civil Code § 1798.92.

NOTE: Questions regarding this policy should be referred to the Information Technology Department, as appropriate.

Recommended:  

[Signature]

Director Information Technology/CIO  

Date  

Approved:  

[Signature]

City Manager  

Date
EXHIBIT “F”
INFORMATION PRIVACY POLICY
(ADDED)

EXHIBIT “F”
CYBERSECURITY TERMS AND CONDITIONS

In order to assure the privacy and security of the personal information of the City’s customers and people who do business with the City, including, without limitation, vendors, utility customers, library patrons, and other individuals and companies, who are required to share such information with the City, as a condition of receiving services from the City or selling goods and services to the City, including, without limitation, the Software as a Service services provider (the “Consultant”) and its subcontractors, if any, including, without limitation, any Information Technology (“IT”) infrastructure services provider, shall design, install, provide, and maintain a secure IT environment, described below, while it renders and performs the Services and furnishes goods, if any, described in the Statement of Work, Exhibit B, to the extent any scope of work implicates the confidentiality and privacy of the personal information of the City’s customers. The Consultant shall fulfill the data and information security requirements (the “Requirements”) set forth in Part A below.

A "secure IT environment" includes (a) the IT infrastructure, by which the Services are provided to the City, including connection to the City’s IT systems; (b) the Consultant’s operations and maintenance processes needed to support the environment, including disaster recovery and business continuity planning; and (c) the IT infrastructure performance monitoring services to ensure a secure and reliable environment and service availability to the City. "IT infrastructure" refers to the integrated framework, including, without limitation, data centers, computers, and database management devices, upon which digital networks operate.

In the event that, after the Effective Date, the Consultant reasonably determines that it cannot fulfill the Requirements, the Consultant shall promptly inform the City of its determination and submit, in writing, one or more alternate countermeasure options to the Requirements (the "Alternate Requirements" as set forth in Part B), which may be accepted or rejected in the reasonable satisfaction of the Information Security Manager (the "ISM").

Part A. Requirements:

The Consultant shall at all times during the term of any contract between the City and the Consultant:

(a) Appoint or designate an employee, preferably an executive officer, as the security liaison to the City with respect to the Services to be performed under this Agreement.
(b) Comply with the City’s Information Privacy Policy:
(c) Have adopted and implemented information security and privacy policies that are documented, are accessible to the City, and conform to ISO 27001/2 – Information Security Management Systems (ISMS) Standards. See the following:
(d) Conduct routine data and information security compliance training of its personnel that is appropriate to their role.
(e) Develop and maintain detailed documentation of the IT infrastructure, including software versions and patch levels.
(f) Develop an independently verifiable process, consistent with industry standards, for performing professional and criminal background checks of its employees that (1) would permit verification of employees’ personal identity and employment status, and (2) would enable the immediate denial of access to the City's confidential data and information by any of its employees who no
longer would require access to that information or who are terminated.

(g) Provide a list of IT infrastructure components in order to verify whether the Consultant has met or has failed to meet any objective terms and conditions.

(h) Implement access accountability (identification and authentication) architecture and support role-based access control ("RBAC") and segregation of duties ("SoD") mechanisms for all personnel, systems, and Software used to provide the Services. "RBAC" refers to a computer systems security approach to restricting access only to authorized users. "SoD" is an approach that would require more than one individual to complete a security task in order to promote the detection and prevention of fraud and errors.

(i) Assist the City in undertaking annually an assessment to assure that: (1) all elements of the Services’ environment design and deployment are known to the City, and (2) it has implemented measures in accordance with industry best practices applicable to secure coding and secure IT architecture.

(j) Provide and maintain secure intersystem communication paths that would ensure the confidentiality, integrity, and availability of the City’s information.

(k) Deploy and maintain IT system upgrades, patches and configurations conforming to current patch and/or release levels by not later than one (1) week after its date of release. Emergency security patches must be installed within 24 hours after its date of release.

(l) Provide for the timely detection of, response to, and the reporting of security incidents, including on-going incident monitoring with logging.

(m) Notify the City within one (1) hour of detecting a security incident that results in the unauthorized access to or the misuse of the City’s confidential data and information.

(n) Inform the City that any third party service provider(s) meet(s) all of the Requirements.

(o) Perform security self-audits on a regular basis and not less frequently than on a quarterly basis, and provide the required summary reports of those self-audits to the ISM on the annual anniversary date or any other date agreed to by the Parties.

(p) Accommodate, as practicable, and upon reasonable prior notice by the City, the City’s performance of random site security audits at the Consultant’s site(s), including the site(s) of a third-party service provider(s), as applicable. The scope of these audits will extend to the Consultant’s and its third-party service provider(s)’ awareness of security policies and practices, systems configurations, access authentication and authorization, and incident detection and response.

(q) Cooperate with the City to ensure that to the extent required by applicable laws, rules and regulations, and the Confidential Information will be accessible only by the Consultant and any authorized third-party service provider’s personnel.

(r) Perform regular, reliable secured backups of all data needed to maximize the availability of the Services. Adequately encrypt the City of Palo Alto’s data, during the operational process, hosted at rest, and the backup stage at the Vendors’ environment (including Vendor’s contracting organization’s environment).

(s) Maintain records relating to the Services for a period of three (3) years after the expiration or earlier termination of this Agreement and in a mutually agreeable storage medium. Within thirty (30) days after the effective date of expiration or earlier termination of this Agreement, all of those records relating to the performance of the Services shall be provided to the ISM.

(t) Maintain the Confidential Information in accordance with applicable federal, state, and local data and information privacy laws, rules, and regulations.

(u) Encrypt the Confidential Information before delivering the same by electronic mail to the City and or any authorized recipient.

(v) Provide Network Layer IP filtering services to allow access only from the City of Palo Alto’s IP address to the Vendor environment (primarily hosted for the City of Palo Alto).

(w) Offer a robust disaster recovery and business continuity (DR-BCP) solutions to the City for the systems and services the Vendor provides to the City.
(x) Provide and support Single Sign-on (SSO) and Multifactor Authentication (MFA) solutions for authentication and authorization services from the "City's environment to the Vendor's environment," and Vendor's environment to the Vendor's cloud services/hosted environment."

The Vendor shall allow two employees of the City to have superuser and super-admin access to the Vendor's IT environment, and a cloud-hosted IT environment belongs to the City.

(y) Unless otherwise addressed in the Agreement, shall not hold the City liable for any direct, indirect or punitive damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the City's IT environment, including, without limitation, IT infrastructure communications.

Part B. Alternate Requirements:
EXHIBIT G
SERVICES AGREEMENT
V032122

This Exhibit G entitled “Services Agreement” (this “Services Agreement”) is an incorporated attachment to that certain General Services Agreement between GOVERNMENTJOBS.COM, INC. d/b/a NEOGOV (“NEOGOV”) and the CITY OF PALO ALTO (“CITY”), contract no. S17167826, as amended by Amendment No. 1 and Amendment No. 2 (the “Agreement”). As used in this Services Agreement, “Governmentjobs.com”, “NEOGOV”, “we”, and “our” means Governmentjobs.com, Inc. (D/B/A/ NEOGOV), for and on behalf of itself and its subsidiaries PowerDMS, Inc., Cuehit, Inc., Ragnasoft LLC (D/B/A/ PlanIT Schedule), and Design PD, LLC (D/B/A Agency360) (collectively, “NEOGOV”) and, where applicable, its other affiliates; “Customer”, “you”, “your” means the CITY).

If you are placing an order on behalf of a legal entity, you represent that you have the authority to bind such entity to the terms and conditions of the Agreement and these terms and, in such event, “you” and “your” as used in these Services Agreement terms shall refer to such entity. “Services Agreement” shall be used to collectively refer to this NEOGOV Services Agreement and its Exhibit A (Government Customer Addendum), Exhibit B (PowerEngage Platform Addendum), Exhibit C (HRIS Addendum), and Exhibit D (Integration Terms Addendum), incorporated herein.

1. **Provision of Services.** Subject to the terms of the Agreement, NEOGOV hereby agrees to provide Customer with access to its SaaS Applications and Professional Services (each defined below) included or ordered by Customer in the Agreement (collectively referred to as the “Services”). Customer hereby acknowledges and agrees that NEOGOV’s provision and performance of, and Customer’s access to, the Services is subject to Customer’s performance of its material duties, obligations and responsibilities under the Agreement.

2. **SaaS Subscription.**

   a) **Subscription Grant.** “SaaS Applications” means each proprietary NEOGOV web-based software-as-a-service application that is set forth on the Scope of Services of the Agreement, and associated components as described in any written service specifications made available to Customer by NEOGOV (the “Service Specifications”). Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of the Agreement, NEOGOV hereby grants to Customer a limited, non-exclusive, non-transferable, and non-sublicensable right to (a) onboard, access and use, and to permit Authorized Users to onboard, access and use, the SaaS Applications specified in the Agreement solely for Customer’s internal, non-commercial purposes; (b) generate, print, and download Customer Data as may result from any access to or use of the SaaS Applications; and (c) train Authorized Users in uses of the SaaS Applications permitted hereunder (these rights shall collectively be referred to as the “SaaS Subscription”). “Authorized Users” means (i) Customer employees, agents, contractors, consultants (“Personnel”) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to the Agreement and (ii) for whom access to the Services has been purchased thereunder. You may not access the SaaS Applications if you are a direct competitor of NEOGOV or its affiliates. In addition, you may not access the SaaS Applications for commercial, competitive purposes such as monitoring their availability, performance, or functionality, or for any other benchmarking or other commercial, competitive purposes. You shall be responsible for each Authorized User’s access to and use of the SaaS Applications and compliance with applicable terms and conditions of the Agreement.

   b) **Subscription Term.** SaaS Subscriptions shall commence on the date specified in Exhibit B (Schedule of Performance) of the Agreement and remain in effect for the term specified therein, unless terminated...
earlier in accordance with the provisions of the Agreement. Thereafter, SaaS Subscriptions may be renewed for successive twelve (12) month terms (each a “Renewal Term”) upon mutual written agreement of the parties implemented via written amendment to this Agreement executed by the authorized representatives of the parties and approved as required under Palo Alto Municipal Code. Except as otherwise provided in the Agreement, the term for the Services is a continuous and non-divisible commitment for the full duration regardless of any invoice schedule. Any change to the Services provided under the Agreement may only be implemented by written amendment to the Agreement executed by the authorized representatives of the parties and approved as required under Palo Alto Municipal Code.

3. **Customer Responsibilities.** Customer will not, and will ensure its Authorized Users do not (a) make any of the Services available to anyone other than Authorized Users or use any Services for the benefit of anyone other than Customer and its Authorized Users, unless otherwise agreed in writing by the parties, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any of the Services, or include any of the Services in a service bureau or outsourcing offering, unless otherwise agreed in writing by the parties, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of the privacy rights, publicity rights, copyright rights, or other rights of any person or entity, (d) use the Services to store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses, (e) interfere with or disrupt the integrity or performance of the Services (including, without limitation, activities such as security penetration tests, stress tests, and spamming activity), (f) attempt to gain unauthorized access to the Services or its related systems or networks, (g) disassemble, reverse engineer, or decompile the Services, or modify, copy, or create derivative works based on the Services or any part, feature, function or user interface thereof, (h) remove the copyright, trademark, or any other proprietary rights or notices included within NEOGOV Intellectual Property and on and in any documentation or training materials, or (i) intentionally use the Services in a manner which materially violates the terms of the Agreement.

4. **Professional Services.** “Professional Services” shall mean any consulting, training services purchased by Customer detailed in the Scope of Services of the Agreement relating to, for example and without limitation, assistance, training, deployment, usage, customizations, accessory data processing, and best practices of and concerning the SaaS Applications. Professional Services not so detailed in the Agreement may be ordered by Customer pursuant to a written amendment to the Agreement executed by the authorized representatives of the parties and approved as required under Palo Alto Municipal Code, with such amendment including, for example and without limitation, a SOW and Service Specifications describing the work to be performed, fees, and any applicable milestones, dependencies, and other technical specifications or related information. Any such amendment must be signed by authorized representatives of Customer and NEOGOV, and approved as required by Palo Alto Municipal Code, before NEOGOV shall commence work. If Customer and NEOGOV do not execute an amendment to the Agreement, the Services shall be provided as stated on the Scope of Services of the Agreement.

5. **Payment Terms.**

   a) **Fees.** Unless otherwise stated in the Agreement, Customer shall pay all Subscription, Onboarding and Set-Up fees (“Subscription Fees”) and Professional Service fees (“Professional Service Fees”, collectively the “Fees”) within thirty (30) days of Customer’s receipt of NEOGOV’s invoice. Fees shall be invoiced annually in advance and in a single invoice for each Term. Invoices shall be delivered to the stated “bill to” party on the Agreement. If any amount owing by Customer is more than 30 days overdue, NEOGOV may, without limiting its other rights and remedies, suspend the Services until such amounts are paid in full. Subscription Fees are based upon the Authorized User count unless otherwise stated in the Agreement and Customer shall owe NEOGOV supplemental Subscription Fees to the extent Customer exceeds the number of Authorized Users set forth in the Agreement, to be implemented if applicable pursuant to a
written amendment to the Agreement executed by the authorized representatives of the parties and approved as required under Palo Alto Municipal Code.

b) **Taxes.** Any applicable taxes will be determined based on the laws and regulations of the taxing authority(ies) governing the Customer’s address as provided in the Agreement, which is in the State of California. All fees under the Agreement are exclusive of any applicable taxes. It is the understanding of the parties that online-hosted software, such as the SaaS Services provided under the Agreement, is not “tangible personal property” and is therefore not taxable under Title 18 of the California Code of Regulations, Section 1502(f)(1)(C)-(D). If this understanding should prove to be incorrect, Customer will pay all taxes, duties and levies imposed by all federal, state, and local authorities (including, without limitation, export, sales, use, excise, and value-added taxes) based on the transactions or payments under the Agreement (collectively, “Sales Taxes”), except those taxes imposed or based on NEOGOV’s net income or those exempt by applicable state law. Customer shall provide NEOGOV with a certificate or other evidence of such exemption within ten (10) days of NEOGOV’s request therefor, or as soon as practicable if such certificate is dependent upon issuance by a federal or state government entity. If any Sales Taxes are found at any time to be payable, and are assessed by the taxing authority against NEOGOV, the amount may be billed by NEOGOV to Customer with supporting documentation, and shall be paid by Customer pursuant to an amendment to the Agreement as provided for in the Agreement.

c) **Customer Purchase Orders.** Except as otherwise specified in the Agreement, Customer will not require any purchase order to pay fees due or otherwise to perform its obligations with respect to any amount due under the Agreement. Any reference to a purchase order in any associated invoice is solely for Customer’s convenience in record keeping, and no such reference or any delivery of services to Customer following receipt of any purchase order shall be deemed an acknowledgement of or an agreement to any terms or conditions referenced or included in any such purchase order. If a purchase order is delivered by Customer in connection with the purchase of Services under the Agreement, none of the terms and conditions contained in such purchase order shall modify or supersede the terms and conditions of the Agreement. NEOGOV’s failure to object to terms contained in any such purchase order shall not be a waiver of the terms set forth in this provision or in the Agreement.

6. **Term and Termination.**

a) **Term.** The term (“Term”) of this Services Agreement is the same as the term of the Agreement as specified in Section 3 (Term) therein. “Subscription Term” means the term of any SaaS Application provided to Customer as detailed in the Scope of Services of the Agreement if the term of Customer’s use of and access to such SaaS Application is less than the full term of this Agreement.

b) **Termination for Cause; Effect of Termination.** In addition to the provisions of Section R (Termination) of the Agreement, either Party may terminate the Agreement immediately if the other is in material breach of the Agreement and such breach is not cured within thirty (30) days following non-breaching party’s written specification of the breach. NEOGOV may suspend the Customer’s use of the Services immediately in the event the Customer’s use of the Services poses a security risk to the SaaS Services or in the event NEOGOV reasonably believes that Customer’s use of the SaaS Services has become illegal or contrary to any applicable law, rule, regulation, or public policy, and NEOGOV will restore Customer’s use of the Services promptly upon cure of the Customer use that posed the security risk to the SaaS Services. Any failure by Customer to cure the Customer use that posed the security risk to the SaaS Services shall be addressed as a material breach under the first sentence of this Section 6(b), and NEOGOV may terminate this Agreement under that first sentence of this Section 6(b). Customer shall pay NEOGOV for Services (including SaaS Services) provided up to the effective date of termination. In the event of a termination for cause by Customer due to NEOGOV’s material, uncured breach, Customer shall have no payment.
obligation for Services (including SaaS Services) for any contract year not yet in effect as of the effective date of termination. Upon expiration or any termination of the Agreement, Customer shall cease all use and refrain from all further use of the Services and other NEOGOV Intellectual Property, except as provided in Section CC (City Data Post-Termination) of the Agreement. Customer’s obligation to pay amounts due and unpaid to NEOGOV under the Agreement shall survive the termination or expiration of the Agreement. Unless otherwise specified, after expiration or termination of the Agreement NEOGOV may remove Customer Data from NEOGOV Services and without Customer consent or notice, except as provided in Section CC (City Data Post-Termination) of the Agreement.

7. **Audit Rights.** This section 7 (Audit Rights) applies only if Customer compensation to NEOGOV provides for per-user fees in Exhibit C (Compensation) of the Agreement. Upon reasonable notice, NEOGOV or its agent shall have the right during the term of the Agreement to audit Customer’s records relating to its number of users specified under the Agreement. Customer shall provide commercially reasonable cooperation with this audit.

8. **Maintenance; Modifications; Support Services.**

   a) **Maintenance, Updates, Upgrades.** NEOGOV maintains NEOGOV’s hardware and software infrastructure for the Services and is responsible for maintaining the NEOGOV server operation and NEOGOV database security. NEOGOV may in its sole discretion, periodically modify, Update, and Upgrade the features, components, and functionality of the Services during the Term. “Update” means any update, bug fix, patch or correction of the Services or underlying NEOGOV software that NEOGOV makes generally available to its customers of the same module, excluding Upgrades. Updates are automatic and available upon Customer’s next login to the Services following an Update at no additional cost to Customer. “Upgrade” means any update of the Services or underlying NEOGOV software such as platform updates, and major product enhancements and/or new features that NEOGOV makes commercially available. NEOGOV shall have no obligation to provide Upgrades to customers and retains the right to offer Upgrades free of cost or on a per customer basis at additional cost. NEOGOV shall have no liability for, or any obligations to, investments in, or modifications to Customer’s hardware, systems or other software which may be necessary to use or access the Services due to a modification, Update, or Upgrade of the Services.

   b) **Program Documentation; Training Materials.** “Program Documentation” shall mean all user guides, training, and implementation material, and Service descriptions provided by NEOGOV to Customer in connection with the Services. NEOGOV hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use, print, and distribute internally via non-public platforms, the Program Documentation during the Term solely for Customer’s internal business purposes in connection with its use of the Services. Primary training of NEOGOV Services is conducted by self-review of online materials. NEOGOV’s pre-built, online training consists of a series of tutorials to introduce the standard features and functions (the “Training Materials”). The Training Materials may be used as reference material by Customer Personnel conducting day-to-day activities.

   c) **Implementation.** For Services requiring implementation, NEOGOV implementation supplements the Training Materials and is conducted off-site unless otherwise agreed in the Agreement. NEOGOV personnel will provide consultation on best practices for setting up the Services, answer Customer questions during the implementation period, and use commercially reasonable efforts to ensure Authorized User Admins grasp the system. The length of the implementation time is dependent on the type of Service and the Customer’s responsiveness. NEOGOV is not responsible or liable for any delay or failure to perform implementation caused in whole or in part by Customer’s delay in performing it
obligations hereunder and, in the event of any such delay, NEOGOV may, in its sole discretion, extend all performance dates as NEOGOV deems reasonably necessary.

d) **Support.** Phone support for the Services is available to Customer Monday through Friday, excluding NEOGOV holidays. Customer may submit a request for online support for the Services 24 hours a day, seven days a week, and the NEOGOV support desk will acknowledge receipt of the request within a reasonable time. The length of time for a resolution of any problem is dependent on the type of case.

e) **Limitations.** Unless otherwise specified in the Agreement, this Services Agreement does not obligate NEOGOV to render any maintenance or support services that are not expressly provided herein, including, but not limited to data uploads, manual data entry, migration services, data conversion, refinement, purification, reformatting, SQL dump, or process consultation.

9. **NEOGOV Intellectual Property.** NEOGOV shall exclusively own all right, title and interest in and to all pre-existing and future intellectual property developed or delivered by NEOGOV including all Services, products, systems, software (including any source code or object code) or Service Specifications related thereto, Updates or Upgrades, trademarks, service marks, logos and other distinctive brand features of NEOGOV and all proprietary rights embodied therein (collectively, the “NEOGOV Intellectual Property”). This Services Agreement does not convey or transfer title or ownership of the NEOGOV Intellectual Property to Customer or any of its users. All rights not expressly granted herein are reserved by NEOGOV. Other than recommendation use or as required by law, all use of NEOGOV trademarks must be pre-approved by NEOGOV prior to use. Trademarks shall include any word, name, symbol, color, designation or device, or any combination thereof that functions as a source identifier, including any trademark, trade dress, service mark, trade name, logo, design mark, or domain name, whether or not registered.

10. **Data Processing and Privacy.**

   a) **Customer Data.** “Customer Data” shall mean all data that is owned or developed by Customer, whether provided to NEOGOV by Customer or its Authorized Users in connection with NEOGOV’s provision of Services to Customer, including but not limited to Personnel data collected, loaded into, used, maintained, processed, stored or generated by or on behalf of the Customer in connection with the Agreement including data resulting from use of the SaaS Applications and/or located in Customer data files maintained by NEOGOV. Customer Data may include but is not limited to “Personal Information” about a California resident as defined in California Civil Code Section 1798 et seq., as amended from time to time, I-9 verifications, direct deposit forms, driver’s license information, social security numbers, and new employee onboarding and benefit forms. NEOGOV Intellectual Property, including but not limited to the Services and all derivative works thereof, NEOGOV Confidential Information, and Platform Data do not fall within the meaning of the term “Customer Data”. Customer exclusively owns all right, title, and interest in and to all Customer Data. Customer hereby grants to NEOGOV a limited, non-exclusive, non-transferable, revocable license to host, use, process, display, create non-personal derivative works of, and transmit Customer Data during the term of this Agreement for purposes of providing the Services to Customer under this Agreement. This Agreement does not grant NEOGOV or its subcontractors, if any, any intellectual property license or rights in or to the Customer Data except those expressly granted herein. The provisions of this Section 10(a) (Customer Data) shall survive the termination or expiration of this Services Agreement. If NEOGOV receives a bona fide notification that any Customer Data published by Customer in any public-facing portion of the Services infringes upon the Intellectual Property Rights of others, NEOGOV shall provide prompt written notice of such to Customer, and Customer will work with NEOGOV to resolve the issue promptly and to the reasonable satisfaction of the parties hereto, in accordance with the requirements of this Agreement and applicable law.
b) **Platform Data.** “Platform Data” shall mean any anonymized, de-identified data reflecting the access or use of the Services by or on behalf of Customer or any user, including statistical or other analysis and performance information related to the provision and operation of the Services including any end user visit, session, impression, clickthrough or click stream data, as well as log, device, transaction data, or other analysis, information, or data based on or derived from any of the foregoing. NEOGOV shall exclusively own all right, title and interest in and to all Platform Data. Customer acknowledges NEOGOV may compile Platform Data based on Customer Data input into the Services. NEOGOV shall not use, nor allow any other person or entity to use, any Platform Data to re-identify the Customer or any Authorized User of Customer. Each of NEOGOV and Customer agrees that NEOGOV may use Platform Data to the extent and in the manner permitted under this Agreement and applicable law. The provisions of this Section 10(b) (Platform Data) shall survive the termination or expiration of this Services Agreement.

c) **Data Processing Agreement.** To the extent Customer uses the Services to target and collect personal information from users located in the European Union, European Economic Area, or Switzerland (the “EU”) or the United Kingdom (“UK”), or has Authorized Users accessing the Services from the EU or UK, the following NEOGOV Data Processing Addendum ("DPA") is incorporated herein by reference: https://www.neogov.com/hubfs/Legal%20Documents/Customer%20Data%20Processing%20Addendum -signed.pdf.

d) **Data Responsibilities.**

i) NEOGOV will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Customer Data in accordance with the provisions of this Agreement. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by unauthorized third parties, as well as measures for preventing access, use, modification or disclosure of Customer Data by NEOGOV personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by applicable law (in accordance with Section 12 entitled "Nondisclosure" of this Services Agreement), or (c) as Customer expressly permits in writing.

ii) Customer is solely responsible for its development, content, operation, maintenance, and use of Customer Data. NEOGOV will have no responsibility or liability for the accuracy of the Customer Data prior to receipt of such data into the Services. In its use of the Services, Customer shall be solely responsible for and shall comply with all applicable laws and regulations relating to (i) the accuracy and completeness of all information input, submitted, or uploaded by Customer or its Authorized Users to the Services; (ii) the privacy of users of the Services; and (iii) the Customer’s collection, use, modification, alteration, extraction, retention, copying, external storage, disclosure, transfer, disposal, and other processing by Customer of any Customer Data. NEOGOV is not responsible for lost data to the extent caused by the action or inaction of Customer or Authorized Users. Unless otherwise contemplated by the Agreement, or otherwise mutually agreed in writing, Customer shall not maintain any financial, health, payment card, or similarly sensitive data that imposes specific data security or data protection obligations within the Services. Nothing in this Section 10(d)(ii) diminishes NEOGOV’s privacy, confidentiality or security obligations under the Agreement as the provider of the Services.

e) **Breach Notice.** NEOGOV will comply with all applicable laws requiring notification in the event of unauthorized access to or release of Customer Data or other event requiring notification. NEOGOV will notify Customer of any of any actual unauthorized access to, or unauthorized use, loss or disclosure of, Customer Data within its custody or control (a “Security Breach”), or reasonable belief that a Security Breach has occurred, promptly following discovery of such but not later than seventy-two (72) hours after
discovery, or when required by applicable law, whichever is earlier. If the Security Breach involved or is reasonably believed to have involved “Personal Information” about a California resident as defined in California Civil Code Section 1798 et seq, NEOGOV will notify Customer promptly following discovery of such Security Breach but not later than seventy-two (72) hours after discovery, or when required by applicable law, whichever is earlier, and NEOGOV will provide information to Customer sufficient to meet the notice requirements of Civil Code Section 1798 et seq., as applicable, as amended from time to time. Each party will reasonably cooperate with the other and with law enforcement with respect to the investigation and resolution of any Security Breach. If applicable law or Customer’s policies require notification of its Authorized Users or others of the Security Breach, Customer shall be responsible for such notification.

f) **Data Export, Retention and Destruction.** Customer may export or delete Customer Data from the Services at any time during the Term, using the existing features and functionality of the Services. Customer is solely responsible for its data retention obligations with respect to Customer Data. If and to the extent Customer cannot export or delete Customer Data stored on NEOGOV’s systems using the then existing features and functionality of the Services, NEOGOV will, upon Customer's written request, make the Customer Data available for export by Customer or securely destroy the Customer Data. If Customer requires the Customer Data to be exported in a different format than provided by NEOGOV, such additional services will be subject to a separate agreement on a time and materials basis. Except as otherwise required by applicable law, NEOGOV will have no obligation to maintain or provide any Customer Data more than ninety (90) days after the expiration or termination of the Agreement.

11. **Third Party Services.** The Services may permit Customer and its Authorized Users to access services or content provided by third parties through the Services (“Third Party Services”). Customer agrees that NEOGOV is not the original source and shall not be liable for any inaccuracies contained in any content provided in any of the Third Party Services. NEOGOV makes no representations, warranties or guarantees with respect to the Third Party Services or any content contained therein. NEOGOV may discontinue access to any Third Party Services through the Services if the relevant agreement with the applicable third party no longer permits NEOGOV to provide such access. If loss of access to any Third Party Services (to which Customer has a subscription under the Agreement) occurs during a Subscription Term, NEOGOV will refund to Customer any prepaid fees for such Third Party Services covering the remainder of the Subscription Term.

12. **Nondisclosure.**

a) **Definition of Confidential Information.** “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer’s Confidential Information includes its Customer Data. NEOGOV Confidential Information includes the NEOGOV Intellectual Property and the Services. Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

b) **Obligations.** The Receiving Party will: (i) use the same degree of care it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care); (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of the Agreement and (iii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need access for
purposes consistent with the Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not less protective of the Confidential Information than those herein.

c) **Exceptions.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

d) **Equitable Relief.** The parties recognize and agree there is no adequate remedy at law for breach of the provisions of the confidentiality obligations set forth in this Section 12 (Nondisclosure), that such a breach would irreparably harm the Disclosing Party and the Disclosing Party is entitled to seek equitable relief (including, without limitation, an injunction) with respect to any such breach or potential breach in addition to any other remedies available to it at law or in equity.

13. **Representations, Warranties, and Disclaimers.**

a) **Mutual Representations.** Each party represents and warrants to the other party that (i) it has full power and authority under all relevant laws and regulations and is duly authorized to enter into the Agreement; and (ii) to its knowledge, the execution, delivery and performance of the Agreement by such party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

b) **Service Performance Warranty.** NEOGOV warrants that it provides the Services using a commercially reasonable level of care and skill. THE FOREGOING WARRANTY DOES NOT APPLY, AND NEOGOV STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD PARTY SERVICES.

c) **No Other Warranty.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS WARRANTY SECTION, THE SERVICES ARE PROVIDED ON AN “AS IS” BASIS. NEOGOV DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NEOGOV DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT ANY ERROR WILL BE CORRECTED.

d) **Disclaimer of Actions Caused by and/or Under the Control of Third Parties.** NEOGOV DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE NEOGOV SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER’S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NEOGOV WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT REASONABLY DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, NEOGOV CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NEOGOV DISCLAIMS ANY AND ALL LIABILITY FOR IMPAIRMENT OR DISRUPTION OF SERVICES RESULTING FROM OR RELATED TO SUCH EVENTS BEYOND NEOGOV’S REASONABLE CONTROL AND WHICH DO NOT RESULT FROM OR RELATE TO ANY BREACH BY NEOGOV OF ANY OBLIGATION UNDER THE AGREEMENT.

14. **Indemnification.**
a) NEOGOV Infringement Indemnity. Subject to subsections 14(b)(i) through 14(b)(iii) of this Section, if a third party makes a claim against Customer that any NEOGOV intellectual property furnished by NEOGOV and used by Customer infringes a third party’s intellectual property rights, NEOGOV will defend the Customer against the claim and indemnify the Customer from the damages and liabilities awarded by the court to the third-party claiming infringement or the settlement agreed to by NEOGOV, provided that NEOGOV is promptly notified of any and all such claims, demands, suits or proceedings and given reasonable assistance and the opportunity to assume sole control over defense and settlement, provided, however, that NEOGOV will not consent to the entry of any judgment or enter into any settlement with respect to any claim without the prior written consent of Customer (which consent will not be unreasonably withheld) except where the judgment or proposed settlement involves only the payment of money damages by NEOGOV, does not impose any obligation upon Customer, NEOGOV obtains the full and complete release of Customer, and Customer shall have the right to have any suit or proceeding monitored by counsel of Customer’s choice and at Customer’s expense, provided however, Customer’s approval rights shall only apply with respect to any third party claim which triggers a NEOGOV indemnity obligation solely to Customer and not to any other customers of NEOGOV or other third parties.

i) Alternative Resolution. If NEOGOV believes or it is determined that any of the Services may have violated a third party’s intellectual property rights, NEOGOV may choose to either modify the Services to be non-infringing or obtain a license to allow for continued use. If these alternatives are not commercially reasonable, NEOGOV may end the subscription or license for the Services and refund a pro-rata portion of any fees covering the whole months that would have remained, absent such early termination, following the effective date of such early termination.

ii) No Duty to Indemnify. NEOGOV will not indemnify Customer to the extent that an infringement claim is based upon any Customer alteration of the Service or Service Specifications, or Customer use outside the scope of use or if Customer uses a version of the Service or Service Specifications which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Services or Service Specifications which was provided to Customer, or if the Customer continues to use the infringing material after the subscription expires. NEOGOV will not indemnify the Customer to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by NEOGOV under the Agreement. NEOGOV will not indemnify Customer for any portion of an infringement claim that is based upon the combination of Service or Service Specifications with any products or services not provided by NEOGOV. NEOGOV will not indemnify Customer for infringement caused by Customer’s actions against any third party to the extent that the Services as delivered to Customer and used in accordance with the terms of the Agreement would not otherwise infringe any third-party intellectual property rights.

iii) Exclusive Remedy. This Section provides the exclusive remedy for any intellectual property infringement claims or damages against NEOGOV.

15. Limitations of Liability.

a) LIMITATION OF LIABILITY OF NEOGOV. THE PROVISIONS OF THIS SECTION 15.a SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL NEOGOV BE LIABLE TO CUSTOMER, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES OR FOR ANY LOSS OF PROFIT OR LOSS OF BUSINESS BY CUSTOMER, EVEN IF NEOGOV HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH POTENTIAL CLAIM, LOSS OR DAMAGE. EXCEPT AS PROVIDED IN THE IMMEDIATELY FOLLOWING SENTENCE, IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY
UNDER THIS AGREEMENT OF NEOGOV TO CUSTOMER EXCEED THE DOLLAR AMOUNT OF ALL PAYMENTS ACTUALLY RECEIVED BY NEOGOV FROM CUSTOMER IN CONNECTION WITH THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE EVENT GIVING RISE TO SUCH LIABILITY. NEOGOV’S LIABILITY LIMIT SET FORTH IN THIS SUBSECTION 15.a HEREIN SHALL NOT APPLY TO (1) DAMAGES CAUSED BY NEOGOV’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (2) NEOGOV’S OBLIGATIONS TO HOLD HARMLESS, INDEMNIFY AND DEFEND CUSTOMER UNDER SECTION 14.a. OF THIS SERVICES AGREEMENT, (3) NEOGOV’S OBLIGATIONS TO HOLD HARMLESS, INDEMNIFY AND DEFEND CUSTOMER UNDER SECTION 10 OF THE AGREEMENT FOR DAMAGES CAUSED BY NEOGOV’S NEGLIGENCE, (4) CLAIMS TO THE EXTENT ARISING OUT OF NEOGOV’S BREACH OF ITS DATA SECURITY OBLIGATIONS UNDER SECTION 10 OF THIS SERVICES AGREEMENT OR EXHIBIT E OF THE AGREEMENT, AND (5) WRONGFUL DEATH CAUSED BY NEOGOV.

b) NOTWITHSTANDING SECTION 15.a ABOVE, THE TOTAL AGGREGATE LIABILITY OF NEOGOV SHALL NOT EXCEED: (1) TWO (2) TIMES THE DOLLAR AMOUNT OF ALL PAYMENTS ACTUALLY RECEIVED BY NEOGOV FROM CUSTOMER IN CONNECTION WITH THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE EVENT GIVING RISE TO SUCH LIABILITY FOR CLAIMS RELATED TO NEOGOV’S OBLIGATION TO HOLD HARMLESS, INDEMNIFY AND DEFEND CUSTOMER UNDER SECTION 10 OF THE AGREEMENT FOR DAMAGES CAUSED BY NEOGOV’S NEGLIGENCE, AND (2) THREE (3) TIMES THE DOLLAR AMOUNT OF ALL PAYMENTS ACTUALLY RECEIVED BY NEOGOV FROM CUSTOMER IN CONNECTION WITH THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE EVENT GIVING RISE TO SUCH LIABILITY FOR CLAIMS TO THE EXTENT ARISING OUT OF NEOGOV’S BREACH OF ITS DATA SECURITY OBLIGATIONS UNDER SECTION 10 OF THIS SERVICES AGREEMENT OR EXHIBIT E OF THE AGREEMENT.

c) LIMITATION OF LIABILITY OF CUSTOMER. CUSTOMER’S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN 5 (“COMPENSATION FOR ORIGINAL TERM”) OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CUSTOMER BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

d) THE MINIMUM INSURANCE COVERAGES DETAILED IN EXHIBIT D ARE MINIMUM COVERAGE REQUIREMENTS ONLY AND ARE NOT TO BE CONSTRUED IN ANY WAY AS A LIMITATION ON ANY PARTY’S LIABILITY.

16. **Text Message Communications.** If provided for in the Scope of Services of the Agreement, NEOGOV may offer Personnel the opportunity to receive text messages regarding job application or hiring process reminders, applicant status updates, or other human resource related notices. Since these text message services depend on the functionality of third-party providers, there may be technical delays on the part of those providers. NEOGOV may make commercially reasonable efforts to provide text message alerts in a timely manner with accurate information, but cannot guarantee the delivery, timeliness, or accuracy of the content of any alert. NEOGOV shall not be liable for any delays, failure to deliver, or misdirected delivery of any such alert; for any errors in the content of any such alert; or for any actions taken or not taken by you or any third party in reliance on any such alert. NEOGOV cannot vouch for the technical capabilities of any third parties to receive such text messages. To the extent you utilize text messaging features, NEOGOV shall not be responsible for your use of such features, and NEOGOV’s indemnity obligations under this Agreement shall exclude any claim arising from or relating to your use of such text messages. NEOGOV MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, STATUTORY, OR IMPLIED AS TO: (i) THE AVAILABILITY OF TEXT MESSAGE SERVICES; (ii) ANY LOSS, DAMAGE, OR OTHER SECURITY INTRUSION OF THE TEXT MESSAGE
SERVICES; AND (iii) ANY DISCLOSURE OF INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS, OR SETTINGS CONNECTED WITH THE TEXT MESSAGE SERVICES.

17. **Publicity.** During the term of the Agreement, City hereby grants to NEOGOV a limited, non-exclusive, revocable license to identify Customer by name as one of its customers and to use Customer’s logo solely for such purposes during the term of the Agreement, subject to any trademark usage requirements specified by Customer.

18. **Force Majeure.** Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the reasonable control of the affected party (defined below), including without limitation: strikes, lock-outs, or other industrial disputes (whether involving its own workforce or a third party’s), trespassing, sabotage, theft or other criminal acts, failure of energy sources or transport network, acts of god, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, epidemics or similar events, natural disasters or extreme adverse weather conditions (each a “Force Majeure Event”), provided that any such failure or delay is not due any negligence, recklessness or intentional misconduct of the affected Party or any material breach of this Agreement by the affected party. The affected party (meaning, the party suffering a Force Majeure Event) shall (a) notify the other party of the Force Majeure Event as soon as possible and (b) use reasonable efforts to promptly mitigate the effects of such Force Majeure Event.

19. **Independent Contractor; No Third Party Beneficiary; Fulfillment Partners.** The relationship of the parties shall be deemed to be that of an independent contractor and nothing contained herein shall be deemed to constitute a partnership between or a joint venture by the parties hereto or constitute either party the employee or agent of the other. Customer acknowledges that nothing in this Services Agreement gives Customer the right to bind or commit NEOGOV to any agreements with any third parties. This Services Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not. NEOGOV may designate any third-party affiliate, or other agent or subcontractor (each a “Fulfillment Partner”), without notice to, or the consent of, Customer, to perform such tasks and functions to complete any Services in accordance with the terms and conditions of this Agreement and NEOGOV shall be fully responsible for all acts and omissions of its Fulfillment Partners in their performance of this Agreement.

20. **Amendment of this Services Agreement.** This Services Agreement may not be modified or amended (and no rights hereunder may be waived) except through a written instrument signed by the parties to be bound, in accordance with the amendment provisions of the Agreement.

21. **General.** The Agreement shall be governed by and construed in accordance with the laws of the state of California, without giving effect to conflict of law rules. Any legal action or proceeding relating to the Agreement shall be instituted only in any state or federal court in Santa Clara County, California. If any provision of this Services Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Services Agreement will continue in full force and effect. Provisions that survive termination or expiration are those relating to, without limitation, accrued rights to payment, acknowledgements and reservations of proprietary rights, confidentiality obligations, warranty disclaimers, and limitations of liability, and others which by their nature are intended to survive. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given either when personally delivered, one (1) business day following delivery by recognized overnight courier or electronic mail, or three (3) business days following
deposit in the U.S. mail, registered or certified, postage prepaid, return receipt requested. All such communications shall be sent to (i) Customer at the address(es) set forth in the Agreement and (ii) NEOGOV at the address specified in the Agreement. The waiver, express or implied, by either party of any breach of this Services Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind. This Services Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together shall constitute one and the same instrument. Delivery of a copy of the Agreement bearing an original signature executed by any electronic means in accordance with California law will have the same effect as physical delivery of the paper document bearing the original signature. Customer may not assign the Agreement without the express written approval of NEOGOV and any attempt at assignment in violation of this Section shall be null and void. The parties intend the Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits referred to herein are an integral part of this Services Agreement to the same extent as if they were set forth verbatim herein.

[Signature Page to Follow]
IN WITNESS WHEREOF, the parties have caused this Services Agreement to be executed by their respective duly authorized officers as of the date set forth below, and consent to this Services Agreement.

<table>
<thead>
<tr>
<th>Customer</th>
<th>GovermentJobs.com, Inc. (D/B/A/ NEOGOV), on behalf of itself and its subsidiaries PowerDMS, Inc., Cuehit, Inc., Ragnasoft LLC (D/B/A/ PlanIT Schedule), and Design PD, LLC (D/B/A Agency360)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entity Name:</td>
<td>CITY OF PALO ALTO</td>
</tr>
<tr>
<td>Signature:</td>
<td></td>
</tr>
<tr>
<td>Print Name:</td>
<td>Ed Shikada</td>
</tr>
<tr>
<td>Print Title:</td>
<td>City Manager</td>
</tr>
<tr>
<td>Date:</td>
<td></td>
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<tr>
<td>Signature:</td>
<td>Mike Burns</td>
</tr>
<tr>
<td>Print Name:</td>
<td>Mike Burns</td>
</tr>
<tr>
<td>Print Title:</td>
<td>Accounting Director</td>
</tr>
<tr>
<td>Date:</td>
<td>10/6/2022</td>
</tr>
</tbody>
</table>

APPROVED AS TO FORM:

| Signature: | |
| Print Name: | Cassie Coleman |
| Print Title: | Assistant City Attorney |
| Date: | |
| Signature: | Ana Alfaro |
| Print Name: | Ana Alfaro |
| Print Title: | Revenue Accounting Manager |
| Date: | 10/6/2022 |
Exhibit A
Government Customer Addendum

If Customer is a Government Customer, the following Government Customer Addendum (“Government Addendum”) forms part of the Services Agreement, and in the case of any conflict or inconsistency between the terms and provisions of this Addendum and any other provision of the Services Agreement, the terms of this Government Addendum shall control. For purposes hereof, a “Government Customer” means a Customer which is a (a) U.S. Federal agency, (b) state government, agency, department, or political subdivision (including a city, county or municipal corporation), or (c) instrumentality of any of the foregoing (including a municipal hospital or municipal hospital district, police or fire department, public library, park district, state college or university, Indian tribal economic development organization, or port authority).

