



Item No. 1 Town of Atherton

CITY COUNCIL STAFF REPORT – ACTION ITEM

**TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER**

THROUGH: MICHAEL KASHIWAGI, COMMUNITY SERVICES DIRECTOR

FROM: MARTY HANNEMAN, CITY ENGINEER

DATE: AUGUST 1, 2017

SUBJECT: REVIEW THE RESPONSE FROM LAS LOMITAS SCHOOL DISTRICT REGARDING THE PROPOSED MEMORANDUM OF UNDERSTANDING (MOU) FOR THE WATER CAPTURE FACILITY PROJECT AND PROVIDE STAFF WITH DIRECTION TO CONTINUE OR INVESTIGATE ALTERNATIVE OPTIONS

RECOMMENDATION

Review the response from the Las Lomas School District (District) for the proposed Las Lomas storm water capture facility or begin discussions with Caltrans to amend the Cooperative Implementation Agreement (CIA) to relocate the water capture facility project to an alternate location, i.e., Holbrook-Palmer Park.

BACKGROUND

On Tuesday June 27, 2017 the Las Lomas School District Board, in a special meeting, unanimously approved an MOU (Attachment) with the Town of Atherton to address project management, funding, and responsibilities for the proposed Las Lomas Elementary School storm water capture facility. At the July 19, 2017 Council meeting, and after much discussion with representatives from the District, the City Council authorize the City Attorney to review and the City Manager to sign the MOU approved by the Las Lomas School District Board with the amendments that reduced the \$750,000 Town contribution to \$500,000 and clarified the need for a public outreach process for the proposed traffic signal instead of an automatic approval by the Town. During the meeting, the Council also expressed concern for an exit strategy for the project given the unknowns related to ongoing maintenance and operational costs of the Project. These changes were incorporated into the MOU and returned to the District.

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On July 25, 2017, the District advised that given the changes proposed by the Town, the revised MOU would not be returned to their Board for consideration. However, the District advised that they would be happy to continue with the project under the original proposed MOU.

The District also advised that they had already contacted representatives of Menlo Park and San Mateo County to gauge their interest in partnering with the District to build the water capture facility at the school site using the \$13.6M Caltrans Cooperative Implementation Agreement (CIA) funds.

ANALYSIS

Following this feedback from the District, staff reconnected with Tom Rutsch, P.E., Watershed Manager-North Division of Environmental Analysis, California Department of Transportation to confirm that the CIA funds are not transferable to another local agency. Staff also wanted to explore further the possibility of a change in project site to a similar facility at Holbrook-Palmer Park if the Town and District could not reach agreement on the MOU. **Mr. Rutsch stated that CIA with the Town of Atherton is not transferrable to another agency and that Caltrans would be open to amending the CIA to fund a similar project at the Holbrook-Palmer Park site.**

Staff also explored, for Council information, data related to the requirement for PCB load reductions under the current Regional Water Quality Control Board MS4 Permit with the Town's consultant, Richard Watson, RWA Planning. Mr. Watson advised that the Town will be required to reduce its PCB load by 4.4 grams/year by the end of the MS4 Permit term. The proposed water capture facility project would allow the Town to move toward compliance under the MS4 Permit. Further, Mr. Watson advised that the proposed project would likely have a significant impact on the Town's share of any downstream flow costs. A project at Holbrook-Palmer Park has not been conceptualized or analyzed to this degree but could also be a feasible project achieving similar goals.

Matthew Fabry, P.E., from the County's Water Pollution Prevention Program is present to answer any questions the Council may have regarding the Regional Stormwater Permit, requirements for compliance, a regional perspective, and the potential for fines. Mr. Fabry is familiar with the proposed project at Las Lomitas but, as mentioned, any project at the Park is not yet conceptualized or analyzed with respect to its ability to meet PCB load reductions.

City Council direction is requested to either accept the original MOU approved by the District; continue negotiations with the District on the MOU; or reject the MOU and begin discussions with Caltrans to amend the Cooperative Implementation Agreement (CIA) to investigate a water capture facility project at Holbrook-Palmer Park.

