

City of Piedmont  
COUNCIL AGENDA REPORT

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DATE: October 18, 2021

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Consideration of Authorization for the City Administrator to Sign an Agreement with East Bay Community Energy for the Installation of Electric Vehicle Charging Stations on Magnolia Avenue, Adoption of Associated Parking Restrictions for the Spaces Served by the Electric Vehicle Chargers, Appropriation of up to \$75,000 to Fund Possible Costs Above East Bay Community Energy's Cost Allocation, and Determination that the Project is Exempt from CEQA

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RECOMMENDATION

By motion, take the following actions:

1. Authorize the City Administrator to sign an agreement with East Bay Community Energy (EBCE) for the installation of four single-port (or two dual-port) fast Electric Vehicle (EV) charging stations on Magnolia Avenue near the Exedra;
2. Appropriate up to \$75,000 from the General Fund to fund possible costs above EBCE's maximum allocation of \$306,660, and authorize the City Administrator to execute any documents necessary to affect changes up to this amount.
3. Authorize the City Administrator, in consultation with the City Attorney, to make minor changes to the agreement to satisfy the needs of the City; and
4. Approve a 90-minute parking restriction for the five on-street parking spaces served by the EV chargers, which includes one space to account for American with Disabilities (ADA) requirements.
5. Determine that the project is exempt from CEQA pursuant to CEQA Guidelines Section 15303, Class 3 (d), New Construction or Conversion of Small Structures

EXECUTIVE SUMMARY

On June 21, 2021, the City Council discussed a plan to install publicly accessible EV fast charging stations in the Civic Center area. The EV fast charging stations proposed during the meeting would serve four existing angled public parking spots next to the tennis courts on Bonita Avenue, near the intersection of Vista Avenue. During the meeting, the City Council raised numerous concerns, including those about the proposed 1-hour parking limit, noise that may arise in the vicinity of the chargers, enforcement of the parking spots, and potential usage of the spots, particularly by Piedmont Unified School District (PUSD) staff. In light of these concerns, the Council continued

its consideration of the proposed plan until there was additional clarification about these points. Particularly, City Council wanted staff to explain:

- Why the proposed four on-street parking spaces on Bonita Avenue were optimal for EV fast charging stations, as opposed to other nearby angled spaces.
- Whether the 1-hour parking limit could be extended to 90 minutes and if the parking spaces would be restricted to EVs only, 24 hours, 7 days a week (24/7).
- How restrictions for the four parking spaces would be enforced and what the Piedmont Police Department's role would be in enforcement.

The staff report from the June 21, 2021 City Council meeting can be found in Attachment 3 and a recording of the meeting is available at:

[https://piedmont.granicus.com/MediaPlayer.php?view\\_id=3&clip\\_id=2371](https://piedmont.granicus.com/MediaPlayer.php?view_id=3&clip_id=2371)

To address concerns raised at the June 21 Council meeting, City staff conferred with EBCE staff and modified the EV fast charging station proposal to include four EV-only fast charging stations on Magnolia Avenue with a 90-minute time allotment.

## BACKGROUND

Based on 2020 DMV vehicle registration data, there are nearly 900 plug-in EVs registered in Piedmont. Accordingly, EVs account for ~11% of the vehicles registered in Piedmont. Additional charging stations are needed to accelerate progress of the City's Climate Action Plan target of 50% EV adoption by 2030 and may help to encourage further adoption of EVs.

### **Location for EV Fast Charging Stations**

Multiple locations were evaluated over the last 12 months for project development. Throughout the process, City and EBCE staff worked to address various logistical, engineering, and utilization concerns that were raised to identify an optimal site for the installation of charging stations. Angled parking spaces are optimal for EV fast chargers, as the configuration allows charging cords to reach various charging port locations of different vehicle models (e.g., rear passenger side, front driver side). The City's initial examination resulted in the preference of the angled parking spaces on the west side of Bonita Avenue as the location for the chargers. To date, EBCE has expended funds for an engineering contractor to assess the initial technical aspects of the project site (e.g., proximity to PG&E transformers, project layout). EBCE also discussed the Bonita Avenue spaces with their PG&E service planning colleagues, who noted that locating the charging infrastructure at the south end of the block was preferred at this location. However, based on concerns raised at the June 21, 2021 Council meeting as well as proximity to the impending Community Pool construction project, City and EBCE staff explored and other nearby angled spaces for EV fast charging stations.

This exploration resulted in the City and EBCE focusing on EV fast chargers in angled spaces on Magnolia Avenue south of the Exedra (see Attachment 2). This location serves City employees, visitors to City Hall, customers and staff or nearby commercial establishments and houses of worship, residents, and PUSD staff and students at three campuses. Notably, the location also serves visitors to Piedmont Park, the City's most visited park.

To date, EBCE has not expended additional funds for a contractor to assess the Magnolia Avenue site. Upon the Council's approval of this proposal, EBCE will engage with their engineering contractor and PG&E to assess the feasibility of the Magnolia Avenue location. If the site is feasible from a technical perspective, EBCE will expend funds to revise the project drawings, submit a service planning application to PG&E, and revise the project's engineering drawings based on PG&E input. The installation costs and proximity of electrical sources to the proposed charging stations on location on Magnolia Avenue will not be known until PG&E completes their technical assessment of the site. The Magnolia Avenue site will consist of either 4 single-port EV fast chargers (each 75 kilowatts), each serving one parking space, or 2 dual-port EV fast chargers, each serving two parking spaces. An additional parking space is needed to accommodate one space for accessibility to individuals with disabilities.

The identified spaces on Magnolia Avenue are currently restricted to Construction Vehicles Only and are partially occupied by Construction Mobile Structures due to ongoing Piedmont High School construction. These parking spaces were previously Permit A parking spots. The proposed change in the location of these chargers mitigates noise concerns for residential neighborhoods.

#### **Parking Restrictions, Enforcement and Charging Rates**

Following the June 2021 City Council meeting, City and EBCE staff collaborated to address the Council's concerns regarding parking restrictions. Considering the concern that a 1-hour limit would not be adequate time for an individual to park and move their EV, EBCE agreed to increase the allotted time to a 90-minute limit for each EV only parking space. This time limit provides ample time for an EV driver to charge. It also ensures turnover of the publicly accessible fast chargers so that these assets are highly utilized and available to all EV drivers. The EV only parking spaces will not have permit restrictions.

The cost of the electricity used to charge an EV will be borne by the driver and those transactions are managed by EBCE. This rate will be a \$/kilowatt hour (kWh) rate and will be determined by EBCE. The rate will be market competitive and beneficial to EV drivers. Once an EV is fully charged, the charging rate will stop. However, if the EV remains in the EV only parking space longer than 90 minutes, the EV will incur a time-based fee. This fee is applicable 24/7 and requires no special enforcement by PPD.

Based on observations from Piedmont Police Department (PPD) night shift officers, there is very little use of the on-street parking spaces on this portion of Magnolia Avenue during the nighttime hours. Piedmont Police Chief Jeremy Bowers has indicated that should the Council approve the EV only parking spaces, the PPD will enforce the new parking space restrictions consistent with the other restricted parking throughout the City. The PPD's Community Service Officers are the primary parking enforcement mechanism the Department utilizes to enforce varying restricted parking in Piedmont. Police officers will enforce restrictions on a complaint basis when Community Service Officers are not available.

