



CITY OF  
**PALO  
ALTO**

**CITY OF PALO ALTO  
CITY COUNCIL  
Special Meeting  
Monday, June 17, 2024  
Council Chambers & Hybrid  
4:00 PM**

<b>Agenda Item</b>
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24. Adoption of a Resolution Approving an Initial Study/Mitigated Negative Declaration for Citywide Implementation of Fiber-to-the-Premises Project (FTTP), Including the Mitigation, Monitoring and Reporting Program; Approval of Purchase Order No. 4524000496 With Thermo Bond Buildings in an Amount Not to Exceed of \$339,076 for the Design, Build and Delivery of a Modular Building "Fiber Hut"; Authorization for the City Manager or Their Designee to Negotiate and Execute Change Orders in the Amount Not-to-Exceed of \$31,384 for Related Additional but Unforeseen Work That may Develop During the Project, for a Total Not-to-Exceed Amount of \$370,460 with Thermo Bond Buildings.



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**PALO  
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## City Council Staff Report

**From: City Manager**

**Report Type: CONSENT CALENDAR**

**Lead Department: Utilities**

**Meeting Date: June 17, 2024**

Staff Report: 2403-2713

### **TITLE**

Adoption of a Resolution Approving an Initial Study/Mitigated Negative Declaration for Citywide Implementation of Fiber-to-the-Premises Project (FTTP), Including the Mitigation, Monitoring and Reporting Program; Approval of Purchase Order No. 4524000496 With Thermo Bond Buildings in an Amount Not to Exceed of \$339,076 for the Design, Build and Delivery of a Modular Building “Fiber Hut”; Authorization for the City Manager or Their Designee to Negotiate and Execute Change Orders in the Amount Not-to-Exceed of \$31,384 for Related Additional but Unforeseen Work That may Develop During the Project, for a Total Not-to-Exceed Amount of \$370,460 with Thermo Bond Buildings.

### **RECOMMENDATION**

Staff recommends that Council take the following actions regarding Fiber-to-the-Premises (FTTP) Capital Improvement Project (CIP) (FO-24000):

- 1) Adopt the Resolution (Attachment A) Approving the Final Initial Study/Mitigated Negative Declaration for the Fiber to the Premises Project, ([SCH # 2024050007](#)<sup>1</sup>), Including the Mitigation, Monitoring and Reporting Plan (Attachment B)
- 2) Approve and Authorize the City Manager or their designee to execute Purchase Order No. 4524000496 with Thermo Bond Buildings (Attachment C) in the amount of \$339,076 for design, build, and delivery of a Modular Building “Fiber Hut” Including Ancillary Equipment to House Fiber Networking Equipment and to Serve as an Aggregation Site for FTTP; and
- 3) Authorize the City Manager or their designee to negotiate and execute one or more change orders to the purchase order with Thermo Bond Buildings for related additional but unforeseen work which may develop during the project in the amount of \$31,384; for a total not-to-exceed contract amount of \$370,460.

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<sup>1</sup> SCH # 2024050007 <https://www.cityofpaloalto.org/files/assets/public/v/1/city-manager/communications-office/palo-alto-fiber/mnd-final-docs/final-initial-study-mitigated-negative-declaration.pdf>

## **EXECUTIVE SUMMARY**

The COVID-19 pandemic emphasized the need for reliable, high-speed, and affordable internet, which is addressed by the Fiber-to-the-Premises “FTTP” Project (FO-24000). Through the FTTP project, the City will provide broadband high-speed internet directly to Palo Alto homes and businesses.

The City, acting as the lead agency, prepared an Initial Study/Mitigated Negative Declaration for citywide implementation of the FTTP Project. The IS/MND evaluates the complete buildout of all phases of the project, and includes a Mitigation Monitoring and Reporting Plan to reduce the environmental impacts associated with the Project to a less than significant level. However, the project will be built out in phases, and to date, Council has authorized only the Phase 1 buildout which includes the pilot area. Staff will return to Council for approval of each phase.

At this time, staff is seeking approval of a purchase order for the design, build, and delivery of a fiber hut. The modular building, the “fiber hut”, will be critical to the fiber infrastructure, housing essential fiber equipment for FTTP and serving as a local aggregation site. The fiber hut will be built to City’s specifications measuring approximately 11 feet wide by 20 feet long by 10 feet high and will be located at the Colorado Substation. The fiber hut will have an air-conditioning unit mounted on the side of the hut, a fiber-optic cable underground access vault, and a backup generator. Staff is also seeing authorization for change order funding in the event related additional but unforeseen work develops.

## **BACKGROUND**

On December 19, 2022, City Council directed staff to proceed with the Fiber Expansion Plan to implement the Fiber Rebuild project and Phase 1 of the Fiber-to-the-Premises (FTTP) project. In Phase 1, FTTP would be built out in selected areas of the city, and expanded gradually ([Staff Report ID 14800<sup>2</sup>](#)). Construction of the new fiber backbone in the Fiber Rebuild project and last mile infrastructure to provide FTTP broadband internet to the community in the FTTP project will be a significant undertaking for the City.

On June 19, 2023, Council approved the FY 2024 CIP Budget with both the new FTTP project, and Grid Modernization for Electrification Project. The approval of the electrification project accelerated efforts to align electrification and fiber construction, which impacted the Fiber Expansion Plan. Staff was directed to explore opportunities to align the grid modernization project and projects under the Fiber Expansion Plan to help minimize utility engineering pole make-ready work, pole replacements, noise disruption, and construction activity in neighborhoods.

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<sup>2</sup> Staff Report ID 14800 <https://www.cityofpaloalto.org/files/assets/public/v/1/agendas-minutes-reports/reports/city-manager-reports-cmrs/2022/12-19-2022-id-14800.pdf>

On December 18, 2023<sup>3</sup>, to execute on Council's direction, staff informed Council that a pilot would be deployed to evaluate how alignment of fiber and grid modernization projects may help control project costs, minimize construction impacts to the community, and prevent major delays. Activities essential to the roll-out of the pilot were highlighted as well, such as the California Environmental Quality Act (CEQA) determination and purchase of a fiber hut.

## **ANALYSIS**

Fiber-to-the-Premises consists of the construction of a fiber optic backbone and fiber distribution infrastructure to provide communication services throughout the City of Palo Alto. FTTP would provide municipal high-speed internet service to residences and businesses in Palo Alto.

The proposed project includes the following main components:

1. Installation of approximately 194 miles of fiber optic cables (consisting of about 90 miles of below-ground installation and 104 miles of aerial installation using existing utility poles);
2. Installation of approximately two local aggregation sites either inside modular communications shelters (i.e., fiber huts) or enclosed within existing commercial buildings;
3. Installation of approximately 4,200 underground utility vaults and 147 aboveground utility cabinets; and,
4. Fiber internet connections directly to subscribing customers' homes and/or businesses ("subscribers").

