



**City Council
Special Meeting
Monday, February 14, 2022
5:00 PM
Council Chambers**

Amended Agenda
Amended Agenda items appear on the agenda in Red

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.

HOW TO PARTICIPATE

VIRTUAL PARTICIPATION

[CLICK HERE TO JOIN](https://cityofpaloalto.zoom.us/j/362027238) (<https://cityofpaloalto.zoom.us/j/362027238>)

Meeting ID: 362 027 238 Phone: 1(669)900-6833

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

IN PERSON PARTICIPATION REQUIREMENT:

- Provide Proof of Vaccination or negative COVID-19 test (taken within 48 hours) and a photo ID
- Wear a mask at all times
- Maintain social distancing
- If you cannot or do not wish to comply, you can still participate virtually

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.

PUBLIC COMMENTS

Public Comments will be accepted both in person and via Zoom meeting. 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.

CALL TO ORDER

SPECIAL ORDERS OF THE DAY (5:00 - 5:10 PM)

1. Select Applicants to Interview for the Architectural Review Board

AA1. Friends of the Palo Alto Libraries

AGENDA CHANGES, ADDITIONS AND DELETIONS

PUBLIC COMMENT (5:10 PM - 5:30 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 (5:30 PM - 5:40 PM)

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

2. Approve Minutes from the January 31, 2022 City Council Meeting
3. Approval of Construction Contract Number C22181645 with Legion Contractors Inc., in the Amount of \$494,723, and Authorization for the City Manager or their Designee to Negotiate and Execute Change Orders up to a Not-to-Exceed Amount of \$74,208, for the Magical Bridge Playground Rubber and Synthetic Turf Resurfacing Capital Improvement Program Project (PE-21003)
4. Approval of Amendment Number 2 to the Agreement With Palo Alto Unified School District (PAUSD) for PAUSD Athletic Field Brokering and Maintenance Cost-sharing to Extend the Term to June 30, 2022 with an Optional Extension for an Additional Two Years
5. Approval of Amendment #4 to Contract C18171057 with AECOM to Increase the Not-to-Exceed Compensation by \$722,170 for Additional Evaluation and Outreach of Railroad Grade Separation Alternatives for a Total Not-to-Exceed of \$3,596,828
6. Approval of Meter Data Management System (MDMS) Contract C22184319 With N. Harris Corporation (SmartWorks) in the Amount Not to Exceed \$1,804,055 Over a Five-Year Term
7. SECOND READING: Adoption of an Ordinance Amending Palo Alto Municipal Code Section 9.68 (Relocation Assistance for No-Fault Evictions) by Reducing the Threshold for Applicability from 50 Units to 10 Units or a Lower Threshold. Environmental Assessment: Exempt pursuant to CEQA Guidelines Section 15061(b)(3). (FIRST READING: January 31, 2022 PASSED: 5-1-1, Tanaka no, Stone abstain)

Public Letters

Presentation CITY MANAGER COMMENTS (5:40 PM - 6:00 PM)

ACTION ITEMS

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

**Public Letters
Presentation**

8. Discuss and Provide Direction to Staff on: (1) Continuing the Cubberley Concept Plan; (2) the Temporary Relocation of Palo Verde and Hoover Elementary Schools to Cubberley; and (3) Potential Opportunity to Acquire Additional Land at Cubberley (6:00 - 8:00 PM)

**Public Letters
Presentation**

9. Provide Direction to Staff on Negotiations with Pets in Need for Operations and Capital Improvements at the City's Animal Shelter (8:00 - 10:00 PM) *Supplemental Memo Added*

Q&A

COUNCIL MEMBER QUESTIONS, COMMENTS, ANNOUNCEMENTS

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

ADJOURNMENT

INFORMATION REPORTS

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

10. Surplus Property Donated to Nonprofit Organizations
11. Independent Police Auditor's (IPA) Report of Review of Investigations Completed Between 7/1/20 to 11/1/21 and the Police Department's Use of Force Report for December 2020-December 2021

OTHER INFORMATION

Standing Committee Meetings

Policy & Services Committee February 8, 2022

Finance Committee Meeting February 15, 2022 - Canceled

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 starting with AA, meaning Amended Agenda item.

AA1. Friends of the Palo Alto Libraries

9. Provide Direction to Staff on Negotiations with Pets in Need for Operations and Capital Improvements at the City's Animal Shelter (8:00 - 10:00 PM) *Supplemental Memo 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**



City of Palo Alto
Office of the City Clerk
City Council CAO Report

(ID # 13924)

Meeting Date: 2/14/2022

Title: Select Applicants to Interview for the Architectural Review Board

From: Lesley Milton, City Clerk

Recommendation

Direct Staff to schedule interviews with selected applicants for the scheduled vacancies on the Architectural Review Board (ARB).

Background

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

Per City Council's motion on December 13, 2021, the Special Architectural Review Board (ARB) recruitment was initiated to invite more applicants through January 31, 2022:

MOTION: Mayor DuBois moved, seconded by Council Member Cormack to:

- A. Vote tonight for two ARB positions;
- B. Direct the Clerk to open a new recruitment opening from now until the end of January for the open positions; and
- C. Request the incumbent to serve the holdover position until recruited.

MOTION PASSED: 6-0, Kou absent

Another position was added to the one unfilled vacancy due to Board Member Grace Lee's resignation from the ARB on December 2, 2021. Board Member Lee's vacancy was unable to be added to the Fall Recruitment at that time per [PAMC 2.16.060](#), which required an advertising period of at least 15 days before vacancies are scheduled to be filled. The appointments at that time were on December 13, 2021.

Furthermore, [Ordinance 5529](#) (which outlined the new Board, Commissions, and Committees term limits approved by City Council on August 9, 2021) came into effect this past January 1, 2022. The Ordinance states, "Effective January 1, 2022, terms of office due to expire on December 15 of each year shall be extended to expire on March 31 of the following year, and

thereafter terms of office shall commence on April 1.” Advertising was updated to include the extended terms. As such, the current vacancies staff is requesting to be filled are:

- One (1) position with a term ending March 31, 2025
- One (1) position with an unexpired term ending March 31, 2024

For the Architectural Review Board (ARB) Special Recruitment effort, a total of 13 qualified applications; 7 new applications were submitted during the extended recruitment period and 6 applications were from the previous Fall recruitment.

Scheduling Interviews

During the last several recruitments, the City Council has elected to interview all qualified applicants for respective Boards and Commissions. It is at the discretion of the Council to determine if they wish to continue the past practice, interview all candidates, or select identify and provide direction on a select cohort of applicants to continue to the interview processes.

Applicants from the previous Fall Recruitment period (Yujin Jeon, Kathryn Jordan, Brigham Wilson, Jim Xiao, and Bin Zhou) were also interviewed on November 16, 2021. Council may move to defer to their previous interviews when considering appointments, or schedule another set of interviews with the previous and new applicants.

Staff is recommending that interviews of the selected candidates be scheduled during a Special City Council meeting on the week of February 21, 2022 starting at 5:00 PM. Appointments then can be presented for approval at the February 28, 2022 Meeting.

Membership Requirements

Per [PAMC 2.21.010](#), the Architectural Review Board requires at least 3 of its members to be architects, landscape architects, building designers or other design professionals. Board Members Peter Baltay, David Hirsch, and Osma Thompson are architects. As a result, the current ARB Members fulfill these requirements.

Architectural Review Board: Two positions

- At least three members must be architects, landscape architects, building designers or other design professionals. *(Fulfilled by current members)*
- No Palo Alto residency requirement
([PAMC 2.21.010](#))
- NEWLY RECEIVED APPLICANTS:
 1. Yingxi Chen
 2. Joao (Johnny) Baptista DaRosa
 3. John Kunz
 4. Dave Madwed
 5. Alfred J. Mandel
 6. Kendra Rosenberg
 7. Curtis Smolar

- **PREVIOUSLY RECEIVED APPLICANTS:**

8. Yujin Jeon (Preference of the March 31, 2024 term)
9. Kathryn Jordan
10. Manix Patel
11. Brigham Wilson
12. Jim Xiao
13. Bin Zhou (Resubmitted an updated application)

Public Outreach

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

The Fall 2021 Boards and Commission recruitment invited applications from September 16, 2021 through October 26, 2021 through the new online application process. From that previous recruitment, 6 unselected applicants of the 7 confirmed their continued interest for the 2 vacancies.

The Special ARB recruitment invited applications from December 13, 2021 through January 31, 2022. The vacancies were advertised through various methods in partnership with the Communications team. This included paid print advisements in The Palo Alto Weekly and the Daily Post; via the City’s website and social media channels; in physical locations of the Palo Alto Libraries and Community Centers; and distributed by e-mail and through City subscription-based notification lists.

To effectively reach architectural professionals, further email outreach was done to 17 local Palo Alto based architect companies and Stanford’s Architectural Design Program. Palo Alto’s Public Works Engineering staff were also notified by email to share to their professional networks, as several are licensed architects. A focused social media engagement was also organized with AIA Silicon Valley.

ATTACHMENTS:

- **Attachment1.a:** Attachment A: ARB - All Applications (Redacted) (PDF)

New (Extended Recruitment)

Architectural Review Board Application

Name Yingxi Chen

Address

City

Postal Code

Cell Phone

Home Phone

Email Address

Are you a Palo Alto resident? Yes

Do you have any relatives or members of your household who are employed by the City of Palo Alto, who are currently serving on the City Council, or who are Commissioners or Board Members? No

Are you available and committed to complete the term applied for? Yes

Fair Political Practices No

California state law requires board/commission members to file a disclosure of financial interests ([Fair Political Practices Commission, Conflict of Interest, Form 700](#)).

Do you/your spouse have an investment in, or do you or your spouse serve as an officer or director of, a company doing business in Palo Alto which you believe is likely to:

1. Engage in business with the City;

2. Provide products or services for City projects; or
3. Be affected by decisions of this Board or Commission?

Excluding your principal residence, do you or your spouse own real property in Palo Alto?

No

How did you learn about the vacancy on the Architectural Review Board?

Email from the City, Other: Email from AIA Silicon Valley

- Community Group
- Email from the City
- Palo Alto Weekly
- Daily Post
- City Website
- Flyer
- Other

Consent to Publish Personal Information on the City of Palo Alto Website

California Government Code Section 6254.21 states, in part, "No state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual." This consent form will not be redacted and will be attached to the Application and posted to the City's website. For the full code, review the California Government Code Section 6254.21.

I give permission for the City of Palo Alto to post to the City's website the attached Board and Commission Application intact. I have read and understand my rights under Government Code Section 6254.21. I may revoke this permission at any time by providing written notice to the Palo Alto City Clerk.

Read the code, and check only ONE option below:

- I give permission for the City of Palo Alto to post to the City's website the attached Board and Commission Application intact. I have read and understand my rights under Government Code Section 6254.21. I may revoke this permission at any time by providing written notice to the Palo Alto City Clerk.
- I request that the City of Palo Alto redact my home address, phone numbers, and email address from the attached Board and Commission Application prior to posting to the City's website. I am providing the following alternate information and request that the following contact information:

Alternate Contact Information

Personal and Job Experience

Please list your relevant education, training, experience, certificates of training, licenses, and professional registration.

(621 characters max)

I'm a licensed architect and a member of AIA Silicon Valley. Prior to starting my own practice, I worked with two other firms on a variety of institutional, recreational and hospitality projects both in the U.S and abroad. My architectural education took me around the world. After receiving bachelor's degree in China, I went to graduate school in the U.S., where I also participated Study Abroad program, and spent time studying/ travelling in Europe. These experiences not only broaden my eyes, but also encourage me to interact with and learn from the locals.

Employment Information

Company/Employer Name

Y. Chen Architect

Occupation

Architect

Is your Company/Employer your current one or last?

Current Employer

Please describe your involvement in community activities, volunteer and civic organizations, including dates and any offices held.

(1311 characters max)

As a member of AIA Silicon Valley Home Tour committee in 2018 and 2019, I teamed up with the other 4 members, reached out to potential architects, reviewed applications, toured potential homes, and assisted in being a house captain in coordinating docents. I also volunteered to join 2018 AIA Silicon Valley Design Awards committee, where I helped identifying venues, contacting sponsors and assisting in coordinating logistics.

Application Questions

1. Why are you interested in serving on the Architectural Review Board and what experience would you bring to the position?

(1449 characters max)

Buildings are more or less permanent commitments. As an architect and a mom of two young kids, it would be a great honor to be involved in the city's development and help building a better living/ learning environment for the next generation. As a sole practitioner, I miss those days when talking designs and share thoughts on the industry with my colleagues.

The experiences on both commercial and residential projects allow me to develop a more holistic view on projects. Aesthetics, accessibility, safety, flexibility, just to name a few. Privacy is one of the common issues I'm facing when designing single families in recent years. It is always helpful to hear neighbors' feedback and thoughts when preparing IR review in Palo Alto and design review in nearby cities. Privacy is important to both the owners and their neighbors, and we, as architects, are always trying to find a balance while addressing certain concerns.

2. Please describe an issue that recently came before the Board that is of particular interest to you and describe why you are interested in it.

(1449 characters max)

Archived video meetings are available from the [Midpen Media Center](#).

The Castilleja school project is controversial and has been on the board for many years. I do appreciate the city allows people to speak up and has fully discussion before finalizing the plans. As a mom with school age kid, I'm interested to know ways to modernize a campus. Education changes and technology evolves. This project is challenging and inevitable. I'm a licensed architect and a member of AIA Silicon Valley. Prior to starting my own practice, I worked with two other firms on a variety of institutional, recreational and hospitality projects both in the U.S and abroad. My architectural education took me around the world. After receiving bachelor's degree in China, I went to graduate school in the U.S., where I also participated Study Abroad program, and spent time studying/ travelling in Europe. These experiences not only broaden my eyes, but also encourage me to interact with and learn from the locals.

3. If you are appointed, what specific goals would you like to see the Architectural Review Board achieve, and how would you help in the process?

(1587 characters max)

If I was lucky enough to be appointed, I'd love to work collaboratively with the board members and city staff. There are always new regulations and laws coming out, and each city has its own character. I'd like to explore with the team and see what's the best interpretation and practice that works for Palo Alto. The city has very restricted zoning codes and different level of reviews to promote and protect the public peace and safety. ARB is like an extra layer of protection to have decent buildings to be built. Ideally, the applicant/ architects can see the process as inspiring discussions, instead of extra restraint or limit to their creativity.

4. Please identify a project (or projects) that you find to be examples of good architecture, and explain why. You may include samples, identify project addresses, or provide links.

(1035 characters max)

The Kolumba Museum by Peter Zumthor is a very successful work that brings new life to the ruins. It is located in Cologne, Germany. The original church was destroyed during WWII. I visited the museum 15 years ago. The details and techniques are very impressive. The new longer and thinner bricks blends so well with the old darker ones. The perforated brick wall allows

diffused light to fill specific spaces of the museum. The result is amazing.

5. Architectural Review Board Members work with the documents listed below. If you have experience with any of these documents, please describe that experience. Experience with these documents is not required for selection, but will help you better understand the work of the board.

(1173 characters max)

Palo Alto 2030 Comprehensive Plan (2017)

Zoning Code

El Camino Real Design Guidelines

El Camino Real Master Plan Study (2007)

Area Plans such as the South of Forest Avenue (SOFA) I (2000) and II (2003) Plans

California Environmental Quality Act

Permit Streamlining Act Density Bonus Law

Secretary of the Interior's Standards

Downtown Urban Design Guidelines (1993)

Other documents listed on [this website](#) as well.

I'm familiar with the Zoning Code, specifically R-1 zone. I have limited knowledge of CEQA and Secretary of the Interior's Standards when preparing for ARE and getting the license.

If you'd like to provide any additional documents, please upload below.

Please confirm that you have read the Boards and Commissions Handbook.

Yes

View the [Boards and Commissions Handbook](#).

Signature

Yingxi Chen

Date Completed

01/27/2022

New (Extended Recruitment)

Architectural Review Board Application

Name Joao Baptista DaRosa (Johnny)

Address

City

Postal Code

Cell Phone

Home Phone

Email Address

Are you a Palo Alto resident? No

Do you have any relatives or members of your household who are employed by the City of Palo Alto, who are currently serving on the City Council, or who are Commissioners or Board Members? No

Are you available and committed to complete the term applied for? Yes

Fair Political Practices No

California state law requires board/commission members to file a disclosure of financial interests ([Fair Political Practices Commission](#), [Conflict of Interest](#), [Form 700](#)).

Do you/your spouse have an investment in, or do you or your spouse serve as an officer or director of, a company doing business in Palo Alto which you believe is likely to:

1. Engage in business with the City;

2. Provide products or services for City projects; or
3. Be affected by decisions of this Board or Commission?

Excluding your principal residence, do you or your spouse own real property in Palo Alto?

No

How did you learn about the vacancy on the Architectural Review Board?

Email from the City

- Community Group
- Email from the City
- Palo Alto Weekly
- Daily Post
- City Website
- Flyer
- Other

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Read the code, and check only ONE option below:

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- **I request that the City of Palo Alto redact my home address, phone numbers, and email address from the attached Board and Commission Application prior to posting to the City's website. I am providing the following alternate information and request that the following contact information:**

Alternate Contact Information

Personal and Job Experience

Please list your relevant education, training, experience, certificates of training, licenses, and professional registration.

(621 characters max)

- MBA Essential (London School of Economics and Politics)
- Advanced Management Development Program in Real Estate (Harvard University Graduated School of Design)
- Higher Education Teaching (Harvard University Graduated School of Education)
- BA of Architecture (University of Hong Kong)
- Please see attached bio

Employment Information

Company/Employer Name

DaRosa & Associates (self employed)

Occupation

Architecture Design, Land Planning and entitlement

Is your Company/Employer your current one or last?

Current Employer

Please describe your involvement in community activities, volunteer and civic organizations, including dates and any offices held.

(1311 characters max)

- President of Peninsula Chinese Business Associations (San Mateo County)
- Board member of Harvard Alumni Real Estate Board
- Member of Harvard Community Partners (Northern California)
- Interim CFO of Family Bridges Inc. (a nonprofit service senior healthcare and children in Oakland)

Application Questions

1. Why are you interested in serving on the Architectural Review Board and what experience would you bring to the position?

(1449 characters max)

With thirty five years of architectural (commercial and residential design), subdivision entitlement, and planning experiences (from Sonoma/Napa counties to Monterey counties). It is time to give back to the society.

2. Please describe an issue that recently came before the Board that is of particular interest to you and describe why you are interested in it.

(1449 characters max)

"Diversity," is what I am proposing to offer. Ecological urbanism is the platform to grow sustainable community. It is included environment, economy, culture, social and building synchronize together in a common tread to enhance quality of living.- MBA Essential (London School of Economics and Politics)

Archived video meetings are available from the [Midpen Media Center](#).

- Advanced Management Development Program in Real Estate (Harvard University Graduated School of Design)
- Higher Education Teaching (Harvard University Graduated School of Education)
- BA of Architecture (University of Hong Kong)
- Please see attached bio

3. If you are appointed, what specific goals would you like to see the Architectural Review Board achieve, and how would you help in the process?
(1587 characters max)

"Balance," is what I would like to see the Architectural Review Board achieve. Building design is like a chair, it requires four legs to support and they are the economy, culture, social and environment.

4. Please identify a project (or projects) that you find to be examples of good architecture, and explain why. You may include samples, identify project addresses, or provide links.
(1035 characters max)

Recently, City of Mountain View approved a 15 units of mixed single-family detached and condominium development project, I designed on Franklin Street in the downtown district. The challenge is to maintain the characteristic of single-family home along the street, and blended with the mid density non visible condominium structures behind them to meet the housing need. A multi functions courtyard is a center component to bond both products together. It serve the purposes of live, work and play concept to meet the trendy lifestyle.

5. Architectural Review Board Members work with the documents listed below. If you have experience with any of these documents, please describe that experience. Experience with these documents is not required for selection, but will help you better understand the work of the board.
(1173 characters max)

My experience with City of Palo Alto only single family residential projects.

Similar experiences:

- * Downtown Urban Design Guideline - with City of Millbrae
- * CEQA - City of Vacaville, City of Marina and Monterey County

Palo Alto 2030 Comprehensive Plan (2017)
Zoning Code
El Camino Real Design Guidelines
El Camino Real Master Plan Study (2007)
Area Plans such as the South of Forest Avenue (SOFA) I (2000) and II (2003) Plans
California Environmental Quality Act
Permit Streamlining Act Density Bonus Law
Secretary of the Interior's Standards
Downtown Urban Design Guidelines (1993)
 Other documents listed on this website as well.

If you'd like to provide any additional documents, please upload below.

14\585740\Johnny's Bio .pdf [SCANNED, FILE SAFE]

**Please confirm that you have read the
Boards and Commissions Handbook.**

Yes

View the [Boards and Commissions
Handbook](#).

Signature

Joao Baptista DaRosa (Johnny)

Date Completed

11/07/2021

Joao Baptista (Johnny) DaRosa

Phone: [REDACTED]

Email: [REDACTED]

www.darosa.associates

PROFILE

Entrepreneur with visionary leadership. Over 35 years track record of success in San Francisco Bay Area private sectors, with strategic resolutions to challenges, delivery of thriving growth performance. Corporate citizen with passion and acute awareness, to helping others to succeed.

PROFESSIONAL EXPERIENCE

DaRosa & Associates, Millbrae, California

1998 to present

Founder and Principal

- Advisory in three industries: planning, construction, and development
- Expertise in land planning, architecture design for high and low densities residences
- Commercial project, focus on hotel interior architecture, athletic facilities, restaurant, winery, medical office, childcare and industrial
- University campus master planning and building design (Nordic Business School Campus, Chengdu China) (Nottingham University Shanghai Campus, Shanghai China)

DaRosa and Company LLC, Millbrae, California

2003 to present

Founder and Principal

Residential sub-division, land and building development

D&A Construction Company, Inc. Millbrae, California

1998 to 2010

Founder and Principal

- General contractor for in-house sub-division developments

SJ Sung & Associates, San Mateo, California

1988 to 1998

Partner

- Expanded a traditional architectural firm to a full design consultation provider
- Grew company from \$1.5M to \$5.0 M in annual project design fee revenues
- Managed staff of five project architects in commercial and residential projects
- Responsible for marketing and operations management

TDR Enterprises USA/Canada Inc (Licensee of Christian Dior, Chemise)

1993 to 1998

Chief Operating Officer

- Developed merchandise products (man dress shirt) for two seasons every year
- Material sourcing and oversaw production
- Responsible for license renewal and product design with Christian Dior's HQ
- Oversaw sales performance of shops and department stores

LRS & Associates, Architects, Sunnyvale, California

1986 to 1988

Assistant Project Architect

- Prepared construction documents and specification
- Construction administration

Johnny DaRosa

Page Two

PROFESSIONAL AFFILIATIONS

- President, Peninsula Chinese Business Association, <http://pcbausa.com> 2020 to Present
 - Founder of Encouragement Scholarship¹ Since 2015
 - Board of Director for (PCBA) 2010 to Present

¹For High School students in Burlingame, Millbrae, San Bruno, and South San Francisco

Oakland Family Bridges Inc.

- Interim Chief Financial Officer 2020 to Present
- Vice President of the Board 2016 to 2018
- Board of Directors for Oakland Family Bridges Inc. 2014 to 2018

- Harvard Business School Community Partners (Northern California)
 - HBS alumni volunteer in multiple projects ¹⁻⁵ 2011 to Present
 - to assist nonprofits address management and financial challenges

Participated projects:

¹Children Hospital & Research, Oakland (CHRCO Rehabilitation TBI Business Plan)

²1% Program of Public Architecture, Nationwide (Strategic Growth Plan)

³New Story, San Francisco (Construction Management Template for low income housing development in South America and Africa)

⁴Greenbelt Alliances, San Francisco (Recommendation for protecting Bay Area open spaces)

⁵Pier 39 Aquarium, San Francisco (Marketing strategic plan)

- Harvard Alumni Real Estate Board 2017 to Present
 - To promote the study of real estate across the university
 - To provide an enhanced experience for students studying real estate
 - To create a beneficial network of alumni working in real estate to foster professional and personal growth
 - Coaching and mentoring graduate students

TEACHING AFFILIATIONS

Lecturer, mentor to graduate students, lecturing in urban design, ecological urbanism, and self-improvement in various universities

Guide students in using case studies to support research

Prepare course materials such as syllabus and assignments

Foster student's commitment to lifelong learning by connecting course materials to broader themes

PUBLICATION

- Journey to Your Dream Home
(A book for what you need to know to build your dream home)

Johnny DaRosa**Page Three**

- Nuts and Bolts to Assemble Your Dream Home
(A book for crafting your living quality)

EDUCATION

- London School of Economics and Political Science: MBA Essential 2021
- Harvard Derek Box: The Higher Education Teaching Certificate 2020
- Harvard University, Graduate School of Design (AMD) in Real Estate 2010
- Hong Kong University, Bachelor of Architecture 1982

EXECUTIVE PROGRAMS

- Education Redesign: Building 21st Century Systems of Child Development and Education 2020
- Harvard University, Graduate School of Design, “Back to the Future” Master Program 2016
- Harvard Law School, The Harvard Negotiation Master Program 2015
- Harvard Graduate School of Education: Learning Environments for Tomorrow,
Practice for Architects and Educators Program 2013
- Harvard Graduate School of Design, Master Planning,
 - Moving Towards a Sustainable City Program 2013
 - Residential Universal Design Program 2013
- Harvard Law School, Negotiation and Leadership Program 2011
- Graduate School of Design, Real Estate Advanced Finance Program 2009
- Harvard Business School, Advanced Business Management Program 2008
- Harvard Business School, Real Estate Management Program: Developing Effective Leaders 2008
- Harvard Business School, Strategies for Project Development and Capital Market Access 2008
- Stanford University, Graduate Business School, Professional and Personal Development Program 2008

OTHER LANGUAGES

Cantonese and Mandarin

Architectural Review Board Application

Name Yujin Jeon

Address

City

Postal Code

Cell Phone

Home Phone

Email Address

Are you a Palo Alto resident? No

Do you have any relatives or members of your household who are employed by the City of Palo Alto, who are currently serving on the City Council, or who are Commissioners or Board Members? No

Are you available and committed to complete the term applied for? Yes

Fair Political Practices No

California state law requires board/commission members to file a disclosure of financial interests ([Fair Political Practices Commission, Conflict of Interest, Form 700](#)).

Do you/your spouse have an investment in, or do you or your spouse serve as an officer or director of, a company doing business in Palo Alto which you believe is likely to:

1. Engage in business with the City;
2. Provide products or services for City projects; or

3. Be affected by decisions of this Board or Commission?

Excluding your principal residence, do you or your spouse own real property in Palo Alto?

No

How did you learn about the vacancy on the Architectural Review Board?

Email from the City

- Community Group
- Email from the City
- Palo Alto Weekly
- Daily Post
- City Website
- Flyer
- Other

Consent to Publish Personal Information on the City of Palo Alto Website

California Government Code Section 6254.21 states, in part, "No state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual." This consent form will not be redacted and will be attached to the Application and posted to the City's website. For the full code, review the California Government Code [Section 6254.21](#).

I request that the City of Palo Alto redact my home address, phone numbers, and email address from the attached Board and Commission Application prior to posting to the City's website. I am providing the following alternate information and request that the following contact information below:

Read the code, and check only ONE option below:

- I give permission for the City of Palo Alto to post to the City's website the attached Board and Commission Application intact. I have read and understand my rights under Government Code Section 6254.21. I may revoke this permission at any time by providing written notice to the Palo Alto City Clerk.
- I request that the City of Palo Alto redact my home address, phone numbers, and email address from the attached Board and Commission Application prior to posting to the City's website. I am providing the following alternate information and request that the following contact information:

Alternate Contact Information**Personal and Job Experience**

Please list your relevant education, training, experience, certificates of training, licenses, and professional registration.

(621 characters max)

I have 25 years experience as a commercial and residential architectural designer. Currently I'm president of Jeon Design. I've worked at several large architecture firms including VBN Architects as Design Director, MBH Architect as Senior Designer, and Michael Willis Architect as Senior Designer. I graduated from FIDM studying interior design.

Employment Information

Company/Employer Name

Jeon Design

Occupation

President/CEO/Architectural Designer

Is your Company/Employer your current one or last?

Current Employer

Please describe your involvement in community activities, volunteer and civic organizations, including dates and any offices held.

(1311 characters max)

This is a great opportunity to have my first chance to work with such a great city as Palo Alto. I worked with many people in the planning department, David Chung, Brian Jones, and Val Perez-Ibardolasa as I did work on the Sweet Maple restaurant project on University Ave. Everyone was wonderful to work with as I completed my construction documents.

Application Questions

1. Why are you interested in serving on the Architectural Review Board and what experience would you bring to the position?

(1449 characters max)

Palo Alto is one of my dream cities to live in at some point in my life. Being a creative designer I would like to have the opportunity to contribute to making this city beautiful through design. It would be an honor to be a part of this team and I would enjoy meeting so many different people that are making a living here. I worked on many different large commercial projects such as mixed-use buildings in San Francisco and also worked on many well-known restaurant projects. PF Chang in the Stanford shopping center, Sweet Maple on University Ave as examples. I have also helped develop some large multi family homes and single private high-end custom homes in locations all over the Bay Area, Beverly Hills, and Shanghai.

2. Please describe an issue that recently came before the Board that is of particular interest to you and describe why you are interested in it.

(1449 characters max)

Currently I am attending many design reviews with our home projects in many different cities. I am always interested to hear other people's ideas and their perspective other than my own. I would also love to learn what the city's perspective is on the process. I love to learn, share ideas, and help and meet other people.

Archived video meetings are available from the [Midpen Media Center](#).

I have 25 years experience as a commercial and residential architectural designer. Currently I'm

president of Jeon Design. I've worked at several large architecture firms including VBN Architects as Design Director, MBH Architect as Senior Designer, and Michael Willis Architect as Senior Designer. I graduated from FIDM studying interior design.

3. If you are appointed, what specific goals would you like to see the Architectural Review Board achieve, and how would you help in the process?
(1587 characters max)

I would like to see many more LEED certified projects as this is important to me for our future. Instead of thinking of single projects look at them from a larger perspective and how we can create more functionality, beauty, and vibrant community.

4. Please identify a project (or projects) that you find to be examples of good architecture, and explain why. You may include samples, identify project addresses, or provide links.
(1035 characters max)

I think good architecture is harmonious design, inside and outside. Design and plans in order to make human meet with nature. As a designer, we provide spaces to make a happy and meaningful place for everyone. I think the most beautiful architecture is Pantheon in Rome because it is the oldest concrete dome and most innovative design. Structurally, there is nothing, 30' diameter opening on the ceiling in the part that requires the most reinforcement. This is an innovative and iconic building.

Sequence is one of most important elements in architecture. A story with a flow, a narrative that is created by successive small events that are related to each other. Ando Tadao is my favorite architect because his architecture has sequence. It is like watching a movie with a climax.

5. Architectural Review Board Members work with the documents listed below. If you have experience with any of these documents, please describe that experience. Experience with these documents is not required for selection, but will help you better understand the work of the board.
(1173 characters max)

I've reviewed portions of the Downtown urban design guide. My business website is at jeondesign.com

[Palo Alto 2030 Comprehensive Plan \(2017\)](#)
[Zoning Code](#)
[El Camino Real Design Guidelines](#)
[El Camino Real Master Plan Study \(2007\)](#)
[Area Plans such as the South of Forest Avenue \(SOFA\) I \(2000\) and II \(2003\) Plans](#)
[California Environmental Quality Act](#)
[Permit Streamling Act](#) [Density Bonus Law](#)
[Secretary of the Interior's Standards](#)
[Downtown Urban Design Guidelines \(1993\)](#)

Other documents listed on [this website](#) as well.

If you'd like to provide any additional documents, please upload below.	20\585740\Yujin Jeon REFERENCES.pdf [SCANNED, FILE SAFE]

Please confirm that you have read the Boards and Commissions Handbook.	Yes

View the [Boards and Commissions Handbook](#).

Signature	Yujin Jeon

Date Completed	10/25/2021

Architectural Review Board Application

Name Kathryn Jordan

Address

City

Postal Code

Cell Phone

Home Phone

Email Address

Are you a Palo Alto resident? Yes

Do you have any relatives or members of your household who are employed by the City of Palo Alto, who are currently serving on the City Council, or who are Commissioners or Board Members? No

Are you available and committed to complete the term applied for? Yes

Fair Political Practices No

California state law requires board/commission members to file a disclosure of financial interests ([Fair Political Practices Commission, Conflict of Interest, Form 700](#)).

Do you/your spouse have an investment in, or do you or your spouse serve as an officer or director of, a company doing business in Palo Alto which you believe is likely to:

1. Engage in business with the City;
2. Provide products or services for City projects; or

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Excluding your principal residence, do you or your spouse own real property in Palo Alto?

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How did you learn about the vacancy on the Architectural Review Board?

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- Community Group
- Email from the City
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Alternate Contact Information**Personal and Job Experience**

Please list your relevant education, training, experience, certificates of training, licenses, and professional registration.

(621 characters max)

BA, Political Science, Stanford University
MSM, GSB, Stanford University

Employment Information

Company/Employer Name

N/A

Occupation

N/A

Is your Company/Employer your current one or last?

Last Employer

Please describe your involvement in community activities, volunteer and civic organizations, including dates and any offices held.

(1311 characters max)

I currently serve on the City's Housing Element Working Group. I am currently the President of the Palo Alto Plaza HOA, a mixed use, multifamily complex in downtown Palo Alto. I have served as Parent network Chair in the Paly PTSA, and volunteered at both Duveneck elementary school and Jordan Middle School. I've coached AYSO soccer.

Application Questions

Because I am interested in the housing and commercial development within the City of Palo Alto.

1. Why are you interested in serving on the Architectural Review Board and what experience would you bring to the position?

(1449 characters max)

2. Please describe an issue that recently came before the Board that is of particular interest to you and describe why you are interested in it.

(1449 characters max)

Archived video meetings are available from the [Midpen Media Center](#).

The expansion of Castilleja. I'm interested in this issue because its expansion may greatly affect both traffic on a main Palo Alto thoroughfare, Embarcadero Road, and a residential neighborhood, depending upon how this project is ultimately configured. The size of the student enrollment will also figure into the size of the project. BA, Political Science, Stanford University
MSM, GSB, Stanford University

3. If you are appointed, what specific goals would you like to see the Architectural Review Board achieve, and how would you help in the process?

(1587 characters max)

Maintain the character of the community of Palo Alto. I would help by giving my time and attention to helping guide change and development within the City of Palo Alto.

4. Please identify a project (or projects) that you find to be examples of good architecture, and explain why. You may include samples, identify project addresses, or provide links.

(1035 characters max)

My neighbor's house at 109 Walter Hays Drive. I think the home fits nicely on its lot and within the existing neighborhood, while at the same time projecting a more sleek and modern exterior.

5. Architectural Review Board Members work with the documents listed below. If you have experience with any of these documents, please describe that experience. Experience with these documents is not required for selection, but will help you better understand the work of the board.

(1173 characters max)

Yes, I built a home in Palo Alto, so I am familiar with the Zoning Code. I have also read almost all of the Comprehensive Plan. I am familiar with the purpose of CEQA and how it applies to development.

[Palo Alto 2030 Comprehensive Plan \(2017\)](#)

[Zoning Code](#)

[El Camino Real Design Guidelines](#)

[El Camino Real Master Plan Study \(2007\)](#)

[Area Plans such as the South of Forest](#)

[Avenue \(SOFA\) I \(2000\) and II \(2003\) Plans](#)

[California Environmental Quality Act](#)

[Permit Streamlining Act](#) [Density Bonus Law](#)

[Secretary of the Interior's Standards](#)

[Downtown Urban Design Guidelines \(1993\)](#)

Other documents listed on [this website](#) as well.

If you'd like to provide any additional documents, please upload below.

Please confirm that you have read the Boards and Commissions Handbook.

Yes

View the [Boards and Commissions Handbook](#).

Signature

Kathryn Jordan

Date Completed

10/25/2021

New (Extended Recruitment)

Architectural Review Board Application

Name john kunz

Address

City

Postal Code

Cell Phone

Home Phone

Email Address

Are you a Palo Alto resident?

Yes

Do you have any relatives or members of your household who are employed by the City of Palo Alto, who are currently serving on the City Council, or who are Commissioners or Board Members?

No

Are you available and committed to complete the term applied for?

Yes

Fair Political Practices

No

California state law requires board/commission members to file a disclosure of financial interests ([Fair Political Practices Commission](#), [Conflict of Interest](#), [Form 700](#)).

Do you/your spouse have an investment in, or do you or your spouse serve as an officer or director of, a company doing business in Palo Alto which you believe is likely to:

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2. Provide products or services for City projects; or
3. Be affected by decisions of this Board or Commission?

Excluding your principal residence, do you or your spouse own real property in Palo Alto?

No

How did you learn about the vacancy on the Architectural Review Board?

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- Community Group
- Email from the City
- Palo Alto Weekly
- Daily Post
- City Website
- Flyer
- Other

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Alternate Contact Information

Personal and Job Experience

Please list your relevant education, training, experience, certificates of training, licenses, and professional registration.

(621 characters max)

BA, Dartmouth; BE, Thayer School of Engineering; MS Computer Science, UCLA; Ph.D., Medical Information Sciences and Artificial Intelligence, Stanford

Experiences: Systems Engineer, US Air Force; Systems Engineer, Institutes of Medical Sciences; Chief Knowledge Systems Engineer, IntelliCorp; Executive Director, Center for Integrated Facility Engineering at Stanford (now emeritus). At Stanford, I worked and taught on social and computer-based methods of collaborative model-based building design and construction. I taught classes on Built Environmental History for the overseas program in Santiago and Madrid.

Employment Information

Company/Employer Name

Stanford University

Occupation

Engineer

Is your Company/Employer your current one or last?

Last Employer

Please describe your involvement in community activities, volunteer and civic organizations, including dates and any offices held.

(1311 characters max)

I have been a Cool Block leader in my neighborhood for several years. We repeatedly met as a neighborhood and discussed how to prepare for a disaster. The past few years, I have been a Block Preparedness Coordinator (BPC) and Neighborhood Preparedness Coordinator (NPC) for the city Emergency Services Volunteers. Our LLL neighborhood has a long tradition of community activities, and I arranged and hosted the most recent New Year's Day get-together, which was attended by many neighbors.

Application Questions

1. Why are you interested in serving on the Architectural Review Board and what experience would you bring to the position?

(1449 characters max)

Having lived all over this country and in France, Spain and Chile and traveled widely, I have observed and experienced many architectural and cultural styles.

A provocative experience was teaching a class when Stanford students considered options for high speed rail through Palo Alto. Students interviewed developers to identify design possibilities, tunneling cost, and size of buildings big enough so air rights could pay for tunneling. They built 3D computer models of each option: elevated tracks, ground-level track right of ways and of soccer fields, etc. above below-ground tunnels and with multiple high rise buildings, generally near train stations, that collectively had air rights large enough to pay for tunneling. They then took their models to a coffee shop, showed them to a hundred or so customers who looked at and evaluated views from different perspectives. To my and the students' surprise, coffee shop customers strongly preferred underground with its enabling multiple high rise buildings. The point is that a picture is worth a thousand words and inspectable 3D architectural models can be invaluable for exploring and evaluating alternatives by groups large and small. I would work to bring a curious and open mind to the Architectural Review Board and encourage and facilitate use of 3D models to help create, explore and evaluate architectural options available to our dear city.

2. Please describe an issue that recently came before the Board that is of particular interest to you and describe why you are interested in it.

(1449 characters max)

Archived video meetings are available from the [Midpen Media Center](#).

Height limitation is a continuing issue. Many people have an aversion to height. Alexander's classic book of architectural theory, *A Pattern Language*, says height is bad. Yet a good thing about height is that it enables high usage of land, which is a scarce asset, and density can facilitate societal ease of access to walkable amenities and public transportation. A guess is that, for both economic and legal reasons, Palo Alto will need to have more tall buildings. Ethically we should and maybe will need to enable many more people such as teachers, police, fire fighters, health care workers, etc., who service the community to live here. Thus, the question for me is where, how and how high the city will need or want denser and taller building than what we now have. Personally I am interested in height because I have felt how unappealing it is in so many big cities; the issue is now so socially divisive; and done well, it can both enable a highly livable and societally beneficial community. BA, Dartmouth; BE, Thayer School of Engineering; MS Computer Science, UCLA; Ph.D., Medical Information Sciences and Artificial Intelligence, Stanford

Experiences: Systems Engineer, US Air Force; Systems Engineer, Institutes of Medical Sciences; Chief Knowledge Systems Engineer, IntelliCorp; Executive Director, Center for Integrated Facility Engineering at Stanford (now emeritus). At Stanford, I worked and taught on social and

computer-based methods of collaborative model-based building design and construction. I taught classes on Built Environmental History for the overseas program in Santiago and Madrid.

3. If you are appointed, what specific goals would you like to see the Architectural Review Board achieve, and how would you help in the process?
(1587 characters max)

Design guidelines for buildings near the train station and along El Camino are a continuing and important issue for the city and me. The societal and emerging legal pressures for growth within Palo Alto are very strong. In a positive sense, I would want to help enable practices that lead to high and valuable utilization of land, which means both tall buildings, easy public transit access, and have an appealing appearance, especially for walkers. Tall is not a problem for me, per se. However, treeless facades without setback are visually distressing. I would also work to create guidelines that minimize large residences much of which will be unoccupied most of the hours of the week. A positive example for me is the Providencia district of Santiago, which has medium high rise buildings with trees on all four sides. It is by far the most appealing dense development I have seen anywhere in the world. Land has high utilization because of height and modest sizes of individual units. Transit and commercial amenities were within easy walking distance. Small porches gave residents easy access to views of the greenery, which was all around. High Street, e.g., 655 High, is an unfortunate bad example because the land use is poor and the visual impact unpleasant for walkers and even drivers. For controversial projects, I would ask developers to create 3D architectural models, which the ARB would then review and share with the community as part of soliciting commentary.

4. Please identify a project (or projects) that you find to be examples of good architecture, and explain why. You may include samples, identify project addresses, or provide links.
(1035 characters max)

Sunrise Palo Alto on El Camino at Ash looks like a very successful project to me. It has high occupant density, attractive amenities for residents and visitors, is located near bus lines and close to the train. For the community, the street setback is ample and the greenery around the building a visual delight for the passerby and surely too for the resident. If the city is required to increase its housing, the building is a good model for transit-friendly location, dense use, high utilization of spaces, and urban greenery.

5. Architectural Review Board Members work with the documents listed below. If you have experience with any of these documents, please describe that experience. Experience with these documents is not required for selection, but will help you better understand the work of the board.
(1173 characters max)

NA

Palo Alto 2030 Comprehensive Plan (2017)
Zoning Code
El Camino Real Design Guidelines

El Camino Real Master Plan Study (2007)
Area Plans such as the South of Forest
Avenue (SOFA) I (2000) and II (2003) Plans
California Environmental Quality Act
Permit Streamling Act Density Bonus Law
Secretary of the Interior's Standards
Downtown Urban Design Guidelines (1993)
 Other documents listed on [this website](#) as
 well.

If you'd like to provide any additional documents, please upload below.

Please confirm that you have read the Boards and Commissions Handbook.

Yes

View the [Boards and Commissions Handbook](#).

Signature

john kunz

Date Completed

1/30/2022

New (Extended Recruitment)**Architectural Review Board****Personal Information – Note:** The ARB regularly meets the first and third Thursdays of the month at 8:30 A.M.

Name: dave madwed

Address: [REDACTED]

Cell Phone [REDACTED]

☒ Home / ☐ Office Phone: [REDACTED]

E-mail:

Are you a Palo Alto Resident? ☒ Yes ☐ NoDo you have any relatives or members of your household who are employed by the City of Palo Alto, who are currently serving on the City Council, or who are Commissioners or Board Members? ☐ Yes ☒ NoAre you available and committed to complete the term applied for? ☒ Yes ☐ NoCalifornia state law requires appointed board and commission members to file a detailed disclosure of their financial interests ([Fair Political Practices Commission](#), [Conflict of Interest](#), [Form 700](#)).

Do you or your spouse have an investment in, or do you or your spouse serve as an officer or director of, a company doing business in Palo Alto which you believe is likely to:

1) engage in business with the City,

2) provide products or services for City projects, or

3) be affected by decisions of the board or commission you are applying for? ☐ Yes ☒ NoExcluding your principal residence, do you or your spouse own real property in Palo Alto? ☐ Yes ☒ No**Consent to Publish Personal Information on the City of Palo Alto Website**California Government Code Section 6254.21 states, in part, "No state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual." *This consent form will not be redacted and will be attached to the Application and posted to the City's website.*For the full code, review the California Government Code [Section 6254.21](#)

Read the code, and check only ONE option below:

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OR

☐ I request that the City of Palo Alto redact my home address, phone numbers, and email address from the attached Board and Commission Application prior to posting to the City's website.**I am providing the following alternate information and request that the following contact information be used instead:**

Address:

Cell Phone:

☐ Home ☐ Office Phone:

E-mail:

How did you learn about the vacancy on the Architectural Review Board? *(Select more than one if applicable)*

☐

Community Group

☐

Email from the City

☒

Palo Alto Weekly

☐

Daily Post

☐

City Website

☐

Flyer

Other: _____

Please list your relevant education, training, experience, certificates of training, licenses, and professional registration: *(621 characters)*

CSLB 1014088

LEED certified

Board Certified Radiologist

Employment☒

Current Employer

☐

Last Employer

Employer: Permanente Medical Group

Occupation: Physician/builder

Please describe your involvement in community activities, volunteer and civic organizations, including dates and any offices held: *(1311 characters)*

Palo Alto Little League 2014- present- Manager

Palo Alto Troop 57 BSA 2017-present- Assistant Scout Master

Palo Alto PTA, have served as school site board member

1. Why are you interested in serving on the Architectural Review Board and what experience would you bring to the position? (1449 characters)

I have lived in Palo Alto for 33 years, and I have been a homeowner for over 25 years.

I have been a licensed builder for the past 20 years.

I am deeply involved in the community, and I take an active interest in the welfare of the community.

With my background as a radiologist and the required attention to detail, my building experience, as well as passion and interest in the community, I bring a comprehensive knowledge required for the position.

2. Please describe an issue that recently came before the Board that is of particular interest to you and describe why you are interested in it. Archived videos are available from the [Midpen Media Center](#). (1449 characters)

I was very interested in the recently reviewed 739 Sutter Ave project near midtown that was recently reviewed. I was very impressed with the design and scope of the project, both in its detail as well as the volume of housing stock that would be added to a growing and vibrant part of the city. Its proximity to retail, school, transportation make it a wonderful place to develop needed high density housing.

3. If you are appointed, what specific goals would you like to see the Architectural Review Board achieve, and how would you help in the process? (1587 characters)

I would like to see a more streamlined process that adheres to defined rules and regulations but also allows outside-the box thinking and approach to change. For far too long Palo Alto has achieved the designation of the "NO" community. Embracing change is difficult, but the consequences for negative thinking will cut the legs off this community. If it was not for Stanford and and fantatsic school system, both of which operate outside the jurisdiction of City management, Palo Alto would certainly not be in the position it currently finds itself. We must build upon this strong foundation to move forward in a positive and fruitful direction.

4. Please identify a project (or projects) that you find to be examples of good architecture, and explain why. You may include samples, identify project addresses, or provide links. (1035 characters)

I have been particularly impressed with virtually every commercial project that has sprung up in the downtown corridors of Lytton, University and Hamilton Ave as well as cross streets in past 8-10 years. They are aesthetically pleasing as well as very functional.

I am very impressed with the new parking garage off California Ave. It is the most attractive parking structure I have ever seen, in this country or foreign soil.

5. Architectural Review Board Members work with the documents listed below. If you have experience with any of these documents, please describe that experience. Experience with these documents is not required for selection, but will help you better understand the work of the board. (1173 characters)

[Palo Alto 2030 Comprehensive Plan \(2017\)](#)

[Zoning Code](#)

[El Camino Real Design Guidelines](#)

[El Camino Real Master Plan Study \(2007\)](#)

[Area Plans such as the South of Forest Avenue \(SOFA\) I \(2000\) and II \(2003\) Plans](#)

[California Environmental Quality Act](#)

[Permit Streamlining Act](#)

[Density Bonus Law](#)

[Secretary of the Interior's Standards](#)

[Downtown Urban Design Guidelines \(1993\)](#)

Experience with other documents listed on [this webpage](#) is desirable as well.

CEQA- I have dealt with CEQA on a few coastal projects

Zoning Code- I have read this.

6. Please confirm that you have read the Boards and Commissions Handbook: ☒ Yes ☐ No

Signature: (Please type or sign) David Madwed Date: 1/20/2022

New (Extended Recruitment)

Architectural Review Board Application

Name Alfred J. Mandel

Address

City

Postal Code

Cell Phone

Home Phone

Email Address

Are you a Palo Alto resident? Yes

Do you have any relatives or members of your household who are employed by the City of Palo Alto, who are currently serving on the City Council, or who are Commissioners or Board Members? No

Are you available and committed to complete the term applied for? Yes

Fair Political Practices No

California state law requires board/commission members to file a disclosure of financial interests ([Fair Political Practices Commission](#), [Conflict of Interest](#), [Form 700](#)).

Do you/your spouse have an investment in, or do you or your spouse serve as an officer or director of, a company doing business in Palo Alto which you believe is likely to:

1. Engage in business with the City;

2. Provide products or services for City projects; or
3. Be affected by decisions of this Board or Commission?

Excluding your principal residence, do you or your spouse own real property in Palo Alto?

No

How did you learn about the vacancy on the Architectural Review Board?

Email from the City

- Community Group
- Email from the City
- Palo Alto Weekly
- Daily Post
- City Website
- Flyer
- Other

Consent to Publish Personal Information on the City of Palo Alto Website

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- **I request that the City of Palo Alto redact my home address, phone numbers, and email address from the attached Board and Commission Application prior to posting to the City's website. I am providing the following alternate information and request that the following contact information:**

Alternate Contact Information**Personal and Job Experience**

Please list your relevant education, training, experience, certificates of training, licenses, and professional registration.

(621 characters max)

BS Environmental Sciences, University of California, Santa Barbara
 School of Law, University of Oregon (did not finish or obtain a degree)
 MA Urban and Regional Planning, University of Oregon, School of Architecture
 MS Environment Design, University of Oregon, School of Architecture

Employment Information

Company/Employer Name

AJM Advisors, Self

Occupation

Advisor

Is your Company/Employer your current one or last?

Current Employer

Please describe your involvement in community activities, volunteer and civic organizations, including dates and any offices held.

(1311 characters max)

Lived in downtown Palo Alto for the past thirty two years. Lived in South Palo Alto for four years before that.

Application Questions

1. Why are you interested in serving on the Architectural Review Board and what experience would you bring to the position?

(1449 characters max)

I have been interested in Palo Alto's business and urban development for many years and believe that we are experiencing several trends that are effecting the aesthetic and functional nature of our City. I have restored/remodeled four of my residences over the past forty five years, doing most of the work myself.

2. Please describe an issue that recently came before the Board that is of particular interest to you and describe why you are interested in it.

(1449 characters max)

Archived video meetings are available from the [Midpen Media Center](#).

Did not review the videos. BS Environmental Sciences, University of California, Santa Barbara School of Law, University of Oregon (did not finish or obtain a degree)
 MA Urban and Regional Planning, University of Oregon, School of Architecture
 MS Environment Design, University of Oregon, School of Architecture

3. If you are appointed, what specific goals would you like to see the Architectural Review Board achieve, and how would you help in the process?

Retain retail locations, both local and regional businesses. Better balance the need for smaller work places, City revenues and longer term planning for development of businesses in residential adjacent neighborhoods.

(1587 characters max)

4. Please identify a project (or projects) that you find to be examples of good architecture, and explain why. You may include samples, identify project addresses, or provide links.

(1035 characters max)

The multi-use building on the corner of Alma and University Ave. Construction that was well suited to that location, aesthetically interesting and provides good multi-use.

5. Architectural Review Board Members work with the documents listed below. If you have experience with any of these documents, please describe that experience. Experience with these documents is not required for selection, but will help you better understand the work of the board.

(1173 characters max)

I briefly reviewed the Palo Alto 2030 Comprehensive plan several years ago and spoke with one of the City's architects.

Palo Alto 2030 Comprehensive Plan (2017)

Zoning Code

El Camino Real Design Guidelines

El Camino Real Master Plan Study (2007)

Area Plans such as the South of Forest Avenue (SOFA) I (2000) and II (2003) Plans

California Environmental Quality Act

Permit Streamlining Act Density Bonus Law

Secretary of the Interior's Standards

Downtown Urban Design Guidelines (1993)

Other documents listed on this website as well.

If you'd like to provide any additional documents, please upload below.

Please confirm that you have read the Boards and Commissions Handbook.

Yes

View the Boards and Commissions Handbook.

Signature

Alfred J. Mandel

Date Completed

12/26/2021

Architectural Review Board Application

Name Manix Patel

Address

City

Postal Code

Cell Phone

Home Phone

Email Address

Are you a Palo Alto resident? Yes

Do you have any relatives or members of your household who are employed by the City of Palo Alto, who are currently serving on the City Council, or who are Commissioners or Board Members? No

Are you available and committed to complete the term applied for? Yes

Fair Political Practices Yes

California state law requires board/commission members to file a disclosure of financial interests ([Fair Political Practices Commission, Conflict of Interest, Form 700](#)).

Do you/your spouse have an investment in, or do you or your spouse serve as an officer or director of, a company doing business in Palo Alto which you believe is likely to:

1. Engage in business with the City;
2. Provide products or services for City projects; or

3. Be affected by decisions of this Board or Commission?

Excluding your principal residence, do you or your spouse own real property in Palo Alto?

Yes

How did you learn about the vacancy on the Architectural Review Board?

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- Community Group
- Email from the City
- Palo Alto Weekly
- Daily Post
- City Website
- Flyer
- Other

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Alternate Contact Information

Personal and Job Experience

Please list your relevant education, training, experience, certificates of training, licenses, and professional registration.

(621 characters max)

Bachelor of Architecture from Cal Poly Pomona - Class of '98

20+ years of experience in Arch.

20+ years of experience in the Hospitality Industry

Owner (Berbeda Place Palo Alto)

Employment Information

Company/Employer Name

Carrasco & Associates Architects, Inc.

Occupation

Project Architect

Is your Company/Employer your current one or last?

Current Employer

Please describe your involvement in community activities, volunteer and civic organizations, including dates and any offices held.

(1311 characters max)

NA

Application Questions

I can bring a new thought process to the ARB by using my 20+ years experience in Architecture and the Hospitality Industry.

1. Why are you interested in serving on the Architectural Review Board and what experience would you bring to the position?

(1449 characters max)

2. Please describe an issue that recently came before the Board that is of particular interest to you and describe why you are interested in it.

(1449 characters max)

I live and breathe ECR therefore am interested in anything and everything that affects El Camino Real. All projects are important. Bachelor of Architecture from Cal Poly Pomona - Class of '98

20+ years of experience in Arch.

20+ years of experience in the Hospitality Industry

Owner (Berbeda Place Palo Alto)

Archived video meetings are available from the [Midpen Media Center](#).

3. If you are appointed, what specific goals would you like to see the Architectural Review Board achieve, and how would you help in the process?

(1587 characters max)

I would like to help the current ARB members in reviewing and responding to the housing and hotel projects being presented for approval by keeping in mind the existing communities, through careful analysis, creative alternatives, etc.

4. Please identify a project (or projects) that you find to be examples of good architecture, and explain why. You may include samples, identify project addresses, or provide links.
(1035 characters max)

636 Hamilton Ave. Palo Alto
I was waiting for years and years when an Architect would propose a concrete and glass structure and was really excited to see this.

5. Architectural Review Board Members work with the documents listed below. If you have experience with any of these documents, please describe that experience. Experience with these documents is not required for selection, but will help you better understand the work of the board.
(1173 characters max)

Zoning Code
El Camino Real Design Guidelines
Comprehensive Plan
CEQA
Secretary of the Interior's Standards
By completing numerous projects with Carrasco & Associates Architects I have experience in the above listed guidelines.

[Palo Alto 2030 Comprehensive Plan \(2017\)](#)
[Zoning Code](#)
[El Camino Real Design Guidelines](#)
[El Camino Real Master Plan Study \(2007\)](#)
[Area Plans such as the South of Forest Avenue \(SOFA\) I \(2000\) and II \(2003\) Plans](#)
[California Environmental Quality Act](#)
[Permit Streamlining Act](#) [Density Bonus Law](#)
[Secretary of the Interior's Standards](#)
[Downtown Urban Design Guidelines \(1993\)](#)
Other documents listed on [this website](#) as well.

If you'd like to provide any additional documents, please upload below.

Please confirm that you have read the Boards and Commissions Handbook.
View the [Boards and Commissions Handbook](#).

Yes

Signature

Manix Patel

Date Completed

10/26/2021

New (Extended Recruitment)

Architectural Review Board Application

Name Kendra Rosenberg

Address

City

Postal Code

Cell Phone

Home Phone

Email Address

Are you a Palo Alto resident? Yes

Do you have any relatives or members of your household who are employed by the City of Palo Alto, who are currently serving on the City Council, or who are Commissioners or Board Members? No

Are you available and committed to complete the term applied for? Yes

Fair Political Practices No

California state law requires board/commission members to file a disclosure of financial interests ([Fair Political Practices Commission](#), [Conflict of Interest](#), [Form 700](#)).

Do you/your spouse have an investment in, or do you or your spouse serve as an officer or director of, a company doing business in Palo Alto which you believe is likely to:

1. Engage in business with the City;

2. Provide products or services for City projects; or
3. Be affected by decisions of this Board or Commission?

Excluding your principal residence, do you or your spouse own real property in Palo Alto?

No

How did you learn about the vacancy on the Architectural Review Board?

Email from the City, Other: General work in the city

- Community Group
- Email from the City
- Palo Alto Weekly
- Daily Post
- City Website
- Flyer
- Other

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Alternate Contact Information**Personal and Job Experience**

Please list your relevant education, training, experience, certificates of training, licenses, and professional registration.

(621 characters max)

Have worked at architectural firms and running my own residential design firm in the local area for the past 15+ years.

Employment Information

Company/Employer Name

KNR Design Studio

Occupation

Principal Designer

Is your Company/Employer your current one or last?

Current Employer

Please describe your involvement in community activities, volunteer and civic organizations, including dates and any offices held.

(1311 characters max)

Never held office.
Was an original board member of Magical Bridge Playground.
Briones PTA member and Project Cornerstone Reader

Application Questions

1. Why are you interested in serving on the Architectural Review Board and what experience would you bring to the position?

(1449 characters max)

Full background in architecture and have been through the ARB process from the "other side" before, in Palo Alto and several other cities in the area. Honestly, I feel that Palo Alto is not doing as good of a job as its neighbors and I hope to be able to bring fresh energy to the team.

2. Please describe an issue that recently came before the Board that is of particular interest to you and describe why you are interested in it.

(1449 characters max)

I'm interested in all of the residential housing projects. Sometimes the decisions feel very arbitrary. Have worked at architectural firms and running my own residential design firm in the local area for the past 15+ years.

Archived video meetings are available from the [Midpen Media Center](#).

3. If you are appointed, what specific goals would you like to see the Architectural Review Board achieve, and how would you help in the process?

(1587 characters max)

A bit more consistency with the approval process. Bringing a professional "design eye" to the team.
I would also like to note: I have ceased accepting new projects in Palo Alto at this time. I intend to maintain that separation if I do serve to avoid any possible Conflict of Interest.

4. Please identify a project (or projects) that you find to be examples of good architecture, and explain why. You may include samples, identify project addresses, or provide links.
(1035 characters max)

Enchante Boutique Hotel

1 Main St, Los Altos, CA 94022

I watched the posters go up depicting the design and thought it would be terrible. When the final building was up, I was completely impressed. It's not a style I particularly like, but the architects used proportion and space beautifully to revitalize a corner of downtown Los Altos that was previously a sore spot. It's an elegant and yet unimposing welcome to downtown Los Altos.

5. Architectural Review Board Members work with the documents listed below. If you have experience with any of these documents, please describe that experience. Experience with these documents is not required for selection, but will help you better understand the work of the board.
(1173 characters max)

Experience with all except SOFA and downtown urban design guidelines.

Palo Alto 2030 Comprehensive Plan (2017)

Zoning Code

El Camino Real Design Guidelines

El Camino Real Master Plan Study (2007)

Area Plans such as the South of Forest Avenue (SOFA) I (2000) and II (2003) Plans

California Environmental Quality Act

Permit Streamlining Act Density Bonus Law

Secretary of the Interior's Standards

Downtown Urban Design Guidelines (1993)

Other documents listed on this website as well.

If you'd like to provide any additional documents, please upload below.

Please confirm that you have read the Boards and Commissions Handbook.

Yes

View the Boards and Commissions Handbook.

