



CITY OF CUPERTINO

AGENDA

CITY COUNCIL

10300 Torre Avenue and 10350 Torre Avenue

Tuesday, October 16, 2018

6:00 PM

Non-televised Closed Session (6:00) and Televised Regular Meeting (6:45)

CLOSED SESSION - 6:00 PM

City Hall Conference Room A, 10300 Torre Avenue

1. Subject: Conference with Legal Counsel-Anticipated Litigation; Initiation of Litigation pursuant to paragraph (4) of subdivision (d) of Gov't Section 54956.9: Two Cases
2. Subject: Conference with Legal Counsel-Existing Litigation pursuant to Gov't Code Section 54956.9, paragraph 1 of subdivision (d)
Name of Case: Committee Supporting Cupertino Citizens' Sensible Growth Initiative et al., Plaintiffs and Appellants, v. City of Cupertino et al., Defendants and Respondents. Santa Clara Superior Court Case No. 16CV296322 / Court of Appeal, Sixth Appellate District Case No. H043940

RECESS

PLEDGE OF ALLEGIANCE - 6:45 PM

Community Hall, 10350 Torre Avenue

ROLL CALL

CEREMONIAL MATTERS AND PRESENTATIONS

3. Subject: Proclamation declaring the 2nd week in October as Code Enforcement Officer Appreciation Week.
Recommended Action: Present Proclamation declaring the 2nd week in October as Code Enforcement Officer Appreciation Week.
4. Subject: Proclamation for Team Pi-oneers from Cupertino for being the 2018 National Middle School Quiz Bowl Champion
Recommended Action: Present proclamation to Team Pi-oneers from Cupertino for being the 2018 National Middle School Quiz Bowl Champion

5. Subject: Presentation from Toyokawa Sister City regarding recent student exchange trip
Recommended Action: Receive presentation from Toyokawa Sister City regarding recent student exchange trip
6. Subject: Presentation from Bhubaneswar Sister City regarding recent student exchange trip
Recommended Action: Receive presentation from Bhubaneswar Sister City regarding recent student exchange trip

STUDY SESSION

7. Subject: Study Session on homelessness
Recommended Action: Present on the topic of homelessness in the City and the region
[Staff Report](#)

POSTPONEMENTS

ORAL COMMUNICATIONS

This portion of the meeting is reserved for persons wishing to address the council on any matter not on the agenda. Speakers are limited to three (3) minutes. In most cases, State law will prohibit the council from making any decisions with respect to a matter not listed on the agenda.

CONSENT CALENDAR

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.

8. Subject: Approve the October 2 City Council minutes
Recommended Action: Approve the October 2 City Council minutes
[A - Draft Minutes](#)

9. Subject: Receive report on commission and committee members' terms expiring January 30, 2019 and set application submittal deadline date of January 11, 2019 and candidate interview dates of January 28 and 29, 2019
Recommended Action: a.) Receive report on commission and committee members' terms expiring January 30, 2019; and
b.) Set the application submittal deadline date of 4:30 p.m. on Friday, January 11, 2019 and candidate interviews beginning at 5:00 p.m. on Monday and Tuesday, January 28 and 29 for commission and committee members' terms expiring January 30, 2019
[Staff Report](#)
[A – 2019 Local Appointments List and Notice of Vacancies](#)
[B - Resolution Governing Recruitment](#)
10. Subject: Small Cell Wireless Agreement with ExteNet Systems (California) LLC
Recommended Action: Authorize the City Manager to enter into a Small Cell License Agreement with ExteNet Systems (California) LLC
[Staff Report](#)
[A - Small Cell License Agreement](#)
11. Subject: Report on Bids and Award a Contract for the McClellan Ranch West Parking Lot Improvement Project (No. 2017-05)
Recommended Action: 1. Award a construction contract to Galeb Paving, Inc. of Saratoga, California, in the amount of Six Hundred Five Thousand Eighty-two Dollars and 88/100 (\$605,082.88); and
2. Authorize a construction contingency budget of Sixty-one Thousand Dollars (\$61,000), which is approximately 10% of the construction contract amount, to address unforeseen conditions during construction.
[Staff Report](#)
[A - Draft Contract](#)

SECOND READING OF ORDINANCES

PUBLIC HEARINGS

ORDINANCES AND ACTION ITEMS

12. Subject: Consider adopting the resolution establishing a policy for accepting sponsorships
Recommended Action: Adopt Resolution No. 18-101 establishing a policy for accepting sponsorships (Attachment A)
[Staff Report](#)
[A - Draft Resolution: Sponsorship Policy](#)
[B - Sample Sponsorship Application Template](#)
13. Subject: Budget Adjustment to proceed with a Request for Proposals for architectural services for a New City Hall, an Interim City Hall and to add one 3-year Limited Term Project Manager
Recommended Action: Staff recommends Council adopt Resolution No. 18-102 approving a Budget Adjustment for the amount of \$6,175,000:
1. \$5,500,000 for architectural design services for a New City Hall, funded by the Capital Reserve, and;
2. \$500,000 for architectural design and other services as needed for the Interim City Hall, funded by the Capital Reserve, and;
3. \$87,500 to add one 3-year Limited Term Project Manager in the Department of Public Works, funded by the General Fund
[Staff Report](#)
[A - Civic Center Master Plan Background](#)
[B - Draft Resolution](#)
14. Subject: Budget Adjustment to proceed with Request for Proposals for a market and operations feasibility study for a Performing Arts Center
Recommended Action: 1. Adopt Resolution No. 18-103 approving a Budget Adjustment in the amount of \$200,000 in the General Fund to complete a market and operations feasibility study for a performing art center; and
2. Authorize staff to hire a consultant for a contract amount not to exceed \$200,000 to complete a market and operations feasibility study for a performing art center
[Staff Report](#)
[A - Development Agreement Excerpt](#)
[B - Draft Resolution](#)

15. Subject: Proposed revisions to the 2018-19 City Work Plan and Capital Improvement Program (CIP) due to the new City Hall project, the Performance Art Center (PAC) Market and Operations feasibility study, Regional Transformative Transit Initiatives, and other key initiatives

Recommended Action: 1. Revise the 2018-19 City Work Program to reprioritize certain staff efforts to allow for the meeting of schedules for several major new proposed initiatives; and

2. Amend the CIP by adding the New City Hall Project, the Interim City Hall and Relocation Project, and the Performing Arts Center Market and Operations Feasibility Study, and delaying certain projects to enable sufficient resources for these large priority projects; and

3. Adopt Resolution No. 18-104 to approve the defunding of \$4,425,750 in budgeted Capital Funds for the Capital Improvement Projects listed in Table 1

[Staff Report](#)

[A - 2018-2019 City Work Program Proposed Updates](#)

[B - Proposed CIP Adjustments](#)

[C - Draft Resolution defunding CIP](#)

REPORTS BY COUNCIL AND STAFF

16. Subject: Report on Committee assignments and general comments

Recommended Action: Report on Committee assignments and general comments

ADJOURNMENT

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/index.aspx?page=125> for a reconsideration petition form.

In compliance with the Americans with Disabilities Act (ADA), anyone who is planning to attend the next 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, 48 hours in advance of the Council meeting to arrange for assistance. 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. Also upon request, in advance, an assistive listening device can be made available for use during the meeting.

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, 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 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 agenda item. These written communications are accessible to the public through the City's website and kept in packet archives. You are hereby admonished not to include any personal or private information in written communications to the City that you do not wish to make public; doing so shall constitute a waiver of any privacy rights you may have on the information provided to the City.

Members of the public are entitled to address the City Council concerning any item that is described in the notice or agenda for this meeting, before or during

consideration of that item. If you wish to address the Council on any issue that is on this agenda, please complete a speaker request card located in front of the Council, and deliver it to the Clerk prior to discussion of the item. When you are called, proceed to the podium and the Mayor will recognize you. If you wish to address the City Council on any other item not on the agenda, you may do so by during the public comment portion of the meeting following the same procedure described above. Please limit your comments to three (3) minutes or less.



CITY OF CUPERTINO

Legislation Details (With Text)

File #: 18-4481 **Version:** 1 **Name:**

Type: Closed Session **Status:** Agenda Ready

File created: 10/10/2018 **In control:** City Council

On agenda: 10/16/2018 **Final action:**

Title: Subject: Conference with Legal Counsel-Anticipated Litigation; Initiation of Litigation pursuant to paragraph (4) of subdivision (d) of Gov't Section 54956.9: Two Cases

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
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Subject: Conference with Legal Counsel-Anticipated Litigation; Initiation of Litigation pursuant to paragraph (4) of subdivision (d) of Gov't Section 54956.9: Two Cases



CITY OF CUPERTINO

Legislation Details (With Text)

File #: 18-4482 **Version:** 1 **Name:**
Type: Closed Session **Status:** Agenda Ready
File created: 10/10/2018 **In control:** City Council
On agenda: 10/16/2018 **Final action:**
Title: Subject: Conference with Legal Counsel-Existing Litigation pursuant to Gov't Code Section 54956.9, paragraph 1 of subdivision (d)
Name of Case: Committee Supporting Cupertino Citizens' Sensible Growth Initiative et al., Plaintiffs and Appellants, v. City of Cupertino et al., Defendants and Respondents. Santa Clara Superior Court Case No. 16CV296322 / Court of Appeal, Sixth Appellate District Case No. H043940

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
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Subject: Conference with Legal Counsel-Existing Litigation pursuant to Gov't Code Section 54956.9, paragraph 1 of subdivision (d)
Name of Case: Committee Supporting Cupertino Citizens' Sensible Growth Initiative et al., Plaintiffs and Appellants, v. City of Cupertino et al., Defendants and Respondents. Santa Clara Superior Court Case No. 16CV296322 / Court of Appeal, Sixth Appellate District Case No. H043940



CITY OF CUPERTINO

Legislation Details (With Text)

File #: 18-4418 **Version:** 1 **Name:**
Type: Ceremonial Matters & Presentations **Status:** Agenda Ready
File created: 9/26/2018 **In control:** City Council
On agenda: 10/16/2018 **Final action:**
Title: Subject: Proclamation declaring the 2nd week in October as Code Enforcement Officer Appreciation Week.
Sponsors:
Indexes:
Code sections:
Attachments:

Date	Ver.	Action By	Action	Result
10/16/2018	1	City Council		

Subject: Proclamation declaring the 2nd week in October as Code Enforcement Officer Appreciation Week.

Present Proclamation declaring the 2nd week in October as Code Enforcement Officer Appreciation Week.



CITY OF CUPERTINO

Legislation Details (With Text)

File #: 18-4478 **Version:** 1 **Name:**

Type: Ceremonial Matters & Presentations **Status:** Agenda Ready

File created: 10/9/2018 **In control:** City Council

On agenda: 10/16/2018 **Final action:**

Title: Subject: Proclamation for Team Pi-oneers from Cupertino for being the 2018 National Middle School Quiz Bowl Champion

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
10/16/2018	1	City Council		

Subject: Proclamation for Team Pi-oneers from Cupertino for being the 2018 National Middle School Quiz Bowl Champion

Present proclamation to Team Pi-oneers from Cupertino for being the 2018 National Middle School Quiz Bowl Champion



CITY OF CUPERTINO

Legislation Details (With Text)

File #: 18-4397 **Version:** 1 **Name:**

Type: Ceremonial Matters & Presentations **Status:** Agenda Ready

File created: 9/17/2018 **In control:** City Council

On agenda: 10/16/2018 **Final action:**

Title: Subject: Presentation from Toyokawa Sister City regarding recent student exchange trip

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
10/16/2018	1	City Council		

Subject: Presentation from Toyokawa Sister City regarding recent student exchange trip

Receive presentation from Toyokawa Sister City regarding recent student exchange trip



CITY OF CUPERTINO

Legislation Details (With Text)

File #: 18-4443 **Version:** 1 **Name:**

Type: Ceremonial Matters & Presentations **Status:** Agenda Ready

File created: 9/27/2018 **In control:** City Council

On agenda: 10/16/2018 **Final action:**

Title: Subject: Presentation from Bhubaneswar Sister City regarding recent student exchange trip

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
10/16/2018	1	City Council		

Subject: Presentation from Bhubaneswar Sister City regarding recent student exchange trip

Receive presentation from Bhubaneswar Sister City regarding recent student exchange trip



CITY OF CUPERTINO

Legislation Details (With Text)

File #: 18-3976 **Version:** 1 **Name:**
Type: Study Session **Status:** Agenda Ready
File created: 5/8/2018 **In control:** City Council
On agenda: 10/16/2018 **Final action:**
Title: Subject: Study Session on homelessness
Sponsors:
Indexes:
Code sections:
Attachments: [Staff Report](#)

Date	Ver.	Action By	Action	Result
10/16/2018	1	City Council		

Subject: Study Session on homelessness

Present on the topic of homelessness in the City and the region



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
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CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: October 16, 2018

Subject

City of Cupertino Homelessness Study Session

Recommended Action

Hold a Study Session to

1. Present on the topic of homelessness in the city and the region.

Background

The United States Department of Housing and Urban Development (HUD) requires a biennial Point-in-Time census (Census) every two (2) years for all jurisdictions receiving federal funding for housing and supportive services. In partnership with the social research firm Applied Survey Research (ASR), the Santa Clara County Continuum of Care (County CoC) conducted a two-pronged study, consisting of the Census and an in-depth survey of unsheltered and sheltered homeless individuals and families.

Results from the 2017 Census counted one hundred twenty-seven (127) individuals experiencing homelessness in the City of Cupertino, a seventy-four percent (74%) increase since the seventy-three (73) individuals counted during the 2015 Census. Regionally, the 2017 Census counted 7,394 individuals experiencing homelessness throughout Santa Clara County, an increase of thirteen percent (13%) from the 6,556 individuals counted during the 2015 Census. As indicated in Figure 1, nearly sixty percent (60%) of homeless individuals and families identified in the 2017 Census are located in the City of San Jose, while approximately seventeen percent (17%) of homeless individuals are located in Cupertino.

JURISDICTION	UNSHELTERED		SHELTERED		TOTAL		'15-'17 % CHANGE
	2015	2017	2015	2017	2015	2017	
Total Incorporated	4,204	5,259	1,817	1,775	6,021	7,034	17%
City of Campbell	53	94	0	0	53	94	77%
City of Cupertino	50	127	23	0	73	127	74%
City of Gilroy	179	295	260	427	439	722	64%
City of Los Altos	18	6	0	0	18	6	*
Town of Los Gatos	1	52	0	0	1	52	*
City of Milpitas	122	66	0	0	122	66	-46%
City of Monte Sereno	1	0	0	0	1	0	*
City of Morgan Hill	81	388	0	0	81	388	379%
City of Mountain View	271	411	5	5	276	416	51%
City of Palo Alto	203	256	16	20	219	276	26%
City of San José	2,810	3,231	1,253	1,119	4,063	4,350	7%
City of Santa Clara	150	199	227	73	377	272	-28%
City of Saratoga	10	12	0	0	10	12	*
City of Sunnyvale	255	122	33	131	288	253	-12%
Total Unincorporated	423	189	77	113	500	302	-40%
Confidential Locations	NA	NA	35	58	35	58	66%
Total	4,627	5,448	1,929	1,946	6,556	7,394	13%

Source: Applied Survey Research. (2015-2017). Santa Clara County Homeless Census and Survey.
 *Note: Percentage change was not calculated for jurisdictions with less than 50 individuals.

Figure 1. 2017 Santa Clara County Homeless Census and Survey Results

As part of a nation-wide effort by HUD to better understand youth homelessness, the 2017 study specifically focused on homelessness among unaccompanied children and transition-age youth under twenty-five (25) years of age. Since the 2015 Census, the number of unaccompanied children and transition-age youth experiencing homelessness has increased by more than 175%. HUD will use the 2017 Census youth-count results as a baseline for their goal of ending youth homelessness throughout the nation by 2020.

Following the 2017 Census, the County CoC and ASR conducted in-person surveys with 587 homeless individuals throughout Santa Clara County. Survey data indicated the primary causes of homelessness (Table 1) as job loss, drug and/or alcohol use, formal and informal housing evictions, and personal hardships. Response rates for job loss and formal evictions each increased by six percent (6%) from the 2015 survey.

Primary Cause of Homelessness	%
Job Loss	37%
Drug and/or Alcohol Use	20%
Formal Housing Eviction	16%
Personal Hardship	14%
Informal Housing Eviction by Friend/Family Member	13%

Table 1. Primary Causes of Homelessness

Survey participants were also asked about the obstacles to obtaining permanent housing. Data indicated the primary obstacles to obtaining permanent housing (Table 2) included housing affordability and the lack of a job or income.

Obstacles to Obtaining Permanent Housing*	%
Housing Affordability	62%
Lack of Job/Income	56%
Inability to Afford Moving Costs	23%
Poor Credit	20%
Lack of Transportation	13%

Table 2. Obstacles to Obtaining Permanent Housing

**Multiple-response question, percentages do not add up to 100.*

Census and survey data allow HUD to better understand the current state of homelessness and to assist local jurisdictions with developing tools to prevent homelessness. The remainder of this staff report provides an overview of the City's resources, regional resources, and a discussion about potential opportunities to combat homelessness.

City Resources and Service Providers

Funding

The City releases a Notice of Funding Availability (NOFA) annually for eligible public services and capital housing projects. Public Service funds are awarded bi-annually on a two-year funding cycle. Capital Housing funds are awarded annually on a one-year funding cycle. Funding categories include the Community Development Block Grant (CDBG) program, Below Market Rate (BMR) Affordable Housing Fund (AHF), and General Fund Human Services Grant (HSG). The City allocates funds for homeless services/projects within each of the three (3) funding categories, as outlined below.

Community Development Block Grant (CDBG)

Cupertino is in its sixteenth year as an entitlement city for the CDBG program, which is funded by HUD. CDBG funds must be used for projects that will serve low-income households in the City. Targeted groups include homeless individuals and families,

seniors, persons with disabilities, and other special needs groups. On April 17, 2018, the City awarded \$35,000 for FY 2018-19 to West Valley Community Services (WVCS) for their Community Access to Resource and Education (CARE) program, which provides services to homeless individuals. The remaining \$20,431.15 in CDBG funds was awarded to Live Oak for their senior service program.

Below Market Rate Affordable Housing Fund (BMR AHF)

Annually, the City releases the available balance of BMR AHF funds for capital housing projects that serve low- and moderate-income households. Eligible projects include land acquisition, new construction, acquisition and/or rehabilitation of buildings for permanent affordability, and substantial rehabilitation. In 2017, the City provided \$3,672,000 in BMR AHF to The Veranda, a low-income senior housing development. Of the nineteen (19) units at The Veranda, six (6) have been set aside as Measure A units designed to serve extremely low-income formerly homeless individuals.

General Fund Human Services Grant (HSG)

The City Council allocates \$100,000 annually from the General Fund to human service agencies that service low- and moderate-income households in the City. HSG funds may be used for homeless services, senior services, and other eligible programs. Due to the increased need for homeless services, City Council increased the HSG fund from \$40,000 to \$100,000 in April 2018. On April 17, 2018, the City awarded \$40,000 for FY 2018-19 to WVCS' Haven to Home Program, which provides supportive services and housing resources for homeless individuals and families. In addition, a total of \$43,600 was awarded to three (3) service providers leaving the HSG fund with a balance of \$16,400 for FY 2018-19.

Policies

In March 2018, the City Council amended the Policy and Procedurals Manual for Administering Deed Restricted Affordable Housing Units (BMR Manual) to include a new definition of "residency" to enable homeless individuals and families in Cupertino to claim City residency priority points for the below market rate waiting list. The revised BMR Manual language was informed by regional best practices and is modeled after the City of Sunnyvale's policy accounting for individuals and families experiencing homelessness.

Housing and Service Provider Partnerships

West Valley Community Services (WVCS)

West Valley Community Services (WVCS) provides human services, housing services, and family support throughout Santa Clara County. WVCS' programs work to address basic human needs through focusing on food, housing, support, and mobile services. The City currently provides funding for their CARE and Haven to Home programs to help clients secure permanent, affordable housing and employment.

Charities Housing

The Veranda Housing Development by Charities Housing will provide eighteen (18) low-income units available to senior citizens plus one (1) property manager unit. The County provided Measure A funding and management for six (6) units, which will be reserved as permanent supportive housing (PSH) for homeless seniors with disabling conditions.

St. Jude's Episcopal Church

St. Jude's Episcopal Church Safe Park Program, which allows a safe place for homeless individuals and families to park their vehicles on church property at night, ended in September 2018 after operating for approximately three (3) months. The program continues to be sporadically active, based on a schedule organized through the Winter Faith Collaborative. The Winter Faith Collaborative is a network of churches throughout Santa Clara County that provides temporary shelter and resources for the homeless community

Regional Resources and Service Providers

Measure A Affordable Housing Bond

In November 2016, Santa Clara County voters approved Measure A- the \$950 million affordable housing bond intended to assist with the creation and/or preservation of approximately 5,100 affordable housing units. Measure A provides another tool, in addition to the City's BMR Housing Program, to provide affordable housing for vulnerable populations including homeless individuals and families, seniors, persons with disabilities, veterans, low- and moderate-income households, foster youth, victims of abuse, and individuals suffering from mental health or substance abuse illnesses. Measure A funding will enhance the County's ability to achieve its housing priorities which include increasing the supply of housing that is affordable to extremely low-income households. In April 2018, The Veranda development in Cupertino was the first housing project to break ground with Measure A funds.

As part of the implementation of the 2016 Measure A Affordable Housing Bond, the County launched the Housing Ready Communities (HRC) campaign- a community engagement and education campaign in partnership with cities and other stakeholders to fully implement the County's plan to end homelessness and build new affordable and supportive housing."

Community Plan to End Homelessness

In an effort to end homelessness by 2020, the County of Santa Clara Office of Supportive Housing (OSH) has partnered with Destination: Home to create the "2015-2020 Community Plan to End Homelessness in Santa Clara County." The plan is part of a twenty-seven (27) month pilot program to implement a countywide homelessness prevention program. Specific solutions outlined in the plan include creating 6,000 new housing opportunities throughout the region, expanding rapid rehousing resources, and

incorporating preventative measures such as emergency rental assistance and financial literacy. Destination: Home is working with Sacred Heart Community Services to coordinate homeless prevention efforts and to date has raised \$4.2 million through the combined resources of the Emergency Financial Assistance Network

Housing and Service Provider Partnerships

Non-Profit Housing and Service Providers

Santa Clara County OSH currently collaborates with a number of non-profit service providers including WVCS, Destination: Home, and Destination: Work. Non-profit partners provide valuable services such as housing services, case management, and employment services.

Faith-Based Organizations

The Winter Faith Collaborative is a network of over 100 churches throughout Santa Clara County that advocates for the homeless community. The Winter Faith Collaborative provides various provides temporary shelter opportunities including overnight shelters, daytime drop-in centers, and safe parking programs.

Affordable Housing Developers

Affordable housing developers such as MidPen Housing and Charities Housing help support the County's objective to increase the regional supply of affordable housing. Charities Housing was awarded Measure A funding from the County in April 2018 for the development and management of six (6) PSH units for homeless seniors with disabling conditions.

Discussion

Since 1990, the San Francisco Bay Area's rapidly growing economy helped to create an imbalanced jobs to housing ratio with roughly twice the number of new jobs per every unit of housing developed. The lack of available housing is one contributing factor to the complex regional housing crisis, which has fueled serious concerns about housing affordability, increased rates of homelessness and displacement, traffic congestion, and environmental quality as continued population growth is expected. While recent legislation as well as regional and local policies have been enacted to promote the development of affordable housing across all affordability levels, equal attention should also be paid to the current state of homelessness.

With the lack of housing affordability and employment opportunities reported as the leading causes of homelessness in Santa Clara County, the City is examining how resources can be used to address these issues.

The City's existing BMR housing program includes 120 ownership units and 142 rental units. Recent project approvals include the Hamptons (7 low- and 30 moderate-income

units), Marina Plaza (16 very-low and 2 moderate-income units), and the Vallco Specific Plan (40 extremely-low, 156 very-low, 205 low-, and 133 moderate-income units).

Housing Solutions and Services

The number of unsheltered homeless individuals in Cupertino increased between 2015 and 2017, with the 2017 Census indicating that 100% of homeless individuals in Cupertino lack shelter. Currently, the City does not have a temporary shelter program in place. The Mountain View shelter, Hope's Corner at Trinity United Methodist Church, provides an example of how public agencies can collaborate with private companies, non-profit organizations, and the faith community to address homelessness. Hope's Corner is partially funded by Google, run by Hope's Corner and other non-profits, and hosted by Trinity United Methodist Church. The program provides shelter and services for homeless individuals and families including a cold-weather shelter run by HomeFirst, showers, an expanded meal plan, job training, and case management services by Mountain View Community Services Agency.

An alternative housing solution is the City of Sunnyvale's Tenant-Based Rental Assistance (TBRA) Program, which is managed by Abode and funded through HOME funds. The TBRA Program provides rental assistance for 24-months to homeless clients and very low-income households who are at risk of homelessness.

Employment Solutions and Services

Job loss was identified by 2017 Survey participants as the primary cause of homelessness. The County currently partners with Destination: Work, a subset of Destination: Home, to create employment pathways by connecting eligible low-income individuals to high-growth industries, providing job training, and assisting individuals in attaining and maintaining jobs. Other examples of programs providing workforce case management and supportive services throughout the region include the City of Sunnyvale's WorkFirst Program and organizations such as Ascent Employment Program and Work2Future.

Prepared by: Erika Poveda, Assistant Planner

Kerri Heusler, Senior Housing Planner

Reviewed by: Benjamin Fu, Assistant Community Development Director

Aarti Shrivastava, Assistant City Manager

Approved for Submission by: Amy Chan, Interim City Manager



CITY OF CUPERTINO

Legislation Details (With Text)

File #: 17-3291 **Version:** 1 **Name:**
Type: Consent Calendar **Status:** Agenda Ready
File created: 11/13/2017 **In control:** City Council
On agenda: 10/16/2018 **Final action:**
Title: Subject: Approve the October 2 City Council minutes
Sponsors:
Indexes:
Code sections:
Attachments: [A - Draft Minutes](#)

Date	Ver.	Action By	Action	Result
10/16/2018	1	City Council		

Subject: Approve the October 2 City Council minutes

Approve the October 2 City Council minutes



**DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, October 2, 2018**

SPECIAL CITY COUNCIL MEETING

At 4:00 p.m. Mayor Darcy Paul called the Special City Council meeting to order in the City Hall Conference Room A, 10300 Torre Avenue.

Present: Mayor Darcy Paul, Vice Mayor Rod Sinks, and Councilmembers Barry Chang, Steven Scharf, and Savita Vaidhyanathan. Absent: None.

CLOSED SESSION

Council went into closed session and reconvened in open session at 5:00 p.m. in the Cupertino Community Hall Council Chambers, 10350 Torre Avenue for a Study Session followed by the Regular Meeting at 6:45 p.m.

1. Subject: Public Employee Discipline/Dismissal/Release - Gov't Code Section 54957(b)(1).

Mayor Paul announced that an update was provided and no action was taken.

STUDY SESSION

At 5:00 p.m. Mayor Paul reconvened the Special City Council meeting in the Cupertino Community Hall Council Chambers, 10350 Torre Avenue and led the Pledge of Allegiance.

Present: Mayor Darcy Paul, Vice Mayor Rod Sinks, and Councilmembers Barry Chang, Steven Scharf, and Savita Vaidhyanathan. Absent: None.

2. Subject: Factors affecting water rates in Cupertino
Recommended Action: Accept presentation on water rates

Written communications for this item included a staff presentation.

Assistant Director of Public Works Roger Lee reviewed the staff report and presentation on

water rates.

John Tang from San Jose Water and staff answered questions from Council.

Council accepted the presentation on water rates.

ADJOURNMENT

REGULAR CITY COUNCIL MEETING

PLEDGE OF ALLEGIANCE

At 6:45 p.m. Mayor Darcy Paul called the Regular City Council meeting in the Cupertino Community Hall Council Chambers, 10350 Torre Avenue and led the Pledge of Allegiance.

ROLL CALL

Present: Mayor Darcy Paul, Vice Mayor Rod Sinks, and Councilmembers Barry Chang (6:52 p.m.), Steven Scharf, and Savita Vaidhyanathan. Absent: None.

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Proclamation for September as Ovarian Cancer Awareness Month
Recommended Action: Present Proclamation for September as Ovarian Cancer Awareness Month

Mayor Paul presented a Proclamation to Erna Arnesen and Sonia Singh for September as Ovarian Cancer Awareness Month.

2. Subject: Proclamation for the 48th Annual Cupertino High School Tournament of Bands
Recommended Action: Present Proclamation for the 48th Annual Cupertino High School Tournament of Bands

Mayor Paul presented a Proclamation to Addy Roff for the Annual Cupertino High School Tournament of Bands.

POSTPONEMENTS - None

ORAL COMMUNICATIONS

Herb Wiffler and Dan Rosenbaum (Cupertino residents) on behalf of Residents of Prospect Road talked about a petition from residents on Prospect Road regarding neighborhood nuisance complaints (distributed written comments).

Ignatius Y. Ding (Cupertino resident) talked about development and health hazards.

Kathy R. Chole (Cupertino resident) talked about the Regnart Creek Trail Feasibility Study.

Ilango Ganga (Cupertino resident) talked about the Regnart Creek Trail Feasibility Study.

Anika McClure on behalf of Silicon Valley Leadership Group talked about the Annual Applied Materials of Silicon Valley Turkey Trot on November 22 in downtown San Jose beginning at 8:00 a.m.

CONSENT CALENDAR

Chang moved and Vaidhyanathan seconded to approve the items on the Consent Calendar as presented. Ayes: Paul, Sinks, Chang, Scharf, and Vaidhyanathan. Noes: None. Abstain: None. Absent: None.

3. Subject: Approve the September 18-19 City Council minutes
Recommended Action: Approve the September 18-19 City Council minutes
4. Subject: Accept Accounts Payable for the period ending August 03, 2018
Recommended Action: Adopt Resolution No. 18-095 accepting Accounts Payable for the period ending August 03, 2018
5. Subject: Accept Accounts Payable for the period ending August 10, 2018
Recommended Action: Adopt Resolution No. 18-096 accepting Accounts Payable for the period ending August 10, 2018
6. Subject: Accept Accounts Payable for the period ending August 17, 2018
Recommended Action: Adopt Resolution No. 18-097 accepting Accounts Payable for the period ending August 17, 2018
7. Subject: Adopt a resolution increasing the employer's contribution for medical and hospitalization insurance consistent with the Meyers-Geddes State Employees Medical and Hospital Care Act for the Unrepresented (Management and Confidential), Cupertino Employees' Association (Employees Association), Operating Engineers, Local Union No. 3

(Operating Engineers), Appointed (City Attorney and City Manager), Elected Official groups and retired annuitants.

Recommended Action: Adopt Resolution No. 18-098 increasing the employer's contribution for medical and hospitalization insurance for employees under the Unrepresented, Cupertino Employees' Association, Operating Engineers, Local union No. 3, Appointed, Elected Officials, and retired annuitant groups.