1. Applicability. The provisions of this Addendum shall apply only if Customer is a Government Customer under the Services Agreement. The parties understand and acknowledge that the Customer, being the City of Palo Alto, is a California municipal corporation and charter city, and that Customer therefore constitutes a Government Customer for purposes of this Government Addendum.

2. Termination for Non-Appropriation of Funds. If Customer is subject to federal, state or local law which makes Customer’s financial obligations under this Services Agreement contingent upon sufficient appropriation of funds by the applicable legislature (or other appropriate governmental body), and if such funds are not forthcoming or are insufficient due to failure of such appropriation, then Customer will have the right to terminate the Services Agreement at no additional cost and with no penalty by giving prior written notice documenting the lack of funding. Customer will provide at least thirty (30) days advance written notice of such termination. Customer will use reasonable efforts to ensure appropriated funds are available.

3. [RESERVED (Indemnification)].

4. Open Records. If the Customer is subject to federal, state or local public meeting and/or public records laws, including laws styled as open meeting, open records, freedom of information, or sunshine laws (“Open Records Laws”) the confidentiality requirements of Section 12 (Nondisclosure) of the Services Agreement apply to Customer only to the extent permitted by Open Records Laws applicable to the Customer. This Section 4 (Open Records) is not intended to be a waiver of any of the provisions of the applicable Open Records Laws, including, without limitation, any requirement for the Customer to provide notice and opportunity for NEOGOV to assert an exception to disclosure requirements in accordance with the applicable Open Records laws. In the event the Customer receives a public records request covering NEOGOV’s Confidential Information, the Customer will, promptly following receipt, give notice to NEOGOV of such request in case NEOGOV wishes to take legal action to prevent disclosure if NEOGOV so chooses. Nothing in this Section 4 (Open Records) or in Section 12 (Nondisclosure) of this Services Agreement shall require the Customer to take any action, or to refuse to release information, where doing so would violate applicable law or court order.

5. Cooperative Purchasing. If Customer is a Government Customer, but is not a U.S. Federal Agency or subdivision thereof, NEOGOV agrees to allow any other state agency, department, political subdivision or instrumentality of the state but in all cases located in the same state as the Customer (“Related Agency”) to purchase Services under the terms of the Services Agreement, at the Related Agency’s discretion with the following requirements, exceptions and limitations: (a) any purchases made by a Related Agency shall be transactions between the Related Agency and NEOGOV; for clarity, Customer shall not be responsible for any transactions between the Related Agency and NEOGOV, (b) the terms (including pricing) specified
in the Order Forms entered into between NEOGOV and Customer shall not be incorporated into the transactions between the Related Agency and NEOGOV, and (c) the Related Agency will confirm in writing it has the authority to use the Services Agreement for the purchase and that the use of the Services Agreement for the purchase is not prohibited by law or procurement regulations or standards applicable to the Related Agency.
Exhibit B
PowerEngage Platform Addendum

If Customer is purchasing the PowerEngage Platform pursuant to the Agreement (as “Agreement” is defined in the Services Agreement to which this Exhibit B, entitled “PowerEngage Platform Addendum,” is an incorporated attachment), the following terms are hereby incorporated into Exhibit G (Services Agreement). This PowerEngage Platform Addendum (“PowerEngage Addendum”) forms part of the Services Agreement, and in the case of any conflict or inconsistency between the terms and provisions of this PowerEngage Addendum and any other provision of the Services Agreement, the terms of this PowerEngage Addendum shall control. For clarity, the parties acknowledge and agree that the current Scope of Services (Exhibit A to the Agreement) does not include the PowerEngage Platform, and that the addition of such platform to the Agreement would require a written amendment to the Agreement executed by the authorized representatives of the parties and approved as required under Palo Alto Municipal code.

1. **Applicability.** The provisions of this PowerEngage Addendum shall apply only if Customer has purchased the PowerEngage Platform pursuant to an Order Form.

2. **CAD/RMS Assumptions.** The parties agree that the fees specified with respect to the PowerEngage Platform on the applicable Order Form do not include any additional fees that the Customer’s CAD or RMS vendor may charge, if any. The Services Agreement and this Exhibit B is entered into with the mutual assumption that the PowerEngage Platform will be able to make a connection to Customer’s CAD or RMS replicated or reporting database directly or will be able to read from a file produced for such a purpose.

3. **CAD/RMS Provisions.** The definition of Confidential Information in Section 12 of the Services Agreement shall also include any Customer CAD and/or RMS data made available to NEOGOV in connection with the provision of the PowerEngage Platform.

4. **SOW.** NEOGOV agrees to provide the training, configuration and support services with respect to the PowerEngage Platform, and Customer acknowledges that its cooperation is required for efficient and timely implementation of the PowerEngage Platform, in accordance with the following:

   **PowerEngage Software**

NEOGOV will be used to survey citizens that have interacted with Customer, send messages to citizens or other stakeholders and gather and report on data. Customer will be able to configure the surveys and rules based on data received from the Computer Aided Dispatch System. The results of the surveys will be stored within PowerEngage and available for display in a Feedback Board and within the analytics component called Measure. Other rules and messages can be built to be triggered to send on certain events as driven by the rules engine.

   **NEOGOV and Customer Responsibilities**

The bullet points below outline when NEOGOV, Customer, or both NEOGOV and Customer have responsibility with respect to a particular deliverable.

1. NEOGOV will configure a tenant and telephone number group for the Customer

2. NEOGOV will schedule a 90-minute kickoff call with the Customer to review the objectives, timeline and mutual deliverables
   - Configure Customer administrator account - NEOGOV
   - Walk Customer through the survey builder - NEOGOV

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• Walk Customer through the rules builder - NEOGOV
• Walk Customer through the Feedback Board- NEOGOV
• Walk Customer through Activity /Survey tools- NEOGOV
• Walk Customer through the CueHit CAD Data Agent and what is needed for the connection to CAD - NEOGOV

3. Customer will gather information needed for Surveys, Rules, Tasks and CAD/RMS Data – Customer

4. NEOGOV will coordinate a CAD/RMS Connection Workshop with Customer
   • Configure PowerEngage CAD/RMS agent- NEOGOV and Customer
   • Connect to Customer CAD/RMS Data – Customer
   • Test data – NEOGOV and Customer

5. NEOGOV will coordinate a 2-hour Survey Workshop with Customer
   • Consult on the questions to ask in a satisfaction survey (maximum of 3 to 5 questions) = NEOGOV and Customer
   • Configure the questions in the survey tool = NEOGOV and Customer
   • Configure the acceptable responses in the survey tool = NEOGOV and Customer
   • Configure additional criteria (Follow Up question only) = NEOGOV and Customer
   • Send sample survey to Customer on text message = NEOGOV and Customer
   • Review in Feedback Board and Activity Screens= NEOGOV and Customer

6. NEOGOV will coordinate a 2- 4 hour Rules Workshop with Customer to jointly
   • Consult on the rules for surveys and automatic text notifications = NEOGOV and Customer
   • Configure the rules and texts = NEOGOV and Customer
   • Send example encounters to test rules = NEOGOV and Customer
   • Review in Activity= NEOGOV and Customer

7. NEOGOV will coordinate a 2 Hour Task Creation and Notification Workshop with Customer to jointly:
   • Configure Tasks and Task Assignments
   • Identify Personnel information needed for notifications and digest emails
   • Import Personnel information for receiving messages and emails from Customer provided .xls or .csv

8. NEOGOV will schedule a 2-hour Analytics Workshop with the Customer to review the ideas for the Dashboards to reflect the results of the surveys.
   • NEOGOV will review standard visualizations and data in the dashboard
   • NEOGOV will request from the Customer, input on the data and visualization to be presented in the Measure Tool
   • Once agreed, a maximum of 1 custom visualizations will be created by NEOGOV and deployed to the Customer’s environment

9. NEOGOV will train the Customer Administrators on the use of the PowerEngage configuration tools, Measure tools and Activity logs.

Support Services

Telephone Assistance. Customer will be given the telephone number for a support line and will be entitled to contact the support line during normal operating hours, (between 7:30am and 5:30pm Central Time) on regular business days, excluding NEOGOV holidays, to consult with NEOGOV technical support staff concerning problem resolution, bug reporting, documentation clarification, and general technical guidance. Assistance may include
remote connectivity, modem, or electronic bulletin board.

**Software Problem Reporting.** Customer may submit requests to NEOGOV identifying potential problems in the PowerEngage software. Requests should be in writing and directed to NEOGOV by e-mail, or through the NEOGOV support website. NEOGOV retains the right to determine in the final disposition of all requests and will inform Customer of the disposition of each request. If NEOGOV acts upon a request, it will do so by providing a bug fix.

**Scheduled Maintenance.** Software may be unavailable periodically for system maintenance. Regular system maintenance includes installation of the software updates, operating system updates/patches and updates to other third-party applications as needed. Customers are notified of maintenance periods via an email message or via a banner on the main page of the PowerEngage Platform.

**Exclusions from Technical Support Services:**
NEOGOV shall have no support obligations with respect to any third-party hardware or software product not provided by NEOGOV as a part of the PowerEngage Platform purchased hereunder.
Exhibit C
HRIS Addendum

If Customer is purchasing HRIS Services (defined below) pursuant to the Agreement (as “Agreement” is defined in the Services Agreement to which this Exhibit C, entitled “HRIS Addendum,” is an incorporated attachment), the following terms are hereby incorporated into Exhibit G (Services Agreement). This HRIS Addendum forms part of the Services Agreement, and in the case of any conflict or inconsistency between the terms and provisions of this HRIS Addendum and any other provision of the Services Agreement, the terms of this HRIS Addendum shall control. “HRIS Services” refers to the following SaaS Applications or any Add-Ons (defined below) or Professional Services related to such SaaS Applications: NEOGOV Core HR, NEOGOV Payroll, and NEOGOV Time and Attendance. For clarity, the parties acknowledge and agree that the Agreement does not include the HRIS Services, and that the addition of HRIS Services to the Agreement would require a written amendment to the Agreement executed by the authorized representatives of the parties and approved as required under Palo Alto Municipal Code.

Implementation; Add-Ons; and Configuration Limitation. Implementation of HRIS Services as detailed in the standard statement of work (“SOW”) and the mutually agreed-upon scope document (“Scope”) will proceed in accordance with the estimated implementation schedule provided by NEOGOV and as further detailed in the SOW and Scope. Implementation services not included in the SOW and Scope may be subject to additional fees. Customer acknowledges that the timeline for the implementation schedule is an estimate only and dependent on a number of variables, including but not limited to Customer’s responsiveness to NEOGOV’s requests during the implementation process and Customer’s obligation to fill out the “Implementation Workbook” to facilitate the implementation process. In the event that Customer does not order the full suite of HRIS services offered, NEOGOV may be required to generate custom feeds for Customer for an additional fee. During implementation, Customer may elect optional add-on services that supplement the SaaS Applications (the “Add-Ons”). After completion of implementation, any subsequent changes Customer requests to the configuration of the HRIS Services will be at cost.

NEOGOV will have no responsibility for nor any duty to review, verify, correct or otherwise perform any investigation as to the completeness, accuracy or sufficiency of any data or information input into the HRIS system by or on behalf of the Customer prior to its receipt by NEOGOV/the Services. Customer is solely responsible for ensuring that all data entered into the HRIS system by Customer or its Authorized Users is accurate and complete, and for correcting any errors or discrepancies in such data prior to providing it to NEOGOV/the Services.

CORE HR and Benefits – Additional Terms

The following terms shall apply to the extent that Customer orders the NEOGOV Core HR, and HRIS Services involving benefits administration (the “Benefits Module”):

1. **Benefits Module Representative.** Customer shall designate one or more persons who shall serve as NEOGOV’s designated contact for the Benefits Module (the “Benefits Representative”). Customer represents and warrants to NEOGOV that the Benefits Representative has, and shall at all times have, the requisite authority to transmit information, directions and instructions on behalf of Customer, each “plan administrator” defined in Section 3(16)(A) of the ERISA and Section 414(g) of the Code and, if applicable, each “fiduciary” (as defined in Section 3(21) of ERISA) of each separate employee benefit plan covered by the Benefits Module (each, a “Benefit Plan”). The Benefits Representative also shall be deemed to have authority to issue, execute, grant, or provide any approvals, requests, notices, or other communications required or permitted under the Services Agreement or requested by NEOGOV in connection with the
2. **Use of the Benefits Module.**

   a) **HR Users.** Customer shall authorize an administrator to input information and access certain information relating to (i) the benefits offered by Customer and (ii) Customer’s employees/plan participants and their benefit options and elections as well as view certain personal and company information regarding company employees. The Benefits Module permits Customer’s employees/plan participants to make various benefits elections and to view and update certain personal and company information. It is Customer’s responsibility to submit instructions and information relating to the Benefits Module and to verify the accuracy and completeness of all such instructions and information submitted by Customer, employees, and plan participants.

   b) **NEOGOV Not Fiduciary Advisor.** Customer acknowledges and agrees that, in making the Benefits Module available, NEOGOV is not acting as an investment advisor, broker-dealer, insurance agent, tax advisor, attorney or intermediary or a financial or benefit planner. NEOGOV is not providing any benefits, tax advice, or any information related thereto; Customer is responsible for making available all benefits and information related thereto referenced or included in the Benefits Module.

   c) **NEOGOV’s Health Care Clearinghouse Status.** Customer expressly acknowledges and agrees that NEOGOV is not a “Health Care Clearinghouse”, a “Covered Entity” or a “Business Associate” within the meaning of HIPAA, and Customer shall not request or otherwise require NEOGOV to act as such. To the extent that NEOGOV is required to enter into any additional agreement as a result of Customer’s use of the Benefits module, Customer shall be responsible for any liability incurred by NEOGOV thereunder.

3. **Additional Rights.** NEOGOV may, to the extent necessary to address the alleged issue(s), suspend Core HR, the Benefits Module, or this Services Agreement immediately upon written notice to the Customer upon (a) the failure of Customer to maintain its Benefit Plan(s) in compliance with ERISA or other applicable laws or regulations or (b) NEOGOV’s determination that the exercise of any of the rights granted hereunder or the continued performance by NEOGOV of its obligations under this Services Agreement would cause NEOGOV to violate any applicable international, federal, state or local law(s) and/or regulation(s). In such notice to Customer, NEOGOV shall provide sufficient detail to enable Customer to reasonably understand the nature of the issue(s) and a cure period as detailed in the termination section of the Services Agreement.

4. **ERISA.** The terms of this Section only shall apply to the extent Customer uses services governed, in whole or in part, by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)

   a) **NEOGOV’s Non-Fiduciary Status.** Customer expressly acknowledges and agrees that NEOGOV is not an “Administrator”, “Plan Sponsor,” or a “Plan Administrator” as defined in Section 3(16)(A) of ERISA, and Section 414(g) of the Internal Revenue Code of 1986, as amended (the “Code”), respectively, nor is NEOGOV a “fiduciary” within the meaning of ERISA Section 3(21), and Customer shall not request or otherwise require NEOGOV to act as such. NEOGOV shall not exercise any discretionary authority or control respecting management of any of Customer’s benefit or welfare plans (“Plan” or “Plans”) or management or disposition of any of Customer’s benefit or welfare Plan assets. NEOGOV shall not render investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of any Plan, nor does NEOGOV have any authority or responsibility to do so. NEOGOV has no discretionary authority or discretionary responsibility in the administration of the...
b) **Use of NEOGOV’s Name.** Customer or the Plan Administrator must obtain the prior written consent of NEOGOV to insert any references to NEOGOV or its affiliates, or to NEOGOV Services, with respect to any communication or document pertaining to a Plan prepared by Customer, or on behalf of Customer (other than documents prepared by NEOGOV), unless the reference only identifies NEOGOV as a service provider or the reference is required in a filing or document required by ERISA or any other applicable law. Without limiting the foregoing, in no event may Customer or the Plan Administrator identify or refer to NEOGOV as “administrator”, “plan administrator”, “third-party administrator”, “plan sponsor”, “fiduciary”, “plan fiduciary” or similar title.

5. **Direct to Carrier Services.** Customer may elect direct to insurance carrier services (each a “Carrier Link”) at its option, each for an additional cost. Reconfiguration of existing Carrier Links, establishing new Carrier Links, and additional elections are available for an additional fee and may be completed by NEOGOV at NEOGOV’s then current rates. Customer may access and use the NEOGOV HRIS Services to electronically transmit employee data, including employee benefits enrollment data, to Customer’s carriers or other third parties authorized by Customer. NEOGOV’s ability to transmit data is subject to the provision of a current functional interface between HRIS Services and the carriers’ systems. NEOGOV will not be obligated to transmit Customer’s data to carriers if at any time Customer’s carriers fail to provide the proper interface as solely determined by NEOGOV. If Customer requires development of any special or customized interfaces to transmit such data, all work performed by NEOGOV to create such interfaces will be at NEOGOV’s then current fees for such services. NEOGOV makes no warranty that each carrier’s specifications will conform with NEOGOV’s current functional interfaces. In the event a carrier provides formats or specifications not supported by the NEOGOV HRIS Services, Customer will be solely responsible for transmitting the data to such carrier using an alternative system to be determined solely by Customer. Customer shall be responsible for promptly reviewing all records of transmissions to carriers and other reports prepared by NEOGOV for validity and accuracy according to Customer’s records, and Customer will notify NEOGOV of any discrepancies promptly after receipt thereof.

**Payroll Services – Additional Terms**

The following terms shall apply to the extent that Customer orders the NEOGOV Payroll Services module:

1. **Payroll Processing and Tax Filing.** NEOGOV will deliver (i) payroll administrative services to Customer through NEOGOV’s payroll software as a service (the “Payroll Module”), (ii) at Customer’s election, direct deposit administration to those employees electing such service via ACH processing (collectively referred to as the “Payroll Services”), remit payroll taxes on Customer’s behalf to those federal, state, and local taxing jurisdictions designated by Customer, and file related tax returns (such remitting of payroll taxes and filing of related tax returns, the “Tax Services”). At NEOGOV’s then current fees, NEOGOV may also process calendar year-end W-2 forms for Customer’s employees and Forms 1099-MISC. NEOGOV will, and Customer hereby authorizes NEOGOV and Fulfillment Partners to, initiate debits or reverse wire transfers prior to each paydate for Customer’s payroll (“Paydate”) and credit the bank accounts of Customer’s employees and others to be paid by Customer by direct deposit payment on Paydate (a “Payee”), all in compliance with the operating rules of the National Automated Clearing House Association and the terms and conditions hereof. For purpose of clarity, the parties understand and agree that NEOGOV does not print and/or send paychecks for or on behalf of Customer.

2. **Documentation and Required Information.**
a) Authorization Forms; Proof of Name. Customer will be required to complete and submit the following documents in order to use the payroll processing components of Payroll Module: (i) power of attorney forms for each jurisdiction in which Customer will use the HRIS Services (the “POA”), (ii) Authorization to Debit/Credit Bank Account(s)/Obtain Bank Account Information (the “Authorization Form”), (iii) an IRS proof of legal name/FEIN and (iv) any authorization form for Fulfillment Partner authorizing debiting and crediting Customer’s bank account.

b) Proof of Existence. Customer will provide NEOGOV, and authorize NEOGOV to provide to Fulfillment Partner, Customer’s (i) legal name, and “doing business as” name if applicable, (ii) physical street address (not a PO Box or PMB), (iii) phone number, (iv) Primary Business Activity (Nature of Business), (v) Duns Number (if one exists), (vi) Tax ID Number, (vii) estimated transaction count and dollar volume, (viii) number of employees, and (ix) supporting evidence via (A) either certified Articles of Incorporation, IRS EIN Letter, unexpired government issued business license, trust instrument or other government-issued evidence showing legal existence, and (B) either a voided business check, copy of utility bill, other evidence of legal name, physical address, DBA Name, or Tax ID.

c) Permitted Disclosure Authorization. Customer hereby authorizes NEOGOV to (i) provide Customer’s data to Fulfillment Partner for the purposes of performing the Payroll and Tax Services, and (ii) take such action as is necessary to perform the Payroll and Tax Services.

d) Time and Attendance Information. Prior to commencement of Time and Attendance Services, Customer shall provide to NEOGOV all necessary information and guidance relating to its time and attendance policies and guidelines and coordinate with NEOGOV to establish standards for NEOGOV in its execution of the Time and Attendance Services. Customer agrees to promptly comply with NEOGOV’s request for such additional documentation and understands that Payroll or Tax Services may be impaired or delayed if Customer does not comply with such request.

3. Customer Obligations, Representations, and Warranties. Customer acknowledges that NEOGOV's obligation to perform the HRIS Services is subject to Customer’s obligations, representations, and warranties. Customer represents and warrants the following:

a) Processing Authorization. Customer authorizes NEOGOV to process payroll entries on behalf of Customer. Customer acknowledges that NEOGOV is acting solely in the capacity of data processing agent and is not a source of funds for Customer. Customer shall be liable for each payroll related transaction initiated by NEOGOV on behalf of Customer, whether by electronic entry or wire transfer. NEOGOV, or its Fulfillment Partners, electronically transmit employee data, including employee payroll data, to designated third parties, and Customer authorizes NEOGOV and its Fulfillment Partners, to provide such transmission on Customer’s behalf. Customer agrees that NEOGOV maintains specific Fulfillment Partner(s) for NEOGOV Payroll and Tax Services fulfillment during the term of and in accordance with this Services Agreement and that Customer shall not, directly or indirectly, supplement, substitute, or otherwise modify the provision of such Payroll and Tax Services without terminating this Services Agreement.

b) Information Accuracy; Reliance; Change Notice. Customer shall input, maintain, and verify the accuracy of any and all information, including payroll and tax information, and Customer shall continually ensure that such information is kept complete, accurate, delivered on time, and up to date at all times. Customer acknowledges that NEOGOV and NEOGOV Fulfillment Partners will rely on the accuracy of this information as it performs its requested functions. NEOGOV shall not be responsible for any delays or inaccuracies in Customer’s delivery of data to NEOGOV. Customer will notify NEOGOV immediately of any change in the processing information, including the Authorization Form. Customer will also
obtain a voluntary written authorization from any Payee prior to the initiation of the first credit to the account of such Payee and shall provide upon demand a copy of such written authorization to NEOGOV.

c) **Processing Deadlines.** Unless otherwise agreed to by the Parties, Customer will: (a) complete and execute all required documentation so that NEOGOV or Fulfillment Partner may withdraw funds from Customer’s account to process direct deposit payrolls, (b) input or report all relevant payroll data for ACH transmissions to NEOGOV no later than 2:00 p.m. Pacific Standard Time (PST) three (3) banking days prior to each Paydate, (c) input or report all other relevant payroll data to NEOGOV no later than 2:00 p.m. Pacific Standard Time (PST) two banking days prior to each Paydate, (d) have available in Customer’s bank account good, collectable funds in a sufficient amount to cover funding disbursements, checks, direct deposits, tax payments, or recurring payments to third parties no later than the opening of business (i) two banking days prior to each Paydate for debits by electronic entry, and (ii) two banking days prior to each Paydate for funding by wire transfer, and (e) compare all reports on credits or debits initiated by Customer to NEOGOV’s records and promptly notify NEOGOV of any discrepancies. In the event Customer does not meet the deadlines specified herein, NEOGOV shall make reasonable efforts to complete processing prior to the Paydate; however, NEOGOV makes no representation or warranty that payroll will process by the Paydate where Customer fails to provide all required documentation by the deadline. Additional Fees may apply for expedited processing.

d) **Customer Review.** Within seven (7) business days after receipt from NEOGOV, Customer will promptly conduct a detailed review of all payroll and tax registers produced by NEOGOV or Fulfillment Partners for accuracy, validity and conformance with Customer’s records. Customer will promptly notify NEOGOV of any error or omission discovered by Customer in any payroll registers, disbursement records, payroll or tax reports and documents produced by NEOGOV or Fulfillment Partners, or any discrepancy between the information provided by NEOGOV or Fulfillment Partners, and Customer’s records. Customer will not rely on any record, report or document containing any discovered error, omission or discrepancy until such error, omission or discrepancy, has been corrected. Customer will be responsible for any consequences resulting from instructions Customer may give to NEOGOV or Fulfillment Partners with regard to HRIS Services or any payroll registers, disbursement records, reports and documents prepared by NEOGOV based on information provided by Customer.

c) **Document Retention.** Customer will retain copies of all information entered into or generated by the HRIS Services and Customer shall be solely responsible for maintaining such data, and all tax records, in accordance with any legal obligations.

f) **Special Processing.** Customer understands and acknowledges that administering processing dates beyond standard payroll dates, and correcting, amending, or cancelling payroll entries or mistaken reversals (collectively “Special Processing”), are complicated, highly manual, and may result in additional expenses, tax consequences, and penalties. Therefore, Special Processing may be subject to additional NEOGOV Fees.

g) **Recovery Cooperation.** Customer agrees to undertake reasonable efforts to cooperate with NEOGOV and any other parties involved in processing any transactions hereunder to recover funds credited to any employee as a result of an error made by Customer, NEOGOV, or Fulfillment Partners, or any other loss recovery efforts and in connection with any actions that the relevant party NEOGOV may be obligated to defend or elects to pursue against any third-party.

h) **Compliance with Laws.** Customer acknowledges that, in order to put into effect the Payroll Services which include ACH transactions, Customer will be the Originator of the ACH transactions and will follow and be bound by the rules for ACH Originators as adopted from time to time by the NACHA. Customer
agrees that it has assumed the responsibilities of an Originator under the ACH Rules and acknowledges that entries may not be initiated in violation of the laws of the United States. Customer agrees to be compliant with laws. Customer will comply with all laws including, but not limited to, the U.S. Patriot Act, the Unlawful Internet Gambling Enforcement Act, the Bank Secrecy Act, and Anti Money Laundering laws.

4. **Effect of Failed Funds.** If Customer fails to pay the taxes, direct deposits, employee payments or other charges, including fees, then Customer agrees to pay NEOGOV for all costs of collection, including reasonable attorney fees, which may be associated with collection of the amounts due. NEOGOV also may, at its sole option, terminate this Services Agreement and withhold or suspend any work in progress. This is in addition to any other rights NEOGOV may have under this contract or under law. NEOGOV also reserves the right to reverse employee transactions and /or tax payments for which funds have not been received from Customer.

5. **Rejection of Entries.** NEOGOV shall reject any file or entry that does not comply with the requirements of this Services Agreement, the NACHA Rules, or uses an improper SEC Code, or if NEOGOV suspects fraud or illegal or improper activity. NEOGOV shall have no liability.

6. **Resolution of Error Exceptions.** For the purposes of this Section, the term “error exception(s)” shall mean any data requirements within the HRIS Services that, based on Customer’s configuration, have been assigned a severity level designation of “error”; such designation shall create a requirement for an operational task to be completed by Customer in order to proceed with Customer’s processing, including processing of Customer payroll for the designated period. Failure to resolve an error exception will prevent Customer’s payroll from being processed as scheduled. NEOGOV is not obligated to clear any such error on behalf of Customer.

7. **NEOGOV Errors and Omissions Warranty.** NEOGOV warrants it will use commercially reasonable efforts to properly transmit the appropriate reports, data, or filings based on the information provided in Customer’s HRIS Services. In addition, NEOGOV will use commercially reasonable efforts to rectify any Customer report, data, or filing error, including any deposit, corrected or reversal debit or credit entry, for which NEOGOV is solely responsible; provided that, in each case Customer advises NEOGOV no later than ten (10) business days after the occurrence or discovery of such errors or omissions. This is Customer’s sole remedy in the event of a breach of the foregoing warranty. Notwithstanding the foregoing, Customer will be solely responsible for payment of all tax penalties, interest, and additional NEOGOV fees if: (i) the penalty is the result of incorrect, inaccurate, or incomplete information Customer provides to NEOGOV, (ii) Customer has insufficient funds in Customer’s designated bank account to process HRIS Services, or (iii) a party other than NEOGOV, or a NEOGOV Fulfillment Partner, fails to perform services in a timely manner.

8. **Additional Liability and Warranty Limitations.** NEOGOV, ITS PROVIDERS, AND FULFILLMENT PARTNERS, AND THE OFFICERS, DIRECTORS, EMPLOYEES, AND SUPPLIERS OF EACH WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES OR UNDER ANY THEORY OF RECOVERY (WHETHER IN CONTRACT OR TORT OR OTHERWISE) FOR (i) ANY FEES, COSTS, CHARGES, OR ANY DAMAGES CAUSED BY LOST SHIPMENT OR TRANSMISSION OF CHECKS OR ANY FORM OF DISBURSEMENT INCLUDING, BUT NOT LIMITED TO, STOP PAYMENT FEES, REPRINTING OR RETRANSMISSION COSTS, SHIPPING CHARGES, OR CONSEQUENTIAL EXPENSES AND DAMAGE, (ii) ANY CHARGES, FEES, OR EXPENSES INCURRED BY CUSTOMER, CUSTOMER’S AGENTS, OR EMPLOYEES WHICH ARE DUE TO LATE PAYCHECKS, REGARDLESS OF WHETHER SUCH PAYCHECKS ARE TO BE PREPARED AND DELIVERED BY NEOGOV, FULFILLMENT PARTNERS, OR BY CUSTOMER, (iii) NON-PERFORMANCE OF HRIS SERVICES WHICH HAVE BEEN SUSPENDED DUE TO FAILURE OR DELAY IN PAYMENT OF FEES OWED UNDER THIS SERVICES AGREEMENT, AND (IV) FOR ANY DAMAGES TO CUSTOMER ARISING FROM OR IN CONNECTION WITH A DECISION BY NEOGOV TO SUBMIT FILES FOR
PROCESSING AFTER CUSTOMER HAS FAILED TO CLEAR OUTSTANDING ERROR EXCEPTIONS WITHIN THE SPECIFIED DEADLINE.


a) Termination for Default. Customer’s breach of the NACHA Rules, violation of any applicable federal or state regulation, or failure to maintain account funding as required by this Services Agreement (and as a result any debit to Customer’s account is returned), shall each constitute a default. Upon default, NEOGOV may suspend the HRIS Services or terminate this Services Agreement in a manner that permits NEOGOV to comply with the NACHA Rules. Termination is effective immediately upon written notice of such termination to Customer. The right to suspend the HRIS Services and/or terminate this Services Agreement is in addition to any other rights and remedies provided under this Services Agreement or otherwise under law.

b) Effect of Termination. No termination of this Services Agreement shall release Customer from any obligation to pay NEOGOV any amount that has accrued or becomes payable at or prior to the date of termination. No suspension of HRIS Services shall release Customer from any obligation to pay NEOGOV any amounts due under this Services Agreement. Customer shall not be entitled to any refund of any amounts paid to NEOGOV as a result of a termination based on Customer’s default. Notwithstanding the termination of this Services Agreement, the parties shall continue to comply with the NACHA Rules with respect to transmissions pursuant to this Services Agreement.

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Exhibit D
Integration Terms Addendum

NEOGOV offers integrations and platform APIs for integrations to third party systems (“Integration Services”). Customer may use only those Integration Services purchased or subscribed to as listed within the Scope of Services of the Agreement (as defined in the Services Agreement to which this Exhibit D, entitled “Integration Terms Addendum,” is an incorporated attachment). The following terms of this Integration Terms Addendum shall apply to the extent that Customer utilizes a system integration between the Services and either: (a) an affiliated integrated service, including those found at https://api.neogov.com/connect/marketplace.html and/or https://apidocs.powerdms.com (“Affiliated API”) or to the extent that Customer utilizes a system integration between the Services and an unaffiliated third-party service (“Customer Application”) integrated using NEOGOV’s open API (“Open API”). Integration Services are not available for HRIS Services and this Exhibit D shall not apply to HRIS Services.

1. **Provision of Integrations.** Subject to and conditioned on compliance with all terms and conditions set forth in this Integration Terms Addendum, NEOGOV hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable license during the applicable Term to use and/or access the Affiliated API as described in the Services Agreement, or the Open API for communication between Customer’s human resource related third application(s) that will interoperate with NEOGOV Services (collectively these uses shall be referred to as the “API” or “Integration”). Customer acknowledges there are no implied licenses granted under this Integration Terms Addendum. NEOGOV reserves all rights that are not expressly granted. Customer may not use the API for any other purpose without our prior written consent. Customer may not share the API with any third party, must keep the API and all log-in information secure, and must use the API key as Customer sole means of accessing the API.

2. **Integration Intellectual Property.** All right, title, and interest in the API and any and all information, data, documents, materials, inventions, technologies, know-how, descriptions, requirements, plans, reports, works, intellectual property, software, hardware, systems, methods, processes, and inventions, customizations, enhancements, improvements and other modifications based on or derived from the API are and will remain, as appropriate, with NEOGOV. All right, title, and interest in and to the third-party materials, including all intellectual property rights therein, are and will remain with their respective third-party rights holders subject to the terms and conditions of the applicable third-party license agreements. Customer has no right or license with respect to any third-party materials except as expressly licensed under such third-party license agreements.

3. **Integration Terms of Use.** Except as expressly authorized under this Integration Terms Addendum, you may not remove any proprietary notices from the API; use the API in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or otherwise of right of any person, or that violates any applicable law; combine or integrate the API with any software, technology, services, or materials not authorized by NEOGOV; design or permit Customer Application(s) to disable, override, or otherwise interfere with any NEOGOV-implemented communications to end users, consent screens, user settings, alerts, warning, or the like; use the API in any of Customer Application(s) to replicate or attempt to replace the user experience of the Services; or attempt to cloak or conceal Customer identity or the identity of Customer Application(s) when requesting authorization to use the API.

4. **Customer Integration Responsibilities.** Customer, Customer developed web or other software
services or applications, and Customer third-party vendors that integrate with the API (collectively the “Customer Applications”), shall comply with all terms and conditions of this Integration Terms Addendum, all applicable laws, rules, and regulations, and all guidelines, standards, and requirements that may be posted on https://api.neogov.com/connect/index.html and/or https://apidocs.powerdms.com from time to time. In addition, Customer will not use the API in connection with or to promote any products, services, or materials that constitute, promote, or are used primarily for the purpose of dealing in spyware, adware, or other malicious programs or code, counterfeit goods, items subject to U.S. embargo, unsolicited mass distribution of email (“spam”), multi-level marketing proposals, hate materials, hacking, surveillance, interception, or descrambling equipment, libelous, defamatory, obscene, pornographic, abusive, or otherwise offensive content, stolen products, and items used for theft, hazardous materials, or any illegal activities.

5. Cooperation. If applicable, Customer shall timely provide such cooperation, assistance, and information as NEOGOV reasonably requests to enable the API. NEOGOV is not responsible or liable for any late delivery or delay or failure of performance caused in whole or in part by Customer’s delay in performing, or failure to perform, any of its obligations under this Integration Terms Addendum. NEOGOV will provide Customer maintenance and support services for API issues arising from the information technology designed, developed, and under then current control of NEOGOV. NEOGOV shall have no obligation to provide maintenance or support for issues arising from the inaction or action of Customer or third parties of which are outside NEOGOV control.

6. Provision of Open API. In the event license fees or other payments are not due in exchange for the right to use and access the Open API, you acknowledge and agree that this arrangement is made in consideration of the mutual covenants set forth in this Integration Terms Addendum, including, without limitation, the disclaimers, exclusions, and limitations of liability set forth herein. Notwithstanding the foregoing, NEOGOV reserves the right to change for access with effect from the start of each Renewal Term by giving Customer at least ninety (90) day notice prior to commencement of a Renewal Term.

7. API Key. In order to use and access the Open API, you must obtain an Open API key through the registration process. Customer agrees to monitor Customer Applications for any activity that violates applicable laws, rules and regulation, or any terms and conditions of this Integration Terms Addendum, including any fraudulent, inappropriate, or potentially harmful behavior. This Integration Terms Addendum does not entitle Customer to any support for the Open API. You acknowledge that NEOGOV may update or modify the Open API from time to time and at our sole discretion and may require you to obtain and use the most recent version(s). You are required to make any such changes to Customer Applications that are required for integration as a result of such Update at Customer sole cost and expense. Updates may adversely affect how Customer Applications communicate with the Services.

8. Efficient Processing. You must use efficient programming, which will not cause an overwhelming number of requests to be made in too-short a period of time, as determined solely by NEOGOV in its reasonable discretion. If this occurs, NEOGOV reserves the right to throttle your API connections, or suspend or terminate your access to the Open API. NEOGOV shall use reasonable efforts to provide Customer notice and a reasonable time to cure prior to taking such actions.

9. Open API Limitations. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL NEOGOV BE LIABLE TO CUSTOMER UNDER ANY TORT,
CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY DIRECT, LOST PROFITS, LOST OR CORRUPTED DATA, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS, OR OTHER SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THE USE OR INABILITY TO USE THE OPEN API; OR ANY DAMAGES, IN THE AGGREGATE, IN EXCESS OF FIFTY DOLLARS IN RELATION TO USE OR INABILITY TO USE THE OPEN API, EVEN IF NEOGOV HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES AND WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE OR NEOGOV WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. **Open API Termination.** Notwithstanding the additional Termination rights herein, NEOGOV may immediately terminate or suspend Customer access to Open APIs in our sole discretion at any time and for any reason, with or without notice or cause. In addition, your Open API subscription will terminate immediately and automatically without any notice if you materially violate any of the terms and conditions of this Integration Terms Addendum and you do not cure such material breach promptly upon notice of such breach from NEOGOV.
Certificate Of Completion

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Certificate Pages: 2
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Enveloped Stamping: Enabled
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Mimi.Nguyen@CityofPaloAlto.org
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Storage Appliance Status: Connected
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mburns@neogov.net
Accounting Director
NEOGOV
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aalfaro@neogov.net
Revenue Accounting Manager
Governmentjobs.com, Inc. dba NEOGOV
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Tarandeep.Mann@CityofPaloAlto.org
Sr. Human Resources Administrator
City of Palo Alto
Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure: Not Offered via DocuSign

Electronic Record and Signature Disclosure: Not Offered via DocuSign

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Tarandeep.Mann@CityofPaloAlto.org
Sr. Human Resources Administrator
City of Palo Alto
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Packet Pg. 117
This Amendment No. 1 (this “Amendment”) to Contract No. S17167826 (the “Contract” as defined below) is entered into as of June 1, 2020, by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and GOVERNMENTJOBS.COM dba., NEOGOV, a California Corporation, located at 222 N. Sepulveda Blvd., Suite 2000, El Segunda, CA 90245 (“CONTRACTOR”). CITY and CONTRACTOR are referred to collectively as the “Parties” in this Amendment.

R E C I T A L S

A. The Contract (as defined below) was entered into by and between the Parties hereto for the provision of Software for recruitment, as detailed therein.

B. The Parties now wish to amend the Contract in order to extend the term, amend the scope of services to incorporate additional services, and to increase the total maximum compensation by $73,475.44 from $87,964.26 to $161,439.70.

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:


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 3, “TERM”, of the Contract is hereby amended to read as follows:

“The term of this Agreement is from 04/09/2020 to 04/08/2022 inclusive, subject to the provisions of Sections R and W of the General Terms and Conditions.”

SECTION 3. Section 5, “COMPENSATION FOR ORIGINAL TERM”, of the Contract is hereby amended to read as follows:
“CITY shall pay and CONTRACTOR agrees to accept as not-to-exceed compensation for the full performance of the Services and reimbursable expenses, if any:

A sum calculated in accordance with the fee schedule set forth at Exhibit C, not to exceed a total maximum compensation amount of Two Hundred Eighty Five Thousand and Thirty Five Dollars ($161,439.70).

CONTRACTOR agrees that it can perform the Services for an amount not to exceed the total maximum compensation set forth above. Any hours worked or services performed by CONTRACTOR for which payment would result in a total exceeding the maximum amount of compensation set forth above for performance of the Services shall be at no cost to CITY.”

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 “A” entitled “SCOPE OF SERVICES”, AMENDED, REPLACES PREVIOUS.

b. Exhibit “B” entitled “SCHEDULE OF PERFORMANCE”, AMENDED, REPLACES PREVIOUS.

c. Exhibit “C” entitled “COMPENSATION”, 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.)
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

By: Christine Paras
Purchasing Manager

APPROVED AS TO FORM:

By: Cassie Coleman
City Attorney or designee

GOVERNMENTJOBS.COM dba., NEOGOV

By: John Closs
Name: John Closs
Title: Controller

By: Stephen Koo
Name: Stephen Koo, CFO
Title: Stephen Koo, CFO

Attachments:
EXHIBIT “A”: SCOPE OF SERVICES (AMENDED, REPLACES PREVIOUS)
EXHIBIT “B”: SCHEDULE OF PERFORMANCE (AMENDED, REPLACES PREVIOUS)
EXHIBIT “C”: COMPENSATION (AMENDED, REPLACES PREVIOUS)
EXHIBIT A
SCOPE OF SERVICES

CONTRACTOR shall provide to CITY the following Software as Service (SAAS) subscriptions with the functionality and services described, during the time periods specified:

Services to Be Provided During the Period Covering 04/09/2017 – 04/08/2020

1. Insight Enterprise (IN)
   License Subscription to NEOGOV IN
   The CITY’s subscription to the Insight platform includes the following functionality:

   Recruitment
   - Online job application
   - Online job announcements and descriptions
   - Automatic online job interest cards
   - Recruitment and examination planning

   Selection
   - Configurable supplemental questions
   - Define unique scoring plans
   - Test analysis and pass-point setting
   - Score, rank, and refer applicants

   Applicant Tracking
   - Email and hardcopy notifications
   - EEO Data collection and reports
   - Track applicants by step/hurdle
   - Schedule written, oral, and other exams
   - Candidate Self-Service Portal for scheduling and application status

   Reporting and Analysis
   - 90 standard system reports
   - Ad Hoc reporting tool

   HR Automation
   - Create and route job requisitions for approval
   - Certification/eligible lists

2. NEOGOV Onboarding (ON)
   License Subscription to NEOGOV ON
   - Electronic Employee File
   - W4
   - I9
3. GovernmentJobs.com Job Posting Subscription

(GJC) License Subscription
- Enables organizations to advertise their job postings created in Insight on the GovernmentJobs.com website.
- May add an unlimited number of postings

4. NEOGOV Integrations

CONTRACTOR provides Standard Integrations as well as platform APIs for 3rd party system integration(s).

Standard Integrations include:

i. Conduct project scope, review integration plan, discuss timeline, and set schedule for required meetings
ii. Annual Maintenance by CONTRACTOR

Note: CONTRACTOR APIs are to be configured directly by CITY staff using CONTRACTOR documentation.

5. Customer Support and Product Upgrades

The following are included with the subscription services:

- Unlimited Customer Support M-F, 6:00AM – 6:00 PM PT
- Product upgrades to licensed software

*NEOGOV ON includes I9 and W4 standard forms that are updated by CONTRACTOR. Additional forms or form maintenance is available by NEOGOV Professional Services at the following cost:
- Background forms $295 per form
- Dynamic Forms $195 per form
- Updates to existing forms $200 an hour
Services to Be Provided During the Period Covering 4/9/2020 – 4/8/2022 (except as performance dates are otherwise specified in Exhibit B)

CONSULTANT shall provide the Services detailed below during the period covering 4/9/2020 – 4/8/2022, except as performance dates are otherwise specified in Exhibit B (Schedule of Performance).

