

LICENSE AND COST SHARING AGREEMENT

This License and Cost Sharing Agreement ("**Agreement**") is made this 26 day of SEPTEMBER, 2016 ("**Effective Date**") by and between the ANGELO MIO ("**Participating Business**"), and the City of Menlo Park ("**City**"), alternatively referred to herein as a "**Party**" and collectively referred to herein as the "**Parties**".

RECITALS

WHEREAS, local businesses expressed interest in a cost-sharing plan for the Santa Cruz Street Café Pilot Program ("Program");

WHEREAS, the Program will be a semi-permanent expansion of the On-Street Dining Pilot Program from January 2015, open to businesses located in the central downtown area ("Downtown");

WHEREAS, it was determined that the Program is consistent with the El Camino Real/Downtown Specific Plan to enhance the vibrancy of Downtown;

WHEREAS, on May 24, 2016, the City Council approved a design by Ian Moore Designs, Inc. and the cost-sharing requirements for the Program;

WHEREAS, several local businesses have submitted applications to participate in the Program;

WHEREAS, City staff has reviewed the applications and only approved applications which have a *de minimis* effect on parking, agree to comply with existing outdoor seating permit requirements, and agree to the cost-sharing plan; and

WHEREAS, the application submitted by Participating Business was reviewed and approved by City staff.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1: Construction, Maintenance and Cost-Sharing of Improvement.

1.1 Construction. The City shall be responsible for design, construction, and installation of sidewalk improvements ("Improvement") for the Program, as shown on **Exhibit A ("Final Plan")**.

1.2 Location of Improvement. The installation of the Improvement shall be located in the in the public right-of-way immediately adjacent to the Participating Business as shown on the front page of **Exhibit A ("Final Plan")**.

1.3 Cost-Sharing. The City shall be responsible for payment of eighty (80%) of the total cost of construction, and installation of the Improvement. The Participating Business shall be responsible for twenty (20%) of the total cost of construction and installation of

the Improvement and for any custom features desired beyond the base design. Attached as **Exhibit B (“Invoice”)**, is a cost breakdown indicating the total estimated amount owed by Participating Business. The Participating Business shall pay to the City its share of the cost as described herein and as shown on the Invoice within thirty (30) days of execution of this Agreement. If after completion of construction the actual final cost is more or less than the amount previously invoiced, then any overpayment shall be reimbursed to Participating Business or any underpayment shall be paid to the City within 30 days of receipt of notice.

1.4 Penalty for Delinquent/Non-Payment. In the event that the Participating Business does not submit payment of the Invoice to the City within the time set by Section 1.3, it will be required to pay a late payment penalty of five percent (5%) of the total delinquent payment and interest at a rate of ten percent (10%) per annum until the Invoice is paid in full.

1.5 Furnishings and Additional Improvements by Participating Business. All additional improvements made by Participating Business, such as lighting and/or outdoor heaters, shall be made at Participating Business’ sole cost and expense and shall be subject to City’s prior written approval, which approval shall not be unreasonably withheld. The Participating Business shall be responsible for providing any furnishings for its use of the Improvement, subject to City’s review and approval, not to be unreasonably withheld or delayed. At a minimum, Participating Business agrees to install furnishings and improvements to enhance the aesthetics of the Improvement as described in **Exhibit C (“Additional Improvements”)**. Such enhancements shall be completed/ installed when Participating Business commences use of the Improvement.

1.6 Maintenance and Repair. The Participating Business shall be responsible for the ongoing maintenance and repair of the Improvement and for any damage caused to the Improvement, including but not limited to, keeping the storm drain running through or adjacent to the Improvement free and clear of leaves, debris and blockages. If the Improvement is not properly maintained or damage is not repaired by the Participating Business, the City shall submit notice (“Maintenance/Repair Notice”) to the Participating Business specifying the maintenance and/or repair that must be completed. If the Participating Business does not comply with the Maintenance/Repair Notice within five (5) business days, the City may undertake and complete the required maintenance and/or repair. The Participating Business shall be responsible for reimbursing the City for the cost of such maintenance/repair performed by City.

1.7 Utilities. The Participating Business shall be responsible for payment of all utilities serving the Improvement, or to the extent the utilities are not separately metered and are paid for by the City, the parties shall determine a fair amount to be paid to the City annually to reimburse the City for the utilities serving the Improvement.

SECTION 2: License.

2.1 Grant of License. The City hereby grants to the Participating Business an exclusive license (“License”) upon, across, and over the Improvement Location for the purpose of utilizing the space for patrons of the Participating Business. The Parties agree

that this License does not grant or create in the Participating Business any fee, leasehold, easement or other interest or estate in land in the Improvement Location.

2.2 Permits. Participating Business shall and comply with any required City Administrative Permit for outdoor seating prior to any use of the Improvement requiring such permit.

2.3 Term. This Agreement shall become effective, and the obligations herein, commencing on the Effective Date and shall remain in effect for a term of five (5) years from the completion of the Improvement. Thereafter, the term shall continue on a month-to-month basis upon all of the terms and provisions herein, except that they City, upon approval of the City Council may require payment of a reasonable monthly or annual license fee for the continued use and enjoyment of the Improvement. Following the initial Term of this Agreement, the City may, with or without cause, revoke this License by service upon the Participating Business (or its heirs, successors and assigns) of a written notice of revocation ("Termination Notice") if the City determines that it is in the best interests of the public to do so. The Agreement shall terminate Ninety (90) days after City submits the Termination Notice. This Agreement and the License granted herein may also be terminated at any time upon written mutual agreement of the Parties.

2.5 Insurance. Participating Business shall maintain commercial business liability insurance coverage for use and maintenance of the Improvement, with limits of at least One Million Dollars (\$1,000,000) for each occurrence, naming the City as additional insured under such policy. Upon request, Participating Business shall provide the City with a certificate evidencing such insurance.

2.6 Indemnification. Participating Business shall indemnify, protect, defend and hold the City and its successors and assigns, and its agents, contractors, guests, and invitees, harmless from and against any and all claims, demands, actions, suits, losses, obligations, liens, proceedings, costs, expenses (including, without limitation, attorneys' fees and costs), judgments, orders, decrees, damages or liabilities of any type or kind arising out of or in any way connected with the Participating Business', including use by its employees and patrons, of the Improvement, as set forth in this Agreement; except to the extent such claims arise out of the gross negligence or willful misconduct of the City.

SECTION 3. Miscellaneous.

3.1 Notice. All notices required or permitted to be given under this Agreement must be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery or overnight courier to the appropriate address indicated below or at such other place(s) that either Party may designate in written notice to the other. Notices are deemed received upon delivery if personally served, one day after mailing if delivered via overnight courier, or two days after mailing if mailed as provided above.

