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](https://www.youtube.com/c/cityofpaloalto), and streamed to Midpen Media Center at [https://midpenmedia.org](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 ORDER OF THE DAY

AA1. SOBRATO PHILANTHROPIES (5:00 – 5:10 PM)

CLOSED SESSION (5:10 – 6:30 PM)

1. CONFERENCE WITH LABOR NEGOTIATORS City Designated Representatives: City Manager and his Designees Pursuant to Merit System Rules and Regulations (Ed Shikada, Kiely Nose, Sandra Blanch, Nicholas Raisch, Molly Stump, and Terence Howzell) Employee Organization: Service Employees International Union, (SEIU) Local 521, Utilities Management and Professional Association of Palo Alto (UMPAPA) Palo Alto Peace Officer’s Association (PAPOA), Palo Alto Police Management Association (PMA), International Association of Fire Fighters (IAFF) local 1319, Palo Alto Fire Chiefs Association (FCA), Authority: Government Code Section 54957.6 (a)

AGENDA CHANGES, ADDITIONS AND DELETIONS

PUBLIC COMMENT (6:30 – 6:50 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 (6:50 – 6:55 PM)

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

2. SECOND READING: Adoption of an Ordinance extending the Term of Ordinance No. 5517 by an Additional 18 Months to Expire on June 16, 2024. Ordinance 5517 Amends Title 18 (Zoning) of the Palo Alto Municipal Code to Update Definitions, Broaden Permitted Uses and Provide Limits on Certain Uses through Updates to the Conditional Use Permit Thresholds. Environmental Review: CEQA Exemption 15061(b)(3) (FIRST READING: November 28, 2022 PASSED 6-1, Cormack No)

3. Utilities Advisory Commission Recommend the City Council Affirm the Continuation of the REC Exchange Program

4. Approval of Amendment No. 1 to Contract C09124501 with GreenWaste of Palo Alto for Collection and Processing Services to Implement Domestic Recycling of Mixed Paper and Mixed Rigid Plastics with Program Annual Costs Not to Exceed $1.2M; and Approval of Budget Amendment in the Refuse Fund Supplemental Report Added

Public Letter

Materials related to an item on this agenda submitted to the Board after distribution of the agenda packet are available for public inspection at www.CityofPaloAlto.org.
5. Approval of Contract S20178749 Amendment No. 3 with LCT SOFTWARE, LLC in the Amount of $72,924 for a New Not to Exceed Amount of $247,254 for Electronic Document Review Software related to the City’s Land Use and Permitting System Through December 31, 2023

6. Approval of Lease and License of 300 Homer Ave. Roth Building between the City of Palo Alto and the Palo Alto Museum

7. Appointment of Kiely Nose as Assistant City Manager

8. Approval of a Contract with Nomad Transit, LLC (Via) for City of Palo Alto On-Demand Transit Service in a total contract amount not to exceed $2,500,000 for up to two years and Approval of a Budget Amendment in the General Fund (Late Packet Report Added)

CITY MANAGER COMMENTS (6:55 – 7:15 PM)

ACTION ITEMS


10. PUBLIC HEARING/LEGISLATIVE: Adoption of Amendments to Palo Alto Municipal Code Chapter 18.09, Accessory and Junior Accessory Dwelling Units due to State Law Changes and Direction from the California Department of Housing and Community Development. Environmental Assessment: Exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines sections 15061(b)(3), 15301, 15302 and 15305. Planning and Transportation Commission Recommended Approval of the Ordinance. (7:45 – 8:45 PM) (Supplemental Report Added)

11. Approval of Response to the Grand Jury Report "If You Only Read the Ballot, You're Being Duped" (8:45 – 9:15 PM)

12. Colleagues Memo From Council Members Dubois, Kou, And Stone Regarding: Whole Home Short Term Rentals (9:15 – 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

Policy & Services Committee Meeting December 13, 2022

Public Comment Letters

Schedule of Meetings

AMENDED AGENDA ITEMS
Items that have been added/modified from the original publication of the agenda are listed below. Any corresponding materials are appended to the end of the initial packet. If full items have been added to the Agenda, they will be denoted with a number staring with AA, meaning Amended Agenda item.

AA1. SOBRATO PHILANTHROPIES (5:00 – 5:10 PM)

4. Approval of Amendment No. 1 to Contract C09124501 with GreenWaste of Palo Alto for Collection and Processing Services to Implement Domestic Recycling of Mixed Paper and Mixed Rigid Plastics with Program Annual Costs Not to Exceed $1.2M; and Approval of Budget Amendment in the Refuse Fund Supplemental Report Added

10. PUBLIC HEARING/LEGISLATIVE: Adoption of Amendments to Palo Alto Municipal Code Chapter 18.09, Accessory and Junior Accessory Dwelling Units due to State Law Changes and Direction from the California Department of Housing and Community Development. Environmental Assessment: Exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines sections 15061(b)(3), 15301, 15302 and 15305. Planning and Transportation Commission Recommended Approval of the Ordinance. (7:45 – 8:45 PM) Supplemental Report Added

8. Approval of a Contract with Nomad Transit, LLC (Via) for City of Palo Alto On-Demand Transit Service in a total contract amount not to exceed $2,500,000 for up to two years and Approval of a Budget Amendment in the General Fund Late Packet Report Added
PUBLIC COMMENT INSTRUCTIONS

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

1. **Written public comments** may be submitted by email to city.council@cityofpaloalto.org.

2. **Spoken public comments using a computer** will be accepted through the teleconference meeting. To address the Council, click on the link below to access a Zoom-based meeting. Please read the following instructions carefully.
   A. You may download the Zoom client or connect to the meeting in-browser. If using your browser, make sure you are using a current, up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers including Internet Explorer.
   B. You may be asked to enter an email address and name. We request that you identify yourself by name as this will be visible online and will be used to notify you that it is your turn to speak.
   C. When you wish to speak on an Agenda Item, click on “raise hand.” The Clerk will activate and unmute speakers in turn. Speakers will be notified shortly before they are called to speak.
   D. When called, please limit your remarks to the time limit allotted.
   E. A timer will be shown on the computer to help keep track of your comments.

3. **Spoken public comments using a smart phone** will be accepted through the teleconference meeting. To address the Council, download the Zoom application onto your phone from the Apple App Store or Google Play Store and enter the Meeting ID below. Please follow the instructions B-E above.

4. **Spoken public comments using a phone** use the telephone number listed below. When you wish to speak on an agenda item hit *9 on your phone so we know that you wish to speak. You will be asked to provide your first and last name before addressing the Council. You will be advised how long you have to speak. When called please limit your remarks to the agenda item and time limit allotted.

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

Materials related to an item on this agenda submitted to the Board after distribution of the agenda packet are available for public inspection at www.CityofPaloAlto.org.
Title: SECOND READING: Adoption of an Ordinance extending the Term of Ordinance No. 5517 by an Additional 18 Months to Expire on June 16, 2024. Ordinance 5517 Amends Title 18 (Zoning) of the Palo Alto Municipal Code to Update Definitions, Broaden Permitted Uses and Provide Limits on Certain Uses through Updates to the Conditional Use Permit Thresholds. Environmental Review: CEQA Exemption 15061(b)(3) (FIRST READING: November 28, 2022 PASSED 6-1, Cormack No)

From: Lesley Milton, City Clerk

This was heard by the City Council on November 28, 2022 for a first reading and was approved 6-1, Cormack No. No changes were made to the Ordinance; it is now before you for a second reading.

ATTACHMENTS:

- Attachment2.a: Attachment A: Ordinance Temporarily Extending Ord 5517 Amending PAMC Ch 18.04 18.16 18.18 18.30 (PDF)
Ordinance No. ____

Ordinance of the Council of the City of Palo Alto Temporarily Extending Ordinance 5517, Amending Palo Alto Municipal Code (PAMC) Title 18 (Zoning), Chapters 18.04 (Definitions), 18.16 (Neighborhood, Community, and Service Commercial (CN, CC and CS) Districts), 18.18 (Downtown Commercial (CD) Districts) and 18.30 (A) and (C) – the Retail and Ground Floor combining districts

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

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

A. On April 5, 2021 the City Council adopted Ordinance 5517 to temporarily relax certain zoning regulations in the City’s commercial zoning districts to address some of the economic challenges created by the COVID-19 pandemic and to spur economic activity.

B. The City Council directed the Planning and Transportation Commission (PTC) to review certain elements of the temporary ordinance and provide a recommendation to the City Council.

C. On March 30, 2022 the PTC recommended that the term of Ordinance 5517 be extended to allow additional time for consideration of whether the temporary relaxation of zoning regulations should remain indefinitely, and whether such regulations should be otherwise amended.

D. On May 16, 2022, the City Council adopted Ordinance 5549, extending the term of Ordinance 5517 to expire on December 16, 2022.

E. On August 31, 2022, the PTC recommended that the term of Ordinance 5517 be further extended for a temporary period of time.

SECTION 2. The effective date of Ordinance 5517 of the Palo Alto City Council, attached hereto as Exhibit A and incorporated herein, is hereby extended so that the Ordinance shall expire upon the earlier of June 16, 2024 or adoption of replacement legislation by the City Council. Upon expiration of Ordinance 5517, the City Clerk shall direct the City’s codifier to update the Palo Alto Municipal Code as appropriate.

SECTION 3. Any provision of the Palo Alto Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.
SECTION 4. 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 5. The Council finds that the adoption of this ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to CEQA Guideline sections 15061(b)(3) because it can be seen with certainty that temporary relaxation of minor land use regulations will not have a significant, adverse impact on the environment.

SECTION 6. This ordinance shall be effective on the thirty-first date after the date of its adoption.
Ordinance No. 5517

Ordinance of the Council of the City of Palo Alto Amending Palo Alto Municipal Code (PAMC) Title 18 (Zoning), Chapters 18.04 (Definitions), 18.16 (Neighborhood, Community, and Service Commercial (CN, CC and CS) Districts), 18.18 (Downtown Commercial (CD) Districts) and 18.30 (A) and (C) – the Retail and Ground Floor Combining Districts

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

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:


B. As a result of the COVID-19 pandemic and the public health response, restaurant, retail, tourism, and hospitality business has significantly declined and the nation is experiencing a recession.

C. The City Council desires to relax certain zoning regulations in the City’s commercial zoning districts to address some of the economic challenges created by the COVID-19 pandemic and to spur economic activity.

D. The public health, safety, or welfare require that such changes to the City’s zoning regulations be enacted for a temporary period and as expediently as possible, without review by the Planning and Transportation Commission pursuant to Palo Alto Municipal Code section 18.80.090.

SECTION 2. Section 18.04.030 (Definitions) of Chapter 18.04 (Definitions) of Title 18 (Zoning) of the Palo Alto Municipal Code is amended to read as follows:

18.04.030 Definitions

(a) Throughout this title the following words and phrases shall have the meanings ascribed in this section.

[. . .]

(45) “Drive-in/drive-through service” means a feature or characteristic of a use involving sales of products or provision of services to occupants in vehicles, including drive-in or drive-up windows and drive-through services such as mechanical automobile washing, pharmacy windows, coffee stands, automatic teller machines, etc.

[. . .]
(47) “Eating and drinking service” means a use providing preparation and retail sale of food and beverages with a full menu and providing indoor seating area. Eating and drinking service include presence of a full commercial kitchen and commercial dishwasher, including restaurants, fountains, cafes, coffee shops, sandwich shops, ice cream parlors, taverns, cocktail lounges and similar uses. For establishments with incidental sale alcoholic beverages, a minimum of 50% of revenues from an ‘eating and drinking service’ must be derived from the sale of food. Related definitions are provided in subsections (45) (Drive-in/drive-through service), (125)(B) (Intensive retail service) and (136) (Take-out service).

(95) “Medical office” means a use providing consultation, diagnosis, therapeutic, preventive, or corrective personal treatment services by doctors, dentists, medical and dental laboratories, and similar practitioners of medical and healing arts for humans, licensed for such practice by the state of California. Incidental medical and/or dental research within the office is considered part of the office use, where it supports the on-site patient services. Medical office use does not include the storage or use of hazardous materials in excess of the permit quantities as defined in Title 15 of the Municipal Code. Medical gas storage or use shall be allowed up to 1,008 cubic feet per gas type and flammable liquids storage and use shall be allowed up to 20 gallons total (including waste).

(95.1) (A)—“Medical research” means a use related to medical and/or dental research, testing and analysis, including but not limited to trial and clinical research. Biomedical and pharmaceutical research and development facilities are not included in this definition. Medical Research does not include the storage or use of quantities of hazardous materials above the exempt quantities listed in Title 15 of the Municipal Code nor any toxic gas regulated by Title 15. Additionally, Medical Research may include storage and use of etiological (biological) agents up to and including Risk Group 2 or Bio Safety Level 2 (Center for Disease Control).

(95.2) (B)—“Medical support retail” means a retail use providing sales, rental, service, or repair of medical products and services to consumers or businesses, and whose location near hospitals or medical offices facilitates the provision of medical care or medical research. Examples of medical retail uses typically include, but are not limited to, pharmacies, sale of prosthetics, and sale of eyeglasses or other eye care products.

(95.3) (C) “Medical support service” means a use providing administrative support functions for healthcare providers or facilities, intended to support the operations of hospitals or of medical and dental office uses, and whose location near those medical facilities enhances the interaction between medical providers and/or facilitates the provision of medical care or medical research. Examples of medical support service uses typically include, but are not limited to, administration and billing services, public relations, training, and fundraising. Hospitals and ambulance services are not included in this definition.
(114) “Personal service” means a use providing services of a personal convenience nature, and cleaning, repair or sales incidental thereto, including:

(A) Beauty shops, nail salons, day spas, and barbershops;

(B) Self-service laundry and cleaning services; laundry and cleaning pick-up stations where all cleaning or servicing for the particular station is done elsewhere; and laundry and cleaning stations where the cleaning or servicing for the particular station is done on site, utilizing equipment meeting any applicable Bay Area Air Quality Management District requirements, so long as no cleaning for any other station is done on the same site, provided that the amount of hazardous materials stored does not at any time exceed the threshold which would require a permit under Title 17 (Hazardous Materials Storage) of this code;

(C) Repair and fitting of clothes, shoes, and personal accessories;

(D) Quick printing and copying services where printing or copying for the particular service is done on site, so long as no quick printing or copying for any off-site printing or copying service is done on the same site;

(E) Internet and other consumer electronics services;

(F) Film, data and video processing shops, including shops where processing for the particular shop is done on site, so long as no processing for any other shop is done on the same site;

(G) Art, dance or music studios intended for an individual or small group of persons in a class (see “commercial recreation” for other activities); and

(H) Fitness and exercise studios, or similar uses, in a space having of 1,800 5,000 square feet or fewer of gross floor area (see “commercial recreation” for uses exceeding 5,000 square feet) other activities.

(I) Learning centers intended for individual or small group settings, including tutoring, standardized test preparation, language classes, after-school programs, cooking classes, and similar uses.

(125) “Retail service” means a use open to the public during typical business hours and predominantly engaged in providing retail sale, rental, service, processing, or repair of items primarily intended for consumer or household use.

(A) “Extensive retail service,” as used with respect to parking requirements, means a retail sales use having more than seventy-five percent of the gross floor area used for display, sales, and related storage of bulky commodities, including household furniture and appliances, lumber and building materials, carpeting and floor covering, air conditioning and heating equipment, and similar goods, which uses have demonstrably low parking demand generation per square foot of gross floor area.
(B) “Intensive retail service” as used with respect to parking requirements, means any retail service use not defined as extensive retail service and including limited food service (i.e., ‘ready-to-eat’ food and/or beverage shops without a full commercial kitchen, where food and/or beverages are ready to consume at the time of sale and any seating area is limited; examples include sandwiches, frozen desserts, non-alcoholic beverages, and baked items).

[...]

(136) “Take-out service” means a characteristic of an eating or drinking service which encourages, on a regular basis, consumption of food or beverages, such as prepared or prepackaged items, outside of a building, in outdoor seating areas where regular table service is not provided, in vehicles parked on the premises, or off-site. Take-out service does not include intensive retail service uses, as defined in subsection (125)(B).

[...]

SECTION 3. Section 18.16.040 (Land Uses) of Chapter 18.16 (Neighborhood, Community, and Service Commercial (CN, CC, CS) Districts) of Title 18 (Zoning) of the Palo Alto Municipal Code is amended to read as follows:

The uses of land allowed by this chapter in each commercial zoning district are identified in the following tables. Land uses that are not listed on the tables are not allowed, except where otherwise noted. Where the last column on the following tables ("Subject to Regulations in") includes a section number, specific regulations in the referenced section also apply to the use; however, provisions in other sections may apply as well.

(a) Commercial Zones and Land Uses

Permitted and conditionally permitted land uses for each commercial zone are shown in Table 1:

**TABLE 1**

<table>
<thead>
<tr>
<th>PERMITTED AND CONDITIONALLY PERMITTED USES</th>
</tr>
</thead>
<tbody>
<tr>
<td>P = Permitted Use</td>
</tr>
<tr>
<td>CUP = Conditional Use Permit Required</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LAND USE</th>
<th>CN(4)</th>
<th>CC, CC(2)</th>
<th>CS (4)</th>
<th>Subject to Regulations In:</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCESSORY AND SUPPORT USES</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accessory facilities and activities customarily associated with or essential to permitted uses, and operated incidental to the principal use.</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>18.42</td>
</tr>
<tr>
<td>Drive-in services or take-out services associated with permitted uses(3)</td>
<td>CUP</td>
<td>CUP</td>
<td>CUP</td>
<td>18.42</td>
</tr>
<tr>
<td>Service Type</td>
<td>Zone</td>
<td>Code</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------</td>
<td>------</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Tire, battery, and automotive service facilities, when operated incidental to</td>
<td></td>
<td>18.42, 18.40.160</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a permitted retail service or shopping center having a gross floor area of</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>more than 30,000 square feet.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Safe Parking</td>
<td></td>
<td>18.42.160</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**EDUCATIONAL, RELIGIOUS, AND ASSEMBLY USES**

<table>
<thead>
<tr>
<th>Use Type</th>
<th>Zone</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business and Trade Schools</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Churches and Religious Institutions</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Private Educational Facilities</td>
<td>CUP</td>
<td>P</td>
</tr>
<tr>
<td>Private Clubs, Lodges, or Fraternal Organizations</td>
<td>CUP</td>
<td>P</td>
</tr>
</tbody>
</table>

**MANUFACTURING AND PROCESSING USES**

<table>
<thead>
<tr>
<th>Use Type</th>
<th>Zone</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recycling Centers</td>
<td>CUP</td>
<td>CUP</td>
</tr>
<tr>
<td>Warehousing and Distribution</td>
<td>CUP</td>
<td></td>
</tr>
</tbody>
</table>

**OFFICE USES**

<table>
<thead>
<tr>
<th>Use Type</th>
<th>Zone</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Office Services</td>
<td>P</td>
<td>18.16.050</td>
</tr>
<tr>
<td>Medical Offices</td>
<td>CUP</td>
<td>CUP (5)</td>
</tr>
<tr>
<td>Professional and General Business Offices</td>
<td>P</td>
<td>P</td>
</tr>
</tbody>
</table>

**PUBLIC/QUASI-PUBLIC USES**

<table>
<thead>
<tr>
<th>Use Type</th>
<th>Zone</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utility Facilities essential to provision of utility services but excluding construction or storage yards, maintenance facilities, or corporation yards.</td>
<td>CUP</td>
<td>CUP</td>
</tr>
</tbody>
</table>

**RECREATION USES**

<table>
<thead>
<tr>
<th>Use Type</th>
<th>Zone</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Recreation</td>
<td>CUP</td>
<td>CUP (5)</td>
</tr>
<tr>
<td>Outdoor Recreation Services</td>
<td>CUP</td>
<td>CUP</td>
</tr>
<tr>
<td>RESIDENTIAL USES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------------------------------</td>
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</tr>
<tr>
<td>Multiple-Family</td>
<td>P(1)</td>
<td>P(1)</td>
</tr>
<tr>
<td>Home Occupations</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Residential Care Homes</td>
<td>P</td>
<td>P</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>RETAIL USES</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Eating and Drinking Services, excluding drive-in and take-out services</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>18.40.160</td>
</tr>
<tr>
<td>Retail Services, excluding liquor stores</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>18.40.160</td>
</tr>
<tr>
<td>Liquor stores</td>
<td>CUP</td>
<td>P</td>
<td>P</td>
<td>18.40.160</td>
</tr>
<tr>
<td>Shopping Centers</td>
<td>P</td>
<td></td>
<td></td>
<td>18.16.060(e), 18.40.160</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SERVICE USES</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Ambulance Services</td>
<td>CUP</td>
<td>CUP</td>
<td>CUP</td>
<td></td>
</tr>
<tr>
<td>Animal Care, excluding boarding and kennels</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Boarding and Kennels</td>
<td></td>
<td></td>
<td></td>
<td>CUP</td>
</tr>
<tr>
<td>Automobile Service Stations</td>
<td>CUP</td>
<td>CUP</td>
<td>CUP</td>
<td>18.30(G)</td>
</tr>
<tr>
<td>Automotive Services</td>
<td></td>
<td></td>
<td></td>
<td>CUP</td>
</tr>
<tr>
<td>Convalescent Facilities</td>
<td>CUP</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Day Care Centers</td>
<td>P</td>
<td>P</td>
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<td>Banks and Financial Services V</td>
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<tr>
<td>Personal Services</td>
<td>P</td>
<td>P (6)</td>
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<td>18.16.060(f), 18.40.160</td>
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<td>Reverse Vending Machines</td>
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</table>

**TEMPORARY USES**

- Farmer’s Markets: CUP
- Temporary Parking Facilities, provided that such facilities shall remain no more than five years. CUP

**TRANSPORTATION USES**

- Parking as a principal use: CUP
- Transportation Terminals: CUP

P = Permitted Use
CUP = Conditional Use Permit Required

1. Residential is only permitted: (i) as part of a mixed use development, pursuant to the provisions of Section 18.16.060(b), or (iii) on sites designated as housing inventory sites in the Housing Element of the Comprehensive Plan, (iii) on CN or CS sites on El Camino Real, or (iv) on CC(2) sites, all pursuant to the provisions of Section 18.16.060(b) and (c).

2. Except drive-in services.

3. So long as drive up facilities, excluding car washes, provide full access to pedestrians and bicyclists. A maximum of two such services shall be permitted within 1,000 feet, and each use shall not be less than 150 feet from one another.

4. For properties in the CN and CS zone districts, businesses that operate or have associated activities at any time between the hours of 10:00 p.m. and 6:00 a.m. require a conditional use permit.

5. A conditional use permit is not required for medical office or commercial recreation uses up to 5,000 square feet of gross floor area, with the following exceptions, for which a conditional use permit is always required: (A) medical office fronting on California Avenue and in the Midtown Shopping District; (B) commercial recreation uses fronting on California Avenue and in the Town and Country Village Shopping Center.

6. A conditional use permit is required for the following uses when fronting on California Avenue: (A) Fitness or exercise studios, and similar uses exceeding 1,800 square feet in gross floor area; and (B) Learning centers intended for individual or small group settings. A conditional use permit is required for
fitness or exercise studios, and similar uses exceeding 1,800 square feet in gross floor area in Town and Country Village Shopping Center.

[. . .]

**SECTION 4.** Section 18.16.060 (Development Standards) of Chapter 18.16 (Neighborhood, Community, and Service Commercial (CN, CC, CS) Districts) of Title 18 (Zoning) of the Palo Alto Municipal Code is amended to read as follows:

18.16.060 Development Standards

[. . .]

(f) Size of Establishments in the CN District

In the CN district, permitted commercial uses shall not exceed the floor area per individual use or business establishment shown in Table 5. Such uses may be allowed to exceed the maximum establishment size, subject to issuance of a conditional use permit in accord with Section 18.76.010. The maximum establishment size for any conditional use shall be established by the director and specified in the conditional use permit for such use.

**TABLE 5**

MAXIMUM SIZE OF ESTABLISHMENT

<table>
<thead>
<tr>
<th>Type of Establishment</th>
<th>Maximum Size (sq ft)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>2,500 - 3,000</td>
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<tr>
<td>Retail services, except grocery stores</td>
<td>15,000</td>
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<tr>
<td>Grocery stores</td>
<td>20,000</td>
</tr>
<tr>
<td>Eating and drinking services</td>
<td>5,000</td>
</tr>
<tr>
<td>Neighborhood business services</td>
<td>2,500 - 3,000</td>
</tr>
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</table>

[. . .]

(h) Outdoor Sales and Storage

(2) In the CC district and in the CC (2) district, the following regulations shall apply to outdoor sales and storage:

(A) Except in shopping centers, all permitted office and commercial activities shall be conducted within a building, except for:

(i) Incidental sales and display of plant materials and garden supplies occupying no more than 2,000 square feet of exterior sales and display area,

(ii) Outdoor eating areas operated incidental to permitted eating and drinking services or intensive retail uses,

(iii) Farmers’ markets that have obtained a conditional use permit, and
(iv) Recycling centers that have obtained a conditional use permit.

(B) Any permitted outdoor activity in excess of 2,000 square feet shall be subject to a conditional use permit.

**SECTION 5.** Sections 18.18.050 (Land Uses) of Chapter 18.18 (Commercial Downtown (CD) District) of Title 18 (Zoning) of the Palo Alto Municipal Code is amended to read as follows:

**18.18.050 Land Uses**

The uses of land allowed by this chapter in each commercial zoning district are identified in the following table. Land uses that are not listed on the tables are not allowed, except where otherwise noted. Where the last column on the following tables ("Subject to Regulations in") includes a section number, specific regulations in the referenced section also apply to the use; however, provisions in other sections may apply as well.

Permited and conditionally permitted land uses for the CD district are shown in Table 1:

<table>
<thead>
<tr>
<th>P Permitted Use • CUP Conditional Use Permit Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>CD-C</td>
</tr>
<tr>
<td>-------</td>
</tr>
<tr>
<td><strong>ACCESSORY USES</strong></td>
</tr>
<tr>
<td>Accessory facilities and activities associated with or essential to permitted uses, and operated incidental to the principal use</td>
</tr>
<tr>
<td>Drive-in or Take-out Services associated with permitted uses (2)</td>
</tr>
<tr>
<td>Tire, battery, and automotive service facilities, when operated incidental to a permitted retail service or shopping center having a gross floor area of more than 30,000 square feet</td>
</tr>
<tr>
<td>Safe Parking</td>
</tr>
<tr>
<td><strong>EDUCATIONAL, RELIGIOUS, AND ASSEMBLY USES</strong></td>
</tr>
<tr>
<td>Business and Trade Schools</td>
</tr>
<tr>
<td>Churches and Religious Institutions</td>
</tr>
<tr>
<td>Use</td>
</tr>
<tr>
<td>--------------------------------------------------------------------</td>
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<tr>
<td>Private Educational Facilities</td>
</tr>
<tr>
<td>Private Clubs, Lodges, or Fraternal Organizations</td>
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<tr>
<td><strong>MANUFACTURING AND PROCESSING USES</strong></td>
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<tr>
<td>Recycling Centers</td>
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<tr>
<td>Warehousing and Distribution</td>
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<tr>
<td><strong>OFFICE USES</strong></td>
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<tr>
<td>Administrative Office Services</td>
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<td>Medical, Professional, and General Business Offices</td>
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<td><strong>PUBLIC/QUASI-PUBLIC FACILITY USES</strong></td>
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<tr>
<td>Utility Facilities essential to provision of utility services but excluding construction or storage yards, maintenance facilities, or corporation yards</td>
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<tr>
<td><strong>RECREATION USES</strong></td>
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<tr>
<td>Commercial Recreation</td>
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<td>Outdoor Recreation Services</td>
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<td><strong>RESIDENTIAL USES</strong></td>
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<td>Multiple-Family</td>
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<td>Home Occupations</td>
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<td>Residential Care Homes</td>
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<td><strong>RETAIL USES</strong></td>
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<tr>
<td>Eating and Drinking Services, except drive-in or take-out services</td>
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<tr>
<td>Retail Services, excluding liquor stores</td>
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<tr>
<td>Shopping Centers</td>
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<tr>
<td>Use</td>
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<tr>
<td>------------------------------------------</td>
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<tr>
<td>Liquor Stores</td>
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<tr>
<td><strong>SERVICE USES</strong></td>
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<tr>
<td>Animal Care, excluding boarding and kennels</td>
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<td>Ambulance Services</td>
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<td>Automobile Service Stations</td>
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<tr>
<td>Small Adult Day Care Homes</td>
</tr>
<tr>
<td>Large Adult Day Care Homes</td>
</tr>
<tr>
<td>Financial Services, except drive-up services</td>
</tr>
<tr>
<td>General Business Services</td>
</tr>
<tr>
<td>Hotels</td>
</tr>
<tr>
<td>Mortuaries</td>
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<tr>
<td>Personal Services</td>
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<tr>
<td>Reverse Vending Machines</td>
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<tr>
<td><strong>TRANSPORTATION USES</strong></td>
</tr>
<tr>
<td>Parking as a principal use</td>
</tr>
<tr>
<td>Passenger Transportation Terminals</td>
</tr>
</tbody>
</table>
### TEMPORARY USES

<table>
<thead>
<tr>
<th>P  Permitted Use</th>
<th>CUP  Conditional Use Permit Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indoor Farmers’ Markets</td>
<td>CUP</td>
</tr>
<tr>
<td>Temporary Parking Facilities, provided that such facilities shall remain no more than five years</td>
<td>CUP</td>
</tr>
</tbody>
</table>

1. Residential is only permitted as part of a mixed use development, pursuant to the provisions of Section 18.18.060(b), or on sites designated as Housing Opportunity Sites in the Housing Element of the Comprehensive Plan, pursuant to the provisions of Section 18.18.060(c).

2. Drive-up facilities, excluding car washes, provide full access to pedestrians and bicyclists. A maximum of two such services shall be permitted within 1,000 feet and each use shall not be less than 150 ft from one another.

3. A conditional use permit is not required for commercial recreation uses up to 5,000 square feet of gross floor area, with the following exceptions, for which a conditional use permit is always required: (A) medical office fronting on University Avenue; (B) commercial recreation uses fronting on University Avenue.

4. A conditional use permit is required for the following uses when fronting on University Avenue: (A) Fitness or exercise studios, and similar uses; and (B) Learning centers intended for individual or small group settings.

### SECTION 6

Section 18.18.060 (Development Standards) of Chapter 18.18 (Commercial Downtown (CD) District) of Title 18 (Zoning) of the Palo Alto Municipal Code is amended to read as follows:

[..]

(g) Restrictions on Size of Commercial Establishments in CD-N Subdistrict

In the CD-N subdistrict, permitted commercial uses shall not exceed the floor area per individual use or business establishment shown in Table 4. Such uses may be allowed to exceed the maximum establishment size, subject to the issuance of a conditional use permit in accordance with Chapter 18.76. The maximum establishment size for any conditional use shall be established by the director and specified in the conditional use permit for such use.

//

//
**TABLE 4**
**MAXIMUM SIZE OF ESTABLISHMENT**

<table>
<thead>
<tr>
<th>Type of Establishment</th>
<th>Maximum Size (ft²)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>2,500 3,000</td>
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<tr>
<td>Retail services, except grocery stores</td>
<td>15,000</td>
</tr>
<tr>
<td>Grocery stores</td>
<td>20,000</td>
</tr>
<tr>
<td>Eating and drinking services</td>
<td>5,000</td>
</tr>
</tbody>
</table>

(h) Outdoor Sales and Storage.

The following regulations shall apply to outdoor sales and storage in the CD district:

(1) CD-C Subdistrict

In the CD-C subdistrict, the following regulations apply:

(A) Except in shopping centers, all permitted office and commercial activities shall be conducted within a building, except for:

(i) Incidental sales and display of plant materials and garden supplies occupying no more than 2,000 square feet of exterior sales and display area,

(ii) Outdoor eating areas operated incidental to permitted eating and drinking services or intensive retail uses,

(iii) Farmers’ markets which have obtained a conditional use permit, and

(iv) Recycling centers that have obtained a conditional use permit.

(B) Any permitted outdoor activity in excess of 2,000 square feet shall be subject to a conditional use permit.

(C) Exterior storage shall be prohibited, except recycling centers which have obtained a conditional use permit.

(2) CD-S Subdistrict

In the CD-S subdistrict, outdoor sales and display of merchandise, and outdoor eating areas operated incidental to permitted eating and drinking services and intensive retail uses shall be permitted subject to the following regulations:

(A) Outdoor sales and display shall not occupy a total site area exceeding the gross building floor area on the site, except as authorized by a conditional use permit.
(B) Areas used for outdoor sales and display of motor vehicles, boats, campers, camp trailers, trailers, trailer coaches, house cars, or similar conveyances shall meet the minimum design standards applicable to off-street parking facilities with respect to paving, grading, drainage, access to public streets and alleys, safety and protective features, lighting, landscaping, and screening.

(C) Exterior storage shall be prohibited, unless screened by a solid wall or fence of between 5 and 8 feet in height.

(3) CD-N Subdistrict

In the CD-N subdistrict, all permitted office and commercial activities shall be conducted within a building, except for:

(A) Incidental sales and display of plant materials and garden supplies occupying not more than 500 square feet of exterior sales and display area, and

(B) Farmers' markets that have obtained conditional use permits.

[. . .]

SECTION 7. Section 18.30(A).040 (Permitted Uses) of Chapter 18.30(A) (Retail Shopping (R) Combining District Regulations) of Title 18 (Zoning) of the Palo Alto Municipal Code are amended to read as follows:

Except to the extent a conditional use permit is required pursuant to Section 18.30(A).050, the following uses shall be permitted in an R district:

(a) Eating and drinking services, except drive-in and take-out services.
(b) Personal services, except the following on California Avenue: beauty shops; nail salons; barbershops; and laundry and cleaning services as defined in Section 18.04.030(114)(B); fitness or exercise studios exceeding 1,800 square feet in gross floor area; and learning centers intended for individual or small group settings.
(c) Retail services.
(d) All other uses permitted in the underlying commercial district, provided they are not located on a ground floor.

SECTION 8. Section 18.30(A).050 (Conditional Uses) of Chapter 18.30(A) (Retail Shopping (R) Combining District Regulations) of Title 18 (Zoning) of the Palo Alto Municipal Code are amended to read as follows:

The following uses may be conditionally permitted in an R district, subject to the issuance of a conditional use permit in accord with Chapter 18.76 (Permits and Approval):

(a) Financial services, except drive-in services, on a ground floor.
(b) All other conditional uses allowed in the underlying commercial district provided they are not located on a ground floor.
(c) Formula retail businesses on California Avenue.
(d) Beauty shops, nail salons, and barbershops, fitness or exercise studios exceeding 1,800 square feet in gross floor area; and learning centers intended for individual or small group settings.

SECTION 9. Section 18.30(C).020 (Permitted Uses) of Chapter 18.30(C) (Ground Floor (GF) Combining District Regulations) of Title 18 (Zoning) of the Palo Alto Municipal Code are amended to read as follows:

(a) The following uses shall be permitted in the GF combining district, subject to restrictions in Section 18.40.160180:

(1) Eating and drinking;
(2) Hotels;
(3) Personal services, except for parcels with frontage on University Avenue, where uses defined in Section 18.04.030(114)(B), (G), and (H), and (I) are not permitted;
(4) Retail services;
(5) Theaters;
(6) Travel agencies;
(7) Commercial Recreation up to 5,000 square feet in gross floor area, except for parcels with frontage on University Avenue;
(8) All other uses permitted in the underlying district, provided such uses are not on the ground floor.

(b) Elimination or conversion of basement space currently in retail or retail-like use or related support purposes is prohibited.

(c) Entrance, lobby, or reception areas serving non-ground floor uses may be located on the ground floor to the extent reasonably necessary, provided they do not interfere with the ground floor use(s), and subject to the approval of the Director.

SECTION 10. Section 18.30(C).030 (Conditional Uses) of Chapter 18.30(C) (Ground Floor (GF) Combining District Regulations) of Title 18 (Zoning) of the Palo Alto Municipal Code are amended to read as follows:

(a) The following uses may be conditionally allowed on the ground floor in the GF combining district, subject to issuance of a conditional use permit in accord with Chapter 18.76 (Permits and Approvals) and with the additional finding required by subsection (b), subject to restrictions in Section 18.40.160:

(1) Business or trade school;
(2) Commercial recreation over 5,000 square feet in gross floor area or with frontage on University Avenue;
(3) Day care;
(4) Financial services, except drive in services;
(5) General business service;
(6) Learning centers intended for individual or small group settings;
(7) All other uses conditionally permitted in the applicable underlying district, provided such uses are not on the ground floor.

(b) The director may grant a conditional use permit under this section only if he or she makes the following findings in addition to the findings required by Chapter 18.76 (Permits and Approvals):

(1) The location, access or design of the ground floor space of the existing building housing the proposed use, creates exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to property in the same district.

(2) The proposed use will not be determined to the retail environment or the pedestrian-oriented design objectives of the GF combining district.

(c) Any use conditionally permitted pursuant to this section shall be effective only during the existence of the building that created the exceptional circumstance upon which the finding set forth in subsection (b) was made.

SECTION 11. Any provision of the Palo Alto Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 12. 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. The Council finds that the adoption of this ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to CEQA Guideline sections 15061(b)(3) because it can be seen.
SECTION 14. This ordinance shall be effective on the thirty-first date after the date of its adoption and shall expire upon the earlier of June 30, 2022 or adoption of replacement legislation by the City Council. Upon expiration of this ordinance, the City Clerk shall direct the City’s codifier to update the Palo Alto Municipal Code as appropriate.

INTRODUCED: March 8, 2021
PASSED: April 12, 2021
AYES: BURT, DUBOIS, FILSETH, KOU, STONE
NOES: CORMACK, TANAKA
ABSENT:
ABSTENTIONS:
NOT PARTICIPATING:
ATTEST:

APPROVED AS TO FORM:

APPROVED:

City Clerk
Mayor

Assistant City Attorney
City Manager
Director of Planning & Development Services
Certificate Of Completion

Envelope Id: 2FFD3DF938C64D8A8AAD4B626E119FA7
Status: Completed

Subject: Please DocuSign: ORD 5517 Ordinance Amending PAMC Title 18 Ch 18.04 Definitions 18.16 Neighborh...

Source Envelope:
Document Pages: 17
Signatures: 5
AutoNav: Enabled
Initials: 0
Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Envelope Originator:
250 Hamilton Ave
Palo Alto, CA 94301
Danielle.Kang@cityofpaloalto.org
IP Address: 199.33.32.254

Record Tracking

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Storage Appliance Status: Connected

Holder: Danielle Kang
Danielle.Kang@cityofpaloalto.org
Location: DocuSign

Signer Events

Albert Yang
Albert.Yang@CityofPaloAlto.org
Assistant City Attorney
City of Palo Alto
Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style
Using IP Address: 97.113.131.147

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Signed: 4/19/2021 10:28:38 AM

Electronic Record and Signature Disclosure:
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Jonathan Lait
Jonathan.Lait@CityofPaloAlto.org
Interim Director Planning and Community Environment
City of Palo Alto
Security Level: Email, Account Authentication (None)

Signature Adoption: Uploaded Signature Image
Using IP Address: 99.88.42.180

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Electronic Record and Signature Disclosure:
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Ed Shikada
Ed.Shikada@CityofPaloAlto.org
Ed Shikada, City Manager
City of Palo Alto
Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style
Using IP Address: 199.33.32.254

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Electronic Record and Signature Disclosure:
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Tom DuBois
tomforcouncil@gmail.com
Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style
Using IP Address: 24.5.55.204

Electronic Record and Signature Disclosure:
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Title: Utilities Advisory Commission Recommend the City Council Affirm the Continuation of the REC Exchange Program

Council Priority: Climate Change: Protection & Adaption

From: City Manager

Lead Department: Utilities

Recommendation
The Utilities Advisory Commission (UAC) and staff recommend that the City Council:

1) Affirm the continuation of the “REC Exchange Program,” whereby the City exchanges bundled RECs from its long-term renewable resources (Bucket 1 RECs) for Renewable Portfolio Standard (RPS) eligible, unbundled RECs (Bucket 3 RECs),\(^1\) to the maximum extent possible, while maintaining compliance with the State’s RPS regulations, in order to provide additional revenue for local decarbonization efforts; and

2) Direct staff to return to the UAC and City Council in 2025 to provide another review of the program’s impacts.

Executive Summary
This action, if approved, would continue the REC Exchange Program, estimated to yield net earnings of about $1.9 million per year over the next five years (CYs 2023-2027). Over time, the REC Exchange program net revenue is projected to gradually decline, due to: (a) the gradual ramping up of the state’s RPS requirement levels, which reduces the volume of supplies the City can sell, and (b) some of the City’s older renewable energy contracts expiring. To date, the program has yielded net earnings of $6.73 million (about $2.24 million per year), with $3.38 million of these earnings being allocated toward local decarbonization efforts and the balance being used to offset operational costs and provide for general customer rate reduction. Going forward, all the Program’s net earnings are planned to be directed towards local decarbonization initiatives.

Background
In order to achieve the aggressive greenhouse gas (GHG) emissions reduction goals it has set, in March 2013, through Resolution No. 9322, the City adopted a Carbon Neutral Plan for the

\(^1\) See Attachment A for a more detailed description of the different types of RECs.
electric supply portfolio, with a goal of achieving carbon neutrality by 2013. The City has achieved its Carbon Neutral Plan objectives each year starting in 2013, and due to its pursuit of these objectives, the City’s electric supply portfolio currently far exceeds the procurement requirements of the State’s Renewable Portfolio Standard (RPS) mandate, and all of the City’s current RPS resources are classified as Bucket 1 RECs.

In August 2020, the City Council adopted a resolution allowing for REC Exchanges\(^2\) to take advantage of the significant cost difference between Bucket 1 and Bucket 3 RECs\(^3\) to generate additional revenue for the City’s electric utility (Resolution 9913, Staff Report 11556) and for local decarbonization. The amendments permitted the exchange of Bucket 1 (primarily in-state) RECs for Bucket 3 (primarily out-of-state) RECs, provided the City maintains compliance with State Renewable Portfolio Standard (RPS) regulations. The Council also directed that for 2020 and 2021, the earnings from this program would be split, with two-thirds of proceeds going to electric operating cost reductions and mitigating the economic impacts of the coronavirus pandemic and one-third toward local decarbonization (GHG emission reduction) programs, and that thereafter all of the earnings would be devoted to emission reduction programs.

Since then, staff has purchased and sold RECs for Calendar Years (CYs) 2020 through 2022 in accordance with the Carbon Neutral Plan amendments, resulting in net earnings of $6.73 million, or about $2.24 million per year. Actual earnings are slightly lower than the amounts that staff projected at the time the program was approved (about $3 million per year) due to a narrowing of the Bucket 1 vs Bucket 3 price spread.

The Council authorized these REC Exchanges without a specific end date; however, they directed staff to return prior to the end of 2022 to provide a review of the policy. That program review is the focus of this report.

**Discussion**

**REC Exchange Program Results (2020-2022) and Projections (2023-2027)**

Since approving the REC Exchange Program in August 2020, staff has sold a total of approximately 802,000 Bucket 1 RECs for CYs 2020-2022 and purchased an equal number of Bucket 3 RECs for that period, as summarized in Table 1 below.\(^4\) These REC Exchange transactions have yielded a total of $6.73 million in net revenue, or about $2.24 million per year.

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\(^2\) The exchange of bundled RECs from the City’s in-state, long-term renewable resources (Bucket 1 RECs) for RPS-eligible, unbundled RECs (Bucket 3 RECs), which usually come from out of state sources.

\(^3\) Due to limitations on the use of Bucket 3 RECs for compliance with the state’s RPS mandate (only 10% of a utility’s RPS procurement may consist of Bucket 3 RECs), a significant financial premium currently exists for in-state bundled renewable energy resources (Bucket 1 RECs).

\(^4\) Staff has purchased additional Bucket 3 RECs and sold additional Bucket 1 RECs during this time period (96,198 additional RECs purchased and 49,814 additional sold); however, these are RECs that would have been bought or sold anyway—purchased in order to satisfy the City’s Carbon Neutral Plan goals during the ongoing drought (in 2021 and 2022), and sold because the City had a surplus of carbon neutral supplies (in 2020). The analysis in this report includes only the REC transactions that were the direct result of the approval of the REC Exchange Program.
Table 1: Summary of REC Exchange Transactions and Revenue, CY 2020-2022

<table>
<thead>
<tr>
<th></th>
<th>CY 2020</th>
<th>CY 2021</th>
<th>CY 2022 (est.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bucket 1 REC Sales Volume (MWh)</td>
<td>325,186</td>
<td>287,210</td>
<td>190,000</td>
</tr>
<tr>
<td>Bucket 3 REC Purchase Volume (MWh)</td>
<td>325,186</td>
<td>287,210</td>
<td>190,000</td>
</tr>
<tr>
<td>Bucket 1 REC Sales Revenue ($M)</td>
<td>$3.59</td>
<td>$4.01</td>
<td>$2.74</td>
</tr>
<tr>
<td>Bucket 3 REC Purchase Cost ($M)</td>
<td>$1.10</td>
<td>$1.47</td>
<td>$1.03</td>
</tr>
<tr>
<td>Net Revenue ($M)</td>
<td>$2.48</td>
<td>$2.54</td>
<td>$1.71</td>
</tr>
<tr>
<td>RPS Level (%)</td>
<td>20.8%</td>
<td>35.0%</td>
<td>38.5%</td>
</tr>
</tbody>
</table>

When presenting the REC Exchange Program to Council for approval in 2020, staff estimated it would generate roughly $3.0 million per year in net revenue for FY 2021-2025, with a significant tapering off thereafter due to the steady increases in the statewide RPS requirement level. Actual net revenues have thus far come in lower than this initial estimate due to a tightening of the differential between Bucket 1 and Bucket 3 REC prices compared to the staff estimate at the time.

Over the next five years, staff estimates that the Program will yield approximately $9.3 million in total net revenue, or $1.9 million per year, as shown in Table 2 below. The REC Exchange Program’s earnings are projected to gradually decline in future years, primarily due to the ramping up of the State’s RPS requirement levels, which reduces the volume of Bucket 1 supplies the City is able to sell. In addition, some of the City’s older (and smaller) renewable energy contracts are set to expire, starting in 2026, which further reduces the supply of Bucket 1 RECs the City has available to exchange.

Table 2: Projected REC Exchange Transactions and Revenue, CY 2023-2027

<table>
<thead>
<tr>
<th></th>
<th>CY 2023</th>
<th>CY 2024</th>
<th>CY 2025</th>
<th>CY 2026</th>
<th>CY 2027</th>
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<tbody>
<tr>
<td>Bucket 1 REC Sales Volume (MWh)</td>
<td>224,000</td>
<td>188,000</td>
<td>174,000</td>
<td>138,000</td>
<td>124,000</td>
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<tr>
<td>Bucket 3 REC Purchase Volume (MWh)</td>
<td>224,000</td>
<td>188,000</td>
<td>174,000</td>
<td>138,000</td>
<td>124,000</td>
</tr>
<tr>
<td>Bucket 1 REC Sales Revenue ($M)</td>
<td>$3.81</td>
<td>$3.20</td>
<td>$2.96</td>
<td>$2.35</td>
<td>$2.11</td>
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<tr>
<td>Bucket 3 REC Purchase Cost ($M)</td>
<td>$1.35</td>
<td>$1.13</td>
<td>$1.05</td>
<td>$0.83</td>
<td>$0.74</td>
</tr>
<tr>
<td>Net Revenue ($M)</td>
<td>$2.47</td>
<td>$2.07</td>
<td>$1.92</td>
<td>$1.52</td>
<td>$1.36</td>
</tr>
<tr>
<td>RPS Level (%)</td>
<td>41%</td>
<td>44%</td>
<td>46%</td>
<td>50%</td>
<td>52%</td>
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**Impact on Palo Alto’s Supply Portfolio**

As discussed in [Staff Report 11556](#), although exchanging in-state RECs for out-of-state RECs has no real impact on the City’s total electricity-related carbon emissions (see [Attachment A](#) for more discussion on this topic), the downside of this strategy is that it has a negative impact on the City’s reported portfolio make-up and carbon emissions. California’s RPS law gives
preferential treatment to in-state renewable resources over out-of-state resources, and the same is true of how such resources are reported to customers on the annual Power Content Label (PCL). The California Energy Commission’s (CEC's) PCL regulations require that utilities report their out-of-state (Bucket 3) REC purchases as “unspecified sources of power” rather than under the appropriate renewable energy technology category. Furthermore, utilities are now required to report the annual average GHG emissions intensity of their electric supply on their PCLs—and again, rather than being treated as carbon-free resources like other forms of renewable energy, Bucket 3 RECs are treated as having an emissions intensity equivalent to generic market power purchases (428 kilograms (kg) of CO2 per MWh, which is almost 20% greater than the average emissions intensity of natural gas generation).

As a result, rather than reporting a supply mix that is over 60% renewable and nearly carbon-free on average, under the REC Exchange Program the City must report a portfolio mix that is less than 40% renewable and is responsible for a moderate amount of carbon emissions. Figure 1 below depicts the City’s projected electric supply portfolio mix in CY 2022, before and after accounting for the REC Exchange Program transactions. Meanwhile, the estimated annual average GHG emissions intensities that the City would report on its PCL for these two portfolios are 114 and 209 kg CO2 per MWh, respectively.

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5 Although the City's baseline portfolio mix is entirely comprised of renewables and hydroelectric resources, the CEC's PCL regulations assign a small emission intensity to all biomass generation such as landfill gas generation, which currently accounts for about 10% of the City’s supply mix.

6 For reference, the statewide average GHG emissions intensity for CY 2021 was 207 kg CO2 per MWh. In CY 2021, the City's average GHG emissions intensity as reported on its PCL (and accounting for the REC Exchange Program transactions) was 124 kg CO2 per MWh. The City's emissions intensity is projected to be significantly higher for CY 2022 than for CY 2021 because of the significant decline in hydroelectric generation this year due to the ongoing drought.
Use of REC Exchange Funds
Of the $6.73 million in net revenue that the REC Exchange Program has brought in since 2020, $3.35 million of it has been directed towards general electric operating cost reductions (in accordance with Council’s direction that two-thirds of the net proceeds should be used in this way for 2020 and 2021, to offset the impacts of the pandemic) and $3.38 million has been (or soon will be) used towards local decarbonization programs. If the recommendation to continue the REC Exchange Program is approved, all of the net revenue from the program (whose estimates are shown in Table 2) would be used for these decarbonization efforts. To date, the programs that this funding has supported include the Advanced heat-pump water heater (HPWH) pilot, the Home Efficiency Genie program, and multi-family building electrification efforts.

Next Steps
Upon the approval of the Recommendation, staff will continue to execute transactions to sell the City’s in-state renewable resources and purchase out-of-state renewables for 2023 and beyond. In addition, staff will continue to report on the portfolio’s total GHG emissions under both an hourly and an annual carbon accounting framework in the annual report to the City Council on the City’s Renewable Procurement Plan, Renewable Portfolio Standard Compliance, and Carbon Neutral Electric Supplies (usually presented in Q4 of each year).
Stakeholder Engagement
The UAC reviewed staff’s discussion of the REC Exchange Program’s impacts and its recommendation to reauthorize the program at its November 2, 2022 meeting (Linked Document). The UAC expressed general approval of the program’s structure and its results to-date, and were pleased to learn that staff have so far received no comments or questions from the public about the changes to the City’s PCL caused by the program.

The UAC voted to approve a slightly updated version of staff’s recommendation 6-0 (with Chair Segal, Vice Chair Johnston, and Commissioners Forssell, Metz, Smith, and Scharff voting yes, and Commissioner Bowie absent) (Attachment B). The one update the UAC made to staff’s recommendation was to indicate that staff should return to the Council for another review of the program in 2025, rather than 2027.

Resource Impact
Staff estimates that continuing the REC Exchange program will generate an average of approximately $1.9 million in additional revenue per year for the next five fiscal years (2023 – 2027), which will be used to support the City’s decarbonization efforts.

Policy Impact
This report supports the Sustainability and Climate Action Plan goals of continuing to lower the carbon footprint of the community.

Environmental Review
The City Council’s review of the REC Exchange Program does not meet the definition of a project because it is an administrative government activity that will not result in any direct or indirect physical change to the environment (CEQA Guidelines section 15378(b)(5), therefore California Environmental Quality Act (CEQA) review is not required.

Attachments:
- Attachment3.a: Attachment A: REC Background Information
- Attachment3.b: Attachment B: Action Minutes of November 2022 UAC Meeting
In-State vs. Out-of-State Renewable Energy Credits

In-state, Bundled Renewable Energy (Bucket 1 RECs) vs. Out-of-state, Unbundled Renewable Energy (Bucket 3 RECs)

The fundamental difference between bundled renewables (or “Bucket 1 RECs”) and unbundled (“Bucket 3”) RECs, as the diagram in Figure 1 illustrates, is that with bundled renewables both the energy and the REC (which represents the environmental value of the energy) are sold together to the same entity. With unbundled RECs, the energy and the REC are sold separately to different entities. Practically speaking though, Bucket 1 RECs are almost always produced by in-state renewable generators, while Bucket 3 RECs are produced by out-of-state renewable generators. Also, because of limitations placed on the use of Bucket 3 RECs for compliance purposes in the state’s RPS legislation, and because of strong demand for Bucket 1 resources as Community Choice Aggregators (CCAs) ramp up their energy purchases, Bucket 1 RECs currently carry a significant price premium relative to Bucket 3 RECs, in spite of the fact that these two resources represent equivalent amounts of renewable energy.

Figure 1: Bundled (Bucket 1) vs. Unbundled (Bucket 3) RECs Diagram

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UTILITIES ADVISORY COMMISSION MEETING
ACTION MINUTES OF NOVEMBER 2, 2022 SPECIAL MEETING

CALL TO ORDER
Chair Segal called the meeting of the Utilities Advisory Commission (UAC) to order at 6:01 p.m.

Present: Chair Segal, Vice Chair Johnston, Commissioners Forssell, Metz, Commissioner Smith (arrived at 6:03 p.m) and Scharff

Absent: Commissioner Bowie

AGENDA REVIEW AND REVISIONS
None

ORAL COMMUNICATIONS
None

APPROVAL OF THE MINUTES
Chair Segal noted the October 12, 2022 draft minutes were not ready for review and will be available at the December 7, 2022 UAC meeting.

UNFINISHED BUSINESS
None

UTILITIES DIRECTOR REPORT
Dean Batchelor, Utilities Director, delivered the Director’s Report

NEW BUSINESS
ITEM 1: ACTION: Adoption of a Resolution Authorizing Use of Teleconferencing for Utilities Advisory Commission Meetings During Covid-19 State of Emergency
ACTION: Vice Chair Johnston moved Staff recommendation that the Utilities Advisory Commission (UAC) Adopt a Resolution (Attachment A) authorizing the use of teleconferencing under Government Code Section 54953(e) for meetings of the Utilities Advisory Commission (UAC) and its committees due to the COVID-19 declared state of emergency.

Seconded by Commissioner Metz

Motion carries 6-0 with Chair Segal, Vice Chair Johnston, and Commissioners Forssell, Metz, Smith, and Scharff voting yes.

Commissioner Bowie absent

ITEM 2: ACTION: Staff Recommends the Utilities Advisory Commissioner Consider and Adopt an Attendance Policy

ACTION: Commissioner Metz moved Staff recommendation that the Utilities Advisory Commission (UAC) Adopt an Attendance Policy as amended.

Seconded by Vice Chair Johnston

Motion carries 6-0 with Chair Segal, Vice Chair Johnston, and Commissioners Forssell, Metz, Smith, and Scharff voting yes.

Commissioner Bowie absent

ITEM 3: ACTION: Staff Recommendation That the Utilities Advisory Commissioner Review and Recommend the City Council Affirm the Continuation of the RED Exchange Program

ACTION: Vice Chair Johnston moved Staff recommendation that the Utilities Advisory Commission (UAC) recommend that the City Council as amended:

1) affirm the continuation of the “REC Exchange Program,” whereby the City exchanges bundled RECs from its long-term renewable resources (Bucket 1 RECs) for Renewable Portfolio Standard (RPS) eligible, unbundled RECs (Bucket 3 RECs), to the maximum extent possible, while maintaining compliance with the state’s RPS regulations, in order to provide additional revenue for local decarbonization efforts; and

2) direct staff to return to the UAC and City Council in 2027 to provide another review of the program’s impacts.

Seconded by Commissioner Forssell
Motion carries 6-0 with Chair Segal, Vice Chair Johnston, and Commissioners Forssell, Metz, Smith, and Scharff voting yes.

Commissioner Bowie absent

ITEM 4: ACTION: Staff Recommends the Utilities Advisory Commission Recommend the Finance Committee Recommend That the City Council Adopt a Resolution Amending the E-HRA (Electric Hydro Rate Adjuster) Rate Schedule, Increasing the Current E-HRA Rate to $0.026/kWh Effective January 1, 2023.

ACTION: Vice Chair Johnston moved Staff recommendation that the Utilities Advisory Commission (UAC) recommend the Finance Committee recommend that Council adopt a resolution amending the Electric Hydro Rate Adjuster (E-HRA), effective January 1, 2023, to reflect current hydrological conditions and market purchase costs. This would double the existing E-HRA surcharges and discounts across all levels, increasing the current E-HRA rate from $0.013/kwh to $0.026/kwh.

Seconded by Commissioner Forssell

Motion carries 6-0 with Chair Segal, Vice Chair Johnston, and Commissioners Forssell, Metz, Smith, and Scharff voting yes.

Commissioner Bowie absent

The UAC took a break at 7:26 and returned at 7:40 pm

ITEM 5: ACTION: Changes to the Utilities Rules and Regulations and Rate Schedules for AMI Implementation

ACTION: Vice Chair Johnston moved Staff recommendation that the UAC recommend Council adopt the attached Resolution (Attachment A) amending Utilities Rules and Regulations 2, 8, 9 (change request was to ensure that the notices for physical disconnect/reconnect also apply to remote disconnect/reconnect), 10, 15, 18, 20, and Utilities Rate Schedules C-1 and C-4, as amended.

Seconded by Commissioner Metz

Motion carries 6-0 with Chair Segal, Vice Chair Johnston, and Commissioners Forssell, Metz, Smith, and Scharff voting yes.

Commissioner Bowie absent
ITEM 6: ACTION: Staff Recommends That the Utilities Advisory Committee (UAC) Approve a Recommendation That Council Recommend Building the Fiber Backbone and Options for Fiber-to-the-Premises (FTTP)

ACTION: Commissioner Scharff moved Staff recommendation that the Utilities Advisory Commission (UAC) approve a recommendation that Council recommend building the fiber backbone and the following option for Fiber-to-the-Premises (FTTP):

Option 2. Build fiber backbone and FTTP under a phased approach without new bond financing. Use $34M from the Fiber fund and $13M from the Electric fund to build the fiber backbone and build phase 1 of the FTTP distribution network in a phased approach.

Seconded by Vice Chair Johnston

Motion carries 6-0 with Chair Segal, Vice Chair Johnston, and Commissioners Forssell, Metz, Smith, and Scharff voting yes.

Commissioner Bowie absent

COMMISSIONER COMMENTS and REPORTS from MEETINGS/EVENTS

FUTURE TOPICS FOR UPCOMING MEETINGS:

NEXT SCHEDULED MEETING: December 7, 2022

Meeting adjourned at 10:05 p.m.

Respectfully Submitted
Jenelle Kamian
City of Palo Alto Utilities
Title: Approval of Amendment No. 1 to Contract C09124501 with GreenWaste of Palo Alto for Collection and Processing Services to Implement Domestic Recycling of Mixed Paper and Mixed Rigid Plastics with Program Annual Costs Not to Exceed $1.2M; and Approval of Budget Amendment in the Refuse Fund

From: City Manager

Lead Department: Public Works

Recommendation
Staff recommends that Council:

1. Approve and authorize the City Manager or their designee to execute Amendment No. 1 to Contract Number C09124501A with GreenWaste of Palo Alto to implement Domestic Recycling of Mixed Paper and Mixed Rigid Plastics with program costs not to exceed a total of $1,200,000 annually; and
2. Amend (by a 2/3 majority) the Fiscal Year 2023 Budget Appropriation for the Refuse Fund by:
   a. Increasing Utilities Purchase funding for Collection/Hauling/Disposal Administration by $500,000; and
   b. Decreasing the Rate Stabilization Reserve Balance by $500,000.

Executive Summary
Prior to a three-month pilot program at the end of Fiscal Year 2022, approximately 60 percent of Palo Alto’s recyclables were sent to international markets where their fate and any negative impacts were largely unknown. In 2021, Council directed staff to work on finding alternative solutions to sending recyclable materials to be marketed and processed internationally. Since then, staff and the City’s contracted refuse hauler, GreenWaste of Palo Alto (GWPA), found domestic markets for mixed paper (MP) and mixed rigid plastics (MRP) and conducted a three-month pilot program to utilize these U.S. markets. The pilot program was successful, and staff is recommending that Council approve a contract amendment and the associated costs to continue this program through June 30, 2026, when the Contract with GWPA ends. This action for MP and MRP will lead to about 61 percent of the City’s total recyclable materials staying in the United States, reducing the amount being exported to 39 percent, with mostly cardboard being sent internationally. Staff believes this will place the City in a leadership role nationally in preventing unintended consequences of shipping plastic and mixed paper recyclables internationally.
Background
GreenWaste of Palo Alto (GWPA) is the City's refuse hauler for collecting recyclable, compostable, and landfill materials, and processing recyclable and compostable materials. On January 22, 2019, Council approved the Second Amended and Restated Agreement with GWPA (Staff Report #9752). This amendment facilitated the implementation of multiple initiatives identified in the 2018 Zero Waste Plan, replaced old waste collection vehicles, and extended the agreement five years to end June 30, 2026. The amendment also designated a new cost methodology for the processing of recyclable materials to be based on tonnage collected and processed and for a new profit-sharing procedure on the recyclable materials which began in Fiscal Year 2022.

Palo Alto’s recyclable materials are processed at the GreenWaste Materials Recovery Facility in San Jose, where they are combined with recyclables from other communities, separated by type, baled, and marketed. The City requires GWPA to report on the disposition of recyclable materials as well as to gather information on the environmental and social implications associated with the further offsite marketing and processing of Palo Alto’s recyclable materials. For Fiscal Year 2021, GWPA reported (Staff Report #13535) that approximately 14,000 tons of recyclable materials were collected from Palo Alto, with about 40 percent staying in the United States and 60 percent being exported to India, Indonesia, Korea, Malaysia, Mexico, Taiwan, Thailand, Vietnam, Mexico and other countries. For the last three years, GWPA has provided the City with traceability reports; however, the reports do not explain exactly which shipments go to which cities or facilities within those countries. GWPA has tried to ascertain from its recyclable materials brokers which international facility is receiving and processing Palo Alto’s recyclables, but the market information is considered confidential. Therefore, it has not been possible to determine with certainty how much of the materials are being recycled, if the materials are being managed in an environmentally sound way, or whether the conditions at the international locations are causing any human health or social problems. The GWPA Traceability Report for Fiscal Year 2022 is consistent with past reports and provides updates on the GWPA and City collaborated pilot programs.

Council discussed these concerns on May 24, 2021 (Staff Report #11632) as part of the new solid waste processing contract and directed staff to:

1) Pursue, with other cities, a greater accounting of GreenWaste’s secondary markets;
2) Return to Council with an amendment to the GWPA Contract to authorize a quick response to opportunities to utilize domestic mixed paper recycling;
3) Provide GreenWaste reports to the public and City Council on a regular basis;
4) Work with other cities on legislation to spur domestic or in-state recycling; and
5) If GreenWaste is unable to provide additional secondary market accounting, return to Council for consideration of further actions.

Staff provided an update to Council on each of these directives on January 24, 2022 (Staff Report #13535). On May 2, 2022, Staff Report #14169 outlined a three-month pilot program
conducted where MP and MRP were processed in Northern Louisiana and Southern California respectively, instead of being sent to international markets. MP includes a mixture of paper collected curbside from residents and businesses such as magazines, colored paper, and cereal boxes. MRP are primarily plastics #2 through #7 including milk crates, buckets, and toys. Cardboard was not selected as a material to be kept domestically since it is high quality, contains low contaminants, is desired by processing facilities, and has consistent market demand. The pilot was quite successful, and GreenWaste’s private sector processors are willing to continue the arrangements.

As directed by Council in #1) above, staff has worked with other cities in an attempt to obtain definitive information about the disposition and impacts of recyclables overseas. Few cities have spent the time and energy that Palo Alto and GWPA have on this issue, and it is now apparent that GWPA, and other haulers, are unable to obtain this information due to recyclables brokers and processors considering it to be trade secrets and confidential. Therefore, staff returned to Council on June 6, 2022 (Staff Report #14464) to propose further action, as directed above. Staff proposed, and Council directed, that staff negotiate a contract amendment with GWPA for to $1.2 million annually to provide domestic processing and management of MP and MRP materials.

Discussion

GWPA has identified domestic processing facilities to take Palo Alto’s MP and MRP where they will become new products, rather than sending them to international markets where their processing, disposition and impacts are uncertain. It has been very difficult for GWPA to find domestic markets for several recyclables, including cardboard, mixed paper, and plastic, since capacity at U.S. processing facilities for these recyclables is very limited. In addition, as staff continues its engagement with other cities, jurisdictions, and legislators to increase the awareness of the environmental and social concerns with shipping and processing of recyclable materials internationally, demand on domestic capacity for processing of recyclables will increase.

Staff and GWPA developed an ongoing program to take MP and MRP to processing facilities within the United States and negotiated a corresponding contract amendment (Attachment A). MP is going to a pulp and paper mill in Louisiana to be combined with other wood products and made into paperboard, printing paper, and other paper products within the U.S. MRP is being cleaned, processed, and becoming part of a feedstock for making bits of plastic often called “nurdles” which are then made into various plastic products in southern California including paint buckets, vehicle parts, and woven plastic items such as upholstery, bags, and rope. These are the same domestic markets and materials accepted in the Fiscal Year 2022 three-month pilot program, which excluded cardboard. Cardboard is also not included in the ongoing program because it is less likely to be mismanaged since it is a commonly high-quality product with little contamination and a high recyclability. The added cost would have also been too great at this time. In Fiscal Year 2023, it is estimated that approximately 3,800 tons of MP and 230 tons of MRP will be sent to these domestic processors instead of international markets.
This action for MP and MRP will lead to about 61 percent of the City’s total recyclable materials staying in the United States, reducing the amount being exported from 59 percent to 39 percent, with almost all of the exported material being cardboard.

Most importantly, international shipments of plastics, the recyclable of greatest concern, are essentially being eliminated. Virtually all plastics will be processed in North America. Table 1 provides a list of the common recyclable materials categories, breakdown percentages estimated for Fiscal Year 2023 based on Fiscal Year 2022 numbers and destination of where they are being marketed for processing. Of all the types of plastic, only clamshell food containers (a subset of # 1 PET Plastic) are still being managed outside the U.S. in Mexico at known processing locations where problems can be identified. The exception to these destinations will be any short-term market disruptions due to economy disfunctions and when shipment of materials to target locations cannot be made due to uncontrollable circumstances.

<table>
<thead>
<tr>
<th>Material Type</th>
<th>Material Breakdown</th>
<th>Domestic</th>
<th>Export</th>
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<tr>
<td>Aluminum</td>
<td>1.3%</td>
<td>100%</td>
<td>0%</td>
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<tr>
<td>Other Metals</td>
<td>8.0%</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>Glass</td>
<td>22.4%</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>Plastic</td>
<td>7.7%</td>
<td>92%</td>
<td>8%</td>
</tr>
<tr>
<td>Mixed Rigid Plastic</td>
<td>1.5%</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>Mixed Paper</td>
<td>16.8%</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>Cardboard</td>
<td>42.2%</td>
<td>10%</td>
<td>90%</td>
</tr>
<tr>
<td>E-Waste</td>
<td>0.1%</td>
<td>100%</td>
<td>0%</td>
</tr>
</tbody>
</table>

**Resource Impact**

The program cost for domestic processing of MP and MRP is estimated not to exceed $1,200,000 annually. The Fiscal Year 2023 Adopted operating budget for the Refuse Fund included a placeholder of $700,000 to support the domestic recyclables processing. To meet the not-to-exceed annual amount of $1,200,000, staff recommends an appropriation of $500,000 in Fiscal Year 2023 in the Refuse Fund as part of this report. Staff also recommends continuing this program during the remaining term of the GWPA contract which ends in June 2026, with the associated annual expense of $1,200,000 for the subsequent years to be subject to appropriation of funds through the annual budget process.
Table 2 indicates the approximate average cost per customer for domestic processing of MP and MRP. For the typical residential customer, this equates to 5.5 percent of the monthly bill. The last increase to Refuse Rates occurred in 2017, and staff is currently analyzing whether an increase will be proposed for Fiscal Year 2024.

Table 2: Estimated Average Additional Cost per Residential and Commercial Customer

<table>
<thead>
<tr>
<th>Estimated Additional Cost</th>
<th>Residential</th>
<th>Commercial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subtotal based on tonnage</td>
<td>$600,000</td>
<td>$600,000</td>
</tr>
<tr>
<td>Average cost per customer per year</td>
<td>$33.46</td>
<td>$323.10</td>
</tr>
<tr>
<td>Average cost per customer per month</td>
<td>$2.79</td>
<td>$26.93</td>
</tr>
</tbody>
</table>

Stakeholder Engagement
The current stakeholder engagement includes conducting several virtual forums with other cities and jurisdictions focusing on increasing the knowledge of the environmental and social issues that international shipping of recyclables may be causing, sharing information as well as exploring solutions. These forums were initiated by Palo Alto staff and are being co-sponsored by the City of San Jose. City Council Meetings have also proven to be important community engagement vehicles with members of the public expressing concerns about international shipments of recyclables and Council and staff have responded with actions.

Policy Implications
The program is also consistent with the City’s Environmentally Preferred Purchasing Policy, which states that the City shall incorporate environmental, economic and social stewardship criteria into its purchases of products and services, and more specifically minimizing the City’s contributions to global warming, solid waste, local and global pollution, and toxic chemical exposures to people and the environment. In addition, the program aligns with the Sustainability and Climate Action Plan (S/CAP) Update, which proposes a Zero Waste Key Action to prioritize domestic processing of recyclable materials.

Environmental Review
Council action on this item is exempt from review under the California Environmental Quality Act (CEQA) because it can be seen with certainty that redirecting recyclables from international to domestic facilities will not have a significant effect on the environment, i.e., a substantial or potentially substantial adverse impact on the environment. CEQA Guidelines Section 15061(b)(3)

Attachments:
- **Attachment4.a:** Attachment A - Amendment 1 to GWPA Contract No C09124501A
Amendment No. 1 TO CONTRACT NO. C09124501A  
SECOND AMENDED AND RESTATED AGREEMENT FOR SOLID WASTE, RECYCLABLE MATERIALS, AND COMPOSTABLE MATERIALS COLLECTION AND PROCESSING SERVICES  
BETWEEN THE CITY OF PALO ALTO AND  
GREENWASTE OF PALO ALTO, LLC

This Amendment No. 1 ("Amendment") to Contract No. C09124501A (the "Contract" as defined below), is effective as of December 12, 2022 by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and GREENWASTE OF PALO ALTO, LLC, a California limited liability company ("Contractor" or "GWPA"), located at 610 E. Gish Road, San Jose, CA 95112. The City and Contractor are occasionally herein referred to each as a “Party” and collectively as the “Parties.”

