



CITY OF CUPERTINO

AGENDA

CITY COUNCIL

10350 Torre Avenue, Council Chamber and via Teleconference

Tuesday, October 4, 2022

6:45 PM

Televised Regular City Council Meeting

IN-PERSON AND TELECONFERENCE / PUBLIC PARTICIPATION INFORMATION

Members of the public wishing to observe the meeting may do so in one of the following ways:

- 1) Attend in person at Cupertino Community Hall, 10350 Torre Avenue.
- 2) Tune to Comcast Channel 26 and AT&T U-Verse Channel 99 on your TV.
- 3) The meeting will also be streamed live on and online at www.Cupertino.org/youtube and www.Cupertino.org/webcast

Members of the public wishing to comment on an item on the agenda may do so in the following ways:

- 1) Appear in person at Cupertino Community Hall. Members of the audience who address the City Council must come to the lectern/microphone, and are requested to complete a Speaker Card and identify themselves. Completion of Speaker Cards and identifying yourself is voluntary and not required to attend the meeting or provide comments.
- 2) E-mail comments by 4:30 p.m. on Tuesday, October 4 to the Council at citycouncil@cupertino.org. These e-mail comments will also be forwarded to Councilmembers by the City Clerk's office before the meeting and posted to the City's website after the meeting.
- 3) E-mail comments during the times for public comment during the meeting to the City Clerk at cityclerk@cupertino.org. The City Clerk will read the emails into the record, and display any attachments on the screen, for up to three minutes (subject to the Mayor's discretion to shorten time for public comments). Members of the public that wish to share a document must email cityclerk@cupertino.org prior to speaking.

Members of the public may provide oral public comments during the meeting as follows:

Oral public comments will be accepted during the meeting. Comments may be made during “oral communications” for matters not on the agenda, and during the public comment period for each agenda item.

Teleconferencing Instructions

To address the City Council, click on the link below to register in advance and access the meeting:

Online

Register in advance for this webinar:

https://cityofcupertino.zoom.us/webinar/register/WN_C1pKgj5fRkm4hPuS-ZrvEw

Phone

Dial: 669-900-6833 and enter Webinar ID: 965 4075 5789 (Type *9 to raise hand to speak, *6 to unmute yourself). Unregistered participants will be called on by the last four digits of their phone number.

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

Meeting ID: 965 4075 5789

SIP: 96540755789@zoomcrc.com

After registering, you will receive a confirmation email containing information about joining the webinar.

Please read the following instructions carefully:

1. You can directly download the teleconference software or connect to the meeting in your internet browser. If you are using your browser, make sure you are using a current and up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers, including Internet Explorer.
2. You will be asked to enter an email address and a name, followed by an email with instructions on how to connect to the meeting. Your email address will not be disclosed to the public. If you wish to make an oral public comment but do not wish to provide your name, you may enter “Cupertino Resident” or similar designation.
3. When the Mayor calls for the item on which you wish to speak, click on “raise hand,” or,

if you are calling in, press *9. Speakers will be notified shortly before they are called to speak.

4. When called, please limit your remarks to the time allotted and the specific agenda topic.

In compliance with the Americans with Disabilities Act (ADA), anyone who is planning to attend this teleconference City Council meeting who is visually or hearing impaired or has any disability that needs special assistance should call the City Clerk's Office at 408-777-3223, at least 48 hours in advance of the Council meeting to arrange for assistance. In addition, upon request, in advance, by a person with a disability, City Council meeting agendas and writings distributed for the meeting that are public records will be made available in the appropriate alternative format.

PLEDGE OF ALLEGIANCE

ROLL CALL

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Consider acceptance of grant funds presented by Assemblymember Evan Low for Jollyman All-Inclusive Playground and McClellan Road Bridge and a certificate of appreciation for the grant funds
Recommended Action: Accept grant funds presented by Assemblymember Evan Low for Jollyman All-Inclusive Playground and McClellan Road Bridge, and present a certificate of appreciation for the grant funds
Presenter: Chad Mosley, Assistant Director of Public Works
[A - Certificate of Appreciation](#)
2. Subject: Consider a proclamation recognizing October as Hindu Heritage and Awareness Month
Recommended Action: Present proclamation recognizing October as Hindu Heritage and Awareness Month
[A - Proclamation](#)
3. Subject: Consider a proclamation recognizing October as Breast Cancer Awareness Month
Recommended Action: Present proclamation recognizing October as Breast Cancer Awareness Month
[A - Proclamation](#)

RECESS - 15 Minutes

POSTPONEMENTS AND ORDERS OF THE DAY

ORAL COMMUNICATIONS

This portion of the meeting is reserved for persons wishing to address the Council on any matter within the jurisdiction of the Council and not on the agenda. The total time for Oral Communications will ordinarily be limited to one hour. Individual speakers are limited to three (3) minutes. As necessary, the Chair may further limit the time allowed to individual speakers, or reschedule remaining comments to the end of the meeting on a first come first heard basis, with priority given to students. In most cases, State law will prohibit the Council from discussing or making any decisions with respect to a matter not listed on the agenda. A councilmember may, however, briefly respond to statements made or questions posed by speakers. A councilmember may also ask a question for clarification, provide a reference for factual information, request staff to report back concerning a matter, or request that an item be added to a future City Council agenda in response to public comment.

REPORTS BY COUNCIL AND STAFF

4. Subject: Brief reports on councilmember activities and brief announcements
Recommended Action: Receive brief reports on councilmember activities and brief announcements
5. Subject: Report on Committee assignments
Recommended Action: Report on Committee assignments
6. Subject: Report on Subcommittee assignments
Recommended Action: Report on Subcommittee assignments
7. Subject: City Manager update
Recommended Action: Receive City Manager update on City business
8. Subject: Economic Development Committee Update
Recommended Action: Receive Economic Development Committee Update

CONSENT CALENDAR (Items 9-13)

Unless there are separate discussions and/or actions requested by council, staff or a member of the public, it is requested that items under the Consent Calendar be acted on simultaneously.

9. Subject: Consider approval of the September 20 City Council Special Meeting (Closed Session) minutes
Recommended Action: Approve the September 20 City Council Special Meeting (Closed Session) minutes
[A - Draft Minutes](#)

10. Subject: Consider approval of the September 20 City Council Regular Meeting minutes
Recommended Action: Approve the September 20 City Council Regular Meeting minutes
[A - Draft Minutes](#)
11. Subject: Consider adopting a resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period October 4, 2022 through November 3, 2022 pursuant to the Brown Act, as amended by AB 361
Recommended Action: Adopt Resolution No. 22-121 authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period October 4, 2022 through November 3, 2022 pursuant to the Brown Act, as amended by AB 361
[Staff Report](#)
[A - Draft Resolution](#)
[B – Adopted Resolution No. 22-109](#)
[C – Health Officer Recommendation Regarding Public Governmental Meetings](#)
12. Subject: Consider authorizing the City Manager to execute a Second Amendment with Granicus, LLC. to renew Enterprise Government Experience Cloud Services subscription for \$634,124.98 plus a contingency of \$63,412 over four years, for a total cost of \$697,536.98.
Recommended Action: Authorize the City Manager to execute a Second Amendment with Granicus, LLC., to renew Enterprise Government Experience Cloud Services subscription for \$634,124.98 plus a contingency of \$63,412 over four years, for a total cost of \$697,536.98.
[Staff Report](#)
[A - Second Amendment \(Granicus Signed\) 9-15-22](#)
[B - Proof of Insurance](#)
[C - Granicus, LLC., Sole Source Letter \(OpenCities\)](#)
[D - First Amendment 8-9-21](#)
[E - Granicus, LLC., Master Subscription Agreement 6-29-21](#)
13. Subject: Consideration of an award of a construction contract for the 2022 Pavement Maintenance Phase 2 Project - Project No. 2022-107.
Recommended Action: 1. Award a construction contract for the 2022 Pavement Maintenance Phase 2 Project
2. Authorize the City Manager to execute a contract in the amount of \$1,672,133.50
3. Authorize the Director of Public Works to execute any necessary change orders, up to the construction contingency amount of \$167,213.00 for a total authorized contract amount of \$1,839,346.50

[Staff Report](#)

[A - Project Street List](#)

[B - Draft Contract](#)

[C - Project Location Map](#)

SECOND READING OF ORDINANCES - None

PUBLIC HEARINGS - None

ORDINANCES AND ACTION ITEMS

14. Subject: Consider authorizing execution of an Agreement between the City of Cupertino and Cupertino Historical Society
Recommended Action: 1. Authorize the City Manager to execute an Agreement between the City of Cupertino and Cupertino Historical Society for three years, at an annual amount of not-to-exceed \$40,000; and if performance is satisfactory, followed up by up to two additional years for a total of five years at the same not-to-exceed annual amount of \$40,000.
2. Adopt Resolution No. 22-122 to approve budget modification No. 2223-242 increasing appropriations in the City Council, Community Funding budget 100-10-104.
Presenter: Rachele Sander, Acting Director of Parks and Recreation
[Staff Report](#)
[A - 1992-1996 Resolutions and Tenant Agreements](#)
[B - Comparative Analysis - Santa Clara County Historical Society Relationships](#)
[C - Historical Funding Report \(FY 2017-21\) and Proposed FY 2022-23](#)
[D - Historical Society Grant - License Agreement](#)
[E - Draft Resolution](#)
15. Subject: Progress update on the Climate Victory Gardens pilot program
Recommended Action: Receive an update on the Climate Victory Gardens pilot and direct staff to:
1. Continue to share these findings with neighboring jurisdictions, Valley Water, and to develop further partnerships with landscape supply companies, designers, and installers through the life of the pilot program, and
2. Focus on large and institutional sites based on the evidence provided by the cost effectiveness table (Table 3), and
3. Explore partnerships for training and workforce development to ensure that the customer, the City, and contractor can move projects forward in a timely manner, and
4. Bring back a permanent program for City Council's consideration before the pilot program expires in 2023.
Presenter: Andre Duurvoort , Sustainability Manager
[Staff Report](#)
[A - Customer Testimonials](#)

16. Subject: Consider an ordinance to comply with AB 1236 to establish an expedited permit process for electric vehicle (EV) charging systems
Recommended Action: Conduct the first reading of Ordinance No. 22-2244 amending Cupertino Municipal Code Chapter 16.28 establishing an expedited, streamlined permitting process for electric vehicle charging stations in compliance with AB 1236: "An ordinance of the Cupertino City Council setting forth procedures for expediting permitting processing for electric vehicle charging stations."
Presenters: Albert Salvador, Assistant Director of Community Development/Building Official and Andre Duurvoort, Sustainability Manager
[Staff Report](#)
[A - Draft Ordinance \(Redline\)](#)
[B - Draft Ordinance \(Clean\)](#)

ORAL COMMUNICATIONS - CONTINUED (As necessary)

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

ADJOURNMENT

Lobbyist Registration and Reporting Requirements: Individuals who influence or attempt to influence legislative or administrative action may be required by the City of Cupertino's lobbying ordinance (Cupertino Municipal Code Chapter 2.100) to register and report lobbying activity. Persons whose communications regarding any legislative or administrative are solely limited to appearing at or submitting testimony for any public meeting held by the City are not required to register as lobbyists. For more information about the lobbying ordinance, please contact the City Clerk's Office at 10300 Torre Avenue, Cupertino, CA 94107; telephone (408) 777-3223; email cityclerk@cupertino.org; and website: www.cupertino.org/lobbyist.

The City of Cupertino has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a final decision of the City Council must be brought within 90 days after a decision is announced unless a shorter time is required by State or Federal law.

Prior to seeking judicial review of any adjudicatory (quasi-judicial) decision, interested persons must file a petition for reconsideration within ten calendar days of the date the City Clerk mails notice of the City's decision. Reconsideration petitions must comply with the requirements of Cupertino Municipal Code §2.08.096. Contact the City Clerk's office for more information or go to <http://www.cupertino.org/cityclerk> for a reconsideration petition form.

In compliance with the Americans with Disabilities Act (ADA), anyone who is planning to attend this meeting who is visually or hearing impaired or has any disability that needs special assistance should call the City Clerk's Office at 408-777-3223, at least 48 hours in advance of the meeting to arrange for assistance. In addition, upon request, in advance, by a person with a disability, meeting agendas and

writings distributed for the meeting that are public records will be made available in the appropriate alternative format.

Any writings or documents provided to a majority of the Cupertino City Council after publication of the packet will be made available for public inspection in the City Clerk's Office located at City Hall, 10300 Torre Avenue, Cupertino, California 95014, during normal business hours; and in Council packet archives linked from the agenda/minutes page on the Cupertino web site.

IMPORTANT NOTICE: Please be advised that pursuant to Cupertino Municipal Code section 2.08.100 written communications sent to the Cupertino City Council, Commissioners or City staff concerning a matter on the agenda are included as supplemental material to the agendized item. These written communications are accessible to the public through the City's website and kept in packet archives. Do not include any personal or private information in written communications to the City that you do not wish to make public, as written communications are considered public records and will be made publicly available on the City website.



CITY OF CUPERTINO

Agenda Item

22-11407

Agenda Date: 10/4/2022
Agenda #: 1.

Subject: Consider acceptance of grant funds presented by Assemblymember Evan Low for Jollyman All-Inclusive Playground and McClellan Road Bridge and a certificate of appreciation for the grant funds

Accept grant funds presented by Assemblymember Evan Low for Jollyman All-Inclusive Playground and McClellan Road Bridge, and present a certificate of appreciation for the grant funds

Presenter: Chad Mosley, Assistant Director of Public Works

CITY OF



CUPERTINO

Certificate of Appreciation

Presented to

Assemblymember Evan Low

October 4, 2022

in Appreciation for your efforts to secure significant funding for the City of Cupertino in the 2022-2023 California Budget, allocating \$6 million for two projects which promote resiliency and inclusivity for our community.

The City of Cupertino recognizes and appreciates your support.

Darcy Paul
Mayor



CITY OF CUPERTINO

Agenda Item

22-11476

Agenda Date: 10/4/2022
Agenda #: 2.

Subject: Consider a proclamation recognizing October as Hindu Heritage and Awareness Month

Present proclamation recognizing October as Hindu Heritage and Awareness Month



Proclamation

WHEREAS, the City of Cupertino, the State of California, and the United States have been enriched by the ethnic, linguistic, and religious diversity of its residents;

WHEREAS, Hinduism is the third largest religion in the world with more than one billion followers worldwide and four million in the U.S.;

WHEREAS, Hindu Americans have made numerous positive contributions in all aspects of society, from science to business to politics to spirituality;

WHEREAS, the culture, history, traditions, achievements, and contributions of Hindu Americans are recognized and celebrated throughout the United States during the month of October;

WHEREAS, Hindu Americans in Cupertino have contributed tremendously to the vitality of our City and enriched the lives of our residents;

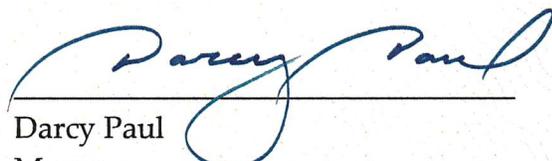
WHEREAS, Hindu Americans in Cupertino celebrate numerous festivals, such as Diwali, marking the victory of good over evil and knowledge over ignorance;

THEREFORE, I, Mayor Darcy Paul, and the Cupertino City Council do hereby Proclaim October 2022 as

Hindu Heritage and Awareness Month

in the City of Cupertino, and thank the Hindu American community for creating a better society for the children, families, and people of Cupertino.

IN WITNESS THEREOF, I have hereunto set my hand and caused the seal of the City of Cupertino to be affixed this Tuesday, October Fourth, Two Thousand and Twenty Two.



 Darcy Paul
 Mayor



CITY OF CUPERTINO

Agenda Item

22-11523

Agenda Date: 10/4/2022
Agenda #: 3.

Subject: Consider a proclamation recognizing October as Breast Cancer Awareness Month

Present proclamation recognizing October as Breast Cancer Awareness Month



Proclamation

WHEREAS, While considerable progress has been made in the fight against breast cancer, it remains the most commonly diagnosed cancer and the second leading cause of death among women in the nation;

WHEREAS, Each year it is estimated that more than 287,850 women in the United States will be diagnosed with breast cancer and more than 43,250 will die as a result of the disease;

WHEREAS, October is Breast Cancer Awareness Month, an annual campaign to increase awareness about the disease and to raise funds for research into its cause, prevention, diagnosis, treatment, and cure;

WHEREAS, During this month, the City of Cupertino reaffirms our commitment to support breast cancer research and to educate all citizens about its risk factors, early detection, and treatment;

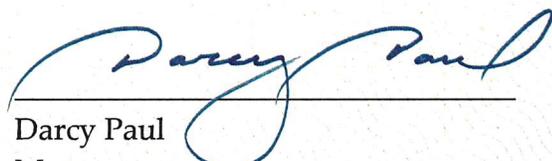
WHEREAS, This October, we recognize breast cancer survivors, those battling the disease, their families and friends who are a constant source of love and encouragement, and applaud the efforts of our medical professionals and researchers working to find a cure to one day defeat this deadly disease;

THEREFORE, I, Mayor Darcy Paul, and the Cupertino City Council do hereby proclaim October 2022 as

Breast Cancer Awareness Month

in the City of Cupertino, and encourage all citizens to learn about early detection practices and educational resources provided to those who are affected by this disease in order to better maintain and assist our citizens in leading healthy, long lives.

IN WITNESS THEREOF, I have hereunto set my hand and caused the seal of the City of Cupertino to be affixed this Tuesday, October Fourth, Two Thousand and Twenty Two.



 Darcy Paul
 Mayor



CITY OF CUPERTINO

Agenda Item

22-11072

Agenda Date: 10/4/2022
Agenda #: 4.

Subject: Brief reports on councilmember activities and brief announcements

Receive brief reports on councilmember activities and brief announcements



CITY OF CUPERTINO

Agenda Item

22-11084

Agenda Date: 10/4/2022
Agenda #: 5.

Subject: Report on Committee assignments

Report on Committee assignments



CITY OF CUPERTINO

Agenda Item

22-11452

Agenda Date: 10/4/2022
Agenda #: 6.

Subject: Report on Subcommittee assignments

Report on Subcommittee assignments



CITY OF CUPERTINO

Agenda Item

22-11094

Agenda Date: 10/4/2022
Agenda #: 7.

Subject: City Manager update

Receive City Manager update on City business



CITY OF CUPERTINO

Agenda Item

22-11459

Agenda Date: 10/4/2022
Agenda #: 8.

Subject: Economic Development Committee Update

Receive Economic Development Committee Update



CITY OF CUPERTINO

Agenda Item

22-11553

Agenda Date: 10/4/2022
Agenda #: 9.

Subject: Consider approval of the September 20 City Council Special Meeting (Closed Session) minutes

Approve the September 20 City Council Special Meeting (Closed Session) minutes



DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, September 20, 2022

SPECIAL MEETING

At 5:00 p.m., Mayor Darcy Paul called the Special City Council Meeting to order. This was a teleconference meeting with no physical location.

ROLL CALL

Present: Mayor Darcy Paul, Vice Mayor Liang Chao, and Councilmembers Kitty Moore, Hung Wei, and Jon Robert Willey. Absent: None. All Councilmembers attended the meeting via teleconference.

In open session before Council convened in closed session, the Mayor called for any members of the public who were present to provide comment regarding any item on the agenda. No members of the public requested to speak. Mayor Paul then closed the session.

CLOSED SESSION

1. **Subject:** Conference with real property negotiators pursuant to Government Code section 54956.8
Property: 21801 Stevens Creek Boulevard, Cupertino
Agency Negotiators: Matt Morley and Christopher D. Jensen
Negotiating Parties: ETNB Holding Co. LLC
Under Negotiation: Price and terms of payment

Council conducted the conference with real property negotiators pursuant to Government Code section 54956.8.

No reportable action was taken.

OPEN SESSION

REPORT REGARDING CLOSED SESSION

Mayor Paul conducted the report regarding closed session.

ADJOURNMENT

At 5:25 p.m., Mayor Paul adjourned the Special City Council Meeting.

Kirsten Squarcia, City Clerk



CITY OF CUPERTINO

Agenda Item

22-10500

Agenda Date: 10/4/2022
Agenda #: 10.

Subject: Consider approval of the September 20 City Council Regular Meeting minutes

Approve the September 20 City Council Regular Meeting minutes



DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, September 20, 2022

SPECIAL MEETING

At 5:30 p.m., Mayor Paul called the Special City Council Meeting to order. This was a teleconference meeting with no physical location.

ROLL CALL

Present: Mayor Darcy Paul, Vice Mayor Liang Chao, and Councilmembers Kitty Moore, Hung Wei (5:36 p.m.), and Jon Robert Willey. All Councilmembers attended the meeting via teleconference.

STUDY SESSION

1. Subject: Study Session to consider potential Municipal Code Amendments to allow properties in Single Family Residential Districts to subdivide properties into two and/or develop properties with up to two units ministerially pursuant to CA Senate Bill 9
Recommended Action: Receive this report and provide direction to staff on next steps related to finalizing a regular ordinance to implement Senate Bill 9
Presenter(s): Emi Sugiyama, Assistant Planner and Piu Ghosh, Planning Manager

Written communications for this item included a staff presentation and emails to Council.

Assistant Planner Emi Sugiyama gave a presentation.

Mayor Paul opened the public comment period and the following people spoke.

Jennifer Griffin opposed State housing bills and SB 9 allowances and was concerned about loss of local control.

Tej Kohli supported SB 9 allowances for flag lot splits in order to subdivide on his lot.

Nitu Kohli ceded their time to Tej Kohli.

Nagaraj Murthy opposed the lot split computation and supported allowing more people to find places to live.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Council unanimously consented to continue the Special Meeting Study Session to the Regular Meeting after Oral Communications.

ADJOURNMENT

At 6:30 p.m., Mayor Paul adjourned the Special City Council Meeting.

REGULAR MEETING

At 6:45 p.m., Mayor Paul called the Regular City Council Meeting to order and led the Pledge of Allegiance in the Cupertino Community Hall Council Chamber, 10350 Torre Avenue and via teleconference.

ROLL CALL

Present: Mayor Darcy Paul, Vice Mayor Liang Chao, and Councilmembers Kitty Moore, Hung Wei, and Jon Robert Willey. Vice Mayor Liang Chao and Councilmember Kitty Moore attended the meeting via teleconference.

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Consider a proclamation recognizing September 21 as World Alzheimer's Day
Recommended Action: Present proclamation recognizing September 21 as World Alzheimer's Day

Senior Center Recreation Supervisor Alex Greer received the proclamation.

Mayor Paul presented the proclamation recognizing September 21 as World Alzheimer's Day.

2. Subject: Consider a proclamation recognizing National Hispanic Heritage Month from September 15, 2022 to October 15, 2022

Recommended Action: Present proclamation recognizing National Hispanic Heritage Month from September 15, 2022 to October 15, 2022

City Clerk Kirsten Squarcia received the proclamation.

Mayor Paul presented the proclamation recognizing National Hispanic Heritage Month from September 15, 2022 to October 15, 2022.

3. Subject: Update on Fiscal Year 2021-22 and FY 2022-23 of City Work Program Item on Homeless Jobs Program

Recommended Action: Receive presentation on the FY 2021-22 successful completion and FY 2022-23 continuation of the Homeless Jobs Program City Work Program item
Presenter: Kerri Heusler, Housing Manager

Written communications for this item included a staff presentation.

Housing Manager Kerri Heusler gave a presentation.

Mayor Paul opened the public comment period and the following people spoke.

Jennifer Griffin supported the continuation of the Homeless Jobs Program.

Rahul Vadodkar supported the continuation of the Homeless Jobs Program.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

West Valley Community Services Executive Director Josh Selo answered questions.

Council received the presentation on the FY 2021-22 successful completion and FY 2022-23 continuation of the Homeless Jobs Program City Work Program item.

POSTPONEMENTS AND ORDERS OF THE DAY - None

ORAL COMMUNICATIONS

Written Communications for this item included an email from Emily Poon opposing closure of Blackberry Farm Golf Course to build a natural habitat and supporting mutual solutions.

Peggy Griffin supported keeping Blackberry Farm Golf open instead of converting the site to a

natural habitat and revisions to increase revenues. (Submitted written comments).

Judy Lomas ceded their time to Friends of Blackberry Farm Golf.

Jennifer Griffin opposed high-density housing and ADU (Accessory Dwelling Unit) bills and using the terms “by-right ministerial” and “streamlining” to eliminate local control.

Venkat Ranganathan was concerned about an unhoused person encamped at Portal Avenue and Stevens Creek Boulevard and supported moving them to a shelter. (Submitted written comments).

Lisa Warren supported keeping Blackberry Farm Golf Course open instead of converting the site to a natural habitat.

Rhoda Fry supported Council’s governance and accomplishments and keeping Blackberry Farm Golf Course open and terminating studies to close it.

Darren Stevens, representing Friends of Blackberry Farm Golf, supported preserving Blackberry Farm Golf Course as a recreational value for families. (Submitted written comments).

Rahul Vadodkar was concerned about an unhoused person at Stevens Creek Boulevard and Portal Avenue and supported ways to help them. (Submitted written comments).

Ken Eng, representing Friends of Blackberry Farm Golf, presented risk factors to support keeping Blackberry Farm Golf Course open as a benefit to the community. (Submitted written comments).

City Clerk Kirsten Squarcia read email on behalf of Caitlyn Huang supporting Council’s accomplishments since 2018.

At 8:40 p.m., Mayor Paul re-opened Oral Communications and the following people spoke.

Don Halsey, representing Friends of Blackberry Farm Golf, supported keeping Blackberry Farm Golf Course open and was concerned about the metrics of the outreach survey. (Submitted written comments).

Mayor Paul then closed Oral Communications.

SPECIAL MEETING STUDY SESSION - CONTINUED

Council continued the Special Meeting Study Session Item 1 heard at 5:30 p.m.

1. Subject: Study Session to consider potential Municipal Code Amendments to allow properties in Single Family Residential Districts to subdivide properties into two and/or develop properties with up to two units ministerially pursuant to CA Senate Bill 9
Recommended Action: Receive this report and provide direction to staff on next steps related to finalizing a regular ordinance to implement Senate Bill 9

Councilmembers asked questions and made comments.

Council received the report and Councilmembers provided the following comments to staff on next steps related to finalizing a regular ordinance to implement Senate Bill 9.

Flag lots:

Willey: concerned about privacy protection and supported hearing Planning Commission recommendation.

Moore: concerned about how many lots could be potentially impacted and lack of information; asked about ways to accommodate resident subdivision request; and supported hearing Planning Commission recommendation.

Wei: supported building in flexibility.

Chao: concerned about flexibility without a process of appeal.

Paul: supported example raised by a member of the public.

Second story balcony:

Willey: concerned about privacy protection and opposed considering until assurances that adjacent parcels will not be affected.

Moore: supported a discretionary approval process or none; concerned about upsetting neighbors; and supported larger setback for RHS.

Wei: opposed one-size-fits-all approach and supported privacy considerations.

Chao: supported all balconies requiring discretionary review for smaller RHS lots and clarifying ministerial or by-right approval versus discretionary.

Paul: supported a discretionary process taking public input into account

Grade change:

Willey: requested information on why current process is different from SB 9.

Moore: supported modifying regulations in a rational way and increasing housing supply by being limited to a 6-inch limit.

Wei and Chao: supported staff recommendation and building in flexibility.

Paul: supported the staff recommendation and bringing back language for Council to consider.

Zero foot setback:

Willey: supported for duplex developments and maintaining four-foot setbacks if SFR (Single Family Residential).

Moore, Wei: supported the zero-foot setback and requested clarifications on staff recommendations.

Chao: supported the staff recommendation to clarify objective standards.

Paul: supported the staff recommendations.

Second Story Envelope:

Willey, Wei, Chao, Paul: supported the staff recommendations.

Moore: supported retaining and exempting zero setback portions.

Council recessed from 8:41 p.m. to 8:47 p.m.

REPORTS BY COUNCIL AND STAFF

4. Subject: Brief reports on councilmember activities and brief announcements
Recommended Action: Receive brief reports on councilmember activities and brief announcements

Council received brief reports on councilmember activities and brief announcements.

5. Subject: Report on Committee assignments
Recommended Action: Report on Committee assignments

Councilmembers highlighted the activities of their various committees.

6. Subject: Report on Subcommittee assignments
Recommended Action: Report on Subcommittee assignments

Councilmembers reported on Subcommittee assignments.

7. Subject: City Manager update
Recommended Action: Receive City Manager update on City business

Council received the City Manager update on City business.

8. Subject: Department Update - Public Works
Recommended Action: Receive update regarding the Public Works Department

Written communications for this item included a staff presentation.

Public Works Director Matt Morley gave a presentation.

Council received the update regarding the Public Works Department.

CONSENT CALENDAR (Items 9-17)

Wei moved and Moore seconded to approve the items on the Consent Calendar except for Items 14, 15, and 16 which were pulled for discussion. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

9. Subject: Consider approval of the August 29 City Council minutes
Recommended Action: Approve the August 29 City Council minutes
10. Subject: Consider approval of the August 30 City Council minutes
Recommended Action: Approve the August 30 City Council minutes
11. Subject: Consider approval of the September 6 Special Meeting (Closed Session) City Council minutes
Recommended Action: Approve the September 6 Special Meeting (Closed Session) City Council minutes
12. Subject: Consider approval of the September 6 Regular Meeting City Council minutes
Recommended Action: Approve the September 6 Regular Meeting City Council minutes
13. Subject: Consider approval of the September 12 City Council minutes
Recommended Action: Approve the September 12 City Council minutes
14. Subject: Consider accepting State grant funding for the Via On-Demand Shuttle Pilot Program and extending the contract with Nomad Transit, LLP to operate Via Shuttle Pilot Program
Recommended Action: 1. Accept grant funding for the Via Shuttle Pilot Program from the California State Transportation Agency's (CalSTA) Transit & Intercity Rail Capital Program (TIRCP) grant in the amount of \$8,465,000
2. Authorize the City Manager to execute an amendment to the Professional/ Consulting Services Agreement with Nomad Transit, LLC for the Via On-Demand Shuttle Pilot Program (Attachment A), increasing the previous not to exceed amount by \$200,000 and extending the term to June 30, 2023
3. Adopt Resolution No. 22-117 (Attachment B) to approve a budget modification

(number 2223-231) increasing appropriations in the General Fund, Traffic Engineering Program (100-88-844) by \$200,000, for a revised not-to-exceed amount of \$1,950,000 for the Via Shuttle Pilot Program

4. Find that the use of formal competitive bidding procedures is not practicable for the Cupertino-Santa Clara TIRCP shuttle program and direct the City Manager to dispense with City bidding requirements pursuant to the Cupertino Municipal Code § 3.22.060

Written communications for this item included a staff presentation.

Senior Transit and Transportation Planner Chris Correo gave a presentation.

Mayor Paul opened the public comment period and, seeing no one, closed the public comment period.

Councilmembers asked questions and made comments.

Chao moved and Moore seconded to:

1. Accept grant funding for the Via Shuttle Pilot Program from the California State Transportation Agency's (CalSTA) Transit & Intercity Rail Capital Program (TIRCP) grant in the amount of \$8,465,000;

2. Authorize the City Manager to execute an amendment to the Professional/ Consulting Services Agreement with Nomad Transit, LLC for the Via On-Demand Shuttle Pilot Program, increasing the previous not to exceed amount by \$200,000 and extending the term to June 30, 2023;

3. Adopt Resolution No. 22-117 to approve a budget modification (number 2223-231) increasing appropriations in the General Fund, Traffic Engineering Program (100-88-844) by \$200,000, for a revised not-to-exceed amount of \$1,950,000 for the Via Shuttle Pilot Program; and

4. Find that the use of formal competitive bidding procedures is not practicable for the Cupertino-Santa Clara TIRCP shuttle program and direct the City Manager to dispense with City bidding requirements pursuant to the Cupertino Municipal Code § 3.22.060.

The motion carried unanimously.

15. Subject: Consider providing a Statement of City Council Support for the I-280/Wolfe Road Interchange Project and authorize the appropriation of \$800,000 from the General Fund Capital Reserves as a 10% non-Measure B local match for the I-280/Wolfe Road Interchange Improvements Project

Recommended Action: 1. Provide a Statement of City Council Support for the I-280/Wolfe Road Interchange Project, and

2. Adopt Resolution No. 22-118 to approve budget modification 2223-239 increasing appropriations in the Capital Reserve by \$800,000 for the transfer out of funds

(429-90-001) and General Fund, budget 100-88-844 by \$800,000 for a 10% non-Measure B local match for the I-280/Wolfe Road Interchange Improvements Project

Mayor Paul opened the public comment period and the following people spoke.

Jennifer Griffin was concerned about the potential impacts from Vallco and Apple.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Public Works Director Matt Morley and Transportation Manager David Stillman answered questions.

Moore moved and Paul seconded to:

1. Provide a Statement of City Council Support for the I-280/Wolfe Road Interchange Project, and
2. Adopt Resolution No. 22-118 to approve budget modification 2223-239 increasing appropriations in the Capital Reserve by \$800,000 for the transfer out of funds (429-90-001) and General Fund, budget 100-88-844 by \$800,000 for a 10% non-Measure B local match for the I-280/Wolfe Road Interchange Improvements Project

The motion carried unanimously.

- 16.** Subject: Consider the Streetlight Transition Assessment Report
Recommended Action: Accept the Streetlight Transition Assessment Report

Mayor Paul opened the public comment period and the following people spoke.

Jennifer Griffin supported including photo examples of streetlights to assess color and brightness.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Public Works Director Matt Morley and CIP Manager Susan Michael answered questions.

Paul moved and Willey seconded to bring the report back to Council with the request for modifications based on Council's input and requests for outreach. The motion carried unanimously.

Council recessed from 10:50 p.m. to 10:55 p.m.

17. Subject: Consider the summary vacation of a portion of a Public Utility Easement on the property located at 10778 Morengo Drive
Recommended Action: Adopt Resolution No. 22-119, summarily vacating a portion of a Public Utility Easement on the property located at 10778 Morengo Drive

SECOND READING OF ORDINANCES - None

PUBLIC HEARINGS - None

ORDINANCES AND ACTION ITEMS

Paul moved and Moore seconded to hear Item 19 before Item 18. The motion carried unanimously.

19. Subject: Consider amending the City of Cupertino Conflict of Interest Code for officials and designated employees per State law requirement on a biennial basis; 2022 Local Agency Biennial Notice
Recommended Action: a.) Adopt Resolution No. 22-120 rescinding Resolution No. 20-115 and amending the City of Cupertino Conflict of Interest Code for officials and designated employees; and b.) Authorize the City Manager to sign the required 2022 Local Agency Biennial Notice
Presenter: Kirsten Squarcia, City Clerk

Written Communications for this item included a staff presentation.

Mayor Paul opened the public comment period and, seeing no one, closed the public comment period.

Moore moved and Wei seconded to:

- a.) Adopt Resolution No. 22-120 rescinding Resolution No. 20-115 and amending the City of Cupertino Conflict of Interest Code for officials and designated employees; and
b.) Authorize the City Manager to sign the required 2022 Local Agency Biennial Notice
The motion carried unanimously.

18. Subject: Update on the Status of the Research from the City Council Subcommittee Meetings for the Cupertino Community Funding Grant Program
Recommended Action: Receive an update on the status of the research from the City Council subcommittee meetings for the Cupertino Community Funding Grant Program

and provide direction on next steps.

Presenter: Rachelle Sander, Acting Director of Parks and Recreation

Written Communications for this item included a staff presentation.

Management Analyst Jacinta Liang gave a presentation.

Mayor Paul opened the public comment period and the following people spoke.

City Clerk Kirsten Squarcia read an email on behalf of Parks and Recreation Commissioner Carol Stanek (representing self) supporting removing commissioners from the process and Council having direct input and interaction with the applicants.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Council received the update on the status of the research from the City Council subcommittee meetings for the Cupertino Community Funding Grant Program.

Wei moved and Willey seconded for the Council Subcommittee to meet with Parks and Recreation Commissioners and decide next steps in the process.

Wei amended the motion to have the Council Subcommittee meet with Parks and Recreation Commissioners and staff; and bring back Commission recommendations and staff input to Council for follow-up. (Willey accepted the amendment). The motion as amended carried unanimously.

20. Subject: Consider:

a. Review crosswalk options across Rodrigues Avenue in the vicinity of the public pedestrian walkway easement through Tract 9405 (Campo De Lozano subdivision), located near 20138 Rodrigues Avenue; and

b. Review the proposed language for signage to be posted at each end of the pedestrian walkway easement through the Campo De Lozano subdivision

Recommended Action: 1. Consider directing staff to return to City Council one year after the opening of Regnart Creek Trail (tentatively scheduled for November 2023) with recommendations on the necessity for, and location of, potential crosswalks across Rodrigues Avenue in the vicinity of the public pedestrian walkway easement through Tract 9405 (Campo De Lozano subdivision), located near 20138 Rodrigues Avenue; and
2. Review the proposed language for the signage to be installed and posted at each end of the pedestrian walkway easement through the Campo De Lozano subdivision.

Installation would occur following Council's approval at the September 20, 2022 meeting

Presenter: David Stillman, Transportation Manager

Written Communications for this item included a staff presentation and emails to Council.

Transportation Manager David Stillman gave a presentation.

Mayor Paul opened the public comment period and the following people spoke.

Christina Yang opposed the easement being linked to the new crosswalk and supported directing traffic across Rodrigues and entering at the official trailhead.

John Z agreed with the previous speaker and supported crosswalk option A and opposed bikes and skateboards on the walkway.

Xingchi He supported modifications to the proposed signage and City liability and maintenance, fair decisions, and respectful conversations.

Mayor Paul closed the public comment period.

Paul moved and Moore seconded to continue this item, for purposes of continued hearing, consideration, deliberation, and decisions, until the October 18, 2022 City Council meeting. The motion carried unanimously with Chao absent.

ORAL COMMUNICATIONS - CONTINUED (As necessary) - None

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Council did not hear this item.

ADJOURNMENT

At 12:12 a.m., on Wednesday, September 21, 2022, Mayor Paul adjourned the Regular City Council Meeting.

Kirsten Squarcia City Clerk



CITY OF CUPERTINO

Agenda Item

22-11291

Agenda Date: 10/4/2022
Agenda #: 11.

Subject: Consider adopting a resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period October 4, 2022 through November 3, 2022 pursuant to the Brown Act, as amended by AB 361

Adopt Resolution No. 22-121 authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period October 4, 2022 through November 3, 2022 pursuant to the Brown Act, as amended by AB 361



CITY MANAGER'S OFFICE

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CITY COUNCIL STAFF REPORT

Meeting: October 4, 2022

Subject

Consider adopting a resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period October 4, 2022 through November 3, 2022 pursuant to the Brown Act, as amended by AB 361

Recommended Action

Consider adopting a resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period October 4, 2022 through November 3, 2022 pursuant to the Brown Act, as amended by AB 361

Background

On March 2, 2020, Governor Newsom declared a state of emergency due to the public health threat posed by COVID-19. On March 4, 2020, Governor Newsom issued Executive Order No-29-20, which suspended certain elements of the Brown Act and specifically allowed legislative bodies to hold meetings entirely electronically with no physical meeting. In accordance with the Executive Order, the City held its first teleconference meeting on March 24, 2020, to help stop the spread of COVID-19. On June 11, 2021, Governor Newsom issued Executive Order No-08-21, which stated that the provisions in Executive Order No-29-20, suspending certain elements of the Brown Act, would continue to apply through September 30, 2021.

On September 15, 2021, Governor Newsom signed AB 361 into law, which allows state and local agencies to continue using teleconferencing during certain state-declared emergencies under modified Brown Act requirements. AB 361 became effective immediately after signing due to its emergency clause and is set to sunset on January 1, 2024. Under AB 361, teleconference meetings may be held during a state of emergency if (1) state or local officials have imposed or recommended measures to promote social distancing, or (2) a legislative body determines by a majority vote that meeting in person would present imminent risks to the health or safety of attendees. (Gov. Code, § 54953(e)(1).)