#### **FISCAL IMPACT AND PROJECT SCHEDULE**

In January 2021, the Alameda County Transportation Commission approved EBCE’s application for \$120,000 in Transportation Fund for Clean Air (TFCA) grant funding to partially pay for the installation of the proposed EV fast chargers in Piedmont. Coupled with the TFCA grant, EBCE will fund the remaining project costs (not to exceed \$186,660) for the Magnolia Avenue site. Given the total project cost for the Magnolia Avenue location is not known at this time, EBCE has indicated that the City will have the option to fund the balance of the project should the cost exceed \$306,660.

Unless project costs exceed \$306,660, EBCE will assume responsibility for the full cost of installing, maintaining and operating the EV fast chargers on Magnolia Avenue for a term no less than ten years. If the cost estimate were to exceed \$306,660 for the Magnolia Avenue site, EBCE has the option to terminate the agreement or the City can fund the cost difference for EBCE to proceed with the project scope described above.

Per EBCE’s TCFA grant agreement, construction must start by April 30, 2022 and the EV fast chargers must be operational by July 1, 2022.

CEQA

The project to install publicly accessible EV fast charging stations is categorically exempt under the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Section 15303, Class 3 (d), New Construction or Conversion of Small Structures because the project consists of the installation of a limited number of small facilities or as new small structures, and the project is consistent with General Plan policies and programs. The CEQA determination has been reviewed and approved by the City Attorney.

CONCLUSION AND NEXT STEPS

Should the Council agree to approve the agreement with EBCE and the parking restrictions, EBCE will submit applications for encroachment and excavation permits for the installation of the EV fast chargers at Magnolia Avenue. If project cost is determined to exceed EBCE’s threshold of feasibility, the City Administrator will proceed with the project up to her Purchasing Policy limit of \$75,000. Beyond \$75,000, staff will return to Council to seek authorization for additional funding to cover the project cost difference. Should the Council elect not to cover the additional funding to cover the delta, the project will be terminated by EBCE.

ATTACHMENTS

	<u>Pages</u>	
1	5-13	Contract Agreement for EV Charging Stations with EBCE
2	14	Proposed EV Charging Station Location on Magnolia Avenue
3	15-28	June 21, 2021 City Council EV Charging Stations Staff Report

By:

Daniel Gonzales, Director of Public Works  
 Alyssa Dykman, Sustainability Program Manager

## CHARGING STATION LICENSE AGREEMENT

This Charging Station License Agreement (“Agreement”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021 (“Effective Date”) by and between the City of Piedmont, a municipal corporation (“Host”) and the East Bay Community Energy Authority, a Joint Power Authority (“EBCE”). Host and EBCE are individually referred to as “Party” and collectively as “Parties”.

1. Grant of License. Host is the fee simple owner of certain real property located at Magnolia Avenue, Piedmont, CA 94611 (“Property”), which is more particularly depicted on Exhibit A, which is attached hereto and incorporated by reference. Host grants to EBCE for the Term of this Agreement: (i) an exclusive and irrevocable, except as specifically set forth in Section 4 of this Agreement, license to use and occupy a portion of the Property, including the designated parking spaces for charging vehicles (“Charging Stalls”), located on the Premises shown on Exhibit A (the “Premises”), for the Purpose described in Section 2 of this Agreement and (ii) any necessary rights for Installation, maintenance, operation, access and utilities for the Purpose. Host shall not allow installation or use of charging stations other than those of EBCE on the Property. Prior to EBCE offering use of the Charging Stalls to the public, EBCE shall submit, for approval to the Planning and Building Director, plans for the manner of operation of the Charging Stalls, including, but not limited to, details regarding the maximum length of time a vehicle may occupy a Charging Stall, and any other such information deemed necessary by the Planning and Building Director (“Operation Plans”).

2. Purpose. The Premises may be used by EBCE for any lawful activity in connection with the design, development, construction, installation, maintenance, repair, replacement, removal, security, and operation of electric vehicle chargers and ancillary items, including, without limitation, electrical equipment, hardware, software, signage and all supporting equipment and structures (which may include concrete pads and protective bollards) (collectively, the “Charging Station”), together with any other uses permitted herein (“Purpose”), on the terms and conditions set forth in this Agreement.

3. Term. The term of this Agreement (as extended or renewed from time to time, the “Term”) shall commence on the Effective Date and terminate ten (10) years from the date that the Charging Stations are first operational (“Commencement Date”). Following the expiration of the initial Term, the Agreement may be renewed for an additional five (5) year term and then successive one (1)-year terms upon the written agreement of both Parties.

4. Termination. This Agreement may be terminated:

a. by EBCE, upon thirty (30) days’ written notice to Host, at any time prior to the submission of the permit application for construction of the Charging Station at the Property, or in the event that EBCE determines that the construction or continued operation of the Charging Station is impracticable or uneconomical; or

b. by EBCE, upon thirty (30) days’ written notice to Host, if Host adversely affects EBCE's use of the Premises.

c. by Host, after the initial ten (10)-year Term, upon ninety (90) days' written notice to EBCE, if Host notifies EBCE that it intends to use the Property and/or Premises for another purpose.

d. by Host, upon thirty (30) days' written notice to EBCE, in the event the Commencement Date has not occurred within fifteen (15) months following the Effective Date; provided that the foregoing right shall terminate upon the Commencement Date; or

e. by either Party if the other Party breaches or fails to perform any of its obligations in any material respect, and such breach or failure continues uncured for ten (10) business days after receipt of written notice; provided that if such breach or failure reasonably requires more than ten (10) business days to cure, this provision shall not be triggered if such breaching Party commences to cure within such period and diligently proceeds to complete such cure; or

f. by either Party, if the other Party becomes insolvent or proceedings are instituted by or against it under any provision of any federal or state bankruptcy or insolvency laws.

g. by either Party, if any portion of the Property is damaged by fire or other casualty in a manner that adversely affects EBCE's use of the Premises, within thirty (30) days of the date of such fire or other casualty.

5. Electricity. Unless otherwise agreed by the Parties, EBCE shall be responsible for all electricity costs of the Charging Stations by obtaining separately metered electricity service. Host shall reasonably cooperate with EBCE's efforts regarding the provision of electricity to the Charging Stations. Neither Host nor EBCE has any responsibility or liability for interruption, curtailment, failure, or defect in the supply or character of distribution utilities furnished to the Charging Station. Host grants to EBCE the right to establish and/or receive utility services including but not limited to electric, and the right for the distribution utility service supplier to construct, reconstruct, install, inspect, maintain, replace, remove, and use said utility services to serve the Charging Stations together with the right for the utility service supplier to ingress to and egress from said utility service facilities across the Host Property. Host grants the right for the distribution utility and the service utility to trim, cut down, and clear away or otherwise control any trees or brush within five (5) feet of said route upon Host's written consent prior to such action, which shall not be unreasonably withheld, conditioned or delayed.