The fiber hut is a critical element of the FTTP network design because it serves as the local aggregation site for up to 15,000 customers. A fiber hut is usually a modular building (approximately 11'W x 20'L x 10'H) containing communications equipment, racks, power, fire suppression, and fiber terminations that connects to fiber distribution cabinets throughout the neighborhoods. Huts may also contain backup generators and HVAC systems to maintain equipment within its operating environmental specifications, and equipment for electrical needs. The Colorado substation was selected as an ideal location due to its proximity to the area it serves and its current use for utilities.

Fiber hut vendors are specialized to design and install these modular buildings customized to the needs of the fiber network design. As a result, the City works closely with the vendor on the requirements and hut designs are finalized upon vendor selection.

### Procurement Process

City staff posted a formal request for proposals on February 28, 2024 on the City of Palo Alto's e-procurement website (OpenGov).

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<sup>3</sup> December 18, 2023 <https://www.cityofpaloalto.org/files/assets/public/v/1/agendas-minutes-reports/reports/city-manager-reports-cmrs/2023/12-11-2023-id-2309-2094.pdf>

Due to the limited number of suppliers and extended lead time (24 – 52 weeks), the City requested quotes for both new and refurbished fiber huts. The City received two (2) bids. Cell Site proposed a refurbished hut at a lower price (~\$50k less) but staff had concerns about the durability of the hut due to its age (21 years), previous climate wear and tear, and limited warranty. Thermo Bond proposed a new hut based on the City’s specifications including the alternate bid items (DC power distribution system and AC inverter) which are required to provide power and air conditioning to the hut. Staff recommends the new fiber hut from Thermo Bond since the hut may potentially be in place for several decades to enable municipal fiber internet service up to 15,000 customers.

#### Entitlement Process

A minor architectural review application is required for the proposed hut. Once a design is developed, City of Palo Alto Utilities would submit a Minor Architectural Review application to Planning for staff review and the Director’s approval.

#### **FISCAL/RESOURCE IMPACT**

Funding for this contract is available in the Fiscal Year 2024 Capital Improvement Plan budget for the Fiber-To-The-Premises “FTTP” Capital Project (FO-24000). Additional services of \$31,384 is requested for any unforeseen shipping and crane-off loading services which will depend on the carrier, location and site layout. The purchase order pricing is not currently guaranteed for these services. Any unused amount for additional services will be returned to the FTTP CIP project.

#### **STAKEHOLDER ENGAGEMENT**

Staff continues to engage with the community on the FTTP and Grid Modernization Projects primarily through the City’s Finance Committee and Utilities Advisory Commission discussions which are open to the public to participate and share feedback.

On November 7, 2023, the Finance Committee was updated on the Fiber Master Plan, which included the pilot program area to align FTTP with the Electric grid modernization project. The Finance Committee provided feedback on timeline, costs, and alignment of FTTP to grid modernization ([Staff Report #2309-2082](#)<sup>4</sup>). In addition, staff continues to share updates through the Palo Alto Fiber project webpage<sup>5</sup>, City communications channels such as social media<sup>6</sup>, Medium.com blog<sup>7</sup> and interactive Palo Alto Fiber Hub<sup>8</sup>.

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<sup>4</sup> Finance Committee staff report 2309-2082, [https://www.cityofpaloalto.org/files/assets/public/v/1/agendas-minutes-reports/reports/city-manager-reports-cmrs/2023/11-7-2023\\_2309-2082-mini-packet.pdf](https://www.cityofpaloalto.org/files/assets/public/v/1/agendas-minutes-reports/reports/city-manager-reports-cmrs/2023/11-7-2023_2309-2082-mini-packet.pdf)

<sup>5</sup> Palo Alto Fiber Webpage, <https://www.cityofpaloalto.org/paloaltofiber>

<sup>6</sup> City Social Media Channels, <https://www.cityofpaloalto.org/connect>

<sup>7</sup> Palo Alto Connect, <https://medium.com/@paloaltoconnect>

<sup>8</sup> Palo Alto Fiber Hub, <https://fiber-palo-alto.hub.arcgis.com/>

## **ENVIRONMENTAL REVIEW**

The FTTP Project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. An Initial Study-Mitigated Negative Declaration has been prepared and was circulated for a 30-day public review beginning on May 1, 2024, and ending on May 31, 2024. A final IS/MND that incorporated revisions, as appropriate, based on public comments was published on June 6, 2024. The analysis in the IS/MND includes evaluation of the fiber hut.

The IS/MND concludes that no significant and unavoidable impacts are anticipated for the proposed project. Mitigation is incorporated to mitigate potential impacts on air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, Transportation, and tribal cultural resources to a less than significant level as detailed in the Resolution in Attachment A and the related Mitigation Monitoring and Reporting Plan (MMRP) (Attachment B).

The City received five comments letters on the proposed project during the MND circulation period. These comments were from one member of the public and four responsible agencies for the proposed project: Caltrans, Valley Water, Santa Clara County, and California Department of Fish and Wildlife (CDFW). Comments from the member of the public were not related to the environmental analysis. Comments from the responsible agencies primarily indicated the permits that would be required for work in certain areas for which they have jurisdiction. Comments from CDFW recommended additional measures for the protection of Crotch's Bumble Bee, California Ridgeway's Rail and Black Rail. While the City concluded that impacts on these species would be less than significant, the city has agreed to implement these additional measures to further reduce impacts on those species. This is detailed further in the Final MND. An e-mail has been sent to each commenter responding to their comments and, where applicable, indicating where their comments have been addressed in the Final MND. A link to the Final IS/MND and MMRP are included in the [City of Palo Alto Fiber webpage](#)<sup>9</sup>

## **ATTACHMENTS**

Attachment A: Resolution Approving the IS/MND for the FTTP Project

Attachment B: Mitigation Monitoring and Reporting Plan

Attachment C: Purchase Order 4524000496 with Thermo Bond Buildings

## **APPROVED BY:**

Dean Batchelor, Director of Utilities

Staff: Dave Yuan, Strategic Business Manager

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<sup>9</sup>City of Palo Alto Fiber Webpage, <https://www.cityofpaloalto.org/paloaltofiber>

Resolution No. \_\_\_\_\_

Resolution of the Council of the City of Palo Alto Adopting the Fiber to the Premises Project Mitigated Negative Declaration for which an Initial Study was Prepared, in accordance with the California Environmental Quality Act and Adopting a Related Mitigation, Monitoring and Reporting Program

R E C I T A L S

A. Prior to the adoption of this Resolution, the City of Palo Alto prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the Fiber to the Premises Project, (the "Initial Study/Mitigated Negative Declaration") all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively "CEQA").

B. The Fiber to the Premises Project analyzed under the Initial Study/Mitigated Negative Declaration would involve the installation of approximately 194 miles of fiber optic cables, both below ground and aerial, installation of approximately 4200 underground utility vaults and 147 aboveground utility cabinets, and installation of approximately two local aggregation sties either inside modular communication shelters ("fiber huts") or enclosed within existing commercial buildings. A more detailed description of the Project is set forth in the Initial Study/Mitigated Negative Declaration.

C. The draft Initial Study/Mitigated Negative Declaration was made available for public comment from May 1, 2024 through May 31, 2024.

