



## Newton City Council

### Committee of the Whole Agenda

**Monday, July 8, 2019**

#### **Council Chamber**

**7 PM**

The City Council will meet in a Committee of the Whole with Public Facilities and Finance presiding on July 8, 2019 at 7 PM to discuss and possibly vote in Committee of the Whole Docket Items #23-19(2) and #115-19(3), and #209-19.

#### ***Public Hearing assigned for July 8, 2019***

##### **#23-19(2) Authorization to amend the lease for Solar Phase III**

HER HONOR THE MAYOR requesting authorization to amend the lease for Brown Middle School to replace the front canopy at the site with two canopies in the rear parking area.

##### **#115-19(3) Extension of time to act on a wireless attachment grant of location**

EXTENET SYSTEMS, INC agrees to an EXTENSION OF TIME in which to ACT until SEPTEMBER 17, 2019 on Petition #115-19 to install a small cell wireless facility on an existing utility pole located in the right-of-way in the vicinity of 262 Beacon Street. The installation will include an antenna, radio equipment, an electric meter, and cabling for fiber and power to enhance wireless coverage in the area.

##### **#209-19**

HER HONOR THE MAYOR, COMMISSIONER OF PUBLIC WORKS AND DIRECTOR OF PLANNING & DEVELOPMENT providing a recommendation to the City Council on the use of seven hundred thousand dollars (\$700,000) for off-site improvements provided for in the Washington Place Special Permit #96-17 as amended by Special Permit #216-18.

Respectfully submitted,

Deborah Crossley, Chair of Public Facilities  
Leonard J. Gentile, Chair of Finance

---

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the City of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: [jfairley@newtonma.gov](mailto:jfairley@newtonma.gov) or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.



Ruthanne Fuller  
Mayor

City of Newton, Massachusetts  
Office of the Mayor

#23-19(2) Telephone  
(617) 796-1100  
Fax  
(617) 796-1113  
TDD/TTY  
(617) 796-1089  
Email  
rfuller@newtonma.gov

Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Honorable City Councilors:

I write to request that this Honorable Council docket a request to amend the approval for the Mayor to negotiate a lease for solar panels at Brown Middle School as part of the City's Phase 3 Solar Program. The new plan, as attached, removes the solar canopy from the front of the middle school and places two canopies in the rear parking area.

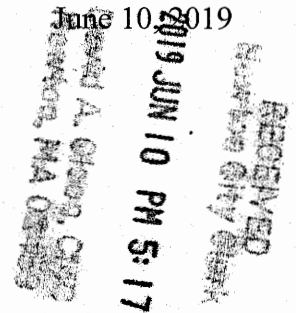
In April, after the Council's approval of solar panel locations, Co-Director of Sustainability Bill Ferguson met with Brown Middle School PTO members and Principal John Jordan at Brown Middle School to answer questions about the solar project at the school. Liam Hurley and Dave Stickney were also present representing the School Department. The PTO raised several concerns about the solar canopy at the school entrance, including safety concerns. Mr. Ferguson agreed to revisit the safety issues and did so with the Fire Department and the Police Department. Two site visits were made to the Brown entrance area by the Police Department with Bill, including one with Chief MacDonald. Visits were also made by Glenn Manning of the Fire Department. The conclusion of this evaluation was that the solar canopy at the entrance did not present any new safety issues (although some existing traffic problems were identified).

Also in late April, we found out from former Brown Principal Judy Malone-Neville that the mature tulip tree near the entrance was planted in memory of the lives of four Oak Hill Middle School students who lost their lives in the tragic bus crash 18 years ago. That tree would be removed if the canopy was placed in front of the school.

The Brown PTO and Principal John Jordan urged the City to abandon the solar canopy at the entrance and, as an alternative, construct the solar canopy in the back of the school. They showed us three sites behind the school. Mr. Ferguson worked with Macquarie/HESP to analyze panel locations in the back and came out with a great layout that gives some cover for teacher cars and no programmatic impacts. The result of that effort was a layout of two canopies over the row of car parking. The new canopy locations have been cleared by the Fire Department.

We are requesting Council approval to use two of those sites in place of the entrance canopy.

The three attachments include a schematic with clearance information needed by the fire department to verify adequate access for the ladder truck, renderings of the proposed canopies, and diagrams which

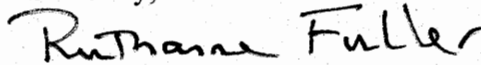


show shading of the proposed solar canopies. There is some early morning (~8:30 to 10am) shading in the dead of winter on one portion of the back side of the school's lower level, but Brown Principal Jordan has looked at the issue and says the impacts are minimal given the way the classroom is used. The small shade impact disappears in the Spring and Fall periods.

We are requesting that the approval of these sites be placed on the Committee of the Whole on July 8, 2019. This meeting will serve as the public hearing for the project with notification to abutters.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "Ruthanne Fuller". The signature is written in a cursive, flowing style.

Mayor Ruthanne Fuller





PROJECT DETAIL		SYSTEM DESCRIPTION			SHEET INFORMATION					
PROJECT #:	MA-18-116	MODULE TYPE:	TRINA SOLAR, TSM-DE14A(II) PERC MONO 375	TILT ANGLE:	7	DATE:	05.22.19	SHEET NO:	PV 0	
PROJECT NAME:	BROWN MIDDLE SCHOOL	MODULE QUANTITY:	1,464	RACKING STRUCTURE:		CANOPY MOUNTED		DESIGNER:		DG
SITE ADDRESS:	WHEELER ROAD NEWTON, MA 02459	SYSTEM SIZE kW (DC):	549	INVERTER:		SOLECTRIA PVI 50 & 60TL		SCALE:		NTS
CLIENT NAME:	CITY OF NEWTON	SYSTEM SIZE kW (AC):	450							

THIS DRAWING IS THE PROPERTY OF HESP SOLAR, LLC. THIS INFORMATION IS CONFIDENTIAL AND IS TO BE USED ONLY IN CONNECTION WITH WORK DESCRIBED BY HESP SOLAR, LLC. NO PART IS TO BE DISCLOSED TO OTHERS WITHOUT WRITTEN PERMISSION FROM HESP SOLAR, LLC. PRELIMINARY DESIGN NOT FOR CONSTRUCTION

HESP SOLAR, LLC  
400 Rella Blvd  
Suite 160,  
Suffern, NY 10901  
www.hespsolar.com

(c) HESP SOLAR, LLC AND ITS AFFILIATES, ALL RIGHTS RESERVED



# Behind Brown Renderings

For Public Facilities Meeting –June 19, 2019



















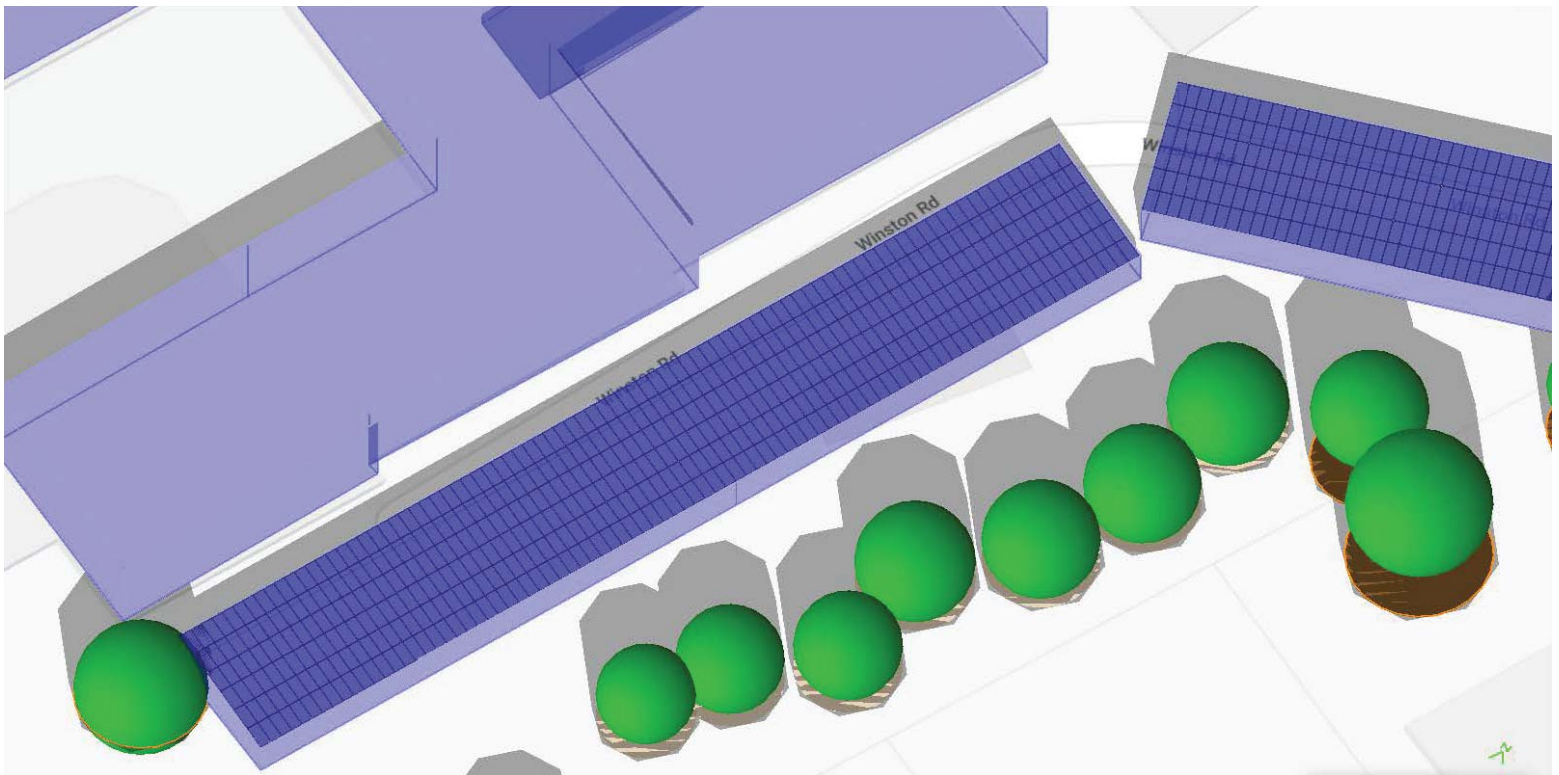
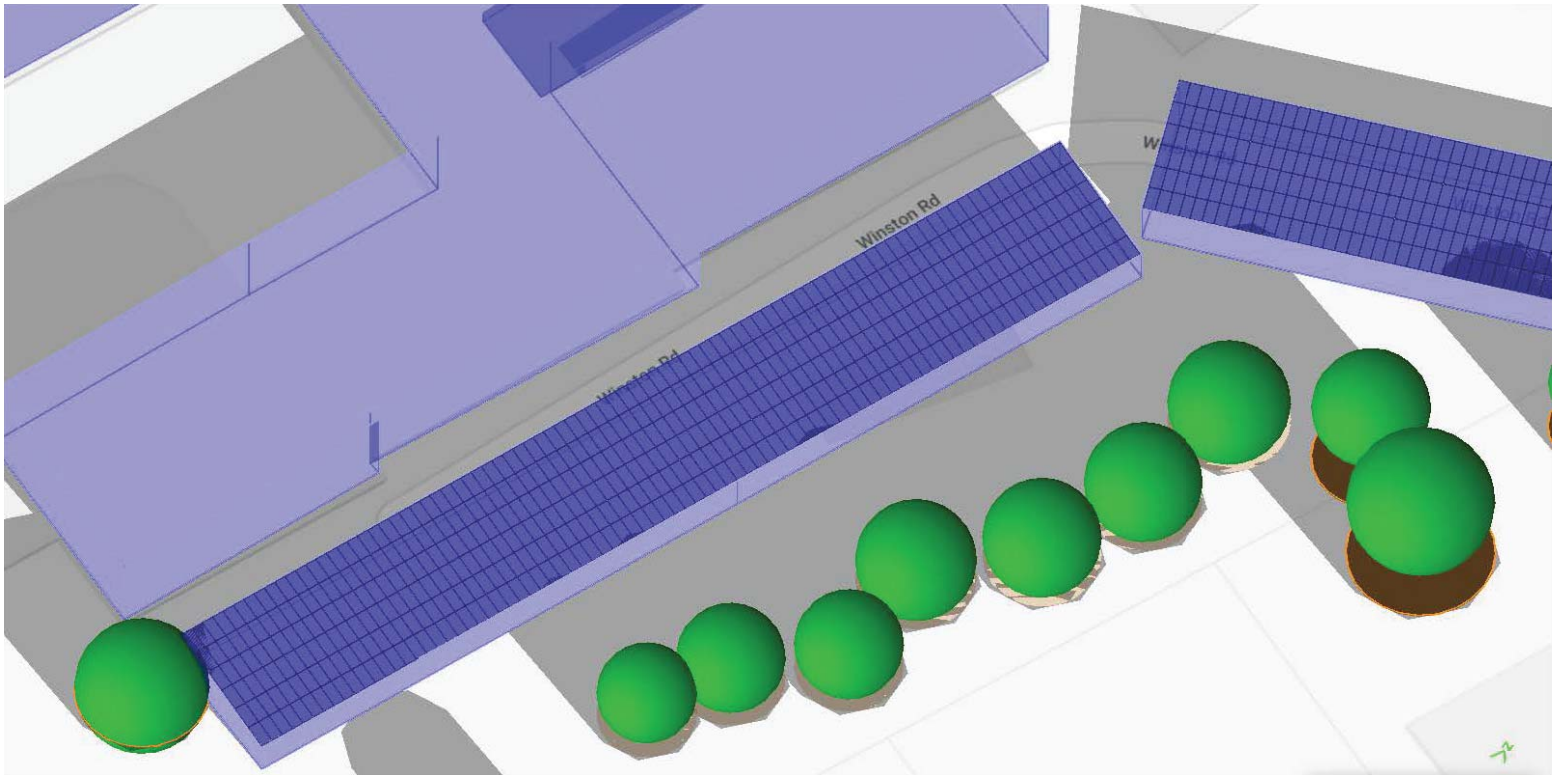