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POLICY ISSUES

The Town has a unique opportunity to receive \$13.6 million in Caltrans funds to implement a Water Capture Facility. A project at Las Lomitas would provide the Town with downstream flow benefits, but would also require upfront capital investment (\$750,000) and a long-term maintenance obligation that may or may not be shared with other agencies. A project at Holbrook-Palmer Park may also provide the Town with downstream flow benefits; would have limited upfront capital investment; could potentially provide irrigation opportunities at the Park (similar to Bolivar Park in Lakewood); but may still have long-term maintenance obligations that would need to be largely met by the Town.

FISCAL IMPACT

The financial parameters of the project have not changed.

With the CIA now fully executed, Caltrans agrees to contribute an amount not to exceed thirteen million six hundred thousand Dollars (\$13,600,000) to the Town to design and construct the Water Capture Facility as presently conceptualized at Las Lomitas Elementary School Site. The State funds do not require any matching funds from the Town. Since these funds will be received through the executed CIA with the Town and reimbursable in nature, the District would pay all costs for design and construction and request reimbursement through the Town. All Town staff and consultant related costs will be fully reimbursable by these Caltrans funds. If the project were shifted to the Park, the Town would be the project manager for the project and all Town costs would be reimbursed.

Once complete, the Town is responsible for the ongoing operations and maintenance (O&M) of the project. These O&M costs, currently estimated up to \$100,000/yr., will not be fully known until the water capture facility is approximately 50 percent designed. This would be true at either location. At Las Lomitas, it is more likely that the Town would be able to develop a gravity-based system without pumps thus reducing the O&M costs, whereas this remains an unknown at the Park.

If the City Council approves the original MOU, the Town's \$750,000 contribution supports the District project without specificity; but, in actuality, the cost of a traffic signal would be approximately the same. The District did not propose any ongoing lease, rent or easement costs to the Town associated with the Water Capture Facility on District grounds.

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PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the item is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

ATTACHMENT

1. Revised Memorandum of Understanding
2. PCB Load Reduction Requirements

MEMORANDUM OF UNDERSTANDING

LAS LOMITAS ELEMENTARY SCHOOL WATER CAPTURE FACILITY

THIS MEMORANDUM OF UNDERSTANDING, entered into on August ____, 2017, is between the Town of Atherton, a municipal corporation of the State of California, (the “Town”), and the Las Lomitas Elementary School District (the “District”) for the design, construction, funding and operation of a Water Capture Facility on the Las Lomitas Elementary School campus.

RECITALS

1. The Town is subject to the requirements of mercury and polychlorinated biphenyls (PCBs) Total Maximum Daily Loads (TMDLs) adopted by the San Francisco Bay Regional Water Quality Control Board.
2. The Town’s 2015 Townwide Drainage Study Update conceptually analyzed three possible water detention facilities to reduce peak stormwater flows in the Atherton Channel, which would reduce the incidence of flooding. One of these facilities, the Las Lomitas Elementary School, could be constructed in cooperation with the District.
3. On May 24, 2017, the California Department of Transportation (“Caltrans”) and the Town entered into a Cooperative Implementation Agreement (“Caltrans Agreement”) whereby Caltrans agreed to contribute an amount not to exceed thirteen million six hundred thousand dollars (\$13,600,000) to the Town to construct the Las Lomitas Elementary School Water Capture Facility (“Water Capture Facility”). The Water Capture Facility will help comply with the TMDLs, and it will capture trash and reduce peak stormwater flows within the Atherton Channel.
4. Currently, the District’s improvement and drainage plans do not require a detention basin. The District has developed plans to adequately control and direct its drainage to approved drainage courses. Nevertheless, the District recognizes that a water capture facility would benefit the Town and is agreeable to the project.
5. Because the project is on a school site, it will go to the Division of the State Architect (DSA) as a change to the existing school construction project, and the District’s Architect will oversee the project.
6. The Town and District will work in collaboration to select a design consultant for the Water Capture facility.
7. The Town, in cooperation of the District, will have final design authority in order to meet the City Council’s goals to maximize the amount of water capture and water quality, minimize the amount of on-going operations and maintenance costs and keep the project within the Caltrans funded budget.
8. The Town and District will work in collaboration during construction to address and resolve any issues and to keep the project within budget.
9. The construction of the Water Capture Facility project is expected to begin in the spring of 2018 and completed in the summer of 2019.
10. Once the Water Capture Facility is constructed, the Town will own be responsible for ongoing operations and maintenance.