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties:


2. The Contract contains a number of provisions intended to implement initiatives in the City's 2018 Zero Waste Plan, including an annual report on the disposition of recyclable materials and related information on the environmental and social implications of the processing and sale of recyclable materials collected from solid waste customers in the city.

3. On June 6, 2022 the Palo Alto City Council directed City staff to negotiate a contract amendment under which GWPA would implement a program to prioritize the processing, marketing, and selling mixed paper and mixed rigid plastic to domestic, rather than international, markets.

4. The purpose of this Amendment is to implement a new program to maximize the use of domestic markets, as opposed to international markets, for sorted recyclables from Palo Alto. This Amendment contains additional definitions, additional compensation to Contractor for this new program, and new reporting requirements to document the materials management. The program enhances the City's ability to be informed of environmental, human health, or social impacts occurring during materials management downstream of the Contractor.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Amendment and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree to amendment the Contract as follows:

SECTION 1. Interpretation. Capitalized terms used in this Amendment will have the same meanings specified in Attachment A of the Contract unless expressly provided otherwise in this Amendment.

SECTION 2. Amendment Definitions. The following definitions shall apply to this Amendment:

-1-
a) “Processing” or “Processed” shall mean the sorting of Recyclable Materials by the Contractor.

b) “Sorted Recyclables” shall mean Recyclable Materials sorted and produced by the Contractor which can be recycled by a downstream provider.

c) “Materials Management” shall mean the handling and use of the Sorted Recyclables after Processed by Contractor at its Facilities as specified in Section 3 of this Amendment.

d) “Mixed paper” or “MP” shall mean magazines, catalogues, envelopes, junk mail, paperboard, shredded paper, non-metallic wrapping paper, Kraft brown bags and paper, paper egg cartons, office ledger paper, self-stick notes, and telephone books.

e) “Mixed Rigid Plastic” or “MRP” shall mean plastic containers (#1-7 including containers made of HDPE, LDPE, PET, or PVC), kids toys, buckets.

f) “International” shall mean territory outside the United States of America.

g) “Domestic” shall mean territory inside the United States of America.


a) Market and sale of MP and MRP. Contractor shall undertake commercially reasonable efforts to market and sell the City’s MP and MRP materials domestically. If no Domestic markets exist, Contractor will notify City of alternative markets and proposed new destinations. The proposed destinations may be International. City will then provide direction to Contractor as needed on the recommended selected destination. In providing direction with respect to International destinations, City will consider the use of best environmental practices, the ability to trace the new Material Management destination, and price. Contractor will determine the amount of MP and MRP materials to market and sell domestically on (1) the actual tonnage of single stream Recyclable Materials delivered from the City to the GreenWaste MRF, and (2) the percentage of MP and MRP, respectively; based on the rolling average of the last three waste characterization audits of single stream Recyclable Materials from the City’s material that are delivered for Processing at the GreenWaste MRF.

b) Single Stream Recyclable Materials Waste Characterization Audit. Contractor shall perform a minimum of two waste characterization audits per year on single stream Recyclable Materials from the City that are delivered for Processing at the GreenWaste MRF. Waste characterization audits shall be performed in accordance with the methodology provided in Section 3(c) of this Amendment at a time determined by mutual agreement between Contractor and the City and/or the City consultant. Contractor will coordinate and schedule these audits with the City. Representatives from the City, the Contractor, and/or City’s consultants may also participate and observe the audits. Audits shall be performed one in spring and one in fall of each year. Once a date has been selected, the Contractor and City will collaborate to identify route(s) in order to secure a target volume of 30 tons per audit. Loads will be taken from different routes or truck numbers representing a typical breakdown between both commercial and residential sectors and different Collection days.

c) Single Stream Recyclables Waste Characterization Audit Methodology. Contractor will conduct waste characterization audits using the following methodology:
1. Prior to each waste characterization audit, all bunkers at the GreenWaste MRF will be cleaned out such that they are free of material; and the selected volume of single stream Recyclable Materials from City will be delivered by the Contractor and weighed on the inbound scale.

2. The single stream Recyclable Materials from Contractor’s collection vehicles will be unloaded on the floor of the GreenWaste MRF.

3. Recyclable Materials will then be “fed” onto the Processing line.

4. Recyclable Materials, by type, and residue will be sorted out and are placed in the appropriate bunker(s) and/or bin(s).

5. Recyclable Materials from bunker(s) and/or bin(s) will be removed and weighed individually.

6. Contractor will compile the data into a report that may include, but not be limited to, the tonnage information by commodity. The commodities include paper, cardboard, plastic, glass, metal, e-waste, residue, and any other categories as applicable.

   d) **Use of Audit Data; Residue.** The data from audits provided herein shall be used to calculate the percentage of MP and MRP in the City’s single stream recyclables. The residue within the MP amount will be kept to a minimum and not more than 2%.

   e) **Targeted Tons.** The MP and MRP individual percentages from waste characterization audits hereunder will be used to determine the target tonnage for MP and MRP that Contractor will attempt to deliver to domestic markets calculated as follows:

   1. \[ \text{Targeted MP Tons to be Delivered to Domestic Markets} = \frac{\text{Actual Tons of Single Stream Recyclables collected from City}}{\times \text{Percentage of MP}} \]

   2. \[ \text{Targeted MRP to be Tons Delivered to Domestic Markets} = \frac{\text{Actual Tons of Single Stream Recyclables collected from City}}{\times \text{Percentage of MRP}} \]

**SECTION 4. Compensation.**

a) **General.** Contractor shall be entitled to additional compensation for the increased expense associated with Domestic Materials Management. The parties acknowledge that Domestic and International prices for MP and MRP are determined by multiple factors including proximity to ports, quality of material, currency exchange, length of contract period, and market availability; and that actual prices Contractor receives from processors or brokers is affected by all these factors. Notwithstanding the foregoing, except as provided herein, this Amendment will not be construed as affecting compensation to Contractor described in Section 9.06 of the Contract, Compensation for Recyclable Materials or Attachment U, Recyclable Materials Profit (Loss) Methodology.

b) **Mixed Paper (MP).** Compensation to Contractor will be computed by the formulas below for MP.

\[ A = (IP) (T) \]
### Variable Description

<table>
<thead>
<tr>
<th>Description</th>
<th>Variable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor’s Adjusted Opportunity Cost</td>
<td>A</td>
</tr>
<tr>
<td>International Price</td>
<td>IP</td>
</tr>
<tr>
<td>($/ton from actual Contractor sales) ($150 for July 2022)</td>
<td></td>
</tr>
<tr>
<td>Actual MP Tons Delivered to Domestic Markets</td>
<td>T</td>
</tr>
</tbody>
</table>

\[
B = -(DP) (T)
\]

<table>
<thead>
<tr>
<th>Description</th>
<th>Variable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost to Deliver to Domestic Mill</td>
<td>B</td>
</tr>
<tr>
<td>Domestic Price</td>
<td>DP</td>
</tr>
<tr>
<td>($/ton from actual Contractor costs) (-$125 for July 2022)</td>
<td></td>
</tr>
<tr>
<td>Actual MP Tons Delivered to Domestic Markets</td>
<td>T</td>
</tr>
</tbody>
</table>

**MP Compensation to Contractor** = A + B, or

**MP Compensation to Contractor** = (IP - DP) * (T)

For Fiscal Year 2023, the Domestic price for MP is the difference between the Mixed Paper Price from the Pulp & Paper Producer Price Index published monthly by Fastmarkets RISI in Pulp & Paper Week (PPI) and the Brokerage fee. In subsequent Fiscal years this method of calculation of the Domestic Price may be changed by mutual agreement between City and Contractor. For illustrative purposes, in August 2022, the Southeast Mixed Paper price PPI published was $45, given that MP was sent to Louisiana. The maximum brokerage fee for Fiscal Year 2023 is $170/ton. Resulting in -$125 per ton for Domestic Price for the previous month, July 2022.

The International price shall be determined monthly by the actual sales of materials. If there are no International sales in a particular month, the International price shall be determined by the sales from the previous month.

Example for July 2022:

International Price = $150; Domestic Price = -$125;
Actual MP Tons Delivered to Domestic Markets = 313.605 tons

\[
\text{MP Compensation to GW} = 150 - (-125) \times 313.605 \text{ tons} = 86,241.38
\]

Contractor shall report the actual tonnages delivered to Domestic markets and calculate the City’s compensation to Contractor on a monthly basis and itemize it in the monthly invoice. The actual MP Tons Delivered to Domestic markets in the compensation calculation shall not exceed the targeted MP Tons as determined in Section 3(e) of this Amendment. Contractor shall indicate the appropriate MP prices used based on location from PPI for the compensation calculation. Contractor shall provide the City:

1. Copies of purchase orders and proof of monthly payment received from the International sale of MP
2. Copies of monthly invoices and payments to the domestic mill for MP delivered
3. Copies of the complete PPI for both the Domestic and export indexes on a monthly basis
(4) Copies of documentation indicating the Domestic brokerage fee, if applicable

c) Mixed Rigid Plastics (MRP). Compensation to Contractor will be computed by the formulas below for MRP.

\[ A = (IP)(T) \]

<table>
<thead>
<tr>
<th>Description</th>
<th>Variable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor’s Adjusted Opportunity Cost</td>
<td>A</td>
</tr>
<tr>
<td>International Price ($/\text{ton from actual Contractor sales}$) ($220) for July 2022)</td>
<td>IP</td>
</tr>
<tr>
<td>Actual MRP Tons Delivered to Domestic Markets</td>
<td>T</td>
</tr>
</tbody>
</table>

\[ B = -(DP)(T) \]

<table>
<thead>
<tr>
<th>Description</th>
<th>Variable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost to Deliver to Domestic Processor</td>
<td>B</td>
</tr>
<tr>
<td>Domestic Price ($/\text{ton from actual Contractor cost}$) ($220) for July 2022)</td>
<td>DP</td>
</tr>
<tr>
<td>Actual MRP Tons Delivered to Domestic Markets</td>
<td>T</td>
</tr>
</tbody>
</table>

MRP Compensation to GW = A + B, or

MRP Compensation to GW = (IP - DP) (T)

The International price shall be determined monthly by the actual sales of Recyclable Materials. If there are no International sales in a particular month, the International price shall be determined by the sales from the previous month. The Domestic Price shall be determined monthly by the actual sales of materials.

Example for July 2022:

International Price = $220; Domestic Price = $220;
Actual MP Tons Delivered to Domestic Markets = 11.615 tons

MRP Compensation to GW = $220 - ($220) * 11.615 tons = $0

Contractor shall report the tonnages delivered and calculate the City’s compensation to Contractor on a monthly basis and itemize it in the monthly invoice. The actual MRP Tons Delivered to Domestic Markets in the compensation calculation shall not exceed the Targeted MRP Tons as determined in Section 3(e) of this Amendment. Unless the actual MRP Tons delivered to Domestic markets is zero and the City has been notified, then the tonnages may be carried over to a subsequent month for delivery and compensation calculation.

Contractor shall provide the City:
(1) Copies of purchase orders and proof of monthly payment received from the international sale of MRP.

(2) Copies of monthly invoices and payments to the domestic processor for MRP.

d) **Annual Limit on Additional Compensation.** Contractor’s additional compensation for the Domestic Materials Management program specified in this Amendment is subject to an annual limit to be established by the City. City, in its sole discretion, may evaluate and adjust the limit on additional compensation on an annual basis via the City’s budget development process, as approved by City Council. If the limit is not adjusted in a given Fiscal Year, then the limit from the previous Fiscal Year shall apply. The limit for Fiscal Year 2023 is $1,200,000. If this limit is not adjusted, the limit shall remain at $1,200,000 per fiscal year for the remainder of the Contract term. If this limit, or the established limit in subsequent Fiscal Years, is reached during any single Fiscal Year, Contractor will have the right to redirect MP and MRP materials in International markets until City provides notice of and establishes a new limit.

**SECTION 5. Advance Notice to City Regarding Contractor’s Ability to Implement Program.** Contractor shall notify City, at the earliest time practicable, of any occurrence that materially affects the Contractor’s ability to implement the Domestic Materials Management program specified in this Amendment, including:

(1) If, by March 31 of each Fiscal Year, the annual limit on additional compensation will not be reached through the MP and MRP tonnage, Contractor shall notify the City and maximize the use of Domestic markets for cardboard, or other Sorted Recyclables approved by the City, with the remaining funds if so directed by the City.

(2) Contractor anticipates reaching the annual limit on additional compensation before the end of the Fiscal year

(3) Contractor becomes aware that Domestic markets are not available for MP, MRP, cardboard, or other Sorted Recyclables or if markets are anticipated to not become available on any upcoming fiscal year.

**SECTION 6. Full Force and Effect.** Except as provided herein, all other provisions of the Contract shall remain in full force and effect. In the event of any conflict between the Agreement and this Amendment, this Amendment shall apply.

**SECTION 7. Due Execution.** The person(s) executing this Amendment on behalf of a Party hereto warrant(s) that (i) such Party is duly organized and existing; (ii) such person(s) are duly authorized to execute and deliver this Amendment on behalf of said Party; (iii) by so executing this Amendment, such Party is formally bound to the provisions of this Amendment; and (iv) entering into this Amendment does not violate any provision of any other agreement to which said Party is bound.

**SECTION 8. Counterparts.** This Amendment may be executed in counterparts, each of which shall be considered an original.

[SIGNATURES ON FOLLOWING 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

______________________________
City Manager

APPROVED AS TO FORM:

______________________________
City Attorney or Designee

GREENWASTE OF PALO ALTO, LLC

Officer 1

By: ___________________________

Name: __ Tracy M. Adams ________

Title: ___ Chief Executive Officer ___

Officer 2

By: ___________________________

Name: __ Greg Ryan _____________

Title: ___ Vice President & COO ___
Summary Title: Approval of Contract S20178749 Amendment No. 3 with LCT SOFTWARE

Title: Approval of Contract S20178749 Amendment No. 3 with LCT SOFTWARE, LLC in the Amount of $72,924 for a New Not to Exceed Amount of $247,254 for Electronic Document Review Software related to the City’s Land Use and Permitting System Through December 31, 2023

From: City Manager

Lead Department: Planning and Development Services

Recommendation
Staff recommends that City Council approve and authorize the City Manager or their designee to execute Contract S20178749 Amendment No. 3 With LCT SOFTWARE, LLC in the amount of $72,924 for a new not to exceed amount of $247,254 for electronic document review software related to the city’s land use and permitting system through December 31, 2023.

Background
This staff report presents Amendment No. 3 to Contract S20178749 with LCT SOFTWARE, LLC (LTC) for a 12-month extension. The software enables electronic document and plan set review and processing of permit and entitlement applications in conjunction with the City’s land use and permitting software (Accela). This amendment is required for the continuity of services as staff complete the RFP process before the summer of 2023. The City will not have to pay the entire $72,924 as LTC will bill the City on a quarterly basis should the City transition to another firm within the calendar year 2023.

Discussion
The Planning and Development Services Department (PDS) entered into a contract with LTC SOFTWARE, LLC for technology related to enabling electronic document reviews in April 2020, allowing for the electronic processing of plans and permit applications. An
initial request for proposal (RFP) was executed in August 2021; however, the City received a protest against the intent to award in Oct 2021 and made the determination to cancel the RFP. On December 13, 2021, City Council approved Amendment No. 2 with LCT SOFTWARE, LLC, in the amount of $70,800 for the continuity of services through the calendar year 2022. Further information, background, and discussion can be found online.¹

On August 22, 2022, the City re-issued a request for proposal for these services. The City received four responses and is in the process of reviewing and evaluating the proposals. Staff anticipates that the RFP process will conclude in Spring 2023. Staff will bring forward the results to the City Council with a new multi-year contract based on the outcome of the RFP process.

At this time, for the continuity of city services, staff recommends Amendment No. 3 to extend the contract through December 31, 2023. LCT SOFTWARE, LLC will bill the City on a quarterly basis, and should the City transition to another firm within the calendar year 2023, the City will not pay the entire $72,924.

**Resource Impact**
Funding for this service is available in the FY 2023 Adopted Operating Budget. Costs are offset by revenue from planning and permit fees.

**Environmental Review**
This project is exempt from environmental review under Section 15061 of the California Environmental Quality Act Guidelines.

**Attachments:**
Attachment5.a: Attachment A: LCT SOFTWARE, LLC Contract; S20178749 Amendment No. 3 (PDF)

AMENDMENT NO. 3 TO CONTRACT NO. S20178749
BETWEEN THE CITY OF PALO ALTO AND LCT SOFTWARE LLC. (DigEplan)

This Amendment No. 3 (this “Amendment”) to Contract No. S20178749 (the “Contract” as defined below) is entered into as of December 12, 2022, by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and LCT Software, LLC aka DigEplan, a California corporation, located at 4500 140th Avenue North, Suite 101, Clearwater, Florida, 33762 ("CONSULTANT"). CITY and CONSULTANT 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 subscription to software applications and platforms, as detailed therein.

B. The Parties now wish to amend the Contract in order to extend the term of the contract by one year to December 31, 2023 and increase the compensation by $72,924.00, from $174,330.00 to $247,254.00.

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

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

a. **Contract.** The term “Contract” shall mean Contract No. S20178749 between CONSULTANT and CITY, dated April 13, 2020, as amended by:

   Amendment No.1, dated April 1, 2021
   Amendment No.2, dated December 13, 2021

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 “Subscription Fees and Term” of the Contract is hereby amended to read as follows:

1. Subscription Fees

   Subscription Fees for the 1st year (April 1, 2020 to March 31, 2021) shall amount to a total of $59,160 for an enterprise license for unlimited users. The 2nd year Subscription Fees shall be $44,370 for a 9-month renewal (April 1, 2021 to December 31, 2021) for the DigiEPlan V4 Enterprise at a quantity of 9. The 3rd year Subscription Fee shall be $70,800 for a 12-month renewal (January 1, 2022 to December 31, 2022) for the DigEplan V4 Enterprise on 100 User

Vers.: Aug. 5, 2019

Page 1 of 3
Subscriptions. Additional subscriptions may be purchased for $59 per User Subscription per month. The 4th year Subscription Fee shall be $72,924 for a 12-month renewal (January 1, 2023 to December 31, 2023) for the DigEplan V4 Enterprise on 100 User Subscriptions.


3. Contract not to exceed $247,254.00.

SECTION 3. 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 4. 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

City Manager

APPROVED AS TO FORM:

City Attorney or designee

LCT SOFTWARE, LLC. (aka DigEplan)

Officer 1

By: [Signature]
Name: Jason Matthews
Title: Chief Channel Officer

Officer 2 (Required for Corp. or LLC)

By: [Signature]
Name: Jay Mayne
Title: Chief Financial Officer

Attachments: None
Title: Approval of Lease and License of 300 Homer Ave. Roth Building between the City of Palo Alto and the Palo Alto Museum

From: City Manager

Lead Department: Administrative Services

Recommendation
Staff recommends that the City Council review and approve the following:

1) Approve and authorize the City Manager or their designee to execute the lease agreement by and between the City of Palo Alto as landlord and Palo Alto History Museum as tenant ("Lease Agreement") for the use of 300 Homer Ave. (Roth Building) for a term of 40 years in an amount not to exceed $40.
   a. Approve and authorize the City Manager or their designee to execute the License Agreement, Exhibit C to the Lease Agreement, for the use of the City Archives Room, to house and service the City-owned Historic Archives, to be built as part of the rehabilitation of 300 Homer Ave. with the City contributing to 9.6% of annual facility maintenance and operations including annualized capitalized investment costs of 300 Homer Ave. over the term of the Lease Agreement.

Executive Summary
Approval of the Lease Agreement and License Agreement will begin a 40-year agreement for the rehabilitation and use of the Roth Building (300 Homer Ave.) by the Palo Alto History Museum ("the Museum") for the development and provision of a history museum for community use. This action reflects approval of two of the three necessary documents for construction to begin on this rehabilitation. These documents provide for the use of the facility at a rental cost of $1 per year with the City responsible for its fair share (9.6%) of the operating and maintenance costs of the building as a result of the City’s use of 1,305 square feet for the City-owned Historic Archives. Community facilities will be provided upon completion of the rehabilitation of the facility including three rooms of various size and use, ranging from a multipurpose room, classroom, and conference room. The Museum, upon completion of the rehabilitation work, will open within 12 months of substantial construction completion, and will be open to the public for a minimum of 20 hours per week.

The third and final document, a Tenant Work Letter, is in progress and provides the terms and conditions for the Museum’s rehabilitation and capital improvements to the site. This is
expected to be brought for Council consideration as soon as feasible. Staff and the Museum are working on final language, updated construction costs, and the expected Museum Contribution, specifically related to inclusion of the federal earmark of $3 million that is expected to support this project.

**Background**

In April 2000, the City Council approved the $1,957,000 purchase of the Roth Building and its 0.41 acre site for potential development as a “public facility or alternative use if a public facility is not feasible,” in conjunction with the South of Forest Avenue Coordinated Area Plan (SOFA CAP). On May 20, 2002, Council approved a Request for Proposals (RFP) and directed staff to solicit proposals for the lease of the Roth Building. The RFP specified that preference be given to non-profit groups located in or serving Palo Alto, that the property be improved and operated at no cost to the City, and that public access to the Roth Building restrooms by users of the neighboring park be provided.

In response to the RFP, one proposal was received in November 2003 from the Palo Alto Museum (The Museum or PAM). The Museum proposed to restore, preserve, and improve the historic Roth Building for use as a history museum. The Museum’s proposal was accepted by the Council in April 2004, at which time staff sent the Museum a draft Option and Lease Agreement for its review. On May 14, 2007, Council authorized the Mayor to execute the Option Agreement. The Option Agreement (2007 Lease Option) was executed on June 22, 2007 with a twenty-four-month term.

Since 2007, The Museum personnel and City staff have examined a variety of proposals to fund the capital and operating needs of the Roth Building Museum. Although the City Council extended the 2007 Lease Option several times, in late 2018 the 2007 Lease Option lapsed and is no longer in effect. Additional background information is provided by prior staff reports listed in Attachment B.

On June 21, 2021, as part of the FY 2022 budget adoption, the Council approved various actions related to the use and funding of the Roth Building and long term lease (CMR:12307, Minutes). Council directed staff to use a combination of the following funds to finance the rehabilitation of the building: Stanford University Medical Center Fund, Parks Impact Fees, and Community Center Impact Fees. In addition, as part of the FY 2023 budget adoption, the Council approved a Roth Building Rehabilitation Phase 1 capital project (PF-23001). Below is a summary table of the City’s contributions for the $10.5 million remaining project costs of the $12.3 million Roth Building rehabilitation as approved by the Council in June 2021. This work is intended to produce a “warm shell” at 300 Homer Avenue for further development and use by the Museum as a history museum.

- TDR proceeds + $1.0 million contribution from the General Fund  $5.1 M

---

1 This figure reflects the estimated cost by the Museum previously. This does not reconcile to include City costs for the restoration of the public art, City staff or City contractual services resources for this project.
• Library impact fees designated for the establishment of the City archives $0.3 M
• Stanford University Medical Center (SUMC) Funds – Community & Infrastructure $2.0 M
• Community Center Impact Fees $1.65 M
• Parks Impact Fees $0.35 M

Since August 2021, City staff has been meeting with representatives of the Museum including their legal team. The parties mutually agreed that it was essential to work out the key lease terms in order to begin preparing a new lease agreement structured on those key terms. As an interim check-in staff met with Council in closed session on August 21, 2021. Council provided input on draft key lease terms. Pursuant to Council’s input during closed session, staff has continued to meet with representatives of the Museum on the draft terms, which are outlined below. The parties reached tentative agreement on many of the key terms for a new lease agreement. On November 15, 2021, the Council reviewed a list of key terms and provided City staff and the Museum direction on areas including: expectations for fee-setting, financial responsibilities for a security deposit, long-term maintenance, City fees, prevailing wage compliance, and payment and performance bonds.

MOTION: Mayor DuBois moved, seconded by Council Member Kou to:
A. Direct Staff to complete lease negotiations with Palo Alto History Museum in alignment with terms outlined in the staff report with following additional guidance:
   i. $10,000 security deposit;
   ii. Museum is responsible for long term maintenance;
   iii. Proceed with principles outlined in the presentation on the community room/facilities;
   iv. Reimburse the permit and processing fees and the City to pay for the payment/performance bonds;
   v. Museum is responsible for prevailing wage compliance payment of $15,000;
   vi. Staff to develop a contingency plan in the event that the museum does not meet its operating commitment (to be defined), which would allow the City to find other uses of the building;
B. Request Staff to return with a lease and budget amendment within 90 days or sooner; and
C. Extend the permit approvals when requested.

MOTION SPLIT FOR THE PURPOSE OF VOTING PART A – ii, iii, v, vi AND PART C OF MOTION PASSED: 6-1, Tanaka no PART A – i, iv AND PART B OF MOTION PASSED: 5-2, Cormack, Tanaka no

Staff brought forward a status update for Council as part of a closed session item, and an ad hoc committee was created by the Mayor to assist in finalizing discussions between parties. Mayor Burt and Councilmember Stone were assigned to the ad hoc committee in June 2022.

Discussion
Over the past year, City staff and the Museum have been corresponding regularly regarding three legal documents to formalize the current and long-term relationship between the parties:

1) **Lease Agreement**: This is a Lease Agreement by and between the City of Palo Alto as landlord and Palo Alto History Museum as tenant at the Roth Building 300 Homer Ave.
2) **License Agreement**: This is an exclusive License Agreement for the City Archives Room, referenced as Exhibit C to the Lease Agreement, and grants the City the license to use the “archives room.”
3) **Tenant Work Letter**: This is a Tenant Work Letter (TWL) for the Roth Building Warm Shell rehabilitation, referenced as Exhibit D to the Lease Agreement, and sets forth the terms and conditions for planned Phase 1 “warm shell” rehabilitation of the building including project funding.

Each of these agreements provide direction over different components of the relationship between the parties and their authorized representatives. Below is a summary of terms included in the two agreements recommended for approval in this item. The agreements, containing the full terms and conditions, can be found in the attachments.

As an exhibit to the Lease Agreement, a Tenant Work Letter is in progress that provides the terms and conditions for the museum’s rehabilitation and capital improvements to the site. This is a similar agreement structure to that used for the building of the new Palo Alto Museum and Zoo, however, the terms have been adjusted to reflect the unique parameters of this partnership. This is expected to be brought for Council consideration as soon as feasible. Staff and the Museum are working on final language, estimated costs, and the expected Museum Contribution, namely the federal earmark of $3 million that is expected to support this project.

### Roth Building – Lease Agreement

<table>
<thead>
<tr>
<th>Lease Provision</th>
<th>Summary of Key Terms</th>
</tr>
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</table>
| **2. Premises** | Roth Building (300 Homer Avenue); Museum will lease entire building, including exclusive use and control of the surrounding premise  
- City will have exclusive use of the restrooms on the northeast side for restrooms for Heritage Park (“Heritage Park Restroom”). |
| **3. Tenant Use** | Restore, preserve and improve the Building as an historic asset and make available to the Palo Alto community through displays; exhibits; interactive demonstrations; workshops; classes and lectures.  
- Open to the public within 12 months of substantial completion of initial tenant improvements (outlined in the |
# Roth Building – Lease Agreement

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<thead>
<tr>
<th>Lease Provision (Section #)</th>
<th>Summary of Key Terms</th>
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<tr>
<td>TWL).</td>
<td>Open to the public for a minimum of 20 hours per week</td>
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<td></td>
<td>Fee schedule to be approved by City and not unreasonably withheld or delayed</td>
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<td>Museum may use facilities for fundraising activities and rental for corporate/private events</td>
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<td></td>
<td>“Community Rooms” are areas for community center use and to be managed by mutual agreement between parties</td>
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<td></td>
<td>City will not be charged a use fee by Museum for City events other than direct costs attributable to the City’s use</td>
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<td></td>
<td>Parties may mutually agree to discuss repayment of Community Center Impact Fees in the future to the extent legally permissible and enter into a separate agreement to complete this.</td>
</tr>
</tbody>
</table>

4. **Lease Term:** 40-years, commencing upon mutual execution of the lease.

5. **Rent:** $1 per year.

7. **Annual Reporting**
   - Museum will file the Form 990 (or the applicable successor form) with the IRS as required by law and concurrently deliver a copy to City Manager or City Manager’s designee.
   - Museum will provide City with annual reporting documents necessary to comply with restricted funds and grants used to fund the Initial Tenant Improvements.

9. **Security Deposit:** *Per Council Direction*, $10,000 security deposit

10. **Initial Tenant Improvements:** Complete the Initial Tenant Improvements per the terms and conditions specified in the TWL.

12. **Assurance Of Construction Completion**
   - Payment and performance bond are to be obtained as outlined in the TWL

16. **Maintenance Obligation of the Museum**
   - Museum responsible for all maintenance costs and repair, including provision of a maintenance plan. Costs exclude those outlined in section 17.
   - Cost may include but are not limited to: landscaping, electrical, plumbing, the roof, security system, windows,
<table>
<thead>
<tr>
<th>Lease Provision (Section #)</th>
<th>Summary of Key Terms</th>
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</table>
| 17. Maintenance Obligation of City | City responsible for the maintenance, repair and replacement, of the Public Parkside Restroom and the City Archives Room. Costs include:  
- the repair and replacement of fixtures, wall and floor coverings, and doors.  
- public sidewalks, trees and landscaping between the public sidewalk and street  
- public Parkside restroom and archives facilities  
- maintenance and removal, as necessary, of trees immediately adjacent to the Building, including the oak tree in the Building’s courtyard.  
- maintenance, repair, protection, and any required restoration of the City’s Arnautoff Frescoes, including protection during construction of the Initial Tenant Improvements. The Parties acknowledge and agree that City’s foregoing obligations relate solely to the surface of the wall. City will complete any necessary refurbishment and repair of the Arnautoff Frescoes.  
- maintenance and repair of the water, electric and sewer lines serving the Public Parkside Restroom. |
| 18. Utilities | Museum responsible for all charges for utilities supplied to the Premises during the Lease Term  
- City is responsible for: obligations pursuant to the License Agreement and all utilities supplied to the Public Parkside Restroom and archives on a pro rata basis. |
| 21. Tenant Sublease Rights | Subleasing space for office purposes is permitted subject to compliance with City ordinances, rules and regulations, including the CUP.  
- Museum has right to sublease up to 25% of the useable space in the Premises for a for-profit food service operator and/or a for-profit gift/book shop operator.  
- Museum will have the right to assign its interest in this Lease to a non-profit organization who agrees to abide by the Lease terms and conditions if approved by City. |
As an exhibit to the Lease Agreement, there is a license agreement that provides the terms and conditions for the City’s exclusive use of the City Archives room, a 1,305 square foot room on the second floor. This space is intended to store the City’s historical documents and items that are currently in various locations such as Cubberley or storage rooms at City facilities. The City’s archive materials are owned by the City and currently managed by a contract between the Library Department and the Palo Alto Historical Association (PAHA). No change in the current operations of the City’s archives is expected, the only change expected is the location of the storage of the archives. The new storage will be a temperature-controlled room to assist in the preservation of the archive contents. Below is a summary of the license agreement, authorizing the City use of the archives room.

### Roth Building – License Agreement, Exhibit C to Lease Agreement

<table>
<thead>
<tr>
<th>License Provision (Section #)</th>
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</table>
| 1. **Archives Room**         | Guy Miller Archives room, on the 2nd floor, occupying 1,305 sq feet as designated on the drawings.  
• City will have access to necessary entry and exit common areas including but not limited to hallways, stairwells, restrooms etc. |
| 2. **Term**                  | This is linked with the termination of the Lease Agreement, 40-year term. There is no annual rent as the City is the owner of the facility. |
| 3. **Use**                   | Facility will be used for storage and/or display of the City’s official archives and records and any ancillary, legal related uses  
• Available during standard hours Monday – Friday (consistent with Exhibit C) and at other times that do not unreasonably interfere with Museum’s use  
• Public access to the Archives Room will be limited to those times the Museum is open to the public |
| 8. **Maintenance**           | City will maintain, replace, and repair the interior of the Archives Room and any systems exclusively serving |
| 9. **Operating Expense Reporting & Audit** | City will pay to Museum City’s proportionate share (“City’s Share”) of the Operating Expenses. City’s initial share is 9.6%.  
• Operating expenses are subject to annual reporting, audit at the City’s request and cost. |
| 10. **Operating Expense (Definition &** | Operating expenses include utilities and expenses for the repair, replacement and maintenance of the Building and the Building’s Exterior Common Areas with controllable expenses not to exceed a 3% |
Roth Building – License Agreement, Exhibit C to Lease Agreement

<table>
<thead>
<tr>
<th>Allowable Costs</th>
<th>Summary of Key Terms</th>
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<td>Increase annually. Examples of allowable costs include:</td>
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<td>- replacement and repair of building systems and equipment such as the HVAC system, elevator, life safety, sprinkler systems and roof</td>
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<tr>
<td>- the cost of utilities: water and sewer charges, electricity, trash pickup, janitorial services, ventilation, supplies</td>
<td></td>
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<td>- access control/security costs,</td>
<td></td>
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<td>- establishment of reasonable reserves for capital</td>
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<td>- the cost of all capital improvements or replacements, provided that, if any such improvement or replacement constitutes a capital expenditure under generally accepted accounting principles.</td>
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</tbody>
</table>

Stakeholder Engagement
Staff met with representatives of the Museum including their counsel to discuss and negotiate the lease terms. Over these final 4 months, teams have maintained a weekly cadence to ensure continued progress including support and meeting with the ad hoc City Council members.

Resource Impact
The City and the Museum have spent significant resources to reach these agreements. Over the past year or so, staff have dedicated significant staffing resources and outside legal support. A FY 2023 Mid-Year budget amendment is expected recommending appropriation of $100,000-$200,000 to fund the legal contractual services needed to complete these documents.

More significantly, there are varied impacts associated with the execution of these agreements. A) capital investment, B) maintenance and operations, and C) other miscellaneous costs.

(A) Capital Investment: Council approved the Roth Building Rehabilitation Phase 1 capital project (PF-23001) as part of the FY 2023 adopted budget with $11 million in funding to complete the rehabilitation of the Roth Building based on estimated costs at the time. Funding was identified from various sources including impact fees, Stanford University Medical Fund, General Fund/Infrastructure Reserve, grant funds (as applied for by the Museum), and proceeds from the sale of transfer of development rights (TDRs). Construction costs are estimated to have increased over $1.3 million due to inflation since the approval of the prior funding plan. The forthcoming TWL in progress will reflect revised funding allocations which recognize and allocate additional grant funding from the County of Santa Clara and most significantly, an additional $3 million received through a federal earmark with the assistance of Congresswoman Anna Eshoo. These federal funds are to be used for the restoration and
rehabilitation of the Museum and will be critical to enabling the completion of this warm shell phase 1 of the project.

(B) Maintenance and Operations City Share: The City is responsible for ongoing costs associated with the following items during the lease term. The cost for these services are unknown at this time but will be reported out through the annual budget process once the facility is rehabilitated and open.

- City is solely responsible for the cost of the public sidewalks and landscaping between the sidewalk and street, trees including the trees immediately adjacent to the Roth building, public restroom, and Arnautoff frescos (public art). This includes utility costs, janitorial costs, and supplies.
- City is responsible for a proportional share of operating expenses, as allocated by the Museum in alignment with allowable expenses in the license and subject to annual audit, for use of the City Archives facility (9.6%) based on square footage. These costs will be paid to the Museum on a monthly basis.

These ongoing maintenance and operating costs will be brought forward as part of the base budget development, pending approval of these agreements, once these spaces are ready for occupancy.

(C) Other Miscellaneous Costs: The City Council has provided some direction for the City to cover some costs already, including reimbursement of permit and processing fees and the City to pay for the payment/performance bonds (total cost estimated at $175,000). Staff anticipate bringing a recommended budget amendment to appropriate these funds in the FY 2023 Mid-Year Budget Review with funding to be taken from the Budget Stabilization Reserve. In addition, the City will either be responsible or need to partner with the Museum in the purchase of fixtures and furnishings for “community facilities” spaces such as the community room and the Guy Miller Archives Rooms. Upon completed rehabilitation, these spaces will be provided to the City in the form of a “warm shell” and will need to be further outfitted for productive use.

Timeline
Palo Alto Museum will assume responsibility for the property upon execution of these documents. It is expected that the history museum and their contractor Vance Brown will begin construction work as soon as practicable.

Environmental Review
Approval of the lease and license agreements is categorically exempt from the requirements of the California Environmental Quality Act under Article 19, Section 15301, existing facilities.

Attachments:
- Attachment6.a: Attachment A - Lease Agreement
- Attachment6.b: Attachment B - License Agreement
LEASE AGREEMENT

BY AND BETWEEN

CITY OF PALO ALTO

AS LANDLORD

AND

PALO ALTO HISTORY MUSEUM

AS TENANT

ROTH BUILDING
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This Lease Agreement is made this ______ day of ________, 2022 (the “Effective Date”), by and between the City of Palo Alto, a California chartered municipal corporation (“City”), and the Palo Alto History Museum, a California nonprofit public benefit corporation (“Museum”) (individually, a “Party” and, collectively, the “Parties”).

RECITALS:

A. In April 2000, City purchased the real property and improvements located at 300 Homer Avenue, Palo Alto, Santa Clara County, California, which includes the building commonly referred to as the “Roth Building” as depicted on Exhibit A attached hereto (the “Building”).

B. On May 20, 2002, City’s City Council (the “Council”) approved a request for proposals for leases of the Building. The RFP specified that preference be given to non-profit groups located in or serving Palo Alto, that the Building be improved and operated at no cost to the City and that public access to the Building’s Public Parkside Restroom (as defined below) be provided to users of the neighboring City park.

C. In November 2003 Museum submitted a proposal to lease the Building for the purpose of (a) developing and operating the Building for use as a history museum and (b) restoring and preserving the Building. Council ultimately accepted Museum’s proposal. Pursuant to the terms of a lease option agreement between City and Museum dated June 22, 2007 (the “Lease Option”), City granted Museum an exclusive option to lease the Building. During the 24-month period during which Museum could exercise its option (the “Original Option Term”), Museum was to develop specific plans, obtain financing, and satisfy other covenants, terms and conditions set forth therein prior to exercising the option and implementing the project described in the foregoing proposal.

D. Following execution of the Lease Option, Museum and City staff examined a variety of proposals to fund the capital and operating needs of the project described therein. During this period, the Original Option Term was extended multiple times by the Parties to provide Museum additional time to satisfy the conditions to proceed with such project. The Museum did not exercise the option and the Lease Option ultimately expired on November 30, 2018. The Lease Option is of no further force or effect.

E. Following expiration of the Lease Option, the Parties continued informal discussions about the lease of the Building and implementation of the foregoing project. This included completion of right to entry agreements with the Museum in February 2019, amended in May 2019 and January 2020 and a new right of entry entered into October 14, 2021 for up to six months.
F. As part of the FY 2022 Adopted Budget process, on June 21, 2021 Council approved a new path forward for the Project (defined below) directing City staff to use a combination of funding sources, including funds raised by the Museum, restricted impact fees and certain grant funding, to provide $10.5 million towards the anticipated $12.3 million cost to rehabilitate the Building to produce a “warm shell” for Museum to occupy and use the Building. The Parties acknowledge that City’s contribution of such funds is conditioned upon Museum’s compliance with requirements necessary to support the use of certain restricted funds for the Project.

G. To effectuate the Project and City’s goals for the Building in accordance with the FY 2022 Adopted Budget, City desires to lease the Building to Museum and provide funds for the Project in accordance with the covenants, terms and conditions set forth below.

H. The exterior front wall of the Building that faces the courtyard contains the Victor Arnautoff Frescoes depicting the history of medicine (the “Arnautoff Frescoes”). These frescoes have been accessioned into the City Art Collection and will be protected, repaired and maintained by City as its sole cost in accordance with this Lease.

NOW, THEREFORE, in consideration of the covenants, terms and conditions, the Parties mutually agree, as follows:

1. DEFINITIONS

“Alterations” has the meaning set forth in Section 11(A) of this Lease.

“Arnautoff Frescoes” has the meaning set forth in Recital H of this Lease.

“Arnautoff Frescoes Grant” means the January 27, 2022 $105,150.00 grant from Santa Clara County HGP (Historic Grant Program) for the rehabilitation of the Arnautoff Frescoes.

“Base Rent” has the meaning set forth in Section 5(A) of this Lease.

“Building” has the meaning set forth in Recital A of this Lease.

“Building’s Exterior Common Areas” has the meaning set forth in Section 16(A) of this Lease.

“City” has the meaning set forth in the introductory paragraph of this Lease.

“City Archives Room” has the meaning set forth in Section 3(A) of this Lease.

“City Manager” means the then serving City Manager of the City.
“Commencement Date” means the date that the Parties mutually execute the Tenant Work Letter in accordance with Section 10 of this Lease.

“Community Rooms” has the meaning set forth in Section 3(A) of this Lease.

“Council” has the meaning set forth in Recital B of this Lease.

“County Grant Agreements” means the grants awarded and established for the rehabilitation of the Building are set forth in Exhibit F attached hereto which will be used to partially fund the Project. The Parties acknowledge that the Arnautoff Frescoes Grant is not part of the Project.

“CUP” means the Minor Architectural Review and Conditional Use Permit Approval 18PLN-00321.

“Effective Date” has the meaning set forth in the introductory paragraph of this Lease.

“Hazardous Materials” has the meaning set forth in Section 25(A) of this Lease.

“Initial Tenant Improvements” means Museum’s rehabilitation and improvement of the Premises performed in accordance with the Tenant Work Letter.

“Lease” means this Lease Agreement, including all exhibits and schedules hereto, and any amendments thereto.

“Lease Option” has the meaning set forth in Recital C of this Lease.

“Lease Term” has the meaning set forth in Section 4 of this Lease.

“License Agreement” means the License Agreement attached hereto as Exhibit C and incorporated herein by reference.

“Maintenance Plan” has the meaning set forth in Section 16(B).

“Museum” has the meaning set forth in the introductory paragraph of this Lease.

“Original Option Term” has the meaning set forth in Recital C of this Lease.

“Party” and “Parties” have the meaning set forth in the introductory paragraph of this Lease.

“Premises” means the Building, provided that, upon completion of the construction of the Public Parkside Restroom, the Premises shall expressly exclude the Public Parkside Restroom.

3
“Project” means the rehabilitation of the Building contemplated by the Tenant Work Letter.

“Public Parkside Restroom” has the meaning set forth in Section 3(A).

“Real Property Manager” means the then serving Real Property Manager of the City.

“Rent” means Base Rent and any other amounts payable hereunder from Museum to City unless otherwise specified herein.

“Security Deposit” means the sum of Ten Thousand Dollars ($10,000) to be held by City in accordance with Section 9.

“Tenant Work Letter” has the meaning set forth in Section 10 of this Lease.

2. LEASE OF PREMISES

A. In consideration for the obligations of Museum hereunder, and for other consideration as specified herein, City does hereby lease to Museum and Museum does hereby hire and take from City the Premises upon the terms and conditions of this Lease. The purpose of this Lease is to allow Museum to undertake the Project and the construction of the Initial Tenant Improvements in accordance with the Tenant Work Letter, and upon completion of the Initial Tenant Improvements, to develop and operate the Premises as a history museum open to the public, according to the covenants, terms and conditions of this Lease.

B. Landlord will tender possession of the Premises to Museum on the Commencement Date. Notwithstanding the foregoing, during normal business hours or as otherwise reasonably agreed to in advance by City, Museum and its agents and representatives may enter the Premises in accordance with this Section 2 to inspect the Premises and/or if related to the preparation of the Tenant Work Letter. Prior to such entry Museum will deliver to City certificates of insurance for all insurance that Museum is required to maintain under this Lease. If Museum enters the Premises before the Commencement Date under this Section 2, all of the terms and provisions of this Lease will apply to Museum’s entry on and use of the Premises, and Museum will abide by all of such terms and provisions, provided that Museum will owe no Base Rent for the period of such early access.

C. Museum accepts the Premises in “AS IS, WHERE IS” condition and configuration without any representations or warranties by City, and subject to all matters of record and all applicable laws, ordinances, rules and regulations, with no obligation of City to make repairs, alterations or improvements to the Premises except as expressly provided in this Lease. Museum acknowledges that it has had a right of access to the Premises under the Lease Option and via right of entry agreements and prior to execution
of this Lease and has therefore been afforded a full opportunity to inspect all aspects of
the Premises, its state of maintenance and repair, and based thereon, accepts
possession of the Premises in its current condition.

D. Upon completion of the construction of the Public Parkside
Restroom, the Museum will turn over the Public Parkside Restroom to the City, and
thereafter, the Premises will expressly exclude the Public Parkside Restroom, and, except
to the extent caused by the gross negligence or willful misconduct of Museum or
Museum’s Agents (as defined below), City will be solely responsible and liable for the
use, operation, repair, maintenance and replacement of the Public Parkside Restroom.

3. REQUIRED, PERMITTED, AND OPTIONAL SERVICES AND USES

Museum enters into this Lease with a desire to restore, preserve and improve the
Building as an historic asset and make that asset available to the Palo Alto community in
the following ways: through displays; exhibits; interactive demonstrations; workshops;
classes and lectures. Museum further desires to use the Building to provide a place to
learn about the people, places and events that played a part in Palo Alto history. In
furtherance of the foregoing, during the Lease Term the following required, permitted, and
optional services and uses will be provided, permitted or prohibited on the Premises,
including any additions or modifications to the Premises as may be approved by City.

A. Required Services and Uses. Throughout the Lease Term, Museum
will provide the following services and engage in the following uses at the Premises:

1. Rehabilitation, preservation and improvement of the Building
as contemplated by the Tenant Work Letter.

2. As part of the Initial Tenant Improvements, Museum will
construct a restroom on the northeast side of the Building as shown on Exhibit B that will
be made available and accessible by the City at no charge to the public, including users
of the adjacent City park commonly known as Heritage Park, which is accessible from the
exterior of the Building (the “Public Parkside Restroom”) (subject to City’s
responsibilities for maintenance and repair set forth in Section 17 hereof).

3. Displays, exhibits and demonstrations relating to local history.

4. Subject to force majeure delays as described in Section 37
below, within twelve (12) months following the date of substantial completion of the Initial
Tenant Improvements in accordance with the Tenant Work Letter, Museum will be open
to the public for a minimum of twenty (20) hours per week, except as otherwise provided
or permitted under this Lease. Subject to City’s prior written approval of the fee schedule
to be used by Museum (including prior written approval of any changes to a previously
approved fee schedule), with such approval not unreasonably withheld or delayed, during
the Lease Term Museum may charge (i) admission fees to the Premises operated as a
museum, (ii) membership fees to members of the Museum and (iii) fees to members and non-members for their special private use events held at the Premises.

5. As part of the Initial Tenant Improvements, Museum will construct the portion of the Building to be used as a community meeting room(s) identified as “Community Center Use” areas on Exhibit B which will be made available for use by neighborhood/community groups and the City (“Community Rooms”). The terms and policies of such use (including reservation procedures and use fees and charges) will be determined by mutual agreement of the City and Museum prior to the opening of such Community Rooms for the uses described herein and may be reasonably adjusted by mutual agreement of the City and Museum from time to time. When establishing and subsequently modifying the foregoing terms and policies, the Parties will endeavor to ensure that such terms and policies are consistent with the principles set forth in Exhibit E attached hereto.

While in no way limiting City’s rights under the License Agreement, the Parties acknowledge and agree that City may reserve and use Community Rooms and other rooms in the Premises for City sponsored events and other City purposes and City will not be charged a use fee by Museum for such use provided that City will reimburse Museum for any direct costs attributable to City’s use which are not included in the Premises’ general Operating Expenses (as defined in the License Agreement), such as additional janitorial or security services incurred for the specific use. Notwithstanding the foregoing, if City intends to reserve and use any portion of the Premises not deemed part of the Community Rooms, City will provide reasonable prior notice to Museum of City’s proposed use and Museum will have the right to refuse such use by City if Museum use of such non-Community Room space at the time of City’s proposed use will conflict with City’s use, as the Parties acknowledge that Museum’s use of the non-Community Room space will take priority over City use.

6. As part of the Initial Tenant Improvements, Museum will construct the portion of the second floor of the Building to be used for the storage and display of City’s official archives identified on Exhibit B (the “City Archives Room”). During the Lease Term, City will have the exclusive right to use the City Archives Room in accordance with the terms of License Agreement.

7. The use of the Premises by Museum and its agents and representatives will at all times comply with the requirements and conditions associated with the impact fees (pursuant to California Government Code Section 66000 et seq. and Palo Alto Municipal Code chapter 16.58) and grants used by the Parties to contribute to the cost of the Project including without limitation the requirements and conditions of County Grant Agreements. Museum and the City will mutually cooperate to take all actions reasonably required (i) to ensure compliance with such requirements and conditions, (ii) to obtain reimbursement from the County under the County Grant Agreements, and (iii) to address any legal challenge to use of such funds related to the
Project or use of the Building; provided, that the foregoing shall not be interpreted to require the Museum to repay to the City any impact fees.

The Parties acknowledge and agree that the Arnautoff Frescoes Grant requires a fundraising match from the community in the amount of $110,150 and Museum will be solely responsible for providing such funds in accordance with the Arnautoff Frescoes Grant.

B. Permitted Services and Uses. In addition to the required services and uses set forth above, during the Lease Term the following services and uses will be permitted, but only as they may be incidental to the required services and uses:

1. Workshops, classes and lectures associated with museum purpose;

2. Administrative offices and storage space to support the required services and uses under this Lease;

3. Fund-raising activities only to support the required services and uses, including, but not limited to, sales of goods and gifts related to the museum use, operation of a cafe and the hosting of benefits and social activities; and/or

4. Periodic rental of rooms and other portions of the Premises by community groups and individuals, but in no event will such rental interfere with or limit the required services and uses of the Premises as set forth above. Notwithstanding the foregoing, Museum may periodically rent portions of the Premises to organizations and individuals for events unrelated to the required services and uses for the purpose of fund-raising to support the required services and uses so long as the timing and frequency of such events do not interfere with the obligation of Museum to provide the required services and uses (for example, and not by way of limitation, Museum may rent the facilities for evening corporate events).

C. Additional Services and Uses. Subject to the prior written approval of the City Manager or the City Manager’s designee, Museum may also use the Premises to provide additional services and uses which are ancillary to and compatible with the required services and uses stated above and not in conflict with the required services and uses. In addition, and also subject to the prior written approval of the City Manager or designee, Museum may also use the Premises to conduct revenue-generating events or operations so long as (i) such uses do not materially interfere with Museum’s ability to provide the required services and uses described in Section 3(A) hereof, (ii) such services and uses will not result in damage to the Premises or materially impair the operations conducted on the Premises, and (iii) all net revenue generated by such services and uses are devoted exclusively to funding the activities of Museum conducted at the Premises. In each case, the approval of the City Manager or designee will not be unreasonably withheld.
D. **Prohibited Uses.** The above listed required, permitted and optional services and uses will be the only services and uses permitted upon or from the Premises. Museum agrees that no activity will be conducted or carried on, in or around the Premises in violation of the terms of this Lease, or any regulation, order of law, statute, ordinance or permit of a governmental agency having jurisdiction over Museum’s use of the Premises, including without limitation the CUP.

E. **Special Uses.** Museum will have the following rights:

1. The Parties acknowledge that Museum will have the exclusive right to use the Building Exterior Common Areas (defined below) as part of the Premises and such areas and their use are otherwise subject to the covenants, terms and conditions of this Lease.

2. Museum will have the right to temporarily close the Museum operations to conduct repairs, make alterations, change exhibits, and observe holidays.

F. **Repayment of Community Center Impact Fees.** The Parties acknowledge that City will contribute Community Center Impact Fees to fund a portion of the City Contribution (as defined in the Tenant Work Letter) in conjunction with the construction of the Community Rooms as part of the Project. If during the Lease Term Museum desires to convert a Community Room(s) to areas of exclusive use for Museum programming, Museum will notify City of its desire to convert such Community Room(s) and the Parties will meet and confer to discuss the possibility of such conversion including the repayment to City of a portion of the Community Center Impact Fees included in the City Contribution. If the Parties mutually agree (at each Party’s sole discretion) to the terms of such conversion, the Parties will enter into a separate agreement to effectuate the conversion and amend this Lease as applicable to reflect such change to the Community Rooms.

4. **TERM**

The term of this Lease (“Lease Term”) will be four hundred eighty (480) months, beginning on the Commencement Date and will terminate at midnight on the last day of the four hundred eightieth (480th) full calendar month following the Commencement Date.

5. **CONSIDERATION/RENT**

A. **Rent.** As partial consideration for the Lease, Museum will pay to City One Dollar ($1.00) per year as “Base Rent” in accordance with Section 8 hereof. Museum alternatively may pay City the sum total of all Base Rent that would be due and payable over the Lease Term thereof in advance at the commencement of the Lease Term. All items of Rent other than Base Rent will be due and payable by Museum within thirty (30) days after billing by City.
B. **Non-Monetary Consideration.** In addition to the rent set forth in Section 5(A) hereof, Museum will develop and operate the Premises at no cost to City as a museum consistent with the terms of this Lease (subject to City’s contribution to costs of the Initial Tenant Improvements in accordance with the Tenant Work Letter and City’s maintenance and cost reimbursement obligations related to the Public Parkside Restroom and the City Archives Room set forth herein and in the License Agreement).

6. **CHARGE FOR UNAUTHORIZED SERVICES AND USES**

Museum will pay City a sum equal to one hundred percent (100%) of the net receipts (determined after deduction of all costs reasonably incurred by Museum for conducting the activity in question) for any service or use that is not permitted or authorized by Section 3 hereof. The existence of such charge or the payment or receipt of money under this Section does not constitute an authorization of a particular service or use and does not constitute a waiver of City’s right to terminate such service or use.

7. **MUSEUM ORGANIZATIONAL DOCUMENTS AND MEMBERSHIP; ANNUAL REPORTING**

A. Changes in restrictions, rules, articles of incorporation or bylaws of Museum which change or modify the essential character or membership requirements of Museum will, prior to being put into effect, be reviewed and approved by the City Manager and the City’s City Attorney, which approval will not be unreasonably withheld. Museum’s rules, articles of incorporation and bylaws, and any amendments thereto, will be on file with the Real Property Manager during the Lease Term.

B. On or before its due date, Museum will file the Form 990 (or the applicable successor form) with the IRS as required by law and concurrently deliver a copy of such Form 990 to City Manager or City Manager’s designee. Upon prior reasonable notice, Museum will provide City with annual reporting and other documents necessary to comply with any requirements associated with restricted funds and grants used to fund the Initial Tenant Improvements or the Building’s operation, including requirements established by any applicable granting agency and/or City’s third-party auditors.

8. **BASE RENT PAYMENT PROCEDURE**

A. **Payment of Base Rent.** Except as otherwise provided in Section 5(A), on or before each annual anniversary date of the Lease Term, Museum will pay to City the Base Rent as set forth in Section 5 hereof.

B. **Commencement of Obligation.** Museum’s obligation to pay the Base Rent will commence upon the Commencement Date.
C. Place of Payment. Rental payments will be delivered to the Revenue Collections Division, 250 Hamilton Avenue, P. O. Box 10250, Palo Alto, CA  94303. The designated place of payment may be changed at any time by City upon ten (10) days’ prior written notice to Museum. Rental payments may be made by check or draft made payable to the City of Palo Alto. Museum assumes all risk of loss if payments are delivered by mail but are not received by City.

9. SECURITY DEPOSIT

On the Commencement Date, Museum will deliver to City the Security Deposit and said Security Deposit will be held by City without liability for interest (unless required by law) as security for the performance of Museum’s obligations. The Security Deposit is not an advance payment of rent or a measure of damages. City may from time to time and without prejudice to any other remedy provided in this Lease or by law, use all or a portion of the Security Deposit to the extent necessary to satisfy past due rent or to satisfy or partially satisfy Museum’s default under this Lease or to reimburse or compensate City for any liability, expense, loss or damage which City may suffer or incur by reason thereof. The Security Deposit will be retained by City as a debtor and not as a trustee. City will not be required to keep said Security Deposit separate from its general accounts. If City so uses or applies any portion of the Security Deposit, then within fifteen (15) days after demand thereof, Museum will deposit cash with City in an amount sufficient to restore the deposit to its full amount thereof, and Museum’s failure to do so will constitute a default under this Lease. If there are no payments to be made from the Security Deposit as set forth in this Section, or if there is any balance of the Security Deposit remaining after all payments have been made, the Security Deposit, or such balance thereof remaining, will be refunded to Museum after expiration or earlier termination of this Lease and Museum’s vacation of the Premises. No trust relationship is created herein between City and Museum with respect to said Security Deposit. Museum’s payment of the Security Deposit will not limit Museum’s liability to City for the payment of amounts due to City by Museum in excess of the amount of the Security Deposit. Museum hereby waives the benefit of the provisions of California Civil Code §1950.7, or any successor statute.

10. TENANT WORK LETTER; INITIAL TENANT IMPROVEMENTS

To document the Parties’ additional obligations related to the construction of the Initial Tenant Improvements, following the Effective Date the Parties will endeavor in good faith to agree upon a mutually acceptable tenant work letter (“Tenant Work Letter”). Upon mutual agreement of the Tenant Work Letter, the Parties will execute the Tenant Work Letter and attach a copy of the executed Tenant Work Letter hereto as Exhibit D. If the Parties fail to execute a Tenant Work Letter within 60 days following the Effective Date or as otherwise mutually agreed, this Lease will automatically terminate and be of no further force or effect.
Commencing upon the execution of the Tenant Work Letter, Museum will in an efficient, good, and workmanlike manner complete the Initial Tenant Improvements to the extent required by and in accordance with the terms and conditions specified in the Tenant Work Letter. If the Tenant Work Letter is terminated at no fault of City, City may at its option terminate this Lease upon written notice to Museum.

11. ADDITIONAL CONSTRUCTION AND/OR ALTERATION BY MUSEUM

A. City’s Consent. Except for the Initial Tenant Improvements, no additional structures, improvements, or facilities (collectively, “Alterations”) will be constructed, erected, altered, or made on or within the Premises without the prior written consent of the Council (if the same is required by any City policy, procedure or ordinance), or otherwise by the City Manager or the City Manager’s designee, which consent will not be unreasonably withheld. Museum understands that any consents granted by City under this Lease will be deemed to be granted by the City in its proprietary capacity as City and not in its regulatory capacity as the City of Palo Alto. Notwithstanding anything to the contrary herein, Museum shall not be required to obtain consent of the City, Counsel or City Manager to any of the following (“Permitted Alterations”): (1) the design, location, configuration, installation or display of Museum’s exhibits and artifacts and alterations required in connection therewith, (2) purely cosmetic Alterations, such as painting, carpeting or floor coverings or (3) non-structural alterations, additions and improvements in the Premises, if the cost of any such project does not exceed Fifty Thousand Dollars ($50,000). Museum will deliver to City reasonable prior written notice of any Permitted Alterations under clause (3) of the definition thereof, including a reasonable description of such Permitted Alterations and the proposed schedule for the work.

B. Strict Compliance with Development Plans and Construction Drawings. Any Alterations constructed by Museum within the Premises will be constructed in an efficient and workmanlike manner and in strict compliance with (1) except for Permitted Alterations, detailed plans and specifications approved by the Council (if the same is required by any City policy, procedure or ordinance), or otherwise by the City Manager or City Manager’s designee, and (2) all applicable laws. All Alterations will be performed by contractors who have and will maintain during the course of such work all current licenses required by the State of California and such contractors will maintain insurance in amounts and in such form as City may reasonably require.

C. Asbestos and Lead Paint. The Parties are aware of lead paint and asbestos-laden materials in the Building. Museum will be solely responsible for any lead and asbestos abatement or containment on the Premises to the extent required under all applicable federal, state and local building and safety codes and regulations, and will fully comply with any applicable asbestos notification requirements under California Health and Safety Code §§25915 et seq., as amended.

D. Compliance with Law. Museum warrants that all construction or improvement of the Premises will comply with all applicable laws, including without
limitation the federal Americans with Disabilities Act of 1990, as amended, including the Act’s implementing regulations, as amended (collectively, the “ADA”). To the extent feasible, Museum will be entitled to utilize the California State Historic Building Code to achieve compliance with the ADA.

E. Certificate of Inspection. Upon completion of construction of any substantial Alterations to the Premises, Museum will submit to the Real Property Manager a Certificate of Inspection, verifying that the construction was completed in conformance with Title 24 of the California Code of Regulations for non-residential construction. To the extent feasible, Museum will be entitled to utilize the California State Historic Building Code to achieve compliance with the aforementioned Title 24.

F. Liens. Except to the extent caused by City’s default of its obligations under the Tenant Work Letter, Museum will at all times indemnify and save City harmless from all claims for labor or materials supplied in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including attorney’s fees.

G. Prevailing Wages. Museum acknowledges and agrees any work or improvements (including any Alterations) made by or on behalf of Museum to the Premises, or any portion thereof, will constitute “[c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds…”. (California Labor Code section 1720.) Museum will comply with any applicable laws, rules and regulations related to construction wages and other construction matters, if and to the extent applicable to the Premises after the Commencement Date including, but not limited to, the provision of Labor Code Section 1720 et seq. From and after the Commencement Date, Museum will indemnify, defend (with counsel reasonably acceptable to City), and hold harmless the City and its officers, agents and employees against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Museum and its contractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., to require any contractor or subcontractor listed on a bid proposal for a public works project to be registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5, to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code, to require the general contractor for any prevailing wage work to furnish electronic certified payroll records directly to the Labor Commissioner at: https://apps.dir.ca.gov/ecpr/das/altlogin, or to comply with any other regulation related to public contracts. Museum’s obligation to indemnify, defend and hold harmless under this Section will survive termination of this Lease, and will be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.
H. Access to Premises During Alterations. During construction of any Alterations by Museum, Museum will endeavor to limit any material interference with City’s or the public’s use of the Community Rooms and/or the Archives Room hereunder.

12. MUSEUM’S ASSURANCE OF CONSTRUCTION COMPLETION

Prior to commencement of any Alterations (excluding Permitted Alterations), Museum will furnish the Real Property Manager with satisfactory evidence that sufficient funds will be available to complete the approved construction. The amount of such assurance will be not less than one hundred percent (100%) of the total estimated construction cost for the Alterations submitted to and approved by City. Evidence of such assurance will take one of the forms described below and will guarantee Museum’s full and faithful performance of all of the covenants, terms, and conditions of this Lease:

A. Completion bond naming City as beneficiary;
B. Performance and payment bonds, supplied by Museum’s contractor or contractors, provided the bonds are issued with both Museum and City named as beneficiaries;
C. Irrevocable letter of credit from a financial institution naming City as beneficiary; or
D. Any combination of the above.

Notwithstanding the foregoing, City acknowledges and agrees that with respect to the Initial Tenant Improvements only, the performance and payment bonds provided by Museum’s contractor in accordance with the Tenant Work Letter satisfy Tenant’s obligations under this Section 12.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California, must be in a form acceptable to the City’s Director of Administrative Services and the City’s City Attorney, and must ensure the faithful and full observance and performance by Museum of all of the covenants, terms, and conditions relating to the construction of improvements in accordance with the development plans and construction plans approved by City as set forth in this Lease. To the extent a letter of credit is utilized, the amount of the letter of credit will be substantially equal to the estimated cost to complete all approved construction, and City will cooperate with Museum to structure the letter of credit so that its amount may be periodically reduced to reflect the remaining cost to complete all approved construction, to permit Museum to recover from the issuer of the letter of credit any collateral to actually pay for the construction in progress with such collateral that is no longer needed.
City may request, and Museum will provide promptly, a revised estimated construction cost estimate upon the completion of each new set of construction documents. Museum will furnish this revised estimate to the Real Property Manager.

13. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

Subject to the Parties' rights and obligations under Section 20, prior to the Commencement Date City shall have the sole obligation to operate, maintain, repair and replace the Building and the Building Exterior Common Areas, including, without limitation, performing all obligations of Museum set forth in this Section 13 with respect to repair and restoration of any damage or destruction to the Building. Commencing on the Commencement Date and prior to the completion of the Initial Tenant Improvements, in the event of damage to or destruction of the Building, facilities, or improvements located within the Premises, the Parties' obligations to repair such damage or destruction will be governed by the Tenant Work Letter.

After completion of the Initial Tenant Improvements, in the event of damage to or destruction of the Building, facilities, or improvements located within the Premises, or in the event the Building, facilities, or improvements located within the Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Museum will, within thirty (30) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements necessary to permit full use and occupancy of the Premises for the purposes required by this Lease. Repair, replacement, or reconstruction of improvements within the Premises will be accomplished in a manner and according to plans approved by the City Engineer, the Chief Building Official and the Real Property Manager. Except as otherwise provided herein, the termination of this Lease will not reduce or nullify Museum's obligation under this Section.

Notwithstanding the foregoing, should the Building and other improvements on the Premises be more than fifty percent (50%) destroyed or damaged by an insured loss during the last ten (10) years of the Lease Term, Museum will have the option of rebuilding or repairing such damage or terminating this Lease. In addition, Museum will have the option of rebuilding or repairing such damage or terminating this Lease if insurance proceeds actually recovered by Museum on account of the loss are less than ninety percent (90%) of the estimated cost to restore the damage. Museum will notify the Real Property Manager in writing of its decision within thirty (30) days of the occurrence of such damage or destruction. In the event that Museum elects to terminate this Lease and not rebuild or repair such damage, Museum will demolish any remaining structures or portions of structures not desired by City and clean up any and all debris and (after deducting such demolition and cleanup costs) will pay to City the remaining insurance proceeds received by Museum provided that Museum will retain the “Museum Portion” of such proceeds as calculated in accordance with the following formula:

\[ \text{Museum Portion} = \frac{C(R)}{T} \]
Where:

\[ C = \text{Total amount of the Museum Contribution (as defined in the Tenant Work Letter) expended to complete the Initial Tenant Improvements in accordance with the Tenant Work Letter plus the cost of any other Alterations (excluding Permitted Alterations) paid for by the Museum thereafter as of the date of such casualty.} \]

\[ R = \text{Remaining number of months of the Lease Term following completion of the demolition and debris removal by Museum pursuant to this Section 13.} \]

\[ T = \text{The total Lease Term.} \]

Museum’s liability for demolition and cleanup will be limited to insured losses including any deductible amount.

In case of destruction to the improvements located on the Premises, there will be no abatement or reduction of Rent as a result thereof. Museum waives the provisions of California Civil Code Sections 1932(2) and 1933(4), or any successor statute thereto or similar statute hereinafter enacted, which relate to termination of leases when the thing leased is destroyed and agrees that any such event will be governed solely by the terms of this Lease.

14. RECORD DRAWINGS PLANS

Upon completion of any Alterations, Museum will provide the Real Property Manager with a complete set of reproducible record drawings plans, reflecting the actual construction, building construction and site improvements within or upon the Premises. These record drawings plans will be made available in electronic AutoCAD format, or in another form reasonably requested by City, and delivered to the Real Property Manager. Museum will also provide the Real Property Manager with a statement signed by Museum under penalty of perjury certified as to accuracy and of actual construction costs for all such improvements.

15. OWNERSHIP OF IMPROVEMENTS

All improvements constructed, erected or installed upon the Premises must be free and clear of all liens, claims, or liability for labor or material and will become the property of City, at its election, upon the expiration or earlier termination of this Lease and, upon City’s election, will remain upon the Premises upon the termination of this Lease.

Title to all equipment, furniture, furnishings and trade fixtures placed by Museum upon the Premises will remain in Museum, and replacements, substitutions and modifications thereof may be made by Museum throughout the Lease Term. Museum may remove such fixtures and furnishings upon termination of this Lease if Museum is not then in default under this Lease, provided that Museum will repair to the satisfaction
of City any damage to the Premises and improvements caused by such removal and provided that usual and customary lighting, plumbing and heating fixtures will remain upon the Premises upon termination of this Lease.

16. MAINTENANCE OBLIGATIONS OF MUSEUM

A. General Obligations. During the Lease Term, Museum, at its sole expense, will perform all regular and extraordinary maintenance and repairs to the Premises and the Building’s Exterior Common Areas. “Building’s Exterior Common Areas” will mean: (i) the Building’s front courtyard (including landscaping), (ii) the Building’s adjacent rear paved patio and arcade area (which will be constructed as part of the Initial Tenant Improvements) as such areas are more fully depicted on Exhibit B, and (iii) the landscaping located between the Building and Homer Avenue and Bryant Street, respectively (but the Museum has no obligations with respect to the public sidewalks or the trees and landscaping between the public sidewalks and the street). Such maintenance and repair obligations shall include, but not be limited to, electrical, plumbing, the roof, security system (if any), windows, walls and the HVAC system, including all painting necessary to keep the Premises and the Building’s Exterior Common Areas in first-class order, repair and condition. Notwithstanding the foregoing, City will be responsible for the maintenance and repair of the Public Parkside Restroom, the Arnautoff Frescoes in accordance with Section 17(C) below, and the City Archives Room in accordance with the License Agreement. Except for City’s obligations regarding trees stated in Section 17(B) hereof, Museum will maintain the landscaping in the Building’s front courtyard. In addition, Museum will maintain, at its sole expense, all equipment, furnishings and trade fixtures upon the Premises required for the maintenance and operation of the Museum. Museum waives the right to make repairs at the expense of City and for the benefit of the provisions of Sections 1941 and 1942 of the Civil Code of California, as amended, relating thereto; and further agrees that if and when any repairs, alterations, additions or betterments will be made by it as required by this paragraph, it will promptly pay for all labor done or materials furnished and will keep the Premises free and clear of any lien or encumbrance of any kind whatsoever.

B. Maintenance Plan. For purposes of continued historic preservation of the Premises, following completion of the Initial Tenant Improvements, Museum will comply with the long-term maintenance plan and schedule for the Premises (“Maintenance Plan”) approved and modified from time to time in accordance with this Section 16(B). Within sixty (60) days following the Commencement Date, Museum will deliver to City a written copy of Museum’s proposed initial Maintenance Plan and thereafter the Parties will collaborate in good faith to agree upon a mutually acceptable Maintenance Plan. Upon mutual agreement of the initial Maintenance Plan, the Parties will attach the approved Maintenance Plan hereto as Exhibit G. After approval of the initial Maintenance Plan, the Parties will meet and confer not less than every five (5) years during the Lease Term to evaluate the adequacy of the then existing Maintenance Plan with the City authorized to make changes to the Maintenance Plan as City deems
reasonable. Any changes to the Maintenance Plan will be promptly memorialized in writing and signed by the Parties and attached hereto as a new Exhibit G superseding the prior version of Exhibit G.

C. City’s Performance Due to Museum Failure. Should Museum fail to make any repairs or perform any maintenance work for which it is liable, City will have the option to make the repairs and Museum, within ten (10) days of receipt of a bill therefor from the Real Property Manager, will reimburse City for the cost of such repairs, plus a fifteen percent (15%) administrative overhead fee. The making of such repairs or performance of maintenance by City will not be construed as a waiver of the duty of Museum to make repairs or perform maintenance as provided herein.

17. MAINTENANCE OBLIGATIONS OF CITY

Following Tenant’s completion of the Public Parkside Restroom and the City Archives Room as part of the Initial Tenant Improvements, City will have the following obligations with respect to the Building which it will undertake at its sole cost and expense, without the right of reimbursement from Museum:

A. City will be responsible for the maintenance, repair and replacement, as necessary, of the Public Parkside Restroom and the City Archives Room (in accordance with the License Agreement), including the repair and replacement of fixtures, wall and floor coverings, and doors;

B. City will be responsible for the maintenance and removal, as necessary, of trees immediately adjacent to the Building, including the oak tree in the Building’s courtyard.