To continue teleconference meetings beyond a 30-day period, AB 361 requires the Council to make a determination that either (i) "[t]he state of emergency continues to directly impact the ability of the members to meet safely in person, or (ii) "State or local officials continue to impose or recommend measures to promote social distancing." (Gov. Code, § 54953(e)(3)(B).) That determination must be reviewed each 30 days thereafter to continue teleconference meetings. (*Ibid.*)

Discussion

AB 361 allows the City Council and other City legislative bodies to continue meeting exclusively via teleconference so long as a state emergency declaration remains in place and the statute's conditions for permitting remote meetings are met. To continue meeting remotely, the City Council must find that state or local officials have imposed or recommend measures to support social distancing, or that the state of emergency continues to directly impact the ability of the members to meet safely in person.

On September 6, 2022, Council adopted Resolution No. 22-109 affirming findings related to AB 361 and authorizing the City Manager and legislative bodies of the City of Cupertino to meet exclusively by teleconference in accordance with Government Code section 54953(e)(3) and other applicable provisions of the Brown Act through October 6, 2022 (Attachment B). Council may make either or both of the permitted findings to extend the time to allow teleconference meetings to continue. The Santa Clara County Health Officer continues to recommend that public bodies meet remotely to the extent possible, specifically including use of newly enacted AB 361 to maintain remote meetings under the Ralph M. Brown Act and similar laws (Attachment C). It is therefore recommended that Council adopt the Draft Resolution authorizing continued teleconference meetings for the City of Cupertino's legislative bodies in order to protect the health and safety of all attendees and participants, particularly those who are unvaccinated (Attachment A).

Sustainability Impact

Conducting meetings remotely has reduced paper consumption by providing electronic access to meeting materials instead of printed materials.

Fiscal Impact

No fiscal impact.

Prepared by: Kirsten Squarcia, City Clerk

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A – Draft Resolution

B – Adopted Resolution No. 22-109

C – Health Officer Recommendation Regarding Public Governmental Meetings

RESOLUTION NO. 22-__

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
AUTHORIZING CONTINUED REMOTE TELECONFERENCE MEETINGS OF THE
LEGISLATIVE BODIES OF THE CITY OF CUPERTINO FOR THE PERIOD
OCTOBER 4, 2022 THROUGH NOVEMBER 3, 2022 PURSUANT TO BROWN ACT
PROVISIONS**

WHEREAS, the City of Cupertino is committed to preserving and nurturing public access and participation in meetings of the City Council, commissions, and committees; and

WHEREAS, all meetings of the City of Cupertino's legislative bodies are open and public, as required by the Ralph M. Brown Act (Government Code sections 54950–54963), so that any member of the public may attend, participate, and watch the City's legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition for holding meetings exclusively by teleconference is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, Government Code section 54953(e) further requires that in order to authorize meetings exclusively by teleconference, a legislative body must determine that state or local officials have imposed or recommended measures to promote social distancing, or that meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, on October 5, 2021, November 2, 2021, November 30, 2021, December 21, 2021, January 18, 2022, February 15, 2022, March 15, 2022, April 5, 2022, May 3, 2022, May 19, 2022, June 7, 2022, July 7, 2022, July 19, 2022, August 16, 2022, and September 6, 2022 the Cupertino City Council made the findings required under Government Code section 54953(e) and resolved that the legislative bodies of the City of Cupertino shall conduct their meetings without compliance with Government Code section 54953(b)(3),

as authorized by Government Code section 54953(e), and that such legislative bodies should comply with the requirements to provide the public with access to the meetings as prescribed in section 54953(e)(2); and

WHEREAS, Government Code section 54593(e)(3) provides that to continue to holding meetings of legislative bodies exclusively by teleconference, the legislative body must reconsider the circumstances of the state of emergency every 30 days, and find that either (i) the state of emergency continues to directly impact the ability of the members to meet safely in person, or (ii) State or local officials continue to impose or recommend measures to promote social distancing; and

WHEREAS, the City Council has reconsidered the circumstances of the state of emergency that now exists, specifically defined in the County of Santa Clara proclamation of a local emergency beginning February 3, 2020, the City of Cupertino proclamation of a local emergency on March 11, 2020, the Governor of the State of California proclamation of a state of emergency beginning on March 4, 2020, and the national emergency declaration in Proclamation 9994 of March 13, 2020, beginning March 1, 2020, concerning the COVID-19 pandemic; and

WHEREAS, the County of Santa Clara Health Officer's Recommendation Regarding Continued Remote Public Meetings of Governmental Entities dated September 21, 2021 and the California Department of Industrial Relations Revised Emergency Temporary Standards, effective May 6, 2022, continue to require or recommend social distancing in the workplace in certain circumstances; and

WHEREAS, the Health Officer's Recommendations, the Revised Emergency Temporary Standards, and evidence documenting the transmission of COVID-19 in indoor spaces establishes that the state of emergency continues to directly impact the ability of the members to meet safely in person; and

WHEREAS, based on the above findings, the Cupertino City Council hereby determines that the legislative bodies of the City of Cupertino shall continue to conduct their meetings without compliance with Government Code section 54953(b)(3), as authorized by Government Code section 54953(e), and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in section 54953(e)(2); and

WHEREAS, the City has and will continue to provide access for the public to legislative meetings and procedures through video teleconference technologies.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cupertino, as follows:

1. Remote Teleconference Meetings. The City Manager and legislative bodies of the City of Cupertino are hereby authorized and directed to meet exclusively by teleconference and to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

2. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective through November 3, 2022, or such time as the City Council adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the City Council of the City of Cupertino may continue to teleconference without compliance with Government Code section 54953(b)(3).

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 4th day of October 2022, by the following vote:

Vote Members of the City Council

AYES:
NOES:
ABSENT:
ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>Darcy Paul, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>

RESOLUTION NO. 22-109

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
AUTHORIZING CONTINUED REMOTE TELECONFERENCE MEETINGS OF THE
LEGISLATIVE BODIES OF THE CITY OF CUPERTINO FOR THE PERIOD
SEPTEMBER 6, 2022 THROUGH OCTOBER 6, 2022 PURSUANT TO BROWN ACT
PROVISIONS**

WHEREAS, the City of Cupertino is committed to preserving and nurturing public access and participation in meetings of the City Council, commissions, and committees; and

WHEREAS, all meetings of the City of Cupertino's legislative bodies are open and public, as required by the Ralph M. Brown Act (Government Code sections 54950–54963), so that any member of the public may attend, participate, and watch the City's legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition for holding meetings exclusively by teleconference is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, Government Code section 54953(e) further requires that in order to authorize meetings exclusively by teleconference, a legislative body must determine that state or local officials have imposed or recommended measures to promote social distancing, or that meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, on October 5, 2021, November 2, 2021, November 30, 2021, December 21, 2021, January 18, 2022, February 15, 2022, March 15, 2022, April 5, 2022, May 3, 2022, May 19, 2022, June 7, 2022, July 7, 2022, July 19, 2022, and August 16, 2022 the Cupertino City Council made the findings required under Government Code section 54953(e) and resolved that the legislative bodies of the City of Cupertino shall conduct their meetings without compliance with Government Code section 54953(b)(3), as authorized by

Resolution No. 22-109
Page 2

Government Code section 54953(e), and that such legislative bodies should comply with the requirements to provide the public with access to the meetings as prescribed in section 54953(e)(2); and

WHEREAS, Government Code section 54593(e)(3) provides that to continue to holding meetings of legislative bodies exclusively by teleconference, the legislative body must reconsider the circumstances of the state of emergency every 30 days, and find that either (i) the state of emergency continues to directly impact the ability of the members to meet safely in person, or (ii) State or local officials continue to impose or recommend measures to promote social distancing; and

WHEREAS, the City Council has reconsidered the circumstances of the state of emergency that now exists, specifically defined in the County of Santa Clara proclamation of a local emergency beginning February 3, 2020, the City of Cupertino proclamation of a local emergency on March 11, 2020, the Governor of the State of California proclamation of a state of emergency beginning on March 4, 2020, and the national emergency declaration in Proclamation 9994 of March 13, 2020, beginning March 1, 2020, concerning the COVID-19 pandemic; and

WHEREAS, the County of Santa Clara Health Officer's Recommendation Regarding Continued Remote Public Meetings of Governmental Entities dated September 21, 2021 and the California Department of Industrial Relations Revised Emergency Temporary Standards, effective May 6, 2022, continue to require or recommend social distancing in the workplace in certain circumstances; and

WHEREAS, the Health Officer's Recommendations, the Revised Emergency Temporary Standards, and evidence documenting the transmission of COVID-19 in indoor spaces establishes that the state of emergency continues to directly impact the ability of the members to meet safely in person; and

WHEREAS, based on the above findings, the Cupertino City Council hereby determines that the legislative bodies of the City of Cupertino shall continue to conduct their meetings without compliance with Government Code section 54953(b)(3), as authorized by Government Code section 54953(e), and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in section 54953(e)(2); and

WHEREAS, the City has and will continue to provide access for the public to legislative meetings and procedures through video teleconference technologies.

Resolution No. 22-109
Page 3

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cupertino, as follows:

1. Remote Teleconference Meetings. The City Manager and legislative bodies of the City of Cupertino are hereby authorized and directed to meet exclusively by teleconference and to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.
2. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective through October 6, 2022, or such time as the City Council adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the City Council of the City of Cupertino may continue to teleconference without compliance with Government Code section 54953(b)(3).

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 6th day of September 2022, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
AYES:	Paul, Chao, Moore, Wei, Willey
NOES:	None
ABSENT:	None
ABSTAIN:	None

SIGNED:  Darcy Paul, Mayor City of Cupertino	<u>09/23/2022</u> Date
ATTEST:  Kirsten Squarcia, City Clerk	<u>9/27/22</u> Date



County of Santa Clara Public Health Department

Health Officer
976 Lenzen Avenue, 2nd Floor
San José, CA 95126
408.792.3798

Recommendation Regarding Continued Remote Public Meetings of Governmental Entities

Issued: September 21, 2021

In light of the continued state of emergency related to COVID-19, the County Public Health Officer continues to recommend that public bodies meet remotely to the extent possible, specifically including use of newly enacted AB 361 to maintain remote meetings under the Ralph M. Brown Act and similar laws.

Among other reasons, this recommendation is made due to the continued threat of COVID-19 to the community, the unique characteristics of public governmental meetings (such as the increased mixing associated with bringing together people from across the community, the need to enable those who are immunocompromised or unvaccinated to be able to safely continue to fully participate in public governmental meetings, and the challenges with fully ascertaining and ensuring compliance with vaccination and other safety recommendations at such meetings), and the continued increased safety protection that social distancing provides as one means by which to reduce the risk of COVID-19 transmission. This recommendation does not apply to those meetings of a quasi-judicial nature that have been already meeting in person prior to September 21, 2021, for example to allow for credibility determinations of witnesses.

The Health Officer will continue to evaluate this recommendation on an ongoing basis and will communicate when there is no longer such a recommendation with respect to meetings for public bodies.



CITY OF CUPERTINO

Agenda Item

22-11502

Agenda Date: 10/4/2022
Agenda #: 12.

Subject: Consider authorizing the City Manager to execute a Second Amendment with Granicus, LLC. to renew Enterprise Government Experience Cloud Services subscription for \$634,124.98 plus a contingency of \$63,412 over four years, for a total cost of \$697,536.98.

Authorize the City Manager to execute a Second Amendment with Granicus, LLC., to renew Enterprise Government Experience Cloud Services subscription for \$634,124.98 plus a contingency of \$63,412 over four years, for a total cost of \$697,536.98.



INNOVATION TECHNOLOGY DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: October 4, 2022

Subject

Consider authorizing the City Manager to execute a Second Amendment with Granicus, LLC., to renew Enterprise Government Experience Cloud Services subscription for \$634,124.98 plus a contingency of \$63,412 over four years, for a total cost of \$697,536.98.

Recommended Action

Authorize the City Manager to execute a Second Amendment with Granicus, LLC., to renew Enterprise Government Experience Cloud Services subscription for \$634,124.98 plus a contingency of \$63,412 over four years, for a total cost of \$697,536.98.

Background

Granicus is a scalable cloud Software as Service (SaaS) Company that offers service in civic, citizen and community engagement, digital communications, digital government services, website content management system, website design services, legislative management, and short-term vacation rental compliance monitoring.

The company has seven offices worldwide, including Denver, St. Paul, and Washington D. C. They have over 5,500 government customers and serve 300 plus million citizens. Many neighboring cities including San Jose, Santa Clara, Mountain View, and Palo Alto are Granicus customers.

The City has procured various Granicus subscriptions over the last 15 years. These SaaS applications include *govAccess* for City website content management system, *govService* for short term rental compliance monitoring, *govMeetings* for Legistar agenda Management, *govDelivery* for community opt-in e-Notifications, and *govRecords* for CampaignDocs and DisclosureDocs. Additionally, the City has

invested in Granicus civic and community engagement services like Engagement HQ, to assist with Housing Element public engagement.

To consolidate the various Granicus applications utilized, a Master Agreement was executed in June 2021. The first amendment to the Master agreement was executed in August 2021, which added VoteCast and eComment services.

Below is a table of the various subscriptions and descriptions:

Software Solution	Description
CampaignDocs	Used by the staff to manage campaign filers, generate letters, emails, run reports on filings, scan paper filing and receive electronic filings.
DisclosureDocs	Filer Review – allows the Filing Officer to perform the required tasks of verifying the accuracy of forms
Legistar	Used by staff to perform agenda review of Council, and other city meetings. The staff post the final approved agenda packets on for all the city meetings on Legistar to publish to the Legistar portal. The meeting minutes along with the video of the telecasted meetings.
Short Term Vacation Rental	This Service includes registration, licensing and permitting of short-term rentals and perform compliance monitoring. The software also monitors short-term rental listings, occupancy and revenue estimates
Engagement HQ	City staff use this public participation platform to keep the community informed of CIP project details and timeline and access to community input related to these projects.
Meeting Efficiency Suite	Cupertino staff is able to streamline meeting data capture and minutes production. During a meeting, use Live Manager to record roll calls, motions speakers, all indexed with video.
City Website	The City of Cupertino website is designed by Granicus and is built on its GovAccess content management system.
GovDelivery	Staff send electronic notifications, programs, and newsletters to citizens and other interested users who have subscribed to receive city related news and communications.
Vote Cast	Elected officials utilize this platform for motion, second, vote, and request to speak on the touch screen at the Council chambers. This data automatically populates to the clerk's software ensuring accuracy and reducing workload.
eComment	This service help staff to collect and manage citizen input on agenda items. Residents and other interested parties can submit comments regarding items or sign up to speak before a scheduled meeting.

These Granicus applications were procured by the City over a fifteen-year period. Many of the applications like Legistar, CampaignDocs, DisclosureDocs, Engagement HQ, and Short-Term Rental application were procured from different vendors, but now fall under Granicus' portfolio as they were acquired by Granicus. Some of these applications like GovDelivery, Legistar, Media Manager and eComment are tightly integrated into the website content management system, allowing for single entry of data and proper noticing of website updates. This efficiently allows updates since updates and changes to one program will be reflected on the City website and on the other Granicus integrated applications dynamically.

To replace the existing Granicus applications with either in-house developed solutions, or other vendor competing products would increase the cost (due to additional implementation fees), cause inefficiencies and prolong the timeline to implement such applications.

Discussion

Staff is recommending entering into the proposed 4-year agreement to reduce annual subscription costs, consolidate services, and change billing to once a year for all Granicus SaaS applications.

Additionally, Staff is proposing to replace the current website content management system, *govAccess*, with Granicus' OpenCities platform. OpenCities provides enhanced functionality for website visitors and has existing integrations with other City enterprise-wide applications, e.g., Accela, land-use management System, New World, financial application, and govDelivery. Procuring OpenCities will provide an upgraded website design that ensures American with Disabilities Act (ADA) compliance and provides an improved backend system to manage website content.

The cost breakdown over the four years is as follows:

Year 1 Cost	\$131,966.78
Year 1 OpenCities One-time Implementation Cost	\$48,200.00
Year 2 Cost	\$141,204.45
Year 3 Cost	\$151,088.77
Year 4 Cost	\$161,664.98
10% Contingency Cost	\$63,412
Total Cost	\$697,536.98

Market Scan and Research

Analysis with neighboring cities utilizing Granicus applications denotes the City of Cupertino is paying lower by entering into a Second Amendment. Other Granicus clients, such as Mountain View, Palo Alto, and San Jose, who bundle multiple products on average save a total of 3~10% on their annual subscription. Given the long-term relationship of the City of Cupertino and Granicus, this contract amendment includes a saving of 25% for the first year and an 11% saving for the overall agreement.

Sustainability Impact

Utilization of Granicus software solutions has reduced the volume of paper used for customer notifications and transactions, conserving natural resources, and reducing greenhouse gases generated during the production and disposal of paper. Utilization of Legistar in doing paperless agendas and minutes for all the City meetings is a great example in that initiative. City staff leverages the Granicus software in sending electronic notifications, citizen collaboration and civic engagement digitally. Additionally, in time, more residents are anticipated to collaborate and communicate with the City digitally online, further reducing vehicle travel and use of paper. Implementation of paperless office strategies like this one are prioritized in Cupertino's Climate Action Plan (M-SW-1).

Fiscal Impact

Existing Granicus software solutions are part of the Innovation and Technology Applications Base Budget. OpenCities will consist of funding from Approved FY22 Proposal: City Website Redesign. On-going fees of \$26,000 for OpenCities subscription will be absorbed by cost savings due to the 4-year amendment to Granicus Agreement.

Prepared by: Nidhi Mathur, Applications Manager

Recommended for Submission: Bill Mitchell, Chief Technology Officer

Approved for Submission by: Pamela Wu, City Manager
Chris Jensen, City Attorney

Attachments:

- A – Second Amendment (Granicus Signed) dated 9-15-22
- B – Proof of Insurance
- C - Granicus, LLC., Sole Source Letter (OpenCities)
- D – First Amendment dated 8-9-21
- E - Granicus Master Subscription Agreement dated 6-29-21



Second Amendment to the Granicus Service Agreement between Granicus, LLC and Cupertino, CA

This Second Amendment to the Granicus, LLC Service Agreement is effective on the date this document is signed and entered into by and between Granicus, LLC, a Minnesota Limited Liability Company d/b/a Granicus (hereinafter referred to as "Granicus"), and Cupertino, CA (hereinafter referred to as "Client"), with reference to the following:

WHEREAS, the Client and Granicus entered into an Agreement effective 07/06/2021 (the "Agreement"); and

WHEREAS, in addition to Client's existing solution, Client wishes to add certain products and services as detailed in Q-222413, which is attached as Exhibit A and incorporated herein by reference; and

NOW, THEREFORE, in consideration of the premises, the parties intend that the Agreement be amended as follows:

1. Client and Granicus desire to continue Granicus' services to the Client under the Agreement, and hereby affirm their intent that it remain in full force and effect as amended and restated by this Second Amendment.
2. Compensation shall be amended to include the fees detailed in Exhibit A. Exhibit A is exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is the responsibility of the Client to provide applicable exemption certificate(s).
3. Either Party may terminate the Agreement for convenience by providing the other Party 30 days' notice.
4. Except as amended by this Second Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.
5. In the event of any inconsistency between the provisions of this Second Amendment and the documents comprising the Agreement, the provisions of this Second Amendment shall prevail.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to be executed by their duly authorized representatives.

Agreement and Acceptance

By signing this document, the undersigned certifies they have authority to enter the agreement. The undersigned also understands the services and terms.

Cupertino, CA

Signature:

Name:

Title:

Date:

Cupertino, CA

Signature:

Name:

Title:

Date:

Granicus

Signature: DocuSigned by:
Kelly Oliver

Name: kelly oliver

Title: Vice President of Contracts

Date: 8/8/2022

Cupertino, CA

Signature:

Name:

Title:

Date:



408 Saint Peter Street, Suite 600
Saint Paul, MN 55102
United States

THIS IS NOT AN INVOICE

Exhibit A
Prepared for
Cupertino, CA

Exhibit A

ORDER DETAILS

Prepared By: Antonio Bullock
Phone:
Email: antonio.bullock@granicus.com
Order #: Q-222413
Prepared On: 08/04/2022
Expires On: 10/28/2022

ORDER TERMS

Currency: USD
Payment Terms: Net 30 (Payments for subscriptions are due at the beginning of the period of performance.)
Current Subscription End Date: 07/05/2022
Initial Order Term End Date: 07/05/2026
Period of Performance: 07/06/2022 - 07/05/2023

The subscription includes the following domain(s) and subdomain(s):
cupertino.org

Communications Cloud Tier:
for up to 25000 subscribers.
Number of Filers:
73



PRICING SUMMARY

The pricing and terms within this Proposal are specific to the products and volumes contained within this Proposal.

One-Time Fees			
Solution	Billing Frequency	Quantity/Unit	One-Time Fee
OpenCities SaaS License - Setup and configuration package	Milestones - 25/25/25/25	1 Each	\$10,000.00
OpenCities CMS Design	Upon Delivery	1 Each	\$5,000.00
Training - OpenCities	Upon Delivery	1 Each	\$1,500.00
GXG Writing for the Web Workshop	Up Front	1 Each	\$5,000.00
OpenCities Content Migration	Upon Delivery	600 Each	\$3,000.00
OpenForms License - Setup and Configuration Package	Up Front	1 Each	\$0.00
Training - OpenForms	Upon Delivery	1 Each	\$1,200.00
GXG Information Architecture	Up Front	1 Each	\$22,500.00
OpenCities Imperva Security License - Services Setup and Configuration Package	Up Front	1 Each	\$0.00
SUBTOTAL:			\$48,200.00

New Subscription Fees					
Solution	Period of Performance	Billing Frequency	Quantity/Unit	Annual Fee	Prorated Fee
OpenCities SaaS License	7/6/2022 to 7/5/2023	Annual	1 Each	\$17,250.00	\$17,250.00
OpenForms Enterprise License (30 users, 100 forms)	7/6/2022 to 7/5/2023	Annual	1 Each	\$7,500.00	\$7,500.00
OpenCities Cloud Security License	7/6/2022 to 7/5/2023	Annual	1 Each	\$1,250.00	\$1,250.00
SUBTOTAL:				\$26,000.00	\$26,000.00



Renewing Subscription Fees					
Solution	Period of Performance	Billing Frequency	Quantity/ Unit	Annual Fee	Prorated Fee
govService (Short Term Rentals)					
Tax Collection	7/6/2022 to 7/5/2023	Annual	1 Each	\$0.00	\$0.00
Address Identification	7/6/2022 to 7/5/2023	Annual	1 Each	\$13,119.74	\$13,119.74
eComment	7/6/2022 to 7/5/2023	Annual	1 Each	\$2,205.00	\$2,205.00
24/7 Hotline	7/6/2022 to 7/5/2023	Annual	1 Each	\$4,505.13	\$4,505.13
Compliance Monitoring	7/6/2022 to 7/5/2023	Annual	1 Each	\$5,624.26	\$5,624.26
Mobile Permitting & Registration	7/6/2022 to 7/5/2023	Annual	1 Each	\$5,250.00	\$5,250.00
Rental Activity Monitoring	7/6/2022 to 7/5/2023	Annual	1 Each	\$7,507.14	\$7,507.14
govMeetings					
VoteCast Standard Package (Tablet) (ME)	7/6/2022 to 7/5/2023	Annual	1 Each	\$3,780.00	\$3,780.00
Government Transparency Suite	7/6/2022 to 7/5/2023	Annual	1 Each	\$6,168.93	\$6,168.93
Meeting Efficiency Suite	7/6/2022 to 7/5/2023	Annual	1 Each	\$6,027.11	\$6,027.11
Legistar Add-On - Laserfiche Integration	7/6/2022 to 7/5/2023	Annual	1 Each	\$0.00	\$0.00
Template - Sectioned View Page	7/6/2022 to 7/5/2023	Annual	1 Each	\$0.00	\$0.00
Upgrade to SDI 720p Streaming	7/6/2022 to 7/5/2023	Annual	1 Each	\$1,418.15	\$1,418.15
Open Platform Suite	7/6/2022 to 7/5/2023	Annual	1 Each	\$4,254.42	\$4,254.42
Legistar	7/6/2022 to 7/5/2023	Annual	1 Each	\$10,210.63	\$10,210.63
Granicus Encoding Appliance Software (GT)	7/6/2022 to 7/5/2023	Annual	1 Each	\$1,418.15	\$1,418.15

govDelivery					
Communications Cloud	7/6/2022 to 7/5/2023	Annual	1 Each	\$12,500.00	\$12,500.00
Communications Cloud Advanced Package	7/6/2022 to 7/5/2023	Annual	1 Each	\$3,125.00	\$3,125.00
govRecords					
CampaignDocs Subscription	7/6/2022 to 7/5/2023	Annual	1 Each	\$1,535.03	\$1,535.03
DisclosureDocs Full Review Subscription	7/6/2022 to 7/5/2023	Annual	1 Each	\$547.65	\$547.65
DisclosureDocs Ethics Subscription	7/6/2022 to 7/5/2023	Annual	1 Each	\$773.71	\$773.71
DisclosureDocs Subscription	7/6/2022 to 7/5/2023	Annual	1 Each	\$1,597.12	\$1,597.12
eDisclosure Filer Module Subscription	7/6/2022 to 7/5/2023	Annual	1 Each	\$1,597.12	\$1,597.12
CampaignDocs - Hosting	7/6/2022 to 7/5/2023	Annual	1 Each	\$0.00	\$0.00
CampaignDocs Public Kiosk Subscription	7/6/2022 to 7/5/2023	Annual	1 Each	\$328.87	\$328.87
CampaignDocs Web Publishing Subscription	7/6/2022 to 7/5/2023	Annual	1 Each	\$657.87	\$657.87
eCampaign Subscription	7/6/2022 to 7/5/2023	Annual	1 Each	\$1,315.74	\$1,315.74
eHQ					
Project Finder Basic	12/16/2022 to 7/5/2023	Annual	1 Each	\$999.99	\$554.79
EngagementHQ Additional Hub Admin	5/10/2023 to 7/5/2023	Annual	1 Each	\$0.00	\$0.00
EngagementHQ Additional Hub	5/10/2023 to 7/5/2023	Annual	1 Each	\$4,500.01	\$695.55
Brand Integration Maintainence	5/10/2023 to 7/5/2023	Annual	1 Each	\$4,999.99	\$772.83
SUBTOTAL:				\$105,966.76	\$97,489.94



FUTURE YEAR PRICING

Solution(s)	Period of Performance		
	07/06/2023 - 07/05/2024	07/06/2024 - 07/05/2025	07/06/2025 - 07/05/2026
eHQ			
Project Finder Basic	\$1,049.99	\$1,102.49	\$1,157.62
EngagementHQ Additional Hub Admin	\$0.00	\$0.00	\$0.00
EngagementHQ Additional Hub	\$4,725.01	\$4,961.26	\$5,209.33
Brand Integration Maintenance	\$5,249.99	\$5,512.49	\$5,788.12
govDelivery			
Communications Cloud	\$13,125.00	\$13,781.25	\$14,470.31
Communications Cloud Advanced Package	\$3,281.25	\$3,445.31	\$3,617.58
govMeetings			
VoteCast Standard Package (Tablet) (ME)	\$3,969.00	\$4,167.45	\$4,375.82
Upgrade to SDI 720p Streaming	\$1,489.06	\$1,563.51	\$1,641.69
Open Platform Suite	\$4,467.14	\$4,690.50	\$4,925.02
Legistar	\$10,721.16	\$11,257.22	\$11,820.08
Granicus Encoding Appliance Software (GT)	\$1,489.06	\$1,563.51	\$1,641.69
Government Transparency Suite	\$6,477.38	\$6,801.25	\$7,141.31
Meeting Efficiency Suite	\$6,328.47	\$6,644.89	\$6,977.13
Legistar Add-On - Laserfiche Integration	\$0.00	\$0.00	\$0.00
Template - Sectioned View Page	\$0.00	\$0.00	\$0.00



Exhibit A
Cupertino, CA

govService (Short Term Rentals)			
Tax Collection	\$0.00	\$0.00	\$0.00
Address Identification	\$13,775.73	\$14,464.51	\$15,187.74
eComment	\$2,315.25	\$2,431.01	\$2,552.56
24/7 Hotline	\$4,730.39	\$4,966.91	\$5,215.25
Compliance Monitoring	\$5,905.47	\$6,200.75	\$6,510.78
Mobile Permitting & Registration	\$5,512.50	\$5,788.13	\$6,077.53
Rental Activity Monitoring	\$7,882.50	\$8,276.62	\$8,690.45
govRecords			
CampaignDocs Subscription	\$1,611.78	\$1,692.37	\$1,776.99
DisclosureDocs Full Review Subscription	\$575.03	\$603.78	\$633.97
DisclosureDocs Ethics Subscription	\$812.40	\$853.02	\$895.67
DisclosureDocs Subscription	\$1,676.98	\$1,760.82	\$1,848.87
eDisclosure Filer Module Subscription	\$1,676.98	\$1,760.82	\$1,848.87
CampaignDocs - Hosting	\$0.00	\$0.00	\$0.00
CampaignDocs Public Kiosk Subscription	\$345.31	\$362.58	\$380.71
CampaignDocs Web Publishing Subscription	\$690.76	\$725.30	\$761.57
eCampaign Subscription	\$1,381.53	\$1,450.60	\$1,523.13
OpenCities			
OpenCities SaaS License	\$18,112.50	\$19,018.13	\$19,969.03
OpenForms Enterprise License (30 users, 100 forms)	\$7,875.00	\$8,268.75	\$8,682.19
OpenCities Cloud Security License	\$1,312.50	\$1,378.13	\$1,447.03
SUBTOTAL:	\$138,565.12	\$145,493.36	\$152,768.04



Cupertino, CA

PRODUCT DESCRIPTIONS

Solution	Description
CampaignDocs Subscription	CampaignDocs™ is a powerful desktop system used by the ROV staff that provides numerous features to help you manage your Campaign Filers, generate letters, emails, run reports on Filings, scan paper filing and receive Electronic Filings submitted by the filers that use eCampaign Module.
VoteCast Standard Package (Tablet) (ME)	<p>VoteCast is a hybrid Software-as-a-Service (SaaS) and Hardware-as-a-Service (HaaS) solution that enables government organizations to streamline the meeting process for both the clerk's office as well as elected officials. By leveraging this solution, the client will be able to automate meeting data capture and display – improving accuracy and keeping all attendees informed of meeting proceedings. Available on a variety of hardware as well as the iLegislate platform, elected officials can use their touchscreens or tablets to motion, second, vote, and request to speak. This data automatically populates to the clerk software (LiveManager) ensuring accuracy and reducing workload. As action items occur during the meeting, TVs or projectors hooked up to VoteCast Display will automatically show the current agenda item, motion on the floor, vote result, and speaker timer as well as speaker name. VoteCast includes:</p> <ul style="list-style-type: none"> • Unlimited user accounts • Unlimited meeting bodies • Access to one Granicus platform site • Access to the VoteCast software application for elected officials • Access to the VoteCast Display software application to output meeting proceedings to TVs or projectors in the meeting room
DisclosureDocs Full Review Subscription	Filer Review – allows the Filing Officer to perform the required tasks of verifying the accuracy of forms and if needed requesting necessary Amendments. 20% on time and 100 % late filings. 10 % needs to be picked at random.
DisclosureDocs Ethics Subscription	Ethics Training Tracking - Ethics and Sexual Harassment Prevention Training Tracking Modules work hand in hand with our DisclosureDocs /eDisclosure System. This Module allows tracking the Ethics Certificates and notifying Filers of their Ethics Training requirements.
DisclosureDocs Subscription	DisclosureDocs™ is your robust desktop application that provides numerous features to help you manage your Filers, Conflict of Interest Code changes, Full and Facial Reviews, generate Letters, Emails, business process Reports and manage your corresponding Public Access and Electronic Filing components.



Cupertino, CA

Solution	Description
eDisclosure Filer Module Subscription	eDisclosure™ application allows your Filers to login and file for all positions that he/she is holding as well as submit the filing to their Filing Officer(s).
Address Identification	<p>Ongoing monitoring of 60+ Short Term Rental websites including major platforms Airbnb, VRBO, HomeAway, Booking.com, FlipKey, & Expedia. Our machine learning will deduplicate all known Listings into unique Rental Units, where our identification team will provide owner contact information for further enforcement. This product includes:- Ongoing monitoring of all listings in your jurisdiction</p> <ul style="list-style-type: none"> - Updating listing activity and details every 3-5 days - Screenshot activity of every listing - Deduplication of listings into unique Rental Units - Activity dashboard and map to monitor trends and breakdown of compliance
eComment	eComment reduces staff time by providing the ability to effortlessly collect and manage citizen input on agenda items. Citizens are allowed to either submit comments in regards to items or sign up to speak before a scheduled meeting.
24/7 Hotline	<p>24/7 web and phone hotline for your community to report short term rental complaints such as parking, trash, noise disturbances, and illegal short term rentals. This product include:- Mobile-enabled online web form for citizens to submit tips or complaints (text, videos, and photos)</p> <ul style="list-style-type: none"> - 24/7 call center for citizens to contact and report complaints verbally - Recordings for all call center complaints - Email notifications to your team when complaints are logged - Automatic outbound IVR calls and SMS messages to permit emergency contacts notifying them of the complaint - SMS support for emergency contacts to mark a complaint as acknowledged or resolved with the ability to send resolution notes - Hotline Dashboard for tracking complaint volumes, trends, and categories - Ability to upload Notes/Comments to each complaint
Compliance Monitoring	<p>Compliance monitoring provides up-to-date information for each identified Rental Unit and its compliance status. We configure your compliance definition specific to your jurisdiction rules and ordinances in order to provide up-to-date compliance status of each identified Rental Unit. Additionally, this product will:- Allow your team to send letters to non-compliant properties 24/7</p> <ul style="list-style-type: none"> - Configure letter templates with your branding and letterhead - Add as many letter sequences as you need for escalation - Monitor properties that become compliant after letter enforcement



Cupertino, CA

Solution	Description
Mobile Permitting & Registration	Mobile-enabled online forms and back-end systems for streamlining the registration/licensing/permitting of individual short-term rental hosts. These registration forms and workflows include:- Parcel Number lookup and validation - E-Signatures - ACH, Debit, and Credit Payments exclusively powered by Stripe.com - Registration Number & Certificate creation - Document Upload - Renewals - Email confirmation - Admin approval & denial
Rental Activity Monitoring	Ongoing monitoring of Short Term Rental listings for signs of rental activity including historical revenue estimates & occupancy. Coupled with our Tax Collection product, users can also compare historical revenue estimates to actual reported revenue to identify those that may be underreporting and underpaying sales tax (i.e. TOT).
Upgrade to SDI 720p Streaming	Upgrade to SDI 720p Streaming (requires Digital encoder and HD feed)



Cupertino, CA

Solution	Description
Communications Cloud	<p>The Cloud is a Software-as-a-Service (SaaS) solution that enables government organizations to connect with more people. By leveraging the Cloud, the client will be able to utilize a number of different outreach mediums, including email, SMS/text messages, RSS feeds, and social media integration to connect with its target audiences. The Cloud includes:</p> <ul style="list-style-type: none"> • Unlimited email sends with industry-leading delivery and management of all bounces • Support to upload and migrate existing email lists • Access to participate in the GovDelivery Network • Ability to send mass notifications to multiple devices • 24/7 system monitoring, email and phone support during business hours, auto-response to inbound messages from end users, and emergency support • Text-to-subscribe functionality • Up to 2 Web-hosted training sessions annually • Up to 50 administrators • Up to 1 GovDelivery account(s) • Access to a complete archive of all data created by the client for 18 months (rolling) • Up to 3 hours of message template and integration development • Up to 100 subscription topics • Up to 100,000 SMS/text messages per year from a shared short code within the United States* <p>*International numbers are not supported. SMS/text messages not used in the period of performance will not carry over to the following year.</p>
Open Platform Suite	<p>Open Platform is access to MediaManager, upload of archives, ability to post agendas/documents, and index of archives. These are able to be published and accessible through a searchable viewpage.</p>



Cupertino, CA

Solution	Description
Legistar	<p>Legistar is a Software-as-a-Service (SaaS) solution that enables government organizations to automate the entire legislative process of the clerk's office. Clerks can leverage Legistar to easily manage the entire legislative process from drafting files, through assignment to various departments, to final approval. Legistar includes:</p> <ul style="list-style-type: none"> • Unlimited user accounts • Unlimited meeting bodies and meeting types • Unlimited data storage and retention • Up to one (1) Legistar database • Up to one (1) InSite web portal
Granicus Encoding Appliance Software (GT)	<p>Granicus Encoding Appliance Software (GT) This includes the LiveManager Software solution where webcasts are started/stopped, agendas amended and indexed, votes and attendance recorded, and minutes created.</p>
Communications Cloud Advanced Package	<p>The Advanced Cloud Module gives government communicators better insight into the needs of citizens and improves their ability to enhance online transactions, promote behavior change through public awareness, and improve citizen engagement. The Advanced Cloud Module adds streamlined marketing capabilities that incorporate greater degrees of audience segmentation, personalization, message testing, and mobile engagement. The Advanced Cloud Module includes:</p> <ul style="list-style-type: none"> • Dynamic segmentation around bulletins, engagement, and question (e.g. zip code) • Canned campaigns for re-engagement and new subscriber onboarding • Testing: Simple (A/B, 10/10/80) <p><i>A subscription for the Advanced Cloud Module is dependent on an active license for the GovDelivery Communications Cloud.</i></p>
Government Transparency Suite	<p>Government Transparency are the live in-meeting functions. Streaming of an event, pushing of documents, and indexing of events.</p>



Cupertino, CA

Solution	Description
Meeting Efficiency Suite	<p>Meeting Efficiency is a hybrid Software-as-a-Service (SaaS) and Hardware-as-a-Service (HaaS) solution that enables government organizations to simplify the in-meeting management and post-meeting minutes creation processes of the clerk's office. By leveraging this solution, the client will be able to streamline meeting data capture and minutes production, reducing staff efforts and decreasing time to get minutes published. During a meeting, use LiveManager to record roll calls, motions, votes, notes, and speakers, all indexed with video. Use the index points to quickly edit minutes, templates to format in Microsoft Word, and publish online with the click of a button. Meeting Efficiency includes:</p> <ul style="list-style-type: none"> • Unlimited user accounts • Unlimited meeting bodies • Unlimited storage of minutes documents • Access to the LiveManager software application for recording information during meetings • Access to the Word Add-in software component for minutes formatting in MS Word if desired • Up to one (1) MS Word minutes template (additional templates can be purchased if needed)
Legistar Add-On - Laserfiche Integration	Legistar Add-On - Laserfiche Integration is for the Legistar\Laserfiche integration that allows for documents to be imported from Laserfiche to Legistar and for Legistar to export reports\attachments to Laserfiche
Project Finder Basic	Unlimited project finders to be embedded across various web sites.
EngagementHQ Additional Hub Admin	Additional hub administrator for team access.
EngagementHQ Additional Hub	Add an additional hub to your existing hub subscription.
Rename to Brand Integration Maintenance	Ongoing brand integration maintenance and support.