D. The City of Palo Alto considered the comments received during the public review period and prepared a final Initial Study/Mitigated Negative Declaration, published June 6, 2024.

E. The Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level.

F. In connection with the approval of a project involving the preparation of an initial study/mitigated negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environmental effects to a less-than-significant level.

G. Whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires the lead agency to adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during project implementation, and such a mitigation monitoring and

reporting program has been prepared for the Project for consideration by the decision-making body of the City of Palo Alto as lead agency for the Project (the “Mitigation Monitoring and Reporting Program” or “MMRP”).

H. The City of Palo Alto is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval of the Project.

I. The City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project, together with comments received on the Initial Study/Mitigated Negative Declaration, and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA.

J. The Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project are on file at the City of Palo Alto Development Center, 285 Hamilton Avenue -- Ground Floor Palo Alto, CA 94301, and are available for inspection by any interested person at that location, and are, by this reference, incorporated into this Resolution as if fully set forth herein.

The Council of the City of Palo Alto does hereby RESOLVE as follows:

SECTION 1. THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Initial Study/Mitigated Negative Declaration represents the independent judgment and analysis of the City of Palo Alto, as lead agency for the Project. The City Council designates the Director of Planning and Development Services, at 250 Hamilton Avenue, 5th Floor, Palo Alto, CA 94301, as the custodian of documents and records of proceedings on which this decision is based.

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SECTION 2. THE CITY COUNCIL does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program prepared for the Project. The Initial Study/Mitigated Negative Declaration is available for viewing at City of Palo Alto Development Center, 285 Hamilton Avenue -- Ground Floor, Palo Alto, CA 94301.

INTRODUCED AND 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

\_\_\_\_\_  
Director of Utilities



## MITIGATION MONITORING + REPORTING PROGRAM

<b>PROJECT NAME</b>	Fiber-to-the-Premises Project	<b>SCH NUMBER</b>	2024050007
<b>APPLICANT</b>	City of Palo Alto Public Works Utilities Division 250 Hamilton Avenue Palo Alto, California 94301	<b>DATE</b>	May 31, 2024

The Initial Study - Mitigated Negative Declaration (IS-MND) for the Fiber-to-the-Premises Project identifies mitigation measures that will be implemented to reduce the environmental impacts associated with the project.

California Environmental Quality Act (CEQA) Section 21081.6 requires a public agency to adopt a monitoring and reporting program for assessing and ensuring compliance with any required mitigation measures applied to proposed development. As stated in section 21081.6(a)(1) of the Public Resources Code, "... the public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment."

Section 21081.6 also provides general guidelines for implementing mitigation monitoring programs and indicates that specific reporting and/or monitoring requirements, to be enforced during project implementation, shall be defined as part of adopting a Mitigated Negative Declaration.

The mitigation monitoring table lists those mitigation measures that would be included as conditions of approval for the project. To ensure that the mitigation measures are properly implemented, a monitoring program has been devised which identifies the timing and responsibility for monitoring each measure.



## MITIGATION MONITORING + REPORTING PROGRAM

Mitigation Measure Number	Mitigation Measure Text	Responsible for Implementation	Timing of Compliance	Oversight of Implementation
<b>AIR QUALITY</b>				
<b>AIR-2a</b>	As part of the City’s development approval process, the City shall require applicants for future development projects to comply with the current BAAQMD basic control measures for reducing construction emissions of PM <sub>10</sub> (Table 8-1, Basic Construction Mitigation Measures Recommended for All Proposed Projects, of the BAAQMD CEQA Guidelines).	Applicant or designee/ Construction contractor	During construction	City of Palo Alto Planning Department
<b>BIOLOGICAL RESOURCES</b>				
<b>BIO-1</b>	If project activities are within 200 feet of rail habitat (tidal and brackish marshes with unrestricted daily tidal flows) during the nesting season (February 1 to August 31), then pre-construction call back rail surveys shall be required prior to initiation of project activities. If rails are detected through surveys, then project activities shall not occur within 100 feet of an identified detection location. If the activity occurs where the project site is across a major channel or slough from the project site greater than 100 feet in distance the activity may continue. If bird activity is surveyed or discovered within the buffer limits immediate consultation with CDFW shall be required. If a rail is observed within the project area during project construction or maintenance work shall be stopped immediately by a qualified biologist and the rail species shall be allowed to leave the area on its own. If the rail species does not leave the area, then no work shall commence until CDFW has determined how to proceed with work activities. Examples of how CDFW may determine work activities proceed include installation of a temporary noise barrier to reduce construction noise or postponing construction in the area until outside of the nesting season. Daily monitoring surveys of project site within 200 feet of rail habitat shall occur for rail until project construction is complete.	Applicant or designee/ Construction contractor	Prior to and during construction	City of Palo Alto Planning Department

Mitigation Measure Number	Mitigation Measure Text	Responsible for Implementation	Timing of Compliance	Oversight of Implementation
BIO-2	<p>Prior to initiating construction activities west of Interstate 280 that involve ground disturbance off existing roadway surfaces, sidewalks, maintained lawns and landscaping, or existing utility pads, a qualified biologist or botanist shall conduct a protocol-level survey of the proposed disturbance area to confirm the absence of special-status plant species. The survey shall cover the entire area of ground disturbance and shall occur when above ground plant material is evident and when identifying features, such as flowers and fruit, are identifiable. Multiple site visits during the survey season may be necessary to make observations during the appropriate phenological stage of all special-status plant species. <i>Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities</i> (CDFW 2018) shall be used to develop appropriate protocol-level surveys. If special-status plant species are detected during the survey, the biologist or botanist shall establish a buffer around the plant or plants in which no construction or ground disturbance shall occur. The buffer size or distance shall be at the discretion of the biologist or botanist based upon review of site-specific conditions (e.g. special-status plants located downstream or in lower elevational areas in relation to the impact location, special-status plants being down wind of earth moving activities, and other conditions). Prior construction or issuance of construction permits (whichever occurs first) in the applicable areas west of Interstate 280, the biologist or botanist shall submit a report indicating the results of the survey and designated buffer zones to the satisfaction of the City of Palo Alto. Additionally, prior to construction or issuance of construction permits (whichever occurs first) a review of protocol-level survey results shall be conducted to establish appropriate compensatory mitigation ratios specific to each special-status plant species. Compensatory mitigation ratios shall be developed based on the biological factors specific to each species and should be sufficient to compensate for the loss of those species. Compensatory mitigation ratios shall be approved by CDFW unless CDFW delegates approval to the City of Palo Alto.</p>	Applicant or designee/ Construction contractor	Prior to issuance of construction permits and during construction	City of Palo Alto Planning Department
BIO-3	<p>Prior to initiating construction activities west of Interstate 280 that involve ground disturbance off existing roadway surfaces, sidewalks, maintained lawns and landscaping, or existing utility pads, a habitat assessment shall be conducted by a qualified entomologist with knowledge of the life history and ecological requirements of Crotch's bumble bee (<i>Bombus crotchii</i>). The habitat assessment shall include suitable nesting, overwintering, and foraging habitats within the project area. Potential nest habitat (February through October) could include that of other <i>Bombus</i> species such as bare ground, thatched grasses,</p>	Applicant or designee/ Construction contractor	Prior to issuance of construction permits and during construction	City of Palo Alto Planning Department

