

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF BURLINGAME COMMUNITY DEVELOPMENT DEPARTMENT
AND THE CITY OF EAST PALO ALTO FOR THE
MULTI-JURISDICTIONAL ENVIRONMENTAL JUSTICE ELEMENT PROJECT**

This Memorandum of Understanding ("MOU"), effective the 1st day of June 2023 is entered into by and between the City of Burlingame Community Development Department ("CITY") and the City of East Palo Alto ("AGENCY"), together referred to herein as the "PARTIES."

WHEREAS, the cities, towns and County in San Mateo have a strong history of collaboration and resource sharing on various planning studies and initiatives, including this initiative to participate in a Multi-Jurisdictional Environmental Justice Element PROJECT ("PROJECT"), a collaborative effort coordinated by 21 Elements; and

WHEREAS, Senate Bill 1000 (SB1000), requires that jurisdictions with disadvantaged communities either include an environmental justice element in their general plan or incorporate environmental justice goals, policies, and objectives throughout other general plan elements; and

WHEREAS, the purpose of this PROJECT is to address the legal requirements of SB 1000 by sharing analysis and resources for greater efficiency for the three jurisdictions participating in this collaborative effort;, including the City of Burlingame, City of East Palo Alto, and County of San Mateo; and

WHEREAS, through a competitive RFP process facilitated by the City of Burlingame, PlaceWorks ("CONTRACTOR") was chosen as the firm to provide consulting services for the outreach, analysis and planning associated with the PROJECT; and

WHEREAS, Community Planning Collaborative, the consulting firm for the 21 Elements Project, has served as the project manager ("PROJECT MANAGER") for this collaborative effort through initial formation and the RFP process to ensure the voice of each participating agency is heard and their needs addressed; and

WHEREAS, Community Planning Collaborative will continue to serve as the PROJECT MANAGER for the collaborative effort for the duration of the Project; and

WHEREAS, the City of Burlingame will serve as fiscal agent for the Project and will enter into contracts with PlaceWorks, Inc. and Community Planning Collaborative and oversee the payment of invoices on behalf of the participating agencies; and

WHEREAS, each participating agency will enter into a Memorandum of Understanding with the City of Burlingame outlining the roles of each participating agency, the consultants, and the funding obligations for the Project;

NOW, THEREFORE, BE IT RESOLVED that the CITY and AGENCY agree as follows:

I. PURPOSE

The purpose of this MOU is to memorialize the understanding between the CITY and AGENCY that (1) the Agency wishes to participate in the Multi-Jurisdictional Environmental Justice Element Project, (2) the Agency wishes to utilize the CONTRACTOR and PROJECT MANAGER as the consulting team, and (3) the CITY is serving as a fiscal agent to facilitate the PROJECT.

II. EXHIBIT AND ATTACHMENTS

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A – PlaceWorks Work Program and Cost Proposal
- Exhibit B – Project Management Scope and Fee from Community Planning Collaborative
- Exhibit C – Project Budget and Agency Costs

III. ROLES AND RESPONSIBILITIES

- A. The CITY will serve as the Fiscal Agent for the project and enter into contracts with CONTRACTOR and PROJECT MANAGER. All payments and invoices will be reviewed and paid on behalf of the participating agencies to the consultants.
- B. The AGENCY will provide funding as outlined in Exhibit C for the PROJECT and will participate in obligations outlined in the WORK PROGRAM, including participating in the overall plan development and implementation.
- C. Community Planning Collaborative through 21 Elements will serve as PROJECT MANAGER and will manage and implement all aspects of the PROJECT, in accordance with the WORK PROGRAM set forth in Exhibit B.

- D. Placeworks will serve as the consultant team to carry out any or all aspects of the PROJECT as the CONTRACTOR, in accordance with the Work Program set forth in Exhibit A.

IV. FUNDING AND METHOD OF PAYMENT

- A. AGENCY agrees to pay the CITY for the prescribed AGENCY portion (Exhibit C) within 60 days of the executed MOU. An AGENCY will have the option to split their contribution over two fiscal years if necessary.
 - 1. The CONTRACTOR will submit invoices to PROJECT MANAGER on a monthly basis for PROJECT activities. A brief narrative progress report shall be included with each invoice.
 - 2. The PROJECT MANAGER will submit invoices to the CITY on a monthly basis for PROJECT activities.
 - 3. The CITY and PROJECT MANAGER will provide a quarterly accounting of invoices, charged and remaining funds for each of the PARTIES. A final accounting will be submitted to all PARTIES with any remaining funds returned or an additional invoice if required.
- B. The CITY agrees that it will not be entitled to reimbursement of its costs incurred while performing its obligations as set forth in Section III, Roles and Responsibilities.
- C. In the event that the actual costs of completing the PROJECT Work Program, as set forth in Exhibit A, exceed the budget as outlined in Exhibit C (including the contingency budget amounts), the PARTIES, including the CITY and AGENCY, will confer and agree either to reduce the PROJECT Work Program and/or to provide additional funding based on mutual agreements in writing. All PARTIES agree to use best efforts in such case to reach agreement without causing a PROJECT delay.

V. TERM

This MOU shall remain in effect from June 1, 2023 to June 1, 2025, unless terminated sooner pursuant to Section XIV.