Cupertino, CA

Solution	Description
CampaignDocs Public Kiosk Subscription	Public access to your filings is available through your Public Kiosk in an unredacted form using our CampaignDocs Public Access™ module. The Public is able to search for filings in your office without the need of taking staff time to pull the original records. This is not only a cost savings for your staff, but eliminates the risk of the original filing disappearing or becoming misfiled when it's returned. If the Public wants a copy of a filing, they order it at the kiosk and pay for it at the counter where they will pick up their copy.
CampaignDocs Web Publishing Subscription	CampaignDocs WebPublisher™ module the public has access to redacted copies of the filings on the web. The public is able to search, view and print from their own computer without the need of using your agency's resources.
eCampaign Subscription	eCampaign™ system is a benefit to your filers. Your filers will be able to use our data screens to enter their contributions / expenditures as they occur and file their forms by the due date. The system will validate the information and summarize all the information on the forms. There are several tools that will help your Filer properly file their filings.
Tax Collection	Tax Collection can be built as a separate mobile-enabled form or coupled with Mobile Permitting & Registration in one single portal allowing your users to:- Report revenue monthly, quarterly, or annually and pay sales tax due (i.e TOT) - Remind users when they are registering for a permit/license to also report any back taxes - Collect ACH, Debit, and Credit Payments exclusively powered by Stripe.com



Cupertino, CA

Solution	Description
OpenCities SaaS License	<p>The OpenCities platform allows you to launch modern, easy to use websites that evolve to put the needs of your community at the center. The SaaS License includes:</p> <ul style="list-style-type: none"> • All OpenCities out of the box functionality (excluding optional/premium modules priced separately) • Platform setup and full project management • Managed cloud hosting via Microsoft AzureGov • Ongoing security updates • Ongoing product updates and enhancements • WCAG AA Accessibility maintained perpetually • 99.9% up-time guarantee and 24/7 support for Priority 1 issues (per SLA) • Comprehensive SLA and Support Ticketing system <p>See subscription agreement for details.</p>
OpenCities SaaS License - Setup and configuration package	Installation and setup of OpenCities SaaS, including an assigned Project Manager during the implementation phase.
OpenCities CMS Design	This is a design package tailored for unique city requirements. Requires scoping by implementation.
Training - OpenCities	<p>OpenCities training session for up to 20 people, covering one of these topics:</p> <ol style="list-style-type: none"> 1. Site Admin training 2. Content Publisher Training 3. Power Publisher training



Cupertino, CA

Solution	Description
OpenForms Enterprise License (30 users, 100 forms)	<p>OpenForms is a digital forms builder specifically designed for Government. Government services can be complicated, but the experience for the residents accessing them shouldn't have to be. OpenForms is perfect for the business of government, with capabilities that will help you convert complex, multi-page forms and processes into simple, step-by-step online forms that adjust based on customers responses. The Enterprise plan to accelerate digital transformation for up to: 30 users, 100 published forms.</p> <p>Key features include:</p> <ul style="list-style-type: none"> • Workspaces • Response workflows • Custom documents (Certificates, permits, formal letters & more) • Form versioning & scheduling • Drag and drop form builder • Display logic and calculations • Payments • Insights dashboard • Form analytics • Support team access • Save responses • Unlimited responses • Data connections and API access • Up to: 50GB file uploads, 2,000 web API calls per hour, 20 custom documents per form



Cupertino, CA

Solution	Description
<p>GXG Writing for the Web Workshop</p>	<p>Content is the most important element of a website. We believe in using best practices to standardize and promote consistency. There's no better time to completely revamp your content than when you're updating your website and moving to a new CMS. We'll teach your team how to undeniably sound like the agency and focus on the user, helping you mature your communications and services over time. Services include:</p> <ul style="list-style-type: none"> • Workshop kick off: align on goals, dates, and participants / services • Services review: review every service selected to confirm workshop feasibility • One 3-hour workshop (remote) <p>Sold as Firm Fixed Price (not Time & Materials). Assumes a 2-week level of effort to be completed within the contract period. Assumes the client has manual PDFs or use another digital tool. NOT for clients that mainly use third party applications for all services. NOT for clients that have a centralized content creation model (1-2 Content Authors/Publishers for the entire website)</p>



Cupertino, CA

Solution	Description
OpenCities Content Migration	<p>Content Migration Delivery: Once we have agreed upon a strategy and a timeline, our team of migrators will work to deliver your project by the designated deadline. At the end, you will receive:</p> <ul style="list-style-type: none"> • Access to the system with all agreed pages moved over • A recap document that details anything your team should know about what we migrated as well as recommendations <p>Client Responsibilities:</p> <ul style="list-style-type: none"> • Completion of an AIM Spreadsheet (provided by OpenCities) listing all pages in hierarchical order classified as either Archive, Improve or Migrate (or purchase the Content Rationalization package add on) • Identify individual or team with the ability to clarify questions and promptly make decisions about migration questions • Provide a desired folder structure for files (if contracted) <p>What's IN scope?</p> <ul style="list-style-type: none"> • 400 pages of content migrated and audited/corrected to align with ADA standards OR 600 pages of content migrated as it exists today and is managed within your current CMS • Documents/images (if contracted) <p>What's NOT in scope?</p> <ul style="list-style-type: none"> • Anything within an iFrame or embedded HTML content • Dynamic content pulled from other systems • Content not managed within CMS • JavaScript, CSS, or other custom code • Interactive web forms and/or single page applications • Written content within image/diagram • Content contained inside a PDF file • Documents and images on pages marked "Archive"
OpenForms License - Setup and Configuration Package	Setup and configuration of OpenForms Team License (5 users, 50 forms)
Training - OpenForms	OpenForms training session for up to 20 people.



Cupertino, CA

Solution	Description
GXG Information Architecture	<p>Updating your website's Information Architecture (IA) is key to improving the overall user experience. Our IA process involves website data analysis, user research and user testing, and other best-practice methodologies that serve to seamlessly bridge your goals with user needs. This effort will result in a strategic and scalable approach to content priorities, a development of a navigation structure for your new site, and the creation of an actionable implementation strategy for your existing content. Activities include:</p> <ul style="list-style-type: none"> • Kickoff: Align on goals, expectations, timelines, and deliverables • Data Audit: We'll review surveys, Google Analytics, and any other piece of data to get a sense of how the website is currently utilized, what the user priorities are, and how the current content is meeting their needs. • User engagement: Conduct up to one (1) card sort with up to forty (40) external users OR up to one (1) tree test with up to forty (40) external users <p>Deliverable:</p> <ul style="list-style-type: none"> • Recommendations & Implementation Report. Includes new Information Architecture map, connecting individual pages to their new categories and location in the site tree <p>Assumptions:</p> <ul style="list-style-type: none"> • Covers analysis and IA for sites with up to 2,500 URLs. • Three-month period of performance to be completed within the contract period. • Does NOT include a content audit. • Does NOT include content creation. • Client sources external users for testing. • Does NOT include document review.
OpenCities Cloud Security License	<p>Deployment of Imperva Security and Content Delivery Network (CDN). Providing leading caching and security resulting in enhanced protection from malicious attacks.</p> <p>Once configured, it continuously monitors and blocks attacks. With a global 24/7/365 security operations center, it provides an expertly managed web application firewall, distributed denial of service attack protection and advanced bot detection.</p>
OpenCities Imperva Security License - Services Setup and Configuration Package	Setup and configuration of OpenCities Imperva Security License

UPDATES TO SHARED SHORT CODES FOR SMS/TEXT MESSAGING (US CLIENTS ONLY):

- Granicus will be migrating all clients with SMS/Text Messaging Solutions using a shared short code option to a unique standard toll-free number within the United States (International numbers not supported). Short Codes are recommended for Text-to-Subscribe functionalities, if enabled where available, for an additional fee.
- Client must have explicit opt-in for all destinations sent to and adhere to all CTIA guidelines for the duration of its use.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
 10/20/2022 12/17/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Insurance Brokers, LLC CA License #OF15767 Three Embarcadero Center, Suite 600 San Francisco CA 94111 (415) 568-4000	CONTACT NAME:		
	PHONE (A/C, No, Ext):	FAX (A/C, No):	
INSURED 1477873 Granicus, LLC 1999 Broadway Denver CO 80202	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : National Fire Insurance Co of Hartford		20478
	INSURER B : Valley Forge Insurance Company		20508
	INSURER C : The Continental Insurance Company		35289
	INSURER D : Columbia Casualty Company		31127
	INSURER E : American Casualty Company of Reading, PA		20427
INSURER F :			

COVERAGES GRAIN01 CERTIFICATE NUMBER: 16781970 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y	N	6043664103	10/20/2021	10/20/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> Comp \$100 Ded <input type="checkbox"/> Coll \$1,000 Ded	N	N	6043664084	10/20/2021	10/20/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	N	N	6043664098	10/20/2021	10/20/2022	EACH OCCURRENCE \$ 15,000,000 AGGREGATE \$ 15,000,000 \$ XXXXXXXX
C E	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	6043664067 (AOS) 6043664070 (CA)	10/20/2021 10/20/2021	10/20/2022 10/20/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Tech E&O/Cyber Liability	N	N	596722177	12/15/2021	12/15/2022	\$5M

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers, is an Additional Insured with respect to liability arising out of the operations of the insured and to the extent provided by the policy language or endorsement issued or approved by the insurance carrier. Waiver of Subrogation applies per attached endorsement or policy language.

CERTIFICATE HOLDER	CANCELLATION See Attachments
16781970 City of Cupertino 10300 Torre Avenue Cupertino CA 95014-3255	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

Attachment Code: D524693 Certificate ID: 16781970

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It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

TABLE OF CONTENTS
1. Additional Insureds
2. Additional Insured - Primary And Non-Contributory To Additional Insured's Insurance
3. Bodily Injury – Expanded Definition
4. Broad Knowledge of Occurrence/ Notice of Occurrence
5. Broad Named Insured
6. Estates, Legal Representatives and Spouses
7. Expected Or Intended Injury – Exception for Reasonable Force
8. In Rem Actions
9. Incidental Health Care Malpractice Coverage
10. Joint Ventures/Partnership/Limited Liability Companies
11. Legal Liability – Damage To Premises
12. Medical Payments
13. Non-owned Aircraft Coverage
14. Non-owned Watercraft
15. Personal And Advertising Injury – Discrimination or Humiliation
16. Personal And Advertising Injury - Limited Contractual Liability
17. Property Damage - Elevators
18. Supplementary Payments
19. Property Damage – Patterns, Molds and Dies
20. Unintentional Failure To Disclose Hazards
21. Waiver of Subrogation – Blanket

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1. ADDITIONAL INSUREDS

a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs **A.** through **K.** below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph **A.** through **K.** below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Grantor of Franchise

Any person or organization that has granted a franchise to a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** as grantor of a franchise to the **Named Insured**.

D. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

E. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

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F. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

H. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

I. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:
 - a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury or property damage** included within the **products-completed operations hazard**.

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J. Vendor

Any person or organization but only with respect to such person or organization's liability for **bodily injury** or **property damage** arising out of **your products** which are distributed or sold in the regular course of such person or organization's business, provided that:

1. The coverage granted by this paragraph does not apply to:
 - a. **bodily injury** or **property damage** for which such person or organization is obligated to pay **damages** by reason of the assumption of liability in a contract or agreement unless such liability exists in the absence of the contract or agreement;
 - b. any express warranty unauthorized by the **Named Insured**;
 - c. any physical or chemical change in any product made intentionally by such person or organization;
 - d. repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - e. any failure to make any inspections, adjustments, tests or servicing that such person or organization has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - f. demonstration, installation, servicing or repair operations, except such operations performed at such person or organization's premises in connection with the sale of a product;
 - g. products which, after distribution or sale by the **Named Insured**, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for such person or organization; or
 - h. **bodily injury** or **property damage** arising out of the sole negligence of such person or organization for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (1) the exceptions contained in Subparagraphs **d.** or **f.** above; or
 - (2) such inspections, adjustments, tests or servicing as such person or organization has agreed with the **Named Insured** to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
2. This Paragraph **J.** does not apply to any insured person or organization, from whom the **Named Insured** has acquired such products, nor to any ingredient, part or container, entering into, accompanying or containing such products.
3. This Paragraph **J.** also does not apply:
 - a. to any vendor specifically scheduled as an additional insured by endorsement to this **Coverage Part**;
 - b. to any of **your products** for which coverage is excluded by endorsement to this **Coverage Part**; nor
 - c. if **bodily injury** or **property damage** included within the **products-completed operations hazard** is excluded by endorsement to this **Coverage Part**.

K. Other Person Or Organization / Your Work

Any person or organization who is not an additional insured under Paragraphs **A.** through **J.** above. Such additional insured is an **Insured** solely for **bodily injury**, **property damage** or **personal and advertising injury** for which such additional insured is liable because of the **Named Insured's** acts or omissions.

The coverage granted by this paragraph does not apply to any person or organization:

1. who is specifically scheduled as an additional insured on another endorsement to this **Coverage Part**; nor

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2. for **bodily injury** or **property damage** included within the **products-completed operations hazard** except to the extent all of the following apply:
 - a. this **Coverage Part** provides such coverage;
 - b. the written contract or agreement described in the opening paragraph of this **ADDITIONAL INSUREDS** Provision requires the **Named Insured** to provide the additional insured such coverage; and
 - c. the **bodily injury** or **property damage** results from **your work** that is the subject of the written contract or agreement, and such work has not been excluded by endorsement to this **Coverage Part**.

2. **ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE**

- A. The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision **2.**, the additional insured's own insurance means insurance on which the additional insured is a named insured.

- B. With respect to persons or organizations that qualify as additional insureds pursuant to paragraph **1.K.** of this endorsement, the following sentence is added to the paragraph above:

Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. **BODILY INJURY – EXPANDED DEFINITION**

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. **BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE**

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** Condition is amended to add the following provisions:

A. **BROAD KNOWLEDGE OF OCCURRENCE**

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or to an **employee** designated by any of the above to give such notice.

B. **NOTICE OF OCCURRENCE**

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. **BROAD NAMED INSURED**

WHO IS AN INSURED is amended to delete its Paragraph **3.** in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph **4.** below, any organization in which a **Named Insured** has management control:
 - a. on the effective date of this **Coverage Part**; or

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b. by reason of a **Named Insured** creating or acquiring the organization during the **policy period**,

qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this **BROAD NAMED INSURED** provision does not apply to:

(a) any partnership or joint venture; or

(b) any organization for which coverage is excluded by another endorsement attached to this **Coverage Part**.

For the purpose of this provision, and of this endorsement's **JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES** provision, management control means:

A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation, or the members of the management board of a limited liability company; or

B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.

4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph 3. above, this insurance does not apply to:

a. **bodily injury** or **property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor

b. **personal or advertising injury** caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.

5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.

6. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for **claims** arising solely out of their capacity or status as such and, in the case of a **spouse**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such **spouse**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or **spouse** outside the scope of such person's capacity or status as such, provided however that the **spouse** of a natural person **Named Insured** and the **spouses** of members or partners of joint venture or partnership **Named Insureds** are **Insureds** with respect to such **spouses'** acts, errors or omissions in the conduct of the **Named Insured's** business.

7. EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE

Under **COVERAGES, Coverage A – Bodily Injury And Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

Expected or Intended Injury

Bodily injury or **property damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

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8. IN REM ACTIONS

A quasi *in rem* action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were *in personam* against the **Named Insured**.

9. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to **bodily injury** that arises out of a **health care incident**:

A. Under **COVERAGES, Coverage A – Bodily Injury And Property Damage Liability**, the **Insuring Agreement** is amended to replace Paragraphs **1.b.(1)** and **1.b.(2)** with the following:

b. This insurance applies to **bodily injury** provided that the professional health care services are incidental to the **Named Insured's** primary business purpose, and only if:

(1) such **bodily injury** is caused by an **occurrence** that takes place in the **coverage territory**.

(2) the **bodily injury** first occurs during the **policy period**. All **bodily injury** arising from an **occurrence** will be deemed to have occurred at the time of the first act, error, or omission that is part of the **occurrence**; and

B. Under **COVERAGES, Coverage A – Bodily Injury And Property Damage Liability**, the paragraph entitled **Exclusions** is amended to:

i. add the following to the **Employers Liability** exclusion:

This exclusion applies only if the **bodily injury** arising from a **health care incident** is covered by other liability insurance available to the **Insured** (or which would have been available but for exhaustion of its limits).

ii. delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

Contractual Liability

the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.

iii. add the following additional exclusions.

This insurance does not apply to:

Discrimination

any actual or alleged discrimination, humiliation or harassment, that includes but shall not be limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.

Dishonesty or Crime

Any actual or alleged dishonest, criminal or malicious act, error or omission.

Medicare/Medicaid Fraud

any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

Services Excluded by Endorsement

Any **health care incident** for which coverage is excluded by endorsement.

C. **DEFINITIONS** is amended to:

i. add the following definitions:

Health care incident means an act, error or omission by the **Named Insured's employees** or **volunteer workers** in the rendering of:

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- a. **professional health care services** on behalf of the **Named Insured** or
- b. Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

Professional health care services means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

- a. Physician;
- b. Nurse;
- c. Nurse practitioner;
- d. Emergency medical technician;
- e. Paramedic;
- f. Dentist;
- g. Physical therapist;
- h. Psychologist;
- i. Speech therapist;
- j. Other allied health professional; or

Professional health care services does not include any services rendered in connection with human clinical trials or product testing.

- ii. delete the definition of **occurrence** and replace it with the following:

Occurrence means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

- iii. amend the definition of **Insured** to:

- a. add the following:

- the **Named Insured's employees** are **Insureds** with respect to:

- (1) **bodily injury** to a **co-employee** while in the course of the **co-employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and

- (2) **bodily injury** to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

- the **Named Insured's volunteer workers** are **Insureds** with respect to:

- (1) **bodily injury** to a **co-volunteer worker** while performing duties related to the conduct of the **Named Insured's** business; and

- (2) **bodily injury** to an **employee** while in the course of the **employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

- b. delete Subparagraphs (a), (b), (c) and (d) of Paragraph 2.a.(1) of **WHO IS AN INSURED**.

- c. add the following:

Insured does not include any physician while acting in his or her capacity as such.

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(Ed.)

- D. The **Other Insurance** condition is amended to delete Paragraph **b.(1)** in its entirety and replace it with the following:

Other Insurance

b. Excess Insurance

- (1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the **Named Insured** to be excess of this coverage.

10. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES

WHO IS AN INSURED is amended to delete its last paragraph and replace it with the following:

No person or organization is an **Insured** with respect to:

- the conduct of any current or past partnership or joint venture that is not shown as a **Named Insured** in the Declarations; nor
- the conduct of a current or past limited liability company in which a **Named Insured's** interest does/did not rise to the level of management control;

except that if the **Named Insured** was a joint venturer, partner, or member of such a limited liability company, and such joint venture, partnership or limited liability company terminated prior to or during the **policy period**, then such **Named Insured** is an **Insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

- a. any offense giving rise to **personal and advertising injury** occurred prior to such termination date, and the **personal and advertising injury** arising out of such offense, first occurred after such termination date;
- b. the **bodily injury** or **property damage** first occurred after such termination date; and
- c. there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company.

11. LEGAL LIABILITY – DAMAGE TO PREMISES

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the first paragraph immediately following subparagraph (6) of the **Damage to Property** exclusion and replace it with the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to **property damage** (other than damage by fire, lightning, explosion, smoke or leakage from automatic fire protective systems) to premises rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **LIMITS OF INSURANCE**.

- B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete its last paragraph and replace it with the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protective systems to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner, nor to damage to the contents of premises rented to a **Named Insured** for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in the **LIMITS OF INSURANCE** Section.

- C. **LIMITS OF INSURANCE** is amended to delete Paragraph 6. (the Damage To Premises Rented To You Limit) and replace it with the following:

6. Subject to Paragraph 5. above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most the Insurer will pay under **COVERAGE A** for **damages** because of **property damage** to:

Attachment Code: D524693 Certificate ID: 16781970

Policy Number: 6043664103

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(Ed.)

- a. any one premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with the permission of the owner; and
- b. contents of such premises if the premises is rented to the **Named Insured** for a period of 7 or fewer consecutive days.

The Damage To Premises Rented To You Limit is \$500,000. unless a higher Damage to Premises Rented to You Limit is shown in the Declarations.

D. The **Other Insurance** Condition is amended to delete Paragraph **b.(1)(a)(ii)**, and replace it with the following:

- (ii) That is property insurance for premises rented to a **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner; or for personal property of others in the **Named Insured's** care, custody or control;

E. This Provision **11.** does not apply if liability for damage to premises rented to a **Named Insured** is excluded by another endorsement attached to this **Coverage Part.**

12. MEDICAL PAYMENTS

A. **LIMITS OF INSURANCE** is amended to delete Paragraph **7.** (the Medical Expense Limit) and replace it with the following:

- 7. Subject to Paragraph **5.** above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C – Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:

- (1) \$15,000 unless a different amount is shown here: @@@@ ; or
- (2) the amount shown in the Declarations for Medical Expense Limit.

B. Under **COVERAGES**, the **Insuring Agreement of Coverage C – Medical Payments** is amended to replace Paragraph **1.a.(3)(b)** with the following:

- (b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and

13. NON-OWNED AIRCRAFT

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

- 1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
- 2. the aircraft is rented with a trained, paid crew to the **Named Insured**; and
- 3. the aircraft is not being used to carry persons or property for a charge.

14. NON-OWNED WATERCRAFT

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph **(2)** of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

- (2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:
 - (a) less than 75 feet long; and
 - (b) not being used to carry persons or property for a charge.

Attachment Code: D524693 Certificate ID: 16781970

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(Ed.)

15. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION

A. Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort:

- Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

B. Under **COVERAGES, Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:

1. delete the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following:

This insurance does not apply to:

Knowing Violation of Rights of Another

Personal and advertising injury caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

(a) the **Named Insured**; or

(b) any **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured**.

2. add the following exclusions:

This insurance does not apply to:

Employment Related Discrimination

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.

Premises Related Discrimination

discrimination or humiliation arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured**.

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

- Provision **1. ADDITIONAL INSURED** of this endorsement; or
- attachment of an additional insured endorsement to this **Coverage Part**.

16. PERSONAL AND ADVERTISING INJURY - LIMITED CONTRACTUAL LIABILITY

A. Under **COVERAGES, Coverage B –Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

Contractual Liability

Personal and advertising injury for which the **Insured** has assumed liability in a contract or agreement.

This exclusion does not apply to liability for **damages**:

- (1) that the **Insured** would have in the absence of the contract or agreement; or

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(2) assumed in a contract or agreement that is an **insured contract** provided the offense that caused such **personal or advertising injury** first occurred subsequent to the execution of such **insured contract**. Solely for the purpose of liability assumed in an **insured contract**, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an **Insured** are deemed to be **damages** because of **personal and advertising injury** provided:

- (a) liability to such party for, or for the cost of, that party's defense has also been assumed in such **insured contract**; and
- (b) such attorney fees and litigation expenses are for defense of such party against a civil or alternative dispute resolution proceeding in which covered **damages** are alleged.

B. Solely for the purpose of the coverage provided by this paragraph, **DEFINITIONS** is amended to delete the definition of **insured contract** in its entirety, and replace it with the following:

Insured contract means that part of a written contract or written agreement pertaining to the **Named Insured's** business under which the **Named Insured** assumes the tort liability of another party to pay for **personal or advertising injury** arising out of the offense of false arrest, detention or imprisonment. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

C. Solely for the purpose of the coverage provided by this paragraph, the following changes are made to the Section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**:

1. Paragraph 2.d. is replaced by the following:

d. The allegations in the **suit** and the information the Insurer knows about the offense alleged in such **suit** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;

2. The first unnumbered paragraph beneath Paragraph 2.f.(2)(b) is deleted and replaced by the following:

So long as the above conditions are met, attorneys fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Notwithstanding the provisions of Paragraph e.(2) of the Contractual Liability exclusion (as amended by this Endorsement), such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.

D. This **PERSONAL AND ADVERTISING INJURY - LIMITED CONTRACTUAL LIABILITY** Provision does not apply if **Coverage B –Personal and Advertising Injury Liability** is excluded by another endorsement attached to this **Coverage Part**.

17. PROPERTY DAMAGE – ELEVATORS

A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product** Exclusion and subparagraphs (3), (4) and (6) of the **Damage to Property** Exclusion do not apply to **property damage** that results from the use of elevators.

B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

18. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and

B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

Attachment Code: D524693 Certificate ID: 16781970

Policy Number: 6043664103

G-00000-A
(Ed.)

19. PROPERTY DAMAGE - PATTERNS MOLDS AND DIES

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraphs (3) and (4) of the Exclusion entitled **Damage to Property**, but only with respect to patterns, molds or dies that are in the care, custody or control of the **Insured**, and only if such patterns, molds or dies are not being used to perform operations at the time of loss. A limit of insurance of \$25,000 per **policy period** applies to this **PROPERTY DAMAGE - PATTERNS MOLDS AND DIES** coverage, and this limit:

- A. is included within the General Aggregate Limit as described in **LIMITS OF INSURANCE**; and
- B. applies excess over any valid and collectible property insurance available to the **Insured**, including any deductible applicable to such insurance; the **Other Insurance** condition is changed accordingly.

20. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

21. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

- 1. the **Named Insured's** ongoing operations; or
- 2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

- 1. is in effect or becomes effective during the term of this **Coverage Part**; and
- 2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the **claim**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.



Workers Compensation And Employers Liability Insurance
Policy Endorsement

BLANKET WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS

This endorsement changes the policy to which it is attached.

It is agreed that **Part One - Workers' Compensation Insurance G. Recovery From Others** and **Part Two Employers' Liability Insurance H. Recovery From Others** are amended by adding the following:

We will not enforce our right to recover against persons or organizations. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

PREMIUM CHARGE - Refer to the Schedule of Operations

The charge will be an amount to which you and we agree that is a percentage of the total standard premium for California exposure. The amount is 2%.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective Date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.

Form No: G-19160-B (11-1997)

Endorsement Effective Date:

Endorsement No: 7; Page: 1 of 1

Underwriting Company: American Casualty Company of Reading, Pennsylvania, 151 N Franklin St,
Chicago, IL 60606

Endorsement Expiration Date:

Policy No: WC 6 43664070

Policy Effective Date:

10/20/2021 Policy Page: 37 of
53



granicus.com

September 20, 2022

ATTN: City of Cupertino, California
10300 Torre Avenue
Cupertino, CA 95014-3255
US

SOLE SUPPLIER CERTIFICATION

This is to certify that the computer software program(s) identified below (the "Software"), are the sole and exclusive property of **Granicus, LLC. and/or its affiliates and subsidiaries, ("Supplier")**. Supplier is the owner, developer, and manufacturer of the source code to the Software and has exclusive rights to distribute the source code for the Software or authorize affiliates and resellers to distribute the Software on Supplier's behalf. No other vendor has end user distribution rights to the source code.

Supplier is the only vendor that has the ability and expertise to support the source code for the Software for the purposes of maintenance services, including Software updates, enhancements, bug fixes, and standard technical support issues. Any third-party technology or data included in or with the Software is the property of such third party, is provided under separate agreement between the third party and Supplier, and is not subject to this certification.

Signed on behalf of Supplier as of the date set forth above:

DocuSigned by:
Signature: Brendan Stierman
8E342585D3714DF...
Name: Brendan Stierman
Title: Contracts Manager

Software:

OpenForms Enterprise License (30 users, 100 forms)
OpenCities Saas License
OpenCities Cloud Security License

Washington D.C.
1152 15th Street NW, Suite 800
Washington, DC 20005
202.407.7500

Denver
1999 Broadway, Suite 3600
Denver, CO 80202
800.314.0147

Saint Paul
408 St. Peter St, Suite 600
Saint Paul, MN 55102
651.726.7309

United Kingdom
15 Worship Street
EC2A 2DT, London
+44 (0) 1293 804622



408 Saint Peter Street, Suite 600
Saint Paul, MN 55102
United States

Amendment
Prepared for
Cupertino, CA

First Amendment to the Granicus Service Agreement between Granicus, LLC and Cupertino, CA

This First Amendment to the Granicus, LLC Service Agreement is effective on the date this document is signed and entered into by and between Granicus, LLC, a Minnesota Limited Liability Company d/b/a Granicus (hereinafter referred to as "Granicus"), and Cupertino, CA (hereinafter referred to as "Client"), with reference to the following:

WHEREAS, the Client and Granicus entered into an Agreement effective 06/29/2021 (the "Agreement"); and

WHEREAS, in addition to Client's existing solution, Client wishes to add certain products and services as detailed in Q-141769, which is attached as Exhibit A and incorporated herein by reference; and

NOW, THEREFORE, in consideration of the premises, the parties intend that the Agreement be amended as follows:

1. Compensation shall be amended to include the fees detailed in Exhibit A. Exhibit A is exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is the responsibility of the Client to provide applicable exemption certificate(s).
2. Except as amended by this First Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.
3. In the event of any inconsistency between the provisions of this First Amendment and the documents comprising the Agreement, the provisions of this First Amendment shall prevail.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed by their duly authorized representatives.

Agreement and Acceptance

By signing this document, the undersigned certifies they have authority to enter the agreement. The undersigned also understands the services and terms.

Cupertino, CA

Signature: *Bill Mitchell*

Name: Bill Mitchell

Title: CTO

Date: Aug 9, 2021

Granicus

Signature: *Kelly Oliver*

Name: Kelly Oliver

Title: Vice President Contracts

Date: Aug 9, 2021

Christopher D. Jensen

Christopher D. Jensen
City Attorney

Kirsten Squarcia

Aug 9, 2021

Kirsten Squarcia
City Clerk

Date:



408 Saint Peter Street, Suite 600
Saint Paul, MN 55102
United States

THIS IS NOT AN INVOICE

Exhibit A
Prepared for
Cupertino, CA

Exhibit A

ORDER DETAILS

Prepared By: Chloe Scheer
Phone:
Email: chloe.scheer@granicus.com
Order #: Q-141769
Prepared On: 08/03/2021
Expires On: 07/17/2021

ORDER TERMS

Currency: USD
Payment Terms: Net 30 (Payments for subscriptions are due at the beginning of the period of performance.)



PRICING SUMMARY

The pricing and terms within this Proposal are specific to the products and volumes contained within this Proposal.

One-Time Fees			
Solution	Billing Frequency	Quantity/Unit	One-Time Fee
VoteCast Tablet (ME) - Setup and Configuration	Up Front	4 Hours	\$0.00
VoteCast - Online Training	Upon Delivery	6 Hours	\$1,350.00
VoteCast Display CPU (Dell) (ME)	Upon Delivery	1 Each	\$980.00
US Shipping Charge B - Medium Item	Upon Delivery	1 Each	\$60.00
iLegislate Voting - Onsite Training	Upon Delivery	1 Days	\$0.00
iLegislate Voting - Setup and Configuration	Up Front	1 Hours	\$0.00
VoteCast Display - Setup and Configuration	Up Front	4 Hours	\$900.00
US Shipping Charge C - Large Item	Upon Delivery	1 Each	\$125.00
eComment - Online Training	Upon Delivery	1 Hours	\$0.00
eComment - Setup and Configuration	Up Front	1 Each	\$0.00
SUBTOTAL:			\$3,415.00

New Subscription Fees			
Solution	Billing Frequency	Quantity/Unit	Annual Fee
VoteCast Standard Package (Tablet) (ME)	Annual	1 Each	\$3,600.00
eComment	Annual	1 Each	\$2,100.00
SUBTOTAL:			\$5,700.00

- Please note, annual fees for new subscriptions will be prorated to align to Client's then-current billing term. Exceptions include Recurring Captioning Services, SMS, and Targeted Messages.



PRODUCT DESCRIPTIONS

Solution	Description
VoteCast Standard Package (Tablet) (ME)	<p>VoteCast is a hybrid Software-as-a-Service (SaaS) and Hardware-as-a-Service (HaaS) solution that enables government organizations to streamline the meeting process for both the clerk's office as well as elected officials. By leveraging this solution, the client will be able to automate meeting data capture and display – improving accuracy and keeping all attendees informed of meeting proceedings. Available on a variety of hardware as well as the iLegislate platform, elected officials can use their touchscreens or tablets to motion, second, vote, and request to speak. This data automatically populates to the clerk software (LiveManager) ensuring accuracy and reducing workload. As action items occur during the meeting, TVs or projectors hooked up to VoteCast Display will automatically show the current agenda item, motion on the floor, vote result, and speaker timer as well as speaker name. VoteCast includes:</p> <ul style="list-style-type: none"> • Unlimited user accounts • Unlimited meeting bodies • Access to one Granicus platform site • Access to the VoteCast software application for elected officials • Access to the VoteCast Display software application to output meeting proceedings to TVs or projectors in the meeting room
VoteCast Tablet (ME) - Setup and Configuration	<p>Implementation includes:</p> <ul style="list-style-type: none"> • Access to an implementation consultant until project acceptance • VoteCast installation on one of the following hardware setups: Dell CPU and ELO Touchscreens, Microsoft Surface tablets, or iLegislate-enabled devices • Access to video-based trainings around standard account functions and capabilities <p><i>The implementation process takes four to six weeks, on average, depending on the availability of stakeholders.</i></p>
VoteCast - Online Training	Virtual training session with a Granicus professional services trainer
VoteCast Display CPU (Dell) (ME)	Dell CPU hardware for VoteCast Display that outputs meeting information like current agenda item or vote results to displays in the meeting room such as TVs or projectors.
US Shipping Charge B - Medium Item	US shipping of a medium item



Solution	Description
iLegislate Voting - Onsite Training	Onsite Training for iLegislate Voting
iLegislate Voting - Setup and Configuration	Setup and configuration of iLegislate Voting
VoteCast Display - Setup and Configuration	<p>Implementation includes:</p> <ul style="list-style-type: none"> • Access to an implementation consultant until project acceptance • Design service for VoteCast Display template updates • Access to video-based trainings around standard account functions and capabilities <p><i>The implementation process takes four to six weeks, on average, depending on the availability of stakeholders.</i></p>
US Shipping Charge C - Large Item	US shipping of a large item
eComment	eComment reduces staff time by providing the ability to effortlessly collect and manage citizen input on agenda items. Citizens are allowed to either/or submit comments in regards to items or sign up to speak before a scheduled meeting.
eComment - Online Training	Virtual training session with a Granicus professional services trainer.

First Amendment to Granicus Master Agreement

Final Audit Report

2021-08-09

Created:	2021-08-05
By:	Marilyn Monreal (Marilynm@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAIIH2WgFxY9I47i7EJJelXT28OBKvpuSRv

"First Amendment to Granicus Master Agreement" History

-  Document created by Marilyn Monreal (Marilynm@cupertino.org)
2021-08-05 - 10:24:39 PM GMT - IP address: 64.165.34.3

-  Document emailed to Araceli Alejandre (aracelia@cupertino.org) for approval
2021-08-05 - 10:29:08 PM GMT

-  Document approved by Araceli Alejandre (aracelia@cupertino.org)
Approval Date: 2021-08-05 - 10:39:43 PM GMT - Time Source: server- IP address: 64.165.34.3

-  Document emailed to Kelly Oliver (kelly.oliver@granicus.com) for signature
2021-08-05 - 10:39:45 PM GMT

-  Document e-signed by Kelly Oliver (kelly.oliver@granicus.com)
E-signature obtained using URL retrieved through the Adobe Sign API
Signature Date: 2021-08-09 - 9:51:30 PM GMT - Time Source: server- IP address: 216.193.158.137

-  Document emailed to Christopher D. Jensen (christopherj@cupertino.org) for signature
2021-08-09 - 9:51:31 PM GMT

-  Email viewed by Christopher D. Jensen (christopherj@cupertino.org)
2021-08-09 - 10:01:53 PM GMT - IP address: 104.47.73.254

-  Document e-signed by Christopher D. Jensen (christopherj@cupertino.org)
Signature Date: 2021-08-09 - 10:02:16 PM GMT - Time Source: server- IP address: 136.24.42.212

-  Document emailed to Bill Mitchell (billm@cupertino.org) for signature
2021-08-09 - 10:02:18 PM GMT

-  Email viewed by Bill Mitchell (billm@cupertino.org)
2021-08-09 - 10:07:41 PM GMT - IP address: 104.47.73.254



 Document e-signed by Bill Mitchell (billm@cupertino.org)
Signature Date: 2021-08-09 - 10:07:58 PM GMT - Time Source: server- IP address: 73.63.186.99

 Document emailed to Kirsten Squarcia (kirstens@cupertino.org) for signature
2021-08-09 - 10:08:00 PM GMT

 Email viewed by Kirsten Squarcia (kirstens@cupertino.org)
2021-08-09 - 11:28:36 PM GMT- IP address: 174.194.135.223

 Document e-signed by Kirsten Squarcia (kirstens@cupertino.org)
Signature Date: 2021-08-09 - 11:28:49 PM GMT - Time Source: server- IP address: 174.194.135.223

 Agreement completed.
2021-08-09 - 11:28:49 PM GMT

Master Subscription Agreement

This Master Subscription Agreement (“**Agreement**”) is made and entered into as of the latter date of the signatures below (the “Effective Date”) by and between Cupertino, CA (“**Client**”) and Granicus, LLC, a Minnesota Limited Liability Company d/b/a Granicus (“**Granicus**”). Client and Granicus may each be referred to herein as “Party” or collectively as “Parties”.

By accessing the Granicus Products and Services, Client accepts this Agreement. Due to the rapidly changing nature of digital communications, this Agreement may be updated from time to time at Granicus’ sole discretion. Notification to Client will be via email or posting to the Granicus website.

- 1. Definitions.** In addition to terms defined elsewhere in this Agreement, the following terms shall have the meaning specified:

“**Agreement Term**” means the total time covered by the Initial Term and all Extension Terms for each Order or SOW under this Agreement, further specified in Section 7.1.

“**Extension Term**” means any term that increases the length of the Initial Term of this Agreement or an Order Term of an Order or SOW.

“**Granicus Products and Services**” means the products and services made available to Client pursuant to this Agreement, which may include Granicus products and services accessible for use by Client on a subscription basis (“Software-as-a-Service” or “SaaS”), Granicus professional services, content from any professional services or other required equipment components or other required hardware, as specified in each Order or SOW.

“**Initial Term**” shall have the meaning specified in Exhibit A or Order or SOW between Granicus and Client for the first duration of performance that Client has access to Granicus Products and Services.

“**Order**” means a written order, proposal, or purchase document in which Granicus agrees to provide and Client agrees to purchase specific Granicus Products and Services.

“**Order Term**” means the then-current duration of performance identified on each Order or SOW, for which Granicus has committed to provide, and Client has committed to pay for, Granicus Products and Services.

“**Statement of Work**” or “**SOW**” means a written order, proposal, or purchase document that is signed by both Parties and describes the Granicus Products and Services to be provided and/or performed by Granicus. Each Order or SOW shall describe the Parties’ performance obligations and any assumptions or contingencies associated with the implementations of the Granicus Products and Services, as specified in each Order or SOW placed hereunder.

“**Support**” means the ongoing support and maintenance services performed by Granicus related to the Granicus Products and Services as specified in each Order or SOW placed between the Parties.

2. Ordering and Scope

2.1. Ordering Granicus Products and Services. The Parties may execute one or more Order or SOW related to the sale and purchase of Granicus Products and Services. Each Order or SOW will generally include an itemized list of the Granicus Products and Services as well as the Order Term for such Granicus Products and Services. Each Order or SOW must, generally, be signed by the Parties; although, when a validly-issued purchase order by Client accompanies the Order or SOW, then the Order or SOW need not be executed by the Parties. Each Order or SOW shall be governed by this Agreement regardless of any pre-printed legal terms on each Order or SOW, and by this reference is incorporated herein.

- 2.2. Support.** Basic support related to standard Granicus Products and Services is included within the fees paid during the Order Term. Granicus may update its Support obligations under this Agreement, so long as the functionality purchased by Client is not materially diminished.
- 2.3. Future Functionality.** Client acknowledges that any purchase hereunder is not contingent on the delivery of any future functionality or features.
- 2.4. Cooperative Purchasing.** To the extent permitted by law and approved by Client, the terms of this Agreement and set forth in one or more Order or SOW may be extended for use by other municipalities, school districts and governmental agencies upon execution of an addendum or other duly signed writing setting forth all of the terms and conditions for such use. The applicable fees for additional municipalities, school districts or governmental agencies will be provided by Granicus to Client and the applicable additional party upon written request.