6. Maintenance of Premises. Host shall cause the Premises, including EBCE Charging Stalls, to be reasonably maintained in a clean, safe, and orderly condition to at least the same standard as adjacent areas of the Property that are under Host control are maintained. Host shall have no responsibility to maintain EBCE's Charging Station or related to EBCE equipment, hardware, software, or signage. Host shall not retain any ownership rights in the Charging Station and related EBCE equipment. EBCE and its employees, contractors, and vendors may, at any time during the Term, access the Premises and Property to maintain, inspect, repair, upgrade, remove or replace any portion of the Charging Stations.

7. EBCE Customers: Access. EBCE will provide access to the Charging Stations to customers ("EBCE Customers"), which may include members of the public, as well as commercial fleet and rideshare vehicles, who shall be charged in amounts reasonably determined by EBCE, which may change from time to time in EBCE's sole discretion. EBCE Customers shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week, and 365/366 days per year. Host shall notify EBCE at least forty-eight (48) hours in advance, or as soon as reasonably practical in the event that forty-eight (48) hours' advance is impractical due to emergency, of any need to limit access to the Premises due to maintenance, safety, or other unforeseen reasons.

8. Signage & Promotional Activities. EBCE may stripe and place appropriate signage at the Premises and mark the Charging Station and Charging Stalls and related EBCE equipment with Host's prior approval, which shall not be unreasonably withheld, conditioned or delayed. In addition, subject to Host's prior approval, not to be unreasonably withheld, EBCE may place signage, marks, or advertising devices in, on, or about and around the Premises within the Host Property at EBCE's sole cost and subject to applicable laws and regulations. At no time may Host place any signage on EBCE property without EBCE's prior approval.

9. Promotional Activities. During the Term of the Agreement, EBCE may promote the availability of the Charging Station through traditional and/or electronic media, including providing the address to the Property and a description thereof. No Party shall use the other Party's trade or service marks, logos, or other proprietary materials without the prior written consent of the other Party.

10. Construction. EBCE shall, at its sole cost and expense, be responsible for all installation activities required to support the operation of the Charging Station and services therewith, including the hiring and coordination of all vendors and contractors; the installation of electrical equipment, utility lines, hardware, and software; site preparation, trenching, repaving, and landscaping. Before beginning any installation activities, EBCE shall provide a copy of the construction schedule and installation plans to Host for its approval, which approval shall not be unreasonably delayed or withheld. EBCE shall ensure that it or its designated contractor(s) and/or service providers: obtain from governmental authorities all licenses, permits, or other approvals (collectively, "Approvals") required to conduct such installation activities. Host will reasonably cooperate with EBCE's designated contractors and service providers to obtain such Approvals. EBCE shall not permit or suffer any mechanic's or materialmen's liens to attach to the Premises. If such a lien attaches to the Premises, EBCE shall remove or bond over such lien at EBCE's sole cost and expense, within twenty (20) days of EBCE receiving written notice thereof from Host. EBCE shall ensure that it or its designated contractors, subcontractors and/or service providers pay prevailing wages for any construction, installation work or maintenance contracts related to the Charging Station and related equipment, as those wages are determined pursuant to Labor Code Section 1720 *et seq.*, and Sections 1774 and 1775, to employ apprentices as required by Labor Code Section 1777.5 *et seq.*, and EBCE shall cause the contractor and subcontractors to comply with all other applicable provisions of the Labor Code and the implementing regulations of the Department of Industrial Relations (the "DIR").

11. Modification. EBCE may, at any time during the Term and in its discretion modify, including, without limitation, upgrade, replace, and/or remove all or a portion of the Charging

Station (collectively, "Modifications"), whether or not said items are considered fixtures and attachments to the Premises under applicable laws; provided, however, before any such Modifications, EBCE shall provide at least sixty (60) days prior written notice to Host.

11. Removal. Within ninety (90) days following the termination of this Agreement, EBCE shall remove the Charging Stations and all of EBCE's other equipment and personal property from the Premises, but not electric infrastructure, which shall remain with the Property. This provision shall survive the termination of this Agreement.

12. Representations, Warranties & Covenants. Host and EBCE each hereby represent and warrant to the other that, as of the Effective Date: (a) it has all necessary power and authority to execute, deliver, and perform its obligations hereunder; (b) the execution, delivery, and performance of the Agreement have been duly authorized by all necessary action and do not violate any of the terms or conditions of its governing documents, any contract to which it is a party, or any law, regulation, order, or other legal determination applicable to it; (c) there is no pending or, to its knowledge, threatened litigation or proceeding that may adversely affect its ability to perform the Agreement; (d) it is duly organized and validly existing under the laws of the jurisdiction of its organization; (e) the Agreement constitutes a legal, valid and binding obligation of such Party, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights and by general principles of equity. Both Parties shall comply with all federal, state, and local laws, rules, regulations (including, without limitation, all zoning ordinances and building codes, nondiscrimination laws) and as amended from time-to-time in performing its obligations under the Agreement.

13. Indemnity. Each Party shall indemnify and hold harmless the other Party, and their respective affiliates, representatives, officials, agents, officers, directors, managers, members, partners, contractors, consultants, or employees, from and against all third-party claims, demands, causes of action, liabilities, costs, damages, losses, penalties, fines, judgments or expenses, including reasonable attorneys' fees and costs of collection (collectively, "Losses") that arise out of or result from (i) any willful misconduct or negligence of the indemnifying Party in connection with this Agreement, (ii) any breach by the indemnifying Party of its obligations, representations or warranties under this Agreement, or (iii) the indemnifying Party's operation of the Premises or Property, except to the extent arising out of or resulting from any willful misconduct or negligence of the indemnified Party. The obligations of the Parties under this Section shall survive the expiration, cancellation, or termination of this Agreement and the Term.

14. Insurance. During the Term, EBCE shall maintain insurance in full force and effect, at its cost and expense, as set forth in Exhibit B, attached hereto and incorporated herein by this reference. The insurance limits required of EBCE may be satisfied through self-insurance or a JPA, as designated in Exhibit B. Prior to the execution of the Agreement, EBCE shall provide proof of insurance required. EBCE shall make best efforts to provide Host thirty (30) days prior written notice of termination or material change in coverage and ten (10) days prior written notice of cancellation for non-payment. The City of Piedmont, its Council Members, directors, officers, agents and employees shall be named as additional insureds. EBCE shall provide Host with an additional insured certificate for each such insurance coverage.

15. Limitation of Liability. In no event shall either Party be liable (in contract or in tort, including negligence and strict liability) to such other Party for any special, indirect or consequential damages relating to this Agreement. The provisions of this Section shall apply to the full extent permitted by law and shall survive termination of this Agreement.