CONTRACTOR shall provide to CITY the following Software as Service (SAAS) subscriptions with the functionality and services described:

1. **Insight Enterprise (IN)**
   
   **License Subscription to NEOGOV IN**
   
   The CITY’s subscription to the Insight platform includes the following functionality:

   **Recruitment**
   - Online job application
   - Online job announcements and descriptions
   - Automatic online job interest cards
   - Recruitment and examination planning Selection
   - Configurable supplemental questions
   - Define unique scoring plans
   - Test analysis and pass-point setting
   - Score, rank, and refer applicants

   **Applicant Tracking**
   - Email and hardcopy notifications
   - EEO Data collection and reports
   - Track applicants by step/hurdle
   - Schedule written, oral, and other exams
   - Candidate Self-Service Portal for scheduling and application status Reporting and Analysis
   - 90 standard system reports
   - Ad Hoc reporting tool HR Automation
   - Create and route job requisitions for approval
   - Certification/eligible lists

2. **NEOGOV Onboarding (ON)**
   
   **License Subscription to NEOGOV ON**
   
   - Electronic Employee File
   - W4
   - I9
   - Configurable Workflow
   - Task Manager
● Employee data upload
● Attachments
● Build your own Onboarding forms*

*NEOGOV ON includes I9 and W4 standard forms that are updated by CONTRACTOR.

Additional forms or form maintenance is available by NEOGOV Professional Services at the following cost:

- Background forms $295 per form
- Dynamic Forms $195 per form
- Updates to existing forms $200 an hour

3. **GovernmentJobs.com Job Posting Subscription**

   (GJC) License Subscription
   
   a. Enables organizations to advertise their job postings created in Insight on the GovernmentJobs.com website.
   b. May add an unlimited number of postings

4. **NEOGOV Integrations**

   CONTRACTOR provides Standard Integrations as well as platform APIs for 3rd party system integration(s).

   Standard Integrations include:

   iii. Conduct project scope, review integration plan, discuss timeline, and set schedule for required meetings
   iv. Annual Maintenance by CONTRACTOR

   Note: CONTRACTOR APIs are to be configured directly by CITY staff using CONTRACTOR documentation.

5. **Customer Support and Product Upgrades**

   The following are included with the subscription services:

   - Unlimited Customer Support M-F, 6:00AM – 6:00 PM PT
   - Product upgrades to licensed software

6. **Background Check**

   Allows agencies to initiate background checks directly from Insight or OHC. Choose from a wide and ever-growing selection of background check vendors to find one that suits the needs of your agency. Control who has access to view or initiate background checks via security role customization in OHC and track the status of the background check from the referred list.

7. **Candidate Text Messaging**
Select Your Candidates:
If subscribed, candidate will have a mobile icon next to their name. Select the subscribed candidates and click “Text Message Notify”.

Select a Template:
Send personalized, relevant texts to applicants. Create custom message templates with easy-to-use merge fields for hiring managers to choose from.

Generate Text Messages:
Texts can be sent at any step in the evaluation process, in bulk or individually.

Ensure Delivery:
Once you have sent your message, view the status to see if candidates have received the text.
EXHIBIT B
SCHEDULE OF PERFORMANCE

CONTRACTOR shall provide the Services detailed in Exhibit A during the periods specified as follows:

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<td>API License</td>
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<td>Insight Enterprise Software License</td>
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<td>API License</td>
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EXHIBIT C
COMPENSATION

CITY shall compensate CONTRACTOR for performance of the Services according to the following schedules for the applicable time period, with the maximum amount of compensation not to exceed the amount stated in Sections 5 of this Agreement. Any Services provided for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.

Schedule of Fees for the Period Covering: 04/09/2017 – 04/08/2020

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Total not-to-exceed amount of the Agreement:
- For the Period Covering: 04/09/2017 – 04/08/2020: $87,964.26 (Paid in full)
- For the Period Covering: 4/9/2020 – 4/8/2022: $73,475.44
- **Total not-to-exceed: $161,439.70**
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City of Palo Alto

City Council Staff Report

Report Type: Consent Calendar       Meeting Date: 10/24/2022

Summary Title: Permanent Local Housing Allocation (PLHA) Application

Title: Adoption of a Resolution Authorizing a City Application for the State Permanent Local Housing Allocation (PLHA) Funds and Authorization of City Manager or Designee to Manage the Allocation

From: City Manager

Lead Department: Planning and Development Services

Recommendation

Staff recommends that City Council take the following actions in support of the City applying for State of California Department of Housing and Community Development (HCD) Permanent Local Housing Allocation (PLHA) Entitlement funding:

1. Adopt the Resolution (Attachment A) authorizing submittal of the PLHA application and PHLA funding plan therein and making associated commitments; and,

2. Authorize the City Manager or designee from the Planning and Development Services Department to manage the PLHA funding, including submission of the PLHA application, execution of the PLHA Standard Agreement with HCD, and filing the required requests for funds and PLHA annual reports to HCD.

Executive Summary

The Permanent Local Housing Allocation (PLHA) is a new State funding source administered by the State of California Department of Housing and Community Development Department (HCD). Like the Federal Housing and Urban Development (HUD) Community Development Block Grant (CDBG) program, Palo Alto and other California jurisdictions are entitled to an annual allocation of funds coming from the Building Homes and Jobs Trust Fund (Fund). The Fund is established under the Building Homes and Job Act of 2017 Senate Bill 2 (SB 2) and started generating revenues in 2019. The Fund provides a permanent, ongoing annual source of local
government funding for housing-related projects and programs that address unmet housing needs.

This report summarizes the PLHA application. The PLHA application contains a PLHA funding plan that proposes the use of funds for eligible activities for five PLHA allocation years (Attachment A). PLHA funding amounts are already known for the 2019 through 2021 revenue collection calendar years. The PLHA application also includes the proposed use of funds for current and future calendar years 2022 and 2023, respectively.

PLHA allocations to Palo Alto are anticipated to total $1,388,976 for the PLHA calendar years 2019 through 2023. Staff proposes to focus PLHA funds toward the following City priorities:

- Assistance to persons experiencing or at risk of homelessness, including:
  - Outreach and services to those experiencing homelessness,
  - Operating expenses for the forthcoming Homekey shelter, and
- Affordable housing rental unit preservation, new construction, and operating subsidies.

The PLHA funds would result in more financial assistance to current and future City housing priorities. To submit for Palo Alto’s PLHA funding allocations, staff needs authorization from the City Council.

**Background**

HCD issued a PLHA Notice of Funding Availability (NOFA)\(^1\) on August 17, 2022.\(^2\) This 2022 PLHA NOFA is funded from revenues collected into the Building Homes and Jobs Trust Fund (Fund) during the calendar year 2021, as well as the remaining unawarded funds collected for calendar years 2019 and 2020. The Fund is provided pursuant to Senate Bill 2 (SB 2) (Chapter 364, Statutes of 2017). The Fund provides a permanent, ongoing annual source of local government funding for housing-related projects and programs that address unmet housing needs. The revenue source is a $75 recording fee on real estate documents. The revenues collected each year fluctuate because they are based upon the variable number of real estate transactions recorded in each county from year to year.

**PLHA Application Requirements**

\(^1\) 2022 Permanent Local Housing Allocation Program Entitlement and Non-Entitlement Local Government Formula Component – Notice of Funding Availability: [https://www.hcd.ca.gov/sites/default/files/2022-08/2022-PLHA-Formula-Component-NOFA.pdf](https://www.hcd.ca.gov/sites/default/files/2022-08/2022-PLHA-Formula-Component-NOFA.pdf); 10/07/22 HCD announcement clarifying the amended application window of between August 27 and November 30, 2022.

\(^2\) Entitlement City means a city designated by the Department of Housing and Urban Development to receive an amount of funds which the city is entitled to receive under the Entitlement Grant Program, as determined by formula set forth in Section 106 of the Housing and Community Development Act of 1974.
The 2022 PLHA NOFA application window is between August 27 and November 30, 2022. While jurisdictions can apply for PLHA allocations for prior years, this is the last year for which the City can apply for its 2019 PLHA allocation.

Palo Alto must meet the PLHA application threshold requirements at the time of application submittal. Key requirements include:

1. **Housing Element Compliance**: Palo Alto must have an adopted Housing Element that HCD has found to be in compliance with state Housing Element law.
2. **Housing Element Annual Progress Report Submittal**: Palo Alto must have submitted its required Annual Progress Report for the relevant calendar year.

Palo Alto currently complies with both application threshold requirements.

The PLHA application must also include a PLHA funding plan that describes how PLHA funds will be used for eligible activities, a description for how this will increase the supply of housing for households with incomes at or below 60 percent of the Area Median Income (AMI), a description of how this is consistent with the Housing Element, and additional information is included in Attachment A.

**PLHA Eligible Activities**

PLHA entitlement funds can be used to fund various activities that address a community’s unmet housing needs, as outlined in the 2019 PLHA Final Guidelines\(^3\) Section 301(a). The PLHA application proposes use of Palo Alto’s entitled PLHA funding under the following activity categories:

- **PLHA Section 301(a) Activity 1**: The predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is Affordable to Extremely low-, Very low-, Low-, or Moderate-income households, including necessary Operating subsidies.

- **PLHA Section 301(a) Activity 6**: Assisting persons who are experiencing or at risk of homelessness, including, but not limited to, providing rapid rehousing, rental assistance, supportive/case management services that allow people to obtain and retain housing, operating and capital costs for navigation centers and emergency shelters, and the new construction, rehabilitation, and preservation of permanent and transitional housing.

**PLHA Funding Amounts and Expenditure Deadlines**

The PLHA application contains a PLHA funding plan for five PLHA allocation years (Attachment A) based on the PLHA funding amounts for Palo Alto for the 2019 through 2021 revenue collection calendar years and the proposed use of funds for current and future calendar years 2022 and 2023. The amounts for 2022 CY and 2023 CY will remain unknown until the close of each year. HCD’s estimated five-year PLHA funding for Palo Alto is $1,388,976 and summarized below.

<table>
<thead>
<tr>
<th>PLHA Revenue Collection Calendar Year (CY)</th>
<th>Palo Alto PLHA Entitlement Amount of Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019 CY</td>
<td>$231,496</td>
</tr>
<tr>
<td>2020 CY</td>
<td>$359,817</td>
</tr>
<tr>
<td>2021 CY</td>
<td>$395,967</td>
</tr>
<tr>
<td>2022 CY</td>
<td>TBD by HCD at the close of Calendar Year 2022</td>
</tr>
<tr>
<td>2023 CY</td>
<td>TBD by HCD at the close of Calendar Year 2023</td>
</tr>
</tbody>
</table>

HCD Estimate of 5-Year Funding Amount Total (Maximum PLHA Funding Amount) $1,388,976

PLHA establishes funding expenditure deadlines for each year of revenues collected. As examples, PLHA funding for 2019 CY must be spent by April 30, 2024, and 2023 CY, the last year in the PLHA application (Attachment A), must be spent by April 30, 2028.

**Discussion**

The PLHA application is organized to account for when the City would need funding for eligible activities, when sufficient loan documents and other documentation would be produced in time for staff to submit requests for funds, and for spending to meet year-over-year PLHA funding expenditure deadlines.

**PLHA Proposed Activities**

As outlined in the PLHA application (Attachment A), staff proposes to focus HCD’s estimated $1,388,976 PLHA funds toward the following City priorities:

- Assistance to persons experiencing or at risk of homelessness (PLHA Section 301(a) Activity 6), including:
  - Outreach and services to those experiencing homelessness,
  - Operating expenses for the forthcoming Homekey shelter, and
- Affordable housing rental unit preservation, new construction, and operating subsidies (PLHA Section 301(a) Activity 1).

Staff identified these activities because they are City priorities and because they represent activities that need ongoing funding such that the City could successfully meet the 2019 PLHA Final Guidelines Section 300(e) contains funding expenditure requirements.
Assistance for People Experiencing or At Risk of Homelessness

Staff recommends providing the majority of the PLHA funding to people experiencing or at risk of homelessness. Directing PLHA funds to homeless outreach services, as well as operational expenses for Palo Alto Homekey serves to leverage this state funding source for this City priority. Outreach services are a key component to the success of Palo Alto Homekey and the City’s strategies for serving Palo Altans experiencing homelessness. The services would include outreach, case management, service coordination, shelter access, and housing navigation services. For persons experiencing homelessness, establishing trust (i.e., through an outreach worker) can be an important first step in their path toward accepting services and assistance. Additionally, the PHLA funding could benefit Palo Alto Homekey as part of the City’s contributions towards the Palo Alto Homekey operations to support the interim housing shelter’s rich array of case management, health, job, and housing services.

Affordable Housing Preservation, Operating Subsidies, and New Construction

Staff also prioritized the preservation of existing affordable housing rental units, operating subsidies for existing affordable housing, as well as the construction of new affordable housing units. The affordability target for use of PLHA funding is for providing affordable housing units to people with income levels that are at 60% of AMI or less.

While the amount of PLHA funding available is small relative to overall preservation, operation, and new construction costs, it is prudent to include these PLHA-eligible activities within the PLHA application. Inclusion underscores the importance of preservation, operation, and new construction of affordable housing units in the City. Inclusion also allows the PLHA application to be more robust, as the funding could easily be spent in these categories throughout the year.

An example of how PLHA funds would be helpful for new construction of affordable housing is Mitchell Park Place, a 50-unit affordable housing project located at 525 East Charleston Road sponsored by Eden Housing. Twenty-five of the rental units will be for persons with disabilities. The City has already committed funds for the project. However, due to rising development costs, additional funds are needed. The PLHA funds could be a potential source of additional funding for a project already known to meet PLHA eligibility.

PLHA Administration, Reporting, and Accounting

The 2019 PLHA Final Guidelines, 2022 PLHA NOFA, and the HCD PLHA website outline PLHA administration procedures, such as expenditure requirements, annual reporting responsibilities,

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and accounting requirements. City Departments reviewed these administrative procedures and determined that the City can comply. For example, staff would place PLHA funds in a new, separate City PLHA fund. The PLHA fund would have sub-funds reflecting the activity categories in the five-year PLHA application. When funds are received over time, they would go into each sub-fund so that transfers in and out can be easily tracked and reported to HCD each year.

While it is possible that HCD could request the repayment of funds or offset with a future years’ funds if the City did not comply with the aforementioned administrative procedures or the terms and conditions of the HCD Standard Agreement, staff has determined that this is extremely unlikely; the PLHA application has clearly identified eligible activities for which to expend PLHA funds in a timely manner and City Departments have the necessary procedures to adhere to the administration procedures, including the reporting and accounting requirements.

PLHA Program Income Reuse Plan
PLHA funding requires the City to implement a program income reuse plan for interest earned on PLHA funds on deposits and loans repaid. The plan is for this income to be collected into and to remain within the sub-fund for future use for the same PLHA activity, such as future affordable housing preservation efforts or future new construction of affordable housing at the AMI targets outlined in the PLHA application.

Policy Implications
Applying for PLHA funding is consistent with best practice to secure available Palo Alto-entitled state funding for City priorities. The proposed use of funds is directed toward currently unmet housing needs, including those that are more costly and difficult to find funding sources for. The proposed use of funds focuses on low, very low, and extremely low-income levels, which is consistent with current and proposed Housing Element programs to serve low and very low-income households, pursuing new funding sources as well as encouraging affordable housing production.

Resource Impact
The resource impact of applying for PLHA funds is the opportunity for the City to secure receive a new permanent, ongoing, and flexible state funding source to assist in addressing currently unmet housing needs. There is no additional expense associated with submitting a PLHA application; staff time necessary to submit the PLHA application and administer the PLHA

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6 State of California Department of Housing and Community Development Department (HCD) Permanent Local Housing Allocation (PLHA) website: https://www.hcd.ca.gov/grants-and-funding/programs-active/permanent-local-housing-allocation

City of Palo Alto
funding is considered within the existing department workplan to administer the existing Affordable Housing Fund program, which is currently administered by staff allocated to the City’s General Fund. Once HCD reviews and approves the City’s PLHA application and funds are awarded, staff will return to City Council for budgetary actions to recognize the new PLHA funding source and corresponding expenses.

**Timeline**
Staff requests Council action on the staff recommendations at the October 24, 2022 Council meeting to authorize the City Manager to submit the PLHA application by the deadline of November 30, 2022.

HCD processes PLHA applications on an ongoing basis. Approvals will be granted as PLHA applications are processed, which could continue through February 2023. Once HCD approves Palo Alto’s PLHA application, the City would need to enter into a Standard Agreement with HCD. Staff would then commence submittal of Requests for Funds.

**Environmental Review**
Submission of a PLHA application is not considered a project under the California Environmental Quality Act.

**Attachments:**

Attachment 5.a: Attachment A: Resolution Authorizing the Application and Adopting the PLHA Plan for the Permanent Local Housing Allocation Program (PDF)
Resolution No. ____
Resolution of the Council of the City of Palo Alto Authorizing the Application
And Adopting the PLHA Plan for the Permanent Local Housing Allocation
Program

A necessary quorum and majority of the council members of the City of Palo Alto (“Applicant”) hereby consents to, adopts and ratifies the following resolution:

A. WHEREAS, the Department is authorized to provide up to $335 million under the SB 2 Permanent Local Housing Allocation Program Formula Component from the Building Homes and Jobs Trust Fund for assistance to Cities and Counties (as described in Health and Safety Code section 50470 et seq. (Chapter 364, Statutes of 2017 (SB 2))

B. WHEREAS the State of California (the “State”), Department of Housing and Community Development (“Department”) issued a Notice of Funding Availability (“NOFA”) dated 8/17/2022 under the Permanent Local Housing Allocation (PLHA) Program;

C. WHEREAS the City of Palo Alto is an eligible Local government who has applied for program funds to administer one or more eligible activities, or a Local or Regional Housing Trust Fund to whom an eligible Local government delegated its PLHA formula allocation.

D. WHEREAS the Department may approve funding allocations for PLHA Program, subject to the terms and conditions of the Guidelines, NOFA, Program requirements, the Standard Agreement, and other contracts between the Department and PLHA grant recipients;

NOW, THEREFORE, the Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. If Applicant receives a grant of PLHA funds from the Department pursuant to the above referenced PLHA NOFA, it represents and certifies that it will use all such funds in a manner consistent and in compliance with all applicable state and federal statutes, rules, regulations, and laws, including without limitation all rules and laws regarding the PLHA Program, as well as any and all contracts Applicant may have with the Department.

SECTION 2. Applicant is hereby authorized and directed to receive a PLHA grant, in an amount not to exceed the five-year estimate of the PLHA formula allocations of $1,388,976, as stated in Appendix C of the current NOFA in accordance with all applicable rules and laws.

SECTION 3. Applicant hereby agrees to use the PLHA funds for eligible activities as approved by the Department and in accordance with all Program requirements, Guidelines, other rules and laws, as well as in a manner consistent and in compliance with the Standard Agreement and other contracts between the Applicant and the Department.
SECTION 4. Pursuant to Section 302(c)(4) of the Guidelines, Applicant’s PLHA Plan for the 2019-2023 Allocations is attached to this resolution, and Applicant hereby adopts this PLHA Plan and certifies compliance with all public notice, public comment, and public hearing requirements in accordance with the Guidelines.

SECTION 5. The following is included at the request of Department staff, though it is not applicable: Applicant certifies that it was delegated by ________________ to submit an application on its behalf and administer the PLHA grant award for the formula allocation of PLHA funds, pursuant to Guidelines Section 300(c) and 300(d), and the legally binding agreement between the recipient of the PLHA funds and the Applicant is submitted with the PLHA application.

SECTION 6. Applicant certifies that it has or will subgrant some or all of its PLHA funds to another entity or entities. Pursuant to Guidelines Section 302(c)(3), “entity” means a housing developer or program operator, but does not mean an administering Local government to whom a Local government may delegate its PLHA allocation.

SECTION 7. Applicant certifies that its selection process of these subgrantees was or will be accessible to the public and avoided or shall avoid any conflicts of interest.

SECTION 8. Pursuant to Applicant’s certification in this resolution, the PLHA funds will be expended only for eligible Activities and consistent with all program requirements.

SECTION 9. Applicant certifies that, if funds are used for the acquisition, construction or rehabilitation of for-sale housing projects or units within for-sale housing projects, the grantee shall record a deed restriction against the property that will ensure compliance with one of the requirements stated in Guidelines Section 302(c)(6)(A),(B) and (C).

SECTION 10. Applicant certifies that, if funds are used for the development of an Affordable Rental Housing Development, the Local government shall make PLHA assistance in the form of a low-interest, deferred loan to the Sponsor of the Project, and such loan shall be evidenced through a Promissory Note secured by a Deed of Trust and a Regulatory Agreement shall restrict occupancy and rents in accordance with a Local government-approved underwriting of the Project for a term of at least 55 years.

SECTION 12. Applicant shall be subject to the terms and conditions as specified in the Standard Agreement, the PLHA Program Guidelines and any other applicable SB 2 Guidelines published by the Department.

SECTION 12. The City of Palo Alto’s Director of Planning and Development Services is authorized to execute the PLHA Program Application, the PLHA Standard Agreement and any subsequent amendments or modifications thereto, as well as any other documents which are related to the Program or the PLHA grant awarded to Applicant, as the Department may deem appropriate.
SECTION 13. The Council finds that the adoption of this resolution does not meet the definition of a project under Public Resources Code Section 21065, thus, no environmental assessment under the California Environmental Quality Act is required.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

SIGNATURE OF APPROVING OFFICER:

________________________
Pat Burt, Mayor

CERTIFICATE OF THE ATTESTING OFFICER:
The undersigned, City Clerk of the City of Palo Alto, does hereby attest and certify that the foregoing Resolution is a true, full and correct copy of a resolution duly adopted at a meeting of the City Council of the City of Palo Alto, which was duly convened and held on the date stated thereon, and that said document has not been amended, modified, repealed or rescinded since its date of adoption and is in full force and effect as of the date hereof.

ATTEST:

________________________
Lesley Milton, City Clerk

APPROVED AS TO FORM: 

________________________
Assistant City Attorney

APPROVED AS TO CONTENT: 

________________________
City Manager
$302(c)(4) Plan

The City of Palo Alto has focused the PLHA funds exclusively to Activity (1) and Activity (8) as described in the 2019 PLHA Final Guidelines Section 301(a), as these eligible activities are City priorities.

The PLHA funds focused on Activity (1) are dedicated to preservation of existing affordable housing units, operating subsidies for existing affordable housing units, and construction of new affordable housing units at or below 60% AMI. The PLHA funds focused for Activity (8) are dedicated to addressing the needs of people experiencing or at risk of homelessness, which are people which are at an income level of 0% through 30% AMI.

The City of Palo Alto has focused PLHA funds to Activity (1) as described in the 2019 PLHA Final Guidelines Section 301(a), as these eligible activities are City priorities.

The predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is affordable to extremely low-, very low-, or low-income households, including necessary Operating subsidies.

The City of Palo Alto has an ongoing need for funds to support preservation of existing affordable units, operating subsidies for existing affordable units, and construction of new affordable multi-family rental housing at 60% AMI or less. Program income from Activity (1) would be retained within this PLHA activity account and reused for the same activities in the future.

$302(c)(4)(E) Provide a detailed and complete description of how allocated funds will be used for each proposed Affordable Rental Housing Activity.

Provide a detailed and complete description of the way the local government will prioritize investments that increase the supply of housing for households with incomes at or below 60 percent of Area Median Income (AMI).

Apply for PLHA funding is consistent with best practice to secure available Palo Alto-entitled state funding for City priorities. The proposed use of PLHA funds is directed toward currently unmet housing needs, including those activities that are more costly and difficult to find funding sources for. The proposed use of PLHA funds focus on low, very low, and extremely low income levels, which is consistent with current and proposed Housing Element programs to serve low and very low income households, pursuing new funding sources, as well as encouraging affordable housing production.

The City of Palo Alto has focused the PLHA funds exclusively to Activity (1) and Activity (6) as described in the 2019 PLHA Final Guidelines Section 301(a), as these eligible activities are City priorities.

Describe the manner in which allocated funds will be used for eligible activities.

Describe the manner in which allocated funds will be used for eligible activities.

Describe the manner in which allocated funds will be used for eligible activities.

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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of Activity for Persons Experiencing or At Risk of Homelessness</td>
<td>Street Outreach</td>
<td>Street Outreach</td>
<td>Street Outreach</td>
<td>Street Outreach</td>
<td>Street Outreach</td>
<td>Emergency Shelter Operating</td>
<td>Emergency Shelter Operating</td>
<td>Emergency Shelter Operating</td>
<td>Emergency Shelter Operating</td>
<td>Emergency Shelter Operating</td>
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<tr>
<td>§302(c)(4)(E)(iii) Percentage of Funds Allocated for the Proposed Activity</td>
<td>50.00%</td>
<td>60.00%</td>
<td>60.00%</td>
<td>60.00%</td>
<td>60.00%</td>
<td>10.00%</td>
<td>20.00%</td>
<td>20.00%</td>
<td>20.00%</td>
<td>20.00%</td>
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<tr>
<td>§302(c)(4)(E)(iii) Area Median Income Level Served</td>
<td>30%</td>
<td>30%</td>
<td>30%</td>
<td>30%</td>
<td>30%</td>
<td>30%</td>
<td>30%</td>
<td>30%</td>
<td>30%</td>
<td>30%</td>
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<tr>
<td>§302(c)(4)(E)(ii) Unmet share of the RHNA at AMI Level</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>§302(c)(4)(E)(iv) Projected Number of Households Served</td>
<td>150</td>
<td>150</td>
<td>150</td>
<td>150</td>
<td>150</td>
<td>150</td>
<td>150</td>
<td>150</td>
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<td>150</td>
</tr>
<tr>
<td>§302(c)(4)(E)(v) Period of Affordability for the Proposed Activity (55 years required for rental housing projects)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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The City of Palo Alto proposes to use PLHA funds for street outreach as soon as possible, including in support of the opening of the Homekey emergency shelter in July 2023, as well as on an ongoing basis. This City will provide necessary documentation of the street outreach activity eligibility as part of submitting the HCD Request for Funds. The City of Palo Alto proposes to use PLHA funds for emergency shelter operating expenses as soon as July 2023 or beforehand, as well as on an ongoing basis. This City will provide necessary documentation of the emergency shelter operational expenses eligibility as part of submitting the HCD Request for Funds.
Title: Approval of Fiscal Year 2022 Reappropriation Requests to be Carried Forward Into Fiscal Year 2023 and Budget Amendments in Various Funds

From: City Manager

Lead Department: Administrative Services

Recommendation
Staff recommends that the City Council amend the Fiscal Year 2023 Budget Appropriation Ordinance for various funds as identified in Attachment A, and various capital projects as identified in Attachment B and Attachment C (requires a supermajority approval).

Executive Summary
This report and the appropriation adjustments recommended within reflect a part of the annual fiscal year-end process. Annually, when the City transitions between fiscal years on June 30 and begins a new fiscal year on July 1, staff reviews the City’s unencumbered and unspent appropriations of the fiscal year just ended with the City’s spending plans. This report reflects the true-up of active projects, both operating and capital, reconciling what was estimated to occur in FY 2022 when developing the FY 2023 Adopted Budget and what actually did occur. All projects, programs, and corresponding funding contained within this report were previously approved by the City Council for FY 2022. If approved, this report simply realigns funding between fiscal years to align with the status of projects and programs.

Background
As a part of the fiscal year-end process, staff reviews the City’s unencumbered and unspent appropriations of the fiscal year just ended, along with the City’s spending plans. Encumbered amounts are those subject to the legal claims of other parties due to contractual obligations (for example, commitments made through purchase orders), which are carried forward from one fiscal year to the next. Each year there are a small number of important projects which staff was not able to complete or encumber funds. The reappropriation process allows staff to bring forward funding recommendations to the City Council to continue these projects into the next fiscal year. In a couple of instances, there was not enough funding remaining in the prior year to reappropriate to the current year; however, the projects that were not completed are still needed so staff is recommending appropriating funding in the current year.
On September 22, 2014, the City Council approved a recommendation to amend Chapter 2.28, Section 2.28.090 of the Municipal Code, reducing the previous two-step reappropriations process (preliminary and final reappropriation authorization) to one step as long as the Administrative Services Department (ASD) Director/Chief Financial Officer (CFO) certifies that sufficient unencumbered and unexpended funds are available in the Fiscal Year that just ended to be carried forward to the subsequent Fiscal Year.

Additionally, the City Council amended the Municipal Code to eliminate the provision allowing for the automatic reappropriation of capital project funds. There remains a need to reappropriate funds for capital projects in some instances, capital projects may still be delayed or deferred for various reasons. This reappropriation is completed through a review of the status of projects as part of the annual budget process and is built into the annual adopted budget. As staff work to close Fiscal Year 2022 staff process necessary accounting transactions, expended and encumbered funds for each capital project have been reviewed a final time. Based on that review, staff recommends capital dollars remaining for some projects in various funds through Fiscal Year 2022 be reappropriated to Fiscal Year 2023. For some projects too much funding was recommended for reappropriation as additional expenditures occurred in Fiscal Year 2022. Therefore, this staff report recommends reversing a portion of previously authorized reappropriations. In a few capital projects, the expenditure in FY 2022 was greater than the total amount recommended for reappropriation to FY 2023. In these projects, staff recommends reversing the full reappropriation, as well as a technical clean-up action to reduce funds appropriated in FY 2023. This will keep the total project budget the same over the life of the project and allow for an adjustment to the project budget in FY 2022 as part of the FY 2022 Year-End clean-up process, currently scheduled for review by the Finance Committee in November 2022.

**Discussion**

Attachment A identifies those operating budget requests that staff recommends for approval, while Attachment B lists recommended capital project requests. Attachment C includes the recommended technical clean-up items for a few capital projects. With the submission of this report for City Council consideration, the ASD Director/CFO certifies sufficient unencumbered and unexpended funds are available from Fiscal Year 2022 to be reappropriated to Fiscal Year 2023. This staff report is being brought forward prior to the FY 2022 Annual Comprehensive Financial Report (ACFR), scheduled to be considered by the Finance Committee in November, in order to support the continuity of business for these ongoing projects and initiatives.

**Operating Budget Reappropriations**

The projects recommended for budget reappropriations are outlined in more detail in Attachment A and can generally be grouped into the following categories:

- **Funding for Citywide Council Priorities and Recovery:** Items in this category are related to citywide priority and recovery needs previously identified by the Council that could not be completed in FY 2022 and funding is recommended to be reappropriated to FY 2023 to
complete the work. Examples of projects in this category include: Utility Litigation Reserve ($12.4 million), Rent Forgiveness Program ($0.7 million), Advancing Racial Equity ($0.5 million), COVID-19 Recovery ($0.5 million), Transition Reserve ($0.2 million), Administrative Support Reserve ($0.2 million), and Homeless Outreach Case Manager ($0.1 million). A number of these initiatives were delayed due to the continued effects of the pandemic beyond initial estimated timeframes, including staffing and recruiting issues across the City.

- **Timing and Workload Delays:** Projects in this category were delayed due to competing workload demands, appropriation of funds late in the fiscal year, or other unanticipated delays, including COVID-19 and related impacts. Examples of projects in this category include: Information Technology Risk Framework Management ($0.2 million), Urban Forest Master Plan (Tree Inventory) data and analysis ($0.1 million), Aerial Truck Rental Buyout ($0.1 million), and Enterprise Software Maintenance – GIS ($0.1 million).

- **Multi-year Funding Agreements:** Projects in this category include approved donations, grants, loans, and other funding agreements that are anticipated to continue in the coming year. Examples in this category include: Alta Housing Loan for Affordable Workforce Housing at 231 Grant Avenue ($3.0 million), Alta Housing Loan for Affordable Housing at Wilton Court ($1.8 million), Direct Cost Recovery Projects in the Planning and Development Services Department ($0.3 million), and Information Technology On-Call Professional Services Contracts ($0.1 million).

- **Human Services Resource Allocation Process (HSRAP) Reserve:** As part of the FY 2015 Adopted Budget, the City Council established a one-time reserve of $50,000 for HSRAP funding requests. In FY 2019, $10,000 was allocated to Heart and Home Collaborative, a non-profit organization that provides shelter and services to unhoused women in Palo Alto. No additional funds were allocated from this reserve in FY 2022, so the remaining balance of $40,000 is recommended to be reappropriated to FY 2023.

- **Think Fund Teen Services Programs (formerly Bryant Street Garage Teen Program):** In 2001, the City Council voted to lease out a garage property located at 455 Bryant Street. Since this site was formerly the location of the Bryant Street Teen Center, a stipulation in the lease required that 75 percent of the rental revenues would be used to fund programs specifically for Palo Alto youth and teens. In prior years, staff has returned to the Policy and Services Committee and City Council for guidance on community engagement and potential uses of this funding (CMR 4776, CMR 8887). Teen Services programs include, but are not limited to: Think Fund grants, ClickPA website, Teen Arts Council, MakeX, Art Center, Think Fund Gala, and the Buoyancy Teen Festival. The unspent balance of $0.2 million is recommended to be reappropriated to FY 2023 to ensure sufficient resources are available to continue providing quality teen services to the community and develop a long-term approach to maintain delivery of these services.
• **Management Training Program**: The Management Training Program provides $1,000 per eligible employee under the terms outlined in the MGMT and PAPMA labor agreements. The purpose of this program is to provide employees with resources to improve and supplement their job and professional skills. In total, $0.3 million in unused funding is requested to be reappropriated to FY 2023 for various training programs, including: ethics, civics and citizen engagement, leadership and management, budget, finance, procurement, interpersonal communication, presentation skills, business writing, time management, project management, change management, online-based education, and safety and security. The City is working on partnering with local resources such as Stanford University to engage in training to support the development of key skills for employees.

New Operating Budget Appropriation Recommendations for Continuing Projects

Sufficient savings was unavailable in FY 2022 to support reappropriation of funds to FY 2023 due to overall Salary and Benefit expenses exceeding non-salary savings in the department. However, since these projects are related to Council priorities and are still necessary to be completed, staff is recommending appropriation of funds for these projects to be continued in FY 2023.

• **FireMed Marketing**: This action appropriates $50,000 in the Fire Department for marketing related to the City’s ambulance subscription program (FireMed). During FY 2022, the Fire Department began coordination with the Utilities Department to establish a workflow for the program’s online billing. Additional work with the City’s communications team on website design, frequently asked questions, program logo, and a mailer were completed. Staff also began educating fire fighters on the specifics of the program to be able to respond to community questions while in the field. This funding will continue the full implementation of the program and its marketing component during FY 2023.

• **Equity Hiring Initiative**: This action appropriates $50,000 in the Fire Department for work related to equity hiring initiatives. Due to the logistical requirements of the SAFER grant and lower Fire management staffing, the Department was unable to focus on this work in FY 2022. The Deputy Chief position restored in FY 2023 will be responsible for departmental recruitment, hiring and retention, and managing the equity hiring initiative work with the support of this funding.

Capital Budget Reappropriations

As discussed in the Background section of this report, starting with the Fiscal Year 2016 capital budget, all capital project reappropriations require City Council approval. The FY 2023 Adopted Budget included $83.6 million in reappropriated expenditure funds, partially offset by $41.9 million in reappropriated revenue, across all City funds based on estimates of anticipated spending and revenue collections in FY 2022. Since the adoption of the capital budget, some adjustments and refinements to project reappropriations are required since FY 2022 year-end
project revenues and costs have been updated to reflect actual experience. These primarily reflect either increases or decreases to assumed reappropriations in the FY 2023 Adopted Budget:

- Additional reappropriations are recommended when project expenditures originally anticipated to occur before the end of FY 2022 will now instead occur in FY 2023. Similarly, revenue anticipated to be collected in FY 2022 will be reappropriated to FY 2023 to align with actual collections.

- Downward adjustments to reappropriations are recommended when expenses are no longer anticipated to occur in FY 2023 and funding was previously reappropriated in the budget document to FY 2023. If expenses were realized in FY 2022, an adjustment to reduce the project budget is needed as the activity no longer needs funding in FY 2023. The downward adjustment of estimated revenue is treated similarly; an adjustment to reduce the estimated revenue is needed to align collections in the appropriate fiscal year.

Table 1 summarizes the recommended net adjustments as detailed in Attachment B. These Fiscal Year 2022 adjustment amounts represent the final step in the City Council-approved change to the reappropriation process. There are sufficient expenditure savings in Fiscal Year 2022 to support all recommended adjustments.

The revised process and active review of all project reappropriations results in a reduced level of reappropriated funding from one year to the next, compared to the process of automatically reappropriating all unspent capital funding at the end of a fiscal year, and better reflects the needs of the various capital projects and the overall capital programs.

**Table 1: Year-End Capital Project Reappropriation Summary – By Fund**

<table>
<thead>
<tr>
<th>Fund</th>
<th>Number of Projects</th>
<th>Recommended Revenue Reappropriation Adjustment</th>
<th>Recommended Expense Reappropriation Adjustment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Improvement Fund</td>
<td>62</td>
<td>($1,355,000)</td>
<td>$11,536,000</td>
</tr>
<tr>
<td>Cubberley Infrastructure Fund</td>
<td>3</td>
<td>-</td>
<td>($64,000)</td>
</tr>
<tr>
<td>Airport Fund</td>
<td>4</td>
<td>$2,829,000</td>
<td>$693,000</td>
</tr>
<tr>
<td>Electric Fund</td>
<td>14</td>
<td>-</td>
<td>$2,364,000</td>
</tr>
<tr>
<td>Fiber Fund</td>
<td>2</td>
<td>-</td>
<td>$179,000</td>
</tr>
<tr>
<td>Gas Fund</td>
<td>3</td>
<td>-</td>
<td>($119,000)</td>
</tr>
<tr>
<td>Stormwater Management Fund</td>
<td>6</td>
<td>-</td>
<td>$250,000</td>
</tr>
<tr>
<td>Wastewater Collection Fund</td>
<td>3</td>
<td>-</td>
<td>($355,000)</td>
</tr>
<tr>
<td>Wastewater Treatment Fund</td>
<td>7</td>
<td>$5,040,000</td>
<td>$846,000</td>
</tr>
<tr>
<td>Water Fund</td>
<td>6</td>
<td>-</td>
<td>($39,000)</td>
</tr>
<tr>
<td>Technology Fund</td>
<td>5</td>
<td>-</td>
<td>$159,000</td>
</tr>
</tbody>
</table>
Technical Clean-up Actions

As detailed in Attachment C, the Rinconada Park Improvements (PE-08011) project was overspent in the Capital Improvement Fund in FY 2022 by a total of $109,000. In order to fund the overage for this project in FY 2022 and keep the overall project budget at $10.7 million, a technical clean-up action is recommended to reduce the funds appropriated in FY 2023 to shift the funding back into FY 2022. A corresponding adjustment will be done in FY 2022 as part of the FY 2022 Year-End clean-up process, currently scheduled for review by the Finance Committee in November 2022. These actions will align the project budget by year with the actual expenses by year.

For the Electric System Improvements (EL-98003) project, Council approved a three-year contract on March 21, 2022 (CMR 13953) to support undergrounding work in multiple projects: Foothills Rebuild (EL-21001); Electric Customer Connections (EL-89028); Fiber Optic Customer Connections (FO-10000); and Fiber Optic System Improvement (FO-10001). However, the total contract amount for all the projects in all three years was entirely encumbered in EL-98003 in FY 2022 and carried into FY 2023. This action will align funding in FY 2023 with planned work in this project by reducing the budget from $9.5 million to $4.1 million for the anticipated first year amount of the contract needed for this project.

Resource Impact

All projects, programs, and corresponding funding contained within this report were previously approved by the City Council for FY 2022. This report simply realigns funding between fiscal years to align with the status of projects and programs. The ASD Director/CFO certified that sufficient funds exist for the recommended Fiscal Year 2022 Operating Budget adjustments (Attachment A), and Capital Budget adjustments (Attachment B and Attachment C). For Operating reappropriations, staff recommends expense reappropriations of $15.6 million, partially offset by $0.3 million in revenue in the General Fund; $4.8 million in Special Revenue Funds; $0.1 million in Enterprise Funds; and $0.7 million in Internal Service Funds.

Additionally, staff recommends appropriating $0.1 million in the Fire Department in the General Fund for programs that need to continue in FY 2023 but did not have savings in FY 2022 to allow for reappropriations. This funding will be appropriated from the Budget Stabilization Reserve.

For capital projects, in addition to the amounts reappropriated as part of the FY 2023 Adopted Capital Budget, staff recommends $11.5 million in expenses be reappropriated to FY 2023 in the Capital Improvement Funds, in addition to a reduction of $1.4 million in revenue reappropriations. Also recommended is $2.0 million in additional expenses reappropriated in various Enterprise Funds, and a reduction of $1.2 million in expenditures in the Internal Service Funds.

<table>
<thead>
<tr>
<th>Vehicle Replacement and Maintenance Fund</th>
<th>4</th>
<th>-</th>
<th>($1,345,000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total All Funds</td>
<td>119</td>
<td>$6,514,000</td>
<td>$14,105,000</td>
</tr>
</tbody>
</table>
Funds. The cumulative reappropriation, including amounts approved in the FY 2023 Adopted Capital Budget, will be $45.5 million in expenses, partially offset by $7.7 million in revenue in the Capital Improvement Fund projects; $46.5 million in expenses, partially offset by $40.7 million in revenue in the Enterprise Fund projects; and $5.7 million in expenses in the Internal Service Fund projects. The results of the reappropriations and technical clean-up actions will have a net-zero impact to the total projects’ budgets over the life of the projects.

Policy Implications
This recommendation is consistent with adopted Council policy.

Stakeholder Engagement
Review and reconciliation of the funding available for both the Operating reappropriations and the reappropriations for individual Capital projects was coordinated between ASD divisions of the Office of Management and Budget and Accounting, as well as with the impacted departments.

Environmental Review
The action recommended is not a project for the purposes of the California Environmental Quality Act.