3. Use of Granicus Products and Services and Proprietary Rights

- 3.1. Granicus Products and Services.** The Granicus Products and Services are purchased by Client as subscriptions during an Order Term specified in each Order or SOW. Additional Granicus Products and Services may be added during an Order Term as described in Section 2.1.
- 3.2. Permitted Use.** Subject to the terms and conditions of this Agreement, Granicus hereby grants during each Order Term, and Client hereby accepts, solely for its internal use, a worldwide, revocable, non-exclusive, non-transferrable right to use the Granicus Products and Services to the extent allowed in the relevant Order or SOW (collectively the “Permitted Use”).
 - 3.2.1. Data Sources.** Data uploaded into Granicus Products and Services must be brought in from Client sources (interactions with end users and opt-in contact lists). Client cannot upload purchased contact information into Granicus Products and Services without Granicus’ written permission and professional services support for list cleansing. Granicus certifies that it will not sell, retain, use, or disclose any personal information provided by Client for any purpose other than the specific purpose of performing the Services outlined within this Agreement.
 - 3.2.2. Passwords.** Passwords are not transferable to any third party. Client is responsible for keeping all passwords secure and all use of the Granicus Products and Services accessed through Client’s passwords.
 - 3.2.3. Content.** Client can only use Granicus Products and Services to share content that is created by and owned by Client and/or content for related organizations provided that it is in support of other organizations but not as a primary communication vehicle for other organizations that do not have a Granicus subscription. Any content deemed inappropriate for a public audience or in support of programs or topics that are unrelated to Client, can be removed or limited by Granicus.
 - 3.2.3.1. Disclaimers.** Any text, data, graphics, or any other material displayed or published on Client’s website must be free from violation of or infringement of copyright, trademark, service mark, patent, trade secret, statutory, common law or proprietary or intellectual property rights of others. Granicus is not responsible for content migrated by Client or any third party.
 - 3.2.4. Advertising.** Granicus Products and Services shall not be used to promote products or services available for sale through Client or any third party unless approved in writing, in advance, by Granicus. Granicus reserves the right to request and review the details of any agreement between Client and a third party that compensates Client for the right to have information included in Content distributed or made available through Granicus Products and Services prior to approving the presence of Advertising within Granicus Products and Services.

3.2.5. Granicus Subscriber Information for Communications Cloud Suite only

3.2.5.1. Data Provided by Client. Data provided by Client and contact information gathered through Client's own web properties or activities will remain the property of Client ("Direct Subscriber"), including any and all personally identifiable information (PII). Granicus will not release the data without the express written permission of Client, unless required by law.

3.2.5.2. Granicus shall not disclose the client's data except to any third parties as necessary to operate the Granicus Products and Services (provided that the client hereby grants to Granicus a perpetual, noncancelable, worldwide, non-exclusive license to utilize any data, on an anonymous or aggregate basis only, that arises from the use of the Granicus Products and Services by the client, whether disclosed on, subsequent to, or prior to the Effective Date, to improve the functionality of the Granicus Products and Services and any other legitimate business purpose including the right to sublicense such data to third parties, subject to all legal restrictions regarding the use and disclosure of such information).

3.2.5.3. Data Obtained through the Granicus Advanced Network

3.2.5.3.1. Granicus offers a SaaS product, known as the Communications Cloud, that offers Direct Subscribers recommendations to subscribe to other Granicus Client's digital communication (the "Advanced Network"). When a Direct Subscriber signs up through one of the recommendations of the Advanced Network, that subscriber is a "Network Subscriber" to the agency it subscribed to through the Advanced Network.

3.2.5.3.2. Access to the Advanced Network is a benefit of the GovDelivery Communications Cloud subscription with Granicus. Network Subscribers are available for use only on the GovDelivery Communications Cloud while Client is under an active GovDelivery Communications Cloud subscription. Network Subscribers will not transfer to Client upon termination of any Granicus Order, SOW or Exhibit. Client shall not use or transfer any of the Network Subscribers after termination of its Order, SOW or Exhibit placed under this Agreement. All information related to Network Subscribers must be destroyed by Client within 15 calendar days of the Order, SOW or Exhibit placed under this Agreement terminating.

3.2.5.3.3. Opt-In. During the last 10 calendar days of Client's Order Term for the terminating Order, SOW or Exhibit placed under this Agreement, Client may send an opt-in email to Network Subscribers that shall include an explanation of Client's relationship with Granicus terminating and that the Network Subscribers may visit Client's website to subscribe to further updates from Client in the future. Any Network Subscriber that does not opt-in will not be transferred with the subscriber list provided to Client upon termination.

3.3. Restrictions. Client shall not:

3.3.1. Misuse any Granicus resources or cause any disruption, including but not limited to, the display of pornography or linking to pornographic material, advertisements, solicitations, or mass mailings to individuals who have not agreed to be contacted;

- 3.3.2.** Use any process, program, or tool for gaining unauthorized access to the systems, networks, or accounts of other parties, including but not limited to, other Granicus Clients;
 - 3.3.3.** Client must not use the Granicus Products and Services in a manner in which system or network resources are unreasonably denied to other Granicus clients;
 - 3.3.4.** Client must not use the Services as a door or signpost to another server.
 - 3.3.5.** Access or use any portion of Granicus Products and Services, except as expressly allowed by this Agreement or each Order or SOW placed hereunder;
 - 3.3.6.** Disassemble, decompile, or otherwise reverse engineer all or any portion of the Granicus Products and Services;
 - 3.3.7.** Use the Granicus Products and Services for any unlawful purposes;
 - 3.3.8.** Export or allow access to the Granicus Products and Services in violation of U.S. laws or regulations;
 - 3.3.9.** Except as expressly permitted in this Agreement, subcontract, disclose, rent, or lease the Granicus Products and Services, or any portion thereof, for third party use; or
 - 3.3.10.** Modify, adapt, or use the Granicus Products and Services to develop any software application intended for resale which uses the Granicus Products and Services in whole or in part.
- 3.4. Client Feedback.** Client assigns to Granicus any suggestion, enhancement, request, recommendation, correction or other feedback provided by Client relating to the use of the Granicus Products and Services. Granicus may use such submissions as it deems appropriate in its sole discretion.
- 3.5. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Granicus and/or its licensors reserve all right, title and interest in the Granicus Products and Services, the documentation and resulting product including all related intellectual property rights. Further, no implied licenses are granted to Client. The Granicus name, the Granicus logo, and the product names associated with the services are trademarks of Granicus or its suppliers, and no right or license is granted to use them.

4. Payment

- 4.1. Fees.** Client agrees to pay all fees, costs and other amounts as specified in each Order or SOW. Annual fees are due upfront according to the billing frequency specified in each Order or SOW. Granicus reserves the right to suspend any Granicus Products and Services should there be a lapse in payment. A lapse in the term of each Order or SOW will require the payment of a setup fee to reinstate the subscription. All fees are exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is Client's responsibility to provide applicable exemption certificate(s).
- 4.2. Disputed Invoiced Amounts.** Client shall provide Granicus with detailed written notice of any amount(s) Client reasonably disputes within thirty (30) days of the date of invoice for said amount(s) at issue. Granicus will not exercise its rights under 4.1 above if Client has, in good faith, disputed an invoice and is diligently trying to resolve the dispute. Client's failure to provide Granicus with notice of any disputed invoiced amount(s) shall be deemed to be Client's acceptance of the content of such invoice.
- 4.3. Price Increases.** Any price increases not negotiated in advance shall be provided by Granicus to Client at least thirty (30) days prior to the end of the Order Term. Upon each yearly anniversary during the term of this Agreement (including the Initial Term, all Extended Terms, and all Order Terms), the Granicus Product and Services fees shall increase from the previous term's fees by up to ten (10) percent per year.

5. Representations, Warranties and Disclaimers

- 5.1. Representations.** Each Party represents that it has validly entered into this Agreement and has the legal power to do so.
- 5.2. Warranties.** Granicus warrants that it takes all precautions that are standard in the industry to increase the likelihood of a successful performance for the Granicus Products and Services; however, the Granicus Products and Services are provided “AS IS” and as available.
- 5.3. Disclaimers.** EXCEPT AS PROVIDED IN SECTION 5.2 ABOVE, EACH PARTY HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY NATURE WHATSOEVER WHETHER ORAL AND WRITTEN, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. GRANICUS DOES NOT WARRANT THAT GRANICUS PRODUCTS AND SERVICES WILL MEET CLIENT’S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE.

6. Confidential Information

- 6.1. Confidential Information.** It is expected that one Party (Disclosing Party) may disclose to the other Party (Receiving Party) certain information which may be considered confidential and/or trade secret information (“Confidential Information”). Confidential Information shall include: (i) Granicus’ Products and Services, (ii) non-public information if it is clearly and conspicuously marked as “confidential” or with a similar designation at the time of disclosure; (iii) non-public information of the Disclosing Party if it is identified as confidential and/or proprietary before, during, or promptly after presentation or communication and (iv) any information that should be reasonably understood to be confidential or proprietary to the Receiving Party, given the nature of the information and the context in which disclosed.

Subject to applicable law, each Receiving Party agrees to receive and hold any Confidential Information in strict confidence. Without limiting the scope of the foregoing, each Receiving Party also agrees: (a) to protect and safeguard the Confidential Information against unauthorized use, publication or disclosure; (b) not to reveal, report, publish, disclose, transfer, copy or otherwise use any Confidential Information except as specifically authorized by the Disclosing Party; (c) not to use any Confidential Information for any purpose other than as stated above; (d) to restrict access to Confidential Information to those of its advisors, officers, directors, employees, agents, consultants, contractors and lobbyists who have a need to know, who have been advised of the confidential nature thereof, and who are under express written obligations of confidentiality or under obligations of confidentiality imposed by law or rule; and (e) to exercise at least the same standard of care and security to protect the confidentiality of the Confidential Information received by it as it protects its own confidential information.

If a Receiving Party is requested or required in a judicial, administrative, or governmental proceeding to disclose any Confidential Information, it will notify the Disclosing Party as promptly as practicable so that the Disclosing Party may seek an appropriate protective order or waiver for that instance.

- 6.2. Exceptions.** Confidential Information shall not include information which: (i) is or becomes public knowledge through no fault of the Receiving Party; (ii) was in the Receiving Party’s possession before receipt from the Disclosing Party; (iii) is rightfully received by the Receiving party from a third party without any duty of confidentiality; (iv) is disclosed by the Disclosing Party without any duty of confidentiality on the third party; (v) is independently developed by the Receiving Party without use or reference to the Disclosing Party’s Confidential Information; or (vi) is disclosed with the prior written approval of the Disclosing Party.

6.3. Storage and Sending. In the event that Granicus Products and Services will be used to store and/or send Confidential Information, Granicus must be notified in writing, in advance of the storage or sending. Should Client provide such notice, Client must ensure that Confidential Information or sensitive information is stored behind a secure interface and that Granicus Products and Services be used only to notify people of updates to the information that can be accessed after authentication against a secure interface managed by Client.

6.4. Return of Confidential Information. Each Receiving Party shall return or destroy the Confidential Information immediately upon written request by the Disclosing Party; provided, however, that each Receiving Party may retain one copy of the Confidential Information in order to comply with applicable laws and the terms of this Agreement. Customer understands and agrees that it may not always be possible to completely remove or delete all personal data from Granicus' databases without some residual data because of backups and for other reasons.

7. Term and Termination

7.1. Agreement Term. The Agreement Term shall begin on the date of the initial Order or SOW and continue through the latest date of the Order Term of each Order or SOW under this Agreement, unless otherwise terminated as provided in this Section 7. Each Order or SOW will specify an Order Term for the Granicus Products and Services provided under the respective Order or SOW. Client's right to access or use the Granicus Products and Services will cease at the end of the Order Term identified within each Order or SOW, unless either extended or earlier terminated as provided in this Section 7. Unless a Party has given written notice to the other Party at least ninety (90) days prior to the end of the then-current Order Term, the Granicus Products and Services will automatically renew at the end of each term for an Extension Term of one (1) year.

7.2. Effect of Termination. If the Parties agree to terminate this Agreement and an Order or SOW is still in effect at the time of termination, then the terms and conditions contained in this Agreement shall continue to govern the outstanding Order or SOW until termination or expiration thereof. If the Agreement is terminated for breach, then unless otherwise agreed to in writing, all outstanding Orders or SOWs shall immediately terminate as of the Agreement termination date. Unless otherwise stated in this Agreement, in no event shall Client be entitled to a refund of any prepaid fees upon termination.

7.3. Termination for Cause. The non-breaching Party may terminate this Agreement upon written notice if the other Party is in material breach of this Agreement and fails to cure such breach within thirty (30) days after the non-breaching Party provides written notice of the breach. A Party may also terminate this Agreement immediately upon notice if the other Party: (a) is liquidated, dissolved, or adjudged to be in a state of bankruptcy or receivership; (b) is insolvent, unable to pay its debts as they become due, makes an assignment for the benefit of creditors or takes advantage of any law for the benefit of debtors; or (c) ceases to conduct business for any reason on an ongoing basis leaving no successor in interest. Granicus may, without liability, immediately suspend or terminate any or all Order or SOW issued hereunder if any Fees owed under this Agreement are past due pursuant to Section 4.1.

7.4. Rights and Obligations After Termination. In the event of expiration or termination of this Agreement, Client shall immediately pay to Granicus all Fees due to Granicus through the date of expiration or termination.

7.5. Survival. All rights granted hereunder shall terminate upon the latter of the termination or expiration date of this Agreement, or each Order or SOW. The provisions of this Agreement with respect to warranties, liability, choice of law and jurisdiction, and confidentiality shall survive termination of this Agreement and continue in full force and effect.

8. Limitation of Liability

8.1. EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES. UNDER NO CIRCUMSTANCES SHALL GRANICUS BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, GRANICUS SHALL NOT BE LIABLE FOR: (A) ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF CLIENT DATA; (B) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (C) LOSS OF BUSINESS; (D) DAMAGES ARISING OUT OF ACCESS TO OR INABILITY TO ACCESS THE SERVICES, SOFTWARE, CONTENT, OR RELATED TECHNICAL SUPPORT; OR (E) FOR ANY MATTER BEYOND GRANICUS' REASONABLE CONTROL, EVEN IF GRANICUS HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING LOSSES OR DAMAGES.

8.2. LIMITATION OF LIABILITY. EXCEPT FOR CLIENT'S BREACH OF SECTION 3.3, IN NO INSTANCE SHALL EITHER PARTY'S LIABILITY TO THE OTHER PARTY FOR DIRECT DAMAGES UNDER THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR OTHERWISE) EXCEED THE FEES PAID BY CLIENT FOR THE GRANICUS PRODUCTS AND SERVICES DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE THE DAMAGED PARTY NOTIFIES THE OTHER PARTY IN WRITING OF THE CLAIM FOR DIRECT DAMAGES. GRANICUS SHALL NOT BE RESPONSIBLE FOR ANY LOST PROFITS OR OTHER DAMAGES, INCLUDING DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR ANY OTHER DAMAGES, HOWEVER CAUSED. NEITHER PARTY MAY INSTITUTE AN ACTION IN ANY FORM ARISING OUT OF NOR IN CONNECTION WITH THIS AGREEMENT MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS ARISEN. THE ABOVE LIMITATIONS WILL NOT LIMIT CLIENT'S PAYMENT OBLIGATIONS UNDER SECTION 4 ABOVE.

9. Indemnification

9.1. Indemnification by Granicus. Granicus will defend Client from and against all losses, liabilities, damages and expenses arising from any claim or suit by a third party unaffiliated with either Party to this Agreement ("Claims") and shall pay all losses, damages, liabilities, settlements, judgments, awards, interest, civil penalties, and reasonable expenses (collectively, "Losses," and including reasonable attorneys' fees and court costs), to the extent arising out of any Claims by any third party that Granicus Products and Services infringe a valid U.S. copyright or U.S. patent issued as of the date of the applicable Order or SOW. In the event of such a Claim, if Granicus determines that an affected Order or SOW is likely, or if the solution is determined in a final, non-appealable judgment by a court of competent jurisdiction, to infringe a valid U.S. copyright or U.S. patent issued as of the date of the applicable Order or SOW, Granicus will, in its discretion: (a) replace the affected Granicus Products and Services; (b) modify the affected Granicus Products and Services to render it non-infringing; or (c) terminate this Agreement or the applicable Order or SOW with respect to the affected solution and refund to Client any prepaid fees for the then-remaining or unexpired portion of the Order or SOW term. Notwithstanding the foregoing, Granicus shall have no obligation to indemnify, defend, or hold Client harmless from any Claim to the extent it is based upon: (i) a modification to any solution by Client (or by anyone under Client's direction or control or using logins or passwords assigned to Client); (ii) a modification made by Granicus pursuant to Client's required instructions or specifications or in reliance on materials or information provided by Client; or (iii) Client's use (or use by anyone under Client's direction or control or using logins or passwords assigned to Client) of any Granicus Products and Services other than in accordance with this Agreement. This section 9.1 sets forth Client's sole and exclusive remedy, and Granicus' entire liability, for any Claim that the Granicus

Products and Services or any other materials provided by Granicus violate or infringe upon the rights of any third party.

- 9.2. Indemnification by Client.** Client shall defend, indemnify, and hold Granicus harmless from and against any Claims, and shall pay all Losses, to the extent arising out of or related to (a) Client's (or that of anyone authorized by Client or using logins or passwords assigned to Client) use or modification of any Granicus Products and Services; (b) any Client content; or (c) Client's violation of applicable law.
- 9.3. Defense.** With regard to any Claim subject to indemnification pursuant to this Section 9: (a) the Party seeking indemnification shall promptly notify the indemnifying Party upon becoming aware of the Claim; (b) the indemnifying Party shall promptly assume sole defense and control of such Claim upon becoming aware thereof; and (c) the indemnified Party shall reasonably cooperate with the indemnifying Party regarding such Claim. Nevertheless, the indemnified Party may reasonably participate in such defense, at its expense, with counsel of its choice, but shall not settle any such Claim without the indemnifying Party's prior written consent. The indemnifying Party shall not settle or compromise any Claim in any manner that imposes any obligations upon the indemnified Party without the prior written consent of the indemnified Party.

10. General

- 10.1. Relationship of the Parties.** Granicus and Client acknowledge that they operate independent of each other. Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership, agency, or employee/employer relationship between the Parties for any purpose, including, but not limited to, taxes or employee benefits. Each Party will be solely responsible for the payment of all taxes and insurance for its employees and business operations.
- 10.2. Headings.** The various section headings of this Agreement are inserted only for convenience of reference and are not intended, nor shall they be construed to modify, define, limit, or expand the intent of the Parties.
- 10.3. Amendments.** This Agreement may not be amended or modified except by a written instrument signed by authorized representatives of both Parties.
- 10.4. Severability.** To the extent permitted by applicable law, the Parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 10.5. Assignment.** Neither Party may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder, either voluntarily or by operation of law, without the prior written consent of the other Party (such consent not to be unreasonably withheld); provided, however, that either Party may assign this Agreement without the other Party's consent in the event of any successor or assign that has acquired all, or substantially all, of the assigning Party's business by means of merger, stock purchase, asset purchase, or otherwise. Any assignment or attempted assignment in violation of this Agreement shall be null and void.
- 10.6. No Third-Party Beneficiaries.** Subject to Section 10.5 this Agreement is binding upon, and insures solely to the benefit of the Parties hereto and their respective permitted successors and assigns; there are no third-party beneficiaries to this Agreement.
- 10.7. Notice.** Other than routine administrative communications, which may be exchanged by the Parties via email or other means, all notices, consents, and approvals hereunder shall be in writing and shall be deemed to have been given upon: (a) personal delivery; (b) the day of receipt, as shown in the applicable carrier's systems, if sent via FedEx, UPS, DHL, or other

nationally recognized express carrier; (c) the third business day after sending by U.S. Postal Service, First Class, postage prepaid, return receipt requested; or (d) sending by email, with confirmed receipt from the receiving party. Either Party may provide the other with notice of a change in mailing or email address in which case the mailing or email address, as applicable, for that Party will be deemed to have been amended. The mailing and email addresses of the Parties are as follows:

Granicus		Cupertino, CA	
ATTN:	Contracts	ATTN:	Nidhi Mathur
Address:	408 St. Peter Street Suite 600 Saint Paul, MN 55102	Address:	10300 Torre Avenue Cupertino, CA 95014
Phone:	(651) 757-4154	Phone:	408-777-3200
Email:	contracts@granicus.com	Email:	Nidhim@cupertino.org

- 10.8. Force Majeure.** Any delay in the performance by either Party hereto of its obligations hereunder shall be excused when such delay in performance is due to any cause or event of any nature whatsoever beyond the reasonable control of such Party, including, without limitation, any act of God; any fire, flood, or weather condition; any computer virus, worm, denial of service attack; any earthquake; any act of a public enemy, war, insurrection, riot, explosion or strike; provided, that written notice thereof must be given by such Party to the other Party within twenty (20) days after occurrence of such cause or event.
- 10.9. Choice of Law and Jurisdiction.** This Agreement shall be governed by and interpreted under the laws of the State of California, without reference to the State’s principles of conflicts of law. The Parties expressly consent and submit to the exclusive jurisdiction of the state and federal courts of Santa Clara County, California.
- 10.10. Entire Agreement.** This Agreement, together with all Orders or SOWs referenced herein, sets forth the entire understanding of the Parties with respect to the subject matter of this Agreement, and supersedes any and all prior oral and written understandings, quotations, communications, and agreements. Granicus and Client agree that any and all Orders or SOWs are incorporated herein by this reference. In the event of possible conflict or inconsistency between such documents, the conflict or inconsistency shall be resolved by giving precedence in the following order: (1) the terms of this Agreement; (2) Orders; (3) all other SOWs or other purchase documents; (4) Granicus response to Client’s request for RFI, RFP, RFQ; and (5) Client’s RFI, RFP, RFQ. If Client issues a purchase order, Granicus hereby rejects any additional or conflicting terms appearing on the purchase order or any other ordering materials submitted by Client. Upon request, Granicus shall reference a purchase order number on its invoices, provided, however, that Client acknowledges that it is Client’s responsibility to provide the corresponding purchase order information (including a purchase order number) to Granicus upon the creation of such a purchase order. Client agrees that a failure to provide Granicus with the corresponding purchase order shall not relieve Client of its obligations to provide payment to Granicus pursuant to Section 4.1 above.
- 10.11. Reference.** Notwithstanding any other terms to the contrary contained herein, Client grants Granicus the right to use Client’s name and logo in Client lists and marketing materials.

10.12. Injunctive Relief. Granicus is entitled to obtain injunctive relief if Client's use of Granicus Products and Services is in violation of any restrictions set forth in this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly-authorized representatives on the Effective Date as set forth above.

Granicus

By: Kelly Oliver
(Authorized Signature)

Name: Kelly Oliver
(Print or Type Name of Signatory)

Title: Vice President Contracts

Date: Jun 24, 2021
(Execution Date)

Cupertino, CA

By: Bill Mitchell
(Authorized Signature)

Name: Bill Mitchell
(Print or Type Name of Signatory)

Title: CTO

Date: Jun 29, 2021
(Execution Date)

Heather M. Minner

Heather M. Minner
City Attorney

Kirsten Squarcia Jun 29, 2021

Kirsten Squarcia Date
City Clerk

THIS IS NOT AN INVOICE

Order Form
Prepared for
Cupertino, CA

EXHIBIT A

Granicus Proposal for Cupertino, CA

ORDER DETAILS

Prepared By: John Watkins
Phone: (323) 909-5189
Email: john.watkins@granicus.com
Order #: Q-147273
Prepared On: 07/08/2021
Expires On: 07/05/2021

ORDER TERMS

Currency: USD
Payment Terms: Net 30 (Payments for subscriptions are due at the beginning of the period of performance.)
Current Subscription End Date: 07/05/2021
Initial Order Term End Date: 07/05/2026
Period of Performance: 07/06/2021 - 07/05/2022

The subscription includes the following domain(s) and subdomain(s):
cupertino.org

PRICING SUMMARY

The pricing and terms within this Proposal are specific to the products and volumes contained within this Proposal.

Renewing Subscription Fees					
Solution	Period of Performance	Billing Frequency	Quantity/ Unit	Annual Fee	Prorated Fee
CampaignDocs Subscription	7/6/2021 to 7/5/2022	Annual	1 Each	\$1,461.93	\$1,461.93
DisclosureDocs Full Review Subscription	10/15/2021 to 7/5/2022	Annual	1 Each	\$521.57	\$377.72
DisclosureDocs Ethics Subscription	10/15/2021 to 7/5/2022	Annual	1 Each	\$736.87	\$533.64
DisclosureDocs Subscription	10/15/2021 to 7/5/2022	Annual	1 Each	\$1,521.07	\$1,101.56
eDisclosure Filer Module Subscription	10/15/2021 to 7/5/2022	Annual	1 Each	\$1,521.07	\$1,101.56
Address Identification	12/31/2021 to 7/5/2022	Annual	1 Each	\$12,494.99	\$6,452.89
24/7 Hotline	12/31/2021 to 7/5/2022	Annual	1 Each	\$4,290.60	\$2,215.83
Compliance Monitoring	12/31/2021 to 7/5/2022	Annual	1 Each	\$5,356.44	\$2,766.27
Mobile Permitting & Registration	12/31/2021 to 7/5/2022	Annual	1 Each	\$5,000.00	\$2,582.19
Rental Activity Monitoring	12/31/2021 to 7/5/2022	Annual	1 Each	\$7,149.66	\$3,692.36
Upgrade to SDI 720p Streaming	1/26/2022 to 7/5/2022	Monthly	1 Each	\$1,350.62	\$599.76
Communications Cloud	1/26/2022 to 7/5/2022	Annual	1 Each	\$6,365.41	\$2,826.65
govAccess Developer Toolkit	1/26/2022 to 7/5/2022	Annual	1 Each	\$4,500.01	\$1,998.29
Open Platform Suite	1/26/2022 to 7/5/2022	Monthly	1 Each	\$4,051.83	\$1,799.27
Legistar	1/26/2022 to 7/5/2022	Quarterly	1 Each	\$9,724.41	\$4,318.26
Granicus Encoding Appliance Software (GT)	1/26/2022 to 7/5/2022	Quarterly	1 Each	\$1,350.62	\$599.76
Communications Cloud Advanced Package	1/26/2022 to 7/5/2022	Annual	1 Each	\$1,591.35	\$706.66
Government Transparency Suite	1/26/2022 to 7/5/2022	Monthly	1 Each	\$5,875.17	\$2,608.95



Meeting Efficiency Suite	1/26/2022 to 7/5/2022	Monthly	1 Each	\$5,740.10	\$2,548.97
Legistar Add-On - Laserfiche Integration	1/26/2022 to 7/5/2022	Quarterly	1 Each	\$0.00	\$0.00
Template - Sectioned View Page	1/26/2022 to 7/5/2022	Quarterly	1 Each	\$0.00	\$0.00
CampaignDocs - Hosting	7/6/2021 to 7/5/2022	Annual	1 Each	\$0.00	\$0.00
CampaignDocs Public Kiosk Subscription	7/6/2021 to 7/5/2022	Annual	1 Each	\$313.21	\$313.21
CampaignDocs Web Publishing Subscription	7/6/2021 to 7/5/2022	Annual	1 Each	\$626.54	\$626.54
eCampaign Subscription	7/6/2021 to 7/5/2022	Annual	1 Each	\$1,253.09	\$1,253.09
Tax Collection	12/31/2021 to 7/5/2022	Annual	1 Each	\$0.00	\$0.00
SUBTOTAL:				\$82,796.56	\$42,485.36

FUTURE YEAR PRICING



Solution(s)	Period of Performance			
	07/06/2022 - 07/05/2023	07/06/2023 - 07/05/2024	07/06/2024 - 07/05/2025	07/06/2025 - 07/05/2026
CampaignDocs Subscription	\$1,564.27	\$1,673.76	\$1,790.93	\$1,916.29
DisclosureDocs Full Review Subscription	\$558.08	\$597.14	\$638.94	\$683.67
DisclosureDocs Ethics Subscription	\$788.45	\$843.64	\$902.69	\$965.88
DisclosureDocs Subscription	\$1,627.54	\$1,741.47	\$1,863.38	\$1,993.81
eDisclosure Filer Module Subscription	\$1,627.54	\$1,741.47	\$1,863.38	\$1,993.81
Address Identification	\$13,369.63	\$14,305.51	\$15,306.90	\$16,378.38
24/7 Hotline	\$4,590.94	\$4,912.31	\$5,256.17	\$5,624.10
Compliance Monitoring	\$5,731.39	\$6,132.59	\$6,561.87	\$7,021.20
Mobile Permitting & Registration	\$5,350.00	\$5,724.50	\$6,125.21	\$6,553.98
Rental Activity Monitoring	\$7,650.14	\$8,185.65	\$8,758.64	\$9,371.75
Upgrade to SDI 720p Streaming	\$1,445.16	\$1,546.32	\$1,654.56	\$1,770.38
Communications Cloud	\$6,810.99	\$7,287.76	\$7,797.90	\$8,343.76
govAccess Developer Toolkit	\$4,815.01	\$5,152.06	\$5,512.70	\$5,898.59
Open Platform Suite	\$4,335.45	\$4,638.94	\$4,963.66	\$5,311.12
Legistar	\$10,405.12	\$11,133.48	\$11,912.82	\$12,746.72
Granicus Encoding Appliance Software (GT)	\$1,445.16	\$1,546.32	\$1,654.56	\$1,770.38
Communications Cloud Advanced Package	\$1,702.74	\$1,821.93	\$1,949.47	\$2,085.93
Government Transparency Suite	\$6,286.43	\$6,726.48	\$7,197.33	\$7,701.15
Meeting Efficiency Suite	\$6,141.90	\$6,571.84	\$7,031.87	\$7,524.10
Legistar Add-On - Laserfiche Integration	\$0.00	\$0.00	\$0.00	\$0.00
Template - Sectioned View Page	\$0.00	\$0.00	\$0.00	\$0.00
CampaignDocs - Hosting	\$0.00	\$0.00	\$0.00	\$0.00
CampaignDocs Public Kiosk Subscription	\$335.13	\$358.59	\$383.70	\$410.55
CampaignDocs Web Publishing Subscription	\$670.40	\$717.33	\$767.54	\$821.27



eCampaign Subscription	\$1,340.81	\$1,434.66	\$1,535.09	\$1,642.55
Tax Collection	\$0.00	\$0.00	\$0.00	\$0.00
SUBTOTAL:	\$88,592.28	\$94,793.75	\$101,429.31	\$108,529.37

PRODUCT DESCRIPTIONS

Solution	Description
CampaignDocs Subscription	CampaignDocs™ is a powerful desktop system used by the ROV staff that provides numerous features to help you manage your Campaign Filers, generate letters, emails, run reports on Filings, scan paper filing and receive Electronic Filings submitted by the filers that use eCampaign Module.
DisclosureDocs Full Review Subscription	Filer Review – allows the Filing Officer to perform the required tasks of verifying the accuracy of forms and if needed requesting necessary Amendments. 20% on time and 100 % late filings. 10 % needs to be picked at random.
DisclosureDocs Ethics Subscription	Ethics Training Tracking - Ethics and Sexual Harassment Prevention Training Tracking Modules work hand in hand with our DisclosureDocs /eDisclosure System. This Module allows tracking the Ethics Certificates and notifying Filers of their Ethics Training requirements.
DisclosureDocs Subscription	DisclosureDocs™ is your robust desktop application that provides numerous features to help you manage your Filers, Conflict of Interest Code changes, Full and Facial Reviews, generate Letters, Emails, business process Reports and manage your corresponding Public Access and Electronic Filing components.
eDisclosure Filer Module Subscription	eDisclosure™ application allows your Filers to login and file for all positions that he/she is holding as well as submit the filing to their Filing Officer(s).
Address Identification	<p>Ongoing monitoring of 60+ Short Term Rental websites including major platforms Airbnb, VRBO, HomeAway, Booking.com, FlipKey, & Expedia. Our machine learning will deduplicate all known Listings into unique Rental Units, where our identification team will provide owner contact information for further enforcement. This product includes:-</p> <ul style="list-style-type: none"> - Ongoing monitoring of all listings in your jurisdiction - Updating listing activity and details every 3-5 days - Screenshot activity of every listing - Deduplication of listings into unique Rental Units - Activity dashboard and map to monitor trends and breakdown of compliance

Solution	Description
24/7 Hotline	<p>24/7 web and phone hotline for your community to report short term rental complaints such as parking, trash, noise disturbances, and illegal short term rentals. This product include:- Mobile-enabled online web form for citizens to submit tips or complaints (text, videos, and photos)</p> <ul style="list-style-type: none"> - 24/7 call center for citizens to contact and report complaints verbally - Recordings for all call center complaints - Email notifications to your team when complaints are logged - Automatic outbound IVR calls and SMS messages to permit emergency contacts notifying them of the complaint - SMS support for emergency contacts to mark a complaint as acknowledged or resolved with the ability to send resolution notes - Hotline Dashboard for tracking complaint volumes, trends, and categories - Ability to upload Notes/Comments to each complaint
Compliance Monitoring	<p>Compliance monitoring provides up-to-date information for each identified Rental Unit and its compliance status. We configure your compliance definition specific to your jurisdiction rules and ordinances in order to provide up-to-date compliance status of each identified Rental Unit. Additionally, this product will:- Allow your team to send letters to non-compliant properties 24/7</p> <ul style="list-style-type: none"> - Configure letter templates with your branding and letterhead - Add as many letter sequences as you need for escalation - Monitor properties that become compliant after letter enforcement
Mobile Permitting & Registration	<p>Mobile-enabled online forms and back-end systems for streamlining the registration/licensing/permitting of individual short-term rental hosts. These registration forms and workflows include:- Parcel Number lookup and validation</p> <ul style="list-style-type: none"> - E-Signatures - ACH, Debit, and Credit Payments exclusively powered by Stripe.com - Registration Number & Certificate creation - Document Upload - Renewals - Email confirmation - Admin approval & denial
Rental Activity Monitoring	<p>Ongoing monitoring of Short Term Rental listings for signs of rental activity including historical revenue estimates & occupancy. Coupled with our Tax Collection product, users can also compare historical revenue estimates to actual reported revenue to identify those that may be underreporting and underpaying sales tax (i.e. TOT).</p>
Upgrade to SDI 720p Streaming	Upgrade to SDI 720p Streaming (requires Digital encoder and HD feed)

Solution	Description
Communications Cloud	<p>The Cloud is a Software-as-a-Service (SaaS) solution that enables government organizations to connect with more people. By leveraging the Cloud, the client will be able to utilize a number of different outreach mediums, including email, SMS/text messages, RSS feeds, and social media integration to connect with its target audiences. The Cloud includes:</p> <ul style="list-style-type: none"> • Unlimited email sends with industry-leading delivery and management of all bounces • Support to upload and migrate existing email lists • Access to participate in the GovDelivery Network • Ability to send mass notifications to multiple devices • 24/7 system monitoring, email and phone support during business hours, auto-response to inbound messages from end users, and emergency support • Text-to-subscribe functionality • Up to 2 Web-hosted training sessions annually • Up to 50 administrators • Up to 1 GovDelivery account(s) • Access to a complete archive of all data created by the client for 18 months (rolling) • Up to 3 hours of message template and integration development • Up to 100 subscription topics • Up to 100,000 SMS/text messages per year from a shared short code within the United States* <p>*International numbers are not supported. SMS/text messages not used in the period of performance will not carry over to the following year.</p>
govAccess Developer Toolkit	<p>The govAccess Developer Toolkit puts control back in the hands of technical staff while providing content contributors the ease of use and speed to adapt. Agencies can quickly and easily create new digital experiences for constituents across any device which can grow with the organization. The Developer Toolkit solution provides agencies with microsite management while maintaining consistent branding within with a single web platform. The Developer Toolkit includes core functionality such as:</p> <ul style="list-style-type: none"> • Microsite Builder • Design Studio • Content SDK

Solution	Description
Open Platform Suite	Open Platform is access to MediaManager, upload of archives, ability to post agendas/documents, and index of archives. These are able to be published and accessible through a searchable viewpage.
Legistar	<p>Legistar is a Software-as-a-Service (SaaS) solution that enables government organizations to automate the entire legislative process of the clerk's office. Clerks can leverage Legistar to easily manage the entire legislative process from drafting files, through assignment to various departments, to final approval. Legistar includes:</p> <ul style="list-style-type: none"> • Unlimited user accounts • Unlimited meeting bodies and meeting types • Unlimited data storage and retention • Up to one (1) Legistar database • Up to one (1) InSite web portal
Granicus Encoding Appliance Software (GT)	Granicus Encoding Appliance Software (GT) This includes the LiveManager Software solution where webcasts are started/stopped, agendas amended and indexed, votes and attendance recorded, and minutes created.
Communications Cloud Advanced Package	<p>The Advanced Cloud Module gives government communicators better insight into the needs of citizens and improves their ability to enhance online transactions, promote behavior change through public awareness, and improve citizen engagement. The Advanced Cloud Module adds streamlined marketing capabilities that incorporate greater degrees of audience segmentation, personalization, message testing, and mobile engagement. The Advanced Cloud Module includes:</p> <ul style="list-style-type: none"> • Dynamic segmentation around bulletins, engagement, and question (e.g. zip code) • Canned campaigns for re-engagement and new subscriber onboarding • Testing: Simple (A/B, 10/10/80) <p><i>A subscription for the Advanced Cloud Module is dependent on an active license for the GovDelivery Communications Cloud.</i></p>
Government Transparency Suite	Government Transparency are the live in-meeting functions. Streaming of an event, pushing of documents, and indexing of events.

Solution	Description
Meeting Efficiency Suite	<p>Meeting Efficiency is a hybrid Software-as-a-Service (SaaS) and Hardware-as-a-Service (HaaS) solution that enables government organizations to simplify the in-meeting management and post-meeting minutes creation processes of the clerk's office. By leveraging this solution, the client will be able to streamline meeting data capture and minutes production, reducing staff efforts and decreasing time to get minutes published. During a meeting, use LiveManager to record roll calls, motions, votes, notes, and speakers, all indexed with video. Use the index points to quickly edit minutes, templates to format in Microsoft Word, and publish online with the click of a button. Meeting Efficiency includes:</p> <ul style="list-style-type: none"> • Unlimited user accounts • Unlimited meeting bodies • Unlimited storage of minutes documents • Access to the LiveManager software application for recording information during meetings • Access to the Word Add-in software component for minutes formatting in MS Word if desired • Up to one (1) MS Word minutes template (additional templates can be purchased if needed)
Legistar Add-On - Laserfiche Integration	Legistar Add-On - Laserfiche Integration is for the Legistar\Laserfiche integration that allows for documents to be imported from Laserfiche to Legistar and for Legistar to export reports\attachments to Laserfiche
CampaignDocs Public Kiosk Subscription	Public access to your filings is available through your Public Kiosk in an unredacted form using our CampaignDocs Public Access™ module. The Public is able to search for filings in your office without the need of taking staff time to pull the original records. This is not only a cost savings for your staff, but eliminates the risk of the original filing disappearing or becoming misfiled when it's returned. If the Public wants a copy of a filing, they order it at the kiosk and pay for it at the counter where they will pick up their copy.
CampaignDocs Web Publishing Subscription	CampaignDocs WebPublisher™ module the public has access to redacted copies of the filings on the web. The public is able to search, view and print from their own computer without the need of using your agency's resources.
eCampaign Subscription	eCampaign™ system is a benefit to your filers. Your filers will be able to use our data screens to enter their contributions / expenditures as they occur and file their forms by the due date. The system will validate the information and summarize all the information on the forms. There are several tools that will help your Filer properly file their filings.