16. Miscellaneous.

a. Notice. Any notice provided or permitted to be given under the Agreement must be in writing and be served either by (i) deposit in the mail, addressed to the Party to be notified, postage prepaid, and registered or certified, with a return receipt requested, or (ii) deposit with an internationally-recognized overnight delivery carrier, with notice of delivery to the recipient Party. Notice given by registered or certified mail or overnight carrier shall be deemed delivered and effective on the date of delivery shown on the return receipt or proof of receipt. Each Party may change its address for notice by giving notice thereof to the other Party. For purposes of notice the addresses of the Parties shall be as follows: [CONTACT INFORMATION]

b. Assignment. In the event the Premises is transferred or Host ceases to have the requisite level of control over the Premises necessary to fulfill its obligations under the Agreement (each, a "Transfer Event"), and the Agreement is not first terminated pursuant to Section 4 of this Agreement, Host shall assign its rights and obligations under the Agreement to the person or entity which would be able to comply with Host's obligations following such Transfer Event. Further, Host agrees that any such Transfer Event shall not affect, terminate or disturb EBCE's right to possession of the Premises under the terms of the Agreement or any of EBCE's other rights under the Agreement, so long as EBCE is not then in default under any of the terms, covenants or conditions of the Agreement.

c. No Agency Relationship. Nothing in the Agreement shall be deemed or construed to create a joint venture, partnership, fiduciary, or agency relationship between the Parties for any purpose set forth in this Agreement, and the employees of one party shall not be deemed to be the employees of the other Party. Except as otherwise stated in the Agreement, neither Party has any right to act on behalf of the other, nor represent that it has such right or authority.

d. Severability. If any term of the Agreement is held by any court of competent jurisdiction to be invalid, such invalidity shall not invalidate the remainder of the Agreement and the Agreement shall be construed and deemed reformed to the extent necessary to render valid such term and the rights and obligations of the parties shall be enforced accordingly.

e. Governing Law. This Agreement shall be governed by the laws of California and the City of Piedmont with venue in Alameda County.

f. No Waiver. The failure of a Party to insist on strict performance of any provision of the Agreement does not constitute a waiver of or estoppel against asserting the right to require performance in the future and a waiver or estoppel given in any one instance does not constitute the same with respect to a later obligation or breach.

g. Remedies. The rights and remedies provided by the Agreement are cumulative, and the use of any right or remedy by any Party does not preclude or waive its right to use any or all other remedies. These rights and remedies are given in addition to any other rights a Party may have under any applicable law, in equity or otherwise.

h. Force Majeure. Neither Party is responsible for any delay or failure in performance of any part of the Agreement to the extent that delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, pandemic, act or omission of carriers or other similar causes beyond the Party's control.

i. Attorneys' Fees. If either Party institutes a suit against the other for violation of or to enforce any covenant, term or condition of the Agreement, the prevailing party shall be entitled to reimbursement of all of its costs and expenses, including, without limitation, reasonable attorneys' fees.

j. No Third Party Beneficiaries. The Agreement does not confer any rights or remedies on any person other than the Parties and their respective successors and permitted assigns.

k. Integration; Amendments. The Agreement contains all agreements, promises and understandings between the Parties as to the subject matter of this Agreement. Any amendment, modification or other change to the Agreement shall be ineffective unless made in a writing signed by the Parties hereto.

l. Counterparts. The Agreement may be executed in any number of counterparts with the same effect as if all the Parties had signed the same document.

m. Construction. All documents or items attached to, or referred to in, the Agreement are incorporated into the Agreement as fully as if stated within the body of the Agreement. Each Party has cooperated in the drafting, negotiation and preparation of the Agreement and nothing herein shall be construed against either Party on the basis of that Party being the drafter of such language.

In witness thereof, the Parties have entered into this Agreement as of the Effective Date set forth above.

\* \* \*

*[Signatures on following page]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**CITY OF PIEDMONT**

By: \_\_\_\_\_  
Sara Lillevand, City Administrator

Date: \_\_\_\_\_

**CONSULTANT**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Attest

By: \_\_\_\_\_  
John Tulloch, City Clerk

Approved As To Form

By: \_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney

**EXHIBIT A**  
**PROPERTY AND PREMISES**

**EXHIBIT B  
INSURANCE**

The following minimum levels of insurance coverage shall be provided during the term of this Contract.

The City of Piedmont, its Council Members, directors, officers, agents and employees shall be named as additional insureds. EBCE shall provide Host with an additional insured certificate for each such insurance coverage.

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|----|---|---|
| A. | <u>Professional Liability Insurance.</u>                | \$2,000,000 per claim /<br>\$6,000,000 in aggregate |
| B. | <u>Worker's Compensation Insurance.</u>                 | \$1,000,000   |
| C. | <u>Automobile Insurance</u>                             | \$1,000,000   |
| D. | <u>General Liability and Property Damage Insurance.</u> | \$4,000,000<br>(single limit per occurrence)        |

EBCE shall notify Host within one (1) business day after it has been served or notified of any claim or legal action that in any way involves EBCE, and Host, even if Host is not named in the claim or as a defendant in any legal action, if such notification comes to EBCE from any source other than Host. EBCE shall also promptly provide Host, within the same time period set forth in the prior sentence, with copies of any document or information it has regarding such claim or legal action.

Attachment 2 – Proposed Magnolia Avenue Site



City of Piedmont  
COUNCIL AGENDA REPORT

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DATE: June 21, 2021

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Consideration of a Resolution Authorizing the City Administrator to Sign an Agreement with East Bay Community Energy for the Installation of Two Dual Port Electric Vehicle Charging Stations on Bonita Avenue and Parking Restrictions for the Four Spaces Served by the Electric Vehicle Chargers.

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RECOMMENDATION

By a single motion, take the following actions:

1. Approve a resolution authorizing the City Administrator to sign an agreement with East Bay Community Energy (EBCE) for the installation of two dual-port fast Electric Vehicle (EV) charging stations on Bonita Avenue near the intersection of Vista Avenue;
2. Authorize the City Administrator, in consultation with the City Attorney, to make minor changes to the agreement to satisfy the needs of the City; and
3. Approve parking restrictions for the four on-street parking spaces served by the EV chargers.

EXECUTIVE SUMMARY

City Staff has been working with EBCE to plan the installation of publicly-accessible EV charging stations in the Civic Center area serving four existing angled public parking spots next to the tennis courts on Bonita Avenue near the intersection of Vista Avenue. These four angled spots will share two dual-port direct current fast charging kiosk-style ground-mounted chargers. (Attachment 2 provides photographic examples of the chargers.) This installation will provide four publicly-accessible EV-only parking spaces available to anyone with an EV in an area of Piedmont where there is the opportunity for high utilization and demand. The EV chargers will be installed, owned, maintained, and operated by EBCE at no cost to the City. The four parking spaces that will be used for EV charging are currently available to the public subject to a 2-hour limit. Direct current fast chargers are able to charge an EV battery in 30 minutes. Staff recommends restricting these four parking spaces to a 1-hour limit and to electric vehicles only. A preliminary location plan and an agreement are attached to this report for reference. Should EBCE seek further minor refinements, staff is recommending the authorization for the City Administrator, in consultation with the City Attorney, to make minor changes to the agreement to satisfy the needs of the City

## BACKGROUND

Emissions of carbon dioxide equivalent (CO<sub>2</sub>e) from gas and diesel-fueled vehicles are among the biggest obstacles to meeting the City's emissions reduction goals as outlined in the Climate Action Plan (CAP) 2.0. In 2019, vehicles in Piedmont emitted over 16,000 metric tons of CO<sub>2</sub>e, which accounts for 49% of the Piedmont community's total emissions. The municipal government has no effective local regulatory authority over the type of private sector vehicles used within the city boundaries. That authority lies with the State and Federal governments. However, the City can implement projects and programs that incentivize the use of zero emission vehicles which include plug-in hybrid EVs, plug-in battery EVs, and fuel cell EVs, and that make it more convenient and cost effective to drive electric. In its efforts to achieve the City's CAP 2.0 emissions reduction goals, staff has collaborated for more than a year with EBCE on the development of a public EV charging project. The charging stations are expected to serve residents who may or may not have access to charging facilities at home, and visitors. According to a random sample survey of 400 Piedmont residents conducted June 17 to 22, 2020 by FM3 Research, 79% of survey respondents support a program for public chargers in Piedmont (follow hyperlink in Attachment section of this report). Additionally, 49% of respondents said they were likely to use the chargers and 48% of respondents said the availability of the proposed chargers might influence their decision to select an EV the next time they purchase a car.