City:

City of Menlo Park
Attn: Public Works Director
701 Laurel Street
Menlo Park, CA 94025

Participating Business:

Angelo Mio
Attn: Emilio Demirkol
820 Santa Cruz Ave
Menlo Park, CA 94025

3.2. Entire Agreement. This Agreement contains the entire understanding and agreement of the Parties relating to the rights granted and the obligations set forth in this Agreement. Any prior, contemporaneous or subsequent written or oral representations and modifications shall be of no force or effect, except an amendment in accordance with Section 3.3.

3.3 Amendment. This Agreement may only be amended in a writing executed by both Parties.

3.4 Severability. Should any provisions or portion hereof be declared to be invalid or in conflict with any law, the validity of all other provisions or portion of this Agreement shall remain unaffected and in full force and effect.

3.5 Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of California. The venue for any action related to this Agreement shall be the County of San Mateo, California.

3.6 Authority. Each Party to this Agreement represents and warrants to the other party that this Agreement is a binding obligation of the Party.

3.7 Waiver. Waiver by any Party of any of the provisions contained in this Agreement, or of the application thereof to any person by judgment or court order, shall in no way affect any of the other provisions of this Agreement, or the application thereof to any other person, and the same shall remain in full force and effect to the maximum extent possible.

3.8 Compliance with Laws. Participating Business shall comply with all applicable Federal, State and local laws, regulations and ordinances regarding the use of the Improvement, including but not limited to State Department of Alcohol and Beverage Control requirements for the service and consumption of alcohol and City Administrative Permit terms and conditions for participating business' use of the improvement.

3.9 Counterparts. This Agreement may be executed in counterparts, each of which, when taken together, shall constitute one and the same instrument.

3.10 Further Assurances. Each Party covenants, on behalf of itself and its successors and assigns, to take all actions and do all things, and to execute, with


acknowledgement or affidavit if required, any and all documents, instruments and writings as may be necessary or proper to achieve the purposes and objections of the Agreement.

3.11 Attorney Fees. In the event that any party to this Agreement commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled.

IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

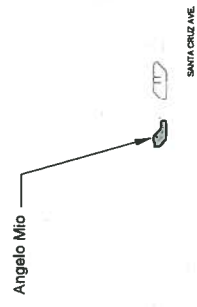
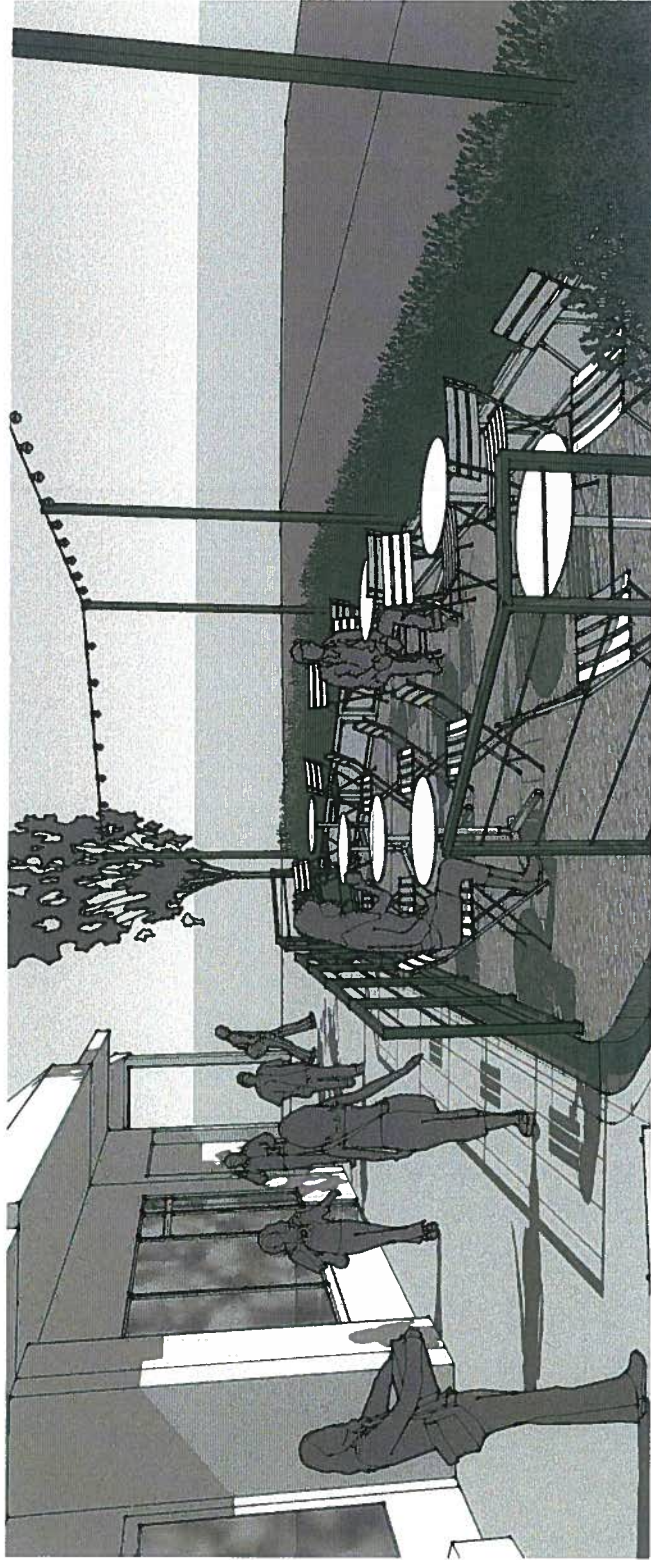
CITY OF MENLO PARK,
a Municipal Corporation

By:  Charles Taylor for
Alex McIntyre, City Manager

Approved as to form:

William McClure, City Attorney

Angelo Mio

By: 



- SHEET INDEX**
- 001 - Cover
 - 101 - Street Cafe Plan
 - 102 - Existing Conditions
 - 103 - Demolition Plan
 - 201 - Concrete Platform Construction Plan
 - 202 - Concrete Platform Details
 - 301 - Cross-sections
 - 401 - Drainage Grate Details
 - 402 - Custom Railing & Light Pole Details
 - 403 - Material Images