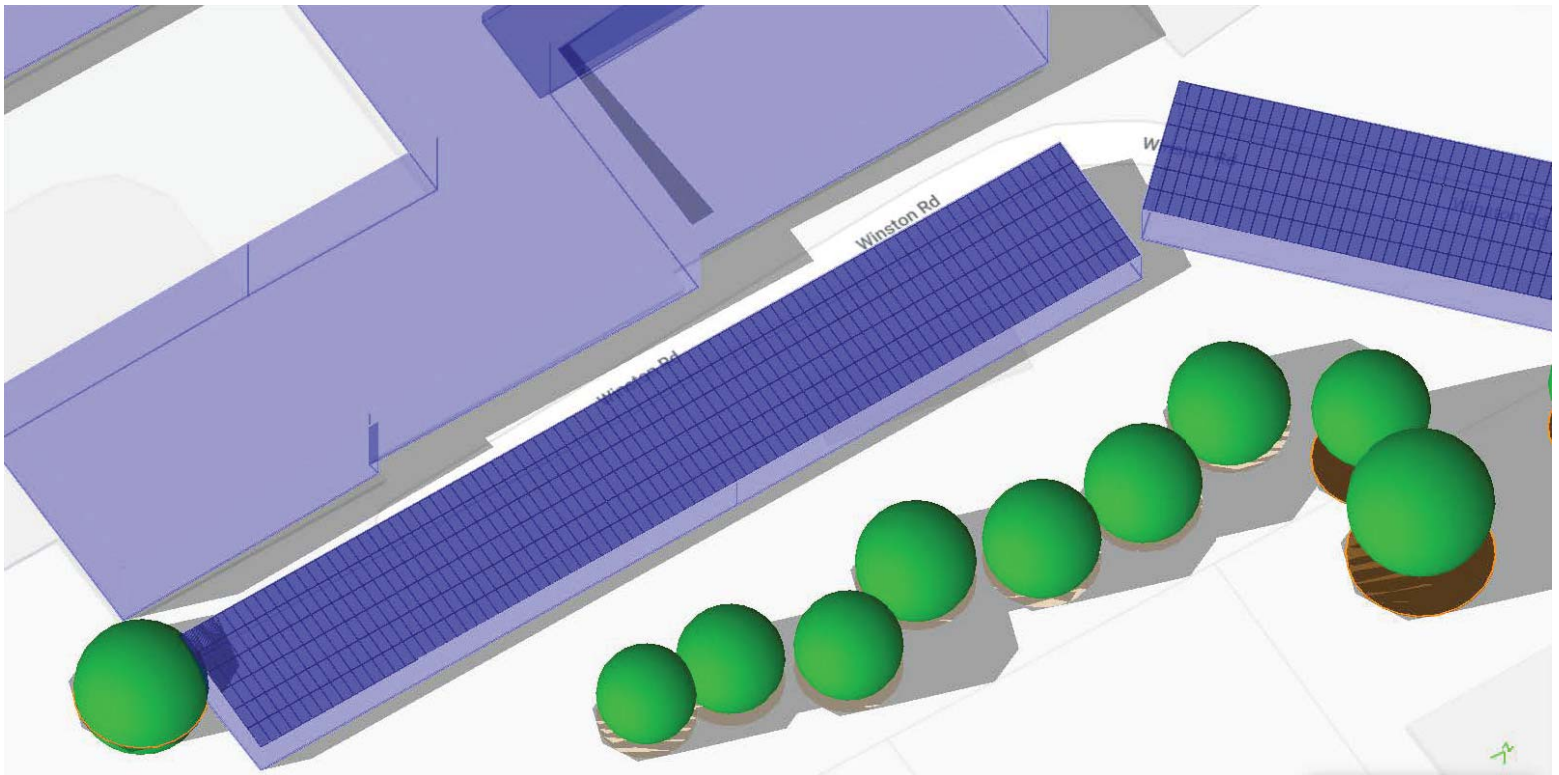
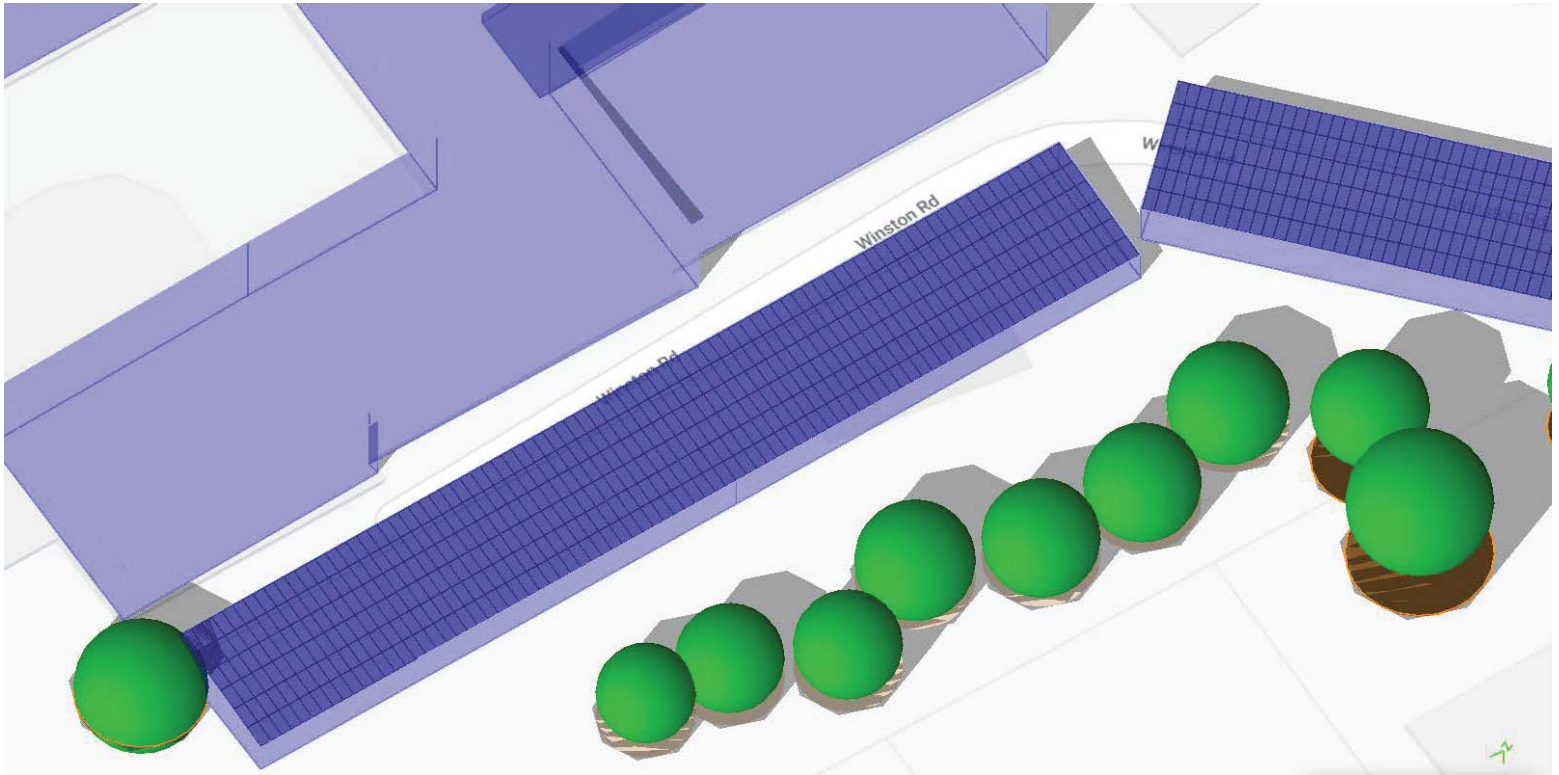