Signature

Kendra Rosenberg

Date Completed

01/09/2022

New (Extended Recruitment)

Architectural Review Board Application

Name Curtis Smolar

Address

City

Postal Code

Cell Phone

Home Phone

Email Address

Are you a Palo Alto resident? Yes

Do you have any relatives or members of your household who are employed by the City of Palo Alto, who are currently serving on the City Council, or who are Commissioners or Board Members? No

Are you available and committed to complete the term applied for? Yes

Fair Political Practices No

California state law requires board/commission members to file a disclosure of financial interests ([Fair Political Practices Commission](#), [Conflict of Interest](#), [Form 700](#)).

Do you/your spouse have an investment in, or do you or your spouse serve as an officer or director of, a company doing business in Palo Alto which you believe is likely to:

1. Engage in business with the City;

2. Provide products or services for City projects; or
3. Be affected by decisions of this Board or Commission?

Excluding your principal residence, do you or your spouse own real property in Palo Alto?

No

How did you learn about the vacancy on the Architectural Review Board?

Email from the City

- Community Group
- Email from the City
- Palo Alto Weekly
- Daily Post
- City Website
- Flyer
- Other

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Alternate Contact Information

Personal and Job Experience

Please list your relevant education, training, experience, certificates of training, licenses, and professional registration.

(621 characters max)

Attorney, licensed in California, all courts, Ninth Circuit Court of Appeals, United States District Court for Northern District of California, United States District Court for the Central District of California and United States District Court for the Eastern District of California
Southern Methodist University Law School, J.D.

Employment Information

Company/Employer Name

Legalist, Inc.

Occupation

General Counsel, Director of Underwriting

Is your Company/Employer your current one or last?

Current Employer

Please describe your involvement in community activities, volunteer and civic organizations, including dates and any offices held.

(1311 characters max)

I was on the board of the Palo Alto Little League, and I am active in the Silicon Valley Bicycle Coalition.

Application Questions

1. Why are you interested in serving on the Architectural Review Board and what experience would you bring to the position?

(1449 characters max)

I have represented numerous clients in the process of going through architectural review and in the permitting processes. I have coordinated architects, clients and cities in multiple projects in the bay area and achieved favorable results for all interest holders

2. Please describe an issue that recently came before the Board that is of particular interest to you and describe why you are interested in it.

(1449 characters max)

Archived video meetings are available from the [Midpen Media Center](#).

October 7, 2021, all hearings. Ever since the Palo Alto revised its rules in response to the recent state laws such, i.e. Senate Bill 35 and Senate Bill 330, I have been interested in how the City will implement the new objective standards. The new standard, which I understand, effectively bans Palo Alto from turning down qualifying housing projects based on subjective criteria that are open to interpretation. The new standards, the "objective standards" may be a tool for the city help guide new developments towards rational designs that are in line with the look and feel of the community. Attorney, licensed in California, all courts, Ninth Circuit Court of Appeals, United States District Court for Northern District of

California, United States District Court for the Central District of California and United States District Court for the Eastern District of California
Southern Methodist University Law School, J.D.

3. If you are appointed, what specific goals would you like to see the Architectural Review Board achieve, and how would you help in the process?
(1587 characters max)

I am interested in implementing the new statutes being passed in Sacramento on a local level. The state mandates will be, at times, a challenge to enforce. For example, Sacramento may have specific needs or feel in the community that Palo Alto does not. It will be a challenge to interpret the state law and local law, apply the facts to the laws and make decision in a rational way.

Being an attorney with over 25 years experience I have spent my entire career doing the aforementioned. Every day I look at statutes and specific fact, analyze how they interact and synthesize a solution. Also, I am not currently practicing law in this area and therefore I would not be subject to potential conflicts of those that are seeking work from the same people that I would be reviewing.

4. Please identify a project (or projects) that you find to be examples of good architecture, and explain why. You may include samples, identify project addresses, or provide links.
(1035 characters max)

One of my favorite designs in Palo Alto is the Aidlen Darling Design Tree house(<https://www.dezeen.com/2019/05/24/tree-house-aidlin-darling-silicon-valley/>). It is a sustainably built house that integrates it beautiful surroundings with a charming house.

5. Architectural Review Board Members work with the documents listed below. If you have experience with any of these documents, please describe that experience. Experience with these documents is not required for selection, but will help you better understand the work of the board.
(1173 characters max)

As an attorney I worked extensively with CEQA and the zoning code. I have worked with the Palo Alto 2030 Comprehensive plan when I previous applied for this position previously.

Palo Alto 2030 Comprehensive Plan (2017)
Zoning Code

El Camino Real Design Guidelines

El Camino Real Master Plan Study (2007)

Area Plans such as the South of Forest Avenue (SOFA) I (2000) and II (2003) Plans
California Environmental Quality Act

Permit Streamling Act Density Bonus Law

Secretary of the Interior's Standards

Downtown Urban Design Guidelines (1993)

Other documents listed on this website as well.

If you'd like to provide any additional documents, please upload below.

**Please confirm that you have read the
Boards and Commissions Handbook.**

Yes

View the [Boards and Commissions
Handbook](#).

Signature

Curtis Smolar

Date Completed

1/30/2022

Architectural Review Board Application

Name Brigham Wilson

Address

[REDACTED]

City

[REDACTED]

Postal Code

[REDACTED]

Cell Phone

[REDACTED]

Home Phone

Email Address

[REDACTED]

Are you a Palo Alto resident?

Yes

Do you have any relatives or members of your household who are employed by the City of Palo Alto, who are currently serving on the City Council, or who are Commissioners or Board Members?

No

Are you available and committed to complete the term applied for?

Yes

Fair Political Practices

No

California state law requires board/commission members to file a disclosure of financial interests ([Fair Political Practices Commission, Conflict of Interest, Form 700](#)).

Do you/your spouse have an investment in, or do you or your spouse serve as an officer or director of, a company doing business in Palo Alto which you believe is likely to:

1. Engage in business with the City;
2. Provide products or services for City projects; or

3. Be affected by decisions of this Board or Commission?

Excluding your principal residence, do you or your spouse own real property in Palo Alto?

No

How did you learn about the vacancy on the Architectural Review Board?

Community Group, Email from the City

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Alternate Contact Information

Personal and Job Experience

Please list your relevant education, training, experience, certificates of training, licenses, and professional registration.

(621 characters max)

I am a passionate student of residential architecture and city planning. For the past 5 years, I have closely followed our city's plans and policies to balance increasing our housing supply while maintaining the character and desirability of our development. My training has been a decade of self-study of the relevant text books and thought-pieces on land use, urban design, and construction.

Employment Information

Company/Employer Name

Google

Occupation

Program Manager

Is your Company/Employer your current one or last?

Current Employer

Please describe your involvement in community activities, volunteer and civic organizations, including dates and any offices held.

(1311 characters max)

Member and Chair of the Library Advisory Commission (2017-2020)
Palo Alto Police Department Citizen Police Academy participant (2017)
Community Gardener at Johnson Park (2018-Present)
Member of Stanford Congregation of The Church of Jesus Christ of Latter-day Saints (2016-2020)
Membership Clerk and Organist for The Church of Jesus Christ of Latter-day Saints near Middlefield and E. Charleston (2020-2021)

Application Questions

1. Why are you interested in serving on the Architectural Review Board and what experience would you bring to the position?

(1449 characters max)

I am interested in serving on the Architectural Review Board because the design of our city is important, I have the knowledge for suburban architecture, and I have the passion for civic oversight and committee workings. As Palo Alto continues to grow, keeping a balance between new construction and renovations along with our history and character is integral to our personality as a community. I follow proposed residential, commercial, and landscape proposals in our county and analyze their merits environmental impact, impact on housing supply, meeting residential and commercial needs, open space conservation, and visual appeal. Having been on the Library Advisory Commission and chairing it for one year, I understand how to collaborate with City Council, review and decide on proposals, and request and respond to input from fellow citizens.

2. Please describe an issue that recently came before the Board that is of particular interest to you and describe why you are interested in it.

(1449 characters max)

Archived video meetings are available from the [Midpen Media Center](#).

On Thursday, 10/7/2021, the board reviewed a proposal to allow for external changes at the retail/commercial site at 2585 E Bayshore Rd. I ride my bike past this building every day on the way to and from work and am aware of its unique location in our city and the environmental concerns being so close to the wetland area. I was excited about the proposal because it was going to change asphalt areas to landscaping, create bike parking where there wasn't (which encourages non-car transportation), upgrade the exterior to a more modern look, and continue the retail preservation waiver. I enjoy reading and analyzing these proposals that balance so many different characteristics of design, landscaping, zoning, and commercial interests. I am a passionate student of residential architecture and city planning. For the past 5 years, I have closely followed our city's plans and policies to balance increasing our housing supply while maintaining the character and desirability of our development. My training has been a decade of self-study of the relevant text books and thought-pieces on land use, urban design, and construction.

3. If you are appointed, what specific goals would you like to see the Architectural Review Board achieve, and how would you help in the process?

(1587 characters max)

While serving on the Architectural Review Board I would help create the mandated 6,086 units by 2031 in a manner that preserves the character of each neighborhood. We would increase density where it is most appropriate aesthetically and focus on parcels that are underused or vacant or near major transit centers. As a non-homeowner but 5+ year resident, I would be a more impartial collaborative partner, able to balance the needs of the many stakeholders involved in these discussions while being loyal and driven to find the optimal outcome.

4. Please identify a project (or projects) that you find to be examples of good architecture, and explain why. You may include samples, identify project addresses, or provide links.

(1035 characters max)

The half-closed streets on the south bank of the Sortedams Sø in Copenhagen (<https://goo.gl/maps/ceadXETWQCvyKUFT6>). These row houses provide for a safe open area for children to play, privacy in an increased density zone, charming character, and sufficient parking while encouraging other methods of travel. Palo Alto has small apartment complexes and many single-family homes, but has too few row house developments that would provide increased units while also conserving a charming pedestrian environment.

Charles Street in Beacon Hill in Boston (<https://bit.ly/3pvsIBK>). Provides a delightful walkable retail in addition to above-store-level residential units. Palo Alto has premium shopping in the Town and Country Mall, Stanford Mall, and University Ave, Midtown, and Cal Ave that could benefit from increased residential units that could increase retail patronage without requiring much more parking infrastructure. We can leverage the

already higher density areas to preserve the single-family zoned areas.

5. Architectural Review Board Members work with the documents listed below. If you have experience with any of these documents, please describe that experience. Experience with these documents is not required for selection, but will help you better understand the work of the board.

(1173 characters max)

When I was on the Library Advisory Commission, I read the Palo Alto 2030 Comprehensive Plan (2017) to ensure that our recommendations aligned with the long-term vision of the city. I have looked at some of the other documents to begin to become familiar with them, but will study each of them further upon my being selected to serve on the Architectural Review Board so that I know the regulations and requirements necessary.

Palo Alto 2030 Comprehensive Plan (2017)

Zoning Code

El Camino Real Design Guidelines

El Camino Real Master Plan Study (2007)

Area Plans such as the South of Forest Avenue (SOFA) I (2000) and II (2003) Plans

California Environmental Quality Act

Permit Streamling Act Density Bonus Law

Secretary of the Interior's Standards

Downtown Urban Design Guidelines (1993)

Other documents listed on this website as well.

If you'd like to provide any additional documents, please upload below.

Please confirm that you have read the Boards and Commissions Handbook.

Yes

View the Boards and Commissions Handbook.

Signature

Brigham Wilson

Date Completed

10/24/2021

Architectural Review Board Application

Name Jim Xiao

Address

City

Postal Code

Cell Phone

Home Phone

Email Address

Are you a Palo Alto resident? Yes

Do you have any relatives or members of your household who are employed by the City of Palo Alto, who are currently serving on the City Council, or who are Commissioners or Board Members? No

Are you available and committed to complete the term applied for? Yes

Fair Political Practices No

California state law requires board/commission members to file a disclosure of financial interests ([Fair Political Practices Commission, Conflict of Interest, Form 700](#)).

Do you/your spouse have an investment in, or do you or your spouse serve as an officer or director of, a company doing business in Palo Alto which you believe is likely to:

1. Engage in business with the City;
2. Provide products or services for City projects; or

3. Be affected by decisions of this Board or Commission?

Excluding your principal residence, do you or your spouse own real property in Palo Alto?

No

How did you learn about the vacancy on the Architectural Review Board?

Other: email invitation

- Community Group
- Email from the City
- Palo Alto Weekly
- Daily Post
- City Website
- Flyer
- Other

Consent to Publish Personal Information on the City of Palo Alto Website

California Government Code Section 6254.21 states, in part, "No state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual." This consent form will not be redacted and will be attached to the Application and posted to the City's website. For the full code, review the California Government Code [Section 6254.21](#).

I request that the City of Palo Alto redact my home address, phone numbers, and email address from the attached Board and Commission Application prior to posting to the City's website. I am providing the following alternate information and request that the following contact information below:

Read the code, and check only ONE option below:

- I give permission for the City of Palo Alto to post to the City's website the attached Board and Commission Application intact. I have read and understand my rights under Government Code Section 6254.21. I may revoke this permission at any time by providing written notice to the Palo Alto City Clerk.
- I request that the City of Palo Alto redact my home address, phone numbers, and email address from the attached Board and Commission Application prior to posting to the City's website. I am providing the following alternate information and request that the following contact information:

Alternate Contact Information**Personal and Job Experience**

Please list your relevant education, training, experience, certificates of training, licenses, and professional registration.

(621 characters max)

CSLB licensed general contractor since 2019 combined with prior experience has been active in designing, development for 8 years. finished several projects in Palo Alto, San Jose and Cupertino. very familiar with the new code of Palo Alto on green building tier 1, 2 and ADU code. 20 years as software professional after leaving the Ph.D education from LSU in computer science.

Employment Information

Company/Employer Name

svden

Occupation

builder and CEO

Is your Company/Employer your current one or last?

Current Employer

Please describe your involvement in community activities, volunteer and civic organizations, including dates and any offices held.

(1311 characters max)

member of church committee for church searching committee of CCIC-Sunnyvale, in the process of searching, screening property, dual diligence and working closely with city regarding permitting and code requirement.

Application Questions

1. Why are you interested in serving on the Architectural Review Board and what experience would you bring to the position?

(1449 characters max)

the ARB is particularly important not only to maintain the core community value of Palo Alto, but also will help to steer the long term vision of city's planning which would be fundamental key of a vibrant and business-family friendly neighbor.

2. Please describe an issue that recently came before the Board that is of particular interest to you and describe why you are interested in it.

(1449 characters max)

Archived video meetings are available from the [Midpen Media Center](#).

SB-9, SB10, SB8 along with ADU code, green building requirements are going to totally reshape Palo Alto, would be important for all citizen to be assisted, get informed and comfortable for the new change. CSLB licensed general contractor since 2019 combined with prior experience has been active in designing, development for 8 years. finished several projects in Palo Alto, San Jose and Cupertino. very familiar with the new code of Palo Alto on green building tier 1, 2 and ADU code.

20 years as software professional after leaving the Ph.D education from LSU in computer science.

3. If you are appointed, what specific goals would you like to see the Architectural Review Board achieve, and how would you help in the process?
(1587 characters max)

Help current homeowners to be protected to keep the old neighborhood they like, the same time to upgrade, adapt to the new SB-9, SB10, SB8 along with ADU code, green building requirements. So Palo Alto will also be a welcoming city to the young professionals and new families/

4. Please identify a project (or projects) that you find to be examples of good architecture, and explain why. You may include samples, identify project addresses, or provide links.
(1035 characters max)

1031 Embarcadero Dr, 94303, with the great suggestion from Bud Stammer, this is one of the first batch of project adopted:
ADU code,
green building tier 2 for main building
green building tier 2 for ADU. also EV ready, title 24 compliant, and Tesla roof ready.

5. Architectural Review Board Members work with the documents listed below. If you have experience with any of these documents, please describe that experience. Experience with these documents is not required for selection, but will help you better understand the work of the board.
(1173 characters max)

In the past 3 years has been working very closely with planning department, building department , public works and inspection team. very family with Zoning code. Design guideline and working knowledge of Permit Streamline Act and interior's standard .

Palo Alto 2030 Comprehensive Plan (2017)
Zoning Code
El Camino Real Design Guidelines
El Camino Real Master Plan Study (2007)
Area Plans such as the South of Forest Avenue (SOFA) I (2000) and II (2003) Plans
California Environmental Quality Act
Permit Streamling Act Density Bonus Law
Secretary of the Interior's Standards
Downtown Urban Design Guidelines (1993)
Other documents listed on this website as well.

If you'd like to provide any additional documents, please upload below.

Please confirm that you have read the Boards and Commissions Handbook.

Yes

View the Boards and Commissions Handbook.

Signature

Jim Xiao

Date Completed

10/25/2021

Updated Application

Architectural Review Board Application

Name Bin Zhou

Address

City

Postal Code

Cell Phone

Home Phone

Email Address

Are you a Palo Alto resident? Yes

Do you have any relatives or members of your household who are employed by the City of Palo Alto, who are currently serving on the City Council, or who are Commissioners or Board Members? No

Are you available and committed to complete the term applied for? Yes

Fair Political Practices No

California state law requires board/commission members to file a disclosure of financial interests ([Fair Political Practices Commission, Conflict of Interest, Form 700](#)).

Do you/your spouse have an investment in, or do you or your spouse serve as an officer or director of, a company doing business in Palo Alto which you believe is likely to:

1. Engage in business with the City;

2. Provide products or services for City projects; or
3. Be affected by decisions of this Board or Commission?

Excluding your principal residence, do you or your spouse own real property in Palo Alto?

No

How did you learn about the vacancy on the Architectural Review Board?

Email from the City

- Community Group
- Email from the City
- Palo Alto Weekly
- Daily Post
- City Website
- Flyer
- Other

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- I request that the City of Palo Alto redact my home address, phone numbers, and email address from the attached Board and Commission Application prior to posting to the City's website. I am providing the following alternate information and request that the following contact information:

Alternate Contact Information

Personal and Job Experience

Please list your relevant education, training, experience, certificates of training, licenses, and professional registration.

(621 characters max)

– Experienced construction project manager bringing 10+ years construction and architecture design experience in residential construction. Expert project and team manager with deep understanding of safety, scheduling and codes. Talented at motivating works to keep projects moving forward for on time completion.

– 4+ years general contractor experience(GC License B) for residential/commercial construction. Recognized for strong team leadership capacity with experience working in a team environment, able to collaborate with individuals from diverse backgrounds.

Employment Information

Company/Employer Name

Dowell construction & development Inc

Occupation

Construction Designer & Manager

Is your Company/Employer your current one or last?

Current Employer

Please describe your involvement in community activities, volunteer and civic organizations, including dates and any offices held.

(1311 characters max)

I fully realize that volunteers are integral to a community as it helps to better the whole community. Also it provides a great opportunity to build up the relationship between residence and community. In the past, I have been actively involved in the Cupertino Union School District meetings and discussions and have been a board member of the Cupertino Union School District Citizens' Bond Oversight Committee since 2018. My work is to review expenditure reports produced by the District to ensure a better school community.

Application Questions

1. Why are you interested in serving on the Architectural Review Board and what experience would you bring to the position?

(1449 characters max)

I am a passionate design and construction professional with extensive construction knowledge and experience . And I would love to contribute my values to the city and community. Bring my expertise to Palo Alto City to enhance the desirability of residence or investment, and the living conditions upon the immediate site or in adjacent areas.

2. Please describe an issue that recently came before the Board that is of particular interest to you and describe why you are interested in it.

As part of the city's growth, more and more home improvements are going on. I could see several streets getting better looking and attractive. As I am a general contractor and architect, I would

(1449 characters max)

Archived video meetings are available from the [Midpen Media Center](#).

love to help our residents and contribute my knowledge and expertise to the decisions. It could make streets more attractive while blending with the whole ecosystem with following codes.– Experienced construction project manager bringing 10+ years construction and architecture design experience in residential construction. Expert project and team manager with deep understanding of safety, scheduling and codes. Talented at motivating works to keep projects moving forward for on time completion.
– 4+ years general contractor experience(GC License B) for residential/commercial construction. Recognized for strong team leadership capacity with experience working in a team environment, able to collaborate with individuals from diverse backgrounds.

3. If you are appointed, what specific goals would you like to see the Architectural Review Board achieve, and how would you help in the process?
(1587 characters max)

I would like to help the committee and city council to outline the Architectural guideline and promote the guideline to all city residents. I would like to help all residents to make clear choices when they are thinking of doing new construction, adding addition and remodeling. And also I would like to make our city planning and building work easier.

4. Please identify a project (or projects) that you find to be examples of good architecture, and explain why. You may include samples, identify project addresses, or provide links.
(1035 characters max)

18283 Baylor Ave, SARATOGA, CA 95070 is a good sample project for single story home improvement. it looks clean and modern. But it won't change too much structure and not over high to damage privacy. Also the project is green compared with full demolish and huge structure changes.

5. Architectural Review Board Members work with the documents listed below. If you have experience with any of these documents, please describe that experience. Experience with these documents is not required for selection, but will help you better understand the work of the board.
(1173 characters max)

I have understanding and read El Camino Real Design Guidelines, building code. I have building home experience in palo alto. I love to work with other members and contribute my value.

[Palo Alto 2030 Comprehensive Plan \(2017\)](#)
[Zoning Code](#)
[El Camino Real Design Guidelines](#)
[El Camino Real Master Plan Study \(2007\)](#)
[Area Plans such as the South of Forest Avenue \(SOFA\) I \(2000\) and II \(2003\) Plans](#)
[California Environmental Quality Act](#)
[Permit Streamlining Act](#) [Density Bonus Law](#)
[Secretary of the Interior's Standards](#)
[Downtown Urban Design Guidelines \(1993\)](#)

Other documents listed on [this website](#) as well.

If you'd like to provide any additional documents, please upload below.

Please confirm that you have read the Boards and Commissions Handbook.

Yes

View the [Boards and Commissions Handbook](#).

Signature

Bin Zhou

Date Completed

01/30/2022



City of Palo Alto
Office of the City Clerk
City Council CAO Report

(ID # 14015)

Meeting Date: 2/14/2022

Title: Approve Minutes from the January 31, 2022 City Council Meeting

From: Lesley Milton, City Clerk

Staff recommends Council to review and approve the minutes as presented.

ATTACHMENTS:

- **Attachment2.a:** Attachment A: 20220131amCCs (DOCX)



CITY COUNCIL DRAFT ACTION MINUTES

Special Meeting
January 31, 2022

The City Council of the City of Palo Alto met on this date in virtual teleconference at 5:00 P.M.

Participating Remotely: Burt, Cormack, DuBois, Filseth, Kou, Stone, Tanaka

Absent: None

Closed Session

1. CONFERENCE WITH LABOR NEGOTIATORS City Designated Representatives: City Manager and his Designees Pursuant to Merit System Rules and Regulations (Ed Shikada, Kiely Nose, Rumi Portillo, Sandra Blanch, Nicholas Raisch, Tori Anthony, 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 Officers' Association (PAPOA), Palo Alto Police Management Association (PMA), International Association of Fire Fighters (IAFF) local 1319, Palo Alto Fire Chiefs Association (FCA), Management and Professional Employees (MGMT) ; Authority: Government Code Section 54957.6 (a).

MOTION: Council Member Filseth moved, seconded by Council Member DuBois to go into Closed Session.

MOTION PASSED: 7-0

Council went into Closed Session at 5:05 P.M.

Council returned from Closed Session at 7.22 P.M.

Mayor Burt announced there was no reportable action.

Agenda Changes, Additions and Deletions

Item 4 was continued until March 7, 2022.

DRAFT ACTION MINUTES

Consent Calendar

2. Foothills Fire Mitigation and Safety Improvement Strategies, Staff Recommendations to City Council.

MOTION: Vice Mayor Kou moved, seconded by Council Member Stone, third by Mayor Burt to pull Agenda Item Number 2 from the Consent Calendar to be heard on a date uncertain.

Action Items

3. PUBLIC HEARING: Adoption of an Emergency Ordinance and Regular Ordinance Amending Palo Alto Municipal Code Section 9.68 (Relocation Assistance for No-Fault Evictions) by Reducing the Threshold for Applicability from 50 Units to 10 Units or a Lower Threshold. Environmental Assessment: Exempt pursuant to CEQA Guidelines Section 15061(b)(3).

MOTION: Council Member DuBois moved, seconded by Council Member Cormack to:

- A. Adopt **Emergency Ordinance 5543** lowering the threshold for relocation assistance from 50 units per property to 10 units per property for qualifying tenants as defined in the municipal code; and
- B. Adopt an ordinance lowering the threshold for relocation assistance from 50 units per property to 10 units per property for qualifying tenants as defined in the municipal code.

MOTION PASSED: 5-1-1, Tanaka no, Stone abstain

4. ~~Parks and Recreation Commission (PRC) Recommends that Council Direct Staff and the PRC to Assess and Conduct Public Outreach on a New Community Gymnasium Project in Palo Alto~~

This item was continued to March 7, 2022.

5. Colleagues Memo: Consider sale of up to 1 millions gallons per day (MGD) of Individual Supply Guarantee (ISD).

The Council deferred action on this item for future consideration.

Adjournment: The meeting was adjourned at 11:11 P.M in Honor of Public Work Engineering Department Staff Leonard Mello.

DRAFT ACTION MINUTES

ATTEST:

APPROVED:

City Clerk

Mayor

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



City of Palo Alto City Council Staff Report

(ID # 13894)

Meeting Date: 2/14/2022

Title: Approval of Construction Contract Number C22181645 with Legion Contractors Inc., in the Amount of \$494,723, and Authorization for the City Manager or their Designee to Negotiate and Execute Change Orders up to a Not-to-Exceed Amount of \$74,208, for the Magical Bridge Playground Rubber and Synthetic Turf Resurfacing Capital Improvement Program Project (PE-21003)

From: City Manager

Lead Department: Public Works

Recommendation

Staff recommends that Council:

1. Approve and authorize the City Manager or their designee to execute a construction contract with Legion Contractors, Inc. ([Contract No. C22181645](#)) in an amount not-to-exceed \$494,723 for the Capital Improvement Program Magical Bridge Playground Rubber and Synthetic Turf Resurfacing project (PE-21003);
2. Authorize the City Manager or their designee to negotiate and execute one or more change orders to Construction Contract No. C22181645 with Legion Contractors, Inc. for related additional but unforeseen work which may develop during the project, the total value of which shall not exceed \$74,208; and

Background

The Magical Bridge Playground Rubber and Synthetic Turf Resurfacing Project (PE-21003) focuses on anticipated maintenance to playground amenities, mainly the replacement of the attenuated surfacing. The Magical Bridge playground opened in March 2015 and is now one of the most used facilities in the City, drawing approximately 15,000 visitors per month. This high rate of use requires periodic maintenance to playground facilities to maintain quality and safety. Since its installation, portions of playground failed prematurely and required periodic closures for repairs. Playground surfacing is anticipated to last 7-10 years with typical use and sun exposure. Other maintenance items include refurbishing of the playhouse and replacement of railing to a longer lasting and more durable material to ensure the playground will continue to provide inclusive play for the community.

Discussion

As part of the Fiscal Year 2022 Adopted Capital Budget, Council approved funding for renovations at Magical Bridge Playground in Mitchell Park. The renovations address maintenance and safety renovations and upgrades to the heavily used playground. These renovations include:

- Rubberized surfacing replacement
- Synthetic turf replacement
- Cleaning and re-staining the playhouse
- Replacing the playhouse railing with a more durable material
- Replacement of the net on the net spinner
- Painting handrails
- Replacement planting
- Replacement of the shade umbrella on the slide mound
- Addition of a shade structure over the spin zone (partially funded by the community through a donation from the Magical Bridge Foundation)

Bid Process

On October 22, 2021, an Invitation for Bids (IFB) for the Magical Bridge Playground Renovation Project was posted online through PlanetBids and 1,441 notifications were sent to general contractors, subcontractors, consultants, and builder's exchanges through the City's eProcurement system. The bidding period was 24 days. A non-mandatory pre-bid meeting was held on November 4, 2021. Bids were received from six qualified firms on November 15, 2021 as listed in the attached Bid Summary (Attachment A).

SUMMARY OF BID PROCESS

BID NAME/NUMBER	MAGICAL BRIDGE PLAYGROUND RENOVATIONS PROJECT IFB #181645
Proposed Length of Project	60 Days
Number of Bid Packages Downloaded Contractors	17
Number of Bid Packages Downloaded by Builder's Exchanges	23
Total Days to Respond to Bid	24
Pre-Bid Meeting?	Non-Mandatory
Number of Bids Received:	6
Bid Price Range (Base Bid)	\$224,273 - \$652,110
Bid Price Range (Base Bid Plus Alternates)	\$494,723 - \$997,320

A review of the bids included the base bid and all the bid alternates. Base bids ranged from \$224,273 to \$652,110 and from 52% below to 39% above the engineer's estimate of \$468,000. Bid alternates ranged from \$270,450 to \$345,210 and from 11% below to 13% above the

Engineer's Estimate of \$305,000.

Staff has reviewed all bids and recommends that the Base Bid of \$224,273, plus all the Additive Bid Alternates (1 through 9; in Attachment A) of \$270,450, for a total of \$494,723, submitted by Legion Contractors, Inc. be accepted and that Legion Contractors, Inc. be declared the lowest responsive and responsible bidder. Bid alternate items were separated out from the base bid to allow for flexibility selecting the park elements that could be included in the project scope with the current funding available. The construction contingency amount of \$74,208, which equals 15 percent of the contract value, is requested for related, additional, but unforeseen work which may develop during the project. A 15 percent contingency is requested (rather than the standard 10 percent amount) to allow flexibility for a larger replacement area of the padded sub-base of the attenuated surfacing if necessary. Additional sub-base material that could not be visually inspected may be damaged by tree roots.

Staff reviewed information regarding Legion Contractors, Inc.'s responsibility as a bidder and found Legion Contractors to be the lowest responsive and responsible bidder. Staff also checked with the Contractor's State License Board and confirmed that the contractor has an active license on file.

This contract is on the City's construction contract template, which permits the City to terminate without cause/for convenience by providing written notice to the contractor. In the event the City finds itself facing a challenging budget situation, and it is determined that City resources need to be refocused elsewhere, the City can terminate for convenience. Other options include termination due to non-appropriation of funds or amending the contract to reduce the cost, for example, by reducing the scope of work.

Timeline

This project is scheduled for a 60-day construction period. Construction is expected to start in March 2022 and be completed by May 2022.

Resource Impact

Funding for this project is available in the Fiscal Year 2022 Capital Improvement Program Magical Bridge Playground Rubber and Synthetic Turf Resurfacing project (PE-21003).

The Magical Bridge Foundation has made a \$5,000 bench donation to add seating to the spin zone area, and a \$30,000 donation toward the purchase of the shade sail over the spin zone area and the new shade umbrella at the top of the slide mound. In total, \$35,000 in Other Revenue will be recognized as a donation from the Magical Bridge Foundation for PE-21003, allowing \$35,000 to be returned to the Capital Improvement Fund balance to be used for other capital projects. This will be adjusted as funding is received as part of the annual reconciliation of the project as part of the year-end financial close process.

Policy Implications

The project is consistent with the City's Comprehensive Plan goals, policies, and programs.

Stakeholder Engagement

As this project is a renovation of an existing facility to address maintenance needs, no community meetings were held to review the renovation items. However, staff met with the Magical Bridge Foundation, the original funder of the playground, to review the project's scope. Staff will notify users of the playground closure prior to work commencing.

Environmental Review

Pursuant to the requirements of the California Environmental Quality Act (CEQA), the project is categorically exempt from CEQA, per Section 15303 New Construction or Conversion of Small Structures.

Attachments:

- **Attachment3.a:** Attachment A - Bid Summary Magical Bridge PE-21003

Bid Summary - Magical Bridge Playground
PE-21003

	Legion Contractors	Azul Works	Redwood Engineering	101 Builders	Top Line	Agbayani Constuction	Engineers Estimate
Remove and replace rubber surfacing color coat (standard)	\$119,272.50	\$152,000.00	\$176,700.00	\$212,040.00	\$263,283.00	\$335,760.00	\$285,000.00
Remove and replace rubber surfacing color coat (premium)	\$6,500.00	\$14,000.00	\$14,250.00	\$11,400.00	\$16,672.50	\$18,050.00	\$16,000.00
Remove and replace synthetic turf on flat ground	\$49,600.00	\$66,000.00	\$59,520.00	\$99,200.00	\$98,456.00	\$111,600.00	\$72,000.00
Remove and replace synthetic turf on slope section of mound	\$12,250.00	\$11,000.00	\$12,250.00	\$14,000.00	\$15,925.00	\$17,500.00	\$15,000.00
Spot repair and level attenuated buffing sub surface under rubber and turf	\$7,500.00	\$35,000.00	\$37,500.00	\$17,500.00	\$154,750.00	\$95,000.00	\$45,000.00
Remove and repalce bonded rubber mulch	\$29,150.00	\$56,000.00	\$47,700.00	\$60,950.00	\$77,115.00	\$74,200.00	\$35,000.00
Total:	\$224,272.50	\$334,000.00	\$347,920.00	\$415,090.00	\$626,201.50	\$652,110.00	\$468,000.00
Remove net railing of playhouse and replace with synthetic wood railing	\$45,750.00	\$11,900.00	\$41,785.00	\$67,100.00	\$12,962.50	\$137,250.00	\$68,000.00
Power wash and paint/stain playhouse includes scaffoldign	\$45,000.00	\$83,000.00	\$99,000.00	\$90,000.00	\$71,000.00	\$50,000.00	\$65,000.00
Purchase and install shade sail strucutre	\$79,000.00	\$70,600.00	\$75,000.00	\$78,000.00	\$67,500.00	\$75,000.00	\$85,000.00
Install new 6' donor bench on concrete pad	\$4,000.00	\$7,700.00	\$4,000.00	\$12,000.00	\$5,000.00	\$10,000.00	\$3,000.00
Replace the nettin on the Dynamo spinner	\$33,000.00	\$29,700.00	\$30,000.00	\$33,000.00	\$33,600.00	\$25,000.00	\$38,000.00
Prime and paint metal handrails	\$3,200.00	\$2,600.00	\$7,150.00	\$11,700.00	\$7,040.00	\$960.00	\$3,500.00
Purchase and install shade umbrell at slide mound	\$37,500.00	\$28,000.00	\$32,000.00	\$32,000.00	\$26,300.00	\$25,000.00	\$35,000.00
Plant 20 15gal Dietes	\$20,000.00	\$5,900.00	\$5,000.00	\$6,900.00	\$7,000.00	\$20,000.00	\$6,000.00
Plant 15 1gal Lavender	\$3,000.00	\$400.00	\$975.00	\$375.00	\$2,250.00	\$2,000.00	\$1,500.00
Total:	\$270,450.00	\$239,800.00	\$294,910.00	\$331,075.00	\$232,652.50	\$345,210.00	\$305,000.00
Total:	\$494,722.50	\$573,800.00	\$642,830.00	\$746,165.00	\$858,854.00	\$997,320.00	\$773,000.00



City of Palo Alto City Council Staff Report

(ID # 13899)

Meeting Date: 2/14/2022

Title: Approval of Amendment Number 2 to the Agreement With Palo Alto Unified School District (PAUSD) for PAUSD Athletic Field Brokering and Maintenance Cost-sharing to Extend the Term to June 30, 2022 with an Optional Extension for an Additional Two Years

From: City Manager

Lead Department: Community Services

Recommendation

Staff recommends that City Council approve and authorize the City Manager to execute Amendment No. 2 (Attachment A) to the [Agreement](#) Between the City of Palo Alto and the Palo Alto Unified School District of Santa Clara County Concerning the Public Use, Brokering and Maintenance of District-Owned Athletic Fields, Tennis Courts, and Basketball Courts Jointly Used By School Students and the General Public (Agreement) to extend the term to cover the period July 1, 2019 through June 30, 2022 with an optional mutual extension of an additional 24 months.

Background

Beginning in 1993, the City and PAUSD staff met to discuss a possible partnership for the maintenance and public use of PAUSD athletic fields. An Agreement between the City and PAUSD was entered into in 1995 for the City to maintain select PAUSD athletic fields for both school and community use with both parties contributing an equal share of the costs. The Agreement also included an equal cost share for capital improvements to athletic fields. The agreement has since been revised several times and no longer includes a cost share for capital improvements. The cost of capital improvements is now fully incurred by PAUSD.

The Agreement encompasses the maintenance and brokering of the athletic fields at 13 elementary schools and three middle schools, and tennis courts at five PAUSD schools. The City manages the brokering of PAUSD athletic fields and tennis courts for public community use outside of school activity hours. Revenue received from renting PAUSD athletic fields and courts is shared between both parties with the City retaining 60% and PAUSD retaining 40% of revenue.

The Agreement provides for the continued maintenance of school district fields at all PAUSD elementary schools, as well as the fields at Jane Lathrop Stanford (JLS) and Frank S. Greene, Jr. (Greene) Middle Schools. Greene Middle School was previously named Jordan Middle School. The maintenance of turf areas includes mowing, edging, de-thatching, reseeding, aeration, and maintenance of irrigation heads, valves, and controllers. The fields at Ellen Fletcher (Fletcher) Middle School (formerly named Terman) are not part of this agreement as these fields are dedicated parkland (Terman Park) and are maintained in a manner consistent with City Park maintenance standards.

The Agreement also provides for the maintenance of tennis courts and basketball courts at JLS, Greene, and Fletcher Middle Schools, and at Henry M. Gunn and Palo Alto High Schools. This work includes periodic sweeping of the court surfaces and washing during the summer months.

The City brokers the fields, tennis courts, and basketball courts in accordance with the Council-approved [Field Use Policy](#). This policy is intended to ensure residents, both youth and adults, have fair access to PAUSD and City-owned fields and athletic facilities. The criteria incorporated into the Field Use Policy helps ensure Palo Alto youth and non-profit sports clubs have top priority access to field space for practice and competition.

The City places a high priority on the maintenance and safety of school playing fields to ensure the community has access to athletic fields and courts for physical fitness and recreation. This Agreement will continue the City's commitment to provide quality turf and court surfaces.

Discussion

In the fall of 2019, City and PAUSD staff met to discuss renewing the Agreement ([Amendment No. 1](#)). City and PAUSD staff agreed to extend the Agreement through December 31, 2021 with a mutual option for an extension through Dec. 31, 2023. On December 9, 2019, City Council approved the extension of the Agreement ([Amendment No. 2](#)). City staff later learned that PAUSD staff did not bring the Agreement to the PAUSD Board for approval. Both the City and PAUSD have honored the terms of the Agreement (Amendment No. 2).

PAUSD staff have agreed to update Amendment No. 2 to extend the term to cover the period July 1, 2019 through June 30, 2022 with an optional mutual extension of an additional 24 months. PAUSD staff will bring the Amendment No. 2 to the PAUSD Board for their approval on February 8, 2022.

Amendment No. 2 retains the same scope of work and service level performed by City staff. The maintenance costs are shared equally between the City and PAUSD. The revenue share remains at 60% to City and 40% to PAUSD.

If City Council approves Amendment No. 2 of the Agreement, staff will collaborate with PAUSD and return to City Council in June 2022 with a recommendation to extend the Agreement.

Timeline

The attached amendment will extend the existing agreement to June 30, 2022 (with a mutual option to extend for an additional two years through June 30, 2024). Staff will return to City Council with a recommendation to extend the Agreement in June 2022.

Policy Implications

There are no policy implications from this contract amendment.

Resource Impact

Amendment No. 2 extends the terms of the existing agreement for six months (December 31, 2021 to June 30, 2022). The annual maintenance cost is approximately \$1.0M and the costs are split equally between the City and PAUSD. The revenue remains shared at 60% to the City and 40% to PAUSD. The total shared revenue in calendar year 2020 was approximately \$18,000. For calendar year 2021, the shared revenue is estimated to be approximately \$45,000. For calendar year 2022, the shared revenue is estimated to be approximately \$50,000.

The amendment maintains the level and scope of services and cost share of actual expenses as established in the original contract. The only financial impacts to the City from this action are the result of updated labor costs for continuing these services, which were included in the FY 2022 Adopted Budget. Funding for subsequent years of the agreement is subject to appropriation of funds through the annual budget process.

Stakeholder Engagement

City and PAUSD staff met multiple times to discuss the agreement and have a mutual interest in continuing this partnership.

Environmental Review

This amendment is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15301 (existing facilities) of the CEQA guidelines.

Attachments:

- **Attachment4.a:** Attachment A: City PAUSD Athletic Field Agreement, Second Amendment

**AMENDMENT NO. 2 TO THE
AGREEMENT BETWEEN THE CITY OF PALO ALTO AND THE
PALO ALTO UNIFIED SCHOOL DISTRICT OF SANTA CLARA
COUNTY CONCERNING THE PUBLIC USE, BROKERING AND
MAINTENANCE OF DISTRICT-OWNED ATHLETIC FIELDS,
TENNIS COURTS AND BASKETBALL COURTS JOINTLY USED
BY SCHOOL STUDENTS AND THE GENERAL PUBLIC**

This Amendment No. 2 to the “Agreement Between The City Of Palo Alto And The Palo Alto Unified School District Of Santa Clara County Concerning The Public Use, Brokering And Maintenance Of District-Owned Athletic Fields, Tennis Courts And Basketball Courts Jointly Used By School Students And The General Public” (“Contract”) is entered into February ____, 2022, by and between the CITY OF PALO ALTO, a California chartered municipal corporation (the “CITY”) and the PALO ALTO UNIFIED SCHOOL DISTRICT OF SANTA CLARA COUNTY, a unified school district organized and existing under the Laws of the State of California (the “DISTRICT”) (individually, a “Party” and, collectively, the “Parties”), in reference to the following facts and circumstances:

RECITALS

A. The Contract was entered into between the Parties on or about January 1, 2014 for the use, maintenance, and related cost-sharing of District-owned athletic fields and courts. The Contract was amended in June 2018.

B. The Parties intend to extend the Contract to cover the period July 1, 2019 through June 30, 2022 with an optional mutual extension of an additional 24 months.

C. The Parties wish to amend the Contract for the purposes described herein.

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

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

- a. **Contract.** The term “Contract” shall mean Contract titled “Agreement Between The City Of Palo Alto And The Palo Alto Unified School District Of Santa Clara County Concerning The Public Use, Brokering And Maintenance Of District-Owned Athletic Fields, Tennis Courts And Basketball Courts Jointly Used By School Students And The General Public” between DISTRICT and CITY, dated January 1, 2014 as amended by:

Amendment No.1, dated June 25, 2018

- 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. Subsection 2.1 of Section 2 TERM AND TERMINATION of the Contract is hereby amended to read as follows:

2.1 The term of this Second Amendment will commence on July 1, 2019, and end on June 30, 2022, subject to the earlier termination of this Agreement by any Party hereto upon ninety (90) days' advance written notice. The preceding sentence notwithstanding, this Agreement is subject to the fiscal provisions of the Charter of the CITY and other Laws of the CITY and the DISTRICT, and this Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated by the Council or Board of Education for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are not appropriated by the Council or Board of Education for a portion of the fiscal year and funds for this Agreement are no longer available. The CITY or the DISTRICT will use reasonable efforts to give the other Party reasonable notice of termination in the event that funds will not be appropriated. No provision is made for the automatic extension or renewal of the term.

SECTION 3. Subsection 2.3 of Section 2 TERM AND TERMINATION of the Contract is hereby added to read as follows:

2.3 The term of this Agreement may be extended for an additional twenty four (24) months by written mutual agreement of the parties executed at least seven (7) calendar days before expiration of the term. Nothing in this Agreement requires either party to renew or extend this Agreement or to enter into negotiations regarding the renewal or extension of this Agreement.

SECTION 4. Subsection 5.1 of Section 5 PAYMENTS OF COSTS OF MAINTENANCE of the Contract is hereby amended to read as follows:

5.1 Actual costs shall be shared in the ratio of 50:50 between the CITY and the DISTRICT for the costs of Maintenance and water (plus equipment costs and salary and benefits costs, as appropriate) for the Facilities. City shall provide District with estimated maintenance costs on a quarterly basis to aid with allocation of funds.

SECTION 5. The following exhibit(s) to the Contract is hereby amended to read as set forth in the attachment(s) to this Amendment, which are incorporated in full by this reference:

- a. Attachment "B" entitled "Fee Schedule and Program".

SECTION 6. Except as herein modified, all other provisions of the Contract, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

SECTION 7. The recitals set forth above are terms of this Amendment and are fully incorporated herein by this reference.

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

CITY OF PALO ALTO

PALO ALTO UNIFIED SCHOOL DISTRICT:

APPROVED AS TO FORM:

Attachments:

ATTACHMENT B: FEE SCHEDULE AND PROGRAM

ATTACHMENT B
Fee Schedule and Program

Athletic Field Rentals**

Baseball Fields	<u>2018-2019</u> \$7.50 - 162.00/hr.*
Soccer Fields	\$7.50 - 162.00/hr.*
Softball Fields	\$7.50 - 162.00/hr.*
Lights	\$27.00/use

Athletic Field Rentals**

Baseball Fields	<u>2019-2020</u> \$7.50 - 174.00/hr.*
Soccer Fields	\$7.50 - 174.00/hr.*
Softball Fields	\$7.50 - 174.00/hr.*
Lights	\$29.00/use

Athletic Field Rentals**

Baseball Fields	<u>2021-2022</u> \$9.00 - 163.00/hr.*
Soccer Fields	\$9.00 - 163.00/hr.*
Softball Fields	\$9.00 – 163.00/hr.*
Lights	\$30.00/use

(Rates for 2023 and beyond to be determined by the City's Municipal Fee Schedule)

Tennis Court Rentals (2018-2019)**

Tennis Tournament Court Use Fee	\$5.00 – 16/hr./court*

Tennis Court Rentals (2019-2020)**

Tennis Tournament Court Use Fee	\$5.00 – 17/hr./court*

Tennis Court Rentals (2021-2022)**

Tennis Tournament Court Use Fee	\$7.00 – 9/hr./court*

(Rates for 2023 and beyond to be determined by the City's Municipal Fee Schedule)

* Athletic fields' fees will be reduced by 50% for nonprofit users. Proof of nonprofit status will be required for fee reduction. However, there shall be no fee reduction if any fee or donation is required by the nonprofit organization permit holder in connection with the use of the permitted field or tennis court.

** Rates are subject to change subject to the City's Municipal Fee Schedule.

Facilities covered by these fees include:City Sites/Parks

Terman Park

Palo Alto Unified School District Sites

All Elementary Schools -Open or Closed

Greene Middle School

JLS Middle School

Palo Alto High School Tennis Courts

Gunn High School Tennis Courts



City of Palo Alto City Council Staff Report

(ID # 13761)

Meeting Date: 2/14/2022

Council Priority: Transportation and Traffic

Title: Approval of Amendment #4 to Contract C18171057 with AECOM to Increase the Not-to-Exceed Compensation by \$722,170 for Additional Evaluation and Outreach of Railroad Grade Separation Alternatives for a Total Not-to-Exceed of \$3,596,828

From: City Manager

Lead Department: Transportation Department

Recommendation

Staff recommends that the City Council approve and authorize the City Manager to execute Amendment No. 4 to Contract C18171057 with AECOM for the Railroad Grade Separation and Safety Improvements Capital Improvement Project (PL-17001) effort and to increase compensation by \$722,170 on a time and material basis for a total not-to-exceed amount of \$3,596,828. This amendment will allow AECOM to perform additional studies as directed by City Council on the remaining rail crossing alternatives and perform outreach and seek input through stakeholders. This amendment also includes optional additional services for evaluating four-track alternatives that can be authorized by the City Manager in consultation with the City Council and Rail Committee if needed.

Background

The City Council approved a contract with AECOM to serve as the primary consultant for the Connecting Palo Alto rail grade separation project on April 16, 2018. The approved contract (C18171057) for \$1,278,660 is shown with the staff report [\(CMR 9100\)](#).

The City Council also authorized Amendment No. 1 on June 24, 2019 [\(CMR 10463\)](#), Amendment No. 2 on June 23, 2020 [\(CMR 11273\)](#), and Amendment No. 3 on April 26, 2021 [\(CMR 12153\)](#) to the AECOM contract. These contract amendments provided for additional services supporting rail grade separation project outreach efforts and assistance to the City for technical support for review of the selected rail grade separation alternatives by the Expanded Community Advisory Panel (XCAP). The proposed contract amendment is included in Attachment A.

Discussion

After receiving the final report from the Expanded Community Advisory Panel (XCAP) on April 26, 2021 ([CMR 12185](#)), the City Council eliminated the south Palo Alto tunnel alternatives from further consideration for Meadow Drive and Charleston Road crossings. Staff presented a detailed review for Meadow Drive and Charleston Road crossing alternatives on August 23, 2021 ([CMR 13435](#)) and also provided details on additional studies that may be performed to provide further information in narrowing the alternatives for selection of preferred alternatives at these crossings.

At this meeting on August 23, 2021, the City Council eliminated the viaduct option for Charleston Road and Meadow Drive grade crossings from further consideration and directed staff to perform additional studies. These studies included work to refine underpass alternatives for Meadow Drive and Charleston Road crossing to address current shortcomings, including the size of the roundabout, the bike/ped connections, and right-of-way impacts. In addition, the Council directed staff to conduct additional geotechnical studies and to obtain the cost for a second cost opinion of the Trench option, in particular a company with experience with trenches, underground or subterranean methods parallel to the geotechnical studies.

Following the discussion about Charleston Road and Meadow Drive crossing, staff presented details on Churchill Avenue crossing alternatives for grade separation on November 1, 2021 ([CMR 13543](#)). This discussion was continued on November 29, 2021 ([CMR 13746](#)). Similar to other crossings, staff presented information on additional studies that may be performed to provide further information in narrowing the alternatives for the selection of preferred alternatives at Churchill Avenue Crossings.

At this meeting on November 29, 2021, the City Council eliminated the viaduct alternative for Churchill Avenue grade crossing from further consideration and selected the partial underpass alternative as a preferred alternative and the closure alternative with mitigations as a backup. Council desired the refinement to the partial underpass alternative with input from PAUSD, PABAC, and Stanford to address current shortcomings and to conduct additional outreach.

In addition, Council directed initiating the rail committee to further discuss the alternatives in consideration, and to facilitate engagement with Caltrain, PAUSD, and Sandford. The rail committee with staff and the Local Policy Maker Group (LPMG), will also help pursue Caltrans; the reduction in areas for 4-tracking concerns, design alternatives considerations, construction technologies, etc. Also, staff will bring the additional studies performed by the consultant for rail committee review and seek direction before the City Council for review and approval.

Staff requested AECOM Consultants to provide a proposal for the additional services and ongoing support as discussed and directed by the City Council at these meetings on a time and material basis, including support from sub-consultants. The Council directed that the scope includes the following major tasks:

- Refinement of Underpass Alternatives at Charleston Road and Meadow Drive crossing, and Partial Underpass Alternative at Churchill Avenue.
- Preliminary Geotechnical Studies to confirm the design assumptions and unit costs. In addition, assist with reviewing the merits of box jacking construction technology.
- Cost estimate review for a second cost opinion of the Trench alternatives from a company experienced with trenches, underground or subterranean methods parallel to the geotechnical studies
- Additional outreach to PAUSD, Stanford, and PABAC to gather input and feedback.
- Technical Support for review of the alternatives for analysis as needed to support Rail Committee discussions.
- Additional Services: Optional Task for Four Tracking Review of impacts on alternatives is included in the scope as an optional task that can be authorized, if needed by the City Manager, in consultation with City Council and Rail Committee. This optional task may be authorized for only the level of effort needed from the Consultant, in the event Caltrain's timings for evaluation of City's project limits the ability for the City to move forward with the project.

Timeline & Workplan

The work will be performed in the following anticipated timeline:

- Initiate Rail Committee and present workplan and seek direction on guiding principles and criteria; February/March 2022
- Engage with Rail Committee for discussion with Caltrain and impacts of Caltrain's decisions on alternatives in consideration; March through May 2022
- Check-in with Rail Committee in reviewing the technical information and refined designs available from the Consultant; June/July 2022
- Provide an update on the additional studies from the geotechnical information prepared by the consultant; August/September 2022
- Coordinate with PAUSD, Stanford, and PABAC to seek their input for refinement of partial underpass alternative at Churchill Avenue, and underpass alternatives at Meadow Drive and Charleston Road Crossings; including review of Rail Committee; through September 2022
- City Council review of the alternatives in consideration based on Rail Committee recommendations; October 2022
- Consultant to prepare Draft Project Study Report (PSR); December 2022

Resource Impact

At the request of the City based on the past practice with previous amendments of this contract, the Consultant provided the proposal for this work on a time and material basis. Following negotiations between the City and the Consultant, the amendment to the contract is

proposed in the amount of \$722,170. This amount includes the additional services for the optional task in the amount of \$104,126 that can be authorized by the City Manager in consultation with the City Council or Rail Committee as needed.

Funding required for Contract Amendment #4 is available in the FY 2022 Adopted Capital Budget Railroad Grade Separation and Safety Improvement Project, PL-17001. The existing AECOM Contract including Amendments 1-3 totals \$2,874,658. Based on the amount proposed in Contract Amendment #4 of \$722,170, the total contract amount for the AECOM Contract would increase to \$3,596,828. There is adequate funding available from Measure B Local Streets and Roadways (LSR) allocated to this project to fund this contract amendment.

Stakeholder Engagement

From June 2019 through February 2021, the XCAP conducted regular meetings for the review of the various alternatives in consideration at the Churchill Avenue, Meadow Drive, and Charleston Road crossings along the Caltrain corridor. Staff in coordination with AECOM Consultants provided continuous support to the XCAP and conducted other community engagement activities. In addition to XCAP, and to further engage the community, the City hosted a [Virtual Town Hall](#) from August 19, 2020 to September 14, 2020 gaining over 1,000 unique visitors to the online platform. This virtual platform was designed to inform the community and seek feedback on the proposed alternatives for the grade at the three separation grade crossing locations.

A summary report of the virtual Town Hall was provided as an Informational Report to the City Council on November 30, 2020 ([CMR 11759](#)). Earlier in 2020, before the pandemic began, the City also hosted two well-attended Rail Town Hall meetings and smaller neighborhood specific open house meetings to gain community input on the rail alternatives and answer community questions. Staff also developed and released online surveys, used social media, City's website, and electronic newsletters to inform, answer questions, and gain feedback from the community on this important City priority.

The scheduled Council Meetings on the ongoing discussion for grade separation alternatives for Meadow Drive, Charleston Road, and Churchill Avenue crossings discussions also provided the community with the opportunities to provide their comments to the City. In 2021, these meetings were held on March 23, April 26, August 23, November 1, and November 29.

In addition, outreach to PAUSD, Stanford, PABAC, and similar entities are included in the scope of this amendment for further refinement of the project alternatives. The Rail Committee and future Council Meetings for the project will also provide opportunities for additional community feedback.

Policy Implications

Goals and policies from the Palo Alto 2030 Comprehensive Plan that are supported and advanced by the proposed project include:

Goal T-1 Create a sustainable transportation system, complemented by a mix of land uses, that emphasizes walking, bicycling, use of public transportation and other methods to reduce GHG emissions and the use of single-occupancy motor vehicles.

Policy T-1.19 Provide facilities that encourage and support bicycling and walking.

Policy T-1.10 Support Caltrain modernization and electrification capacity and service enhancements and extension to Downtown San Francisco.

Policy T-1.25 Pursue transportation funding opportunities for ongoing transportation improvements that will help mitigate the impacts of future development and protect residents' quality of life. When other sources are unavailable, continue to fund improvements, operations and maintenance through the general fund.

Goal T-2 Decrease delay, congestion and VMT with a priority on our worst intersections and our peak commute times, including school traffic.

Policy T-2.3 Use motor vehicle LOS at signalized intersections to evaluate the potential impact of proposed projects, including contributions to cumulative congestion. Use signal warrants and other metrics to evaluate impacts at unsignalized intersections.

Goal T-3 Maintain an efficient roadway network for all users.

Policy T-3.5 When constructing or modifying roadways, plan for use of the roadway by all users.

Policy T-3.6 Consider pedestrians, bicyclists, e-bikes and motorcycles when designing road surfaces, curbs, crossings, signage, landscaping and sight lines.

Policy T-3.14 Continue to prioritize the safety of school children in street modification projects that affect school travel routes, including during construction.

GOAL T-6 Provide a safe environment for motorists, pedestrians and bicyclists on Palo Alto streets

Policy T-6.1 Continue to make safety the first priority of citywide transportation planning. Prioritize pedestrian, bicycle and automobile safety over motor vehicle level of service at intersections and motor vehicle parking.

Policy T-6.3 Continue to work with Caltrain to increase safety at train crossings, including improving gate technology and signal coordination.

Goal T-8 Influence the shape and implementation of regional transportation policies and technologies to reduce traffic congestion and GHG emissions.

Environmental Review

The recommendation in this report does not constitute a project in accordance with the California Environmental Quality Act and is therefore not subject to environmental review.

Attachments:

- **Attachment5.a:** Attachment A: AECOM Contract Amendment #4, C18171057
Amend No. 4

**AMENDMENT NO. 4 TO CONTRACT NO. C18171057
BETWEEN THE CITY OF PALO ALTO AND
AECOM TECHNICAL SERVICES, INC.**

This Amendment No. 4 (this "Amendment") to Contract No. C18171057 (the "Contract" as defined below) is entered into as of February 14, 2022, by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and AECOM TECHNICAL SERVICES, INC., a California corporation, located at 300 Lakeside Drive, Suite 400, Oakland, CA 94612 ("CONSULTANT"). CITY and CONSULTANT are referred to collectively as the "Parties" in this Amendment.

RECITALS

A. The Contract (as defined below) was entered by and between the Parties hereto for the provision of providing additional support to City staff for additional meetings with XCAP and City Council, as detailed therein.

B. The Parties now wish to amend the Professional Service Agreement Contract in order to increase the total compensation by \$722,170.00 from \$2,874,658.00 to \$3,596,828.00 for Services and Additional services not included in the previous scope of work and extend the term by one year to April 22, 2023.

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. C18171057 between CONSULTANT and CITY, dated April 23, 2018.

Amendment No. 1, dated June 24, 2019

Amendment No. 2, dated June 23, 2020

Amendment No. 3, dated April 23, 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 2. "TERM" of the Contract is hereby amended to read as follows:

"SECTION 2. TERM. The term of this Agreement shall be from the date of its full execution through April 22, 2023, unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. Section 4. "NOT TO EXCEED COMPENSATION" of the Contract is hereby amended to read as follows:

"SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit "A" as amended by Exhibits "A-1", "A-2", "A-3" and "A-4" (referred to collectively as Exhibit "A" or the "Basic Services"), and reimbursable expenses, shall not exceed Three Million Five Hundred Ninety-Six Thousand Eight Hundred Twenty-Eight Dollars (\$3,596,828.00). CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. In the event Additional Services are authorized, the total compensation for Basic Services, Additional Services, and reimbursable expenses shall not exceed Three Million Five Hundred Ninety-Six Thousand Eight Hundred Twenty-Eight Dollars (\$3,596,828.00). The applicable rates and schedule of payment are set out at Exhibit "C-4", entitled "HOURLY RATE SCHEDULE," which is attached to and made a part of this Agreement. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY. Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit "C". CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described at Exhibit "A"."

SECTION 4. The following exhibits to the Contract are hereby amended or added to read as set forth in the attachments to this Amendment, which are incorporated in full by this reference:

- a. EXHIBIT "A-4": SCOPE OF SERVICES, AMENDMENT NO.4 (ADDED)
- b. EXHIBIT "B-4": SCHEDULE OF PERFORMANCE, AMENDMENT NO.4 (ADDED)
- c. EXHIBIT "C": COMPENSATION, AMENDMENT NO.4 (AMENDED, REPLACES PREVIOUS)
- d. EXHIBIT "C-1.4": HOURLY RATE SCHEDULE, AMENDMENT NO.4 (ADDED)

Exhibit "A-4" to this Amendment shall amend, but not replace, Exhibit "A" attached to the original Contract, Exhibit "A-1" attached to Amendment No. 1, Exhibit "A-2" attached to Amendment No. 2, and Exhibit "A-3" attached to Amendment 3 to the Contract. References to "Exhibit A" in the Contract shall mean Exhibits "A", "A-1", "A-2", "A-3" and "A-4" read together. To the extent the provisions of Exhibit "A-4" directly conflict with original Exhibit "A", Exhibit "A-1", or Exhibit "A-2", or Exhibit "A-3", the provisions of Exhibit "A-4" will control.

Exhibit "B-4" shall amend, but not replace, Exhibit "B" as previously amended. References to "Exhibit B" in the Contract shall mean Exhibit "B" (as previously amended) and this Exhibit "B-4", read together. To the extent the provisions of Exhibit "B-4" directly conflict with Exhibit "B" as previously amended, the provisions of Exhibit "B-4" will control.

Exhibit "C-1.4" shall amend, but not replace, Exhibit "C-1" as previously amended. References to "Exhibit C-1" in the Contract shall mean Exhibit "C-1" (as previously amended) and this Exhibit "C-1.4", read together. To the extent the provisions of Exhibit "C-1.4" directly conflict with Exhibit "C-1" as previously amended, the provisions of Exhibit "C-1.4" will control.

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.

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

CONSULTANT: AECOM TECHNICAL SERVICES, INC.