Attachments:
- Attachment6.a: Attachment A - FY22 to FY23 Reappropriation Requests_Operating
- Attachment6.b: Attachment B - FY 2022 Reappropriations (Adopted & Final YE) to FY 2023
- Attachment6.c: Attachment C - FY23 Technical Clean-up Actions
<table>
<thead>
<tr>
<th>Fund Name</th>
<th>Department</th>
<th>Title</th>
<th>Description</th>
<th>Recommended Revenue Appropriation</th>
<th>Recommended Expense Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>Community Services</td>
<td>Bryant St. Revenue - Teen Services</td>
<td>This action reappropriates funds for teen services from revenue generated by the rental of the Bryant Street Garage. In 2003, the City Council voted to lease out a garage property located at 455 Bryant Street. Since this site was formerly the location of the Bryant Street Teen Center, a stipulation in the lease required that 75 percent of the rental revenues would be used to fund programs specifically for Palo Alto youth and teens. In prior years, Staff has returned to the Policy and Services Committee and City Council for guidance on community engagement and potential uses of this funding (CMR 4776, CMR 8887). Teen services programs include, but are not limited to: Think Fund grants, ClickPA website, Teen Arts Council, MakeX, Art Center, Think Fund Gala and the Buoyancy Teen Festival. This action will reappropriate $216,000, the remaining value, to ensure resources are available to continue providing quality teen services to the community and develop a long-term approach to maintain delivery of these services.</td>
<td>$</td>
<td>- $ 216,000</td>
</tr>
<tr>
<td>General Fund</td>
<td>Community Services</td>
<td>Art Center Ceramics Studio Bequest</td>
<td>This action reappropriates a bequest from the Sherrie Innis Estate. On June 19, 2017, the City Council approved a bequest of $54,350 from the Sherrie Innis Estate to maintain and upgrade the ceramic studio at the Palo Alto Art Center (CMR 8187) including kilns, wheels, and several other large pieces of equipment. At the close of FY 2022, the unspent balance is projected to be $30,000 and recommended to be reappropriated to FY 2023.</td>
<td>$</td>
<td>- $ 30,000</td>
</tr>
<tr>
<td>General Fund</td>
<td>Community Services</td>
<td>Foothills Nature Preserve Fee Collection Services</td>
<td>This action reappropriates $20,000 for the purchase and installation of an automated ticket sales machine at Foothills Nature Preserve, including software services, training, technical support, and on-site machine servicing. This funding was appropriated in the FY 2021 Midyear Budget Review (CMR 11872) with the opening of Foothills Park to the general public and the creation of a ticketed entry fee.</td>
<td>$</td>
<td>- $ 20,000</td>
</tr>
<tr>
<td>General Fund</td>
<td>Community Services</td>
<td>Child Care Trust Funds for Palo Alto Advisory Commission on Early Care and Education (PAACECE) Work Plan</td>
<td>This action reappropriates $17,000 of the $30,000 that was transferred from the Child Care Trust Fund for a pilot Child Care Mini Grant Program to fund educational and professional services costs of child care providers. As a pilot program, the development of the policies and procedures took longer than anticipated, with the first grants being awarded in the latter half of FY 2022. Initial results have been promising, and Staff would like the remainder of FY 2023 to complete the pilot program and expend the remainder of the funding, as well as evaluate its impact on the community.</td>
<td>$</td>
<td>- $ 17,000</td>
</tr>
<tr>
<td>Fund Name</td>
<td>Department</td>
<td>Title</td>
<td>Description</td>
<td>Recommended Revenue Appropriation</td>
<td>Recommended Expense Appropriation</td>
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</tr>
<tr>
<td>General Fund</td>
<td>Community Services</td>
<td>Homeless Outreach Case Manager</td>
<td>This action reappropriates $115,000 that was allocated for the homeless outreach case manager. Delays related to the request for proposals were experienced as the proposal received in June 2022 did not meet departmental requirements. Staff is planning on re-bidding this project in FY 2023 and will potentially supplement this funding with grant funding and changes in scope in order to encourage more adequate responses.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Fund</td>
<td>Non-Departmental</td>
<td>Advancing Racial Equity</td>
<td>An allocation of $500,000 for the advancement of racial equity was approved in FY 2020 (CMR 11328). In light of the national and local racial equity movement, this funding was set aside to help fund a resolution and associated workplan to address systematic inequities. Since the workplan was not completed in FY 2022, these funds are recommended to be reappropriated to FY 2023 to support initiatives related to advancing racial equity, as directed by the City Council.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Fund</td>
<td>Non-Departmental</td>
<td>Rent Forgiveness Program</td>
<td>This action reappropriates funding to FY 2023 for the rent forgiveness program that Council approved on June 7, 2021 (CMR 12234) to forgive three months of rent for active non-profit tenants. Staff needs additional time to evaluate the information collected from tenants and amend agreements in order to complete the program.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Fund</td>
<td>Non-Departmental</td>
<td>COVID-19 Funding</td>
<td>This action reappropriates $500,000 of COVID-19 Recovery Funds to continue COVID-19 recovery related work in FY 2023. This total amount is comprised of remaining funding set-aside for three separate activities: $100,000 for Contact Tracing; $200,000 for Workplace Restoration; and $200,000 for Business and Communication Support. The City remained in reductive modes longer than originally anticipated and expenses for COVID-19 Recovery activities were not fully spent in FY 2022. These funds are anticipated to be needed in FY 2023 to support economic recovery through a continually evolving endemic state.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Fund</td>
<td>Non-Departmental</td>
<td>Administrative Support Reserve</td>
<td>This action reappropriates $175,000 to provide funding for unforeseen resource needs in FY 2023. Funding was appropriated in this reserve as part of the FY 2022 Adopted Budget to be used for administrative support costs that were anticipated to materialize in various departments across the City as a result of service restoration and the City continuing to recover from effects of the COVID-19 pandemic. Funds are anticipated to be needed in FY 2023 to continue to support these efforts.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fund Name</td>
<td>Department</td>
<td>Title</td>
<td>Description</td>
<td>Recommended Revenue Appropriation</td>
<td>Recommended Expense Appropriation</td>
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</tr>
<tr>
<td>General Fund</td>
<td>Non-Departmental</td>
<td>Human Services Resource Allocation Program (HSRAP) Reserve</td>
<td>This action reappropriates the remaining balance in the Human Services Resource Allocation Program (HSRAP) Reserve. As part of the FY 2015 Adopted Budget, the City Council established a one-time reserve of $50,000 for HSRAP funding requests. In FY 2019, $10,000 was allocated to Heart and Home Collaborative, a non-profit organization that provides shelter and services to unhoused women in Palo Alto. The remaining balance of $40,000 is recommended to be reappropriated to FY 2023 for future HSRAP use.</td>
<td>$ 40,000</td>
<td></td>
</tr>
<tr>
<td>General Fund</td>
<td>Non-Departmental</td>
<td>Transition Costs Reserve</td>
<td>This action reappropriates $210,000 to address one-time funding needs for the transition and implementation of various service delivery changes approved in the FY 2022 operating budget. A number of costs related to recruitment and changes in service delivery are likely to incur one-time transition costs. These funds will continue to assist in aiding these transitions in FY 2023.</td>
<td>$</td>
<td>$ 210,000</td>
</tr>
<tr>
<td>General Fund</td>
<td>Non-Departmental</td>
<td>Utility Transfer Litigation Reserve</td>
<td>This action reappropriates $12.4 million to plan for the potential financial impacts of an ongoing lawsuit, Green v. City of Palo Alto (Santa Clara Superior Court, Case No. 1-16-CV-300760). This case is a class action lawsuit filed on October 6, 2016, which claimed that the City's gas and electric rates are taxes that exceed the cost of providing service, absent voter approval, because the rates fund annual transfers from the utilities to the City's general fund. The lawsuit sought a refund of three years of alleged overpayments by gas and electric ratepayers and an injunction prohibiting further overpayments. This action will bring the reserve to $17.5 million in FY 2023 for potential prior year overpayments.</td>
<td>$</td>
<td>$ 12,400,000</td>
</tr>
<tr>
<td>General Fund</td>
<td>Non-Departmental</td>
<td>Management Development Funds</td>
<td>This action reappropriates funding for management training and professional development. The Management Training Program provides $1,000 per eligible employee under the terms outlined in the labor agreements and compensation plans with the Management and Professional group and the Palo Alto Police Management Association. For retention strategies and workforce development, this action is recommended for training opportunities that may include the following program topics: ethics, civics and citizen engagement, leadership and management, budget, finance, procurement, interpersonal communication, presentation skills, business writing, time management, project management, change management, and safety and security.</td>
<td>$</td>
<td>$ 287,000</td>
</tr>
<tr>
<td>General Fund</td>
<td>Planning and Development</td>
<td>Direct Cost Recovery Project Budget, 3225 El Camino Real</td>
<td>This action reappropriates remaining revenue and expense related to the deposit-based cost recovery project at 3225 El Camino Real. This is a fully cost recoverable project that is tracked separately using deposit accounts. The funds do not comingle with other contract service budgets and funds are only accessible for this purpose. This is a cost-neutral action for a specific cost recovery project. All costs will be reimbursed by the applicant.</td>
<td>$ 70,000</td>
<td>$ 70,000</td>
</tr>
<tr>
<td>Fund Name</td>
<td>Department</td>
<td>Title</td>
<td>Description</td>
<td>Recommended Revenue Appropriation</td>
<td>Recommended Expense Appropriation</td>
</tr>
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<td>---------------</td>
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<td>-----------------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>General Fund</td>
<td>Planning and Development Services</td>
<td>Direct Cost Recovery Project Budget</td>
<td>This action reappropriates remaining revenue and expense related to various deposit-based direct cost recovery projects. These are fully cost recoverable and are tracked separately using deposit accounts. The funds do not comingle with other contract service budgets and funds are only accessible for this purpose. This is a cost-neutral action. On November 9, 2020 the City Council approved $500,000 in contract services funding to support consultant services and a corresponding increase of $500,000 to the revenue budget, resulting in a net-zero impact to the General Fund. These contracts are paid by deposit-based fees and the applicant is invoiced or refunded when the entire cost of the project is finalized. Annually the City receives about fifty direct cost recovery projects per year. These projects vary from single family dwellings, to mixed use projects, to new hotels being developed in Palo Alto.</td>
<td>$225,000</td>
<td>$225,000</td>
</tr>
<tr>
<td>General Fund</td>
<td>Public Works</td>
<td>Urban Forest Master Plan (Tree Inventory)</td>
<td>This action reappropriates $97,000 for the tree inventory update related to the Urban Forest Master Plan (UFMP). The City is currently entering year 8 of the 12-year implementation of the UFMP, and a tree inventory update and tree benefits and inventory analysis was called for in year 8 (S.A.ii, FY23). The City maintains more than 38,000 public trees along City streets, in City parks, and around City-owned buildings. The last street tree inventory update was completed in 2010 and over time the inventory data can become out of alignment with the actual tree field conditions. As trees are a living green asset that changes over time, periodic updates are part of industry best practices for tree inventories.</td>
<td>$97,000</td>
<td></td>
</tr>
</tbody>
</table>

**Total General Fund Reappropriation** | $295,000 | $15,646,000
<table>
<thead>
<tr>
<th>Fund Name</th>
<th>Department</th>
<th>Title</th>
<th>Description</th>
<th>Recommended Revenue Appropriation</th>
<th>Recommended Expense Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing In-Lieu Fund: Residential</td>
<td>Planning and Development Services</td>
<td>231 Grant Avenue Affordable Housing Project</td>
<td>This action reappropriates $3 million for a loan to Santa Clara County for the development of an affordable workforce housing project located at 231 Grant Avenue. This development will be primarily for teachers and other school district employees from participating school districts in Santa Clara and San Mateo Counties. This loan from the Residential Housing In-Lieu Fund was initially approved by the City Council at the February 7, 2022 meeting (CMR 13741). At the close of FY 2022 this funding remains unspent and is recommended to be reappropriated to FY 2023.</td>
<td>$3,000,000</td>
<td>$3,000,000</td>
</tr>
<tr>
<td>Housing In-Lieu Fund: Commercial/Residential Housing Impact Fund</td>
<td>Planning and Development Services</td>
<td>Alta Housing Affordable Housing Loan Agreement: 3705 El Camino Real (Wilton Court)</td>
<td>This action reappropriates $1.8 million for an agreement with Alta Housing to develop and construct a 100 percent affordable housing project at 3705 El Camino Real (Wilton Court). In total, $20.5 million in City contributions have been appropriated for this project. The City Council approved the initial contribution of $10.0 million at the June 3, 2019 meeting (CMR 10143); $1.0 million from the Residential Housing Fund, and $9.0 million from the Commercial Housing Fund. The City Council approved an additional contribution of $10.5 million at the January 13, 2020 meeting (CMR 10928); $7.2 million from the Residential Housing Fund, $2.7 million from the Commercial Housing Fund, and $0.6 million from the Residential Housing Impact Fund. At the close of FY 2022, approximately $1.8 million of funding remains ($1.2 million in the Commercial Housing fund and $0.6 million in the Residential Housing Fund), which is recommended to be reappropriated to continue the project in FY 2023.</td>
<td>$1,767,000</td>
<td>$1,767,000</td>
</tr>
</tbody>
</table>

**Total Special Revenue Fund Reappropriation** | $ - | $4,767,000 |

| Electric Fund | Utilities | Aerial Truck Rental Buyout | This action reappropriates $120,000 in the Electric Fund to purchase a rented aerial bucket truck. Consistent with recommendations Council approved in 2016 (CMR 6736), inventory for these aerial trucks are provided through a lease-to-purchase model. Buying the rented truck will enable staff to sell the vehicle to help offset the cost to enter into a new lease-to-purchase agreement. Funds for this purchase were set aside in FY 2022 but delays caused for the purchase to roll into FY 2023. | $ - | $120,000 |

**Total Enterprise Fund Reappropriation** | $ - | $120,000 |
<table>
<thead>
<tr>
<th>Fund Name</th>
<th>Department</th>
<th>Title</th>
<th>Description</th>
<th>Recommended Revenue Appropriation</th>
<th>Recommended Expense Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technology Fund</td>
<td>Information Technology</td>
<td>On-Call Professional Services Contracts</td>
<td>This action reappropriates $100,000 to assist with on-call professional services contracts in the Information Technology Department that were not completed in FY 2022. These projects consist of RFP/vendor selection/implementation of large applications throughout the City, spanning multiple departments as well as desktop replacements and mobile device management projects. Current IT Project Managers are working on several other projects, and these funds will help to assign some of the pending projects to on-call staff (project managers) to help fulfill the projects requested.</td>
<td>$</td>
<td>$ 100,000</td>
</tr>
<tr>
<td>Technology Fund</td>
<td>Information Technology</td>
<td>Enterprise Software Maintenance - GIS</td>
<td>This action reappropriates $125,000 for enterprise software maintenance in the Information Technology Department. With recent reinvestments related to geographic information system (GIS) staffing and infrastructure, staff plan to complete GIS projects in progress that were not able to be finished in FY 2022 in order to begin new enterprise GIS enhancements slated for FY 2023. Below are some of the projects that this funding will help with completing: continue work on SQL server, map styling and symbology, AMI-related GIS interface requirements (with SAP, WOMs, MDMS, and RNI), SAP- and GIS-related integration tasks, and OMS and GIS integration tasks.</td>
<td>$</td>
<td>$ 125,000</td>
</tr>
<tr>
<td>Technology Fund</td>
<td>Information Technology</td>
<td>Risk Framework Management Request For Proposals</td>
<td>This action reappropriates $200,000 for the risk framework management requests for proposals (RFP) in the Information Technology Department. In March 2020, Baker Tilly indicated in their audit that the City does not currently have formal IT risk management practices. In general, day-to-day operational controls are in place to mitigate IT risks, but gaps may still exist for unidentified IT risks. An RFP was issued to address this in FY 2022, but a vendor was not chosen so the funds could not be encumbered. This action will allow the Department to complete the RFP and begin work on developing, implementing, and operationalizing the City's new IT Risk Management Process.</td>
<td>$</td>
<td>$ 200,000</td>
</tr>
<tr>
<td>Technology Fund</td>
<td>Information Technology</td>
<td>Planning and Development Services Technology Fee</td>
<td>This action reappropriates $321,000 for various technology projects in the Planning and Development Services (PDS) Department. As part of the Adopted Municipal Fee Schedule, a surcharge up to three percent is included in some of the PDS fees to recover funding for technology projects. These projects include ongoing technical support of the City's Geographic Information System (GIS) and the new ESRI platform, implementing an online permitting system, expanding Accela capabilities, and digitizing and storing plans and records. At the close of FY 2022, $321,000 of the approximate $330,000 collected remains unspent and will be used for planned projects in FY 2023.</td>
<td>$</td>
<td>$ 321,000</td>
</tr>
</tbody>
</table>

**Total Internal Service Fund Reappropriation** $ 746,000  
**Total All Funds Reappropriation** $ 21,279,000
### FY 2023 New Funding Appropriation for Continuing Projects

<table>
<thead>
<tr>
<th>Fund Name</th>
<th>Department</th>
<th>Title</th>
<th>Description</th>
<th>Recommended Revenue Appropriation</th>
<th>Recommended Expense Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>Fire</td>
<td>FireMed Marketing</td>
<td>This action appropriates $50,000 for marketing related to the City’s ambulance subscription program, known as the FireMed Program. The Program was approved in October 2021 (CMR 13618) and launched in April 2022. During FY 2022, the Fire Department began coordination with the Utilities Department to establish a workflow for the Program’s online billing. Additional work with the City’s Communications Team on website design, frequently asked questions, program logo, and mailer were completed. Staff also began educating sworn fire personnel on the specifics of the program to be able to respond to community questions while in the field. This funding will continue to support the full implementation of the Program, including the marketing component during FY 2023.</td>
<td>$</td>
<td>$ 50,000</td>
</tr>
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<td>General Fund</td>
<td>Fire</td>
<td>Equity Hiring Initiative</td>
<td>This action appropriates $50,000 for equity hiring initiatives in the Fire Department. Funding for contract services for research and implementation of initiatives was approved during the FY 2022 budget process; however, logistical requirements for the SAFER grant and lower Fire management staffing did not allow the Department to focus on equity hiring initiatives in FY 2022. The Deputy Chief position restored in FY 2023 will be responsible for departmental recruitment, hiring and retention, and managing the equity hiring initiative work with the support of this funding.</td>
<td>$</td>
<td>$ 50,000</td>
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<td>General Fund</td>
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<td>Fund Number and Name</td>
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## Capital Improvement Plan FY 2022 Reappropriations to FY 2023

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<th>Fund Number and Name</th>
<th>Project Title</th>
<th>Proj. No.</th>
<th>Expenses</th>
<th>Revenues</th>
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<td>Transportation and Parking Improvements</td>
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<td>Water, Gas, Wastewater Office Remodel</td>
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<td>Plant Repair, Retrofit, and Equipment Replacement</td>
<td>WQ-19002</td>
<td>6,985,100</td>
<td>867,000</td>
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<tr>
<td></td>
<td>Primary Sedimentation Tank Rehabilitation</td>
<td>WQ-14003</td>
<td>2,628,000</td>
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<tr>
<td></td>
<td>Secondary Treatment Upgrades</td>
<td>WQ-19001</td>
<td>34,200</td>
<td>-</td>
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<tr>
<td><strong>526 - Wastewater Treatment Fund Total</strong></td>
<td></td>
<td></td>
<td>23,039,600</td>
<td>846,000</td>
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Page 2 of 3
## Reappropriations to FY 2023

<table>
<thead>
<tr>
<th>Fund Number and Name</th>
<th>Project Title</th>
<th>Proj. No.</th>
<th>Adopted Reapp</th>
<th>Final Reapp</th>
<th>Total Reapp</th>
<th>Adopted Reapp</th>
<th>Final Reapp</th>
<th>Total Reapp</th>
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<tbody>
<tr>
<td>522 - Water Fund</td>
<td>Water Distribution System Improvements</td>
<td>WS-11003</td>
<td>217,000</td>
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<td></td>
<td>Water General Equipment/Tools</td>
<td>WS-13002</td>
<td>55,000</td>
<td>(25,000)</td>
<td>30,000</td>
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<tr>
<td></td>
<td>Water Main Replacement - Project 28</td>
<td>WS-14001</td>
<td>2,000,000</td>
<td>(200,000)</td>
<td>1,800,000</td>
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<tr>
<td></td>
<td>Water Main Replacement - Project 29</td>
<td>WS-15002</td>
<td>374,600</td>
<td></td>
<td>374,600</td>
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<td></td>
<td>Water Meters</td>
<td>WS-80015</td>
<td>400,000</td>
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<td></td>
<td>Water Regulation Station Improvements</td>
<td>WS-07000</td>
<td>548,150</td>
<td>(31,000)</td>
<td>517,150</td>
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<tr>
<td>522 - Water Fund Total</td>
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<td></td>
<td>3,377,750</td>
<td>(39,000)</td>
<td>3,338,750</td>
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<tr>
<td>682 - Technology Fund</td>
<td>City Council Chambers Upgrade</td>
<td>TE-19001</td>
<td>1,697,500</td>
<td>93,000</td>
<td>1,790,500</td>
<td></td>
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<tr>
<td></td>
<td>Development Center Blueprint Technology Enhancements</td>
<td>TE-12001</td>
<td>66,000</td>
<td></td>
<td>66,000</td>
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<tr>
<td></td>
<td>Enterprise Resource Planning Upgrade</td>
<td>TE-19000</td>
<td>2,029,000</td>
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<td></td>
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<tr>
<td></td>
<td>Radio Infrastructure Replacement</td>
<td>TE-05000</td>
<td>259,900</td>
<td></td>
<td>259,900</td>
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<td></td>
<td>Utilities Customer Bill System Improvements</td>
<td>TE-10001</td>
<td>130,000</td>
<td></td>
<td>130,000</td>
<td></td>
<td></td>
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<tr>
<td>682 - Technology Fund Total</td>
<td></td>
<td></td>
<td>4,116,400</td>
<td>159,000</td>
<td>4,275,400</td>
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<tr>
<td>681 - Vehicle Replacement &amp; Maintenance Fund</td>
<td>Emergency Repair and Replacement</td>
<td>VR-15001</td>
<td></td>
<td>65,000</td>
<td>65,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Scheduled Vehicle and Equipment Replacement - Fiscal Year 2020</td>
<td>VR-20000</td>
<td>1,413,700</td>
<td>(671,000)</td>
<td>742,700</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Scheduled Vehicle and Equipment Replacement - Fiscal Year 2021</td>
<td>VR-21000</td>
<td>271,700</td>
<td>(72,000)</td>
<td>199,700</td>
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<tr>
<td></td>
<td>Scheduled Vehicle and Equipment Replacement - Fiscal Year 2022</td>
<td>VR-22000</td>
<td>1,069,000</td>
<td>(667,000)</td>
<td>402,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>681 - Vehicle Replacement &amp; Maintenance Fund Total</td>
<td></td>
<td></td>
<td>2,754,400</td>
<td>(1,345,000)</td>
<td>1,409,400</td>
<td></td>
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<tr>
<td>Grand Total</td>
<td></td>
<td></td>
<td>83,618,478</td>
<td>14,105,000</td>
<td>97,723,478</td>
<td>41,870,600</td>
<td>6,514,000</td>
<td>48,384,600</td>
</tr>
</tbody>
</table>
## Capital Improvement Plan FY 2023 Technical Clean-Up Actions

### Attachment C

<table>
<thead>
<tr>
<th>Fund Name</th>
<th>Department</th>
<th>Proj. No.</th>
<th>Title</th>
<th>Description</th>
<th>Expense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Improvement</td>
<td>Public Works</td>
<td>PE-08001</td>
<td>Rinconada Park Improvements</td>
<td>This project was over-expended in FY 2022 and the budget increased by $109,000 as part of the FY 2022 Year-End process. A corresponding decrease is recommended in FY 2023 in order to maintain the total project budget of $10.7 million over the life of the project.</td>
<td>(109,000)</td>
</tr>
<tr>
<td>Electric Fund</td>
<td>Utilities</td>
<td>EL-98003</td>
<td>Electric System Improvements</td>
<td>Council approved a three-year contract (CMR 133953) to support undergrounding work in multiple projects: Foothills Rebuild (EL-21001), Electric Customer Connections (EL-89028), Fiber Optic Customer Connections (FO-10000), and Fiber Optic System Improvement (FO-10001). However, the total contract amount for all the projects in all three years instead of the anticipated first year amount of the contract needed for this project was entirely encumbered in this project in FY 2022 and carried into FY 2023. This action will align funding in FY 2023 with planned work in this project by reducing the budget from $9.5 million to $4.1 million.</td>
<td>(9,500,000)</td>
</tr>
</tbody>
</table>
Title: Approval of a Professional Services Agreement Contract Number C23185658 With BKF Engineers for the Amount of $900,000 Over a 3-year Term for On-Call Surveying and Design Support Services

From: City Manager

Lead Department: Public Works

Recommendation
Staff recommends that Council approve and authorize the City Manager or their designee to execute a contract with BKF Engineers (Attachment A) in the amount of $300,000 per year, for three years, for a total amount not to exceed $900,000, for on-call surveying and design support services.

Background/Discussion
The City currently has one land surveyor on-staff who primarily handles grade checking for Public Works Capital Improvement Program (CIP) construction projects and administrative documents and does not have the time or capability to perform large surveys. The proposed on-call contract for surveying will augment the staff surveyor resource to meet this need. The proposed contract would replace a previous on-call surveying contract which will expire on October 22, 2022 (Staff Report ID #10699).

On July 7, 2022, the City released a Request for Proposals (RFP) for On-Call Surveying Services. Seven proposals were received in response to the RFP but two proposals have been deemed nonresponsive. Public Works Engineering Services staff carefully reviewed each firm's qualifications and submittal in response to the criteria identified in the RFP. Siegfried and BKF Engineers were ranked number one and two, respectively, on the first round of selection. On September 6, 2022, staff conducted interviews with Siegfried and BKF Engineers to select the top firm. BKF Engineers was selected as the top ranked proposer based on their presentation at the interview, hourly billing rates, in-house ability to perform surveying, studies, and design, as well as their familiarity with City projects and standards.

The scope of services of the on-call proposed contract includes providing on-call support to help advance street resurfacing projects, including the survey and drainage design for various City streets. The contract capacity allows for these professional services to be utilized for other CIP projects (including storm drain, parks, and buildings projects) requiring surveying,
including large roadway survey needs. Work will be assigned to the consultant on a task order basis.

Summary of Solicitation Process

<table>
<thead>
<tr>
<th>Name/Number</th>
<th>On-Call Surveying Services RFP #185658</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed Length of Project</td>
<td>36 months</td>
</tr>
<tr>
<td>Number of Notices sent to Vendors via City’s eProcurement System (PlanetBids)</td>
<td>2,271</td>
</tr>
<tr>
<td>Number of RFP Packages downloaded by</td>
<td>19</td>
</tr>
<tr>
<td>Total Days to Respond</td>
<td>21</td>
</tr>
<tr>
<td>Pre-Proposal Meeting</td>
<td>No</td>
</tr>
<tr>
<td>Number of Proposals Received</td>
<td>5</td>
</tr>
<tr>
<td>Proposal Price Range</td>
<td>N/A</td>
</tr>
<tr>
<td>Public Link to Solicitation</td>
<td><a href="https://pbsystem.planetbids.com/portal/25569/bo/bo-detail/95879">https://pbsystem.planetbids.com/portal/25569/bo/bo-detail/95879</a></td>
</tr>
</tbody>
</table>

Resource Impact
Funding for on-call project work will be encumbered as survey and design task orders are issued and assigned to specific CIP projects. Task orders will be funded within existing CIP project budgets as approved by the City Council through the annual budget process.

Stakeholder Engagement
Stakeholder engagement will be conducted as necessary for each project. Over 2,000 notices were sent through the City’s public procurement process to notify potential service providers of this opportunity.

Policy Implications
This project is in conformance with the City of Palo Alto’s Comprehensive Plan and does not represent any changes to existing City policies.

Environmental Review
Council action on this item is not a project as defined by CEQA because a contract award for on-call surveying and design services is a continuing administrative or maintenance activity. CEQA Guidelines section 15378(b)(2).
Title: Approve the Parks and Recreation Commission Recommendation for a New Skate Park; Authorize the Friends of Palo Alto Parks to begin Fundraising; and Direct Staff to Support Outreach

From: City Manager

Lead Department: Community Services

Recommendation
The Parks and Recreation Commission (PRC) recommends that City Council:

A. Approve the following findings from the Parks and Recreation Commission:
   1. A new skate park is needed in our community.
   2. The area adjoining the existing Greer Park Skate Bowl is a suitable location for a new skate park (Attachment A).
   3. A new skate park is a high priority among the projects identified in the Parks, Trails, Natural Open Space and Recreation Master Plan.

B. Authorize the Friends of Palo Alto Parks to begin fundraising for the design and construction of a new skate park at Greer Park (Attachment A) and require that the fundraising earmark funds to conduct a parking analysis to identify peak usage times and determine if additional parking is needed prior to creating design plans.

C. Direct staff to support the process with community outreach during the design phase of the project once the Friends of Palo Alto Parks have raised the necessary funds to design a new skate park.

Background
The skate bowl at Greer Park was constructed in 1990 and opened to the public in January 1991. The skate facility is a three-bowl complex consisting of three interconnected concrete bowls. The bowls are four, six and eight feet deep, with an island in the center bowl. The existing skate bowl and the surrounding paved area is 6,032 sq. ft.

While the existing skate bowl remains popular and beloved by many in the skateboarding community, the sport of skateboarding has grown and evolved in ways...
that require new styles of skate parks. Almost 2,000 people have signed a petition asking for a new skate park with a good mix of street and transition features that would support skaters at all levels.

On April 12, 2021, City Council voted to refer a proposal (City Council Colleagues' memo) for a new skate park to the PRC to evaluate the need for a skate park, identify a suitable location, and prioritize a skate park facility within the Parks, Trails, Natural Open Space and Recreation Master Plan.

On April 27, 2021, the PRC formed a skate park Ad Hoc Committee. Staff, the Ad Hoc Committee, and a stakeholder group met numerous times over the last year to work on the three tasks that City Council referred to the PRC. On June 15, 2022, staff held a virtual community meeting to collect feedback on the concept of building a new skate park adjacent to the existing skate park at Greer Park. Twenty-one people participated in the meeting. There was broad support for the proposed location. There were numerous comments commending the process so far and for working closely with the skateboarding community to find the right location. The participants also encouraged staff to continue to work closely with the skateboarding community.

There were several comments of appreciation for preserving the existing skate bowl. There was a question about the funding plan for the project and whether the City will contribute to the cost of the project. Staff explained that the current idea is that it would be community funded. There were comments from several skate park advocates who mentioned that skate parks don’t have a standard size, and that the proposed space for a new skate park at Greer seems more than adequate.

**Discussion**

On July 28, 2022, the Parks and Recreation Commission reviewed and discussed the feedback from the Ad Hoc Committee, the skate park stakeholders, staff, and comments from the June 15, 2022 community meeting regarding the need for a new skate park, a suitable location for a new skate park, and the prioritization of a new skate park within the Parks, Trails, Natural Open Space and Recreation Master Plan (Staff Report).

The Commission was supportive of the analysis from staff and the Ad Hoc Committee and agreed with the proposed location for the new skate park. The Commission also praised the public engagement process and the helpful work that the skate park stakeholder group has done.

The Commission asked staff to ensure that Greer Park field users were notified and informed about the proposed location of a new skate park. Staff reached out to all the regular Greer Park field users (AYSO, Palo Alto Soccer Club, AAYSA, PSV Union, and Stanford Soccer Club) as well as City staff who sometimes program the fields for classes
in advance of the community meeting and after the July PRC meeting. There were no questions or concerns from the field users.

The Commission asked about the impacts to the trees around the existing skate park. Staff explained that impacts to trees would not be known until there is a design for the skate park; but that the park would be designed to avoid impacts to trees wherever feasible. A City arborist surveyed the trees that are within the boundary of the proposed location for the skate park and identified the following trees:

- #255 Chinese Pistache 8” diameter
- #256 Chinese Pistache 7” diameter
- #257 Chinese Pistache 10” diameter
- #258 Patmore Ash 8” diameter
- #259 Chinese Pistache 4” diameter
- two small volunteer (self-seeded) Privet trees

There was also a question about impacts to the parking at Greer Park given that peak use times for the skate park are likely to coincide with peak use on weekdays by after school sports practice and on weekends by sport field games. Impacts related to transportation and trees would be assessed in accordance with CEQA as well as for consistency with Council policies, Comprehensive Plan goals and policies, and City regulations once a conceptual design is proposed. CEQA would be completed prior to adoption of a Park Improvement Ordinance for this project.

On September 1, 2022, the PRC voted unanimously (6-0 vote, Brown absent) to recommend that City Council:

A. Receive the following findings from the Parks and Recreation Commission:
   1. A new skate park is needed in our community.
   2. The area adjoining the existing Greer Park Skate Bowl is a suitable location for a new skate park (Attachment A).
   3. A new skate park is a high priority among the projects identified in the Parks Master Plan.

B. Authorize the Friends of Palo Alto Parks to begin fundraising for the design and construction of a new skate park at Greer Park (Attachment A) and require that the fundraising earmark funds to conduct a parking analysis to identify peak usage times and determine if additional parking is needed prior to creating design plans.

C. Direct staff to support the process with community outreach during the design phase of the project once the Friends of Palo Alto Parks have raised the necessary funds to design a new skate park.
Staff noted that the potential impacts to parking would be evaluated further during Planning Department review as part of the Park Improvement Ordinance and Architectural Review process once a design is completed. As noted above, the commissioners recommended that fundraising earmark funds for conducting a parking study prior to evaluate the need for additional parking prior to developing project plans. The Commissioners voiced their support for the project and highlighted the important role that Sam Kaplinsky, a youth community member, has had in advocating for a new skate park. Mr. Kaplinsky has been instrumental in supporting a new skate park and participated in stakeholder meetings.

If the City Council ultimately approves the recommendation in this staff report, it will help provide initial direction on this project. Staff will continue to return to the PRC and City Council to receive direction and approval for specific aspects of this project going forward. As this project progresses, City staff, the Friends of the Palo Alto Parks, and the skate park stakeholders will work cooperatively to develop a framework for how this project will move forward.

Timeline
October 2022 – Begin fundraising for skate park design and construction (pending City Council approval).

Resource Impact
The recommendations in this staff report would initiate private fundraising and public outreach for a new skate park, which would require staff time to coordinate the public outreach process. The Community Services Department currently has sufficient staff capacity to support the outreach process. It is not anticipated to require City funds to design or construct a new skate park.

If the fundraising campaign is successful and a capital improvement project is created to construct a new skate park, additional staff resources will be required to manage the project. The City will be responsible for the ongoing maintenance of the new skate park. Once a new skate park is constructed, there will be increased operating and maintenance costs incurred by the City, which will be determined upon completion of the design of the skate park.

Stakeholder Engagement
• April 2021 to July 2022—numerous meetings with PRC Ad Hoc Committee, staff, and a skate park stakeholder group
• June 15, 2022—community meeting
• July 28, 2022—Parks and Recreation Commission meeting
• September 1, 2022—Parks and Recreation Commission meeting

Environmental Review
Authorizing a third party to begin fundraising and design as well as authorizing staff to support outreach efforts to obtain input on the design does not meet the definition of a project under Section 21065 of the Public Resources Code (California Environmental Quality Act [CEQA] Guidelines Section 15378) because it would not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

Construction of the skate park would require approval of an architectural review application as well as a Park Improvement Ordinance. The proposed design would be evaluated in accordance with CEQA once a plan detailing the proposed modifications is available to adequately assess the impacts of the proposed project.
City of Palo Alto

City Council Staff Report

Report Type: Action Items  Meeting Date: 10/24/2022

Summary Title: NVCAP Refined Preferred Plan Update

Title: PUBLIC HEARING: Staff Recommend the City Council Review the North Ventura Coordinated Area Plan (NVCAP) Refined Preferred Alternative, Take Public Comment, and Endorse the Refined Preferred Alternative Plan.

From: City Manager

Lead Department: Planning and Development Services

Recommendation:
Staff recommends that Council receive the staff presentation, offer comments, and endorse the refined North Ventura Coordinated Area Plan (NVCAP) concept.

Executive Summary:
The purpose of the NVCAP planning process is to capture the City’s vision for a 60-acre area within the Ventura neighborhood in a regulatory document. The document would include land use policies, development standards, and design guidelines for future development. The neighborhood would include an improved transportation network, multi-family housing units, ground-floor retail spaces, public open spaces, and creek improvements. An interconnected street grid would take advantage of the area’s proximity to the Caltrain station, the California Avenue retail corridor, and El Camino Real arterial.

In summary, the Council-selected preferred plan creates a long-term build-out scenario that maintains the existing street network and enhances Portage to become a woonerf1 (limited accessway); provides bicycle improvements; represents a modest increase in residential units over what is existing; serves to continue an eventual transition of existing office space to other uses and offers the creation of park space and re-naturalization of Matadero Creek.

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1 Woonerf is a Dutch term for ‘living street’ that includes shared space for pedestrians, bicyclists and motorist using design elements such as traffic calming and slower posted speed limits.
The purpose of this report is to share a refined area plan concept showing more program details such as height transitions and a built-out scenario. Staff seeks feedback and direction on policy implications such as:

- Height transitions
- Use of Transportation Demand Management to address employment density
- Implementing parking maximums
- Additional height for affordable housing site adjacent to cannery

Staff wants to ensure that the plan is aligned with the Council’s vision for the area before commencing with environmental review and drafting the plan.

Background:
The City’s 2030 Comprehensive Plan adopted in 2017 called for site-specific planning in the North Ventura area. See the June 14, 2021, City Council meeting staff report for more background information about the North Ventura area, the Coordinated Area Plan contents, and a summary of the public engagement process for the plan. To help guide the planning process, the City Council adopted seven goals and six objectives contained in Attachment A.

Preferred Plan Concept
During the meetings with the NVCAP Working Group (WG), a range of plan concepts were developed that advanced City Council adopted goals and vision for the plan area. Several public hearings with the Planning and Transportation Commission (PTC) and the City Council occurred to present and discuss these alternative scenarios for the NVCAP project area. On January 10, 2022, the City Council endorsed a preferred plan concept and provided the following direction in the form of a motion: ³

MOTION: Council Member DuBois moved, seconded by Mayor Burt that the Council confirm direction for the preferred plan for NVCAP with additional considerations:

A. Define a low-density R&D zone limiting employment density;
B. 1.0 parking spot for 1 bedroom going to 2 spots for 2 bedroom + units, in parallel, refer to the Planning and Transportation Commission to make recommendations for analysis of appropriate parking based on the Fehr & Peers study and other studies and encourage mechanisms to discourage street parking;

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C. Deed restricted retail required in order to get 15’ first floor incentive;
D. Eliminate workforce housing incentives or propose incentives separate from affordable housing and redefine qualifications for workforce housing; and
E. Develop preferred park locations for larger park space and continue to explore the naturalization of the creek consistent with option 3;
F. Include 100% affordable housing height limits based upon the minimum height necessary for a five-story, retail affordable housing project or a six-story non-retail affordable housing project.

The motion represented a milestone in the NVCAP process and starting point for confirming a refined preferred plan.

Activities Since January 2022
Since the selection of the preferred plan, staff re-engaged with the consultant (Perkins + Will) to complete the remainder of the tasks necessary to adopt the NVCAP. The primary focus of work since the Council meeting was to address Council’s direction and refine the preferred plan to enable drafting of focused policies and development standards to be compiled into a unified document.

Discussion:
The refined plan concepts discussed below address the City Council’s direction. The purpose of the concepts is to create the framework for the draft NVCAP document. This meeting provides a check-in opportunity for the City Council and the community to offer any feedback before a very detailed and technical analysis occurs. Feedback on the concepts will be considered with the draft NVCAP.

There are other efforts either by the City or by outside organizations that may affect the draft NVCAP. These include the proposed Sobrato Development Agreement for 340 Portage Avenue (Cannery); the Metropolitan Transportation Commission’s (MTC) efforts on Planning Development Areas (PDA) Transit Oriented Communities (TOC) policy updates; the Palo Alto Housing Element update; and relevant State Assembly or Senate laws that may go into effect next year, including Assembly Bill (AB) 2097, which is explained later in this report.

340 Portage Sobrato Development Agreement
Earlier this year, the City Council Ad Hoc, staff, and representatives of the Sobrato Corporation (owner of 340 Portage Avenue) were in discussions regarding the subject site. The intent was to find common ground for the future use of the site, which is a key parcel within the NVCAP area. The August 1, 2022, City Council staff report provides background on these discussions.4

4 August 1, 2022 City Council Staff Report:
summary, a potential development agreement is under consideration for the site. The development agreement proposal would differ in some ways from the NVCAP plan concept; highlights of the key differences are shown in Table 1 below.

Table 1: Key Differences Between NVCAP and Sobrato Development Agreement

<table>
<thead>
<tr>
<th>Highlights</th>
<th>NVCAP Plan</th>
<th>Sobrato Development Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cannery</td>
<td>Adaptive reuse</td>
<td>Portion is demolished and existing R&amp;D uses remain</td>
</tr>
<tr>
<td>Open space</td>
<td>2.1 acres for open space and creek</td>
<td>2.25 acres for open space and creek (Sitewide w/Sobrato DA total open space for NVCAP would be 3.25 acres.)</td>
</tr>
<tr>
<td>Creek</td>
<td>Concept #3</td>
<td>Modified Concept #2 or 3</td>
</tr>
<tr>
<td>Housing</td>
<td>Townhouses</td>
<td>74 Townhouses &amp; 1-acre affordable housing site (units TBD)</td>
</tr>
<tr>
<td>Office space</td>
<td>R&amp;D to remain but transition over time to other uses</td>
<td>R&amp;D to stay in remaining portion of cannery building and would be established in the Audi building; the existing Ash office building would remain.</td>
</tr>
</tbody>
</table>

MTC Planned Development Area - Transit Oriented Communities (TOC) Policy Update

The NVCAP is within a designated PDA, which allows the City to be eligible for specific grants to assist with planning activities. For example, the City was successful in receiving a grant for the development of the NVCAP. The proposed TOC Policy will replace the 2005 Transit-Oriented Development (TOD) Policy. The proposed TOC policies would apply to PDAs that are served by fixed-guideway transit such as the California Avenue Station (Caltrain). To provide jurisdictions time to comply with TOC Policy requirements, MTC proposes to prioritize regional discretionary funding through the One Bay Area Grant (OBAG3) program and the Regional Early Action Planning Grants of 2021 (REAP 2.0) program for planning in geographies subject to the TOC Policy. The following table compares the differences in development standards between the proposed NVCAP and the TOC policies based on the level of service at the California Avenue Station.

Table 2: NVCAP & PDA TOC Comparisons

<table>
<thead>
<tr>
<th>Development Standard</th>
<th>NVCAP</th>
<th>PDA TOC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential min density</td>
<td>16 DU/AC*</td>
<td>50 DU/AC</td>
</tr>
</tbody>
</table>

Required allowed residential density | 30 and no max for sites along El Camino Real* | 75 DU/AC
--- | --- | ---
Office density min/allowed | 0.5:1 FAR* | 2.0:1 FAR to 4.0:1 FAR
Residential parking | 1 space per bedroom (2 max per unit) | 1 space per unit max
Commercial parking | 4 spaces per 1,000 SF (1 space per 250 SF) | 2.5 spaces per 1,000 SF (1 space per 400 SF)

*Existing zoning requirements and may change with the NVCAP.

As shown in Table 1, the proposed NVCAP development potential is not anticipated to be aligned with the MTC TOC policies and therefore making the City ineligible for certain funding opportunities in the future.

