



Item No. 24 Town of Atherton

CITY COUNCIL STAFF REPORT – REGULAR AGENDA

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

THROUGH: MICHAEL KASHIWAGI, COMMUNITY SERVICES DIRECTOR

FROM: MARTY HANNEMAN, CITY ENGINEER

DATE: JULY 19, 2017

**SUBJECT: AUTHORIZE THE CITY ATTORNEY TO REVIEW AND THE CITY
MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING
(MOU) WITH THE LAS LOMITAS SCHOOL DISTRICT FOR A
PROPOSED STORM WATER CAPTURE FACILITY**

RECOMMENDATION

Authorize the City Attorney to review and the City Manager to sign a memorandum of understanding (MOU) with the Las Lomas School District to address project management, funding, and responsibilities for the proposed Las Lomas Elementary School storm water capture facility.

BACKGROUND

The 2015 Townwide Drainage Study Update conceptually analyzed three possible detention facilities to reduce peak stormwater flows in the Atherton Channel which would in turn reduce the incidence of flooding downstream. One possible location was at Las Lomas Elementary School located at 299 Alameda de las Pulgas. This facility would need to be constructed in cooperation with the Las Lomas Elementary School District (District) as they make improvements on campus. To construct a detention facility there, a cooperative development and funding agreement with the District would be required. Currently, the District's improvement and drainage plans do not require a detention basin.

The District has developed plans to adequately control and direct their drainage to approved drainage courses. Nevertheless, the District recognizes that a water capture facility would benefit the Town and are agreeable to the project. The District would benefit from a joint project with the Town through the potential of reduced on campus flooding occurrences and largely the possibility that portions of their project (the subsurface of the parking lot) are funded via the joint project.

MOU WITH THE LAS LOMITAS SCHOOL DISTRICT FOR A PROPOSED STORM WATER CAPTURE FACILITY

July 19, 2017

Page 2 of 5

On March 16, 2016, the City Council authorized the City Manager to execute a professional services agreement with Callander Associates for a feasibility study at Las Lomitas School for the project. Since developing the concept plans for a detention basin at the Las Lomitas School, Town staff identified a potential project funding source for design and construction. These funds are administered by the State of California Transportation Department (Caltrans) and are available to projects that help comply with total maximum daily loads (TMDLs). TMDLs are regulatory tools in the U.S. Clean Water Act that describe the maximum amount of a pollutant that a body of water can receive while still meeting water quality standards) and mercury that comes off the roadways from reaching the San Francisco bay.

On November 16, 2016 staff met on the Las Lomitas school site with a District representative, consultants, City staff and Constantine Kontaxis P.E., Watershed Manager, Division of Environmental Analysis, Caltrans to discuss the merits of the proposed project to compete for the State funding. Mr. Kontaxis stated the proposed Town project in partnership with the District is a viable project that may be eligible for the funding pending additional analysis that would be required.

As a result, on January 18, 2017, the City Council authorized the City Manager to execute an amendment to the professional services agreement with Callander Associates to prepare additional conceptual level plans and cost estimates required by Caltrans for a Cooperative Implementation Agreement (CIA).

The proposed stormwater detention facility or as Caltrans refers to it as the “Water Capture Facility” at Las Lomitas Elementary School, would 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 facilities with a targeted storage capacity of seven (7) acre-feet.

The proposed project will initially 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.

Upon review of the proposed Las Lomitas School Water Capture facility Caltrans has determined that this project will reduce the amount of Total Maximum Daily Load (TMDL) released to San Francisco Bay through stormwater capture and use and/or infiltration to

MOU WITH THE LAS LOMITAS SCHOOL DISTRICT FOR A PROPOSED STORM WATER CAPTURE FACILITY

July 19, 2017

Page 3 of 5

groundwater. Caltrans agreed to enter into a Cooperative Implementation Agreement (CIA) with the Town to collaboratively implement the NPDES Permit requirements as they have been identified as stakeholders in the Total Maximum Daily Load (TMDL) Las Lomitas Elementary School Water Capture Facility and Caltrans has agreed to contribute an amount not to exceed thirteen million six hundred thousand dollars (\$13,600,000) to the Town to construct the Water Capture Facility.

At the May 3, 2017 meeting, the City Council:

- Adopted a resolution for the Town of Atherton to enter in to a Cooperative Implementation Agreement (CIA) with the California Department of Transportation (Caltrans); and
- Authorized the City Attorney to review and the City Manager to sign a CIA with Caltrans to receive State funds to construct a stormwater capture facility at Las Lomitas Elementary School; and
- Directed staff to work with the Las Lomitas School District to develop a memorandum of understanding (MOU) for Council's approval to address project management, funding, and responsibilities for the proposed Las Lomitas Elementary School storm water capture facility.
- Directed staff to begin discussions with upstream agencies for contributions toward the future maintenance requirements of the facility.