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By: Etty Mercurio
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Etty Mercurio
Name: _____
Title: Vice President

DocuSigned by:
By: Allison Hall
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Allison Hall
Name: _____
Title: CFO, Americas

Attachments:

EXHIBIT "A-4": SCOPE OF SERVICES, AMENDMENT NO.4 (ADDED)
EXHIBIT "B-4": SCHEDULE OF PERFORMANCE, AMENDMENT NO.4 (ADDED)
EXHIBIT "C": COMPENSATION, AMENDMENT NO.4 (AMENDED, REPLACES PREVIOUS)
EXHIBIT "C-1.4": HOURLY RATE SCHEDULE, AMENDMENT NO.4 (ADDED)

City of Palo Alto

Form Vers.: Aug. 5, 2019

**EXHIBIT A-4
SCOPE OF SERVICES,
AMENDMENT NO. 4
(ADDED)**

This Exhibit "A-4" shall amend, but not replace, Exhibit "A" attached to the original Contract, Exhibit "A-1" attached to Amendment No. 1, Exhibit "A-2" attached to Amendment No. 2, and Exhibit "A-3" attached to Amendment 3 to the Contract. References to "Exhibit A" in the Contract shall mean Exhibits "A", "A-1", "A-2", "A-3" and "A-4" read together. To the extent the provisions of Exhibit "A-4" directly conflict with original Exhibit "A", Exhibit "A-1", or Exhibit "A-2", or Exhibit "A-3", the provisions of Exhibit "A-4" will control.

AMENDMENT NO. 4 SCOPE OF WORK:

CONSULTANT will continue to manage the Project, which will include required technical analyses of alternatives and a community and stakeholder engagement process to identify and develop locally- preferred alternatives for modifications to the existing at-grade crossings in Palo Alto at Churchill Avenue, Meadow Drive, and Charleston Road. CONSULTANT will coordinate and manage the project inconjunction with CITY's staff.

The tasks anticipated in this supplemental scope of services with descriptions of supplemental servicesfor each task and associated deliverables are shown below.

Task 1. Project Management

1.1 Project Management and Administration

For the additional 16 months to the project (January 2022-April 2023), the CONSULTANT will continue toprovide project management for each task for the duration of the Project. Management activities will consist of administration, coordination, and quality control, as follows:

- a. Prepare a scope, budget, and updated project schedule.
- b. Continue to supervise, coordinate, and monitor activities and product development for conformance with the scope of services and CITY standards.
- c. Prepare sixteen (16) additional monthly invoices and progress reports.

1.2 Performance and Quality Monitoring

CONSULTANT will continue to use a project specific Quality Assurance Plan for technical reviews and detailed checking for work products including the work produced by CONSULTANT's subconsultants. TheCONSULTANT will continue to make sure that all work performed on the project is checked and that all deliverables undergo a quality review before submittal to the CITY.

1.3 Monthly Invoicing, Progress Reports and Schedule

City of Palo Alto

Form Vers.: Aug. 5, 2019

CONSULTANT will prepare and update the project schedule based on the supplemental work and it will be submitted to CITY staff for review and approval.

Task 1 Supplemental Deliverables:

- a. Updated baseline project schedule
- b. Monthly update of progress against baseline schedule
- c. Sixteen (16) additional monthly invoices with progress reports

Task 4. Community Engagement

4.1 Supplemental Meetings

CONSULTANT will support the City staff with meetings not included in the original scope of work or prior amendments. The additional services will include the preparation and attendance of up to six meetings (3 stakeholders x 2 meetings with each), as directed by the City. Approximate dates are shown in the schedule and stakeholders are assumed to be Stanford, PAUSD and PABAC.

4.2 Presentation to Rail Committee #1

CONSULTANT will prepare a summary of comments from the initial set of stakeholder meetings and develop a PowerPoint presentation to present to the Rail Committee.

Task 4 Deliverables

- a. Stakeholder meeting summaries
- b. Presentation materials for one Rail Committee meeting

Task 6. Identify Recommended Alternatives

6.1 Refine Meadow and Charleston (MC) Underpasses and Churchill (CH) Partial Underpass Alternatives

6.1.1 Refine Alternatives

CONSULTANT will refine the three underpass alternatives (at Churchill, Meadow and Charleston) to address input received to date, and feedback received from the stakeholders described in Task 4. Only input recommended by the City and the Rail Committee will be incorporated into the refinement of the alternatives. Some input received to date includes the size of the Charleston roundabout, improvements to bike/pedestrian connections and reduction of right-of-way impacts. The following materials will be updated:

6.1.2 Update Exhibits

Update plan, profile and typical section for each of the three alternatives (Initial and Final)

6.1.3 Update Renderings

Update 3D CAD model and still image renderings to include refinements not previously captured such as U-turn at Alma Plaza (Initial and Final)

6.1.4 Update Cost Estimates

Update quantities and cost estimate for each alternative. These tasks will be completed only after the final refinements are made.

6.1.5 Update Misc. Items (Fact Sheets, Matrix, VR Room)

Update evaluation matrix, FACT Sheets, website materials and VR room materials/exhibits based on the refinements. These tasks will be completed only after the final refinements are made.

6.1.6 Presentation to Rail Committee #2

CONSULTANT will prepare a summary of comments from the second set of stakeholder meetings. Based on comments from the stakeholders and Rail Committee, CONSULTANT will make a final update to the exhibits and renderings for the underpass alternatives. and develop a PowerPoint presentation to present to the Rail Committee.

6.2 Preliminary Geotechnical Study**6.2.1 Data Collection and Review – Groundwater and Geotechnical**

CONSULTANT will collect available soil profile and groundwater data from adjacent projects. This could include data from Santa Clara Water District channel projects, local bridges (Caltrain, City or Caltrans), and/or other sources (e.g. local development projects).

6.2.2 Field and Laboratory Studies

Following review of available subsurface information, CONSULTANT will conduct a limited geotechnical field exploration program consisting of one boring and one seismic cone penetration test (CPT) near each of the three rail crossings for preliminary site characterization; this information would be used to update design assumptions made during the current planning-level phase. At least one porewater pressure dissipation test to estimate groundwater depth would be attempted in the CPT at each location if granular deposits are encountered.

The borings would be drilled to a depth of 80 feet and the CPTs would be advanced to a depth of 100 feet or practical refusal, whichever is shallower. An AECOM field engineer or geologist will log the borings during drilling and supervise the field activities. Soil samples will be obtained at 5-foot depth intervals or changes in stratigraphy to a depth of about 50 feet; the sampling interval might be increased to 7- to 10-foot below a depth of 50 feet. Samples will be collected with a modified California sampler or Standard Penetration Test split-spoon sampler. All borings and CPTs will be backfilled in accordance with Valley Water requirements. Cold patch asphalt or rapid set concrete would be used at the surface to complete exploration backfill in paved areas. Soil cuttings would be spread on the ground in unpaved areas along the south side of Alma Street (i.e. drumming or offsite disposal will not be required). We assume the soil and groundwater are non-hazardous and Level D personal protective equipment will be adequate.

Prior to mobilizing equipment, we will mark the proposed locations of the borings and CPTs and coordinate utility clearances with Underground Service Alert. We also will retain a private utility locator to clear the boring and CPT locations on the sites. Exploration locations will be tape

City of Palo Alto

Form Vers.: Aug. 5, 2019

measured in the field from existing features.

Access for site exploration is limited by the existing tracks, overhead lines, and fencing, as well as the likely presence of numerous underground utilities often found along rail lines. For this reason, site exploration for the three crossings will most likely need to be performed in City streets with approved lane closure (including City or County encroachment permit to be provided at no cost to CONSULTANT) and traffic control; night work is anticipated to minimize impacts to the public.

Laboratory tests will be made to evaluate the engineering properties of the materials encountered. These tests are likely to include moisture content, total and dry unit weight, Plasticity Index, grain size distribution and soil corrosivity. Consolidation and triaxial strength testing might also be performed if weak or compressible fine-grained soils are encountered in the borings.

6.2.3 Construction Methodology Evaluation

Based on field exploration and laboratory test program results, CONSULTANT will evaluate the feasibility of the proposed trenching (overhead), underpass, and jacked box alternatives as they relate to the subsurface soil and groundwater conditions anticipated at each site.

6.2.4 Technical Memorandum – Draft and Final

CONSULTANT will prepare a draft memorandum summarizing the findings of the data review and site-specific field and laboratory testing programs; it will include CPT records and boring logs in gINT format. The memorandum will provide recommendations for further geotechnical exploration needed for detailed design and will include discussion of feasible foundation and retaining wall types, the need for tiebacks anchors, control of groundwater and construction considerations associated with the proposed alternatives as they relate to the anticipated geotechnical conditions. The memorandum will be finalized following receipt of comments from the CITY.

6.2.5 Presentation to Rail Committee #3 and City Council Meeting

CONSULTANT will prepare presentation materials for a Rail Committee meeting to present the results of the geotechnical study described above and the cost estimate Peer Review described in Task 6.3.

Following this meeting, CONSULTANT will support the City staff at a City Council meeting to discuss the Rail Committee's recommendations and answer technical questions as-needed.

6.3 Cost Estimate Peer Review

CONSULTANT will conduct a Peer Review of the cost estimate and design assumptions for the trench alternative. The Peer Review will be conducted by an independent consultant with experience and expertise in trench design and construction. The Peer Review will be summarized in a memorandum and will evaluate overall costs as well as unit costs.

6.4 Additional Technical Support

CONSULTANT will provide additional technical support to City staff for additional meetings with the Rail Committee and the City Council and/or additional engineering services by advanced request and written authorization from the City's Project Manager. The CONSULTANT at the City of Palo Alto

City's request shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort and CONSULTANT's maximum compensation for the services based on rates set forth in the contract. The additional services shall be negotiated and agreed to in writing by the City's Project Manager prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement. Additional Services could also include additional meetings and/or additional studies/renderings at City's request. A budgetary allowance has been included in the fee estimate for this task.

6.5 Caltrain Coordination on 4-Track Policy (Optional Task – Only if Authorized by City Manager or Designee)

JPB has adopted the moderate-growth improvement program as outlined in the Business Plan (<https://caltrain2040.org/>). However, JPB also indicated that the high-growth improvement program should not be precluded. Palo Alto has been identified in the Business Plan as a location for the high-growth improvements, including 4-tracks. To date, alternatives developed for the Rail Program have only been evaluated for 2-tracks.

6.5.1 Gather Data from Caltrain

CONSULTANT along with City staff will meet with Caltrain to gather more information about what the limits of the 4-track alignment would be and what the typical section would be along the limits and at the stations.

6.5.2 Evaluate Alternatives

CONSULTANT to conduct a high-level analysis of the impacts of 4-tracks for each alternative still under consideration (MC Hybrid, MC Trench, MC Underpass, CH Underpass, and CH Closure) by overlaying Caltrain's 4-track geometry over the proposed 2-track. The analysis will identify a list of significant impacts for each alternative and determine if the alternatives are still feasible with 4-tracks or does not preclude 4-tracks in the future. This task assumes no animations or photo simulations, or updates to existing exhibits.

6.5.3 Meet with Caltrain

CONSULTANT along with City staff will meet with Caltrain to review the evaluation of alternatives and gather additional feedback on the feasibility and impacts of each. It is assumed there will be two meetings.

6.5.4 Prepare Memorandum Report

CONSULTANT will prepare a draft and final memorandum report that documents the evaluation of the 4-track alignment and feedback received from Caltrain. CONSULTANT will incorporate one set of consolidated comments from the City and Caltrain on the draft technical memorandum.

6.5.5 Presentation to Rail Committee and City Council

CONSULTANT will prepare presentation materials to present to Rail Committee and City Council. Based on comments from Rail Committee and City Council, update exhibits and return to Rail Committee to present revised exhibits.

Task 6 Deliverables

- a. Updated plans, exhibits and renderings for two underpass alternatives (Meadow and Charleston) and one partial underpass alternative (Churchill) – Draft and Final
- b. Geotechnical Memorandum – Draft and Final
- c. Memorandum to summarize independent review of cost estimate and assumptions – Draft and Final
- d. Presentation materials for three Rail Committee meetings and one City Council meeting
- e. Memorandum report for 4-Track evaluation and presentation materials for one Rail Committee meeting and one City Council meeting (OPTIONAL – Task 6.5)

EXHIBIT "B-4"
SCHEDULE OF PERFORMANCE, AMENDMENT NO.4
(ADDED)

The timeline in this Exhibit "B-4" is intended to show the schedule of performance for the scope of work in this Amendment No.4.

This Exhibit "B-4" shall amend, but not replace, Exhibit "B" as previously amended. References to "Exhibit B" in the Contract shall mean Exhibit "B" (as previously amended) and this Exhibit "B-4", read together. To the extent the provisions of Exhibit "B-4" directly conflict with Exhibit "B" as previously amended, the provisions of Exhibit "B-4" will control.

(See following page)

Exhibit B-4 (continued) – Schedule of Performance for Amendment # 4 Scope of Work

EXHIBIT “B”: SCHEDULE OF PERFORMANCE Connecting Palo Alto Railroad Grade Separation

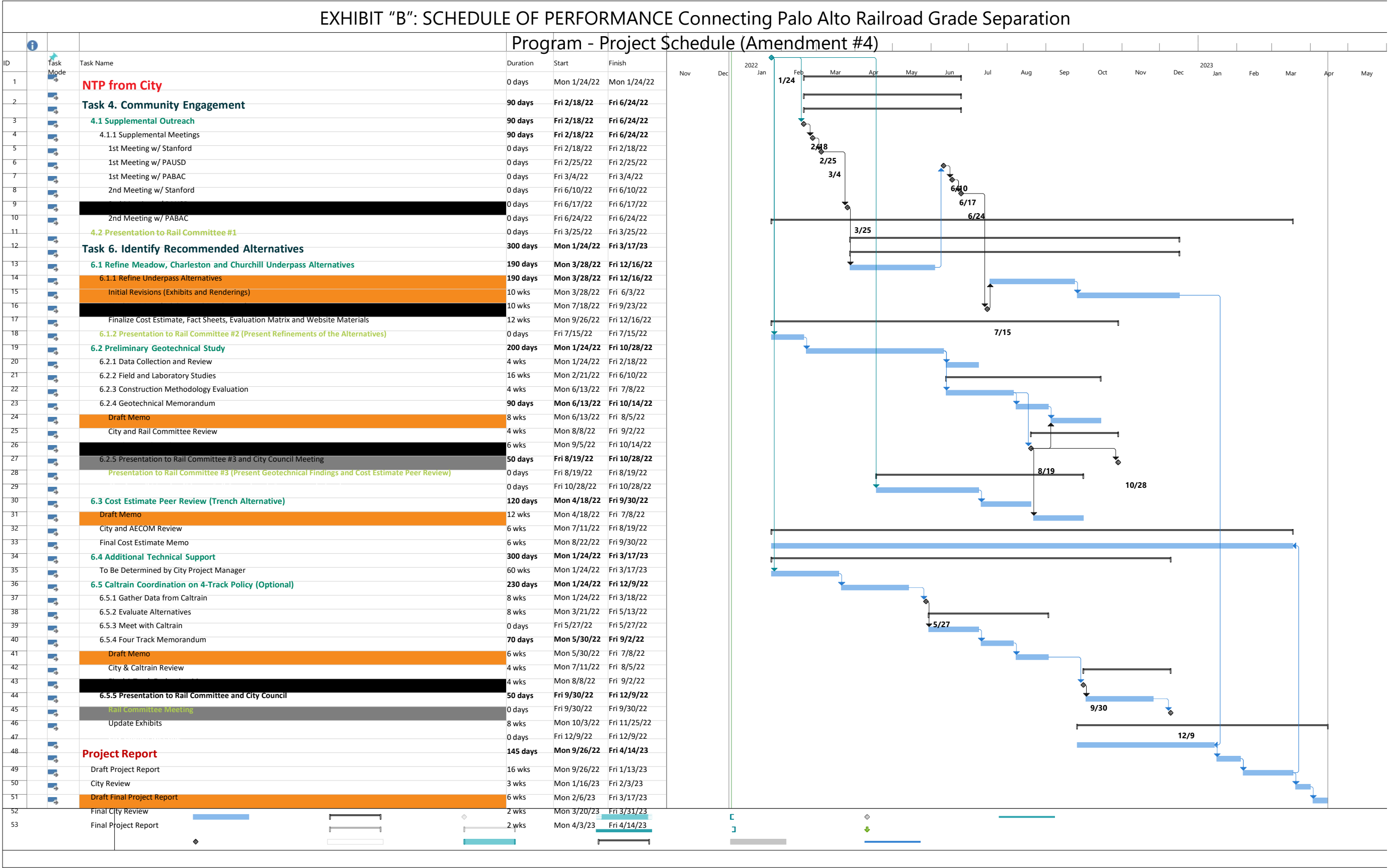


**EXHIBIT "C" COMPENSATION
AMENDMENT NO.4
(AMENDED, REPLACES PREVIOUS)**

CITY agrees to compensate CONSULTANT for professional 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 hourly rate schedule attached as Exhibit "C-1" up to the not to exceed budget amount for each task set forth below.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. CITY's Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including reimbursable expenses, and the total compensation for Additional Services do not exceed the amounts set forth in Section 4 of this Agreement.

TASK		ORIGINAL CONTRACT NOT TO EXCEED AMOUNT	NOT TO EXCEED AMOUNT ADDED OR (SUBTRACTED) BY AMENDMENT NO 1	NOT TO EXCEED AMOUNT ADDED BY AMENDMENT NO 2	NOT TO EXCEED AMOUNT ADDED BY AMENDME NT NO 3	NOT TO EXCEED AMOUNT ADDED BY AMENDMENT NO. 4
Task 1	Project Management	\$225,184.00	\$136,825	\$48,827	\$0	\$57,982
Task 2	Data Collection & Review	\$121,117.20	\$12,360	\$0	\$0	\$0
Task 3	Convene Technical Advisory Committee Meetings	\$51,873.60	(\$39,806)	\$0	\$0	\$0
Task 4	Community Engagement	\$285,885.60	\$470,050	\$79,626	\$0	\$33,939
Task 5	Identify Alternative Analysis	\$177,420.00	\$0	\$0	\$0	\$0
Task 6	Identify Recommended	\$312,523.20	\$387,406	\$178,419	\$0	\$526,122
Task 7	Assist with CAHSR Analysis Phase	\$32,424.00	\$0	\$0	\$0	\$0
Task 8	Financing Plan	\$28,032.00	\$59,290	\$0	\$0	\$0
	Reimbursables and Other	\$44,200.00	\$0	\$3,000	\$0	\$0
	Additional Services	0	\$180,000	\$0	\$80,000	\$104,126
TOTAL		\$1,278,660.0	\$1,206,126	\$309,872	\$80,000	\$722,120
MAXIMUM						

TOTAL BASIC SERVICES (AMENDMENT NO. 4)	\$ 618,044.00
TOTAL BASIC SERVICES (AMENDMENT NO. 2)	\$ 306,872.00
TOTAL BASIC SERVICES (AMENDMENT NO. 1)	\$1,026,126.00
TOTAL BASIC SERVICES (ORIGINAL CONTRACT)	\$1,234,460.00
 Reimbursable Expenses	 \$47,200.00
 Additional Services (AMENDMENT 1)	 \$180,000.00
Additional Services (AMENDMENT NO. 3)	\$80,000.00
 Additional Services (AMENDMENT NO. 4)	 \$104,126.00

Maximum Total Compensation **\$3,596,828.00**

REIMBURSABLE EXPENSES

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are:

- A. Travel outside the San Francisco Bay area, including transportation and meals, will be reimbursed at actual cost subject to the City of Palo Alto's policy for reimbursement of travel and meal expenses for City of Palo Alto employees.
- B. Long distance telephone service charges, cellular phone service charges, facsimile transmission and postage charges are reimbursable at actual cost.

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than \$2,500.00 shall be approved in advance by the CITY's project manager.

EXHIBIT "C-1.4"
HOURLY RATE SCHEDULE
AMENDMENT NO. 4,
(ADDED)

The hourly rates in this Exhibit "C-1.4" are intended to show the rates for services rendered in 2022.

This Exhibit "C-1.4" shall amend, but not replace, Exhibit "C-1" as previously amended. References to "Exhibit C-1" in the Contract shall mean Exhibit "C-1" (as previously amended) and this Exhibit "C-1.4", read together. To the extent the provisions of Exhibit "C-1.4" directly conflict with Exhibit "C-1" as previously amended, the provisions of Exhibit "C-1.4" will control.

(see rates on following page)

AECOM/URS 2022 RATE SCHEDULE

The services under this Agreement rendered in 2022 will be compensated in accordance with the following consultant rate schedule and adjusted annually

Name/Position/Title	Fully-Burdened Hourly Rates**
Principal Professional/Project Director	\$296 - \$429
Senior Project Manager	\$236 - \$374
Project Manager	\$213 - \$305
Lead Project Professional/Engineer	\$223 - \$412
Senior Project Professional/Engineer	\$170 - \$247
Sr. Designer/Lab, Field, or CADD Supervisor	\$149 - \$196
Sr. Technician*	\$131 - \$196
Sr. CADD Technician/Sr. Illustrator/Designer*	\$131 - \$191
Project Professional/Engineer	\$131 - \$224
Project Administrator/Controller	\$121 - \$191
Staff Professional/Engineer	\$109 - \$138
Junior Professional/Engineer	\$65 - \$112
Word Processor/Project Assistant/Editor*	\$73 - \$153
Technician*	\$65 - \$165
CADD Technician/Illustrator*	\$73 - \$135
Clerk/Administrator/Intern*	\$38 - \$122

* Overtime premium charged at cost where required by law for non-exempt employees

** Bill rates are computed as actual pay rate at time of service plus current FAR multiplier plus 10% fee (raw labor + 130.70% for FY 2020 plus 10% fee = 253.77%)

** Salaries are adjusted each October 1, but individual merit or promotional increases may occur at any time.

Reimbursable Items to be Billed	
Subcontracted Services	Cost plus 5%
In-house printing (per page)	Color \$1.00, B/W \$.10, no markup
Vehicles	\$90/day, \$45/½ day, no markup
Personal vehicles (mileage)	Current IRS rate, no markup
Other miscellaneous Expenses	At cost



City of Palo Alto City Council Staff Report

(ID # 13712)

Meeting Date: 2/14/2022

Title: Approval of Meter Data Management System (MDMS) Contract C22184319 With N. Harris Corporation (SmartWorks) in the Amount Not to Exceed \$1,804,055 Over a Five-Year Term

From: City Manager

Lead Department: Utilities

Recommendation

Staff recommends that Council approve and authorize the City Manager or their designee to execute Contract C22184319 ([Attachment A](#)) with N. Harris Computer Corporation (SmartWorks), for meter data management system (MDMS) subscription licensing and professional services, in an amount not to exceed \$1,804,055 over a five-year term.

Executive Summary

On October 18, 2021, Council approved the advanced metering infrastructure (AMI) contract with Sensus for the citywide AMI system and installation services ([Staff Report #13665](#)). AMI is a foundational technology that is becoming a standard in the utilities industry to implement smart grid systems designed to improve customer experience, strengthen system reliability, enable City of Palo Alto Utilities (CPAU) to operate more effectively, and enable the community to meet its environmental sustainability and resiliency goals.

The MDMS will act as the system of record for all meter readings and customer consumption, integrating with various other system and providing essential information to utility billing, customer service, engineering, and operations. It will offer dashboards, visualizations, and analytics to view individual meters or aggregated meters. The MDMS also provides analysis tools for water leak detection, outage map, and transformer health.

Background

In November 2018, the City Council approved the Utilities Smart Grid Assessment and Technology Implementation Plan ([Staff Report #9780](#)). The assessment recommended the implementation of AMI and MDMS smart grid systems for the benefit of electric, natural gas and water utility customers. The smart grid systems will empower customers to more efficiently utilize utility supplies, facilitate customer adoption of distributed energy resources (DER) such as solar photovoltaics, energy storage, and electric vehicles, and enable the timely detection of water leaks. AMI and MDMS will also enable CPAU to optimize operations and improve

reliability by reducing restoration time for outages. AMI and MDMS will be critical systems to meet the community's greenhouse gas reductions goals by enabling time-of-use (TOU) electricity rates and to encourage the use of electrical appliances and charging EVs during periods of the day when electricity cost is low.

The UAC and Council acceptance in 2018 of staff's recommendation to invest \$16 to \$19 million in AMI technology was based on a financial and economic analysis undertaken by expert consultants and the experience gained by CPAU after implementing the Customer Connect AMI pilot in 2013-18. The estimated capital cost related to the AMI system installation was approximately \$16 to \$19 million with an investment life of 18 years. The evaluation also analyzed the operational impact and found that the investment will require a few staffing changes to implement and maintain the AMI infrastructure to maximize the value of the investment. The annual operating cost of the AMI system is estimated to be \$1.9 million, which would be offset by \$3.3 million in benefits estimated to accrue from electricity and water use conservation, and current staffing related savings. The result is projected to be a net monetary benefit of \$1.4 million per year on an ongoing basis.

Discussion

Following Council's acceptance of staff's recommendation to invest in AMI technology in November 2018, staff retained consultants to assist with soliciting AMI system vendor proposals. On March 31, 2020, a Request for Proposal (RFP) Number 177782 for 'Equipment, Software, and Services for an Advanced Metering Infrastructure Project' was issued. Staff received 8 proposals for a hosted MDMS. The proposals ranged in implementation costs (\$165,000 - \$1,029,000), subscription fees (\$39,000 - \$313,000), maturity of the technology (0 – 15 years), business requirements (112), integration with third party systems (CIS, GIS, Sensus, SEW), and utilities (electric, gas, water).

The proposals were evaluated based on the following criteria.

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 ability to provide future maintenance, repairs, parts and/or services
9. Proposer's compliance with applicable laws, regulations, policies
10. Whether or not the Proposal is Turnkey; existence of synergies with existing City systems

SmartWorks (a division of N. Harris Computer Corporation) scored the highest overall points for the MDMS evaluation. They are the industry's leading MDM provider for medium size and municipal utilities like CPAU. SmartWorks has deployed SmartWorks Compass and MeterSense

MDM at more than 300 utilities throughout North America.

As part of the AMI RFP, there were five components (AMI network, water metering, gas metering, installation services, and meter data management system). Proposers were permitted to submit a single or joint proposal for one or more project components. Multiple AMI vendors also proposed SmartWorks as the MDMS in their joint proposals.

In addition to the MDMS platform and KPI dashboard, SmartWorks will provide the following analytical modules.

Leak Detection and Notification

SmartWorks Compass provides an analytical software solution to water leaks, identifying leaks both from meter notifications and using intelligent data analysis. A prioritized list of customers to be contacted is then produced. The magnitude of the leaks is quantified to help prioritize customer contact and even help identify root cause (i.e., broken toilet, burst pipe, etc.).

Outage Performance

The outage performance module will improve outage response time by enabling CPAU to 1) view outage and restoration notifications on a map; 2) classify and interrogate outage events; 3) process outage notifications; and 4) initiate actions for outage response.

Transformer Load Analysis

The transformer analysis module continually analyses loads on distribution transformers and identifies those at risk of failure, resulting in improved system reliability and better asset utilization. “What-if” scenario planning determines the optimum replacement size for overloaded transformers and helps determine if existing transformers have sufficient capacity for future construction and developments.

Rate and Revenue Analysis

The rate and revenue analysis module enables CPAU to evaluate the financial impact of various operational scenarios both on utilities and consumers by 1) configuring TOU rates with blocks and tiers; 2) calculating “what-if” bills and assess cost delta for an account; 3) quantifying the effect of rate changes on customers and impact on utility revenue; 4) identifying customers most impacted by specific rate changes.

The system would include the following application and security features:

- Validate, edit and estimate (VEE) metering information received from the AMI network and store information as the system of meter reading records.
- Process and provide required information to produce customer bills in the SAP CIS system; feed hourly/daily consumption information to the SEW customer portal (MyCPAU) for viewing by the customer.
- Provide information for various system analytics tasks such as outage notification, transformer loading analysis, voltage analysis, conservation voltage program, etc.

- The software and hosting services are provided on servers operated by IBM. The hosted software meets industry security standards:
 - o AES-256 encryption, FIPS (140-2), FISMA and California SB1386 compliant.
 - o In the process of obtaining SOC2 certification by early 2022.
 - o No Personally Identifiable Information (PII) will be stored in the system.

The MDMS will act as the system of record for all meter readings and customer consumption. It will offer dashboards, visualizations, and analytics to view individual meters or aggregated meters.

Timeline

Under phase 1 (2023 – 2025), the City will receive water leak detection and outage maps. The transformer module for identification and resolution of overloaded and underloaded transformers within the system will also be implemented. Additional features such as rate and revenue analysis and conservation voltage reduction program are expected to be implemented in phase 2 of the AMI project in the 2026 period.

Resource Impact

Funding for year one of the Harris SmartWorks MDMS contract is available in the FY 2022 Adopted Capital Budget via Electric capital improvement project (CIP) EL-11014 (Smart Grid Technology Installation). The first year of the contract is for \$790,731 consisting of one-time implementation costs of \$457,400, first year software subscription fees of \$253,331 and not-to-exceed travel expenses of \$80,000 for professional services as needed. The annual recurring subscription fee of \$253,331 for software licensing and SaaS support will be charged to the Electric, Gas and Water operating budgets in FY 2023 - 2026. Funding for FY 2023 and beyond is subject to City Council approval of the annual appropriation of funds through the annual budget process.

This contract is not on the City's professional services template, but incorporates the City's right to terminate without cause/for convenience by providing written notice to the contractor. In the event the City finds itself facing a challenging budget situation, and it is determined that City resources need to be refocused elsewhere, the City can terminate for convenience. Other options include termination due to non-appropriation of funds or amending the contract to reduce the cost, for example, by reducing the scope of work. The contract may also be temporarily suspended by written notice of the City Manager. However, depending on the cause for termination or suspension, the City may incur an early termination penalty equivalent to one year's annual software subscription fees (\$253,331).

Stakeholder Engagement

The need for an AMI system has been discussed with the UAC and Council since 2013, including

the implementation of a pilot AMI system in the 2013-2018.

As part of the 2018 Utilities Strategic Plan development, staff actively engaged with internal and external stakeholders to identify priorities to be carried out by staff over the next three to five years. AMI was a recurring theme and identified as a strategic initiative under the “Technology” priority to increase system reliability, enhance customer experience, improve response time, and meet the community’s sustainability goals.

Staff has begun a concerted effort to communicate the many facets of this project, including: customer and organization benefits and costs, project timeline and what can customers and employees expect during different stages of the project, how will this project impact individual staff members, staffing, and training needs. Utilities is coordinating this project with multiple departments (Administrative Services, IT, Attorney’s Office, Planning) and discussing impacts to their organizations. Appropriate channels will be used to effectively communicate and engage with stakeholders. The AMI project related information can be found at www.cityofpaloalto.org/AMI. As the project progresses and mass meter deployment begins in mid-2023, additional meter installation related communications will also be undertaken with the community.

Environmental Review

Approval of the MDMS agreement proposed in this staff report does not meet the definition of a project under the California Environmental Quality Act (CEQA), pursuant to the California Public Resources Code Section 21065, because it is not an activity that will cause a direct physical change in the environment.

The City’s prior approval of the AMI project, of which MDMS is a part, is categorically exempt under California Environmental Quality Act (CEQA) Guidelines section 15301(b) as a Project involving minor alteration of existing public utilities facilities and equipment, with negligible or no expansion of existing or former use; therefore, CEQA review is not required.

Attachments:

- **Attachment6.a:** Attachment A: N. Harris Corporation (SmartWorks), Contract C22177782A



Subscription Services Agreement – C22177782A

This **Subscription Services Agreement** (the “**Agreement**”), is entered into on February 14, 2022 (the “**Effective Date**”) by and between City of Palo Alto (“**Customer**” or “**City**”) N. Harris Computer Corporation of 1 Antares Drive, Suite 400, Ottawa, Ontario K2E 8C4 (“**SmartWorks**” or “**CONSULTANT**”).

NOW THEREFORE, in consideration of the mutual covenants and obligations contained here and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions

(a) The following terms shall have the meaning set out below; all other capitalized terms not otherwise defined in this Section shall have the meaning set forth in the Agreement:

- (i) “**Annual Subscription Fees**” means the annual subscription fees set out in Schedule “A” to this Agreement.
- (ii) “**Change Order**” means any written documentation between the Customer and SmartWorks evidencing their agreement to change particular aspects of this Agreement.
- (iii) “**Completion of Services**” means the Professional Services are complete and shall be deemed to have occurred on the date which the Customer commences using the Services in a production environment.
- (iv) “**Confidential Information**” means, with respect to a party hereto, all information or material which: is (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (B) known by the parties to be considered confidential, proprietary, or is confidential under federal or state law or (C) which should be known or understood to be confidential or proprietary by an individual exercising reasonable commercial judgment in the circumstances. Confidential Information of SmartWorks shall include, without limitation, the Software, the Documentation, and any information with respect to the Services that SmartWorks may provide to Customer from time to time, including without limitation, all information disclosed by SmartWorks or its service providers relating to the security of its facilities, computer systems and products. Confidential Information does not include information to the extent that a party can show by appropriate documentation that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving party from a third party who is not under an obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information and which such independent development can be established using evidence that would be acceptable to a court of competent jurisdiction.
- (v) “**Data Conversion Fees**” shall have the meaning set forth in Section 10 of this Agreement.
- (vi) “**Data**” or “**City Data**” means all data, documents, content, software, text, information, audio, video and images that are provided by or on behalf of Customer to SmartWorks or its third party service provider and all other content transmitted, posted, received or created through Customer's use of the Services or the Software, including Personal Information.

- (vii) **“Documentation”** means user guides, operating manuals, education materials, product descriptions and specifications, technical manuals, and supporting materials.
- (viii) **“Fees”** means the Annual Subscription Fees, Professional Services Fees, Conversion Costs and other Fees as may be further described and listed in Schedule “A” of this Agreement.
- (ix) **“Maximum Channels”** means the maximum number of channels or existing systems and connected devices such as Supervisory Control and Data Acquisition (SCADA) and sensors in the emerging Internet of Things (IoT) that collect data regarding electricity being consumed by a customer of Customer or collect data regarding electricity provided by a customer to Customer, with which Customer is authorized to use the Software as specified in Schedule “A”.
- (x) **“Maximum Meters”** means the maximum number of meters with which Customer is authorized to use the Software as specified in Schedule “A”.
- (xi) **“Personal Information”** means personal information about a California resident as defined in the California Civil Code Section 1798 et seq., as amended from time to time.
- (xii) **“Professional Service(s)”** means those implementation, training, consulting and professional service(s) provided by the SmartWorks Professional Services team as further described in a SOW.
- (xiii) **“Professional Services Fees”** means the Professional Service(s) fees set out in Schedule “A” and the SOW.
- (xiv) **“Services” and “Software Services”** each means the web-based hosting service(s) and software solution to be provided by or on behalf of SmartWorks under this Agreement that includes hosting, monitoring, operating and maintaining the Software as a service at a site owned or controlled by SmartWorks and the delivery of exclusive access via the Internet to Customer to use the Software, as a service, granted to Customer pursuant to Section 2 hereof. The Services shall also include storing all data entered and maintained by Users through use of the Services.
- (xv) **“Software”** means the software product(s) that are owned by SmartWorks, delivered as a subscription based hosted solution and listed in Schedule “A”.
- (xvi) **“SOW” or “Statement of Work”** means a written statement of work that sets out a description of the Professional Services to be provided by SmartWorks to Customer that is signed by an authorized representative of each of the parties and attached to this Agreement as Schedule “C”.
- (xvii) **“Support Services”** means those support services to be provided by the SmartWorks Support team as further described in Schedule “D” to this Agreement.
- (xviii) **“Third Party Components”** means any third party telecommunications, energy/utility transportation, managed facilities and/or software applications and services that SmartWorks or its service providers has licensed or purchased and provided access to or otherwise made available to Customer as part of the Services.
- (xix) **“User”** means an employee or legal agent of Customer that has been authorized by the Customer to access and use the Services.

b) Schedules

The Schedules described below and attached to this Agreement shall be deemed to be integral parts of this Agreement.

Schedule “A” - Description of Services; Fees & Payment Terms

Schedule "B" - Services Availability
Schedule "C" - Statement of Work
Schedule "D" - Support Services
Schedule "E" - Security
Schedule "F" – Third Party Software
Schedule "G" – Insurance Requirements
Schedule "H" – Cybersecurity Terms and Conditions

In the event of any conflict or inconsistency between the terms and conditions in the main body of this Agreement and the terms and conditions in any Schedule, the terms and conditions of the main body of this Agreement shall control unless otherwise expressly stated in the provision giving rise to the conflict or inconsistency.

2. Authorization

Subject to the terms and conditions of this Agreement, including without limitation, payment by Customer of the Professional Services Fees required for set-up and the Annual Subscription Fees, SmartWorks hereby grants to Customer a personal, non-exclusive, non-transferable limited right during the Term (a) to allow Users to access and use the Services for up to the Maximum Channels and Maximum Meters on an annual subscription basis and in accordance with the Documentation solely for Customer's internal business purposes and (b) to use, copy and modify the Documentation solely for the purpose of creating and using internal training materials relating to the Services.

3. Fees, Not to Exceed Compensation

The Fees to be paid to SmartWorks in consideration of the performance of the Services and the Professional Services shall be based on the compensation structure detailed in Schedule A, entitled "Description of Services; Fees & Payment Terms," including any reimbursable expenses specified therein, and the maximum total compensation for the Initial Term (as defined in Section 5 below) shall not exceed \$1,804,055 (the "**Initial Term Maximum**"). Any work performed or expenses incurred for which payment would result in a total exceeding the Initial Term Maximum shall be at no cost to the CITY.

Customer shall pay "**Undisputed Fees**" by the due date set forth in an invoice. "**Undisputed Fees**" means the fees set forth in any invoice for which Customer has not, within thirty (30) days of receipt of the applicable invoice, delivered written notice to SmartWorks detailing its dispute regarding the Fees.

The CITY's Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed in Schedule A, Fees and Payment Terms, provided the total compensation for the performance of the Services during the Initial Term, including any reimbursable expenses authorized by City, does not exceed the Initial Term Maximum.

The Annual Subscription Fees, Professional Services Fees and any other fees set out in this Agreement are exclusive of taxes. Customer agrees to pay all foreign, federal, state, provincial, county or local income taxes, value added taxes, use, personal, property sales and any other taxes, tariff, duty or similar charges that may be levied by a taxing authority (excluding taxes on SmartWorks' net income). If Customer is exempted from payment of the foregoing taxes by applicable laws, it shall deliver written proof of tax exemption status to SmartWorks on the Effective Date.

If any Fees are not paid when due, then at SmartWorks' discretion, SmartWorks may suspend the Services, including all Customer access to the Services, pursuant to Section 15(b).

4. Travel and Lodging Expenses

Travel and lodging expenses will be billed in conjunction with any Professional Services work performed at

Customer's offices by any SmartWorks personnel. SmartWorks will be reimbursed for travel time at a rate of \$50 per hour per SmartWorks representative. Travel from outside the San Francisco Bay area, including transportation and meals, will be reimbursed at actual cost for each SmartWorks employee providing Professional Services subject to the following:

(a) Lodging Expense If the SmartWorks employee must spend the evening, the employee shall select single occupancy, standard, non-deluxe accommodations and should stay at hotels offering economical lodging rates. The City shall not reimburse any cost related to the extension of a hotel stay beyond the time necessary to complete the work-related event. Within California or adjoining states an extra night's hotel stay should not be necessary if flight arrangements can be made the same day. The use of hotels is restricted to cities located beyond 50 miles (one way) from the City of Palo Alto or the traveler's residence (whichever is shortest).

(b) Transportation

i. **Air Transportation.** If the SmartWorks employee must travel by air to reach Customer's offices, the traveler shall fly economy coach class on the lowest cost flight available for the most direct route to the final destination, which could reasonably include scheduled layovers. Travelers are encouraged to make air reservations as early as feasible to obtain the greatest discount and to consider the use of alternate but nearby airports to take advantage of the lowest fares. Extension of the trip to cover a weekend stay to obtain a lower airfare does not entitle the traveler to be reimbursed for the extra day's hotel costs or meal expenses. Travelers may use City travel to qualify for frequent flyer credits, but the selection of an airline for a given trip shall not be made for the purpose of accumulating such credits. Travelers that choose to use their personal frequent flyer miles for City business shall not be reimbursed for the value of the tickets. If the airline charges for all checked baggage, the City will cover the cost for one checked bag only. Excess baggage charges are not reimbursable.

ii. **Rental Cars.** Rental cars shall only be approved, if other ground transportation, such as shuttles or taxis, is more expensive during the stay at the destination. Only economy or compact car models may be rented, unless the upgrade is provided by the rental agency at no cost. Rental car options such as GPS devices are not reimbursable. Travelers must also decline any Fuel Purchase Options (which allow for prepayment of a gas tank refill) and shall refuel prior to returning the rental car, if additional charges apply for refueling. Use of a rental car will be reimbursed either at the current IRS mileage rate or the car rental cost apportioned for the number of days used for City business, whichever is less.

iii. **Private Automobiles.** Travelers may use private automobiles for personal or group transportation on extended trips. Reimbursement shall be made at the current IRS mileage rate. Mileage reimbursement shall not exceed the cost of refundable round trip air transportation (economy class) for a reservation made at least seven days in advance of the trip.

(c) Incidental Expenses. Incidental expenses related to City business shall be reimbursed at cost as supported by submitted receipts. Incidental expenses may include parking charges, hotel Internet connection services, and other necessary business-related charges. Travelers should use the lowest cost alternative for parking within a reasonable area from the destination. Where a hotel stay is authorized, Internet connection services purchased to conduct City business are reimbursable. Travelers will be reimbursed for hotel telephone calls to City of Palo Alto offices. The hotel bill should indicate any calls that are of a business nature. Other charges on a hotel bill, such as pay-TV movies, cleaning, laundry, room service charges (additional over cost of meal) or charges for additional guests are not reimbursable.

(d) Meals. Travelers may be reimbursed for meal expenses. Itemized receipts for meals must be maintained. The maximum reimbursement amount for meals shall be: \$15.00 for breakfast, \$16.00 for lunch, and \$28.00 for dinner. Under no circumstances will expenses for alcoholic beverages be reimbursed by the City. Meal reimbursements for meetings or trainings not requiring overnight accommodations, and conducted between the hours of 8 a.m. and 5 p.m., will be limited to lunch. When meals are provided as part of the cost of an event, travelers will not be reimbursed for the actual expenses

of these meals. Local travel meal expenses that do not meet the IRS definition of "business related" will not be reimbursed.

SmartWorks will use its reasonable efforts to minimize all travel and lodging expenses. Only actual travel and lodging expenses will be billed to the Customer.

5. Term

Unless terminated earlier in accordance with the terms hereof, this Agreement shall commence on the Effective Date and shall continue for a period from the date of execution through the end of the fifth (5th) year from the date that the Software Services listed in Schedule "A" are installed and configured in SmartWorks' hosted environment as indicated by the issuance of an invoice for the Fees by SmartWorks or its authorized reseller to Customer (the "**Initial Term**"). After the Initial Term, the parties may extend this Agreement for an additional five (5) year period on Customer providing SmartWorks with written notice of its intention to renew this Agreement at least 120 days prior to the end of the Initial Term (the "**First Renewal Term**") and the parties shall in good faith negotiate the terms and conditions that will apply to the First Renewal Term. After the First Renewal Term, the parties may extend this Agreement for an additional Renewal Term (the "**Second Renewal Term**") on Customer providing SmartWorks with written notice of its intention to further renew this Agreement at least 120 days prior to the end of the First Renewal Term and the parties shall in good faith negotiate the terms and conditions that will apply to the Second Renewal Term. The Initial Term, First Renewal Term and Second Renewal Term shall collectively be referred to as the "**Term**". During the First Renewal Term, the Fees shall increase by a maximum of 3% on each anniversary of the Effective Date and for each Term after the Initial Renewal Term, the Fees shall be SmartWorks' then current Fees in effect and SmartWorks shall provide notice of such Fees within one hundred and eighty (180) days prior to the end of the then current Term.

6. Restrictions on Use

- (a) Except as expressly provided herein, Customer may not give away, rent, lease or otherwise sell, re-sell, sublicense, distribute or transfer the license rights granted under this Agreement or otherwise use the Services except as expressly permitted by this Agreement without the prior written consent of SmartWorks.
- (b) Customer agrees that it will not reverse engineer, decompile, translate or otherwise attempt to derive, or permit or help others to derive the source code relating to all or any part of the Software or Services, or attempt to otherwise convert or alter the Software or Services into human readable code, except to the extent applicable law expressly prohibits the foregoing restriction.
- (c) Customer may duplicate Documentation, at no additional charge, for Customer's internal use so long as all required proprietary markings are retained on all duplicated copies.
- (d) No third party, other than duly authorized legal agents or employees of Customer authorized pursuant to Section 2 hereunder, shall have access to or use of the Services.
- (e) Customer shall not copy, frame or mirror any part or content of the Services, other than copying or framing on Customer's own intranets or otherwise for Customer's own internal business purposes.
- (f) Customer shall not access or use the system (including, without limitation, the network infrastructure and cloud services) used to provide the Services separately from the Services and shall not use third-party tools to access the system used to provide the Services.
- (g) Customer shall not access the Services in order to (i) build a competitive product or service; (ii) copy any ideas, features, functionality or graphics of the Software; or (iii) knowingly allow access to any competitor of SmartWorks.

- (h) The Customer shall not transmit, upload, post, distribute, store or otherwise publish, through use of the Services, any data, material or Information that: (i) contains a software virus, Trojan horse, worm or other harmful or deleterious computer code, files or programs that may adversely affect any hardware or software, or that intercepts or misappropriates any data or information; (ii) is threatening, defamatory, libelous, harassing, profane, is an invasion of privacy, offensive, obscene or harmful; (iii) infringes or otherwise violates any patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party; (iv) violates any law, statute, ordinance or regulation; (v) includes unsolicited bulk e-mails, advertisements or solicitations.
- (i) Customer shall not knowingly transmit any data to the system used by SmartWorks or its third party service provider to provide the Services that contains software viruses or other harmful or deleterious computer code, files or programs.
- (j) Customer shall not interfere with or disrupt services or networks connected to the system used to provide the Services and shall not attempt to gain unauthorized access to the Services or such services or networks connected to the system used to provide the Services.
- (k) Customer shall not use the Services for unlawful, obscene, offensive or fraudulent Data or activity, such as advocating or causing harm, evading filters, sending abusive or deceptive messages.
- (l) Customer shall not provide the results of using the Services for the purposes of monitoring its availability, performance, functionality, benchmarking or competitive analysis to any third party.
- (m) In addition to its termination rights under Section 15, SmartWorks may restrict or limit Customer's access to the Services if SmartWorks reasonably determines that Customer has engaged in or is likely to engage in (whether knowingly or unknowingly) any prohibited conduct described herein and such conduct, in SmartWorks' reasonable opinion poses any risk of any kind or nature to SmartWorks or its service providers' network, business or other customers. As promptly as practicable after becoming aware of Customer's engagement in any such prohibited conduct, SmartWorks will use reasonable efforts to notify Customer of the restriction or limitation to Customer's access to the Services and will promptly restore Customer's access after SmartWorks has had reasonable assurance that any such prohibited conduct has been permanently discontinued. In addition to and without limiting the foregoing, SmartWorks reserves the right to refuse to post or to remove in whole or in part any information or materials provided or submitted by or on behalf of Customer in connection with its use of the Services that SmartWorks determines, in its reasonable discretion, are either in violation of this Agreement or pose any risk of any kind or nature to SmartWorks or its service provider's network, business or other customers. SmartWorks shall make reasonable efforts to provide Customer with notice of the foregoing and reasonable opportunity to cure or assist with the potential violation or risk just described.

7. Services Availability

- (a) SmartWorks and/or its service provider shall provide all facilities, equipment, and software required to deliver the Services for up to the Maximum Meters and Maximum Channels.
- (b) SmartWorks shall use commercially reasonable efforts to make the Services available to Users twenty-four (24) hours per day, seven (7) days per week; subject to the terms further defined in Schedule "B".
- (c) SmartWorks reserves the right to have additional User acceptance criteria that may be applied to Users prior to their ability to have access to the Services. SmartWorks shall inform Customer of such criteria but SmartWorks shall be free to implement such criteria at any time without prior written warning to the Customer and/or to Users. Where Users do not accept such and/or agree to such criteria, SmartWorks reserves its rights to not grant to such Users access to the Services. SmartWorks reserves its rights to restrict access to the Services to Users for any violation of any additional terms and conditions to which such Users accept/agree to access the Services.

- (d) SmartWorks shall provide installation, configuration, system administration and maintenance of the facilities and equipment and software required to operate and ensure availability of the Services. Customer, not SmartWorks, shall be responsible for creating and maintaining all User account information and for performing all other application level system administration functions that are available within the Services.
- (e) SmartWorks shall comply with the terms and conditions regarding access and use of Data as set out in Section 17 of this Agreement.
- (f) Customer acknowledges that in order to provide the Services SmartWorks may be required to purchase access to the Third Party Components. Customer further acknowledges that the availability of such Third Party Components is based solely on the best information available to SmartWorks and its service providers as of the Effective Date including third party representations and government regulations and is subject to change during the Term with little or no advance notice. If any necessary Third Party Components are determined by SmartWorks to be unavailable as a result of changes to any third party availability, governmental regulations or other condition or circumstance outside of SmartWorks' control, then (a) SmartWorks shall not be in breach hereof or otherwise liable for any failure or inability to provide the Services as a result of such unavailability of any Third Party Components; and (b) SmartWorks may in its sole discretion modify, change or replace the applicable Third Party Components and otherwise attempt to mitigate the impact of the such unavailability of Third Party Components, and reserves the right to pass on any price increases by revising the Annual Subscription Fees, subject to the right to terminate set out in Section 15.
- (g) The infrastructure deployed to support the Customer's Services solution is based upon the scope of work as defined in Schedule "A" and/or the Statement of Work (Schedule "C"). Should the technical demands of the infrastructure materially change due to changes such as total number of meters, interval lengths, or number of virtual meters, SmartWorks reserves the right to reassess and redefine the infrastructure required for acceptable performance and adjust the Annual Subscription Fees accordingly.

8. Customer Responsibilities

- (a) **Cooperation by Customer.** Customer acknowledges that the success and timeliness of the implementation process shall require the active participation and collaboration of Customer and its staff and agrees to act reasonably and co-operate fully with SmartWorks to achieve the Completion of Services related to any Professional Services provided by SmartWorks. To enable SmartWorks to provide effective Support Services, the Customer will establish auto remote access based on remote access procedures compatible with SmartWorks' practices.
- (b) **Project Manager.** CONSULTANT will assign Veronique Gagnier, Director of Professional Services as the CONSULTANT's interim Project Manager, until a permanent Project Manager is subsequently assigned 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 Dave Yuan, Utility Strategic Business Manager, Utilities Department, 250 Hamilton Avenue, Palo Alto, CA, 94301, Telephone: (650) 329-2522 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. Customer's project manager shall work closely with SmartWorks to facilitate the successful completion of the implementation process and shall be responsible for supervising Customer staff and ensuring their co-operation with and participation in such process during any Professional Services engagement.

- (c) **Customer Equipment.** Customer agrees that it shall be responsible, at its sole expense, for providing all Internet access, including but not limited to obtaining, installing and maintaining all equipment, hardware, network, Internet or direct telecommunications connections and software applications (e.g. web browser) at Customer's facilities required for Users to access and use the Services. SmartWorks shall not be responsible for the operation of any Internet, network or other communication services. Customer further acknowledges that access to and the operation of the Services requires Customer's and Users' hardware to be of sufficient quality, condition and repair, and Customer agrees to and/or to ensure that Users maintain their applicable hardware in the appropriate quality, condition and repair at its sole cost and expense. These requirements may also be necessary in order to facilitate the achievement of Completion of Services related to any Professional Services supplied by SmartWorks.
- (d) **Passwords.** Customer agrees to comply with all SmartWorks and its service providers' security policies and procedures made available to it and as may be amended from time to time and made available through URL or other means mutually agreed to by the parties. Customer and its Users shall be responsible for keeping any and all passwords and user ID's assigned to its Users secret and confidential. Customer agrees that it is and shall remain solely and completely liable for any communications or other uses that are made using Customer's or its Users' passwords and user ID's, as well as any obligation that may result from such use. Customer agrees to notify SmartWorks promptly in writing if it believes that a password has been stolen or might otherwise be misused, of any unauthorized use of any password or user ID, or any other breach of security suspected by Customer related to the Services.
- (e) **Users.** The Customer is responsible for: (i) the actions of Users using the Services in accordance with this Agreement; (ii) ensuring that Users agree to any further terms and conditions as may be provided on notice of such further terms and conditions or through training by SmartWorks from time to time for Users; and (iii) informing SmartWorks of any information about Users' actions that may affect either the Services or third party data contained in or used by the Services, or SmartWorks' ability to provide the Services as contemplated by this Agreement.
- (f) **Compliance with Laws.** Customer represents and warrants to SmartWorks that it and its Users will at all times be in compliance with all applicable local, state, provincial, federal and international laws, rules and regulations including but not limited to those laws regarding restrictions on exports (including the U.S. Export Administration Regulations, end-user, end use and destination restrictions by Canadian, U.S. and other governments related to SmartWorks and its service provider's products, services and technologies).

CONSULTANT and CITY shall each keep itself informed of and in compliance with all applicable federal, provincial, state and local laws, ordinances, regulations, and orders (and as the foregoing are amended from time to time) that may affect in any manner the performance of the Services or those engaged to perform Services or, in the case of CITY, the use of the Services by CITY and its Users under this Agreement. 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.

- (g) **Data Security.** Customer acknowledges and agrees that use of or connection to the Internet is inherently insecure and provides opportunity for unauthorized access by a third party to Customer's and its Users' (as well as SmartWorks' and its service providers') computer systems, networks and any and all information stored therein. Customer is solely responsible for ensuring that (i) Customer's computer systems are secure and protected from unwanted interference (such as "hackers" and viruses), (ii) all transmissions are screened for viruses or other harmful code prior to transmission to SmartWorks' servers; and (iii) Data is encrypted. If any Data could be subject to governmental regulation or may require security measures beyond those specified by SmartWorks for the Services, Customer will not input or provide such content or Data unless SmartWorks has otherwise first agreed in writing to implement additional security and other measures. By using the Services, Customer acknowledges that it meets Customer's requirements and data (including personal information) processing instructions.

SmartWorks will maintain a data security program for the Software delivered to Customer as Software as a Service (SaaS) that will include reasonable administrative, physical, technical, organizational and other security measures to protect against unauthorized access to, or destruction, loss, unavailability or alteration

of, any City Data processed or stored by the SaaS, it being understood that the SaaS relies on Third Party Components which are delivered pursuant to the data security programs implemented and controlled by the third party service provider of such Third Party Components and not by SmartWorks.

SMARTWORKS AND ITS THIRD PARTY SERVICE PROVIDER DO NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY, AND NON-CORRUPTION OF ANY INFORMATION TRANSMITTED OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. SMARTWORKS AND ITS THIRD PARTY SERVICE PROVIDER SHALL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF CUSTOMER'S OR ITS USERS' CONNECTION TO OR USE OF THE INTERNET, AND SMARTWORKS AND ITS THIRD PARTY SERVICE PROVIDER SHALL NOT BE RESPONSIBLE FOR ANY USE BY CUSTOMER OR ANY USER OF CUSTOMER'S INTERNET CONNECTION IN VIOLATION OF ANY LAW, RULE OR REGULATION.

- (h) **Third Party Software.** Customer agrees to comply with the terms and conditions regarding third party software set out in Schedule "F" to this Agreement, where applicable.

9. Delivery Schedule

The parties will mutually agree in writing upon a delivery schedule based on, among other things, the purchased modules, required training and availability of both Customer and SmartWorks staff members.

10. Data Conversion Fees

SmartWorks may offer data conversion services for the purpose of migrating existing Customer data to a format usable by the Software. The success of the data conversion effort is largely based on the format and quality of the Customer provided data. Unless otherwise indicated, converted data is strictly limited to non-dollar amounts and typically includes information such as names, addresses, and phone numbers. Only information explicitly listed in this Agreement will be converted. In certain instances, initial cost estimates for a data conversion may have been included in a professional services pricing proposal. Unless specifically included in this Agreement as part of Schedule "A" and "C", such cost estimates, and all prior data conversion cost estimates, are not binding nor are they incorporated into this Agreement. Accordingly, SmartWorks shall notify Customer of the final data conversion fees and costs after the Customer provided sample data is examined by SmartWorks to verify existing Customer data formats and data integrity; but before data conversion efforts are commenced. In such event, and upon receipt by SmartWorks of notice in writing from Customer that applicable data conversion fees are acceptable, such data conversion fees (the "**Data Conversion Fees**") shall be in addition to all fees currently stated in this Agreement.

Any costs associated with obtaining the data from an existing Customer vendor are the responsibility of the Customer. Sample data shall be provided in standard fixed length format with ASCII display characters only. Data must be on a media formats readable by SmartWorks.

In the event a data re-conversion is required, for whatever reason, Customer will be billed at the Professional Services Fee rate set out in Schedule "A" to this Agreement.

11. Professional Services & Support Services

- (a) **Professional Services and Support Services.** Subject to the terms and conditions of this Agreement, SmartWorks shall provide the Professional Services to Customer in accordance with Schedules "A" and "C" and the Support Services in accordance with Schedule "D".
- (b) **Manner of Performance.** SmartWorks shall perform the Professional Services in an efficient, competent and timely manner and exercise reasonable care, skill and diligence in the performance thereof. SmartWorks shall determine in its sole discretion the manner and means by which the Professional Services shall be performed,

with due consideration of adequate knowledge transfer to Customer personnel. SmartWorks will communicate openly with Customer in its methodology, manner and means.

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.

- (c) **Conduct on Customer's Premises.** In the event that SmartWorks is required to perform Professional Services on Customer's premises, any such Professional Services shall be performed with Customer's full co-operation and on the premises of Customer or, if agreed to by both parties, at an alternate location. SmartWorks agrees that, while working on Customer's premises, each of its employees shall observe Customer's rules and policies provided to SmartWorks in writing relating to conduct thereon.
- (d) **Subcontracting:** CONSULTANT shall not subcontract any portion of the Services to be performed under this Agreement without the prior written authorization of the City Manager or designee. In the event CONSULTANT does subcontract any portion of the work to be performed under this Agreement, CONSULTANT shall be fully responsible for all acts and omissions of subcontractors.

CONSULTANT shall be responsible for directing the work of any subcontractors and for any compensation due to subcontractors. CITY assumes no responsibility whatsoever concerning compensation of subcontractors.

12. Warranty and Warranty Disclaimer

- (a) **Limited Warranty.** SmartWorks warrants to Customer that the Services shall be performed in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services, and the Software shall function substantially in accordance with the specifications, as stated in SmartWorks' Documentation provided to Customer, provided that all use of the Services is for the purposes and in the environment for which they were designed and in accordance with such specifications and the terms and conditions of this Agreement. The foregoing limited warranty will not apply if there has been misuse, modification, damage not caused by SmartWorks or its third party service provider, failure to comply with written instructions provided by SmartWorks or if otherwise stated in this Agreement. Customer's sole remedy in the event the Services do not conform to the foregoing limited warranty is for SmartWorks to use commercially reasonable efforts to correct such non-conformance and the right to terminate this Agreement in accordance with Section 15(c). Where applicable, Third Party Software is provided as-is, without warranties of any kind.
- (b) **Warranty Disclaimer.** TO THE GREATEST EXTENT PERMITTED BY LAW, EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET OUT IN SECTION 12(A), THE SERVICES, THE SOFTWARE, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED TO CUSTOMER "AS IS" AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HERewith.

SMARTWORKS, ITS THIRD PARTY SERVICE PROVIDER, LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE, THE SERVICES, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS, SERVICES AND MATERIALS PROVIDED

HEREUNDER OR IN CONNECTION HERewith, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

SMARTWORKS, ITS THIRD PARTY SERVICE PROVIDER, LICENSORS AND SUPPLIERS DO NOT REPRESENT OR WARRANT THAT THE SERVICES OR THE SOFTWARE SHALL OPERATE ERROR FREE OR UNINTERRUPTED, SHALL MEET ANY OR ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS, THAT ALL ERRORS OR DEFECTS IN THE SERVICES OR SOFTWARE CAN BE FOUND OR CORRECTED, OR THAT SMARTWORKS OR ITS THIRD PARTY SERVICE PROVIDER WILL PREVENT THIRD PARTY DISRUPTIONS OR UNAUTHORIZED THIRD PARTY ACCESS TO THE SOFTWARE, SUBSCRIPTION SERVICES OR SYSTEM USED TO PROVIDE THE SUBSCRIPTION SERVICES.

WITHOUT LIMITING THE FOREGOING, SMARTWORKS DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH REGARD TO PRODUCTS OR SERVICES FROM THIRD PARTIES (INCLUDING WITHOUT LIMITATION THE THIRD PARTY COMPONENTS, THE HARDWARE, THE OPERATION OF THE INTERNET, NETWORK OR OTHER COMMUNICATION SERVICES) AND ASSUMES NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THE FOREGOING OR THE APPROPRIATENESS OF YOUR DATA MANAGEMENT SYSTEM OR THE ACCURACY OF DATA CONTAINED IN SUCH SYSTEM.