C. City will be responsible for the maintenance, repair, protection and any required restoration of the Arnautoff Frescoes, including protection during construction of the Initial Tenant Improvements. The Parties acknowledge and agree that City’s foregoing obligations relate solely to the surface of the wall and that Museum is solely responsible for the infrastructure and integrity of the underlying wall upon which the Arnautoff Frescoes have been painted. City will complete any necessary refurbishment and repair of the Arnautoff Frescoes following completion of the Initial Tenant Improvements and in a manner so as to minimize interference with the construction of the Initial Tenant Improvements and/or Museum’s subsequent use of the Premises, as applicable.

D. City will be responsible for the maintenance and repair of the water, electric and sewer lines serving the Public Parkside Restroom.

E. Except to the extent caused by the gross negligence or willful misconduct of Museum or any of the Museum’s Agents, City will be responsible for property damage and personal injury occurring on or about the Public Parkside Restroom.
Except to the extent caused by the gross negligence or willful misconduct of Museum or any of the Museum’s Agents, City hereby agrees to protect, indemnify, hold harmless and defend Museum, its officers, agents, and employees against any and all claims, liability, demands, damages, cost, expenses or attorneys’ fees arising out of the use, operation or maintenance of the Public Parkside Restroom or the City’s performance or nonperformance of the terms of this Lease with respect to the Public Parkside Restroom. In the event Museum is named as co-defendant, Museum will notify City of such fact and City will represent Museum in such legal action with counsel reasonably approved by Museum, unless Museum undertakes to represent itself as co-defendant in such legal action, in which event City will pay to Museum its litigation costs, expenses and attorneys’ fees.

18. UTILITIES

Museum will be solely responsible for and will pay, prior to delinquency, all charges for utilities supplied to the Premises during the Lease Term, subject to the reimbursement obligations of the City pursuant to the License Agreement. City will pay for all utilities supplied to the Public Parkside Restroom. Museum may elect to install a FLOW meter to measure water consumption from the Public Parkside Restroom and City will pay for any such consumption as determined by such meter. Each Party will be responsible for the cost of procuring, installing, maintaining and repairing the meters for their respective utility service.

19. INSURANCE

During the Lease Term, Museum, at its sole expense, will obtain and maintain the following insurance acceptable to City in full force and effect.

A. Minimum Scope of Insurance Coverage will be at least as broad as:

1. Commercial General Liability coverage (occurrence Insurance Services Office form CG 0001);

2. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance; and/or

3. If applicable, Course of Construction insurance form providing coverage for “all risks” of loss.

The policy or policies of insurance maintained by Museum will provide the following minimum limits and coverages:

<table>
<thead>
<tr>
<th>POLICY</th>
<th>MINIMUM LIMITS OF LIABILITY</th>
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<tbody>
<tr>
<td>A. WORKERS’ COMPENSATION</td>
<td>Statutory</td>
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18
EMPLOYER’S LIABILITY $1,000,000 each occurrence

B. COMMERCIAL GENERAL LIABILITY, including products and completed operations, broad form contractual, and personal injury. Bodily Injury $2,000,000 each Person $2,000,000 each Occurrence Property Damage $4,000,000 aggregate $2,000,000 each Occurrence

C. PROPERTY INSURANCE All risks of loss to any tenant personal property, equipment, fixtures, improvements or betterments, at full replacement cost with no coinsurance penalty provision. The property insurance is to be endorsed to include Damage to Premises Rented to You Coverage (ISO Form CP 00 40 04 02 or equivalent) with a limit equal to the replacement cost of the leased property.

D. FIRE & EXTENDED COVERAGE Not less than one hundred percent (100%) of the replacement cost of all insurable improvements within or upon the Premises. Such policies must include water damage and debris cleanup provisions. Additional fire and extended coverage must be obtained in accordance with this clause upon completion of construction or installation of any major insurable improvement of the Premises including the Initial Tenant Improvements.

E. COURSE OF CONSTRUCTION Completed value of the Initial Tenant Improvements or subsequent Alterations, as applicable.

B. Other Insurance Provisions. Insurance will be in full force and effect commencing on the Commencement Date. Each insurance policy required by this Lease will comply with the following requirements:

1. Museum will not suspend, void, cancel or reduce coverage below the limits set forth above except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to the City.
2. With respect to property insurance, Museum shall waive any right to subrogation which any insurer of Museum may acquire against City by virtue of the payment of any loss under such insurance. Museum agrees to use commercially reasonable efforts to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Museum has received a waiver of subrogation endorsement from the insurer.

3. The City of Palo Alto will be named as a loss payee on the property insurance policy and, if applicable, course of construction insurance policy described above.

4. The City of Palo Alto, its elective and appointive officials, and officers are to be covered as additional insureds as respects to liability arising out of activities performed by or on behalf of Museum; products and completed operations of Museum; premises owned, occupied or used by Museum; or automobiles owned, subleased, hired or borrowed by Museum. The coverage will contain no special limitations on the scope of protection afforded to the City, its elective and appointive officials, officers, employees, agents or volunteers.

5. For any claims related to this Lease, Museum's insurance coverage will be primary insurance as respects the City of Palo Alto, its elective and appointive officials, officers, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its elective and appointive officials, officers, employees, agents or volunteers will be excess to Museum’s insurance and will not contribute with it.

6. Any failure to comply with reporting or other provisions of the policies including breaches of warranties will not affect coverage provided to the City of Palo Alto, its elective and appointive officials, officers, employees, agents or volunteers.

C. Acceptability of Insurers

Insurance will be placed with insurers with a current A.M. Best’s rating of not less than A-VII.

Museum agrees to deposit with the Real Property Manager, on or before the effective date of this Lease, certificates of insurance necessary to satisfy City that the insurance provisions of this Lease have been complied with, and to keep such insurance in effect and the certificates therefor on deposit with City during the Lease Term.

City will retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of City’s Risk Manager, the insurance provisions in this Lease do not provide adequate protection for City and for members of the public using the Premises, the Real Property Manager may require Museum to obtain insurance sufficient in coverage, form, and amount to provide adequate protection as determined by the Risk Manager, to the extent such coverage is commercially reasonable.
and available at a commercially reasonable cost. City's requirements will be reasonable and will be designed to assure protection from and against the kind and extent of risk which exists at the time a change in insurance is required.

The Real Property Manager will notify Museum, in writing, of changes in the insurance requirements. If Museum does not deposit copies of acceptable insurance policies or certificates with City incorporating such changes within sixty (60) days of receipt of such notice, or in the event Museum fails to maintain in effect any required insurance coverage, Museum will be in default under this Lease without further notice to Museum. Such failure will constitute a material breach and will be grounds for immediate termination of this Lease at the option of City.

The procuring of such required policy or policies of insurance will not be construed to limit Museum’s liability hereunder or to fulfill the indemnification provision and requirements of this Lease. Notwithstanding anything to the contrary herein, the Parties hereto release each other and their respective agents, employees, successors, assignees and subtenants from all liability for damage to any property that is caused by or results from a risk which is actually insured against, which is required to be insured against under this Lease, or which would normally be covered by all risk property insurance, without regard to the negligence or willful misconduct of the entity so released. All of City’s and Museum’s repair and indemnity obligations under this Lease shall be subject to the waiver contained in this paragraph.

20. HOLD HARMLESS

Museum hereby waives all claims, liability and recourse against City including the right of contribution for loss or damage of or to persons or property to the extent growing out of or arising from Museum’s use or occupancy of the Premises or from any activity undertaken by Museum or Museum’s Agents (as defined below) which is related to this Lease and/or the License Agreement. Except to the extent resulting from the negligence or willful misconduct of City or City’s Agents (as defined below), Museum agrees to protect, indemnify, hold harmless and defend City and City’s Agents against any and all claims, liability, demands, damages, costs, expenses or attorneys’ fees arising out of the negligence of Museum or Museum’s Agents or resulting from a default by Museum of its obligations under this Lease and/or the License Agreement. In the event City is named as co-defendant, Museum will notify City of such fact and will represent City in such legal action with counsel reasonably approved by City, unless City undertakes to represent itself as a co-defendant in such legal action, in which event Museum will pay to City its litigation costs, expenses and attorneys’ fees. “Museum’s Agents” will mean Museum’s officers, directors, agents and employees. “City’s Agents” will mean City’s officers, agents and employees.

City hereby waives all claims, liability and recourse against Museum including the right of contribution for loss or damage of or to persons or property to the extent growing out of or arising from City’s use of the City Archives Room or from any activity undertaken
by City or City’s Agents which is related to this Lease and/or the License Agreement. Except to the extent resulting from the negligence or willful misconduct of Museum or Museum’s Agents, City agrees to protect, indemnify, hold harmless and defend Museum and Museum’s Agents against any and all claims, liability, demands, damages, costs, expenses or attorneys’ fees arising out of the negligence of City or City’s Agents or resulting from a default by City of its obligations under this Lease and/or the License Agreement. In the event Museum is named as a co-defendant, City will notify Museum of such fact and will represent Museum in such legal action with counsel reasonably approved by Museum, unless Museum undertakes to represent itself as co-defendant in such legal action, in which event City will pay to Museum its litigation costs, expenses and attorneys’ fees.

21. ASSIGNING, SUBLETTING, AND ENCUMBERING PROHIBITED

As City has relied on the qualifications of Museum in awarding this Lease, except as set forth under Section 3 hereof, any mortgage, pledge, hypothecation, encumbrance, transfer, or assignment (collectively, “Encumbrance”) of Museum’s interest in the Premises, or any part or portion thereof, is prohibited. Any attempted Encumbrance will be null and void and will confer no right, title, or interest in or to this Lease or the Premises.

Subleasing space in the Building for office purposes will be permitted subject to compliance of the use with City ordinances, rules and regulations, including the CUP, and to approval by the City Manager or the City Manager’s designee, which approval will not be unreasonably withheld. In addition, Museum will have the right to sublease up to twenty-five percent (25%) of the useable space in the Premises to one or both of the following: (A) a for-profit food service operator; and (B) a for-profit gift/book shop operator; provided, however, these uses will be in support of Museum’s obligation to provide the required services and uses specified in Section 3(A) hereof. If Museum commences proceedings to dissolve or otherwise cease doing business during the Lease Term, Museum will have the right to assign its interest in this Lease to a non-profit organization who agrees to abide by the covenants, terms and conditions of the Lease and provide the required, permitted and optional services and uses so long as such assignment is approved by City.

22. DEFAULT BY MUSEUM

A. City’s Remedies on Default. Except as otherwise provided under this Lease, should Museum default in the performance of any covenant, term or condition contained in this Lease, including, but not limited to, those specified in Section 3, 10, and 16, and such default is not corrected within sixty (60) days of receipt of a notice of default from City, City may:

1. Terminate this Lease, and all rights of Museum and those who claim under Museum, stemming from this Lease, will end at the time of such termination;
2. At City’s sole option, cure any such default by performance of any act, including payment of money, and the cost thereof, plus all reasonable administrative costs, will become immediately due and payable by Museum to City;

3. Seek an action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of City;

4. Seek a mandamus or other suit, action or proceeding at law or in equity to enforce its rights against Museum, and to compel Museum to perform and carry out its duties and obligations under the law and under Museum’s covenants, terms and conditions with City as provided herein; or

5. Pursue any other remedy available by law or specifically provided in other provisions of this Lease.

B. Cumulative Remedies. However, in the event of a default which cannot reasonably be cured within sixty (60) days, Museum will have a reasonable period of time to cure the default. The remedies given to City hereunder, or by any law now or hereafter enacted, are cumulative and the exercise of one right or remedy will not impair the right of City to exercise any or all other remedies. In case any suit, action or proceeding to enforce any right or exercise any remedy will be brought or taken and then discontinued or abandoned, then, and in every such case, City and Museum will be restored to its and their former position and rights and remedies as if no such suit, action or proceedings had been brought or taken.

C. Additional Defaults of Museum. In addition to a violation or breach of any other provision of this Lease, Museum will be considered to be in default under this Lease in the event that:

1. Museum is adjudicated bankrupt or makes a general assignment for the benefit of creditors; or

2. Museum is in default under the Tenant Work Letter.

23. TAXES AND ASSESSMENTS

This Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. Museum acknowledges that all taxes and assessments (including but not limited to the possessory interest tax) which may become due and payable upon the Premises or upon fixtures, equipment, or other property installed or constructed thereon, will be the full responsibility of Museum (subject to City’s reimbursement obligations under the License Agreement) and Museum will pay the taxes and assessments prior to delinquency.

24. EMINENT DOMAIN
In the event the whole or any part of the Premises is condemned by a public entity in the lawful exercise of its power of eminent domain, this Lease will cease as to the part condemned. The date of such termination will be the effective date of possession of the whole or part of the Premises by the condemning public entity.

If only a part is condemned and the condemnation of that part does not substantially impair the capacity of the remainder to be used for the purposes required by this Lease, Museum will continue to be bound by the terms, covenants and conditions of this Lease. If the condemnation of a part of the Premises substantially impairs the capacity of the remainder to be used for the purposes required by this Lease, Museum may: (A) terminate this Lease and thereby be absolved of obligations under this Lease which have not accrued as of the date of possession by the condemning public entity; or (B) continue to occupy the remaining Premises and thereby continue to be bound by the terms, covenants and conditions of this Lease. Museum will provide City with written notice advising City of Museum’s choice within thirty (30) days of possession of the part condemned by the condemning public entity.

City will be entitled to and will receive all compensation related to the condemnation of all or part of the Premises by the exercise of eminent domain. Notwithstanding the foregoing, so long as such award does not reduce or delay City’s award, Museum may seek a separate award if permitted by state law for loss of its personal property, fixtures, or relocation expenses.

25. HAZARDOUS SUBSTANCES

A. Definition. As used herein, the term “Hazardous Materials” means any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing risk of injury to health, safety, and property, including petroleum and petroleum products and all of those materials and substances designated as hazardous or toxic by the U.S. Environmental Protection Agency, the California Water Quality Control Board, the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Health Services, the California Health and Welfare Agency in connection with the Safe Water and Toxic Enforcement Act of 1986, the U.S. Department of Transportation, the U.S. Department of Agriculture, the U.S. Consumer Product Safety Commission, the U.S. Department of Health and Human Services, the U.S. Food and Drug Administration or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment. Without limiting the generality of the foregoing, the term “Hazardous Materials” will include all of those materials and substances defined as “toxic materials” in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, as the same may be amended from time to time.

B. Museum’s Use of Premises. During the Lease Term, Museum will abide and be bound by all of the following requirements:
1. Museum will comply with all laws now or hereafter in effect during the Lease Term relating to the use of Hazardous Materials on, under or about the Premises, and Museum will not contaminate the Premises, or its subsurface, with any Hazardous Materials;

2. Museum will restrict its use of Hazardous Materials at the Premises to those kinds of materials that are normally used in constructing and operation of the Premises. Disposal of any Hazardous Materials at the Premises are strictly prohibited. Storage of such permissible Hazardous Materials is allowed only in accordance with all applicable laws now or hereafter in effect. All safety and monitoring features of any storage facilities will be approved by City’s Fire Chief in accordance with all laws;

3. Museum will be solely and fully responsible for the reporting of all Hazardous Materials releases that occur during the Lease Term, to the appropriate public agencies, when such releases are caused by or result from Museum’s activities on the Premises. Museum will immediately inform City of any release of Hazardous Materials, whether or not the release is in quantities that would otherwise be reportable to a public agency;

4. Museum will be solely and fully responsible and liable for such releases at the Premises, or into City’s sewage or storm drainage systems. Museum will take all necessary precautions to prevent any of its Hazardous Materials from entering into any storm or sewage drain system or from being released on the Premises. Museum will remove releases of its Hazardous Materials in accordance with all laws. In addition to all other rights and remedies of City hereunder, if the release of Hazardous Materials caused by Museum is not removed by Museum within ninety (90) days after discovery by Museum, City or any other third party, City may pay to have the same removed and Museum will reimburse City for such costs within five (5) days of City’s demand for payment;

5. Museum will protect, defend, indemnify and hold harmless City from and against all loss, damage, or liability (including all foreseeable and unforeseeable consequential damages) and expenses (including, without limitation, the cost of any cleanup and remediation of Hazardous Materials) which City may sustain as a result of the presence or cleanup of Hazardous Materials on the Premises;

6. Museum’s obligations to City under this Section will include Museum’s obligation and responsibility to abate or contain any asbestos containing material or lead paint that may be present in the building on the Premises;

7. Museum’s obligation under this Section will survive the expiration or earlier termination of this Lease;
8. Notwithstanding anything contained herein, Museum will not be responsible for the following, all of which will be the sole responsibility of City: (a) releases of Hazardous Materials caused by City or any of City’s agents; (b) releases of Hazardous Materials occurring prior to the commencement of the Lease Term, or any Hazardous Materials existing on, in or under the Premises as of the commencement of the Lease Term; and

9. This Section will exclusively establish and govern the obligations of City and Museum with respect to Hazardous Materials located on the Premises.

26. NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder given by either party to the other, will be in writing and will be sufficiently given and served upon the other party if (1) personally served, (2) sent by United States Postal Service certified mail, postage, prepaid, or (3) sent by express delivery service. Personal service will include, without limitation, service by delivery service. Delivery of notices properly addressed will be deemed complete when the notice is physically delivered to the Real Property Manager or to [Museum’s designee].

All notices pursuant to this Lease will be addressed as set forth below or as either Party may subsequently designate by written notice.
27. CERTIFIED ACCESS SPECIALIST DISCLOSURE

In accordance with Civil Code Section 1938, City hereby discloses that the Premises have not undergone inspection by a Certified Access Specialist for purposes of determining whether the property has or does not meet all applicable construction related accessibility standards pursuant to Civil Code Section 55.53. City hereby provides the following notification to Museum: “A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The Parties will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.” The forgoing notwithstanding, the Parties agree that Museum will be solely responsible for the payment of all fees for any CASp inspection requested by Museum and Museum will pay the cost of making any repairs necessary to correct violations of construction related accessibility standards identified in any CASp inspection report requested by the Museum within the Premises with such repairs completed as Alterations in accordance with this Lease;
provided, that, the City, rather than the Museum, shall perform and pay for any such repairs with respect to the Public Parkside Restroom.

28. GOVERNING LAW

This Lease will be governed by and interpreted in accordance with the laws of the State of California and the Charter of the City of Palo Alto and the Palo Alto Municipal Code. The Parties will comply with all applicable federal, state and local laws in the exercise of their rights and the performance of their obligations under this Lease.

29. VENUE

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 or in the United States District Court for the Northern District of California in the County of Santa Clara, State of California.

30. TIME

Time is of the essence of this Lease.

31. SIGNS

Museum agrees not to construct, maintain, or allow any permanent sign to be placed upon the exterior of the Building except as may be approved by City Manager or designee, which approval will not be unreasonably withheld, provided that all such signs must be in accordance with all applicable laws, including without limitation City’s sign ordinance in Palo Alto Municipal Code Chapter 16.20 et seq., as amended from time to time (the “Sign Ordinance”). Museum will be entitled to place temporary signs, banners or similar items on the exterior of the Building without the foregoing approval of the City Manager or designee so long as such temporary signs, banners or similar items are related to Museum activities and/or operations and such signs comply with all applicable laws, including without limitation the Sign Ordinance. In addition to any other remedies, City at the Museum’s cost may remove any signs in violation of this Section.

32. CONSTRUCTION

This Lease will not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that all Parties have contributed substantially and materially to the preparation of this Lease. The headings of various sections in this Lease are for convenience only, and are not to be utilized in construing the content or meaning of the substantive provisions hereof. The Parties further intend that this Lease be broadly construed to achieve its stated purposes.
33. ENTIRE AGREEMENT; AMENDMENT

This Lease represents the entire agreement between the Parties and supersedes all prior negotiations, representations and contracts, whether written or oral. This Lease may be amended by an instrument, in writing, signed by the Parties.

34. NONDISCRIMINATION

Museum and its officers, employees and agents will not discriminate against any person because of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height, consistent with Palo Alto Municipal Code Section 9.73.010 et seq. Museum will not discriminate against any employee or applicant for employment because of attributes mentioned in the previous sentence. Museum covenants to meet all requirements of the Palo Alto Municipal Code pertaining to nondiscrimination in employment, consistent with Palo Alto Municipal Code section 2.30.510. If Museum is found in violation of the nondiscrimination provision of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the conduct of its activities under this Lease by the State of California Fair Employment Practices Commission or the equivalent federal agency or officer, it will be a default under this Lease subject to the applicable notice and cure period in accordance with Section 22.

35. INSPECTION

City’s employees and agents will have the right at all reasonable times to inspect the Premises to determine Museum’s compliance with the provisions of this Lease.

36. SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the covenants, terms, and conditions contained herein will apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom will be jointly and severally liable hereunder.

37. FORCE MAJEURE

If either Party will be delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the Party obligated (financial inability excepted), performance of such act will be excused for the period of the delay and the period for the performance of any such act will be extended for a period equivalent to the period of such delay.
38. **PARTIAL INVALIDITY**

If any provision or provisions of this Lease will be held in a judicial proceeding to be invalid, illegal or void, or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby, provided the purposes of this Lease remain legal and enforceable.

39. **WAIVER OF RIGHTS**

The failure of City or Museum to insist upon strict performance of any of the covenants, terms, or conditions of this Lease will not be deemed a waiver of any right or remedy that City or Museum may have, and will not be deemed a waiver of the right to require strict performance of all the covenants, terms, and conditions of the Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Lease.

40. **ATTORNEY FEES**

In the event of any litigation between the Parties with respect to the Lease, the performance of their respective obligations hereunder or the effect of a termination under this Lease, the losing party will pay all costs and expenses incurred by the prevailing party in connection with such litigation, including, but not limited to, reasonable attorneys’ fees of counsel selected by the prevailing party.

41. **RESERVATIONS TO CITY**

City reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the applications and appurtenances necessary or convenient for connection therewith, in, over, upon, through, across and along the Premises or any part thereof, respecting the National Register of Historic Places status of the Building, and to enter the Premises for any and all such purposes. City also reserves the right to grant franchises, easements, rights of way, and permits, in, over, upon, through, across, and along any and all portions of the Premises. No right reserved by City in this section will be so exercised as to interfere unreasonably with Museum’s operation hereunder and City will pay all costs reasonably incurred by Museum in connection with the exercise by City of the rights granted to it by this section. City agrees that rights granted to third parties by reason of this section will contain provisions that the surface of the land will be restored as nearly as practicable to the original condition upon the completion of any construction.

42. **HOLDING OVER**

In the event Museum will continue in possession of the Premises after the Lease Term expires or is terminated, such possession will not be considered a renewal of this
Lease but a tenancy from month to month and will be governed by the conditions and covenants contained in this Lease.

43. DISPOSITION OF ABANDONED PERSONAL PROPERTY

If Museum abandons the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to Museum and remaining on the Premises forty-five (45) days after such abandonment or dispossession will be deemed to have been transferred to City. City will have the right to remove and to dispose, at the cost of the Museum, of such property without liability therefor to Museum or to any person claiming under Museum, and will have no need to account therefor.

44. QUITCLAIM OF MUSEUM’S INTEREST UPON TERMINATION

Upon termination of this Lease for any reason, including but not limited to termination because of default by Museum, Museum will, at City’s request execute, acknowledge and deliver to City within five (5) days after receipt of written demand thereof, a good and sufficient deed whereby all rights, title, and interest of Museum in the Premises, is quitclaimed to City. Should Museum wrongfully fail or refuse to deliver the required deed to City, City may prepare and record a notice reciting the failure of Museum to execute, acknowledge and deliver such deed and the notice will be conclusive evidence of the termination of this Lease, and of all rights, title and interest of Museum or those claiming under Museum in and to the Premises.

45. CITY’S RIGHT TO RE-ENTER

Museum agrees to yield and peaceably deliver possession of the Premises to City on the date of termination of this Lease, whatsoever the reason for such termination. Upon giving written notice of termination to Museum, City will have the right to re-enter and take possession of the Premises on the date such termination becomes effective without further notice of any kind and without institution of regular legal proceedings. Termination of the Lease and re-entry of the Premises by City will in no way alter or diminish any obligation of Museum under the Lease terms and will constitute an acceptance or surrender. At the expiration or earlier termination of the Lease, the Museum shall surrender possession of the Premises in broom-clean condition and in good repair, normal wear and tear, casualties, condemnation, Hazardous Materials (for which Tenant is not responsible under Section 25), alterations or other interior improvements which it is permitted to surrender at the termination of this Lease and repairs that the Museum is not responsible for under this Lease, excepted.

46. CONFLICT OF INTEREST

Museum warrants and covenants that no official, officer or employee of City nor any business entity in which any official, officer or employee of City is interested: (1) has been employed or retained to solicit or aid in the procuring of this Lease; or (2) will be
employed in the performance of this Lease without the divulgence of such fact to City. In the event that City determines that the employment of any such official, officer employee or business entity is not compatible with such official’s, officer’s or employee’s duties as an official, officer or employee, respectively, of City, Museum upon request of City will immediately terminate such employment.

47. ALL COVENANTS ARE CONDITIONS

All provisions of this Lease are expressly made conditions.

48. PARTIES OF INTEREST

Nothing in this Lease, expressed or implied, is intended to, or will be construed to, confer upon or to give to any person or party other than City and Museum the covenants, terms, or condition hereof. All covenants, terms, and conditions in this Lease will be for the sole and exclusive benefit of City and Museum.

49. RECORDATION OF LEASE

Neither City nor Museum will record this Lease; however, a short-form memorandum of Lease may be recorded at City’s request.

50. QUIET POSSESSION

Upon Museum paying the Rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Museum’s part to be observed and performed hereunder, Museum will have quiet possession of the Premises for the entire Lease Term subject to all the provisions of this Lease.

51. AUTHORITY

City and Museum each represents and warrants that the individuals executing this Lease on its behalf are duly authorized to execute and deliver this Lease on behalf of such party and that this Lease is binding upon such party in accordance with its terms.

52. EXHIBITS TO LEASE

This Lease includes the following exhibits, which are attached hereto and by this reference incorporated into this Lease:

Exhibit A – Depiction of Building

Exhibit B – Depiction of Premises, Community Room and Public Parkside Restroom

Exhibit C – License Agreement for City Archives Room
Exhibit D – Tenant Work Letter

Exhibit E – Community Room Principles

Exhibit F – County Grant Agreements

Exhibit G – Maintenance Plan

53. COUNTERPARTS

This Lease may be executed in multiple counterparts, each of which will be an original and all of which together will constitute one instrument.

[The remainder of the page is intentionally blank.]
IN WITNESS WHEREOF, the parties have executed this Lease as of the Commencement Date.

**City:**

CITY OF PALO ALTO

By: ____________________________
City Manager

**Museum:**

PALO ALTO HISTORY MUSEUM

By: ____________________________
It's: ____________________________

By: ____________________________
It's: ____________________________

APPROVED AS TO FORM:

By: ____________________________
Assistant City Attorney

RECOMMENDED FOR APPROVAL:

By: ____________________________
Director of Administrative Services
EXHIBIT A

DEPICTION OF THE BUILDING
EXHIBIT B

DEPICTION OF PREMISES, COMMUNITY ROOM AND PUBLIC PARKSIDE RESTROOM

[SEE ATTACHED]
REQUIRED BY CITY FOR CITY OWNED ARCHIVES
1,300 SQ FT

PROPOSED COMMUNITY CENTER USE
1,000 SQ FT

MUSEUM PROGRAMMING
10,437 SQ FT

COMMON AREAS
597 SQ FT

NAMED BY AN EXISTING DONOR
4,915 SQ FT [INCLUDED ABOVE]

---

CITY-OWNED ARCHIVES
ARCHIVES + PRO RATA COMMON AREA = TOTAL CALCULATED AREA
1,300 + 374 = 1,674 SQ FT, AREA: $1,462,916

PROPOSED COMMUNITY CENTER USE
COMMUNITY CENTER + PRO RATA COMMON AREA = TOTAL CALCULATED AREA
1,000 + 374 = 1,374 SQ FT, AREA: $1,691,315

MUSEUM PROGRAMMING
MUSEUM + PRO RATA COMMON AREA = TOTAL CALCULATED AREA
10,437 + 374 = 10,811 SQ FT, AREA: $9,603,120

* $629.36 x 15,698 = $12,300,000 TOTAL COST OF REHABILITATION
$235.36 TOTAL COST PER SQUARE FOOT

---

PALO ALTO MUSEUM
360 HOMER AVENUE
PALO ALTO, CA 94301

---

Packet Pg. 105
EXHIBIT C

LICENSE AGREEMENT FOR CITY ARCHIVES ROOM
EXHIBIT D

TENANT WORK LETTER

[To be prepared, approved and attached by the Parties in accordance

Section 10 following the Effective Date.]
EXHIBIT E

COMMUNITY ROOM PRINCIPLES

• Community Rooms will be available for community use and will comprise the areas designated as “Community Center Use” in the color-coded floor plans of the Building attached as Exhibit B of this Lease.

• Use and hours of Community Rooms should be consistent with other community center spaces within the City.

• Use of Community Rooms should not jeopardize the security or safety of Museum’s exhibits.

• Set-up and cleanup standards will seek to ensure that after events space is returned to pre-existing condition and order. Such standards will be determined based on the needs of the user of the Community Room(s), availability of resources to assist, and nature of the user. The Parties’ intent is to confirm that the Community Rooms are common space and with that comes a mutual respect for use of and state of the space.

• Fee revenues will be allocated annually on a pro rata and/or proportional basis between City and Museum based on the costs borne by the organizations for the total cost of the community use of the spaces (for example, staffing for operations, cost of minor repairs, and replacement of FF&E based on the original purchaser).

• Revenues in excess of the total cost to support the use of the Community Rooms as allocated above will be used exclusively to fund the operations and maintenance of activities conducted by Museum at the Premises.

• City and Museum will meet at least annually to revise operations among the Parties and revisit proportional allocation of revenues (including but not limited to maintenance of a master calendar to ensure symbiotic coordination of space usage).

• Users of the Community Rooms will have access to central facilities for restrooms etc. when using the Community Rooms.
EXHIBIT F

COUNTY GRANT AGREEMENTS

Below is a listing of the grant agreements followed by the executed agreements:

Roof Grant 1
Grant Cycle 2019
Amount: $102,992
Date Signed: 1/27/2020

Roof Grant 2
Grant Cycle 2019
Amount: $200,000
Date Signed: 1/27/2022

Elevator Grant
Grant Cycle 2022
Amount: $350,000
Date Signed: 9/15/2022
GRANT FUNDING AGREEMENT
between the County of Santa Clara and the City of Palo Alto for
the Roth Building Clay Tile Roof Restoration Project
(Fiscal Year 2019 HISTORIC HERITAGE GRANT FUNDS, $102,992)

This Grant Funding Agreement (“Agreement”), is made and entered into, as of the last date
signed below by all parties (“Effective Date”) by and between the COUNTY OF SANTA
CLARA, a political subdivision of the State of California (hereinafter referred to as the
“County”), and the City of Palo Alto, a California municipality, with its primary offices located
at 250 Hamilton Ave, Palo Alto, CA 94301 (“Grantee”).

RECITALS

WHEREAS, the Grantee submitted an application to the County’s Historical Heritage
Commission (“Historical Heritage Commission”) for funding of the Roth Building Clay Tile
Roof Restoration Project located at 300 Homer Avenue, Palo Alto, CA 94301, as more fully
described in Attachment A “Scope of Work” incorporated and made a part of this Agreement by
reference herein (“Project”);

WHEREAS, the Historical Heritage Commission, on May 16, 2019, reviewed the merits
of the Grantee’s application and forwarded its recommendation to the Board of Supervisors that
it approve the allocation of $102,992 from the Fiscal Year 2019 Historical Heritage Park
Charter Development Funds (the “Grant”) to assist the Grantee with the Project;

WHEREAS, the Board of Supervisors reviewed the information provided in support of
the Project and finds that the Project meets the requirements for use of Park Charter
Development funds in Section 604 (b) of the County Charter; and,

WHEREAS, the Board of Supervisors on August 27, 2019, reviewed and approved the
recommendation of the Historical Heritage Commission to allocate Grant funding to assist with
the Project, which will acknowledge, preserve and commemorate the historical and cultural
heritage of the Santa Clara Valley.

NOW, THEREFORE, in consideration of the mutual promises, covenants and
conditions herein, the County and Grantee agree to the foregoing and as follows:
SECTION I

GRANTEE RESPONSIBILITIES

Grantee warrants, represents and agrees that:

1. Recitals.

All Recitals contained herein above are incorporated into and made a part of this Agreement as terms and conditions.

2. General.

Grantee, at Grantee’s sole cost and expense, will perform or cause to be performed the Scope of Work described in Attachment A, and the Grantee shall act promptly and without delay with respect to such matters in relation to the Project. In performing the Project, the Grantee shall:

   a) Prepare all environmental documents and take all other actions required for approval and completion of the Project pursuant to the California Environmental Quality Act, National Environmental Policy Act, and any rules and/or regulations promulgated thereunder and any other applicable laws. Grantee warrants, represents and agrees that, except where otherwise expressly prohibited by state or federal law, Grantee, as the applicant for any discretionary land use permit, development permit, license, authorization, entitlement or other approval from the County, will defend, indemnify and hold harmless the County and its officers, agents, employees, boards and commissions from, for and against any claim, action or proceeding brought by any person or entity ("third party") other than the Grantee against the County or its officers, agents, employees, boards or commissions that arises from or is in any way related to the approval, including but not limited to claims, actions or proceedings to attack, set aside, void or annul the approval. If a third party claim, action or proceeding is filed, the County will notify the applicant of the claim, action or proceeding and will cooperate fully in the defense. Notwithstanding the above, the County has the right to participate in the defense of any claim, action or proceeding. This indemnity shall not apply to the gross negligence or willful misconduct of the County, or of its agents, officers, employees, boards or commissions.

   b) Secure all required approvals, including approvals from government agencies required for completion of the Project.

   c) Publicly acknowledge the Grant by providing a plaque permanently affixed to the building exterior, or on a prominent location on the Project site, visible to the public. The acknowledgement credit shall read: “Restoration made possible in part by a grant from the County of Santa Clara Parks and Recreation Department’s Historical Heritage Grant Program.” Grantee will obtain County Parks and Recreation Department review and approval of the plaque/sign prior to manufacture and installation.
d) Publicly acknowledge the Grant by giving credit to the County in project-related materials including newsletters, brochures, and internet messages.

e) Submit a written progress report for the Project to the County Parks and Recreation Department no later than November 1 and May 1 of each year, until the Project is completed, and reimbursement received.

f) Provide any requested documentation about the Project to the Historical Heritage Commission. This includes request for documents before construction work begins in order to ensure that the proposed Project is consistent with the United States Secretary of the Interior’s standards for rehabilitation, preservation and restoration of historic properties.

g) Make a presentation at a regularly scheduled Historical Heritage Commission meeting discussing the completed Project within three (3) months of Project completion. The Grantee shall print and distribute the same photos that were submitted with the final reimbursement request to the Commission members at the presentation.

3. Capital Contributions.

a) Grantee shall expend the Grant exclusively for third party expenses arising from services, permits, fees, labor, materials and equipment required for the Scope of Work specified in Attachment A (“Eligible Costs”), and consistent with Attachment B, Itemized Project Budget for completion of the Project. No contribution made by the County shall be used for Grantee’s internal salary or administrative expenses, including office overhead or expenses.

b) Grantee must successfully demonstrate expenditure of Grantee’s cash contribution funds to the County’s satisfaction prior to reimbursement through the Grant. Additional funds needed to complete the Project shall be identified in Attachment B, Itemized Project Budget.

c) County recognizes that the Project Budget identified in Attachment B is an estimate and may include a contingency. To the extent Eligible Costs vary from this budget:

   (i) For work to be performed that is funded by both Grantee and Grantor as reflected in Attachment B, if Grantee’s Cash Contribution for any itemized work to be performed is reduced, then the Grant contribution shall be reduced by the same percentage; and

   (ii) Costs between Project elements may be adjusted to reflect actual costs, however material changes (even if there is minor or no change in cost) that will affect the restoration or preservation of a historical element, or changes that would necessitate County
funding of a non-preservation element that the Grantee was financing with other funds, shall require Historical Heritage Commission approval. Grantee is solely responsible for expenditures that may exceed the Grant amount.

4. Prevailing Wages.

The Project is a public work within the meaning of Labor Code Section 1720, to which the provisions of Labor Code Section 1770 et seq. apply. The Grantee shall comply with all of the applicable provisions of the Labor Code, including, but not limited to, payment, or cause payment to be made, of prevailing wages. The Grantee shall include prevailing wage requirements in all agreements with third parties for work or services needed to complete the Project. Grantee is hereby notified that the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification or type of worker needed to perform the work. Grantee is further notified that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Further information on Compliance Monitoring Unit requirements can be found at https://www.dir.ca.gov/dlse/cmu/cmu.html.

The Labor Code was recently amended to now require Grantee’s compliance with the Department of Industrial Relations (DIR) electronic certified payroll reporting (eCPR) requirements which took effect on January 1, 2016. No contract can be awarded unless the public works project has been registered with the Department of Industrial Relations. Subcontractors used on the project must also comply. Additional information is available at http://www.dir.ca.gov/Public-Works/PublicWorks.html.

Grantee agrees to comply with all related provisions of the Labor Code, including but not limited to, the provisions of Labor Code Section 1775 relating to the payment of prevailing wages, Section 1777.5 relating to the employment of apprentices, Section 1811-1813 relating to the payment of Overtime and provisions pertaining to eCPR compliance.

4. Project Conformance with the Secretary of the Interior’s Standards.

The Project and the property upon which the Project is located must at all times conform to the Secretary of the Interior’s Standards for the Treatment of Historic Properties.

5. Timeline for Project Completion.

The Project must be completed before the expiration of the Term. If the Project cannot be completed within the required timeframe, Grantee may be required, at County’s sole election, to forfeit any and all unexpended Grant funds.
6. **Changes to Project Agreement Term.**

Grantee must complete the Project and demonstrate the Project to be fully usable within the Term. The County may but is not required to, at its sole discretion, approve an extension for demonstrated delays not within the control of Grantee. The Grantee must request the extension in writing no later than three (3) months prior to the expiration of the Term. If the Project cannot be completed within the required timeframe, the Grantee shall not be entitled to receive unexpended Grant funds and the County has the sole discretion to terminate at the expiration of the Term.

**SECTION II**

**OPERATION AND MAINTENANCE**

Upon completion of the Project, the Grantee represents and warrants that it shall open the property upon which the Project is located to the public, and continuously operate and maintain the property and the Project for the benefit of the public for a period of at least twenty (20) years. On-going maintenance is solely the responsibility of the Grantee.

**SECTION III**

**COMPENSATION / REIMBURSEMENT**

1. **Reimbursement Amount.**

The County will reimburse the Grantee in an amount not to exceed the maximum Grant amount of $102,992 for Eligible Costs. County’s obligation to pay is expressly conditioned upon the Grantee’s demonstrated compliance with all of the conditions of this Agreement and the availability of Grant funds.

2. **Invoice Requirements.**

Grantee must keep accurate accounting records of all Project expenditures. Grant funds are issued on a reimbursement basis only, based upon completion of the Agreement requirements. Grantee shall provide County a detailed, itemized invoice requesting reimbursement of Eligible Costs containing information noted below. The County shall only reimburse for approved costs. If a reimbursement request is not complete, the County will return the request for payment with deficiencies noted. The County, in its sole discretion, may pay that part of the reimbursement request that is complete, or decline payment until the reimbursement request is complete. All reimbursement requests shall include the following information:

   a) A letter itemizing Eligible Costs being claimed for reimbursement. Itemizations must clearly show the relationship between the Eligible Cost and the matters listed in Attachment A, Scope of Work.

   b) Clear copies of invoices that are for the Project and addressed to the Grantee.
c) Evidence that all invoices have been paid. For example, a clear copy of the front side of the check or warrant issued to pay said invoices, or a receipt evidencing such payment. Account statements will not be accepted.

d) Evidence that Grantee’s cash contribution identified in the recitals were provided and expended.

e) A report on the status of the Project, which shall include construction inspection reports.

Grantee may submit requests for reimbursement any time that Grantee has claimable expenditures exceeding $1,000. However, Grantee must send the County reimbursement requests on a quarterly basis when Grantee has claimable expenditures during that quarter that exceed $1,000. No advances of Grant funds will be issued. The quarterly submittal dates are January 1, April 1, July 1, and October 1. Upon Project completion, the Grantee may submit a final Grant payment request that must include all the items required in a standard reimbursement request and the following:

a) At least six (6) different photos of the Project; and,

b) Demonstration of compliance with the acknowledgement required under Section I, Paragraph 2. c) (a photograph of the installed sign will suffice); and,

c) A statement of how each one of the conditions noted in Section I, Paragraph 1. g) have been met.

If the County approves the reimbursement request, the County will provide payment to the Grantee within thirty (30) days of receipt of the request for reimbursement. The County of Santa Clara Parks and Recreation Department must have received Grantee’s request for reimbursement within the Term of this Agreement, or any written extension thereof. Upon expiration of the Term of this Agreement, any remaining unexpended Grant funds will remain with the County. It is the Grantee’s responsibility to keep track of the expiration of the Term of this Agreement and to ensure that the Project is completed, and reimbursements submitted in accordance with the terms of the Agreement.

3. Project Records, County Audit, and Inspection.

Grantee is responsible for maintaining fiscal controls and fund accounting procedures that shall show the following:

a) The disposition of the proceeds of Grant funds provided to Grantee;

b) The total costs of the Project;

c) The amount and nature of that portion of the Project cost supplied by other sources; and,

d) Any other records and controls that will facilitate an effective audit.
Grantee will maintain Project financial records for audit purposes for three (3) years after completion of the Project or until all claims are settled, whichever occurs last. All records and data shall be available to County upon reasonable notice within five (5) working days of a request by County. Grantee shall repay County with interest at the rate earned on County’s investments for any unauthorized activities disclosed by audit or inspection, including the cost of the audit, within thirty (30) days of demand by the County.

Grantee will maintain Project records related to maintenance and access for audit purposes for twenty (20) years after completion of the Project. All records and data shall be available to the County upon reasonable notice within five (5) working days of a request by the County.

Audits may be conducted at the discretion of the County. The audits may take two forms; a walk through inspection of the Project and informal review of the Project records by County staff, and/or a formal audit conducted by either County staff or a consultant. Grantee should be prepared for either or both types of audits. A walk through inspection may occur at the beginning of a Project, prior to approval of the final reimbursement request, or at periodic intervals during construction and the period of time during which the playground must remain open and accessible to the public. A formal audit may occur as deemed necessary by the County.

SECTION IV

INDEMNIFICATION, INSURANCE AND RELEASE

1. During the construction phase, the Grantee, at its sole cost and expense, shall provide the insurance set forth in the Attachment C, Insurance. As insurance requirements may differ from those in effect at time of grant application, Grantee shall comply with requirements in effect at time of execution of this Project Agreement.

2. Except to the extent of Claims (defined below) resulting from the sole active gross negligence or willful misconduct of County, Grantee warrants, represents and agrees to protect, defend (with counsel reasonably acceptable to County) and hold County and County’s agents, directors, officers, Board of Supervisors, employees, representatives, contractors, successors and assigns and each of their respective partners, members, directors, officers, employees, representatives, agents, contractors, heirs, successors and assigns (collectively, the “County Indemnitees”) harmless and indemnify the County Indemnitees from and against all liabilities, damages, demands, penalties, costs, claims, losses, judgments, charges and expenses (including reasonable attorneys' fees, costs of court and expenses necessary in the prosecution or defense of any litigation including the enforcement of this provision) (collectively, “Claims”) arising from or in any way related to, directly or indirectly, (i) Grantee’s or Grantee’s Representatives’ use of the Grant funds, (ii) the conduct of Grantee’s operations or business, (iii) from any activity, work or thing done, permitted or suffered by Grantee in or about Grantee’s property wherever located, (iv) Grantee’s failure to perform any covenant or obligation under this Agreement, and/or (v) the Project.
3. Except to the extent of Claims resulting from the sole active gross negligence or willful misconduct of County, to the fullest extent permitted by law, Grantee agrees that neither Grantee nor any of the Grantee’s Indemnitees shall at any time or to any extent whatsoever be liable, responsible or in any way accountable for any loss, liability, injury, death or damage to persons or property which at any time may be suffered or sustained by Grantee or by any person(s) whomsoever who may at any time be using, occupying or visiting the Grantee’s property wherever located. Notwithstanding any provision to the contrary contained in this Agreement, at no time shall County be responsible or liable to Grantee or its representatives for any lost profits, lost economic opportunities, or any form of consequential damage as the result of any actual or alleged breach by County of its obligations under this Agreement.

SECTION V

TERM OF AGREEMENT

This Agreement is effective on the Effective Date as stated above and shall remain in effect for twenty (20) years following project completion. The Agreement shall then expire on an agreed upon date by the parties or as otherwise determined by County in its sole discretion. County reserves the right to cancel or terminate this Agreement at any time without any additional obligation or liability.

SECTION VI

GRANTEE AUTHORIZED SIGNATURES

Ed Shikada, City Manager has been authorized to execute this Agreement on behalf of the Grantee.

SECTION VII

NOTICES

Any notices provided pursuant to this Agreement shall be sent by regular mail to the respective parties addressed as follows:

<table>
<thead>
<tr>
<th>COUNTY OF SANTA CLARA</th>
<th>GRANTEE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Don Rocha, Director</td>
<td>Ed Shikada</td>
</tr>
<tr>
<td>Parks and Recreation Department</td>
<td>City Manager</td>
</tr>
<tr>
<td>298 Garden Hill Drive</td>
<td>250 Hamilton Ave, Palo Alto, CA 94301</td>
</tr>
<tr>
<td>Los Gatos, CA 95032</td>
<td>650-329-2280</td>
</tr>
<tr>
<td>Phone: (408) 355-2220</td>
<td></td>
</tr>
</tbody>
</table>
SECTION VIII

MISCELLANEOUS

1. **Entire Agreement.** This Agreement, including its attachments as referenced herein, contains the entire agreement by and between the Parties respecting the matters herein set forth and supersedes all prior agreements between the Parties hereto respecting such matters, if any, there being no other oral or written promises, conditions, representations, understandings, warranties or terms of any kind as conditions or inducements to the execution hereof and none have been relied upon by either Party.

2. **Headings.** Section headings shall not be used in construing this Agreement.

3. **No Waiver.** Except as herein expressly provided, no waiver by a Party of any breach of this Agreement by the other Party shall be deemed to be a waiver of any other breach by such other Party (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by a Party after any breach by the other Party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other Party whether or not the first party knows of such breach at the time it accepts such payment or performance.

4. **Governing Law.** This Agreement, and all the rights and duties of the Parties arising from or relating in any way to the subject matter of this Agreement contemplated by it, shall be governed by, construed and enforced in accordance with the laws of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Agreement, including mediation or other alternative dispute resolution proceedings, shall be brought only in Santa Clara County, California. **EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.**

5. **Written Modifications.** No agreement, amendment, modification, understanding or waiver of or with respect to this Agreement or any term, provision, covenant or condition hereof, nor any approval or consent given under or with respect to this Agreement, shall be effective for any purpose unless agreed to in writing and signed by both Parties to this Agreement.

6. **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of both parties and their successors and assigns.

7. **Construction.** This Agreement shall not be construed more strongly against either party regardless of who is more responsible for its preparation.

8. **Illegality or Unenforceability.** If any provision of this Agreement, or the application of it to any person or circumstances, shall to any extent be invalid, void or unenforceable, the remainder of this Agreement, or the application of this provision to any person or circumstances other than those as to which it is invalid, void or unenforceable, shall not be affected, and each
9. **Conflict of Interest.** Grantee represents, warrants and agrees that it shall comply, and require its employees, agents, representatives, contractors, consultants, sub-consultants and subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination by County of this Agreement.

10. **Funding Contingency.** This Agreement is contingent upon the appropriation of sufficient funding by County for the obligations and responsibilities of County covered by this Agreement. If funding is reduced or deleted by the County for the obligations or responsibilities of County covered by this Agreement, then County may terminate this Agreement at its election without liability or obligation.

11. **California Public Records Act.** County is a public agency subject to the disclosure requirements of the California Public Records Act (“CPRA”). If Grantee’s proprietary information is contained in documents submitted to County, and Grantee claims that such information falls within one or more CPRA exemptions, then Grantee must clearly mark such information “CONFIDENTIAL AND PROPRIETARY,” and identify the specific lines containing the information. In the event of a request for such information, County will use reasonable efforts to provide notice to Grantee prior to such disclosure. If Grantee contends that any documents are exempt from the CPRA and wishes to prevent County disclosure, Grantee is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before County responds to the CPRA request. If Grantee fails to obtain such remedy, Grantee will have forever waived its right to dispute the disclosure and County will disclose, at its election, the requested information even if marked “CONFIDENTIAL AND PROPRIETARY”, in which case neither Grantee nor any third parties will have any right or claim against County for such disclosure. If County elects to not disclose the information or is precluded from disclosing the information because of a court order or other remedy obtained by Grantee or any Grantee representative, then County represents, warrants and agrees that it will defend, indemnify and hold harmless the County for and against all claims, causes of action, liabilities, relief, injunctions, penalties, attorneys’ fees, court costs, costs of litigation including discovery, settlement, and other remedies obtained or sought by any third party claiming such information should have or are required to be disclosed.

12. **Relationship of Parties.** The Parties acknowledge and agree that nothing set forth in this Agreement shall be deemed or construed to render the Parties as joint venturers, partners, agents, a joint enterprise, employer-employee, lender-borrower or contractor. Grantee shall have no authority to employ any person as employee or agent on behalf of County for any purpose. Neither Grantee nor any person using or involved in or participating in any actions or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law except where such illegal, invalid, void or unenforceable provision is material to the Agreement in which case this Agreement shall be void.
inactions relating to this Agreement shall be deemed an employee or agent of County, nor shall any such person or entity represent himself, herself or itself to others as an employee or agent of County.

13. **No Third Party Rights.** The Parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein. This Agreement shall not be construed as nor deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action herein for any cause whatsoever.

14. **Counterparts.** This Agreement may be executed in several counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original. Facsimile or electronic signatures shall have the same legal effect as original or manual signatures.

15. **Survival.** Those provisions which by their nature should survive termination, cancellation or expiration of this Agreement, shall so survive.

16. **Equal Opportunity/Non-Discrimination.** No party contracting with the County will discriminate against any subcontractor, employee, or applicant for employment, because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status. It is further the policy of the County that no party contracting with the County may discriminate in the provision of services under the contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

///

///SIGATURES FOLLOW ON NEXT PAGE///
17. Signatories. The undersigned signatories each represent and warrant that they are authorized to execute this Agreement for the party on whose behalf they are signing.

IN WITNESS WHEREOF, the parties have executed this Historical Heritage Project Agreement as of the Effective Date as provided above.

SIGNATORIES:

CITY OF PALO ALTO

[Signature]
ED SHIKADA
City Manager

APPROVED AS TO FORM

[Signature]
Sandra Lee
City Attorney or designee

COUNTY OF SANTA CLARA

[Signature]
JEFFREY V. SMITH, M.D., J.D.
County Executive

APPROVED AS TO FORM & LEGALITY

[Signature]
TONY LOPRESTI
Deputy County Counsel
ATTACHMENT A

SCOPE OF WORK

GENERAL PROJECT DESCRIPTION

Restore and Repair the Original Tile Roof of the Historic Roth Building.

ITEMIZED SCOPE OF WORK BEING FUNDED BY GRANT

The Project Applicant shall:

<table>
<thead>
<tr>
<th>WORK TO BE PERFORMED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remove, repair and replace clay tiles. Replacement tiles, if needed, to be acquired from those salvaged from other Palo Alto-owned Birge Clark buildings or a compatible modern fabricator.</td>
</tr>
</tbody>
</table>

All work will be performed to meet the terms of the Historical Heritage Project Agreement, and the Historical Heritage Grant Program Application and Procedures, including any and all revisions thereto.
## ATTACHMENT B

### ITEMIZED PROJECT BUDGET CORRESPONDING WITH ATTACHMENT A

<table>
<thead>
<tr>
<th>WORK TO BE PERFORMED</th>
<th>GRANTEE CASH CONTRIBUTION</th>
<th>GRANT</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remove, repair and replace clay roof tiles.</td>
<td>$0</td>
<td>$102,992</td>
<td>$102,992</td>
</tr>
<tr>
<td><strong>TOTAL PROJECT AMOUNT</strong></td>
<td><strong>$0</strong></td>
<td><strong>$102,992</strong></td>
<td><strong>$102,992</strong></td>
</tr>
</tbody>
</table>
ATTACHMENT C

CURRENT CERTIFICATE OF INSURANCE

The Project Applicant shall provide evidence of meeting the insurance requirements as shown in the County’s Insurance Exhibit attached.

The Project Applicant shall attach an insurance certificate to the Project Agreement when submitting their signed Agreement to the County for execution.
INSURANCE REQUIREMENTS FOR
GRANT AGREEMENT

Indemnity

The Grantee shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter “County”), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Grantee and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Grantee shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Grantee contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Grantee's indemnification of the County, the Grantee shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Grantee shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Grantee upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Grantee shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Grantee.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.
D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
   a. Each occurrence - $1,000,000
   b. General aggregate - $1,000,000
   c. Products/Completed Operations aggregate - $1,000,000
   d. Personal Injury - $1,000,000

2. General liability coverage shall include:
   a. Premises and Operations
   b. Products/Completed
   c. Personal Injury liability
   d. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

   **Additional Insured Endorsement**, which shall read:

   “County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

   Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the Grantee shall be notified by the contracting department of these requirements.

4. Fidelity Bond

Before receiving any reimbursement under this Agreement, Grantee will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount
of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Grantee will notify County immediately, and County may withhold further payment to Grantee until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Grantee and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Grantee pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Grantee. However, this shall not in any way limit liabilities assumed by the Grantee under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Grantee's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

3. Should any of the work under this Agreement be sublet, the Grantee shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Grantee may insure subcontractors under its own policies.
**CERTIFICATE OF LIABILITY INSURANCE**

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**PRODUCER**
NFP Property & Casualty Services, Inc.
160 West Santa Clara Street
Suite 575
San Jose, CA 95113

**CONTACT NAME:** Tami O'Neill
**PHONE:** (A/C, No, Ext): (858) 677-9409
**FAX:** (A/C, No): (603) 875-1213
**E-MAIL ADDRESS:** tami.oneill@nfp.com

**INSURER(S) AFFORDING COVERAGE**
INSURER A: Nonprofits’ Insurance Alliance of California Inc. XXXXXX

**INSURED**
Palo Alto History Museum
P O Box 676
Palo Alto, CA 94302

**COVERAGES**

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<tr>
<th>INSURER</th>
<th>TYPE OF INSURANCE</th>
<th>ADDL INSURED</th>
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<th>Policy Eff</th>
<th>Policy Exp</th>
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**CERTIFICATE HOLDER**
County of Santa Clara
Attn: Santa Clara County Clerk
70 W. Hedding
San Jose, CA 95110

**CANCELLATION**
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**AUTHORIZED REPRESENTATIVE**

© 1988-2015 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

Any person or organization that you are required to add as an additional insured on this policy, under a written contract or agreement currently in effect, or becoming effective during the term of this policy. The additional insured status will not be afforded with respect to liability arising out of or related to your activities as a real estate manager for that person or organization.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
   1. In the performance of your ongoing operations; or
   2. In connection with your premises owned by or rented to you.

However:
   1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
   2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:
   1. Required by the contract or agreement; or
   2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
HISTORIC GRANT PROGRAM FUNDING AGREEMENT  
BY AND BETWEEN  
THE CITY OF PALO ALTO AND THE COUNTY OF SANTA CLARA  

This Funding Agreement ("Agreement") is made and entered into by and between the County of Santa Clara, a political subdivision of the State of California (hereinafter referred to as the "County") and the City of Palo Alto, a municipal corporation (hereinafter referred to as "Grantee"). County and Grantee are each a "Party" and collectively the "Parties" to this Agreement.

RECITALS

WHEREAS, Grantee signed and submitted a Historic Grant Program application ("Application") to the County requesting grant funding for Restoration of the Original Clay Tile Roof of the Historic Roth Building ("Project"), which is incorporated herein and made a part of this Agreement by this reference (Exhibit B). County materially relies upon the statements and documentation submitted by Grantee in said Application in its entirety and based upon this material reliance County is willing to enter into this Agreement with Grantee;

WHEREAS, Grantee represents and warrants to County that Grantee, by itself and through its contractors and consultants, has experience, expertise, financial capability and ability to complete the Project contemplated herein and to fully perform all obligations and responsibilities under this Agreement to completion;

WHEREAS, the Board of Supervisors, wishes to assist Grantee in completing the Project which serves as a capital improvement to the Historic Roth Building, home to the Palo Alto History Museum on a continuous uninterrupted basis for at least twenty (20) years (collectively, the "Public Purpose");

WHEREAS, the Board of Supervisors has approved the award of Grant Funds (as defined herein below) to Grantee provided Grantee complies with all terms and conditions of this Agreement and has found that the Project will serve a public purpose of general County interest as a capital improvement to the Historic Roth Building, home to the Palo Alto History Museum; and,

WHEREAS, the award of the Grant Funds is contingent upon Grantee complying with all terms and conditions of this Agreement, which includes Grantee satisfying all of the Grant Scope/Cost Estimate Form representations contained in Appendix D (as amended) of Grantee’s Application, which is included within Exhibit B herein below.
NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Grantee agree to the foregoing and as follows:

1. All Recitals contained herein above are incorporated into and made a part of this Agreement as terms and conditions.

2. Grantee may utilize the Grant Funds specified in Section 4 of this Agreement to complete the Project within three years from the Effective Date of this Agreement and shall return any unspent funds at the end of this three-year period to County.

3. Grantee warrants and represents that it shall expend all Grant Funds in accordance with the terms of this Agreement and the Historic Grant Program Procedural Guide (“Guide”) (Exhibit A) attached and incorporated herein by this reference. In the event that there are any inconsistencies between the Agreement and the Guide, the provisions of this Agreement shall control.

4. Grantee shall acknowledge County’s contribution to the Project in accordance with the requirements of the Guide; the acknowledgement shall first be reviewed and approved by County before it is installed or displayed.

SECTION 1. PUBLIC PURPOSES

If applicable, Grantee represents and warrants that it will use best efforts to secure all the requisite rights and entitlements from public agencies, local government, and the property owner (if any) to carry out the Project. Grantee further represents and warrants that it will ensure that at all times applicable to the Project, it will be open and available to the public on an equal basis, and accessible by all members of the public.

SECTION 2. GRANTEES RESPONSIBILITIES

County funding is subject to the following conditions, as applicable to the Project:

(1) Responsibilities of Grantee. Grantee shall ensure that the Project is completed and operated in compliance with all requirements of the Guide. The Project shall be fully completed and operational within three years from the date of execution of this Agreement. Grantee shall act promptly and without delay with respect to such matters in relation to the Project in accordance with the following (as applicable to the Project):
   a. Comply with all laws and Guide requirements, including but not limited to all environmental, health, and safety laws and all provisions of the California Public Contracts Code and Labor Code.
   b. Comply with best industry practices and manufacturer design and construction specifications.
c. Prepare plans and specifications and construction of the Project using qualified persons with the requisite skills and expertise to complete the Project.

d. Prepare all environmental documents required for completion of the Project pursuant to the California Environmental Quality Act, National Environmental Policy Act, and any rules and/or regulations promulgated thereunder, where applicable. No funds will be dispersed until these environmental requirements have been fully met.

e. Secure all approvals, permits, and certifications by government agencies required for completion of the Project.

f. Secure performance and payment bonds in 100% of the amount of any construction contract to assure satisfactory completion of the Project, and the payment of laborers and suppliers of material.

g. Each year, during completion of the Project, Grantee shall cause a report to be made to the County Board of Supervisors showing progress made towards completion of the Project.

(2) Capital Contributions by Parties to Agreement

a. Grantee shall ensure that any funds in excess of the Grant Funds needed to complete the Project are secured by Grantee and not by County.

b. No Grant Funds may be used for office space, salary, or administrative expenses incidental to the Project.

(3) Budget Contingency. Performance and/or payment by County pursuant to this Agreement is contingent upon the appropriation of sufficient funds by County for the work covered by this Agreement. If funding is reduced or eliminated by County for the work covered by this Agreement, the County may, at its option and without penalty or liability, terminate this Agreement or offer an amendment to this Agreement indicating the reduced amount. County is under no obligation to fund the Project.

SECTION 3. OPERATION AND MAINTENANCE

Upon completion of Project, Grantee warrants, represents, and agrees that it, or its authorized representatives, will operate, manage, and maintain the Project for a period of at least twenty (20) consecutive years from the effective date of this Agreement, for Public purposes, open to the public and for the benefit of the general public. Ongoing operation, management, and maintenance is solely the responsibility of the Grantee acting by itself or through its authorized representatives.
SECTION 4. COMPENSATION

(1) County shall provide Grantee Two Hundred Thousand Dollars ($200,000) (“Grant Funds”) only in accordance with the reimbursement provisions of the Guide. Grantee shall thoroughly review and develop an understanding of the obligations set out in the Guide, including but not limited to the “Reimbursements” and “Final Reimbursement” sections. The Compensation in this Agreement shall be subject to the Budget Contingency in Section 2, paragraph 3.

(2) If the amount of compensation in Section 4.1 of this Agreement varies from the Project budget identified in Appendix D of the Application, then a revised grant scope and cost estimate form shall be attached hereto as “Amended Appendix D” and “Amended Appendix E” to Exhibit B. Amended Appendix D shall set forth the grant scope and cost estimate based on the Grant Funds awarded. Amended Appendix D and Amended Appendix E shall replace Appendix D and Appendix E to Exhibit B.

(3) Any Grant Funds not expended pursuant to the terms and conditions of this Agreement shall be returned to County immediately. In addition, if, for whatever reason, the Grantee is unable to ensure the completion of the Project or is unable to ensure that the Project is carried out, operated, managed, or maintained for the time period specified in this Agreement, Grantee shall immediately refund to the County all the Grant Funds, even if some or all of such Grant Funds have already been expended for the Project.

(4) At the sole discretion of the County, advance funding may be provided in accordance with the terms of the Guide.

SECTION 5. RECORDS RETENTION AND AUDIT

(1) Grantee shall maintain Project records for audit purposes for three (3) years after completion of the Project or until all claims are settled, whichever occurs last. All records and data shall be available to County upon reasonable notice within five (5) working days of a request by County. Grantee shall repay County with interest at the rate earned on County investments for any unauthorized activities disclosed by audit or inspection, including the cost of the audit, within thirty (30) calendar days of demand by County.

(2) Audits may be conducted at the discretion of the Santa Clara County Parks and Recreation Department (“Department”). The audits may take two forms; a walk-through inspection of the Project premises, if any, and informal review of the Project records by Department staff, and/or a formal financial audit conducted by either County staff or a consultant. Grantee shall be prepared for either or both types of audits. A walk-through inspection may occur at the beginning of a Project, prior to approval of the final reimbursement request, or at periodic intervals throughout the Project. A formal financial audit may occur as deemed necessary by the Department.
SECTION 6. INDEMNIFICATION.

Grantee covenants, warrants, represents, and agrees that it shall indemnify, defend, save, and hold harmless the County and all of its employees, officers, directors, attorneys, agents, contractors, successors, and assigns in accordance with the indemnification provision of Exhibit C, which is incorporated herein and made a part of this Agreement by this reference.

SECTION 7. TERM OF AGREEMENT

This Agreement is effective as of the date of its full execution and shall terminate three (3) years following date of full execution, unless otherwise terminated earlier pursuant to the terms of this Agreement.

SECTION 8. NOTICES

Any notices provided herein shall be deemed received when mailed or delivered to the respective parties addressed as follows:

<table>
<thead>
<tr>
<th>County of Santa Clara</th>
<th>City of Palo Alto</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director</td>
<td>Ed Shikada</td>
</tr>
<tr>
<td>County of Santa Clara Parks and Recreation Department</td>
<td>City Manager</td>
</tr>
<tr>
<td>298 Garden Hill Drive</td>
<td>City of Palo Alto</td>
</tr>
<tr>
<td>Los Gatos, CA 95032</td>
<td>250 Hamilton</td>
</tr>
<tr>
<td>Phone: (408) 355-2220</td>
<td>Palo Alto, CA 94301</td>
</tr>
<tr>
<td></td>
<td>Phone: (650) 329-2634</td>
</tr>
</tbody>
</table>

SECTION 9. MISCELLANEOUS

(1) Entire Agreement. This document represents the entire agreement between the parties in relation to the subject matter contained herein. All prior negotiations and written and/or oral agreements between the Parties with respect to the subject matter of the Agreement are merged into this Agreement.

(2) Amendments. This Agreement may only be amended by a written instrument signed by authorized representatives of both parties.

(3) Conflict of Interest. Grantee shall comply, and require its contractors, employees, agents, representatives, subcontractors and consultants to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.
a. In accepting this Agreement, Grantee covenants, warrants, represents, and agrees 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 this Agreement. Grantee further covenants that, in the performance of this Agreement, it will not employ any contractor, consultant or person having such an interest. Grantee, including but not limited to Grantee’s employees, contractors, subcontractors and consultants, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the “Act”), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

b. If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Grantee shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other applicable laws and regulations including, as required, filing of Statements of Economic Interests within 30 days of commencing any work pursuant to this Agreement, annually by April 1, and within 30 days of their termination or cessation of work pursuant to this Agreement.

(4) Governing Law, Venue. This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by, construed, and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Agreement, including arbitration proceedings, shall be brought only in Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

(5) Assignment. No assignment of this Agreement or of any of the rights or obligations hereunder shall be valid without the prior written consent of the County.

(6) Waiver. No delay or omission by either Party hereto to exercise any right occurring upon any noncompliance or default by the other Party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained.

(7) Non-Discrimination. Grantee represents, warrants, and agrees that it and its contractors, consultants, and representatives shall comply with all applicable Federal, State, and local laws and regulations including Santa Clara County’s policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with
Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Grantee represents, warrants, and agrees that it shall not discriminate against any contractor, subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Grantee also represents, warrants, and agrees that it shall not discriminate in provision of work performed in relation to this Agreement because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

(8) **County No-Smoking Policy.** Grantee and its employees, agents, contractors, subcontractors and consultants, shall comply with the County’s No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where County is the sole occupant, and (3) in all County vehicles.

(9) **Food and Beverage Standards.** Except in the event of an emergency or medical necessity, County’s nutritional standards shall apply to any foods and/or beverages purchased by Grantee with Grant Funds for County-sponsored meetings or events.

(10) **California Public Records Act.** All documents and records provided to or made available to County under this Agreement become the property of the County, which is a public agency subject to the disclosure requirements of the California Public Records Act (“CPRA”). If Grantee proprietary information is contained in documents submitted to County, and Grantee claims that such information falls within one or more CPRA exemptions, Grantee must clearly mark such information “CONFIDENTIAL AND PROPRIETARY,” and identify the specific lines containing the information. In the event of a request for such information, County will make reasonable efforts to provide notice to Grantee prior to such disclosure. If Grantee contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required at its own cost, liability, and expense to obtain a protective order, injunctive relief, or other appropriate remedy from a court of law in Santa Clara county before the County responds to the CPRA request. If Grantee fails to obtain such a remedy before County responds to the CPRA request, County may disclose the requested information and shall not be liable or responsible for such disclosure.

Grantee further warrants, represents, and agrees that it shall defend, indemnify, and hold County harmless against any and all claims, actions or litigation (including but not limited to all judgments, costs, fees, and attorney’s fees) that may result from denial by County of a CPRA request for any information arising from any representation, or any action (or inaction), by the Grantee, its contractors, consultants, employees, agents, or representatives.
(11) **No Third-Party Beneficiaries.** This Agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the Parties signing this Agreement. Subcontractors, sponsors, and affiliates shall have no right or claim attaching to this Agreement or to the Grant Funds and are not third-party beneficiaries of or to this Agreement.

(12) **Relationship of the Parties.** The Parties acknowledge and agree that nothing set forth in this Agreement shall be deemed or construed to render the parties as joint venturers, partners, agents, a joint enterprise, employer-employee, or lender-borrower. Grantee shall have no authority to employ any person as employee or agent on behalf of County for any purpose. Neither Grantee nor any person using or involved in or participating in the Project or in the use of the Grant Funds shall be deemed a third party beneficiary to this Agreement nor an employee or agent of County, nor shall any such person represent himself or herself to others as a third party beneficiary to this Agreement or as an employee or agent of County.

(13) **No Indemnification and Insurance by County.** Nothing contained in this Agreement is to be construed as an indemnification by County for any loss, damage, injury or death arising out of or caused, in whole or in part, by the County or its Board of Supervisors, officers, executives, attorneys, employees, agents, representatives, contractors or subcontractors. Nothing contained herein shall be construed to, and nothing shall, obligate the County to provide any insurance, indemnity or protection for or on behalf of any third party, the Project or the property owner.

(14) **Subcontractors.** If any obligation is performed for or on behalf of Grantee through a consultant, contractor or subcontractor, Grantee shall remain fully responsible for the performance of all obligations under this Agreement and Grantee shall be solely responsible for all payments due to its contractors, consultants, or subcontractors. No contract, subcontract, or other agreement entered into by Grantee with any third party in connection with this Agreement, or for or in relation to the use of the Grant Funds, shall provide for any indemnity, guarantee, or assumption of liability by, or other obligation of, County with respect to such arrangement. No contractor, consultant, or subcontractor will be deemed a third party beneficiary for any purposes under or to this Agreement.

(15) **Nonexclusive Agreement.** Grantee agrees that this Agreement is non-exclusive and County may at any time, in its sole discretion, enter into agreements with other parties for any purpose deemed to be in the best interest of the County.

(16) **Paragraph Headings.** The headings and captions of the various paragraphs and subparagraphs hereof are for convenience only, and they shall not limit, expand, or otherwise affect the construction or interpretation of this Agreement.

(17) **Cumulative Remedies.** The rights and remedies of the Parties to this Agreement, whether pursuant to this Agreement or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.
(18) **Counterparts and Electronic Signatures.** This Agreement may be executed in any number of counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original provided all of the Parties have fully executed the Agreement. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

(19) **Construction/Severability.** This Agreement shall not be construed more strongly against either Party regardless of who is more responsible for its preparation. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable any other part of this Agreement, but the Agreement shall be construed as not containing the particular provision or provisions held to be invalid or unenforceable.

(20) **Authority.** Each Party represents and warrants that it has executed this Agreement freely, fully intending to be bound by the terms and provisions contained in this Agreement and that the persons signing below are authorized to sign on each Party’s behalf.

(21) **Office of Foreign Assets Control Compliance.** Grantee represents to County that:
(a) Grantee and each of the Grantee Representatives are not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, “Specially Designated National and Blocked Person,” or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (b) Grantee, and the Grantee Representatives, are not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

(22) **County Regulatory Authority.** Grantee acknowledges and agrees that County, acting not as landlord but in its governmental regulatory capacity, has certain governmental regulatory authority over the Premises and that nothing in this Agreement binds the County to exercise or refrain from exercising this discretionary governmental authority in any particular manner.