8. Subject: Application for Alcohol Beverage License for Safeway, Inc. (dba Safeway), 20620 Homestead Road
Recommended Action: Recommend approval to the California Department of Alcoholic Beverage Control of the application for Alcohol Beverage License for Safeway, Inc. (dba Safeway), 20620 Homestead Road
9. Subject: Recology Cupertino's request for payment of \$8,023 to cover additional costs to process commercial organic materials collected in calendar year 2017
Recommended Action: Authorize a payment of \$8,023 to Recology Cupertino from the Resource Recovery fund 520-81-801 to cover additional costs to process commercial organic materials collected in calendar year 2017
10. Subject: Annexation of Creston Dr. 18-01 (10598 Creston Dr. - APN 326-12-089)
Recommended Action: Adopt Resolution No. 18-099 making determinations and approving the annexation of territory designated as "Creston Dr. 18-01" of approximately 0.31 acre of land located on the north side of Creston Drive, between Groveland Drive and Alderney Court
11. Subject: Reject all bids for a construction contract for the McClellan Ranch Preserve Community Garden Project
Recommended Action: Reject all bids related to the construction of the McClellan Ranch Preserve Community Garden Improvements Project (Project No. 2019-06) and authorize the rebid of the project

SECOND READING OF ORDINANCES

12. Subject: Second Reading of an Ordinance Designating Additional Preferential Parking Zones Ordinance on Noble Fir Court, Red Fir Court and White Fir Court (Continued from September 18)
Recommended Action: 1. Conduct the second reading of Ordinance No. 18-2176: "An Ordinance of the City Council of the City of Cupertino Amending Cupertino Municipal Code Section 11.27.145 Designating Additional Preferential Parking Zones to add Noble Fir Court, Red Fir Court and White Fir Court"; and 2. Enact the ordinance. Note: The first reading was conducted on August 21 and there were no changes to the ordinance.

Director of Public Works Timm Borden introduced the item.

Mayor Paul opened public comment and the following individual spoke on this item:

Amar Sajapuram (Cupertino resident) on behalf of Roundtree Cupertino Board of Directors Management.

Mayor Paul closed public comment.

City Clerk Grace Schmidt read the title of Ordinance No. 18-2176.

Chang moved and Sinks seconded to read Ordinance No. 18-2176 by title only and that the City Clerk's reading would constitute the second reading thereof. Ayes: Paul, Chang, Scharf, Sinks, and Vaidhyanathan. Noes: None. Abstain: None. Absent: None.

Chang moved and Sinks seconded to enact Ordinance No. 18-2176. Ayes: Paul, Chang, Scharf, Sinks, and Vaidhyanathan. Noes: None. Abstain: None. Absent: None.

13. Subject: Second reading and enactment of ordinances to amend the Municipal Code to allow Adoption and Implementation of Vallco Town Center Specific Plan, to Rezone the Parcels within the Vallco Special Area and to Approve a Development Agreement by and Between the City of Cupertino and Vallco Property Owner LLC for the Development of Vallco Town Center. (Application Number(s): MCA-2018-01, Z-2018-01, DA-2015-02; Applicant(s): City of Cupertino (Municipal Code and Zoning Amendments) and Vallco Property Owner, LLC (Development Agreement); Location: 10101 to 10333 North Wolfe Road APN: 316-20-080, 316-20-081, 316-20-103, 316-20-107, 316-20-101, 316-20-105, 316-20-106, 316-20-104, 316-20-088, 316-20-092, 316-20-094, 316-20-099, 316-20-100, 316-20-095)
Recommended Action: Conduct the second reading and enact:
1. Ordinance No. 18-2177: "An Ordinance of the City Council of the City of Cupertino Amending the Municipal Code to Allow Adoption and Implementation of Vallco Town Center Specific Plan;"
 2. Ordinance No. 18-2178: "An Ordinance of the City Council of the City of Cupertino Rezoning the Parcels within the Vallco Special Area;" and
 3. Ordinance No. 18-2179: "Ordinance of the City Council of the City of Cupertino Approving a Development Agreement by and Between the City of Cupertino and Vallco Property Owner LLC for the Development of Vallco Town Center."

Written communications for this item included emails to Council, redline changes to the ordinance, and a staff presentation.

Senior Planner Catarina Kidd reviewed the staff report and presentation.

Staff answered questions from Council.

Mayor Paul opened public comment and the following individuals spoke:

Sujatha Venkatraman and Monica Chandra on behalf of West Valley Community Services

Andrew Walter (Cupertino resident) on behalf of Cupertino Chamber of Commerce

Jan Stokely on behalf of Housing Choices

Geoff Paulsen (Cupertino resident)

Orrin Mahoney

Kaili Liao (Cupertino resident) on behalf of Friends of Children with Special Needs (FCSN)

David Wei (Cupertino resident) on behalf of Organization of Special Needs Families (OSF)

Jean Bedord (Cupertino resident)

Jim Walker (Cupertino resident)

Marie Liu (Cupertino resident)

Guangyn Tang (Cupertino resident) on behalf of FCSN

Sabrina Rizk (Cupertino resident)

Ganesh Suve (Cupertino resident)

Regina Thomas (Cupertino resident) on behalf of Housing Choices

Feng Ye (Cupertino resident)

Pete Heller (Cupertino resident)

Jennifer Griffin

Jeanne Bradford (Cupertino resident)

David Meyer on behalf of Silicon Valley at Home

Hemant Buch

Kinjal Buch (Cupertino resident)

Danessa Techmanski (Cupertino resident)

Stanley Tseng (Mountain View resident)

Hung Wei (Cupertino resident)

Kevin McClelland

Ian Greenside (Cupertino resident)

Liang Chao (Cupertino resident) (distributed written comments)

Lisa Warren (Cupertino resident)

Mayor Paul closed public comment.

Council recessed from 8:33 p.m. to 8:42 p.m.

City Clerk Grace Schmidt read the title of Ordinance No. 18-2177.

Chang moved and Sinks seconded to read Ordinance No. 18-2177 by title only and that the City Clerk's reading would constitute the second reading thereof. Ayes: Sinks, Chang, Vaidhyanathan. Noes: Paul, Scharf. Abstain: None. Absent: None.

Sinks moved and Chang seconded to enact Ordinance No. 18-2177. Ayes: Sinks, Chang, Vaidhyanathan. Noes: Paul, Scharf. Abstain: None. Absent: None.

City Clerk Grace Schmidt read the title of Ordinance No. 18-2178.

Chang moved and Sinks seconded to read Ordinance No. 18-2178 by title only and that the City Clerk's reading would constitute the second reading thereof. Ayes: Sinks, Chang, Vaidhyanathan. Noes: Paul, Scharf. Abstain: None. Absent: None.

Sinks moved and Chang seconded to enact Ordinance No. 18-2178. Ayes: Sinks, Chang, Vaidhyanathan. Noes: Paul, Scharf. Abstain: None. Absent: None.

City Clerk Grace Schmidt read the title of Ordinance No. 18-2179.

Chang moved and Sinks seconded to read Ordinance No. 18-2179 by title only and that the City Clerk's reading would constitute the second reading thereof. Ayes: Sinks, Chang, Vaidhyanathan. Noes: Paul, Scharf. Abstain: None. Absent: None.

Sinks moved and Chang seconded to enact Ordinance No. 18-2179. Ayes: Sinks, Chang, Vaidhyanathan. Noes: Paul, Scharf. Abstain: None. Absent: None.

PUBLIC HEARINGS

ORDINANCES AND ACTION ITEMS

14. Subject: Authorization of grant application to County of Santa Clara's All-Inclusive Playground Grant Program
Recommended Action: Adopt Resolution No. 18-100 authorizing application to the County of Santa Clara's All-Inclusive Playground Grant Program for funding to replace an existing playground at Jollyman Park with an All-Inclusive playground, and related actions. Written communications for this item included a staff presentation.

Councilmember Vaidhyanathan noted that she had a conflict of interest on this item and left the dais.

Written communications for this item included a staff presentation.

Park Restoration and Improvement Manager Gail Seeds reviewed the staff report and presentation.

Staff answered questions from Council.

Scharf moved and Chang seconded to adopt Resolution No. 18-100 authorizing application to the County of Santa Clara's All-Inclusive Playground Grant Program for funding to replace an existing playground at Jollyman Park with an All-Inclusive playground, and related actions. The motion carried with Vaidhyanathan recusing.

Councilmember Vaidhyanathan returned to the dais.

REPORTS BY COUNCIL AND STAFF

15. Subject: Report on Committee assignments and general comments
Recommended Action: Report on Committee assignments and general comments

Interim City Manager Amy Chan updated Council regarding nuisance concerns on Prospect Road as brought up by a resident in Oral Communications. Staff noted that they would look into the concerns.

Councilmembers highlighted the activities of their committees and various community events.

ADJOURNMENT

At 10:14 p.m., Mayor Paul adjourned the meeting.

Grace Schmidt, City Clerk



CITY OF CUPERTINO

Legislation Details (With Text)

File #: 18-4376 **Version:** 1 **Name:**
Type: Consent Calendar **Status:** Agenda Ready
File created: 9/12/2018 **In control:** City Council
On agenda: 10/16/2018 **Final action:**
Title: Subject: Receive report on commission and committee members' terms expiring January 30, 2019 and set application submittal deadline date of January 11, 2019 and candidate interview dates of January 28 and 29, 2019

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report](#)
[A – 2019 Local Appointments List and Notice of Vacancies](#)
[B - Resolution Governing Recruitment](#)

Date	Ver.	Action By	Action	Result
10/16/2018	1	City Council		

Subject: Receive report on commission and committee members' terms expiring January 30, 2019 and set application submittal deadline date of January 11, 2019 and candidate interview dates of January 28 and 29, 2019

- a.) Receive report on commission and committee members' terms expiring January 30, 2019; and
- b.) Set the application submittal deadline date of 4:30 p.m. on Friday, January 11, 2019 and candidate interviews beginning at 5:00 p.m. on Monday and Tuesday, January 28 and 29 for commission and committee members' terms expiring January 30, 2019



OFFICE OF THE CITY CLERK

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 16, 2018

Subject

Receive report on commission and committee members' terms expiring January 30, 2019 and set application submittal deadline date of January 11, 2019 and candidate interview dates of January 28 and 29, 2019.

Recommended Action

- a.) Receive report on commission and committee members' terms expiring January 30, 2019; and
- b.) Set the application submittal deadline date of 4:30 p.m. on Friday, January 11, 2019 and candidate interviews beginning at 5:00 p.m. on Monday and Tuesday, January 28 and 29 for commission and committee members' terms expiring January 30, 2019.

Background

Outreach for the annual recruitment of all commission candidates will begin in late October and City Council will interview applicants in January. Commissions with upcoming vacancies in January 2019 include: Fine Arts Commission (2), Bicycle Pedestrian Commission (3), Housing Commission (1), Library Commission (2), Parks and Recreation Commission (2), Planning Commission (2), and TICC (3). Council will also have the option to designate alternates at the time of the appointment of regular members during the interviews.

Discussion

The City Council appoints members to 11 advisory commissions. Members serve staggered, four-year terms with a two-term limit and must wait two years before they can reapply for the same commission. The Cupertino Municipal Code specifies that the term of office for the members of each commission shall end on January 30 of the year their term is due to expire. No commissioner shall serve more than two consecutive terms except if they have been appointed to fill an unscheduled vacancy for a term that is less than two years.

Recruitment, appointment, and reappointment are governed by City Council Resolution No. 16-137, and Government Code sections 54970-54974. The Teen Commission is governed by Resolution No. 18-019 and follows a different appointment schedule and structure.

Vacancies will be announced in October in the local media, posted at City Hall, Senior Center, Quinlan Community Center, and the Library, and included in the Cupertino Scene and the City's

web site. Notices are also mailed to CERT graduates, Neighborhood Block Leaders, Leadership 95014 graduates, the Chamber of Commerce, service organizations, and other interested parties. Commissioners who have expired terms and are eligible for reappointment are notified as well as those with applications on file.

The attached list describes all of the commissions and lists the names of incumbents whose terms are ending in January 2019. Applicants may apply for up to two commissions and each applicant is interviewed for their preferred commission(s).

Sustainability Impact

None

Fiscal Impact

None

Prepared by: Kirsten Squarcia, Deputy City Clerk

Reviewed by: Grace Schmidt, City Clerk

Approved for Submission by: Amy Chan, Interim City Manager

Attachments:

A – 2019 Local Appointments List and Notice of Vacancies

B – Resolution Governing Recruitment



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LOCAL APPOINTMENTS LIST AND NOTICE OF COMMISSION AND COMMITTEE TERMS EXPIRING IN 2019

NOTICE IS HEREBY GIVEN that residents are encouraged to apply for positions on City commissions that will have vacancies in January of 2019. The application deadline is 4:30 p.m. on Friday, January 11, 2019. Council will conduct interviews beginning at 5:00 p.m. on Monday, January 28, 2019 and Tuesday, January 29, 2019. Commissioners are appointed by the City Council and may serve a total of two consecutive 4-year terms (the Teen Commission has a different term structure). Council may also appoint alternates to serve on commissions and committees in the event of a vacancy. A commissioner may serve more than two consecutive terms if he or she has been appointed to fill an unexpired (partial) term of less than two years. All meetings are open to the public. For more information or to apply for a commission, please contact the City Clerk's Office, 777-3223 or cityclerk@cupertino.org; or visit the City website at www.cupertino.org/vacancies.

BICYCLE PEDESTRIAN COMMISSION			
3 available seats (residency requirement for all five members)			
Incumbent	Date Appointed	Term Expires	Eligible to Reapply?
Gerhard Eschelbeck	1/30/17	First term ends 1/30/19	Yes
Erik Lindskog	1/27/15	First term ends 1/30/19	Yes
Sean Lyn	1/27/15	First term ends 1/30/19	Yes
<p><u>Qualifications:</u> The Commission consists of five members who are residents of the City and shall be appointed by the Council to four-year overlapping terms. None shall be officials or employees of the City nor cohabit with, as defined by law, nor be related by blood or marriage to, any member of the committee, the City Manager or the staff person or persons assigned to the Commission. The function of the Commission is to review, monitor and suggest recommendations for City transportation matters including, but not limited to bicycle and pedestrian traffic, parking, education and recreation within Cupertino. The Bicycle Pedestrian Commission falls under the Political Reform Act of 1974 and financial disclosure is required. Regular meetings are held monthly on the third Wednesday at 7 p.m. in City Hall, Conference Room C. For more information, call staff liaison David Stillman at 408-777-3249 or davids@cupertino.org.</p>			

FINE ARTS COMMISSION			
2 available seats (residency requirement for three out of five members)			
Incumbent	Date Appointed	Term Expires	Eligible to Reapply?
Michael Sanchez	1/28/13; and 1/27/15	Second term ends 1/30/19	No
Janki Chokshi	1/26/16	First term ends 1/30/19	Yes

Qualifications: The Commission consists of five members appointed by Council for four-year terms. None of the members shall be employees or officials of the City, nor cohabit with as defined by law, nor be related by blood or marriage to any member of the Commission, the City Manager or staff person assigned to the Commission. At least three shall be Cupertino residents. The powers and functions of the Fine Arts Commission are to foster, encourage and assist the realization, preservation and advancement of the fine arts for the benefit of the community. The Fine Arts Commission falls under the Political Reform Act of 1974 and financial disclosure is required. Regular meetings are held on the 4th Monday of every other month (odd months) and more often as necessary at 7:00 p.m. in City Hall, Conference Room C. For more information, contact staff liaison Catarina Kidd at 408-777-3214 or finearts@cupertino.org.

HOUSING COMMISSION			
1 available seat (residency requirement for three out of five members; Business and financial institution representatives must be located in Cupertino)			
Incumbent	Date Appointed	Term Expires	Eligible to Reapply?
Sanjiv Kapil	1/30/17	First term ends 1/30/19	Yes
<p><u>Qualifications:</u> The Commission consists of five members appointed by the council to four-year terms. One must be a representative from a Cupertino financial institution and another from a Cupertino business. Housing Commission members who are representatives of a financial institution or a business are not required to be Cupertino residents, but the financial institution and the business represented must be located in Cupertino. The three remaining community members must be residents of Cupertino. The commission assists in developing housing policies and strategies, recommends policies for implementation and monitoring of affordable housing projects, helps identify sources of funding for affordable housing and performs other advisory functions authorized by the City Council. The Cupertino Housing Commission falls under the Political Reform Act of 1974 and financial disclosure is required. Regular meetings are held at 9:00 a.m., the second Thursday of the month at City Hall, Conference Room C. For more information, contact staff liaison Kerri Heusler at 408-777-3251 or kerrih@cupertino.org.</p>			

LIBRARY COMMISSION			
2 available seats (residency requirement three out of five members)			
Incumbent	Date Appointed	Term Expires	Eligible to Reapply?
Rose Grymes	1/25/11; and 1/27/15	Second term ends 1/30/19	No
Gopal Kumarappan	1/27/15	First term ends 1/30/19	Yes

Qualifications: The Commission consists of five members appointed by the Council to four-year, overlapping terms. At least three members must be residents of Cupertino. None of the members shall be officials or employees of the City, nor cohabit with, as defined by law, nor be related by blood or marriage to any member of the Commission, the City Manager or the staff person(s) assigned to this Commission. The Commission advises the City Council on the adequacy of library service within the community and such other matters relating to library service as specified by the city council, and serves as liaison between the city and the Santa Clara County library system. The Library Commission falls under the Political Reform Act of 1974 and financial disclosure is required. Regular meetings are held monthly on the first Wednesday of each month at 7:00 p.m. in the Cupertino Library, 10800 Torre Avenue, Story Room. For more information, call staff liaison Christine Hanel at 408-777-3120 or christineh@cupertino.org.

PARKS AND RECREATION COMMISSION

2 available seats (residency requirement for all five members)

Incumbent	Date Appointed	Term Expires	Eligible to Reapply?
Meenakshi Biyani	3/21/17	Partial term ends 1/30/19	Yes
Carol Stanek	1/26/15	First term ends 1/30/19	Yes

Qualifications: The Commission consists of five members who are residents of the City and shall be appointed by the Council to four-year, overlapping terms. None of the members shall be officials or employees of the City, nor cohabit with as defined by law, nor be related by blood or marriage to any member of the Commission, the City Manager or the staff person(s) assigned to this Commission. The commission advises the City Council on municipal activities in relation to parks and recreation, including park site acquisition and development, recreation program policy, and expansion of the park program as development occurs. The Parks and Recreation Commission falls under the Political Reform Act of 1974 and financial disclosure is required. Regular meetings are held at 7:00 p.m. on the first Thursday of each month in the Community Hall. For more information, contact staff liaison Jeff Milkes at 408-777-3120 or parks@cupertino.org.

PLANNING COMMISSION

2 available seats (residency requirement for all five members)

Incumbent	Date Appointed	Term Expires	Eligible to Reapply?
Don Sun	1/24/11; and 1/26/15	Second term ends 1/30/19	No
Geoffrey Paulsen	1/26/15	First term ends 1/30/19	Yes

Qualifications: The Commission consists of five members appointed by the Council to overlapping four-year terms. Each member shall be a qualified elector in and resident of the City. None of the members shall be officials or employees of the City and none of whom shall cohabit with as defined by law, nor be related by blood or marriage to any other member of the Commission, the City Manager or the staff person(s) assigned to this Commission. The Commission's primary function is to advise the City Council on land use matters such as specific and general plans, zonings and subdivisions. The Commission reviews other matters as specified by City ordinances or Title VII of the Government Code of California. The Planning Commission falls under the Political Reform Act of 1974 and financial disclosure is required. Regular meetings are held at 6:45 on the second and fourth Tuesday of the month in the Community Hall. Commissioners must take an ethics course every two years. For more information, contact staff liaison Benjamin Fu at 408-777-3247 or benjaminf@cupertino.org.

TECHNOLOGY, INFORMATION, AND COMMUNICATIONS COMMISSION			
3 available seats (residency requirement for all five members)			
Incumbent	Date Appointed	Term Expires	Eligible to Reapply?
Mukesh Garg	6/8/17	Partial term ends 1/30/19	Yes
Keita Broadwater	3/18/15	First term ends 1/30/19	Yes
Vaishali Deshpande	3/18/15	First term ends 1/30/19	Yes
<p><u>Qualifications:</u> The Commission consists of five members, from among the qualified electors of the City, appointed by the council to four-year, overlapping terms. None of the members shall be officials or employees of the City, nor cohabit with, as defined by law, nor be related by blood or marriage to any member of the Commission, the City Manager or the staff person(s) assigned to this Commission. They advise the city council on all matters relating to telecommunications within the city of Cupertino, including evaluating compliance with any franchise or other agreement between the city and a telecommunications provider and conducting periodic reviews of providers, facilities, and products. In addition, members serve as liaisons between the city, the public, and telecommunications providers in enhancing education and information. The commission also provides support for community access television, especially public and educational access, and gives guidance when needed for development and implementation of access channels and programming. The Technology, Information, and Communications Commission falls under the Political Reform Act of 1974 and financial disclosure is required. Regular meetings are held at least once every three months and, at the discretion of the Commission, other meetings may be held as necessary or expedient. Meetings usually fall on the first Wednesday of the month at 7:00 p.m. in City Hall Conference Room A. For more information, call staff liaison Bill Mitchell at 408-777-1333 or billm@cupertino.org.</p>			

AUDIT COMMITTEE
No vacancies
There are no terms expiring in January 2019

PUBLIC SAFETY COMMISSION
No vacancies
There are no terms expiring in January 2019

TEEN COMMISSION
No vacancies
There are no terms expiring in January 2019

SUSTAINABILITY COMMISSION
No vacancies
There are no terms expiring in January 2019

RESOLUTION NO. 16-137

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO RESCINDING RESOLUTION NO. 10-048 AND AMENDING THE RESOLUTION ESTABLISHING RULES GOVERNING RECRUITMENT, ATTENDANCE, APPOINTMENTS, AND VACANCIES ON CITY ADVISORY BODIES TO ADD DESIGNATED ALTERNATES TO THE INTERVIEWS AND APPOINTMENTS PROCESS

WHEREAS, the City of Cupertino wishes to establish uniform terms and conditions of office for advisory commissions; and

WHEREAS, there are within the City of Cupertino many citizens with talent, expertise and experience who wish to serve the community; and

WHEREAS, the City Council believes it is important to provide these citizens the opportunity to contribute to their community;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cupertino rescinds Resolution No. 10-048 and establishes the following rules governing recruitment, appointment and reappointment to City of Cupertino Advisory bodies.

A. RECRUITMENT

1. Two months before regular terms expire, or immediately following receipt of a resignation, the City Clerk distributes the vacancy notice as follows:
 - The Cupertino Scene
 - The Cupertino Courier
 - The World Journal
 - The Cupertino City Channel
 - City Hall bulletin board
 - The City Clerk's Office
 - The Cupertino Library
 - The Cupertino Chamber of Commerce
 - Cupertino City Web site
 - Other organizations as appropriate with respect to the openings
 - All persons with applications on file for that particular commission

2. Two months before regular terms expire, the City Clerk's Office also mails the vacancy notice to the following individuals:
 - Students and graduates of Cupertino Emergency Response Training
 - Students or graduates of Leadership Cupertino
 - Neighborhood Block Leaders
 - Individuals who have signed up for notification at the Cupertino Town Hall meetings.
3. All vacancy notices and posting shall be done in accordance with the provisions of the Maddy Act, California Government Code 54970. Specifically, vacancy notices shall be posted for a minimum of 10 days.
4. Applications will be retained for a maximum of one year after Council review. After that time, applicants shall submit a new application if they wish to remain on the list for consideration.
5. Those persons with applications on file within one year of Council review are advised of the vacancy by the City Clerk and may activate that application. –Upon receipt of the vacancy notice, the applicant must contact the City Clerk's Office and ask that the application be reactivated.
6. An applicant may file for a maximum of two commissions at any one application period.
7. A member of an advisory body, having completed two consecutive terms, must wait two years after the term would have normally ended before being eligible to apply for the same commission or committee.
8. Application forms will be available in the City Clerk's Office and will be mailed upon request with information about the opening(s). Application forms will also be available on the City's Web site.
9. No application shall be accepted after the deadline.
10. When the final deadline has passed, the City Clerk's Office will mail applicants the date, time and location of the interviews along with sample questions to consider.

11. The City Clerk's Office will copy the applicants' written material for Council members. The written material will also be available for public review in the City Clerk's Office.
12. An applicant who is unable to attend the interview may submit a 5-minute video presentation in advance of the interview meeting. The tape will be reviewed at the meeting. The video will be made by City staff at the applicant's request upon the approval of the City Clerk. The City will fund these costs.

B. INTERVIEWS AND APPOINTMENTS

1. When Council meets to conduct interviews, it is a public meeting subject to the Brown Act and therefore open to the public. The candidates will be asked by the City Clerk (either in person or by written instructions left in the waiting area) to remain seated in the waiting area until they are called in for the interview. Candidates will also be asked to return to the waiting area until the announcement of the vote, or to go home and contact the City Clerk's Office the next day regarding the results. However, all applicants and members of the public have the option of remaining in the room for any or all of the meeting.
2. The order in which interviews are scheduled to take place will be determined by a drawing of names. The City Clerk will do this in advance.
3. Interviews are informal and usually last 5-8 minutes. Council members are looking for:
 - Familiarity with the subject
 - Decision-making ability
 - Commitment to the position for which they have applied
4. Appointments will be made following a vote in public. Ballots will be distributed, and Council members will vote and sign the ballots. The City Clerk will announce the votes.

5. The City Council may appoint alternates to serve on boards, commissions and committees in the event of a vacancy. Such alternates may attend and participate in meetings of the board, commission, or committee but shall not vote in such meetings until such time as a vacancy has occurred and the alternate has filled such vacancy. If the City Council appoints more than one alternate for a particular board, commission or committee, the City Council shall designate the alternates as first alternate, second alternate and so on such that immediately upon a vacancy occurring in a board, commission, or committee, the first alternate shall fill such vacancy without the need for further City Council action.

C. UNSCHEDULED VACANCIES AND ATTENDANCE

1. If a vacancy occurs for an unexpired term and interviews for appointment to that advisory body have been conducted within the previous ninety days, the unexpired term may be filled from those applications following the required posting of the vacancy.
2. The notice of unscheduled vacancy shall be posted no earlier than 20 days before nor later than 20 days after the vacancy occurs, and at least 10 working days before appointment. The notice of unscheduled vacancy must be posted in the Office of the City Clerk, at the City Hall bulletin board, at the Cupertino Library, and in other places designated by the City Clerk.
3. A member shall be considered removed from an advisory body under the following conditions.
 - A member misses more than three consecutive meetings
 - A member misses more than 25% of the advisory body's meetings in a calendar year
4. It is the responsibility of the advisory body's staff liaison to notify the City Clerk of a member's attendance record to allow sufficient time to send a warning notice if the member has missed three consecutive meetings or 25% of the meetings, and to send a termination notice if the member has missed more three consecutive meetings or more than 25% of the meetings in a calendar year.

5. A member who has been removed from an advisory body for inadequate attendance may request a waiver of this provision by submitting a letter to the City Council setting forth the reason for the absences and confirming future availability.

D. GENERAL PROVISIONS

1. Term limit restrictions listed in this resolution do not apply to temporary appointments for unexpired terms.
2. All provisions of this resolution shall apply unless otherwise decided by the City Council on a case-by-case basis.
3. In the event that any provision of this resolution conflicts with the provisions of any other ordinance or resolution governing a particular advisory body, the provisions governing that advisory body shall prevail.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 20th day of December, 2016, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
-------------	------------------------------------

AYES:	Vaidhyanathan, Chang, Scharf, Sinks
-------	-------------------------------------

NOES:	None
-------	------

ABSENT:	Paul
---------	------

ABSTAIN:	None
----------	------

ATTEST:

APPROVED:

/s/ Grace Schmidt

/s/ Savita Vaidhyanathan

Grace Schmidt, City Clerk

Savita Vaidhyanathan, Mayor,
City of Cupertino



CITY OF CUPERTINO

Legislation Details (With Text)

File #: 18-4360 **Version:** 1 **Name:**
Type: Consent Calendar **Status:** Agenda Ready
File created: 9/11/2018 **In control:** City Council
On agenda: 10/16/2018 **Final action:**
Title: Subject: Small Cell Wireless Agreement with ExteNet Systems (California) LLC
Sponsors:
Indexes:
Code sections:
Attachments: [Staff Report](#)
[A - Small Cell License Agreement](#)

Date	Ver.	Action By	Action	Result
10/16/2018	1	City Council		

Subject: Small Cell Wireless Agreement with ExteNet Systems (California) LLC

Authorize the City Manager to enter into a Small Cell License Agreement with ExteNet Systems (California) LLC



PUBLIC WORKS DEPARTMENT

CITY HALL

10300 TORRE AVENUE • CUPERTINO, CA 95014-3255

TELEPHONE: (408) 777-3354 www.cupertino.org

CITY COUNCIL STAFF REPORT

Meeting: October 16, 2018

Subject

Small Cell License Agreement with ExteNet Systems (California) LLC

Recommended Action

Authorize the City Manager to enter into a Small Cell License Agreement with ExteNet Systems (California) LLC

Description

Small Cell Facilities are wireless telecommunication devices that consist of radio receivers, antennas and other associated power and electronics equipment, with a defined maximum size (volume) for all equipment. Small Cell Facilities produce considerably less emissions than typical macro-cell towers, and help to mitigate and manage the use of the wireless frequency spectrum, ensuring residents, public safety officers and visitors have adequate cellular coverage. Small cell facilities are the industry solution to address the growing demand for wireless services.

The City currently has four agreements in place for placement of Small Cell Facilities on City owned street light poles. These four agreements are with Crown Castle Ng West, LLC; Mobilitie, LLC; GTE Mobilnet of California Limited Partnership, d/b/a/ Verizon Wireless; and New Cingular Wireless PCS, LLC, d/b/a AT&T Wireless.

This new agreement allows ExteNet to place their own small cell equipment on the city's street light poles, and has the same basic terms and requirements as the four existing small cell agreements. The different provisions in this small cell agreement, as negotiated by the parties, are an automatic renewal after the 5 year periods, up to the 15 year agreement term; City approval would not be required for modifications to equipment that are consistent with Section 6409 (a) of the Middle Class Tax Relief and Job Creation Act (in compliance with State Law); clarification that leasing to a third party is not considered a transfer of interest; and various changes to improve and strengthen the Indemnity and Insurance and the General Provisions sections of the

City's standard agreement. The substantive terms that were reached with ExteNet (which match those of the other small cell agreements) are as follows:

Term: Three (3) - five (5) year terms for a total of fifteen (15) years. Fifteen years also happens to be the current term of the Verizon Cell Tower Lease for the Civic Center.

Rent: The rent has been set at \$1500 per pole per year. This amount is increased at a 3% annual rate each year.

Rent Adjustment: The rent is adjusted annually. In addition, every five years the rent is adjusted to reflect the highest rent paid by the carrier to any jurisdiction within the County of Santa Clara with the exception of San Jose. Cupertino's rate will equal or exceed the rate of any other City in the County with the exception of San Jose at the start of this License. Every five years the City will have an opportunity to catch up to the market rate if the carrier pays any other City, including the County of Santa Clara a higher rate. Again, the exception is that San Jose is carved out due to its unique circumstances.

Aesthetic Control: The City Engineer retains full control over the design of Small Cells. Thus, the City Engineer will be able to ensure that the aesthetic impact of these Small Cells is minimized. The current intent is to not allow battery back-ups for the Small Cells due to the large size of the batteries. Although this will minimize Small Cell availability during an emergency, it will reduce unsightly batteries on poles or new street furniture in the public rights of way. The agreement with ExteNet has provided a design for these facilities that staff believes is aesthetically suitable, and which is identical to the designs approved for the four existing small cell agreements.