NO AGREEMENTS VARYING OR EXTENDING ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT SHALL BE BINDING ON EITHER PARTY UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED SIGNING OFFICER OF SMARTWORKS.

13. Limitations on Liability.

City and SmartWorks recognize that circumstances may arise entitling City to damages for breach or other fault on the part of SmartWorks arising from this Agreement. The parties agree that in all such circumstances, the City's remedies and Smartworks' liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.

- A. TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR DAMAGES ARISING OUT OF (I) SMARTWORKS' INTENTIONAL MISREPRESENTATION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (II) INJURY OR DEATH TO PERSONS (III) DAMAGE TO TANGIBLE OR REAL PROPERTY OR (IV) SMARTWORKS' INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTION 19(A) ("INTELLECTUAL PROPERTY INDEMNITY"), BOTH PARTIES AGREE THAT THE ENTIRE COLLECTIVE LIABILITY OF SMARTWORKS AND ITS THIRD PARTY SERVICE PROVIDER AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO THE SERVICES, THE SOFTWARE, THE SOFTWARE SERVICES, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS, MATERIALS OR SERVICES SUPPLIED BY SMARTWORKS IN CONNECTION WITH THIS AGREEMENT FOR DAMAGES FOR ANY CAUSE AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE, SHALL BE LIMITED TO ACTUAL DIRECT AND PROVEN DAMAGES OR ACTUAL DIRECT DAMAGES THAT ARE DOCUMENTED AND AGREED TO BY THE PARTIES THROUGH SETTLEMENT, AND SHALL NOT EXCEED THE FOLLOWING: (I) IN RESPECT OF LIABILITY ARISING OTHER THAN THROUGH A THIRD-PARTY CLAIM (AS THAT TERM IS DEFINED IN SECTION 19(B) BELOW), THE APPLICABLE INSURANCE COVERAGE UP TO THE LIMITS SET FORTH IN SCHEDULE G OR ONE MILLION DOLLARS (\$1,000,000) IN THE AGGREGATE, WHICHEVER IS GREATER; AND (II) IN REPSECT OF LIABILITY ARISING FROM A THIRD-PARTY CLAIM (AS THAT TERM IS DEFINED IN SECTION 19(B) BELOW), THREE (3) TIMES THE INTIAL TERM MAXIMUM (AS THAT TERM IS DEFINED IN SECTION 3 ABOVE).**
- B. CUSTOMER FURTHER AGREES THAT IN NO EVENT SHALL SMARTWORKS OR ITS THIRD PARTY SERVICE PROVIDERS BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE, FOR ANY**

INDIRECT, PUNITIVE, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION FOR LOST PROFITS, LOSS OF REVENUE, FAILURE TO REALIZE ANTICIPATED SAVINGS, LOST OR DAMAGED DATA, LOSS OF GOODWILL, BUSINESS OPPORTUNITIES OR REPUTATION, OR ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGES, OR SUCH LOSSES OR DAMAGES ARE FORESEEABLE.

- C. FOR CLARITY, "APPLICABLE LAW" AS REFERENCED IN SECTION 13A. ABOVE INCLUDES STATUTORY LAW WHICH IMPOSES LIABILITY UPON SMARTWORKS, AS SUCH LIABILITY IS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION OR AGREED TO IN WRITING BY SMARTWORKS.**

14. Change Order Process

With respect to any proposed changes to the Professional Services defined by this Agreement, the parties will cooperate in good faith to execute Change Orders in respect thereof, or amendments to this Agreement, if required, and will not unreasonably withhold approval of such proposed changes. If either party causes or requests a change in the allocation of the resources of SmartWorks applied to a task, changes in completion schedules for individual tasks or for overall implementation, and changes in staffing that require SmartWorks to provide additional work hours, SmartWorks may propose a change to cover the additional work effort required of it. Approval of any such proposed changes will not be unreasonably withheld (it being acknowledged that any such material changes may require modifications to the consideration paid, and timelines governing the Professional Services), and any disputes regarding changes shall be handled initially by discussions between the parties which will be convened in good faith by the parties to resolve any such matters in dispute.

15. Cancellations and Termination

(a) Professional Services may be cancelled as follows:

Cancellation of any on-site Professional Services by Customer is allowed for any reason if done in writing more than fourteen (14) days in advance of such Professional Services. In the case of cancellation of Professional Services within fourteen (14) days or less of scheduled on-site Professional Services, Customer will be billed for any on-site fees, plus any non-recoverable costs incurred by SmartWorks due to advance scheduling of travel. Additionally, Customer hereby acknowledges that cancellation of on-site services means that such on-site services will be rescheduled as SmartWorks' then current schedule permits. SmartWorks is not responsible for any delay in Customer's project resulting from Customer's cancellation of Professional Services. If additional services are required because the Customer was not adequately prepared for the on-site services, SmartWorks will provide a Change Order to the Customer for the additional services.

(b) Suspension of Services. In addition to any other rights that SmartWorks may have under this Agreement, at law or in equity, SmartWorks may suspend, limit or terminate Customers' use of the Services if SmartWorks determines there is a material breach of this Agreement, a security breach, or violation of law by Customer or any User. If SmartWorks' service provider determines that the cause of the suspension can reasonably be remedied, SmartWorks will provide notice of the actions Customer and its Users must take to reinstate the Services. If such action is not taken within a reasonable time, SmartWorks may terminate this Agreement effectively immediately upon written notice to Customer to that effect.

(c) This Agreement may be terminated as follows:

- i. If SmartWorks is in material breach of any of its obligations or any provision under this Agreement, Customer must notify SmartWorks in writing of such default (a "**Default Notice**"). Upon receipt of a Default Notice, SmartWorks must correct the default within ninety (90) days, or issue a written notice of its own disputing the alleged default within thirty (30) days, of the date of receipt of a Default Notice. If SmartWorks fails to correct the default within such ninety (90) day period and the alleged default is a failure of the Services to comply

with the Documentation, and the Parties did not agree in writing to a longer cure period, Customer may terminate this Agreement upon written notice to SmartWorks to that effect. If SmartWorks timely disputes the alleged default but the Parties are unable to resolve the issue within 120 days and the alleged default is a failure of the Services to comply with the Documentation, Customer may terminate this Agreement upon written notice to SmartWorks to that effect.

- ii. For convenience: Subject to Section 16(d) and Section 16(e), the City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving thirty (30) days prior written notice thereof to CONSULTANT. 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.
- iii. 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, it being understood that prepaid Fees are non-refundable. Customer shall provide SmartWorks with at least 120 days' written notice of non-appropriation and associated termination of this Agreement. This Section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.
- iv. In the event that any Fees are thirty (30) or more days overdue from the date payable shown in an invoice, SmartWorks may (without limiting any of its other rights and remedies) (A) suspend performance of the Services (including Customer access to the Services) until all amounts are paid in full; and/or (B) terminate this Agreement effective immediately upon written notice to Customer to that effect.
- v. Customer may terminate this Agreement effective immediately upon written notice to SmartWorks if SmartWorks has breached its obligations of confidentiality;
- vi. SmartWorks may terminate this Agreement effective immediately upon written notice to Customer if Customer has breached its obligations of confidentiality;
- vii. SmartWorks may terminate this Agreement effective immediately upon written notice to Customer if Customer has breached its obligations with respect to any intellectual property right or proprietary right of SmartWorks or its service provider or in accordance with Section 15(b) in the event of a material breach by Customer.
- viii. Either party may terminate this Agreement effective immediately upon written notice to the other party if the other party: (i) becomes insolvent; (ii) becomes the subject of any proceeding under any bankruptcy, insolvency or liquidation law, whether domestic or foreign, and whether voluntary or involuntary, which is not resolved favorably to the subject party within ninety (90) days of commencement thereof; or (iii) becomes subject to property seizure under court order, court injunction or other court order which has a material adverse effect on its ability to perform hereunder.
- ix. If any such modification, change or replacement of the original Third Party Components pursuant to Section 7(f) includes a material price increase with respect to the Services enabled by such Third Party Components or impairs Customer's ability to utilize such Services in substantially the same manner as they were utilized prior to the modification, change or replacement, Customer may terminate this Agreement by providing written notice to SmartWorks within sixty (60) days after Customer's receipt of notification of such material price increase or discovery of such impairment.

16. Effects of Termination

In the event of termination or expiration of this Agreement:

- (a) All rights granted to Customer in this Agreement shall immediately terminate and SmartWorks will immediately cease to perform or provide the Services.
- (b) Customer shall return to SmartWorks or at SmartWorks' option purge or destroy all copies of any Confidential Information of SmartWorks in its possession or under its control (except as required under any statute or legislation related to retention requirements), and provide a duly authorized certificate of an officer of Customer confirming same within thirty (30) days.
- (c) Except as otherwise provided in this Agreement, termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
- (d) Customer will pay all amounts due under this Agreement up to and through the date of termination that are Undisputed Fees together with all costs reasonably incurred by SmartWorks.
- (e) Except in the case of termination by Customer under Section 15(c)(i), 15(c)(iii), 15(c)(v), or 15(c)(ix), any cancellation and/or termination of this Agreement prior to the end of the Initial Term shall result in (an acceleration of all Annual Subscription Fees due for each year of the Initial Term not already invoiced and/or paid up to a maximum of twelve months' Annual Subscription Fees which amount will be due immediately. This section will not affect SmartWorks' right to collect any further invoiced amounts for other Professional Service Fees.
- (f) In the case of termination by Customer under Section 15(c)(i), 15(c)(iii), 15(c)(v), or 15(c)(ix), any cancellation and/or termination of this Agreement prior to the end of the Initial Term shall result in the following: CONSULTANT will be paid Undisputed Fees; provided, however, if this Agreement is suspended or terminated in accordance with Section 15(c)(i) 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 mutual agreement of the parties, acting reasonably. For pre-paid Annual Subscription Fees, Consultant will remit to CITY any applicable prorated fees for the remainder of the pre-paid period following termination.
- (g) Conditional upon Customer's payment of all Fees that are due to SmartWorks, SmartWorks will furnish the Customer with a copy of the Data in a format to be mutually agreed upon between the parties in writing (typically a .csv file). The anticipated services to provide a copy of the Data are one to two days and will be billed at SmartWorks' then current daily rate. Upon receipt of notice from Customer confirming receipt of the Data, SmartWorks shall destroy all copies of the Data and delete all Data on the database and an Officer of SmartWorks shall certify the destruction and deletion to the Customer. Subject to any legal requirement that SmartWorks must retain a copy of the Data, SmartWorks shall not delete the Data for 90 days from the date of termination except: (i) where SmartWorks has provided the Data to Customer pursuant to this Subsection; or (ii) where it has received written instructions from Customer to delete the Data. Following 90 days from the date of termination if Customer has not communicated with SmartWorks regarding the Data, SmartWorks shall have the right to delete all Data at any time as either required by law or as determined by SmartWorks in its sole discretion. Notwithstanding the foregoing, SmartWorks shall be permitted to delete all Data without providing notification to Customer and SmartWorks shall not be required to adhere to the time frames detailed above where SmartWorks is required by law to delete such Data.
- (h) 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 City Data and reports included in the Services that are requested by CITY.
- (i) 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 expressly waived in writing.

17. Ownership and Responsibilities

- (a) **By SmartWorks.** SmartWorks its service providers and licensors are and shall at all times remain the owner of all copyright, trademarks, trade secrets, patents and any other intellectual property rights in and to the Services, Software, Documentation, and related documentation, materials, logos, names and other support materials, and other information relating to the Software or used in conjunction with the Software, whether distributed in print, magnetic, electronic, or video format, in effect as of the date the Software are provided to the Customer pursuant to the terms of this Agreement ("**SmartWorks Intellectual Property Rights**"). Customer shall acquire no right whatsoever to all or any part of the Services, Software, underlying system or software except the limited right to access and use the Services in accordance with the terms of this Agreement and SmartWorks, its service providers and its licensors reserve all rights not expressly granted to Customer. Customer must fully reproduce any copyright or other notice marked on any part of the documentation or other materials on all authorized copies and must not alter or remove any such copyright or other notice. Customer shall report to SmartWorks any infringement or misappropriation of SmartWorks Intellectual Property Rights or other rights in the Software, the Services or the Documentation of which Customer becomes aware. Customer hereby grants to SmartWorks a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services, Software, and underlying system and software any suggestions, ideas, enhancement requests, recommendations or other feedback provided by Customer relating to the operation of the Services or Software.
- (b) **City Data.** As between SmartWorks and Customer, all Data will remain the sole and exclusive property of Customer. The CITY has a right to control, access and retrieve City Data at any time during the Term, in computer-readable format. The CITY hereby grants to CONSULTANT and its subcontractors, if any, the limited, non-exclusive, non-transferable, revocable rights to access and use City Data during the Term solely for the purposes of performing CONSULTANT's Services. Customer is solely responsible for ensuring the accuracy, quality, integrity, reliability, appropriateness and right to view and use the Data. Subject to the terms and conditions of the Agreement, Customer grants to SmartWorks a world-wide, non-exclusive, royalty-free license to access the Data for the purpose of performing the Services. Access to the Data shall only be by SmartWorks' employees and/or subcontractors whose job function requires access. Except as specified in this Agreement, SmartWorks may not access the Data for any other purpose without the express written consent of Customer. Access to Data by any outside party shall only be in accordance with the terms of this Agreement or where required by law.

Customer grants to SmartWorks a world-wide, non-exclusive, royalty-free license to aggregate or compile Data with the customer data of other customers using the Services so long as such aggregation or compilation omits any data that would enable the identification of Customer, its customers or any individual or their Personal Information, company or organization ("Aggregated Data"). SmartWorks shall have a worldwide, perpetual, royalty-free license to use, modify, distribute and create derivative works based on such Aggregated Data, including all reports, statistics or analyses created or derived therefrom. Additionally, Customer grants SmartWorks the right to access Data to provide feedback to Customer concerning its use of the Services.

Customer authorizes SmartWorks to disclose the fact that Customer is a customer of SmartWorks and uses the Services.

If and to the extent (i) SmartWorks and its third party service provider are processing personal data on behalf of Customer acting as Customer's subprocessor, and (ii) the European General Data Protection Regulation (EU/2016/679) ("GDPR") applies to such processing of personal data, to the extent legally required Customer shall enter into a data processing agreement.

- (c) SmartWorks' third party service provider and its affiliates, and their contractors and subprocessors, may wherever they do business, store and otherwise process business contact information ("BCI") of Customer and its Users, for example, name, business telephone, address, email, and user IDs for business dealings with them. Where notice to or consent by the individuals is required for such processing, Customer will notify and obtain such consent. SmartWorks' third party service provider may use personnel and resources in locations worldwide and third party suppliers to support the delivery of its products and services. SmartWorks' third party service provider collects Account Data, defined as information other than Data and BCI that Customer provides to the third party service provider to enable SmartWorks' or Customer's use of the third party service provider's products or that it collects using tracking technologies, such as cookies and web beacons, regarding SmartWorks' or Customer's use of the third party service provider's products. Additional details are available at the link to SmartWorks' third party service provider's Online Privacy Statement set out

in Schedule "A".

(d) Customer Responsibilities in Respect of City Data and Use of Services. Both parties acknowledge that:

- (i) the Data may be subject to privacy laws providing for the owners of the Data to review such Data or to challenge the collection and storage of the Data; and/or
- (ii) demands, claims, actions, suits or proceedings may arise out of or in connection with (A) the use of the Services including but not limited to any Third Party Components by Customer or its Users; (B) any breach by Customer or its Users of this Agreement; or (C) Customer's Data, including but not limited to any third party claims that the inclusion, use, reference, incorporation of or linking to any third party materials or the Customer's Data violates such third party's copyright and/or other intellectual property, privacy or other rights, or that such use is illegal.

In the event of the occurrence of either of the foregoing, Customer shall be responsible to defend all legal and regulatory proceedings; and shall be responsible for all associated costs, damages, expenses including costs of challenges to requests, attorney's fees and other disbursements. For clarity, SmartWorks shall be responsible for costs of extracting and delivering the Data to comply with Data disclosure requests, whether by an individual or a government body ("**Costs of Data Extraction**"). Customer represents and warrants to SmartWorks that as of the Effective Date and to the best of its knowledge, no individual, government body or third party has requested a review of the Data or challenged the collection and storage of the Data to be stored in the Software. SmartWorks shall not be responsible for the Costs of Data Extraction for any proceeding related to a Data disclosure request that results from Customer's willful misconduct or gross negligence. For clarity, in the event that notice of a proceeding described in subsections (i) and (ii) above is delivered only to SmartWorks and not to Customer, SmartWorks will notify Customer of such proceeding as soon as reasonably practicable. In the event that SmartWorks is named as a party to proceedings of the type described in subsections (i) and (ii), Customer shall expeditiously and in good faith take steps to remove SmartWorks from such proceedings by court order or equivalent.

(e) Data and Privacy Policy of Customer

The Customer represents and warrants to SmartWorks that:

- i. Data that is either provided to or acquired by SmartWorks from Customer is owned exclusively by Customer and that the Customer has full right and title to provide the Data to SmartWorks and its third party service provider;
- ii. Data that is either provided to or acquired by SmartWorks is subject to a privacy policy in effect as of the Effective Date and Customer's customers have provided to Customer their written consent for its collection, use and storage by SmartWorks and its third-party service providers in accordance with this Agreement and in any jurisdiction in North America;
- iii. Customer complies with all applicable privacy legislation as of the Effective Date in the performance of its obligations hereunder in respect of any Data collected, used, transferred, created or disclosed pursuant to this Agreement; and
- iv. Customer will not provide SmartWorks with data of any kind for which SmartWorks or its third party service provider either has no need or does not have the right to collect, use and store under the terms of this Agreement.

(f) Audit Rights

- i. By Smartworks: In order to assist SmartWorks with the protection of its proprietary information and Confidential Information and to enable SmartWorks to verify Customer's compliance with the terms and conditions of this Agreement, Customer shall permit SmartWorks and its independent auditor to visit during normal business hours any premises at which the Services are used or being accessed and shall provide SmartWorks with access to its records including usage data. SmartWorks shall provide Customer with reasonable notice of any such audit. Customer will promptly order and pay for required entitlements at SmartWorks' then current rates (including uses in excess of Customer's authorizations or licenses) and for other charges and liabilities determined as a result of such verification, as SmartWorks specifies in an invoice. These compliance verification obligations remain in effect during the Term and for two (2) years thereafter.
- ii. By City: CONSULTANT agrees to permit CITY and its authorized representatives to audit, no more than once in a calendar year, at any reasonable time, on notice to CONSULTANT, during the Term 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 that the parties are independent contractors. 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.

18. Confidential Information

- (a) The parties agree to keep confidential any and all Confidential Information with respect to the other party which it has received or may in the future receive in connection with this Agreement and shall only disclose such Confidential Information of the other party (i) to its agents, employees or representatives who have a need to know such information, for the purpose of performance under this Agreement and exercising the rights granted under this Agreement, and who are bound by confidentiality and non-disclosure provisions at least as protective of the other party's Confidential Information as this Agreement, or (ii) to the extent required by applicable law or as ordered during the course of or in connection with any litigation, arbitration or other proceeding based upon or in connection with the subject matter of this Agreement, provided that the receiving party shall give the disclosing party reasonable written notice of intent to comply with such law or order prior to such disclosure (unless prohibited by law from doing so), to give the other party an opportunity to oppose or otherwise respond to such order, and shall comply with any applicable protective order or equivalent. The parties each agree to hold the other party's Confidential Information in confidence and to take all reasonable steps, which shall be no less than those steps it takes to protect its own confidential and proprietary information, to protect the Confidential Information of the other party.
- (b) CONSULTANT will notify City as soon as reasonably practicable 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.
- (c) This Agreement is also subject to the Cybersecurity Terms and Conditions (Schedule H).
- (d) **Cooperation to Prevent Disclosure of Confidential Information.** Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- (e) **Remedies for Breach of Obligation of Confidentiality.** Each Party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any

other legal remedies which may be available, to include, at the sole election of a party, the immediate termination, without liability under this Agreement.

19. Indemnity

(a) Intellectual Property Indemnity.

SmartWorks will indemnify, defend, and hold harmless, or at its option settle, any third party claim, suit or proceeding against Customer alleging that the Software delivered to Customer, or Customer's authorized use of the Software, infringes any patent issued in the United States or Canada or any trademark, copyright, or other right in intellectual property, or misappropriates any trade secret ("**IP Claim**"); provided, that Customer (i) promptly notifies SmartWorks of any such claim in writing, provided however that no delay on the part of the CITY shall relieve SmartWorks from any obligation hereunder, unless such delay prejudices SmartWorks; (ii) provides SmartWorks with all reasonable information and assistance in connection with such claim; and (iii) gives SmartWorks the sole right to control the defense of, or settle such claim, provided, however, that SmartWorks will not consent to the entry of any judgment or enter into any settlement with respect to a Claim without the prior written consent of CITY (which consent will not be unreasonably withheld) except where the judgment or proposed settlement involves only the payment of money damages by SmartWorks, does not impose any obligation upon CITY, and SmartWorks obtains the full and complete release of CITY to be delivered in a timely manner. Failure of CITY to deliver the full and complete release within such reasonable time as specified by SmartWorks shall be deemed to be CITY's consent to such proposed settlement or form of judgment and SmartWorks is therefore authorized to proceed with entry of judgment or finalization of settlement of an IP Claim. For clarity, notwithstanding the foregoing, the parties may by agreement determine the time in which CITY is to provide its full and complete release. SmartWorks will pay any settlement approved by SmartWorks or final judgment entered against Customer on such IP Claim in any such suit or proceeding defended by SmartWorks.

SmartWorks will have no obligation for any claim, suit or proceeding to the extent that it results from (i) the combination, operation or use of or any modification to the Software made without SmartWorks' prior written consent, (ii) failure to use updated or modified Software if SmartWorks notified Customer that the use of the updated or modified software was necessary to avoid a claim of infringement, or (iii) use of Software not in accordance with this Agreement and applicable Documentation.

If SmartWorks receives notice of an alleged infringement by the Software, or if SmartWorks reasonably believes that such a claim is likely, SmartWorks may stop delivery of such Software without liability for failure to deliver it. SmartWorks will have the right, at its sole option, to obtain the right for Customer to continue use of the affected Software, or to replace or modify the affected Software so that it is no longer alleged or believed to infringe, provided that this can be done without significant loss of functionality. If neither of the foregoing options is available to SmartWorks on commercially reasonable terms, SmartWorks may terminate Customer's use of the affected Software, in which case SmartWorks will refund to Customer that portion of the Annual Subscription Fees paid but unused by Customer. THE RIGHTS AND REMEDIES PROVIDED IN THIS SECTION CONSTITUTE SMARTWORKS' ENTIRE OBLIGATIONS AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES CONCERNING INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT OR MISAPPROPRIATION BY ANY SOFTWARE OR SERVICE.

(b) SmartWorks' Indemnity For Third-Party Claims.

Subject to CONSULTANT's limitations of liability set forth in Section 13 and to the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and authorized agents for whom SmartWorks is in law responsible (each an "**Indemnified Party**") from and against any and all third-party demands, claims, or liability of any nature, including death or injury to any person, property damage, or any other loss, including all costs and expenses of whatever nature including attorney's fees, experts fees, court costs and disbursements (together, "**Third-Party Claim(s)**") resulting

directly from, or arising directly out of or in any manner related to material breach, violation or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement. CONSULTANT's obligations under this Section 19(b) are limited to the extent of its liability as finally determined by a court of competent jurisdiction or as agreed by CONSULTANT in writing. If an Indemnified Party is finally determined to be jointly liable in respect of a Third-Party Claim, whether by court order or agreement of the parties, CITY shall pay CONSULTANT the Indemnified Parties' proportionate share of costs that were incurred by CONSULTANT in defending a Third-Party Claim (including attorney fees and other disbursements). CONSULTANT's indemnity obligations under this Section 19(b) are subject to Customer: (A) promptly notifying CONSULTANT of a Third-Party Claim in writing; (B) giving CONSULTANT the sole right to control the defense of, or settle such Third-Party Claim, provided, however, that Consultant will not consent to the entry of any judgment or enter into any settlement with respect to any Third-Party Claims without the prior written consent of CITY (which consent will not be unreasonably withheld) except where the judgment or proposed settlement involves only the payment of money damages by CONSULTANT, does not impose any obligation upon CITY, and CONSULTANT obtains the full and complete release of CITY; (C) providing assistance and information to CONSULTANT throughout the action or proceeding; (D) not making any admissions or beginning settlement negotiations after receipt of notice of the applicable Third-Party Claim; and (E) not having carried out any integrations between the Software and/or the Services with a third party software or service or not having materially modified the Software or the Services in any manner without the express written consent of CONSULTANT.

- (c) Any breach by Customer of its covenants under this Section 19 that results in prejudice to SmartWorks, shall nullify SmartWorks' indemnity obligations, and in such event, SmartWorks shall have the sole right to have full and complete authority to defend any claims under Section 19 (a) or any Third-Party Claims under Section 19(b) and all of the related negotiations and settlement.
- (d) Subject to the limitation periods established by applicable laws, 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 19 shall survive the expiration or early termination of this Agreement.

20. General

- (a) **Governing Law; Venue:** This Agreement shall be governed by California law, without regard to its conflict of law provisions. 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. Customer and SmartWorks hereby waive, to the fullest extent permitted by applicable law, the right to trial by jury and agree to pursue a bench trial in any action, proceeding or counterclaim filed by any party, whether in contract, tort or otherwise, relating directly or indirectly to this Agreement or any acts or omissions of SmartWorks in connection therewith or contemplated thereby.
- (b) **Mediation:** Except where this Agreement explicitly states that this Section does not apply, the parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. Such mediator shall be knowledgeable in software system agreements. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notified the other of its desire to have a dispute be placed before a mediator. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys' fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless

the time period is extended by a written agreement of the parties. Nothing in this Section shall inhibit a party's right to seek injunctive relief at any time.

- (c) **Notice:** Any notice required or permitted to be given to any party to this Agreement shall be given in writing and shall be delivered either personally, mailed by prepaid registered post or sent by facsimile to the appropriate address or facsimile number set out below. Any such notice shall be conclusively deemed to have been given and received on the day on which it is delivered or transmitted (or on the next succeeding business day if delivered or received by facsimile after 5:00 p.m. local time on the date of delivery or receipt, or if delivered or received by facsimile on a day other than a business day), if personally delivered or sent by facsimile or, if mailed, on the third business day following the date of mailing, and addressed, in the case of the Consultant, to:

N. HARRIS COMPUTER CORPORATION
1 Antares Drive, Suite 400
Ottawa, Ontario K2E 8C4
Attention: CEO
Telephone: 613-226-5511, extension 2149

and in the case of the Customer, to:

Office of the City Clerk
City of Palo Alto
Post Office Box 10250
Palo Alto, CA 94303
Telephone: (650) 329-2571
Fax: (650) 328-3631

With a copy to the Purchasing Manager

Each party may change its particulars respecting notice, by issuing notice to the other party in the manner described in this Section 20(c).

- (d) **Currency:** Unless otherwise indicated, all dollar amounts referred in this Agreement are in lawful money of the United States of America.
- (e) **Entire Agreement:** This Agreement together with the Schedules attached to this Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, negotiations, understandings, arrangements, and communications between the parties, both written and oral, relating to the subject matter hereof. No terms and conditions in any Customer orders, or in any other documentation employed by or on behalf of Customer in connection with this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by the receiving party, with such provisions being deemed deleted. This Agreement may only be modified by a written amendment signed by an authorized representative of each of the parties.
- (f) **Waiver.** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. 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, unless expressly so stated in such provision. 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.
- (g) **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, which shall not be unreasonably withheld, except that either party may assign to a successor entity in the event of its dissolution, acquisition, merger, sale of substantially all of its assets, or other change in legal status ("**Assignment to Successor**"). In the event of an Assignment to Successor, the assigning party shall provide written notice of such change in status and shall cooperate in providing all documentation to effectuate the change, which may require an amendment to this Agreement. Any purported assignment (other than an Assignment to Successor) 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.

- (h) **Severability:** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable under any applicable law, then such provision shall be deemed modified to the extent necessary in order to render such provision valid and enforceable. If such provision may not be so saved, it shall be severed and the remainder of this Agreement shall remain in full force and effect.
- (i) **Allocation of Risk:** Customer acknowledges and agrees that the warranty disclaimer and limitation of liability contained in this Agreement are fundamental elements of the basis of the bargain between SmartWorks and Customer and set forth an allocation of risk reflected in the fees and payments due hereunder.
- (j) **Relationship:** The parties are and shall at all times remain independent contractors in the performance of this Agreement and nothing herein shall be deemed to create a joint venture, partnership or agency relationship between the parties. Neither party will have the power to bind the other party or to contract in the name of or create any liability against the other party in any way for any purpose. Neither party will be responsible for the acts or defaults of the other party or of those for whom the other party is law responsible.
- (k) **No Employment Relationship.** 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.
- (l) **Equitable Relief:** Customer acknowledges and agrees that it would be difficult to compute the monetary loss to SmartWorks arising from a breach or threatened breach of this Agreement by Customer and that, accordingly, SmartWorks will be entitled to specific performance, injunctive or other equitable relief in addition to or instead of monetary damages in the event of a breach or threatened breach of this Agreement by Customer in respect of Customer's obligations relating to Section 6 (Restrictions on Use), Section 8(f) (Compliance with Laws), Section 8(g) (Data Security), Section 17 (Ownership and Responsibilities), and Section 18 (Confidential Information).
- (m) **Force Majeure:** No default, delay or failure to perform on the part of SmartWorks shall be considered a breach of this Agreement where such default, delay or failure is due to a force majeure or to circumstances beyond its control. Such circumstances will include, without limitation, strikes, riots, civil disturbances, actions or inactions concerning government authorities, epidemics, war, terrorist acts, embargoes, severe weather, fire, earthquakes, floods, acts of any governmental body, acts of God or the public enemy or default of a common carrier, unavailability of Third Party Components or other disasters or events.
- (n) **Survival:** Sections 1 (Definitions), 3 (Fees, Not to Exceed Compensation), 4 (Travel and Lodging Expenses) incurred either prior to termination or in connection with transition services, 6 (Restrictions on Use), 8(f) (Compliance with Laws), 8(g) (Data Security), 12(b) (Warranty Disclaimer), 13 (Limitations on Liability), 16 (Effects of Termination), 17 (Ownership and Responsibilities), 18 (Confidential Information), 19 (Indemnity), 20 (General) and any other provision of this Agreement which is required to ensure that the parties fully exercise their rights and their obligations hereunder shall survive any termination or expiration of this Agreement unless and until waived expressly in writing by the party to whom they are the benefit.

- (o) **Counterparts:** This Agreement may be executed in counterparts (whether by facsimile signature, PDF via email, or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.
- (p) **Section Headings:** 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.

21. **Conflict of Interest**

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. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subcontractors or other persons or parties, that to the best of its knowledge have 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.

22. **NONDISCRIMINATION; COMPLIANCE WITH ADA**

- (a) 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.
- (b) 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.

23. **ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS**

CONSULTANT shall use its best efforts to 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 use its best efforts to comply with the following Zero Waste requirements:

- (a) All printed materials provided by CONSULTANT to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable-based inks.

- (b) Goods purchased by CONSULTANT on behalf of CITY shall be purchased in accordance with CITY's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Department's office.

- (c) Reusable/returnable pallets shall be taken back by CONSULTANT, at no additional cost to CITY, for reuse or recycling. CONSULTANT shall provide documentation from the facility accepting the

pallets to verify that pallets are not being disposed.

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, and if applicable, CONSULTANT shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code Section 4.62.060.

25. INSURANCE

(a) 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 Schedule G, entitled "INSURANCE REQUIREMENTS". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured or which includes CITY as insured under any general liability or automobile policy or policies.

(b) 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.

(c) 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 on reasonable 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 as soon as reasonably practicable following 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.

(d) 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, provided however, that Section 13 (Limitations on Liability) shall apply in all circumstances.

[Signatures on Following Page]

IN WITNESS WHEREOF, SmartWorks and the Customer have duly executed this Agreement to be effective on the Effective Date first written above.

N. HARRIS COMPUTER CORPORATION

DocuSigned by:



Signature

Jeff Bender

Jeff Bender

Chief Executive Officer

Chief Executive Officer

2/1/2022

Date

DocuSigned by:



Signature

Todd Richardson

Todd Richardson

CFO

Chief Financial Officer

2/1/2022

Date

CITY OF PALO ALTO

City Manager

APPROVED AS TO FORM:

City Attorney or designee

APPROVED:

Director of Utilities

Schedule "A"**Description of Services; Fees and Payment Terms *****I. Software Services mean the following modules:****Modules Included:**

- Compass Platform
- MeterSense MDM
- KPI Dashboard
- Leak Detection and Notification
- Outage Performance
- Transformer Loading Analysis
- Rate and Revenue Analysis

II. Customer shall pay the following Annual Subscription Fees during the Initial Term:

<i>Annual Recurring Fees (includes support services)</i>	<i>Amount</i>
Software Annual Subscription Fee:	
Year 1	\$253,331
Year 2	\$253,331
Year 3	\$253,331
Year 4	\$253,331
Year 5	\$253,331

The Annual Subscription Fees are based upon the modules included (below), as well as the maximum meters, channel and Interval lengths set out in SOW section 2.3 (Meter Configuration)

III. Customer shall pay the following Professional Services Fees:

<i>Professional Services: One Time Initial Set-up Fees</i>	<i>Amount</i>
Professional Services provided per Schedule C of this Agreement.	\$457,400

* All charges are exclusive of out of pocket expenses for Professional Services performed. Charges for actual and reasonable out-of-pocket expenses including, but not limited to, travel and lodging expenses will be billed monthly as incurred. All pricing is exclusive of applicable sales, use or similar taxes. Customer is responsible for any such taxes that may apply; if Customer is tax exempt, evidence of such tax exemption must be provided. Lapsed payments may lead to denial of access to the Service in accordance with Section 16(b)(ii) of the Agreement.

** Travel expense is estimated not to exceed \$80,000 but is not included section 3 (Fees, not to exceed compensation) to conform with Smartwork's accounting practices. Palo Alto will fund travel expenses under the contract's contingency amount.

IV. Payment Terms:

The Annual Subscription Fees will be due upon execution and thereafter prior to the anniversary date during the Initial Term and each Renewal Term.

Professional Services Fees, and any applicable travel and lodging expenses, will be invoiced per the below milestones tables and shall be due and payable thirty (30) days from the date of invoice.

Milestone	Phase	Services Percentage Due	Services \$ Due	Subscription Fee % Due
Contract execution and Issuance of Notice to Proceed	Alpha	25%	\$114,350	
Sensus Kick-Off Participation	Alpha	5%	\$22,870	
Software installation	Alpha	2%	\$9,148	100%
SmartWorks Kick off Session held	Alpha	3%	\$13,722	
Initial DataSync and AMI integration completed	Alpha	5%	\$22,870	
UAT (Alpha)	Alpha	10%	\$45,740	
Delivery of requirements document	Beta	5%	\$22,870	
Completion of integrations	Beta	8%	\$36,592	
Completion of Functional Training	Beta	5%	\$22,870	
Rules Engine Training		2%	\$9,148	
Completion of UAT	Beta	10%	\$45,740	
Bill Production for Customer Billing	Beta	5%	\$22,870	
Transition to Support	Beta	3%	\$13,722	
Discovery (Post Full Implementation - PFI)	PFI	3%	\$13,722	
Outage Performance module ready	PFI	3%	\$13,722	
Transformer Loading Analysis module ready	PFI	3%	\$13,722	
Rate and Revenue Analysis module ready	PFI	3%	\$13,722	

*The above table includes an additional 180 hours requested for above baseline training and reporting, and ESRI integration. These additional hours can be used during Alpha, Beta, or PFI phases and will be tracked separately.

V. **ADDITIONAL PROFESSIONAL SERVICE(S) FEES:**

Any Professional Services that are not set forth in a Statement of Work are deemed to be additional Professional Services (the “**Additional Professional Services**”). The Additional Professional Services may be provided on-site or via the telephone or through on-line communication platform. Additional Professional Services provided via telephone or through on-line communication platform shall be billed at the rate of two hundred and thirty dollars (\$230) per hour. On-site Additional Professional Services shall be billed at two hundred and ninety dollars (\$290) per hour, plus applicable travel, lodging and per diem expenses. Professional Services performed one year or more after the execution date of this Agreement shall be billed at the then current SmartWorks Professional Services rates. Help line support and Support Services do not include training or other Professional Services.

In addition to the Professional Services Fees set out in a Statement of Work, Customer shall be billed a seven-hundred and fifty dollar (\$750) daily surcharge for any Professional Services provided on weekends or SmartWorks-

recognized holidays, plus any applicable travel charges in accordance with Section 4 of the Agreement.

Additional Professional Services may include, but are not limited to, the following: software installation, configuration, data validation, system setup, system balancing, interface setup, interface testing, process training, customized reporting, application training and business requirements gathering.

VI. RESET OF TERM TO MATCH FISCAL YEAR:

Customer may request that SmartWorks match the annual invoicing of the Annual Subscription Fees with Customer's fiscal year. In order for Customer to elect to match annual invoicing with their fiscal year, Customer must make said request to SmartWorks in writing and during the Initial Term of this Agreement. If such election is made SmartWorks shall, a) issue a prorated invoice for any Subscription Fees due for the portion of the year remaining in Customer's current fiscal year, b) extend the then current term to expire at the end of the Customer's subsequent fiscal year, c) issue an annual invoice thereafter on the annual anniversary date of Customer's fiscal year for any Subscription Fees due, and d) reset future annual terms to expire at the end of Customer's fiscal year. Annual Subscription Fees are invoiced in advance of an upcoming annual term. Subscription fees shall be due and payable thirty (30) days from date of invoice.

VII. Third Party Service Provider's Online Privacy Policy: <https://www.ibm.com/privacy/details/us/en/>

SCHEDULE "B"**SERVICES AVAILABILITY****1. Availability Requirement.**

SmartWorks shall use commercially reasonable efforts to make the Services Available 100% of the time of the time in any given calendar month as measured over the course of the total number of days in each calendar month during the Term (each such calendar month, a "**Service Period**"), excluding un-Availability as a result of any of the Exceptions described below in this Section 1 (the "**Availability Requirement**").

"**Service Level Failure**" means a material failure of the Services to meet the Availability Requirement.

"**Available**" means the Services are available for access and use by Customer in a production environment. For the purposes of calculating the Availability Requirement, the Services will not be considered un-Available and no Service Level Failure will be deemed to have occurred in connection with any failure to meet the Availability Requirement that is due, in whole or in part, to any: (a) Customer Cause; (b) Customer's Internet connectivity; (c) a force majeure event (as described in Section 20(m)); (d) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by SmartWorks pursuant to this Agreement; (e) Routine Scheduled Downtime; (f) any interruption to the access or use of the Services that occurs in a non-production environment; (g) Emergency Work; or (i) disabling, suspension, or termination of the Services for cause by SmartWorks. For clarity, references to "Customer" in this Schedule B include Authorized Users.

2. Customer Cause.

For the purposes of this Schedule B, "**Customer Cause**" means any of the following causes: (a) any negligent or improper use, misapplication, misuse or abuse of, or damage to, the Services by Customer or its representatives; (b) any interference or modification to or alteration of the Services by Customer or its representatives; (c) any use of the Services by Customer or its representatives in a manner inconsistent with the then-current Documentation; (d) any use by Customer or its representatives of any third party products that SmartWorks has not provided or caused to be provided to Customer; or (e) any use by Customer of a non-current version or release of Third Party Components, notwithstanding notice from SmartWorks that updates, fixes or patches are required.

3. Service Level Failures and Remedies.

- (a) In the event of a Service Level Failure, SmartWorks shall issue a credit to Customer in the amounts set out in the table below (a "**Service Level Credit**"), provided however, that SmartWorks has no obligation to issue any Service Level Credit unless Customer: (i) reports the Service Level Failure to SmartWorks immediately on becoming aware of it; and (ii) requests such Service Level Credit in writing within ten (10) days of the Service Level Failure ("**SLC Request**").

Service Period Availability	Service Level Credit (Percentage of Monthly Payment of Annual Subscription Fee)
Equal to or greater than 99%	0%
Equal to or greater than 98%	4%
Equal to or greater than 97%	7%
Equal to or greater than 95%	15%
Less than 95%	20%

The Service Period Availability is calculated by subtracting the total number of minutes that the Services are un-Available in a Service Period from the total number of minutes in a Service Period and then dividing the difference by the total number of minutes in a Service Period.

- (b) Any Service Level Credit determined to be payable to Customer under this Agreement shall be computed monthly, and Service Level Credit will be issued to Customer in the last calendar month of the then current twelve-month period of the relevant Term. This Section 3 sets forth SmartWorks' sole obligation and liability and Customer's sole remedy for any Service Level Failure.

4. Routine Scheduled Downtime.

For the purposes of this Schedule B, "**Routine Scheduled Downtime**" means a period of time during which SmartWorks conducts routine system maintenance and for which SmartWorks has provided Customer written notice a minimum of three business days prior to such period, which will be between 6PM and midnight Central Time on weekdays and or any time on weekends, as agreed by the parties.

5. Factors Outside SmartWorks's Reasonable Control.

For the purposes of this Schedule B, outages due to force majeure events include power surges or network or device failure external to SmartWorks' data centers. In the event of a force majeure event, SmartWorks shall be entitled to take any actions determined, in its sole discretion, necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security, or like concern to SmartWorks' hosting infrastructure resulting from such force majeure event ("**Emergency Work**"). SmartWorks shall provide advance notice of such Emergency Work to Customer when practicable and possible. SmartWorks shall not be held responsible for any deterioration of performance or un-Availability during such force majeure events or Emergency Work.

6. Unauthorized Actions.

SmartWorks shall not be responsible for any un-Availability that results from Customer's unauthorized action or lack of action when required, or from Customer's employees, agents, contractors, or vendors, or anyone gaining access to the Services by means of Customer passwords or equipment, or otherwise resulting from Customer failure to follow appropriate security practices. Although SmartWorks will use commercially reasonable efforts to mitigate the effects of any such events, SmartWorks cannot guarantee that such events will not occur. Accordingly, SmartWorks disclaims any and all liability resulting from or relating to such events.

7. Failure to Adhere to Requirements.

SmartWorks shall not be responsible for any un-Availability which results from Customer's failure to adhere to any required configurations, follow any policies for acceptable use, or use of the Services in a manner inconsistent with the features and functionality of the Services (for example, attempts to perform operations that are not supported, exceeding prescribed quotas, if applicable, or suspected abusive behavior) or inconsistent with SmartWorks' published guidance.

SmartWorks will maintain a data security program for the Software delivered to Customer as Software as a Service (SaaS) that will include reasonable administrative, physical, technical, organizational and other security measures to protect against unauthorized access to, or destruction, loss, unavailability or alteration of, any City Data processed or stored by the SaaS, it being understood that the SaaS relies on Third Party Components which are delivered pursuant to the data security programs implemented and controlled by the third party service provider of such Third Party Components and not by SmartWorks.

SMARTWORKS AND ITS THIRD PARTY SERVICE PROVIDER DO NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY, AND NON-CORRUPTION OF ANY INFORMATION TRANSMITTED OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. SMARTWORKS AND ITS THIRD PARTY SERVICE PROVIDER SHALL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF CUSTOMER'S OR ITS USERS' CONNECTION TO OR USE OF THE INTERNET, AND SMARTWORKS AND ITS THIRD PARTY SERVICE PROVIDER SHALL NOT BE RESPONSIBLE FOR ANY USE BY CUSTOMER OR ANY USER OF CUSTOMER'S INTERNET CONNECTION IN VIOLATION OF ANY LAW, RULE OR REGULATION.

- (h) **Third Party Software.** Customer agrees to comply with the terms and conditions regarding third party software set out in Schedule "F" to this Agreement, where applicable.

9. Delivery Schedule

The parties will mutually agree in writing upon a delivery schedule based on, among other things, the purchased modules, required training and availability of both Customer and SmartWorks staff members.

10. Data Conversion Fees

SmartWorks may offer data conversion services for the purpose of migrating existing Customer data to a format usable by the Software. The success of the data conversion effort is largely based on the format and quality of the Customer provided data. Unless otherwise indicated, converted data is strictly limited to non-dollar amounts and typically includes information such as names, addresses, and phone numbers. Only information explicitly listed in this Agreement will be converted. In certain instances, initial cost estimates for a data conversion may have been included in a professional services pricing proposal. Unless specifically included in this Agreement as part of Schedule "A" and "C", such cost estimates, and all prior data conversion cost estimates, are not binding nor are they incorporated into this Agreement. Accordingly, SmartWorks shall notify Customer of the final data conversion fees and costs after the Customer provided sample data is examined by SmartWorks to verify existing Customer data formats and data integrity; but before data conversion efforts are commenced. In such event, and upon receipt by SmartWorks of notice in writing from Customer that applicable data conversion fees are acceptable, such data conversion fees (the "**Data Conversion Fees**") shall be in addition to all fees currently stated in this Agreement.

Any costs associated with obtaining the data from an existing Customer vendor are the responsibility of the Customer. Sample data shall be provided in standard fixed length format with ASCII display characters only. Data must be on a media formats readable by SmartWorks.

In the event a data re-conversion is required, for whatever reason, Customer will be billed at the Professional Services Fee rate set out in Schedule "A" to this Agreement.

11. Professional Services & Support Services

- (a) **Professional Services and Support Services.** Subject to the terms and conditions of this Agreement, SmartWorks shall provide the Professional Services to Customer in accordance with Schedules "A" and "C" and the Support Services in accordance with Schedule "D".

SCHEDULE C



Statement of Work

for
SmartWorks Compass

Presented to

City of Palo Alto Utilities

June 28, 2021

Version: 1.0



Revision Control

Document Title: City of Palo Alto Utilities – SmartWorks Schedule “C” - Statement of Work

Document Owner: SmartWorks – Professional Services

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0.11	Draft	2021.04.28	V. Gagnier	Updated based on latest info provided
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0.18	Draft	2021.06.23	V. Gagnier	Updated during meeting with CPAU
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1. Introduction

This Statement of Work (SOW) defines the work to be performed by the SmartWorks division of N. Harris Computer Corporation (herein referred to as “SmartWorks”) for City of Palo Alto Utilities, (herein referred to as “Customer” or “CPAU”). This SOW includes a high-level timeline and other Terms and Conditions specific to the services requested by Customer.

This document serves as the complete understanding, between Customer and SmartWorks, as to what the current Statement of Work entails. SmartWorks will use this document as reference for the configuration and implementation of **SmartWorks Compass** (herein referred to as the “SmartWorks Software”). This document will also be used by Customer to determine if the SmartWorks Software provides the functionality requested and agreed to, per this document. If there are any issues during the project lifecycle, this document will be used to determine if the issue is a configuration/development issue or if the issue was not included as part of the current Statement of Work.

Changes to this document shall be made through a Change Management Process as described Section 4.3.

The implementation project will accomplish the following high-level objectives:

- 1) Install, configure and implement the SmartWorks Software as defined in Section 2.
 - a) The SmartWorks software will be installed at the **SmartWorks Hosting Facility**.
- 2) Initiate within SmartWorks Software the collection and management of register and interval read, Voltage data from AMI Meters.
- 3) Integrate with:
 - a) Sensus AMI to import register and interval reads, import meter events/alarms, and to initiate remote actions
 - b) SAP HANA CIS to import meter and location data and to provide billing determinants as required
 - c) ESRI GIS to integration with base maps URL and import GPS coordinates (latitude, longitude)
 - d) SEW Portal to provide interval read data
 - e) SAP BI to provide database information for reporting (see section 3.6 of the SOW)
- 4) Deliver system training designed to develop competency with the use and configuration of the SmartWorks Software.
- 5) Provide support during User Acceptance Testing.

1.1. Glossary of Terms

Acceptance Testing Period	A defined period of time to perform User Acceptance Testing on the Solution including testing in a live pre-production environment.



Actual Solution Acceptance Date	Date that written acceptance by Customer is received by SmartWorks that Solution substantially meets the Functional and Integration Requirements Document, and substantially satisfies the testing criteria set forth in the Solution Acceptance Criteria.
Billing Determinant	The measure of consumption used to calculate a customer's bill. A billing determinant is either; • A register read; or • A value calculated by the MDM for billing purposes based on interval and/or register read data. If rates are blocked, seasonally differentiated, time-differentiated, consumption vs generation, or separated by demand and energy measures, then the billing determinants are organized in the same fashion.
Change Management Process	The process outlined in section 4.3 of the SOW, which SmartWorks will follow for any proposed changes to the SOW.
Deliverable	An item created during the project that requires formal review and approval by Customer.
Deliverable Acceptance Criteria	Criteria by which Customer determines that the Deliverable provided by Consultant is in accordance with this Statement of Work.
Deliverable Acceptance Criteria Document	A central listing of all Deliverables and Work Products developed by and maintained throughout the project.
Detailed Project Plan	A baseline plan created by SmartWorks in collaboration with Customer during the Initiation and Build phase of the project. The plan establishes the implementation timeline (including certain milestones) for the project.
Expected Solution Acceptance Date	The date, identified in the Detailed Project Plan, by which the Parties expect Solution Acceptance to be achieved.
Functional Testing	Test the core Solution components (configuration, interfaces, reports, and modifications) against agreed upon requirements.
Go-Live Plan Document	A Deliverable identifying and describing the activities to be performed during the Deployment phase of the project.
Integration Testing	Test the end-to-end process based on business processes and scenarios against the agreed upon integration requirements.
Interval Read Data	A meter read showing the consumption over a defined period of time, demand, or interval, normally 60 minutes, 30 minutes, 15 minutes or 5 minutes. Typical units of measure include kilowatt-hours (kWh) for electric meters, Gallons/cubic foot or cubic meter for water meters.



Meter Channel	Unique stream of meter read data, with corresponding UOM (Unit of Measure), provided by meters and stored under a unique Channel ID within SmartWorks Compass. Each channel can consist of consumption data (referred to as consumption channel) or a demand data (referred to as demand channel).
Meter Event	An anomalous network situation or notification reported by an AMI meter; for example, issues related to quality of supply, security failures, fraud, meter tampering, leaks, reverse flow, no flow or issues with network communications. Meter events are collected and reported by Customer's AMI system as part of the routine meter interrogation cycle.
Post Implementation Grace Period	Calendar days after acceptance Date for each phase in which SmartWorks Software is operating as Customer's primary operating system with respect to functionality contained herein.
Register Read Data	A value provided by the meter that is shown on the meter's faceplate, and hence can be validated by the customer by visual inspection of the meter. This can include: - Cumulative Consumption Register Read – total measured consumption since the meter was manufactured or refurbished (Typical units of measure include kilowatt-hours (kWh) for electric meters, Gallons/ cubic foot or cubic meter for water meters.) - Time of Use Consumption Register (total consumption during a specific time of use window)
Solution	The set of related software programs and services contained within in this Statement of Work.
Solution Acceptance	Customer determination by written acknowledgement that the Solution provided by Consultant performs in accordance with the Functional and Technical Requirements developed for this Statement of Work and any applicable Documentation.
Third-Party Vendor	Any vendor or organization that is not part of SmartWorks or Customer
Unit Testing	Ad hoc testing of individual Solution components prior to Functional Testing, to validate that each component meet the specifications set forth during the project.
User Acceptance Testing	Testing to validate that Solution behaves per agreed-upon requirements as defined in the Functional and Integration Requirements Document based on the test cases and selected scenarios.
Voltage	Volt-hour interval data included with the periodic meter data delivery (Min/Max/Average or Instantaneous)
Work Product	An item created during the engagement that is reviewed by Customer but does not require formal approval by Customer



1.2. Roles and Responsibilities

The activities to be carried out are detailed in each section of this SOW. The table below defines the associated roles and responsibilities at a high level. References to the corresponding sections of the SOW are included when a more detailed description is required.

Note: Changes to team personnel will be carefully evaluated by both parties, in the context of the project, and will be provided to Customer for consideration in advance of any changes.

Responsibility	Role
Define scope of work with CIS Vendor under a separate agreement. This includes development of the integrations listed in this SOW as well as integration with the AMI head end system for meter provisioning.	Project Manager (Customer)
Establish Detailed Project Plan	Project Managers (SmartWorks/Customer)
Ensure resources are available to carry out tasks defined in section 5.6 Customer Resource Involvement	Project Manager (Customer)
Engage in tasks defined in section 5.6 Customer Resource Involvement	Project Core Team (Customer)
Ensure resources are available to perform work as defined in SOW	Project Manager (SmartWorks)
Ensure assistance and cooperation by Third-Party Vendors (including AMI, CIS and GIS)	Project Manager (Customer)
Participate in weekly project calls	Entire Project Team (SmartWorks/Customer)
Configure Virtual Private Network (VPN) to enable customer access to the SmartWorks Hosting Facility (applications on the SmartWorks Hosting Facility may not be exposed on the internet).	IT (Customer)
Perform initial install in SmartWorks Hosting Facility	Infrastructure specialist (SmartWorks)
Install Software Modules as per section 2 SmartWorks Compass Implementation Scope	Consultants (SmartWorks)
Provide deliverables as defined in section 2.7 Project Deliverables and Work Products	Consultants (SmartWorks)
Provide AMI infrastructure and meter data	Metering (Customer via AMI vendor)
Provide input data for integration points as defined in section 3 Software Integrations	Project Team (Customer)
Install and configure integration points as defined in section 3 Software Integrations	Consultants (SmartWorks)
Perform functional and integration testing	Consultants (SmartWorks)
Perform User Acceptance Testing	Project Team (Customer)



Responsibility	Role
Provide support during User Acceptance Testing	Consultants (SmartWorks)
Perform configuration updates once training has been delivered and User Acceptance Testing is completed. Note: Guidance will be provided by SmartWorks until the project is deemed completed.	Project Team (Customer)

1.3. Related Documents

Related documents to the SOW are:

- 1) Harris-SmartWorks Subscription Agreement



2. SmartWorks Compass Implementation Scope

The scope of this Statement of Work is to implement the SmartWorks Software Solution for the Customer and to train the key people on the operation of the SmartWorks Software. The Customer will procure and install their respective advanced meters and supporting network infrastructure.

2.1. Environments

SmartWorks will deploy two (2) instances of the SmartWorks Software at the SmartWorks Hosting Facility in the United States: (1) Test instance and (1) Production instance.

Note that the intent of a test environment is to test new or existing functionality with a minimal set of data representative of the meter population prior to a production update.

The Test and Production environment specifications are shown in the Server Specification Assumptions table below. The use of the test instance as a copy of production with a full set of data and corresponding full dataset processing is not included in the scope of work. Server specifications and associated hosting costs, if applicable, included in our proposal are based on these assumptions. Changes to the environments may be brought into scope using the Change Management process described in section 4.3.

Server Specification Assumptions

	Live Storage	Meter Population	Integrations	VEE
Test instance (Beta)	12 months	Meter Deployment following table in Section 2.2	Integrations defined in Section 3, not real time. Real-time integrations only enabled/active as required e.g. DataSync, real-time events, remote actions Note: The test instance will connect to QA SAP CIS	Enabled as required
Production instance	3 years	Meter Deployment following table in Section 2.2	All integrations defined in Section 3.	Enabled

2.2. Storage

The SmartWorks Software will be capable of importing, processing and storing thirty-six (36) months of meter usage data for the meters, interval length, and channels reflected in the table in section 2.3 Meter Configuration. Each instance will be sized appropriately to manage this volume of data. Changes to the table below that may affect the size of the SmartWorks Hosting Facility will be made in accordance with by the terms and conditions of the Hosting Services Agreement.

Changes to storage and data processing requirements including storage duration, meter counts, configuration of intervals length or number of channels impact the storage requirements submitted with our proposal. These may be brought into scope using the Change Management process described in section 4.3.



An archive and purge process will be used for data older than thirty-six (36) months. Archived data will be recoverable for a period of five (5) years after the date of archive, after which it will be purged.

To restore a location's data, users have the ability to enter the Location Number or meter ID. Once the restore execution is complete, all data for the selected meter ID, or for all meters associated with the selected location, will now be available in the system again, and can be viewed in graphs, tables, or other reports. This data will remain in the system indefinitely and will be excluded from further data purge processes. Users also have the ability to configure a "Data Purge Exclusion Meter List".

2.3. Meter Configuration

The SmartWorks Software is capable of importing, processing and storing meter usage data based on the interval length and channels submitted with our proposal and defined below.

<i>Initial Meter Count</i>	<i>Commodity</i>	<i>Service Type</i>	<i>AMI Read Channels</i>	<i>Voltage</i>	<i>Interval</i>	<i>Daily Number of processed Interval Reads</i>
25,000	Electric	RES	KWH	VOL	15	2,400,000 (1*25K*24*4)
1,800	Electric	NEM	KWH KWH_RCVD	VOL	15	345,600 (2*1.8K*24*4)
3,000	Electric	C&I	KWH KVARH	VOL	15	576,000 (2*3.0K*24*4)
1,000	Electric	C&I	KWH KVARH	VOL	5	576,000 (2*1.0K*24*12)
20	Electric	Comm Solar	KWH KWH_RCVD KVARH KVARH_RCVD	VOL	15	7,680 (4*20*24*4)
45,000	Water Gas	ALL	CCF (1/100 CCF)	N/A	60	1,080,000 (1*45K*24)
~5,850	Electric	Virtual			60	280,000 (2*5,850*24)
~650	Electric	Virtual			15	124,800 (2*650*24*4)

Notes:

The total number of daily processed reads is estimated at $5,390,080 \times 2 = 10,780,160$ raw and processed reads

VOL data is stored in a separate table than meter reads (see section 2.4)



2.4. SmartWorks Compass Meter Data Types

For each meter provided in the datasync process, there are five (5) different record types supported in Compass MDM:

- INT (Interval reads),
- REG (Register reads),
- VOL (Voltages),
- EVN (Meter events)
- OMD (Other Meter Data values).

The SmartWorks Compass record layout for each of these six record types is detailed in the tables below.

Raw Interval Reads

<i>Field Name</i>	<i>Field Type</i>	<i>Description</i>
Record Indicator	String (3 chars)	Must have value 'INT' for interval reads.
Meter_id	String (Not exceeding 30 characters)	Unique meter identifier. Must exactly match the unique meter identifier stored in AMI and CIS systems.
Channel_id	Integer	Channel identifier. A meter must have only one channel identifier with a given unit of measure. Data with different units of measure must each have their own channel identifier.
Read_dtm	Date/Time	Date and time of the end of the interval, in the meter's local standard time (not including daylight savings) or UTC. Preferred format is: "yyyy/mm/dd hh24:mi:ss".
Read_value	Decimal (any precision)	Numeric value representing the meter reading (either consumption or max demand, depending on the channel's Unit of Measure) for the interval.
UOM	String (not exceeding 30 characters)	Unit of measure for the reading. For example, KWH, KW, KVAR, KVA, GAL, M3, FT3
Source_collector_id	String (not exceeding 30 characters)	Unique identifier of the data collection device that obtained this meter reading (optional).



Raw Register Reads

<i>Field Name</i>	<i>Field Type</i>	<i>Description</i>
Record Indicator	String (3 chars)	Must have value 'REG' for register reads.
Meter_id	String (Not exceeding 30 characters)	Unique meter identifier. Must exactly match the unique meter identifier stored in AMI and CIS systems.
Channel_id	Integer	Channel identifier. A meter must have only one channel identifier with a given unit of measure. Data with different units of measure must each have their own channel identifier.
Read_dtm	Date/Time	Date and time the meter's register was read, in the meter's local standard time (not including daylight savings). Preferred format is: "yyyy/mm/dd hh24:mi:ss".
Read_value	Decimal (any precision)	Numeric value representing the meter register reading, which should match the meter's faceplate value at that time.
UOM	String (not exceeding 30 characters)	Unit of measure for the reading. For example, KWH, KW, KVAR, KVA, GAL, M3, FT3
Source_collector_id	String (not exceeding 30 characters)	Unique identifier of the data collection device that obtained this meter reading (optional).