(23) **Bribery Clause.** Grantee certifies, represents, and warrants that Grantee and the Grantee Representatives have not been convicted of bribery or attempting to bribe an officer or employee of County or any other municipality or state entity nor has Grantee or any of the Grantee Representatives made an admission of guilt of such conduct which is a matter of record.

a. Compliance with Wage and Hour Laws. Grantee, and any the Grantee Representatives it employs or contracts with to complete work under this Agreement, must comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or Living Wage Ordinance.

b. Final Judgments, Decisions, and Orders. For purposes of this Section, a “final judgment, decision, or order” refers to one for which all appeals have been exhausted. Relevant investigatory government agencies include: the Federal Department of Labor, the California Division of Labor Standards Enforcement, a local enforcement agency, or any other government entity tasked with the investigation and enforcement of wage and hour laws.

c. Prior Judgments against Grantee. By signing this Agreement, grantee affirms that it has disclosed any final judgments, decisions, or orders from a court or investigatory government agency finding—in the five years prior to executing this Agreement—that Grantee has violated any applicable wage and hour laws.

Grantee further affirms that it has satisfied and complied with—or has reached agreement with the County regarding the manner in which it will satisfy—any such judgments, decisions, or orders.

d. Judgments During Term of Contract. If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision, or order finding that Grantee or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Grantee learns of such a judgment, decision, or order that was not previously disclosed, Grantee must inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM), no more than 15 days after the judgment, decision, or order becomes final or of learning of the final judgment, decision, or order. Grantee and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the Office of the County Executive-OCCM with documentary evidence of compliance with the final judgment, decision, or order. County reserves the right to require Grantee to enter into an agreement with the County regarding the manner in which any such final judgment, decision, or order will be satisfied.

e. County’s Right to Withhold Payment. Where Grantee has been found in violation of any applicable wage and hour law by a final judgment, decision, or order of a court or government agency, the County reserves the right to withhold payment to Grantee until such judgment, decision, or order has been satisfied in full.

f. Material Breach. Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for termination of this Agreement and/or any other remedies available under this Agreement and/or law.
g. Notice to County Related to Wage Theft Prevention. Notice provided to the Office of the County Executive as required under this Section shall be addressed to: Office of the County Executive—OCCM; 70 West Hedding Street; East Wing, 11th Floor; San José, CA 95110. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

(25) Prevailing Wage. Grantee acknowledges and agrees that work performed under this Agreement may be considered a public work within the meaning of California Labor Code Section 1720 and that the requirements of Section 1771, et. seq. apply to such public work. Grantee has included (and will include) consideration for this obligation in calculating compensation under this Agreement, if such prevailing wage requirements are applicable. Grantee is solely responsible and liable for ensuring compliance with all applicable prevailing wage laws. County may at any time, without obligation to do so, audit Grantee to verify whether Grantee is in compliance with prevailing wage laws. Grantee shall cooperate with all such audits, including making available and providing copies, during the period 9:00 a.m. to 5:00 p.m., Monday through Friday, any and all records requested by County to verify compliance promptly upon request, but not later than seventy-two hours after such request.

(26) Insurance. Grantee shall provide insurance and comply with all insurance and other terms and conditions set out in the attached Exhibit C.

(27) Intellectual Property. Grantee acknowledges, represents, warrants, and agrees that Grantee owns and holds the full rights to any and all images, paintings, art work, photographs, depictions, videos, other digital representations and other intellectual property (the “Intellectual Property”) that Grantee produces, creates, generates, uses or provides as a part of the Project, and Grantee does hereby assign, transfer and grant to the County of Santa Clara the non-exclusive, non-revocable, perpetual, worldwide license to use the Intellectual Property for any County purpose, including but not limited to the right to post, reproduce, market, print, copy, use in any form and in social media or the internet, use in any marketing or advertising, display, publicly perform, publish, broadcast, distribute, combine or distribute the Intellectual Property or any of the intellectual property rights contained therein for County’s sole use, excluding the right to sell, transfer or assign any of the Intellectual Property. Grantee further waives any right it may have to inspect, view, or approve any of the uses made of the Intellectual Property. Grantee hereby forever releases, discharges, and agrees to save and hold harmless County, its employees, agents, representatives and Board of Supervisors, from, for and against any and all liabilities, claims, causes of action, allegations and lawsuits that are made or threatened to be made in relation to any use made of any of the Intellectual Property, including but not limited to any blurring, distortion, alteration, optical illusion or use in composite or edited form, whether intentional or otherwise, that may occur or be produced in the use of any of the Intellectual Property or the processing of the Intellectual Property.
(28) **Exhibits.** The following exhibits are attached to this Agreement and are incorporated herein by this reference.
   Exhibit A – Historic Grant Program Procedural Guide
   Exhibit B – Grant Application
   Exhibit C – Insurance Requirements and Proof of Insurance

(29) **Survival.** All terms and conditions that by their nature should survive termination or expiration of this Agreement, shall so survive including but not limited to Sections 1, 2, 3, 5, 6, 8, and 9 inclusive.

///SIGNATURES FOLLOW ON NEXT PAGE/////
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as provided below, effective as of the last date signed by all the Parties (“Effective Date”).

Grantee:

Ed Shikada, City Manager
City of Palo Alto

Dated: 1/25/2022

Approved as to form:

Terence Howzell, Chief Assistant City Attorney
City of Palo Alto

COUNTY OF SANTA CLARA:

Sylvia Gallegos, Deputy County Executive

Date: 1/27/2022

Approved as to form and legality:

Deputy County Counsel

Historic Grant Agreement (Program One-Round 1) CAPITAL
By and between the City of Palo Alto and the County of Santa Clara for the
‘Restoration of the Original Clay Tile Roof of the Historic Roth Building’ Project
Page 13 of 16
GRANT FUNDING AGREEMENT
Between the County of Santa Clara and the City of Palo Alto
for Restoration and Repair of the Roth Building Elevator
(Fiscal Year 2022 Historic Heritage Grant Funds, $350,000)

This Grant Funding Agreement (“Agreement”) is made and entered into as of the last date signed below by all parties (“Effective Date”) by and between the County of Santa Clara, a political subdivision of the State of California (“County”), and the City of Palo Alto, a California municipality, with its primary offices located at 250 Hamilton Ave, Palo Alto, CA 94301 (“Grantee”). County and Grantee shall sometimes be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the Grantee submitted an application to the County’s Historical Heritage Commission (“Historical Heritage Commission” or “Commission”) for funding of the Restoration and Repair of the Roth Building Elevator (“Project”) located at 300 Homer Avenue, Palo Alto, CA 94301;

WHEREAS, the Project includes the restoration and repair of the Roth Building’s 1940’s Otis Elevator, as more fully described in Attachment A “Scope of Work and Itemized Project Budget” incorporated and made a part of this Agreement by reference herein;

WHEREAS, the Historical Heritage Commission, on April 21, 2022, reviewed the merits of the Grantee’s application and forwarded its recommendation to the Board of Supervisors that it approve the allocation of $350,000 (Three-hundred fifty thousand dollars) from the Fiscal Year 2022 Historical Heritage Park Charter Development Funds to assist the Grantee with the Project;

WHEREAS, the Board of Supervisors reviewed the information provided in support of the Project and found that the Project meets the requirements for use of Park Charter Development funds in Section 604 (b) of the County Charter; and,

WHEREAS, the Board of Supervisors on June 7, 2022, reviewed and approved the recommendation of the Historical Heritage Commission to allocate $350,000 (“Grant”) to assist with the Project, which will acknowledge, preserve, and commemorate the historical and cultural heritage of the Santa Clara Valley.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions herein, County and Grantee agree to the foregoing and as follows:
SECTION I. GRANTEE RESPONSIBILITIES

The County and Grantee agree that the foregoing recitals of the Agreement are the basis for and incorporated into and made a part of this Agreement as terms and conditions. The County and Grantee further agree that County funding is subject to the following conditions:

A. General.

Grantee, at Grantee’s sole cost and expense, shall perform or cause to be performed the Scope of Work described in Attachment A, and the Grantee shall act promptly and without delay with respect to such matters in relation to the Project. In performing the Project, the Grantee agrees to the following terms and conditions.

1. Approvals.

   (a) Grantee shall prepare all environmental documents and take all other actions required for approval and completion of the Project pursuant to the California Environmental Quality Act, National Environmental Policy Act, and any rules and/or regulations promulgated thereunder and any other applicable laws.

   (b) Grantee shall secure all required approvals, including approvals from government agencies required for completion of the Project.

   (c) Grantee warrants, represents, and agrees that, except where otherwise expressly prohibited by state or federal law, Grantee, as the applicant for any discretionary land use permit, development permit, license, authorization, entitlement, or other approval from County, will defend, indemnify, and hold harmless County and its officers, agents, employees, boards and commissions from, for and against any claim, action or proceeding brought by any person or entity (“third party”) other than the Grantee against County or its officers, agents, employees, boards, or commissions that arises from or is in any way related to the approval, including but not limited to claims, actions, or proceedings to attack, set aside, void, or annul the approval. County has the right to participate in the defense of any claim, action, or proceeding. This indemnity shall not apply to the gross negligence or willful misconduct of County, or of its agents, officers, employees, boards, or commissions.

2. Acknowledgements.

   (a) Grantee shall publicly acknowledge the Grant by providing a plaque permanently affixed to the building exterior, or on a prominent location on the Project site, visible to the public. The acknowledgement credit shall read: “Restoration made possible in part by a grant from the County of Santa Clara..."
Parks and Recreation Department’s Historical Heritage Grant Program.”
Grantee shall obtain County Parks and Recreation Department review and approval of the plaque or sign prior to manufacture and installation.

(b) Grantee shall publicly acknowledge the Grant by giving credit to County in project-related materials including newsletters, brochures, and internet messages.

(3) Reports and Documentation.

(a) Grantee shall submit a bi-annual written project accomplishment report for the Project to the County Parks and Recreation Department no later than November 1 and May 1 of each year, until the Project is completed and reimbursement received.

(b) Grantee shall provide any documentation the Historical Heritage Commission requests regarding the Project. This includes, but is not limited to, documents before construction work begins in order to ensure that the proposed Project is consistent with the United States Secretary of the Interior’s standards for rehabilitation, preservation, and restoration of historic properties.

(c) Grantee shall make a presentation at a regularly scheduled Historical Heritage Commission meeting discussing the completed Project within three (3) months of Project completion. The Grantee shall print and distribute the same photos that were submitted with the final reimbursement request to the Commission members at the presentation. County Parks and Recreation Department Staff will facilitate the scheduling of the presentation.

(4) Additional Conditions for Artwork Restoration

(a) If the Scope of Work involves the restoration or alteration of an artwork, mural, or other original work of authorship within the meaning of 17 U.S.C. § 102, Grantee shall obtain a License from the owner of the copyright to the work prior to requesting funding. This License must grant the right to (1) reproduce the copyrighted work; (2) prepare derivative works based upon the copyrighted work; (3) distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending; and (4) display the copyrighted work publicly. As a condition of the Agreement, Grantee must assign its license to the County.

B. Capital Contributions.

(1) Grantee shall expend the Grant exclusively for third-party expenses arising from services, permits, fees, labor, materials, and equipment required for the Scope of
Work and Itemized Project Budget specified in Attachment A for completion of the Project. No contribution made by County shall be used for Grantee’s internal salary or administrative expenses, including office overhead or expenses.

(2) Grantee shall successfully demonstrate expenditure of Grantee’s cash contribution funds to County’s satisfaction prior to reimbursement through the Grant. Additional funds needed to complete the Project shall be identified in Attachment A, Scope of Work and Itemized Project Budget.

(3) County recognizes that the Itemized Project Budget identified in Attachment A is an estimate and may include a contingency. To the extent that costs qualifying for reimbursement through the Grant vary from this budget, the following provisions apply:

(a) For work to be performed that is funded by both Grantee and County as reflected in Attachment A, if Grantee’s Cash Contribution for any itemized work to be performed is reduced, then the Grant contribution shall be reduced by the same percentage;

(b) Adjustments may be made in the costs associated with Project elements to reflect actual costs, however material changes (even if there is minor or no change in cost) that will affect the restoration or preservation of a historical element, or changes that would necessitate County funding of a non-preservation element that the Grantee was financing with other funds, must be approved by the Historical Heritage Commission. The Commission shall have sole discretion whether to approve or disapprove such adjustments.

(c) Grantee is solely responsible for expenditures that may exceed the Grant amount.

C. Prevailing Wages.

The Project is a public work within the meaning of Labor Code Section 1720, to which the provisions of Labor Code Section 1770 et seq. apply. Grantee shall comply with all of the applicable provisions of the Labor Code, including, but not limited to, payment of prevailing wages. The Grantee shall include prevailing wage requirements in all agreements with third parties for work or services needed to complete the Project. Grantee is hereby notified that prevailing wage must meet the general prevailing rate of per diem wages and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification or type of worker needed to perform the work, as specified by the Director of Industrial Relations. Grantee are further notified that this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Further information on Compliance Monitoring Unit requirements can be found at https://www.dir.ca.gov/dlse/cmu/cmu.html.
The Labor Code requires Grantee’s compliance with the Department of Industrial Relations (DIR) electronic certified payroll reporting (eCPR) requirements which took effect on January 1, 2016. No contract can be awarded unless the public works project has been registered with the Department of Industrial Relations. Subcontractors used on the project must also comply. Additional information is available at http://www.dir.ca.gov/Public-Works/PublicWorks.html.

Grantee agrees to comply with all related provisions of the Labor Code, including but not limited to, the provisions of Labor Code Section 1775 relating to the payment of prevailing wages, Section 1777.5 relating to the employment of apprentices, and Section 1811-1813 relating to the payment of Overtime and provisions pertaining to eCPR compliance.

D. Project Conformance with the Secretary of the Interior’s Standards.

The Project and the property upon which the Project is located shall at all times conform to the Secretary of the Interior’s Standards for the Treatment of Historic Properties. Should Grantee’s implementation of the Scope of Work fail to conform to the Secretary of the Interior’s Standards, the County may, at its sole discretion, withhold reimbursement until Grantee cures the issue.

E. Term of Agreement.

1. This Agreement is effective on the Effective Date as stated above and shall remain in effect for three (3) years from the Effective Date (“Term”). If the Project is completed before the expiration of the Term, the Agreement shall then expire on an agreed upon date by the parties or as otherwise determined by County in its sole discretion.

2. Grantee shall complete the Project and demonstrate the Project to be fully usable within the Term. County may, at its sole discretion, approve an extension for demonstrated delays not within the control of Grantee. The Grantee must request the extension in writing no later than three (3) months prior to the expiration of the Term.

3. If Grantee fails to complete the Project within the required timeframe and does not receive an extension pursuant to this section, or if the Project does not conform to the Scope of Work in Attachment A, the Grantee shall return all awarded Grant funds to the County. The County may, at its sole discretion, agree in writing to accept a partially completed Project or a Project that does not conform to the Scope of Work.

F. Operation and Maintenance.

Upon completion of the Project, the Grantee represents and warrants that it shall open the property upon which the Project is located to the public, and continuously operate and maintain the property and the Project for the benefit of the public for a period of at least twenty (20) years. Grantee shall
maintain the property in good operating condition during this period of time. Grantee shall be solely responsible for ongoing maintenance and operation.

**G. Termination**

The County may, upon written notice to Grantee, terminate all or part of this Agreement at any time for County’s convenience. Upon receipt of such notice, Grantee must immediately cease all work on the date and in the manner specified in the notice. Upon termination, County shall reimburse Grantee for eligible costs incurred pursuant to Section II of this Agreement. County is under no obligation to reimburse for work not yet completed or work that does not conform to the approved Scope of Work and Itemized Project Budget.

**SECTION II. COMPENSATION AND REIMBURSEMENT**

**A. Reimbursement Amount.**

County shall reimburse the Grantee in an amount not to exceed the maximum Grant amount of $350,000 for eligible costs. County’s obligation to pay is expressly conditioned upon the Grantee’s demonstrated compliance with all of the terms and conditions of this Agreement and the availability of Grant funds.

**B. Reimbursement Requirements.**

1. Grant funds shall be issued on a reimbursement basis only. No advanced funds shall be issued. Grantee shall keep accurate accounting records of all Project expenditures. Reimbursement shall be limited to expenditures for work approved in the Scope of Work and Itemized Project Budget (Attachment A). Expenditures shall be incurred during the Term.

2. Reimbursement requests may be submitted at Grantee’s convenience but shall not exceed one request per quarter, and the Project shall have accrued at least $1,000 in claimable expenditures during that quarter. Grantees must provide the following:

   a. HHGP Payment Request Form completed and signed by the authorized representative.

   b. HHGP Project Expenditure Worksheet which clearly shows the relationship between expenditures and the grant scope of work deliverables in the grant funding agreement.

   c. Itemized invoice(s) demonstrating expenditure of eligible costs. All Project invoices must be directed to the Grantee.

   d. Evidence that all invoices have been paid. For example, a clear copy of both sides of a check or warrant issued to pay said invoices, or a receipt evidencing such payment. Bank account statements will not be accepted.
(e) Project Accomplishment Report that may include photos and construction inspection reports as applicable.

(3) If Grantee is providing cash contribution funds, such funds shall be utilized before requests for reimbursement are made for HHGP funds. Documentation substantiating the expenditure of Grantee’s cash contribution funds must be provided with the first reimbursement request.

(4) If a reimbursement request is incomplete, County may, at its sole discretion, pay that part of the reimbursement request that is complete or decline payment until the reimbursement request is complete. If the reimbursement request is satisfactory, the County shall endeavor to provide payment to the grantee within sixty (60) days of a complete submittal.

(5) Upon Project completion, the Grantee shall submit a final reimbursement request that includes all the items required in a standard reimbursement request and at least four photographs of the completed project and additional photographs of the permanently installed HHGP funding acknowledgement sign.

(6) Final reimbursement requests shall be submitted at least sixty (60) days prior to the expiration of this Agreement. It is the responsibility of the Grantee to be knowledgeable of the Agreement expiration date, to ensure timely completion of the Project and take all required steps to ensure receipt of reimbursement funds.

C. Project Records, County Audit and Inspection.

(1) Grantee shall be responsible for maintaining fiscal controls and fund accounting procedures that show the following:

(a) The disposition of the proceeds of Grant funds provided to Grantee;

(b) The total costs of the Project;

(c) The amount and nature of that portion of the Project cost supplied by other sources; and,

(d) Any other records and controls that will facilitate an effective audit.

(2) The fiscal controls and accounting procedures used to record Project costs and fund receipts shall be based on generally accepted accounting standards and principles. Grantee shall maintain Project records (including paper and electronic media, as appropriate) showing compliance with all aspects of this Agreement for three (3) years after completion of the Project or until all claims are settled, whichever occurs last. All Project records shall be available to County within five (5) working
days of County’s reasonable notice. If the County determines that the Grantee used the Grant for ineligible costs, or other terms of the Agreement were breached, County may take any action permitted by law and any authorized actions under this Agreement and require Grantee to repay the Grant, with interest at the rate earned on County’s investments, and the cost of the audit.

(3) In addition to an audit of Project Records, Grantee shall provide consent to County to access the Project during business hours any time during construction, and, following completion of the Project, during business hours following reasonable notice by County.

SECTION III. INDEMNIFICATION

Grantee covenants, warrants, represents, and agrees that it shall indemnify, defend, save, and hold harmless the County and all of its employees, officers, directors, attorneys, agents, contractors, successors and assigns in accordance with the indemnification provisions of Exhibit C, which is incorporated herein and made a part of this Agreement by this reference.

SECTION IV. NOTICES

Any notices provided pursuant to this Agreement shall be sent by regular mail to the respective parties addressed as follows:

<table>
<thead>
<tr>
<th>COUNTY OF SANTA CLARA</th>
<th>GRANTEE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director</td>
<td>Ed Shikada, City Manager</td>
</tr>
<tr>
<td>Parks and Recreation Department</td>
<td>City of Palo Alto</td>
</tr>
<tr>
<td>298 Garden Hill Drive</td>
<td>250 Hamilton Ave</td>
</tr>
<tr>
<td>Los Gatos, CA 95032</td>
<td>Palo Alto, CA 94301</td>
</tr>
<tr>
<td>Phone: (408) 355-2220</td>
<td>650-329-2280</td>
</tr>
</tbody>
</table>

SECTION V. MISCELLANEOUS

A. Entire Agreement.

This document represents the entire agreement between the Parties in relation to the subject matter contained herein. All prior negotiations and written and/or oral agreements between the Parties with respect to the subject matter of the Agreement are merged into this Agreement.

B. Amendments. This Agreement may only be amended by a written instrument signed by authorized representatives of both Parties.
C.  Conflict of Interest.

(1) Grantee shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by County.

(2) In accepting this Agreement, Grantee 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 this Agreement. Grantee further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest. Grantee subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the “Act”), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

(3) If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Grantee shall, upon execution of this Agreement, provide County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Grantee’s employees, agents and subcontractors, who could be substantively involved in “mak[ing] a governmental decision” or “serv[ing] in a staff capacity” and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position, (2 CCR 18700.3), as part of Grantee’s service to County under this Agreement. Grantee shall immediately notify County of the names and email addresses of any additional individuals later assigned to provide such service to County under this Agreement in such a capacity. Grantee shall immediately notify County of the names of individuals working in such a capacity who, during the course of the Agreement, end their service to County.

(4) If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Grantee shall ensure that all
such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other applicable laws and regulations, including but not limited to those listed in subpart (ii) of the first sentence of this Section VI.C including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30 days of their termination of service pursuant to this Agreement.

D. Governing Law, Venue.

This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by, construed, and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Agreement, including arbitration proceedings, shall be brought only in Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

E. Assignment.

No assignment of this Agreement or of any of the rights or obligations hereunder shall be valid without the prior written consent of County.

F. Waiver.

No delay or omission by either Party hereto to exercise any right occurring upon any noncompliance or default by the other Party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained.

G. Compliance with All Laws, Including Nondiscrimination, Equal Opportunity, and Wage Theft Prevention.

(1) Grantee shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, “Laws”), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

(2) Grantee shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the
following: Santa Clara County’s policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Grantee shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Grantee discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

(3) Grantee shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.

(4) For purposes of this Section V.G, the following definitions shall apply. A “Final Judgment” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual’s sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose’s Office of Equality Assurance.

(5) By signing this Agreement, Grantee affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement.
by a court, an investigatory government agency, arbiter, or arbitration panel and
(B) found that Grantee violated an applicable wage and hour law or pay equity
law. Grantee further affirms that it has satisfied and complied with – or has
reached Agreement with the County regarding the manner in which it will satisfy
– any such final judgments.

(6) If at any time during the term of this Agreement, Grantee receives a Final
Judgment rendered against it for violation of an applicable wage and hour Law or
pay equity Law, then Grantee shall promptly satisfy and comply with any such
Final Judgment. Grantee shall inform the Office of the County Executive-Office
of Countywide Contracting Management (OCCM) of any relevant Final Judgment
against it within 30 days of the Final Judgment becoming final or of learning of
the Final Judgment, whichever is later. Grantee shall also provide any
documentary evidence of compliance with the Final Judgment within 5 days of
satisfying the Final Judgment. Any notice required by this paragraph shall be
addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street,
East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph
are separate from any other notice provisions in this Agreement and, accordingly,
only notice provided to the Office of the County Executive-OCCM satisfies the
notice requirements in this paragraph.

(7) In addition to and notwithstanding any other provision of this Agreement
concerning access to Grantee’s records, Grantee shall permit the County and/or
its authorized representatives to audit and review records related to compliance
with applicable pay equity Laws. Upon the County’s request, Grantee shall
provide the County with access to any and all facilities and records, including but
not limited to financial and employee records, that are related to the purpose of
this Section V.G, except where prohibited by federal or state laws, regulations or
rules. County’s access to such records and facilities shall be permitted at any time
during Grantee’s normal business hours upon no less than 10 business days'ADVANCE NOTICE.

(8) Grantee shall (1) at least once in the first year of this Agreement and annually
thereafter, provide each of its employees working in California and each person
applying to Grantee for a job in California (collectively, “Employees and Job
Applicants”) with an electronic or paper copy of all applicable pay equity Laws or
(2) throughout the term of this Agreement, continuously post an electronic copy
of all applicable pay equity Laws in conspicuous places accessible to all of
Grantee’s Employees and Job Applicants.

(9) Material Breach: Failure to comply with any part of this section shall constitute a
material breach of this Agreement. In the event of such a breach, the County may,
in its discretion, exercise any or all remedies available under this Agreement and
at law. County may, among other things, take any or all of the following actions:
(a) Suspend or terminate any or all parts of this Agreement.
(b) Withhold payment to Grantee until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
(c) Offer Grantee an opportunity to cure the breach.

(10) Grantee shall impose all of the requirements set forth in this Section V.G on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

H. County No-Smoking Policy.

Grantee and its employees, agents, contractors, subcontractors and consultants, shall comply with the County’s No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where County is the sole occupant, and (3) in all County vehicles.

I. Food and Beverage Standards.

Except in the event of an emergency or medical necessity, County’s nutritional standards shall apply to any foods and/or beverages purchased by Grantee with Grant Funds for County-sponsored meetings or events.


All documents and records provided to or made available to County under this Agreement become the property of the County, which is a public agency subject to the disclosure requirements of the California Public Records Act (“CPRA”). If Grantee proprietary information is contained in documents submitted to County, and Grantee claims that such information falls within one or more CPRA exemptions, Grantee must clearly mark such information “CONFIDENTIAL AND PROPRIETARY,” and identify the specific lines containing the information. In the event of a request for such information, County will make reasonable efforts to provide notice to Grantee prior to such disclosure. If Grantee contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required at its own cost, liability, and expense to obtain a protective order, injunctive relief, or other appropriate remedy from a court of law in Santa Clara county before the County responds to the CPRA request. If Grantee fails to obtain such a remedy before County responds to the CPRA request, County may disclose the requested information and shall not be liable or responsible for such disclosure.
Grantee further warrants, represents, and agrees that it shall defend, indemnify, and hold County harmless against any and all claims, actions or litigation (including but not limited to all judgments, costs, fees, and attorney’s fees) that may result from denial by County of a CPRA request for any information arising from any representation, or any action (or inaction), by the Grantee, its contractors, consultants, employees, agents, or representatives.

K. No Third-Party Beneficiaries.

This Agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the Parties signing this Agreement. Subcontractors, sponsors, and affiliates shall have no right or claim attaching to this Agreement or to the Grant Funds and are not third-party beneficiaries of or to this Agreement.

L. Relationship of the Parties.

The Parties acknowledge and agree that nothing set forth in this Agreement shall be deemed or construed to render the parties as joint venturers, partners, agents, a joint enterprise, employer-employee, or lender-borrower. Grantee shall have no authority to employ any person as employee or agent on behalf of County for any purpose. Neither Grantee nor any person using or involved in or participating in the Project or in the use of the Grant Funds shall be deemed a third party beneficiary to this Agreement nor an employee or agent of County, nor shall any such person represent himself or herself to others as a third party beneficiary to this Agreement or as an employee or agent of County.

M. No Indemnification and Insurance by County.

Nothing contained in this Agreement is to be construed as an indemnification by County for any loss, damage, injury or death arising out of or caused, in whole or in part, by the County or its Board of Supervisors, officers, executives, attorneys, employees, agents, representatives, contractors or subcontractors. Nothing contained herein shall be construed to, and nothing shall, obligate the County to provide any insurance, indemnity, or protection for or on behalf of any third party, the Project, or the property owner.

N. Subcontractors.

If any obligation is performed for or on behalf of Grantee through a consultant, contractor, or subcontractor, Grantee shall remain fully responsible for the performance of all obligations under this Agreement and Grantee shall be solely responsible for all payments due to its contractors, consultants, or subcontractors. No contract, subcontract, or other agreement entered into by Grantee with any third party in connection with this Agreement, or for or in relation to the use of the Grant Funds, shall provide for any indemnity, guarantee, or assumption of liability by, or other obligation of, County with respect to such arrangement. No contractor, consultant, or subcontractor will be deemed a third-party beneficiary for any purposes under or to this Agreement.
O. Nonexclusive Agreement.

Grantee agrees that this Agreement is non-exclusive and County may at any time, in its sole discretion, enter into agreements with other parties for any purpose deemed to be in the best interest of the County.

P. Paragraph Headings.

The headings and captions of the various paragraphs and subparagraphs hereof are for convenience only, and they shall not limit, expand, or otherwise affect the construction or interpretation of this Agreement.

Q. Cumulative Remedies.

The rights and remedies of the Parties to this Agreement, whether pursuant to this Agreement or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.

R. Counterparts and Electronic Signatures.

This Agreement may be executed in several counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original. Unless otherwise prohibited by law or County policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

S. Construction/Severability.

This Agreement shall not be construed more strongly against either Party regardless of who is more responsible for its preparation. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable any other part of this Agreement, but the Agreement shall be construed as not containing the particular provision or provisions held to be invalid or unenforceable.

T. Authority.

Each Party represents and warrants that it has executed this Agreement freely, fully intending
to be bound by the terms and provisions contained in this Agreement and that the persons signing below are authorized to sign on each Party’s behalf.

U. Office of Foreign Assets Control Compliance.

Grantee represents to County that: (a) Grantee and each of the Grantee Representatives are not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, “Specially Designated National and Blocked Person,” or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (b) Grantee, and the Grantee Representatives, are not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

W. County Regulatory Authority.

Grantee acknowledges and agrees that County, acting not as landlord but in its governmental regulatory capacity, has certain governmental regulatory authority over the Premises and that nothing in this Agreement binds the County to exercise or refrain from exercising this discretionary governmental authority in any particular manner.

X. Bribery Clause.

Grantee certifies, represents, and warrants that Grantee and the Grantee Representatives have not been convicted of bribery or attempting to bribe an officer or employee of County or any other municipality or state entity nor has Grantee or any of the Grantee Representatives made an admission of guilt of such conduct which is a matter of record.

Y. Insurance.

Grantee shall provide insurance and comply with all insurance and other terms and conditions set out in the attached Attachment B.

Z. Intellectual Property.

(1) County shall own all right, title, and interest in and to the Deliverables. For purposes of this Agreement, the term “Deliverables” shall mean any documentation and deliverables created by Grantee during the performance of services that are identified in this Agreement. Grantee hereby assigns to the County all rights, title and interest in and to any and all intellectual property whether or not patentable or registrable under patent, copyright, trademark or similar statutes, made or conceived or reduced to practice or learned by Grantee, either alone or jointly with others, during the period of Grantee’s agreement with
the County or result from the use of premises leased, owned or contracted for by the County.

(2) Grantee acknowledges that all original works of authorship which are made by Grantee (either solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are “works made for hire,” as that term is defined in the United States Copyright Act (17 U.S.C. Section 101), and shall belong solely to County. Grantee agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or delivered by Grantee, either solely or jointly with others, in connection with any agreement with the County.

(3) If Grantee is undertaking a restoration or alteration of an original work of authorship within the meaning of 17 U.S.C. § 102, Grantee covenants that the owner of the copyright has consented to the restoration or alteration work. Grantee further covenants that it possesses a License consistent with Section I.A.4 of this Agreement and that it will assign this License to the County prior to requesting grant funding. Grantee hereby forever releases, discharges, and agrees to save and hold harmless County, its employees, agents, representatives, and Board of Supervisors, from, for and against any and all liabilities, claims, causes of action, allegations and lawsuits that are made or threatened to be made in relation to any use made of any of the Intellectual Property. These claims include, but are not limited to, the Copyright Act of 1976 (17 U.S.C. § 101 et seq.), the Visual Artists Rights Act of 1990 (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civ. Code §§987 and 989), or any other local, state, foreign or international law, as currently drafted or as may be hereafter amended, that conveys the same or similar rights.

AA. Survival.

All terms and conditions that by their nature should survive termination or expiration of this Agreement, shall so survive including but not limited to Sections I, III, IV, and V.

BB. Attachments.

The following attachments are included in this Agreement and are incorporated herein by this reference.

Attachment A – Scope of Work and Itemized Project Budget
Attachment B – Insurance Requirements and Proof of Insurance

///SIGNATURES FOLLOW ON NEXT PAGE///
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as provided below, effective as of the last date signed by all the Parties.

Grantee:

[Signature]
Ed Shikada, City Manager
City of Palo Alto, a California municipality

Date: 9/14/2022

Approved as to form:

[Signature]
Terence Howzell
Chief Assistant City Attorney

COUNTY OF SANTA CLARA:

[Signature]
Sylvia Gallegos
Deputy County Executive

Date: 9/15/2022

Approved as to form and legality:

[Signature]
Elizabeth Vissers
Deputy County Counsel
**ATTACHMENT A**

**SCOPE OF WORK AND ITEMIZED PROJECT BUDGET**

Restoration and repair of the Roth Building’s 1940’s Otis Elevator.

All work will be performed to meet the terms of the Historical Heritage Funding Agreement, and the Historical Heritage Grant Program Application and Procedural Guide, including any and all revisions thereto.

**ITEMIZED PROJECT BUDGET**

<table>
<thead>
<tr>
<th>WORK TO BE PERFORMED</th>
<th>GRANTEE CASH CONTRIBUTION</th>
<th>GRANT</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. New Control System, new geared machines, new devices fully regulated, new AC motors, new wiring and traveling cables, new door protection, new closed loop door operator, new fixtures, remote elevator monitoring (REM) installed, new seismic operation.</td>
<td>$0</td>
<td>$350,000</td>
<td>$350,000</td>
</tr>
<tr>
<td>2. Self-closing door and locking entrance door on machine room, main line power feeders, main line disconnect switch, shunt trip disconnects, cab lighting and fan circuit, REM circuit, GFI outlets, lighting machinery spaces and pit, machine room ventilation, phone, fire recall, patching cracked and missing plaster, voids or holes in the hoist way or machine room walls, ceiling or floor.</td>
<td>$105,000</td>
<td>$0</td>
<td>$105,000</td>
</tr>
<tr>
<td>TOTAL PROJECT AMOUNT</td>
<td>$105,000</td>
<td>$350,000</td>
<td>$455,000</td>
</tr>
</tbody>
</table>
ATTACHMENT B – INSURANCE REQUIREMENTS AND PROOF OF INSURANCE

INSURANCE REQUIREMENTS FOR
GRANT AGREEMENT

Indemnity

The Grantee shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Grantee and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Grantee shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Grantee contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Grantee's indemnification of the County, the Grantee shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Grantee shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Grantee upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Grantee shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Grantee.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.
C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
   a. Each occurrence - $1,000,000
   b. General aggregate - $1,000,000
   c. Products/Completed Operations aggregate - $1,000,000
   d. Personal Injury - $1,000,000

2. General liability coverage shall include:
   a. Premises and Operations
   b. Products/Completed
   c. Personal Injury liability
   d. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

   **Additional Insured Endorsement**, which shall read:

   “County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not.
contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the Grantee shall be notified by the contracting department of these requirements.

4. **Fidelity Bond**

Before receiving any reimbursement under this Agreement, Grantee will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Grantee will notify County immediately, and County may withhold further payment to Grantee until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

E. **Special Provisions**

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Grantee and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Grantee pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Grantee. However, this shall not in any way limit liabilities assumed by the Grantee under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Grantees obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

3. Should any of the work under this Agreement be sublet, the Grantee shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Grantee may insure subcontractors under its own policies.
CERTIFICATE OF COVERAGE

PRODUCER
Alliant Insurance Services, Inc.
560 Mission Street, 6th Floor
San Francisco CA 94105

DATE (MM/DD/YYYY)
6/20/2022

NAMED COVERED PARTY
ACCEL - City of Palo Alto
250 Hamilton Avenue
Palo Alto CA 94301

COVERAGE

This is to certify that the coverage is afforded to the above named member, as provided by the memorandum(s) of coverage, for the period shown below. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the coverage afforded by the program described herein is subject to all the terms, exclusions, and conditions of such memorandum(s) of coverage. The following coverage is in effect:

<table>
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<tr>
<th>JPA LTR</th>
<th>TYPE OF COVERAGE</th>
<th>MEMORANDUM NUMBER</th>
<th>COVERAGE EFFECTIVE DATE (MM/DD/YYYY)</th>
<th>COVERAGE EXPIRATION DATE (MM/DD/YYYY)</th>
<th>LIMITS</th>
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<table>
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<tr>
<th>A</th>
<th>OTHER Public Entity Liability</th>
<th>ACC2223/PAL171</th>
<th>7/1/2022</th>
<th>7/1/2023</th>
<th>$1,000,000 Per Occ</th>
<th>S.I.R.</th>
</tr>
</thead>
</table>

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS

If required by written contract, County of Santa Clara and members of the Board of Supervisors of the County of Santa Clara and the officers, agents and employees of the County of Santa Clara, individually and collectively are covered as Additional Covered Parties as respects the Historic Grant Program for the Roth Building.

Subject to policy terms, conditions and exclusions.

CERTIFICATE HOLDER
County of Santa Clara Office of the County Executive, Attn:
Dr. Jeffrey V. Smith, Deputy County Executive
Eleventh Floor - East Wing
70 West Hedding Street
San Jose CA 95110

CANCELLATION

Should any of the above described memorandum(s) of coverage be cancelled before the expiration date thereof, notice will be delivered in accordance with the memorandum(s) of coverage provisions.

AUTHORIZED REPRESENTATIVE

GRANT FUNDING AGREEMENT

for the Restoration and Repair of the Roth Building
Fiscal Year 2022 HISTORIC HERITAGE GRANT FUNDS
AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY (ACCEL)
A JOINT POWERS AUTHORITY
EXCESS LIABILITY COVERAGE

ADDITIONAL COVERED PARTY ENDORSEMENT

It is understood and agreed that in accordance with Section III. WHO IS A COVERED PARTY paragraph D. that the following person or organization named below is included as an additional covered party for Bodily Injury and Property Damage, but only with respect to facilities or personal property owned by such person or organization and used by the Member Agency or for liability arising out of operations performed by or on behalf of the Member Agency for such person or organization so designated.

<table>
<thead>
<tr>
<th>Additional Covered Party</th>
<th>Limit of Liability</th>
<th>Description of Activity or Location of Facilities Used</th>
</tr>
</thead>
<tbody>
<tr>
<td>County of Santa Clara Office of the County Executive</td>
<td>$1,000,000</td>
<td>If required by written contract, County of Santa Clara and members of the Board of Supervisors of the County of Santa Clara and the officers, agents and employees of the County of Santa Clara, individually and collectively are covered as Additional Covered Parties as respects the Historic Grant Program for the Roth Building. Subject to policy terms, conditions and exclusions.</td>
</tr>
</tbody>
</table>

Notwithstanding any requirement, term or condition of any contract or agreement to which this coverage may apply, the coverage afforded an additional covered party shall be subject to all the terms, exclusions and conditions of this Memorandum of Excess Liability Coverage (07/22) as otherwise applicable.

This endorsement is part of the Memorandum of Excess Liability Coverage (07/22) and is effective on the date shown below.

All other terms and conditions remain unchanged.

Policy Period: July 1, 2022 to July 1, 2023
Member Agency: City of Palo Alto
Endorsement No.: 2223-PAL-005
Issued to: County of Santa Clara Office of the County Executive
Attn: Dr. Jeffrey V. Smith, Deputy County Executive
Eleventh Floor - East Wing
70 West Hedding Street
San Jose, CA 95110
Date Issued: 6/20/2022

Authorized Representative for ACCEL
Alliant Insurance Services, Inc.

GRANT FUNDING AGREEMENT
for the City of Palo Alto for
the Restoration and Repair of the Roth Building Elevator Project
Fiscal Year 2022 HISTORIC HERITAGE GRANT FUNDING

Packet Pg. 170
EXHIBIT G
MAINTENANCE PLAN

[To be prepared, approved and attached by the Parties in accordance
Section 16(B) following the Commencement Date.]
LICENSE AGREEMENT

FOR

CITY ARCHIVES ROOM

EXHIBIT C

TO

LEASE AGREEMENT

BY AND BETWEEN

CITY OF PALO ALTO

AS LANDLORD

AND

PALO ALTO HISTORY MUSEUM

AS TENANT
IRREVOCABLE LICENSE AGREEMENT

This Irrevocable License Agreement ("License Agreement") is dated as of ______________, 2022 (the "Effective Date") and is entered into concurrently with the Lease Agreement dated ________, 2022 ("Lease") between the City of Palo Alto ("City") and the Palo Alto History Museum ("Museum") (individually, a "Party" and, collectively, the "Parties"), in reference to the following facts and circumstances:

RECITALS:

A. Pursuant to the terms of the Lease, the Museum is leasing certain real property from the City known as the Roth Building, located at 300 Homer Avenue in the City. Capitalized terms not otherwise defined in this License Agreement will have the meaning set forth in the Lease.

B. As part of its obligations under the Lease, Museum is undertaking the "warm shell" renovation of the Premises including completion of the Initial Tenant Improvements pursuant to the Tenant Work Letter.

C. Following completion of the Initial Tenant Improvements, and thereafter during the Lease Term, City will have the right to use the Archives Room (as defined below) and the Shared Areas (as defined below) of the Premises in accordance with the terms of this License Agreement.

NOW, THEREFORE, in consideration of the covenants, terms and conditions, the Parties mutually agree, as follows:

1. LICENSE; ARCHIVES ROOM. In accordance with the terms hereof, and in consideration for City’s entry into the Lease, its payment of the City Contribution (as defined in the Tenant Work Letter), and its payment and performance of all obligations hereunder, along with other consideration acknowledged and received by Museum, Museum hereby grants to City the license to use the following portions of the Premises during the License Term (as defined below):

A. City and its employees, agents, contractors, suppliers, guests and invitees (collectively, "City Parties") will have the exclusive right to use a room on the second floor of the Building (the "Archives Room") as more specifically depicted on Attachment I attached hereto and incorporated herein. The parties acknowledge that the depiction of the Archives Room in Attachment I attached hereto as of the Effective Date is derived from Museum’s space plans prepared in conjunction with Initial Tenant Improvements. If after completion of the Initial Tenant Improvements the Parties reasonably determine that the depiction of the Archives Room does not accurately reflect the Archives Room in its as-built configuration and condition, Museum will prepare a new Attachment I and, following City’s reasonable approval of such new Attachment I, the Parties will promptly sign and attach the new Attachment I hereto, superseding the prior version of Attachment I.

B. As reasonably required for the use of the Archives Room and subject
to reasonable rules and regulations mutually agreed to by the Parties, the City and the City Parties will have the nonexclusive right to use the Premises’ public and common areas as designated by Museum, including without limitation the Premises’ interior restrooms, elevator, stairwells and corridors, and those areas reasonably necessary for ingress to and egress from the Archives Room (the “Shared Areas”).

2. TERM OF LICENSE.

A. The term of this License Agreement ("License Term") will commence (the “Commencement Date”) on the City’s acceptance of the completed Project pursuant to the Tenant Work Letter and will expire upon the expiration or earlier termination of the Lease.

B. Notwithstanding the foregoing, City may terminate this License Agreement upon at least sixty (60) days’ prior written notice to Museum. If City terminates this License Agreement prior to the expiration or earlier termination of the Lease, (i) City at its cost will remove any personal property and equipment from the Archives Room (and, upon Museum’s request, any City Alterations (as defined below) constructed pursuant to Section 11 below) and (ii) on the last day of the License Term, City will deliver the Archives Room to Museum broom clean and in the condition received, ordinary wear and tear excepted, and subject to the parties’ rights upon casualty under Section 12 below.

3. CITY’S USE. During the License Term, City may use the Archives Room for storage and/or display of the City’s official archives and records and any ancillary, legal related uses; provided, that such ancillary, legal related uses will not unreasonably interfere with Museum’s use of the Premises in accordance with the Lease. The City will not use the Archives Room for any other uses without the prior written approval of Museum, which may be withheld in Museum’s sole and absolute discretion. City will have access to and use of the Archives Room during standard hours (Monday to Friday 8:00 AM to 8:00 PM) and at all other times that do not unreasonably interfere with Museum’s use and occupancy of the Premises; provided, that, the public’s access to the Archives Room will be limited to those times the Museum is open to the public or such other times as agreed to by City and Museum in writing. City will promptly observe and comply with all (i) laws with respect to the Archives Room and City’s use thereof, and (ii) commercially reasonable requirements of any insurance company, insurance underwriter, or Board of Fire Underwriters which are necessary to maintain the insurance coverage carried by either Museum or its agents or City pursuant to this License Agreement. City will not do or permit anything to be done in, about or with respect to the Archives Room which would (a) injure the Premises, or (b) vibrate, shake, overload, or impair the efficient operation of the Premises or the building systems serving the Premises.

4. DELIVERY OF ARCHIVES ROOM. Upon commencement of the License Term, Museum will deliver the Archives Room to City in its then-current as-is condition. By taking possession of the Archives Room, City conclusively will be deemed to have accepted the Archives Room in its as-is, then-existing condition, without any warranty whatsoever of Museum with respect thereto.
5. **KEYS AND SECURITY SYSTEM.**

   A. The parties acknowledge and agree that the Initial Tenant Improvements will include construction of the entry doors to the Archives Room (including door hardware and locks) as reasonably approved by City. Museum at its cost will provide City with a set of all keys needed to access the Archives Room. If Museum installs a security system at the Premises, Museum will provide City with copies of instructions and access codes and/or devices (such as access cards) to operate such security system, to the extent necessary to provide City entry to the Archives Room.

   B. City at its cost may install a security system for the Archives Room as City deems reasonably necessary, provided that such security system will be compatible with the security system for the Premises and City will be solely responsible for the maintenance and repair of such security system. City will deliver to Museum copies of instructions and access codes and/or keys to operate any security system installed by City to provide entry to the Archives Room.

6. **ENTRY BY MUSEUM.** Museum and its authorized representatives will have the right to enter the Archives Room at all reasonable times by giving reasonable prior written notice, except in the case of emergency where such notice will not be required.

7. **SERVICES AND UTILITIES PROVIDED TO ARCHIVES ROOM.** Museum will provide electrical, heating and air conditioning, water, and janitorial services to the Archives Room for City’s reasonable use of the Archives Room which costs will be included in the Premises’ Operating Expenses (as defined below). City will pay directly all charges for City’s telephone, cable and/or internet service, and other services provided to the Archives Room. Except to the extent caused by the gross negligence or willful misconduct of Museum or its agents or representatives, Museum will not be liable for the interruption of any services or utilities to the Archives Room.

8. **MAINTENANCE.**

   A. At City’s cost, City will maintain, replace, and repair the interior of the Archives Room and any systems exclusively serving the same in good condition and repair, normal wear and tear, excepted and subject to the parties’ rights upon casualty under Section 12 below.

   B. In no way limiting Museum’s maintenance obligations for the Premises under Section 16(A) of the Lease, Museum will maintain the building systems servicing the Archives Room, including the electrical, plumbing, HVAC system, sprinkler system, and life-safety system (but excluding any systems exclusively serving the Archives Room), provided that costs related to the foregoing will be included in the Operating Expenses in accordance with Section 10 below.

9. **CITY’S SHARE OF OPERATING EXPENSES; AUDIT.**

   A. All amounts required to be paid by City under this License Agreement will be deemed “Fees”. Fees will be due and payable during the License Term as set forth
in this License Agreement at the address indicated by Museum from time to time. As part of Fees and in accordance with this Section 9, City will pay to Museum City’s proportionate share (“City’s Share”) of the Operating Expenses incurred during the License Term. City’s Share will be a percentage calculated by dividing the square footage of the Archives Room by the total square footage (less the common areas) of the Premises. The Parties acknowledge and agree that City’s Share will initially be equal to nine and 6/10th percent (9.6%) as derived from Museum’s space plans prepared in conjunction with Initial Tenant Improvements as set forth in Attachment I. If during the License Term, the Parties reasonably determine that City’s Share does not accurately reflect the proportion of the square footage of the Archives Room and the Premises in its then as-built configuration and condition, the Parties will promptly agree in writing upon the new City’s Share. In addition, in the event that the Parties determine that the Archives Room incurs a non-proportional benefit from any expense, or is the non-proportional cause of any such expense, Museum may reasonably increase City’s Share with respect to such expense.

B. Operating Expenses will be payable by City within thirty (30) days after a reasonably detailed statement of actual expenses is presented to City by Museum. At Museum’s option, however, an amount may be estimated by Museum from time to time of City’s portion of annual Operating Expenses and the same will be payable monthly, during each calendar year of the License Term. Such estimates may be revised by Museum at any time in its reasonable discretion. When the new estimate is delivered to City, City will, at the next monthly payment date, pay any difference between the amount paid during such calendar year and the amount that would have been paid during such calendar year based upon the new estimate. Museum will deliver to City within ninety (90) days after the expiration of each calendar year (or as soon thereafter as is reasonably practicable) a reasonably detailed statement showing the actual Operating Expenses incurred during the preceding year (the “Statement”). If City’s payments during said preceding calendar year exceed City’s obligation as indicated on the Statement, City will be entitled to credit the amount of such overpayment to Fees next coming due hereunder. If City’s payments under this Section during said preceding calendar year were less than City’s obligation as indicated on the Statement, City will pay to Museum the amount of the deficiency within thirty (30) days after delivery by Museum to City of the Statement. If any Operating Expenses paid by Museum include periods prior to the commencement or after the termination of the License Term, such Operating Expenses will be prorated as of the License Term’s commencement or termination date (as applicable). Within ninety (90) days following termination of the License Agreement (or as soon thereafter as is reasonably practicable), Museum will deliver a final Statement to City for such calendar year through the termination date of the License Agreement. If City’s portion of any Operating Expenses as shown on the final statement is greater or less than the total amounts of Operating Expenses actually paid by City during the year covered by the final Statement, then within thirty (30) days thereafter the appropriate party will pay to the other party any sums owed.

C. Audit of Operating Expenses.

i. Within one (1) year of Museum’s delivery of the Statement to
City, City will have the right to cause an audit of the Operating Expenses provided that City delivers to Museum written notice of its election to have an audit within such one (1) year period. The audit will be performed during normal business hours at a time reasonably designated by Museum following receipt of City’s election to cause an audit and subject to Museum’s reasonable office procedures. The audit will be completed no later than sixty (60) days following the date Museum provides City access to its book and records relating to Operating Expenses. If the audit discloses that the Statement has overstated Operating Expenses, then Museum will reimburse the City within sixty (60) days. If the audit discloses that the Statement has understated Operating Expenses, then City will, within thirty (30) days after the completion of the audit, deliver to Museum its proportionate share of the difference. City will bear all fees and costs of the audit, unless the Parties determine that the Operating Expenses have been overstated by five percent (5%) or more. In that event, Museum will also reimburse City for the cost of the audit.

ii. Without limiting Section 9(C)(i), the Parties acknowledge that the audit may include the determination of whether items included in the Statement were costs appropriately deemed Operating Expenses in accordance with the definition of Operating Expenses pursuant to Section 10 below. City will notify Museum if City objects to the classification of an item included in the Statement as an Operating Expense. Following notice of City’s objection, the Parties will promptly meet and confer in good faith and determine by mutual agreement whether such item should be included in the Operating Expenses or should be excluded from the Operating Expenses. City’s 60-day period to complete its audit pursuant to Section 9(C)(i) will be extended day for day during the period while the Parties seek to agree upon the classification of a Statement item in accordance with the foregoing.

D. The Parties’ rights and obligations under this Section 9 will survive the expiration or earlier termination of this License Agreement.

10. OPERATING EXPENSES.

A. “Operating Expenses” will mean the following costs incurred by Museum during the License Term: (1) the utilities for the Premises and the Building’s Exterior Common Areas, and (2) all reasonable expenses related to the repair, replacement and maintenance of the Building and the Building’s Exterior Common Areas. Operating Expenses will include without limitation the following items:

i. replacement and repair of building systems and equipment, improvements or devices, such as the HVAC system, elevator, life safety, sprinkler systems and roof (provided that any capital expenses will be subject to Section 10(A)(viii) below);

ii. premiums and deductibles for all insurance carried by Museum in connection with the Building and the Building’s Exterior Common
Areas;

   iii. the cost of water and sewer charges;
   iv. the cost of license, permit, and inspection fees;
   v. the cost of light, power, window washing, trash pickup, janitorial services, heating, ventilating and air conditioning, supplies, materials, equipment, and tools;
   vi. access control/security costs, inclusive of the reasonable cost of improvements made to enhance access control systems and procedures;
   vii. costs incurred in connection with compliance with any laws or changes in laws applicable to the Building or the Building’s Exterior Common Areas (provided that any capital expenses will be subject to Section 10(A)(viii) below); and
   viii. the cost of all capital improvements or replacements, provided that, if any such improvement or replacement constitutes a capital expenditure under generally accepted accounting principles, Museum will amortize such expense over the useful life of such improvement or replacement with the monthly amortized portions deemed an Operating Expense.

B. Notwithstanding Section 10(A), Operating Expenses will not include the following items:

   i. any taxes assessed against or levied upon the trade fixtures, furnishings, equipment and all other personal property of Museum or any other tenants or occupants of the Premises, except to the extent serving the Shared Areas;
   ii. any and all taxes, assessments, sales, use, business, occupation or other taxes, license fees or other charges whatsoever levied, assessed or imposed upon Museum and/or any other tenants or occupants of the Premises for its/their business operations, services or sale of goods conducted in the Premises (including without limitation any franchise, estate, inheritance, corporation, succession, gift, net income or excess profits tax);
   iii. any Property Taxes (as defined below);
   iv. costs for which Museum receives reimbursement from insurance proceeds or a third party;
   v. late fees or costs related to the payment of any Operating Expense by Museum due to Museum’s negligence or willful misconduct;
   vi. costs associated with Museum’s general corporate overhead
and general administrative expenses;

vii. costs of any renovation, improvement, painting or redecorating of any portion of the Premises not made available for City’s use and access hereunder;

viii. costs which could properly be capitalized under generally accepted accounting principles, except as provided in Section 10(A)(viii) above; and

ix. any increase in Controllable Expenses exceeding three percent (3%) per annum on a cumulative, compounding basis over the actual Controllable Expenses incurred in the first calendar year after the Commencement Date. “Controllable Expenses” will mean all Operating Expenses except Property Taxes, insurance premiums, utilities and refuse removal, janitorial and cleaning expenses, capital expenses properly amortized and included in Operating Expenses pursuant to Section 10(A)(viii) above, and any other items incurred due to an event of force majeure.

C. “Property Taxes” for the purposes of this Section will mean any and all taxes, assessments (special or otherwise), fees, and charges accruing during the License Term that are levied, assessed or charged by the federal government, the state, county, City, or any other tax or assessment levying body (i) against the land that comprises the Premises and all improvements thereon, including the Building, or (ii) on any activity carried on under the Lease, any interest in the Lease, any occupancy or possessory right that Museum or any other party may have in or to the Premises, any rents and/or fees receivable by Museum for the sublease and/or use of the Premises.

11. CITY ALTERATIONS TO ARCHIVES ROOM. At City’s cost and subject to Museum’s prior written consent, City may make alterations and improvements to the Archives Room (the “City Alterations”). City will complete any City Alterations in a good and workmanlike manner and in compliance with all applicable laws. All work related to any City Alterations will be performed by licensed and insured contractors. City will indemnify, defend and save Museum harmless from all claims for labor or materials related to the City Alterations, including reasonable attorney’s fees. City will keep the Premises free of any liens arising out of work performed by or for City. All alterations that cannot be removed without material damage to the Archives Room will be deemed part of the Premises upon installation. Notwithstanding anything to the contrary herein, City shall not be required to obtain consent of Museum to any of the following (“Permitted Alterations”): (1) the design, location, configuration, installation or display of City’s exhibits and artifacts in the Archives Room and alterations required in connection therewith, (2) purely cosmetic City Alterations, such as painting, carpeting or floor coverings or (3) non-structural alterations, additions and improvements in the Archives Room, if the cost of any such project does not exceed Fifty Thousand Dollars ($50,000).

12. CASUALTY AND CONDEMNATION. If the Archives Room is damaged due to any peril or is taken by the exercise of the power of eminent domain or a voluntary
transfer in lieu thereof, Museum will have the right to terminate this License Agreement to the extent that Museum has the right to terminate the Lease in connection therewith. If Museum does not terminate this License Agreement, any damage to or destruction of the Archives Room will be repaired by Museum at Museum’s cost in accordance with the Lease, provided that if such damage or destruction is due to the negligence or willful misconduct of City or any City Parties, City will be responsible for any reasonable applicable insurance deductible (which will be promptly paid to Museum following written notice). Notwithstanding the foregoing, City will be responsible for the repair of the interior of the Archives Room and replacement and repair of City’s personal property and equipment within the Archives Room.

13. **DEFAULT; REMEDIES.** Either Party will be in default of this License Agreement if it fails or refuses to perform any of its obligations under this License Agreement if the failure to perform is not cured within sixty (60) days after notice of the failure to perform has been given by the other Party. If the obligation cannot reasonably be cured within sixty (60) days, the Party will not be in default of this License Agreement if such Party commences performance of such cure within such sixty (60) day period and thereafter diligently prosecutes the same to completion. Notwithstanding the foregoing, City will be in default under either Sections 2(B) or 14 of this License Agreement if it breaches its obligations under either such Section and fails to cure such breach within ten (10) business days after written notice is given to the City by Museum of such breach. In the event of a default beyond applicable notice and cure periods by a Party, such Party shall have all rights and remedies available to such Party with respect to such default as are available under applicable law, including, without limitation, injunction and specific performance.

14. **ASSIGNMENT.** City may not assign this License Agreement or sublicense the Archives Room or permit the use of the Archives Room by anyone other than the City Parties (collectively, “Transfer”), without the prior written consent of Museum, which consent may be withheld in Museum’s sole discretion. Museum’s consent to one Transfer will not constitute consent to a subsequent Transfer. Notwithstanding the foregoing, Museum acknowledges that City may elect to engage another entity to operate the Archives Room (e.g., the Palo Alto Historical Association) and hereby consents to any such entities’ use of the Archives Room in accordance with the provisions of this License Agreement.

15. **HAZARDOUS MATERIALS.** City will not use, store, transport or dispose of any Hazardous Material in or about the Premises in violation of applicable law. City will indemnify, defend, protect and hold Museum and its officers, directors, employees, successors and assigns harmless from and against, all losses, damages, claims, costs and liabilities, including attorneys’ fees and costs, arising out of City’s use, discharge, disposal, storage, transport, release or emission of Hazardous Materials on or about the Premises during the License Term.

16. **TAXES.** City will pay before delinquency all taxes imposed against any personal property located in the Archives Room.
17. **INDEMNITY AND HOLD HARMLESS.** The Parties acknowledge and agree that the provisions of Section 20 of the Lease apply to this License Agreement and the terms of such Section 20 are incorporated herein.

18. **RELEASE AND WAIVER OF SUBROGATION.** Notwithstanding anything to the contrary herein, Museum and City hereby release each other, and their respective agents, employees, sublessees, and contractors, from all liability for damage to any property that is caused by or results from a risk which is actually insured against or which would normally be covered by “all risk” property insurance, without regard to the negligence or willful misconduct of the entity so released.

19. **WAIVER.** No delay or omission in the exercise of any right or remedy of either party on any default by the other party will impair such right or remedy or be construed as a waiver. Nothing in this License Agreement shall be deemed a waiver of any legal right or remedy which a Party is not permitted to waive under applicable law.

20. **AUTHORITY.** Each Party hereby represents and warrants to the other that it has proper authority and is empowered to execute this License Agreement on behalf of Museum and City, respectively, and that this License Agreement is a binding and enforceable obligation of Museum and City, respectively.

21. **TIME OF ESSENCE.** Time is of the essence of each and every provision of this License Agreement.

22. **SEVERABILITY.** If any term or provision of this License Agreement will, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this License Agreement will not be affected thereby, and each of the other terms and provisions of this License Agreement will be valid and enforceable to the fullest extent permitted by law.

23. **SUCCESSORS.** All of the terms and conditions of this License Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors-in-interest.

24. **INTERPRETATION OF LICENSE AGREEMENT.** This License Agreement will be construed and interpreted in accordance with the laws of the State of California.

25. **ENTIRE AGREEMENT; MODIFICATIONS.** The Lease and this License Agreement contain the entire agreement between Museum and City concerning City’s use of the Archives Room. If there is any conflict between the Lease and this License Agreement, the terms of this License Agreement will govern. This License Agreement may not be modified or amended except by a writing executed by the Parties.

26. **INCORPORATION OF RECITALS.** The Recitals hereunder are incorporated herein by this reference and made a part hereof.

27. **NOTICES.** Any statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder given by
either party to the other, will be in writing and made in accordance with Section 26 of the Lease.

28. **SURVIVAL.** All representations, covenants, warranties, and indemnification obligations hereunder will survive the expiration or earlier termination of this License Agreement.

29. **COUNTERPARTS.** This License Agreement may be signed in any number of counterparts with the same effect as if the signatures were upon the same instrument and all such counterparts taken together will constitute one and the same instrument.

30. **EFFECT OF CONVEYANCE.** As used in this License Agreement, the term “Museum” means the holder of a leasehold interest in the Premises pursuant to the Lease. In the event of any assignment or transfer of Museum’s interest under the Lease, Museum will be and hereby is entirely relieved of all covenants and obligations of Museum as to this License Agreement accruing after the date of such transfer, and it will be deemed and construed that any transferee has assumed and will carry out all covenants and obligations thereafter to be performed by Museum hereunder.

31. **MISCELLANEOUS.** Any executed copy of this License Agreement will be deemed an original for all purposes. The language in all parts of this License Agreement will in all cases be construed as a whole according to its fair meaning, and not strictly for or against either Museum or City. The captions used in this License Agreement are for convenience only and will not be considered in the construction or interpretation of any provision hereof. When a party is required to do something by this License Agreement, it will do so at its sole cost and expense without right of reimbursement from the other party unless specific provision is made therefor. If either party brings any action or legal proceeding with respect to this License Agreement, the prevailing party will be entitled to recover reasonable attorneys’ and experts’ fees and court costs. Museum has not had an inspection of the Archives Room performed by a Certified Access Specialist as described in California Civil Code § 1938. A Certified Access Specialist (CASp) can inspect the Archives Room and determine whether the Archives Room complies with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Archives Room, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the Archives Room for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Archives Room.

[Signature page follows.]
IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this License Agreement.

APPROVED AS TO FORM:  CITY OF PALO ALTO

_______________________________  ________________________________
City Attorney  City Manager

APPROVED:

_______________________________
Director of Administrative Services

_______________________________
Director of Public Works

PAULO ALTO HISTORY MUSEUM, a California nonprofit public benefit corporation

_______________________________
Board President

_______________________________
Treasurer
The Archives Room is the 1305 sq foot area designated as “Guy Miller City Archives”
City of Palo Alto

City Council Staff Report

Meeting Date: 12/12/2022

Report Type: Action Items

Title: Appointment of Kiely Nose as Assistant City Manager

From: City Manager

Lead Department: Human Resources

Recommendation

The City Manager recommends that Council approve the appointment of Kiely Nosé as Assistant City Manager.

Background

The Palo Alto Municipal Code requires that the City Council approve the City Manager’s appointment of the Assistant City Manager.

The Assistant City Manager provides executive level support and assistance to City Departments and may act on behalf of the City Manager at City Council meetings or with members of the public as well as at times when the City Manager is not present. The position of Assistant City Manager became vacant in March 2021 when Monique leConge Ziesenhenne retired.

Discussion

The City Manager requests approval of the appointment of Kiely Nosé to the position of Assistant City Manager. Ms. Nosé has been successfully serving as the Interim Assistant City Manager since March 2021. The City Manager recommends approval based on Ms. Nosé’s proven ability to execute higher level duties and has demonstrated effective leadership in a changing environment.

Ms. Nosé joined the City of Palo Alto Office of Management and Budget in October 2015 and was promoted as the Director of OMB starting in 2016. Ms. Nosé served as the Interim Director of Administrative Services/Chief Financial Officer (CFO) in July 2018 followed by the appointment as the Director, of Administrative Services/CFO in 2019.

Ms. Nosé earned her degree in Political Science and Economics from Santa Clara University and has held positions with the City of San José and OpenGov (a government sector start-up) prior to her arrival at Palo Alto. She has 14 years of experience and expertise in governmental budgeting and management practices. This internal promotion is the result of the strong culture of professional development and succession planning in the Palo Alto workforce.
**Resource Impact**
Ms. Nosé will serve in an “At Will” position, which means she will serve at the pleasure of the City Manager and can be asked to resign or be terminated at any time. The annual salary will be $275,142 which is within the management pay range for the Assistant City Manager position according to the approved salary schedule previously adopted by the City Council. Ms. Nosé’s benefits and terms of employment will not change and are consistent with the adopted Management Compensation Plan, authorized by Council.

The Assistant City Manager position salary is included in the current FY 2023 Budget therefore, no budget modifications or additional funding is necessary.

**Timeline**
With approval of this appointment, Ms. Nosé will assume the position of Assistant City Manager effective December 13, 2022.

**Policy Implications (If Applicable)**
This appointment is consistent with existing City policies.

**Environmental Review**
Not applicable
Meeting Date: 12/12/2022  
Report Type: Consent Calendar

Title: Approval of a Contract with Nomad Transit, LLC (Via) for City of Palo Alto On-Demand Transit Service in a total contract amount not to exceed $2,500,000 for up to two years and Approval of a Budget Amendment in the General Fund

From: City Manager

Recommendation

This report will be a late packet distribution on December 8, 2022.
Title: Approval of Amendment No. 1 to Contract # C21180078 with Blue Rhino Studios, Inc. in the Amount of $234,748 for Design and Fabrication of Additional Dinosaur Sculptures and Exhibits for the Palo Alto Junior Museum & Zoo for a total not-to-exceed amount of $449,464. Environmental Review: CEQA Exemption 15301.

From: City Manager

Lead Department: Community Services

Recommendation
Staff recommends that Council approve an amendment (Attachment A) to the professional services agreement (C21180078) with Blue Rhino Studios, Inc. to increase the contract in the amount of $234,758 for a total not to exceed amount of $449,464 for fabrication of dinosaur sculptures and exhibits for the Palo Alto Junior Museum & Zoo (JMZ) “California Dinosaur Garden” Exhibition Project, Capital Improvement Program Project AC-18001.

Background
This item was previously on the November 7, 2022 City Council Agenda as a Consent item. The item was pulled from Consent by three Councilmembers (Burt, Kou, Tanaka) and is now brought forward as an Action Item.

The JMZ Renovation Capital Improvement Project (AC-18001) provides funding to support the opening of the new JMZ including specific funding for new indoor and outdoor exhibits. A new permanent outdoor exhibition about dinosaurs that lived in California was included in the JMZ’s exhibit plans during project planning and design. The exhibition will include live cretaceous-era plants, turtles, geologic specimens, animations, a fossil dig, and life-size sculptures of several types of dinosaurs and animals from California. Attachment B includes a rendering of the outdoor exhibit.

On February 5, 2018, the City Council approved the Agreement between the City of Palo Alto and the Friends of the Palo Alto Junior Museum & Zoo to Replace the Existing Building and Facilities Housing the Palo Alto Junior Museum & Zoo with a New Building and Facilities (Facilities Agreement). Exhibit D of the Facilities Agreement states that, “In consideration of the Friends’ contribution of $1,573,700 toward the parking lot...
improvements in the Construction contract, the City will expend at least $1,688,731 for the Exhibits in lieu of the Friends’ original proposal to pay $1,573,700 for Exhibit costs.”

To align with the City’s contractual requirement above, Capital Improvement Project AC-18001 included funding for new exhibits, including temporary staff for design and prototyping. In the Fiscal Year 2023 adopted Capital Budget, funds were re-appropriated for the exterior exhibit and completion of various project features.

On April 19, 2021, Council awarded a contract to Blue Rhino Studios in the amount of $214,706 to design and fabricate three large dinosaurs for the exhibit. The original contract only included the large dinosaurs because design and fabrication of these main pieces of the exhibit have a longer lead time than the smaller elements (Staff Report 12071). The longer lead time of the large dinosaurs provided staff the opportunity to engage the JMZ audience, scientific advisors, and accessibility advisors in the development process for the four additional life-size smaller sculptures and fossil dig experience.

More background on the JMZ Project can be found in CMR #8851.

Discussion

Staff recommends that Blue Rhino Studios fabricate this additional scope of work to maintain artistic and scientific consistency across all elements of the exhibit. Their costs for the currently contracted scope of work were very competitive during the initial bid process. During that process Blue Rhino was the second lowest bid out of seven, however; price was only one of multiple factors evaluated. Refer to Staff Report 12071 for a summary of the initial bid process. Blue Rhino Studios has proven to be competent and did excellent quality of work on this initial contracted scope of work. Based on staff’s experience completing other exhibit development projects and research of similar vendors, staff is confident the bid for the amended scope is also very competitively priced.

The total design and fabrication budget for this permanent exhibition is $980,000, which includes allocated funds from the CIP in the amount of $430,000, a federal grant in the amount of $250,000, and a contribution from the Friends of the Palo Alto Junior Museum & Zoo (Friends) in the amount of $300,000 from individual donors. Council accepted the federal grant for $250,000 and the corresponding budget amendment to appropriate additional funding for the new exhibition, called “California Dinosaur Garden”, on September 14, 2020 (Staff Report 11558). The $300,000 contribution from the Friends will be expended by them for the remaining exhibit costs. Exhibition cost breakdown is as follows:
Approval of Amendment No. 1 to the contract with Blue Rhino Studios, Inc. fulfills the City’s contractual obligation (Facilities Agreement) with the Friends of the JMZ to fund new exhibits and expends the remaining budget that was re-appropriated in Fiscal Year 2023 for this project. In addition, not completing the additional elements as defined in Amendment No. 1 would impact the City’s ability to comply with Federal Grant requirements and its obligation to the Friends of the Junior Museum & Zoo for their donation, which have generously come from individual donors in the community. The California Dinosaur Garden exhibit is the final exhibit to be funded from AC-18001. All other exhibits, both indoor and outdoor, have been completed.

**Timeline and Next Steps**

It is standard practice for new museums and attractions to include a new exhibit or feature in the project design that has an opening date that is intentionally delayed. This practice of delaying the opening of a new exhibition is done because museums industry-wide often experience a decline in visitation roughly two years after opening. Planning the opening of a new exhibit during that time can help reduce or avoid the potential decline in attendance. For the JMZ, adding the outdoor exhibit to the courtyard will also increase overall visitor capacity by providing a new attraction and activity in the ticketed outdoor courtyard, thus reducing crowds in the exhibit hall and zoo. The “California Dinosaur Garden” exhibition will open in Fall of 2023.

Staff plan to engage a consultant to perform an operational analysis and develop a business plan that will be used to guide ongoing operations of the JMZ and inform future budgetary decisions. Staff are developing a scope of work and will issue a Request for Proposals for Professional Services from an industry expert. The Friends of the JMZ are aware of this effort and will be involved in all stages of plan development.

**Resource Impact**

Funding for the fabrication of dinosaur sculptures and exhibits for the “California Dinosaur Garden” Exhibition Project, Capital Improvement Program Project AC-18001 is available in the FY 2023 Adopted Capital Budget. The total fabrication budget for this permanent exhibition is $980,000, which includes:

- allocated funds from the CIP in the amount of $430,000,

<table>
<thead>
<tr>
<th>Expense</th>
<th>Cost</th>
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<tr>
<td>Blue Rhino Contract - Sculptures</td>
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</tr>
<tr>
<td>Exhibit Fabrication (other than sculptures)</td>
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<tr>
<td>Summative Evaluation</td>
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<tr>
<td><strong>Total:</strong></td>
<td><strong>$980,000</strong></td>
</tr>
</tbody>
</table>
• a federal grant in the amount of $250,000, and
• a contribution from the Friends of the Palo Alto Junior Museum & Zoo (Friends) in the amount of $300,000.

Policy Implications
The exhibition discussed in this report advance many important policy objectives related to the City Comprehensive Plan Policy Goal C-1: Deliver community services effectively and efficiently. These include:
• Policy C-1.4 Promote City parks, open spaces, recreational facilities, libraries, classes and cultural activities for community members recognizing that these facilities and services build and strengthen community.
• Policy C-1.16 Provide arts, science and recreational activities that foster healthy children, youth and teen development.
• Policy C-1.20 Leverage available funding to support the development of, and improved access to, programs that address all types of developmental disabilities, including physical, sensory, cognitive or social/emotional needs.