**Palo Alto Housing Element Update**

The State requires that the City update its Housing Element by January 2023. Two significant components of the update are the identification of sites to meet the City’s regional housing needs allocation and the creation of goals, policies, and programs to spur housing production. The NVCAP area includes 15 properties identified by the Housing Element as opportunity sites that could help the City meet its housing needs (unit yield of 348). In addition, several policies may affect the NVCAP area such as the expansion of the Housing Incentive Program (HIP). The Council adoption of the 6th Cycle Housing Element is expected to follow a similar timeline as the NVCAP adoption.

**State Law Changes Effective January 1, 2023**

The California State Legislature passed and the Governor signed AB2097 that eliminates minimum parking requirements for all uses/development, except for hotels within ½ mile of public transit. This bill will affect the majority of the properties within the NVCAP. The new requirements will go into effect on January 1, 2023, ahead of the anticipated adoption of the NVCAP.

Consistent with the requirements of AB 2097, staff proposes the NVCAP not include any minimum parking requirements where none may be imposed. Staff does propose to implement ‘parking maximums’ consistent with the minimum requirements previously recommended by the Council:

- One parking spot for 1-bedroom going to two spots for 2-bedroom + units.

This requirement would align with the goals of reducing greenhouse gas emissions and traffic.
Area Plan Components
The following describes the various components of the NVCAP. Where applicable, each component includes a corresponding NVCAP goal and/or objective being met as well as a specific City Council motion item being addressed.

Housing
Table 3 summarizes the anticipated build-out of the NVCAP for residential and non-residential uses. This is helpful in understanding the proposed intensity for the plan area. Overall, it is not anticipated that there would be significant turnover or growth in the plan area.

Table 3: Development Capacity for NVCAP

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Existing</th>
<th>NVCAP + Existing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing Units (Realistic)</td>
<td>142</td>
<td>670</td>
</tr>
<tr>
<td>Office SF</td>
<td>744,000</td>
<td>466,000</td>
</tr>
<tr>
<td>Retail SF</td>
<td>111,200</td>
<td>103,700</td>
</tr>
</tbody>
</table>

To facilitate housing development and to be sensitive to existing lower intensity development, the plan anticipates lower intensity development such as townhouses near existing residential and higher intensity mid-rise or mixed-use development elsewhere. This component would be consistent with Goal #1 to increase housing and enhance land uses. Figure 1 illustrates the anticipated building typologies for the plan area.

These typologies identify the types, heights, densities of residential and mixed-use that are feasible.
Figure 1: Residential & Mixed-Use Building Typologies

Figure 2 provides an axonometric illustration of the possible build-out of the plan area envisioned by the plan goals and objectives.

Figure 2: Axonometric Exhibit of the NVCAP
To bolster the City’s affordable housing program, new residential projects would require 20% inclusionary below market rate (BMR) for for-sale townhouses, 15% inclusionary BMR for for-sale condominiums and rental projects. Where applicable and in accordance with the Palo Alto Municipal Code, in-lieu fees may be paid.

The City Council motion in January 2022 discussed amending the City’s Workforce housing overlay. Amendments to the overlay are a part of the upcoming Housing Element update and are expected to be completed outside of the NVCAP process.

**Height/Density and Transitions (Motion Item F)**

The plan envisions placing higher building heights and as a result more units on El Camino Real and Page Mill Road, where multifamily and residential mixed-use buildings with ground floor retail would be permitted. Transition between higher intensity/height areas and existing single-family homes through height transitions would be established. See Figure 3 for the proposed heights within the plan area. This would be consistent with Goal #6 to balance community wide objectives.

In keeping with the Council’s motion, projects with 100% affordable housing may achieve heights that accommodate six stories for residential or five stories for mixed-use with retail on the first floor. The Sobrato DA alternative does include an affordable housing site adjacent to the cannery (depicted as an ‘L’ shape in Figure 3). Staff seeks confirmation from the Council to allow greater height to that site for an affordable housing project up to seven stories to accommodate at-grade parking given the anticipated challenges having below ground parking at that location. Conceptually this would include two levels of at and above grade parking and five stories of affordable housing above.
One of the key concerns of the public has been the transition from lower-density development to more intense development. In the past, the ARB has been supportive of adjacent development having a one-story transition in height. Therefore, staff seeks feedback from the City Council on whether that concept can be applied to the NVCAP. An example of this is for the properties adjacent to El Camino Real and Page Mill Road where R-1 properties are directly behind. This transition is presented for the potential building envelope. This accounts for the potential development consistent with the zoning standards, which may be larger than the existing building footprint or taller than the existing building. The proposed maximum height would be 55 feet for the frontages of the properties, then coming down to 45 feet (one story above the adjacent R-1 properties with a 30-foot height limit that are separated by an alley/roadway). Figure 4 provides an illustrated cross-section of the proposed height transition.
This would allow for more flexibility in design as well as being sensitive to lower-intensity development.

Figure 4: Cross-section of Height Transition

Mobility
One of the goals of the NVCAP is to create a connected street grid for the area (Goal #3). Figure 5 demonstrates how this goal would be implemented. The overall program would seek to:

- Provide bicycle improvements (widen bicycle lanes)
- Remove on-street parking in certain areas
- Reduce curb cuts
- Provide speed humps or raised intersections
- Create a woonerf for the private portion of Portage Avenue
- Provide new bicycle and pedestrian connections

Overall, the program would also meet Goal #2 (create transit, pedestrian, and bicycle connections) and Objective #1 (data-driven policy development).
Open Space (Motion Item E)
In keeping with the Council’s motion, the plan envisions larger park spaces as identified on Figure 6. The plan also supports the full naturalization of Matadero Creek shown in Figure 2. The target range of parkland is 1.6 acres/1,000 residents to 1.7 acres/1,000 residents.

The plan also considers the woonerf as a part of the open space program that would accommodate multi-modal access but deemphasizes vehicles in favor of pedestrians and cyclists. The open space program would be consistent with Goals #4 (mindful integrations of new facilities and infrastructure) and #5 (balance community-wide objectives).

Office
The plan would allow existing large-format office floor area to continue. These uses are concentrated within the GM and ROLM zoning districts. Once the use discontinues or buildings are demolished these office spaces may not be rebuilt.

The plan would allow new, ground-floor, small, professional offices such as dentists, etc. that are 5,000 square feet or less in size to locate within the plan area.

Retail
The plan would encourage and allow ground floor retail space. The plan would encourage active-ground floor uses, which can be retail or retail-like. Retail space would be required along El Camino Real.

340 Portage (Cannery)
The 340 Portage property is 12.65 acres in size and the largest property in the NVCAP area. There has been a lot of discussion regarding this property in the past mainly because of the use of the cannery building. More recently, as mentioned previously, the City and the property owner were in discussions regarding a development agreement.

The NVCAP envisions maintaining the cannery building and the Ash office building and allowing for two possible uses of the buildings: (1) continued use as retail and office space or (2) adaptive reuse into housing (transition to housing as a long-term vision). The plan would also allow the development of housing on the remaining portions of the parcel, specifically, the two remaining surface parking lot areas. The Ash building should be considered as a ‘creative arts’ space.

Additional setbacks are needed to accommodate easements and the acquisition of property for the renaturalization of Matadero Creek that bisects the site.

395 Page Mill (Cloudera)
The 395 Page Mill property is 9.87 acres and is the second largest property in the plan area. The plan envisions retaining the existing office building and parking garage while allowing for multi-family housing up to 55 feet in height on the remaining surface parking lot.

Residential Parking Ratio (Motion Item B)
The City Council motion recommended the residential parking ratio as one (1) space per bedroom, capped at two (2) spaces per unit. Given AB2097, staff recommends maintaining the parking cap for residential and exploring parking caps for other uses. Staff will still need to confirm with the Planning & Transportation Commission regarding further recommendations on parking taking into consideration the Fehr and Peers parking study and other studies. In addition, staff will explore ways to discourage street parking.
Commercial Parking Ratio
The NVCAP would implement a blended standard of one (1) parking space per 250 square feet of floor area, which is similar to the University Avenue parking district. Another standard is to exempt the first 1,500 square feet of ground floor commercial area from parking requirements.

AB2097 as described in the previous section would also apply to commercial uses.

Employment Density (Motion Item A)
The Council’s motion provided direction for the plan to include a Research & Development (R&D) zone that defines limited employment densities. This motion stemmed from the NVCAP’s use of Santa Clara Valley Transportation Authority’s (VTA) congestion management plan (CMP) employment density figures to determine the number of employees projected to be within the plan area upon buildout. Staff and consultants conducted research on how to limit employee occupancy within buildings. There is no example of a regulation that exists and it would be challenging to implement and enforce an occupancy limit that differs from fire and building occupancy codes.

Staff acknowledges that any employment density figure used would fluctuate over time depending on the state of the economy. For instance, prior to the COVID-19 pandemic, the trend was to increase the number of employees in an office space. However, since the pandemic began, office densities have decreased. While it is uncertain to determine the exact trend going forward, staff acknowledges that the issues with the increased amounts of employees in the office are related to single-occupant vehicle trips and parking associated with single-occupant vehicle trips by employees.

To address the issue, staff proposes to create a traffic target associated with a low employment density zone and implement a Transportation Demand Management (TDM) program that would reduce single-occupant vehicle trips meeting that target. This would also apply when existing offices are replaced with new tenants. This TDM program would require annual reporting to ensure compliance with the established targets.

Summary of Key Issues / Policy Implications:
This report summarizes staff’s response to the City Council’s direction on the NVCAP concept and seeks endorsement of the refined NVCAp preferred plan to move forward. This effort seeks to confirm the following:

- Height transitions
  - Confirming ARB approach to support a one-story transition in height
- Approach towards negative effects of employment density
  - Confirming the use of TDM
• Parking regulations considering the passage of AB 2097
  o Confirming implementation of AB 2097 and using parking maximums
• Height for affordable housing site associated with Sobrato DA
  o Confirming additional height for future site

Resource Impact:
The NVCAP project is currently funded and no further funding is requested at this time to complete the project. The majority of the NVCAP project funding is from the Valley Transportation Authority (VTA) Priority Development Area grant ($638,000). Per the grant agreement, the City must complete this NVCAP project by December 1, 2023, or risk forfeiting the grant funds. In that scenario, the City would need to repay any grant funds expended on the project.

Timeline:
After the endorsement of a refined plan, the consultant will create a draft of the NVCAP and complete technical studies to support the conclusions of an environmental analysis consistent with the California Environmental Quality Act (CEQA). Staff intends to check in with the ARB and the PTC during this period. After a draft plan is completed, staff will return to the PTC and City Council for recommendation and adoption of the NVCAP before the end of 2023. The following are tentative key milestones and hearing dates:

• December 2022: Commence technical studies for CEQA document
• February 2023: PTC check in meeting
• March 2023: Draft CEQA document
• April 2023: ARB check in meeting
• May 2023: ARB Follow up meeting
• June 2023: Draft NVCAP
• July 2023: PTC plan recommendation
• August 2023: City Council plan adoption

Stakeholder Engagement:
It is not anticipated that any additional WG meetings will occur. However, additional public meetings with the PTC, ARB and City Council are expected to occur throughout the remainder of the process. In addition, the NVCAP project website will transition from being hosted by a
third-party and relaunch within the City’s website including all past information and upcoming events information.

**Environmental Review:**
The action being considered does not constitute a “project” within the meaning of CEQA pursuant to CEQA Guidelines section 15378(b)(4) in that it is an informational report. Overall, prior to any adoption of the NVCAP, it is expected that an addendum to the 2030 Comprehensive Plan Environmental Impact Report would be completed.

**Attachments:**
Attachment9.a: Attachment A_Council Adopted Goals (PDF)
North Ventura Coordinated Area Plan
Project Goals, Objectives, Milestones and Proposed Boundary
February 12, 2018

Proposed NVCAP Goals

1. **Housing and Land Use**
   Add to the City’s supply of multifamily housing, including market rate, affordable, “missing middle,” and senior housing in a walkable, mixed use, transit-accessible neighborhood, with retail and commercial services, open space, and possibly arts and entertainment uses.

2. **Transit, Pedestrian and Bicycle Connections**
   Create and enhance well-defined connections to transit, pedestrian, and bicycle facilities, including connections to the Caltrain station, Park Boulevard and El Camino Real.

3. **Connected Street Grid**
   Create a connected street grid, filling in sidewalk gaps and street connections to California Avenue, the Caltrain Station, and El Camino Real where appropriate.

4. **Community Facilities and Infrastructure**
   Carefully align and integrate development of new community facilities and infrastructure with private development, recognizing both the community’s needs and that such investments can increase the cost of housing.

5. **Balance of Community Interests**
   Balance community-wide objectives with the interests of neighborhood residents and minimize displacement of existing residents.

   Develop human-scale urban design strategies, and design guidelines that strengthen and support the neighborhood fabric. Infill development will respect the scale and character of the surrounding residential neighborhood.

Proposed NVCAP Objectives

1. **Data Driven Approach:** Employ a data-driven approach that considers community desires, market conditions and forecasts, financial feasibility, existing uses and development patterns, development capacity, traffic and travel patterns, historic/cultural and natural resources, need for community facilities (e.g., schools), and
other relevant data to inform plan policies.

2. Comprehensive User Friendly Document and Implementation: Create a comprehensive but user-friendly document that identifies the distribution, location and extent of land uses, planning policies, development regulations and design guidelines to enable development and needed infrastructure investments in the project area.

3. Guide and Strategy for Staff and Decision Makers: Provide a guide and strategy for staff and decision-makers to bridge the gap between the goals and policies of the Comprehensive Plan and individual development projects in order to streamline future land use and transportation decisions.

4. Meaningful Community Engagement: Enable a process with meaningful opportunities for community engagement, within the defined timeline, and an outcome (the CAP document) that reflects the community's priorities.

5. Economic Feasibility: A determination of the economic and fiscal feasibility of the plan with specific analysis of market place factors and incentives and disincentives, as well as a cost-benefit analysis of public infrastructure investments and projected economic benefits to the City and community.

6. Environmental: A plan that is protective of public health and a process that complies with the requirements of the California Environmental Quality Act.
Summary Title: Permanent Parklet Program Discussion and Direction

Title: Review and Provide Direction to Staff on the Draft Permanent Parklet Program Standards and Policies; Adopt an Interim Ordinance and Resolution to Continue the Pilot Parklet Program and Other On-Street Uses During Transition Period; and Direct Staff to Return with Legislation Implementing a Permanent Parklet Program

From: City Manager

Lead Department: Planning and Development Services

Recommendation

Staff recommends that the City Council:

1. Review and provide direction to staff on:
   a. the proposed permanent parklet standards (Attachment A)
   b. parklet fees to be collected and specifically the Parklet License Fee (for use of public right of way);
   c. requirement for a neighbor consent letter if the parklet extends past the parking space(s) directly in front of the permittee; and,
   d. other operational and design considerations as appropriate.

2. Adopt the interim ordinance and resolution currently set to expire on December 31, 2022, to extend the temporary parklet program to June 30, 2023, and allow the other on-street and parking lot dining and retail programs to December 31, 2023.

Executive Summary

Council is requested to review the draft permanent outdoor parklet design standards presented in this report, provide general comments and specific guidance on discrete policy issues related to fee amount for the use of the right-of-way, and other operational clarifications. Following Council direction, staff will refine the standards and anticipates returning this December with a formal ordinance to enact the program. Staff will also return with an amendment to the
municipal fee schedule to enact parklet fees and a budget request for consultant funding to initially staff the work effort.

Enforcement of the permanent parklet standards is expected to start on July 1, 2023. Accordingly, staff recommends the City Council extend the interim program through June 30, 2023, with some modifications to better align the interim program with the direction the City is taking for permanent standards. Pending Council feedback on this item, staff will proactively work to identify and onboard necessary resources to implement Council direction. Formal budget adjustments will likely be included either as part of the ordinance approval or FY 2023 Mid-Year Budget Review to align appropriated funds with program needs.

**Background**

Throughout the United States, outdoor dining became an important aspect of life during the COVID-19 pandemic. For many restaurants, offering outdoor dining allowed them to remain open and endure the pandemic. For customers, particularly in California and the Bay Area, outdoor dining became a way to enjoy the company of others with decreased risk of spreading COVID. Palo Alto, like many cities, allowed parklets for the very first time to aid local businesses and provide a place for residents to gather. The pilot parklet program was generally well-received by residents, patrons, and restaurateurs.

Since the implementation of the pilot program, roughly 28 parklets have been built in downtown Palo Alto, allowing residents to gather and businesses to operate in a safe way. However, the pilot parklet program and guidelines\(^1\) were developed with a focus on reducing risk and maximizing safety for parklet patrons, motorists, and pedestrians. Due to the emergency nature of the program’s development, not all operational logistics and design standards were included.

While expedient, the design and subsequent implementation of the pilot program and guidelines have led to a wide range of parklet designs and operations. Some have expressed concern about the lack of aesthetic standards and variable quality. Compliance with the guidelines has also varied greatly between permit holders. Staff continues to document and provide notices of violations to permit holders, though compliance and corrections remain challenging. In addition, businesses and property owners have raised concerns over parklets’ encroachment over neighboring business frontages regarding both enforcement of guidelines and lack of support/consent.

**History of Pilot Parklet Program**

In 2020, Palo Alto expanded opportunities for outdoor dining in response to the COVID-19 pandemic, including a pilot parklet program.

On June 23, 2020, the City Council adopted Ordinance No. 5500, which temporarily permitted businesses, such as restaurants, retail, and personal services to operate outdoors on both public and private property in lieu of normal zoning and parking requirements.

Ordinance 5500 was adopted as an emergency ordinance based, in part, on the presence of restrictions prohibiting many indoor business operations due to the COVID-19 pandemic and associated Public Health guidelines. At the same time, the City Council approved Resolution 9909, which provided additional implementation guidelines for the pilot parklet program.

On April 19, 2021, the Council directed staff to “Develop a permanent parklet program with the input of the Architectural Review Board” and directed staff to draft a resolution extending the pilot parklet program to December 31, 2021. That ordinance passed on June 22, 2021. On September 13, 2021, the program was extended again to a new sunset date of June 30, 2022.

On May 5, 2022, City staff presented draft standards for the permanent parklet program to the ARB and then to the City Council on May 9, 2022, to receive initial feedback on draft program standards and operational items. The Council staff report focused on three aspects of the program:

1. **Parklet Design and Operation Standards for Safety and Aesthetics** – Minimum requirements for parklet design, construction, and operation by permit holders.

2. **Efficient Permitting and Program Operations** – Ensuring applications can be received and reviewed, that construction can be inspected, and that compliance with standards remains enduring.

3. **Compensation Structure for the Use of Public Space** – Determining the right charge for the private use of public space for parklet construction and operation.

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6 May 9 CMR: [https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2022/20220509/20220509pccsmamended-linked.pdf](https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2022/20220509/20220509pccsmamended-linked.pdf)

7 May 9 minutes: [https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2022/20220509/20220509amccs.pdf](https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2022/20220509/20220509amccs.pdf)
The May 2022 meetings resulted in a robust discourse and valuable feedback. The Council also extended the temporary program to the end of 2022, allowing for the ARB, staff, and the community to continue to refine the permanent program.

ARB Review
The Architectural Review Board (ARB) provided feedback on the standards on May 5, 2022, and July 21, 2022, and recommended several changes. The July staff report, meeting minutes and video are viewable on the City's webpage. The Architectural Review Board, including an ad hoc subcommittee, reviewed and provided input on the standards. The proposed standards (Attachment A) contain the ARB’s revisions (except for the ARB’s allowance for the use of propane fire pits and decorative elements) and are recommended for adoption (5-0 vote of ARB members).

The ARB recommended modifications to:
- allow clear panels above 36 inches,
- allow propane-fueled fire pits and decorative elements,
- require conductors to be in conduit with one conduit per parklet that was finished to match the décor of the parklet,
- allow amplified sound in parklets with a time and decibel limit prepared by staff,
- prohibit televisions, and strike “shall not exceed 6 inches” from Item 6a regarding the height of any plants contained within planters.

Outreach History
On April 27th, staff met with nine (9) members of the Palo Alto business community to provide a preview of proposed permanent parklet program standards. The group included restaurant owners and property owners in the Downtown and one restaurant/business owner from California Avenue. Staff reviewed key areas of change being proposed to city decision-makers for feedback. The key topics and corresponding feedback from the meeting are summarized below:

- **Design Standard Feedback**
  - **Planters and Landscaping**
    - Concerns about planters/required landscaping due to maintenance.
    - Removing the landscaping requirement could allow for more creativity.
    - If the City is requiring the planters, could they be provided?

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Transparency and Side walls
- Most business owners felt that their parklet patrons need protection from wind and sun by way of parklet siding.
- One business owner felt that “Not allowing side walls feels like a program killer”.

Power Supply Feedback
- Concerns over cost of electric connectivity and potential retrofitting.
- Most folks felt that propane should be allowed for businesses that have the space and capabilities.
- Someone felt that saying ‘no propane’ is unnecessary—if the guidelines are being followed, they should be allowed.

Program Cost Feedback
- Some feel it should be free given the revenue being provided to the City through sales tax.
- Some expressed the need to pay for the public space being utilized for a private use/business.

In addition to focused feedback, there were a few general comments including that it would be helpful to have the standards provided through example plans for businesses to utilize for their respective applications. The business owner in the group suggested having design guidelines that were flexible enough for a future tenant to take over the parklet without too much trouble or need for retrofitting.

Staff have taken these comments into consideration and addressed them throughout the development of the permanent program. Additionally, the permanent program is informed by the experience of over 38 parklets that now exist throughout Palo Alto and a review of permanent parklet programs in other cities. Staff carefully considered how to balance safety, aesthetics, the public realm, and the needs of local businesses and the public.

Discussion

The pilot parklet guidelines\textsuperscript{11} were developed and focused on reducing risk and maximizing safety for parklet patrons, motorists, and pedestrians. Due to the emergency nature of their development, aesthetic considerations were not included. While expedient, the design and subsequent implementation of the pilot guidelines have led to many parklet designs and operations.

In contrast, the draft permanent parklet standards are being developed to focus on both the safety and aesthetics of parklets in Palo Alto. The objective is for the permanent standards to

better serve the program’s intended purpose of adding vibrancy to the public realm and enhancing the civic experiences of diners, pedestrians, motorists, and cyclists.

Proposed Parklet Standards
The proposed permanent standards have been refined since the Council’s last review in May. Attachment A contains the draft permanent standards which include provisions addressing parklet location and setbacks; parklet design; operational standards; and permit requirements. Some changes from the previous review include the deletion of propane heaters and decorative elements; provisions for clear sidewalls above 36 inches and amplified sound in compliance with the City’s noise ordinance; a requirement for a three-foot emergency exit every 20 linear feet of parklet; and, allowance for certain fabric shade sails but not tents. Attachment D includes a strikeout/underline version comparing the updated proposed standards to the standards reviewed by Council in May.

The City Council is encouraged to review the standards in Attachment A and identify any concerns or modifications that are needed. Staff intends to memorialize these standards through an ordinance establishing a permanent parklet program in December. These draft standards, if endorsed by Council, will also serve to provide parklet operators the opportunity to plan parklet design changes that may be necessary to comply with the new provisions. These standards can be modified administratively in the future by the Director of Public Works or by action from the City Council.

As staff finalizes program details, the subject public meeting provides an opportunity for Council to reaffirm the direction staff is taking on certain program components. For most of the items below, staff recommendations will be incorporated into the final draft standards unless Council directs otherwise. For the Parklet fee schedule topic, staff seeks Council guidance on the license fee that should be established for the parklet use of public land. These specific topics that are expanded upon below include:

- Parklet Location / Areas of Applicability
- Parklet License Terms
- Parklet Fee Schedule
- Parklet Neighbor Consent Letter
- Parklet Propane Prohibition

Parklet Location / Areas of Applicability
The permanent program would continue to allow outdoor dining parklets in the commercial areas of University Avenue and its intersecting cross streets. The standards would also apply to commercial portions of California Avenue except areas currently closed to vehicular traffic. The standards were drafted to include Ramona Street and could extend to the California Avenue road closure following the City’s completion of Alternatives Analysis previously directed by
Council. One of many considerations to be explored for California Avenue includes coordination of the Farmer’s Market. Staff will schedule a discussion with the City Council regarding the closed portions of California Avenue at a future date.

The parklet program could also be extended to other commercial areas of the City over time but staff recommends initially it apply only to areas that currently allow parklets.

**Parklet License Terms**

The permit will contain a limited-use license authorizing the permittee to use a specific right-of-way area for the parklet. Like other leases and licenses issued by the City, permittees will be required to have insurance, indemnify the City against permittee negligence, and be liable for damage to City property. Parklets will be required to comply with the Americans with Disabilities Act and not block City facilities such as bike racks, utility vaults, and other infrastructure. Permittees will have to remove their parklet in case the City needs access to the street, utilities, or adjacent infrastructure, such as in cases of utility line emergencies or road maintenance. The license will be fully integrated with the permit; uses besides parklets will not be allowed. The parklet license (and permit generally) will have a one-year term.

**Parklet Fee Schedule**

A parklet permit and initial application/inspection fee will be required to establish a parklet under the permanent parklet program. Unless otherwise directed by Council, this fee will be set at a cost-recoverable flat rate based on the amount of time it takes to process the application. This fee will also include a share of the ongoing program administration costs related to staffing the program to provide customer service, ensure compliance with parklet standards (code compliance), respond to complaints, conduct regular site inspections and related tasks. While staff will refine this cost following Council direction, it is estimated this initial permit fee would cost between $1,000 and $2,000. The annual renewal fee is expected somewhat less because it does not require the same level of staff work to review a new parklet plan set.

A policy consideration for the City Council to evaluate is whether the initial parklet permit and renewal fees should also include a share of the City’s increased costs for sidewalk and street cleaning associated with the parklet uses. If so, the permit fees would increase by approximately two to three thousand dollars for a total initial permit fee ranging from $3,000 to $5,000, not including the annual license fee described below.

The City Council may also want to consider requiring a security deposit from the parklet operator to address unrepaired damages to the roadway or scenarios when the City may need to forcibly remove a parklet. A security deposit would place an additional upfront cost that would be refunded if not used and would require more administrative staff oversight. The security deposit would be based, in part, on the estimated number of hours it would take to
remove a parklet and potentially store any private property. Staff estimates a typical two-space parklet would take approximately 48 labor-hours to deconstruct, remove, and restore the area for an estimated cost of approximately $3,000.

Lastly, based on prior Council direction, a license fee for use of the public right of way would be required. Unlike the fees above that are based on staff time and program administration costs, this fee could be set based on the Council's reasonable assessment of the value of land used by the parklet operator.

Staff seeks the Council's direction on where to set the license fee.

After reviewing peer city approaches, staff proposes establishing a rate per square foot using current ground floor retail lease rates and applying a "discount" to account for the public right-of-way's features being unfinished with no electricity, roof, walls, heat, etc., and adjacent to the travel lane.

Table 1 summarizes three different rental rate options assessed at 100% of the value and yields an annual fee per parking space used in a parklet. Table 2 provides a sliding scale whereby the Council could assign an adjustment rate (subsidy) to each of the three fee options.

Table 1: Fee Comparison Using Palo Alto Ground Floor Retail Rental Rates

<table>
<thead>
<tr>
<th>Ground Floor Retail Rental Rates</th>
<th>RATE</th>
<th>ADJUSTMENT (% of rate)</th>
<th>ANNUAL FEE/SPACE</th>
<th>Notes/Background</th>
</tr>
</thead>
<tbody>
<tr>
<td>Downtown</td>
<td>$63/sq ft</td>
<td>100%</td>
<td>$12,600</td>
<td>Average parking space is 200sqft. Palo Alto (Downtown) Average Commercial Rental Rate is $63/sqft/month</td>
</tr>
<tr>
<td>All Palo Alto</td>
<td>$57/sq ft</td>
<td>100%</td>
<td>$11,400</td>
<td>Average parking space is 200sqft. Palo Alto (All) Average Commercial Rental Rate is $57/sqft/month</td>
</tr>
<tr>
<td>All of Palo Alto, Excluding Downtown</td>
<td>$30/sq ft</td>
<td>100%</td>
<td>$6,000</td>
<td>Average parking space is 200sqft. Palo Alto (All, excluding downtown) Average Commercial Rental Rate is $30/sqft/month</td>
</tr>
</tbody>
</table>

Note: Dollar amounts represent annual rates.
Table 2: Fee Adjustment Comparison

<table>
<thead>
<tr>
<th>Adjustment Rate (% of current rents)</th>
<th>Downtown ($63/SQFT)</th>
<th>All Palo Alto ($57/SQFT)</th>
<th>All Palo Alto, excl. Downtown ($30/SQFT)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10%</td>
<td>$1,260</td>
<td>$1,140</td>
<td>$600</td>
</tr>
<tr>
<td>20%</td>
<td>$2,520</td>
<td>$2,280</td>
<td>$1,200</td>
</tr>
<tr>
<td>30%</td>
<td>$3,780</td>
<td>$3,420</td>
<td>$1,800</td>
</tr>
<tr>
<td>40%</td>
<td>$5,040</td>
<td>$4,560</td>
<td>$2,400</td>
</tr>
<tr>
<td>50%</td>
<td>$6,300</td>
<td>$5,700</td>
<td>$3,000</td>
</tr>
<tr>
<td>60%</td>
<td>$7,560</td>
<td>$6,840</td>
<td>$3,600</td>
</tr>
<tr>
<td>70%</td>
<td>$8,820</td>
<td>$7,980</td>
<td>$4,200</td>
</tr>
<tr>
<td>80%</td>
<td>$10,080</td>
<td>$9,120</td>
<td>$4,800</td>
</tr>
<tr>
<td>90%</td>
<td>$11,340</td>
<td>$10,260</td>
<td>$5,400</td>
</tr>
<tr>
<td>100%</td>
<td>$12,600</td>
<td>$11,400</td>
<td>$6,000</td>
</tr>
</tbody>
</table>

Note: Dollar amounts represent annual rates.

Included with this report in Attachment C is a list of peer review cities and fees associated with their respective parklet programs.

In the future, it is possible that additional permit fees may be required to recover the costs of moving existing bike racks to allow parklets to operate in the adjacent right-of-way, but such costs are unable to be quantified at this time. As the permanent program is developed and implemented the Office of Transportation will monitor these costs and may bring forward a future request to adjust permit fees if needed.

**Parklet Neighbor Consent Letter**

During the current pilot parklet program, the City has received complaints from some in the community that parklets impede the visibility or perceived access to neighboring commercial spaces. This has created some conflicts between a parklet owner’s desire to have a more expansive parklet and an adjacent tenant’s interest in maintaining visual access to potential customers.

Based on staff research of other jurisdictions’ parklet programs, there are a variety of approaches that can be used to receive consent (or not) from adjacent neighboring businesses. Generally, there are four approaches:

1) City requires a letter of consent for all parklets,
2) City requires a letter of consent if the parklet extends over a neighboring storefront,
3) City does not require a letter of consent, or
4) City does not allow the parklet to encroach over the neighboring storefront.
Staff’s recommendation is similar to San Francisco’s approach, which is outlined in their *Shared Spaces Manual*¹² (effective April 2023), but instead of requiring consent from either the adjacent property owner or tenant, staff recommends requiring consent from both the neighboring tenant and owner if a parklet occupies more than half of a marked parking space is not in front of the applicant’s storefront, or if any part of an unmarked parking space is not in front of the applicant’s storefront. Consent would be established through letters of support, which staff believes could address the concerns that have been experienced in Palo Alto.

Some additional highlights from San Francisco’s parklet program guidelines that staff would incorporate into the local program include the following:

- Consent is provided for the permittee’s upcoming permit cycle, which may last up to 12 months
- If neighboring tenancy and/or property ownership changes, the Director of Public Works may require a new consent letter at the time of change of ownership
- Neighboring consent is revocable and if revoked the parklet business is responsible for the removal of any structure placed in the right of way, including any applicable portion extending into a neighboring frontage
- Any enforcement action against a permittee for revoked consent may be suspended until the parklet permit expiration (permits are up to 12 months); and,
- Parklet owner must obtain an up-to-date consent letter for any future permit renewals.

San Diego and Pleasanton are two other jurisdictions that require consent from a neighboring business and from the adjacent property owner. Los Altos requires consent from the neighboring business and West Hollywood requires consent from the adjacent property owner; San Mateo considers requests on a case-by-case basis, but its standard of review was unclear from the initial research.

**Parklet Propane Prohibition**

In May, Council members indicated concurrence with the staff recommendation not to allow any propane heaters in parklets. Prohibiting propane heaters decreases greenhouse gas emissions, reduces the possibility of improperly stored propane, and mitigates other safety hazards.

The ARB in its review of the permanent parklet standards was more mixed, with some members supporting allowing limited use of propane, such as fire pits and decorative heating elements. The ARB ultimately motioned to allow propane-fueled fire pits and decorative elements with a 5-0-0 vote.

Staff continue to recommend against the use of any propane-fueled heaters, equipment, appliances, decorative or other elements. Very few businesses can meet the state fire code requirements for safe propane usage including storage, location, and setbacks. Propane cannot be stored indoors, on roofs, near exits, near vehicles, near combustible materials, etc., and very few businesses have the required and/or appropriate space outdoors to store propane in accordance with the California Fire Code.

Moreover, the average parklet is limited in width, and the proposed permanent parklet standards allow roofs and hard, transparent sidewalls along the parklet enclosure, which make it challenging and/or unlikely for liquid petroleum gas (LPG) cylinders to be operated according to fire code with required setbacks including minimum 5-foot separation from combustible materials. Finally, LPG cannot be used indoors, including in parklets with sidewalls and roofs. Structures such as walls, solid fences, earth, concrete barriers, or other similar structures shall not surround outdoor heating appliances or otherwise restrict air circulation around the appliance. This is because the base of the heater contains the LPG cylinder, and the presence of such structures can create significant hazards such as pocketing of escaping gas, interference with the application of cooling water by firefighters, and the redirection of flames against the LPG cylinders.

Because of the risks associated with propane heating elements, the draft permanent parklet standards prohibit the use of propane.

Parklet Staffing (Public Works)
Public Works will need staffing resources to implement the parklet program, including permit review, enforcement, outreach, inspection, administration – i.e. collect applications and insurance certificates – and manage the program on an ongoing basis. In the last two years, over 38 temporary parklet permits have been issued. Staff anticipates that a large percentage of these permit holders will transition to the permanent program. Additionally, as restaurants open and close, processing new applications and ensuring abandoned parklets are disposed of properly will be important.

These efforts will require dedicated staff to take the lead in managing applications that require review by multiple departments. This person can also serve as the first and single point of contact for permit holders or applicants who have questions, as well as members of the public who have questions or complaints.

The cost of the staff person is proposed to be covered by the cost recovery fees outlined above.

This staffing need will require a new part-time position for the Public Works department. Staff anticipates making this request as part of the formal budget review process or may return with
a mid-year request. However, to get the program launched more quickly, staff anticipates returning in December with a budget request for funding to hire a consultant who would become familiar with and initiate the program.

**Timeline and Transition from Pilot to Permanent Program**

The current parklet pilot program expires on December 31, 2022. Staff recommends the Council initially extend these interim measures through June 2023 as these pilot parklet program standards will be discontinued upon adoption of a permanent parklet program. The permanent parklet program will require two readings of the ordinance and will become effective 30 days after the second reading. Staff recommends enforcement of the new parklet regulations, once adopted, be stayed several months until July 1, 2023.

Interim Pilot Parklet renewals, which are required for all parklets to operate in 2023 will be approved for six months through June 30, 2023. However, consistent with the proposed standards, renewals will be required to submit a parklet neighbor consent letter when a parklet occupies a portion of an adjacent tenant’s frontage (see full description above). A consent letter will be required from the property owner and affected tenant(s). Any parklet operator unable to obtain the requisite consent letters will need to immediately remove or modify the parklet to comply and would be subject to code enforcement action, including daily, escalating penalties. All other aspects of the current pilot program would remain unchanged.

Prior to July 1, 2023, all parklets must obtain new parklet permits, pay applicable fees and comply with the new permanent parklet regulations. Enforcement of the City’s permanent parklet standards will commence on July 1, 2023, with non-compliant operators being subject to daily, escalating penalties.

Staff anticipates returning to the Council with an ordinance implementing the permanent parklet program in December 2022, including recommendations for ongoing resources necessary for the implementation and administration of the permanent parklet program.
Policy Implications

Overall, the permanent parklet program asks the City Council how it wants to allocate the use of public space. Specifically, the permanent parklet program seeks to identify under what conditions, terms, and specific portions of public streets can be used by private restaurants for outdoor dining. The thoughtful establishment of how to steward the resource of public space requires careful consideration of many aspects of the program.

For some residents and merchants alike, the availability of public on-street parking spaces remains a concern. Some worry that permanent parklets will reduce the availability of parking spaces, making it difficult to park and reducing the number of customers. These concerns can partially be addressed through the annual application period which can allow city staff to consider the locations of parklets and potential impacts on parking availability. In addition, efforts to ensure public garages and lots can be easily accessed and located to ensure customers and visitors traveling by car can easily park their vehicles.

Resource Impact

The permanent parklet program will require dedicated program funding and staffing resources not currently approved or allocated. If the parking space lease rate is set at a competitive rate, parklets will continue to be a part of the local landscape and generate annual revenues that can help fund program costs, including staff. Staff can ensure ongoing compliance, collect annual fees and charges, provide support to applicants and inter-departmental staff, respond to disruptions or challenges, and ensure the program remains a part of Palo Alto’s vibrancy through ongoing attention. Staff anticipates that at minimum a half-time position, funded by program revenue, will be needed to accomplish administration of this new permanent program and the necessary duties.

In order to project revenue generated by the parklet program, staff will need a better understanding of the preferred license rate (as discussed above). With that information, the City will be better able to estimate how much revenue might be anticipated and when the revenue may be received.

To date, the pilot parklet program has operated on an interim basis, not charging fees for the permits or using the sidewalks and roads. In addition, department budgets have absorbed the cost to administer the pilot program. While departments have temporarily absorbed the cost of the pilot program, the permanent program requires dedicated resources and staffing capacity.

The City Manager’s Office also allocated $30,000 from contingency for contractor support to aid in the research and development of the permanent parklet standards and program. Pending Council feedback on this item, staff will proactively work to identify and fund and onboard necessary resources to implement Council direction. Formal budget adjustments will likely be
included either as part of the ordinance approval or FY 2023 Mid-Year Budget Review to align appropriated funds with program needs.

**Timeline**

As noted in the recommendation, staff requests Council extend the pilot program to allow time to finalize the permanent parklet standards with an anticipated implementation date of July 1, 2023. Other aspects of the temporary outdoor program related to the use of sidewalks for outdoor displays, on-street dining, and road closures of California Ave. and Ramona St. would extend throughout 2023. These aspects are not contemplated to change through the adoption of a permanent parklet ordinance and will instead be addressed separately to address the nuances of those situations.

**Stakeholder Engagement**

The Architectural Review Board provided feedback on the standards. Staff also conducted a focus group and survey with local businesses as discussed earlier in this report. Staff anticipates ongoing communication with the business community regarding the implementation and administration of a permanent parklet program to ensure that it is a successful program that contributes to the City’s economic vibrancy.

**Public Notification**

The Palo Alto Municipal Code requires notice of this public hearing to be published in a local paper at least ten days in advance. Notice of a public hearing for this project was published in the Daily Post on October 14, 2022.

**Environmental Review**

Extension of the attached ordinance and resolution are categorically exempt from CEQA under CEQA Guidelines Sections 15301 (existing facilities) and 15304(e) (minor temporary use of land having negligible or no permanent effects on the environment). Staff will determine the required CEQA analysis of the permanent parklet program going forward.

**Attachments:**

- Attachment10.a: Attachment A: Draft Permanent Parklet Program Standards (PDF)
- Attachment10.b: Attachment B: Interim Ordinance Temporarily Continuing Expansion of Outdoor Dining, Retail, and Other Activities (PDF)
- Attachment10.c: Attachment C: Resolution Continuing the Pilot Parklet Demonstration Program (PDF)
DRAFT PALO ALTO PERMANENT PARKLETS PROGRAM

I. Introduction

The City of Palo Alto has developed a Permanent Parklet Program that will allow for parklet installations in eligible areas of Palo Alto. The program is designed with the intended purpose of supporting the vibrancy of the public realm and enhancing the civic experience of diners, pedestrians, motorists, and cyclists.

The following standards outline the requirements for parklet installation including, location, materials, and design. The City of Palo Alto will review all parklet permit applications and will only approve parklets that are able to meet the standards. Due to the unique circumstances of each proposed parklet location, some parklets may require additional review by key departments (as outlined).

All parklets—including installations previously installed under the pilot parklet program—will require a new Permanent Parklet Permit from the City of Palo Alto. Application requirements are outlined in Section IV (A) Submittal Requirements.

Parklets are permitted in conjunction with legally existing and permitted eating and drinking establishment uses as well as commercial uses including retail and fitness establishments. Any and all business activity must be contained within the parklet space and not encroach into the sidewalk, public right-of-way, or roadway.

II. Glossary

Due to the unique design and placement of parklets, there are several terms with distinct meanings that should be understood in order to implement the standards.

1. **Enclosure**—Protective barrier that follows the parklet edge.
2. **Platform Edge**—The outermost edge of the parklet platform.
3. **Parklet Footprint**—The total area within the parklet edge that can be utilized by a project applicant.
4. **Platform**—Base of the parklet that is at grade with the sidewalk.
5. **Travel Lane**—Portion of the street with active automobile traffic.

![Figure 1: Key Terms](image-url)
III. Location and Setback Requirements

A. Location

The location of a parklet is dependent on the eligibility criteria, which varies based on the type of parking space a parklet will occupy (parallel parking spaces, angled spaces, and non-standard spaces).

1. Eligibility
   a. Parklets are only permitted on streets with speed limits of 25 mph or less.
   b. Parklets are generally permitted on streets with a running slope (grade) of five percent or less.
   c. Parklets cannot be installed in any portion of a travel lane at any time.
   d. When located near an intersection, parklets must be located at least 20 feet from the rear most boundary of a crosswalk at the nearest intersection of the street corner. Exceptions will be considered on a case-by-case basis.
   e. In the event a restricted area (i.e., loading zone) is being proposed to be used as space for a parklet, the Office of Transportation shall meet with the applicant to evaluate relocation of the restricted area. Relocation of the restricted area may not be possible.