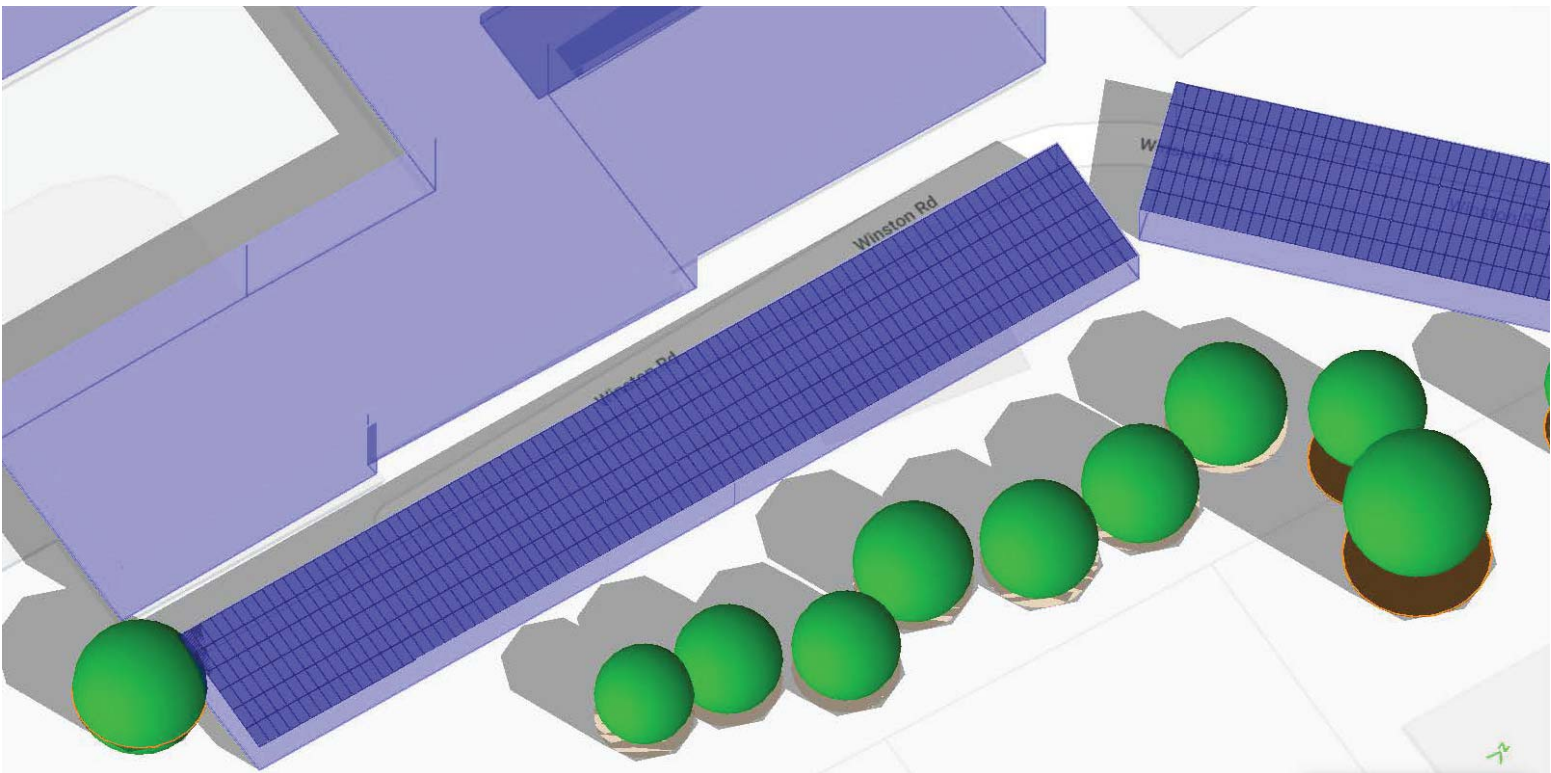
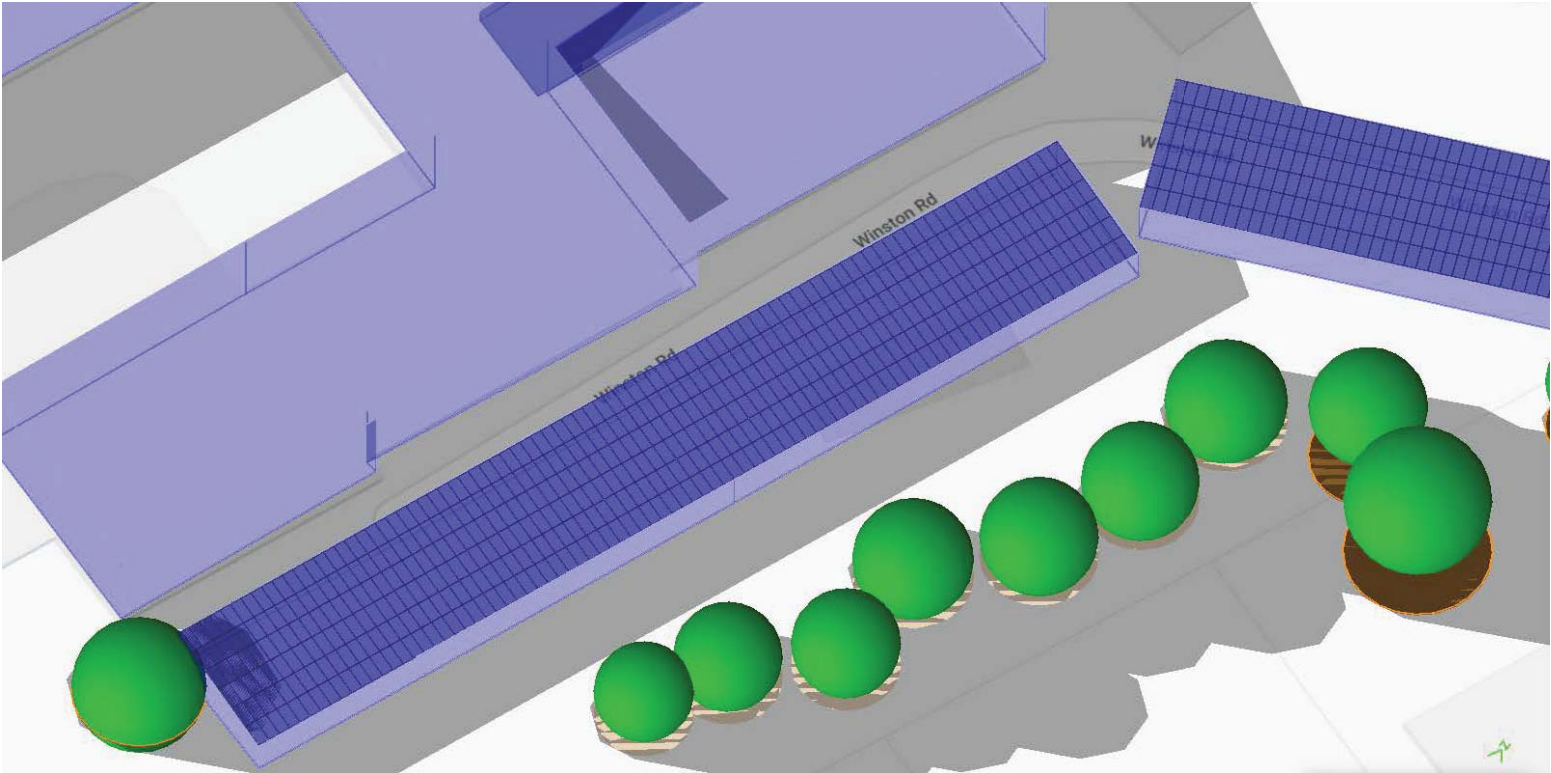




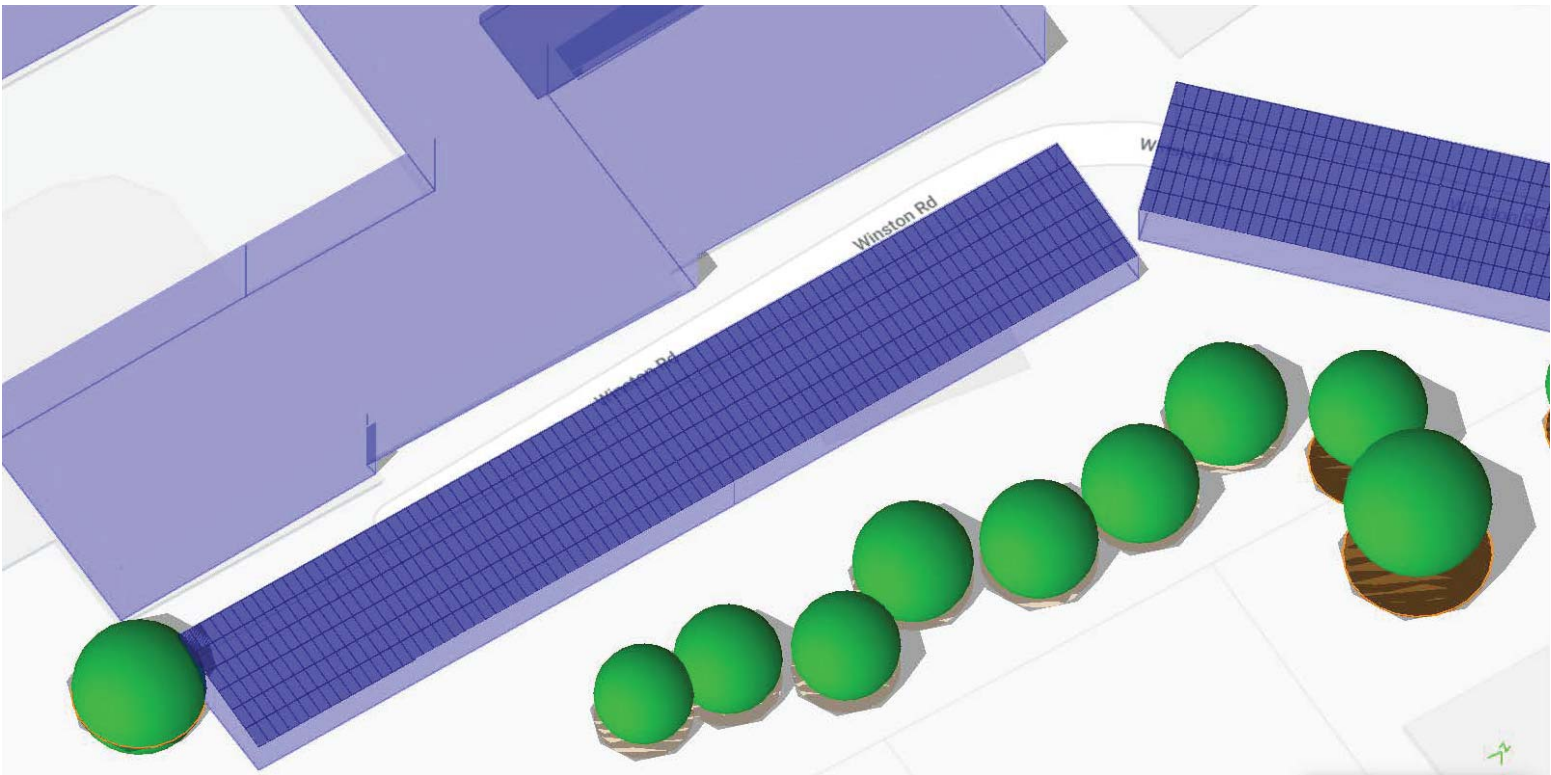
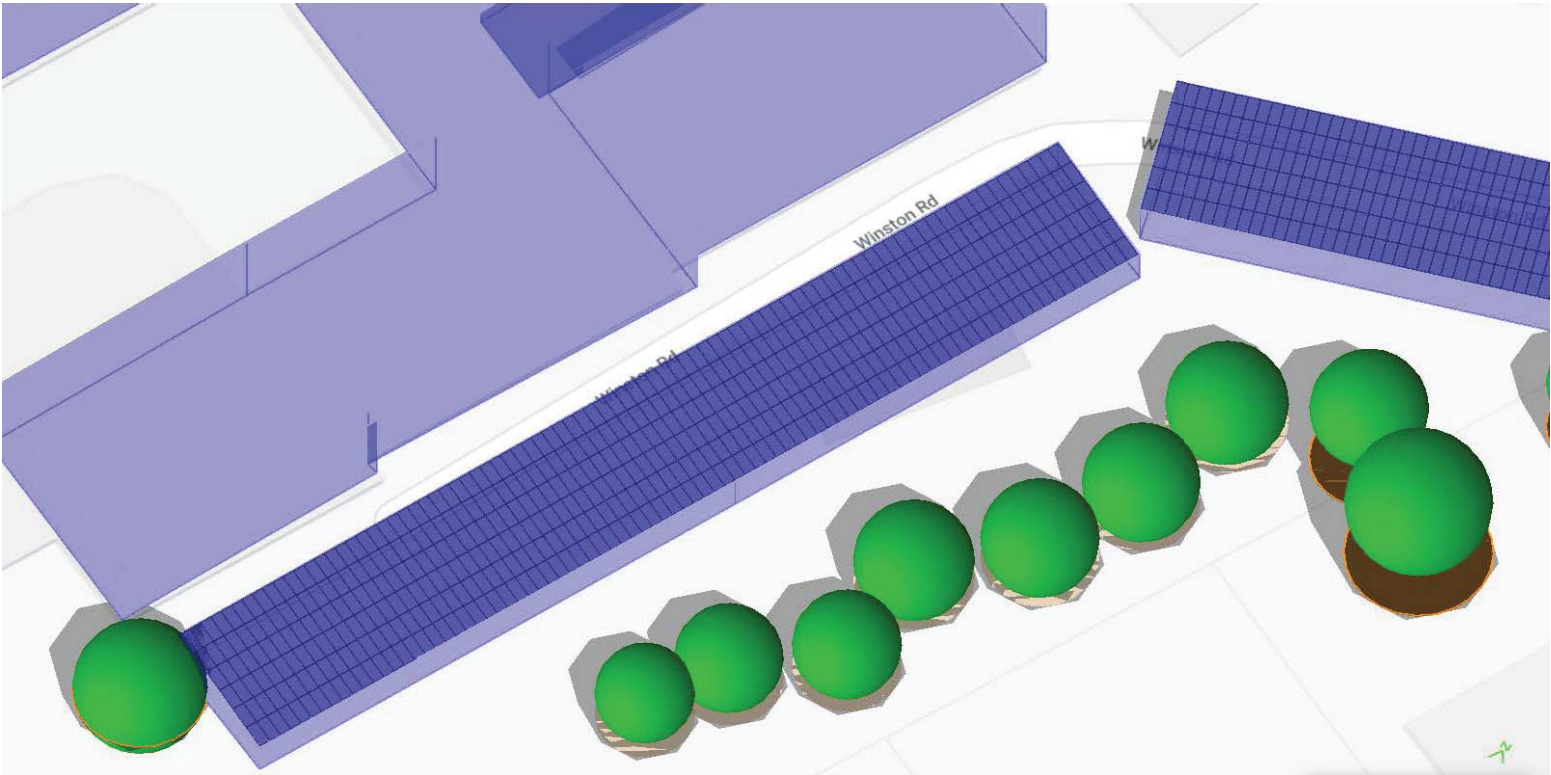