1563 Walnut Street
Berkeley, CA 94708

SANTA CRUZ STREET CAFE PROJECT: ANGELO MIO LOCATION

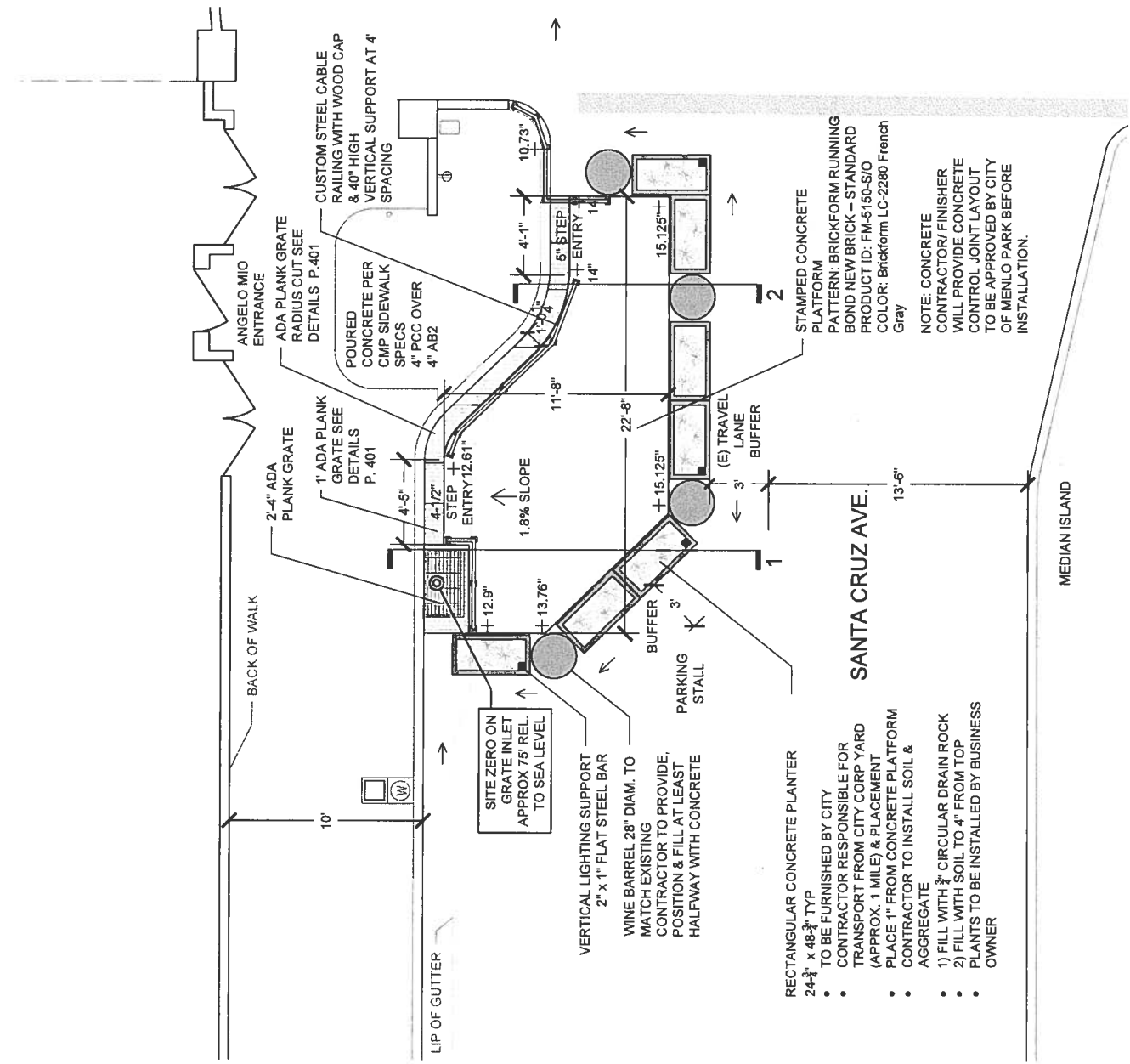
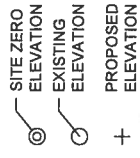
001	15-07 Downtown Menlo Park Santa Cruz Ave. Street Cafes	Angelo Mio	Ian Moore Kyra Baldwin	Date: 8/10/2016 KB
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SYMBOL LEGEND

EXISTING FEATURES



ELEVATION POINTS



- RECTANGULAR CONCRETE PLANTER**
24'-3" x 48'-3" TYP
- TO BE FURNISHED BY CITY
 - CONTRACTOR RESPONSIBLE FOR TRANSPORT FROM CITY CORP YARD (APPROX. 1 MILE) & PLACEMENT
 - PLACE 1" FROM CONCRETE PLATFORM AGGREGATE
 - CONTRACTOR TO INSTALL SOIL & PLANTS TO BE INSTALLED BY BUSINESS OWNER

- STAMPED CONCRETE PLATFORM**
PATTERN: BRICKFORM RUNNING BOND NEW BRICK - STANDARD PRODUCT ID: FM-5150-S/O COLOR: Brickform LC-2280 French Gray
- NOTE: CONCRETE CONTRACTOR/ FINISHER WILL PROVIDE CONCRETE CONTROL JOINT LAYOUT TO BE APPROVED BY CITY OF MENLO PARK BEFORE INSTALLATION.**