On July 1, 2020, City staff brought forth the concept of an EV charging station pilot program to the Park Commission. This original plan was to deploy both Level-2 and Direct Current Fast Charging (DCFC) technologies to meet the needs of drivers. The plan proposed five EV charging stations: two kiosk style fast chargers serving four parking spaces in the Community Hall parking lot, and three streetlight pole-mounted Level-2 chargers serving 3 curbside parking spaces on Highland Avenue and 2 curbside parking spaces on Grand Avenue. After receiving a presentation by City and EBCE staff, receiving comments from members of the public, and having a thorough discussion of the project, the Park Commission supported the general concept of an EV charging station pilot program and voted unanimously to recommend the City Council and staff to work with EBCE to address the Commission's concerns and suggestions, including those related to traffic congestion and scarcity of parking on Grand Avenue and near the Community Center. A hyperlink to the minutes and video of the Park Commission is available under the Attachments section of this report.

## DISCUSSION

### **Site Selection**

Following the July 2020 Park Commission meeting, City and EBCE staff collaborated to address the Park Commission's concerns regarding locations and installation options. The investigation found that there are obstacles to locating chargers at curbside parking spaces in residential neighborhoods. Attaching EV chargers to PG&E-owned utility poles is not a viable option due to the fact that adding equipment to a utility pole is not industry best practice as it prohibits line workers from easily and safely accessing the wires above. Attaching EV chargers to City-owned streetlights also proved infeasible due to PG&E engineering and billing constraints. Finally, locating curbside EV chargers in residential areas that are not near high-traffic commercial and civic districts would result in underutilization of the equipment. Siting EV charging infrastructure

in high-traffic commercial and Civic Center areas will result in higher utilization, which is required for EBCE's investment.

In response to the location and infrastructure constraints, City and EBCE staff determined that two dual-port, kiosk-style ground-mounted DC fast chargers serving four parking spaces in the Civic Center area provided the best solution as follows:

- DC fast chargers replenish an EV battery in less than 30 minutes, much faster than the two hours required by Level-2 chargers. This offers more opportunity for use.
- The location of the kiosk-style chargers are not limited by proximity to streetlights.
- A Civic Center location would be the most likely to serve the greatest number of people without disrupting the existing flow of traffic or further constrain on-street parking availability.

In collaboration with EBCE, City staff identified the four angled parking spaces on the west side of Bonita Avenue next to the intersection with Vista Avenue as the optimal location for the chargers (see Attachment 3). This location serves PUSD staff and students at three campuses, City employees, visitors to City Hall, customers and staff of nearby commercial establishments and houses of worship, and neighborhood residents. The location also reduces installation costs by minimizing trenching, which can be done with minimal disturbance to tree roots.

### **Parking Restrictions**

The four parking spaces served by the proposed location are currently restricted to a 2-hour time limit and with no permit restrictions. Installation of the EV charging stations will require changing these existing parking restrictions by the City Council. Because DC fast chargers are able to charge an EV battery in 30 minutes, City staff recommend restricting these four parking spaces to a 1-hour limit and to electric vehicles only. These restrictions provide a generous amount of time for a driver to charge an EV and also meet EBCE's project goals that the chargers serve publicly-accessible EV-only parking spaces with no permit restrictions and in areas where demand will likely be greatest.

### **FISCAL IMPACT**

In January 2021, the Alameda County Transportation Commission approved EBCE's application for Transportation Fund for Clean Air (TFCA) grant funding (~\$120,000) to pay for the installation of the proposed EV chargers in Piedmont. By leveraging local TFCA grant funds, and its own funds for infrastructure development, EBCE will deliver the project at no cost to the City. The project will serve as a pilot for EBCE with the goal of taking lessons learned and scaling deployment of EV charging infrastructure assets throughout its service area. Since EBCE is responsible for the full cost of installing, maintaining and operating the EV chargers, the project will not have any impact on the General Fund other than the cost of any signage and curb painting associated with the EV-only parking spaces. The cost of the electricity used to charge a vehicle's battery is borne by the EV user and those transactions are managed by EBCE.

CEQA

The project to install publicly-accessible EV charging stations is categorically exempt under the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Section 15303, Class 3 (d), New Construction or Conversion of Small Structures because the project consists of the installation of a limited number of small facilities or as new small structures, and the project is consistent with General Plan policies and programs. The CEQA determination has been reviewed and approved by the City Attorney.

CONCLUSION AND NEXT STEPS

The installation of direct current fast EV chargers to serve Piedmont residents, business owners, employees, students, and visitors will help the City meet the goals of the Piedmont Climate Action Plan. That this project comes at very little cost to the City makes it especially attractive. Should the Council agree to approve the agreement and the parking restrictions, City staff will direct EBCE to submit an applications for encroachment and excavation permits for the installation of the chargers.

By: Kevin Jackson, Director of Planning & Building  
 Daniel Gonzales, Director of Public Works  
 Alyssa Dykman, Sustainability Program Manager  
 Nate Redinbo, Climate Action Fellow

ATTACHMENTSPages

- |   |      |   |
|---|------|---|
| 1 | 5-12 | Contract Agreement for EV Charging Stations with EBCE                         |
| 2 | 13   | Photographs of Example DCFC EV Chargers                                       |
| 3 | 14   | Proposed Dual-Port Ground-Mounted EV Charging Station Location on Bonita Ave. |

**Supplemental and Referenced Documents**

A recording of the July 1, 2020 Park Commission Meeting is available at:

[https://piedmont.granicus.com/MediaPlayer.php?view\\_id=3&clip\\_id=2183](https://piedmont.granicus.com/MediaPlayer.php?view_id=3&clip_id=2183)

Piedmont Emissions Reduction Survey of June 17-22, 2020 – Results is available at:

[https://piedmont.ca.gov/UserFiles/Servers/Server\\_13659739/File/Government/Departments/Planning%20Division/Reach\\_Codes/Emissions\\_Reduction\\_Survey\\_Results.pdf](https://piedmont.ca.gov/UserFiles/Servers/Server_13659739/File/Government/Departments/Planning%20Division/Reach_Codes/Emissions_Reduction_Survey_Results.pdf)

Video Compilation of Interviews with EV Users in Piedmont is available at either:

Granicus – [https://piedmont.granicus.com/MediaPlayer.php?view\\_id=3&clip\\_id=2174](https://piedmont.granicus.com/MediaPlayer.php?view_id=3&clip_id=2174)

YouTube - <https://youtu.be/OE3a9yTBeTA>

The City of Piedmont General Plan is available at: [https://piedmont.ca.gov/General\\_Plan](https://piedmont.ca.gov/General_Plan)

The City of Piedmont Climate Action Plan 2.0 is available at:

[https://piedmont.ca.gov/Climate\\_Action\\_Plan](https://piedmont.ca.gov/Climate_Action_Plan)

## CHARGING STATION LICENSE AGREEMENT

This Charging Station License Agreement ("Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021 ("Effective Date") by and between the City of Piedmont, a municipal corporation ("Host") and the East Bay Community Energy Authority, a Joint Power Authority ("EBCE"). Host and EBCE are individually referred to as "Party" and collectively as "Parties".