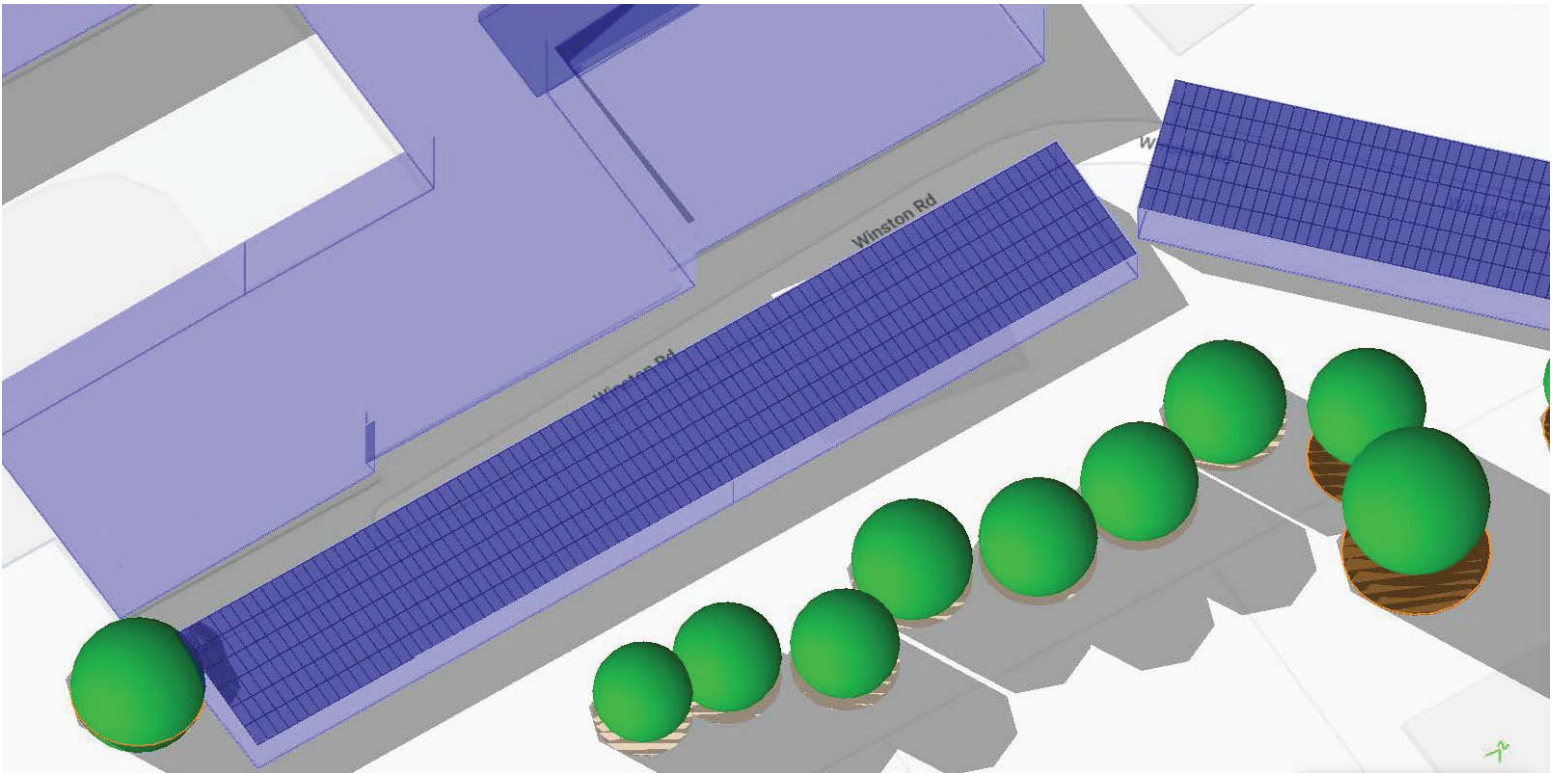
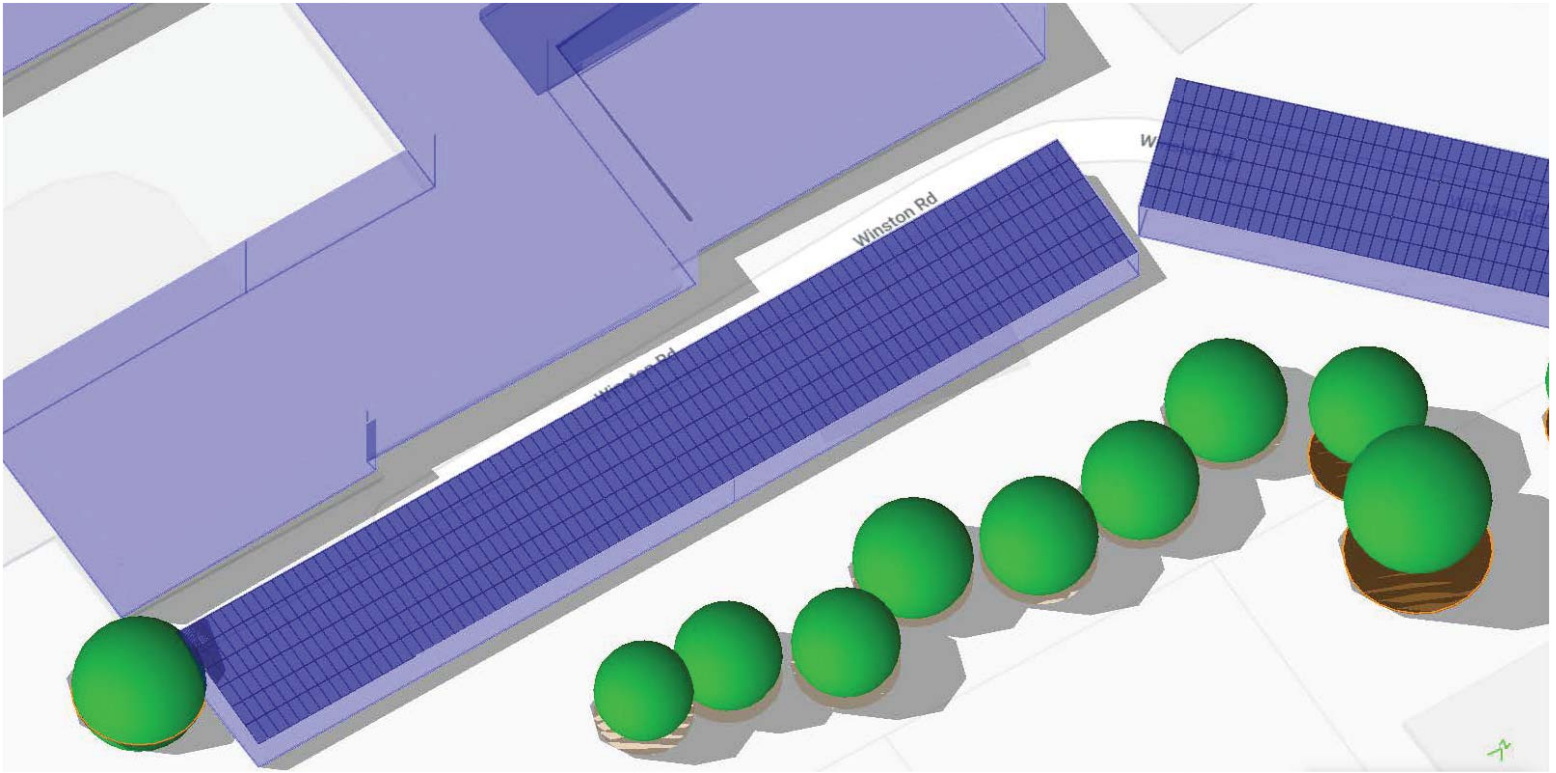