101	15-07	Downtown Menlo Park Santa Cruz Ave. Street Cafes	Angelo Mio - Street Cafe Plan	Scale: 1/4" = 1'-0"	Date: 8/10/2016 KB
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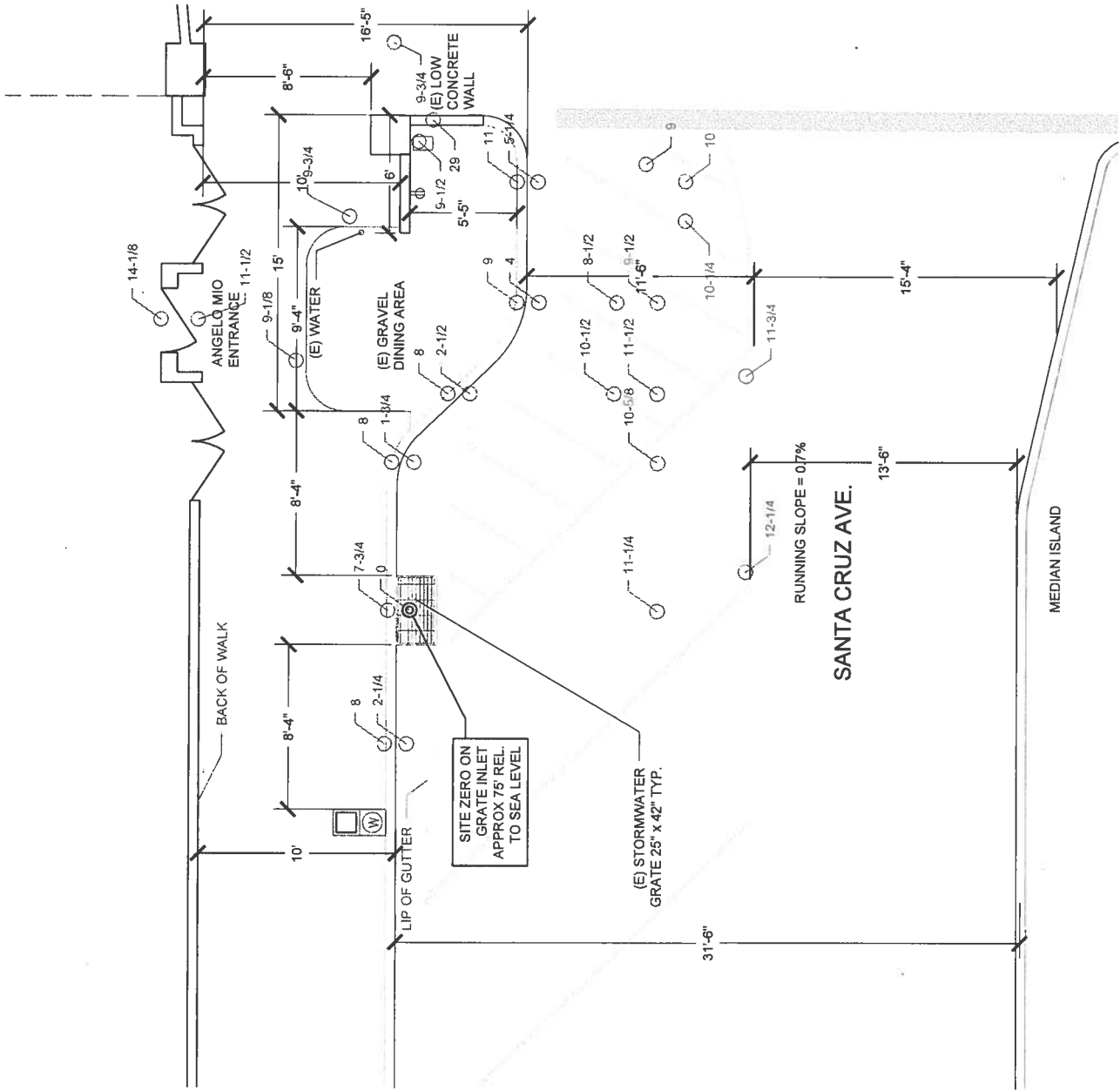
SYMBOL LEGEND

EXISTING FEATURES

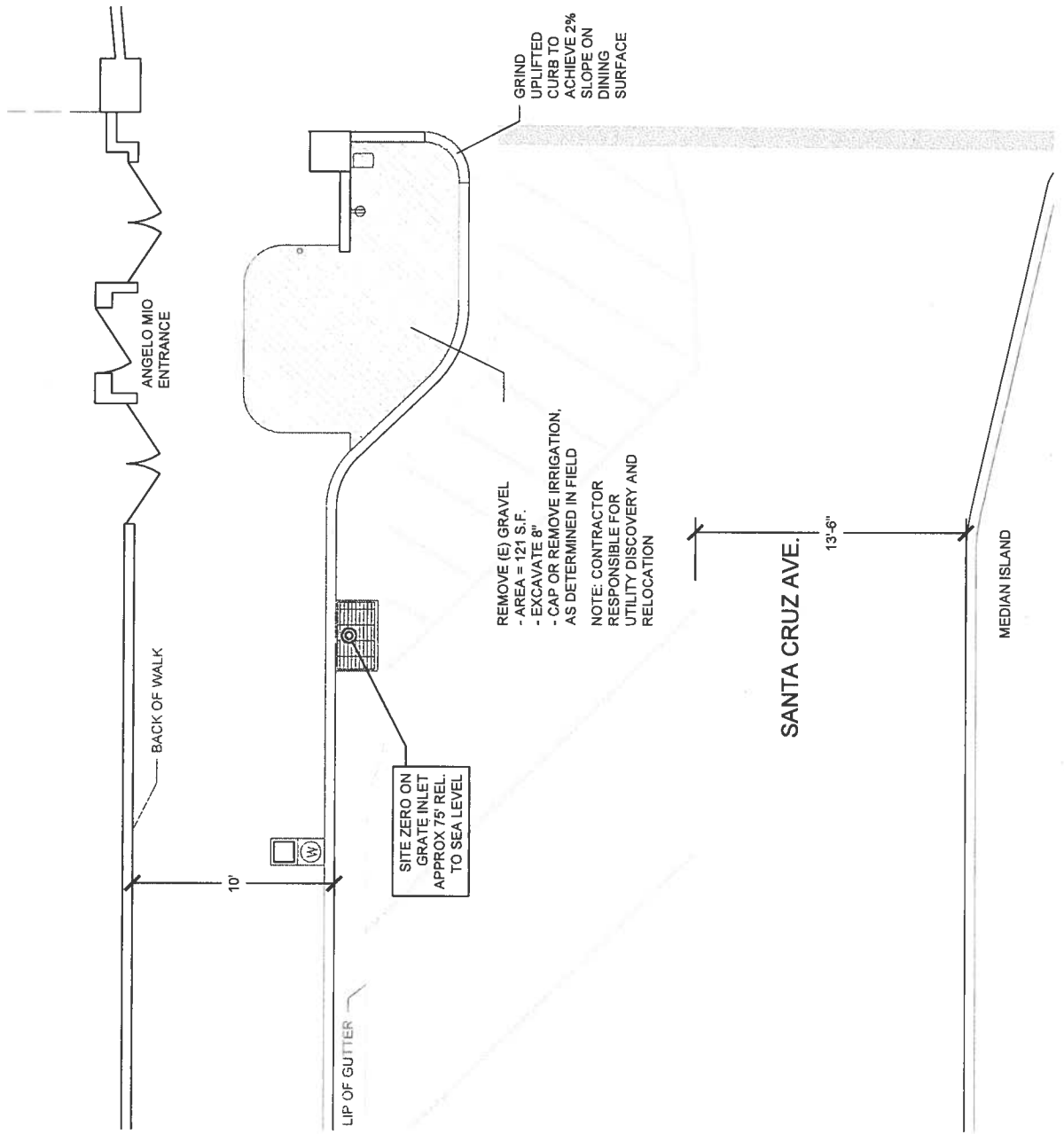
- ELECTRICAL OUTLET
- UTILITY BOX
- IRRIGATION BOX
- WATER METER
- WOOD CLAD STREET POLE
- BUS STOP