Placement Control: The City Engineer will retain full discretion on which poles may be used for Small Cells. This discretion will be based on safety and aesthetic concerns. The carrier may replace City poles at their own expense following City Engineer approval of the design of the replacement pole. Depictions of the approved designs are attached to the agreement.

There have been a number of attempts, both by Federal and State Officials (FCC Dockets WT 17-79 & 17-84, SB-649, ACR-62), to minimize or remove a City's ability to

regulate aesthetics, placement and permitting for small cell facilities which, in effect, grant wireless service providers permission to place facilities on any locally owned utility poles, streetlights, and other suitable facilities located within the public right-of-way, as well as in other local public spaces such as parks, hospitals and public buildings. To date, most attempts have been blocked at various levels of government. However, the FCC recently released Declaratory Ruling and Order for Dockets 17-79 and 17-84 which could provide backing for further legislative initiatives.

The proposed License Agreement for ExteNet owned small cell facilities on street light poles will help the City to retain some control over the design, placement and aesthetics of small cell facilities. Without this License Agreement, ExteNet only has the option to install small cell facilities on PG&E poles. Current designs for facilities on PG&E poles are more challenging to disguise, and the City has less authority over the designs for these facilities, and there will be fewer alternatives for locating the facilities. Limiting service providers to use only PG&E owned poles could prove to the Federal and State legislatures that cities are not capable of streamlining deployment of small cell facilities, and thus hasten the need to enact legislation that removes all discretion from cities.

Environmental Impact

Installation of small cell facilities on existing street light poles is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 of the Guidelines for CEQA.

CEQA Guidelines Section 15302 allows for replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Likewise, the replacement light standard would serve the same purpose as the existing field light standard. Additionally, CEQA Guidelines Section 15303 allows for the construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The proposed antennas to be mounted on replacement poles would qualify as minor modifications to an existing pole.

Fiscal Impact

The initial fiscal impact of these licenses will be minimal if the assumption is made that 10 poles will be utilized by ExteNet for their initial build-out. This would result in a

total annual revenue to the City of \$15,000 per year. However it is anticipated that this is the first step in a more significant deployment so the sums could increase over time.

Sustainability Impact

No sustainability impact.

Prepared by: Chad Mosley, City Engineer

Reviewed by: Timm Borden, Director Public Works

Approved for Submission by: Amy Chan, Interim City Manager

Attachments:

A - Small Cell License Agreement between the City Of Cupertino and ExteNet Systems (California) LLC

**SMALL CELL LICENSE
AGREEMENT
BETWEEN
THE CITY OF CUPERTINO, CALIFORNIA
AND
EXTENET
SYSTEMS
(CALIFORNIA)
LLC**

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SMALL CELL LICENSE AGREEMENT

This Small Cell License Agreement ("License") is made and entered into as of _____, 20__, by and between the City of Cupertino, California, ("City" or "Licensor") and ExteNet Systems (California) LLC, a California limited liability company ("Licensee"). Licensor and Licensee may be collectively referred to as "Parties."

RECITALS

The following recitals are a substantive portion of this License:

- A. City is the owner of approximately 3,240 street light poles, traffic signal poles or other poles (collectively "City Poles") within the public right-of-way and owns or controls public right-of-way within the City of Cupertino located in Santa Clara County, State of California.
- B. Licensee is a California limited liability company organized under the laws of the State of California, legally qualified to do business within the State of California whose business includes the installation of small cell cellular antenna sites.
- C. Licensee requests the use of certain City Poles as designated on the attached Exhibit "1", for the installation and operation of small cell cellular antenna and radio sites.
- D. City is willing to permit Licensee to License the City Poles in accordance with the terms, conditions, and covenants of this License.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1

City Poles and Improvements

1.1 License of City Poles. City hereby licenses to Licensee and Licensee licenses from City for the term, at the rental rate and upon all of the other terms and conditions set forth, the City Poles listed on Exhibit "1", attached hereto and incorporated herein. The Parties acknowledge that they may amend Exhibit "1" if City and Licensee agree to additional City Pole sites.

1.2 Improvements. City licenses to Licensee the limited right to use City Poles only to locate a small cell antenna and related equipment of the same or substantially similar initial design as previously approved by the City and shown on Exhibit "2", attached hereto and incorporated herein. It is understood and agreed that the final antenna equipment design will be shown in the plans submitted to the City in connection with the City's encroachment permit process.

ARTICLE 2

Term

2.1 Term. The term of this License shall be for an initial period of five (5) years commencing on the Commencement Date and with automatic renewal term of two five (5) year periods ("Renewal Term"), terminating on the anniversary of the Commencement Date, unless earlier terminated ("Term").

2.2 Commencement Date. The Commencement Date of this License shall be the date this License is approved by the City Council.

ARTICLE 3

Rental

3.1 Base Rent. Licensee shall pay to City, as annual rent for the use of the City Poles, in advance on the first day of the calendar month during the Term and the Option Term, if any, of this License without deduction, offset, prior notice or demand, in lawful money of the United States, the sum of One Thousand Five Hundred Dollars (\$1500.00) ("Base Rent") for each City Pole. If the Commencement Date is not the first day of the month during the Term, the Base Rent shall be due on the first day of the calendar month after the Commencement Date of this License. The first year's rent shall be prorated as necessary, if the License does not commence upon the first day of the month. All payments, including Rent shall be mailed to: City Manager, City of Cupertino, 10300 Torre Avenue, Cupertino, CA 95014-3202.

3.2 Annual Increase. During the Term of this License, including the Option Terms, the Base Rent shall be increased annually by the San Francisco-Oakland-San Jose Consumer Price Index CPI-U ("CPI-U") for the prior year, beginning on the first anniversary of the Commencement Date, and effective each anniversary thereafter throughout the Term and Option Terms, if any. The sum shall be adjusted annually resulting in a compound rate of increase. For example, the Base Rent for the first year for one pole would be One Thousand Five Hundred Dollars (\$1500.00) per year and the new rate commencing on the first anniversary, assuming a CPI-U of 3% would be One Thousand Five Hundred Forty Five Dollars (\$1545.00).

3.3 Market Rate Adjustment. At the start of each of the Option Terms, the rental rate shall be adjusted to equal the highest annual rental rate paid by Licensee to any City within the County of Santa Clara or to the County itself, with the exception of rental rates paid to the City of San Jose. In addition this rental rate shall be subject to the annual rent increase as described in section 3.2. Should the rent paid under this Agreement equal or exceed that paid to other jurisdictions at the start of each additional five year term, no rental adjustment at the start of the five year term shall be required.

3.4 Transactional Costs. Licensee shall pay to City, as additional rent, any reasonable transactional costs, which shall include any reasonable attorneys' fees incurred by City because of the negotiation, preparation, execution, and delivery of this License, any amendment, any future consent of City required and the preparation and negotiation of an amendment to the License ("Transactional Costs"). City shall furnish Licensee with an invoice reflecting the

Transactional Costs due, and Licensee shall make full payment to City of these costs within thirty (30) days from the date of City's invoice.

3.5 Late Charge. Licensee acknowledges late payment by Licensee to City of rent will cause City to incur costs not contemplated by this License, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed on City. If any installment of rent due from Licensee is not received by City within ten (10) days after the date rent is due, Licensee shall pay to City an additional sum of ten percent (10%) of the overdue rent as a late charge. The parties agree this late charge represents a fair and reasonable estimate of the costs City will incur because of late payment by Licensee. Acceptance of any late charge shall not constitute a waiver of Licensee's default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to City.

ARTICLE 4

Use

4.1 Permitted Uses. Licensee shall use the City Poles for purposes related to the small cell antenna and radio installation and related equipment including but not limited to support mast and mounts, cable equipment, amplifiers, receivers, battery units, equipment cabinets, through bolts, washers, nuts, power supply cabinets, power meters, grounding or bond wires, enclosures, cabinets, and battery back-up units (collectively "Antenna"), as approved by the City Engineer. Licensee shall be solely responsible for all costs associated with the construction, installation, maintenance, and use of the Antenna.

4.2 Access. City grants Licensee reasonable foot access to the City Poles. Access shall be available to Licensee, Licensee's employees and invitees, during normal business hours, except if an emergency occurs. It is anticipated, after installation of the Antenna is completed, that Licensee shall require reasonable access once every month for the purpose of ordinary tuning of Licensee's equipment and appropriate maintenance of the Antenna. As a part of this License, City grants to Licensee reasonable access to the area adjacent to the City Poles ("City Property") for the purposes of installing or maintaining the Antennas.

4.3 Prohibited Uses. Licensee shall not use City Poles for any purpose not expressly permitted herein. Licensee shall not (a) create, cause, or permit any nuisance or waste in, on or about the City Poles or permit the City Poles to be used for any unlawful purpose, (b) do or permit to be done anything that unreasonably disturbs the City's use of the City Poles or the occupants of neighboring property. Specifically, and without limiting the above, Licensee agrees not to cause any unreasonable odors, noise, vibration, power emissions or other item to emanate from the Antenna on the City Poles. No materials or articles of any nature shall be stored outside adjacent to any portion of the City Poles.

4.4 Approval by the City and Other Agencies. Licensee, at its sole cost and expense, may install the Antenna, subject to Licensee's obtaining all required permits, licenses, and approvals from the City and any other governmental agencies having jurisdiction. Licensee shall maintain permits, licenses, and approvals in force through the Term and the Renewal Term, if any. The

revocation or expiration of any permit, license, or approval is a breach of this License. If Licensee replaces the Antenna, it shall not do so without the prior written approval of City, and all required permits, licenses, and approvals from the City and any other governmental agencies with jurisdiction. If a change in the Antenna is approved, Licensee and City shall amend Exhibit "2" to reflect the change. Should Licensee change or expand any Antenna without the prior approval of City, City may require that Licensee remove the expansion at Licensee's sole cost and expense. Licensee Antenna replacement approval shall not be required if the replacement meets the requirements of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act. Licensee shall be solely responsible for conducting any environmental review required in association with Licensee's use of the City Poles and for all costs associated, as well as all fees, charges or other expenses imposed by the City or other regulatory agencies in connection with Licensee's use of the City Poles prior to the License commencement, or at any time during the Term of the License.

4.5 Compliance with Laws.

4.5.1 General Laws. Licensee shall comply with all laws and regulations applicable to this Lease. Licensee will promptly notify City of changes in the law or other conditions that may affect the Project or Licensee's ability to perform. Licensee is responsible for verifying the employment status of employees performing the Work, as required by the Immigration Reform and Control Act.

4.5.2 Labor Laws.

(a) Agreements of \$1,000 or more are subject to the requirements of the California Labor Code, including but not limited to:

(i) Prevailing wage laws under Labor Code Section 1775, which require Licensee to pay prevailing wages applicable in Santa Clara County for each craft, classification, or type of worker needed to perform the Work, including health, pension and vacation. The prevailing wage rates are on file with the City Engineer's office and are available online at <http://www.dir.ca.gov/DLSR>;

(ii) Apprenticeship requirements under Labor Code Section 1777.5 for Contracts \$30,000 or more;

(iii) Maintain certified payroll records in accordance with Labor Code Sections 1776 and 1812, and electronically submit them to the Labor Commissioner as required by the regulations of California, Department of Industrial Relations ("DIR");

(iv) Comply with DIR Monitoring, Enforcement and Registration requirements of Labor Code Section 1725.5.

(b) Licensee must compensate workers who are paid less than prevailing wages or required to work more than a legal day's work. Licensee will also be required to pay City a penalty of \$500 per worker for each day of violation.

(c) As required by Labor Code Section 1861, by signing this Lease Agreement Licensee certifies as follows: "I am aware of Labor Code Section 3700 which requires 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 Work on this Lease Agreement."

4.5.3 Discrimination Laws. Licensee 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. Licensee 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, Licensee understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Licensee or Licensee's employees or sub-Licensees will not be tolerated.

4.5.4 Conflicts of Interest. Licensee, its employees, subcontractors, servants and agents, may not have, maintain or acquire a conflict of interest in relation to this Agreement in violation of law, including Government Code section 1090 and Government Code section 81000 and their accompanying regulations. No officer, official, employee, consultant, or other agent of the City ("City Representative") may have, maintain, or acquire a "financial interest" in the Lease Agreement, as that term is defined by state law, or in violation of a City ordinance or policy while serving as a City Representative or for one year thereafter. Licensee, its employees, subcontractors, servants and agents warrant they are not employees of City or have any relationship with City officials, officers or employees that creates a conflict of interest. Licensee may be required to file a conflict of interest form if it makes certain governmental decisions or serves in a staff capacity, as defined in section 18700 of the California Code of Regulations. Licensee agrees to abide by City rules governing gifts to public officials and employees.

4.5.5 Remedies. Any violation of Section 4.5 constitutes a material breach and may result in City suspending payments, requiring reimbursement, or terminating the Lease Agreement. City reserves all rights and remedies under the law and this Lease, including seeking indemnification.

4.6 Condition, Use of City Poles. Licensor makes no warranty or representation concerning the condition of City Poles, or the fitness of City Poles for the use intended by Licensee, and disclaims any personal knowledge. Licensee has personally inspected the City Poles, knows their condition, finds them fit for Licensee's intended use, accepts them "as is", and has ascertained that they can be used for the limited purposes specified in Section 4.1.

4.7 Hazardous Materials.

4.7.1 Hazardous Materials on City Poles. Licensee shall not introduce any Hazardous Materials (as defined below) to the City Property, (excluding any Hazardous Materials which are components of commercially available products) unless the Hazardous Materials are transported,

obtained, handled, stored, and/or disposed of in accordance with all federal, state, and local laws, ordinances, rules, regulations, or policies.

4.7.2. Hazardous Materials Defined. The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material, or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances, materials, or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Secs. 9601 et seq., (b) RCRA, 42 U.S.C. Secs. 6901 et seq., (c) CWA, 33 U.S.C. Secs. 1251 et seq., (d) CAA, 42 U.S.C. Secs. 7401 et seq., (e) TSCA, 15 U.S.C. Secs. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Secs. 407, (g) OSHA, 29 U.S.C. Secs. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Secs. 5101 et seq., (i) USDOT Table (49 CFR Sec. 172.101 App. A and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) Carpenter- Presley-Tanner Hazardous Substance Account Act, Cal. Health & Safety Code Secs. 25300 et seq., (k) California Hazardous Waste Control Act, Cal. Health & Safety Code Secs. 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Secs. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) "Proposition 65," Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Secs. 108100 et seq., (q) Air Resources Law, Cal. Health & Safety Code Secs. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500 et seq., (s) TPCA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

4.7.3 Hazardous Materials Indemnity. Licensee shall indemnify, defend (by counsel reasonably acceptable to City), protect and hold Licenser harmless from and against any and all claims, liabilities, penalties, forfeitures, losses, and/or expenses, including, without limitation, diminution in value of the City Poles or City Property, damages for the loss or restriction on use of the rentable or usable space or of any amenity of City Poles or, damages arising from any adverse impact or marketing of the City Poles and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings, or orders, fines, costs of death of or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), arising from, or caused or resulting, either prior to or during the License Term, in whole or in

part, directly or indirectly, by the presence or discharge in, on, under or about the City Poles by Licensee, Licensee's agents, employees, licensees or invitees or at Licensee's direction, of Hazardous Material, or by Licensee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. Licensee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the City Poles or Project, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the License Term. For purposes of the indemnity, any acts or omissions of Licensee or its employees, agents, customers, assignees, contractors, or subcontractors of Licensee (whether or not they are negligent, intentional, willful, or unlawful) shall be strictly attributable to Licensee.

4.7.4 City's Right to Perform Tests. At any time during the License Term, City shall have the right to conduct tests of water and soil and to deliver to Licensee the results of such tests to demonstrate that levels of any Hazardous Materials in excess of permissible levels has occurred as a result of Licensee's use of the City Poles. Licensee shall be solely responsible for and shall indemnify, protect, defend and hold City harmless from and against all claims, costs and liabilities including actual attorneys' fees and costs arising out of or in connection with any removal, remediation, clean up, restoration and materials required hereunder to return the City Poles and any other property of whatever nature to their condition existing prior to the appearance of the Hazardous Materials. The testing shall be at Licensee's expense if City has a reasonable basis for suspecting and confirms the presence of Hazardous Materials in the soil or surface or groundwater in on, under, or about the City Poles or the Project, which has been caused by or resulted from the activities of Licensee, its agents, employees, contractors, or invitees. Licensee shall demonstrate that the antenna meets or exceeds all appropriate FCC requirements. Licensee shall provide results of any test results on the antenna prepared for the FCC or any other testing body.

4.7.5 Survival. This entire Section 4.7 of this License shall survive termination of the License, as to any activities during the Term or Option Term of this License.

4.7.6 Termination of License. City shall have the right to terminate the Term of the License in City's sole and absolute discretion in the event that (i) any anticipated use of the City Poles or City Property by Licensee involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority or Hazardous Materials Laws; (ii) Licensee has been required to take remedial action in connection with Hazardous Material contaminating the City Poles or City Property, if the contamination resulted from Licensee's action or use of the City Poles or City Property; or (iii) Licensee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal, or storage of a Hazardous Material on the City Poles or City Property.

4.7.7 Covenant of Non-Interference. Licensee shall be responsible for inspecting City Poles and finding adequate space at the site without moving or relocating any of City's Poles or equipment, or any other facility, or utility located at the City Property, at the time Licensee's facilities are installed. Licensee's equipment shall not negatively impact any other existing facility or antenna. In the event that Licensee's equipment does impact other facilities, Licensee shall

be required to install, at its own expense, frequency filters or take other reasonable measures to correct the problem. Licensee shall be required to coordinate with other existing utilities located at the property, to ensure that Licensee's equipment does not interfere with the frequencies utilized by existing utilities or other parties.

4.7.8 Co-location. Licensee acknowledges that City has the right to license additional positions on City Poles to third parties. All operations by Licensee shall comply with all Federal Communications Commission ("FCC") requirements. If City adds new City Poles or other facilities in the future, Licensee will not electronically or physically interfere with City owned and operated equipment. Licensee shall reasonably cooperate with current and future City licensees. Licensor will not grant a license to any party for use of the City Pole site, if the new use would unreasonably interfere with Licensee's operation of its Antenna. Any future license of the City Pole site, which permits installation of Antennas, shall be conditioned upon the new Antennas not interfering with Licensee's Antenna.

4.7.9 Electromagnetic Emissions. Licensee's operations on the City Poles shall comply with all applicable federal laws and regulations regarding electromagnetic emissions. Licensee shall conduct all necessary tests after its improvements are constructed on the City Poles to ensure that its facilities comply with those laws and regulations. The tests shall be conducted by a licensed professional engineer, and the results shall be provided to the City.

4.8 Telecommunications Services. At any time that Licensee ceases to operate as a provider of telecommunications services under Federal law, the Licensor shall have the option, in its sole discretion and upon sixty (60) days written notice to Licensee, to terminate this License and to require the removal of Licensee's Antennas from City Poles, including the cost of any site remediation, at no cost to the Licensor.

4.9 Scope of Agreement. All rights expressly granted to Licensee under this License, which shall be exercised at Licensee's sole cost and expense, shall be subject to the prior and continuing right of the Licensor to use all parts of the public right-of-way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the right-of-way as of the date of this License.

ARTICLE 5

Maintenance, Repairs and Alterations

5.1 General. Licensee shall keep in good order, condition, and repair City Poles and the Antenna placed on the Poles. Licensee shall keep the City Poles clean and free of debris.

5.2 Surrender. On the last day of the Term, or of the Renewal Term, Licensee shall surrender City Poles to City in the same condition as when received, clean and free of debris. Licensee shall also remove all improvements and cables and wires located above ground or below ground that Licensee placed upon City Poles, and repair any damage to City Poles by the installation, maintenance, or removal of Licensee's improvements and any related cables, wires or other

equipment, and shall restore City Poles to the same conditions as when Licensee received City Poles from City.

5.3 City's Rights. If Licensee is in default, subject to the applicable cure periods, City may (but shall not be required to) enter upon City Poles, (except in the case of an emergency, in which case no notice shall be required), to perform obligations on Licensee's behalf and put the City Poles and/or Antenna in good order, condition and repair, and the cost, together with interest at the maximum rate then allowable by law, shall become due and payable as additional rent to City with Licensee's next rental installment, provided, however, in the case of a non-emergency, City shall notify Licensee of City's intention to perform Licensee's obligations ten (10) days prior to performing any work on Licensee's behalf. If no rental installment is due to City, these costs shall become due and payable within thirty (30) days from the date of City's invoice.

5.4 City Repair Obligations. City shall have no obligation to repair and maintain the City Poles nor the Improvements and facilities. Licensee expressly waives the benefit of any statute now or hereinafter in effect which would afford Licensee the right to make repairs at City's expense or to terminate this License because of City's failure to keep City Poles in good order, condition, and repair.

5.5 Improvements.

5.5.1 Licensee Payment for Labor or Materials. Licensee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Licensee at or for use on the City Poles, which claims are or may be secured by any mechanic or material lien against the City Poles or any interest therein. Licensee shall give City not less than ten (10) days' notice prior to the commencement of any work on the City Poles, if City shall require a surety bond, Licensee shall furnish to City a surety bond satisfactory to City in an amount equal to the contested lien, claim indemnifying City against liability for and holding the City Poles free from the lien or claim. In addition, City shall have the right to require Licensee to pay City's attorneys' fees and costs in participating in the action if City decides to participate.

5.5.2 Conditions Precedent. Before construction of any improvements are commenced on City Poles, and before any building materials have been delivered to City Property and property adjacent to the Pole locations by Licensee or its agents, Licensee shall comply with the following conditions or procure City's written waiver of the conditions specified:

5.5.2.1 Compliance with Applicable codes. All work on City Poles shall be done in strict compliance with all versions or editions of the latest applicable building, technical, safety and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent edition of the TIA ANSI Code, National Electrical Safety Code, the National Electrical Code and the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. The codes referred to are codes that include, but are

not limited to, construction, building, electrical, fire, safety, health, and land use. In the event of a conflict between or among any of the preceding, the more stringent shall apply.

5.5.2.2 Certification. Where a certification is called for on a technological matter or issue, such certification shall bear the signature and seal of a Professional Engineer licensed in the State of California. All other certifications shall be made by an individual authorized to make commitments for or on behalf of the Licensee.

5.5.2.3 Permits and Licenses. A holder of a Special Use Permit or Administrative Special Use Permit granted under this Agreement shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the Licensee.

5.5.2.4 Construction Schedule. A construction schedule approved by Licensee and the City setting forth in detail a description of the Improvements and all steps for construction of the Improvements, and Licensee's best estimate of the date upon which each step shall be substantially completed is attached and incorporated herein as **Exhibit "D"**.

5.5.2.5 Line Location Requests. Licensee is responsible for promptly responding to line location requests. For underground service alerts for street lighting and traffic signal conduits, City's Service Center must be called at (408) 777-3269. Government Code Section 4215 requires Licensee to notify City and Utility in writing if it discovers utilities or utility facilities not identified in the Agreement.

5.5.2.6 Pursuant to Government Code Section 7104, Licensee must stop work, notify City in writing, and wait for instructions if one of the conditions below is found at the worksite.

- (a) Material believed to be hazardous waste under Health and Safety Code Section 25117, and which requires removal to a Class I, Class II, or Class III disposal site pursuant to law;
- (b) Subsurface or latent physical conditions at the Project worksite differing from those indicated by information about the worksite made available to Licensee;
- (c) Unknown physical conditions at the Project worksite of any unusual nature, materially different from those ordinarily encountered and from those generally recognized as inherent in the character of the Work.

5.5.2.7 For contracts \$25,000 or higher that require excavation or involve trenches five feet or more in depth, Licensee must submit a detailed plan for City approval, per Labor Code Section 6705 prior to commencing work. The plan must show the design of shoring, bracing, sloping and other provisions for worker protection from caving ground and other hazards. The protective system must comply with all Construction Safety Orders. If the plan varies from shoring system standards, it must be prepared by a registered civil or structural engineer.

5.5.2.8 **PROJECT COORDINATION City Project Manager.** City assigns as the City representative for all purposes under this Agreement, with authority to require compliance with the Scope of Work. City may substitute Project Managers at any time and without prior notice to Licensee. Licensee Project Manager. Subject to City approval, Licensee assigns as its single representative for all purposes under this Agreement, with the responsibility to ensure progress with the Work. Licensee's Project Manager is responsible for coordinating and scheduling the Work and must regularly update the City Project Manager about the status and any delays with the Work, consistent with the Scope of Work. Any substitutions must be approved in writing by City.

5.5.2.9 Protection of Adjacent Property, Indemnity of the City. Licensee shall protect the City Property and adjacent property against damage resulting from the performance of work undertaken by Licensee or Licensee's agents, employees, contractors (excluding any damage caused by gross negligence or the willful act of City) and shall indemnify the City against all liens or liability arising out of the performance of the work or the furnishing of labor, services, materials, supplies, equipment, or power.

5.5.2.10 **Worker's Compensation Insurance.** In addition to the insurance coverage otherwise required under this License, Licensee shall maintain workers' compensation insurance covering all persons employed in connection with the construction of any improvements, repair, or maintenance activities with respect to whom death or injury claims could be asserted against the City, or Licensee. City may require any third party(ies) contractor performing work at the City Poles to maintain workers' compensation insurance as contractor's sole cost and expense at all times when any work is in process and shall otherwise conform to the requirements of this License with respect to insurance.

5.5.2.11 Final Inspection. Licensee shall not provide service to its customers from the Antenna in any way without receiving a final inspection of the Antenna from the City.

5.5.2.12 Notice of Changes in Plans. Upon completion of the installation of any Antenna, Licensee shall give City notice of all changes in the plans and specifications made during the course of the work and at the same time deliver to City "as built" drawings accurately reflecting all changes, provided that no change that substantially alters the final plans last approved by the City shall be made without the City's prior written approval.

5.6 URBAN RUNOFF MANAGEMENT

5.6.1 All Work must fully comply with federal, state and local laws and regulations concerning storm water management. Licensee must avoid creating excess dust when breaking asphalt or concrete and during excavation and grading. If water is used for dust control, Licensee will use only the amount of water necessary to dampen the dust. Licensee will take all steps necessary to keep wash water out of the streets, gutters and storm drains. Prior to the start of the Work, Licensee will implement erosion and sediment controls to prevent pollution of storm drains, and must upgrade and maintain these controls based on weather conditions or as otherwise required by City. These controls must be in place during the entire Lease time and must be removed at the end of construction and completion of the Work. Such controls must include, but will not be limited to, the following requirements:

(a) Install storm drain inlet protection devices such as sand bag barriers, filter fabric fences, and block and gravel filters at all drain inlets impacted by construction. During the annual rainy season, October 15 through June 15, storm drain inlets impacted by construction work must be filter-protected from onsite de-watering activities and saw-cutting activities. Shovel or vacuum saw-cut slurry and remove from the Work site;

(b) Cover exposed piles of soil or construction material with plastic sheeting. Store all construction materials in containers;

(c) Sweep and remove all materials from paved surfaces that drain to streets, gutters and storm drains prior to rain and at the end of each work day. When the Work is completed, wash the streets, collect and dispose of the wash water offsite in lawful manner;

(d) After breaking old pavement, remove debris to avoid contact with rainfall/runoff

(e) Maintain a clean work area by removing trash, litter, and debris at the end of each work day and when Work is completed. Clean up any leaks, drips, and other spills as they occur.

5.6.2 These requirements must be used in conjunction with the California Stormwater Quality Association and California Best Management Practices Municipal and Construction Handbooks, local program guidance materials from municipalities, and any other applicable documents on stormwater quality controls for construction. Licensee's failure to comply with this Section will result in the issuance of noncompliance notices, citations, Work stop orders and regulatory fines.

5.7 City Access. The City or its agents, may inspect City Poles at all reasonable times during the term of this License Agreement to determine whether Licensee is complying with the terms and conditions or for any other purpose incidental to rights of the City.

5.8 Licensee Access. Licensee may access City Poles during normal business hours, Monday through Friday from 8:00 a.m. to 5:00 p.m. upon reasonable notice to the City. In the event of an emergency, Licensee's access shall be 24/7, but such access outside of normal business hours must be reported to City within 48 hours of the emergency. Licensee acknowledges that other licensees also have rights to access the City Poles, and that if multiple licensees or licensees request simultaneous access, the City may have to delay Licensee's access to the City Poles to accommodate others or vice versa. Licensee must report any damage to City Poles within 24 hours of causing or discovering the damage. Damage to City Poles caused or discovered by Licensee that may impact public safety must be reported to City immediately by Licensee.

5.9 Licensee Access During Security Alert. During times of high security alert by the Homeland Security Advisory System, Licensee must in all instances obtain City's prior consent to access City Poles.

5.10 Attachment to City Poles. Licensee will submit to the authorized representative of the Licensor, no more than two proposed designs for any proposed Antenna installations. Assuming that all of Licensor's requirements are met, Licensor will preapprove up to two acceptable designs for Antennas. Licensee may only install Antenna designs that are the same as the preapproved design. All installations shall, to the maximum extent possible, be placed behind equipment

shrouds or located so as to minimize visual impacts to the City Engineer's satisfaction. The City Engineer may require a physical mock-up of the installation and photo simulations. If required the mock-up shall be the actual size of the equipment and include the actual color(s) to be used for the final installation. Licensee is prohibited from installing ground mounted cabinets. Licensee shall install all wires within the pole, any external wires that feed external equipment shall be hidden or shrouded from view. Any equipment (including but not limited to radio boxes), on poles shall be screened by street signs to City Engineer's satisfaction and shall not exceed the preapproved size. Each antenna shall have identifying information on it including emergency contact numbers. No advertising may be placed on any equipment.

5.11 Encroachment Permit. Subject to the conditions herein, Licensee shall submit an application for an encroachment permit ("Encroachment Permit") to the Licensor to enter upon the right-of-way and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace the Antenna on City Poles in the public right-of-way for the purposes of providing telecommunications services. Licensor reserves the right to deny any application for an Encroachment Permit for the installation of an Antenna to City Poles at the sole discretion of the City Engineer. Licensee agrees to abide by decisions made by the City Engineer regarding Antenna placement.

5.12 Replacement Pole. If Licensee selects a Pole that is structurally inadequate to accommodate the Antenna, Licensee may at its sole cost and expense, and at the discretion of the City Engineer, replace the Pole (a "Replacement Pole") with one that is acceptable to and approved by the Licensor and dedicate such Replacement Pole to the Licensor.

5.13 Preference for Municipal Facilities. In any situation where Licensee has a choice of attaching its equipment to either City Poles or third-party-owned poles in the public right-of-way, Licensee shall use good faith efforts to attach to City Poles, provided that City Poles are suitable for the Antenna and the operation of the telecommunication network.

5.14 No Interference. Licensee shall not interfere in any manner with the existence and operation of any public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities owned by the Licensor, electroliers, cable television, location monitoring services, public safety, and other then existing telecommunications equipment, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable law or this License. However, the Licensor agrees that the Licensor and/or any other tenants, licensees, or users of the public right-of-way who currently have, or in the future take possession of, space within the public right-of-way adjacent to any of Licensee's Antennas will be permitted to install only equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of Licensee. Licensee shall act reasonably to accommodate future providers so that the public right-of-way may be used by additional providers.

5.15 No Authorization to Provide Other Services. Licensee represents, warrants, and covenants that the Antennas installed pursuant to this License will be utilized solely for providing the telecommunications services identified herein. Licensee is not authorized to and shall not use its

Antennas to offer or provide any services not specified herein. Licensee shall not use the Antenna or related hardware or software for data collection.