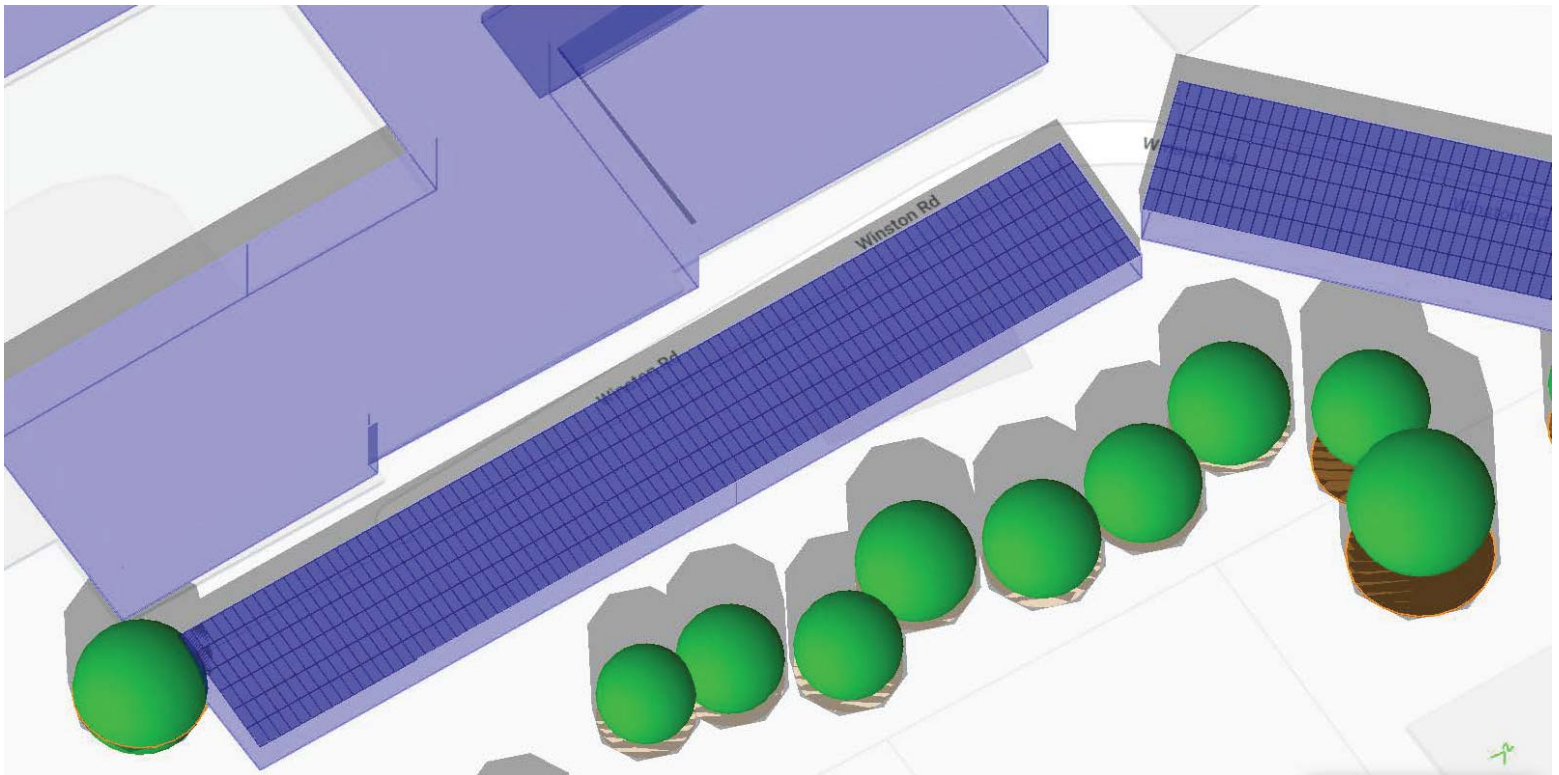
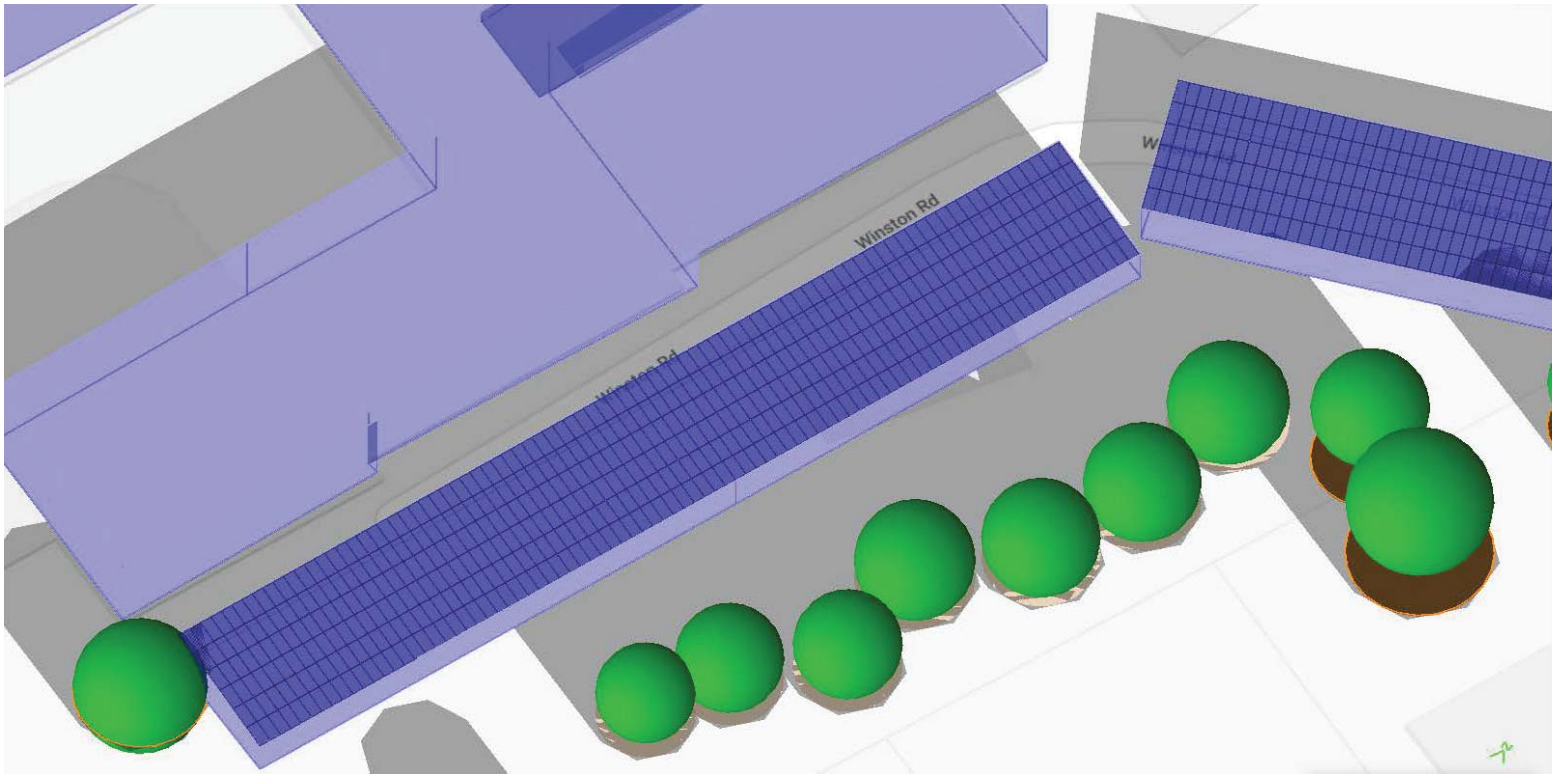




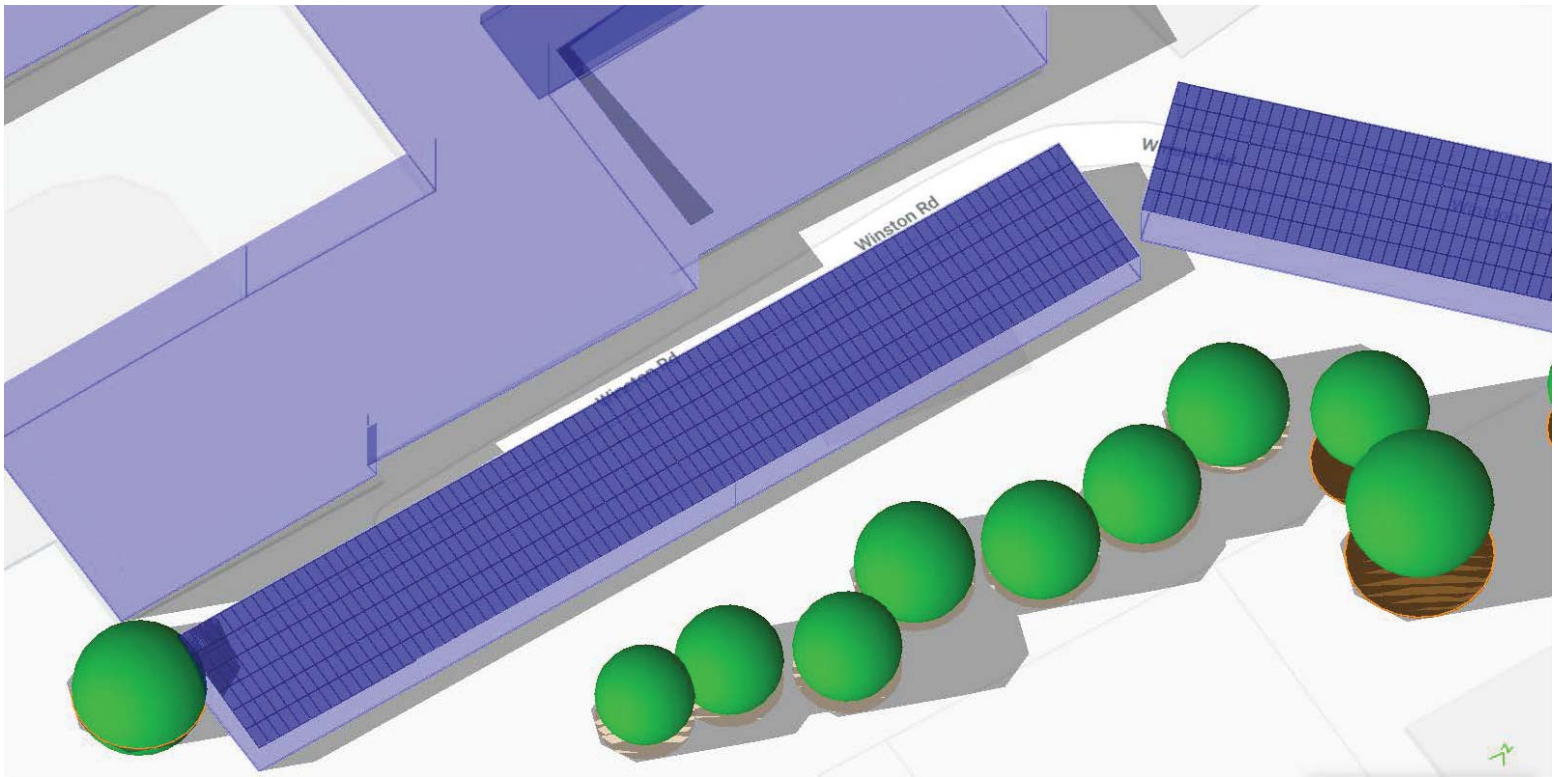
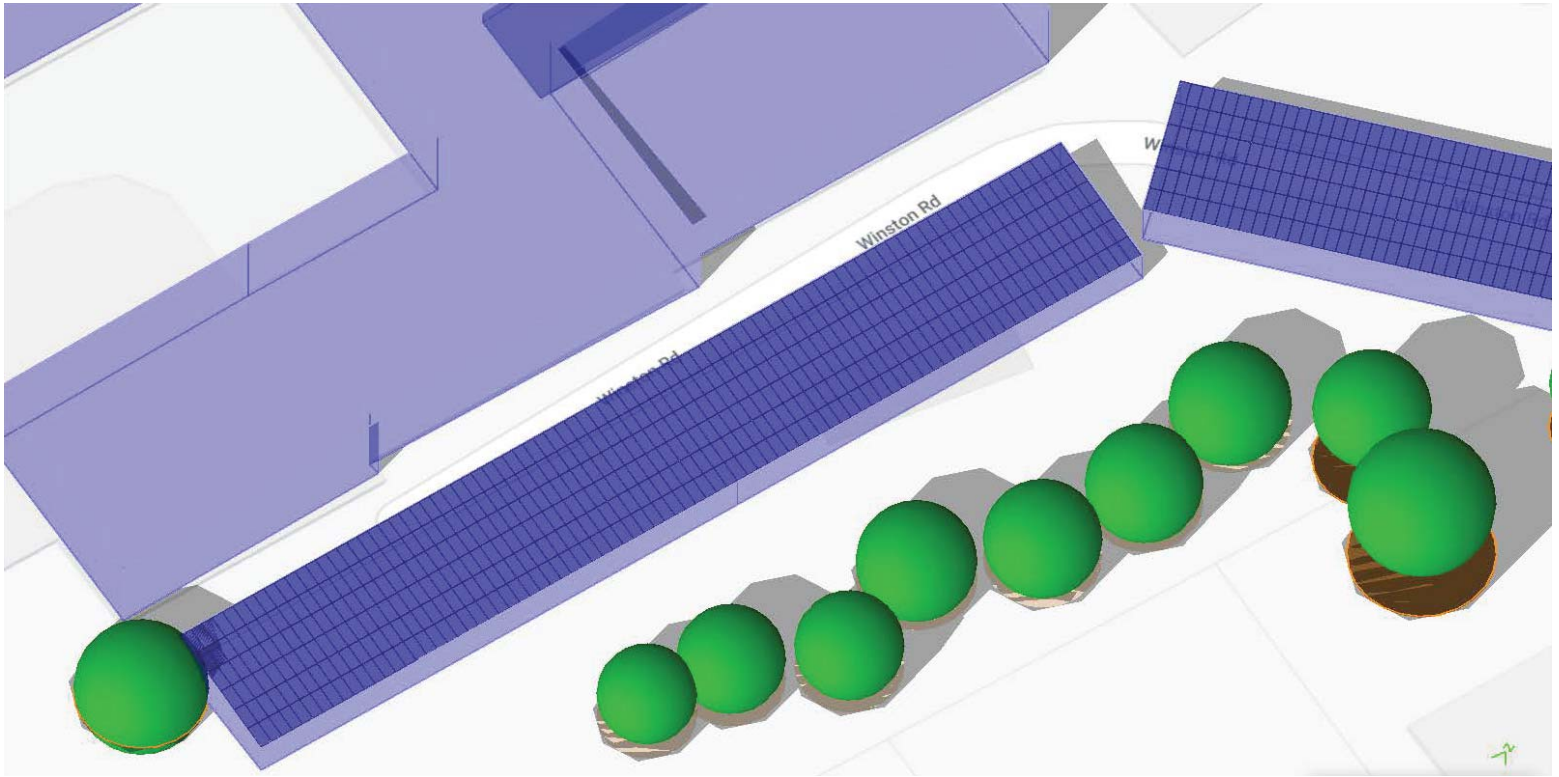