Mitigation Measure Number	Mitigation Measure Text	Responsible for Implementation	Timing of Compliance	Oversight of Implementation
	<p>abandoned rodent burrows or bird nests, brush piles, rock piles, and fallen logs. Overwintering habitat (November through January) could include that of other <i>Bombus</i> species such as soft and disturbed soil or under leaf litter or other debris. The habitat assessment shall be conducted during peak bloom period for floral resources on which Crotch’s bumble bee feed, and shall be based on guidance provided within <i>Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species</i> (CDFW 2023).</p> <p>If the habitat assessment identifies suitable nesting, foraging, or overwintering habitat within the work area, a qualified entomologist familiar with the species behavior and life history shall perform a minimum of three on-site surveys within the identified habitat prior to vegetation removal and/or grading to determine the presence/absence of Crotch bumble bees. Each survey shall ideally be spaced 2- to 4 weeks apart during the Colony Active Period (April–August) (CDFW 2023). Surveys shall occur during the day (at least an hour after sunrise and at least two hours before sunset, though ideally between 9:00 a.m. to - 1:00 p.m.) on warm, but not hot, sunny days (65 to 90 degrees Fahrenheit), with low wind (less than 8 miles per hour). The entomologist shall take photos of bumble bees or bumble bee resources observed during the surveys and during the initial habitat assessment.</p> <p>Where bumble bees have been identified by the qualified entomologist during the on-site surveys, ground disturbing activities shall be restricted to the period when bumble bees are active (during the flight period of listed bee species). No ground disturbance shall occur from November 1st to February 15th to accommodate the overwintering period. If Crotch’s bumble bee nests are observed on site or ‘take’ could occur, a 50-foot avoidance buffer shall be installed and CDFW shall be notified to determine next steps for relocation and/or avoidance. If no Crotch bumble bees are found during the multiple rounds of focused surveys, but the habitat assessment identified suitable nesting, foraging, or overwintering habitat within the work area, a biological monitor shall be onsite during vegetation removal or ground disturbing activities that take place during the Queen and Gyne Flight Period and Colony Active Period (April–August).</p>			
<b>BIO-4</b>	<p>Prior to the issuance of tree removal, tree trimming, or other construction and activities or the issuance of project permits (whichever comes first), the project applicant shall schedule all construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive). Construction activities</p>	<p>Applicant or designee/ Construction contractor</p>	<p>Prior to tree and vegetation removal of issuance of construction permits</p>	<p>City of Palo Alto Planning Department</p>

Mitigation Measure Number	Mitigation Measure Text	Responsible for Implementation	Timing of Compliance	Oversight of Implementation
	<p>include site disturbance such as, but not limited to, tree trimming or removal, trenching, boring, and drilling.</p> <p>If construction activities cannot be scheduled between September 1st and January 31st (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist or biologist to ensure that no active nests shall be disturbed during construction activities. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st inclusive). During this survey, the ornithologist/ biologist shall inspect all trees and other possible nesting habitats on-site and within 250 feet of the site for nests.</p> <p>If an active nest is found within 250 feet of the project area to be disturbed by construction, the ornithologist/biologist, in consultation with the California Department of Fish and Wildlife, shall determine the extent of a construction free buffer zone to be established around the nest, (typically 250 feet for raptors and 100 feet for other birds), to ensure that raptor or migratory bird nests shall not be disturbed during project construction.</p> <p>Prior to tree removal, or issuance of construction permits (whichever occurs first), the ornithologist/biologist shall submit a report indicating the results of the survey and designated buffer zones to the satisfaction of the City of Palo Alto.</p>		<p>(whichever comes first)</p> <p>Buffers, if applicable, to continue during construction through nesting season</p>	
<b>BIO-5</b>	<p>Prior to the trimming or removal of trees, a bat survey shall be performed by a qualified biologist between March 1 and July 31. If bat roosts are identified, the bats shall be safely flushed from the sites where roosting habitat is planned to be removed prior to roosting season (typically May to August) and prior to the onset of construction activities. If maternity roosts are identified during the maternity roosting season (typically May to September) they shall remain undisturbed until a qualified biologist has determined the young bats are no longer roosting. If roosting is found to occur onsite, replacement roost habitat (e.g., bat boxes) shall be provided to offset roosting sites removed. If no bat roosts are detected, then no further action is required if the trees are removed prior to the next breeding season. If removal is delayed, an additional survey shall be conducted 30 days prior to removal to ensure that a new colony has not established itself.</p> <p>If impacts to roosts cannot be avoided or activities may cause roost abandonment, the bats shall be excluded from the roosting site before</p>	Applicant or designee/ Construction contractor	Prior to trimming or removing trees and during construction	City of Palo Alto Planning Department

Mitigation Measure Number	Mitigation Measure Text	Responsible for Implementation	Timing of Compliance	Oversight of Implementation
	<p>the roost is removed/impacted. Exclusionary materials, including, but not limited to, expandable foam and steel wool, shall be applied selectively and as needed until bats have relocated. Bats shall be excluded from the directly affected work areas prior to April 15 of the construction year, and exclusionary devices shall be removed between August 31 and April 15. Exclusion shall occur at dusk to allow bats to exit during the darker hours.</p>			
<p><b>BIO-6</b></p>	<p>If a stream crossing cannot be avoided through colocation with existing infrastructure and requires the use of horizontal directional drilling, the following measures shall be incorporated into drilling procedures to avoid or reduce impacts to receiving waters from bentonite release. In addition, the project applicant shall obtain the necessary agency approvals for horizontal directional drilling activity, which may include additional controls/conditions.</p> <ol style="list-style-type: none"> <li>1. Horizontal directional drilling staging areas and mud pits shall be located no closer than 20 feet to riparian zones, wetlands, creeks, and other surface waters.</li> <li>2. A horizontal directional drilling foreman shall be present at all times during drilling operations, regardless of where the drilling occurs.</li> <li>3. Geotechnical borings in the horizontal directional drilling affected areas shall be performed as part of the construction scope prior to the start of drilling operations. Geotechnical bore data shall provide information defining proper pipe depth as dictated by the soil strata characterization.</li> <li>4. All horizontal directional drilling operations for the proposed project shall be guided by a tracking system consistent with best industry practices. The alignment shall be surveyed on foot by a team of personnel. Temporary surveyor stakes shall be placed strategically along the alignment to anchor the tracker wires. The alignment shall be accessed throughout the drilling operation to monitor for bentonite mud loss.</li> <li>5. The drill rig operator shall monitor the equipment for loss of drilling lubricant pressure and volume. Members of the drill crew shall also monitor the alignment of the drill and visually inspect for indications of mud loss.</li> <li>6. The drill rig operator shall monitor the bore hole to keep it free from obstructions that would inhibit the return of drilling lubricant to the rig.</li> </ol>	<p>Applicant or designee/ Construction contractor</p>	<p>Prior to and during construction</p>	<p>City of Palo Alto Planning Department</p>

Mitigation Measure Number	Mitigation Measure Text	Responsible for Implementation	Timing of Compliance	Oversight of Implementation
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7. Unless drilling operations are within 1 hour of completion, drilling shall be limited to the operation times of dawn to 30 minutes prior to dusk.