Voltages

<i>Field Name</i>	<i>Field Type</i>	<i>Description</i>
Record Indicator	String (3 chars)	Must have value 'VOL' for register reads.
Meter_id	String (not exceeding 30 chars)	Unique meter identifier. Must exactly match the unique meter identifier stored in AMI and CIS systems.
Read_dtm	Date/Time	Date and time associated with the voltage, in the meter's local standard time (not including daylight savings). Preferred format is: "yyyy/mm/dd hh24:mi:ss".
Phase	String (not exceeding 3 chars)	Indicator of the phase of the voltage reading (for example, A, B or C). If unknown and the meter is a single-phase meter, specify 'X'.
V_current	Decimal (any precision)	Instantaneous voltage value as of the read_dtm. Can be null, if min/max/avg values are defined.
V_min	Decimal (any precision)	Minimum voltage for the time period ending at read_dtm and starting as of the previously supplied record. Can be null if



Field Name	Field Type	Description
		v_current is supplied, and min/max/avg is not available.
V_max	Decimal (any precision)	Maximum voltage for the time period ending at read_dtm and starting as of the previously supplied record. Can be null if v_current is supplied, and min/max/avg is not available.
V_avg	Decimal (any precision)	Average voltage for the time period ending at read_dtm and starting as of the previously supplied record. Can be null if v_current is supplied, and min/max/avg is not available.
Source_collector_id	String (not exceeding 30 chars)	Unique identifier of the collector device that

Meter Events

Field Name	Field Type	Description
Record Indicator	String (3 chars)	Must have value 'EVN' for meter events.
Meter_id	String (not exceeding 30 chars)	Unique meter identifier. Must exactly match the unique meter identifier stored in AMI and CIS systems.
Channel_id	Int	Where applicable, indicate the channel ID associated with this event. In most cases, the event is associated at the meter-level, and not with a particular channel. In such cases, just put "1".
event_dtm	Date/Time	Date and time associated with the event, in the meter's local standard time (not including daylight savings). Preferred format is: "yyyy/mm/dd hh24:mi:ss".
Event_tp	String (not exceeding 30 chars)	Text indicating the type of event (example, 'Tamper', 'Outage', 'Leak', etc.)
Event_Comments	String (not exceeding 256 chars)	Text description of the event. If none is available, just duplicate the value in the Event Type field.

Other Meter Data

Field Name	Field Type	Description
Record Indicator	String (3 chars)	Must have value 'OMD' for other meter data.
Meter_id	String (not exceeding 30 chars)	Unique meter identifier. Must exactly match the unique meter identifier stored in AMI and CIS systems.
Value_Type	String (not exceeding 30 chars)	Identifier of the type of other meter data - i.e. "blink count, current".



<i>Field Name</i>	<i>Field Type</i>	<i>Description</i>
value_dtm	Date/Time	Date and time associated with the data value, in the meter's local standard time (not including daylight savings). Preferred format is: "yyyy/mm/dd hh24:mi:ss".
Value_qty	Decimal	Numeric value indicating the quantity of the data value.
UOM	String (not exceeding 8 chars)	Unit of measure for the data value.
Source_collector_id	String (not exceeding 30 chars)	Unique identifier of the collector device that obtained this meter data value (optional).

2.5. SmartWorks Compass Modules

The following SmartWorks Compass Software modules will be installed and configured as part of the scope of this engagement:

- **SmartWorks Compass**, including the following modules:
 - **MeterSense MDM**
 - **KPI Dashboard**
 - **Outage Performance**
 - **Transformer Loading Analysis**
 - **Leak Detection and Notification Module**
 - **Rate and Revenue Analysis**

This section includes a description of each module as well as their corresponding Pre-requisites and Assumptions.

2.5.1. MeterSense MDM (Alpha/Beta)

SmartWorks will install and configure **MeterSense MDM** module.

Module Functionality includes:

- Support meter deployment
- Reports to help ensure that meters are provisioned correctly and communicating in the field
- Monitor AMI Performance



- Report on number of reads delivered compared to AMI Service Level Agreement
- Enable Meter-to-Cash
- Validation of reads, billing determinants and customer service support
- Alert via Meter Events
- Store and report on Tamperers, Leaks, error and other meter flags

2.5.1.1. Pre-Requisites & Assumptions

- Meter reads are imported from the AMI as defined in section 3.1 AMI Head End Systems.
- Meter events are imported from the AMI as defined in section 3.1 AMI Head End System.
- Meters installation/removal are synchronized with the system of record as defined in sections 3.2.1 CIS Synchronization Integration.
- After installation of **MeterSense** MDM by SmartWorks, meter reads validation routines (VEE – Validate, edit, estimate) as defined in SmartWorks User-Guide VEE will be available for configuration.
- Data will be presented in the **MeterSense** MDM reports based on the modules identified in this Statement of Work and the availability of the data described in section 3 Software Integrations.

2.5.2. KPI Dashboard (Alpha/Beta)

SmartWorks will install and configure the **KPI Dashboard** module. The KPI Dashboard enables the user to configure one or more dashboards to display information on Key Performance Indicators (KPIs). A KPI is a metric that is represented by a One-Dimension or Two-Dimension Visualization component:

- One-Dimension KPI Visualization includes: Numeric, Thermometer, or Speedometer
- Two-Dimension KPI Visualization includes: Area, Bar, Column, Scatter, Pie, or Table

For each KPI, a panel of information is available. This includes:

- Value of the KPI displayed as a numeric value, speedometer graphic or thermometer graphic.
- If a drilldown link was defined when the KPI was registered, clicking anywhere on the value will launch a window with the drilldown page.
- Color coded value (red/yellow/green), depending on settings.
- Max/min statistics and trend area.
- Secondary KPI value, where configured. If the secondary KPI value has been defined with a drilldown link, clicking on the value will launch a window with the drilldown page.

Information on a KPI can be shared via email on a scheduled basis or threshold-driven exception basis.

A set of standard KPIs are made available with the application. These are arranged into a set of standard dashboards. It may be that not all dashboards or KPIs are applicable to a utility depending on available



information, modules deployed, and integrations performed. Users may configure their own dashboards from the available KPIs.

2.5.2.1. Pre-Requisites & Assumptions

- Deployment of the **Compass Framework**, if not already in place.
- Population of any data required for calculation of KPIs as per section 3 of this SOW.

2.5.3. Leak Detection and Notification (Beta)

SmartWorks Compass provides an analytical software solution that identifies leaks both from meter notifications and using intelligent data analysis. A prioritized list of customers to be contacted is then produced, filtered for false positives and duplicates, and refined on an ongoing basis to eliminate wasted effort.

Functionality Delivered:

- Import Leak Events from AMI meters if available.
- Monitor for Continuous Consumption, with parameters configurable by group.
- Generate Leak Notifications using either or both approaches above.
- Provide notification summary reports to utility personnel
- Customer notification:
 - The MDM will provide a csv report to Customer portal as per section 3.5 of this SOW. This will enable the utility to send notifications to customers using CPAU customer portal.
- Registered Report: Customers that have received Leak Notification but the leak still persists for a selected period of time (default to 3 days).
- Leak Detection KPI Dashboard, displaying.
 - Leaks Detected: Number of locations with a suspected leak.
 - Average Leak Time: Average time of leak, based on Continuous Consumption statistics.
 - Average Leak Volume: Average leak volume, takes the average of each interval that reported a Continuous Consumption failure.
 - Leak Notifications Sent: Leak Notifications sent to customers. This KPI is based on a rule specifically created for customers that emails the leak notification to customers, reported on a daily basis. Customer will import customer/account/location information from the CIS.
 - Leak Events Yesterday: Total Volume of all leak events over the past 24 hours.
 - Total Leak Volume: Total Volume of all reported Continuous Consumption failures over the previous 6 months time span.
 - Average Leak Volume: Average leak volume of all reported Continuous Consumption Failures over the previous 6 months.

Implementation

- Consultant will implement and configure the above functionality.
- Consultant will train customer on module functionality and uses.
- Consultant will support customer testing.

2.5.3.1. Pre-Requisites & Assumptions



- Deployment of the Compass Framework by SmartWorks, if not already in place.
- Utilization of Leak Notifications from meters requires meter-generated leak notifications to be delivered to the SmartWorks Compass Framework via standard Advanced Metering Infrastructure integration methods.
- Utilization of usage data analysis for leak notification requires hourly (or finer) interval usage data to be delivered to the SmartWorks Compass Framework via standard Advanced Metering Infrastructure integration methods.
- Map views require latitude/longitude information for each meter to be available via synchronization with the system of record.
- Customer communications for notification of leaks is assumed to leverage existing customer communication approaches. SmartWorks will provide a .csv file to Customer Web Portal to advise of Leak Events. Customer Web Portal will be configured to notify the end customer of such leaks.
- Synchronization exists with CIS for association of meters with locations and accounts, plus the status of the account (active/inactive).
- Customer contact details must be accessible by Compass for any customer communications sent by Compass.
- If available, registration data (name, email, status, active date, inactive date) will be synchronized with the system of record. Otherwise, registration will be managed manually within Compass.

2.5.4. Outage Performance (Beta or Post Full Implementation)

Automatically track outage signals from AMI & customer calls, streamline response and measure performance.

When receiving alarms, Compass will create an outage table with a place for a 'restore' event, which will be updated when a restore event is received from the meter.

Customer will use business as usual processes to address the outage and notify dispatch that the outage has been addressed.

Confirmation of Restoration

Compass will look for a high volume of restores followed by a reduction in restore events to a threshold of restoration messages/minute.

Compass will use an asynchronous On-Demand read request to ping all devices assigned to a transformer that have not provided a restore message afterwards. Compass will throttle requests to batches of not more than 500 meters.

Functionality delivered:

- Map Views for Current Outages and Current Outages with recent restorations
- Event Summary by Event Type, grouped by Meter
- Event Listing for Outage Events
- Outage Statistics



- KPI Dashboard for Outages
- Meter Ping to Confirm Restoration of Power

Implementation

The AMI will send meter events (Outages) through MultiSpeak 3.0 or 4.1 to Compass near real-time. (Additional charges will be included for Non-MultiSpeak options)

The customer is required to provide the following to Compass during implementation:

- Outage and Restoration Mappings (i.e., what's considered an outage? Last Gasp, etc.)
- Outage Event Time Tolerance (to avoid duplicates)
 - How long has the outage occurred
- The Meter (Lat/Long) would need to be displayed for the map
- In the event of an outage, Compass can set restoration on demand read by pinging a meter (with response) and set a restore time. CMEP event will still be required for back-up/redundancy purposes. The high volume (high-level threshold and drop-off threshold) will need to be quantified and Compass will need to be notified during a restoration check.
- The customer will need to identify what an outage is in order to for Compass to adequately provide corresponding reports and statistics
- Compass will not be responsible for MultiSpeak events not sent by the AMI during an outage.
- Consultant will support customer testing.

2.5.4.1. Pre-Requisites & Assumptions

- The AMI will filter meter events before forwarding them to Compass.
- Deployment of the Compass Framework by SmartWorks, if not already in place.
- Population of any data required.
- Datasync must already be in place.
- ESRI based GIS for use is required for base maps.
- On-Demand reads will be accepted by MultiSpeak

2.5.5. Transformer Loading Analysis (Beta or Post Full Implementation)

The SmartWorks Transformer Loading Analysis module continually analyzes loads on distribution transformers and identifies those at risk of failure, resulting in improved system reliability and better asset utilization. SmartWorks Transformer Loading Analysis uses AMI data, power factor and distribution network mapping to analyze transformer loads in relation to their ratings. Analytical calculations are run in the background so that detailed dashboards can be viewed on demand. You can interrogate the system to identify reliability risks and plan their mitigation strategy, or leave it to the system to monitor loads on a continual basis, then serve up notifications based on configurable parameters.

- KPI Dashboard of Overloaded and Underloaded transformers, based on combination of
 - Peak level
 - % time above Optimal Operating Band (OOB)
 - Drill downs from KPIs.



- Transformer Loading Dashboard
 - KPIs for
 - Qty of Tfrs peaking above 200%
 - Qty of Tfrs >10% over OOB
 - Qty of Tfrs >90% below OOB
- Map of Transformers by Load
- Map of Transformer-Meter relationships
- Transformer Contributors graph
- Watch-list of transformers implemented with Markers
- Prioritized Replacement list implemented with Task Manager

Implementation

- Consultant will implement and configure the above functionality.
- Consultant will train customer on module functionality and uses.
- Consultant will support customer testing.

2.5.5.1. Pre-Requisites & Assumptions

- Deployment of the **Compass Framework**, if not already in place
- Population of any data required for Transformer Loading calculations, including interval reads for meters
- To enable the Transformer Loading Analysis functionality, Customer's GIS must provide the following from the datasync on at least a daily basis:
 - transformer assets, including KVA rating
 - date-driven relationship between transformer and AMI meter/location, including active and inactive dates.

Note: The history also needs to be provided, but if not possible, it will be inferred based on the datasync date
- Interval data from AMI meters need to be provided, particularly the KWH, KVARH, KVAR, and KVAH, when available.
- Configuration of virtual interval channels for unmetered loads (e.g., streetlights, leased lights) and non-AMI meters
- A specific group for the transformer needs to be configured.

2.5.6. Rate and Revenue Analysis (Beta or Post Full Implementation)

The **Rate & Revenue Analysis** module enables a user to model billing rates and apply those rates to consumption profiles that have been imported from other systems. Rates may be applied over user-definable timeframes. This allows the user to compare multiple rates for a single consumption pattern.



The rates modeled in SmartWorks Compass can incorporate blocks, tiers, TOU, demand, peak time pricing, flat fees, service charges and taxes. However, for some rates they may represent approximations. They are intended for decision support and may not mirror exact billed amounts.

The user may also use this module to pre-calculate and store pseudo bills by applying one or more rates to one or more consumption profiles for one or more definable time periods. Standard reporting provides comparisons of these calculated bills to assess the impact on utility revenue for different scenarios. Scenarios may include groups of customers switching from one rate to another; changing the parameters that constitute a rate, or introducing a new rate to a group of customers.

Implementation

- Consultant will implement and configure the above functionality.
- Consultant will train customer on module functionality and uses.

2.5.6.1. Pre-Requisites & Assumptions

- Deployment of the Compass Framework by SmartWorks, if not already in place.
- AMI Interval Data is required. If this is not available, consultant can create pseudo interval data for periodic consumption information for an additional cost.
- Customer is currently synchronizing CIS or other system of record information for meter location cross references and accounts, plus the status of the account (active/inactive).
- Customer will provide a list of rates or their rate structure in advance of implementation.

2.6. Reporting

All standard reports available within the SmartWorks Software will be made available for all licensed modules.

Examples of standard reports include but is not limited to:

- Continuous Usage
- Meter Events and Alarms
- Meters With Estimated Intervals
- Meters Failing Validation
- Register Validation Failures
- Interval Validation Failures
- Interval Bar Graph
- Raw Vs Processed Reads Report

A scope of **50** hours will be assigned to the design, development, and testing of custom reports or custom queries based on Customer reporting requirements gathered during the Discovery Session and throughout the course of the project. This includes the development of custom KPI Dashboard reports.



Requirements for custom reports must be defined prior to each Testing phase, but no later than the transition to Support at the end of the Beta phase.

Customer can decide to re-assign all or parts of these hours to other project activities, such as additional remote training.

No custom reports have been identified for delivery. However, if during the project, Customer identifies a requirement for a custom report, the services can be brought into scope using the Change Management process described in section 4.3.

2.7. Project Deliverables and Work Products

The following deliverables, milestones and work products are included in this project. **Deliverables** are items created during the project that may require formal review and approval by the customer. **Work products** are items created during the project that are reviewed by the customer but do not require formal approval by the customer.

2.7.1. Deliverables

The following list identifies the key deliverables associated with this project:

- Functional and Integration Requirements Document
- SmartWorks Software installation
- SmartWorks Software configuration
- SmartWorks Software integration as defined in section 3
- SmartWorks Software End-User Training

2.7.2. Work Products

The following list identifies the key work product documentation associated with this project:

- Project Schedule
- Acceptance Criteria Document
- Test Case Scenario Checklist
- Testing Plan
- Training Plan
- Training Material
- SmartWorks Software User Guides
- Go-Live Approach Document

2.8. SmartWorks Compass Training and Discovery Sessions

To enable users to effectively use the software both during acceptance testing and in a production capacity, SmartWorks will provide end-user training as part of this project. Onsite and remote training sessions will be provided the Customer as outlined in the table below.



Activity	Location	Phase	Length (Business Days)
Sensus Kick Off Meeting	Remote	Alpha	Individual meetings up to 4hrs total
Kick Off Meeting	Onsite*	Alpha	1 day
SmartWorks Compass Overview Session	Remote	Alpha	0.5 day
Alpha UAT Support	Remote	Alpha	2 days
Discovery Session	Onsite*	Beta	3 days
Functional and Process Training	Onsite*	Beta	3 days
Advanced Process Automation Module Training	Onsite*	Beta	2 days
User Acceptance Testing (UAT) Support	Remote	Beta	10 days
Discover Session – Post Full implementation	Onsite*	Post Full Implementations	2 days
Functional and Process Training – Post Full Implementation	Onsite*	Post Full Implementations	3 days
User Acceptance Testing (UAT) Support	Remote	Post Full Implementations	5 days

Note: Onsite sessions will take place when safe and appropriate. The onsite sessions can be replaced with remote online sessions upon agreement between SmartWorks and Customer.

2.8.1. Kick Off Meeting

The purpose of this onsite meeting is to introduce project team members and review the MDM project at a high level. Topics include scheduling, methodology, milestones, communication plan and short term focus.

Additional topics can also include a demo of the SmartWorks Software, as well as a review of infrastructure components, including the Solution Architecture Diagram.

2.8.2. Compass Overview Session

The Overview Training is held with the core user group when initial configuration is complete. This session occurs during the Analysis phase and is held remotely.



The overview training session provides users an overview of current system functionality. Upon conclusion of this session, users are able to dive into the **SmartWorks Compass** platform and understand existing configuration.

2.8.3. Discovery Session

The purpose of the Discovery Session is to demonstrate existing functionality and elicit feedback for updates to functionality. Emphasis is placed on understanding existing customer business process and the impact to the process due to **SmartWorks Compass** is documented in the Functional requirement documents.

2.8.4. Functional and Process Training

During the Functional and Process Training, up to 12 users will be provided training on the SmartWorks Software. System Navigation will be reviewed as well as the main business functions of the solution. Following the Functional Training, the Business processes and use cases applicable to Customer will be reviewed.

Topics typically covered in this training include:

- SmartWorks Software Overview
- Data Setup
- Meter Reads & Validating, Estimating, Editing – VEE
- Billing & Customer Service Functions
- Using Maps and Reports
- Advanced Reporting
- System Administration
- Sessions specific to each **SmartWorks Compass** module defined in section 2.3
- Process Automation Overview

2.8.1. UAT Acceptance Testing Support

SmartWorks will be available to provide remote support during the UAT phase, as described in section 5.4, for the length define in the summary table included in section 2.8.

2.8.2. Advanced Process Automation Rules Training

The Advanced Process Automation Rules Training course is a two-day technical course on rules development designed to enable participants to become competent at developing rules for **SmartWorks Compass** modules.

The topics include:

1. Overview of Rules Engine as a tool, Lifecycle of a Rule, Rule Components



2. **SmartWorks Compass** Data Schema/Data Flow/ Rules Performance Management
 - a. Applications of Rules
 - b. AMI System Performance
 - c. Responding to VEE exceptions
 - d. Meter Events and Alarms
3. Data Analysis
4. Data Safety Practices

The course will be delivered following rules design themes so that participants understand the construction of rules and can apply those design themes to any functional application and will include hands on exercises and an exam.

The Advanced Process Automation Module Rules Training course will be delivered to up to 3 participants. The intent is to train individuals within an organization to create a “rules engine technician”, who can take business requirements from business lines develop a rule that meets the business needs. Customer should only need 1 to 3 technicians.

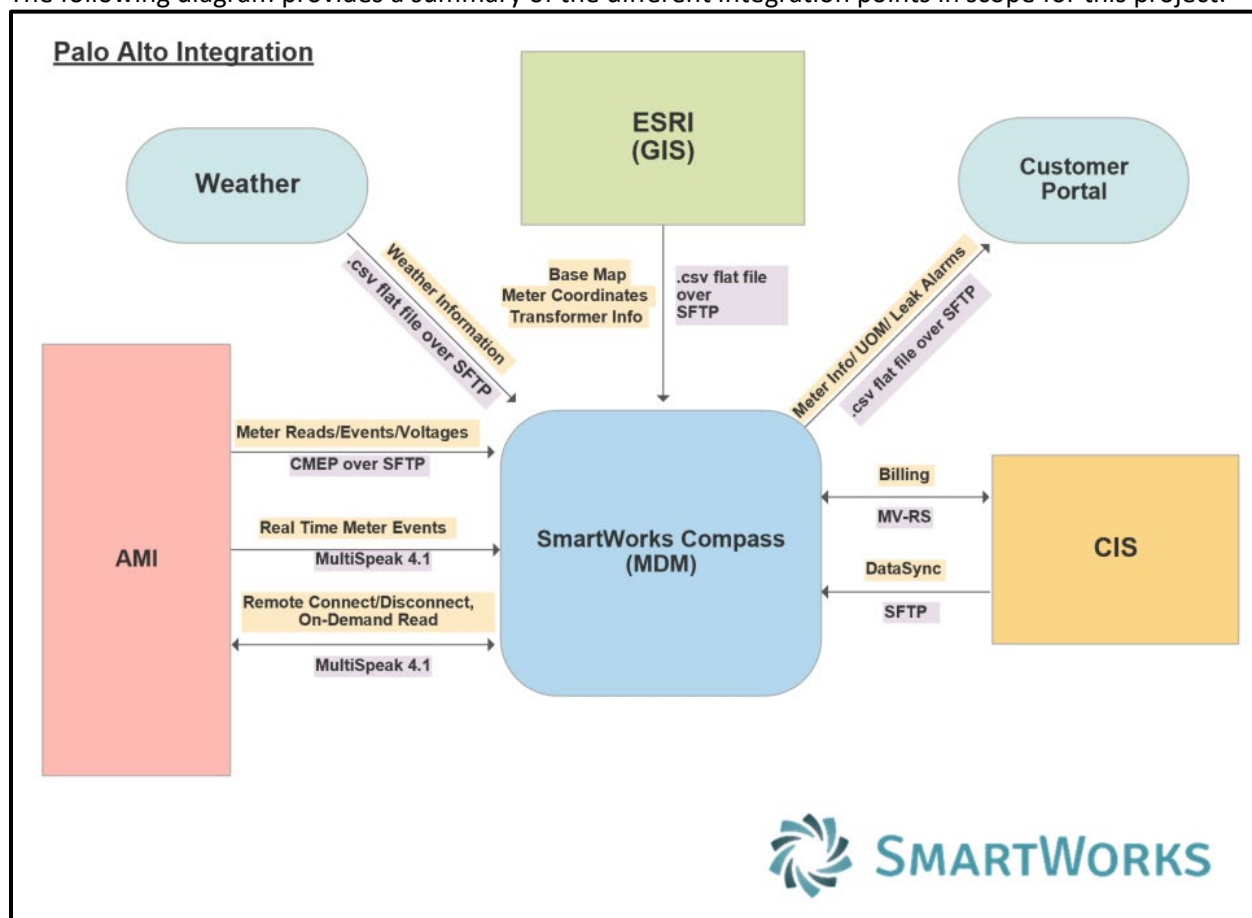
Competency with SQL and a basic understanding of databases are pre-requisites for participants in the Advanced Process Automation Module Rules Training course.

Customer should also have several “rules champions”, who represent a business unit. The rules champions will be trained on the capabilities of the Rules Engine during the Functional and Process training course. These business unit rules ‘champions’ would be responsible for finding ways to improve their business and then passing the requirements to the rules engine technician (i.e. the 1 or 2 people trained by this course). The technician creates the rule. The champion tests and signs off on the rule.



3. Software Integrations

The following diagram provides a summary of the different integration points in scope for this project:



During software integration:

- Customer will act as or provide an integration coordinator who will be responsible for overseeing integration communications for this project.

The integration coordinator role consists in securing, as required and in a timely fashion, the assistance and cooperation of third-party vendors. A change order may be required if a third-party vendor is unavailable or non-cooperative and causes an impact to the project schedule or effort.

- SmartWorks will provide advice and recommendations regarding its experience and leading practice.

SmartWorks will make a reasonable attempt to provide sufficient lead time when making requests for assistance from third-party vendors. When deemed appropriate by Customer,



SmartWorks will also work directly with third-party vendors if direct communication will result in efficient execution of the project.

Any version changes to integrating systems that occur during the project will be reviewed by SmartWorks and may require a change order if integration updates or re-testing activities are required.

The following Integrations are included in the project scope for the project:

3.1. AMI Head End System (Sensus RNI) - Alpha, version 4.8

SmartWorks Software will integrate with the AMI Head End System to:

- **Meter reads:** Import the current day's readings as well as older reads that were previously missed. Interval and daily midnight register read data will be received from AMI Head End system.
- **Meter events:** Import meter event data from AMI Head End. Examples include alerts such as tamper, leak, outage, restore, etc. Specific alarms will be defined between Sensus and Customer. Real time outages will not be provided by the AMI, however outage information will be included as part of the CMEP file.
- **Voltage:** Import the current day's voltage reading.
- **Remote action:** Where the functionality is supported by the meters or compatible others, SmartWorks Software will integrate with the AMI Head End to perform On Demand reads and Remote Connects & Disconnects.

Integration	Initiator	Type(s)	Protocol	Frequency
Meter Reads	AMI	CMEP Read File	sFTP	1-4 times/day
Voltage	AMI	CMEP Voltage File	sFTP	1-4 times/day
Meter Events	AMI	CMEP Event File	sFTP	1-4 times/day
Meter Events	AMI	Real Time events (to be defined during Workshops with the AMI e.g. Tamper, Leak,)	MultiSpeak® methods 4.1	Real Time
Remote Actions	AMI	OnDemand read	MultiSpeak® methods 4.1	Real Time
Remote Actions	AMI	Remote Disconnect	MultiSpeak® methods 4.1	Real Time
Remote Actions	AMI	Remote Connect	MultiSpeak® methods 4.1	Real Time

If flat files are used for providing meter data, the initial files (midnight register reads and interval reads) are expected to be delivered by 5:00am (local time) or an agreed upon time suitable to Consultant and Customer in order for the SmartWorks Software to perform the VEE process. The AMI Head End may deliver files at multiple times during the day in order to collect the maximum amount of meter data.

It is assumed that the applicable AMI Head End version will be installed on the Customer system in time for Consultant to perform its development and testing activities.



3.2. Customer Information System (CIS) (SAP)

In collaboration with Customer or Customer's agent(s), Consultant will provide the following integrations with Customer's CIS. The integrations will require ongoing support from the CIS vendor through the SmartWorks integration project.

Summary of integrations

Integration	Initiator	Type	Protocol	Frequency
DataSync	CIS	Creates .csv datasync files	sftp	1-3 times/day
DataSync	MDM	Import .csv datasync files and corresponding data	sftp	1-3 times/day
Billing	CIS	Billing Request	MVRS	TBD during discovery
Billing	MDM	Billing Response	MVRS	TBD during discovery

Note: SmartWorks will setup the sftp site

3.2.1. CIS Synchronization Integration (Alpha)

Import of customer and meter data into the SmartWorks Software for validation of AMI data. A daily full periodic synchronization activity will occur. The final data set (fields), file layout, and protocol to be used and exchanged between the CIS and MDM will be finalized during the kick-off sessions and signed-off in the agreed upon Business Requirement Document (BRD). The information that is initially expected to be provided from the CIS to support the functionality and modules, in scope, includes the following:



	SmartWorks Compass (Alpha)	Notifications & Rates (Beta)
METERS: List of meters with identifiers, meter types, etc.	X	
LOCATION: List of premise with ID, service addresses	X	
METER LOCATION XREF: A date-driven cross reference between meter and location number (i.e. when a meter is installed and removed from a location)	X	
METER CONNECTION STATUS: State of the meter (ON/OFF)	X	
METER ALIAS: Descriptive information related to the meter, combining meter/location attributes	X	
BILLING SCHEDULE: Cycle/Route schedule indicating billing period and reading period	X	
ACCOUNTS: Customer Account information (such as account name, account ID)		X
ACCOUNT SERVICES: A date-driven cross reference between account and location (i.e. customer move in/out information)		X
CUSTOMERS: List of customers with identifiers and names, email address, subject to PII restrictions.		X
CUSTOMER/ACCOUNTS CROSS REFERENCE: A date-driven cross reference between account and customers		X
METER RATE CODES: Rate codes associated to each meter		X
RATES PLANS: Simple rate elements (e.g. Tiered, TOU, Fixed) as defined in section 2.5.6		X

*It is expected that when a radio is installed or removed from a meter, a cross reference between meter ID and associated radio ID will be maintained in the CIS and provided during DataSync.

It is expected that there will be a minimum of 2 iterations during the Alpha phase, and a minimum of 3 iterations during the Beta phase for additional data elements to be included in the file.

This integration will be established using a *.csv flat file that will be queried by SmartWorks Software. The flat files will be developed by the CIS vendor or another agent of Customer. Depending on Customer requirements, the synchronization will occur between 1 to 3 times per day and will be scheduled to occur after the Customer database has been updated.

Note: Integration with the AMI head end system for the purpose of facilitating synchronization of the meter status between the AMI head end system and CIS is not included in the scope of this project. This integration enables the identification of meters that should be transmitting data to the MDM. It is therefore assumed that a direct integration will be made between the AMI head end system and the CIS. It is expected that Customer and AMI provider will work collaboratively to develop this integration.

3.2.2. Billing Interface (MVRs file format) (Beta)



Customer will initially bill using register reads, not time-based determinants for most meters.

Customer will use **SmartWorks Compass** billing interface, which makes use of an MV-RS file format. The MV-RS file will be created in the CIS and uploaded to an ftp/sftp site using CIS processes. **SmartWorks Compass** will be configured to automatically update the file with reads and place it on an ftp/sftp site for download back to the CIS.

Billing determinants and corresponding calculations are included in Appendix C.

3.3. Geographic Information System (GIS) Integration - ESRI

3.3.1. Base Map (Alpha)

The SmartWorks Software will be configured so that meter data will be overlaid on top of one or more ESRI “Base Maps” via URL live link. With this capability, the Customer will be able to view meter data together with their other data layers within SmartWorks Software.

Customer will create URL and provide a custom base map to SmartWorks for configuration of **MeterSense**. This scope of integration assumes Customer is hosting ESRI on a web server and can provide a URL.

3.3.2. Meter Coordinates (Alpha)

Meter coordinates (latitude and longitude) will be provided by the GIS in a .csv file format following SmartWorks predefined format. Meter ID from GIS must match the Meter ID within the CIS.

3.3.3. Transformer (Post Full Deployment)

Customer GIS will be the system of record for the transformer-to-location relationships. SmartWorks will implement a daily flat file transfer integration (*.csv) to import the GIS transformer asset data required to support transformer loading analysis, as listed in the table below.

	Compass
Transformer assets, including kVA rating	X
Relationship between transformer and location	X
Meters to feeder relationships and corresponding multipliers	X



3.4. The Weather Network (Alpha)

The SmartWorks Software will integrate weather data services with daily feed of observed weather data received from the Weather Network weather station determined to be closest to Customer's location.

The following weather data, if provided by the weather station, will be imported into SmartWorks Software:

- Temperature (Hourly)
- Humidity (Hourly)
- Wind Speed (Hourly)
- Wind Direction (Hourly)
- Weather Conditions (Hourly)
- Precipitation (Daily)

This data is automatically downloaded from SmartWorks' data provider for a weather station or stations in the Customer's service area and is automatically inserted into the SmartWorks Software database.

3.5. Customer Portal (SEW) –(Beta)

The Harris Software will integrate with Customer portal to provide two separate data files:

1. Usage
2. Leak Alerts.

Usage – frequency: every 24hrs

SmartWorks will provide hourly interval read data as well as daily midnight register read value, using a data export of the following information, for each Location ID (Premise ID):

- Location ID (Premise ID)
- Account Number
- meter_id
- Read date time (PST)
- Interval Length (5, 15 or 60)
- Interval Consumption
 - Compass will provide intervals as per the meter configuration (5, 15 or 60min.)
 - Compass will not perform any calculations to aggregate or split the interval data
 - KW will be calculated and SW will provide monthly demand value (repeated until new value is identified and is reset)
- Midnight Register Read Value (for each UOM)
- Unit of Measure
- Applicable Multipliers
- Commodity Type
- Read Status (1=Passed, 2=Failed, 3=Estimated, 4=Manually Edited, 5=Accepted, and 6=Billed)

It is assumed that SEW will overwrite any duplicated data if the reads overlap.

**Water Leak alarms (multiple times per day)**

- Location ID (Premise ID)
- Account Number
- meter_id
- Unit of Measure
- Leak date time (PST)
- Leak alarm (type)

It is assumed that all data points required for this integration will be provided by the AMI (meter reads) or the CIS (meter and location attributes). The data will be provided using a delimited .csv flat file. Flat files will be delivered using ftp or sftp transfer protocols.

3.6. Perform integration of the MDMS to SAP BI to provide reporting data (Beta)

SmartWorks will provide Customer with Advanced Process Automation Rules Training on Reporting and Rules Development which will enable Customer to create its own integration to external systems such as SAP BI. Should Customer require SmartWorks to develop this interface, the related scope of work and associated cost will be determined using the Change Management process described in section 4.3.



4. Project Management Approach

4.1. Communication/Status and Relationship Management Approach

Communication Management is the cornerstone of any project and a well-structured Communication Plan is a must from the beginning. Regular and ongoing communications include those opportunities to communicate with project team members, sponsors, steering committee members, and other key stakeholders on a regular basis. These types of communication include regular status reports, scheduled project team meetings, monthly updates with the steering committee or with executive project sponsors on a project.

During the Project Kick Off Meeting, a Communication Plan will be presented and reviewed with Customer staff based on the following Communication Strategy:

Goals of Communication Strategy

- Keep people informed on project status
- Focus on communication to effectively prepare Customer for their software rollout
- Focus on communication to build support for project
- Monitor effectiveness of communication

Guiding Principles

- Clear messages using simple language
- Openness, honesty, credibility, and trust in all communications
- Two-way communication, with feedback valued and asked for
- Project Team and Management ownership of the communication program
- Ongoing commitment to the communications process

Effective Communication Guidelines

- There are multiple audiences for project communications
- Communication needs to be:
 - Tailored to specific groups
 - Regular and informative
 - Real-time and relevant
- Communication content needs to be of interest to the target audience

Following is the proposed communication plan for the project:

What	Who / Target	Purpose	When / Frequency	Type/Method(s)
Project Kick Off	All stakeholders	Communicate plans and stakeholder roles/responsibilities.	At or near Project Start Date	Onsite Meeting (if safe and appropriate)
Status Reports	All stakeholders and Project Office	Update stakeholders on progress of the project.	Weekly	Distribute electronically using agreed Status Report template
Team Meetings	Entire Project Team	To review detailed plans (tasks, assignments, and action items) and risks.	Weekly	Remote Meeting Review Project Plan, Status Reports, and Risk Log



What	Who / Target	Purpose	When / Frequency	Type/Method(s)
Project Management Status Meetings	Sponsor(s) and Project Manager (SmartWorks, Customer, AMI Vendor, CIS Vendor)	Update Sponsor(s) on status and discuss critical issues. Seek approval for changes to Project Plan.	Weekly	Remote Meeting
Executive Sponsor Meetings	Executive Sponsor(s) and Project Manager(s)	Update Sponsor(s) on status and discuss critical issues. Seek approval for changes to Project Plan.	Monthly	Remote Meeting

4.2. Work Management Approach

Work will be managed through the use of the Project Schedule. The SmartWorks Project Manager will have the responsibility to create and maintain the Project Schedule for the modules and integrations listed in this Statement of Work. It is expected that Customer Project Manager will work in conjunction with the SmartWorks Project Manager to ensure that key Customer activities that impact the project are also contained in the Project Plan.

During and after the User Acceptance Testing in the Testing phase, the SmartWorks TeamSupport solution will be used to track project issues such as bugs or other lower level action items. The Entire Project Team (SmartWorks / Customer) will have access to TeamSupport.

4.3. Change Management Approach

This document serves as the complete understanding, between Customer and SmartWorks, as to what the current Statement of Work entails. Customer and/or SmartWorks may propose changes to the scope of work defined in this document ("Change"). The Change Order Form (Appendix A) must be used for all Change Requests. SmartWorks shall have no obligation to commence work in connection with any change until the fee and schedule impact of the change is agreed upon in a written Change Order Form signed by the designated representatives from both Parties.

Upon a request for a change, SmartWorks shall submit the standard Change Order Form describing the change, including the impact on the schedule, budget, scope and expenses. The Change Management Process that will be employed is defined below:

- Identify and document proposed change
- Assess impact of proposed change
- Estimate required effort / cost of proposed change
- Submit Change Order for Approval / Disapproval
- Communicate Change Order Decision
- If Change Order is Approved:
 - Assign responsibility
 - SmartWorks to update Project Plan as needed
 - If there are project delays due to Change Request, SmartWorks may create subsequent Change Requests to address those delays
 - Monitor and report progress



Within fifteen (15) consecutive business days of receipt of the Change Order Form, Customer shall either:

- Accept the proposed change by signing the Change Order Form, or
- Reject the proposed change and inform SmartWorks Project Manager via email.

If SmartWorks is advised not to perform the change, or in the absence of Customer acceptance or rejection within fifteen (15) days, then SmartWorks:

- Will not perform the proposed change and will proceed only with the original services
- May create a new Change Request to accommodate the expenses incurred during the discussion of the proposed change. This may happen only in cases where:
 - Customer takes longer than fifteen (15) days to reach the decision, or does not reach a decision, and
 - Overall project timeline, budget or scope are affected.

4.4. Risk Management Approach

Risk Management planning is an important part of project management and a core component of the SmartWorks Project Implementation Methodology. Risk Management planning is about defining the process of how to engage and oversee risk management activities for a project. Having a viable plan on how to manage risk allows one to mitigate risk versus attempting to decide in the midst how to handle a risk. The earlier Risk Management planning is engaged within the project increases the probability of success of risk mitigation activities. Risk Management planning will be initiated at the start of the project by having the initial discussion with Customer prior to, or during the Project Kick Off Meeting.

Risks can be raised by any project stakeholder, including Entire Project Team members, Customer, third-party integrators, or vendors during the project.

Risks will be entered on the Risk Log and categorized by type and priority. The SmartWorks Project Manager will investigate the risk and, if necessary, will update the Risk Log with background information to place the risk in perspective.

At a minimum, the following information will be captured and tracked for all risks:

- RISK ID – each risk should have a unique ID
- TITLE – short description of the risk (usually a few words or a sentence, helpful when reporting risks)
- DESCRIPTION – complete description of the risk, the more details the better
- IMPACT – impact to the project and/or business in terms of money, time, and/or quality
- PROBABILITY – indicate the probability of the risk
- SEVERITY – risk severity (typically values could be “critical”, “high”, “medium”, “low”)
- TYPE – type of risk (e.g. technical, process, organizational, etc.)
- RISK MITIGATION PLAN – detailed description of actions (including dates and owners) required mitigating the risk



- STATUS – current status of the risk (typical values are “open” or “closed”)

The following Risk Matrix will be used to establish the severity of risk:

PROBABILITY	High (3)	3	6	9
	Medium (2)	2	4	6
	Low (1)	1	2	3
		Low (1)	Medium (2)	High (3)
		IMPACT		

Throughout the duration of the project, as risks are identified they will be added to the Risk Log and will be reviewed at weekly Status Meetings with the team to determine the possibility of occurrence and the best plan for mitigation.

If identified risk(s) and/or mitigation strategies are deemed to have an effect on project timeline, budget, or scope, a Change Request may be created, as per section 4.3, to address those concerns.

Based on SmartWorks’ experience, the following have been identified as dependencies that could have negative effect on project timeline, cost and/or scope and could become potential risks:

- VPN ports not opened for SmartWorks personnel and for communication between integration points
- AMI not ready on time, or not sending the data
- Data source not ready for DataSync
- Resources not available to provide required information

Early engagement and commitments on timelines by all parties can significantly reduce risks linked to the above dependencies.

4.5. Acceptance Management Approach

In collaboration with Customer, SmartWorks will develop and maintain a central listing of all Deliverables and Work Products to be completed throughout the project **“Deliverable Acceptance Criteria Document”**. The Deliverable Acceptance Criteria Document will also set forth the acceptance criteria for each deliverable (**“Deliverable Acceptance Criteria”**).

A baseline version of the Deliverable Acceptance Criteria document will be created through a combined effort between SmartWorks and Customer during the Initiation and Build phase. The Deliverable Acceptance Criteria Document will be reviewed with Customer regularly and updated to record the approval of the Deliverables as they are accepted. The approvals of the Deliverables in the Acceptance Criteria document will constitute final system acceptance.



A core component of the Deliverable Acceptance Criteria Document will be the execution of the test plan and test cases. The Testing Plan, also created in the Initiation and Build phase, and the Test Case Scenarios, created during the Initiation and Build phase, are customized specific to the implementation for Customer. The Test Plan and Test Case Scenarios are used for testing and will be provided to Customer for their own review and testing of the system. SmartWorks Implementation Team and Customer staff will work as a team to ensure that exhaustive testing is carried out. During the Testing phase, when the system testing is being executed, the Project Team will be meeting to review the testing status and ensure that scheduled testing is being carried out.

Once system testing has been completed, and Customer staff has been trained on the system, Customer staff will have the necessary tools to review the system for acceptance. Customer will have access to its own instance of the SmartWorks Software, loaded with their data, to train and test on. SmartWorks Consultants assigned to Customer will provide training of the system to the staff, along with training documents, consisting of User Guides and PowerPoint. Training will be conducted onsite and using WebEx sessions, phone calls and documentation when needed.



5. Delivery Approach

5.1. Implementation Approach – Phases, Deliverables, Key Milestones

Successful implementation is based on SmartWorks' understanding of Customer requirements and experience gained through the implementations of SmartWorks Software at various Customers across North America. 's project will leverage SmartWorks' Implementation Methodology which has been honed and perfected over the company's long history to successfully guide project implementation from Initiation to Deployment.

5.2. Implementation Methodology

The SmartWorks Methodology is based on the following guiding principles:

- *Promote and foster customer ownership of solution;*
- *Establish and maintain consistent and regular touchpoints with Customer;*
- *Ensure that project performance is visible, measurable, tracked and risks identified and mitigated – No Surprises!; and*
- *Seek to minimize customer cost and time while still achieving project objectives.*

The Implementation Methodology consists of two main areas: **Project Management** and **SmartWorks Software Implementation Management** where each has associated (where applicable):

- Processes / Checklists / Matrices that define how to operate;
- Deliverables that are formal outputs that require Customer sign-off;
- Work Products that are outputs produced as part of the work required to achieve the desired project goals; and
- Tools / Assets that are leveraged to produce defined outputs.

The **Project Management** area defines how projects are managed. It includes:

- **Communication/Status Management** aimed at establishing internal and external communications as well as monitoring and communicating project status and effort spent;
- **Relationship Management** aimed at measuring the pulse of Customers and partners;
- **Work Management** aimed at capturing and monitoring effort, cost and work to be performed;
- **Change Management** aimed at defining and controlling project scope;
- **Risk Management** aimed at planning, mitigating, tracking and monitoring risks;
- **Acceptance Management** aimed at ensuring that expected deliverables are delivered and accepted; and
- **Financial/Contract Management** aimed at monitoring project financial health.

The **Implementation Management** area defines the Implementation Phases and associated Work Products and Deliverables that are part of this project. The Implementation Phases are defined in the following table:



Implementation Phases	Objectives	Key Work Products and Activities	Deliverables
Phase I (Alpha) Initiation and Build <i>Key Milestones</i> - Kick Off Meeting Held - Project Plan Reviewed/Updated	- To Kick Off project and establish successful working relationship - To obtain detailed agreement on Project Plan - To install and perform base configuration work	- Kick Off Meeting - Implementation Questionnaire - Acceptance Criteria Document - Initial Configuration complete - Initial Integration with CIS and AMI complete - Physical Architecture Recommendation	- SmartWorks Software installation - Software Overview Training Session
Phase II (Beta) Analysis <i>Key Milestones</i> - Integration Documents signed - Functional and Integration Requirement Document signed	- To demonstrate base configuration functionality - Conduct Discovery Sessions - To obtain an agreement on what is remaining to be delivered	Discovery Session(s) Summary	Functional and Integration Requirements Document
Phase III (Beta) Development <i>Key Milestones</i> Solution Feature / Code / Configuration Complete	- To configure according to requirements and build the Solution components - To write associated test cases that Customer would execute for acceptance of the Solution	- Test Scenarios / Cases - User Acceptance Test Scripts - Base Solution Installed and Configured	- SmartWorks Software configuration - SmartWorks Software integration
Phase IV (Beta) Testing <i>Key Milestones</i> User Acceptance Testing Complete	- To move the Solution to a known state of quality and ready for deployment - To train customer on their Solution	- Functional Testing Results - Integration Testing Results - User Acceptance Test (UAT) Results - Accepted Solution per UAT	- Functional and Process Training - User Acceptance Testing Support - Go-Live Plan Document
Phase V (Beta) Deployment <i>Key Milestones</i> Solution Live	To move the Solution into a production environment state and transition support to the operations team	Solution Live	Installation Acceptance

To minimize project costs, the majority of project work will be performed at one of the SmartWorks' locations except for key project activities such as Discovery Sessions where face-to-face is deemed more effective for a successful project. Throughout the project, SmartWorks' Project Team will be engaged with Customer using WebEx sessions to review configuration work and provide remote support.



5.3. Implementation Timeline

The estimated duration to implement the SmartWorks Software within scope is approximately 6 months for Alpha phase and 9 months for Beta phase. Customer will be transitioned to Support after the Beta phase. The PS project team will re-engage with Customer for the implementation of post-Beta items (Post Full Implementation PFI). Post Beta items are anticipated at the end of Full Deployment.

The actual duration and scheduling of project activities will be evaluated during the Initiation and Build phase and a detailed baseline Project Plan will be jointly created at that time.

A baseline plan will be delivered within fourteen (14) calendar days of the project Kick Off Meeting allowing Customer an opportunity to review the Project Plan over the next ten (10) business days. If Customer does not agree to the proposed Project Plan, Customer and SmartWorks will work collaboratively to develop a mutually agreeable plan within a reasonable timeline.

The Project Plan will include a project completion date (the date where project is completed based on the criteria in section 5.7 Project Completion Criteria). The Project Plan will be reviewed periodically during the project and may be revised. Changes to the project completion date may require a Change Order if it is mutually determined that the delay in completion is the fault of the Customer or Customer's third-party vendors.

5.4. Validation/Testing Approach

Systems Testing is an activity that is addressed through all Phases of the SmartWorks Software Implementation Methodology but is the focus of the Testing Phase.

To ensure that a quality Solution is delivered to Customer, the Testing Phase focuses on validating that the configured and developed Customer Solution performs per agreed upon requirements for each module. This includes three (3) main testing activities:

- **Functional Testing** to test the core Solution components (Configuration, Interfaces, Reports, and Modifications) against agreed upon requirements as defined in the Functional and Integration Requirements Document based on the test cases and scenarios developed during the Development phase.
- **Integration Testing** to test the end-to-end process based on business processes and scenarios developed during the Development phase.
- **User Acceptance Testing** to provide Customer the opportunity to validate that Solution behaves per agreed upon requirements as defined in the Functional and Integration Requirements Document based on the test cases and selected scenarios collaboratively developed with Customer during the Development phase. User Acceptance Testing sign-off per agreed upon criteria is necessary to move to Deployment phase.

The progress for performing the three (3) testing activities will be logged into TeamSupport. At a minimum, the TeamSupport will include the following information:

- The test name
- The objective for performing the test



- A Description of the steps required to perform the test **“Test Script”**
- The expected result that will demonstrate the test is successful **“Test Acceptance Criteria”**
- The actual result observed after performing the test **“Test Result”**

Prior to commencing Functional Testing and Integration Testing activities, the Test Scripts and Test Acceptance Criteria will be documented in TeamSupport by SmartWorks using Test Scripts that have been defined by SmartWorks.

While performing testing activities, the tester will update the TeamSupport with the Test Result and will make a determination as to whether the result meets the Test Acceptance Criteria.

Functional Testing and Integration Testing will be performed by SmartWorks. User Acceptance Testing will be performed by Customer with support from SmartWorks.

5.4.1. User Acceptance Testing Procedure

Once Functional Testing and Integration Testing have been completed, and Customer staff has received Functional Process Training, Customer staff will have the necessary tools to perform User Acceptance Testing.

Prior to commencing User Acceptance Testing activity, the Test Scripts and Test Acceptance Criteria will be documented in TeamSupport by SmartWorks collaboratively with Customer.

Customer will have its own instance of The SmartWorks Software, loaded with its data, to train and test on. The Application SmartWorks assigned to Customer will provide the documents and training of the system to the staff. Training will be conducted onsite and using WebEx sessions, phone calls and documentation as needed.

Customer will have a defined period of time to perform User Acceptance Testing on the Solution (including testing in a live production environment) (the **“Acceptance Testing Period”**). The length of the Acceptance Testing Period will be defined in the Detailed Project Plan. This User Acceptance Testing Period will begin upon formal written notification from SmartWorks to Customer that the SmartWorks Software has been configured and is ready for testing. During such Acceptance Testing Period, both Parties shall work diligently and dedicate the appropriate resources to conclude the evaluation in a timely and efficient fashion.

If the Solution substantially meets the Functional and Integration Requirements Document, and substantially satisfies the testing criteria set forth in TeamSupport (together the **“Solution Acceptance Criteria”**), Customer will provide SmartWorks with written acceptance notice thereof, and the date of such notice to be the **“Actual Solution Acceptance Date”**.

In the event Customer determines that the results of a test do not meet the Solution Acceptance Criteria, following the initial User Acceptance Testing cycle, Customer will provide SmartWorks with written notice thereof, specifying in reasonable detail how the Solution failed to meet the Solution Acceptance Criteria. If Customer delivers to SmartWorks such notice of retesting, SmartWorks shall make all necessary corrections, repairs, fixes, modifications, or additions to or replacements of all or any part of the rejected SmartWorks Software as well as integrations for which SmartWorks is responsible so that it conforms to



and performs in accordance with the Solution Acceptance Criteria. SmartWorks will have a defined period of time **“Correction Period”** to correct any deficiency, after which the User Acceptance Testing will be resumed. The Correction Period will be defined in the Detailed Project Plan.

Should the Customer require additional testing outside of SmartWorks’ standard testing routines, such as for Disaster Recovery, these can be brought into scope via Change Order.

In the event retesting is required by Customer, the User Acceptance Testing process will then be repeated.

Customer shall not unreasonably reject or fail to accept the Solution based on any Severity 3 issues, as defined in the table below.

Severity Level	Description
1	• <i>System Down (Software Application, Hardware, Operating System, Database)</i> • <i>Program errors where there is no reasonable alternative available to Customer to continue its business, operations or services utilizing Software</i> • <i>Incorrect calculation errors impacting 10% of records</i> • <i>Error messages preventing data integration and update</i> • <i>Performance issues of severe nature impacting critical processes</i> • <i>Security Issues</i>
2	• <i>Program errors where there is a reasonable alternative available to Customer to continue its business, operations or services utilizing the Software</i> • <i>Calculation errors impacting less than one-third of records</i> • <i>Reports calculation issues</i> • <i>Performance issues not impacting critical processes</i> • <i>Usability issues</i> • <i>Workstation connectivity issues (Workstation specific)</i>
3	• <i>Training questions, how to, or implementing new processes</i> • <i>Aesthetic issues</i> • <i>Issues where there is a reasonable alternative available to Customer to continue its business, operations or services utilizing the Software for a large majority of the cases</i> • <i>Recommendations for enhancements or system changes</i> • <i>Questions on documentation</i>

During the Acceptance Testing Period, Customer may in collaboration with SmartWorks, acting reasonably, extend the Acceptance Testing Period, the Correction Period, and the Expected Solution



Acceptance Date (such that the extended Acceptance Testing Period shall expire on the revised Expected Solution Acceptance Date). During the Acceptance Testing Period, Customer should provide written notification to SmartWorks of any deficiency of a test result. Any issues identified after the end of the Testing Period will be address by SmartWorks according to the Support and Maintenance agreement.



5.5. Software Progression and Configuration Management

During the course of the project, updates are performed as described in the table below.

Phase	Activities	Operational Environment	Updates	Details
Alpha	• Initiation and Build	Pre-production	Configuration	Performed on an ongoing basis by SmartWorks Implementation Team. No Customer approval required.
			Software updates	Performed on an ongoing basis by SmartWorks Implementation Team. No Customer approval required.
			Software upgrades	<i>Not performed without prior agreement between SmartWorks and Customer.</i>
Alpha	• Initiation and Build - Alpha Testing	Pre-production	Configuration	Performed to address issues raised as a result of Alpha Testing
			Software updates	Performed to address issues raised as a result of Alpha Testing
			Software upgrades	Not performed.
Alpha meters ready for AMI monitoring				
Beta	• Initiation and Build • Analysis • Development	Pre-production	Configuration	Performed on an ongoing basis by SmartWorks Implementation Team.
			Software updates	Performed on an ongoing basis by SmartWorks Implementation Team. <i>Customer to be notified. Reviewed and approved by Customer</i>
			Software upgrades	<i>Not performed without prior agreement between SmartWorks and Customer.</i>
Beta	• Testing	Pre-production	Configuration	Performed to address issues raised as a result of UAT.
			Software updates	Performed to address issues raised as a result of UAT.
			Software upgrades	Not performed.
Beta	• Deployment	Pre-production becomes Production	Configuration	Performed for items related to Go-Live deployment activities. This system will be used for the Bill Production for Customer Billing
Beta	• Deployment	Test instance created	Configuration	Can be performed by Customer to test additional configurations for Post Go-Live.
			Software updates	Not performed, unless exception scenario is encountered. <i>Requires agreement between SmartWorks and Customer.</i>
			Software upgrades	Not performed.
Meter to Cash from CIS enabled in Production as well as Beta modules				
Transition to Customer Support				



Phase	Activities	Operational Environment	Updates	Details
Post Beta Go-Live	• Customer Support	Production	Configuration	See Master Support and Maintenance Agreement. Applicable to all items included in Beta phase.
Post Full Implementation (PFI)	• Initiation and Build • Analysis • Development	Test	Configuration	Performed on an ongoing basis by SmartWorks Implementation Team. Changes to be performed in coordination between SmartWorks and Customer.
			Software updates	Performed on an ongoing basis by SmartWorks Implementation Team. Customer to be notified, Reviewed and approved by Customer
			Software upgrades	Not performed without prior agreement between SmartWorks and Customer.
PFI	• Testing	Test	Configuration	Performed to address issues raised as a result of UAT. Customer to be notified. Reviewed and approved by Customer
			Software updates	Performed to address issues raised as a result of UAT. Customer to be notified. Reviewed and approved by Customer
			Software upgrades	Not performed.
PFI	• Deployment	Production	Configuration	Promoted from Test after approval from Customer
			Software updates	Promoted from Test after approval from Customer
			Software upgrades	Not performed.
All Compass Modules and integrations contracted under this SOW accepted				
Full Deployments	Customer Support	All	Configuration	See Master Support and Maintenance Agreement
			Software updates	See Master Support and Maintenance Agreement
			Software upgrades	See Master Support and Maintenance Agreement

*Once the Test instance is setup during the Deployment phase, the migration of items (configuration, updates or upgrades) from Test to Production will be evaluated for each scenario and a plan will be agreed upon between Customer and SmartWorks.



5.6. Customer Resource Involvement

SmartWorks strongly believes that a successful implementation project requires that both Customer and SmartWorks resources work openly and collaboratively towards a common objective. As such, Customer's involvement will be required through all phases of the implementation project. SmartWorks also believes that the involvement of key Customer resources will help with the organizational change management activities that are essential to obtain acceptance of the new solution.

The factors that will determine the size of Customer's team includes the following:

- The level and expertise of each of the Customer Project Core Team members;
- The ability of Customer Project Manager to make decisions regarding the project;
- Whether current job responsibilities will interfere with Core Team responsibilities;
- The amount of business reengineering that Customer determines is necessary; and
- The number of personnel that Customer will use to run their Solution, which in turn affects the amount of training needed.

Based on SmartWorks' experience with other clients, the following list outlines the anticipated involvement of Customer throughout the implementation project, by phase.

Phase I: Initiation and Build

1. Work with SmartWorks to develop the Project Schedule.
2. Identify users of the Solution.
3. Complete the Implementation Questionnaire provided by SmartWorks. This questionnaire provides SmartWorks with the technical and environmental details required to configure the SmartWorks Software.
4. Ensure that any third-parties required for the success of this project such as the AMI and CIS vendors have been informed and that they are ready to participate and contribute on an as-required basis.
5. Install VPN connection(s).
6. Assist with ensuring that SmartWorks Software is accessible from within Customer environment.

Phase II: Analysis

1. Ensure the staff members that have been identified to participate in Discovery Session(s) are available on dates agreed to and scheduled.

Phase III: Development

1. Provide and ensure all required technical staff are available on dates agreed to and scheduled.
2. Create User Acceptance Testing Plan, including Test scenarios.



Phase IV: Testing

1. Determine the appropriate staff to be trained.
2. Ensure the staff members that have been identified to participate in the training sessions are available on dates agreed to and scheduled.
3. Assist with Functional / Integrated Testing.
4. Conduct User Acceptance Testing.
5. Log issues in the SmartWorks TeamSupport system (a web-based issue tracking system). The issues logged in TeamSupport will be addressed by SmartWorks Consultants per triage and priority.
6. Assist SmartWorks in developing a Go-Live Plan Document.

Phase V: Deployment

1. Assist in activities as defined within the Go-Live Plan Document.

5.7. Project Completion Criteria

The Implementation Project is deemed complete once the following criteria have been met:

- An agreed upon sample of AMI meters representing different meter types and location classes have been installed and tested during User Acceptance Testing, within the project timeline indicated in section 5.3.
- Solution Acceptance has been given by Customer.
- SmartWorks Software Functionality within scope of this SOW has been deployed for a minimum of thirty (30) calendar days "Post Implementation Grace Period".
- Severity Level 1 issues identified during the Post Implementation Grace Period have been addressed. The Severity Matrix Table presented in section 5.4.1, defines the Severity Level 1 issues.

Customer will be transitioned to support upon completion of the project. Severity Level 2 and 3 issues logged in TeamSupport within the first three (3) weeks of the Post Implementation Grace Period will be reviewed by the Implementation Team prior to the transition to support and if possible, will be addressed prior to the end of the Grace Period. After the transition to support all outstanding Severity Level 2 and 3 issues will be addressed following the Master Support and Maintenance Agreement.



5.7.1. Completion Criteria Summary

Milestone	Phase	Deliverable/ Completion Criteria	Assumptions/Dependencies
Contract execution	Alpha		Agreements signed by all parties
Software installation	Alpha	- Pre-production system provisioned - Modules contracted as part of this SOW enabled (not configured)	Introduction call between SmartWorks and Customer Project Managers held prior to installation
Kick off Session held	Alpha	- Team Introduction - Confirm project planning and review of Statement of Work - Initial review of Data Mapping requirements and implementation Questionnaire	Data Mapping requirements and implementation Questionnaire have been presented but will be updated throughout the project
Initial DataSync and AMI integration completed	Alpha	- Initial Data Mapping requirements completed - Initial Implementation Questionnaire completed - DataSync completed for Alpha meters - AMI data (reads, events) populated in MDM for Alpha meters - Remote actions (On-Demand reads, Remote Disconnect/Connect) configured for Alpha meters	- Customer provided timely input for the documentation presented during Kick Off - Acceptance only includes pre-defined Alpha meters 3rd parties provided requested data as per agreed upon schedule
UAT (Alpha)	Alpha	- Test results documented by Customer - Severity level 1 tickets have been addressed	- Initial DataSync and AMI integration completed for Alpha meters only - Compass Overview training session has been delivered
Delivery of requirements document	Beta	- Discovery Sessions have been held (as outlined in Section 2.8) - Initial requirements documents have been delivered to Customer for review	Acceptance linked to initial delivery of documents
Completion of integrations	Beta	Alpha and Beta Integration as defined in section 3 of the SOW have been delivered	Final requirements documents have been approved
Completion of Functional Training	Beta	- Software modules as defined in section 2.3 available - Training as defined in section 2.6 has been delivered	Agenda provided ahead of training



Milestone	Phase	Deliverable/ Completion Criteria	Assumptions/Dependencies
Rules Engine Training	Beta	Rules Engine Training completed	Agenda provided ahead of training
Completion of UAT	Beta	- Test results documented by Customer - Severity level 1 tickets have been addressed	- Test scripts have been defined - Customer resources are available to perform testing within 10 business days - Tickets logged after completion of UAT will not delay acceptance
Bill Production for Customer Billing	Beta	3 billing cycles of actual bill production and mailing to customer	- UAT completed - This will take place at the end of the Beta phase for ~ 3 months of monitoring
Transition to Support	Beta	Transition to Support meeting has been held	
Discovery (Post Full Implementation - PFI)	PFI	Post Full Implementation Discovery Sessions have been held (as outlined in Section 2.8)	
Outage Performance module ready	PFI	- Outage Performance module configured - Training delivered - Customer Testing completed	Requirements have been approved prior to configuration
Transformer Loading Analysis module ready	PFI	- Transformer Loading Analysis module configured - Training delivered - Customer Testing completed	Requirements have been approved prior to configuration
Rate and Revenue Analysis module ready	PFI	- Rate and Revenue Analysis module configured - Training delivered - Customer Testing completed	Requirements have been approved prior to configuration



6. Assumptions

The Services, fees and delivery schedule for this project are based upon the following assumptions:

1. **This SOW defines the scope of work for SmartWorks and does not include any work or expenses required from other vendors including GIS, AMI, CIS, etc.**
2. This project currently has, and will continue to have, the support of senior Customer management and will be assigned sufficient priority with respect to other projects to ensure its success.
3. Customer will assign a Project Manager to act as an internal resource and guide throughout this project.
4. Customer will secure the appropriate staff in a timely fashion in order to discuss or review the various materials produced when required, provided SmartWorks gives reasonable notice of such request.
5. SmartWorks will provide a written agenda and notice of any prerequisites to prior to any onsite or remote sessions.
6. SmartWorks will provide adequate resources to support the efforts to complete the project as schedules and within the constraints of the project budget.
7. SmartWorks will provide the resumes for resources assigned to the project upon 's request.
8. Customer agrees to facilitate any required logistics between additional vendors, Customer resources and SmartWorks for the fulfillment of this SOW.
9. Customer will secure, as required and in a timely fashion, the assistance and cooperation of third-party vendors (e.g. CIS, AMI, OMS) to ensure a successful implementation. A Change Order may be created if the third-party vendor is unavailable or non-cooperative and as such results in an impact to the schedule or effort.
10. Third-Party vendor solutions are able to provide data required by the SmartWorks Software as well as accept information provided by the SmartWorks Software.
11. All third-party software and hardware products are assumed to perform correctly in Customer environment, in accordance with the appropriate third-party vendor's specifications.
12. All documentation provided by Customer shall be up-to-date and accurate or if that is not the case, advise SmartWorks as such.
13. All network components supplied by Customer are working properly and are free of defects and will meet minimum industry standards provided during the project.
14. To minimize project costs, the majority of project work will be performed at one of the SmartWorks' locations except for project activities where onsite is deemed more effective.
15. Customer will provide the appropriate monitored remote access to its network, facilities, and systems as may be required to perform activities from one of SmartWorks' locations. SmartWorks shall abide by all rules and directions of Customer when accessing Customer's network, facilities or systems. A Change Order may be created if appropriate remote access to its network is not available, resulting in project delays.
16. Any items not explicitly identified within this document are considered out of scope. Any changes to those responsibilities and/or deliverables will be considered a change in scope for the project. Any



proposed change to the project scope must be put into written format and be submitted to SmartWorks during this project for review and consideration.