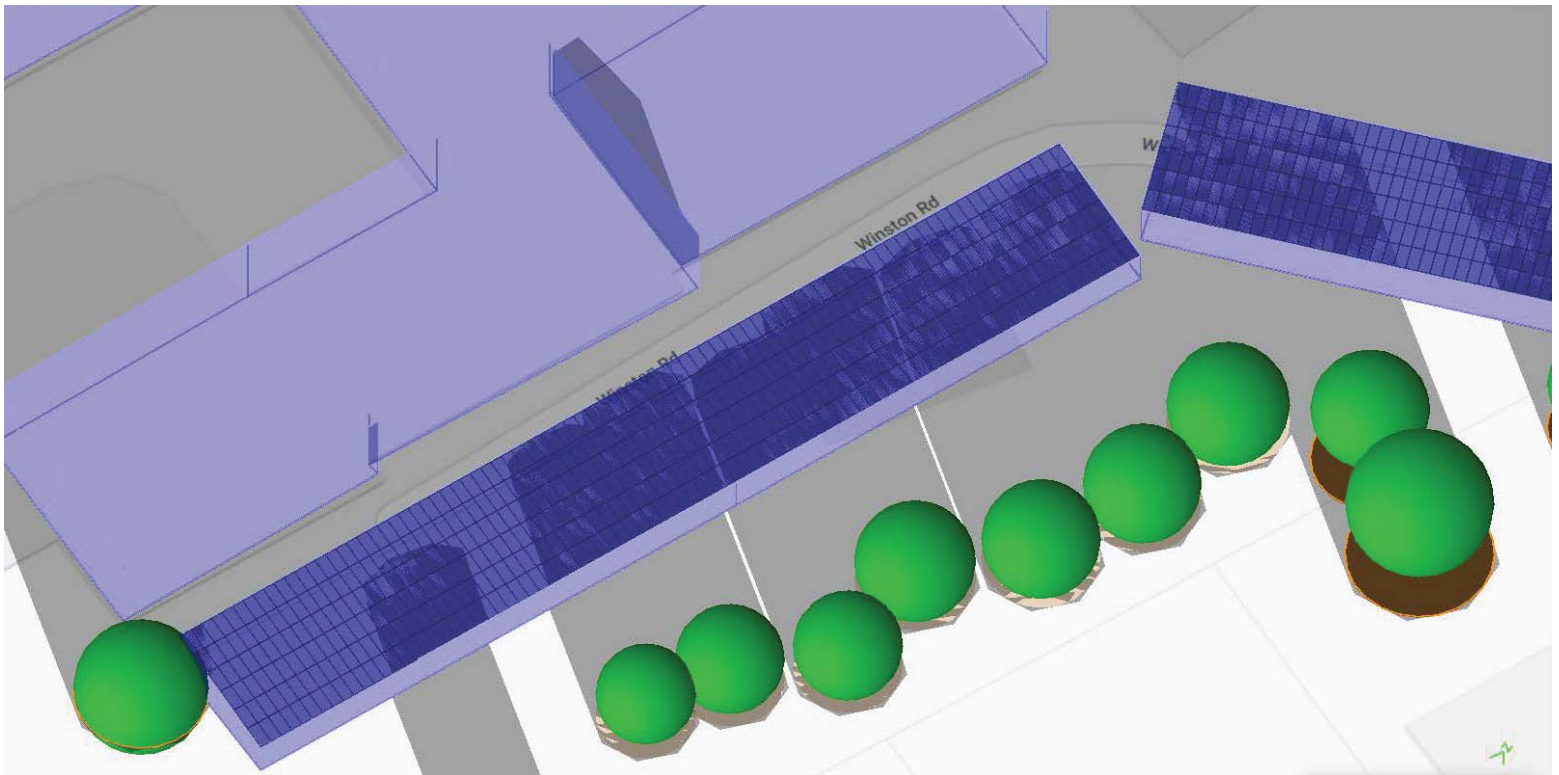
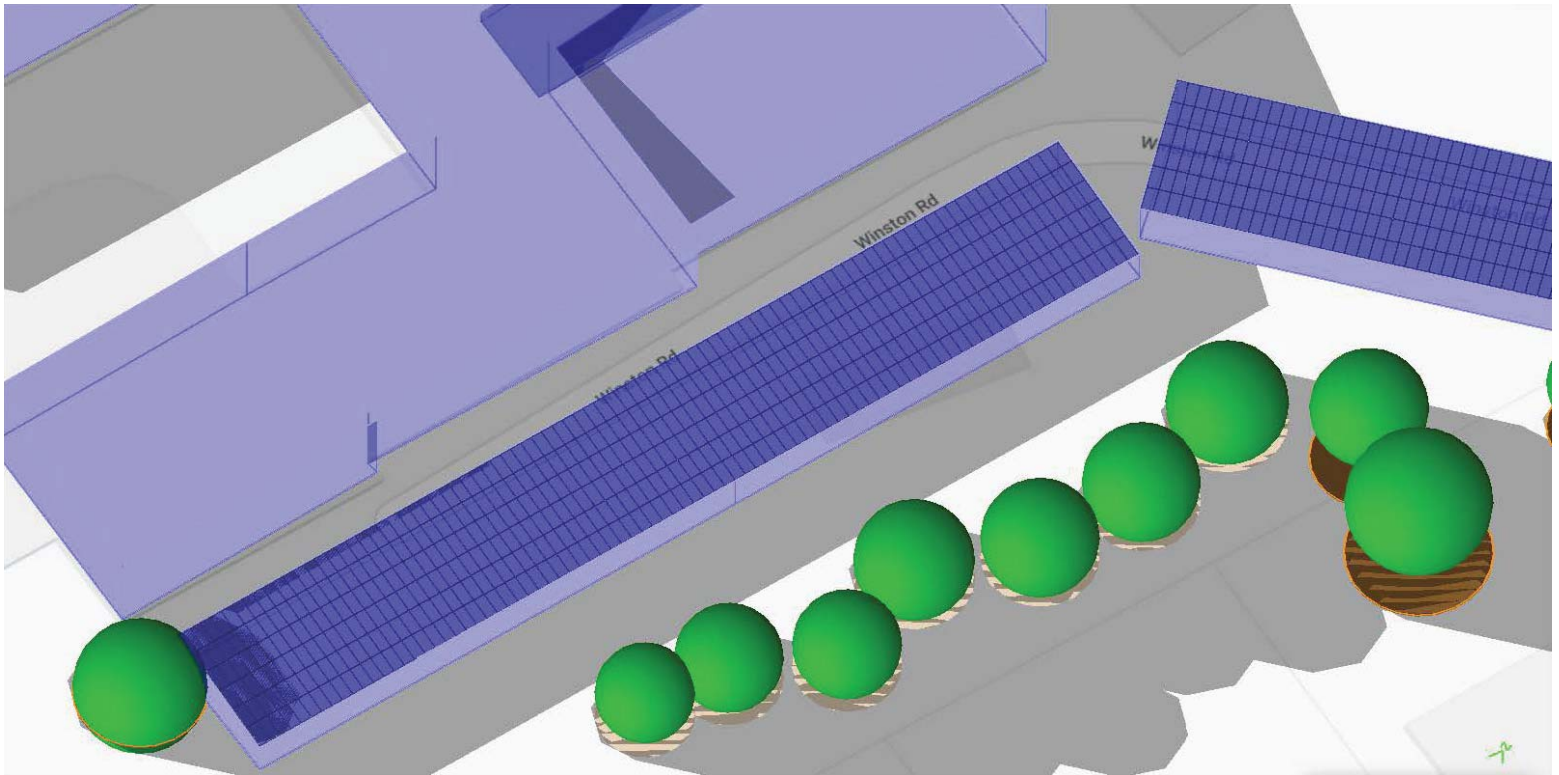




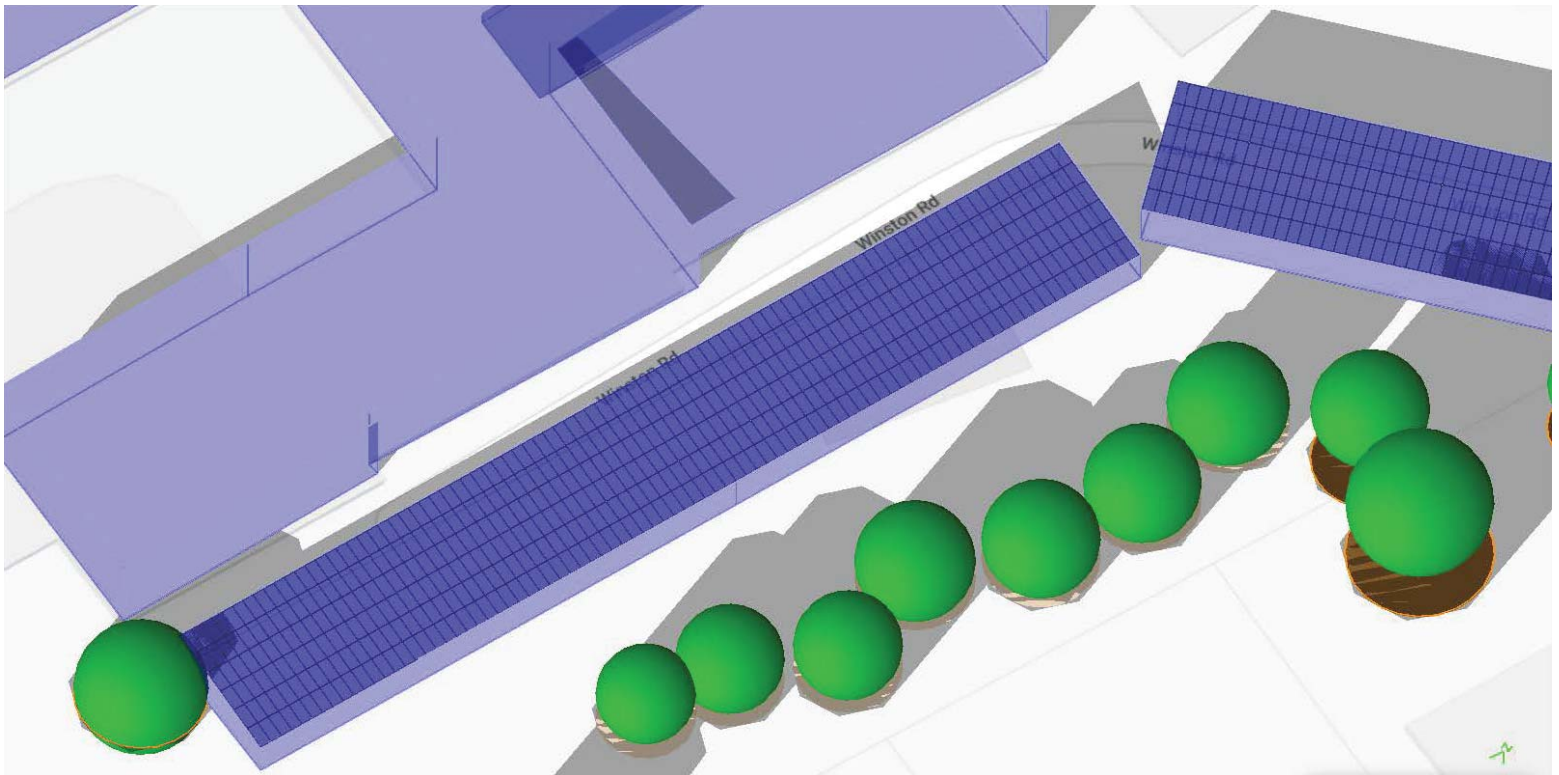
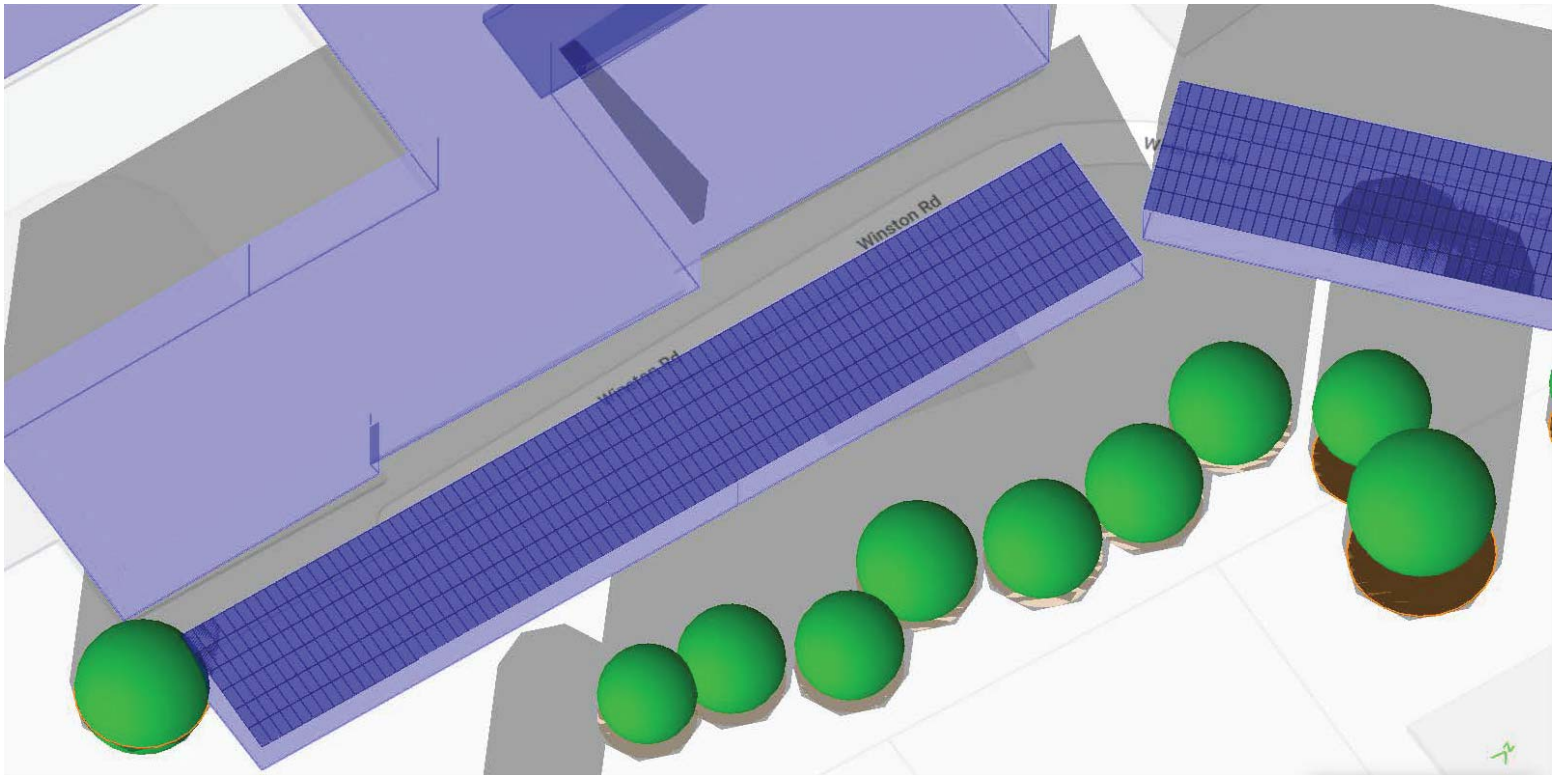