**CULTURAL RESOURCES**

**CUL-1**

An archaeological monitor having either a B.S. or B.A. in archaeology or related field with at least 1 year of field experience shall be present during ground disturbing within the work locations listed below. The monitor shall work under the direct supervision of a qualified archaeologist having either a M.S. or MB.A. in archaeology or related field with at least 10 years of experience and demonstrated competence in archaeological research, fieldwork, reporting, and curation. The qualified archaeologist shall be on-site at the pre-construction meeting to discuss monitoring protocols. The archaeological monitor shall be present full-time during ground disturbance within site locations listed below, including but not limited to grading, trenching, utilities, and off-site easements. If, after excavation begins, the qualified archaeologist determines that the sediments is not likely to produce archaeological resources, monitoring efforts shall be decreased. The monitor shall be empowered to temporarily halt or redirect grading efforts if paleontological resources are discovered. In the event of an archaeological discovery the monitor shall flag the area and notify the construction crew immediately. No further disturbance in the flagged area shall occur until the qualified archaeologist has cleared the area and announced that construction can resume. In consultation with the qualified archaeologist, the monitor shall quickly assess the nature and significance of the find. If the specimen is not significant it shall be quickly mapped, documented, removed, and the area cleared. If the discovery is potentially significant the qualified archaeologist shall notify the construction crew and City of Palo Alto immediately. In consultation with the City the qualified archaeologist shall develop a plan of mitigation which will likely include full-time monitoring, salvage excavation, scientific removal of the find, removal of sediment from around the specimen (in the laboratory), research to identify and categorize the find, curation of the find in a local qualified repository, and preparation of a report summarizing the find. A Native American representative registered with the Native American Heritage Commission for the City of Palo Alto and that is traditionally and culturally affiliated with the project area shall be invited to work alongside the qualified archaeologist and have the same powers as the qualified archaeologist.

Applicant or designee/ Construction contractor

Prior to and during construction

City of Palo Alto Planning Department



Mitigation Measure Number	Mitigation Measure Text	Responsible for Implementation	Timing of Compliance	Oversight of Implementation
	<p>The above mitigation activities shall be applied during construction in the following areas:</p> <ul style="list-style-type: none"> <li>• Within the rights-of-ways and adjacent to the rights-of-ways of West Charleston Avenue and Park Boulevard between West Charleston Avenue and Edlee Avenue.</li> <li>• The area between Oregon Expressway south to Moreno Avenue between Ross Road and Middlefield Road.</li> <li>• Within the right-of-way and adjacent to the right-of-way of Bryant Street within one block north and south of its intersection with University Avenue.</li> <li>• Within the right-of-way and adjacent to the right-of-way of University Avenue within one block east and west of its intersection with Bryant Street.</li> </ul> <p>If cultural resources are uncovered during construction anywhere in the project area, work shall be halted until the qualified archaeologist can assess the significance of the find and then apply the actions described in this mitigation measure, as applicable.</p>			
<b>CUL-2</b>	<p>Prior to the initiation of any site preparation and/or start of construction, the City of Palo Alto Public Works Utilities Division and/or its construction contractor(s) shall ensure that all project construction workers receive training overseen by a qualified archaeologist who is experienced in teaching nonspecialists, to ensure that forepersons and field supervisors can recognize archaeological resources in the event that any are discovered during construction. The City of Palo Alto Public Works Utilities Division and/or its construction contractor(s) shall keep a log or register to document that all construction workers have received the training. If potential archaeological resources are observed or reported by construction workers, the actions described in Mitigation Measure CUL-1 shall be applied to the resource or resources, as applicable.</p>	Applicant or designee/ Construction contractor	Prior to and during construction	City of Palo Alto Planning Department
<b>GEOLOGY AND SOILS</b>				
<b>GEO-1</b>	<p>If vertebrate fossils are discovered during construction, all work within 50 feet of the site shall stop immediately and the construction contract shall immediately notify the City of Palo Alto. Before work resumes, a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for</p>	Applicant or designee/ Construction contractor	During construction	City of Palo Alto Planning Department

Mitigation Measure Number	Mitigation Measure Text	Responsible for Implementation	Timing of Compliance	Oversight of Implementation
	publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the City			
<b>HAZARDS AND HAZARDOUS MATERIALS</b>				
<b>HAZ-1</b>	<p>A Soil Management and Transportation Plan (SMTP) shall be created for the project to assist construction workers in identifying potentially hazardous materials and guide the handling, storage, and transportation of materials excavated during fiber-optic infrastructure installation. The SMTP will detail the necessary actions to comply with applicable hazardous materials regulations, some of which include Health and Safety Code Section 25100 et seq. and Section 25163 et seq., 22 CCR 66263.10 et seq., 13 CCR 1160 et seq., California Vehicle Code Sections 12804 et seq., and 31300 et seq. The SMTP shall establish criteria for reuse of excavated materials or off-site transport for disposal at appropriate State-approved facilities. The SMTP shall be reviewed and approved by the City prior to the issuance of construction permits. Examples of the types of measures that the plan could include are:</p> <ul style="list-style-type: none"> <li>• Requirements for field screening to identify potentially contaminated soil;</li> <li>• Dust mitigation measures for earth moving activities that may include wetting and other forms of material stabilization;</li> <li>• Procedures for stockpiling and stockpile management to isolate apparently contaminated materials and minimize migration of those materials from stockpile areas;</li> <li>• Procedures for stockpile sampling and analysis to characterize the soil for appropriate transport and disposal; and</li> <li>• Identification of appropriate disposal facilities.</li> </ul>	Applicant or designee/ Construction contractor	Prior to issuance of construction permits  SMTP to be implemented during construction	City of Palo Alto Planning Department
<b>HYDROLOGY AND WATER QUALITY</b>				
<b>HYD-1</b>	<p>Fuels and other fluids used for the operation of construction equipment, shall not be staged or stored within areas that the Federal Emergency Management Agency have mapped as special flood hazard areas. Likewise, equipment staging and storage shall not occur within areas subject to inundation from tsunami or seiche, as mapped by the California Department of Conservation. Bentonite mud and mud pits used for horizontal directional drilling shall be exempt from this mitigation measure because bentonite is non-toxic. Permanent project features containing fluids, such as the proposed fiber hut at Colorado Substation, but be raised such that they are above inundation elevations.</p>	Applicant or designee/ Construction contractor	During construction and operation	City of Palo Alto Planning Department