ELEVATION POINTS

- SITE ZERO ELEVATION
- EXISTING ELEVATION
- PROPOSED ELEVATION



102	15-07	Downtown Menlo Park Santa Cruz Ave. Street Cafes	Angelo Mio - Existing Conditions	Scale: 1/4" = 1'-0"	Date: 7/25/2016 KB
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IAN MOORE DESIGN LANDSCAPE
 CHICG E:112 C:118
 1523 Wilcox Street Berkeley, CA 94708

103	15-07	Downtown Menlo Park Santa Cruz Ave. Street Cafes	Angelo Mio - Demolition Plan	Scale: 1/4" = 1'-0"	Date: 8/2/2016 KB
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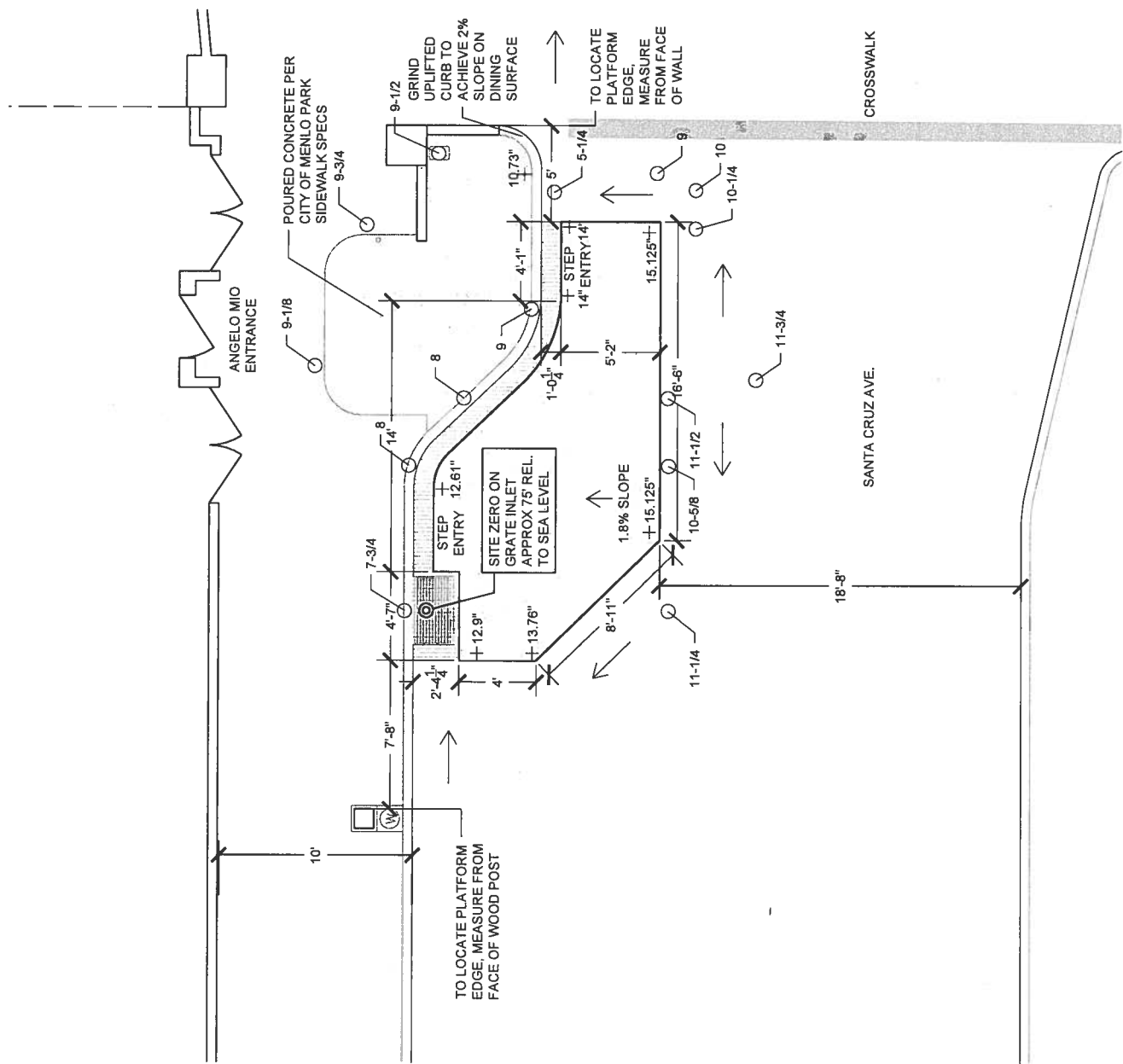
SYMBOL LEGEND

EXISTING FEATURES

- ELECTRICAL OUTLET
- UTILITY BOX
- IRRIGATION BOX
- WATER METER
- WOOD CLAD STREET POLE
- BUS STOP

ELEVATION POINTS

- SITE ZERO ELEVATION
- EXISTING ELEVATION
- PROPOSED ELEVATION



1223 Menlo Street
Berkeley, CA 94708

Date: 7/25/2016
KB

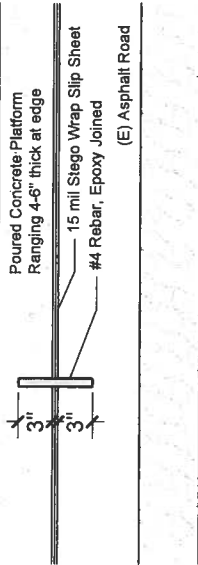
Scale: 1/4" = 1' - 0"

Angelo Mio - Concrete Platform Plan

Downtown Menlo Park
Santa Cruz Ave. Street Cafes

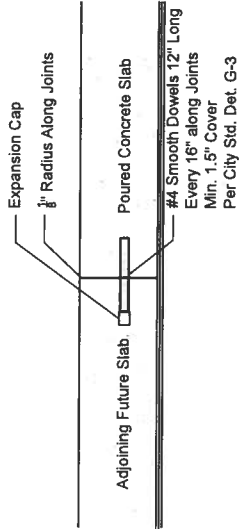
201 15-07

Reinforcement for all street cafe platforms to include vertical doweling between existing asphalt and new concrete. Doweling to be placed by contractor per general specification and in accordance with basic layout provided on plans.