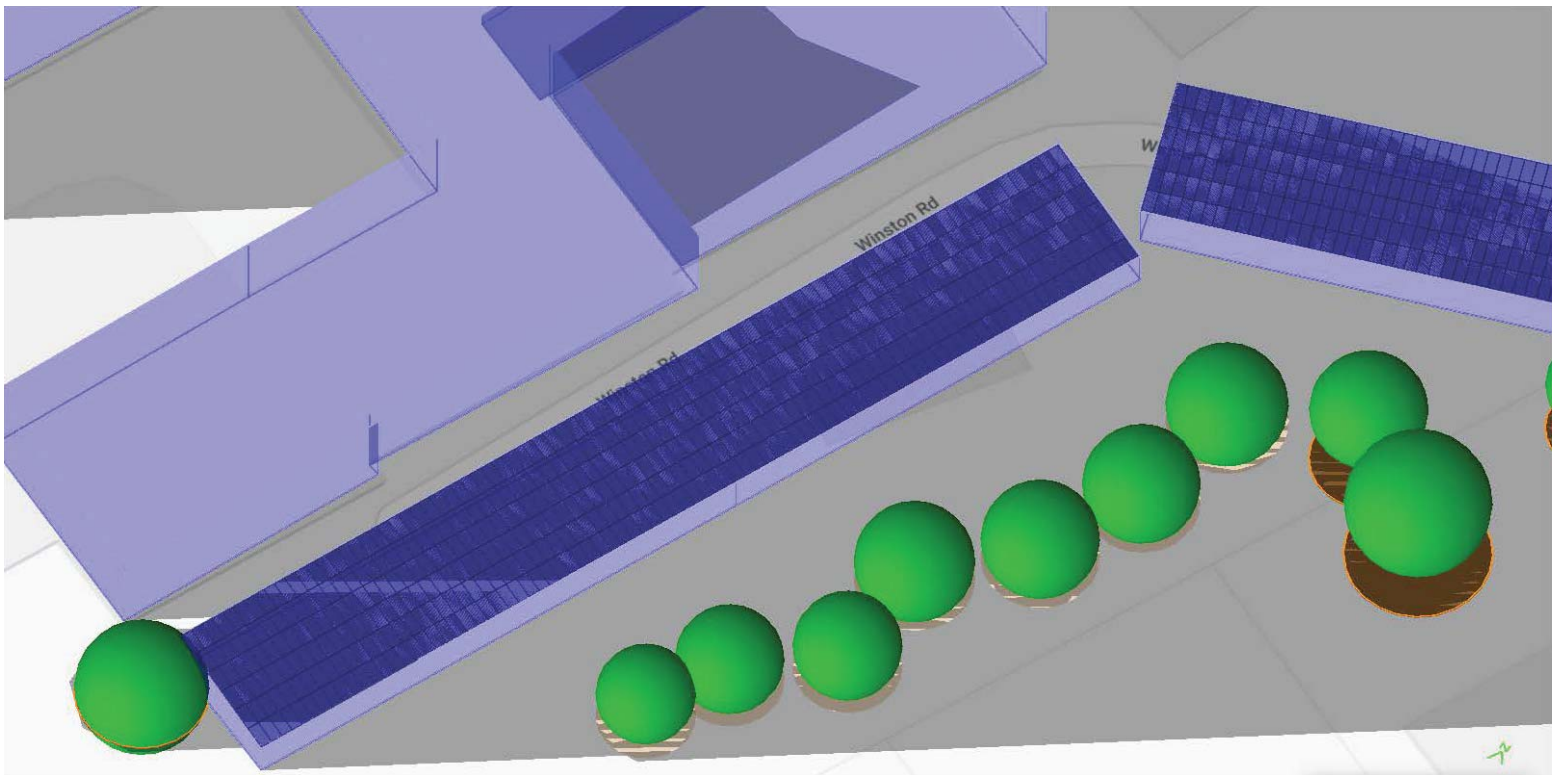
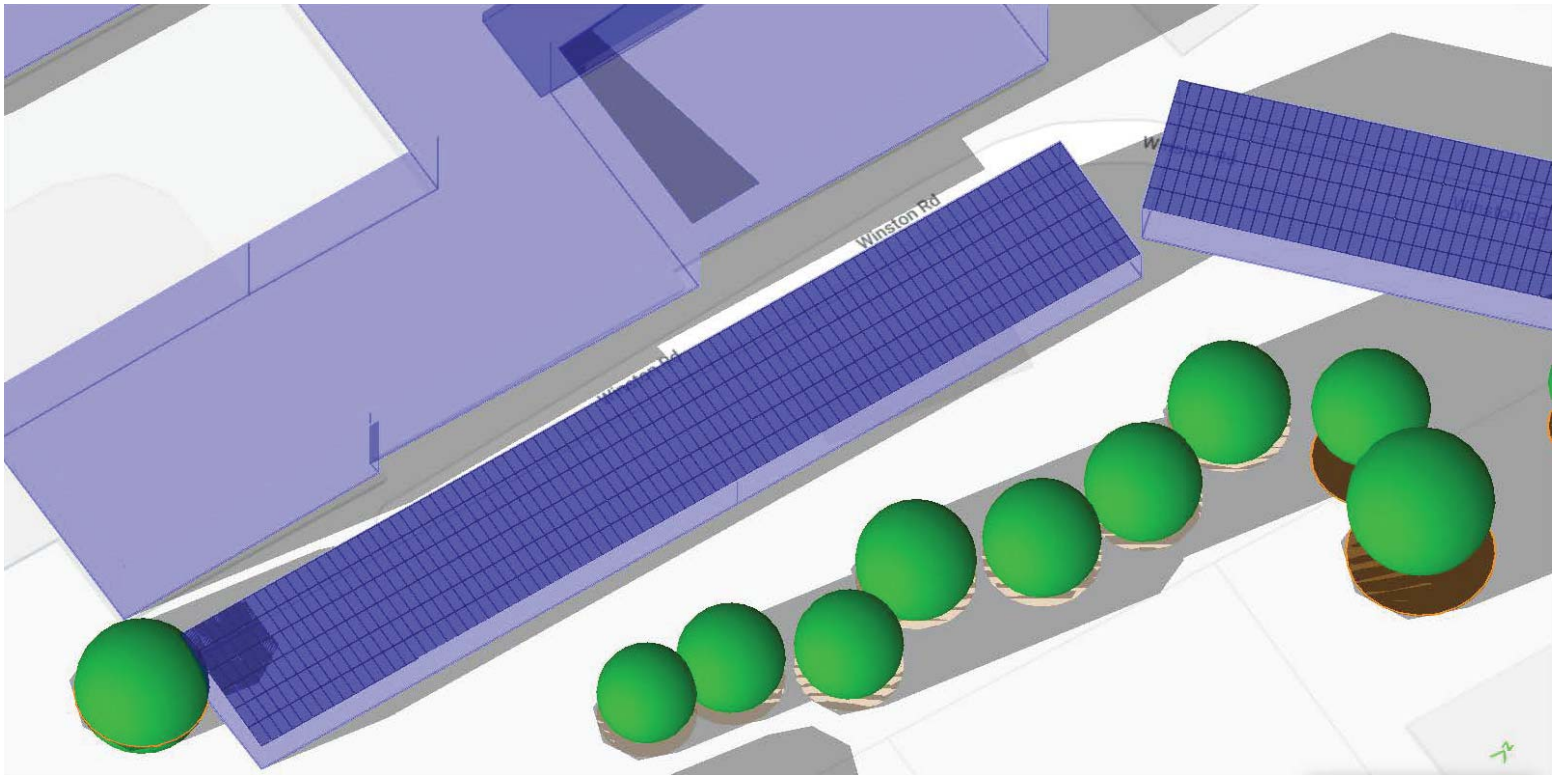














**TOLLING AGREEMENT  
BETWEEN EXTENET SYSTEMS, INC., AND THE CITY OF NEWTON, MASSACHUSETTS**

Dated: June 26, 2019

Whereas, ExteNet Systems, Inc., a Delaware corporation (“ExteNet”) and the City of Newton, MA (the “City”) enter into this Tolling Agreement (this “Agreement”), this 26th, day of June, 2019.

Whereas, ExteNet is authorized to provide intrastate telecommunication services for its networks, pursuant to certification granted by the Commonwealth of Massachusetts, Department of Telecommunications and Cable, dated December 19, 2007 (the “Certificate”).

Whereas, On March 5, 2019, ExteNet filed with the City a Grant of Location Application (“GOL”) for the placement of small cell equipment within the City’s Rights-of-Way (“ROW”) on one (1) Eversource-owned wood pole.