Solution	Description
Tax Collection	Tax Collection can be built as a separate mobile-enabled form or coupled with Mobile Permitting & Registration in one single portal allowing your users to:- Report revenue monthly, quarterly, or annually and pay sales tax due (i.e TOT) - Remind users when they are registering for a permit/license to also report any back taxes - Collect ACH, Debit, and Credit Payments exclusively powered by Stripe.com

GRANICUS ADVANCED NETWORK AND SUBSCRIBER INFORMATION

- Granicus Communications Suite Subscriber Information.**

 - Data provided by the Client and contact information gathered through the Client's own web properties or activities will remain the property of the Client ('Direct Subscriber'), including any and all personally identifiable information (PII). Granicus will not release the data without the express written permission of the Client, unless required by law.
 - Granicus shall: (i) not disclose the Client's data except to any third parties as necessary to operate the Granicus Products and Services (provided that the Client hereby grants to Granicus a perpetual, non-cancelable, worldwide, non-exclusive license to utilize any data, on an anonymous or aggregate basis only, that arises from the use of the Granicus Products by the Client, whether disclosed on, subsequent to, or prior to the Effective Date, to improve the functionality of the Granicus Products and any other legitimate business purpose, including the right to sublicense such data to third parties, subject to all legal restrictions regarding the use and disclosure of such information).
- Data obtained through the Granicus Advanced Network.**

 - Granicus offers a SaaS product, known as the Communications Cloud, that offers Direct Subscribers recommendations to subscribe to other Granicus Client's digital communication (the 'Advanced Network'). When a Direct Subscriber signs up through one of the recommendations of the Advanced Network, that subscriber is a 'Network Subscriber' to the agency it subscribed to through the Advanced Network.
 - Network Subscribers are available for use while the Client is under an active subscription with Granicus. Network Subscribers will not transfer to the Client upon termination of any Granicus Order, SOW, or Exhibit. The Client shall not use or transfer any of the Network Subscribers after termination of its Order, SOW, or Exhibit placed under this agreement. All information related to Network Subscribers must be destroyed by the Client within 15 calendar days of the Order, SOW, or Exhibit placed under this agreement terminating.
 - Opt-In. During the last 10 calendar days of the Client's subscription, the Client may send an opt-in email to Network Subscribers that shall include an explanation of the Client's relationship with Granicus terminating and that the Network Subscribers may visit the Client's website to subscribe to further updates from the Client in the future. Any Network Subscriber that does not opt-in will not be transferred with the subscriber list provided to the Client upon termination.

TERMS & CONDITIONS

- This quote is exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is the responsibility of Cupertino, CA to provide applicable exemption certificate(s).
- Granicus certifies that it will not sell, retain, use, or disclose any personal information provided by Client for any purpose other than the specific purpose of performing the services outlined within this Agreement.
- Any lapse in payment may result in suspension of service and will require the payment of a setup fee to reinstate the subscription.
- Client will be invoiced for use of any product or service measured or capped by volume or amount of usage that exceeds the permitted amount set forth in this Quote at the same cost or rate set forth herein.
- **Updates to Shared Short Codes for SMS/Text Messaging:**
Granicus will be migrating all clients with SMS/Text Messaging Solutions using a shared short code option to a unique standard toll-free number within the United States (International numbers not supported). Short Codes are recommended for Text-to-Subscribe functionalities, if enabled where available, for an additional fee. Client must have explicit opt-in for all destinations sent to and adhere to all CTIA guidelines for the duration of its use.
- Notwithstanding anything to the contrary, Granicus reserves the right to adjust pricing at any renewal in which the volume has changed from the prior term without regard to the prior term's per-unit pricing.
- Renewal pricing for Address Identification, Compliance Monitoring, Rental Activity Monitoring, 24/7 Hotline, Tax Collection, and Mobile Permitting & Registration is based on the average volume of rental listings or units for the preceding 10-12 months and is subject to volume-based pricing adjustments as described herein.

BILLING INFORMATION

Billing Contact:		Purchase Order Required?	[] - No [] - Yes
Billing Address:		PO Number: <i>If PO required</i>	
Billing Email:		Billing Phone:	

If submitting a Purchase Order, please include the following language:

The pricing, terms, and conditions of quote Q-147273 dated 07/08/2021 are incorporated into this Purchase Order by reference and shall take precedence over any terms and conditions included in this Purchase Order.

Contract No. _____

Exhibit A: Insurance Requirements and Proof of Insurance

Proof of insurance coverage described below is attached to this Exhibit, with City named as additional insured.

1. MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES

Additional Insureds:

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers ("Additional Insureds") are to be covered as additional insureds on Consultant's Commercial General Liability and Cyber Liability policies. General Liability coverage can be provided in the form of an endorsement to Consultant's insurance (at least as broad as ISO Form CG 20 10 (11/ 85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

Primary Coverage:

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Software Provider's insurance and shall not contribute to it.

Notice of Cancellation:

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.

Workers' Compensation:

As required by the State of California, with Statutory Limits and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Software Provider, its employees, agents, and subconsultants.

General Liability:

For bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.

a. It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.

b. Additional Insured coverage under Software Provider's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 01 (04/13).

Contract No. _____

c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Agreement. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.

Automobile Liability

ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than **\$1,000,000** per accident for bodily injury and property damage.

Cyber Liability:

Insurance, with limits not less than:
 \$2,000,000 each occurrence
 \$2,000,000 aggregate - all other

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Software Provider in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If the Software Provider maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Software Provider . Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

2. ABSENCE OF INSURANCE COVERAGE.

City may direct Software Provider to immediately cease all activities with respect to this Agreement if it determines that Software Provider fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to Software Provider.

3. PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.

A Certificate of Insurance, on an Accord form, and completed coverage verification shall be provided to City by each of Software Provider's insurance companies as evidence of the stipulated coverages prior to the Commencement Date of this Agreement, and annually thereafter for the term of this Agreement. All of the insurance companies providing insurance for Software Provider shall be licensed to do insurance business in the State of California and shall have, and provide evidence of, a Best Rating Service rate of A:VII or above.

Contract No. _____

4. SUBCONTRACTORS

Software Provider shall require and verify that all subconsultants maintain insurance that meet the requirements of this Contract, including naming the City as an additional insured on subconsultant's insurance policies.

5. HIGHER INSURANCE LIMITS

If Software Provider maintains broader coverage and/or higher limits than the minimums shown above, City shall be entitled to coverage for the higher insurance limits maintained by Software Provider .

6. ADEQUACY OF COVERAGE

City reserves the right to modify these insurance requirements/coverage based on the nature of the risk, prior experience, insurer or other special circumstances, with not less than ninety (90) days prior written notice.



CERTIFICATE OF LIABILITY INSURANCE

CC 10-04-2022
 121 of 218
 10/20/2021 12/18/2020
 DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Insurance Brokers, LLC CA License #OF15767 Three Embarcadero Center, Suite 600 San Francisco CA 94111 (415) 568-4000	CONTACT NAME: PHONE (A/C, No. Ext): E-MAIL ADDRESS:	FAX (A/C, No):
	INSURER(S) AFFORDING COVERAGE	
INSURED 1449952 Granicus, LLC 408 Saint Peter Street Suite 600 Saint Paul MN 55102	INSURER A: National Fire Insurance Co of Hartford NAIC # 20478	
	INSURER B: Continental Casualty Company NAIC # 20443	
	INSURER C: The Continental Insurance Company NAIC # 35289	
	INSURER D: Columbia Casualty Company NAIC # 31127	
	INSURER E:	
	INSURER F:	

COVERAGES GRAIN01 **CERTIFICATE NUMBER:** 16781970 **REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	N	6043664103	10/20/2020	10/20/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> Comp \$100 Ded <input checked="" type="checkbox"/> Coll \$1,000 Ded	N	N	6043664084	10/20/2020	10/20/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	6043664067 (AOS) 6043664070 (CA)	10/20/2020 10/20/2020	10/20/2021 10/20/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Cyber Liability	N	N	596722177 (E&O/Cyber)	12/15/2020	12/15/2021	\$5M/ \$25K RET.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers, is an Additional Insured with respect to liability arising out of the operations of the insured and to the extent provided by the policy language or endorsement issued or approved by the insurance carrier. Waiver of Subrogation applies per attached endorsement or policy language.

CERTIFICATE HOLDER 16781970 City of Cupertino 10300 Torre Avenue Cupertino CA 95014-3255	CANCELLATION See Attachments SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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To whom it may concern:

In our continuing effort to provide timely certificate delivery, Lockton Companies is transitioning to paperless delivery of Certificates of Insurance.

To ensure electronic delivery for future renewals of this certificate, we need your email address. Please contact us via one of the methods below, referencing Certificate ID **16781970**.

- Email: PacificeDelivery@lockton.com
- Phone: (213) 689-2300

If you received this certificate through an internet link where the current certificate is viewable, we have your email and no further action is needed.

In the event your mailing address has changed, will change in the future, or you no longer require this certificate, please let us know using one of the methods above.

The above inbox is for automating electronic delivery of certificates only. Please do NOT send future certificate requests to this inbox.

Thank you for your cooperation and willingness in reducing our environmental footprint.

Lockton Insurance Brokers, LLC – Pacific Series

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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1. ADDITIONAL INSUREDS

a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs **A.** through **K.** below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph **A.** through **K.** below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Grantor of Franchise

Any person or organization that has granted a franchise to a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** as grantor of a franchise to the **Named Insured**.

D. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

E. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the

termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

H. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

I. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:
 - a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,

in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.

2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

J. Vendor

Any person or organization but only with respect to such person or organization's liability for **bodily injury** or **property damage** arising out of **your products** which are distributed or sold in the regular course of such person or organization's business, provided that:

1. The coverage granted by this paragraph does not apply to:
 - a. **bodily injury** or **property damage** for which such person or organization is obligated to pay **damages** by reason of the assumption of liability in a contract or agreement unless such liability exists in the absence of the contract or agreement;
 - b. any express warranty unauthorized by the **Named Insured**;
 - c. any physical or chemical change in any product made intentionally by such person or organization;
 - d. repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - e. any failure to make any inspections, adjustments, tests or servicing that such person or organization has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - f. demonstration, installation, servicing or repair operations, except such operations performed at such person or organization's premises in connection with the sale of a product;
 - g. products which, after distribution or sale by the **Named Insured**, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for such person or organization; or
 - h. **bodily injury** or **property damage** arising out of the sole negligence of such person or organization for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (1) the exceptions contained in Subparagraphs **d.** or **f.** above; or
 - (2) such inspections, adjustments, tests or servicing as such person or organization has agreed with the **Named Insured** to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
2. This Paragraph J. does not apply to any insured person or organization, from whom the **Named Insured** has acquired such products, nor to any ingredient, part or container, entering into, accompanying or containing such products.
3. This Paragraph J. also does not apply:
 - a. to any vendor specifically scheduled as an additional insured by endorsement to this **Coverage Part**;
 - b. to any of **your products** for which coverage is excluded by endorsement to this **Coverage Part**; nor
 - c. if **bodily injury** or **property damage** included within the **products-completed operations hazard** is excluded by endorsement to this **Coverage Part**.

K. Other Person Or Organization / Your Work

Any person or organization who is not an additional insured under Paragraphs **A.** through **J.** above. Such additional insured is an **Insured** solely for **bodily injury**, **property damage** or **personal and advertising injury** for which such additional insured is liable because of the **Named Insured's** acts or omissions.

The coverage granted by this paragraph does not apply to any person or organization:

1. who is specifically scheduled as an additional insured on another endorsement to this **Coverage Part**; nor
2. for **bodily injury** or **property damage** included within the **products-completed operations hazard** except to the extent all of the following apply:
 - a. this **Coverage Part** provides such coverage;
 - b. the written contract or agreement described in the opening paragraph of this **ADDITIONAL INSUREDS** Provision requires the **Named Insured** to provide the additional insured such coverage; and
 - c. the **bodily injury** or **property damage** results from **your work** that is the subject of the written contract or agreement, and such work has not been excluded by endorsement to this **Coverage Part**.

2. **ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE**

- A. The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured.

- B. With respect to persons or organizations that qualify as additional insureds pursuant to paragraph 1.K. of this endorsement, the following sentence is added to the paragraph above:

Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. **BODILY INJURY – EXPANDED DEFINITION**

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. **BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE**

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** Condition is amended to add the following provisions:

A. **BROAD KNOWLEDGE OF OCCURRENCE**

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or to an **employee** designated by any of the above to give such notice.

B. **NOTICE OF OCCURRENCE**

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. **BROAD NAMED INSURED**

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:

- a. on the effective date of this **Coverage Part**; or
- b. by reason of a **Named Insured** creating or acquiring the organization during the **policy period**, qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this **BROAD NAMED INSURED** provision does not apply to:

- (a) any partnership or joint venture; or
- (b) any organization for which coverage is excluded by another endorsement attached to this **Coverage Part**.

For the purpose of this provision, and of this endorsement's **JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES** provision, management control means:

- A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation, or the members of the management board of a limited liability company; or
 - B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.
4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph 3. above, this insurance does not apply to:
- a. **bodily injury** or **property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor
 - b. **personal or advertising injury** caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.
5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.

6. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for **claims** arising solely out of their capacity or status as such and, in the case of a **spouse**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such **spouse**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or **spouse** outside the scope of such person's capacity or status as such, provided however that the **spouse** of a natural person **Named Insured** and the **spouses** of members or partners of joint venture or partnership **Named Insureds** are **Insureds** with respect to such **spouses'** acts, errors or omissions in the conduct of the **Named Insured's** business.

7. EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE

Under **COVERAGES, Coverage A – Bodily Injury And Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

Expected or Intended Injury

Bodily injury or **property damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

8. IN REM ACTIONS

A quasi *in rem* action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were *in personam* against the **Named Insured**.

9. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to **bodily injury** that arises out of a **health care incident**:

A. Under COVERAGES, Coverage A – Bodily Injury And Property Damage Liability, the **Insuring Agreement** is amended to replace Paragraphs **1.b.(1)** and **1.b.(2)** with the following:

b. This insurance applies to **bodily injury** provided that the professional health care services are incidental to the **Named Insured's** primary business purpose, and only if:

(1) such **bodily injury** is caused by an **occurrence** that takes place in the **coverage territory**.

(2) the **bodily injury** first occurs during the **policy period**. All **bodily injury** arising from an **occurrence** will be deemed to have occurred at the time of the first act, error, or omission that is part of the **occurrence**; and

B. Under COVERAGES, Coverage A – Bodily Injury And Property Damage Liability, the paragraph entitled **Exclusions** is amended to:

i. add the following to the **Employers Liability** exclusion:

This exclusion applies only if the **bodily injury** arising from a **health care incident** is covered by other liability insurance available to the **Insured** (or which would have been available but for exhaustion of its limits).

ii. delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

Contractual Liability

the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.

iii. add the following additional exclusions.

This insurance does not apply to:

Discrimination

any actual or alleged discrimination, humiliation or harassment, that includes but shall not be limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.

Dishonesty or Crime

Any actual or alleged dishonest, criminal or malicious act, error or omission.

Medicare/Medicaid Fraud

any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

Services Excluded by Endorsement

Any **health care incident** for which coverage is excluded by endorsement.

C. DEFINITIONS is amended to:

i. add the following definitions:

Health care incident means an act, error or omission by the **Named Insured's employees** or **volunteer workers** in the rendering of:

- a. **professional health care services** on behalf of the **Named Insured** or
- b. Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

Professional health care services means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

- a. Physician;
- b. Nurse;
- c. Nurse practitioner;
- d. Emergency medical technician;
- e. Paramedic;
- f. Dentist;
- g. Physical therapist;
- h. Psychologist;
- i. Speech therapist;
- j. Other allied health professional; or

Professional health care services does not include any services rendered in connection with human clinical trials or product testing.

- ii. delete the definition of **occurrence** and replace it with the following:

Occurrence means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

- iii. amend the definition of **Insured** to:

- a. add the following:

- the **Named Insured's employees** are **Insureds** with respect to:

(1) **bodily injury** to a **co-employee** while in the course of the **co-employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and

(2) **bodily injury** to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

- the **Named Insured's volunteer workers** are **Insureds** with respect to:

(1) **bodily injury** to a **co-volunteer worker** while performing duties related to the conduct of the **Named Insured's** business; and

(2) **bodily injury** to an **employee** while in the course of the **employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

- b. delete Subparagraphs (a), (b), (c) and (d) of Paragraph 2.a.(1) of **WHO IS AN INSURED**.

- c. add the following:

Insured does not include any physician while acting in his or her capacity as such.

- D. The **Other Insurance** condition is amended to delete Paragraph **b.(1)** in its entirety and replace it with the following:

Other Insurance

b. Excess Insurance

- (1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the **Named Insured** to be excess of this coverage.

10. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES

WHO IS AN INSURED is amended to delete its last paragraph and replace it with the following:

No person or organization is an **Insured** with respect to:

- the conduct of any current or past partnership or joint venture that is not shown as a **Named Insured** in the Declarations; nor
- the conduct of a current or past limited liability company in which a **Named Insured's** interest does/did not rise to the level of management control;

except that if the **Named Insured** was a joint venturer, partner, or member of such a limited liability company, and such joint venture, partnership or limited liability company terminated prior to or during the **policy period**, then such **Named Insured** is an **Insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

- a. any offense giving rise to **personal and advertising injury** occurred prior to such termination date, and the **personal and advertising injury** arising out of such offense, first occurred after such termination date;
- b. the **bodily injury** or **property damage** first occurred after such termination date; and
- c. there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company.

11. LEGAL LIABILITY – DAMAGE TO PREMISES

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the first paragraph immediately following subparagraph (6) of the **Damage to Property** exclusion and replace it with the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to **property damage** (other than damage by fire, lightning, explosion, smoke or leakage from automatic fire protective systems) to premises rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **LIMITS OF INSURANCE**.

- B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete its last paragraph and replace it with the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protective systems to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner, nor to damage to the contents of premises rented to a **Named Insured** for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in the **LIMITS OF INSURANCE** Section.

- C. **LIMITS OF INSURANCE** is amended to delete Paragraph 6. (the Damage To Premises Rented To You Limit) and replace it with the following:

6. Subject to Paragraph 5. above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most the Insurer will pay under **COVERAGE A** for **damages** because of **property damage** to:

- a. any one premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with the permission of the owner; and
- b. contents of such premises if the premises is rented to the **Named Insured** for a period of 7 or fewer consecutive days.

The Damage To Premises Rented To You Limit is \$500,000. unless a higher Damage to Premises Rented to You Limit is shown in the Declarations.

- D. The **Other Insurance** Condition is amended to delete Paragraph **b.(1)(a)(ii)**, and replace it with the following:

(ii) That is property insurance for premises rented to a **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner; or for personal property of others in the **Named Insured's** care, custody or control;

- E. This Provision 11. does not apply if liability for damage to premises rented to a **Named Insured** is excluded by another endorsement attached to this **Coverage Part**.

12. MEDICAL PAYMENTS

- A. **LIMITS OF INSURANCE** is amended to delete Paragraph 7. (the Medical Expense Limit) and replace it with the following:

7. Subject to Paragraph 5. above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C – Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:

- (1) \$15,000 unless a different amount is shown here: @@@@ ; or
- (2) the amount shown in the Declarations for Medical Expense Limit.

- B. Under **COVERAGES**, the **Insuring Agreement of Coverage C – Medical Payments** is amended to replace Paragraph 1.a.(3)(b) with the following:

(b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and

13. NON-OWNED AIRCRAFT

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

- 1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
- 2. the aircraft is rented with a trained, paid crew to the **Named Insured**; and
- 3. the aircraft is not being used to carry persons or property for a charge.

14. NON-OWNED WATERCRAFT

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph (2) of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

- (2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:
 - (a) less than 75 feet long; and
 - (b) not being used to carry persons or property for a charge.

15. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION

A. Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort:

- Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

B. Under **COVERAGES, Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:

1. delete the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following:

This insurance does not apply to:

Knowing Violation of Rights of Another

Personal and advertising injury caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

(a) the **Named Insured**; or

(b) any **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured**.

2. add the following exclusions:

This insurance does not apply to:

Employment Related Discrimination

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.

Premises Related Discrimination

discrimination or humiliation arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured**.

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

- Provision **1. ADDITIONAL INSURED** of this endorsement; or
- attachment of an additional insured endorsement to this **Coverage Part**.

16. PERSONAL AND ADVERTISING INJURY - LIMITED CONTRACTUAL LIABILITY

A. Under **COVERAGES, Coverage B –Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

Contractual Liability

Personal and advertising injury for which the **Insured** has assumed liability in a contract or agreement.

This exclusion does not apply to liability for **damages**:

- (1) that the **Insured** would have in the absence of the contract or agreement; or

- (2) assumed in a contract or agreement that is an **insured contract** provided the offense that caused such **personal or advertising injury** first occurred subsequent to the execution of such **insured contract**. Solely for the purpose of liability assumed in an **insured contract**, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an **Insured** are deemed to be **damages** because of **personal and advertising injury** provided:
- (a) liability to such party for, or for the cost of, that party's defense has also been assumed in such **insured contract**; and
 - (b) such attorney fees and litigation expenses are for defense of such party against a civil or alternative dispute resolution proceeding in which covered **damages** are alleged.
- B. Solely for the purpose of the coverage provided by this paragraph, **DEFINITIONS** is amended to delete the definition of **insured contract** in its entirety, and replace it with the following:
- Insured contract** means that part of a written contract or written agreement pertaining to the **Named Insured's** business under which the **Named Insured** assumes the tort liability of another party to pay for **personal or advertising injury** arising out of the offense of false arrest, detention or imprisonment. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- C. Solely for the purpose of the coverage provided by this paragraph, the following changes are made to the Section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**:
- 1. Paragraph **2.d.** is replaced by the following:
 - d. The allegations in the **suit** and the information the Insurer knows about the offense alleged in such **suit** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;
 - 2. The first unnumbered paragraph beneath Paragraph **2.f.(2)(b)** is deleted and replaced by the following:

So long as the above conditions are met, attorneys fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Notwithstanding the provisions of Paragraph **e.(2)** of the Contractual Liability exclusion (as amended by this Endorsement), such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.
- D. This **PERSONAL AND ADVERTISING INJURY - LIMITED CONTRACTUAL LIABILITY** Provision does not apply if **Coverage B –Personal and Advertising Injury Liability** is excluded by another endorsement attached to this **Coverage Part**.

17. PROPERTY DAMAGE – ELEVATORS

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product** Exclusion and subparagraphs **(3)**, **(4)** and **(6)** of the **Damage to Property** Exclusion do not apply to **property damage** that results from the use of elevators.
- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

18. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph **1.b.** is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph **1.d.** is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

19. PROPERTY DAMAGE - PATTERNS MOLDS AND DIES

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraphs **(3)** and **(4)** of the Exclusion entitled **Damage to Property**, but only with respect to patterns, molds or dies that are in the care, custody or control of the **Insured**, and only if such patterns, molds or dies are not being used to perform operations at the time of loss. A limit of insurance of \$25,000 per **policy period** applies to this **PROPERTY DAMAGE - PATTERNS MOLDS AND DIES** coverage, and this limit:

- A. is included within the General Aggregate Limit as described in **LIMITS OF INSURANCE**; and
- B. applies excess over any valid and collectible property insurance available to the **Insured**, including any deductible applicable to such insurance; the **Other Insurance** condition is changed accordingly.

20. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

21. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

- 1. the **Named Insured's** ongoing operations; or
- 2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

- 1. is in effect or becomes effective during the term of this **Coverage Part**; and
- 2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the **claim**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

BLANKET WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS

This endorsement changes the policy to which it is attached.

It is agreed that Part One - Workers' Compensation Insurance G. Recovery From Others and Part Two Employers' Liability Insurance H. Recovery From Others are amended by adding the following:

We will not enforce our right to recover against persons or organizations. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

PREMIUM CHARGE - Refer to the Schedule of Operations

The charge will be an amount to which you and we agree that is a percentage of the total standard premium for California exposure. The amount is 2%.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective Date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy 1 unless another expiration date is shown below.

Form No: G-19160-B (11-1997)

Endorsement Effective Date:

Endorsement No: 7; Page: 1 of 1

Underwriting Company: The Continental Insurance Company, 151 N Franklin St, Chicago, IL 60606

Endorsement Expiration Date:

Policy No: WC 6 43664070 -1

Policy Effective Date: 10/20/2020

Policy Page: 38 of 52



CITY OF CUPERTINO

Agenda Item

22-11477

Agenda Date: 10/4/2022
Agenda #: 13.

Subject: Consideration of an award of a construction contract for the 2022 Pavement Maintenance Phase 2 Project - Project No. 2022-107.

1. Award a construction contract for the 2022 Pavement Maintenance Phase 2 Project
2. Authorize the City Manager to execute a contract in the amount of \$1,672,133.50
3. Authorize the Director of Public Works to execute any necessary change orders, up to the construction contingency amount of \$167,213.00 for a total authorized contract amount of \$1,839,346.50



PUBLIC WORKS DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3354 • FAX: (408) 777-3333
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: October 4, 2022

Subject

Consideration of an award of a construction contract for the 2022 Pavement Maintenance Phase 2 Project – Project No. 2022-107

Recommended Action

1. Award a construction contract for the 2022 Pavement Maintenance Phase 2 Project
2. Authorize the City Manager to execute a contract in the amount of \$1,672,133.50
3. Authorize the Director of Public Works to execute any necessary change orders, up to the construction contingency amount of \$167,213.00 for total authorized contract amount of \$1,839,346.50

Discussion

On September 13, the City of Cupertino received two bids for the 2022 Pavement Maintenance Phase 2 Project. This project provides a rubberized cape seal on South Tantau Avenue, Prospect Road and South Stelling Road between Prospect Road and the SR-85 bridge deck. The project also provides crack seal and fog seal treatments on various city streets. A full list of work to be completed is included in Attachment A. Work is anticipated to begin in October (weather permitting) and be completed in Spring of 2023. The following is a summary of bids deemed responsive:

Bidder	Bid Amount
Engineers Estimate	\$1,550,000.00
Pavement Coating, Co	\$1,672,133.50
VSS International	\$1,740,120.00

Sustainability Impact

Maintaining and preserving the local streets and road system in good condition will reduce drive time and traffic congestion, improve bicycle safety, and make the pedestrian experience safer and more appealing. This leads to reduced vehicle emissions, helping the City achieve air quality and greenhouse gas emission reduction goals.

California Environmental Quality Act (CEQA)

This project is exempt from CEQA under 14 C.C.R Sections 15301(c), repair and maintenance of existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities.

Fiscal Impact

Award of this project will result in a fiscal impact up to \$1,839,346.50. The amount of \$1,309,445.5 will be deducted from the \$2,041,093.29 available in account 270-85-821 900 902 (Capital Outlay Senate Bill 1) and \$519,899 will be deducted from the \$1,011.043.00 available in account 270-85-821 700-702 (Street Pavement Maintenance Contract Services.) No additional appropriations are needed.

Prepared by: Jo Anne Johnson, Project Manager

Reviewed by: Matt Morley, Director of Public Works

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A – Project Street List

B – Draft Contract

C – Project Location Map

2022 PAVEMENT MAINTENANCE PHASE 2

ATTACHMENT A - PROJECT STREET LIST

Street Name	From	To	Treatment
ALPINE DR	N FOOTHILL BLVD	SALEM AVE	FOG SEAL
ANTHONY PL	SALEM	END	FOG SEAL
BEAVEN AVE	STOKES AVE	NOEL AVE	FOG SEAL
Benetti Ct	Dempster Ave	W End	FOG SEAL
BYERLY CT	SALEM AVE	END	FOG SEAL
CALLE DE BARCELONA	MILLER AVE	FINCH AVE	FOG SEAL
CANDLELIGHT WAY	CRESTLINE DR	SHADOWHILL LN	FOG SEAL
CLEARCREEK CT	PHAR LAP DR	END	FOG SEAL
CLEARWOOD CT	PHAR LAP DR	END	FOG SEAL
CLEO AVE	GARDENSIDE LN	END	FOG SEAL
CORTE DE MADRID	CALLE DE BARCELONA	S END	FOG SEAL
CORTE DE SAVILLE	CALLE DE BARCELONA	END	FOG SEAL
CRABTREE AVE	JOHNSON AVE	STERLING BLVD	FOG SEAL
CREEKLINE DR	NOVEMBER DR	END	FOG SEAL
CREEKSIDE CT	PHAR LAP DR	END	FOG SEAL
CULBERTSON DR	MEIGGS LN	BARNHART AVE	FOG SEAL
DEEPROSE PL	PRICE AVE	END	FOG SEAL
EDWARD WAY	BUBB RD	RONALD WAY	FOG SEAL
FORT BAKER DR	PRESIDIO DR	HYANNISPORT DR	FOG SEAL
GARDENSIDE LN	KINGSBURY PL	RAINBOW DR	FOG SEAL
HYANNISPORT DR	LINDA VISTA DR	BUBB RD	FOG SEAL
JANICE AVE	STEVENS CREEK BLVD	CASS PL	FOG SEAL
JOHNSON AVE	LOREE AVE	BARNHART AVE	FOG SEAL
KENTWOOD AVE	600' W/O DE ANZE BLVD	TIP TOE	FOG SEAL
KINGSBURY CT	KINGSBURY PL	END	FOG SEAL
KINGSBURY PL	CANDLELIGHT WAY	GARDENSIDE LN	FOG SEAL
LA PALOMA DR	COLUMBUS AVE	SANTA TERESA DR	FOG SEAL
LOCKFORD CT	SCOTLAND DR	END	FOG SEAL
MADRONE CT	END	END	FOG SEAL
MANZANITA CT	END	END	FOG SEAL
MARIA ROSA WAY	ROSARIO AVE	COLUMBUS AVE	FOG SEAL
MEADOW PL	VOSS AVE	END	FOG SEAL
MELLO PL	PRICE AVE	END	FOG SEAL
MENHART	CALVERT DR	MORETTI DR	FOG SEAL
MORETTI	BARNHART AVE	LOREE AVE	FOG SEAL
NEWSOM	JOHNSON AVE	WUNDERLICH DR	FOG SEAL
NOEL AVE	BEAVEN AVE	FITZGERALD DR	FOG SEAL
NORWICH AVE	MERRITT DR	AMHERST DR	FOG SEAL
OASIS CT	ALPINE DR	END	FOG SEAL
PERALTA	CANYON OAK WAY	END	FOG SEAL
PRICE AVE	BLANEY AVE	PORTAL AVE	FOG SEAL
RAINBOW DR	VILLA MARIA CT	S END	FOG SEAL
RAMPART AVE	E ESTATES DR	GLENVIEW AVE	FOG SEAL

2022 PAVEMENT MAINTENANCE PHASE 2

ATTACHMENT A - PROJECT STREET LIST

Street Name	From	To	Treatment
RANCHO PL	RANCHO VENTURA ST	END	FOG SEAL
RANCHO VENTURA ST	FOOTHILL BLVD	PALO VISTA	FOG SEAL
RONALD WAY	ROSARIO AVE	EDWARD WAY	FOG SEAL
Scotland Dr	Squirewood Way	Kingsbury Pl	FOG SEAL
SHADOWHILL LN	STELLING RD	CANDLELIGHT WAY	FOG SEAL
SILVER OAK WY	FOOTHILL	LAZY OAK CT	FOG SEAL
SILVERADO DR	DE ANZA BLVD	WHITNEY WAY	FOG SEAL
SQUIREWOOD WAY	STELLING RD	SCOTLAND DR	FOG SEAL
STANFORD PL	KENTWOOD AVE	ANNETTE WAY	FOG SEAL
STEEPLECHASE LN	ROLLINDELL	KENTWOOD AVE	FOG SEAL
SUISUN DR	FARALLONE DR	BLANEY AVE	FOG SEAL
TERRY WAY	RODRIGUES	END	FOG SEAL
TILSON AVE	S TANTAU AVE	STERN	FOG SEAL
TILSON AVE	STERN	CALVERT DR	FOG SEAL
UPLAND WAY	11593 UPLAND WAY	S END	FOG SEAL
WESTERN DR	RODRIGUES AVE	SCOFIELD DR	FOG SEAL
WILL CT	LAZENE DR	S END	FOG SEAL
WUNDERLICH DR	TILSON AVE	MENHART LN	FOG SEAL
PROSPECT RD	DE ANZA	JAMESTOWN	RUBBER CAPE
PROSPECT RD	JAMESTOWN	STELLING	RUBBER CAPE
STELLING RD	PROSPECT	WATERFORD	RUBBER CAPE
STELLING RD	WATERFORD	RAINBOW	RUBBER CAPE
STELLING RD	RAINBOW	SQUIREHILL	RUBBER CAPE
STELLING RD	SQUIREHILL	ORION	RUBBER CAPE
STELLING RD	ORION	SR85	RUBBER CAPE
TANTAU AV	SUTTON PARK	BOLLINGER	RUBBER CAPE
TANTAU AVE	STEVENS CREEK	COZETTE	RUBBER CAPE
TANTAU AVE	COZETTE	MURIEL	RUBBER CAPE
TANTAU AVE	MURIEL	PHIL	RUBBER CAPE
TANTAU AVE	PHIL	SUTTON PARK	RUBBER CAPE

ATTACHMENT B – DRAFT CONTRACT

Contract

This public works contract (“Contract”) is entered into by and between City of Cupertino (“City”) and Pavement Coating, Co. (“Contractor”), for work on the 2022 Pavement Maintenance Phase 2 Project (“Project”).

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On September 13, 2022, City authorized award of this Contract to Contractor for the amount set forth in Section 4, below.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.
 - 2.1 Notice Inviting Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Plans and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Potential Award;
 - 2.12 Notice to Proceed; and
 - 2.13 The following: Caltrans Standard Specifications, Location Map, Estimated Quantities, Attachment A – Work Hour Restrictions
3. **Contractor’s Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents. Contractor agrees to carry out its work in compliance with any applicable local, State or Federal order regarding COVID-19.
4. **Payment.** As full and complete compensation for Contractor’s timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor \$1,672,133.50 (“Contract Price”) for all of Contractor’s direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
5. **Time for Completion.** Contractor will fully complete the Work for the Project, meeting all requirements for Final Completion, within 45 calendar days from the commencement date given in the Notice to Proceed (“Contract Time”). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$1,000.00 per day for each day of

ATTACHMENT B – DRAFT CONTRACT

unexcused delay in achieving Final Completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.

7. Labor Code Compliance.

7.1 General. This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.

7.2 Prevailing Wages. This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.

7.3 DIR Registration. City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.

8. Workers' Compensation Certification. Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. Conflicts of Interest. Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.

10. Independent Contractor. Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.

11. Notice. Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

City:

Department of Public Works
10300 Torre Ave
Cupertino, CA 95014
408-777-3245
Attn: Jo Anne Johnson
joannej@cupertino.org

ATTACHMENT B – DRAFT CONTRACT

Copy to: Pwinvoices
pwinvoices@cupertino.org

Contractor:

Name: _____
Address: _____
City/State/Zip: _____
Phone: _____
Attn: _____
Email: _____
Copy to: _____

12. General Provisions.

- 12.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City’s written consent. This Contract is binding on Contractor’s and City’s lawful heirs, successors and permitted assigns.
- 12.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract.
- 12.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Santa Clara County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Santa Clara County, California.
- 12.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.
- 12.6 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the “Act”), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.
- 12.8 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code § 313.

ATTACHMENT B – DRAFT CONTRACT

The parties agree to this Contract as witnessed by the signatures below:

CITY:

Approved as to form:

s/ _____

s/ _____

Name, Title

Name, Title

Date: _____

Date: _____

Attest:

s/ _____

Name, Title

Date: _____

CONTRACTOR: PAVEMENT COATING CO.

Business Name

s/ _____

Seal:

Name, Title

Date: _____

Second Signature (See Section 12.8):

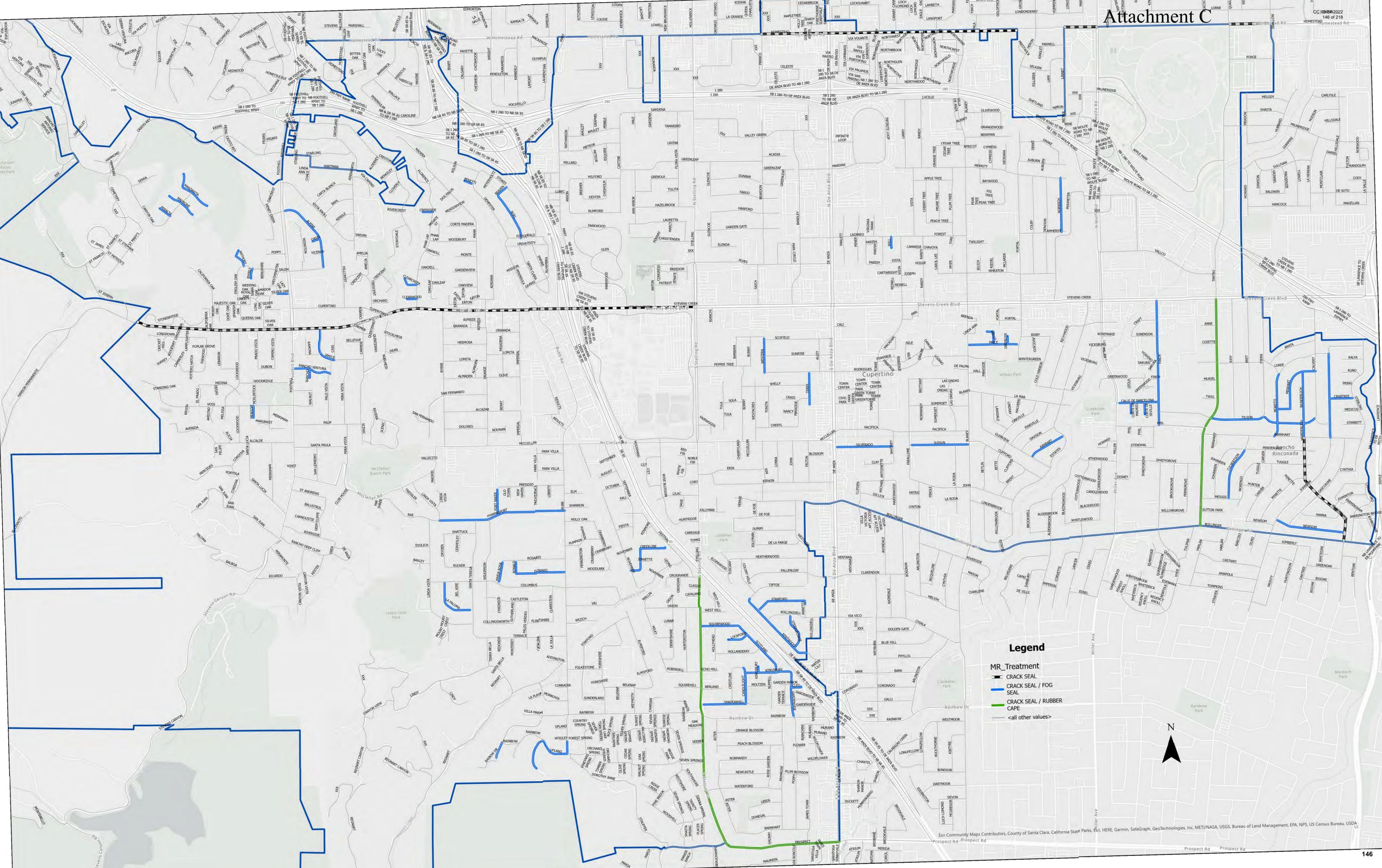
s/ _____

Name, Title

Date: _____

Contractor's California License Number(s) and Expiration Date(s)

END OF CONTRACT



Legend

- MR_Treatment
- CRACK SEAL
- SEAL
- CRACK SEAL / RUBBER CAPE
- <all other values>





CITY OF CUPERTINO

Agenda Item

22-11216

Agenda Date: 10/4/2022
Agenda #: 14.