2. Parallel Parking
   a. For parallel parking spaces, the parklet structure must be set back 48 inches (4 feet) from adjacent marked parking spaces.
   b. It is recommended, though not required, that a parklet consist of at least two contiguous parallel parking spaces.
   c. The platform edge shall be 2 feet back from the outer edge of the parking space it occupies. For all parallel parking spaces located on public streets within the City of Palo Alto, this shall be 2 feet from the exterior edge (closest to traffic) of marked parking T’s (where they exist). This is shown in Figure 2.
   d. In no case shall a parklet be placed within the 2-foot area measured from the outer edge of the parking space. These 2 feet shall be kept clear at all times. The only objects which shall lawfully occupy this space are reflective delineator posts, or their equal.
   e. Parallel parking spaces adjacent to a curb typically measure 8 feet wide by 20 feet long. The dimensions of a parklet in one parking space could be 6 feet wide and 12 feet long. This is because of the 2 foot setback from the outer edge of the parking space, and the 4-foot setbacks from the adjacent parking spaces(Figure A).
   f. Parallel parking space measurements may vary across the City of Palo Alto. As a result of this variation, some parklets may measure less than 6 feet wide. If the existing parking stall width is less than 8 (eight) feet, the parklet shall be 2 feet less than the parking stall width.
   g. Parklets located in the downtown area that are between a bulb-out tree planter do not require a 4-foot setback from the adjacent parking spaces.
3. **Angle Parking Spaces**
   
a. A parklet in an angle parking space shall consist of at least two contiguous angles parking spaces.

   b. A parklet platform shall be 3 feet back from the rear edge of the existing angled parking space. For angled parking spaces located on public streets within the City of Palo Alto, this shall be 3 feet from the exterior edge (closest to traffic) of the marked parking stall. This is shown in Figure 3.

   c. In no case shall a parklet be placed within the 3-foot area measured from the rear edge of the parking space. These 3 feet shall be kept clear at all times.

   d. The only objects which shall lawfully occupy this space are reflective delineator posts, or their equal.

   e. For angled parking spaces, the edge of the parklet must be set back 3 feet from the adjacent parking space on either space.

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*Figure 2: Dimensions of a Parallel Parking Space Parklet*
4. **Non-Standard Spaces**

1. A non-standard parking space is an angle or parallel space that does not meet the City of Palo Alto’s standard width or length for parking spaces. Standard parking space dimensions are as follows:
   a. Parallel parking space adjacent to a curb: 8-feet wide and 20-feet long
   b. Parallel parking space adjacent to a wall: 10-feet wide and 20-feet long
   c. 45-degree angle parking space: 8.5-feet wide and 21.2-feet long
   d. 60-degree angle parking space: 8.5-feet wide and 19.7-feet long
   e. 75-degree angle parking space: 8.5-feet wide and 20.2-feet long
   f. 90-degree angle parking space: 8.5-feet wide and 17.5-feet long

2. Angled parking space measurements may vary across the City of Palo Alto. As a result of this variation, some parklets may measure less than the standard 8.5-feet wide. If the existing parking stall width is less than 8.5-feet, the parklet shall be 3 feet less than the parking stall width.

3. For any non-standard parking space, the Office of Transportation staff, in partnership with Public Works, will review plans for such sites; this may include a site visit. The additional review will help maximize the parklet while maintaining an adequate travel lane.

4. For non-standard angled parking spaces, the edge of the parklet structure must be set back 3 feet from the adjacent parking space on either side. (This applies to all angle parking spaces along University Avenue as nearly all are substandard).
B. Parklet Setbacks

5. Setbacks
   a. As stated above, all parklets in parallel parking spaces must be setback 4 feet from the adjacent parking spaces. This setback shall be delineated by a concrete wheel stop affixed to the street (see figure 2 above and ‘Traffic Safety’ below).
   b. As stated above, all parklets in angled parking spaces must be setback 3 feet from adjacent parking spaces and 3 feet from the rear edge of the parking space (see figure 3).
   c. All parklets are required to include 2-foot setback from adjacent driveways.
   d. Parklets are prohibited in front of active driveways, on street curves, or hills where horizontal or vertical sight-distance is a safety issue as determined by the Office of Transportation.
   e. The setback may not contain seating.

6. Sidewalk Area
   a. Neither the construction nor operation of the parklet shall interfere with, obstruct, or otherwise diminish the adjacent sidewalk and pedestrian path of travel.
   b. All walkways and sidewalks shall maintain at least 8 (eight) feet clear path of travel.
   c. A parklet cannot operate in conjunction with sidewalk dining. Eligible applicants must elect to operate a parklet or sidewalk dining. This ensures sidewalks remain open and available for pedestrian travel.
   d. The setback may not contain seating.

C. Other Location Criteria

1. Proximity to Utilities and Public Facilities
   a. Parklets must not block public utilities, bus stops, driveways, telecommunication vaults, or other in-ground infrastructure.
      i. Parklets shall not be placed over gas main or gas services due to potential hazards.
   b. Parklets located next to alleys (as defined under PAMC 18.04.030(a)8) must be set back 5 (five) feet from the outside edge of the driveway as measured from the curb face/gutter flowline.
   c. Parklets shall be placed no closer than 50 linear feet from a bus stop loading zone.
   d. Parklets shall be placed no closer than 15 linear feet from fire hydrants.
   e. Parklets shall not be placed within a 5 foot radius of a manhole cover to allow for maintenance access.
   f. Parklets shall be placed no closer than 5 linear feet from a storm drain catch basin. Parklet construction and design must allow access to the catch basin and shall not obstruct the catch basin.
g. In the event a proposed parklet location is in conflict with public infrastructure (i.e., public signage, benches, etc.), the Public Works Department shall meet with the applicant to evaluate relocation of the infrastructure. Relocation of any infrastructure may not be possible.

2. Fire Safety
   a. No portion of the parklet or associated seating shall block FDC or associated equipment.
   b. Business address shall be visible from the street and cannot be fully obstructed by the parklet and associated materials.

3. Street Trees
   a. Any portion of the proposed parklet must maintain the following clearances from existing street trees:
      a. Horizontal clearance equal to a two-foot radius around the tree well. This does not apply to raised tree wells.
      b. Vertical clearance of 3 feet measured from the highest point of the parklet (if proposing a parklet with a roof).
   c. At no time shall there be materials placed in the tree well area or within City planters.
   b. To discourage patrons from stepping on tree wells and possibly damaging tree roots, where needed, a railing shall be installed on the parklet platform adjacent to the tree well. This will alter the path patrons travel, limiting persons stepping on the tree roots.

4. Bike Facilities
   c. Bicycle racks or other bicycle facilities shall not be removed, made unusable, or otherwise disturbed or obstructed by the construction of a parklet.
      i. Any parklet design that proposes such disruption shall require review by and approval of the Office of Transportation. Relocation of an existing bicycle facility may be subject to additional fees.
   d. Applicants are encouraged to incorporate bike parking into their parklet design.

5. Accessibility
   1. The sidewalk and parklet path of travel must comply with the appropriate Americans with Disabilities Act (ADA) and California Building Code (CBC) chapter 11B accessibility provisions.
   2. The parklet path of travel must comply with CBC chapter 10 exiting requirements.
IV. Parklet Design

The following guidelines describe both the safety and design requirements for parklet applications including standards for:

A. Platform
B. Enclosure
C. Traffic Safety
D. Furnishings & Fixtures

A. Platform

1. Structural
   a. Parklets shall be constructed with quality materials and shall be of natural durable wood (such as redwood, cedar, etc.), preservative treated wood, or other engineered material suitable for exterior conditions.
   b. The parklet platform must support 100 pounds per square foot of live load.
   c. All fastening hardware and fasteners adjacent to and into preservative treated wood must be made of one of the following: hot-dipped zinc coated galvanized steel, stainless steel, silicon bronze, or copper.

2. Drainage & Ventilation
   a. The underside of the platform shall be constructed to allow for seasonal drainage.
   b. Adequate cross ventilation shall be installed to allow for the surface to dry within 12 – 24 hours.
   c. Openings under the platform shall be screened with corrosion-resistant material with a maximum one quarter inch mesh.
   d. Parklets shall not impede the flow of curbside drainage. The parklet design shall include a minimum 6.5” wide clearance from sidewalk curb along the entire length of the parklet. Openings at either end of the parklet shall be covered with screens to prevent debris buildup beneath the parklet and in the gutter. The closure 2x decking can be removable for easy access for under platform inspection as needed. See Figure 4 for suggested platform attachment design details.

3. Platform Attachment
   a. The parklet shall be anchored to the City street and/or curb. Any anchoring proposed into the public street will require USA markings and additional staff review. Platform system shall be anchored at maximum 6’-0 apart in each direction to the roadway to avoid movement during an earthquake. See Figure 4.
      i. Limit anchoring to 6-12 inches embedment in the street.
   b. The grate support along the curb face shall be anchored to the curb. The anchor shall be installed perpendicular to the curb (per the detail provided in figure 4).
      i. The manner of anchoring shall be through a pre-drilled hole into the curb and a concrete anchor bolt. Limit anchoring to 3-4 inches embedment in the curb.
Figure 4: Suggested Platform Attachment Design

- Minimum of 8" and maximum of 12" wide continuous grating flushed with the sidewalk and decking (1½" edge supported bear on sleeper/blocking) - ADA compliance
- 2x6 horizontal blocking between sleepers
- Parklet platform 2x decking spanning over sleepers
- 2-10d to sleeper
- 2x sleeper @ 16"o.c. taper to bear on road
- Simpson Galv ABR9020 (6' max oc) sleeper to road with min 6" from end of sleeper
- Minimum 6 ½" opening for drainage - add screen at edge of parklet
- 2" galvanized steel angle L2.5x2x½ LLV at 24" o.c.
- 2 - 3/8" dia x 3" Simpson galv titen bolt e/a angle to concrete sidewalk

PARKLET–SIDEWALK DRAINAGE DETAIL (NTS)
4. **Roofs**
   
   a. **Structural**
      
      i. Complete roof framing plan, which includes horizontal and vertical bracing, is required to be submitted with structural calculations. A licensed architect, and/or a civil and/or structural engineer, shall sign the plan and associated calculations.
      
      ii. All connector hardware and fasteners shall be resistant to corrosion and listed as compatible to the framing material.
      
      iii. Roof may be a solid uniform material or open construction (i.e., trellis, pergola, etc.)
      
      iv. Roofs shall not be attached or connected to a building.
      
      v. Roof shall slope toward the street to ensure rainwater drains into the street.
      
      vi. Gutters and rain leaders are required.
      
      vii. Roofs shall not extend over the public sidewalk.
      
      viii. Roof’s outer edges along the travel lane may extend 6 inches beyond parklet footprint at 8 feet or above to allow for attachment of the rain leaders and gutters only.

   b. **Height**
      
      i. The roof shall be a minimum height of 8 feet provided the adjacent sidewalk is at least 8 feet wide. If the adjacent sidewalk is less than 8 feet wide, the applicant will need to consult with the Palo Alto Fire Department.
      
      ii. A parklet roof shall measure no taller than 12 feet, as measured from the platform grade.

   c. **Materials**
      
      i. Rooftop material may be of plywood sheathing, polycarbonate sheets, or sheet metal.
         
         i. If plywood sheathing is used, it must be painted or stained.
      
      ii. If fabric shade sails or similar fabric coverings are proposed, the fabric cover shall be limited to the top portion of the parklet and not extend to additional sides perpendicular to the street or sidewalk. All fabric coverings shall be of all-weather and flame retardant materials excluding vinyl.
      
      iii. Roof material may be a solid uniform material or open construction (i.e., trellis, pergola, etc.)
      
      iv. All exposed wood is required to be treated for exposure to weather.

5. **Accessibility**

   a. The parklet shall comply with the Americans with Disabilities Act (ADA).
   
   b. The surface of the parklet platform must be flush with the adjacent sidewalk with a maximum gap of one quarter inch and one quarter inch vertical tolerance.
   
   c. A minimum 4-foot-wide accessible path of travel and 5-foot diameter turnaround space must be maintained within the parklet.
   
   d. Any abrupt changes in elevation exceeding 4 inches along an accessible path of travel shall be identified by 6-inch-tall warning curbs.
   
   e. Parklets shall utilize outdoor grade reflective tape to mark changes in grade.
D. Enclosures

1. Dimensions & Load
   a. For user safety, parklets are required to include a continuous enclosure along the parklet’s edge adjacent to the travel lane and parking spaces. The sidewalk edge of the parklet may be enclosed or open.
      i. All parklets in which alcoholic beverages are served shall be enclosed on all sides of the parklet edge, as required by the department of alcoholic beverage control.
   b. The continuous enclosure shall include a periodic barrier, which may be planters or other heavy material, along the parklet edge.
      i. The periodic barrier shall weigh at least 500 lbs when filled with soil, sand, water, or concrete.
      ii. The periodic barrier shall be placed at least every 6 feet along the parklet edge parallel to the travel lane.
      iii. The periodic barrier shall measure at least 16 inches in depth, and a height of at least 36 inches and no more than 38 inches measured from the surface of the platform.
   c. The enclosure must be at least 36 inches in height and no more than 38 inches in height, measured from the surface of the platform.
   d. Any gaps in the enclosure shall be smaller than a 4-inch sphere.
   e. The Enclosure must be capable of withstanding at least 200 pounds of horizontal force.

2. Emergency Access (Figure 5)
   a. A minimum 3-foot-wide emergency gap, with vertical and horizontal clearance, is required for every 20 feet of enclosure length.
   b. The gap must be kept clear of any tables, chairs, bike racks, poles, walls, roofs, or other elements.
   c. The barrier in the emergency access gap shall be easily removable by emergency personnel and provide a latch or hinge that allows easy access.
      i. The latch shall be placed on the outside of the barrier, facing the travel lane.
      ii. The hinge shall open a minimum of 90 degrees.
      iii. Any gaps in the barrier shall be smaller than a 4-inch sphere.
3. **Design**
   
a. Enclosure materials must be high-quality, durable, and non-reflective including but not limited to hardwood, steel, concrete planters, etc.
   
a. Materials that are not permitted: particle board, vinyl, soft plastic or tarps.
   
b. Street facing colors used on the exterior of enclosure must be matte-finish paint or opaque stain.
   
c. Parklets shall integrate and/or incorporate vegetation into the enclosure (edge treatment) at least every six (6) feet.
   
a. The height of any plants contained within planters in setback or planters serving as a parklet platform enclosure shall not impede or obstruct the view from the travel lane to the sidewalk and vice-versa.
   
   Plant material shall not impede or hinder pedestrian and vehicular visibility.

*Images above illustrate compliant examples of a parklet enclosure*
4. **Sidewalls**
   a. Parklets may include a hard, transparent screen between the enclosure and the roof to provide a windscreen for parklet users.
      i. The sidewall screen must be completely transparent and not obstruct sightlines from the travel lane to the sidewalk and vice-versa.
      ii. Materials that are not permitted: vinyl, soft plastic or tarps.

E. **Traffic Safety**

1. **Wheel Stops**
   a. When a parklet is adjacent to active parallel parking spaces, a wheel stop must be installed to delineate the 4-foot setback from adjacent parking spaces (see figure 3 above). The wheel stop shall measure 3 feet long by 4 inches high (see figure 6). It shall be constructed of concrete or rubber.

   ![Figure 6: Wheel Stop](image)

   b. **Affixing Wheel Stops**
      i. Drilled-in Wheel stops: A permittee will need USA clearance to anchor a wheel stop into the road.

   c. **Location**
      i. The wheel stop shall be placed one foot from the curb at the edge of the front parking space.
      ii. A wheel stop shall be placed one foot from the curb at the edge of the rear parking space.
      iii. Wheel stops shall be placed four feet from the parklet structure.

   d. **Exceptions**
      i. Parklets extending the length between two in-street tree wells, as on University Avenue, may omit wheel stops.

2. **Reflective Delineators**
   a. The parklet shall include installation of the California Manual of Uniform Traffic Control Devices (MUTCD) approved delineator posts or flexible bollards. Examples of these devices are illustrated in Figures 7 and 8.
b. Location
   i. Delineator posts shall be surface mounted to the roadway via epoxy and/or glue down methods unless approved otherwise.
   ii. Reflective delineators must be installed at the outside corners of the parklet. The channelizers or posts must align with the end of the platform and not encroach on the travel lane.
   iii. Additional delineators must be placed every 20 (twenty) feet in the 2 foot buffer zone along the lane of travel—but not in the lane of travel.

c. Dimensions
   i. Right side of travel lane – Delineators shall be 42 inches high and white with white reflective bands for use on the right side of a travel lane.
   ii. Left side of travel lane – Delineators shall be 42 inches high and be white with yellow reflective bands if used on the left edge of a travel lane.

d. Maintenance
   i. Maintenance of the delineator posts shall be the responsibility of the Permit holder.
   ii. Permittee shall replace any missing or damaged delineators within 24 hours of a delineator’s failure or within 24 hours’ notice from the City.

F. Furnishings & Fixtures

1. Materials
   a. Parklet furnishings and fixtures must be high-quality, durable, outdoor-rated, and non-reflective including but not limited to: Hardwood, steel, concrete, etc.
      i. Materials that are not permitted: particle board and vinyl.

2. Electrical Power Supply
   a. No power cords or conduits are allowed under the sidewalk.
   b. Power cords between the building and the parklet shall be in conduit, with a limit of one conduit per parklet, and shall not be adjacent, above, below or attached to any part of a fire escape.
      a. Conduit shall be finished to match the parklet design
      b. No extension cords shall be permitted for fixed lighting or heaters
   c. A weatherproof GFCI electrical outlet may be installed on the exterior of the building at a
minimum of 10 feet above the walking surface for decorative lighting purposes only. Fixed
cables may be used to support the light’s cord and it shall be easily unplugged by fire
department personnel.
d. Electrical power supply to the parklet, including receptacle outlets, shall comply with
permanent wiring methods as outlined in the adopted California Electrical code.
e. Parklet power source shall not be pulled from city sidewalk lighting or supported by tree
f. Generators are not allowed in association with parklets.

3. Lighting

a. If installing permanent lighting, an electrical permit shall be obtained and shall comply with
permanent wiring methods as outlined in the adopted California Electrical code.
b. The following types of lighting and fixtures are permitted:
   i. String lights;
      ii. Solar powered and/or rechargeable battery powered table lights; and
      iii. Overhead light fixtures for parklets with roofs (permit required)
c. The use of electrical adaptors and power strips are prohibited.
d. All lighting must be rated for exterior use, listed, and carry a product certificate for its
intended use by a recognized electrical testing laboratory.
e. Lighting must be LED only
f. Lighting shall be limited to the parklet area and not encroach into any portion of the public
sidewalk.
g. Lighting shall be of the lowest intensity and energy use adequate for its purpose and be
designed to focus illumination downward to avoid excessive illumination above the light
fixture with a maximum of 100 watts or 1600 lumens, whichever is greater, per fixture.
h. Applicants interested in lighting should consider solar-powered lighting that use a
rechargeable battery.

4. Heaters

a. Only electrical heaters are allowed on parklets.
   i. Electric heaters must be an outdoor approved type
   ii. Electric heaters must be located on the parklet in accordance with the
      manufacturer’s instructions and specifications.
   iii. Electric heaters must be placed at least 5 feet away from any combustible materials.
   iv. A fire extinguisher is required to be mounted within sight and have appropriate
      signage per the Fire Code.
b. Propane is not permitted to be used for heaters, equipment, appliances, or decorated
   elements.
c. Any new electrical circuits required for heating require an electrical permit from the
   Building Department (see ‘Power Supply’ above). Any electrical equipment must be listed
   and carry a product certificate for its intended use by a recognized electrical testing
   laboratory.

5. Umbrellas

a. Permitted Umbrella Types:
   i. Table Umbrella
   ii. Tilting Umbrella
   iii. Off-set/ Cantilever Umbrella
b. No portion of an umbrella shall extend beyond the edge and/or enclosure of the parklet on any side.

c. No umbrella shall obstruct the view from the street between three (3) and eight (8) feet, measured from the street, from any side.

6. **Signage**
   a. Parklet signage is limited to six (6) square feet and shall be limited to the name of the business and shall be non-illuminated and non-reflective. Letters no taller than 15”.
   b. Businesses are permitted one (1) sign on their parklet, total.
   c. Signs must be affixed to the outer most portion of the parklet enclosure no higher than 36” from the street grade.
   d. No form of advertising is permitted to be painted or mounted on any surface or area of the parklet.
   e. Any existing parking signs installed adjacent to the parklet must be covered with opaque plastic; such coverage or illegibility shall occur only in manners approved by the City of Palo Alto through its Department of Public Works and/or its Office of Transportation.

7. **Seating & Furniture**
   a. **Accessibility**
      i. The establishment must provide 5% accessible seating for each type of seating provided (table, booth, etc.) or a minimum of 1 seat per type, whichever is greater, in an outdoor seating area where the slope is no greater than 2% in any direction.
      ii. Such ADA accessible areas shall include a clear path of travel to the seating and a 60” diameter turnaround area.
      iii. Such ADA accessible seating shall be provided at an accessible height which includes:
         i. Table surface between 28 to 34 inches high.
         ii. At least 27 inches of space from the floor to the bottom of the table.
         iii. Knee clearance extends at least 19 inches under the table.
         iv. Total clear floor area of 30 inches by 48 inches per seat.
      iv. Such ADA accessible seating shall be of the same size and appearance as the establishment’s other outdoor seating.
   b. **Street Furniture**
      i. Street furniture including tables, chairs, benches, etc. shall be all-weather, and of a high-quality material.

![Images above illustrate street furniture examples.](image)

8. **Landscape**
   a. Vegetation shall be comprised of native, low-water use, and drought tolerant plants.
b. No plants shall have thorns, spikes, or sharp edges.
c. Poisonous or invasive plants are not permitted.

9. Televisions
   a. Televisions are not permitted on parklets.

V. Operational Standards

10. Private Control
   a. Parklets will be considered under the control of the permit holder. The permit holder is responsible for securing the parklet and any fixtures and furnishings contained within it at all times, including during hours when the associated business is not in operation.

11. Alcohol Service
   a. Parklets that serve alcoholic beverages shall include appropriate fencing or other barriers to delineate the space and adhere to Alcohol Beverage Control (ABC) regulations.
      i. As described in the Enclosure section above, all parklets in which alcoholic beverages are served shall be enclosed on all sides of the parklet edge, as required by the department of alcoholic beverage control.
   b. All physical requirements of ABC should be reflected in the design submitted for review.
   c. A Conditional Use Permit (CUP) Amendment is required to allow alcohol service at a parklet.
   d. A restaurant with existing CUP for alcohol service must submit an application to Planning and Development Services to amend the existing CUP to expand alcohol service to parklet.
   e. The CUP Amendment must be approved before alcohol service is allowed at a parklet.

12. Site Maintenance
   a. Parklets shall be maintained free of litter and debris.
   b. The parklet area and adjacent sidewalk shall be scrubbed and mopped to remove any food or drink stains on a daily basis by the permittee.

13. Hours of Operation
   a. The parklet shall adhere to the same approved hours of operation as the associated business.
   b. Note: In the CN or CS zone districts, a CUP is needed to operate/activities between the hours of 10:00 p.m. and 6:00 a.m. and approval conditions for operations during these hours are to ensure the operation is compatible with the abutting (or within 50 feet of) residential property.

14. Amplified Sound
   a. Amplified sound shall not exceed a noise level of more than fifteen dB above the local ambient at a distance of twenty-five feet or more, as defined in section 9.10 of the Municipal Code.
   b. Amplified sound is restricted to the following daytime hours:
      i. 8 a.m. to 8 p.m. Monday through Friday, except holidays
      ii. 9 a.m. and 8 p.m. on Saturday, except holidays
      iii. 10 a.m. and 6 p.m. on Sunday and holidays
VI. PERMIT APPLICATION REQUIREMENTS

A. Submittal Requirements

1. Site Plan—Site plan shall be drawn to scale on 11 x17 tabloid paper, include all pertinent dimensions and the following information:
   a. Location of the business frontage
   b. Dimensions of the parklet platform
   c. ADA accessibility measurements
   d. Setbacks from adjacent parking spaces and the adjacent traffic lane
   e. Locations of traffic protection improvements including wheel stops, reflective delineators, etc.
   f. Location of public utilities including any manhole covers, gutter drains, fire hydrants, and FDCs, light poles, etc. (and distances to parklet)
   g. Any adjacent installations on the sidewalk including utility boxes, street signs, bike racks, street furniture, etc. (and distances to parklet)
   h. Existing parking space striping
   i. Crosswalks, bus stops, driveways (and distances to parklet)
   j. Width of sidewalk
   k. Planters (if applicable)

2. Floor Plan
   a. Floor Plan of the proposed parklet showing the following information:
      i. Total number and location of tables and seats and/or benches on parklet
      ii. Dimensions of tables, seats, and benches on parklet

3. Elevations
   a. Elevation drawing showing the following information:
   b. Height and design of platform railings/guards or edge buffers
   c. Height and design of roof (if applicable)
   d. Heating, lighting, other electrical equipment
   e. Power connection (show distance from ground to overhead wire)
   f. Storm water drainage
   g. Cross-section drawing of parklet

4. Construction Drawing/Calculation
   a. Structural drawings
   b. Structural calculations (if applying for parklet with roof)
   c. Heating, lighting, other electrical equipment
   d. Electrical power connection/source

5. Pictures of proposed site—The application should include at least 3 photos showing existing built parklet, if applicable, the proposed parking space(s) converted into a parklet, adjacent sidewalk and store frontage

6. List of all materials and equipment proposed
   a. Materials palette showing the following information:
      i. Proposed materials for platform
      ii. Proposed materials for railings or edge buffers
      iii. Proposed furnishings
      iv. Roof material (if applicable)
   b. Equipment sheet including:
i. Image of equipment
ii. Any manufacturer instructions

c. Planters
d. Type of plants

7. Parklet Information:
   a. Number of parking spaces requested
   b. Perpendicular or angled spaces
   c. Color of curb
   d. Proposed use of parklet
   e. Business hours of operation
   f. Parklet Designer/Architect/Engineer/Construction Firm contact (if applicable)
   g. Signage (if applicable)

8. Business Information
   a. Business Address
   b. City of Palo Alto Business License Number

9. Business Owner Information

10. Property Owner Information (if different than applicant)

11. Insurance Documents

12. Letter(s) of Support – A parklet applicant must get a letter of support from the neighboring
ground-floor tenant(s) and building owner(s) if more than half of a marked parking space is
not in front of the applicant’s storefront, or if any part of an unmarked parking space is not in
front of the applicant’s storefront (see Figure 9). [Note to City: Draft template to be provided,
still being drafted by staff].
   a. If the tenancy and/or ownership of the neighboring property changes, Public Works may
require the parklet sponsor to submit an updated letter of support to continue utilizing
any space extending into a neighboring frontage regardless of the status of the parklet
license at the time of change of ownership/tenancy.
   b. Consent to occupy neighboring space as part of a parklet permit is revocable by nature;
and, if such support is revoked, or if parklet occupancy is not in accordance with the
terms of any applicable law, these regulations, and/or any permit requirement, the
parklet sponsor is responsible for the removal of any structure placed in the right of way
under the parklet permit, including any applicable portion of the parklet permit
extending into a neighboring frontage.
   c. Parklet sponsor must obtain an up-to-date letter of support for any future license
renewals as requested by Public Works during future permit renewal processes.

13. Indemnity Acknowledgement
B. Failure to Maintain

A parklet sponsor who fails to properly and sufficiently maintain the cleanliness, safety, and accessibility of their parklet may be subject to violations and fines. If maintenance issues are not resolved, the City may revoke the encroachment permit and the parklet sponsor may be required by the City to remove the parklet at their own expense.
C. Utility Maintenance & Public Safety

Because a parklet may sit atop buried utilities, there may be instances where a parklet will need to be removed to access a utility beneath it. In the event of necessary utility maintenance or the unlikely event of a utility failure such as a gas leak or water main break that threatens public safety, the City or utility owner may remove parklets with little or no notice. Parklet sponsors are responsible for the cost of re-installing and restoring any damage to the parklet.

In instances of advanced notice (such as street repaving, planned maintenance, etc., the parklet sponsor may need to remove and reinstall the parklet at their sole expense. If the sponsor cannot remove the parklet, the City will remove the parklet.

D. Parklet Removal

If for some reason the parklet sponsor decides no longer wants to maintain a parklet, the parklet sponsor is responsible for notifying the City and removing it at the parklet sponsors’ own expense. Immediately upon removal the parklet area shall be cleaned and restored to its previous condition to the satisfaction of the City.

E. Permit Fee, License Fee, and Deposit

[Note: Fee methodology for permit and license annual or monthly fee is still to be determined].
Ordinance No. ______

Interim Ordinance of the Council of the City of Palo Alto Temporarily Continuing the Expansion of Outdoor Dining, Retail and Other Activities on Public and Private Property and Relaxing Regulations Regarding Onsite Parking, On-Sale of Alcohol, Design/Architectural Review, Permit Fees, and Alcohol Consumption in Public Places, All to Facilitate Such Outdoor Use

The Council of the City of Palo Alto ORDAINS as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

A. On June 23, 2020, the City Council adopted Ordinance 5500, an emergency ordinance, in response to COVID-19 and its effects on local businesses. At that time and since then, county and state regulations related to COVID-19 have limited or curtailed many indoor activities, including dining, bars, retail, performances, and other recreational uses.

B. In June 2021, the City Council adopted Ordinance 5526, which amended and restated Ordinance 5500 on a non-emergency basis (among other changes).

C. On November 8, 2022, the City Council adopted Ordinance 5533, which amended and restated Ordinance 5526 with a sunset date of June 30, 2022.

D. In May 2022, the City Council adopted Ordinance 5551, which amended and restated Ordinance 5533 to extend its provisions through December 31, 2022.

E. The City Council now desires to amend and restate Ordinance 5551 to extend the parklet provisions of this ordinance until June 30, 2022 in anticipation of a permanent parklet program taking effect by then. The City Council also desires to extend the remainder of this ordinance until December 31, 2023.

SECTION 2. City Manager Authorization

The City Manager or his or her designee(s) may promulgate guidelines and implementing regulations for the uses and programs described in this Ordinance as long as such regulations do not conflict with this Ordinance.

SECTION 3. Fee Waivers for Encroachment Permits and Parking Space Closures

A. The permit fees set forth in the Municipal Fee Schedule are temporarily waived for applications for encroachment permits under Palo Alto Municipal Code Section 12.12.010 and Section 12.12.020, as modified by this Ordinance, to place structures and equipment...
in the public right-of-way (including closed streets and sidewalks) for purposes of outdoor dining and outdoor retail sales and display of wares.

B. The parking space closure fee in the Municipal Fee Schedule collected by the Department of Planning and Development Services is temporarily waived for the use of a parking space(s) on-street or in a parking lot for purposes of outdoor dining and outdoor retail sales and display of wares as authorized through an encroachment permit, license, or agreement with the City.

SECTION 4. Modified Review Process for Commercial Sidewalk Encroachment Permits

Notwithstanding contrary provisions of PAMC Section 12.12.020, permits may be granted for commercial sidewalk encroachments for outdoor retail sales and display areas and outdoor eating areas. Permits for these purposes shall not be required to undergo and complete design review by the Planning Department described in subsection (d) of Section 12.12.020. Except as expressly modified herein, the provisions of Section 12.12.020 shall apply to commercial sidewalk encroachments.

SECTION 5. Eating and Drinking Establishments

Eating establishments, and drinking establishments may temporarily relocate some or all of their existing indoor seating capacity to outdoor seating capacity, as follows:

A. Location. Outdoor eating areas may be placed in one or more of the following areas:

1. Public streets temporarily closed by the City of Palo Alto, through issuance of an encroachment permit under PAMC Section 12.12.010;

2. Sidewalks through issuance of an encroachment permit under PAMC Section 12.12.020, as modified by Section 4 of this Ordinance;

3. In on-street parking spaces approved for use as temporary parklets, in accordance with the Pilot Parklet Demonstration Project as first approved by Council Resolution No. 9909 and continued by subsequent resolutions;

4. Surface parking lots that currently provide required onsite parking for the eating/drinking establishment, through issuance of an approval by the Director of Planning, or his or her designee, as described in subsections C and D of this Section, below;

5. Other outdoor areas on the eating/drinking establishment site not originally permitted for outdoor seating in the establishment’s approved site plan or planning entitlement (such as landscaped areas), through issuance of an approval by the
Director of Planning, or his or her designee, in accordance with subsections C and D of this Section, below; and

6. In other areas that the Council identifies by resolution or ordinance.

B. **Use of Private Parking Lots – Temporary Reduction of Parking Requirements.**

1. Notwithstanding the parking requirements applicable to eating/drinking establishments in Title 18 (Zoning) of the PAMC or in individual planning entitlements or approvals for eating/drinking establishments, an eating/drinking establishment may place outdoor eating areas in its parking lot, so long as at least half of the parking spaces on the subject site remain available for use by vehicles. If the establishment’s parking lot has ten or fewer parking spaces, up to 100 percent of the parking lot may be used for outdoor eating, subject to review and approval of the Planning Director or his or her designee.

2. Notwithstanding the parking requirements applicable to shopping centers and their tenant businesses in Title 18 (Zoning) of the PAMC or in individual planning entitlements or approvals for shopping centers or their tenant businesses, a shopping center with an eating/drinking establishment tenant(s) may place outdoor eating areas for such tenant business(es) in the shopping center parking lot, so long as at least half of the parking spaces on the subject site remain available for use by vehicles.

C. **Application.** An application in a form approved by the Director of Planning shall be submitted to the Planning and Development Services Department to relocate some or all of an eating/drinking establishment’s permitted indoor restaurant seating to outdoor seating in privately-owned areas on the eating/drinking establishment site not originally permitted for outdoor eating. The Director of Planning is authorized to establish submittal requirements and procedures. Temporary Use Permits (TUP) under PAMC Section 18.42.050 may be utilized for this purpose. A TUP issued for this purpose may be valid for a specified period longer than 45 days, notwithstanding subsection (d) of Section 18.42.050. The Planning Director may extend a TUP issued prior to the effective date of this Ordinance to be valid beyond 45 days.

D. **Seating Layout Review.** A Seating Layout Review is required to relocate some or all of an eating/drinking establishment’s permitted indoor seating to outdoor seating in privately-owned areas on the eating/drinking establishment site not originally permitted for outdoor eating. The Seating Layout Review shall be conducted by a transportation planner, planner, and/or fire inspector who will review and either approve or require modifications to the proposed outdoor seating layout based on the following criteria:

1. Seating layout does not create a safety risk and adequate pedestrian and vehicular separation is maintained, including with movable barriers as appropriate where outdoor seating is to be placed in parking lots or on-street parking spaces.
2. Seating layout accommodates appropriate vehicle and pedestrian circulation and maintains adequate paths of travel and complies with accessibility requirements of the Americans with Disabilities Act.

3. Any tents must comply with fire codes and Palo Alto Fire Department issued standards for tents, and safety standards set forth by the National Fire Protection Association for fire-resistant tents and must include an affixed manufacturer’s label stating the tent meets NFPA requirements. A State Fire Marshal seal on the tent or a certificate is needed to prove treatment.

4. Any heaters must comply with fire codes.

5. An adequate and visible barrier is placed that clearly separates the retail area from the parking area and provides sufficient protection for patrons. Adequacy shall be defined in standards and guidelines issued by the Director of Planning.

6. Other requirements established in the standards and guidelines issued by the Director of Planning.

E. Fee. No fee will be charged for submittal and review of the Application and for conducting a Seating Layout Review.

F. Occupancy. Total seating occupancy (including all indoor and outdoor seating) shall not exceed the overall occupancy for which the restaurant is permitted.

G. Alcohol Service. Establishments that are allowed by the City to serve alcohol for onsite consumption by issuance of a conditional use permit (“CUP”) as required by PAMC Section 18.42.090 or as a legal nonconforming use, and that both have an on-sale license from the Department of Alcoholic Beverage Control (“ABC”) and are duly authorized by ABC to serve alcohol in outdoor areas, shall be allowed to serve alcohol for onsite consumption in such outdoor areas, notwithstanding any prohibition on outdoor alcohol service or consumption in the PAMC or planning entitlement issued under Title 18 (Zoning) of the PAMC. During the effective period of this Ordinance, establishments that meet the preceding requirements may expand their footprint to outdoor areas without an amendment of the CUP, notwithstanding PAMC Section 18.42.090(c). Outdoor alcohol service shall be in full compliance with ABC regulations, as amended.

H. No Architectural Review. Notwithstanding PAMC Sections 18.77.077 and 18.76.020, architectural review shall not be required for proposed outdoor eating areas or signage related to such areas during the effective period of this Ordinance.
SECTION 6. Retail Establishments

Retail establishments may temporarily relocate some or all of their existing customer-accessible square footage to outdoor spaces as follows:

A. Location. Outdoor retail sales and display areas and outdoor eating areas may be placed in one or more of the following areas:

1. Public streets temporarily closed by the City of Palo Alto, through issuance of an encroachment permit under PAMC Section 12.12.010;

2. Sidewalks through issuance of an encroachment permit under PAMC Section 12.12.020, as modified by Section 4 of this Ordinance;

3. Surface parking lots that currently provide required onsite parking for the retail establishment, through issuance of an approval by the Director of Planning, or his or her designee, as described in subsections C and D of this Section, below;

4. Other outdoor areas on the retail establishment site not originally permitted for retail sales and display or dining in the retail establishment’s approved site plan or planning entitlement (such as landscaped areas), through issuance of an approval by the Director of Planning or his or her designee in accordance with subsections C and D of this Section, below; and

5. In other areas that the Council identifies by resolution or ordinance.


1. Notwithstanding the parking requirements applicable to retail establishments in Title 18 (Zoning) of the PAMC or in individual planning entitlements or approvals for retail establishments, a retail establishment may conduct outdoor retail sales and display and may place outdoor eating areas in its parking lot, so long as at least half of the parking spaces on the subject site remain available for use by vehicles. If the establishment’s parking lot has ten or fewer parking spaces, up to 100 percent of the parking lot may be used for outdoor dining/retail, subject to review and approval of the Planning Director or his or her designee.

2. Notwithstanding the parking requirements applicable to shopping centers and their tenant businesses in Title 18 (Zoning) of the PAMC or in individual planning entitlements or approvals for shopping centers or their tenant businesses, a shopping center with a retail establishment tenant(s) may place outdoor retail sales and display areas and outdoor eating areas for such tenant business(es) in the shopping center parking lot, so long as at least half of the parking spaces on the subject site remain available for use by vehicles.
C. **Application.** An application in a form approved by the Director of Planning shall be submitted to the Planning and Development Services Department to relocate some or all of a retail establishment’s customer-accessible square footage to outdoor retail sales and display in privately-owned areas on the retail establishment site not originally permitted for outdoor retail sales and display. The Director of Planning is authorized to establish submittal requirements and procedures. Temporary Use Permits (TUP) under PAMC Section 18.42.050 may be utilized for this purpose. A TUP issued for this purpose may be valid for a specified period longer than 45 days, notwithstanding subsection (d) of Section 18.42.050. The Planning Director may extend a TUP issued prior to the effective date of this Ordinance to be valid beyond 45 days.

D. **Merchandise or Seating Layout Review.** A Layout Review is required to relocate some or all of an retail establishment’s permitted indoor customer-accessible square footage to privately-owned areas on the retail establishment site not originally permitted for retail. The Layout Review shall be conducted by a transportation planner, planner, and/or fire inspector who will review and either approve or require modifications to the proposed retail layout based on the following criteria:

1. The placement of the merchandise, displays, or other items does not create a safety risk and adequate pedestrian and vehicular separation is maintained, including with movable barriers as appropriate where outdoor seating is to be placed in parking lots or on-street parking spaces.

2. The layout accommodates appropriate vehicle and pedestrian circulation and maintains adequate paths of travel and complies with accessibility requirements of the Americans with Disabilities Act.

3. Any tents must comply with fire codes and Palo Alto Fire Department issued standards for tents, and safety standards set forth by the National Fire Protection Association for fire-resistant tents and must include an affixed manufacturer’s label stating the tent meets NFPA requirements. A State Fire Marshal seal on the tent or a certificate is needed to prove treatment.

4. Any heaters must comply with fire codes.

5. An adequate and visible barrier is placed that clearly separates the retail area from the parking area and provides sufficient protection for patrons. Adequacy shall be defined in standards and guidelines issued by the Director of Planning.

6. Other requirements established in the standards and guidelines issued by the Director of Planning.
E. **Fee.** No fee will be charged for submittal and review of the Application for conducting a Layout Review.

F. **No Architectural Review.** Notwithstanding PAMC Sections 18.77.077 and 18.76.020, architectural review shall not be required for proposed outdoor retail areas or signage related to such areas during the effective period of this Ordinance.

**SECTION 7. Compliance with Other Regulations, Orders and Approvals**

The uses of public and private property allowed in this Ordinance shall be conducted in compliance with any applicable state or county mandate (including executive orders and health orders), this Ordinance, Resolution No. 9909 and its successors, and all other local and state regulations, orders, and approvals, as applicable (collectively, “Applicable Law”). Any approval, allowance or permit to conduct such temporary outdoor use(s) shall be subject to revocation by the issuing City official if the use is conducted in violation of Applicable Law, or poses a threat to public health, safety or welfare.

**SECTION 8. No Vested Rights**

The outdoor uses of public and private property allowed in this Ordinance are temporary and shall be terminated upon the earlier of the date stated in the applicable permit/approval or the expiration of this interim Ordinance, unless earlier revoked by the City Manager or other authorized official (or their designee) or terminated by action of the City Council. The City may discontinue one or more, or all, of the allowed outdoor uses at any time if the City Manager or designee determines that the public health, safety or welfare warrant such action. Nothing in this Ordinance shall establish a vested right.

**SECTION 9. Suspension of Prohibition on Alcohol Consumption in Lytton Plaza and Cogswell Plaza**

Notwithstanding PAMC Sections 22.04.330 and 22.04.331, the City Manager is authorized to suspend the prohibition on consumption of alcoholic beverages in the parking lots adjacent to Lytton Plaza and Cogswell Plaza.

**SECTION 10. Use of City Parking Lots for Reopening Activities**

A. The City Manager, or his or her designee (“City Manager”), is authorized to permit outdoor dining, retail and other activities necessary to facilitate the reopening of businesses, in public parking lots owned by the City, subject to the City Manager’s adoption of rules, regulations, guidelines, and standards for such use (“Regulations”), and publication of such Regulations on the City’s website. Use of parking lots, or portions thereof, by a business shall require a license or other agreement, including an agreement to indemnify and hold harmless the City, and provision of insurance.
B. The City Manager is authorized to waive any fee in the Municipal Fee Schedule associated with the temporary use of parking areas for the purposes identified in Section A above.

C. Notwithstanding PAMC Section 9.04.020, the City Manager is authorized to suspend the prohibition on consumption of alcoholic beverages in any City owned parking lot.

SECTION 11. Personal Services, Indoor Recreation and Other Uses

The authorized outdoor uses of public and private spaces authorized in this Ordinance may be applied to personal services, indoor recreation and other uses. Prior to authorizing these additional activities to occur, the City Manager, or his or her designee (“City Manager”), shall adopt rules, regulations, guidelines, and standards for these uses, and publish them on the City’s website.