Whereas, the GOL Application is identified as:

NE-MA-ALBRD3M1-14009 262 Beacon St, Chestnut Hill, Newton, MA 02467, Newton Pole Type: Eversource Wood (the “GOL Application”).

Whereas, the Public Facilities Committee of the City Council held over the GOL Application, under which the proposed location is within the Chestnut Hill Historic District, pending ExteNet’s obtaining a Certificate of Hardship or other permission from the Chestnut Hill Historic District Commission;

Whereas, Pursuant to the Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996), codified in various sections of 47 U.S.C. §151 et seq. (the “Act”), ExteNet’s Certificate, related state laws and 47 U.S.C. § 253(a) and (c), ExteNet may place facilities in public rights of way subject to the City’s reasonable access and permitting requirements;

Whereas, the GOL Application is subject to the federal timelines under 47 U.S.C. § 332(c)(7)(a) and a related FCC order which sets a presumed reasonable deadline for municipal decisions on small cell wireless communications facilities located in public ways of sixty (60) days from the date of the GOL Application (subject to certain exceptions);

Whereas, ExteNet contends that the deadline under federal law for action by the City on the GOL Application, expired no later than May 6, 2019;

Whereas, the parties intend to toll the sixty (60) day period as provided herein, without prejudicing ExteNet from any of its rights to pursue any remedy at law or in equity, provided that the City Council issues a final order for for the GOL Application on or before July 9, 2019 (subject to conditions herein);

Whereas, the parties have acted in good faith; and

final 5.22.2019

Whereas, without either party waiving rights or arguments they may have, ExteNet and the City agree to move forward pursuant to the terms of this Agreement as authorized by federal law and to avoid the filing of any litigation as might otherwise be required by federal and state statutes of limitations.

NOW THEREFORE, THE PARTIES AGREE:

- 1) The City and ExteNet acknowledge ExteNet's filing of the GOL Application as of March 5, 2019;
- 2) The Parties have agreed that solely for purposes of the GOL Application, the sixty (60) day period in which the City is required to respond expires May 6, 2019;
- 3) ExteNet may resubmit an application for a certificate of hardship accompanied by information requested by the Chestnut Hill Historic District Commission (the "Commission") in order to demonstrate that ExteNet was not able to find alternative locations outside the Chestnut Hill Historic District that could provide the same capacity or better;
- 4) ExteNet shall notify the City if it elects not to resubmit such an application, and instead chooses to pursue a different site for its small cell equipment;
- 5) Should ExteNet resubmit such an application and information with the Chestnut Hill Historic District Commission on or before July 31, 2015, the City agrees that once the Commission issues its decision, the Public Facilities Committee will act on the GOL Application as soon as practicable at a scheduled meeting, and the City Council shall issue a final order for said application on or before September 17, 2019; and
- 6) If the City fails to act as required above, ExteNet may take any action entitled to it under state or federal law, including but not limited requests for relief pursuant to 47 U.S.C. § 332(c)(7) and 47 U.S.C. § 253(a) and (c), ExteNet may pursue any and all administrative and/or judicial remedies ExteNet may have with respect thereto as if it is responding on May 6, 2019.

This Agreement supersedes the Tolling Agreement entered into by and between the parties dated May 22, 2019. The parties remain free to amend this Agreement, but the amendments must be in writing.

City of Newton, MA

By: \_\_\_\_\_  
David A. Olson, Clerk of the Newton City Council

For ExteNet Systems, Inc.

By: Linda Rooney 6/26/19  
Linda Rooney, Senior Counsel, Regulatory Affairs





Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

**Barney S. Heath**  
Director

**MEMORANDUM**

**DATE:** May 28, 2019  
**TO:** Maureen Lemieux, Chief Financial Officer  
**FROM:** Barney S. Heath, Director of Planning and Development  
James McGonagle, Commissioner of Public Works  
**SUBJECT:** Recommendations to City Council on the Use of \$700,000 for Off-Site Improvements  
Provided for in the Washington Place Special Permit  
**CC:** Jonathan Yeo, Chief Operating Officer

RECEIVED  
NEWTON CITY CLERK  
2019 MAY 28 PM 3:48  
David A. Olson, Clerk  
Newton, MA 02459

#XXX-19 Director of Public Works and Director of Planning and Development providing a recommendation to the City Council on the use of \$700,000 for off-site improvements provided for in the Washington Place Special Permit, #216-18.

The above docket request was developed jointly by the departments of Planning and Public Works to identify a set of streetscape and transportation improvements that the City could undertake with \$700,000 in mitigation funding from the Washington Place Special Permit.

We have attached an itemized list of projects that address both streetscape and transportation enhancements identified as the priority areas in the Special Permit Board Order including the following:

**Streetscape**

- Street Tree Planting (location to be determined)
- Sidewalk Replacement on south-side (MassPike side) of Washington Street opposite Washington Place
- Alleyway/walkway improvements (signage, lighting, murals) on paths between buildings from Walnut Street to the newly constructed municipal parking area on Bram Way
- Art treatment to chain-link fence on bridge over MassPike

**Transportation**

- Permanent traffic-calming improvements to the south side of the bridge at Lowell Avenue/Austin Street intersections
- Side street traffic calming interventions as needed
- New bus shelter at base of south side of Walnut Street bridge for northbound buses
- Covered bike parking shelter at both locations near commuter rail entrances
- Entryway improvements at both Newtonville Commuter Rail entrances to define the actual entrances to include real-time train schedule displays
- Funds set-aside to facilitate and supplement Commuter Rail accessibility upgrade at Newtonville Station.



Washington Place Mitigation Funds (\$700,000)			
ITEM	DESCRIPTION	COST ESTIMATE	
1	Trees	Tree plantings (location to be determined)	\$ 10,000
2	Refurbished southern sidewalk between Lowell & Washington Street	Sidewalk on this side will see a lot more use with Washington Place.	\$ 105,000
3	Lowell/Austin intersection safety	Funding to implement permanent traffic calming measures at this intersection.	\$ 180,000
4	Newtonville Alleyways: Beautification and Safety	Improved security and beautification with light fixtures and paint to two passageways to municipal parking from Walnut Street to Bram Way.	\$ 10,000
5	Walnut Street Mass Pike Bridge fence treatment	Treatment to bridge fence to improve pedestrian experience.	\$ 50,000
6	Side street traffic calming	Set-aside to address potential cut-through traffic impacts on residential streets near Washington /Walnut Streets.	\$ 100,000
7	New bus shelter at Walnut Street/Newtonville Ave	Install new bus shelter at Walnut St northbound at base of bridge.	\$ 35,000
8	Covered bike parking	All-weather bike parking, especially for commuter rail passengers	\$ 20,000
9	Prominent Entryway Treatments at Entrances of Newtonville	Install entryway treatments including real-time displays at both Newtonville train entrances.	\$ 90,000
10	Commuter Rail Station improvements	Fund set aside to supplement and /or facilitate eventual MBTA Commuter station improvements in Newtonville	\$ 100,000
		<b>TOTAL</b>	<b>\$ 700,000</b>

Income units will be reduced pro rata from 24 Inclusionary/16 Middle Income units in a 160 unit Project to 21 Inclusionary/14 Middle Income units in a 140 unit Project. The number of on-site parking stalls outside at grade within the Project Site or within a below-grade garage, shall be no less than 350 in a 160 unit Project, and no less than 309 in a 140 unit Project. While the I&I contribution will be reduced due to the reduction in the number of residential units, the Petitioner shall be required to comply with all other monetary or public benefit obligations in this Order regardless of whether the Project contains 160 or 140 residential units. Final elevations, final floor plans, and any other documents required to be revised by virtue of a decrease in the residential density from 160 to 140 units shall be submitted to the Director of Planning and Development for review and approval, consistent with the terms of this Order, and shall not require the further review or approval of the City Council.

2. The Petitioner shall merge the existing parcels in one new lot no later than thirty (30) days after the issuance of the first building permit (other than a demolition permit). Proof of recording a plan with the Middlesex South District Registry of Deeds shall be submitted to the Department of Planning and Development, the Inspectional Services Department, and the City Solicitor's office.
3. This Special Permit/Site Plan Approval shall be deemed to have been (i) vested, for the purposes of utilizing the benefits of the change of zone authorized by Council Order #95-17, upon the submission to the City of an application for a building permit (other than a demolition permit) for all or any portion of the Project; and (ii) vested and exercised, with respect to the entire Project, once construction under this Special Permit/Site Plan Approval has begun for any portion of the Project.
4. Prior to the issuance of any building permits for the vertical construction of the Project, the Petitioner shall submit stamped and signed engineered plans for the reconstruction of the intersection at Walnut and Washington Streets as described on Schedule E attached hereto, for review and approval by the Director of Planning and Development and the Commissioner of Public Works in consultation with the Director of Transportation, and the City Engineer, for consistency with (i) the City's Complete Streets Policy, and (ii) to the extent such plans have been developed at the time of issuance of the building permit for the vertical construction of the Project, the Newtonville Streetscape Project south of the Massachusetts Turnpike. These improvements will be completed by the Petitioner at its sole cost and expense.
5. Prior to the issuance of any final certificates of occupancy, and at the Petitioner's sole cost and expense, the Petitioner shall complete the reconstruction of the intersection of Washington Street and Walnut Street as described on Schedule E attached hereto. The City Engineer shall also inspect and approve the improvements upon completion.
6. **The Petitioner shall make or fund off-site improvements in addition to the off-site improvements required in General Conditions ## 4 and 5 and Schedule E in the vicinity of**



the Project categorized as: (a) streetscape and street beautification initiatives in the vicinity of the Project including the bridge over the Massachusetts Turnpike and MBTA railroad line, and (b) transportation enhancements for all travel modes, including, but not limited to, pedestrian, bicycle, and elements related to the Newtonville MBTA commuter rail station. Within ninety (90) days after the issuance of a building permit for vertical construction, the City Council shall identify the specific improvements to be made under the foregoing categories and the City Council shall either direct the Petitioner to construct the improvements identified by the City Council, at Petitioner's expense, for an amount not to exceed \$700,000.00, or it shall direct the Petitioner to pay the sum of \$700,000.00 to the City, which the City shall use to construct the off-site improvements. In the event that the City Council elects to accept payment of \$700,000.00 for the off-site improvements, funds from the account in which the \$700,000.00 will be held shall be appropriated to construct the off-site improvements in accordance with municipal finance law. In the event that the City Council directs the Petitioner to construct the improvements and the final cost of the improvements is less than \$700,000.00, the Petitioner shall pay the balance to the City and the City shall use the funds for additional off-site improvements accordance with the provisions of this condition. In the event that the City Council fails to identify the improvements to be made within ninety (90) days after the issuance of a building permit for vertical construction, in accordance with this condition, then the Petitioner shall pay the sum of \$700,000.00 to the City and the Petitioner shall have no further obligation with respect to this General Condition #6.

7. Prior to the issuance of any certificates of occupancy, temporary or final, for the residential portion of the site, the Petitioner, if it elects to pursue development of the Project with 160 residential units, shall pay an amount of \$782,880 to the City, which sum represents an 8:1 ratio for municipal sewer Inflow and Infiltration improvements in accordance with a memorandum from Associate City Engineer John Daghlian dated November 29, 2016, a copy of which is on file in the office of the City Clerk. In the event the Petitioner elects to pursue the Project with 140 residential units, Petitioner shall pay an amount to the City for municipal sewer Inflow and Infiltration improvements based on an 8:1 ratio calculated in a similar fashion to the calculations used in said memorandum, but in no event shall the amount due exceed \$782,880.
8. The Petitioner shall institute a Transportation Demand Management Subsidy Program (the "TDM Subsidy Program") in the amount of \$300,000 and shall commence implementation of the TDM Subsidy Program and the Transportation Demand Management Plan (the "TDM Plan") when the first residential tenant moves into the Project. The details of the TDM Subsidy Program are set forth in Schedule C. The TDM Plan is attached as Schedule D. The Petitioner shall have no obligation to continue the TDM Subsidy Program once the \$300,000 funding is fully expended. Ongoing costs associated with the TDM Plan are not included in the \$300,000 amount, and the Petitioner shall be obligated to continue such Plan for the life of the Project.