On Thursday May 25, 2017 the City Manager met with Tom Rutsch, Watershed Manager–North Division of Environmental Analysis, Caltrans and signed the CIA. Also, per Council's direction, staff met on June 27, 2017 with other member agencies (Woodside and Menlo Park) in the watershed upstream of the proposed Las Lomitas water capture facility to begin discussions on a MOU to share ongoing operations and maintenance (O&M). Currently annual O&M costs are estimated between \$25,000 and \$100,000. These costs will be better defined once the water capture facility is in design. Staff is expecting to bring to Council for consideration an O&M MOU prior to the project going out to bid in early 2018.

On Tuesday June 27, 2017 the Las Lomitas School District Board, in a special meeting, unanimously approved the attached MOU.

ANALYSIS

The project includes development and approval of a Memorandum of Understanding (MOU) between the Town and the District and a potential MOU among the benefitting municipalities for the long-term operation and maintenance of the constructed water capture facility. Because the project is on a school site, it must go to the Division of the State Architect (DSA) as a change to

MOU WITH THE LAS LOMITAS SCHOOL DISTRICT FOR A PROPOSED STORM WATER CAPTURE FACILITY

July 19, 2017

Page 4 of 5

the existing school construction project, and the District's Architect will oversee the project (i.e. not the Town).

Consultants will be hired to manage the project, conduct engineering and geotechnical investigations, and assist with environmental clearance, permitting, design, and construction management. Contractors will be selected through Las Lomas Elementary School District procurement procedures. Pursuant to the MOU between the Town and the District, consultants and contractors working on the project will be under contract with the District and District staff assigned to manage the project will charge hours to the project in accordance with the Caltrans requirements under this agreement. Although the project will be managed by the District, the Town will play an active role in selecting the designers and provide input throughout the construction process.

The construction of the project is expected to begin in the spring of 2018 and completed in the summer of 2019.

POLICY ISSUES

The Town has a unique opportunity to receive \$13.6 million in Caltrans funds to implement the Water Capture Facility at the Las Lomas Elementary School Site, an identified Tier 1 project in the 2015 Townwide Drainage Study Update. Council approval is required to authorize the City Manager to sign the MOU with the Las Lomas School District to determine project funding and management responsibilities.

FISCAL IMPACT

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 at Las Lomas Elementary School Site. These State funds do not require any matching funds from the Town. Since these Caltrans funds will be received through the executed CIA with the Town and reimbursable in nature, the District will 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.

However, as noted, the District's improvement plans do not require a detention basin. The District has developed plans to adequately control and direct its drainage to approved drainage courses. The District acknowledges the benefit of this project to the Town. Once complete, the Town is responsible for the ongoing operations and maintenance of the project. In exchange for allowing the Water Capture Facility on school property under its parking lot, the District has asked the Town for a \$750,000 contribution provided over a 5-year period, permission for the

MOU WITH THE LAS LOMITAS SCHOOL DISTRICT FOR A PROPOSED STORM WATER CAPTURE FACILITY

July 19, 2017

Page 5 of 5

District to install a traffic signal at Walsh Road (once installed – owned and controlled by the Town), authorization for an easement to improve and use the Camino Al Lago frontage (as currently used for school parking), and application support for future State Safe Routes to School Grant Applications.

In essence, the Town's \$750,000 contribution supports and pays for the installation of the traffic signal and crossing improvements at Walsh Road. There are no ongoing lease, rent or easement costs to the Town associated with the Water Capture Facility on District grounds. These funds will need to be budgeted beginning in FY 2018/19 at \$150,000 per year over the Town's 5-Year CIP (Streets and Roads). Once the water capture facility is constructed, the Town will be required to acquire an access easement for on-going operations and maintenance.

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

- Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

LAS LOMITAS ELEMENTARY SCHOOL WATER CAPTURE FACILITY

THIS MEMORANDUM OF UNDERSTANDING, entered into on July ____, 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 construction of the Water Capture Facility project is expected to begin in the spring of 2018 and completed in the summer of 2019.
7. Once the Water Capture Facility is constructed, the Town will 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 Lomas 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 Lomas 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

- A. 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 seven hundred and fifty thousand dollars (\$750,000) 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. The Town further agrees to grant permission to the District to install a traffic signal at Walsh Road and the new Las Lomitas Elementary School campus exit.
- 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 Cam 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.

- D. The Town will assume ownership and maintenance of the existing culvert that runs under campus.
- 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.

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

George Rodericks, City Manager

Date

**FOR THE LAS LOMITAS ELEMENTARY
SCHOOL DISTRICT**

Lisa Cesario, Superintendent

Date