DESCRIPTION OF THE WATER CAPTURE FACILITY PROJECT

- A. The Water Capture Facility will include a diversion structure to re-direct all dry-weather urban runoff and the first flush of wet-weather runoff from the Atherton Channel through two pre-treatment devices to remove trash, debris, and sediment before conveying the water into two buried multi-chambered storage/infiltration facility with a targeted storage capacity of seven (7) acre-feet. Depending on the results of a geotechnical analysis, engineered dry well(s) on the bottom of the storage chamber are proposed to be constructed to facilitate infiltration. The density, depth, and diameter of these drains (dry wells) will be determined during the site evaluation stage of project design.
- B. The project will involve an evaluation of how to best achieve the multiple objectives of 1) capturing dry weather runoff in order to eliminate the transport of mercury, PCBs, trash and other pollutants to San Francisco Bay during dry weather; 2) capturing at least the first flush of wet-weather runoff to reduce the load of pollutants transported downstream to the Bay during wet weather, and 3) diverting potential flood flows from the Atherton Channel that flows beneath Alameda de las Pulgas and the campus.
- C. The Las Lomitas Elementary School site would capture discharges from a tributary area of approximately 1,177 acres. The drainage area is split between four jurisdictions. The approximate drainage areas are: 319 acres from Atherton, 306 acres from Menlo Park, 389 acres from Woodside, and 163 acres from Stanford University property. A water capture facility at this site could greatly assist Caltrans and the municipalities to come into compliance with the Mercury and PCBs TMDLs by reducing the transport of these pollutants downstream to San Francisco Bay. It will also help Caltrans comply with Part 2 of Attachment V of the Caltrans Statewide MS4 Permit by capturing discharges from approximately 14 acres of I-280 drainage.
- D. The project involves initial engineering and geotechnical assessments, detailed design, environmental compliance, permitting, construction of a diversion structure and piping, construction of a pre-treatment facility or facilities, excavation and construction of a high void underground storage/infiltration chambers (one on either side of the Atherton Channel culvert), disposal of excavated soil, and reconstruction of disturbed portions of the site. Details of the diversion structure will be determined during the design phase through coordination with the District and the San Mateo County Flood Control District.

PROJECT MANAGEMENT

- A. The Water Capture Facility project will require the District to change the design and schedule of its planned construction at the Las Lomitas Elementary School campus, which is currently under review by the Division of the State Architect (“DSA”). The District’s architect, CAW Architects, Inc., is the architect of record with the DSA. CAW will be the architect for the Water Capture Facility project, and CAW’s subconsultant will perform the engineering. Additional consultants and contractors not already hired for the District’s planned construction at the school site will be selected through the District’s procurement procedures.
- B. CAW, the District’s Director of Bond Projects and their consultants will manage the project, conduct engineering and geotechnical investigations, and assist with environmental clearance, permitting, design,

and construction management. Contractors and consultants will be selected through the District's procurement procedures, and they will be under contract with the District. District staff assigned to manage the project will charge hours to the project in accordance with the Caltrans requirements. Although the project will be managed by the District, the Town will have milestone sign off and meeting participation to provide a level of representation and oversight as well.