Mitigation Measure Number	Mitigation Measure Text	Responsible for Implementation	Timing of Compliance	Oversight of Implementation
<b>TRANSPORTATION</b>				
<b>TRA-1</b>	<p>Prior to project construction, the project applicant or its construction contractors shall coordinate with the applicable traffic regulatory agency (City of Palo Alto, County of Santa Clara, and Caltrans) regarding planned improvements near the fiber-optic facility to limit interference with the implementation of roadway improvements or trenching in nearly completed facilities. At a minimum, coordination shall include the following:</p> <ul style="list-style-type: none"> <li>• Circulation and detour plans shall be developed by the applicant to minimize impacts to local street circulation, including the use of signage and flagging to guide vehicles through and/or around the construction zone. Circulation and detour plans must be approved by the City prior to construction.</li> <li>• To minimize disturbances to traffic, throughout project construction, the construction staging areas shall be provided by the applicant and its contractors in locations that are not within travel lanes or paved shoulders of existing public roads. Construction staging areas shall not be located at transit stops or facilities.</li> <li>• A traffic plan shall be prepared by the applicant that incorporates all of the above measures and any additional measures required by the City of Palo Alto. The project applicant shall provide the traffic plan to the City for review as part of the construction permit submittal. Both parties shall ensure that revisions are agreed upon and the final traffic plan is approved by both the applicant and the City of Palo Alto prior to the issuance of construction permits and the start of construction activities.</li> </ul>	Applicant or designee/ Construction contractor	Prior to issuance of construction permits and during construction	City of Palo Alto Planning Department
<b>TRIBAL CULTURAL RESOURCES</b>				
<b>TCR-1</b>	<p>In the event that cultural resources of Native American origin are identified during implementation of the proposed project, all earth-disturbing work within 50 feet of the find shall be temporarily suspended or redirected until an archaeologist and culturally affiliated Native American representative have evaluated the nature and significance of the find. If the City, in consultation with local Native Americans, determines that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with state guidelines and in consultation with local Native American group(s). The plan shall include avoidance of</p>	Applicant or designee/ Construction contractor	During construction	City of Palo Alto Planning Department

Mitigation Measure Number	Mitigation Measure Text	Responsible for Implementation	Timing of Compliance	Oversight of Implementation
	<p>the resource or, if avoidance of the resource is infeasible, the plan shall outline the appropriate treatment of the resource in coordination with the culturally affiliated local Native American tribal representative and, if applicable, a qualified archaeologist. Examples of appropriate mitigation for tribal cultural resources include, but are not limited to, protecting the cultural character and integrity of the resource, protecting traditional use of the resource, protecting the confidentiality of the resource, or heritage recovery. Regardless of the plan developed, the City of Palo Alto shall maintain the confidentiality of the resource.</p>			



# City of Palo Alto

Purchasing and Contract Administration  
 P.O.Box 10250  
 Palo Alto CA 94303  
 Tel:(650)329-2271 Fax:(650)329-2468

## Purchase Order

### Vendor Address

THERMO BOND BUILDINGS LLC  
 1001 W MAIN ST  
 ELK POINT SD 57025  
 Tel: 605-952-0070

P.O. NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES, SHIPPING PAPERS AND CORRESPONDENCE PERTAINING TO THIS ORDER

<b>PO Number</b>	4524000496
<b>Date</b>	06/03/2024
<b>Vendor No.</b>	108224
<b>Payment Terms</b>	Payment Due 30 days
<b>FOB Point</b>	F.O.B. Palo Alto
<b>Ship via</b>	Vendor to ship best way
<b>Required Date</b>	11/18/2024
<b>Buyer/Phone</b>	Renee Howard / 650-496-5900
<b>Email</b>	renee.howard@cityofpaloalto.org

**Ship To:**

Utilities Department  
 City of Palo Alto  
 250 Hamilton Avenue  
 Palo Alto CA 94301

**Bill To:**

Utilities Department  
 City of Palo Alto  
 250 Hamilton Avenue  
 Palo Alto CA 94301

DELIVERIES ACCEPTED ONLY BETWEEN 7:00 AM & 3:00 PM UNLESS OTHER ARRANGEMENTS ARE INDICATED HEREIN

Item	Material/Description	Quantity	UM	Net Price	Net Amount
0010	<p>Award in accordance with Proposal No. 2401-30 dated March 14, 2024 and Staff Report 2403-2713 approved on June 18, 2024.</p> <p>PO NTE: \$313,844.00</p> <p>Upon notification of items shipping staff will advise the delivery address for all items.</p> <p>Fiber Hut</p> <p>Purchase and delivery of Fiber Hut for Fiber to the Premise project.</p> <p>- 11#-6"x20#x9# Shelter \$204,375</p> <p>Optional add on items:</p> <p>- Generator 25kw diesel engine \$43,335</p> <p>- Inverter - (1) 4K 120VAC inverter N+ 1 \$8,100</p> <p>- DC Plant \$20,700            500A Max Capacity 48VDC Plant configured for 300A N+ 1            100AH Lithium battery pack</p> <p>Project Manager: Dave Yuan (650) 329-2522</p>	276,510	USD	1.00	276,510.00

*Cecilia Magana*

Chief Procurement Officer

THIS P.O. IS SUBJECT TO THE TERMS AND CONDITIONS STATED BELOW AND ON THE LAST PAGE  
 SPECIFICATIONS - Any specification and /or drawings referred to and/or attached hereto are expressly made a part of this Purchase Order.  
 DELIVERY - Please notify the City promptly if delivery cannot be made on or before the date specified. If partial shipment is authorized, so indicate on all documents. Complete packing lists must accompany each shipment.  
 INVOICE - A separate invoice is required for each order. Send to address indicated above.



# City of Palo Alto

Purchasing and Contract Administration  
 P.O.Box 10250  
 Palo Alto CA 94303  
 Tel:(650)329-2271 Fax:(650)329-2468

## Purchase Order

### Vendor Address

THERMO BOND BUILDINGS LLC  
 1001 W MAIN ST  
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#### Ship To:

Utilities Department  
 City of Palo Alto  
 250 Hamilton Avenue  
 Palo Alto CA 94301

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 City of Palo Alto  
 250 Hamilton Avenue  
 Palo Alto CA 94301

**P.O. NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES, SHIPPING PAPERS AND CORRESPONDENCE PERTAINING TO THIS ORDER**

**PO Number** 4524000496  
**Date** 06/03/2024  
**Vendor No.** 108224  
**Payment Terms** Payment Due 30 days  
**FOB Point** F.O.B. Palo Alto  
**Ship via** Vendor to ship best way  
**Required Date** 11/18/2024  
**Buyer/Phone** Renee Howard / 650-496-5900  
**Email** renee.howard@cityofpaloalto.org

**DELIVERIES ACCEPTED ONLY BETWEEN 7:00 AM & 3:00 PM UNLESS OTHER ARRANGEMENTS ARE INDICATED HEREIN**

Item	Material/Description	Quantity	UM	Net Price	Net Amount
	<i>Email: dave.yuan@cityofpaloalto.org</i>				
	<i>TOTAL NTE \$313,844.00</i>				
0020	Shipping (Estimated)	21,999	USD	1.00	21,999.00
0030	Crane Off Loading (Estimated)	15,335	USD	1.00	15,335.00
				Sub-Total	313,844.00
				Sales Tax	25,231.54
	*** ORDERING VIA EMAIL ***				
	**** PRICE HAS BEEN QUOTED ****				

**Total 339,075.54**

*Cecilia Magana*

Chief Procurement Officer

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# TERMS AND CONDITIONS OF PURCHASE

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**ACCEPTANCE/AGREEMENT:** City of Palo Alto (City) reserves the right to reject any and all quotations, to waive any informalities, and, unless otherwise specified by Seller, to accept any item in a quotation. By accepting or filing this Purchase Order (P.O.), Seller agrees to the terms and conditions herein which shall prevail over any inconsistent provision in any form or other paper submitted by Seller. All shipments or services performed shall be deemed to have been made pursuant hereto. No other terms are acceptable. This P.O., including all specifications and drawings, shall constitute the entire agreement between the parties unless modified in writing by City.