Subject: Consider authorizing execution of an Agreement between the City of Cupertino and Cupertino Historical Society

1. Authorize the City Manager to execute an Agreement between the City of Cupertino and Cupertino Historical Society for three years, at an annual amount of not-to-exceed \$40,000; and if performance is satisfactory, followed up by up to two additional years for a total of five years at the same not-to-exceed annual amount of \$40,000.
 2. Adopt Resolution No. 22-122 to approve budget modification No. 2223-242 increasing appropriations in the City Council, Community Funding budget 100-10-104.
- Presenter: Rachelle Sander, Acting Director of Parks and Recreation



PARKS AND RECREATION DEPARTMENT

QUINLAN COMMUNITY CENTER
10185 NORTH STELLING ROAD • CUPERTINO, CA 95014-5732
TELEPHONE: (408) 777-3120 • FAX: (408) 777-1305
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: October 4, 2022

Subject

Consider authorizing execution of an Agreement between the City of Cupertino and Cupertino Historical Society

Recommended Action

1. Authorize the City Manager to execute an Agreement between the City of Cupertino and Cupertino Historical Society for three years, at an annual amount of not-to-exceed \$40,000; and if performance is satisfactory, followed up by two additional years for a total of five years at the same not-to-exceed annual amount of \$40,000.
2. Adopt Resolution No. 22-___ to approve budget modification No. 2223-242 increasing appropriations in the City Council, Historical Society budget 100-10-104.

Discussion

Background

On July 6, 1992, Council authorized execution of the original tenant agreement with the Cupertino Historical Society at the Quinlan Community Center. The agreement was later renewed in 1994 and 1996 (Attachment A).

The Cupertino Historical Society has been awarded funding through the Community Funding Grant Program since 2015. As part of the Fiscal Year 2019-2020 budget approval process at the June 18, 2019 City Council meeting, Council unanimously approved to designate an annual amount of \$20,000 as a base (or line) item for the Cupertino Historical Society. These funds are to be allocated in the Community Funding Grant Program budget as their own line item.

Below is a breakdown of the Historical Society's previously awarded funds through the Community Funding Grant Program:

2015 - \$10,000
2016 - \$15,000
2017 - \$15,000

2018 - \$15,000
2019 - \$20,000 (individual budget line item)
2020 - \$20,000 (individual budget line item)
2021 - \$20,000 (one time allocation)

At their December 1, 2020 meeting, City Council reviewed the Community Funding Grant Policy and requested to add funding of the Historical Society as a future agenda item for discussion. Prior to this upcoming fiscal year FY 2022-23, the Historical Society was required to submit a grant application, in lieu of executing a formal agreement with the City, outlining how they anticipate utilizing funds, as well as a financial report at the end of each fiscal year, detailing how funds were used.

As part of the Tuesday, June 4, 2021 City Council Special Meeting, Council unanimously decided to form a Council Subcommittee comprised of Councilmembers Moore and Wei to discuss with the Historical Society 1) the purpose for the monetary allocation of an ongoing budget line item of \$20,000; 2) acceptance of Council Subcommittee members ongoing attendance at monthly board meetings; and 3) Council involvement and working together on the future direction of the Stockmeir and Snyder-Hammond House properties; and direct staff to come back for Council consideration at a future study session.

On March 8, 2022, the Council Subcommittee met with and provided guidance to staff to research specific items and bring an update to City Council. Pursuant to the Subcommittee's request, Staff has compiled a comparative analysis of other Santa Clara County Historical Societies and their relationships with other cities (Attachment B) and prepared a historical funding report on how the Cupertino Historical Society has used their funds during FY 2017-21, including the proposed use for the FY 2022-23 funding (Attachment C). Additionally, the Subcommittee requested clarification on the difference between funding received through the budget line-item process versus the Community Funding process.

The difference between funding received as a budget line item versus funding through the Community Funding process is that as a budget line item, funding for the Cupertino Historical Society would be discussed, allocated, and approved through the City's annual budget adoption process. However, to receive funding through the Community Funding Grant process, the Historical Society would be required to submit an application that would be evaluated and ranked among other applications received for the Community Funding program by the Parks and Recreation Commission. The Commission's ranking and recommendation would then present to City Council for review and final approval. Through this process, the application from the Historical Society may not receive approval and, if approved, would be awarded a grant limited to a \$20,000 maximum. Thus, a budget line item would allow the Historical Society to receive the funds after City Council's budget approval in a more efficient and reliable manner, thus allowing the Cupertino Historical Society to plan their budget accordingly.

At the June 21, 2022 City Council Meeting, Council received an update on the status of the research from the City Council Subcommittee Meetings for the Cupertino Historical Society. As a part of this meeting, Chao moved, and Moore seconded to provide the following direction to staff:

- Bring back an agreement for facility use of the Quinlan Museum space and meeting spaces in Quinlan.
- Bring back an agreement or Memorandum of Understanding (MOU) between the City and Cupertino Historical Society (CHS) to clarify what services CHS will provide and what processes will be used to ensure transparency and accountability for taxpayer dollars.
- Potential annual budget amount: \$20,000 - \$40,000
- Potential methods to consider (not limited to the items below):
 - o Semi-annual update and an annual report with a list of events demonstrating the number of Cupertino residents served
 - o Annual work plan presented to Council and/or Parks and Recreation Commission to provide feedback and allow public to provide input
 - o City Council representatives on Cupertino Historical Society (CHS) Board or liaisons as committee assignments
 - o Partial funding for staffing, provided that there is strong oversight by the city on the staff work
 - o Commitment for fundraising goals so the funding from the city maintains at 20% of the budget, for example
 - o Hybrid method with both grant funding and agreement with some funding
 - o 3–5-year agreement

The amended motion carried unanimously (Paul absent).

Following the direction provided by City Council at their June 21, 2022 meeting, Parks and Recreation staff and the City Attorney's office drafted a City of Cupertino Grant Funding and License Agreement (Attachment D) for City Council's consideration. The agreement includes facility and meeting space use as specified in Exhibit A – License Area of Attachment D. Also included as Exhibit B to Attachment D is an Exhibit titled Grant Project which defines how the funding will be used by the Cupertino Historical Society and clarifies the services that will be provided by the Cupertino Historical Society to ensure transparency and proper use of the grant funding. The agreement has been reviewed and agreed to by the Cupertino Historical Society.

As directed in the City Council motion, staff is bringing back an agreement for the museum space and annual funding. The agreement term is set at three years with a possible two-year extension with a total of five years. The Cupertino Historical Society would receive funding in the amount of \$40,000 in each of the first three years of the agreement. If the Cupertino Historical Society meets all requirements identified in the agreement in the first three years, the agreement would be extended up to two more

years, with each year awarding \$40,000 in funding. The total for three years would be \$120,000 and the following two years would total \$80,000, for a five-year total of \$200,000.

Additional contract terms address other methods that Council directed staff to consider, including the following:

- The Cupertino Historical Society would provide a semi-annual update and an annual report to the Parks and Recreation Commission. This update and annual report are set forth in Section 7 of the Agreement.
- The annual report to the Parks and Recreation Commission would include a presentation of the Historical Society's annual work plan.
- A position on the Cupertino Historical Society Advisory Council would be designated for a Cupertino City Council member. The Council Member will be able to attend the Board Meetings as a non-voting member to represent the City and provide input and feedback.¹
- With respect to providing funding for Historical Society staffing, while such funding can be provided, since the Historical Society is a separate legal entity from the City, the City's ability to provide staff oversight and direction would be limited.
- Commitment to engage in fundraising is incorporated into Exhibit B of the Agreement.
- Regarding the method of hybrid funding, the proposed agreement does not set aside Community Funding Grant program funds for the Cupertino Historical Society. However, the Historical Society is permitted to apply for a Community Funding Grant under the terms of the Community Funding Grant Policy. Staff recommends this approach for transparency and to ensure equitable treatment of organizations seeking Community Funding Grants.

Sustainability Impact

No sustainability impact.

Fiscal Impact

If Council approves to continue allocating funding to the Cupertino Historical Society, this will be included as an amendment in the budget for the current FY 2022-23. Funding will also be included in the budget each year thereafter for Council approval as part of

¹ Please note that in a 2018 opinion letter issued by the Fair Political Practices Commission, the Commission provided guidance that a Councilmember's participation in another entity such as the Historical Society's Advisory Council would not present a conflict of interest under the Political Reform Act or Government Code section 1090. However, the possibility that this arrangement would create a common law conflict of interest that would require the participating Councilmember to recuse themselves in matters that come before Council cannot be ruled out.

the Proposed Budget Study Session and Final Budget Hearing and Adoption. This appropriation will continue, until the end of the proposed agreement term, including the option term.

There is currently a \$20,000 place holder for Historical Society funding included as line item in the Community Funding budget 100-10-101. Expenditures for Historical Society had historically been included as part of the Community Funding budget. A total budget of \$92,231 was approved for community funding broken out as follows:

Expense Category	Amount
Contracts	\$89,461 (69,461) Approved Community Grants (20,000) Historical Society Line Item
Cost Allocation	2,270
Contingencies	500
Total	92, 231

A new budget unit has been created to track these expenses 100-10-104. If the \$40,000 in funding is approved. Staff will add \$20,000 to the Historical Society budget and transfer \$20,000 from the contract line item in the Community Funding budget to the new Historical Society budget (Attachment E). This new budget will appear in the FY23-24 budget and include a budget narrative describing the use of these funds. The additional \$20,000 will be funded by General Fund unassigned fund balance, that is estimated at \$46.3 million.

Prepared by: Rachele Sander, Acting Director of Parks and Recreation

Reviewed by: Christopher Jensen, City Attorney; Kristina Alfaro, Director of Administrative Services

Approved by: Pamela Wu, City Manager

Attachments:

A – 1992-1996 Resolutions and Tenant Agreements

B – Comparative Analysis – Santa Clara County Historical Society Relationships

C – Historical Funding Report (FY 2017-21) and Proposed FY 2022-23

D – Historical Society Grant – License Agreement

E – Draft Resolution

RESOLUTION NO. 8705

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AUTHORIZING EXECUTION OF TENANT AGREEMENT WITH CUPERTINO HISTORICAL SOCIETY AT QUINLAN COMMUNITY CENTER

WHEREAS, there has been presented to the City Council a tenant agreement between the City of Cupertino and the Cupertino Historical Society setting forth the terms and conditions for use of museum space at Quinlan Community Center; and

WHEREAS, said agreement has been reviewed and approved by the Director of Parks and Recreation and the City Attorney;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cupertino hereby approves the aforementioned tenant agreement and authorizes the City Manager and the City Clerk to execute said agreement on behalf of the City of Cupertino.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 6th day of July, 1992 by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
AYES:	Dean, Goldman, Szabo, Sorensen
NOES:	None
ABSENT:	Koppel
ABSTAIN:	None

ATTEST:

APPROVED:

/s/ Dorothy Cornelius
City Clerk

/s/ Lauralee Sorensen
Mayor, City of Cupertino

RESOLUTION NO. 9117

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AUTHORIZING RENEWAL OF TENANT AGREEMENT FOR SPACE AT QUINLAN COMMUNITY CENTER BETWEEN THE CITY OF CUPERTINO AND THE CUPERTINO HISTORICAL SOCIETY

WHEREAS, there has been presented to the City Council a tenant agreement between the City of Cupertino and the Cupertino Historical Society providing for the lease of space at the Quinlan Community Center; and

WHEREAS, the terms, conditions and provisions of the agreement have been reviewed and approved by the City Attorney and the Director of Parks and Recreation.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cupertino hereby approves the aforementioned tenant agreement and authorizes the Mayor and City Clerk to execute said agreement on behalf of the City of Cupertino.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 20th day of June, 1994 by the following vote:

Vote Members of the City Council

AYES: Bautista, Burnett, Sorensen, Dean
NOES: None
ABSENT: Koppel
ABSTAIN: None

ATTEST:

APPROVED:

/s/ Kim Marie Smith
City Clerk

/s/ Wally Dean
Mayor, City of Cupertino

**TENANT AGREEMENT
FOR MUSEUM SPACE AT
QUINLAN COMMUNITY CENTER**

This Tenant Agreement ("AGREEMENT") is made by and between the City of Cupertino ("CITY") and the Cupertino Historical Society ("TENANT").

The premises to be occupied by this AGREEMENT is a portion of what is commonly known as the "Quinlan Community Center", and more particularly described as 10185 N. Stelling Road, City of Cupertino, County of Santa Clara, State of California ("PREMISES"). The PREMISES consist of museum room and office within the Quinlan Community Center consisting of 1300 square feet, together with the non-exclusive use of hallways, restrooms, and outside parking facilities.

This AGREEMENT is entered for the purpose of making available the PREMISES owned by the CITY on the condition that the TENANT provides historical educational programs to the CITY and Cupertino community as set forth in the terms of this AGREEMENT.

CITY AND TENANT AGREE AS FOLLOWS:

1. **TENANCY:** The tenancy of the PREMISES shall commence on July 1, 1994 and end two years later, on June 30, 1996, at which time the agreement may be renegotiated after evaluation by the CITY.
2. **UTILITIES, TELEPHONE, OFFICE EQUIPMENT:** CITY shall be responsible for the payment of all utility bills applicable to the PREMISES including water, electrical services, garbage and janitorial services for said PREMISES. TENANT shall be responsible for its own telephone service and shall provide for its own office equipment and furnishings.
3. **TAXES:** TENANT shall be responsible for payment of any and all possessory interest property taxes.
4. **MAINTENANCE:** CITY shall be responsible for maintaining the PREMISES, including doorways, windows, sidewalks adjacent to said PREMISES and the interior of the PREMISES in good and sanitary order, condition and repair, normal wear and tear excepted, provided, however, that TENANT shall be responsible for damages caused by the negligence of its employees, invitees or guests.

5. **ALTERATIONS AND REPAIRS/ACCESS:** TENANT shall not paint, paper, or make alterations to the PREMISES without prior written consent from the CITY. TENANT shall permit the CITY and its agents to enter into and upon the PREMISES at all reasonable times for purposes of inspecting the same or for the purpose of maintaining or repairing the PREMISES. Access to the PREMISES is limited to CITY employees or agents, TENANT employees or agents, and members of the public receiving services provided by TENANT.

6. **HOURS OF OPERATION:** TENANT shall determine its own hours of operation, provided that said hours are between 8:00 a.m. and 10:00 p.m. TENANT shall be responsible for securing the facility.

7. **COMMON AREAS/PARKING:** TENANT may utilize the hallways, restrooms, and parking facilities without additional rent; provided, however, that if TENANT wishes to utilize other areas of Quinlan Community Center for which CITY normally charges a user fee, TENANT shall be responsible for payment of said fee.

8. **INSURANCE:** TENANT shall maintain insurance as outlined in the insurance and indemnity requirements as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

9. **INDEMNIFICATION:** CITY shall not be liable for any damage or injury to any employee, guest, or invitee, or to any property occurring within the PREMISES or within the common areas. TENANT agrees to hold CITY harmless from any claims for damages unless such damage is the proximate result of negligence or unlawful conduct of CITY, its agents or employees.

10. **ORDINANCES AND STATUTES:** TENANT shall comply with Cupertino's Municipal Ordinances and all State and Federal Statutes and Ordinances now in force, or which may hereafter be in force pertaining to the use of the PREMISES.

11. **SIGNAGE:** The CITY shall provide signage designating facility and organizations utilizing the facility.

12. **RETURN OF KEYS:** Upon termination of this AGREEMENT, the keys to the PREMISES including all duplicated sets, are to be hand delivered to CITY's Parks and Recreation Director or an authorized representative.

13. **HOLDING OVER:** Any holding over after the expiration of the AGREEMENT, with the written consent of the CITY, shall be construed as a month-to-month tenancy in accordance with the terms of this AGREEMENT, until either party terminates the tenancy by giving the other party ninety (90) days written notice delivered by certified mail.

14. **GROUND FOR TERMINATION:** CITY retains the right to terminate this AGREEMENT upon any breach by TENANT, of any material term, provision, covenant or condition herein. CITY shall first provide TENANT written notice of any perceived breach of this AGREEMENT and TENANT shall have ten (10) days to correct or resolve said condition.

15. **WAIVER:** The failure of CITY to exercise any right hereunder shall not constitute waiver of such right.

16. **ATTORNEYS' FEES:** If legal action is commenced to enforce or to declare the effect of any provision of this AGREEMENT, the prevailing party shall be awarded attorneys' fees and costs incurred in such action.

17. **TIME:** Time is of the essence of this AGREEMENT.

18. **EXHIBITS:** All Exhibits hereto, specifically Exhibit A are incorporated herein and made part of this AGREEMENT by this reference.

19. **ADDITIONAL DUTIES OF TENANT:** TENANT and CITY are entering into this AGREEMENT with goals of enhancing the quality of programs for the CITY and providing an appropriate area for the conduct of some of TENANT'S ongoing society activities. As such, both the CITY and TENANT agree to work together throughout the term of this AGREEMENT to try to develop a program of activities mutually beneficial to CITY and TENANT.

a. It is the intent of the parties that the operation of the Cupertino Historical Museum shall be under the direction of the TENANT, subject to reasonable control by the CITY, and that any ambiguity arising from the foregoing provisions shall be resolved in the light of this paragraph.

b. TENANT shall arrange for personnel as is required for the operation of the museum facility.

c. The TENANT shall be permitted to sell promotional items within the confines of the display area.

d. The TENANT shall be responsible for the security of all artifacts displayed by the organization.

20. **ENTIRE AGREEMENT:** This AGREEMENT consisting of five (5) pages, constitutes the entire AGREEMENT and supersedes any prior agreement between the parties.

TENANT has executed this AGREEMENT for the PREMISES in Quinlan Community Center on this _____ day of _____, 1994.

By _____
Cupertino Historical Society

CITY has executed this AGREEMENT for the PREMISES in Quinlan Community Center on this _____ day of _____, 1994.

By _____
Donald D. Brown
City Manager

Attested By _____
Kim Smith
City Clerk

Approved as to form _____
Charles T. Kilian
City Attorney

Attachments:
Exhibit A - Insurance and Indemnity Requirements

June 15, 1994

EXHIBIT A
INSURANCE AND INDEMNITY REQUIREMENTS

INDEMNITY: TENANT agrees to indemnify and hold harmless the City of Cupertino, its officers, employees and elected officials, boards and commissions from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the TENANT'S performance under the AGREEMENT, including the TENANT'S failure to comply with or carry out any of the provisions of the AGREEMENT.

INSURANCE: TENANT shall take out prior to commencement of the performance of the terms of the AGREEMENT, pay for, and maintain until completion of the AGREEMENT, the following types of Policies. These Policies must cover at least the following, which are minimum coverages and limits.

I. **COMPREHENSIVE GENERAL LIABILITY INSURANCE;** including the following:

- A. Premises Operations (including completed operations, if the exposure exits).
- B. Broad Form Blanket Contractual.
- C. Personal Injury coverages A, B and C.

1. All coverages must have a minimum of \$1,000,000 combined single limit.

II. **WORKERS COMPENSATION:** TENANT shall provide CITY with a copy of TENANT'S Workers Compensation coverage.

III. **ENDORSEMENTS:** On all required insurance the **following** endorsements must be a **part of each policy**.

A. The City of Cupertino, its officers and employees, and agents are to be additional insured.

B. Thirty (30) days notice of cancellation or reduction in coverage of any nature must be given to the City of Cupertino.

C. The insurance policies must be endorsed to show that they are primary, and any other valid and collectable insurance the City of Cupertino may have will be excess only.

D. All insurance policies must be approved by the City of Cupertino.

June 15, 1994

RESOLUTION NO. 9653

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CUPERTINO AUTHORIZING EXECUTION OF TENANT
AGREEMENT BETWEEN CITY OF CUPERTINO AND THE
CUPERTINO HISTORICAL SOCIETY FOR MUSEUM SPACE AT
THE QUINLAN COMMUNITY CENTER

WHEREAS, there has been presented to the City Council a proposed Tenant Agreement between the City of Cupertino and the Cupertino Historical Society for museum space at the Quinlan Community Center; and

WHEREAS, the terms, conditions and provisions of the agreement have been reviewed and approved by the City Attorney and the Director of Parks and Recreation.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cupertino hereby approves the aforementioned agreement and authorizes the City Manager and the City Clerk to execute said agreement on behalf of the City of Cupertino.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 1st day of July, 1996 by the following vote:

Vote Members of the City Council

AYES: Chang, Dean, Sorensen, Burnett

NOES: None

ABSENT: Bautista

ABSTAIN: None

ATTEST:

APPROVED:


City Clerk


Mayor, City of Cupertino

**TENANT AGREEMENT
FOR MUSEUM SPACE AT
QUINLAN COMMUNITY CENTER**

This Tenant Agreement ("AGREEMENT") is made by and between the City of Cupertino ("CITY") and the Cupertino Historical Society ("TENANT").

The premises to be occupied by this AGREEMENT is a portion of what is commonly known as the "Quinlan Community Center", and more particularly described as 10185 N. Stelling Road, City of Cupertino, County of Santa Clara, State of California ("PREMISES"). The PREMISES consist of museum room and office within the Quinlan Community Center consisting of 1300 square feet, together with the non-exclusive use of hallways, restrooms, and outside parking facilities.

This AGREEMENT is entered for the purpose of making available the PREMISES owned by the CITY on the condition that the TENANT provides historical educational programs to the CITY and Cupertino community as set forth in the terms of this AGREEMENT.

CITY AND TENANT AGREE AS FOLLOWS:

1. **TENANCY:** The tenancy of the PREMISES shall commence on July 1, 1996 and end two years later, on June 30, 1998, at which time the agreement may be renegotiated after evaluation by the CITY.
2. **UTILITIES, TELEPHONE, OFFICE EQUIPMENT:** CITY shall be responsible for the payment of all utility bills applicable to the PREMISES including water, electrical services, garbage and janitorial services for said PREMISES. TENANT shall be responsible for its own telephone service and shall provide for its own office equipment and furnishings.
3. **TAXES:** TENANT shall be responsible for payment of any and all possessory interest property taxes.

4. **MAINTENANCE:** CITY shall be responsible for maintaining the PREMISES, including doorways, windows, sidewalks adjacent to said PREMISES and the interior of the PREMISES in good and sanitary order, condition and repair, normal wear and tear excepted, provided, however, that TENANT shall be responsible for damages caused by the negligence of its employees, invitees or guests.

5. **ALTERATIONS AND REPAIRS/ACCESS:** TENANT shall not paint, paper, or make alterations to the PREMISES without prior written consent from the CITY. TENANT shall permit the CITY and its agents to enter into and upon the PREMISES at all reasonable times for purposes of inspecting the same or for the purpose of maintaining or repairing the PREMISES. Access to the PREMISES is limited to CITY employees or agents, TENANT employees or agents, and members of the public receiving services provided by TENANT

6. **HOURS OF OPERATION:** TENANT shall determine its own hours of operation, provided that said hours are between 8:00 a.m. and 10:00 p.m. TENANT shall be responsible for securing the facility.

7. **COMMON AREAS/PARKING:** TENANT may utilize the hallways, restrooms, and parking facilities without additional rent; provided, however, that if TENANT wishes to utilize other areas of Quinlan Community Center for which CITY normally charges a user fee, TENANT shall be responsible for payment of said fee.

8. **INSURANCE:** TENANT shall maintain insurance as outlined in the insurance and indemnity requirements as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

9. **INDEMNIFICATION:** CITY shall not be liable for any damage or injury to any employee, guest, or invitee, or to any property occurring within the PREMISES or within the common areas. TENANT agrees to hold CITY harmless from any claims for damages unless such damage is the proximate result of negligence or unlawful conduct of CITY, its agents or employees.

10. **ORDINANCES AND STATUTES:** TENANT shall comply with Cupertino's Municipal Ordinances and all State and Federal Statutes and Ordinances now in force, or which may hereafter be in force pertaining to the use of the PREMISES.

11. **SIGNAGE**: The CITY shall provide signage designating facility and organizations utilizing the facility.
12. **RETURN OF KEYS**: Upon termination of this AGREEMENT, the keys to the PREMISES including all duplicated sets, are to be hand delivered to CITY's Parks and Recreation Director or an authorized representative.
13. **HOLDING OVER**: Any holding over after the expiration of the AGREEMENT, with the written consent of the CITY, shall be construed as a month-to-month tenancy in accordance with the terms of this AGREEMENT, until either party terminates the tenancy by giving the other party ninety (90) days written notice delivered by certified mail.
14. **GROUNDS FOR TERMINATION**: CITY retains the right to terminate this AGREEMENT upon any breach by TENANT, of any material term, provision, covenant or condition herein. CITY shall first provide TENANT written notice of any perceived breach of this AGREEMENT and TENANT shall have ten (10) days to correct or resolve said condition.
15. **WAIVER**: The failure of CITY to exercise any right hereunder shall not constitute waiver of such right.
16. **ATTORNEYS' FEES**: If legal action is commenced to enforce or to declare the effect of any provision of this AGREEMENT, the prevailing party shall be awarded attorneys' fees and costs incurred in such action.
17. **TIME**: Time is of the essence of this AGREEMENT.
18. **EXHIBITS**: All Exhibits hereto, specifically Exhibit A are incorporated herein and made part of this AGREEMENT by this reference
19. **ADDITIONAL DUTIES OF TENANT**: TENANT and CITY are entering into this AGREEMENT with goals of enhancing the quality of programs for the CITY and providing an appropriate area for the conduct of some of TENANT'S ongoing society activities. As such, both the CITY and TENANT agree to work together throughout the term of this AGREEMENT to try to develop a program of activities mutually beneficial to CITY and TENANT.

a. It is the intent of the parties that the operation of the Cupertino Historical Museum shall be under the direction of the TENANT, subject to reasonable control by the CITY, and that any ambiguity arising from the foregoing provisions shall be resolved in the light of this paragraph.

b. TENANT shall arrange for personnel as is required for the operation of the museum facility.

c. The TENANT shall be permitted to sell promotional items within the confines of the display area.

d. The TENANT shall be responsible for the security of all artifacts displayed by the organization.

20. **ENTIRE AGREEMENT:** This AGREEMENT consisting of five (5) pages, constitutes the entire AGREEMENT and supersedes any prior agreement between the parties.

TENANT has executed this AGREEMENT for the PREMISES in Quinlan Community Center on this 21st day of June, 1996.

By [Signature]
Cupertino Historical Society

CITY has executed this AGREEMENT for the PREMISES in Quinlan Community Center on this 7th day of July, 1996.

By [Signature]
Donald D. Brown
City Manager

Attested By [Signature]
Kim Smith
City Clerk

Approved as to form [Signature]
Charles T. Kilian
City Attorney

Attachments:
Exhibit A - Insurance and Indemnity Requirements

6/12/96

EXHIBIT A
INSURANCE AND INDEMNITY REQUIREMENTS

INDEMNITY: TENANT agrees to indemnify and hold harmless the City of Cupertino, its officers, employees and elected officials, boards and commissions from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the TENANT'S performance under the AGREEMENT, including the TENANT'S failure to comply with or carry out any of the provisions of the AGREEMENT.

INSURANCE: TENANT shall take out prior to commencement of the performance of the terms of the AGREEMENT, pay for, and maintain until completion of the AGREEMENT, the following types of Policies. These Policies must cover at least the following, which are minimum coverages and limits.

I. **COMPREHENSIVE GENERAL LIABILITY INSURANCE;** including the following:

- A. Premises Operations (including completed operations, if the exposure exists).
- B. Broad Form Blanket Contractual.
- C. Personal Injury coverages A, B and C.

1. All coverages must have a minimum of \$1,000,000 combined single limit.

II. **WORKERS COMPENSATION:** TENANT shall provide CITY with a copy of TENANT'S Workers Compensation coverage.

III. **ENDORSEMENTS:** On all required insurance the following endorsements must be a part of each policy.

A. The City of Cupertino, its officers and employees, and agents are to be additional insured.

B. Thirty (30) days notice of cancellation or reduction in coverage of any nature must be given to the City of Cupertino.

C. The insurance policies must be endorsed to show that they are primary, and any other valid and collectable insurance the City of Cupertino may have will be excess only.

D. All insurance policies must be approved by the City of Cupertino.

Historical Society Support Across Cities in Santa Clara County

City	Cupertino	Palo Alto	San Jose	Campbell	Los Altos	Los Gatos	Morgan Hill	Gilroy	Mountain View	Saratoga	Sunnyvale
Museum	Cupertino Historical Society and Museum	Palo Alto Junior Museum & Zoom	History San Jose (incl. History Park, Fallon House, Peralta Adobe)	Campbell Historical Museum & Ainsley House	Los Altos History Museum	New Museum of Los Gatos	Morgan Hill Historical Society and Villa Mira Monte	Gilroy Museum	Rengstorff House	Saratoga History Foundation & Museum	Heritage Park & Museum
Annual Budget	\$95,000	\$3,000,000	\$1,457,000	\$344,681	\$773,346	\$476,000	\$50,000	\$29,000	\$3,800	\$50,000	\$80,000 to \$120,000
Financial Support from the City	\$20,000	\$1,500,000	\$825,000	\$344,681	\$65,000	\$20,000+	\$20,000	\$2,200	\$0	\$0	\$0
Percent of Budget	21%	50%	58%	100%	8%	4%	40%	7.50%	0	0	0
Staff Supported by the City	0	All Staff 18 Full-Time	0	1.75 Full-Time with Benefits .11 Part-Time	Partial	0	No Staff	0	No Staff	0	0
Other support from the City	1,000 sq ft Gallery Space (total waived based on similar sq ft rentable space at Quinlan = \$67,980) Facility Maintenance Free Quinlan room rentals for historical society events, meetings, etc. (total fees waived for calendar year 2019 = \$2,405)	Owned and operated by the City	Operating agreement: City assets managed by History San Jose City uses some capital improvement project funding as needed	Museum operations Supplies Utilities Communications Collections storage Archival supplies Exhibit expenses Gardening supplies Books Professional dues IT support and monitoring	Facility owned and operated by the City 12,000 sq ft of facilities Full site one acre	10,800 sq ft facility Facility maintenance		Facility Maintenance Computer, copier, and IT support Volunteers are City of Gilroy volunteers Pays for HR onboarding of museum volunteers Historical society has a lease to operate the museum Bathroom janitorial is provided by City	Facility Offsite 240 sq ft storage unit Facility Maintenance	3,332 sq ft facility Facility owner (City)	Land owner (City) Facility owner (Historical Society)
Notes/Comments	<p><u>City/Historical Society partnership:</u></p> <ul style="list-style-type: none"> > Festival open houses > Quarterly preschool events and crafts > Museum open with booth or activities during city events and festivals > Exhibits in the Baer Blacksmith Shop at McClellan Ranch Preserve > Working on reinstating guided history walks at McClellan Ranch Preserve. <p><u>Historical Society Offerings to the Cupertino Community:</u></p> <ul style="list-style-type: none"> > Collection of more than 5,000 artifacts representing Cupertino > Local Historians > Three to five museum exhibits annually > An archive available for historical research, dissemination, and publication > Conservation expertise and managed care of the historical collection > Programming and exhibits <ul style="list-style-type: none"> - Quinlan Community Center - Cupertino Library - Cupertino Schools (traveling trunk program) > Avenue through which the community can highlight and celebrate various ethnic, religious, and international communities that represent contemporary Cupertino > Volunteer and paid staff who provide scholarly support to authors, researchers, and community members > Volunteer and internship opportunities <ul style="list-style-type: none"> - High School and College students - local civic organizations > Partnerships with local organizations <ul style="list-style-type: none"> - Cupertino Schools - Walk/Bike Cupertino - Cupertino Chamber - Rotary Cupertino - Eagle Scout Capstone Projects > Quarterly <ul style="list-style-type: none"> - newsletter - speaker series - film screenings - book signings > Intergenerational learning opportunities and areas of engagement > Day trips to museums and areas of historical interest > Themed Reading Groups 	Has a formal relationship with a friend group who in addition to funding about \$200k in programming per year recently funded the a \$25m rebuilding of their facility.	Other sources of History San Jose revenue: <ul style="list-style-type: none"> > HSJ's Education Programs > Event Use Fees > Membership Program > Individual, Corporate, Foundation Donations > Grants <p>Throughout the years, History San Jose has invested millions of dollars from County grants and other sources to maintain the City's structures within History Park and the Gonzales Peralta Adobe & Carmel & Thomas Fallon House.</p>	Fluctuating additional support provided by the Campbell Museum Foundation. A non-profit support organization. The Foundation helps to fund preservation, exhibits, and educational programs to offset operational expenses of the City.		The Town charges the museum \$2,000 per month for rent. During Covid they have forgiven the rent. Rent to resume in July 2022. The Town charges the museum \$2,000 per month for rent. Museum is lobbying to renegotiate the rent. The museum applies for a competitive grant each year that ranges from \$7,500 to \$10,000 which they usually receive for restricted funding.	The City of Morgan Hill has \$2M in Villa Mira Monte improvements budgeted in the 5-year CIP. The City also allocated one-time funds of \$206,000 in 2017 (park improvement and maintenance funds) for paint, security cameras, and miscellaneous maintenance projects. Villa Mira Monte is a 2.5-acre site with two historical buildings. The main house, referred to as the Hiram Morgan Hill House, was built in 1884 and is used as an event venue with upstairs storage for the Historical Society. A second building that was built in 1911 and brought onto the site, is used as the Morgan Hill Museum. The site was entered into the National Registry of Historic Landmarks in 1978 and the Morgan Hill Historical Society took title of the property in 1993 under an Owner Participation Agreement with the City. The covenants, conditions, restrictions, and easements dictate that the site must be maintained as a public educational and recreational park and will revert to the City's ownership if that purpose is not fulfilled. In 2017, the City entered into partnership with the Historical Society to preserve the site and support the operation as a park facility. The Morgan Hill Historical Society began in 1971 as a 501(c)(3) corporation and has devoted its resources to site preservation, maintenance, and operation. The organization has no paid staff and relies exclusively on volunteers to support its board and operations. In 2017, the Morgan Hill Historical Society entered into a memorandum of understanding with the City of Morgan Hill where the Historical Society committed to operate and maintain Villa Mira Monte as a community resource in exchange for City funding (a minimum of \$20,000 per year), marketing, and limited administrative functions. Since then, the City of Morgan Hill has provided funds for site maintenance and improvements. TLDR: The Historical Society owns the property, but ownership reverts to the City should the Society become insolvent. The Historical Society is fully responsible for management of the Villa Mira Monte Historical site.	> Other museum janitorial is the responsibility of the museum staff and volunteers > Historical Society is responsible for recruiting volunteers > Museum volunteers are managed by Historical Society staff. The Gilroy Museum was operated by part-time City staff until 2009. City of Gilroy volunteers under the supervision of the Gilroy Historical Society kept the Museum doors open for the next ten years on a limited basis while the Gilroy Historical Society raised a fund large enough to support a part time manager. The City of Gilroy then signed a lease with the Gilroy Historical Society to operate the Museum, and a part-time (25 hours/week) Museum Manager was hired in March 2020.	The City grants use of the property for housing the museum exhibit, holding special events/programming, board meetings, and storing inventory. Friends of the "R" House is the non-profit organization that conducts activities, such as educational events and community outreach to promote the awareness of Rengstorff House, the Rengstorff Family, and the history of Mountain View. The Friends purchase items, accept donations, and deaccession items, for use at the House. City requires insurance that costs approximately \$2000/yr.	Director and staff are volunteers The Historical Society is raising funds to build an extension to the current museum building. The City is not contributing to this.	

Cities contacted multiple times with no response: Santa Clara, Milpitas

Palo Alto Museum	Palo Alto Museum not yet open. The Palo Alto Museum, a nonprofit organization, established a public-private partnership with the City of Palo Alto to transform the Roth Building as a home for the Palo Alto Museum. The Museum will be the permanent home of the City of Palo Alto Archives. It will feature interactive exhibits, hands-on activities, thought-provoking programs and be a central resource for local history and research. Sustainability best practice will underlie the renovation of the Roth Building into a modern museum while preserving its historic features. Community spaces will include meeting rooms, a small café, a gift shop, and lounge.
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CUPERTINO HISTORICAL SOCIETY + MUSEUM FUNDING REPORT 2017-2022 and proposed 2023

Year and Amount	Category	Description	Amount	
FY2017-2018, Community Funding: \$15,000	Professional Services	Design and Printing of Historical Sites Brochure	\$4,200.00	
	Professional Services	Insurance for Snyder-Hammond House	\$4,100.00	
	Professional Services	Collections Storage and Care	\$2,200.00	
	Other	Newsletters and Other Printed Materials	\$1,700.00	
	Materials/Equipment	Exhibit and Programming Supplies	\$2,800.00	
	TOTAL			\$15,000.00
FY2018-2019, Community Funding: \$15,000	Admin/Staff	Admin/Staff	\$5,920.00	
	Materials/Equipment	All printing for society, newsletters and other printed materials, signage, exhibit needs, etc.	\$6,250.00	
	Entertainment	Musicians Exhibit Opening + Paul & Eddie's Event	\$820	
	Room Rental	Room Rental	\$1,400	
	Other	Insurance for Snyder-Hammond House; Misc Office Expenses (telephone and internet)	\$5,610	
	TOTAL			20,000
FY2019-2020, Community Funding: \$20,000	Admin/Staff	Admin/Staff	\$1,000	
	Materials/Equipment	Upgraded internet for hosting the Boglione Collection + 24 hour surveillance of the Apple-1, exhibit opening rentals, security cameras, ear phones, paint, plexiglass, bulletproof plexi, computer contractor, zoom, website upgrade	\$9,000	
	Other Professional Services	Collections Care, Storage and Snyder-Hammond House Upkeep	\$8,000	
	Other	Brochure, Newsletter, and other Didactic Material Printing	\$2,000	
	TOTAL			\$20,000
	FY2020-2021, Line Item: \$20,000	Admin/Staff	Admin/Staff	\$2,000
Other Professional Services		Collections Storage and Care	\$4,800	
Other Professional Services		Insurance for Snyder-Hammond and Misc. Upkeep	\$6,500.00	
Other Professional Services		Misc. Office Expenses, upgraded web security, zoom, computer contractor for at-home work expenses due to COVID, all printing and marketing.	\$6,700	
TOTAL			\$20,000	
FY2022-2023, Line Item: \$20,000 (Proposed)	Admin/Staff	\$2500 for Executive Director Expenses and \$2500 for part-time Collections	\$5,000	
	Other Professional Services	Collections Storage and Care	\$4,800	
	Other	Brochure, Newsletter, and other Didactic Material Printing	\$3,700	
	Other Professional Services	Insurance for Snyder-Hammond and Misc. Upkeep	\$6,500.00	
	TOTAL			\$20,000
	<i>(Continued)</i>			
<i>What we could do with more funding in 2022-2023</i>	Admin/Staff	Health Insurance for Executive Director	\$12,000	
	Other Professional Services	Misc Office Expenses--Newsletters, Phone and Internet expenses, postage, all signage and didactic materials	\$5,000	
	Other Professional Services	Charter Bus for 55 passengers for historical "field trips to various Bay Area locations of historical interest at \$2000/trip	\$8,000	
	Other	Catering, Marketing and PR Budget, and Additional resources for setting up Community Action Committee to reach key members of the Chinese, Tiwanese, and Indo-American Communities for CHSM Community Action Committees	\$4,000	
	Materials/Equipment	iPad (2-3) + tripod, portable lighting, digital tape recorder, misc supplies for "Chinese in Cupertino" oral history research project to be conducted in partnership with the Chinese Historical Society of America.	\$6,500	
	Materials/Equipment	Exhibit and Programming Supplies	\$5,000.00	
	Total (including \$20,000 from Above):			\$60,500

CITY OF CUPERTINO GRANT FUNDING AND LICENSE AGREEMENT

This Grant Funding and License Agreement (“Agreement”) is entered into between the City of Cupertino, a municipal corporation (“City”), and the Cupertino Historical Society, a non-profit public benefit corporation (“Historical Society” or “Grantee”), together, the “Parties.” The allocation of funds pursuant to this Agreement will be a grant. This Agreement is effective on the last date signed below (“Effective Date”).

RECITALS

- A. City is the fee owner of that certain real property known as the Quinlan Community Center ("Quinlan Center" or "Property"), with a street address of 10185 N Stelling Rd, Cupertino, CA 95014.
- B. The Historical Society has been using a certain portion of the Quinlan Center since 1992 for 20 years. The Historical Society desires to continue to use the portion of the Quinlan Center for gallery and office space.
- C. Since 2015, the City has provided grant funding to the Historical Society and desires to continue to support the mission of the Historical Society.
- D. City is willing to continue to provide grant funding to the Historical Society and to allow the Historical Society to continue to make use of that certain portion of the Quinlan Center depicted and described in **Exhibit A** attached hereto and incorporated herein ("License Area") on the terms and conditions set forth in this Agreement.