1. Grant of License. Host is the fee simple owner of certain real property located at Bonita Avenue and Vista Avenue, Piedmont, CA 94611 ("Property"), which is more particularly depicted on Exhibit A, which is attached hereto and incorporated by reference. Host grants to EBCE for the Term of this Agreement: (i) an exclusive and irrevocable, except as specifically set forth in Section 4 of this Agreement, license to use and occupy a portion of the Property, including the designated parking spaces for charging vehicles ("Charging Stalls"), located on the Premises shown on Exhibit A (the "Premises"), for the Purpose described in Section 2 of this Agreement and (ii) any necessary rights for Installation, maintenance, operation, access and utilities for the Purpose. Host shall not allow installation or use of charging stations other than those of EBCE on the Property. Prior to EBCE offering use of the Charging Stalls to the public, EBCE shall submit, for approval to the Planning and Building Director, plans for the manner of operation of the Charging Stalls, including, but not limited to, details regarding the maximum length of time a vehicle may occupy a Charging Stall, and any other such information deemed necessary by the Planning and Building Director ("Operation Plans").

2. Purpose. The Premises may be used by EBCE for any lawful activity in connection with the design, development, construction, installation, maintenance, repair, replacement, removal, security, and operation of electric vehicle chargers and ancillary items, including, without limitation, electrical equipment, hardware, software, signage and all supporting equipment and structures (which may include concrete pads and protective bollards) (collectively, the "Charging Station"), together with any other uses permitted herein ("Purpose"), on the terms and conditions set forth in this Agreement.

3. Term. The term of this Agreement (as extended or renewed from time to time, the "Term") shall commence on the Effective Date and terminate ten (10) years from the date that the Charging Stations are first operational ("Commencement Date"). Following the expiration of the initial Term, the Agreement may be renewed for an additional five (5) year term and then successive one (1)-year terms upon the written agreement of both Parties.

4. Termination. This Agreement may be terminated:

a. by EBCE, upon thirty (30) days' written notice to Host, at any time prior to the submission of the permit application for construction of the Charging Station at the Property, or in the event that EBCE determines that the construction or continued operation of the Charging Station is impracticable or uneconomical; or

b. by EBCE, upon thirty (30) days' written notice to Host, if Host adversely affects EBCE's use of the Premises.

c. by Host, after the initial ten (10)-year Term, upon ninety (90) days' written notice to EBCE, if Host notifies EBCE that it intends to use the Property and/or Premises for another purpose.

d. by Host, upon thirty (30) days' written notice to EBCE, in the event the Commencement Date has not occurred within fifteen (15) months following the Effective Date; provided that the foregoing right shall terminate upon the Commencement Date; or

e. by either Party if the other Party breaches or fails to perform any of its obligations in any material respect, and such breach or failure continues uncured for ten (10) business days after receipt of written notice; provided that if such breach or failure reasonably requires more than ten

(10) business days to cure, this provision shall not be triggered if such breaching Party commences to cure within such period and diligently proceeds to complete such cure; or

f. by either Party, if the other Party becomes insolvent or proceedings are instituted by or against it under any provision of any federal or state bankruptcy or insolvency laws.

g. by either Party, if any portion of the Property is damaged by fire or other casualty in a manner that adversely affects EBCE's use of the Premises, within thirty (30) days of the date of such fire or other casualty.

5. Electricity. Unless otherwise agreed by the Parties, EBCE shall be responsible for all electricity costs of the Charging Stations by obtaining separately metered electricity service. Host shall reasonably cooperate with EBCE's efforts regarding the provision of electricity to the Charging Stations. Neither Host nor EBCE has any responsibility or liability for interruption, curtailment, failure, or defect in the supply or character of distribution utilities furnished to the Charging Station. Host grants to EBCE the right to establish and/or receive utility services including but not limited to electric, and the right for the distribution utility service supplier to construct, reconstruct, install, inspect, maintain, replace, remove, and use said utility services to serve the Charging Stations together with the right for the utility service supplier to ingress to and egress from said utility service facilities across the Host Property. Host grants the right for the distribution utility and the service utility to trim, cut down, and clear away or otherwise control any trees or brush within five (5) feet of said route upon Host's written consent prior to such action, which shall not be unreasonably withheld, conditioned or delayed.

6. Maintenance of Premises. Host shall cause the Premises, including EBCE Charging Stalls, to be reasonably maintained in a clean, safe, and orderly condition to at least the same standard as adjacent areas of the Property that are under Host control are maintained. Host shall have no responsibility to maintain EBCE's Charging Station or related to EBCE equipment, hardware, software, or signage. Host shall not retain any ownership rights in the Charging Station and related EBCE equipment. EBCE and its employees, contractors, and vendors may, at any time during the Term, access the Premises and Property to maintain, inspect, repair, upgrade, remove or replace any portion of the Charging Stations.

7. EBCE Customers: Access. EBCE will provide access to the Charging Stations to customers ("EBCE Customers"), which may include members of the public, as well as commercial fleet and rideshare vehicles, who shall be charged in amounts reasonably determined by EBCE, which may change from time to time in EBCE's sole discretion. EBCE Customers shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week, and 365/366 days per year. Host shall notify EBCE at least forty-eight (48) hours in advance, or as soon as reasonably practical in the event that forty-eight (48) hours' advance is impractical due to emergency, of any need to limit access to the Premises due to maintenance, safety, or other unforeseen reasons.

8. Signage & Promotional Activities. EBCE may stripe and place appropriate signage at the Premises and mark the Charging Station and Charging Stalls and related EBCE equipment with Host's prior approval, which shall not be unreasonably withheld, conditioned or delayed. In addition, subject to Host's prior approval, not to be unreasonably withheld, EBCE may place signage, marks, or advertising devices in, on, or about and around the Premises within the Host Property at EBCE's sole cost and subject to applicable laws and regulations. At no time may Host place any signage on EBCE property without EBCE's prior approval.

9. Promotional Activities. During the Term of the Agreement, EBCE may promote the availability of the Charging Station through traditional and/or electronic media, including providing the address to the Property and a description thereof. No Party shall use the other Party's trade or service marks, logos, or other proprietary materials without the prior written consent of the other Party.

