September 24, 2018

Via Email to: KLSalvail@menlopark.org

City of Menlo Park  
City Hall – 1st Floor  
701 Laurel St.  
Menlo Park, CA 94025  
Attention: Kenneth L. Salvail, P.E.

Subject: Request for consent to perform public street maintenance within portions of SFPUC Parcel Nos. 12 to 23 and 2009 in Menlo Park  
CST 673-18

Dear Mr. Salvail:

The City and County of San Francisco ("City"), through the San Francisco Public Utilities Commission ("SFPUC"), owns the above-referenced real property ("Property"). As a part of its 2018 Street Preventive Maintenance Project, the City of Menlo Park requests City’s consent to perform work on public streets within the Property consisting of (i) the resurfacing of the existing asphalt with a slurry seal coat; (ii) sealing cracks; (iii) performing maintenance to deteriorated asphalt pavement; (iv) installing striping and road markings; and (v) the removal and thermoplastic replacement of a stop bar (the "Work").

In connection with your request, we hereby consent to the City of Menlo Park ("Requesting Party"), though its contractor(s) engaged to perform the Work (singularly or collectively, "Contractor"), performance of the Work at the locations identified on the attached Exhibit A (the "Work Area") subject to, and conditioned strictly on, Requesting Party’s compliance, and its causing its Contractor to comply, with all the following terms and conditions:

1. Requesting Party shall pay all costs and fees associated with the Work.

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.
2. City has no responsibility or liability of any kind with respect to any pipes, cables, conduits, or other facilities of utility companies or other third parties that may be on, in, or under the Work Area. Requesting Party shall be solely responsible to locate such utilities, City’s facilities, and other existing facilities, protect them from damage, and pay for any damage caused by the activities of Requesting Party or its agents, contractors, or invitees on or about the Work Area.

3. The Work shall not interfere with, damage, or endanger City’s pipelines or appurtenances in any way. If any portion of the Work Area or any of City’s other real or personal property located on or about the Work Area is damaged by any of the activities of Requesting Party or its agents, contractors, or invitees, Requesting Party shall immediately notify City and shall repair, at Requesting Party’s sole cost, all such damage and restore the Work Area and/or damaged City property to its previous condition; provided, however, at its sole discretion, City may elect to make any necessary repairs to City’s facilities itself, at Requesting Party’s sole cost, by notifying Requesting Party of such fact, in which event Requesting Party shall pay City the cost thereof within thirty (30) days after receipt of City’s invoice.

4. Upon completion of the Work, Requesting Party shall cause all debris to be removed and the restoration of the Work Area and any other City property affected by the Work to its original condition to the satisfaction of City’s construction inspector Mr. Albert Hao (the “Construction Inspector”).

5. At its sole expense, Requesting Party shall conduct, and cause to be conducted, the Work and any other activities permitted by this consent in a safe and reasonable manner and in compliance with all applicable laws, rules, and regulations of any applicable governmental or other regulatory entity and applicable industry standards, (including, without limitation, restrictions on heavy equipment and vibrating compaction equipment).

6. The Work must commence within 60 days, and be completed within 180 days, after the effective date of this letter. All Work must be performed Monday through Friday between 8:00 a.m. and 4:30 p.m., excluding City holidays. Any Work performed at any other time must be approved by City in writing at least two (2) business days prior to the commencement of such Work. Requesting Party shall contact the SFPUC’s Millbrae Dispatch operator at (650) 872-5900 at least 24
hours prior to commencing the Work and again at the conclusion of the operations.

7. At least two (2) business days prior to the start of the Work, notification must be given to the Underground Service Alert (USA). Notification must also be given to the Construction Inspector, at (650) 871-3015 or by e-mail to ahaosfwater.org, not less than five (5) working days prior to the start of any Work on or about the Property. Requesting Party shall coordinate the construction schedule with the Construction Inspector to facilitate any inspections required by the Construction Inspector.

8. Where potholing is required to measure the depth of City's pipelines and related facilities, the method, location, and other details of such work shall be subject to the Construction Inspector's direction. The term "Work" includes such potholing. Potholing using the soft dig method (vacuum soil extraction system) is preferred. If Requesting Party wishes to use any other mechanical method such as digging with a backhoe, Requesting Party or its Contractor must submit a written request to City at least five (5) business days prior to the proposed commencement date of the Work and obtain SFPUC's prior written consent, which may be granted, conditioned, or refused at SFPUC's sole discretion. Notwithstanding the foregoing, the last two feet (2') of soil above the top of any City pipeline must be dug manually, without the use of any machines. Upon completion of Work, Requesting Party or its Contractor shall promptly notify City in writing of the depth of City's pipeline(s) and related facilities in the Work Area.

9. Upon completion of the Work, Requesting Party or its Contractor will provide as-built drawings of the Work, in a format acceptable to the SFPUC, to Ms. Tracy Leung, SFPUC Land Engineering, via e-mail at tleung@sfwater.org and Ms. Heather Rodgers, Real Estate Services via email at herodgers@sfwater.org.

10. Requesting Party shall procure at its expense and keep in effect, and cause its Contractor, if any, to procure, at its expense and keep in effect at all times during the course of the Work, commercially reasonable insurance, adequate to cover Requesting Party's obligations under this consent, and shall name as additional insured in the liability policies the City and County of San Francisco and its Public Utilities Commission, and their respective officers, agents, volunteers, and employees. Prior to commencement of the Work, and at City's request at any time, Requesting Party shall deliver to City certificates of insurance
evidencing the insurance coverage required by this consent, together with complete copies of the policies at City’s request. The minimum coverage of insurance shall be as follows: (a) General Liability Insurance with limits not less than $2,000,000 each occurrence combined single limit for bodily injury and property damage, including coverage for contractual liability, independent contractors, explosion, collapse and underground (XCU), personal injury, broadform property damage, products and completed operations; (b) Automobile Liability Insurance not less than $1,000,000 each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned, and hired automobiles, as applicable, if Requesting Party or its Contractor uses or causes to be used any vehicles in connection with its performance of the Work or use of the Property; and (c) workers’ compensation insurance with employer’s liability coverage of not less than $1,000,000 each accident. The workers’ compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Requesting Party, its employees, agents, contractors, and subcontractors on or about the Property.