NOW THEREFORE, FOR AND IN CONSIDERATION of the mutual agreements by the Parties set forth herein and other good and valuable consideration, the Parties hereby agree as follows:

I. GRANT TERMS

1. **Purpose of Grant.** This is a grant for the Historical Society as more specifically described in **Exhibit B** to this Agreement (“Grant Project”), and all work funded by this Agreement shall be completed in accordance with the Grant Project Description.
2. **Term.** The term of this Agreement and the license granted hereunder shall commence on the Effective Date and expires on _____ (“Initial Term”) unless this Agreement is terminated earlier as provided herein. At the City’s sole discretion, this Agreement may be extended annually for a total of two additional years (“Option Term”). Following expiration of the Initial Term, and, if applicable, Option Term, this Agreement shall continue on a month-to-month basis.
3. **Grant.** The total grant funding provided pursuant to this Agreement shall not exceed the annual sum of forty thousand dollars (\$40,000) and, if the Option Term is exercised pursuant to Section 2, for a total sum of two hundred thousand dollars (\$200,000) (the “Grant Funds”).

4. **Disbursement of Grant Funds.** The City will not disburse Grant Funds to Grantee until (1) this Agreement is fully executed, and (2) signed Federal Taxpayer ID Number Form (substitute IRS Form W-9) has been submitted. Grant funds following the first year shall be disbursed by August 1st.
5. **Use of Grant Funds.** In accepting grant funds, Grantee agrees that it shall use or expend grant funds, or any portion thereof, only as provided for in this Agreement and, without limiting the generality of the foregoing, agrees to purchase materials, equipment, or other property specified in **Exhibit B** only for use in connection with the Grant Project authorized by this Agreement except as may be otherwise provided herein.
6. **Grantee Obligations.**
 - 6.1 **Performance.** Grantee shall carry out the Grant Project to the best of Grantee's ability and in accordance with the generally accepted professional and ethical standards of Grantee's profession and community and currently approved methods and practices in Grantee's field and in accordance with the standards required by the Grant Project Description.
 - 6.2 **Compliance with Laws.**
 - a. Grantee shall observe and comply with all applicable laws, ordinances, codes, and regulations of governmental agencies, including without limitation all provisions of the Occupational Safety and Health Act of 1979, Title VII of the Civil Rights Act of 1964, the Immigration Reform and Control Act of 1986 and all other applicable federal, state, and local laws.
 - b. Grantee represents and warrants to City that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for Grantee to complete the Grant Project.
 - c. Grantee shall comply with all labor laws applicable to this Agreement. If the Grant Project Description includes a "public works" component, Grantee is required to comply with prevailing wage laws under Labor Code Section 1720 and other labor laws.
 - d. Grantee shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS), or any other protected classification. Grantee shall comply with all anti-discrimination laws, including Government Code Sections 12900 and 11135, and Labor Code Sections 1735, 1777, and 3077.5. Consistent with City policy prohibiting harassment and discrimination, Grantee understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Grantee or its employees, contractors, or sub-contractors, will not be tolerated.

- 6.3 **Not an Employee.** Grantee and the agents, employees, contractors, and subcontractors of Grantee shall act in an independent capacity and not as officers or employees or agents of City. Grantee acknowledges and promises that City is not acting as an employer to any individuals furnishing services or work pursuant to this Agreement.
- 6.4 **Benefits and Taxes.** Grantee shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Grantee shall be solely liable for and obligated to pay directly all applicable taxes, including, but not limited to, federal and state income taxes, and in connection therewith Grantee shall indemnify and hold City harmless from any and all liability that City may incur because of Grantee's failure to pay such taxes.
- 6.5 **Return of Unused Grant Funds.** Any Grant Funds not expended for the Grant Project and substantiated in the Grant Report described in Section 7, below, shall be reimbursed to the City no later than fifteen (15) business days after submission of the Grant Report. In the event that this Agreement is terminated pursuant to Section 23, Grantee shall return to the City on a pro-rata basis funds granted for that particular year. For example, if this Agreement is terminated effective 6 months into a grant year, Grantee shall return \$20,000 to the City.
7. **Grant Report.** By the fifteenth (15th) business day of July in the fiscal year following disbursement of the Grant Funds, Grantee must submit to the City a written report (the "Grant Report") proving that Grant Funds have been spent in the matter and for the purposes stated in the Grant Project. The Grant Report shall include, at a minimum, a description of the work completed, a description of what the Grant Funds were spent on, substantiating documentation for grant expenditures (e.g., invoices, timesheets), and information about the number of persons served and other results that benefit Cupertino. The Grant Report shall also identify whether all Grant Funds were expended.
8. **Grant Coordination.**
- City Grant Manager. City assigns the Director of Parks and Recreation as the City's representative(s) for all purposes under this Agreement, with authority to oversee the progress and performance of the Grant Project. City reserves the right to substitute another grant manager at any time, and without prior notice to Grantee.
- Contractor Project Manager. Subject to City approval, Grantee assigns Jennifer Furlong as its single representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Grant Project. City written approval is required prior to substituting a new representative.
9. **Notice.** All notices, requests and approvals must be sent in writing to the persons below, which will be considered effective on the date of personal delivery or the date confirmed

by a reputable overnight delivery service, on the fifth (5th) calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

<p>To City of Cupertino:</p> <p>10185 N Stelling Road Cupertino, CA 95014</p> <p>Attention: Director of Parks and Recreation</p> <p>Email: recreation@cupertino.org</p>	<p>To Grantee:</p> <p>Attention:</p> <p>Email:</p>
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10. **Assignments and Subcontracts.** Grantee shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so will be null and void. Any changes related to the financial control or business nature of Grantee as a legal entity is considered an assignment of the Agreement and subject to City approval, which shall not be unreasonably withheld. Control means fifty percent (50%) or more of the voting power of the business entity.
11. **Retention of Records.** Grantee must maintain complete and accurate accounting records relating to its performance in accordance with generally accepted accounting principles. The records must include detailed information of Grantee’s performance, benchmarks and deliverables, which must be available to City for review and audit. The records and supporting documents must be kept separate from other records and must be maintained for five (5) years from the date of City’s final payment.
12. **Conflicts of Interest.** Grantee shall comply with all conflict of interest laws applicable to this Agreement and must avoid any conflict of interest. Grantee warrants that no public official, employee, or member of a City board or commission who might have been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement, in violation of California Government Code Section 1090, et seq. Grantee may be required to file a conflict of interest form if Grantee makes certain governmental decisions or serves in a staff capacity, as defined in Section 18700 of Title 2 of the California Code of Regulations. Grantee agrees to abide by the City’s rules governing gifts to public officials and employees.
13. **Rights to Material Produced.**
 - 13.1 Grantee agrees that all original writings, sound recordings, pictorial reproductions, drawings, data, computer programs, and other works of similar nature produced in the course of or under this Agreement, are subject to the rights of City as set forth in this section. City shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purpose whatsoever and to authorize others to do so. If any such work is copyrightable, Grantee may copyright the same, except that, as to any work which is copyrighted by the Grantee, the City reserves

a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so. Grantee agrees to deliver a reproducible copy of such documents and materials to City upon request.

- 13.2 City may, in its sole discretion, require Grantee to identify or credit City as the funding agency or source for all materials or products generated or produced by Grantee pursuant to the Grant Project Description. This identification or credit may take the form of a logo or other representative mark of City or representative wording (e.g. "funded in whole or in part by the City of Cupertino") which is printed or applied directly on or to those materials or products. Grantee shall not use City materials including logos, flyers, etc., without written permission from City.
- 13.3 Except as otherwise provided in this Agreement, Grantee shall have and retain title to all real or personal property purchased or funded with grant funds; provided, however, that City may require, as an additional condition of eligibility for grant funds and in advance of approval of this Agreement, that the Grantee provide security to City in order to ensure the performance of Grantee's obligations under this Agreement and that those obligations are performed consistent with the terms and conditions of this Agreement.
14. **Intellectual Property.** Grantee represents and warrants that it has the legal right to utilize all intellectual property it will utilize in carrying out the Grant Project. Grantee shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs, and all other litigation expenses for any infringement of the patent rights, copyright, trade secret, or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or work to be carried out in the performance of this Agreement.
15. **Publicity.** Any publicity generated by Grantee for the Grant Project under this Agreement, during the term of this Agreement and for one (1) year thereafter, will reference the City's contributions in making the Grant Project possible. The words "City of Cupertino" will be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews, and newspaper articles. No signs may be posted, exhibited, or displayed on or about City property, except signage required by law or this Agreement, without prior written approval from the City.

II. LICENSE TERMS

16. **Grant of License.** City hereby grants to Historical Society, its employees, consultants, representatives, contractors and guests a non-exclusive, revocable, temporary license ("License") to enter and use the License Area, as described in **Exhibit A**, for the sole purpose of gallery and office space (collectively, the "Permitted Activities"), between the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, as may be amended by the City from time to time.

17. **As-Is.** Historical Society acknowledges that neither City nor any agent of City has made any representation or warranty with respect to the condition of the Property or License Area, or its suitability for the Permitted Activities. Historical Society accepts the License Area in its "AS IS" condition and City shall have no obligation to improve the License Area. Historical Society shall not do or permit anything to be done in or about the License Area or the Property nor bring or keep anything therein which will in any way interfere with the City's use of the Property.
18. **Limitation on City Liability, Damage to Historical Society Property.** Historical Society, as a material part of the consideration to City, hereby assumes all risk of damage to property including, but not limited to, Historical Society's property, and injury to or death of persons in, upon or about the License Area, or any portion thereof, arising from any cause, and Historical Society hereby waives all claims in respect thereof against City, except to the extent such claims are caused by City's negligence or willful misconduct. Historical Society hereby agrees that City shall not be liable for injury to or death of any Historical Society employee, contractor, invitee or agent, or any other person in or about the Licensed Area, the Property, or any portion thereof, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising within or about the License Area, or any portion thereof or from other sources or places, except damage or injury caused solely by City's negligence or willful misconduct.
19. **Waste or Nuisance.** Historical Society shall not cause or maintain any nuisances in, on, or about the License Area or Property; or commit any waste in, on, or about the License Area or Property.
20. **No Alterations.** Historical Society shall not make any alterations, additions or improvements to the License Area or any part thereof.
21. **Protection of Property.** Historical Society shall practice all due diligence to protect the License Area. Historical Society shall, at its own expense, ensure that any litter is placed in the proper garbage, recycling, or compostable bins after each use. City, at its own expense, will ensure that the License Area is free of any litter, but the City is not obligated to empty its garbage, compost, or recycle bins outside of its ordinary schedule for doing so. In the event of damage to the License Area or Property arising directly or indirectly from Historical Society's use or access to the License Area or performance of the Permitted Activities, whether by Historical Society or its employees, contractors, invitees, third party program providers or other agents, the Historical Society shall reimburse the City, within 30 days following City's demand therefor, the cost of restoring any damage to the License Area or other improvements comprising the Property. Historical Society's obligations under this Section shall survive any expiration or termination of this Agreement.
22. **Utilities and Equipment.** Historical Society shall be responsible for its own telephone service and shall provide for its own office equipment and furnishings.

23. **Access to Premises.** Historical Society shall permit the City and its agents to enter into and upon the premises at all reasonable times for purposes of inspecting the same or for the purpose of maintaining or repairing the premises. Access to the premises is limited to city employees or agents, grantee employees or agents, and members of the public receiving services provided by grantee.

III. GENERAL PROVISIONS

24. **Indemnification.**

24.1 Except to the extent claims are caused by City's sole negligence or willful misconduct, Historical Society shall indemnify, protect, defend, and hold harmless City and its elected officials, officers, employees, volunteers, agents, representatives, and contractors from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including attorneys' fees and costs incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the term as a result (directly or indirectly) of or in connection with (i) any default in the performance of any obligation on Historical Society's part to be performed under the terms of this Agreement; (ii) the Permitted Activities; (iii) any act, error or omission of Historical Society or its employees, contractors, invitees, third party program providers or other agents in or about the License Area or Property or any portion thereof; or (iv) loss of, injury or damage to, or destruction of personal property or fixtures (including but not limited to furnishings and bathroom fixtures) on or about the License Area (collectively, the "Indemnification") arising from this agreement. Historical Society shall provide the defense portion of such Indemnification by and through counsel reasonably acceptable to City. The indemnification obligations of Historical Society set forth in this Section shall survive any expiration or termination of this Agreement.

24.2 City shall indemnify, protect, defend, and hold harmless Historical Society and its elected officials, officers, employees, volunteers, agents, representatives, and contractors from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including attorneys' fees and costs incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the term to the extent caused (directly or indirectly) by (i) any default in the performance of any obligation on City's part to be performed under the terms of this Agreement; (ii) caused by the sole negligence or willful misconduct of City or its employees, contractors, invitees or agents in or about the License Area or Property or any portion thereof. The indemnification obligations of City set forth in this Section shall survive any expiration or termination of this Agreement.

25. **Insurance.** Grantee shall maintain the following minimum levels of insurance coverage during the term of this Agreement. Prior to the execution of the Agreement, the Grantee shall provide proof of insurance required. Insurance is to be placed with either a public entity risk pooling organization acceptable to the City or with insurers authorized to conduct business in the state. Coverage shall be at least as broad as:

E. Commercial General Liability (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.

1. It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
2. Additional Insured coverage under Grantee's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 10 (04/13).
3. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Agreement. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.

B. Automobile Liability: ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than **\$1,000,000** per accident for bodily injury and property damage.

C. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

D. The insurance obligations under this Agreement shall be (i) the minimum coverage and limits specified above; or (ii) all the Insurance coverage and/or limits carried by or available to Grantee, whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to City.

E. Other Insurance Provisions. The aforementioned insurance shall be endorsed and have all the following conditions and provisions:

1. Additional Insured Status. The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers ("Additional Insureds") are to be covered as additional insureds on Grantee's CGL and automobile liability policies. General Liability coverage can be provided in the form of an endorsement to Grantee's insurance (at least as broad as ISO Form CG 20 10 (11/ 85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

2. **Primary Coverage.** Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Grantee's insurance and shall not contribute to it.
3. **Notice of Cancellation.** Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.
4. **Waiver of Subrogation.** Grantee waives any right to subrogation against City/Additional Insureds for recovery of damages to the extent said losses are covered by the insurance policies required herein. Specifically, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Grantee, its employees, agents and subconsultants. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by the City. At City's option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Grantee must show proof of ability to pay losses and costs related investigations, claim administration and defense expenses. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the insured or the City.
6. **Acceptability of Insurers.** Insurers must be licensed to do business in California with an A.M. Best Rating of A-VII, or better.
7. **Verification of Coverage.** Grantee must furnish acceptable insurance certificates and mandatory endorsements (or copies of the policies effecting the coverage required by this Agreement), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements prior to commencement of the Agreement. City retains the right to demand verification of compliance at any time during the Agreement term.
8. **Subcontractors.** Grantee shall require and verify that all subcontractors maintain insurance that meet the requirements of this Agreement, including naming the City as an additional insured on subcontractors' insurance policies.
9. **Higher Insurance Limits.** If Grantee maintains broader coverage and/or higher limits than the minimums shown above, City shall be entitled to coverage for the higher insurance limits maintained by Grantee.
10. **Adequacy of Coverage.** City reserves the right to modify these insurance requirements/coverage based on the nature of the risk, prior experience, insurer or other special circumstances, with not less than ninety (90) days prior written notice.

26. **Termination.** Either party may terminate this Agreement, with or without cause, by providing thirty (30) days' notice in writing to the other party. The City may terminate this Agreement at any time without prior notice in the event that Grantee commits a material breach of the terms of this Agreement. Upon termination, this Agreement shall become of no further force or effect whatsoever, and each of the Parties hereto shall be relieved and discharged from their obligations under this Agreement, subject to payment for acceptable grant implementation work carried out prior to the expiration of the notice of termination or reimbursement to the City pursuant to Section 6.5. Subject to the foregoing, all provisions which by their nature must continue after the Agreement expires or is terminated shall survive the Agreement and remain in full force and effect, including but not limited to: Grantee Obligations, Benefits and Taxes (Section 6.4); Retention of Records (Section 11); Rights to Material Produced (Section 13); Intellectual Property (Section 14); Indemnification (Section 24); Governing Law, Venue, and Dispute Resolution (Section 27); and Attorneys' Fees (Section 28).
27. **Governing Law, Venue, and Dispute Resolution.** This Agreement is governed by the laws of the State of California. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Grantee must comply with the claims filing requirements under the Government Code prior to filing a civil action in court. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.
28. **Attorneys' Fees.** If either party initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceedings to enforce its rights or a judgment in connection with this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.
29. **Waiver.** Neither the acknowledgement of work or disbursement of grant funds pursuant to this Agreement shall constitute a waiver of any rights or obligations arising under this Agreement. The failure by the City to enforce any of Grantee's obligations or to exercise City's rights shall in no event be deemed a waiver of the right to do so thereafter.
30. **Notice of Nonrenewal.** Grantee understands and agrees that there is no representation, implication, or understanding that Grantee may be entitled to grant funds or that the work or other activity funded by City pursuant to this Agreement will be funded by the City under a new agreement following expiration or termination of this Agreement. Grantee waives all rights or claims to notice or hearing respecting any failure by City to continue to fund all or any such activities by Grantee following the expiration or termination of this Agreement.
31. **Third Party Beneficiaries.** There are no intended third party beneficiaries of this Agreement.
32. **Entire Agreement.** This Agreement represents the full and complete understanding of every kind or nature between the Parties, and supersedes any other agreement(s) and understanding(s) on this subject, either oral or written, between the Parties. Any modification of this Agreement will be effective only if in writing and signed by each

Party's authorized representative. No verbal agreement or implied covenant will be valid to amend or abridge this Agreement. If there is any inconsistency between any term, clause, or provision of the main Agreement and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Agreement shall prevail and be controlling unless otherwise indicated.

33. **Severability.** If any term or provision of this Agreement, or its application to a particular situation, is found by the court to be void, invalid, illegal, or unenforceable, such term or provision shall remain in force and effect to the extent allowed by such ruling. All other terms and provisions of this Agreement or their application to specific situations shall remain in full force and effect. The Parties agree to work in good faith to amend this Agreement to carry out its intent.
34. **Execution.** Each individual executing this Agreement, on behalf of one of the Parties, represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed.

CITY OF CUPERTINO
A Municipal Corporation

GRANTEE/LICENSEE

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

Tax I.D. No.: _____

APPROVED AS TO FORM:

CHRISTOPHER D. JENSEN
Cupertino City Attorney

DATE: _____

ATTEST:

KIRSTEN SQUARCIA
City Clerk

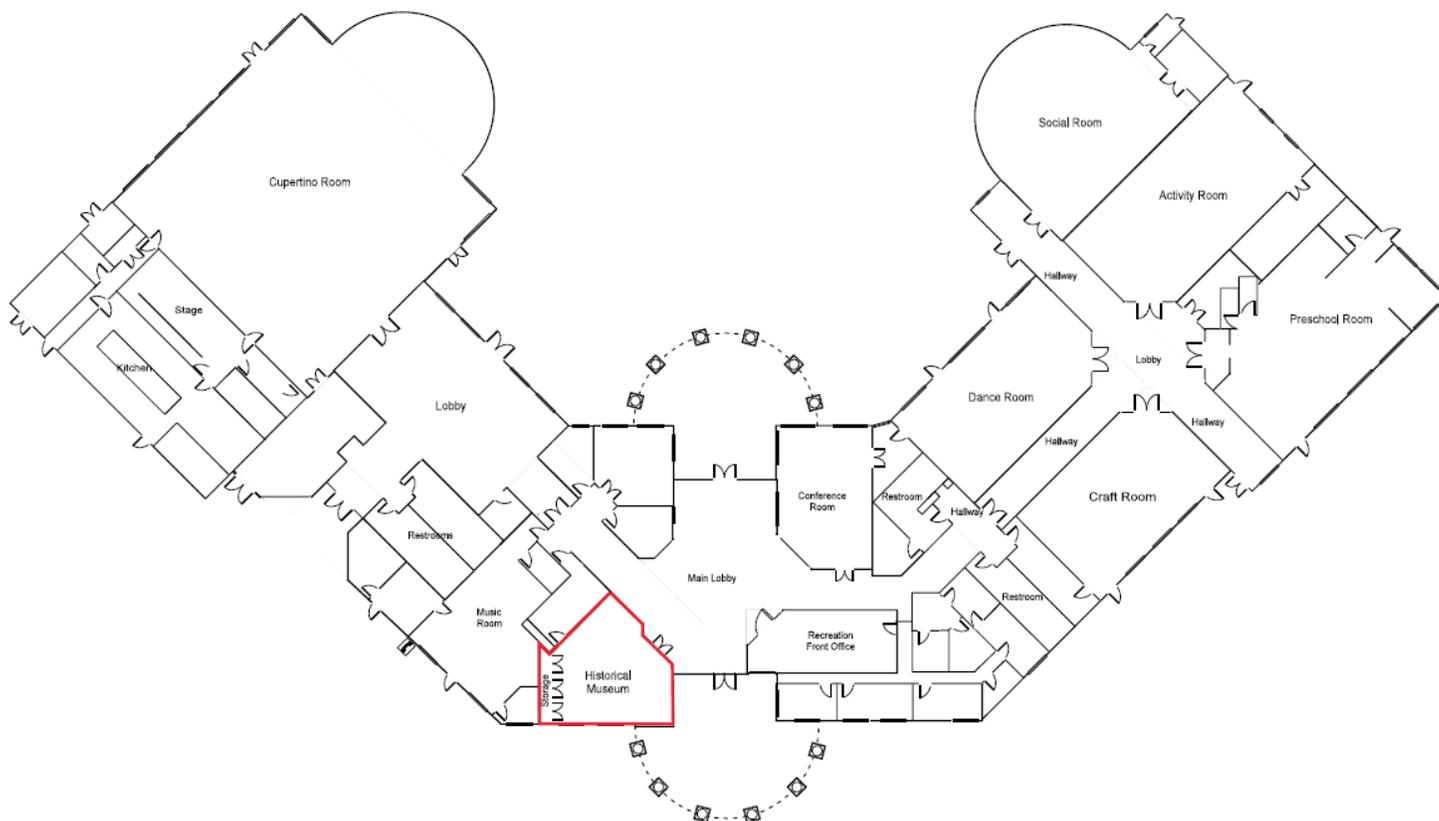
DATE: _____

Exhibit A

License Area

The Historical Society desires to continue to use the portion of the Quinlan Center for gallery and office space as depicted in the image above.

Quinlan Community Center



Both parties further agree to the following:

1. The City shall provide 18 meeting rooms and four large rooms at the Quinlan Center per calendar year with no base hourly fees applied to the Grantee for related activities. Meeting rooms shall not include the Quinlan Community Center's Cupertino and Social Rooms. For rental of any all other City meeting rooms, Grantee shall be charged the facility use Cupertino Non-Profit rate on the rental of any City facility.
 - a. Grantee shall be responsible for additional costs as outlined in the Fee Schedule E – Recreation.
2. Grantee shall notify City, in writing, at least 30 days in advance to cancel any room rentals. Late cancellation notices may result in the reduction of meeting rooms provided for that calendar year.
3. Upon termination of this Agreement with the Grantee, the Executive Director shall return all keys to the City's Parks and Recreation Director or an authorized representative.

-End of Exhibit A-

Exhibit B

Grant Project

Service	Description	Itemized Expense	Total for Service Category
Collections Management	Professionally manage archive of over 5,000 objects. Sample activities include cataloging, rehousing objects, collections research, object paperwork and assessment, collections inventory, collections digitizing, condition reports, pest remediation, etc.	IT Support and misc tech needs-- \$1,000/year Collections Assistant \$3,000/year Collections Supplies \$500/year (can include software), PastPerfect Online digital collections database \$1000/year; Insurance and Storage \$6500	\$12,000
Curatorial/Exhibitions	Provide 3-5 professionally curated exhibits/pop-up exhibits annually that relate to the mission of the museum and interests of the community.	\$10,000 graphics and printing for labels, panels and other didactics. \$5,000 misc. exhibit supplies—for technology and/or interactives, as dictated by the needs of the exhibition.	\$15,000
Community Outreach	Museum open houses during City festivals and fairs; QCC Preschool Events with Crafts; Special Exhibits at various locations around Cupertino (Cupertino Library, Baer Blacksmith Shop, Other Local Organizations); Traveling Trunk; Quarterly Speaker Series; Community Action Committee; Oral History Events; History Happy Hours; Volunteer and	\$1,000 Craft and Exhibit Supplies; \$5,000 food/beverage needs; \$5,000 Advertising/PR; \$2000 newsletter printing	\$13,000

	Internship opportunities for anyone ages 16+; Reading Groups		
Total			\$40,000

The Historical Society further agrees to the following:

1. Submit annual grant funding report as stated in Section 7 - Grant Report.
2. Present an annual report of fundraising activities, current work plan achievements, and future work plan items and projects to the Parks and Recreation Commission.
3. Designate one position on the Cupertino Historical Society Advisory Council for a Cupertino City Council member, as a representative of the City.
4. Commit to fundraising or pursuing other funding opportunities.

-End of Exhibit B-

RESOLUTION NO. 22- ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING THE OPERATING BUDGET FOR FISCAL YEAR 2022-23 BY
APPROPRIATING, TRANSFERRING, AND UNAPPROPRIATING MONIES
FOR SPECIFIED FUNDS

WHEREAS, the orderly administration of municipal government depends on a sound fiscal policy of maintaining a proper ratio of expenditures within anticipated revenues and available monies; and

WHEREAS, accomplishing City Council directives, projects and programs, and performing staff duties and responsibilities likewise depends on the monies available for that purpose; and

WHEREAS, the City Manager has determined that the balances from the funds specified in this resolution are adequate to cover the proposed amended appropriations, and therefore recommends the fund reallocations described herein.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby approve the recommended fund reallocations and ratifies the attached amended appropriations as set forth in Exhibit A.

PASSED AND ADOPTED at a special meeting of the City Council of the City of Cupertino this 4th day of Octoer 2022, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
-------------	------------------------------------

AYES:
NOES:
ABSENT:
ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date

EXHIBIT A

Appropriation Amendment by Fund	Appropriation Amendment	Revenue Amendment	Fund Balance (Use of)
General Fund	\$20,000	\$-	\$(20,000)
Special Revenue Funds	\$-	\$-	\$-
Capital Projects Funds	\$-	\$-	\$-
Enterprise Funds	\$-	\$-	\$-
Internal Service Funds	\$-	\$-	\$-
Total Appropriation Amendment All Funds	\$20,000	\$-	\$(20,000)



CITY OF CUPERTINO

Agenda Item

22-11491

Agenda Date: 10/4/2022
Agenda #: 15.

Subject: Progress update on the Climate Victory Gardens pilot program

Receive an update on the Climate Victory Gardens pilot and direct staff to:

1. Continue to share these findings with neighboring jurisdictions, Valley Water, and to develop further partnerships with landscape supply companies, designers, and installers through the life of the pilot program, and
2. Focus on large and institutional sites based on the evidence provided by the cost effectiveness table (Table 3), and
3. Explore partnerships for training and workforce development to ensure that the customer, the City, and contractor can move projects forward in a timely manner, and
4. Bring back a permanent program for City Council's consideration before the pilot program expires in 2023.

Presenter: Andre Duurvoort , Sustainability Manager



CITY MANAGER'S OFFICE

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: October 4, 2022

Subject

Progress update on the Climate Victory Gardens pilot program

Recommended Action

Receive an update on the Climate Victory Gardens pilot and direct staff to

- (1) Continue to share these findings with neighboring jurisdictions, Valley Water, and to develop further partnerships with landscape supply companies, designers, and installers through the life of the pilot program, and
- (2) Focus on large and institutional sites based on the evidence provided by the cost effectiveness table (Table 3), and
- (3) Explore partnerships for training and workforce development to ensure that the customer, the City, and contractor can move projects forward in a timely manner, and
- (4) Bring back a permanent program for City Council's consideration before the pilot program expires in 2023.

Discussion

The City Council directed staff to create a "Lawn Buster Drought Tolerant Planting Pilot" as part of the Fiscal Year 2019-2020 City Work Program and allocated a project budget of \$175,000. The project's objective was to create a program to enable residents to easily elect water-wise turf conversion, including pre-set landscape plans, pre-approved contractors, and fixed prices. Below is a brief overview of the project milestones:

- **Pre-planning:** City conducted initial research and data collection on similar programs within other jurisdictions and created an initial conceptual design for a Cupertino-specific landscape conversion pilot.
- **April 2019:** City prepared a Request for Qualifications (RFQ) to solicit project design and technical support from qualified firms. No firms were identified.
- **Spring 2020:** The project team consulted with water agencies and landscaping professionals, re-designed the concept, and issued a revised request for proposals (RFP).
- **October 2020:** A local non-profit, Ecology Action, was awarded a contract of \$102,100 for a one-year pilot. Climate Victory Gardens pilot launched with a public

relations campaign, program documents and website, and an online workflow application developed by the Information Technology Division.

- **September 21, 2021:** Staff update to Council on pilot's progress. Council authorized the City Manager to waive City planning and review fees for removing turf grass in certain situations.
- **December 2021:** Based on promising results of the first year, the City Manager authorized a new contract for \$60,000 and extension of the pilot through December 2022.
- **July 2022:** Staff update to Sustainability Commission.
- **September 2022:** Amendment signed to add \$12,181 to fund additional scope of services and extend the pilot through the end of FY23.

The project team expects the pilot program goals to be reached and exceeded by the end of this fiscal year. The targets are summarized in this report. With innovation pilot programs, the targets are often designed in a way to not only move forward a strategy such as water conservation, but also to generate tests and data that can help improve program offerings and how they scale across City operations.

Pilot Overview and Objectives

Climate Victory Gardens offers full-service project management services to support residents, homeowner's associations, and property managers step-by-step through the process of converting turf into drought-tolerant, California native landscapes. Ecology Action provides technical assistance, direct installation of landscaping, and recruitment of landscape installation contractors.

Climate Victory Gardens makes installation costs more predictable by leveraging rebates from Valley Water, and by negotiating fixed rates with qualified installation contractors. The program promotes add-on features including rainwater harvesting, laundry to landscape greywater reuse, and rain gardens. These add-on features help the property owner to utilize additional rebates, apply ecological principles as identified in the Climate Action Plan 2.0, and apply today's best landscape retrofit practices.

Ecology Action offers two "pathways" for customers to install drought-tolerant landscapes:

1. **Participant Installation (DIY):** Ecology Action supports the customer with no-cost landscape design and technical assistance services. The work is performed by the customer with assistance from Ecology Action. Ecology Action procures all materials and applies for the Valley Water rebates on the customer's behalf. This basic offering is designed so that all or nearly all the cost to the customer is offset by the rebates.
2. **Contractor Installation:** Ecology Action provides "turn-key" project services, including landscape design, technical assistance, and contractor selection support. The contractor can be one of the pre-approved program contractors selected by Ecology Action or another contractor selected by the customer. Installation costs

are determined by the program agreement. A basic landscape conversion project is set at \$6/square foot; however, customers can choose different features and adjust as needed. The customer then claims the landscape water conservation rebate from Valley Water to offset the cost of their installation.

Climate Victory Gardens key service elements:

- No-cost landscape and irrigation assessment at the property
- Planting and irrigation design to replace the lawn
- Negotiated bulk pricing for plants and irrigation equipment
- Negotiated rate agreements with a bench of qualified landscape installation contractors
- Upfront standard fee of \$6/square foot for a basic project (Contractor Installation Option)
- Basic package designed to be entirely offset by Valley Water rebates, with professional design and technical assistance at no cost (Participant Installation (DIY) Option)
- Technical design assistance for rainwater and graywater “add-on” features
- Technical support in applying for and receiving Valley Water rebates
- Project Agreement Forms document all expectations for the customer upfront

Climate Victory Gardens maximizes uptake of incentives and rebates from Valley Water, including the Landscape Conversion Rebate detailed in Table 1.

Table 1. Valley Water rebate examples within the City of Cupertino.

	Small-Medium Sites	Large Sites
	<i>Single Family and Small Multi-Family (4 or fewer units)</i>	<i>Commercial, Industrial, Institutional, and Large Multi-Family (5 or more units)</i>
Total Lifetime Combined Rebate	\$5,000	\$110,000
First 1,000 sq. ft.	\$3.00/sq. ft.	-
First 10,000 sq. ft.	-	\$3.00/sq. ft.
Thereafter sq. ft.	\$2.00/sq. ft. up to per-site cap	\$2.00/sq. ft. up to per-site cap

**Note: Rebate cap is one-time only; sites in unincorporated areas in Cupertino are not eligible for additional cost sharing amount; amounts updated since September 2022.*

In addition to the standard landscape conversion rebate type, Cupertino customers are eligible to apply for rebates for irrigation equipment and rainwater capture to further improve their yards (Table 2).

Table 2. Additional Rebates for Cupertino Customers

Irrigation Equipment	
High-Efficiency Nozzles	Up to \$5/nozzle

Rotor Sprinklers or Spray Bodies	Up to \$20/body
Rain Sensor	Up to \$50/sensor
Dedicated Landscape Meter, Flow Sensor*, Hydrometer*	Up to \$1,000/meter
Weather Based Irrigation Controller, 1-12 Stations	Up to \$300/controller
Weather-Based Irrigation Controller, 13-24 Stations	Up to \$1,000/controller
Weather-Based Irrigation Controller, 25 Stations+	Up to \$2,000 per controller
In-line Drip	\$0.25/sq. ft.
Rainwater Capture	
Rain Barrel (40-199 gals)	Up to \$70
Cistern (200-gals min)	\$1.00 per gallon
Rain Garden	\$2.00/sq. ft. (up to \$600)

Customer rebate examples:

- A single-family property that replaces a turf lawn of 1,000 square feet will receive a total of \$3,000 (1,000 sq. ft. x \$3.00). The customer will receive a rebate of \$3,000 for their landscape conversion and has the potential to access \$2,000 worth of irrigation equipment and rainwater capture rebates.
- A non-residential property that has a turf lawn of 7,000 square feet will receive a total of \$21,000 (7,000 sq. ft. x \$3.00). The customer will receive a rebate of \$21,000 for their landscape conversion and has the potential to capture \$89,000 worth of irrigation equipment and rainwater capture rebates.

Pilot Objectives:

- **Up to 55 landscape consultation site visits** to educate residents about the possibilities for sustainable landscape transformation
- **30 customized designs** delivered (mix of single-family, multi-family, and non-residential sites)
- **45,000 ft² of high water/energy use landscaping converted** to climate- adapted landscapes that increase biodiversity, sequester carbon, and reduce stormwater run-off

As of August 2022, a total of 44 landscape consultation site visits have been completed (Table 3).

Table 3. Climate Victory Garden (CVG) Pilot Program goals, current pipeline of projects, and completed projects as of August 2022.

Pilot Program Goals	Total in Progress + Completed	Completed to Date
Up to 55 landscape consultation site visits	48	44

30 gardens designed	35	29
45,000 ft ² of turf converted	35,095 ft ²	30,972 ft ²

While the program is on track to exceed the goal for number of gardens designed, it is currently short of the turf conversion goal. In hopes of meeting and exceeding the turf conversion target, remaining pilot program resources are being prioritized. The project team is in discussions with several community-based organizations and public agencies that may be good pilot participants, in order to observe results from that customer class compared to homeowners or HOAs. In addition, having a diversity of sites would allow the pilot’s effectiveness to be evaluated for various sized projects across multiple sectors. With a large list of interested customers, the project team expects to exceed all pilot program goals.

Two example projects are pictured below. A selection of customer testimonials is included as an Appendix to this report.

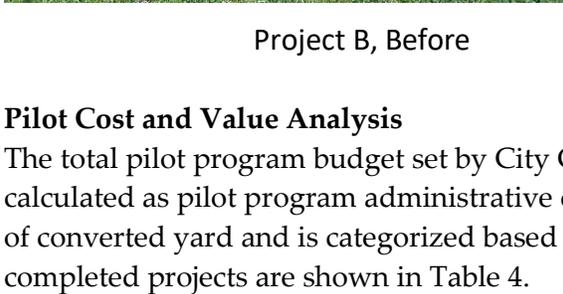
Project A, Before



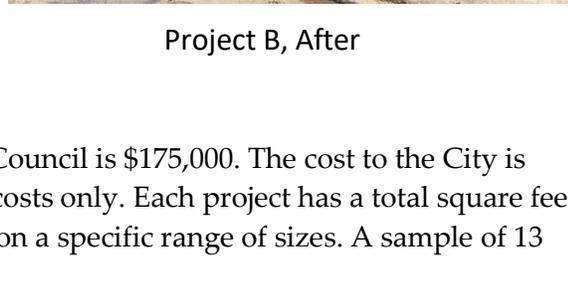
Project A, After



Project B, Before



Project B, After



Pilot Cost and Value Analysis

The total pilot program budget set by City Council is \$175,000. The cost to the City is calculated as pilot program administrative costs only. Each project has a total square feet of converted yard and is categorized based on a specific range of sizes. A sample of 13 completed projects are shown in Table 4.

The contracted services amount to approximately \$3.80 per square foot converted. For comparison, a direct install program operated by the City of San Jose Municipal Water Agency contracted with a consultant in 2015 for \$2.00 per square foot converted. The San Jose program is limited to only low-income customers, does not provide any

customization options for participants, does not provide or irrigation systems, and has a wait list of 1 year or more before a consultation can be scheduled. The San Jose program does rely on AmeriCorps to complete the conversions, which provides an important workforce development service but at the expense of the more concierge experience provided by the Climate Victory Gardens pilot model. Initial results suggest that the Climate Victory Gardens model provides for more reliable outcomes; however, cost is higher on a per-unit basis.

Table 4. Program administration cost to the City, 13 completed projects are categorized by size of turf converted.

Category Label	Project Size (Sq. Ft.)	# of Sites in Sample	Total Sq. Ft.	Water Savings (Gallons)	Cost per gallon saved
A	0-500	2	2,000	55,881	\$3.13
B	501-800	4	5,564	155,462	\$1.13
C	801-1000	2	3,692	103,157	\$1.70
D	1001-1500	3	6,534	182,564	\$0.96
E	1501-2000	2	6,428	179,602	\$0.97

Findings and Key Lessons Learned

The project team makes the following conclusions based on this data.

- a) The sustainability value to the City is higher when these types of direct assistance services are targeted to larger customers – the cost per unit is lower.
- b) Most of the project sizes were in category ‘B’ ranging from 501 to 800 square feet. The project team has identified a “neighborhood effect,” where converted lawns across many neighborhoods may spark conversations among neighbors. This has an intangible value to the City in terms of driving behavior change over the long term.
- c) The largest total area of turf converted was in category ‘D’ (1001 to 1500 sq. ft.) with a total of 6,534 converted yard area; the program administrative cost is \$0.96 per gallon saved. This site is a highly visible HOA property.
- d) There was approximately 100 hours of staff time dedicated to this pilot program in Fiscal Year 2021. Some functions could be brought in-house to reduce the fixed costs to the City, but the design and technical advice is a specialized activity that is best performed by experienced landscape managers.

Overall, the City and its collaboration with Ecology Action has shown positive outcomes within the Cupertino community through (1) positive feedback from clients on the

program, EA, and the City, (2) a long waitlist indicating a high interest in this pilot program, and (3) increased awareness, education, and proactive behavioral changes to reduce water usage.