SECTION 12. Severability

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 13. Environmental Review

The Council finds that the Ordinance is categorically exempt from CEQA under CEQA Guidelines Sections 15301 (existing facilities) and 15304(e) (minor temporary use of land having negligible or no permanent effects on the environment).

SECTION 14. Effective Date

This Ordinance shall be effective 31 days after adoption. The provisions of this Ordinance allowing temporary parklets shall remain in effect until June 30, 2023 unless otherwise modified, repealed or extended by the City Council. The remainder of this Ordinance shall remain in effect until December 31, 2023 unless otherwise modified, repealed or extended by the City Council.

SECTION 15. Uncodified

This Ordinance shall not be codified.
SECTION 16. Supercedes Ordinance 5551.

As of the effective date of this Ordinance, this Ordinance shall supercede Ordinance 5551, and any conflict shall be resolved in favor of this Ordinance.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

NOT PARTICIPATING:

ATTEST:

__________________________________  __________________________________
City Clerk       Mayor

__________________________________  __________________________________
Assistant City Attorney  City Manager

__________________________________
Director of Public Works

__________________________________
Director of Planning & Development Services
Resolution No. ______

Resolution of the Council of the City of Palo Alto Continuing the Pilot Parklet Demonstration Program as Continued by Resolution 10036

RECITALS

A. On June 23, 2020, the City Council adopted Resolution 9909 in response to COVID-19 and its effects on local businesses. Resolution 9909 created a Pilot Parklet Demonstration Program and also permitted the City Manager to temporarily close certain streets. At that time and since then, county and state regulations related to COVID-19 have limited or curtailed many indoor activities, including dining, bars, retail, and other recreational uses.

B. On June 7, 2021, the City Council adopted Resolution 9962, which amended and restated Resolution 9909 on a non-emergency basis (among other changes).

C. On October 18, 2021, the City Council adopted Resolution 9992, which amended and restated Resolution 9962 to continue the pilot program until June 30, 2022.

D. On May 9, 2022, the City Council adopted Resolution 10036, which amended and restated Resolution 9962 to continue the pilot program until December 31, 2022.

E. The City Council now intends to extend the pilot program through June 30, 2023 through this Resolution in anticipation of a permanent parklet program taking effect by then.

F. This Resolution, like its predecessors, implements a temporary parklet program authorized by Ordinance 5526 and its successor ordinances.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF PALO ALTO RESOLVES AS FOLLOWS:

SECTION 1. Findings and Declarations. The Council hereby adopts the above Recitals as findings of the Council.

SECTION 2. Pilot Parklet Program and Design Requirements. The City Council hereby approves the temporary use of on-street parking spaces in Palo Alto for parklets under the Pilot Parklet Demonstration Program as first described Resolution 9909 and continued by its successor resolutions.
A. The Director of Public Works/City Engineer, or his or her designee (the “Director”), is delegated the authority to exercise their discretion to approve specific parklet locations, plans, designs, materials, and standards, and amendments thereto, consistent with the Parklet Standards and Requirements. The plans and designs shall be signed by the Director. Any existing parklet locations, plans, designs, materials, standards, and amendments to the Parklet Standards and Requirements approved by the Director under the authority of Resolution 9909 and/or its successors shall remain valid under the authority of this Resolution unless otherwise amended, rescinded, or modified in any other way.

B. The Director is authorized to issue implementing guidelines and regulations for the Pilot Parklet Demonstration Program, and to approve amendments to the Parklet Standards and Requirements as the Director in his or her discretion deems necessary and proper. Any existing guidelines, regulations, or amendments issued by the Director under the authority of Resolution 9909 and/or its successors shall remain valid under the authority of this Resolution unless otherwise amended, rescinded, or modified in any other way.

C. A valid encroachment permit issued under Palo Alto Municipal Code Section 12.12.010 is required to operate a parklet under this Program. The Director may approve a parklet application through issuance of an Encroachment Permit, subject to the general regulations in Palo Alto Municipal Code Section 12.12.010 and the following criteria and procedures:

1. **Use.** Parklets shall be restricted to outdoor eating areas of eating establishments.

2. **Application and Review.** A complete application for a parklet encroachment permit shall be reviewed by City staff for a determination as to whether such application complies with the Parklet Standards and Requirements. The application shall include all information necessary for a determination on the application including, but not limited to a certificate of insurance and a hold harmless and indemnity agreement in favor of the City shall be submitted in accordance with the provisions of Palo Alto Municipal Code Section 12.08.120. The Director shall grant or deny the application.

3. **Conditions.** Conditions of approval may be imposed on parklet encroachment permits to maintain the public health, safety and welfare.
4. **Revocation.** The Director may revoke a parklet encroachment permit if he or she determines that the conditions of the permit, the provisions of this Resolution, or any applicable regulation, ordinance, or provision of the Municipal Code are being violated, or if the municipal use of the area is required for reasons of public health, safety, welfare or convenience. The permittee shall be notified of an intent to revoke the permit and shall be entitled to a hearing before the Director whose decision shall be final.

5. **Existing Permits.** Any parklet encroachment permit issued under the authority of Resolution 9909 and/or its successors shall remain valid under the authority of this Resolution unless such a permit is otherwise amended, revoked, or modified in any other way.

**SECTION 3.** **Rules and Regulations.** In addition to the authority given to the Director of Public Works and his or her designee in Section 2 of this Resolution, the City Manager is authorized to enact any rule or regulation or implementing guidelines to effectuate and implement this Resolution.

**SECTION 4.** **Compliance with Other Regulations, Orders and Approvals.** The uses of public and private property allowed in this Resolution shall be conducted in compliance with any applicable state or county mandate (including executive orders and health orders), and all other local, county, and state regulations, orders, and approvals, as applicable (collectively, “Applicable Law”). Any approval, allowance or permit to conduct such temporary outdoor use(s) shall be subject to revocation by the issuing City official if the use is conducted in violation of Applicable Law, or poses a threat to public health, safety or welfare.

**SECTION 5.** **No Vested Rights.** The uses allowed in this Resolution are temporary and shall be terminated upon the earlier of the date stated in the applicable permit/approval or the expiration of this Resolution, unless earlier revoked by the City Manager or other authorized official (or their designee) or terminated by action of the City Council. The City may discontinue one or more, or all, of the allowed uses at any time if the City Manager or designee determines that the public health, safety or welfare warrant such action. Nothing in this Resolution shall establish a vested right.

**SECTION 6.** **The Council finds that this Resolution is categorically exempt from CEQA under CEQA Guidelines Sections 15301 (existing facilities) and 15304(e) (minor temporary use of land having negligible or no permanent effects on the environment).**

**SECTION 7.** **This Resolution supersedes Resolution 10036.** Any conflict between this Resolution and Resolution 10036 shall be resolved in favor of this Resolution.
SECTION 8. This Resolution shall become effective immediately upon approval and shall remain in effect until June 30, 2023 unless otherwise modified, repealed or extended by the City Council.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

__________________________   _____________________________
City Clerk      Mayor

APPROVED AS TO FORM:

__________________________   _____________________________
Assistant City Attorney    City Manager

_____________________________
Director of Public Works

_____________________________
Director of Planning and Development Services
I. Introduction

The City of Palo Alto has developed a Permanent Parklet Program that will allow for parklet installations in eligible areas of Palo Alto. The program is designed with the intended purpose of supporting the vibrancy of the public realm and enhancing the civic experience of diners, pedestrians, motorists, and cyclists.

The following standards outline the requirements for parklet installation including, location, materials, and design. The City of Palo Alto will review all parklet permit applications and will only approve parklets that are able to meet the standards. Due to the unique circumstances of each proposed parklet location, some parklets may require additional review by key departments (as outlined).

All parklets—including installations previously installed under the pilot parklet program—will require a new Permanent Parklet Permit from the City of Palo Alto. Application requirements are outlined in Section IV (A) Submittal Requirements.

Parklets are permitted in conjunction with legally existing and permitted eating and drinking establishment uses as well as commercial uses including retail and fitness establishments. Any and all business activity must be contained within the parklet space and not encroach into the sidewalk, public right-of-way, or roadway.

II. Glossary

Due to the unique design and placement of parklets, there are several terms with distinct meanings that should be understood in order to implement the standards.

1. Enclosure—Protective barrier that follows the parklet edge.
2. Parklet Platform Edge—The outermost edge of the parklet platform, perimeter of parklet area (subtracting required setbacks).
3. Parklet Footprint—The total area with-in the parklet edge that can be utilized by a project applicant.
4. Platform—Base of the parklet that is at grade with the sidewalk.
5. Travel Lane—Portion of the street with active automobile traffic.
III. Location and Setback Requirements

A. Location

The location of a parklet is dependent on the eligibility criteria, which varies based on the type of parking space a parklet will occupy (parallel parking spaces, angled spaces, and non-standard spaces).

1. Eligibility
   a. Parklets are only permitted on streets with speed limits of 25 mph or less.
   b. Parklets are generally permitted on streets with a running slope (grade) of five percent or less.
   c. Parklets cannot be installed in any portion of an existing travel lane at any time.
   d. When located near an intersection, parklets must be located at least 20 feet from the rear...
most boundary of a crosswalk at the nearest intersection of the street corner. Exceptions will be considered on a case-by-case basis.

e. In the event a restricted area (i.e., loading zone) is being proposed to be used as space for a parklet, the Office of Transportation shall meet with the applicant to evaluate relocation of the restricted area. Relocation of the restricted area may not be possible.

2. **Parallel Parking**

a. For parallel parking spaces, the parklet structure must be set back 48 inches (4 feet) from adjacent marked parking spaces.

b. It is recommended, though not required, that a parklet consist of at least two contiguous parallel parking spaces.

c. **A parklet’s outer edge** shall be 2 feet back from the outer edge of the parking space it occupies. For all parallel parking spaces located on public streets within the City of Palo Alto, this shall be 2 feet from the exterior edge (closest to traffic) of marked parking T’s (where they exist). This is shown in Figure 2A.

d. **In no case shall a parklet be placed within the 2-foot area measured from the outer edge of the parking space.** These 2 feet shall be kept clear at all times. The only objects which shall lawfully occupy this space are reflective delineator posts, or their equal.

e. Parallel parking spaces **adjacent to a curb** typically measure 8 feet wide by 20 feet long. The dimensions of a parklet in one parking space could be 6 feet wide and 12 feet long. This is because of the given the above mentioned 2 feet offset setback from the outer edge of the parking space, and the 4-foot setbacks from the adjacent parking spaces creating buffer space for wheel stops (if no tree wells are present on the adjacent areas), the dimensions of a parklet in one parking space would be 6 feet wide \( \times \) 12 feet long. (Figure A).
e. Parallel parking space measurements may vary across the City of Palo Alto. As a result of this variation, some parklets may measure less than 6 feet wide. If the existing parking stall width is less than 8 (eight) feet, the parklet shall be 2 feet less than the parking stall width.

f. 

g. Parklets located in the downtown area that are between a bulb-out tree planter do not require a 4-foot-x-4-foot setback from the adjacent parking spaces.

Variations notwithstanding, in no case shall a parklet be placed within the 2-foot area measured from the outer edge of the parking space.

3. Angle Parking Spaces

a. A parklet in an angle parking space shall consist of at least two contiguous angles parking
b. A parklet platform’s outer edge shall be 32 feet back from the outer rear edge of the existing angled parking space. For angled parking spaces located on public streets within the City of Palo Alto, this shall be 32 feet from the exterior edge (closest to traffic) of the marked parking stall. This is shown in Figure 3B.

c. In no case shall a parklet be placed within the 3-foot area measured from the rear edge of the parking space. These 3 feet shall be kept clear at all times.

d. The only objects which shall lawfully occupy this space are reflective delineator posts, or their equal.

e. Offset from neighboring parallel space may be needed. For angled parking spaces, the edge of the parklet must be set back 3 feet from the adjacent parking space on either side.
4. Non-Standard Spaces
1. A non-standard parking space is an angle or parallel space that does not meet the City of Palo Alto's standard width or length for parking spaces. Standard parking space dimensions are as follows:
   a. Parallel parking space adjacent to a curb: 8-feet wide and 20-feet long
   b. Parallel parking space adjacent to a wall: 10-feet wide and 20-feet long. For parallel parking spaces, the standard dimensions are XX. For angle parking spaces, standard dimensions are XX.
   c. 45-degree angle parking space: 8.5-feet wide and 21.2-feet long
   d. 60-degree angle parking space: 8.5-feet wide and 19.7-feet long
   e. 75-degree angle parking space: 8.5-feet wide and 20.2-feet long
   f. 90-degree angle parking space: 8.5-feet wide and 17.5-feet long

2. Angled parking space measurements may vary across the City of Palo Alto. As a result of this variation, some parklets may measure less than the standard 8.5-feet wide. If the existing parking stall width is less than 8.5-feet, the parklet shall be 3 feet less than the parking stall width.

2.3 A parklet proposed in angled parking spaces that do not meet the City of Palo Alto's standard depth for angle parking spaces may only be eligible for parallel parking space parklets. For any non-standard parking space, the Office of Transportation staff, in partnership with Public Works, will review plans for such sites; this may include a site visit. The additional review will help maximize the parklet while maintaining an adequate travel lane.

3. For non-standard angled diagonal and perpendicular parking spaces, the edge of the parklet structure must be set back 3 feet 36 inches from the adjacent parking space on either side. (This applies to all angle parking spaces along University Avenue as nearly all are substandard).

4. In the event a restricted area (i.e., loading zone) is being proposed to be used as space for a parklet, the applicant shall consider the relocation of this restricted area as part of their design and work with OOT prior to application submittal to determine relocation placement.

B. Parklet Setbacks

5. **Adjacent Setbacks**
   a. As stated above, all parklets in parallel parking spaces must be setback 4 feet from the adjacent parking spaces. All parklets are required to include 4-foot setbacks from adjacent on-street parking spaces. This setback shall be delineated by a concrete wheel stop affixed to the street (see figure 2 above and 'Traffic Safety' below).
   b. As stated above, all parklets in angled parking spaces must be setback 3 feet from adjacent parking spaces and 3 feet from the rear edge of the parking space (see figure 3).
   c. All parklets are required to include 2-foot setback from adjacent driveways.
   e. The parklet shall be set back at least 9 feet from the adjacent building(s) with no part of the parklet extending over the curb or sidewalk.
d. Parklets are prohibited in front of active driveways, on street curves, or hills where horizontal or vertical sight-distance is a safety issue as determined by the Office of Transportation.

d-e. The setback may not contain seating.

6. Setback Area

a. The setback may not contain seating or any other objects.

b. Neither the construction nor operation of the parklet shall interfere with, obstruct, or otherwise diminish the adjacent sidewalk and pedestrian path of travel.

c. All walkways and sidewalks shall maintain at least 8 (eight) feet clear, unobstructed path of travel.

d. If an 8 foot clear, unobstructed path of travel cannot be maintained, then sidewalk dining may not occur in conjunction with a parklet. A parklet cannot operate in conjunction with sidewalk dining. Eligible applicants must elect to operate a parklet or sidewalk dining. This ensures sidewalks remain open and available for pedestrian travel.

c. The setback may not contain seating

C. Other Location Criteria

1. Proximity to Utilities and Public Facilities

a. Parklets must not block public utilities, bus stops, driveways, telecommunication vaults, or other in-ground infrastructure.
   i. Parklets shall not be placed over gas main or gas services due to potential hazards.

b. Parklets located next to alleys (as defined under PAMC 18.04.030(a)8) must be set back 5 (five) feet from the outside edge of the driveway as measured from the curb face/gutter flowline.

c. Parklets shall be placed no closer than 50 linear feet from a bus stop loading zone.

d. Parklets shall be placed no closer than 15 linear feet from fire hydrants.

e. Parklets shall not be placed no closer than within a 5 feet-foot radius of a manhole covers to allow for maintenance access.

f. Parklets shall be placed no closer than 5 linear feet from a storm drain catch basin in each direction. Parklet construction and design must allow access to the catch basin and shall not obstruct the catch basin.

g. In the event that a parklet location is in conflict with public infrastructure (i.e., public signage, benches, etc.) the applicant shall work with the Office of Public Works and/or Office of Transportation prior to submittal to determine relocation. In the event a proposed parklet location is in conflict with public infrastructure (i.e., public signage, benches, etc.), the Public Works Department shall meet with the applicant to evaluate relocation of the
infrastructure. Relocation of any infrastructure may not be possible.

2. Fire Safety
   a. No portion of the parklet or associated seating shall block FDC or associated equipment.
   b. Business address shall be visible from the street and cannot be fully obstructed by the parklet and associated materials.

3. Street Trees
   a. Any portion of the proposed parklet must maintain the following clearances from existing street trees:
      b. Horizontal clearance equal to a two-foot radius around the tree well. **This does not apply to raised tree wells.**
      a. Vertical clearance of 3 feet measured from the highest point of the parklet (if proposing a parklet with a roof).
      b.
   c. At no time shall there be materials placed in the tree well area or within City planters.
      c. To discourage patrons from stepping on tree wells and possibly damaging tree roots, where needed, a railing shall be installed on the parklet platform adjacent to the tree well. This will alter the path patrons travel, limiting persons stepping on the tree roots.
      b.

4. Bike Facilities
   c. Bicycle racks or other bicycle facilities shall not be removed, made unusable, or otherwise disturbed or obstructed by the construction of a parklet.
      i. Any parklet design that proposes such disruption shall require review by and approval of the Office of Transportation. **Relocation of an existing bicycle facility may be subject to additional fees.**
   d. Applicants are encouraged to incorporate bike parking into their parklet design.

5. Accessibility
   1. The sidewalk and parklet path of travel must comply with the appropriate Americans with Disabilities Act (ADA) and California Building Code (CBC) chapter 11B accessibility provisions.
   2. The parklet path of travel must comply with CBC chapter 10 exiting requirements.

IV. Parklet Design
The following guidelines describe both the safety and design requirements for parklet applications including standards for:

A. Platform
B. Enclosure
C. Traffic Safety
D. Furnishings & Fixtures

A. Platform

1. Structural
   a. Parklets shall be constructed with quality materials and shall be of natural durable wood (such as redwood, cedar, etc.), preservative treated wood, or other engineered material suitable for exterior conditions.
   b. The parklet platform must support 100 pounds per square foot of live load.
   c. All fastening hardware and fasteners adjacent to and into preservative treated wood must be made of one of the following: hot-dipped zinc coated galvanized steel, stainless steel, silicon bronze, or copper.

2. Drainage & Ventilation
   a. The underside of the platform shall be constructed to allow for seasonal drainage.
   b. Adequate cross ventilation shall be installed to allow for the surface to dry within 12–24 hours.
   c. Openings under the platform shall be screened with corrosion-resistant material with a maximum one quarter inch mesh.
   d. Parklets shall not impede the flow of curbside drainage. The parklet design shall include a minimum 6.5” wide 4-1/2”x-8” clearance from sidewalk curb along the entire length of the parklet. Openings at either end of the parklet shall be covered with screens to prevent debris buildup beneath the parklet and in the gutter. The closure 2x decking can be removable for easy access for under platform inspection as needed. See Figure 4 for suggested platform attachment design details.

3. Platform Attachment

[Diagram of platform attachment]
The parklet shall be anchored to the City street and/or curb. Any anchoring proposed into the public street will require USA markings and additional staff review. Platform system shall be anchored at maximum 6’-0 apart in each direction to the roadway to avoid movement during an earthquake. See Figure 4 above.

- Limit anchoring to 6-12 inches embedment in the street.

b. The grate support along the curb face shall be anchored to the curb. The anchor shall be installed perpendicular to the curb. The manner of anchoring shall be through a pre-drilled hole into the curb and a concrete anchor bolt.

- Limit anchoring to 6-12-3/4 inches embedment in the curb.
Figure 5-4: Suggested Platform Attachment Design

PARKLET–SIDEWALK DRAINAGE DETAIL (NTS)

- Minimum of 8" and maximum of 12" wide continuous grating flushed with the sidewalk and decking (1½" edge supported bear on sleeper/blocking)—ADA compliance
- 2x6 horizontal blocking between sleepers
- Parklet platform 2x deck spanning over sleepers
- 2-10d to sleeper
- 2x sleeper Ø 16”O.C taper to bear on road
- Simpson Galv ABR9020 (6” max OC) sleeper to road with min 6” from end of sleeper
- Minimum 6 ½" opening for drainage – add screen at edge of parklet
- 12" galvanized steel angle L2.5x2x½ LLV at 24” O.C
- 2 – 3/8” dia x 3” Simpson galv titen bolt ea angle to concrete sidewalk
Figure 64: Suggested Platform Attachment Design
4. **Roofs**
   a. **Structural**
      i. Complete roof framing plan, which includes horizontal and vertical bracing, is required to be submitted with structural calculations. A licensed architect and/or a civil and/or structural engineer shall sign the plan and associated calculations.
      ii. All connector hardware and fasteners shall be resistant to corrosion and listed as compatible to the framing material.
      iii. Roof may be a solid uniform material or open construction (i.e., trellis, pergola, etc.)
      iv. Roofs shall not be attached or connected to a building.
      v. Roof shall slope toward the street to ensure rainwater drains into the street.
      vi. Gutters and rain leaders are required.
      vii. Roofs shall not extend over the public sidewalk.
      viii. Roof’s outer edges along the travel lane may extend 6 inches beyond parklet footprint at 8 feet or above to allow for attachment of the rain leaders and gutters only.

   b. **Height**
      i. The roof shall be a minimum height of 8 feet provided the adjacent sidewalk is at least 8 feet wide. If the adjacent sidewalk is less than 8 feet wide, the applicant will need to consult with the Palo Alto Fire Department.
      ii. A parklet roof shall measure no taller than 12 feet, as measured from the platform grade.

   c. **Materials**
      i. Rooftop material may be of plywood sheathing, polycarbonate sheets, or sheet metal. Roof framing maybe of one neutral tone such as natural or stained wood, or painted brown, black, beige, or other earth tones.
         i. If plywood sheathing is used, it must be painted or stained.
         ii. Fabric roofing is not allowed.
         iii. If fabric shade sails or similar fabric coverings are proposed, the fabric cover shall be limited to the top portion of the parklet and not extend to additional sides perpendicular to the street or sidewalk. All fabric coverings shall be of all-weather and flame retardant materials excluding vinyl.
      iv. Roof material may be a solid uniform material or open construction (i.e., trellis, pergola, etc.)
      v. All exposed wood is required to be treated for exposure to weather.

5. **Design**
   a. Platform decking materials shall be of one consistent material and be of a neutral tone such as natural or stained wood or painted brown, black, beige, or other earth tones.

6. **Accessibility**
   a. The parklet shall comply with the Americans with Disabilities Act (ADA).
b. The surface of the parklet platform must be flush with the adjacent sidewalk with a maximum gap of one quarter inch and one quarter inch vertical tolerance.

c. A minimum 4-foot-wide accessible path of travel and 5-foot diameter turnaround space must be maintained within the parklet.
d. Any abrupt changes in elevation exceeding 4 inches along an accessible path of travel shall be identified by 6-inch-tall warning curbs.
e. Parklets shall utilize outdoor grade reflective tape to mark changes in grade.

d. Enclosures

1. Dimensions & Load

   a. For user safety, parklets are required to include a continuous barrier enclosure along the parklet’s edge adjacent to the travel lane and parking spaces to bolster parklet user safety. The barrier shall be located on the outermost edge of the platform on all sides adjacent to the travel lane and the parklet ends. The sidewalk edge of the parklet may be enclosed or open.

      i. All parklets in which alcoholic beverages are served shall be enclosed on all sides of the parklet edge, as required by the department of alcoholic beverage control.

   b. The continuous enclosure shall include a periodic barrier, which may be planters or other heavy material, along the parklet edge.

      i. The periodic barrier shall weigh at least 500 lbs, and when filled with soil, sand, water, or concrete weighs 500 lbs.

      ii. The periodic barrier shall be placed along the edge perpendicular to traffic and spaced at least every 6 feet along the parklet edge parallel to the travel lane.

      iii. The periodic barrier shall measure at least 16 inches in depth, and a height no shorter than of at least 36 inches and no more than 38 inches 36 inches and no higher than 42 inches measured from the street level surface of the platform.

   c. The enclosure must be at least 36 inches in height and no more than 38 inches in height, measured from the surface of the platform, comply with the California Building Code for guardrails, this includes but is not limited to guardrail gaps (smaller than a 4 inch sphere) and height (42 inches).

d. Any gaps in the enclosure shall be smaller than a 4-inch sphere.

de. The Enclosure must be capable of withstanding at least 200 pounds of horizontal force.

2. Emergency Access (Figure 5)

   a. A minimum 3-foot-wide emergency gap, with vertical and horizontal clearance, is required for every 20 feet of enclosure length.

   b. The gap must be kept clear of any tables, chairs, bike racks, poles, walls, roofs, or other elements.

   c. The barrier in the emergency access gap shall be easily removable by emergency personnel and provide a latch or hinge that allows easy access.
i. The latch shall be placed on the outside of the barrier, facing the travel lane.

ii. The hinge shall open a minimum of 90 degrees.

iii. Any gaps in the barrier shall be smaller than a 4-inch sphere.

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**2.3. Design**

a. Enclosure materials must be high-quality, durable, and non-reflective including but not limited to hardwood, steel, concrete planters, etc.
   
   a. Materials that are not permitted: Aluminum, particle board, and vinyl, soft plastic or tarps.

   b. The continuous enclosure must be a neutral tone such as natural or stained wood, or painted brown, black, beige, or other earth tones, or be made of steel, iron (wrought or cast), or other non-reflective, all-weather proofed metals.

   c. Street facing colors used on the exterior of enclosure must be matte-finish paint or opaque stain.

   d. Parklets shall integrate and/or incorporate vegetation into the enclosure (edge treatment) at least every six (6) feet.

   a. The height of any plants contained within planters in setback or planters serving as a parklet platform enclosure shall not exceed 6” — impede or obstruct the view from the travel lane to the sidewalk and vice-versa.

   b. Plant material shall not impede or hinder pedestrian and vehicular visibility.
b. No plants shall have thorns, spikes, or sharp edges.
d. Poisonous or invasive plants are not permitted.

\[\text{Figures-Images above illustrate compliant examples of a parklet enclosure.}\]

4. Sidewalls
   a. Parklets may include a hard, transparent screen between the enclosure and the roof to provide a windscreen for parklet users.
      i. The sidewall screen must be completely transparent and not obstruct sightlines from the travel lane to the sidewalk and vice-versa.
      ii. Materials that are not permitted: vinyl, soft plastic or tarps.

E. Traffic Safety

1. Wheel Stops
   a. When a parklet is adjacent to active parallel parking spaces, a wheel stop must be installed to delineate the 4-foot setback from adjacent parking spaces (see figure 3 above). The wheel stop shall measure 3 feet long by 4 inches high (see figure 6). It shall be constructed of concrete or rubber.

\[\text{Figure 6: Wheel Stop}\]
b. Affixing Wheel Stops
   i. Drilled-in Wheel stops: A permittee will need USA clearance to anchor a wheel stop into the road.

c. Location
   i. The wheel stop shall be placed one foot from the curb at the edge of the front parking space.
   ii. A wheel stop shall be placed one foot from the curb at the edge of the rear parking space.
   iii. Wheel stops shall be placed four feet from the parklet structure.

d. Exceptions
   i. Parklets extending the length between two in-street tree wells, as on University Avenue, may omit wheel stops.

2. Reflective Delineators

a. The parklet shall include installation of the California Manual of Uniform Traffic Control Devices (MUTCD) approved delineator posts or flexible bollards. Examples of these devices are illustrated in Figures 7 and 8.

b. Location
   i. Delineator posts shall be surface mounted to the roadway via epoxy and/or glue down methods unless approved otherwise.
   ii. Reflective delineators must be installed at the outside corners of the parklet. The channelizers or posts must align with the end of the platform and not encroach on the travel lane.
iii. Additional delineators must be placed every 20 (twenty) feet in the 2 foot buffer zone along the lane of travel—but not in the lane of travel.

c. Dimensions
   i. Right side of travel lane – Delineators shall be 42 inches high and white with white reflective bands for use on the right side of a travel lane.
   ii. Left side of travel lane – Delineators shall be 42 inches high and be white with yellow reflective bands if used on the left edge of a travel lane.

d. Maintenance
   i. Maintenance of the delineator posts shall be the responsibility of the Permit holder.
   ii. Permittee shall replace any missing or damaged delineators within 24 hours of a delineator’s failure or within 24 hours’ notice from the City.

Examples of these devices are illustrated in Figures 6 and 7.

3. Travel Clearance

   a. Parklets shall provide a minimum 2-foot clearance from the edge of the travel lane (measured from the parking striping adjacent to the travel lane) to ensure safe separation from traffic.

F. Furnishings & Fixtures

1. Materials
a. Parklet furnishings and fixtures must be high-quality, durable, outdoor-rated, and non-reflective including but not limited to: Hardwood, steel, concrete, etc.
   
i. Materials that are not permitted: Aluminum, particle board, and vinyl.

b. Parklet design and materials shall match the colors, textures, and design of the accompanying business storefront.

c. Parklets shall utilize outdoor grade reflective tape to mark changes in grade.

2. **Electrical Power Supply**

2.

a. No power cords or conduits are allowed under the sidewalk.

b. Power cords between the building and the parklet shall be in conduit, with a limit of one conduit per parklet, and shall not be adjacent, above, below or attached to any part of a fire escape.
   
a. Conduit shall be finished to match the parklet design
   
b. No extension cords shall be permitted for fixed lighting or heaters

c. A weatherproof GFCI electrical outlet may be installed on the exterior of the building at a minimum of 10 feet above the walking surface for decorative lighting purposes only. Fixed cables may be used to support the light’s cord and it shall be easily unplugged by fire department personnel.

d. Electrical power supply to the parklet, including receptacle outlets, shall comply with permanent wiring methods as outlined in the adopted California Electrical code.

e. Parklet power source shall not be pulled from city sidewalk lighting or supported by tree
c. Generators are not allowed in association with parklets.

   a. Propane is not permitted to be used for heaters.

   b. Electrical power supply to the parklet, including receptacle outlets, shall comply with permanent wiring methods as outlined in the adopted California Electrical code.

   c. Applicants must apply and obtain the appropriate electrical permit with a maximum of one conduit per parklet.

   d. No power cords or conduits are allowed under the sidewalk. All electrical conduits shall be installed overhead, with a minimum height of 10 feet at the lowest point. Overhead conductors shall be properly sized and supported.

   e. Generators are not allowed in association with parklets.

   f. Parklet power source shall not be pulled from city sidewalk lighting or supported by tree.

3. **Lighting**

a. If installing permanent lighting, an electrical permit shall be obtained and shall comply with permanent wiring methods as outlined in the adopted California Electrical code.

b. The following types of lighting and fixtures are permitted:
   
i. String lights;
   
ii. Solar powered and/or rechargeable battery powered table lights; and
   
iii. Overhead light fixtures for parklets with roofs (permit required)

c. The use of electrical adaptors and power strips are prohibited.

d. All lighting must be rated for exterior use, listed, and carry a product certificate for its intended use by a recognized electrical testing laboratory.

   e. Lighting must be LED only

   f. Lighting shall be limited to the parklet area and not encroach into any portion of the public
sidewalk.
g. Lighting shall be of the lowest intensity and energy use adequate for its purpose and be
designed to focus illumination downward to avoid excessive illumination above the light
fixture with a maximum of 100 watts or 1600 lumens, whichever is greater, per fixture.
h. Applicants interested in lighting should consider solar-powered lighting that use a
rechargeable battery.

3.4. Heaters

a. Only electrical heaters are allowed on parklets.
   i. Electric heaters must be an outdoor approved type
   ii. Electric heaters must be located on the parklet in accordance with the
       manufacturer’s instructions and specifications.
   iii. Electric heaters must be placed at least 5 feet away from any combustible materials.
   iv. A fire extinguisher is required to be mounted within sight and have appropriate
       signage per the Fire Code.
b. Propane is not permitted to be used for heaters, equipment, appliances, or decorated
elements.
c. Any new electrical circuits required for heating require an electrical permit from the
   Building Department (see ‘Power Supply’ above). Any electrical equipment must be listed
   and carry a product certificate for its intended use by a recognized electrical testing
   laboratory.

   a. Parklets without Roofs
      i. Electric space heaters are permitted if they are an outdoor approved type, are
         located in accordance with the manufacturer’s recommendations.
      ii. Heaters must be placed at least 5 feet away from any combustible materials.
      iii. Heaters may not be used or stored under a tent, canopy, or umbrella.
      iv. A fire extinguisher is required to be mounted within sight and have appropriate
          signage per the Fire Code.
      v. Heaters must maintain at least 6 feet of clearance from any
          portion of street tree.

   b. Parklets with Roofs
      i. Any new electric circuits required for heating and lighting require an electrical permit
         from the Building Department (see ‘Power Supply’ above). Any electrical equipment
         must be listed and carry a product certificate for its intended use by a recognized
         electrical testing laboratory.
      ii. Permanently mounted electric heaters must follow all manufacturer's instructions
          and applicable code requirements.
      iii. A fire extinguisher is required to be mounted within sight and have appropriate
          signage per the Fire Code.

4. Lighting

a. Outdoor lighting, such as decorative string lights are allowed if parklet permit holders can
   connect this lighting to a GFCI-protected branch circuit properly sized to accommodate the
   additional load.
b. Listed exterior rated extension cords must be sized properly for the anticipated load and
   not create tripping hazards. Extension cords shall not extend over any part of the sidewalk
   at grade.
c. Extension cords are not to be a substitute for permanent wiring.
d. If utilized, extension cords shall be installed overhead with a minimum height of 10 feet at the lowest point. No cords can extend under the parklet floor or any floor coverings.

e. The use of electrical adapters and power strips are prohibited. All lighting and extension cords must be rated for exterior use, listed, and carry a product certificate for its intended use by a recognized electrical testing laboratory.

f. Lighting must be LED only.

g. Lighting shall be limited to the parklet area and not encroach into any portion of the public sidewalk.

h. Low Voltage Wiring (such as might be used for speakers, though please note amplified music is not allowed)

i. All low voltage wiring must be installed per the adopted California electrical code.

5. Umbrellas

a. Permitted Umbrella Types:
   i. Table Umbrella
   ii. Tilting Umbrella
   iii. Off-set/ Cantilever Umbrella

b. No portion of an umbrella shall extend beyond the edge and/or enclosure of the parklet on any side.

c. No umbrella shall obstruct the view from the street between three (3) and eight (8) feet, measured from the street, from any side.

6. Signage

a. Parklet signage is limited to six (6) square feet and shall be limited to the name of the business and shall be non-illuminated and non-reflective. Letters no taller than 15”.

b. Businesses are permitted one (1) sign on their parklet, total.

c. Signs must be affixed to the outer most portion of the parklet enclosure no higher than 36” from the street grade.

d. No form of advertising is permitted to be painted or mounted on any surface or area of the parklet.

e. Any existing parking signs installed adjacent to the parklet must be covered with opaque plastic; such coverage or illegibility shall occur only in manners approved by the City of Palo Alto through its Department of Public Works and/or its Office of Transportation.

7. Seating & Furniture

a. Accessibility
   i. The establishment must provide 5% accessible seating for each type of seating provided (table, booth, etc.) or a minimum of 1 seat per type, whichever is greater, in an outdoor seating area where the slope is no greater than 2% in any direction.

   ii. Such ADA accessible areas shall include a clear path of travel to the seating and a 60” diameter turnaround area.

   iii. Such ADA accessible seating shall be provided at an accessible height which includes:

      i. Table surface between 28 to 34 inches high.

      ii. At least 27 inches of space from the floor to the bottom of the table.

      iii. Knee clearance extends at least 19 inches under the table.

      iv. Total clear floor area of 30 inches by 48 inches per seat.

   iv. Such ADA accessible seating shall be of the same size and appearance as the establishment’s other outdoor seating.
b. Street Furniture
   i. Street furniture including tables, chairs, benches, etc. shall be all-weather, and of a high-quality material.

Image Figures above illustrate street furniture examples.

8. Landscape
   a. Vegetation shall be comprised of native, low-water use, and drought tolerant plants.
   b. No plants shall have thorns, spikes, or sharp edges.
   c. Poisonous or invasive plants are not permitted.

9. Televisions
   a. Televisions are not permitted on parklets.

V. Operational Standards

9. Private Control

10. Parklets will be considered under the control of the permit holder. The permit holder is responsible for securing the parklet and any fixtures and furnishings contained within it at all times, including during hours when the associated business is not in operation. Staff continue to develop language regarding the private control of this area under the terms of the permit.

a. 

11. Alcohol Service
   a. Parklets that serve alcoholic beverages shall include appropriate fencing or other barriers to delineate the space and adhere to Alcohol Beverage Control (ABC) regulations.
      a. i. As described in the Enclosure section above, all parklets in which alcoholic beverages are served shall be enclosed on all sides of the parklet edge, as required by the department of alcoholic beverage control.
   b. All physical requirements of ABC should be reflected in the design submitted for review.
   c. ![Note: the following is still in discussion and a clear process is yet to be determined]. A Conditional Use Permit (CUP) Amendment is required to allow alcohol service at a parklet.
   d. A restaurant with existing CUP for alcohol service must submit an application to Planning and Development Services to amend the existing CUP to expand alcohol service to parklet.
   e. The CUP Amendment must be approved before alcohol service is allowed at a parklet.

12. Site Maintenance
a. Parklets shall be maintained free of litter and debris.
b. The parklet area and adjacent sidewalk shall be scrubbed and mopped to remove any food or drink stains on a daily basis by the permittee.

13. Hours of Operation

a. The parklet shall adhere to the same approved hours of operation as the associated business.

b. Note: In the CN or CS zone districts, a CUP is needed to operate/activities between the hours of 10:00 p.m. and 6:00 a.m. and approval conditions for operations during these hours are to ensure the operation is compatible with the abutting (or within 50 feet of) residential property.

14. Amplified Sound

a. Amplified sound shall not exceed a noise level of more than fifteen dB above the local ambient at a distance of twenty-five feet or more, as defined in section 9.10 of the Municipal Code.

b. Amplified sound is restricted to the following daytime hours:
   i. 8 a.m. to 8 p.m. Monday through Friday, except holidays
   ii. 9 a.m. and 8 p.m. on Saturday, except holidays
   b.iii. 10 a.m. and 6 p.m. on Sunday and holidays

VI. PERMIT APPLICATION REQUIREMENTS

A. Submittal Requirements

1. Site Plan—Site plan shall be drawn to scale on 11 x17 tabloid paper, include all pertinent dimensions and the following information:
   a. Location of the business frontage
   b. Dimensions of the parklet platform
   c. ADA accessibility measurements
   d. Setbacks from adjacent parking spaces and the adjacent traffic lane
   e. Locations of traffic protection improvements including wheel stops, reflective delineators, etc.
   f. Location of public utilities including any manhole covers, gutter drains, fire hydrants, and FDCs, light poles, etc. (and distances to parklet)
   g. Any adjacent installations on the sidewalk including parking meters, utility boxes, street signs, bike racks, street furniture, etc. (and distances to parklet)
   h. Existing parking space striping
   i. Crosswalks, bus stops, driveways (and distances to parklet)
   j. Width of sidewalk
   k. Planters (if applicable)

2. Floor Plan
   a. Floor Plan of the proposed parklet showing the following information:
      i. Total number and location of tables and seats and/or benches on parklet
      ii. Dimensions of tables, seats, and benches on parklet

2.3 Elevations
   a. Elevation drawing showing the following information:
   b. Height and design of platform railings/guards or edge buffers
   c. Height and design of roof (if applicable)
d. Heating, lighting, other electrical equipment  
e. Power connection (show distance from ground to overhead wire)  
f. Storm water drainage  
g. Cross-section drawing of parklet  

3.4. Construction Drawing/Calculation  
   a. Structural drawings  
   b. Structural calculations (if applying for parklet with roof)  
   c. Heating, lighting, other electrical equipment  
   d. Electrical power connection/source  

4.5. Pictures of proposed site—The application should include at least 3 photos showing existing built parklet, if applicable, the proposed parking space(s) converted into a parklet, adjacent sidewalk and store frontage  

5.6. List of all materials and equipment proposed  
   a. Materials palette showing the following information:  
      i. Proposed materials for platform  
      ii. Proposed materials for railings or edge buffers  
      iii. Proposed furnishings  
      iv. Roof material (if applicable)  
   b. Equipment sheet including:  
      i. Image of equipment  
      ii. Any manufacturer instructions  
   c. Planters  
   d. Type of plants  

6.7. Parklet Information:  
   a. Number of parking spaces requested  
   b. Perpendicular or angled spaces  
   c. Color of curb  
   d. Proposed use of parklet  
   e. Business hours of operation  
   f. Parklet Designer/Architect/Engineer/Construction Firm contact (if applicable)  
   g. Signage (if applicable)  

7.8. Business Information  
   a. Business Address  
   b. City of Palo Alto Business License Number  

8.9. Business Owner Information  

9.10. Property Owner Information (if different than applicant)  

10.11. Insurance Documents  

12. Letter(s) of Support — A parklet applicant must get a letter of support from the neighboring ground-floor tenant(s) and building owner(s) if more than half of a marked parking space is not in front of the applicant’s storefront, or if any part of an unmarked parking space is not in front of the applicant’s storefront (see Figure 9). If the proposed parklet extends beyond the applicant’s storefront, the applicant shall obtain letters of support from the neighboring ground-floor building owner(s) and tenant(s). [Note to City: Draft template to be provided, still being drafted by staff].  
   a. If the tenancy and/or ownership of the neighboring property changes, Public Works may require the parklet sponsor to submit an updated letter of support to continue utilizing any space extending into a neighboring frontage regardless of the status of the parklet
license at the time of change of ownership/tenancy.

b. Consent to occupy neighboring space as part of a parklet permit is revocable by nature; and, if such support is revoked, or if parklet occupancy is not in accordance with the terms of any applicable law, these regulations, and/or any permit requirement, the parklet sponsor is responsible for the removal of any structure placed in the right of way under the parklet permit, including any applicable portion of the parklet permit extending into a neighboring frontage.

c. Parklet sponsor must obtain an up-to-date letter of support for any future license renewals as requested by Public Works during future permit renewal processes.

13. Indemnity Acknowledgement
B. Failure to Maintain

A parklet sponsor who fails to properly and sufficiently maintain the cleanliness, safety, and accessibility of their parklet may be subject to violations and fines. If maintenance issues are not resolved, the City may revoke the encroachment permit and the parklet sponsor may be required by the City to remove...
the parklet at their own expense.

C. Utility Maintenance & Public Safety

Because a parklet may sit atop buried utilities, there may be instances where a parklet will need to be removed to access a utility beneath it. In the event of necessary utility maintenance or the unlikely event of a utility failure such as a gas leak or water main break that threatens public safety, the City or utility owner may remove parklets with little or no notice. Parklet sponsors are responsible for the cost of re-installing and restoring any damage to the parklet.

In instances of advanced notice (such as street repaving, planned maintenance, etc.), the parklet sponsor may need to remove and reinstall the parklet at their sole expense. If the sponsor cannot remove the parklet, the City will remove the parklet.