Stakeholder Engagement
Stakeholders, including the JMZ audience, scientific advisors, accessibility advisors, and museum experts, have been engaged in the exhibit development process to determine the sculptures and exhibit experiences.

Environmental Review
The new JMZ has been evaluated as a project under CEQA. In December 2017, the City Council adopted Resolution 9727 which approved a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the new Junior Museum and Zoo. The scope of work of this Agreement as amended is categorically exempt pursuant to CEQA regulation 15301 (Existing Facilities).

Attachments:
• Attachment9.a: Attachment A: Amendment No. 1 to Contract with Blue Rhino Studios, Inc.
• Attachment9.b: Attachment B: Rendering of Dinosaur Garden Exhibit
AMENDMENT NO. 1 TO CONTRACT NO. C21180078
BETWEEN THE CITY OF PALO ALTO AND BLUE RHINO STUDIO, INC.

This Amendment No. 1 (this “Amendment”) to Contract No. C21180078 (the “Contract” as defined below) is entered into as of August 11, 2022, by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and BLUE RHINO STUDIO, INC., a Minnesota corporation, located at 3277 Sun Drive, Eagan, MN 55121 (“CONSULTANT”). CITY and CONSULTANT are referred to collectively as the “Parties” in this Amendment.

RECEPTION

A. The Contract (as defined below) was entered into by and between the Parties hereto for the provision of the artistic creation of three life-size, scientifically realistic sculptures for the Junior Museum and Zoo, as detailed therein.

B. The Parties now wish to amend the Contract in order to add the artistic creation of four life-size, scientifically realistic animal sculptures and two fossil sculptures, extend the term by two months, and increase the compensation by $234,758.00, from a total not to exceed total of $214,706.00 to $449,464.00.

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 Jan 1, 2021 to August 30, 2023 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 Four Hundred Forty Nine Thousand Four Hundred and Sixty Four dollars ($449,464.00).

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 “A-2” entitled “PHOTOS OF MODELS AND DRAWINGS OF INSTALLATION”, ADDED.

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

d. Exhibit “C” entitled “SCHEDULE OF FEES”, 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

City Manager

APPROVED AS TO FORM:

City Attorney or designee

BLUE RHINO, INC.

Officer 1

By: Tim Quady
Name: Tim Quady
Title: President

Attachments:
EXHIBIT “A”: SCOPE OF SERVICES, AMENDED, REPLACES PREVIOUS
EXHIBIT “A-2”: PHOTOS OF MODELS AND DRAWINGS OF INSTALLATION
EXHIBIT “B”: SCHEDULE OF PERFORMANCE, AMENDED, REPLACES PREVIOUS
EXHIBIT “C”: SCHEDULE OF FEES, AMENDED, REPLACES PREVIOUS
EXHIBIT A
SCOPE OF SERVICES
AMENDED, REPLACES PREVIOUS

This project entails the artistic creation of three life-size, scientifically realistic sculptures. Contract responsibilities include design, communication with JMZ’s scientific advisors, fabrication of full-size sculptures, shipment and onsite oversight during installation. The JMZ will be responsible for hiring a crane (if required) and/or installation crew.

The three sculptures include:

1. Aletopelta coombsi (a type of ankylosaur, approximately 17’ long): This is an outdoor sculpture and will be climbable by visitors and should therefore hold up to the rigors of repeated touch.

2. Augustynolophus morrisi (approximately 30’ long): This is an outdoor sculpture and will be not be touchable by visitors. It will be located in a fenced area.

3. Pteranodon (in flight, 18’ wingspan): The sculpture will be located inside the museum and hung from architectural steel beams via steel cable. It should have structural eyebolts or other hardware to connect cables to. Contractor is responsible for cable spec to ensure structural capability. It will be non-touchable and hung at a height that is out-of-reach by visitors. It must be completed and delivered by Feb. 2021 to assist in marketing and fundraising efforts.

Fabrication methods and materials should meet these specifications:

- Contractor must adhere to the previously approved models, structurally engineered designs, and stamped engineering drawings that were completed in an earlier contract as attached in Exhibit A-1 to this Agreement. Concrete footings based on the stamped drawings have already been installed during building construction by the general contractor. The two large dinosaur sculptures (Aletopelta and Augustynolophus) must structurally attach to these existing footings.

- Exterior should be durable, exterior grade fiberglass, painted in a scientifically accurate manner with detailed, scientifically accurate body textures. The JMZ has scientific advisors for the contractor to utilize and approve in process sculptures.

The Contractor will manage sculpture fabrication in accordance with the terms and conditions of the City contract. Services shall also include but are not limited to the following:
• Participate in meetings required to coordinate the work. Submit timely requests for clarification, specifications, and scientific details to City’s Project Manager. Communicate clearly and seek timely approvals of sculptures.

• Be onsite to manage proper installation of sculptures to existing footings to meet structural engineering drawings. JMZ will secure local contracts and crane (if necessary) for installation as well as manage those contractors.

• Prepare and maintain a schedule for regular updates to City’s Project Manager. Conduct interim sculpture reviews via email and photographs with City’s Project Manager as required.

• Ensure that punch list items are completed promptly, and that incomplete or deficient work is completed/repaired/replaced at no additional cost to the City.

• Provide documentation to the City for maintenance requirements, including a maintenance schedule and any necessary parts, material or touch-up paint specs.

**AMENDMENT NUMBER 1:**

Amendment Number 1 adds the following scope to the existing scope:

This scope amendment, part of the California Dinosaur Garden exhibition, includes the artistic creation of four life-size, scientifically realistic animal sculptures and two fossil sculptures for the Fossil Dig exhibit area. JMZ will direct general pose based on proposed location.

**Contractor responsibilities include:**

• Artistic and structural design,

• Communication with JMZ’s scientific advisors who will provide latest research on species along with JMZ and careful paleontological review throughout the sculpting process,

• Fabrication of full-size sculptures with a durable, exterior grade fiberglass, painted in a scientifically accurate manner with detailed, scientifically accurate body textures and fabrication of fossils for dig in a durable concrete to withstand the abuses of a sand matrix,

• Shipment and onsite installation.

**The four sculptures include:**

• One Ichthyornis (approximately the size of a tern; mounted on a railing or bench back, fish in mouth, wings are folded),
Custom sculpted in clay at full size (roughly that of a tern), mold, and cast in two-part tinted epoxy, and paint realistically. Sculpture will include cast metal legs and feet and posed in a way that will allow for secure mounting to railing or surface (provided by JMZ) via threaded rod.

- Two Hypsilophodontids (approximately the size of a deer; 2 of these in slightly different poses),

Custom sculpted directly in foam, fiberglass, and sculpting epoxy with internal steel armatures. Finished sculptures to be approximately 6’ long x <3’ tall, painted realistically. Completed sculptures to be mounted with threaded rod or armature to concrete pads or footings provided by JMZ).

- One Saurornithelestes (feathered carnivore; like a velociraptor)

Custom sculpted at full size directly in foam, fiberglass, and sculpting epoxy with an internal steel armature. Finished sculpture to be approximately 6’ long x <3’ tall, painted realistically. Due to thinness and potential fragility of sculpted feathers, sculpture should be out of reach of visitors. JMZ to direct general pose based on proposed location. Latest research on species to be provided by client and Scientific Advisor, Ken Kirkland. Careful paleontological reviews to happen throughout sculpting process. Completed sculptures to be mounted with threaded rod or armature to concrete pads or footings provided by JMZ.

**Reference images are below in Exhibit A-2.**

**Fossil Dig Sculptures:**

The exhibition will also include a fossil dig exhibition in an outdoor location. One large fossil set will be in a large in-ground concrete area (already installed) and the other small fossil set will be in the above-ground steel table, accessible to people in wheelchairs.

The fossils in the fossil dig will be buried in sand, rubber granules or a matrix of sawdust and wax. Matrix to be determined.

**Reference images and dimensioned drawings of installation areas are below.**

**Fossil specimen for fossil dig area**

The fossil may be a plesiosaur or other agreed upon marine animal from California based upon available specimens and research references. Hydrotherosaurus alexandrae is desirable. This specimen is approximately 23’ in length. Fabricator to research available options and make recommendations. Final specimen choice to be approved by JMZ.
**Fossil specimen for accessible fossil dig table**

There is an accessible fossil dig table for people in wheelchairs. The tabletop is approximately 2’d x 4’w. Fossil sculpture should be a section of the same specimen in ground level fossil dig, with a preference for the skull.

The Contractor will manage sculpture fabrication in accordance with the terms and conditions of the City contract. Services shall also include but are not limited to the following:

- Participate in meetings required to coordinate the work. Submit timely requests for clarification, specifications, and scientific details to City’s Project Manager. Communicate clearly and seek timely approvals of sculptures.

- Be onsite to manage proper installation of sculptures to existing footings to meet structural engineering drawings. JMZ will be responsible for crane and scissor rentals for installation.

- Prepare and maintain a schedule for regular updates to City’s Project Manager. Conduct interim sculpture reviews via email and photographs with City’s Project Manager as required.

- Ensure that punch list items are completed promptly, and that incomplete or deficient work is completed/repaired/replaced at no additional cost to the City.

- Provide documentation to the City for maintenance requirements, including a maintenance schedule and any necessary parts, material or touch-up paint specs.
EXHIBIT A-2
PHOTOS OF MODELS AND DRAWINGS OF INSTALLATION
ADDED

Ichthyornis

Hypsilophodontids
Saurornithelestes
Fossil Dig Sculptures

Hydrotherosaurus alexandrae

Example of a fossil dig from another museum
Image shows fossil dig area on left and accessible fossil dig table.

Dimensions and layout of area
EXHIBIT B
SCHEDULE OF PERFORMANCE
AMENDED, REPLACES PREVIOUS

CONTRACTOR shall perform the Services according to the following schedule. Phases may be completed in advance of deadlines. However, CONTRACTOR is responsible for off-site storage if completed in advance (i.e. Sculptures may not be delivered earlier than dates indicated).

Jun. 1, 2021 – PHASE 1, Fabrication of full-scale Pteranodon & 50% Fabrication of Aletopelta
- Fabrication of Pteranodon (includes coordination with JMZ and scientific advisors to achieve approval on details and coloration);
- Storage of sculpture if completed in advance
- Completion of interior of full-scale Aletopelta sculpture: steel armature & foam

Nov. 1, 2021 – PHASE 2, 100% Fabrication of Aletopelta
- Completion of exterior of full-scale Aletopelta sculpture: resin, detailing & painting;
- Storage of sculpture if completed in advance

Jan. 14, 2022 – PHASE 3, Shipping and Delivery of Pteranodon

Jun. 1, 2022 – PHASE 4, 50% Fabrication of Augustynolophus
- Completion of interior of full-scale Augustynolophus sculpture: steel armature & foam

Nov. 1, 2022 – PHASE 5, 100% Fabrication of Augustynolophus
- Completion of exterior of full-scale Augustynolophus sculpture: resin, detailing & painting;
- Storage of sculpture if completed in advance

Jan. 16, 2023 – PHASE 3, Shipping, Delivery & Installation of Aletopelta and Augustynolophus
- Shipment of Aletopelta and Augustynolophus
- Onsite management of delivery and installation (NOTE: Installation to be completed by City staff and City-hired crane company)

Jan. 31, 2023 – ACCEPTANCE TEST, Two Weeks of Testing With Staff and Visitors; Resolution of Any Issues
- Maintenance documentation delivered
- Completion of any deficient work

AMENDMENT NUMBER 1:
Amendment Number 1 revises the schedule by incorporating the additional scope of work and extending the deadlines because the exhibition’s opening date was revised to mid-June.

Jun. 1, 2021 – PHASE 1, Fabrication of full-scale Pteranodon & 50% Fabrication of Aletopelta
• Fabrication of Pteranodon (includes coordination with JMZ and scientific advisors to achieve approval on details and coloration);
• Storage of sculpture if completed in advance
• Completion of interior of full-scale Aletopelta sculpture: steel armature & foam

**Nov. 1, 2021 – PHASE 2, 100% Fabrication of Aletopelta**
• Completion of exterior of full-scale Aletopelta sculpture: resin, detailing & painting;
• Storage of sculpture if completed in advance

**Jun. 1, 2022 – PHASE 3, 100% Fabrication of Augustynolophus**
• Completion of interior of full-scale Augustynolophus sculpture: steel armature & foam

**Jan. 1, 2023 – PHASE 4, 50% Fabrication of Ichthyornis, two Hypsilophodontids, Saurornitholestes, two Fossil Dig sculptures**
• Completion of artistic direction and interior of full-scale Ichthyornis, two Hypsilophodontids, Saurornitholestes sculptures: steel armature & foam
• Completion of artistic direction and 50% full-scale Ichthyornis: steel armature & clay
• Completion of artistic direction and 50% of full-scale Fossil Dig sculptures in concrete
• Storage of sculptures if completed in advance

**Apr. 1, 2023 – PHASE 5, 100% Fabrication of Ichthyornis, two Hypsilophodontids, Saurornitholestes, two Fossil Dig sculptures**
• Completion of exterior of full-scale two Hypsilophodontids, Saurornitholestes, sculptures: resin, detailing & painting;
• Completion of exterior full-scale Ichthyornis: mold & painting
• Completion of two Fossil Dig sculptures in sections: concrete
• Storage of sculptures if completed in advance

**May 5, 2023 – PHASE 6, Shipping, Delivery & Installation of all sculptures**
• Shipment of all sculptures
• Onsite installation

**Jun. 30, 2023 – ACCEPTANCE TEST, Two weeks of testing With Staff and Visitors after exhibition opening; Resolution of Any Issues**
• Maintenance documentation delivered
• Completion of any deficient work
## Compensation based upon deliverables

CITY shall compensate CONTRACTOR for performance of the Services according to the following schedule, with the maximum amount of compensation not to exceed the amount stated in Sections 5 and 6 of this Agreement:

<table>
<thead>
<tr>
<th>PHASE OF PROJECT</th>
<th>DELIVERABLE</th>
<th>% OF TOTAL</th>
<th>AMOUNT (INCLUDING REIMBURSABLES)</th>
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</thead>
<tbody>
<tr>
<td><strong>Phase One</strong></td>
<td>100% FABRICATION OF PTERANODON &amp; 50% FABRICATION OF ALETOPELTA</td>
<td>9.5</td>
<td>$42,941.20</td>
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<tr>
<td></td>
<td>Completion of full-scale Pteranodon</td>
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<td></td>
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<tr>
<td></td>
<td>Storage of sculpture if completed in advance</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Completion of interior of full-scale Aletopelta sculpture: steel armature &amp; foam</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Phase Two</strong></td>
<td>100% FABRICATION OF ALETOPELTA</td>
<td>7</td>
<td>$32,205.90</td>
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<tr>
<td></td>
<td>Completion of exterior of full-scale Aletopelta sculpture: resin, detailing &amp; painting</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Storage of sculpture if completed in advance</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Phase Three</strong></td>
<td>100% FABRICATION OF AUGUSTYNOLOPHUS</td>
<td>21</td>
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<td></td>
<td>Completion of interior of full-scale Augustynolophus sculpture: steel armature &amp; foam</td>
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<td></td>
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<tr>
<td></td>
<td>Completion of exterior of full-scale Augustynolophus sculpture: resin, detailing &amp; painting</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Storage of sculpture if completed in advance</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Phase Four</strong></td>
<td>50% FABRICATION OF ICHTHYORNIS, TWO HYPSILOPHODONTIDS, SAURORNITHOLESTES, TWO FOSSIL DIG SCULPTURES</td>
<td>25</td>
<td>$111,805.03</td>
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<tr>
<td></td>
<td>Completion of artistic direction and interior of full-scale Ichthyornis, two Hypsilophodontids, Saurornitholestes sculptures: steel armature &amp; foam</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Completion of artistic direction and 50% full-scale Ichthyornis: steel armature &amp; clay</td>
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<td></td>
</tr>
</tbody>
</table>
Completion of artistic direction and 50% of full-scale Fossil Dig sculptures in concrete

**PHASE FIVE**

<table>
<thead>
<tr>
<th>Description</th>
<th>Deliverable</th>
<th>Hours</th>
<th>Total Cost</th>
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<tbody>
<tr>
<td>100% FABRICATION OF Ichthyornis, Two Hypsilophodontids, Saurornitholestes, Two FOSSIL DIG SCULPTURES</td>
<td></td>
<td>25</td>
<td>$111,805.03</td>
</tr>
</tbody>
</table>

Completion of exterior of full-scale two Hypsilophodontids, Saurornitholestes, sculptures: resin, detailing & painting;

Completion of exterior full-scale Ichthyornis: mold & painting;

Completion of two Fossil Dig sculptures in sections: concrete;

Storage of sculptures if completed in advance;

**PHASE SIX**

<table>
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<tr>
<th>Description</th>
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<th>Hours</th>
<th>Total Cost</th>
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<tbody>
<tr>
<td>SHIPPING, DELIVERY &amp; INSTALLATION OF ALL SCULPTURES</td>
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<td>7.5</td>
<td>$33,763.00</td>
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Shipment of all sculptures;

Onsite installation (NOTE: City-hired crane company);

**ACCEPTANCE TEST**

<table>
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<th>Description</th>
<th>Deliverable</th>
<th>Hours</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>TWO WEEKS OF TESTING WITH STAFF &amp; VISITORS; RESOLUTION OF ANY ISSUES</td>
<td></td>
<td>5</td>
<td>$22,473.20</td>
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Maintenance documentation delivered;

Completion of any deficient work;

**TOTAL**

<table>
<thead>
<tr>
<th>Description</th>
<th>Deliverable</th>
<th>Total Percentage</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>100%</td>
<td>$449,464.00</td>
</tr>
</tbody>
</table>

All Payments are based upon CITY’s acceptance of CONTRACTOR’s performance of the phase as evidenced by successful completion of the Deliverable for that Phase. CITY shall have no obligation to pay unless CONTRACTOR has successfully completed and CITY has approved the Project Phase for which payment is due.

The maximum amount of compensation to be paid to CONTRACTOR, including both payment for services and reimbursable expenses, shall not exceed the amounts stated in Sections 5 and 6 of the Agreement. Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.
City of Palo Alto
City Council Staff Report

Report Type: Action Items
Meeting Date: 12/12/2022

Summary Title: Action Item: ADU Code Changes to PAMC

Title: PUBLIC HEARING/LEGISLATIVE: Adoption of Amendments to Palo Alto Municipal Code Chapter 18.09, Accessory and Junior Accessory Dwelling Units due to State Law Changes and Direction from the California Department of Housing and Community Development. Environmental Assessment: Exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines sections 15061(b)(3), 15301, 15302 and 15305. Planning and Transportation Commission Recommended Approval of the Ordinance.

From: City Manager

Lead Department: Planning and Development Services

Recommendation
Staff recommends the City Council adopt the attached Ordinance (Attachment A) amending Palo Alto Municipal Code Title 18 (Zoning) regulations for Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) to reflect changes in state law and direction from the California Department of Housing and Community Development (HCD).

Report Summary/Background
On October 26, 2020, the City Council adopted the updated Palo Alto’s Accessory Dwelling Unit and Junior Accessory Dwelling Unit (ADU and JADU) Ordinance. These were consolidated into Palo Alto Municipal Code (PAMC) Chapter 18.09. On October 26, 2020, Council also directed staff to continue working with stakeholders and to present any additional changes to the Planning and Transportation Commission (PTC). The PTC held multiple hearings to discuss potential ADU/JADU code changes, and the PTC staff reports, meeting minutes, and videos are viewable on the City’s PTC webpages.¹

¹ Link to 2022 PTC Staff reports, meeting minutes, and videos
https://www.cityofpaloalto.org/Departments/Planning-Development-Services/Planning-and-Transportation-
In September 2022, the Governor signed the California State legislature’s three new bills regarding ADU/JADU regulations (SB897, AB2221, and AB157). The laws will go into effect on January 1, 2023; they are intended to incentivize housing unit development. In addition, there was a Budget Act that appropriates $100 million to bolster CalHFA’s ADU grant program that provides up to $40,000 for low- and moderate-income homeowners to cover pre-development costs.

On September 28, 2022, the PTC recommended Council approve a draft ordinance incorporating the new state legislation and direction from HCD as well as other changes the PTC discussed in public hearings. The attached ordinance, however, is limited only to the code updates necessary to comply with the new state law and direction from HCD. The other policy recommendations will follow early next year. The reason staff is separating these ordinances is to focus on the more time sensitive state-mandated changes to avoid having the City’s local ADU/JADU ordinance invalidated, which arguably would be the case if the City does not adopt an ordinance by January 1, 2023.

The attached draft Ordinance (Attachment A) enables the Council to adopt the State’s 2022 ADU legislation.

Discussion
This staff report touches on the staff response to a California Department of Housing and Community Development (HCD) letter received in late 2021, as well as describing the 2022 State legislation regarding ADUs and JADUs.

Staff Response to HCD Letter
On December 23, 2021, the City received a letter from HCD regarding the ordinance the City adopted in November 2020 (Attachment B). HCD raised 12 issues with the City’s ordinance where it thought the ordinance conflicted with state law or required further clarification. On February 3, 2022, City staff met with HCD staff to discuss HCD’s comments and concerns as well as to explain the structure and intent of the language incorporated into the City’s ordinance. Following that discussion, City staff provided detailed responses to the HCD letter, indicating areas where the City would incorporate changes and where staff required clarification (Attachment C). Staff has sought updates from HCD on this request for additional feedback over the past year but has not received HCD’s response.

Many of the HCD’s changes were minor clarifications, which appear in the draft ordinance as noted in comment bubbles. In many cases, the proposed adjustments clarify existing policy to

Commission-PTC/Current-PTC-Agendas-Minutes: the most recent PTC hearing was September 28, 2022. Earlier PTC hearings in 2022 were July 13, 2022 and August 10, 2022.
provide assurance to the state and the public that the City’s ordinance should be interpreted in a manner consistent with state law.

Other items (such as #3, #4, and #5 in the HCD letter) are more significant changes to City policy, where February 2022 meeting left staff uncertain about the HCD’s direction. Staff awaits further clarification from HCD before proposing an ordinance change for those items. While staff believes that there are strong arguments in support of the City’s position on these issues, it is possible that HCD’s eventual response will require further modifications to the ordinance. Given the uncertainty around when the City can expect a detailed response from HCD, staff recommends proceeding with the ordinance update, though further ordinance revisions may be required based on any additional HCD feedback received.

Inclusion of 2022 State ADU Legislation
The Governor signed the following three bills pertaining to ADUs:

- **SB 897** allows two-story ADUs in some places, prevents local governments from posting unnecessary notices, and prevents a local government from changing the Group R occupancy status as that relates to building codes, among other important changes.
- **AB 2221** prevents local governments from imposing front setbacks, establishes a 60-day timeline for a complete review of ADUs that are denied, and makes other important changes noted below in the AB 2221 summary section.
- **AB 157**, a late addition to budget trailer bills, requires CalHFA to convene a working group of experts to recommend next-phase updates to CalHFA’s ADU grant program so that more homeowners can benefit.

Two of these bills, now laws, are incorporated into provisions of the attached draft ordinance - SB897 and AB2221. AB 2221 and SB 897 both amended Government Code section 65852.2. AB 2221 was chaptered at 650, and SB 897 was chaptered at 664.

**SB 897² (GC 65852.2 amendment @664) Requires That:**
- The City must allow a height of 18 feet for a detached ADU on a lot with an existing or proposed single-family or multifamily dwelling unit that is within one-half mile walking distance of a major transit stop or a high-quality transit corridor³, as those terms are defined in Section 21155 of the Public Resources Code. An additional two feet in height shall be provided to accommodate a roof pitch on an ADU that is aligned with the roof pitch of the primary dwelling unit.
- The City must allow a height of 18 feet for a detached ADU on a lot with an existing or proposed multifamily, multi-story dwelling, regardless of proximity to a transit stop or

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² Link to Summary of SB897: [https://legiscan.com/CA/text/SB897/2021](https://legiscan.com/CA/text/SB897/2021)
³ See Attachment D for a map of the major transit stops and high-quality transit corridor
high-quality transit corridor. This would not affect properties with multifamily, single-story dwellings.

- The City must allow a height of 25 feet or the height limitation in the underlying zone district that applies to the primary dwelling, whichever is lower, for an ADU that is attached to a primary dwelling. The ADUs shall not exceed two stories in height.
- The City cannot require modification to an existing, noncomplying, multi-family residential dwelling to satisfy the height limit or rear or side setback of four feet for an ADU.
- The City cannot reject an ADU application because an existing multi-family residential dwelling exceeds the maximum height or rear or side setbacks of less than four feet.
- The City cannot impose parking standards on an ADU that is included in an application to create a new single-family dwelling unit or new multi-family residential dwelling on the same lot, provided the ADU meets other specified requirements.
- Enclosed uses within the proposed or existing single-family residence, such as attached garages, are considered part of the proposed or existing single-family residence.
- A JADU that does not include a separate bathroom must include a separate entrance from the main entrance to the structure, with an interior entry to the main living area.
- The City cannot deny an application for JADU due to the correction of nonconforming zoning conditions or building violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the JADU.
- The City cannot deny a permit for an unpermitted ADU constructed before January 1, 2018, because, among other things, the unit is in violation of building standards or state or local standards applicable to ADUs, unless the local agency makes a finding that correcting the violation is necessary to protect the health and safety of the public or occupants of the structure. This prohibition does not apply to a building that is deemed substandard under specified provisions of law.

AB 2221\(^4\) (GC 65852.2 amendment @650):

- Clarifies that an ADU may be attached to or located within a detached garage for the primary dwelling.
- Specifies that the permitting agency action must be approval or denial of the application. If a permitting agency denies an application for an ADU or JADU, the law requires a permitting agency to return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant within the same timeframes. The law defines “permitting agency” for its purposes.

\(^4\) Link to Summary of AB2221: [https://legiscan.com/CA/text/AB2221/2021](https://legiscan.com/CA/text/AB2221/2021)
• Prohibits a local agency from enforcing front setbacks, where such setbacks would preclude the creation of an ADU of at least 800 square feet, with four-foot side and rear setbacks and 16 feet in height.

Significant Changes
The most significant effects of these state law changes pertain to the increased height allowances for attached ADUs and detached ADUs located within a half-mile distance from high-quality transit in the City. In Palo Alto, these areas primarily occur near the University and California Avenue Caltrain Stations and along El Camino Real, as shown in Attachment D. The increased height in these areas will inevitably create greater privacy and massing impacts on adjacent properties that the City is unable to control or prevent. This is, however, consistent with the approach the state has taken to encourage ADU development in California and will likely continue to be expanded in the future.

While other new state laws seek to limit a local jurisdiction’s ability to require front yard setbacks, staff believe that the current phrasing built into the state code only provides that ability as a last resort to homeowners, when the ADU follows a four-foot side and rear yard setback, but they would still be unable to create minimum sized 800 square foot ADU. Staff does not anticipate that this will become a prevalent issue. Many of the state law revisions do not affect the City’s ADU/JADU ordinance because they are requirements the City already established in the code and practices staff follow for processing ADU/JADU applications.

Quarterly ADU report dated June 20, 2022
The Council received a quarterly report on ADUs. In the report, the average size of ADUs was reported to be around 552 square feet which is an increase largely associated with the additional flexibility the State provides for minimum sizes of second units that homeowners can develop by right.

Environmental Review
The adoption of the Draft Ordinance would be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines sections 15061(b)(3), 15301, 15302 and 15305 because it meets requirements related to accessory dwelling units as established in Government Code Section 65852.2, and these changes are also likely to result in few additional dwelling units dispersed throughout the City. As such, it can be seen with certainty that the proposed action will not have the potential for causing a significant effect on the environment.

Public Notification, Outreach & Comments
The PAMC requires notice of this public hearing to be published in a local paper and mailed to owners and occupants of property within 600 feet of the subject property at least 10 days in advance. Notice of a public hearing for this project was published in the Daily Post on December 2, which is 10 days in advance of the meeting.

Attachments:
Attachment10.a: ATTACHMENT A - Ordinance Amending Title 18 (Zoning) of the PAMC to Amend Requirements Relating to Accessory Dwelling Units and Junior Accessory Dwelling Units (PDF)
Attachment10.b: ATTACHMENT B - HCD Letter on ADU Ordinance (PDF)
Attachment10.c: ATTACHMENT C - Staff Response to HCD (PDF)
Attachment10.d: ATTACHMENT D - Half Mile Buffer from High Quality Transit (PDF)
*NOT YET APPROVED*

Ordinance No. ______

Ordinance of the Council of the City of Palo Alto Amending Title 18 (Zoning) of the Palo Alto Municipal Code to Amend Requirements Relating to Accessory Dwelling Units and Junior Accessory Dwelling Units

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

**SECTION 1.** Findings and Declarations. The City Council finds and declares as follows:

A. Housing in California is increasingly unaffordable. In 2017, the average California home cost about 2.5 times the national average home price and the monthly rent was 50% higher than the rest of the nation. Rents in San Francisco, San Jose, Oakland, and Los Angeles are among the top 10 most unaffordable in the nation.

B. Housing in Palo Alto is especially unaffordable. The average Palo Alto home currently costs about 8 times the national average home price and the monthly rent is about 2.5 times the national average.

C. Palo Alto has a jobs/housing imbalance. When addressing this imbalance, the City must not only provide housing but also ensure affordability.

D. Assembly Bill ("AB") 2221 and Senate Bill ("SB") 897 ("State ADU Law") pertain to accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs") and were approved by the California Legislature in 2022 and signed by the Governor on September 30, 2022. These bills, codified primarily in California Government Code sections 65952.2 and 65952.22, are intended to spur the creation of lower cost housing by easing regulatory barriers to the creation of ADUs and JADUs. The City adopted Ordinance 5507 (now Palo Alto Municipal Code Chapter 18.09), which brought the City’s municipal code into conformance with state laws AB 68, 587, 671 and 881, and SB 13.

- **SB 897** allows two-story ADUs in some places, prevents local governments from posting unnecessary notices, and prevents a local government from changing the Group R occupancy status as that relates to building codes, among other important changes.
- **AB 2221** adds front setbacks to the list of standards that must give way to permit an 800sf ADU, establishes a 60-day timeline for complete review of ADUs that are denied, and makes other important changes.

E. This ordinance is adopted to incorporate changes in state law that have occurred since the adoption of Ordinance 5507, respond to comments the City has received from the California Department of Housing and Community Development regarding its ADU regulations, respond to additional policies advocated by members of the public, and issues staff has noticed.
when reviewing permits. This ordinance is also adopted to establish a program for deed-restricted affordable ADU/JADUs.

**SECTION 2.** Chapter 18.09 (Accessory Dwelling Units and Junior Accessory Dwelling Units) of Title 18 (Zoning) of the Palo Alto Municipal Code (“PAMC”) is amended to read as follows (additions underlined and deletions struck through):

*18.09.010 Purpose*

The intent of this Chapter is to provide regulations to accommodate accessory and junior accessory dwelling units (ADU/JADU), in order to provide for variety to the city’s housing stock and additional affordable housing opportunities. These units shall be separate, self-contained living units, with separate entrances from the main residence, whether attached or detached. The standards below are provided to minimize the impacts of units on nearby residents and throughout the city, and to assure that the size and location of such dwellings is compatible with the existing or proposed residence(s) on the site and with other structures in the area.

**18.09.020 Applicable Zoning Districts**

The establishment of an accessory dwelling unit is permitted in zoning districts when single-family or multi-family residential is a permitted land use. The development of a single-family home, ADU, and/or a JADU on a lot that allows for single-family development shall not be considered a multifamily development pursuant to PAMC Section 18.04.030, nor shall they require Architectural Review pursuant to other sections of Chapter 18.

**18.09.030 Units Exempt from Generally Applicable Local Regulations**

(a) Government Code section 65852.2, subdivision (e) provides that certain units shall be approved notwithstanding state or local regulations that may otherwise apply. The following types of units shall be governed by the standards in this section. In the event of a conflict between this section and Government Code section 65852.2, subdivision (e), the Government Code shall prevail.

i. An ADU and/or JADU within the existing space of a single-family dwelling or an ADU within the existing space of an accessory structure (i.e., conversion without substantial addition).

ii. An ADU and/or JADU within the proposed space of a single-family dwelling.

iii. A detached, new construction ADU on a lot with a proposed or existing single-family dwelling, provided the ADU does not exceed 800 square feet, sixteen feet in height, or four-foot side and rear (i.e. interior) setbacks.

iv. ADUs created by conversion of portions of existing multi-family dwellings not used as livable space.

v. Up to two detached ADUs on a lot with an existing multi-family dwelling.

*NOT YET APPROVED*
(b) The Development Standards for units governed by this section are summarized in Table 1. Regulations set forth in section 18.09.040 do not apply to units created under 18.09.030. The minimum and maximum sizes indicated in Table 1 do not prohibit units that are greater than 800 square feet. These sizes simply serve to distinguish when a unit transitions from regulations set forth in Table 1 and section 18.09.030 to regulations set forth in Table 2 and section 18.09.040.

Table 1: Development Standards for Units Described in Government Code Section 65852.2(e)

<table>
<thead>
<tr>
<th></th>
<th>Single-Family</th>
<th>Multi-Family</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conversion of Space</td>
<td>Construction of Attached ADU Within the Proposed Space of a Single-Family Home</td>
<td>Conversion of Non-Habitable Space Within Existing Multi-family Dwelling Structure</td>
</tr>
<tr>
<td>Within an Existing</td>
<td>(ADU must be within the allowable space of a Single-Family Home)</td>
<td>(ADU must be within the allowable space of a Multi-family Dwelling Structure)</td>
</tr>
<tr>
<td>Space of a Single-Family Home or Accessory Structure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Units</td>
<td>1 ADU and 1 JADU</td>
<td>25% of the existing units (at least one)</td>
</tr>
<tr>
<td>Allowed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum size(1)</td>
<td></td>
<td>150 sf</td>
</tr>
<tr>
<td>Maximum size(2)</td>
<td></td>
<td>800 sf</td>
</tr>
<tr>
<td>setbacks</td>
<td>N/A, if condition is sufficient for fire and safety</td>
<td>N/A, if condition is sufficient for fire and safety</td>
</tr>
<tr>
<td>(ADU must be within the allowable space of a Single-Family Home)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daylight Plane</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Maximum Height(3)</td>
<td>N/A</td>
<td>16[feet]</td>
</tr>
<tr>
<td>Parking</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>State Law Reference</td>
<td>65852.2(e)(1)(A)</td>
<td>65852.2(e)(1)(A)</td>
</tr>
</tbody>
</table>

(1) Lofts where the height from the floor level to the underside of the rafter or finished roof surface is 5’ or greater shall count towards the unit’s floor area.

(2) Up to 150 sf may be added for the purpose of ingress and egress only.

Commented [SG3]: Response to HCD item #5, #10, #11, #12
Commented [SG4]: Response to HCD item #1
(3) Units built in a flood zone are not entitled to any height extensions granted to the primary dwelling.

(4) Units must be detached from existing primary dwellings but may be attached to each other.

(5) A height of 18 feet for a detached ADU on a lot with an existing or proposed single family or multifamily dwelling unit that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. An additional two feet in height shall be provided to accommodate a roof pitch on an ADU that is aligned with the roof pitch of the primary dwelling unit.

(6) A height of 18 feet for a detached ADU on a lot with an existing or proposed multifamily, multistory dwelling.

(7) A height of 25 feet or the height limitation in the underlying zone district that applies to the primary dwelling, whichever is lower, for an ADU that is attached to a primary dwelling. These ADUs shall not exceed two stories in height.

(c) Development standards stated elsewhere in this Section or Title 18, including standards related to FAR, lot coverage, and privacy, are not applicable to ADUs or JADUs that qualify for approval under this section.

(d) The establishment of accessory dwelling units and junior accessory dwelling units pursuant to this section shall not be conditioned on the correction of non-conforming zoning conditions; provided, however, that nothing in this section shall limit the authority of the Chief Building Official to require correction of building standards relating to health and safety.

(e) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. Nothing in this section shall preclude the Fire Marshal from accepting fire sprinklers as an alternative means of compliance with generally applicable fire protection requirements.

(f) Rental of any unit created pursuant to this section shall be for a term of 30 days or more.

(g) Attached units shall have independent exterior access from a proposed or existing single-family dwelling. Except for JADUs, attached units shall not have an interior access point to the primary dwelling (e.g. hotel door or other similar feature/appurtenance).

(h) Conversion of an existing accessory structure pursuant to Government Code section 65852.2(e)(1)(A) may include reconstruction in-place of a non-conforming structure, so long as the renovation of reconstruction does not increase the degree of non-compliance, such as increased height, envelope, or further intrusion into required setbacks.

*NOT YET APPROVED*
(i) Street addresses shall be assigned to all units prior to building permit final to assist in emergency response.

(j) The unit shall not be sold separately from the primary residence.

(k) Replacement parking is not required when a garage, carport, or covered parking structure is converted to, or demolished in conjunction with the construction of, an ADU.

(l) JADUs shall comply with the requirements of Section 18.09.050.

### 18.09.040 Units Subject to Local Standards

(a) This section shall govern applications for ADUs and JADUs that do not qualify for approval under section 18.09.030 and for which the City may impose local standards pursuant to Government Code section 65852.2, subdivisions (a) through (d). Nothing in this section shall be interpreted to prohibit an ADU of up to 800 square feet, at the heights stated in Table 2, with a four foot side and rear setbacks.

(b) The Development Standards for units governed by this section are provided in Table 2. These regulations do not limit the height of existing structures converted into ADU/JADUs unless the envelope of the building is proposed to be modified beyond any existing legal, non-conforming condition.

#### Table 2: All other Units

<table>
<thead>
<tr>
<th></th>
<th>Attached</th>
<th>Detached</th>
<th>JADU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Units Allowed1</td>
<td></td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Minimum size</td>
<td></td>
<td>150 sf</td>
<td></td>
</tr>
<tr>
<td>Maximum size</td>
<td>900 sf (1,000 sf for two or more bedrooms); no more than 50% of the size of the single-family home</td>
<td>900 sf (1,000 sf for two or more bedrooms)</td>
<td>500 sf</td>
</tr>
<tr>
<td>Setbacks</td>
<td>4 feet from side and rear lot lines; underlying zone standard for front setback</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daylight Plane Initial Height</td>
<td>8 feet at lot line</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Angle</td>
<td>45 degrees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maximum Height3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Res. Estate (RE)</td>
<td></td>
<td></td>
<td>30 feet</td>
</tr>
<tr>
<td>Open Space (OS)</td>
<td></td>
<td></td>
<td>25 feet</td>
</tr>
</tbody>
</table>

Commented [SG6]: Response to HCD item #6, #9; SB 897 change re height

Commented [SG7]: Response to HCD item #5
<table>
<thead>
<tr>
<th>Exemption</th>
<th>All other eligible zones</th>
<th>Parking</th>
<th>Square Footage</th>
<th>Exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>16 feet^12^</td>
<td>None</td>
<td>Up to 800 sf^4^</td>
<td>Up to 500 sf^4^</td>
</tr>
</tbody>
</table>

(1) An attached or detached ADU may be built in conjunction with a JADU on a lot with an existing or proposed single family home. One attached or detached ADU may be built in conjunction with an existing or proposed multifamily building.

(2) Lofts where the height from the floor level to the underside of the rafter or finished roof surface is 5’ or greater shall count towards the unit’s floor area.

(3) Units built in a flood zone are not entitled to any height extensions granted to the primary dwelling.

(4) Lots with both an ADU and a JADU may exempt a maximum combined total of 800 square feet of the ADU and JADU from FAR, Lot Coverage, and Maximum House Size calculations.

(5) A height of 18 feet for a detached ADU on a lot with an existing or proposed single family or multifamily dwelling unit that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. An additional two feet in height shall be provided to accommodate a roof pitch on an ADU that is aligned with the roof pitch of the primary dwelling unit.

(6) A height of 18 feet for a detached ADU on a lot with an existing or proposed multifamily, multistory dwelling.

(7) A height of 25 feet or the height limitation in the underlying zone district that applies to the primary dwelling, whichever is lower, for an ADU that is attached to a primary dwelling. These ADUs shall not exceed two stories in height.

(c) A single-family dwelling shall exist on the lot or shall be constructed on the lot in conjunction with the construction of an ADU/JADU.

(d) ADU and/or JADU square footage shall not be included in FAR, Lot Coverage, and Maximum House Size calculations for a lot with an existing or proposed single family home, up to the amounts stated in Table 2. ADU and/or JADU square footage in excess of the exemptions provided in Table 2 shall be included in FAR, Lot Coverage, and Maximum House Size calculations for the lot.

(e) Attached units shall have independent exterior access from a proposed or existing single-family dwelling. Except for JADUs, attached units shall not have an interior access point to the primary dwelling (e.g. hotel door or other similar feature/appurtenance).

(f) No protected tree shall be removed for the purpose of establishing an accessory dwelling unit unless the tree is dead, dangerous or constitutes a nuisance under

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^1^ Commented [SG8]: Response to HCD direction.

^2^ Commented [SG9]: SB 897 and AB 2221 Changes
Section 8.04.050. Any protected tree removed pursuant to this subsection shall be replaced in accordance with the standards in the Tree Technical Manual.

(g) For properties listed in the Palo Alto Historic Inventory, the California Register of Historical Resources, the National Register of Historic Places, or considered a historic resource after completion of a historic resource evaluation, compliance with the appropriate Secretary of Interior’s Standards for the Treatment of Historic Properties shall be required.

(h) Noise-producing equipment such as air conditioners, water heaters, and similar service equipment. All such equipment shall be insulated and housed, except that the director may permit installation without housing and insulation, provided that a combination of technical noise specifications, location of equipment, and/or other screening or buffering will assure compliance with the city’s Noise Ordinance at the nearest property line. All service equipment must meet the city’s Noise Ordinance in Chapter 9.10 of the Municipal Code.

(i) Setbacks
1. Detached units shall maintain a minimum three-foot distance from the primary unit, measured from the exterior walls of structures.
2. No basement or other subterranean portion of an ADU/JADU shall encroach into a setback required for the primary dwelling.
3. Projections, including but not limited to windows, doors, mechanical equipment, venting or exhaust systems, are not permitted to encroach into the required setbacks, with the exception of a roof eave of up to 2 feet.

(j) Design
1. Except on corner lots, the unit shall not have an entranceway facing the same lot line (property line) as the entranceway to the main dwelling unit unless the entranceway to the accessory unit is located in the rear half of the lot. Exterior staircases to second floor units shall be located toward the interior side or rear yard of the property.
2. Privacy
   A. Second story doors and decks shall not face a neighboring dwelling unit. Second story decks and balconies shall utilize screening barriers to prevent views into adjacent properties. These barriers shall provide a minimum five-foot, six-inch, screen wall from the floor level of the deck or balcony and shall not include perforations that would allow visibility between properties.
   B. Second story windows, excluding those required for egress, shall have a five-foot sill height as measured from the second-floor level, or utilize obscured glazing on the entirety of the window when facing adjacent properties. Second story egress windows shall utilize obscured glazing on the entirety of the windows which face adjacent properties.
C. Second story windows shall be offset from neighbor’s windows to maximize privacy.

(k) Parking
1. Replacement parking is not required when a garage, carport, or covered parking structure is converted to, or demolished in conjunction with the construction of, an ADU.
2. Replacement parking is required when an existing attached garage is converted to a JADU. These replacement spaces may be provided as uncovered spaces in any configuration on the lot including within the front or street side yard setback for the property.
   A. The Director shall have the authority to modify required replacement parking spaces by up to one foot in width and length upon finding that the reduction is necessary to accommodate parking in a location otherwise allowed under this code and is not detrimental to public health, safety or the general welfare.
   B. Existing front and street side yard driveways may be enlarged to the minimum extent necessary to comply with the replacement parking requirement above. Existing curb cuts shall not be altered except when necessary to promote public health, safety or the general welfare.
3. When parking is provided, the unit shall have street access from a driveway in common with the main residence in order to prevent new curb cuts, excessive paving, and elimination of street trees, unless separate driveway access will result in fewer environmental impacts such as paving, grading or tree removal.
4. If covered parking for a unit is provided in any district, the maximum size of the covered parking area for the accessory dwelling unit is 220 square feet. This space shall count towards the total floor area for the site but does not contribute to the maximum size of the unit unless attached to the unit.

(l) Miscellaneous requirements
1. Street addresses shall be assigned to all units prior to building permit final to assist in emergency response.
2. The unit shall not be sold separately from the primary residence.
3. Rental of any unit created pursuant to this section shall be for a term of 30 days or more.
4. The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. Nothing in this section shall preclude the Fire Marshal from accepting fire sprinklers as an alternative means of compliance with generally applicable fire protection requirements.
18.09.050 Additional Requirements for JADUs

(a) A junior accessory dwelling unit shall be created within the walls of an existing or proposed primary dwelling.

(b) The junior accessory dwelling unit shall include an efficiency kitchen, requiring the following components: A cooking facility with appliances, and; food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.
   
i. A cooking facility with appliances shall mean, at minimum a one burner installed range, an oven or convection microwave, a 10 cubic foot refrigerator and freezer combination unit, and a sink that facilitates hot and cold water.
   
ii. A food preparation counter and storage cabinets shall be of reasonable size in relation to a JADU if they provide counter space equal to a minimum 24-inch depth and 36-inch length.

(c) For the purposes of any fire or life protection ordinance or regulation or for the purposes of providing service for water, sewer, or power, a junior accessory dwelling unit shall not be considered a separate or new unit.

(d) The owner of a parcel proposed for a junior accessory dwelling unit shall occupy as a primary residence either the primary dwelling or the junior accessory dwelling. Owner-occupancy is not required if the owner is a governmental agency, land trust, or housing organization.

(e) Prior to the issuance of a building permit for a junior accessory dwelling unit, the owner shall record a deed restriction in a form approved by the city that includes a prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, requires owner-occupancy consistent with subsection (d) above, does not permit short-term rentals, and restricts the size and attributes of the junior dwelling unit to those that conform with this section.

SECTION 3. Section 18.10.030 (Land Uses) of Chapter 18.10 (Low-Density Residential) of Title 18 (Zoning) of the Palo Alto Municipal Code (“PAMC”) is amended to read (additions underlined, deletions struck through, and omissions noted with bracketed ellipses):

18.10.030 Land Uses

Table 1 shows the permitted and conditionally permitted uses for the low-density residential districts.
TABLE 1
PERMITTED AND CONDITIONALLY PERMITTED LOW-DENSITY RESIDENTIAL USES

[P = Permitted Use -- CUP = Conditional Use Permit Required]

<table>
<thead>
<tr>
<th></th>
<th>R-E</th>
<th>R-2</th>
<th>RMD</th>
<th>Subject to Regulations in:</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCESSORY AND SUPPORT USES</td>
<td>[.]</td>
<td>[.]</td>
<td>[.]</td>
<td>[.]</td>
</tr>
<tr>
<td>Accessory Dwelling Units</td>
<td>p</td>
<td>p(i)</td>
<td>p(i)</td>
<td>18.0942.040</td>
</tr>
<tr>
<td>Junior Accessory Dwelling Units</td>
<td>p</td>
<td>p(i)</td>
<td>p(i)</td>
<td>18.0942.040</td>
</tr>
</tbody>
</table>

Footnotes:
(1) Sale of Agricultural Products: No permanent commercial structures for the sale or processing of agricultural products are permitted.
(2) Junior Accessory Dwelling Units in R-2 and RMD Zones: An accessory dwelling unit or a Junior Accessory Dwelling Unit is permitted only in conjunction with a single family residence, subject to the provisions of Chapter 18.09, associated with a single family residence on a lot in the R-2 or RMD zones is permitted, subject to the provisions of Section 18.42.040, and such that no more than two units result on the lot.
(3) Two Unit Development Pursuant to California Government Code Section 65852.21 (SB 9, 2021): Construction of two units is permitted on an RE-zoned lot, subject to the regulations in Section 18.42.180.

SECTION 4. Section 18.12.030 (Land Uses) of Chapter 18.12 (Single-Family Residential District) of Title 18 (Zoning) of the Palo Alto Municipal Code (“PAMC”) is amended to read (additions underlined, deletions struck through, and omissions noted with bracketed ellipses):

18.12.030 Land Uses

The permitted and conditionally permitted uses for the single family residential districts are shown in Table 1:

Table 1
PERMITTED AND CONDITIONAL R-1 RESIDENTIAL USES

<table>
<thead>
<tr>
<th></th>
<th>R-1 and all R-1 Subdistricts</th>
<th>Subject to Regulations for in:</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCESSORY AND SUPPORT USES</td>
<td>[.]</td>
<td>[.]</td>
</tr>
</tbody>
</table>

0160097_20221128_av_16
Footnotes:
(1) An Accessory Dwelling Unit or a Junior Accessory Dwelling Unit associated with a single-family residence on a lot is permitted, subject to the provisions of Chapter 18.09 Section 18.42.040, and such that no more than two total units result on the lot.

SECTION 5. Section 18.13.030 (Land Uses) of Chapter 18.13 (Multiple-Family Residential Districts) of Title 18 (Zoning) of the Palo Alto Municipal Code (“PAMC”) is amended to read (additions underlined, deletions struck through, and omissions noted with bracketed ellipses):

18.13.030 Land Uses

Table 1 specifies the permitted and conditionally permitted land uses in the multiple-family residence districts.

Table 1
Multiple Family Residential Uses
[P = Permitted Use • CUP = Conditional Use Permit Required]

<table>
<thead>
<tr>
<th>Accessory Dwelling Units</th>
<th>P(1)</th>
<th>18.0942.040</th>
</tr>
</thead>
<tbody>
<tr>
<td>Junior Accessory Dwelling Units</td>
<td>P(1)</td>
<td>18.0942.040</td>
</tr>
</tbody>
</table>

Footnotes:
(1) Permitted use only on lots less than 8,500 square feet in size.

(4) An accessory dwelling unit associated with a single-family residence on a lot is permitted if it is contained within the existing space of a single-family residence or an existing accessory structure in accordance with and pursuant to Section 18.42.040(a)(5), subject to the provisions of Section 18.42.040 and such that no more than two total units result on the lot.

SECTION 6. Any provision of the Palo Alto Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.
SECTION 7. 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 8. The Council finds that the adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines sections 15061(b)(3), 15301, 15302 and 15305 because it constitutes minor adjustments to the City’s zoning ordinance to implement State law requirements related to accessory dwelling units as established in Government Code Section 65852.2, and these changes are also likely to result in few additional dwelling units dispersed throughout the City. As such, it can be seen with certainty that the proposed action will not have the potential for causing a significant effect on the environment.

SECTION 9. This ordinance shall be effective on the thirty-first date after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

NOT PARTICIPATING:

ATTEST:

____________________________
City Clerk

____________________________
Mayor

____________________________
Assistant City Attorney

____________________________
City Manager

____________________________
Director of Planning and Development Services
December 23, 2021

Jonathan Lait, Planning Director
Planning Department
City of Palo Alto
250 Hamilton Avenue – Fifth Floor
Palo Alto, CA 94301

Dear Jonathan Lait:

RE: Review of Palo Alto’s Accessory Dwelling Unit (ADU) Ordinance under ADU Law (Gov. Code § 65852.2)

Thank you for submitting the City of Palo Alto (City) accessory dwelling unit (ADU) ordinance (Ordinance No. 5507) adopted September 26, 2020, to the California Department of Housing and Community Development (HCD). The ordinance was received on October 20, 2020. HCD has reviewed the ordinance and is submitting these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD has determined that the ordinance does not comply with section 65852.2 in the manner noted below. Under the statute, the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than January 23, 2022. HCD will review and consider any written response received from the City before that date in advance of taking further action authorized by Government Code section 65852.2.

The adopted ADU ordinance meets many statutory requirements. However, the ordinance must be revised to comply with State ADU Law (Gov. Code, § 65852.2), as follows:

- Section 18.09.030(a)(3) Units Exempt from Generally Applicable Local Regulations: The text of this Section and the applicable portion of Table 1 indicate the maximum size of a newly constructed detached ADU is 800 square feet. Although a local agency may establish minimum and maximum size requirements for ADUs pursuant to subdivision (c)(1) of Government Code section 65852.2 within limits, a local agency shall not establish a maximum square footage requirement for either attached or detached ADUs that is less than 850 square feet and 1,000 square feet for an ADU that provides more than one bedroom. (Gov. Code, § 65852.2, subd. (c)(2)(B).) Therefore, all relevant
sections of the ordinance must be amended to comply with this mandate in State ADU Law.

- **Section 18.09.030 Units Exempt from Generally Applicable Local Regulations:** There appears to be a conflict between the text of this section and Table 1. The number of allowable units are correctly noted in Table 1 as “1 ADU and 1 JADU.” The text of section 18.09.030(a) appears to limit allowable units to “an ADU or JADU.” Government Code section 65852.2, subdivision (e)(1)(A), requires an ordinance to allow “one ADU and one JADU per lot…” The City must amend the ordinance to correct this inconsistency, clarifying that “one ADU and one JADU” are permitted if all the conditions of section 65852.2, subdivision (e)(1)(A) apply.

- **Section 18.09.030(b) Application of Development Standards:** Local agencies may establish standards for ADUs pursuant to Government Code section 65852.2, subdivision (a); however, these standards do not apply to ADUs constructed pursuant to subdivision (e). Table 1 impermissibly applies “underlying zoning” “for front setback[s]” to subdivision (e) ADUs. (Mun. Code, §18.09.030(b).) Subdivision (e)(1) describes permitted setbacks in full. Unless underlying zoning for all residential areas conforms to subdivision (e) limits, this table must be amended to comply with statute. (Gov. Code, § 65852.2, subd. (e)(1)(A).)

- **Section 18.09.030(b)(1) ADU Height in Flood Zones:** The City has impermissibly restricted the height of ADUs. It appears that the City establishes minimum elevations for the first floor of structures in the flood zone, which is essentially the entire city to varying degrees. To account for this, the zoning code allows most residential structures to exceed otherwise maximum allowable heights for development. The City does not extend this accommodation to ADUs. Currently, Table 1 states that the maximum height for new, detached ADUs is 16 feet, but includes a caveat that “units built in a flood zone are not entitled to any height extension.” (Mun. Code, § 18.09.030(b).) In many instances, this would operate as an impermissible restriction on ADUs. Under State ADU Law, the City must accommodate an ADU of at least 800 square feet and 16 feet in height. Thus, the caveat in Table 1 is potentially confusing and could restrict the height to less than 16 feet. If it would in fact operate to effectively limit the height of ADUs to less than 16 feet, it would operate as an impermissible restriction on ADUs. As such, Table 1 should be revised to clarify that this limitation does not apply where necessary to permit an 800-square foot ADU that it at least 16 feet tall. (Gov. Code, § 65852.2, subds. (c)(2)(C) and (e)(1)(B)(ii).)

- **Section 18.09.040(b) Daylight Plane and ADU Height Standards:** Table 2 states that “daylight plane” acts as a limit on the height of ADUs. In many instances,
this may not be a problem; however, daylight plane concerns cannot be used to
unduly limit the height of an ADU. ADUs are permitted up to 16 feet high. (Gov.
Code, § 65852.2, subds. (c)(2)(C), (e)(1)(B)(ii).) Therefore, in considering
restrictions that the City is imposing on ADUs for daylight planes, the ordinance
should note the 16-foot height allowable for ADUs. This Table must be
amended to clarify this point.

- Section 18.09.040(b) Units Subject to Local Standards: Table 2 sets out the
development standards for ADUs that do not qualify under section 18.09.030.
Although the City has more freedom to establish development standards for
these ADUs, that is not without limitation. This section, and Table 2, must be
amended to clarify that—notwithstanding the development standards—an ADU
of at least 800 square feet, 16 feet in height, and with four-foot rear and side-
yard setbacks is permitted as required by State ADU Law. (Gov. Code, §
65852.2, subd. (c)(2)(C).)

- Section 18.09.040(b) Floor Area and JADUs: Development standards can
account for ADUs in their measurement of the floor area restrictions or ratio
(FAR). But these standards may not account for or consider JADUs. A JADU
may not be included in this calculation, because a JADU is a unit that is
contained entirely within a single-family residence. (Gov. Code § 65852.22,
subd. (h)(1).) Footnote 4 of Table 2 impermissibly includes JADUs as part of
the FAR calculations. This footnote must be amended to clarify this point.

- Section 18.09.040(h) Noise-Producing Equipment: Local agencies may impose
development standards on ADUs; however, these standards shall not exceed
state standards. Section 18.09.040(h) states that noise-producing equipment
“shall be located outside of the setbacks.” This section must be revised to only
refer to ADUs since setbacks are not required for JADUs. In addition, this
setback for noise-producing equipment for ADUs must be revised to make clear
that this setback requirement will not impede the minimum state standards of
four-foot setbacks. (Gov. Code, § 65852.2, subd. (c)(2)(C).)

- Section 18.09.040(i)(2) Setbacks: Currently, this section states, “No basement or
other subterranean portion of an ADU/JADU shall encroach into a setback required
for the primary dwelling.” Under state law, new attached and detached ADUs have
maximum four-foot rear and side-yard setbacks. (Gov. Code, § 65852.2, subds.
(a)(1)(D)(vii), (c)(2)(C), (e)(1)(B), and (e)(1)(D).) Local agencies may impose
setback requirements if the minimum rear and side-yard setbacks established by
state law are not exceeded. This restriction is concerning on a number of grounds.
First, setbacks may not be required for JADUs as they are constructed within the
walls of the primary dwelling. Second, this requirement imposes excessive
restrictions on ADUs converted from an existing area of the primary dwelling or
accessory structure with a basement or subterranean space. Again, these
structures are not subject to setback requirements. Finally, this section would violate State ADU Law if the side or rear setback requirement for an ADU or JADU located in a basement or other subterranean structure exceeded four feet. Requiring ADUs and JADUs to meet the side and rear setbacks for the primary dwellings could exceed the maximum four-foot setbacks set out in State ADU Law. The ordinance must be revised to eliminate these concerns.

- Section 18.09.040(j) Design: This section states, “Except on corner lots, the unit shall not have an entranceway facing the same lot line (property line) as the entranceway to the main dwelling unit unless the entranceway to the accessory unit is located in the rear half of the lot. Exterior staircases to second floor units shall be located towards the interior side or rear yard of the property.” These standards appear to apply only to the creation of ADUs and may unduly restrict the placement of an ADU on some lots. Local development standards provided by ordinance pursuant to subdivisions (a) through (d) of Government Code section 65852.2 do not apply to ADUs created under subdivision (e). Please consider eliminating this restriction or modifying it such that it applies “when feasible.”

- Section 18.09.040(j)(2)(A) Privacy: The section states, “Second story doors and decks shall not face a neighboring dwelling unit.” This limitation, however, may place an impermissible constraint on an ADU. For example, excessive constraints would be placed on the creation of a second story ADU if residential units were located on all adjacent parcels. In addition, when operating in conjunction with Section 18.09.040(j), noted above, this restriction may prohibit ADUs created under subdivision (e) of Government Code section 65852.2. Accordingly, this provision must be revised to allow for more flexibility. The City could revise the first sentence of this section to state, “Second story doors and decks shall not face a neighboring dwelling unit, where feasible.”

- Section 18.09.040(k)(4) Parking: The ordinance indicates if covered parking for a unit is provided in any district, the maximum size of the covered parking area for the accessory dwelling unit is 220 square feet. Further, under this section, the space for the covered parking count towards the total floor area for the site and the ADU if attached to the unit. Covered parking should not count towards the total floor area of the site as it would unduly limit the allowable size of an ADU established by state law, nor should it directly count toward the area available for the ADU. Although standards within an underlying zone may apply when noted in the adopted ADU ordinance, they may not be more restrictive than those contained in state statute. (See, e.g., Gov. Code, § 65852.2, subs. (a)(1)(B), (a)(1)(D)(vii), (a)(1)(D)(x), (c), and (e).) The portion of this section stating “unit unless attached to the unit” should be deleted, or the section should otherwise be modified to comply with state law.
In these respects, revisions are necessary to comply with statute.

HCD will consider any written response to these findings, such as a revised ordinance or a detailed plan to bring the ordinance into compliance with law by a date certain, before taking further action authorized pursuant to Government Code section 65852.2. Please note that HCD may notify the Attorney General’s Office in the event that the City fails to take appropriate and timely action under section 65852.2, subdivision (h).

HCD appreciates the City’s efforts in the preparation and adoption of the ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please contact Lauren Lajoie of our staff, at (916) 776-7495 or at Lauren.Lajoie@hcd.ca.gov if you have any questions or would like HCD’s technical assistance in these matters.

Sincerely,

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability
February 3, 2022

Lauren Lajoie
Housing & Community Development
Division of Housing Policy Development
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
Lauren.Lajoie@hcd.ca.gov

Dear Ms. Lajoie,

This letter represents the City of Palo Alto’s response to your letter dated December 23, 2021 received by email, and received by hard copy on January 27, 2022. The content of the Housing and Community Development’s letter is italicized. The City of Palo Alto’s responses are bolded.

1. ADU Size - Section 18.09.030(a)(3) Units Exempt from Generally Applicable Local Regulations: The text of this Section and the applicable portion of Table 1 indicate the maximum size of a newly constructed detached ADU is 800 square feet. Although a local agency may establish minimum and maximum size requirements for ADUs pursuant to subdivision (c)(1) of Government Code section 65852.2 within limits, a local agency shall not establish a maximum square footage requirement for either attached or detached ADUs that is less than 850 square feet and 1,000 square feet for an ADU that provides more than one bedroom. (Gov. Code, § 65852.2, subd. (c)(2)(B).) Therefore, all relevant sections of the ordinance must be amended to comply with this mandate in State ADU Law.

PAMC Section 18.09.030 is intended to describe the requirements for ADUs built under Gov. Code 65852.2, subdivision (e). This is not intended to create any limitation on ADUs built under subdivisions (a)-(d), which are governed by PAMC Section 18.09.040. The City will add clarifying language to this effect at the top of PAMC Section 18.09.030.

2. ADU & JADU - Section 18.09.030 Units Exempt from Generally Applicable Local Regulations: There appears to be a conflict between the text of this section and Table 1. The number of allowable units are correctly noted in Table 1 as “1 ADU and 1 JADU.” The text of section 18.09.030(a) appears to limit allowable units to “an ADU or JADU.” Government Code section 65852.2, subdivision (e)(1)(A), requires an ordinance to allow “one ADU and one JADU per lot....” The City must amend the ordinance to correct this inconsistency, clarifying that “one ADU and one JADU” are permitted if all the conditions of section 65852.2, subdivision (e)(1)(A) apply.

The City will update its ordinance to reflect the changes made by AB 3182 with respect to 1 ADU and 1 JADU.

3. Front Setback - Section 18.09.030(b) Application of Development Standards: Local agencies may establish standards for ADUs pursuant to Government Code section 65852.2, subdivision (a); however, these standards do not apply to ADUs constructed pursuant to subdivision (e). Table 1 impermissibly applies “underlying zoning” “for front setback[s]” to subdivision (e) ADUs. (Mun. Code, §18.09.030(b).) Subdivision (e)(1) describes permitted setbacks in full. Unless underlying zoning for
all residential areas conforms to subdivision (e) limits, this table must be amended to comply with statute. (Gov. Code, § 65852.2, subd. (e)(1)(A).)

During our conversation on February 2, 2022, you explained that local rules may apply for front setbacks, including ADUs built under subdivision (e), and that it is not HCD’s position that subdivision (e) ADUs must be allowed at the front lot line. You explained that the issue with the current City ordinance is that it does not make clear that “underlying zoning” is only for front setbacks. The City will clarify this point in its ordinance.

4. Height - Section 18.09.030(b)(1) ADU Height in Flood Zones: The City has impermissibly restricted the height of ADUs. It appears that the City establishes minimum elevations for the first floor of structures in the flood zone, which is essentially the entire city to varying degrees. To account for this, the zoning code allows most residential structures to exceed otherwise maximum allowable heights for development. The City does not extend this accommodation to ADUs. Currently, Table 1 states that the maximum height for new, detached ADUs is 16 feet, but includes a caveat that “units built in a flood zone are not entitled to any height extension.” (Mun. Code, § 18.09.030(b).) In many instances, this would operate as an impermissible restriction on ADUs. Under State ADU Law, the City must accommodate an ADU of at least 800 square feet and 16 feet in height. Thus, the caveat in Table 1 is potentially confusing and could restrict the height to less than 16 feet. If it would in fact operate to effectively limit the height of ADUs to less than 16 feet, it would operate as an impermissible restriction on ADUs. As such, Table 1 should be revised to clarify that this limitation does not apply where necessary to permit an 800-square foot ADU that is at least 16 feet tall. (Gov. Code, § 65852.2, subsds. (c)(2)(C) and (e)(1)(B)(iii).)

For purposes of health and safety, the City of Palo Alto requires structures built in a flood zone to have a minimum finished floor height based on FEMA regulations. For a primary residence, the City provides an extra height allowance of 50% the minimum finished floor height. The City does not provide this allowance for any accessory structures, including ADUs. Nevertheless, ADUs in the flood zone can still be built to a height of 16 feet. It is unclear to the City how the failure to provide additional height above 16 feet represents an impermissible restriction on ADUs. During our conversation, you related that HCD prefers to have as few restrictions as possible on ADU production. The only restriction here is on finished floor height in the flood zone, which cannot be waived or relaxed without impacts on health and safety. Even in areas requiring the most extreme height above the base flood elevation, an ADU remains feasible within the 16 foot height limit.

5. Daylight Plane - Section 18.09.040(b) Daylight Plane and ADU Height Standards: Table 2 states that “daylight plane” acts as a limit on the height of ADUs. In many instances, this may not be a problem; however, daylight plane concerns cannot be used to unduly limit the height of an ADU. ADUs are permitted up to 16 feet high. (Gov. Code, § 65852.2, subsds. (c)(2)(C), (e)(1)(B)(ii).) Therefore, in considering restrictions that the City is imposing on ADUs for daylight planes, the ordinance should note the 16-foot height allowable for ADUs. This Table must be amended to clarify this point.

Please note that the City’s daylight plane regulations do not apply to subdivision (e) ADUs, which are governed by PAMC Section 18.09.030. The City will add a clarifying sentence at the top of Section 18.09.040 explaining that none of the regulations in PAMC 18.09.040 apply to subdivision (e) ADUs. In addition, the City will add a clarifying statement that the regulations in PAMC 18.09.040 are not intended to limit the conversion of existing structures to ADUs or JADUs.

For all other ADUs, however, the City has requested clarity on HCD’s position on daylight plane on numerous occasions, most recently by email dated August 8, 2021. Please see this email, which is
attached, for an explanation of the City’s position. The City looks forward to continued discussion of this topic.

6. Clarify - Section 18.09.040(b) Units Subject to Local Standards: Table 2 sets out the development standards for ADUs that do not qualify under section 18.09.030. Although the City has more freedom to establish development standards for these ADUs, that is not without limitation. This section, and Table 2, must be amended to clarify that—notwithstanding the development standards—an ADU of at least 800 square feet, 16 feet in height, and with four-foot rear and side-yard setbacks is permitted as required by State ADU Law. (Gov. Code, § 65852.2, subd. (c)(2)(C).)

The City will add a clarifying statement to this effect.

7. Floor Area & JADUs - Section 18.09.040(b) Floor Area and JADUs: Development standards can account for ADUs in their measurement of the floor area restrictions or ratio (FAR). But these standards may not account for or consider JADUs. A JADU may not be included in this calculation, because a JADU is a unit that is contained entirely within a single-family residence. (Gov. Code § 65852.22, subd. (h)(1).) Footnote 4 of Table 2 impermissibly includes JADUs as part of the FAR calculations. This footnote must be amended to clarify this point.

Footnote 4 of Table 2 provides additional FAR on a site for ADUs and JADUs. This is an incentive to promote production of such units without limiting the development potential of a primary unit. Because a JADU is contained entirely within the space of a single-family residence, it would normally be included in the floor area of the primary unit. Footnote 4 provides an opportunity for a property owner to exempt all JADU square footage from the calculation of floor area for the primary unit. The removal of JADUs from footnote 4 would only serve to restrict the development of JADUs. The City will attempt to clarify the language of this footnote.

8. Noise-Producing Equipment - Section 18.09.040(h) Noise-Producing Equipment: Local agencies may impose development standards on ADUs; however, these standards shall not exceed state standards. Section 18.09.040(h) states that noise-producing equipment “shall be located outside of the setbacks.” This section must be revised to only refer to ADUs since setbacks are not required for JADUs. In addition, this setback for noise-producing equipment for ADUs must be revised to make clear that this setback requirement will not impede the minimum state standards of four-foot setbacks. (Gov. Code, § 65852.2, subd. (c)(2)(C)).

As noted above, the City will add a clarifying statement that the regulations in PAMC 18.09.040 are not intended to limit the conversion of existing structures to ADUs or JADUs. For new construction, however, the City permits JADUs to build at a lesser setback than a single-family home normally would. Therefore, the removal of JADUs from this section will only serve to restrict the development of JADUs.

Additionally, the City’s ordinance states that noise producing equipment needs to be placed outside the setback for an ADU or JADU. This means that the noise producing equipment itself cannot be placed closer than four-feet to a property line for either type of structure; not that the ADU or JADU cannot be placed at those locations. This is consistent with the state setback requirements for an ADU.

9. Basements - Section 18.09.040(i)(2) Setbacks: Currently, this section states, “No basement or other subterranean portion of an ADU/JADU shall encroach into a setback required for the primary dwelling.” Under state law, new attached and detached ADUs have maximum four-foot rear and side-yard setbacks. (Gov. Code, § 65852.2, subds. (a)(1)(D)(vii), (c)(2)(C), (e)(1)(B), and (e)(1)(D).) Local
agencies may impose setback requirements if the minimum rear and side-yard setbacks established by state law are not exceeded. This restriction is concerning on a number of grounds. First, setbacks may not be required for JADUs as they are constructed within the walls of the primary dwelling. Second, this requirement imposes excessive restrictions on ADUs converted from an existing area of the primary dwelling or accessory structure with a basement or subterranean space. Again, these structures are not subject to setback requirements. Finally, this section would violate State ADU Law if the side or rear setback requirement for an ADU or JADU located in a basement or other subterranean structure exceeded four feet. Requiring ADUs and JADUs to meet the side and rear setbacks for the primary dwellings could exceed the maximum four-foot setbacks set out in State ADU Law. The ordinance must be revised to eliminate these concerns.

As noted above, the City will add a clarifying statement that the regulations in PAMC 18.09.040 are not intended to limit the conversion of existing structures to ADUs or JADUs. In addition, as with the previous section, the inclusion of JADUs here only serves to increase flexibility of JADU production.

As noted above, the City will add a clarifying statement an ADU of at least 800 square feet, 16 feet in height, and with four-foot rear and side-yard setbacks is permitted as required by State ADU Law.

With these clarifications the City does not believe it would violate State ADU Law to require that a newly constructed ADU limit any below-grade space to a setback greater than 4 feet. It is the City's understanding that it could simply state that basements are not permitted for ADUs built under subdivisions (a)-(d), so long as it was still feasible to construct an ADU of at least 800 square feet. If this is the case, the City should have the lesser authority to direct the placement of below-grade development.

The City has significant concerns about basements in general, and those concerns extend to basements constructed as part of ADUs. Due to a high water table throughout most of Palo Alto, the construction of basements requires dewatering (pumping water from the construction site). While this is allowed, there are significant restrictions on timing and procedures taken during the dewatering process.