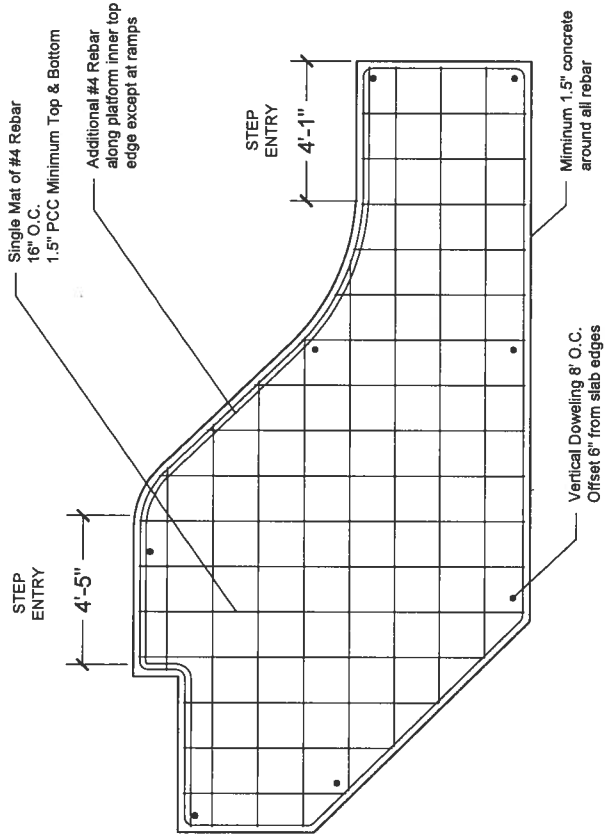
H Rebar Doweling Cross-Section

SCALE: 1-1/2" = 1'-0"



I Construction Joint Cross-Section

SCALE: 1-1/2" = 1'-0"

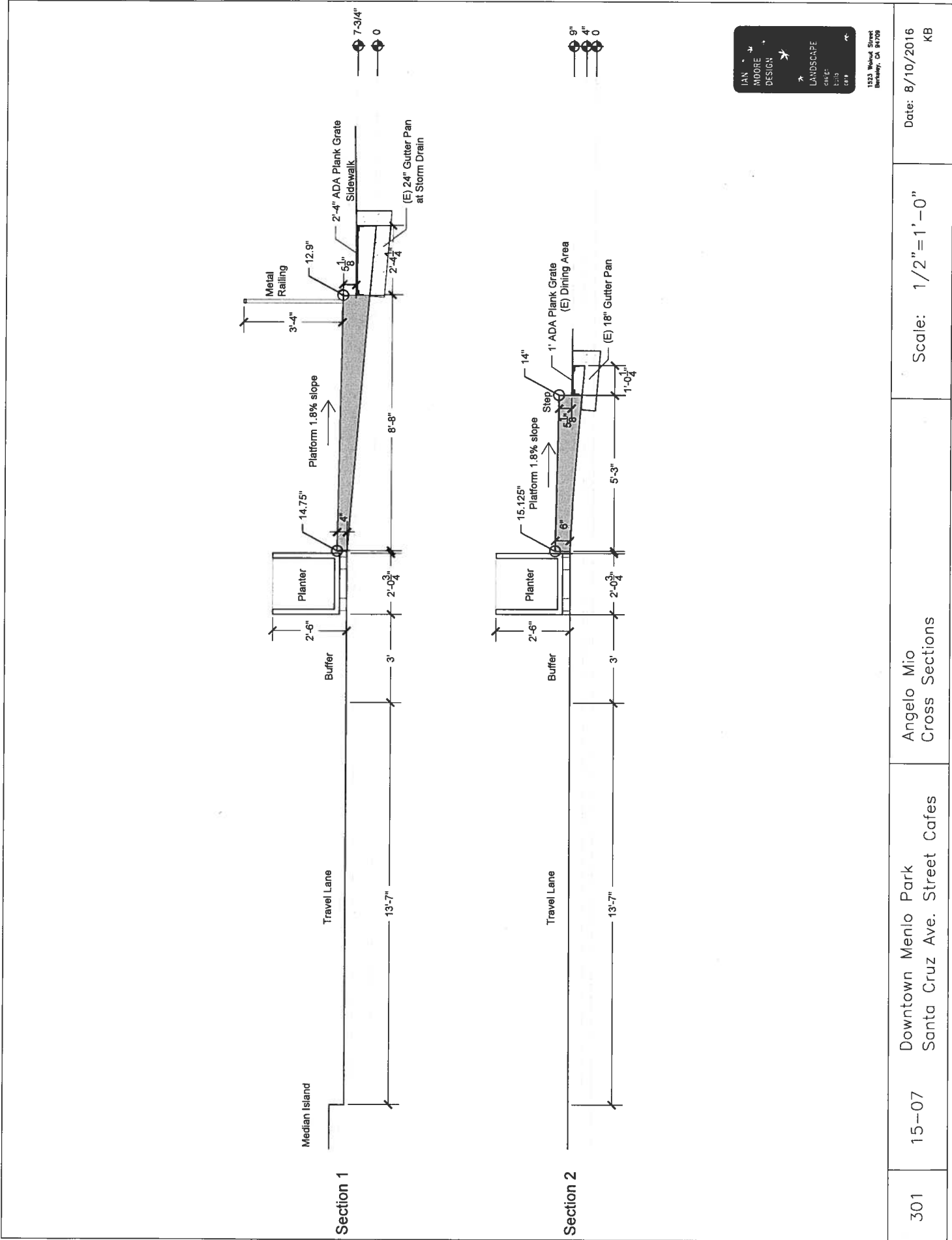


J Rebar Layout Plan

SCALE: 3/8" = 1'-0"



1923 Menlo Street
Berkeley, CA 94709



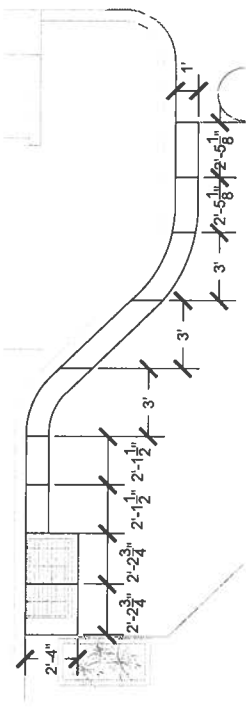
Date: 8/10/2016
KB

Scale: 1/2" = 1' - 0"