5.16 Payment to PG&E of Power Costs. Licensee shall cause a separate electric line to be run to its equipment. Licensee shall pay all electricity costs directly to Pacific Gas and Electric Company ("PG&E") or its other electric service provider. Licensee shall not use Licensor's electricity to power its equipment. Licensee shall make good faith efforts to negotiate a flat rate with PG&E to avoid above ground metering facilities where practicable. Should Licensee be unable to secure a flat rate service from PG&E then a ground mounted meter or pole mounted smart meters may be utilized with written approval by the City Engineer. All Equipment shall have a master cutoff switch installed which will allow power shut down to the Equipment in case of emergencies.

5.17 Commencement of Installation and Operation. Licensee shall commence installation of its initial Antenna no later than one (1) year after the mutual execution of an applicable Encroachment Permit. Licensee shall commence operation no later than six (6) months after Licensee commences installation, excepting delays due to any force majeure event. Failure of Licensee to commence installation or commence operation of the applicable telecommunications service as provided above shall afford Licensor the right to terminate the License upon thirty (30) days' notice to Licensee, unless within such thirty (30) day period, Licensee shall commence installation or commence operation, as applicable.

5.18 Relocation and Displacement of Equipment. From time to time, Licensor may require Licensee to relocate its equipment. Upon Licensor's sixty (60) days written notice to Licensee, Licensee shall relocate such equipment at Licensee's sole cost and expense when Licensor reasonably determines that the equipment relocation is necessary for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a Licensor or other public agency project; (b) because the Antenna is interfering with, or adversely affecting proper operation of City Poles, traffic signals, communications, or other municipal facilities; or (c) to protect or preserve the public health or safety. Licensor shall use reasonable efforts to provide Licensee with a reasonably equivalent alternate location for its equipment. If Licensee shall fail to relocate any Antenna as requested by the Licensor in accordance with this provision, Licensor shall be entitled to remove or relocate the equipment at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal work and any storage of Licensee's property after removal within thirty (30) days of Licensor's written demand for such payment. If the City Pole is damaged or downed for any reason, and as a result is not able to hold the Antenna safely, the Licensor will have no obligation to repair or replace the City Pole for the use of Licensee's Antenna. Licensee shall bear all risk of loss because of damaged or downed City Poles, and may choose to replace City Poles pursuant to the provisions of Section 5.11 above.

5.19 Damages Caused by Licensee. Licensee shall, at its sole cost and expense and to the satisfaction of the Licensor: (a) remove, repair or replace any of its Antennas that are damaged or become detached; and/or (b) repair any damage to public right-of-way, City Property or other property, whether public or private, caused by Licensee, its agents, employees or contractors in

their actions relating to attachment, operation, repair or maintenance of its Antennas. If Licensee does not remove, repair or replace such damage to its Antenna or to the public right-of-way, City Property or other property, the Licensor shall have the option, upon 30 days' prior written notice to Licensee, to perform or cause to be performed such removal, repair, or replacement on behalf of Licensee and shall charge Licensee for the actual costs incurred by the Licensor. If such damage causes a public health or safety emergency, as reasonably determined by the Licensor, the Licensor may immediately perform reasonable and necessary repair or removal work on behalf of Licensee and will notify Licensee as soon as practicable; provided, such repair work involves reattachment of its Antennas to a Pole or repair of the Pole itself, and shall not include any technical work on Licensee's equipment. Upon the receipt of a demand for payment from the Licensor, Licensee shall within thirty (30) days of such receipt, reimburse the Licensor for such costs. The terms of this provision shall survive the expiration, completion, or earlier termination of this License.

5.20 Bond Requirement. Licensee shall provide a bond to Licensor in the amount of fifty thousand dollars (\$50000.00), for the first twenty five (25) installed Antennas to protect Licensor in the event that Licensee fails to remove its Antennas upon termination of this License. For subsequent Antenna installations exceeding the first twenty five, a bond amount of \$2,000 per additional installed Antenna is required. The bonding company shall be a United States based entity with legal rights to issue bonds in the State of California. The bond forms shall be in a form approved by the City Attorney. City reserves the right to increase bond amount required depending upon the reasonable determination of the City Public Works Director.

5.21 As Built Plans. Licensee shall provide as built plans, to the City, for each Antenna installation within 30 days of the completion of the installation.

ARTICLE 6

Indemnity and Insurance

6.1 Indemnification.

6.1.1 To the fullest extent allowed by law, and except for losses caused by the sole and active negligence or willful misconduct of City personnel, Licensee shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, officials, employees, agents, servants, volunteers and consultants ("Indemnitees"), through legal counsel acceptable to City, from and against any and all liability, damages, claims, actions, causes of action, demands, charges, losses, costs and expenses (including attorney fees, legal costs and expenses related to litigation and dispute resolution proceedings) of every nature, arising directly or indirectly from this Agreement or in any manner relating to any of the following:

- 6.1.1.1 Breach of contract, obligations, representations or warranties;
- 6.1.1.2 Negligent or willful acts or omissions committed during performance of the Services;
- 6.1.1.3 Personal injury, property damage, or economic loss resulting from the work or performance of Licensee or its contractors or sub-contractors;

6.1.1.4 Unauthorized use or disclosure of City's confidential and proprietary Information;

6.1.1.5 Claim of infringement or violation of a U.S. patent or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

6.1.2 Licensee must pay the costs City incurs in enforcing this provision. Licensee must accept a tender of defense upon receiving notice from City of a third-party claim, in accordance with California Public Contract Code Section 9201. At City's request, Licensee will assist City in the defense of a claim, dispute or lawsuit arising out of this Agreement.

6.1.3 Licensee's duties under this section are not limited to the Contract Price, workers' compensation payments, or the insurance or bond amounts required in the Agreement. Nothing in the Agreement shall be construed to give rise to an implied right of indemnity in favor of Licensee against City or any Indemnitee.

6.2 Insurance. Licensee shall comply with the Insurance Requirements, attached and incorporated here as Exhibit 3, and must maintain the insurance for the duration of the Agreement, or longer as required by City. City will not execute the Agreement until City approves receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Failure to comply with this provision may result in City, at its sole discretion and without notice, purchasing insurance for Licensee and deducting the costs from Licensee's compensation or terminating the Agreement.

ARTICLE 7

Damage, Destruction and Termination

7.1 Nontermination and Nonabatement. Except as provided herein, no destruction or damage to the City Poles by fire, windstorm or other casualty, whether insured or uninsured, shall entitle Licensee to terminate this License, unless City Poles are rendered unusable for the Antenna.

7.2 Force Majeure. Prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor, materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy, or hostile governmental actions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Licensee, shall excuse the performance by Licensee for a period equal to the prevention, delay or stoppage, except the obligations imposed with regard to rent to be paid by Licensee pursuant to this License. In the event any work performed by Licensee or Licensee's contractor's results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by Licensee of the provisions of this License.

7.3 Waiver of Statutory Termination. City and Licensee waive the provisions of any statutes, which relate to termination of Licenses when licensed property is destroyed and agree that such event shall be governed by the terms of this License.

ARTICLE 8

Taxes

8.1 Personal Property. Licensee shall pay, prior to delinquency, all taxes, license fees, and public charges assessed or levied against Licensee or Licensee's estate in this License or Licensee's improvements, trade fixtures, furnishings, equipment and other personal property.

8.2 Real Property. Licensee shall pay Licensee's share of all real property taxes (as defined in Section 8.3 below) which become due and payable to City on or before the later of ten (10) days prior to the delinquency, or three (3) days after the date on which Licensee receives a copy of the tax bill and notice of City's determination, including documentation reasonably supporting determination hereunder. Licensee's liability to pay real property taxes shall be prorated based on a three hundred sixty-five (365) day year to account for any fraction or portion of a tax year included in the License Term at the commencement or end of the License. Licensee is not responsible for taxes related to rental income to City under this License. Licensee specifically acknowledges it is familiar with Section 107.6 of the California Revenue and Taxation Code and realizes that a possessory interest subject to property taxes may be created, agrees to pay any tax, and waives any rights Licensee may have under Revenue and Taxation Code 107.6.

8.3 Definition. The term "real property taxes" as used herein shall mean:

8.3.1 All taxes, assessments, levies and other charges, general and special, foreseen and unforeseen, now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against or with respect to (i) value, occupancy, use or possession of City Poles and/or the Improvements, (ii) any improvements, fixtures, equipment and other real or personal property of Licensee that are an integral part of City Poles, (iii) use of City Poles, improvements, public utilities, or energy within City;

8.3.2 All charges, levies, or fees imposed by reason of environmental regulation or other governmental control of City Poles and/or the improvements;

8.3.3 New excise, transaction, sales, privilege, or other taxes now or hereafter imposed upon City as a result of this License; and

8.3.4 All costs and fees (including attorneys' fees) incurred by City in contesting any real property taxes and in negotiating with public authorities as to any real property taxes affecting the City Poles. If at any time during the Term, the taxation or assessment of the City Poles and/or the improvements prevailing as of the commencement of this License shall be altered, then any tax or charge, however designated, shall be included within the meaning of the term "real property taxes." If any real property taxes are based upon property or rents unrelated to the City Poles and/or the improvements, then only that part of such tax that is fairly allocable to the City Poles and/or the improvements, as determined by City, on the basis of the assessor's worksheets or other available information, shall be included within the meaning of the term "real property taxes."

ARTICLE 9

Utilities

9. Licensee shall pay for all power, telephone, and other utilities and services supplied to the Licensee's improvements or equipment, together with any taxes.

ARTICLE 10

Signs

10. Licensee shall not place any signs upon City Poles without prior written consent of City.

ARTICLE 11

Assignment and Subletting

11.1 City's Consent Required. Licensee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Licensee's interest in this License or in City Poles, without City's prior written consent, which consent shall not be unreasonably withheld. City shall respond to Licensee's request for consent in a reasonably timely manner and any attempted assignment, transfer, mortgage, encumbrance, or subletting without such consent shall be void and shall constitute a breach of this License. Use of Licensee Antenna equipment by third parties or attachment of third-party owned Antenna equipment to Licensor Poles by Licensee shall not constitute an assignment or transfer of privileges for purposes of this Agreement.

11.2 Net Worth Requirements. Notwithstanding the foregoing, Licensee may not assign or sublet its equipment attached to the City Poles, or any portion thereof, without the City's consent, to any entity which controls, is controlled by, or is under the common control with Licensee, or to any entity resulting from any merger or consolidation with Licensee, or to any partner of Licensee or to any partnership in which Licensee is a general partner, or to any person or entity which acquires all of the assets of Licensee as a going concern, or to any entity which obtains a security interest in a substantial portion of Licensee's assets. Any entity listed in this paragraph shall have a net worth of not less than ten million dollars (\$10,000,000.00).

11.3 No Release of Licensee. No subletting or assignment as approved by City shall eliminate Licensee's obligation or alter the primary liability of Licensee to pay the rent and to perform all other obligations to be performed by Licensee hereunder. The acceptance of rent by City from any other person shall not be deemed to be a waiver by City of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Licensee or any successor of Licensee in the performance of any of the terms hereof, City may proceed directly against Licensee without the necessity of exhausting remedies against said assignee.

ARTICLE 12

Defaults; Remedies

12.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default or breach of this License by Licensee:

12.1.1 The abandonment of the City Poles by Licensee for non-payment of rent as defined by Civil Code §1951.3, or the abandonment of the City Poles for non-use for the period of time specified in the Cupertino Municipal Code, Section 19.136.080, which shall require removal of Licensee's facilities with Licensee to bear the entire cost of removal and restoration.

12.1.2 The failure by Licensee to make any payment of rent or any other payment required to be made by Licensee hereunder, as and when due, where the failure shall continue for a period of ten (10) business days after written notice from City to Licensee. In the event City serves Licensee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.

12.1.3 The failure by Licensee to observe or perform any of the covenants, conditions, or provisions of this License in any material respect to be observed or performed by Licensee, where the failure shall continue for a period of thirty (30) days after written notice from City to Licensee; provided, however, that if the nature of Licensee's default is that more than thirty (30) days are reasonably required for its cure, then Licensee shall not be deemed to be in default if Licensee commences cure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion.

12.1.4 The making by Licensee of any general arrangement or assignment for the benefit of creditors; Licensee's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Licensee, it is dismissed within sixty (60) days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Licensee's assets located at or on City Poles or of Licensee's interest in this License where possession is not restored to Licensee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Licensee's assets located at the City Poles or of Licensee's interest in this License, where seizure is not discharged within thirty (30) days.

12.2 Remedies. In the event of any material default or breach by Licensee, City may at any time thereafter, following any notice required by statute, and without limiting City in the exercise of any right or remedy which City may have by reason of default or breach:

12.2.1 Terminate Licensee's right to possession of the City Poles by any lawful means, in which case this License shall terminate and Licensee shall immediately surrender possession of City Poles and improvements to City. In that event, City shall be entitled to recover from Licensee all damages incurred by City by reason of Licensee's default including, but not limited to, the cost of recovering possession of the City Poles, expenses of reletting, including if necessary, removal of improvements and restoration of the City Poles, reasonable attorneys' fees, the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this License and the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of such award exceeds the amount of rental loss for the same period that Licensee proves could be reasonably avoided;

12.2.2 Maintain Licensee's right to possession, in which case this License shall continue in effect whether or not Licensee shall have abandoned City Poles. In that event, City shall

be entitled to enforce all of City's rights and remedies under this License, including the right to recover rent as it becomes due; and

12.2.3 Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of California.

12.3 No Relief from Forfeiture After Default. Licensee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure §§1174 and 1179, and any other present or future law, in the event Licensee is evicted or City otherwise lawfully takes possession of the City Poles by reason of any default or breach of this License by Licensee.

ARTICLE 13

Termination of License

13.1 Termination by Licensee. Except as provided otherwise herein or by applicable law, Licensee may terminate this License for cause upon the giving of not less than thirty (30) days written notice to City if any of the following occur:

13.1.1 The failure by City to observe or perform any of the covenants, conditions, or provisions of this License in any material respect to be observed or performed by City, where the failure shall continue for a period of sixty (60) days after written notice from Licensee to City; provided, however, that if the nature of the City's default is such that more than thirty (30) days are reasonably required for its cure, then City shall not be deemed to be in default, if City commenced to cure within a sixty (60) day period and thereafter diligently prosecutes such cure to completion;

13.1.2 Licensee fails to obtain or loses any permits necessary for operation of the City Poles as a cellular telephone communications facility; or

13.1.3 Licensee determines that the site is inappropriate for technological reasons, beyond its control, including but not limited to signal interference.

13.2 Termination by City. Except as otherwise provided or by applicable law, City may terminate this License for cause upon giving thirty (30) days written notice if any of the following occur:

13.2.1 The City Council of City determines through credible scientific evidence collected with regard to the Antenna operated on the City Poles, that the facility is a threat to public health or safety; or

13.2.2 Licensee loses or fails to satisfy any condition of any permit required by City necessary for operation of City Poles as a location for the Antenna.

13.3 Condemnation of Licensed City Poles. Should all or part of the Licensed City Poles be taken by any public or quasi-public agency or entity under the power of eminent domain under the term of this License:

13.3.1 Either City or Licensee may terminate this License by giving the other thirty (30) days written notice of termination; and

13.3.2 Any damages and compensation awarded or paid because of the taking shall belong to the City, except for amounts paid Licensee for moving expenses or for damage to property owned by Licensee and the value of the unexpired Term of this License.

ARTICLE 14

City's Liability

14. The term "City" as used herein, shall mean the City only while the City is the owner of the fee title of City Poles. In the event of any transfer of title or interest, the City (and in case of any subsequent transfer, then the grantor) shall, after the date of such transfer, be relieved from all liability with respect to its obligations hereunder occurring after the transfer date, provided that any funds in the hands of City at the time of transfer, in which Licensee has an interest, shall be delivered to the City's grantee.

ARTICLE 15

Interest on Past-Due Obligations

15. Except as expressly provided, any overdue amount due to City shall bear interest at the lesser of ten percent (10%) per year or the maximum rate allowable by law from the date due.

ARTICLE 16

Holding Over

16. If Licensee remains in possession of City Poles or any part of City Poles after the expiration of the Term or Option Term, the occupancy shall be a tenancy from month to month. All the obligations of this License applicable to Licensee shall remain in effect. The monthly rental obligation shall be two (2) times the Base Rent in effect at the time of expiration.

ARTICLE 17

City's Access

17. City and City's agents shall have the right to access City Poles for the purpose of showing to prospective purchasers, lenders, or licensees, and making alterations, repairs, improvements, or additions to City Poles as City may deem necessary.

ARTICLE 18

Prevailing Wage

18. To the extent applicable by law to Licensee's activities under this Agreement, Licensee shall pay prevailing wages.

ARTICLE 19

Easements

19. City reserves to itself, the right, from time to time, to grant such easements, rights, and dedications that City deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as the easements, rights, dedications, maps and restrictions do not materially interfere with Licensee's use of the City Poles. Licensee shall sign any of the aforementioned documents upon request of City and failure to do so shall constitute a material breach of this License.

ARTICLE 20

General Provisions

20.1 Severability/Partial Invalidity. If a court finds any term or provision of this Agreement to be illegal, invalid, or unenforceable, the legal portion of said provision and all other Agreement provisions will remain in full force and effect.

20.2 Time of Essence. Time is of the essence under this License.

20.3 Additional Rent. Any monetary obligations of Licensee to City under the terms of this License shall be deemed to be rent and all references herein to "rent" shall be deemed to include the Base Rent and all other sums paid or payable by Licensee to City.

20.4 Entire Agreement, Modification. This Agreement and the attachments, documents, and statutes attached, referenced, or expressly incorporated herein, including authorized amendments or change orders constitute the final and complete Agreement between City and Licensee with respect to the Work and the Project. No oral Agreement or implied covenant will be enforceable against City. If any attachment or incorporated provisions conflict or are inconsistent with the terms of this Agreement, the Agreement terms will control. This Agreement may be modified in writing only. A major modification of the terms of this Agreement shall require the approval of the City Council.

20.5 No Warranty. Except as otherwise stated in this License, Licensee hereby acknowledges that neither the City nor any employees or agents of the City has made any oral or written warranties or representations to Licensee relative to the condition or use by Licensee of the City Poles. Licensee assumes all responsibility regarding the Occupational Safety and Health Act, the legal use and adaptability of City Poles, and compliance with all applicable laws and regulations in effect during the Term of this License.

20.6 Survival. The Agreement provisions which by their nature should survive the Agreement, including without limitation all warranties, indemnities, payment obligations, insurance and bonds, shall remain in full force and effect after the License ends.

20.7 Inserted Provisions. Each provision and clause required by law to be inserted in this Agreement will be deemed to be included and will be inferred herein. Either party may request an amendment to cure mistaken insertions or omissions of required provisions.

20.8 Captions. The captions, titles, and headings in this Agreement are for convenience only and may not be used in the construction or interpretation of the Agreement or for any other purpose.

20.9 Counterparts. This Agreement may be executed in counterparts, each of which is an original and all of which taken together shall form one single document.

20.10 Notices. All notices, requests, and approvals must be sent in writing to the persons below and will be considered effective on the date of personal delivery, the date confirmed by a reputable overnight delivery service, on the fifth calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

Licensee:

ExteNet Systems (California) LLC
3030 Warrenville Road, Suite 340
Lisle, Illinois 60532
Attn: Vice President
With a copy to General Counsel at same address

City:

City Manager
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202

With Copy to:

Rocio Fierro
City Attorney
20410 Town Center Lane, Suite 210
Cupertino, CA 95014-3255

Each notice shall specify the License provision pursuant to which it is given. Either Party may specify a different address or contact person. Notice given under this section shall be deemed in compliance with applicable statutory notice requirements, including Code of Civil Procedure §1162.

20.7 Waivers. Neither acceptance of the Work nor payment thereof shall constitute a waiver of any provision. City waiver of any breach shall not constitute waiver of another provision or breach.

20.8 Cumulative Remedies. No remedy or election under this License shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

20.9 Governing Law, Venue, and Dispute Resolution. This Agreement is governed by the laws of State of California. Venue for any legal action shall be the Superior Court of the County of Santa Clara, California. The dispute resolution procedures of Public Contract Code Section 20104, incorporated here by reference, apply to this Agreement and Licensee is required to continue the Work pending resolution of any dispute. Prior to filing a lawsuit, Licensee must comply with the claim filing requirements of the California Government Code. 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.

20.10 Condition to Effectiveness of License. The approval of the City Council of City constitutes an express condition precedent to the effectiveness of this License.

20.11 Attorneys' Fees. If City 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 Lease, the prevailing party will be entitled to reasonable attorney fees and costs.

20.12 Brokers. Each Party represents that it has not had dealings with any real estate broker or finder, with respect to this License in any manner. Each Party shall hold harmless the other Party from all damages resulting from any claims that may be asserted against the other Party by any broker, finder, or other person with whom the indemnifying Party has or purportedly has dealt.

20.13 Authority to Execute. The persons signing below warrant they have the authority to enter into this Lease Agreement and to legally bind their respective Parties. If Licensee is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code Section 313.

20.14 Non-Liability of Officials and Employees of the City. No official or employee of City shall be personally liable for any default or liability under this License.

20.15 Independent Contractor.

20.15.1 Status. Licensee is an independent Contractor and not an employee of City. Licensee is solely responsible for the means and methods of performing the Work and for the persons under this employment. Licensee is not entitled to worker's compensation or any other City benefits.

20.15.2 Licensee's Qualifications. Licensee warrants on behalf of itself and its subcontractors that they have the qualifications and skills to perform the Work in a competent and professional manner and according to the highest standards and best practices in the industry.

20.15.3 Permits And Licenses. Licensee warrants on behalf of itself and its subcontractors that they are properly licensed, registered, and/or certified to perform the Work as required by law, and have procured a City Business License. Licensee shall possess a California Contractor's

License in good standing for the following classification(s), which must remain valid for the entire Lease time.

20.15.4 Subcontractors. Only Licensee's employees are authorized to work under this Agreement. Prior written approval from City is required for any subcontractor, and the terms and conditions of this Agreement will apply to any approved subcontractor.

20.15.5 Tools, Materials And Equipment. Licensee will supply all tools, materials and equipment required to perform the Work under this Agreement.

20.15.6 Payment of Taxes. Licensee must pay income taxes on the money earned under this Agreement. Upon City's request, Licensee will provide proof of payment and will indemnify City for violations pursuant to the indemnification provision of this Agreement.

20.16 Memorandum of Lease. Following execution of this Agreement, either party, at its sole expense shall be entitled to record a Memorandum of Lease in the official records of Santa Clara County. Upon termination or expiration of this Agreement, Licensee shall execute and record a quitclaim deed.

20.17 Estoppel Certificate. Licensee shall, from time to time, upon at least thirty (30) days prior written notice from City, execute, acknowledge and deliver to City a statement in writing (a) certifying this Agreement is unmodified and in full force and effect, or, if modified, stating the nature of the modification and certifying that the Agreement, as modified, is in full force and effect, and the date to which the rental and other charges, if any, have been paid; and, (b) acknowledging that there are not to Licensee's knowledge, any defaults, or stating if any defaults are claimed, any statement may be relied upon by any prospective purchaser or encumbrancer of the City Property.

20.18 The language of all parts of this Agreement shall be construed with its fair meaning and not strictly for or against the City or Licensee.

20.19 Validity Of Agreement. This Agreement is valid and enforceable only if (a) it is signed by the City Manager or an authorized designee, and (b) is approved for form by the City Attorney's Office.

CITY OF CUPERTINO, CALIFORNIA

APPROVED AS TO FORM:

ROCIO FIERRO

City Attorney

City Manager


ATTEST:

City Clerk

"City"

Licensee

ExteNet Systems (California) LLC



By: Daniel L. Timm

Title: Vice President

10/03/18

Licensee's Address:

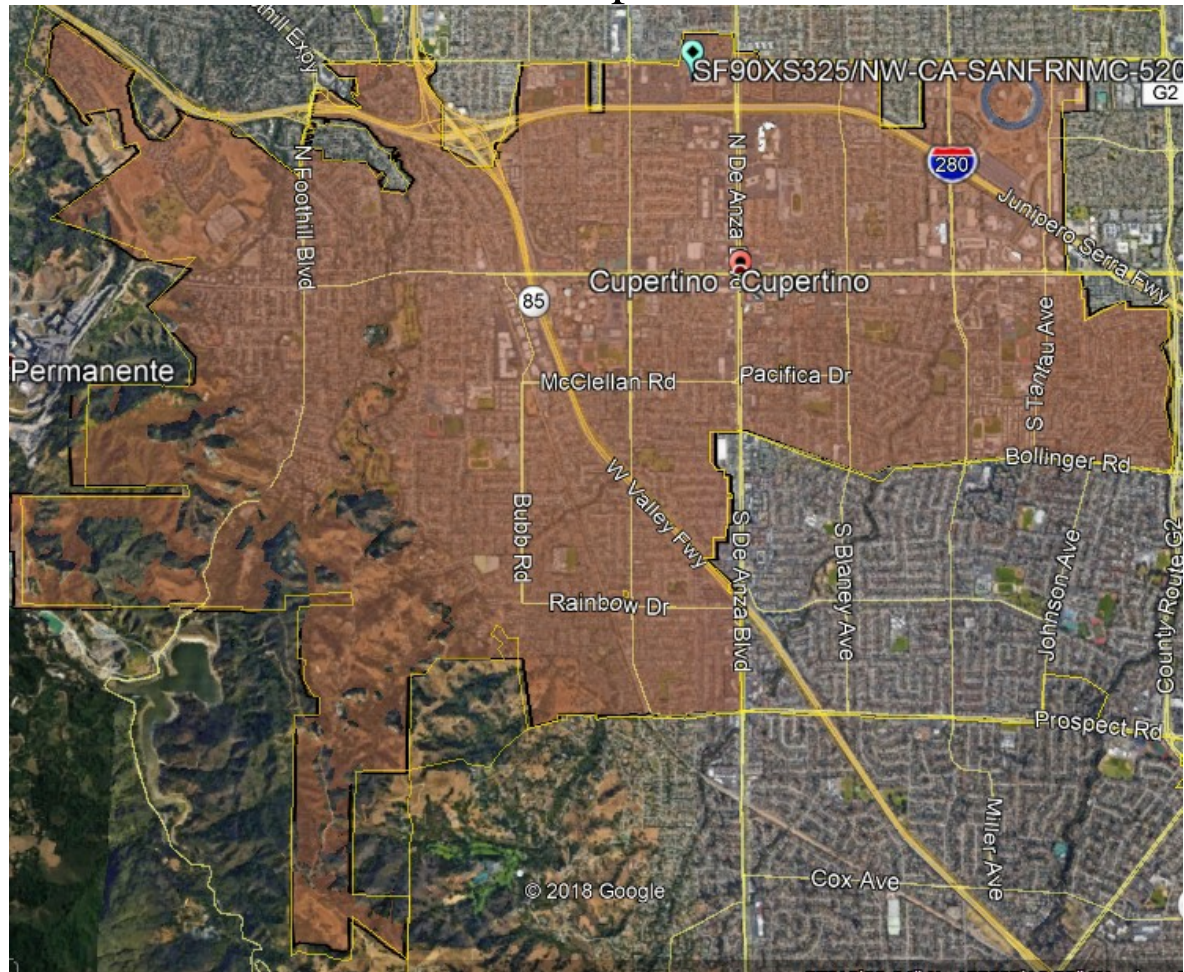
3030 Warrenville Road, Suite 340

Lisle, Illinois 60532

Attn: Vice President

Telephone: 630-505-3800

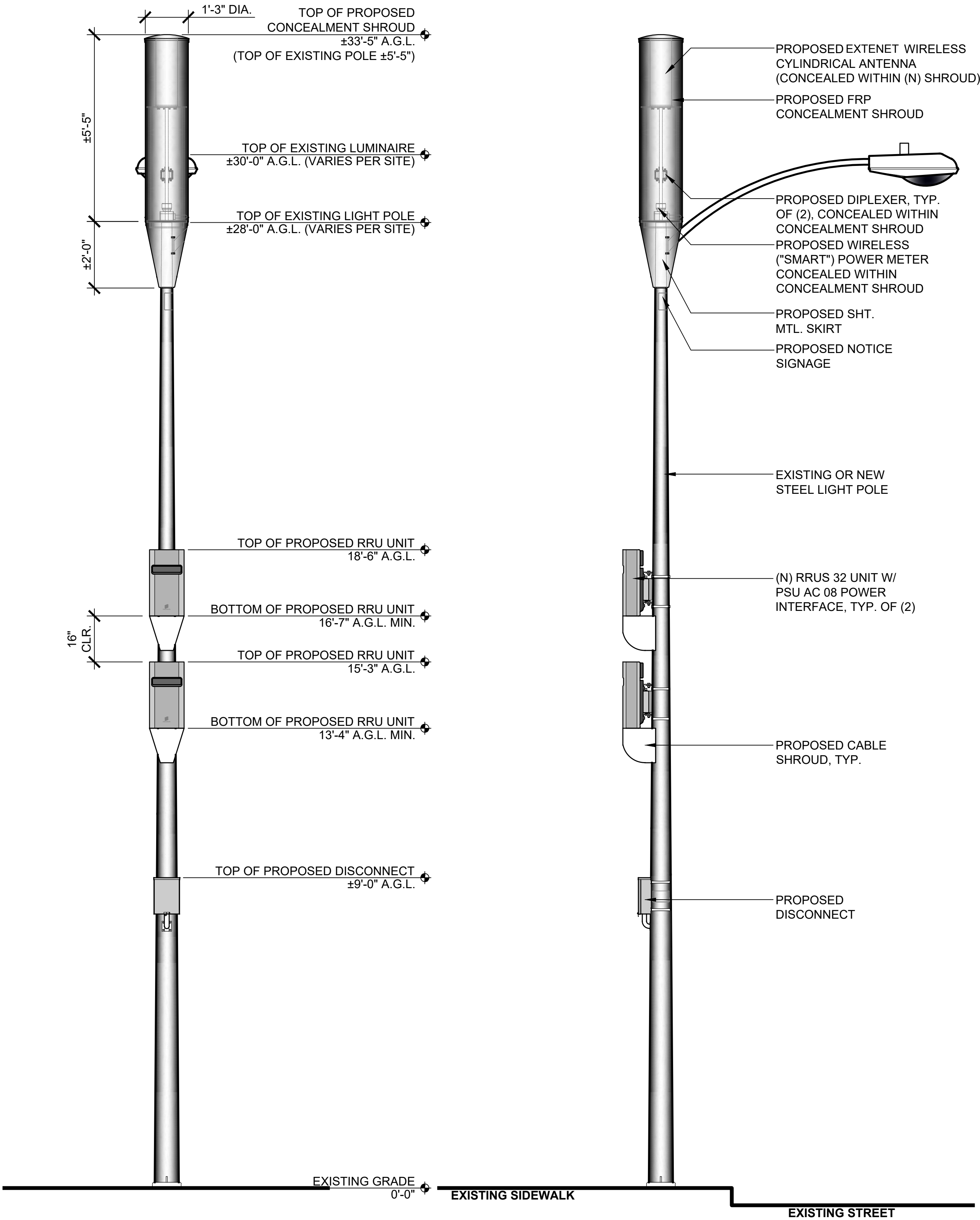
Exhibit 1: ExteNet Proposed Node Location



Cascade + Cand.	ExteNet Project ID	ExteNet Node Location ID	Customer Node	Candidate Letter	Jurisdiction	Latitude	Longitude	Pole Type	Antenna Location
SF90XS325M	NW-CA-SNFSPR09-SPR	NW-CA-SANFRNMC-52013	SF90XS325	M	Cupertino	37.337455	-122.036107	Metal Light	Pole Top

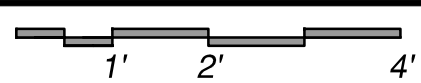
NOTES:

- 1. FRP CONCEALMENT SHROUD, SKIRT, RRU UNITS AND CABLE SWEEPS SHALL BE PAINTED TO MATCH EXISTING LIGHT POLE.
- 2. DESIGN SHOWN ASSUMES EXCLUSION OF GPS ANTENNA.
- 3. DESIGN SHOWN IN BASED ON AMPHENOL WB080X06FX60 ANTENNA, CONCEALMENT SHROUD/ SKIRT BY WIRELESS STRUCTURES CONSULTING, ERICSSON RRUS32 UNITS.
- 4. DESIGN AND HEIGHTS MAY VARY ON A SITE BY SITE BASIS BASED ON EXISTING SITE/ POLE CONDITIONS AND EXISTING POLE MOUNTED APPURTENANCES.
- 5. EXISTING TRAFFIC SIGN(S) TO BE RELOCATED AS REQUIRED TO SCREEN RRU UNIT.