Secondly, development of homes in Palo Alto often includes requirements for the planting and maintenance of trees used to enhance privacy between properties. Placing ADUs with basements as close as 4 feet from the property line may jeopardize the health of these trees on the subject property as well as trees on adjacent properties. The trees could fail, which would both diminish the tree canopy—important for our environment and adaptation to climate change—and diminish the privacy between properties.

Building below ground is not required in order to achieve a unit which follows the requirements in Section 65852.2 and can lead to potential impacts on adjacent lots, such as to large stature trees on adjacent lots which is a common occurrence in Palo Alto. Building a basement in these scenarios may cause the tree to fail which is a life, safety, and health hazard which would unduly affect both homeowners as a result of the action by one individual. There are construction methods which can be implemented for above ground construction to help limit root damage caused by this construction to preserve trees but that is not possible for below ground construction and can lead to significant impacts as noted above.
10. Corner Lots - Section 18.09.040(j) Design: This section states, “Except on corner lots, the unit shall not have an entranceway facing the same lot line (property line) as the entranceway to the main dwelling unit unless the entranceway to the accessory unit is located in the rear half of the lot. Exterior staircases to second floor units shall be located towards the interior side or rear yard of the property.” These standards appear to apply only to the creation of ADUs and may unduly restrict the placement of an ADU on some lots. Local development standards provided by ordinance pursuant to subdivisions (a) through (d) of Government Code section 65852.2 do not apply to ADUs created under subdivision (e). Please consider eliminating this restriction or modifying it such that it applies “when feasible.”

As noted above, the City will add a clarifying sentence at the top of Section 18.09.040 explaining that none of the regulations in PAMC 18.09.040 apply to subdivision (e) ADUs. The City will clarify this is not applicable for subsection (e) ADUs. We are not aware of any evidence that this simple design requirement creates an excessive constraint on ADU production and that has not been our experience.

11. Privacy - Section 18.09.040(j)(2)(A) Privacy: The section states, “Second story doors and decks shall not face a neighboring dwelling unit.” This limitation, however, may place an impermissible constraint on an ADU. For example, excessive constraints would be placed on the creation of a second story ADU if residential units were located on all adjacent parcels. In addition, when operating in conjunction with Section 18.09.040(j), noted above, this restriction may prohibit ADUs created under subdivision (e) of Government Code section 65852.2. Accordingly, this provision must be revised to allow for more flexibility. The City could revise the first sentence of this section to state, “Second story doors and decks shall not face a neighboring dwelling unit, where feasible.”

As noted above, the City will add a clarifying sentence at the top of Section 18.09.040 explaining that none of the regulations in PAMC 18.09.040 apply to subdivision (e) ADUs. We are not aware of any evidence that this simple design requirement creates an excessive constraint on ADU production and that has not been our experience.

The City will clarify this is not applicable for subsection (e) ADUs. We are not aware of any evidence that this creates an excessive constraint and that has not been our experience.

12. Parking - Section 18.09.040(k)(4) Parking: The ordinance indicates if covered parking for a unit is provided in any district, the maximum size of the covered parking area for the accessory dwelling unit is 220 square feet. Further, under this section, the space for the covered parking count towards the total floor area for the site and the ADU if attached to the unit. Covered parking should not count towards the total floor area of the site as if it would unduly limit the allowable size of an ADU established by state law, nor should it directly count toward the area available for the ADU. Although standards within an underlying zone may apply when noted in the adopted ADU ordinance, they may not be more restrictive than those contained in state statute. (See, e.g., Gov. Code, § 65852.2, subs. (a)(1)(B), (a)(1)(D)(vii), (a)(1)(D)(x), (c), and (e).) The portion of this section stating “unit unless attached to the unit” should be deleted, or the section should otherwise be modified to comply with state law.

As noted above, the City will add a clarifying sentence at the top of Section 18.09.040 explaining that none of the regulations in PAMC 18.09.040 apply to subdivision (e) ADUs.

Currently, all covered parking in the single-family zones counts towards floor area for the site and dwelling unit. The City does not understand how this creates a standard that is more restrictive than that contained in state statute; none of the subsections cited in your letter speak to whether a garage for an ADU must be exempted from the unit size for the ADU. Moreover, this provision does
not create a constraint on ADU production, as a property owner may always choose to provide a detached garage, uncovered parking, or no parking at all for the ADU.

The City has concerns that allowing attached garages onto these structures will incentivize individuals to illegally expand the unit into the garage, which would both exceed the City’s ordinance, contain unpermitted construction, and potentially place the health and safety of the occupants at risk.

Sincerely,

Jonathan Lait
Director of Planning and Development Services
**Certificate Of Completion**

- **Envelope Id:** 26247F48AB8146DCAE7591A87A8EE538  
  **Status:** Completed
- **Subject:** Please DocuSign: 2022-02-02 Draft HCD ADU Letter response.docx
- **Source Envelope:**  
  - **Document Pages:** 6  
  - **Certificate Pages:** 2  
  - **Signatures:** 1  
  - **Initials:** 0  
  - **AutoNav:** Enabled
- **Envelope Originator:**  
  - **Madina Klicheva**  
  - **250 Hamilton Ave**  
  - **Palo Alto, CA 94301**  
  - **Madina.Klicheva@CityofPaloAlto.org**  
  - **IP Address:** 199.33.32.254
- **Record Tracking:**  
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- **Storage Appliance Status:** Connected  
  - **Pool:** City of Palo Alto  
  - **Location:** DocuSign
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  - **Timestamp**  
  - **Jonathan Lait**  
    - **Jonathan.Lait@CityofPaloAlto.org**  
    - **Interim Director Planning and Community Environment**  
    - **City of Palo Alto**  
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  - **Timestamp**  
  - **Garrett Sauls**  
    - **Garrett.Sauls@CityofPaloAlto.org**  
    - **Associate Planner**  
    - **City of Palo Alto**  
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- **Carbon Copy Events**  
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  - **Timestamp**  
  - **Rachael Tanner**  
    - **Rachael.Tanner@CityofPaloAlto.org**  
    - **Assistant Director of Planning and Development Services**  
    - **City of Palo Alto**  
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    - **Electronic Record and Signature Disclosure:** Not Offered via DocuSign  
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Half Mile Buffer from Major High Quality Transit
Title: Approval of Response to the Grand Jury Report "If You Only Read the Ballot, You're Being Duped"

From: Molly Stump, City Attorney

Recommendation
Staff recommends that Council approve the proposed response to the Santa Clara County Civil Grand Jury Report entitled, “If You Only Read the Ballot, You’re Being Duped,” dated October 7, 2022.

Executive Summary
The Grand Jury Report surveyed several agencies in Santa Clara County and made findings and recommendations for action with respect to the drafting of ballot measure questions. A copy of the Grand Jury Report is included as Attachment A. The proposed City response for Council approval is Attachment B.

Discussion
In California, the Civil Grand Jury is convened on an annual basis by the Superior Court in each of the 58 counties to investigate and report on the operations of local government. The Civil Grand Jury is composed of citizen volunteers appointed by the Court. In conducting its work, the Grand Jury has broad access to public officials, employees, records and information.

The website of the California Courts describes the operations of the Civil Grand Jury this way:

As a truly independent body, each grand jury is free to choose which local governmental entities or public officials to investigate. With very limited exceptions, no one outside the grand jury can direct it to conduct an investigation. Ideas for investigations generally come by way of three avenues:

- citizen complaints,
- matters raised by the members of the grand jury, and
- referrals from the preceding grand jury.
During its investigations, the grand jury acts as a finder of fact. In addition to determining if the official or entity under investigation is adhering to the laws that govern the operations of that entity, the jury analyzes whether the entity is operating in a businesslike manner and providing public services effectively and economically. While it has no authority to order or otherwise compel compliance with its recommendations, it is through its reports that the grand jury wields its power.

State law requires government entities to respond in writing to Grand Jury findings and recommendations that are directed at the entity. Responses are due no later than 90 days from issuance of the report. The City’s response to the October 7, 2021 Grand Jury report is due on January 5, 2023.

California Penal Code § 933.05 provides that responses be in the following form:

- As to each grand jury finding, the responding person or entity shall indicate one of the following:
  1. The respondent agrees with the finding.
  2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

- As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  1. The recommendation has been implemented, with a summary regarding the implemented action.
  2. The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
  3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
  4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

Staff recommends that Council approve the proposed response at Attachment B, which is reprinted here for convenience:

Civil Grand Jury Finding 1:

*The Civil Grand Jury finds that in the current environment, which is unregulated at the local level, it is easy for the author of a ballot measure question to write the question in a way that is confusing or misleading to voters.*
The City of Palo Alto Response: The City of Palo Alto agrees in part and disagrees in part with this Finding.

The City of Palo Alto agrees that the drafting of ballot measure language is an important part of the democratic process, and that local governmental entities that sponsor ballot measures have a responsibility to ensure that ballot measure language is clear, accurate, and useful to voters.

The City of Palo Alto disagrees that the current process is “unregulated at the local level.” Ballot measure language is drafted by the City’s professional staff and approved by the elected City Council, according to requirements of the City Charter and state law. Draft ballot measure language is posted publicly in advance of the City Council meeting, and members of the public have an opportunity to provide written and oral input prior to Council approval. After Council approval, if residents believe that a ballot measure question does not meet the standards required by law, the recourse in our system is to the courts. The Grand Jury contends this is an ineffective remedy, but in fact, every election year, many pre-election lawsuits are filed in California that challenge ballot measure language. These can result in courts ordering corrections to ballot questions. Because attorney’s fees are recoverable by a successful challenger under the private attorney general statute (Code Civ. Proc. § 1021.5), challengers with meritorious arguments are generally able to obtain counsel to represent them.

The City of Palo Alto also disagrees that the example cited from this jurisdiction—Measure L on the November 8, 2022 ballot—was misleading. The statement “until ended by voters,” to which the Grand Jury objects, is true and accurate, and not misleading. California law requires that tax measures on the ballot include a statement on duration. California Elections Code section 13119(b) states: “If the proposed measure imposes a tax or raises the rate of a tax, the ballot shall include in the statement of the measure to be voted on the … duration of the tax to be levied.” In addition, under California law, the voters can repeal or amend an ordinance that has been adopted by the voters. (Cal. Elections Code section 9217 (“No ordinance that is … adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance.”).) It is therefore a true statement that if a tax ordinance is approved by the voters and does not have a fixed end date, then it will be in effect until it is ended or repealed by the voters. The Grand Jury opines that this is misleading because it implies “that the measure itself provide[s] for repeal or that voters would have an opportunity to repeal the tax when they did not.” While it is true that Palo Alto’s measure itself did not specify a process for voter repeal, that is because voters already have that power under the Elections Code. Under state law voters exercise that power by circulating a petition. For these reasons, “until ended by voters” is a true statement of the law, and therefore is not misleading.

Civil Grand Jury Recommendation 1b:
Governance entities within Santa Clara County should voluntarily submit their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendation 1d is implemented.

**City of Palo Alto Response:** The recommendation is not warranted and accordingly will not be implemented by the City of Palo Alto.

The Grand Jury’s proposal to empower the County Counsel to review ballot questions, and presumably order changes, is not appropriate for charter cities like Palo Alto, which are separate government entities with independent constitutional authority to control our own elections. Article XI, section 5, subdivision (b) of the California Constitution states that “[i]t shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: ... conduct of city elections.” The California Court of Appeal has recognized that “[t]he ‘conduct of city elections’ is one of the few specifically enumerated core areas of autonomy for home rule cities.” (Traders Sports, Inc. v. City of San Leandro (2001) 93 Cal.App.4th 37, 46.) The County Counsel is appointed by and serves at the pleasure of the County Board of Supervisors. Giving authority to the County Counsel to review and edit ballot questions for the City of Palo Alto would impinge on Palo Alto’s constitutional authority over its elections. The effect would be to reduce local control by shifting power to a government entity that is not accountable to Palo Alto residents.

**Civil Grand Jury Recommendation 1c:**

*Governance entities within Santa Clara County should, by March 31, 2023, adopt their own resolution or ordinance to require submission of their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendations 1d and 1e are implemented.*

**City of Palo Alto Response:** For the reasons stated in the response to Recommendation 1b, above, the recommendation is not warranted and will not be implemented by the City of Palo Alto.

**Civil Grand Jury Recommendation 1e:**

*Governance entities within Santa Clara County should submit their ballot questions for review by the Good Governance in Ballots Commission pursuant to Recommendation 1d.*

**City of Palo Alto Response:** The recommendation is not warranted and accordingly will not be implemented by the City of Palo Alto. A commission appointed by the County Board of Supervisors poses the same problems identified in the response to Recommendation 1b, above.
Resource Impact
There is no fiscal impact resulting from approval of this Grand Jury Response.

Policy Implications
The proposed Grand Jury Response reflects the City’s commitment to transparent governance and local control.

Environmental Review
The proposed response to the Civil Grand Jury Report is not a project under the California Environmental Quality Act (CEQA).

ATTACHMENTS:
- Attachment11.a: Attachment A: Grand Jury Report  (PDF)
- Attachment11.b: Attachment B: Response to Grand Jury- Ballot Measure  (DOCX)
October 7, 2022

City of Palo Alto
c/o Ms. Lesley Milton, City Clerk
250 Hamilton Avenue
Palo Alto, CA 94301

Sent via email:  City.Clerk@cityofpaloalto.org

Dear Ms. Milton:

The 2022 Santa Clara County Civil Grand Jury is transmitting to you its Final Report, **If You Only Read the Ballot, You’re Being Duped.**

California Penal Code § 933(c) requires that a governing body of the particular public agency or department that has been the subject of a Grand Jury final report shall respond within 90 days to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. California Penal Code § 933.05 contains guidelines for responses to Grand Jury findings and recommendations and is attached to this transmission.

Please note:

1. As stated in Penal Code § 933.05(a), attached, you are required to "Agree" or "Disagree" with each applicable Finding: 1. If you disagree, in whole or part, you must include an explanation of the reasons you disagree.

2. As stated in Penal Code § 933.05(b), attached, you are required to respond with one of four possible actions to each applicable Recommendation: 1b, 1c, 1e.

Your comments are due to the office of the Honorable Beth McGowen, 2023 Presiding Judge, Superior Court of California, County of Santa Clara, 191 North First Street, San José, CA 95113, no later than **January 5, 2023.**

Copies of all responses shall be placed on file with the Clerk of the Court.

If you have any questions, please contact Britney Huelbig, Deputy Manager for the Civil Grand Jury, at (408) 882-2721 or CGJ@sescourt.org.

Sincerely,

James Renalds
Foreperson, 2022 Civil Grand Jury

Enclosures
December 12, 2022

Honorable Beth McGowen
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA  95113

RE: City of Palo Alto Response to 2022 Santa Clara County Civil Grand Jury Report: If You Only Read the Ballot, You’re Being Duped

Dear Honorable Judge McGowen,

The following is the City of Palo Alto’s response to the above-mentioned Grand Jury Report pursuant to California Penal Code §§ 933 and 933.05.

Civil Grand Jury Finding 1:

The Civil Grand Jury finds that in the current environment, which is unregulated at the local level, it is easy for the author of a ballot measure question to write the question in a way that is confusing or misleading to voters.

City of Palo Alto Response: The City of Palo Alto agrees in part and disagrees in part with this Finding.

The City of Palo Alto agrees that the drafting of ballot measure language is an important part of the democratic process, and that local governmental entities that sponsor ballot measures have a responsibility to ensure that ballot measure language is clear, accurate, and useful to voters.

The City of Palo Alto disagrees that the current process is “unregulated at the local level.” Ballot measure language is drafted by the City’s professional staff and approved by the elected City Council, according to requirements of the City Charter and state law. Draft ballot measure language is posted publicly in advance of the City Council meeting, and members
of the public have an opportunity to provide written and oral input prior to Council approval. After Council approval, if residents believe that a ballot measure question does not meet the standards required by law, the recourse in our system is to the courts. The Grand Jury contends this is an ineffective remedy, but in fact, every election year, many pre-election lawsuits are filed in California that challenge ballot measure language. These can result in courts ordering corrections to ballot questions. Because attorney’s fees are recoverable by a successful challenger under the private attorney general statute (Code Civ. Proc. § 1021.5), challengers with meritorious arguments are generally able to obtain counsel to represent them.

The City of Palo Alto also disagrees that the example cited from this jurisdiction—Measure L on the November 8, 2022 ballot—was misleading. The statement “until ended by voters,” to which the Grand Jury objects, is true and accurate, and not misleading. California law requires that tax measures on the ballot include a statement on duration. California Elections Code section 13119(b) states: “If the proposed measure imposes a tax or raises the rate of a tax, the ballot shall include in the statement of the measure to be voted on the ... duration of the tax to be levied.” In addition, under California law, the voters can repeal or amend an ordinance that has been adopted by the voters. (Cal. Elections Code section 9217 (“No ordinance that is ... adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance.”).) It is therefore a true statement that if a tax ordinance is approved by the voters and does not have a fixed end date, then it will be in effect until it is ended or repealed by the voters. The Grand Jury opines that this is misleading because it implies “that the measure itself provide[s] for repeal or that voters would have an opportunity to repeal the tax when they did not.” While it is true that Palo Alto’s measure itself did not specify a process for voter repeal, that is because voters already have that power under the Elections Code. Under state law voters exercise that power by circulating a petition. For these reasons, “until ended by voters” is a true statement of the law, and therefore is not misleading.

Civil Grand Jury Recommendation 1b:

_Governing entities within Santa Clara County should voluntarily submit their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until recommendation 1d is implemented._

_City of Palo Alto Response:_ The recommendation is not warranted and accordingly will not be implemented by the City of Palo Alto.
The Grand Jury’s proposal to empower the County Counsel to review ballot questions, and presumably order changes, is not appropriate for charter cities like Palo Alto, which are separate government entities with independent constitutional authority to control our own elections. Article XI, section 5, subdivision (b) of the California Constitution states that “[i]t shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: ... conduct of city elections.” The California Court of Appeal has recognized that “[t]he ‘conduct of city elections’ is one of the few specifically enumerated core areas of autonomy for home rule cities.” (Traders Sports, Inc. v. City of San Leandro (2001) 93 Cal.App.4th 37, 46.) The County Counsel is appointed by and serves at the pleasure of the County Board of Supervisors. Giving authority to the County Counsel to review and edit ballot questions for the City of Palo Alto would impinge on Palo Alto’s constitutional authority over its elections. The effect would be to reduce local control by shifting authority to a government entity that is not accountable to Palo Alto residents.

Civil Grand Jury Recommendation 1c:

*Governing entities within Santa Clara County should, by March 31, 2023, adopt their own resolution or ordinance to require submission of their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendations 1d and 1e are implemented.*

**City of Palo Alto Response:** For the reasons stated in the response to Recommendation 1b, above, the recommendation is not warranted and will not be implemented by the City of Palo Alto.

Civil Grand Jury Recommendation 1e:

*Governing entities within Santa Clara County should submit their ballot questions for review by the Good Governance in Ballots Commission pursuant to Recommendation 1d.*

**City of Palo Alto Response:** The recommendation is not warranted and accordingly will not be implemented by the City of Palo Alto. A commission appointed by the County Board of Supervisors poses the same problems identified in the response to Recommendation 1b, above.
DATE: December 12, 2022

TO: City Council Members

FROM: Council Member Stone, Council Member Kou, Council Member DuBois

SUBJECT: COLLEAGUES MEMO FROM COUNCIL MEMBERS DUBOIS, KOU, AND STONE REGARDING: WHOLE HOME SHORT TERM RENTALS

Issue:
The cost of rental housing in Palo Alto and the region has soared in recent years as the pace of job growth has far exceeded the rate of housing growth. A large number of housing units have been converted into small hotels through short term rental services, in violation of city ordinances.

Short term rental offerings vary - a key differentiator is whether a rental is owner occupied or not. In some cases, an owner is on the property renting a room to supplement their income and better use their primary residence. In other instances, owners are renting “entire unit” housing - either entire homes or ADUs. In some instances, investors are packing in as many bunk beds as possible and advertising these hidden hotels as being “in quiet neighborhoods near beautiful parks”.

The city is currently working on the new housing element, a rental registry and a business tax, all of which may intersect with short term rentals. While the number of housing units varies month to month, for the last year, there have been around 500 Short term rentals in Palo Alto with about 375 of those consisting of “entire unit rentals”. This represents 375 housing units which should be housing stock available for long term rental.

Goals:
- Ensure that housing stock is used as housing and our prohibition on rentals under 30 days is enforced, particularly for whole home short term rentals;
- Protect our hotels as they recover from Covid impacts;
- Consider regulations to allow some number of short term rentals for rooms when the house is owner occupied and registers with the city.

1 Data is sourced from two companies tracking short term rentals - Granicus and Azavar
Background and Discussion:

Approximately 44% of Palo Alto residents are renters who are predominantly long-term members of our community, contributing to our social balance and economy.

The City of Palo Alto has more Airbnb listings than units available for rent. Council recently received the City of Palo Alto “Condo Conversion Report” Information Report #14664 on Sept 19, 2022. The report showed that Palo Alto has only had greater than 2% rental vacancy once in 7 years and currently has only 100 vacant rentals out of 8057. At that same time in Sept, 2022 we had 743 airbnb listings.

Many cities throughout the county have passed short term rental ordinances to reduce the impacts on neighborhoods. The benefit of these ordinances include:

- Remove impacts on overall housing affordability
- Stem STR impact on affordable housing availability
- Ensure a level playing field between law abiding traditional lodging providers and illegal STRs
- Reduce noise, parking, traffic and trash-problems
- Eliminate party houses
- Reduce STR impact on neighborhood character
- Ensure building safety
- Improve responsiveness to neighbor complaints
- Improve compliance to increase tax revenue
- Reduce tension between short-term rental property owners and their neighbors
- Make citizens aware that STR problems are taken seriously

When the owner is not present, neighbors often feel helpless at resolving impacts on their own properties and lives.

Mountain View, Sunnyvale, Cupertino, Redwood City, Milpitas, San Mateo are all monitoring short term rental and have passed regulations. These cities are using a service from Granicus to cost effectively manage auditing and enforcement. Other vendors such as Azavar offer off-the-shelf solutions. More information is presented in the Appendix.

Many of the short term rental platform companies have been uncooperative in the past and hostile to discussions about impacts on housing supply. Their actions:

- Hide identities of hosts and locations of illegal listings
- Systematically fail to verify host identities and locations
- Refuse to follow local laws like displaying registration numbers or removing illegal
listings
- Threatening legal action over new regulations and filing abusive lawsuits
- Refusing to provide data for enforcement
- Failing to disclose activity for taxes collected
- Using taxes to avoid housing regulations
- Offering negotiation to avoid regulations (spoiler, most negotiations fail)
- Withdrawing negotiated agreements in retaliation
- Self regulation tools: trivial to bypass (yearly caps and “one host one home”)
- Proposing ineffective regulations to delay and block better regulations

Cities are getting smarter and moving to Ordinances 2.0 with clear primary residence requirements to foil professional investors. The onus is put on the homeowner to show that multiple key documents such as their driver license, voter record and other documents all match the home address.

While Palo Alto already prohibits short-term rentals by ordinance, the City signed an agreement with Airbnb, one of the first cities to do so in order to require payment of TOT tax. Either party may terminate the agreement with notice.

At this point, Airbnb is routinely paying TOT tax. We should terminate the current agreement if needed to have transparent, clear discussions at Council on the impacts of short term rentals, while continuing to collect TOT.

On August 22, 2022, as part of its review of the housing element, the council passed an amendment to Program 4.2 “Housing Preservation” by a 6-0 vote with Councilmember Cormack recused:

- Add a program to evaluate amending the muni code to restrict short term rentals, particularly where owner is not present, and insure housing stock is used for long term rentals

Some cities have implemented transparent portals available to residents to understand short term rentals in their community. For example, Pacific Grove’s website allows residents to look up an address to see if it is a registered short term rental

Carmel, CA, has outright banned rentals of less than 30 days in residential districts.

There was a previous colleagues memo on short term rentals in Dec 2014 and a study session in March of 20152 but no Council discussion since then.

**Recommendation:**
We recommend the Council refer this matter to the Policy & Services Committee with the following recommendations:

That, for the short-term:
- Review the Airbnb agreement and, if needed for transparent discussion and the City’s ability to impose new regulations, give notice to terminate the existing agreement with Airbnb while requiring them to continue to pay tax.
- Include short term rentals in definition of required reporting in the City’s proposed rental registry (as the number of STR exceeds the number of available rental units).
- Include short term rentals as businesses required to register in the City’s business registry.
- Review with staff the opportunity to use vendors for tracking and enforcement to ease implementation.
- Our housing element work should determine if we are able to get RHNA credit if we can demonstrate the return of a significant amount of housing units to our inventory.

AND

in the longer-term:
- suggest parameters for Staff to return with proposed ordinance to prohibit “whole unit” short term rental (less than 30 days)
- Consider if and how we should regulate owner occupied rooms for rent
- Evaluate enforcement / auditing vendor services in order to cost effectively enforce our ordinances, potential vendor selection
- Evaluate an update to penalties, including a penalty for illegal listings.

**Resource Implications:**

Staff anticipates the development of effective regulations for short-term rentals will be a significant undertaking, with the following specific considerations:
- We anticipate that a fairly large community engagement effort should be recommended. This would recognize the potential for citywide interest, with wide-ranging perspectives on the primary issues that should be addressed by the city as well as preferred regulations.
- It should be noted that short-term rentals are not currently allowed under the Palo Alto zoning code. As such, any new regulatory framework will require reconciliation with the zoning code and likely code amendments regarding allowable zones and any associated requirements.
- Modification or termination of the City’s agreement with AirBnB will require both legal analysis as well as presumably direct staff consultation with AirBnB and other companies, with the potential for negotiations to ensue.
- The recommendation that short term rentals be included in either or both the proposed residential rental registry or the business registry may require modifying the definitions of
entities subject to registration. This could add a significant number of entities and raise associated concerns regarding enforcement.

- It should be noted that the staff resources needed for this effort are the same that are currently working on the residential rental registry as well as the business registry and associated implementation of the business tax registration system.

Given these considerations, staff would recommend that if the Colleague’s memo is referred to a committee for further development, the City Council includes a narrowing of the issues to be evaluated in the near term.

As an alternative, the City might consider a more incremental approach to the various issues involved with this topic. Such an approach could include:

- Conducting public meetings intended to determine the magnitude of resident concerns, such as: neighborhood impacts of non-residential use, non-resident parties, and/or owner neglect, as well as interest in supplemental income for homeowners.
- Based on the feedback received, staff would report on feedback received and recommended next steps.

While also not currently resourced, this alternative would enable initial steps with manageable impacts to current priorities. Subsequent steps would then be pursued once prioritized among other competing initiatives.
Appendix

VENDORS

Granicus
https://granicus.com/solution/govservice/host-compliance/?gclid=Cj0KCQiw4omaBhDqARIsADXULuV800WbicrshIbpv3fBFDZsBwNYVr-8OnuA128NGQMXXkES4_pSnoMaAmrlEALw_wcB

AirDNA
Azavar
https://www.azavar.com/solutions
Ordinance Services

Often, the speed of business and market developments outpaces local government’s ability to keep up. We help municipalities review, implement, and refine legislation that helps communities keep up with market conditions.

- **Short term rental ordinances**: This is a fragmented and fluid market difficult for municipalities to track, manage, and monetize. Establish and refine ordinances to keep tabs on this growing industry. (Short-term rental tax, transient occupancy tax, transient event tax)

- **Streaming amusements ordinances**: Cable taxes paid to municipalities are going down as consumers move to streaming services. Align your ordinances with these changes in consumer behavior. (Entertainment tax, amusement tax, streaming amusement tax)

- **Additional developments**: Every community is different and it’s important to proactively recognize revenue trends before they become revenue challenges. Ordinance development and refinement are part of that solution—and our team can help.

---

**InsideAirBnb**

http://insideairbnb.com/santa-clara-county
Short Term Rental Example Ordinances
Provided by Kyle O’Rourke, Baker Tilly
Jan, 2022

New Orleans
Short Term Rentals - Ordinances and Enabling Legislation - City of New Orleans (nola.gov)
Short Term Rentals - City of New Orleans (nola.gov)
Short-Term Rental Enforcement Ordinance by Councilmembers Brossett and Palmer
Passed by Governmental - New Orleans City Council (nola.gov)

Honolulu
CO 19-18 (Bill 89) Honolulu - New Short-Term Rental Rules For Oahu - (hawaiiliving.com)
210823_REVISED_Draft_Bill_Relating_to_Transient_Accommodations.pdf (honolulu.gov)
faqs.pdf (honolulu.gov)
Recents News Articles

The Impact of Airbnb on NYC Rents

Between 2009 and 2016, approximately 9.2 percent of the citywide increase in rental rates can be attributed to Airbnb.

New York Now Has More Airbnb Listings Than Apartments for Rent
https://www.curbed.com/2022/05/new-york-more-airbnb-listings-apartments-rentals.html

NYC sues 'illegal' Airbnb operator under new law governing short-term rentals

Pacific Grove could beef up enforcement of short-term rentals

Short Term Rental Ban Finalized in Downtown Carmel, California

Burlington City Council Approves Sweeping Restrictions on Short Term Rentals

Paso Robles Council approves changes to short-term rental ordinance

Dallas officials can’t agree whether short-term rentals should be banned in neighborhoods. The city currently has no rules overseeing how short-term rentals are run

Attachments:
- **Attachment12.a:** Attachment A: Granicus Host Compliance Presentation
- **Attachment12.b:** Attachment B The Process of Regulating Short-term Rentals
- **Attachment12.c:** Attachment C: National League of Cities Rental Regulations
Monitoring Short-Term Rentals (STRs) presents both widely known and underappreciated challenges.

Getting **visibility** into STR data is nearly impossible.

Manual processes weigh on my team and drain our budget.

Our internal alignment is ineffective and suffers.

So much of my time is wasted on finding more room in the budget.

<10% Of STR owners voluntarily get registered and pay all of their taxes.

20-30% Issues with STRs growing at an alarming rate year over year.
The Short-Term Rental Market is Exploding

Many communities are struggling to define and enforce regulations that preserve community character and keep communities safe while ensuring revenue collection.

- 15x the # of short-term rental listings since 2011
- 27 global markets have seen home rentals outperform hotels in the last year
- 100s of different platforms make it nearly impossible to manually track STR property listings
- 239% Increase in STR related party complaints in the last year
Without compliance, local government knows STRs bring significant challenges

- Lost economic opportunities
- Diminished neighborhood character
- Impact on housing affordability
- Wasted time and money
• Reduce noise, parking, traffic and trash-problems
• Eliminate party houses
• Reduce STR impact on neighborhood character
• Ensure building safety
• Improve responsiveness to neighbor complaints
• Stem STR impact on affordable housing availability
• Improve permit and tax compliance to increase tax revenue
• Ensure a level playing field between law abiding traditional lodging providers and illegal STRs
• Reduce tension between short-term rental property owners and their neighbors
• Make citizens aware that STR problems are taken seriously
How big of a challenge are short-term rentals in Palo Alto?
...and in Palo Alto we have identified 625 listings, representing 453 unique rental units*

Short-term rentals in Palo Alto as of March 2022

* Granicus Host Compliance’s pricing is based on the count of listings and rental units that would need to be analyzed and monitored for compliance. In terms of listings, this number is 738 as we will expand our search area by several hundred yards beyond the borders of Palo Alto to capture all relevant listings. Source: Granicus Host Compliance Proprietary Data
Palo Alto STR Market Details

Median Nightly Rate (USD)

$172

Listing Types:

- 41% Single Family Home
- 57% Multi Family Home
- 2% Unknown Home Type

Unit Types:

- 77% Entire Homes
- 23% Partial Homes
- 0% Unknown Room Type
Palo Alto’s short-term rental listings are spread across a number of online platforms.

Source: Granicus Host Compliance Proprietary Data
Historic short-term rental counts in Palo Alto

Unique rental units

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</tr>
<tr>
<td>3/10/2022</td>
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</tr>
</tbody>
</table>
True Compliance Requires a Holistic Approach
Identifying STRs alone isn’t enough. You need to...

Understand the market
Understand the size and scope of short-term rentals in your community

Automate and save
Support greater staff efficiency with impactful tools and process automation to help implement and enforce fair regulations

Identify revenue loss
Ensure your community has identified every opportunity for revenue capture, creating an even playing field for all types of providers and residents

Protect the community
Ensure all lodging providers meet health and safety standards; develop short- and long-term plans to create, grow, or revitalize a community or area
Granicus Experience Group
A strategic team of experts delivering managed services

- **govAccess**: Transactional websites designed for today's citizen
- **govService**: Online citizen self-service solutions and process automation
- **govMeetings**: Meeting agendas, video, and boards management
- **govDelivery**: Targeted email, text, and social media communications
- **govRecords**: Paperless records management

Subscriber Network
A network of 250M citizen subscribers

Packet Pg. 270
govService Host Compliance

Compliance Monitoring

Permitting & Registration

Tax Collection

24/7 Hotline

Rental Activity Monitoring

Consulting Services

Workflow | Approvals

Address Identification

Communications

 Resident

 Visitor

 Business

Data & Analytics | Professional Services
Address Identification technology and processes make it possible to easily monitor the STR market and find the addresses and owners of all identifiable STRs.

1. **Scan**
   - We scan the world’s 60+ largest STR websites for all listings.

2. **Extract**
   - We identify each listing and extract as much information as possible to allow our AI models to narrow down the list of possible address/owner matches.

3. **Combine**
   - We combine AI and human analysts to identify the exact addresses and owner information for each identifiable STR.
Address Identification monitors the STR market and finds the addresses and owners of all identifiable STRs.

The data and screenshots are made available to authorized users in an easy-to-use online dashboard and records management system and easily exported in Excel/CSV format.
Use software to automate the systematic capture of listing screenshots
Listing status, metadata and full-screen screenshots are time stamped and made available in real time on the rental unit record.
Provide documented evidence of every address match to support all of Palo Alto’s enforcement efforts.
Easily track the status of individual rentals and create case notes on the unit's record.
Compliance Monitoring allows you to stay in control and save time by sending your enforcement letters with the click of a button.
Increase your outreach effectiveness and efficiency by automatically adding evidence to communications.
Mobile Permitting & Registration

Simplify Palo Alto’s permitting and registration processes and significantly reduce the administrative costs on the back-end.
**Tax Collection**

Simplify Palo Alto’s tax collection process and significantly reduce the administrative costs on the back-end.

Please enter the taxable receipts for listing 1/2: https://www.airbnb.com/rooms/XXXXXXXX. If you have had $0 taxable receipts for a given quarter, please enter $0.

Taxable receipts INCLUDE, but are not limited to, nightly rents, weekly rents, standard cleaning fees, pet fees, internet charges, late check-out fees, extra person fees, and resort fees. Taxable receipts EXCLUDE refundable deposits and any additional items included in a special package rate, such as ski passes, or other recreational activity or additional service subject to sales tax.

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<th>Date Range</th>
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<td>July 2019 to September 2019</td>
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<tr>
<td>October 2019 to December 2019</td>
<td>$10,000</td>
<td>200</td>
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</table>
24/7 Hotline makes it easy for neighbors to report, substantiate, and resolve non-emergency STR incidents in real-time

1. Report
   Concerned neighbor calls 24/7 short-term rental hotline or reports incident online

2. Proof
   Complainant provides info on alleged incident and is asked to submit photos, videos or other proof of the alleged violation

3. Resolution
   If property is registered, Granicus Host Compliance immediately calls and texts host/emergency contact to seek acknowledgement & resolution

4. Complete
   Problem solved – complaints & resolution notes saved in database so serial offenders can be held accountable
Get detailed reports and dashboards to track all short-term rental related complaints in real-time.
Rental Activity Monitoring automates the selection of audit candidates to maximize the impact of audit efforts.

Identifying tax fraud and occupancy/rental frequency violations by STR listings for signs of rental activity.
Streamline the audit process by requesting all backup information through simple, interactive online forms.

Hosts can easily upload STR revenue statements to verify rental activity.
Short-Term Rental regulation creation, updates, and guidance from planning experts

✓ Experience with hundreds of communities including 1) access to proprietary regulations data that is the most trusted by government and 2) support on hundreds of regulations.

✓ Custom public outreach strategy and messaging framing.

✓ Complete draft of a custom short-term rental ordinance.

✓ Compliance monitoring and enforcement plan for staff and legal counsel to refine and adopt.
How can you make sure all voices are heard while considering short-term rental regulations?

**Neighborhoods**
- Organized neighborhood groups (including HOAs, etc.)
- Individual homeowners
- Renters
- Housing advocacy groups

**Government**
- Code Enforcement
- Planning & Zoning
- Public Safety
- Assessor

**Lodging**
- Existing STR host groups
- Individual STR hosts
- Realtors
- Current lodging providers
- Tourism Board
With **Bang The Table** community engagement in Palo Alto just got easier

- **Choose the right mix of online feedback tools for your community engagement objectives**
- **Foster meaningful connections and build trust with your community**
- **Deliver a seamless, closed-loop communication experiences for your citizens**
- **Reach targeted audiences and use data to measure effectiveness**
Truckee, California

Goal: Collect transient occupancy tax related to the growing number of STRs.

Properties identified: 400  
More taxes collected: 36%  
Compliance rate: 80%

“We’ve used the [Host Compliance] data to be able to proceed with our compliance efforts.”

— Chrissy Earnhardt, Administrative Services Manager
Garden Grove, California

Goal: Obtain evidence to cite illegal short-term rentals

- 229 Listings identified
- 4X Efficiency
- 80 Citations

"Host Compliance really helps out with analysis. We’re able to save a lot of Code Enforcement time and resources so we can address other issues in the community.

- Pete Roque, Code Enforcement Supervisor

HOST COMPLIANCE
Why Government Leaders Choose Granicus

Trusted by thousands of government agencies at all levels

Secure

Security-First
FedRAMP authorized; Tier III, DOD-approved data centers; Private vs. Public cloud.

Supported

1 Team, 24/7
Around-the-clock support and training for your entire team; three types of support available – technical, success, adoption.

Simplified

One Platform
Streamline digital services by consolidating to a single platform vs. multiple vendors and applications.

Innovation Leader

First-to-Market Technology
$20M Invested Annually in R&D, Foremost innovator of government SaaS technology, with 5 first-to-market solutions.
In California we are currently partnering with local agencies to address their STR related challenges

- Nevada County CA
- Chula Vista, CA
- Indian Wells, CA
- Albany, CA
- Daly City CA
- Citrus Heights CA
- Redwood City, CA
- Coronado CA
- El Paso de Robles CA
- Marina CA
- Long Beach CA
- Marin County CA
- Milpitas CA
- Roseville CA
- Union City CA
- Fullerton, CA
- Benicia CA
- Los Angeles County CA
- Riverside CA
- Sacramento, CA
- San Mateo County CA
- El Dorado County CA
- Berkeley CA
- Mariposa County CA
- Santa Cruz County CA
- Plumas County CA
- Lake County CA
- Alpine County CA
- Calaveras County CA
- Del Norte County CA
- Inyo County CA
- Irvine, CA
- Petaluma, CA
- Napa, CA
- Mono County CA
- Buena Park, CA
- Newark, CA
- Garden Grove, CA
- Sunnyvale, CA
- Butte County, CA
In the broader Far West we are already serving 137 forward-thinking local government agencies

- Nevada County CA
- Hood River County OR
- Chula Vista, CA
- Indian Wells, CA
- Penticton, BC
- Nelson, BC
- Albany, CA
- Daly City CA
- Citrus Heights CA
- Redwood City, CA
- Skamania County WA
- Coronado CA
- Kimberley, BC
- El Paso de Robles CA
- Marina CA
- Long Beach CA
- Lewis County WA
- Marin County CA
- Vancouver WA
- Milpitas CA
- Roseville CA
- Union City CA
- Fullerton, CA
- Benicia CA
- Los Angeles County CA
- Riverside CA
- Sacramento, CA
- San Mateo County CA
- El Dorado County CA
- Berkeley CA
- Las Vegas NV
- Kelowna, BC
- Mariposa County CA
- Santa Cruz County CA
- Washoe County NV
- Plumas County CA
- Lake County CA
- Ucluelet, BC
- Alpine County CA
- Calaveras County CA
<table>
<thead>
<tr>
<th>Service</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>Address Identification</strong></td>
<td>Automated monitoring of 60+ STR websites and online dashboard with complete address information and screenshots of all identifiable short-term rentals.</td>
</tr>
<tr>
<td><strong>Compliance Monitoring</strong></td>
<td>Ongoing monitoring of STRs for zoning and permit compliance coupled with systematic outreach to illegal short-term rental operators.</td>
</tr>
<tr>
<td><strong>Permitting &amp; Registration</strong></td>
<td>Online forms and back-end systems to streamline the registration process and capture required documentation, signatures and payments electronically.</td>
</tr>
<tr>
<td><strong>Tax Collection</strong></td>
<td>Make tax reporting and collection easy for hosts and staff to submit and review online.</td>
</tr>
<tr>
<td><strong>24/7 Hotline</strong></td>
<td>Make it easy for neighbors to report, prove, and resolve non-emergency short-term rental related problems in real-time, any day, at any hour.</td>
</tr>
<tr>
<td><strong>Rental Activity Monitoring</strong></td>
<td>Estimate occupancy or rental revenue for each property and identify audit candidates who are under-reporting on taxes or exceeding occupancy regulations.</td>
</tr>
</tbody>
</table>
To accommodate any budget and ensure a high ROI for our clients, our services are priced based on the number of STRs that need to be monitored.

<table>
<thead>
<tr>
<th>Service</th>
<th>Cost per STR Listing/Rental Unit</th>
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<td>$10.20 Per Year</td>
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<tr>
<td>Rental Activity Monitoring</td>
<td>$17.00 Per Year</td>
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Note: the pricing reflected is direct, list pricing in USD. The exact scope can be adjusted to meet Palo Alto’s exact monitoring needs in terms of geography, listing sites, listing types and other variables.
## Modular pricing tailored to Palo Alto’s short-term rental needs

<table>
<thead>
<tr>
<th>Service</th>
<th>Cost</th>
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<td>Address Identification</td>
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<td>Rental Activity Monitoring</td>
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</table>

Note: the pricing reflected is direct, list pricing in USD. The exact scope can be adjusted to meet Palo Alto’s exact monitoring needs in terms of geography, listing sites, listing types and other variables.
Working backwards to a solution to address Palo Alto’s STR challenges

1. STR Problem Solved
2. Implement
3. Sign Contract
4. Budget
5. Project Approval
6. Project Scope
7. Gather Team
8. Set Deadline
Next Steps

I. Send Meeting Summary & Presentation

II. Schedule All Team Value Meeting
   Participant: Administration, Finance, Planning, Code Enforcement, Elected Officials

III. Confirm Performance Goals & Metrics
   Participant: Administration, Finance, Planning, Code Enforcement, Elected Officials
   a) Return on Investment Experienced by Peer Governments
   b) Alignment on Success Metrics/KPIs

IV. Develop Joint Action Plan for addressing Palo Alto’s needs
   Participant: Administration, Finance, Planning, Code Enforcement, Elected Officials
   a) Set appropriate expectations
   b) Efficiently utilize staff time
   c) Address requirements, fit, and value
   d) Optimize time to completion while ensuring highest quality
Please feel free to contact us anytime if you have any questions about short-term rental compliance and how to best address the associated monitoring and enforcement challenges.

Kyle Salonga

kyle.salonga@granicus.com

415.874.1783
The Process of Regulating Short-term Rentals

Published June 2022

Shannon Jamison, Principal, Third Space Community Planning
Eric Swanson, Co-Executive Director, Generation Squeeze
Jeffrey Goodman, JBGoodman Consulting for Granicus
About Generation Squeeze
Gen Squeeze is a national research and advocacy organization for young Canadians. We work to address a 360-degree “squeeze” currently facing millions of Canadians in their 20s, 30s and 40s – from stagnant earnings to high costs for things like housing and childcare, to mounting debts and climate change. Housing affordability is currently our largest program area, and the appropriate regulation of short-term rentals is part of that broader work.

About Third Space Community Planning
Third Space Community Planning is a boutique planning consultancy based out of Victoria, B.C. led by Shannon Jamison, a city planner and this project’s primary consultant.

About Jeffrey Goodman
Jeffrey Goodman is an urban planner and designer whose work has led to him to be considered one of North America’s leading authorities on short-term rentals and how they impact communities. Jeffrey has spoken about short-term rentals across the country, including at the APA’s National Planning Conference and written extensively on best practices for cities, including as the author of a featured article in Planning Magazine and in the New York Times.

This toolkit was made possible with support from the Real Estate Foundation of BC, the Federation of Canadian Municipalities, LandlordBC and the Vancouver Foundation. And thank you to all the local government staff and elected officials for participating in a national survey on STR regulations.

This toolkit has been carefully prepared and is intended to provide a summary of complex matters. It does not include all details and cannot take into account all local facts and circumstances. While this toolkit suggests a sequence of considerations, we recognize the path to regulation is not always linear. This guide refers to laws and practices that may change.

Municipalities are responsible for making local decisions, including decisions in compliance with law such as applicable statutes and regulations. For these reasons, this toolkit, as well as any links or information from other sources referred to within it, should not be relied upon as a substitute for specialized legal or professional advice. The user is solely responsible for any use or application of this guide.
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## Introduction

While online platforms like Airbnb have led to an explosion in short-term rentals (STRs) across the United States and around the world, the practice of renting out space goes back to the very beginning of cities. But what had been a localized, often word-of-mouth activity has become a billion-dollar industry dominated by wealthy startups, excited investors, and a rapidly changing real estate landscape. Not surprisingly, local governments have been playing catch-up.

Short-term rentals are here to stay — now what? As a use that sits at the intersection of a number of issues — housing, economic development, neighborhood character — that people feel very strongly about, STRs can be a frustrating thing to regulate. But, like any issue, local governments have the duty and the right to regulate for their context and the general good — even that of the grumblers and complainers.

We created this guide as a resource, one that allows local governments, elected officials, and staff to follow a process that will lead to better, more enforceable, more equitable rules and regulations. No matter your community’s priorities, whether your residents want fewer STRs, more STRs, or just better regulated STRs; or whether your community is at the cutting edge of regulations or just getting started, you should be able to find resources in this toolkit that can help.
Part 1: Background

What is a Short-term Rental?

While the idea of renting out residential space is nothing new, these days a short-term rental (STR) often refers to the rental of a residential dwelling unit (either the entire dwelling or a room (or rooms) within it\(^1\) for a short period of time (less than a month, for example); facilitated by online platforms like Airbnb and VRBO.

- Rental of a residential dwelling unit (either the entire dwelling or a room(s) within it);
- In any housing type (e.g. houses, secondary suites, carriage houses, garden suites, cabins, apartments and condos);
- For a short period of time (e.g. less than a month);
- Facilitated by online platforms (e.g. Airbnb, VRBO, etc.);

Because of special rights and rules related to renters’ tenancy and eviction in many jurisdictions, the definition of a short-term rental is simply anything that is not a long-term rental. The distinction between an STR, in the modern sense, and other lodging types (motels, bed & breakfasts, boarding houses) may be difficult to discern.

\(^1\)Non-dwelling units (e.g. vans, boats, parking spaces, campgrounds) can also be listed as a STR, but these represent a small fraction of STR activity.
The Range from Homesharing to Commercial Operation

There are many types of units on STR platforms, from couches to mansions. And many types of users on STR platforms, from people making a little money on the side to major commercial operations. While the platforms like to emphasize heart-warming users, much of the rapid growth in the industry has come from professionally managed, non-owner-occupied units.

Understanding the breadth of use cases is key to regulating effectively, especially in a local context. The most important distinction for many communities is separating homesharing, which takes place in an operator’s principal dwelling unit, from a commercial operation, which occurs in a unit that is not someone’s principal dwelling. Non-principal dwelling unit STRs also include vacation properties or secondary residences that are not the designated principal dwelling of the owner.

Potential Positive and Negative Consequences of STRs

Short-term rentals, as a regulatory issue, can be complicated to understand, as the industry touches on housing, community development, neighborhood character, taxation, and land use simultaneously. Based on hundreds of interviews, the following positives and negatives are the most common discussion points.

The potential benefits include:

Income generation, higher housing values, greater choice, local experiences, new tourist accommodation, more efficient use of space, support for the local tourism economy, greater neighborhood distribution of wealth

The potential harms include:

Housing loss, housing unaffordability, unfair advantages, revenue loss, increased contraventions of local regulation, community disruption, reinforced inequities

---

2 Hereafter referred to as “principal dwelling unit STR” and “non-principal dwelling unit STR” for technical clarity
Part 2: Regulatory Roadmap

This section lays out a basic roadmap for designing and implementing a comprehensive STR regulatory program, including key considerations and tips.

High-Level Best Practices

When you’re developing your regulatory and enforcement programs and selecting regulatory tools, referring back to this list can help ensure your approach is aligned with best practices in the field.

- **Say yes to regulated STRs.** Outright bans on all STRs — including true homesharing — are difficult and expensive to effectively enforce. Acknowledge that STRs are here to stay and then regulate them like the business it is.

- **Say no to the one-size-fits-all approach.** Regulations and enforcement need to be tailored to community priorities, context, and objectives. What one community has decided is appropriate may not be successful for another. Jurisdictional scans are a helpful tool, but regulations and enforcement must be localized.

- **Start with a goal, not a regulation.** Agree on the specific goals you wish to achieve before developing regulations. Regulations can only be successful if it’s clear what success actually looks like (e.g., a particular problem is solved or benefit created).

- **Dedicate appropriate resources.** STRs are a complex, multi-disciplinary issue; dedicated staff and financial resources are required to develop and implement meaningful and successful regulations.

- **Create enforceable regulations.** If a regulation cannot be enforced in a clear, cost-effective, practical manner, don’t include it in the ordinance. Including unenforceable regulations in your ordinance will defeat the purpose of enacting a law in the first place and diminish the credibility of the local government.
• **Keep it simple.** Simple, easy-to-understand regulations will achieve higher levels of voluntary compliance. They are also less onerous for staff to administer and enforce and can be just as effective as more complex regulations.

• **Strive for consistency.** Instead of developing new, punitive approaches, apply current, relevant, and effective regulations, processes, and standards to your ordinance such as quiet hours, parking minimums, occupancy limits, zoning, building and fire codes.

• **Prioritize housing for residents.** Communities experiencing low vacancy rates and high costs to rent or buy a home (relative to local incomes) should consider regulatory tools such as the principal dwelling unit restriction to advance adequate housing and discourage housing loss to STR activity.

• **Avoid relying on voluntary support from platforms to regulate and enforce STRs.** Municipalities and platforms often have competing objectives: the former to protect their users (operators) and maximize business and profits, and the latter to regulate STRs for the public good. These competing objectives can make it difficult, if not impossible, to negotiate voluntary data sharing agreements.

• **Utilize technology.** Including internal technology like online business license applications and/or external technology like third-party resources for data acquisition/modeling can facilitate a streamlined application process and effective enforcement.

• **Communicate widely.** Proactive, widespread, and sustained communication and engagement/education about STR regulations should be used to boost levels of voluntary compliance in conjunction with proactive enforcement.

• **Proactively enforce.** To achieve high levels of compliance, a robust and proactive enforcement strategy must accompany STR regulations. Draw on dedicated resources and utilizing technology to identify non-compliant operators. Complaint-based approaches to enforcement will yield low levels of compliance.

• **Be adaptable.** The rapid growth and fluid nature of the industry means traditional approaches to enforcement may not work. Best practices will evolve over time and policy approaches may need to change.
Prioritizing Your Regulatory Goals

Clearly identifying and prioritizing your goals is fundamental to any successful STR regulatory program and provides a basic starting point for staff to plan their work and evaluate the effectiveness of the regulations after implementation.

Example Regulatory Goals

In the context of the potential benefits and harms of STRs, local governments can define a number of goals for their STR regulatory program.

Through the development of this toolkit, seven broad and interrelated goals emerged as being the most common:

- **Housing**
  - Protecting housing availability and affordability. Restrict the type, location, size, and/or number of STRs that are permitted to operate to reduce the demand placed by this sector on limited local housing stock.

- **Tourism Development**
  - Support the tourism economy. This usually means being more permissive about both the type and/or number of STRs that are permitted to operate to increase the total number of tourist accommodation options and their diversity (character, amenities, and cost). Often, this also means being more intentional about the distribution of STRs and pursuing greater regulatory equity across the range of accommodation providers (see below).

- **Regulatory Equity**
  - Establish regulatory and tax equity among accommodation providers. This can mean requiring certain types of STR operators to comply with health, safety and other regulations that are already being applied to traditional accommodation providers such as B&Bs, motels and hotels that require licensed operators to pay a fee. It also usually means some level of coordination or advocacy directed at higher levels of government to assist with tax equity.

- **Health and Safety**
  - Ensure health and safety. Related to regulatory equity, this often means requiring STRs to meet certain health and safety standards established in existing regulations (e.g., fire and building codes, etc.) to ensure the habitability of a STR and to protect guests, hosts, and neighbors from harm.
Revenue

Collect taxes owed. This means finding a way to collect taxes that are (or should be) owed by STR operators, but are not being voluntarily paid, including local/regional tourism taxes/fees and state and federal taxes.

Ensure cost recovery. Virtually all local governments are keen to ensure that the cost of administering their STR regulatory program is recovered, typically through STR-specific licensing fees, tax income, or fines.

Neighborhood Compatibility

Foster respectful neighborhoods. This usually means promoting “good neighbor” behavior between STR operators, their guests, and nearby residents. A degree of neighborhood-level compatibility (e.g., sufficient parking, acceptable ratios of STRs to residents, etc.) should be established before permission is granted to operate.

Compliance

Achieve a high degree of compliance. Regardless of the other goals pursued through the STR regulatory program, many local governments have an interest in achieving and reporting a high degree of compliance to enhance the likelihood of public trust in the STR program, specifically and local government regulatory interventions, generally.

Prioritize Your Community’s Goals

Once you have identified your community’s goals, you can then consider which of them to prioritize over others.

This is especially important where there is a natural tension between different goals such that they cannot be achieved to the same degree.

For example, local governments should be mindful of a major incompatibility between the goal of protecting housing availability and affordability (e.g. in the context of a local housing crisis) and the goal of supporting STR tourism (specifically via non-principal dwelling unit STR).

The natural scarcity of both housing and land means that increased demand from non-principal STR operators can have significant impacts on housing access and costs. Local governments should therefore consider making a clear choice between prioritizing housing or STR tourism.
As you work through each of the regulatory steps—particularly gathering additional data on STRs and undertaking public engagement—the way you initially defined or prioritized your goals may change.

**Developing a Project Plan**

A detailed project plan can ensure the right people are involved, there are adequate financial and human resources to support the work, and timelines and deliverables are clearly defined and realistic.

STR project plans can include:

- **Draft Goals.** Use the previous section of this toolkit as an example.

- **Scope.** Clearly identify the scope of the project by collecting data on local STR activity, conducting initial public engagement to gauge interest, or going all the way by developing and implementing STR regulations. Make sure your scope matches the scale of your problem.

- **Project team.** This should include an interdepartmental team from planning, legislative/corporate services, economic development, zoning enforcement, legal, and finance. At the beginning, the project may be led by one department, but the involvement of staff across the organization is important to develop buy-in and support for the initiative and to ensure continuity through the regulatory and enforcement process.

- **Proposed stakeholders.** The impact of STRs is of interest to a broad cross-section of your community, including hotel and tourism associations, accommodation providers, housing advocacy groups and providers, STR operators, platforms, residents, and STR users. A separate communications and engagement strategy could be developed and include proposed stakeholders.

- **Budget.** Staff time will likely account for the majority of costs, with additional costs for communications, public engagement material, and data (if you secure third party monitoring and enforcement support).

- **Timeline.** It could be possible to develop a comprehensive STR regulatory program within about a year of initiation, for example, if there is a robust project plan that clearly articulates phases (research, proposed regulatory framework, public consultation, drafting, implementation, and enforcement) and is responsive to changing circumstances.
• **Project risks.** The regulation of STRs can be an extremely polarizing and highly controversial issue. Public opposition should be expected. Identify risks early and put a plan in place to minimize, mitigate, and respond to them quickly.

• **Governance.** STRs are an issue that impacts multiple departments. To eliminate uncertainty, identify which department will lead the project, present to council, and have final decision-making authority on the proposed regulation and enforcement. The lead department may change over the course of the project. For example, a planning department may lead in the development of the regulations while a licensing and enforcement department will take over that responsibility once the regulations are adopted.

Of course, as with any plan, STR project plans will be subject to change and refinement over time.
Gathering Data to Inform Your Approach

Your local government can use data to:

- **Assess STR activity in your community and estimate its impact.** Hard data on STR activity can help estimate impacts to housing and tourism, which will help your community identify and prioritize its regulatory goals and inform the design of your STR regulatory and enforcement approach.

- **Evaluate the effectiveness of your regulatory and enforcement program.** Data can be used to help evaluate the impact of your regulations in achieving desired goals related to housing, tourism development, neighborhood compatibility, regulatory equity, health and safety, and compliance. This can take the form of pre-regulation projections or post-regulation evaluation.

- **Enforce the regulations.** Good data is often essential to proactively enforce STR regulations and achieve high rates of compliance.

There are two basic categories of data you can draw on to get a clear picture of STRs and their impact in your community:

1. **STR-specific data** - The number, type and distribution of STR listings, complaints, etc.

2. **Contextual data** - Housing market data, lodging rates, or tourism-related data.
Getting STR-Specific Data

Getting accurate data on STRs in your community can be difficult because platforms (that are the holders of the raw data) have been extremely protective of this information. In the absence of voluntary data-sharing agreements, or new legislation that requires data sharing, local governments have a couple of basic options to get STR-specific data:

- Gather, compile, and analyze data from free sources
- Get more detailed information from paid providers

Determining how much STR data your community truly needs and deciding which data sharing option is best will be a judgement each local government must make.

Getting 100% accurate, comprehensive data is essentially impossible, especially without voluntary or mandated cooperation from STR platforms. The fluid and seasonal nature of the industry and the difficulty of verifying third party data can make things even trickier.

That said, there are plenty of ways to obtain “good enough” data. When deciding what “good enough” means for your community you can take into consideration things like:

- Community size
- Scale of STR activity
- Regulatory goals
- Resource constraints
- Importance of the issue to your community
- Level of comfort of staff and elected officials
- Complexity of the anticipated/implemented STR regulations
- Desired degree of compliance
Getting Contextual Data

Getting a range of contextual data can help your community prioritize and refine STR regulatory goals, guide your regulatory approach, and evaluate the impact of regulations.

The following table includes some examples.

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<th>Example Indicators</th>
<th>Example Data Sources</th>
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<td>Rental housing affordability (% of income on rent and utilities)</td>
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<td>Current number and distribution of traditional accommodation (hotels, B&amp;B, campgrounds)</td>
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<td>Municipal code (business, zoning, noise and nuisance, property standards)</td>
</tr>
<tr>
<td>Cost Recovery</td>
<td>Local government financial position (e.g. annual revenue, sources)</td>
<td>Master budget</td>
</tr>
</tbody>
</table>
5-Step Guide to Drafting STR Regulations

Step 1
First, choose between two basic approaches:

- **Stick to amending existing laws.** Most STR regulations will substantively impact existing regulations such as business licensing, tickets and offences, and zoning. References to STRs can be included in amendments to these existing rules in ways that make STR permissions or restrictions clear.

- **Develop a new stand-alone STR ordinance and amend existing laws.** The new STR rules can reference all of the necessary context and components of your STR regulations in one place (e.g., purpose, description, provisions, schedules, related ordinances).

Determining which route to take will depend on your community’s size and complexity, current approach to ordinance creation as well as the status of existing regulations.
**Step 2**

Second, determine who will be responsible for drafting the law (e.g., CAO, city attorney, city manager, planner) and involve the project team in the drafting process.

Providing staff with an opportunity to participate in the drafting stage will create staff buy-in, remove ambiguity or uncertainty about the meaning of the regulations and how they should be applied, and help preserve the intent of the regulations when transferred from an approach into a law.

**Step 3**

Third, draft the standalone ordinance and/or amendments.

State and local government legislation define the mandatory part of an ordinance (title, number, etc.) but there are areas to pay particular attention to regarding STRs, including:

- **Definitions.** Terms that are particular to the STR law and/or amendments (operator, short-term rental, principal dwelling unit, listing, platform) should be well-defined and as specific as possible. Definitions in other codes such as bed and breakfast, home occupation, business license, and dwelling unit will apply to any new laws, so confirm their accuracy and consistency now and amend these too, if needed.

- **General provisions and rules/responsibilities.** This section contains the main components of your regulations (e.g., licensing requirements, principal residence, designated responsible person, display license number in ads) and should be clear and precise enough that staff as well as operators understand what must or must not be done to comply with the regulations.

- **Severability.** Should a decision by a court find a part of the law illegal, void or unenforceable, a severability clause specifies that part of the law would be removed and not affect the balance of the law. This is particularly important given the relative newness of STR regulations.

- **Penalties.** These should be sufficiently high to deter non-compliance and can be per instance of offense, or per each day that it occurs. State laws may limit maximums.

- **Transition provisions.** This is particularly important for regulations that are coming into force part way through the year to allow for pro-rated licensing fees. Effective date and signature. Once the law has received readings and has passed, this is the day the law comes into force.
Step 4

Fourth, prior to bringing the law(s) to council for readings and votes, have staff review it to confirm the enforceability of the regulations. When passing a new ordinance, it is important for staff to consider whether the capacity (staff, equipment, and other resources) exists to adequately enforce the ordinance. Ideally, this step occurs at the same time as staff are developing your enforcement plan. Insufficient enforcement capacity may defeat the purpose of enacting the rules in the first place and erode public trust in the effectiveness of local government.

Step 5

Fifth, present the rules to council for reading and adoption and prepare for tinkering. Hopefully, if you have given time and space for feedback both before and during the development of your ordinance, you can avoid anyone in the public (or politicians!) from feeling blindsided or attacked. There may always be someone who won’t agree with your ordinance but hopefully, they understand why certain choices were made.
Establishing Your Enforcement Approach

Effective enforcement is important not only to achieve the desired impact of STR regulations but to maintain public confidence and trust in a local government’s authority.

Identifying your local government’s enforcement approach requires two key decisions:

- **Decide on your position on the enforcement continuum.** With completely voluntary compliance on one end (e.g., public education and outreach, warning letters), and consistent proactive enforcement on the other (e.g., issuing violations or tickets, seeking injunctions and prosecuting), enabling both ends of the spectrum is often the best approach.

- **Determine your enforcement complement.** This can include relying on existing staff and/or hiring new STR-specific enforcement staff, retaining a third-party monitoring and compliance firm, seeking to negotiate an agreement with platforms, or a combination of the above. For communities with fewer STRs (e.g., less than 100), it may be possible to develop an effective enforcement approach that relies only on local government staff. For communities with higher STR activity, staff can still effectively enforce the regulations but consider seeking the support of a third-party compliance and monitoring firm to aid and expedite the process.

Third Party Monitoring and Compliance Firms

Host Compliance is the current industry leader, with hundreds of local government clients across Canada and the United States. They provide a range of services in support of short-term rental regulations, including:

- Data snapshots on current STR activity
- On-line registration and licensing systems
- Address identification for operating STR
- STR monitoring to identify possible non-compliance
- STR operator outreach, including the issuance of warning letters
- 24/7 hotline to lodge neighbor complaints

Additional third-party monitoring and compliance firms include Hamari and LODGINGRevs.
Developing an Enforcement Plan

Developing an enforcement plan and making it readily accessible to the public (e.g. publishing it on a designated STR webpage) can help local governments manage public expectations while promoting transparency and accountability.

An enforcement plan can include:

- **Goals of the regulation and enforcement program.** Clearly stated goals will help STR operators and residents understand the purpose of the STR regulations and establish expectations and standards for enforcement.

- **Description of the enforcement approach.** As discussed in the previous section of this toolkit.

- **Defined categories of non-compliance.** When clearly stated, these can help STR operators, residents, and staff understand what is and is not permitted under the new regulations. Categories of non-compliance may include operating without a license, operating in an unpermitted zone, operating a STR that is not one’s principal dwelling unit, and listing or advertising a STR without displaying a business license number.

- **Description of the actions that will be taken.** This helps STR operators understand how and why enforcement decisions are made and can include details about warning letters, fines, suspensions and revocation of licenses, audits and inspections, and legal proceedings.

- **Description of sequencing and escalation of actions.** This helps STR operators understand how enforcement will be escalated (e.g. from an initial warning letter to first and subsequent offence tickets, to license revocation and even legal proceedings). Details can also be provided on how long operators will have to comply once receiving a notice of violation.

- **Description of the complaints process.** This provides clarity and detail to residents on how to make a complaint or report a non-compliant STR operator and what the resolution process will entail.

- **Description of the appeals process.** This provides clarity about how STR operators can appeal a decision like a license revocation, for example.

Local governments should expect the first year of a STR regulation and enforcement program to be more resource-intensive as you license existing operators, respond to
requests and complaints, conduct audits and inspections, and begin to proactively enforce the regulations.

Monitoring, Evaluation and Improvement

Once the STR regulatory and enforcement program has been established, things will move into a monitoring and evaluation phase.

This will be a time to assess the success of the program and its individual components, make modifications, and identify any new components to add.

Code Amendments

Our conversations with local governments that have established STR regulations suggest you anticipate one or more of the following types of amendments:

- **Clearer definitions.** To remove areas of confusion or ambiguity.
- **Higher business license fees.** To better cover the cost of the STR regulation and enforcement program.
- **Stiffer fines.** To deter non-compliant operators.

Measuring Impact

To gather qualitative feedback on the effectiveness of the program consider consulting:

- **Your STR advisory committee.** If established and maintained after implementation, this multi-stakeholder group can provide valuable ongoing feedback.
- **STR operators.** Operators can provide feedback on the clarity of the regulations, enforcement plan, communications materials, and the ease of the business licensing process, along with any unanticipated consequences of the program.
- **Departmental staff.** Interviews with all staff that engage with STRs, including front counter staff, licensing clerks, zoning and inspection personnel, and code enforcement staff can help identify what is and is not working.

Developing quantitative methods to measure the effectiveness and impact of your regulatory program can be notoriously difficult.

Conducting an annual review of the program and producing a report to council that includes proposed amendments, program improvements, and an assessment of the impact of the regulations is encouraged.
Advocating to Higher Levels of Government

Throughout this toolkit, we make the case — and attempt to make it easier — for local governments to regulate STRs regardless of what the state and federal governments are doing. That said, a lot of money, time, and headaches could be saved if higher levels of government did a bit more.

Here, we briefly identify four key areas of state and federal intervention that local governments could choose to prioritize for their advocacy agendas.

1. Data sharing

The problem:
Local governments need two kinds of information to effectively regulate STRs:

1. **Individual information.** The name of individual STR operators and the full address and booking details of their listings, for example (state or federal authorities would also benefit from details on operators’ booking revenue for income tax purposes).

2. **Aggregate information.** Detailing the extent and nature of STR activity in the community over time.

While local governments can play detective by using a combination of methods to get some of this data, the process can be expensive, time-consuming, and only partially accurate. Meanwhile, STR platforms have most of the necessary data, but aren’t required to share it.
The solution:
Use local, state, and/or federal legislation to compel platforms to share individual and aggregate data on STR operators and activity with government authorities in a way that balances the protection of privacy and intellectual property with the public interest.

The benefits:
A more accurate understanding of STR activity, simplified enforcement (time and money saved), fewer illegal STRs (higher compliance), increased public trust.

2. Platform accountability

The problem:
STR platforms often publish illegal listings (i.e., listings where the unit is not permitted as a STR).

The solution:
Use local, state, and federal legislation to compel STR platforms to only include legal listings (e.g., listings that have a government-verified license number and meet other relevant criteria), including penalties and fines for non-compliant platforms.

The benefits:
Simplified enforcement (time and money saved), fewer illegal STRs (higher compliance), and increased public trust.

Data sharing and platform accountability share similar objectives. In the former, STR platforms hand over data to enable government-led enforcement. In the latter, governments hand over data to enable platform-led enforcement. A combination of the two may be the best way forward.

3. State registration systems

The problem:
While local governments are generally very used to managing business licensing programs, the unique nature of STRs requires custom licensing systems be put in place, often at high administrative costs and with challenges to enforcement.

The solution:
Establish a single state STR operator registry with a clear and streamlined licensing process and data-sharing with local governments (to ensure compliance with local regulations), tourism authorities (to enable better planning), taxation authorities (to assist with tax collection), and platforms. Platform accountability requirements will
ensure operators publish only legal/licensed listings. Then, direct license fees back to local governments and/or tourism/economic development authorities.

**The benefits:**
State registration simplifies the STR licensing process for all parties. Data sharing and/or platform accountability mechanisms are still likely required to simplify enforcement and achieve high compliance, but a single state/territorial registry would make both of those options much easier to implement.

**4. Tax fairness**
**The problem:**
Many operators are unlikely to voluntarily collect and remit sales taxes and any local tourism/accommodation levies on their STR bookings. Many operators are also likely failing to report STR income on their income tax returns. Furthermore, many operators of non-principal dwelling unit STRs are currently only paying residential property tax rates on STR properties, despite their commercial use.

**The solutions:**
A solution for the tax fairness problem is local, state, and federal legislation that requires all STR platforms to collect and remit applicable sales taxes and tourism/accommodation levies on behalf of individual operators. Data sharing to enable thorough income tax collection (or at a minimum, state registries that better enable audit selection) would also help. Lastly, it would be beneficial to have legislation that permitted local governments to reclassify residential properties used for commercial STRs to apply differential property tax rates.
Conclusion

Regulating STRs is not an impossible task, but one that can uphold the values and goals of your community if you follow a comprehensive and transparent process. Work from the reality on the ground—supplied by data—and your own expertise—to cut through the noise and develop targeted and contextual rules and enforcement systems that are strong and fair. Many communities around the country have solved their problems and with a little preparation, you can as well.

If you’d like to learn more about your local short-term rental market and the regulatory processes and tools that align with your community’s goals, click here for a complimentary consultation, including a map of rentals, average nightly rates and more.
Appendix - Glossary of Terms

This section provides definitions for key terms used throughout the toolkit.

These definitions are intended to help consistently communicate key concepts and not as universal, absolute definitions. Every local government, in developing a STR regulatory and enforcement program, will need to choose their own set of STR specific definitions as well as those terms already used in existing laws.

**Bed and breakfast**: A private room, and often a private bathroom, is rented with guest access to common spaces (e.g., living room, kitchen) and typically includes some interaction between the operator and guest; for example, when the guest checks in or if breakfast is provided. The operator lives on the premises.

**Commercial short-term rental**: A short-term rental unit that is not in someone’s principal dwelling. Often identified by searching for “frequently rented entire home listings”.

**Commercial operator**: An operator of a short-term rental unit that is not someone’s principal dwelling; sometimes identified by searching for operators with two or more listings (see multi-listings).

**Dwelling unit**: A suite of rooms in a building suitable for residential occupancy by one or more people who normally live together that has a separate entrance, kitchen, and bathroom facilities.

**Guest**: Consumers of short-term rental services. Guests use platforms to search, reserve, and manage their bookings of STR accommodation. They pay the operator of the STR a platform service fee and, in some jurisdictions, applicable taxes if included in the booking (facilitated by operators or the platform).

**Host**: Provides accommodation to guests, lists their STR(s) on online platforms, sets the price, availability, and house rules (e.g., guest limits, quiet hours) and approves rentals. Hosts charge guests a nightly fee, optional additional fees like cleaning or accommodating extra people, and should charge applicable taxes. Hosts can either be individuals or businesses (e.g., property management firms) and are sometimes assisted by support services such as professional cleaners.