CONSTRUCTION SCHEDULING

- A. The Parties agree that it is imperative to implement the Water Capture Facility project in a timely fashion to prevent a negative impact on the District's current construction schedule and planned Bond projects. Upon execution of this MOU, the District will make changes to current design of the storm water bypass system so that it aligns with the Water Capture Facility project. The storm water changes must occur after DSA approval. There are additional site utilities components that must be rerouted during the summer of 2017 for the Water Capture Facility project to proceed. The District intends to contract with Blach Construction Corporation for construction of the District's bond measure project at Las Lomitas Elementary School. The Water Capture Facility project will likely be executed as a change order to the bond measure project.
- B. The current District bond measure project is scheduled to be completed in August 2018. The Water Capture Facility project will extend that completion date to December 2018 or January 2019. Additionally, there may be logistical adjustments required to facilitate construction on the Las Lomitas Elementary School Campus during school periods.

FUNDING

- A. The Water Capture Facility project is funded by Caltrans, as set forth in the Caltrans Agreement. The Parties agree that any cost changes will result in a reduced scope of work to avoid added cost.
- B. The District agrees to submit invoices for reimbursement to the Town in compliance with the invoicing requirements set forth in section II(3) of the Caltrans Agreement. The Town agrees to promptly reimburse the District net 30 days, or as negotiated between the District's Chief Business Officer and the Town Manager.

RESPONSIBILITY FOR ONGOING MAINTENANCE AND OPERATION OF THE WATER CAPTURE FACILITY

Once the Water Capture Facility is constructed, the Town will be responsible for ongoing operations and maintenance. The District is aware that the Town intends to seek contributions toward the ongoing maintenance and operations costs from the four jurisdictions that will benefit from the Water Capture Facility. In no event shall the District be responsible for the ongoing operations and maintenance costs of the Water Capture Facility, including but not limited to the existing culvert that runs under the Las Lomitas Elementary School Campus.

ADDITIONAL TOWN RESPONSIBILITIES

- A. The Town agrees to contribute five hundred thousand dollars (\$500,000) to the District to support campus safety improvements. This contribution will be paid to the District over a five (5) year period beginning in FY 2018/19 to allow the Town to include it in its annual budgets.
- B. Town and District shall work together to implement an outreach plan for the proposed installation of a traffic signal at Walsh Road. At the conclusion of the outreach effort, upon Town approval, District shall be provided permission to install a traffic signal at Walsh Road which will be owned and operated by the Town.
- C. Implementation of a permanent easement to allow for parking and drop off to occur in the Atherton right of way along the school's Camino Al Lago frontage. Future reconfigurations will be subject to the Division of the State Architect standards and approvals. This will allow the school to reconfigure the parking to better support our needs and will move the public sidewalk onto campus along the current drop off zone. Trees within the right-of-way along Camino al Lago frontage are authorized for removal provided that the Project include the installation of landscaping screening along the frontage.
- D. The Town will assume ownership and maintenance of the existing culvert that runs under campus. The future disposition of that culvert will depend on Project design for the Water Capture facility.
- E. The Town agrees to support and assist the District with its applications for Safe Routes to School Grants from the County of San Mateo which must be submitted by the Town as the lead agency.
- F. Termination of the Cooperative Implementation Agreement pursuant to its terms shall automatically terminate all responsibilities under this MOU.

DISPUTE RESOLUTION

- A. The Parties will first attempt to resolve disputes arising out of this MOU at the project team level. If they cannot resolve the dispute themselves, the Town Manager and the District's Chief Business Official will attempt to negotiate a resolution.
- B. If the Parties do not reach a resolution, the aggrieved party's legal counsel will initiate mediation. The Parties agree to participate in mediation in good faith and will share equally in its costs.
- C. Neither the dispute nor the mediation process relieves the Parties from full and timely performance of obligations in accordance with the terms of this MOU. However, if either party stops fulfilling its obligations, the other party may seek equitable relief to ensure that the obligations continue.
- D. Except for equitable relief, no party may file a civil complaint until after mediation, or 60 calendar days after filing the written mediation request, whichever occurs first.
- E. Any disputes arising out of this MOU shall for all purposes be deemed subject to the laws of the State of California without regard to its choice of law rules, and any lawsuit concerning or arising out of this Agreement shall be venued in the County of San Mateo.
- F. The Parties maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.