**CITY'S PROPERTY:** Seller agrees that the information, tools, jigs, dies, or materials, and drawings, patterns, and specification supplied or paid for by City shall be and remain City property and shall be held by Seller for City unless directed otherwise. Seller shall account for such items and keep them protected, insured, and in good working conditions without expense to City.

**DELIVERY:** The terms of delivery are as stated on the reverse side hereof. The obligation of Seller to meet the delivery dates, specifications, and quantities set forth herein is of the essence of this P.O. No boxing, packing, or cartage charge will be allowed unless authorized by this P.O. Deliveries are to be made both in quantities and at times specified herein or, if not, such quantities and times are specified pursuant to City's written instruction. Items not delivered may be canceled without penalty to City. Shipments in greater or lesser quantity that ordered may be returned at Seller's expense unless written authorization is issued by City.

**PRICES:** The price which Seller charges in filling this P.O. shall not be higher than Seller's most recent quote or charge to City for such materials, supplies, services and/or installations unless City expressly agrees otherwise in writing. Notwithstanding the prices set forth the P.O. City shall receive the benefit of any general reduction in the price of any item(s) listed herein which may be made by Seller at any time prior to the last delivery of goods or services covered by this P.O.

**TERMINATION:** City shall have the right to terminate this P.O. or any part thereof upon ten (10) days notice in writing to Seller.

(1) Without Cause. City may terminate all or any part of this P.O. without cause. Any claim by Seller for damages due to termination without cause must be submitted to City within thirty (30) days after effective date of termination.

(2) For Cause. If Seller fails to make any delivery in accordance with the agreed delivery date, delivery schedule, or otherwise fails to observe or comply with any of the other instructions, terms, conditions or warranties applicable to this P.O., City may, in addition to any other right or remedy provided by this P.O. or by law, terminate all or any part of this P.O. in writing without any liability of City with respect to Seller at any time during the term of this P.O. In the event of termination for cause, City may purchase supplies or services elsewhere on such terms or in such manner as City may deem appropriate and Seller shall be liable to City for any cost and other expenses incurred by City, which is charged to City.

**CHANGES:** City shall have the right at any time by written notice via P.O. Change Order to Seller to make changes in the specifications, the quantity of items called for, delivery schedules, and requirements covering testing, packaging, or destination. Any claim by Seller for adjustment under this clause shall be deemed waived unless made in writing with then (10) days after receipt by Seller of notice of such change. Price increases or extensions of time for delivery shall not be binding on City unless evidenced by a P.O. Change Order issued by City's Purchasing Manager.

**INSPECTION:** City shall have the right to inspect and approve or reject any materials, supplies, services and/or installations upon arrival of notice of completion prior to payment without regard to the manner of shipment, completion, or any shipping or price terms contained in this P.O. All materials, supplies, services and/or installations must be furnished as specified.

(1) Defective, damaged, and nonconforming materials and/or supplies may be returned for credit or refund, at Seller's expense. City may charge Seller for all expenses of unpacking, examining, repacking and reshipping of such materials and/or supplies.

(2) Defective, incorrect and nonconforming services and/or installations may be returned for credit or refund, at Seller's expense. All of the above notwithstanding prior payment by City.

**WARRANTY:** Seller expressly warrants that all materials, supplies, services and/or installations covered by this P.O. shall:

(1) conform to the specifications, drawings, samples, or other descriptions specified by City or if none are so specified, to Seller's standard specification or the standards of the ASTM or ANSI or other national standard organizations;

(2) be new and unless specified to the contrary on the face hereof, will be free from defects in material and workmanship and will be free of all liens and encumbrances and will conform to any affirmation of facts made on the container or label;

(3) be adequately contained, packaged, marked, labeled and/or provided in compliance with all applicable federal and state laws and regulations (including materials deemed hazardous);

(4) be performed within the rules and regulations of the Occupational Safety and Health Act of 1970 (as amended);

(5) be produced or transferred or disposed of as required by federal and state laws and regulation under the conditions of the Toxic Substances Control Act; the Hazardous Materials Control and Hazardous Waste Regulations; and other toxic laws and programs.

Seller further expressly agrees to protect, indemnify, and hold harmless City, its employees and agents for any loss, damage, fine, liability, fee (including reasonable charges and fees) or expense arising in connection with or resulting from Seller's failure to furnish materials or supplies or perform services that conform with any warranty contained herein.

(6) have good marketable title.

**GOVERNING LAW:** This P.O. shall be governed by the laws of the State of California.

**INDEPENDENT CONTRACTOR, INSURANCE:** Seller certifies, by acceptance, that he/she is an independent contractor. Seller shall protect, defend, and indemnify and hold City harmless against all damages, liability, claims, losses and expenses (including attorney's fees) arising out of, or resulting in any way from Seller's negligence in providing the goods or services purchased hereunder or from any act or omission of Seller, its agents, employees, or subcontractors, Seller shall maintain such public liability insurance, including contractual liability, automobile and general public liability, (including non-owned automobile liability) Worker's Compensation, and employer's liability insurance as well adequately protect City against such damage, liabilities, claims, losses, and expenses (including attorney's fees). Seller agrees to submit certificates of insurance, evidencing its insurance coverage when requested by City.

**EQUAL OPPORTUNITY CLAUSE:** By acceptance of this P.O., Seller certifies it is in compliance with the Equal Opportunity Clause required by Executive Order 11246, as amended, and the Palo Alto Municipal Code, as amended, including Affirmative Action Compliance Programs for Veterans; Handicapped; and Minority Business, and other equal opportunity programs.

**FORCE MAJEURE:** City may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such materials, supplies, services and/or installations at the direction of City and shall deliver them when the cause affecting the delay has been removed. City shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of this P.O. and City's request. Seller shall also be excused if delivery is delayed by unforeseen events beyond its reasonable control, provided Seller notifies City as soon as they occur. City may cancel this P.O. if such delay exceeds thirty (30) days from the original delivery date. Seller shall use its best efforts to grant preference to this P.O. over those of other customers, which were placed after this P.O.