**Hotel**: An accommodation type where private rooms are rented that normally include a private bathroom, with some units including private kitchen facilities or other amenities. Hotels are purpose built for guest accommodation and located in commercial zones (e.g., downtown, along highway corridors).
**Listing:** Individual short-term rentals advertised on platforms. The advertisement should include the listing title, listing type (entire dwelling unit, private room, or shared room), description, operator name, number of bedrooms, availability, and prices.

**Listing type:** The type of unit identified in the listing, either an entire dwelling unit where the guest has complete and sole access to the entire dwelling unit during the stay, a private room where the guest has their own sleeping area but shares access to the dwelling unit’s common areas with others, or a shared room where the guest sleeps in an area shared with others, such as a sofa in a living room.

**Long-term rental:** A residential dwelling unit rented on a long-term basis by way of a tenancy agreement between a landlord and tenant that outlines a standard set of terms.

**Multi-listings:** A methodological term and concept used to help identify commercial STR operators and defined as STR operators who manage two or more entire home (dwelling unit) listings or three or more private room listings.

**Non-dwelling unit STR:** A STR unit that does not meet the full definition of a dwelling unit. Often seasonal in nature, these can include vans, boats, parking spaces, yurts, and campgrounds and represent a very small portion of total STR listings.

**Non-principal dwelling unit STR:** A STR unit that is not a principal dwelling unit; in this document, treated as synonymous with commercial STRs and sometimes identified by searching for “frequently rented entire home listings”.

**Platform:** An online matching and/or payment processing platform for transactions between STR operators and guests. Platforms maintain the websites and digital applications that facilitate the searching, listing, booking, and payments of STR services, which can include platform fees (charged to both operators and guests) and applicable taxes. In some cases, the platform will verify personal information through security checks and transaction protection.

**Principal dwelling unit:** The usual dwelling unit where an individual lives, makes their home and conducts their daily affairs, and receives mail; generally the dwelling unit with the residential address used on documentation related to billing, identification, taxation, and insurance purposes including income tax returns, driver’s licenses, vehicle registration, and utility bills. We treat this term as being synonymous with “principal residence” and is the site of true homesharing. An individual may only have one principal dwelling unit.

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5 https://bylaws.vancouver.ca/consolidated/12079.PDF
**Principal dwelling unit STR**: A STR unit that is (or is within) someone’s principal dwelling unit (principal residence.) This term is used in place of “principal residence STR” to help communicate that the STR is confined to the dwelling unit (i.e., it doesn't include other dwelling units on the same lot).

**Principal residence**: In this toolkit, we treat this term as synonymous with “principal dwelling unit” and is the site of true homesharing. An individual may only designate one dwelling unit as their principal residence.

**Principal resident**: The person who normally resides in a dwelling unit that is their principal dwelling unit (home).

**Short-term rental (“STR”)**: The rental of a dwelling unit or non-dwelling unit (or a room(s) within); characterized as occurring in any housing type (e.g., houses, secondary suites, carriage houses, garden suites, cabins, apartments, and condos) for a short period of time (e.g., less than a month), facilitated by online platforms (e.g., Airbnb) primarily utilized by visitors/tourists and often without in-person interaction.

**Short-term rental operator**: Often referred to as a host. STR operators provide accommodation to guests, list their STR(s) on online platforms, sets the price, availability, and house rules (e.g., guest limits, quiet hours) and approves rentals. They charge guests a nightly fee, optional additional fees (e.g., cleaning or accommodating extra people), and should charge applicable taxes. STR operators can either be individuals or businesses (e.g., property management firms) and are sometimes assisted by support services such as professional cleaners.

**True homesharing**: The STR of someone’s principal dwelling unit or room(s) within; synonymous with “principal dwelling unit STR”. True homesharing can take place while the principal resident is present or away (e.g., on vacation).

**Web scraping**: A process by which information is gathered and copied from the web for later retrieval and analysis. Web scraping can be conducted manually or using automated software.⁶

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Short-Term Rental Regulations:
A GUIDE FOR LOCAL GOVERNMENTS
About the National League of Cities
The National League of Cities (NLC) is the voice of America’s cities, towns and villages, representing more than 200 million people. NLC works to strengthen local leadership, influence federal policy and drive innovative solutions.

NLC’s Center for City Solutions provides research and analysis on key topics and trends important to cities, creative solutions to improve the quality of life in communities, inspiration and ideas for local officials to use in tackling tough issues, and opportunities for city leaders to connect with peers, share experiences and learn about innovative approaches in cities.

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Foreword

In recent years, short-term rentals have increased in cities, towns and villages across the United States. As a result of this growth, local leaders have had to grapple with competing benefits and challenges – in particular, how to ensure a healthy stock of affordable housing and how to support local tourism and economic development opportunities. One of the top priorities for city leaders today is to ensure that residents and visitors to their communities have access to safe, affordable lodging.

These competing priorities make passing regulations difficult, which is why it’s not surprising that short-term rentals have become a common topic of discussion among our members at the National League of Cities (NLC). Members faced with these challenges often ask us: “What tools are available to assist me with regulating short-term rentals in my community?”

This persistent question led NLC to research short-term rental regulations in cities across the country and ultimately produce Short-Term Rental Regulations: A Guide for Local Governments. Based on an analysis of 60 short-term rental ordinances, this action guide lays out a detailed overview of best practices for cities to develop and pass short-term rental regulations in their communities.

While no two municipalities face the same opportunities and challenges when it comes to regulating short-term rentals, this research provides insight into how to chart a path forward successfully. This guide recommends local leaders create and enforce firm and fair regulations by focusing on clear policy objectives, centering racial equity as a critical component in their planning and actively engaging with relevant stakeholders throughout the process.

Short-term rentals can open a swath of opportunity for homeowners looking to make additional dollars, while also providing economic development opportunities in neighborhoods that may not generally see high levels of tourism. By bringing community and industry leaders together, local leaders can create policies that work for both – and maximize the potential value of short-term rentals for hosts, guests and neighbors alike, all while protecting the affordability of neighborhoods.

While short-term rentals are a prominent issue today, this challenge is not a new one for local leaders. There are often difficulties that come with maximizing economic growth while protecting community interests. Mayors, councilmembers and other local elected officials are well-equipped to help bring stakeholders together to understand and navigate potential trade-offs.

Local leaders have an incredibly important role to play in capitalizing on the benefits of short-term rentals and minimizing potential negative impacts. I hope this resource will help your community make decisions about short-term rentals that are best for your residents.

Clarence E. Anthony
CEO AND EXECUTIVE DIRECTOR
National League of Cities
Introduction

THE RAPID GROWTH of short-term rentals in cities, towns and villages across the U.S. has caused much controversy. From contentious City Hall meetings where residents advocate for more stringent or more relaxed regulations to lengthy and expensive legal battles between cities and short-term rental platforms, cities can get caught in the cross-hairs of a complicated policy issue. Short-term rentals present no shortage of challenges for local leaders, as they can affect housing availability and affordability, local tourism and economic development, neighborhood wellbeing, and health and safety. However, many cities have learned important lessons in navigating these complex issues and offer some best practices for others to learn from.

Regulation of short-term rentals has proven to be an important and effective tool in making short-term rentals work for all parts of the community. Regulations that define what short-term rentals are and have appropriate mechanisms in place should intervention be necessary have helped city leaders steer the conversation toward solutions and meeting community needs. The purpose of regulating short-term rentals is not to be overly punitive or to prohibit them, but to put safeguards and appropriate enforcement mechanisms in place for when problems arise.

This Action Guide will not settle debates about the specific impacts of short-term rentals on each community. Instead, it aims to equip local leaders with appropriate information and tools to adopt or amend ordinances that serve their community best: policies that are equitable; that protect municipal interests such as health and safety and housing affordability; that preserve the residential quality of neighborhoods; and that enable responsible and eligible residents to earn some additional income.
Defining Short-Term Rentals

What is a Short-Term Rental?

In general, short-term rental (STR) refers to an activity in which one party, the “host,” agrees to rent out all or part of a home to another party, the “guest,” on a temporary, time-limited basis. The precise legal definition of a short-term rental varies by community. Most short-term rental ordinances include details on the following types of provisions that define short-term rentals for a particular community:

LOCATION AND USE: Where and how many short-term rentals are allowed

TIMING: How long short-term rentals can be rented for

MANNER OF RENTAL: Additional requirements for hosts and guests

What Can Communities Regulate?

Regulations vary, depending on the needs of the locality issuing them. In a community where vacant properties are a problem, regulations might focus on upkeep and oversight. In a community where housing stock is scarce, regulations might be put in place to limit the number of properties lost to residential rentals.

Generally, however, regulations include some combination of the following provisions:

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<tr>
<th>PROVISIONS</th>
<th>DETAILS</th>
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<tbody>
<tr>
<td>LOCATION AND USE</td>
<td>Geographic limits: Cities can decide to limit the availability of STRs in specific areas of cities, such as particular residential areas or neighborhoods with specific historic character.</td>
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<td>Commercial-residential distinctions: Cities can establish different rules for properties in residential and commercial areas to account for the different interests of communities in each of these areas.</td>
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<tr>
<td>TIMING</td>
<td>Primary residence requirements: Cities can require that the STR is occupied by the host for most of the year, and/or that the rental is in or part of the owner’s primary residence.</td>
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<td></td>
<td>Day limits: Cities can include provisions capping the number of days per year that hosts can rent their STR.</td>
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<tr>
<td>MANNER OF RENTAL</td>
<td>Registration and licensing: Cities can require hosts to register their properties with the city and can require rental platforms (e.g., Airbnb, Vrbo, etc.) to ensure that properties listed on their sites are properly registered.</td>
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<tr>
<td></td>
<td>Taxes: Cities can require that hosts pay transient occupancy taxes, which are taxes on what guests pay for temporary lodging in the city and are usually collected and remitted by hotels, motels and similar businesses. Cities can also work with STR platforms and other third-party providers to minimize the burden of tax remittance.</td>
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<td></td>
<td>Occupancy limits: Cities can limit the number of guests per stay, usually by establishing a guests-per-bedroom or per-property cap.</td>
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<td></td>
<td>Health and safety regulations: Cities can require STRs to have fire safety equipment and carbon monoxide detectors; display emergency information for guests; adopt measures to maintain a sanitary residence; and adopt plans for emergencies, among other requirements.</td>
</tr>
<tr>
<td></td>
<td>Noise and event regulations: Cities can restrict the use of STRs for large gatherings and events, and they may explicitly require that guests comply with existing noise, trash and parking ordinances.</td>
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The Issue

Short-term rentals are not a new concept. Companies like Vrbo, HomeAway, Couchsurfing and Craigslist have offered consumers short-term rental options since the late 1990s without much controversy. The meteoric growth of the short-term rental industry in the 2010s changed that. Companies like Airbnb, Vrbo, HomeAway and FlipKey grew in popularity while consumer appetite for more original, authentic and local experiences increased, driving demand higher.

As short-term rentals become more accessible to both hosts and users, use skyrocketed over a short period. But the meteoric success of short-term rental platforms has not been welcomed unreservedly. Common complaints are that short-term rentals can drive up local rents, limit the availability of long-term residential rentals, attract an influx of tourists and create excessive noise.

Local leaders attempting to chart the pathway forward for short-term rentals in their communities must respond to many competing interests, making passing regulations and balancing those interests difficult. Some of these issues that must be considered include:

Housing

The research is divided on whether short-term rentals contribute to the housing crisis. Regardless of whether the exact impact on the housing market is measurable, it is undeniable that many cities in the U.S. face a housing crisis — due to a shortage of affordable housing, steady decline in federal investment in low-income housing, wage growth stagnation, etc. — and that short-term rentals may contribute to housing unaffordability and unavailability.

Tourism

Short-term rentals outside of the typical tourism areas in cities can be a boon to local economies, spreading dollars across the cities in ways that traditional lodging accommodations do not. On the other hand, cities with high tourism rates face a greater share of the negative impacts of short-term rentals in communities. In high-tourism communities, large numbers of whole home rentals can affect neighborhood cohesion, as they may stand empty for weeks at a time or experience high turnover in guests.

Preemption

Preemptive state laws can limit cities’ ability to regulate short-term rentals. The impacts of preemptive laws can range from a complete inability to regulate, to restrictions on the kinds of regulations that can be imposed.

Public Health and Safety

Poorly regulated and unsupervised short-term rentals can threaten the safety of neighborhoods for residents and guests alike. Party houses have become a significant point of contention in some communities. Guests may ignore or be unaware of noise, trash and parking ordinances.

For myriad reasons — both within and outside of city control — cities may find it difficult to enforce the regulations they do have. Some ordinances are difficult for hosts and residents to understand and difficult for the city to enforce because they are overly complicated or poorly publicized. In other instances, cities may have no systematic way to identify hosts who are not in compliance or to keep track of what properties are being used for short-term rentals, and when. Understanding the most common barriers to effective regulation — unclear rules and lack of data — is key to making sound policy choices. Despite the limitations and challenges that city leaders face, local leaders can pass regulations that effectively balance competing interests, fit community needs, and most critically, are enforceable.
Recommendations: Short-Term Rental Regulations

This Action Guide will help local leaders break down the process of developing a short-term rental ordinance, provide relevant city examples and identify key tips. The following recommendations are a menu of policy principles and good practices that cities should explore when establishing or updating their regulations, based on research into short-term rental ordinances and policies across the country.

THE NATIONAL LEAGUE of Cities analyzed 60 short-term rental ordinances to inform this report across 30 indicators, including the legal definition of short-term rentals, regulations and enforcement. At least one city, town or village was selected in each state, with two cities, towns or villages selected for the top ten states by population (California, Texas, Florida, New York, Pennsylvania, Illinois, Ohio, Georgia, North Carolina and Michigan) to ensure that a diversity of local context was represented in the analysis.

The recommendation sections (Understand the Landscape, Develop and Pass Regulations, Enforcement, and Revisit and Adapt) are meant to build off each other and should therefore be executed in chronological order. They are detailed in the section below.

- **UNDERSTAND THE LANDSCAPE**
  - Gather Data
  - Engage a Diverse Group of Stakeholders
  - Identify Policy Goal(s)

- **DEVELOP AND PASS REGULATIONS**
  - Apply a Racial Equity Lens
  - Pass Regulations Early
  - Craft Simple Regulations
  - Institute a Permit Requirement
  - Determine Fines and Fees
  - Establish a Clear Taxing Model
  - Negotiate an Agreement with Platforms

- **ENFORCEMENT**
  - Dedicate Resources to Enforcement
  - Ensure Extensive Communication and Marketing
  - Move Registration and Administration Systems Online

- **REVISIT AND ADAPT**
  - Establish a Feedback Loop
UNDERSTAND THE LANDSCAPE

Before passing regulations, understand the local short-term rental landscape. This should involve extensive information gathering and thorough engagement with relevant stakeholders. Be mindful of what issues are associated with short-term rentals in your community to determine the goals your policy should meet.

GATHER DATA

While anecdotes are powerful, they are not a proxy for actual data to estimate the number and location of short-term rentals operating in a community. In some cases, data may be available through third-party platforms such as Inside Airbnb or AirDNA. Knowing approximately how many units may be on the market is critical to understanding the scope of the issue.

**KEY DATA POINTS INCLUDE:**
- How many short-term rentals are operating in your community?
- What is the breakdown between hosted room rentals vs. whole home rentals?
- Where are short-term rentals operating in your community?
- What neighborhoods are most affected?
- What is the average daily price of short-term rentals vs. hotels?
- What is the occupancy rate of short-term rentals vs. hotels?
- How much revenue are short-term rental properties generating vs. hotels?

Additional data sources that can help supplement short-term rental-specific data to develop a comprehensive picture of the local landscape can include tourism, housing and complaint data. Connect with local tourism boards to gather information such as how much money visitors are spending, where visitors are spending their money, where they are staying, where they are spending their time and how long they are staying. Leverage data sources such as the American Community Survey to understand the breakdown in renter vs. homeownership rates, vacancy rates and demographic information in different neighborhoods to contextualize short-term rentals in the broader housing landscape. Records of noise and nuisance complaints (e.g., through 311 calls or similar complaint or service request software) can also help cities understand where these complaints are filed and what they are.

ENGAGE A DIVERSE GROUP OF STAKEHOLDERS

Engage a network of stakeholders, including but not limited to tenants, landlords/homeowners, hotel and motel industry representatives, neighborhood organizations, housing advocates, tourism agencies and short-term rental platforms. This mix will look different for each city, but identifying relevant stakeholders will be key to understanding the challenges and opportunities each city faces.

Hold virtual or in-person town hall meetings, drop in on various group meetings (e.g., landlord associations, property owner groups, neighborhood associations, etc.) and solicit comments from members of the public to gauge the perceptions of short-term rentals directly from community members. Cities can, for example, work with neighborhood associations to map areas especially strained by short-term rentals or tourism. Residents have the closest ear to the ground. City leaders should leverage this knowledge to their advantage.

Cities have a lot to gain by partnering with platforms, but the relationship-building process can be contentious at times. These relationships are more likely to be positive when cities come to the discussion table with a clear goal in mind and communicate it with the platforms.

**POTENTIAL STAKEHOLDERS INCLUDE:**
- Motel and lodge union or association
- Hotels or hotel union or association
- Realtor groups or associations
- Restaurant associations
- City Council
- Local planning groups and organizations
- Existing short-term rental operators
- Platforms (e.g., Airbnb, Expedia, etc.)
- Neighborhood associations
- Housing advocates
- Tourism agencies
In 2018, the City of Fayetteville’s Sustainability Department worked with the University of Arkansas’ Public Policy Department to explore short-term rentals. The students leveraged data sources such as AirDNA to gather the following information:

- Active rentals
- Average booked properties
- Occupancy rate
- Average booking rate per night
- Average Airbnb private room price (Fayetteville)
- Average hotel room price (Fayetteville)
- Average Airbnb private room price (Downtown Fayetteville)
- Average hotel room price (Downtown Fayetteville)

Based on this information, the students generated maps of short-term rental locations in the Fayetteville area, noting a large concentration of Airbnb rentals in the downtown area. This analysis was presented to city staff and elected officials in December 2018 to inform their discussion on short-term rentals in Fayetteville.

While drafting its short-term rental ordinance, the City of San Diego engaged a wide variety of stakeholders including:

- Unite Here, a union for motel/lodges
- Neighborhood groups
- Hotel stakeholders, including the hotel/motel association
- Realtor groups and associations
- The restaurant association
- City Council
- Local planning boards and organizations
- Pre-existing STR operators
- Expedia Group and Airbnb

A staff member from the San Diego City Council conducted meetings with the stakeholders. The meeting format and length varied. The city representative sometimes met stakeholders individually or invited them to speak at public meetings. Those interested in engaging longer-term were invited to a permanent stakeholder group. The stakeholder group continues to provide input on short-term rental regulation implementation.

Compromise was eventually reached, most notably in the form of a memorandum of understanding (MOU) between Unite Here and Expedia Group. Through the MOU, these two major stakeholders with different perspectives agreed to partner to help regulate the short-term rental market. The MOU also laid the foundation for the regulations that the city would push forward when engaging with other stakeholder groups. Following this engagement process, the ordinance was presented to the public, Planning Commission, mayor and Coastal Commission. The city found that putting the time in to build relationships and establish trust between the municipality and short-term rental platforms was essential to the ordinance’s success. Further, going into the process with a clear goal, while being mindful of what compromises could be made, allowed the city to achieve buy-in from a diversity of stakeholders.
IDENTIFY POLICY GOAL(S)

Develop a clear and concise policy goal for the short-term rental ordinance, driven by the city’s overarching goals and community input. Review strategic city plans (e.g., comprehensive housing plans, 5- and 10-year city visions, master plans) and identify top city priorities that may dovetail with priorities for short-term rentals. For example, a city may have a broader goal to advance housing affordability and may choose to focus on preserving the stock of affordable housing as a policy goal. Or a city may have the broader goal to attract more tourism and choose to focus its regulations on enabling short-term rentals with appropriate guardrails in place as the tourism industry continues to grow.

CITIES should be intentional about setting a goal or priority before drafting regulations. Without a clear “end goal,” cities can pass regulations that may not align with community priorities, and do not have effective mechanisms to accomplish them. By deciding on a policy and community goal, cities can craft a simpler and more targeted ordinance.

Common goals, based on NLC’s analysis of 60 cities, include:

- Prevent the loss of rental housing stock
- Support tourism in a balanced way
- Combat displacement
- Preserve the residential quality of neighborhoods
- Ensure health and safety for guests and residents
- Balance the needs and rights of property owners and neighbors
- Allow economic gain for residents
- Capture tax revenue
- Slow or prevent the overgrowth of STRs
- Support tourism in a balanced way
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- Capture tax revenue
- Slow or prevent the overgrowth of STRs

KEY CONSIDERATION

Balance competing expectations. By their nature, short-term rentals can be a contentious issue, with strongly vested interests on all sides. Each stakeholder will have to make concessions from their vision of “ideal” regulations, so helping the community and STR platforms understand that compromise is needed is critical to setting realistic expectations. Having a clear policy goal will also help coalesce stakeholders around the city’s broader vision and help justify policy choices.

CITY SPOTLIGHT: CHARLESTON, SC

The City of Charleston began regulating short-term rentals in 2012, when it adopted regulations that allowed commercially zoned properties to be rented as short-term rentals in the Cannonborough Elliotborough neighborhood. The goal of the regulation was to bring reinvestment into vacant, abandoned and distressed properties in the neighborhood. In subsequent years, the city saw an increase in the number of short-term rental units in Cannonborough Elliotborough and throughout Charleston. With a growing number of short-term rentals and an incoming mayor interested in revisiting short-term rental regulations, the policy moved to the forefront of Charleston’s agenda again.

In 2016, the mayor and City Council began the process of updating short-term rental regulations by appointing a committee of local citizens to study and provide recommendations on short-term rentals. The committee included residents, representatives of the city’s preservation and historical societies, and tourism interests. Over time, a consensus was built around the goal to preserve the historic nature of downtown Charleston and allow short-term rentals to contribute to the local tourism economy, but only in such a way that did not alter the character of the city and negatively affect residents’ quality of life.

Based on this consensus, the city developed a category-based short-term rental permitting system that requires most short-term rentals to be owner-occupied, and details additional requirements for properties located in downtown Charleston or in properties listed with the National Register of Historic Places.
As the short-term rental industry continues to mature, it has become clear that complex regulations are not only cumbersome for hosts and residents of the city but are also unenforceable. Policies with clear goals, fair implementation and mechanisms for enforcement will help everyone.

**APPLY A RACIAL EQUITY LENS**

One of the most commonly cited benefits of short-term rentals is that they allow hosts to generate extra income from existing assets. While this may be true, hosting is most commonly available to those who own a home. Homeownership is inseparable from race and inequality in America. According to the latest estimates from the U.S. Census Bureau, the homeownership gap between White and Black households was 30 percent in 2020. According to NLC’s ordinance analysis, only 38 percent of cities surveyed specifically allowed tenants to host a short-term rental. Even then, cities that do explicitly state that tenants are allowed to host require them to acquire written consent from their landlords or have a rental contract that allows them to sublet their unit. Tenants face a high barrier to host even in the minority of cities that allow them to.

The ability of short-term rentals to democratize the tourism industry is overstated when a majority of Black, Indigenous and People of Color (BIPOC) do not have access to homeownership. Given the divide in homeownership in America, the direct economic benefit of short-term rentals may exacerbate existing inequality. There is also evidence that hosts may discriminate based on race and ethnicity. A 2017 study of Airbnb data found that “applications from guests with distinctively African-American names are 16 percent less likely to be accepted relative to identical guests with distinctively White names.” Airbnb has since made moves to fight bias and discrimination, including changing when guest pictures are shown to a host in the booking process. The city of Columbus, OH, passed a discrimination clause in its ordinance stipulating that “after administration expenses are met, any additional funds shall be placed in the city’s affordable housing fund.”

**KEY CONSIDERATION**

Recognize the role that short-term rentals play in exacerbating housing unaffordability. Consider dedicating some portion of STR permit or tax revenue towards affordable housing funds or homeownership opportunities, or earmarking general fund dollars for similar programs. Boulder, CO stipulates in its ordinance that “after administration expenses are met, any additional funds shall be placed in the city’s affordable housing fund.”

**PASS REGULATIONS EARLY**

The short-term rental industry is rapidly growing. Given the complexity of the policy and regulatory space, be proactive and establish regulations before short-term rentals have a negative impact on the community. Establishing regulations gives cities the power to intervene when necessary. It is much easier to limit the spread of short-term rentals before they have proliferated than it is to retroactively remove them from the market. Establishing regulations also becomes increasingly controversial as more stakeholders have a vested interest in seeing them maintained. Even cities that have not yet faced the negative impacts of short-term rentals should pass regulations to regulate the STR market before they proliferate.

**KEY CONSIDERATION**

A common hurdle that cities face is what to do with pre-existing short-term rentals once a new ordinance is passed. In 58 percent of the cities reviewed in the NLC ordinance analysis, cities required existing hosts to comply with regulations or apply for a permit or license. Cities must communicate early and clearly with existing hosts about their responsibilities under a newly passed or revised ordinance to give them time to meet new regulations.

**CRAFT SIMPLE REGULATIONS**

Craft simple ordinances that are clear about policy goals. This will better equip leaders to engage in conversation with platforms, residents, property owners and other stakeholders invested in the ordinance outcome. Below is a list of common goals found in the ordinance analysis, and key ordinance elements to achieve those goals.
## Policy Levers to Pull to Achieve Common Policy Goals

<table>
<thead>
<tr>
<th>POLICY GOAL</th>
<th>POLICY LEVERS</th>
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<tbody>
<tr>
<td><strong>PREVENT THE LOSS OF RENTAL HOUSING</strong></td>
<td>Adopt a permit requirement and institute a host residency requirement, which should prevent homeowners from renting properties solely as short-term rentals and prevent properties from being purchased for the sole purpose of operating as short-term rentals.</td>
</tr>
<tr>
<td><strong>SLOW OR PREVENT THE OVERGROWTH OF STRS</strong></td>
<td>Adopt a permit requirement and set a specific quota (number or percentage) on the number of short-term rental permits that will be distributed in a particular geographic area (e.g., neighborhood, census tract, ZIP code, etc.).</td>
</tr>
<tr>
<td><strong>COMBAT DISPLACEMENT</strong></td>
<td>Adopt a permit requirement and set a quota on the number of short-term rentals that are allowed to operate in a specific zoning district or neighborhood, particularly areas of the city that are at risk of, or are currently experiencing displacement pressure. Beware that such quotas can limit existing low-income homeowners’ ability to earn revenues from their homes. Therefore, consider how to equitably distribute permits.</td>
</tr>
<tr>
<td><strong>PRESERVE THE RESIDENTIAL QUALITY OF NEIGHBORHOODS</strong></td>
<td>Adopt a permit requirement and include a limit to the number of people that can stay in a short-term rental. This limit can be tied to the number of bedrooms in a short-term rental, or a total cap on the number that can stay in any type of property. A common limit that cities institute is two adults per bedroom.</td>
</tr>
<tr>
<td><strong>BALANCE THE NEEDS AND RIGHTS OF PROPERTY OWNERS AND NEIGHBORS</strong></td>
<td>Adopt a permit requirement and establish a process for revoking permits from properties in violation, such as a “three strikes” rule. If three verified complaints are filed within a certain time, the city can revoke a host’s permit.</td>
</tr>
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## Policy Goald

<table>
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<th>POLICY GOAL</th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>ENSURE HEALTH AND SAFETY OF GUESTS AND RESIDENTS</strong></td>
<td>Ensure the safety of guests and residents, including minimizing public safety risks and noise and trash complaints.</td>
</tr>
<tr>
<td><strong>CAPTURING TAX REVENUE</strong></td>
<td>Ensure that revenue is being collected.</td>
</tr>
<tr>
<td><strong>SUPPORT TOURISM IN A BALANCED WAY</strong></td>
<td>Tourism is a key component to many local economies and short-term rentals can play a role in facilitating tourism without impacting residents if done in a balanced way.</td>
</tr>
<tr>
<td><strong>ALLOW FOR ECONOMIC GAIN FOR RESIDENTS</strong></td>
<td>Short-term rentals can support wealth building for community members, although city leaders must pay attention to who is eligible to host.</td>
</tr>
</tbody>
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1 Adopt a permit requirement that requires each listing to include a local contact who can be reached at any time. Use this emergency contact if a complaint is filed. stipulate that if the registered contact is not responsive, the host’s permit risks being terminated.
2 Institute a permanent residency requirement. City leaders report that most complaints come from non-owner-occupied units. Hosts may be more invested in their property if they, too, call it home.
3 Require that short-term rental hosts provide their guests with a “Good Neighbor Guide” that summarizes all ordinances that guests are required to comply with during their stay (e.g., noise, trash, parking, etc.).
4 Require an inspection, or, if the city cannot carry out inspections, stipulate that the city has the right to inspect a property should sufficient suspicion arise that the property is not up to code.
5 Institute a process for revoking permits from properties in violation, such as a “three strikes” rule. If three verified complaints are filed within a certain time, the city can revoke a host’s permit.
6 Ensure that revenue is being collected. If done in a balanced way.
7 Ensure that revenue is being collected.
8 Make it easier to identify whether hosts are complying and paying the appropriate taxes. Use permit and tax revenue to either hire additional staff or a third-party provider to help monitor compliance.
9 Reach an agreement with platforms that requires them to automatically collect and remit taxes back to the city. Be wary of the transparency of the tax remittance process and ensure that the city’s enforcement powers are not stifled.
10 Adopt a permit requirement that will make it easier to identify whether hosts are complying and paying the appropriate taxes. Use permit and tax revenue to either hire additional staff or a third-party provider to help monitor compliance.
11 Ensure the safety of guests and residents, including minimizing public safety risks and noise and trash complaints.
12 Adapting a formal permit requirement will not deter hosts from participating, so long as the permitting process is not overly cumbersome. Encourage the permit fees are reasonable and tied to the cost of administering the permit program.
**INSTITUTE A PERMIT REQUIREMENT**

Enforceable short-term rental ordinances require owners who want to host short-term rentals to acquire a permit before renting. In general, a permit requirement allows local governments to create and maintain a database of units and contact information for properties that are operating as short-term rentals. The information provided in an application is key to enforcing the ordinance, allowing the city to have a point of contact to check in with when a property is not in compliance. Without information on who is operating short-term rentals, cities are effectively rendered helpless in enforcing their regulations. Having an active database of short-term rentals in operation is key to moving from a reactive to a proactive approach to enforcement.

To ensure that hosts are acquiring permits, the city must have a mechanism to check to ensure compliance. Some cities, like San Francisco, have negotiated agreements with platforms that require the platform to put a permit number on the host listing. In other cases, cities have hired third-party platforms to aid their enforcement efforts. The City of Nashville, TN, uses Granicus’s Host Compliance, a short-term rental compliance monitoring platform, to support enforcement efforts. According to Nashville officials, the Code Department was struggling to enforce its regulations when they were relying on a complaint-based process. The city was manually identifying STR addresses. With more than 60 active rental websites and private addresses and contact information, it proved to be too herculean an effort to maintain. Host Compliance’s online portal enables the city to identify illegal operators before there is a complaint, moving from reactive to proactive enforcement. Since implementing Host Compliance, Nashville has more than doubled its compliance rate to 91 percent.

**DETERMINE FINES AND FEES**

Many cities adopt fine structures to incentivize compliance by short-term rental hosts. According to NLC’s analysis, fines range from $200 a day to $2,000 per violation, which may escalate each day. Beyond deciding the fine structure, cities must have adequate staff and resources to identify hosts who are not in compliance and communicate to hosts how to stay in compliance and avoid violations.

Fines should be proportionate to or more than the economic gains that potential violators can realize from breaking the rules, and should escalate for repeat violators, including the threat of revocation of a permit or license. Host Compliance offers the following fines and fees schedule for cities to consider:

<table>
<thead>
<tr>
<th>Example Fine Schedule</th>
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<table>
<thead>
<tr>
<th>1st violation</th>
<th>2nd violation</th>
<th>3rd violation</th>
<th>4th or subsequent violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>$200 per day</td>
<td>$400 per day</td>
<td>$650 per day</td>
<td>Upon the fourth or subsequent violation in any twenty-four month period, the local government may suspend or revoke any permit. The suspension or revocation can be appealed.</td>
</tr>
<tr>
<td>$250 per day</td>
<td>$500 per day</td>
<td>$750 per day</td>
<td></td>
</tr>
</tbody>
</table>

Notes:

a. Any person found to be in violation of this regulation in a civil case brought by a law enforcement agency shall be ordered to reimburse the local government and other participating law enforcement agencies their full investigative costs, pay all back-taxed taxes, and remit all illegally obtained short-term rental revenue proceeds to the local government.

b. Any unpaid fine will be subject to interest from the date on which the fine became due and payable to the local government until the date of payment.

c. The remedies provided for in this fine schedule are in addition to, and not in lieu of, all other legal remedies, criminal or civil, which may be pursued by the local government to address any violation or other public nuisance.

Source: Host Compliance
The Village of Lake Placid collaborated with its justice court to define a short-term rental fine structure based on other successful cases. Lake Placid’s short-term rental fines range from $350 to $1,000 for the first violation plus the costs that the village has incurred for enforcement (e.g., staff time and attorney fees). Each week that the violation is not remedied constitutes a separate offense. The second violation that occurs within five years will incur a fine of between $1,000 and $3,000. Short-term rental violations can be appealed within 30 days to the joint Town of North Elba/Village of Lake Placid Short-Term Rental Appeals Board by either the short-term rental property owner or the complainant. In most cases, hosts do not intentionally violate regulations, and disputes are often settled without the host incurring a fine.

**Establish a Clear Taxing Model**

Be mindful that there are multiple ways to capture revenue. In most cases, the owner/host is responsible for remitting taxes back to the city; however, several cities are trying to move the collection burden from hosts to the platforms. According to NLC’s analysis, 82 percent of surveyed cities require the host to remit taxes directly to the city, while just 5 percent require the platform to collect and remit taxes on their behalf.

Cities like Annapolis, MD, and Charleston, SC, require platforms to remit taxes back to the city on behalf of hosts, automatically collecting tax revenue from a booking when it is made. While it may be easier for cities to require platforms to remit taxes, beware that there is some ongoing controversy around whether cities get back all the taxes they are owed. Several cities in South Carolina, including Charleston, are suing platforms, alleging that they are not remitting full taxes.

In addition to the transient occupancy tax, some city councils may add an additional tax or surcharge on short-term rentals. For example, Chicago, IL, passed a 4 percent surcharge in 2016 and another 2 percent surcharge in 2018. The surcharge funds supportive homelessness services and enforcement of the ordinance.

**Key Consideration**

Be mindful of how difficult it may be for hosts to remit taxes to the city. If a host has to remit taxes directly, consider how to make that process as simple and streamlined as possible. This not only makes it easier for hosts but ensures that the city is capturing more of the tax revenue it is owed. Include clear and concise instructions on how to remit taxes on the city’s webpage and a user-friendly platform to make payments. Consider sending notifications to all short-term rental hosts about upcoming tax payments.
NEGOTIATE AN AGREEMENT WITH PLATFORMS

Cities have had varying success in building helpful agreements with platforms. Cities have a lot to gain by partnering with platforms; however, the relationship-building process can be contentious at times. These relationships are more likely to be positive when cities come to the discussion table with a clear goal in mind and communicate it with platforms. Cities may have the opportunity to negotiate agreements with platforms, such as voluntary collection agreements (VCAs) or memorandums of understanding (MOUs).

Voluntary Collection Agreements

A Voluntary Collection Agreement (VCA) typically involves a short-term rental platform agreeing to collect and remit transient occupancy taxes on behalf of its hosts. Agreements generally allow local governments to audit the platform, rather than the operator, but do not allow local governments to access information that could identify operators outside of the terms of the agreement.

Many short-term rental platforms have agreements with local governments. As of March 2019, Airbnb had more than 350 VCAs with state and local governments in the U.S.\(^{17}\) While VCAs allows local governments to receive a steady stream of transient occupancy taxes, officials in several states have expressed concerns that these agreements allow platforms to remit less to governments than they owe, a problem compounded by VCA provisions that hinder tax authorities’ ability to audit platforms.\(^{16}\) See the Appendix for more information on VCAs.

Memorandum of Understanding

A memorandum of understanding (MOU) typically focuses on issues such as disclosing data, posting property registration numbers and removing illegal listings. Be aware that an MOU can include provisions that limit cities’ enforcement power or create additional duties for cities. For example, in its draft MOU with the City of Denver, Airbnb included provisions that would have made the MOU confidential and require the city to resort to arbitration to resolve disputes. Together, these provisions would have limited transparency and hampered the city's ability to use the courts for its enforcement actions. Denver rejected the draft.\(^{19}\)

MOUs may create additional duties for cities, such as when an MOU requires a platform to take down listings for unregistered properties but places the burden on cities to inform the platform about suspicious properties — a resource-intensive task. Cities may attempt to shift some of these burdens onto the platform. In one settlement with New York City, Airbnb agreed to automatically provide information for certain listings that met specific criteria.\(^{20}\) In the City of Portland, OR’s MOU with Airbnb, the two parties share duties: Airbnb is responsible for regularly reporting data about hosts and properties, and Portland is responsible for using the information it receives to verify that hosts have properly registered.\(^{21}\)

KEY CONSIDERATION

Approach negotiated agreements well informed and with a clear policy goal in mind. Because VCAs and MOUs tend to be offered with standard language and provisions that benefit platforms and hinder city oversight efforts, cities should be prepared to analyze the agreements and decide whether and how to negotiate more favorable conditions.
ENFORCEMENT

The purpose of regulations should not just be to capture additional revenue but to minimize and mitigate the negative side effects associated with the uncontrolled growth of short-term rentals. Cities need to move away from reactive to proactive enforcement when possible. Effective enforcement is key to an ordinance's success. Without regulations that clearly define what a short-term rental is, a database of units being operated, and contact information for those units, cities are effectively rendered helpless in enforcing their regulations.

DEDICATE RESOURCES TO ENFORCEMENT

Dedicated resources, time, staff and money are necessary for successful enforcement. Short-term rental regulation enforcement can be revenue neutral or positive for municipalities when license, permit and tax revenue offsets costs.\(^22\) In some cases, cities can also leverage existing resources such as 311 service to take in short-term rental complaints.

Some examples of key enforcement components that require dedicated resources include:

- Hiring additional code enforcement officers to identify and flag repeat offenders
- Hiring a third-party platform to help with data collection and enforcement
- Hiring a web developer to create a “one-stop-shop” website for STR hosts and residents
- Hiring additional staff to set up and service a complaint hotline
- Instituting (re)inspections for violating properties

CITY SPOTLIGHT: COLUMBUS, OH

The most recent ordinance amendment in the City of Columbus allows the licensing department to deny, revoke or suspend a permit if there are three or more emergency calls made on a specific property in the previous 12 months (i.e., “three-call rule”). To help facilitate this system, the city’s technology department created an internal database that connects the 311 service with the city’s computer-aided dispatch software to allow enforcement to search the address on the map and know what type of emergency service was requested. City staff reference this database when an application is made or when a complaint about a property is filed. This allows the city to identify properties that have violated the ordinance or have passed the “three-call rule.”
ENSURE EXTENSIVE COMMUNICATION AND MARKETING

Transparent and clear communication and marketing are critical to the success of an ordinance. Clear communication will support the ordinance’s success (e.g., hosts, guests and residents know what the rules and regulations are) and is key to preventing community backlash when an ordinance is established or revisited.

Consistent contact with landlord associations and property owner groups allows the city to convey to hosts how to remain in compliance. This may be an opportunity to develop relationships with trusted voices in key groups who can serve as a liaison with the broader community and as a spokesperson for good hosting etiquette.

Regular contact with residents means that cities can convey the best way to file nuisance and safety complaints should there be a violation at a short-term rental. This helps communities feel like they have a trusted partner in the city to ensure community safety.

KEY CONSIDERATION

Consider hiring or assigning specific city staff to be liaisons with the community. Doing so may help establish trust among hosts, residents and the city, making room for more constructive conversations should something go awry. In addition, developing relationships with specific community members (e.g., hosts or residents) can help broaden the city’s reach into the community. For example, hosts who have good relationships with the city can promote good hosting etiquette in the community.

MOVE REGISTRATION AND ADMINISTRATION SYSTEMS ONLINE

To the extent possible, cities should limit the administrative burden on city staff and platform users. Moving registration or licensing systems online (while keeping the paper application option open) makes the process more seamless for hosts and less cumbersome for city staff who process those applications.

Beyond moving the registration or licensing system online, consider launching a centralized, accessible and easy-to-use webpage with all relevant short-term rental information. One common complaint that cities receive is that short-term rental regulations are difficult to understand. In most cases, it is not that the regulations themselves are too complex; but that regulations are not transparent and explained in an accessible way. Launching a webpage that is regularly updated keeps the community informed. According to a recent 2022 report and survey from Rent Responsibly and the College of Charleston, 49 percent of surveyed short-term rental hosts got information from government websites about local regulations that affect short-term rentals. Furthermore, this webpage can serve as a resource for city staff who are not experts on short-term rentals but may be required to liaise with the public about them.
CITY SPOTLIGHT: HENDERSON, NV

The City of Henderson set up an easily navigable webpage with information on short-term rentals, including application materials and answers to frequently asked questions. This webpage serves as a “one-stop-shop” for hosts, residents and staff. The short-term rental webpage has the second-highest number of hits on the Henderson website.

On the webpage hosts can:
- Find the most up-to-date short-term rental ordinance and state laws that apply to short-term rentals
- Register their short-term rental
- Find city contact information to support them through the registration process
- Find clear lists on how to apply and what documents are needed
- Find application forms that are easy to download or file online
- Renew their short-term rental registration
- Pay their transient lodging tax and fees
- Find tax forms that are easy to download

On the webpage residents can:
- Find relevant short-term rental regulations, including the city ordinance and state laws that apply to short-term rentals
- Locate the complaint phone hotline to report any illegal short-term rental or to file noise, trash, parking, occupancy or other nuisance complaints
- Access the complaint website to submit a complaint online

REVISIT AND ADAPT

The short-term rental market is consistently in flux, meaning regulations may have to change to meet the market and evolving community needs. Regularly revisit your ordinance to ensure that it still has the right balance of competing expectations and alignment with city goals.

ESTABLISH A FEEDBACK LOOP

Particularly when first passing an ordinance, be intentional about setting metrics of success that align with policy goals. These qualitative and quantitative policy goal-aligned metrics will determine how performance is evaluated. Setting a dedicated evaluation period following the passage of a short-term rental ordinance will allow for better evaluation and help generate ideas of how to improve an ordinance. Make sure the public and the hosts understand that the regulation may change at the end of the evaluation period.

Build in a recurring check-in with relevant stakeholders to determine whether the short-term rental ordinance is meeting the city’s originally stated goal, and if not, what needs to be adjusted. This is where the feedback loop is particularly important. Keep an open line of communication with relevant stakeholders (e.g., landlord associations, property owners, residents, housing advocates, community groups, hotels, tourism agencies, etc.) to better understand how the implementation of the ordinance is playing out.

In Fayetteville, AR, the city authorizes a 20-month sunset clause in its ordinance, allowing city leaders to conduct regular review and reauthorization of the ordinance. Some adjustments have been made following these regular review periods, including increasing the occupancy tax rate to better fund the cost of enforcement, adjusting the cap on the number of short-term rentals allowed in the community and requiring a unit inspection.

KEY CONSIDERATION

If there is a recurring evaluation period for the ordinance, tell the community early on. Transparency is key to making sure hosts and residents know that regulations may change in the future. This may limit the potential backlash of changing regulations after passing them.
Conclusion

SHORT-TERM RENTALS ARE here to stay and, when regulated with care and the proper safeguards in place, can be integrated into the fabric of a community. STRs can enhance tourism, stimulate economic growth in targeted neighborhoods and give residents a way to supplement their income, but can also exacerbate racial inequity, put pressures on affordable housing and disrupt neighborhoods. With proper regulation, cities can enjoy the benefits of STRs and limit their negative impacts.

Regulating short-term rentals is not about limiting their potential, but about enacting the appropriate mechanisms to keep competing priorities and interests balanced. As cities consider regulations to address short-term rentals in their communities, it is important that they act promptly, remain focused on a clear policy objective, consider racial equity, actively engage with relevant stakeholders, develop and enforce clear regulations, and provide continuous review of ordinances. The resources found in this Action Guide can help our communities find the proper balance to effectively support and regulate this growing industry.
## Appendix

### Voluntary Collection Agreements (VCAs)

<table>
<thead>
<tr>
<th>COMMON PROVISIONS</th>
<th>THINGS TO WATCH OUT FOR</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>COLLECTION AND REMITTANCE</strong></td>
<td>Without this provision, the platform may refuse to collect the tax, arguing that hosts are responsible for collection. Even with the provision, some platforms have been accused of under delivering taxes remitted to cities.</td>
</tr>
<tr>
<td><strong>REPORTING AGGREGATE INFORMATION</strong></td>
<td>Platforms agree to collect transient occupancy taxes from guests and remit the amount collected to the government taxing authority.</td>
</tr>
<tr>
<td><strong>DETERMINING LIABILITY FOR TAXES</strong></td>
<td>The platform agrees “reasonably to report aggregate information” related to its collection and remittance of transient occupancy taxes to the taxing authority.</td>
</tr>
<tr>
<td><strong>WAIVER OF LOOK-BACK</strong></td>
<td>The platform agrees to be held legally responsible for failure to report, collect or remit the transient occupancy taxes, and the taxing authority agrees not to hold individual hosts responsible for reporting, collecting or remitting taxes on their property.</td>
</tr>
<tr>
<td><strong>NOTIFICATION TO HOSTS AND RENTERS</strong></td>
<td>The platform agrees to notify hosts and renters that it will be collecting and remitting transient occupancy taxes for their transactions.</td>
</tr>
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</table>

### Things to Watch Out For

<table>
<thead>
<tr>
<th>COMMON PROVISIONS</th>
<th>THINGS TO WATCH OUT FOR</th>
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<tbody>
<tr>
<td><strong>AUDITING</strong></td>
<td>The tax authority agrees to audit the platform on the basis of its tax returns and supporting documentation, rather than on audits of individual renters or hosts. Some VCAs also state that the tax authority cannot audit individual renters or hosts until it has finished auditing the platform and a tax issue remains unresolved. All transaction and tax data reviewed by a city tax authority must be anonymized. If the city suspects wrongdoing on the part of a specific host, it must first audit the anonymous data, then pick out suspicious transactions, and then finally obtain a subpoena to get identifiable data from the platform. The tax authority agrees to limit the number of times it will audit the platform (e.g., to only audit the platform once every two years, and to only audit transactions conducted over a 12-month stretch.)</td>
</tr>
<tr>
<td><strong>This may limit the tax authority’s access to data and ability to audit individual hosts and affect city efforts to enforce home-sharing laws. Cities such as Culver City, CA, have negotiated alternative provisions ensuring that they can continue to audit individual hosts if they receive information about the property’s violations from another source.</strong> Anonymized data may mean that cities can only use aggregate information, which prevents cities from investigating individual cases of violation. For example, Snowmass, CO, states that it will audit “on an anonymous numbered account basis,” suggesting that disaggregation is not required. Cities can also suggest alternative kinds of privacy protection that allow for individualized reports, such as pseudonymizing information. VCAs typically provide that all information about hosts and guests will remain anonymous unless the city has completed an audit of the platform and served the platform with a subpoena or similar legal process. Cities may want to negotiate changes to this provision to allow them to ensure that properties are registered. For example, if cities have already passed ordinances requiring registration, their audits might request information about the registration number. Cities can negotiate limits on audit frequency to allow for more frequent and tailored enforcement efforts. For instance, the audit frequency in Pacific Grove, CA, is once every 36 months; although this period may still be too long for many cities to effectively audit home-sharing, it does indicate that VCAs’ time provisions can vary.</td>
<td></td>
</tr>
</tbody>
</table>

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Endnotes


City of Palo Alto
City Council
Supplemental Report

Meeting Date: 12/12/2022
Report Type: Consent Calendar

Title: Supplemental Report Item - GreenWaste Contract Domestic Recycling Amendment

From: City Manager

Lead Department: Public Works

Following the publication of the report for Item #4 on domestic recycling, NBCNews.com published an article titled “This California city asked where its recycling went. The answer wasn’t pretty.”

The article describes Palo Alto’s efforts to track recyclables sent overseas, to collaborate with other interested cities, and to shift to domestic markets for recyclables. It was written by Saqib Rahim, a freelance reporter based in Southeast Asia, following an interview with City staff about the Council’s leadership on the topic of international recycling markets in Spring 2022.

A pdf copy of the article is included as Attachment A. The article is also available at the following link: https://www.nbcnews.com/news/us-news/palo-alto-recycling-asia-garbage-waste-rcna58633

Attachments:
- Attachment13.a: Article: This California city asked where its recycling went. The answer wasn’t pretty._
This California city asked where its recycling went. The answer wasn’t pretty.

Palo Alto found that some 60% of its recyclables got shipped abroad, with little transparency as to their fate.

U.S. recyclables are often shipped abroad, mainly to Asia, with next to no transparency about their fate.

By Saqib Rahim

Four years ago, city officials in Palo Alto, California, posed what they thought was a straightforward question: Where did their recycling go?
Concerned citizens had seen dire headlines about plastic dumping in Southeast Asia, and they wanted to know if their waste contributed.

But the city’s investigations have not offered much clarity. Palo Alto’s best reckoning, today, is that about 40% of its recyclable material stays in North America, where it’s supposed to be processed according to strict environmental and labor standards. The other roughly 60% goes abroad, mainly to Asia, with next to no transparency about its fate.

Experts say cities and towns across the United States would probably have similar difficulty in determining how much of their recyclables are actually recycled.

“If you keep stuff out of landfill but just dump it in Laos, that’s not achieving a good goal,” said Martin Bourque of the Ecology Center in Berkeley, California, a group that advised Palo Alto in its pursuit of transparency. “That’s not what the whole idea was of recycling.”

The main obstacle that Palo Alto encountered was that the half-dozen companies that trade the city’s recyclables on world markets declined to name their trading partners, citing business reasons.

Unable to force disclosure, Palo Alto city staff concluded they are stuck.

“It is not possible to definitively determine whether the materials are being recycled properly or whether they may be causing environmental or social problems,” they wrote in a report published this year.

**Driven underground**

The lack of transparency globally has concerned some law enforcement officials, who fear that recently tightened international rules on the plastic trade have driven parts of the business underground.
In 2020, international police organization Interpol said it had noticed coordinated efforts to export plastic, particularly to Southeast Asia, in violation of national laws.

But investigators still struggle to track suspicious shipments, said Ioana Cotutiu, a project coordinator with the United Nations Office on Drugs and Crime who works on the trade in illegal waste.

“Very often there are a lot of intermediaries and we’re losing track of the waste,” she said in a webinar this year. “Once it reaches the destination country, we don’t know what happens after.”

The global recycling trade dates back at least 30 years, enabling rich countries like the U.S. to keep the cost of recycling lower for consumers by outsourcing some of it to developing countries.
In recent years the global plastic trade has shrunk amid new controls by rich and developing countries alike. U.S. plastic waste exports to Asia fell to 330 million pounds in 2021, according to government data, half their 2017 level.

But even these reduced volumes, environmental groups charge, can overwhelm developing countries that lack the facilities to manage them. Asia is a key danger zone: According to a World Bank estimate, only about 9% of waste in the East Asia and Pacific region gets recycled.

The balance goes to landfills and incinerators or into nature, with local and global consequences.

“Some in Laos see the imported waste as an opportunity,” said Serge Doussant, head of Green Vientiane, an advocacy group in the Laotian capital. “But Laos doesn’t have the necessary factories to treat the amount of plastic waste coming from wealthy countries.”

At one informal dump site in Vientiane, discarded water bottles, shredded plastic bags and shards of styrofoam were strewn across a 50-foot stretch of the bank of the Mekong River.

According to the World Bank, this is one of 149 known informal dump sites in Laos. Such sites can leach plastics into the 2,500-mile Mekong and – as it travels downriver through several other countries – into the sea. Research suggests countries in Southeast Asia rank among the top global sources of ocean plastic.

**Waste management around the world**

Many developing countries lack the facilities to properly dispose of waste, which includes recycling imported from the United States.

<table>
<thead>
<tr>
<th>Waste Management Method</th>
<th>South Asia</th>
<th>Sub-Saharan Africa</th>
<th>Middle East and North Africa</th>
<th>Latin America and Caribbean</th>
<th>Europe and Central Asia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open dump</td>
<td>75.0%</td>
<td>66.0%</td>
<td>52.7%</td>
<td>26.8%</td>
<td>54.2%</td>
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<tr>
<td>Landfill</td>
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<tr>
<td>Recycling</td>
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<tr>
<td>Composting</td>
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<tr>
<td>Incineration</td>
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</tbody>
</table>
That issue came into focus in 2017, when China, which had long absorbed about half of plastic scrap traded worldwide, effectively banned all imports.

Imports to Southeast Asia surged the following year: more than tripling in Malaysia, doubling in Vietnam and growing nearly tenfold in Thailand, according to a report last year by the Global Initiative Against Transnational Organized Crime.

The reception was mixed. In China’s exit, business and political elites in other countries saw opportunities to establish a new “green” industry in plastics recycling.

But environmental campaigners have also documented disastrous side effects: mountains of abandoned trash set aflame, dozens of bootleg recycling operations, and evidence of toxins in local soil and food.

**Pursuing transparency – and hitting a wall**

The headlines out of Southeast Asia stirred consciences in Palo Alto.
Concerned residents asked the city to require their trash hauler, GreenWaste, to annually report how and where their recycling was handled.

The city agreed, and GreenWaste complied. But as GreenWaste’s reports show, it could not establish full traceability.

A key reason, Palo Alto officials said, is that GreenWaste conducts some recycling through middlemen called brokers.

Brokers do not recycle goods, but instead buy and sell them like commodities. Industry participants say they play an important role in linking waste collectors, like GreenWaste, with recycling factories around the world.

But when GreenWaste asked its brokers to specify where and with whom they did business, they balked.

Revealing those relationships would show competitors his company’s cost structure “and how to compete against us,” said William Winchester, chief operations officer for Los Angeles-based Berg Mill, one of the companies that buys materials from GreenWaste.

“I understand their desire for transparency. But let me frame it differently. Should KFC reveal their original chicken recipe? Should Ben & Jerry’s tell us the secret sauce of how they make their ice cream?” he said. “It’s not a cover-up. It’s about protecting our relationships and how we get things done.”

Reshoring recycling

Palo Alto officials said they’ve taken two lessons from this saga.

First, they want to recycle more in the U.S. In May, city staff asked to divert some of Palo Alto’s waste streams to facilities in Louisiana and Southern California. The move would bump the city’s domestic recycling rate to about 60%, they said.

If made permanent, staff said, the change could increase the average citizen’s recycling bill by about $33 a year.

The second lesson, City Manager Ed Shikada said, is that Palo Alto can’t transform the global recycling system alone.
In March the city began talks with other interested California cities to discuss possible reforms at the local or state levels.

The group includes San Jose, the largest city in the San Francisco Bay Area, and about a dozen other Northern California municipalities.

Shikada said they might seek to expand recycling capacity in California, for instance, or ask lawmakers to impose new transparency requirements on companies that export recyclable goods.

Winchester, of Berg Mill, said he attended a recent meeting but came away disappointed.

He said it felt like a missed opportunity to finally grapple with the “big societal questions” – the trade-offs – that come with recycling.

One question he thinks about: Shouldn’t developing countries get to decide, for themselves, how to balance environmental goals with economic gains – as China and the U.S. once did?

“If we want to say no waste gets exported, and it all has to get done here, not a bad concept, it’s just going to raise the cost a lot,” he said. “It goes back to what do we want as citizens? What do we really care about that we’re really ready to participate in with our money and time?”

Saqib Rahim

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Who Are The Top 10 Attorneys in Palo Alto
Title: Housing and Community Development. Environmental Assessment: Exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines sections 15061(b)(3), 15301, 15302 and 15305. Planning and Transportation Commission Recommended Approval of the Ordinance.

From: City Manager

Lead Department: City Attorney

The purpose of the supplemental report is to transmit a corrected ordinance. Here is some text for the body of the report:

Following publication of the staff report and draft ordinance for Item 10 on the City Council’s December 12 agenda, staff identified one error and one omission from the draft ordinance. These are corrected in the ordinance attached to this supplemental memo. The corrections are as follows:

1. Delete proposed footnote 7 from Table 1 in PAMC Section 18.09.030. This footnote was added in response to recent state ADU legislation; however upon further review, staff found that the height regulations stated in the footnote are not applicable to the types of attached ADUs regulated in PAMC Section 18.09.030. Footnotes 5 and 6 remain because they pertain to detached ADUs.

2. Add a clarifying phrase to footnote 2 of Table 1 in PAMC Section 18.09.030. In discussing the regulations that apply to attached ADUs under PAMC 18.09.030, staff identified confusion regarding the analysis of floor area for newly constructed, attached ADUs built within the proposed space of a single family home. The proposed change clarifies that the “proposed space of a single family home,” means space that falls within the buildable envelope, including FAR, of a primary single family dwelling.

Neither of these changes affects the scope of the agenda item and both are consistent with the purpose of this ordinance to bring the City's ADU regulations into compliance with new ADU legislation and to clarify and update the code consistent with those areas where staff received clear direction from the California Department of Housing and Community Development.

Attachments:
• **Attachment 14.a:** Attachment A - Ordinance Amending Title 18 of the PAMC to Amend Requirements Relating to Accessory Dwelling Units and Junior Accessory Dwelling Units
Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Amending Title 18 (Zoning) of the Palo Alto Municipal Code to Amend Requirements Relating to Accessory Dwelling Units and Junior Accessory Dwelling Units

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

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

A. Housing in California is increasingly unaffordable. In 2017, the average California home cost about 2.5 times the national average home price and the monthly rent was 50% higher than the rest of the nation. Rents in San Francisco, San Jose, Oakland, and Los Angeles are among the top 10 most unaffordable in the nation.

B. Housing in Palo Alto is especially unaffordable. The average Palo Alto home currently costs about 8 times the national average home price and the monthly rent is about 2.5 times the national average.

C. Palo Alto has a jobs/housing imbalance. When addressing this imbalance, the City must not only provide housing but also ensure affordability.

D. Assembly Bill (“AB”) 2221 and Senate Bill (“SB”) 897 (“State ADU Law”) pertain to accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”) and were approved by the California Legislature in 2022 and signed by the Governor on September 30, 2022. These bills, codified primarily in California Government Code sections 65952.2 and 65952.22, are intended to spur the creation of lower cost housing by easing regulatory barriers to the creation of ADUs and JADUs. The City adopted Ordinance 5507 (now Palo Alto Municipal Code Chapter 18.09), which brought the City’s municipal code into conformance with state laws AB 68, 587, 671 and 881, and SB 13.

- **SB 897** allows two-story ADUs in some places, prevents local governments from posting unnecessary notices, and prevents a local government from changing the Group R occupancy status as that relates to building codes, among other important changes.
- **AB 2221** adds front setbacks to the list of standards that must give way to permit an 800sf ADU, establishes a 60-day timeline for complete review of ADUs that are denied, and makes other important changes.

E. This ordinance is adopted to incorporate changes in state law that have occurred since the adoption of Ordinance 5507, respond to comments the City has received from the California Department of Housing and Community Development regarding its ADU regulations, respond to additional policies advocated by members of the
public, and issues staff has noticed when reviewing permits. This ordinance is also adopted to establish a program for deed-restricted affordable ADU/JADUs.

**SECTION 2.** Chapter 18.09 (Accessory Dwelling Units and Junior Accessory Dwelling Units) of Title 18 (Zoning) of the Palo Alto Municipal Code (“PAMC”) is amended to read as follows (additions underlined and deletions struck through):

**18.09.010 Purpose**

The intent of this Chapter is to provide regulations to accommodate accessory and junior accessory dwelling units (ADU/JADU), in order to provide for variety to the city's housing stock and additional affordable housing opportunities. These units shall be separate, self-contained living units, with separate entrances from the main residence, whether attached or detached. The standards below are provided to minimize the impacts of units on nearby residents and throughout the city, and to assure that the size and location of such dwellings is compatible with the existing or proposed residence(s) on the site and with other structures in the area.

**18.09.020 Applicable Zoning Districts**

The establishment of an accessory dwelling unit is permitted in zoning districts when single-family or multi-family residential is a permitted land use. The development of a single-family home, ADU, and/or a JADU on a lot that allows for single-family development shall not be considered a multifamily development pursuant to PAMC Section 18.04.030, nor shall they require Architectural Review pursuant to other sections of Chapter 18.

**18.09.030 Units Exempt from Generally Applicable Local Regulations**

(a) Government Code section 65852.2, subdivision (e) provides that certain units shall be approved notwithstanding state or local regulations that may otherwise apply. The following types of units shall be governed by the standards in this section. In the event of a conflict between this section and Government Code section 65852.2, subdivision (e), the Government Code shall prevail.

i. An ADU and/or JADU within the existing space of a single-family dwelling or an ADU within the existing space of an accessory structure (i.e. conversion without substantial addition).

ii. An ADU and/or JADU within the proposed space of a single-family dwelling.

iii. A detached, new construction ADU on a lot with a proposed or existing single-family dwelling, provided the ADU does not exceed 800 square feet, sixteen feet in height, or four-foot side and rear (i.e. interior) setbacks.
iv. ADUs created by conversion of portions of existing multi-family dwellings not used as livable space.

v. Up to two detached ADUs on a lot with an existing multi-family dwelling.

(b) The Development Standards for units governed by this section are summarized in Table 1. Regulations set forth in section 18.09.040 do not apply to units created under 18.09.030. The minimum and maximum sizes indicated in Table 1 do not prohibit units that are greater than 800 square feet. These sizes simply serve to distinguish when a unit transitions from regulations set forth in Table 1 and section 18.09.030 to regulations set forth in Table 2 and section 18.09.040.

<table>
<thead>
<tr>
<th>Table 1: Development Standards for Units Described in Government Code Section 65852.2(e)</th>
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<tbody>
<tr>
<td><strong>Single-Family</strong></td>
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<tr>
<td>Conversion of Space Within an Existing Space of a Single-Family Home or Accessory Structure</td>
</tr>
<tr>
<td>New Construction of Detached ADU</td>
</tr>
<tr>
<td>Conversion or Construction of Detached ADU</td>
</tr>
<tr>
<td><strong>Number of Units Allowed</strong></td>
</tr>
<tr>
<td><strong>Minimum size</strong></td>
</tr>
<tr>
<td><strong>Maximum size</strong></td>
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<tr>
<td><strong>Setbacks</strong></td>
</tr>
<tr>
<td><strong>Daylight Plane</strong></td>
</tr>
<tr>
<td><strong>Maximum Height</strong></td>
</tr>
<tr>
<td><strong>Parking</strong></td>
</tr>
<tr>
<td><strong>State Law Reference</strong></td>
</tr>
</tbody>
</table>

Commented [SG3]: Response to HCD item #5, #10, #11, #12

Commented [SG4]: Response to HCD item #1
Lofts where the height from the floor level to the underside of the rafter or finished roof surface is 5’ or greater shall count towards the unit’s floor area.

New construction must be consistent with allowable space (e.g. FAR, Lot Coverage) of a single family residence, except that up to 150 sf may be added for the purpose of ingress and egress only, without regard to underlying zone standards.

Units built in a flood zone are not entitled to any height extensions granted to the primary dwelling.

Units must be detached from existing primary dwellings but may be attached to each other.

A height of 18 feet for a detached ADU on a lot with an existing or proposed single family or multifamily dwelling unit that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. An additional two feet in height shall be provided to accommodate a roof pitch on an ADU that is aligned with the roof pitch of the primary dwelling unit.

A height of 18 feet for a detached ADU on a lot with an existing or proposed multifamily, multistory dwelling.

A height of 25 feet or the height limitation in the underlying zone district that applies to the primary dwelling, whichever is lower, for an ADU that is attached to a primary dwelling. These ADUs shall not exceed two stories in height.

Development standards stated elsewhere in this Section or Title 18, including standards related to FAR, lot coverage, and privacy, are not applicable to ADUs or JADUs that qualify for approval under this section.

The establishment of accessory dwelling units and junior accessory dwelling units pursuant to this section shall not be conditioned on the correction of non-conforming zoning conditions; provided, however, that nothing in this section shall limit the authority of the Chief Building Official to require correction of building standards relating to health and safety.

The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. Nothing in this section shall preclude the Fire Marshal from accepting fire sprinklers as an alternative means of compliance with generally applicable fire protection requirements.

Rental of any unit created pursuant to this section shall be for a term of 30 days or more.

Attached units shall have independent exterior access from a proposed or existing single-family dwelling. Except for JADUs, attached units shall not have an interior access point to the primary dwelling (e.g. hotel door or other similar feature/appurtenance).
(h) Conversion of an existing accessory structure pursuant to Government Code section 65852.2(e)(1)(A) may include reconstruction in-place of a non-conforming structure, so long as the renovation of reconstruction does not increase the degree of non-compliance, such as increased height, envelope, or further intrusion into required setbacks.

(i) Street addresses shall be assigned to all units prior to building permit final to assist in emergency response.

(j) The unit shall not be sold separately from the primary residence.

(k) Replacement parking is not required when a garage, carport, or covered parking structure is converted to, or demolished in conjunction with the construction of, an ADU.

(l) JADUs shall comply with the requirements of Section 18.09.050.

18.09.040 Units Subject to Local Standards

(a) This section shall govern applications for ADUs and JADUs that do not qualify for approval under section 18.09.030 and for which the City may impose local standards pursuant to Government Code section 65852.2, subdivisions (a) through (d). Nothing in this section shall be interpreted to prohibit an ADU of up to 800 square feet, at the heights stated in Table 2, with a four foot side and rear setbacks.

(b) The Development Standards for units governed by this section are provided in Table 2. These regulations do not limit the height of existing structures converted into ADU/JADUs unless the envelope of the building is proposed to be modified beyond any existing legal, non-conforming condition.

Table 2: All other Units

<table>
<thead>
<tr>
<th></th>
<th>Attached</th>
<th>Detached</th>
<th>JADU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Units Allowed1</td>
<td></td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Minimum size</td>
<td>150 sf</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maximum size</td>
<td>900 sf (1,000 sf for two or more bedrooms); no more than 50% of the size of the single-family home</td>
<td>900 sf (1,000 sf for two or more bedrooms)</td>
<td>500 sf</td>
</tr>
<tr>
<td>Setbacks</td>
<td>4 feet from side and rear lot lines; underlying zone standard for front setback</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daylight Plane</td>
<td>Initial Height</td>
<td>Angle</td>
<td></td>
</tr>
<tr>
<td>----------------</td>
<td>----------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td></td>
<td>8 feet at lot line</td>
<td>45 degrees</td>
<td></td>
</tr>
<tr>
<td>Maximum Height</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Res. Estate (RE)</td>
<td>30 feet</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Open Space (OS)</td>
<td>25 feet</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All other eligible zones</td>
<td>16 feet (5)(6)(7)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parking</td>
<td>None</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Square Footage Exemption</td>
<td>Up to 800 sf (4)</td>
<td>Up to 500 sf (4)</td>
<td></td>
</tr>
</tbody>
</table>

(1) An attached or detached ADU may be built in conjunction with a JADU on a lot with an existing or proposed single family home. One attached or detached ADU may be built in conjunction with an existing or proposed multifamily building.

(2) Lofts where the height from the floor level to the underside of the rafter or finished roof surface is 5’ or greater shall count towards the unit’s floor area.

(3) Units built in a flood zone are not entitled to any height extensions granted to the primary dwelling.

(4) Lots with both an ADU and a JADU may exempt a maximum combined total of 800 square feet of the ADU and JADU from FAR, Lot Coverage, and Maximum House Size calculations.

(5) A height of 18 feet for a detached ADU on a lot with an existing or proposed single family or multifamily dwelling unit that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. An additional two feet in height shall be provided to accommodate a roof pitch on an ADU that is aligned with the roof pitch of the primary dwelling unit.

(6) A height of 18 feet for a detached ADU on a lot with an existing or proposed multifamily, multistory dwelling.

(7) A height of 25 feet or the height limitation in the underlying zone district that applies to the primary dwelling, whichever is lower, for an ADU that is attached to a primary dwelling. These ADUs shall not exceed two stories in height.

(c) A single-family dwelling shall exist on the lot or shall be constructed on the lot in conjunction with the construction of an ADU/JADU.

(d) ADU and/or JADU square footage shall not be included in FAR, Lot Coverage, and Maximum House Size calculations for a lot with an existing or proposed single family home, up to the amounts stated in Table 2. ADU and/or JADU square footage in excess of the exemptions provided in Table 2 shall be included in FAR, Lot Coverage, and Maximum House Size calculations for the lot.
(e) Attached units shall have independent exterior access from a proposed or existing single-family dwelling. Except for JADUs, attached units shall not have an interior access point to the primary dwelling (e.g. hotel door or other similar feature/appurtenance).

(f) No protected tree shall be removed for the purpose of establishing an accessory dwelling unit unless the tree is dead, dangerous or constitutes a nuisance under Section 8.04.050. Any protected tree removed pursuant to this subsection shall be replaced in accordance with the standards in the Tree Technical Manual.

(g) For properties listed in the Palo Alto Historic Inventory, the California Register of Historical Resources, the National Register of Historic Places, or considered a historic resource after completion of a historic resource evaluation, compliance with the appropriate Secretary of Interior’s Standards for the Treatment of Historic Properties shall be required.

(h) Noise-producing equipment such as air conditioners, water heaters, and similar service equipment. All such equipment shall be insulated and housed, except that the planning director may permit installation without housing and insulation, provided that a combination of technical noise specifications, location of equipment, and/or other screening or buffering will assure compliance with the city’s Noise Ordinance at the nearest property line. All service equipment must meet the city’s Noise Ordinance in Chapter 9.10 of the Municipal Code.

(i) Setbacks

1. Detached units shall maintain a minimum three-foot distance from the primary unit, measured from the exterior walls of structures.

2. No basement or other subterranean portion of an ADU/JADU shall encroach into a setback required for the primary dwelling.

3. Projections, including but not limited to windows, doors, mechanical equipment, venting or exhaust systems, are not permitted to encroach into the required setbacks, with the exception of a roof eave of up to 2 feet.

(j) Design

1. Except on corner lots, the unit shall not have an entranceway facing the same lot line (property line) as the entranceway to the main dwelling unit unless the entranceway to the accessory unit is located in the rear half of the lot. Exterior staircases to second floor units shall be located toward the interior side or rear yard of the property.
2. Privacy

A. Second story doors and decks shall not face a neighboring dwelling unit. Second story decks and balconies shall utilize screening barriers to prevent views into adjacent properties. These barriers shall provide a minimum five-foot, six-inch, screen wall from the floor level of the deck or balcony and shall not include perforations that would allow visibility between properties.

B. Second story windows, excluding those required for egress, shall have a five-foot sill height as measured from the second-floor level, or utilize obscured glazing on the entirety of the window when facing adjacent properties. Second story egress windows shall utilize obscured glazing on the entirety of the windows which face adjacent properties.

C. Second story windows shall be offset from neighbor’s windows to maximize privacy.

(k) Parking

1. Replacement parking is not required when a garage, carport, or covered parking structure is converted to, or demolished in conjunction with the construction of, an ADU.

2. Replacement parking is required when an existing attached garage is converted to a JADU. These replacement spaces may be provided as uncovered spaces in any configuration on the lot including within the front or street side yard setback for the property.