10. Construction. EBCE shall, at its sole cost and expense, be responsible for all installation activities required to support the operation of the Charging Station and services therewith, including the hiring and coordination of all vendors and contractors; the installation of electrical equipment, utility lines, hardware, and software; site preparation, trenching, repaving, and landscaping. Before beginning any installation activities, EBCE shall provide a copy of the construction schedule and installation plans to Host for its approval, which approval shall not be unreasonably delayed or withheld. EBCE shall ensure that it or its designated contractor(s) and/or service providers: obtain from governmental authorities all licenses, permits, or other approvals (collectively, "Approvals") required to conduct such installation activities. Host will reasonably cooperate with EBCE's designated contractors and service providers to obtain such Approvals. EBCE shall not permit or suffer any mechanic's or materialmen's liens to attach to the Premises. If such a lien attaches to the Premises, EBCE shall remove or bond over such lien at EBCE's sole cost and expense, within twenty (20) days of EBCE receiving written notice thereof from Host. EBCE shall ensure that it or its designated contractors, subcontractors and/or service providers pay prevailing wages for any construction, installation work or maintenance contracts related to the Charging Station and related equipment, as those wages are determined pursuant to Labor Code Section 1720 *et seq.*, and Sections 1774 and 1775, to employ apprentices as required by Labor Code Section 1777.5 *et seq.*, and EBCE shall cause the contractor and subcontractors to comply with all other applicable provisions of the Labor Code and the implementing regulations of the Department of Industrial Relations (the "DIR").

11. Modification. EBCE may, at any time during the Term and in its discretion modify, including, without limitation, upgrade, replace, and/or remove all or a portion of the Charging Station (collectively, "Modifications"), whether or not said items are considered fixtures and attachments to the Premises under applicable laws; provided, however, before any such Modifications, EBCE shall provide at least sixty (60) days prior written notice to Host.

11. Removal. Within ninety (90) days following the termination of this Agreement, EBCE shall remove the Charging Stations and all of EBCE's other equipment and personal property from the Premises, but not electric infrastructure, which shall remain with the Property. This provision shall survive the termination of this Agreement.

12. Representations, Warranties & Covenants. Host and EBCE each hereby represent and warrant to the other that, as of the Effective Date: (a) it has all necessary power and authority to execute, deliver, and perform its obligations hereunder; (b) the execution, delivery, and performance of the Agreement have been duly authorized by all necessary action and do not violate any of the terms or conditions of its governing documents, any contract to which it is a party, or any law, regulation, order, or other legal determination applicable to it; (c) there is no pending or, to its knowledge, threatened litigation or proceeding that may adversely affect its ability to perform the Agreement; (d) it is duly organized and validly existing under the laws of the jurisdiction of its organization; (e) the Agreement constitutes a legal, valid and binding obligation of such Party, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights and by general principles of equity. Both Parties shall comply with all federal, state, and local laws, rules, regulations (including, without limitation, all zoning ordinances and building codes, nondiscrimination laws) and as amended from time-to-time in performing its obligations under the Agreement.

13. Indemnity. Each Party shall indemnify and hold harmless the other Party, and their respective affiliates, representatives, officials, agents, officers, directors, managers, members, partners, contractors, consultants, or employees, from and against all third-party claims, demands, causes of action, liabilities, costs, damages, losses, penalties, fines, judgments or expenses, including reasonable attorneys' fees and costs of collection (collectively, "Losses") that arise out of or result from (i) any willful misconduct or negligence of the indemnifying Party in connection with this Agreement, (ii) any breach by the indemnifying Party of its obligations, representations or warranties

under this Agreement, or (iii) the indemnifying Party's operation of the Premises or Property, except to the extent arising out of or resulting from any willful misconduct or negligence of the indemnified Party. The obligations of the Parties under this Section shall survive the expiration, cancellation, or termination of this Agreement and the Term.

14. Insurance. During the Term, EBCE shall maintain insurance in full force and effect, at its cost and expense, as set forth in Exhibit B, attached hereto and incorporated herein by this reference. The insurance limits required of EBCE may be satisfied through self-insurance or a JPA, as designated in Exhibit B. Prior to the execution of the Agreement, EBCE shall provide proof of insurance required. EBCE shall make best efforts to provide Host thirty (30) days prior written notice of termination or material change in coverage and ten (10) days prior written notice of cancellation for non-payment. The City of Piedmont, its Council Members, directors, officers, agents and employees shall be named as additional insureds. EBCE shall provide Host with an additional insured certificate for each such insurance coverage.

15. Limitation of Liability. In no event shall either Party be liable (in contract or in tort, including negligence and strict liability) to such other Party for any special, indirect or consequential damages relating to this Agreement. The provisions of this Section shall apply to the full extent permitted by law and shall survive termination of this Agreement.

16. Miscellaneous.

a. Notice. Any notice provided or permitted to be given under the Agreement must be in writing and be served either by (i) deposit in the mail, addressed to the Party to be notified, postage prepaid, and registered or certified, with a return receipt requested, or (ii) deposit with an internationally-recognized overnight delivery carrier, with notice of delivery to the recipient Party. Notice given by registered or certified mail or overnight carrier shall be deemed delivered and effective on the date of delivery shown on the return receipt or proof of receipt. Each Party may change its address for notice by giving notice thereof to the other Party. For purposes of notice the addresses of the Parties shall be as follows: [CONTACT INFORMATION]

b. Assignment. In the event the Premises is transferred or Host ceases to have the requisite level of control over the Premises necessary to fulfill its obligations under the Agreement (each, a "Transfer Event"), and the Agreement is not first terminated pursuant to Section 4 of this Agreement, Host shall assign its rights and obligations under the Agreement to the person or entity which would be able to comply with Host's obligations following such Transfer Event. Further, Host agrees that any such Transfer Event shall not affect, terminate or disturb EBCE's right to possession of the Premises under the terms of the Agreement or any of EBCE's other rights under the Agreement, so long as EBCE is not then in default under any of the terms, covenants or conditions of the Agreement.

c. No Agency Relationship. Nothing in the Agreement shall be deemed or construed to create a joint venture, partnership, fiduciary, or agency relationship between the Parties for any purpose set forth in this Agreement, and the employees of one party shall not be deemed to be the employees of the other Party. Except as otherwise stated in the Agreement, neither Party has any right to act on behalf of the other, nor represent that it has such right or authority.

d. Severability. If any term of the Agreement is held by any court of competent jurisdiction to be invalid, such invalidity shall not invalidate the remainder of the Agreement and the Agreement shall be construed and deemed reformed to the extent necessary to render valid such term and the rights and obligations of the parties shall be enforced accordingly.

e. Governing Law. This Agreement shall be governed by the laws of California and the City of Piedmont with venue in Alameda County.

f. No Waiver. The failure of a Party to insist on strict performance of any provision of the Agreement does not constitute a waiver of or estoppel against asserting the right to require performance in the future and a waiver or estoppel given in any one instance does not constitute the same with respect to a later obligation or breach.

g. Remedies. The rights and remedies provided by the Agreement are cumulative, and the use of any right or remedy by any Party does not preclude or waive its right to use any or all other remedies. These rights and remedies are given in addition to any other rights a Party may have under any applicable law, in equity or otherwise.