VI. AMENDMENTS

The AGENCY contact, or his/her designee, is authorized to make minor modifications within the work program and the scope of work in Exhibits A and B to respond to necessary changes as the project evolves as long as the scope of the project does not extend beyond the approved total cost estimate in Exhibit C. Such minor modifications to the scopes of work shall be documented in writing, but shall not require an amendment to this MOU. This MOU can be amended, modified, or supplemented only in writing(s) signed by both PARTIES. No oral understanding or agreement not incorporated herein will be binding on either of the PARTIES.

VII. INDEMNIFICATION

- a. It is agreed that Agency shall defend, hold harmless, and indemnify the City of Burlingame and its officers, employees, agents, and servants from any and all claims, suits, or actions of every name, kind, and description brought by a third party which arise out of the terms and conditions of this MOU (collectively, "Claims"); provided that such Claims are the direct result from the acts or omissions of Agency and/or its officers, employees, agents, and servants.
- b. Agency shall defend, hold harmless, and indemnify the City of Burlingame from and against any and all claims for wages, salaries, benefits, taxes, and all other withholdings and charges payable to, or in respect to, Agency's representatives for services provided under this MOU.
- c. It is agreed that the City of Burlingame shall defend, save harmless, and indemnify Agency and its officers, employees, agents, and servants from any and all claims, suits, or actions of every name, kind, and description brought by a third party which arise out of the terms and conditions of this MOU and which result from the acts or omissions of City of Burlingame and/or its officers and employees, agents and servants.
- d. The duty of each party to defend, hold harmless, and indemnify the other as set forth herein shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
- e. In the event of concurrent negligence (or intentional/reckless acts) of City of Burlingame and/or its officers and employees, on the one hand, and Agency and/or its officers, employees, agents, and servants, on the other hand, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this MOU shall be apportioned according to the California theory of comparative fault.
- f. This indemnification will survive termination or expiration of this MOU.

VIII. NOTICES

- A. All notices and communications deemed by either party to be necessary or desirable must be in writing and may be given by personal delivery to a representative of the other party or by mailing the same, postage prepaid, addressed as follows:

If to the CITY:

City of Burlingame Community Development Department
501 Primrose Road
Burlingame, CA 94010
Joseph Sanfilippo, Economic Development and Housing Specialist
650.558.7264; jsanfilippo@burlingame.org

If to the AGENCY:

City of East Palo Alto
1960 Tate Street
East Palo Alto, CA 94303
Salifu Yakubu, Senior Planner
650.380.3712/ syakubu@cityofepa.org

- B. The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail will be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

IX. INDEPENDENT CONTRACTOR

The PARTIES agree and understand that the work/services performed by either of the PARTIES or any consultant retained by either of the PARTIES under this MOU are performed as independent contractors and not as employees or agents of the other party. Nothing herein will be deemed to create any joint venture between the CITY and AGENCY.

X. SUCCESSORS AND ASSIGNS

Neither party will assign, transfer, or otherwise substitute its interest in this MOU, nor its obligations, without the prior written consent of the other PARTY. All obligations created under this MOU will be binding on, and the rights established herein will inure to the benefit of, any successors or assigns of the PARTIES.

XI. COMPLIANCE

The PARTIES must comply with any and all laws, statues, ordinances, rules, regulations, or requirements of the federal, state, and local governments, and any agency thereof, which relate to or in any manner affect the performance of this MOU.

XII. DISPUTE RESOLUTION

The PARTIES agree that any dispute arising from this MOU that is not resolved within 30 days by the PARTIES' representatives responsible for the administration of this MOU will be set forth in writing to the attention of the CITY's Community Development Director for resolution. In the event resolution cannot be reached, the PARTIES may submit the dispute to mediation by a neutral party mutually agreed to by the PARTIES prior to initiating any formal action in court.

XIII. TERMINATION

Either PARTY may terminate this MOU with or without cause upon thirty (30) days' prior written notice. If either PARTY terminates this MOU with or without cause, the AGENCY will be responsible for its pro rata share of costs incurred by the CITY up through the effective date of termination.

XIV. SEVERABILITY

If any provision of this MOU is be deemed invalid or unenforceable by a court of competent jurisdiction, that provision will be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this MOU; and in any event, the remaining provisions of this MOU will remain in full force and effect.

XV. GOVERNING LAW

This MOU will be governed by the laws of the State of California as applied to contracts that are made and performed entirely in California.

XVI. NO WAIVER

No waiver of any default or breach of any covenant of this MOU by either party will be implied from any omission by either party to take action on account of such default if such default persists or is repeated. No express waiver will affect any default not specified in the waiver, and the waiver will be operative only for the time or extent stated. The consent or approval by either party to or of any act by either party requiring further consent or approval will not be deemed to waive or render unnecessary consent or approval to any subsequent, similar acts.

IN WITNESS WHEREOF, the parties have executed this MOU as follows:

CITY OF EAST PALO ALTO

DocuSigned by:
By: Melvin E. Gaines
Melvin E. Gaines, City Manager

**CITY OF BURLINGAME
COMMUNITY DEVELOPMENT
DEPARTMENT**

By: Lisa K. Goldman
Lisa Goldman, City Manager

ATTEST:

DocuSigned by:
By: James Colin
James Colin, City Clerk

ATTEST:

By: Meaghan Hassel-Shearer
Meaghan Hassel-Shearer, City Clerk

APPROVED AS TO FORM:

DocuSigned by:
By: John D. Lee
John D. Lee, City Attorney

APPROVED AS TO FORM:

By: Michael Guina
Michael Guina, City Attorney