   A. The Director shall have the authority to modify required replacement parking spaces by up to one foot in width and length upon finding that the reduction is necessary to accommodate parking in a location otherwise allowed under this code and is not detrimental to public health, safety or the general welfare.

   B. Existing front and street side yard driveways may be enlarged to the minimum extent necessary to comply with the replacement parking requirement above. Existing curb cuts shall not be altered except when necessary to promote public health, safety or the general welfare.

3. When parking is provided, the unit shall have street access from a driveway in common with the main residence in order to prevent new curb cuts,
excessive paving, and elimination of street trees, unless separate driveway
access will result in fewer environmental impacts such as paving, grading or
tree removal.

4. If covered parking for a unit is provided in any district, the maximum size of the
covered parking area for the accessory dwelling unit is 220 square feet. This
space shall count towards the total floor area for the site but does not
contribute to the maximum size of the unit unless attached to the unit.

(I) Miscellaneous requirements

1. Street addresses shall be assigned to all units prior to building permit final to
assist in emergency response.

2. The unit shall not be sold separately from the primary residence.

3. Rental of any unit created pursuant to this section shall be for a term of 30
days or more.

4. The installation of fire sprinklers shall not be required in an accessory
dwelling unit if sprinklers are not required for the primary residence. Nothing
in this section shall preclude the Fire Marshal from accepting fire sprinklers
as an alternative means of compliance with generally applicable fire
protection requirements.

18.09.050 Additional Requirements for JADUs

(a) A junior accessory dwelling unit shall be created within the walls of an existing or
proposed primary dwelling.

(b) The junior accessory dwelling unit shall include an efficiency kitchen, requiring the
following components: A cooking facility with appliances, and; food preparation
counter and storage cabinets that are of reasonable size in relation to the size of the
junior accessory dwelling unit.

   i. A cooking facility with appliances shall mean, at minimum a one burner
      installed range, an oven or convection microwave, a 10 cubic foot refrigerator
      and freezer combination unit, and a sink that facilitates hot and cold water.

   ii. A food preparation counter and storage cabinets shall be of reasonable size in
       relation to a JADU if they provide counter space equal to a minimum 24-inch
depth and 36-inch length.
(c) For the purposes of any fire or life protection ordinance or regulation or for the purposes of providing service for water, sewer, or power, a junior accessory dwelling unit shall not be considered a separate or new unit.

(d) The owner of a parcel proposed for a junior accessory dwelling unit shall occupy as a primary residence either the primary dwelling or the junior accessory dwelling. Owner-occupancy is not required if the owner is a governmental agency, land trust, or housing organization.

(e) Prior to the issuance of a building permit for a junior accessory dwelling unit, the owner shall record a deed restriction in a form approved by the city that includes a prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, requires owner-occupancy consistent with subsection (d) above, does not permit short-term rentals, and restricts the size and attributes of the junior dwelling unit to those that conform with this section.

SECTION 3. Section 18.10.030 (Land Uses) of Chapter 18.10 (Low-Density Residential) of Title 18 (Zoning) of the Palo Alto Municipal Code ("PAMC") is amended to read (additions underlined, deletions struck through, and omissions noted with bracketed ellipses):

18.10.030  Land Uses

Table 1 shows the permitted and conditionally permitted uses for the low-density residential districts.

TABLE 1
PERMITTED AND CONDITIONALLY PERMITTED LOW-DENSITY RESIDENTIAL USES

[P = Permitted Use -- CUP = Conditional Use Permit Required]

<table>
<thead>
<tr>
<th></th>
<th>R-E</th>
<th>R-2</th>
<th>RMD</th>
<th>Subject to Regulations in:</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCESSORY AND SUPPORT USES</td>
<td>[...]</td>
<td>[...]</td>
<td>[...]</td>
<td>[...]</td>
</tr>
<tr>
<td>Accessory Dwelling Units</td>
<td>P</td>
<td>p(1)</td>
<td>p(1)</td>
<td>18.0942.040</td>
</tr>
<tr>
<td>Junior Accessory Dwelling Units</td>
<td>P</td>
<td>p(2)</td>
<td>p(2)</td>
<td>18.0942.040</td>
</tr>
</tbody>
</table>

Footnotes:
1. Sale of Agricultural Products: No permanent commercial structures for the sale or processing of agricultural products are permitted.
2. Junior Accessory Dwelling Units in R-2 and RMD Zones: An accessory dwelling unit or a Junior Accessory Dwelling Unit is permitted only in conjunction with a single family residence.
subject to the provisions of Chapter 18.09 associated with a single-family residence on a lot in
the R-2 or RMD zones is permitted, subject to the provisions of Section 18.42.040, and such
that no more than two units result on the lot.

(4) Two Unit Development Pursuant to California Government Code Section 65852.21 (SB 9,
2021): Construction of two units is permitted on an RE-zoned lot, subject to the regulations in
Section 18.42.040.

SECTION 4. Section 18.12.030 (Land Uses) of Chapter 18.12 (Single-Family Residential District)
of Title 18 (Zoning) of the Palo Alto Municipal Code (“PAMC”) is amended to read (additions
underlined, deletions struck through, and omissions noted with bracketed ellipses):

18.12.030 Land Uses

The permitted and conditionally permitted uses for the single family residential districts are
shown in Table 1:

Table 1
PERMITTED AND CONDITIONAL R-1 RESIDENTIAL USES

<table>
<thead>
<tr>
<th>R-1 and all R-1 Subdistricts</th>
<th>Subject to Regulations for in:</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCESSORY AND SUPPORT USES</td>
<td>[ . . ]</td>
</tr>
<tr>
<td>Accessory Dwelling Units</td>
<td>p(1)</td>
</tr>
<tr>
<td>Junior Accessory Dwelling Units</td>
<td>[ . . ]</td>
</tr>
</tbody>
</table>

Footnotes:
(1) An Accessory Dwelling Unit or a Junior Accessory Dwelling Unit associated with a single-
family residence on a lot is permitted, subject to the provisions of Chapter 18.09 Section
18.42.040, and such that no more than two total units result on the lot.

SECTION 5. Section 18.13.030 (Land Uses) of Chapter 18.13 (Multiple-Family Residential
Districts) of Title 18 (Zoning) of the Palo Alto Municipal Code (“PAMC”) is amended to read
(additions underlined, deletions struck through, and omissions noted with bracketed ellipses):

18.13.030 Land Uses

Table 1 specifies the permitted and conditionally permitted land uses in the multiple-family
residence districts.
Table 1
Multiple Family Residential Uses
[P = Permitted Use • CUP = Conditional Use Permit Required]

| Accessory and Support Uses | RM-20 | RM-30 | RM-40 | Subject to Regulations in:
|----------------------------|-------|-------|-------|-----------------------------
|                            | [..]  | [..]  | [..]  | 18.0942.040                |
| Accessory Dwelling Unit    |       |       |       |                             |
| when accessory to           |       |       |       |                             |
| permitted single-family     |       |       |       |                             |
| residence                   |       |       |       |                             |
|                            | [..]  | [..]  | [..]  |                             |

Footnotes:
(1) Permitted use only on lots less than 8,500 square feet in size.
(4) An accessory dwelling unit associated with a single-family residence on a lot is permitted if it is contained within the existing space of a single-family residence or an existing accessory structure in accordance with and pursuant to Section 18.42.040(a)(5), subject to the provisions of Section 18.42.040 and such that no more than two total units result on the lot.

SECTION 6. Any provision of the Palo Alto Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 7. 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 8. The Council finds that the adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines sections 15061(b)(3), 15301, 15302 and 15305 because it constitutes minor adjustments to the City’s zoning ordinance to implement State law requirements related to accessory dwelling units as established in Government Code Section 65852.2, and these changes are also likely to result in few additional dwelling units dispersed throughout the City. As such, it can be seen with certainty that the proposed action will not have the potential for causing a significant effect on the environment.
*NOT YET APPROVED*

**SECTION 9.** This ordinance shall be effective on the thirty-first date after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

_________________________ ____________________________
City Clerk  Mayor

APPROVED AS TO FORM:

APPROVED:

_________________________ ____________________________
Assistant City Attorney  City Manager

_________________________ ____________________________
Director of Planning and Development Services
Title: Approval of a Contract with Nomad Transit, LLC (Via) for City of Palo Alto On-Demand Transit Service in a total contract amount not to exceed $2,043,550 for two years and Approval of a Budget Amendment in the General Fund

From: City Manager

Lead Department: Transportation Department

Recommendation
Staff recommends that Council approve and authorize the City Manager to:

1. Execute a contract with Nomad Transit, LLC (Via) to provide City of Palo Alto On-Demand Transit Service in a total contract amount not to exceed $2,043,550 for service up to two years; and
2. Amend the Fiscal Year 2023 Budget Appropriation Ordinance for the General Fund by:
   a. Increasing the Office of Transportation revenue estimate for grants by $2,000,000; and
   b. Increasing the Office of Transportation revenue estimate for On-Demand Fare Box revenue by $340,000; and
   c. Increasing the Office of Transportation contracts appropriation by $2,340,000.

Background
The Palo Alto Shuttle Program began in December 1999 and provided two free shuttle bus services between the Palo Alto Caltrain station and city destinations and neighborhoods. The program operated Monday through Friday, excluding some holidays. The Crosstown Shuttle Route was wholly funded by the City while the Embarcadero Shuttle was managed by Caltrain with a partial subsidy from the City of Palo Alto. A special school commute service on both routes operated on school days per the Palo Alto Unified School District calendar. Effective July 1, 2020, Palo Alto Free Shuttle services (both the Embarcadero and Crosstown shuttle) were discontinued due to citywide financial reductions. The two shuttles served numerous vulnerable and transit-dependent populations including seniors and students. Together, the two previous shuttle routes served an estimated 550 riders per day or 140,000 riders per year.

The VTA Board of Directors adopted the 2016 Measure B Transit Operations Program Category Guidelines at their October 5, 2017 meeting. One of the Transit Operations subcategories funds candidate projects and programs that support innovative transit service models to address
first/last-mile connections. The 2016 Measure B Program office released the Innovative Transit Service Models Competitive Grant call-for-projects on October 5, 2020, making available $6.0 million for distribution. The City of Palo Alto applied for a grant on December 3, 2020, to implement an On-Demand Transit Service. The grant application was in alignment with the August 14, 2017 council motion to approve the Palo Alto Transit Vision Plan while directing staff to incorporate flex transit models and seek Measure B funds. The 2016 Measure B Program office released the Innovative Transit Service Models Competitive Grant call-for-projects on October 5, 2020. The City of Palo Alto applied for a grant on December 3, 2020, to implement the On-Demand Transit Service and was awarded $2,000,000 in 2021.

Discussion
Due to a lack of riders during the COVID-19 pandemic and constraints on the City budget, funding for the City’s Palo Alto Shuttle was eliminated, ending service in 2020. In contrast to the two fixed routes served by the prior Palo Alto Shuttle, the On-Demand service will provide flexible routes and flexible-schedule transit service within most of the city. Pick-up and drop-off locations will be virtually positioned within an acceptable walking distance with the help of a web application. Door-to-door service will also be available for riders who may require extra assistance. The service will help address the first-/last-mile challenge in Palo Alto and provide a convenient and affordable transportation option for residents, employees, and vulnerable/transit-dependent populations.

The City’s Request for Proposals for on-demand transit was published on the City’s eProcurement platform, PlanetBids, on July 7, 2022. The City received five responsive Proposals from Circuit Transit, CLS Global Transportation, Nomad/Via, Bus.com/Moovit, and Downtowner Holdings.

Table 1. Summary of RFP Process:

<table>
<thead>
<tr>
<th>RFP Name/Number:</th>
<th>Palo Alto On-Demand Transit (Shuttle Operator)</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFP No.:184827</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Request for Proposals Issued</th>
<th>July 7, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Notices sent to Vendors via City’s eProcurement System (PlanetBids)</td>
<td>1855</td>
</tr>
<tr>
<td>Proposals Due:</td>
<td>September 15, 2022</td>
</tr>
<tr>
<td>Total Days to Respond to RFP:</td>
<td>70</td>
</tr>
<tr>
<td>Number of Proposals Received:</td>
<td>5</td>
</tr>
<tr>
<td>Public Link to Solicitation</td>
<td><a href="https://pbsystem.planetbids.com/portal/25569/bo/bo-detail/95979">https://pbsystem.planetbids.com/portal/25569/bo/bo-detail/95979</a></td>
</tr>
<tr>
<td>Proposals Price Range for Year 1:</td>
<td>$1,553,240 – 1,993,900</td>
</tr>
</tbody>
</table>

1 See page 8, Item 20, Action Minutes for August 14, 2017: https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/00-archive/2017/08-14-17-action-minutes.pdf
An evaluation committee comprised of City, VTA, and Stanford Research Park Transportation Management Association (SRPGO) staff carefully reviewed each firm’s qualifications and submittal in response to the criteria identified in the Request for Proposals:

1. Quality and completeness of Proposal
2. Quality, performance, and effectiveness of the solution
3. Proposer’s experience
4. Cost to the City
5. Proposer’s financial condition and stability
6. Proposer’s ability to perform the requirements within the time specified
7. Proposer’s prior record of performance with City or other agencies
8. Proposer’s compliance with applicable laws, regulations, policies
9. Proposer’s technology solution, including quality and ease of use of the user app, data dashboard, and availability of tech support

Staff recommends contracting with Nomad/Via who provided a comprehensive approach to the service, demonstrated a clear understanding of needs, and proposed innovative solutions to the challenges of serving a diverse customer base with varying abilities. Nomad/Via is to deliver and operate a full turnkey microtransit service to the City, including, but not limited to equipment, labor, and software; with the technical capabilities of integrated payment system, rider incentives, a Rider App, algorithms that enable on-demand and shared rides by using real-time data. Nomad is to implement on-demand transit services with partner drivers Monday through Friday, 8a to 6p, for at least 18 months or while funding is available, with a fleet of 9 vehicles, including 6 hybrid vans equipped with bicycle racks and 3 electric Wheelchair Accessible Vehicles (WAV). Nomad is to provide exceptional project management, an agile approach to both product development and project governance. Nomad/Via proposes a robust community engagement plan, brings a history of successful operation in other cities, such as Cupertino, and has a track record of partnering with local jurisdictions to acquire grant funds for service expansion and continuation. In addition, the customizable mobile app is designed for diverse accessibility requirements and has the ability to integrate multiple payment fare types and discounted rates.

**Timeline**
Per the funding agreement with VTA, service must begin by March 2023. Once the contract is executed, the vendor will acquire vehicles and staff to provide the service. In addition, an on-demand transit mobile application will be customized with City branding. Public engagement will also begin in early 2023 to prepare the community to use the new service, and there will be a study session with Council prior to service startup.

**Resource Impact**
Approval for the contract with Nomad requires a budget amendment in the General Fund to increase the Office of Transportation’s expenses by $2,340,000 million, offset with an increase to the revenue estimate for grants by $2.0 million and an increase in fare revenue of $340,000;
thus, it will be cost neutral. The City of Palo Alto was awarded $2.0 million of Measure B Innovative Transit Program funds for the City’s On-Demand Transit Service project, and the service is anticipated to generate $340,000 in fare revenue. The remaining $160,000 will be an in-kind contribution covered by City staff’s time to oversee the implementation and maintenance of the On-Demand Transit Service.

As noted in CMR 13589: Approval of a Funding Agreement with the Santa Clara Valley Transportation Authority (VTA) for City of Palo Alto On-Demand Transit Service to Provide $2.0 million in Funding and Requiring $0.5 million in City Matching Funds Over Two Years, the total cost of the project is estimated to be $2.5 million. The $0.5 million in remaining project expenses is the 20% minimum matching contribution that the City is required to make under the grant award contract. As discussed previously, it is assumed that the City’s matching obligation will be funded through a $160,000 In-Kind Contribution and $340,000 in fare collection.

Separately, at Nomad’s request, this contract caps Nomad’s liability to the City at $10 million, which is a deviation from the City’s standard terms which do not include a limit. However, this limit does not apply in some situations, such as if Nomad causes damages due to its gross negligence or willful misconduct. The cap also does not apply for general damages covered by its insurance policies, or when Nomad exercises its duty to indemnify the City. In the case that Nomad causes damages to the City in excess of $10 million, and one of the exceptions to the limit does not apply, the City may not be able to recover more than that under the terms of this cap.

**Policy Implications**

Provision of on-demand transit service supports the City’s Sustainability and Climate Action Plan goals to reduce greenhouse gas emissions and is supported by the following Comprehensive Plan policies and programs:

Policy T-1.1: Take a comprehensive approach to reducing single-occupant vehicle trips by involving those who live, work and shop in Palo Alto in developing strategies that make it easier and more convenient not to drive.

Policy T-1.6: Encourage innovation and expanded transit access to regional destinations, multi-modal transit stations, employment centers and commercial centers, including those within Palo Alto through the use of efficient public and/or private transit options such as rideshare services, on-demand local shuttles and other first/last mile connections.

Program T1.6.1: Collaborate with transit providers, including Caltrain, bus operators and rideshare companies, to develop first/last mile connection strategies that boost the use of transit and shuttle service for local errands and commuting.
Policy T-1.13: Encourage services that complement and enhance the transportation options available to help Palo Alto residents and employees make first/last mile connections and travel within the city for daily needs without using a single-occupancy vehicle, including shuttle, taxi and ridesharing services.

Program T1.13.1: Investigate a pilot program to subsidize a taxi, rideshare or transit program for Palo Altans to get to/from downtown, including offering education and incentives to encourage users.

**Stakeholder Engagement**

Public engagement will begin in early 2023 to alert the community to the upcoming availability of the new service in March. Stakeholders who will be targeted for notification of the service include Caltrain riders, commuters to Palo Alto, service providers targeting older adults, senior living communities, youth service providers, neighborhood groups, etc. Community engagement and marketing activities may include tabling at community events and destinations (Farmer’s Market, Caltrain stations, grocery stores) and social media campaigns (NextDoor, Facebook, Uplift Local, local newspapers, City blog posts, etc.).

**Environmental Review**

This program is not considered a project under CEQA because it has no potential for resulting in either a direct or reasonably foreseeable indirect change in the environment. If the program is found to be a project under CEQA, the program is exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3) in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The program, which proposes no physical changes and would support transit ridership, thereby reducing greenhouse gas emissions, would have no or only a de minimis impact on the environment.

**DOCUMENTS**

Attachment A: Contract between the City of Palo Alto and Nomad Transit, LLC

Attachments:

- **Attachment15.a**: Attachment A: Contract No. C23184827 NOMAD TRANSIT, LLC
This Agreement for Professional Services (this “Agreement”) is entered into as of the 12th day of December, 2022 (the “Effective Date”), by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and NOMAD TRANSIT, LLC, a Delaware limited liability company, located at 10 Crosby Street, 2nd Floor, New York, NY 10013 (“CONSULTANT”).

The following recitals are a substantive portion of this Agreement and are fully incorporated herein by this reference:

RECORDS

A. CITY intends to implement the Palo Alto On-Demand Transit and Shuttle Program (the “Project”) and desires to engage consultant to provide transit and shuttle services, inclusive of equipment, transportation planning, customer engagement, and marketing services, labor and vendor services (fleet managers, vehicle suppliers, driver partners, background check providers, customer service support agencies, a payment processor and insurance brokers and underwriters), and the technology to support services such as integrated payment system, traveler incentives, mobile application, on-demand software, and real-time travel data in connection with the Project (the “Services”, as detailed more fully in Exhibit A).

B. CITY received a grant from the 2016 Measure B Innovative Transit Service Models Program to fund On-Demand Transit services and intends to use this grant to fund this Agreement.

C. CONSULTANT represents that it, its employees, vendors and subconsultants, if any, possess the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

D. 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.

SECTION 2. TERM.
The term of this Agreement shall be from the date of its full execution through December 13, 2024 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 two million forty-three thousand five hundred fifty Dollars ($2,043,550.00). 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 AND VENDOR PARTNERS. Notwithstanding Section 11 (Assignment) above, CITY agrees that subcontractors and vendors may be used to complete the Services.

1. CONSULTANT may subcontract the following roles without CITY approval as long as the subcontractor meets all applicable requirements listed in this Agreement:
   a. Independent contractor drivers
   b. Vehicle lease/rental companies
   c. Vehicle maintenance/storage companies
   d. Third-party technology services necessary to deploy the Services in this Agreement that do not directly face with customers. This includes cloud computing and storage services.

2. City permission shall be required to subcontract out any function of this Agreement not listed in Section 1 above.

CONSULTANT shall be responsible for directing the work of any subcontractors/vendor partners
and for any compensation due to subcontractors/vendor partners. 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 Sophia Witte 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 Nathan Baird, Office of Transportation, 250 Hamilton Avenue, Palo Alto, CA, 94301, Telephone: 650-329-2340. 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 reports, data, documents, and other materials and copyright interests prepared by CONSULTANT for the City as expressly required in 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 foregoing materials 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.**

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, third-party 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 the negligent, willful, or criminal 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 16.A. LIMITATION OF LIABILITY

16.A.1. LIMITATION OF LIABILITY OF CONSULTANT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CONSULTANT BE LIABLE TO CITY, 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 CITY, EVEN IF CONSULTANT 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 CONSULTANT TO CITY EXCEED TEN MILLION ($10,000,000) DOLLARS. CONSULTANT'S LIABILITY LIMIT SET FORTH HEREIN SHALL NOT APPLY TO (1) DAMAGES CAUSED BY CONSULTANT'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR CRIMINAL CONDUCT, (2) CONSULTANT'S OBLIGATIONS TO INDEMNIFY AND DEFEND CITY PURSUANT TO SECTION 16 (“INDEMNIFICATION”) OF THIS AGREEMENT, (3) LIMIT CLAIMS OR GENERAL DAMAGES THAT FALL WITHIN THE INSURANCE COVERAGE OF THIS AGREEMENT, (4) STATUTORY DAMAGES, AND (5) WRONGFUL DEATH CAUSED BY CONSULTANT.

16.A.2. LIMITATION OF LIABILITY OF CITY. CITY’S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 4 (“NOT TO EXCEED COMPENSATION”) OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY 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.

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, subject to the limitation of liability set forth in Section 16.A of this Agreement.

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 cause, by giving a written notice specifying the nature of the cause and providing thirty (30) days to cure. If CONSULTANT fails to cure within the time period, in addition to all other remedies provided under this Agreement or at law, the City Manager may terminate this Agreement immediately 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:

i. 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.

ii. 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.

iii. 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.** 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:

i. is not a public works contract;

ii. 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

iii. 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).

**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 not a 9204 Public Works Project.

**SECTION 28. CONFIDENTIAL INFORMATION.**

28.1. In the performance of this Agreement, the parties may have access to each other’s Confidential Information (defined below). The parties will hold Confidential Information in strict confidence, not disclose it to any third party, and will use it only for the performance of their respective obligations under this Agreement and for no other purpose. The parties will maintain reasonable and appropriate administrative, technical and physical safeguards to ensure the security, confidentiality and integrity of the Confidential Information. Notwithstanding the foregoing, each party may disclose Confidential Information to its respective employees, agents and subcontractors, if any, to the extent they have a need to know in order to perform obligations under this Agreement and for no other purpose, provided that such party 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 “Electronic Payment Data,” defined as any data collected from a person to compete a payment by electronic means) and materials, in any form or media, tangible or intangible, provided or otherwise made available to a party to this Agreement (the “receiving party”), directly or indirectly, pursuant to this Agreement. Except for documents
containing “Personal Information” and/or “Electronic Payment Data” as defined in the previous sentence, a party shall mark any document with the word CONFIDENTIAL prominently on each section or page of the document that is intended to be confidential. An email signature that contains a confidentiality clause or disclaimer shall not be considered marking a document CONFIDENTIAL within the meaning of this section. Confidential Information excludes information that the receiving party 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 the receiving party’s possession free of any obligation of confidence prior to receipt of Confidential Information; (iii) is rightfully obtained by the receiving party from a third party without breach of any confidentiality obligation; (iv) is independently developed by employees of the receiving party without any use of or access to the Confidential Information; or (v) the receiving party has written consent to disclose signed by an authorized representative of the party who disclosed the Confidential Information (the “disclosing party”).

28.3. Notwithstanding the foregoing, the receiving party may disclose Confidential Information to the extent required by law, order of a court of competent jurisdiction or governmental body, provided that the receiving party will notify the disclosing party in writing of such order within 72 hours upon receipt and prior to any such disclosure (unless the receiving party is prohibited by law from doing so), to give the disclosing party an opportunity to oppose or otherwise respond to such order.

28.4. CONSULTANT will notify City within 72 hours (or sooner if required by law) 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, the receiving party will honor any request from the disclosing party to return or securely destroy all copies of Confidential Information in conformance with any applicable laws or retention schedules. All Confidential Information is and will remain the property of the disclosing party and nothing contained in this Agreement grants or confers any rights to such Confidential Information on the receiving party.

28.6. If selected in Section 30 (Exhibits), this Agreement is also subject to the terms and conditions of the Information Privacy Policy.

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 B: SCHEDULE OF PERFORMANCE
☒ EXHIBIT C: COMPENSATION
☒ EXHIBIT C-1: SCHEDULE OF RATES
☒ EXHIBIT D: INSURANCE REQUIREMENTS
☒ EXHIBIT E: INFORMATION PRIVACY POLICY

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

NOMAD TRANSIT, LLC

Officer 1

By: 
Name: Alex Lavoie
Title: Manager

Officer 2

By: 
Name: Erin Abrams
Title: Chief Legal Officer
EXHIBIT A
SCOPE OF SERVICES

CONSULTANT (aka “Contractor”) shall provide the Services detailed in this Exhibit A, entitled “SCOPE OF SERVICES”.

SECTION 1: SERVICE DETAILS

A. Service Hours, Days, and Area

Contractor shall operate Palo Alto On-Demand Transit Services. Services are scheduled to begin as detailed in Exhibit B and operate from March 2023 through and inclusive of at least 18 months of total service or until funding under this Agreement is depleted, with further services available via contract extension and funding availability.

<table>
<thead>
<tr>
<th>Operating Hours</th>
<th>Daily Service Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>8:00 a.m. – 6:00 p.m. (Rides to be requested by 6pm but may end after that)</td>
<td>Up to 10 service hours per vehicle daily</td>
</tr>
</tbody>
</table>

Contractor shall have all service vehicles staged and ready to receive passengers at least ten (10) minutes before start of each service day.

Operations on City Holidays (per PAMC 2.08.100) may be limited or cancelled upon mutual agreement of the Parties.

The Service Area for the Services shall be defined by the City and may be amended from time to time.

B. Service Increases and Reductions

CITY reserves the right to increase, reduce, or modify shuttle service as CITY may find necessary or appropriate in response to changes in ridership or CITY’s annual budget. Any additions shall be compensated at the hourly rates agreed upon by Contractor and CITY. CITY will give Contractor at least thirty (30) days’ notice for shuttle service changes such as adding, deleting or modifying service. The contractor will be expected to acquire any additional vehicles as well as hiring and training new personnel necessary. If Contractor requires additional time beyond 30-days to acquire the necessary vehicles and personnel, Contractor must contact CITY in writing within five (5) business days of receipt of CITY’s written request for the modified or expanded service. Contractor and CITY must then mutually agree on a new date for fulfilling CITY’s request to add service, however, under no circumstances shall that date be more than 75 days from the date of City’s written request for additional service. The contractor may elect to provide the requested service change in less than 30-days if they are able and CITY agrees. The contractor must always maintain sufficient staffing of vehicle operators to operate a minimum of 9 vehicles.

C. As detailed further in this Exhibit A, Contractor shall provide a Work Plan, Launch Schedule, Startup processes, Personnel Recruitment, Onboarding, and Management, Vehicle provision, Marketing and Community Engagement, Rider Growth strategies, ongoing Training, Partner Support, Call Center Support, Service Performance Analysis, Weekly and/or Bi-Weekly Check-in Meetings per each major phase and services provision effort, Service Goals
reporting and management, and for the initial funding provided, a reasonable provision of Premium Features in service of pursuing funding for sustained operations (including a Planning Workshop, support for Innovative Funding Models, pursuit of Institutional Sponsorships and Additional Sources of Revenue).

SECTION 2: WORK PLAN AND PRE-LAUNCH

A. Work Plan
Contractor to deliver and operate a full turnkey microtransit service on behalf of the City, including, but not limited to equipment, labor, and software; with the technical capabilities of integrated payment system, rider incentives, a Rider App, and algorithms that enable on-demand and shared rides by using real-time data.

Contractor to provide Agile project management, project governance, and product development; with processes to rapidly deploy test and iterate ideas, communicate frequently with partners; and quickly incorporate feedback without causing delays. To include productive partner communication and nimble project management, team meeting deliverables to include agreed-upon timelines while maintaining the flexibility to course-correct as necessary.

Contractor to work with Palo Alto to clarify goals and service specifications, including desired quality of service metrics (e.g. average wait times, maximum walking distance, etc.), key destinations served, and expected travel patterns throughout the zone), followed by data gathering (Contractor will estimate demand patterns for the service by examining the local physical environment, including street widths, land use, and residential and employment densities. Where available, Contractor will on draw on existing data, such as transit ridership, parking data, census information, and demographic data; for Simulations to test results (Using an in-house simulation technology, Contractor to test its algorithm’s performance under different demand levels, travel patterns, fleet sizes, and traffic conditions, producing hundreds of Key Performance Indicators (KPIs). These metrics include expected wait times, ride aggregation predictions, and more.) During this simulation phase, Contractor algorithms to generate granular data, guide City through the results and impacts on service, before refining configurations according to desired outcomes.

Contractor to provide Recommendations based on the results of these analyses to work with the City to plan service operations. Contractor to develop detailed and actionable launch plan, including steps for system localization, software features configuration, driving training, and ongoing rider engagement, and then Launch Service based on the results of our collaborative analyses; Contractor to work with City to finalize service operations approach, and then Launch Service with City. Contractor to: Continue to develop the solution in response to performance data and feedback. Contractor to oversee and manage all of the services and features required to launch and deliver an exceptional microtransit service, including partner & funding recruitment, workflow management, fleet provision, customer support, and safety plans.
## Pre-Launch Tasks and Responsibilities

<table>
<thead>
<tr>
<th>Launch Stages &amp; Milestones</th>
<th>Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>City to:</strong></td>
<td><strong>Contractor to:</strong></td>
</tr>
<tr>
<td>● Provide service branding assets</td>
<td>● Configure zone geographies, service hours, and service modes</td>
</tr>
<tr>
<td>● Communicate marketing goals</td>
<td>● Configure mapping and routing inputs</td>
</tr>
<tr>
<td>● Provide data to inform service simulations</td>
<td>● Confirm data-sharing plan</td>
</tr>
<tr>
<td>● Work with Contractor to determine zone boundaries and desired service characteristics</td>
<td>● Establish marketing plan</td>
</tr>
</tbody>
</table>

**Milestone:** Finalized project scope

**Milestone:** Established service parameters

**Milestone:** Finalized data sharing plan

**Milestone:** Defined marketing plan

**Weeks 2 – 7:** Contractor’s Product Team to configure the Rider App, Driver App, and supporting dashboards. Contractor to localize the service to Palo Alto and begin system testing.

**City to:**
- Continue to provide input on desired service characteristics (e.g., content for rider messages)

**Contractor to:**
- Localize back-end and front-end environment
- Perform internal system tests
- Determine Virtual Bus Stops

**Milestone:** Localized software suite

**Milestone:** Quality assurance and internal system testing completed

**Weeks 6 – 12:** Contractor to continue testing the service with real riders and drivers — reviewing routing, rider messaging, and other functionalities to ensure the experience aligns with the City’s project vision. Additionally, Contractor to conduct training workshops with drivers and Palo Alto staff, as needed.

**City to:**
- Attend relevant training workshops

**Contractor to:**
- Conduct final training workshops
- Conduct internal field tests with live riders and drivers in the service zone
- Perform a final field test of the system to test its readiness
- Prepare for service go-live

**Milestone:** Pre-launch driver and staff training completed

**Milestone:** Rider and Driver Apps available for download

**Weeks 7-12:** Contractor to finalize the fleet management plan. Contractor to carry out activities within the pre-launch marketing and promotions plan.

**City to:**
- Receive fleet management plan

**Contractor to:**
- Inspect and approve all vehicles
- Implement marketing
<table>
<thead>
<tr>
<th>Milestone: Fleet ready for live service</th>
<th>marketing events (e.g., go-live kickoff event)</th>
<th>and promotions plan (e.g., press releases)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milestone: Live field testing completed</td>
<td>City to:</td>
<td>Contractor to:</td>
</tr>
<tr>
<td>Milestone: All pre-launch marketing completed</td>
<td>● Review Contractor-provided data reports</td>
<td>● Share service data and benchmark performance against KPIs provided by the City</td>
</tr>
<tr>
<td></td>
<td>● Provide feedback on service performance</td>
<td>● Make iterative improvements based on feedback from riders, drivers, and the City</td>
</tr>
<tr>
<td></td>
<td>● Attend key marketing events</td>
<td>● Implement post-launch marketing strategy to attract new riders</td>
</tr>
</tbody>
</table>

C. Driver Recruitment and On-Boarding

Driver Recruitment: Contractor to partner with independent contractor drivers that have been vetted by Contractor’s Operations Team – complying with the Personnel requirements listed in the RFP Scope of Work. For each driver applicant, a driving history and criminal record check to be completed before they can access the Contractor Platform and on an ongoing basis thereafter. If background checks uncover any barring charges or criminal history, Contractor will not permit the applicant to use the Contractor Platform. In addition to clearing a thorough, third-party background check, to ensure a high standard of safety and professionalism, Contractor to conduct post-accident and reasonable suspicion drug and alcohol testing of the City’s drivers. Contractor to leverage experience conducting random testing in deployments worldwide, so as to maintain a driver pool fit for microtransit service delivery.

Driver Onboarding: Contractor to coordinate comprehensive pre-launch onboarding for drivers, through a program to equip each driver to deliver safe, comfortable, and friendly experiences for riders. Intensive sessions and online modules to teach drivers how to:

1. Provide outstanding customer service, including instructions on greeting passengers and providing assistance to those who may not understand how to use the service;
2. Assist passengers with limited mobility (e.g., how to operate a wheelchair lift);
3. Practice defensive driving and safely navigate roads;
4. Follow safety and emergency instructions, including how to handle and report accidents and major incidents; and
5. Use the Contractor Driver App, including how to troubleshoot or report any technology issues.
6. Contractor program to include Passenger Assistance, Safety & Sensitivity for Rideshare PASS onboarding sessions, a program developed by the Community Transportation Association of America CTAA, for drivers who provide WAV service. Subject areas covered include:

7. Customer Service, Professionalism
8. The Americans with Disabilities Act ADA
9. Ramp Operation
10. Disability Awareness
11. Wheelchairs and Assistive Devices
12. Wheelchair Securement
13. In addition to standard PASS training, Contractor to curate an onboarding program to ensure that drivers are prepared to serve the City’s anticipated rider cohorts, including senior citizens and riders with disabilities. Contractor to coordinate additional certifications if necessary to ensure that all drivers are in compliance with relevant local, state, and federal regulations.

SECTION 3: VEHICLE, DRIVER, AND PERSONNEL STANDARDS

A. Vehicle Requirements:
Contractor shall provide enough vehicles (minimum 9) that seat a minimum of four (4) riders each, including at least two dedicated spares to be used as stand-by vehicles. Contractor shall also have the capability to provide additional vehicles for any service expansion requested by CITY at a later date. Additionally, Contractor is responsible for ensuring that all service vehicles meet the applicable California Air Resources Board (CARB) and Bay Area Air Quality Management District (BAAQMD) air emissions standards for public transit fleets at all times.

At commencement of service, all vehicles used shall be no more than one (1) year old and have incurred fewer than 50,000 miles on engine and transmission, unless prior written approval from CITY has been received. All vehicles used at the start of the contract must adhere to the vehicle requirements contained in the next section, “Type of Vehicle.”

1. Type of Vehicle:
The following types of vehicles may be placed in service during the contract term:

When available, new or used electric, hybrid-electric, or fuel cell vehicles should be utilized. If fossil-fueled vehicles are included in the service fleet, then Contractor must make a best effort to transition to zero emission vehicles during the contract term.

Each service vehicle shall further meet the following criteria:

a. At least 3 vehicles in operation shall be accessible to disabled patrons and be equipped with proper wheelchair restraints, complying with the Americans with Disabilities Act regulations.

b. Vehicle signage and logos/wraps shall be designed by the City but installed and maintained by Contractor. No additional advertising or messages shall be provided on the vehicles without written authorization by the City.

c. Each vehicle shall be equipped with a working communications system linking the vehicle with its operating facility. The communications system must be operable in all locations on the service areas specified. Two-way communications must be possible at all times during all service hours. In this case, the “communications system” will be the Contractor Driver app, and drivers will be using their personal smartphones.

d. Each vehicle shall be equipped with an automatic passenger counting system or equivalent, such as utilizing Contractor’s booking software to count the number of passengers.

e. Each vehicle providing service shall have fully functioning and properly maintained heating and air-conditioning.
f. Each vehicle shall be equipped with a bicycle rack, with the exception of wheelchair-accessible vehicles to prioritize riders requiring a wheelchair

g. Each vehicle shall be equipped with a GPS device enabling riders to track the vehicle and estimate its schedule arrival.

h. Fare payments will be made in the mobile phone application that accompanies the service. Other payment options will include a web booking portal (with the same look and flow as the rider application) and over the phone with a customer support reservationist.

2. **Vehicle Licensing:**
   The Contractor shall keep all vehicles fully licensed and inspected as required by state and local government and regulatory agencies. The Contractor shall further comply with all federal, state and local vehicle registration, permitting, operating, emissions and regulatory requirements, restrictions and laws.

3. **Vehicle Safety/Inspections:**
   The vehicles shall comply with all applicable State and Department of Transportation Motor Vehicle Safety Standards. Contractor shall be responsible for ensuring that vehicles are inspected and only driven if they are considered to be in safe operating condition. Vehicles shall be repaired or replaced within 30 minutes of breakdown. Vehicles failing inspection shall not be used in service until the failure and its cause(s) are corrected. All replaced vehicles must display the proper signage as directed by CITY.

   CITY reserves the right but has no obligation to ensure that vehicles are being maintained properly and are in safe operating condition. CITY may inspect vehicles at any time and may bar a vehicle from service, if it determines that the safety or operation of the vehicle is impaired, until the problem(s) are corrected. CITY may also bar a vehicle from service, if it fails to comply with the maintenance, operating and emissions standards dictated by federal, state and local mandates.

   Contractor must also ensure that the maintenance/repair facility and equipment used for maintenance and repair of all service vehicles are in compliance with all federal, state and local laws. CITY reserves the right to inspect all facilities and equipment used for maintenance and repair activities and requires that they be replaced or improved to ensure operational efficiency of the shuttle vehicles and the safety of employees and passengers. Additionally, the Contractor shall be in receipt of a current CHP Terminal Inspection Report at all times.

4. **Vehicle Maintenance:**
   The Contractor, at its expense, shall maintain all vehicles used for the services provided, at a minimum, in accordance with manufacturer’s specifications and/or in accordance with the State’s vehicle maintenance standards. Where duplicate standards/regulations exist, the Contractor shall be required to maintain vehicles in accordance with the stricter standards. Vehicles shall be cleaned and maintained as stated in this section. Maintenance records shall be kept for all vehicles and shall be available for CITY inspection during normal office hours (8 a.m. to 5 p.m.).

   Contractor shall have in place a maintenance process plan, including cleaning procedures for the vehicles. All fuels, lubricants, parts, materials, etc., required for
the performance of the service, shall be supplied by the Contractor at Contractor’s expense and may be subject to specification and approval by CITY.

In addition to any other criteria identified by the Contractor, vehicles with cracked windshield, inoperative safety devices, inoperative heater/air conditioner, illegal tire tread, or other significant defects shall not be operated for Service.

5. **Air Emissions:**
   The vehicles used for provision of Palo Alto Shuttle services must not emit particulate matter (PM), Nitrous Oxide (NOx) and other air pollutants, indicated by the California Air Resources Board (CARB) and the Bay Area Air Quality Management District (BAAQMD), in amounts that exceed the maximum level(s) mandated by them. (See “Type of Vehicle” paragraph in this section for vehicle details.) Should Contractor choose to use diesel-powered vehicles, as approved by CARB and the BAAQMD only, Contractor must use ultralow- sulphur diesel fuel that does not exceed fifteen parts per million.

Unless otherwise instructed, all Palo Alto Shuttle operators shall turn off the vehicle’s engine if the idle time will exceed three minutes per Palo Alto Municipal Code Chapter 10.62.

6. **Wheelchair Lifts:**
   Contractor shall maintain all wheelchair lifts and safety devices in full operating condition. During all preventative maintenance inspections, the lift shall be checked to ensure it is capable of lifting 600 pounds. Any required maintenance or repair work shall be performed before a vehicle can be put into service.

7. **Spare Vehicles:**
   The Contractor shall have at its disposal, and document for the City, a sufficient number of spare vehicles available via ownership or lease to meet service requirements.

8. **Vehicle Damage:**
   All cosmetic damage to vehicles shall be repaired in a high-quality manner and in an expeditious manner. Damaged vehicles shall immediately be removed from service until such repairs are completed and replaced with another vehicle that meets the vehicle and signage requirements indicated in the service contract.

9. **Vehicle Signage:**
   Vehicles shall include a Wrap Decal Scheme. The City will provide the design files for the Wrap Decal Schemes. Contractor will be responsible for printing, installing, and maintaining the Wrap Decal Scheme. Vehicles shall display signage as directed and approved by CITY, when providing Palo Alto transit services.

   Signs shall be maintained in prime condition throughout the contract period. CITY shall have the right to require the Contractor, at any time during the contract period and at Contractor’s sole expense, to replace any signage and/or logos that are torn, faded, frayed along the edges, obsolete, or otherwise deemed unacceptable by CITY for professional display.
Contractor must meet all Federal, State and local regulations regarding vehicle identification and signage. All marked vehicles are subject to approval by CITY before being placed in service. Furthermore, all signage and logos associated with the service must be removed or completely covered, should any of the designated shuttle vehicles be used to perform other contracted services that are unrelated to contracted services.

10. **On Board Advertising:**
Any advertising on either the interior or exterior of the shuttle vehicles, while in service, is strictly prohibited. Any advertising already on vehicles must be removed prior to entering into CITY Service. However, CITY reserves the right to review this policy at a later date and implement on-board advertising, especially if proposed as a funding source for additional services.

11. **Vehicle Cleaning:**
- At a minimum, interiors shall be swept, mopped, and wiped down daily, including the driver and dash areas.
- At a minimum, exteriors shall be washed twice weekly with more frequent washings as required during periods of rainy weather, including polishing of windshields and cleaning of wheels.
- At a minimum, all vehicles shall be completely detailed twice a month including, but not limited to, the driver’s area, dashboard, windows, ceiling, walls, floors and seats.

B. **Personnel Requirements:**
The Contractor shall be solely responsible for the provision and the satisfactory work performance of all its employees, including subcontracted personnel and partners, contributing to the Palo Alto On-Demand Shuttle service. The Contractor shall be solely responsible for payment of all employee and/or subcontractor and/or partner fees, wages and/or benefits. Without any additional expense to CITY, the Contractor shall comply with the requirements of employee liability, equal employment, Worker’s Compensation, unemployment insurance, Social Security, income tax and all other applicable laws.

1. **Removal of Contract and Vendor Partner Personnel:**
Contractor shall remove services personnel who do not meet the performance standards in this Agreement. The Contractor shall not, without prior written notice to CITY, remove or re-assign the key management personnel identified in its proposal, (i.e. Project Manager) at any time, prior to or after execution of the Agreement. CITY has the right to approve of any proposed substitute or replacement of such key management personnel.

Contractor shall immediately remove and report to City any drivers who are arrested for public offenses while providing shuttle services, including being cited for moving traffic violations, and immediately take all reasonable steps to ensure passenger and vehicle safety in the event of such a violation.

2. **Project Manager:**
Contractor shall designate a Project Manager, specifically assigned to the provision of the service, who shall oversee the day-to-day operation of the service, as well as serve as a daily point of contact. The Project Manager shall fulfill reporting
requirements, address service and operator issues, respond to complaints, and ensure that daily service requirements are met.

3. **Route Supervisor:**
   Contractor shall designate a Service Supervisor for coordinating, monitoring and overseeing the day-to-day operations of shuttle service in the field. The Service Supervisor shall be responsible for communicating special instructions from the CITY to all shuttle vehicle operators and ensuring that the instructions are fulfilled accordingly. The Service Supervisor duty may be fulfilled by a Lead Operator.

   CITY staff, at their discretion, may from time to time provide operational instructions governing service operations. Contractor shall inform all service drivers that operational instructions from CITY staff must be fully executed. CITY staff shall notify Contractor of any special instructions provided to the operators which may impact service hours.

4. **Drivers:**
   The Contractor shall supply a sufficient number of qualified personnel to operate the vehicles and to provide the Services required. All drivers furnished by Contractor for the Services shall comply with the following:

   i. **Appearance:**
      Each of the Contractor's drivers shall, at all times while on duty, in the performance of the services, be neatly, professionally and cleanly dressed.

   ii. **Driver and Passenger Conduct Standards:*** Drivers shall comply with and enforce the following conduct standards, in order to maintain a comfortable and safe environment for all service patrons:

      1. Drivers shall maintain a courteous and cooperative attitude in their contact with the public.
      2. Drivers shall only provide accurate and correct information to customers. Project Manager is responsible for providing personnel with the most updated and accurate information regarding the service on a daily basis or more frequent.
      3. Drivers and passengers shall not smoke on board or near the vehicles.
      4. There shall be no operation of audio devices by drivers or passengers, with the exception that headphone systems are allowed to be played by passengers.
      5. Drivers shall not use communication devices of any kind, including cellular telephones or Bluetooth headsets, for any purpose while driving or attending to passengers except that drivers may use communication devices to access the Contractor driver application for the purposes of providing its services. These devices shall only be used for communication while the driver is stopped at a designated bus stop or other safe location.
      6. Shoes and shirts shall be required of all passengers.
      7. No eating or drinking shall be allowed on board the vehicles.
      8. Drivers shall operate vehicles safely and in compliance with applicable laws.
9. Drivers shall follow ADA protocol, anti-discrimination and sexual harassment policy, traffic regulations, and other local regulations.

iii. Language Proficiency
A level of proficiency in the English language, sufficient for speaking effectively and clearly with passengers and for preparing required written logs and reports, is required.

iv. Licensing and Other Requirements
1. Contractor shall comply with the Immigration Reform and Control Act (IRCA), which requires all employers to verify the authorization of its employees to work in the United States.
2. All drivers shall be properly licensed in the State of California to provide this type of service. Contractor shall provide a written attestation that each driver is enrolled in the California Pull Notice Program and meets the applicable regulatory requirements as well as the requirements stated in this clause. Drivers shall possess the appropriate Driver’s License, with applicable endorsements mandated by the State of California for the type of vehicle operated. All drivers shall comply with all relevant State of California codes and standards.

v. Future Standards – At such time as they may be implemented, drivers shall comply with any future standards, which may be required of drivers operating the Services.

vi. Training – All drivers shall be required to receive, and have successfully completed, the minimum current drivers training required by the California Department of Motor Vehicles for the type of vehicle operated. All costs associated with driver training shall be the responsibility of the Contractor. The Contractor is responsible for ensuring that each driver is properly acquainted with the requirements of the program, his/her responsibilities as a driver, and assisting passengers with special needs and disabilities.

vii. Sex Offenses – A driver shall be disqualified from operating a vehicle for conduct resulting in the following:
1. Any person required to register as a sex offender under the provisions of Section 290 of the Penal Code or under similar provisions of law of any other state.

viii. Driving Offenses – A driver shall be disqualified from providing service, if any of the following circumstances exist:
1. Conviction of more than three (3) moving violations within the last three years.
2. Driver’s license has been suspended, revoked or put on probation by the DMV for a cause involving the safe operation of a motor vehicle within the last three years.

ix. For each driver applicant, Contractor shall conduct a driving history and criminal record check to be completed before they can access the Contractor Platform and on an ongoing basis thereafter. If background checks uncover
any barring charges or criminal history, Contractor will not permit the applicant to use the Contractor Platform. In addition to clearing a thorough, third-party background check, to ensure a high standard of safety and professionalism, Contractor to conduct post-accident and reasonable suspicion drug and alcohol testing of the City’s drivers. Contractor to leverage experience conducting random testing in deployments worldwide, so as to maintain a driver pool fit for microtransit service delivery.

x. Usage of Vehicles -- It is prohibited for drivers to allow friends, family or relatives to ride aboard vehicles unless they are actually using the service to get to a service area destination.

5. Driver Monitoring

Ensuring Driver Excellence: Contractor’s Support and Operations Teams to monitor, track, and take corrective actions on driver-related issues around the clock. Issues may be flagged by external parties (ex. riders, community members, partners) through the following channels: Rider app with Post-ride rating on a 1 to 5 scale (with opportunity to provide additional detail); Rider app with Post-ride survey form; Rider support contact via Email form; Rider support contact via Phone call; or Partner support contact Support Ticket form.

Upon receipt of feedback, Contractor agents to evaluate and classify the feedback based on severity. Contractor to track all driver incidents, including those involving customer service, vehicle status, dangerous driving, system knowledge, and fraud. Contractor to handle all complaints involving passengers immediately, and all others will be addressed in order.

For complaints involving drivers, Contractor to investigate thoroughly and take appropriate disciplinary action up to and including permanent disaffiliation from the system During all service hours. Contractor’s local operations team and dispatchers to proactively monitor driver performance to ensure the provision of timely, safe, and accurate service. At all times, dispatchers to have a comprehensive overview of all driver locations.

In addition to reviewing externally reported complaints, Contractor to regularly reviews key internal metrics including:
- Aggregate rider ratings
- Incident counts per driver partner
- Low completion rate of pickups and other measures of platform misuse

These metrics may result in disciplinary action up to and including permanent disaffiliation from the system.

6. Driver Support

- Issues Reported by Drivers: Contractor to provide an excellent experience for those operating vehicles on the Contractor platform. Contractor to ensure they are regularly hearing from driver partners and addressing their concerns. Contractor to provide:

- Pulse Surveys: Contractor to request driver feedback and rating (out of 5) regarding their experience after each time using the platform; to include feedback on rental experience, navigation, app experience, and any other manually inputted feedback.
- Town Halls: Contractor to conduct semi-regular town halls where drivers can gather to collectively provide feedback and hear updates from the Contractor Operations
Team. Feedback is tracked and shared with all relevant internal teams.

- **Office Hours:** Contractor’s local operating team to hold weekly office hours for driver partners to receive one-on-one support.
- **Driver Advocate Program:** Contractor’s Driver Advocate program to pair each market with an experienced former Contractor Driver Partner now on the Driver Operations team. Feedback is to be tracked and shared with all relevant internal teams.
- **Support:** Contractor to provide several channels for support on and off the road including live phone, and email support. These interactions are to be tracked in Contractor’s customer support system.

7. **Office Staff:**
The Contractor shall supply a sufficient number of employees to staff the Contractor’s office at all required times and perform all necessary tasks associated with the service, including responding to calls for information or assistance from the public or City staff. The Contractor shall be responsible for training these employees and ensuring that all program policies and procedures are understood and enforced. During all times when vehicles are on the road for this program, the Contractor shall staff the office with at least one person trained to perform radio dispatching functions, monitor the telephone and handle any issues associated with City Service.

**SECTION 4: RECORDS AND REPORTS**

A. Records and Reports Requirements:

1. Routine Reports
   Contractor shall compile, prepare and furnish to City the following records and reports in a format approved by City. These records and reports shall be submitted on a monthly basis with billing information. City reserves the right to withhold payment if the required reports are not included with the billing information by the due date established by City at the onset of the contract.

   iv. Billing Information (in City-specified format)
   v. Actual/Scheduled number of service operating hours and miles of each route and vehicle
   vi. Level of usage by disabled passengers and bicycles
   vii. Complete explanation of all accidents, incidents, complaints and unusual events
   viii. Passenger Counting data
   ix. Daily passenger logs, or equivalent, which must include daily passenger counts (on/off per nearest corner, totals)

2. The following data reports shall be provided by Contractor at least monthly to meet VTA funding requirements.

<table>
<thead>
<tr>
<th>System data</th>
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<tbody>
<tr>
<td>Operating expenses</td>
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<tr>
<td>Capital expenses and other miscellaneous expenses</td>
</tr>
<tr>
<td>Total expenses</td>
</tr>
<tr>
<td>Total fare revenues collected</td>
</tr>
<tr>
<td>Average operating cost per trip</td>
</tr>
<tr>
<td>Average fare per trip</td>
</tr>
</tbody>
</table>
Fare recovery rate

Transit-dependent population data
Fare revenues collected from youth, low income and disabled population
Average cost per trip for youth, low income and disabled population

Other performance indicators data
Origin & Destination data
Total # of bicycles carried
Total # of wheelchair lift usage
On-time performance (%)
Total # of missed trips
Total # of excessively late trips*
Total # of bookings by mobile application/website
Total # of bookings cancelled w/n allowable period **
Total # of bookings cancelled outside of allowable period**
Total # of boardings by stop/boardings by Time of Day (nearest corner/intersection of stop)

3. Other Reports that shall be provided by Contractor upon City request as required by this Agreement include the following:
   i. Maintenance Records – vehicle number, dates, types of service, etc., daily vehicle availability, summary of vehicle road failures (as requested)
   ii. State Department of Motor Vehicles record of each driver (semi-annually)
   iii. California Highway Patrol (CHP) Pull-Notice System Reports (as required)
   iv. California Highway Patrol (CHP) Terminal Inspection Report
   v. Substance Abuse Control Program reports (as required)
   vi. Vehicle reports verifying compliance with CARB and the BAAQMD (as requested)
   vii. Passenger Surveys provided by City (as requested)
   viii. Report on Vehicle Compliance with the CARB to include engine type, vehicle model and year, odometer readings, fuel used, and vehicle size for each shuttle used to provide Palo Alto Shuttle services (prior to start of service and annually thereafter, or as requested)

4. Records Requirements:
The Contractor shall be responsible for properly maintaining separate records and summaries for this Service as deemed necessary by City and/or for City’s submission to federal and/or state agencies. Contractor shall comply with all federal, state and local mandates regarding record retention.

5. Maintenance and Ownership of Records:
All reports, records, and data relating to this Agreement shall be the property of City subject to the requirements of Section 14 of the contract.

B. Periodic Reviews

The Parties shall meet at these specified intervals for the following milestones and service items:
Milestone: Feedback gathered from initial users  | Quarterly review
---|---
Milestone: Post-launch marketing and promotions plan initiated  | Monthly review
Milestone: Ongoing optimization of day-to-day operations  | Monthly review

<table>
<thead>
<tr>
<th>Service Item</th>
<th>Communication Schedule</th>
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<tbody>
<tr>
<td>Recruitment, Onboarding, and Management; Personnel &amp; Partners; Vehicle provision; Rider growth strategies; Ongoing training; Partner support; Call Center Support;</td>
<td>Weekly and/or Bi-Weekly Check-in Meetings per each major phase and ongoing services provision effort</td>
</tr>
<tr>
<td>Marking &amp; Community Engagement</td>
<td>Quarterly reviews following initial Weekly and/or Bi-Weekly Check-in Meetings to launch initial plan</td>
</tr>
<tr>
<td>Service Performance Analysis</td>
<td>Quarterly reviews following initial launch</td>
</tr>
<tr>
<td>Service Goals reporting and management</td>
<td>Quarterly reviews following initial launch</td>
</tr>
</tbody>
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**SECTION 5: Miscellaneous Requirements**

1. **Fares:**  
   This Palo Alto On-Demand Transit service shall charge fares based on the following schedule:

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<thead>
<tr>
<th>Fare Type</th>
<th>Fare per Trip ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular – Adult</td>
<td>$3.50</td>
</tr>
<tr>
<td>Disabled</td>
<td>$1</td>
</tr>
<tr>
<td>Low-income</td>
<td>$1</td>
</tr>
<tr>
<td>Youth</td>
<td>$1</td>
</tr>
<tr>
<td>Other types, please specify:</td>
<td>Partner subsidies potentially available</td>
</tr>
</tbody>
</table>

   The Parties may modify the fare types and fare per trip upon mutual written agreement.

   Nomad shall collect these fares from customers. The fares shall belong to the City. Upon mutual agreement, the parties may determine how the fares shall be paid to the City; the fares may be applied directly to invoices or may be paid to the City, or in
any other manner mutually acceptable.

2. **Gratuities:**
The Contractor and its employees and or subcontractors are prohibited from soliciting or accepting any tips or gifts of any kind while operating a vehicle in City Service.

3. **Meetings:**
City plans to hold meetings on an as-needed basis for the purpose of discussing service problems and proposed solutions and to maintain open and frequent communications. Unless otherwise notified, the Contractor’s Project Manager shall attend all meetings.

4. **Facilities:**
The City shall identify and make available a depot or parking lot with ample overnight parking for the dedicated fleet. The depot/lot must be in a safe and lighted area inside the boundaries of the service zone and have on-site charging available for the electric vehicles in the fleet.

5. **Safety/Emergency Preparedness/Security Requirements:**
The Contractor shall provide for the safety of passengers by any and all reasonable means, including but not limited to: driver training, retraining, and monitoring; vehicle maintenance; maintaining order in and around vehicles; providing safety and emergency procedures.

6. **Web-Based Vehicle Tracking:**
Each vehicle shall include Automatic Vehicle Location (AVL) technology that must provide real-time route and vehicle information via a web-based interface for use by the public. Public must be able to track vehicle location, receive estimates on arrival to stops and must have access to this information through a website as well as mobile applications (such as smartphone apps). The shuttle operator shall use websites as well as mobile applications that incorporate information for other public transit providers. The system must also be equipped with reporting capabilities to accurately datastream and archive operational service information (for example: route timing, passenger wait time, trip counts, operator performance, vehicle speed and movement, departure and arrival times, etc.). The cost of maintaining the GPS and web-based portal shall be included in the hourly service fee for each route.

7. **On-Time Performance Monitoring:**
The contractor shall provide data to track the on-time performance of each shuttle trip. The city is permitted to share data to the public. Contractor shall provide the following data for each trip to allow for on-time performance monitoring of shuttle service.

<table>
<thead>
<tr>
<th>Field Name</th>
<th>Format</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trip Number</td>
<td>xx1, xx2, xx3…</td>
<td>2-letter Date of the day + Consecutive trip #</td>
</tr>
<tr>
<td>Trip Duration</td>
<td>MM:SS</td>
<td></td>
</tr>
<tr>
<td>Trip Distance</td>
<td>Miles</td>
<td></td>
</tr>
<tr>
<td>Start Date</td>
<td>MM, DD, YYYY</td>
<td></td>
</tr>
<tr>
<td>Start Time</td>
<td>HH:MM:SS</td>
<td></td>
</tr>
<tr>
<td>End Date</td>
<td>MM, DD, YYYY</td>
<td></td>
</tr>
<tr>
<td>End Time</td>
<td>HH:MM:SS</td>
<td></td>
</tr>
</tbody>
</table>
8. **City Promotions and Survey Materials:**
   i. Upon City’s request, Contractor shall be required to hand out City promotional materials or surveys to passengers. The City shall supply all such materials.
CONSULTANT shall perform the Services so as to complete each milestone within the number of days/weeks specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the Project Managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed (“NTP”) from the CITY.

<table>
<thead>
<tr>
<th>Milestones</th>
<th>Completion - Number of Days/Weeks (as specified below) from NTP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finalized project scope</td>
<td>By end of Week 6</td>
</tr>
<tr>
<td>Established service parameters</td>
<td>By end of Week 6</td>
</tr>
<tr>
<td>Finalized data sharing plan</td>
<td>By end of Week 6</td>
</tr>
<tr>
<td>Defined marketing plan</td>
<td>By end of Week 6</td>
</tr>
<tr>
<td>Localized software suite</td>
<td>By end of Week 6</td>
</tr>
<tr>
<td>Quality assurance and internal system testing completed</td>
<td>By end of Week 7</td>
</tr>
<tr>
<td>Pre-launch driver and staff training completed</td>
<td>By end of Week 7</td>
</tr>
<tr>
<td>Rider and Driver Apps available for download</td>
<td>By end of Week 7</td>
</tr>
<tr>
<td>Fleet ready for live service</td>
<td>By end of Week 12</td>
</tr>
<tr>
<td>Live field testing completed</td>
<td>By end of Week 12</td>
</tr>
<tr>
<td>All pre-launch marketing completed</td>
<td>By end of Week 12</td>
</tr>
<tr>
<td>M-F, 8a-6p transit services provided</td>
<td>Ongoing delivery beyond service launch</td>
</tr>
<tr>
<td>Feedback gathered from initial users</td>
<td>Quarterly review</td>
</tr>
<tr>
<td>Post-launch marketing and promotions plan initiated</td>
<td>Monthly review</td>
</tr>
<tr>
<td>Ongoing optimization of day-to-day operations</td>
<td>Monthly review</td>
</tr>
<tr>
<td>End of service marketing plan</td>
<td>6 weeks before anticipated transit services end</td>
</tr>
<tr>
<td>Final reporting requirements completed</td>
<td>Before final disbursement of funds</td>
</tr>
</tbody>
</table>
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.

BUDGET SCHEDULE

<table>
<thead>
<tr>
<th>TASK</th>
<th>NOT TO EXCEED AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Task 1 (Upfront Costs)</td>
<td>$92,500.00</td>
</tr>
<tr>
<td>Task 2 (Vehicle Hours (Up to 21,580 Hours))</td>
<td>$1,945,050.00</td>
</tr>
<tr>
<td>Task 3 (Estimated Electricity Cost (To be Treated as a Pass-Through))</td>
<td>$6,000.00</td>
</tr>
<tr>
<td>Sub-total for Services</td>
<td>$2,043,550.00</td>
</tr>
<tr>
<td>Reimbursable Expenses (if any)</td>
<td>$0.00</td>
</tr>
<tr>
<td>Total for Services and Reimbursable Expenses</td>
<td>$2,043,550.00</td>
</tr>
<tr>
<td>Additional Services (if any, per Section 4)</td>
<td>$0.00</td>
</tr>
<tr>
<td>Maximum Total Compensation</td>
<td>$2,043,550.00</td>
</tr>
</tbody>
</table>

Note: Pricing assumes that the Services provided hereunder are tax exempt and assumes service hours of 8am-6pm M-F. Pricing assumes launch within 4 months of contract signing. Estimated Electricity Cost assumes 2 active EVs with 171 Wh/km efficiency and electricity cost at $0.23 / kWh. Electricity costs will be treated as a pass-through. In the event that the Services cease to be tax exempt, such taxes will be treated as pass-through and charged 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 are: **NONE** up to the not-to-exceed amount of: **$0.00**.

All requests for reimbursement of expenses, if any are specified as reimbursable under this section, shall be accompanied by appropriate backup documentation and information.
EXHIBIT C-1
SCHEDULE OF RATES

CONSULTANT’s schedule of rates is as follows:
Cost per Driver Hour, Months 1-12: $88.65
Cost per Driver Hour, Months 13-18: $93.09

Note: Annual rate increase for Months 13-18 will be the greater of 5% (as shown) or the last 12 months U.S. all-items CPI. A Driver Hour is defined as each hour during which a driver is paid on the Via platform.
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, AS SPECIFIED, BELOW:

<table>
<thead>
<tr>
<th>REQUIRED</th>
<th>TYPE OF COVERAGE</th>
<th>MINIMUM LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>EACH OCCURRENCE</td>
</tr>
<tr>
<td>YES</td>
<td>WORKER’S COMPENSATION</td>
<td>STATUTORY</td>
</tr>
<tr>
<td>YES</td>
<td>EMPLOYER'S LIABILITY</td>
<td>STATUTORY</td>
</tr>
<tr>
<td>YES</td>
<td>GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, PRODUCTS/COMPLETED OPERATIONS AND FIRE LEGAL LIABILITY</td>
<td>BODILY INJURY</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PROPERTY DAMAGE</td>
</tr>
<tr>
<td></td>
<td></td>
<td>BODILY INJURY &amp; PROPERTY DAMAGE COMBINED.</td>
</tr>
<tr>
<td>YES</td>
<td>Cyber and Privacy Insurance</td>
<td>ALL DAMAGES</td>
</tr>
<tr>
<td></td>
<td>SUCH INSURANCE SHALL INCLUDE COVERAGE FOR LIABILITY ARISING FROM COVERAGE IN AN AMOUNT SUFFICIENT TO COVER THE FULL REPLACEMENT VALUE OF 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 VENDOR. INFORMATION INCLUDING BUT NOT LIMITED TO, BANK AND CREDIT CARD ACCOUNT 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.</td>
<td>BODILY INJURY</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- EACH PERSON</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- EACH OCCURRENCE</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PROPERTY DAMAGE</td>
</tr>
<tr>
<td></td>
<td></td>
<td>BODILY INJURY &amp; PROPERTY DAMAGE, COMBINED.</td>
</tr>
<tr>
<td>YES</td>
<td>AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED</td>
<td>BODILY INJURY</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- EACH PERSON</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- EACH OCCURRENCE</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PROPERTY DAMAGE</td>
</tr>
<tr>
<td></td>
<td></td>
<td>BODILY INJURY &amp; PROPERTY DAMAGE, COMBINED.</td>
</tr>
<tr>
<td>YES</td>
<td>SEXUAL ABUSE</td>
<td>ALL DAMAGES</td>
</tr>
</tbody>
</table>

THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS’ COMPENSATION, EMPLOYER’S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSURED CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.

I. INSURANCE COVERAGE MUST INCLUDE:
A. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR’S AGREEMENT TO INDEMNIFY CITY.

II. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO “ADDITIONAL INSUREDS”

A. PRIMARY COVERAGE

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

B. CROSS LIABILITY

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

EXHIBIT E
INFORMATION PRIVACY POLICY

POLICY AND PROCEDURES 1-64/IT
Revised: December 2017

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.
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
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.
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
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: 

Jonathan Richental 12/5/2017
Director Information Technology/CIO Date

Approved: 

City Manager 12/13/2017

Additional requirements:
1. PCI (Payment Card Industry) compliance is required. If Consultant uses a subcontractor or a vendor to process payments, Consultant is required to ensure that such subcontractor or vendor maintains PCI compliance.
**CERTIFICATE OF LIABILITY INSURANCE**

**City of Palo Alto COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES** are additional insured on the **General Liability policy** on a primary, **250 HAMILTON AVENUE PALO ALTO CA 94301**

**Table: Certificates of Liability Insurance**

<table>
<thead>
<tr>
<th>INSURER(S) AFFORDING COVERAGE</th>
<th>NAIC #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pacific Insurance Company, Limited</td>
<td>10046</td>
</tr>
</tbody>
</table>

**COVERAGE**

<table>
<thead>
<tr>
<th>INSURER F :</th>
<th>ADDRESS:</th>
<th>E-MAIL:</th>
<th>PHONE:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cottingham &amp; Butler</td>
<td>563-587-5000</td>
<td>563-583-7339</td>
<td>350597147</td>
</tr>
</tbody>
</table>

**Important:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**To the Insured:**

If yes, describe under DESCRIPTION OF OPERATIONS below

**OFFICER/MEMBER EXCLUDED?**

**Y / N**

**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY**

If yes, describe under DESCRIPTION OF OPERATIONS below

**CERTIFICATE HOLDER**

City of Palo Alto
250 HAMILTON AVENUE
PALO ALTO CA 94301

**CANCELLATION**

should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

**AUTHORIZED REPRESENTATIVE**

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ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):
Blanket, as required per written contract executed prior to a loss

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
POLICY NUMBER: 91 YR3 OH8163

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE

Name Of Person Or Organization:
Blanket, as required per written contract executed prior to a loss

The following is added to the Other Insurance Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under this policy that is shown in the SCHEDULE above, provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

However, the insurance provided under this endorsement will not apply beyond the extent required by such contract or agreement.

All other terms, conditions, and exclusions of the policy remain unchanged.
# Certificate of Liability Insurance

## Important Notice
This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies below. This certificate of insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder.

### Producer
Marsh USA, Inc.
1166 Avenue of the Americas
New York, NY 10036

CN115319700--WCXSC-22-23

### Insured
Via Transportation, Inc.
10 Crosby Street
Floor 2
New York, NY 10013

### Insurer
- **A**: Lloyd's Syndicate No. 1969

**AA112010**

- **B**: The Continental Insurance Company

35289

- **C**: United States Fire Insurance Company

21113

- **D**: AIG Specialty Insurance Company

26883

### Certificate Number
NYC-011523124-02

### Revision Number
2

## Coverages
This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

<table>
<thead>
<tr>
<th>Iner</th>
<th>Policy Type</th>
<th>Addl Insured</th>
<th>Policy Number</th>
<th>Policy Eff (MM/DD/YYYY)</th>
<th>Policy Exp (MM/DD/YYYY)</th>
<th>Limits</th>
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</thead>
<tbody>
<tr>
<td>A</td>
<td>Cyber/E&amp;O Liability</td>
<td>X Occur</td>
<td>BOWCN2251400</td>
<td>10/01/2022</td>
<td>10/01/2023</td>
<td>EACH OCCURRENCE $1,000,000</td>
</tr>
<tr>
<td>B</td>
<td>Workers Compensation and Employers' Liability</td>
<td>Y/N</td>
<td>7034521992(CO,CT,DC,FL,GA,IL,KY,MD,MA,MI,NJ,NY,NC,PA,SC,TX,UT,VT,VA,</td>
<td>10/01/2022</td>
<td>10/01/2023</td>
<td>X PER STATUTE</td>
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<tr>
<td>C</td>
<td>N/A</td>
<td>408-743942-4 (CA)</td>
<td>10/01/2022</td>
<td>10/01/2023</td>
<td>E.L. EACH EMPLOYEE $1,000,000</td>
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</tr>
<tr>
<td>D</td>
<td>Cyber/E&amp;O Liability</td>
<td>02-842-99-36</td>
<td>02/07/2022</td>
<td>02/07/2023</td>
<td>E.L. DISEASE - POLICY LIMIT $1,000,000</td>
<td></td>
</tr>
</tbody>
</table>

### Description of Operations / Locations / Vehicles
(Acord 101, Additional Remarks Schedule, may be attached if more space is required)

### Certificate Holder
City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301

### Cancellation
Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

### Authorized Representative
Marsh USA Inc.

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<table>
<thead>
<tr>
<th>AGENCY</th>
<th>Marsh USA, Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAMED INSURED</td>
<td>Via Transportation, Inc. 10 Crosby Street Floor 2 New York, NY 10013</td>
</tr>
<tr>
<td>POLICY NUMBER</td>
<td></td>
</tr>
<tr>
<td>CARRIER</td>
<td>Endurance American Specialty Insurance Company</td>
</tr>
<tr>
<td>NAIC CODE</td>
<td></td>
</tr>
<tr>
<td>EFFECTIVE DATE:</td>
<td></td>
</tr>
</tbody>
</table>

**Excess SIR applies per policy terms & conditions.**

**Excess Cyber/E&O Liability**
- Carrier: Endurance American Specialty Insurance Company
- Policy: PRX30015976400
- Effective Dates: 02/07/2022-02/07/2023
- Limits: $3,000,000 excess of $3,000,000

**Workers Compensation - Independent Contractors**
- Carrier: Crum & Forster Specialty Insurance Company
- Policy: US1846779/US08499
- Effective Dates: 10/01/2022-10/01/2023
- Limit: Employers Liability Each Accident: $1,000,000
- Employers Liability Disease-Policy Limit: $1,000,000
- Employers Liability Disease-Each Employee: $1,000,000