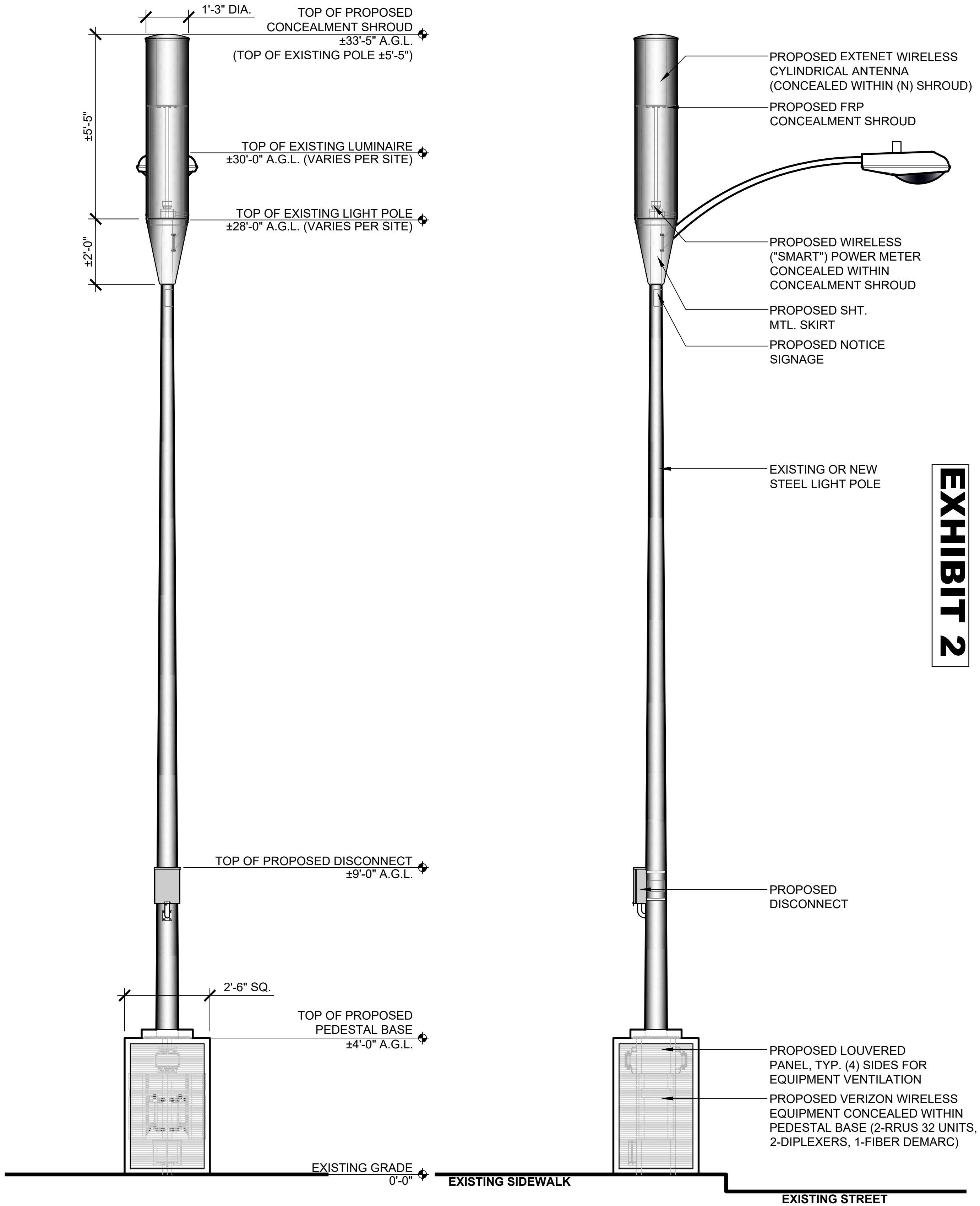
STACKED RRU UNIT ELEVATIONS

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



NOTES:

- 1. FRP CONCEALMENT SHROUD, SKIRT AND PEDESTAL BASE SHALL BE PAINTED TO MATCH EXISTING LIGHT POLE.
- 2. DESIGN SHOWN ASSUMES EXCLUSION OF GPS ANTENNA.
- 3. DESIGN SHOWN IN BASED ON AMPHENOL WB080X06FX60 ANTENNA, CONCEALMENT SHROUD/ SKIRT BY WIRELESS STRUCTURES CONSULTING, ERICSSON RRUS32 UNITS.
- 4. DESIGN AND HEIGHTS MAY VARY ON A SITE BY SITE BASIS BASED ON EXISTING SITE/ POLE CONDITIONS AND EXISTING POLE MOUNTED APPURTENANCES.



PEDESTAL BASE ELEVATIONS

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

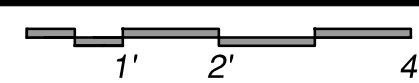


EXHIBIT "3"
Insurance Requirements

Licensee shall purchase and maintain the insurance policies set forth below at its sole cost and expense. Such policies shall be maintained for the full Term of this License. The term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees, and volunteers of the City of Cupertino, California, individually or collectively.

1. MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.

On or before the commencement of the Term of this License, Licensee shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with this Exhibit. These certificates, which do not limit Licensee's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Cupertino by certified mail, "Attention: City Manager." Endorsements naming the City as additional insured shall be submitted with the insurance certificates. The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the City:

(1) **Workers' Compensation:**
Statutory coverage as required by the State of California.

(2) **Liability:**
Commercial general liability coverage in the following minimum limits:
Bodily Injury:
\$2,000,000 each occurrence
\$4,000,000 aggregate - all other
Property Damage:
\$1,000,000 each occurrence
\$4,000,000 aggregate
If submitted, combined single limit policy with aggregate limits in the amounts of \$4,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:**
Comprehensive automobile liability coverage in the following minimum limits:
Bodily injury: \$1,000,000 each occurrence
Property Damage: \$1,000,000 each occurrence or
Combined Single Limit: \$1,000,000 each occurrence

2. SUBROGATION WAIVER.

Licensee agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Licensee shall look solely to its insurance for recovery. Licensee hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Licensee or City with respect to the services of Licensee, a waiver of any right to subrogation, which any insurer of the Licensee may acquire against City by virtue of the payment of any loss under the insurance.

3. ABSENCE OF INSURANCE COVERAGE.

City may direct Licensee to immediately cease all activities with respect to this License if it determines that Licensee fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this License. Any delays or expense caused due to stopping of work and change of insurance shall be considered Licensee's delay and expense. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to Licensee.

4. 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 Licensee's insurance companies as evidence of the stipulated coverages prior to the Commencement Date of this License, and annually thereafter for the term of this License. All of the insurance companies providing insurance for Licensee shall have, and provide evidence of, a Best Rating Service rate of A VI or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to:

City Clerk
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202



CITY OF CUPERTINO

Legislation Details (With Text)

File #: 18-4157 **Version:** 1 **Name:**
Type: Consent Calendar **Status:** Agenda Ready
File created: 7/9/2018 **In control:** City Council
On agenda: 10/16/2018 **Final action:**
Title: Subject: Report on Bids and Award a Contract for the McClellan Ranch West Parking Lot Improvement Project (No. 2017-05)

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report](#)
[A - Draft Contract](#)

Date	Ver.	Action By	Action	Result
10/16/2018	1	City Council		

Subject: Report on Bids and Award a Contract for the McClellan Ranch West Parking Lot Improvement Project (No. 2017-05)

1. Award a construction contract to Galeb Paving, Inc. of Saratoga, California, in the amount of Six Hundred Five Thousand Eighty-two Dollars and 88/100 (\$605,082.88); and
2. Authorize a construction contingency budget of Sixty-one Thousand Dollars (\$61,000), which is approximately 10% of the construction contract amount, to address unforeseen conditions during construction.



PUBLIC WORKS DEPARTMENT

CITY HALL

10300 TORRE AVENUE • CUPERTINO, CA 95014-3255

TELEPHONE: (408) 777-3354 www.cupertino.org

CITY COUNCIL STAFF REPORT

October 16, 2018

Subject

Report on Bids and Award a Contract for the McClellan Ranch West Parking Lot Improvement Project (No. 2017-05)

Recommended Action

1. Award a construction contract to Galeb Paving, Inc. of Saratoga, California, in the amount of Six Hundred Five Thousand Eighty-two Dollars and 88/100 (\$605,082.88); and
2. Authorize a construction contingency budget of Sixty-one Thousand Dollars (\$61,000), which is approximately 10% of the construction contract amount, to address unforeseen conditions during construction.

Description

The recommended project will formalize the existing use of the site located at 22241 McClellan Road. This new “green”, meadow-style parking lot, which will have a permeable concrete paving, has been designed to be compatible with and sensitive to the creek environment in order to have minimal impact to the site.

Discussion

This project is in the FY 2018-19 CIP plan. The McClellan Ranch West site has been used informally for staff and overflow parking without a suitable, stable surface, and is not available for use during the rainy season due to mud. The opening of the Environmental Education Center in 2015 has increased the parking demand at McClellan Ranch Preserve. The removal of the Simms House two and a half years ago at the McClellan Ranch West site advanced the option to build the additional parking needed at McClellan Ranch Preserve by providing a suitable parking surface with appropriate landscaping.

Bid Results

The bid opening for the McClellan Ranch West Parking Lot Improvement Project was on October 2, 2018. Five bids were received for the project as follows:

<u>Bidder</u>	<u>Base Bid</u>	<u>Additive Alternate</u>	<u>Total Bid</u>
Galeb Paving, Inc.	\$ 490,324.88	\$ 114,758.00	\$ 605,082.88
Redgwick Construction	\$ 574,207.50	\$ 143,418.00	\$ 717,625.50
Guerra Construction Group	\$ 606,675.00	\$ 128,985.00	\$ 735,660.00
QLM, Inc.	\$ 644,778.00	\$ 223,378.00	\$ 868,156.00
McGuire & Hester	\$ 680,503.00	\$ 206,840.00	\$ 887,343.00
Expected Expenditure	\$ 495,000.00	\$ 120,000.00	\$ 615,000.00

The Notice Inviting Bids was posted on the City's Business Opportunities webpage, in the Courier, and was distributed to required outlets and to construction firms with the proper contractor licensing requirement. The bid package consisted of a Base Bid, which included the grading, paving and associated work for the parking lot itself, and an Additive Alternate, which included the planting and irrigation scopes of work. Galeb Paving's bid was 1.61 percent below the posted total expected expenditure for the project.

Staff evaluated the bid and contractor qualifications concluding that the contract may be awarded to the low bidder, Galeb Paving, Inc. This contractor has successfully completed many grading, paving and parking lot projects in the Bay Area, including work with local school and community college districts in the South Bay.

The project is scheduled to begin on or about November 26, 2018 with completion in spring 2019. This schedule supports parking lot availability for the late spring and summer recreation season at McClellan Ranch Preserve.

Sustainability Impact

None

CEQA

Council adopted a resolution on August 21, 2018 adopting the Mitigated Negative Declaration for the McClellan Ranch West Parking Lot Improvement Project and approved the project.

Fiscal Impact

The FY 2018-2019 CIP budget for the McClellan Ranch West Parking Lot Improvement Project (budget unit 420-99-030) is adequate to implement the project. No additional appropriation is needed.

Prepared by: Michael Zimmermann, CIP Manager

Reviewed by: Timm Borden, Director of Public Works

Approved for Submission by: Amy Chan, Interim City Manager

Attachments:

A – Draft Contract

Contract

This public works contract ("Contract") is entered into by and between the City of Cupertino ("City"), a municipal corporation, and Galeb Paving, Inc. ("Contractor"), for work on the < McClellan Ranch West Parking Lot Improvement > Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal and accompanying Bid Schedule, a copy of which is attached for convenience as Exhibit A, to perform the Work to construct the Project. On October 16, 2018, 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 following:
 - 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 Bond, Performance Bond and, if required, a Warranty Bond;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Drawings and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Award;
 - 2.12 Notice to Proceed;
 - 2.13 The following: No other documents
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, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.
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 \$ 605,082.88 ("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 **90 calendar days** from the date of 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 \$ 1,500 per day for each day of unexcused delay in 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.

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 under Labor Code section 1725.5, subject to limited legal exceptions.

8. Workers' Compensation Certification. Under Labor Code section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code section 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 policy or in violation of any California law, including under Government Code section 1090 et seq. and under the Political Reform Act as set forth in Government Code section 81000 et seq. and its accompanying regulations. No officer, official, employee, consultant, or other agent of the City ("City Representative") may have, maintain, or acquire a "financial interest" in the Contract, as that term is defined under the Political Reform Act (Government Code section 81000, et seq., and regulations promulgated thereunder); or under Government Code section 1090, et seq.; or in violation of any City ordinance or policy while serving as a City Representative or for one year thereafter. 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 (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

City:

Name: City of Cupertino
Address: 10300 Torre Avenue
City/State/Zip: Cupertino, CA 95014
Phone: (408) 777-3354
Email: AlexA@cupertino.org
Copy to: PWinvoices@cupertino.org

Contractor:

Name: _____ Galeb Paving, Inc.
Address: _____ 12340 Saratoga-Sunnyvale Rd.
City/State/Zip: _____ Saratoga, CA 95070
Phone: _____ (408) 253-4747
Attn: _____ Lee Pellicciotti
Email: _____ lee@galebpaving.com
Copy to: _____ toyo@galebpaving.com

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 except as expressly provided in the General Conditions or Special Conditions.
- 12.3 **Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place.
- 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, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 **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 section 313.

[Signatures are on the following page.]

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

CONTRACTOR

Galeb Paving, Inc.

CITY OF CUPERTINO
A Municipal Corporation

By _____
Name _____
Title _____

By _____
Timm Borden
Director of Public Works

Date _____

Date _____

By _____
Name _____
Title _____

Date _____

APPROVED AS TO FORM:

By _____
Name _____
City Attorney
Date _____

ATTEST:

Grace Schmidt
City Clerk
Date _____

Contract Amount: \$ 605,082.88
P.O. No. _____
Account No. 420-99-030-900-905

END OF CONTRACT

Exhibit A

Bidder's Name: GALER PAVING, INC.

Bid Proposal

McClellan Ranch West Parking Lot Improvement

< GALER PAVING, INC. > ("Bidder") hereby submits this Bid Proposal to the City of Cupertino ("City") for the above-referenced project ("Project") in response to the Notice Inviting Bids and in accordance with the Contract Documents referenced therein.

1. **Base Bid.** Bidder proposes to perform and fully complete the Work for the Project as specified in the Contract Documents, within the time required for full completion of the Work, including all labor, materials, supplies, and equipment and all other direct or indirect costs including, but not limited to, taxes, insurance and all overhead for the following price ("Base Bid"):

\$ 490,324⁸⁸

2. **Bid Alternates.** Bidder submits the following prices for the specified bid alternates:

Bid Alternate #1: ITEM 20 THROUGH 25 INCLUSIVE

Add: \$ 114,798⁰⁰

3. **Addenda.** Bidder agrees that it has confirmed receipt of or access to, and reviewed, all addenda issued for this Bid. Bidder specifically acknowledges receipt of the following addenda:

Addendum:	Date Received:	Addendum:	Date Received:
#01	<u>9-12-18</u>	#05	_____
#02	<u>9-26-18</u>	#06	_____
#03	_____	#07	_____
#04	_____	#08	_____

4. **Bidder's Warranties.** By signing and submitting this Bid Proposal, Bidder warrants the following:

- 4.1 **Examination of Contract Documents.** Bidder has thoroughly examined the Contract Documents and represents that, to the best of Bidder's knowledge, there are no errors, omissions, or discrepancies in the Contract Documents, subject to the limitations of Public Contract Code section 1104.

- 4.2 **Examination of Worksite.** Bidder has had the opportunity to examine the Worksite and local conditions at the Project location.

- 4.3 **Bidder is Qualified.** Bidder is fully qualified to perform the Work.

- 4.4 **Responsibility for Bid.** Bidder has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed Bid.

5. **Award of Contract.** By signing and submitting this Bid Proposal, Bidder agrees that if Bidder is awarded the Contract for the Project, within ten days following issuance of the Notice of Award to Bidder, Bidder will do all of the following:

- 5.1 **Execute Contract.** Enter into the Contract with City in accordance with the terms of this Bid Proposal, by signing and submitting to City the Contract prepared by City using the form included with the Contract Documents;

Exhibit A

Bidder's Name: GALEB PAVING, INC.

- 5.2 Submit Required Bonds.** Submit to City a payment bond and a performance bond, each for 100% of the Contract Price, using the bond forms provided and in accordance with the requirements of the Contract Documents; and
- 5.3 Insurance Requirements.** Submit to City the insurance certificate(s) and endorsement(s) as required by the Contract Documents.
- 6. Bid Security.** As a guarantee that, if awarded the Contract, Bidder will perform its obligations under Section 4 above, Bidder is enclosing bid security in the amount of ten percent of its maximum bid amount in one of the following forms (check one):

☐ A cashier's check or certified check payable to City and issued by _____ [Bank name] in the amount of \$ _____.

☒ A bid bond, using the Bid Bond form included with the Contract Documents, payable to City and executed by a surety licensed to do business in the State of California.

This Bid Proposal is hereby submitted on OCT. 2, 2018

GALEB PAVING, INC.

Bidder Business Name

Signature

TOMO GALEB, VICE PRESIDENT

Name/Title (If Corporation: Chairman, President or Vice President)

325912 A, C12
04-30-19

License #, Expiration Date, and Classification

12340 SARATOGA - SUNNYVALE RD.

Address

SARATOGA, CA 95070

City, State, Zip

408.253.4747

Contact Phone

OCT. 2, 2018

Date

Signature

MARGARET GALEB, SECRETARY

Name/Title (If Corporation: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer)

1000000487

DIR Registration #

408.253.4747

Phone

LEE PELUCCIOTTI, SENIOR ESTIMATOR

Contact Name/Title

LEE@GALEBPAVING.COM

Contact Email

END OF BID PROPOSAL

Exhibit A

Bidder's Name: GALEB PAVING, INC.

Bid Schedule

This Bid Schedule must be completed in ink and included with the sealed Bid Proposal. Pricing must be provided for each Bid Item as indicated. Items marked "(SW)" are Specialty Work that must be performed by a qualified Subcontractor. The lump sum or unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the "Extended Total Amount" column must be identical to the Base Bid price entered in Section 1 of the Bid Proposal Form.

LS = Lump Sum EA = Each LF = Linear Foot CF = Cubic Feet CY = Cubic Yard
SY = Square Yard SF = Square Feet LB = Pounds TON = Ton (2000 lbs) AL = Allowance

BASE BID:

NO.	ITEM DESCRIPTION	QTY.	UNIT	UNIT PRICE	ITEM COST
1	Temporary Tree Protection	1	LS	2,670 ⁰⁰	\$ 2,670 ⁰⁰
2	Chain Barrier on Wood Post	1	LS	4,200 ⁰⁰	\$ 4,200 ⁰⁰
3	Grape Stake Fence	155	LF	79 ⁰⁰	\$ 12,245 ⁰⁰
4	Split Rail Fence	28	LF	297 ⁰⁰	\$ 8,316 ⁰⁰
5	Vehicular Access Gate	1	LS	5,600 ⁰⁰	\$ 5,600 ⁰⁰
6	General Electrical Requirements	1	LS	30,950 ⁰⁰	\$ 30,950 ⁰⁰
7	Site Clearing	1	LS	76,760 ⁰⁰	\$ 76,760 ⁰⁰
8	Earth Moving	1	LS	97,820 ⁰⁰	\$ 97,820 ⁰⁰
9	Concrete Curb	306	LF	77 ⁰⁰	\$ 23,715 ⁰⁰
10	Truncated Dome	102	SF	50 ⁰⁰	\$ 5,100 ⁰⁰
11	Portland Cement Pervious Concrete Paving	12,336	SF	15 ⁵⁰	\$ 191,208 ⁰⁰
12	Stabilized Decomposed Granite Paving	847	SF	8 ⁰⁰	\$ 6,776 ⁰⁰
13	Pavement Markings	1	LS	2,500 ⁰⁰	\$ 2,500 ⁰⁰
14	Signage	1	LS	1,000 ⁰⁰	\$ 1,000 ⁰⁰
15	ADA Wheel Stops	1	LS	200 ⁰⁰	\$ 200 ⁰⁰
16	Parking Lot Permeable Base w/ Header board	1,860	SF	3 ⁰⁰	\$ 5,580 ⁰⁰
17	Hydroseed	17,114	SF	0.23	\$ 3,884 ⁸⁸
18	Log	17	EA	400 ⁰⁰	\$ 6,800 ⁰⁰
19	Log Wheel Stop	25	EA	200 ⁰⁰	\$ 5,000 ⁰⁰

TOTAL BASE BID: Items 1 through 19 inclusive: \$ 490,324⁸⁸

Exhibit A

Bidder's Name: GALERS PAVING, INC.

Addendum No. 1

BID ALTERNATE NO. 1:

NO.	ITEM DESCRIPTION	QTY.	UNIT	UNIT PRICE	ITEM COST
20	Irrigation	1	LS	23000 ⁰⁰	\$ 23,000 ⁰⁰
21	15 Gal Tree	18	EA	170 ⁰⁰	\$ 3,060 ⁰⁰
22	5 Gal Tree	115	EA	68 ⁰⁰	\$ 7,820 ⁰⁰
23	1 Gal Tree	178	EA	51 ⁰⁰	\$ 9,078 ⁰⁰
24	Mulch	1	LS	7450 ⁰⁰	\$ 7,450 ⁰⁰
25	Landscape Boulder	198	TON	326 ⁰⁰	\$ 64,350 ⁰⁰

TOTAL BID ALTERNATE: Items 20 through 25 inclusive: \$ 114,758⁰⁰

BASE BID + BID ALTERNATE = \$ 605,082⁸⁸

Note: The amount entered as the "Total Base Bid" and "Total Bid Alternate" should be identical to the Base Bid and Bid Alternate amounts entered in Section 1 of the Bid Proposal form.

END OF BID SCHEDULE



CITY OF CUPERTINO

Legislation Details (With Text)

File #: 17-3018 **Version:** 1 **Name:**
Type: Ordinances and Action Items **Status:** Agenda Ready
File created: 9/13/2017 **In control:** City Council
On agenda: 10/16/2018 **Final action:**
Title: Subject: Consider adopting the resolution establishing a policy for accepting sponsorships
Sponsors:
Indexes:
Code sections:
Attachments: [Staff Report](#)
[A - Draft Resolution: Sponsorship Policy](#)
[B - Sample Sponsorship Application Template](#)

Date	Ver.	Action By	Action	Result
10/16/2018	1	City Council		

Subject: Consider adopting the resolution establishing a policy for accepting sponsorships

Adopt Resolution No. 18-101 establishing a policy for accepting sponsorships (Attachment A)



OFFICE OF THE CITY MANAGER

CITY HALL

10300 TORRE AVENUE • CUPERTINO, CA 95014-3255

TELEPHONE: (408) 777-3212 www.cupertino.org

CITY COUNCIL STAFF REPORT

Meeting: October 16, 2018

Subject

Consider adopting the resolution establishing a policy for accepting sponsorships.

Recommended Action

Adopt Resolution No. 18-____ establishing a policy for accepting sponsorships (Attachment A).

Background

The City has been approached by individuals, organizations, and companies interested in sponsoring City events and services. Currently, there are no formal guidelines for City staff to follow when handling these requests.

Discussion

Sponsorship arrangements enhance events that include new and innovative ideas making them more successful and better attended. They also add value to programs and events by bringing partners to the table to provide funding and volunteer support. In addition, these arrangements can provide promotional opportunities for local businesses that strengthen relationships with the City while supporting a vibrant business community. The Sponsorship Policy will provide the framework to move forward with these potential relationships.

Staff drafted the policy after reviewing example policies from other cities and in consultation with the City Attorney's Office. Consistent with the existing Donation Policy, it is proposed that the authority to approve and execute agreements up to \$25,000 would be delegated to the City Manager while department heads will be authorized for up to \$10,000. Guidelines outlined in the policy will ensure that sponsorship agreements are considered in a fair and impartial manner while also maintaining the City's mission, values, and policies.

For these reasons, staff recommends that Council approve the draft resolution to establish the Sponsorship Policy.

Sustainability Impact

None anticipated.

Fiscal Impact

Sponsorships would allow for additional funding and resources for the City to utilize to enhance services and events.

Prepared by: Katy Nomura, Senior Management Analyst

Reviewed by: Jacqueline Guzman, Deputy City Manager; Jeff Milkes, Director of Recreation and Community Services

Approved for Submission by: Amy Chan, Acting City Manager

Attachments:

A – Draft Resolution: Sponsorship Policy

B – Sample Sponsorship Application Template

RESOLUTION NO.18-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
ESTABLISHING A POLICY FOR ACCEPTING SPONSORSHIPS**

WHEREAS, the City of Cupertino is empowered by state law to accept or reject any donation, gift, bequest, or devise made to or for the City, consistent with California Government Code section 37354; and

WHEREAS, the purpose of the sponsorship policy is to lessen the impacts on the City funds for community events, provide opportunities for new revenue streams to support and enhance services and programs, and to establish new partnerships with local businesses and organizations; and

WHEREAS, the Cupertino City Council recognizes the numerous contributions made by individuals and organizations to the City – both in cash, in kind or involvement in a particular public event, program, or activity; furthermore the City Council wishes to encourage this form of civic participation in city affairs and to have the opportunity to recognize sponsors for their contributions to the wellbeing of the City and its residents; and

WHEREAS, the City Council desires to establish a City policy for sponsorships to ensure consistency with the values and interests of the City and to make sure there is clarity to potential sponsors, the general public, and city staff concerning the Council's goals and policies respecting sponsorships; and

WHEREAS, this Resolution and Policy only apply to contributions made to the City of Cupertino as a municipal corporation, and

WHEREAS, the Cupertino City Council finds and determines that the above recitals are true and correct and material to the adoption of this Resolution.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Cupertino hereby adopts and approves the attached Sponsorship Policy as the official sponsorship policy of the City of Cupertino.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this ____ day of October, 2018, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
-------------	------------------------------------

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Darcy Paul, Mayor

CITY OF CUPERTINO SPONSORSHIP POLICY

PURPOSE

The purpose of the City's sponsorship policy is to maximize community resources, promote public engagement in city affairs, and support the financial health of city departments. Therefore the City wishes to create and enhance sponsorship relationships with businesses, non-profit groups and individuals who desire to support city activities through sponsorship opportunities. This policy sets guidelines and procedures regarding the qualifications, responsibilities, and requirements for city staff and participating sponsors.

DEFINITIONS

Sponsorship: A financial or in-kind support such as cash, products, services, or involvement from a private individual, entity or other source, for a specific program, project, event or activity in return for benefits to the sponsor. Sponsorship may be offered through various sponsorship packages.

Sponsorship Agreement: An agreement between City and Sponsor identifying the program, project or activity being sponsored, the tangible or intangible benefits to the sponsor, and other relevant terms and conditions agreed to by the Parties.

Sponsorship Benefits: Tangible or intangible benefits received by the sponsor such as marketing opportunities for their products, name association/recognition, and other allowable benefits as approved by City. This may include opportunities given to the sponsor to have its name/logo appear on City property, printed material or verbal recognition in public for a specified period of time, formalized in a sponsorship application or agreement.

SPONSORSHIP ELIGIBILITY

The following factors and guidelines must be used in determining the qualifications of a sponsor:

1. The sponsors should be businesses, non-profits, or individuals promoting mutually beneficial relationships with the City of Cupertino.
2. All sponsored programs should promote the goals and mission of the City of Cupertino and must be consistent with City policies and regulations.
3. The products/ services are compatible with the mission and values of the City.
4. The sponsorship enhances the Department's priorities, programs and core services.
5. The sponsorship meets City design standards and does not degrade the experience of users of city parks and recreation facilities (for sponsorships involving these city assets).
6. The sponsorship does not commit the department to additional operating and maintenance responsibilities and costs greater than the value of the sponsorship.

7. The sponsorship does not create a conflict of interest for the City.
8. The sponsorship is allowed by law and the sponsor complies with anti-discrimination laws and does not discriminate based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental or physical disability, medical condition, age, pregnancy, denial of medical and family care leave and pregnancy. Sponsorships that are generally not eligible for participation include those whose primary objectives, products, or services consist of the following:
 - a. Religious and political organizations.
 - b. Organizations in direct competition with City services or products.
 - c. Sponsorships which create a conflict of interest or the appearance of a conflict of interest.
 - d. Products that are substantially derived from the sale of alcohol, drugs, tobacco, gambling, firearms, or sexually explicit materials.
9. No advertising or sponsorship recognition will be allowed on City clothing unless the clothing is designed for a specific event or program that has a specific time frame.

REQUIREMENTS FOR SPONSORS

Sponsors must comply with the following requirements:

1. Submit a sponsorship application or a sponsorship letter of interest to City.
2. Upon approval of the application, for sponsorships valued at more than \$500, enter into a sponsorship agreement with City, including a release and hold harmless clause.
3. Agree not to use, reproduce or distribute the City's logo, seal, or trademark without City's written consent.
4. Obtain and maintain during the term of their agreement, all appropriate permits, certificates and licenses, at his/her sole expense. For example, sponsors providing food must obtain all necessary health permits.

CITY STAFF RESPONSIBILITIES

It is the responsibility of Department Heads, supervisors, and staff to follow this policy.

1. For sponsorships of less than \$500 in value, a sponsorship agreement is not required but an application or letter documenting the sponsorship must be received with the approval of the Department Head or his/her designee. For all other sponsorships, designated staff from each department must use the City's standard sponsorship agreement with any necessary modifications as determined by department supervisor/manager, consistent with the guidelines set forth in this policy.

2. Department Heads may approve sponsorships and sign agreements for up to \$10,000. The City Manager is authorized to sign agreements up to \$25,000. All other sponsorships valued over \$25,000 must be approved by the City Council. All sponsorships involving funds must be reported to the Finance Department.

DISCLAIMERS

This policy, procedures and approval of any sponsorship agreement is subject to the following disclaimers:

1. City retains full authority and control of its facilities, events, programs, or activities.
2. Apart from what is outlined in the sponsorship agreement, Sponsors will not receive any other special considerations from the City.
3. Acceptance of a sponsorship does not imply endorsement of any individual, entity, company, organization, or product by the City.