MISCELLANEOUS

- A. Hold Harmless. Each party shall be responsible for its own negligent acts or omissions and the negligent acts or omissions of its employees, officers, directors, agents, or representatives to the extent allowed by law.
- B. Relationship of the Parties. It is expressly understood that this MOU is an agreement executed by and between two independent governmental entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an independent party.
- C. Effective Date. This Agreement shall become effective as of the date when the governing body of each party has approved the form and content of this Agreement and authorized its representatives to execute this document on its behalf. Such date shall thereupon be inserted at the beginning of this Agreement.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement.

FOR THE TOWN OF ATHERTON

**FOR THE LAS LOMITAS ELEMENTARY
SCHOOL DISTRICT**

George Rodericks, City Manager

Lisa Cesario, Superintendent

| San Mateo County Permittee | Preliminary PCBs Load Reductions (grams/year) | | | | | | |
|----------------------------|---|---------------------------------------|--|--------------------------------------|---|--|--|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| | Projected by June 2018 via GI | Required by All Controls by June 2018 | Projected by End of Permit Term via GI | Required by GI by End of Permit Term | Credit for PCBs Demo Program by July 2019 | Projected by End of Permit Term via GI + Demo Program Credit | Required by All Controls by End of Permit Term |
| Atherton | 0.0 | 0.7 | 0.0 | 0.2 | 2.9 | 3.0 | 4.4 |
| Belmont | 0.2 | 2.7 | 0.3 | 0.7 | 11.0 | 11.3 | 16.5 |
| Brisbane | 0.7 | 0.4 | 0.7 | 0.1 | 1.8 | 2.6 | 2.7 |
| Burlingame | 0.5 | 3.0 | 1.3 | 0.7 | 12.3 | 13.6 | 18.4 |
| Colma | 0.3 | 0.2 | 0.3 | 0.0 | 0.8 | 1.1 | 1.1 |
| Daly City | 5.7 | 4.6 | 6.0 | 1.1 | 18.8 | 24.8 | 28.1 |
| East Palo Alto | 0.9 | 2.9 | 1.0 | 0.7 | 12.0 | 13.0 | 18.0 |
| Foster City | 0.8 | 3.2 | 0.8 | 0.8 | 13.0 | 13.8 | 19.5 |
| Hillsborough | 0.0 | 1.1 | 0.0 | 0.3 | 4.6 | 4.6 | 6.9 |
| Menlo Park | 4.5 | 3.3 | 4.5 | 0.8 | 13.6 | 18.2 | 20.4 |
| Millbrae | 0.0 | 2.2 | 0.0 | 0.6 | 9.2 | 9.2 | 13.7 |
| Portola Valley | 0.0 | 0.5 | 0.0 | 0.1 | 1.9 | 1.9 | 2.8 |
| Redwood City | 13.9 | 8.0 | 15.2 | 2.0 | 32.7 | 47.9 | 49.0 |
| San Bruno | 0.8 | 4.3 | 0.8 | 1.1 | 17.5 | 18.3 | 26.2 |
| San Carlos | 3.9 | 2.9 | 3.9 | 0.7 | 12.1 | 16.0 | 18.1 |
| City of San Mateo | 4.8 | 10.1 | 4.9 | 2.5 | 41.4 | 46.3 | 62.1 |
| Unincorporated SM County | 1.7 | 2.9 | 1.8 | 0.7 | 12.0 | 13.7 | 17.9 |
| South San Francisco | 7.2 | 6.6 | 9.2 | 1.6 | 27.1 | 36.3 | 40.6 |
| Woodside | 0.0 | 0.5 | 0.0 | 0.1 | 2.3 | 2.3 | 3.4 |
| Total | 45.9 | 60.0 | 50.7 | 15.0 | 247.0 | 297.7 | 370.0 |