h. Force Majeure. Neither Party is responsible for any delay or failure in performance of any part of the Agreement to the extent that delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, pandemic, act or omission of carriers or other similar causes beyond the Party's control.

i. Attorneys' Fees. If either Party institutes a suit against the other for violation of or to enforce any covenant, term or condition of the Agreement, the prevailing party shall be entitled to reimbursement of all of its costs and expenses, including, without limitation, reasonable attorneys' fees.

j. No Third Party Beneficiaries. The Agreement does not confer any rights or remedies on any person other than the Parties and their respective successors and permitted assigns.

k. Integration; Amendments. The Agreement contains all agreements, promises and understandings between the Parties as to the subject matter of this Agreement. Any amendment, modification or other change to the Agreement shall be ineffective unless made in a writing signed by the Parties hereto.

l. Counterparts. The Agreement may be executed in any number of counterparts with the same effect as if all the Parties had signed the same document.

m. Construction. All documents or items attached to, or referred to in, the Agreement are incorporated into the Agreement as fully as if stated within the body of the Agreement. Each Party has cooperated in the drafting, negotiation and preparation of the Agreement and nothing herein shall be construed against either Party on the basis of that Party being the drafter of such language.

In witness thereof, the Parties have entered into this Agreement as of the Effective Date set forth above.

\* \* \*

*[Signatures on following page]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**CITY OF PIEDMONT**

By: \_\_\_\_\_  
Sara Lillevand, City Administrator

Date: \_\_\_\_\_

**CONSULTANT**

By: \_\_\_\_\_

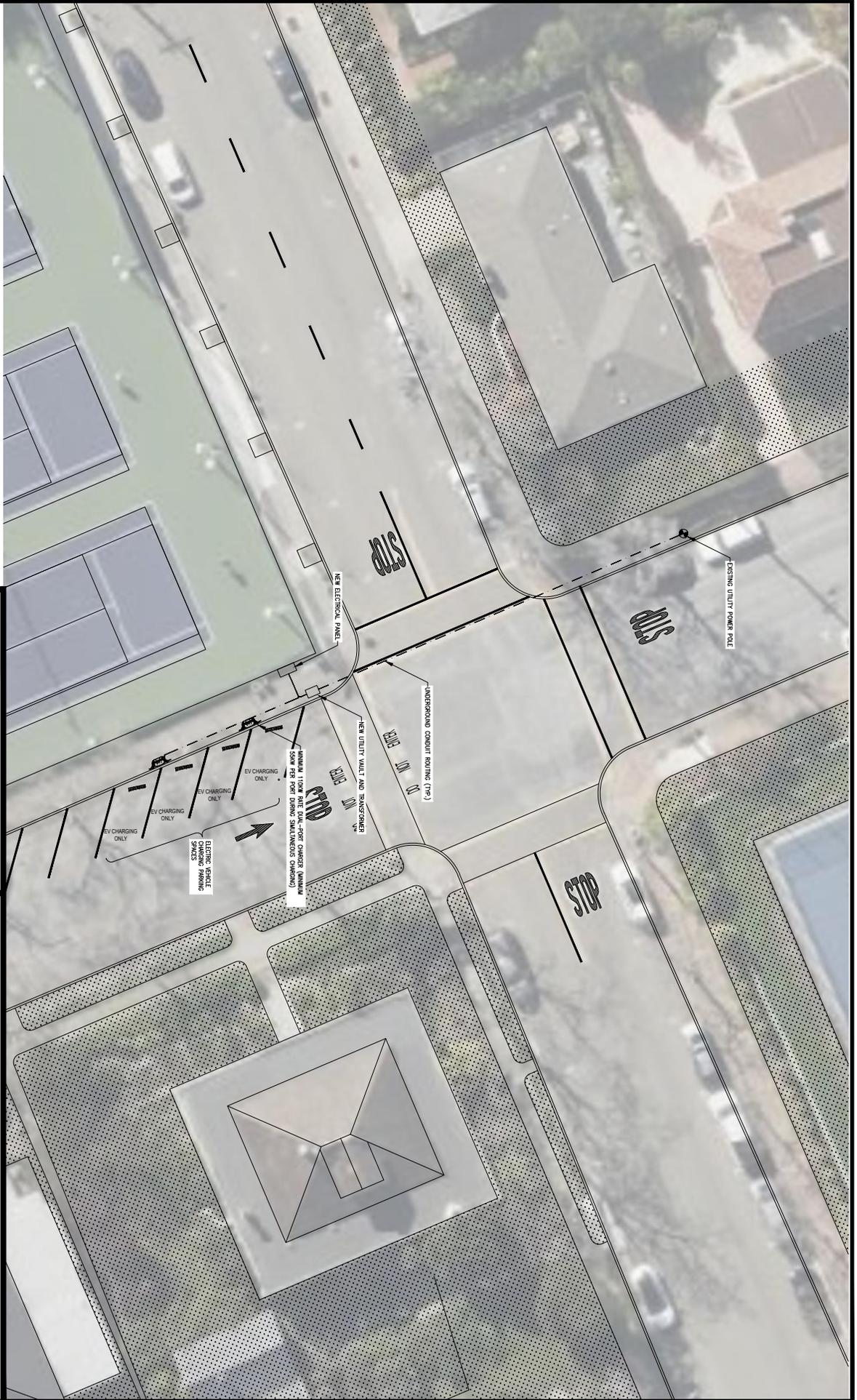
Date: \_\_\_\_\_

Attest

By: \_\_\_\_\_  
John Tulloch, City Clerk

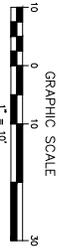
Approved As To Form

By: \_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney



Attachment 3

Appendix Report Page 25



**BONITA AVE & VISTA AVE**  
 PIEDMONT, CA  
 SITE PLAN

Preliminary

06/09/21

**EXHIBIT B  
INSURANCE**

The following minimum levels of insurance coverage shall be provided during the term of this Contract.

The City of Piedmont, its Council Members, directors, officers, agents and employees shall be named as additional insureds. EBCE shall provide Host with an additional insured certificate for each such insurance coverage.

- |    |   |   |
|----|---|---|
| A. | <u>Professional Liability Insurance.</u>                | \$2,000,000 per claim /<br>\$6,000,000 in aggregate |
| B. | <u>Worker's Compensation Insurance.</u>                 | \$1,000,000   |
| C. | <u>Automobile Insurance</u>                             | \$1,000,000   |
| D. | <u>General Liability and Property Damage Insurance.</u> | \$4,000,000<br>(single limit per occurrence)        |

EBCE shall notify Host within one (1) business day after it has been served or notified of any claim or legal action that in any way involves EBCE, and Host, even if Host is not named in the claim or as a defendant in any legal action, if such notification comes to EBCE from any source other than Host. EBCE shall also promptly provide Host, within the same time period set forth in the prior sentence, with copies of any document or information it has regarding such claim or legal action.

Attachment 2 – Examples of DCFC EV Chargers



Attachment 3 – Proposed Dual-Port Ground-Mounted EV Charging Station Location on Bonita Avenue