**AUTHORITY OF AGENT OR FACTOR:** Seller represents that, whenever it executes this P.O. on behalf of a third party as an agent or factor, it shall disclose the existence of the agency or factor relationship to City. Seller shall be deemed to have the legal authority to enter into this P.O. with City on behalf of the third party.

**INTERPRETATION OF CONTRACT DOCUMENTS:** In the event of a conflict between the terms of this P.O. and the attached specification with respect to any obligation of Seller, the provision which impose the greater obligations upon Seller shall prevail.

# TERMS AND CONDITIONS OF PURCHASE

**ENVIRONMENTALLY PREFERRED PURCHASING REQUIREMENTS:** Seller agrees to comply with the City's Environmentally Preferred Purchasing Requirements.

(1) Hazardous Waste:

Seller shall take-back all spent or otherwise discarded hazardous products sold to the City by the Seller if the spent or discarded products are classified as hazardous or universal wastes by State or Federal regulations. Seller shall provide convenient collection and recycling services (or disposal services if recycling technology is unavailable) for all universal wastes, which originate from the Vendor. Hazardous waste manifests or bills of lading must be provided to City staff upon request. Recycling and reuse of hazardous wastes must occur within the United States. Universal waste lists and information are available [www.dtsc.ca.gov/HazardousWaste/UniversalWaste/](http://www.dtsc.ca.gov/HazardousWaste/UniversalWaste/). A hazardous waste list is available at <http://www.calrecycle.ca.gov/LEA/Training/wasteclass/yep.htm>. Additional information can be obtained by contacting the City of Palo Alto Hazardous Waste Department at (650) 496-6980.

(2) Zero Waste and Pollution Prevention:

Per Palo Alto City Council policy, the City is targeting to achieve Zero Waste by 2021. The City must also meet Municipal Regional Stormwater Permit requirements requiring no visible impact from litter via stormdrains by 2022. To that end the vendor, manufacturer and or contractor must individually or collaboratively comply with the waste reduction, reuse and recycling requirements of the City's Zero Waste and Pollution Prevention Programs. Seller acknowledges and agrees that if Seller fails to fully and satisfactorily comply with these requirements, the City will suffer, as a result of Seller's failure, substantial damages which are both extremely difficult and impracticable to ascertain. Therefore, the Seller agrees that in addition to all other damages to which the City may be entitled, in the event Seller fails to comply with the below requirements Seller shall pay City as liquidated damages the amounts specified below. The liquidated damage amount is not a penalty but considered to be a reasonable estimate of the amount of damages City will suffer as a result of such non-compliance.

- Sellers shall adhere to the standard that all printed materials provided to the City that are generated from a personal computer and printer including, proposals, quotes, invoices, reports, and public education materials shall be double-sided, printed on a minimum of 30% post-consumer content paper or greater unless otherwise approved by the City's Environmental Services Division (650) 329-2117. Materials printed by a professional printing company shall be a minimum of 30% post-consumer material or greater and printed with vegetable based inks. Liquidated damages of \$30 per document will be assessed by City for failure to adhere to this requirement.
- All paper packaging must be Forest Stewardship Council (FSC) Certified.
- All primary, secondary and shipping (tertiary) packaging be minimized to the maximum extent feasible while protecting the product being shipped.
- All primary, secondary and shipping packaging shall be recyclable in the City's recycling program. A complete list of items accepted for recycling are found at [www.zerowastepaloalto.org](http://www.zerowastepaloalto.org) or by calling (650) 496-5910. If any portion is received that does not meet this requirement, liquidated damages of \$235 or a minimum of \$50 if the combined product and shipping cost is \$235 or less will be assessed by City for failure to adhere to this requirement.
- Expanded foam plastics (e.g., foam or cushion blocks, trays, packing 'peanuts'), such as but not limited to polystyrene (aka Styrofoam[tm]), polypropylene, or polyurethane shall not be used as primary, secondary or tertiary/shipping packaging with the following exceptions:
  - o Primary packaging made from these materials may be used if the vendor, manufacturer, contractor individually or collaboratively does one of the following:
    - (a) takes the material back at the City's convenience and at no cost to the City, or
    - (b) pays the City of Palo Alto's disposal costs via payment of liquidated damages of \$235, or a minimum of \$50 if the combined product and shipping cost is \$235 or less.
  - o Bioplastics that meet ASTM D6400 standards for compostability may be accepted with approval from the City's Environmental Services Division subject to local municipal compost facility requirements.
  - o If approved by the City's Environmental Services Division, a packaging requirement may be waived if no other viable packaging alternative exists.

- Reusable/returnable pallets shall be used and taken back by the Seller, at no additional cost to the City. Seller shall provide documentation upon request ensuring reuse of pallets and/or recycling of broken pallets. Liquidated damages of \$262 or a minimum of \$50 if the combined product and shipping cost is \$262 or less will be assessed by City for failure to adhere to this requirement.

(3) Energy and Water Efficiency:

Seller shall provide products with an ENERGY STAR, Water Sense or State of California standard rating, whichever is more efficient, when ratings exist for those products. A life cycle cost analysis shall be provided to the City upon request and shall at minimum include: first cost, operating costs, maintenance costs, and disposal costs.

Contacts for additional information about City of Palo Alto Hazardous Waste, Zero Waste and Utilities programs:

**Hazardous Waste Program (Public Works)**

(650) 496-6980

**Zero Waste Program (Public Works)**

(650) 496-5910

**Watershed Protection**

(650) 329-2117

**Energy Efficiency**

(650) 496-2244

(4) Liquidated Damages:

Seller agrees that failure to comply with the City's Environmentally Preferred Purchasing Requirements will result in Liquidated Damages, according to the table marked Liquidated Damages on page 3 of this P.O.



## TERMS AND CONDITIONS OF PURCHASE

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### NONCOMPLIANCE WITH ENVIRONMENTALLY PREFERRED PURCHASING REQUIREMENTS, LIQUIDATED DAMAGES:

The following table lists the events that constitute breaches of the Agreement's standard of performance warranting the imposition of liquidated damages; the acceptable performance level, and the amount of liquidated damages for failure to meet the contractually required standards of performance.

<b>Event of Non-Performance</b>	<b>Acceptable Performance Level</b> (Allowed events per Fiscal Year)	<b>Liquidated Damage Amount</b>
<b>Recycled Paper Use</b> Failure to use 30% recycled content paper	1	\$30 per each document
<b>Recyclable Packaging Materials</b> Failure of Seller to use secondary and shipping packaging that is recyclable in the City's recycling program.	1	\$235 or a minimum of \$50 if the combined product and shipping cost is \$250 or less will be incurred if this is not adhered to.
<b>Expanded Foam Plastics</b> Unapproved use of expanded foam plastics for secondary or shipping packaging	0	\$235 or a minimum of \$50 if the combined product and shipping cost is \$235 or less
<b>Pallet Use</b> Failure of Seller to take-back and reuse pallets, recycling only broken pallets, at no additional cost to the City.	1	\$262 or a minimum of \$50 if the combined product and shipping cost is \$2 or less