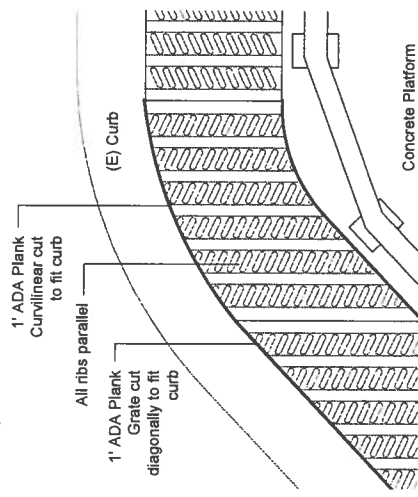
Angelo Mio
Cross Sections

Downtown Menlo Park
Santa Cruz Ave. Street Cafes

301 15-07

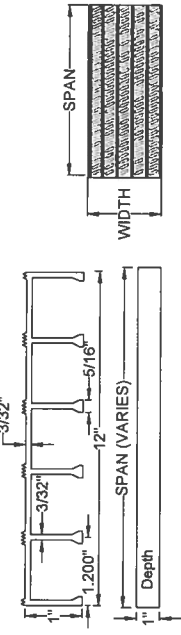


E Plank Grate Segment Dimensions - Plan View
 SCALE: 1/4" = 1'-0"



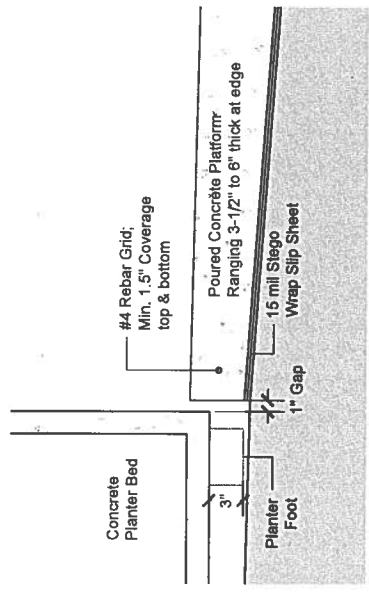
G Curved Platform Edge Plan View
 SCALE: 1-1/2" = 1'-0"

Punched ADA Plank - SlipNOT Metal Safety Flooring

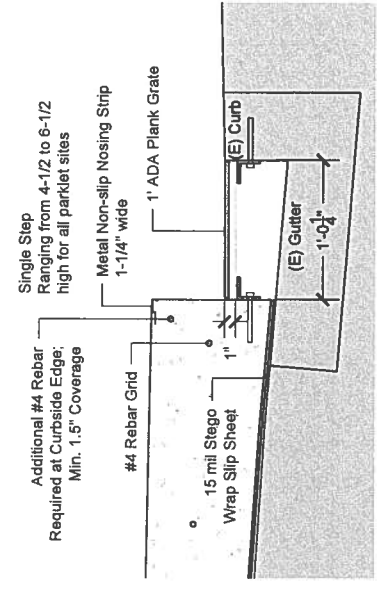


Available Widths	15-7/8"	23-1/8"	30"
1-1/2"	8-11/16"	17-1/8"	24"
2-11/16"	9-7/8"	17-1/8"	24"
3-7/8"	11-1/8"	18"	25-1/2"
5-1/8"	12"	19-1/2"	26-11/16"
6"	13-1/2"	20-11/16"	27-7/8"
7-1/2"	14-11/16"	21-7/8"	29-1/8"
			36"

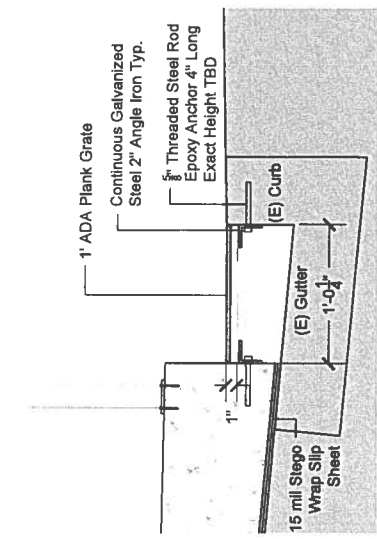
D ADA Plank Grate Dimensions
 SCALE: 3" = 1'-0"



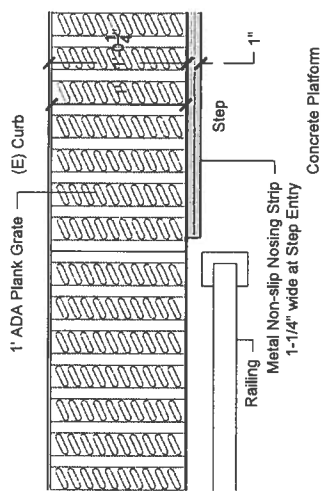
B Concrete Slab Edge at Planter
 SCALE: 1-1/2" = 1'-0"



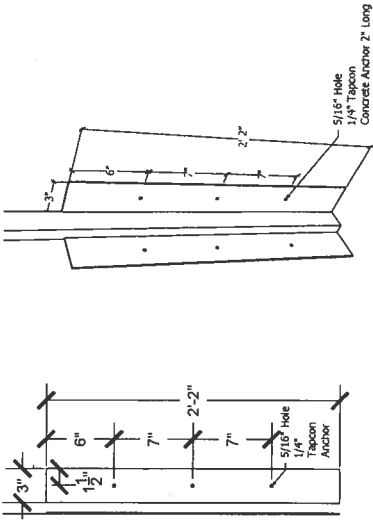
C Step Entry Cross Section
 SCALE: 1-1/2" = 1'-0"



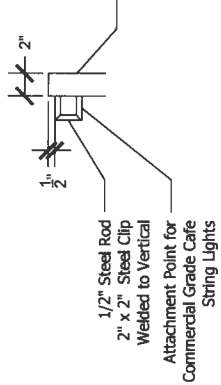
A Drain Panel Cross-Section
 SCALE: 1-1/2" = 1'-0"



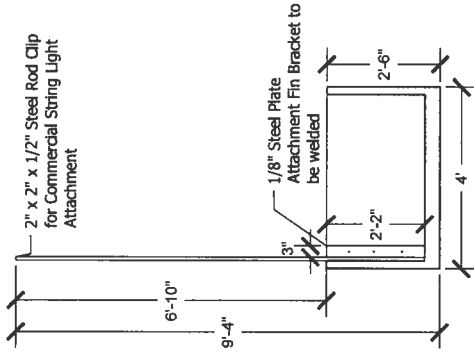
F Step Entry Plan View
 SCALE: 1-1/2" = 1'-0"



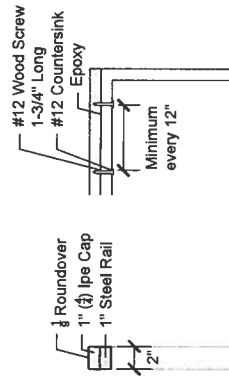
J Lighting Attachment to Planter Detail
SCALE: 1-1/2" = 1'-0" & N.T.S.