17-3018 - B - SAMPLE SPONSORSHIP APPLICATION TEMPLATE

CUPERTINO

CUPERTINO RECREATION & COMMUNITY SERVICES | 408-777-3120 | WWW.CUPERTINO.ORG

SPONSOR INFORMATION

Company: _____ Website: _____

Contact Name: _____ Email: _____

Address: _____

City: _____ State: _____ Zip: _____ Phone: _____

Entity Type: ☐ Sole Proprietor ☐ Partnership ☐ Corporation (Type: _____)☐ NonProfit: (Type: _____) ☐ Trust ☐ Other: _____

EVENT INFORMATION

Event Name: _____ Event Date(s): _____

Event Description: _____

SPONSORSHIP OPPORTUNITIES

[This is where the conditions of the sponsorship including benefits to the City and recognition of the sponsor will be outlined.]

PAYMENT INFORMATION

☐ Check (Make Payable to: City of Cupertino) ☐ AMEX ☐ Discover ☐ Master Card ☐ Visa

CC #: _____ CVC: _____ Expiration: ____/____ Amount: \$ _____

Cardholder Name: _____ Cardholder Signature: _____

TERMS AND CONDITIONS

1. The Sponsor has reviewed and agrees to be bound by those procedures, limitations, and restrictions identified in the City's Sponsorship Policy.
2. All sponsorships greater than \$500 must complete the required City of Cupertino Sponsorship Agreement. (Separate Document)
3. The sponsor may not receive exclusive rights to benefits unless approved by the Department Head.
4. Sponsor agrees, to the fullest extent allowed by law, to indemnify, defend, and hold harmless the City, and its officers, employees, and agents ("City indemnitees"), from and against any and all causes of

action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Sponsorship or Sponsor's performance of this Application and/or Agreement, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from this Sponsorship or Sponsor's performance of this agreement, Sponsor shall provide a defense to the City indemnitees, or at the City's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims. This duty extends to any claim for violation of intellectual property rights, including but not limited to copyright or patent rights.

5. To the extent applicable, Sponsor is is required to comply with the City's event permitting requirements, including the insurance requirements stated therein.

Name: _____ Title: _____

Signature: _____ Date: _____

CUPERTINO STAFF USE ONLY (FOR SPONSORSHIPS NOT REQUIRING A SPONSORSHIP AGREEMENT)

Status: ☐ Approved ☐ Denied

Reason for Denial:

Special Requirements:

Reviewed by:

Staff Name: _____ Title: _____

Signature: _____ Date: _____



CITY OF CUPERTINO

Legislation Details (With Text)

File #: 18-4461 **Version:** 1 **Name:**
Type: Ordinances and Action Items **Status:** Agenda Ready
File created: 10/4/2018 **In control:** City Council
On agenda: 10/16/2018 **Final action:**
Title: Subject: Budget Adjustment to proceed with a Request for Proposals for architectural services for a New City Hall, an Interim City Hall and to add one 3-year Limited Term Project Manager

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report](#)
[A - Civic Center Master Plan Background](#)
[B - Draft Resolution](#)

Date	Ver.	Action By	Action	Result
10/16/2018	1	City Council		

Subject: Budget Adjustment to proceed with a Request for Proposals for architectural services for a New City Hall, an Interim City Hall and to add one 3-year Limited Term Project Manager

Staff recommends Council adopt Resolution No. 18-102 approving a Budget Adjustment for the amount of \$6,175,000:

1. \$5,500,000 for architectural design services for a New City Hall, funded by the Capital Reserve, and;
2. \$500,000 for architectural design and other services as needed for the Interim City Hall, funded by the Capital Reserve, and;
3. \$87,500 to add one 3-year Limited Term Project Manager in the Department of Public Works, funded by the General Fund



PUBLIC WORKS DEPARTMENT

CITY HALL

10300 TORRE AVENUE • CUPERTINO, CA 95014-3255

TELEPHONE: (408) 777-3354 www.cupertino.org

CITY COUNCIL STAFF REPORT

Meeting: October 16, 2018

Subject

Budget Adjustment to proceed with a Request for Proposals for architectural services for a New City Hall, an Interim City Hall, and to add one 3-Year Limited Term Project Manager

Recommended Action

Staff recommends Council adopt Resolution No. 18-XXX amending FY 18/19 Operating Budget to appropriate \$6,175,000 to Public Works, as follows:

1. \$5,500,000 for architectural design services for a New City Hall, funded by the Capital Reserve, and;
2. \$500,000 for architectural design and other services as needed for the Interim City Hall, funded by the Capital Reserve, and;
3. \$87,500 to add one 3-year Limited Term Project Manager in the Department of Public Works, funded by the General Fund

Vallco Town Center Background

On September 19, 2018, the Cupertino City Council adopted the Vallco Town Center Specific Plan including resolutions to certify the Environmental Impact Report and associated General Plan Amendments. In addition, the City Council introduced and conducted the first reading to adopt a Development Agreement (DA) between the City and Vallco Property Owner LLC (Developer), as well as introduced and conducted the first reading for ordinances to amend the Municipal Code and the Zoning Map. On October 2, 2018, the Cupertino City Council conducted the second readings and adopted the DA and amended the Municipal Code and the Zoning Map. Although the DA will not be effective until November 2, the schedule for the New City Hall and Interim City Hall designs are on a very aggressive schedule and by proceeding at this time, Requests for Proposals for both efforts will be able to be issued in November.

The DA includes a number of community benefits for the City if the Developer chooses to construct a project on the site that conforms to the Tier 2 option established in the Specific Plan. One of the community benefits included in the Development Agreement is a one-time payment of \$30,000,000 from the Developer to the City (In-Lieu Payment), or for the Developer to construct a core and warm shell building for a New City Hall, conforming to the preferred alternative from the Civic Center Master Plan (a background of the Civic Center Master Plan, and a chronology of related actions is provided as Attachment A). The City may accept the In-Lieu Payment at its discretion at any time

prior to the Developer's contracting with a general contractor for the work or commencement of construction of the New City Hall. If the City elects to receive the In-Lieu Payment, the Developer would pay the full amount prior to issuance of occupancy for the first office building. The core and warm shell will be for a 40,000 square foot, two story building, built to Essential Facility standards, including approximately 118 parking stalls one-level underground garage, and associated site work in the construction area. Although the Developer's obligation under the DA for the New City Hall is to construct a core and warm shell building that has been fully designed and permitted by the City, this budget request includes a scope for the full design of the project, including the design of tenant improvements that are the City's financial and construction obligation.

Timing of Developer's Commitment to New City Hall Construction

If Developer commences construction or installation of "Project Specific Work" for the SB 35 Project, then Developer shall pay City within 30 days following City's demand therefor an amount equal to 50% of the reasonable out-of-pocket costs and expenses incurred by City in connection with the design and planning for the New City Hall, not to exceed Three Million Dollars (\$3,000,000).

"Project Specific Work" is defined as work that is specific to either the SB 35 Project, a Tier 1 development project, or the Tier 2 Project under the Development Agreement, contemplated to be work beyond the Project Neutral Work. This would most notably be work associated with a building permit, such as a foundation permit or other construction associated with vertical infrastructure.

"Project Neutral Work", as defined in the DA, includes demolition, rough grading, make-ready utility work, offsite work, excavation and shoring, and such other work as the parties may mutually agree is Project Neutral Work.

Developer's Scope of Work for Core and Warm Shell Building

As part of the core and warm shell construction to be delivered by the Developer, the following items will be included:

- Concrete one level parking garage with shotcrete walls included and furnished with code minimum fire sprinkler system, fire alarm system and lighting.
- The New City Hall building will be core and shell (warm shell box) where the box will consist of building envelope and roof.
- Mechanical units will be provided on the roof and will be stubbed into the building for distribution under tenant improvement scope performed by City.
- All utilities, including fire stand pipes, will be stubbed in to the building and will be distributed as part of the tenant improvement work.
- Electrical panels will be provided and electrical services will be brought from the existing transformer connection location point into the building to a location to be shown in the construction drawings.

- The exterior envelope will be either wood frame with stucco and glass windows or metal stud framing with stucco and glass windows.
- The building will be designed to Essential Facility seismic codes.
- Store front doors will be provided. All exterior doors and hardware will be provided.
- All utility connections from the existing connection points to be brought into the building to a location to be shown in the construction drawings.
- The site work in the construction zone is included to have standard landscaping with irrigation and the parking lot to be asphalt, and concrete sidewalks commensurate with existing improvements. Any damage will be restored to original state.
- The civil and structural portions of the building will be designed by the City to LEED Silver.
- Roofing will be an industry standard roofing material.
- Roof will be designed and built to allow for solar panels to be installed by the City.

The City's obligations for the New City Hall project, as identified in the DA are the following:

- City will be responsible for designing, preparing construction documents and obtaining all necessary discretionary approvals and building permits for the New City Hall.
- The target budget (not including Design Deviations) for the work to be completed by the Developer for the core and warm shell New City Hall, consistent with the criteria established in the Civic Center Master Plan, assuming commencement of construction within 24 months, is Thirty One Million Dollars (\$31,000,000)
- City will commence design work within 30 days following the effective date of the Development Agreement for the Tier 2 Vallco Town Center Specific Plan (Effective Date). Thereafter, City will diligently proceed with any discretionary and ministerial approvals for the New City Hall, including any required architectural approvals, preparation of construction documents and permitting, including demolition, tree removal, make-ready utilities, excavation and building permits. The City shall complete all approvals and acquire permits for the New City Hall within 21 months of the Effective Date, subject to extensions that may occur per the DA.
- In order to allow for Developer's timely construction of the New City Hall, City shall vacate the Existing City Hall and deliver possession of the Existing City Hall site to Developer for construction within 24 months of the Effective Date, subject to extensions that may occur per the DA.
- If the City does not meet the above scheduled deadline, the Developer has the option to provide the In-Lieu Payment to the City instead of constructing the New City Hall.

If Developer elects to proceed with development of the Tier 2 of the Vallco Town Center Specific Plan, the Developer shall complete the New City Hall core and shell construction and deliver a Warm Shell New City Hall to the City within thirty six (36) months after the date that the City provided the approved building permits and relinquished the site to the Developer.

If the City's construction plans, specifications and drawings for the New City Hall deviate from the New City Hall Criteria and the deviations increase the cost to construct the New City Hall, the Developer will pay the cost of the design deviations not to exceed Four Million Dollars (\$4,000,000). Any design deviations that increase the New City Hall costs above the deviation cost allowance will be the responsibility of the City.

Interim City Hall

Staff will begin to monitor and assess the potential and likely cost to acquire sufficient building lease space for City Hall staff relocation for the potential 4-5 year period that the warm shell and tenant improvements are being constructed. Possibilities of moving City Hall staff to two or more lease spaces will also be considered. However, in the event that sufficient lease space will not be available when the relocation is to occur, staff will need to begin to design and estimate the cost of locating portable buildings, providing temporary utilities, and constructing parking on the Library Field. This design will need to begin early in order to be able to implement the relocation of City without delay if necessary, but the effort would be abandoned if offsite lease space is able to be acquired and the City Council directs staff to do so. More information and a cost comparison will be brought to the City Council by early spring, 2019.

City Financial Obligations for New City Hall Delivery

Along with the budget adjustments recommended in this report, the City will be responsible for either the construction of the Interim City Hall in portables on Library Field, very roughly estimated at \$5 million, and the operations and maintenance of those facilities for approximately five years, or the lease cost for five years if the City is able to secure sufficient space at the needed time. For example, if 24,000 square feet of lease space is secured at the current market rate of about \$4.60/sf, then the lease will cost the City approximately \$6,600,000 over the five years. Additionally for either option, the cost for staff and equipment relocations to the Interim City Hall would be necessary, as would the cost to relocate back into the New City Hall.

The City will also be responsible for tenant improvements once the Developer has completed the core and warm shell structure. Assuming \$400-\$500 per square foot for tenant improvements (based on approximate rates for similar improvements in comparable buildings) to the 40,000 square foot building, the tenant improvement costs could be in the range of \$16-\$20 million.

Although without any plans to estimate at this time, the total cost for the project, from beginning of design until move-in, would be:

Design of New City Hall	\$ 5,500,000
Design of Interim City Hall	\$ 500,000
Construction of Interim City Hall	\$ 5,000,000
Construction of Tenant Improvements	\$15-20,000,000
<hr/>	
City Cost Subtotal	\$26-31 million
Developer's core and warm shell	\$ 31 million
<hr/>	
Total Project Cost	\$57-62 million

Total, all-inclusive estimate with contingencies, as presented to the City Council in February 2018, was \$69,150,000. So roughly, the Developer's construction of the core and warm shell has reduced the estimate by \$8-13 million, on top of the \$31 million construction that will be funded and constructed by the Developer.

There are also savings that can be expected to offset some of this cost. A study session to discuss the Citywide building condition assessment project is scheduled for November 5th. At this study session, City Hall will be described as requiring up to \$13 million of expenditures over the next 10 years. These expenditures will be necessary to keep the building from failing. These expenditures would not be required upon the decision to proceed with the New City Hall project.

Although the proposed New City Hall is approximately 50% larger than the current building, future operating and maintenance cost of the building will likely be roughly similar due to many energy and water-use efficiencies, modern technologies, and an overall LEED rating of at least Silver.

Add One 3-Year Limited Term Project Manager

In order to manage this effort and ensure that schedules are met and that the designs of the Interim City Hall and the New City Hall meet the needs of the City, additional resources are necessary. One additional Project Manager is recommended to be added to the Public Works Department for a term of three years. This Project Manager may work on the City Hall projects, or they may work on more routine CIP projects to allow more experienced staff to work on the City Hall projects. The total estimate cost for this position is \$525,000 for the full three years. As an alternative, staff considered bringing on a Project Manager consultant, which for one person for three years billed at approximately \$250/hour would cost \$1,560,000.

Schedule

Below is the schedule that would be necessary in order to meet deadlines in the DA:

Date	Activity
October 16, 2018	Council approves budget appropriation to conduct RFP for Design Services
November 2, 2018	Effective Date of the Development Agreement
November 5, 2018	Request for Proposals for Design Services for the Interim City Hall project utilizing On-Call consultant list
November 27, 2018	Issue Design RFQ for New City Hall
December 4, 2018	Council Approval of Design Services Agreement - Interim City Hall
January 7, 2019	Start Design Interim City Hall
April 2, 2019	Council Approval of Design Consultant and Study Session Review of City Hall Concepts from Civic Center Master Plan and review of Interim City Hall Options
June 5, 2019	Community Meeting No. 1
June 30, 2019	Conceptual Design Complete
July 12, 2019	Construction Documents Complete - Interim City Hall Project
July 26, 2019	Building Permit Approval Interim City Hall
August 21, 2019	Advertise Interim City Hall Project
September 17, 2019	Bid Opening - Interim City Hall project
September 30, 2019	Schematic Design Complete
October 15, 2019	Award Interim City Hall project and Study Session on Schematic Design
November 15, 2019	Contract Executed - Interim City Hall project
December 4, 2019	Community Meeting No. 2
December 30, 2019	Design Development Complete for City Council Review
January 2, 2020	Start Construction - Interim City Hall project
January 7, 2020	City Council Review of Design Development – Study Session
April 30, 2020	Construction Documents Complete
June 30, 2020	Building Permit Approval anticipated
August 2, 2020	City Hall Approval Deadline (ie Building Permit approvals)
September 1, 2020	Interim City Complete, receive Occupancy permit
September 15 - October 15, 2020	Transition staff to Interim City Hall
November 2, 2020	Current City Hall is completely vacated
April 1, 2023	Award City Hall T.I. project
August 9, 2023	City begins Tenant Improvements
May 1, 2025	City Hall Complete, Opening Ceremony
	LEGEND
	Interim City Hall
	Deadlines identified in the Development Agreement
	New City Hall
Bold	City Council Approvals/Actions

In addition to the above schedule, there will be at least monthly progress reports provided to the City Council and the public.

Sustainability

The New City Hall, per the Civic Center Master Plan and the Vallco Town Center DA, will be at least LEED Silver rated facility.

Fiscal Impact

Costs related to the approval of this item total \$6.175 million dollars. The City's Capital Reserve Fund 429 currently has an available fund balance of approximately \$10 million dollars and is expected to end fiscal year 2018-19 with an additional \$6 million dollars for a total available fund balance of \$16 million dollars. As part of another Item on this agenda, Staff is also recommending to de-fund approximately \$4.425 million from the approved 2018-19 Capital Improvement Program (CIP) Budget. If approved, this would make the fund balance approximately \$20.4 million. Staff recommends using the Capital Reserve to fund architectural services of \$6 million dollars, leaving either \$10 million dollars in available fund balance, or \$14.4 million if the CIP deferrals are approved on this agenda.

The fiscal impact to add one 3-Year Limited Term Project Manager position for FY 18/19 will be \$87,500. Ongoing costs will be \$175,000 in FY 19/20 and FY 20/21 and \$87,500 in FY 21/22, to be funded by the General Fund.

Prepared by: Timm Borden, Director of Public Works Department

Approved for Submission by: Amy Chan, Interim City Manager

Attachments:

Attachment A - Civic Center Master Plan Background

Attachment B – Draft Resolution

Civic Center Master Plan Background

In July, 2015 the City Council adopted the Civic Center Master Plan (CCMP), with a preferred alternative that included a new 40,000 square foot City Hall with an Emergency Operations Center and basement level parking to accommodate approximately 118 vehicles. The City Council also adopted a Mitigated Negative Declaration and the Initial Study.

In August 2015, Council considered whether to fund an architectural services agreement. Council did not approve the architectural services agreement in the amount of \$5.5 million (included the “perch” addition to the library) and directed staff to provide more information on financing options for implementing the master plan. In October, 2015 Council received the Report on Lease Financing which was considered and discussed by Council in November 2015. Council directed staff to 1) explore options for a maximum cost of \$40 million (financed plus cash). 2) explore options of leasing 40,000 square feet, and 3) explore possibility of building the proposed project for half the cost. In December 2015, staff reported to Council that it was not possible to build the project for a maximum of \$40 million.

At the Work Program study session on February 20, 2018, the City Council indicated that they were not in favor of moving forward with the design of a new city hall at that time, and instead directed staff to continue to evaluate alternative construction and finance mechanisms to reduce the overall cost of the Civic Center Master Plan implementation. The total cost estimate of \$69,150,000, was all inclusive of construction costs, demolition and removal of existing building, design, City staff cost, testing and inspection, construction management, community outreach, relocation, lease, and furniture, fixtures and equipment. This compares to a total project cost, as currently proposed, of approximately \$57-62 million, of which the Developer is responsible for \$31 million, leaving the City’s total cost at \$26-31 million.

Total, all-inclusive estimate with contingencies, as presented to the City Council in February 2018, was \$69,150,000. So roughly, the Developer’s construction of the core and warm shell has reduced the estimate by \$8-13 million, on top of the \$31 million construction that will be funded and constructed by the Developer.

On April 3, 2018, the City Council considered a major renovation of City Hall, however did not pursue that option and directed staff to spend 5-7 months to explore other designs/general concepts for a New City Hall and to look at other potential cost saving solutions, still preserving the new 40,000 square foot building as the preferred alternative.

The CCMP called for the design to meet the following criteria:

- Complement that of the Library and Community Hall and to project the Cupertino Civic Center as a locus of civic pride with enhanced civic identity and public interface that greatly improves the experience of the place; the architectural expression will represent the City's contemporary civic identity and express the community's civic values of open engagement with the government.
- Accommodate staff of up to 102;
- Include an Emergency Operations Center function;
- Include a public service center for permits, licenses and other business transactions;
- Provide adequate meeting space for staff to conduct city business, and allow for flexible scheduling for evening and weekend use by the public;
- Provide larger meeting and program space for public activities and events during mid-week and weekend days and evenings;
- Design the building with high sustainability goals including to meet at least the LEED Silver standard and the Cupertino Climate Action Plan, with resource efficient systems that reduce consumption and minimize building maintenance costs.

The current city hall building, as indicated to the City Council in April of this year, has the following deficiencies that would require approximately \$21 million just for the remodel:

- Building does not meet existing Life Safety building codes, much less Essential Facility code to support EOC.
- Building can be braced to meet seismic requirements.
- Heavy tile roof
- Electrical Service and distribution systems are at end of useful life, at capacity and need full replacement. Parts not available.
- 1960's era boiler and emergency generator need replacement.
- Generator should not be within building. Parts not available.
- Air handler, boiler, chiller equipment needs replacement. HVAC controls outdated and do not work properly. Parts not available.
- Communication and data systems will be difficult to maintain over time due to age and capacities.
- Building configuration is inefficient and non-compliant
- ADA accessibility issues with toilet rooms and elevator
- Employees lack work and meeting space
- EOC and Lobby spaces inefficient
- Interior doors and finishes need updates and replacements

- Abundant walled offices create inefficiencies and reduce natural lighting
- Building is energy inefficient
- Building envelop needs insulation and better energy windows.
- Building is space inefficient
- Building space remodel likely to gain 10-15% in usable office space.

A study session to discuss the Citywide building condition assessment project is scheduled for November 5th. At this study session, City Hall will be described as requiring up to \$13 million of expenditures over the next 10 years. These expenditures will be necessary to keep the building from failing.

RESOLUTION NO. 18-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING FY18/19 ANNUAL OPERATING BUDGET TO APPROPRIATE \$5,500,000 TO PUBLIC WORKS TO CONDUCT A REQUEST FOR PROPOSALS FOR ARCHITECTURAL DESIGN SERVICES FOR THE DESIGN OF A NEW CITY HALL, \$500,000 TO CONDUCT A REQUEST FOR PROPOSALS FOR ARCHITECTURAL DESIGN SERVICES AND OTHER SERVICES AS NECESSARY FOR THE DESIGN OF AN INTERIM CITY HALL, AND \$525,000 TO ACQUIRE ONE 3-YEAR LIMITED TERM PROJECT MANAGER TO ASSIST IN DELIVERING THE NEW CITY HALL, INTERIM CITY HALL, AND OTHER PRIORITY CAPITAL IMPROVEMENT PROJECTS

WHEREAS, the City of Cupertino (City), a municipal corporation and general law city duly organized and existing under and pursuant to the laws of the State of California (City) is authorized to request proposals and to enter into contracts on its behalf and for the benefit of the City; and

WHEREAS, the City Council, in July 2015, approved a Civic Center Master Plan that included a preferred alternative for a New City Hall that consisted of a 40,000 square building and approximately 118 below ground parking spaces; and

WHEREAS, the New City Hall design has not moved forward until now due to concerns about the estimated cost for the project; and

WHEREAS, on October 2, 2018, the City Council conducted the second reading approving the Vallco Town Center Specific Plan and Development Agreement, which included a provision for the developer to construct a core and warm shell of a New City Hall (which would likely save the City at least \$31 million on the project), or to provide the City with a payment of \$30,000,000 in-lieu of constructing a New City Hall; and

WHEREAS, under the approved Development Agreement, the City is obligated to provide the design and construction drawings for the building; and

WHEREAS, the City desires to hire a consultant for professional services to provide architectural design services for the New City Hall; and

WHEREAS, the Development Agreement obligates the City to vacate the existing City Hall as early as twenty four (24) months from the effective date of the Development Agreement (November 2, 2020) ; and

WHEREAS, because it is not known at this time if the City will be able to acquire sufficient off-site leased building space for an Interim City Hall, City will need to design an Interim City Hall in portable buildings on Library Field to be prepared for the possibility that lease space is not available; and

WHEREAS, to provide sufficient City resources to meet the schedule for the design and construction of the New City and design of the Interim City Hall, one additional limited term project manager is necessary to augment existing staff ;

NOW, THEREFORE, THE CUPERTINO CITY COUNCIL RESOLVES AS FOLLOWS:

The FY 18/19 Operating Budget is amended to appropriate a total of \$6,175,000, which includes:

1. \$5,500,000 for architectural design services for a new City Hall, funded by the Capital Reserve, and;
2. \$500,000 for architectural design and other services as needed for the interim City Hall, funded by the Capital Reserve, and;
3. \$87,500 to add one 3-year Limited Term Project Manager in the Department of Public Works to assist in delivering the new City Hall, interim City Hall, and other priority capital improvement projects, funded by the General Fund.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 16th day of October 2018, by the following vote:

Vote

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Darcy Paul, Mayor



CITY OF CUPERTINO

Legislation Details (With Text)

File #: 18-4462 **Version:** 1 **Name:**
Type: Ordinances and Action Items **Status:** Agenda Ready
File created: 10/4/2018 **In control:** City Council
On agenda: 10/16/2018 **Final action:**
Title: Subject: Budget Adjustment to proceed with Request for Proposals for a market and operations feasibility study for a Performing Arts Center

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report](#)
[A - Development Agreement Excerpt](#)
[B - Draft Resolution](#)

Date	Ver.	Action By	Action	Result
10/16/2018	1	City Council		

Subject: Budget Adjustment to proceed with Request for Proposals for a market and operations feasibility study for a Performing Arts Center

1. Adopt Resolution No. 18-103 approving a Budget Adjustment in the amount of \$200,000 in the General Fund to complete a market and operations feasibility study for a performing art center; and
2. Authorize staff to hire a consultant for a contract amount not to exceed \$200,000 to complete a market and operations feasibility study for a performing art center



PUBLIC WORKS DEPARTMENT

CITY HALL

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CITY COUNCIL STAFF REPORT

Meeting: October 16, 2018

Subject

Budget Adjustment to proceed with a Request for Proposals for a market and operations feasibility study for a Performing Arts Center

Recommended Action

Staff recommends Council take the following actions:

1. Adopt Resolution No. 18-XXX amending FY 18/19 Operating Budget to appropriate \$200,000 from the General Fund to complete a market and operations feasibility study for a Performing Arts Center; and
2. Authorize staff to hire a consultant for a contract amount not to exceed \$200,000 to complete a market and operations feasibility study for a Performing Arts Center

Background

On September 19, 2018, the Cupertino City Council adopted the Vallco Town Center Specific Plan including resolutions to certify the Environmental Impact Report and associated General Plan Amendments. In addition, the City Council introduced and conducted the first reading to adopt a Development Agreement between the City and Vallco Property Owner LLC, as well as introduced and conducted the first reading for ordinances to amend the Municipal Code and the Zoning Map. On October 2, 2018, the Cupertino City Council conducted the second readings and adopted the DA and amended the Municipal Code and the Zoning Map.

The Development Agreement includes a number of community benefits for the City if the Developer chooses to construct a project on the site that conforms to the Tier 2 option established in the Specific Plan. One of the community benefits proposed in the Development Agreement is the option for City Council to accept either a 'core and warm shell' for a 60,000 square foot Performing Arts Center (PAC) that would be constructed by the Developer on the Town Center property, or a one-time payment to the City in a total amount of \$22,800,000 (PAC In Lieu Payment). The Development Agreement further stipulates that the City would begin, within 90-days after the effective date of the agreement, a feasibility study for the Performing Arts Center. Based on the feasibility study, the City may elect to either receive the PAC In Lieu Payment or proceed with

design and construction of the PAC. To proceed with construction of the PAC, the City must approve the Vallco Master Site Development Permit with the PAC included in the permit. If the City approves the Vallco Master Site Development Permit without the PAC included in the design, then the Developer shall pay to the City the PAC In Lieu Payment. The PAC In Lieu Payment shall be paid to the City prior to issuance of the certificate of occupancy for the last office building.

A feasibility study will analyze existing performing arts center spaces in west Santa Clara County and surrounding communities, alongside market and industry trends and other factors to determine whether a new facility of the size proposed is feasible and could be successful in this market, what expected tenant improvement costs would be for the City's funding obligation, and what annual operating costs could be expected. The study will aid the City Council in making a choice between the two options (PAC or PAC In Lieu Payment). Key considerations that will be analyzed in the study are:

- Economic, Demographic and Destination Market Analysis
- Performing Arts Center Trends
- Review of Financial and Programmatic Performances of Existing Performing Arts Centers
- Analysis of Comparable and Competitive Facilities
- Potential Joint Use Opportunities
- Demand Projections
- Financial Projections
- Cost Estimates for Completion of Tenant Improvements
- Expected annual operating costs

Next Steps

Public Works will initiate a Request for Qualifications (RFQ) for a market and operations feasibility study; will review the submittals and choose a qualified consultant and will begin the study.

Schedule

Date	Activity
November 2018	Post Request For Qualifications
January 2018	Choose Qualified Consultant and Execute Contract
February-June 2019	Prepare the Market and Operations Feasibility Study
June 2019	Present the Market and Operations Feasibility Study to City Council.

Sustainability

There are no negative effects from this action. The study will analyze the market demand, economic impact, estimate of required tenant improvements, and annual operating cost for a 60,000 square foot Performing Arts Center at the Town Center property.

Fiscal Impact

To complete a market and operation feasibility study for a Performing Arts Center at the Vallco Town Center property, the FY 18/19 Operating Budget needs to be amended to appropriate \$200,000 to Public Works Capital Improvement Program operating account. This additional appropriation will be funded from the Capital Reserve Fund 429. Current year end projections for this fund anticipate the fund will end the year with \$13 million in unassigned fund balance, the use of \$200,000 will reduce that year end projection to \$12.8 million.

Prepared by: Chad Mosley

Reviewed by: Timm Borden, Director of Public Works Department

Approved for Submission by: Amy Chan, Interim City Manager

Attachments:

A – Excerpt from Development Agreement by and between City of Cupertino and Vallco Property Owner, LLC – Article 5.1 - Performing Arts Center

B – Draft Resolution

ARTICLE 5 PUBLIC BENEFITS

5.1 Performing Arts Center.

5.1.1 Feasibility Study. Commencing within ninety (90) days after the Effective Date of this Agreement, City will commence a feasibility study for an approximately 60,000 square foot performing arts center, including 600 seat main auditorium, 200 seat secondary auditorium, lobby and concession areas, restrooms etc., located in the vicinity of the Town Square ("PAC").

5.1.2 Core and Warm Shell. Based on the feasibility study City may elect either (i) to receive a payment from Developer in the total amount of Twenty Two Million Eight Hundred Thousand Dollars (\$22,800,000) ("PAC In Lieu Payment"), or (ii) for Developer to construct and deliver to City a Warm Shell (defined below) PAC space which City shall be responsible for completing and maintaining. If City elects for Developer to build the PAC, Developer's obligation is for a maximum of a 60,000 square foot Warm Shell space. The space would be intended to optimize ability to accommodate a main theater of approximately 600 seats, a second stage of no more than 200 seats, lobby to host pre-theater events, ticketing space and food preparation and staging area, and appropriate number of finished restrooms in light of the size of the facility, among other things. The "Warm Shell" space scope will include (i) an enclosed box with roof, exterior walls/finishes and floor completed and the exterior envelope to have Project standard glazing, roofing and exterior exiting doors as required by code; (ii) stub out of all required utilities at an agreed upon location within the structure, (iii) its own HVAC units available at plenum for tenant improvement to connect for their distribution; and (iv) a fire sprinkler stand pipe for the tenant work distribution. The specific requirements for the Warm Shell scope will be detailed in the three alternative design options described in Section 5.1.3. Following delivery of the Warm Shell space City shall be responsible for completing all front and back of house tenant improvements, including theatre seating, and lobby and concession area fixturation. In addition to the Warm Shell work, Developer shall provide City, at no charge to City, 150 parking stalls within Retail and Entertainment/Mixed Use District (as defined in the Specific Plan) and within reasonable proximity to the PAC, which will be subject to project-wide shared parking strategies, and reasonable relocation from time to time depending on leasing or operational requirements.