7. Document Acceptance and Sign-off

Accepted on this day by:

City of Palo Alto Utilities

**N.Harris Computer Corporation (Harris Utilities,
SmartWorks)**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



APPENDIX A – Change Order Template

Harris Utilities SmartWorks Change Order

This document defines the work to be performed by the Harris Utilities, SmartWorks division of N. Harris Computer Corporation (herein referred to as “SmartWorks”) for City of Palo Alto Utilities (herein referred to as “Customer”), upon authorization to proceed from Customer.

Date: <Date>

Change Order #: <xx>

Customer: <Customer>

Customer Contact: <Name of Requester/Technical Contact>

Description of Change: <Title of Change Order>

Related Documents

1. This Change Order is subject to the terms and conditions of the Software License Agreement, Support and Maintenance Agreement, Software Implementation Services Agreement and Hosting Services Agreement between City of Palo Alto Utilities and N. Harris Computer Corp. signed <date signed>
2. This Change Order describes a change from the scope or schedule defined in<Statement of Work (SOW) details>
3. (other related documents such as Technical Specification Documents)

Scope of Change

<Describe changes to be made>

Assumptions and Constraints

1. <List any applicable assumptions/constraints>

Schedule Impact

<Identify schedule impact, if any>



Change Order Effort

Description	Estimated Effort (Hours)
Work Description 1	0
Work Description 2	0
Project Total	0

Change Order Fees

Support and Maintenance

Monthly Support & Maintenance fees may be adjusted based on the increased functionality or complexity resulting from this scope of work.

Taxes

Fees exclude any applicable taxes.

Validity

The price estimate is valid for a period of thirty (30) days from the quote submission. Customer may request this date to be extended.

Scope Changes

If there are material changes to the scope or SmartWorks' understanding of the scope, the price estimate is subject to change.

- The discounted hourly rate for Change Orders during the scope of the implementation project, until the go-live milestone is achieved, will be USD \$230.00
- The Support & Maintenance fees may be adjusted accordingly as well.

It is expected that once the deliverables included in the Statement of Work have been delivered and the project is closed, all future services (including but not limited to training, customization, consulting) will be delivered using SmartWorks Standard hourly rate applicable at the time of the request for services.



Change Order Payment Schedule

Customer will be invoiced based on the following payment fees and schedule. All prices are in USD.

Description		Payment
(Milestone A TBD)	X%	\$0.00
(Milestone B TBD)	X%	\$0.00
Total	100%	\$0.00
Additional Annual Support & Maintenance fees		\$0.00
Notes: - This fee is intended to cover support and maintenance activities anticipated for new functionality provided in this quote. - The fee will be applied upon installation in test environment (or production if a test environment is not available). - The first-year fee will be pro-rated to align with Customer’s existing maintenance payment schedule. Annual fees are subject to change as defined in the Support and Maintenance Agreement.		

Invoices are payable on a net 30-day basis.



Change Order Acceptance and Sign-off

A signature below will serve as authorization to proceed with the work defined in this document.

Please sign and return this document to [Project Manager]:

- Fax: 613-482-4874
- Email: [projectmanager]@harriscomputer.com

☐ Approval to Proceed

Please provide both an authorized signature for sign-off on this Change Order, and a technical contact where we should be directing Technical Issues.

Print Name (Authorized signature)	Signature	Date

Name (Technical Contact)	e-mail	Phone Number

N. Harris Computer Corporation

SmartWorks manager authorized to sign this Change Order

Print Name (Authorized signature)	Signature	Date

If you have any questions or need further information, please feel free to contact the Project Manager noted above.



APPENDIX B – Roles and Responsibilities

As the AMI and MDMS components of the Project are tightly coupled through integration, and as these components are being implemented concurrently through separate contracts, the following table has been developed to establish mutual obligations and co-dependencies between the services and systems being provided by the respective vendors for these components. This table outlines tasks (including integration services, with specifications listed if already identified) and denotes which parties are the owners ("O") or contributors ("C") of specific activities.

The City of Palo Alto shall be ultimately responsible for obtaining and coordinating adequate participation of the AMI vendor to contribute to the listed tasks.

The tasks and integrations identified in this table will be superseded by any changes that occur and are mutually agreed-upon by all parties during the kickoff and workshopping tasks outlined in the SOW. SmartWorks will not be held liable for non-compliance as a result of the AMI contract not being executed.

Work Category	Activity	Customer	AMI Provider	MDMS Provider
Service	Develop Project Schedule.	C	O	C
Service	Design meter rate configurations.	C	O	C
Service	Update and finalize AMI requirements through Design workshop(s).	C	O	C
Service	Test Plan Development (Alpha Proof of Concept, Beta Proof of Concept, and Full Deployment Testing).	C	O	C
Service	Perform integration of the RNI to/from the MDMS to exchange all meter event data, reads, and initiation of remote commands.	C	O	C
Service	Perform Alpha POC testing and approval.	O	C	C
Service	Perform Beta POC testing and approval.	O	C	C
Service	Formal System Acceptance Test Design.	C	O	C
Service	Draft and facilitate approval and consensus of SAT Definitions.	C	O	C
Integration SFTP	- CMEP Read File	C	O	O
Integration SFTP	- CMEP Voltage File	C	O	O
Integration SFTP	- CMEP Event File	C	O	O



Work Category	Activity	Customer	AMI Provider	MDMS Provider
Integration - MultiSpeak 4.1	Real-Time Events	C	O	O
Integration - MultiSpeak 4.1	On-Demand Read	C	O	O
Integration - MultiSpeak 4.1	Remote Disconnect	C	O	O
Integration - MultiSpeak 4.1	Remote Connect	C	O	O
Service	To Kick Off project and establish successful working relationship	C	C	O
Service	To obtain detailed agreement on Project Plan	C	C	O
Service	Conduct Discovery Sessions	C	C	O
Service	To write associated test cases that Customer would execute for acceptance of the Solution	O	C	C
Service	Integration Testing	C	C	O

APPENDIX C – Billing Determinants

# of Registres	Utility	Fact grp	CIS RateType	RateTypeTxt	CY 2021 # Of Meters	Interval	CY 2025 est. # of meters	CY 2030 est. # of meters	AMI to MDM UOM Note: May not match meter programming
1	Electric	E1	KWH-SM	Residential Electric Service	24946	15	23846	16946	KWH
1	Electric	E1N1	EXP-E1N1	E1N1 Net Meter KWH Received	1001	15	1001	901	KWH_RCVD
2	Electric	E1N1	KWH-E1N1	E1 NEM1 KWH Delivered	1001	15	1001	901	KWH
1	Electric	E1N2	EXP-E1N2	E1N2 Net Meter KWH Received	228	15	1000	2000	KWH_RCVD
2	Electric	E1N2	KWH-E1N2	E1 NEM2 KWH Delivered	228	15	1000	2000	KWH
		E1T	N/A			15	100	5000	KWH
1	Electric	E1T	KW_M-E1	E1T Mid Peak Ele TOU KW		15	100	5000	N/A Calculated by MDM: Max 15 Mid Peak KWH * 4
2	Electric	E1T	KW_O-E1	E1T Off Peak Ele TOU KW		15	100	5000	N/A Calculated by MDM: Max 15 Off Peak KWH * 4
3	Electric	E1T	KW_P-E1	E1T On Peak Ele TOU KW		15	100	5000	N/A Calculated by MDM: Max 15 On Peak KWH * 4
4	Electric	E1T	KWH_M-E1	E1T Mid Peak Ele TOU Kwh		15	100	5000	N/A Calculated by MDM based on Mid Peak KWH
5	Electric	E1T	KWH_O-E1	E1T Off Peak Ele TOU Kwh		15	100	5000	N/A Calculated by MDM based on Off Peak KWH



6	Electric	E1T	KWH_P-E1	E1T On Peak Ele TOU Kwh		15	100	5000	N/A Calculated by MDM based on On Peak KWH
		E1N1T	N/A				100	100	KWH_RCVD
		E1N1T	N/A				100	100	KWH
1	Electric	E1N1T	KW_M-E1	E1T Mid Peak Ele TOU KW Received		15	100	100	N/A Calculated by MDM: Max 15 Mid Peak KWH_RCVD * 4
2	Electric	E1N1T	KW_O-E1	E1T Off Peak Ele TOU KW Received		15	100	100	N/A Calculated by MDM: Max 15 Off Peak KWH_RCVD * 4
3	Electric	E1N1T	KW_P-E1	E1T On Peak Ele TOU KW Received		15	100	100	N/A Calculated by MDM: Max 15 On Peak KWH_RCVD * 4
4	Electric	E1N1T	KWH_M-E1	E1T Mid Peak Ele TOU Kwh Received		15	100	100	N/A Calculated by MDM based on Mid Peak KWH_RCVD
5	Electric	E1N1T	KWH_O-E1	E1T Off Peak Ele TOU Kwh Received		15	100	100	N/A Calculated by MDM based on Off Peak KWH_RCVD
6	Electric	E1N1T	KWH_P-E1	E1T On Peak Ele TOU Kwh Received		15	100	100	N/A Calculated by MDM based on On Peak KWH_RCVD
7	Electric	E1N1T	KW_M-E1	E1T Mid Peak Ele TOU KW Delivered		15	100	100	N/A Calculated by MDM: Max 15 Mid Peak KWH * 4
8	Electric	E1N1T	KW_O-E1	E1T Off Peak Ele TOU KW Delivered		15	100	100	N/A Calculated by MDM: Max 15 Off Peak KWH * 4
9	Electric	E1N1T	KW_P-E1	E1T On Peak Ele TOU KW Delivered		15	100	100	N/A Calculated by MDM: Max 15 On Peak KWH * 4
10	Electric	E1N1T	KWH_M-E1	E1T Mid Peak Ele TOU Kwh Delivered		15	100	100	N/A Calculated by MDM based on Mid Peak KWH
11	Electric	E1N1T	KWH_O-E1	E1T Off Peak Ele TOU Kwh Delivered		15	100	100	N/A Calculated by MDM based on Off Peak KWH



12	Electric	E1N1T	KWH_P-E1	E1T On Peak Ele TOU Kwh Delivered		15	100	100	N/A Calculated by MDM based on On Peak KWH
		E1N2T	N/A				0	1000	KWH_RCVD
		E1N2T	N/A				0	1000	KWH
1	Electric	E1N2T	KW_M-E1	E1N2T Mid Peak Ele TOU KW Received		15	0	1000	N/A Calculated by MDM: Max 15 Mid Peak KWH_RCVD * 4
2	Electric	E1N2T	KW_O-E1	E1N2T Off Peak Ele TOU KW Received		15	0	1000	N/A Calculated by MDM: Max 15 Off Peak KWH_RCVD * 4
3	Electric	E1N2T	KW_P-E1	E1N2T On Peak Ele TOU KW Received		15	0	1000	N/A Calculated by MDM: Max 15 On Peak KWH_RCVD * 4
4	Electric	E1N2T	KWH_M-E1	E1N2T Mid Peak Ele TOU Kwh Received		15	0	1000	N/A Calculated by MDM based on Mid Peak KWH_RCVD
5	Electric	E1N2T	KWH_O-E1	E1N2T Off Peak Ele TOU Kwh Received		15	0	1000	N/A Calculated by MDM based on Off Peak KWH_RCVD
6	Electric	E1N2T	KWH_P-E1	E1N2T On Peak Ele TOU Kwh Received		15	0	1000	N/A Calculated by MDM based on On Peak KWH_RCVD
7	Electric	E1N2T	KW_M-E1	E1N2T Mid Peak Ele TOU KW Delivered		15	0	1000	N/A Calculated by MDM: Max 15 Mid Peak KWH * 4
8	Electric	E1N2T	KW_O-E1	E1N2T Off Peak Ele TOU KW Delivered		15	0	1000	N/A Calculated by MDM: Max 15 Off Peak KWH * 4
9	Electric	E1N2T	KW_P-E1	E1N2T On Peak Ele TOU KW Delivered		15	0	1000	N/A Calculated by MDM: Max 15 On Peak KWH * 4
10	Electric	E1N2T	KWH_M-E1	E1N2T Mid Peak Ele TOU Kwh Delivered		15	0	1000	N/A Calculated by MDM based on Mid Peak KWH
11	Electric	E1N2T	KWH_O-E1	E1N2T Off Peak Ele TOU Kwh Delivered		15	0	1000	N/A Calculated by MDM based on Off Peak KWH



12	Electric	E1N2T	KWH_P-E1	E1N2T On Peak Ele TOU Kwh Delivered		15	0	1000	N/A Calculated by MDM based on On Peak KWH
1	Electric	E2	KWH-SM2	Residential Electric Service	3133	15	2789	2579	KWH
		E2T	N/A			15	300	500	KWH
1	Electric	E2T	KW_M- E2T	E2T Mid Peak Ele TOU KW		15	300	500	N/A Calculated by MDM: Max 15 Mid Peak KWH * 4
2	Electric	E2T	KW_O-E2T	E2T Off Peak Ele TOU KW		15	300	500	N/A Calculated by MDM: Max 15 Off Peak KWH * 4
3	Electric	E2T	KW_P-E2T	E2T On Peak Ele TOU KW		15	300	500	N/A Calculated by MDM: Max 15 On Peak KWH * 4
4	Electric	E2T	KWH_M- E2T	E2T Mid Peak Ele TOU Kwh		15	300	500	N/A Calculated by MDM based on Mid Peak KWH
5	Electric	E2T	KWH_O- E2T	E2T Off Peak Ele TOU Kwh		15	300	500	N/A Calculated by MDM based on Off Peak KWH
6	Electric	E2T	KWH_P- E2T	E2T On Peak Ele TOU Kwh		15	300	500	N/A Calculated by MDM based on On Peak KWH
1	Electric	E2N	EXP-E2N	E2 NEM1 KWH Received	34	15	34	34	KWH_RCVD
2	Electric	E2N	KWH-E2N	E2N NEM1 KWH Delivered	34	15	34	34	KWH
		E2N1T	N/A	E2N1 Net Meter KWH Received			0	0	KWH_RCVD
		E2N1T	N/A	E2N1 Net Meter KWH Delivered			0	0	KWH
1	Electric	E2N1T	KW_M-E2	E2N1T Mid Peak Ele TOU KW Received		15	0	0	0 Meters



2	Electric	E2N1T	KW_O-E2	E2N1T Off Peak Ele TOU KW Received		15	0	0	0 Meters
3	Electric	E2N1T	KW_P-E2	E2N1T On Peak Ele TOU KW Received		15	0	0	0 Meters
4	Electric	E2N1T	KWH_M-E2	E2N1T Mid Peak Ele TOU Kwh Received		15	0	0	0 Meters
5	Electric	E2N1T	KWH_O-E2	E2N1T Off Peak Ele TOU Kwh Received		15	0	0	0 Meters
6	Electric	E2N1T	KWH_P-E2	E2N1T On Peak Ele TOU Kwh Received		15	0	0	0 Meters
7	Electric	E2N1T	KW_M-E2	E2N1T Mid Peak Ele TOU KW Delivered		15	0	0	0 Meters
8	Electric	E2N1T	KW_O-E2	E2N1T Off Peak Ele TOU KW Delivered		15	0	0	0 Meters
9	Electric	E2N1T	KW_P-E2	E2N1T On Peak Ele TOU KW Delivered		15	0	0	0 Meters
10	Electric	E2N1T	KWH_M-E2	E2N1T Mid Peak Ele TOU Kwh Delivered		15	0	0	0 Meters
11	Electric	E2N1T	KWH_O-E2	E2N1T Off Peak Ele TOU Kwh Delivered		15	0	0	0 Meters
12	Electric	E2N1T	KWH_P-E2	E2N1T On Peak Ele TOU Kwh Delivered		15	0	0	0 Meters
1	Electric	E2N2	EXP-E2N2	E2N2 NEM2 KWH Received	6	15	10	20	KWH_RCVD
2	Electric	E2N2	KWH-E2N2	E2N2 NEM2 KWH Delivered	6	15	10	20	KWH
		E2N2T	N/A	E2N2 NEM2 KWH Received			0	0	KWH_RCVD
		E2N2T	N/A	E2N2 NEM2 KWH Delivered			0	0	KWH



1	Electric	E2N2T	KW_M-E2	E2N2T Mid Peak Ele TOU KW Received		15	0	0	0 Meters
2	Electric	E2N2T	KW_O-E2	E2N2T Off Peak Ele TOU KW Received		15	0	0	0 Meters
3	Electric	E2N2T	KW_P-E2	E2N2T On Peak Ele TOU KW Received		15	0	0	0 Meters
4	Electric	E2N2T	KWH_M-E2	E2N2T Mid Peak Ele TOU Kwh Received		15	0	0	0 Meters
5	Electric	E2N2T	KWH_O-E2	E2N2T Off Peak Ele TOU Kwh Received		15	0	0	0 Meters
6	Electric	E2N2T	KWH_P-E2	E2N2T On Peak Ele TOU Kwh Received		15	0	0	0 Meters
7	Electric	E2N2T	KW_M-E2	E2N2T Mid Peak Ele TOU KW Delivered		15	0	0	0 Meters
8	Electric	E2N2T	KW_O-E2	E2N2T Off Peak Ele TOU KW Delivered		15	0	0	0 Meters
9	Electric	E2N2T	KW_P-E2	E2N2T On Peak Ele TOU KW Delivered		15	0	0	0 Meters
10	Electric	E2N2T	KWH_M-E2	E2N2T Mid Peak Ele TOU Kwh Delivered		15	0	0	0 Meters
11	Electric	E2N2T	KWH_O-E2	E2N2T Off Peak Ele TOU Kwh Delivered		15	0	0	0 Meters
12	Electric	E2N2T	KWH_P-E2	E2N2T On Peak Ele TOU Kwh Delivered		15	0	0	0 Meters
1	Electric	E4	KWH-E4	E4 Medium Comm Elec Ser Kwh	859	5	859	859	KWH
2	Electric	E4	KVARH-E4	E4 Medium Comm Elec Ser Kvarh	859	5	859	859	KVRAH
3	Electric	E4	KW-E4	E4 Medium Comm Elec Ser KW	859	5	859	859	Calculated by MDM: Rolling Demand



		E4T	N/A			5	5	10	KWH
		E4T	N/A			5	5	10	KVARh
1	Electric	E4T	KW_M-E4T	E4T Mid Peak Ele TOU KW	0	5	5	10	Calculated by MDM: Rolling Demand – Mid Peak
2	Electric	E4T	KW_O-E4T	E4T Off Peak Ele TOU KW	0	5	5	10	Calculated by MDM: Rolling Demand – Mid Peak
3	Electric	E4T	KW_P-E4T	E4T On Peak Ele TOU KW	0	5	5	10	Calculated by MDM: Rolling Demand – Mid Peak
4	Electric	E4T	KWH_M-E4T	E4T Mid Peak Ele TOU Kwh	0	5	5	10	N/A Calculated by MDM based on Mid Peak KWH
5	Electric	E4T	KWH_O-E4T	E4T Off Peak Ele TOU Kwh	0	5	5	10	N/A Calculated by MDM based on Off Peak KWH
6	Electric	E4T	KWH_P-E4T	E4T On Peak Ele TOU Kwh	0	5	5	10	N/A Calculated by MDM based on On Peak KWH
7	Electric	E4T	KVARh_M-E4T	E4T Mid Peak Ele TOU KVARh	0	5	5	10	N/A Calculated by MDM based on Mid Peak KVARh
8	Electric	E4T	KVARh_O-E4T	E4T Off Peak Ele TOU KVARh	0	5	5	10	N/A Calculated by MDM based on Off Peak KVARh
9	Electric	E4T	KVARh_P-E4T	E4T On Peak Ele TOU KVARh	0	5	5	10	N/A Calculated by MDM based on On Peak KVARh
	Electric	E4N	N/A			5	44	44	KWH_RCVD
	Electric	E4N	N/A			5	44	44	KVARh_RCVD
	Electric	E4N	N/A			5	44	44	KWH
	Electric	E4N	N/A			5	44	44	KVARh
1	Electric	E4N	KWH-E4N	E4 Medium Comm Elec Ser Kwh_RCVD	44	5	44	44	KWH_RCVD
2	Electric	E4N	KVR-E4N	E4 Medium Comm Elec Ser Kvarh_RCVD	44	5	44	44	KVarh_RCVD
3	Electric	E4N	KW-E4N	E4 Medium Comm Elec Ser KW_RCVD	44	5	44	44	N/A Calculated by MDM: Rolling Demand



4	Electric	E4N	KWH-E4N	E4 Medium Comm Elec Ser Kwh_Delivered	44	5	44	44	KWH
5	Electric	E4N	KVR-E4N	E4 Medium Comm Elec Ser Kvarh_Delivered	44	5	44	44	KVARh
6	Electric	E4N	KW-E4N	E4 Medium Comm Elec Ser KW_Delivered	44	5	44	44	N/A Calculated by MDM: Rolling Demand
1	Electric	E4N2	EXP-E4N2	E4 NEM2 KWH Exported	1	5	1	1	KWH_RCVD
2	Electric	E4N2	KW-E4N2	E4 NEM2 KW Exported	1	5	1	1	N/A Calculated by MDM based on KWH_RCVD
3	Electric	E4N2	KWH-E4N2	E4 NEM2 KWH Consumed	1	5	1	1	KWH
4	Electric	E4N2	KW-E4N2	E4 NEM2 KW Consumed	1	5	1	1	N/A Calculated by MDM based on KWH
		E4N2T	N/A				0	5	KWH_RCVD
		E4N2T	N/A				0	5	KWH
		E4N2T	N/A				0	5	KVARH
1	Electric	E4N2T	KW_M-E4N2T	E4N2T Mid Peak Ele TOU KW Received		5	0	5	N/A Calculated by MDM: Rolling Demand – Mid Peak
2	Electric	E4N2T	KW_O-E4N2T	E4N2T Off Peak Ele TOU KW Received		5	0	5	N/A Calculated by MDM: Rolling Demand – Off Peak
3	Electric	E4N2T	KW_P-E4N2T	E4N2T On Peak Ele TOU KW Received		5	0	5	N/A Calculated by MDM: Rolling Demand – On Peak
4	Electric	E4N2T	KWH_M-E4N2T	E4N2T Mid Peak Ele TOU Kwh Received		5	0	5	N/A Calculated by MDM based on Mid Peak KWH_RCVD
5	Electric	E4N2T	KWH_O-E4N2T	E4N2T Off Peak Ele TOU Kwh Received		5	0	5	N/A Calculated by MDM based on Off Peak KWH_RCVD
6	Electric	E4N2T	KWH_P-E4N2T	E4N2T On Peak Ele TOU Kwh Received		5	0	5	N/A Calculated by MDM based on On Peak KWH_RCVD



7	Electric	E4N2T	KW_M-E4N2T	E4N2T Mid Peak Ele TOU KW Delivered		5	0	5	N/A Calculated by MDM: Rolling Demand – Mid Peak
8	Electric	E4N2T	KW_O-E4N2T	E4N2T Off Peak Ele TOU KW Delivered		5	0	5	N/A Calculated by MDM: Rolling Demand – Off Peak
9	Electric	E4N2T	KW_P-E4N2T	E4N2T On Peak Ele TOU KW Delivered		5	0	5	N/A Calculated by MDM: Rolling Demand – On Peak
10	Electric	E4N2T	KWH_M-E4N2T	E4N2T Mid Peak Ele TOU Kwh Delivered		5	0	5	N/A Calculated by MDM based on Mid Peak KWH
11	Electric	E4N2T	KWH_O-E4N2T	E4N2T Off Peak Ele TOU Kwh Delivered		5	0	5	N/A Calculated by MDM based on Off Peak KWH
12	Electric	E4N2T	KWH_P-E4N2T	E4N2T On Peak Ele TOU Kwh Delivered		5	0	5	N/A Calculated by MDM based on On Peak KWH
13	Electric	E4N2T	KVARH_M-E4N2T	E4N2T Mid Peak Ele TOU KVARh		5	0	5	N/A Calculated by MDM based on Mid Peak KVARh
14	Electric	E4N2T	KVARH_O-E4N2T	E4N2T Off Peak Ele TOU KVARh		5	0	5	N/A Calculated by MDM based on Off Peak KVARh
15	Electric	E4N2T	KVARH_P-E4N2T	E4N2T On Peak Ele TOU KVARh		5	0	5	N/A Calculated by MDM based on On Peak KVARh
1	Electric	E7	KVARH-E7	E7 Large Comm Elec Ser Kvarh	62	5	62	62	KVARh
2	Electric	E7	KW-E7	E7 Large Comm Elec Ser KW	62	5	62	62	N/A Calculated by MDM based on KWH
3	Electric	E7	KWH-E7	E7 Large Comm Elec Ser Kwh	62	5	62	62	KWH
1	Electric	E7N	KVR-E7N	E7 NEM1 Large Comm Elec Ser Kvarh Received	8	5	8	15	KVARh_RCVD
2	Electric	E7N	KW-E7N	E7 NEM1 Large Comm Elec Ser KW Received	8	5	8	15	N/A Calculated by MDM based on KWH_RCVD
3	Electric	E7N	KWH-E7N	E7 NEM1 Large Comm Elec Ser Kwh Received	8	5	8	15	KWH_RCVD



4	Electric	E7N	KAVRH-E7N	E7 NEM1 Large Comm Elec Ser Kvarh Delivered	8	5	8	15	KVARh
5	Electric	E7N	KW-E7N	E7 NEM1 Large Comm Elec Ser KW Delivered	8	5	8	15	N/A Calculated by MDM based on KWH
6	Electric	E7N	KWH-E7N	E7 NEM1 Large Comm Elec Ser Kwh Delivered	8	5	8	15	KWH
1	Electric	E7N2	KVARH-E7N2	E7 NEM2 Large Comm Elec Ser Kvarh Received		5	0	0	KVARh_RCVD
2	Electric	E7N2	KW-E7N2	E7 NEM2 Large Comm Elec Ser KW Received		5	0	0	N/A Calculated by MDM based on KWH_RCVD
3	Electric	E7N2	KWH-E7N2	E7 NEM2 Large Comm Elec Ser Kwh Received		5	0	0	KWH_RCVD
4	Electric	E7N2	KVARH-E7N2	E7 NEM2 Large Comm Elec Ser Kvarh Delivered		5	0	0	KVARh
5	Electric	E7N2	KW-E7N2	E7 NEM2 Large Comm Elec Ser KW Delivered		5	0	0	N/A Calculated by MDM based on KWH
6	Electric	E7N2	KWH-E7N2	E7 NEM2 Large Comm Elec Ser Kwh Delivered		5	0	0	KWH
		E7T	N/A				2	5	KWH
		E7T	N/A				2	5	KVARh
1	Electric	E7T	KW_M-E7	E7T Mid Peak Ele TOU KW	2	5	2	5	N/A Calculated by MDM: Rolling Demand – Mid Peak
2	Electric	E7T	KW_O-E7	E7T Off Peak Ele TOU KW	2	5	2	5	N/A Calculated by MDM: Rolling Demand – Off Peak
3	Electric	E7T	KW_P-E7	E7T On Peak Ele TOU KW	2	5	2	5	N/A Calculated by MDM: Rolling Demand – On Peak
4	Electric	E7T	KWH_M-E7	E7T Mid Peak Ele TOU Kwh	2	5	2	5	N/A Calculated by MDM based on KWH



5	Electric	E7T	KWH_O-E7	E7T Off Peak Ele TOU Kwh	2	5	2	5	N/A Calculated by MDM based on KWH
6	Electric	E7T	KWH_P-E7	E7T On Peak Ele TOU Kwh	2	5	2	5	N/A Calculated by MDM based on KWH
7	Electric	E7T	KVARh_M- E7T	E7T Mid Peak Ele TOU KVARh	0	5	2	5	N/A Calculated by MDM based on KVARh
8	Electric	E7T	KVARh_O- E7T	E7T Off Peak Ele TOU KVARh	0	5	2	5	N/A Calculated by MDM based on KVARh
9	Electric	E7T	KVARh_P- E7T	E7T On Peak Ele TOU KVARh	0	5	2	5	N/A Calculated by MDM based on KVARh
1	Electric	E7T (PF)	KW_M-E7	E7T Mid Peak Ele TOU KW		5	0	0	CIS calculates the PF based on KWH and KVARH and max KW register reads
2	Electric	E7T (PF)	KW_O-E7	E7T Off Peak Ele TOU KW		5	0	0	CIS calculates the PF based on KWH and KVARH and max KW register reads
3	Electric	E7T (PF)	KW_P-E7	E7T On Peak Ele TOU KW		5	0	0	CIS calculates the PF based on KWH and KVARH and max KW register reads
4	Electric	E7T (PF)	KWH_M- E7	E7T Mid Peak Ele TOU Kwh		5	0	0	CIS calculates the PF based on KWH and KVARH and max KW register reads
5	Electric	E7T (PF)	KWH_O-E7	E7T Off Peak Ele TOU Kwh		5	0	0	CIS calculates the PF based on KWH and KVARH and max KW register reads
6	Electric	E7T (PF)	KWH_P-E7	E7T On Peak Ele TOU Kwh		5	0	0	CIS calculates the PF based on KWH and KVARH and max KW register reads
7	Electric	E7T (PF)	KVARH_M- E7	E7T Mid Peak Ele TOU KVARh		5	0	0	CIS calculates the PF based on KWH and KVARH and max KW register reads



8	Electric	E7T (PF)	KVARH_O-E7	E7T Off Peak Ele TOU KVARh		5	0	0	CIS calculates the PF based on KWH and KVARH and max KW register reads
9	Electric	E7T (PF)	KVARH_P-E7	E7T On Peak Ele TOU KVARh		5	0	0	CIS calculates the PF based on KWH and KVARH and max KW register reads
	Electric	E7N2T	N/A						KWH_RCVD
	Electric	E7N2T	N/A						KWH
	Electric	E7N2T	N/A						KVarh
1	Electric	E7N2T	KW_M-E7N2T	E7N2T Mid Peak Ele TOU KW Received		5	0	0	N/A Calculated by MDM: Rolling Demand – Mid Peak
2	Electric	E7N2T	KW_O-E7N2T	E7N2T Off Peak Ele TOU KW Received		5	0	0	N/A Calculated by MDM: Rolling Demand – Off Peak
3	Electric	E7N2T	KW_P-E7N2T	E7N2T On Peak Ele TOU KW Received		5	0	0	N/A Calculated by MDM: Rolling Demand – On Peak
4	Electric	E7N2T	KWH_M-E7N2T	E7N2T Mid Peak Ele TOU Kwh Received		5	0	0	N/A Calculated by MDM based on KWH_RCVD
5	Electric	E7N2T	KWH_O-E7N2T	E7N2T Off Peak Ele TOU Kwh Received		5	0	0	N/A Calculated by MDM based on KWH_RCVD
6	Electric	E7N2T	KWH_P-E7N2T	E7N2T On Peak Ele TOU Kwh Received		5	0	0	N/A Calculated by MDM based on KWH_RCVD
7	Electric	E7N2T	KW_M-E7N2T	E7N2T Mid Peak Ele TOU KW Delivered		5	0	0	N/A Calculated by MDM: Rolling Demand – Mid Peak
8	Electric	E7N2T	KW_O-E7N2T	E7N2T Off Peak Ele TOU KW Delivered		5	0	0	N/A Calculated by MDM: Rolling Demand – Off Peak
9	Electric	E7N2T	KW_P-E7N2T	E7N2T On Peak Ele TOU KW Delivered		5	0	0	N/A Calculated by MDM: Rolling Demand – On Peak
10	Electric	E7N2T	KWH_M-E7N2T	E7N2T Mid Peak Ele TOU Kwh Delivered		5	0	0	N/A Calculated by MDM based on KWH
11	Electric	E7N2T	KWH_O-E7N2T	E7N2T Off Peak Ele TOU Kwh Delivered		5	0	0	N/A Calculated by MDM based on KWH



12	Electric	E7N2T	KWH_P-E7N2T	E7N2T On Peak Ele TOU Kwh Delivered		5	0	0	N/A Calculated by MDM based on KWH
13	Electric	E7N2T	KVARH_M-E7N2T	E7N2T Mid Peak Ele TOU KVarh Delivered		5	0	0	N/A Calculated by MDM based on KVARh
14	Electric	E7N2T	KVARH_O-E7N2T	E7N2T Off Peak Ele TOU KVarh Delivered		5	0	0	N/A Calculated by MDM based on KVARh
15	Electric	E7N2T	KVARH_P-E7N2T	E7N2T On Peak Ele TOU KVarh Delivered		5	0	0	N/A Calculated by MDM based on KVARh
			N/A	Voltage (not for the purpose of billing)	300				VOL
1	Gas	G1 Residential	THERMS	Therms	21872	60	21872	21872	CCF
1	Gas	G2 Commerical	THERMS	Therms	2286	60	2286	2286	CCF
1	Gas	G3 Industrial	THERMS	Therms	34	60	34	34	CCF
1	Water	W1 Register	CCF	Water Consumption	20356	60	20356	20356	CCF
1	Water	W2 Register	CCF	W2 HI	300	60	300	300	CCF
2	Water	W2 Register	CCF	W2 LO	300	60	300	300	CCF
1	Water	W3 Register	CCF	W3 HI	3	60	3	3	CCF
2	Water	W3 Register	CCF	W3 LO	3	60	3	3	CCF
3	Water	W3 Register	CCF	W3 FIRE	3	60	3	3	CCF



				Total	79,165		83,414	128,044	

Schedule "D"**Support Services****SmartWorks Support Services**

The Schedule D describes the Support Services included in this Subscription Agreement and more specifically, a listing of ticket priorities, an outline of SmartWorks' escalation procedures and related details. For the purposes of this Schedule D, "SmartWorks Services" means the Services and the Software Services.

SmartWorks reserves the right to make modifications to this document as required.

Last Updated: July 21, 2020

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STANDARD SUPPORT AND MAINTENANCE SERVICES – GUIDELINES

The support services listed below (“**Support Services**”) are included in the SmartWorks Services.

- Support for the SmartWorks Services as provided by the SmartWorks professional services group includes:
 - The SmartWorks Services and all default functionality
 - The SmartWorks Services side of the interfaces with other third party systems, as implemented by our professional services consultants
 - Customized rules developed by professional services staff. Rules developed or modified by the Customer are not supported through the standard Support Services.
 - The integrity of the data within the SmartWorks Services, to the extent that the SmartWorks Services has manipulated it. The SmartWorks Services is not responsible for the completeness or accuracy of the data originating in third party systems (e.g. AMI, CIS, etc.)
 - Advice on VEE parameter settings and processes, however the VEE settings themselves are the responsibility of the Customer
- SmartWorks will create and install software updates (release notes will be available upon request and on the Customer Hub) that may include:
 - Defect corrections (as warranted)
 - Planned enhancements
 - State (Provincial) and/or Federal mandated changes (charges may exist depending on scope)
 - From time to time, we will provide software upgrades (note that there may be charges in implementation depending on the scope of services)
- SmartWorks will troubleshoot customer issues and provide recommendations for resolution
- SmartWorks will deploy performance monitoring tools
- SmartWorks will provide remote training on subjects of limited scope. As a rule of thumb, a subject of limited scope can be addressed in about 15 minutes over the phone. If a customer makes numerous training requests in a short period of time, we may deem the training requests to be of a broad nature.
- HealthWatch - Online Diagnostics
 - HealthWatch rules will collect data and alert Support Services when specific thresholds have been met (e.g. disk space limit reached, no interval data for two days, etc.)
 - SmartWorks will proactively monitor your solution to identify small issues before they become big problems using our HealthWatch tool. Depending on the nature of the issue, we may either alert you or attempt to address the issue ourselves.
 - If customer decides to opt-out of HealthWatch, charges may apply.
- Customer Care Program. On a periodic basis, SmartWorks will share useful information regarding the use of your SmartWorks Services modules through one or more of the following methods:
 - Support Bulletins
 - Communication on new products and services
 - On-site visits (as required)
 - Webinars
 - Surveys
 - Knowledge Base
- If requested, provide an Outstanding Tickets Report with conference call
- Ability to attend the annual customer conference (attendance fees apply)
- Opportunity to participate in BETA programs at our discretion

- SmartWorks shall provide an online ticketing system with the following features:
 - Ability to log and close tickets
 - Ability to view and update tickets
 - Ability to update contact information
 - Access to published documentation
 - Access to support knowledge base
 - Ability to report on metrics
- 800 Toll Free Telephone Support

Out-of-Scope Services, as defined and set out in Exhibit I are not included in the Support Services. Additional fees shall apply to Out-of-Scope services.

Customer Responsibilities

In order to effectively provide our support services, the Customer is responsible for the following items:

- Customer shall notify SmartWorks of suspected defects in the Services. Customer shall provide, upon SmartWorks request, additional data deemed necessary or desirable by SmartWorks to reproduce the environment in which such defect occurred.
- Customer shall ensure that its personnel are, at relevant stages of the project, educated and trained in the proper use of Services in accordance with applicable SmartWorks manuals and instructions. If Customer's personnel are not properly trained as mutually determined by SmartWorks and Customer, Customer agrees that such personnel will be trained by SmartWorks or Customer within fifteen (15) days of determination. If Customer desires SmartWorks to perform the required training then SmartWorks shall be compensated in accordance with this Agreement.
- Customer shall establish proper backup procedures necessary to replace critical Customer data in the event of loss or damage to such data from any cause. Customer shall provide SmartWorks with access to qualified functional or technical personnel to aid in diagnosis and to assist in repair of the Software in the event of error, defect or malfunction.
- Customer shall have the sole responsibility for:
 - The performance of any tests it deems necessary prior to the use of the Services.
 - Assuring proper Customer computer system installation, configuration, verification, audit controls and operating methods.
 - Implementing proper procedures to assure security and accuracy of input and output and restart and recovery in the event of malfunction.
 - Timely upgrade and keeping current all third party license releases and/or Third Party Components to meet the requirements of the SmartWorks Services.
- Customer is responsible for the data quality, completeness, and availability from 3rd party applications on which SmartWorks product relies.
- Customer shall be responsible for rules created and/or edited by Customer staff.
- Customer shall be solely responsible for all VEE parameters settings, the regular monitoring of validation failures, and the rectification of any validation failures.

SOLUTION UPDATES

SmartWorks will make software updates relevant to the Services available from time to time. When an update is available, SmartWorks will make an announcement to its customers.

BILLABLE SUPPORT SERVICES

The services listed below are services that are out of scope of your Support Services and are therefore considered billable services.

- Provision of remote or on-site training on subjects of broad scope
- New interfaces or connections to non-SmartWorks (or third party) applications
- Creation of test instances
- Custom modifications (e.g. rules, reports, new data, etc.)
- Data conversions and global modification to setup table data
- Database maintenance, repairs and optimization, refreshes, backups, restores
- Extended Hardware and Operating System support
- Upgrades and support of third party software (e.g. database software, OS, web server, etc.)
- Installations and/or re-installations of software solution
- Support for rules, reports, database procedures, or screens developed by, or modified by, the Customer
- Cleansing or re-processing of data originating from a third party system (e.g. AMI, CIS, etc.)

Note: If customer purchases a billable service with a maintenance fee such as the ones listed above, the Customer is responsible for supporting these items.

Test Databases and Environments

SmartWorks support customers in the maintenance of independent test environments for testing purposes. This allows customers the opportunity to test fixes, modifications, new business processes and/or scenarios without risking any potentially unwanted changes to the live environment. The creation of test databases and Environments is a billable service; quotations and incremental maintenance rates will be provided on request.

OPERATIONS

Hours

Our standard Support Services hours are from 8:00 a.m. EST to 8:00 p.m. EST, Monday to Friday, excluding designated statutory holidays. Weekend assistance is available, but must be scheduled in advance, and in most cases is billable.

Holiday Schedule

Below is a listing of statutory holidays. Please note that Support Services will be closed on designated days as outlined below.

New Year's Eve	Early Closure (noon EST)
New Year's Day	Closed
President's Day (USA) /Family Day (Canada)	Closed
Victoria Day (Canada)	Closed
Labor Day	Closed
Canada Day (Canada)	Closed
Thanksgiving Day (Canada)	Closed
Christmas Eve	Early Closure (noon EST)
Christmas Day	Closed
Boxing Day (Canada)	Closed

Ticket Process

All issues or questions reported to support are tracked via a TeamSupport Customer Hub ticket. SmartWorks Support Services analysts cannot provide assistance unless a support ticket is logged. The use of a TeamSupport ticket allows us to track the resolution of your issues. In addition it allows measurement of activities for proper forecasting of staffing requirements. SmartWorks' current process for logging tickets includes the following: TeamSupport Customer Hub (via website), email, phone and fax.

- Ticket must contain at a minimum: Customer name, contact person, module and/or menu selection, nature of issue, detailed description of question or issue and any other pertinent information.
- SmartWorks' Support Services or Support Services analysts will provide with a ticket id to track issue and Customer ticket will be logged into SmartWorks' support tracking database.
- Ticket will be stored in a queue and the first available support representative will be assigned to deal with Customer's issue.
- As assigned support representative investigates issue, Customer will be notified of status updates, actions and a resolution plan via the support ticketing system. If additional information is required, Customer will be contacted by the assigned support representative to supply the information required.
- All correspondence and actions associated with Customer ticket will be tracked against ticket ID in SmartWorks' support database. At any time, Customer may log onto our website to see status of ticket.

- Once issue has been resolved, the ticket will be set to a “Resolved” status. Customer will then have time to evaluate the resolution and provide feedback. Once Customer is satisfied that the issue has been addressed, Customer will then close the ticket. SmartWorks will endeavour to provide w adequate time to evaluate the resolution. However, SmartWorks will close a ticket if no feedback is received within 24 hours. Customer will always be notified of a pending or actual ticket closure. Customer will have the option of re-opening the ticket if needed.
- Once ticket has been closed, Customer will receive an automated notification by email. This email will contain the entire event history of the ticket from the time it was created and leading up to the resolution of the ticket. Customer has option of viewing both open and closed tickets, via SmartWorks’ website.
- If issue requires escalation to a development resource or programmer for resolution, issue will be forwarded to SmartWorks development team. Ticket will remain open until development team provides a response. If a development item opens, Customer will be provided with a development tracking number upon request. Issues escalated to development will be scheduled for resolution and may not be resolved immediately depending on the nature and complexity of the issue. If an issue is determined to be an enhancement or feature, Support Services personnel will log a ticket in SmartWorks’ product management queue and will notify Customer when a release has been made available.
- Customer may contact the support department for a status update on development issues.

Ticket Priorities

SmartWorks Support Services is based on three ticket priorities: 1(high/critical), 2(medium), and 3(low). The criteria used to establish a ticket priority are as follows:

Priority Level	Description
1	• System Down (Software Application, Hardware, Operating System, Database) • Program errors without workarounds • Incorrect calculation errors impacting one-third of records • Error messages preventing data integration and update • Performance issues of severe nature impacting critical processes • Security Issues <i>Note: in most cases issues affecting a test environment only will not be considered a priority of 1</i>
2	• System errors that have workarounds • Calculation errors impacting less than one-third of records • Reports calculation issues • Performance issues not impacting critical processes • Usability issues • Workstation connectivity issues (Workstation specific)

3

- Training questions, how to, or implementation of new processes
- Aesthetic issues
- Issues where a workaround is available for a large majority of cases
- Recommendations for enhancements on system changes
- Questions on documentation
- Test environment issues or questions

Response Times

Response times will vary and are dependent on the priority of the ticket. SmartWorks will make its best efforts to ensure that incoming tickets are dealt with in the order that they are received, however, tickets will be escalated based on the urgency of the issue reported. If a support ticket is logged during standard operating hours, SmartWorks response times are as follows:

Priority	Initial Response Time *	R&D Response Time from Escalation	Update Frequency
1	Within 4 hours	Same day	Every 2 business days
2	Within 8 hours	Within one week	Every 5 business days
3	Within 24 hours	Within 3 weeks	Every 10 business days

*During Business Hours

Example:

- Priority 1 Support Ticket received Monday January 2 at 10 am >> Support Analyst responds Monday January 2 by noon >> Support Analyst sends update Monday January 2.

- Priority 1 Support Ticket received Monday January 2 at 9 PM >> Support Analyst responds Tuesday January 3 by noon >> Support Analyst sends update Tuesday January 3.

Escalation Process

SmartWorks will endeavour to provide a satisfying and positive Support Services experience. However, if at any time Customer is not completely satisfied with the resolution of an issue, Customer is encouraged to escalate within Support Services, as follows:

Level 1: Customer ticket's assigned Support Services Analyst

Level 2: Team Lead, Support Services

Level 3: Manager, Support Services

Level 4: Executive Vice President, SmartWorks

EXHIBIT I**OUT-OF-SCOPE SUPPORT SERVICES**

“Out-Of-Scope Services” means the following services, which shall be more particularly described in and delivered pursuant to a Change Order:

- Troubleshooting and analysis that ought to have been performed by Customer through reference to documentation (Support Resources).
- Services associated with configuring, testing and deploying an update or upgrade in any of Customer's systems.
- Services related to Third Party IaaS/PaaS integration performed at the Customer's site.
 - Any other excluded Support Services as SmartWorks may determine from time to time.

Schedule "E"**Security**

1. Harris shall store and process Data in accordance with industry standard practices.
2. Response to Legal Orders, Demands or Requests for Data.
 - a. Where permitted by law SmartWorks shall:
 - i. Promptly notify the Customer of any subpoenas, warrants, or other legal orders, demands or requests received by SmartWorks seeking Data;
 - ii. Consult with the Customer regarding its response;
 - iii. Cooperate with the Customer's reasonable requests, at Customer's expense, in connection with efforts by the Customer to intervene and quash or modify the legal order, demand or request; and
 - iv. Upon the Customer's request, provide the Customer with a copy of its response.
 - b. If the Customer receives a subpoena, warrant, or other legal order, demand ("requests") or request seeking Data maintained by SmartWorks, Customer will promptly provide a copy of the request to SmartWorks. SmartWorks will, where permitted by law, promptly supply Customer with copies of records or information required for the Customer to respond, and will cooperate with Customer's reasonable requests, and at Customer's expense, in connection with its response.

Schedule "F"

Third Party Software

(To be completed, if required)

Not Applicable

EXHIBIT “G” INSURANCE REQUIREMENTS

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

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

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

YES	CYBER AND PRIVACY INSURANCE. 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 TRAMSITTED IN ELECTRONIC FORM, SUBJECT TO TERMS, CONDITIONS, LIMITATIONS AND EXCLUSIONS OF POLICY	ALL DAMAGES	\$2,000,000	\$2,000,000
YES	AUTOMOBILE LIABILITY, ALL OWNED	THIRD PARTY LIABILITY-ANY AUTO PERSONAL INJURY PROTECTION AUTO SUBJECT TO NO FAULT AUTO MEDICAL PAYMENTS OWNED PRIVATE PASSENGER AUTOS UNINSURED/UNDERINSURED MOTORIST COVERAGE PHYSICAL DAMAGE COLLISION AND COMPREHENSIVE	\$1,000,000 STATUTORY \$5,000 \$1,000,000 ACTUAL VALUE	\$1,000,000 STATUTORY \$5,000 \$1,000,000 ACTUAL VALUE
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS’ COMPENSATION, EMPLOYER’S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES OR GRANTING ADDITIONAL INSURED STATUS BY POLICY ENDORSEMENT.			

I. INSURANCE COVERAGE MUST INCLUDE:

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

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

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

A. PRIMARY COVERAGE

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

B. CROSS LIABILITY

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

C. NOTICE OF CANCELLATION

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

**VENDORS ARE REQUIRED TO FILE THEIR EVIDENCE OF INSURANCE
AND ANY OTHER RELATED NOTICES WITH THE CITY OF PALO ALTO
AT THE FOLLOWING URL:**

<HTTPS://WWW.PLANETBIDS.COM/PORTAL/PORTAL.CFM?COMPANYID=25569>

OR

HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET_BIDS_HOW_TO.ASP



SCHEDULE H

VENDOR CYBERSECURITY TERMS AND CONDITIONS

(AKA: SAAS SECURITY AND PRIVACY TERMS AND CONDITIONS)

This Exhibit shall be made a part of the City of Palo Alto's Professional Services Agreement or any other contract entered into by and between the City of Palo Alto (the "City") and N. Harris Computer Corporation (DBA SmartWorks) (the "Consultant") for the provision of Software as a Service services to the City (the "Agreement").

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

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

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

Part A. Requirements:

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

- (a) Appoint or designate an employee, preferably an executive officer, as the security liaison to the



City with respect to the Services to be performed under this Agreement.

- (b) Have adopted and implemented information security and privacy policies that are documented, are accessible to the City and comply with industry standards. Third party audit reports based on industry standards (SOC 2 or ISO 27001 or equivalent) will be made available annually, on request.
- (c) Conduct routine data and information security compliance training of its personnel that is appropriate to their role.
- (d) Develop and maintain detailed documentation of the IT infrastructure, including software versions and patch levels.
- (e) Develop an independently verifiable process, consistent with industry standards, for performing professional and criminal background checks of its employees that (1) would permit verification of employees' personal identity and employment status, and (2) would enable the immediate denial of access to the City's confidential data and information by any of its employees who no longer would require access to that information or who are terminated.
- (f) Implement access accountability (identification and authentication) architecture and support role-based access control ("RBAC") and segregation of duties ("SoD") mechanisms, as applicable. "RBAC" refers to a computer systems security approach to restricting access only to authorized users. "SoD" is an approach that would require more than one individual to complete a security task in order to promote the detection and prevention of fraud and errors.
- (g) Assist the City in undertaking annually an assessment to assure that: (1) all elements of the Services' environment design and deployment are known to the City, and (2) it has implemented measures in accordance with industry best practices applicable to secure coding and secure IT architecture.
- (h) Provide and maintain secure intersystem communication paths that would ensure the confidentiality, integrity, and availability of the City's information.
- (i) Deploy and maintain IT system upgrades, patches and configurations conforming to current patch and/or release levels within a reasonable time.
- (j) Provide for the timely detection of, response to, and the reporting of security incidents, including on-going incident monitoring with logging.
- (k) Notify the City as soon as reasonably practicable of detecting a security incident that results in the unauthorized access to or the misuse of the City's confidential data and information.
- (l) Perform security self-audits on a regular basis.
- (m) Cooperate with the City to ensure that to the extent required by applicable laws, rules and regulations, the Confidential Information will be accessible only by the Consultant and any authorized third party service provider's personnel.
- (n) Perform regular, reliable secured backups of all data needed to maximize availability of the Services.
- (o) Maintain the Confidential Information in accordance with applicable federal, state and local data and information privacy laws, rules, and regulations.
- (p) Encrypt the Confidential Information before delivering the same by electronic mail to the City and or any authorized recipient.

Certificate Of Completion

Envelope Id: 767E277F989A4AEC840182DB2A4E2400

Status: Completed

Subject: Please DocuSign: 184319 Harris contract complete.pdf

Source Envelope:

Document Pages: 118

Signatures: 2

Certificate Pages: 2

Initials: 0

AutoNav: Enabled

Envelopeld Stamping: Enabled

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Envelope Originator:

Annmarie Romero

250 Hamilton Ave

Palo Alto , CA 94301

annmarie.romero@cityofpaloalto.org

IP Address: 199.33.32.254

Record Tracking

Status: Original

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Holder: Annmarie Romero

annmarie.romero@cityofpaloalto.org

Location: DocuSign

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: City of Palo Alto

Location: DocuSign

Signer Events

Jeff Bender

JBender@harriscomputer.com

Chief Executive Officer

Security Level: Email, Account Authentication
(None)**Signature**

DocuSigned by:



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Signature Adoption: Pre-selected Style

Using IP Address: 174.116.125.43

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Electronic Record and Signature Disclosure:

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Todd Richardson

trichardson@harriscomputer.com

CFO

Security Level: Email, Account Authentication
(None)

DocuSigned by:



1AE122C2326246F...

Signature Adoption: Pre-selected Style

Using IP Address: 174.114.126.107

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Signed: 2/1/2022 1:30:41 PM

Electronic Record and Signature Disclosure:

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In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

Dave Yuan

Dave.Yuan@CityofPaloAlto.org

Utilities Strategic Business Manager

Dave Yuan

Security Level: Email, Account Authentication
(None)**COPIED**

Sent: 2/1/2022 1:30:50 PM

Viewed: 2/1/2022 3:28:06 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
Tabatha Boatwright Tabatha.Boatwright@CityofPaloAlto.org Utilities Administrative Assistant City of Palo Alto Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 2/1/2022 1:30:51 PM
Curtis Craig CCraig@harriscomputer.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 2/1/2022 1:30:51 PM

Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	1/31/2022 2:32:39 PM
Certified Delivered	Security Checked	2/1/2022 1:29:11 PM
Signing Complete	Security Checked	2/1/2022 1:30:41 PM
Completed	Security Checked	2/1/2022 1:30:51 PM
Payment Events	Status	Timestamps



City of Palo Alto City Council Staff Report

(ID # 14016)

Report Type: Action Items

Meeting Date: 2/14/2022

Summary Title: SECOND READING: Renter Relocation Assistance Ordinance

Title: SECOND READING: Adoption of an Ordinance Amending Palo Alto Municipal Code Section 9.68 (Relocation Assistance for No-Fault Evictions) by Reducing the Threshold for Applicability from 50 Units to 10 Units or a Lower Threshold. Environmental Assessment: Exempt pursuant to CEQA Guidelines Section 15061(b)(3). (FIRST READING: January 31, 2022 PASSED: 5-1-1, Tanaka no, Stone abstain)

From: City Manager

Lead Department: City Clerk

This was heard by the City Council on January 31, 2022 for a first reading and was approved 5-1-1, Council Member Tanaka voting no, and Council Member Stone abstaining. No changes were made to the Ordinance; it is now before you for a second reading.

Attachments:

Attachment7.a: Attachment A: Ordinance Amending Ch 9.68 of PAMC to Extend Relocation Assistance Requirements (PDF)

NOT YET APPROVED

Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Amending Chapter 9.68
(Rental Housing Stabilization) of Title 9 (Public Peace, Morals, and Safety) of
the Palo Alto Municipal Code to Extend Relocation Assistant Requirements

The Council of the City of Palo Alto ORDAINS as follows:

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

- A. Renters occupy 45% of the housing units in Palo Alto and 37% are rent burdened, particularly those households in which the household would be considered low income under Santa Clara County's area median income.
- B. Tenants evicted in Palo Alto are forced to incur substantial costs related to new housing including, but not limited to, move-in costs, moving costs, new utility hook-ups, payments for temporary housing, and lost work time seeking housing.
- C. Move-in costs commonly include first and last month's rent plus a security deposit equal to one month's rent, leading to total relocation expenses in excess of three months' rent.
- D. Tenants who do not have adequate funds to move and who are forced to move pursuant to no-fault eviction notice face displacement and great hardship
- E. The impacts of these no-fault evictions are particularly significant on low-income, elderly, and disabled tenants, and tenants with minor children, justifying an additional payment for households with these tenants.
- F. On November 29, 2021, the City Council held a public meeting to discuss a variety of renter protection measures and directed staff to lower the number of units in the previous tenant relocation assistance ordinance from properties with 50 units or more to properties with ten units or more.
- G. On January 26, 2022, the Planning and Transportation Commission considered the ordinance and recommended adoption to the City Council.

SECTION 2. Section 9.68.035 (Relocation Assistance for No Fault Eviction) of Chapter 9.68 (Rental Housing Stabilization) of Title 9 (Public Peace, Morals and Safety) of the Palo Alto Municipal Code is amended as follows (~~striktethrough~~ text is deleted, underlined text is added):

NOT YET APPROVED

9.68.035 Relocation Assistance for No Fault Eviction.

- a) This section shall be applicable only to structures or lots containing ~~50~~ 10 or more rental units.
- b) For the purposes of this section, a "no-fault eviction" means an action by a landlord to recover possession of a rental unit for any reason other than the following:
1. The tenant has failed to pay rent to which the landlord is legally entitled.
 2. The tenant has violated a lawful obligation or covenant of the tenancy.
 3. The tenant has refused the landlord reasonable access to the unit for the purposes of making repairs or improvements, for any reasonable purpose as permitted by law, or for the purpose of showing the rental unit to any prospective purchaser or tenant.
 4. The tenant is permitting a nuisance to exist in, or is causing damage to, the rental unit.
 5. The tenant is using or permitting a rental unit to be used for any illegal purpose.
 6. The landlord seeks in good faith to recover possession of the rental unit in order to comply with regulations relating to the qualifications of tenancy established by a governmental entity, where the tenant is no longer qualified.
- No fault evictions shall include, without limitation, actions in which the landlord seeks in good faith to recover possession of the rental unit:
7. To demolish or otherwise permanently withdraw the rental unit from offer for rent or lease pursuant to California Government Code sections 7060-7060.7.
 8. To perform work on the building or buildings housing the rental unit that will render the rentable unit uninhabitable;
 9. For use and occupancy by the landlord or the landlord's spouse, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, children, or parents provided the landlord is a natural person.
 10. For no specified cause.
- c) Whenever a landlord seeks a no-fault eviction, as defined in this section, other than temporary displacement of 31 days or fewer, the landlord shall provide a relocation assistance payment as follows:

1. Unit Type Amount

0 bedrooms	\$7,000
1 bedroom	\$9,000
2 bedrooms	\$13,000
3 or more bedrooms	\$17,000

If the rental unit is occupied by two or more tenants, the landlord shall provide each tenant with a proportional share of the required payment. One half of the payment shall be paid at the time that the landlord provides notice of its intent to seek no-fault eviction; the remainder of the payment shall be paid to each tenant when that tenant vacates the unit.

2. Notwithstanding subsection ~~(d-c)~~(1), each rental unit that, at the time the landlord provides notice of its intent to seek no-fault eviction, is occupied by a low-income household as defined in Chapter 16.65, a tenant who is 60 years of age or older, a

NOT YET APPROVED

tenant who is disabled within the meaning of Government Code section 12955.3, or a tenant who is a minor, shall be entitled to a single additional relocation payment of \$3,000. This amount shall be divided equally among the qualifying (i.e. low-income, elderly, disabled, or minor) tenants. In order to receive this additional payment a qualifying tenant must provide written notice to the landlord of his or her eligibility along with supporting evidence within 15 days of receiving the landlord's notice. The entirety of this additional payment shall be paid within 15 days of the tenant's written notice to the landlord.

- d) Prior to or at the same time that the landlord provides notice of its intent to seek no-fault eviction, the landlord shall serve on the tenant a written notice describing the rights described in this section. The failure to provide this notice shall not operate as a substantive defense to an eviction pursuant to California Government Code sections 7060-7060.7.
- e) Commencing July 1, 2019, the relocation payments specified in this section shall increase annually at the rate of increase in the "rent of primary residence" expenditure category of the Consumer Price Index (CPI) for all urban consumers in the San Francisco-Oakland-San Jose Region for the preceding calendar year. Current rates shall be published on the city's website.
- f) A landlord may request a waiver or adjustment of the relocation assistance payment required by this section only upon a showing that strict application of its requirements would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the property. Requests for waiver or adjustment must be submitted in writing to the director of planning and development services together with supporting documentation at least 90 days before the proposed termination of tenancy. Requests shall be acted on by the city council.
- g) The director of planning and development services may issue regulations implementing this section.