As the drought continues to present short and long-term consequences with water supply and infrastructure, our partners in the Valley Water Conservation Subcommittee have also provided the following feedback:

- The Climate Victory Gardens pilot has produced better outcomes compared to most projects that Valley Water audits. The gardens are thoughtfully designed, and the homeowners are likely to maintain them when they have a consultative approach to the project delivery
- The pilot is likely to produce sustainable water savings, because the gardens are installed with professional oversight, which eliminates many of the issues that Valley Water observes with improper irrigation, plant die-off, or incorrect mulching techniques.
- The pilot program provides additional value to the broader community by training homeowners, property managers, and installation contractors in proper application of low water use drip irrigation and design principles.
- The incentive applications are processed quicker under the pilot, using economies of scale and providing direct homeowner assistance to claim the rebates. This is a reduced administrative burden for both the homeowners and the Valley Water program.
- Valley Water is interested in exploring further partnerships with Cupertino.

Attracting Interested Installers: A consultative approach results in better outcomes, however it is a large element of the cost to serve. Constraints such as resident financial flexibility, apprehension on the landscape design, present challenges to administrative cost. For smaller sites (below 1,000 ft²), it has been a challenge to attract interested installers for the \$5/ ft² set price (\$6/ ft² as of 2022). This is due to fixed overhead costs and labor shortages during the pandemic. The program is being evaluated to potentially adjust the pricing structure or the minimum square footage requirement, which is currently set at 500 ft². Changes to the customer contribution would have no fiscal impact to the City.

Multiple Stakeholders: The pilot program seeks to include several project types including single-family residential, multi-family residential, small commercial, and community-based facilities such as churches and fire stations. However, it can be difficult to get commitment from the appropriate point of contact with decision authority for sites with multiple stakeholders. The program is being evaluated to determine how best to handle these situations. There has been some success in this area through collaborative interactions and multiple iterations. For example, the City is working with a local church to provide design services and assistance installing rainwater harvesting system to support their community garden and improve stormwater conditions. However, all these interactions require time and administrative fees.

Attracting Larger Sites: It is clear from Table 3 that larger sites are more cost-effective in terms of administration of this type of technical assistance program. Under this pilot model, each site served has a relatively fixed administrative cost, but the more landscape that is converted results in increased water savings. In addition, larger projects allow for more gallons of water saved because the original turf yard needs substantial watering compared to drought tolerant and native plants which need significantly less water.

An additional barrier to converting larger sites was the additional fee for removing or converting yards. The Planning and Sustainability staff brought the fee and review process to the attention of the City Council in a September 2021 staff report. Council adopted Resolution No. 21-087 which authorizes the City Manager to waive certain City fees when a property owner undertakes a project to remove turf grass and replace with more drought-tolerant options. Applicants can contact the Planning Division to start that process.

Next Steps

Based on the findings from the analysis on cost, program effectiveness, and considerations for continuing the program, City Council is recommended to direct staff to:

- (1) Continue to share these findings with neighboring jurisdictions, Valley Water, and to develop further partnerships with landscape supply companies, designers, and installers through the lift of the pilot program, and
- (2) Focus on large and institutional sites based on the evidence provided by the cost effectiveness table (Table 3), and
- (3) Explore partnerships for training and workforce development to ensure that the customer, the City, and contractor can move projects forward in a timely manner, and
- (4) Bring back a permanent program for City Council's consideration before the pilot program expires in 2023.

Sustainability Impact

The pilot program helps the City make progress towards multiple objectives in the Climate Action Plan 2.0, especially water conservation and promoting biodiversity.

Drought tolerant and California native plant landscapes have a beneficial impact to residents, wildlife, and water conservation:

- Ground covers, shrubs, and trees that are drought tolerant can withstand low water and high-heat weather conditions because they are able to retain moisture. The root systems of these plants reach further into the ground compared to grass turf, thus can store groundwater, and can stabilize slopes and hills. With the

- increase in California wildfires, many of the drought tolerant plants have lower quantities of flammable oils and can contribute to fire-resistance.¹
- Supporting local ecology through lawn conversions means preservation of California native plants and wildlife biodiversity.² Reducing landscape maintenance such as traditional lawn mowing means there is less green waste and a reduction in pesticide use which means toxins stay out of our waterways and soil.³

A recent report from the Santa Clara Valley Water District shows that average water savings increases incrementally each year after conversion therefore although initial water savings is low after initial turf conversion, it will increase substantially by the fifth year (Figure 2).

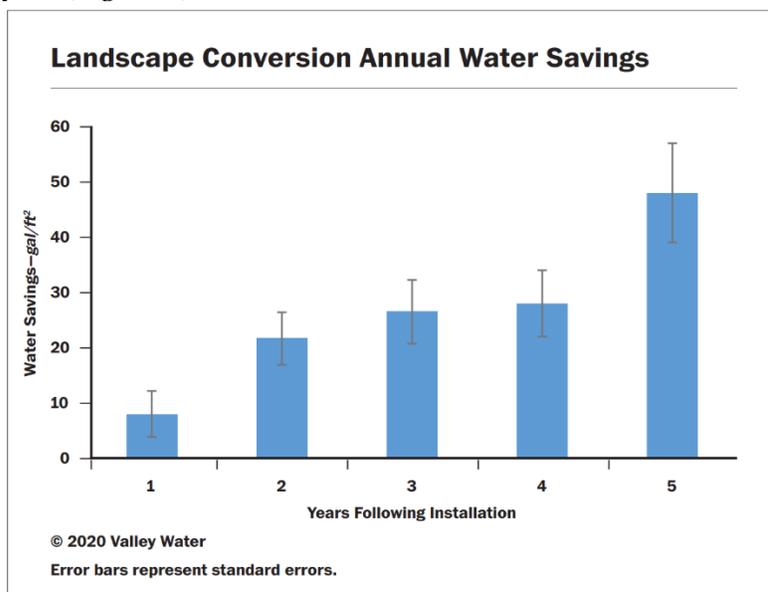


Figure 2. Neeta S. Bijoor, Valley Water, “Saving Water with a Landscape Water Conservation Rebate Program,”⁴

The regional water authorities have stated that if this upcoming winter is also a dry winter, then the mandatory water restrictions will become stricter and will continue to exert pressure on our communities. It is the responsible approach to remove every possible barrier to reducing water use in Cupertino at this time, in a way that can

¹ University of California Cooperative Extension (UCCE), California Sea Grant Extension, 2009, “Drought Tolerant Plants,” accessed March 19, 2022, https://caseagrant.ucsd.edu/sites/default/files/Drought-Tolerant-Plants_8-7-09-2.pdf.

² California Native Plant Society, “Benefits of California Native Plants,” accessed March 19, 2022, <https://www.cnps.org/gardening/why-natives/benefits-of-california-native-plants>.

³ California Department of Water Resources (CDWR), June 10, 2020, “Why Garden with California Native Plants: Tips from DWR Landscape Architect Cassandra Musto,” accessed March 19, 2022, <https://water.ca.gov/News/Blog/2020/June/Why-Garden-with-California-Native-Plants>.

⁴

https://www.valleywater.org/sites/default/files/Bijoor%20AWWA%20Publication_2021.pdf.

responsibly build up resilient properties but also spur private investments and economic activity. Drought-tolerant gardens set a very visual example of what a climate-adapted City looks like.

Ecological Benefits

Another sustainability impact is in increasing the ecological benefits offered by more diverse landscapes. Studies show that most turf removal projects replace a single species of turf grass with between 6 to 20 distinct species of plants, which may offer more beneficial habitat for local pollinators, birds, and other wildlife, especially if the plants selected are native to the area. Increasing biodiversity is a

Reduce Stormwater Runoff

A third benefit is that well-designed urban landscapes can also help infiltrate water and reduce stormwater runoff. Managing the stormwater system and reporting on creek water quality is a core function of the Cupertino City government and is performed by the Public Works, Environmental Programs Division. For this reason, Cupertino can leverage stormwater protection fees to supplement the water conservation programs and reduce overall general fund impact.

Leadership and Collaboration

Another sustainability impact is the innovative nature of this pilot program and demonstrating leadership in water conservation. Valley Water has been a key collaborator in providing advice and support for Cupertino in this effort. Other cities are taking notice, for example the City of Milpitas has confirmed that as of August 2021, they are embarking on a similar one-year pilot program inspired by Cupertino's efforts.

Fiscal Impact

This Work Program project's adopted budget is \$175,000. No further funds are being requested at this time.

Prepared by: Rina Horie, Sustainability Division Intern

Reviewed by: Andre Duurvoort, Sustainability Division Manager

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A – Customer Testimonials

Attachment A: Customer Testimonials

Customer Testimonials: *the following testimonials are from the evaluation survey offered to residents to provide feedback on ideas to improve the Climate Victory Gardens Pilot program for future participants:*

4/24/2021 “Provide sample images of plants in design plan for better visualization. Many of the plants that were suggested were not available so it would have been easier to have a list of availability. I spent countless hours looking up some plants only to be notified that they were not available. Choice of varied materials like gravel or stones to provide texture in design. Provide a list of mulch suppliers. Follow-up visit two to three months later to check on landscape.”

4/24/2021 “It's not clear if we had any effect on neighbors, but all have noticed. It's also hard to note the savings in water until we do more analysis, but we certainly are not wasting water that runs into the concrete areas attempting to water the lawn.”

7/5/2021 “Increase public awareness about this great program.”

9/1/2021 “My wife and I asked Paradise Garden & Landscape to also increase scope of our Front Yard Project beyond lawn conversion portion. These additions went really well. We also added new irrigation controllers with a weather forecast feature to shut off watering on rainy days. The under-surface drip irrigation really lowered our water usage when we compared annual water usage.”

9/27/2021 “We loved working with our designer Sherry Bryan from Ecology Action - she was knowledgeable, professional and fun. Sherry delivered a design that fit our needs and had some fun/interest in it. She communicated well and kept us updated on timelines. We had an issue with our initial landscape installation contractor who came out and viewed our property but did not respond in a timely manner with the quote and ultimately did not have bandwidth for our project. Our designer worked hard to find Paradise Garden and Landscape and get a timeline that fit with our requirements. Paradise was great to work with as well and the project looked great when it was finished.

There are a couple of improvements that could be made. First, the timeline from our initial application to final completion was very long. My estimation is that from initial application submission to receiving the rebate check took about one year. We thought about withdrawing from the program as it took much longer than we anticipated and would have taken us to do. However, we really wanted to change over to a more sustainable landscape solution and valued access to a knowledgeable landscape designer. Second, the 90-day timing between approval of the plans by the water district and required time to completion is too short given the demand for landscape contractors. While they will extend the timeline, it creates undo stress on homeowners especially when there is a short list of installers who fit the requirements of the program.”



CITY OF CUPERTINO

Agenda Item

22-11503

Agenda Date: 10/4/2022
Agenda #: 16.

Subject: Consider an ordinance to comply with AB 1236 to establish an expedited permit process for electric vehicle (EV) charging systems

Conduct the first reading of Ordinance No. 22-2244 amending Cupertino Municipal Code Chapter 16.28 establishing an expedited, streamlined permitting process for electric vehicle charging stations in compliance with AB 1236: "An ordinance of the Cupertino City Council setting forth procedures for expediting permitting processing for electric vehicle charging stations."

Presenters: Albert Salvador, Assistant Director of Community Development/Building Official and Andre Duurvoort, Sustainability Manager



CITY MANAGER'S OFFICE

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
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CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: October 4, 2022

Subject

Consider adopting an ordinance to comply with AB 1236 to establish an expedited permit process for electric vehicle (EV) charging systems

Recommended Action

Introduce for first reading an ordinance amending Cupertino Municipal Code Chapter 16.28 establishing an expedited, streamlined permitting process for electric vehicle charging stations in compliance with AB 1236.

Background

Assembly Bill 1236 (Chiu, 2015) requires cities and counties to establish procedures for expedited, streamlined processes for permitting of electric vehicle charging stations (EVCS). Pursuant to AB 1236, cities and counties must adopt a streamlining ordinance and checklist, and any EVCS permit review can only be limited to health and safety requirements.

Assembly Bill 970 (McCarty, 2021), which created Government Code Section 65850.71, builds upon AB 1236. AB 970 adds specific binding timelines to the review period based on the size of the project and clarifies parking requirements.

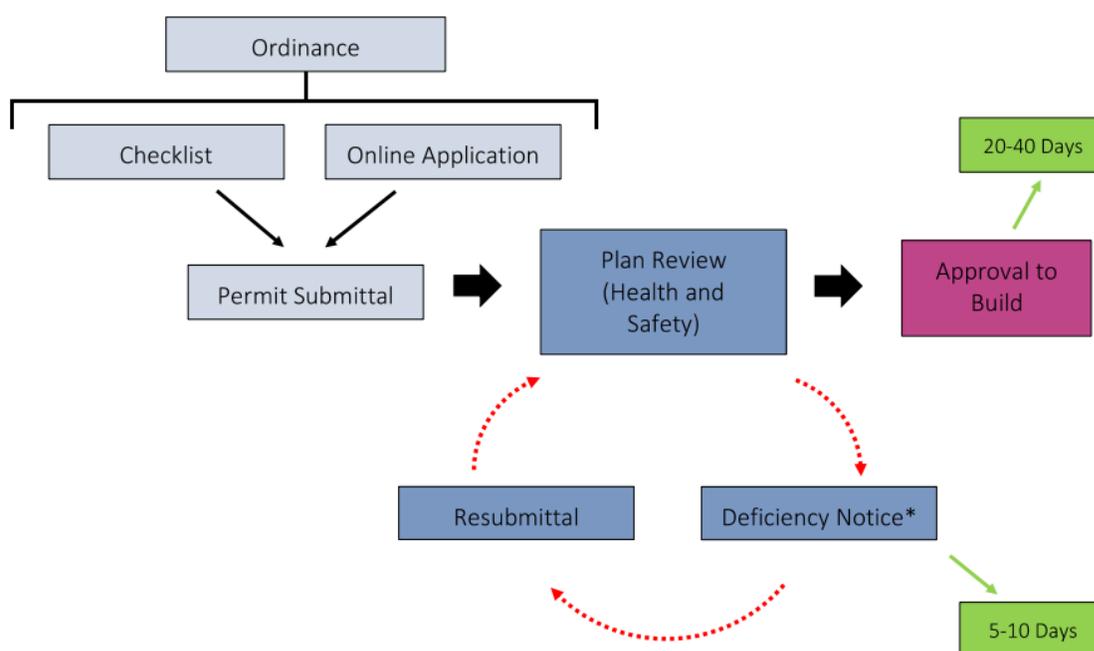
AB 1236 and AB 970 require the City to become "EVCS Permit Ready," based on the following standards:

1. Streamlining Ordinance for Expedited EVCS Permit Process
2. Permitting Checklists Online for L2 & DCFC
3. Administrative Approval of EVCS
4. Approval Limited to Health & Safety Review
5. Electronic Signatures Accepted
6. EVCS Not Subject to Association Approval
7. One Complete Deficiency Notice if Application is Incomplete

In addition to adoption of the proposed ordinance, staff will update its checklist to contain objective requirements for the installation of an electric vehicle charging station and a process for electronic submittal of permit applications to be made available on City's website. The updated checklist is expected to be made available by the beginning of calendar year 2023,

following the ordinance becomes effective. The content of the checklist requires the permit applicant to check the features of the existing electrical service such as rating in amperes, system voltage, connected or calculated load, spare capacity in amperes, voltage and ampere rating of the electric vehicle supply equipment, circuit rating of the electric vehicle supply equipment, location of the electric vehicle supply equipment, if ventilation is/ or is not required, and clearances of the charging equipment to comply with all applicable building and fire safety laws. The checklist also assists the applicant in confirming that the location of the electric vehicle supply equipment will comply with any vehicle clearance requirements in the City’s Zoning Ordinance. The permit process and timeline are outlined below.

1. EVCS Permit Process and Timeline



* The deficiency notice should include one complete set of comments.

Assembly Bill 1236 (2015) further prohibits a jurisdiction from imposing any condition approval on an EV charging station permit based on the approval of an association as defined in California Civil Code, Section 4080.

Staff recommends that the City Council introduce for first reading the proposed ordinance, based on the requirements of Government Code section 65850.7. The ordinance and related next steps below will bring the City of Cupertino in full compliance with both AB 1236 and AB 970 and create an expedited, streamlined process will be available to permit applicants.

Related Relevant Laws

AB 1100 (Kamlager-Dove, 2019), codified in Vehicle Code section 22511.2, provides that charging spaces count as at least one standard parking space for complying with minimum

parking requirements. Accessible charging spaces with an access aisle count as at least two standard parking spaces.

Civil Code Section 4745 limits a homeowner association's ability to prohibit or restrict the installation of an EVCS by a member.

Civil Code Section 1947.6 (residential) and Civil Code Section 1952.7 (commercial) provide that tenants have the right to install EVCS and landlords must grant permission under specified circumstances.

Next Steps

If Council approves the introduction of the ordinance, staff will agendize the second reading on October 18, 2022 to adopt the proposed ordinance. Subsequently, staff will create the necessary permitting checklist and post it to the website and at the permit counter by January 2023. A public relations campaign will follow to notify the public of the newly adopted streamlined permitting process.

Staff will also submit this information to the State of California's Go-BIZ administrators, and request that the EVCS permit streamlining map be updated to show Cupertino in full compliance with the EVCS permit streamlining laws.

Sustainability Impact

The Cupertino Climate Action Plan 2.0, which was adopted by City Council on August 12, 2022, places a great emphasis on decarbonizing the transportation systems in the City. Measure TR-3 seeks an increase in zero-emission vehicles to 35 percent for passenger vehicles and 20 percent for commercial vehicles by the year 2030. Adopting and maintaining a streamlined EVCS permitting process is a key action toward this end.

Fiscal Impact

Adopting the ordinance proposed today will not by itself have any fiscal impact.

Prepared by:

Andre Duurvoort, Sustainability Division Manager

Reviewed by:

Albert Salvador, Assistant Director of Community Development/Building Official

Benjamin Fu, Director of Community Development

Christopher Jensen, City Attorney

Approved for Submission by:

Pamela Wu, City Manager

Attachments:

A – Draft Ordinance (Redline)

B – Draft Ordinance (Clean)

ORDINANCE NO. _____

**AN ORDINANCE OF THE CUPERTINO CITY COUNCIL
SETTING FORTH PROCEDURES FOR
EXPEDITING PERMITTING PROCESSING FOR
ELECTRIC VEHICLE CHARGING SYSTEMS**

WHEREAS, the State of California and the City of Cupertino has consistently promoted and encouraged the use of fuel-efficient electric vehicles; and,

WHEREAS, the State of California recent adopted Assembly Bill 1236, which requires local agencies to adopt an ordinance that creates an expedited and streamlined permitting process for electric vehicle charging systems; and,

WHEREAS, in September 2018, the Governor of the State of California issued Executive Order B-55-18, establishing a statewide goal to achieve carbon neutrality as soon as possible, and no later than 2045, and achieve and maintain net negative emissions thereafter; and,

WHEREAS, on September 18, 2018, the Cupertino City Council adopted a climate emergency declaration, calling for a mobilization effort to end citywide greenhouse gas emissions as quickly as possible, and recognizes the need for an organized and equitable transition away from fossil fuels used in buildings and transportation; and,

WHEREAS, creation of an expedited, streamlined permitting process for electric vehicle charging stations would facilitate convenient charging of electric vehicles and help reduce the City of Cupertino's reliance on environmentally damaging fossil fuels.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:

SECTION 1. TITLE, WORDS, AND PHRASES

This Ordinance shall be known as the City Cupertino Electric Vehicle Charging Station Permit Expediting Ordinance. The terms, phrases, and words used in this Ordinance shall be construed in compliance with the definitions set forth by California Government Code Section 65850.7.

SECTION 2.

Chapter 16.28 of the Cupertino Municipal Code is hereby amended as set forth in Attachment A.

SECTION 3. SEVERABILITY AND CONTINUITY

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT

This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action would have no or only a de minimis effect on the environment. The Ordinance is also exempt from CEQA under CEQA Guidelines section 15308, because it is a regulatory action for the protection of the environment. The foregoing determination is made by the City Council in its independent judgment.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 6. PUBLICATION

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the Cupertino City Council this 4th day of October, 2022; and

ENACTED at a regular meeting of the Cupertino City Council this 18th day of October, 2022, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date

ATTACHMENT A

CHAPTER 16.28: EXPEDITED PERMIT PROCESS FOR SMALL ROOFTOP SOLAR SYSTEMS AND ELECTRIC VEHICLE CHARGING SYSTEMS

Section

- 16.28.010 Purpose and intent.
- 16.28.020 Definitions.
- 16.28.030 Applicability.
- 16.28.040 ~~Solar energy system requirements.~~ Requirements.
- 16.28.050 Application and documents.
- 16.28.060 Permit review and inspection requirements.

16.28.010 Purpose and Intent.

The purpose of this Ordinance Chapter is:

- 1) To adopt an expedited, streamlined solar permitting process that complies with the Solar Rights Act and AB 2188 (Chapter 521, Statutes 2014) to achieve timely and cost-effective installations of small residential rooftop solar energy systems. The Ordinance expands AB2188 to provide for timely and cost-effective installations of solar panels on small multi-family and commercial buildings. The Ordinance encourages the use of solar systems by removing unreasonable barriers, minimizing costs to property owners and the City, and expanding the ability of property owners to install solar energy systems. The Ordinance allows the City to achieve these goals while protecting the public health and safety. (Ord. 15-2133, part, 2015)
- 2) To promote and encourage the use of electric vehicles by creating an expedited, streamlined permitting process for electric vehicle charging stations while promoting public health and safety and preventing specific adverse impacts in the installation and use of such charging stations.

16.28.020 Definitions.

For the purposes of this Chapter, the following words and phrases shall have the meanings as defined in this section.

~~a.~~ A. A "Solar Energy System" means either of the following:

~~i.~~ 1. Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

~~ii.~~ 2. Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

~~b.~~ B. A "small residential rooftop solar energy system" means all of the following:

~~i.~~ 1. A solar energy system that is a simple photovoltaic system no larger than 10 kilowatts or a solar thermal system no larger than 30 kilowatts thermal.

~~ii.~~ 2. A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the City and all state and local health and safety standards.

~~iii.~~ 3. A solar energy system that is installed on a single or duplex family dwelling.

~~iv.~~ 4. A solar panel or module array that does not exceed the maximum legal building height as defined by the city.

~~c.~~ C. A “small multi-family or commercial rooftop solar energy system” means all of the following:

—~~i.~~ 1. A solar energy system that is a simple photovoltaic system no larger than 10 kilowatts or 30 a solar thermal system no larger than kilowatts thermal.

—~~ii.~~ 2. A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the City and all state and local health and safety standards.

—~~iii.~~ 3. A solar energy system that is installed on a triplex, four-plex family dwelling or on a commercial building no more than 10,000 square feet in size.

—~~iv.~~ 4. A solar panel or module array that does not exceed the maximum legal building height as defined by the City.

~~d.~~ D. A “small rooftop solar energy system” either a “small residential rooftop solar energy system” or a “small multi-family or commercial rooftop solar energy system”.

~~e.~~ E. “Electronic submittal” means the utilization of one or more of the following:

—~~i.~~ 1. Email;

~~ii.~~ 2. The Internet;

—~~iii.~~ 3. Facsimile.

~~f.~~ F. An “association” means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

~~g.~~ G. A “common interest development” means any of the following:

~~i.~~ 1. A community apartment project.

—~~ii.~~ 2. A condominium project.

~~iii.~~ 3. A planned development.

~~iv.~~ 4. A stock cooperative.

~~h.~~ H. “Specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

~~i.~~ I. “Reasonable restrictions” on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or

specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

~~j. J.~~ “Restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance” means:

~~i. 1.~~ For Water Heater Systems or Solar Swimming Pool Heating Systems: an amount exceeding 10 percent of the cost of the system, but in no case more than one thousand dollars (\$1,000), or decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed.

~~ii. 2.~~ For Photovoltaic Systems: an amount not to exceed one thousand dollars (\$1,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 10 percent as originally specified and proposed. (Ord. 15-2133, part, 2015)

K. ELECTRIC VEHICLE CHARGING STATION OR EVCS. Any level of electric vehicle supply equipment station that is designed and built-in compliance with article 625 of the California Electrical Code and delivers electricity from a source outside an electric vehicle into a plug-in vehicle.

L. “A feasible method to satisfactorily mitigate or avoid the specific, adverse impact” includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by the City on another similarly situated application in a prior successful application for a permit. The City shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code defining restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance.

16.28.030 Applicability.

~~a. A.~~ This ~~Ordinance Chapter~~ applies to the permitting of all Small Rooftop Solar Energy Systems and Electric Vehicle Charging Systems in the City.

~~b. B.~~ Small Rooftop Solar Energy Systems and Electric Vehicle Charging Systems legally established or permitted prior to the effective date of this Ordinance are not subject to the requirements of this Ordinance unless physical modifications or alterations are undertaken that materially change the size, type, or components of a small rooftop energy system in such a way as to require new permitting. Routine operation and maintenance or like-kind replacements shall not require a permit.

16.28.040 ~~Solar Energy System~~ Requirements.

~~a. A.~~ All solar energy systems and Electric Vehicle Charging Stations shall meet applicable health and safety standards and requirements imposed by the State, the City, and Santa Clara County Fire Department.

~~b.~~ B. Solar energy systems for heating water in single-family residences and for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined by the California Plumbing and Mechanical Code.

~~e.~~ C. Solar energy systems for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability. (Ord. 15-2133, part, 2015)

D. Electric Vehicle Charging Stations shall meet all applicable safety and performance standards established by the California Electric Code, the Society of Automotive Engineers, the National Electrical Manufacturers Association, and the accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

16.28.050 Application and Documents.

~~a.~~ A. All documents required for the submission of an expedited solar energy system application and for an EVCS permit application shall be made available on the City's website.

~~b.~~ B. Electronic submittal of the required permit application and documents shall be made available to all small rooftop solar energy system permit applicants.

~~e.~~ C. An applicant's electronic signature shall be accepted on all forms, applications, and other documents in lieu of a wet signature.

~~d.~~ D. The ~~City's Building Department Building Official~~ shall adopt a standard plan and checklist of all requirements with which small rooftop solar energy systems shall comply to be eligible for expedited review.

E. The Building Official shall provide a permit checklist for EVCS permit applications.

~~e.~~ F. The small residential rooftop solar system permit process, standard plan(s), and checklist(s) shall substantially conform to recommendations for expedited permitting, including the checklist and standard plans contained in the most current version of the California Solar Permitting Guidebook adopted by the Governor's Office of Planning and Research.

~~f.~~ G. The small multi-family or commercial rooftop solar energy system permit process, standard plan(s), and checklist(s) shall be developed by the ~~City's Building Department Building Official~~.

~~g.~~ H. All fees prescribed for the permitting of small rooftop solar energy system must comply with Government Code Section 65850.55, Government Code Section 66015,

Government Code Section 66016, and State Health and Safety Code Section 17951.
(Ord. 15-2133, part, 2015)

16.28.60 Permit Review and Inspection Requirements.

~~a. A.~~ The City shall adopt an administrative, nondiscretionary review process to expedite approval of small rooftop solar energy systems and EVCS application of one to 25 stations at a single site. Upon receipt of a complete application which meets the requirements of the approved checklist and standard plan, the City shall issue a building permit or other nondiscretionary permit ~~on the same day for over the counter applications or~~ within 3 five business days for electronic applications. For complete EVCS applications including 26 or more EVCS stations at a single site, a permit shall be issued after ten business days for electronic applications. ~~The building official may require an applicant to apply for a use permit if the official finds, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety.~~

~~b. B.~~ Review of the application shall be limited to the building official's review of whether the application meets local, state, and federal health and safety requirements.

~~c. C.~~ ~~If a use permit is required, a building official~~ The Building Official may deny an application for ~~the use a~~ permit for a small rooftop solar energy system or EVCS if the ~~e~~Official makes written findings based upon substantive evidence in the record that:

1. The proposed installation would have a specific, adverse impact upon public health or safety; and
2. There is no feasible method to satisfactorily mitigate or avoid, as defined, the adverse impact. Such findings shall include the basis for the rejection of the potential feasible alternative for preventing the adverse impact.

~~a. Decisions to require a use permit or to deny a use permit may be appealed by filing a request for appeal, in writing, with a description of the grounds for appeal. The request for appeal must be made within ten (10) business days of the serving or mailing of the building official's determination. A hearing shall be scheduled within thirty (30) days before the Board of Appeals as defined in Cupertino Municipal Code Section 16.02.270. If the appeal is not filed within the time specified above, the applicant shall be deemed to waive the right to appeal.~~

~~b. D.~~ Any condition imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost.

~~c. "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or~~

- ~~mitigation imposed by the City on another similarly situated application in a prior successful application for a permit. The City shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code defining restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance.~~
- ~~d. Approval of an application shall not be conditioned upon the approval of an association, as defined in Section 4080 of the Civil Code.~~
- ~~e. If an application is deemed incomplete, a written correction notice detailing all deficiencies in the application and any additional information or documentation required to be eligible for expedited permit issuance shall be sent to the applicant for resubmission.~~
- f. E. The City shall require only one inspection for small residential rooftop solar energy systems eligible for expedited review. The City may require two inspections for small multi-family or commercial rooftop solar energy systems if deemed necessary. A separate fire inspection may be performed if the City does not have an agreement with ~~the local fire authority~~ County of Santa Clara Fire Department to perform safety inspections on behalf of the ~~local fire authority~~ County of Santa Clara Fire Department.
- ~~g.~~ F. The inspection(s) shall be done in a timely manner and should include consolidated inspections. An inspection will be scheduled within two (2) business days of a request and provide a two-hour inspection window on the day of the inspection.
- ~~h.~~ G. If a small rooftop solar energy system fails inspection a subsequent inspection is authorized but need not conform to the requirements of this Ordinance. (Ord. 15-2133, part, 2015)

16.28.070 Appeals.

Any final decision of the Building Official made pursuant to this Chapter may be appealed by filing a request for appeal, in writing, with a description of the grounds for appeal. The request for appeal must be made within ten (10) business days of the serving or mailing of the building official's determination. A hearing shall be scheduled within thirty (30) days before the Planning Commission. If the appeal is not filed within the time specified above, the applicant shall be deemed to waive the right to appeal.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CUPERTINO CITY COUNCIL
SETTING FORTH PROCEDURES FOR
EXPEDITING PERMITTING PROCESSING FOR
ELECTRIC VEHICLE CHARGING SYSTEMS**

WHEREAS, the State of California and the City of Cupertino has consistently promoted and encouraged the use of fuel-efficient electric vehicles; and,

WHEREAS, the State of California recent adopted Assembly Bill 1236, which requires local agencies to adopt an ordinance that creates an expedited and streamlined permitting process for electric vehicle charging systems; and,

WHEREAS, in September 2018, the Governor of the State of California issued Executive Order B-55-18, establishing a statewide goal to achieve carbon neutrality as soon as possible, and no later than 2045, and achieve and maintain net negative emissions thereafter; and,

WHEREAS, on September 18, 2018, the Cupertino City Council adopted a climate emergency declaration, calling for a mobilization effort to end citywide greenhouse gas emissions as quickly as possible, and recognizes the need for an organized and equitable transition away from fossil fuels used in buildings and transportation; and,

WHEREAS, creation of an expedited, streamlined permitting process for electric vehicle charging stations would facilitate convenient charging of electric vehicles and help reduce the City of Cupertino's reliance on environmentally damaging fossil fuels.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:

SECTION 1. TITLE, WORDS, AND PHRASES

This Ordinance shall be known as the City Cupertino Electric Vehicle Charging Station Permit Expediting Ordinance. The terms, phrases, and words used in this Ordinance shall be construed in compliance with the definitions set forth by California Government Code Section 65850.7.

SECTION 2.

Chapter 16.28 of the Cupertino Municipal Code is hereby amended as set forth in Attachment A.

SECTION 3. SEVERABILITY AND CONTINUITY

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT

This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action would have no or only a de minimis effect on the environment. The Ordinance is also exempt from CEQA under CEQA Guidelines section 15308, because it is a regulatory action for the protection of the environment. The foregoing determination is made by the City Council in its independent judgment.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 6. PUBLICATION

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the Cupertino City Council this 4th day of October, 2022; and

ENACTED at a regular meeting of the Cupertino City Council this 18th day of October, 2022, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNER: _____ Darcy Paul, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date

ATTACHMENT A

CHAPTER 16.28: EXPEDITED PERMIT PROCESS FOR SMALL ROOFTOP SOLAR SYSTEMS AND ELECTRIC VEHICLE CHARGING SYSTEMS

Section

- 16.28.010 Purpose and intent.
- 16.28.020 Definitions.
- 16.28.030 Applicability.
- 16.28.040 Requirements.
- 16.28.050 Application and documents.
- 16.28.060 Permit review and inspection requirements.

16.28.010 Purpose and Intent.

The purpose of this Chapter is:

- 1) To adopt an expedited, streamlined solar permitting process that complies with the Solar Rights Act and AB 2188 (Chapter 521, Statutes 2014) to achieve timely and cost-effective installations of small residential rooftop solar energy systems. The Ordinance expands AB2188 to provide for timely and cost-effective installations of solar panels on small multi-family and commercial buildings. The Ordinance encourages the use of solar systems by removing unreasonable barriers, minimizing costs to property owners and the City, and expanding the ability of property owners to install solar energy systems. The Ordinance allows the City to achieve these goals while protecting the public health and safety. (Ord. 15-2133, part, 2015)
- 2) To promote and encourage the use of electric vehicles by creating an expedited, streamlined permitting process for electric vehicle charging stations while promoting public health and safety and preventing specific adverse impacts in the installation and use of such charging stations.

16.28.020 Definitions.

For the purposes of this Chapter, the following words and phrases shall have the meanings as defined in this section.

A. A “Solar Energy System” means either of the following:

1. Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.
2. Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

B. A “small residential rooftop solar energy system” means all of the following:

1. A solar energy system that is a simple photovoltaic system no larger than 10 kilowatts or a solar thermal system no larger than 30 kilowatts thermal.
2. A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the City and all state and local health and safety standards.
3. A solar energy system that is installed on a single or duplex family dwelling.
4. A solar panel or module array that does not exceed the maximum legal building height as defined by the city.

C. A “small multi-family or commercial rooftop solar energy system” means all of the following:

1. A solar energy system that is a simple photovoltaic system no larger than 10 kilowatts or 30 a solar thermal system no larger than kilowatts thermal.
2. A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the City and all state and local health and safety standards.
3. A solar energy system that is installed on a triplex, four-plex family dwelling or on a commercial building no more than 10,000 square feet in size.
4. A solar panel or module array that does not exceed the maximum legal building height as defined by the City.

D. A “small rooftop solar energy system” either a “small residential rooftop solar energy system” or a “small multi-family or commercial rooftop solar energy system”.

E. “Electronic submittal” means the utilization of one or more of the following:

1. Email;
2. The Internet;
3. Facsimile.

F. An “association” means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

G. A “common interest development” means any of the following:

1. A community apartment project.
2. A condominium project.
3. A planned development.
4. A stock cooperative.

H. “Specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

I. “Reasonable restrictions” on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or

specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

J. "Restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance" means:

1. For Water Heater Systems or Solar Swimming Pool Heating Systems: an amount exceeding 10 percent of the cost of the system, but in no case more than one thousand dollars (\$1,000), or decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed.

2. For Photovoltaic Systems: an amount not to exceed one thousand dollars (\$1,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 10 percent as originally specified and proposed. (Ord. 15-2133, part, 2015)

K. ELECTRIC VEHICLE CHARGING STATION OR EVCS. Any level of electric vehicle supply equipment station that is designed and built-in compliance with article 625 of the California Electrical Code and delivers electricity from a source outside an electric vehicle into a plug-in vehicle.

L. "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by the City on another similarly situated application in a prior successful application for a permit. The City shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code defining restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance.

16.28.030 Applicability.

A. This Chapter applies to the permitting of all Small Rooftop Solar Energy Systems and Electric Vehicle Charging Systems in the City.

B. Small Rooftop Solar Energy Systems and Electric Vehicle Charging Systems legally established or permitted prior to the effective date of this Ordinance are not subject to the requirements of this Ordinance unless physical modifications or alterations are undertaken that materially change the size, type, or components of a small rooftop energy system in such a way as to require new permitting. Routine operation and maintenance or like-kind replacements shall not require a permit.

16.28.040 Requirements.

A. All solar energy systems and Electric Vehicle Charging Stations shall meet applicable health and safety standards and requirements imposed by the State, the City, and Santa Clara County Fire Department.

B. Solar energy systems for heating water in single-family residences and for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined by the California Plumbing and Mechanical Code.

C. Solar energy systems for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability. (Ord. 15-2133, part, 2015)

D. Electric Vehicle Charging Stations shall meet all applicable safety and performance standards established by the California Electric Code, the Society of Automotive Engineers, the National Electrical Manufacturers Association, and the accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

16.28.050 Application and Documents.

A. All documents required for the submission of an expedited solar energy system application and for an EVCS permit application shall be made available on the City's website.

B. Electronic submittal of the required permit application and documents shall be made available to all small rooftop solar energy system permit applicants.

C. An applicant's electronic signature shall be accepted on all forms, applications, and other documents in lieu of a wet signature.

D. The Building Official shall adopt a standard plan and checklist of all requirements with which small rooftop solar energy systems shall comply to be eligible for expedited review.

E. The Building Official shall provide a permit checklist for EVCS permit applications.

F. The small residential rooftop solar system permit process, standard plan(s), and checklist(s) shall substantially conform to recommendations for expedited permitting, including the checklist and standard plans contained in the most current version of the California Solar Permitting Guidebook adopted by the Governor's Office of Planning and Research.

G. The small multi-family or commercial rooftop solar energy system permit process, standard plan(s), and checklist(s) shall be developed by the Building Official.

H. All fees prescribed for the permitting of small rooftop solar energy system must comply with Government Code Section 65850.55, Government Code Section 66015,

Government Code Section 66016, and State Health and Safety Code Section 17951.
(Ord. 15-2133, part, 2015)

16.28.60 Permit Review and Inspection Requirements.

- A. The City shall adopt an administrative, nondiscretionary review process to expedite approval of small rooftop solar energy systems and EVCS application of one to 25 stations at a single site. Upon receipt of a complete application which meets the requirements of the approved checklist and standard plan, the City shall issue a building permit or other nondiscretionary permit five business days for electronic applications. For complete EVCS applications including 26 or more EVCS stations at a single site, a permit shall be issued after ten business days for electronic applications.
- B. Review of the application shall be limited to the building official's review of whether the application meets local, state, and federal health and safety requirements.
- C. The Building Official may deny an application for a permit for a small rooftop solar energy system or EVCS if the Official makes written findings based upon substantive evidence in the record that:
1. The proposed installation would have a specific, adverse impact upon public health or safety; and
 2. There is no feasible method to satisfactorily mitigate or avoid, as defined, the adverse impact. Such findings shall include the basis for the rejection of the potential feasible alternative for preventing the adverse impact.
- D. Any condition imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost.
- E. The City shall require only one inspection for small residential rooftop solar energy systems eligible for expedited review. The City may require two inspections for small multi-family or commercial rooftop solar energy systems if deemed necessary. A separate fire inspection may be performed if the City does not have an agreement with County of Santa Clara Fire Department to perform safety inspections on behalf of the County of Santa Clara Fire Department.
- F. The inspection(s) shall be done in a timely manner and should include consolidated inspections. An inspection will be scheduled within two (2) business days of a request and provide a two-hour inspection window on the day of the inspection.
- G. If a small rooftop solar energy system fails inspection a subsequent inspection is authorized but need not conform to the requirements of this Ordinance. (Ord. 15-2133, part, 2015)

16.28.070 Appeals.

Any final decision of the Building Official made pursuant to this Chapter may be appealed by filing a request for appeal, in writing, with a description of the grounds for appeal. The request for appeal must be made within ten (10) business days of the serving or mailing of the building official's determination. A hearing shall be scheduled within thirty (30) days before the Planning Commission. If the appeal is not filed within the time specified above, the applicant shall be deemed to waive the right to appeal.