D. Parklet Removal

If for some reason the parklet sponsor decides no longer wants to maintain a parklet, the parklet sponsor is responsible for notifying the City and removing it at the parklet sponsors’ own expense. Immediately upon removal the parklet area shall be cleaned and restored to its previous condition to the satisfaction of the City.

E. Permit Fees, Permit Charges, License Fee, and Deposit

[Note: Fee methodology for permit and license annual or monthly leasing fee is still to be determined in addition to any resulting fee for ongoing program management].
Schedule of Meetings  
Published October 13, 2022

This is a courtesy notice only. Meeting dates, times, and locations are subject to change. Almost all Palo Alto Council and some Standing Committee meetings are cablecast live on Channel 26. If there happens to be concurrent meetings, one meeting will be broadcast on Channel 29.

Meetings are held in-person and virtually unless otherwise noted

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Board/Committee</th>
<th>Physical Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>THURSDAY, October 13</td>
<td>8:30 a.m.</td>
<td>Historic Resources Board</td>
<td>Council Chambers</td>
</tr>
<tr>
<td></td>
<td>6:00 p.m.</td>
<td>Human Relations Commission</td>
<td>Council Chambers</td>
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<tr>
<td>MONDAY, October 17</td>
<td>5:00 p.m.</td>
<td>City Council</td>
<td>Council Chambers</td>
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<tr>
<td>TUESDAY, October 18</td>
<td>5:30 p.m.</td>
<td>Finance Committee</td>
<td>Community Meeting Room</td>
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<tr>
<td>WEDNESDAY, October 19</td>
<td>1:00 p.m.</td>
<td>Rail Committee</td>
<td>Community Meeting Room</td>
</tr>
<tr>
<td>THURSDAY, October 20</td>
<td>8:30 p.m.</td>
<td>City/School Liaison Committee</td>
<td>Virtual Only</td>
</tr>
<tr>
<td></td>
<td>8:30 a.m.</td>
<td>Architectural Review Board</td>
<td>Council Chambers</td>
</tr>
<tr>
<td></td>
<td>7:00 p.m.</td>
<td>Public Art Commission</td>
<td>Council Chambers</td>
</tr>
<tr>
<td>MONDAY, October 24</td>
<td>5:00 p.m.</td>
<td>City Council</td>
<td>Council Chambers</td>
</tr>
<tr>
<td>TUESDAY, October 25</td>
<td>7:00 p.m.</td>
<td>Parks &amp; Recreation Commission</td>
<td>Council Chambers</td>
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<td>WEDNESDAY, October 26</td>
<td>6:00 p.m.</td>
<td>Planning &amp; Transportation Commission</td>
<td>Council Chambers</td>
</tr>
<tr>
<td>THURSDAY, October 27</td>
<td>8:30 a.m.</td>
<td>Historic Resources Board</td>
<td>Council Chambers</td>
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<td>TUESDAY, November 1</td>
<td>5:30 p.m.</td>
<td>Finance Committee</td>
<td>CANCELLED</td>
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<td>WEDNESDAY, November 2</td>
<td>6:00 p.m.</td>
<td>Utilities Advisory Commission</td>
<td>Council Chambers</td>
</tr>
<tr>
<td>THURSDAY, November 3</td>
<td>8:30 a.m.</td>
<td>Architectural Review Board</td>
<td>Council Chambers</td>
</tr>
<tr>
<td></td>
<td>7:00 p.m.</td>
<td>Policy &amp; Services Committee</td>
<td>Council Chambers</td>
</tr>
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</table>
Supplemental Report – Item 7

MEETING DATE: OCTOBER 24, 2022

TO: HONORABLE CITY COUNCIL

FROM: ED SHIKADA, CITY MANAGER

SUBJECT: AGENDA ITEM NUMBER 7 - TITLE: APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT CONTRACT NUMBER C23185658 WITH BKF ENGINEERS FOR THE AMOUNT OF $900,000 OVER A 3-YEAR TERM FOR ON-CALL SURVEYING AND DESIGN SUPPORT SERV

Attachment A (the proposed Professional Services Agreement) was inadvertently missing from the original published packet due to a system compiling issue. Attachment A is attached to this supplemental report.
CITY OF PALO ALTO CONTRACT NO. C23185658

AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN THE CITY OF PALO ALTO AND BKF ENGINEERS

This Agreement for Professional Services (this “Agreement”) is entered into as of the 24th day of October, 2022 (the “Effective Date”), by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and BKF ENGINEERS, a California corporation, Department of Industrial Relations (DIR) Registration Number #1000002096, located at 255 Shoreline Drive, Suite 200, Redwood City, CA 94065 (“CONSULTANT”).

The following recitals are a substantive portion of this Agreement and are fully incorporated herein by this reference:

RECITALS

A. CITY intends to perform topographic surveying for various work groups within the Public Works Engineering Services Division (the “Project”) and desires to engage a consultant to provide as-needed, on-call surveying services in connection with the Project (the “Services”, as detailed more fully in Exhibit A).

B. CONSULTANT represents that it, its employees and subconsultants, if any, possess the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY, in reliance on these representations, desires to engage CONSULTANT to provide the Services as more fully described in Exhibit A, entitled “SCOPE OF SERVICES”.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, in this Agreement, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in Exhibit A in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

☒ Optional On-Call Provision (This provision only applies if checked and only applies to on-call agreements.)

CITY may elect to, but is not required to, authorize on-call Services up to the maximum compensation amount set forth in Section 4 (Not to Exceed Compensation). CONSULTANT shall provide on-call Services only by advanced, written authorization from CITY as detailed in this Section. On-call Services, if any, shall be authorized by CITY, as needed, with a Task Order assigned and approved by CITY’s Project Manager,
as identified in Section 13 (Project Management). Each Task Order shall be in substantially the same form as Exhibit A-1 entitled “PROFESSIONAL SERVICES TASK ORDER”. Each Task Order shall contain a specific scope of services, schedule of performance and maximum compensation amount, in accordance with the provisions of this Agreement. Compensation for on-call Services shall be specified by CITY in the Task Order, based on whichever is lowest: the compensation structure set forth in Exhibit C, the hourly rates set forth in Exhibit C-1, or a negotiated lump sum.

To accept a Task Order, CONSULTANT shall sign the Task Order and return it to CITY’s Project Manager within the time specified by the Project Manager, and upon authorization by CITY (defined as counter-signature by the CITY Project Manager), the fully executed Task Order shall become part of this Agreement. The cumulative total compensation due to CONSULTANT for all Task Orders issued under this Agreement shall not exceed the amount of compensation set forth in Section 4. CONSULTANT shall only be compensated for on-call Services performed under an authorized Task Order and only up to the maximum compensation amount set forth in Section 4. Performance of and payment for any on-call Services are subject to all requirements and restrictions in this Agreement.

**SECTION 2. TERM.**
The term of this Agreement shall be from the date of its full execution through October 31, 2025 unless terminated earlier pursuant to Section 19 (Termination) of this Agreement.

**SECTION 3. SCHEDULE OF PERFORMANCE.** Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit B, entitled “SCHEDULE OF PERFORMANCE”. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY’s agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

**SECTION 4. NOT TO EXCEED COMPENSATION.** The compensation to be paid to CONSULTANT for performance of the Services shall be based on the compensation structure detailed in Exhibit C, entitled “COMPENSATION,” including any reimbursable expenses specified therein, and the maximum total compensation shall not exceed Three Hundred Thousand Dollars ($300,000) per contract year for a maximum total Not to Exceed Compensation amount of Nine Hundred Thousand Dollars ($900,000) over the term of the Agreement. The hourly schedule of rates, if applicable, is set out in Exhibit C-1, entitled “SCHEDULE OF RATES.” Any work performed or expenses incurred for which payment would result in a total exceeding the maximum compensation set forth in this Section 4 shall be at no cost to the CITY.

**SECTION 5. INVOICES.** In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the Services performed and the applicable charges (including, if applicable, an identification of personnel who performed the Services, hours worked, hourly rates, and reimbursable expenses), based upon Exhibit C or, as applicable, CONSULTANT’s schedule of rates set forth in Exhibit C-1. If applicable, the invoice shall also describe the percentage of
completion of each task. The information in CONSULTANT’s invoices shall be subject to verification by CITY. CONSULTANT shall send all invoices to CITY’s Project Manager at the address specified in Section 13 (Project Management) below. CITY will generally process and pay invoices within thirty (30) days of receipt of an acceptable invoice.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All Services shall be performed by CONSULTANT or under CONSULTANT’s supervision. CONSULTANT represents that it, its employees and subcontractors, if any, possess the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subcontractors, if any, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services. All Services to be furnished by CONSULTANT under this Agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement, as amended from time to time. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

SECTION 8. ERRORS/OMISSIONS. CONSULTANT is solely responsible for costs, including, but not limited to, increases in the cost of Services, arising from or caused by CONSULTANT’s errors and omissions, including, but not limited to, the costs of corrections such errors and omissions, any change order markup costs, or costs arising from delay caused by the errors and omissions or unreasonable delay in correcting the errors and omissions.

SECTION 9. COST ESTIMATES. If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds the CITY’s stated construction budget by ten percent (10%) or more, CONSULTANT shall make recommendations to CITY for aligning the Project design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

SECTION 10. INDEPENDENT CONTRACTOR. CONSULTANT acknowledges and agrees that CONSULTANT and any agent or employee of CONSULTANT will act as and shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which CONSULTANT performs the Services requested by CITY under this Agreement. CONSULTANT and any agent or employee of CONSULTANT will not have employee status with CITY, nor be entitled to participate in any plans, arrangements, or distributions by CITY pertaining to or in connection with any retirement, health or other benefits that CITY may offer its employees. CONSULTANT will be responsible for all obligations and payments, whether
imposed by federal, state or local law, including, but not limited to, FICA, income tax
withholdings, workers’ compensation, unemployment compensation, insurance, and other similar
responsibilities related to CONSULTANT’s performance of the Services, or any agent or
employee of CONSULTANT providing same. Nothing in this Agreement shall be construed as
creating an employment or agency relationship between CITY and CONSULTANT or any agent
or employee of CONSULTANT. Any terms in this Agreement referring to direction from CITY
shall be construed as providing for direction as to policy and the result of CONSULTANT’s
provision of the Services only, and not as to the means by which such a result is obtained.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of
CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign
or transfer any interest in this Agreement nor the performance of any of CONSULTANT’s
obligations hereunder without the prior written approval of the City Manager. Any purported
assignment made without the prior written approval of the City Manager will be void and without
effect. Subject to the foregoing, the covenants, terms, conditions and provisions of this Agreement
will apply to, and will bind, the heirs, successors, executors, administrators and assignees of the
parties.

SECTION 12. SUBCONTRACTING.

☐ Option A: No Subcontractor: CONSULTANT shall not subcontract any portion of the
Services to be performed under this Agreement without the prior written authorization of the City
Manager or designee. In the event CONSULTANT does subcontract any portion of the work to
be performed under this Agreement, CONSULTANT shall be fully responsible for all acts
and omissions of subcontractors.

☐ Option B: Subcontracts Authorized: Notwithstanding Section 11 (Assignment) above, CITY
agrees that subcontractors may be used to complete the Services. The subcontractors authorized
by CITY to perform work on this Project are:

CONSULTANT shall be responsible for directing the work of any subcontractors and for any
compensation due to subcontractors. CITY assumes no responsibility whatsoever concerning
compensation of subcontractors. CONSULTANT shall be fully responsible to CITY for all acts
and omissions of subcontractors. CONSULTANT shall change or add subcontractors only with
the prior written approval of the City Manager or designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Ben Santos, PLS
Associate, 1730 N. First Street #600, San Jose, CA 95112, telephone: 650-455-9489, email:
bsantos@bkf.com as the CONSULTANT’s Project Manager to have supervisory responsibility for
the performance, progress, and execution of the Services and represent CONSULTANT during
the day-to-day performance of the Services. If circumstances cause the substitution of the
CONSULTANT’s Project Manager or any other of CONSULTANT’s key personnel for any
reason, the appointment of a substitute Project Manager and the assignment of any key new or
replacement personnel will be subject to the prior written approval of the CITY’s Project Manager.
CONSULTANT, at CITY’s request, shall promptly remove CONSULTANT personnel who CITY
finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Services or a threat to the safety of persons or property.

CITY’s Project Manager is Hung Nguyen, Project Engineer, Public Works Department, Engineering Division, 250 Hamilton Avenue, Palo Alto, CA 94301, Telephone: 650-329-2548, hung.nguyen@cityofpaloalto.org. CITY’s Project Manager will be CONSULTANT’s point of contact with respect to performance, progress and execution of the Services. CITY may designate an alternate Project Manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. All work product, including without limitation, all writings, drawings, studies, sketches, photographs, plans, reports, specifications, computations, models, recordings, data, documents, and other materials and copyright interests developed under this Agreement, in any form or media, shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work product pursuant to this Agreement are vested in CITY, and CONSULTANT hereby waives and relinquishes all claims to copyright or other intellectual property rights in favor of CITY. Neither CONSULTANT nor its subcontractors, if any, shall make any of such work product available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the Scope of Services.

SECTION 15. AUDITS. CONSULTANT agrees to permit CITY and its authorized representatives to audit, at any reasonable time during the term of this Agreement and for four (4) years from the date of final payment, CONSULTANT’s records pertaining to matters covered by this Agreement, including without limitation records demonstrating compliance with the requirements of Section 10 (Independent Contractor). CONSULTANT further agrees to maintain and retain accurate books and records in accordance with generally accepted accounting principles for at least four (4) years after the expiration or earlier termination of this Agreement or the completion of any audit hereunder, whichever is later.

SECTION 16. INDEMNITY.

☒[Option A applies to the following design professionals pursuant to Civil Code Section 2782.8: architects; landscape architects; registered professional engineers and licensed professional land surveyors.] 16.1. To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an “Indemnified Party”) from and against any and all third party demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including reasonable attorney’s fees, experts fees, court costs and disbursements (“Claims”) to the extent that such Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party. CITY will reimburse CONSULTANT for the proportionate percentage of defense costs exceeding CONSULTANT’s proportionate percentage of fault as determined by the final judgment of a court of competent jurisdiction.
[Option B applies to any consultant who does not qualify as a design professional as defined in Civil Code Section 2782.8.] 16.1. To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an “Indemnified Party”) from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorney’s fees, experts fees, court costs and disbursements (“Claims”) resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from a Claim arising from the active negligence or willful misconduct of an Indemnified Party that is not contributed to by any act of, or by any omission to perform a duty imposed by law or agreement by, CONSULTANT, its officers, employees, agents or contractors under this Agreement.

16.3. The acceptance of CONSULTANT’s Services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

SECTION 17. WAIVERS. No waiver of a condition or nonperformance of an obligation under this Agreement is effective unless it is in writing in accordance with Section 29.4 of this Agreement. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit D, entitled “INSURANCE REQUIREMENTS”. CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best’s Key Rating Guide ratings of A-:VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval...
of CITY’s Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days’ prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days’ notice to CONSULTANT, CONSULTANT shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the CONSULTANT’s receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY’s Chief Procurement Officer during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT’s liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. If CONSULTANT fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided under this Agreement or at law, the City Manager may terminate this Agreement sooner upon written notice of termination. Upon receipt of any notice of suspension or termination, CONSULTANT will discontinue its performance of the Services on the effective date in the notice of suspension or termination.

19.2. In event of suspension or termination, CONSULTANT will deliver to the City Manager on or before the effective date in the notice of suspension or termination, any and all work product, as detailed in Section 14 (Ownership of Materials), whether or not completed, prepared by CONSULTANT or its contractors, if any, in the performance of this Agreement. Such work product is the property of CITY, as detailed in Section 14 (Ownership of Materials).

19.3. In event of suspension or termination, CONSULTANT will be paid for the Services rendered and work products delivered to CITY in accordance with the Scope of Services up to the effective date in the notice of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT’s Services provided in material conformity with this Agreement as such determination is made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 16, 17, 19.2, 19.3, 19.4, 20, 25, 27, 28, 29 and 30.

19.4. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement, unless made
in accordance with Section 17 (Waivers).

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
City of Palo Alto
Post Office Box 10250
Palo Alto, CA  94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the Project Manager at the address of CONSULTANT recited on the first page of this Agreement.

CONSULTANT shall provide written notice to CITY of any change of address.

SECTION 21. CONFLICT OF INTEREST.

21.1. In executing this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subcontractors or other persons or parties having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California, as amended from time to time. CONSULTANT agrees to notify CITY if any conflict arises.

21.3. If the CONSULTANT meets the definition of a “Consultant” as defined by the Regulations of the Fair Political Practices Commission, CONSULTANT will file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act of 1974, as amended from time to time.

SECTION 22. NONDISCRIMINATION; COMPLIANCE WITH ADA.

22.1. As set forth in Palo Alto Municipal Code Section 2.30.510, as amended from time to time, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person due to that person’s 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. CONSULTANT 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 agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

22.2. CONSULTANT understands and agrees that pursuant to the Americans Disabilities Act (“ADA”), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor or subcontractor, are required to be accessible to the disabled public. CONSULTANT will provide the Services specified in this Agreement in a manner that complies with the ADA and any other applicable federal, state and local disability rights laws and regulations, as amended from time to time. CONSULTANT will not discriminate against persons with disabilities in the provision of services, benefits or activities provided under this Agreement.

SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS. CONSULTANT shall comply with the CITY’s Environmentally Preferred Purchasing policies which are available at CITY’s Purchasing Department, hereby incorporated by reference and as amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of 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, CONSULTANT shall comply with the following Zero Waste requirements:

(a) All printed materials provided by CONSULTANT 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 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.

(b) Goods purchased by CONSULTANT on behalf of CITY shall be purchased in accordance with 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 Department’s office.

(c) Reusable/returnable pallets shall be taken back by CONSULTANT, at no additional cost to CITY, for reuse or recycling. CONSULTANT shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

SECTION 24. COMPLIANCE WITH PALO ALTO MINIMUM WAGE ORDINANCE. CONSULTANT shall comply with all requirements of the 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, CONSULTANT 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, CONSULTANT shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code Section 4.62.060.

SECTION 25. NON-APPROPRIATION. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code, as amended from time to
time. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, 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 Agreement 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 26. PREVAILING WAGES AND DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS.

26.1. This Project is not subject to prevailing wages and related requirements. CONSULTANT 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

26.1. 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. CONSULTANT 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, web site (see e.g. http://www.dir.ca.gov/DLSR/PWD/index.htm) as amended from time to time. CONSULTANT 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. CONSULTANT 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 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. CONSULTANT shall comply with the requirements of Exhibit E, entitled “DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS”, for any contract for public works construction, alteration, demolition, repair or maintenance, including but not limited to the obligations to register with, and furnish certified payroll records directly to, DIR.

SECTION 27. CLAIMS PROCEDURE FOR “9204 PUBLIC WORKS PROJECTS”. For
purposes of this Section 27, a “9204 Public Works Project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. (Cal. Pub. Cont. Code § 9204.) Per California Public Contract Code Section 9204, for Public Works Projects, certain claims procedures shall apply, as set forth in Exhibit F, entitled “Claims for Public Contract Code Section 9204 Public Works Projects”.

☐ This Project is a 9204 Public Works Project and is required to comply with the claims procedures set forth in Exhibit F, entitled “Claims for Public Contract Code Section 9204 Public Works Projects”.

OR

☐ This Project is not a 9204 Public Works Project.

SECTION 28. CONFIDENTIAL INFORMATION.

28.1. In the performance of this Agreement, CONSULTANT may have access to CITY’s Confidential Information (defined below). CONSULTANT will hold Confidential Information in strict confidence, not disclose it to any third party, and will use it only for the performance of its obligations to CITY under this Agreement and for no other purpose. CONSULTANT will maintain reasonable and appropriate administrative, technical and physical safeguards to ensure the security, confidentiality and integrity of the Confidential Information. Notwithstanding the foregoing, CONSULTANT may disclose Confidential Information to its employees, agents and subcontractors, if any, to the extent they have a need to know in order to perform CONSULTANT’s obligations to CITY under this Agreement and for no other purpose, provided that the CONSULTANT informs them of, and requires them to follow, the confidentiality and security obligations of this Agreement.

28.2. “Confidential Information” means all data, information (including without limitation “Personal Information” about a California resident as defined in Civil Code Section 1798 et seq., as amended from time to time) and materials, in any form or media, tangible or intangible, provided or otherwise made available to CONSULTANT by CITY, directly or indirectly, pursuant to this Agreement. Confidential Information excludes information that CONSULTANT can show by appropriate documentation: (i) was publicly known at the time it was provided or has subsequently become publicly known other than by a breach of this Agreement; (ii) was rightfully in CONSULTANT’s possession free of any obligation of confidence prior to receipt of Confidential Information; (iii) is rightfully obtained by CONSULTANT from a third party without breach of any confidentiality obligation; (iv) is independently developed by employees of CONSULTANT without any use of or access to the Confidential Information; or (v) CONSULTANT has written consent to disclose signed by an authorized representative of CITY.

28.3. Notwithstanding the foregoing, CONSULTANT may disclose Confidential Information to the extent required by order of a court of competent jurisdiction or governmental body, provided that CONSULTANT will notify CITY in writing of such order immediately upon receipt and prior to any such disclosure (unless CONSULTANT is prohibited by law from doing
so), to give CITY an opportunity to oppose or otherwise respond to such order.

28.4. CONSULTANT will notify City promptly upon learning of any breach in the security of its systems or unauthorized disclosure of, or access to, Confidential Information in its possession or control, and if such Confidential Information consists of Personal Information, CONSULTANT will provide information to CITY sufficient to meet the notice requirements of Civil Code Section 1798 et seq., as applicable, as amended from time to time.

28.5. Prior to or upon termination or expiration of this Agreement, CONSULTANT will honor any request from the CITY to return or securely destroy all copies of Confidential Information. All Confidential Information is and will remain the property of the CITY and nothing contained in this Agreement grants or confers any rights to such Confidential Information on CONSULTANT.

28.6. If selected in Section 30 (Exhibits), this Agreement is also subject to the terms and conditions of the Information Privacy Policy and Cybersecurity Terms and Conditions.

SECTION 29. MISCELLANEOUS PROVISIONS.

29.1. This Agreement will be governed by California law, without regard to its conflict of law provisions.

29.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

29.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys’ fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys’ fees paid to third parties.

29.4. This Agreement, including all exhibits, constitutes the entire and integrated agreement between the parties with respect to the subject matter of this Agreement, and supersedes all prior agreements, negotiations, representations, statements and undertakings, either oral or written. This Agreement may be amended only by a written instrument, which is signed by the authorized representatives of the parties and approved as required under Palo Alto Municipal Code, as amended from time to time.

29.5. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the unaffected provisions of this Agreement will remain in full force and effect.

29.6. In the event of a conflict between the terms of this Agreement and the exhibits hereto (per Section 30) or CONSULTANT’s proposal (if any), the Agreement shall control. In the event of a conflict between the exhibits hereto and CONSULTANT’s proposal (if
any), the exhibits shall control.

29.7. The provisions of all checked boxes in this Agreement shall apply to this Agreement; the provisions of any unchecked boxes shall not apply to this Agreement.

29.8. All section headings contained in this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.

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

SECTION 30. EXHIBITS. Each of the following exhibits, if the check box for such exhibit is selected below, is hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

- ☑ EXHIBIT A: SCOPE OF SERVICES
- ☑ EXHIBIT A-1: PROFESSIONAL SERVICES TASK ORDER
- ☑ EXHIBIT B: SCHEDULE OF PERFORMANCE
- ☑ EXHIBIT C: COMPENSATION
- ☑ EXHIBIT C-1: SCHEDULE OF RATES
- ☑ EXHIBIT D: INSURANCE REQUIREMENTS
- ☑ EXHIBIT E: DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS
- ☑ EXHIBIT F: CLAIMS FOR PUBLIC CONTRACT CODE SECTION 9204 PUBLIC WORKS PROJECTS

THIS AGREEMENT IS NOT COMPLETE UNLESS ALL SELECTED EXHIBITS ARE ATTACHED.
IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement as of the date first above written.

CITY OF PALO ALTO

________________________________________
City Manager

APPROVED AS TO FORM:

________________________________________
City Attorney or Designee

BKF ENGINEERS

Officer 1

_______________________________
By:

Name: Davis Thresh

Title: Principal/Vice President
EXHIBIT A
SCOPE OF SERVICES

CONSULTANT shall provide the Services detailed in this Exhibit A, entitled “SCOPE OF SERVICES”.

Consultant shall provide as-needed, on-call surveying services for various City projects. The contract will be administered by the Public Works Department, Engineering Services Division, but the services may be requested by and for other divisions of the Public Works Department and other City departments.

SPECIFIC QUALIFICATIONS

The Consultant(s) must be able to provide the following service in-house:

- Surveying
- Technical review of survey and land use/development related documents
- Act as City Surveyor

The selected Consultant must be able to subcontract for the following services, including but not necessarily limited to:

- Civil Engineering
- Architect

TASK ORDERS

Consultant shall perform topographic surveying, engineering or design services on a task order basis. Task orders not to exceed $300,000 will be developed for specific projects by the City department requesting the work and the not-to-exceed fee negotiated with the Consultant. Issuance of any or a certain number of task orders under this Agreement is not guaranteed and is at the sole discretion of City.

SCOPE OF WORK

CONSULTANT will be working with various work groups within the Public Works Engineering Services Division including Streets and Sidewalks, Parks, Building and Storm Drain. Therefore the Consultant may be asked to work on more than one project at a time. All services to be performed by the Consultant shall be documented in a task order to be executed by the Consultant and City in the form of Exhibit “A-1” attached hereto. The specified work required for these projects will be determined as the projects are developed including a detailed scope, schedule and budget, and will be set forth in the task order. Below are descriptions of required tasks for each work group.

Streets and Sidewalks, Parks, Building and Storm Drain – Topographic survey services will be used to provide base maps for preparation of plans for proposed improvement projects.
The Consultant shall provide the following topographic survey services:

- Establish survey control line extending 10 feet beyond the limits of work
- Locate, identify, and tie-out City of Palo Alto survey markers, landmarks, and monuments found within the project area
- Perform topographic survey of existing features, which includes but is not limited to the following:
  - Locate and identify existing surface features, which includes but is not limited to the following: driveway areas, top of curb, flow line, any exposed lip of gutter, sidewalk, ramps, edge of pavement, street cross section, centerline, speed humps, traffic striping, signs, walkways in park strips, trees (including diameter), light poles, building corners, top of bank, drainage ditch and other pertinent field features
  - Locate and identify existing surface utilities, which includes but is not limited to the following: catch basins, manholes, boxes, valves, water, gas, electric, fiber optics, telecommunications, sewer, and cable television utilities

Additional features required for Storm Drain projects include the following:

- Storm drain infrastructure (pipelines, manholes, and catch basins) including invert elevations, pipe sizes, material type, and rim elevations
- Other existing underground utilities (i.e. sewer, water, gas, electric, fiber optics, telecommunications, and cable television utilities) including invert elevations, pipe sizes, material type, top/bottom, pipe elevations, rim elevations, and duct/encasement bottom elevations. Deliverables – prepare and submit the following:
  - Surveys must use NAVD88
  - 2019 Civil 3D Auto-CAD files for the survey work done
  - Electronic files (csv format) of all survey data points
  - CTB files
  - Comprehensive CAD file of survey and presentable pdf with title block, project information, and key descriptions as feature identifier for each surveyed infrastructure
  - Separate layers for different topographic features
  - Provide line work, profile, and cross-sections utilizing 2019 Auto-CAD Civil 3D

The City will provide existing infrastructure and right-of-way information from City of Palo Alto Geographic Information System (GIS) Streets. Work on arterial and collector streets (including Alma, Middlefield, and Embarcadero will not be permitted between the hours of 7 a.m. and 9 a.m. and 4 p.m. and 6 p.m. to avoid traffic congestion to the public. Consultant shall be responsible for all traffic control for survey crews. The Consultant shall comply will the MUTCD Rolling/mobile traffic control for short term work. Any work that is longer than 15 minutes at one particular spot shall require a more specific traffic control plan to be submitted for the City’s Transportation Division’s review and approval. Consultant shall be responsible for all traffic control for survey crews.
EXHIBIT A-1
PROFESSIONAL SERVICES TASK ORDER

CONSULTANT shall perform the Services detailed below in accordance with all the terms and conditions of the Agreement referenced in Item 1A below. All exhibits referenced in Item 8 are incorporated into this Task Order by this reference. CONSULTANT shall furnish the necessary facilities, professional, technical and supporting personnel required by this Task Order as described below.

CONTRACT NO.
OR PURCHASE ORDER REQUISITION NO. (AS APPLICABLE)

1A. MASTER AGREEMENT NO. (MAY BE SAME AS CONTRACT / P.O. NO. ABOVE):
1B. TASK ORDER NO.:
2. CONSULTANT NAME:
3. PERIOD OF PERFORMANCE: START: COMPLETION:
4. TOTAL TASK ORDER PRICE: $______________
   BALANCE REMAINING IN MASTER AGREEMENT/CONTRACT $______________
5. BUDGET CODE______________
   COST CENTER______________
   COST ELEMENT______________
   WBS/CIP__________________
   PHASE______________
6. CITY PROJECT MANAGER’S NAME & DEPARTMENT:____________________________________
7. DESCRIPTION OF SCOPE OF SERVICES (Attachment A) MUST INCLUDE:
   • SERVICES AND DELIVERABLES TO BE PROVIDED
   • SCHEDULE OF PERFORMANCE
   • MAXIMUM COMPENSATION AMOUNT AND RATE SCHEDULE (as applicable)
   • REIMBURSABLE EXPENSES, if any (with “not to exceed” amount)
8. ATTACHMENTS:  A: Task Order Scope of Services  B (if any): __________________________

I hereby authorize the performance of the work described in this Task Order.

APPROVED:
CITY OF PALO ALTO

BY: ____________________________
Name ____________________________
Title ____________________________
Date ____________________________

I hereby acknowledge receipt and acceptance of this Task Order and warrant that I have authority to sign on behalf of Consultant.

APPROVED:
COMPANY NAME: ____________________________

BY: ____________________________
Name ____________________________
Title ____________________________
Date ____________________________
EXHIBIT B
SCHEDULE OF PERFORMANCE

☒ Optional Schedule of Performance Provision for On-Call or Additional Services Agreements.
(This provision only applies if checked and only applies to on-call agreements per Section 1 or agreements with Additional Services per Section 4.)

The schedule of performance shall be as provided in the approved Task Order, as detailed in Section 1 (Scope of Services) in the case of on-call Services, or as detailed in Section 4 in the case of Additional Services, provided in all cases that the schedule of performance shall fall within the term as provided in Section 2 (Term) of this Agreement.
EXHIBIT C
COMPENSATION

CITY agrees to compensate CONSULTANT for Services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the rate schedule attached as Exhibit C-1 up to the not to exceed budget amount for each task set forth below.

CITY’s Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below, provided that the total compensation for the Services, including any specified reimbursable expenses, and the total compensation for Additional Services (if any, per Section 4 of the Agreement) do not exceed the amounts set forth in Section 4 of this Agreement.

CONSULTANT agrees to complete all Services, any specified reimbursable expenses, and Additional Services (if any, per Section 4), within this/these amount(s). Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth in this Agreement shall be at no cost to the CITY.

REIMBURSABLE EXPENSES

CONSULTANT’S ordinary business expenses, such as administrative, overhead, administrative support time/overtime, information systems, software and hardware, photocopying, telecommunications (telephone, internet), in-house printing, insurance and other ordinary business expenses, are included within the scope of payment for Services and are not reimbursable expenses hereunder.

Reimbursable expenses, if any are specified as reimbursable under this section, will be reimbursed at actual cost. The expenses (by type, e.g. travel) for which CONSULTANT will be reimbursed shall be included in the task order price.
EXHIBIT C-1
SCHEDULE OF RATES

CONSULTANT’s schedule of rates is as follows:

<table>
<thead>
<tr>
<th>CLASSIFICATION</th>
<th>HOURLY RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROJECT MANAGEMENT</td>
<td></td>
</tr>
<tr>
<td>Principal/Vice President</td>
<td>$272.00</td>
</tr>
<tr>
<td>Senior Associate/Vice President</td>
<td>$244.00</td>
</tr>
<tr>
<td>Associate</td>
<td>$237.00</td>
</tr>
<tr>
<td>Senior Project Manager</td>
<td>Senior Technical Manager</td>
</tr>
<tr>
<td>Project Manager</td>
<td>$231.00</td>
</tr>
<tr>
<td>Engineering Manager</td>
<td>Surveying Manager</td>
</tr>
<tr>
<td>TECHNICAL STAFF</td>
<td></td>
</tr>
<tr>
<td>Senior Project Engineer</td>
<td>Senior Project Surveyor</td>
</tr>
<tr>
<td>Project Engineer</td>
<td>$174.00</td>
</tr>
<tr>
<td>Design Engineer</td>
<td>$151.00</td>
</tr>
<tr>
<td>BIM Specialist I, II, III</td>
<td>$151.00 - $174.00 - $198.00</td>
</tr>
<tr>
<td>Technician I, II, III, IV</td>
<td>$144.00 - $153.00 - $168.00 - $181.00</td>
</tr>
<tr>
<td>Drafter I, II, III, IV</td>
<td>$113.00 - $124.00 - $134.00 - $148.00</td>
</tr>
<tr>
<td>Engineering Assistant</td>
<td>Surveying Assistant</td>
</tr>
<tr>
<td>FIELD SURVEYING</td>
<td></td>
</tr>
<tr>
<td>Survey Party Chief</td>
<td>$198.00</td>
</tr>
<tr>
<td>Instrument Person</td>
<td>$170.00</td>
</tr>
<tr>
<td>Survey Chainperson</td>
<td>$127.00</td>
</tr>
<tr>
<td>Utility Locator I, II, III, IV</td>
<td>$103.00 - $146.00 - $175.00 - $199.00</td>
</tr>
<tr>
<td>Apprentice I, II, III, IV</td>
<td>$78.00 - $105.00 - $116.00 - $123.00</td>
</tr>
<tr>
<td>CONSTRUCTION ADMINISTRATION</td>
<td></td>
</tr>
<tr>
<td>Senior Consultant</td>
<td>$259.00</td>
</tr>
<tr>
<td>Senior Construction Administrator</td>
<td>$225.00</td>
</tr>
<tr>
<td>Resident Engineer</td>
<td>$167.00</td>
</tr>
<tr>
<td>Field Engineer I, II, III</td>
<td>$151.00 - $174.00 - $198.00</td>
</tr>
<tr>
<td>PROJECT ADMINISTRATION</td>
<td></td>
</tr>
<tr>
<td>Project Coordinator</td>
<td>$126.00</td>
</tr>
<tr>
<td>Senior Project Assistant</td>
<td>$109.00</td>
</tr>
<tr>
<td>Project Assistant</td>
<td>$96.00</td>
</tr>
<tr>
<td>Clerical</td>
<td>Administrative Assistant</td>
</tr>
</tbody>
</table>

Please note: CONSULTANT shall include any reimbursable expenses in the task order price.
EXHIBIT D
INSURANCE REQUIREMENTS

CONSULTANTS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, 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.

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY’S INSURANCE REQUIREMENTS AS SPECIFIED HEREIN.

<table>
<thead>
<tr>
<th>REQUIRED</th>
<th>TYPE OF COVERAGE</th>
<th>REQUIREMENT</th>
<th>MINIMUM LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>YES YES</td>
<td>WORKER’S COMPENSATION EMPLOYER’S LIABILITY</td>
<td>STATUTORY</td>
<td>STATUTORY</td>
</tr>
<tr>
<td></td>
<td>GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY</td>
<td>BODILY INJURY</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PROPERTY DAMAGE</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>BODILY INJURY &amp; PROPERTY DAMAGE COMBINED.</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>YES</td>
<td>AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED</td>
<td>BODILY INJURY</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- EACH PERSON</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- EACH OCCURRENCE</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PROPERTY DAMAGE</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>BODILY INJURY AND PROPERTY DAMAGE, COMBINED</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>YES</td>
<td>PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE</td>
<td>ALL DAMAGES</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>YES</td>
<td>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONSULTANT, 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 CONSULTANT AND ITS SUBCONSULTANTS, 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.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

I. INSURANCE COVERAGE MUST INCLUDE:

A. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONSULTANT’S AGREEMENT TO INDEMNIFY CITY.

II. THE CONSULTANT MUST SUBMIT CERTIFICATES(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 INSURED.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED 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 INSURED, 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 CONSULTANT 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 CONSULTANT 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

OR

HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET_BIDS_HOW_TO.ASP
EXHIBIT E
DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS

This Exhibit shall apply only to a contract for public works construction, alteration, demolition, repair or maintenance work, CITY will not accept a bid proposal from or enter into this Agreement with CONSULTANT without proof that CONSULTANT and its listed subcontractors are registered with the California Department of Industrial Relations (“DIR”) to perform public work, subject to limited exceptions. City requires CONSULTANT and its listed subcontractors, if any, 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. This Exhibit E applies in addition to the provisions of Section 26 (Prevailing Wages and DIR Registration for Public Works Contracts) of the Agreement.

CITY provides notice to CONSULTANT 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.”

This Project is subject to compliance monitoring and enforcement by DIR. All contractors must be registered with DIR per Labor Code Section 1725.5 in order to submit a bid. All subcontractors must also be registered with DIR. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with DIR. Additional information regarding public works and prevailing wage requirements is available on the DIR web site (see e.g. http://www.dir.ca.gov) as amended from time to time.

CITY gives notice to CONSULTANT and its listed subcontractors that CONSULTANT is required to post all job site notices prescribed by law or regulation.

CONSULTANT 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 CONSULTANT and its listed subcontractors to comply with the requirements of Labor Code Section 1776, including but not limited to:

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,
CONSULTANT and its listed subcontractors, in connection with the Project.

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 CONSULTANT and its listed subcontractors, respectively.

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

☐ CITY requests CONSULTANT and its listed subcontractors to submit the certified payroll records to CITY’s Project Manager at the end of each week during the Project.

If the certified payroll records are not provided as required within the 10-day period, then CONSULTANT and its listed 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 CONSULTANT.

Inform CITY’s Project Manager of the location of CONSULTANT’s and its listed subcontractors’ payroll records (street address, city and county) at the commencement of the Project, and also provide notice to CITY’s Project Manager within five (5) business days of any change of location of those payroll records.

Eight (8) hours labor constitutes a legal day’s work. CONSULTANT shall forfeit as a penalty to CITY, $25.00 for each worker employed in the execution of the Agreement by CONSULTANT or any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day or forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular, Sections 1810 through 1815 thereof, except that work performed by employees of CONSULTANT or any subcontractor in excess of eight (8) hours per day, or forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day, or forty (40) hours per week, at not less than one and one-half (1&1/2) times the basic rate of pay, as provided in Section 1815.

CONSULTANT shall secure the payment of workers’ compensation to its employees as provided in Labor Code Sections 1860 and 3700 (Labor Code 1861). CONSULTANT shall sign and file with the CITY a statutorily prescribed statement acknowledging its obligation to secure the payment of workers’ compensation to its employees before beginning work (Labor Code 1861). CONSULTANT shall post job site notices per regulation (Labor Code 1771.4(a)(2)).

CONSULTANT 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.
EXHIBIT F
CLAIMS FOR PUBLIC CONTRACT CODE SECTION 9204 PUBLIC WORKS PROJECTS

The provisions of this Exhibit are provided in compliance with Public Contract Code Section 9204; they provide the exclusive procedures for any claims pursuant to Public Contract Code Section 9204 related to the Services performed under this Agreement.

1. **Claim Definition.** “Claim” means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

   (A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by the City.
   (B) Payment by the City of money or damages arising from the Services performed by, or on behalf of, the Contractor pursuant to the Agreement and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled.
   (C) Payment of an amount that is disputed by the City.

2. **Claim Process.**

   (A) **Timing.** Any Claim must be submitted to City in compliance with the requirements of this Exhibit no later than fourteen (14) days following the event or occurrence giving rise to the Claim. This time requirement is mandatory; failure to submit a Claim within fourteen (14) days will result in its being deemed waived.

   (B) **Submission.** The Claim must be submitted to City in writing, clearly identified as a “Claim” submitted pursuant to this Exhibit, and must include reasonable documentation substantiating the Claim. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Agreement, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

   (C) **Review.** Upon receipt of a Claim in compliance with this Exhibit, the City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days from receipt, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the City and Contractor may, by mutual agreement, extend the time period provided in this paragraph 2.

   (D) **If City Council Approval Required.** If the City needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three days following the next duly publicly
noticed meeting of the City Council after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

(E) **Payment.** Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the City issues its written statement. If the City fails to issue a written statement, paragraph 3, below, shall apply.

3. **Disputed Claims**

   (A) **Meet and Confer.** If the Contractor disputes the City's written response, or if the City fails to respond to a Claim submitted pursuant to this Exhibit within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the City issues its written statement.

   (B) **Mediation.** Any remaining disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing by the Contractor. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to any other remedies authorized by the Agreement and laws.

   (i) For purposes of this paragraph 3.B, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

   (ii) Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation, if any, under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

4. **City’s Failure to Respond.** Failure by the City to respond to a Claim from the Contractor within the time periods described in this Exhibit or to otherwise meet the time requirements of this Exhibit shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the City's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this Exhibit, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Contractor.
5. **Interest.** Amounts not paid in a timely manner as required by this section shall bear interest at seven (7) percent per annum.

6. **Approved Subcontractor Claims.** If an approved subcontractor or a lower tier subcontractor lacks legal standing to assert a Claim against the City because privity of contract does not exist, the Contractor may present to the City a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to the City shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the Contractor presented the claim to the City and, if the Contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

7. **Waiver of Provisions.** A waiver of the rights granted by Public Contract Code Section 9204 is void and contrary to public policy, provided, however, that (1) upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) the City may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of Public Contract Code Section 9204, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.
Supplemental Report – Item 8

MEETING DATE: OCTOBER 24, 2022

TO: HONORABLE CITY COUNCIL

FROM: ED SHIKADA, CITY MANAGER

SUBJECT: AGENDA ITEM NUMBER 8 - TITLE: APPROVE THE PARKS AND RECREATION COMMISSION RECOMMENDATION FOR A NEW SKATE PARK; AUTHORIZE THE FRIENDS OF PALO ALTO PARKS TO BEGIN FUNDRAISING; AND DIRECT STAFF TO SUPPORT OUTREACH

Attachment A (the proposed location for a new skate park at Greer Park) was inadvertently missing from the original published packet. Attachment A is attached below to this supplemental report and can be found online here.
Attachment A: Proposed Skate Park Area

- Existing bowl and surrounding paving is 6,032 sq.ft.
- New skate park area 22,430 sq.ft. (minus the existing bowl)
- Proposed new skate park area 28,462 sq.ft. (including the existing bowl)