SECTION 3. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. The Council finds that this project is exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to Section 15061 of the CEQA Guidelines, because it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 5. This ordinance shall be effective on the thirty-first day following its adoption. It is the intent of the City Council that this ordinance shall apply to any no-fault eviction that is not yet completed on the effective date of the ordinance. In the event this ordinance becomes effective after an initial notice of no-fault eviction is sent, the landlord shall provide a

NOT YET APPROVED

written notice of rights, pursuant to PAMC Section 9.68.035, subdivision (d), as soon as practicable. The notice required from a tenant to the landlord pursuant to PAMC Section 9.68.035, subdivision (c)(2) shall be due no sooner than fifteen days following the landlord's notice of rights.

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



City of Palo Alto City Council Staff Report

(ID # 13842)

Meeting Date: 2/14/2022

Title: Discuss and Provide Direction to Staff on: (1) Continuing the Cubberley Concept Plan; (2) the Temporary Relocation of Palo Verde and Hoover Elementary Schools to Cubberley; and (3) Potential Opportunity to Acquire Additional Land at Cubberley (6:00 - 8:00 PM)

From: City Manager

Lead Department: Community Services

Recommendation

Staff recommends that the Council provide direction to Staff on advancement of the Cubberley Concept Plan and provide feedback on the temporary relocation of Palo Verde and Hoover Elementary Schools to Cubberley and potential opportunity to acquire additional land at Cubberley.

Background

This report provides information on several projects related to the Cubberley Community Center. These projects include: the Cubberley Concept Plan, temporary relocation of Palo Verde and Hoover Elementary Schools to Cubberley, and potential opportunity to acquire additional land at Cubberley.

The City of Palo Alto (City) began leasing the Cubberley site from the Palo Alto Unified School District (PAUSD) on January 1, 1990. The Lease provided City use of the 35-acre former Cubberley High School site, which closed as a school in 1979. The Lease included a covenant that PAUSD would not develop or sell five neighborhood elementary school sites that were closed due to declining enrollment in exchange for annual payments from the City to PAUSD. In the Lease, PAUSD also agreed to lease space at 11 elementary school sites to the City for City-operated extended day care. The original Lease was for 15 years, ending on December 31, 2004. The Lease included a provision that the City could extend the term of the Lease an additional ten years, and two additional five-year extensions could be allowed upon mutual agreement of the City and PAUSD. The City exercised its option to extend the Lease for an additional ten years, which extended the lease through 2014.

There were two amendments during the original Lease term. In 1998, the Lease was amended to remove one school site and add two new school sites to the Covenant Not

to Develop. In 2002, the City and the District entered into a Lease Amendment and Land Exchange Agreement whereby the City conveyed to the District the Terman site and in exchange received 8 acres of the Cubberley site (Cubberley Conveyance Property). As a result, the amount of the Cubberley site leased to the City was reduced to 27 acres. A third amendment to the Lease expired on December 31, 2019. In this amendment, the Covenant Not to Develop was eliminated from the Lease and instead a requirement was added that the City establish a restricted Property Infrastructure Fund for repairing, renovating, or improving the leased portion of Cubberley and the Cubberley Conveyance Property. The Lease requires that the City deposit \$1,864,248 into the fund annually. Also, the third amendment includes a condition that the City and District jointly develop a master plan for the Cubberley site by December 31, 2019, the termination date of the Lease. Due to the negative impacts to the City's budget from the events surrounding COVID-19, a new lease for Cubberley was negotiated to reduce the City's use of the premises and the corresponding cost. The lease was approved by Council on [June 23, 2020](#).

To address the lease requirement that a master plan be developed for the Cubberley site, funding in the amount of \$771,692 for the Cubberley Concept Plan was included in Capital Improvement Project CB-16001 (Cubberley Community Center Master Plan). The City and PAUSD shared the cost for the Cubberley Master Plan and the CEQA consultant. The City managed two Professional Service Agreements with consultants to assist in the effort. A Consultant contract for development of the Concept Plan was approved with a not to exceed amount of \$565,972, and a Consultant contract and amendment for development of the CEQA document was approved with a not to exceed amount of \$170,497. The City's portion for the CEQA consultant exceeded that of PAUSD's portion due to a term in the Cost Share Agreement that the total contract amount not to exceed \$100,000.

The City operated the entire 35-acre site as the Cubberley Community Center until the leased area was reduced in 2020. The City continues to provide below market space to organizations and artists who then offer programs and services to the community in the facilities owned by the City and in the gym, Pavilion, theatre and athletic fields, which are owned by PAUSD. Space is either leased to long term tenants and artists, or rented to other organizations (classrooms, a theatre, gyms and fields) on an hourly basis.

Discussion

Cubberley Concept Plan

Recognizing that the Cubberley buildings are coming to the end of their useful life, the City of Palo Alto and Palo Alto Unified School District (PAUSD) jointly developed a concept plan for future development of the Cubberley Community Center site, with collaborative participation from the community. The community co-design effort began in October 2018 and included four iterative community meetings in which community members worked together to identify needs, propose opportunities, discuss options, and guide the master planning process towards solutions for the Palo Alto community.

At each meeting, participants engaged in interactive activities designed to gather pertinent information and perspectives on key project decisions. All project information and deliverables, including meeting materials and summaries are available on the project website at <https://www.pausd.org/about-us/committees-task-forces/cubberley-master-plan>.

The Cubberley Concept Plan was completed in November 2019 and the final step is to complete the environmental assessment as required by the California Environmental Quality Act (CEQA). [In June 2019](#), Rincon Consultants was hired to complete the CEQA review and documentation. During the review, the law changed with respect to how traffic impacts are to be assessed and in June, 2021 Council approved a [contract amendment](#) with Rincon to re-assess traffic impacts using the new requirement of determining vehicle miles traveled (VMT). The CEQA review is not complete and limited staff resources have resulted in further delays. A decision should be made whether to continue moving forward and completing the CEQA document and ultimately, adopting the Concept Plan considering that much of what was identified during the co-design process is no longer applicable with respect to future activities on PAUSD's portion of Cubberley. PAUSD has shifted its priorities to focus on a future alternative high school and will not be pursuing teacher housing or relocation of PAUSD Administrative Offices. Since many of the spaces planned are identified as "shared use spaces" in the Concept Plan, this would likely impact plans for development of the City's portion of Cubberley. Staff is requesting feedback and direction from Council on whether to continue this effort.

Temporary relocation of Palo Verde and Hoover Elementary Schools

In the next three academic school years (2022-23, 2023-24, and 2024-25) significant school construction projects will occur at two Elementary Schools which will require a relocation of student education from the Palo Verde School in 2022-23 and the Hoover Elementary School in 2023-24 and 2024-25 to Cubberley grounds, specifically the Greendell School campus. The relocation will not impact City-owned or leased sections of Cubberley, but students, staff and their families will utilize common areas of Cubberley as defined in the lease agreement between the City of Palo Alto and PAUSD. The lease agreement defines common areas as including, but not limited to parking, walkways, restrooms, and other portions of the Property which are non-exclusive. No adjustments to the lease will be made in association with the relocation.

Since October 2021, City of Palo Alto staff have been actively engaging with PAUSD staff to address logistical questions in preparation for the relocation. Per the School District, Palo Alto Unified has also engaged in 23 school community, general community, and public Board meetings thus far and continues to meet with different constituent groups. The School District has also met with various Palo Alto staff departments over half a dozen times, and Palo Alto City staff continue to collaborate with the School District.

Beginning at the start of the 2022-23 School Year in August 2022, students from Palo Verde Elementary will occupy the Greendell School located adjacent to the Cubberley Community Center. The existing Greendell structures will house classrooms for students in Grades K-3 and portable structures located in the Greendell parking lot will house classrooms for students in grades 4-5. PAUSD will install technology upgrades in all the temporary classrooms at Greendell this spring including large touch panel displays and voice uplift systems (microphones and speakers) for every classroom. The plans for the temporary upper campus were submitted to the Division of State Architect (DSA) and will be approved soon. The portables will contain six classrooms for 4th and 5th grade students, a bathroom building, and two additional buildings with one for administrative needs and the other for music/ art. PAUSD will also hire a logistics company to manage the teacher/ campus move in summer 2022. Attachment A depicts the locations of existing Greendell structures and portables that will be installed.

The majority of the Greendell temp portables will come from the Hoover site. Teachers were already moved out of those portables over winter break, and the portables will be moved to Greendell during spring break. In addition to the portable placement, adjacent parking lot areas will be reconstructed to provide safe pedestrian parking and access. The school District is also working with the City of Palo Alto Utilities to install a new electrical service at the site to serve the portable village.

The Adult Education program currently located at the Greendell School will re-locate to the Cubberley I building, which is owned by PAUSD. In 2022-23 afterschool programs for Palo Verde students will utilize one or more PAUSD rooms in Cubberley; the exact locations of the afterschool programs are currently being determined in coordination with the Palo Alto Fire Department and the non-profit afterschool providers. PAUSD has met with the Palo Alto Fire Department to discuss potential fire alarm and signage needs for the temporary before and after school care programs.

Traffic circulation patterns and student safety is a paramount concern for the redesign. As such, PAUSD hired Transportation consultant Fehr and Peers. The City has worked with Fehr and Peers on the Waverley bike path and the Cubberley Community Center Concept Plan. PAUSD has met with City Transportation staff multiple times and presented and sought feedback at the October, November, December and January City School Traffic Safety Committee Meetings and with the City's Pedestrian and Bicycle Advisory Committee. Many conceptual iterations centered on exploring feedback concerns and suggestions from previous meetings. PAUSD is continuing to work on refining plans and scenarios for bike/ pedestrian/ car parking and drop off at the site. Potential fire lane and drop off scenarios are being discussed with the Palo Alto Fire Department.

PAUSD is planning a bike audit of the route from Palo Verde to Greendell to explore additional mitigation measures that may be necessary along the city streets so that PAUSD can coordinate and get approval from the Office of Transportation to implement

further improvements. PAUSD is also planning a bike rodeo in the spring to support the 4th grade students that missed the traditional bike safety training last year due to COVID and will hold multiple rolling bike to school trainings in the fall to teach children safety, specifically along the path the Greendell campus.

The City of Palo Alto will continue to collaborate closely with PAUSD on the relocation preparation through regular emails with project updates to all Departments involved in the relocation, as well as project-specific meetings with Transportation, Fire, Police, and Community Services Department.

Land acquisition opportunity

At PAUSD's [October 19, 2021](#) Board of Education meeting, a discussion of Cubberley included a staff recommendation that 20 acres of the 27 acre site owned by PAUSD be preserved for an innovative alternative high school for 1,000 students if enrollment grows at an unknown point in the future (staff presentation and Board discussion can be viewed [here](#)). The recommendation recognized that the City may have an interest in the remaining seven acres by including this statement, "Work with City for ways to increase their ownership of the Cubberley site in a fiscally responsible way." This could potentially be acquired through a land swap of another City-owned property or through a land purchase. While the Board of Education did not take an action on this item, the Board expressed general support for the staff recommendation. Neither a formal proposal nor a timeline have been discussed, but it is anticipated that significant staff resources would be needed to advance this forward. If a land swap were preferred, surplus land would need to be identified. Through initial discussion of a land swap involving the Ventura Community Center property, it is clear that such a transaction would be complex and involve multiple community interests.

Timeline

Cubberley Concept Plan

A draft CEQA document was expected to be completed by the end of the calendar year 2021, however; due to limited staff resources the document is not complete. If Council chooses to finalize the CEQA document, it would likely be completed by Fall 2022.

Temporary relocation of Palo Verde and Hoover Elementary Schools

Palo Verde will move to Cubberley in Summer of 2022 for the 2022-2023 academic year. Hoover Elementary School will occupy the Cubberley grounds during the 2023-24 and 2024-25 academic years. PAUSD plans to move most of the portables to Greendell during PAUSD Spring Break. Two remaining portables will move in June after school finishes because they are coming from another site and are occupied until the school year ends. PAUSD is currently working out the sequence of events for the prep work in the existing Greendell structure and hopes to start that in March. The physical move of teachers will happen over the summer.

Resource Impact

Cubberley Concept Plan

There are adequate funds remaining in the contract budget to complete the CEQA study.

Temporary relocation of Palo Verde and Hoover Elementary Schools

Coordination with PAUSD on the relocation has resulted in a use of City staff resources from multiple departments. Because the relocation will not impact City owned or leased sections of Cubberley, no adjustments to the amount paid by the City to PAUSD as identified in the lease agreement will be made in association with the relocation.

Policy Implications

Cubberley Concept Plan

If Council chooses not to complete the CEQA document, the Concept Plan could not be formally adopted.

Stakeholder Engagement

Cubberley Concept Plan

Significant community engagement was part of the Cubberley Co-design process. A public comment period is part of the CEQA process.

Temporary relocation of Palo Verde and Hoover Elementary Schools

As discussed above, PAUSD continues to engage with City staff on the logistics of the campus moves. Per the School District, they have also engaged the school community, general community, and presented to the Board of Education.

Environmental Review

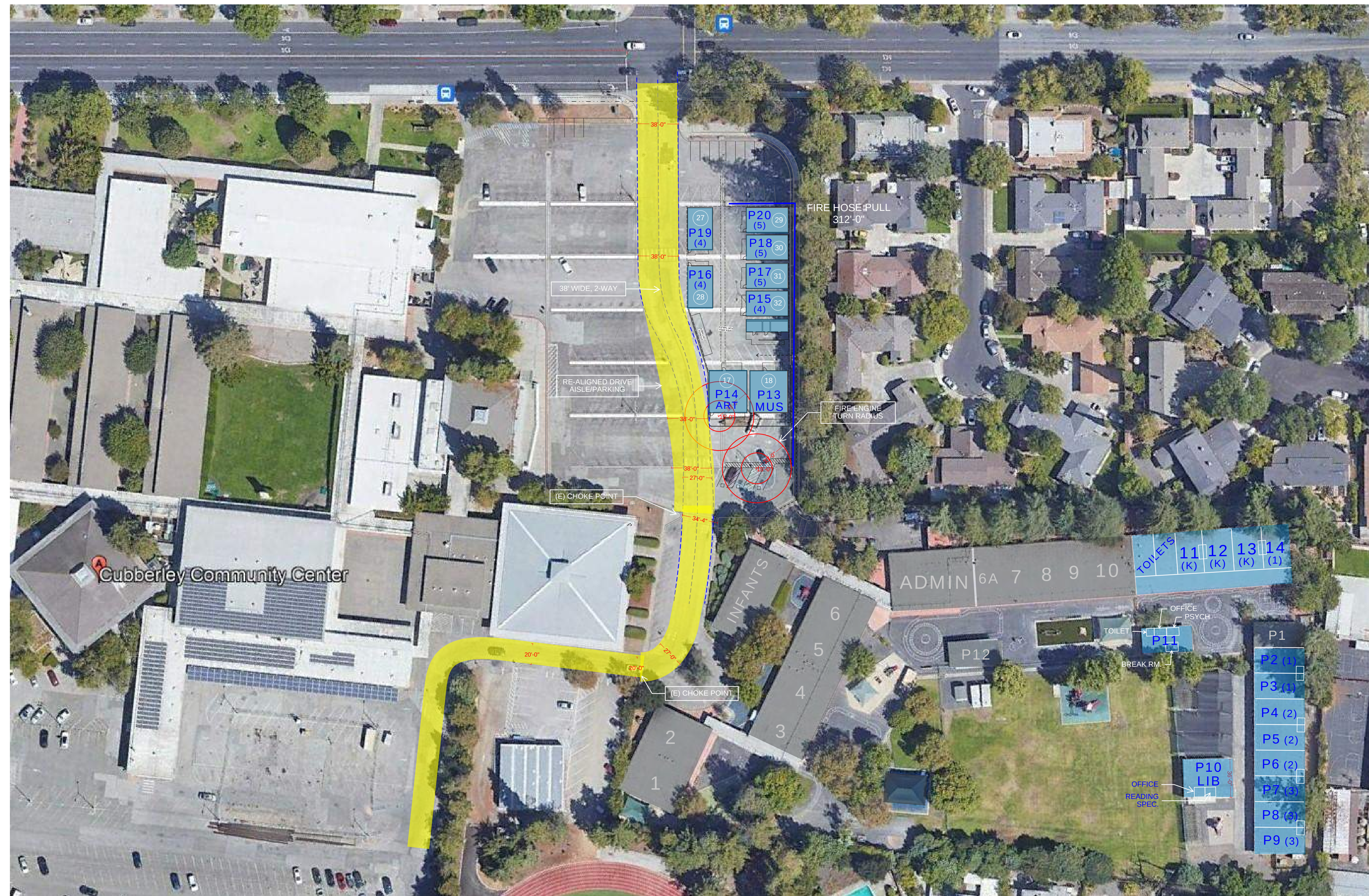
As discussed above, the Cubberley Concept Plan is currently undergoing CEQA review. Should environmental review be required under CEQA for any aspect of the temporary school relocations or land acquisition, staff will return to Council as necessary.

Attachments:

- **Attachment8.a:** Greendell Temp Campus Site map



GREENDELL TEMP CAMPUS



LEGEND

- EXISTING, DEDICATED USE
- (N) TEMPORARY CAMPUS USE
- DRIVE LANE
- 18 HOOVER/PALO VERDE PORTABLE #



City of Palo Alto City Council Staff Report

(ID # 13952)

Meeting Date: 2/14/2022

Title: Provide Direction to Staff on Negotiations with Pets in Need for Operations and Capital Improvements at the City's Animal Shelter (8:00 - 10:00 PM)

From: City Manager

Lead Department: Community Services

Recommendation

Staff recommends that Council discuss and provide feedback to staff on negotiating with Pets in Need for continued operations and potential new capital projects at the Animal Shelter.

Executive Summary

The City of Palo Alto (City) and Pets in Need (PIN) have had a public/private partnership agreement for operation of the Palo Alto Animal Shelter since 2019. PIN provides animal shelter and medical services while the City's Animal Control Division of the Police Department provides animal control services to Palo Alto, Los Altos and Los Altos Hills. A summary of the Agreement terms is provided below. In November 2021 PIN provided the City written notification of early termination of the Agreement with a timeframe of one year. PIN cited construction delays as the reason for the early termination. The Agreement requires the City to complete \$3.4 million in capital projects including a renovated medical suite, a new modular office building, minor renovations to the existing kennels, and a new kennel house consisting of 16 new kennels. The City has completed all projects with the exception of construction of the new kennel building and has spent \$1.8 million to date.

The City and PIN both have an interest in continuing the partnership and negotiating a new or amended Agreement and have been in communications for several weeks on how this might be accomplished. PIN has indicated that construction of a new and re-designed kennel building as well as a renovated cat/small animal area is a top priority to be able to move forward with the Agreement. The City will need assurances that the shelter and medical clinic are open and available to the public during agreed upon times, and that animal care and welfare is of the highest quality. The additional capital projects identified by PIN would increase the capital improvement costs significantly beyond the \$3.4 million included in the Agreement. Staff's very preliminary estimate is

an additional \$3 - \$4 million above what has already been committed. There is no identified funding for these additional costs. Staff is seeking feedback from Council on future operations of the Animal Shelter and negotiations with Pets in Need.

Background

California requires that cities and counties provide animal control and sheltering services for the purpose of ensuring the safety of people and animals, providing for the proper care, and sheltering of abandoned or neglected domestic animals, licensing domestic animals and providing humane disposal of animals when necessary. There are several ways local jurisdictions meet these requirements; some agencies manage their own animal shelters and animal control services, while others partner with other agencies to take advantage of economies of scale and to reduce costs. Historically, Palo Alto has maintained its own shelter and provided animal services to other neighboring cities. Since 2019, Palo Alto has provided animal control and sheltering services for Palo Alto and two partner cities, Los Altos and Los Altos Hills through a public/private partnership with Pets in Need. Animal Control continues to be provided by the Palo Alto Police Department's Animal Control Officers (ACOs).

City Council approved a Professional Services Agreement (Agreement) with the non-profit Pets in Need on November 26, 2018 ([Staff Report ID #9822](#)) to operate the Animal Shelter. The term and compensation of the Agreement (Attachment A) are:

- Five year term commencing January 17, 2019
- Compensation to be paid to PIN for performance of the Scope of Services in a not to exceed amount \$3,440,626.10 over the five-year term
- A Contingency Fund of \$200,000
- A Compensation for Renovation Delays Fund of \$60,000
- Completion by City of capital improvement projects not to exceed \$3.4 million

Key responsibilities of Pets in Need include:

- Animal Shelter Services including sheltering stray, abandoned, and owner surrendered animals
- Medical Services including veterinarian services to shelter animals, vaccination clinics, micro-chipping, and a low cost spay and neuter clinic
- Operating schedules for shelter services, emergency veterinary services, and public hours and access (minimum of 6 days/40 hours per week)
- Impoundment and transfer of wildlife
- Records management and reporting
- Services to Los Altos and Los Altos Hills

Key responsibilities of the City include:

- Provide an adequate and safe facility
- Provide ACOs and their services including processing of citations
- Payment of facility utilities charges
- Provide or pay for animal shelter management software (Chameleon)

- Fund and complete capital improvement projects in an amount not to exceed \$3.4 million

The November 26, 2018 staff report included a cost comparison of operating the Animal Shelter in-house versus contracting with PIN for the first year of the contract (FY2020). For FY2020, the in-house scenario resulted in total costs to the City of \$1.47 million and the PIN contract resulted in total costs to the City of \$1.07 million. These totals do not include Animal Control expenses or costs associated with the capital improvements.

The Agreement between the City and PIN included significant improvements to the shelter facility to be funded and completed by the City. At the time the Agreement was approved, the improvements totaled approximately \$3.4 million and included remodeling and expanding the medical suite, installing a modular office/classroom building, minor improvements to the existing dog kennel building, and installing a new kennel building with approximately 16 new dog kennels. Additional compensation was added to the Agreement in the event that shelter renovation projects were delayed. The compensation amount is up to \$5,000 per month for up to 12 consecutive months.

Status of these capital improvements including updated costs, funds spent to date and schedule for full completion is provided below.

Medical Suite

The Agreement stipulated a completion date for renovations of the medical suite by November 14, 2019. The budgeted amount for this project was \$800,000. The medical suite was completed in September 2020 and actual costs were \$875,000.

Modular Office/Classroom

A modular building for PIN to use as office space and a classroom was to be installed by July 28, 2019. Until its completion, a temporary construction-type trailer was to be installed. The budgeted amount for this project was \$500,000. The modular building was completed in March 2020 and actual costs were \$611,000.

Installation of New Dog Kennels

Construction of a new kennel building with 16 new kennels was to be completed by July 30, 2020 with a budgeted amount of \$2.1 million. In February 2019, City Council approved and authorized the City Manager to execute a contract with Swatt Miers Architects, Inc. (SMA) for design services in an amount not-to-exceed \$397,725 ([Staff Report ID #10057](#)). The contract with SMA provides design services for the new one-level dog kennel building and the upgrades to the existing medical suite at the animal shelter (as described above). The architectural review process and round 1 of the building permit review of the new kennel building design have been completed. However, the most recent cost estimate for construction of the new kennel building resulted in a total estimated project cost of \$2.44 million. Considering the actual costs of the Medical Suite and Modular Office/Classroom building projects, proceeding with

construction of the new dog kennel building would have caused the total capital investment of \$3.4 million described in the agreement to be exceeded by approximately \$650,000.

Due to this funding gap and the timeline for completing construction of the new kennel building, PIN had requested that the City prioritize using available funding to provide upgrades to the existing kennel building that improve the day-to-day conditions for the animals. The upgrades include acoustics, mechanical system, epoxy floor and paint, and replacing the existing kennel caging system. These more extensive improvements were in addition to minor improvements made to the existing kennels in early 2019. Amendment No. 1 to the SMA contract was approved by Council on June 21, 2021 for an additional \$89,000 to include the design costs for the upgrades to the existing kennel building and required code upgrades associated with permitting the new and existing kennel buildings ([Staff Report ID #12164](#)). The design work was completed and staff was prepared to go to Council in November 2021 to recommend an exemption from competitive solicitation for the purchase of new kennels, but the item did not move forward and the project was put on hold following receipt of PIN's notification of termination.

While not required by the agreement between the City and PIN, these more extensive improvements fall within the categories of improvement described in the agreement for the existing dog kennels, and do not require an amendment to the agreement. Approval of this contract amendment did not eliminate the requirement to provide a new kennel building. However, the agreement does not require the City to pay more than \$3.4 million of the Animal Shelter capital projects. City staff and PIN had agreed to begin discussions about how to bridge the funding gap for the new kennel building.

To date, expenditures of approximately \$240,000 have been spent on the new kennel building design and \$89,000 have been spent on design for the renovation of the existing kennels.

Compensation for Renovation Delays

The City has paid Pets in Need the full amount of \$60,000 for renovation delays.

Discussion

On November 15, 2021, Pets in Need (PIN) provided formal notification to the City that it would exercise its right to terminate the Agreement without cause in 12 months time as allowed in Section 19.2 of the Agreement. PIN stated delays in completing the capital improvement projects as the reason for terminating the Agreement. Since that time a new Interim Executive Director, Valerie McCarthy, was named following the resignation of the former Executive Director, Al Mollica. Ms. McCarthy has put significant effort into understanding the operations of the Animal Shelter, familiarizing herself with the facility and getting to know City staff.

City and PIN staff have been in conversations on how best to operate the Animal

Shelter for the remaining term of the Agreement and are exploring how we might continue the partnership beyond the termination date. Both the City and PIN have identified areas of concern that need to be addressed to successfully move forward beyond the 12-month termination period.

- The most significant issues for PIN are expediting the construction of new upgraded dog kennels and expanding other areas of the shelter.
- The City would like a commitment that the public has access to animal shelter services as stated in the current Agreement (6 days/40hours per week minimum), and that a low cost spay and neuter clinic and vaccination clinic be available to the public for a minimum number of days/hours per week.
- Both PIN and City staff recognize that the relationship between the two organizations should be built on collaboration and partnership and have already made significant progress in this area.
- Other topics such as transportation of wildlife, developing a plan for handling feral cats, and exploring alternate animal management software are also being discussed.

The capital improvements now being proposed by PIN are substantially greater in size and scope than previously agreed to in the Agreement or those currently under design by Swatt Miers. As mentioned previously, the current Agreement required capital improvements to include a renovated medical suite, installation of a modular office building, and a new kennel building (16 kennels) with a maximum City contribution of \$3.4 million.

PIN has indicated that a new Agreement would need to include demolition of the existing kennel building and construction of a new kennel building with 24 new kennels, including 4 isolation kennels. A new or renovated cat/small animal area with specific size and amenity requirements including outdoor areas for adoptable and quarantined cats would also be a condition of a new Agreement. The additional costs to design and build these new capital projects would likely be the City's responsibility; however, those negotiations have not yet started. Staff's very preliminary estimate of the costs is \$3-4 million above the \$3.4 million that has already been committed. Since the Animal Shelter is located in a flood zone, staff will need to ensure that any renovations do not cost more than or equal to 50% of the depreciated value of the structure, as this could trigger FEMA requirements to raise the entire facility by approximately three feet. It is staff's understanding that the PIN Board is supportive of rescinding its termination letter if the City commits to these capital improvements; however, there is currently no funding source identified for the additional \$3-4 million costs involved.

Timeline

The current Agreement will expire November 15, 2022, which is 12 months since the City received formal notification of early termination. In parallel with the City Council's discussion of this topic, the PIN Board is expected to discuss the Agreement during the week of February 7. Staff will issue a supplemental report later that week to provide

updated information. Based on feedback received from Council on this item, staff will return with further analysis of the preferred path forward, including additional costs and schedule. With the potential termination of the Agreement in November, staff anticipates needing a decision to proceed with development of alternatives by the end of March.

Resource Impact

There are several ways that the City could operate the animal shelter in the future. The City could: 1) re-negotiate the Agreement with Pets in Need; 2) bring operations back to an in-house model; 3) contract the services to an outside sheltering service such as the Silicon Valley Animal Control Authority (SVACA); or 4) issue a Request for Proposals for a new provider to operate the Palo Alto Animal Shelter. As mentioned previously, the FY2020 costs to operate the Animal Shelter in-house were estimated at \$1.47 million and costs to the City for PIN to operate the Animal Shelter were \$1.07 million (excluding Animal Control and capital improvement costs.)

Significant staff resources will be needed regardless of the path forward. Since there is an existing agreement in place with PIN and initial discussions on new terms have been initiated, one would assume a new Agreement could be finalized prior to the termination date of November 15, 2022. In the current Agreement, the City is committed to \$3.4 million in capital improvements to the Animal Shelter. To date, \$1.8 million has been spent on new kennel design, installation of the modular building, and renovation of the medical suite.

If a new or amended Agreement with PIN were to include terms that require additional capital improvements, additional funds will need to be added to the Animal Shelter Renovation Capital Improvement Project (PE-19002) for FY23. Expanding the scope of the capital improvements at the shelter would likely increase the capital budget by \$3 to \$4 million in design and construction costs. A more detailed cost analysis will be conducted based on the next steps identified by Council.

Policy Implications

Comprehensive Plan Policy C-3.2 - Reinvest in aging facilities to improve their usefulness and appearance. Avoid deferred maintenance of City infrastructure.

Stakeholder Engagement

Staff from the Community Services, Public Works, and Police Departments have been working closely with PIN Interim Executive Director and PIN staff to ensure Animal Shelter operations continue through the remainder of the Agreement term, and to discuss the possibility of negotiating a new Agreement with modified terms acceptable to both parties. If a different path is pursued, Staff would evaluate the level of stakeholder engagement needed to ensure the best option for the City and partner agencies.

Environmental Review

This discussion and direction are not a “project” within the meaning of CEQA. Should any future action involving the Animal Shelter require environmental review or approval by Council, staff will return at the appropriate time.



City of Palo Alto City Council Staff Report

(ID # 13799)

Meeting Date: 2/14/2022

Title: Surplus Property Donated to Nonprofit Organizations

From: City Manager

Lead Department: Administrative Services

Recommendation

This is an informational report and no Council action is required.

Discussion

Section 2.31.010 of the Palo Alto Municipal Code allows for the donation of unusable or obsolete City property and equipment to nonprofit or other organizations and to provide a report on such donations, as follows:

(b) Property with No Commercial Value. The city manager may authorize the abandonment, destruction or donation to public bodies, charitable, civic or nonprofit organizations, of city property which has no commercial value or of which the estimated cost of continued care, handling, maintenance or storage would exceed the estimated proceeds of sale. Such determination shall be made in writing and countersigned by the director of administrative services.

(c) Donations to Nonprofit Support Organizations. Notwithstanding any other provisions of this chapter, the city manager may adopt policies and procedures authorizing the donation of surplus property that is no longer suitable for use by the city to nonprofit organizations that are formed for the purpose of supporting city programs. The city's donation of surplus property shall be contingent on a written agreement that any profits from the sale of such items shall be used for the purchase of equipment, books or capital expenses related to the program supported by the nonprofit organization.

(d) Annual Report to Council. The city manager shall identify all property donated to nonprofit agencies pursuant to subsection (b) or (c) above. In January of each year, the city manager shall provide a report to the city council that includes an inventory of the items donated by the city and all contributions made to the city from nonprofit organizations that have received surplus city property.

<i>Donated Item</i>	<i>Receiving Organization</i>	<i>Municipal Code Reference</i>	<i>Estimated Value</i>
Panelized Animal Enclosures (sides and top)	Literacyworks, Santa Rosa, CA	2.31.010 (b)	No est. resale value
Clean Green Energy Machines (3)	Adventure! Children's Museum Santa Cruz Discovery Children's Museum	2.31.010 (b)	No est. resale value
JMZ Custom Children's interactive exhibits (4)	Adventure! Children's Museum San Francisco Zoological Society Santa Cruz Discovery Children's Museum	2.31.010 (b)	No est. resale value
Total CY 2021			\$0

Resource Impact

The donated items are accomplished with existing staff in city departments. No other resource impacts are identified with this report.

Stakeholder Engagement

The Administrative Services Department collaborated with City departments to prepare the donation information contained in this report.



City of Palo Alto City Council Staff Report

(ID # 14028)

Meeting Date: 2/14/2022

Title: Independent Police Auditor's (IPA) Report of Review of Investigations Completed Between 7/1/20 to 11/1/21 and the Police Department's Use of Force Report for December 2020-December 2021

From: City Manager

Lead Department: Police

Independent Police Auditor's Report on Investigations Completed: 7/1/20 to 11/1/21

Since 2006, Palo Alto has utilized an independent police auditor (IPA) to conduct secondary review of defined investigations of uniformed Police Department personnel and provide related services. Since the inception of the independent police auditing program, the City has contracted with the Office of Independent Review (OIR Group), to provide these services.

Prior to this report, the most recent IPA report was published was on August 30, 2021 as Informational Item AA2 (starts on packet page 145) at the following link:
<https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2021/08-august/20210830/20210830pccsm-amended-for-print-linked.pdf>.

For an overview of the history of the expanded scope of the IPA work, please visit the City's Race and Equity webpage at: www.cityofpaloalto.org/raceandequity.

POLICE DEPARTMENT'S USE OF FORCE REPORT FOR DECEMBER 2020-DECEMBER 2021

The City Council also voted in November 2020 for staff to include use of force information with the IPA report submitted to the City Council. This information is being reported on an annual basis. The current report (**Attachment B**) starts after the November 2020 City Council direction and goes through the end of calendar year 2021. Staff shared similar information during the 2020 Racial Equity ad hoc meetings through Transmittal #3 online at:
<https://www.cityofpaloalto.org/files/assets/public/city-manager/communications-office/race-equity/race-and-equity-data-transmittal-3-august-26-2020.pdf?t=51654.01>.

PROCESS TO FILE A COMPLAINT TO THE IPA

The public can find more information about filing a complaint through the link here:
<https://www.cityofpaloalto.org/Departments/Police/Accountability/Employee-Complaint>

Complaints may also be directed to the Independent Police Auditor as follows:

Contact: Mr. Mike Gennaco Phone: (323) 412-0334 Email: Michael.gennaco@oirgroup.com	Or mail to: OIR Group 1443 E. Washington Blvd., #234 Pasadena, CA 91104

Attachments:

- **Attachment11.a:** Attachment A: Independent Police Auditor Report Jul. 2020-Nov. 2021
- **Attachment11.b:** Attachment B: 2021 Annual Use of Force Report

INDEPENDENT POLICE AUDITORS' REPORT:

Review of Investigations Completed: 7/1/20 to 11/1/21

Presented to the Honorable City Council

City of Palo Alto

February 2022

Prepared by: Michael Gennaco and Stephen Connolly
Independent Police Auditors for
the City of Palo Alto



Introduction

This report is both the latest in a long series and the product of a new paradigm. OIR Group has served as the Independent Police Auditor for the City of Palo Alto since 2007. Public reporting has been a cornerstone of our responsibilities in the City since the beginning of that relationship, and the idea has been a straightforward one: we would utilize our access to confidential investigation files and records to review completed cases across certain key categories, and would share our assessment of the effectiveness of the Palo Alto Police Department (“PAPD”) handling of the underlying issues and allegations in each matter.

The involved categories included complaint investigations, other Internal Affairs reviews, Taser deployments, and other critical incidents.¹ The reports were designed to cover six months’ worth of material at a time and to be released on a twice-yearly basis. And the process was meant not only to provide transparency as to how the system worked (or, at times, fell short of working) but also insight into the types of incidents that led to complaints and investigations in the first place. It was also a forum for us – as longtime practitioners in the field of oversight – to offer recommendations that would ideally strengthen the rigor of the PAPD internal review systems.

That pattern continued without significant disruption for several years. Then, in 2019, we experienced a pause as we worked with the City to sort through an ambiguous issue within our scope of work: namely, whether internal personnel complaints about other PAPD employees which were investigated and resolved by the City’s Human Resources Department were within our intended purview. As that question was being clarified, we developed a backlog of completed cases that we have been working to clear; accordingly, this report covers cases completed by PAPD between July 1, 2020 and November 1, 2021.

More significantly, the City joined jurisdictions across the country in re-evaluating its approach to police accountability in the aftermath of the George Floyd murder and subsequent movement for change. We met with the City Council in September of 2020 to talk about our role in the context of the City’s larger Racial Equity initiatives, and we responded to their questions about possible adjustments to our scope of work.

Our new contract, which was finalized earlier this year, retains the elements of our previous model and includes important additional opportunities to monitor the Department and inform the public. Perhaps most significantly, we have a new window into uses of force and the process by which PAPD investigates and evaluates them for compliance with policy. We have also clarified our

¹ PAPD has had one officer-involved shooting during our tenure as IPA; it occurred on December 25, 2015, and we provided a detailed assessment into the Department’s administrative review into the case.

commitment to engage publicly with the Council on a regular basis, and we have a newly established ability to engage in special audit projects at the Council's request.

The seventeen cases covered in this report fall into several categories. There are two Taser deployments and five other "force reviews" (including two canine bites) that we assess. There are four Internal Affairs cases into allegations of misconduct that were initiated by the Department. Four complaints from the public that are discussed here were handled as "supervisor inquiry investigations" – a review and resolution that are based on initially available evidence that is sufficient to reach the appropriate outcome. Two other public complaints required additional investigation and therefore fall into their own category. Lastly, an encounter that drew some social media attention at the outset of the pandemic was resolved informally; we discuss that case and our reaction to the Department's approach.

As in the past, our overall sense was that the dispositions reached by the Department were reasonable and supported by the evidence. Its investigations are generally robust and undertaken in earnest, and they often benefit from an extensive amount of recorded evidence that captures the conduct at issue. The agency's long-standing adoption of body-worn cameras, in conjunction with its previously established in-car camera video system, has elevated PAPD into the top tier of California agencies in this regard.

It was also consistent with our prior experience to note areas of concern and even disagreement with specific elements of the conduct being scrutinized, or specific aspects of the investigative process and its effectiveness. We discuss these below – and generally accompany such observations with suggestions on how to improve Department operations going forward. While law enforcement transparency and accountability have been prioritized more than ever, we have always thought that our reports are most valuable when they also contribute to constructive change.

Whether that happens or not is very much a function of the Department's receptivity and engagement. Accordingly, we are happy to acknowledge that Department's leadership has been consistent in honoring – or going beyond – its obligations when it comes to interacting with us. They take initiative in outreach, ensure that our access to necessary materials is unfettered, welcome questions and input, share their own views with candor, and remain receptive to criticism and ideas for reform.

At a time when law enforcement nationally has struggled with new expectations and a perceived loss of support, and when the Department has dealt with high profile incidents of its own, PAPD's collaborative relationship to oversight is especially noteworthy. Our hope is that this public report and the discussions it engenders will contribute to an ongoing process of improvement and adaptation.

Misconduct Investigations

Case 1: Allegation of Harassment

Factual Overview

The complainant alleged that an officer's decision to run the license plate of his parked vehicle for possible violations was an improper act of targeting him for being "residentially challenged." The officer at issue was one of four who responded to an unrelated call for service at an address near the street where this individual had his S.U.V. They were assisting with the removal of an unauthorized guest at a residential center. As other officers detained the guest on the sidewalk, the subject of the complaint walked over and got on the radio to run a check of the complainant's license plate number with dispatch.

This agitated the man, who was standing by his vehicle at the time – and who had apparently commented at the cadre of officers as they passed him while escorting their detainee away from the center, attracting their attention. He became angry that his car (among several parked on the block) was being singled out for the officer's scrutiny. He confronted the officer, spoke to him somewhat aggressively on a couple of occasions, and took the officer's business card with the expressed intention of complaining about him.

The vehicle's registration was apparently current, and there were no other issues; accordingly, no enforcement action was taken against the complainant, and the four officers left together soon thereafter.

A supervisor interviewed the man when he came to police headquarters to file his complaint. The supervisor then watched the body-worn camera recording of the incident. The supervisor determined that the officer had acted in a manner consistent with Department policy by initiating his investigation into the license plate status. Officers, of course, have the discretion to conduct such inquiries as part of their authorized, expected patrol functions. Accordingly, the review was closed with a finding of "Exonerated," and the complainant was notified accordingly.

Outcome and Analysis

We found this case disappointing in terms of both the subject officer's actions and the adequacy of the supervisor's review. It was clear from the body-worn camera recording that the complainant's own anger reflected poorly on him. But the relatively restrained nature of the officer's responses was undermined at times by his condescension and dismissive attitude, which at one point further – and unhelpfully – extended the man's last attempt at confrontation. More importantly, the

complainant appeared to have a point – namely, that the officer’s “investigation” did seem to single him out in a questionable fashion.

Perhaps as a reaction to the man’s earlier comments, the subject had said to a partner officer, “I’m going to go run his S.U.V. next, see if I can get false tags or something,” and walked half a block to engage with the man and his vehicle at the outset of the encounter.² Though nothing came of it in terms of citations or other enforcement actions, it nonetheless came across as the sort of officious exercise of authority that contributes to negative stereotypes about the police. Nor did the earlier minutes of body-camera recording (prior to his encounter with the complainant) reflect the highest standards of professionalism, marked as they were by multiple instances of casual profanity (though not directed at members of the public) and sardonic commentary.³

None of this, however, was discernible from the single-page review produced by the initial reviewing supervisor, or the half-page endorsement of it by another supervisor that effectively closed the case. Instead, the supervisor’s memo focused on the complainant’s poor behavior, on the authority that officers have under law and policy, and on the recorded concerns that had been expressed by a bystander as to the bothersome nature of long-term parking activity on the block – including by the complainant. It is telling, though, that the conversation with the bystander happened *after* the fractious encounter with the complainant, even though it is highlighted as a seeming justification for the “investigation” that had already occurred.

This strikes us as a lost opportunity. Statistically, Palo Alto generates very few public complaints. But even if there were more (thereby creating resource challenges and stronger arguments in favor of “bottom line” efficiency), we would still advocate a rigorous approach that treats the complaints not only as a forum for accountability but also as a chance to provide feedback and improve performance. That rigor did not happen here – even though we are hard pressed to believe that this is how PAPD’s leadership wishes its officers to approach their patrol responsibilities.

RECOMMENDATION ONE: PAPD should go beyond a “letter of the law” assessment when evaluating an allegation that an officer used his discretion in a retaliatory or otherwise improper fashion.

We were also provided with the letter that PAPD is required under state law to provide to the complainant advising of the results of the investigation. As with prior letters we have reviewed, this letter consists of four “boilerplate” sentences that does not provide any detail about how or why the Department reached the conclusion it did. As we have said previously, PAPD’s failure to

² “Go do it,” the other officer replied. “He’s fun.”

³ We recognize that officers are entitled to have a personality, and that few of us would welcome outside scrutiny of the informal remarks we make to colleagues in a casual workplace context. However, the officer presumably knew he was recording himself. At the very least, a reminder about the potential discoverability of all such materials seems warranted.

provide additional information about what was done to investigate the complainant's allegations and the reasons for its conclusion is a missed opportunity to "show its work" and demonstrated that the allegations were seriously considered. In fairness, though, we note that the command staff has expressed its acknowledgement of that point and the closing letter in this matter preceded our initial recommendation. More importantly, PAPD has shifted its approach in more recent communications, and provided us with examples of a more effective model. We appreciate that the Department considered and adopted our recommendation and commend PAPD for this increase in transparency.

Case 2: Allegation of Failure to Act

Factual Overview

This case involved a complainant's allegation that a PAPD supervisor had failed to take appropriate action regarding the enforcement of a Criminal Protective Order ("CPO") against his former spouse. The specific issue related to email correspondence that the ex-wife's attorney had sent to the complainant's attorney in the context of their ongoing legal disputes. The email concerned challenges to the legitimacy of medical claims being asserted by the complainant.

The complainant's contention was that this correspondence, which he provided to the PAPD supervisor, amounted to harassment that violated the terms of the CPO. Accordingly, when the supervisor declined to take enforcement action based on his own interpretation of the email in relation to the CPO's terms, the complainant contacted PAPD to register his concerns.

A Department manager completed the review as a "Supervisory Inquiry Investigation," and based his findings and conclusions on a series of documents related to the case.

Outcome and Analysis

The manager handling the "Inquiry Investigation" determined that the supervisor had properly assessed the underlying situation. The correspondence at issue was between attorneys of record in the litigation between the former spouses. The reviewer determined that the content served a legitimate purpose, was from one lawyer to another, and did not otherwise fall within the restrictions of the CPO – a copy of which the manager had obtained and reviewed.

Accordingly, the Department found that the supervisor's original decision had been legitimate and that no misconduct had occurred.

We concur with this assessment. The handling manager performed the review with appropriate due diligence and thoughtfulness, and the accompanying memo is well-written and persuasive.

This case lent itself well to the parameters of the Inquiry Investigation, since the complainant's assertions revolved wholly around documents that were sufficiently available and clear. In short, a full-scale investigation (including interviews) was not needed to conclude that the complaint lacked substantive legitimacy.

Case 3: Allegations of Investigative Misconduct

Factual Overview

This case involved a series of claims that were made by an incarcerated individual who was challenging the legitimacy of his conviction on arson charges. He believed that the handling PAPD detectives who investigated his case and participated in the prosecution against him relied on several willful misrepresentations or other acts of misconduct in order to wrongfully incriminate him. His original complaint letter raised several specific issues and allegations, and offered to provide court records and other documentation in support of his claims.

The complainant originally reached out to our office in the belief that the Independent Police Auditor would facilitate the review of his complaint. We in turn directed his concerns to PAPD for proper handling. There was some initial reticence about delving administratively into issues that were the potential subject of a criminal appeal, but eventually the Department agreed that – apart from the complainant's motivations and whatever other implications might arise from further inquiry – the allegations of misconduct against PAPD personnel merited formal attention. A supervisor took responsibility for conducting an assessment of the claims in relation to the extensive evidence and court history that the case had produced.

The underlying arson fire occurred several years ago, at the home of the complainant's former employer. The complainant had been terminated from his job several weeks before the incident, and there was considerable physical and circumstantial evidence connecting him to the arson crime. He was charged within days of the incident, and convicted in a jury trial that occurred approximately a year and a half later. He was sentenced to several years in prison, and filed an appeal of his conviction on different grounds – some of which overlapped with the misconduct assertions in his complaint to PAPD.⁴

The complainant's letter that ultimately led to the PAPD review consisted of six handwritten pages that detailed several different claims. The allegations vary in length, clarity, and complexity but revolve around assertions that officers acted "unethically and maliciously" in their efforts first to

⁴ The appeal proved to be partially successful in a ruling that was announced in 2020. But the court's basis for remanding the case was *not* related to the allegations of investigative misconduct that drove the complaint.

secure a search warrant and then to present the extensive evidence that was discovered either at the scene or when the search warrant was approved by a magistrate.

Outcome and Analysis

After some initial breakdowns in communication that arose in part from the complainant's separate but overlapping outreach to both PAPD and the Independent Police Auditor, and some initial reluctance to "re-litigate" matters that had presumably been addressed at trial and were the subject of further court proceedings, PAPD agreed to review the complaint and take further action as needed. We supported this decision. While recognizing the unique circumstances from which the complaint emerged, we took the position that the assertions of officer misconduct were worthy of administrative attention apart from any implications in the courts. Accordingly, we appreciated the thoughtful consideration that the complaint was ultimately given.

The PAPD reviewer eventually produced a memorandum that addressed each of the claims in turn – and found no legitimacy to any of them. Some of the allegations were easily refuted. For example, the complainant argued that the affidavit in support of the search warrant had included multiple unjustified assertions about his mental state; however, unlike the complainant's characterization of the relevant language, the detective who wrote the affidavit was not opining himself but instead conveying the third-party observations of others and the deductions drawn from prior police contacts. He also cites discrepancies between language in the affidavit and the signed search warrant – an observation that is accurate but, per the supervisor's review, neither unusual nor substantively significant.

Claims regarding falsification of evidence at the scene of the crime are somewhat more detailed and convoluted, but the supervisor's memo refutes each one convincingly. In short, the memo addresses seven separate allegations of supposed misconduct and explains the misunderstandings, suppositions, or flawed assumptions upon which they rely. The supervisor concluded that none of the claims warranted further investigation, and recommended that the matter be closed as "Unfounded." We were provided with a large amount of the relevant reports and documentation in addition to the memo itself. We concurred with the Department's findings and conclusions.

Unfortunately, the Department took several months to finalize its review after the completion of the initial investigator's work. We received a helpful initial briefing from the reviewing supervisor himself, but did not get a copy of the memo or the supporting documentation until considerably later, with no explanation as to why. Our understanding is that the materials were simply waiting for evaluation and approval at the next rank level, and this simply did not happen in a timely fashion.

This is regrettable in terms of best practices and operational efficiency – to say nothing of the understandable confusion about the delay that was expressed by the complainant in his

correspondence with our Office. The Department has acknowledged that this was far from optimal – while reminding us of a number of other priorities that were taking precedence throughout the agency during the months that the completed investigation sat idle, such as the special challenges of the pandemic⁵, the demands placed on PAPD to engage with the new narrative on public safety following the George Floyd murder, and the strains placed on smaller Departments. With due respect for the competing demands on executive time and attention, we nonetheless urge PAPD to make a commitment to the prompt resolution of all administrative matters – particularly when the investigation itself is complete and awaiting managerial review.

RECOMMENDATION TWO: PAPD should address allegations of officer misconduct in straightforward and timely ways, apart from concerns about parallel proceedings that may involve some of the same concerns.

RECOMMENDATION THREE: PAPD should prioritize the timely resolution of cases, and should hold managers accountable as needed to ensure that this occurs.

Case 4: Allegation of Officer's Failure to Address Concerns of Complainant and Concerns About Subsequent Investigation

Factual Overview

This allegation involved an individual who requested a patrol officer to intercede when he reported a man behaving in a concerning manner. The complaining party said that he had seen a male subject speaking to a female in a manner the complainant felt was inappropriate. As the complainant spoke to the officer, the male appeared. The officer spoke to the male briefly. Because no apparent crime had been committed, the officer did not pursue the matter.

Subsequently, the complainant alleged that the investigator assigned to the complaint did not fully or timely investigate the concerns he had raised.

Outcome and Analysis

IPA's independent review of the body camera footage determined that the officer responded appropriately and there was no legal basis for any further detention of the male. IPA also reviewed the work done by the investigator assigned to the matter and found that his investigation was both timely and thorough.

⁵ With particular regard to the challenges of the pandemic, the Governor granted an extension to law enforcement entities to complete internal investigations beyond the normal one year period.

Case 5: Allegation of Inadequate “Missing Cell Phone” Investigation

Factual Overview

The complainant in this case reported that she had left her cell phone at the library. When she returned the next day, the phone was missing. The complainant reported the matter to library staff, but a search was not able to locate the phone. The complainant reported the missing phone to PAPD, and an officer contacted library supervision, made inquiry about the missing phone, and prepared a police report.

The complainant then lodged a complaint against PAPD alleging that its investigation into the missing phone was inadequate. The complainant believed, for example, that it was incumbent upon PAPD to interview all library employees about the missing phone – a step that had not been taken.

PAPD concluded that the inquiry into this matter met Department and industry standards and that it was not a violation of policy to conduct the missing phone investigation as extensively as requested by the complainant.

Outcome and Analysis

IPA has reviewed the allegation and underlying materials and concurs with PAPD’s determination that there were no violations of policy or performance issues.

Case 6: Allegation of False Arrest, Illegal Search and Racial Profiling

Factual Overview

The complainant alleged that during their investigation of a traffic accident, PAPD officers falsely arrested him, illegally searched him, and subjected him to racial profiling.

The underlying incident was initiated when PAPD responded to a two car non-injury collision. During the subsequent investigation, responding officers suspected that one of the drivers (the eventual complainant) was under the influence of marijuana. Indicia of that suspicion was an unsteady gait, the detected odor of marijuana emanating from the driver’s person, and eventually an admission from the driver that he had smoked marijuana. As a result, the driver was given a

series of field sobriety tests that he was not able to successfully perform, and he was then arrested for driving under the influence of marijuana.

As a result of the detection of marijuana odor from the vehicle, officers conducted a search prior to it being towed away, and did in fact discover marijuana. The driver was transported to jail, but booking was refused by jail authorities as a result of a high blood pressure reading. As a result, PAPD offered to transport the driver to a hospital for medical attention or to cite and release him. Per the driver's request, he was then cited and released.

The District Attorney declined to pursue any charges against the driver, citing the failure of PAPD to obtain a blood draw from the driver.

Outcome and Analysis

PAPD conducted an investigation into the allegations raised by the complainant. Several attempts to reach the complainant for an interview were not successful. Nonetheless, PAPD continued to conduct a thorough investigation, including a review of body-worn camera⁶ and in-car video evidence of the responding officer. The analysis was thorough and concluded that the arresting officer did not violate policy, and that the allegations of false arrest, illegal search, and racial profiling were not substantiated. The investigative report noted that the recorded evidence was consistent with the information in the responding officer's arrest report and that there was sufficient cause to search the vehicle. The investigative report found a lack of evidence that the detention and arrest were racially motivated, noting that officers were "responding" to a traffic collision (as opposed to initiating the stop), and that both drivers were asked if they had been drinking or under the influence of a drug.

PAPD did recommend that both responding officers be verbally counseled on their failure to obtain a blood draw from the driver, which had resulted in the District Attorney's decision not to prosecute.⁷

IPA concurs with PAPD's findings that the allegations were not substantiated by the evidence. It also appreciated PAPD's recommendation that the officers be verbally counseled as a learning

⁶ The report noted that after the arresting officer put on a traffic vest, it blocked any further video recording of the incident, although the audio continued to record.

⁷ The body-worn camera recording depicts a conversation between the newer officer and a more tenured officer, in which the newer officer asked if they should call for a blood technician to respond to the station. The senior officer stated that they would take care of that issue upon arrival at the station; however, there is no indicia that any further arrangements were made to obtain a warrant or arrange for a blood draw. The paperwork supporting the arrest notes that the driver refused a blood draw, with no further information being provided.

opportunity for the future. If the District Attorney is not filing certain kinds of cases without a blood draw, in-service officers should be aware of that practice. To be sure, all PAPD officers would benefit from the apparent need to obtain a blood draw in order to support a viable prosecution. However, there is no evidence in the file to indicate that the verbal counseling occurred.⁸

The fact that the arresting officer's body-worn camera was blocked when he donned the traffic vest was identified during PAPD's investigation, but there was no apparent follow up on this issue. In order to further guide officers on where to place a body-worn camera when donning a traffic vest, the investigation should have determined how the equipment could still fully function while wearing the safety equipment. With that knowledge, PAPD could then have advised the involved officer and the Department of the appropriate "fix" to this important and recurring equipment issue.

RECOMMENDATION FOUR: PAPD should advise its members of the apparent need to obtain a blood draw in order to support a successful prosecution and consider changing policy to require it in cases involving suspected driving while intoxicated (marijuana or other drugs).

RECOMMENDATION FIVE: PAPD should ensure, through documentation, that any recommended verbal counseling does in fact occur.

RECOMMENDATION SIX: PAPD should determine how a body-worn camera should be placed that would still successfully video events when wearing a traffic vest and import that knowledge to the involved officer and the Department as a whole.

Case 7: Investigation into Improper Database Access and Allegations of Off-Duty Misconduct

Factual Overview

This case was generated internally, when a dispatcher became aware that an unauthorized name had been entered into the Department's criminal records database via an in-car computer terminal. At the time, the patrol officer who was assigned to the relevant car was working a normal shift and

⁸ We have been advised that recently PAPD has developed a case disposition form that will document that any time that verbal counseling has occurred.

accompanied by a female ride-along (with whom he also was in a dating relationship⁹) and whose name had been the subject of the possibly inappropriate query.

While conducting an initial investigation in the database entry, a supervisor reviewed recordings made by the officer on his body-worn camera at around the relevant time. In doing so, he overheard a recorded conversation in which the officer apparently alluded to a recent recreational use of illegal drugs. This caused the Department to put the officer on administrative leave during the pendency of a now-expanded misconduct review.

The Department interviewed several people as witnesses, including the dispatcher who identified the issue, the officer's direct supervisors, and a friend of the officer who had attended the gathering where illegal drug use had occurred. The officer himself was also interviewed about the various issues.

Outcome and Analysis

The case presented several issues, including the circumstances under which the woman's name had been entered into the database, whether the officer had properly notified supervisors and maintained appropriate control of the woman's actions in her capacity as a ride-along, whether the officer had knowingly been in a social context where illegal drugs were being used, and – most significantly – whether he himself had used illegal drugs in this and/or other contexts.

As for the drug use in question, the Department (after consultation with both the City Attorney's Office and City Human Resources) decided not to administer a physical test of the officer.¹⁰ This meant that the issue on possible drug use turned on different people's testimony about the event – in addition, of course, to the statements made by the officer on the recording as he chatted with his ride-along about the conversation with another officer in which the drug use had been mentioned.¹¹

Based on the representations of the woman, the other friend, and the officer himself – all of whom acknowledged that drug use had occurred at the party, but who steadfastly denied that he had participated as anything other than an observer, the Department determined that it could not prove

⁹ We recognize that the existence of a personal relationship does not *inherently* make applicable ride-along pairings a bad idea. But we encourage PAPD to consider the issue and reinforce the importance of professionalism in that distinctive context, particularly when a dating relationship is part of the dynamic.

¹⁰ One factor was the reality that even if the alleged use had occurred, enough time had passed that the drug's presence would no longer be detectable.

¹¹ It is unclear as to why the officer would have had his camera activated at that point in the ride along.

that the officer had engaged in illegal drug use.¹² His attendance at that party and tacit endorsement of other people's illegal activities did, however, constitute a separate policy violation that was found to be sustained.

As for the inappropriate entry in the Department computer system, the officer's girlfriend accepted responsibility for being the one to physically make the entry. The officer, for his part, claimed to have no knowledge of how the entry came to be made – though he accepted responsibility for her having done so by apparently failing to provide sufficient monitoring. This too was a violation of policy that contributed to the disciplinary consequence the officer ultimately received.

Having reviewed the investigation, we find the Department's different conclusions to be reasonable. However, and especially given the seriousness of the allegations and the discrepancies in certain of the parties' respective stories, it is unfortunate that the investigation itself was not more rigorous, effective, and convincing.

For example, the investigator's interview of the officer to whom the subject officer had originally made his supposedly "joking" reference to illegal drug use was notably short and unsatisfying. The substantive part of the interview lasted approximately three minutes, with the inquiry largely truncated by the officer's assertion that he did not remember such a conversation (which had occurred, if at all, a month earlier). This is, of course, not the same thing as denying that it ever occurred – a distinction that the interview did not pursue.

More pointedly, we found the subject officer's own testimony to strain credulity in several self-serving ways.¹³ But the supervisor who conducted the investigation seemed to accept these at face value rather than probing for explanations – especially in light of the other evidence that was at least partly conflicting.¹⁴

Part of the issue may have been that most of the key interviews – including the subject interview – were conducted only by the supervisor who handled the case. It is common investigative practice (both in criminal cases and in our experience of internal affairs best practice) to have two people

¹² In his interview, he explained that his conversational claim to the contrary had merely been an effort to impress his girlfriend, and not a reflection of his actual behavior. The recorded exchange is ambiguous enough to lend itself to this interpretation, particularly since it gets cut off by radio traffic and interceding events.

¹³ This included his professing to having no independent recollection of the incriminating conversation with his girlfriend that was recorded on his body camera, and his surmising that he must have been out of the car when the inappropriate entry of his girlfriend's name occurred.

¹⁴ For example, the officer's girlfriend recalled his sitting right next to her when she was using the illegal drugs at the gathering in question, whereas he described himself as moving from room to room and distanced from the activity itself.

assigned as questioners. This is for the simple reason that the presence of a “backup” listener and participant increases the likelihood that all relevant ground will be covered and that appropriate follow-up questions will get asked.

We acknowledge that the evidence for the allegation of drug use was insufficient, and recognize that there was value to the accountability that did emerge from the case and the other sustained policy violations. Nonetheless, in light of the shortcomings we noted above, we encourage the Department to consider standardizing the staffing of administrative interviews with two investigators to help promote appropriately robust reviews.

RECOMMENDATION SEVEN: The Department should assign two investigators to key interviews in its internal affairs cases, and at a minimum should ensure such staffing for the interview of the subject employee.

Case 8: Complaint about Rudeness/Interference with First Amendment Activity

Factual Overview

This case arose in the early weeks of the COVID-19 pandemic. It involved a male subject who approached a PAPD traffic stop on foot and began to record it. The PAPD supervisor who had initiated the stop called for backup out of concern that the individual, who was standing nearby and uncooperative with requests to move, presented a potential officer safety issue. Three additional officers responded and interacted with the man over the course of approximately fifteen minutes. Ultimately, the traffic citation was issued, and everyone left the scene.

The man who was recording on the sidewalk eventually posted a video of his encounter with the officers. It attracted a number of views on social media, and some of the attention in that forum centered on a moment when one of the officers (who was unmasked) coughed while standing near the man. Though the officer did cover his mouth, the action provoked additional tension with the subject and led to the officer making a glib reference to coronavirus that was highlighted on the man’s resulting video version of the exchange.

The other officer took the lead on the last few minutes of monitoring this individual, who remained verbally antagonistic. This second officer used a derogatory profanity to characterize the man toward the end of the encounter. Meanwhile, each of the involved officers was also filming the incident with their respective body-worn cameras. The second officer’s recording depicts the man lowering his own mask and coughing repeatedly in her direction at one point in the incident.