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall double the occurrence or claims limits specified above.

At all times, all policies shall be in form and content, and with coverage types and amounts, satisfactory to City’s Risk Manager, and shall remain subject to City’s periodic review of limits and types of insurance to be carried. All required liability insurance shall specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of the Work and that the insurance applies separately to each insured against whom claim is made or suit is brought. All policies shall be endorsed to require at least thirty (30) days’ prior written notice to City of cancellation or intended non-renewal. Insurance companies shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating no less than “A-, VIII” and shall be satisfactory to City. If Requesting Party or its Contractor fails to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of Requesting Party, and the resulting cost shall be paid to City by Requesting Party within five (5) days after delivery to Requesting Party of bills for such costs.
Requesting Party, but not its Contractor, shall have the right to self-insure with respect to any of the insurance required of Requesting Party under this consent, to the extent permitted by applicable law. If Requesting Party elects to self-insure, Requesting Party shall submit to SFPUC a certificate of self-insurance signed by a duly authorized representative of Requesting Party, such certificate evidencing that Requesting Party’s self-insurance program is adequately funded, in full force and effect, and in compliance with and subject to all the terms, agreements, covenants, conditions and provisions of this consent, and shall give City prompt written notice of any significant change in or the depletion of its self-insurance fund. Notwithstanding the foregoing, Requesting Party remains responsible for causing its Contractor and any of its subcontractors and/or agents to maintain commercially reasonable insurance coverages and coverage limits as required under this consent.

11. By its acceptance of this letter and its signature below, Requesting Party hereby agrees to indemnify and hold harmless City, its Public Utilities Commission, and their respective officers, agents, employees, contractors, and volunteers (together, the “Indemnified Parties”) against all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind (“Claims”) arising out of, or that may be alleged to have arisen out of, any act or omission of Requesting Party or its Contractor, employees, representatives, invitees, or agents, in connection with this consent, the Work, and/or the Requesting Party’s or its Contractor’s use of the Work Area and/or any other City property affected by the Work except to the extent the Claims result from the gross negligence or willful misconduct of City or City’s authorized representatives. The term “Claims” shall include, without limitation, liabilities resulting from environmental pollution, to the extent caused or exacerbated by any act or omission of Requesting Party or its Contractor or any of their respective employees, contractors, representatives, invitees, or agents, and environmental remediation and disposal costs. Requesting Party shall defend City and the other Indemnified Parties against all Claims and pay all charges of attorneys and all other costs and expenses arising therefore or incurred in connection therewith; and if any judgment be rendered against City or any of the other Indemnified Parties, Requesting Party shall satisfy and discharge same immediately, at its expense.

12. Neither City nor any of its commissions, boards, officers, agents, or employees shall be liable for any damage to, or for any bodily injury or
death resulting or arising from the condition of the Property or its use by Requesting Party. Without limiting any indemnification contained in this consent, Requesting Party fully RELEASES, WAIVES, AND DISCHARGES forever all Claims relating to this consent, the Work, the Work Area, and/or any other City property affected by the Work, and covenants not to sue City, its departments, commissions, officers, and employees, and all persons acting through them, under any present or future laws. Requesting Party acknowledges that the above release includes all Claims, known and unknown, direct and indirect, and anticipated and unanticipated.

13. Requesting Party accepts the Property in its “AS IS” condition, and acknowledges and agrees that neither City nor any of its employees, representatives, or agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning the Property.

14. The obligations contained in this consent shall survive any termination of this consent and the performance of the Work. This consent is revocable, nonpossessory, nonexclusive, and personal to Requesting Party and shall not be assigned or otherwise transferred by Requesting Party under any circumstances. City may freely revoke this consent at any time without cause and without any liability to the Requesting Party. This consent does not constitute a license or grant by City of any ownership, leasehold, easement, or other property interest or estate whatsoever in any portion of the Property. Nothing in this consent grants or creates any franchise rights pursuant to any federal, state, or local laws, or diminishes the scope, nature, or priority of City’s rights in the Property.

This consent may be signed in counterparts. This consent will be considered signed when an original counterpart of the consent, signed by an authorized signing officer of the signing party, is delivered to the other party, or an electronic copy of such signed counterpart is delivered to the other party in an Adobe .pdf file by email transmission to Heather Rodgers at herodgers@sfwater.org. Such electronic signature shall be treated in all respects as having the same effect as an original signature.

[SIGNATURES ON FOLLOWING PAGE]
City of Menlo Park Street Maintenance Consent Letter
September 24, 2018
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Please contact Heather Rodgers at (415) 487-5228 with any questions.

Sincerely,

Rosanna S. Russell
Real Estate Director

AGREED TO AND ACCEPTED this ___ day of __________, 2018.

Requesting Party:

CITY OF MENLO PARK, a municipal corporation,
By its Authorized Agent,

By: 

Print Name: JUSTIN MURPHY
Print Title: PUBLIC WORKS DIRECTOR

Attachment: Exhibit A (Work Area)

cc: Dina Brasil
    Heather Rodgers
    Emily Read
    Albert Hao
    Tracy Leung
    Consent Letter File
EXHIBIT A

Work Area

[attached]