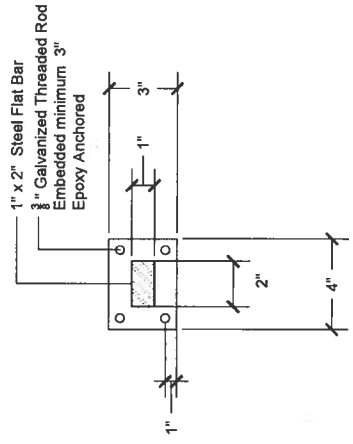
I Lighting Clip Detail
SCALE: 1-1/2" = 1'-0"



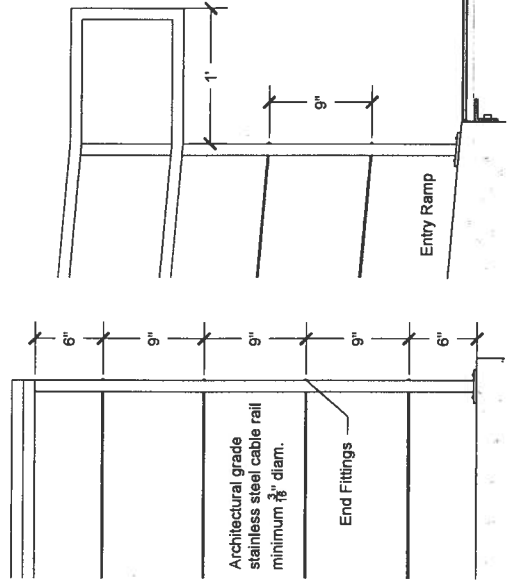
H Lighting Post Section-Elevation
SCALE: 1/2" = 1'-0"



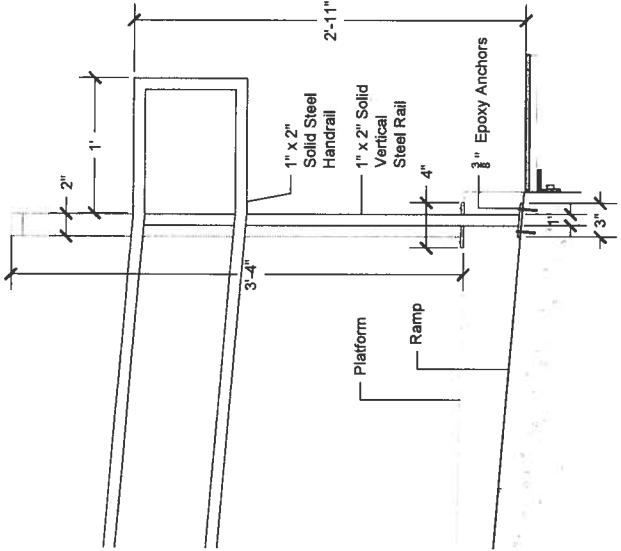
G Wood Rail Cap Detail
SCALE: 1-1/2" = 1'-0"



F Railing Foot Plan View
SCALE: 3" = 1'-0"



E Cable Rail Detail
SCALE: 1-1/2" = 1'-0"



D Railing
SCALE: 1-1/2" = 1'-0"



Date: 8/2/2016
KB

Scale: Varies

Custom Railing & Lighting Pole Details

Downtown Menlo Park
Santa Cruz Ave. Street Cafes

402 15-07

Metal Drain Panel



Perforated non-slip ADA Plank over gutters

Metal Railing



Stamped Concrete Platform Surface



Running Bond Brick



Architectural cable
Wood cap





EXHIBIT B - INVOICE

INVOICE

RETURN ONE COPY OF THIS INVOICE WITH YOUR REMITTANCE

PAYABLE UPON RECEIPT

Make all checks payable to:

City of Menlo Park/Transportation Division
701 Laurel Street
Menlo Park, CA 94025

Invoice to:

Angelo Mio - Attn: Emilio Demirkol
820 Santa Cruz Avenue
Menlo Park, CA 94025

Date: 9/23/2016
Department Public Works
Phone: 650-330-6740

Description

20% of the contract amount for the project: Santa Cruz Street Café Project: Angelo Mio and Mademoiselle Colette

Angelo Mio	
Total Construction Cost Estimate	\$66,665.09
20% Owner responsibility	\$13,333.02

Total Due \$13,333.02

EXHIBIT C - Additional Improvements

TO: Jim Cogan, Manager of Economic Development & Housing

9/9/16

FM: Emilio, Owner of Angelo Mio Restaurant

cc: Michael Tsai

SUB: Angelo Mio Parklet: Café Finishes

Summary of New Uses and Decorations

#1 The decoration scheme: The scheme of the new seating area will match the exterior color of the restaurant and the area of existing outdoor tables: the color is terra cotta with brown and tan contrast elements; there are now five matching umbrellas, which cover the stone-look tables and ~20 tan chairs which are in place today.

#2 The planter-box 'wall' (barrier) from the street:

Banners: We are having a graphics designer create three, full-color banners, for the sides of the three boxes which face the street. They will depict scenes from northern Italy, and a tasteful "Welcome to Northern Italy" will be woven into one of them. The banners will be replaced with new designs every two to three years, as needed.

Interior faces of the boxes: If the boxes' grey color clashes with the restaurant color scheme, the inward facing surfaces will be painted the color of terra cotta (if needed).

Barrels: The restaurant will purchase four wine barrels which will become part of the wall, and they will be installed by the contractor. An antique-style statue of a kneeling angel will sit atop each barrel.

#3 Planting material: Before planting, the restaurant will amend the soil with high-quality, fresh compost from Lyngso Garden Materials. Three drought-tolerant "Euphorbia" bushes will be planted in each 4' long planter. The soil will then be top-dressed with appropriate mulch.

#4 New furnishings: Additional stone-look tables will be purchased for the new seating area. All of the older style outdoor chairs will be replaced with new, comfortable, wicker-style outdoor chairs. More umbrellas will be added to the new seating area (as many as are needed). If the current propane space-heating tower proves insufficient to warm the added seating, an additional outdoor heater will be evaluated and purchased if needed.

#5 Lights: A string of low-voltage, white mini-lights will be strung from the vertical poles which will be installed along the wall by the contractor. The lights will match the appearance of the City's street-trees lighting. They will only operate at night, and be on a timer to shut off after the restaurant closes.

#6 Other decorations: The current outside decorations will remain. They include: a) five terra cotta planters (2' tall, 18" square) with plants, b) a 4' statue of an Italian woman by the front door, c) the restaurant's 8' tall "Ficus" bush which is strung with white mini-lights, d) the working, antique exterior lights above the front windows, and e) the US and Italian flags (which will be replaced with new flags).