The man's subsequently released video shows most but not all of the various exchanges. The Department became aware of the video via the internet soon after it appeared – approximately three weeks prior to the subject's emailed complaints, which separately named both the coughing officer and the officer who had used profanity. The complaint alleged various elements of misconduct, including interference with the man's First Amendment rights, his potential exposure to COVID-19, and different instances of discourtesy.

Outcome and Analysis

The Chief chose to take action after being notified of the relevant social media posting – and before the man's complaints were received by the Department.¹⁵ The Chief reviewed not only the relevant social media posting, but the body camera recordings of the involved officers, which offered a more complete version of the events. He determined that the officers' actions did not rise to the level of a policy violation that required formal investigation or disciplinary consequences. Instead, he met with each officer and provided verbal counseling as to the conduct at issue and the need to meet the Department's expectations for professionalism.

By the time the complaint was received, then, the matter had been addressed internally to the Chief's satisfaction, and he did not feel the need to revisit it. Accordingly, the complaint was lodged for tracking and retention purposes, and no further action was taken.

We have reviewed the body-worn camera recordings (as well as the video posted by the complainant) and have a clear sense of what occurred. Although we were not privy to the substance of the Chief's relevant interactions with the named officers, we consider the approach that was taken to be a reasonable one.

Much of the conflict revolved around the man's assertions that his right to stand on a "public sidewalk" and make a recording was being improperly impinged upon by the officers' directing him to move back. For their part, the officers were careful to distinguish between the man's right to record (which they repeatedly acknowledged) and authority of the officer who was handling the original traffic stop and was entitled to have the man move a safe distance away so as not to create a distraction that interfered with her investigation. Unfortunately, the explanation was not always as clear as it might have been,¹⁶ and the officers gradually allowed their exasperation with the

¹⁵ Different third parties had also contacted the Independent Police Auditor to inform us of the issue after viewing the video on social media.

¹⁶ It is also difficult to know how much of the man's professed lack of understanding was more tactical in nature, given his apparent animosity and desire to provoke. In fact, the man has produced and posted a number of videos of himself engaging in contentious interactions with law enforcement in several different jurisdictions.

man's recalcitrance and contentious, disrespectful manner to influence aspects of the exchange for the worse.

While the officer's cough was apparently unintentional, his subsequent sarcastic reference to maybe carrying the virus was obviously a poor choice – especially in the highly charged and uncertain atmosphere of the pandemic's earliest weeks. Similarly, the other officer's use of profanity betrayed her (understandable) annoyance in a way that not only fell below Department expectations, but also played into the man's apparent eagerness to antagonize.

None of this is optimal. At the same time, in the overall context of the encounter and in light of the brief, passing nature of the respective lapses, it was reasonable for the Department to address the concerns in a relatively low-level manner. Not every performance issue – even those that are arguably or technically in violation of policy – need result in formal discipline in order for the goals of correction and future improvement to be achieved.

Case 9: Complaint about Ineffective Response to a Medical Emergency and Alleged Disclosure of Confidential Information

Factual Overview

This case involved the response to call for service involving an adult woman who was experiencing a medical emergency outside her home in a residential neighborhood. Encountering a young neighbor in her distressed condition, she was able to walk and speak, but had difficulty completing thoughts and expressing the type of help that she needed. The young man called 911 as well as enlisting the aid of his father.

During the communication with the Palo Alto Public Safety Dispatcher, ambiguity as to the cause and nature of the woman's ailment led to the Dispatcher's decision to notify the Police Department in addition to the Fire Department and Medic units that she initially summoned. This led to a delay of several minutes as the Fire and Medic personnel staged a short distance away and waited for PAPD to arrive and clear the situation as safe. PAPD personnel (an officer and a supervisor) eventually made initial contact, with the goal of determining whether the woman was having a mental health episode and potentially posed a danger to herself or others.

Thirteen minutes after their own arrival on scene (and shortly after the PAPD personnel had done their initial assessment), the medics contacted the woman and began treating her. (She was eventually taken to the hospital and admitted with a serious medical condition.) Meanwhile, the PAPD officer who was handling the call made a search of the woman's home in an effort to locate possible evidence that would account for her incapacity and potentially assist with treatment.

Within a few weeks, the woman and her husband had initiated an inquiry with various city officials as to what had occurred and why.¹⁷ There was a focus on several different issues, including the delay in allowing the on-scene medical professionals to begin their work, and the propriety of the officer's search of the woman's home and belongings. An additional question arose regarding the officer's later sharing of information about the call with her own spouse, who was acquainted with the woman; the allegation was that confidentiality protocols had been breached by whatever disclosures had occurred. Lastly, the absence of a body-worn camera recording from the supervisor was investigated for possible violation of PAPD's activation policies.

Because the incident had involved multiple entities within Palo Alto, the City ultimately decided to hire an independent investigator to assess the possible culpability of implicated personnel. There were three identified subjects: the PAPD officer, the supervisor who had also been at the scene from the outset of the response, and the dispatcher who had handled the original 911 call from the neighbor of the ailing woman.

Outcome and Analysis

Dispatcher

Much of the accountability assessment centered on the thirteen-minute gap between when the Fire Department units first arrived on scene and when they initiated treatment of the woman. It is of course preferable to address a medical emergency sooner rather than later. However, the woman's very serious physical distress was manifesting itself in ambiguous ways. She was conscious but agitated, and had difficulty articulating complete thoughts. The young neighbor bystander who first sought to assist her was unsure of her status, and his answers to the dispatcher who handled his 911 call led the dispatcher to request a police response to ensure that the situation was safe for medical personnel. This decision, in turn, led to much of the ensuing time lag: both officers arrived after the Fire Department units were in place and then took several minutes to question the woman before summoning Fire personnel forward.

For purposes of the investigation, the dispatcher's performance (as captured in a recording that was transcribed) was analyzed by multiple subject-matter experts in relation to both policy and to "Universal Standards" for Emergency Medical Dispatch. The ultimate finding was that the dispatcher had deviated from protocol by asking the caller a "freelance" question about the woman's condition, and then failing to return to the standardized checklist in a way that may have better clarified the situation. At the same time, the choice to involve the police and initially "stage" the Fire Department for safety reasons was found to be reasonable based on the

¹⁷ She also corresponded by email and phone with our Office as she was initially exploring her options and seeking a response to her different concerns. We clarified our role in the process and did not hear from her subsequently.

dispatcher's developing sense of the call – even though the *foundation* for that sense was at least partially flawed.

Officer

As for the PAPD personnel, the investigator determined that neither the officer nor the supervisor had violated policy in their decision-making or actions in responding to the call for service. Overall, these outcomes seemed reasonable from our assessment of the investigation.

The officer's five-minute wait for the supervisor obviously slowed her own response to the scene, but it was in keeping with the supervisor's direction (which was in itself based on standard officer safety protocols of waiting for backup in certain contexts). The officer's interactions with the woman seemed well-intentioned, appropriate to the circumstances, and of limited duration. Similarly, her search of the woman's home (which was recorded in full on the officer's body-worn camera and which was authorized on a phone call with the woman's husband) seems to have been undertaken in a good faith effort to gain insight into the woman's condition.

The issue of a possibly inappropriate disclosure was also explored in the investigation. The officer acknowledged sharing information about the service call – specifically and limited to the identity of the woman and the fact she had been transported to the hospital – with her wife, who was familiar with the woman from different contexts.¹⁸ However, the investigator found that these details were not of a type or nature that PAPD confidentiality restrictions forbid.¹⁹

Though the investigator's analysis makes sense in the context of the case and existing policy, the situation and its aftermath raise the question of whether further consideration (or guidance) regarding disclosure of sensitive information is warranted. While the facts and overlap of relationships here were unusual, it is far from inconceivable that similar paradigms will arise in the future. The difference between “can” and “should” seems to be one worth pursuing by Department management.

Supervisor

The supervisor's actions were also evaluated and found to be reasonable, for many of the same reasons as those of the officer. Her choice to have the other officer wait so that they could communicate at the scene and then respond together was considered appropriate to their (limited knowledge) of the situation. If anything, the supervisor was intent on *not* having the Fire Department cede responsibility for handling a case that was medical in nature, and ultimately

¹⁸ The wife's subsequent communications about the matter with third parties also received public attention in the aftermath of the incident.

¹⁹ Notably, the wife was not interviewed as a witness.

sought to hasten the medics arrival by waving them forward and then getting on the radio when they did not seem to react.

The independent investigator also reviewed the supervisor's lack of a body-camera recording. Apparently, the supervisor had inadvertently left the camera in its charging cradle within the police vehicle upon arrival at the scene. By the time the supervisor realized her error, the thought was that getting to the woman and beginning to engage was a higher priority than returning for the camera. The investigator found "insufficient evidence" of a policy violation under these facts. Because the other PAPD officer was properly equipped and had activated her camera (as the supervisor confirmed), the investigator determined that key events were in fact being recorded and that the supervisor's breaking away from the scene to get her own camera would not have been "reasonable." Thus, per the investigator, she was not in violation of the PAPD policy that requires officers to make all "reasonable" efforts to activate their camera system when responding to calls for service.

This is perhaps the least convincing of the investigator's conclusions. The supervisor's mistake in forgetting the camera initially may well have been an innocent one, and the decision to forego retrieval of it made sense as well. But it was a mistake, and it compromised the totality of the available evidence in a call that became the subject of some controversy. Moreover, her identity as a supervisor raises expectations and makes accountability even more appropriate. In our view, a better approach would have been to acknowledge the lapse as a violation, and consider mitigating factors as needed with regard to any consequence.

Policy Change

Importantly, the incident itself also proved to be an occasion for a thorough revisiting of related policies and practices. This systemic review resulted in concrete operational changes. These included updates that refined expectations for the timelier delivery of medical aid in situations where the police and fire department personnel are both responding. Notable shifts included the direction for the police to employ lights and sirens in speeding their own arrival to such scenes, and more overt references to prioritizing necessary medical care even when the subject is a candidate for a possible mental health commitment.

To us, these steps appear to make practical sense. They also show a commendable ability to glean lessons from experiences in the field, and to make adjustments in an effort to improve future performance.

Taser Deployments

Case 1: Non-contact Deployment during Foot Pursuit

Factual Overview

Officers responded to two calls that emerged in a short span of time and involved similar allegations. Individual female victims described being approached by two subjects while walking in a residential neighborhood. In both instances, the females were pushed and had their cell phones physically wrested from them. This constituted a “strong arm robbery,” an obviously serious offense. Responding officers soon located the subjects, who were both on bicycles, and attempted to detain them. One subject fled on foot and was pursued by an officer who used his Taser in an effort to facilitate the apprehension. The activation failed to connect, and the foot pursuit continued.

Soon thereafter, the subject stopped and was taken into custody without further incident. He was found in possession of the two phones that had been taken from the victims.

Outcome and Analysis

This use of force was reviewed by a supervisor, who interviewed the subject and assessed recordings and reports from the involved officers. The recounting of the Taser deployment was essentially consistent across the different individual versions. The subject acknowledged recognizing that it was a police officer who was ordering him to stop, admitted to running away, and repeatedly confirmed that he had not been struck by the darts or otherwise injured.

That said, a few additional factors needed to be weighed in terms of reaching the supervisor’s ultimate conclusion (which was endorsed up the chain of command): that the use of the Taser had been objectively reasonable and consistent with Department policy. We found the underlying analysis at this initial level of review to be less than robust, as we discuss below.

The first issue was the fact that the subject was running away at the time the officer used the Taser. Per PAPD policy, “Mere flight from a pursuing officer, without other known circumstances or factors, is not good cause for the use of the [device] to apprehend an individual.” The resulting question, then, was whether “other known circumstances or factors” warranted the exception here to the normal limitation.

The officer himself cited various reasons why he believed that such justification occurred. These included the physical nature of the crimes the subject was believed to have recently committed and the fact that he was “grabbing at his pockets” as he ran – thereby raising the possibility of a weapon. The supervisor seemed to accept this representation (and not illegitimately). But his

memo in connection with the case did not even flag the flight issue as one worth citing and explicating.²⁰

The second issue was the lack of a warning. The Department's "Conducted Energy Weapon" policy stipulates that a verbal warning should precede activation of the device unless it "would otherwise endanger the safety of officers or when it is not practicable due to the circumstances."²¹ The officer in this case did not issue a warning, which he attributed in his report to the fact of their running, and that the "incident was evolving."

Again, it was disappointing that the supervisor again did not make an overt, specific analysis of this element as part of his overall assessment of the Taser use. Nor did the subsequent memo produced by a higher ranking officer close this gap.

An issue that the second-level reviewer *did* address (though the original supervisor had not) was the subject's status as a juvenile. The relevant PAPD policy regarding "Targeting Considerations" cautions that "obvious juveniles" are among the groups for whom use of the Taser should "generally be avoided." The supervising reviewer correctly noted that the size and appearance of the subject (6 feet tall, 205 pounds) moved him beyond the realm of an "obvious" juvenile. Nonetheless, the supervisor's memo should have flagged the subject's actual age (16) and considered it as part of the analysis.

The initial reviewer did identify and contend with an additional concern in the case: namely, the fact that the officer wore a jacket over his body camera in a way that obscured the key parts of the encounter (and meant that there was no visual evidence of the actual Taser discharge). This obvious shortcoming seems to have been appropriately addressed in direct communications with the officer, as documented in the memo.²²

Lastly, the memo features an extended discussion of a profanity used by the partner officer in the seconds before the subject surrendered and was handcuffed. Specifically, the approaching officer (after a tiring foot pursuit of some 150 yards) yelled for the subject to "get on the fucking ground." To his credit, the supervisor identifies the issue in his write-up and engages in a thoughtful analysis of it. He ultimately determined that this statement fell within the "deliberate verbal tactic"

²⁰ Interestingly, the manager who reviewed the first supervisor's work and prepared his own memo added a reference to the "densely populated" neighborhood where the pursuit occurred, "where it has been historically difficult to apprehend suspects." This potential rationale would have been more compelling if the officer himself had articulated it. We write elsewhere in this report about the importance of supervisors refraining from adding their own after-the-fact supports for officer actions in the review context.

²¹ Interestingly, the subject made reference to this expectation when he was interviewed by the supervisor about the force deployment; he wondered why no warning had occurred and shared his impression that the officer was "supposed to" issue one.

²² Conversely, another case discussed in this report involved the donning of a safety vest by an officer that prevented a video account of the incident, but there was no such proof of direct intervention. (See Misconduct Case 6, above.)

exception to the usual Department prohibition against profane language. We concur. However, in our own review of that officer's body-worn camera recording, we noted additional instances of subsequent profanity that seemed more gratuitous in nature. More importantly, they were omitted from the supervisor's memo, which went so far as to (incorrectly) say that the "obscene language ceased when the suspect was taken into custody."

We have discussed profanity concerns in multiple prior reports, and need not belabor them here. The supervisor's attention to the topic as part of his review is a form of progress, and we think the framework for analysis is a sensible one. At the same time, effectiveness in the setting and upholding of *any* expectations depends on consistency and rigor, and these latter qualities were missing from that part of the discussion in this case.

Case 2: Arrest of Carjacking Suspect

Factual Overview

A PAPD supervisor responded to a call for service involving a carjacking in progress. When the supervisor arrived, he observed an individual sitting in the driver's seat of a vehicle and was advised by the victim that he was the subject who was attempting to steal her car. The supervisor ordered the subject to get on the ground; instead of complying, the man told the supervisor to "back the fuck up." At that time, according to the supervisor, the subject made an abrupt move in his direction. The supervisor, who had already unholstered his Taser, deployed it and struck the subject, causing him to fall to the ground. The supervisor then took the man into custody.

The subject was transported to a local hospital for treatment, cleared for booking, and booked for carjacking and resisting arrest.

Outcome and Analysis

The supervisor who reviewed the force incident determined that the use of force was within PAPD policy. Below, we discuss our own impressions in two categories: procedural issues in the investigation, and substantive questions about potential inconsistencies in reporting.

1. Procedural Shortcomings

Attempted Interview of Subject

The reviewing supervisor traveled to the jail in an effort to interview the subject. According to the reviewing supervisor's report, the subject was falling in and out of sleep and did not respond to questions asked of him. As a result, the reviewing supervisor ended his efforts to interview the subject.

The reviewing supervisor's report regarding the physical and/or mental state of the subject suggests that his then-condition may have precluded his ability to respond to the questions being posed. In such cases, which presumably arise with some regularity, we recommend that the reviewing supervisor revisit the subject when practicable to again attempt the interview under better conditions.

RECOMMENDATION EIGHT: PAPD should revise its force review protocols to instruct supervisors that when an initial attempt at a subject interview is not productive as a result of an observed physical or mental condition, the reviewer should attempt to re-interview the subject at a later, more favorable time, or document why such an attempt was not made.

Delay in Supervisory Review of Recording

According to the reviewing supervisor's report, fifteen days after the incident he reviewed the footage from the supervisor's body-worn camera. In our view, a lapse of more than two weeks between the date of the incident and a review of body-worn camera evidence is problematic, since it inherently slows the identification of potential issues warranting further exploration. No explanation was documented for the delay; it is important that the reviewer examine any body-worn camera video much closer in time to the incident.²³

RECOMMENDATION NINE: PAPD should develop protocols to ensure that body-worn camera evidence of any reportable force be reviewed by the supervisor assigned the force review close in time to the date of the incident.

2. Substantive Review of Evidence as to Deployment

In our own review of the available evidence here, we found inconsistencies that we believe warranted further attention. Specifically, we found that the video recording did not clearly corroborate some aspects of either the involved supervisor's version or the reviewer's recounting of it. And we noted that the report of the additional officer on scene included an observation worth exploring further.

The reviewing supervisor wrote that he spoke with the supervisor who deployed the Taser. According to that report, the supervisor stated that after he arrived on scene, obtained information from the victim, and observed the subject seated in the vehicle, he called for back up and ordered the subject to get out of the vehicle and on the ground. The subject responded by telling the supervisor "to back the fuck up," at which time the supervisor deployed his Taser and again

²³ We were advised that a supervisor did review the body worn camera footage within 48 hours of the incident, but this was not the supervisor assigned to conduct the force review.

ordered the subject to get out of the vehicle and on the ground. According to the supervisor, the subject exited the vehicle and took an “aggressive stance,” lunging toward the officer with his left shoulder. The supervisor said that he believed the subject was maneuvering to assault him and therefore deployed his Taser.

In a supplemental police report, the supervisor who deployed the Taser wrote that after he arrived on scene, he told the subject to get on the ground. The report indicated that the subject quickly looked at the supervisor while “aggressively and threateningly” pointing his finger at the supervisor and yelling: “back the fuck up”. The supervisor wrote that he then unholstered his Taser, pointed it at the subject and repeatedly told the subject to get on the ground.

The supervisor wrote that the subject then paused a moment before suddenly and quickly stepping fully out of the vehicle and towards the officer in an “aggressive” manner. The supervisor wrote that he believed that the subject was moving to assault the officer. The supervisor wrote that he believed that if he attempted to go hands on, the subject would fight him or resist arrest, which would have likely caused injuries to the officer, the subject, and responding officers. The supervisor wrote that the subject provided no indication or statement that he was going to peacefully comply with his commands.

The supervisor reported that as the subject stepped out of the vehicle and quickly turned his head to his left, the officer immediately activated his Taser, once, striking what appeared to be the subject’s stomach and leg. The supervisor stated that the subject appeared to feel the effect of the Taser application and collapsed to the ground. The supervisor advised that he did not provide a verbal warning of his intended use of the Taser before activation because the subject could clearly see that the officer was pointing the Taser at him and because the situation was unfolding quickly. The supervisor indicated that he could observe the red laser dots on the subject’s body.

In contrast to the rationale offered by the supervisor, a responding PAPD officer who observed the Taser deployment and was tasked with writing the main police report wrote that once the subject exited the vehicle, he made an attempt to flee on foot, but police prevented his escape by using a Taser to incapacitate him.

The force memo prepared by the reviewer also and separately summarizes what occurred and includes the reviewer’s description of the video evidence and what it shows. For instance, the supervisor reported that the footage begins with the involved supervisor arriving on scene and asking “what’s going on,” to which a woman depicted in the video replied: “some guy tried to steal my fucking car.” The supervisor reported that the video shows that the man in the car steps out and remains within the driver’s side door area and appears agitated as he motions about “wildly.”

The reviewing supervisor reports that the footage captures the supervisor asking for emergency backup and telling the subject: “Hey sir, get on the ground”. The supervisor review reports that the

subject looks back to the supervisor, waves his hand at him, and says “back the fuck up.” The supervisor indicates that the subject does not comply with officer commands and still has one leg inside the driver compartment of the vehicle. According to the report, the footage shows the supervisor deploying his Taser and while pointing it at the subject continues to order him to get on the ground. The report states that the footage shows that the subject again responds to the supervisor to “back the fuck up” and then makes a quick turning movement toward the supervisor. The reviewing supervisor describes the footage as showing the subject turning and pulling his leg out while lunging outward from the driver side of the car. Finally, the reviewing supervisor notes that the video shows the supervisor deploying the Taser which causes the subject to immediately fall to the ground.

Based on his assessment of the evidence, the reviewing supervisor determined that the use of the Taser was within policy. He noted the PAPD policy requiring verbal warning of the intended use of the Taser but found that it was a “rapidly evolving event” that required immediate police intervention; additionally, because the involved officer was by himself, there was no need to warn other officers of the Taser activation.

The reviewing supervisor further concluded that since after the subject exited the vehicle and took an “aggressive stance, lunging toward him with his left shoulder,” the supervisor reasonably believed that the subject was maneuvering to assault him, which provided a sufficient threat to justify the deployment of the Taser.

OIR Group Analysis

Current Taser policy requires a verbal warning of its intended use unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The current policy also states that “mere flight from a pursuing officer, without other known circumstances or factors, is not good cause for the use of the [Taser] to apprehend an individual”.²⁴

IPA’s review of the body-worn camera of the supervisor who deployed the Taser depicts the officer arriving on scene, asking “what’s going on”, and being advised by the victim that the subject was trying to steal the victim’s car. The video recording further depicts the supervisor telling the subject to get on the ground and unholstering and pointing his Taser at the subject. The video recording also depicts the subject telling the supervisor to “back the fuck up.”

The video shows the subject gesticulating and pointing but neither the supervisor who used force nor the video shows the subject motioning about “wildly” as written by the reviewing supervisor. There also appears as if there would have been time to issue a verbal warning to the subject before

²⁴ The relevant passage of the current PAPD policy had a “typo” with a critical word missing. The typo has subsequently been corrected.

deployment of the Taser. And significantly, the video shows the subject stepping out of the car and taking a step or two towards the back of the car as if he is moving to flee as opposed to moving aggressively towards the supervisor.

The potential discrepancy between what the video shows and the arguably varying accounts from the involved supervisor and witness officer suggests that this matter should have been elevated to a formal internal affairs investigation. That process provides for formal interviews of witness officers and the involved supervisor who deployed the Taser. A more formal investigation would provide an opportunity to fully flesh out any discrepancies from PAPD personnel and potential variances from what the video appears to portray. In turn, PAPD would have had a more complete basis to determine whether the supervisor violated policy in failing to provide verbal warnings or deploying the Taser on a subject whose actions may not have met the threshold of provocation. While PAPD might have well determined after a formal investigation that the Taser use was consistent with policy and Departmental expectations, this matter would have benefitted from a more formal investigation to flesh out the incident.

RECOMMENDATION TEN: PAPD should ensure that in force cases for which there is a seeming discrepancy in the evidence (as in gaps between officer versions, or between reports and body-worn camera footage), the review is elevated to a formal internal affairs investigation.

Other Force Cases

Case 1: K-9 Deployment in Back Yard

Factual Overview

Police in a neighboring jurisdiction were responding to a kidnapping call with a suspect at large and called PAPD for assistance from the K-9 unit to assist in locating the individual. PAPD deployed a K-9 police officer, who met with the neighboring agency's scene supervisor and then deployed his dog to track in the area where the suspect had last been seen. Prior to this, the K-9 officer made repeated announcements of his intent to deploy the dog.

Eventually, the K-9 officer began to conduct yard to yard searches. The first yard search was of a residence that was under construction and not inhabited. The K-9 and the handler were able to make entry with the dog off leash; once inside the fence the handler made announcements. No one was located in this yard.

The second house was dark and there were no signs of people awake in the house. There was no effort to contact anyone in the house. The K9 officer made entry into the rear yard, again with the

dog off leash, and then made announcements. The yard search was conducted but nothing was found.

Prior to entering the residence in question, the K-9 officer and his cover team (another PAPD officer and a K-9 officer from a neighboring agency) observed people in the front rooms of this residence. The PAPD officer assigned to provide cover to the K-9 officer went to the door and spoke to a resident. The information provided to the K-9 handler by the cover officer prior to his entry into the back yard was that the residents had not heard anything, that nobody was in the backyard, and that the officers could go into the yard and search.

The officer and the K-9 then went into a back yard with the K-9 off leash, at which time the officer observed an individual in a small structure whom he believed was the suspect. The officer wrote in his report that he observed the individual fighting with the dog (kicking him, choking him, and hitting him repeatedly on the face) and then ordered the dog to bite. The individual was bitten on the leg by the K-9. The officer said he kept the dog on the bite until the cover officers could successfully take the individual into custody, a duration he estimated as approximately 40 seconds.

After the individual was handcuffed, officers examined the man's wallet and it was determined that he was not the suspect, but rather a relative of the location's residents. The man was taken out of handcuffs and medical attention was promptly provided to him.

Prior to entering the back yard, the K-9 officer had not provided announcements warning of the deployment of the K-9. The officer explained it was his intent to do so once he had entered the yard, but because the individual ended up being situated so close to the entry area, he was not able to do so.

The K-9 handler spoke with the victim at the scene, while he was in the ambulance and awaiting transport to the hospital. In later reviewing a recording of this interview, the investigator noted that he was able to discern that English did not appear to be the victim's primary language; he also noted that understanding the man's speech was difficult at times.

The K-9 officer asked the victim why he did not come out when he had made the earlier announcements, and the victim replied that he had not heard them because he was sleeping. The K-9 officer asked why he did not show his hands, why he choked the dog, and why he tried to run. The victim responded that he did not know what was happening to him and was trying to get the dog off of him. The victim said he did not try to run. The officer asked why the family did not know he was in the back yard; the victim said he had left to get something to drink and had not told them he was back.

A PAPD supervisor also interviewed the victim in the emergency room of the hospital. The victim said he did not hear the officers make any announcement. He further said that he did not know

what was going on and that he was trying to stop the dog by pushing him away. The victim denied trying to choke the dog.

PAPD Findings:

PAPD conducted an internal investigation and determined that the deployment of the K-9 was consistent with current training and policy. However, to the Department's credit, the review did identify policy issues worthy of potential revision.

First, a PAPD reviewer recommended that policy be revised to clearly state that the deployment of a canine was a use of force, with the potential for serious injury, and is accordingly governed by the Department's overall use of force policy. This recommendation was in fact adopted, and the canine policy was revised.

The reviewer further recommended that the "serious offense" language in current policy that was intended to describe the types of matters for which a K-9 deployment was authorized be replaced by "crime of violence" or "violent felony" in order to provide more clarity on the types of offenses that would warrant the use of a K-9. The reviewer specifically noted that the policy did not define what constituted a "serious offense" whereas "crimes of violence" or "violent felonies" are defined in state law. Again, this recommendation was accepted, and the policy was revised to authorize K-9 deployment for any "violent felony as defined by PC 667.5 or misdemeanor involving the possession or use of a deadly weapon."

The reviewer recommended that additional language should be added to current policy clarifying that the mere presence of a police canine can be an effective tool for facilitating a peaceful surrender and that an announcement should be made prior to entry or deployment to provide a meaningful opportunity for peaceful surrender to occur. Again, this language was adopted and codified into the Department's canine policy.

The reviewer further proposed changing the policy to permit the absence of an announcement only when specific and articulable facts exist to indicate that making the announcement would increase the risk of injury to officers or the public, and eliminating current language which excuses the absence of an announcement when there is an increased risk of escape. This recommendation was accepted and PAPD's canine policy was revised accordingly.

The reviewer noted that the investigation had revealed that the K-9 officer had been trained to make entry to an enclosed yard and reach a position of safety where he could assess the terrain prior to making the announcement. The reviewer recommended reconsideration of the use of this tactic. The reviewer opined that had the handler made an announcement prior to opening the gate (or even after opening the gate but before making entry), it was possible the individual would have made his presence known and avoided the bite.

Analysis

Interviews Not Conducted

In reviewing the investigation, the IPA determined that the victim and an officer witness to the incident were not formally interviewed as part of the internal affairs investigation.

With regard to the victim of the dog bite, the internal investigator reported that he decided not to interview him because he was represented by an attorney and had filed a claim with the City. The fact that an individual has representation does mean that any outreach to him should go through his attorney, and it is possible that cooperation will not be forthcoming. Still, in such situations a police agency should still make all reasonable efforts to obtain an account of the event from the victim of a K-9 deployment. While an attorney may decide that it is in the best interests of his client not to sit for an administrative interview, we also have experience to the contrary. It was disappointing that PAPD used the victim's represented status as a reason to forego any outreach.

RECOMMENDATION ELEVEN: PAPD should revise its protocols to ensure that PAPD personnel assigned to administrative investigations attempt to interview all civilian victims and witnesses, even when they are represented by counsel.

Additionally, the investigative report indicated that another agency's K9 handler was present during the deployment of PAPD's K9 but was not interviewed. While there is body-worn camera footage of the deployment, the video does not capture events preceding the incident, and the night-time and confined conditions of the deployment provided a less than optimal video/audio account. The K9 handler wrote a report that was obtained by PAPD, but a written report is a poor substitute for a thorough interview.

RECOMMENDATION TWELVE: PAPD should advise those assigned to conduct internal investigations that witness officers to any force incident should be interviewed if possible, even if they are employed by another police agency.

Body-Worn Camera Evidence

The other agency officer wrote in his report that he had activated his body-worn camera prior to the incident. However, there is no evidence that PAPD attempted to retrieve the body-worn recording of that event from the other agency. Obtaining that recording would have provided an additional vantage point from which to evaluate the incident.

RECOMMENDATION THIRTEEN: During internal investigations into uses of force, PAPD should retrieve and review any body-worn cameras of other agency witness officers.

Additional Issues Identified by PAPD during the Review Process

1. Failure to Attempt to Contact Residents Before Conducting Yard Search

As detailed above, the investigation revealed that prior to the entry in question, the K-9 officer had made at least one other backyard entry with the police dog off leash and without contacting the residents. Current PAPD policy has no requirement that residents be contacted prior to entering into a yard and deploying a K-9.

A failure to even attempt to contact residents prior to deploying a K-9 in their back yard could easily lead to the sort of harmful outcome that occurred later in this incident. While the report was that the relevant residence was dark, a knock on the door and advisements should nonetheless have been undertaken prior to entering the back yard of a residence with a K-9 off leash.

2. Conversation Between Resident and PAPD Cover Officer

The internal investigator reviewed the recorded conversation between the PAPD cover officer and the resident who answered the front door. According to the investigative report, while the officer inquired about possible pets or pools in the back yard, he did not ask if there were any people there. Nor did the cover officer indicate to the resident that the officers intended to search the back yard with a police dog.

While the failure of the PAPD cover officer to specifically ask whether there were any people in the yard to be searched and to expressly advise of the Department's intent to deploy a K-9 was identified during the Department's investigation, there was no recommendation in the review documents on how to ensure that future deployments avoid similar pitfalls. We were advised, however, that a training memorandum was issued subsequent to this incident and were provided a copy of that memo. The

memorandum indicates that a policy modification will be made consistent with the instruction in the training memorandum and urge PAPD to revise its policy accordingly²⁵

RECOMMENDATION FOURTEEN: Per its stated intent, PAPD should modify its policy requiring officers to contact residents of yards prior to searching, ensuring that specific questions are asked about potential individuals in the back yard, the Department's intent to deploy a K-9, an advisement to residents to stay inside during the search, and a follow up contact when the search has been completed.

3. Failure to Provide Warnings Before Entry into the Back Yard

PAPD's then-policy regarding warnings read in pertinent part:

318.5.2 WARNINGS AND ANNOUNCEMENTS

Unless it would increase the risk of injury or escape, a clearly audible warning announcing that a canine will be used if the suspect does not surrender should be made prior to releasing a canine.

In this case, the handler asserted that by waiting to make announcements until they breached the yard, it avoided officers getting "ambushed" or the suspect escaping, and that they were better positioned inside the yard to ascertain the intent of the suspect. The investigation also corroborated the K-9 handler's statement that this approach had been regularly approved and trained as a technique by PAPD's K-9 program.

The internal investigator recognized that this tactic is problematic if the person sought is within a few feet of the entry point, as in this case, and could lend itself to the unfortunate result that occurred here. However, based on the plain language of the policy and the training provided at the time of the incident, he found that the handler's actions were consistent with policy.

As noted above, the reviewer of this investigation recommended that the tactic of having an off-leash K-9 enter the back yard prior to warnings should be reconsidered. And the canine policy was revised consistent with the recommendation:

A clearly audible warning to announce that a canine will be released if the person does not surrender shall be made prior to each entry, deployment, or

²⁵ The Department should also consider in the policy modification an instruction to residents to stay inside during the pendency of the dog search, and a provision for subsequent contact to advise of when the search has been completed.

release of the canine. When a search involves entering multiple distinct properties, a warning should precede each such entry.

4. Deployment of K-9

PAPD determined that because the handler believed that the individual in the back yard was a person wanted for kidnaping, the situation met the criteria for deployment. PAPD concluded that the handler perceived that the man's attempts to fend off the dog was violent resistance and the command given to the K-9 was appropriate under the circumstances believed by the officer.

The investigator noted that the officer gave repeated bite commands, somewhere in excess of 35 times. However, the investigator noted that the repeated commands were an instruction to hold the bite, not to release the bite and continue to bite repeatedly. PAPD found that after the cover officers had control of the man's hands, the K-9 officer called the dog off the bite.

5. Failure to Identify Oneself During Arrest

A review of the body-worn camera of the dog deployment showed that none of the three responding officers identified themselves as police to the man. As noted above, the victim said that he was shocked and had no idea what was going on. However, the investigator concluded that because the officers believed they were arresting an individual who should have known that he was the subject of a police response, they would not have had the mindset to advise him that they were police.

In this case, while it may have not been *necessary* under policy and law to identify themselves as police officers, law enforcement is universally trained on the advantage of doing so to eliminate any potential confusion as to their status. This provided a learning opportunity to the responding officers that was not apparently pursued.

RECOMMENDATION FIFTEEN: The K-9 handler and PAPD cover officer should be counseled on the importance of identifying themselves as police officers during any attempts at apprehension.

6. On-Scene Interview of Victim by K-9 Handler

As detailed above, the K-9 handler interviewed the victim in the back of the medic van. The internal investigator expressed concern with this conversation due to the stance that the officer took, asking questions that were leading and accusatory. The investigator noted that by this point, it was clear to the handler that the man was not

the suspect, but that it was evident from the officer's line of questioning that he was nonetheless trying to shift blame to the victim for fighting with the police K-9.

The investigator concluded that the victim had no intention of harming the dog but was merely defending himself from an unprovoked attack. The investigator concluded that the K-9 handler's attempt to shift blame to the victim was not appropriate. Instead, the investigator opined that the officers should have acknowledged that an error was made and that the wrong person was bit. As the investigator aptly summed up: "We should not try to blame the innocent person, or their response, because of very unfortunate circumstances that fell upon them."

While the investigator should be credited with identifying this issue, the Department did not appear to consider any remedial action designed to address the situation. One reform worth considering is systemic: in order to create more neutrality to any post-incident interview, it would be more appropriate in the future to have a supervisor exclusively handle that task.²⁶

Moreover, as for this specific case, the handler should be counseled on the inappropriateness of his conversation with the victim who had been wrongly bit by his police dog. While there is no documentation indicating that such counseling did occur, we have been advised that the dog handler was so advised.

RECOMMENDATION SIXTEEN: PAPD should revise policy to ensure that any post-incident interview of a person subjected to a K-9 deployment be handled by a supervisor.

Case 2: K-9 Deployment on Fleeing Suspected Felon

PAPD received a report of a carjacking occurring in a neighboring jurisdiction. One of the subjects was reportedly armed with a long gun. A PAPD K-9 officer was on patrol when he observed a car traveling at a high rate of speed. The license number matched the stolen car. The officer went in pursuit of the vehicle.

Eventually the vehicle came to a stop and five occupants ran from the car. The officer, his K-9, and two backup PAPD officers all chased after the driver of the car. The police K-9 bit the driver who had fled from the scene, and he was arrested. It was learned subsequently that the driver was a minor. He was transported to a hospital for medical attention after sustaining puncture wounds and bite marks to his left shoulder, left elbow, and left thigh. He was then booked into Juvenile Hall.

²⁶ And as detailed above, a supervisor did interview the victim at the hospital.

The PAPD reviewer determined that the decision to pursue the car was within Department policy and expectations. He also found that once the vehicle pursuit came to an end and the driver fled, the decision to deploy the K-9 to effectuate the apprehension was also consistent with PAPD policy.

Additionally, the reviewer considered the expectations of policy that warnings be given and concluded that under the circumstances, the formal warnings normally provided would have been ineffectual. However, the reviewer did recommend that K-9 handlers be advised that using a shorter improvised verbal warning such as “Police Dog” should be considered. OIR Group agrees with this recommendation. Such a warning would not slow down the deployment of the dog, might cause the desired goal of self-surrender, and would provide potential warnings to uninvolved individuals that an unleashed police dog was about to be deployed.

The reviewer also considered current policy’s restrictions regarding deployment of K-9 on juveniles. He determined that based on the physical features of the driver, it would not have been possible for the dog handler to know that he was a juvenile.

Finally, the reviewer noted that one of the backup officers was not wearing his body camera at the time of the foot pursuit. The officer reported that his camera was being charged and under the exigency of the situation, he had not remembered to retrieve it prior to going into foot pursuit. The reviewer indicated that the officer’s oversight would be verbally addressed with him.

The review of this matter by PAPD was thorough and addressed both central and collateral issues regarding the officer’s performance. One important internal recommendation was made to ensure that some type of modified warning be provided when a dog is about to be released under exigent circumstances would be helpful. There is no indication that this recommendation was implemented. It should be.

RECOMMENDATION SEVENTEEN: PAPD should advise all members of the K-9 program (including the involved officer in this incident) that even when formal announcements are not practicable, officers should provide a modified warning so that the subject and other potential uninvolved individuals are advised of the impending intent to deploy the police dog.

UOF Case 1: Knee Injury After Foot Pursuit, Takedown

Factual Overview

The subject in this incident injured her knee at some point in an encounter with a PAPD officer. She was a shoplifting suspect who attempted to run away from the scene, ignoring the officer's commands to stop. He ran after her, caught her, and took her to the ground from behind after grabbing her sweater and hair and pulling her down. She was then taken into custody without further incident.

Two different supervisors came to the scene and were notably responsive to the issue of potential knee pain. The subject herself did not seem to initially emphasize the issue, focused as she was on whether she should have been arrested in the first place.²⁷ Indeed, she did not mention it at all for several minutes, and walked a considerable distance with no issues after her initial apprehension. However, as time passed and it became clear that she was going to be faced with multiple charges, she began to accentuate the knee problem as if in a reactive way.

In spite of some skepticism as the severity of the injury and the sincerity of the subject's assertions, the Department and facilitated her transport by medics to the emergency room for treatment.²⁸

A different officer responded to the hospital to conduct further investigation. That officer eventually cited and released her at the hospital for the crimes of petty theft and resisting arrest.

Force Review

The force review was conducted by one of the responding supervisors, who ended up having the majority of the interactions with the subject. She was able to make her assessment about the force based on several factors, including a statement from the subject, the involved officer's written report and body-worn camera recording, and witness testimony and other evidence as to the underlying crime. This was a comprehensive basis for evaluation – with one minor exception.

This involved documentation of the woman's injuries. The supervisor made the decision on scene not to attempt photographs in light of the obstacle presented by the tights the subject was wearing.

²⁷ She repeatedly asserted that the store Loss Prevention personnel had told her she could leave after she returned several items she was apparently intending to steal.

²⁸ This was the criterion that brought the case within our notification protocol with the Department.

This seemed reasonable, but, as the force memo later explained, “volume and staffing needs” also prevented any follow-up at the hospital as to photos or other information about her condition.²⁹

The force itself was limited in its application: the officer’s grabbing and “takedown” of the woman from behind lasted only a couple of seconds, and she did not offer any resistance after going to the ground. The woman herself seemed unsure what had happened, and thought that she had tripped either right before or right after coming into contact with the officer. Nor did she seemingly take exception to his pulling on her long hair as part of his seizure of her – in fact, she did not allude to that detail in her descriptions of what occurred. Again, the fact that he had taken her into custody at all seemed much more of a preoccupation than the manner in which it happened, or the legitimacy of the force that was used.

The supervisor determined that the use of force was justified and consistent with policy, and that no further action was required. This analysis was endorsed by three other reviewers of higher rank.

We concur with the conclusion that this minor force event authorized to apprehend the subject and consistent with Department policy. Although the officer neglected to identify himself as law enforcement as he gave commands to the woman from behind (thus providing a window for her to claim uncertainty about what was happening), he believed she had looked right at him as she initially ran by and was undoubtedly aware of his status. He also seems to have been physically controlled, and was quick to de-escalate when it became clear that no further force was necessary.

Apart from the claim of injury and the loose ends regarding any medical outcomes, the most noteworthy aspect of the force deployment was the technique of grabbing the woman’s hair. This was unorthodox – if effective – and it was interesting that the officer omitted this detail when writing his supplemental report about the incident.³⁰

While the reviewer’s analysis seemed reasonable on the whole, it also took pains to justify the force through rationales that seemed unduly elaborate. This included reference not only to potential traffic hazards and collisions had the foot pursuit continued, but also to the possibility of the suspect retrieving a weapon from a parked vehicle, or an “ambush scenario” if accomplices were nearby.

We question the value of – and need for – this emphasis on speculative dangers. Importantly, the officer himself did not mention any of these factors in his own report; the use of force happened

²⁹ The records in the case file also include a partially completed authorization for disclosure of medical information. But it is not signed, and apparently was not pursued.

³⁰ Notably, and to his credit, he did verbally relay it to responding supervisors, and explained it to the handling medics so as to ensure that they would have an accurate sense of possible issues.

quite quickly and as a reaction to the subject's sudden appearance, and it seems unlikely that this detailed calculus of potential threats occurred to him in the moment.

Here, the officer had every right to apprehend her, and did so in a way that involved proportional force. Law enforcement's credibility with the public depends in part on taking ownership of the choices it makes, and that credibility is strained when the potential for harm is exaggerated in this fashion.

RECOMMENDATION EIGHTEEN: PAPD should follow through where possible on obtaining relevant photographs of injuries and medical records in force cases resulting in hospital visits.

RECOMMENDATION NINETEEN: PAPD supervisors should refrain from going beyond the involved officer's own claims in justifying force through the listing of possible threat-based rationales.

UOF Case 2: Leg Sweep and Take Down to Effect Arrest

Factual Overview:

Officers responded to the scene after getting a report of a transient individual pushing newspaper racks in the middle of the street. The first officer to arrive found the male subject to be immediately confrontational – including spitting at the officer as he sat in his patrol car. The officer eventually got out of his car and tried to verbally engage with the man (who was in his sixties and very slender) from a safe distance, but he remained agitated and antagonistic.

As the standoff continued, a second officer arrived in response to his colleague's radio request for emergency backup. He approached by car from behind the subject, took a moment to observe the situation (including the subject's aggressive stance), and decided that his best option was to decisively move to grab the subject and take him to the ground with a leg sweep. He was able to effectuate this tactic, and the first officer placed the subject into handcuffs.

Seeing a small amount of blood on the man's head from where he may have impacted the ground (as well as scrapes on his bare feet), the officers summoned medical aid to the scene. The man was eventually transported to the hospital for treatment and placed on a psychiatric hold in light of his aggressive behavior and his repeated outbursts.³¹

³¹ This was the criterion which brought the case within our notification protocol with the Department.

Force Review

The primary memorandum regarding the use of force was prepared by a supervisor who had responded to the scene. He followed the format/template established by the Department, which we find to be thorough and very useful in the topics that it requires supervisors to address. One of these, for example, relates to “De-Escalation” and requires a summary of the efforts that were made (or an explanation as to why such attempts were not feasible).³²

The supervisor showed patience and diligence in conducting an interview with the subject. He also took photos, evaluated recorded evidence (including looking for possible surveillance cameras from the nearby business), and did a methodical analysis of the relevant factors in reaching his conclusion: namely, that the force was reasonable and justified.

Unfortunately, the overall body of evidence was lessened by the first officer’s initial failure to activate his body-worn and in-car camera and audio systems. The supervisor (and the higher-ranking manager who later reviewed the case) properly flagged this as a concern and designed an intervention to remediate the issue.

We concur with the finding that the force was in policy.

UOF Case 3: Controlling Force and Use of Restraint System Leading to Minor Injury

Factual Overview

Officers responded to a call for service arising from a confrontation in the street and the alleged robbery by force of the victim’s personal property. Officers were able to locate, detain and handcuff the alleged perpetrator, a male in his fifties. Because the victim was disabled and in a wheelchair, officers decided to drive the subject the short distance necessary so that the victim could provide a field identification. It was when officers tried to place the handcuffed subject in the back of a patrol car that he began to resist energetically. The officers struggled unsuccessfully to force him into the car, and eventually decided to change their plan. They seated the subject on a curb and arranged for the victim to come to them. However, the subject’s ongoing lack of cooperation, which included his getting up and attempting to walk away, made the officers decide to deploy a restraint system that would greatly limit his ability to move.

³² Here, the supervisor credited the first officer’s efforts at verbal persuasion and non-confrontational demeanor. The second officer made the conscious – and seemingly reasonable – choice to use the “element of surprise” upon his own arrival in an effort to resolve the situation.

Officers used further force to hold the subject's head in an effort to overcome his movements during the attempted identification; the man repeatedly turned his face away to thwart the victim's efforts at seeing him. The subject then began to complain of breathing issues and neck pain. This prompted the on-scene PAPD supervisor to call for medics to respond.

The man was transported to the hospital to be evaluated.³³ Several hours later, he was cleared for release and booking into jail. A supervisor responded to the jail (where the subject was being housed in a special unit for those experiencing mental health concerns) for an interview; he described lingering neck stiffness as well as swollen, painful wrists.

Force Review

The memo that was prepared by the supervisor in this case was the product of a thorough investigation and a thoughtful, detailed analysis. It included a lengthy interview with the subject, whose version of events largely coincided with the officer reports and other evidence (though the man took particular exception to the "twisting" of his head, to which he attributed his neck discomfort).³⁴

The various body-worn camera recordings created by the responding officers establish the persistent lack of cooperation from the subject, beginning with when he was first contacted by an officer and refused to stop for questioning. The force was controlled and entirely driven by the man's ongoing lack of cooperation, which took many forms. It included his going completely limp and his twisting and kicking to prevent officers from placing him in the back seat of the vehicle.

For their part, the officers maintained their composure and made repeated efforts to verbally persuade the man to stop resisting. To their credit, they also regrouped and made a new plan when the struggle to force the man into the back of the patrol car began to exceed the value of transporting him at that moment. The decision of on-scene supervisors to enlist the "WRAP" restraint device in order to limit the man's movements and lessen the amount of "hands-on" physical control they needed to exert during the waiting periods before he was finally transported to the hospital.

The memo that resulted from the supervisor's review ran for several pages. It documented the events in a thorough, objective fashion and analyzed the legitimacy of the officers' actions across a variety of factors. The force was found to be reasonable under the circumstances – an outcome with which we concurred.

³³ This was the criterion which brought the case within our notification protocol with the Department.

³⁴ The supervisor also spoke with the subject about the issues he had raised with jail staff concerning possible officer misconduct in deriding his sexuality or style of dress. The subject did not substantiate any of these concerns with specific details of any kind, but the supervisor was conscientious in asking about them.

Conclusion

As we moved forward with the review process and drafting of this report, we have received ongoing communications from PAPD management about new and developing matters, as well as investigation materials from five cases that were completed in more recent months. We have conducted our initial assessment of those investigations, and will feature them in our next public report, which is scheduled to be released in August.

On the whole, the cases covered in this Report are illustrative in several ways. They show the range of issues and allegations that generate concerns by the public and/or the Department as to improper officer behavior. They offer insight into the process by which Taser deployments (long a source of community concern in Palo Alto), dog bites, and lesser uses of force are scrutinized by the agency – both for compliance with policy and (at times) thoughtful consideration of peripheral issues. And they display the strengths, and occasional limitations with which PAPD evaluates officer conduct and pursues appropriate remediation.

Our sense is that the Department's leadership is attuned to the high expectations of its public as well as the engagement of the City's elected officials. The observations and recommendations in this Report are meant to be useful in meeting those recommendations, and we look forward to furthering our efforts in that regard as our enhanced role with the City continues.



DATE: JANUARY 27, 2022

TO: HONORABLE CITY COUNCIL

FROM: CHIEF OF POLICE ROBERT JONSEN

SUBJECT: 2021 USE OF FORCE REPORT

Background:

In early June 2020, the Palo Alto City Council approved a Race and Equity Framework and action plan and guided the Human Relations Commission to collaborate with the Police Department to lead a review of the “8 Can’t Wait” campaign in relation to Palo Alto to proactively revise the Police Department’s use of force policy and add a greater emphasis on de-escalation and crisis intervention techniques. As the City’s race and equity work continued into the fall of 2020, a series of community engagement opportunities and City Council ad hoc conversations concluded with the City Council adopting new actions in November 2020 that increased transparency with the Police Policy Manual, expanded the scope of administrative investigations reviewed by the Independent Police Auditor (IPA), and provided direction to include use of force information with the IPA report submitted to the City Council.

This memorandum satisfies the City Council’s direction to provide an annual use of force summary which encompasses all use of force incidents in which a “Supervisor’s Report on Use of Force” has been completed by the Police Department. Most commonly, a Supervisor’s Report is completed when there is a visible or apparent physical injury, the subject complains of pain, or the subject alleges they were injured. This initial summary covers the period from the City Council’s direction on November 16, 2020, through December 31, 2021. Subsequent reports will be published annually in January or February covering the prior calendar year. The Police Policy Manual requires that all uses of force by Police Department members “be documented promptly, completely, and accurately in an appropriate report.” Such reports are required to be reviewed by a supervisor and approved in writing. In certain circumstances, section §300.5.2 of the Police Policy Manual enumerates the circumstances where the “Supervisor’s Report on Use of Force” also requires review up to and including the Office of the Chief.

Summary:

From November 16, 2020, until the end of 2021, PAPD officers used force requiring a “Supervisor’s Report on Use of Force” pursuant to §300.5.2 a total of sixteen times. Of these sixteen incidents, officers used no more than bodily force ¹ on twelve subjects, a less lethal Sage round ² on one subject, a Taser on one subject, and a canine on two subjects. Eleven of the sixteen reports have been or will be sent to the

¹ Bodily force includes control holds, takedowns, or other uses of the body that does not involve the use of a tool.

² A Sage round is a 37 millimeter less-lethal foam rubber projectile.

IPA for review and recommendations, as they meet the criteria for the IPA's expanded scope of administrative review established by the City Council in November 2020. The expanded criteria for IPA review of use of force reports includes all administrative use of force reports where a baton, chemical agent, Taser, less-lethal projectile, canine, or firearm is used, and all cases where the subject's injuries necessitate any treatment beyond minor medical treatment in the field. The remaining five cases did not meet the criteria set forth by the City Council. The current IPA report attached to this informational memorandum reviewed seven of those eleven force cases. The remaining cases will be reviewed and reported on in the next IPA report due to Council in August 2022.

During this same period, Palo Alto Police Officers responded to 42,405 calls for service; this equates to officers using force on 0.03% of dispatched calls. A call for service is generated by a dispatcher in the Computer Aided Dispatch (CAD) system as a result of a community member calling for assistance or an officer initiating field activity, such as traffic stops, pedestrian stops, and/or directed patrol. Of the sixteen incidents requiring a Supervisor's Report, thirteen were associated with calls for service initiated by a community member, and three involved officer-initiated pedestrian stops. None of the sixteen incidents required the disclosure of police personnel records under the California Public Records Act pursuant to Senate Bill (SB) 1421 or Assembly Bill (AB) 748. SB 1421 amended Penal Code section 832.7 to require the release of records relating to the discharge of a firearm at a person, officer use of force incidents resulting in death or great bodily injury, sexual assault, and acts of dishonesty. AB 748 requires law enforcement agencies to disclose video and audio recordings of "critical incidents" involving the discharge of a firearm at a person, or an incident in which the use of force resulted in death or great bodily injury.

Enhanced Transparency, De-Escalation, and Training Initiatives:

Building on the significant amount of work undertaken since the summer of 2020 to revise policy, increase transparency and build greater trust with our community, the Police Department continues to actively seek ways to improve policy, emphasize de-escalation alternatives, and expand use of force training opportunities. In August 2021, the Department revised its canine policy to clearly state the deployment of a canine was a use of force and is governed by the Police Department's overall use of force policy. The revised policy also provided for fewer circumstances when a canine can be deployed for apprehension purposes and fewer circumstances when a canine could be deployed off-leash for any purpose. It also clarified pre-deployment announcement procedures and officer actions prior to searching with a canine.

Over the summer, the Police Department acquired a Virtual Reality (V/R) Force-Options Simulator via a grant program administered by the California Commission on Peace Officer Standards and Training (CA POST). This simulator allows personnel to participate in "real-life" training scenarios that focus on de-escalation strategies including skilled communication, decision making under stress, conflict resolution, and crisis intervention. Multiple officers have already participated in this V/R training simulator and the Police Department will expand the use of it moving forward to incorporate all sworn personnel. Additionally, the Police Department provided use of force and de-escalation training to all Police Department members as part of its on-going Continuous Police Training (CPT) curriculum and added a specific heading titled "De-escalation" to the "Supervisor's Report on Use of Force." This heading allows the incident reviewer to specifically highlight any de-escalation tactics used or explain why the circumstances and/or subject behavior did not allow the officer to use de-escalation.

Lastly, in November 2021, the Police Department launched its Psychiatric Emergency Response Team (PERT), where a police officer is paired with a licensed mental health clinician from the Santa Clara County Behavioral Health Services Department. The team's primary objective is to provide rapid intervention to a person in mental health crisis by de-escalating the situation and stabilizing it in the

least restrictive way possible. The team then strives to connect that person to services and get them the help they need. The team is making very meaningful connections with the community thus far.

Conclusion:

As we enter 2022, the Department will continue to evaluate its use of force policies, take advantage of de-escalation training opportunities, and continue to connect with the Palo Alto community to institutionalize sustainable, positive, and transformative positive law enforcement interactions with the public. This summary report will be presented annually to cover one year of use of force data as done with this summary memorandum. The Police Department's initial Use of Force Analysis memorandum included in the Race and Equity *Ad Hoc* Transmittal #3 in August 2020, can be viewed using the following link: <https://www.cityofpaloalto.org/files/assets/public/city-manager/communications-office/race-equity/race-and-equity-data-transmittal-3-august-26-2020.pdf?t=51654.01>



Supplemental Report – Item 9

MEETING DATE: FEBRUARY 14, 2022

TO: HONORABLE CITY COUNCIL

FROM: ED SHIKADA, CITY MANAGER

SUBJECT: AGENDA ITEM NUMBER 9 - TITLE: PROVIDE DIRECTION TO STAFF ON NEGOTIATIONS WITH PETS IN NEED FOR OPERATIONS AND CAPITAL IMPROVEMENTS AT THE CITY'S ANIMAL SHELTER

This memo provides additional information on preliminary negotiating terms discussed by the Pets in Need (PIN) Board and provides information on funding the additional capital improvements identified by PIN as necessary for PIN to move forward with a long-term agreement.

The PIN Board gave consent to their Interim Executive Director on February 9, 2022 to engage in good faith negotiations with the City of Palo Alto for a new or amended agreement. PIN has provided the following priority topics to be resolved before committing to a longer-term agreement:

- Evaluation of animal shelter software – The current Agreement requires the use of the software Chameleon, however; PIN has an interest in exploring other options and would like the City's flexibility in adjusting if both parties agree to transition to a new software system. City staff are open to exploring another shelter software if it meets the needs of the Animal Control Officers who utilize Chameleon daily.
- Feral cat plan – The current Agreement states that PIN cannot release feral cats within the City of Palo Alto or any of its Partner Cities. PIN would like to establish a Trap-Neuter-Release plan for feral cats in cooperation with the City. City staff are open to exploring this topic with participation from community stakeholders.
- Additional capital improvements – PIN has new specifications for a kennel building that would include demolition of the existing kennel building. The building would house 24 dog



kennels, including 4 isolation kennels. PIN has also provided specifications for a new or renovated cat and small animal area. The area would include rooms for ready to go, quarantine and isolation animals, and would include both indoor and outdoor areas.

Staff does not have a clear scope of the additional capital improvement needs at the Animal Shelter proposed by PIN at this time. The \$3-4 million stated in the memorandum is only a rough order-of-magnitude estimate, and the amount could increase or decrease as the scope of the project becomes more defined. If the agreement between the City and PIN continues, Staff anticipates working in partnership with PIN to determine the scope of the capital improvements and will explore a cost sharing method between the two parties to fund the project.

Several sources could be considered to fund the City's portion, as listed below; however, there would be tradeoffs to use these funds for improvements at the Animal Shelter.

- Infrastructure Reserve – Would require reprioritizing planned projects in the Capital Improvement Fund to ensure the Fund remains solvent over the five-year Capital Improvement Plan (CIP).
- Budget Stabilization Reserve – Would reduce the ability to fund service reinvestments across General Fund departments.
- Unallocated Future Revenue Growth – Revenues in this category could include future TOT earnings, above the amount reserved for Infrastructure Plan project debt repayment and revenue from a potential local ballot measure in November 2022 (pending voter approval).
- Impact Fee Funds – Most Impact Fee Funds have been programmed to current capital projects; however, deferral or cancellation of current projects or earmarking future fee revenue where eligible could contribute to the project.
- Stanford University Medical Center - (SUMC) Funds – staff would need to further research eligibility of these funds for investment in this project. These funds are one-time in nature so once they are used, they would no longer be available for any future needs.

PIN and City Staff are interested in demonstrating our commitment to negotiating new agreement terms through a Memorandum of Understanding (MOU). If consistent with Council direction, staff would bring an MOU to Council on Consent to demonstrate the City's good faith commitment to negotiating a new agreement.

Schedule of Meetings

Published February 3, 2022

This is a courtesy notice only. Meeting dates, times, and locations are subject to change. Almost all Palo Alto Council and some Standing Committee meetings are cablecast live on Channel 26. If there happens to be concurrent meetings, one meeting will be broadcast on Channel 29.

Until further notice, all meetings will be held virtually.

SATURDAY,

FEBRUARY

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City Council Retreat, 9 a.m.

MONDAY, FEBRUARY 7

Sp. City Council Meeting, 5 p.m.

TUESDAY, FEBRUARY 8

Policy & Services Committee Meeting, 7 p.m.

WEDNESDAY, FEBRUARY 9

Planning & Transportation Commission Meeting, 6 p.m.

THURSDAY, FEBRUARY 10

Historic Resources Board Meeting, 8:30 a.m.

Human Relations Commissions Meeting, 6 p.m.

FRIDAY, FEBRUARY 11

Parks and Recreation Commissions Retreat, 10:30 a.m.

MONDAY, FEBRUARY 14

Sp. City Council Meeting, 5 p.m.

TUESDAY, FEBRUARY 15

Finance Committee Meeting, 7 p.m. (**CANCELLED**)

THURSDAY, FEBRUARY 17

City/School Liaison Committee Meeting, 8:30 a.m.

Architectural Review Board Meeting, 8:30 a.m.

Public Art Commission Meeting, 7 p.m.

MONDAY, FEBRUARY 21

City Council Meeting, 6 p.m. (**CANCELLED DUE TO HOLIDAY**)

TUESDAY, FEBRUARY 22

Parks and Recreation Commission Meeting, 7 p.m.

WEDNESDAY, FEBRUARY 23

Planning & Transportation Commission Meeting, 6 p.m.

THURSDAY, FEBRUARY 24

Historic Resources Board Meeting, 8:30 a.m.

MONDAY, FEBRUARY 28

Sp. City Council Meeting, 5 p.m.

TUESDAY, MARCH 1

Finance Committee Meeting, 7 p.m.

Persons with disabilities who require auxiliary aids or services in using City facilities or programs, or who would like information on the City's compliance with the Americans with Disabilities Act (ADA) of 1990, may contact: ADA Coordinator, City of Palo Alto, 650-329-2550 (voice) or 329-1199 (TDD), ada@cityofpaloalto.org. Listening assistive devices are available in the Council Chambers. Sign language interpreters will be provided upon request with 72 hours advance notice. Please advise the City Clerk's Office (650-329-2571) of meetings or changes by 3:00 p.m. on Wednesdays for inclusion in the following week's schedule.