5.1.3 MSDP/Design. The MSDP shall include two scenarios with respect to the PAC, one that includes a PAC generally located in the Retail District/Phase 1 area, and one that does not include a PAC. With the submittal of the MSDP, Developer will also provide up to three (3) alternative design options, including conceptual program lay-outs, for City consideration concurrently with, but separate from, the review of the MSDP. Within six (6) months of Developer submittal of the MSDP application, the City shall elect whether to include the PAC at the location proposed by Developer in the MSDP, or to approve the MSDP without the PAC.

5.1.4 Cash Election. If City approves the MSDP without the inclusion of a PAC, then Developer shall pay to City the PAC In Lieu Payment prior to issuance of the certificate of occupancy for the last office building in the Office/Mixed-Use District which is not Amenity Office Space, as shown on the MSDP.

5.1.5 Construction of PAC. If City approves the MSDP with the PAC, it shall also, at that time, elect one of the design alternatives provided by Developer. Developer shall design and construct the PAC to Warm Shell level of completion together with the associated parking, in the location shown on the approved MSDP, consistent in all material respects with the design selected by the City, provided that Developer shall have no obligation to commence design and construction of the PAC until the Vested Approvals and the approvals for the MSDP and Master Tentative Map are Final. Developer shall provide a one (1) year warranty for the Warm Shell PAC space; warranties and guarantees for other systems and components of the PAC space, including HVAC, will be provided per industry standard.

5.1.6 Delivery. Developer shall deliver to City a completed Warm Shell, PAC and associated parking as described above, provide City with a complete set of as-built plans and drawings, and the warranties and guarantees referenced in Section 5.1.5 above, prior to issuance of a certificate of occupancy for the last building in the Project located west of Wolfe Road. City and Developer shall collaborate on the plans, specifications and drawings for the PAC. City will be solely responsible for all costs, fees and expenses, including permitting, to design and construct the interior tenant improvements for the PAC, and all other associated amenities, facilities and improvements (other than the Warm Shell improvements and PAC parking the costs of which shall be paid by Developer), and thereafter to operate, and following expiration of the warranty period, to maintain and repair the PAC. Developer shall provide City with a 34 year lease for the PAC premises and parking at a rent of \$1 per year on a NNN basis. The Lease term shall commence as of the date Developer delivers a complete (other than minor punch list items) Warm Shell PAC space to City. City, as PAC tenant, will participate in the Project's master property owners' association and pay a proportionate fair share cost contribution for typical common area maintenance in the Retail and Entertainment/Mixed Use District. If the PAC is constructed but ultimately the City fails to accept and operate it, the City PAC lease shall terminate and the PAC may be used as entertainment space, with any of the uses allowed in the Retail Mixed Use District component, including co-working or event space, subject to any further CEQA review.

5.1.7 PAC Agreements. Developer shall prepare a term sheet for the improvement and lease agreements referenced below generally at the same time as its MSDP application, and prior to construction and issuance of PAC building permits, or at such later time as City and Developer may mutually agree each in its discretion, City and Developer shall prepare and execute forms of improvement and lease agreements setting forth in greater detail their respective obligations with respect to design, development, delivery and leasing of the PAC. The PAC improvement agreement shall address among other issues, requirements for collaboration on design, labor and materials and performance bonds, completion guarantee, process for submittal and approval of change orders, and warranty requirements. If the Parties are unable to achieve the schedule dates due to disagreements, the Parties shall meet and confer in good faith to resolve such disagreements and, if necessary, enter into mediation pursuant to Section 12.8 below.

RESOLUTION NO. 18-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING FY18/19 ANNUAL OPERATING BUDGET TO APPROPRIATE \$200,000
TO PUBLIC WORKS TO CONDUCT A REQUEST FOR PROPOSALS AND RETAIN A
CONSULTANT TO CONDUCT A MARKET AND OPERATIONS FEASIBILITY
STUDY FOR A PERFORMING ARTS CENTER

WHEREAS, the City of Cupertino (City), a municipal corporation and general law city duly organized and existing under and pursuant to the laws of the State of California is authorized to request proposals and to enter into contracts on its behalf and for the benefit of the City; and

WHEREAS, on October 2, 2018, the City Council conducted the second reading approving the Vallco Town Center Specific Plan and Development Agreement, which included a provision for the developer to construct a 60,000 square foot core and warm shell for a Performing Arts Center, or to provide the City with a payment of \$22,800,000 in-lieu of constructing a Performing Arts Center within the Vallco Town Center project; and

WHEREAS, under the approved Development Agreement, the City is obligated to perform a market and operations feasibility study for the Performing Arts Center; and

WHEREAS, the City desires to hire a consultant for professional services to prepare the market and operations feasibility study for the Performing Arts Center; and

WHEREAS, the Development Agreement obligates the City to begin the market and operations feasibility study within ninety (90) days of the effective date of the Development Agreement;

NOW, THEREFORE, THE CUPERTINO CITY COUNCIL RESOLVES AS FOLLOWS:

1. The FY 18/19 Operating Budget is amended to appropriate \$200,000 to Public Works Capital Improvement account for the purpose of hiring a consultant to prepare a market and operations feasibility study for a Performing Arts Center.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 16th day of October 2018, by the following vote:

Vote

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Grace Schmidt, City Clerk

Members of the City Council

APPROVED:

Darcy Paul, Mayor



CITY OF CUPERTINO

Legislation Details (With Text)

File #: 18-4463 **Version:** 1 **Name:**
Type: Ordinances and Action Items **Status:** Agenda Ready
File created: 10/4/2018 **In control:** City Council
On agenda: 10/16/2018 **Final action:**
Title: Subject: Proposed revisions to the 2018-19 City Work Plan and Capital Improvement Program (CIP) due to the new City Hall project, the Performance Art Center (PAC) Market and Operations feasibility study, Regional Transformative Transit Initiatives, and other key initiatives

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report](#)
[A - 2018-2019 City Work Program Proposed Updates](#)
[B - Proposed CIP Adjustments](#)
[C - Draft Resolution defunding CIP](#)

Date	Ver.	Action By	Action	Result
10/16/2018	1	City Council		

Subject: Proposed revisions to the 2018-19 City Work Plan and Capital Improvement Program (CIP) due to the new City Hall project, the Performance Art Center (PAC) Market and Operations feasibility study, Regional Transformative Transit Initiatives, and other key initiatives

1. Revise the 2018-19 City Work Program to reprioritize certain staff efforts to allow for the meeting of schedules for several major new proposed initiatives; and
2. Amend the CIP by adding the New City Hall Project, the Interim City Hall and Relocation Project, and the Performing Arts Center Market and Operations Feasibility Study, and delaying certain projects to enable sufficient resources for these large priority projects; and
3. Adopt Resolution No. 18-104 to approve the defunding of \$4,425,750 in budgeted Capital Funds for the Capital Improvement Projects listed in Table 1



PUBLIC WORKS DEPARTMENT

CITY HALL

10300 TORRE AVENUE • CUPERTINO, CA 95014-3255

TELEPHONE: (408) 777-3354 www.cupertino.org

CITY COUNCIL STAFF REPORT

Meeting: October 16, 2018

Subject

Proposed revisions to the 2018-19 City Work Plan and the Capital Improvement Program (CIP) due to the New City Hall project, the Performing Arts Center (PAC) Market and Operations feasibility study, Regional Transformative Transit Initiatives, and other key initiatives

Recommended Action

Staff recommends Council take the following actions:

1. Revise the 2018-19 City Work Program to reprioritize certain staff efforts to allow for the meeting of schedules for several major new proposed initiatives; and
2. Amend the CIP by adding the New City Hall Project, the Interim City Hall and Relocation Project, and the Performing Arts Center Market and Operations Feasibility Study, and delaying certain projects to enable sufficient resources for these large priority projects; and
3. Adopt Resolution No. 18-XXX to approve the defunding of \$4,425,750 in budgeted Capital Funds for the Capital Improvement Projects listed in Table 1

Background

With the Vallco Town Center development agreement approved on September 19, 2018, the schedule for design and delivery for the New City Hall, the design and delivery of the Interim City Hall and Relocation Project, and the PAC will require a redirection of resources and reprioritization of several projects. With this major effort, it is recommended that the City Council consider additional updates and changes to the 2018-19 City Work Plan and the CIP so that staff has guidance on current City Council priorities.

Proposed Additions to Work Plan

The City has used the Work Plan process as a tool, at least back to 1982, to manage the efforts and the prioritization of resources for the organization to deliver services, support policy-making, and manage projects. The Work Plan identifies City Council priority projects and initiatives, and matches those with the capacity of City resources. This guidance allows the City organization to stay focused and efficient and meet the schedule expectations of the City Council and the community. When new projects or initiatives are

approved and are added to the Work Plan, it is appropriate for the City Council to re-visit the priorities of the remaining Work Plan.

The Council has typically approved the Work Plan around February each year, and then may have a mid-year status update, but not a discussion of amending the Work Plan to capture new initiatives that they may want to include, and removing or deferring other efforts to allow resources to be redirected. The attached Redlined 2018-19 City Work Plan has proposed new efforts added, some initiatives removed or deferred, and some items are simply updated. The new initiatives and the initiatives proposed to be removed are described below.

Proposed Additions to Current 2018-19 City Work Plan

Smart City

5G Smart City Public Private Partnership Agreement with Verizon – Verizon has had discussions with City staff to be an early provider of 5G technology with Small Cell Antennas to allow faster connections, lower latency, and to support the Internet of Things, which is the interconnection via the Internet of computing devices embedded in everyday objects, enabling them to send and receive data.

Community Livability and Sustainable Infrastructure

New City Hall - Following the effective date for the Vallco Town Center Specific Plan, the City has 21 months to deliver building permits for the New City Hall to Sandhill Property Company for them to demolish the current City Hall and construct a new warm shell building. Within this 21 months, staff will need to develop a complex scope of work and acquire an architectural consultant through a Request for Proposals process, work with City Hall staff to develop programming for the new space, conduct community outreach on public spaces and architecture, and with periodic check-ins with the City Council, complete construction drawings for the core and warm shell to be delivered to the Developer, and also complete tenant improvement plans for the follow-on construction to be completed by a City contractor.

Interim City Hall and Relocation - Staff will begin to monitor and assess the potential and likely cost to acquire sufficient building lease space for City Hall staff relocation for the potential 3-4 year period that the warm shell and tenant improvements are being constructed. However, in the event the sufficient lease space will not be available when the relocation is to occur, staff will need to begin to design and estimate the cost of locating portable buildings, providing temporary utilities, and constructing parking on Library Field. Library Field currently has a zoning for public building. This design will need to begin early in order to be able to implement without delay if necessary, but the

effort would be abandoned if offsite lease space is able to be acquired and the City Council directs staff to do so. More information and a cost comparison will be brought to the City Council by early spring 2019.

Performing Arts Center Market and Operations Feasibility Study - This effort will need to begin immediately in order to select a consultant by January and then bring the study results to the City Council for consideration in June 2019. The study will analyze the market demand for a 60,000 square foot facility, a cost estimate of tenant improvements, and a cost estimate of ongoing annual operations of the facility.

Regional Transformative Transit Projects Initiative - With adoption of the 2018-19 CIP, the City Council approved funding of \$150,000 to conduct an Automated Transit Guideway Project that would connect Mountain View's Transit Center to the I-280/Wolfe Road area. In September, the City Council directed staff to submit several projects to the MTC in response to their call for Transformative Transportation Projects. These projects are:

- Stevens Creek Corridor High Capacity Transit
- Automated Fixed Guideway to Mountain View
- Cupertino Station at I-280/Wolfe Road
- Highway 85 Transit Guideway
- Silicon Valley High Capacity Transit Loop

Meeting with private businesses and regional partners, along with supporting any efforts with the VTA and the Highway 85 Project Advisory Board, will require a significant investment of staff resources, so this item is proposed to be included in the amended work plan.

Public Infrastructure Financing Strategy - An initiative is proposed to be added to the Work Plan to hire a finance consultant that can provide options to the City on financing some of the large infrastructure projects that the City will likely be considering in the near future, such as those described below.

The obligations of the City for the delivery of the New City Hall is very roughly estimated to be approximately \$26-31 million. This estimate includes architectural design for either the construction of the Interim City Hall on Library Field or lease space, the relocation of City Hall staff from the existing City Hall and then later into the New City Hall, and all of the tenant improvements.

If the City Council decides to move forward with the PAC project upon receiving the Performing Arts Center Market and Operations Feasibility Study, the City's obligation will be to fund and construct the tenant improvements, which could likely be at least another \$25-30 million.

Other costly infrastructure investments will be necessary into the future, resulting from the all city-wide building facility asset and the nearly-completed Storm Drain Master Plan. Also anticipated are park upgrades as a result of the completion of the City Wide Parks and Recreation Master Plan.

Dog Off Leash Area Trial at Jollyman Park – Complete public engagement and work with neighbors to complete a six month trial of an off leash area at Jollyman Park.

All Inclusive Playground – Study, fund-raise and design an all-inclusive playground in a neighborhood park. A grant application has been submitted to Santa Clara County.

Amend Municipal Code to Change construction hour start time from 7:00 am to 8:00 am.
– This would be to allow City Council to consider addressing neighbor concerns related to construction noise and disturbance.

Recreation and Community Services Strategic Plan – This effort would be to complete a three year strategic plan that serves to align the Recreation and Community Services Department with common vision and values. The plan will be measurable, with specific goals, objectives and actions. The goals will revolve around action items in the Master Plan, department culture and tools for successful implementation.

Proposed Reprioritizations and Deferrals to Current 2018-19 City Work Plan

The following changes are proposed to be reprioritized and deferred within the current 2018-19 City Work Plan:

Operational Efficiency

- American Public Works Association (APWA) Accreditation – this item is proposed to be removed from the Work Plan and brought back at a future date.
- Civic Center Master Plan – Renovation – this item will be dropped in favor of the current effort to construct a New City Hall
- Staffing Level Evaluation (Public Works) – This Item is proposed to be removed from the Work Plan and brought back at a future date.
- Civic Center Master Plan – Renovation – This item was brought to the Council in spring 2018, however the City Council directed staff to continue to look for ways to build the preferred alternative New City Hall from the Civic Center Master Plan,

but more affordable. This renovation is being substituted with the New City Hall design.

- Accreditation of the Recreation & Community Services Department - Accreditation has been removed to reprioritize staff capacity to complete the strategic plan. Important action items to meet national accreditation such as the master plan, strategic plan, marketing plan, policy development will continue.
- Weekend Work Program (Public Works) – This program was analyzed and determined to continue to add good value, with some procedural improvements. The Item will be shown as completed.

Proposed Changes to Current 2018-19 CIP

In order to make staff resources available and also make available some funding for the new efforts for the New City Hall, the Interim City Hall, the Performing Arts Center Study, and the various Regional Transit Projects, a number of projects in the Adopted 2018-19 CIP are proposed to be reprioritized and defunded and either moved into future budget years and moved to the Unfunded List. A potential additional benefit to deferring these projects is that the current bid market has seen rapid cost escalation, and so deferring the projects may provide an opportunity to move some of these projects forward in a future better construction market.

Table 1

Project Name and Recommended Action	Unencumbered FY 18/19 CIP Fund Budget Balance
<ul style="list-style-type: none"> • <i>Blackberry Farm Entrance Road Improvements Feasibility Study</i> – Defer until after completion of Stevens Creek Corridor Park Chain Master Plan. – Defer and defund 	\$75,000
<ul style="list-style-type: none"> • <i>Creek Infall/Outfall Restoration</i> – Defer until after completion and prioritization of the Storm Drain Master Plan – Defer and defund 	\$160,000
<ul style="list-style-type: none"> • <i>De Anza Median Island Landscaping Phase II</i> – Complete design consistent with Phase I and then defer construction. 	\$1,470,900
<ul style="list-style-type: none"> • <i>McClellan Ranch Preserve Community Garden Improvements – Construction</i> – Received bids in Sept. 2018, rejected due to costs far exceeding budget. Repackage to reduce costs and bring back to 2019-20 Budget discussions for prioritization. - Defer 	
<ul style="list-style-type: none"> • <i>McClellan Ranch Preserve – EEC Aquatic Habitat</i> - Bring back to 2019-20 Budget discussions for prioritization. – Defer and defund 	\$125,000

<ul style="list-style-type: none"> • <i>McClellan Ranch Preserve – Construct Trash Enclosure – Design completed with Community Garden Project. Bring back to 2019-20 Budget discussions for prioritization. – Defer</i> 	
<ul style="list-style-type: none"> • <i>Recreation Facilities Monument Signs – Defer and defund</i> 	\$385,000
<ul style="list-style-type: none"> • <i>Retaining Wall Repair – Cordova Road – Defer, monitor condition and defund</i> 	\$298,300
<ul style="list-style-type: none"> • <i>Service Center Shed No. 3 Improvement – Defer and seek alternate temporary solutions</i> 	\$991,050
<ul style="list-style-type: none"> • <i>Stevens Cr. Bank Repair – South of SCB – Concept Design – Defer</i> 	
<ul style="list-style-type: none"> • <i>Sports Center – Upgrades - Complete design consistent with Phase I and then defer construction until building condition assessment is complete and comprehensive structural and space requirements are known.</i> 	\$920,500
<ul style="list-style-type: none"> • <i>Storm Drain Master Plan Implementation - Defer</i> 	
Proposed to Return Back to Capital Reserve Fund:	\$4,425,750

Sustainability

No sustainability impact.

Fiscal Impact

If the recommendation changes to the CIP are approved, approximately \$4,425,750 would be returned to the Capital Reserve Fund.

Prepared by: Timm Borden, Director of Public Works Department

Approved for Submission by: Amy Chan, Interim City Manager

Attachments:

A – Proposed Amended 2018-19 City Work Plan

B – CIP Budget Pages for New Projects and for Projects proposed to be Deferred and Defunded

C – Draft Resolution

Smart City

Project Title	Project Objective	Progress to Date	Next Steps	Current Status	Completion Date	Staff Lead	Department
Wireless Master Plan	Update the City's wireless policies and goals to ensure a comprehensive build out of facilities.	The City will initiate a Request for Proposals in Winter 2018.	Request proposals from interested consultants.	Scheduled	November 2018	Chad Mosley/Bill Mitchell	Public Works/IT
Water System Asset Management Plan (AMP) / Valuation	1) Quantify system condition and projected needs / costs to sustain industry standard; and 2) Value system to determine appropriate lease rate or sale price after 2022.	Agreement with consultant executed with completed work product due in August 2018.	Coordinate with SJWC and consultant an AMP that is mutually beneficial to both parties.	In Progress	August 2018	Roger Lee	Public Works
Municipal Water System	Ensure lessee (San Jose Water Co.) is maintaining and operating system to industry standard.	SJWC investment in system has increased. Negotiations ongoing to define capital investments through 2022.	Continue negotiations.	In Progress	December 2018	Timm Borden/Roger Lee	Public Works
Emergency Services Continuity of Government Plan	Complete plan to resume operations of the City after a major emergency.	Previous plan was written in 2004. That plan will be evaluated and a new plan will be developed.	Emergency Services Coordinator will research and coordinate with Santa Clara County and other partners to write a plan for City Council review and adoption.	In Progress	September 2019	Clare Francavilla	Recreation & Community Services
Wireless Upgrade - Public Space	Build wireless "hot spots" at various public locations w/in Cupertino	Determining best location and associated solution(s).	Seismic modeling of selected "hot-spot" locations. Budget allocation for FY18/FY19	In Progress	FY2018/FY19	Bill Mitchell	Innovation & Technology
5G Smart City Public Private Partnership Agreement with Verizon	Provide 5G technology roll-out with Small Cell Antennas to allow faster connections and lower latency to support the Internet of Things.	Initial Meetings with Verizon	Recieve draft agreement from Verizon	In Progress	December 2019	Chad Mosley/Bill Mitchell	Public Works/IT

Public Engagement and Transparency

Project Title	Project Objective	Progress to Date	Next Steps	Current Status	Completion Date	Staff Lead	Department
Expand Therapeutic Recreation Programs	Provide greater access to programs and activities for individuals with disabilities by completing and launching a strategic plan. The plan will address ADA requirements, inclusion opportunities and special programs. Expand recreation program offerings to accommodate therapeutic recreation needs in the community.		Create a task force within the department to create a strategy and begin coordinating opportunities.	In Progress	June 2019	Christine Hanel	Recreation & Community Services
Explore Consolidation of Senior Citizen, Library, and Safety issues into Parks & Recreation Commission	Per Council request, explore the possibility of consolidating senior, safety, and library issues into the Parks & Recreation Commission. Currently, the Recreation and Community Services Department oversees a Senior Citizen Advisory Council based out of the Senior Center, manages general code enforcement and emergency services, and liaisons with the Library on services provided to our community.			Proposed	TBD	Jaqui Guzman Jeff Milkes	CMO/ Recreation & Community Services
I heart Cupertino - Teen Design Challenge	Build a sense of community by launching a Cupertino swag store with an fun youth design project	Project team is developing project charter	Request buy-in from local schools and businesses	Scheduled	October 2018 June 2019	Jaqui Guzman Colleen Letire Danny Mestizo	CMO/ Recreation & Community Services
Volunteer Fair	Promote a sense of community and good will in Cupertino by encouraging volunteerism	The volunteer fair has been scheduled for May 5th at Civic Center Plaza	Outreach plans are being developed	Scheduled	May 2018	Colleen Letire	CMO
Economic Development Website	Streamline city web content for new businesses. Develop an integrated approach for outreach and marketing to brokers, business owners, and others as a center for innovation and the heart of Silicon Valley.	Valuable content and links on existing site.	Will continue to assess the needs of businesses and add helpful resources. Work with the City's Public Affairs/Communications team to redesign the Economic Development webpages within the Citywide website enhancement.	In Progress	2018	Angela Tsui	Community Development
Citywide Branding Strategy	Train staff on City branding standards, create secondary logos, and a City tag line	Branding standards have been developed and training for staff is scheduled	Work with consultant to develop secondary logos	In Progress	February 2018	Brian Babcock	CMO
Citywide Community Engagement	Develop strategies for better engaging with the public on City issues and provide staff with tools and training	Four staff members participated in ILG's TIERS community engagement training. City has also contracted with Open Town Hall (formerly known as Peak Democracy) and training for staff has been scheduled.	Pilot TIERS strategy for Junipero Sierra Trail feasibility study. Pilot Open Town Hall.	In Progress	December 2018	Jaqui Guzman Brian Babcock Bill Mitchell Jennifer Chiu	CMO/Innovation & Technology/Public Works

Financial Stability							
Project Title	Project Objective	Progress to Date	Next Steps	Current Status	Completion Date	Staff Lead	Department
BMR linkage fees update	Consider increasing linkage fees for residential and non-residential projects to provide funding for BMR affordable units	To begin in Summer 2018 after requested funding for nexus study is authorized as part of FY 2018-19 budget	Prepare nexus study	In Progress	Winter 2018-19	Erick Serrano	Community Development
Employer-based revenue measures	Explore employer-based revenue measures to address issues such as traffic congestion			Proposed	TBD	David Brandt	CMO
Explore storm water ballot initiative with grassroots group(s) with input from Sustainability Commission.	Explore feasibility and potential steps to conduct property owner mail-in election for authorization to adjust stormwater fees from 1992 level to current. Note: General Fund subsidizes Cupertino Stormwater Program to meet legal obligations, fund pollution prevention programs, and provide robust environmental education and outreach to residents, businesses, and Cupertino School District.	Mayor sent support letter for SB 231 (enacted 10/17) relaxing legal restrictions on storm water fees. Staff have discussed steps taken by Palo Alto to achieve a successful election outcome.	Explore feasibility of an election in Cupertino. Solicit input from Sustainability Commission and local grassroots groups. Discuss topic with Sustainability Commission before July 2018; conduct outreach and focus groups by July 2019. Develop plan for potential property owner mail-in election by December 2019.	In Progress	December 2019	Cheri Donnelly	Public Works
Consider policies and related Code and Specific Plan amendments to implement policies in the Economic Development Strategic Plan.		EDSP adopted by City Council in late 2016. Hired consultant to work on implementation of key objectives including: Identified several policies for forward-looking economic development including: 1. Consider allowing incubator/co-working uses to replace underperforming retail, as well as consider creating office allocation in the General Plan specifically for mid-to-small size companies. 2. Create a policy to allow mobile uses (including food trucks) in the City. 3. Identify and develop regulations for an Innovation/Arts district in the City.	Identified several policies for forward-looking economic development including: 1. Consider allowing incubator/co-working uses to replace retail on sites that have underperforming retail and meet specific criteria. 2. Consider creating office allocation in the General Plan specifically for mid-to-small size companies. 3. Identify and develop regulations for an Innovation/Arts district in the City. 4. Create a policy to allow mobile uses (including food trucks) in the City. This could include identifying areas where such uses could be allowed. Incubator/co-working space is currently defined as smaller work space for a range of creative industries, and unlike in a typical office, those in incubator/co-working spaces are usually not employed by the same organization. The space would include, but not be limited to, smaller business spaces with shared resources, such as conference and meeting rooms, reception services, kitchen and/or food services, and other shared amenities. Bring draft ordinances to City Council in Winter 2018 for Item 1: Conversion of underperforming retail space to incubator/accelerator/co-working space and Item 2: Mobile vendors. Schedule a Council Study Session in Spring 2019 to discuss Item 3: Innovation District Vision Plan and to engage property owners and residents.	In Progress	End of 2018-19	Angela Tsui	Community Development
Sustainable calpers funding strategy	Identify a long term funding strategy to fund rising costs related to retirement. Goal of 80-100% funded in the next 20 years.	Strategies: a) Establish a 115 Trust and funding strategy; b) 20 year amortization; c) 6% discount rate; d) Long Term staffing costs projections including negotiated increase using GovInvest	Presentation to Council as part of Mid Year Budget (March 6) and present to Fiscal Strategic in Late March/Early April. Cost of strategy to Council as part of Proposed Budget Hearing	In Progress	June 2018	Kristina Alfaro	Administrative Services

Community Livability and Sustainable Infrastructure							
Project Title	Project Objective	Progress to Date	Next Steps	Current Status	Completion Date	Staff Lead	Department
Incentives to build Accessory Dwelling Units (ADUs)	Provide incentives to build ADUs (which provide affordable housing opportunities) by reviewing ordinance and reducing fees	The Council asked staff to add this item to the work program in late 2017.	Project will begin in Fall 2018 and is expected to be completed by early 2019.	In Progress	2018	Gian Martire, Piu Ghosh	Community Development
Update the Municipal Code to Provide Parking Incentives for Electric Vehicles and Encourage Outdoor Seating in Restaurants	The Planning Commission requested these items to be added to the work program to provide incentives for green infrastructure and enhance pedestrian-oriented character of developments		To begin after Council authorizes it in the work program	Proposed	TBD	Piu Ghosh	Community Development
Public Art in Developments	Review and consider amending the \$100,000 maximum for Public Art in Developments.	The FAC requested that this project be added to the upcoming work program in 2016. Council authorized this in 2017.	FAC reviewed on June 18, 2018, recommending raising the percentage of art to 1% with no cap; City Council introduced July 3, 2018 and enacted August 21, 2018.	Completed	August 21, 2018	Catarina Kidd	Community Development
Lawn Buster Drought Tolerant Planting Pilot	Develop a program that allows residents to easily elect water-wise turf conversion, including pre-set landscape plans, pre-approved contractors, and fixed prices	Research has begun to evaluate best options for a city-wide pilot	Collect data and research similar programs	Proposed	June 2019	Misty Mersich	CMO
Healthy Cities Initiative	Revise smoking (including vaping) and water access policies and regulations to meet HCI standards			Proposed	December 2018	Jaqui Guzman	CMO
Shuttle Bus Service Study	Study the feasibility of an east-west shuttle bus service that connects to Caltrain. Also look at possible shuttle programs to service schools.	Online survey has been completed.	Vallco Development Agreement requires a pilot Shuttle Bus Program, so work with developer on implementation plan.	Proposed	TBD	Senior-Transportation-Planner Chris Correo	Public Works
Penalties for Violation of Conditions of Approval	Consider increasing maximum penalty of \$100K for violations of conditions of approval.	Requested by Councilmember.	Issue will be reviewed with related municipal code updates.	In Progress	TBD	Phillip Willkomm, Piu Ghosh	Community Development
Teen Stress	Work with the Teen Commission and Cupertino 95014 on events that address teen stress in Cupertino	Cupertino 95014 has agreed to study the issue of teen stress in Cupertino and propose an event to highlight the problem and potential solutions The Teen Commission is working on a teen stress-relief event as part of their workplan		Scheduled	TBD	Colleen Lettire Danny Mestizo	CMO/Recreation & Community Services
Short Term Rentals	Develop a regulatory program to regulate and collect TOT from STRs	Study session on Feb. 6, 2018	Sign collection agreements with Airbnb and other large STR platforms. Draft Muni Code regulations for STRs with public input.	Scheduled	June 2019	Jaqui Guzman Ben Fu	CMO/Community Development
Regnart Road – analysis of maintenance responsibilities	1) Research and determine adjacent property owner and City maintenance responsibilities; and 2) Receive owner input and educate regarding responsibilities; and 3) Complete City work.	Drainage evaluation complete.	Obtain land use general counsel, review findings and conduct public meeting(s). Investigative work and meeting with owners complete by summer 2018.	In Progress	June 2019.	Chad Mosley / Roger Lee	Public Works
Lawrence Mitty	Acquire a parcel at Lawrence Expwy and Mitty Ave for trail expansion and park development	City has worked with SJWC and County to secure a three-way transaction but was not able to reach agreement with SJWC	County is taking the lead on negotiations with SJWC. If property is secured, funding allocation for conceptual design will be proposed with 2018-19 CIP.	In Progress	TBD	Jaqui Guzman Timm Borden Jeff Milkes	CMO/ Public Works/ Recreation & Community Services
Vallco Specific Plan	Create a community-based vision and objective standards for development at Vallco	Vallco Town Center Specific Plan (including Final Environmental Impact Report and associated general plan amendments) adopted and first reading of associated ordinances including Development Agreement conducted on September 19, 2018. Ordinances including Development Agreement with Vallco Town Center LLC enacted on October 2, 2018.	Review Master Site Development Plan for the Vallco project.	In Progress	Winter 2019	Catarina Kidd and Piu Ghosh	Community Development

Community Livability and Sustainable Infrastructure

Project Title	Project Objective	Progress to Date	Next Steps	Current Status	Completion Date	Staff Lead	Department
Community Garden Improvements	Renovate the community gardens at McClellan Ranch, and implement a new process and procedures for a more effective, community-driven gardens program.	Multiple stakeholder meetings have been held to develop better procedures and appropriate enforcement policies. A capital project was completed that developed a clear concept, vision and design/construction documents for the gardens. The renovate project is currently in the bid process. The new rules and enforcement process will be implemented as garden plots are assigned.	Complete contracting process and renovate the gardens as approved in the 2018/19 CIP budget. Evaluate fees to consider in the 2019/20 budget with respect to potential cost recovery.	In Progress	Summer 2019	Kim Calame	Recreation & Community Services
Strategic Plan for Neighborhood Special Events	Complete strategic planning to implement recreational activities in neighborhood parks.	Thirty-four events and activities were offered between July and September, 2018 with 5,888 community members participating.	Complete summary report and present to the Parks & Recreation Commission with recommendations to City Council for the program in 2019/2020.	In Progress	February 2019	Jeff Milkes/Kim Calame	Recreation & Community Services
Citywide Parks and Recreation System Master Plan	Create a 20+ year community-driven plan to meet future parks, open space and recreation needs through establishing goals and priorities and enhancing or expanding facilities and programs. Completion of the System Master Plan will trigger preparation of the Department's three year Strategic Plan.	Consultant and staff have evaluated existing park and recreation systems, formed an advisory group, developed a vision statement and goals, identified prioritization criteria and identified preliminary opportunities. Community outreach explored best use of park spaces to identify needs for different events, activities and goals. The plan is anticipated to be issued for public comment in early 2019 and be finalized for City Council in spring 2019 , depending upon additional public input and results of workshops.	Prepare administrative and public draft Master Plan. Public and Commission input and presentations will occur. Refine a final draft master plan for adoption.	In Progress	May 2019	Gail Seeds	Recreation & Community Services
Solid Waste Characterization Studies and Waste Audits	1) Complete tonnage audit and waste characterization studies of pertinent streams of City facilities, residential curbside, and commercial waste; and 2) Analyze effectiveness of neighboring agency programs and emerging technology as it might apply in Cupertino in diverting recyclable content from landfill.	Collected contract and waste characterization information from neighboring agencies. Began review of potential auditors and consultants.	Execute consultant agreements and begin work.	In Progress	June 2018	Cheri Donnelly/ Roger Lee	Public Works
Teacher Housing	Evaluate a "Teacher Housing" project in partnership with a non-profit developer and try to identify and develop surplus school property as a teacher housing project.	In March 2016, the Planning Commission recommended adding a goal of providing 100 senior or "teacher" housing units per year for the next five years and/or provide incentive and priority for Cupertino residents. The priority system was implemented as part of the BMR Administrative Manual update in September 2016.	Continue to explore opportunities in collaboration with the school districts	In Progress	TBD	Kerri Heusler	Community Development
Heart of the City Plan	Amend the Heart of the City Specific Plan: (1) for clarifications to the minimum street side setback requirements, and (2) to review street tree requirements to allow larger trees, increase diversity of tree type and encourage drought-tolerant and native tree types.	To be revised during the next Heart of the City Specific Plan update		On Hold		Erick Serrano	Community Development
Library Community Room Addition	Continue design and implementation of library community room addition	Preferred alternative was adopted by City Council in 2015. Funding was pledged by Irvine Company in development agreement for Hamptons development pending issuance of building permits.	Initiate architectural design	On Hold	TBD	Timm Borden	Public Works
Dog Off Leash Area Trial at Jollyman Park	Complete public engagement and work with neighbors to complete a six month trial of an off leash area within Jollyman Park	A self selected survey of neighbors was completed with over 300 respondents. The Parks and Recreation Commission has recommended a trial move forward in the Spring of 2019.	Public Engagement process and eventual trial in the Spring, 2019.	In Progress	November, 2019	Jeff Milkes	Recreation and Community Services

Community Livability and Sustainable Infrastructure

Project Title	Project Objective	Progress to Date	Next Steps	Current Status	Completion Date	Staff Lead	Department
All Inclusive Playground	Study, fund raise and design an All-Inclusive Playground in a neighborhood park	Council approved a grant application in October, 2018 to Santa Clara County. Staff completed a feasibility study as part of the 2018/19 CIP budget.	Submit grant application. If the application is successful, staff will further evaluate costs, need, and value to the community to support Council decisionmaking regarding this significant investment.	In Progress	TBD	Gail Seeds	Recreation and Community Services
Amend Municipal Code to change construction hour start time from 7:00am to 8:00am	Address neighbor concerns related to noise and disturbance related to construction	Requested by Councilmember.	Confirm project process and schedule. Earliest timeline is November 20, 2018 for first reading..	Proposed	November 2018	Ben Fu	Community Development
Recreation and Community Services Strategic Plan	Complete a three year strategic plan that serves to align the department with a common vision and values. The plan will be measurable, with specific goals, objectives and actions. Goals will revolve around action items in the Master Plan, department culture and tools for successful implementation.	Staff have contracted with a consultant to assist with the process.	Identify strategic themes, objectives, measures, performance indicators and initiatives.	In Progress	TBD	Jeff Milkes/Department Leadership Team	Recreation and Community Services
Performing Art Center Market and Operations Feasibility Study	Conduct a feasibility study for City Council consideration on whether to have the Vallco developer construct a warm shell building as part of their Master Site Development Permit	The budget amendment to allow staff to move forward with an RFP to hire a consultant is on the 10/16/18 Council Agenda	Issue an RFP in early November.	In Progress	April 2019	Chad Mosley	Public Works

Operational Efficiency							
Project Title	Project Objective	Progress to Date	Next Steps	Current Status	Completion Date	Staff Lead	Department
Alternative Commute Pilot for Staff	Pilot to encourage employees to use alternative modes of transportation such as walking, biking, transit, and carpool to relieve road congestion, reduce harmful emissions and improve employee health.	Exploring programs from surrounding cities and writing a draft proposal	Develop policy, implementation measures, and determine appropriate incentive levels.	Proposed	June 2019	Misty Mersich	CMO
American Public Works Association (APWA) Accreditation	To objectively evaluate, verify and recognize compliance with recommended management practices.	Reviewing / amending current practices and beginning self-assessment process.	Complete update of current practices and schedule on-site evaluation.	Scheduled	FY2019/2020	Roger Lee	Public Works
Workforce Planning	Use data in the City's ERP system and several city documents such as the budget, CIP and Council Work Program to identify key positions needed and how to attract, retain or train to ensure the availability of those positions when needed.	None	Begin identifying key positions. Formulate training/recruitment/retention strategy for those positions.	Scheduled	June 2019	Kristina Alfaro	Administrative Services
Labor Negotiations	Negotiate equitable long term contracts with all bargaining units	Current contract expires in June 2019.	Begin preparation for negotiations in January 2019	Scheduled	June 2019	Kristina	Administrative Services
Disaster recovery plan	Provide network/data resiliency thru the use of offsite and out of region data centers	Simplified network/data infrastructure to allow for easy migration to offsite data center	1) Move current City Hall data center infrastructure elements to local colocation facility. 2) Build second infrastructure environment at distant, out-of-region colocation facility.	In Progress	FY2018/FY19	Bill Mitchell	Innovation & Technology
Applications	Deploy applications to enhance operational efficiency.	In process of implementing various enterprise applications including Accela Land Management, GovInvest, Peak Democracy and Zonar 3D	1) Finalize implementation of applications in flight. 2) Continue to research cost effective solutions to current business problems.	In Progress	FY2018	Bill Mitchell	Innovation & Technology
Public Building Condition and Use Assessment	1) Determine priority assessment of buildings for future improvements; and, 2) Analyze selected buildings for facility use efficiency	Notice to proceed issued.	Facilitate consultants work by retrieving needed documents and facilitating on-site inspections.	In Progress	August 2018	Roger Lee	Public Works
Staffing Level Evaluation	Analyze work load of various staff to insure community expectations are met and ordinance requirements are enforced.	Various deficiencies have been identified.	Complete evaluation within department and discuss coordination with other departments as applicable and needed.	In Progress	FY2019/20	Timm Borden/Roger Lee	Public Works
Weekend Work Program	Ensure efficiency of program.	reviewing current practices and gathering data from staff. Analysis has been completed and program still is shown to provide good value to the City.	Complete evaluation within the department and determine the value of labor received from participants vs. the value of full-time employees to monitor the program.	Completed	January 2019	Carl Valdez	Public Works
Civic Center Master Plan—Renovation-	Begin design for renovation of City Hall, including structural strengthening, accessibility improvements, and replacement of all electrical and mechanical systems	Following rehabilitation options from Civic Center Master Plan, as currently is being validated by consultant conducting city-wide facility condition and use efficiency study.	Upon approval from City Council to move forward, advertise RFP for architectural services.	In Progress	January 2020	Timm Borden	Public Works
New City Hall Design	Design a New City per the Valco Specific Plan Development Agreement and deliver building permits to the developer in 21 months and vacate the building 24 months from 11/2/18.	The budget amendment to allow staff to move forward with an RFP to hire an Architectural consultant is on the 10/16/18 Council Agenda	Issue an RFP in late November.	In Progress	August 2020	Timm Borden	Public Works
Interim City Hall Design	Design an Interim City Hall on the Library Field (Modular Portables) for the timeframe that the New City Hall is under construction.	The budget amendment to allow staff to move forward with an RFP to hire an Architectural consultant is on the 10/16/18 Council Agenda	Issue an RFP in early November.	In Progress	November 2020	Timm Borden	Public Works
Roll Out of Additional ERP Modules	Fully utilize ERP system to automate and simplify business processes	Fixed Asset module is in data verification stage. CAFR Builder is in contract negotiations.	Review contract module and requested time off capabilities in the City's online timesheet/benefits portal	In Progress	June 2020	Kristina Alfaro	Administrative Services
Roll Out of Open Gov Platform (maps and additional reports)	Fully utilize OpenGov Software	Successfully began using and integrating open budget portion of OpenGov	Build out additional reports and view on the City's transparency portal	In Progress	June 2020	Kristina Alfaro	Administrative Services
Integration of Workplan and Other Long/Short Term Documents to Develop 5 Year Business Plan for City.	Comprehensive Business Plan that encompasses all workplan items ensuring adequate funding and staffing resources.	Pending work plan approval.	Ensure costs associated with items approved in workplan are included in the FY19 budget. Ensure future costs of items in the workplan are included in the Long Term Financial forecast	In Progress	June 2020	Kristina Alfaro	Administrative Services

Operational Efficiency							
Project Title	Project Objective	Progress to Date	Next Steps	Current Status	Completion Date	Staff Lead	Department
Accreditation of the Recreation & Community Services-Department	National accreditation by the Commission for Accreditation of Park and Recreation Agencies to inform policy makers, staff, and community members that the parks and recreation agency has been independently evaluated against established benchmarks for delivering a high level of quality service.	The City has been accepted as a candidate for national accreditation in 2019. A committee of front-line staff, supervisors and managers are addressing each of the 151 national standards. All Recreation staff have been trained in the process. The Department is on schedule to be reviewed in early 2019 and potentially accredited in October, 2019.	Complete self evaluation addressing the 151 national standards. This requires wide-ranging tasks including creating a department marketing plan, risk assessment plan, and a review of all department policies.	Cancelled	October 2019	Jeff Milkes	Recreation and Community Services
Implement ActiveNet Registration Software System	Replace the current recreation registration software with a cloud-based software version to enhance service at the Quinlan Community Center, Sports Center, Senior Center and other recreation facilities as appropriate.	Staff have negotiated a contract with ActiveNet with project implementation and training in the Spring and Summer of 2018. The project software was successfully launched on October 2, 2018	Continue with phase in of all modules of the software package.	Completed	October 2, 2018	Project Lead, Rachelle Sander. Project Manager, Bill Mitchell	Recreation and Community Services, with Innovation & Technology
Cross Platform System Integration	Leverage new technology acquisitions to create integrated systems	Identified integration possibilities between the City's ERP Logos and Land Management Software, Recreation Software, Project Works and Recruitment software. Finance division working with Land Management software on integration specifications	Explore and implement integration	In Progress	Summer 2018 and Ongoing	Kristina Alfaro	All
Improve Process of Public Records Act (PRA) Requests	Provide a comprehensive web portal that allows 24x7 public access to search previous PRA responses or submit a new PRA request. Route, escalate, track, distribute, log and manage each PRA request. Provide knowledge base of previous PRA requests and associated responses. Manage, review and improve current City process.	Met with vendors on different applications that meet our goals.	Vendor demo application for staff review and selection.	In Progress	Fall 2018	Bill Mitchell/Grace Schmidt	Innovation & Technology/City Clerk

Public and Private Partnerships							
Project Title	Project Objective	Progress to Date	Next Steps	Current Status	Completion Date	Staff Lead	Department
Support the Creation of a Film Society	To increase art opportunities in the City. The goal is to support the creation of a film society based on a request by interested citizens	N/A	Explore opportunities upon authorization	Proposed	TBD	Angela Tsui/Catarina Kidd	Community Development
Small Business Dev. Center	Explore the viability of establishing a small business development center within the City of Cupertino.	This is an action item in the EDSP as a resource to retain and grow small and midsize businesses.	Continue to explore opportunities.	In Progress	TBD	Angela Tsui	Community Development
Library Lease	Sign a new lease with the Library JPA for use of the City's Library facility	Staff has begun meeting with Library staff to discuss terms for the new lease	Negotiate and complete lease	In Progress	June 2018 June 2019	Jaqui Guzman/ Rocio Fierro/ Jeff Milkes/ Roger Lee/	CMO/CAO/Recreation & Community Services/Public Works
Strategic Partnerships with Nonprofits	Create strategic partnerships with nonprofits to improve effectiveness of Recreation & Community Services Programs. Objectives include coordination of programs with the Cupertino Library, YMCA, West Valley Community Services, School Districts, etc.	Many new partnerships have been strenthe	Develop MOU with Library addressing program opportunities, and continue discussions with West Valley Community Services and other non profit service providers.	In Progress	June 2019 (ongoing)	Kim Calame/Kim Frey/Christine Hanel	Recreation & Community Services



PUBLIC WORKS DEPARTMENT
Timm Borden, Director

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C I P F Y 2019

Capital Improvement Program
Adopted FY 2019 Planned FY 2020-2023



Proposed CIP Revisions – October 16, 2018

EXISTING PROJECTS – TO BE POSTPONED

Blackberry Farm Entrance Road Improvements - Feasibility



DESCRIPTION

Prepare a feasibility study on ways to improve pedestrian and bicycle access to Blackberry Park Farm and Stevens Creek Corridor Trail.

Budget Unit:	560-99-061	Priority:	1
Estimated Project Costs:	\$75,000	Location:	Blackberry Farm
Requesting Dept.:	Rec. and Comm. Services		

PROJECT JUSTIFICATION

Current access to Blackberry Farm for bicycles, pedestrians and vehicles is a narrow access road shared by all three groups. This feasibility study will identify and evaluate various concepts to improve access for non-vehicular visitors to the park.

STATUS

This feasibility study is proposed to be postponed due to limited staff resources and budget constraints

Creek Infall/Outfall Restoration



DESCRIPTION

Reconstruct existing drainage structures adjacent to 22001 Lindy Lane, 10545 Cordova Road and 21710 Regnart Road to prevent debris build-up, flooding and creek erosion during the rainy season.

Budget Unit: 420-99-064
Estimated Project Costs: \$480,000
Requesting Dept.: Public Works

Priority: 1
Location: Various

PROJECT JUSTIFICATION

The existing drainage structures at these three locations are antiquated, poorly protected from floating debris making them susceptible to debris build-up, blockages and potential flooding. This project proposes to rebuild these structure with more effective debris capture devices and improve the outfall structures to reduce erosion and improve hydraulic conditions.

STATUS

This project is proposed to be postponed due to limited staff resources and budget constraints.

De Anza Median Island Landscaping Phase II



DESCRIPTION

Design and construct replacement arbor, irrigation and plantings of street medians. This is the second phase of the program and covers the length of De Anza Boulevard between I-280 & Mariani Avenue.

Budget Unit: 420-99-065

Estimated Project Costs: \$1,546,500

Priority 2

Location: De Anza Blvd. between
HWY 280 to Mariani Ave.

Requesting Dept.: Public Works

PROJECT JUSTIFICATION

Cupertino has many mounded median islands which are difficult to irrigate efficiently. Since the installation of many of the City's planted median islands, the approach to grading, planting, and maintaining them has changed as the desire to conserve resources has increased. Over that same time, irrigation products and systems have also improved efficiency. In addition, landscape plantings need to be replaced as they age out over time. Projects to renovate the median islands will refresh the plantings and improve the efficiency in the use of water and labor to maintain the systems.

STATUS

The consultant has been selected and the design has begun on the second phase of the De Anza Median Island renovation program. Construction is proposed to be postponed due to limited staff resources and budget constraints.

Lawrence-Mitty Park Master Plan



DESCRIPTION

Develop a Master Plan for a proposed neighborhood park located on several acres of land adjacent to Saratoga Creek, near the intersection of Lawrence Expressway and Mitty Way.

Budget Unit: 280-99-009

Priority 2

Estimated Project Costs: \$100,000

Location: Lawrence Expressway and
Mitty Way

Requesting Dept.: Rec. and Comm. Services

PROJECT JUSTIFICATION

The City is under-served for parks and open space to meet the level of service goal of the City's General Plan. The east side of the City is particularly under-served. With the acquisition and annexation of the project the next step is to master plan the site to determine the best use for the site.

STATUS

This project is proposed to be postponed due to limited staff resources and budget constraints.

McClellan Ranch Preserve Community Garden Improvements – Construction



DESCRIPTION

Reconstruct the existing community garden based on the design developed in FY 2017-18. The project includes reconfiguration of the garden plots, improved ADA accessibility to and within the garden, installation of new perimeter fencing, irrigation distribution system and informal meeting area.

Budget Unit:	280-99-066	Priority:	2
Estimated Project Costs:	\$1,500,000	Location:	McClellan Ranch Preserve
Requesting Dept.:	Rec. and Comm. Services		

PROJECT JUSTIFICATION

This project will implement the approved conceptual design for the McClellan Ranch Community Garden Improvements project. The goals of this project are to increase the number of garden plots thereby reducing the number of residents on the waiting list, improve ADA accessibility, improve the water distribution system throughout the garden, increase the aesthetics and sense of community and provide increased protection from non-beneficial wildlife.

STATUS

The design is complete, the project was advertised and bids were opened on September 18, 2018. Bids received exceeded the available budget. The project will be value engineered and re-packaged. Construction is proposed to be postponed due to limited staff resources and budget constraints.

McClellan Ranch Preserve EEC Aquatic Habitat Upgrade



DESCRIPTION

Construction of an outdoor aquatic habitat for turtles, fish and other species adjacent to the Environmental Education Center (EEC). This habitat will be used as an outdoor education center for schools visiting the EEC.

Budget Unit:	280-99-067	Priority:	1
Estimated Project Costs:	\$125,000	Location:	McClellan Ranch Preserve
Requesting Dept.:	Rec. and Comm. Services		

PROJECT JUSTIFICATION

This project would create an outdoor habitat and classroom providing for a more natural environment for the turtles, fish, etc and more space to conduct classroom sized presentations. The facility would be ADA accessible, consistent with the McClellan Ranch environment and from other animals.

STATUS

This project is proposed to be postponed due to limited staff resources and budget constraints.

McClellan Ranch – Construct Trash Enclosure



DESCRIPTION

Screen the existing trash/debris boxes from McClellan Road. This would include a concrete pad for the boxes.

Budget Unit:	420-99-003	Priority:	1
Estimated Project Costs:	\$154,000	Location:	McClellan Ranch Preserve
Requesting Dept.:	Rec. and Comm. Services		

PROJECT JUSTIFICATION

Currently the trash containers are in the open, visible from McClellan Road, and attract illegal dumping. Screening the trash containers will help discourage illegal dumping at McClellan Ranch Preserve.

STATUS

The design is complete and the project was packaged with the Community Garden project. The project was advertised and bids were opened on September 18, 2018. Bids received exceeded the available budget. The project will be value engineered and re-packaged. Construction is proposed to be postponed due to limited staff resources and budget constraints.

Recreation Facilities Monument Signs



DESCRIPTION

Design and construct new monument signs with lighting at the following locations:

- McClellan Ranch Preserve
- McClellan Ranch West
- Blackberry Farm
- Memorial Park
- Sports Center

Budget Unit:	420-99-031	Priority:	2
Estimated Project Costs:	\$385,000	Location:	Various
Requesting Dept.:	Rec. and Comm. Services		

PROJECT JUSTIFICATION

The McClellan Ranch Preserve and Stevens Creek Corridor Signage Program was approved by Council in December 2014. The Signage Program prescribes a standardized and consistent look and feel for all signage along Stevens Creek.

The Signage Program provides a signage convention that can be applied to other recreation facilities in the city. The existing monument signs at several city facilities are outdated, worn, and in need of repair. This project will install new monument signs at five city facilities consistent with the Signage Program.

STATUS

This project is proposed to be postponed due to limited staff resources and budget constraints.

Retaining Road Improvements – Cordova Road



DESCRIPTION

Design and construct a project to replace the wood planks in the existing wall.

Budget Unit: 420-99-040

Priority: 1

Estimated Project Costs: \$350,000

Location: West side of Cordova Road,
north of San Juan Road

Requesting Dept.: Public Works

PROJECT JUSTIFICATION

There is an existing wall along Cordova Rd. that retains soil adjacent to private property. The existing retaining wall is showing signs of deferred maintenance and potential premature failure. This project will replace the wood planks (ie lagging) in the wall and extend the useful life of the wall.

STATUS

This project is proposed to be postponed due to limited staff resources and budget constraints.

Service Center Shed No. 3 Improvements



DESCRIPTION

Design and construct a replacement for the existing Shed 3 to accommodate the landscape material and organic waste storage requirements, including durable walls and canopy and comply with current stormwater pollution prevention requirements.

Budget Unit: 420-99-034
Estimated Project Costs: \$1,100,000
Requesting Dept.: Public Works

Priority: 1
Location: Service Center

PROJECT JUSTIFICATION

Currently, loose landscape materials and waste are stored at the Service Center in outdoor, covered, material storage bays at Shed No. 3. As part of the City's increasing waste diversion efforts, it now collects different types of organics from its sites to recycle, including food scraps. The existing material bays need to be reconfigured to accommodate the increasing demand for separate storage bays.

STATUS

This project was bid in January, 2018 and proposals exceeded the available budget. This project will be redesigned to a more cost effective solution. This project is proposed to be postponed due to limited staff resources and budget constraints.

Sports Center – Upgrades



DESCRIPTION

Design and implement the following, as prioritized, as available funding permits: 1) renovate the second floor restrooms; 2) renovate the women's locker room and shower; 3) renovate the men's locker room and shower; 4) renovate the front lobby counter.

Budget Unit:	420-99-017	Priority:	1
Estimated Project Costs:	\$1,590,000	Location:	Sports Center
Requesting Dept.:	Rec. and Comm. Services		

PROJECT JUSTIFICATION

The last major upgrades to the building were in 2004 and the facility is in need of some minor upgrades, due to wear-&-tear and weathering. These improvements will improve user experience and attract new users. Prior year funding authorized conversion of the east court lights to LED and installation of an electronic monument sign. This project will continue the modernization program and increase the attractiveness of the facility.

STATUS

Design is underway and is approximately 50% complete. Project design is expected to be complete by January, 2019. This project is proposed to be postponed due to limited staff resources and budget constraints.

Stevens Creek Bank Repair – South of SCB – Conceptual Design



DESCRIPTION

Prepare a conceptual design for repairs to creek banks that will protect property from further erosion and stabilize the bank, and is compatible with existing goals and requirements for the creek corridor.

Budget Unit:	420-99-014	Priority:	1
Estimated Project Costs:	\$100,000	Location:	Stevens Creek South of
Requesting Dept.:	Rec. and Comm. Services		Stevens Creek Boulevard

PROJECT JUSTIFICATION

In 2014, the City purchased a residential parcel (Blesch) on Stevens Creek Boulevard that lies between the Stocklmeir site and the Blackberry Farm Golf Course. The creek channel upstream of this parcel has been widened and restored. However this parcel, which is in the active floodway and subject to bank erosion, remains to be stabilized and restored. This parcel is targeted for improvements relating to the park and recreation purposes of the Stevens Creek Corridor. Its bank should be stabilized before such improvements move forward in order to protect the City's investment. A conceptual plan for improvement of the bank and channel will make the implementation of the project more eligible and attractive for potential grant funding.

STATUS

This project is proposed to be postponed due to limited staff resources and budget constraints.

Storm Drain Master Plan Implementation



DESCRIPTION

Design and construct storm drain improvements at high priority locations identified in the updated Storm Drain Master Plan. The goal of the improvements is to minimize the potential for localized flooding of streets and private property.

Budget Unit: 210-99-071
Budgeted Amount: \$3,100,000
Requesting Dept.: Public Works

Priority: 2
Location: Various locations

PROJECT JUSTIFICATION

Completion of the Storm Drain Master Plan Update is anticipated in 2018, which will identify and prioritize storm drain improvement projects. A project to fund implementation of the initial priorities will be the next step to improve the City's storm drain system.

STATUS

This project is proposed to be postponed due to limited staff resources and budget constraints.

NEW PROJECTS – CURRENT YEAR

New City Hall Design



DESCRIPTION

Design a new 40,000 sf City Hall on the site of the existing City Hall. The new building will be two story with a 118 stall underground parking lot.

Budget Unit:	TBD	Priority:	1
Estimated Project Costs:	\$5,500,000	Location:	10300 Torre Road
Requesting Dept.:	Public Works		

PROJECT JUSTIFICATION

As part of the Vallco Development Agreement with Vallco Property Owner, LLC the City is responsible for the design of a new City Hall Building. The new building will be located on the site of the existing City Hall. Vallco Property Owner, LLC is responsible to construct the “warm shell” and the City is responsible for the tenant improvements.

STATUS

Consultant selection will begin as soon as the project is approved. Completed design and approved building permits are anticipated by August 2020.

Interim City Hall



DESCRIPTION

Design and construct an Interim City Hall, approximately 25,000 sf. on Library field.

Budget Unit:	TBD	Priority:	1
Estimated Project Costs:	\$500,000	Location:	Library Field
Requesting Dept.:	Public Works		

PROJECT JUSTIFICATION

As part of the Vallco Development Agreement, the existing City Hall will be relinquished to Vallco Property Owner, LLC in November, 2020. Vallco Property Owner, LLC is responsible to construct a “warm shell” for a new City Hall in the location of the current City Hall. All City Hall employees need to be relocated prior to the November deadline. This project will construct interim, modular office space on Library field. This interim facility will remain operational for the duration of the New City Hall project construction. Sufficient lease space will also be pursued as an option for the Interim City Hall, and this design will be abandoned if space can be secured and the Council chooses the lease option.

STATUS

Upon approval of the budget appropriation consultant selection will begin. Construction and employee transition must be complete by November, 2020.

Inclusive Play Area



DESCRIPTION

This project will design and construct an Inclusive Play Area identified in Citywide Parks, Open Space & Recreation Master Plan.

Budget Unit:	TBD	Priority:	1
Estimated Project Costs:	\$5,000,000	Location:	Jollyman Park
Requesting Dept.:	Rec. and Comm. Services		

PROJECT JUSTIFICATION

In September 2018, Santa Clara County approved funding of \$10M countywide for development of All Inclusive Play Areas. Recreation and Community Services staff have completed site selection and conceptual design and have identified Jollyman Park as the best location in the City for an All Inclusive Play area. City Council approved submitting a grant application on October 2, 2018 with the goal of securing up to \$2M in grant funding. If successful, this project will design and construct such a facility.

STATUS

Site selection and key project components have been identified. Santa Clara County approved second round funding of \$10M. Staff has submitted a grant application and anticipate hearing in December if they were successful. Design would commence immediately once the Council accepts the grant award.

Performing Arts Center – Market and Operations Feasibility Study



DESCRIPTION

This feasibility study will include a market analysis for a proposed Performing Arts Center as well as identify the estimated tenant improvement costs and the operational expenses related to a facility of this type.

Budget Unit: TBD

Estimated Project Costs: \$200,000

Priority: 1

Location: Vallco Development,
west of Wolfe Rd.

Requesting Dept.: Public Works

PROJECT JUSTIFICATION

The Vallco Development Agreement proposes to construct a 60,000 sf Performing Arts Center for City use. This feasibility study will verify the community interest, revenue potential, likely tenant improvement costs, operational costs and evaluate different management models for this type of facility.

STATUS

Within 90 days of the Effective date of the Development Agreement the City will commence with a Market and Operations feasibility study for the proposed project.

RESOLUTION NO. 18-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING THE FY18/19 ANNUAL CAPITAL IMPROVEMENT PROGRAM
BUDGET TO DEFUND \$4,425,750 IN BUDGETED CAPITAL FUNDS AND
REALLOCATE THE FUNDS TO THE CAPITAL RESERVE FUND

WHEREAS, the City has identified several Capital Improvement Projects that should be deferred to make staff resources available for the New City Hall Project, Interim City Hall Project, the Performing Arts Center Study, and various Regional Transit Projects; and

WHEREAS, the City seeks to create additional funding capacity for the New City Hall, Interim City Hall, Performing Arts Center Study and various Regional Transit Projects;

NOW, THEREFORE, THE CUPERTINO CITY COUNCIL RESOLVES AS FOLLOWS:

The City Council approves the defunding of \$4,425,750 in budgeted Capital Funds for the following projects:

Table 1

Project Name and Recommended Action	Unencumbered FY 18/19 CIP Fund Budget Balance
<ul style="list-style-type: none"><i>Blackberry Farm Entrance Road Improvements Feasibility Study</i> – Defer until after completion of Stevens Creek Corridor Park Chain Master Plan. – Defer and defund	\$75,000
<ul style="list-style-type: none"><i>Creek Infall/Outfall Restoration</i> – Defer until after completion and prioritization of the Storm Drain Master Plan – Defer and defund	\$160,000
<ul style="list-style-type: none"><i>De Anza Median Island Landscaping Phase II</i> – Complete design consistent with Phase I and then defer construction.	\$1,470,900
<ul style="list-style-type: none"><i>McClellan Ranch Preserve Community Garden Improvements – Construction</i> – Received bids in Sept. 2018, rejected due to costs far exceeding budget. Repackage to reduce costs and bring back to 2019-20 Budget discussions for prioritization. - Defer	
<ul style="list-style-type: none"><i>McClellan Ranch Preserve – EEC Aquatic Habitat</i> - Bring back to 2019-20 Budget discussions for prioritization. – Defer and defund	\$125,000

<ul style="list-style-type: none"> • <i>McClellan Ranch Preserve – Construct Trash Enclosure – Design completed with Community Garden Project. Bring back to 2019-20 Budget discussions for prioritization. – Defer</i> 	
<ul style="list-style-type: none"> • <i>Recreation Facilities Monument Signs – Defer and defund</i> 	\$385,000
<ul style="list-style-type: none"> • <i>Retaining Wall Repair – Cordova Road – Defer, monitor condition and defund</i> 	\$298,300
<ul style="list-style-type: none"> • <i>Service Center Shed No. 3 Improvement – Defer and seek alternate temporary solutions</i> 	\$991,050
<ul style="list-style-type: none"> • <i>Stevens Cr. Bank Repair – South of SCB – Concept Design – Defer</i> 	
<ul style="list-style-type: none"> • <i>Sports Center – Upgrades - Complete design consistent with Phase I and then defer construction until building condition assessment is complete and comprehensive structural and space requirements are known.</i> 	\$920,500
<ul style="list-style-type: none"> • <i>Storm Drain Master Plan Implementation - Defer</i> 	
Proposed to Return Back to Capital Reserve Fund:	\$4,425,750

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 16th day of October 2018, by the following vote:

Vote

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Darcy Paul, Mayor



CITY OF CUPERTINO

Legislation Details (With Text)

File #: 17-3277 **Version:** 1 **Name:**
Type: Reports by Council and Staff **Status:** Agenda Ready
File created: 11/13/2017 **In control:** City Council
On agenda: 10/16/2018 **Final action:**
Title: Subject: Report on Committee assignments and general comments
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Date	Ver.	Action By	Action	Result
10/16/2018	1	City Council		

Subject: Report on Committee assignments and general comments

Report on Committee assignments and general comments